**Journal Philosophy *Of Law***
Volume 5 Number 1, January-July 2024
**ISSN Online: 2809-1000**
Publisher:
**Program Studi Hukum Program Doktor**
**Fakultas Hukum, Universitas 17 Agustus 1945 Semarang**


# THE AUTHORITY OF INVESTIGATORS TO TERMINATE INVESTIGATIONS FROM A LEGAL PERSPECTIVE IN INDONESIA

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***Abstract:***

*This study aims to understand how law enforcement is regulated according to Law Number 8 of 1981 and how the criminal investigation process can be terminated by investigators. This research uses normative legal research methods, utilizing both primary and secondary data. The research approach used is a legislative approach. The results of the study show that in the Indonesian Code of Criminal Procedure (KUHAP), there are provisions that allow law enforcement officers, especially investigators and public prosecutors, to discontinue a criminal case from proceeding to trial. This can be done through the termination of investigation or prosecution. However, the authorities stipulated in the KUHAP to discontinue a criminal case to court, such as the termination of investigation and prosecution, do not provide a legal basis for investigators to settle cases peacefully. Instead, the KUHAP follows the principle of legality in prosecution, obliging investigators and public prosecutors to prosecute all cases that meet legal requirements in court, in accordance with Article 140 paragraph (2) linked to Article 14 of the KUHAP. Although Article 140 paragraph (2) of the KUHAP indicates that the KUHAP does not adopt the principle of opportunity in prosecution but follows the principle of legality, the explanation of Article 77 of the KUHAP acknowledges the principle of opportunity. This principle gives authority to public prosecutors to postpone or suspend a case that actually meets the legal requirements for prosecution, for the public interest. However, this authority cannot be a legal basis for settling cases peacefully outside of court, as reasons of interest in peaceful settlement cannot be considered as reasons of public interest, as explained in the Explanation of Article 35 Letter c of the Indonesian Prosecutor Law No. 16 of 2004.*
***Keywords:*** *Indonesian Code Of Criminal Procedure; Investigator; Termination Of Investigation*

***Abstrak:***

*Penelitian ini bertujuan untuk memahami bagaimana penegakan hukum diatur menurut Undang-Undang Nomor 8 Tahun 1981 serta bagaimana proses penyidikan dalam kasus pidana dapat dihentikan oleh penyidik. Penelitian ini menggunakan metode penelitian hukum normatif, dengan menggunakan data primer dan data sekunder, pendekatan penelitian yang digunakan yaitu pendekatan perundang-undangan, hasil penelitian menunjukan bahwa Dalam KUHAP, terdapat ketentuan yang memungkinkan para penegak hukum, khususnya penyidik dan penuntut umum, untuk tidak melanjutkan suatu kasus pidana ke Pengadilan. Hal ini dapat dilakukan melalui penghentian penyidikan atau penghentian penuntutan. Namun, kewenangan-kewenangan yang diatur dalam KUHAP untuk tidak melanjutkan suatu kasus pidana ke pengadilan, seperti penghentian penyidikan dan penuntutan, tidak memberikan dasar hukum bagi penyelesaian kasus secara damai oleh penyidik. Sebaliknya, KUHAP mengikuti asas legalitas dalam penuntutan, yang mewajibkan penyidik dan penuntut umum untuk mengajukan semua kasus yang memenuhi syarat hukum untuk dituntut di Pengadilan, sesuai dengan Pasal 140 ayat (2) yang dikaitkan dengan Pasal 14 KUHAP. Meskipun Pasal 140 ayat (2) KUHAP menunjukkan bahwa KUHAP tidak mengadopsi asas opportunitas dalam penuntutan tetapi mengikuti*

*asas legalitas, penjelasan atas Pasal 77 KUHAP mengakui adanya asas opportunitas. Asas ini memberikan kewenangan kepada penuntut umum untuk menunda atau menangguhkan suatu kasus yang sebenarnya memenuhi syarat hukum untuk dituntut, demi kepentingan umum. Namun, kewenangan ini tidak dapat menjadi dasar hukum untuk menyelesaikan kasus secara damai di luar pengadilan, karena alasan kepentingan dalam penyelesaian damai tidak dapat dianggap sebagai alasan kepentingan umum, sebagaimana dijelaskan dalam Penjelasan Pasal 35 Huruf c Undang-undang Kejaksaan RI No. 16 Tahun 2004.*

***Kata Kunci:*** *Kitab Undang-Undang Hukum Acara Pidana; Penyidik; Penghentian Penyidikan*

## A. Introduction

The Criminal Procedure Code (KUHAP) currently in effect, based on Law Number 8 of 1981, does not at all provide for the possibility of resolving cases outside of the court. Thus, in terms of the current Criminal Procedure Law, it appears that there is no room for the possibility of settling cases outside of the Court.(Ali, 2023)

However, this does not mean that the settlement of criminal cases outside of the Court does not occur in practice. Professor Suedarto, SH, stated, among other things, that: "In practice, the police do not always refer cases to the Prosecutor's Office, even if there is a suspect and there is no doubt about the violation of the law they committed. This is especially true for minor cases that do not endanger the public. This practice can be acceptable, as it would consume resources, costs, and time if such cases were referred to the Prosecutor's Office. The Prosecutor's Office certainly holds the opinion that there is no positive legal basis for the Police to do so, and the police should refer all cases to that institution".(Atmasasmita, 1995)

In reality, it cannot be denied that in certain cases, the Police as investigators handle specific criminal cases, acting as the first-instance investigators. Sometimes they encounter policies not to proceed with the case to the public prosecutor if there is an agreement or settlement reached between the victim/affected party and the perpetrator of the crime, usually documented in writing, stating that with the occurrence of the settlement, the victim/affected party will not make any claims either criminally or civilly.(Kahardani et al., 2023)

Research discussing the authority of investigators to terminate investigations has been written and studied by several researchers, including:

a. Jainiver A. M. Supit's paper titled "Authority to Terminate Investigations in Cases of Corruption Crimes," published in the Unsrat Journal, attempts to provide an analysis of the termination of investigations into corruption crimes, which is clearly different from the author's study analyzing the termination of investigations from the perspective of national law, especially the KUHAP.(Supit et al., 2024)
b. Johana Olivia Rumajar, in her paper titled "Reasons for Termination of Investigation into a Corruption Crime," published in the Lex Crimen Journal Vol. III/No. 4/Aug-Nov/2014, conducted research almost similar to that of Jainiver A. M. Supit, where the study analyzes the reasons influencing the termination of investigations into corruption crimes(Rumajar, 2014)
c. Ahwan & Topo Santoso, in their paper titled "Discontinuation of Corruption Investigation and Prosecution: A Comparison of Indonesia, The Netherlands, and Hong Kong," published in the De Jure Legal Research Journal Volume 22 Number 1, March 2022, focus more on the comparative legal aspects of authority in terminating investigations(Ahwan & Santoso, 2022)

Based on the information presented above, this research will attempt to provide a study related to how the determination of the authority of law enforcement officers complies with Law Number 8 of 1981 and how investigators terminate investigations in the process of handling criminal cases.

## B. Research Method

This study is of a normative juridical nature with a legal research type that relies on library research. The approach in this research is a legislative approach. The data collection technique used is literature study. The data used consist of secondary data, which include primary and secondary legal materials regulating the termination of investigations, as well as reference sources and literature such as books and journals relevant to this research. The collected data are analyzed and explained descriptively analytically.

## C. Discussion

### 1. Pengaturan Kewenangan Penegak Hukum Menurut Undang-Undang Nomor 8 tahun 1981

The Regulation of Law Enforcement Authority According to Law Number 8 of 1981, the Indonesian Code of Criminal Procedure (KUHAP), as stipulated in Law Number 8 of 1981, serves as the current legal basis for criminal procedural law. The KUHAP serves as the foundation for all actions undertaken by law enforcement authorities in executing their respective mandates.(Laksono, 2021) These law enforcement authorities include investigators acting as law enforcement officials authorized at the primary level to handle specific criminal cases involving investigative functions, including the authority to conduct investigations. Investigation is defined as "a series of investigative actions, conducted in accordance with the provisions of this Law, to seek and collect evidence that may provide information regarding the alleged criminal offense and the suspected perpetrators".(Sukmareni et al., 2020)

The KUHAP provides a definition of investigation as follows: Investigation is a series of investigative actions to seek and collect evidence regarding an incident suspected to be a criminal offense, to determine whether an investigation should be conducted, as specified in this Law. Its tasks primarily involve receiving reports and complaints and identifying individuals suspected for examination.(Hiariej, 2020)

Thus, the investigation and inquiry tasks are entrusted to investigators. From the overview of the tasks and functions of investigators and inquiries, it is apparent that these two functions are distinguishable but inseparable. The theoretical function of investigation is to precede the investigation, but in practice, it is challenging to separate them since during the handling of a case, there is a possibility that what is being investigated is indeed a criminal offense, leading to immediate investigative action. Hence, it is appropriate that this function is under the authority of a single entity or institution, namely the Indonesian National Police (POLRI).

In the implementation guidelines of the Indonesian Code of Criminal Procedure based on the Decree of the Minister of Justice of the Republic of Indonesia No.: M. 01. P.W.07.03 of 1982, it is stipulated, among other things:(Susanti, 2020)

a) Investigation (Article 1 paragraph 5 of the KUHAP) is introduced in the KUHAP with the motive of safeguarding human rights and strict limitations on the use of coercive measures. If coercive measures are used as a means of investigation or to conduct an investigation, the inquiry precedes other actions

to determine whether an alleged incident of criminal offense can be subject to investigation.

b) Inquiry follows a technical research function and can be specialized

According to the guidelines for the implementation of the Criminal Procedure Code (KUHAP), regarding the integration of investigation with criminal investigation, it is clearly stated that investigation is part of the investigative activities, so it is not a separate part detached from the investigation. Investigations are carried out to limit the use of coercive force and to protect human rights. The use of coercive force is still highly restricted during the investigative phase. The authority to conduct investigations is clearly determined by Article 1, paragraph 1 of the KUHAP. According to this Article, investigators are officers of the Indonesian National Police or certain civil servants who are authorized by law to conduct investigations. Meanwhile, paragraph 4 of that Article states that investigators are officers of the Indonesian National Police who are authorized by this law to conduct investigations.(Hayy Nasution & Lakshana, 2022)

The authority to conduct investigations according to these provisions lies with two institutions, namely the Indonesian National Police and certain civil servant officials who are specially authorized by law. Regarding the investigation authority of these two institutions, Dr. Andi Hamzah, SH stated: The national police monopolize all criminal investigations covered by the Criminal Code. What is meant by item b (civil servant investigators) only has certain authorities included in specific regulations or administrative regulations sanctioned by criminal law. The role of police as investigators is very important and difficult. Especially in Indonesia where the police monopolize all criminal law investigations (KUHP).(Hamzah, 2008)

Thus, the authority in the investigation is a function monopolized by the Indonesian National Police, namely in the case of investigations into criminal acts covered by the Criminal Code. There are no other investigators besides the Indonesian National Police who have authority over criminal acts covered by the Criminal Code. Non-police investigators, namely certain Civil Servants, only have very limited authority, namely they cannot conduct investigations into criminal acts beyond the specific authority determined by the Law.(Muhammad Ekaputra, 2010)

So, for criminal acts covered by the Criminal Procedure Code, only police investigators can carry out activities or a series of actions to search for and collect evidence to prove the criminal acts that have occurred and uncover the perpetrators. The Indonesian National Police investigators have the position as the main investigators in the Criminal Procedure Code system. As the sole investigator for criminal acts within its scope, the Indonesian National Police, as investigators, are also included in investigations. Under the Criminal Procedure Code, they are granted authority, namely: Article 5 confirms that Investigators as referred to in Article 4 because of their obligation to have the authority to Receive reports or complaints from individuals about criminal acts, Seek information and evidence, arrest suspects, and take other actions in accordance with applicable law. Meanwhile, item b confirms that at the order of the investigator, they can take actions such as Arrest, detention, examination and seizure of letters, taking fingerprints and seizure of letters, and fingerprinting and photographing an individual(Pemerintah Republik Indonesia, 1981)

In addition to the provisions in Article 5, Article 7 also asserts that Investigators as referred to in Article 6 paragraph (1) item a, because of their obligation, have the authority to:

a. Receive reports or complaints from individuals about criminal acts.
b. Take initial actions at the time of the incident;
c. Make an arrest of a suspect, and examine the suspect's identification.
d. Carry out arrests, detentions, and searches, and seizures.
e. Conduct examination and seizure of documents;
f. Take fingerprints and photographs of individuals;
g. Summon individuals to be heard as suspects or witnesses.
h. Bring in experts needed during the investigation process.
i. Conduct the termination of the investigation;
j. Take other actions in accordance with the responsible authority.

These are various authorities granted to investigators by the Criminal Procedure Code, including the power to use force such as making arrests, prohibiting someone from leaving a place, conducting searches, seizures, examination and seizure of documents, summoning individuals to provide information as suspects or witnesses, and other similar actions. These are the authorities possessed by investigators as specified by the Criminal Procedure Code, forming the legal basis for law enforcement officials in handling criminal cases. Furthermore, the Criminal Procedure Code distinguishes its authority from other law enforcement officials in handling criminal cases (Wijayanto, 2020)

As for these law enforcement officers, the Criminal Procedure Code defines them; Article 1 paragraph 6 of the Criminal Procedure Code, stipulates about the Public Prosecutor as follows: "The Public Prosecutor is a Prosecutor authorized by this law to conduct prosecutions and implement court rulings. So the Public Prosecutor is a Prosecutor authorized by law to conduct prosecutions and also Article 15 of the Criminal Procedure Code. In Article 14, the authority of the Public Prosecutor is detailed as follows:

a) Receive and examine investigation case files;
b) Conduct pretrial proceedings if there are deficiencies in the investigation, taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing recommendations in the investigation;
c) Extend detention, carry out detention or hand over the case for prosecution by the investigator;
d) Prepare an indictment;
e) Hand over the case to court
f) Notify the defendant about the date and time of the trial accompanied by a summons, both to the defendant and to witnesses, to attend the designated hearing;
g) Conduct prosecutions;
h) Uphold justice for the public interest;
i) Take other actions within the scope of duties and responsibilities as a Public Prosecutor in accordance with the provisions of this law;
j) Implement court rulings.

**2. Authority to Resolve Criminal Cases Outside of Court**

The practice of case resolution outside of court, which is limited to minor criminal offenses and accidents in traffic resulting from negligence, is considered to have a positive impact in terms of improving the sense of justice, as well as saving costs and time in case resolution. Such practice is solely conducted by investigators at the

investigative level and is never carried out by public prosecutors at the prosecutorial level (Suyono, 2020)

The authority governing investigators at the investigative level is outlined in the Criminal Procedure Code. However, the detailed duties and powers of investigators in investigations do not explicitly specify the authority to resolve cases peacefully at the investigative level. Among the authorities granted to investigators under Article 5, 7, and 8 of the Criminal Procedure Code, one relevant authority where investigators no longer proceed with a case until they receive a court decision is mentioned in Article 7, paragraph (1) i: to terminate the investigation.

The question arises as to whether the practice of peacefully resolving cases outside of court at the investigative level by investigators is based on the authority specified in Article 7, paragraph (1) i. To address this, it is essential to examine the meaning of terminating the investigation, particularly the reasons that can be used to justify such termination.

In accordance with the authority to terminate investigations, Article 109, paragraph (2) of the Criminal Procedure Code states: "In the event the investigator terminates the investigation because there is no evidence or the event under investigation is not a criminal act, or for judicial reasons, the investigator shall inform the public prosecutor, the suspect, or their family." From Article 109, paragraph 2, it can be inferred that there are two possible reasons for terminating the investigation stipulated by the Criminal Procedure Code, which serve as the legal basis for the decision: termination due to lack of evidence or because the event under investigation is not a criminal act. Based on this article, investigators have the legal basis to terminate investigations, which are being conducted, with two potential reasons as outlined in Article 109, paragraph (2) of the Criminal Procedure Code.(Hanifawati, 2021)

The reasons for granting authority to investigators to terminate investigations are not explicitly stated in the governing laws, but one writer expressed in their writing that perhaps the rationale or reasons for granting termination authority include: to enforce the principles of swift, accurate, and cost-effective law enforcement and to ensure legal certainty in the future of society. Because if investigators have concluded that, based on the results of investigation and inquiry, there is no evidence or reason to prosecute the suspect in court, what is the point of prolonging the handling and examination of the suspect? Therefore, investigators formally declare the termination of investigation to promptly establish legal certainty for themselves, especially for the suspect and society, to prevent the possibility of compensation claims from suspects or defendants who feel aggrieved and become victims of futile law enforcement actions because investigators have identified weaknesses and deficiencies in terms of legal grounds to continue the investigation.(Harahap, 2009)

In order to enhance the effectiveness of law enforcement, investigators are granted the authority to terminate investigations if continued by the investigators themselves is deemed futile in law enforcement because there are no legal provisions that can be enforced. The termination of investigations is a suitable step to save time and costs, ultimately ensuring swift case resolution and prompt legal certainty while avoiding the possibility of compensation claims from suspects or defendants who feel aggrieved and victimized by futile law enforcement actions due to investigators having identified weaknesses and deficiencies in legal grounds to continue the investigation from the very beginning.

The rationale for granting the authority to terminate investigations to investigators shares similarities with the reasons for resolving cases peacefully outside of court by investigators, as articulated by Prof. Suedarto, SH. The main difference lies in the continuation of investigations for cases resolved peacefully at the investigative level, which is not deemed futile law enforcement efforts, but rather a relatively lengthy process, incurring costs and delaying the delivery of justice for seekers of justice.

Is the practice of peacefully resolving criminal cases at the investigative level by investigators based on this termination of investigation rationale? To answer this question, it is necessary to first discuss the reasons for termination as stipulated in Article 209 paragraph (2) of the Criminal Procedure Code (KUHAP). In line with the termination reasons outlined in Article 209 paragraph (2) of the Criminal Procedure Code, M. Yahya Harahap, SH, expressed his commentary in one of his writings as follows: "The law has limitatively specified reasons that investigators can use as grounds for terminating investigations. The establishment or delineation of these reasons is crucial to prevent arbitrary actions by investigative officials. Through this delineation, the law aims to ensure that investigators, when exercising the authority to terminate investigations, base their decisions on predetermined reasons. Not because of subjective judgments, and consequently, provide a basis for scrutiny for parties who feel aggrieved by the legality of the investigation termination"(Harahap, 2009)

It is explicitly and clearly stated that there are two reasons that investigators can use to exercise the authority to terminate investigations, to provide clarity to all parties regarding which reasons investigators can utilize to terminate investigations and to set clear boundaries for investigators in exercising their authority. Consequently, termination of investigation can only be carried out by investigators if it falls under one of the two aforementioned reasons in Article 209 paragraph (2). Therefore, both reasons for termination as outlined should be discussed and analyzed, namely: Firstly, concerning the absence of evidence or the event not constituting a criminal act. Regarding the reason for the absence of sufficient evidence, M. Yahya Harahap, SH, expressed: "If investigators do not obtain sufficient evidence to prosecute the suspect, or the evidence obtained by investigators is inadequate to prove the suspect's guilt when brought to trial ... termination of investigation on the grounds of lack of evidence does not have any consequences on the investigator's authority to investigate and re-examine the case".(Harahap, 2009)

Thus, if, in the course of actions taken by investigators to establish a criminal case, whether regarding the offense itself or the perpetrator, it turns out that there is insufficient evidence to conduct the investigation, this may serve as a reason for investigators to utilize their authority to terminate the investigation.

However, this does not mean that there is no possibility for the case in question to be investigated again if, subsequently after the termination of the investigation, investigators obtain sufficient evidence to conduct further investigation into the same case.

This termination reason cannot serve as a basis for case resolution through peace agreements because peace agreements in resolving criminal cases are not based on the absence of sufficient evidence but on the willingness of the victim or the victim's family to settle, and even the victim or the victim's family waiving the investigation altogether because a peace agreement has been reached with the suspect or defendant.

Regarding the reason that what occurred is not a crime or violation, M. Yahya Harahap, SH, stated: "If from the investigation results and interrogations, investigators

conclude that what is alleged against the defendant does not constitute a criminal act or a legal violation, in this case, they are authorized to terminate the investigation. Or firmly, if what is alleged is not a criminal event or not a legal violation. The public falls within the competence of the civilian judiciary. Therefore, it is not a crime or violation as stipulated in the Criminal Code, or in special regulations within the jurisdiction of civilian courts."

The significance of not being a crime or violation from the act or incident being investigated by investigators is that what is alleged to have been committed by the suspect does not meet any criminal elements, whether within the Criminal Code and the jurisdiction of civilian courts, that can be enforced.

In this understanding, there is a possibility that the suspect may indeed have committed a criminal act, but it later transpires from the interrogation results that the suspect is a member of the military. In this case, the POLRI investigator may, and indeed should, terminate the investigation.

However, this reason cannot be used as a reason for investigators to engage in peaceful case resolution because the termination of investigation is ultimately based on legal grounds. Regarding this matter, it is stated: "Termination on the basis of legal reasons essentially complies with the reasons for the loss of prosecution rights and the loss of the right to enforce penalties stipulated in Chapter VIII of the Criminal Code, as articulated in Articles 76, 77, and 78 and subsequent articles."

Termination of investigation based on legal grounds, therefore, constitutes termination of investigation because the reasons determined and stipulated in the law for criminal acts in question cannot be pursued.

Because the investigators, when conducting investigations into certain criminal acts, recognize the presence of reasons as stipulated in Articles 76, 77, and 78 of the Criminal Code, namely: the criminal act in question has been previously tried and has obtained a final verdict from an Indonesian judge with permanent legal force (Article 76), the suspect/defendant has passed away (Article 77), or because it has exceeded the statute of limitations (Article 78). Article 76 stipulates that a criminal act that has been previously tried and has obtained a final verdict from a judge with permanent legal force cannot be tried again.

Therefore, if a certain criminal act being investigated and temporarily suspended by the investigator, it turns out that the suspect or defendant has passed away, the investigation or prosecution against the said criminal act is terminated because prosecution against the said criminal act is no longer possible due to the death of the suspect or defendant.

The establishment of this reason is because the responsibility imposed by criminal law is not only by one or several states but universal, it is individual. Individual responsibility means that criminal responsibility for a certain criminal act committed is solely borne by the perpetrator and cannot be imposed on others who are not the perpetrator. Therefore, based on the principle of individual responsibility, if the perpetrator of a certain criminal act has been tried and obtained a judge's verdict, the prosecution against the said criminal act is no longer possible. The right to conduct prosecution against the said criminal act has been lost.

Article 78 of the Indonesian Criminal Code stipulates that prosecution for a certain criminal act cannot be conducted if the statutory limitation period has elapsed, in other words, the right to prosecute the criminal act has expired.

The statutory limitation period for a criminal act, as outlined in Article 78 of the Indonesian Criminal Code, varies. The limitation period for prosecution within one year applies to all misdemeanors and crimes committed through printing. The limitation period for prosecution within six years applies to crimes punishable by fines, detention, or imprisonment for less than three years. After the expiration of six years, crimes punishable by fines, detention, or imprisonment for less than three years cannot be prosecuted.

The limitation period for prosecution after twelve years applies to crimes punishable by imprisonment for more than three years. Therefore, if a crime carries a penalty of more than three years' imprisonment, that crime cannot be prosecuted after twelve years have passed.

However, for crimes punishable by death or life imprisonment, the limitation period for prosecution expires after twenty years. The differentiation in the duration categories of the limitation period for prosecution, as stipulated in Article 78 of the Indonesian Criminal Code, is primarily based on the severity of the penalties imposed for the respective crimes. Less severe criminal offenses have shorter limitation periods for prosecution (expiration of the right to prosecute) compared to more severe offenses.

For offenders who were under 18 years old at the time of committing the criminal act, the duration of the limitation period for prosecution for each type of offense specified is reduced by one-third. The existence of statutory limitations on the time frame for prosecution of a crime, as provided for in Article 78 of the Indonesian Criminal Code, serves to ensure legal certainty for perpetrators of criminal acts. Even though they may have committed a crime and have not been prosecuted and received a judge's verdict, they will not be pursued indefinitely by authorities. For them, there is a certain legal certainty that the judicial pursuit will cease after the expiration of the specified statutory limitation period, as outlined in Article 78 of the Indonesian Criminal Code.

From the above explanation regarding termination of investigation based on legal grounds, it is apparent that it contradicts with the peaceful resolution of criminal cases by investigators, as none of the reasons for terminating investigation based on legal grounds can be used as a basis for peaceful resolution of criminal cases by investigators. Thus, the peaceful resolution of criminal cases by investigators cannot find its legal basis in the authority granted to investigators by the Criminal Procedure Code to terminate investigations.

Furthermore, the termination of criminal cases peacefully by investigators under the Criminal Procedure Code has no legal basis whatsoever, which means that investigators essentially do not have the authority to resolve criminal cases peacefully. In contrast, the termination of criminal cases through peace agreements is recognized as having two different principles that may be applied by criminal procedural law, namely the principle of legality and the principle of opportunity.

The principle of legality dictates that any legal violations that escape prosecution, if there are no grounds in statutory regulations that can serve as a basis for not prosecuting such violations, must be prosecuted. "... Prosecutors are obliged to prosecute a crime." On the other hand, the principle of opportunity does not require prosecutors to prosecute every legal violation or every crime. Thus, the principle of opportunity is in opposition to the principle of legality. While the principle of legality mandates that all violations be prosecuted as long as there are provisions in the laws, the principle of legality does not mandate prosecution for all violations. Prosecutors are

given the discretion to postpone or dismiss the prosecution of a criminal case based on the consideration that, in terms of public interest, prosecution may be more beneficial than non-prosecution. Prosecutors have the authority to postpone or dismiss the prosecution of a criminal case if it is deemed that non-prosecution would be more beneficial for public interest. The peaceful resolution of cases outside of court, as practiced by investigators as discussed in this writing, can potentially find its legal basis in this principle of opportunity. Therefore, it depends on whether the Criminal Procedure Code in force adheres to the principle of opportunity or the principle of legality.

## D. Conclusion

In the Indonesian Criminal Procedure Code (KUHAP), there are provisions that allow law enforcement officers, namely investigators and prosecutors, not to proceed with a criminal case to court. These possibilities include the termination of investigation or prosecution. The authorities stipulated in the Criminal Procedure Code not to proceed with a criminal case to court, namely the termination of investigation and prosecution, do not provide any legal basis for the practice of peacefully resolving criminal cases by investigators. On the contrary, the Criminal Procedure Code adheres to the principle of legality in prosecution, obligating investigators and prosecutors to refer all cases that meet the criteria established by law for prosecution in court, as stipulated in Article 140 paragraph (2) and supported by Article 14 of the Criminal Procedure Code.

Based on Article 140 paragraph (2) of the Criminal Procedure Code, it is evident that the Criminal Procedure Code does not adopt the principle of opportunity in prosecution but rather adheres to the principle of legality. However, in the explanation of Article 77 of the Criminal Procedure Code, it is apparent that the Criminal Procedure Code still recognizes the principle of opportunity, which grants prosecutors the authority to set aside or postpone cases that actually meet the criteria established by law for prosecution, for the benefit of the public interest. The authority to postpone a criminal case for the benefit of the public interest (principle of opportunity) is based on the interpretation of public interest as outlined in the Explanation of Article 35 paragraph c of Law No. 16 of 2004 on the Attorney's Office, which cannot serve as a legal basis for resolving cases outside of court, as the reasons for public interest in peaceful case resolution in practice cannot be considered as reasons for public interest.

## E. Recommendations

The absence of regulations that can serve as a legal basis for resolving cases outside of court, which is deemed necessary for the future of society, renders the practice of peacefully resolving cases in a dilemma. Therefore, law enforcement officers must prioritize justice in society in accordance with applicable legal regulations. Several articles in the Police Law should be revised to specify the authority of the Indonesian National Police investigator to terminate investigations for certain crimes, given that peace has been achieved between the perpetrator and the victim or their families, wherein the victim or their families express their willingness not to pursue criminal prosecution for the incident.

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