

The Role of Civil Servants Investigators of Department of Environmental of East Java In Conducting Environmental Law Enforcement Under Criminal Law Number 32 of 2009 Concerning The Protection and Environmental Management

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Abstract:-This study aims to determine the role of civil servants investigator in the enforcement of environmental criminal law. Legal research is included in empirical legal research is descriptive with qualitative approach. Types and sources of data used in the writing of this legal research is primary data and secondary data, through field studies and literature, and analyzed using qualitative data analysis techniques including data reduction, data presentation, drawing conclusions and civil servant investigators verifikasi. That in carrying out the duties and authority in accordance regulated in Law Number 32 of 2009 on the Protection and Management of the Environment has not been optimal.

Keywords: Role, Civil Servant Investigators, Environmental Criminal Law

I. INTRODUCTION

Indonesia is a country rich in natural resources. Discussing about the natural resources it is also inseparable discuss about the environment. Arrangements concerning environmental law is essential to regulate the life of mankind, which is associated with the natural resources.

“Good and healthy environment is a fundamental right of every citizen of Indonesia as stipulated in Article 28 H of the 1945 Constitution of Republic of Indonesia. Indonesia Environment is a gift and gift and grace of God Almighty to the people and nation of Indonesia, a space for life in all aspect, and its spell is in accordance with the Archipelgo Concept in order to utilize the natural resource for the welfare of the republic as stated in the 1945 Constitution and to achieve happiness in life based on Pancasila. Therefore, it is necessary to have sustainable development environmentally based on the integrated and comprehensive National Policy

taking into account the needs of the present and future generations”.¹

Environmental law issues of concern both at the local, national, and international levels. Enforcement of environmental law is an integral part "legislative framework" and the final stage of "regulatory chain".²Environmental law enforcement theme has attracted the attention of the public including the main topic in the "Fifth International Conference on Environmental Compliance and Enforcement" in Monterey, California, United States (USA), 16 to 20 November 1998. The conference is intended to provide a basic understanding of environmental enforcement and develop it into a partnership among nations, particularly on "transboundary compliance issues".³The emergence of environmental pollution and destruction of the problems arising regarding the protection and management of the environment. Their development activities is the risk of pollution and environmental damage.⁴ With the increasing implementation of development led to increasing as well the impact on the environment.⁵On the other hand, the construction itself is a conscious and deliberate effort to

¹ Agus Widodo, "Implementation of Act No 32 of On Environmental Management", *International Journal of Business, Economic and Law*, Vol. 10, Issue 4, Aug, ISSN 2289-1552, p 84.

² Rene Seerden and Michiel Heldeweg, "Comparative Environmental Law in Europe: An Introduction to Public Environmental Law in the EU Member States" in GH Addink, *Environmental Law in a Comparative Perspective: National, European and International Law, Literature, Institute of Constitutional and Administrative Law, Utrecht*, 2002, p. 61.

³ Jo Gerardu and Cheryl Wasserman, *Fifth International Conference on Environmental Compliance and Enforcement: Conference Proceedings*, Vol. 1 and 2, Monterey, California, USA, 1998, p. 3.

⁴ SamsulWahidin. 2014 *Legal Dimensions of Environmental Protection and Management*. Yogyakarta: Student Library. P. 104-106

⁵ GatotSupramono. 2013. *Environmental Dispute Resolution in Indonesia*. Jakarta: Rineka Reserved. p.6

manage natural resources (SDA) in order to improve the welfare and quality of life.⁶

In the Constitution of the Republic of Indonesia Year 1945, hereinafter referred to as the Constitution NRI 1945, Article 28H paragraph (1) states that "Everyone has the right to live physical and spiritual prosperity, reside and obtain a good living environment and healthy and receive medical care." Therefore, the constitution of 1945 can be said pro NRI to environmental issues, so it can be referred to as the constitution of the green (green constitution). Changes (amendment) 1945 NRI fourth Constitution in 2002, in addition to providing confirmation of the konstitusionalisasi economic policy, as well as to the improvement of the status of the environment associated with the human rights guaranteed by the Constitution.⁷

Indonesia is a country rich in natural resources. In Article 33 paragraph (3) Constitution NRI 1945 states that "earth and water and natural resources contained in it are controlled by the State and used for the greatest prosperity of the people." This chapter regulates the basic right to control the state of the natural resources as well as also governs basic economic system desired by the State of Indonesia, which towards the goal of Article 33 paragraph (3) of the 1945 Constitution NRI is not independent of the rationale for social welfare.⁸

Indonesian state which is a state of law, have given the setting of the environment, namely Law No. 4 of 1982 on Basic Provisions of Environmental Management (UULH 1982). Then the law was replaced by Act No. 23 of 1997 on Environmental Management (UULH 1997). Subsequently, on October 3, 2009, the government passed Law No. 32 of 2009 on the Protection and Environmental Management (UUPPLH). "Legally, the rules of the law on Environmental Protection and Management are more comprehensive in the regulation of environmental protection and management because in addition to refining also have incorporated various principles/principles related to the environment that developed at the international level".⁹

"Environmental protection and management is currently carried out through a law enforcement mechanism. According to Satjipto Raharjo, law enforcement is defined as a process employed to realize legal desires, namely the thoughts of the legislative bodies that are formulated and stipulated in regulations which are then implemented".¹⁰ Legal handling of

the case of environmental contamination, the necessary synergy between the parties. Related to the investigator, in which case the competent authority in conducting the investigation, the legislation before UUPPLH, investigative authority that are in the Indonesian National Police. Although the Civil Service of Environment conduct an investigation, the police who have the authority to take control of coordination. After their UUPPLH, legality Civil Servant Investigators Environment has the full authority to conduct an investigation in terms of environmental crime. In fact, if the necessary coordination with the police, it is not mandatory.

Such changes can be seen in Article 94 paragraph (6) UUPPLH which states that "the investigations that have been carried out by investigators civil servants submitted to the public prosecutor." Thus, the Civil Servant Investigators (investigators) environment can be and is authorized to submit direct results of the investigation file to the public prosecutor without going through the police again. But in the absence of changes in the criminal procedure law, namely the provision of this investigation authority remains to be seen whether it will provide a significant impact on environmental criminal law enforcement efforts or not.

II. FORMULATION OF THE PROBLEM

How Role of Civil Servant Investigators Environment Agency in the East Java Provincial Environmental Criminal Law Enforcement Based on Law No. 32 of 2009 on the Protection and Management of the Environment?

III. RESEARCH METHODS

Legal research is included in empirical legal research or sociological research that is based on methods, systematics and certain thoughts, which aims to study one or several specific social phenomena by analyzing road. It also held in-depth examination of the social facts are then seek a solution to a problem arising from the related symptoms. In empirical legal research or sociological, then studied at first was secondary data, to then proceed to the primary data research in the field.¹¹

IV. RESULTS AND DISCUSSION

David Silalahi who quote the opinion of Hawkins stating that environmental law enforcement in Indonesia include renovating and repression that covers the field of administrative law, civil law and criminal law. The same view expressed by SitiSundariRangkuti, that the enforcement of environmental law is an effort to achieve compliance with the regulations and requirements in the applicable law in general

⁶Muhammad Akib. 2014. Environmental Law. Jakarta: King GrafindoPersada. Hlm.9

⁷Asshiddiqie. 2009. Green Constitution: Shades of Green Constitution NRI 1945. Jakarta: Rajawali Pers. hlm.79

⁸Bagir Manan. 1995. Growth and Development of a Country's Constitution. Bandung: MandarMaju. hlm.55

⁹ Endah Pujiastuti and Dewi Tuti Muryati, "Administrative Penalty On Licenses Violation Of Environmental Protection and Management On Regencies/Cities In Central Java Province", *Jurnal Dinamika Hukum*, Vol. 18, No 1, January 2018. P 62.

¹⁰ Nurul Listiyani and M. Yasir Said, "Politik Law on the Environment: The Authority of the Government and Local Government to File Litigation in Law

Number 32 Year 2009 on Environmental Protection and Management", *Resource* 2018, 7, 77, www.mdpi.com/journal/Resource, p. 1.

¹¹Soerjono Soekanto. 2010. Introduction to Legal Research. Jakarta: Indonesian University Press. hlm.52

and the individual, through supervision and implementation (or threat) means of administrative, criminal and civil.¹²

Sociologically, law enforcement has a position (status) and role (role). Social position is a particular position in the social structure that may be high, moderate or low. The notch is actually a container, whose contents are the rights and certain obligations. The rights and obligations before the role or roles. Therefore, a person who has a certain position, usually called the holder of the role (role occupant).¹³

Role of Civil Servant Investigators Environment specifically regulated in Law Number 32 of 2009 on the Protection and Environmental Management. In general assumption is referred to as the investigating officer only Indonesian National Police (INP). However, no formal judicial case. In addition to the Police there are other investigators such as civil servants investigator (investigators), prosecutors and military officers the Navy. Provisions governing it, among others, can be listened to in Law No. 8 of 1981 on the Criminal Procedure Code and Government Regulation (PP) No. 27 of 1983 on the implementation of the Code of Criminal Procedure.¹⁴

Understanding the investigator according to Article 1 paragraph 1 of Law No. 8 of 1981 on Criminal Proceedings (Criminal Code) that investigators are police officers of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct an investigation. Whereas in Article 1 point 4 of the Code of Criminal Procedure states that "investigators are police officers of the Republic of Indonesia which is authorized by law to conduct an investigation".¹⁵ In Article 1 point 2 of the Code of Criminal Procedure (Criminal Procedure Code) states that the definition of investigation is a series of actions the investigator in the case and in the manner set forth in this law to search for and collect evidence with evidence that shed light on offenses happened and to find the suspects.¹⁶

Article 94 paragraph (1) UUPPLH states that:

"In addition to investigating police officials of the Republic of Indonesia, officials of certain civil service in the government agency whose scope of duties and responsibilities in the field of protection and management of the environment was authorized as an investigator referred to in the Criminal Procedure Code to conduct the investigation of environmental crime."

¹²Muhammad Akib. 2013. Environmental Law Global and National Perspective, revised edition. Jakarta: Rajawali Pers. hlm.204

¹³Pantun Andrianus Lumban Gaol. Role of Civil Servant Investigators Center for Food and Drug Administration in the discipline Circulation Traditional Medicine Not Licensed under Act No. 36 of 2009 on Health in Pekanbaru. "Jom Faculty of Law. Volume III Number October 2, 2016. p.6

¹⁴Bambang Waluyo. 2008. Crime And Punishment. Jakarta: SinarGrafika. hlm.41

¹⁵Andi Hamzah. 2001. Indonesian Criminal Procedure Law. Jakarta: SinarGrafika. hlm.77

¹⁶Ibid. Page. 118

UUPPLH have led to changes in the field of investigative authority in cases surroundings. Under Article 6, paragraph (1) the Code of Criminal Procedure (Criminal Procedure Code), the investigator is a police officer of the Republic of Indonesia (hereinafter abbreviated as INP) and officials of Civil Servants (hereinafter abbreviated as investigators) certain given special authority by enactment Act. UUPPLH is one of the laws referred to in Article 6 paragraph (1), which became the basis for the existence of investigators as defined in Article authority of the Police other than as mentioned in Article 7 (1) Criminal Procedure Code, among other things, arrest, detention, search, and confiscation, inspection and seizure of letters and coordinating authority for the implementation of the task of investigators (Article 7 (2),

Thus, the system is based on the Criminal Procedure Code, investigators are not authorized to submit the results of the investigation file directly to the public prosecutor, but it must pass the Police. UUPPLH has changed the provisions which currently provides authority to the Police as the sole institution that can submit the file to the public prosecutor the results of the investigation as stated in Article 8 (2) Criminal Procedure Code.

These changes occur through Article 94 paragraph (6) UUPPLH which states that "the investigations that have been done by a civil servant investigators submitted to the public prosecutor". Thus, the Civil Servant Investigators (investigators) environment can be and is authorized to submit the results of the investigation file to the public prosecutor directly without going through the Police again. Granting this authority is yet to be demonstrated empirically in the future whether to bring a positive development for criminal environmental law enforcement efforts, or do not lead to any change.

In Article 94 paragraph (2) UUPPLH authorizes investigators in the investigation. Investigators civil service officials authorized to:

- a. verify a report or information relating to criminal offenses in the field of environmental protection and management;
- b. conduct an examination of any person suspected of committing criminal offenses in the field of environmental protection and management;
- c. asking for information and evidence from any person in respect of a criminal incident in the field of environmental protection and management;
- d. conduct examination of books, records, and other documents relating to criminal offenses in the field of environmental protection and management;
- e. checks in certain places that allegedly contained evidence materials, books, records and other documents;
- f. confiscation of the material and infringing goods which can be used as evidence in criminal

- perkaratindak in the field of environmental protection and management;
- g. asking for expert assistance in the execution of the duties of investigation of criminal offenses in the field of environmental protection and management;
- h. discontinue an investigation;
- i. entering certain places, photograph, and / or make audio-visual recordings;
- j. conduct a search of the body, clothing, room and / or any other place where he did a suspected criminal offense;
- k. arrest and detain the offender.

The success of law enforcement is influenced by several factors which these factors have a close relationship and become a benchmark on the effectiveness of law enforcement. According to Lawrence Meir Friedman success or failure of law enforcement depends on the substance of the law, the legal structure and legal culture. Friedman theory can we make a benchmark in measuring the law enforcement process¹⁷:

a. *Legal Substance*

The substance of law as a substantial system that determines whether or not the law was implemented. In addition, the substance also means that products produced by people who are in a legal system which includes the decisions they have to spend, the new rules that they set. The substance also includes the law of life (living law), not only the existing rules in the book of the law (law books).

b. *Legal Structure*

The legal structure as a structural system that determines whether or not the law was implemented. The legal structure is based on Law No. 8 of 1981 include the start of the police, prosecution, courts and criminal executing agencies (prisons). The authority of law enforcement agencies is guaranteed by law, so that in carrying out its duties and responsibilities in spite of the influence of the powers of government and other influences. There adage that states "fiat iustitia" (even though the world is crumbling law must be upheld). Law can not walk or stand-up when there is no law enforcement officers that credibility, competent and independent.

c. *Legal Culture*

Legal culture is a human attitude toward law and the legal system of beliefs, values, thoughts and hopes. Legal culture is an atmosphere of social thought and social forces that determine how the law is used, avoided or misused. Legal culture is closely related to public legal awareness. The higher of

public awareness it will create a good legal culture and can change the mindset of people about the law over the years.

According to Friedman mostly developing countries in law enforcement efforts only concerns the structure and substance of it, while the issue of the legal culture that is closely received less attention.¹⁸ Some of these components include the scope of the working of the law as a system. William Chambliss and Robert B. Seidman reveals that the working of the law society is influenced by all other personal societal force (all fears of individual people) that covers the entire process.¹⁹

Study the effectiveness of the law is an activity which shows a strategy formulation of the problem of a general nature, which is a comparison between the legal reality and the ideal law, specifically look ladder between the law in action (law in action) with the law in theory (law in theory) or with in other words this activity will show the relation between law in the books and law in action.²⁰

Law enforcement efforts can be interpreted as an effort in order to minimize and mitigate environmental crime. In the context of law enforcement in order to achieve the purpose of the law is fairness, predictability, and effectiveness, especially in this case environmental crime, namely pollution and environmental destruction in the province of East Java, there are several constraints faced by the Civil Servant Investigators Environment Agency of East Java Province , Based on interviews with Civil Servant Investigators Environment Agency of East Java province, there are several factors that become obstacles facing law enforcement, namely:²¹

1. *The limited number of investigators*

In law enforcement cases related to pollution and environmental damage, especially in the province of East Java, the required number of investigators adequate personnel. This is so that the authority possessed by the investigators appropriate environment that is governed by laws can be implemented.

According to AinulHuriSpi., MM as investigators at the Environment Agency of East Java Province explained that enforcement by investigators could be said to be not optimal. This is because the Environment Agency of East Java province only has two (2) personnel in the field of law enforcement

¹⁸EsmiWarrasihPujiRahayu. Assessing 2005. A Sociological Institution Law. Semarang: Top Suryandaru. hlm.29

¹⁹Robert B Seidman. Law orders and Power, Adition Reading Massachusetts' Wesley Publishing Company, 1972, p. 9-13

²⁰Soleman B Taneko. 1993. Principles of Legal Studies in Society. Jakarta: Rajawali Press. Hlm.47-48

²¹ Interview with Mr. AinulHuriSpi., MM Civil Servant Investigators Environment Agency of East Java province, on Day Monday, March 11, 2019, at the Environment Agency of East Java Province

¹⁷Slamet Tri Wahyudi. "Problems of Application of Criminal Dead in the Context of Law Enforcement in Indonesia". Journal of Law and Justice. Vol. 1 Number July 2nd, 2012. Pg. 217

investigators (PPNS gakum). Actually there are four personnel of investigators, but that is PPNS gakum only amounted to two (2) personnel, so that the number of personnel PPNS gakum 2 is deemed ineffective.

2. *Their skill level investigators that the investigation is still lacking*

In order to enforce the law in the environmental field to minimize the violation, the Ministry of Environment and Forestry induct investigators to carry out enforcement of environmental laws. Before PPNS inducted, terlebih first following education and training (training) in advance. Cases of alleged environmental crime different kinds of work in each region respectively investigators, not all investigators to master the skill in each territory served.

3. *The absence of a specific budget for PPNS*

There is no specific budget for the implementation of the investigators in the investigation. In terms of budget, then there is no specific budget for the investigators because they joined the budgetary field of environmental compliance. Compliance field here can be considered as the field of law enforcement. If the investigators have a special container such as functional, in carrying out its duties and authorities, then the budget will be directly allocated to the functional investigators, and the investigators functional which will set the budget for the activities of the investigation.

4. *In the organizational structure, investigators do not have a special container*

In the organizational structure of the Environment Agency of East Java province, law enforcement into the Environmental Compliance Division. This means that the investigators do not have a special container. In terms of budget, then there is no specific budget for the investigators because they joined the budgetary field of environmental compliance. Moreover, the absence of a special container for lead investigators do not focus the implementation of the investigation. Because if it rules the structure of investigators into the field of environmental compliance, the duties and authority will be very broad. When they become one, the problems addressed by the field of legal compliance is not only related to the investigation, but manifold.

5. *Inadequate facilities and infrastructure to support the performance of PPNS*

In the implementation of the investigation, law enforcement infrastructure still needs to be

completed again. One example that should have a rapid test equipment in the field. Moreover, the enforcement of environmental cases, sometimes the problem is the difficulty in terms of proof. This is because it does not allow the investigator to save and move the evidence, sometimes violators have changed evidence. So that would otherwise need to be equipped storage evidence investigation results.

According to AinulHuriSpi., MM as the Head of Complaints and Compliance Environmental Law Environmental Office of East Java province, efforts to address the constraints faced by Civil Servant Investigators Environment Agency of East Java province is to establish a special container for investigators in the structure the organization department of the environment. Investigators are in a separate section on functional groups, and is no longer one in the part of environmental compliance. So the duties, obligations, and its authority will be more evident in law enforcement. In law enforcement, investigators can focus on solving problems and only limited specifically to handle the investigation alone.²²

Then after the special containers for investigators, only then can address the human resource issues by providing an opportunity to participate in education and vocational training. Once it is increasing its personnel investigating the competent civil servants. Besides education and training should be organized between the members of the investigating authorities across agencies in certain cases in order to obtain a shared understanding in handling cases of environmental crime.

Civil Servant Investigators under field Complaints and Compliance Environmental Law Environmental Office of East Java province in carrying out its duties and functions in the environmental field, working to improve its performance. In law enforcement, environmental agencies formed a task force of law enforcement team (task force gakum). And in this task force this gakum many activities involving outside agencies. Office environment is always coordination both within the organizational unit and with other agencies involved, such as the Police, prosecutors, KODAM, Faculty of Law, University of Airlangga.²³

On the issue of the budget, if there are special containers for investigators budget problems will be resolved, because it automatically budget will be directly allocated to the functional investigators, and the investigators functional which will set the budget for activities through the investigation without environmental compliance. To perform its duties, in operational and investigative activities, both from start to forceful measures, transport or transfer until securing evidence in much need of high cost. Therefore, investigators in order to carry out their duties optimally, again the urgent thing is the creation of a special container for investigators.

²² Ibid.

²³ Ibid.

V. CONCLUSION

The role of civil servant investigators Environment Agency in the East Java Provincial Environmental Criminal Law Enforcement by Act No. 32 of 2009 on the Protection and Environmental Management are as follows:

Article 94 paragraph (1) states that in addition to investigating police officers of the Republic of Indonesia, officials of certain civil service in the government agency whose scope of duties and responsibilities in the field of protection and management of the environment was authorized as an investigator referred to in the Code of Criminal Procedure to do environmental crime investigation.

In Article 94 paragraph (2) UUPPLH authorizes investigators in the investigation. Investigators civil service officials authorized to:

- a. verify a report or information relating to criminal offenses in the field of environmental protection and management;
- b. conduct an examination of any person suspected of committing criminal offenses in the field of environmental protection and management;
- c. asking for information and evidence from any person in respect of a criminal incident in the field of environmental protection and management;
- d. conduct examination of books, records, and other documents relating to criminal offenses in the field of environmental protection and management;
- e. checks in certain places that allegedly contained evidence materials, books, records and other documents;
- f. confiscation of the material and infringing goods which can be used as evidence in criminal perkaratindak in the field of environmental protection and management;
- g. asking for expert assistance in the execution of the duties of investigation of criminal offenses in the field of environmental protection and management;
- h. discontinue an investigation;
- i. entering certain places, photograph, and / or make audio-visual recordings;
- j. conduct a search of the body, clothing, room and / or any other place where he did a suspected criminal offense
- k. arrest and detain the offender.

Then in Article 94 paragraph (3) states that the arrest and detention referred to in paragraph (2) letter k, investigators civil service officials to coordinate with the investigating police officers of the Republic of Indonesia. Furthermore.

Article 94 paragraph (4) states in terms of investigating civil service officials conducting an investigation, investigator civil service officials told the investigating police officers of the Republic of Indonesia and

the investigating police officers of the Republic of Indonesia to provide assistance in order to smooth the investigation.

Article (5) that investigators civil service officials notify the commencement of the investigation to the public prosecutor with a copy to the investigating police officers of the Republic of Indonesia. and Article (6) The results of the investigation conducted by the investigating civil servants submitted to the public prosecutor.

Because of limited facilities and infrastructure owned by the Environment Agency of East Java province, then in carrying out its duties and functions role, investigators requested assistance from the East Java Police. Lack of space for storing evidence, then dibanyu by police. Then in the case of the arrest also still require police assistance because of limited facilities and infrastructure. Given the arresting someone needs to prudence, one of them to anticipate when the person is carrying a weapon. Henceforth, the delegation of authority, the office environment is still bound di jajaran Police, so keep coordinating with investigators korwas. In the Police, on direkrimsus are korwas investigators. Devolution korwas still pass it, and then just submitted to the prosecutor.

VI. SUGGESTION

1. To the Government, is expected to investigators be given a special container in the organizational structure of the Environment Agency of East Java Province.
2. Civil Servant Investigators told the Environment Agency of East Java Province and East Java Police, expected their education and training in order to strengthen the coordination and agreement in the framework of criminal law enforcement environment.

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