

# The Juridical Analysis in Viewing the Position of Reported Revocation of Complaints A General Criminal One Party by the Reporter in Investigation Process

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## Abstract.

*This study aims to determine and analyze the legal impact of the unilateral revocation of general crime reports by the reporter at the Semarang Police Station. To find out and analyze the obstacles faced and solutions to unilaterally revocation of reports of general crimes by the reporter at the Semarang Police Station. The research approach method used is legal research analytical descriptive. Based on the research it can be concluded that with the boundaries of the legal field being blurred, it often makes people, most of whom do not understand the law in the criminal and civil spheres, so that all problems are reported or reported to the police. These societal dynamics often result in the revocation of police complaints that are increasingly high in the community as a result of which the issue of legal certainty in the legal process becomes a new boomerang in Indonesia.*

*Keywords: Complaints; Revocation; Victims.*

## 1. Introduction

The existence of legal principles as an umbrella in development as well as the implementation of national law has not been able to run without obstacles. The reason is that the social dynamics of society are so dynamic and complex that it often creates a mutual attraction between legal principles. Such attraction by Satjipto Rahardjo is called *spannungsverhältnis*, the tension that causes mutual attraction between these principles occurs as a result of differences in value content in various legal principles today.<sup>1</sup> People who mostly see law as a subjective means of realizing justice often clash with the intention of lawmakers who instill the dogma of legal certainty as a form of embodiment of the rule of law.

This legal turbulence can also be observed in the criminal law system. The value of legal certainty in its development is often seen in the principle of legality. The principle of legality states that "*nullum delictum nulla poena sine praevia lege poenalli*".<sup>2</sup> Meanwhile, according to the Dutch language, the meaning of the principle of legality is "*Geen feit is strafbaar and uit kracht van eene daaran voorafgegane wettelijke strafbepaling*".<sup>3</sup> Based on the various explanations above, it is clear that the principle of legality states that there is no crime without prior

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<sup>1</sup>Satjipto Rahardjo, (2012), *Ilmu Hukum*, Citra Aditya Bakti, Bandung, p. 20.

<sup>2</sup> <https://jdih.jogjakota.go.id/index.php/articles/read/48>, Downloaded on October 12, 2021.

<sup>3</sup>Danel Aditia Situngkir, Asas Legalitas Dalam Hukum Pidana Nasional Dan Hukum Pidana Internasional, *Jurnal Soumatara Law Review*, Volume 1, No. 1, 2018

regulations.<sup>4</sup> Juridically this principle is contained in Article 1 paragraph (1) of the Criminal Code (KUHP).

The dynamics of an increasingly complex society and the progress of civilization often have many impacts in various aspects of human life, including the law. The wider community interaction and communication makes it difficult to study and analyze the boundaries of the legal field that intersect with each other in a social frame. The jump in one field of law will automatically attract other fields of law, this dynamic I can say as a transplant of legal problems between legal fields today. This situation results in pluralism in the interpretation of the law.<sup>5</sup>

One of these legal anomalies can be observed in the issue of revocation of reports of a criminal act unilaterally by the reporting party. The revocation of a report in criminal law is basically regulated in Article 75 of the Criminal Code. The dictum of the article clearly shows that a reporting person can apply for a revocation of a report related to a criminal act after the report is submitted to the police. The implementation of unilateral revocation of the report is in fact not in accordance with the mandate of Article 75 of the Criminal Code. Often the revocation of the report by the complainant does not stop the investigation and investigation process. The legal process in investigations and investigations is generally based on Article 17 of the Criminal Procedure Code.

The sound of the provisions in Article 75 of the Criminal Code and Article 17 of the Criminal Procedure Code rub against each other. This results in the unilateral revocation of the report by the complainant not stopping the examination and investigation process, especially in the examination and investigation of ordinary criminal acts. So that the legal process is often continued even though the report has been revoked.<sup>6</sup> This is becoming more and more a dilemma with the lack of understanding of the community and their legal counsel regarding reports that they suspect are criminal acts which in fact are not included as criminal acts.<sup>7</sup> This situation is increasingly complicated by the difficulty of law enforcement in digging up the facts of a criminal act through examination and investigation as a result of the reported case being proven not to be a criminal act.<sup>8</sup> This disharmony then resulted in problems in the form of increasing revocation of reports by the reporting party who was dissatisfied with the efforts to go through the criminal legal process which was considered slow, on the other hand the police could not refuse any reporting to

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<sup>4</sup>Lukman Hakim, (2012), *Asas-Asas Hukum Pidana*, Budi Utama, Yogyakarta, p. 17-19.

<sup>5</sup>Arif Septria Hendra Saputra, Gunarto, dan Lathifah Hanim, Penerapan Restoratife Justice Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Di Satreskrim Polsek Lasem, *Jurnal Daulat Hukum* Vol. 1. No. 1 March 2018, p. 159.

<sup>6</sup>Nur Cahyanti, Budi Raharjo, & Sri Endah Wahyuningsih, Sanksi Terhadap Notaris Yang Melakukan Tindak Pidana Menurut Peraturan Perundang-Undangan Di Indonesia, *Jurnal Akta*, Vol 5 No 1 March 2018, p. 91.

<sup>7</sup>Sri Endah Wahyuningsih, Perlindungan Hukum terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan Dalam Hukum Pidana Positif Saat Ini, *Jurnal Pembaharuan Hukum* Volume III No. 2 May - August 2016, p. 173.

<sup>8</sup>Sarwadi & Bambang Tri Bawono, Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia, *Jurnal Daulat Hukum* Volume 3 Issue 4, December 2020, p. 377-400.

him as regulated in Article 3 of the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations.<sup>9</sup>

Article 3 paragraph (3) of the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigations explains in letter b that the police are obliged to conduct an initial study to assess whether or not a police report is made.<sup>10</sup> After submitting a report to the police, the police must examine and analyze whether an act can be considered a crime or not through examination and investigation that is based on the search for strong evidence.<sup>11</sup> This can be seen in the report reported by MS that there has been a criminal act of theft of his land located in Tegalsari, Vil. Mangunsari, Dist. Gunungpati. After an examination and investigation, it was later discovered that the reported case was included in the case of land ownership between MS and the reported party. This situation makes the legal process take a long time. The length of the legal process made the complainant then resolve the case through deliberation, on the basis of this amicable settlement the MS report was revoked. Even though MS has withdrawn the report, it turns out that the criminal legal process can continue.<sup>12</sup>

This situation not only affects the police normatively, but also sociologically for the reported party, even though the report against him has been withdrawn, he still has to carry out the legal process.<sup>13</sup> This situation clearly shows a violation of the principle of legal certainty and the value of legal justice in society. It also automatically contradicts the mandate of the rule of law concept.<sup>14</sup>

The purpose of the study is that the existence of limitations and assessments from the Police regarding sufficient preliminary evidence regarding complaints of criminal acts can make coercive power to the public to understand the law in the realm of criminal law and the realm of civil law so as to avoid many complaints by the public which are then revoked which can result in there is a back report from the party who was reported because he felt his good name was tarnished due to false suspicions.

## 2. Research Methods

The type of research used in this study is a descriptive analytical legal research type. The approach used is sociological juridical, with data collection methods in the

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<sup>9</sup>Sri Endah Wahyuningsih, Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Laundering Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia, *Jurnal Pembaharuan Hukum* Volume III No. 2 May - August 2016, p. 47.

<sup>10</sup>Oscar Stefanus Setjo & Umar Ma'ruf, Investigation of Children Which Conflicting With Law in Narcotics Criminal Acts In Law Area of the Semarang City Police Jurisdiction, *Jurnal Daulat Hukum*, Volume 3 Issue 2, June 2020, p.287-288.

<sup>11</sup>Sri Endah Wahyuningsih, Op.cit. p. 173.

<sup>12</sup>The Police of the Greater City of Semarang, Files for Revocation of Reports of Criminal Acts by the Whistleblower, Obtained on May 12, 2021.

<sup>13</sup>Ibnu Suka, Gunarto, & Umar Ma'ruf, Peran & Tanggung Jawab Polri Sebagai Penegak Hukum Dalam Melaksanakan Restorative Justice Untuk Keadilan & Kemanfaatan Masyarakat, *Jurnal Hukum Khaira Ummah* Vol. 13. No. 1 March 2018, p. 115-116.

<sup>14</sup>M.Gargarin Friyandi & Aryani Witasari, Restorative Justice In Application For Crime Investigation Abuse In Polsek Middle Semarang, *Jurnal Daulat Hukum* Volume 2 Issue 1, March 2019, p. 41-44.

form of literature study, document study, then interviews. The data processing technique is qualitative.

### 3. Results and Discussion

#### 3.1. Legal Anomalies in the Unilateral Revocation of General Crime Reports by Victims

The revocation of a report in criminal law in Indonesia is basically regulated in Article 75 of the Criminal Code, Article 75 of the Criminal Code states that "a person who submits a complaint has the right to withdraw it within three months after the complaint is submitted." In reality, the unilateral revocation of the report by the victim does not stop the legal process in general criminal acts. This is because the legal process in general crimes only relies on the existence of strong evidence. Article 17 of the Criminal Procedure Code which reads "an arrest order is made against a person who is strongly suspected of committing a criminal act based on sufficient preliminary evidence"

Submission for revocation of the report in its development is carried out only when the case is still in the stage of examining files and/or examination before the court. The revocation of the report by the victim must be based on the victim's own wishes and cannot be based on the wishes of another party. At the initial stage, the revocation of the report is carried out by submitting a letter of request for the revocation of the report to the police. Applications can also be made by submitting directly to law enforcement officials. After the application is submitted and received by law enforcement, law enforcement then analyzes the crime experienced by the victim, including general offenses or complaints. If it is a complaint offense, law enforcement will stop the legal process being carried out, the police's considerations in stopping the investigation are:<sup>15</sup>

- The investigation is terminated because it does not meet the elements of the crime of embezzlement;
- The investigation is terminated because there has been a reconciliation between the complainant and the reported party;
- The investigation was terminated because the reported person died;
- The investigation is terminated because the reporter is not willing to continue the investigation and is not willing to provide further information; and
- The investigation is terminated because the complainant withdraws the report in the event that the offense reported is a complaint offense.
- However, if the offense experienced by the victim is a general offense, the legal process will still be carried out. This is a consequence of Article 109 paragraph (2) of the Criminal Procedure Code which does not make the revocation of the report by the victim the basis for stopping the legal process. Materially the reasons for the termination of the legal process are regulated in 76 to 85 of the Criminal Code consisting of:
- *Nebis in idem*

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<sup>15</sup>Indra Mardiana, Personal Interview with the Head of the Criminal Investigation Unit of the Semarang City Police, the interview was conducted on December 12, 2021.

A person can no longer be prosecuted for the second time on the basis of the same act, for which the person concerned has already been tried and the case has been decided by a judge or court competent for that purpose in Indonesia, and the decision has obtained permanent legal force. The principle of *nebis in idem* is one of the human rights that must be protected by law and is also intended to uphold legal certainty. That a person is not allowed to be punished several times for a crime he has committed. If a criminal act has been decided against him, whether the decision is in the form of punishment, acquittal, or acquittal from a lawsuit, and the decision has obtained a permanent legal decision, the person can no longer be investigated prosecution and trial for the second time for the incident in question. The reason for the abolition of the authority to prosecute this crime is regulated in Article 76 of the Criminal Code which states that:

- Except in the case that it is still possible to repeat the judge's decision, a person may not be prosecuted twice because of an act which an Indonesian judge has tried against him with a final decision. In the sense of Indonesian judges, including judges of the autonomous and customary courts, in places that have these courts.
- If the final decision comes from another judge, then against that person and because of the crime, no prosecution may be held in the case of:
  - a decision in the form of acquittal from charges or escape from lawsuits;
  - a decision in the form of a sentence and has been served in its entirety or has been pardoned or the authority to carry it out has been nullified because it has expired.
- Suspect dies

With the death of the suspect, automatically the investigation must be stopped. This is in accordance with the principle of law that applies universally in the modern century, namely that the guilt of a criminal act committed by a person is the full responsibility of the perpetrator concerned. This legal principle is an affirmation of responsibility in criminal law, which teaches that a person's responsibility in criminal law is only borne by the perpetrator of the crime. This responsibility cannot be transferred to the heirs. With the death of the suspect, the investigation automatically stops and is abolished according to law. Investigation and examination cannot be transferred to the heirs. In the science of criminal law, criminal responsibility is a personal or individual responsibility. This means that it cannot be assigned to other people. This aspect is regulated in Article 77 of the Criminal Code which states that "the authority to demand punishment is abolished, if the accused dies".

- Expired

After exceeding a certain time limit, a criminal act cannot be prosecuted on the grounds that the crime has passed the time limit or has expired (Article 78 of the Criminal Code). Logically, if a person who has committed a crime has removed the authority to sue before a court session, of course it is useless to carry out an investigation and examination of that person. Therefore, if the investigator finds a situation like this, he must immediately stop the investigation and examination. The reason for the abolition of the authority to sue for the abolition of the crime because it has expired is regulated in Article 78 of the Criminal Code which states that:

- The authority to sue for the abolition of the sentence due to expiration:
  - regarding all violations and crimes committed by printing after one year;
  - concerning crimes punishable by a fine, imprisonment, or imprisonment for a maximum of three years, after six years;
  - concerning crimes punishable by imprisonment of more than three years, after twelve years;
  - concerning crimes punishable by death or life imprisonment, after eighteen years.
- For people who at the time of committing the act were not yet eighteen years old, each of the above expiry dates is reduced to one third.

Then in the Chief of Police Circular No. SE/7/VII/2018 concerning Termination of Investigation in point 2 stated that:

- Whereas in the process of searching for and finding an event that is suspected of being a criminal act, the facts and evidence collected by the investigator are inadequate, then there is sufficient reason not to continue the investigation as an investigation;
- That the termination of the investigation as referred to in letter a is carried out in order to provide legal certainty;
- That in stopping an investigation, investigators must pay attention to the requirements and applicable mechanisms.

Chief of Police Circular No. SE/8/VII/2018 regarding the Application of Restorative Justice in the Settlement of Criminal Cases does not in fact clearly contain the termination of the criminal case legal process when there is peace between the parties and the revocation of reports and/or complaints by the complainant and/or complainant.

Another problem seen in the Circular Letter of the Chief of the National Police No. SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases is related to not all criminal cases that can be resolved by Restorative Justice.

Based on the various explanations above, it is clear that the revocation of the report as intended by Article 75 of the Criminal Code is only applied to a complaint offense where the complaint offense is an offense that is based on the victim's complaint and can be resolved amicably or based on the agreement of the victim and perpetrator, so that it can be stopped by carrying out revocation of complaint. Meanwhile, the general offense of revocation of the complaint cannot be the reason for the termination of the investigation. In this aspect, there is a lack of legal certainty, if indeed the revocation of the report cannot stop the legal process, it should not be necessary to include the right of the victim to withdraw the report in a general offense.

According to E. Utrecht in his book Criminal Law II, the prosecution complaint against the offense depends on the consent of the injured party (the victim). In this complaint offense, the victim of a crime can withdraw his report to the competent authority if there has been a reconciliation between the victim and the perpetrator. Please note that the person who filed the complaint has the right to withdraw it within three months after the complaint is filed. Whereas in ordinary offenses the

case can be processed without the consent of the harmed (victim). So even though the victim has made peace, the investigator is still obliged to process the case.<sup>16</sup> The legal process that cannot be stopped even if the victim's report has been withdrawn has the following consequences:

- The legal process that was carried out was experiencing difficulties, this was due to the blurring of the fact-finding process and evidence related to the existence of a criminal act due to the loss of the role of the victim after the complaint report was withdrawn.
- The increasing revocation of reports by victims can have an impact on decreasing public trust because they are considered unable to resolve criminal cases in the community.
- The reported party does not get legal certainty and guarantees protection from the threat of criminal sanctions in general criminal offenses, this is because the revocation of the report by the victim does not become a reference for stopping the legal process in criminal acts which are included in general offenses.

Such a situation clearly juridically has resulted in the purpose of criminal law in general which is none other than realizing justice and legal benefits with legal certainty. The problems that arise due to the absence of guarantees for the protection of the reported rights to be equal before the law show that the rule of law so far is not a law that are clear (clear), consistent and easy to obtain, issued by and recognized because of the state (power) that is able to respect human values in the context of equal treatment before the law. This situation clearly resulted in the ruling agencies (government) applying the legal rules in an unbalanced manner.

As a result, citizens can no longer trust the applicable law. This clearly contradicts Jan Michiel Otto's principle of legal certainty. Jan Michiel Otto stated that in order to guarantee legal certainty in certain situations it is necessary:<sup>17</sup>

- There are clear (clear), consistent and easy to obtain regulations, issued by and recognized by the state (power).
- Ruling agencies (government) apply the rules of law consistently and are also subject to and obedient to them.
- Citizens principally adjust their behavior to these rules.

The absence of legal certainty for the reported party after the revocation of the report by the victim shows that the current criminal law is far from the goal of law enforcement based on justice, this is considering that the complaint or report of the victim is not always included in the criminal category and also the reported party is not always the guilty party. Such a situation clearly shows the ambiguity of Article 75 of the Criminal Code, the provisions of Article 75 of the Criminal Code only provide benefits for the victim in the form of the right to withdraw the complaint, while for the reported person this is not able to achieve justice.

This can be seen in the case of beatings carried out by DM which was carried out on IS in the Tirtoyoso 10 Region, Semarang City. In that case, IS insulted DM by spreading information to DM's friends and IS that DM's parents were former perpetrators of theft. DM, who did not accept his parents, said that the former thief

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<sup>16</sup><https://www.Hukumonline.com/klinik/detail/lt4c25bfda42993/ada-perpeacebisakah-case-pencabulan-terhadap-anak-terhentikan>. Retrieved January 13, 2022.

<sup>17</sup>Soeroso, (2011), *Pengantar Ilmu Hukum*, PT. Sinar Grafika, Jakarta, p. 68.

immediately went to IS at his house located in Tirtoyoso 10 and hit IS on the head with an iron rod with a diameter of 8 cm. As a result of DM's actions, IS's parents reported DM to the police at the Semarang City Resort Police, after making a complaint on June 18, 2021, it was later discovered that IS's mother was still a relative of DM's father, In the end, both parties resolved the issue amicably with the decision that the DM family must bear all IS treatment and pay compensation to the IS family. With the agreement of both parties, the reports made by the families of the victims and victims were withdrawn. One month after the incident, it was discovered that the legal process was still ongoing, as a result of this DM was finally found guilty and had to carry out imprisonment on the basis of Article 351 of the Criminal Code.<sup>18</sup> According to Oky Adi Pratama as Satreskrim Unit 2 Polrestabes Semarang, in early 2022 there were 47 Complaint Reports related to general crimes, as many as 20 reports were stopped due to the revocation of reports by victims. The data shows that the level of revocation of reports at the Semarang City Police Station is quite large in early 2022. However, 17 cases whose reports were revoked which were general offenses were continued with legal proceedings, while two cases which were complaint offenses were terminated and one case which had its report withdrawn was terminated because no strong evidence was found even though it was a general offense.<sup>19</sup>

- Legal Reorientation in the Process of Revocation of Unilateral Reports by Victims

Legal reorientation in the issue of unilaterally revocation of reports by victims in general offenses is by:

- Adding types of general crimes that have not been accommodated by the restorative justice system;
- There is a need for confirmation regarding the juridical implications related to the impact of unilateral revocation of reports by the reporter in the reporting of general offenses;
- It is necessary to determine the type of general crime that can be terminated by the revocation of the report unilaterally by the complainant;
- It is necessary to optimize the use of the non-penal route as a form of the concept of restorative justice.
- In the realm of victims, it is also necessary to provide legal education regarding whether their report is a criminal case report or not, and if peace is possible, peace efforts through non-penal are prioritized and pursued first.

Applicatively, the legal reorientation that can be done is by making an assessment of the complaint reports that come in to the police as well as letters/complaint reports that are directly submitted by the complainant or the public, the assessment is carried out through several aspects, namely:

- Assessment in the aspect of assessment related to the party entitled to report the existence of a criminal act, the provisions of Article 1 point 24 of the Criminal Procedure Code states that a report is a notification submitted by a person due to rights or obligations under the law to an authorized official regarding the

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<sup>18</sup>Indra Mardiana, Personal Interview with the Head of the Criminal Investigation Unit of the Semarang City Police, the interview was conducted on December 12, 2021.

<sup>19</sup>Oky Adi Pratama, Personal Interview with Satreskrim Unit 2 Polrestabes Semarang, Conducted on March 12, 2022.



occurrence or occurrence of an incident. Meanwhile, Article 1 point 25 of the Criminal Procedure Code states that a complaint is a notification accompanied by a request by an interested party to an authorized official to take legal action against a person who has committed a criminal offense against him. In this explanation, the parties who have the right to make complaints and reports are the victims who have experienced and directly experienced a criminal act.

- The next assessment is related to aspects of legal review of reports and complaints that come to the police, after reporting and complaints, legal proceedings should not be carried out directly, but it is necessary to conduct a legal review related to criminal cases reported and reported, whether the case is real with evidence including in a criminal case or not. If the fact remains that there is a vagueness in the existence of preliminary evidence and the difficulty of finding criminal elements in reports and complaints,
- The next stage of assessment is to determine whether the reports and complaints contain a criminal element or not, if they contain a criminal element, then proceed to the prosecution division, but if they do not contain a criminal element, the reports and complaints are stopped, until the reporting parties and complainants are legally and convincingly able to show there is a criminal element in the report and complaint.

Based on the concept of the assessment of reports and complaints above, it is necessary to form a special division for the assessment of reports and complaints at every police station at the resort level, especially at Polrestabes Semarang. Then it is necessary to make a formulation that regulates the assessment of these reports and complaints.

#### **4. Conclusion**

The legal dynamics that make the boundaries of the legal field blur, often make people, most of whom do not understand the law, to distinguish between actions under criminal law or civil law, who often when encountering a problem wisely file a complaint to the police. When the investigation or investigation process takes place, people often carry out unilateral revocations because they are resolved amicably or revocations are carried out because they cannot prove the reported criminal allegations so as to avoid back reports from the accused or reported parties due to slanderous complaints or false suspicions so that they withdraw the report unilaterally. . This situation often results in the revocation of police complaints which is getting higher in the community because not all cases can be stopped immediately with the revocation. As a result, the issue of legal certainty in the legal process has become a new boomerang in Indonesia. This requires a solution in the form of screening related to a series of complaints about the existence of general crimes in society in order to create order between certainty, benefit, and legal justice.

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