

The Authority Investigators Civil Servant in the Criminal Justice System

Jeanne Darc N Manik^{1*} A.Rachmad Budiono² Prija Djatmika² I Nyoman Nurjaya³
1.Doctorate Candidate of Law Faculty, Brawijaya University, Malang, Indonesia and Lecturer of Law Faculty,
Bangka Belitung University, Indonesia
2.Postgraduate Program of Law Faculty, Brawijaya University, Malang
3.Professor of Anthropology of Law, Brawijaya University, Malang

Abstract

The probe is investigating a series of actions in the matter and according to the manner provided for in the Act to find and gather the evidence with the evidence it made clear about the crime happened and to find should suspect. Investigators civil servant have a special authority in accordance with the legislation that became the basis of the law and in the exercise of his duties were under the coordination and supervision of the Police investigators. Special authority means the authority is exercised on the basis of the provisions of the legislation which establishes the authority for executing those special regulations. This type of research is the study of the law (Legal Research). Research directed at the practical side of goal to allow the application concerns the formation of (institution) of law and application of the law by related officials. Investigators civil servant because of its obligations has the authority receives a report or a complaint from a person regarding the existence of a criminal act, performing the first act at the moment on the scene, told to stop a suspect and examining the self identifier suspects, making arrests, detentions, searches and seizures, foreclosure and checks the mail, taking finger prints and a photograph of a person, call the people to be heard and examined as a suspect or a witness certain experts people, bringing needed in relation to the proceeding, termination of investigation and held another action according to law. Its gave the authority to carry out investigation to investigators civil servant will facilitate in the disclosure of a crime given the large number of obstacles faced by police authorities in conducting the investigation.

Keywords: Authority, Investigator, Investigators Civil Servants, The Criminal Justice System

1. Introduction

The organization of criminal justice is a mechanism of criminal law enforcement works ranging from the process of inquiry and investigation, arrest, detention, prosecution to examination in the court of session. Works of the police, prosecutors, judges and correctional officers, which means the process or works of the law of criminal procedure (Anwar, Yesmil and Adang, 2009). These efforts are conducted, in order to achieve the goals of criminal justice. In order to achieve the aim in criminal justice, law enforcement or law enforcement even though the task is different but must work together in one unified system.

The performance of each of the legal officer should always be functionally related. Alignment of the subsystems in the criminal justice system is not only directed towards the goal of tackling crime, is also directed towards controlling the occurrence of crime within the limits of the acceptable tolerance (Mardjono Reksodiputro, 2007). The success of a system, it can be known if it is directly proportional to the admissibility of the complaint of the community who are victims of crime, was able to bring the perpetrators to trial and implementation of future court rulings. In the criminal justice system approach is heavy on the coordination and synchronization of components of criminal justice are Police, Prosecutors, Courts and Correctional Institutions. Supervisory control of the use of power by the components of criminal justice.

The law of criminal procedure in Indonesia, governing the country through the agencies enforcing the right to punish or assign criminal. Therefore, the use of these rights should be set up as an investigator and investigation. According to Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana : KUHP) in Article 1 point 2, the probe is investigating a series of actions in the matter and according to the manner provided for in this Act to find and gather the evidence with the evidence it makes clear about the crime happened and to find should suspect.

R. Susilo explained the meaning of the word investigation is as follows "The investigation comes from the word which means the bright prints, so the investigation means making light or clear. Fingerprints means fingerprinting scars so that investigation means looking for the former, in this case the former crime which means after the former there is accumulated of the crime. The meaning is, strictly speaking, so it can prosecute known criminal events of what has happened and who is the person who has committed a crime. (R. Soesilo, 1980).

The first examination against a criminal act is an act of investigation to find the facts and evidence, the existence of a crime. The nature of criminal investigation was to clear up the issue, to pursue wrongdoers while obviating the innocent people of action who are not supposed to. (Sofyan Andi and Asis, Abd., 2014). In this

case the setting by KUHAP in Article 4 has been distinguishing between researchers with investigators for investigators in KUHAP only against police officials of the Republic of Indonesia while investigators in addition to police investigators, also there are other investigators and auxiliary civil servant .

KUHAP on Article 6 paragraph (1) states that investigators are:

- a. Police officials of the Republic of Indonesia
- b. The particular investigators civil servant (Penyidik Pegawai Negeri Sipil : PPNS), who are specifically authorized by law.

Civil institutions are empowered to conduct the investigation of a criminal case based on the laws that govern it is investigators civil servant (PPNS). According to Act No. 2 of 2002 about Police of the Republic of Indonesia in Article 1 point 10, that what is meant by investigators civil servants are investigators of certain civil servants based on regulations was appointed as investigator and has the authority to conduct criminal acts within the scope of the legislation that became the basic law respectively. The efforts made lawmakers in anticipating and tackling crimes tend to increase both in quantity as well as quality is drafting regulations that authorize at other institutions, outside the police force, to engage in the process of investigation. The hope, the process of investigation can be checked and resolved in a timely, appropriate and has started in an event of a criminal offence.

After the enactment of Act. No. 8 of 1981 about KUHAP occurs a few variations the legal relationship between the investigating police with investigators civil servant. During this extensive scope of the duties and responsibilities of investigators in the system of law enforcement in Indonesia has many problems, not only related to the large number of institutions that are authorized to conduct the investigation of a criminal offence, but also still there is overlapping authority investigation is among several institutions. This resulted in the coordination relationship between institutional investigators appear less impression is created coordination and synergy that can have an impact on the reduced credibility of law enforcement institutions in the community. On the other hand the number of institutions investigating potentially cause attraction between the authority of the institution, especially when each institution seeks investigators sectoral ego, which may culminate in the presence of obstacles in the process of law enforcement.

In the science of law, known the existence of the general criminal law and criminal law. In the criminal law system in Indonesia can be found in Act No. 1 of 1946 about Criminal Law (Kitab Undang-Undang Hukum Pidana : KUHP) on Article 103 that the provisions of Chapter I – Chapter VIII of this handbook applies to acts by other statutory provisions is liable to a criminal, unless specified by law to another. Based on the book of the law of Criminal Law on Article 103, then what is meant by:

- a. The common criminal acts are all the criminal acts stated in the book of the law of criminal law and all the laws that change or add a book of law criminal law.
- b. The special criminal act is all the criminal acts provided for in specific legislation outside of the book of the law of criminal law.

As a special criminal offence, in the aspect of investigation as the subsystems of Criminal Justice System, there is some variation. From the perspective of the theory of special authority investigators, investigators civil servant in the field of natural resource management (such as fisheries, oil and gas, forestry, aquatic conservation of natural resources, bio diversity, minerals and coal, marine, as well as forestry) unless there are special reasons that are listed in the regulations (in the condition or situation there are exceptions). Theoretically, its presence indicated by a shift in the concept of a criminal justice system that prioritizes coordination between sub-sub criminal justice system such as the sub systems of investigation. The essence of the juridical problems on setting special authority investigators civil servants i.e. irregularity giving rise to a diverse interpretation of investigators civil servant through discretion in the form of inconsistency and conflict norms of regulatory policy.

2. Research Methods

This type of research is the study of the law (legal research). Legal research methods based on the science of law that its object is the law or norms. The essence of norm is to provide guidelines for people to behave so that the grammar of life become orderly. Legal research can be differentiated into research for practical purposes and for purposes of academic research. Legal research for academic purposes to give a donation for new thinking of development of legal science, find new answers to a problem or issue of law, develop or find the concept as well as a new legal theory against things that have work in the science of law. (Tim Penyusun Fakultas Hukum Universitas Brawijaya, 2013). Legal research function to get the truth, i.e. the search for coherence or alignment of something that wants to canvassed and the rule or principle which made the reference. The legislation in question is writing regulations that contain binding legal norms in general and established or designated by the agency or the competent authority via procedures specified in the legislation (Marzuki, Peter M., 2005), particularly with regard to the norms regulating the authority of investigators and crime investigation.

3. Results and Discussion

The authority is the formal powers that come from the legislation while the authority is a specification of the authority, meaning that whoever (the subject of law) that was given authority by the Act, it is authorized to do something in the authority.

The authority possessed by the organ (institutions) Government in doing real hold setting or issue a decision always grounded by authority derived from the Constitution in 1) attribution, 2 or 3) delegation) mandate. An attribution refers to the authority of the original on the basis of the Constitution On authority delegations, should be defined a devolution authority to other government organs. On the mandate of any submission does not occur in the sense of granting of authority, but which was given a mandate to act on behalf of the giver of the mandate. In awarding the mandate, officials who were given a mandate designating other officials to act on behalf of the giver of the mandate.

Tabel.1.

The difference between the Privileges Attribution, Delegation and Mandate

Subject	Attribution	Delegation	Mandate
How to Obtain	Act	Devolution	Devolution
The force of law	Menteri Kehakiman RI No: M.08-UM. 01. 06 tahun 1983	Can be revoked or withdrawn in case of conflict or discrepancy (<i>contaius actus</i>)	Can be withdrawn or used at any time by the giver of the authority
The responsibility and Liability of worship	Recipient of the authority responsible for the consequences arising from absolute authority	Giver of authority delegated the responsibility and accountability to recipients authority (<i>delegatoris</i>)	Located on the giver's mandate
The relationship of the authority	Legal relationship of common law with government institutions	Based on the attribution of authority assigned to <i>delegataris</i>	A relationship that is internal among superiors by subordinates

Source: How to Obtain the Differences and the Responsibility of the Authority of Government

There is an increasingly strong trend that the general criminal law enforcement broke through to the implementation of a special criminal offence cases that should be handled by or subject to special legislation. This has resulted in a special authority interpretation differences occurred mainly handling criminal acts in mining business activities in the technical agencies that constitute the authority investigators civil servant, while the role of the police as investigators coordinator for investigators civil servant.

KUHAP provides the authority to carry out the investigation to the KUHAP, according to investigators civil servant was given authority to do investigation on the field of duty that has been established by legislation, on the one hand will facilitate in the disclosure of a crime that occurred, given the large number of obstacles faced by police to conduct the investigation, such as the quality and quantity of human resources, infrastructure support and budget. (Yurizal (Disertasi)2013)

Its efforts according to the KUHAP, the investigating authority given to investigators civil servant do the investigation in the field of duty that has been established by legislation. As an independent institution in conducting the investigation of a criminal offence seems to be not just talk, but already lead to institutionalization. Investigation means examination beginning by officials, who are appointed to it by law, as soon as investigators with the way anything, heard that just a reasoned, that there was something unlawful. Knowledge and the definition of investigation need to be stated with certainty and clear. This is directly related to the restriction of human rights. Thus, part of the law regarding investigation namely (Andi Hamzah, 2008) :

1. The provisions of the investigator tools ;
2. The provisions of note the occurrence of criminal offence ;
3. Examination on the scene ;
4. Calling the suspect ;
5. Temporary detention ;
6. The search ;
7. Examination or introgation ;
8. News event (shakedown, introgation and on-site inspection) ;
9. Foreclosure ;
10. The submission of case ;
11. Submission of dossiers to the public prosecutor and its return to the investigator for the refined.

On Article 7 paragraph (1) of KUHAP that the investigator as referred to in Article 6 paragraph (1) letter a because its obligations has the authority:

- a. Receive reports or complaints from a person of a criminal offence ;

- b. Action at the time of the first on the scene ;
- c. Sent to stop a suspect and examining self identification of suspects ;
- d. Making arrests, detentions, searches and seizures ;
- e. Perform the inspection and seizure letters ;
- f. Taking fingerprints and a photograph of a person ;
- g. Calling the people to be heard and examined as a suspect or a witness ;
- h. Bring people of certain experts that are required in connection with a proceeding ;
- i. Hold the termination of investigation ;
- j. Other actions held responsible according to the law.

In the explanation of KUHAP on Article 7 paragraph (2) mean that Police Investigators have to be law enforcement, meaning not just used to mere regulations but must be directed to what the purpose of the law itself while the investigators civil servant is the part that is only limited by regulations to enforce the legislation in the field of each task. That's the difference of understanding of law enforcement with the enforcement of legislation as it is devoted to investigators civil servant. With the existence of a common criminal act and this particular criminal offence, then the resolution of the matter is also regulated in the law of public and legal events occasions, resulting in the implementation and enforcement of the law individually loaded as special provisions (lex specialist) (Sukardi, 2009).

Investigation of certain criminal acts by investigators civil servant should be qualified include:

1. Investigators civil servant are at the Ministry;
2. Investigator civil servant must have decision letteras investigators;
3. Have a letter or document, in the form of news events as investigators civil servant.

Police investigators on the point by the head of Police of the Republic of Indonesia in accordance with the applicable laws and regulations and may grant the authority to the other police officials. Investigators civil servant appointed on the basis of the provisions of the Ministry of Justice of the Republic of Indonesia over the proposal that raised the department employees. This assumption of authority can be assigned (delegated) the Minister of Justice of the Republic of Indonesia as determined by a decision of the Minister of Justice of Indonesia Number: m. 08-01.06. UM of 1983. According to the explanation of the Article (6) of paragraph 2, the position and line of the investigator is set out in government regulations, organized and balanced with the position and line of the public prosecutor and judge of the judiciary.

There are some national legislation of the Republic of Indonesia which can be used as the basis of the law he gave Investigators authority to the civil servant to do the investigation include:

1. KUHAP on Article 6 paragraph (1)
2. Act. No. 2 of 2002 about Police of the Republic of Indonesia on Article 1 point 10
3. Regulation of the Minister of Justice No. m. 18-PW07.03. of 1993, Proposing The Implementation of Instructions of The Mutation and The Dismissal of Investigators Civil Servant
4. Regulation of Kementerian Dalam Negeri No. 4 of 1997 about Investigators Civil Servants in Local Government Environment
5. Keputusan Menteri Dalam Negeri No. 6 of 2003 about Guidelines for The Construction of Investigators Civil Servant in The Environment of Local Government
6. Keputusan Menteri Dalam Negeri No. 7 of 2003 About An Operational Guidelines Investigator Civil Servant Areas in The Enforcement Of Local Regulations
7. The Chief of Police of the Republic of Indonesia Regulation No. 6 of 2010 about the Management of Investigation by The Civil Servant Officials
8. The Chief of Police of the Republic of Indonesia Regulation No. 20 of 2010 about Coordination, Supervision and Coaching of Investigation The Investigator for Investigators Civil Servants

The position of the investigating authority and civil servant in performing the duties of investigation (Hartono, 2012) :

- a. Investigators civil servant, his position is under the coordination and supervision of the investigating Police
- b. For the purposes of the investigation, the investigating police investigators provide guidance to investigators civil servant and provide relief of investigation required;
- c. Investigators civil servant must report to police investigators about the existence of a criminal act that was in him, if that investigation by investigators of the civil servant there are a discovered strong evidence to file the perpetrators of criminal acts to the public prosecutor.

Investigators because of its obligations has the authority that is set KUHAP on Article 7 paragraph (1) as follows:

1. Receives a report or a complaint from a person regarding the existence of a criminal offence;
2. Did the first act at the time in the scene;
3. Sent to stop a suspect and examining the self identifier suspects;
4. Making arrests, detentions, searches and seizures;
5. Conducting the inspection and seizure of mail;

6. Taking the fingerprints of a person;
7. Call on the people to be heard and examined as a suspect or a witness;
8. The necessary expert person Incurred in connection with the proceeding;
9. Hold the cessation of investigation;
10. Other actions held responsible according to the law.

The function and scope of the investigator is to conduct the investigation. The dimensions of the investigation started when the occurrence of the crime so that process through the process of investigation should be retrieved a description of the form of the following aspects:

- a. Criminal acts that have been committed;
- b. Place the crime was done;
- c. The time a criminal offence was done;
- d. How the crime is carried out;
- e. With what the crime is carried out;
- f. Background until the crime is carried out;
- g. Who is the perpetrator of a criminal offence

KUHAP on Article 7 paragraph (1) authorizes an investigator to police investigator of the Republic of Indonesia. In Act No. 8 of 1981 about KUHAP on Article 7 paragraph (2) has given authority to the investigating police force of the Republic of Indonesia to conduct coordination and supervision of the execution of the duties of investigation by the investigators civil servant.

A variety of related legislation a law enforcement institution set up impartial, though then there is the view that the authority investigators have dependency with the authority of the Prosecutor, and the authority of the courts in litigation depends upon termination of the authority of the investigator civil servants, the police and prosecutors. The existence of such legislation, not to regulate comprehensively concerned about interrelation of their respective authorities so that, if the criminal justice system wants the alignment, then it needs to be established one policy which governs criminal law authority-the authority in legislation. That is because the existing legislation, while it regulates the structure of an agency/institution which is mixed with functional authority, which basically has also regulated in KUHAP so that the repetition of words and interpretation is less profound.

In the handling of certain laws against (lex specialists) is more and more emphasis on empowering the role and function of investigating civil servant professionally and proportionally. As a partner of the national police, the policy is based on the KUHAP authorizes investigators civil servant to conduct the investigation under the coordination, supervision and coaching national police investigators. The policy was the encouragement, support and the opportunity to improve the performance of the investigators civil servant.

By structuring the concrete institutional functions that related specifically about the investigation related to the implementation of the protection of natural resources, then it can set the institutions/agencies involved directly or indirectly. An agency/agencies who are involved indirectly mean that his involvement at any time can be requested by the holder of the operational control. Thus will facilitate the implementation of an integrated operational activities are coordinated. Every motion step wisdom issued in the field of work of the institutions / agencies each must always take into account the possibility of dependencies with the field/other natural resources sectors. Given the urgency of the implementation of the protection and management of natural resources for the nation, either in the present or the future, then there is no other choice except trying its best. Then to it, then all provisions of laws and regulations that govern and underlying to be enforced are pure and consistent. The legislation is the juridical fence that must be upheld by all related authorities and citizens.

In the legislation which governs about natural resources vary greatly in different sectors (including law enforcement) associated with several institutions/agencies, either directly or indirectly, then the required good coordination between system agencies/authorities related agencies, so as to materialize a Union steps and actions, the unity of the language and in common perception among law enforcement agencies. This coordination system will be easily created through the institutional arrangement of natural resources. With the formation of a system of coordination is good, will facilitate operational activities, whether sectoral or integrated. Integrated operational activities are cross-cutting in accordance with the authority and expertise of each at any time is indispensable, especially in dealing with certain cases are viewed very seriously and require an integrated and coordinated handling.

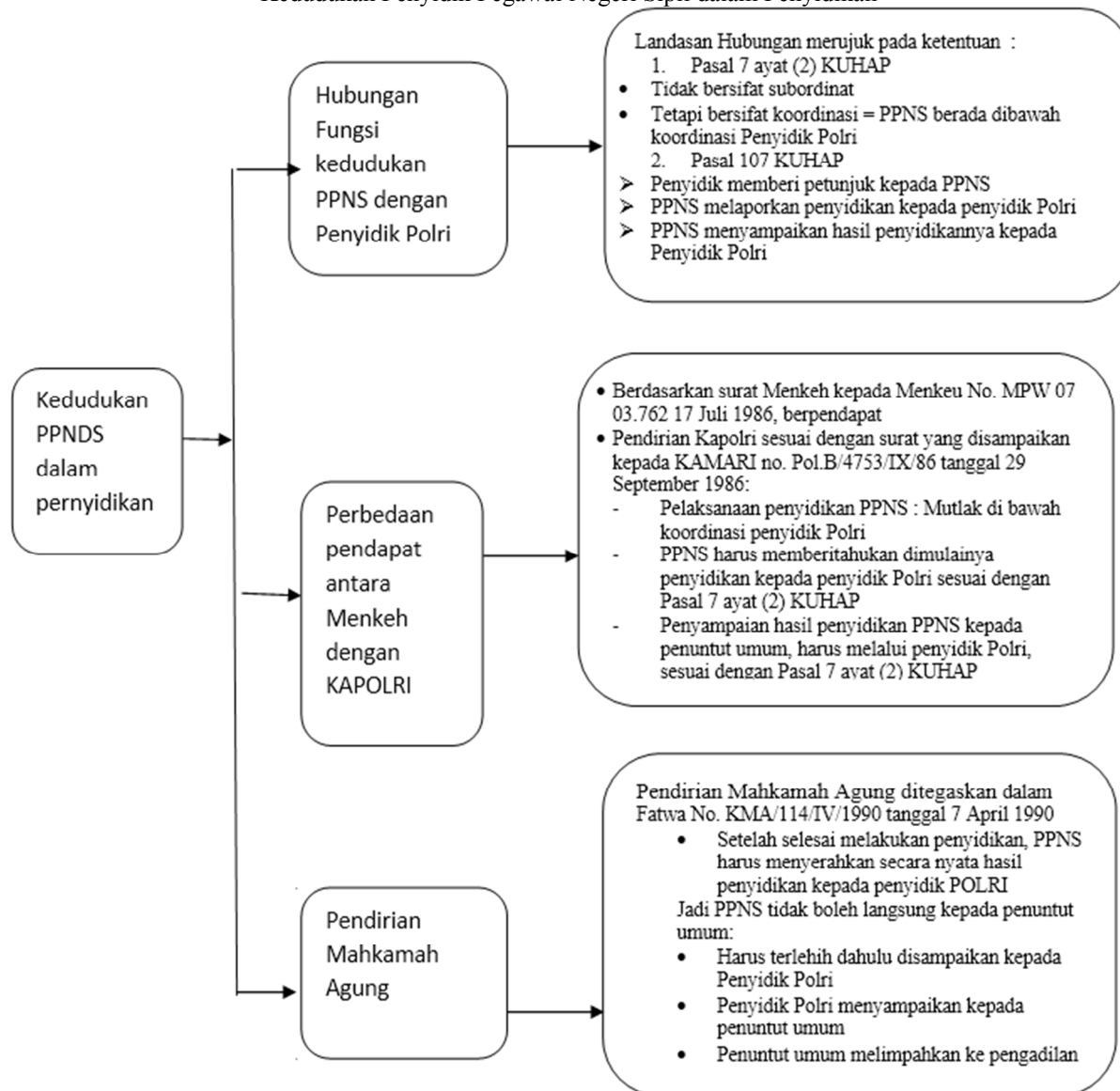
The attribution of authority occurred in terms of recognition of the existence of the right to a new authority. The authority is a public law action scope, the scope of the authority of Government, not only includes the authority to make the decision the Government but include authority in the framework of the implementation of tasks and authorize the distribution of the main authority and set out in the legislation.

It is owned by the Authority organs (institutions) Government in doing real deeds, to make arrangements or release decisions always grounded by authority derived from the Constitution : 1) attribution, 2)

delegation and 3) mandate. An attribution refers to the authority of the original on the basis of the Constitution (Undang-Undang dasar Negara Republik Indonesia Tahun 1945 : UUD NRI Tahun 1945)

Chart 1

Kedudukan Penyidik Pegawai Negeri Sipil dalam Penyidikan



To carry out the provisions of Act No. 2 of 2002 about Police of the Republic of Indonesia on Article 14 paragraph (2), the need to establish Government Regulation of the Republic of Indonesia Number 43 of 2012 about The Procedures for The Implementation of Coordination, Supervision and Technical Coaching Against The Special Police Investigators, Investigators Civil Servants and Independent Security Forms (State Gazette of the Republic of Indonesia Number 74 of 2012). The Chief of Police of the Republic of Indonesia Regulation No. 6 of 2010 about the Management of Investigation by The Investigator Civil Servant at the weigh grain (c) namely the execution of investigation by investigators, investigators civil servants need to be supported in accordance with laws-an invitation to produce an effective and efficient performance.

4. Conclusion

The probe or investigation is investigating a series of actions in the matter and according to the manner provided for in the Act to find and gather the evidence with the evidence it makes clear about the crime happened and to locate suspects or perpetrators of the crime. Investigators civil servant have a special authority in accordance with the legislation that became the basis of the law and in the exercise of his duties were under the coordination and supervision of the police investigators. Special authority as a legal concept is the core of that authority is exercised on the basis of the provisions of the legislation which establishes the authority for executing those special regulations. Its gave the authority to carry out investigation to investigators civil servant, on the one hand

will certainly facilitate the disclosure of a crime given the large number of obstacles faced by police in conducting investigations, such as the quality and quantity of human resources, supporting equipment, as well as the budget. The management of investigation criminal act by investigators civil servant are planned, organized, controlled and implemented effectively and efficiently.

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