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Investigation of Criminal Acts in Mining of Minerals and Coal by Investigators Civil Servant

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Abstract
Law enforcement in mining involves various government agencies, namely the police investigators and civil servant investigators of conducting the investigation over the crime that occurred. The crime of mining concerns aspects which are often technical in nature requires certain expertise in collecting much needed evidence in proof in court. For it is very reasonable when the authorized agencies do this investigation has the ability of good and reliable. The investigation 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 made clear about the crime happened and to find should suspect. Investigation as a preliminary step for tackling crime is a process that includes a series of complex investigation actions ranging from the most delicate to the actions of a very hard i.e. either a forced effort. 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 law and application of the law by related officials. The results of this investigation process, then conducted filings with securities litigation and sent to the public prosecutor for processed and relied upon the claim at this stage of the prosecution in front of the Court. Investigators civil servant in mining of Minerba in carrying out those powers as investigators did not become subordinated from police investigators but only under the coordination and supervision of the national police investigators, as for the forms of coordination and supervision.
Keywords : investigation, investigators civil servant, criminal act, mining

1. Introduction

Act Mining of Mineral and Coal (hereinafter referred to as the **Act of Minerba**) contained in the region of Indonesia is not a renewable natural resources as a gift of God Almighty which has an important role in ful filling the intention of living people, because it's management should be controlled by the state to provide added value for real for the national economy in an effort to achieve prosperity and well-being of the people in justice. The business activities of mining of Minerba business activities is outside the earth's heat, oil and gas as well as ground water has an important role in providing value added significantly to the growth of the national economy and sustainable regional development. The Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the Constitution NRI 1945) in Article 33 paragraph (3) confirms that Earth, water, and natural resources contained there in are controlled by the State and used for the most of people's prosperity. Given minerals and coal as natural riches contained in the Earth is natural resources that are not renewable, management needs to be done may be optimal, efficient, transparent, sustainable and environmentally, and equitable in order to obtain the benefits of the prosperity of the people on an ongoing basis.

Act No. 4 Year 2009 about Mineral and Coal Mining (hereinafter referred to as the **Act of Minerba)** on Article 2 states minerals and/or coal mining is managed based on:

a. Benefits, justice, and balance;
b. Alignments to the interests of the nation;
c. Participatory, transparency, and accountability;
d. Sustainable and environmentally

In the legislation in Article 145 **Act of Minerba** stated that communities negatively affected directly from mining business activities are entitled to:

a. Obtain a proper redress due to errors in the business of mining activities in accordance with the provisions of the legislation.
b. File a lawsuit to the Court against loss due to mining concessions which have violated applicable provisions

In order to support a sustainable national development, the purpose **Act of Minerba** in Article 3, are:

a. Assure effectiveness of implementation and control of mining business activities are useful, powerful competitiveness in order to succeed;
b. Ensure the benefits of mineral and coal mining in environmentallysustainable and life;
c. ensure the availability of minerals and coal as raw material and/or as a source of energy for domestic

needs;

d. Support and cultivate national capabilities in order to be better able to compete at the national level, regional, and international;
e. Increase the income of local communities, regions, and countries, as well as create jobs for the massive welfare of people; and
f. Ensure legal certainty in the conduct of the business activities mining of mineral and coal .

As with any legal protection, law enforcement in principle can also be made through the efforts of a preventive and repressive nature. Is a series of preventative law enforcement efforts of the action was intended as a precaution so as not to breach or deviation provision exists. Instead of repressive law enforcement in an effort to prevent the occurrence of the offence but rather meant to tackle legal issues if there is, especially if there is a violation. In fact, law enforcement in the context of the protection and management of the environment, including mining, aims to prevent shrinkage and the deterioration of the quality of the environment. (Muchtar, Masrudi, 2015)

Specifically for criminal acts relating to mines, mining activities and mining results in addition to Police investigators, then the Investigators Civil Servant (hereinafter referred to as the Penyidik Pegawai Negeri Sipil = PPNS) given special authority by **Act of Minerba** is expressly to be able to become investigators as Police investigators, only limited only the scope of duties and authority in terms of the Act.

Mardjono Reksodiputro, according to the criminal justice system is a system of controlling crimes that consisted of the institutions of the police, prosecution, courts, prisons and the convicted person. (Mardjono Reksodiputro, 1997). In addition he has also suggested that the four components within the criminal justice system (police, prosecutors, courts, and correctional facility) is expected to cooperate and can form an "Integrated Criminal Justice System". If the alignment in the works of the system is not done, it is estimated there will be three losses as follows:

1. Difficulty in judging their own success or failure of each agency in connection with their duties alongside
2. Difficulties in solving a major problem each agency (as a subsystem of criminal justice)
3. Because it is the responsibility of each agency are often less clearly divided, then every instance of not particularly paying attention to the overall effectiveness of the criminal justice system.

According to Barda Nawawi Arief, the criminal justice system is in fact "power system enforce the criminal law" which is manifested in 4 (four) subsystems, namely: (Barda Nawawi Arief, 2006)

1. Power "Investigation" (by Agency Investigators/institutions)
2. The powers of the "Prosecution" (by agency/institution of public prosecutor)
3. Power "Prosecute and impose the verdict/criminal" (by the Court)
4. The powers of the "Execution of a criminal Verdict" (by agency/implementing/execution apparatus).

Of the four subsystems within an integrated criminal justice system as we mentioned above, the subsystem "Powers of investigation" is the most decisive stage in their operations the Integrated criminal justice system in order to achieve the purpose of the enforcement of criminal law, because at this stage of the investigation can be found the presence of the suspect an event of crime or criminal acts as well as determine the suspect the perpetrators of the crime or the perpetrator of a criminal offence before the crime ultimately prosecuted and tried in the trial and given criminal sanctions that correspond with his actions. Without going through the process or stage of the investigation then automatically, the next stages in the process of criminal justice, namely the stage of prosecution, examination in advance of the implementation stage of the trial and the verdict of the criminal could not be executed. Authorities of the institution of the investigation, in addition to the police investigating , based on the provisions set forth in Article 284 paragraph 2 of Act No. 8 of 1981 on the Act of Criminal Procedure (hereinafter referred to as the KUHAP), which confirms that within two years after the legislation is enacted, then against all things into effect the provisions of this law with the exception of the special provisions regarding interim criminal procedure assuch on certain legislation until there is a change or was declared no longer valid . Exceptions to the special provisions of criminal procedure referred to in article the further elaborated in the Government Regulation Number 27 in 1983 about the Implementation of the KUHAP on Article 17, which was concluded that "the authority of investigation in certain criminal acts which are specifically regulated by a specific act performed by the investigator, the prosecutor and the investigating authorities of other officials who are appointedon the basis of legislation.

Based on the Act No. 8 of 1981 on the KUHAP, in Article 1 paragraph (1) the investigators police officer was understanding of the Republic of Indonesia or the particular PPNS who are specifically authorized by law to conduct the investigation. In the KUHAP on 1 paragraph (2) the definition of investigation 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.

Parts of the law of criminal procedure relating to the investigation are as follows:

1. The provisions of the instruments of the investigator.

2. The provisions of the known occurrence of crime (*delict*)
3. Examination on the scene
4. Calling the suspect or defendant
5. Temporary Detention
6. The search
7. The inspection or questioning
8. News event (search, interrogation, and on-site inspection)
9. Foreclosure
10. Panning Things
11. Forward the matter to the public prosecutor and its return to theinvestigator for the refined.

Investigation as a preliminary step for tackling real crime is a process that includes a series of complex investigation actions began from the most lenient to the actions of a very hard i.e. be forced effort. The results of this investigation process, then conducted filings with securities litigation and sent to the public prosecutor for processed and relied upon the claim at this stage of the prosecution in front of the Court. Thus, the investigation in the framework of the criminal justice system is the initial stage or process a crime prevention or criminal acts on a stage before prosecution. Therefore, the investigation is beginning its process can be on the crimes. In other words, this stage can be the deciding factor whether or not the perpetrators of the crime are processed through the criminal justice system. Also whether the rules of criminal law, which provided the legal basis as the justification he did investigation already judged right legally so it really can be applied, enabled or operated (Widiada Gunakaya, 2011)

This means, for tackling the crime for the first time been able to do with the issue of judicial policy in the form of investigation by the police in the form of acts of forced efforts as mentioned above. If the investigation is not successful, then surely it will have implications for crime prevention failure against itself, due to the absence or lack of evidence should be collected by the police in the Act of crime investigation. Some of the statutory policy (policy legislation) about the investigation, not only provide full authority in the field of investigation to the specific in 1988, but also makes the lost authority of Police to conduct the investigation. But according to legislation Policing, confirmed that the police force in the discharge of duty is entitled "investigations and the investigation of all criminal acts and other regulations" (vide Article 14 paragraph (1) the letter "g" Act No. 2 of 2002 about Police the Republic of Indonesia (hereinafter referred to as **Polri**)).

Some policies the legislation contrary to the KUHAP as a policy legislation is functionally a higher degree, serves as the "umbrella law" and/or as the basis of legality in the field of criminal justice (vide Article 3 KUHAP. Indeed, according to article 6 paragraph (1) of the KUHAP that is not only investigating by police investigators of the Republic of Indonesia, but PPNS including certain special authorised by law. However, in the implementation of tasks PPNS remains under the coordination and supervision of the police investigators (vide Article 7 paragraph (2) of the KUHAP of jo. Article 14 paragraph (1) the letter "f" Act. No. 2 Th 2002 about Polri).

Article 6

(1) Investigators are:
   a. Police officials of the Republic of Indonesia;
   b. The particular civil servant officials (PPNS) who are specifically authorized by law.
(2) The terms of the line of the officials referred to in subsection (1) shall be regulated further in Government Regulations

Article 7

(1) The investigator as referred to in Article 6 paragraph (1) letter a because its obligations has the authority:
   a. Receive reports or complaints about the existence of a criminal offence
   b. Action at the time of the first on the scene;
   c. Sent to stop a suspect and examining the self identifier suspects;
   d. Making arrests, detentions, searches and seizures;
   e. Perform the inspection and seizure of mail;
   f. Taking fingerprints and a photograph;
   g. Calling the people to be heard and examined as a suspect or a witness;
   h. Bring those experts needed in connection with the proceeding;
   i. Hold the cessation of investigation;
   j. Other actions held responsible according to the law.
(2) The investigator as referred to in Article 6 paragraph (1) letter b has the 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 investigators in Article 6 paragraph (1) letter ‘a’.
(3) In performing his duties as referred to in paragraph (1) and paragraph (2), an investigator is obligated to uphold the Act.

Article 8

(1) The investigator made the news event on the implementation of the actions referred to in Article 75 by not reducing the other provisions in this Act.
(2) The investigator handed the dossiers to the public prosecutor.
(3) The submission of dossiers referred to in paragraph (2) do:
    a. in the first stage the investigator only submit dossiers;
    b. in the event the investigation already is considered finished, investigators handed over responsibility for the suspects and evidence to the public prosecutor.

To ensure a smooth investigation is a criminal offence, should the Mining of Minerba investigation conducted by PPNS, in collaboration with the Police Investigators. Experience shows that the investigation conducted itself more quickly, cheaply and accurately. Informally PPNS should monitor developments in the case of what is already convicted and how long a verdict is given. (Rinaldy Amrullah, 2013)

In addition, the expert witness should as far as possible from institutions of mining science and experience because he mastered in their field compared to other institutions. Formal and informal coordination has to be built and up graded between law enforcement authorities (police, prosecutors and courts). Experience shows that informal relationships are much more effective than formal. To further enhance the authority of investigators, refinement to be done against the KUHAP especially with regard to duties and authorities of PPNS, among others, include arrest and detention of suspects, the delivery of the file to the public prosecutor "through" Police investigators. The words of arrest, detention and often impedes smooth through tasks of PPNS, especially when there is a specific interest "by Police Investigators. Whereas Article 6 paragraph 1 of the KUHAP mentioned in PPNS and Police Investigator in the same the position. PPNS of mining of Minerba is a particular civil servants investigator in the sphere of mining explosives Minerba Center and areas by law authorized special investigation in Mining of Minerba. KUHAP does not give the authority in detail to police investigators and PPNS as above, Article 7 paragraph (2) of the KUHAP states that PPNS has the authority in accordance with the legislation that became the basic law respectively.

2. Research Methods

This type of research is the legal research, i.e. research which examines legislation in a coherent legal nomenclature. In this case, the law as a positive norm that applies at any given time and was published as a product of a particular political force that something has legitimacy. Legal research is a series of actions or processes to find the law caused the occurrence of vacuum norm, the obscuur norm or conflict norm or find a legal basis. Legal research is done by using the law as the main reference material, both primary law, secondary law materials as well as legal materials tertiary. The primary legal materials include all legislation related to higher education. Secondary legal materials include textbooks that contains a set of theories and concepts of law, previous research results, scientific articles, journals, and papers. In the tradition of legal science known three elements to guide researchers in conducting the legal material classification so that the classification process remain on the logical and systematic way corridor. (Saptomo, Ade, 2007) The corridor was the third nature of law, sources of law, and types. As the study of law, then the dogmatik ingredients law is normative with stage (Sidharta, B. Arief , 2000) i.e. structure, describe, and systemzation legal materials consisting of three studies, namely the technical landscape, landscape teleologis landscape, and the preparation of the external. 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

Of the four subsystems within an integrated criminal justice system as we mentioned above, the subsystem "Powers of investigation" is the most decisive stage in operated the integrated criminal justice system in order to achieve the purpose of the Enforcement of criminal law, because at this stage of the investigation be known to the presence of the suspect an event of crime or criminal acts as well as determine the suspect the perpetrators of the crime or the perpetrator of a criminal offence before the crime ultimately prosecuted and tried in the trial and given criminal sanctions that correspond with his actions. Without going through the process or stage of the investigation then automatically, the next stages in the process of criminal justice, namely the stage of prosecution, examination in advance of the implementation stage of the trial and the verdict of the criminal could not be executed. Less good condition of the act as one of the factors in the incidence of crime, among others, expressed by Sahetappy although the presence of other factors also put forward, namely the implementation of a law that is not consistent and the attitude or mindless acquiescence from law enforcement officers. (Sahetapy, J.E. 1982).

Exceptions to the special provisions of criminal procedure referred to in article the further elaborated in Article 17 the Government Regulation No. 27 Year 1983 about the implementation of the KUHAP, which

concluded that "the authority of investigation in certain criminal acts which are specifically regulated by a specific act performed by the investigator, the prosecutor and the investigating authorities of other officials who are appointed on the basis of laws and regulations."

Thus from the explanation above, can be described, that in the criminal justice system that is integrated, always have consequences and implications are as follows:

1. All subsystems will be mutually dependent because the product (output) is a subsystem input for other subsystems.
2. System Approach will encourage the presence of interagency consultation and cooperation which in turn will enhance the efforts of the strategic arrangement of the whole system.
3. A Policy decided upon and is run by one subsystem will affect other subsystems.

Crime prevention efforts or policy in fact is an integral part of the protection of society (social defence) and the efforts of achieving community welfare (social welfare) can therefore be said that the ultimate purpose or primary purpose of criminal kebijkan is the "protection of society to achieve the welfare of society". The formulation of the purpose of criminal politics that ever also stated in one report the course exercises held by UNAFEI '34 in Tōkyō 1973 as follows:

Most of group members agreed some discussion that "Protection of the Society"could be accepted as the final goal of criminal policy, although Not ultimate aim of society, which might perhaps be described by terms like "happiness of citizen" "a wholesome and cultural living", "social welfare "or"equality",

Sudarto put forward three (3) sense about policies or political criminal are:

1. In a narrow sense, is the overall principle and methods became the basis of the reaction to the offence that is criminal.
2. In the broad sense, is the overall function of the law enforcement apparatus, including the workings of the courts and the police.
3. In the sense of most extensive (which he took from Jorgen Jepsen) is the overall policies made through official bodies of legislation aimed at enforcing Central norms of society (Sudarto, 1983)

The lack of synchronization, including less "good" (irrationally) substance policy legislation, can certainly be problematic does – the integrated implementation of the criminal justice system, and this will also pose a factor Criminogen (and viktimogen) in the system itself. Thus it is certain, that the system in question will not run effectively.

Rising crime in Indonesia at present is very related to the ineffectiveness and the performance is less well from the system, so that the impact on its inability to control crime. Whereas if viewed from the production system, the criminal justice system serves as a raw material production process is suspect crime/criminals (input) and output is an ex-convict (the person expected to no longer commit crimes), and criminal justice system has a strategic position for monitoring the development of crime.

Completeness of the formal investigation, the terms of which are:

1) Every action that poured in news events should be made by the investigating officer/ associate investigators over the power of the oath of office and signed by the officials in question and by all parties involved in these actions.
2) Line PPNS and police investigators or assistants as well as those powers (including PPNS) must meet the conditions set forth in the legislation.
3) Investigator or investigators helpers action in the specific action that is valid, if there are any special permission/knowledge of the Chairman of the local district court or the presence of a particular witnessor a signature of the complainant or the complainant parties on the report/ complaint as stipulated in Article 33, Article 108 subsection Article 129 (4), subsection (2), Article 130. Article 133 jo. Article 187 sub c KUHAP.
4) There must be a complaint at delict complaint.
5) The identity of the suspect as referred to in Article 143 (2) paragraph sub a of the KUHAP needs to be clarified. Iin the event that he did the Act of confiscation, seizure of documents should be attached in the docket.
6) Evidence submitted voluntarily by the witness/suspect told investigators, should make any news event the acceptance and approval of penyitaannya, and attached in a file.
7) Changes to the status of objects confiscated must get special permission from the Chairman of the District Court. Similarly against the objects confiscated were sold before the auction got court decisions, should be also with the permission of the Chairman of the District Court.
8) Docket *visum et repertum* must be completed if a matter requires proof visum et repertum. If the visa in question has not been retrieved, then on the docket is quite attached to his letter, with notes tools other evidence has been insufficient.

The completeness condition materially investigation, are:

1) The existence of the tort, in accordance with the sense of action and understanding against the law, with

guided by elements of a criminal offence is suspected.

2) An error, either in the form of deliberate action or negligence in accordance with the elements of a criminal offence is suspected.
3) The presence of at least 2 (two) evidence that can support or prove the deeds and mistakes of the suspect.
4) Evidence which shows tempus delicti (when he does evil), so that itcan be known whether or not prosecution. And whether the alleged crime is as qualification as criminal acts or not, as well as to find out whether or not there is a change in conditions and norms not to know whether or not there is a change in the normative provisions of the criminal law was positive after he committed the crime.
5) Evidence which shows *the locus delicti*, so knowable enforceability positive criminal law and to determine which Prosecutor's Office/District Court where authorities conduct prosecution/judge (relative competence).
6) Clarity about the role of the perpetrator or the perpetrators and as well as its quality. Similarly, clarity on the level of implementation/ completion delik so obvious responsibility of the suspect. The quality of principals and or the perpetrators need to be clear, so that it can be determined which court is authorized to prosecute (absolute competence).
7) Does the Act or fault of the suspects including a special criminal offence to be doing its own investigation and additional investigationby the Prosecutor's Office (Article 284 subsection (2) of the KUHAP Article 17 jo Government Regulation No. 27 of 1983).
8) Need not docket is broken down (splitsing), either for in sufficient substantiation as well as efforts to develop things.

The completeness condition materially above, is already a juridical investigation technical that can only be done by the jurist who is experienced in that field. Incomplete terms materially in the investigation will bring the impact of the law against prosecution proceeding and in advance of the court session, which ultimately resulted in the Court ruling.

Investigators in the field of mineral and coal mining, regulated **Act of Minerba** in Article 149, stated that:

(1) In addition to the investigating police officials of the Republic of Indonesia, officials of the PPNS that the scope of duties and responsibilities in the field of mining as a special investigator was authorized in accordance with the provisions of the legislation.
(2) PPNS as intended in paragraph (1) is authorized:
   a. Checks over the truth of the reports or information concerning criminal acts in mining business activities;
   b. Do the examination of persons or entities suspected of committing criminal acts in mining business activities;
   c. Call and/or bringing forced people to be heard and examined as a witness or a suspect in criminal acts in mining business activities;
   d. Search places and/or the means allegedly used to commit criminal acts in mining business activities;
   e. Perform the inspection of facilities and infrastructure of mining business activities and stop using the equipment allegedly used to commit a criminal offence;
   f. Seal and/or seize mining business activities are tools used to commit the crime as a means of proof;
   g. Bring and/or ask for help experts needed in relation to the proceeding criminal acts in mining business ctivities; and/or
   h. Terminate investigation of things criminal acts in mining business activities.

Article 150

(1) PPNS as stipulated in Article 149 can catch the perpetrators of criminal acts in mining business activities.
(2) PPNS as intended in paragraph (1) notify the started investigation and submit the results of the investigation to the police officials of the Republic of Indonesia in accordance with the provisions of the legislation.
(3) PPNS as intended in paragraph (1) is obligated to stop the investigation in case there was not enough evidence and/or events does not constitute a criminal offence.
(4) The exercise of the powers referred to in subsection (2) and paragraph (3) is carried out in accordance with the provisions of the legislation

Efforts and the efforts of investigation other than absolute regard for"basic judiciary/principles of legality" referred to above, also requiresthe ability of certain criminal acts, as well as much-needed legal understanding of high ability (especially criminal law). In addition, PPNS based on KUHAP, the investigators are also has operational capabilities of investigation in the field, especially in pursuing and arresting suspects and collect evidence. All it requires operational capabilities or the activities of a very good investigators. It must be

admitted that Police investigators, who have the ability like that, compared with the capabilities of mobility PPNS certain investigators whose number is very limited and does not always exist in the whole of Indonesia, in addition to not having international networks such as with interpol.

4. Conclusion

The implementation of the powers of investigation on the case of criminal acts in mining of Minerba between PPNS and Police Investigators and there are overlaps and vagueness of the arrangements giving rise to the perception or different interpretations between different institutions of law enforcement themselves. Less good condition of the act as one of the factors in the incidence of crime even though besides the existence of other factors, namely the implementation of a law that is not consistent and mindless acquiescence or attitude of the law enforcement institutions. Agency investigators can really support the integrated criminal justice system, Indonesia should do good improvements are substantial improvements that is improving in terms of legislation by forming and drawing up specific legislation regarding agency investigators in Indonesia as well as revamping the the structural nature, namely improving the mechanism, the work and the coordination of Agency /institutions of investigators.

Improving the cultural nature namely revamping attitudes or behavior of the law enforcement investigators, to conform with the conception of the integrated criminal justice system which requires the existence of the ideal rule of written law as the basis for action of each subsystem, presence of functional differentiation of each subsystem, the coordination of each subsystem, the specific expertise of each subsystem as well as the mechanisms of control of each subsystem. All subsystems in the integrated criminal justice system i.e. subsystem of power of investigation, prosecution, power subsystem power subsystem adjudicate criminal, and drop the/subsystem of power execution/ implementation of criminal, embraced independence integral/systemic, not a partial independence / fragmenter.

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