

Legal Consequences In The Regulatory Requirements For Investigating And Investigating Police Assistants On The Law

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Abstract: *The investigation is the authority of the police, as stated in article 6 of the criminal proceedings, the enforcement of investigators and investigators in the helper as a process to achieve the purpose of the pipetting to run well. This type of research using the type of noemative juridical approach is the law as a concept of norms, conventions, principles and dogma. The results of the study, which, due to the legal investigation of ineligible investigators, may be revoked and the legal product may be null and void, while the legal consequences for a cobblestone-produced investigator of the product will not be credible and accountable and become a loophole for the precondition by other institutions such as the PH or the suspect family as set out in article 77 of paragraph A of the KUHAP, and the limitation of the terms for the appointment of this investigator shall be governed by the charge of the law not Implementing regulations, because the government regulations only execute the rules of the legislation alone technically without the charge of the law, the consequences of the law of investigators and investigators who do not qualify is: can not provide Legal certainty for suspects, news events that are null and void and pretrial.*

Keywords: *Legal Consequences; Requirements; Rapture: Investigators.*

I. Introduction

The active role of the law enforcement authorities is especially needed to the police trust in conducting investigations. For the implementation of the police investigation with a good intensive, quality, optimal, professional, and continuing. Police also establish a good cooperation with the Trust Dkpt Commission Corruption (KPK) who has a full role in the cause of corruption criminal act in accordance with the regulations contained in the law No. 30 year 2002 on the Commission DKPT Corruption.

The investigation is the authority of the police, as stated in article 6 of the Criminal program law which states investigators as police officers and civil servants. Other regulations regarding the requirements of being an investigator are governed by Article 2a paragraph (1) of government regulation No. 58 year 2010 of amendment to government regulation No. 27 year 1983 on the implementation of the Criminal Code stated that, "to be appointed as the official of the Indonesian National Police investigator as referred to in article 2 A, the candidate must meet the requirements:

1. The lowest ranked two police inspector and educated the inferior undergraduate strata one or the equivalent;
2. Served in the field of investigation function in the shortest 2 (two) years;
3. Follow and graduate Educational development specialization of criminal investigation function;
4. Physical and spiritual health that is evidenced by a doctor's certificate; Dan
5. High moral ability and integrity.

As for the arrangement of auxiliary investigators stipulated in article 3 paragraph (1) of government regulation No. 58 year 2010 states that, "the helper investigator is the official of the Republic of Indonesia police which meets the following requirements:

1. The lowest rank of Brigadier two police;
2. Follow and graduate Educational development specialization of criminal investigation function;
3. In the field of investigation function in the shortest 2 (two) years;
4. Physical and spiritual health that is evidenced by a doctor's certificate; Dan
5. High moral ability and integrity.

Helper investigators are open only from Police and are also comprised of civil servants in a police environment specialising in certain skills such as pathologists, forensic experts and others. Civil servants who cannot be appointed as auxiliary investigators can delay implementation of the investigation. The alone police officer is still minimal to be appointed as a helper investigator, therefore the auxiliary investigator can be removed from the civil servants ' officials in the police environment (Hidayat, 2013).

If further attention to government regulations should not limit a requirement for a person either in any case. The regulations for the restrictions should be contained in the law not the management of the

implementing regulations as contained in article 10 of law No. 12 of 2011 on the establishment of legislation that says the order of In the Act shall be governed by the law not in the implementing regulations which should contain the procedure of implementation of the procedures meet the standards.

Failure of the investigation can be caused by the quality of individual investigation, the success of an investigation can be backed by education, principality, mastering the technology and follow the modernization, so as not to miss the handling of acts Criminal. The implementation of this investigation that handles mandatory criminal acts as stipulated in government regulation No. 58 year 2010 on amendment to government regulation No. 27 year 1983 on the implementation of the law Criminal events Law.

The appointment of investigators and auxiliaries in the linkup of the Indonesian police department partially did not meet the requirements stipulated in the Government's pearregulation No. 58 of the amendment to the government's pearregulation No. 27 Year 1983 on Implementation of the criminal event code. The Rapture is considered to have deviated procedural to the appointment of an investigator and investigator, many of which are severely disadvantaged when an investigator does not qualify the task executed it is unprofessional and incompetent In running it or not profit, this may result in null and void for the investigation of the proceedings bestowed upon the police. The conditions acquired for the appointment of an unqualified police investigator include:

1. Do not have a bachelor's degree or equivalent,
2. Not following the Reserse specialist education,
3. Never assigned to the investigation function.

While the requirements for auxiliary investigators that are not met include:

1. Do not follow the education specialization Reserse.
2. Never served the function pad investigation.

The appointment of this government investigator and investigator can be null and void in the appointment of investigators and investigator investigators, which means that it can be dismissed the investigation by the authorized officials who provide a letter of investigation, As well as professional, legal, accountable, procedural, transparent, efficient and effective in accordance with the principles contained in the regulation of the head of Police criminal investigation agency No. 2 year 2014 on organizing follow-up investigations Criminal.

From the results of the background description, the author raises 2 (two) identification of the interesting problem that is, how is the result of the law for investigators and auxiliary investigators who are not qualified to be a student and investigator of the assistant and Whether the Government regulation can provide restrictions on the conditions of appointment of investigators and auxiliary investigators.

Related to this writing there are several studies resembling that is, research by Jastin Miksondes Siringoringo that discusses that, the current law does not authorize the Corruption Eradication Commission for the appointment of And investigators, who did not come from the police and prosecutors (Siringoringo, 2016: 45). Research studied by Muchammad Fahmi Rosadi that, from the results of his research discussed that the investigation is conducted by the police and prosecutors. The process of investigation can use forced efforts to suspect to seek evidence at the examination level. The presenter can also dodge things to find new hill tools and related information (h., 2014: 145). The research studied by Indra Stary Pradhana discussing investigators can call SUBEJK for examination as Suspect or as a witness. Article 1 Number 2 of the Criminal Program code of law explains that investigators must find and collect hill tools to clarify criminal acts and seek out actual suspects in criminal acts. In fact the authority owned by investigators has not been implemented optimally (Pradhana, 2017: 48).

This method of research using normative juridical research is the type of study that uses rules, norms and legal dogma. This type of research is also known by doctoral research or normative research using literature studies from studying legislation, books and other legal articles, but also required interviews to complement them (Ilyas et, 2017: 9).

II. Literature Review

The investigation phase is one of the important parts in the series of stages that must be passed a case to the disclosure of a proven or suspected alleged criminal offence. Therefore, the existence of the investigation is not able to be removed from the provisions of legislation governing the act of its own (Nugroho, 2012: 67). According to article 1 item (1) The Code of Investigation of criminal proceedings is the police officer of the Republic of Indonesia or civil servants official who is given special authority by law to investigate. According to the Code of Law, the criminal event which is held in article 1 Figure 2, translates as "a series of investigator actions in terms of and in the manner stipulated in the Criminal event code of laws to seek and Gather evidence with the evidence to make a light about the crimes that took place and to find their suspects.

Based on the explanation above the investigator has authority pursuant to article 7 paragraph (1) of KUHAP as follows:

1. Receive a report or complaint from a criminal offence;
2. Take the first action at the moment on the scene;
3. To have to stop a suspect and examine the suspect's self-identification;
4. Conduct arrest, detention, search and seizure;
5. Conducting checks and foreclosures of mail;
6. Take a fingerprint and photograph A;
7. Call people to be heard and examined as suspects or witnesses;
8. Bring about the necessary experts in conjunction with the examination of the case;
9. Conduct termination of investigation;
10. Conduct other actions under responsible law.

Gerson Bawengan explained the purpose of police investigation to appoint who has committed a crime and gave evidence of the wrongdoing. In order to achieve this intention, investigators will gather information with certain facts or events that occur in the case of the crime scene (Taufik, 2015: 11).

In article 16 paragraph (1) of Law year 2002 No. 2 of the State Police of the Republic of Indonesia, mentioned that in order to conduct its duties in the field of criminal law enforcement. Other responsible actions referred to above (on the letter M), are further described in article 16 paragraph (2) stating that such action is an investigation and investigation conducted if qualified as Following:

1. Not contrary to a rule of law,
2. In accordance with legal obligations requiring such action to be undertaken,
3. Should be appropriate, reasonable, and included in the office environment,
4. Proper consideration based on forced circumstances,
5. Respecting human rights.

Began the investigation of a lawsuit which is a criminal offence by investigators notified to the public Prosecutor by the commencement of the notification letter of the investigation (SPDP) in accordance with article. 109 paragraph (1) of the criminal CODE. After the evidence has been collected and alleged to have been found further, the investigator carefully assesses, whether it is sufficient evidence to be bestowed on the prosecution or apparently not a criminal offence. If investigators argue that the event is not a criminal offence then the investigation is terminated for legal.

According to article 8 paragraph (3) if the investigation is completed then the investigator submit the docket to the Prosecutor, the submission is done in two phases, namely:

1. The first stage of the investigator only submit the docket.
2. The second stage, in the event that the investigation has been deemed completed investigators submit responsibility for the suspect and the evidence to the public prosecutor.

The function of investigation is to seek and find the material truth which is the truth according to the actual facts. R. Soesilo equates the function of the investigation with the task of the investigation that, in line with the duty of criminal proceedings, the task of investigation of matters is to seek the material truth that is truth in the truth (Soesilo, 1980: 27).

According to the KUHAP, the explanation of the auxiliary investigator is contained in article 1, number 3 which says that the assistant investigator is a police officer of the Republic of Indonesia who is given certain authorities can perform the investigation duties arranged In this law. Further on government regulation of the Republic of Indonesia number 58 year 2010 about changes to government Regulation number 27 year 1983 concerning implementation of the Code of Law of criminal Events Article 3 paragraph (1) says that, Assistant investigator is the official of the Indonesian State Police who meet the following requirements:

1. The lowest ranking of the two police brigadier;
2. Follow and graduate Educational development specialization of criminal investigation function;
3. Working in the field of investigation function in the shortest 2 (two) years;
4. Healthy physical and spiritual evidenced by a doctor's certificate; Dan
5. Possess high ability and moral integrity.

III. Lawlessness For Investigators And Unqualified Auxiliary Investigators

The law has given authority to the police force in the implementation of a preventive criminal law or a repressive in the form of action and prevention. The authority given by one of which is the investigation in the police process tends to be repressive resulting in the police task is related to the use of violence in the action to obtain recognition and description of the suspect Against a criminal offence (Simanjuntak, 2009: 87).

The police chief Regulation No. 14 of 2014 on Criminal investigation management which refers to the ruling of the Constitutional Court that says:

1. Determination of suspects by investigators after the investigation and to get two sufficient evidence;
2. The evidence is determined by the degree of matter by the police.

The process of investigation to find legitimate hill tools, among others, evidence, witness description, suspect information, letters and information experts. Instructions for evidence is encountered after judgment by the judge. Examination of the trial with additional evidence is the defendant's information in accordance with the regulations stipulated in article 188 and 189 of the Criminal Code of law.

Pursuant to article 70 paragraph (2) of the police chief Regulation No. 14 year 2012 on the management of criminal investigation for the purpose of seeking evidence and determination of suspect should be done in the initial degree of investigation which aims:

1. Set the Status of criminal matters;
2. Make an investigation plan;
3. Determine the elements of the article;
4. Create the target time;
5. Develop techniques and tactics of investigation.

The implementation of the title in order to support the execution of the application of the community as a report and can establish public confidence to the law enforcement officers to obtain legal certainty and the title of the case well Without the police leadership intervention. The consequences of unqualified investigators and investigators are described as follows:

1. Can not provide legal certainty for suspects, Article 114 of the Code of Law of the Criminal program is the uncertainty of the law caused by investigators before the examination should inform and commemorate the right to seek legal aid. These terms are mandatory, but are not sanctioned for investigators if they do not execute them. This explanation can be concluded that the substance from article 114 of KUHAP does not provide legal certainty to suspects (Pramudita, 2013: 65-67). Legal certainty is important for suspects to fulfill their rights, which are covered by the state. The uncertainty of this law is caused by investigators not to get a specialist development school and do not know the rights and obligations of suspects who lose financially and physically suspect because police investigators do not give certainty Law.
2. The news of the press show that is null and void, In the decree of the Supreme Court No. 1565K/Pid/1991 stated in the its verdict shall be based on the consideration caused not to give the legal counsel to accompany the investigation in the examination rate, it has been contrary With the contents of article 56 of the Criminal Code of law, resulting in the examination of the news of the investigation by investigators are declared data for the sake of law. The judge who plays a role in this may be able to decide the matter which is denied null for the law due to the ineligible investigator as stipulated in article 2A paragraph (1) of government regulation No. 58 Year 2010 on Amendment Government regulation No. 27 year 1983 on the implementation of the Book of criminal proceedings that the ruling of a judge cancels the verdict relating to an ineligible investigator.
3. Pretrial, The pretrial is an oversight of the conduct that performs its duties and functions in the judicial process well or not. The pretrial provides space to supervise the purpose of proper law enforcement that satisfies the elements of justice and truth. The determination of suspects by investigators is considered by the law academician not in accordance with the procedures prescribed by the law which resulted in suspects being able to apply for a pretrial in court, due to investigators who did not meet The requirement to conduct an investigation may misuse the authority to miscapture the suspect, hence the supervision of action carried out by investigators in order not to be pretrial (Husin, 2016: 23).
4. Wrong denying the article to the defendant, From the error of the public prosecutor can change the article that is based on the rules in the criminal event code which must provide a notification letter at the start of the investigation to Prosecutors. After the notification, the investigation is aware that the Prosecutor receives the next file called the public prosecutor and can supervise the investigation (Winarno, 2011: 26). The applicability of the law of the criminal Acra has a function difference between law enforcement apparatus. Prosecutors ordered the supervisor to complete the file that is still less than perfect and can not order investigators to amend the article that is said to be the authority of the Prosecutor.

The explanation above the author may conclude that when investigators and investigators who do not qualify for investigation in accordance with the contents of PASL 2a paragraph (1) government regulation No. 58 year 2010 will result in legal damages Society in general and without the obvious sanction of the investigators or investigators of the helper itself.

Government regulation is a regulation that is made to run and implement so that legislation can be carried out well. Government regulation is administrative, it can not load or engrave the constitutional norm, and can not give birth to a state organization and authority unless it has been governed by the law in advance. In order for government regulation to be made unopposed can be determined by the rules of the law or on the consideration of the President that a provision of legislation requires regulation in the implementation by the Government. There is no express explanation in the law, the president can arrange it in other forms such as

presidential regulation, so the material contained in the implementing rules is limited to the implementation only. In implementing government regulations, there are several principles of order (Manan, 1992: 13):

1. Lower level of law must adhere materially to the prevailing laws and regulations;
2. The substance of the lower-level regulation shall not peruse or contradict the regulation of higher-tier invitations, except when the higher legislation is made without authorization (ONBEVOEGD) not exceeding his authority.
3. There is a mechanism to safeguard and ensure that the breach of the principle.

The position of government regulation in Indonesian constitutional rule is a lot of controversy in its formation and its implementation, because its legal system refers to the flow of positivism, which is more the material form of text more Preferred. Another option given to Indonesia using a progressive legal system is used to symbolised the legal system of the ATS positivity properties contained therein, meaning that progressive law is instrumental in the development of the law of positivism with Comprehensive efforts (Rosnidar, 2011: 8).

The form of controversy located in the law of the Posivistik is in the statement of the term *Overmacht* or the force majeure to the Constitution. The terminology of forced circumstances can be interpreted by the Executive body with diverse. Essential to the forced state can lead to a clear meaning even the condition of this force closes the possibility to be interpreted as the importance of the ruler alone that is temporary (Bruce, 2004: 1033).

So far, the constitutional practice carried out from the various government regulations that have been issued by the Executive Board, the head of state showing the likelihood of interpretation of the circumstances as urgent as its settings Level of law. As the reason for the establishment of government regulation No. 58 Year 2010, challenge the Second Amendment to government regulation No. 27 year 1983 on the implementation of the Criminal Code.

The consideration of this Government regulation is due to subjective reasons, meaning that the regulation is based solely on the authority of the ruler, but the reason it becomes the basis of the ruler to publish the government's pearregulation refers to the situation and The objective condition of the country that is sourced from the reasoning of the government regulations that are issued and also renew and improve the legal system in the formation and establishment of government regulations. This situation is much needed for reform of the formation of a better national law (Bambang, 2007: 5).

In the exercise of good governance, the state of force can be anticipated by the head of State, which many use the power of the needs of society or government institutions. Concerning the procedure of drafting the government regulation is governed by article 54 of law No. 12 of 2011 on the establishment of legislation that says:

- (1) The drafting of government regulation should be formed between ministry or non-ministry institution;
- (2) The concept of administration of the design of the government has to be coarulated by the Minister of Legal Affairs;
- (3) Provisions of subsection (1) and paragraph (2) shall be governed by the Presidential regulation.

The government has issued presidential regulation No. 87 Year 2011 on implementing Law No. 12 year 2011 which regulates technical procedures only but does not explain anything that can be contained in government regulations, as well as Granting investigators the appointment should not be contained in government regulations but is contained in the law because this has been related to the rights of the individual permanently.

According to Mazmanian and Sebatier formulating the implementation process or implementation is a basic implementation of the policy within the legal framework and also the form of an *exselutif* decision to be established. The decision can identify the problem that is happening by mentioning the objectives that you want to achieve and to structure the implementation. The decision goes through the usual stages with the determination of the laws implemented by the target organs (Abdul, 2008: 34). The types of implementing regulations that belong to the following are as follows:

1. Government regulation;
2. Presidential regulation;
3. Ministerial regulation;
4. Local regulations;
5. Institution rules.

Government regulation is not able to give restrictions on a condition to be an investigator can be seen in the explanation of law No. 12 year 2011 on procedures for forming legislation. Furthermore, when viewed in government regulation No. 58 year 2010 as the Second Amendment to law No. 27 year 1983 on the implementation of the Book of Criminal event Law which is the law of the event with codification.

Speaking the policy of penal in the criminal implementation in Indonesia should be examined the substance of the current criminal law. See the practice or application of criminal law and see the fore steps on the application of Coveted criminal law. According to the author's saving restrictions the condition for the

appointment of this investigator shall be governed in the charge of the law is not the implementing regulations, because the government regulations only implement the rules of legislation alone technically without covering The bill, the government in this case the president should see his role more observant in order not to interfere with the Legislative affairs of the House of Representatives.

IV. Conclusion

Unqualified legal investigator and investigator law may conclude that if an investigator and auxiliary investigator are not eligible for investigation in accordance with the contents of article 2A paragraph (1) of government regulation No. 58 Year 2010 is legally resulted in public losses and without any obvious sanctions for investigators or auxiliary investigators. Government regulations shall be established as a rule that executes or implements the law or the provisions of the government regulation governing law and not with the content of the law to perform properly. Government regulation is not able to give restrictions on a condition to be an investigator can be seen in the explanation of law No. 12 of 2011 On the procedure for forming legislation. Furthermore, when viewed by government regulation No. 58 year 2010 of the Second Amendment to government regulation No. 27 Year 1983 is the law of events that need codification.

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Ari Kurniawan. "Legal Consequences in the Regulatory Requirements for Investigating and Investigating Police Assistants on the Law. " *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*. vol. 24 no. 06, 2019, pp. 41-46.