

RECONSTRUCTION OF REGULATORY AUTHORITIES OF CERTAIN CIVIL SERVANT INVESTIGATORS IN INVESTIGATION OF CUSTOMS CRIMINAL ACTS BASED ON PANCASILA JUSTICE

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Abstract: PPNS cannot carry out forced efforts such as detention, arrest, and so on. This limitation of authority has resulted in the PPNS having to always carry out investigations together with the POLRI. This is because POLRI investigators are parties who are given full authority to carry out various forced measures such as arrest, detention, search and confiscation. The granting of such authority to the PPNS of the Director General of Customs and Excise often results in clashes during the implementation of law enforcement against criminal acts in the field of excise. Clashes mainly occur when determining which party is domiciled as an investigator and is authorized to make every effort in the framework of investigating criminal acts in the field of excise. This legal research uses a sociological legal research approach. To analyze the data, in terms of its nature, this research is descriptive-analytical, researchers used qualitative data analysis methods to obtain descriptive data. Since the promulgation of Law no. 11 of 1995 concerning Excise, the Directorate General of Customs and Excise based on Article 63 is given special authority to act as an investigator and carry out a series of investigative actions against criminal offenses in the field of Excise. However, it must be remembered that the investigative powers possessed by Civil Servant Investigators are only limited to criminal acts regulated in special criminal laws. This is in accordance with the limitation of authority stated in Article 7 paragraph (2) of the Criminal Procedure Code. Weaknesses in Legal Substance: Article 7 paragraph (2) stipulates that PPNS investigators in carrying out their duties are under the coordination and supervision of Polri investigators. Weaknesses in the Legal Structure: Weak coordination between law enforcement agencies can lead to overlapping authorities and policies of each party. Weaknesses of Legal Culture: One of the customs and excise crimes that is often committed is the crime of counterfeiting excise tape, which is a crime committed by legal subjects, both in the form of agencies and individuals by affixing or falsifying a country's official stamp, whether it is stamp duty or brand. Reconstruction of Article 7 paragraph (2) of the Criminal Procedure Code by changing PPNS in carrying out their duties under the coordination and supervision of Polri investigators to become PPNS in carrying out their duties coordinating with each other with Polri investigators.

Keywords: PPNS, Authority, Investigation

A. BACKGROUND

Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia¹ (UUD NRI) stipulates Indonesia as a legal state, wants the establishment of a solid national legal system that serves national interests, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. However, since independence The national customs law has not yet been formed so that Indische Tarief Wet (Indonesian Tariff Law) Staatblad of 1873 Number 35, Rechten Ordonantie (Customs Ordinance) Staatsblad of 1882 Number 204, and Tarief Ordonantie (Tariff Ordinance) Staatsblad of 1910 Number 628 are still enacted under Article II of the Transitional Rules of the 1945 Constitution.²

With the promulgation of Law Number 10 of 1995 concerning Customs, PPNS officials within the Directorate General of Customs and Excise are given the authority to carry out investigations of criminal acts in the field of Customs. Customs crime is a fiscal crime. In order to deal with developments in fiscal crimes which are increasing both in terms of quantity and quality, professionalism is required in investigating criminal acts in the fiscal sector. This will be realized if it is carried out by an official who is specifically given the task of carrying out an investigation.³ The enactment of Law Number 11 of 1995 Law No. 39 of 2007 concerning Excise has formulated various criminal acts related to Customs and Excise making the Customs and Excise Law apply as a special criminal law. Specific criminal law is a law that contains general criminal provisions and principles that have so far been regulated in the Criminal Code (KUHP).⁴

Regulations on criminal laws specifically outside the Criminal Code have an influence on Police investigators in the Criminal Procedure Code with regard to handling violations of special offenses outside the Criminal Code which require special expertise according to their field. Where if the



criminal act is handled by investigators from Polri officials, it is possible for limitations to occur in the investigation of this particular crime.⁵

The ambiguity of the meaning and position of PPNS in the Criminal Procedure Code and rules outside the Criminal Code creates legal uncertainty regarding the purpose of the law itself, namely the benefit of the law. This conflict or antinomy between legal certainty and legal benefits can actually be overcome by, among other things, how the process of making regulations. The point here is none other than that a rule of law will be correct and useful if it is made in the right way and the contents are in accordance with legal awareness and provide maximum benefits for the interests of individuals and society in general⁶.

Law No. 17 of 2006 concerning Excise is one of the laws that regulates the granting of authority for civil servants to conduct investigations into a crime regulated in the excise law. Civil Servant Investigators (PPNS) Customs and Excise are given the authority to make arrests, detain everything related to criminal offenses in the field of Excise.⁷ When compared with the authority possessed by PPNS in other agencies (Example of comparison with PPNS from the Ministry of Environment), PPNS cannot carry out forced measures such as detention, arrest, and so on. This limitation of authority has resulted in the PPNS having to always carry out investigations together with the POLRI. This is because POLRI investigators are parties that are given full authority to carry out various forced measures such as arrest, detention, search and confiscation.

The granting of such authority to the PPNS of the Director General of Customs and Excise often results in clashes during the implementation of law enforcement against criminal acts in the field of excise. Clashes mainly occur when determining which party is an investigator and has the authority to make every effort in the context of investigating criminal acts in the field of excise.

Civil Servant Investigators (PPNS) of the Directorate General of Customs and Excise, are given special authority based on Law Number 11 of 1995 Law No. 39 of 2007 concerning Excise to carry out a series of investigative actions on criminal acts in the field of Excise. Customs and Excise Civil Servant Investigators (PPNS) can detain someone who is suspected of committing a crime in the Excise sector, but the authority possessed by Customs and Excise PPNS is only found in criminal acts that are regulated in a limitative manner in Article 63 paragraph (2) of the Law Law Number 11 of 1995 Law No. 39 of 2007 concerning Excise. Law Number 8 of 1981 Concerning the Criminal Procedure Code (KUHAP) gives authority to Polri investigators to conduct investigations of all criminal acts based on the formulation of Article 7 paragraphs (1) and (2) of the Criminal Procedure Code. The working relationship between Customs and Excise Civil Servant Investigators (PPNS) and National Police Investigators is a relationship of coordination and supervision, providing instructions and assistance, reports on the start of investigations and termination of investigations. In carrying out a series of investigations, Polri investigators play more of a role in providing instructions and supervising investigations of excise crimes. In reality, in the field, there are still inappropriate relations and positions between Civil Servant Investigators of the Directorate General of Customs and Excise and National Police Investigators in the investigation of excise crimes. Such was the case with detention in the case of the crime of counterfeiting excise bands against suspect Erni Rusdiana, at the investigation stage at the National Police the suspect had been detained until the maximum time limit for detention, then the Directorate General of Customs and Excise re-arrested the suspect in the same crime, the suspect should have may not be detained again because at the stage of investigation at the National Police he has been detained for 120 (one hundred and twenty) days. The legal consequences of being re-detained by the Customs and Excise Civil Service Civil Service Civil Servants lead to illegal detention.

B. RESEARCH METHODS

This legal research uses a sociological legal research approach. Sociological juridical research, namely legal research using legal principles and principles in reviewing, viewing, and analyzing problems, in research, in addition to reviewing the implementation of law in practice.⁸ This research is analytical descriptive in nature, namely the data analysis carried out does not go outside the scope of the problem and is based on general theories or concepts applied to explain a set of data, or show comparisons or relationships between a set of data and another set of data.⁹ Then after the primary and secondary data are collected, then the data is analyzed. The data analysis method used is descriptive qualitative.¹⁰



C. Research Results And Discussion

1. Regulations on the Authorities of Certain Civil Servant Investigators in Investigating Customs and Excise Crimes Have Not Been Equitable

Since the promulgation of Law no. 11 of 1995 in conjunction with Law no. 39 of 2007 concerning Excise, the Directorate General of Customs and Excise based on Article 63 is given special authority to act as an investigator and carry out a series of investigative actions against criminal offenses in the field of Excise. However, it must be remembered that the investigative powers possessed by Civil Servant Investigators are only limited to criminal acts regulated in special criminal laws. This is in accordance with the limitation of authority stated in Article 7 paragraph (2) of the Criminal Procedure Code.¹¹

Based on the authority possessed by Customs and Excise Civil Servant Investigators (PPNS) with National Police Investigators, Customs and Excise PPNS and National Police investigators have the same authority to conduct investigations into criminal acts. However, PPNS Customs and excise can only conduct investigations into criminal acts related to excise crimes as stipulated in Article 63 of Law no. 11 of 1995 Law no. 39 of 2007 concerning Excise Jo Article 6 paragraph (2) of the Criminal Procedure Code, investigators are Republic of Indonesia Police Officers who are given special authority by law to conduct investigations (Article 6 paragraph (2) of the Criminal Procedure Code, and Article 16 of Law No. 2 of 2002 concerning the Indonesian National Police.

In the investigation process, PPNS Customs and Excise tried to find evidence and suspects to be handed over to the Public Prosecutor. In Customs crime an investigation process can be carried out when it is known that a criminal act has occurred. The crime itself can be known from:

- a) Reports (Legal Basis Article 106 KUHAP) Actions that violate the law in the field of Customs and Excise can be processed when there is a report. Reports submitted in writing or orally are recorded in advance by the Customs and Excise Officer and then set forth in an incident report signed by the investigator.
- b) Caught in the Hand (Legal Basis Article 108 of the Criminal Procedure Code) The definition of being caught red-handed is the arrest of a person at the time of committing a crime, or immediately after a while the crime was committed or shortly after being called out by the general public as the person who did it. or if a moment later an object is found which is strongly suspected of having been used to commit the crime indicating that he was the perpetrator or participated in or assisted in the commission of the crime. So directly can be ascertained suspect in a crime.
- c) Known Directly by Investigators (Legal Basis Article 111 KUHAP) If a Customs and Excise crime is known by investigators directly, then investigators who witness it are obliged to immediately take actions according to their authority then make reports of incidents and or minutes of actions taken for further solutions.

In customs crime cases, in this case the crime of smuggling electronic goods without permission most often occurs due to being caught red-handed. Cases of smuggling of electronic goods without a permit were caught red-handed by officers who were conducting patrols, then asked for the documents and examined the contents of the container cargo, if there were no documents or the customs notification was incorrect then further inspection would be carried out immediately.

If in the case of being caught red-handed committing a criminal act of smuggling electronic goods without a permit, but the person making the arrest is an ordinary Customs and Excise employee not from the Customs and Excise PPNS, then the employee can make an arrest and secure the evidence even without a warrant, this is done so that the perpetrator does not run away. Meanwhile, in carrying out searches and seizures, permission must be obtained from the local court. Immediately after that notifying and or handing over the suspect along with evidence to the authorized investigator or in this case the Customs and Excise PPNS, if receiving the surrender of the suspect along with or without evidence from Customs and Excise officials or the public, is obliged to make an incident report and make an official report on every action taken.

Article 107 paragraph (1) of the Criminal Procedure Code states that every investigator is obliged to provide investigative assistance to civil servant investigators, thus the working relationship between Polri investigators and Civil Servant Investigators regulated in Law Number 8 of 1981 concerning Criminal Procedure Law includes the implementation coordination, supervision, provision of instructions and provision of investigative assistance from Polri investigators to Civil Servant Investigators based on the joints of functional relationships with due regard to their respective hierarchies.¹²

In coordinating investigations, the obligatory assistance provided by Polri investigators to PPNS Customs and Excise according to Polri investigators whether requested or not requested or not based on their responsibilities in the context of carrying out investigations includes:



- a) Tactical assistance, namely investigative assistance provided by Police Investigators to PPNS Customs and Excise in the form of personnel or assistance personnel and their equipment for investigation purposes;
- b) Technical assistance, which is assistance provided by Police investigators to PPNS Customs and Excise in the form of authorized enforcement activities that are not owned by PPNS Customs and Excise.¹³

2. Weaknesses in the Regulatory Authority of Certain Civil Servant Investigators in Current Customs and Excise Crime Investigations

Civil servant investigators (PPNS) are regulated in Article 6 paragraph 1 letter b of Law number 8 of 1981 namely certain civil servant officials who are given special authority by law. Basically the authority of civil servant investigators originates from the provisions of the special criminal law which give authority to conduct investigations. Article 2 letter (b) Article 3 letter (b) and Article 3 paragraph (3) Government regulation number 58 of 2010 concerning amendments to government regulation number 27 of 1983 concerning the implementation of the Criminal Procedure Code which defines PPNS officials as employees certain civil administrations as referred to in the Criminal Procedure Code.

Article 7 paragraph (2), stipulates that PPNS investigators in carrying out their duties are under the coordination and supervision of Polri investigators. In practice, PPNS investigators only inform Police investigators. The coordination relationship as regulated in these articles did not work as it should. In the future Criminal Procedure Code, it is necessary to reconstruct the formulation of legal norms for obligations and legal consequences for law enforcement¹⁴ officials who do not carry out their obligations.

The conception of the Integrated Criminal Justice System adopted by Indonesia requires integrated cooperation between the components involved in the criminal justice system, bearing in mind that in integration, the failure of one of the components in the system will affect the methods and results of the work of other components. In addition, the concept of an integrated criminal justice system also requires a unified mindset that successful implementation of tasks can only be achieved due to cooperation between law enforcers. For this reason, each component of law enforcement, in order to realize an integrated criminal justice system, should be able to develop a uniform mindset in carrying out their respective duties towards an efficient state administration as the ideals of the Indonesian criminal justice system, namely a judicial process that is fast, simple and low-cost. by all levels of society seeking justice. Weak coordination between law enforcement agencies can lead to overlapping authorities and policies of each party. This condition is prone to cause conflicts of interest between law enforcement agencies.¹⁵

One of the customs and excise crimes that is often committed is the crime of counterfeiting excise tape, which is a crime committed by legal subjects, both in the form of agencies and individuals by affixing or falsifying a country's official stamp, whether stamp duty or brand. The legal subjects referred to here are factory entrepreneurs who produce alcoholic beverages or tobacco-produced cigarettes. Terms and obligations that are increasingly difficult to fulfill by legal subjects as well as the many provisions made by the government regarding excise stamps, make people dare to commit fraudulent acts by falsifying the original ribbons in order to reduce expenses from this type of business. Cases of violations in the excise sector that still frequently occur in addition to causing losses to the state also indicate that the handling of excise crimes by PPNS Customs and Excise is less than optimal.

3. Reconstruction of the Regulatory Authority of Certain Civil Servant Investigators in Investigating Customs Crimes Based on Pancasila Justice

The relationship of procedures for implementing coordination and supervision of PPNS is carried out in two fields, namely the field of coaching and the operational field. In the field of development, functional working relations in the framework of implementing coordination, supervision and guidance are carried out directly by the detective unit. This working relationship is carried out functionally horizontally by not ruling out the possibility of a diagonal relationship between the Police (investigation units ranging from the National Police Headquarters to the Police Headquarters) and PPNS elements. This coaching can be done through educational activities on PPNS elements. In the operational field, in essence coordination is carried out reciprocally between PPNS and Polri investigators.

The delegation of the criminal investigation process is carried out in the event that the case being investigated by PPNS turns out to be related to other statutory provisions outside of the



authority which is the legal basis. The PPNS Korwas Section received the delegation of the investigation process from the Tax Agency regarding criminal acts as stipulated in the tax legislation. The process of investigating these criminal acts should have been independently investigated by PPNS because it was included in the scope of their field of work, but then it was delegated to Polri investigators because the case already had a certain category.¹⁶

The Polri investigators who received the delegation then carried out the criminal act investigation process in accordance with the existing criminal investigation procedures starting from the sending of the Notice of Commencement of Investigation to the submission of the case dossier to the public prosecutor. Even though the case files have been delegated, Polri investigators are still coordinating with the Tax Service in terms of examining expert witnesses.

This shows that even though there are statutory provisions where investigations fall under the authority of PPNS, with an agreement between the two parties as outlined in a Joint Decree, the investigation process can be delegated to Polri investigators. On the other hand, although Polri investigators can conduct investigations into all criminal acts, as stipulated in Article 14 paragraph (1) letter f of the Republic of Indonesia Law Number 2 of 2002 concerning the Police of the Republic of Indonesia (Polri) it is stated that the obligation of the Indonesian National Police to carry out coordination, guidance and technical supervision of PPNS. However, the Criminal Procedure Code also provides the same opportunity to PPNS other than the Police to carry out investigations. Efforts to place PPNS as an independent institution in committing a crime have led to institutional efforts. As a result, in law enforcement practice, it is not uncommon for PPNS and POLRI investigators to overlap authority.

In practice PPNS are not independent, they even seem to be subordinated and placed as assistants to Police Investigators. Article 3 paragraph (1) Law no. 2 of 2002 states that the bearer of police functions is the Indonesian National Police who are assisted by: a. special police; b. civil servant investigators; and/or c. forms of self-defence.

PPNS is placed as an auxiliary function of the police, especially in the field of law enforcement (investigation). This is contrary to the provisions of the Criminal Procedure Code Article 1 point 1 in conjunction with Article 6 paragraph (1), the positions of PPNS and Polri Investigators are equal. The Criminal Procedure Code stipulates that PPNS in carrying out their duties are under the coordination and supervision of Polri Investigators (Article 7 paragraph (2) of the Criminal Procedure Code). Supervision and coordination are not in the sense of a sub-ordination position but in an equal position. This equal position will be clearly seen by examining the development of legal politics from legislation governing the authority of PPNS, where the authority of PPNS in investigating certain criminal acts such as immigration, excise, and finally environmental crimes, PPNS has very much authority. extends to detention authority.

Therefore it is necessary to reconstruct Article 7 paragraph (2) of the Criminal Procedure Code as follows:

Table 2. Reconstruction of Article 7 paragraph (2) of the Criminal Procedure Code

Article 7 Paragraph (2) of the Criminal Procedure Code	Weakness	Reconstruction
<p>Article 7 (2) Investigators as referred to in Article 6 paragraph (1) letter b (certain civil servant officials who are given special authority by law) have the authority in accordance with the law which forms their respective legal basis and in carrying out their duties are under coordination and supervision of investigators referred to in Article 6 paragraph (1) letter a (officials of the Indonesian National Police).</p>	<p>In practice PPNS are often not independent, even as if they are subordinated and placed as assistants to Police Investigators. PPNS is placed as an auxiliary function of the police, especially in the field of law enforcement (investigation). This is contrary to the provisions of the Criminal Procedure Code Article 1 point 1 in conjunction with Article 6 paragraph (1), the positions of PPNS and Polri Investigators are equal. The Criminal Procedure Code stipulates that PPNS in</p>	<p>Article 7 (2) Investigators as referred to in Article 6 paragraph (1) letter b (certain civil servant officials who are given special authority by law) have the authority in accordance with the law which forms the basis of their respective laws and in carrying out their duties coordinate with each other with the investigator referred to in Article 6 paragraph (1) letter a (officials of the Indonesian National Police).</p>



	carrying out their duties are under the coordination and supervision of Polri Investigators (Article 7 paragraph (2) of the Criminal Procedure Code).	
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The process of investigating criminal acts is one of the subsystems in the criminal justice system in Indonesia as stipulated in the Criminal Procedure Code and in this investigation process it is very necessary to have synchronization and harmony in the investigation subsystem in the criminal justice system. Based on the Criminal Procedure Code and other laws and regulations, PPNS has the authority to carry out investigations in accordance with the law which forms the legal basis, and in carrying out their duties is under the coordination and supervision of Polri Investigators.

The existence of PPNS is needed in carrying out investigations due to the complexity of the investigation, the existence of special crimes, and the limitations of Polri investigators. Regarding the implementation of PNS duties so that there is harmony and there is no overlap between Polri Investigators and PPNS, the government has stipulated various regulations regarding the mechanism for the appointment and dismissal of PPNS, as well as the implementation of coordination and supervision carried out by Polri Investigators on PPNS.

D. CONCLUSION


Based on the authority possessed by Customs and Excise Civil Servant Investigators (PPNS) with National Police Investigators, Customs and Excise Civil Servant Investigators and National Police investigators have the same authority to conduct investigations into criminal acts. However, PPNS Customs and excise can only conduct investigations into criminal acts related to excise crimes as stipulated in Article 63 of Law no. 11 of 1995 Law no. 39 of 2007 concerning Excise Jo Article 6 paragraph (2) of the Criminal Procedure Code, investigators are Republic of Indonesia Police Officers who are given special authority by law to conduct investigations (Article 6 paragraph (2) of the Criminal Procedure Code, and Article 16 of Law No. 2 of 2002 concerning the Indonesian National Police. Weaknesses in Legal Substance: In Article 7 paragraph (2), it is stipulated that PPNS investigators in carrying out their duties are under the coordination and supervision of Polri investigators. In practice, PPNS investigators only inform Police investigators. The coordination relationship as regulated in these articles did not work as it should. Weaknesses in the Legal Structure: Weak coordination between law enforcement agencies can lead to overlapping powers and policies of each party. This condition is prone to cause conflicts of interest between law enforcement agencies. Weaknesses of Legal Culture: One of the customs and excise crimes that is often committed is the crime of counterfeiting excise tape, which is a crime committed by legal subjects, both in the form of agencies and individuals by affixing or falsifying a country's official stamp, whether it is stamp duty or brand. The legal subjects referred to here are factory entrepreneurs who produce alcoholic beverages or tobacco-produced cigarettes. PPNS is placed as an auxiliary function of the police, especially in the field of law enforcement (investigation). This is contrary to the provisions of the Criminal Procedure Code Article 1 point 1 in conjunction with Article 6 paragraph (1), the positions of PPNS and Polri Investigators are equal. Reconstruction of Article 7 paragraph (2) of the Criminal Procedure Code by changing PPNS in carrying out their duties under the coordination and supervision of Polri investigators to become PPNS in carrying out their duties coordinating with each other with Polri investigators.

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