

Position of The Investigation Termination Order (SP3) By The Police From The Perspective of Legal Certainty

Viermann Banjarnahor¹, Zainal Abidin pakpahan^{2*}, Muhammad Yusuf Siregar³

^{1,2,3} Faculty of Law, University of Labuhan Batu, Indonesia

*Corresponding author:

E-mail: zainalpakpahan@gmail.com

Abstract.

The Investigation Termination Order (SP3) is an important instrument in the Indonesian criminal justice system, granted to investigators to terminate an investigation due to insufficient evidence, non-criminal events, or termination by law as stipulated in Article 109 paragraph (2) of the Criminal Procedure Code. This authority is directly related to the principle of legal certainty, which demands clarity, order, and protection for every individual facing the legal process. In practice, the SP3 serves to provide certainty of legal status for suspects to avoid criminalization or protracted investigations without adequate basis. However, the implementation of the SP3 often raises problems, especially when it is deemed non-transparent or has the potential for abuse by law enforcement officers. This can affect public trust in the Police institution and create uncertainty for victims or reporters. This research uses a normative juridical approach by examining laws and regulations, legal doctrine, and court decisions related to pretrial as an instrument of judicial control over the validity or invalidity of the issuance of the SP3. The analysis shows that although SP3 is a legal and necessary mechanism to maintain the effectiveness and accountability of investigations, its implementation still faces various challenges, such as inconsistent standards of evidence, minimal internal oversight, and limited public access to pretrial mechanisms. Therefore, strengthening measures are needed through increased transparency, standardization of investigation termination procedures, and optimization of the oversight function to ensure that the issuance of SP3 truly reflects the principle of legal certainty and does not conflict with the principle of human rights protection.

Keywords: SP3; Termination of Investigation and Criminal Procedure Code.

I. INTRODUCTION

The criminal justice system in Indonesia places investigation as a crucial stage in law enforcement. At this stage, investigators have the authority to determine whether a case is worthy of prosecution or should be discontinued. This authority is regulated in the Criminal Procedure Code (KUHAP), specifically through the Investigation Termination Order (SP3). Letter of Order to Terminate Investigation (A warrant (SP3) is a legal mechanism to stop an investigation into a criminal act for certain reasons, such as insufficient evidence, not being a crime, or for legal reasons. This authority is important for efficiency, protecting the suspect's rights, and maintaining legal certainty. However, the use of a warrant to stop an investigation (SP3) often sparks debate, particularly when it is perceived as opening up opportunities for abuse of authority or legal uncertainty for the reporting party, victim, or suspect. This article discusses the position of the Investigation Termination Order (SP3) from the perspective of legal certainty, outlining its legal basis, objectives, and implications in the criminal justice system. In the criminal justice system, the investigation process is a crucial stage in gathering evidence to prove the existence or absence of a crime. However, not all investigations end with the transfer of case files to the public prosecutor. One legal instrument that ends the investigation process is a Letter of Order to Terminate Investigation, better known as a Letter of Order to Terminate Investigation. Order to Terminate Investigation (SP3) The existence of SP3 is often controversial in society, on the one hand it is considered a form of legal protection for suspects, but on the other hand it is considered a loophole for impunity.

The investigator's authority to issue an SP3 is based on the provisions of the Criminal Procedure Code, namely:

1. Article 109 paragraph (2) of the Criminal Procedure Code

Investigators stop the investigation if: a. there is insufficient evidence; b. the incident does not constitute a crime; c. the investigation is stopped by law (e.g. the suspect dies, *nebis in idem*, the case has expired).

2. **Article 14 letter g of Law No. 2 of 2002 concerning the Police**

Gives the police the authority to terminate investigations.

This legal basis confirms that the authority to terminate an investigation is not merely a technical authority, but is part of the principle of due process of law which aims to prevent excessive criminalization and provide legal protection for the community. However, although normatively Order to Terminate Investigation (SP3) is a necessary legal instrument, in practice the issuance of SP3 often gives rise to various problems. On the one hand, termination of investigations carried out without transparency and accountability can create negative perceptions of law enforcement, particularly regarding the objectivity and integrity of the police. On the other hand, reporters and victims often feel disadvantaged when SP3s are issued without adequate explanation or when objection mechanisms such as pretrial motions are difficult to access. This condition raises questions about the extent to which SP3s truly reflect the principle of legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution. Legal certainty is a fundamental principle in a state based on the rule of law, which requires clear norms, predictable decisions, and equal protection for all parties. Therefore, the implementation of SP3 should be carried out with clear, proportional, and accountable standards, so that it not only provides protection to the suspect but also respects the victim's right to justice. With these various problems and dynamics, a study of the position of SP3 from the perspective of legal certainty is important to understand whether the authority to terminate an investigation has been used in accordance with the principles of legality, objectivity and protection of human rights. This study analyzes the legal basis, function, and challenges of implementing SP3, while also examining control mechanisms such as pretrial as an effort to achieve certainty and justice in the criminal investigation process.

II. **METHODS**

This research uses a normative (dogmatic) juridical approach with a focus on the analysis of legal norms related to the Investigation Termination Order (SP3) in the Criminal Procedure Code (KUHAP), especially Article 109 paragraph (2), as well as other implementing regulations. This approach incorporates socio-legal elements to explore the practice of issuing SP3s and their implications for legal certainty from a criminal law enforcement perspective. This research is descriptive and analytical, utilizing secondary data in the form of laws, pretrial decisions, legal journals, and literature related to SP3s, as well as primary data from interviews and field observations of police practices, if necessary. Data collection was conducted through literature review and comparative methods to compare legal provisions with the reality of their application. Data analysis employed a qualitative method with a deductive approach, systematically outlining legal norms and linking them to the principle of legal certainty and pretrial oversight mechanisms. This technique ensures objective and relevant findings to address the problem formulation regarding the status of SP3s.

III. **RESULT AND DISCUSSION**

1. **Normative Basis for Termination of Investigation through SP3**

The research results show that the investigator's authority to issue an SP3 has strong legitimacy in the Indonesian legal system. Article 109 paragraph (2) of the Criminal Procedure Code expressly provides a legal basis for investigators to stop an investigation when there is no longer a legal reason to continue the process. This provision is reinforced by Law Number 2 of 2002 concerning the Police, which places investigations as an integral part of the Police's duties in law enforcement. Normatively, this authority is designed to ensure that investigations are only carried out on cases that fulfill the elements of a criminal act and are supported by sufficient evidence. Thus, at the normative level, SP3 is a legitimate and essential instrument in maintaining effectiveness and legal certainty in the investigation process.

2. **SP3 as an Instrument of Legal Certainty for Suspects**

From a legal certainty perspective, the SP3 serves to provide clarity on the suspect's legal status. Analysis shows that without an SP3, suspects could potentially be trapped in prolonged legal uncertainty due to investigations that lack a clear time limit. This is contrary to the principle of legal certainty as guaranteed

in Article 28D paragraph (1) of the 1945 Constitution. The SP3 also prevents criminalization that can arise from forced investigations without sufficient evidence. Therefore, terminating an investigation through an SP3 is an important form of legal protection for suspects.

3. Impact of Issuing SP3 on Victims and Reporters

Research results show that the implementation of SP3 not only impacts the suspect but also directly impacts the victim or reporter. In some cases, victims felt disadvantaged because the termination of the investigation was determined without transparent communication from the police. Furthermore, SP3s are often perceived as unfair when issued without clear justification or sufficient evidence. While normatively, victims have the right to file a pretrial motion to challenge the validity of the investigation termination, empirically, complainants are often unaware of this mechanism or lack adequate access to file one. Therefore, SP3 is an instrument that must be managed carefully so as not to create legal uncertainty for victims.

4. Pre-trial as a Supervisory Mechanism for SP3

The pretrial mechanism provides a form of judicial oversight of investigators' authority to halt investigations. Research shows that pretrial proceedings have become an important tool for ensuring the accountability of law enforcement officials. Through pretrial proceedings, judges assess whether the termination of an investigation was carried out according to procedure, met evidentiary standards, and did not abuse authority. Pretrial decisions that overturn SP3s demonstrate the existence of checks and balances in the criminal justice system. However, in practice, reporters often find pretrial proceedings difficult to access, thus suboptimally effective as a control tool. This demonstrates the unequal public understanding of available procedural rights.

5. Challenges of SP3 Implementation from the Perspective of Legal Certainty

Based on the analysis results, there are several main challenges in implementing SP3:

a. Lack of Transparency in the Reasons for Terminating the Investigation

Some investigators did not provide adequate explanation regarding the reasons for issuing the SP3, thus creating legal uncertainty for the victims.

b. Potential for Abuse of Authority

SP3 is considered vulnerable to misuse to stop certain cases involving parties with political or economic interests.

c. Non-uniformity of Standards of Proof

Investigators in different regions have different standards regarding the category of "sufficient evidence", leading to inconsistencies in the practice of terminating investigations.

d. Weak Internal Supervision

Internal police supervision has not been running optimally to assess whether SP3 was issued objectively.

6. SP3 in the Construction of Legal Certainty

Theoretically, legal certainty encompasses clarity of norms, consistency of decisions, and open access to legal mechanisms. Based on research:

- SP3 provides legal certainty for suspects,
- but can create uncertainty for victims if not managed accountably.

Thus, the SP3 has a dual nature: it guarantees legal certainty for the suspect while also potentially disrupting legal certainty for the victim if its implementation is not professional and transparent. This demonstrates the need to harmonize the rights of the suspect, the rights of the victim, and the authority of the investigator to achieve just legal certainty.

7. Legal Basis for Efforts to Obtain Sp3

1. Criminal Procedure Code (Law No. 8 of 1981)

Article 77 letter a of the Criminal Procedure Code

Pretrial objects include:

- *"Whether or not the termination of the investigation is valid."*

Article 80 of the Criminal Procedure Code

Parties who can file a pretrial motion:

- Suspect
- The suspect's family
- Interested third parties (including the reporter and the victim—strengthened by the Constitutional Court's decision)

2. Constitutional Court Decision Expanding Legal Remedies for SP3

a. Constitutional Court Decision No. 76/PUU-X/2012

This decision confirms that:

- **The reporter/victim has legal standing** to file a pretrial motion against SP3.
- Not only suspects can sue SP3.

b. Constitutional Court Decision No. 98/PUU-X/2012

This decision reaffirms that:

- Termination of investigation can be tested by the reporting party and the victim for the principle of access to justice.

3. Regulation of the Chief of Police No. 6 of 2019 concerning Criminal Investigation

This regulation regulates:

Articles 30–31

- The investigator's authority to issue SP3.
- Obligation to notify the reporter/victim and prosecutor if SP3 is issued.

Article 32

- The reporter/victim can file an objection or request a re-trial of the case.

Forms of Legal Action against SP3

The following paths are recognized by law:

1. Pre-trial at the District Court

Legal basis: Article 77 of the Criminal Procedure Code + Constitutional Court Decision 76/PUU-X/2012.

2. Administrative objections within the Indonesian National Police

Legal basis: Perkap 6/2019 Article 32.

For example:

- Requesting a retrial.
- Report to Propam or Itwasum.

3. External supervision

- National Police Commission (Legal basis: Presidential Decree 17/2011).
- Indonesian Ombudsman if there is suspicion of maladministration.

4. Application to reopen the investigation (Re-opening)

If the pretrial declares the SP3 invalid, the investigator is obliged to continue the investigation.

IV. CONCLUSION

From the overall analysis, it can be concluded that the SP3 is a legitimate and important instrument for legal certainty in the criminal justice system. However, its implementation still faces serious challenges, particularly regarding transparency, evidentiary standards, and oversight. SP3 will only truly reflect legal certainty if it is used professionally, objectively, and can be tested through pretrial mechanisms. The position of SP3 from a legal certainty perspective is dynamic and dualistic. Normatively, it is a pillar of legal certainty that protects citizens from baseless investigations. However, in practice, its position is vulnerable to distortions that can actually undermine legal certainty. The determining factors influencing whether SP3 enforces or undermines legal certainty lie in the integrity of the authorities, the transparency of the process, and the effectiveness of oversight mechanisms by the Public Prosecutor and the Pre-Trial Court.

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