

# THE LEGALITY OF THE PEACE LETTER FORMED AS THE BASIS OF SP3 (LETTER OF DISMISSAL INVESTIGATION)

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## ABSTRACT

*Every single crime action that has been done would have negative consequences in the form of misbalancing of the positive or natural human life. To return it back to the positive life. It needs a responsibility action from the crime accusers. In fact, the society prefers to choose to have done the case through a peace action by a kinship spirit, between the crime perpetrators and the victims. Based on the background above, so the subject of the problem in this study are: 1) How is the legal basis of SP3 (Letter of Dismissal Investigation) spending in the Denpasar Police? 2) How is the legality of peace letter used as a legal basis of SP3 (Letter of Dismissal Investigation) expenditure by the police in Denpasar Police. The kind of research used in this study is empirical research. 1) The data used is a result of reviewing the state of the situation and condition, and the real facts directly by using an empirical juridical approach that reviews the problem that happened. It is reviewed from the legal view by doing a research which emphasizes on the empirical characteristics that are real field studies. 2) The primary data source was gotten from real situation in Denpasar Police (Denpasar Regional Police). 3) The processing and analyzing data in this study was done qualitatively, where the data that was obtained by the researcher from the library and real situation was processed qualitatively, then as the result, the researcher served by descriptive analytical. The legal basis of SP3 (Letter of Dismissal Investigation) expenditure in Denpasar Police at the investigation level, that is in article 1 point 2, article 7 section (1) letter I, article 109 section (2) KUHP (Criminal Code Procedures). Police Report Number: LP/1168/VII/2016/Bali/Resta Dps on August 15 th 2016. The result of the title case on October 4 th 2016. The Assessment Letter of Denpasar Regional Police Chief on October 4 th 2016 about the dismissal of the investigation. The legality of peace letters used as a legal basis of SP3 expenditure by the police of Polresta Denpasar are: Having an absolute legal force, the effort to appeal and cassation is closed, having a strength execution. Article 130 of HIR regulates that peace certificates have a force and will be done as a normal judges' decision and against the ruling, it cannot be asked for appealing. In other words, again the peace agreement that has set down on the final judgment. There are nojudicial remedies that can be done for that.*

*Key Terms: Legality, Peace Letter, SP3 (Letter of Dismissal Investigation)*

## 1. PRELIMINARY

Criminal law which is classified as public law functions to protect the interests of the public and maintain public order from the actions of members of the public who are unfavorable, detrimental, or even evil. Thus its enforcement "can be forced". It does not depend on the will of the individual, but it is up to the State as the representative of the "public interest" and the violators will be subject to sanctions in the form of "criminal". (Wirjono Prodjodikoro, 2010)

Criminal procedural law aims to seek and obtain or at least approach material truth, namely the complete truth of a criminal case. By applying the provisions of criminal procedural law in an honest and appropriate manner. It is hoped that the material

truth in a criminal case can be revealed and prevent innocent people from being punished. This criminal procedural law is realized in real terms through a criminal justice system. If during the court examination the defendant is found guilty of committing the crime charged, he will be punished and sent to the penitentiary to carry out his sentence. For the next penitentiary to foster convicts in an effort to prepare them to become better human beings.

According to the provisions of Article 1 paragraph 2 of the Criminal Procedure Code:

"Investigation is a series of investigative actions in terms of and according to the method regulated in this law to seek and collect evidence with which evidence makes clear about the criminal act that is currently taking place"

At this stage, the investigator is tasked with gathering information, evidence and evidence as completely as possible in order to uncover the truth and make light of the crime and find the suspect. In this paper, the author limits the discussion only to general criminal investigation issues. Starting an investigation, the police must issue an investigative order assigning investigators to carry out investigations into criminal cases. Once an investigation has started, the investigator must notify this matter to the public prosecutor. The assignment warrant is very important because it is the legal basis for the authority of investigators in carrying out investigations.

Investigating officers are obliged to immediately carry out investigative actions if a criminal act occurs, a criminal act can be known by the police through 4 possibilities, namely:

1. Because of reports
2. Due to complaints
3. Caught caught
4. It is known by the investigator himself or notification or other means so that the investigator is aware of the occurrence of a crime. (Andi Hamzah, 2010: 122)

It is required by law that the termination of the investigation must be notified to the public prosecutor, the suspect and his family. As stipulated in the Decree of the Minister of Justice of the Republic of Indonesia No. M.01-pw.07.03 of 1982 concerning Guidelines for the Implementation of the Criminal Procedure Code which requires notification of the start of an investigation in written form, so the termination of an investigation must also be in written form. Termination of the investigation is stated through a "Notification of Termination of Investigation" which is usually shortened to SP3. The SP3 consists of a letter of notification of termination of the investigation, a letter of decision to terminate the investigation and an order for the termination of the investigation.

Based on the Decree of the Minister of Justice No. M.14 PW.07.03 of 1983 number 11, notification of termination of investigation in addition to being conveyed to the public prosecutor, the suspect or his family, must also be conveyed to his legal adviser and to the reporting witness or victim. The purpose of issuing the decree is for legal certainty for the parties involved. Parties who object to the termination of the investigation can submit their objections through the pretrial institution to examine whether or not the termination of the investigation is legal.

Every criminal act committed will cause negative consequences in the form of an imbalance in the atmosphere of life that is of good value. In order to return to the atmosphere and life that is of good value, an accountability is needed from the perpetrator who has caused the imbalance. And the accountability that must be carried out by the perpetrators is in the form of delegating the discomfort of the community so that the suffering or losses experienced can also be felt. So someone who is convicted means that he carries out a punishment to be held

accountable for his actions which are considered to be not good and endanger the public interest. (Teguh Prasetyo, 2012:3)

In reality, in society, the settlement of criminal cases outside the court is often carried out. The community prefers to resolve these cases through family peace between the perpetrators of crimes and victims. The peace is considered a settlement that benefits the parties. Usually this peace is carried out by providing compensation in the form of an amount of money from the perpetrator to the victim or the victim forgives the perpetrator by asking for compensation for the actions he has committed.

## **2. RESEARCH METODOLOGY**

The research that the author uses is empirical research, namely the data obtained is the result of a survey of conditions and field facts directly with an empirical juridical approach, namely studying the problems faced from a legal perspective by conducting research that focuses on its empirical nature, namely field studies. directly.

In this writing, descriptive research is used (describing), namely research that seeks to accurately describe the characteristics of an individual, condition, symptom or to determine whether there is a relationship between a symptom and other symptoms in society. (Amiruddin, Zainal Asikin, 2008: 25)

Data sources in this study consist of: primary data sources and secondary data sources. In writing this thesis, the primary data was obtained from field research, namely at the Denpasar Police. Secondary data sources are data obtained from the literature, which consist of: Primary legal materials, namely reviewing laws and regulations that apply specifically based on the 1945 Constitution, Law No. 8 of 1981 Criminal Procedure Code (KUHAP), Law no. 13 of 1961 concerning Basic Provisions for the State Police, Law No. 2 of 2002 concerning the Police, Law no. 15 of 1961 concerning Main Provisions of the Prosecutor's Office. Secondary legal materials are guided by literature, articles, law journals and others related to the problem.

## **3. RESULTS AND DISCUSSION**

Settlement is an agreement in which both parties surrender, promise or hold an item, end a dispute that is hanging or prevent the emergence of a case, and the peace agreement is not valid but must be made in writing. In disputes there are always two or more parties who are fighting in dispute resolution, it is possible for the parties to resolve it themselves without going through a court, for example they ask for help from relatives, community leaders or other parties, in an effort to find a settlement to a dispute like this, quite a lot has been successful. However, it often happens that later one of the parties violates the agreement that has been agreed upon, to avoid the recurrence of the same problem in the future.

Peace agreements in the Civil Code Peace agreements are also known as *dading*. The peace agreement is regulated in Articles 1851-1864 of the Civil Code. Settlement is an agreement between the two parties whose contents are to surrender, promise or hold an item, both parties may end a case that is being examined by the court to prevent a case from arising (Article 1851 of the Civil Code). (Salim, 2008: 92)

The reconciliation carried out by the parties has the same binding power as the judge's decision at the final level, both cassation and review decisions (Article 1858 of the Civil Code). Peace cannot be made on the grounds of annulment that there has been a mistake regarding the law or on the grounds that one of the parties has been harmed.

Investigation or what is commonly called investigation, in foreign terms it is called opsporing is the preparation of equipment to carry out a prosecution (vervolging), or is the basis for carrying out a prosecution, therefore a prosecution cannot be carried out before carrying out an investigation or investigation. The act of investigating or investigating is an attempt or action to seek and find the truth about whether a crime actually occurred, who committed the act, what was the nature of the act, and who was involved in the act. In other words, investigation is defined as a series of investigative actions regulated by law to seek and collect evidence of criminal offenders. (WJS Poerwadar Minta, 2005:937)

Based on Article 1 point 1 of the Criminal Procedure Code, investigators are the Indonesian National Police or certain Civil Service Officials who are given special authority by law to conduct investigations. Whereas according to Article 1 point 2 of the Criminal Procedure Code, investigation is a series of investigative actions in matters and according to the methods stipulated in this law to seek and collect evidence with which evidence makes it clear about the crime that occurred and to find the suspect. In accordance with Article 1 point 2 of the Criminal Procedure Code, the main task of the investigator is to find and collect evidence in order to shed light on the crime that occurred. In order to support the main tasks of investigators so that they can run smoothly, investigators are given the authority to carry out their obligations, as stated in Article 7 paragraph (1) of the Criminal Procedure Code which reads:

- 1) Receive a report or complaint from a person regarding a criminal act;
- 2) Take the first action at the scene;
- 3) Ordering a suspect to stop and checking the suspect's identification;
- 4) Carry out arrests, detentions, searches and confiscations;
- 5) Examine and confiscate documents;
- 6) Taking fingerprints and photographing a person;
- 7) Call people to be heard and examined as suspects or witnesses;
- 8) Bring in the necessary experts in connection with the examination of cases;
- 9) Holding an end to the investigation;
- 10) Take other actions according to responsible law

Legal basis for publication Investigation Termination Warrant ("SP3") at the investigative level, namely Article 109 paragraph (2) The Criminal Procedure Code ("KUHAP"):

*"In the event that the investigator stops the investigation because there is insufficient evidence or the event turns out to be not a crime or the investigation is stopped for the sake of law, the investigator shall notify the public prosecutor, the suspect or his family."*

Based on Article 109 of the Criminal Procedure Code, an investigator can stop the investigation if:

- a. Not enough evidence
- b. This incident is not a crime
- c. The investigation was terminated by law:
  - 1) The accused died
  - 2) The case is *Nebis in idem*
  - 3) The case is expired (*verjaring*)  
The authority to demand an abolishment penalty because it has expired (Article 78 of the Criminal Code):
    - a) Regarding all the offenses and crimes committed with printing, after one year;
    - b) Regarding crimes that are punishable by fines, imprisonment, or imprisonment for a maximum of three years, after six years;
    - c) Regarding crimes punishable by a maximum imprisonment of three years, after twelve years;

- d) Regarding crimes punishable by death or life imprisonment, after eighteen years.

The parties must comply with and comply with the contents of the peace decision not only according to the sound of the formula, but also in terms of objectives, in terms of the nature of the peace itself and also according to decency and custom. So that compliance with the peace decision must be in accordance with what was decided by the Supreme Court on November 9, 1976 No. 1245 k/SIP/1974 which reads: "implementation of an agreement and the interpretation of an agreement, but also based on the nature of the object of the agreement and the objectives specified in the agreement"

In this case, not only is the binding legal force attached to the peace regulations, but also inherent in it is the executorial legal force, this means that if one party is reluctant to fill in the peace agreement "voluntarily", the other party can submit a request for execution to the court. the country, so that the party that had denied earlier could be forced to comply with the content of the peace decision. And if necessary, you can ask for legal assistance.

It is clear that all the provisions on the execution of court decisions that have permanent legal force, fully apply to the execution of conciliation decisions. If the peace decision contains real execution as stipulated in article 200 paragraph 11 HIR or article 1033 RV, it is fully applicable in the case of the execution of the peace decision. Furthermore, if the peace decision is in the form of executing the payment of money, the execution stipulated in Articles 195 to 200 HIR shall be fully enforced. And if the execution contains the execution of an act (to carry out something) the execution provisions stipulated in article 225 HIR are fully applicable.

Thus the arrangement and fulfillment of peace decisions is the same as the arrangement and fulfillment of court decisions that have obtained legal force, namely:

- 1) Arrangement and fulfillment can be done voluntarily.
- 2) Arrangement and fulfillment can be forced through execution, if one party is reluctant to obey and fulfill it voluntarily.

So in principle the peace decision shortens and streamlines the process of resolving disputes between disputing parties.

#### **4. CONCLUSION**

- 1) The legal basis for issuing SP3 (Notification of Termination of Investigation) at the Denpasar Police at the investigation level, namely:
  - a. Article 1 point 2, article 7 paragraph (1) letter I, article 109 paragraph (2) of the Criminal Procedure Code.
  - b. Police Report Number: LP/1168/VII/2016/Bali/Resta Dps dated 15 August 2016.
  - c. Investigation Order Number: Sprin.sidik/735/VIII/2016/Reskrim, dated 17 August 2016.
  - d. Results of the title case on October 4, 2016.
  - e. Denpasar Police Chief Stipulation Letter Number S.Tap/ /X/ 2016 /Polresta Dps, October 2016 concerning Termination of Investigation
- 2) The legality of the peace certificate which is used as the basis for issuing SP3 by the police at the Denpasar Police, namely

In this case of violence against children, the Declaration of Peace between I Ketut Alit Mahardika (as the father of I Putu Lanang Wisnawan as the victim of violence against children) and I Ketut Sumardika (father of I Made Yogi Arta as the perpetrator of violence against children) has binding legal power. , in which both parties agreed to enter into a peace agreement with the contents:

- a. The victim agreed to make peace and not prolong the problem and was willing to withdraw the report at the police.
- b. The perpetrators are willing to bear all the costs of treatment at the hospital until they recover and the administrative costs of revoking the report.
- c. The perpetrator is willing to supervise his child and will not repeat the act of violence.

## 5. REFERENCE

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