

# Investigation of Water Resources-Related Legal Violations Following Constitutional Court Decision Number 85/PUU-XI/2013

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## ABSTRACT

*This study was conducted to analyze legal violations related to water resources after the Constitutional Court's decision to annul Law No. 7 of 2004 concerning Water Resources. The decision caused confusion regarding the legal position of Civil Servant Investigators for Water Resources (PPNS SDA) in enforcing the law related to air resource management. The purpose of this study is to explore the legal status of PPNS SDA after regulatory changes and to assess the challenges faced in investigating legal violations in the air resource sector. The research method used in the analysis is qualitative, which includes literature studies from various legal sources, scientific articles, and interviews with relevant stakeholders in water resource management and protection. The results of the study indicate that despite the existence of laws and regulations, PPNS SDA are still legally recognized and have certain authorities in examining and investigating alleged violations of the law related to water resources. This study also identified several cases of investigations carried out by PPNS SDA, as well as coordination with other law enforcement officers. From the results of the study, it can be concluded that PPNS SDA still have legal standing in conducting investigations related to water resources despite regulatory changes. The investigation procedures followed by PPNS SDA are in accordance with the established methodology, but still require ongoing collaboration with other agencies, such as the police and prosecutors.*

**Keywords:** Constitutional Court Decision Number 85/PUU-XI/2013, Violation of Law, Water Resources.

## I. INTRODUCTION

Article 9 of Presidential Regulation Number 15 of 2015 concerning the Ministry of Public Works and Public Housing is followed in this case. To improve supervision and law enforcement in the water resources sector, a strategy adopted is the establishment of Civil Servant Investigators for Water Resources (PPNS SDA). The water resources sector is managed by the task area under the Water Resources Supervisory Agency for Public Works and Public Housing (PPNS SDA). According to Law Number 7 of 2004 concerning Water Resources, PPNS SDA has certain legal jurisdiction. Indonesian legal provisions relating to natural resources and criminal procedures give rise to this jurisdiction.

Responsibilities, rights, and efforts of the Indonesian National Police (Polri) and Civil Servant Investigators in the field of Water Resources (PPNS SDA) are described in the Criminal Procedure Code. Article 6, Article 106 and Article 107 of the Criminal Procedure Code provide specifics on the relationship between these parties.

Civil servant investigators conducting investigations in the field of Water Resources face challenges when questioned by the Constitutional Court Plenary Session in the Plenary Session Room. The Decision of the Chief Justice of the Supreme Court Arief Hidayat No. 85/PUU-XII/2013 because it was proven to be in conflict with the six basic principles governing water resources administration. The Constitutional Court recently restored Law No. 11 of 1974 relating to irrigation in an effort to address the absence of a legislative framework controlling water resources (Merdekawati et al., 2022).

However, the law does not contain any provisions for Civil Servant Investigators in the Water Resources Sector (PPNS SDA). As a result, their ongoing investigations into related cases may be hampered without proper

authorization. Filling this gap could help ensure continued progress in law enforcement efforts in this important policy area.

The examination of the legal standing of the National Water Resources Justice Institution (PPNS SDA) follows the Constitutional Court's decision Number 85/PUU-XI/2013 which declared Law Number 7 of 2004 concerning Water Resources unconstitutional. Given the Constitutional Court's decision, it also considers the authority of PPNS SDA to investigate existing criminal cases involving water resources.

Although a number of previous studies have discussed the role and challenges faced by Civil Servant Investigators of Water Resources (PPNS SDA) in the context of law enforcement related to air resources, there is still a lack of understanding of the legitimacy and continuity of the function of PPNS SDA after the Constitutional Court Decision No. 85/PUU-XI/2013 which revoked Law No. Previous studies tend to focus on normative aspects without considering the practical impact of the decision on the performance of PPNS SDA investigations and their collaboration with other law enforcement officers. Therefore, this study aims to fill this gap by examining how this legal change affects the position of PPNS SDA in implementing it and its consequences for law enforcement in the air resources sector (Akhmad & Hangabei, 2023).

## **II. RESEARCH METHOD**

This study uses a normative legal research type, which aims to understand the applicable legal norms and principles. The approach used in this study is a qualitative approach with a focus on document analysis and legal studies. The data sources used in this study include secondary data, namely primary legal materials, supporting legal materials, and additional legal materials relevant to the issues discussed. The analytical method applied involves systematic legal

analysis, including theoretical evaluation of related legal norms, as well as systematic vertical and horizontal analysis of existing regulations. With this approach, the study aims to provide an objective understanding of the position of PPNS SDA after regulatory changes and how this affects law enforcement in the water resources sector (Huda et al., 2024).

### **III. RESEARCH RESULTS AND ANALYSIS**

#### **A. Legality of Civil Servant investigators in the field of Water Resources based on Decree Number 85/PUU-XI/2013**

In the implementation of its administration, the government designs policies that are aimed at the public interest. The government has implemented various measures and initiatives aimed at addressing specific development issues and achieving stated development goals. This includes policies that target specific problems in the development sector or goals intended to advance development progress. The goal is to manage water resources to realize the greatest prosperity of the people (Aswar et al., 2022). This requires decision-making, formulating strategies, organizing, and putting various policy tools into practice in the field. The application of the role of government in the policy formulation process is carried out through various government tools (Tignino, 2023). One of these government tools is a legal instrument, which involves laws and regulations or other policies that are authorized by the government (Muryati & Triasih, 2021). Thus, the state's efforts related to the implementation, formulation, and implementation of policies in water resources management are realized through the use of legal instruments (Wulandari et al., 2022). Water crimes are classified as environmental crimes, and various water crimes have emerged historically (Eman & Meško, 2021).

The authority of the Civil Servant Investigator for Water Resources (PPNS SDA) is determined based on the Water Resources Law. The confirmation of the status of PPNS SDA as civil servants with special duties in water resources management and the authority to conduct special investigations is regulated in Article 93 paragraph (1). Civil

Servant Investigators for Water Resources (PPNS SDA) are recognized as having special legal jurisdiction in accordance with the Water Resources Law and other laws and regulations, in accordance with the Criminal Procedure Code (Husein & Nuraeny, 2024). In other words, the ability of PPNS SDA to investigate alleged water resource violations is an important legal role that is defined in detail by regulations. This is particularly related to the authority granted to Civil Servant Investigators for Water Resources (PPNS SDA), in accordance with Philipus M. Hadjon's explanation of the concept of the source of authority (Dewi & Ningtyas, 2023).

Hadjon points out that attribution, delegation, and mandate are the three main sources of legitimate power required for all government operations. While delegation and mandate require the transfer of authority from one entity to another, attribution is often done through the constitutional distribution of state power. As stated in the Water Resources Law and the Criminal Procedure Code, the Civil Servant Investigator for Water Resources (PPNS SDA) receives its first source of authority from the granting of investigative powers related to criminal acts in the field of water resources. PPNS SDA has been formed and given the authority to investigate water resource crimes through attribution (Ernawati et al., 2022).

With the Constitutional Court Decision No. 85/PUU-XI/2013, the Water Resources Law can no longer be enforced (Failaq & Pradana, 2023). As a result of the loss of the legal obligation, Article 93 paragraph (2) of the Water Resources Law which regulates the authority of Civil Servant Investigators is considered invalid (Syofyan & Nazmi, 2023). Substantially, the authority previously held includes:

- a. Conducting investigations to verify information or reports of illegal activities concerning water resources;
- b. Conducting investigations into individuals or companies suspected of being involved in crimes related to water resources; Inviting individuals to testify and be interviewed as witnesses or suspects in criminal cases involving water resources;
- c. Verify the truth and accuracy of such information through appropriate fact-finding and audit procedures;

- d. Inspect water resource facilities and stop equipment suspected of being used for criminal activities;
- e. Sealing and/or confiscating criminal instruments as evidence;
- f. Request assistance from experts to complete criminal investigation tasks involving water resources;
- g. Prepare and sign the minutes and submit them to the investigators of the Republic of Indonesia National Police; and/or
- h. Stop the investigation if there is insufficient evidence or the incident does not qualify as criminal activity.

The legal standing of the Civil Servant Investigator for Water Resources (PPNS SDA) is not inherently threatened by the revocation of the Water Resources Law or the revocation of the authority of the PPNS SDA. Legislation, especially the Irrigation Law. In other words, the PPNS SDA remains a legally recognized body according to law and basically maintains all previous authority as originally granted under Article 93 paragraph (2) of the Water Resources Law, although with certain limitations.

PPNS SDA is tasked with supervising, monitoring, and communicating any violations or unlawful acts related to water resources. Thus liability for tortious acts causing damage is established, which is a form of legal liability (Ungureanu, 2020). They serve as the vanguard in enforcing the law in the water resources sector and coordinating with the National Police Investigators.

## **B. Investigation by the Civil Servants of Water Resources into water resource crimes**

The Constitutional Court's decision annulled the re-enactment of Law Number 11 of 1974 concerning irrigation. However, there is no law relating to Civil Servants for Water Resources (PPNS SDA) in the Irrigation Law. The Irrigation Law only regulates several aspects, such as:

1. Definitions (Chapter I); functions of water (Chapter II);
2. Government authority over the management and improvement of the use of water and water sources (Part III);

3. Technical design for water regulation and irrigation systems, and development of water areas (Part IV); from the government Guidelines on guidance procedures in the context of irrigation activities (Part V);
4. Management of water and water resources (Part VI);
5. Exploitation and maintenance of water structures (Chapter VII);
6. Efforts to protect water, water sources and irrigation infrastructure (Chapter VIII);
7. Funding for activities related to water management and irrigation development (Chapter IX);
8. Transitional provisions (Chapter XI); And
9. Closing provisions (Chapter XII).

The development of the investigation process into alleged criminal cases related to SDA carried out by PPNS SDA has resulted in the revocation of the Water Resources Law and the absence of provisions governing PPNS SDA in the Irrigation Law. Therefore, it is necessary to organize the protection of interests in fulfilling their daily needs and also for irrigation (Musthofa et al., 2024). In this case, the state has a serious goal in protecting and preserving the environment (Aradhea, 2023). All types and forms of use and development of water resources for business activities must be carried out based on a permit for the use of water resources for business needs (Winarno & Kusumaputra, 2020). Several companies are currently being investigated by PPNS SDA related to potential violations of water resources. These companies include:

a. PT Ratu Sambat Mining, Bengkulu Province

PT Ratu Sambat Mining is engaged in coal mining. The alleged criminal act against PT Ratu Sambat Mining in 2013 occurred through the adjustment of the flow path of the Lemau River, Susuf River, and Penyengat River. This is related to coal mining exploitation activities in the river basin, which caused a decrease in water quality and significant fluctuations in water discharge during the rainy season and dry season. PT Ratu Sambat Mining may face legal consequences and criminal risks in accordance with existing regulations. Article 24 of the Water Resources Law outlines regulations on the use and protection of water. Specifically, it addresses the

responsible use and conservation of water resources to ensure access and sustainability of water availability. Proper management and supervision are needed to balance needs among various users and maintain water quality. Collaboration across public and private stakeholders can help enforce the guidelines set to maintain equitable water services now and in the years to come.

Water Resources Law Article 94 paragraph (1) letter a contains the following provisions: Sentenced to a maximum imprisonment of 9 (nine) years and a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah) for anyone who intentionally carries out activities that result in damage to water sources and their infrastructure, disrupts water conservation efforts, and/or results in water pollution as referred to in Article 24."

b. PT. Kasongan Bumi Kencana (KBK) Central Kalimantan Province

PT Kasongan Bumi Kencana (KBK) is engaged in gold mining. Alleged violations of water resources committed by PT Kasongan Bumi Kencana (KBK) in 2013 involved the direct discharge of gold processing waste into the Kanamalan River, which has the potential to damage water sources and cause water pollution. PT Kasongan Bumi Kencana (KBK) may face sanctions and potential criminal charges in accordance with Article 24 of the Law in question and Article 94 paragraph (1).

c. PT Urbit Prima Central Kalimantan Province

PT Urbit Prima is engaged in coal mining. In Bujut Village, Central Kapuas Regency, Central Kalimantan Province, coal mining waste was dumped directly into the Nanap Umpu River as part of the alleged 2013 water resource crime against PT Urbit Prima.

Certain behaviors have the potential to pollute and damage water sources. Violations of Article 24 of Law Number 7 of 2004 concerning Water Resources in conjunction with Article 94 paragraph (1) letter a of the Water Resources Law can result in legal consequences for the individuals involved.

d. PT. Tunas Agro Subur Kencana 3 (TASK3) Central Kalimantan Province



PT Tunas Agro Subur Kencana (TASK3) is engaged in coal mining. PT Urbit Prima is suspected of being involved in water resource crimes in 2013, involving illegal oil palm plantation activities in Patai Village. The involvement includes illegal closure, alteration, and narrowing of the Patai River from the Cempaga River tributary, as well as the construction of building structures on the Patai River from the Cempaga River tributary.

The legal consequences for this action may include possible threats defined by Article 24, Article 94, paragraph 1 (a), and Article 63, paragraphs 1, 2, and 3. Article 63, states that:

1. Development of water resources infrastructure is carried out in accordance with norms, standards, guidelines and manuals;
2. No person or business entity may carry out water resource infrastructure development activities that are not based on the norms, standards, guidelines and guidelines as referred to in paragraph (1); and
3. Every person or business entity that carries out construction activities on water sources must obtain a permit from the Government or regional government in accordance with their authority." Safety, work security, and sustainability of ecological functions are prioritized in accordance with laws and regulations.

Investigations and law enforcement related to cases of violations of water resources can be briefly described as follows:

1. Referring to the images as a form of evidence, the evaluation of the alleged violations related to water resources committed by PT Kasongan Bumi Kencana (KBK), PT Urbit Prima, and PT Tunas Agro Subur Kencana 3 (TASK3) in Central Kalimantan Province shows that the alleged violations of water resources by these three companies began with reports from the public (not caught red-handed) which were submitted directly;
2. Public reports are followed up by issuing a Report Receipt Letter (STPL); and
3. The Report Receipt Letter (STPL) will be responded to by conducting observations which are then reported through the Incident Report. This incident report includes

information about the reporting party and related details, such as the time and location of the incident, the reported incident, the person or party suspected of being involved, the method used, witnesses, and existing evidence; and

4. The next step after the Incident Report is to hold a case conference and issue a Letter of Order to Commence Investigation (SPDP), which is then sent to the District Attorney's Office in the local area.
5. After the issuance of the Investigation Commencement Order (SPDP), the suspect in the water resources crime was summoned via a Summons Letter 3 (three) times;
6. If in Summons I and Summons II the suspect is present, then a case title, oath and examination of witnesses, including the suspect and expert witnesses, will be carried out; And
7. The results of the case investigation will then be submitted to the Public Prosecutor (JPU) (P21) for the Prosecution stage, where documents, evidence, and the defendant will be submitted. This process will continue until a decision is obtained from the panel of judges in the Court.

In short, the law that was canceled during the active investigation created problems for the process. PPNS SDA has the authority to enforce laws related to water resource crimes. The investigative role of the Water Resources Civil Service Investigator, this includes the Regulation of the Chief of the Republic of Indonesia Police Number 6 of 2010 concerning the Management of Civil Service Investigators. The main purpose of this regulation is to control the administration and supervision of investigative work carried out by Civil Service Investigators (Mochtar & Rishan, 2022).

Provide guidelines for Civil Servant Investigators (PPNS) to conduct investigation processes. This is outlined in Article 3. The main focus lies in promoting cooperation and expertise in conducting investigations between Civil Servant Investigators (PPNS) and Police Investigators. PPNS are responsible for managing criminal cases in accordance with their assigned responsibilities and jurisdictions. According to Article 4, the following matters are included in the scope of this regulation :

1. Observation, research, examination, or supervision

2. Investigation, and
3. Supervision is carried out by investigators from the Republic of Indonesia Police (Polri).

Article 9 paragraph (4) explains that Civil Servant Investigators (PPNS) and Police Investigators are responsible for supervising each stage of the legal process until a resolution is reached. Government Regulation Number 43 of 2012 concerning Procedures for the Implementation, Supervision, and Technical Promotion of Special Police, Civil Servant Investigators, and Forms of Security for Self-Initiatives outlines how this directive will be implemented. In Law Number 2 of 2002 which outlines the main responsibilities of the Republic of Indonesia National Police, this regulation is a real action (Kafrawi et al., 2023).

Article 3 of Government Regulation Number 43 of 2012, which explains the Process of Implementation, Monitoring, and Technical Support for Special Police, Civil Servant Investigators (PPNS), together with Polsus and Pam Swakarsa, is referred to as one of the implementers of the Police function.

In accordance with Article 4, Polsus is responsible for carrying out security, prevention, and non-judicial law enforcement tasks that are in line with the technical areas mentioned in the laws and regulations. In contrast, as stated in Article 6, Pam Swakarsa is tasked with individually maintaining law and order in their communities. Article 5 states that Civil Servant Investigators (PPNS) are responsible for implementing the legal framework of relevant laws and regulations when conducting criminal investigations within their jurisdiction.

Government agencies, institutions, or bodies that have Civil Servant Investigators (PPNS), are involved in collaborative coordination with the Indonesian National Police (Polri). The stages of this coordination, as explained in Article 9, are carried out through the implementation of operational investigations with the following steps:

1. Pay attention to the commencement of investigations by PPNS and forward them to the Public Prosecutor in accordance with applicable laws and regulations;

2. Make plans to conduct cooperative investigations in accordance with the guidelines established by each relevant authority;
3. Assisting Civil Servant Investigators (PPNS) with technical, tactical, coercive and investigative consulting support;
4. Collecting the results of investigations from PPNS and sending them to the Public Prosecutor in accordance with applicable laws and regulations;
5. Participate in or lead case trials under the supervision of PPNS;
6. Receive notification from the PPNS regarding the conclusion of the investigation and forward it to the Public Prosecutor; and
7. Exchange of data and information regarding potential criminal acts being investigated by Civil Servant Investigators (PPNS); and 8. Participate in meetings frequently held by PPNS.

According to Article 14, the following activities are under the supervision of Civil Servant Investigators (PPNS):

1. Tracking the stages of the investigation and submitting Hardjasoemantri, Koesnadi. Law on Case File Procedure;
2. Conduct joint supervision with ministries/institutions that employ Civil Servant Investigators (PPNS) at the request of the head of the PPNS institution;
3. Collecting information on cases handled by PPNS; or  
Periodically analyze and assess how investigative tasks are performed.

#### **IV. CONCLUSION**

Civil Servant Investigators of Water Resources (PPNS SDA) still have legal standing. In the field of water resources, PPNS SDA still has a position as a civil servant with certain jurisdiction. The Civil Servant Investigator for Water Resources (PPNS SDA) follows the established regulations. The PPNS SDA investigation procedures adhere to the established methodology, ensuring full collaboration with the National Police throughout the investigation. However, the Public Prosecutor's Office and the judiciary continue to have jurisdiction over matters relating to prosecution and trial.

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