

REFORMULATING THE LEGAL STANDING OF INTERESTED THIRD PARTIES IN SUBMITTING PRETRIAL MOTIONS AGAINST THE TERMINATION OF INVESTIGATION OR PROSECUTION

Enos Syahputra Sipahutar^{1*}, Faizin Sulistio², Abdul Madjid³

Faculty of Law, Magister of Law, Universitas Brawijaya, Malang

Faculty of Law, Universitas Brawijaya, Malang

Faculty of Law, Universitas Brawijaya, Malang

E-mail: enossyahputrasipahutar@gmail.com^{1*}, faizin@ub.ac.id², majid@ub.ac.id³

Received : 20 April 2025

Published : 05 June 2025

Revised : 29 April 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i4.3142>

Accepted : 10 May 2025

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

Abstract

This article discusses the urgency and necessity of reformulating the scope of third parties with legal standing to file a pretrial motion against the termination of investigation or prosecution. The study is motivated by a pretrial case in which the petition was rejected on formal grounds regarding the petitioner's legal standing, despite substantive indications of injustice in the law enforcement process. This research adopts a normative juridical method using statutory, conceptual, and case study approaches. The findings indicate that the limited interpretation of "interested third parties" as provided by the Constitutional Court in Decision Number 98/PUU-X/2012 does not fully reflect the principle of justice. Therefore, a redefinition of the scope of third parties particularly including suspects/defendants/convicts in separate case files is necessary to ensure equal access to justice and prevent discrimination in legal proceedings.

Keywords: *Interested Third Party; Pretrial; Termination Of Investigation; Termination Of Prosecution*

INTRODUCTION

A state governed by the rule of law is characterized by its emphasis on law enforcement (Lilik Mulyadi, 2012:129). Law enforcement, particularly in the field of criminal law, aims to establish a legal state that guarantees the protection of individual human rights from various criminal threats and provides legal certainty in addressing legal issues. In order to safeguard human rights for all individuals, law enforcement must be properly regulated through procedural law, ensuring that a person's rights as a human being are respected and upheld by the legal system. This underscores the crucial role of procedural or formal law in the life of the state (Sunarto, 2016:47-48).

Legal certainty can be achieved in two ways: first, through legal norms that are clearly formulated without allowing multiple interpretations within statutory regulations; and second, through the certainty derived from the very existence of the law itself (Bambang Semedi, 2013:4). However, the inherent limitations of legislation which often lags behind the dynamic changes in society have led to varying interpretations of existing rules depending on prevailing circumstances. This situation often results in the perception that the law fails to provide adequate legal protection for those seeking justice.

The process of identifying the individual responsible for a criminal act must be based on criminal procedural law. In principle, criminal procedural law is designed to uncover the truth in a criminal case specifically, to determine whether the accused can be held liable and deserves an appropriate punishment (Andi Hamzah, 2008:7). Criminal procedural law sets forth the provisions governing the examination of a criminal case, starting from the investigation process through to the final judgment by the court that declares whether the accused is guilty or not.

Every individual who believes they have been a victim of a criminal act has the right to report the incident based on their experience. Conversely, any person suspected of committing a criminal offense has the right to defend themselves against the allegations until a court judgment definitively declares their guilt. Ideally, laws should be interpreted strictly, meaning they should not be expanded or interpreted in a way that could harm the interests of certain parties. However, by nature, laws are human-made and therefore prone to imperfections and often lag behind societal changes. One example of a law with ambiguous meaning that may disadvantage certain parties is Article 80 of Law Number 8 of 1981, which concerns the scope of individuals authorized to file a pretrial motion challenging

the legality of law enforcement decisions to terminate an investigation or prosecution. The provision under Article 80 of the Indonesian Criminal Procedure Code has been reviewed by the Constitutional Court. Through its Decision Number 98/PUU-X/2012 dated May 21, 2013, the Court clarified the definition of “interested third parties” in the context of the termination of investigation or prosecution, stating that it includes “victim-witnesses or complainants, non-governmental organizations, or community-based organizations.”

There are several pretrial rulings stating the invalidity of the termination of the investigation carried out by the investigator. The judge argued that the termination of the investigation completely violates the rights of the victim/reporter because the termination was not based on law. Based on the analysis of the rulings the author has studied, the parties filing the pretrial petition concerning the validity or invalidity of the investigation termination are generally the victim/reporter and non-governmental organizations.

However, on the other hand, the author has identified a legal issue in the decision of the Sragen District Court No. 1/Pid.Pra/2025/PN Sgn, where the petitioner, who works as an advocate, filed an objection against the actions of law enforcement officials, in this case, the Sragen Police and the Sragen District Attorney's Office, for failing to prosecute the parties involved in a case of continuous fraud and money laundering committed by the convict Sugiyono SP Bin Sasmo Suwiryo. This is despite the fact that in both the public prosecutor's indictment and the judge's considerations, the convict was proven to have committed the alleged actions together with other perpetrators, namely Mulyadi Bin Karyotomo, Sumadi Bin Narto Wiyono, Sutrisno Bin Harjo Siran, and Hendry Hastho Atmojo Bin Hadi Susanto, who were prosecuted in separate case files. The petitioner was previously the legal advisor to the convict, Sugiyono SP Bin Sasmo Suwiryo.

However, on the other hand, the author has identified a legal issue in the decision of the Sragen District Court No. 1/Pid.Pra/2025/PN Sgn, where the petitioner, who works as the defense counsel for the defendant whose case has been adjudicated, raised an objection to the actions of law enforcement authorities, specifically the Sragen Police and the Sragen District Attorney's Office, for failing to prosecute the parties involved in a case of continuous fraud and money laundering committed by the convict Sugiyono SP Bin Sasmo Suwiryo. This is despite the fact that in both the indictment by the public prosecutor and the judge's considerations, the convict was proven to have committed the alleged offenses in cooperation with other perpetrators, namely Mulyadi Bin Karyotomo, Sumadi Bin Narto Wiyono, Sutrisno Bin Harjo Siran, and Hendry Hastho Atmojo Bin Hadi Susanto, who were prosecuted in separate case files. The petitioner was previously the legal advisor to the convict, Sugiyono SP Bin Sasmo Suwiryo.

In response to the petition, the Public Prosecutor, as the Respondent, provided an answer, stating in essence that the Public Prosecutor did not receive case files from the investigator regarding the other parties mentioned in the indictment. The Public Prosecutor only received the case file concerning Sugiyono SP Bin Sasmo Suwiryo, and therefore, the petitioner's request for a pretrial to prosecute the other parties in the case is unfounded. Meanwhile, the Investigator, as the Co-Respondent, responded by stating that the petitioner lacks the standing to file the pretrial petition, as the Co-Respondent is not a party with a vested interest in the case of the convict Sugiyono SP Bin Sasmo Suwiryo.

Ultimately, in the case, a verdict was rendered stating that the petition was inadmissible on the grounds that the petitioner had no legal standing to file the pretrial, as the procedural law has specifically regulated that third parties with an interest do not include suspects/defendants/convicts or their legal representatives. Based on the legal events alleged in the ruling, it can be seen that there was an injustice in the criminal case experienced by the convict Sugiyono SP Bin Sasmo Suwiryo, who was only investigated and tried alone, even though the facts presented in the court ruling revealed that the convict committed the alleged criminal act together with other suspects as mentioned in the indictment. In fact, in the response, the Investigator did not mention the status of the case concerning the other suspects accused of committing the criminal act together with the convict.

If the third party with an interest is only interpreted in a limited sense as the victim, reporter, or non-governmental organizations, then this provision could become biased and contrary to the principle that everyone should be treated equally before the law. It would be clearly unjust if a person suspected of being involved in a criminal act together with others, but against whom no prosecution is carried out in the case, is treated in such a manner. Injustice in law enforcement often triggers responses from the public, which can indicate a reaction or retaliation against the provocations that have occurred (Muhammad Mustofa, 2021:81-97). Likewise, if a suspect/defendant/convict who committed a criminal act together with others does not receive fair treatment, reactions to rebel against this injustice may arise. If we reconsider the reasons behind the formulation of the Criminal Procedure Code according to Romli Atmasasmita, it is stated that criminal procedural law aims to protect human rights, legal interests, and the government, as well as to align the actions of law enforcement officials and apply the law in accordance with the Pancasila and the 1945 Constitution (Romli Atmasasmita, 2011:70). The expanded

interpretation of Article 80 of the Criminal Procedure Code by the Constitutional Court, which has been concretized in the district court's ruling, has violated the sense of justice. This refers to the question of how it is possible for perpetrators suspected of committing a criminal act together to be tried only partially. This not only violates the sense of justice for the other perpetrators of the crime but also the sense of justice for the general public, as it results in selective enforcement of criminal law.

LITERATURE REVIEW

The literature review generally pertains to prior research or scholarly literature. Based on a review of the existing literature, the author has identified several works that discuss legal issues concerning the termination of investigation or prosecution within the pretrial mechanism. However, there remains a lack of scholarly work that specifically examines pretrial proceedings related to the termination of investigation or prosecution. From the review of academic literature and relevant sources, the author has not found any academic studies that address the limitations or scope of third parties who may file objections against the termination of an investigation or prosecution through the pretrial mechanism.

After reviewing various previous studies, it is evident that research on the criminal justice process has mostly focused on legal issues related to the termination of investigation by investigators, particularly concerning the absence of regulation on the duration or timeframe allowed for an investigation. As a result, there is ambiguity as to whether a reported case is still ongoing or has been terminated. Therefore, there has not yet been a specific study that concentrates on the limitations or scope of third parties who may submit objections to the termination of an investigation or prosecution through the pretrial mechanism. This research gap presents the issue as a novel and worthy topic for further study by the author.

METHOD

This research employs a normative legal research method, which is based on literature or document studies (Peter Mahmud Marzuki, 2014:35). The focus of the research is on written regulations and other legal materials, utilizing three main approaches: the statutory approach, the conceptual approach, and the case approach (Irwansyah, 2021:54). This study is descriptive in nature, meaning that it aims to present and provide a comprehensive overview of the applicable legal conditions at a specific time and place, the emerging legal phenomena, or particular legal events within society. The research relies on primary legal sources, including various regulations such as the Criminal Procedure Code, the Human Rights Law, and policies issued by law enforcement authorities. In addition, this study draws on secondary legal sources in the form of books, journals, and legal literature, as well as tertiary legal sources such as dictionaries.

RESULTS AND DISCUSSION

The Urgency of Suspects/Defendants/Convicts in the Same Criminal Case with Separate Case Files to Submit a Pretrial Petition Against the Termination of Investigation/Prosecution

The pretrial institution functions as a body that exercises horizontal oversight over the actions of the police as investigators and the public prosecution service as prosecutors. Therefore, pretrial proceedings play a vital role in minimizing irregularities and the abuse of power in the implementation of the law enforcement process. The objective of this horizontal oversight by the pretrial institution aligns with the general purpose of the establishment of the Criminal Procedure Code, which is to ensure a law enforcement process founded upon the principles of due process of law.

In the legal system, due process of law is a guarantee that every stage of the judicial process must follow systematic, fair, and non-discriminatory procedures, while respecting the fundamental rights of all individuals involved. The application of due process of law is essential to ensure the protection of human rights, particularly in matters related to criminal law, the protection of witnesses and victims of crime, the role of society in safeguarding victims, as well as in the regulation of the rights of suspects/defendants in cases where those rights are violated (Zico Junius Fernando, 2001:87).

It is important first to understand when an investigation begins in a criminal case. An investigation is preceded by a preliminary inquiry. According to the provision of Article 1 point 5 of the Indonesian Criminal Procedure Code, it is stated that: "*a preliminary inquiry is a series of actions conducted by an investigator to discover whether an event may be suspected as a criminal offense in order to determine whether or not a formal investigation may be initiated.*" Therefore, if the investigator concludes that a criminal offense has occurred, the investigator submits a report of the inquiry's findings to the Investigator for further action.

Upon receiving the results of the preliminary inquiry, the investigator will issue an *Investigation Order* to initiate the investigation process, followed by the issuance of a *Notification Letter on the Commencement of Investigation*. This letter is addressed to the public prosecutor, the victim, and the suspect. It must contain essential information regarding the grounds for initiating the investigation, the date on which the investigation began, the type of criminal offense being investigated, the relevant legal provisions violated, and a summary of the criminal incident.

The public prosecutor will not be aware of an investigation being conducted by the investigator if the investigator does not issue and submit the Notification Letter on the Commencement of Investigation to the prosecutor. Consequently, the prosecutor will be unable to monitor the progress of the investigation or coordinate with the investigator. It is from the commencement of the investigation process that the investigator gains the authority to carry out coercive measures that may potentially restrict an individual's rights. This authority is stipulated in the Indonesian Criminal Procedure Code, which grants investigators the power to make arrests, detain individuals, conduct searches, and seize property. Therefore, the issuance of the Notification Letter on the Commencement of Investigation should not merely be regarded as a procedural formality; rather, it signifies the beginning of an authority to undertake coercive actions that may infringe upon human rights.

During the course of an investigation, the investigator may decide to terminate the investigation. This authority is based on three grounds: (1) insufficient evidence, (2) the act in question is not considered a criminal offense, or (3) the investigation is terminated by operation of law. If the investigator decides to terminate the investigation, they are obliged to notify both the public prosecutor and the victim/complainant of the termination.

If the public prosecutor determines that the case file is complete, the results of the investigation are accepted, marking the commencement of the prosecution stage. At this stage, the public prosecutor examines the substance of the case to determine whether it should be brought to trial. The prosecutor may also determine that the case should not be submitted to the court and therefore terminate the prosecution. A prosecution may be terminated on the grounds of (1) insufficient evidence, (2) the act does not constitute a criminal offense, or (3) termination by operation of law. In such a case, the public prosecutor will issue a decree of termination.

If a case is terminated either at the investigation or prosecution stage, the investigator, the public prosecutor, or a third party with a legitimate interest may file an objection to the termination with the head of the district court. The criminal procedure law does not explicitly define who qualifies as a "third party with a legitimate interest" in the event of termination of investigation or prosecution. However, the party that can most reasonably be regarded as having a legitimate interest in the continuation of the investigation or prosecution is the victim, as the victim is the party most logically affected by the injustice arising from the termination of the criminal process.

From the perspective of legal standing, a pretrial petition concerning the validity of the termination of an investigation or prosecution may only be submitted by specific parties, namely the investigator, the public prosecutor, and a third party with a legitimate interest. Regarding these subjects, the Indonesian Criminal Procedure Code provides clear and explicit definitions of who qualifies as an investigator and a public prosecutor. Conversely, although the Code acknowledges the existence of a third party with a legitimate interest under Article 80, it does not provide a clear interpretation of who may be categorized as such a party.

The Constitutional Court Decision No. 98/PUU-X/2012 dated May 21, 2013 has provided a clear interpretation regarding "interested third parties" in the context of the termination of an investigation or prosecution, namely "victim-witnesses or complainants, non-governmental organizations, or community-based organizations." From a narrow legal perspective, the third party with a vested interest is naturally the victim of the criminal act or the complainant. However, an alternative opinion has emerged, advocating for a broader interpretation of "interested third party" to include the general public as represented by NGOs or other civil society organizations (M. Yahya Harahap, 2003:9). This expanded interpretation is based on the notion that the impacts of criminal acts often result in harm to the public interest, either as individual members of a community or as part of a broader societal group.

In reality, a criminal offense may be committed by one or more individuals. In criminal proceedings, when more than one person is involved, the offense is often categorized as a jointly committed crime, known as participation in the commission of a crime (*deelneming*). Such participation may include individuals who perpetrate the act, order others to do so, assist in its commission, or incite others to commit the offense.

Once the public prosecutor receives the results of the investigation from the investigator, the prosecution process begins. If there is more than one suspect, the prosecutor may choose to split the case file into multiple files, based on their discretion. This separation of case files results in individual indictments for each suspect. The separation of criminal case files is based on Article 142 of the Indonesian Criminal Procedure Code. In practice, this is referred to as *splitsing*. However, this method may give rise to injustice, including inconsistency in the application of the law, violations of the principles of non-self-incrimination and the presumption of innocence, and ambiguity

regarding the concept of participation (*deelneming*). The prosecution of a new defendant through a separated case file may violate the presumption of innocence, as a verdict against a previous defendant may imply the guilt of the new defendant, reducing the latter's trial to mere formality. In fact, the separation of criminal case files has also raised concerns, as demonstrated in the District Court Decision of Sragen No. 1/Pid.Pra/2025/PN Sgn, which rejected a pretrial motion challenging the legality of the termination of an investigation, on the legal grounds that the petitioner did not qualify as an interested third party eligible to file such a motion.

A Warrant for the Termination of Investigation is not the only basis for filing a pretrial motion regarding the legality of an investigation's termination. The cessation of an investigation should not be interpreted solely in literal terms through the existence of an A Warrant for the Termination of Investigation. Rather, it encompasses any action by investigators that results in the discontinuation of an investigation into a reported criminal act. Under the Criminal Procedure Code, an investigation or prosecution may be terminated on three grounds: lack of sufficient evidence, the incident does not constitute a criminal offense, or termination by operation of law. The law does not define what constitutes "insufficient evidence," but Article 183 of Indonesian Criminal Procedure Code stipulates that sufficient evidence consists of at least two valid items of evidence that convince a judge of both the occurrence of the offense and the guilt of the accused (R. Soenarto Soerodibroto, 1979:361-366). Article 184 lists the valid types of evidence: "witness testimony, expert opinion, documents, indications, and the statement of the defendant."

If the reason for termination is that the incident does not constitute a criminal offense, then it must be evaluated against the legal elements of a crime. Moeljatno identified the elements of a criminal offense as follows: (1) The act and its consequences, (2) Circumstances surrounding the act, (3) Aggravating circumstances, (4) Objective elements of unlawfulness, (5) Subjective elements of unlawfulness (Moeljatno: 1987:63). Objective unlawfulness refers to the context within which the act occurs and includes: the illegal nature of the act (*wederrechtelijkheid*), the quality of the offender, and causality between the act and its consequence (Lamintang P.A.F., 1984:184). Subjective elements are those inherent to the offender, such as: (1) Intent or negligence (*dolus* or *culpa*); (2) Intent in an attempted crime as referred to in Article 53 (1) of the Penal Code; (3) Specific intents in crimes such as theft, fraud, extortion, forgery, etc.; (4) Premeditation (*voorbbedachte raad*) as in premeditated murder under Article 340 of the Penal Code; (5) Fear (*vrees*) .

Thus, the termination of an investigation on the grounds that the incident does not constitute a criminal offense means that, upon investigation, the required legal elements of a crime were not present. Meanwhile, termination by operation of law applies in situations such as the death of the suspect, expiration of the statute of limitations, withdrawal of a complaint in a complaint-based offense, or when the offense has already been adjudicated by a final and binding court decision (*nebis in idem*). Termination based on insufficient evidence or the absence of a criminal offense involves the exercise of prosecutorial or investigative discretion. These decisions are inherently based on field findings and factual considerations, which in turn creates vulnerability to abuse of authority (*abus de droit*) (Anne Safrina, et.al, 2017:21).

Every individual has the right to be free from discriminatory treatment of any kind and is entitled to protection against such treatment. The primary goal of law is to establish order, whereas something society needs in a real and objective sense (Mochtar Kusumaatmadja, 1975:20). The failure to prosecute all individuals suspected of jointly committing a crime contradicts the very purpose of the law to uphold legal certainty and justice. Legal certainty represents a condition of clarity and consistency, serving as a fair guideline for conduct and supporting an orderly legal framework. Legal certainty is a normative issue, not a sociological one (Achmad Ali, 2002:82-83).

A state governed by the rule of law guarantees equal treatment of all individuals, including during legal proceedings. The Criminal Procedure Code was designed to enforce procedural law that eliminates discrimination among the state, victims, perpetrators, and society in general, including all parties involved in a criminal case. Discriminatory practices within the law clearly result in injustice. Therefore, the state must ensure equal and proportionate rights for all individuals in the enforcement of justice.

Formulation of the Regulatory Scope of Interested Third Parties in Submitting a Pretrial Motion Concerning the Legality of the Termination of Investigation or Prosecution

The existence of the Criminal Procedure Code serves as a legal instrument intended to support the implementation and enforcement of substantive criminal law. As such, criminal procedural law plays a vital and determinative role in the law enforcement process, which is grounded in the framework of due process of law. As a body of public law norms, the Criminal Procedure Code embodies the principle of balance. This balance implies that the Criminal Procedure Code not only regulates the public interest that is violated but also equally safeguards the rights and interests of the accused.

Reform of the Criminal Procedure Code cannot be separated from the broader criminal law policy, which aims to achieve societal welfare and to address crime effectively. These policy guidelines help determine the extent to which the provisions of criminal procedure law need to be improved and implemented (Barda Nawawi Arief, 1996:28). In essence, criminal law policy seeks to draft and formulate sound criminal legislation. This includes formal criminal law, which requires reform in its formulation. Reform of formal criminal law or procedural criminal law, particularly the Criminal Procedure Code, should be oriented toward the protection of human rights as fundamental, inalienable rights inherent to every individual, universal and enduring which must be protected, respected, and upheld, and must never be ignored or violated by anyone (Lilik Mulyadi, 2007: 516).

Criminal law policy determines whether criminal law should be revised, how crime should be prevented, and how law enforcement should be conducted. It is an effort to create legislation that aligns with current and future societal conditions (Sudarto, 1986:93). Consequently, criminal law policy must be adaptable to produce laws that fulfill the goals of justice. According to Lilik Mulyadi, the reform of criminal procedure law should be oriented towards the underlying principles of the trial process, whether it adheres to the accusatorial system (as in common law courts), the inquisitorial system (as in ecclesiastical courts), or a hybrid of both systems.

With a human rights-oriented dimension, the future Criminal Procedure Code must consistently uphold the equal treatment of all individuals before the law, without discrimination. A state governed by law guarantees equality for every individual, including in legal proceedings. The Criminal Procedure Code was designed to implement procedural law that eliminates discrimination in the treatment of the state, victims, perpetrators, and society in general, including all parties connected to a criminal case. Written law must be interpreted strictly in a way that does not allow for expansion which could harm certain parties. This principle is known as *lex stricta*. The absence of a defined meaning for “interested third party” in submitting a pretrial motion on the validity of the termination of investigation or prosecution results in varied interpretations of who qualifies as such a party. However, the restriction of the definition of “interested third party” following the Constitutional Court's ruling has given rise to injustice and legal uncertainty in the enforcement of criminal law.

The central legal issue in this paper is the absence of the right for suspects, accused, or convicted persons in the same criminal offense whose case files have been separated to act as an interested third party in filing a pretrial motion challenging the termination of investigation or prosecution. This creates injustice through discriminatory legal treatment of those who allegedly committed the crime jointly. This situation contradicts Article 80 of the Criminal Procedure Code, which states: “A request to examine the validity of the termination of an investigation or prosecution may be filed by an investigator, a public prosecutor, or an interested third party with the chairman of the district court, stating the reasons therefor.” Furthermore, Constitutional Court Decision No. 98/PUU-X/2012 dated 21 May 2013 interprets the term “interested third party” in cases of termination of investigation or prosecution to include “victim-witnesses or complainants, non-governmental organizations, or community organizations.”

In addition to the lack of legal standing for suspects, accused, or convicted individuals in the same criminal offense whose cases are split, the Criminal Procedure Code is inherently restrictive, meaning its provisions are finite and not open to interpretation. This limitation constrains judges' ability to explore, discover, and apply substantive truth, despite the growing complexity and dynamic development of legal issues in practice.

The lack of clarity regarding the definition and scope of “interested third party” eligible to file a pretrial motion against the termination of investigation or prosecution has led to misinterpretations of Article 80 of the Criminal Procedure Code even after the Constitutional Court provided its interpretation.

Investigators, prosecutors, and judges have generally adhered to the interpretation provided by the Constitutional Court, that the term “interested third party” is limited to victim-witnesses or complainants, NGOs, or community organizations. However, if parties beyond these four categories exist such as suspects, accused, or convicted individuals in separated case files, should possess the right to file a pretrial motion challenging the validity of the termination of investigation or prosecution.

Given these issues, to achieve justice, legal certainty, utility, and considering the restrictive nature of the Criminal Procedure Code, the Author believes that it is necessary to formulate a clear provision regarding who qualifies as an interested third party in submitting a pretrial motion regarding the validity of the termination of investigation or prosecution. In the event of future amendments to the Criminal Procedure Code, the formulation of the provision defining the scope of interested third parties should be as follows:

Proposed Article:

"A request to examine the validity of the termination of an investigation or prosecution may be submitted by an investigator, a public prosecutor, or an interested third party, including victim-witnesses or complainants,

witnesses, other suspects/accused/convicted individuals in separated case files, and non-governmental organizations or community organizations, to the chairman of the district court, stating the reasons thereof."

This provision would be included under the Chapter on the Court's Authority to Adjudicate within the Pretrial Section. The reform of the Criminal Procedure Code must also be supported by the role of pretrial judges who are capable of restoring pretrial proceedings to their essential function in upholding the law in accordance with prevailing procedural norms. Pretrial judges, in their role as guardians of justice, must be able to assess any indication of selective enforcement, especially when investigations are terminated in a discriminatory or arbitrary manner. In addition to the existence of the pretrial mechanism, there is also a need for internal oversight mechanisms, both at the investigative and prosecutorial levels, for every case handled by investigators or prosecutors. This oversight serves as a preventive measure to avoid unfair handling of criminal cases, as criminal law itself is public law.

CONCLUSION

The regulation regarding the scope of third parties eligible to file an objection against the termination of an investigation or prosecution through the pretrial mechanism remains incomplete and inadequate. Article 80 of the Indonesian Criminal Procedure Code, as reviewed in Constitutional Court Decision Number 98/PUU-X/2012 dated 21 May 2013, defines the scope of such third parties as including "victim witnesses or complainants, non-governmental organizations, or community organizations." However, in practice, there are instances of case file separation (splittings) involving suspects/defendants/convicts in the same criminal act, whereby certain suspects are not brought to trial. This clearly undermines justice and legal certainty for both the victims and the suspects/defendants/convicts whose cases have been submitted and adjudicated by the court, especially in situations where the latter have already been sentenced.

The scope of third parties should not be narrowly interpreted as limited to victim witnesses, complainants, non-governmental organizations, or community organizations. The formulation of the scope of third parties eligible to file objections against the termination of an investigation or prosecution through the pretrial mechanism, as part of future reforms to the Criminal Procedure Code, may be articulated as follows: *"A request to examine the validity of the termination of an investigation or prosecution may be submitted by an investigator, a public prosecutor, or an interested third party, including victim-witnesses or complainants, witnesses, other suspects/accused/convicted individuals in separated case files, and non-governmental organizations or community organizations, to the chairman of the district court, stating the reasons thereof."*

REFERENCES

- Ali, Achmad. (2002). Menguak Teori Hukum (Suatu Kajian Filosofis dan Sosiologis), Toko Gunung Agung, Jakarta.
- Atmasasmita, Romli. (2011). Sistem Peradilan Pidana Kontemporer, Kencana Prenada, Jakarta.
- Fernando, Zico Junius. (2001). Due Process Of Law Dalam Penanggulangan Tindak Pidana Di Indonesia. Majalah Keadilan, Vol. 21, No. 1.
- Hamzah, Andi. (2008). Hukum Acara Pidana Indonesia, Sinar Grafika, Jakarta.
- Harahap, M. Yahya. (2003). Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan dan Penuntutan, Sinar Grafika, Jakarta.
- Irwansyah. (2021). Penelitian Hukum Pilihan Metode dan Praktik Penulisan Artikel, Mirra Buana Media, Yogyakarta.
- Kusumaatmadja, Mochtar. (1975). Fungsi Dalam Hukum Indonesia, Ikhtiar Baru, Jakarta.
- Lamintang, P. A. F. (1984). Dasar-Dasar Hukum Pidana di Indonesia, Sinar Baru, Bandung.
- Marzuki, Peter Mahmud. (2014). Penelitian Hukum, Prenada Media Grub, Jakarta.
- Moeljatno. (1987). Asas-Asas Hukum Pidana, Bina Aksara, Jakarta.
- Mulyadi, Lilik. (2012). Bunga Rampai Hukum Pidana Umum dan Khusus, Alumni, Bandung.
- Mulyadi, Lilik. (2007). Hukum Acara Pidana Normatif, Teoritis, Praktik dan Permasalahannya, Alumni, Bandung.
- Mustofa, Muhammad. (2021). Kriminologi Kajian Sosiologi Terhadap Kriminalitas, Perilaku Menyimpang, Dan Pelanggaran Hukum, Kencana, Jakarta.
- Nawawi Arief, Barda. (1996). Bunga Rampai Kebijakan Hukum Pidana, Citra Aditya Bakti, Bandung.

REFORMULATING THE LEGAL STANDING OF INTERESTED THIRD PARTIES IN SUBMITTING PRETRIAL MOTIONS AGAINST THE TERMINATION OF INVESTIGATION OR PROSECUTION

Enos Syahputra Sipahutar **et al**

- Safrina, Anne, et al. (2017). Penghentian Penyidikan: Tinjauan Hukum Administrasi Dan Hukum Acara Pidana. *Mimbar Hukum*, Vol. 29, No. 1.
- Semedi, Bambang. (2013). *Penegakan Hukum Yang Menjamin Kepastian Hukum*, Pusdiklat Bea dan Cukai, Jakarta.
- Soerodibroto, R. Soenarto. (1979), *KUHP dan KUHAP*, Raja Grafindo Persada, Jakarta.
- Sudarto. (1986). *Hukum dan Hukum Pidana*, Alumni, Bandung.
- Sunarto. (2016). *Keterpaduan Dalam Penanggulangan Kejahatan*, CV Anugrah Utama Raharja, Bandar Lampung.