"TERMINATION OF PRELIMINARY INQUIRY THROUGH SP2LID UNDER THE NEW CRIMINAL PROCEDURE CODE (KUHAP) NUMBER 20 OF 2025: AN ANALYSIS OF THE GAP IN VICTIMS' RIGHTS PROTECTION AND THE PERSPECTIVE OF JASSER AUDA'S MAQĀṢID AL-SHARĪ'AH"



Acc untuk
daftar Munaqasyah
3/'26
3/8

Written By:
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Supervisor:

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THESIS

Submitted to the Department of Ahwal Syakhshiyah Faculty of Islamic Studies Universitas Islam Indonesia
Presented as Partial Fulfillment of The Requirements for Obtaining a Bachelor's Degree in Law

YOGYAKARTA 2026

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YOGYAKARTA
2026

STATEMENT LETTER

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I hereby declare that this thesis is, in its entirety, the result of my own research and work, except for those sections where sources are cited. Should it be proven at a later date that this thesis is the result of plagiarism, I am prepared to have my degree revoked and to face sanctions in accordance with applicable regulations.



Yogyakarta, August 3, 2026

Muhammad Taufiq H M

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Skripsi ini telah diujikan dalam Sidang Skripsi Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyyah Program Internasional yang dilaksanakan pada:

Hari	:	Rabu
Tanggal	:	26 Agustus 2026
Judul Skripsi	:	Termination of Preliminary Inquiry through SP2Lid Under the New Criminal Procedure Code (KUHAP) Number 20 of 2025: An Analysis of the Gap in Victims' Rights Protection and the Perspective of Jasser Auda's Maqasid Al-Syari'ah
Disusun oleh	:	MUHAMMAD TAUFIQ H M
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UNIVERSITAS ISLAM INDONESIA ★ YOGYAKARTA ★ FAKULTAS ILMU AGAMA ISLAM

Dr. Drs. Asmuni, MA

OFFICIAL MEMORANDUM

Yogyakarta,3 August 2026 M
19 safar 1448 H

Subject :Thesis
To :The Honorable Head of the Islamic Family Law Study Programof
Faculty of Islamic Studies, Islamic University of Indonesia

At Yogyakarta,

AssalamuʼalaikumWarahmatullahiWabarakatuh

Based on the appointment by the Head of the Islamic Family Law Study Program through letter number 87/Kaprodi/10/DAATI/FIAI/II/2026, on February 4,2026 AD/ Sya'ban, 16, 1447 H. concerning our assignment as thesis supervisors for the following student:

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After we have carefully reviewed the thesis and made the necessary revisions, we hereby determine that the undergraduate thesis meets the requirements to be submitted for the *munaqashah* (thesis defense) at the Faculty of Islamic Studies, Universitas Islam Indonesia. Accordingly, we hope that the thesis may be scheduled for the *munaqashah* in the near future.

WassalamuʼalaikumWarahmatullahiWabarakatuh

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SUPERVISOR'S APPROVAL

The undersigned, as the academic advisor, hereby certifies that:

Thesis titled	: Termination of Preliminary Inquiry through SP2Lid under the New Criminal Procedure Code (KUHAP) Number 20 of 2025: An Analysis of the Gap in Victims' Rights Protection and the Perspective of Jasser Auda's Maqāṣid al-Sharī'ah
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Approved to be examined by the Undergraduate Thesis Examination Committee of the Ahwal Syakhshiyah Study Program, Faculty of Islamic Studies, Universitas Islam Indonesia.

Yogyakarta, 3, August 2026
Supervisor,



Prof. Dr. Drs. Yusdani, M.Ag.

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My beloved family, whose unwavering love, prayers, and encouragement have sustained me throughout every stage of my life.

MOTTO

"What stands in the way becomes the way"[1]

-Marcus Aurelius

[1] Marcus Aurelius, *Meditations*, trans. Gregory Hays (New York: Modern Library, 2002), 5.20.

ARABIC LATIN TRANSLITERATION GUIDELINES

JOIN DECISION

MINISTER OF RELIGION AND MINISTER OF EDUCATION AND CULTURE OF THE REPUBLIC OF INDONESIA

Number: 158 of 1987

Number: 0543b//U/1987

Transliteration is the transfer of letters from one alphabet to another. Arabic-Latin transliteration here is the copying of Arabic letters with Latin letters and their devices.

A. Consonant

In the Arabic writing system, Arabic consonant phonemes are symbolized by letters. In this transliteration, some are symbolized by letters, and some are symbolized by signs.

The following is a list of the Arabic letters in question and their transliteration with Latin letters:

Table 0.1: Consonant Transliteration Table

Arabic letters	Name	Latin letters	Name
أ	Alif	Not symbolized	Not symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	Ṡa	ṡ	es (with a dot on top)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (with dot below)

خ	Kha	Kh	ka and ha
د	Dal	d	De
ذ	Żal	ż	Zet (with a dot on top)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es
ش	Syin	sy	es dan ye
ص	Ṣad	ṣ	es (with dot below)
ض	Ḍad	ḍ	de (with dot below)
ط	Ṭa	ṭ	te (with dot below)
ظ	Ẓa	ẓ	zet (with dot below)
ع	`ain	`	Inverted comma (above)
غ	Gain	g	ge
ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em
ن	Nun	n	en
و	Wau	w	we
ه	Ha	h	ha
ء	Hamzah	‘	apostrophe
ي	Ya	y	ye

B. Vowel

Arabic vowels, like Indonesian vowels, consist of single vowels or monophthongs and double vowels or diphthongs.

1. Single vowel

Single Arabic vowels whose symbols are signs or harakat are transliterated as follows:

Table 0.2: Single Vowel Transliteration Table

Arabic letters	Name	Latin letters	Name
ـَ	Fathah	a	a
ـِ	Kasrah	i	i
ـُ	Dammah	u	u

2. Double Vowels

Arabic double vowels whose symbols are a combination of harakat and letters, transliterated in the form of a combination of letters as follows:

Table 0.3: Double Vowels Transliteration Table

Arabic letters	Name	Latin letters	Name
يْـَ...	Fathah and ya	ai	a and u
وْـَ...	Fathah and wau	au	a and u

Eamples:

كَتَبَ kataba

فَعَلَ fa`ala

سُئِلَ suila

كَيْفَ kaifa

حَوْلَ haula

C. Maddah

Maddah or long vowels whose symbols are harakat and letters, transliterated in the form of letters and signs as follows:

Tabel 0.4: *Maddah* Transliteration Table

Arabic letters	Name	Latin letters	Name
اَ...ىَ...	Fathah and alif or ya	ā	a and line above
ىِ...	Kasrah and ya	ī	i and line above
وُ...	Dammah and wau	ū	u and line above

Eamples:

- قَالَ qāla
- رَمَى ramā
- قِيْلَ qīla
- يَقُوْلُ yaqūlu

D. Ta’ Marbutah

There are two transliterations for *ta’’ marbutah*, namely:

1. *Ta’ marbutah* live

Ta' marbutah live or which gets *fathah, kasrah,* and *dammah harakat,*

transliteration is “t”.

2. *Ta’ marbutah* die

Ta' marbutah dies or which gets a *sukun harakat*, the transliteration is “h”.

3. If the last word with *ta' marbutah* is followed by a word that uses the article al and the two words are read separately, then the *ta' marbutah* is transliterated with “h”.

Examples:

رَوْضَةُ الأَطْفَالِ raudah al-atfāl/raudahtul atfāl

الْمَدِيْنَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/al-madīnatul munawwarah

طَلْحَةْ talhah

E. Syaddah (Tasydid)

Syaddah or tasydid, which in Arabic writing is symbolized by a sign, the syaddah sign or tasydid sign, is transliterated with a letter, which is the same letter as the letter marked with the syaddah.

Examples:

نَزَّلَ nazzala

البِرُّ al-birr

F. F. The Article

The article in the Arabic writing system is symbolized by a letter, namely ال, but in this transliteration, the article is distinguished above:

1. The article followed by a shamsiyah letter

The article followed by shamsiyah letters is transliterated according to its sound namely the letter "l" is replaced by the letter that directly follows the article.

2. The article followed by qamariyah letters

The article followed by qamariyah letters is transliterated by the rules outlined in front and by its sound. Whether followed by a shamsiyah or qamariyah letter, the article is written separately from the word that follows and is connected without a gap.

Examples:

الرَّجُلُ ar-rajulu

الْقَلَمُ al-qalamu

الشَّمْسُ asy-syamsu

الْجَلاَلُ al-jalālu

G. Hamzah

Hamzah is transliterated as an apostrophe. However, this only applies to hamzah located in the middle and at the end of words. Hamzah, located at the beginning of the word, is symbolized because in Arabic writing, it is in the form of alif.

Examples:

تَأْخُذُ ta’khużu

شَيئٌ syai’un

النَّوْءُ an-nau’u

إِنَّ inna

H. Word Writing

Basically, each word, whether fail, *isim* or letter is written separately. Only certain words whose writing in Arabic letters is commonly combined with other words because there are letters or *harakat* that are omitted, then the writing of the word is also combined with other words that follow it.

Examples:

وَ إِنَّ اللهَ فَهُوَ خَيْرُ الرَّازِقِيْنَ Wa innallāha lahuwa khair ar-rāziqīn/ Wa innallāha lahuwa khairurrāziqīn

بِسْمِ اللهِ مَجْرَاهَا وَ مُرْسَاهَا Bismillāhi majrehā wa mursāhā

I. Capital Letters

Although capital letters are not recognized in the Arabic writing system, they are used in this transliteration. The use of capital letters is like what applies in EYD, including the use of capital letters to write the initial letter of proper names and the beginning of sentences. When an article precedes a proper name, the initial letter of the proper name is written with a capital letter, not the initial letter of the article.

Examples:

الْحَمْدُ للهِ رَبِّ الْعَالَمِيْنَ Alhamdu lillāhi rabbi al-`ālamīn/

Alhamdu lillāhi rabbil `ālamīn

الرَّحْمنِ الرَّحِيْمِ Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

The use of initial capital letters for Allah only applies when the Arabic writing is complete and if the writing is combined with other words so that there are letters or harakat that are omitted, capital letters are not used.

Examples:

اللهُ غَفُوْرٌ رَحِيْمٌ Allaāhu gafūrun rahīm

لِلّهِ الأُمُوْرُ جَمِيْعًا Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwid

These transliteration guidelines are an inseparable part of Tajweed Science for those who want fluency in reading. Therefore, the inauguration of these transliteration guidelines needs to be accompanied by Tajweed guidelines.

ABSTRAK

"PENGHENTIAN PENYELIDIKAN MELALUI SP2LID BERDASARKAN KITAB UNDANG-UNDANG HUKUM ACARA PIDANA (KUHAP) BARU NOMOR 20 TAHUN 2025: ANALISIS KESENJANGAN PERLINDUNGAN HAK KORBAN DAN PERSPEKTIF MAQASID AL-SYARI'AH JASSER AUDA"

Muhammad Taufiq H M

KUHAP baru (Undang-Undang Nomor 20 Tahun 2025) melalui Pasal 19 memberikan dasar hukum yang tegas bagi penghentian penyelidikan. Namun, Pasal 158 dan Pasal 161 tetap mengecualikan penghentian tersebut dari objek praperadilan, sehingga korban tidak memiliki forum yudisial untuk mengujinya. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan, didukung wawancara terhadap salah seorang kuasa hukum pelapor, untuk mengevaluasi kedudukan hukum SP2Lid dan implikasinya terhadap hak-hak korban melalui perspektif maqāṣid al-syarī'ah kontemporer menurut Jasser Auda. Hasil penelitian menunjukkan bahwa Pasal 19 sebenarnya hanya memindahkan, bukan menyelesaikan, kekosongan hukum yang ada. Pasal tersebut memberikan dasar hukum tanpa disertai mekanisme pengujian yudisial, sehingga korban akhirnya hanya bergantung pada mekanisme keberatan internal yang tidak memiliki daya ikat. Ketika dievaluasi melalui dimensi ḥifẓ al-'adl, system openness, dan jalb al-maṣāliḥ, mekanisme ini terbukti gagal pada ketiga dimensi tersebut, sebagaimana diilustrasikan melalui kasus H. Zainul Karim, S.H. Temuan wawancara turut memperkuat adanya persoalan praktis dalam mekanisme penghentian penyelidikan dan perlindungan hak korban. Kegagalan ini juga selaras dengan Idee Trias Gustav Radbruch, yang memandang kepastian hukum sebagai syarat perlu namun tidak cukup bagi tatanan hukum yang sah. Perbandingan dengan prosedur beklag dalam hukum Belanda menunjukkan bahwa penutupan kekosongan ini merupakan pilihan legislatif, bukan keterbatasan struktural. Penelitian ini merekomendasikan revisi Pasal 158 huruf b agar SP2Lid dimasukkan sebagai objek praperadilan, disertai kewajiban notifikasi aktif kepada korban, serta menjadikan gelar perkara wajib dan partisipatif di tingkat kepolisian selagi menunggu reformasi legislatif.

Kata kunci: *SP2Lid; praperadilan; hak-hak korban; maqāṣid al-syariah; kekosongan hukum.*

ABSTRACT

"TERMINATION OF PRELIMINARY INQUIRY THROUGH SP2LID UNDER THE NEW CRIMINAL PROCEDURE CODE (KUHAP) NUMBER 20 OF 2025: AN ANALYSIS OF THE GAP IN VICTIMS' RIGHTS PROTECTION AND THE PERSPECTIVE OF JASSER AUDA'S MAQĀṢID AL-SHARĪ'AH"

Muhammad Taufiq H M

Indonesia's new Criminal Procedure Code (Law No. 20 of 2025) through Article 19 provides an explicit statutory basis for terminating a preliminary inquiry. However, Articles 158 and 161 continue to exclude such termination from the objects of pretrial review, leaving victims without a judicial forum to contest it. This study employs normative legal research through statutory, conceptual, and comparative approaches, supported by an interview with the legal counsel of a complainant, to evaluate SP2Lid's legal position and its implications for victims' rights through Jasser Auda's contemporary maqāṣid al-sharī'ah. The findings show that Article 19 relocates, rather than resolves, the underlying legal vacuum. The article provides a legal basis without a corresponding avenue of judicial review, leaving victims ultimately dependent on an internal objection mechanism with no binding force. Evaluated through ḥifẓ al-'adl, system openness, and jalb al-maṣāliḥ, the mechanism proves deficient on all three dimensions, as illustrated by the case of H. Zainul Karim, S.H. The interview findings further reinforce the existence of practical problems in the mechanism for terminating preliminary inquiries and protecting victims' rights. This deficiency also converges with Gustav Radbruch's Idee Trias, which treats legal certainty as necessary but insufficient for a legitimate legal order. A comparison with the Dutch beklag procedure shows that closing this gap is a legislative choice, not a structural impossibility. This research recommends amending Article 158 letter b to include SP2Lid within the objects of pretrial review, paired with a duty of active notification to victims, and, pending legislative reform, making gelar perkara mandatory and participatory at the police level.

Keywords: SP2Lid; pretrial review; victims' rights; maqāṣid al-sharī'ah; legal vacuum.

PREFACE

بِسْمِ اللَّهِ الرَّحْمٰنِ الرَّحِيمِ

اَلْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، الَّذِي بِنِعْمَتِهِ تَتِمُّ الصَّالِحَاتُ، وَبِفَضْلِهِ وَتَوْفِيقِهِ تَنْجَحُ الْمَقَاصِدُ وَتُدْرَكُ الْغَايَاتُ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى سَيِّدِنَا مُحَمَّدٍ، أُسْوَةِ الْعُلَمَاءِ وَالْمُتَعَلِّمِينَ، وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ.

All praise is due to Allah, the Lord of the worlds, whose infinite mercy, guidance, and blessings have enabled me to complete this thesis. Without His will, strength, and countless favors, this work would never have reached its completion. May peace and blessings be upon Prophet Muhammad ﷺ, his family, his companions, and all those who faithfully follow his path until the Day of Judgment.

The completion of this thesis, entitled "Termination of Preliminary Inquiry through SP2Lid under the New Criminal Procedure Code (KUHAP) Number 20 of 2025: An Analysis of the Gap in Victims' Rights Protection and the Perspective of Jasser Auda's Maqāṣid al-Sharī'ah," would not have been possible without the support, guidance, direction, and supervision of numerous individuals throughout this process. I would therefore like to express my deepest gratitude to the following distinguished individuals:

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them proud, and I pray that I will always be able to repay their kindness through my actions and achievements in the future.

The author recognizes that this thesis is not without its limitations and imperfections. Therefore, constructive comments, suggestions, and criticism are sincerely welcomed to enhance the quality of this work. It is the author's hope that this thesis will make a meaningful contribution to the advancement of Islamic family law studies and provide benefits for both the academic community and society as a whole.

Yogyakarta, 31 July 2026

Muhammad Taufiq H M

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CHAPTER I

INTRODUCTION

A. Background

Indonesian criminal procedure law, as regulated under Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), recognizes the preliminary inquiry stage (*penyelidikan*) as the initial gateway to determine whether a criminal act has occurred, before a case may proceed to the investigation stage (*penyidikan*). [23] This stage serves as the foundation of the criminal justice process, as it is at this point that law enforcement authorities assess whether a report can be advanced for further legal action.[4]

This regulatory disparity is most visible in the framework governing case termination. The termination of an investigation (*penyidikan*) has long been regulated in considerable detail: Article 109(2) of the old KUHAP expressly required an investigator to issue a formal termination order (*Surat Perintah Penghentian Penyidikan*, SP3) and to notify the public prosecutor and the suspect accordingly. [5] By contrast, the termination of a preliminary inquiry has never received equivalent statutory treatment. Under the old KUHAP, Article 1 points (2) and (5) merely defined *penyidikan* and *penyelidikan* as distinct stages, without

[2]Adam Ilyas, Fachrizal Afandi, and Indah Dwi Qurbani, "Closing the Injustice Gap: Reconstructing Pre-trial Proceedings as an Effective Remedy for Victims of Terminated Preliminary Inquiries," *Jurnal Konstitusi* 22, no. 4 (2025): 736–76, https://doi.org/10.31078/jk2247.

[3]Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*, Pasal 1 angka 5.

[4] Tinuk Dwi Cahyani, *Hukum Acara Pidana Indonesia (Dalam Teori dan Praktek)* (Malang: Universitas Muhammadiyah Malang, 2023), 21.

[5] Law No. 8 of 1981 (KUHAP), art. 109(2).

providing any mechanism for terminating the latter, [6] while Article 7(1) confined the investigator's duty to searching for and identifying a suspected criminal event, not to terminating that search. [7] In practice, this vacuum was filled informally: the police issued SP2Lid (*Surat Perintah Penghentian Penyelidikan*) as a unilateral administrative instrument, without statutory basis and without judicial oversight.

The enactment of Law Number 20 of 2025 (the new KUHAP) partially addressed this vacuum: Article 19 now explicitly authorizes a *Penyidik* to terminate a preliminary inquiry where the alleged event is found not to constitute a criminal offense. [89] Yet this formal recognition was not matched by an equivalent expansion of judicial oversight. Article 158 of the new KUHAP does broaden the objects of pretrial review beyond their scope under the old KUHAP — now covering, among others, the legality of coercive measures, the termination of an investigation or prosecution, compensation and rehabilitation, and unjustified procedural delay [10] — yet the termination of a preliminary inquiry remains conspicuously absent from this list, exactly as it was under the old KUHAP. Article 161 confirms that only victims whose cases are terminated at the investigation stage may challenge that decision through pretrial proceedings, leaving victims whose reports are discontinued at the earlier preliminary-inquiry stage without access to any independent judicial review mechanism. [11]

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[6] *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*, Pasal 1 angka 2 dan 5.

[7] *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*, Pasal 7 angka 1.

[8]Republik Indonesia Undang Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana pasal 1(5) (mendefinisikan Penyidikan) dan Pasal 1(8) (mendefinisikan Penyelidikan).

[9]Law No. 20 of 2025, art. 19(1) and art. 19(3).

[10]Law No. 20 of 2025, art. 158(a)–(f).

[11]Law No. 20 of 2025, art. 161.

This omission is not merely an oversight; it is a position the Constitutional Court has affirmed more than once. In Decision No. 53/PUU-XIX/2021, the Court explicitly rejected a petition to extend pretrial jurisdiction to the termination of a preliminary inquiry, reaffirming that pretrial competence is confined to the legality of arrests, detentions, and the termination of formal investigations and prosecutions — a position it had already taken in Decision No. 9/PUU-XVII/2019. [12] This stance sits in notable tension with the Court's own jurisprudence in Decision No. 21/PUU-XII/2014, in which it progressively expanded pretrial jurisdiction to cover the legality of suspect designation, searches, and seizures, on the ground that such acts are *pro justitia* and affect fundamental rights. [13] The Court's willingness to extend pretrial oversight in 2014, followed by its refusal to do so in 2019 and 2021 for a comparably rights-affecting issue, reveals an unresolved inconsistency in constitutional jurisprudence — one that the legislature, in drafting Article 158 of the new KUHAP, ultimately chose not to correct. This normative inconsistency between Article 19 and Article 158 of the new KUHAP constitutes the central legal problem this study examines: the law now formally authorizes the termination of a preliminary inquiry, but withholds from its victims any avenue of judicial review.

This is not a purely doctrinal problem. Law enforcement authorities are frequently confronted with reports lacking sufficient preliminary evidence, making

[12]Constitutional Court of the Republic of Indonesia, Decision Number 53/PUU-XIX/2021, 15 December 2021; Constitutional Court of the Republic of Indonesia, Ikhtisar Putusan Perkara Nomor 53/PUU-XIX/2021: Penghentian Penyelidikan Sebagai Objek Praperadilan [Summary of Decision No. 53/PUU-XIX/2021: Termination of Inquiry as Object of Pretrial], 15 December 2021; Constitutional Court of the Republic of Indonesia, Decision Number 9/PUU-XVII/2019 (Synopsis), 15 April 2019.

[13]Constitutional Court of the Republic of Indonesia, Decision Number 21/PUU-XII/2014.

the discontinuation of cases at the preliminary-inquiry stage practically unavoidable; yet those decisions continue to rest entirely on investigators' discretion, without independent oversight and without a corresponding remedy for the victims affected by them.

As a pragmatic response to this vacuum, the Indonesian National Police issued Chief of Police Circular Letter Number SE/7/VII/2018 concerning the Termination of Preliminary Inquiries, which introduced internal guidelines including case-review sessions (*gelar perkara*), the issuance of SP2Lid, and an obligation to notify complainants in writing when no criminal act or sufficient evidence is found. [14] Chief of Police Regulation Number 6 of 2019 on Criminal Investigation went further, introducing under Article 9(3) a mechanism allowing complainants to object to a termination decision. [15] Yet this mechanism remains confined to internal police forums; from a legal-hierarchy perspective, neither the circular letter nor the regulation carries the normative force of statute, as neither is included in the formal hierarchy of laws and regulations under Law Number 12 of 2011 on Law-Making. [16]

A comparative glance at the Netherlands — the historical source of Indonesia's own criminal procedure through the colonial-era HIR/RIB — throws this gap into sharper relief. Since Article 12 of the *Wetboek van Strafvordering* (Sv)

[14]Muhammad Huzaini and Deni Setya Bagus Yuherawan, "Kedudukan Hukum dan Fungsi Surat Edaran Kapolri Nomor: SE/7/VII/2018 tentang Penghentian Penyelidikan," *Widya Yuridika: Jurnal Hukum* 4, no. 1 (2021): 53–63.

[15]Jessica, Jason Wiratama, and Suhandri Sirait, "*Gelar perkara* dalam Proses Penyelidikan di Kepolisian Daerah Sumatera Utara" [Case Screening in the Inquiry Process at the North Sumatra Regional Police], *Kertha Semaya: Jurnal Ilmu Hukum* 10, no. 3 (2022): 673–85, https://ojs.unud.ac.id/index.php/kerthasemaya/art.icle/download/82792/43348.

[16]Republik Indonesia, *Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan*, Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82.

was enacted nearly a century ago, the termination of a case at the earliest investigative stage (*opsporingsonderzoek*, roughly equivalent to Indonesia's *penyelidikan*) has never been left as a final, unilateral police decision: an independent judicial body, the *Gerechtshof*, may review and even overturn such a termination. [17] Since 2017, Article 51ac Sv has reinforced this further by requiring that victims be explicitly notified once an investigation is terminated, with sufficient information to decide whether to lodge a complaint. [18] Indonesia's *praperadilan*, by contrast, tests only the procedural legality of a termination at the *penyidikan* stage, not whether a case substantively merits prosecution — and offers no equivalent, at any stage, to the Dutch obligation to notify a complainant of a termination decision. Despite sharing common colonial-era roots, the two systems have diverged sharply on this point over the past four decades, with the Dutch framework twice extending victim-protection guarantees — first through Article 12, then again through Article 51ac — while Indonesia's own reform, most recently through the 2025 KUHAP, has yet to close the same gap.

This structural gap is not merely theoretical. It surfaced concretely in a case reported by H. Zainul Karim, S.H., concerning an alleged forgery of an authentic deed that caused significant material loss related to asset ownership. The preliminary inquiry into this report was terminated by the Bekasi Metro Police through Determination Letter Number S.Tap/152/IV/2021, dated 19 April 2021, on

[17] *Wetboek van Strafvordering (Sv), art. 12, in effect since 1926;* see consolidated text at *https://wetboek.org/sv/12. ...https://wetten.overheid.nl/BWBR0001903*.

[18] *Wetboek van Strafvordering* (Dutch Code of Criminal Procedure), art. 51ac(1)(a)–(b) in conjunction with art. 51ac(3), official text available at *wetboek.org/sv/51ac*; amended by *Staatsblad* 2017, No. 90, implementing Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

grounds of insufficient evidence. An objection was subsequently filed under Article 9(3) of Police Regulation No. 6 of 2019. However, according to the legal counsel of H. Zainul Karim, S.H., no gelar perkara was convened in response to the objection, and the termination decision therefore remained unreviewed through any further internal process. Because Article 77 of the old KUHAP — and, as shown above, Article 158 of the new KUHAP likewise — confines pretrial review to terminations at the penyidikan stage, the victim had no avenue to seek judicial review of the termination at all.[19] This case illustrates, in concrete terms, how the normative gap identified above operates in practice: it is not an abstract inconsistency between two statutory provisions, but a lived deprivation of remedy for an identifiable victim.

The problem, then, has both a formal dimension — the absence of judicial review — and a substantive one — the resulting deprivation of victims' rights. Existing scholarship on this subject has approached the problem largely from within positive law: prior studies have examined the procedural status of SP2Lid under police regulations, the discretionary practice of case-review sessions (*gelar perkara*) in police investigations, and the narrow scope of *praperadilan* as a remedy against termination decisions. [20] None of these studies, however, has evaluated the termination of a preliminary inquiry against an explicitly value-based, maqāṣid-oriented standard of justice — one capable of assessing not merely whether SP2Lid is procedurally regular, but whether it is substantively just. This study addresses

[19]Interview with Lucky Omega Hasan, S.H., M.H., legal counsel of H. Zainul Karim, S.H., by Zoom, 25 July 2026, 07:00 a.m.

[20]Ely Kusumastuti, "Penetapan Tersangka sebagai Obyek Praperadilan," Yuridika 33, no. 1 (2018): 1–18.

that gap by evaluating the practice through the lens of contemporary *maqāṣid al-sharī'ah* as reconstructed by Jasser Auda.

Auda proposes a systems-based approach to *maqāṣid*, arguing that the higher objectives of Islamic law should not be confined to the protection of the five classical necessities (*al-ḍarūriyyāt al-khams*) but must also encompass substantive justice, systemic openness, and public welfare. [21] Measured against this framework, the termination of a preliminary inquiry through SP2Lid raises three distinct concerns:

1. Substantive justice (*ḥifẓ al-'adl*) is effectively denied, since victims have no legal avenue to contest a termination decision. [22]
2. Systemic openness is absent, since termination decisions are made internally, without independent judicial oversight or meaningful public accountability. [23]
3. Public welfare (*jalb al-maṣāliḥ*) is adversely affected, since termination practices unchecked by independent oversight erode public confidence in law enforcement institutions. [24]

Taken together, these three concerns suggest that the termination of a preliminary inquiry through SP2Lid, absent an accompanying mechanism of independent judicial review, sits in tension with Auda's conception of *maqāṣid al-sharī'ah* — a conception that treats justice, accountability, and the protection of

[21]Andi Triyawan, "Maqashid Syariah Menurut Jasser Auda," dalam *Panorama Maqashid Syariah*, ed. Abdurrahman Misno BP (Bandung: CV Media Sains Indonesia, 2021), 162–177.

[22]See Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London/Washington: International Institute of Islamic Thought, 2008), 244-48.

[23]Auda, *Maqasid al-Shariah*, 201-206

[24]Auda, *Maqasid al-Shariah*, 120-27.

fundamental rights not as incidental values but as the very purpose the legal system exists to serve.

The issue of SP2Lid termination therefore extends beyond a technical question of positive law. It is, at once, a legal problem — the absence of judicial review for victims under the new KUHAP — and an ethical one, measured against the objectives that any legal process, national or Islamic, is meant to serve.

This study accordingly seeks to address both an academic and a practical gap. Academically, it contributes to criminal procedure scholarship by examining the often-overlooked preliminary-inquiry stage through the underused lens of contemporary *maqāṣid al-sharī'ah*, as reconstructed by Jasser Auda. Practically, it aims to provide normative recommendations for amending Article 158(b) of the new KUHAP to expand the scope of pretrial proceedings to include the termination of a preliminary inquiry, establishing a more transparent and accountable mechanism for victims. Although the object of this study is a question of criminal procedure law, its analytical lens is drawn substantially from Islamic legal theory. In this respect, the study sits within the broader tradition of *Ahwal Syakhshiyah* scholarship insofar as it applies an Islamic jurisprudential method — evaluating a positive-law institution against the higher objectives of *ḥifẓ al-'adl*, systemic openness, and *jalb al-maṣāliḥ* — rather than confining maqāṣid analysis to family-law questions alone.

Based on the juridical and substantive problems outlined above, there are two fundamental issues that warrant academic examination. First, despite the explicit regulation of termination of investigations under Article 19 of the new

KUHAP, to what extent does the current legal framework provide legal certainty and protection of victims' rights, particularly given the exclusion of pretrial review for such terminations under Article 158 letter b?

Second, how is the practice of terminating preliminary inquiry through SP2Lid under the new KUHAP evaluated using the perspective of Jasser Auda's maqāṣid al-sharī'ah, particularly in terms of ḥifẓ al-'adl, system openness, and jalb al-maṣāliḥ? These two issues constitute the central focus of this research.

B. Research Questions

1. How is the legal position of the termination of preliminary inquiries through SP2Lid within Indonesia's criminal procedure system following the enactment of the new Criminal Procedure Code under Law Number 20 of 2025, and to what extent does this regulation ensure legal certainty and the protection of victims' rights?
2. How is the practice of terminating preliminary inquiries through SP2Lid evaluated from the perspective of Jasser Auda's maqāṣid al-sharī'ah, particularly in terms of ḥifẓ al-'adl, system openness, and jalb al-maṣāliḥ?

C. Research Objective and Benefits

1. Objectives
    a. To examine the legal status of the termination of preliminary inquiries through SP2Lid within the Indonesian criminal procedural

law system. This examination encompasses the normative vacuum under the old KUHAP, the limitations of administrative mechanisms provided through Chief of Police Circular Letter Number SE/7/VII/2018 and Police Regulation Number 6 of 2019, and the persisting gap in victim protection under the new KUHAP arising from the exclusion of preliminary inquiry termination from the scope of pretrial proceedings under Article 158 letter b. The analysis further examines the implications for legal certainty, accountability of law enforcement authorities, and the protection of victims' rights, with reference to the Dutch legal system as the direct historical source of Indonesian criminal procedural law.

b. To evaluate the practice of terminating preliminary inquiries through SP2Lid using Jasser Auda's contemporary maqāṣid al-sharī'ah framework, particularly in terms of ḥifẓ al-'adl (substantive justice), system openness, and jalb al-maṣāliḥ (public welfare), in order to formulate normative recommendations for the reform of criminal procedural law that is more transparent, accountable, and just.

2. Benefits

a. Theoretical Benefits

This study is expected to provide theoretical contributions in four main respects.

1) First, it seeks to fill a gap in the academic discourse on criminal procedural law concerning the termination of preliminary inquiries

through SP2Lid, which has largely been overlooked in both normative and scholarly analyses, especially when compared to the extensively studied termination of Investigation through SP3.

2) Second, it aims to enrich contemporary Islamic legal studies by applying Jasser Auda's maqāṣid al-sharī'ah framework—particularly the dimensions of ḥifẓ al-'adl, system openness, and jalb al-maṣāliḥ—as an evaluative lens for issues within positive criminal procedural law that have traditionally been examined separately from Islamic legal perspectives.
3) Third, it contributes to comparative legal studies by examining the regulation of preliminary inquiry termination in Indonesia in comparison with the legal systems of the Netherlands as a representative of a more developed civil law tradition in protecting victims' rights, and as the direct historical source of Indonesian criminal procedure law.
4) Fourth, to contribute to contemporary criminal procedure law studies by offering one of the earliest available analyses, based on the previous-studies review in Chapter II, of the regulation of preliminary inquiry termination under the new Criminal Procedure Code (KUHAP) Number 20 of 2025 from the perspectives of victims' rights protection and maqāṣid al-sharī'ah.

b. Practical Benefits

This study is expected to offer practical benefits for three main stakeholders.

1) First, for policymakers, it serves as a reference in the reform of KUHAP, particularly in establishing a mechanism for terminating preliminary inquiries that is transparent, accountable, and subject to independent judicial oversight.
2) Second, for law enforcement authorities, it provides an evaluative perspective on the practice of SP2Lid, which has thus far relied primarily on internal police regulations lacking normative authority equivalent to statutory law.
3) Third, for academics and researchers, it offers a reference point and foundation for further studies examining the protection of victims' rights from the stage of preliminary inquiry, both from the perspective of positive law and contemporary maqāṣid al-sharī'ah.

D. Discussion systematics

To facilitate a comprehensive understanding of this research, a clear and structured discussion system is required. This study is organized into five chapters, each consisting of several interrelated sub-chapters. The outline of the chapters is as follows:

1. Chapter I: Introduction

Serves as an introduction to the research, providing readers with an overview of the study's objectives and framework. It is divided into five sections: Background, Problem Formulation, Research Objectives, Research Benefits, and Discussion Systematics. The background section in particular traces the normative

evolution of SP2Lid from the absence of any legal basis under the old KUHAP, through the formal resolution provided by Article 19 of the new KUHAP (Law Number 20 of 2025), to the persisting gap in victim protection arising from the exclusion of investigation termination from the scope of pretrial proceedings under Article 158 letter b.

2. Chapter II: Previous Studies and Theoretical Framework

Presents previous studies related to the termination of criminal preliminary inquiry and the application of maqāṣid al-sharī'ah in legal analysis, along with the names of authors and conclusions drawn from each study. Additionally, this chapter discusses the theoretical framework underlying this research, comprising the theory of legal protection by Satjipto Rahardjo, the theory of interest protection by Brian Z. Tamanaha, and the three basic values of law by Gustav radbruch, and the contemporary maqāṣid al-sharī'ah by Jasser Auda — with particular emphasis on three dimensions: ḥifẓ al-'adl (substantive justice), openness of the legal system, and jalb al-maṣāliḥ (public interest). This chapter further presents a single-country comparative analysis of preliminary inquiry termination mechanisms, focusing on the Netherlands through the beklag procedure under Article 12 of the Wetboek van Strafvordering (WvSv), particularly Article 51ac on victim notification obligations and the beklag procedure under Article 12 WvSv. The Netherlands is selected not merely as one among many comparative references, but specifically as the direct historical source of Indonesian criminal procedure law, making it the most legally and historically relevant benchmark for evaluating the extent to which Indonesia

has yet to develop equivalent protections for victims at the preliminary inquiry stage.

3. Chapter III: Research Method

Outlines the research methods employed in this study, including the nature of the research as a normative legal study (yuridis normatif), the approaches applied comprising the statutory, conceptual, and comparative approaches, the sources of legal materials encompassing primary, secondary, and tertiary legal sources, and the deductive reasoning pattern applied in analyzing the data through qualitative descriptive and prescriptive analysis techniques.

4. Chapter IV: Results and Discussion

Presents the core of the research and is divided into two main parts. The first part analyzes the legal standing of SP2Lid within the Indonesian criminal procedure law system — spanning from the normative vacuum under the old KUHAP, through the administrative responses provided by Chief of Police Circular Letter Number SE/7/VII/2018 and Police Regulation Number 6 of 2019, to the formal yet incomplete resolution under Article 19 of the new KUHAP — and examines its implications for legal certainty, accountability of law enforcement, and victims' rights, illustrated through the concrete case of H. Zainul Karim, S.H. (LP/6943/X/2019). The second part evaluates the practice of preliminary inquiry termination through SP2Lid using the contemporary maqāṣid al-sharī'ah framework of Jasser Auda, specifically through the dimensions of ḥifẓ al-'adl, openness of the legal system, and jalb al-maṣāliḥ, and on that basis formulates normative

recommendations for criminal procedure law reform, particularly with respect to expanding the scope of pretrial proceedings under Article 158 letter b of the new KUHAP to include the termination of preliminary inquiries.

5. Chapter V: Conclusion and Recommendations

Summarizes the findings of the analysis in response to the two research questions formulated in Chapter I and presents normative recommendations for legislators, law enforcement agencies, and academics regarding the reform of preliminary inquiry termination mechanisms in Indonesian criminal procedure law. This chapter is followed by a bibliography comprising all legal sources and academic literature cited throughout the study, as well as appendices containing relevant supporting documents.

CHAPTER II

PREVIOUS STUDIES AND THEORETICAL FRAMEWORK

A. Previous Studies

1. Maqāṣid al-Sharī'ah as a Framework for Evaluating Positive Law

    a. The article by Syamsul Fatoni, Erma Rusdiana, Imron Rosyadi, and Opik Rozikin (2025), entitled "Asas Proporsionalitas: Perspektif Hukum Positif and Maqāṣid al-Sharī'ah dalam Sistem Peradilan Pidana" examines the principle of proportionality in Indonesia's criminal justice system from the perspectives of positive law and maqāṣid al-sharī'ah. The study concludes that maqāṣid al-sharī'ah can be used as an evaluative framework to assess positive criminal law and promote a more balanced justice system. This study is relevant because it shows that Islamic legal principles can be applied to evaluate positive law. However, it uses a classical maqāṣid framework based on the five essential objectives (al-ḍarūriyyāt al-khams), while this research adopts Jasser Auda's systems approach. In addition, the study focuses on criminal justice and sentencing in general, whereas this research specifically examines the termination of preliminary inquiries (SP2Lid) and the lack of judicial protection for victims under Law No. 20 of 2025.[25]

[25]Syamsul Fatoni, Erma Rusdiana, Imron Rosyadi, and Opik Rozikin, "Asas Proporsionalitas: Perspektif Hukum Positif dan Maqosid Syariah dalam Sistem Peradilan Pidana," *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 1 (2025): 46–71.

b. The study entitled “Analisis UU No. 11 Tahun 2012 terhadap Perlindungan Hak Anak yang Melakukan Tindak Pidana Perspektif Maqāṣid Syariah Ibnu ‘Āshūr” (2025), by Ahmad Wiland Rofrofil Akmal and Erik Wibowo examines Indonesia’s Juvenile Criminal Justice System using Ibn ‘Āshūr’s maqāṣid al-sharī‘ah framework. The study finds that the protection of children's rights under Law No. 11 of 2012 is generally consistent with the objectives of maqāṣid al-sharī‘ah. This study is relevant because it demonstrates that maqāṣid al-sharī‘ah may serve as a framework for evaluating positive law. However, it applies Ibn ‘Āshūr’s classical approach, while this research uses Jasser Auda’s contemporary systems approach. Moreover, the study focuses on protecting the rights of child offenders, whereas this research examines the legal protection of victims whose reports are terminated through SP2Lid without access to judicial review. It also does not discuss the legal issues arising from Articles 19, 158, and 161 of Law No. 20 of 2025.[26]

c. The study by Nanang Watono and Rahman Alwi (2025) entitled “Qawā'id Maqāṣidiyyah dalam Politik Hukum Islam: Menimbang Legislasi Syariah dalam Negara Demokratis” examines the role of qawā'id maqāṣidiyyah in the development of Islamic legislation within a democratic legal system. The study argues that maqāṣid al-

[26]Ahmad Wiland Rofrofil Akmal and Erik Wibowo, "Analisis UU No. 11 Tahun 2012 Terhadap Perlindungan Hak Anak yang Melakukan Tindak Pidana Perspektif Maqashid Syariah Ibnu Asyur," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 7, no. 1 (2025): 1–13.

sharī'ah, particularly Jasser Auda's systems approach, should serve as an ethical and evaluative framework for legal reform by emphasizing substantive justice, public welfare, accountability, and openness. This study is relevant because it supports the use of Jasser Auda's contemporary maqāṣid as a framework for evaluating positive law. However, it discusses legal reform in general and does not examine Indonesian criminal procedure, the termination of preliminary inquiries through SP2Lid, or the legal protection of victims. It also does not address the legal issues arising from Articles 19, 158, and 161 of Law No. 20 of 2025, which form the main focus of this research.[27]

2. Termination of Criminal Proceedings and Investigators' Authority

   a. The study by Agung Rio Setiawan, Firdaus, and Hellen Lastfitriani (2024), entitled *"Tinjauan Yuridis Penghentian Penyidikan Berdasarkan Peraturan Kapolri Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana,"* examines the legal basis for terminating criminal investigations under Peraturan Kapolri No. 6 of 2019. Using a normative legal approach, the study concludes that an investigation may only be terminated after a *gelar perkara* and must be based on the principles of legal certainty, justice, and legal utility. It also confirms that parties affected by an Investigation Termination

[27]Nanang Wartono and Rahman Alwi, "Qawa'id Maqashidiyyah dalam Politik Hukum Islam: Menimbang Legislasi Syariah dalam Negara Demokratis," Journal of Family and Sharia 1, no. 2 (2025): 102–116.

Order (SP3) may challenge the decision through pretrial proceedings. This study is relevant because it explains the legal requirements for terminating investigations and the importance of judicial control over investigators' decisions. However, it only discusses SP3 under Perkap No. 6 of 2019 and does not examine the termination of preliminary inquiries (SP2Lid) or the legal developments introduced by Law No. 20 of 2025. It also does not address the absence of judicial review for victims whose reports are terminated at the preliminary inquiry stage.[28]

b. Azizul Hakiki (2022), in his study entitled *"Investigation Termination Orders (SP3) Issued Based on Settlement between Suspects and Complainants in Ordinary Offenses,"* examines the legality of SP3 issued solely on the basis of settlement between suspects and complainants. The study concludes that settlement is not one of the legal grounds for terminating an investigation under Article 109 paragraph (2) of the former Criminal Procedure Code (KUHAP). Therefore, such an SP3 may be challenged through pretrial proceedings. This study is relevant because it shows that investigators' authority to terminate criminal proceedings must comply with statutory requirements. However, it only discusses SP3 under the former KUHAP and does not examine SP2Lid under Law

[28]Agung Rio Setiawan, Firdaus, and Hellen Lastfitriani, "Tinjauan Yuridis Penghentian Penyidikan Berdasarkan Peraturan Kapolri Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana," *Jurnal Mahasiswa Fakultas Syariah dan Hukum UIN Suska Riau* 3, no. 4 (2024): 1147–62, https://jom.uin-suska.ac.id/index.php/jurnalfsh/article/view/2956.

No. 20 of 2025 or the lack of judicial remedies available to victims whose reports are terminated during the preliminary inquiry stage.[29]

c. The study by Herman, Handrawan, Oheo Kaimuddin Haris, Ali Rizky, Fuad Nur, Lade Sirjon, and Syamsu Marlin, entitled *"Reinvestigation of Cases Previously Terminated through SP3 by the Indonesian National Police,"* examines the possibility of reopening criminal cases after an Investigation Termination Order (SP3) has been issued. The study concludes that a terminated investigation may only be reopened after a pretrial court declares the SP3 invalid. This finding confirms that SP3 remains subject to judicial review through pretrial proceedings. The study is relevant because it highlights judicial control over investigation termination. However, it only focuses on SP3 and does not discuss the termination of preliminary inquiries through SP2Lid. In addition, it was conducted before the enactment of Law No. 20 of 2025 and therefore does not address the inconsistency between Article 19 and Articles 158 and 161 of the new Criminal Procedure Code.[30]

d. The study by Rudi Afdi Pramana, Ismail, and Junindra Martua ((2020), entitled "Judicial Analysis of Court Decisions Rejecting

[29]Azizul Hakiki, "Surat Perintah Penghentian Penyidikan (SP3) yang Diterbitkan Berdasarkan Perdamaian antara Tersangka dan Pelapor dalam Delik Biasa," Wacana Paramarta *Jurnal Ilmu Hukum* 21, no. 1 (2022): 25–34.

[30]Herman, Handrawan, Oheo Kaimuddin Haris, Ali Rizky, Fuad Nur, Lade Sirjon, and Syamsu Marlin, "Penyidikan Kembali Perkara yang Dihentikan Penyidikannya (SP3) oleh Kepolisian Negara Republik Indonesia," *Halu Oleo Legal Research* 6, no. 1 (2024): 159–72, https://doi.org/10.33772/holresch.v6i1.751.

Pretrial Applications against SP3 (Case No. 06/Pra.Pid/2018/PN.Tjb)," examines the judicial reasoning behind the rejection of a pretrial application challenging an Investigation Termination Order (SP3). The study concludes that SP3 remains subject to judicial review through pretrial proceedings, providing an external mechanism for supervising investigators' authority. This study is relevant because it highlights the role of pretrial as a form of judicial control over investigation termination. However, it is limited to SP3 under the former KUHAP and does not examine the termination of preliminary inquiries through SP2Lid or the continuing absence of judicial review under Articles 158 and 161 of Law No. 20 of 2025.[31]

e. The study by M. Huzaini (2021), entitled *"The Legal Position and Function of the Chief of Police Circular Letter Number SE/7/VII/2018 concerning the Termination of Preliminary Inquiry,"* examines the legal position of the Chief of Police Circular Letter as the basis for terminating preliminary inquiries (*penyelidikan*). The study concludes that the Circular Letter was issued to fill the legal vacuum under the former Criminal Procedure Code (KUHAP). However, because it is only an internal administrative policy, its legal force is limited and raises concerns about legal certainty. This

[31]Rudi Afdi Pramana, Ismail, and Junindra Martua, "Studi Putusan Hakim Menolak Permohonan Praperadilan terhadap Terbitnya SP3 (Surat Perintah Penghentian Penyidikan) Putusan No. 06/Pra.Pid/2018/PN.Tjb," *Jurnal Tectum* 1, no. 2 (2020): 201–7.

study is relevant because it explains the background of SP2Lid before the enactment of the new KUHAP. However, it was conducted before Law No. 20 of 2025 and therefore does not examine Article 19, which now formally regulates the termination of preliminary inquiries. It also does not discuss the continuing absence of judicial review under Articles 158 and 161, which remains the main issue examined in this research.[32]

f. The study by Azan Fujiyanto, Otong Rosadi, and Iyah Faniyah (2022), entitled *"The Urgence of Investigation Termination Orders (SP2Lid) in the Criminal Action Investigation Process as Implementation of the Circular Letter of the Chief of Police Number SE/7/VII/2018,"* examines the legal basis and urgency of SP2Lid as introduced through the Chief of Police Circular Letter No. SE/7/VII/2018. The study concludes that the Circular Letter was issued to fill the legal vacuum under the former Criminal Procedure Code by providing procedures for terminating preliminary inquiries, including *gelar perkara*, notification to complainants, and the possibility of reopening cases when new evidence is found. However, it also notes that the Circular Letter is only an internal administrative policy and does not have the status of a statutory regulation. This study is relevant because it explains the background and legal function of SP2Lid before the enactment of the new

[32]Huzaini and Yuherawan, "Kedudukan Hukum dan Fungsi Surat Edaran Kapolri."

KUHAP. However, it was conducted before Law No. 20 of 2025 and therefore does not examine Article 19, which now formally recognizes the termination of preliminary inquiries. It also does not discuss the continuing absence of judicial review under Articles 158 and 161, which leaves victims without an effective legal remedy after the issuance of SP2Lid.[33]

g. The study by Ardi Nefri and Iyah Faniyah (2024), entitled *"Investigators' Considerations in Terminating Narcotics Crime Investigations Based on Restorative Justice,"* examines the application of restorative justice in terminating narcotics investigations. The study finds that investigations may only be terminated under certain conditions, such as when the offender is a drug addict or victim of abuse, no sufficient evidence is found, the offender is not involved in drug trafficking, and an integrated assessment has been conducted. It also identifies several practical obstacles in implementing restorative justice during the investigation stage. This study is relevant because it shows that the authority to terminate criminal proceedings must be exercised based on clear legal requirements. However, it only discusses the termination of investigations (*penyidikan*) through restorative justice and does not examine the termination of preliminary inquiries

[33]Azan Fujiyanto, Otong Rosadi, and Iyah Faniyah, "The Urgence of Investigation Termination Orders (SP2Lid) in the Criminal Action Investigation Process as Implementation of the Circular Letter of the Kapolri Number: SE/7/VII/2018," *Ensiklopedia of Journal* 4, no. 2 (2022): 127–35.

(*penyelidikan*) through SP2Lid. It also does not discuss the legal issues arising under Law No. 20 of 2025, particularly the absence of judicial remedies for victims after the issuance of SP2Lid.[34]

h. The study entitled *"Konsep Keseimbangan dalam Pemberlakuan Penghentian Penuntutan Berdasarkan Keadilan Restoratif"* by La Ode Awal Sakti examines the balance between the protection of offenders and victims in the termination of prosecution based on restorative justice. Using a normative juridical approach, the study concludes that restorative justice can protect offenders while restoring victims' rights through compensation and other recovery mechanisms. This study is relevant because it emphasizes the importance of balancing the interests of offenders, victims, and the state in every mechanism for terminating criminal proceedings. However, it focuses on the prosecution stage, where legal procedures and victim protection are already clearly regulated. It does not examine SP2Lid, the legal consequences of Article 19 of Law No. 20 of 2025, or the absence of judicial review over the termination of preliminary inquiries. These issues form the main focus of the present research.[35]

3. Protection of Victims' Rights and Institutional Oversight

[34]Ardi Nefri and Iyah Faniyah, "Pertimbangan Penyelidik dalam Penghentian Penyelidikan Tindak Pidana Narkotika Berdasarkan Restoratif Justice," *Ekasakti Legal Science Journal* 1, no. 4 (2024): 313–20.

[35]La Ode Awal Sakti, "Konsep Keseimbangan dalam Pemberlakuan Penghentian Penuntutan Berdasarkan Keadilan Restoratif," *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton* 7, no. 4 (2021): 585–92.

a. The study by Adam Ilyas, Fachrizal Afandi, and Indah Dwi Qurbani (2025), entitled "Closing the Injustice Gap: Reconstructing Pre-trial Proceedings as an Effective Remedy for Victims of Terminated Preliminary Inquiries," examines the absence of pretrial authority to review the termination of preliminary inquiries (penghentian penyelidikan) under both the former and the new Criminal Procedure Code, conceptualising this asymmetry between suspect and victim protection as an "injustice gap." Drawing on Constitutional Court Decisions No. 21/PUU-XII/2014, No. 9/PUU-XVII/2019, and No. 53/PUU-XIX/2021, and applying the theoretical frameworks of John Rawls's theory of justice and Lon L. Fuller's internal morality of law, the study proposes three reform pathways: explicit statutory regulation of preliminary-inquiry termination as an object of pretrial review, constitutional reinterpretation by the Constitutional Court, or the establishment of a Hakim Pemeriksa Pendahuluan (Preliminary Examining Judge). This study is the closest in subject matter to the present research and is relevant because it identifies, from within Indonesian constitutional and criminal procedure scholarship alone, substantially the same normative gap this thesis examines. However, it relies on Rawlsian and Fullerian jurisprudence rather than an Islamic legal framework, and its illustrative material is drawn from previously reported cases such as the East Luwu controversy rather than an original, independently

documented case investigated through primary interview data. It also does not undertake a comparative analysis with the Dutch legal system as the historical source of Indonesian criminal procedure. This research accordingly extends Ilyas, Afandi, and Qurbani's doctrinal findings by evaluating the same normative gap through Jasser Auda's contemporary maqāṣid al-sharī'ah, by grounding the analysis in the documented case of H. Zainul Karim, S.H., and by situating the Indonesian framework against the Dutch beklag procedure under Article 12 and Article 51ac WvSv.[36]

b. The study by Jessica, Jason Wiratama, and Suhandri Sirait (2022), entitled *"Gelar perkara dalam Proses Penyelidikan di Kepolisian Daerah Sumatera Utara,"* examines the implementation of *gelar perkara* during the preliminary inquiry (*penyelidikan*) stage. Using an empirical juridical approach, the study finds that *gelar perkara* functions as an internal mechanism to evaluate evidence, determine the status of a case, and ensure that investigative decisions are made in accordance with procedural requirements. The study also explains that *gelar perkara* promotes legal certainty and accountability while allowing complainants and other parties to participate in the process. This study is relevant because it highlights the importance of *gelar perkara* in supervising decisions made during the preliminary inquiry stage. However, it only discusses the procedural role of *gelar*

[36] Ilyas, Afandi, and Qurbani, "Closing the Injustice Gap," 745

perkara and does not examine the legal consequences of terminating preliminary inquiries through SP2Lid. It also does not discuss whether internal supervision is sufficient when victims have no access to judicial review under Law No. 20 of 2025.[37]

c. The study by Eka Nikmah Rahayu Lestari (2023), entitled *"Pelaksanaan Gelar perkara pada Tahap Penyidikan Ditinjau dari Sistem Peradilan Pidana di Indonesia,"* examines the implementation of *gelar perkara* within Indonesia's criminal justice system. The study finds that *gelar perkara* functions as an internal mechanism to evaluate evidence, determine whether a case should proceed, and ensure that investigators make decisions through collective assessment rather than individual discretion. This study is relevant because it explains the role of *gelar perkara* as an internal control mechanism before important investigative decisions are made. However, it only focuses on the procedural implementation of *gelar perkara* and does not discuss the legal consequences of SP2Lid for victims. It also does not examine whether internal supervision is sufficient when victims have no access to judicial review under the new Criminal Procedure Code.[38]

d. The study by Adam, Muhammad Amirulloh, Ahmad Sultra Rustan, and M. Ridha Fadli (2025), entitled *"Problematika Gelar perkara*

[37]Jessica, Wiratama, and Sirait, "Gelar perkara dalam Proses Penyelidikan," 675.

[38]Eka Nikmah Rahayu Lestari, "Pelaksanaan Gelar perkara pada Tahap Penyidikan Ditinjau dari Sistem Peradilan Pidana di Indonesia," *Jurnal Hukum Egalitaire* 1, no. 2 (2023): 116–130.

Khusus dalam Pengawasan Penyidikan Tindak Pidana oleh Kepolisian," examines the role of *gelar perkara khusus* as an internal supervisory mechanism in criminal investigations. The study concludes that *gelar perkara khusus* plays an important role in reviewing investigators' decisions, responding to public complaints, and strengthening accountability within the police institution. It also identifies several practical and procedural challenges affecting the effectiveness of internal supervision. This study is relevant because it explains the importance of internal oversight in controlling investigators' authority. However, it only focuses on internal supervisory mechanisms and does not examine the need for judicial review when preliminary inquiries are terminated through SP2Lid. It also does not discuss the legal issues arising from Articles 19, 158, and 161 of Law No. 20 of 2025, which are the main focus of this research.[39]

The previous studies have now been reviewed. Of these, only Ilyas, Afandi, and Qurbani (2025) examine substantially the same normative gap — the absence of pretrial review over the termination of preliminary inquiries — as the primary object of analysis. Their study, however, proceeds entirely within secular constitutional theory, drawing on Rawls and Fuller rather than an Islamic jurisprudential framework, and does not extend to an original documented case or

[39]Adam, Muhammad Amirulloh, Ahmad Sultra Rustan, and M. Ridha Fadli, "Problematika Gelar perkara Khusus dalam Pengawasan Penyidikan Tindak Pidana oleh Kepolisian," *Jurnal Konstitusi* 22, no. 1 (2025): 1–40.

a comparative analysis with the Dutch legal system. The remaining previous studies are limited, in varying combinations, to Investigation Termination Orders (SP3), the implementation of SP2Lid under the former Criminal Procedure Code, internal police mechanisms such as gelar perkara, or applications of maqāṣid al-sharīʿah to unrelated areas of law. Consequently, while the normative problem this thesis addresses has now been identified by one other study, no existing study evaluates it through Jasser Auda's contemporary maqāṣid al-sharīʿah, grounds it in an independently documented case, or situates it against the Dutch beklag procedure — the three respects in which this research contributes something genuinely new.

This study treats the termination of preliminary inquiries (SP2Lid) under Law No. 20 of 2025 as a contemporary issue of criminal procedural law and evaluates it through Jasser Auda's maqāṣid al-sharīʿah systems approach. By doing so, it not only examines the legal consequences arising from the interaction between Articles 19, 158, and 161 of the new KUHAP but also provides a normative evaluation of the legal protection afforded to victims when judicial review is unavailable.

Accordingly, this research positions itself at the intersection of Indonesian criminal procedural law, victims' rights, and contemporary maqāṣid al-sharīʿah. It seeks to contribute both conceptually and practically by addressing the continuing legal vacuum surrounding SP2Lid and offering a contemporary Islamic legal perspective on strengthening victims' access to justice within Indonesia's criminal justice system.

B. Theoretical Framework

1. The Concept of Preliminary Inquiry (*Penyelidikan*)

Preliminary inquiry, or *penyelidikan*, sits at the threshold of the Indonesian criminal process. Under the former KUHAP, Article 1(5) defined *penyelidikan* as a series of actions taken to seek and discover an event suspected of being a criminal offence, in order to determine whether an investigation (*penyidikan*) may be carried out.[40] The new KUHAP restates this function in largely the same terms, although the numbering of the definitional article has changed: Article 1(8) of Law No. 20 of 2025 now defines *penyelidikan* as a series of actions by an investigator (penyelidik) to seek and discover an event suspected as a criminal offence, in order to determine whether an investigation may be conducted, while Article 1(5) of the new statute is reserved for the definition of *penyidikan* itself.[41] Doctrinally, *penyelidikan* works as a filter: not every report or complaint should automatically lead to a formal investigation, and preliminary inquiry lets law enforcement test, at relatively low cost, whether the legal threshold for opening an investigation has been met.[42] Because the consequences of that filtering decision fall most heavily on the person who filed the report, the design of this stage is not simply an internal administrative matter. It has direct implications for access to justice, a point developed further in Section B.3.

[40]Law No. 8 of 1981 on Criminal Procedure, art. 1(5).

[41]Law No. 20 of 2025, art. 1(5) (defining Penyidikan) and art. 1(8) (defining Penyelidikan). Under the former KUHAP the numbering was reversed: art. 1(2) defined Penyidikan and art. 1(5) defined Penyelidikan. This is a purely structural change; the substantive definitions are materially unchanged.

[42]See Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2016), on the functional distinction between penyelidikan as a screening stage and penyidikan as the evidentiary stage of Indonesian criminal procedure.

2. The Distinction Between Preliminary Inquiry (*Penyelidikan*) and Formal Investigation (*Penyidikan*)

Both the former and the new KUHAP distinguish *penyelidikan* from *penyidikan* in terms of objective and authority. *Penyelidikan* asks only whether an indication of a criminal offence exists; *penyidikan* is aimed at collecting evidence sufficient to clarify the offence and identify a suspect.[43] The coercive powers available at each stage differ accordingly. Under the new KUHAP, the penyelidik may exercise only a limited set of powers: receiving reports, gathering information, and, only on the instruction of a penyidik, conducting arrest, search, seizure, or forced appearance. The full range of coercive measures ("Upaya Paksa," including suspect designation, arrest, detention, search, seizure, wiretapping, and asset freezing) is reserved to the penyidik once *penyidikan* has formally begun.[44] This graduated allocation of coercive authority is a familiar feature of due process design: authority expands only as the factual basis for state intervention becomes more concrete. That is one reason why the criteria and safeguards attached to terminating *penyelidikan* deserve their own scrutiny, rather than being treated as a subset of the safeguards attached to terminating *penyidikan*.

This distinction has direct consequences for the object of pretrial review. Because *praperadilan* is defined, under both the former and the new KUHAP, as judicial supervision of acts of the penyidik in conducting *penyidikan* or acts of the

[43]Law No. 20 of 2025, art. 1(5) and art. 1(8), read together; compare Law No. 8 of 1981, art. 1(2) and art. 1(5).

[44]Law No. 20 of 2025, art. 5 (powers of Penyelidik) and art. 14 (definition of Upaya Paksa) read with arts 89–141 (regulating each form of Upaya Paksa).

public prosecutor in conducting prosecution,[45] a termination decision issued at the *penyelidikan* stage falls, on the statute's own terms, outside the reach of that supervisory mechanism. The gap this thesis examines is therefore not simply an interpretive oversight; it follows directly from how *praperadilan* itself is defined.

3. The Mechanism of Investigation Termination (SP3) as a Comparative Reference

Termination of investigation under the former KUHAP is carried out through a Surat Perintah Penghentian *Penyidikan* (SP3), issued under Article 109(2), on grounds of insufficient evidence, the absence of a criminal offence, or a legal bar such as ne bis in idem or the expiry of the statute of limitations.[46] Under the new KUHAP, the equivalent mechanism is set out in Article 24, which requires the penyidik to notify the prosecutor, the victim, and the suspect of the termination, and which sets out an expanded list of statutory grounds, including restorative-justice settlement and payment of the maximum applicable fine for minor offences.[47] What matters here is not only that a termination power exists, but the procedural safeguard attached to it. Under Article 158(b) of the new KUHAP, the legality of a termination of *penyidikan*, or of prosecution, is a recognised object of *praperadilan*, and under Article 161, a victim, a complainant, or their legal counsel has standing to bring that challenge before the district court.[48] Judicial oversight of

[45]Law No. 20 of 2025, art. 1(15). The former KUHAP contained a substantially similar definition at art. 1(10).

[46]Law No. 8 of 1981, art. 109(2).

[47]Law No. 20 of 2025, art. 24(1)–(2).

[48]Law No. 20 of 2025, art. 158(b) and art. 161. See also Buku Pintar Adhyaksa, *Praperadilan (Pasal 158–164 KUHAP)* (Kejaksaan Agung Republik Indonesia, 2025), summarising the statutory scheme and its accompanying official explanatory notes.

this kind serves a specific function: it prevents an institution from unilaterally closing a case it opened, and it turns what would otherwise be a purely internal administrative decision into one that answers to an independent forum.[49] No equivalent safeguard applies to termination of *penyelidikan*, which is the imbalance this thesis is concerned with.

4. The concept of *Praperadilan*

Yahya Harahap continues to be one of the principal references in Indonesian criminal procedure, argues that the institution is essentially intended to review the legality of arrests, detentions, seizures, the termination of investigations, and the termination of prosecutions carried out by investigators or public prosecutors.[50] This understanding was originally reflected in Article 1 point 10 of the former Criminal Procedure Code (KUHAP). After the enactment of Law No. 20 of 2025, the definition was relocated to Article 1 point 15 of the new KUHAP, which came into force on 2 January 2026. There are some changes in wording, but they do not really alter the central function of pretrial proceedings. Its supervisory role remains much the same.

Hartono approaches the concept from a more practical perspective. In his view, pretrial proceedings are simply judicial proceedings conducted before the examination of the main criminal case begins.[51] The definition is relatively concise,

[49]On judicial review of prosecutorial and investigative discretion as a check against unaccountable use of state coercive power, see generally Mirjan R. Damaska, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process* (New Haven: Yale University Press, 1986), ch. 1.

[50]Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP (Pemeriksaan Siandg Pengadilan, Banding, Kasasi, dan Peninjauan Kembali)* (Jakarta: Sinar Grafika, 2002), 2–4.

[51]Hartono, *Penyidikan and Penegakan Hukum Pidana (Melalui Pendekatan Hukum Progresif)* (Jakarta: Sinar Grafika, 2010), 88.

but it helps clarify one of the basic limits of pretrial jurisdiction. A pretrial judge is not concerned with deciding whether the accused is guilty of the alleged offence. That question belongs to the trial on the merits. What the judge examines instead is whether investigators and public prosecutors exercised their procedural powers in accorandce with the applicable law. Put differently, the focus of pretrial proceedings is procedural legality rather than criminal liability. This may sound like an obvious distinction, yet it is one that is sometimes overlooked, particularly when pretrial applications are expected to address issues that properly belong to the substantive trial.

Viewed from a broader perspective, pretrial proceedings are closely linked to the protection of fundamental rights. Their principal purpose is to ensure that coercive measures exercised by law enforcement authorities remain within the limits prescribed by law. Whenever arrests, detentions, seizures, or similar procedural measures are challenged, the court reviews whether those actions satisfy the legal requirements established by statute. This philosophical foundation was reaffirmed by the Constitutional Court in Decision No. 65/PUU-IX/2011, where the Court observed that pretrial proceedings were established to protect the rights of suspects and defendants in a manner consistent with their inherent human dignity.[52] This point deserves particular attention because it shows that pretrial proceedings were never intended to function merely as an administrative checkpoint. They also

[52]I Tajudin, "Urgensi Pemeriksaan Sah Tidaknya Penetapan Tersangka Sebagai Perluasan Objek Pra Peradilan dalam Upaya Perlindungan Hak Asasi Manusia," Padjadjaran Law Review, accessed 23 July 2026, https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/426.

serve as a constitutional safeguard against arbitrary exercises of state power, ensuring that criminal procedure remains subject to meaningful judicial control.

From a legal standpoint, pretrial proceedings may therefore be understood as the authority of the district court to examine and determine the legality of arrests, detentions, the termination of investigations, and the termination of prosecutions.[53] That authority, however, has not remained static. Initially, the scope of pretrial review was confined to matters expressly mentioned in the Criminal Procedure Code. The Constitutional Court later broadened its scope through Decision No. 21/PUU-XII/2014 by recognising the legality of suspect designation as an object of pretrial review.[54] This development suggests that the evolution of pretrial proceedings is no longer shaped solely by the wording of the Criminal Procedure Code. It is also influenced by the constitutional responsibility of judges to interpret procedural law in a way that reflects justice and the legal values living within society. Even so, the debate is far from settled. Questions about how far this expansion should go continue to generate discussion among judges, practitioners, and legal scholars alike.

Having established the statutory and doctrinal position of *penyelidikan* and *praperadilan*, this chapter now turns to the theoretical apparatus through which the normative gap identified above will be assessed. It begins with the broadest of these frameworks, Gustav Radbruch's theory of the three basic values of law, before narrowing to the more specific accounts offered by Rahardjo and Tamanaha, and

[53]Dedy Saputro, "Kedudukan Praperadilan dalam Perspektif Kepastian Hukum," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 16 (2024): 198–211, https://jurnal.peneliti.net/index.php/JIWP/article/download/7795/6592/.

[54]I Tajudin, "Urgensi Pemeriksaan Sah Tidaknya Penetapan Tersangka."

finally to the maqāṣid al-sharīʿah framework that supplies this research's primary analytical lens.

5. Gustav Radbruch's Theory of the Three Basic Values of Law

Gustav Radbruch (1878–1949), Professor of Criminal Law and Legal Philosophy at the University of Heidelberg and briefly Germany's Minister of Justice before being dismissed from his academic post by the Nazi regime in 1933, remains one of the most influential legal philosophers in the continental legal tradition.[55] Radbruch argued that the concept of law cannot be reduced to a single value. Instead, it rests upon three fundamental values that exist in constant tension with one another: justice (*Gerechtigkeit*), purposiveness or expediency (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*).[56] Justice, in Radbruch's formal conception, requires that like cases be treated alike and unlike cases according to their relevant differences, reflecting the Aristotelian principle of distributive justice. Because this formal conception alone cannot determine which differences are legally relevant or who should be regarded as equal, it must be complemented by purposiveness, understood as the law's orientation toward ends that serve both individual and collective welfare.[57] Legal certainty, the third value, addresses the practical indeterminacy left by the first two by requiring that law be

[55]Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher," Washington University Journal of Law & Policy 2 (2000): 489–90; Muklis Al'anam, "Teori Keadilan Perspektif Gustav Radbruch: Hubungan Moral dan Hukum," *Jurnal Humaniora* 9, no. 1 (2025): 120.

[56]Gustav Radbruch, "Legal Philosophy," in *The Legal Philosophies of Lask, Radbruch, and Dabin*, trans. Kurt Wilk (Cambridge, MA: Harvard University Press, 1950), 107; Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006), 45.

[57]Radbruch, "Legal Philosophy," 90–95.

positively enacted and sufficiently accessible and predictable, so that what is required, prohibited, and permitted may be known in advance.

Radbruch was explicit that these three values do not sit comfortably together. Justice calls for generalization, treating like cases alike, while expediency calls for individualization, since what is useful is necessarily particular; legal certainty, meanwhile, is indifferent to both and asks only whether a rule has been validly positivized through the exercise of state authority.[58] Radbruch therefore accepted that a functioning legal order requires positive law to be obeyed even when it is imperfect or, to a degree, unjust, precisely because the alternative — allowing every individual to test each rule against their own sense of justice — would itself undermine the certainty that law exists to provide. Under ordinary conditions, then, Radbruch's relativistic approach instructs the legal system to give legal certainty priority whenever what is substantively just cannot be conclusively determined.[59]

This deference to positive law, however, is not unconditional. Writing after the collapse of the Nazi regime, Radbruch revisited his own earlier positivist leanings and, in his 1946 essay *Statutory Lawlessness and Supra-Statutory Law*, formulated what has since become known as the Radbruch Formula.[60] The formula holds that where the conflict between a positive statute and justice reaches a degree that is "intolerable" (*unerträglich*), the statute must yield to justice; and where a law

[58]Radbruch, "Legal Philosophy," 107–9.
[59]Al'anam, "Teori Keadilan Perspektif Gustav Radbruch," 123.
[60]Gustav Radbruch, "*Statutory Lawlessness and Supra-Statutory Law* (1946)," trans. Bonnie Litschewski Paulson and Stanley L. Paulson, Oxford Journal of Legal Studies 26, no. 1 (2006): 1–11

does not even attempt to strive for justice — where equality, the very core of justice, is deliberately betrayed in the process of enacting it — that law is not merely defective, but is denied the character of law altogether.[61] Radbruch illustrated this with the case of Puttfarken, a Nazi-era official convicted after the war for having reported a citizen to the authorities under a law that was found never to have possessed valid legal force in the first place.[11] From this post-war vantage point, Radbruch reordered his own hierarchy of values: justice was to be treated as the first priority, expediency second, and legal certainty last — reversing the deference legal certainty had been given under ordinary conditions.

Radbruch's framework provides the jurisprudential vocabulary that informs this research before it turns to its primary evaluative lens. The tension he identifies between legal certainty and justice captures, in general terms, the central concern examined in this thesis: a legal framework that satisfies the formal requirements of positive law while leaving unresolved the separate question of whether its outcomes are substantively just. His argument that legal certainty cannot be pursued indefinitely at the expense of justice therefore offers an independent, secular jurisprudential foundation for treating formal validity as a necessary, but not sufficient, condition of legitimate law. This premise converges with—rather than derives from—the contemporary *maqāṣid al-sharīʿah* framework discussed in Section 8. The specific implications of this tension for the regulation of SP2Lid are examined in Chapter IV.

[61]Radbruch, "Statutory Lawlessness and Supra-Statutory Law," 7.

Radbruch's framework identifies the tension between certainty and justice at a level of generality that applies to any legal system. Satjipto Rahardjo's theory of legal protection translates that same tension into a more concrete question: what, specifically, does a legal system owe to the individuals affected by it, both before and after a violation occurs.

6. Legal Protection Theory: Satjipto Rahardjo

Satjipto Rahardjo defines legal protection as the effort of law to secure human interests against arbitrary action, treating the ultimate purpose of law as human welfare rather than procedural regularity for its own sake.[62] He distinguishes preventive protection, meaning clear ex-ante rules, procedural safeguards, and limits on discretionary authority designed to forestall violations, from repressive protection, which operates after the fact to restore rights and provide remedies once a violation has occurred.[63]

Preventive legal protection seeks to prevent violations before they occur through the establishment of clear legal norms, legal certainty, and procedural safeguards that limit the exercise of governmental authority. By providing legal standards in advance, preventive protection aims to minimize arbitrary decision-making and ensure that public power is exercised within the framework established by law.

Repressive legal protection, on the other hand, functions after a legal violation has occurred. It provides legal remedies through judicial or other

[62]Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006), 53, 121.
[63]Rahardjo, *Ilmu Hukum* (2006), 121–23.

authorized dispute-resolution mechanisms to restore violated rights and ensure that individuals obtain legal redress. Rahardjo explains that preventive and repressive legal protection are complementary, as preventive safeguards cannot eliminate every potential violation, while repressive remedies serve to restore justice whenever preventive measures prove insufficient.

Rahardjo's later work on hukum progresif (progressive law) argues that law exists to serve human beings rather than the reverse, and that mechanical adherence to the literal text of a provision should give way, where it produces manifest injustice, to an interpretation oriented toward substantive social outcomes.[3]

According to Rahardjo, the primary objective of progressive law is not merely to preserve legal formalism but to realize justice, humanity, and public welfare. Consequently, legal interpretation should consider the broader purposes and social functions of law rather than relying exclusively on literal statutory language.[4] Progressive law therefore views legal development as a dynamic process that responds to the evolving needs of society while remaining committed to the realization of substantive justice.

Rahardjo's distinction between preventive and repressive protection assumes that the institution administering the law is itself a neutral vehicle for delivering that protection. Brian Z. Tamanaha's account of legal instrumentalism questions that assumption directly, asking what happens to legal protection when the institution applying the law has an interest of its own in how a case is resolved.

7. Theory of Interest Protection: Brian Z. Tamanaha

In Law as a Means to an End: Threat to the Rule of Law, Tamanaha argues that once law is habitually understood and used purely as an instrument for achieving the ends of whoever controls it, it progressively loses the independent, constraining character that the rule of law requires, because a purely instrumental view of law provides no internal basis for evaluating whose ends the law should serve.[64]

According to Tamanaha, although law inevitably functions as an instrument for achieving social objectives, the rule of law requires that legal norms remain capable of constraining the exercise of public authority. Law should therefore not merely facilitate institutional interests but also provide objective standards that ensure accountability, predictability, and equal application of legal norms. External oversight and institutional accountability are accordingly regarded as important elements in preserving the integrity of the rule of law.

Tamanaha further distinguishes the rule of law, under which official power is constrained by norms applying generally and predictably, from rule by law or rule of man, under which legal form persists but substantive outcomes are dictated by the unconstrained discretion of the office-holder.[7]

Under the rule of law, governmental authority is exercised within legal limitations that apply equally and predictably to all persons. By contrast, rule by law describes circumstances in which legal procedures formally exist but fail to provide meaningful constraints on governmental discretion. Tamanaha emphasizes

[64]Brian Z. Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge: Cambridge University Press, 2006), 1–8, 246–48.

that this distinction concerns institutional design rather than the personal integrity of individual officials.[65] The existence of independent accountability mechanisms is therefore an essential characteristic of a legal system committed to the principles of the rule of law.

Radbruch, Rahardjo, and Tamanaha together supply the jurisprudential standards against which a legal mechanism such as SP2Lid can be evaluated: certainty against justice, preventive against repressive protection, and institutional constraint against institutional capture. The remainder of this chapter turns to the framework through which these standards are actually applied to SP2Lid in Chapters III and IV: Jasser Auda's contemporary maqāṣid al-sharī'ah.

8. Contemporary Maqasid al-Shari'ah: Jasser Auda

a. Definition and Historical Development

1) The Classical Period: al-Juwayni, al-Ghazali, and al-Shatibi

The concept of maqasid al-shari'ah, the objectives underlying Islamic legal rulings, developed within classical usul al-fiqh as a corrective to purely literal interpretation. Imam al-Haramayn al-Juwayni introduced an early ranking of necessities (maratib al-daruriyyat) that anticipated later systematisation.[66] Abu Hamid al-Ghazali, in al-Mustasfa min 'Ilm al-Usul, formulated the five essential protections (al-daruriyyat al-khams): religion (din), life (nafs), intellect ('aql),

[65]Tamanaha, *Law as a Means to an End*, 91–101.

[66]Al-Juwayni's contribution is discussed in Ahmad al-Raysuni, *Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, trans. Nancy Roberts (Herndon: International Institute of Islamic Thought, 2005), 13–15.

lineage (nasl), and property (mal).[67] Abu Ishaq al-Shatibi later organised these interests into three tiers, daruriyyat (essentials), hajiyyat (complementary needs), and tahsiniyyat (refinements), in al-Muwafaqat fi Usul al-Shari'ah, which remains the classical reference point for maqasid theory.[68] Throughout this period, maqasid remained a subsidiary tool within usul al-fiqh rather than an independent discipline.

2) The Modern Period: Ibn Ashur and the Emergence of Contemporary Maqasid

Muhammad al-Tahir Ibn Ashur argued, in Maqasid al-Shari'ah al-Islamiyyah, that maqasid should stand as an independent discipline capable of guiding legislation directly, rather than functioning only as an interpretive aid within usul al-fiqh.[69] Later twentieth-century reformist scholarship extended the discourse toward human rights, social reform, and public welfare, broadening the classical emphasis on protection (hifz) of fixed categories toward an emphasis on development (tanmiyah) and empowerment as legitimate objectives of Islamic law in their own right.[70]

b. Jasser Auda's Systems Approach

Auda's Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach criticises classical treatments of maqasid as an atomistic list of separate

[67]Abu Hamid al-Ghazali, *al-Mustasfa min 'Ilm al-Usul* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1993 edn), vol. 1, 174–75 (on the five daruriyyat).

[68]Abu Ishaq al-Shatibi, *al-Muwafaqat fi Usul al-Shari'ah* (Cairo: Dar Ibn 'Affan, 1997 edn), vol. 2, 17–25; see also al-Raysuni, *Imam al-Shatibi's Theory*, chs. 3–4.

[69]Muhammad al-Tahir Ibn Ashur, *Maqasid al-Shari'ah al-Islamiyyah*, trans. Mohamed El-Tahir El-Mesawi (London/Washington: International Institute of Islamic Thought, 2006), 1–15, 89–97.

[70]On this reorientation, see Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London/Washington: International Institute of Islamic Thought, 2008), 1–10.

objectives, and proposes instead that Islamic law be analysed as an interconnected system, evaluated by six features: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness.[71]

Auda's own intellectual trajectory is not incidental to the argument he makes. He trained first in classical Islamic law, completing a doctorate in the philosophy of Islamic law at the University of Wales, and then completed a second doctorate, this time in systems analysis and design, at the University of Waterloo in Canada.[72] It is this dual formation — one foot in usul al-fiqh, the other in systems theory, a field ordinarily associated with engineering rather than jurisprudence — that several Indonesian commentators point to as the key to understanding why Auda borrows the vocabulary of systems theory to re-read maqasid in the first place.[73] Read this way, the systems approach is less an imported foreign framework grafted onto Islamic law than a bridge Auda himself is, biographically, positioned to build.

The immediate trigger for the project is also worth stating plainly, because it explains why Auda insists on methodological reconstruction rather than simply adding new rulings to existing fiqh. Fasa situates the systems approach within Auda's broader unease at the Muslim world's difficulty responding to modern conditions — weak political participation, stalled democratisation, underdeveloped economic and educational systems, and the growing prominence of exclusivist

[71]Auda, *Maqasid al-Shariah*, 45–55 (outlining the six features of the systems approach).

[72] Jasser Auda, "Biography," Dr. Jasser Auda (official website), accessed August 6, 2026, https://www.jasserauda.net/biography/?lang=en.

[73]Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem dalam Hukum Islam)," *Jurnal Al-Himayah* 2, no. 1 (2018): 97–118.

religious currents — a gap made sharper by the contrast between the resource wealth of many Muslim-majority states and their comparatively poor record on gender equality and women's political participation.[74] The question this gap raises is not trivial: if the shari'ah is meant to supply a solution to every condition of human life, why do existing fiqh rulings so often fail to answer contemporary problems convincingly? Auda's answer is that the deficiency lies not in the shari'ah itself but in the methodology — usul al-fiqh — through which fiqh is produced, and it is this methodology, not the substantive rulings themselves, that his systems approach sets out to reconstruct.[75]

Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach accordingly proposes six features against which a legal system, or a piece of legal reasoning, can be evaluated: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness.[76] Cognitive nature insists that what is commonly called "Islamic law" is in fact fiqh — a jurist's understanding of the text, not the text itself — and is therefore always coloured by the jurist's own knowledge, ideology, and historical position, which is why Auda treats even canonical fiqh conclusions as open to re-examination rather than as coextensive with the shari'ah.[77] Wholeness requires that legal reasoning be read against the shari'ah's general principles — justice, mercy, freedom — as a totality rather than

[74]Muhammad Iqbal Fasa, "Reformasi Pemahaman Teori Maqasid Syariah (Analisis Pendekatan Sistem Jasser Audah)," Hunafa: *Jurnal Studia Islamika* 13, no. 2 (2016): 218–46, https://doi.org/10.24239/jsi.v13i2.438.218-246.

[75]Fasa, "Reformasi Pemahaman Teori Maqasid Syariah."

[76]Auda, *Maqasid al-Shariah*, 45.

[77]Auda, *Maqasid al-Shariah*, 45–46; Syarifuddin, "Maqashid Syari'ah Jasser Auda: Sebuah Sistem Pendekatan dalam Hukum Islam Kontemporer," Al-Mizan (e-journal) 17, no. 1 (2021): 27–42, discussing the cognitive-nature feature and Auda's distinction between fiqh as human understanding and shari'ah as fixed text.

provision by provision; Auda grounds this move in Ibn Qayyim al-Jawziyyah's own statement, in I'lam al-Muwaqqi'in, that any ruling departing from justice and mercy has, by that fact, departed from the shari'ah, which situates the holistic move inside the classical tradition rather than outside it.[78] Openness holds that a legal system cannot treat any human understanding as final, and must therefore remain receptive to other disciplines — philosophy, history, sociology — in the process of interpretation, with a corresponding shift in emphasis from the literal wording of a text toward the purposes lying behind it.[79] Interrelated hierarchy ties legal understanding to its surrounding social, ideological, and economic structure, so that fiqh cannot be adequately read in isolation from the social sciences. Multidimensionality pushes back against the binary halal/haram, sunnah/bid'ah habits of classical reasoning in favour of a more layered reading of legal reality. Purposefulness, which Auda treats as the most central of the six, insists that the maqasid themselves — not the literal text — should orient every act of ijtihad, a feature the secondary literature repeatedly singles out as best equipped to handle problems classical fiqh never anticipated.[80]

On this methodological basis, Auda goes on to re-read the five classical daruriyyat themselves, arguing that al-Ghazali's formulation, however

[78]Auda, *Maqasid al-Shariah*, 20, citing Ibn Qayyim al-Jawziyyah, I'lam al-Muwaqqi'in, on the shari'ah's grounding in wisdom (hikmah) and human welfare (maslahah).

[79]Auda, *Maqasid al-Shariah*, 30–35; Maulidi, "Maqasid Syariah sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda," Al-Mazaahib: *Jurnal Perbandingan Hukum* 7, no. 1 (2022): 113–132, https://doi.org/10.14421/al-mazaahib.v7i1.2860, on openness as receptiveness to other disciplines in the interpretive process.

[80]Ita Musarrofa and Husnul Muttaqin, "Maqasid Sharia Jasser Auda Theory: Systems Approach to Islamic Family Law in the Digital Era," Al-Hurriyah: *Jurnal Hukum Islam* 9, no. 2 (2024): 194–208, https://doi.org/10.30983/al-hurriyah.v9i2.8979, identifying purposefulness as the feature best equipped to address problems unanticipated by classical fiqh.

foundational, remains too individualistic to answer today's global concerns.[81] Din is elaborated into freedom of religion; nafs into human rights protection more broadly; 'aql, classically limited to a prohibition on intoxication, into the cultivation of scientific inquiry; nasl into family protection inclusive of protection from domestic and child abuse; and mal into a broader social-economic solidarity, understood as a collective duty toward the disadvantaged.[82] Several commentators are careful to describe this move as contextualisation rather than substitution — Auda is not discarding the five daruriyyat, but translating them into the register of contemporary global concerns, a pattern that recurs when the framework is applied to specific problems such as digital-era family law or multidisciplinary Islamic education.[83]

c. Narrowing the Framework: Why This Study Uses Only Three of Auda's Six Dimensions

The six features summarised above are best understood as a general diagnostic toolkit Auda offers for reading Islamic law as a whole, not as six criteria that must all be applied, with equal weight, to any single legal problem examined through his framework. Three of them — cognitive nature, interrelated hierarchy, and multidimensionality — operate mainly at the level of how fiqh itself should be produced and read; they are arguments about method, addressed primarily to the

[81]Auda, *Maqasid al-Shariah*, 179; Maulidi, "Maqasid Syariah sebagai Filsafat Hukum Islam."

[82]Auda, *Maqasid al-Shariah*, 236–50; Saddam Askara, "Maqasid Syariah sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda," Journal Review of Islamic and Social Studies 1, no. 1 (2025): 29–36.

[83]Musarrofa and Muttaqin, "Maqasid Sharia Jasser Auda Theory"; Siti Mutholingah and Muh Rodhi Zamzami, "Relevansi Pemikiran Maqashid Al-Syariah Jasser Auda terhadap Sistem Pendidikan Islam Multidisipliner," TA'LIMUNA: *Jurnal Pendidikan Islam* 7, no. 2 (2018): 90–111, https://doi.org/10.32478/talimuna.v7i2.183.

jurist doing ijtihad, and they do not translate easily into a criterion for evaluating a specific, already-existing institutional mechanism such as SP2Lid. Wholeness, similarly, functions chiefly as a general interpretive posture — read the parts against the whole — rather than as a test a discrete mechanism can be shown to pass or fail.

What this research needs instead is a set of criteria capable of evaluating something narrower and more concrete: whether one specific procedural mechanism, the termination of a preliminary inquiry, meets the standard of a legitimate legal system in Auda's sense. Of the six systemic features, openness is the one that speaks directly to this kind of question, since it concerns precisely whether a decision-making process remains receptive to external scrutiny rather than closing in on itself.[84] Alongside openness, this research also draws on two further elements from Auda's broader discussion of maqasid's higher objectives rather than from the six systemic features themselves: his treatment of 'adl as an overarching maqsad that is not satisfied by formal recognition alone but requires genuine accessibility for those affected,[85] and the principle of jalb al-masālih wa dar' al-mafasid, which Auda carries through his reformulation of the five daruriyyat and which extends, on his reading, beyond individual morality into the design of institutions and social structures.[86] These three — ḥifẓ al-'adl, system openness, and jalb al-maṣāliḥ — are accordingly the dimensions this research adopts as its analytical framework in Chapters III and IV, not because the remaining three

[84]Auda, *Maqasid al-Shariah*, 201-206

[85]Auda, *Maqasid al-Shariah*, 244-48, discussing justice ('adl) as an overarching maqsad of the legal system and distinguishing formal from substantive attainment of that objective.

[86]On jalb al-masalih wa dar' al-mafasid as a governing principle extending beyond individual morality into institutional and social welfare, see Auda, *Maqasid al-Shariah*, 179.

features of Auda's systems approach are unimportant, but because they answer questions this thesis is not asking. The question this thesis is asking is a narrower one: does a specific procedural mechanism, evaluated against justice, openness, and public welfare, meet the standard Auda sets for a legitimate legal system — and it is that narrower question the three selected dimensions are built to answer.

CHAPTER III

RESEARCH METHOD

A. Data Sources

This research relies on library research as its primary technique for collecting legal materials, consisting of primary, secondary, and tertiary legal materials. According to Abdulkadir Muhammad, library research is the study of written legal materials originating from various published sources and is commonly used in normative legal research.[87] This method is appropriate because the issue of SP2Lid is basically a normative problem. The main question is not about statistics or field behavior, but whether the law adequately regulates the termination of *penyelidikan* and whether victims receive sufficient legal protection.

The legal materials in this research are divided into three categories. First, primary legal materials. These include Law Number 8 of 1981 concerning the former KUHAP, Law Number 20 of 2025 concerning the new KUHAP, Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Circular Letter of the Chief of Police SE/7/VII/2018, Police Regulation Number 6 of 2019, and several relevant provisions within the Dutch *Wetboek van Strafvordering* (WvSv), especially Article 51ac and Article 12, as contained in the text of the WvSv applicable on 28 January 2014. In addition to these statutory materials and judicial decisions, this research also uses documentary legal materials related to the case of LP/6943/X/2019/PMJ/Dit.Reskrimum, consisting of the Civil Lawsuit filed by

[87]Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, 3rd printing (Bandung: Citra Aditya Bakti, 2004), 81.

Zainul Karim and the Letter of Objection Against the Termination of Preliminary Inquiry dated 17 September 2021, submitted by his legal counsel to the Bekasi Metro Police. These documents are not used to prove what actually happened in the case, but rather to show the legal arguments the reporting party raised regarding the issuance of SP2Lid and the remedies available to him.

This research also uses a semi-structured interview conducted via Zoom on 25 July 2026 with Dr. Lucky Omega Hasan, S.H., M.H., legal counsel to H. Zainul Karim, S.H., mainly to find out what happened after the objection letter was submitted and why the process did not continue further. This interview is not used as a case approach, since the termination in this case never reached inkracht van gewijsde and so cannot be treated as a court decision in the way a case approach normally requires. Instead, the interview simply supports the chronology already shown by the documents above, and, more importantly, reflects a concern raised by legal practitioners that the same problem could still happen again under the new KUHAP. This use of an interview does not change the normative nature of the research; it only reinforces the documentary data that has already been presented.

Second, secondary legal materials, consisting of books, journal articles, previous research, and legal doctrines related to criminal procedure law, victims' rights, and *maqāṣid al-sharī'ah*. This research particularly uses the thoughts of Jasser Auda, Satjipto Rahardjo, and Brian Z. Tamanaha.

Third, tertiary legal materials such as legal dictionaries, encyclopedias, and online legal databases. These materials are mainly used to clarify concepts and legal terminology.

Library research is considered the most suitable technique for this study, given that the core issue of SP2Lid concerns the normative relationship between statutory gaps, institutional authority, and victims' rights, all of which are primarily addressed through the study of legal texts and doctrine.

B. Type of Research and Approach

This research is normative juridical research. In simple terms, the research focuses on positive law: what is regulated, what is not regulated, and what problems emerge from that absence. Khudzaifah Dimyati explains that normative legal research emphasizes the analysis of legislation related to the legal issue being studied.[88] Meanwhile, Soerjono Soekanto and Sri Mahmudji explain that normative legal research may include analysis of legal principles, legal systematics, legal synchronization, comparative law, and legal history.[89] All of these aspects are relevant in this study.

This research also uses a qualitative approach. According to Sedarmayanti and Syarifudin Hidayat, qualitative research emphasizes interpretation and understanding rather than numerical measurement.[90] This fits the research well because the issue here is not how many SP2Lid decisions exist, but whether the mechanism itself normatively protects victims.

[88]Khudzaifah Dimyati, *Metodologi Penelitian Hukum*, Buku Pegangan Kuliah, Sekolah Pascasarjana Program Magister Ilmu Hukum, Universitas Muhammadiyah Surakarta, 2016, 3–11.

[89]Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003), 14.

[90]Sedarmayanti and Syarifudin Hidayat, *Metodologi Penelitian* (Bandung: Mandar Maju, 2011), 23.

The analysis uses deductive reasoning. General principles of criminal procedure law and legal theory are used first, then applied to the more specific issue of SP2Lid and victims' rights.

To strengthen the analysis, this research uses three approaches.

First, the statute approach. This approach examines all relevant regulations, from the old KUHAP to the new KUHAP, including police circular letters and police regulations. The goal is to identify the normative gap between Article 19 and Article 158 letter b.

Second, the conceptual approach. This research uses three theoretical frameworks: Legal Protection Theory from Satjipto Rahardjo, Interest Protection Theory from Brian Z. Tamanaha, and contemporary *maqāṣid al-sharī'ah* from Jasser Auda. Particularly the dimensions of *ḥifẓ al-'adl*, openness of the legal system, and *jalb al-maṣāliḥ*. These theories are not used separately, but complement each other in evaluating the SP2Lid mechanism.

Third, the comparative approach. The research compares Indonesian law with the Dutch legal system, especially the *beklag* procedure under Article 12 WvSv and victim notification under Article 51ac WvSv. The Netherlands was not chosen randomly. Indonesian criminal procedure law historically developed from the Dutch WvSv, so the comparison is historically relevant.

This comparison highlights a structural irony: the legal system that historically shaped Indonesian criminal procedure law now provides considerably stronger procedural protection for victims than the system it originally influenced.

C. Data Selection

Not all legal materials are used in this research. The selection process focuses only on materials directly relevant to the main issue, namely the normative gap between Article 19 and Article 158 letter b of the new KUHAP and its implications for victims' rights.

In general, legal materials are selected if they discuss SP2Lid, *penyelidikan*, victims' rights, judicial review mechanisms, or theories relevant to legal protection and public interest protection. Dutch legal materials are also selected carefully, especially those specifically related to victim protection during the preliminary inquiry stage.

Legal materials concerning contemporary maqāṣid al-sharī'ah are selected specifically insofar as they elaborate Jasser Auda's systems-based framework, particularly the dimensions of ḥifẓ al-'adl, system openness, and jalb al-maṣāliḥ, to ensure conceptual consistency with the theoretical framework established in Chapter II. Materials are further prioritized based on their authoritative weight and currency: statutory and judicial sources are given primary weight, while academic literature is selected on the basis of its direct relevance and recency in relation to the issues examined.This selection process is necessary to maintain analytical focus, given the breadth of doctrines and regulations potentially relevant to the issue of SP2Lid.

D. Data Analysis Techniques

The legal materials in this research are analyzed qualitatively. Abdulkadir Muhammad explains qualitative analysis as the process of describing legal materials systematically, logically, and selectively so that interpretation becomes easier.[91] This method is suitable because the research mainly deals with interpretation of legal norms rather than statistical measurement.

The analysis is conducted through three stages.

First, legal materials reduction. Legal materials are selected and narrowed down to those directly related to SP2Lid and victims' rights. Materials considered too general or unrelated are excluded.

Second, legal materials presentation. Relevant regulations, legal doctrines, court considerations, and comparative legal materials are organized systematically so that the relationship between legal norms and practical problems becomes clearer.

Third, conclusion drawing through deductive reasoning. General principles of criminal procedure law and legal theory are applied to arrive at specific conclusions regarding the weaknesses of the current SP2Lid mechanism.

Normatively, the analysis refers to KUHAP and criminal procedure doctrines. Meanwhile, for evaluative analysis, this research uses the contemporary *maqāṣid al-sharī'ah* approach of Jasser Auda, especially the dimensions of *ḥifẓ al-'adl*, openness of the legal system, and *jalb al-maṣāliḥ*. Through this approach, the

[91]Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, 127.

research does not stop at asking whether SP2Lid is formally legal. It also asks whether the mechanism truly reflects substantive justice and public welfare.

This combination is essential, since a legal mechanism may appear formally valid on paper while still failing to provide meaningful protection in practice — precisely the issue this research seeks to examine.

CHAPTER IV

RESULTS AND DISCUSSION

A. The Legal Position of SP2Lid Within Indonesia's Criminal Procedure System: From Normative Vacuum to Incomplete Reform

1. SP2Lid Under the Old KUHAP: The Absence of Statutory Legitimacy

a. The Rechtsvacuum in the Termination of Preliminary Inquiry

The former KUHAP defined *penyelidikan* but did not regulate its termination. Article 1(5) explained what preliminary inquiry is, but the statute contained no provision addressing what should happen, procedurally, when investigators decided not to escalate a case to *penyidikan*.[92] This gap, a fully regulated termination mechanism for *penyidikan* and none for *penyelidikan*, can be described, using the terminology of continental legal-gap scholarship, as a rechtsvacuum: a situation where the law recognises a stage of the process but does not regulate a legally consequential aspect of it.[93] Police practice filled this vacuum through an internal instrument, Surat Perintah Penghentian *Penyelidikan* (SP2Lid), which had no direct statutory basis and derived its legitimacy from internal administrative practice alone. An instrument of this kind can regulate how the police exercise an authority they already possess, but it cannot, by itself, create an obligation owed to a third party outside the institution that issued it — and a victim's

[92]Law No. 8 of 1981, art. 1(5), read against the absence of any provision comparable to art. 109(2) governing termination of penyelidikan.

[93]On the concept of a normative vacuum (rechtsvacuum) as a distinct category from mere legislative silence, see Jan M. Smits, *The Mind and Method of the Legal Academic* (Cheltenham: Edward Elgar, 2012), ch. 4, discussing gap-filling as a task of legal science; and, in the Indonesian doctrinal literature, Rahardjo, *Ilmu Hukum* (2006), 96–98.

right to be heard, or to contest a decision, is precisely such an obligation. Because SP2Lid rested on internal practice rather than legislation, it could at most generate a duty of notification internal to police administration; it could not generate a right of the complainant capable of being enforced against the state. This is what should be understood by the weakness of SP2Lid's accountability structure at this stage: not merely that it lacked a statutory label, but that its non-statutory origin left it structurally incapable of producing the kind of protection Rahardjo later distinguishes, in Section B below, as preventive rather than merely repressive.[94]

b. The Constitutional Court's Jurisprudence: Decisions No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021

The normative vacuum eventually gave rise to constitutional litigation. Because Article 77 of the former KUHAP limited pre-trial review to the termination of investigations and prosecutions, petitioners asked the Constitutional Court whether excluding termination of preliminary inquiries from that list was compatible with the constitutional guarantees of equality before the law and legal certainty. Decisions No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021, separated by roughly two years, became the Court's principal statements on the issue, and both reached the same conclusion.

The petitioners asked the Court to declare termination of *penyelidikan* an object of pre-trial review, arguing that leaving it outside judicial reach placed the decision entirely in police hands. The Court rejected the petition. Its ratio decidendi

[94]Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi* (Surabaya: Peradaban, 2007), 130.

rested on the distinction between *penyelidikan* and *penyidikan* as separate stages of the criminal process: *penyelidikan* is a preliminary, exploratory phase meant only to determine whether an event is a criminal offence and whether it merits escalation, not yet, in the Court's own words, a pro justitia act, whereas *penyidikan* is the stage at which the state acquires statutory authority to use coercive measures, dwangmiddelen, such as arrest, detention, search, and seizure. Because pre-trial review under KUHAP 1981 was built to check coercive power, consistent with Tim Mann's account of pre-trial hearings as an institution designed to protect suspects from the coercive reach of the police and prosecution,[95] the Court reasoned that extending it to a stage where no coercive power exists would be a category error, and the petition was refused on that basis.

This reasoning is broadly consistent with the legislative design of KUHAP described by Fachrizal Afandi, who explains that pre-trial review was originally conceived as a limited mechanism for controlling coercive measures rather than supervising every procedural decision.[96] What the Court did not seriously consider is that closing a case at the Inquiry stage may itself be a final, irreversible denial of access to justice for the complainant, regardless of whether anyone was ever arrested or detained.

[95]Tim Mann, "Pretrial Hearings: Safeguarding Human Rights or a Gift to Corruptors?," in *Crime and Punishment in Indonesia*, ed. Tim Lindsey and Helen Pausacker (Abingdon: Routledge, 2020), https://www.taylorfrancis.com/books/edit/10.4324/9780429455247/crime-punishment-indonesia-tim-lindsey-helen-pausacker; see also Republic of Indonesia, Law No. 8 of 1981 on Criminal Procedure (KUHAP), ch. X, https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-acara-pidana/download.

[96]Fachrizal Afandi, "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia" (PhD diss., Universiteit Leiden, 2021), 152, 172–73.

The second case arose from the East Luwu controversy, where termination of an Inquiry into alleged sexual violence against three children left the complainants with no forum to contest the decision. Komnas Perempuan had already issued a public statement urging the police to reopen the case, and LBH Makassar had criticised the termination on similar grounds. The petitioners raised the same constitutional argument as in 2019. The Court reaffirmed its earlier reasoning and again refused to extend pre-trial jurisdiction to Inquiry terminations,[97] rejecting the petition on the same doctrinal footing despite the considerably harder facts. In practice this left victims dependent on the internal *gelar perkara* mechanism under Police Regulation No. 6 of 2019, which, as Jessica, Wiratama, and Sirait illustrate in their study of case screening at the North Sumatra Regional Police, is an investigator-led forum whose recommendations are carried out administratively, with complainant participation depending on police discretion rather than any enforceable right.[98]

The two decisions show less doctrinal development than plain repetition. Decision No. 53/PUU-XIX/2021 does not refine the 2019 reasoning; it restates it, notwithstanding a factual record that was, if anything, more sympathetic to the petitioners. This suggests the coercive-measures rationale functions in the Court's jurisprudence as something closer to a fixed rule than a standard sensitive to the equities of a given case.

[97]Constitutional Court of the Republic of Indonesia, Decision Number 53/PUU-XIX/2021.
[98]Jessica, Wiratama, and Sirait, "Gelar perkara dalam Proses Penyelidikan," 678.

That consistency sits uneasily with The Court's own posture in Decision No. 21/PUU-XII/2014 is worth flagging here, and returned to at greater length in Section B.2: there, it expanded pre-trial competence to cover suspect designation, search, and seizure, none of which was expressly listed in Article 77, because those acts substantially affected fundamental rights.[99]

The practical effect is that this jurisprudence constitutionally entrenches the gap discussed earlier. By refusing, twice, to bring termination of *penyelidikan* within pre-trial competence, the Court confirmed that SP2Lid could keep operating as an internal administrative instrument, accountable only through mechanisms such as *gelar perkara*, never tested before a court. Although the Court associates coercion with physical restrictions on liberty or property, terminating an inquiry may equally deny complainants any realistic opportunity to pursue justice. The Court's reasoning does not fully address this consequence. Decisions No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021 close the door on reform through judicial reinterpretation, at least for as long as the Court holds to this reasoning, and shift the burden squarely onto the legislature.

2. Administrative Responses and Their Normative Limitations

a. Chief of Police Circular Letter SE/7/VII/2018: An Internal Solution to a Statutory Problem

Before the new KUHAP was enacted, terminating a preliminary inquiry through SP2Lid had no clear legal basis under Law No. 8 of 1981 on Criminal

[99]Constitutional Court of the Republic of Indonesia, Decision Number 21/PUU-XII/2014.

Procedure.[100] The Indonesian National Police addressed this gap through Chief of Police Circular Letter No. SE/7/VII/2018, which set out the grounds for termination, the administrative procedure investigators were to follow, and an obligation to record reasons and notify the complainant.

What a circular letter of this kind can and cannot do follows directly from its character as what Bagir Manan terms a peraturan kebijakan (policy rule, or beleidsregel) rather than a source of law recognized under Article 7 of Law No. 12 of 2011 — a point developed further below. According to Bagir Manan, an instrument of this kind does not directly bind as law; its binding force extends only to the administrative body or official that issued it, even where its substance inevitably touches the interests of parties outside that body.[101] Because it binds only within the institution that issued it, SE/7/VII/2018 could standardize how investigators exercised a discretion the old KUHAP had already left to them; it could not enlarge that discretion into anything resembling a statutory power, and it could not attach to it any obligation running toward the complainant that the complainant could invoke outside the police institution itself. The notification duty the Circular imposed illustrates this limit precisely: it obliged an investigator to inform a complainant, but it created no corresponding entitlement the complainant could enforce if that obligation were ignored, since an internal instrument cannot be the source of a right held against the institution that wrote it. In this sense, the Circular did not so much fill the rechtsvacuum identified in Sub-section 1.a as

[100]Fujiyanto, Rosadi, and Faniyah, "The Urgence of Investigation Termination Orders (SP2Lid)," 130.

[101]Bagir Manan and Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*, rev. ed. (Bandung: Alumni, 1997), 11.

manage it administratively — it gave investigators a uniform procedure to follow, without ever curing the absence of a legislative basis that made judicial review of the termination decision possible in the first place. That distinction between administrative management of a gap and its normative closure is what separates SE/7/VII/2018 from Article 19 of the new KUHAP, discussed in Section A.3 below.[102]

b. Article 9 Paragraph (3) of Perkap No. 6 of 2019: Internal Review Without Judicial Independence

The administrative framework built by the Circular was later reinforced through Police Regulation No. 6 of 2019 on Criminal Investigation Management. One of its key provisions—arguably the most important one—is Article 9 paragraph (3), which requires investigators to hold a *gelar perkara* (case exposition) before deciding to terminate a preliminary inquiry.[103][104] The Regulation also governs how the results of the preliminary inquiry are evaluated, how the evidence at that stage is assessed, and how the complainant is notified once the decision is made.

Compared with the earlier Circular, Police Regulation No. 6 of 2019 does offer a more detailed procedural framework. Requiring a *gelar perkara* means the decision to terminate an inquiry no longer rests on one investigator's judgment alone; the matter is discussed internally before anything becomes final.

[102]Wafa Yusdheaputra, "Kedudukan Surat Edaran Menteri dalam Hierarki Peraturan Perundang-undangan," Jurist-Diction 6, no. 1 (2023): 191–214, https://doi.org/10.20473/jd.v6i1.43557.

[103]Setiawan, Firdaus, and Lastfitriani, "Tinjauan Yuridis Penghentian Penyidikan," 1150.

[104]Lestari, "Pelaksanaan Gelar perkara pada Tahap Penyidikan," 120.

c. The Hierarchical Weakness of Administrative Instruments Under Law No. 12 of 2011

The limitations of the Chief of Police Circular Letter and Police Regulation No. 6 of 2019 don't stop at the review mechanism. There's another issue: their legal standing within Indonesia's hierarchy of legislation. Article 7 of Law No. 12 of 2011 on the Formation of Laws and Regulations sets out the formal hierarchy—starting from the 1945 Constitution, statutes, government regulations in lieu of statutes, government regulations, presidential regulations, down to provincial and regency/municipal regulations.[105] Neither the Circular Letter nor the Police Regulation appears anywhere in that list.

The Article 8 of Law No. 12 of 2011 recognises regulations issued by state institutions, but that recognition doesn't place them on equal footing with the legislation listed under Article 7. Their binding force depends on authority granted by higher-level legislation, and it only applies within the institutional scope of whoever issued it. So the Circular and the Police Regulation are better understood as internal administrative instruments, not generally binding legislation. They can regulate how the police exercise powers already granted by law, but they can't independently create, restrict, or take away the legal rights and remedies available to the public.

This distinction becomes particularly significant for SP2Lid. Before Article 19 of the new KUHAP came into force, the legal basis for terminating a preliminary

[105]Law No. 12 of 2011 on the Formation of Laws and Regulations, art. 7(1), as amended by Law No. 13 of 2022.

inquiry rested entirely on the kind of internal administrative instruments discussed above — instruments capable of guiding investigators but structurally incapable, for the reasons already given, of generating an enforceable right for the complainant or a jurisdictional basis for judicial review. The enactment of Article 19 changes only one half of that equation. It relocates the power to terminate *penyelidikan* from the level of internal police regulation to the level of statute, and in doing so satisfies the first condition this chapter has identified as missing: a basis in legislation enacted by Parliament, rather than in an instrument binding only within the police hierarchy. What Article 19 does not do is supply the second condition — a mechanism through which that statutory power can be tested before an independent forum. The vacuum described in Sub-section 1.a is accordingly not closed by the new KUHAP so much as relocated: what was once an absence of any legal basis for SP2Lid becomes, after Article 19, the presence of a legal basis without a corresponding avenue of review. This is the precise sense in which the reform discussed in Section A.3 below is incomplete rather than absent, and it is this narrower, more exact gap — not the broader rechtsvacuum of the old KUHAP — that the remainder of this chapter examines.

3. SP2Lid Under the New KUHAP: Formal Recognition Without Substantive Protection

a. Article 19 of Law No. 20 of 2025: A Step Forward

Article 19 of the new KUHAP closes the vacuum described above, though on terms that need to be stated carefully. Article 19(1) requires the penyidik, not the

penyelidik, to hold a case-exposition session (*gelar perkara*) on the results of *penyelidikan* in order to determine whether the reported event constitutes a criminal offence. Article 19(3) then provides that where the penyidik determines the event is not a criminal offence, the penyidik terminates *penyelidikan*.[106] SP2Lid now has an express statutory foundation, but it is worth being precise about which official actually makes the decision, since that affects whose conduct would, in principle, be the subject of any future judicial review.

This precision matters beyond mere formality: were pretrial review ever extended to cover termination of *penyelidikan* — whether by legislative amendment or, following the pattern of Decision No. 21/PUU-XII/2014 discussed in Sub-section 1.b, by constitutional reinterpretation — the respondent in such a proceeding would necessarily be the penyidik rather than the penyelidik who conducted the underlying inquiry. Article 19's allocation of the termination decision to the penyidik therefore already supplies, in advance, the institutional anchor such a remedy would require; what remains missing is not clarity about who would answer for the decision, but the statutory provision authorizing anyone to ask.

This is a real improvement in formal legality: the decision to terminate *penyelidikan* is no longer based solely on internal police regulation, but is now grounded in primary legislation enacted by the House of Representatives and the President.[107] What Article 19 does not do, however, is attach to that decision any of

[106]Law No. 20 of 2025, art. 19(1) and art. 19(3). Note that decision-making authority under art. 19 is vested in the Penyidik, on the basis of the Penyelidik's investigative report under art. 18, rather than being exercised by the Penyelidik directly.

[107]Law No. 20 of 2025, Preamble paras. (b)–(d), and closing formula ("Dengan Persetujuan Bersama Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia").

the notification, review, or remedial safeguards that Article 24 attaches to termination of *penyidikan*. The reform therefore addresses the existence of the power while leaving its exercise largely unconstrained, a distinction that becomes central once the discussion turns, in Section B.4, to Rahardjo's separation of preventive from repressive protection.

b. The Normative Paradox: Article 19 vs. Article 158 Letter b

The imbalance becomes explicit once Article 19 is read together with Articles 158 and 161. Article 158(b) of the new KUHAP limits the pretrial object of "legality of termination" to termination of *penyidikan* or of prosecution; termination of *penyelidikan* does not appear among the six objects of *praperadilan* listed in Article 158.[108] Article 161 likewise limits standing to challenge a termination decision to victims, complainants, or their legal counsel challenging termination of *penyidikan* or prosecution specifically.[109] The result is that a victim whose report is closed by SP2Lid has, on the face of the statute, no equivalent avenue. The very case-exposition decision that Article 19 now authorises falls outside the oversight mechanism that Articles 158 and 161 provide for its downstream counterpart. Early commentary on the expanded scope of *praperadilan* under the new KUHAP confirms that the legislature extended judicial review well beyond the 1981 baseline, to unjustified delay, to certain forms of detention

[108]Law No. 20 of 2025, art. 158(a)–(f), listing: (a) the legality of coercive measures; (b) the legality of termination of Penyidikan or Penuntutan; (c) claims for compensation and/or rehabilitation for a person whose case was terminated at the Penyidikan or Penuntutan stage; (d) seizure of objects unconnected to the offence; (e) unjustified delay in case handling; and (f) suspension of detention or of the deferral of detention.

[109]Law No. 20 of 2025, art. 161.

suspension, and to a wider category of standing, without extending it to the termination of *penyelidikan*.[110]

c. Article 144 Letter f: Passive Notification Without Meaningful Remedy

Article 144 of the new KUHAP sets out an extensive list of victims' rights, including the right to be free from prosecution for good-faith reports, the right to counsel and legal assistance, the right to receive information on the progress of the case and on the court's judgment, the right to protection, the right to restitution, the right to participate in restorative-justice mechanisms, the right to medical and psychosocial rehabilitation, and the right to make a victim-impact statement.[111] This is a considerably more developed catalogue of victim entitlements than the former KUHAP provided, and it reflects a broader international trend, seen for example in the European Union's Victims' Rights Directive, toward treating the victim as a participant in criminal proceedings rather than simply a source of evidence for the prosecution.[112] Article 144 is nonetheless a catalogue of entitlements, and the question that matters for this thesis is whether that catalogue is backed by an enforcement mechanism at the specific point where SP2Lid operates.

Among the rights listed in Article 144, the one most directly relevant to SP2Lid is the entitlement, under Article 144(f), to receive information on the

[110]See, e.g., Mahkamah Agung Republik Indonesia, "Perluasan Objek Praperadilan Pasca KUHAP Baru," MariNews (6 January 2026); DNT Lawyers, "Perluasan Objek Praperadilan dalam KUHAP Baru Tahun 2025" (12 May 2026).

[111]Law No. 20 of 2025, art. 144(a)–(y).

[112]Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, OJ L 315/57, arts. 4–6 and art. 11 (on the right to review of a decision not to prosecute).

progress of the case.[113] In access-to-justice terms this is best described as an information right rather than a participation right: it obliges the state to keep the victim informed, but it does not, by itself, entitle the victim to contest the substance of a decision once informed of it. This distinction tracks a recognised typology in victimology and procedural-justice scholarship, which separates victims' service rights (information, support, protection) from their procedural rights (participation, review, appeal).[114]

Article 144(f) belongs to the first category. Because no provision of the new KUHAP gives a victim standing to challenge a decision made under Article 19, the information right operates, in the specific context of SP2Lid, without a corresponding participatory or reviewable dimension. What this asymmetry looks like when it is not merely a provision on paper but a decision applied to an actual complainant is the subject of Sub-section 4 below, which examines how each of the gaps identified in this chapter — the absence of judicial review under Article 158, the self-contained character of the *gelar perkara* under Perkap No. 6 of 2019, and the purely informational reach of Article 144(f) — operated together in a single case.

[113]Law No. 20 of 2025, art. 144(f). Article 144(g) separately provides a right to receive information on the court's judgment, and art. 144(h) a right to information where a convicted person is released; neither of these speaks to notification of a penyelidikan-stage termination specifically.

[114]See generally Jo-Anne Wemmers, *Victims in the Criminal Justice System* (Amsterdam: Kugler Publications, 1996), ch. 1; and Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Oxford: Hart Publishing, 2008), chs. 2–3, distinguishing service-based from participatory victims' rights models.

4. The Case of H. Zainul Karim, S.H.: How the Normative Gap Operates in Practice

a. Chronology of the Case (LP/6943/X/2019/PMJ/Dit.Reskrimum)

This case began when H. Zainul Karim, S.H. filed a report with the Bekasi City Police in October 2019, registered as Laporan Polisi No. LP/6943/X/2019/PMJ/Dit.Reskrimum. The report alleged forgery of authentic deeds and the use of falsified documents, connected to three notarial deeds executed between 2001 and 2003, and named two individuals as suspects under Article 264 and/or Article 266 of the Criminal Code. The dispute traced back to a land certificate arrangement from the early 1990s, but that background is mentioned here only for context.[115] Whether the forgery allegation itself was true or false is not something this research is in a position to determine, and it is not the object of analysis here — what matters for this study is not who was right in the underlying dispute, but how the state responded, procedurally, to the report that was filed.

The *penyelidikan* proceeded for close to two years. On 16 July 2020, investigators held a confrontation session between the reporter and the reported parties. Roughly nine months later, through Surat Pemberitahuan Perkembangan Hasil *Penyelidikan* (SP2HP) No. B/1664/IV/2021/Restro Bks Kota and Surat Ketetapan No. S.TAP/152/IV/2021/Restro Bks Kota, both dated April 2021, the police terminated the *penyelidikan* on the ground of "tidak cukup bukti" (insufficient evidence). Zainul Karim has since passed away; according to his legal

[115]Interview with Lucky Omega Hasan.

counsel, his family ultimately decided not to pursue the matter further, for reasons discussed in the following sub-section.

The point of setting out this chronology is not to establish who was right about the land dispute, but to show the procedural shape of the case: a report that led to nearly two years of *penyelidikan*, including a formal confrontation session between the parties, and that ended in termination without the case ever being tested before anyone outside the investigating institution itself. It is this procedural pattern — not the underlying land dispute — that the remainder of this sub-chapter examines

b. The Exhaustion of Internal Remedies Under Article 9 Perkap No. 6 of 2019 and Its Outcome

Once the SP2Lid was issued, the only avenue available to Zainul Karim's side was the objection mechanism under Article 9 paragraph (3) of Perkap No. 6 of 2019. On 17 September 2021, his legal counsel, Lucky Omega Hasan, S.H., M.H. and Budi Ansyahri, S.H., submitted a formal Keberatan Atas Penghentian *Penyelidikan* to the Head of Polres Metro Bekasi, addressed through the Head of the Criminal Investigation Unit and the assigned investigator.[116] The interval of roughly five months between the issuance of SP2Lid in April 2021 and this letter is not explained in the materials reviewed for this research, and no assumption is made here as to its cause.

[116]Interview with Lucky Omega Hasan.

The substance of the objection is relevant to this study primarily because of the legal argument it raises, which mirrors the normative distinction discussed earlier between *penyelidikan* and *penyidikan*. The objection contended that *penyelidikan* is meant only to determine whether an event qualifies as a criminal offence, and that assessing the sufficiency of evidence is properly a function of *penyidikan*. By terminating the case at the *penyelidikan* stage on the ground of "insufficient evidence," the objection argued, the investigator had applied a *penyidikan*-stage standard to a *penyelidikan*-stage decision. The letter also raised two procedural irregularities from the investigation process that, according to the objection, were never addressed, and requested that the case be escalated to *penyidikan* before any termination on evidentiary grounds was considered.

According to the semi-structured interview conducted with Dr. Lucky Omega Hasan, S.H., M.H. on 25 July 2026, the objection letter reached the police, but no *gelar perkara* was subsequently convened to review it, and the assigned investigator became difficult to reach afterward.[117] This account is broadly consistent with findings by Jessica, Jason Wiratama, and Suhandri Sirait on *gelar perkara* practice at the North Sumatra Regional Police, where case screening was similarly found to function as an internal, closed-door process without a clear external mechanism to verify whether or how it is convened.[118] Their study concerns a single regional police force and cannot, on its own, establish a nationwide pattern; it is cited here only as a point of comparison, not as evidence

[117]Interview with Lucky Omega Hasan.
[118]Jessica, Wiratama, and Sirait, "Gelar perkara dalam Proses Penyelidikan," 680.

that the present case reflects a structural rule rather than an isolated institutional failure.

One further avenue existed in principle: filing an ethics complaint against the investigator through Propam. According to the interview, this option was considered but not pursued, as the family preferred not to prolong further engagement with the police. It should be noted, in any event, that a Propam complaint would only address individual misconduct; it carries no authority to reopen a case or review the substantive lawfulness of a termination decision, and would not, therefore, have functioned as an alternative to judicial review.

c. The Impossibility of Pretrial Review Under Article 77 Old KUHAP and Article 158 New KUHAP

When asked directly whether a *praperadilan* petition was ever considered as a next step after the objection went nowhere, counsel's answer was unambiguous: it was not a live option at the time, because there was no legal basis for it. Not "we chose not to file one" — there was nothing to file against, since termination of *penyelidikan* has never been recognized as an object of pretrial review, neither under Article 77 of the old KUHAP nor, as it turned out, under Article 158 of the new one either.

It is worth noting that this was not something counsel already had a settled answer to going in — when asked whether the new KUHAP had changed anything on this point, he said he was not certain and would need to check. Once informed

that the new law still does not list termination of *penyelidikan* among the objects of *praperadilan*, his response confirmed that the gap has survived the reform.[119]

This is the same mechanism this thesis has already set out in normative terms in the earlier discussion of Article 77 of the old KUHAP and the Constitutional Court's rulings in Decision No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021 — both of which left the question of pretrial review over *penyelidikan* termination unresolved rather than settling it in the reporter's favor. The Zainul Karim case does not add a new legal argument to that discussion; it shows what the absence of that remedy looks like for someone on the other end of it. There was no forum to test whether "insufficient evidence" was the correct ground for the termination, no judge to weigh the mismatched witnesses or the missing minuta akta against the police's decision, and, in the end, no ruling at all — just an unanswered letter and a case that stayed closed until the reporter died.

The unavailability of *praperadilan* here was not a matter of the reporter failing to pursue an available remedy correctly. It reflects that under both the old and new KUHAP, no such remedy exists to pursue.

5. Comparative Analysis: The Dutch Legal System as a Reference for Victim Protection

Indonesian criminal procedure law developed under the direct influence of Dutch colonial procedural law, principally through the Herziene Inlandsch Reglement (HIR), and kept structural and terminological continuities with Dutch

[119]Interview with Lucky Omega Hasan.

procedure even after Indonesian independence in 1945 and the enactment of the former KUHAP in 1981.[120] Comparative legal scholarship treats this kind of inherited-and-adapted transplantation as distinct from either wholesale reception or independent indigenous development.[121] This is the methodological reason for treating the WvSv as an appropriate comparator rather than an arbitrary foreign import: the comparison isolates what each legal system did with a shared procedural inheritance, rather than comparing unrelated traditions.

a. The Structure of Dutch Criminal Procedure

Dutch law does not split the pre-trial process into two separate stages the way Indonesian law splits *penyelidikan* and *penyidikan*. Everything from the first suspicion to the point where enough evidence has been gathered falls under one single concept: *opsporing* (investigation).[122] There is no earlier, "unofficial" stage sitting outside this concept the way *penyelidikan* does under the old and new KUHAP.

Within this *opsporing*, the Officier van Justitie (OvJ) already holds *gezag* — authority to direct the police investigation — from the very start, under Article 148 Sv. This is not a role the OvJ only picks up once the police say they are

[120]On the colonial genealogy of Indonesian criminal procedure and its continuity into the 1981 KUHAP, see Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Liberty, 2007); and, on the HIR specifically, Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2016), ch. 1.

[121]On legal transplants generally, see Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed. (Athens: University of Georgia Press, 1993); and, applied to the Indonesia–Netherlands relationship specifically, Adriaan Bedner, "Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions," Hague Journal on the Rule of Law 5 (2013): 253.

[122]Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC), *Onderzoeksdoel en Onderzoeksopzet*, 2 ("Het gezag over de opsporing ligt op grond van artikel 148 Sv bij de officier van justitie"), https://repository.wodc.nl/bitstream/handle/20.500.12832/1167/ob222-samenvatting_tcm28-74924.pdf.

"done."[123] Whenever the police want to use more serious *dwangmiddelen*, such as wiretapping, searching a house, or extended detention, this requires prior authorization from the *rechter-commissaris*, a judge whose specific job is to supervise the investigation while it is still ongoing.[124] Judicial involvement is built into the investigation itself, not added only after it ends.

Once enough evidence exists, the OvJ decides: *vervolgen* (prosecute) or *sepot* (drop the case). Because there was never a separate, lower-status stage in between, there is no gap in which an investigator can quietly close a case through an internal administrative letter with nobody watching. That gap is exactly where SP2Lid lives in the Indonesian system, between *penyelidikan* and *penyidikan* — and it is exactly the gap Dutch law never created in the first place. But a *sepot* decision is still, at the end of the day, a decision by one state official not to bring a case forward, and Dutch law does not leave that decision unchecked either. This is where Article 12 Sv comes in.

b. Article 12 WvSv: The Beklag Mechanism

Under Article 12 Sv, any party with a direct interest — typically the victim — may lodge a written complaint (*beklag*) with the Court of Appeal against a decision not to prosecute, not to continue a prosecution, or to dispose of a case through an out-of-court settlement or penal order.[125] The complaint must ordinarily

[123]WODC, *Onderzoeksdoel en Onderzoeksopzet*, 2.

[124]Rechtspraak (Netherlands Judiciary), "Strafrechtelijke Procedure," accessed July 2026, https://www.rechtspraak.nl/Organisatie-en-contact/Rechtsgebieden/Strafrecht/Procedures/Paginas/Strafrechtelijke-procedure.aspx; Openbaar Ministerie, "Verantwoordelijk voor Opsporen en Vervolgen," Opportuun, 2017, https://magazines.openbaarministerie.nl/opportuun/2017/01/openbaar-ministerie.

[125]Netherlands, *Wetboek van Strafvordering*, art. 12, BWBR0001903, wetten.overheid.nl; Openbaar Ministerie, "Klacht Niet Vervolging (art. 12 Sv)," accessed July 2026, https://www.om.nl/onderwerpen/k/klachten/art-12; see also the Indonesian translation of the Dutch

be filed within three months of the moment the complainant becomes aware of the decision.[126] Once received, the complaint goes to a dedicated chamber of the Court of Appeal, the *beklagkamer*, made up of one or three judges. The Court first asks the Advocate General for a written report on the case, gathered from the file of the original prosecutor.[127] If the complaint is not obviously inadmissible or unfounded, the complainant is entitled to a hearing before a decision is made. The hearing is closed to the public, and the complainant and the person whose prosecution is sought are heard separately rather than together, though both may bring a lawyer.[128]

The review the *beklagkamer* carries out is not a light, procedural check. Since the 1985 reform, the legislature has explicitly chosen a "full" review: the Court may reassess both whether the evidence is sufficient and whether prosecution would serve the public interest — the same two questions the prosecutor was supposed to weigh in the first place. If the chamber finds the complaint well-founded, it does not decide the suspect's guilt itself; its order is limited to directing that prosecution be started or continued, and guilt remains a matter for the trial court once the case actually proceeds.[129] Once such an order is given, the OM must comply — it has to bring the case to court and gather the evidence needed for that. If the OM later reconsiders and again wants to drop the case after further

Code of Criminal Procedure, KataHukum, "KUHAP Belanda (Sv)," Indonesian Judicial Research Society, accessed July 2026, https://katahukum.id/kuhapbelanda.

[126]Meijers Canatan Advocaten, "Art. 12 Sv Procedure," accessed July 2026, https://www.meijerscanatan.nl/en/art-12-sv-procedure/.

[127]Leonie van Lent, Miranda Boone, and Kees van den Bos, *Klachten tegen Niet-vervolging (Artikel 12 Sv-procedure): Doorlooptijden, Instroom, Verwachtingen van Klagers en het Belang van Procedurele Rechtvaardigheid* (Den Haag: Boom Juridisch, 2019), 25–26.

[128]Rechtspraak, "Klacht Niet-vervolgen Strafbaar Feit (Artikel 12 Sv)," accessed July 2026, https://www.rechtspraak.nl/organisatie-en-contact/rechtsgebieden/strafrecht/procedures/klacht-niet-vervolgen-strafbaar-feit.

[129]Openbaar Ministerie, "Klacht Niet Vervolging (art. 12 Sv)."

investigation, it can only do so with the Gerechtshof's approval, so even a reopened case does not simply go back to being the OM's decision alone. There is no further appeal against the chamber's decision, and structurally, this amounts to a form of horizontal judicial control — one branch of the state checking the discretionary decision of another — triggered by the person the decision most directly affects, without any requirement that they be legally represented.[130]

This is also not just a right that exists on paper. Research on the Article 12 procedure, commissioned by the WODC (the research body of the Dutch Ministry of Security and Justice), found that the number of complaints rose by roughly 40 percent between 2004 and 2009, with a 13 percent jump in 2008 alone, while the average processing time was 244 days in 2008 compared to 266 days in 2007.[131] It is true that not many complaints end up being granted — fewer than one in ten Court of Appeal decisions actually orders the OM to prosecute — but this low success rate does not make the mechanism less meaningful. Like most complaint procedures, most complaints will naturally be rejected; what matters more is that an external body is available to check the decision at all, not how often it rules in the complainant's favor.

The last piece is how the victim even finds out there is something to complain about. Article 51ac Sv obliges the OvJ to actively notify the victim of a *sepot* decision and to give enough information for the victim to decide whether to

[130]Van Lent, Boone, and van den Bos, *Klachten tegen Niet-vervolging*, describing Article 12 Sv as the sole mechanism by which a victim may obtain (re)assessment of a decision not to prosecute, and situating its growing significance against increased attention to victims' interests and capacity constraints within the police and prosecution service.

[131]Van Lent, Boone, and van den Bos, *Klachten tegen Niet-vervolging*, 29–31.

file an Article 12 complaint.[132] This is a duty the prosecutor must act on, not something the victim has to chase down. Put together, Dutch law combines an active notification duty with a judicial mechanism the victim can actually use — the two are built to work as one system, not as two separate, unconnected rights.

c. Comparative Implications for Indonesia's SP2Lid Framework

Set against this structure, Indonesia's current framework looks considerably thinner. Article 144 letter f of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) obliges investigators to notify the reporting party once a preliminary inquiry is terminated.[133] This is a real improvement over the old KUHAP, which contained no such obligation at all. But compared to the Dutch structure just described, the gap becomes clearer on two levels rather than one.

First, at the investigative level: Indonesian law still separates *penyelidikan* from *penyidikan*, and it is precisely in that separation that SP2Lid was born — a decision made at a stage the KUHAP itself treats as preliminary and, historically, largely outside continuous prosecutorial or judicial supervision. Dutch law, by keeping *opsporing* as one supervised process from the start, with the OvJ's *gezag* and the *rechter-commissaris*'s authorization built in from the beginning, never creates that kind of gap in the first place.

Second, at the remedy level: Article 144 letter f only requires that the reporting party be informed that SP2Lid has been issued. It creates no avenue through which that party may bring the termination before an independent body for

[132]Netherlands, *Wetboek van Strafvordering*, art. 51ac, BWBR0001903, wetten.overheid.nl; Staatscourant 2017, no. 18999, https://zoek.officielebekendmakingen.nl/stcrt-2017-18999.html.

[133]Law No. 20 of 2025, art. 144(f).

review. This is the same distinction Article 51ac and Article 12 Sv illustrate together in Dutch law: being informed of a decision is not the same as being able to test that decision. Article 144 letter f gives Indonesian victims the first without the second, while Article 51ac gives Dutch victims both, precisely because Article 12 exists to receive them.

Taken together, the comparison shows a structural weakness on two connected fronts, not merely a missing notification clause. Indonesian law lacks both the kind of continuous, judicially-supervised investigation that would make an unreviewed administrative termination like SP2Lid structurally unlikely, and the kind of judicial complaint mechanism that would let a victim challenge such a termination after the fact. It is this combined gap — rather than the narrower question of victim notification alone — that the following chapter examines through legal protection theory, procedural justice, and the contemporary maqāṣid al-sharī'ah of Jasser Auda.

B. Evaluation of SP2Lid Through Jasser Auda's Contemporary Maqāṣid al-Sharī'ah

1. From Positive Law to Higher Objectives: Repositioning Section A's Findings

Section A of this chapter answered a narrower question than the one this section now takes up. It asked how positive law regulates the termination of *penyelidikan*, and it answered that question in stages: the old KUHAP left the matter in a rechtsvacuum, the Circular Letter and Perkap No. 6 of 2019 filled that vacuum

administratively rather than legislatively, and the new KUHAP's Article 19 finally supplies SP2Lid with a statutory foundation, while Articles 158 and 161 withhold from it the judicial review that Article 24 attaches to the termination of *penyidikan*. That inquiry is doctrinal in the strict sense: it establishes what the law is, and it does so without asking whether what the law is, is what the law ought to be.

Before this section puts Auda's evaluative apparatus to work, it is worth pausing on why a systems-based reading of maqāṣid al-sharīʿah is the analytical step this thesis takes next, rather than treating Section A's doctrinal finding as the end of the inquiry. Chapter II's discussion of Gustav Radbruch's Idee Trias closed on a specific proposition that turns out to matter a great deal here: legal certainty, however completely satisfied, is a necessary but not a sufficient condition of a legitimate legal order, because Rechtssicherheit leaves entirely untouched the separate question of whether the arrangement it secures actually serves Gerechtigkeit and Zweckmäßigkeit.[134] Article 19 of the new KUHAP, on the account Section A has already given, satisfies exactly that necessary condition — it supplies SP2Lid with a textual, positively enacted basis it never had before — without thereby settling whether the mechanism built around it is just or purposive in Radbruch's sense.

It is this premise, reached from within a wholly secular and continental-European jurisprudential tradition, that already points this research toward the question the remainder of this section takes up, before Auda's vocabulary is

[134]Radbruch, "Legal Philosophy," 107–9.

introduced at all. What follows is accordingly not a new, freestanding evaluative framework laid down alongside Radbruch's, but an elaboration and operationalisation of the same premise: where Radbruch's Idee Trias identifies, at a high level of generality, that formal validity and substantive justice are separate axes that can come apart, ḥifẓ al-ʿadl, system openness, and jalb al-maṣāliḥ supply doctrinally precise criteria for testing, in the specific case of SP2Lid, exactly where and how they have come apart. One tradition is secular and Weimar-era; the other is classical Islamic jurisprudence reconstructed through contemporary systems theory. Their relevance to this thesis rests on something narrower than shared origin: they converge, independently, on the same normative conclusion, and it is that convergence, developed dimension by dimension below, that gives the conclusion of this section its weight

This section asks the second question. It does not repeat the positive-law findings already established in Section A; it takes each of those findings as a fixed input and subjects it to a different kind of test — not the test of statutory validity, but the test posed by Jasser Auda's reconstruction of maqāṣid al-sharīʿah as a systems approach to Islamic legal theory. Auda's central methodological move is to evaluate a legal arrangement not primarily by asking whether a rule exists, but by asking whether the system built around that rule exhibits the features he identifies as characteristic of a functioning, purpose-realising legal order: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and

purposefulness.[135] Chapter II has already introduced this six-feature framework in general terms, together with Auda's argument that classical maqāṣid theory, confined largely to the five daruriyyat of religion, life, intellect, lineage, and property, requires contemporary supplementation with objectives more directly responsive to modern state institutions, among them justice (al-'adl) and the securing of public benefit (jalb al-maṣāliḥ). Nothing in that general exposition is repeated here. What this section does is narrower: it takes three of the evaluative dimensions already flagged, in passing, in Section A's own analytical asides — ḥifẓ al-'adl, system openness, and jalb al-maṣāliḥ — and turns each of them into an instrument of evaluation applied directly to Section A's findings.

The sequence of the discussion follows the sequence in which Section A's own findings raised these dimensions. Ḥifẓ al-'adl is applied first because it is the reading of Article 19 against Articles 158 and 161 — the central paradox identified in Section A.3.b — that most directly implicates the preservation of justice as between two categories of persons affected by the same statute. System openness is applied second because it is the *gelar perkara* mechanism described in Section A.2.b — and, more specifically, the closed institutional design examined below in this section — that most directly raises a question about the structural capacity of the SP2Lid system to correct itself. Jalb al-maṣāliḥ is applied third, at the level of the mechanism in general, because it is at that level of generality that the standard the maxim supplies can first be stated. The case of H. Zainul Karim examined in

[135]Auda, *Maqasid al-Shariah*, 45-55: see Al-Mazaahib: *Jurnal Perbandingan Hukum* 7, no. 1 (2022) and Al-Hurriyah: *Jurnal Hukum Islam* 9, no. 2 (2024).

Section A.4 is used as a brief illustration at the close of B.4, rather than developed as a separate case study: what it shows — that the three failures identified separately in B.2 through B.4 are, on the facts of a single dispute, one and the same structural absence viewed from three angles — is stated there in compressed form, as confirmation rather than as a fourth line of analysis. The Dutch comparison developed in Section A.5 is returned to only after that, and only to make a narrower point than a repetition of its descriptive content would allow: that satisfaction of these three dimensions is not a civil-law peculiarity structurally foreclosed to Indonesian criminal procedure, but a legislative choice the Indonesian legislature has, so far, declined to make.

2. Ḥifẓ al-'Adl as an Evaluative Standard: Revisiting the Article 19/158/161 Paradox

Ḥifẓ al-'adl, within Auda's reconstruction, is not merely a restatement of the general proposition that law should be just; used as an evaluative tool it asks a more specific question of any given legal arrangement — whether the arrangement distributes the means of contesting a state decision symmetrically across categories of persons whose interests that decision affects, or whether it distributes those means to one category and withholds them from another without a principled reason tied to the nature of the decision itself. Applied at this level of specificity, ḥifẓ al-'adl is not a demand that every legal outcome be substantively correct; it is a demand that the architecture of legal remedy not itself encode an asymmetry between similarly situated interests.

Measured against that standard, the paradox identified in Section A.3.b is not merely an inconvenient gap; it is a textbook case of the asymmetry ḥifẓ al-'adl is designed to detect. Article 19 of the new KUHAP grounds the termination of *penyelidikan* in statute for the first time, addressing the suspect-side legality concern this chapter has traced from the old KUHAP's rechtsvacuum through Decisions No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021. But Article 158(b), read together with Article 161, extends pretrial review only to termination of *penyidikan* and of prosecution, leaving the termination that Article 19 itself newly authorises outside the six objects of *praperadilan* the new Code recognises. The result is not simply that one stage of the process lacks review while another has it; it is that the statute simultaneously creates a new decisional power over the victim's interest — the power to close the file at the Inquiry stage — and withholds from the victim the one procedural instrument, pretrial review, that the same Code makes available to a suspect aggrieved by the analogous decision to close a file at the Investigation stage. A suspect whose case is terminated under Article 24 may test that termination before a court; a victim whose report is terminated one procedural step earlier, under Article 19, may not test anything before anyone. Ḥifẓ al-'adl, applied as an evaluative standard rather than recited as a slogan, identifies this precisely as the failure: not that *penyelidikan* and *penyidikan* are different stages — Section A.1.b has already shown that the Constitutional Court is correct, on its own terms, that they are — but that the difference between the stages has been allowed to determine, without further justification, who receives a remedy and who does not.

This asymmetry is not just a matter of how Article 158 happens to be worded; it fits a pattern already visible in the Court's own case law. Ely Kusumastuti argues that Decision No. 21/PUU-XII/2014, discussed above, already departed from the original philosophy of the 1981 Code by folding a question of substantive truth into what was meant to be a narrow test of procedural legality.[136] If she is right, the Court had already shown itself willing to stretch pre-trial doctrine once, in favour of suspects. My own reading is that its refusal to extend a comparable interpretive generosity to victims in 2019 and 2021 looks less like principled restraint and more like a selective willingness to innovate on only one side of the suspect–victim divide, though this is an inference of my own rather than a claim made by Kusumastuti herself. I Made Wisnu Wijaya Kusuma and colleagues note, relatedly, that even after 2014 broadened Article 77's interpretive scope, pre-trial authority remained, as a matter of doctrine, confined to arrests, detentions, and termination of investigations or prosecutions.[137]

It is also worth noting that this asymmetry did not need Auda's vocabulary to become visible in the first instance. Radbruch's own formal conception of justice — that like cases be treated alike, and unlike cases according to their relevant differences[138] — already supplies enough to flag something wrong in principle with a scheme that gives a suspect a tested remedy against termination while giving a victim, similarly situated as the person whose interest the termination decision

[136]Ely Kusumastuti, "*Penetapan Tersangka*", 1-18.

[137]I Made Wisnu Wijaya Kusuma, I Made Sepud, and Ni Made Sukaryati Karma, "Upaya Hukum Praperadilan dalam Sistem Peradilan Pidana di Indonesia, *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 73–77.

[138]Radbruch, "Legal Philosophy," 107. See also n. 47 above.

extinguishes, none. Ḥifẓ al-ʿadl formalises that suspicion into a workable criterion — symmetry of remedy across similarly situated interests, precise enough to be applied doctrinally to Articles 19, 158, and 161, rather than left as a general Aristotelian intuition about equal treatment. Radbruch's formal justice detects that something is amiss; ḥifẓ al-ʿadl, read as an evaluative standard rather than recited as a slogan, confirms it on independent grounds.

It might be objected that the victim and the suspect are not similarly situated. A suspect faces coercive measures such as arrest, detention, and seizure, while a victim does not face comparable restrictions when a report is terminated. From this perspective, pretrial review is primarily designed to control state power over suspects, not to provide the same remedy to victims.

This research accepts that distinction but considers it insufficient to resolve the question of ḥifẓ al-'adl. The argument is not that victims and suspects must receive identical remedies, but that a party whose legal interest is materially affected by a state decision should have access to a proportionate remedy. The suspect's interest in liberty and the victim's interest in having a report tested on its merits are different, but both may be extinguished by termination without further recourse. Thus, the relevant question is whether the victim has been left without any proportionate remedy. On this basis, Article 158's silence remains a failure of ḥifẓ al-'adl.

It is worth being precise about what this critique does not claim. It does not claim that the Constitutional Court's coercive-measures rationale in Decisions No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021 is internally incoherent; Section

A.1.b has already conceded that the distinction between *penyelidikan* and *penyidikan*, and between a stage with dwangmiddelen and a stage without them, is a real one, consistent with the historical design of pretrial review that Fachrizal Afandi describes. The maqāṣid critique operates one level above that doctrinal question. It accepts, for purposes of argument, that pretrial review was designed around coercive measures, and asks a different question: whether a legal system that treats the presence or absence of coercive measures as the sole criterion for who receives a remedy has thereby preserved 'adl, or has instead allowed a criterion relevant to one purpose — controlling police and prosecutorial compulsion — to silently perform a second function it was never built to perform, namely determining whose grievance counts. Read this way, Article 158's silence on termination of *penyelidikan* is not a neutral gap; it is the coercive-measures criterion doing work — allocating remedies — that ḥifẓ al-'adl requires be justified on its own terms rather than inherited by default from an unrelated doctrinal boundary.

Section A.3.b has already noted the pattern: the legislature, in enacting the new KUHAP, extended judicial review well beyond the 1981 baseline in several other directions — to unjustified delay, to detention suspension, to a wider category of standing — but never to termination of *penyelidikan*. Read against that pattern, the exclusion is at least as plausibly a deliberate boundary as an oversight, since a legislature actively revising the scope of pretrial review is not obviously the kind of legislature that simply forgets to consider one of the stages that review might cover. This reading rests on the internal structure of the statute itself — the pattern of what was expanded and what was not — rather than on legislative history such as the

Naskah Akademik or DPR deliberation records for Law No. 20 of 2025, which fall outside the scope of the textual and doctrinal analysis undertaken in this research. The claim advanced here is accordingly interpretive rather than historical: it is a reading of what the statute's own pattern of expansion suggests, offered as one plausible explanation among others, not as a settled finding about legislative intent.

This reframing also explains why Article 144(f) cannot cure the asymmetry, a point Section A.3.c already establishes on ordinary doctrinal grounds and which the maqāṣid frame only sharpens. An information right tells the victim that a decision has been made; it does nothing to preserve 'adl between the victim and the suspect, because the suspect's parallel right under Article 24 is not merely to be informed of termination but to have that termination tested. Ḥifẓ al-'adl, understood as symmetry of remedy rather than symmetry of information, treats Article 144(f) as answering a question the paradox does not ask. The paradox is not whether the victim knows the file was closed; it is whether the victim can do anything once she knows.

3. System Openness and the Closed-Loop Design of *Gelar perkara*

The second feature Auda identifies — openness — is drawn directly from systems theory, where an open system is one that exchanges information with its environment and is capable of being corrected by inputs external to itself, as against a closed system that can only be corrected, if at all, from within.[139] Transposed into legal-institutional terms, openness asks whether a decisional process contains a

[139]Auda, *Maqasid al-Shariah*, 47.

feedback loop that originates outside the body making the decision, or whether every check on that decision is performed by actors who belong to the same organisational hierarchy as the decision-maker.

Openness, as a systemic feature, has no direct counterpart in Radbruch's classical trias — his generation predates systems theory as a field — so Auda's introduction of it is best read as extending, rather than departing from, the same dissatisfaction with formal validity as a self-sufficient test of legitimacy that the Idee Trias first raised.

Whether the *gelar perkara* required by Article 9 paragraph (3) actually reduces arbitrary decisions in practice is not a question this normative study is positioned to answer, since that would require empirical observation of how those sessions are in fact conducted. What can be assessed on normative grounds alone, however, is the design of the mechanism itself. Hadjon's account of legitimate governmental authority stresses that the lawful exercise of authority depends not only on its source — attribution, delegation, or mandate — but on the institutional conditions under which that authority is exercised and, where relevant, reviewed.[140] Measured against that standard, a *gelar perkara* convened, chaired, and concluded entirely by officials belonging to the same organizational hierarchy as the investigator whose decision is under review is not, by its structure, capable of functioning as an independent check on that decision. Independence in the relevant sense requires that the reviewing body be organizationally and hierarchically

[140]Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, 130.

distinct from the body under review; a forum internal to the same institution can improve consistency of outcome, but it cannot, as a matter of institutional design rather than of how well any particular session happens to be run, substitute for review by a body outside that hierarchy. The *gelar perkara* is still an internal review, carried out entirely within the police institution:[141] the people taking part in the discussion and the people making the final call all belong to the same organisational structure, so a complainant who disagrees with the outcome has no independent court or external body to turn to that could review whether the decision was actually lawful. The *gelar perkara* may strengthen internal administrative accountability, but it cannot substitute for judicial oversight — the two serve different purposes, since internal review is meant to keep the institution consistent, while judicial review exists to give an independent assessment of the legality of state action and, ultimately, to protect the rights of the people affected by it.

Auda's systems vocabulary draws this same structural feature — a review process closed off to anyone outside the police hierarchy — out of an entirely different theoretical lineage, one rooted in general systems theory rather than in administrative law doctrine, and shows that the defect Hadjon's framework identifies from within Indonesian administrative-law theory is not an artefact particular to that theory. A conclusion that survives being derived twice, from two unrelated theoretical starting points, is better supported than a conclusion resting on either alone; that convergence, rather than any single new finding, is what the

[141]Fajar Sudariyanto, Helvis, and Wasis Susetio, "Analisis Gelar perkara dalam Proses Penyidikan Tindak Pidana di Kepolisian," *Jurnal Syntax Transformation* 2, no. 11 (2021): 1574–86, https://doi.org/10.46799/jst.v2i11.451.

openness criterion contributes here. What the openness criterion adds beyond this convergence point is a reason to treat the feature as a normative defect rather than merely an administrative one. A closed system, in Auda's sense, is not disqualified from producing correct outcomes in any individual case; the objection is not that *gelar perkara* sessions are conducted badly. The objection is that a system with no external input has no structural mechanism for detecting its own errors, because the only actors positioned to notice an error are the same actors who produced it. Whether the investigator who terminated the Zainul Karim inquiry on grounds of insufficient evidence applied the correct evidentiary standard was, on the record examined in Section A.4.b, a question that only the police themselves were ever in a position to revisit — and the account given by counsel in interview suggests that, in practice, even that internal revisiting did not occur, since no *gelar perkara* was convened in response to the objection letter at all. An open system would not guarantee a different outcome in that case; what it would guarantee is that the question could, in principle, be put to a body other than the one whose decision was in question. That possibility is precisely what Article 158's silence on *penyelidikan* removes.

Brian Z. Tamanaha's account of legal instrumentalism supplies a further reason to treat this closure as a normative rather than merely administrative defect, and it does so from a different theoretical direction than Auda's systems vocabulary, which is precisely why it strengthens rather than repeats the point. Tamanaha's argument is that a legal process becomes vulnerable to capture by the particular interest of whichever body controls it exactly when that process is treated as a pure

means to an institutional end and is not tested against any standard external to the institution applying it.[142] A *gelar perkara* convened, chaired, and concluded by the same police hierarchy whose prior decision is under discussion is, on this account, structurally poised to serve the institution's own interest in efficient, low-friction case disposal — an entirely legitimate administrative interest in itself — rather than the complainant's interest in an impartial test of the termination decision, precisely because nothing outside the institution ever has occasion to ask which interest the process actually served. Read together with Auda's openness criterion, Tamanaha's point sharpens rather than duplicates the objection: it is not merely that the *gelar perkara* lacks an external reviewer, but that its closure is the specific condition under which an otherwise ordinary administrative mechanism risks sliding into the kind of institutional self-service that undermines confidence in the rule of law more broadly.

It should be noted that openness, in this sense, is not automatically satisfied merely by adding another layer of internal review. On this thesis's reading of Auda's systems vocabulary, what distinguishes an open system from a merely elaborated closed one is where the reviewing authority sits, not how many layers of review exist: a hierarchy of internal reviewers stacked on top of one another remains closed, in the relevant sense, so long as every reviewer belongs to the institution

[142]Tamanaha, Law as a Means to an End, arguing that an instrumentalist view of law — law treated purely as a means to an end, pursued by whichever group controls the relevant institutional process — corrodes the rule of law precisely where no shared "common good" and no external check constrain that process; see also Brian Z. Tamanaha, "How an Instrumental View of Law Corrodes the Rule of Law," DePaul Law Review 56 (2007), restating the book's central argument in article form..

under review. Article 9 paragraph (3)'s *gelar perkara*, however procedurally detailed, does not become open by being made more detailed; it becomes open only if a body organisationally external to the police — a court, most obviously, but in principle any body independent of the police hierarchy — is given jurisdiction to revisit the decision on the complainant's initiative. Because no such jurisdiction exists under either Article 158 of the new KUHAP or, before it, Article 77 of the old one, the SP2Lid mechanism as a whole — from the Circular Letter, through Perkap No. 6 of 2019, to Article 19 of the new Code — remains, on the openness criterion, a closed system at every stage of its historical development examined in Section A. The 2025 reform changed the source of the power to terminate *penyelidikan* from a peraturan kebijakan to a statute; it did not change the system's openness, because it did not introduce an external node into the loop.

4. Jalb al-Maṣāliḥ and the Cost of Practical Finality Without Juridical Testing

The maxim jalb al-maṣāliḥ wa dar' al-mafāsid — securing benefit and repelling harm — long predates Auda's systems reconstruction, but Auda's contribution is to insist that maṣlaḥah be assessed not only at the level of an individual ruling but at the level of the legal system's overall purposefulness: whether the system, taken as a whole, is oriented toward realising the interests it claims to protect, or whether it merely produces outcomes that are formally attributable to it without actually advancing those interests. Applied to SP2Lid, the relevant maṣlaḥah is not abstract; Section A has already identified it in functional terms, as the interest a victim has in a criminal justice process that does more than

confirm, unreviewed, whatever conclusion the investigating institution itself reaches.

Chapter II already supplies a secular precursor to this standard: Radbruch's third value, Zweckmäßigkeit, defined there as the law's orientation toward ends that serve individual and collective welfare[143]. Maṣlaḥah, on Auda's account, stays bounded by the objectives of the sharīʿah in a way Zweckmäßigkeit—a more neutrally utilitarian orientation toward whatever ends a given legal order happens to pursue—does not; the comparison is useful for that difference, not despite it. Applied to SP2Lid, both concepts converge on the same practical failure Section A already documents: a mechanism that is formally complete and substantively indifferent to the interest it was supposed to protect.

Chapter III's distinction between practical and juridical finality supplies the general standard jalb al-maṣāliḥ applies here. A system oriented toward maṣlaḥah does not need to guarantee that every report culminates in prosecution; Section A.1.b's own account of *penyelidikan* as a genuinely preliminary, exploratory stage supplies good reason why many reports should not proceed further. What a maṣlaḥah-oriented system does need is some mechanism external to the investigating institution capable of testing the correctness of a termination, so that a reporter's confidence in the outcome rests on more than trust in that institution's own self-assessment. Assessed at this level of generality, SP2Lid fails this standard

[143]Radbruch, "Legal Philosophy," 90–95. See also n. 47 above.

for the same structural reason B.2 and B.3 have already identified: nothing in Articles 19, 158, or 161 supplies that external mechanism.

This is also the point at which Rahardjo's distinction between preventive and repressive legal protection, already flagged in Section A.1.a, becomes fully operative rather than merely anticipatory.[144] A system that neither involves the complainant meaningfully before a termination is finalised nor offers any avenue to contest it afterward supplies neither form of protection; SP2Lid, as a general mechanism, is precisely such a system, since the notification duty first imposed by the Circular Letter and later carried into Article 144(f) operates only after the decision is made, and no provision anywhere in the mechanism's history examined in Section A allows the decision itself to be tested.

Zainul Karim's case (LP/6943/X/2019/PMJ/Dit.Reskrimum) illustrates how these failures converge on the facts of a single dispute. SP2Lid issued in April 2021 on the same substantive ground — insufficient evidence — that would have given the complainant standing to petition *praperadilan* had the file instead been escalated and terminated as *penyidikan*; only the procedural label differed. Counsel's objection, filed five months later, was met with no *gelar perkara* and, eventually, an unreachable investigator; the one remaining avenue, a Propam ethics complaint, was not pursued because it could not have reopened the case or tested the termination's lawfulness. Zainul Karim died with the matter never adjudicated by any forum — foreclosed as a fact rather than resolved as a matter of law, the

[144]Rahardjo, Ilmu Hukum (2006), 121–23. Rahardjo, Ilmu Hukum (2006), 53–54

kind of unresolved outcome victimological research associates with a measurable erosion of a complainant's trust in the legal system, an effect documented even where some form of proceeding took place, and a fortiori plausible here, where none ever did.[145] The case does not add a fourth deficiency to the three already identified; it shows that ḥifẓ al-'adl, openness, and jalb al-maṣāliḥ fail here for the same reason — the absence of any forum external to the police hierarchy — viewed from three angles rather than as three coincidentally overlapping gaps.

This is also the sense in which the case confirms, in concrete terms, the distinction drawn in Chapter III between practical and juridical finality: SP2Lid rendered the case practically closed, yet it never attained juridical finality in the sense of a decision tested and confirmed by an independent judicial body.

5. Synthesis: Formal Legality Without Maqāṣid-Compliance

Read together, the three evaluations above converge on a single conclusion, and it is a more precise conclusion than the general observation, already available from Section A alone, that SP2Lid lacks judicial review. The precision the maqāṣid frame adds is this: Article 19 of the new KUHAP satisfies Rechtssicherheit in the narrow sense Chapter II identified — the rule now has an identifiable, legislatively enacted textual source rather than resting on internal police practice — but it does so without touching the three further features examined here. It leaves the system asymmetrical as between suspect and victim remedies (a failure of ḥifẓ al-ʿadl),

[145]Uli Orth, "Secondary Victimization of Crime Victims by Criminal Proceedings," Social Justice Research 15, no. 4 (2002): 313–25, finding that outcome satisfaction and subjective procedural justice, rather than punishment severity alone, are the strongest predictors of a crime victim's subsequent trust in the legal system and belief in a just world.

closed to any correction originating outside the police hierarchy (a failure of openness), and, on the evidence of the illustrative case discussed in B.4, capable of producing an outcome that advances none of the interests the mechanism was designed to serve.

This is the point at which the two evaluative traditions this thesis has carried since Chapter II arrive, independently, at the same destination: what Sections B.2 through B.4 confirm, dimension by dimension, is precisely what Radbruch's Idee Trias anticipated at a higher level of generality — that Rechtssicherheit, satisfied here by Article 19's bare textual existence, is necessary but not sufficient for a legitimate legal arrangement. Radbruch reaches that premise from within the secular continental tradition; the ḥifẓ al-ʿadl, openness, and jalb al-maṣāliḥ analysis reaches the same conclusion from maqāṣid al-sharīʿah, supplying the specific doctrinal content that B.1's convergence thesis anticipated it would need to have.

This is the sense in which the phrase used to describe this section's object — formal legality without maqāṣid-compliance — should be understood. It is not a claim that Article 19 is invalid; Section A has already shown that it is validly enacted, hierarchically superior to the Circular Letter and Perkap No. 6 of 2019 that preceded it, and a genuine improvement over the old KUHAP's rechtsvacuum on that narrower question. It is a claim that validity of this kind is a necessary but not a sufficient condition for a legal arrangement to be maqāṣid-compliant, and that the 2025 reform, examined against Auda's fuller set of evaluative features, satisfies the necessary condition while leaving the sufficient one unaddressed. The gap between Article 19 and Article 158 is, on this reading, not a drafting oversight of the kind

that further legislative attention might close incidentally; it is the specific point at which formal legality and substantive purposefulness come apart, and it is this gap — rather than the broader rechtsvacuum already closed by Article 19 — that any legislative response consistent with maqāṣid al-sharī'ah would need to address.

One further response to this synthesis should be addressed before turning to the comparative discussion below. It might be suggested that the deficiencies identified in B.2 through B.4 could be remedied without judicial review at all, simply by strengthening the existing internal mechanism — for instance, by making gelar perkara mandatory rather than discretionary, or by imposing a stricter internal audit of termination decisions. Such reforms are not without value, and this research does not argue against pursuing them. But strengthening a mechanism internal to the police does not, on the openness criterion developed in B.3, change the structural position of the reviewing body: however rigorous, an internally strengthened gelar perkara remains a correction performed by the same institution whose decision is under review, not a correction originating from outside it. Internal reform of this kind may function as a useful interim safeguard, and this research does not discourage it; what it cannot do is substitute for the external, juridical testing that ḥifẓ al-'adl, openness, and jalb al-maṣāliḥ, on the analysis above, each independently require.

6. The Dutch Comparison Revisited: Maqāṣid-Compliance as an Achievable Design

Section A.5 has already described, in doctrinal terms, how Article 12 WvSv and Article 51ac WvSv together supply Dutch law with what Indonesian law

currently withholds: an active duty to inform the victim of a termination decision, coupled with a judicial avenue, the beklag procedure before the beklagkamer of the gerechtshof, through which the victim may test that decision before a body wholly external to the public prosecution service. There is no need to restate that description here. What the maqāṣid framework developed in this section adds is a reason to treat the comparison as more than illustrative colour: the Dutch arrangement is, on each of the three dimensions examined above, a working demonstration that Auda's evaluative features are not merely aspirational.

Article 12 WvSv satisfies ḥifẓ al-'adl in the specific sense developed in Section B.2: it gives the victim a remedy structurally analogous to the remedy a suspect would have against a decision affecting the suspect's own interests, rather than leaving the victim's access to review contingent on which stage of the process a decision happens to occur at. It satisfies openness in the sense developed in Section B.3: the beklagkamer is a chamber of the Court of Appeal, organisationally and hierarchically distinct from the public prosecution service whose decision is under review, so that the correction, when it occurs, originates outside the body being corrected. And it plausibly serves jalb al-maṣāliḥ in the sense developed in Section B.4, precisely because — as the documented lengthening of processing times and rising complaint volumes under Article 12 suggests — the availability of a genuine external forum appears to be used, in practice, by victims seeking exactly the kind of testing that Zainul Karim's family sought and could not obtain.

None of this licenses the inference that Indonesian law should adopt the beklag procedure wholesale, and this thesis does not make that argument. The point

of the comparison, sharpened rather than repeated by the maqāṣid analysis, is narrower and, for that reason, more secure: because Indonesian criminal procedure law developed under the direct influence of the same Dutch tradition that now produces a maqāṣid-compliant arrangement on this specific question, the unavailability of a comparable mechanism in Indonesian law cannot be explained as a structural limitation inherent to a legal system descended from that tradition. It can only be explained as a choice — the same conclusion Section A's closing discussion reaches on doctrinal grounds, and the conclusion the maqāṣid analysis in this section reaches independently, by a different route, on the ground that a legal order historically related to Indonesia's own has shown the three features examined here to be simultaneously achievable within a single procedural design.

7. Concluding Synthesis of Section B

This section has not asked whether SP2Lid is lawful; Section A has already answered that question, and answered it correctly on its own terms. It has asked whether SP2Lid, lawful as it now is under Article 19 of the new KUHAP, can be justified by the higher objectives that, on Auda's reconstruction, a legal system is meant to serve. The answer developed across Sections B.2 through B.4 is that it cannot, not because Article 19 is defective as a rule of positive law, but because the system built around that rule fails, on three distinct and independently sufficient grounds, to satisfy the evaluative standard the maqāṣid framework supplies: it distributes remedy asymmetrically between suspect and victim, it remains closed to correction from any body outside the police hierarchy, and it has, on the evidence

of the illustrative case discussed above, produced an outcome that serves none of the interests its own procedural apparatus was designed to protect.

CHAPTER V

CONCLUDING REMARKS

A. Conclusion

1. The analysis demonstrates that Article 19 of the new KUHAP only partially resolves the legal issues surrounding the termination of a preliminary inquiry (SP2Lid). By providing, for the first time, a statutory basis for SP2Lid, the provision addresses the previous absence of a formal legal foundation, which had relied solely on the Chief of Police Circular Letter and Police Regulation No. 6 of 2019. However, the reform does not extend judicial protection to victims. Articles 158(b) and 161 continue to restrict pretrial review to the termination of investigations and prosecutions, excluding the termination of preliminary inquiries. Consequently, victims remain limited to an internal objection mechanism that lacks binding legal force and cannot compel review by an independent authority. The case of H. Zainul Karim illustrates this deficiency, where an unanswered objection and the absence of a case-exposition hearing ultimately left no legal forum capable of examining the validity of the SP2Lid decision. Accordingly, while Article 19 establishes the legality of SP2Lid, it does not provide victims with effective legal certainty or judicial protection.

2. From the perspective of Jasser Auda's maqāṣid al-sharīʿah, the SP2Lid mechanism remains inconsistent with the principles of ḥifẓ al-ʿadl, system

openness, and jalb al-maṣāliḥ. The absence of judicial review undermines ḥifẓ al-ʿadl by placing victims in a weaker procedural position than parties affected by the termination of investigations. Likewise, the exclusive reliance on internal police review contradicts the principle of system openness, as the same institution both issues and evaluates the termination decision without external oversight. Furthermore, this institutional design fails to realize jalb al-maṣāliḥ, since it weakens public confidence in the fairness and accountability of the criminal justice process. These findings ultimately point to a single structural deficiency: the absence of an independent judicial forum capable of reviewing the termination of preliminary inquiries.

3. In addition to the doctrinal and maqāṣid conclusions stated above, the comparative analysis with the Dutch legal system contributes a further finding relevant to the recommendations that follow. The Netherlands' Article 12 Sv complaint procedure allows a victim to seek external judicial review of a decision not to prosecute, before a court that is institutionally separate from the police and public prosecution service, and Article 51ac WvSv imposes on the authorities an active duty to notify the victim of that decision and of the grounds on which it was made. Neither element has a counterpart in the current regulation of SP2Lid: a victim is neither guaranteed access to an external forum nor assured of receiving the reasoning behind a termination decision. This comparison indicates that the gap identified above is not an inherent limitation of preliminary-stage

review as such, but a specific design choice that the Dutch system resolves differently, and it is this design choice that informs the notification-duty component of the recommendations proposed below.

4. Beyond the specific failures identified above, this research finds a broader theoretical convergence worth stating in its own right. Gustav Radbruch's Idee Trias, discussed in Chapter II, already establishes on secular jurisprudential grounds that legal certainty is a necessary but not a sufficient condition of a legitimate legal order. The maqāṣid al-sharīʿah evaluation developed in Chapter IV confirms this same proposition from within an entirely different legal tradition, showing that Article 19's formal validity leaves ḥifẓ al-ʿadl, system openness, and jalb al-maṣāliḥ unaddressed. That the two frameworks, proceeding from unrelated doctrinal roots, arrive at the same normative destination is not incidental to this thesis's argument; it is offered here as an independent finding, distinct from the doctrinal and maqāṣid conclusions stated above, and one that strengthens rather than merely repeats them.

In sum, the research questions are conclusively answered. First, although Article 19 of the new KUHAP successfully provides a statutory basis for SP2Lid, it does not ensure legal certainty or effective protection for victims because the mechanism remains excluded from pretrial review. Second, when assessed through Jasser Auda's maqāṣid al-sharīʿah, particularly the principles of ḥifẓ al-ʿadl, system openness, and jalb al-maṣāliḥ, the current framework fails to achieve procedural justice, transparency, and public welfare due to the absence of an independent

mechanism for judicial review. Accordingly, the research concludes that the regulation of SP2Lid under the new KUHAP is formally valid but normatively incomplete, indicating a structural gap that can only be addressed through future legislative reform.

B. Suggestion

Based on the conclusions above, this research offers three sets of suggestions, addressed to three different audiences. These summarize, rather than repeat, the more detailed recommendations already developed in Chapter IV.C.

First, for legislators: while judicial reinterpretation by the Constitutional Court or the establishment of a Preliminary Examining Judge (Hakim Pemeriksa Pendahuluan) --- as proposed by Ilyas, Afandi, and Qurbani (2025) --- remain available alternative pathways, this research recommends statutory amendment as the most direct route, since it does not depend on a constitutional petition being filed and accepted, nor on the more structurally demanding institutional reform that establishing a new judicial office would require. Concretely, this means amending Article 158 letter b so that termination of penyelidikan is included as an object of pretrial review, with standing given explicitly to victims and complainants in the same way Article 161 already gives it to suspects. This amendment should be paired with an active notification duty modeled on Article 51ac WvSv, so that a victim is not only told a case has been closed but is also given the ground for that decision and the deadline to challenge it. Without that second piece, a right of review that nobody knows exists is not really a right at all.

Second, for the National Police, and while waiting for legislators to act, this research suggests two changes that do not need any change in the law: making a *gelar perkara* mandatory, not optional, whenever a complainant files an objection under Article 9 paragraph (3), and giving the complainant a real opportunity to be heard in that session rather than just being informed of the result afterward. These changes will not turn *gelar perkara* into independent judicial review, since Chapter IV has already explained why an internal forum cannot do that, but they would at least make sure the one safeguard that currently exists is not simply ignored, the way it was in the Zainul Karim case.

Third, for future researchers, this research is aware of its own limits. As a normative-doctrinal study, it can show that the SP2Lid mechanism is capable of failing, and it can trace exactly how that failure unfolded in one documented case, but it cannot say how often the same failure occurs across Indonesia as a whole. Future work using an empirical approach, such as surveying *gelar perkara* practice across several regional police forces, would be the natural next step, and it would give any future legislative reform a stronger evidentiary basis than a normative study like this one can provide on its own.

REFERENCES

Adam, Muhammad Amirulloh, Ahmad Sultra Rustan, and M. Ridha Fadli. "Problematika Gelar perkara Khusus dalam Pengawasan Penyidikan Tindak Pidana oleh Kepolisian." *Jurnal Konstitusi* 22, no. 1 (2025): 1–40.

Afandi, Fachrizal. *Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia*. Diss. PhD, Universiteit Leiden, 2021.

Akmal, Ahmad Wiland Rofrofil, and Erik Wibowo. "Analisis UU No. 11 Tahun 2012 Terhadap Perlindungan Hak Anak yang Melakukan Tindak Pidana Perspektif Maqashid Syariah Ibnu Asyur." *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 7, no. 1 (2025): 1–13.

Al'anam, Muklis, "Teori Keadilan Perspektif Gustav Radbruch: Hubungan Moral dan Hukum," Jurnal Humaniora 9, no. 1 (2025): 120.

al-Ghazali, Abu Hamid. *al-Mustasfa min 'Ilm al-Usul*. Vol. 1. Beirut: Dar al-Kutub al-'Ilmiyyah, 1993.

al-Raysuni, Ahmad. Imam al-Shatibi's *Theory of the Higher Objectives and Intents of Islamic Law*. Translated by Nancy Roberts. Herndon: International Institute of Islamic Thought, 2005.

al-Shatibi, Abu Ishaq. *al-Muwafaqat fi Usul al-Shari'ah*. Vol. 2. Cairo: Dar Ibn 'Affan, 1997.

Askara, Saddam. "Maqasid Syariah Sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda." *Journal Review of Islamic and Social Studies* 1, no. 1 (2025): 29–36.

Auda, Jasser. *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London/Washington: International Institute of Islamic Thought, 2008.

Auda, Jasser. "Biography." Dr. Jasser Auda (official website). Accessed August 6, 2026. https://www.jasserauda.net/biography/?lang=en.

Bedner, Adriaan. "Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions." *Hague Journal on the Rule of Law* 5 (2013): 253.

Cahyani, Tinuk Dwi. *Hukum Acara Pidana Indonesia (Dalam Teori dan Praktek)*. Malang: Universitas Muhammadiyah Malang, 2023.

Damaska, Mirjan R. *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*. New Haven: Yale University Press, 1986.

Dimyati, Khudzaifah. *Metodologi Penelitian Hukum: Buku Pegangan Kuliah*. Surakarta: Sekolah Pascasarjana Program Magister Ilmu Hukum Universitas Muhammadiyah Surakarta, 2016.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime. OJ L 315/57.

DNT Lawyers. "*Perluasan Objek Praperadilan dalam KUHAP Baru Tahun 2025*." 12 Mey 2026.

Doak, Jonathan. *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*. Oxford: Hart Publishing, 2008.

Fasa, Muhammad Iqbal. "Reformasi Pemahaman Teori Maqasid Syariah (Analisis Pendekatan Sistem Jasser Audah)." Hunafa: *Jurnal Studia Islamika* 13, no. 2 (2016).

Fatoni, Syamsul, Erma Rusdiana, Imron Rosyadi, and Opik Rozikin. "Asas Proporsionalitas: Perspektif Hukum Positif dan Maqosid Syariah dalam Sistem Peradilan Pidana." *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 1 (2025): 46–71.

Fujiyanto, Azan, Otong Rosadi, and Iyah Faniyah. "The Urgence of Investigation Termination Orders (SP2Lid) in the Criminal Action Investigation Process as Implementation of the Circular Letter of the Kapolri Number: SE/7/VII/2018." *Ensiklopedia of Journal* 4, no. 2 (2022): 127–135. https://doi.org/10.33559/eoj.v4i2.1050.

Gumanti, Retna. "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)." *Jurnal Al-Himayah* 2, no. 1 (2018): 97–118.

Hadjon, Philipus M. *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi*. Surabaya: Peradaban, 2007.

Hakiki, Azizul. "Surat Perintah Penghentian Penyidikan (SP3) yang Diterbitkan Berdasarkan Perdamaian Antara Tersangka dan Pelapor dalam Delik Biasa." *Wacana Paramarta Jurnal Ilmu Hukum* 21, no. 1 (2022): 25–34.

Hamzah, Andi. *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika, 2016.

Harahap, Yahya. *Pembahasan Permasalahan dan Penerapan KUHAP (Pemeriksaan Siandg Pengadilan, Banding, Kasasi, dan Peninjauan Kembali)*. Jakarta: Sinar Grafika, 2002.

Hartono. *Penyidikan dan Penegakan Hukum Pidana (Melalui Pendekatan Hukum Progresif)*. Jakarta: Sinar Grafika, 2010.

Herman, Handrawan, Oheo Kaimuddin Haris, Ali Rizky, Fuad Nur, Lade Sirjon, dan Syamsu Marlin. "Penyidikan Kembali Perkara yang Dihentikan Penyidikannya (SP3) oleh Kepolisian Negara Republik Indonesia." *Halu Oleo Legal Research* 6, no. 1 (2024): 159–172. https://doi.org/10.33772/holresch.v6i1. 751Huzaini, Muhammad, and Deni Setya Bagus Yuherawan. "Kedudukan Hukum dan Fungsi Surat Edaran Kapolri Nomor: SE/7/VII/2018 tentang Penghentian Penyelidikan." *Widya Yuridika: Jurnal Hukum* 4, no. 1 (2021): 53–63.

Ibn Ashur, Muhammad al-Tahir. *Maqasid al-Shari'ah al-Islamiyyah*. Translated by Mohamed El-Tahir El-Mesawi. London/Washington: International Institute of Islamic Thought, 2006.

Ilyas, Adam, Fachrizal Afandi, and Indah Dwi Qurbani. "Closing the Injustice Gap: Reconstructing Pre-trial Proceedings as an Effective Remedy for Victims of Terminated Preliminary Inquiries." *Jurnal Konstitusi* 22, no. 4 (2025): 736–776. https://doi.org/10.31078/jk2247.

Jessica, Jason Wiratama, and Suhandri Sirait. "Gelar perkara dalam Proses Penyelidikan di Kepolisian Daerah Sumatera Utara." Kertha Semaya: *Jurnal Ilmu Hukum* 10, no. 3 (2022): 673–685. https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/82792/43348.

KataHukum, "KUHAP Belanda (Sv)," Indonesian Judicial Research Society, accessed July 2026.

Kejaksaan Agung Republik Indonesia, *Buku Pintar Adhyaksa: Praperadilan* (Pasal 158-164 KUHAP). Jakarta: 2025.

Kusuma, I Made Wisnu Wijaya, I Made Sepud, and Ni Made Sukaryati Karma. "Upaya Hukum Praperadilan Dalam Sistem Peradilan Pidana di Indonesia." *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 73–77.

Kusumastuti, Ely. "Penetapan Tersangka Sebagai Obyek Praperadilan." Yuridika 33, no. 1 (2018): 1–18.

Leawoods, Heather, "Gustav Radbruch: An Extraordinary Legal Philosopher," Washington University Journal of Law & Policy 2 (2000): 489–90.

Lestari, Eka Nikmah Rahayu. "Pelaksanaan Gelar perkara pada Tahap Penyidikan Ditinjau dari Sistem Peradilan Pidana di Indonesia." *Jurnal Hukum Egalitaire* 1, no. 2 (2023): 116–130. https://journal.umgo.ac.id/index.php/jhe/article/view/2605.

Mahkamah Agung Republik Indonesia. "Perluasan Objek Praperadilan Pasca KUHAP Baru." MariNews, 6 January 2026.

Mahkamah Konstitusi Republik Indonesia. Ikhtisar Putusan Perkara Nomor 53/PUU-XIX/2021: Penghentian Penyelidikan Sebagai Objek Praperadilan, 15 December 2021.

Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 21/PUU-XII/2014.

Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 53/PUU-XIX/2021, 15 December 2021.

Mahkamah Konstitusi Republik Indonesia. Putusan Nomor 9/PUU-XVII/2019 (Sinopsis), 15 April 2019.

Manan, Bagir, and Kuntana Magnar. *Beberapa Masalah Hukum Tata Negara Indonesia. Edisi Revisi*. Bandung: Alumni, 1997.

Mann, Tim. "*Pretrial Hearings: Safeguarding Human Rights or a Gift to Corruptors?" in Crime and Punishment in Indonesia, edited by Tim Lindsey and Helen Pausacker*. Abingdon: Routledge, 2020.

Marcus Aurelius. *Meditations.* Translated by Gregory Hays. New York: Modern Library, 2002.

Maulidi. "Maqasid Syariah Sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda." Al-Mazaahib: *Jurnal Perbandingan Hukum* 7, no. 1 (2022): 113–132. https://doi.org/10.14421/al-mazaahib.v7i1.2860.

Meijers Canatan Advocaten, "Art. 12 Sv Procedure," accessed July 2026.

Mertokusumo, Sudikno. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 2007.

Muhammad, Abdulkadir. *Hukum dan Penelitian Hukum*. Cetakan III. Bandung: Citra Aditya Bakti, 2004.

Musarrofa, Ita, and Husnul Muttaqin. "Maqasid Sharia Jasser Auda Theory: Systems Approach to Islamic Family Law in the Digital Era." *Al-Hurriyah: Jurnal Hukum Islam* 9, no. 2 (2024): 194–208. https://doi.org/10.30983/al-hurriyah.v9i2.8979.

Mutholingah, Siti, and Muh Rodhi Zamzami. "Relevansi Pemikiran Maqashid Al-Syariah Jasser Auda Terhadap Sistem Pendidikan Islam Multidisipliner." TA'LIMUNA: *Jurnal Pendidikan Islam* 7, no. 2 (2018): 90–111. https://doi.org/10.32478/talimuna.v7i2.183.

Nefri, Ardi, and Iyah Faniyah. "Pertimbangan Penyelidik Dalam Penghentian Penyelidikan Tindak Pidana Narkotika Berdasarkan Restoratif Justice." *Ekasakti Legal Science Journal* 1, no. 4 (2024): 313–320.

Openbaar Ministerie. "Klacht niet vervolging (art. 12 Sv)." Accessed on July 25, 2026.

Orth, Uli. "Secondary Victimization of Crime Victims by Criminal Proceedings." *Social Justice Research* 15, no. 4 (2002): 313–325.

Pramana, Rudi Afdi, Ismail, and Junindra Martua. "Studi Putusan Hakim Menolak Permohonan Praperadilan terhadap Terbitnya SP3 (Surat Perintah Penghentian Penyidikan) Putusan No. 06/Pra.Pid/2018/PN.Tjb." *Jurnal Tectum* 1, no. 2 (2020): 201–207.

Radbruch, "Legal Philosophy," dalam The Legal Philosophies of Lask, Radbruch, and Dabin, trans. Kurt Wilk (Cambridge, MA: Harvard University Press, 1950).

Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," Oxford Journal of Legal Studies 26, no. 1 (2006): 1–11.

Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2006.

Rechtspraak.nl. "Klacht niet-vervolgen strafbaar feit (artikel 12 Sv)." Accessed on July 25, 2026.

Republik Indonesia. Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan, sebagaimana diubah dengan Undang-Undang Nomor 13 Tahun 2022. Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82.

Republik Indonesia. Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana.

Republik Indonesia. Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP). https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-acara-pidana/download.

Sakti, La Ode Awal. "Konsep Keseimbangan dalam Pemberlakuan Penghentian Penuntutan Berdasarkan Keadilan Restoratif." Sang Pencerah: *Jurnal Ilmiah Universitas Muhammadiyah Buton* 7, no. 4 (2021): 585–592.

Saputro, D. "Kedudukan Praperadilan dalam Perspektif Kepastian Hukum." *Jurnal Ilmiah Wahana Pendidikan* 10, no. 16 (2024): 198–211. https://jurnal.peneliti.net/index.php/JIWP/article/download/7795/6592/.

Sedarmayanti, and Syarifudin Hidayat. *Metodologi Penelitian*. Bandung: Mandar Maju, 2011.

Setiawan, Agung Rio, Firdaus, and Hellen Lastfitriani. "Tinjauan Yuridis Penghentian Penyidikan Berdasarkan Peraturan Kapolri Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana." *Jurnal Mahasiswa Fakultas Syariah dan Hukum UIN Suska Riau* 3, no. 4 (2024): 1147–1162. https://jom.uin-suska.ac.id/index.php/jurnalfsh/article/view/2956.

Smits, Jan M. The Mind and Method of the Legal Academic. Cheltenham: Edward Elgar, 2012.

Soekanto, Soerjono, and Sri Mahmudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2003.

Staatsblad 2017, Nr. 90 (implementing Directive 2012/29/EU).

Sudariyanto, Fajar, Helvis, and Wasis Susetio. "Analisis Gelar perkara dalam Proses Penyidikan Tindak Pidana Di Kepolisian." *Jurnal Syntax Transformation* 2, no. 11 (2021): 1574–1586. https://doi.org/10.46799/jst.v2i11.451.

Syarifuddin. "Maqashid Syari'ah Jasser Auda: Sebuah Sistem Pendekatan Dalam Hukum Islam Kontemporer." *Al-Mizan (e-Journal)* 17, no. 1 (2021): 27–42.

Tajudin, I. "Urgensi Pemeriksaan Sah Tidaknya Penetapan Tersangka Sebagai Perluasan Objek Pra Peradilan dalam Upaya Perlindungan Hak Asasi Manusia." Padjadjaran Law Review. Accessed on July 23, 2026. https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/426.

Tamanaha, Brian Z. *Law as a Means to an End: Threat to the Rule of Law*. Cambridge: Cambridge University Press, 2006.

Triyawan, Andi. "*Maqashid Syariah Menurut Jasser Auda." Dalam Panorama Maqashid Syariah*, edited by Abdurrahman Misno BP, 162–177. Bandung: CV Media Sains Indonesia, 2021.

van Lent, Leonie, Miranda Boone, and Kees van den Bos. Klachten tegen niet-vervolging (artikel 12 Sv-procedure). Den Haag: Boom juridisch, Montaigne Centrum reeks, 2019.

Wartono, Nanang, and Rahman Alwi. "Qawa'id Maqashidiyyah dalam Politik Hukum Islam: Menimbang Legislasi Syariah dalam Negara Demokratis." *Journal of Family and Sharia* 1, no. 2 (2025): 102–116.

Watson, Alan. *Legal Transplants: An Approach to Comparative Law*. Second edition. Athens: University of Georgia Press, 1993.

Wemmers, Jo-Anne. Victims in the Criminal Justice System. Amsterdam: Kugler Publications, 1996.

WODC (*Wetenschappelijk Onderzoek- en Documentatiecentrum), Onderzoeksdoel en Onderzoeksopzet.*

Wetboek van Strafvordering (Sv). In effect since 1926. wetboek.org/sv.

Yusdheaputra, Wafa. "Kedudukan Surat Edaran Menteri Dalam Hierarki Peraturan Perundang-Undangan." *Jurist-Diction* 6, no. 1 (2023): 191–214. https://doi.org/10.20473/jd.v6i1.43557.

APPENDIX

Appendix 1. Surat Keberatan Penghentian Penyelidikan of Zainul Karim Case



LOH & PARTNERS

LMPP Building
Jalan KH. Wahid Hasyim No. 10, Menteng, Jakarta Pusat 10340
Telp: 021-31902686/081311641565
Email: lucky@lohandpartners.com.

Jakarta, 17 September 2021.

No : 21/LOH/N.Lit/KBR/IX/2021
Lamp : -
Hal : **Keberatan Atas Penghentian Penyelidikan.**

Kepada Yth :,
Kepala Kepolisian Resort Metro Kota Bekasi;
Cq Kepala Satuan Reserse Kriminal;
Cq Penyidik Perkara Pidana No : LP 6943/X/2019/PMJ//Dit.Reskrimum.

Di
Polres Metro Bekasi
Kota Bekasi, Jawa Barat.

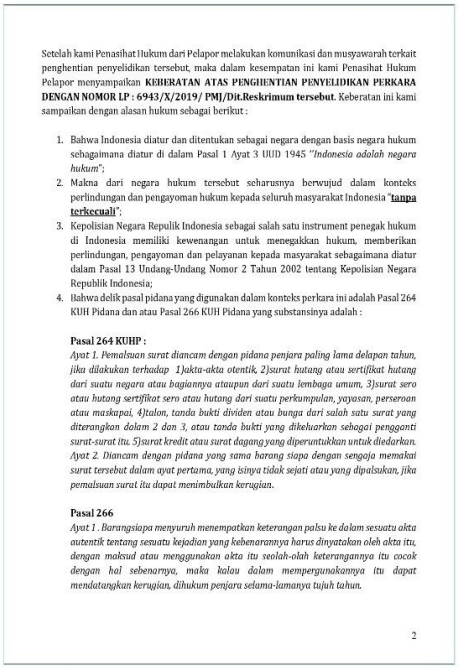
Dengan Hormat,

Bertindak untuk dan atas nama klien kami yang bernama Bapak H. Zainul Karim, S.H sebagai pelapor dan dalam hal ini telah melaporkan Sdr. Fransiskus Sundar Heru Priyono, S.H.,LL.M dan Sdri. Titi Indrasari selaku para terlapor dalam laporan polisi No: LP:6943/X/2019/ PMJ/Dit.Reskrimum.

Berdasarkan kepada informasi yang klien kami terima terkait dengan penghentian penyelidikan sebagaimana tertuang di dalam Surat Pemberitahuan Perkembangan Hasil Penyelidikan (SP2HP) Nomor : B/1664/IV/2021/Restro Bks Kota dan juga surat Ketetapan Nomor : S.TAP/152/IV/2021/Restro Bks Kota.

Di dalam surat ketetapan penghentian penyelidikan tersebut tertuang alasan penghentian penyelidikan oleh karena : **Tidak Cukup Bukti.**

1



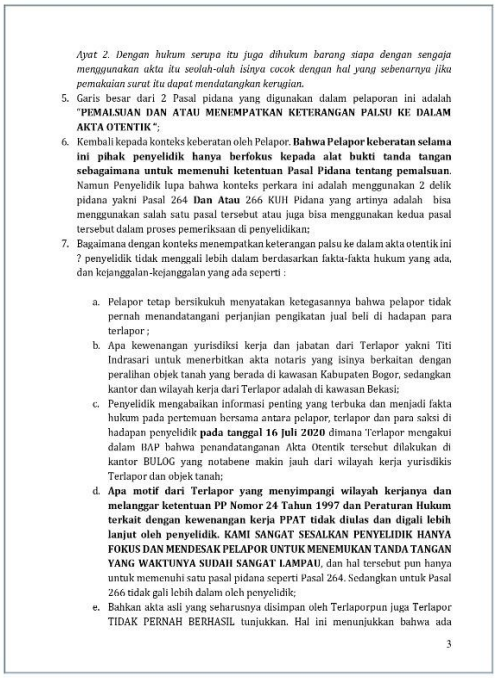
Setelah kami Penasihat Hukum dari Pelapor melakukan komunikasi dan musyawarah terkait penghentian penyelidikan tersebut, maka dalam kesempatan ini kami Penasihat Hukum Pelapor menyampaikan **KEBERATAN ATAS PENGHENTIAN PENYELIDIKAN PERKARA DENGAN NOMOR LP : 6943/X/2019/ PMJ/Dit.Reskrimum tersebut**. Keberatan ini kami sampaikan dengan alasan hukum sebagai berikut :

1. Bahwa Indonesia diatur dan ditentukan sebagai negara dengan basis negara hukum sebagaimana diatur di dalam Pasal 1 Ayat 3 UUD 1945 *"Indonesia adalah negara hukum"*;
2. Makna dari negara hukum tersebut seharusnya berwujud dalam konteks perlindungan dan pengayoman hukum kepada seluruh masyarakat Indonesia "**tanpa terkecuali**";
3. Kepolisian Negara Repulik Indonesia sebagai salah satu instrument penegak hukum di Indonesia memiliki kewenangan untuk menegakkan hukum, memberikan perlindungan, pengayoman dan pelayanan kepada masyarakat sebagaimana diatur dalam Pasal 13 Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia;
4. Bahwa delik pasal pidana yang digunakan dalam konteks perkara ini adalah Pasal 264 KUH Pidana dan atau Pasal 266 KUH Pidana yang substansinya adalah :

Pasal 264 KUHP :
Ayat 1. Pemalsuan surat diancam dengan pidana penjara paling lama delapan tahun, jika dilakukan terhadap 1)akta-akta otentik, 2)surat hutang atau sertifikat hutang dari suatu negara atau bagiannya ataupun dari suatu lembaga umum, 3)surat sero atau hutong sertifikat sero atau hutang dari suatu perkumpulan, yayasan, perseroan atau maskapai, 4)talon, tanda bukti dividen atau bunga dari salah satu surat yang diterangkan dalam 2 dan 3, atau tanda bukti yang dikeluarkan sebagai pengganti surat-surat itu. 5)surat kredit atau surat dagang yang diperuntukkan untuk diedarkan. Ayat 2. Diancam dengan pidana yang sama barang siapa dengan sengaja memakai surat tersebut dalam ayat pertama, yang isinya tidak sejati atau yang dipalsukan, jika pemalsuan surat itu dapat menimbulkan kerugian.

Pasal 266
Ayat 1 . Barangsiapa menyuruh menempatkan keterangan palsu ke dalam sesuatu akta autentik tentang sesuatu kejadian yang kebenarannya harus dinyatakan oleh akta itu, dengan maksud atau menggunakan akta itu seolah-olah keterangannya itu cocok dengan hal sebenarnya, maka kalau dalam mempergunakannya itu dapat mendatangkan kerugian, dihukum penjara selama-lamanya tujuh tahun.

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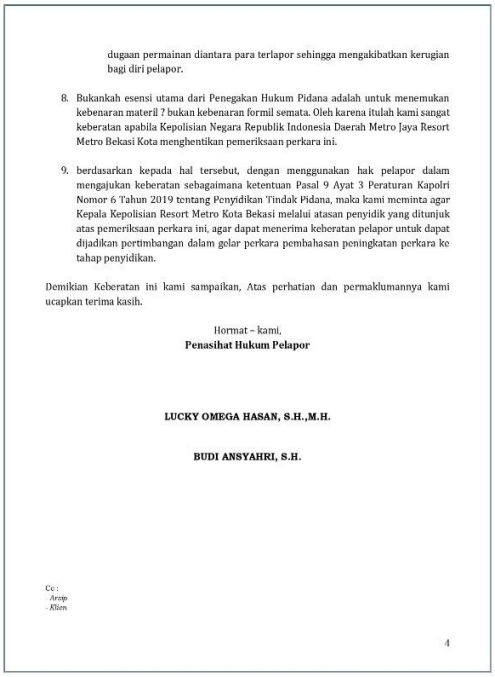


Ayat 2. Dengan hukum serupa itu juga dihukum barang siapa dengan sengaja menggunakan akta itu seolah-olah isinya cocok dengan hal yang sebenarnya jika pemakaian surat itu dapat mendatangkan kerugian.

5. Garis besar dari 2 Pasal pidana yang digunakan dalam pelaporan ini adalah "**PEMALSUAN DAN ATAU MENEMPATKAN KETERANGAN PALSU KE DALAM AKTA OTENTIK** ";
6. Kembali kepada konteks keberatan oleh Pelapor. **Bahwa Pelapor keberatan selama ini pihak penyelidik hanya berfokus kepada alat bukti tanda tangan sebagaimana untuk memenuhi ketentuan Pasal Pidana tentang pemalsuan**. Namun Penyelidik lupa bahwa konteks perkara ini adalah menggunakan 2 delik pidana yakni Pasal 264 **Dan Atau** 266 KUH Pidana yang artinya adalah bisa menggunakan salah satu pasal tersebut atau juga bisa menggunakan kedua pasal tersebut dalam proses pemeriksaan di penyelidikan;
7. Bagaimana dengan konteks menempatkan keterangan palsu ke dalam akta otentik ini ? penyelidik tidak menggali lebih dalam berdasarkan fakta-fakta hukum yang ada, dan kejanggalan-kejanggalan yang ada seperti :

   a. Pelapor tetap bersikukuh menyatakan ketegasannya bahwa pelapor tidak pernah menandatangani perjanjian pengikatan jual beli di hadapan para terlapor ;
   b. Apa kewenangan yurisdiksi kerja dan jabatan dari Terlapor yakni Titi Indrasari untuk menerbitkan akta notaris yang isinya berkaitan dengan peralihan objek tanah yang berada di kawasan Kabupaten Bogor, sedangkan kantor dan wilayah kerja dari Terlapor adalah di kawasan Bekasi;
   c. Penyelidik mengabaikan informasi penting yang terbuka dan menjadi fakta hukum pada pertemuan bersama antara pelapor, terlapor dan para saksi di hadapan penyelidik **pada tanggal 16 juli 2020** dimana Terlapor mengakui dalam BAP bahwa penandatanganan Akta Otentik tersebut dilakukan di kantor BULOG yang notabene makin jauh dari wilayah kerja yurisdikis Terlapor dan objek tanah;
   d. **Apa motif dari Terlapor yang menyimpangi wilayah kerjanya dan melanggar ketentuan PP Nomor 24 Tahun 1997 dan Peraturan Hukum terkait dengan kewenangan kerja PPAT tidak diulas dan digali lebih lanjut oleh penyelidik. KAMI SANGAT SESALKAN PENYELIDIK HANYA FOKUS DAN MENDESAK PELAPOR UNTUK MENEMUKAN TANDA TANGAN YANG WAKTUNYA SUDAH SANGAT LAMPAU**, dan hal tersebut pun hanya untuk memenuhi satu pasal pidana seperti Pasal 264. Sedangkan untuk Pasal 266 tidak gali lebih dalam oleh penyelidik;
   e. Bahkan akta asli yang seharusnya disimpan oleh Terlaporpun juga Terlapor TIDAK PERNAH BERHASIL tunjukkan. Hal ini menunjukkan bahwa ada

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dugaan permainan diantara para terlapor sehingga mengakibatkan kerugian bagi diri pelapor.

8. Bukankah esensi utama dari Penegakan Hukum Pidana adalah untuk menemukan kebenaran materil ? bukan kebenaran formil semata. Oleh karena itulah kami sangat keberatan apabila Kepolisian Negara Republik Indonesia Daerah Metro Jaya Resort Metro Bekasi Kota menghentikan pemeriksaan perkara ini.

9. berdasarkan kepada hal tersebut, dengan menggunakan hak pelapor dalam mengajukan keberatan sebagaimana ketentuan Pasal 9 Ayat 3 Peraturan Kapolri Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana, maka kami meminta agar Kepala Kepolisian Resort Metro Kota Bekasi melalui atasan penyidik yang ditunjuk atas pemeriksaan perkara ini, agar dapat menerima keberatan pelapor untuk dapat dijadikan pertimbangan dalam gelar perkara pembahasan peningkatan perkara ke tahap penyidikan.

Demikian Keberatan ini kami sampaikan, Atas perhatian dan permaklumannya kami ucapkan terima kasih.

Hormat – kami,
Penasihat Hukum Pelapor

LUCKY OMEGA HASAN, S.H.,M.H.

BUDI ANSYAHRI, S.H.

Cc :
- *Arsip*
- *Klien*

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Appendix 2. List of Question and Interview Process (Expert Respondent)

Day/date : Saturday, July 25, 2026

Time : 07.15 AM – 08.10 AM

Place : Via Zoom

Respondent : Dr. Lucky Omega Hasan S.H, M.H

Job : Legal Counsel for the Complainant (Mr. Zainul Karim)

A. Latar Belakang Perkara

Researcher: Bisa diceritakan kembali duduk perkara kasus ini dari awal, untuk memastikan kronologi yang saya pahami dari gugatan perdata sudah sesuai dengan yang Bapak alami?

Mr. Lucky: Almarhum Bapak Zainul Karim dituduh melakukan kesalahan yang merugikan Bulog. Untuk menjaga nama baik menjelang purnabakti, beliau menyatakan bersedia menyerahkan sertifikat tanahnya sebagai kompensasi apabila tuduhan tersebut terbukti benar. Namun hingga kini tidak pernah ada putusan hukum yang menyatakan beliau bersalah.

Researcher: Berarti sertifikat itu diserahkan sebagai semacam jaminan agar nama beliau tetap bersih, bukan karena terbukti bersalah?

Mr. Lucky: Betul. Faktanya, tidak pernah ada putusan yang menyatakan beliau terbukti merugikan Bulog, tetapi sertifikat tetap tidak dikembalikan — justru dimasukkan ke daftar aset Bulog dan dikuasai secara fisik, tanpa proses balik nama atau dasar hukum yang sah.

Researcher: Itu karena ada tiga akta yang ditdanatangani?

Mr. Lucky: Ya, dasarnya tiga akta: surat kuasa, kuasa untuk menjual, dan Perjanjian Pengikatan Jual Beli (PPJB). Ketiganya cacat hukum: pertama, almarhum diduga tidak pernah mendanatanganinya; kedua, dokumen tersebut berbentuk PPJB, bukan Akta Jual Beli (AJB) yang sah sebagai dasar peralihan hak; ketiga, notaris pembuatnya berkedudukan di Jakarta Selatan, sedangkan tanahnya berada di Kabupaten Bogor — di luar wilayah kerja notaris tersebut.

Researcher: Menurut Peraturan Pemerintah No. 24 Tahun 1997, peralihan hak memang hanya sah lewat AJB oleh PPAT, bukan notaris biasa, ya, Pak?

Mr. Lucky: Benar. Jadi akta ini cacat karena diduga ada pemalsuan tdana tangan, sekaligus tidak memenuhi syarat sebagai dokumen peralihan hak.

Researcher: Lalu mengapa akhirnya jalur pidana ditempuh lebih dahulu?

Mr. Lucky: Karena kami melaporkan dugaan pemalsuan tdana tangan dan akta autentik, sekaligus untuk memperkuat pembuktian gugatan perdata PMH yang kami ajukan. Gugatan perdata itu sendiri sempat dinyatakan Niet Ontvankelijke Verklaard (NO) karena pengadilan menilai BPKP seharusnya turut dilibatkan. Ada pula kejanggalan lain: penyelidikan dihentikan dengan alasan "tidak cukup bukti", padahal itu semestinya alasan tahap penyidikan, bukan penyelidikan. Keberatan yang kami ajukan pun tidak diproses karena berada dalam ranah internal Polri.

Researcher: Berarti masalahnya ada di Perkap ini, ya, Pak — pelapor boleh mengajukan keberatan, tapi Polri sendiri tidak menindaklanjutinya?

Mr. Lucky: Betul, dan tidak ada upaya hukum lanjutan yang tersedia. Ini berbeda dengan KUHAP baru, di mana penghentian perkara katanya bisa diuji lewat praperadilan yang melibatkan pihak ketiga — meski saya sendiri kurang yakin persis pengaturannya dan perlu dicek kembali.

B. Laporan Pidana dan Proses Penyelidikan

Researcher: Dugaan tindak pidana apa yang ingin dibuktikan lewat laporan polisi ini?

Mr. Lucky: Pemalsuan akta autentik, melalui tdana tangan yang diduga dipalsukan.

Researcher: Selama penyelidikan, langkah apa saja yang sudah dilakukan penyidik?

Mr. Lucky: Sudah dilakukan pemeriksaan, tapi penyidik meminta bukti tambahan berupa contoh tdana tangan almarhum dari lima tahun sebelum hingga lima tahun sesudah pensiun (sekitar 1991–1994), padahal laporan baru dibuat tahun 2021 dan almarhum sudah lanjut usia serta mulai pikun — permintaan yang menurut saya tidak masuk akal dan justru mempersulit pelapor.

Researcher: Apakah notaris dan saksi-saksi penting sudah diperiksa?

Mr. Lucky: Sudah, termasuk konfrontasi antara pelapor dan terlapor. Ada temuan janggal: dua saksi yang dihadirkan terlapor untuk membantah dugaan pemalsuan bukan saksi yang namanya tercantum dalam akta, bahkan tidak dikenal pelapor. Sayangnya penyidik tidak mempermasalahkan hal ini karena berusaha bersikap netral.

Researcher: Bagaimana dengan minuta akta aslinya, apakah pernah diperiksa?

Mr. Lucky: Tidak, minuta aslinya sudah tidak ada karena kantor notaris tersebut pernah kebanjiran dan dokumennya rusak.

Researcher: Apakah sudah ada pemeriksaan ahli atau uji forensik terhadap tdana tangan?

Mr. Lucky: Belum sampai ke tahap itu. Prosesnya berhenti di permintaan contoh tdana tangan yang tidak mungkin dipenuhi, dan itulah yang akhirnya menjadi dasar penghentian penyelidikan.

Researcher: Bagaimana komunikasi dengan penyidik selama proses ini?

Mr. Lucky: Cukup seimbang pada awalnya, kami sama-sama aktif. Tapi komunikasi berhenti begitu diminta bukti tdana tangan yang tak bisa kami penuhi — penyidik tidak mencari alternatif pembuktian lain, malah langsung menghentikan penyelidikan dengan alasan kurang bukti.

C. Penghentian Penyelidikan (SP2Lid)

Researcher: Kapan Bapak mengetahui penyelidikan ini dihentikan?

Mr. Lucky: Melalui SP2Lid yang diterbitkan.

Researcher: Apa alasan yang disampaikan — hanya "tidak cukup bukti" saja?

Mr. Lucky: Iya, hanya itu saja, tanpa penjelasan lebih rinci.

Researcher: Apakah saya bisa memperoleh salinan resminya?

Mr. Lucky: Dokumen aslinya sudah tidak ada pada saya karena diserahkan kepada keluarga korban.

Researcher: Menurut Bapak, apakah alasan penghentian itu sudah memadai?

Mr. Lucky: Belum, masih banyak menyisakan pertanyaan. Alasan "kurang bukti" semestinya berlaku di tahap penyidikan, bukan penyelidikan — penyelidikan seharusnya hanya menilai ada-tidaknya peristiwa pidana.

D. Surat Keberatan

Researcher: Apa yang membuat Bapak mengajukan keberatan atas SP2Lid ini?

Mr. Lucky: Karena tidak ada respons sama sekali dari penyidik dan penyidik menjadi sulit dihubungi, meski surat kami sudah pasti sampai ke Polri.

Researcher: Apakah dalam surat itu juga diminta gelar perkara?

Mr. Lucky: Kami meminta perkara dibuka kembali dan dicoba alternatif pembuktian lain, serta menegaskan penghentian seharusnya menunggu perkara naik ke tahap penyidikan dulu.

Researcher: Apakah selama proses ini Bapak diminta bukti tambahan?

Mr. Lucky: Tidak, kami hanya mempertahankan bukti yang sudah pernah diajukan.

E. Substansi Keberatan

Researcher: Salah satu poin di surat keberatan menyinggung Pasal 264 dan 266 KUHP. Di mana letak kekeliruan penyidik menurut Bapak?

Mr. Lucky: Kekeliruannya ada pada penghentian di tahap penyelidikan dengan alasan kurang bukti, padahal itu ranah penyidikan — sehingga melanggar ketentuan KUHAP.

Researcher: Apakah ada fakta penting lain yang menurut Bapak tidak dianalisis lebih lanjut oleh penyidik?

Mr. Lucky: Ada beberapa: ketidaksesuaian identitas saksi yang dibawa terlapor; notaris yang membuat akta di luar wilayah kerjanya tanpa alasan jelas; terlapor ternyata tidak memiliki akta asli; dan tanah masih terdaftar atas nama Bapak Zainul Karim di BPN, sementara Bulog tidak pernah mengurus balik nama meski mengklaim tanah itu sebagai asetnya.

F. Perlindungan Hukum Pelapor

Researcher: Setelah keberatan tidak membuahkan hasil, langkah hukum apa lagi yang sempat dipertimbangkan?

Mr. Lucky: Hanya surat keberatan itu, karena memang itu satu-satunya mekanisme yang tersedia. Sempat ada upaya bdaning di jalur perdata, tapi dicabut atas permintaan keluarga pelapor; sempat pula diarahkan mediasi, tapi keluarga belum mengambil keputusan hingga pelapor meninggal dunia.

Researcher: Apakah sempat terpikir mengajukan praperadilan?

Mr. Lucky: Tidak bisa, karena saat itu memang belum ada dasar hukum untuk menggugat penghentian penyelidikan ke ranah peradilan.

Researcher: Menurut Bapak, apakah pelapor saat itu benar-benar punya perlindungan hukum yang memadai?

Mr. Lucky: Tidak. Sebenarnya masih ada opsi mengadukan pelanggaran etik penyidik ke Propam, tapi kami tidak mengambil langkah itu karena keluarga pelapor tidak ingin urusan dengan kepolisian berlanjut lebih jauh. Sedanainya dulu praperadilan bisa digunakan untuk menguji penghentian penyelidikan, tentu akan kami gunakan.

G. Hubungan dengan Gugatan Perdata

Researcher: Apakah penghentian penyelidikan ini jadi alasan utama mengajukan gugatan perdata?

Mr. Lucky: Saya kurang ingat urutan pastinya, tapi kami berharap proses pidana bisa lebih dulu berjalan, misalnya sampai ada penetapan tersangka, karena itu bisa memperkuat gugatan perdata PMH.

Researcher: Bagaimana sebenarnya hubungan antara jalur pidana dan perdata dalam kasus ini?

Mr. Lucky: Keduanya berangkat dari peristiwa yang sama tapi tujuannya beda. Jalur pidana untuk membatalkan akta-akta yang cacat hukum akibat dugaan pemalsuan, sedangkan jalur perdata untuk mengembalikan penguasaan tanah dan sertifikat yang secara sah masih atas nama Pak Zainul.

I. Refleksi

Researcher: Apakah kasus ini menunjukkan adanya kekosongan perlindungan hukum bagi pelapor ketika penyelidikan dihentikan?

Mr. Lucky: Betul, ada kekosongan hukum yang perlu diisi agar kepentingan hukum pelapor terlindungi maksimal. Perlindungan itu semestinya berlaku menyeluruh sejak pembuatan laporan polisi hingga putusan akhir, baik bagi pelapor maupun terlapor, agar prosesnya adil dan mencegah abuse of power.

Researcher: Berarti persoalannya ada di Perkap ini, ya, Pak?

Mr. Lucky: Perkap-nya sebenarnya sudah cukup baik, tapi belum maksimal — ketika keberatan tidak direspons, tidak ada langkah hukum lanjutan bagi pelapor selain mengadu ke Propam, yang sifatnya internal. Gelar perkara juga bersifat internal dan tertutup, sehingga tidak ada konsekuensi jika tidak dilaksanakan. Akar masalahnya adalah kekosongan hukum dalam pengujian penghentian penyelidikan — berbeda dari penghentian penyidikan (SP3) yang lebih jelas pengaturannya — dan persoalan ini belum sepenuhnya terjawab bahkan dalam KUHAP baru. Rekomendasi saya, perlindungan hukum bagi pelapor dan terlapor perlu dibuat maksimal dan menyeluruh di setiap tahapan proses hukum.

J. Administratif

Researcher: Apakah saya boleh mengutip keterangan Bapak sebagai sumber di Bab IV skripsi saya?

Mr. Lucky: Boleh, itu kan sumber primer.

Researcher: Perkara ini saya gunakan sebagai case approach, bukan studi kasus utama, ya, Pak.

Mr. Lucky: Ya, boleh, boleh.

Researcher: Apakah saya juga boleh menggunakan Gugatan Perdata dan Surat Keberatan yang Bapak kirimkan sebagai bahan analisis dan lampiran skripsi, dengan mencantumkan identitas Bapak sebagai kuasa hukum?Mr. Lucky: Boleh.

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CURRICULUM VITAE

Personal Information

Full Name	: Muhammad Taufiq H M
Place, Date of Birth	: Alue Ie Puteh, April 11, 2003
Gender	: Male
Religion	: Islam
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Educational Background

- SD N 1 Baktiya (2009-2015)
- SMP S Ummul Ayman Samalanga (2015-2018)
- MA S Ummul Ayman Samalanga (2018-2021)

Organizational Experience

- Cadre Development Division Vice Coordinator, KMNU UII (2024)
- Coordinator of the Household Division of Organisasi Pondok Pesantren UII (2024-2025)
- Coordinator of Sponsorship Division of Beyond Border 2025 (KKN International FIAI UII)
- Vice Chair of Pusat Studi Tafaquh UII (2025-2026)