

**THE REFORMULATION OF INDONESIAN NATIONAL POLICE FORCE
AND POLICE SERVANT INVESTIGATOR (PPNS) AUTHORITIES
IN INVESTIGATING THE CRIME OF ENVIRONMENT POLLUTION
AND/OR DAMAGING**

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YURIZAL

**DOCTORAL DEGREE OF LAW
LAW FACULTY OF BRAWIJAYA UNIVERSITY
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-Yurizal-

ABSTRACT

The polluting and/or damaging of environment is crime, which is belonging to "extra ordinary crime" that means the crime of polluting and/or damage to environment, is so an extra ordinary crime that then the solving problem has to be extra ordinary. Extra ordinary crime is a crime of polluting and/or damaging to environment, which has big impact for the survival of the environment ecosystem diversity in Indonesia.

1. INTRODUCTION

Indonesia is a rich country regarding resourcess that have rich something contained within the earth. In the chapter 33, article 3, Indonesia Basic Law 1945 regulates about the rich of resources that is spelled " The earth and water and natural riches contained within they are controlled by the state and used for the greatest the publics' prosperity"

It is an obligation for the parties universally to take care of the earth and something contained within it. The earth is having character of holistic. In order to care for the earth and something contained within it in spite of something onto it, that is required the involvement all the parties, both public and state organizers and government. Therefore, it is needed various roles that settles about how to manage and behave the earth and something contained within it in spite of something onto it for being guarded from the pollution and damage that is postscript as caused by human acts.

The reason of the earth issue is a basic problem for live hood.

Polluting and/or damaging to environment is a crime which is belonging to "*extra ordinary crime*" that means the crime of polluting and/or damage to environment is so an extra ordinary crime that then the solving problem has to be extra ordinary. The crime of polluting and/or damage to environment is so an extra ordinary crime that then the solving problem has to be extra ordinary.

In polluting and damaging to environment had many issues those are investigated by Indonesian National Police as data that is mentioned on the summary of environment issue as follows:

**Total of polluting and/or damaging to
environment issues investigated by
East Java Police
Year 2004-2009**

No	Year	Total of issues
1	2004	10
2	2005	9
3	2006	2
4	2007	5
5	2008	2
6	2009	3

Source: Data of Criminal Operative
Directorate Regional Police Force
East Java

For instance, the case bundle of polluting and/damaging to environment issue that is done by PT. Kingdom Indah, branch office Gresik, Raya Bambe St. KM 18 Driyorejo-Gresik, broke the Law No. 23/1997, chapter 43 (article 1), about environment management Jo. Law No. 5/1984, chapter 27 (article 2), about industrialization (C-18), and were sent back to prosecutor with judgment (C-19). It was returned to Indonesian National Police. In connection with handover for completing case bundle to violate chapter 44 articles 1 of the Law No 23/1997 about environment management is complete (C-21)³. It is to be observed with analysis and evaluation, comparing the case bundle, which disposed wastewater of the rest of the dyeing and coloring thread to water of Surabaya stream in the parameters above threshold of Environmental Quality Standard for wastewater. It is agreeable with accordance to the provision in SK GUB Jatim No.45/2002 that is done by PT. Bintang Apollo Textile, Jambangan St. No.124 Surabaya. It

broke the Law No.23/1997 chapter 43 (article 1) about environment management Jo. Chapter 22 article 1 KUHP Subsair chapter 44 article 1 Law No. 23/1997 about environment management Jo. Chapter 55 article 1 KUHP. With notification of the complete investigation (C-21) is from prosecutor⁴.

In order to realize good law making governance, thus government and legislative should do prior agenda that are:

1. Review the all product of laws that do not reflect to justice, democracy and continuity like is instructed by MPR stipulation No. IX/MPR/2001 about agrarian reform and natural resources management;
2. Make policy and rule of legislation that reflect to justice, democracy, and continuity the function and advantage of natural resources by integrating at least five principles as follows:
 - a. Natural resources management should be oriented to reach out the publics' welfare and prosperity continuously from generation to generation.
 - b. Natural resources should be used and allocated in a fair and democratic among recent generation in spite of future generation in welfare gender.
 - c. Natural resources management should be able to create the community, also defend and maintain the existence of local culture, included legal systems that

³ Berkas Perkara No. Pol. : BP/291/IV/2008 /Reskrim.

⁴ Berkas Perkara No. Pol. : BP/327/X/2005/ Reskrim

exist and develop in indigenous/local

- d. The management of natural resources must do by economic system approach (ecosystem) to avoid partial management practice, sector ego, not integrated region and coordination.
- e. Management policies of natural resources must have specific local characteristic, based on ecosystem condition and socio cultural of local society.³

In admission about investigation authority in environment field, in fact that found some norm conflicts between regulations of legislation concern as follow:

1. Book of prophecy No.8 of 1981: Chapter 107
 - 1) For the importance of investigation, investigator in chapter 6, article (1) letter A gives guideline to the investigator. Chapter 6 article (2) letter B gives help investigation that required.
 - 2) In a phenomenon case that should be guessing it means criminal act is investigating by investigator, in chapter 6 article 1, letter B and found strong proof for submitted to public prosecutor that investigator. In chapter 6 article 1 letter B report the case to the investigator in chapter 6 article 1 letter A.
 - 3) In criminal act case done the investigation by investigator on chapter 6 article 1 letter b,

she/he submit the result of investigation to public prosecutor by means of investigator in chapter 6 article 1 letter A.⁵⁴

2. Statement of the Problem

Statement of the problem in this research state as follow:

1. What is background of authority investigation of crime act in pollution and damaging of environment by Police and PPNS (Police Servant Investigator) in chapter 94 article 2? Law no. 32 in 2009 about protection and management of environment (Is there philosophy)?
2. Are the changes of authority investigator Police and PPNS (Police Servant Investigator) in doing investigation through crime act in pollution and damaging of environment by publication of law no. 32 in 2009 about protection and management of environment purely to reach the purposes of the law or because of legal and political interests?
3. How reformulation authority of Police and PPNS (Police Servant Investigator) in investigating the crime of polluting and/or damaging environment (*ius constituendum*)?

³ Nurjaya I Nyoman, *Pengelolaan Sumber Daya Alam dalam Perspektif Antropologi Hukum*, (Jakarta: Prestasi Pustaka 2008), hlm. 184.

⁴ Kitab Undang-Undang Hukum Acara Pidana No. 8 Tahun 1981.

3. The requirement of reformulation in the field of investigation criminal act contamination changes or destruction environment to Police.

Reformulation is come from formulation,⁶⁵ means structure or permanent shape. So from the base word it means that the changes of thing (concept) from something old into new. Basically law contents of idea or concepts about fairness, certainty and social usefulness.⁶ Relate to that idea Sajipto formulate law enforcement is an effort to create that idea become reality and this process of create is the real of law manifestation.⁷ The same way as Sujipto's thought, law manifestation can define by an effort to law actualize in reality. This formulation implied in definition of law by Mochtar K, which define law as a whole principles and rules that organize life of society include institution and process of actualize the law in the reality.⁸

1) Institutional Reformulation

Police institution Indonesian Republic is official institution and formal institutions of the state apparatus. The characteristic of that institution is independent directly responsible to the president. Desirability to enforcing the law and improvement institutions of the state apparatus

in Indonesia is still become long way not apply yet. Actually the principal key that require is political strong willing to overcome various complicated country's problems. That problem related with law aspect in no material or trough nature law enforcement officers.

2) Functional Reformulation

Related to character and function Police, demands of to be a civil institution cannot be negotiable. The movement paradigm dedication of Police before tend used as ruler tool towards serving the public importance has implications fundamental change. One of the changes is reformulation character which appropriate with law number 2 in 2002 that establish role as custodians Kamtibnas national police, law enforcement, and protector, guardian and public servant, the purpose is in every police's member service as custodians Kamtibnas or law enforcement should be imbued with appearance of their attitude as protector, guardian and public servant, in step to the new paradigm that's serve the public interest.

3) Reformulation of Duty and Authority

The reformation of police in the structural area, procedure and culture are done in line with the reformation of governance's administration to create good governance (*good governance*). According to Sadjijono (2005) the basic case of Indonesian police's dependability with good governance, first, attributed to the

⁵ Umami Kulsum dan Windi Novia, Kamus Besar Bahasa Indonesia, Kashiko, Surabaya, 2006

⁶ Gustav Radbruch, dalam Sajoed Raharjo, Masalah Penegakan Hukum Suatu Tinjauan Sosiologis, Sinar Baru, Bandung, tt, hlm. 15

⁷ Sajoed Raharjo, Ibid, hlm. 15

⁸ Mochtar Kusumaatmadja dalam Daud Silalahi, Hukum Lingkungan dalam Sistem Penegakan Hukum Lingkungan Indonesia, Alumni Bandung, hlm. 116

function of police as organization of governance to take care safety and society's orderliness as duty to protect, protected and serve society with to maintain the law, second, as the one of governance function in the sector of maintainer and society's orderliness, the maintenance of law, protection, and service to the society that obtainable attributively by means of chapter 30 article (4) UUD 1945 and article 2 UU NO 2 of 2002. The two instruments of those law laid down the police as the institution which to carry out the duty to maintain, preserve, and to create security, peace and public order for citizens.

4) Reformulation of Activity

Changes in the behavior of police personnel mental must be admitted difficult to do. This case because of much police officer and the most important is the culture that has been attached for long time when it was still under military of ABRI (Indonesian Armed Forces). The culture is placed police personnel as someone who can not be touched, feel important and feel higher than members of society. As a result, it often appears arrogant, bossy, they always feel right to oppress and to press society and many others due to bad behavior. Police further impact on an institution that can not be controlled exclusively by the public so it works to importance organization itself doesn't oriented to society's need.

4. The Reformulation of Authority PPNS (Police Servant Investigator) in Crime Investigation Pollution and / or Environmental Destruction

1) Institutional Reformulation

Police Servant Investigator (PPNS) as out of police institution to help the duties of police to investigate clearly stipulated in the Act and the Criminal Procedure Act no.2 of 2002 on the Indonesian National Police.

Should the certainty of chapter 94 article (1) give limitation clearly on the authority to investigate environmental disputes, so to avoid disputes between the Police's authority and the PPNS (Police Servant Investigator). It is ever happen in handling disputes authority SIM simulator cases between the Commission eradication of corruption (KPK) and the Police. If it happens on the investigation in the surrounding of life, so it can be certain that the process of maintenance of environmental laws will run slow or stalled. It could also be the explanation of the certainty, in which the explanation is said clear enough. But exactly, the certainty contained in Article 94 article (1) give rise to multiple interpretations (not clear).

Furthermore, the provisions of Article 94 paragraph (2) authorized for PPNS the investigators that I said authorities are not much different from the police authority as a law enforcement institution directly governed by the constitution (Constitution-45). Though investigators are essentially civil servants (regular) having an administrative task. In the field of administrative employees, the

Authority PPNS should investigators as regulated in Article 94 paragraph (2) the extent of the authority of the Police Authority to support law enforcement.

In Article 94 paragraph (2) letter f authorizes for PPNS investigators to conduct for eclosure action against infringing goods and the materials that can be used as evidence in criminal environmental protection and management. Under its terms, does not explain the conditions before the foreclosure authority do ask permission to state court foreclosure action, as set out in the Criminal Code in particular. Because the for PPNS action by the investigators that can be categorized as an act that could violate a person's rights, it is a violation of Human Rights.

Article 94 paragraph (2) letter h determines that the PPNS investigators have the authority to halt the investigation. However, the provisions of Law no. 32 of 2009 does not explain the background or the reason why the investigation may be terminated by the investigators PPNS, in addition to whether the termination of the investigation was actually conducted in an objective, because there is no agency that oversees the investigation's termination action.

Provisions of Article 94 paragraph (2) letter I Law no.32 of 2009 authorized for PPNS the investigators to enter certain places, photographing and / or make audio visual. The decree is not explained how the technical implementation of the tasks PPNS related to these investigators.

Terms letters j, authorizes PPNS the investigators were

searching for the body, clothing, hair, and / or any other place is the place where the alleged crime. The provision is a provision which at times can be abused by an PPNS investigators, this is because the authority is not accompanied by the technical implementation of the authority. In addition, no party that oversees the activities of these PPNS investigator. Following that in the letter k authorize for PPNS investigators to make arrests and detain offenders. Furthermore, in paragraph (3) of article 94 stated that the arrest and detention referred to in paragraph (2) letter k, investigators civil officials coordinate with investigating police officers of the Republic of Indonesia. Furthermore, the explanation of paragraph (3) reads, which is a measure of coordination is consulted in order to obtain relief personnel, facilities, and infrastructure needed in the investigation. An issue in terms of the explanation is the need to consult a detailed explanation, whether the consultation should be through the mail or simply by word of mouth.

In Article 94 paragraph (4) mentioned in the case of civil servants investigating officer conducting an investigation, the investigator civil officials told investigators the police officers of the Republic of Indonesia to provide assistance in order to smooth the investigation. The provision does not specify more detailed technical notify police. Any such notice must be in writing or letter or simply through word of mouth. The smoothness of the investigation in the provision of Article 94 paragraph (4) is not described explicitly about what

smoothness, should be clear, so as not to multiple interpretations. The decree also not explained in detail on the witness when the notice was not done by the PPNS to the police investigators.

As for the explanation of Article 94 paragraph (4) states that the notice in this article is not an administration began an investigation, but rather to emphasize the form of coordination between PPNS and the police. In real terms this explanation no longer talk about coordination, but he started the investigation that already meet the elements of the crime.

In the explanation of Article 94 paragraph (5) reads, investigators civil officials tell commencement of the investigation to the public prosecutor with a copy to the police investigating officer of the Republic of Indonesia. Terms of explanation in my opinion, should notice the commencement of the investigation was notified immediately to the Police as an institution that has the knowledge and understanding of science technical investigations, analysis and investigation in order to know the elements of law enforcement, PPNS in Indonesia at this time do not have the ability in the field of investigation maximum.

Furthermore, the results of investigations that have been conducted by PPNS set forth in subsection (6) which states that the results of the investigation conducted by civil investigators submitted to the public prosecutor. In this provision does not include a series of investigations, whereas prior to the investigation must first be done to

meet the elements of the investigation of environmental crime.

2) Functional Reformulation

Within the framework of the criminal justice system, the role of law enforcement agencies, particularly the investigator, very strategic. Investigators are beginning the task of the main gate of the material due to the search for truth through the process of law enforcement investigation actually began.

3) Reformulation of Duty and Authority

This involves a variety of law enforcement agencies, one of which is the duty of the police investigating the crime that happened environment.

4) Reformulation of Activity

PPNS basically as ordinary civil servants who are given certain powers in Law. 32 of 2009 on the Protection and Environmental Management, Strategic has a position in a law enforcement environment.

5. CONCLUSION

As for the background of changes in criminal investigations authority pollution and / or destruction of the environment by the police and PPNS in Article 94 paragraph (2) of Law no.32 of 2009 on the Protection and Management of the Environment in order to ensure legal certainty and protection of the right of everyone to get a good and healthy environment as part of the protection of the entire ecosystem.

a. Change authority police investigators and PPNS in conducting criminal investigations against pollution and / or damage to the issuance of Law no.32 of

- 2009 on the Protection and Environmental Management solely for achieving goals of law enforcement in the environmental field, in addition to the political dynamics of national law in the environmental field.
- b. The reformulation of Indonesian national police force and police servant investigator (PPNS) authorities in investigating the crime of environment pollution and/or damaging for the future (*ius constituendum*), the police should be given the task as a single investigator in accordance with the philosophical position as a custodian kamtibmas Police, and the Police as Coordinator Supervisor according to investigators PPNS Environment field investigators with the expertise.
- Satjipto Rahardjo. *Penegakan Hukum Satuan Tinjauan Sosiologis*. Yogyakarta: Genta Publishing, 2009.
- Mochtar Kusoemaatmadja dalam Daud Silalahi, Hukum Lingkungan dalam Sistem Penegakan Hukum Lingkungan Indonesia, Alumni Bandung,

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