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Pretrial Regarding Termination of the Investigation

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Abstract:
An initial investigation is an action that precedes an investigation, so it must be seen as an integral and inseparable part of the investigation. The initial investigation aims to determine whether an event that is suspected of being a criminal act is a criminal act or not. If the results of the initial investigation conclude that the incident that occurred constituted a crime, then an investigation can be followed up to make the crime clearer and clearer. If the initial investigation is stopped, it will automatically stop the investigation, so the termination of the investigation must be considered a termination of the initial investigation and can become the object of pretrial.

Keywords: *Pretrial, initial investigation, investigations*

1. Background

Based on Article II of the Transitional Regulations of the 1945 Indonesian Constitution (UUD 1945), all existing state bodies and regulations are still in effect, as long as new ones have not been implemented according to this Constitution, all regulations from the period of the Dutch East Indies Government still remain. Effective at the time of the proclamation of Indonesian Independence, including the Het Herziene Inlandsch Reglement, Staatsblad of 1941 Number 44 (HIR) as the Criminal Procedure Law. Het Herziene Inlandsch Reglement was a product of the Dutch East Indies Government, created by the colonialists for the colonial people.

Het Herziene Inlandsch Reglement (HIR) is considered to lack respect for human rights, especially the human rights of suspects or defendants. In the preamble to Code of the Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), among other things, it is expressly stated that it is a legal state based on Pancasila and the 1945 Constitution and which upholds human rights, criminal procedural law in HIR and all implementing regulations are no longer in accordance with the ideals of national law. Hence, they need to be replaced with the Criminal Procedure Code to carry out justice for courts within the general judiciary and the Supreme Court. So, HIR, as the old criminal procedural law, is no longer in accordance with the ideals of the Indonesian Rule of Law and an atmosphere of independence that upholds human rights, including the human rights of suspects or defendants.

One of the main differences between KUHAP and HIR is respect for human rights. HIR is considered to have little respect for human rights, and on the other hand, the KUHAP is considered to respect them very much. The Criminal Procedure Code especially focuses on protecting the dignity of suspects or defendants (Romli Atmasasmita, 2010: 72). This form of respect is demonstrated, among other things, by regulating the rights of suspects and defendants, limiting the implementation of coercive measures against a suspect or defendant, as well as pretrial arrangements in the Criminal Procedure Code. Het Herziene Inlandsch Reglement allows continuous detention without a firm time limit (Ansori Sabuan, Syarifuddin Pettanasse, and Ruben Achmad, 1990: 50). On the other hand, the Criminal Procedure Code limits the implementation of detention as regulated in Article 24-28.

Pretrial is not regulated in the HIR. As a result, law enforcement officers can freely carry out forced arrest and detention efforts because there is no control from any party, including the suspect or defendant. This is different from the Criminal Procedure Code, which, in various respects, regulates the rights of suspects or defendants, including the right to file a pretrial hearing. The district court's authority, which is exercised through pretrial, is intended as a horizontal supervisory authority from the district court (PAF Lamintang and Theo Lamintang, 2010: 229) over acts of coercion carried out by investigators and public prosecutors.

Pretrial is a means of control for law enforcement, especially the police. The spearhead of the criminal case process, whether there is a criminal case or not, begins with the police as initial investigators and/or investigators.

There are 4 (four) ways for an investigator and/or investigator to find out about a criminal act, namely through reports, complaints, being caught red-handed, and other information, both from electronic and print media. Whatever source the initial knowledge of a criminal act is, the investigator or investigator is the one who first processes it and then follows it up to the prosecution and trial levels in the district court, high court and Supreme Court. Therefore, the police agency is the agency most frequently subjected to pretrial proceedings. Indeed, among law enforcement jobs, police work is the most interesting job because police work has more direct contact with the community and, at the same time, carries the risk of receiving sharp attention from the community (Satjipto Rahardjo, 2009: 111).

As the spearhead of the criminal justice system, it may happen that the source of information regarding the occurrence of a criminal act is still raw, meaning that the evidence for it is still minimal or the act is still doubtful as a criminal act. However, perhaps the reason that someone suspected of being the perpetrator of a crime should not go scot-free is that investigators immediately determine someone to be a suspect and sometimes even immediately arrest and detain him. This is what opens up the opportunity for pretrial prosecution to be carried out. On the other hand, it is possible that the source of information about a crime is clear, including the evidence, but the investigator or investigators stop the case on the grounds that there is not enough evidence. Based on Article 1:10 of the Criminal Procedure Code, the object of pretrial is whether or not an arrest and/or detention is valid, whether or not the termination of an investigation or prosecution is valid, requests for compensation and rehabilitation, and this scope is considered too narrow because it does not cover the illegality of other coercive measures carried out by investigator and public prosecutors, such as illegal seizures, illegal searches, etc. (Al. Wisnubroto and G. Widiartana, 2005: 79).

According to Article 1 point 2 of the Criminal Procedure Code, an investigation is a series of investigative actions in terms of and according to the methods regulated in this law to search for and collect evidence that will shed light on the criminal act that occurred and in order to find the suspect. Constitutional Court Decision Number 21/PUU-XII/2014 states that Article 1 number 2 of Law Number 8 of 1981 is conditionally unconstitutional, namely conditionally unconstitutional as long as the phrase 'and in order to find the suspect' is not interpreted as 'to then be able to find the suspect' so that the complete definition of investigation must be read and interpreted as 'a series of investigator actions in terms and according to the methods regulated in this law to search for and collect evidence which, with that evidence, can shed light on the criminal act that occurred so that it can then be found the suspect'.

Furthermore, Article 1 point 4 of the Criminal Procedure Code determines that an initial investigation is a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an initial investigation can be carried out according to the method regulated in this law. Based on Article 1 point 4 of the Criminal Procedure Code, it can be seen that the ultimate aim of the initial investigation is to determine whether or not there is a (suspected) criminal act. If the investigation concludes that the incident that occurred did not constitute a criminal act, the investigation will automatically be stopped. On the other hand, if the investigation concludes that the incident that occurred was a criminal act, an investigation will be carried out according to the method regulated in the Criminal Procedure Code.

Termination of the initial investigation is not regulated in the Criminal Procedure Code. However, in practice, it is often carried out by the investigator by issuing an Investigation Termination Order, not an Investigation Termination Letter (ITL). The reporting party also sometimes objects to the termination of the initial investigation on the grounds that, in fact, there is sufficient evidence to proceed to the investigation stage, or the minimum evidence has been met to determine the reported party as a suspect.

The initial investigation regulations in the Criminal Procedure Code are a consequence of respecting the human rights of suspects. Before someone is named a suspect, an investigation must first be carried out unless caught red-handed. Initial investigation is an inseparable part of investigation, because it is impossible to have an investigation without initial investigation. An initial investigation is an action that precedes an investigation. If the initial investigation is stopped, it automatically stops the investigation, so stopping the initial investigation also means ending the investigation. According to Article 1 point 10 of the Criminal Procedure Code, stopping an investigation is a pretrial object.

2. Problems

Based on the background of the problem above, problems arise:

- Can the termination of an initial investigation be pretrial?
- Is a pretrial to stop an initial investigation contrary to the spirit of the Criminal Procedure Code?

3. Goals and Usage

Theoretically, this research aims to develop knowledge of criminal law in general and criminal procedural law in particular, while practically, this research is useful for providing input to judges in examining and adjudicating pretrial applications whose object is the termination of the initial investigation.

4. Literature Study

4.1. Understanding Pretrial

The word prejudicial consists of 2 (two) words, namely pre and judiciary. Literally, pre means before, while judiciary means the process of examining a case in court. Pretrial means before the case examination process in court. Pretrial discusses matters before the main case examination process in court. This means that the matters discussed in the pretrial do not yet relate to the main case but are related to the main case.

If a person is arrested without an Arrest Warrant (AW) because he is suspected of having committed a criminal act of murder or is then detained without a Detention AW, then the suspect can request a pretrial hearing at the district court. In the pretrial hearing, what was discussed was only whether the arrest and/or detention was legal or not, and did not discuss the crime of murder for which the suspect was accused. If the judge is of the opinion that the arrest and detention are illegal, then by law, the suspect must be released from detention, but the subject matter of the case can still be processed. The suspect was only released from detention for unlawful detention, while the crime of murder was still being processed. If the investigation is to carry out detention, a new and valid Detention AW must be issued.

According to Article 1: 10 of the Criminal Procedure Code, Pretrial is the authority of the district court to examine and decide according to the method regulated by the Criminal Procedure Code, regarding:

- Whether or not an arrest and/or detention is valid at the request of the suspect or his family or another party under the suspect's authority;
- Whether or not the termination of an investigation or prosecution is valid upon request for the sake of upholding law and justice;
- A request for compensation or rehabilitation by the suspect or his family or another party on his behalf whose case has not been submitted to the court.

Article 1: 10 of the Criminal Procedure Code is then confirmed in Article 77 of the Criminal Procedure Code, which determines the following:

The district court has the authority to examine and decide in accordance with the provisions regulated in this law regarding:

- Whether or not the arrest, detention, termination of investigation or termination of prosecution is legal;
- Compensation and/or rehabilitation for a person whose criminal case is stopped at the investigation or prosecution level.

Based on Article 1: 10 juncto (jo.) Article 77 of the Criminal Procedure Code mentioned above, it can be seen that the only court authorized to hear pretrial applications is the district court. Matters discussed and decided in the pretrial process relate to the legality of arrest and/or detention, termination of investigations, termination of prosecution, compensation and rehabilitation, and if connected with Constitutional Court Decision Number 21/PUU-XII/2014, plus the validity of the search, confiscation, and identification of suspects.

4.2. Pretrial in the Criminal Procedure Code

The regulation of pretrial institutions is something new in the Criminal Procedure Code, which is not yet known in the HIR. According to Andi Hamzah (1985: 188), pretrial institutions are imitations of commissioner judges (rechter commissaris) in the Netherlands or juge d'Instruction in France. However, even though the pretrial is an imitation of the Dutch and French, its authority is not the same. The difference can be seen as follows:

- In the Netherlands, commissioner judges also handle coercive measures (dwang middelen): arrest, detention, confiscation, body searches, house searches and mail checks. Pretrial authority is not as broad as this (see Article 1 point 10 juncto (jo.) Articles 79, 80 and 81 of the Criminal Procedure Code).
- In the Netherlands, commissioner judges supervise prosecutors, and prosecutors supervise the police. In Indonesia, pretrial supervision is carried out by prosecutors and police.
- In France (also in the Netherlands), the juge d'Instruction, has the authority to conduct preliminary examinations (of defendants, witnesses and other evidence) and decide whether a case will be referred to court or not. In Indonesia, the pretrial court does not have the authority to examine the subject matter of the case.
- In the Netherlands, commissioner judges are appointed for a period of 2 (two) years but can be reappointed. Commissioner Judges must be judges who are experienced in the field of criminal cases. In Indonesia, there is no such provision.
- In the Netherlands, commissioner judges may not participate as judges (chairman/member) in the final (main) examination of the case. In Indonesia, there is no prohibition (Andi Hamzah, 1985: 188).

The regulation of pretrial institutions in the Criminal Procedure Code can be considered as progress for the protection of human rights. According to O. C. Kaligis (2006: 82), pretrial institutions were born from inspiration originating from the existence of the right of Habeas Corpus in the Anglo-Saxon justice system, which provides fundamental guarantees for human rights, especially the right to liberty. Habeas Corpus gives a person the right to, through a court order, sue (challenge) the official who detained him. This is intended to ensure that the deprivation or restriction of freedom of a suspect or accused actually complies with applicable legal provisions and guarantees of human rights. So, by regulating the right of suspects or defendants to file pretrial charges in the Criminal Procedure Code, it will require police institutions as the spearhead of criminal law enforcement and public prosecutors to be more careful in handling a case, whether or not to proceed to the next stage, including termination of the investigation.

4.3. Pretrial Subject

In practice, there are 2 (two) types of terms for pretrial applicants/subjects, namely applicant and prosecutor. Both terms were accepted by the judge and never questioned. The Criminal Procedure Code itself does not regulate standard terms for this. Even if we follow the terms used by the Criminal Procedure Code (Articles 79 - 82) that the term for what is requested or demanded in pretrial is called 'request', the more appropriate term for the subject is requester, not petitioner or prosecutor. However, the term requester can have a 'negative' connotation, namely requesting (-asking), even though pretrial is the legal right of the suspect or defendant, so it is not Subjects (law) or people who can submit pretrial requests/applications/demands are as follows:

- A request for an examination regarding the legality of an arrest or detention is submitted by the suspect, his family or his attorney (Article 79 of the Criminal Procedure Code).
- A request to examine the legality of a termination of an investigation or prosecution can be submitted by an investigator or public prosecutor or an interested third party (Article 80 of the Criminal Procedure Code).

- Requests for compensation and/or rehabilitation due to illegal arrest or detention or due to the legal termination of investigation or prosecution are submitted by suspects or interested third parties (Article 81 of the Criminal Procedure Code).

Based on Article 1: 10 jo. Article 79, Article 80 and Article 81 of the Criminal Procedure Code, the targets of pretrial prosecution are arrest, detention, investigation, prosecution, compensation and rehabilitation, and the Constitutional Court added further with search, confiscation and determination of suspects. The institutions related to pretrial targets are the police (arrest, detention, search, confiscation and determination of suspects, investigation), the prosecutor's office/public prosecutor (detention, prosecution), and the judge (detention).

According to Article 82 (1) letter d of the Criminal Procedure Code, in the event that a case has begun to be examined by the district court while the examination regarding a pretrial request has not been completed, then the (pretrial) request is dismissed. So, even if the defendant/legal advisor considers that the detention order issued by the presiding judge of the panel for the defendant is invalid and then submits a pretrial request to the district court against the panel of judges, the request is useless because once the district court receives the pretrial request, the panel of judges appointed to examine the subject matter of the case can immediately carry out the trial. Simultaneously with the (first) trial, the request for pretrial charges will automatically be dismissed. Thus, the judge cannot be pretrial. This has been confirmed by the Supreme Court (MA) through the Supreme Court Circular Letter (SEMA) Number: SE MA/14 of 1983, dated 8 December 1983, regarding Judges not being able to be pretrial. The essence of SEMA is that a judge cannot be submitted to a pretrial hearing based on Article 77 of the Criminal Procedure Code because Article 82 (1) letter d applies to him.

According to Article 82 (1) letter d of the Criminal Procedure Code, in the event that a case has begun to be examined by the district court while the examination regarding the pretrial request has not been completed, then the request is dismissed. The purpose of the case in Article 82 (1) letter d of the Criminal Procedure Code is the main case. S. Tanusubroto (1983: 92) disagrees with the provisions of Article 82 (1) letter d of the Criminal Procedure Code and says that if the pretrial process has not been completed, then it is stopped, and the case being examined is deemed to have been dismissed on technical grounds because the main criminal case has already started. If tried, which is not a principled reason, then the pretrial objectives become blurred and lost because the aim of the pretrial is to provide a legal assessment decision regarding the preliminary examination of the suspect as intended in Article 77 of the Criminal Procedure Code, whose decision is the basis for releasing the suspect from unlawful arrest and/or detention as well as claims for compensation. Constitutional Court Decision Number 102/PUU-XIII/2015 states that Article 82 paragraph (1) letter d of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to State Gazette of the Republic of Indonesia Number 3258) is contrary to The Constitution of the Republic of Indonesia of 1945 and does not have binding legal force as long as the phrase "a case has begun to be examined" is not interpreted as "the pretrial request is terminated when the subject matter of the case has been delegated and the first trial of the subject matter has begun" in the name of the defendant/pretrial petitioner."

The first hearing for the main case always involves the reading of the Indictment Letter. In practice, it can happen that the first trial only checks the identity of the defendant, and does not include reading the indictment. This can happen if the public prosecutor is late in delivering a court summons to the defendant, while the defendant has not had time to contact his legal advisor. The defendant is not willing to stand trial on the grounds that his legal advisor is not yet available or his legal advisor is unable to attend because he was contacted suddenly. On the other hand, it can also be used as a "strategy" for pretrial applicants to postpone the main case hearing because the pretrial decision will soon be read out.

4.4. Purpose of Pretrial Institutions

The pretrial institution is a new institution in the Criminal Procedure Code, which is not yet known in HIR. As a new institution, pretrial definitely has certain goals. One of the advances that the Criminal Procedure Code has compared to HIR is that the Criminal Procedure Code upholds human rights more highly. Pretrial institutions are regulated separately in the Criminal Procedure Code as part of efforts to respect the human rights of suspects or defendants.

According to M. Yahya Harahap (2003: 3), pretrial aims to enforce the law and protect the human rights of suspects or defendants in the investigation and prosecution process. S. Tanusubroto (1983: 73) said that the task of the Pretrial is to maintain the orderliness of the preliminary examination and to protect the suspect or accused against actions by investigators and/or public prosecutors that violate the law and harm the suspect. So, pretrial is intended as supervision by district court judges regarding the implementation of the duties of investigators and public prosecutors, especially in the implementation of coercive measures, while the aim of pretrial is to place the implementation of the law in the correct proportions for the protection of human rights, especially the guarantee of the rights of suspects and the defendant is under examination at the level of investigation, prosecution and examination before the court.

Implementing the law in the correct proportions for the protection of human rights can mean that the aim of pretrial is not only aimed at the interests of the alleged perpetrator of a criminal act but also to protect the interests of the victim. This is also reflected in other pretrial objects, such as the invalidity of stopping investigations and the invalidity of stopping prosecutions. The illegality of stopping an investigation or prosecution can be requested by an interested third party (Article 80 of the Criminal Procedure Code). The meaning of an interested third party is a victim or reporter, even though Constitutional Court Decision Number 98/PUU-X/2012 includes victim-witnesses, non-governmental organizations, or community organizations. If the termination of the investigation or prosecution is illegal, it means that the investigation or prosecution will continue; of course, this is useful for the interests of the reporter or victim, not for the

interests of the perpetrator. So, in the pretrial Criminal Procedure Code, both provide legal protection to the suspect (applicant) and to the interested third parties or victims of a criminal act.

4.5. Termination of Investigation as Object of Pretrial Demands

Pretrial demands relate to the legality of coercive measures in the form of arrest, detention, search, confiscation, and termination of the investigation, termination of prosecution, determination of suspects, compensation and rehabilitation. Whether a legal action is legal or not is always related to the requirements specified for the legal action. The reasons that can be used to file pretrial charges under the Criminal Procedure Code include whether or not the termination of the investigation is valid.

If the initial investigation is continued (carried out), then the suspect can file a pretrial to claim that the (ongoing) investigation is invalid or that the termination of the investigation is valid. The reasons for stopping an investigation are regulated in Article 109 of the Criminal Procedure Code, namely because there is insufficient evidence, it is not a criminal act, or it is stopped by law (related to ne bis in idem (Article 76 of the Criminal Code), the suspect dies (Article 77 of the Criminal Code), expiration (Article 78 of the Criminal Code), and afkoop (Article 82 of the Criminal Code)); and there is no complaint (or the complaint has been withdrawn) for the criminal complaint. If the investigation is stopped for no reason, then the termination is invalid.

In contrast to arrest and detention, for investigations, both the legality of stopping an investigation and the illegality of stopping an investigation can be used as a reason for filing pretrial demands. If the investigation is stopped, pretrial proceedings can be requested by interested third parties (victim-witnesses, reporters, complainants or their families). The aim is to demand that the termination of the investigation be illegal or that the case be continued.

According to Article 109 of the Criminal Procedure Code, there are 3 reasons to stop an investigation, namely: there is insufficient evidence, it is not a criminal act, or it is stopped by law. For the third reason, there is no problem. However, problems can arise for the first and second reasons because there may be differences of opinion regarding the assessment of the evidence and the events that occurred.

In general, if an investigator stops an investigation because there is not enough evidence, in order to stop the Investigation, the investigator only states "not enough evidence" without specifying what evidence there is and what evidence is doubtful to the investigator so that it does not qualify as evidence. When terminating an investigation, the investigator generally never provides detailed reasons. The same thing happens for expert testimony evidence. If the judge agrees or disagrees with an expert's statement, the judge also rarely or perhaps never states the reasons why he agrees or disagrees with the expert's statement. Judges generally only say whether they agree or disagree with the opinion of a particular expert.

For the second reason, the investigator stopped the investigation on the basis that the incident that occurred did not constitute a criminal act. In certain circumstances, there are times when the case that occurs is a grey matter in the sense that it can give rise to differences of opinion regarding a case, criminal case, civil case or state administration case. If the principles are not understood, the debate will have no end in sight. If person A owes person B Rp. 10 billion, with a promise that it will be returned 6 months later, and it turns out that after 6 months, person A is unable to return person B's money. When B is billed, person A says: Be patient; in 2 months, I'll definitely pay it off in the future. After 2 months, A could only pay Rp. 3 billion, the remaining Rp. 7 billion, then promised again to pay it in 2 weeks. After 2 weeks, it turned out that A could only pay IDR 2 billion, then IDR 5 billion was left, and A promised to pay it off the next week. After one week, A gave up, saying that he could no longer pay the remaining debt of IDR 5 billion. The question is whether this incident was a criminal act of fraud or breach of contract? Some (large) people will think that this incident is a breach of contract because the basis is an agreement (performance). Person A is considered to have defaulted or broken their promise regarding the agreement between them. Some would argue that this incident was a criminal act of fraud because A had promised several times to pay off his debt, but in fact, he had never paid it off; in fact, he had given up and was no longer able to pay. So, there was a series of lies in that incident.

To determine if this event is a breach of contract or a criminal act, it can be seen from A's assets and intentions whether or not he wants to pay. If a person still has assets, even though the price is not sufficient to pay the remaining debt of Rp. 5 billion, but he has no intention of paying, then this incident is a criminal act of fraud. In criminal acts, there is always evil intent (mens rea). The mens rea in that event is that they have the assets, but they do not want to pay their debts. If person A no longer has assets and does not pay his debt, then person A has committed a breach of contract, not a criminal act of fraud. Person A is trying in good faith to pay his debt, but he no longer has any assets, so there is no evil intention in Person A not to pay his debt. If he has assets, person A will pay his debt to person B.

Initial investigation is an integral part of investigation. Unless caught red-handed, the investigation must always be preceded by an initial investigation. If an initial investigator discontinues an initial investigation into a case, the initial investigator should provide detailed reasons for the discontinuation of the initial investigation, not simply say that the evidence is insufficient. If the results of the initial investigation can find at least 2 (two) pieces of evidence, of course there is no longer any reason not to escalate the case to the investigation stage. In the pretrial petition Number: 4/Pid.Pra/2021/PN-Stb, for example, it is clear that there was a victim who died (NAS, 11 years) at someone's building location that was not fenced. The location of the building without a fence is very dangerous. The community warned the building owner of the potential dangers that could arise if the building is not fenced, but the building owner ignored it, and in the end, a child drowned and died at the building site. There was a doctor's post-mortem (documentary evidence), and many people saw that the child died at the building (project) site (witness testimony evidence). The victim's father reported the incident to the local police, and it was accepted. Then, investigators carried out an examination.

Regarding the incident that occurred, the victim's father made a report Number: STPL/98/X/2021/SU/LKT/SEK PD-TUALANG, 13 October 2021, then followed up by issuing an investigation order with Investigation Termination Letter Number: Sp. Lidik/98/X/RES 1.24/2021/Reskrim. Furthermore, the Padang Tualang Sector Police issued a Notification Letter on the Progress of the Research Report Results (SP2HP), which stated that the report/complaint had been received and that an investigation/investigation would be carried out. The results of this investigation were followed up with a case title. The reporter was invited to file a case through an invitation letter Number K.130/XI/RES 1.24/2021/Reskrim at the Police, dated 8 November 2021, to come for a hearing on 10 November 2021.

On 12 November 2021, the Sector Police Chief issued an Order to Stop Initial Investigation regarding Police Report Number STPL/98/X/2021/SU/LKT/SEK PD-TUUALANG with letter Number: Sprint/98.A/X/RES 1.24/ 2021/Reskrim, which contains: Stopping the initial investigation into the Report/Complaint of the Whistleblower regarding the alleged criminal act of error/negligence which caused another person to die, because it is not a crime. This letter of termination of the investigation was followed by SP2HP dated 13 November 2021 Number: K/320/XI/RES 1.24/2021/Reskrim, which contained Report Number: STPL/98/X/2021/SU/LKT/SEK PD-TUUALANG, dated 13 October 2021 cannot be followed up for investigation because the incident was not a criminal act.

The basis for the Sector Police Chief to stop the investigation was the opinion of the Criminal Law Expert, examined on 6 November 2021, which basically said, "The child (NAS) died as a result of drowning and being sucked into the dam building did not meet the elements of Article 359 of the Criminal Code, even though there was absolutely nothing written about it, neither was there any signboards prohibiting children from bathing in the dam. Everyone who wants to enter the project/building area should know that the area is dangerous because there are project/building materials currently under construction in the area, which can be understood as being dangerous for someone's life and safety. "That in this case, it can be emphasized that no one can be held criminally responsible for negligence related to this case." However, in the Order to stop investigation the initial investigator did not explicitly say that the basis for stopping the initial investigation was the expert's opinion.

Cessation of the initial investigation will automatically stop the initial investigation, because the initial investigation is an integral and inseparable part of the investigation. It is completely unreasonable that there is someone's project. This project has the potential to cause danger because before the project was carried out, the place was often used by children as a place to bathe and play. In fact, a child died in (in) the project, it was reported by his parents. However, no one was responsible for the child's death. It is also completely unreasonable to accept that "there is no need to write or make signs prohibiting children from bathing in the dam (project)." "Every person who wants to enter the project/building area should know that the area is dangerous because in that area there are project/building materials that are under construction, which can be dangerous for someone's life safety," so the initial investigator also has no reason to stop the initial investigation into the expert's opinion. It should be understood that a child (11 years old) should not be required to understand the risks of bathing in the project area just by looking at the project materials at the site, while the paragon that caused the child's head to be sucked in is embedded in the water at a depth of approximately one meter and invisible to the naked eye.

There are several reasons that should be used by investigators not to accept an expert's opinion, so that it is not reasonable to stop the investigation based on the expert's opinion, namely:

- The drowning of the child (NAS) due to drowning and being sucked into the dam building does not fulfil the elements of Article 359 of the Criminal Code. Article 359 of the Criminal Code stipulates: "Anyone who, through his fault (negligence), causes another person to die, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year." There are 3 (three) elements, namely
- (1) The 'whoever' element refers to the actor, namely the project owner (because the project is not being awarded);
- (2) The element of error (negligence) is fulfilled if the project owner is negligent (negligent) in fencing the project because projects that have the potential to cause danger should be fenced by the project owner, especially since the local community has reminded the project owner to fence it because children often bathe or play in the project area;
- (3) The element of causing other people to die, it is clear that as a result of the project not being protected by the owner, it turns out that someone else died, namely NAS. So, in fact the elements of Article 359 of the Criminal Code are fulfilled perfectly.
- (The Death of NAS) even though there is absolutely no writing or signs prohibiting children from bathing in the dam. Whether or not it is necessary to fence the project certainly depends on the risks that could arise. The greater the risk that can arise, the more required it is to create a fence for a project and its sturdiness. If the risk is not that big, a fence or sign, such as a police line, is enough. This becomes a measuring tool to determine the level of fault of the project owner if an accident occurs at that place. If the fence is good, but someone still jumps into the project, of course, if people jump into the project, there is no longer any fault (negligence) of the project owner. The project fence also means it is prohibited to go inside. If someone 'accidentally' jumps in, the fault lies with the person who jumped in, not the fault of the project owner. In this case, the most basic principle in Criminal Law applies, namely the principle of geen straf zonder schuld, there is no punishment without guilt.
- Everyone who wants to enter the project/building area should know that the area is dangerous because there are project/building materials currently under construction in the area, which can be understood as being dangerous for someone's life and safety. This reason is also unfounded because it is illogical to require a child aged around 11 years to understand the risks that could arise from a dammed river project. The river was dammed, and at a depth

of approximately one meter, a large paralon (approximately 10 inches) was planted to drain the water from the dammed river. The child bathes, plays and dives with his friends in the dammed water so that the paralon embedded under the water cannot be seen. Before it was dammed, the project site was often used by children to bathe and play.

If there is a project to dig a large hole up to 2 (two) meters deep on a public road that is always busy with people passing by, for example, to plant Telkom cables or install water channels, then is there no need to make a fence or police line? This project certainly has the potential to cause danger; people could fall into it, especially if the dug hole is flooded and it will be covered with water. Investigators certainly do not have to accept expert information at face value, they need to provide reasons why they accept the expert's information. Termination of an investigation for illogical reasons is contrary to common sense and should be viewed as a termination of the investigation so that it can itself be used as a pretrial object.

5. Conclusion

An initial investigation is an action that precedes an investigation so it must be viewed as an integral part and an inseparable part of the investigations. The initial investigation aims to determine whether an event that is suspected of being a criminal act is a criminal act or not. If the results of the initial investigation conclude that the incident that occurred was a criminal act, then an investigation can be followed up to make the criminal act clear. If the initial investigation is stopped, the investigation will also automatically stop, so the termination of the initial investigation must be considered a termination of the investigation and can become a pretrial object.

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