

# OPTIMIZING THE ROLE OF CIVIL SERVANT INVESTIGATOR IN INDONESIAN LAW ENFORCEMENT

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## ABSTRACT

*Civil Servant Investigators (PPNS) have important role in Indonesian legal enforcement. Studies related Civil Servant Investigators have been carried out but not one of them is focusing into equality with other investigators. This study applied socio-legal research method in which focusing on legal concepts and legal realities to overcome issues related unequal position of Civil Servant Investigators. In the realm of legal concept, there is an unequal placement between police investigators and Civil Servant Investigators. Whereas at the level of reality, legal conditions which are increasingly complicated due to legal esotericism require the specifications of investigators who truly understand their fields. This diametrical condition requires reorientation so that the immunity and independence of investigators of the two institutions have the same legal protection.*

**Keywords:** Civil Servant Investigators, Legal Equality, Legal Role Optimization.

## INTRODUCTION

Civil Servant Investigators (PPNS) have been back in the spotlight in recent times in Indonesia (Syahrin, 2018). After the disclosure of the letter signed by officials in the Bureau of Coordination and Supervision, in the case of Djoko Tjandra who is convicted corruption crime, public realized that there is one law enforcement officer who has the authority to investigate, but so far it seems sink and sidelined, namely Civil Servant Investigators (PPNS). The role and great potential of PPNS that is ignored, not involved, but only used as a 'legal shortcut' to escape the country's fugitives to escape (Handayani, 2019), is actually very interesting to be reviewed further.

Therefore, the substantive course (Brown & Yule, 1996) of PPNS as law enforcement when associated with 'optimization', at least implies two different conditions that the study wants to highlight. On the one hand there is an existing condition that is seen as not yet in the best state (optimal), while at the same time there is hope of better steps to change the existing conditions. Therefore, optimization is directed at the role of Civil Servant Investigators (PPNS) in law enforcement, it must be known in advance the current conditions regarding the role of PPNS which for further improvement measures are formulated.

Observing the current conditions, the pull of globalization is characterized by increased communication and interaction between individuals from different parts of the world, causing the potential for various legal problems between individuals or groups of people that are increasing in intensity. The problems that often arise along with the latest developments, among others, in the form of various types of crime that not only have the dimension of Street Crime (Street Crime) but also includes White Collar Crime (White Collar crime) that applies the rapid sophistication of the latest technology. For the development of such crimes, one of the countermeasures taken is to draw up legislation that gives authority to other institutions outside the National Police, to be involved in the

law enforcement process. In addition to the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), and prosecutors who have the authority to investigate, there is one civil institution authorized to investigate a criminal act, namely the Civil Servant Investigator (PPNS). This is the legal condition referred to as esoteric. Szelnick points out that the more developed the legal profession, the more technical aspects of the law it refines. In such contexts, the more the law increases with the sophistication of its rules and regulations, at this level, the law becomes an exclusive world and can only be entered by people of special and educated expertise to deal with it (Szelnick, 1980; Raharjo, 1979; Rusatmaji, 2019).

It can be observed, the existence of Civil Servant Investigators (PPNS) was formed based on various legal umbrellas including but not limited to Law No. 8 of 1981 on Criminal Procedural Law (KUHAP). In the provisions of the criminal procedural law, investigators formulated as officials of the State Police of the Republic of Indonesia and certain Civil Servants who are specially authorized by the law. In addition to the juridical provisions, Law No.2 of 2002 concerning the State Police of the Republic of Indonesia also states that in carrying out its functions as law enforcement, the State Police of the Republic of Indonesia, assisted by Civil Servant Investigators.

As for the area of regional autonomy, Law No. 23 of 2014 on Local Government as amended the second time by Law No. 9 of 2015 on the Second Amendment to Law No. 23 of 2014 on Local Government, formulates that Members of the Pamong Praja Police Unit (Satpol PP) can be appointed as Civil Servant Investigators to assist the Regional Head in enforcing local regulations and the implementation of public order and public order. Even derivation of such statutory provisions, through a

Regional Regulation can also be appointed other officials who are given the task to investigate violations of the provisions of the Regional Regulation (Peraturan Daerah).

The authority given to Civil Servant Investigators to carry out the task of investigation will facilitate the disclosure of a criminal act. However, the involvement of Civil Servant Investigators in the duties of law enforcement is limited at the level of tactical and technical investigations, giving rise to conditions that reduce the original purpose of its formation. It can be observed that since the beginning Civil Servant Investigators agencies were formed only to assist police officers in conducting investigations, so that efforts to institutionalize Civil Servant Investigators as an independent institution in carrying out investigative tasks are feared to have an impact on the injury of the law enforcement process. Unfortunately, the statement of 'legal certainty' that Civil Servant Investigators 'only' is designed in assisting police officers in investigations based on textual formulations, is used as an 'ideology' in legal life and placed as the ultimate goal of law enforcement. Due to the legal certainty of Civil Servant Investigators position in the formulation of Indonesian Criminal Procedural of Law as assumed as the destination, then the legal task becomes completed if it has found certainty. However, isn't the legal certainty of a formulation the result of human construction, which is not something that is (Putro, 2011) ahistorical and value-free? On this rhetorical question, the study on optimizing the role of Civil Servant Investigators in law enforcement is further examined.

## **PROBLEM FORMULATIONS**

The problem formulation in this article is focused on two parts, first, how is the critical study of the current condition of Civil Servant Investigators done to know the legal concept and the concept of reality (factual concept) that surrounds it? Second, how can optimization measures are projected to provide the direction of reorientation of positional equality and the legal umbrella of Civil Servant Investigators?

## RESEARCH METHODS

In-depth research on the current and projected optimization of Civil Servant Investigators, associated with the phenomenon of sectorial ego and the phenomenon of legal esoterism, was pursued with Sociolegal Research (Warassih, 2007). This study prefers to apply sociolegal research method which still puts the object of research in the form of law, in this case legislation related to the issue of the position of Civil Servant Investigators and its equality. At a later stage, methods and theories of social sciences are also used to assist researchers in conducting analysis. This study is also categorized as qualitative research that is intended so that researchers can reveal more deeply social and legal phenomena because it will make it easier for researchers to adjust to circumstances or deal with double reality (Danim, 2002; Heriyanto, 2015). Its essence is directed as a method of understanding the uniqueness, dynamics and holistic nature of human presence and its interaction with its environment.

## DISCUSSION

### **Review the Current Condition of the Role of Civil Servant Investigators (PPNS)**

As can be studied in a formal juridical manner, the framework of the criminal justice *system* in Indonesia, the role of law enforcement officials, especially investigators, occupies a very strategic position. Investigators are the first gateway to the start of the law enforcement process with the step of searching and finding material truth. Through the investigation process, law enforcement efforts began to be carried out.

Nevertheless, the wide scope of duties and responsibilities of investigators in the law enforcement system in Indonesia still leaves many problems. Such problematic is not only related to the number of institutions authorized to conduct investigations on a criminal act, but also related to the overlap of investigative authority among some of these institutions. As a result, between investigative institutions appears the impression of lack of coordination and synergy that can have an impact on the diminishing credibility of law enforcement institutions in the eyes of the public. Examples of the overlap of investigative authority between Civil Servant Investigators and Police Investigators can be seen for example in pretrial lawsuits as occurred in the case of Abdul Waris Halid's lawsuit. In this case, the suspect in the case of smuggling imported white sugar filed a pretrial lawsuit against the Head of the National Police of the Republic of Indonesia, Police Criminal Investigation Agency, and Director II of Economics and Special Affairs, at the South Jakarta District Court. In its decision The Judge of the South Jakarta District Court stated that the arrest and detention carried out by the Respondent is invalid because the authorized is the Investigator of Civil Servants Directorate General of Customs and Excise, in accordance with the provisions of Article 112 of Law No. 10 of 1995 on Customs jo. Article 6 Law No. 8 of 1981 on Criminal Procedural Law jo. Government Regulation No. 55 of 1996.

The problem as described above will certainly continue if no immediate solution is found. Even more worrying is the threat of a sense of community justice as a result of competing law enforcement, but not material justice (Pavlo et al., 2019). Just because there is a sectorial ego attitude among each law enforcement institution, the sense of community justice that should be upheld must be sacrificed because of it. In such circumstances, there must be a joint awareness that the authority to carry out the task of investigation to Civil Servant Investigators will certainly facilitate the disclosure of a criminal act given the many obstacles faced by police officers in conducting investigations. Constraints and limitations such as the quality and quantity of human resources, supporting facilities, and budgets owned by the Police, certainly not balanced with the potential for crime that is currently growing. However, on the other hand, the

number of investigative institutions must also be aware of the potential to attract authority between institutions, especially if each investigative institution puts forward a sectorial ego, which can lead to a hamper in the law enforcement process.

Therefore, in anticipation of the emergence of inconsistencies in carrying out the task of investigation, especially between police investigators and Civil Servant Investigators, the Criminal Procedure Code has provided solutions related to the position of the two institutions as stipulated in Article 7 paragraph (2) Criminal Procedure Code which confirms that the Investigator as referred to in Article 6 paragraph (1) letter b Civil Servant Investigators has authority in accordance with the law that becomes the basis of their respective laws and in the implementation of their duties under the coordination and supervision of the investigator (Karjadi & Susilo, 1997).

In addition to the formal juridical aspects, there are factual conditions that show different realities regarding Civil Servant Investigators, which it is not optimal in carrying out its duties and functions. Noting autonomy as a consequence of the democratization of the rolling government since the reform era of 1998, it turned out to cause the local government to experience an increase in the number of affairs that must be handled and accounted for the realization of a fair and prosperous society (Hidayat, 2007). The increasing number of local government affairs, not least because of the demands of autonomy that positions the Central Government must decentralize some government affairs to the Local Government to be managed independently based on its own initiatives in accordance with the conditions of each region (Marzuki, 2007; Hidayat, 2008). Organizing government affairs based on its own initiatives, means organizing affairs ranging from planning, organizing, implementation, to supervision conducted by local government devices, to accommodate the diversity of values of local interests of each region (Isharyanto, 2006). Various affairs organized by such regions, of course must have various legal umbrellas in the form of regional regulations. Not infrequently these laws create a variety of provisions that impose sanctions, both administrative and sanctions in the criminal realm.

The culmination of the provisions of criminal sanctions has a different application with administrative sanctions (Firdaus, 2013). Special expertise is required in the field of investigation to uncover acts against criminal law that are generally in violation of the provisions of the law and have the consequences of disrupting public order.

Special skills and heavy duty as an investigator are what should be a joint monitoring on the context of Civil Servant Investigators in the region. It is no secret that it is often found a reality that the designated Civil Servant Investigators officials are structural officials who also carry the mandate of positions in the structure of local government. Double the function of the position or at least the absence of a special position for Civil Servant Investigators, becomes a technical constraint of the placement of Civil Servant Investigators resources that prevents it from working optimally. When Civil Servant Investigators is held by employees who also occupy structural positions in a Local Government Institutions then the concentration and optimization of the main tasks and functions will of course be split. The uncommodified functional position of Civil Servant Investigators which is not attached to a structural position in Local Government Institutions, along with its own career and benefits and intensive positions that are adequate as Civil Servant Investigators, is an issue that still needs to be examined more deeply. Not to mention the personal rolling system in a series of promotions of positions in local government mechanisms, often it is not appropriate to form the character of a person in holding the rule of duty as Civil Servant Investigators. A person's special skills and passion to become an investigator must be realized that it cannot be developed instantly. It takes a long process and sensitivity in running the function as an investigator. Therefore, such a rolling system of human resources should not be applied in the establishment of a reliable Civil Servant Investigators in the region. The consequences of the concentration of career levels in the duties and functions of Civil Servant

Investigators certainly return to the provision of policies and various completeness of incentives that accompany performance as Civil Servant Investigators referred to.

Another thing to note is that the authority of Civil Servant Investigators, which is juridical formal as stated earlier, is also vulnerable to intervention from various parties for the investigation conducted by Civil Servant Investigators. Therefore, the increase of authority as a step to maintain 'immunity' to outside interventions should also be considered in the conception of optimization of Civil Servant Investigators in the future. One of the steps that can be taken of course aligns the legal umbrella of the provisions and authority of Civil Servant Investigators in legal products in the form of legislation. As the highest legal product resulting from the consolidation of representatives of the people together with the executive, the equality of the position of Civil Servant Investigators when faced with other investigators who are staggered by the law, certainly has a positive impact on the independence and 'immunity' of interventions in law enforcement implemented.

### **Optimizing the Role of Civil Servant Investigators**

Observing the current condition of the role of Civil Servant Investigators in law enforcement, there can be at least two aspects that limit its optimization, namely the misperception of the formal juridical aspect (legal concept) and factual concept. At the point of formal juridical, the scope of authority and obligations of investigators is very broad (Karjadi & Susilo, 1997). With such awareness, the scope of such a wide investigation should be understood not a simple process. Therefore, the centralization of the investigation authority only to certain institutions on a single basis without the support of other agencies is impossible (Rustamaji & Gunawati, 2011). Therefore, the presence of Civil Servant Investigators should be interpreted as a support force in law enforcement that cannot be separated from its role and function with police investigators. Such strengthening of legal aspects can be done by strengthening the legal umbrella in the form of legislation for Civil Servant Investigators so that it has a comparable legality, independence without intervention and integrity that is directly controlled by the principle of legality that staggers it. The absence of legal products at the legal level regarding the regulation of Civil Servant Investigators authority, except in Article 6 and Article 7 of Indonesia Criminal Procedural Code, is evidence of inequality that still occurs in the formal juridical aspects when associated with the functions of Civil Servant Investigators as law enforcement.

Theoretically, the fulfillment of Indonesian Criminal Code is associated with the principle of such legality, citing the view of (Corstens, 2014) which asserts that the principle of legality in HAP as no trial without law. The principle of legality in law of criminal procedure is different from the principle of legality in material criminal law, and indicates that law of criminal procedure has a national scope that cannot be enacted in legislation under the law (Corstens, 2014; Supardjaja, 2015). This means that law of criminal procedure can only be changed by law. It is at this point that law of criminal procedure provides protection for individuals in the community that ensures the orderly practice of law. In the context of the existence of Civil Servant Investigators, it can be further explained that the 'regulatory pressure' based on the actual law lies in the process (reduction of individual rights) and procedures (protection of individual rights), all of which are carried out by Civil Servant Investigators when enforcing criminal law. It was at this culmination that the regulatory requirements were much stricter than the establishment of offense on substantive criminal law. Therefore, the legal arrangement of the event as well as the authority of Civil Servant Investigators in carrying out its function as law enforcement must be spelled out by law. This has consequences that arrangements, which are legal in nature, cannot be delegated to legislation under the law (under legislation). In other words, in addition to the Criminal Procedural Code conditions, there should be a special law on Civil Servant Investigators that contains

provisions that are operational in such a way that it can be carried out by Civil Servant Investigators as law enforcement without having to be further regulated in the legislation under the law.

In a more specific area of regional autonomy, the investigation authority that requires special expertise must be realized that it cannot be done by local government institutions in the form of Regional Government Organization (Organisasi Perangkat Daerah) whose main task is not in the realm of investigation, but rather to public services. The existence of criminal sanctions imposed on the provisions of the regulation must be realized requiring professionals as law enforcement and tactically become part of the structure of local government (Fakrulloh, 2005; Qomar, 2011). When Civil Servant Investigators institutions are not given separate arrangements that regardless of structural functions will be feared to cause procedural errors that could potentially lead to the violating of one's human rights.

The involvement of Civil Servant Investigators, which is part of the executive institution, in the process of investigating criminal acts is more based on factual conditions in the internal environment of the National Police which still has a variety of resource shortages, including:

- a) Human Resources. It must be recognized that until now the condition of human resources police still faces obstacles, both in terms of quantity and quality. The unbalanced ratio between the number of members of the National Police and the public has an impact on the lack of police personnel who have qualifications as investigators, while in quantity, there are still many members of the National Police who do not understand the material (substance) of certain criminal cases. For example, an understanding of immigration, customs, employment, which is precisely better controlled by the relevant Civil Servant Investigators? Therefore, the involvement of Civil Servant Investigators in the investigation of a particular crime is an effort to overcome these obstacles (Caron & Giauque, 2006).
- b) Infrastructure Facilities. In certain cases, police institutions do not have adequate investigative infrastructure compared to Civil Servant Investigators. For example, for the enforcement of customs cases of course required motor ship infrastructure with special specifications, while police officers do not have a ship with such specifications, so it requires assistance from Customs and Excise. The same thing happened in the investigation of illegal fishing crimes, until now the infrastructure supporting the investigation owned by the National Police is still in adequate, so it requires the involvement of Civil Servant Investigators.
- c) Budget. As is known, the budget allocated specifically to investigate a criminal act is relatively small compared to the real needs. Especially if the location of the investigation is far apart and crosses the territorial boundaries. Therefore, the involvement of Civil Servant Investigators in conducting investigations is expected to minimize such budget constraints.

Based on some obstacles and conceptualization of the above solutions, it can be explained that the involvement of Civil Servant Investigators in the investigation tasks should not only limited at the level of tactical and technical investigation alone. Limiting the involvement of Civil Servant Investigators without increasing the capability in the field of investigation due to textual legislation that has originally placed Civil Servant Investigators agencies only to help police officers, should have been conceptualized. Fears and concerns of overlapping authorities when the institution of Civil Servant Investigators is manifested as an independent institution in carrying out investigative tasks need to be rethought in the process of law enforcement that has different segmentation of the basis of substantive criminal law (both in Criminal Code and Regional Regulations).

## CONCLUSION

The study of a formal juridical (legal concept) and factual concept which describes the emergence pull of the authority in the investigation process of a particular criminal

act, can have a negative impact if not coordinated very well. The negative excesses not only target the law enforcement process that is not optimal, but also have an impact on the credibility of both law enforcement officers (Civil Servant Investigators and Police Investigators) in the eyes of the public. The ideality, in a criminal justice system between one law enforcement institution and another law enforcement institution must be very well coordinated, because the two investigators are not rivaling but partners. It is the violators of the law who should be acted upon as joint adresat. Good coordination in law enforcement requires an equal position which is then known as the integrated criminal justice system.

To avoid the occurrence of overlapping authorities in conducting investigations that are necessary is the improvement of coordination and supervision between relevant institutions in law enforcement. The discourses step as well as the socialization of legislation related to the investigation authority for each institution, it is also necessary to get a commensurate portion to obtain a proper understanding of the duties and authorities of each institution. Through such discourse and socialization, it is expected to reduce the gap between each institution while also being able to realize an *equal* and complementary investigative institution.

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