Ekasakti Journal of Law and Justice
e-ISSN: 2987-436X | p-ISSN: 2987-7954
Vol 4, No. 1, June 2026
journal homepage https://ejrev.org/law

Investigators' Considerations in Stopping the Investigation of Fraudulent Acts of Customary Land Sales Through Restorative Justice

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Article History
Revised: 2026-05-20
Accepted: 2026-07-19
Published: 2026-08-29

Abstract: The termination of the investigation is regulated in Article 109 Paragraph (2) of the Criminal Procedure Code, which is if there is not enough evidence, it is not a criminal act and for the sake of the law. However, in practice, there is a termination based on restorative justice, as in the police report number: LP/B/422/X/2022/SPKT/Polda Sumatra. Although the elements of fraud and embezzlement have been fulfilled in the case, investigators stopped the investigation on the agreement between the victim and the suspect who had received payment money for 1,000 hectares of land that did not belong to him. The results of the study were obtained that the investigator's consideration in stopping the investigation of the criminal act of fraudulent sale of customary land through restorative justice, included juridical considerations, namely that there had been peace between the victim and the suspect accompanied by compensation: the victim's money was returned including land management costs of Rp. 1,200,000,000,-. Furthermore, the investigator's non-juridical consideration is that the parties still have kinship relations between races so that it becomes the basis for the investigator to prioritize deliberation so as not to cause conflicts between each race. The process of stopping the investigation of the fraudulent act of selling customary land through restorative justice is to bring together customary stakeholders for deliberation and provide options for both parties to resolve it familially and provide advice to the suspect to return all losses of the victims so that they do not sue each other in the future. Then issue a peace report and determine the termination of the investigation on the basis of the revocation of the report due to peace so that the case is stopped for the sake of restorative justice.

Keywords: Termination of Investigation; Customary Land; Restorative Justice

Introduction

Investigators of the National Police of the Republic of Indonesia have duties, functions, and authorities in the field of criminal investigation. This is in accordance with laws and regulations that are carried out in a professional, transparent and accountable manner for every criminal case in order to realize the rule of law that reflects legal certainty, sense of justice and utility.[1] Article 1 Number 2 of Law Number 8 of 1981 concerning the Criminal Procedure Law, states that, investigation is a series of actions by investigators in the case and in the manner regulated in this law to seek and collect evidence that with that evidence sheds light on the criminal act that occurred and in order to find the suspect.

Based on the above article, the investigation aims to shed light on the crime and find the suspect, this is in accordance with the way regulated in the law in accordance with the basic principles of Human Rights.[2] An act can be said to be a criminal act, it must meet certain elements. Regarding these elements, regulated in the Criminal Code, the elements of criminal acts are divided into 2 parts, namely as follows:

1. Subjective Elements are elements related to the state of mind or intention of the perpetrator when committing an act, such as intentional or unintentional.

[1] W.M. Herry Susilowati, Penghentian Penyidikan: Tinjauan Hukum Administrasi Dan Hukum Acara Pidana, Mimbar Hukum Volume 29, Nomor 1, Februari 2021, hlm. 16.

[2] https://elibrary.lemdiklat.polri.go.id/index.php?p=fstream-pdf&fid=121&bid=76, diakses pada 8 April 2025, Pukul 19.23 WIB.

DOI: https://doi.org/10.60034/t3zy4x35
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2. Objective Elements are elements related to physical acts carried out by the perpetrator, such as the acts committed, the consequences, and the causes and consequences of the act.

Based on the elements of the criminal act above, if the above elements are not present, then the investigation can be stopped, because the incident is not a criminal act because no elements of the criminal act are found. Therefore, the investigator is also equipped with the authority to stop the investigation as stipulated in Article 7 Paragraph (1) letter i of Law Number 8 of 1981 concerning the Code of Criminal Procedure which states that, the investigator as referred to in Article 6 Paragraph (1) letter a, because of his obligation to have the authority, to hold an investigation termination.

Investigations are stopped for the sake of the law, have the intention of being stopped for the sake of the law or closed for the sake of the law.[3] Not only that, the lack of evidence was also a factor in the termination of the investigation. This has been regulated in Article 109 Paragraph (2) of Law Number 8 of 1981 concerning the Code of Criminal Procedure which states that,[4] in the event that the investigator stops the investigation because there is not enough evidence or the incident turns out not to be a criminal act or the investigation is stopped for the sake of the law, then the investigator notifies the public prosecutor, the suspect or his family.

This shows that in the investigation process, investigators are not only required to find and prove the existence of criminal acts. But it must also have careful and objective consideration when trying to stop an investigation. One form of criminal act that often raises doubts in the investigation process is the criminal act of fraud in the sale of customary land, considering the characteristics of customary land which is very distinctive and based on customary law.[5]

The existence and specificity of the customary land has constitutionally received state recognition. As affirmed in Article 18B Paragraph (2) of the Constitution of the Republic of Indonesia in 1945 which states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law.

This constitutional provision is an important basis in assessing and understanding legal issues related to customary land. Customary land is communal land that is recognized for its existence in customary law and has been recognized in the national legal system.[6] In practice, the sale of customary land often causes conflicts. Especially when the buying and selling process is carried out without the consent or involvement of all customary rights holders. Cases like this are often reported as criminal acts of fraud, but not all reports end in legal proceedings in court. There are several cases that are actually stopped at the investigation level by investigators, because they are considered not to meet the criminal element or constrained by evidence that is not strong enough.

A very important authority here relates to the issuance of a warrant to terminate the investigation. Investigators in carrying out the orders of the Police law and exercising the authority given to them in the criminal procedure law and other regulations. [7] The investigators' considerations in stopping the investigation of the fraudulent case of the sale of customary land in the police report Number LP/B/422/X/2022/SPKT/West Sumatra Police where there was a criminal act of fraud and embezzlement that caused confusion amounting to Rp. 800,000,000,- (eight hundred million rupiah) was stopped the investigation based on Restorative Justice.

The question that will be raised in this study is to focus on the process of terminating the case based on restorative justice, where the termination of the investigation in the case is in accordance with the

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[3] Kanter E.Y dan Sianturi S.R., Asas-Asas Hukum Pidana di Indonesia dan Penerapannya, AHM-PTHM Jakarta, 1981, hlm. 192.

[4] R. Soenarto Soerodibroto, KUHP dan KUHAP, PT. Raja Grafindo Persada, Jakarta, 1979, hlm. 36

[5] Lili Rasjidi, Hukum Tanah Adat dalam Perspektif Hukum Nasional,: Citra Aditya Bakti, Bandung, 2003, hlm. 85.

[6] https://sumbar.atrbpn.go.id/informasi%20pertanahan/apaitutanahulayat#:~:text=Sertipikasi%20tanah%20ulayat%20adalah%20proses,atau%20nagari/suku/kaum. diakses pada 4 Juli 2025, Pukul 02.27 Wib.

[7] Yunan Hilmy, "Penegakan Hukum oleh Kepolisian Melalui Pendekatan Restorative Justice dalam Sistem Hukum Nasional," Jurnal Rechtsvinding, Vol. 2, No. 2, Agustus 2022, hlm. 8.

applicable legal principles. Based on this context, investigators not only play the role of formal law enforcers, but also as facilitators of restorative justice who bridge between victims and perpetrators to reach a peace agreement, recover losses, and restore social relations.

Meanwhile, the termination of the investigation based on the sake of the law because restorative justice is only covered by the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. The other side in the enforcement of criminal law is to protect the interests of the State, Society, and Individuals. So that in resolving cases based on restorative justice, it must involve the perpetrator, korhan, family of the perpetrator, family of the victim, community leader, religious leader, traditional leader or stakeholders to jointly achieve a just settlement through peace by emphasizing restoration back to the original state.

Based on this thought, the researcher will formulate a problem as the focus of research consisting of how the investigators consider in stopping the investigation of fraudulent acts of customary land sales through restorative justice. Then what is the process of stopping the investigation of fraudulent acts of selling customary land through restorative justice.

Research Methods

This research is a descriptive analytical research, namely a study that describes the considerations of investigators in stopping the investigation of fraudulent acts of selling customary land through restorative justice. The approach used is a normative juridical approach supported by empirical juridical evidence, with secondary data as the main data and primary data as supporting data, which is obtained through literature studies/document studies (*liberary research*) and field studies (*field research*) through semi-structured interview techniques.

Results and Discussion

Investigators' Considerations in Stopping the Investigation of Fraudulent Acts of Customary Land Sales Through Restorative Justice

Based on the results of the investigation by investigators from the West Sumatra Police General Criminal Investigation Directorate, the fraudulent incident of selling customary land began when the suspect assured the victim that the suspects could sell or transfer a 1,000-hectare plot of land, which was claimed to be in his possession. Then the victim handed over Rp. 800,000,000 (eight hundred million rupiah) with the belief that the land really existed and could be transferred to him. However, after the payment was made, the promised land could never be controlled by the victim and in fact the land never existed or was not in the possession of the suspects which resulted in the victim suffering losses.

Furthermore, the results of the interview with the investigator who handled the case of fraudulent land sales, the investigator concluded that the suspects deserved to be held criminally responsible, because their actions had fulfilled the elements of Article 378 of the Criminal Code (fraud) and or Article 372 of the Criminal Code (embezzlement) in conjunction with Article 55 Paragraph (1) 1 and Article 56 of the Criminal Code regarding participation and assistance. However, on September 25, 2023, the suspect and the victim had made peace by the suspects returning to the victim money of IDR 1,200,000,000 (one billion two hundred million rupiah). As a result of the fulfillment of the peace agreement based on the restorative justice mechanism, investigators then issued a termination of the investigation into the police report number LP/B/422/X/2022/SPKT/Polda Sumatra, dated October 12, 2022. This agreement is an important point for the application of restorative justice as one of the approaches developed in the modern criminal justice system.

Termination of an investigation is a legal action that can only be taken if certain valid reasons are fulfilled according to laws and regulations. In the context of the criminal act of fraudulent sale of customary land in the West Sumatra Police, investigators took steps to stop the investigation after considering the juridical and non-juridical aspects at the same time. This consideration is based on Police

Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which regulates as an alternative settlement of criminal cases.[8]

Restorative justice provides space for the settlement of cases through peace that meets material and formal requirements. The investigator assessed that the litigants had agreed to resolve the issue peacefully, including the return of damages. This condition is seen as sufficient to restore the situation to its original point as the principle of restoration in restorative justice. The termination of the investigation was not a form of impunity, but as an implementation of police discretion.

One of the basis for juridical considerations used by investigators is the fulfillment of material requirements as stipulated in Article 5 of Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. Investigators assessed that the case did not cause public unrest, did not trigger prolonged social conflicts and did not fall into the category of serious crimes such as corruption, terrorism or crimes against life. Customary land disputes themselves have special characteristics because they relate to the communal rights of indigenous peoples.

This consideration is in line with Frank Remington's theory, which explains that policies at each stage of the criminal justice system must reflect the system's primary objectives, namely crime control, community protection and effective case resolution. Thus, the investigator's decision to prioritize the restorative justice mechanism is a use of discretion that is within the functional corridor of the criminal justice system.[9] The settlement is more appropriate to be directed through customary deliberation that emphasizes peace and the restoration of social relations. In addition, the suspects are not recidivists or repeat offenders, so the risk of repeating similar acts is considered low. Investigators also ensure that the settlement mechanism through non-litigation channels does not cause legal uncertainty or social turmoil in the community.

These considerations then became the basis for the investigator to conclude that the application of restorative justice met the requirements as stipulated in Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. Thus, the juridical aspect is an important part that must be fulfilled before the decision to terminate the investigation is determined. The next consideration is related to formal requirements as stipulated in Article 6 of Perpol Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. In this case, a peace agreement has been made which is signed by both sides without coercion from any party. In addition, the suspects have fulfilled their obligation to fully reimburse the victims' losses. The refund of Rp 1,200,000,000 shows that the restoration of victims' rights has been carried out in a real and accountable manner.

Investigators consider the recovery to be a form of legal and moral responsibility on the part of the suspect. The peace deal has been administratively strengthened in the minutes of additional inspections. This shows that investigators do not stop at the aspect of peace alone, but also ensure that supporting documents are prepared as proof of accountability. Once this formal condition is met, investigators can proceed to the stage of terminating the investigation. This step is in accordance with the theory of the criminal justice system that must work through accountable, transparent and supervisable procedures.

The Process of Stopping the Investigation of Fraudulent Acts of Customary Land Sales Through Restorative Justice

The process of terminating the investigation in the case of fraudulent sale of customary land through restorative justice at the General Criminal Directorate of the West Sumatra Police shows a series of stages that follow the provisions of the Criminal Code and Perpol Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. Investigators began this step by conducting an initial assessment of the characteristics of the case and the social conditions of the indigenous peoples involved. This stage is important to ensure that the case is eligible to be resolved through restorative justice

[8] Azizul Hakiki, Surat Perintah Penghentian Penyidikan (SP3) Yang Diterbitkan Berdasarkan Perdamaian Antara Tersangka Dan Pelapor Dalam Delik Biasa, Jurnal Riset Rumpun Ilmu Sosial Dan Humaniora, Vol.1, No.2, 2022, Hlm. 4

[9] Mardjono Reksodiputro, Kriminologi dan Sistem Peradilan Pidana, Pusat Pelayanan Hukum dan Keadilan UI, Jakarta, 2007, hlm 53.

mechanisms. Investigators then identify the potential for horizontal conflict if the case is proceeded to a formal judicial process.[10]

This initial analysis became a rational basis for investigators in determining the direction of the settlement. Taking into account these social and legal factors, the investigator considers that *restorative justice* is the most appropriate path. The process of stopping the investigation was not carried out suddenly, but through careful consideration. This stage affirms the professionalism of investigators in handling sensitive customary cases. This shows that law enforcement must consider the social context, human values and the conditions of the society in which the law works. The decision was finally directed to the process of restoring relations between the parties.

This initial stage cannot be separated from the theory of error in criminal law as stated by Sudarto. According to Sudarto, a person can only be convicted if the element of guilt (*schuld*) is fulfilled, namely the ability to be responsible and the inner relationship of the perpetrator with the act committed.[11] The investigator considers that the fulfillment of the return of the damages, the existence of peace, and the fact that the parties have reached a common understanding of the status of customary land shows that there is no longer any intention to commit fraud. In other words, the element of error becomes not strong to prove. The assessment is conceptually in line with the theory of error which asserts that when the elements of error are doubtful or not met, criminal proceedings should not be continued.

Investigators began the mediation process by bringing together the victims, suspects, families of both parties as well as traditional leaders and local community leaders. The meeting is based on the principle of voluntariness and the absence of coercion. Investigators ensure that dialogue takes place equally and provides sufficient space for each party to express their opinions. This mediation is part of the procedure regulated in Perpol Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. In addition, investigators also involve traditional leaders as parties who have moral legitimacy in customary land disputes. The role of traditional leaders is very important to build trust and ensure public acceptance of the results of mediation.

This voluntary mediation process describes what Satjipto Rahardjo calls law *in action* , namely law enforcement that is not far from the needs and values of the community. In the context of indigenous peoples, deliberative dispute resolution is part of the substantive value of justice. By involving indigenous leaders, investigators not only carry out formal restorative procedures, but also practice adaptive law enforcement and based on local values.

The results of the mediation process resulted in a peaceful agreement between the victim and the suspects. The agreement not only contains a peace statement, but also includes full recovery of victims' losses. In this case, the suspect returned Rp 1,200,000,000 as a form of responsibility. The investigator ensured that the return was made without additional conditions and according to the agreement of the parties. The peace agreement was then outlined in a written document signed by all parties present. This is in accordance with Article 6 of Perpol Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, which is a formal requirement in *restorative justice*. Investigators consider that the recovery of the losses that occurred has restored the situation as before the crime occurred. Thus, a peace agreement becomes a strong legal basis for the termination of the investigation. The process of documenting the agreement also emphasizes the importance of investigator accountability.

After the peace agreement was made, investigators continued to verify all elements of the restoration that had been agreed. This verification is important to ensure that the rights of victims are fully met. Investigators check the evidence of the refund and make sure there is no manipulation in the process. In addition, the investigator asked the victim again if he gave consent freely and without pressure. This is a basic principle of restorative justice that requires the voluntariness of the parties. Verification is also carried out to ensure the transparency of the process. Investigators have an

[10] Hasil wawancara dengan Bripda Rici Sapendra, selaku penyidik pembantu Ditreskrimum Polda Sumatera Barat pada tanggal 8 Oktober 2025

[11] Sudarto, Hukum dan Hukum Pidana, Alumni, Bandung, 1986, hlm. 35

administrative basis to proceed to the next stage, namely the title of the case. On the other hand, verification is also related to the aspect of wrongdoing because the full refund of losses is a strong indication that the perpetrator no longer shows a willingness to harm the victim.

The next stage is the implementation of a special case title as a prerequisite for the termination of the investigation. The title of this case was carried out in accordance with the provisions of Article 17 of Perpol Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. In the case title, the investigator presented all supporting documents starting from the chronology of events, evidence, the results of mediation and the peace agreement documents. The results of the case stated that all the requirements of restorative justice had been met, so that the investigation could be stopped. On that basis, investigators issued an Investigation Termination Order (SP3). The issuance of SP3 is carried out according to procedures and signed by the authorized officials. SP3 is an official document that marks the end of the legal investigation process. The investigator then provided a copy of SP3 to the parties as a form of transparency. This action shows that the termination of the investigation was carried out openly. In addition, the existence of SP3 provides legal certainty for suspects and victims.

The process of stopping this investigation prioritizes the principle of restoration rather than punishment. Investigators understand that formal settlement is not always the best path to achieving substantive justice, especially in the context of indigenous peoples. In this case, the recovery of the victim's losses is a top priority rather than pursuing punishment for the suspect. This shows that restorative justice is more valuable for indigenous peoples who uphold deliberation. Investigators see that a peaceful settlement can restore social harmony that had been disturbed. The process of stopping the investigation reflects a humanist approach to law enforcement. The termination of the investigation is a form of justice that is more in accordance with the social context of the community.

In addition to the principle of recovery, the process of stopping the investigation also accommodates the values of customary law that live in the community. Customary land has social, historical and cultural value that goes far beyond material aspects. Therefore, overly aggressive formal investigations can upset the social balance. Investigators understand that customary mechanisms such as deliberation and peace have their own power in resolving internal disputes. By respecting these customary mechanisms, the police strengthen harmonious relations with indigenous peoples. This process also shows that national law can interact with customary law constructively.

Conclusion

The investigator's consideration in stopping the investigation of fraudulent acts of selling customary land through restorative justice consists of juridical considerations in accordance with Perpol Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, namely that there has been peace between the victim and the suspect accompanied by compensation, both the victim's money is returned, including land management costs of Rp. 1,200,000,000,-. Furthermore, the investigator's non-juridical consideration is that the parties still have kinship relations between races so that it becomes the basis for the investigator to prioritize deliberation so as not to cause conflicts between each race.

The process of stopping the investigation of the fraudulent act of selling customary land through restorative justice is to bring together customary stakeholders for deliberation and provide options for both parties to resolve it familially and provide advice to the suspect to return all losses of the victims so that they do not sue each other in the future. Then issue a peace report and determine the termination of the investigation on the basis of the revocation of the report due to peace so that the case is stopped for the sake of restorative justice.

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