

HARMONY IN THE ARRANGEMENT THE TERMINATION OF INVESTIGATION BY THE STATE POLICE REPUBLIC OF INDONESIA

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HARMONY IN THE ARRANGEMENT THE TERMINATION OF INVESTIGATION BY THE STATE POLICE REPUBLIC OF INDONESIA

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Abstract

Starting from the separation of the national armed forces of the Republic of Indonesia from the State police, Republic of Indonesia, based on the provision of People's Consultative Assembly of the Republic of Indonesia (*Majelis Permusyawaratan Rakyat Republik Indonesia/MPR RI*) Number. VI/MPR/2000 and continued with the formation of rules Number 2 of 2002, state police, Republic of Indonesia as the changes to the rules Number 28 of 1997 and rules Number 13 of 1961. There is a law issue in those changes that should be done using the theory and concept of law which expected to be able to find the answers of the legal issue in the arrangement the termination of investigation by the police investigators.

Keyword: harmony, regulation, determination, investigation, police

1. INTRODUCTION

This legal research was carried out with the background, experience and daily work of the writer as a member of the National Police in the area of law in the East Java Regional Police. Starting from the separation of the Indonesian National Police from the TNI based on TAP MPR Number. VI / MPR / 2000 and MPR TAP Number VII / MPR / 2000 concerning the Role of the Indonesian National Army and the Republic of Indonesia's National Police, stated that the TNI is a state instrument that acts as a defense tool for the Unitary State of the Republic of Indonesia, while the National Police is a state instrument that plays a role in maintaining Security, public order, law enforcement, protectors, patronage and service to the community.

Cause of the separation, impact on a change of character in police institutions and organs which are pure militarist or civilian being. It is, as the hope for the community of justice seekers in law enforcement really can be protected and served its interests completely.

However in the arrangement of rules Number. 2 of 2002 on the national police, there are overlapping, such as :

Article 2, mentions "the function of police is one of the functions of State administration in the maintain safety and public order, enforce the law, protect and serve the community".

In this case the police functions included the realm (*domain*) as the national police administration, when officials of The State issuing the decree termination of investigation based on authority, and arising out of a dispute, then the solution through the State Administrative Court, in accordance with the provisions of article 47 rules Number 5 of 1986 on The state administrative court.

While in article 16 paragraph (1) mentions "State police of the Republic of Indonesia organized a duty of criminal proceedings. In this case the function of police included the realm (*domain*) of criminal law.

So, when Police issued Decree the termination of investigation then arise a dispute, then the solution through the Public Justice (District Court). This is in accordance with the provisions of article 77 rules Number 8 of 1981 code of criminal procedure. In both of these terms can be known as the clarity when there is a dispute, cause the termination of investigation is the Official Decision of the State (*beschikking*), issued by the national police investigators, whereas the solution through pretrial by the state court.

In article 109 subsection (2) of rules Number 8 of 1981, mentions: The termination of investigation conducted because there is not enough evidence or the case apparently is not criminal case or by the law, the termination of investigation executed in fact to ensure the law for the criminal investigation. However, the confusion in the termination of investigation which resulted in causing harm to a person or party it may concern, so the person or party can only apply through the District Court pretrial (article 77 legal criminal).

Despite the fact there are imperfections in regulations of legislation, such as the overlapping in the rules Number. 2 of 2002 on the national police, and the inconsistent with the authority of the judiciary, in dispute resolution termination of investigation by Police investigators. As long as there has been no change, then the national police in termination of investigation still stick to the provisions of article 16 subsection (1), letter (h) rules Number. 2 of 2002 on the police force and article 7 subsection (1) letter (i) Article 109, subsection (2) rules Number 8 of 1981 Code of Criminal Procedure, as well as to dispute resolution termination of the investigation, still resolved through pretrial by District Court (judiciary), which is based on article 77 rules Number 8 of 1981 Code of Criminal Procedure.

Based on the description, there are existing problems, namely:

1. Why is there a disharmony of decree the termination of investigation by the national police, and what are the consequences ?
2. What is a decree the termination of investigation Police can be classified as Administrative Decisions of State and what are the implication ?

2. RESEARCH METHOD

Research Methodology as the procedure and technique to solve the problems that will be done by the researcher. Therefore, the use of research legal methodology always be appropriate to the necessary of its research.

This research is a normative legal research in which the writer examines and reviews the kinds of rules which interrelated with the termination of investigation by the police investigators so can be found the solution through the Juridical and the approach of legislation, conceptual and comparative.

Law resources : Primary (legislation), secondary (literatures, working papers, articles, journals and scholarly papers) and tertiary (legal dictionary, Indonesian and english language and catalog).

3. THEORETICAL STUDY

A. The theory of change

Theory of change has function as *grand theory* which used by the writer as the point of analysis to both legal issues. The reason why the writer used this theory is starting from the separation of the National Police from the National Army is not solely a Government policy. However, is the mass movement that demands for the existence of a change (Reformation) to the Government of Indonesia, which included the separation of the National Police from the national army. Furthermore the separation was passed (legalization) with People's consultative Assembly provision Number. VI/MPR/2000 on the separation of State police of the Republic of Indonesia with Indonesian national army.

Regulations pertaining to the Police Department, so the writer agreed with theory of Carl Von Savigny as a point of analysis in overlapping between article 2 and 16 rules Number 2 of 2002 about the policy.

Theory of categorization, grouping, legal division according to C. Van. Volenhoven, using the way of thinking by Montesquieu known as the division of authority referred to trias politica but Vollenhoven separates agency/authority of police specifically. So appears chess praja teaching.⁶ Montesquieu separated among legislative, judicative and

executive while C. Van Vollenhoven separated *Regeling* (legislative), *bestuur* (executive), *rechtspraak* (judicative), and *politie* (police) the special separation of *bestuur*.

In addition, C. Van Vollenhoven distinguished *regeering* (large government) and *bestuur* (narrow government) which include minus *regeling*, *rechtspraak* and *politie*.

Legal categorization in a country consist of four fields. Such as :

- a. The stucture administration law set about the authority organs/device state (*regeling, bestuur, rechtspraak* and *politie*).
- b. The state administration law set about acts of organs/device (*regeling, bestuur, reschtpraak* and *politie*).
- c. The criminal law materill.
- d. The materill civil law is private law.

So, *politie* (national police) in the law administration (motionless), the arrangement of authority and within law administration (in motion in carrying out the function and activity).

B. Theory of law enforcement

According to the legal concepts of Karl Marx reveals, that the basis of conflict theory is the fundamental conception of class society and its struggle, it is the tension between the *proletariat* and *bourgeoisie* encourages the formation of great social movement, it is "*revolution*". that in that case so illustrate the existence of a basis difference in two groups , then appears conflicts and encourages the formation of a great social movement as the revolution. Karl Marx's opinion can be drawn the conclusion, that the conflict occurs because of a conflict or difference between the two groups that can cause tension which makes the social movement toward a change.

When it is linked with the existence of terms in article 2 of rules Number. 2 of 2002, which mentions 'The function of police is one of the functions of Government' is the administrative domain, cause of this provision appears a contradiction or difference, when linked with the provisions in article 16 of rules Number 2 of 2002 which mentions 'the national police in carrying out duties of criminal investigation process is authorized such as the termination of investigation, is the domain (realm) of criminal law. The existence of these two provisions or norms/rules in the rules Number. 2 of 2002, has a different domain and not suitable, disharmony and not balance among one determination with others in the rules.

C. Theory of authority

As the reason, the writer used the theory of change and authority to examine theoretically can the termination of investigation classified as a State Administrative provision, when linked to article 2 of rules Number 2 of 2002 which substance mentions "function of police is one of the functions of Government" in maintenance the safety, public order, law enforcement, protect and serve the community. According to Sadjijono, the function of the police is one of the functions of Government, include the duty and authority of the administration. In Indonesian dictionary mentions the base of "authority" is 'competence' that contains the meaning of the right and power to do something

Philipus M. Hadjon declared the term of authority used as a noun. Both terms are often interchanged each other. We entrust to the experts to explain more proper, authority or competence. In Netherland rules, authority or competence are often aligned with the term *bevoegdheid*, those terms are also in the concept of public Law.¹⁴

In the Library of Administration in Netherland, authority always becomes the important and the first part of law administrative, because the object of the Administration is the Government authority (*bevoegdheid bestuur*).¹⁵

As a concept of public law, the authority is composed of at least three components, such as:

- 1) Components influence, that using of the authority intended to control the behavior of the subject the law.
- 2) The basic components of the law, that the authority should always be appointed its legal basis.
- 3) Components of the Declaration of the law, is the meaning of public authority standard. They are public (any type of authority) and special standard (specific types of authority).

4. Results and Discussion

Depart from the separation of the National Police from the Army, a lot of changes in the police, both concerning the institutional, structure organization and law regulations about the police, that's why the writer used theory of change as a point of analysis, in accordance with histories of Carl Von Savigny, known as "*the soul of the nation*", *volkgeist*, that "*law as a social symptoms*"

The MPR RI provision Number VI/MPRI/2000 on the separation of Indonesian national army from national police and the people's Consultative Assembly Decree of the

Republic of Indonesia, and rules Number. 2 of 2002 on the State police of the Republic of Indonesia, as amendments to Law Number 28 of 1997 and Law Number 13 of 1961 about the Indonesian National Police. Changes to the laws and regulations of the police have very broad implications, because they are not only related to the position and organizational structure of the police, but also concerning the substance and culture of the police. Since there have been many changes in the laws and regulations concerning the police, the authors agree with Carl Von Savigny's theory as the blade of analysis of a change in the police law that there is overlapping in the arrangement between Article 2 and Article 16 of Law No. 2 of 2002 concerning the police force.

Amendments to some of the substances in Law number 2 of 2002 concerning the Police, after a legal review and analysis of the existence of legal norms / rules in the law, there was an overlap between Article 2, the substance of which stated that "the function of the police is wrong one function of the state government "is the domain (domain) of administration or State Administration, with Article 16 paragraph (1) letter (h) stating" the police investigator in conducting the process of investigating criminal cases having the authority to terminate investigations "is the domain (domain) of criminal law.

In addition, in the case of dispute resolution arising as a result of a cessation of investigation with the issuance of a letter of termination of an investigation by a police investigator, which is based on Article 77 of the Criminal Procedure Code, the District Court (general court) has the authority to examine and decide on the validity of the investigation in the form of a cessation letter of investigation. This case overlaps judicial authority and becomes out of harmony (dishamoni), if it is associated with Article 2 of Law No. 2 of 2002 which states "the function of the police is one of the functions of the state government" is the domain (domain) of administration or State Administration and if a dispute occurs it becomes the competence of the State Administrative Court. Polri as a state law enforcement tool, in implementing law enforcement, Polri is demanded to change dynamically in dealing with all developments and legal dynamics of the demands of society, by having adequate knowledge, technology and information capabilities that can access quickly. Because of these demands, the National Police must have the ability to carry out its duties and authority to the best of its ability, and be able to prove itself as one of the country's professional and independent law enforcement tools.

In terms of government authority (bestuur bevoegdheid), which is related to police authority. Starting from the change in police institutions, both related to the organizational structure, the position of the National Police, the laws and regulations concerning the

Indonesian National Police, as well as changes to the culture or culture of behavior and morality of each Polri member.

Linked to opinion of the Bacon, that the Police as investigators in the investigation of a criminal case, legal studies need to be done, given the existence of legal developments and changes related to the duties and authorities of the national police, in particular in terms of police investigation, termination action against a criminal process by issued the termination of investigation, refers to article 7 subsection (1) the letter (i), rules No. 8 of 1981 on the rules in article 16 subsection (1) letter (h) of rules Number 2 of 2002 about the State police, Republic of Indonesia in theory it is the realm (domain) of criminal law, but when associated with article 2 of rules Number 2 of 2002, which States that "function of police is one of the functions of government", then the national police in carrying out duties and authority in law enforcement, in particular in the event of termination of the investigation with a published decree termination of investigation, was in order to organise the function of Government, thus in theory is the realm (domain) administrative law

Based on the explanation in article 1 point 3 of rules Number 5 of 1986, the term "written determination" shows the content and not on the form of a decision issued by the agency or official of The State. That decision is indeed required in writing, but the written form is not a required format such as the Decree of appointment or dismissal of civil servants (Civil Servants) and so on. The written requirements that are required, due to the ease in terms of proof.

Absolute authority to resolve the dispute in termination of investigation issued by the investigators is The national police, as a normative set of article 47 of rulesNumber. 5 of 1986 about Country or Administrative Justice rulesNumber 51 of 2009about the changes to the rulesNumber9 of 2004 on amendment of rules number 5 of 1986 about The State of the judiciary, mentions "the Court has an authority to disconnected and resolve disputes state administrative". But in the case dispute resolution termination of investigation by Police investigators, pursuant to section 77 of the rules Number. 8 of 1981 on the Code of Criminal Procedure is the District Court (public court), and linked to article 2 of rules Number 2 of 2002 on the national police became disharmony and contrary with *lex specialis derogat lex generalis*

But therules Number 8 of 1981 in the book of The law of criminal procedure was created in 1981, while rules Number. 5 of 1986 on state administration was created in

1986, is related to the judicial authority for the resolution of disputes the termination of Investigation contrary with *the principle lex posteriori derogat lex priori*.¹

The result of the discussion of the second problem is that in article 2 of rules Number 2 of 2002 on the national police, mentions: "the function of police is one of the functions of Government" including the duties and authorities of the Administration, while the object of administrative law, according to Hadjon is the authority of Government, the scope not only includes the authority to make decision of government (*besluit*), but also all the authority in order to carry out his duties, such as enforce law, protect, trial and serve the community. Decree termination of investigation can be categorized as State Administrative Provision (*beschikking*).

Considering to decree termination of investigation that was issued by the national police investigators is The Decision of the State, as provision or decision (*beschikking*) is a product of the agency or state of judicial, according to Sjachran Basah, "*beschikking*" is a written decision from the state administration which has the result of laws which conceptually and theoretically included the realm of administrative law and when the dispute occurred, which may be absolute authority to resolve the dispute is The State judicial normative basis, regulated by article 47 of rules Number 5 of 1986 about Country or state administrative in rules Number. 51 of 2009 about the changes to the rules Number 9 of 2004 on amendment of rules Number 5 of 1986 on The state Judicial, mentions "the Court on duty and authorized, disconnected and resolve disputes Administrative State".

Thus, an assessment that the termination of the investigation conducted by police investigators, can be classified as administrative decision-making (*beschikking*) and if a dispute arises competency State Administrative Court. Though in the Article 2 rules number. 5 of 1986 on the State Administrative Court did not exclude the entry as a state administrative decision, but the nature and character "Administrative Decision" still integrated and unchanged. It is precisely the existence of Article 2 of rules Number 5 of 1986 has been mixing between legal concepts with the competence. For it is necessary to study the legal normative, evaluative nature of the existence of Article 2 of rules Number. 5 of 1986, whether this is still relevant, because it is no longer compatible with the dynamic development of the law. Through the research and study of this law, in order to realign the alignment, harmony, conformity, suitability / fit and harmony between the provision and the other provisions of the legislation with other legislation.

5. CONCLUSION

Due the case of dispute the termination of investigation by the police investigators, it still occurs overlapping in authority of the judiciary, because it does not fit or is not aligned with the competence and appears disharmony between the rules number. 8 of 1981 with rules Number. 5 of 1986 of the State Administrative Court. Because termination of investigation by the national police, the administration of the dispute decree, it became absolute competence of judicial Administrative States (vide Article 47 of rules Number 5 of 1986), while the normative arranged in article 77 of the Code of Criminal Procedure of dispute settlement is carried out by the District Court (*judicial*).

In theory of the termination of investigation can be classified as State administrative decisions (*beschikking*), because it is based on article 2 of rules Number. 2 of 2002 on the national police, citing "function of police is one of the functions of the state administration", talk about Government domain administration (the country), and became an object of the Administration is the Government authority (*bestuur bevoegdheid*) definitively by the Legislatif.

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10