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Police Discretion on Terminating Corruption Investigations After Return State Financial Losses in Indonesia: Validity and Challenges

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Abstract

This study examines Police Discretion, notably the Secret Telegram Letter of Kabareskrim Number 206/VII/2016. Once the state's financial losses are recovered, corruption investigations end. This idea has drawn praise and criticism. STR 206/VII/2016's authenticity is also investigated. Conceptual and statutory methodologies are used in this normative legal research study. According to the research, Kabareskrim STR No. 206/VII/2016 is invalid. The STR fails Article 18 of the Police Law's discretionary action requirements. This law requires police discretionary actions must be related to an urgent crisis and serve the public interest. However, the author found no evidence supporting STR 206/VII/2016. Legal guidelines govern police discretion. However, STR 206/VII/2016 only examines the President and Chief of Police's directions, ignoring the Anti-Corruption Law's goal. The Criminal Investigation Unit of the National Police's Secret Telegram Letter 206/VII/2016 expresses concerns about corruption investigations' legal uncertainty. Due to STR 206/VII/2016's conflict with Law No. 31/1999 on Corruption Eradication. The statute emphasises state losses and punishment, while STR 206/VII/2016 neglects penalty. Also unclear is the ceiling on state financial losses that can stop an investigation after their return and the timeframe for their return. In corruption investigations with new evidence (novum), an Investigation Termination Order (SP2Lid) does not guarantee legal certainty. Since it focuses on the Police, Kabareskrim STR No. 206/VII/2016 cannot be extensively analysed institutionally.

1. Introduction

Article 1, paragraph (3) of the 1945 Constitution underscores that Indonesia is a constitutional state, necessitating adherence to the law and establishing explicit regulations. This principle extends to matters of defense and security within society. The Third Amendment to the 1945 Constitution introduced the principle of the Rule of Law to Article 1, paragraph (3) of the Constitution, which states that "Indonesia is a

state of law." This provision is a standardization type drawn from the information in the Explanation of the 1945 Constitution. The Explanation explains that the Indonesian State is founded on the principle of the rule of law (*Rechtsstaat*) rather than being based solely on the exercise of authority (*Machtsstaat*). The notion of the State of Law in the Explanation of the 1945 Constitution holds significant legal authority as the highest norm in the national legal system of the Indonesian state by the provisions of the 1945 Constitution.[1]

Regarding defense and security, Article 30 paragraph (2) of the 1945 Constitution states that the protection and safety of the state will be achieved through a comprehensive system involving the Indonesian National Army and the Indonesian National Police as the primary forces, with the people serving as the auxiliary force. Police officers must have a deep understanding of law enforcement and superior technical skills.[2] They must also demonstrate exemplary conduct to establish order and security in the community. As a result, they possess the capacity to be outstanding examples for the community. It is crucial to acknowledge that a police officer must possess a thorough comprehension and proficiency in all facets of their job. The community perceives the police as possessing a comprehensive comprehension of their duties, irrespective of their position or attire. When a police officer's activities result in adverse outcomes for the community, the officer will inevitably become the primary target of complaints. Hence, each member engaged in the police force must sustain a perpetual consciousness of their responsibilities towards society.[3]

When police officers are carrying out their duties to protect and maintain order in society, they often encounter situations that require them to take actions that go beyond standard procedures or are compelled to take actions to ensure security and order in society. These actions are commonly known as "Police Discretion." Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police establishes the standardized concept of Police Discretion within the scope of the police profession in the institution of the Indonesian National Police (Polri): 1. In pursuit of the common good, the Indonesian National Police personnel have the discretion to use their duties and powers based on their judgment; 2. The measures mentioned in paragraph (1)

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[1] Cipto Prayitno, 'Pembatasan Perubahan Bentuk Negara Kesatuan Dalam Undang-Undang Dasar 1945 Dalam Perspektif Constitution Making', *Jurnal Konstitusi*, 15.4 (2019), 732 <https://doi.org/10.31078/jk1543>.

[2] M. Zamroni, 'General Principles of Good Governance in Indonesia: What Are The Legal Bases?', *Varia Justicia*, 15.1 (2019), 1–8 <https://doi.org/10.31603/variajusticia.v15i1.2464>.

[3] Hendi Yogi Prabowo, 'Re-Understanding Corruption in the Indonesian Public Sector through Three Behavioral Lenses Hendi', *Facilities*, 35.6 (2015), 925–45 <https://doi.org/10.1108/JFC-08-2015-0039>.

should only be applied in extremely required situations while adhering to laws, rules, and the Code of Professional Ethics of the Indonesian National Police.

The authority of the Indonesian National Police, as stated in Article 18 paragraph (1) of Law Number 2 Year 2002, is derived from the principle of general police obligation (*plichtmatigheids beginsel*). This principle grants police officers the power to exercise their judgment in deciding whether to take action within the scope of their general duty to uphold order and ensure public security. According to Article 48 of the Indonesian Criminal Code (KUHP), individuals who engage in an action due to coercion will not face any penalties. According to Article 49, those who defend themselves or others, their honor, decency, or property in response to an attack or imminent threat of attack and do so involuntarily will not face punishment if their actions violate the law. As mentioned by the author, this legal document will discuss police discretion in the form of Secret Telegram Letter Number 206 / VII / 2016 (referred to as STR 206). Point 2 of the document states that during law enforcement if there is a recovery of state financial losses during the investigation process, the investigation will be halted and not escalated to the next level.[4]

As per Secret Telegram Letter Number 206 / VII / 2016, the police can stop investigating corruption crimes reported by the public if no financial damage to the state is found or if any financial damage that did occur has been repaid. The author's research involved using STR 206 in Karanganyar Regency to examine a case of abuse of office related to the management of Bangkok land in Puntukrejo Village, Ngargoyoso District, Karanganyar Regency. Puntukrejo Village is well-known for its plentiful natural resources, which include agricultural commodities such as coffee, ginger, turmeric, and tobacco. Puntukrejo Village is close to Mount Lawu, providing it with an advantageous geographical position and stunning vistas attracting many tourists. Investors are drawn to this favorable geographical location, igniting their enthusiasm for investing in the region.

Mr. AM, an investor in Puntukrejo Village, established the Resto Bali Ndeso tour. The construction of Resto Bali Ndeso commenced no later than September 2016, and it commenced operations no later than mid-May 2017 and is now still in operation. Resto Bali Ndeso operates in the culinary industry. Br. AM does not possess any land

[4] Hendi Yogi Prabowo, Jaka Sriyana, and Muhammad Syamsudin, 'Forgetting Corruption: Unlearning the Knowledge of Corruption in the Indonesian Public Sector', *Journal of Financial Crime*, 25.1 (2018), 28–56 <https://doi.org/10.1108/JFC-07-2016-0048>.

to develop a tourist attraction in that location. Resto Bali Ndeso is situated on seven plots of land, specifically the curved land owned by the village apparatus of Br. HRT, who serves as the Head of Kenteng Hamlet. Br. AM agreed with the other party to lease the village land for two years without any formal script or written contract. Throughout the extension period, the contract between Br AM and Br HRT was executed clandestinely, without the awareness of the other village stakeholders and the community. The execution of the lease on the Bengkok land was, in fact, a violation of Karanganyar Regency Regent Regulation Number 85/2016, specifically Article 15, paragraph 4. This article states that the Village Regulation must transfer the village treasury land's function after obtaining agreement from the BPD and written permission from the Regent. The revenue generated from the development of Bali Ndeso tourism did not contribute to the community treasury due to misappropriation by corrupt village leaders. Furthermore, village officials who have engaged in fraudulent activities have entered into a leasing arrangement with a third party, claiming to be the rightful owner of Bali Ndeso, without documenting the agreement in writing.

However, as stated by the author in the initial release of STR 206, the case above reached the investigation stage but was ultimately resolved without punishment. The village head returned the financial losses incurred by the state due to his abuse of authority. The concept of out-of-court settlement has been thoroughly examined from theoretical and practical perspectives. Originally, the resolution of legal issues, including the issue of corruption, was solely handled by the involved parties. Nevertheless, in the presence of the state, the state assumes responsibility for resolving these issues. In Indonesia, the principle of the rule of law is enshrined in Article 1, paragraph (3) of the Constitution of the Republic of Indonesia 1945, the 3rd Amendment, which declares that "The State of Indonesia is a state governed by law." A state of law refers to a political entity that upholds and adheres to law principles, ensuring justice for its population.[5]

Restorative justice is a justice method that prioritizes the interests of victims, perpetrators, and the communities concerned rather than solely focusing on punishing the perpetrators. According to Zumhana's research findings, using criminal legislation (penal policy) to address criminal acts has proven ineffective. Hence, this study

[5] M Zaid and others, 'Eradicating Public Official Corruption Indonesia : A Revolutionary Paradigm Focusing on State Financial Losses', *Wacana Hukum*, 29.2 (2023), 87–111 <https://doi.org/10.33061/wh.v29i2.9564>.

challenges the authenticity of the Secret Telegram Letter Number 206/VII/2016.

2. Research Method

This study is a form of legal research that focuses on establishing norms and standards. This research has verified that the suitable and employed methods in this legal research are the statute, case, and conceptual approaches.[6] In this study, researchers employed the methodology of document analysis.[7] This study employs legal material analysis procedures utilizing deductive reasoning, as stated by Peter Mahmud Marzuki, who cites his perspective. Philipus M. Hadjon describes the deduction method as a syllogism taught by Aristotle. This method involves presenting general statements, major premises, as legal doctrines.[8] Then, specific statements, called minor premises, are presented as Secret Telegram Letter Number 206 / VII / 2016. By combining these premises, a conclusion or final statement can be derived.

3. Results and Discussion

Validity of Telegram Letter Number 206/VII/2016 from the Head of the Criminal Investigation Unit of the National Police

When examining police discretion in the criminal justice system, there is a connection between law, discretion, police, investigation, and the criminal justice system. The main area of investigation is the operation of the legal system and the implementation of police discretion.[9] The police have a crucial responsibility in ensuring the implementation of criminal laws. The police, as an integral part of the law enforcement system, are tasked with investigating and detecting criminal activities. The Law on the Indonesian National Police clearly outlines the function of the Police as law enforcers in Article 1 point (1) and Article 2. According to Article 1 point 1, policing includes all matters related to the operations and organizations of the police, as specified in legal regulations. As per Article

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[6] Pujiyono Suwadi and others, 'Legal Comparison of the Use of Telemedicine between Indonesia and the United States', *International Journal of Human Rights in Healthcare*, ahead-of-p.ahead-of-print (2022) <https://doi.org/10.1108/IJHRH-04-2022-0032>.

[7] Rian Saputra, M Zaid, and others, 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review*, 7.1 (2023), 61–118 <https://doi.org/10.15294/lesrev.v7i1.64143>.

[8] Jamal Wiwoho and others, 'Islamic Crypto Assets and Regulatory Framework: Evidence from Indonesia and Global Approaches', *International Journal of Law and Management*, 66.2 (2024), 155 – 171 <https://doi.org/10.1108/IJLMA-03-2023-0051>.

[9] Pujiyono, Sufmi Dasco Ahmad, and Rani Tiyas Budiyanti, 'Sex Selection Using Assisted Reproductive Technology: An Islamic Law Perspective', *Medicine and Law*, 36.4 (2017), 45 – 52.

2, the state government is responsible for the function of the police, which includes protecting public safety and order, enforcing laws, and providing protection and service to the community.[10]

As per Law No. 2 of 2002, notably Article 1 point (1) and Article 2, it is clear that Polri, a law enforcement institution, is tasked with upholding the law in the domains of judicial, prevention, and repression. According to Article 18, paragraph (1) of Law No. 2 of 2002, police personnel are authorized to use their discretion when carrying out their duties and exercising their powers as long as it benefits the public. As stated in Article 18 Paragraph (1) of Law No. 2 of 2002, "acting according to his judgment" means that a member of the Indonesian National Police has the authority to make decisions after carefully weighing the pros and cons of their actions, with the primary focus on the well-being of the public.[11]

When the police exercise discretionary acts, they are limited under Article 18 Paragraph (2) of Law 2/2002. This rule mandates that such measures may only be carried out in highly essential situations while complying with laws, regulations, and the Professional Code of Ethics of the Indonesian National Police. The author suggests that it could be problematic in this specific scenario if this degree of flexibility fosters or empowers the cops to abuse their position. Due to the vast power wielded by the police, there is a potential for it to be exploited for personal benefit by entities or other entities. The use of discretionary powers granted by the legislature can impede the efficacy, utility, or advancement of the legal means for resolving problems.[12] Legally, all abilities are obtained from and limited by legal provisions. However, the broad and vague discretionary powers can result in issues, especially when they overlap with the core principles of criminal law, such as legal certainty and human rights. States have a moral and legal obligation to respect the human rights of individuals everywhere and to protect and uphold the human rights of their citizens within their territory. This responsibility is dual, comprising a negative component that forbids noncompliance and a positive component that

[10] Rian Saputra, Muhammad Khalif Ardi, and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (Journal of Indonesian Legal Studies)*, 6.2 (2021), 437–82 <https://doi.org/10.15294/jils.v6i2.51371>.

[11] Dasco Ahmad Sufmi, Arsyad Aldyan, and Pujiyono, 'A Criminological Review on ʿcornering the Marketʿ Practice in Securities Trading in Capital Market (a Study in Indonesia)', *Journal of Advanced Research in Law and Economics*, 8.7 (2017), 2263 – 2267 <https://doi.org/10.14505/jarle.v8.7(29).27>.

[12] P Pujiyono, Sufmi Dasco Ahmad, and Reda Manthovani, 'The Future of the Leniency Program as an Efforts to Reveal Cartel Practices in Indonesia', *ARPN Journal of Engineering and Applied Sciences*, 14.20 (2019), 7599 – 7608 <https://doi.org/10.36478/JEASCI.2019.7599.7608>.

necessitates enforcement or execution.[13]

According to the language used in Article 18 Paragraph (1) and Article 18 Paragraph (2) of Law 2/2002, we can infer certain aspects about the exercise of discretion by the police. These include: 1. Police discretion is used for actions that serve the public interest; 2. Police discretion is employed in situations that require immediate action (discretion urgency), and 3. The police consider the provisions of the law and the Police Code of Ethics when exercising discretion. Following the identification and establishment of the criteria for police discretion as outlined in Law 2/2002, the legitimacy of STR Kabareskrim 206/VI/2016 will now be assessed through the presentation of the following arguments:

1. Urgency and public interest in the establishment of STR Kabareskrim 206/VII/2016

Discretion pertains to regulations governing policy, per the definition provided by STR Kabareskrim 206/VII/2016 in the context of administrative law. These regulations, commonly referred to as "belied rebels," are legal consequences that arise from the power to independently control public interests based on the principle of free Armisen. When free ermessen or discretion is formally recorded, it becomes a policy regulation. These regulations are broad principles set by government agencies to govern their exercise of authority over citizens or other government organizations. It is crucial to acknowledge that these regulations do not originate from the Constitution or formal legislation, either directly or indirectly.[14]

This suggests that policy regulations are not based on legislative authority and do not include legally enforceable rules and regulations that apply to the whole population. Instead, they are linked to a state administrative entity's governmental jurisdiction and relate to its authority's implementation. Policy regulations, or beleidsregel, are a tool of state administrative law that aims to streamline the enforcement of laws and regulations.[15] Discretion pertains to using discretionary power by government administrative agencies or personnel. This authority can only be utilized when the relevant laws and regulations do not cover the issue or the existing regulations are unclear. Discretionary actions are implemented under emergency or urgent circumstances deemed to be in the public's best

[13] Umi Khaerah Pati and others, 'THE SMALL CLAIM COURTS DURING COVID-19: ANALYSIS OF INDONESIAN BANKS' CLAIMS ON BAD CREDIT', *UUM Journal of Legal Studies*, 15.1 (2024), 97 – 120 <https://doi.org/10.32890/uumjls2024.15.1.5>.

[14] Pujiyono Pujiyono, Bambang Waluyo, and Reda Manthovani, 'Legal Threats against the Existence of Famous Brands a Study on the Dispute of the Brand Pierre Cardin in Indonesia', *International Journal of Law and Management*, 63.4 (2020), 387 – 395 <https://doi.org/10.1108/IJLMA-01-2018-0006>.

[15] Pujiyono Pujiyono and Umi Khaerah Pati, 'Legal Protection for the Loss of the Passenger of Online Transportation', *Yustisia Jurnal Hukum*, 8.2 (2019), 220 <https://doi.org/10.20961/yustisia.v8i2.34156>.

interest and are specifically outlined in a statutory rule. There are similarities between the standards for using discretion in government administration, as outlined in Law Number 30 of 2014 about Government Administration (UU AP), and the use of discretion in the police force. Both necessitate a distinct sense of immediacy that is advantageous to the welfare of the general public while using discretionary power.[16]

According to the author's description, discretionary authority is limited to situations where the police have the power to make decisions when there are no laws or regulations or when the present regulations are unclear. This discretion is exclusively employed in cases of emergency or urgent circumstances considered to be in the public interest, as decided by statutory restrictions.[17] The term "urgent, important issues" includes the following elements: a. The issues that need to be dealt with are those related to the public interest, specifically the interests of the nation and state, the interests of the wider community, the collective, and the interests of development; b. The issue arises unexpectedly, outside the planned course of action; c. To address the issue, there is either no specific legislation governing it or the existing legislation only offers general regulations, giving the State administration the authority to resolve it as they see fit; d. The procedure cannot be resolved according to the predetermined administrative process. The technique is not amenable to resolution via conventional administrative methods, or if it is attempted through such methods, it is less efficient and effective. Failure to promptly address the matter will harm the public interest.[18]

An urgent situation can be characterised as a sudden occurrence that arises in the public interest and necessitates immediate response, as per the notion. In such instances, the rules and regulations either fail to address the issue or merely offer rudimentary direction. As per the explanation given in Article 49 of Law Number 5 Year 1986, the phrase "public interest" pertains to the welfare and advancement of the nation, state, community, and development, as specifically defined by the applicable laws and regulations. Hence, sector-specific legislation and regulations possess the capacity to delineate the notion of public interest in particular domains, provided that it encompasses a wide-ranging

[16] Nur Shafiqa Kapeli and Nafsiah Mohamed, 'Battling Corruption in Malaysia: What Can Be Learned?', *Journal of Financial Crime*, 26.2 (2019), 549 – 555 <https://doi.org/10.1108/JFC-04-2018-0044>.
[17] Satryo Sasono, Isharyanto Isharyanto, and Delasari Krisda, 'Child and Women Domestic Abuse Victims ' Social Health Insurance Protection : An Affirmative Justice Perspective', *Journal of Law, Environmental and Justice*, 1.2 (2023), 105–21 <https://doi.org/10.62264/jlej.v1i2.8>.
[18] Gjalt de Graaf, Leo Huberts, and Tebbine Strüwer, 'Integrity Violations and Corruption in Western Public Governance: Empirical Evidence and Reflection from the Netherlands', *Public Integrity*, 20.2 (2018), 131–49 <https://doi.org/10.1080/10999922.2017.1350796>.

applicability and is not confined to the interests of particular individuals or groups.[19]

Therefore, the question arises as to whether the public interest will be protected in the STR Kabareskrim Number 206 / VII / 2016, which deals with the termination of inquiries and investigations into acts of corruption after the state has recovered the financial losses it suffered. The issuance of STR Kabareskrim Number 206/VII/2016 is a presidential order to all Head of Regional Police (Kapolda) and Head of the High Prosecutor's Office (Kajati) on July 19, 2016. Nevertheless, the STR Kabareskrim Number 206/VII/2016 did not provide a clear indication of its direction and objective, leaving it uncertain how it would help to the attainment of the pressing public interest.

Based on the author's analysis and logic, the creation of STR 206/VII/2016 fails to satisfy the requirements of urgency and public interest. Based on the information provided, it may be determined that STR 206/VII/2016 is invalid and contradicts the existing legislation in Indonesia. This is consistent with Hans Kelsen's viewpoint, which emphasises that in order to strengthen the argument, the author will also clarify the next aspect related to the evolution of police discretion, which requires careful examination of the provisions specified in the Legislation and the Police Code of Ethics.

2. Police Discretion must adhere to Laws.

When evaluating the legitimacy of a provision, it is important to examine the relevant legislation. This viewpoint contradicts Hans Kelsen's conviction that the basis for the validity of a rule always originates from the rule itself rather than from the facts. The search for the basis of the validity of a standard does not stem from reality but rather from other norms that act as the source for the construction of the norm. Therefore, Kelsen uses the term "basic norm" to describe a standard that can only be justified by a superior norm. The fundamental norm is a foundational reference point for forming all other norms. It is the primary source and connects other norms in constructing a normative system. From this standpoint, if a norm is a component of a certain normative system, its legitimacy can be evaluated using the fundamental norm.[20]

John Austin is credited with establishing the positive legal school, a concept that Hans Kelsen initially formulated. Austin's definition of law is a command issued by a higher

[19] Susan ROSE-ACKERMAN, 'Corruption and the Criminal Law Legalization and Criminalization', *Forum on Crime and Society*, 2.1 (2002), 20.

[20] Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153 <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11153>.

intellectual entity to govern the behavior of a lower-intelligent entity. Positive law affirms that the governing authority creates a state's legal system. It underscores the importance of considering the law exclusively in its formal structure, distinct from its substance. Furthermore, it acknowledges the substance of the law but not as a focal point of legal academia.[21]

The issue is whether establishing the Kabareskrim STR 206 / VII / 2016 contravenes any rules in the underlying legislation. Does it exclusively depend on Article 18 of the Police Law and ignore the Corruption Crime Law? If this is the case, establishing the Kabareskrim STR 206 / VII / 2016 can be seen as a misuse of authority, especially when it is confirmed that the STR was constituted in compliance with the directives of the President and the Chief of Police at that moment.

Disharmony between Kabareskrim STR 206/VII/2016 and Indonesian Corruption Law

The notion of legal positivism emerged in the 18th century and gained popularity alongside the progress of the modern state, marked by rapid advancements in science and technology. The emergence of the modern state as a separate territorial entity is closely connected to the conditions of societal transformation, and this connection becomes especially evident in economics. Therefore, the combination of scientific advancement, industrialization, and rapid capitalism. A centralized state, supported by contemporary legislation, efficiently caters to the demands of industrialization, which requires concentrated authority without sacrificing land requisites.[22]

The implementation of legal positivism in Indonesia has significantly impacted the country's legal structure. It has led to a perception of legal rigidity, where the law is seen as incapable of delivering justice. The primary factor for this is the widespread dominance of the positivist paradigm in modern legal science. We are acquainted with legal concepts influenced by positivist doctrines, such as the principle of "equality before the law," which asserts that all individuals are seen as equal in the eyes of the law. While this concept may appear reasonable in theory, it is not applicable. The judicial system frequently imposes severe fines on those from lesser social classes while being more forgiving towards those in positions of power. External circumstances greatly impact the implementation of the legislation. The primary characteristic of contemporary law is its rationality. The

[21] Pujiyono, Jamal Wiwoho, and Wahyudi Sutopo, 'Implementation of Javanese Traditional Value in Creating the Accountable Corporate Social Responsibility', *International Journal of Law and Management*, 59.6 (2017), 964 – 976 <https://doi.org/10.1108/IJLMA-06-2016-0060>.

[22] Anisah Alfada, 'The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model', *Heliyon*, 5.10 (2019), e02649 <https://doi.org/https://doi.org/10.1016/j.heliyon.2019.e02649>.

procedural nature of its norms defines the concept of rationality. Processes are crucial in ensuring compliance with the law, upholding justice, and protecting human rights. The significance of processes may surpass the actual discourse on justice, which constitutes the essence of the law.[23]

Legal positivists, such as H.L.A Hart, argue that the law must be manifested concretely, necessitating a specific entity to record it. The concept of "who writes it down" suggests that the legislation must be officially announced and documented by a person (subject) with the necessary authority to do so. The state is the supreme governing entity with absolute authority. The existence of state attributes, such as state sovereignty, provides proof of the power held by the state. Through its sovereignty, the state has the inherent power to establish and enforce what is usually referred to as positive law. Furthermore, H.L.A. Hart put out two primary assertions: 1. Positive law, which embodies legal rules, must primarily consist of authoritative orders. 2. There is no intrinsic correlation between law and morality or the ideal form of law.[24]

As articulated in point (2), Hart's perspective emphasizes the requirement for the law to originate from an abstract foundation. This consequence directly arises from the positivist attitude, which originates from the causal connection between a symptom and other symptoms in a concrete and observable manner. Therefore, the relationship between positive law and moral concerns is not essential, as moral issues are intangible. Hart's thinking is strongly shaped by the principles of positivism, as seen in his belief that the examination of legal concepts is a unique and important area of study that should be treated separately from historical and sociological investigations. Additionally, he emphasizes the critical assessment of law based on moral and social goals. Hart's perspective agrees with John Austin's (1790-1859), who argued that legal norms must include governance, obligations, and sanctions. John Austin posits that for a command to be classified as a law, it must satisfy two criteria. First and foremost, the concept must be universally applicable, indicating its capacity to be relevant in various scenarios, hence necessitating its generality. Furthermore, it must receive backing from an individual or a collective that commands the consistent compliance of the majority of the populace,

[23] Yunsen Chen and others, 'Corruption Culture and Accounting Quality', *Journal of Accounting and Public Policy*, 39.2 (2020), 106698 <https://doi.org/https://doi.org/10.1016/j.jaccpubpol.2019.106698>.
[24] Dahyeon Jeong, Ajay Shenoy, and Laura V Zimmermann, 'De Jure versus De Facto Transparency: Corruption in Local Public Office in India', *Journal of Public Economics*, 221 (2023), 104855 <https://doi.org/https://doi.org/10.1016/j.jpubeco.2023.104855>.

irrespective of the constitutional framework of the society.[25]

Legal certainty is a crucial attribute of positive or modern law, as viewed through legal positivism. The concept of legal certainty emphasizes the importance of enforcing the law based on formal evidence, stating that an action can only be deemed a violation if it goes against explicit written norms. On the other hand, in line with the concept of justice, actions that are unnatural, repulsive, and breach moral standards could be considered offenses to maintain justice, even if there is no legal ban by law. The enduring difficulty of reconciling law enforcement that prioritizes legal precision with a sense of fairness continues to persist. Both principles are important to the idea of the rule of law.[26]

The concept of legal certainty is given greater importance in the legal heritage of the Continental European region, particularly through the concept of rechtsstaat. Conversely, the legal tradition of the Anglo-Saxon region places greater stress on the sense of justice, particularly through the concept of the rule of law. Legal certainty is a fundamental characteristic of contemporary law, particularly within legal positivism. The author's legal research centers on the correlation between the legal outcome of Police discretion, as delineated in STR Kabareskrim Polri No. 206 / VII / 2016, and the notion of legal positivism, particularly the idea of legal certainty. The author analyses the correlation between the discontinuation of corruption investigations following the restoration of state financial losses and the emphasis on guaranteeing legal certainty in legal positivism. The author of this paragraph presents an overview of the several arguments regarding the legal uncertainty surrounding this matter, which encompass:

1. Contradiction between STR 206/VII/2016 and Corruption Eradication Objectives.

There is widespread recognition that corruption has become more prominent during the reformation era. This instance of corruption may be attributed to the influence of the New Order. Corruption has become a fundamental element of this nation's society. *Corruption* is a deep-seated problem that has existed not just in the present government but also has historical origins in the colonial era and the rich periods of the kingdoms in the archipelago.[27] Corruption has become an omnipresent problem that surpasses national borders and has evolved into a worldwide worry. Prominent

[25] Siwen Song, Aelee Jun, and Shiguang Ma, 'Corruption Exposure, Political Disconnection, and Their Impact on Chinese Family Firms', *Journal of Contemporary Accounting & Economics*, 17.3 (2021), 100266 <https://doi.org/https://doi.org/10.1016/j.jcae.2021.100266>.
[26] Ting Gong, Shiru Wang, and Hui Li, 'Sentencing Disparities in Corruption Cases in China', *Journal of Contemporary China*, 28.116 (2019), 245 – 259 <https://doi.org/10.1080/10670564.2018.1511395>.
[27] ROSE-ACKERMAN.

international financial organizations, such as the World Bank, ADB, and IMF, together with organizations like OECD and APEC, support the worldwide endeavor to eradicate corruption. On December 16, 1996, the United Nations declared its dedication to eradicating corruption during its general assembly. In addition, a conference was organized on September 11, 1997, gathering delegates from 93 countries across five nations. This gathering aimed to address and mitigate corruption by collaborative efforts involving the community, the corporate sector, and the government. Furthermore, it underscored the importance of a transparent, responsible, and ethically guided governance of the state and the removal of political influence from the justice system, which has a critical function in upholding the law.[28]

Corruption, a widespread problem that affects many countries, is unquestionably a crucial one that needs to be tackled. Indonesia has not endeavoured to eliminate it. Many governmental systems have arisen throughout history, encompassing the old, new, and reform-order governments.[29] The legal definition of corruption has been delineated in Law No. 31 of 1999, as amended by Law No. 20 of 2001, commonly referred to as the Anti-Corruption Law. The papers offer a comprehensive examination of 30 distinct types of corruption allegations, providing a detailed analysis. In a legal and political study, we have briefly analyzed the law about eradicating corruption in the context of our country's historical development of legislation. Nevertheless, presenting a comprehensive analysis of multiple viewpoints regarding this issue is imperative.

a. Philosophical aspect: The politics of corruption eradication are firstly, maintaining and defending the ideals of social justice and national welfare in the Republic of Indonesia as a state of law as a philosophical foundation; maintaining and protecting the rights of every person to recognition, guarantees, protection and certainty of a just law and equal treatment before the law (Article 28 D paragraph (1) of the 1945 Constitution) as a foundation for law enforcement; maintaining the function of criminal law, especially the 1999 and 2001 Corruption Eradication Laws as an operational foundation, which prioritises the balance of the function of maintaining order and security on the one hand, and the function of deterrence / punishment on the other hand on the basis of the principles of criminal law: lex specialis derogat lege generali; the principle of subsidiarity and the principle of proportionality, and

[28] Stephen Ojeka and others, 'Corruption Perception, Institutional Quality and Performance of Listed Companies in Nigeria', *Heliyon*, 5.10 (2019), e02569 <https://doi.org/https://doi.org/10.1016/j.heliyon.2019.e02569>.

[29] Muhammad Arif Setiawan and Mahrus Ali, 'When Double Intention Ignored: A Study of Corruption Judicial Decisions', *Jurnal Hukum Ius Quia Iustum*, 28.3 (2021), 459–80 <https://doi.org/10.20885/iustum.vol28.iss3.art1>.

last but not least, the role of criminal law (corruption eradication law) as the ultimumremedium, especially in dealing with cases of other criminal offences that are not pure corruption offences (lex specialis systematic). The crimes that fall exclusively under corruption offenses are outlined in Article 3 of the 1999 Corruption Eradication Law and Article 12 B of the 2001 Corruption Eradication Law. Since their establishment, the primary focus of these laws has been to regulate the behavior of public office holders rather than targeting individuals in general across all countries. As the term suggests, corruption refers to unethical conduct, specifically observed among public officials, rather than being prevalent in every individual, as once assumed in combating corruption.Pragmatik.

b. The pragmatic approach assesses legislation to ascertain its efficacy and pertinence. The Corruption Eradication Law unquestionably provides substantial benefits in combating corruption in our country. This act aims to protect the state's assets and provide a legal structure to combat corruption in our country effectively. This includes the enforcement of laws against corruption-related crimes such as money laundering. Assets obtained through illicit operations are generally not promptly used, as doing so would facilitate law enforcement's identification of the funds' source. Hence, to guarantee the complete elimination of corruption, it is imperative to tackle the act of moving unlawfully acquired assets into the financial system, specifically the banking sector. Consequently, creating the PPATK (Financial et al. Centre) was imperative to address this problem. This action aims to impede the transfer of funds acquired through corrupt activities, undermining endeavors to prevent and eradicate corruption.

c. From a sociological perspective, Indonesia's endeavors to eradicate corruption through legal measures have been continuous since the 1960s. The law has undergone four amendments throughout the years, with the most recent revision being Law Number 20 of 2001. However, the problem of corruption continues to exist and remains unresolved. This problem significantly impacts various aspects of people's lives, especially the country's economy. The sociological basis for law enforcement's role in addressing corruption stems from the understanding that the poverty experienced by about 35-50 million Indonesians is a direct consequence of the widespread and ingrained corruption throughout all levels of the bureaucracy. Around 30% of the monies allocated in the APBN are embezzled due to corruption, and this problem is inseparable from the interdependent connection between the bureaucracy and the private sector. Therefore, eradicating corruption is not just a wish of the wider public but an urgent imperative for the Indonesian nation to prevent and eliminate it. Therefore, implementing anti-corruption measures is

expected to reduce poverty in this nation.

The political legislation seeks to concurrently address the prosecution of corrupt individuals and the recovery of financial losses incurred by the state, emphasizing the importance of pursuing these objectives simultaneously rather than sequentially. The Anti-Corruption Law provides a comprehensive explanation that strengthens the notion that the criminal offenses specified in the law are intended to cover acts of unlawfully gaining financial benefits for oneself, another individual, or a company, both in terms of legalities and tangible assets. This is done to efficiently tackle the diverse techniques employed to perpetrate financial irregularities in the state finances or economy, which are progressively growing more intricate and advanced.[30] This formulation broadens the scope of what is considered illegal under the criminal offense of corruption to include repugnant actions that, according to society's concept of fairness, should be eligible for legal action and penalties. *The Law specifically defines corruption* as a formal criminal offense. Verification is of utmost importance. Although the government has recovered the illegal profits obtained from corrupt activities, persons who engage in corruption are still subject to prosecution and punishment within the legal framework provided by this Law.

The STR Kabareskrim Polri No. 206 / VII / 2016, which halts corruption investigations upon the restitution of state financial damages, contradicts the objective of eliminating corruption as outlined in the general explanation of the Anti-Corruption Law. As a result, this leads to uncertainty in the legal aspects of combating corruption in Indonesia.

2. Lack of regulation on the amount of state financial losses can be stopped after return in STR Polri 206/VII/2016

The restitution of state financial losses is inherently connected to eradicating corruption. The Anti-Corruption Law has a twin objective: to punish individuals involved in corruption and to recover the financial damages caused to the state. However, as previously stated by the author, law enforcement and the recovery of state financial losses are intertwined and not distinct. The author foresees that eradicating corruption will make it feasible to recover the financial losses suffered by the state. Article 4 of the Anti-Corruption Law states that persons who conduct criminal offenses, as mentioned in Article 2 and Article 3, will not be exempt from the penalty, even if they reimburse the

[30] Ifrani Ifrani, 'Grey Area Antara Tindak Pidana Korupsi Dengan Tindak Pidana Perbankan', *Jurnal Konstitusi*, 8.6 (2016), 993 <https://doi.org/10.31078/jk866>.

financial losses incurred by the state or enhance the state's economy.[31]

The Anti-Corruption Law provides a comprehensive explanation that strengthens the notion that the criminal offenses specified in the law are intended to cover acts of unlawfully gaining wealth, whether for oneself, another individual, or a corporation, in both a formal and tangible manner. It is essential to properly tackle the diverse techniques employed to perpetrate financial improprieties and economic misbehavior in the state, which are progressively growing more intricate and sophisticated. This formulation broadens the scope of what is considered unlawful under the criminal crime of corruption to include repugnant acts that should be examined and penalized according to society's concept of fairness. *The Law clearly defines corruption* as a separate criminal offense. Verification is of utmost importance. Although the state benefits from the proceeds of corruption, people who engage in corrupt activities are nevertheless prosecuted and punished according to the official framework outlined in this Law.[32]

Therefore, the author argues that STR Kabareskrim No. 206/VII/2016 has neglected the objectives of eradicating various types of corruption and instead focuses exclusively on recovering the financial losses suffered by the state. The issue being discussed is whether the Police can halt all corruption cases from furthering their investigation if the suspect has already reimbursed the state for the financial losses incurred. What about prioritizing the prosecution of corruption accusations that include substantial financial losses to the state or exclusively focusing on alleged corruption offenses that lead to financial losses for the state?

The author of this section explains that regarding the questions addressed before, specifically in STR Kabareskrim No. 206 / VII / 2016, no explicit regulation establishes restrictions on the amount of state financial losses stopped after their recovery. The author's thesis is founded on the apprehension that alleged perpetrators of corruption would exploit the concept of "luck" as a justification to partake in corrupt activities. If such cases are identified, the individuals involved would only be obligated to compensate the state for the financial damages incurred without being subjected to additional penalties. Therefore, drawing from this legal inquiry, the author suggests implementing clear limitations on the degree to which state financial losses can be remedied by reimbursing

[31] Salsabila Salsabila and Slamet Tri Wahyudi, 'Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan Restorative Justice', *Masalah-Masalah Hukum*, 51.1 (2022), 61–70 <https://doi.org/10.14710/mmh.51.1.2022.61-70>.

[32] Kuo Zhou and others, 'The Power of Anti-Corruption in Environmental Innovation: Evidence from a Quasi-Natural Experiment in China', *Technological Forecasting and Social Change*, 182 (2022), 121831 <https://doi.org/https://doi.org/10.1016/j.techfore.2022.121831>.

these losses.

Moreover, the author argues that Police STR 206/VII/2016, which details the discontinuation of corruption investigations after recovering state financial losses, primarily focuses on corruption cases involving modest amounts of money. Therefore, although this law may provide benefits in terms of cost efficiency in criminal procedures and the recovery of public financial losses, it cannot be uniformly implemented in corruption cases involving substantial amounts of state cash.

Nevertheless, the author contends that it is crucial to establish the specific period during which the financial losses resulting from corruption might be recuperated, in addition to simply recovering them. The author derives inspiration from Law Number 30 of 2014 on Government Administration, also known as the AP Law, notably Article 20 Paragraph (4). As to this legislation, if the government's internal machinery is found to be responsible for administrative mistakes that lead to financial losses for the state, the compensation must be given within ten business days from the decision and issuance of the oversight findings. Therefore, it is essential to set a precise period for the repayment of state financial losses in compliance with STR Kabareskrim No. 206/VII/2016 to guarantee legal clarity and minimize the magnitude of these losses. Apologies, but in order to furnish a response, I require additional information. Kindly share the specific text you would like me to rephrase.

3. Does not guarantee legal certainty when novum is found

Except for PPNS, which has the authority to investigate specific actions under special legislation, the police have a vital role as investigators in the Indonesian criminal justice system, with substantial discretionary powers. This personnel is responsible for safeguarding access to "justice" and deciding whether reports or complaints (about criminal offenses) will be subjected to further inquiry. If the reports are deemed comprehensive, they will be forwarded to the Prosecutor (P-19 and P-21); otherwise, they will be suspended (P-14). The case title is of utmost importance in establishing whether the case can be escalated from an investigation to a formal investigation and also in deciding whether the investigation will be continued or ended. While the protocol outlined earlier does not expressly state it, it is customary in practice to have a distinct procedure for concluding the investigation. This situation arises when the case is deemed not to involve a criminal offense or when the complainant chooses to retract the complaint

in the case of an offense that is the subject of a complaint.[33]

The Police will issue a Notification Letter on the Progress of Investigation Results, known as SP2HP, to stop a case investigation officially. SP2HP is not supported by any legal basis in written legislation. According to official legal terminology, no legal remedies are available to challenge or question the legitimacy of an SP2HP (Stop et al.) that terminates an investigation. Conversely, issuing an SP3 enables the option to file a Pre-Trial, as stipulated in the KUHAP. From this perspective, an investigation can be understood as an internal procedure in which investigators select and prioritize cases. Only occurrences that match the criteria for further investigation will be reviewed, while those that do not meet this first selection criterion will be awarded SP2HP. A strong notion suggests that the cause of the SP2HP is connected to the distinction made in KUHAP between the inquiry method and the investigation procedure. This policy rule, referred to as a beleidsregel, has been implemented to rectify a legal loophole in KUHAP, specifically to regulate the transition from the investigation stage to the investigation stage.[34]

The issue being discussed is the extent to which the Letter of Termination of Investigation (SP2Lid) provides legal certainty, namely on the conclusion of corruption investigations after recovering state financial losses, as outlined in STR Kabareskrim No. 206/VII/2016. This is particularly significant if additional evidence (novum) is unearthed in the future. Therefore, it is essential to have a conversation about this matter to achieve legal certainty regarding the provisions stated in the Kabareskrim STR No. 206 / VII / 2016, as the SP2Lid mechanism has not been covered in a formal regulation. It is imperative to prevent any potential confusion that could lead to legal uncertainty. Procedurally, the Police will send a Notification Letter regarding the Progress of Investigation Results, referred to as SP2HP, to halt a case investigation. SP2HP is not supported by any legal basis in written legislation. Formally, it signifies that no legal remedies are available to challenge or dispute the validity of an SP2HP that terminates an investigation. Conversely, issuing an SP3 enables the option to file a Pre-Trial, as the KUHAP specifies.

From this standpoint, an investigation can be understood as an internal procedure in which investigators choose specific cases. Only cases that match the criteria for further investigation will be reviewed, while those that do not meet this initial selection criterion will be issued SP2HP. There is a compelling suspicion that the cause for the SP2HP is

[33] Claudia Permata Dinda, Usman Usman, and Tri Imam Munandar, 'Praperadilan Terhadap Penetapan Status Tersangka Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi', *PAMPAS: Journal of Criminal Law*, 1.2 (2021), 82–103 <https://doi.org/10.22437/pampas.v1i2.9568>.
[34] Zamroni.

connected to the distinction, as outlined in KUHAP, between the inquiry and investigation procedures. This policy regulation, referred to as a beleidsregel, has been implemented to rectify a legal loophole in KUHAP, specifically to manage the transfer from the inquiry stage to the subsequent investigation stage. The issue at hand pertains to the degree of legal assurance offered by the Letter of Termination of Investigation (SP2Lid) in the context of corruption investigations, particularly about the conclusion of investigations related to the restitution of state financial losses as stipulated in STR Kabareskrim No. 206/VII/2016. This is especially pertinent if a novel piece of evidence (novum) is unearthed in the future. Therefore, it is essential to have a conversation about this matter to achieve legal certainty regarding the provisions stated in the Kabareskrim STR No. 206 / VII / 2016, as the SP2Lid mechanism has not been covered in a formal regulation. It is imperative to prevent any confusion that could lead to legal uncertainty.

4. Conclusion

According to this research, it can be inferred that the Kabareskrim STR No. 206/VII/2016 lacks a valid foundation. This is because the STR does not fulfill the necessary conditions for police discretionary actions as stated in Article 18 of the Police Law. This article requires that every discretionary action the police take must have a clear sense of urgency (an urgent situation in the Police Law) and be in the public interest. However, after a thorough investigation, neither of these requirements was found in the arguments supporting the establishment of STR 206/VII/2016. Police discretion should adhere to the terms of laws and regulations. However, the formation of STR 206/VII/2016 solely takes into account the instructions of the President and the Chief of Police, disregarding the objective of eliminating corruption as stated in the Anti-Corruption Law. The Secret Telegram Letter from the Criminal Investigation Unit of the National Police, numbered 206/VII/2016, regarding the termination of corruption investigations following the recovery of state financial losses, does not ensure legal certainty for several reasons. Firstly, there is a contradiction between STR 206/VII/2016 and the objectives of Law No. 31/1999 on the Eradication of Corruption. This law emphasizes the recovery of state losses and punishment and the simultaneous pursuit of both objectives without prioritizing one over the other. Secondly, a regulation in STR 206/VII/2016 sets a limit on the amount of state financial losses that can be used as grounds for terminating an investigation after the recovery of such losses. Lastly, there is ambiguity regarding the timeframe within which the state financial losses must be returned. The issuance of an Investigation Termination Order (SP2Lid) does not provide legal certainty in terminating a corruption investigation, even if state financial losses have been recovered. If new evidence

(novum) is discovered, the Kabareskrim STR No. 206/VII/2016 cannot be subjected to material, institutional testing, as it is primarily intended for the Police institution.

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