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# *The Attorney General's Discretion and the Constitutionality of the Termination of Investigations in the Interest of State Revenue*

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***Abstract***

*This study examines the constitutionality and legal boundaries of the Attorney General's discretion to terminate investigations in the interest of state revenue. The issue arises from the tension between fiscal policy objectives and the constitutional principles of legality, due process, and equality before the law. Using a normative juridical method with statutory, conceptual, and case approaches, the research analyzes the legal framework under Law No. 16 of 2004 as amended by Law No. 11 of 2021, the Criminal Procedure Code, and relevant jurisprudence. The findings indicate that while the Attorney General's discretionary power to halt investigations can be justified to protect state finances, its implementation currently lacks clear statutory parameters, judicial oversight, and public transparency. This gap creates potential conflicts with constitutional guarantees and risks institutionalizing impunity. The study contributes novelty by constructing a constitutional framework for prosecutorial discretion that aligns fiscal interests with legal certainty and justice. It recommends legislative reform to establish explicit criteria, judicial review mechanisms, and accountability systems to ensure that the Attorney General's discretion operates within the rule of law and upholds constitutional rights.*
**Keywords:** *Attorney General; Constitutionality; Discretion; State Revenue; Termination of Investigation*

## 1. INTRODUCTION

In the Indonesian legal system, the Attorney General stands at the apex of prosecutorial authority and holds a decisive role in shaping law enforcement policy.[1] One of the most far-reaching powers conferred upon the Attorney General is the authority to terminate criminal investigations "in the public interest," as codified in Article 35(c) of Law No. 11 of 2021 on the Amendment of Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia.[2] In practice, however, the notion of "public interest" is not clearly defined and remains an open and elastic legal concept. This vagueness allows for broad and sometimes subjective interpretations, including the reading of "public interest" as synonymous with "state revenue interest.[3]

This discretionary practice has gained prominence in cases involving taxation, customs, and excise offences, where the Attorney General may halt ongoing investigations

[1] Jatmiko Winarno et al., "Import Duty Tariffs on Imported Goods Based on Customs Law," 2006.
[2] Muh. Ibnu Fajar Rahim, "Principles of Prosecution Law," *The Prosecutor Law Review* 1, no. 1 (2023): 1–36, https://prolev.kejaksaan.go.id/kejaksaan/article/view/1.
[3] Ferdi Saputra et al., "Legal Analysis of the Issuance of a Letter of Order to Cease Prosecution by the Prosecutor's Office in Relation to the Principle of Opportunity and Law No. 16 of 2004 Concerning the Indonesian Prosecutor's Office," *USU Law Journal* II, no. 1 (2014): 123.

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on the grounds that such action serves to protect or optimize state revenue.[4] While such an approach may be motivated by fiscal pragmatism and policy considerations, it simultaneously raises profound constitutional concerns. Termination of investigations is not a mere administrative measure but a substantive legal intervention that directly affects the enforcement of criminal law, the rights of suspects, and the public's expectation of justice.[5] As such, it must conform strictly to the principles of legality, due process of law, equality before the law, and the protection of fundamental rights.[6]

The tension between maximizing state fiscal interests and upholding constitutional guarantees thus sits at the heart of this issue. Without clear statutory limits and judicial oversight, the Attorney General's discretionary authority risks undermining the supremacy of law, generating moral hazard among economic actors, and eroding public trust in the criminal justice system. It also blurs the boundary between prosecutorial policy and fiscal policy, potentially transforming criminal law enforcement into an instrument of revenue collection rather than an arena for impartial justice.

Against this backdrop, a thorough constitutional examination of the Attorney General's discretionary power to terminate investigations is crucial. Such scrutiny is necessary not only to safeguard fundamental rights and the rule of law but also to ensure that fiscal considerations do not eclipse the core purposes of criminal justice. This study seeks to address precisely that gap by analyzing how the current legal framework accommodates or fails to accommodate a principled balance between state revenue interests and constitutional imperatives.

Research questions: (1) Does the Attorney General's termination of investigations on the grounds of state revenue interests have sufficient legal legitimacy and constitutional validity? (2) What are the limits and scope of the Attorney General's discretionary authority to ensure compliance with the rule of law and the protection of citizens' constitutional rights?

This study is urgently needed to ensure a balance between the state's fiscal interests and the principles of justice, the supremacy of law, and the prevention of moral hazard. Without clear regulations, the Attorney General's discretionary authority may undermine the integrity of the criminal justice system and erode public trust in law enforcement. Previous studies, Hendra emphasized the optimization of state revenue without deeply examining constitutional aspects;[7] Badar addressed the concept of "public interest" only at a conceptual level without linking it to the Attorney General's practice of terminating

[4] Biantoro Joshua, "The Attorney General's Authority to Set Aside Cases for the Public Interest as an Implementation of the Opportunity Principle," 2017, 111.

[5] Bagman Roy Manalu, "Implementation of Restorative Justice in Customs and Excise Law Enforcement," *Indonesian Journal of Social Sciences* 3, no. 5 (2022): 793–809, https://doi.org/10.36418/jiss.v3i5.581.

[6] Dessy Kusuma Dewi, "The Prosecutor's Authority to Stop Prosecution for the Sake of Justice," *Dictum: Journal of Legal Studies* 9, no. 1 (2021): 1–14, https://doi.org/10.24905/diktum.v9i1.135.

[7] Romi Hendra and Bambang Arwanto, "Termination of Investigation in Tax Crime Cases Through the Application of Restorative Justice," nd, 3286–98.

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investigations,[8] and Padeni discussed due process of law in prosecutorial powers without focusing on the termination of investigations on revenue grounds.[9]

Based on the above description, previous studies have focused more on fiscal or conceptual aspects, while this study focuses on constitutional review of the Attorney General's discretion in actual cases of taxation, customs, and excise, with the focus on testing the constitutionality of these authorities, so that the research gap becomes clear. Finally, study this aim for study limit and room scope authority discretion prosecutor great in termination investigation according to the system law national Indonesia and space scope termination investigation by the Attorney General on base interest reception countries, in case of taxation, customs, and excise.

## 2. METHOD

This research is normative legal research *that* focuses [10]on the study of positive legal norms, legal principles, and constitutional principles related to the discretionary authority of the Attorney General in stopping investigations for the sake of state revenue. This research uses several approaches to the Statute Approach which are used to examine various relevant laws and regulations, such as Law Number 16 of 2004 *in conjunction with* Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, the Criminal Procedure Code, the 1945 Constitution of the Republic of Indonesia, and implementing regulations related to prosecutorial authority and discretion. The Conceptual Approach is used to analyze legal concepts such as discretion, constitutionality, the principle of legal certainty, the principle of the rule of law, and the principle of due process of law in the context of the criminal justice system.[11]

## 3. RESULTS AND DISCUSSION

### 3.1. The Limits and Scope of the Attorney General's Discretionary Authority in Terminating Investigations According to the Indonesian National Legal System

Discretion in public administration is essentially a space of freedom granted by legislation to officials to determine certain steps or actions in circumstances where legal norms do not provide comprehensive regulation or offer several options for action. [12] Within the framework of classical administrative theory, as proposed by Kenneth Culp Davis and continued by Wade & Forsyth in Administrative Law, discretion is the "space between laws" that enables the bureaucracy to function effectively and responsively. This

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[8] Baharuddin Badaru, "Public Interest in the Principle of Opportunity in the Criminal Justice System," *Al-Manhaj: Journal of Islamic Law and Social Institutions* 5, no. 2 (2023): 1737–54, https://doi.org/10.37680/almanhaj.v5i2.3715.

[9] Nasution April et al., "Due Process of Law Practices in the Indonesian Criminal Justice System Reviewed from Medan District Court Decisions in 2022-2023 Criminal Case Settlement in Indonesia. The Existence of This Law Gives Rise," *Jurnal Begawan Hukum (JBH)* 2, no. 1 (2024): 117–28.

[10] Peter Machmud Marzuki, *Legal Research, 14th Ed.* (Jakarta: Kencana, 2019).

[11] Yati Nurhayati, *Introduction to Legal Science*, ed. Ifrani, *BBandung,*1st ed. (Bandung: Nusa Media, 2020), https://repo-dosen.ulm.ac.id/bitstream/handle/123456789/18052/Ifrani_Buku Ajar Sesudah_sbg Editor.pdf?sequence=3.

[12] Zaqiah Darojad, "The Use of Discretion by Government Officials in Relation to State Financial Losses Resulting in Criminal Acts of Corruption," *Government Management* 5, no. 2 (2018): 125–39, https://ejournal.ipdn.ac.id/JMP/article/view/435.

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discretion is commonly directed towards ensuring the smooth running of public services and the effectiveness of government administration."

In Indonesia, the concept of administrative discretion has been explicitly recognized in Article 1, point 9 of Law Number 30 of 2014 concerning Government Administration, which states: "Discretion is a decision and/or action determined and/or carried out by government officials to overcome stagnation in the administration of government in certain circumstances for the benefit and public interest." This explanation describes discretion as a functional and administrative instrument that provides relatively limited room for maneuvering, rather than absolute power.

Unlike ordinary administrative discretion, the Attorney General's prosecutorial discretion falls within the realm of criminal law. This discretion is not merely an administrative decision, but one that affects the fate of an individual in the criminal justice system. The termination of an investigation or prosecution directly affects the fundamental rights of suspects, victims, and the public to justice, as well as the basic principles of the rule of law: the principle of legality, due process of law, and equality before the law. Therefore, prosecutorial discretion has more serious constitutional consequences than administrative discretion.[13]

Davis's theory of "administrative discretion" emphasizes the need for judicial control to prevent abuse of authority. However, in the context of "prosecutorial discretion," criminal law literature such as that written by Angela J. Davis (Arbitrary Justice: The Power of the American Prosecutor) shows that without clear parameters, prosecutorial discretion can lead to systemic injustice. This means that even though both are called discretion, their weight and legal consequences are different.[14]

In Indonesia, according to Article 35, letter c of Law Number 16 of 2004 in conjunction with Law Number 11 of 2021, the Attorney General has the authority to terminate prosecution "in the public interest." Normatively, this appears to be like administrative discretion, but substantively, it is much more serious because it can close access to criminal courts. In institutional practice, this authority even extends to influencing the termination of investigations in cases with fiscal dimensions (taxes, excise, customs) on the grounds of state revenue interests.[15]

The constitutional consequences of prosecutorial discretion can be analyzed through three dimensions: (a) the right to legal certainty, (b) equality before the law, and (c) protection against moral hazard.

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[13] Daniel Ch. M. Tampoli, "Termination of Criminal Case Prosecution by Prosecutors Based on Criminal Procedure Law" IV, no. 2 (2016).

[14] Errika Noer Diana, and Tri Susilowati Justicia, and the Role of Prosecutors in Corruption Cases Based on the Corruption Eradication Law, "The Role of Prosecutors in Corruption Cases," *Journal* 14, no. 1 (2025): 2830–5221.

[15] Indrawati Indrawati and Bendito Menezes, "Application of the Ultimum Remidium Principle in Criminal Law Enforcement in the Excise Sector," *Jurnal Cakrawala Hukum* 9, no. 1 (2018): 11–20, https://doi.org/10.26905/idjch.v9i1.2118.

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*First*, the right to legal certainty (Article 28D paragraph (1) of the 1945 Constitution) requires that everyone be treated according to clear norms. If the termination of an investigation is carried out without clear parameters, then legal certainty is undermined. *Second*, equality before the law (Article 27, paragraph (1) of the 1945 Constitution) requires that similar legal subjects receive similar treatment. The Attorney General's discretion based on negotiations over state losses can result in discrimination: perpetrators who are able to repay state losses are released, while those who are unable to do so remain subject to legal proceedings. *Third*, protection against moral hazard: without a monitoring mechanism, this discretion has the potential to become an incentive for economic actors to commit violations with the calculation that "if they can pay later, it's okay.[16]

Doctrinally, the Criminal Procedure Code has limited the grounds for terminating an investigation in Article 109 paragraph (2): lack of evidence, not a criminal offense, or termination due to legal reasons (e.g., ne bis in idem, expiration of the statute of limitations, or death of the suspect). This shows that in the criminal procedure system, termination of an investigation is a strict exception. Therefore, the Attorney General's practice of terminating fiscal cases "in the public interest" is in a constitutionally problematic gray area.

In the United States, prosecutorial discretion is very broad. Federal and district prosecutors can choose which cases to prosecute, arrange indictments, and even make plea bargains. However, this broad authority is balanced by control mechanisms. The doctrine of selective prosecution allows defendants to challenge prosecutors' decisions that are considered discriminatory and violate the 14th Amendment. Congress and supervisory agencies can also review the Attorney General's policies through hearings. In other words, although broad, US prosecutorial discretion is not without limits; there are checks and balances and published policy standards (prosecution guidelines).

The Netherlands, as a civil law country, adheres to the opportuniteitsbeginsel principle, which gives prosecutors the authority not to prosecute if there is no significant public interest. However, every non-prosecution decision must comply with the written guidelines (Aanwijzingen) of the Attorney General (Procureur-Generaal) and can be challenged through the Article 12 Wetboek van Strafvordering mechanism in court. Thus, the scope of discretion in the Netherlands is limited by explicit parameters and public control access.

This comparison highlights gaps in Indonesia: (1) There are no clear and published prosecution guidelines as in the US; (2) There is no court mechanism for victims/the public to challenge non-prosecution decisions as in the Netherlands; (3) There are no explicit parameters regarding the type of case, amount of damages, or level of cooperation of the perpetrator that would allow for the termination of a case. In other words, Indonesia combines broad discretion (like the US) with weak controls (unlike the US and the

[16] Sabda S. Rumondor, "Termination of Investigation in Criminal Proceedings," *Lex Privatum* V, no. 2 (2017): 123–30.

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Netherlands). This is what creates the potential for conflict between fiscal interests and constitutional principles.

Based on the above analysis, several concrete recommendations can be drawn, including: (1) Clarification of Legislation: The law must clearly distinguish between ordinary administrative discretion and prosecutorial discretion. For prosecutorial discretion, the law must include strict requirements, transparent procedures, and oversight mechanisms. (2) Explicit Parameters: The authority to terminate investigations/prosecutions in the public interest needs to be tied to certain parameters, such as specific types of fiscal crimes, minimum state losses, and the level of cooperation of the perpetrator. (3) Judicial Review Mechanism: Every decision to terminate an investigation/prosecution by the Attorney General must be subject to review in court (special pretrial or new mechanism) to comply with the principle of due process of law. (4) Policy Guidelines: Adopt international best practices such as the public interest test in the United Kingdom or written guidelines in the Netherlands, so that every non-prosecution decision has an objective and measurable basis. (5) Public Transparency: The Attorney General's Office needs to publish annual reports containing data on the termination of investigations/prosecutions in the public interest to ensure public accountability. (6) Separation of Fiscal and Law Enforcement Roles: To avoid conflicts of interest, the government may consider establishing a clear fiscal-law enforcement coordination mechanism so that decisions to terminate cases are not solely determined by considerations of state revenue. These steps will shift prosecutorial discretion from an ad hoc instrument to a measurable and accountable one, supporting not only the fiscal interests of the state but also constitutional principles, the rule of law, and the protection of human rights.

### 3.2. Termination of Investigation by the Attorney General Based on the Interests of State Revenue, Especially in Tax, Customs, and Excise Cases.

In the Indonesian legal system, investigation is the initial stage in the criminal justice process, which aims to seek and gather evidence to uncover alleged crimes and identify the perpetrators. This stage is traditionally under the authority of the police, civil servant investigators, or technical agencies such as the Directorate General of Taxes and Customs, and is then coordinated with the Attorney General's Office for the prosecution process. However, in practice, especially in cases involving state finances in the taxation, customs, and excise sectors, there has been a practice of terminating investigations on the grounds of state revenue interests, which are substantively decided by the Attorney General, even though formally the termination of investigations is the authority of the investigator. This phenomenon marks a shift in the function of discretion from what was originally administrative in nature to prosecutorial discretion, which has profound constitutional consequences.[17]

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[17] Sabrina Hidayat et al., "Termination of Investigation Due to Return of SPDP from Public Prosecutor," *Halu Oleo Legal Research* 5, no. 3 (2023): 900, https://journal.uho.ac.id/index.php/holresch/article/view/281/274.

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Conceptually, administrative discretion is defined as the authority of state administrative officials to make decisions or take actions in situations where the law does not provide clear guidance or provides limited freedom in choosing alternatives in the public interest. Article 1 point 9 of Law Number 30 of 2014 concerning Government Administration explicitly states that discretion is "decisions and/or actions determined and/or carried out by government officials to overcome government stagnation in certain circumstances in the public interest." This type of discretion is commonly found in everyday government practice to bridge legal gaps or expedite public services. The legal consequences are more administrative in nature, such as review through administrative court mechanisms or internal administrative oversight[18]

Unlike ordinary administrative discretion, the prosecutorial discretion held by the Attorney General has far more serious characteristics and consequences. Prosecutorial discretion is the authority to determine whether a criminal case will be brought to court, discontinued, or transferred to another mechanism (e.g., restorative justice). In Indonesia, the normative basis for this is found in Article 35(c) of Law No. 16 of 2004 in conjunction with Law No. 11 of 2021, which grants the Attorney General the authority to "discontinue prosecution in the public interest." Historically, this authority was intended to protect broader public interests, such as maintaining social or economic stability in extraordinary circumstances. However, in practice, this authority has been interpreted more broadly so that the Attorney General also influences or initiates the termination of investigations in cases with fiscal dimensions, on the grounds that the state's losses have been recovered, the perpetrators are cooperative, and the state's fiscal interests outweigh the repressive effects of criminal law.[19]

From a criminal law perspective, this condition reflects the application of the ultimum remedium principle, which is the view that criminal law is a last resort after administrative or civil approaches have proven ineffective. This principle is commonly applied in areas with economic dimensions, such as taxation and customs. However, the application of ultimum remedium by the Attorney General raises new problems because it is carried out at the investigation stage, which is formally in the hands of investigators, thus potentially violating the limits of authority set by the Criminal Procedure Code. Article 109 paragraph (2) of the Criminal Procedure Code explicitly and restrictively mentions three reasons for the termination of an investigation by an investigator: (1) insufficient evidence, (2) the incident is not a criminal offense, or (3) the investigation is terminated by law (for example, due to ne bis in idem or the death of the suspect). Beyond that, the investigation cannot be terminated. This provision is intended as a legal control instrument over the use of authority to prevent abuse of power and to ensure the upholding of the principles of legality and

[18] Sri Handayani, "Criminal Law System Policy in Terminating Investigations of Minor Crime Perpetrators in Indonesia," *JDA: Journal of Advertised Crimes* 2, no. 2 (2023): 12–18.
[19] Lani Dharmasetya, "Tax Crimes," 2024, 1–23.

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accountability. Thus, when the Attorney General substantively decides to terminate an investigation outside of these three reasons, even with fiscal considerations, fundamental questions arise regarding the constitutionality of such discretion.[20]

The fundamental difference between ordinary administrative discretion and prosecutorial discretion also lies in their constitutional impact. Administrative discretion is more easily corrected through the Administrative Court mechanism and rarely directly affects a person's human rights. In contrast, prosecutorial discretion affects an individual's criminal status, the right to equality before the law, and the victim's right to justice. Therefore, prosecutorial discretion requires stricter legal standards, greater transparency, and effective external oversight mechanisms. Without these, prosecutorial discretion can become a form of institutionalized impunity.[21]

Comparisons with other countries reveal interesting variations in approach. In the United States, the common law legal system recognizes broad prosecutorial discretion, whereby prosecutors (district attorneys or federal prosecutors) have considerable freedom to determine whether or not to prosecute a case. However, this freedom is not absolute; there is political oversight through elections (district attorneys are elected by the people), judicial oversight of abuse of process, and strict internal mechanisms within the Department of Justice. Transparency in prosecution decisions is also relatively high, for example, through the publication of policy memos and prosecution guidelines.[22]

Meanwhile, in the Netherlands, the continental legal system continues to give prosecutors discretionary powers (opportuniteitsbeginsel) not to prosecute in the public interest, but with clear limitations and oversight mechanisms. If the victim or other parties disagree with the decision not to prosecute, they can file an article 12 Sv-procedure with the court for the judge to review the legality of the prosecutor's decision. Thus, there is concrete judicial oversight of prosecutorial discretion. The Dutch model shows that even though prosecutors have the principle of opportuniteit, this principle is not separate from judicial checks and balances.

Indonesia currently does not have a judicial oversight mechanism similar to Article 12 of the Dutch Criminal Code regarding the Attorney General's decision to terminate an investigation. The pretrial mechanism in the Criminal Procedure Code only examines the legality of the termination of an investigation by investigators, not the Attorney General's substantive decision to terminate an investigation in the interests of state revenue. This creates a research gap: previous studies have tended to focus on fiscal or conceptual aspects of the need for discretion to optimize state revenue, but have not examined in depth the

[20] Kurniawan, "Customs and Excise Law Enforcement II," 2020, 1–76.

[21] Maria Ulfah, Anne Safrina, and WM Herry Susilowati, "Termination of Investigation: A Review of Administrative Law and Criminal Procedure Law," *Law Forum - Faculty of Law, Gadjah Mada University* 29, no. 1 (2017): 16, https://doi.org/10.22146/jmh.17641.

[22] Sean P Collins et al., "Reinvestigation of Corruption Cases That Have Been Terminated by the Prosecutor's Office Based on the Discovery of New Evidence" 3 (2021): 1–18.

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constitutionality of the Attorney General's authority and the absence of an external oversight mechanism. This study is different because it focuses on constitutional review of the Attorney General's discretion in actual cases of taxation, customs, and excise, with a primary focus on testing its conformity with the principles of the rule of law, due process of law, and equality before the law.[23]

The sociological dimension cannot be ignored either. Unsupervised discretion has the potential to create moral hazard, encouraging large economic actors to view legal violations as a "business cost" that can be negotiated with the state through compensation for losses. This creates structural injustice because only those who are financially capable can enjoy this "second chance," while smaller actors continue to face criminal prosecution. In the long term, this situation erodes public trust in the integrity of law enforcement and has the potential to delegitimize law enforcement institutions, including the Attorney General's Office and tax/customs authorities. When the public perceives that the law can be negotiated, voluntary compliance with fiscal obligations will weaken, preventing the sustainable achievement of state revenue recovery goals.[24]

Therefore, this study proposes specific recommendations to balance fiscal interests and constitutional principles through the strengthening of checks and balances mechanisms.[25]

First, a judicial oversight mechanism is needed for decisions to terminate investigations by the Attorney General in cases involving state revenue. This mechanism could take the form of a summary review procedure in court, such as the model in Article 12 Sv in the Netherlands, where interested parties can ask a judge to review the legality and appropriateness of the decision to terminate an investigation. Thus, the decision is not only administratively accountable but also judicially reviewed.[26]

Second, it is necessary to strengthen the role of the House of Representatives in its oversight function over the Attorney General's Office. The DPR can require periodic reports from the Attorney General regarding the number of cases in which investigations have been terminated, the legal basis for this, and the state losses that have been recovered. The DPR can also summon the Attorney General to explain this policy so that the principles of justice

[23] Jefri Ramadhan, Tofik Yanuar Chandra, and Mohamad Ismed, "Application of the Ultimum Remedium Principle in the Enforcement of Excise Crimes as an Effort to Recover State Losses," *Cendekia: Journal of Scientific Research and Studies* 1, no. 9 (2024): 626–38, https://doi.org/10.62335/ygjg6e80.

[24] Renita Kusuma Dewi, "Implementation of Restorative Justice in Criminal Law Enforcement Related to Customs and Excise in Indonesia," *Jurnal Masyarakat Hukum Pendidikan Harapan* 2, no. 1 (2024), https://doi.org/10.46576/wdw.v0i59.349%0Ahttps://jumas.ourhope.biz.id/ojs/index.php/JM/article/view/56.

[25] Drajat Ulung Rachmanto, "Fulfilling Obligations, DJP Jateng II Stops Taxpayer Investigation," Directorate General of Taxes Central Java, 2025, https://www.pajak.go.id/id/berita/penuhi-kewajiban-djp-jateng-ii-hentikan-penyidikan-wajib-pajak#:~:text=Based on Article 44B of the Provisions Law, in accordance with applicable provisions. &text=*).

[26] Rocky Marbun, "Reconstruction of the Criminal Penal System in Tax Law Based on the Ultimum Remidium Concept," *Constitutional Journal* 11, no. 3 (2016): 538, https://doi.org/10.31078/jk1137.

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and legal certainty are maintained. This legislative oversight function is in line with the ideas of trias politica and checks and balances in constitutional theory.[27]

Third, every decision to terminate an investigation must be accompanied by a requirement for public transparency. Legal considerations, the amount of state losses recovered, and the fulfillment of requirements must be announced so that the public can assess the fairness of the decision. This transparency is important to prevent the practice of "exclusive discretion" that only benefits certain parties and undermines the principle of equality before the law. [28]

Fourth, substantive standards for the Attorney General's use of discretion need to be strengthened, for example, through implementing regulations that set clear parameters: the type of crime, the amount of state losses (threshold limit), the status of the perpetrator (e.g., mandatory cooperation), and the mechanism for coordination with relevant agencies. These parameters will reduce excessive interpretation and provide legal certainty for all parties. [29]

Fifth, as a long-term measure, consideration could be given to establishing an independent supervisory body under the Supreme Court or the Prosecutor's Commission with the authority to audit and evaluate every decision to terminate an investigation by the Attorney General. This body would function as an additional preventive check and balance mechanism.[30]

The above recommendations are intended to ensure that the Attorney General's discretion remains a strategic and flexible instrument of criminal law policy, but without sacrificing constitutional principles, particularly the rule of law and equality before the law. With adequate oversight mechanisms, Indonesia can emulate the strengths of the Dutch model (judicial oversight) and the United States model (political oversight and policy transparency) while adapting them to the national legal system.

## 4. CONCLUSION

The Attorney General's discretion to terminate investigations in the interests of state revenue is an executive function in the realm of criminal law that intersects with fiscal policy. The need to maintain a balance between legal certainty, effective law enforcement, and the strategic interests of the state in the areas of taxation, excise, and customs is the basis for this discretion. Reconstructing the constitutional limits and model of judicial

[27] Aulia, Muhammad Nur, and Sulaiman, "Termination of Investigation of Corruption Crime Cases by the Prosecutor's Office Regarding the Return of State Financial Losses," 2025, 41–66.

[28] Muhammad Nu'man, "Analysis of the Authority of Civil Servant Investigators of Customs and Excise in the Investigation of Criminal Acts in the Customs Sector," *Aleph* 87, no. 1,2 (2023): 149–200, https://repositorio.ufsc.br/xmlui/bitstream/handle/123456789/167638/341506.pdf?sequence=1&isAllowed=y%0Ahttps://repositorio.ufsm.br/bitstream/handle/1/8314/LOEBLEIN%2C LUCINEIA CARLA.pdf?sequence=1&isAllowed=y%0Ahttps://antigo.mdr.gov.br/saneamento/proees.

[29] Adhalia Septia Saputri and Lusia Sulastri, "Application of the Ultimum Remedium Principle in the Criminalization of Money Laundering Crimes," *Journal of Mandalika Literature* 5, no. 2 (2024): 2745–5963, http://ojs.cahayamandalika.com/index.php/teacherAkreditasiSinta6,SK.Nomor:0547/E5/DT.05.00/2024.

[30] Trilabali Bontongan, Askari Razak, and Hardianto Djanggih, "The Effectiveness of Applying the Ultimum Remedium Principle to Criminal Offenders in the Field of Tobacco Product Excise," *Journal of Lex Philosophy (JLP)* 5, no. 2 (2024): 1640–55, https://pasca-umi.ac.id/index.php/jlp/article/view/1962/2279.

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oversight of the Attorney General's discretion, which has not been reviewed in depth in previous studies. Research recommendations include: (1) revising the Attorney General's Office Law so that the parameters for terminating investigations are clearly regulated; (2) establishing a judicial oversight mechanism through special pre-trials or the role of the Constitutional Court to review decisions to terminate investigations; and (3) strengthening the role of the House of Representatives and independent supervisory institutions to prevent moral hazard, erosion of public trust, and delegitimization of law enforcement institutions. Furthermore, the Attorney General's discretion can only be considered constitutional if it is strictly limited by law and supervised in a transparent and accountable manner. Without these restrictions, discretion has the potential to become a means of impunity and undermine the principles of justice and the integrity of the criminal justice system.

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