

**DISCRESSION OF THE SAMBAS RESORTS POLICE IN THE
IMPLEMENTATION OF ADMINISTRATIVE LAW PERSPECTIVE
INVESTIGATION**

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Abstract

It is still found that investigating officers do not have an S1 degree or equivalent in the jurisdiction of the Sambas Resort Police as mandated in PP No. 58 of 2010 concerning Amendments to Government Regulation Number 27 of 1983 concerning the Implementation of KUHAP article 2A paragraph (1) letter a. If the requirements of investigators are not fulfilled, there will automatically be limits of authority, including the inability to issue investigation orders, detention warrants and other administrative letters. This study used a qualitative method with juridical empirical research. To obtain accurate data, purposive sampling technique was used, and primary data collection by conducting in-depth interviews. The research results found, among others: first, discretion regarding the administration of investigations in the jurisdiction of the Sambas Resort Police for the Sambas District Police who do not have investigating officers who meet the requirements, is then taken over by the Head of the Criminal Investigation Unit as the supervisor of the integrated criminal investigation function. Second, the impact of an integrated investigation administration causes the time to carry out investigations to be slow due to the long distance between the Sector Police and the Resort Police.

Keywords: *Discretion, Police, Investigation, Administrative Law*

A. INTRODUCTION

The existence of a police institution in a constitutional perspective is absolutely necessary for all countries in the world, including Indonesia. However, police

agencies in a country do not necessarily use the same system. Eddy Hiarij said of course this was adjusted to the social, community, cultural and political conditions that were adopted.¹The Indonesian state is based on law, this means that all actions taken by the government, state institutions and others are based on law (*statutory regulations*) and can be legally accounted for. Indonesia recognizes the principle of a rule of law which has distinctive characteristics, first, recognition and protection of human rights, second, a judiciary which is free from the influence of a power or other force and is impartial, third, legality in the meaning of law in all its forms.²The rule of law is largely determined by the legal structure. According to Friedman, the very first legal system is to have a structure, where the structure has a persistent shape, pattern and force. The structure is defined as the body, the framework, the form of the system carried out by the court or the police department which is organized in lines of jurisdiction.³

Law Number 2 of 2002 concerning the Indonesian National Police is the legal basis for the Indonesian police. The National Police has a very important role in making the wishes written in legal regulations come true.⁴The main duties of the Indonesian police are to maintain public security and order, uphold the law and provide protection, protection and services to the community,⁵in all Indonesian jurisdictions, including the Sambas Police (Polres Sambas).⁶

Sambas Regency is one of the regencies located on the border in West Kalimantan Province in the north. This area has an area of 6,395.70 km² or about 4.36% of the total area of the province of West Kalimantan (146,807 km²).⁷Criminal cases that often occur in the jurisdiction of the border jurisdiction, especially in this

¹Eddy O.S. Hiarij. 2005. *Criminal Justice System in Indonesia: Between Theory and Reality*. Asia Law Review. Korean Legislation Research Institute. Vol. 2. No. 2.

²Moh. Kusnardi dan Bintan R. Saragih. 1985. *Susunan Pembagian Kekuasaan Menurut Sistem Undang-Undang Dasar 1945*. Jakarta: PT. Gramedia. Hlm. 27.

³Lawrence M. Friedman. 1977. *Law and Society an Introduction*. New Jersey: Prentice-Hall. Englewood Cliffs. Hlm. 6.

⁴Satjipto Rahardjo. 2002. *Polisi Sipil Dalam Perubahan Sosial di Indonesia*. Jakarta: Buku Kompas. Hlm. XXIII.

⁵Tim Redaksi Fokusmedia. 2003. *Undang-undang Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia*. Cetakanpertama. Bandung: Fokusmedia. Hlm. 9.

⁶"Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 12 Tahun 2017 Tentang Syarat dan Tata Cara Penetapan Pembagian Daerah Hukum Kepolisian Negara Republik Indonesia" (2017), Lihat Pasal 1 angka 6."Kepolisian Resor yang selanjutnya disebut Polres adalah pelaksana tugas dan wewenang Polri di wilayah kabupaten/kota.

⁷Syaiful Muazir. 2019. *Interaksi Wilayah di Kawasan Strategis Nasional (Perbatasan) dalam Kerangka Jaringan Perkotaan*. Jurnal Wilayah dan Lingkungan. Vol 7. No 1. Hlm 1-13. doi:<http://dx.doi.org/10.14710/jwl.7.1.1-13..>

research in the jurisdiction of the Sambas Police are cases of drug smuggling, criminal acts of trafficking in persons, sexual abuse, domestic violence and so on. In the implementation of criminal law enforcement, there is an activity called investigation or handling cases/cases reported either by the public or directly discovered by members of the National Police. Investigation is juridically defined as the Criminal Procedure Code is a series of actions by an investigator in terms of and according to the manner stipulated in the Criminal Procedure Code to find and collect evidence that occurred and to find the suspect.⁸

The implementation of investigations as contained in the Criminal Procedure Code includes the stages of investigation, investigation time, administration of investigations, articles or provisions of the alleged laws and regulations and other provisions. However, apart from that, the most important thing is the legality of the investigator himself who acts to carry out a series of investigations. Explicitly Article 2A paragraph (1) Government Regulation Number 58 Year 2010 concerning amendments to government regulation Number 27 of 1983 concerning the implementation of the Criminal Procedure Code states that to be appointed as an investigating officer must meet the requirements, a) the lowest rank of Inspector of two police and has the lowest education degree. Bachelor degree or equivalent, b) served in the field of investigation function for a minimum of 2 years,⁹

In the context of the implementation of the investigation, AKP Prayitno (KasatReskrimPolres Sambas)¹⁰ explained that there were several complaints from victims of criminal acts, families of victims, suspects, families of suspects and legal advisors to victims or suspects in connection with case handling or investigations conducted by members of the National Police. Complaints submitted by the public against the handling of cases by the Police in this case are viewed from various aspects. One of them is about handling procedures, especially regarding forced or legal action, determining articles and ethical actions of investigators in terms of handling the case up to the provisions concerning investigators. Objections filed by personnel to the Police relating to case handling can have fatal consequences for the

⁸M. Karjadi dan R. Soesilo. 1997. *Kitab Undang-Undang Hukum Acara Pidana dengan Penjelasan Resmi dan Komentarnya*. Bogor: Politeia Hlm. 3.

⁹“Peraturan Pemerintah Nomor 58 Tahun 2010 Tentang Perubahan Atas Peraturan Pemerintah Nomor 27 Tahun 1983 Tentang Pelaksanaan KUHAP” (2010), Lihat Pasal 2A ayat (1).

¹⁰Wawancara AKP Prayitno, SH., MH sebagai Kasat Reskrim Polres Sambas, tanggal 2 Juni, 2020.

Police, especially regarding the credibility or good name of the Police itself, besides that it also affects the state in this case as the person in charge if there is compensation in its responsibility in connection with the losses suffered certain parties to the complaint. This is due to something that could be the reason for the submission of a pretrial to the District Court by a person against the National Police regarding whether an arrest, detention, termination of investigation is legal or not, as well as demanding a request for compensation or rehabilitation by the suspect or his family or other party on his behalf. Which, not a few of the material in question talks about administrative requirements.

Based on the above statement, the researcher raises the problem on the requirements to become an investigating officer, especially Article 2A paragraph (1) letter a, which is the lowest rank of Inspector Two Police and the lowest education is a bachelor's degree or equivalent. In order to carry out their duties properly and correctly by prioritizing the rule of law so that reliable investigators appear in accordance with the National Police Chief's program, namely PROMOTER (Professional, Modern and Trusted). The focus of the problems that will be studied are: 1) What is the discretion of the police in the administration of investigations in the jurisdiction of the Sambas Police, 2). What factors hampered the implementation of investigations in the jurisdiction of the Sambas Police?

B. RESEARCH METHODS

This research uses qualitative methods with the type of empirical juridical research,¹¹namely reviewing the implementation of PP. 58 of 2010 as happened in the field according to the facts obtained in the jurisdiction of the Sambas Police, so this research is a field incident that actually happened. The location of the research was carried out in the jurisdiction of the Sambas Police. The data sought were primary data, research information and secondary data.¹²To obtain accurate data used purposive sampling technique.¹³Through this technique, researchers only use informants, namely police officials who are considered very knowledgeable of the object of research. Informants from police officials at both the Polsek and Polres

¹¹Bambang Waluyo. 2002. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika. Hlm. 15.

¹²Jamiat Akadol. 2020. *Budaya Hukum Birokrasi Pelayanan Publik di Indonesia*. Yogyakarta: Penerbit Deepublish Publisher. Hlm. 39.

¹³Progo Nurjaman. 2000. *Metode Penelitian Sosial: Terapan dan Kebijakan*. Jakarta: Badan Litbang Depdagri. Hlm. 18.

levels are police officials associated with the implementation of investigations. Primary data collection was carried out through in-depth interview techniques by means of open interviews. According to Denzin and Lincoln,¹⁴ open interviews / unstructured interviews provide more space than other interview types. Secondary data is obtained from statutory regulations, documents and official reports from the police. Furthermore, qualitative data analysis is a continuous, repeated and continuous effort through data reduction, data presentation and drawing conclusions during research activities.¹⁵

C. DISCUSSION

Position of Investigator in the Legal Area of the Sambas Police

The data for the Sambas Police investigators are in accordance with the Chief of Police Regulation No. 23/2010 concerning the organizational structure and work procedures at the Resort Police and Sector Police levels obtained from the information provided by the Police Department personnel (resource section) which is about the number of investigators at the Sambas Police and Polsek ranks as a whole based on the provisions of the above regulations as well as the facts at the Sambas Police and information regarding those who already have an S1 degree or equivalent or not, according to the existing data which will be outlined in the following table form:

Table 1
List of Investigators at Sambas Police in 2019

Unit Name	Position			Information
	KANIT	KBO	KASAT	
Satreskrim	4 Personnel	1 Personnel	1 Personnel	3 S1
Satlantas	1 Personnel	1 Personnel	1 Personnel	1 S1
Satpolair	1 Personnel	1 Personnel	1 Personnel	2 S1
Sat Resnarkoba	2 Personnel	1 Personnel	1 Personnel	0 S1

¹⁴Norman K. Denzin, Yvonna S. Lincoln (editor), dan Dariyatno (penerjemah). 2009. *Handbook of Qualitative Research*. Edisi Ketiga. Yogyakarta: Pustaka Pelajar. Hlm. 507-508.

¹⁵Mathew B. Miles dan A. Michael Huberman. 1994. *Qualitative Data Analysis: A Source Book of New Methodes*. Newbury Park: CA. Sage. Hlm. 20.

Total	8 personnel	4 personnel	4 personnel	6 Bachelor
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Data source: Resources Division of the Sambas Police in 2019

The table above is a list of investigators from the Sambas Police according to 2019 data with the following explanation for the Criminal Investigation Unit, namely the Criminal Investigation Unit in charge of investigating general and special crimes, the Traffic Unit, namely the Traffic Unit that handles road traffic accidents, the Satpolair is the Unit that handles cases marine crimes, Narcotics Unit, namely the unit that handles narcotics and drug crimes with 4 personnel in the Kasat (unit head), 4 personnel for the KBO (Head of operational development affairs), and 8 personnel for the Head of Unit, total investigator positions from the table above, there are 16 positions, but only 15 are filled, 1 is still vacant, namely the investigating officer at the Satnarkoba, Sambas Police. Of the 15 investigating positions at the Sambas Police, 6 of them had bachelor degrees or equivalent, while the remaining 9 had no bachelor degrees.

Furthermore, a list of investigators will be presented at the Polsek ranks of the Sambas Police in 2019, as follows:

Table 2
List of Investigators at the 2019 Sambas Polres

Unit Name	Position			Information
	PANIT	KANIT	KAPOLSEK	
PolsekSelakau	-	1 Personnel	1 Personnel	1 S1
PolsekPemangkat	2 Personnel	1 Personnel	1 Personnel	1 S1
PolsekSemparuk	-	1 Personnel	1 Personnel	1 S1
PolsekTebas	-	1 Personnel	1 Personnel	1 S1
Polsek Sambas	2 Personnel	1 Personnel	1 Personnel	-
PolsekJawai	-	1 Personnel	1 Personnel	2 S1
PolsekJawai Selatan	-	1 Personnel	1 Personnel	1 S1

PolsekTekarang	-	1 Personnel	1 Personnel	1 S1
PolsekTelukKeramat	-	1 Personnel	1 Personnel	-
PolsekPaloh	2 Personnel	1 Personnel	1 Personnel	1 S1
PolsekGaling	-	1 Personnel	1 Personnel	-
PolsekSajingan	-	1 Personnel	1 Personnel	1 S1
PolsekSajad	-	1 Personnel	1 Personnel	-
PolsekSejangkung	-	1 Personnel	1 Personnel	-
PolsekSubah	-	1 Personnel	1 Personnel	1 S1
Total	6 Personnel	15 Personnel	15 Personnel	11 Bachelor

Data source: Resources Division of the Sambas Police in 2019

The table above is a list of Polsek investigators in the Sambas Police ranks according to 2019 data with the following explanation as follows: Kapolsek (Sector Police Head) as many as 15 personnel, Kanit (Head of unit) as many as 15 personnel, Panit (Unit Officer) as many as 6 personnel, total investigator positions from The table above consists of 36 positions, but only 30 positions are filled while 6 positions are still vacant, namely 1 Reskrim Unit, 1 ReskrimPanitPolsekPemangkat, 1 ReskrimKanit, 1 ReskrimPanitPolsekSambas, 1 ReskrimKanitand 1 ReskrimPanitPolsekPaloh. Of the 30 investigating officers at the Polsek, only 11 have an undergraduate degree or equivalent, while the remaining 19 have no bachelor's degree or equivalent.

Discretion of the Sambas Police in the Implementation of Investigation Administration

Discretion according to Bayley, David, is defined as the authority given by the law to act in special situations in accordance with the conscience of the agency or

officer itself.¹⁶In this modern era, discretion is very important to accelerate general goals, discretion becomes a means when there is a vacuum over the absence of a rule in a certain mechanism when a concrete event is urgent for a decision to be made.¹⁷The application of police discretion in carrying out tasks with an operational approach in the field plays a greater role, with the policy of acting on the basis of individual considerations in dealing with real situations.¹⁸

Investigation is one of a series of norm systems in criminal law. As a system, criminal law norms have the general nature of the system itself, namely it is comprehensive, has elements and these elements are interrelated with one another.¹⁹The process of carrying out investigations is regulated in the regulation of Indonesian criminal procedure law, namely Law no. 8 of 1981.²⁰However, in carrying out its duties and authorities, it is contained in Government Regulation Number 58 of 2010 concerning Amendments to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. In Article 2A paragraph (1) Government Regulation Number 58 Year 2010 regulates the requirements to be appointed as investigating officers. According to AgusRiyanto (Kabagsumda), these requirements are important because they will determine the implementation of the investigation, whether the administrative completeness of the investigation is in accordance with the prevailing laws and regulations and improve the performance and professionalism of investigators.²¹

The investigator, before conducting an investigation, must first prepare a notification letter for the commencement of investigation (SPDP),²²Apart from that, there are several stages of investigative activities that are carried out, especially in the case of repression or forced attempts or referred to in other terms, namely legal actions such as summons, arrests, detention, searches, confiscation and termination

¹⁶Aryanto Sutadi dkk. 2013. *Diskresi Kepolisian: Dalam Tinjauan Hukum dan Implementasinya di Lapangan*. Jakarta Selatan: Komisi Kepolisian Nasional. Hlm. 27.

¹⁷Endrik Safudin. 2020. *Politik Hukum Diskresi Di Indonesia: Analisis Terhadap Pembagian Kekuasaan Antara Pemerintah dan Legislatif*. Jurnal Kodifikasi. Vol. 14. No. 01. Hlm. 149.

¹⁸Sutadi dkk. *Diskresi Kepolisian: Dalam Tinjauan Hukum dan Implementasinya di Lapangan*, Hlm. 45.

¹⁹Syaiful Bakhri. 2009. *Hukum Pembuktian*. Jakarta: Total Media. Hlm. 20.

²⁰Farid Achmad. 2019. *Urgensi Penguatan Peran Penuntut Umum Dalam Sistem Peradilan Pidana Indonesia*. Jurnal Pasca Sarjana Hukum UNS. Vol. VII. No. 1. Hlm. 2.

²¹Wawancara Kopol Agus Riyanto, SH sebagai Kabagsumda Polres Sambas. Tanggal 2 juni 2020.

²²Nur Basuki Winarno. 2011. *Beberapa Permasalahan dalam Penyelidikan dan Penyidikan Oleh Kepolisian*. Jurnal PERSPEKTIF. Vol.XVI. No. 2. Hlm. 117-127.

of investigation (SP3). The action mentioned above is an administrative requirement for carrying out an investigation. Based on the results of observations with KumpulSunarno,²³ Explaining the formal requirements of the validity of the warrant is that it must be signed by the officer who orders the activities of the forced attempt as discussed in the above material, namely on the order of the investigator and affixed with the investigator's signature. If the warrant for the implementation of the activities of coercion or enforcement is not signed by the investigator, the warrant is considered invalid and the action is illegal,²⁴ and prosecution can be carried out according to legal channels, namely by pretrial. The authority of the pretrial is to examine whether or not the determination of the suspect is valid, search and confiscation and preliminary evidence.²⁵

Based on the results of an interview with AKP Prayitno, SH, MH²⁶ as Head of the Criminal Investigation Unit of the Sambas Police on June 2, 2020, said that there were 52 investigator positions at the Sambas Police, but currently only 45 are filled and the remaining 7 are empty, of the 45 investigators who have served only 17 have S1 degrees while the remaining 28 are not yet. has an S1 degree. Some Polsek are unable to sign Investigation Warrants because the police chief or investigators have not had an S1 degree so that to avoid prosecutions / complaints from the public or violations of the provisions of the law, the solution is that investigations carried out at the Sambas Police are carried out centrally in the sense of the task order and the administration of the investigation. Directly signed by the Head of Criminal Investigation Unit as the supervisor of the investigative function.

From the results of the interview above that the investigation system carried out by the Sambas Police was with a task order and investigation administration signed by the investigator in accordance with the provisions of Government Regulation Number 58 of 2010 concerning Amendments to Government Regulation Number 27 of 1983 concerning Implementation of the Procedural Code. Criminal law article 2A concerning the requirements for investigators, although there are still

²³Wawancara Kumpul Sunarno sebagai Kapolsek Sambas Polres Sambas. Tanggal 2 Juni 2020.

²⁴Faishal Zahy Ramadhani dan Bambang Santoso. 2020. *Analisis Tentang Alasan Pengajuan Prapreradilan dan Pertimbangan Hakim dalam Memutus Tentang Legalitas Penetapan Tersangka*. Verstek: Jurnal Hukum Acara. Vol. 8. No. 1. Hlm.114-123.

²⁵Nur Hidayat. 2010. *Penghentian Penyidikan oleh Penyidik Polri dan Upaya Hukumnya*. Jurnal Justitia. Vol. 10. No. 1.

²⁶Wawancara AKP Prayitno, SH., MH sebagai Kasat Reskrim Polres Sambas. Tanggal 2 Juni 2020.

some investigators who still do not have an S1 degree, but administration is taken over by an authorized official. This shows that the implementation of the investigation by the Sambas Police and Polsek ranks is in accordance with the provisions of the prevailing laws and regulations.

Inhibiting Factors for Conducting Investigations in the Legal Area of the Sambas Police

PraptoYudono (KapolsekSemparuk) explained that the process of implementing investigations or handling cases is not as easy as imagined, but the process of carrying out investigations must be in accordance with the provisions of applicable legal regulations carried out by members of the National Police, especially for investigators who are referred to as investigators.²⁷The Sambas Police and Polsek ranks had obstacles in carrying out investigations. As for the factors inhibiting the implementation of the investigation based on the results of observations made at the Head of the Sambas Regional Police Headquarters, the Head of Police, the Head of the Criminal Investigation Unit, the Sambas Police, who acted as investigators can be concluded as follows:

1. Investigating officer resource factor. There are still many investigators who do not have an undergraduate or equivalent education status so that it will become a barrier or obstacle in the investigation process where the Sambas Police and Polsek ranks must take steps so that in carrying out investigative activities they must strictly comply with the instructions or guidelines of the applicable laws and regulations. .
2. The factor of the long distance between Polsek and Polres. This was shown to the police who could not sign an investigation warrant because the police chief or investigator did not have a bachelor's degree or equivalent, so he had to first complete administration to the Sambas Police, namely the Head of Criminal Investigation Unit as the supervisor of the investigative function.

Based on these two inhibiting factors, it will more or less affect the process of carrying out the investigation, such as the time needed to carry out the investigation is quite long, because it has to take care of an investigation warrant which must be signed by the Head of the Criminal Investigation Unit of the Sambas Police, which

²⁷Wawancara Prapto Yudono, SH sebagai Kapolsek Semparuk. Tanggal 2 Juni 2020.

incidentally is quite a distance to the Sambas Police. In addition, the policy for making investigation decisions lies with the Criminal Investigation Unit, while the Kapolsek does not have the authority to handle investigations even though it occurs in their jurisdiction because the Police Chief does not have investigator requirements in accordance with the provisions of the applicable laws and regulations.

D. CONCLUSION

The implementation of investigations at the Sambas Police and Polsek ranks is in accordance with the provisions of Article 2A paragraph (1) letter a Government Regulation Number 58 of 2010 concerning Amendments to Government Regulation Number 27 of 1983 concerning Implementation of the Criminal Procedure Code, because the investigation administration has been signed by an investigator who has requirements as referred to in the regulation. The administration of the investigation was taken over by the Head of Criminal Investigation Unit as the supervisor of the criminal investigation function. The factors inhibiting the implementation of the investigation were caused when there were several Polsek whose Kapolsek had not yet had an S1 degree so that the handling of investigations on cases handled by the Police was carried out centrally, namely the assignment order and administration of the investigation were directly signed by KasatReskrim as the supervisor of the investigative investigation function.

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