

# MAPPING OF CONDITIONS AND TRAINING NEED ANALYSIS FOR CIVIL SERVICE INVESTIGATOR IN NATURAL RESOURCES SECTOR

Law Enforcement Capacity  
Enhancement Program  
Jakarta



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# GLOSSARY

EIA	Environmental Impact Analysis
ASP	Agrarian and Spatial Planning
CS	Civil Service
EFSEC	Environmental and Forestry Security and Enforcement Center
RSPC	Regional Spatial Planning Center
GLO	General Land Office
EAT	Education and Training
DTG	Directorate General
DG	Director-General
LE	Law Enforcement
GIS	Geographic Information System
SMBL	Special Mining Business License
IUUF	Illegal, Unreported, and Unregulated Fishing
GML	General Mining License
HSE	Health, Safety of Environment
ROW	References of Work
DGD	Director General Decree
MEMR	Ministry of Energy And Mineral Resources
MMAF	Ministry of Marine Affairs and Fisheries
SSUA	Suitability of Space Utilization Activities
MOEF	Ministry of Environment and Forestry
SES	Strategic Environmental Study
BCPL	Criminal Procedure Code
BCL	Criminal Law Code
DBRE	Diversity Of Biological Resources and Its Ecosystems
EAF	Environmental and Forestry
OAG	Oil and Gas
MAC	Mineral and Coal





UCSBR	Civil Services and Bureaucracy Reform
UN	United Nations
GDP	Gross Domestic Product
CPD	Chief of Police Decree
MD	Ministerial Decree
PD	Presidential Decree
DC	District Court
GO	Government Regulation
EO	Environmental Officer
CSI	Civil Service Investigators
SMFR	Supervision of Marine and Fishery Resources
AC	Administrative Court
CMI	Activity of Collecting of Materials and Information
NMDP	National Mid-Term Development Plan
PSASP	Spatial Planning of Provisional Strategic Area
SP	Spatial Planning
TF	Task Force
NR	Natural Resources
HR	Human Resources
RML	Rock Mining License
FTL	Fish Transporting License
NOI	Notifications on Commencement of Investigation
CSc	Crime Scene
INA-NAVY	Indonesian Navy
UU	Law
SORI	Supervision, Observation, Research, Inspection
MJ	Mining Jurisdiction
EEZ	Exclusive Economic Zone

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## PROGRAM BACKGROUND

Over the years, one of the Indonesian Economic support comes from NR. Therefore, good governance of NR and accountable support from law enforcement agencies are important.-

In order to do so, law enforcement agencies should have strong knowledge of NR's good governance and a good willingness to coordinate between them in combating NR crimes. On the other hand, civil society participation in reporting and monitoring NR crimes becomes an important catalyst for good NR governance.

### PROGRAM PURPOSES



1. Increasing the effectiveness of law enforcement efforts on NR crimes and corruption in the NR sector;



2. Decreasing the corruption rate in the NR sector.

### PROGRAM IMPLEMENTATION STRATEGY

The program works with three main interrelated domains :

1. Improvement capacity and coordination between law enforcement and CSI through training and case simulation.
  - Improvement capacity is carried out through training and cases simulation. The goal is to increase and share knowledge about the management business of certain natural resources.
  - To facilitate the coordination, a platform will be designed to enable the process of coordination and cooperation between CSI in cross sectors of NR.
2. Establishment of a knowledge-sharing mechanism related to natural resource crime act handling.

- Creating database and platform to connect technical exchange process between law enforcement (case handling procedures) and CSI (NR management business flow), also to expand and to strengthen the exchange, knowledge improvement about NR criminal act, with various study centers and also knowledge from academics and non-academics.
3. To strengthen and expand community participation in reporting and monitoring

the law enforcement process in NR crime act cases.

- Civil society's independence in monitoring and reporting NS cases becomes an important element to improve the transparency and accountability of CSI in handling crimes.

For the program purposes, the three main domains will be executed by five components.



**COMPONENT 1**

Enhancing the capacity of law enforcement for Civil Service Investigators;



**COMPONENT 2**

Enhancing the capacity of law enforcement for prosecutors;



**COMPONENT 3**

Improving coordination and cooperation between law enforcement and CSI in handling NR crimes;



**COMPONENT 4**

Forming a mechanism to share the knowledge related to NR crimes;



**COMPONENT 5**

Improving the communities participation in monitoring the law enforcement process in NR crimes.



### TIMELINE AND WORKING AREA

The program is planned to be implemented for three years (2019-2022) and will cover 12 provinces that have a dense forest area:





## **PROGRAM BENEFICIARIES**

This program is designed to serve the needs of increasing the capacity and coordination of law enforcers and CSI, those are :

1. General Attorney;
2. Police;
3. Financial Transaction Reporting and Analysis Center (FTRAC);
4. CSI of DTG of EFSEC, MOEF;
5. CSI of DTG of Plantation, Ministry of Agriculture;
6. CSI of Ministry of Agrarian and Spatial Planning (ASP)/General Land Office (GLO);
7. CSI of MEMR;
8. CSI of MMAF;
9. CSI of DTG of Taxation, Ministry of Finance;
10. CSI of DTG of Customs and Excise, Ministry of Finance;
11. Commission of Business Competition and Supervisory (CBCS);
12. Financial Service Authority (FSA).

In addition, civil society and media (both local and national) are also expected to be involved supervisors in monitoring the NR crimes handling by law enforcement agencies.







# CHAPTER I. PRELIMINARY

## A. BACKGROUND

NR (and environmental) crimes can be classified as special crimes due to special investigators and special strategies required for handling it. The efforts to uncover the perpetrator require special investigation strategies, including finding the losses caused by the crimes, predicting future impact and environmental rehabilitation needs to be done, tracking down and seizing the assets of the crimes.

To against these kinds of crimes, the law has appointed special investigators who come from civil servants. Currently, there are at least seven laws concerning in NR sector that governs the existence of Civil Servant Investigators (CSI) with various authorities, i.e (1) Law No. 41/1999 on Forestry; (2) Law No 4/2009 on Mineral and Coal Mining; (3) Law No. 32/2009 on Protection and Management of the Environment; (4) Law No. 45/2009 on Fishery; (5) Law No. 39/2014 on Plantation; (6) Law No. 18/2013 on Prevention and Eradication of Forest Destruction; (7) Law No. 26/2007 on Spatial Planning.

Although law enforcement in the NR sector by CSI has shown progress in recent years,<sup>1</sup> not all CSI in Ministries/Institutions in the NR sector have made equal progress. The

progress has not been widely used as a source of knowledge for CSI. This happens because lack of structure and capacity development pattern for CSI in dealing with the development of NR crimes.

This situation is worsen by inadequate enabling conditions that affect the capacity of CSI in enforcing the law. These conditions include: an organization that is not yet optimal; unequal number and distribution of CSI; an unsteady of collaboration between CSI; and overlapping regulations.

To ensure that CSI and organizations in the NR sector can provide optimal support in law enforcement, a new approach is needed in developing the capacity of CSI of NR in 3 (three) different dimensions, namely:

1. Enable CSI as individuals to develop and use the necessary competencies to do their jobs well (improving individual capacities);
2. Build and/or maintain entities from all law enforcement institutions which responsible for NR to function optimally (building organizational capacity); and
3. Create an enabling environment for law enforcement through supports from aspects of politic; economic; and socio-cultural.

<sup>1</sup> For example, since 2015, CSI of Environment and Forestry, which is currently attributable to the DTG of Law Enforcement at the MOEF, has filed a claim for compensation due to various environmental damages.

## B. SCOPE AND OBJECTIVES

The scope of Mapping of Conditions and Training Needs for CSI in the NR Sector is limited to 5 (five) sectors, namely: (1) the Agrarian and Spatial Planning (ASP) sector; (2) the Environment and Forestry (EAF) sector; (3) plantation sector; (4) fisheries sector; and (5) the mining sector.

This mapping aims to analyze the strengths and weaknesses OF CSI in the NR sector, as well as to find out the types of competencies required for CSIS who work in the NR sector.

## C. EXPECTED RESULTS

The expected results of this Mapping are:

1. The existence of a Mapping of CSI Conditions in the NR sector through identification and analysis of the strengths and weaknesses of each CSI in the NR sector, both practically; technical, as well as legal;
2. Identification of the institutional framework and institutional external factors that affect the implementation of the duties and functions of CSI;
3. Availability of alternative training proposals to address gaps in the capacity and competence of CSI.

## D. APPROACH AND METHODOLOGY

The methodology used in this study is a desk review with reference to the CSI organizational documents; related laws; and mapping the settlement of NR cases.<sup>2</sup> The data and information that have been

collected through a desk review are then discussed in the form of a Focus Group Discussion with CSI and related stakeholders. In addition, other data and information were also obtained through a questionnaire that was devoted to issues related to the competence of CSI.

This study is focused on 3 (three) aspects, namely: (1) institutional or organization of CSI;<sup>3</sup> (2) skills and knowledge of CSI; (3) the challenges and achievements of CSI in carrying out their duties and functions. The gap analysis of these issues provides an overview of the competencies needed by CSI to achieve optimization in handling NR cases as referred to in the following:

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<sup>2</sup> This method was chosen considering that this mapping was carried out during the COVID-19 pandemic.

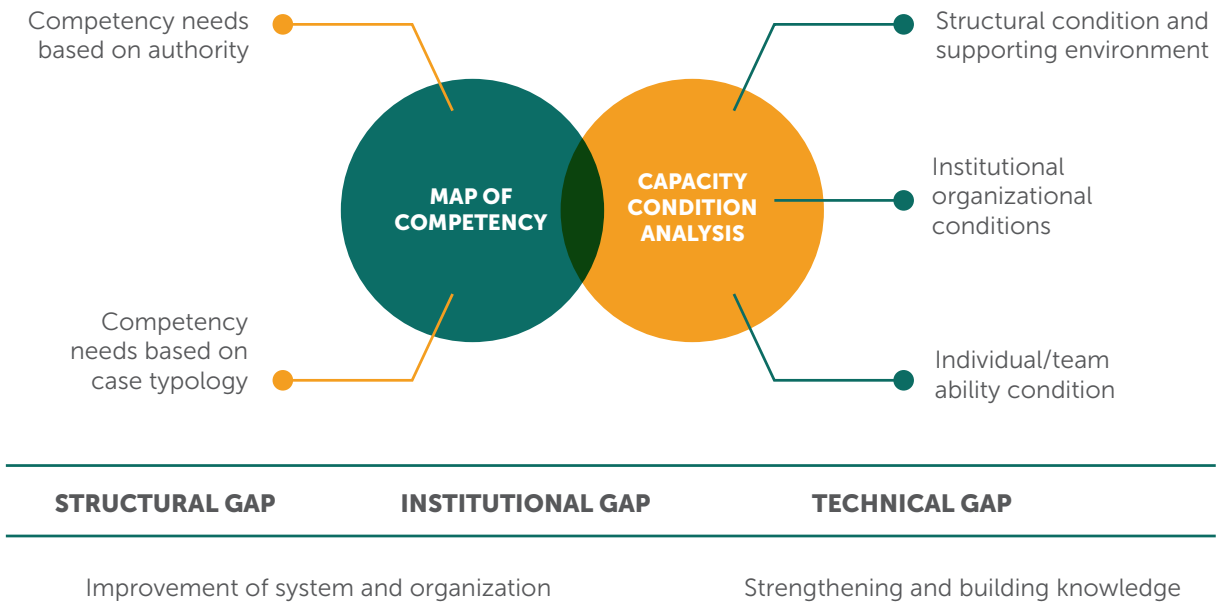
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<sup>3</sup> This includes business processes and the number of personnel.





**Picture 1.1. Approach and Methodology of CSI NR Competency Map**



## CHAPTER. II

# FRAMEWORK OF HANDLING OF CRIMES IN NATURAL RESOURCES SECTOR

### A. PERSPECTIVE IN HANDLING NATURAL RESOURCES AND ENVIRONMENTAL CRIMES

#### 1. AGRARIAN AND SPATIAL PLANNING

Land as part of the earth's surface has an important meaning in human life, both as a place or space for life with all its activities, as well as a source of life. In fact, as a nation, the land is an element of territory in state sovereignty.<sup>4</sup>

Article 33 paragraph (3) of the Indonesian Constitution states that: "Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." The realization of this article is stated in Article 2 paragraph (2) of Law No. 5/ 1960 on Basic Regulations on Agrarian Principles, in which the state is given the authority to regulate and administer allotments; use; stock; and maintenance of earth, water, and space. Article 14 of Law No. 5/1960 confirms that for this arrangement, the Government is

obliged to make a General Plan regarding the supply, designation, include use of earth, water, and space for the various interests of the people and the state.

The arrangement of the supply, designation, and use of land in the area is adjusted to the conditions of each region by referring to the Spatial Plan(SP) as regulated in Law No. 26/2007 on Spatial Planning and Government Regulation (GR) No. 16 /2004 on Land Use. Spatial planning is the frame of all activities from all NR sectors so that all systems related to the use and utilization of NR must be based on spatial planning including agrarian resources in it.

Spatial planning issues, both macro and micro, have become a challenge in implementing good land use management. The existence of limited land and population growth has an impact on the growth of residential areas and the development of development in all fields<sup>5</sup> which in turn results in an increase in the need for land. Spatial planning problems become complicated when there

<sup>4</sup> Bernhard Limbong, National Agrarian Law. Jakarta: Margaretha Pustaka, 2012.

<sup>5</sup> For example: road construction; housing; offices; trading center; industry; tourist spots, etc.

is overlapping of land use to permits and land uses that are not following the spatial designation/plan.

Spatial law enforcement becomes important in terms of tenure; use; and use of land in accordance with SP so the order is realized<sup>6</sup> and guarantees legal certainty to control; use; and utilize the land for people who have a legal relationship with the land in accordance with the current SP.<sup>7</sup>

## **2. ENVIRONMENT AND FORESTRY**

The Indonesian Constitution states that a good and healthy environment is a human right and a constitutional right for every Indonesian citizen. Therefore, the State; Government; and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development, so that the environment can remain a source and support for life for the Indonesian people and other living creatures.

NR as national development capital has real benefits for the life and livelihood of the Indonesian people, both ecological benefits; social; culture; and economy, in a balanced and dynamic manner. For that, the environment and natural resources must be taken care of; managed; protected; and used sustainably for the welfare of the Indonesian people, both for present and future generations.

Forestry is an element of NR that supports life. Forests provide great benefits to mankind and play a role as a harmonic and balancer of the global environment. Therefore, forest

linkages are not only for the national interest but also intersect with the international community.

Forest products are commodities that can be converted into processed products to get added value and open up job opportunities and business opportunities. For this reason, all efforts to process forest products must not cause damage to forests and the environment. Sufficient areas of forest in watersheds and/or islands must be maintained with a balance of environmental benefits; social; cultural; and economic. The utilization of forests and forest areas must pay attention to their characteristics and vulnerabilities, it is not allowed to change their main function as conservation; protection; and production.

A form of control and protection of environmental impacts is through instruments supervision and license. Violations of management against environmental damage must be enforced by law, such as through Law No. 5/1990 on Conservation of Biological Natural Resources and Their Ecosystems; Law No. 41/1999; Law No. 32/2009; and Law No. 18/2013.

In a principle of repressive effort, law enforcement in environment and forestry issues using an administrative sanction in terms of environmental permits; security and rehabilitation approach for area rehabilitation; civil law approach for environmental disputes; and criminal law approach to any violation of permits and destruction of environment and forests.

Law enforcement in the field of environment and forestry targets not only individuals but also corporations, both legal entities and non-legal entities as well as officials authorized to issue related permits.

6 Agrarian Compliance consist of activities of controlling and utilization of land (land preservation)

7 GR No. 16/2004, Article 3.

### 3. PLANTATION

Plantation consist of all activities of NR management; HR; production facilities; tools and machines; cultivation; harvest; processing; and marketing related to plantation crops.<sup>8</sup> The management of plantations is intended to improve the welfare and prosperity of the people; increase the country's foreign exchange sources; provide employment and business opportunities; increase production, productivity, quality, value-added competitiveness, and market share; increase and meet the needs of domestic consumption and industrial raw materials; provide protection to plantation business actors and the community; manage and develop plantation resources in an optimal, responsible and sustainable manner and increase the utilization of plantation services. The management of the plantation is based on the principle of sovereignty; independence; continuity; cohesiveness; togetherness; openness; sustainability; efficiency-fair; local culture; and the preservation of environmental functions.<sup>9</sup>

Law enforcement in the plantation sector as regulated in Law No. 39/2014 includes: (1) forms of plantation crimes; (2) perpetrators of criminal acts (individuals; corporations or business entities and officials who ordered persons or persons who have authority in the plantation); (3) land plantation handling disputes; (4) land plantation fires; (5) violation of plantation business licenses (eg; Plantation Business permits on Customary Land Rights of Indigenous Peoples; and (6) sanctions for the officials who grant permits that are not following the designation and/or issuing

permits that are not in accordance with the terms and conditions of the regulations.

### 4. FISHERIES

Indonesia is an archipelagic country that stretches about 5 thousand kilometers along the equator with a geostrategic position between two oceans (the Pacific Ocean and the Indian Ocean). This position puts Indonesia in a busy international shipping lane. The Indonesian sea also has a wealth of species and potential fishery resources, which are estimated at 6,000 species.<sup>10</sup> This has an important impact for Indonesia, one of which is the enormous economic potential in the process of international traffic trade through the three sea lanes of the Indonesian archipelago.<sup>11</sup>

Apart from being a marine ecosystem space; maritime industry space, Sea Lines of Communication<sup>12</sup>, and Sea Lines of Trade,<sup>13</sup> the sea also has a vital function for archipelagic countries (such as Indonesia) as media for national unity; resources; defense, and security. With the existing of a potential economy, there are practically various interests related to the use of marine resources. In the context of regulating the use of the sea and its resources, there are several United Nations (UN) conventions that have been ratified by the Government of Indonesia through Law No. 19/1961 on Ratification of 3

<sup>8</sup> Law No. 39/2014, Article 1 paragraph (1).

<sup>9</sup> Law No. 39/2014, General Explanation

<sup>10</sup> 3,000 of these species have been identified.

<sup>11</sup> Hayyu Sasvia, Enforcement of Fisheries Law in Indonesian Marine Territory. *Lex Scientia Law Review*, 2019, Volume 3 No. 2.

<sup>12</sup> Sea Lines of Communication or SLOC is a maritime route between ports used for trade, logistics and naval shipping activities.

<sup>13</sup> Sea Lines of Trade or SLOT is a world trade route as the main route to support trade interests, movement of energy resources and food supply.

International Conventions, namely the High Seas Convention; Convention on Fisheries and Biological Protection on the High Seas; and the Continental Shelf Convention.

The 1982 International Law of the Sea Convention has also been ratified by Indonesia with Law No. 17/1985. This convention places Indonesia as having sovereign rights to use; conserve; and manage fish resources in the Indonesian Exclusive Economic Zone (EEZ)<sup>14</sup> and the High Seas which is carried out based on applicable international requirements or standards. The EEZ is an open sea and is prone to actions that are detrimental to the Indonesian state, for example: exploration and exploitation of marine resources by foreign parties.

Dimensions of fisheries as a series of activities related to the management and utilization of fish resources and their environment, starting from pre-production; production; processing to marketing carried out in a fishery business system. To ensure the availability of resources and environmental sustainability of fish resources, as well as effective fisheries management; efficient; and modern then made Law No. 31/2004 on Fisheries, which has been amended by Law No. 45/2009.<sup>15</sup> From a formal juridical perspective, there are 2 (two) types of fisheries crimes, namely: (1) crimes in the field of fisheries; and (2) violations in the field of fisheries. The legal subjects of fisheries crime are imposed on individuals and corporations, both legal entities and non-legal entities.

These criminal provisions try to overcome various problems related to Illegal Fishing, Unregulated Fishing, and Unreported Fishing

(IUUF). Illegal fishing is an illegal fishing activity (without the permission of the coastal state) in the territorial waters or EEZ of a country. Law enforcement for illegal fishing is regulated through Article 102 of Law No. 31/2004 which states that imprisonment does not apply in the EEZ area unless there is an agreement between the Indonesian government and the government of the country concerned. This article is the adoption of Article 73 paragraph (3) of the United Nations Convention on the Law of the Sea (UNCLOS<sup>16</sup>) which states that the punishment imposed by a coastal state for violations of fisheries laws and regulations in the EEZ may not include confinement, in the absence of a treaty providing otherwise between the countries concerned, or any other form of corporal punishment.

Implementation of Article 102 of Law No. 31/2004 becomes a separate dynamic when imprisonment is not enforced and the convict is unwilling or unable to pay the fine and has an impact on the realization of legal certainty. Considering Article 30 paragraph (2) of the Criminal Code (KUHP) stipulates that: "If the criminal fine is not paid, he was replaced with imprisonment." Although Article 102 is strengthened by the Circular Letter of the Supreme Court (CLSC) No. 3/2015 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2015 as a Guide to the Implementation of Duties for the Court,<sup>17</sup> but in implementing the judge's decision, the conditions are still considered case by case.

<sup>14</sup> Indonesia's EEZ is a sea lane outside and bordering the Indonesian territorial sea, which includes the seabed, subsoil and water above it with a width not exceeding 200 nautical miles.

<sup>15</sup> UU No. 31/ 2004 jo. UU No. 45/ 2009, General Explanation.

<sup>16</sup> UNCLOS, Article 73 paragraph (3): Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the Contrary by the States concerned, or any other form of corporal punishment.

<sup>17</sup> SEMA No. 3 of 2015, point A number 3: In the case of illegal fishing in the EEZ, the defendant can only be subject to a fine without being sentenced to imprisonment in lieu of a fine.



## 5. MINING

Minerals and Coal (MAC) as natural resources contained in the earth are non-renewable natural resources. MAC management needs to be carried out in optimal; efficient; transparent; fair and environmental friendly ways in order to obtain the maximum benefit for the prosperity of the people in a sustainable manner. To comply with the provisions of Article 33 paragraph (3) of the Indonesian Constitution, it is necessary to regulate MAC mining in line with the challenges and influences of globalization, to provide a legal basis and certainty steps to reform and organize mining management and exploitation activities.

Mining is part or all of the stages of activities in the framework, management, and exploitation of MAC which include general investigations; exploration; feasibility study; construction; processing and/or refining or developing and/or utilization; transporting and selling, as well as post-mining activities.<sup>18</sup> Through Law No. 3/2020 on Amendments to Law No. 4/2009 on Mineral and Coal Mining, the definition of the Legal Mining Area (LMA) is expanded to include all land spaces; sea areas, including the space within the earth as one territorial unit, namely the Indonesian archipelago; land underwater; and the continental shelf.<sup>19</sup> UU No. 3/ 2000 does not explain the dimensions of LMA in relation to spatial planning,<sup>20</sup> while spatial planning and space utilization policies have a crucial role in managing the tradeoff between economic uses; environmental

protection; and social benefits for sustainable development.<sup>21</sup>

In the case of a criminal act, there are new offenses, namely the prohibition of transferring the Mining Business License (MBL)<sup>22</sup> and the omission offense for not carrying out reclamation and/or post-mining and/or placing a reclamation and/or post-mining guarantee fund when a Mining Business Permit or Special Mining Business License (SMBL) ) is revoked or terminated.<sup>23</sup> In addition, the amount of the threat of a fine has increased from 10 billion rupiah to 100 billion rupiah. Meanwhile, the sanction of imprisonment is reduced to a maximum of 5 years.<sup>24</sup> Legal subjects in terms of mining violations are still targeting individuals and corporations, but the officials who authorized the permits are omitted.<sup>25</sup>

The issue of environmental rehabilitation in natural resource management is often forgotten. In fact, this does not only have an impact on economic losses but also causes social turmoil. The damage and contamination of the area around the mine needs to be a concern in law enforcement, not only through administrative sanctions and the imposition of fines, but also through environmental rehabilitation to ensure the post-mining land is safe or close to the condition as before the damage/pollution.

<sup>18</sup> Law No. 3/ 2020, Article 1.

<sup>19</sup> Ibid., Article 28A.

<sup>20</sup> Law No. 26/2007, Article 6 paragraph (1): Spatial planning must be carried out by taking into account (a) disaster-prone areas, (b) potential natural resources, human resources, and artificial resources, social economic conditions, political culture, law, defense and security, environment, and science and technology as a unit, and (3) geo-strategy, geopolitics, and geo-economics.

<sup>21</sup> ICEL, Legal Inputs to Amendments of Law No. 4/2009 on Minerals and Coal, Jakarta: ICEL, 2020.

<sup>22</sup> Law No. 3/2020, Article 161A.

<sup>23</sup> Ibid., Article 161 B.

<sup>24</sup> Ibid., Article 158 – Article 161.

<sup>25</sup> Deleted: Article 165 of Law No. 4 of 2009: "Each person who issues an MBL, GML, or SMBL that is contrary to this Law and abuses his/her authority is subject to a maximum criminal sanction of 2 (two) years in prison and a maximum fine of Rp. 200,000,000.00 (two hundred million) rupiah."

## **B. LEGAL INSTRUMENTS FOR HANDLING NATURAL RESOURCES CRIMES**

The inventory of natural resources criminal law is divided into 5 (five) sectors as follows:

### **1. AGRARIAN AND SPATIAL PLANNING**

There are 4 (four) laws that regulate and relate

to the agrarian sector and spatial planning; (1) Law No. 5 /1960; (2) Law No. 26/2007; (3) Law No. 5/1990; and (4) Law No. 37/2014 on Water and Soil Conservation.

Types of Spatial Planning Crimes under the authority of the CSI are regulated in Articles 69 to Articles 73 of Law No.26/2007, namely:

**Table 2.1. Crime in Law On Spatial Planning (Law No.26 of 2007)**

<b>Criminal Provisions</b>	<b>Articles</b>	<b>Notes</b>
Disobeying the spatial plan resulting in a change in the function of the space	Article 69 paragraph (1).	Material offense for changing the function of the room.
Disobeying the spatial plan resulting in a change in the function of the space results in loss of property or damage to goods.	Article 69 paragraph (2).	Material offense of changing the function of space which results in loss/damage
Disobeying the spatial plan that results in changes in the function of the space results in the death of people.	Article 69 paragraph (3).	Material offenses for changes in the function of space that cause death.
Utilizing space that is not in accordance with the spatial plan from the authorized official which results in a change in the function of the space	Article 70 paragraph (1).	Material offense for use that changes the function of space.
Utilizing space not in accordance with the spatial plan from the authorized official results in loss of property or damage to goods.	Article 70 paragraph (2).	Material offenses for use that are not in accordance with the permit result in loss/ damage of goods.
Utilizing space that is not in accordance with the space utilization permit from the authorized official results in the death of a person.	Article 70 paragraph (3).	Material offense for the use of space.
Not complying with the provisions stipulated in the requirements for the Suitability of Space Utilization Activities (SSUA) for space utilization.	Article 71.	Formal offense to make use of space.
The authorized government official who issues the permit is not in accordance with the spatial plan.	Article 73.	Formal offense for issuing permits.

All criminal provisions that regulate changes in the function of space are material offenses. So there is a need a proof of changes in the function of the space. Unfortunately, changes in the function of space are very difficult to prove. An activity that violates the function of space when carried out on a small scale does not necessarily change the function of the existing space. Changes in the function of space can occur if an activity that is not in accordance with the function of space is carried out continuously and massively or on a large scale.

Investigators are also still difficult to determine how; when; and who causes the changes in the function of space that occur so that perspectives from various disciplines are needed in proving spatial crimes. The difficulty of proving a change in function in spatial planning crimes makes administrative law enforcement more preferred than criminal law enforcement. In fact, criminal law enforcement can be carried out simultaneously with administrative law enforcement so that the objectives of law enforcement can be fulfilled, for example: deterrence.

Moreover, law enforcement against spatial planning crimes is very dependent on the SP, both national and regional. In the SP, the spatial function of an area has been determined, but in reality, there are still differences between the national SP and the

regional SP. This makes legal uncertainty for law enforcers who want to take action against spatial planning violations to determine the function of a space.

It should also be noted that spatial planning crimes are related to other NR sector crimes, especially the EAF. SP crimes cannot stand alone without concomitant actions with other criminal acts. For example: the use of areas that should be protected forest areas into plantation land; mining; or tourism by certain parties. Therefore, a collaboration between law enforcers in other NR sectors for handling spatial crimes is very necessary.

## 2. ENVIRONMENT AND FORESTRY

The laws and regulations related to the EAF are: (1) Law No. 32/2009; (2) Law No. 41/1999; (3) Law No. 18/2013; and (4) Law No. 5/1990 on Biodiversity of Natural Resources and Their Ecosystems (BNRTE). Crimes related to the EAF can be divided into 3 areas, namely: (1) the environmental sector; forestry sector, and BNRTE sector. Below, the three areas of crime are described one by one.

### 1) ENVIRONMENTAL CRIME

Environmental crimes are all actions that violate Law No. 32/2009 as attached in the following table.

**Table 2.2 Crimes in Law on Environmental Management (Law No. 32/2009)**

Criminal Provisions	Articles	Notes
Violating wastewater quality standards, emission-quality standards, or irritation quality standards.	Articles 98 Articles 99 Article 100	Formal offense of violating quality standards.
Releasing and/or distributing genetically modified organisms (GMO) to environmental media in contravention of statutory regulations or environmental permits.	Articles 101	Formal offense regarding genetically modified organisms.
Produce B3 waste and disobey to manage it.	Articles 103	Formal offense of waste management
Illegal dumping of waste and/or materials	Articles 104	Formal offense of waste disposal.
Importing waste into the territory of the Republic of Indonesia.	Articles 105, Articles 106, Articles 107.	Formal offense related to waste
Burning land.	Articles 108	Formal offense of land burning.
Doing business and/or activities without having a business license and approval from the Government which resulting in environmental victims/damage	Articles 109	Material offenses for business activities
Environmental Officers who issue environmental permits without being equipped with Environmental Impact Analysis (EIA)	Articles 111	Licensing form offense.
Officials who intentionally do not supervise the compliance of the person in charge of the business/activity in accordance with the laws and regulations, licenses, or government approvals which resulting pollution and/or environmental damage with the loss of human life.	Articles 112	Material offenses related to environmental supervision responsibilities.
Providing false; misleading; omitting; destroying or providing incorrect information needed in relation to supervision and law enforcement related to environmental protection and management.	Articles 113	Formal offense related to supervision for environmental protection and management.
Persons in charge of businesses and/or activities who do not carry out government order/ coercion.	Articles 114	Formal offense related to compliance.
Deliberately preventing, hindering, or thwarting the implementation of the duties of Environmental Offices (EO) and/or CSI officials.	Articles 115	The related formal offenses hinder the duties of the Environmental Officer (EO) or CSI.

On Law No. 32/2009, the regulation of criminal acts is dominated by formal offenses. The criminal provisions that are regulated are related to the activities and compliance of the community and business actors in carrying out their activities to be able to maintain and protect the environment. These arrangements are needed to control community activities. UU No. 32/2009 also regulates environmental quality standards as an indicator of the occurrence of environmental pollution.

## 2) FORESTRY CRIME

In addition to those stipulated in Law No. 41/1999 jo. Law No. 18/2004 on Forestry, criminal acts in the forestry sector including acts that violate are regulated in Law No. 18/2013 on Prevention and Prevention of Forest Destruction. Based on the Forestry Law, forestry crimes are as follows:

**Table 2.3 Crimes in Law on Forestry**

Criminal Provisions	Articles	Notes
Deliberately mining with an open-pit mining pattern in protected forest areas	Articles 38 paragraph (4) jo. Articles 78 paragraph (7)	Formal offense of forest destruction
Each person who is granted a Business License in a forest area is prohibited from carrying out activities that cause damage	Articles 50 paragraph (1) jo. Articles 78 paragraph (1)	Material offense regarding forest destruction
Working, using, and/or occupying forest areas illegally;	Articles 50 paragraph (2) point a jo. Articles 78 paragraph (2)	Formal offense of using forest area
Deliberately burning the forest	Articles 50 paragraph (2) point b jo. Articles 78 paragraph (3)	Formal offense of forest burning
Burning the forest by negligence	Articles 50 paragraph (2) point b jo. Articles 78 paragraph (4)	Formal offense of forest burning
Deliberately harvesting or collecting forest products in the forest without having rights or approval from the competent authority;	Articles 50 paragraph (2) point c jo. Articles 78 paragraph (5)	Formal offense regarding forest products
Deliberately storing forest products that are known or reasonably suspected come from forest areas and taken or collected illegally;	Articles 50 paragraph (2) point d jo. Articles 78 paragraph (6)	Formal offense regarding forest product storage



Criminal Provisions	Articles	Notes
Deliberately herding livestock in forest areas that are not specifically designated for this purpose by the competent authority	Articles 50 paragraph (2) point f e jo. Articles 78 paragraph (8)	Formal offense of using forest area
Deliberately discarding objects that can cause fires and forest damage	Articles 50 paragraph (2) point f jo. Articles 78 paragraph (9)	Material offense regarding forest burning
Deliberately removing, carrying, and transporting plants and animals that are not protected from forest areas without the approval of the authorized official	Articles 50 paragraph (2) point g jo. Articles 78 paragraph (10)	Formal offense regarding the protection of wild plants and animals

Meanwhile, forestry crimes according to Law No. 18/2013 are the following acts:

**Table 2.4 Crimes in Law on Prevention and Eradication of Forest Destruction (Law No. 18/2013)**

Criminal Provision	Articles	Notes
Logging in the forest areas which is not in accordance with the Business License of forest utilization.	Articles 12 point a jo. paragraph 82	Formal offense related to logging.
Logging in forest areas without having a Business License issued by an authorized official.	Articles 12 point b jo. Articles 82	Formal offense related to logging.
Illegal logging in the forest areas	Articles 12 point c jo. Articles 82	Formal offense related to logging.
Loading, unloading, releasing, transporting, controlling, and/or owning logging products in forest areas without a Business License from the Central Government	Articles 12 point d jo. Articles 83	Formal offense resulting from logging.
Transporting, controlling, or owning timber forest products that are not accompanied by a legal certificate of forest products.	Articles 12 point e jo. Articles 83	Formal offense related to timber forest products.
Bringing tools commonly used to cut or split trees in forest areas without a Business License from the Central Government	Articles 12 point f jo. Articles 84	Formal offense related to bringing tools without a license into the forest area.

Criminal Provision	Articles	Notes
Carrying heavy equipment and/or other tools that are commonly or reasonably suspected to be used to transport forest products within forest areas without a Business License from the Central Government	Articles 12 point g jo. Articles 85	Formal offense related to carrying tools without permission.
Utilizing timber forest products that are thought to have come from illegal logging.	Articles 12 point h jo. Articles 83	Formal offense related to the use of timber forest products.
Distributing timber from illegal logging by land, water, or aerial.	Articles 12 point l jo. Articles 86	Formal offense related to timber forest product distribution.
Smuggling of timber originated from or entering the territory of Indonesia through rivers, land, sea, or aerial.	Articles 12 point j jo. Articles 86	formal offense related to timber smuggling.
Receiving, buying, selling, accepting exchange, accepting deposit, and/or possessing forest products known to have originated from illegal logging.	Articles 12 point k jo. Articles 87	Formal offense related to illegal logging.
Purchasing, marketing, and/or processing timber forest products originating from forest areas which taken or collected illegally.	Articles 12 point l jo. Articles 87	Formal offense related to timber forest products.
Receiving, selling, accepting exchange, receiving deposit, storing, and/or possessing timber forest products originated from forest areas which are taken or collected illegally.	Articles 12 point m jo. Articles 87	Formal offense related to timber forest products.
Counterfeiting the legal certificate of timber forest products and/or using a fake certificate of legality of timber forest products.	Articles 14 jo. Articles 88	Formal offense related to falsification of timber forest product certificates.
Misuse of timber forest product transportation documents issued by authorized officials.	Articles 15 jo. Articles 88	Formal offense related to misuse of forest product documents.
Carrying out the transportation of forest wood without having a document/ legal certificate of forest product in accordance with the provisions of the legislation.	Articles 16 jo. Articles 88	Formal offense related to the transportation of timber without legal documents.

Criminal Provision	Articles	Notes
Carrying heavy equipment and/or other tools that are common or reasonably suspected to be used to carry out mining activities and/or transport mining products within forest areas without a Business License from the Central Government	Articles 17 paragraph (1) point a jo. Articles 89	Formal offense related to mining activities.
Carry out mining activities in forest areas without a Business License from the Central Government	Articles 17 (1) point b jo. Articles 89	Formal offense related to mining activities.
Transporting and/or receiving deposits of mining products originated from mining activities in forest areas without a Business License from the Central Government	Articles 17 paragraph (1) point c jo. Articles 90	Formal offense related to illegal mining products.
Selling, controlling, possessing, and/or storing mining products originated from mining activities in forest areas without a Business License from the Central Government	Articles 17 paragraph (1) point d jo. Articles 91	Formal offense related to illegal mining products.
Purchasing, marketing, and/or processing mining products from mining activities in forest areas without a Business License from the Central Government	Articles 17 paragraph (1) point e jo. Articles 91	Formal offense related to illegal mining products.
Carrying heavy equipment and/or other tools that are common or reasonably suspected to be used to carry out plantation activities and/or transport plantation products within forest areas without a Business License from the Central Government	Articles 17 paragraph (2) point a jo. Articles 92	Formal offense related to illegal plantation activities.
Carry out plantation activities without a Business License from the Central Government in a forest area.	Articles 17 paragraph (2) point b jo. Articles 92	Formal offense related to illegal plantations.
Transport and/or receive plantation products as a deposit originated from plantation activities in forest areas without a Business License from the Central Government	Articles 17 (2) point c jo. Articles 93	Formal offense related to illegal plantation products.

<b>Criminal Provision</b>	<b>Articles</b>	<b>Notes</b>
Selling, controlling, owning, and/or storing plantation products originating from plantation activities in forest areas without a Business License from the Central Government	Articles 17 paragraph (2) point d jo. Articles 98	Formal offense related to illegal plantation products.
Purchasing, marketing, and/or processing garden products from plantations originating from plantation activities in forest areas without a Business License from the Central Government	Articles 17 paragraph (2) point e jo. Articles 93	Formal offense related to illegal plantation products.
Ordering, organizing, or promoting illegal logging and/or illegal use of forest areas.	Articles 19 point a jo. Articles 94	Formal offenses related to illegal logging and the use of forest areas.
Conducting or assisting fraudulent logging and/or illegal use of forest areas.	Articles 19 point b jo. Articles 98	Formal offenses related to illegal logging activities and use of forest areas.
Conspiring to carry out illegal logging and/or illegal use of forest areas.	Articles 19 point c jo. Articles 94	Formal offenses related to illegal logging and use of forest areas.
Funding illegal logging and/or illegal use of forest areas directly or indirectly.	Articles 19 point d jo. Articles 94	Formal offenses related to funding illegal logging and use of forest areas.
Using funds that were allegedly from illegal logging and/or illegal use of forest areas.	Articles 19 point e jo. Articles 99	Formal offenses related to funds from illegal logging and use of forest areas.
Changing the status of timber from illegal logging and/or using the forest areas illegally, as if it were legal to be sold to third parties, domestically or abroad.	Articles 19 point f jo. Articles 94	Formal offenses related to changing the status of timber from illegal logging and/or the use of forest areas.
Utilizing timber from illegal logging by changing the shape, size, including the use of waste.	Articles 19 point g jo. Articles 95	Formal offense related to the use of timber from illegal logging.

Criminal Provision	Articles	Notes
Placing, transferring, paying, spending, granting, donating, entrusting, bringing abroad, and/or exchanging money or other securities and other assets which are known or alleged to be the result of illegal logging and/or the result of illegal use of forest areas.	Articles 19 point h jo. Articles 95	Formal offense related to the use of illegal logging
Concealing or disguising the origin of assets that are known or alleged to have come from illegal logging and/or illegal use of forest areas so that they appear to be legal assets	Articles 19 point l jo. Articles 95	Formal offense related to concealment of wealth from illegal logging.
Restraining, and/or thwarting directly or indirectly the efforts to eradicate illegal logging and illegal use of forest areas.	Articles 20 jo. Articles 100	Formal offenses related to the eradication of illegal logging and the use of forest areas.
Utilizing timber from illegal logging and/or illegal use of forest areas originating from conservation forests.	Articles 21 jo. Articles 101	Formal offenses related to the use of timber from illegal logging and the use of forest areas.
Obstructing and/or thwarting investigations, prosecutions, or examinations in courts of criminal acts of illegal logging and illegal use of forest areas.	Articles 22 jo. Articles 102	Formal offenses related to obstructing the legal process of illegal logging and use of forest areas.
Intimidating and/or threatening the safety of officers who prevent and eradicate illegal logging and illegal use of forest areas.	Articles 23 jo. Articles 103	Formal offense related to intimidation of officers who prevent illegal logging eradication.
Counterfeiting Business License related to the utilization of timber forest products and/or the use of forest areas.	Articles 24 point a jo. Articles 96	Formal offense related to forest utilization license.
Using a fake Business License for the use of timber forest products and/or the use of forest areas.	Articles 24 point b jo. Articles 96	Formal offense related to forest utilization license.
Transferring or selling a Business License issued by an authorized official except with the approval of the Central Government	Articles 24 point c jo. Articles 96	Formal offense related to the transfer of the permit.
Damaging forest protection facilities and infrastructure.	Articles 25 jo. Articles 97	Formal offense related to the destruction of forest protection facilities.

Criminal Provision	Articles	Notes
Destroying, moving, or eliminating the outer boundary of the forest, the boundary of the function of the forest, or the boundary area of the forest that coincides with the state boundary resulting in changes in the shape and/or area of the forest.	Articles 26 jo. Articles 97	Material offenses related to changes in the shape/area of the forest.
Issuing Business License for the utilization of timber forest products and/ or the use of forest within forest areas that are not under their authority.	Articles 28 point a jo. Articles 105	Material offenses related to the issuance of permits.
Issuing a Business License within a forest area that is not following the provisions of laws and regulations.	Articles 28 point b jo. Articles 105	material offenses related to the issuance of permits.
Protecting perpetrators of illegal logging and/or illegal use of forest areas.	Articles 28 point c jo. Articles 105	Formal offense regarding protecting illegal logging perpetrators.
Participating in or assisting in illegal logging activities and/or illegal use of forest areas.	Articles 28 point d jo. Articles 105	Formal offense related to participating/assisting in illegal logging activities.
Make a consensus for the occurrence of illegal logging and/or illegal use of forest areas.	Articles 28 point e jo. Articles 105	Formal offense related to illegal logging activities.
Issuing a certificate of the legality of forest products without rights.	Articles 28 point f jo. Articles 105	Formal offense related to the Legal Certificate of Forest Products (CFP).
Doing omission in carrying out tasks intentionally	Articles 28 point g jo. Articles 105	Formal offenses related to omission of criminal acts.
Officials who are negligent in carrying out their duties.	Articles 28 point h Articles 106	formal offenses related to the obligations of related sector officials.

Both Law No. 41/1999 and Law No. 18/2013 can be implemented in a complementary manner. Law No. 18/2013 is a specific regulation for illegal logging, while Law No. 41/1999 regulates forestry crimes in general. If there are criminal provisions that are not regulated in Law No. 18/2013, it can be subject to criminal articles regulated in Law No. 41/1999.

### 3) CRIME OF CONSERVATION OF BIOLOGICAL NATURAL RESOURCES AND THEIR ECOSYSTEMS

The Conservation of Biological Natural Resources and Their Ecosystems criminal acts are regulated in several articles in Law No. 5/1990 as can be seen in the following table:

**Table 2.5 Crimes in Law on Conservation of Living Natural Resources and Ecosystem (Law No. 5/1990)**

Criminal Provisions	Articles	Notes
Activities that can result in changes to integrity of the nature reserve area.	Articles 19 paragraph (1).	Material offenses related to changes in the nature reserve area.
Taking, cutting, possessing, destroying, maintaining, transporting, and trading protected plants or parts thereof, alive or dead.	Article 21 ayat (1) paragraph a.	formal offenses related to protected plants.
Removing protected plants or parts thereof, alive or dead from one place in Indonesia to another place inside or outside Indonesia.	Articles 21 Paragraph (1) point b.	formal offenses related to protected plants.
Catching, harming, killing, storing, possessing, maintaining, transporting, and trading protected animals alive.	Articles 21 Paragraph (2) point a.	Formal offenses related to animals that are protected alive.
Storing, possessing, maintaining, transporting, and trading protected animals that are dead.	Articles 21 Paragraph (2) point b.	Formal offense related to a protected animal that is dead.
Releasing protected animals from one place in Indonesia to another inside or outside Indonesia.	Articles 21 Paragraph (2) point c.	Formal offenses related to issuing protected animals.
Trading, storing, or possessing skins, bodies, or other parts of protected animals or goods made from these parts or removing them from one place in Indonesia to another inside or outside Indonesia.	Articles 21 Paragraph (2) point d.	Formal offenses related to body parts or goods made from body parts of protected animals.
Taking, destroying, destroying, trading, storing, or possessing eggs and or nests of protected animals.	Articles 21 Paragraph (2) point e.	Formal offense related to eggs/nests of protected animals.
Activities that can result in changes to the integrity of the core zone of the national park (include reducing, eliminating the function and area of the core zone of the national park, as well as adding other non-native plant and animal species).	Articles 33 Paragraph (1).	Material offenses related to changes in the integrity of the core zone of the national park.
Activities that are not in accordance with the function of the utilization zone and other zones of national parks, forest parks, and natural tourism parks.	Articles 33 Paragraph (3).	Formal offenses related to the use of national parks, forest parks, and nature tourism parks.



There are material offenses and formal offenses in Law No. 5/1990 which regulates state-protected wildlife and the habitat where the animal existence is guaranteed. However, offenses that make changes to the integrity of the nature reserve area or damage

the core zone of the national park are not imposed by environmental rehabilitation.

### 3. PLANTATION

Based on Law No. 39/2014, plantation crimes include the following acts:

**Table 2.6 Crimes in Law on Plantation(Law No. 39 of 2014)**

Criminal Provisions	Articles	Notes
Officials who issue Plantation Business License on customary land rights of customary law communities.	Articles 103.	Formal offenses related to the issuance of permits against the law.
Each person who issued genetic resources of endangered plantation plants and/or which can harm national interests from the territory of the Republic of Indonesia.	Articles 104.	Formal offense related to the circulation of protected natural resources.
Ministers, governors, and regents/ mayors who are authorized to issue plantation business licenses that: <ul style="list-style-type: none"> <li>a. is not in accordance with its designation; and/or</li> <li>b. is not in accordance with the terms and conditions of the laws and regulations.</li> </ul>	Articles 106.	Formal offense related to the issuance of a permit against the law.
Each person who illegally: <ul style="list-style-type: none"> <li>a. working, using, occupying, and/or controlling the Plantation Land;</li> <li>b. working on, using, occupying, and/or controlling community land or customary land rights of customary law communities with a view to plantation business;</li> <li>c. logging of plants in the plantation area; or</li> <li>d. harvesting and/or collecting plantation products.</li> </ul>	Articles 107.	Formal offense related to the use/utilization of plantation land without a license.

Criminal Provisions	Articles	Notes
Plantation business actors who conduct land clearing by burning.	Articles 108.	Formal offense related to land burning to be processed/managed into a plantation business.
Each person who processing, distributing, and/or marketing products of plantation by: 1. falsification of quality and/or packaging of plantation products; 2. using auxiliary materials and/or additional materials for processing; and/or 3. mixing plantation products with other objects or materials.	Articles 110.	Formal offenses related to falsification of quality and plantation product processing materials.
Conducting plantation business obtained from looting and/or theft.	Articles 111.	Formal offense of collecting plantation business
Plantation business actor who advertise the business in order to mislead the consumers.	Articles 112.	Material offenses related to the advertising of plantation business results.

Criminal provisions in the Plantation Law are dominated by formal offenses that prioritize the principles of sustainability, benefit, and the preservation of environmental functions. Punishment is not only imposed on plantation business actors, but also on licensing officials and profit collectors. The Plantation Law also regulates the prohibition of land clearing by burning<sup>26</sup> and the obligation to apply EIA, as well as analysis and monitoring of the environment<sup>27</sup> that must be obeyed by the business actor. With this prohibition, plantation business activities are

expected to carry out by the surrounding environmental conditions.

#### **4. FISHERIES**

UU No. 31/2004 on Fisheries as amended by Law No. 45/2009 regulates various types of criminal acts related to fisheries. There are at least 20 provisions as shown in the following table for acts that can be qualified as fisheries crimes.

<sup>26</sup> UU No. 39/2014, Article 108.

<sup>27</sup> *Ibid.*, Article 109.

**Table 2.7 Crimes in Law on Fishery (Law No. 31/2004 jo. No. 45/2009)**

Criminal Provisions	Articles	Notes
Each person/captain/shipowner/ company owner/company in charge who intentionally catches or fish cultivation using chemical, biological, explosive, or tools that endanger the preservation of fish resources and the environment.	Articles 84.	<ul style="list-style-type: none"> <li>• Formal offense for fishing</li> <li>• Criminal offenses</li> </ul>
Having, carrying, and/or using fishing equipment and/or fishing tools that interfere with and damage the sustainability of fishery resources on fishing vessels in the territory of Indonesia.	Articles 85.	<ul style="list-style-type: none"> <li>• Fishing material offenses damage the environment</li> <li>• Criminal offenses</li> </ul>
Deliberately committing acts that result in pollution and/or damage to fishery resources, environment, and human health.	Articles 86.	<ul style="list-style-type: none"> <li>• Material offenses damage fish resources</li> <li>• - criminal offenses</li> </ul>
Deliberately / negligently causes damage to germ plasma related to fishery resources.	Articles 87.	<ul style="list-style-type: none"> <li>• Material offenses damage fish resources</li> <li>• Violation crime</li> </ul>
Deliberately importing, removing, distributing, or raising fish that are harming the community, fish cultivation, fish resources, and the environment.	Articles 88.	<ul style="list-style-type: none"> <li>• Material offenses damage fish resources and harm the community</li> <li>• Criminal offenses</li> </ul>
Managing fish processing that does not meet and apply to the requirements of the feasibility of fish processing, quality assurance, and safety of fishery products that cause harm to human health.	Articles 89.	<ul style="list-style-type: none"> <li>• Material offense quality feasibility</li> <li>• Violation crime</li> </ul>
Deliberately importing or exporting fish and fishery products from and/or to Indonesia which is not completed with a health certification for human consumption.	Articles 90.	<ul style="list-style-type: none"> <li>• Formal offense of fish consumption health</li> <li>• Violation crime</li> </ul>

Criminal Provisions	Articles	Notes
Deliberately using raw materials, food additives, auxiliary or tools that endanger human health and the environment in carrying and processing fish products	Articles 91.	<ul style="list-style-type: none"> <li>• Fish processing material offenses that are harmful to humans and the environment</li> <li>• Criminal offenses</li> </ul>
Deliberately conducting a fishery business that does not have a Business License.	Articles 92.	<ul style="list-style-type: none"> <li>• Formal business offense without permission</li> <li>• Criminal offenses</li> </ul>
Having and/or operating a fishing vessel with an Indonesian flag to catch the fish in the Indonesian fishery territory and/ or on the high seas without a Business License that causes human victim/ environmental damage	Articles 93 paragraph(1).	<ul style="list-style-type: none"> <li>• Material offense regarding illegal fishing</li> <li>• Criminal offenses</li> </ul>
Having and/or operating fishing vessels with foreign-flagged catching fish in the Indonesian EEZ that does not have a Business License that causes accidents or human victim/ environmental damage	Articles 93 Paragraph (2).	<ul style="list-style-type: none"> <li>• Material offense regarding illegal fishing</li> <li>• Criminal offenses</li> </ul>
Counterfeiting and/or using Business Licensing, or using Business Licensing of other ships, and/or duplicating Business Licensing to be used by other ships or their own ships	Articles 94A	<ul style="list-style-type: none"> <li>• Formal offense of fake documents</li> <li>• Criminal offenses</li> </ul>
The captain who operates a foreign-flagged fishing vessel has a Business License for catching or is not obliged to keep the fishing equipment as regulated in Article 38 paragraph (1).	Articles 97 paragraph(1)	<ul style="list-style-type: none"> <li>• Formal offense regarding licensing of foreign fishing vessels</li> <li>• Violation Crimes</li> </ul>
The captain who operates a foreign-flagged fishing vessel that has fulfilled the Business License with 1 type of fishing equipment in Indonesian EEZ and carrying other fishing equipment.	Articles 97 paragraph (2)	<ul style="list-style-type: none"> <li>• Formal offense regarding business licensing related to fisheries</li> <li>• Violation Crime</li> </ul>
The captain who operates a foreign-flagged fishing vessel that has fulfilled a Business License who does not keep fishing equipment while being outside of the permitted area	Articles 97 paragraph (3)	<ul style="list-style-type: none"> <li>• Formal offense regarding fishing</li> <li>• Violation Crime</li> </ul>

Criminal Provisions	Articles	Notes
The captain who operates a fishing vessel without a sailing approval letter.	Articles 98	<ul style="list-style-type: none"> <li>Formal offense of administrative violation</li> <li>Violation Crime</li> </ul>
Foreigners who conducting fishery research in Indonesian fishery areas without a Government License.	Articles 99	<ul style="list-style-type: none"> <li>Research permit form offense</li> <li>Violation Crime</li> </ul>
Violating provisions regarding the management of fishery activities (eg type, number, size of fishing equipment; marine conservation area; and prohibited fish species).	Articles 100	<ul style="list-style-type: none"> <li>Formal offense of fisheries management violation</li> <li>Violation crime</li> </ul>

Generally, the regulation of criminal acts in Law No. 31/2004 jo. Law No. 45/2009 covers criminal acts related to licensing or administrative matters; protection of fishery resources and their environment; processing and consumption of fish; to prosecution for foreign vessels in the Indonesian EEZ. If we look at the proportion, the regulations regarding licensing and administrative penalties are more than those related to damage to fishery resources or human health.

Thus, it can be seen that the orientation of criminal law enforcement in the field of fisheries prioritizes administrative supervision and licensing. This is also marked by the dominance of the criminal provisions in Law No. 31/ 2004 jo. Law No. 45/ 2009 in the form of a formal offense rather than a material one. Material offenses are only applied to criminal acts that cause biological harm to humans or the environment related to fishery resource extraction, pollution, and fishery consumption in 5 (five) articles. Meanwhile, formal offenses are mostly used to ensnare IUUF perpetrators.

The application of formal offenses in Law No. 31/ 2004 jo. Law No. 45/2009 has a limitation by only can catch the perpetrators in the field, not the beneficial owner.<sup>28</sup> In fact, fisheries crime is a systematic and large-scale crime that causes state losses of at least 101 trillion rupiah per year.<sup>29</sup> Criminal acts in the field of fisheries have real actors who act behind the scenes that encourage small fishermen to commit crimes, namely capital owners or beneficial owners.

Apart from the lack of enforcement for the main actors, the existence of material criminal articles relating to damage to fish resources or the environment as well as human health, shows that CSI of Fisheries must also have knowledge related to the impacts of fishery activities that cause

<sup>28</sup> Civil Investigators Discussion Forum, November 3, 2020, "Searching for Beneficial Owners in Destructive Fishing Cases". Organized by the KPK and the Auriga Nusantara Foundation

<sup>29</sup> Center for Assessment and Analysis of Financial Transactions, Strategies to Uncover Illegal Fishing in Indonesia, [https://www.ppatk.go.id/siaran\\_pers/read/954/usaha-mengunjur-ruang-gerak-illegal-fishing-di-indonesia](https://www.ppatk.go.id/siaran_pers/read/954/usaha-mengunjur-ruang-gerak-illegal-fishing-di-indonesia). html, accessed on November 9, 2020.

environmental damage or human health. Although, the direction of law enforcement to overcome these problems cannot be developed much considering the provisions in Law No. 31/2004 jo. Law No. 45/ 2009 itself does not regulate accountability in recovery, for example in the EO Law.

Law No. 31/2004 jo. Law No. 45/2009 divides 2 (two) forms of fisheries crime into violations and crimes.<sup>30</sup> In addition, the legal subject of criminal acts in Law No. 31/2004 jo. Law No. 45/2009 includes corporations as legal subjects. Article 101 specifically regulates the weighting of criminal sanctions imposed on management and a fine plus 1/3 of the sentence imposed on corporate

actors.<sup>31</sup> In this provision, the management may represent the corporation to be subject to corporal punishment. However, the provisions regarding legal subject corporations do not explain the qualifications that can be associated with corporate actors. The lack of explanation can contribute to the ineffective application of corporate crime in fisheries crimes.

## 5. MINING

Mining crimes are regulated in Law No. 4/2009 jo. Law No. 3/2020. Based on the two laws, acts related to mining that can be convicted are as follows:

**Table 2.8 Crimes in Law on Mineral and Coal (Law No. 4/2009 jo. No. 3/2020)**

Criminal Provisions	Article	Notes
Mining without a license.	Articles 158.	Formal offense for business activities without a permit.
Giving false information or incorrect reports by holders of Mining Business License, SMBL, General's Mining License (GML), and Rock Mining License (RML).	Articles 159.	Formal offense for inappropriate reporting.
Accommodating; using; performing; processing and/or purifying; developing and/or utilizing; transporting Mineral and Coal sales that do not come from Mining Business License, SMBL, GML, RML, or License holders.	Articles 161.	Formal offense for circulation of NR proceeds without permission.

<sup>30</sup> *Ibid.*, Article 103.

<sup>31</sup> *Ibid.*, Article 103.



Criminal Provisions	Article	Notes
GML, SMBL, RML, or Mining Business License holders who transfer the GML, SMBL, RML, and Mining Business License holders.	Articles 161A.	Formal offense for misuse of permission.
Mining Business License or SMBL is revoked or expires if holders of MBL does not implement : a. reclamation and/or post-mining; and/or b. placement of reclamation guarantee funds and/or post-mining guarantee funds.	Articles 161B.	Formal offense for non-compliance with obligations.
Obstructing or disrupting the Mining Business activities of the holders of Mining Business License, GML, SMBL, or RML that have met the requirements referred to Articles 86F of the MAC Law	Articles 162.	Material offenses to protect business activities.

Most of the offenses in Law No. 4/2009 jo. UU No. 3/2020 is a formal offense that relies on a response to the administrative compliance of mining business actors. Thus, control over the MAC crime depends on the ability of the Government to monitor the administration of the mining business. On the other hand, the types of offenses show the efforts of the legislators to ensure that the extraction of mining products only comes from activities that are licensed by the Government. Through these provisions, the Government seeks to control the circulation of Indonesian mining products.

In addition to the offense regarding the legality of the mining business and products, Law No. 4/2009 jo. Law No. 3/2020 also regulates offenses regarding compliance with obligations to protect the environment in the mining business through post-mining reclamation activities and placement of

guarantee funds. A mining business actor can be punished if he does not carry out reclamation activities. However, the offense regulated in Law No. 4/2009 jo. Law No. 3/2020 is also a formal offense, regardless of whether this non-compliance causes a wider environmental or social impact.

In Law No. 4/2009 jo. Law No. 3/2020 there is also an article regarding the prohibition to hinder or interfere with the mining business activities of GML, SMBL, RML, or Mining Business License holders who have met the requirements. It can be said that this article has a tendency to punish people who do not have the intention to take such action because the article in question does not see the intentional element of people who are considered to hinder or disturb mining business activities. Thus, it is very easy to criminalize people who have different interests from the mining business.

In addition, Law No. 4/2009 jo. Law No. 3/2020 also mention additional penalties for perpetrators of criminal acts in the form of:<sup>32</sup>

- a. Confiscation of goods used in committing a crime;
- b. Deprivation of profits derived from criminal acts; and/or
- c. The obligation to pay costs incurred as a result of a criminal act.

There is ambiguity in the obligation to pay referred to in additional criminal acts. If it is related to the criminal provisions in Articles 162, the imposition of this payment obligation risks imposed to the public and protecting the interests of the mining permit holder itself.

Basically, Law No. 4/2009 jo. Law No. 3/2020 does not regulate environmental recovery due to mining crimes because the law deals more with formal offenses. However, by using the articles related to these additional crimes, there is an opportunity for perpetrators of crimes in the mining sector to be held responsible for environmental rehabilitation.

### C. NOTES REGARDING REVISION OF LAW RELATING TO NATURAL RESOURCES IN OMNIBUS LAW

When this study was compiled, the process of drafting Omnibus Law (Law No. 11/2020) is on progress, so there have been several changes to various formulations and penal instruments available in the Law on the Natural Resources sector. Any changes after

<sup>32</sup> *Ibid.*, Article 164.

the enactment of the Act are not included as a consideration in this study. Some notes on the changes to the regulations on the natural resources sector as amended in Law No. 11/2020 include:

#### 1. AGRARIAN AND SPATIAL PLANNING

In Law No. 11/2020 there are several additions and changes to the article that weaken the position of spatial planning law as an instrument for preventing pollution and/or environmental damage.<sup>33</sup> Changes in the article in Law No. 26/2007 will affect the relaxation of spatial planning procedures to accommodate strategic national policies. In addition, the definition of a strategic national policy is also not explained clearly, so that it can be interpreted broadly.

In addition, it is explained that there are at least 9 crucial substances in spatial planning that are amended in Law No. 11 of 2020, including:<sup>34</sup>

##### 1) Deletion of Space Utilization License;

Space utilization permits as mention in Law No. 11/2020 was changed into "Suitability of Spatial Use Activities" in Omnibus Law. This document becomes evidence that the planned location of activities and/or businesses is following the spatial plan.

<sup>33</sup> ICEL, Problems of Omnibus Law in the Environment and Natural Resources Sector. Analysis Series #3, Jakarta: ICEL, 2020, page 107.

<sup>34</sup> Faculty of Law, Gadjah Mada University, Critical Notes on Omnibus Law, Yogyakarta: Gadjah Mada University, 2020, page 23.

**2) Simplification of Spatial Planning System;**

Simplification of the spatial planning system is carried out by eliminating the Provincial Strategic Area Spatial Plan (PSASP) and Regency/City Strategic Spatial Plan (SSP Regency/City). The authority to design strategic areas in Law No. 11/2020 is delegated by Omnibus Law only to the Central Government.

**3) Centralization of Spatial Planning;**

The centralization of spatial planning in Law No. 11/2020 is regulated in several articles, one of which is Article 15 which states that if the Regional Government has not prepared and provided the RDTR. The business actor can apply for approval of the Suitability Of Space Utilization Activities to the Central Government through an electronic business licensing system. In addition, the determination of the Provincial and Regency/City SP can also be taken over by the Central Government if the SP has not been determined within the specified time limit.

**4) Strategic Environmental Studies (SES) in Law No. 26/2007;**

The existence of the insertion of Article 14A in Law No. 26/2007 which is regulated in Law No. 11/2020, namely: "The implementation of the preparation of the spatial plan is carried out by taking into account the aspects of the carrying capacity and capacity of the environment and the SES." In this case, the phrase "with attention" does not have strong coercion.

**5) Settlement of Spatial Incompatibility;**

Article 6 paragraph (8) of Law No. 26/2007 which was amended in Article 17 of Law No. 11/2020 states that: "In the event of a discrepancy between the spatial pattern of the spatial plan and forest area, license and/or land rights, the resolution of the discrepancy is regulated in the GR." However, there is no general guide on how to resolve the discrepancy, thus opening a wide scope for interpretation. This can change the reference in sustainable development.

**6) Deletion of Minimum Criteria for Forest Areas;**

Law No. 11/2020 amending Article 17 paragraph (5) of Law No. 26/2007 which abolished the minimum requirement that an area must have 30% forest area of the watershed area of the area. This of course can lead to shrinkage of forest areas and is contrary to the concept of sustainable development.

**7) Additional Point of Criteria of Review;**

There is additional criteria for review as regulated in Law No. 11/2020, namely the existence of "Strategic National Policy Changes." Unfortunately, it does not explain what is meant by this Strategic National Policy, which can create legal uncertainty.

**8) Public Participation in Spatial Planning;**

Deletion of the Spatial Utilization License makes public/community who get disadvantaged from spatial utilization lost their access to sue the issue to the Administrative Court (AC) because the Approval of Suitability of Spatial Utilization is not an object of AC.

## 9) Sanction;

There are several formulations of criminal sanctions from formal offenses to material offenses, such as Article 70 and Article 71 of Law No. 26/2007. This amendment has the potential to make it difficult in proving the spatial planning violation itself. In addition, there are criminal sanctions that were removed in Law No. 11/2020, namely Article 72 of Law No. 26/2007.

According to the Director of Control of Space Utilization of the Ministry of ASP/GLO (Andi Renald), the enactment of Law No. 11/2020 cause a shifting paradigm in the implementation of spatial planning in Indonesia. Several changes in the spatial planning sector after the enactment of Law No. 11/2020 include:<sup>35</sup>

- a) Issuance of GR No. 21/2021 on the Implementation of Spatial Planning and revoking GR No. 15/2010;
- b) Several changes in criminal sanctions from formal offenses to material offenses as amended in Law No. 11/2020 must be carried out by deep verification by investigators using the scientific based approach to prove the material offense.
- c) The Directorate of Control of the Ministry of ASP/GLO has the authority to take action and prevention. In practice, there will be a delegation from the Directorate of Spatial Planning to the Regional Government to take action and prevent changes in spatial functions.

One of the ASP/GLO Investigators (Hardi Prasetya Risman) said that one of the implications in law enforcement on spatial planning after the enactment of Law No. 11/2020 is the existence of the Suitability of Space Utilization Activities (SSUA) instrument which is the authority of the Central Government. So it is feared that in enforcing the law, the Regional Government will be passive due to the fact that the SSUA issued by the Central Government. Although in GR No. 43 of 2021 on Settlement of Spatial Discrepancies, forest areas, licenses, and/or land rights have also been issued regarding the enactment of Law No. 11/2020, but the GR does not clearly mention the division of authority between the Central Government and Regional Governments for the settlement of spatial disputes itself.<sup>36</sup>

## 2. FORESTRY AND ENVIRONMENT

There are at least 3 laws in the forestry and environmental sector that have changed in No. 11/2020, namely:

- a) Law No. 32/2009;

Changes regulated in Law No. 11/2020 covers the deletion of environmental permits for business activities that cause an impact for public to sue business actor who do not have environmental licenses. In addition, law enforcement for the provisions of Article 82B focuses more on administrative sanctions than criminal as *ultimum remidium*. The weakening of criminal law application is also seen in the amendment of Article 88 which delete the clause "without the need to prove the element of guilt," thus confusing the meaning of the strict liability concept in the article.<sup>37</sup>

<sup>35</sup> Auriga Nusantara Foundation and the Corruption Eradication Commission, Webinar: Sharing the Perspectives of Law Enforcement Officials for Prevention of Corruption in the Natural Resources-Environmental Sector after the Omnibus Law, February 25, 2021.

<sup>36</sup> Ibid.

<sup>37</sup> ICEL, *op.cit.*, p. 37.

In terms of law enforcement, Law No. 11/2020 adheres *ultimum remedium* principle for crimes that cause HSE (Health, Safety, and/or Environment) impacts. Administrative sanctions are imposed for crimes without HSE impact, while criminal sanctions can be imposed if the crime has an HSE impact. In addition, there are additional forms of sanctions, namely administrative fines as a form of administrative enforcement for perpetrators.<sup>38</sup>

There are several articles regulated in Law No. 32/2009 which was amended in Law No. 11/2020 which was originally a material offense to a formal offense. One of them is Article 109 of Law No. 32/2009. Previously, this article stipulates the punishment of business actors who do not have environmental licenses. However, after Law No. 11/2020 applies, the provisions of the article have changed. Business actors who do not have a Business License and causing victims or damage to the environment can be criminalized. The amendment of article 109 of Law No. 11/2020 can encourage massive environmental exploitation because an environmental license is not an absolute requirement in conducting business activities.

#### b) Law No. 41/1999

One of the substantial changes regulated in Law No. 11/2020 is the deletion of the provision to maintain a minimum of 30% forest area based on watersheds/and or islands (Article 18).<sup>39</sup> In terms of law enforcement, there is a change in Article 49 which mention that business actor is responsible for fires that occur in their work areas so that the regulation in Article 49 becomes more stringent than in the previous

Law. In addition, there is Article 50A which regulates the exception of sanctions for the prohibition of certain activities in the forest for local people who have lived in the forest for 5 years continuously.<sup>40</sup>

In addition, Law No. 11/2020 also amends Article 15 paragraph (1) of the Forestry Law which emphasizes that the Central Government prioritizes accelerating the gazette of forest in strategic areas. However, the definition of "strategic area" is not explained further.<sup>41</sup> On the other hand, in determining the change in the designation of forest area functions as well as in deciding the lease-to-use forest area permit, the involvement House of the Representative's approval is also omitted in Law No. 11/2020, so that the full authority is held by the Central Government. This of course will bring risks to the sustainability of forest resources.<sup>42</sup>

#### c) Law No. 18/2013

Several articles were added in Law No. 11/2020 on the provisions of administrative sanctions and their exceptions for indigenous peoples living in forest areas (Article 12A and Article 17A). On the other hand, there is a change in punishment for corporations where the person in the management of the corporation can be punished on behalf of the corporation. This provision is prone to be a problem because it equates and promiscuous between the person in management of the corporation and corporation itself.<sup>43</sup>

<sup>38</sup> Auriga Nusantara Foundation and KPK, op. cit., page 14.

<sup>39</sup> ICEL, op.cit., page 42.

<sup>40</sup> Ibi., hlm. 42

<sup>41</sup> Faculty of Law, Gadjah Mada University, op.cit, p. 32.

<sup>42</sup> Ibi., page 34.

<sup>43</sup> ICEL, op. cit, p. 64.

### 3. PLANTATION

There are several rules In Law No. 34/2014 that were amended by Law No. 11/2020, namely the deletion of the obligation to have an EIA; risk analysis; and the ability to provide fire prevention infrastructure in order to obtain a Business License which will later be regulated in GR. As we know, the power of GR is certainly weaker than the Law because it cannot provide criminal sanction if the Law itself did not mention about the criminal sanction.<sup>44</sup>

### 4. FISHING

Several provisions regarding fisheries activities are regulated in Law No. 45/2009 on Fisheries jo. Law No. 31/2004 which was amended by Law No. 11/2020. These changes include, Article 89 which regulates fish processing activities must comply with certain standards of eligibility and quality assurance and then amended by Law No. 11/2020 as a material offense. The consequence is if the fisheries processing activities that do not meet the eligibility standards and quality assurance it will not be penalized unless there is a victim.<sup>45</sup> This provision shows the weakness of the government in supervising fisheries processing activities. Law No. 11/2020 also regulates administrative violations, one of which is Article 97 which is then detailed into 4 paragraphs. Several administrative violations also have been removed from the criminal provisions by Law No. 11/2020 includes Article 93 paragraph (3) and paragraph (4), Article 95, and Article 96 of Law No. 45/2009 on Fisheries jo. Law No. 31/2004.

<sup>44</sup> Ibid, page 72.

<sup>45</sup> Law No. 11/2020, Article 27

## D. CORPORATE LIABILITY IN THE NATURAL RESOURCES SECTOR

In its development, the corporation has become a legal subject for NR crimes. This is in accordance with several laws related to NR sector which put corporations as responsible party and can be given criminal sanction if proven for having committed a NR crime. In reality, there were some obstacles in enforcing corporations who against NR laws. The following are the laws in the NR sector that regulate corporate liability:

### 1. AGRARIAN AND SPATIAL PLANNING

Corporation as the legal subject is recognized in Article 1 point 33 of Law No. 26/2007. Corporations which proven for having to have committed a NR crime can be sentenced to a fine in amount of triples and also additional penalties in the form of revocation of business licenses and/or revocation of legal entity status.<sup>46</sup>

### 2. ENVIRONMENT AND FORESTRY

Law No. 32/2009; Law No. 41/1999; and Law No. 18/2013 regulates corporations as legal subjects. The definition of a business entity is narrower than a corporation because a corporation can be in the form of a legal entity or a non-legal entity.<sup>47</sup> Whereas, legal entity as the legal subject is recognized indirectly in Law 41/1999 [Article 74 paragraph (14)].

In terms of legal action, Article 109 of Law No. 18/2013 regulates corporate punishment

<sup>46</sup> Law No. 26/2007, Article 74.

<sup>47</sup> Law No. 18/2013, Article 1 point 22.



in detail (both formal and material). One of which is expand the punishment for the corporation.<sup>48</sup> UU No. 18/2013 does not specifically regulate the weighting of sanctions against corporate defendants. It is in contrast to Law No. 32/2009 and Law No. 41/1999 which stipulates that the criminal penalty for legal entities can be increased to 1/3 of the principal sentence.

### 3. PLANTATION

UU No. 39/2014 recognizes corporations as legal subjects (Article 1 point 15). The amount of punishment for corporations maximum of 1/2 of the fine [Article 113 paragraph (2)], and there is no additional penalty for a corporation committing crime under Law No. 39/2014.

### 4. FISHERIES

UU No. 31/2014 does not specifically mention corporation as a legal subject. However, in the weighting of criminal sanction, it is stated that prosecution and criminal sanction against the corporation are imposed on the manager of the corporation and the amount of the fine is added 1/2 of the sentence imposed.<sup>49</sup>

### 5. MINING

Corporation as a legal subject in the mining industry is regulated in Article 1 number 35a of Law No. 3/2020. However, this article is not synchronized to Article 163 of Law No. 4/2009 which specifically weighting a fine of 1/2 and additional penalties for the legal entity.

This makes Article 163 of Law No. 4/2009 could not be applied for a corporation that is not a legal entity.

## E. SOCIO-CULTURAL FACTORS, POLICIES, AND COMMUNITY PARTICIPATION IN THE CONTEXT OF HANDLING NATURAL RESOURCES CRIMES

Almost all regulations related to NR regulate the involvement, empowerment, or participation of the community in protecting, managing, or monitoring NR management. Basically, community participation is seen as an effort to assist the state in carrying out its duties. However, in some cases, the inclusion of communities participation as their right in protecting the environment is not balanced with their security from criminalization.

Article 70 of Law No. 32/2009 states: "The community has the same and widest possible rights and opportunities to play an active role in environmental protection and management. The role of the community in environmental protection and management can be in the form of: (a) social supervision; (b) giving suggestions, opinions/proposals/objections/complaints; (c) submission of information and/or reports. It is explained that the role of the community is carried out to: (a) increase awareness in environmental protection and management; (b) increase independence, community empowerment, and partnerships; (c) develop community capacity and pioneers; (d) develop community responsiveness in carrying out social supervision; (e) develop and maintain local culture and wisdom in the context of preserving environmental functions.

<sup>48</sup> Ibid., Article 109 paragraph (2).

<sup>49</sup> Law No. 31/2014, Article 101.

Law No. 32/2009 does not provide a definition of community, but provides a definition of customary law community, namely: "a group of people who have lived in a certain geographical area for generations because of ties to ancestral origins, a strong relationship with the environment, and the existence of a value system that determines economic, political, social and legal institutions.<sup>50</sup> The definition of community is found in Law No. 27/2007 on the Management of Coastal Areas and Small Islands which divides the community into indigenous peoples, local communities, and traditional communities. Indigenous peoples are groups of coastal communities who have lived for generations in certain geographic areas because of their ties to ancestral origins, their strong relationship with coastal resources and small islands, as well as the existence of a value system that determines economic, political, social and economic institutions.<sup>51</sup>

Local communities are defined as groups of people who carry out their daily life based on habits that have been accepted as generally accepted values but are not completely dependent on certain coastal resources.<sup>52</sup> Furthermore, traditional communities are defined as traditional fishing communities whose traditional rights are still recognized in carrying out fishing activities or other legal activities in certain areas located in archipelagic waters in accordance with the rules of international law of the sea.<sup>53</sup>

The regulation of the form of community participation in spatial planning is regulated

in GR No. 68/2010 on Forms and Procedures for Community Roles in Spatial Planning which defines the role of the community as active community participation in spatial planning, space utilization, and space utilization controlling. Indonesia's spatial planning law stipulates that spatial planning is carried out by the Government with the participation of the community to minimize the potential conflicts of interest from certain groups in the use of space due to the results of spatial planning are ultimately for the benefit of all levels of Indonesian society.

Related to forestry, it is stated that forest management must accommodate the dynamics of aspirations and participation of the community, customs, and culture, as well as community values based on national legal norms. This includes affected communities both in and around the forest, who are entitled to compensation due to the loss of access to the surrounding forest to meet their daily needs.<sup>54</sup> In terms of forest security, several activities that involve the community include:<sup>55</sup> (a) community-based forest security; (b) conservation activities; (c) youth/community activities; (d) forest care community activities; (e) conservation model village development; (g) forestry center; and (h) voluntary activities.

One of the issues related to community protection that is felt to be not optimal is in the plantation sector. The Civil Society Alliance for Justice<sup>56</sup> states that Law No. 39/2014 does

<sup>50</sup> Law No. 32/2009, Article 1 point 31.

<sup>51</sup> Law No. 27/2007, Article 1 number 33.

<sup>52</sup> Ibid., Article I number 34.

<sup>53</sup> Ibid., Article I number 35.

<sup>54</sup> Law No. 41/ 1999, Chapter IX.

<sup>55</sup> Sudirman Sultan, Community Participation of Polhut (Forest Police) Partners, <https://www.slideshare.net/sudirmansultan/partner-serta-rumah-mitra-polhut-dalam-pengamanan-hutan>, downloaded on 20 September 2020.

<sup>56</sup> My Green, The Position of Civil Society Against Law No. 38 of 2014, <https://greenku.com/2015/02/17/position-society-civil-terhadap-uu-no-39-tahun-2014-about-perkebunan>, downloaded on 20 September 2020.

not pay attention to: constitutional and land aspects for food needs; environmental protection, forest exploitation, and sustainable plantation development. Although Article 57 and Article 58 of Law No.

39/2014 has regulated a partnership scheme, the implementation of this partnership has not positioned the community/farmers in an equal position in plantation management and has even led to conflicts.

# CHAPTER III CIVIL SERVICE INVESTIGATORS IN THE NATURAL RESOURCES SECTOR

## A. CSI OF SPATIAL PLANNING

### 1. ORGANIZATIONAL OVERVIEW

CSI of Spatial Planning at the Ministry of ASP/GLO is under the Directorate of Spatial Utilization Control.<sup>57</sup> The Directorate of Spatial Utilization Control has the tasks for carries out the formulation and implementation of policies, compiling norms, standards, procedures, and criteria, and providing technical guidance and supervision, as well as implementing evaluation and reporting the investigation and controlling the violations of spatial utilization as well as the development of CSI of Spatial Planning<sup>58</sup>. This Directorate carries out the following functions<sup>59</sup>:

1. Preparing policies in the field of investigation and control of violations of SP and development of CSI of Spatial Planning.
2. Implementing policies of investigation and control of violations of spatial

utilization and development of CSI of Spatial Planning.

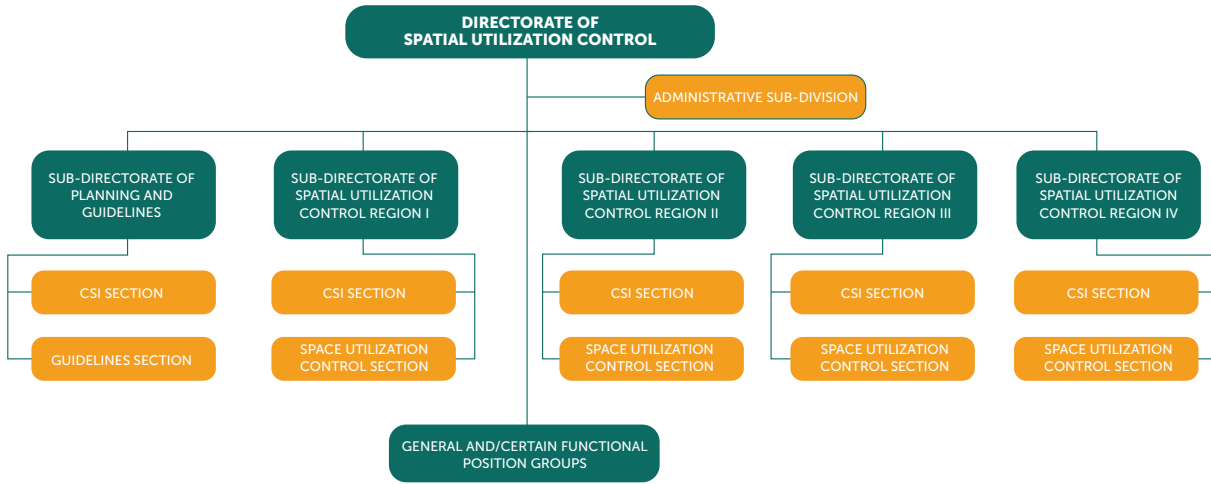
3. Preparing norms, standards, procedures, and criteria of investigation and control of violations of spatial utilization and development of CSI of Spatial Planning.
4. Providing technical guidance and supervising of investigation and control of violations of spatial use and development of CSI of Spatial Planning.
5. Monitoring, evaluations, and reporting of investigation and control of violations of spatial use and development of CSI of Spatial Planning.
6. Implementing of Directorate of the administrative affairs.

<sup>57</sup> The Directorate of Spatial Utilization Control has been removed from the Directorate General of Spatial Planning under the Ministry of Public Works and Public Housing to the Ministry of ASP/GLO in 2015.

<sup>58</sup> Ministerial Decree (MD) ASP/Head of GLO No. 8/2015 concerning Organization and Work Procedure of the Ministry of ASP/GLO, Article 514

<sup>59</sup> Ibid., Article 515.

**Pic 3.1 Organizational structure of the Directorate of Spatial Utilization Control Ministry of ASP/GLO**



The Directorate of Spatial Utilization Control consists of:<sup>60</sup> (1) Sub-directorate of Planning and Guidelines; (2) Sub-directorate of Spatial Utilization Control in Region I; (3) Sub-directorate of Spatial Utilization Control in Region II; (4) Sub-directorate of Spatial Utilization Control in Region III; (5) Sub-directorate of Spatial Utilization control in Region IV; (6) Administration Subdivision; and (7) Functional Position Group. Meanwhile, the division of territory in the Sub-directorate of Controlling Spatial Utilization includes: (1) Region I covers the entire territory Islands of Sumatra; (2) Region II covers the entire islands of Java and Bali; (3) Region III covers the entire islands of Kalimantan and Sulawesi; and (4) Region IV covers the entire Nusa Tenggara Islands, Maluku Islands, and Papua.

CSI of SP consists of: (1) investigators at the national level which are places under and responsible to the Minister; (2) investigators in the provincial level which are places and responsible to the Governor; and (3) investigators in regency/city level which are

places under and responsible to the Regent/ Mayor.

The placement investigators at the regional level are adjusted to the needs of each region. Their status is determined by the respective regions as well as their career path and rank which are also determined by the regional head.

These systems create difficulties for the investigators of SP in carries out their duties and authorities, especially if the violation is related to the regional head or regional official in charge of the CSI of SP. In addition, the transfer of the CSI of SP can change the organizational structure of the Regional Government whose authority is in the hands of the Regional Government. If the SP violation is carried out by the regional head, either the governor or the regent/mayor, the CSI of SP will find it difficult to carry out their authority because the investigation process which will involve the Regional Head as well as their supervisor. Of course, these issues can affect the independence of the CSI of SP in carrying out their authority.

<sup>60</sup> Ibid., Article 516.

Regional CSI of SP does not have a particular institution that specifically accommodates the implementation of their duties and functions of CSI.<sup>61</sup> Without a good organizational structure in the regions, there is no special budget to finance the CSI of SP, making it difficult for CSI to carry out its authority. In fact, in handling spatial violations, coordination is needed between the CSI in the central and regional. A linear organizational structure between the central and the regions can help the CSI of SP maximize in carrying out its authority.

## **2. THE AUTHORITY OF CSI OF SP**

Law No. 26/2007 states that CSI of SP is civil servants within government agency, their duties and responsibilities are in the SP sector, and have special authority as investigators.

CSI of SP has two main tasks: (1) conducting investigations into criminal acts of SP; and (2) provide guidance in preparing for the implementation of investigation the criminal of SP.<sup>62</sup> CSI of SP was formed to enforce the implementation of SP law.<sup>63</sup>

The CSI of SP has the obligations: (1) notify the investigation to the investigators of the Indonesian National Police (INP); (2) notify the progress of the investigation to the investigator of INP ; (3) coordinate with the investigator of INP in accordance with the provisions of laws and regulations; (4) notify the termination of the investigation to the investigator of INP; and (5) submit the results of the investigation (case files, suspects and evidence) to the Public

Prosecutor through the investigator of INP.<sup>64</sup>

Article 68 of Law No.26/2007 states that in addition to the Investigating Officer of INP, the CSI of SP has special authority to assist the Investigating Officer of INP as referred to in the Criminal Procedure Code (CPC).

The authority of the CSI of SP in conducting investigations (Article 68 of Law No.26/2007) includes<sup>65</sup>:

1. Examining the facts of information relating to the criminal act of SP;
2. Conducting the examinations on suspected of committing a criminal act of SP;
3. Asking for information and evidence from people connected with the crime of SP;
4. Examining documents related to the criminal act of SP;
5. Conducting the inspections in places where evidence and other documents are suspected as well as confiscate and seal materials and goods resulting from violations that can be used as evidence in criminal cases of spatial planning; and
6. Requesting assistance from experts to carry out the task for investigation of the criminal act of SP.

The authority of the CSI of Central SP includes the criminal offenses in the national territory; national strategic territory; and inter-provincial territory<sup>66</sup> investigations. In terms of that, if the investigation is outside of its authority, it can be carried out if the crime in the province or district/city area has an impact on the national level.

<sup>61</sup> Pinatik, Gerry Andika, et al, Position of Regional PPNS in Law Enforcement of Criminal Acts of Spatial Violations, *Lex Crimen* Vol. IX. No. 4, Manado: Sam Ratulangi University, 2020. p. 155.

<sup>62</sup> MD ASP/GLO No. 3 of 2017 on Civil Servant Investigators of Spatial Planning, Article 3

<sup>63</sup> *Ibid.*, Article 5.

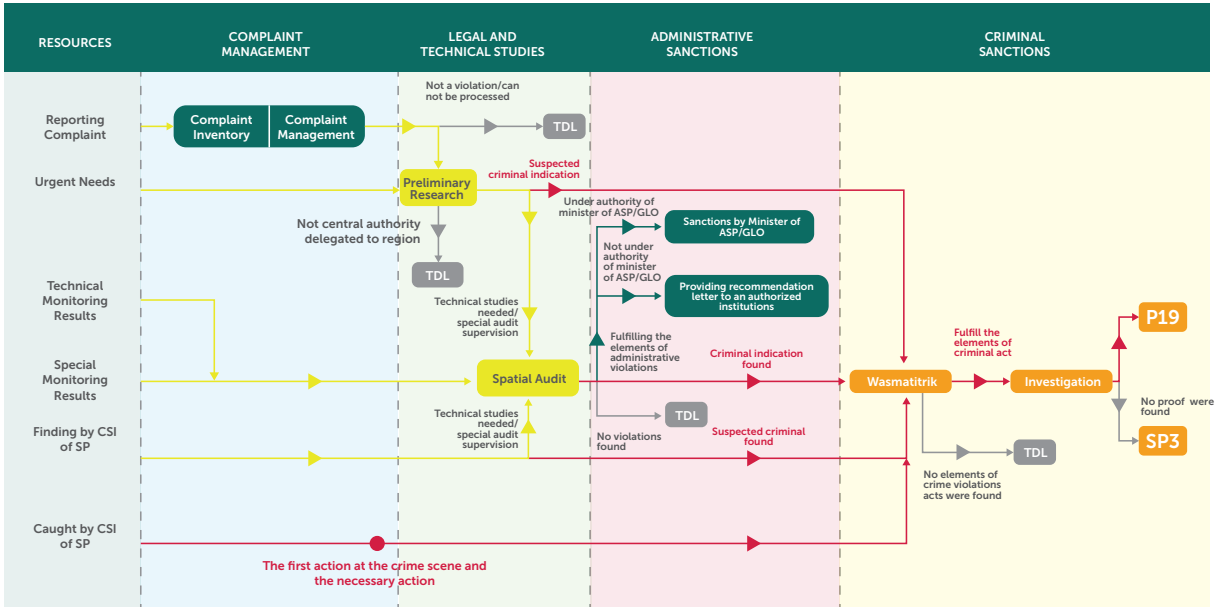
<sup>64</sup> *Ibid.*, Article 4.

<sup>65</sup> *Ibid.*, Article 7.

<sup>66</sup> *Ibid.*, Article 8 paragraph (1).



Pic 3.2 Case Handling Procedure in SP<sup>67</sup>



The case handling procedure of SP regulated in GR of ASP/GLO No. 3/2017. The regulation stipulates the management of investigations which consists of: (1) supervision, observation, research, or examination; (2) investigation stage; and (3) administrative stage of the investigation.

### 3. HUMAN RESOURCES (HR) OF CSI OF SPATIAL PLANNING

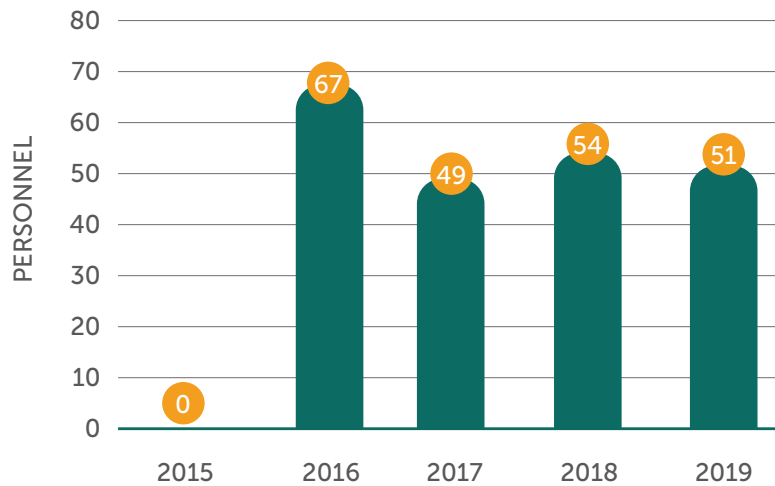
The CSI of SP was formed through the implementation of Education and Training (EAT) which was carried out in collaboration with the INP Headquarters. Based on the Ministry of ASP/GLO Annual Report, during 2019 until the end of 2019, the number of active CSI of SP is around 221 people, both at the central and regional levels. The realization

of the inauguration of CSI in 2019 was 120 people, consisting of 69 CSI refreshers and 51 new formations.

The CSI of SP training was initiated by the Directorate General (DTG) of SP since 2009. Until 2017 there were approximately 514 people who had been facilitated to become CSI of SP. During the training, the CSI of SP participants is given materials related to: SP; investigations and investigations based on the CPC; management of investigation; the scope of the criminal of SP; case file management; and physical light exercise.

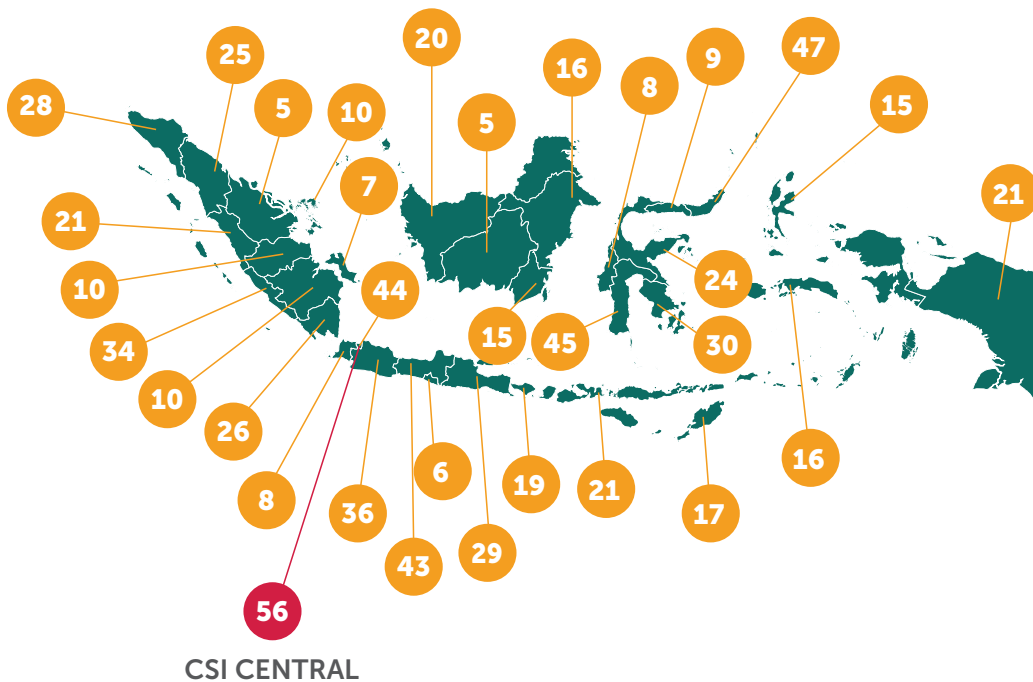
<sup>67</sup> Directorate General of Space Utilization and Land Tenure Control, Coordination Meeting on the Implementation of Spatial Utilization and Land Tenure control in Banten Province, Jakarta: Ministry ASP/GLO, (without information of date).

**Pic 3.3 Number of CSI of SP in 2015-2019**



Source: DTG of SP and Land Tenure

**Pic 3.4 Deployment of the SP CSI in 2016**



Based on the CSI distribution data above, the number of CSI of SP is less compared to the area of Indonesia. In unstructured areas, not all regencies/cities have CSI of SP, so the enforcement of SP violations cannot

be carried out optimally. Ideally, every province/regency/city requires 3 (three) personnel of CSI of SP, consisting of 1 (one) direct supervisor/investigator, and 2 (two) investigator staff.

**Table 3.1 Training for CSI of SP**

Featured Activities	2015		2016		2017		2018		2019 (November)	
	TARGET	REALIZATION	TARGET	REALIZATION	TARGET	REALIZATION	TARGET	REALIZATION	TARGET	REALIZATION
Training of CSI of SP	200 personnel	0	200 personnel	67 personnel	100 personnel	49 personnel	200 personnel	54 personnel	200 personnel	51 personnel
Enhancement Capacity of CSI of SP		127 personnel	-	-	-	-	85 personnel	85 personnel	140 personnel	69 personnel

From the table above it can be seen that the need for CSI of SP for each region has not been accompanied by the increasing number of personnel in each year. The number of additional personnel carried out by the Government each year is also still small. The development capacity of investigators has not been carried out every year and not all investigators received capacity development program.

#### 4. PROBLEMS IN CASE HANDLING

In controlling the utilization of space, CSI of SP encounters many obstacles, including:<sup>68</sup> (1) overlapping enforcement authorities in the regions;<sup>69</sup> (2) the different level of technical competencies between investigators; (3) minimum coordination between investigators at the national level and in the regional levels; (4) no existing supervision unit that monitor and evaluate the performance of investigators; and (5) the placement of investigators are not suitable with the duties as investigators.<sup>70</sup>

## B. CSI OF SP OF EAF

### 1. ORGANIZATIONAL OVERVIEW

The CSI of SP of EAF is under the Directorate General of Environmental and Forestry Law Enforcement (DTG of EAFLE), implementing element at the Ministry of Environment and Forestry (MOEF). Referring to Presidential Decree (PD) No. 16/2015 concerning the MOEF and the MD of MOEF No.18/2015 on Organization and Work Procedures of the Ministry of Environment and Forestry, the main task of the Directorate General of Legal and Legal Affairs is to formulate and implement policies in the field of reducing disturbance; threat; and violations of environmental and forestry laws.

(DTG of EAFLE) was established in early July 2015 to strengthen the quality of the environment and preserve the environment and forestry in Indonesia through the process of enforcing environmental and forestry laws.

<sup>68</sup> Data is processed from various sources. Among others: Sodikin, CSI Existence in Law Enforcement Against Spatial Violations, Rechtsvinding Journal, Jakarta: Faculty of Law, University of Muhammadiyah, August 2017.

<sup>69</sup> In addition to the CSI of SP, enforcement of violations of the enforcement space utilization is also carried out by the Regional Spatial Planning Coordinating (RSPC); permit-issuing agency; as well as other agencies or institutions in charge of controlling

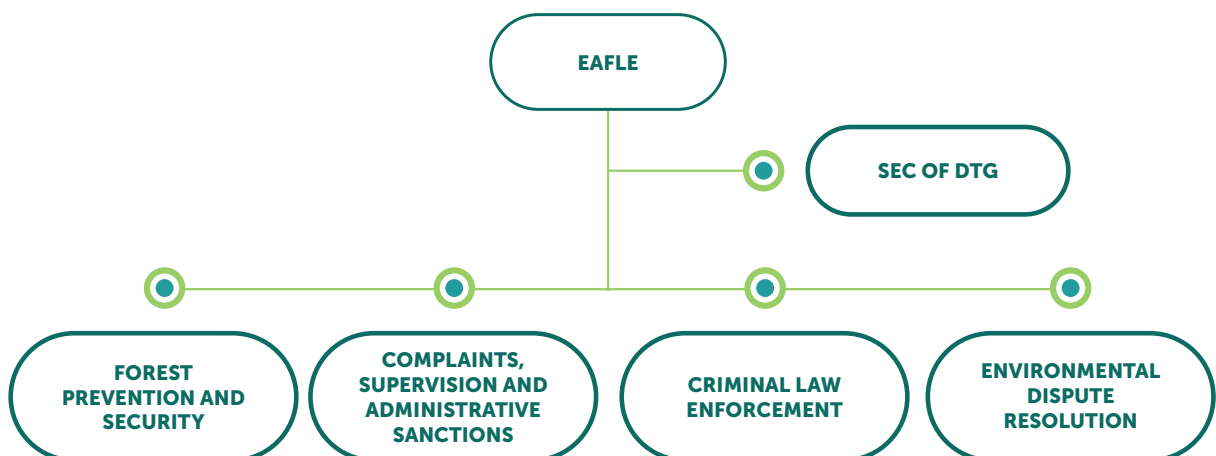
<sup>70</sup> This happens in the regions, where investigators at the regional

level are scattered in work units that are not in line with their duties as investigators and receive main tasks and other functions according to their placement units.

The functions of the DTG of EAFLE are:<sup>71</sup>

1. Compiling the policies of prevention, supervision, security, handling of complaints, investigations, application of administrative, civil, and criminal laws in the EAF domains, as well as support for EAFLE operations;
2. Implementing the policies of prevention, supervision, security, complaint handling, investigation, application of administrative, civil, and criminal law in the EAF domains, as well as support for EAFLE operations;
3. Compiling the norms, standards, procedures, and criteria of prevention, supervision, security, complaint handling, investigation, application of administrative, civil, and criminal law in the EAF sector, as well as support for EAFLE operations;
4. Coordinating and synchronizing policy of prevention, supervision, security, complaint handling, investigation, application of administrative, civil, and criminal law in the EAF domains, as well as support for EAFLE operations;
5. Technical guidance and supervision of prevention, supervision, security, complaint handling, investigation, application of administrative, civil, and criminal law in the EAF domains, as well as support for EAFLE operations in the regions;
6. Evaluating and reporting the implementation of prevention, supervision, security, complaint handling, investigation, application of administrative, civil, and criminal law in the EAF domains, as well as support for EAFLE operations;
7. The administration of the DTG of EAFLE;
8. Implementing other functions assigned by the Minister.

**Pic 3.5 Organizational Structure of the DTG EAFLE**



<sup>71</sup> PD No. 16/2015

MOEF's decree No.18/2015 on the Organization and Work Procedure for EAFLE in Carrying Out its Duties and Functions, The DTG of EAFLE consists of 1 (one) Secretariat and 4 (four) Directorates and assisted by 5 (five) EAFLE.<sup>72</sup>

CSI of EAFLE is under the coordination of DTG of EAFLE. The Directorate of Criminal Law Enforcement is divided into: (1) Sub-directorate of Forest Encroachment Investigation; (2) Sub-directorate of Environmental Destruction Investigation, Forest and Land Fires; (3) Sub-directorate of Environmental Pollution Investigation; and (4) Sub-directorate of Investigation of Illegal Logging and Biodiversity Crimes. Each Sub Directorate is divided into two regions to facilitate the coordination and monitoring of its duties.

In carrying out its duties and functions, the DTG of EAFLE refers to the laws and regulations, including: (1) Law No.5/1990; (2) Law No. 41/1999; (3) Law No. 18/2013; (4) Law No. 32/2009; (5) Law No. 26/2007; (6) Law No. 4/2009 jo. Law No.3/2020; (7) Law No. 39/2014; (8) Law No. 21/2014 on Geothermal; (9) Law No. 27/2007 jo. Law No.1/2014; and (10) Law No. 8/2010 on the Prevention and Eradication of the Crime of Money Laundering

The EAFLE are adjusted to the level of the environmental damage, from soft approach until hard approach. Based on the organization's management above, the use of law enforcement instruments includes:<sup>73</sup>

(1) administrative law for supervision of environmental license and the application of administrative sanctions; (2) secure and restore the forest areas through the operations; (3) civil law approach in terms of outside and inside the court; and (4) criminal law approach. In the next explanation, the relation between the CSI of EAFLE to crimes in the EAF sector will be discussed.

## 2. THE AUTHORITY OF CSI OF EAF

The investigations of EAF crimes are not handled only by the INP but also by the CSI of EAF. With the scope of duties and responsibilities as stated in Law No. 5/1990; Law No.41/1990; Law No.32/2009; and GR No. 45/2004 on Forest Protection.

Based on Law No. 5/1990 CSI of EAF has the following authorities:<sup>74</sup>

1. Examine the information regarding crimes of conservation of biological natural resources and their ecosystems;
2. Examine persons suspected who committing crimes of conservation of living natural resources and their ecosystems;
3. Identify persons who are in conservation area;
4. Search and confiscate evidence of crimes of conservation of biological natural resources and their ecosystems;
5. Requesting information and evidence from individuals or entities connected with crimes of conservation of biological natural resources and their ecosystems;

<sup>72</sup> MD of Environmental No. 15/2015: EAFLE is a technical implementing unit in the field of securing and enforcing environmental and forestry laws under the coordination of the EAFLE and is responsible to the DTG of EAFLE.

<sup>73</sup> DTG of EAFLE Annual Report 2019, Jakarta: Ministry of Environment and Forestry, 2020, p. 3.

<sup>74</sup> Law No. 5/1990 Article 39.

6. Make and sign the minutes of the event;
7. Terminate the investigation if there is not enough evidence of a crime of conservation of biological natural resources and their ecosystems.
8. The investigator shall notify the commencement and the result of the investigation to the public prosecutor through the INP investigator in accordance with the provisions of Article 107 of the CPC.

Furthermore, based on Law No. 41/1990, CSI of EAF has the following authorities:<sup>75</sup>

1. Examine information relating to crimes in the forests, forest areas, and forest products;
2. Examine persons suspected of crimes in the forests, forest areas, and forest products;
3. Identify a person who is in a forest area or legal area;
4. Search and confiscate the evidence of crimes in the forests, forest areas, and forest products in accordance with the provisions of applicable laws and regulations;
5. Request information and evidence from individuals or legal entities in connection with crimes in the forests, forest areas, and forest products;
6. Coordinate with INP related to arresting and detaining of the defendant;
7. Conduct and sign minutes of investigation report;

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<sup>75</sup> Law No. 41/1999, Article 77.

8. Terminate the investigation if there is not enough evidence of crimes in the forests, forest areas, and forest products;
9. Notify the commencement of the investigation and the results of the investigation to the public prosecutor, in accordance with the CPC.

Based on Law No. 32/2009, CSI of EAF has the following authorities:<sup>76</sup>

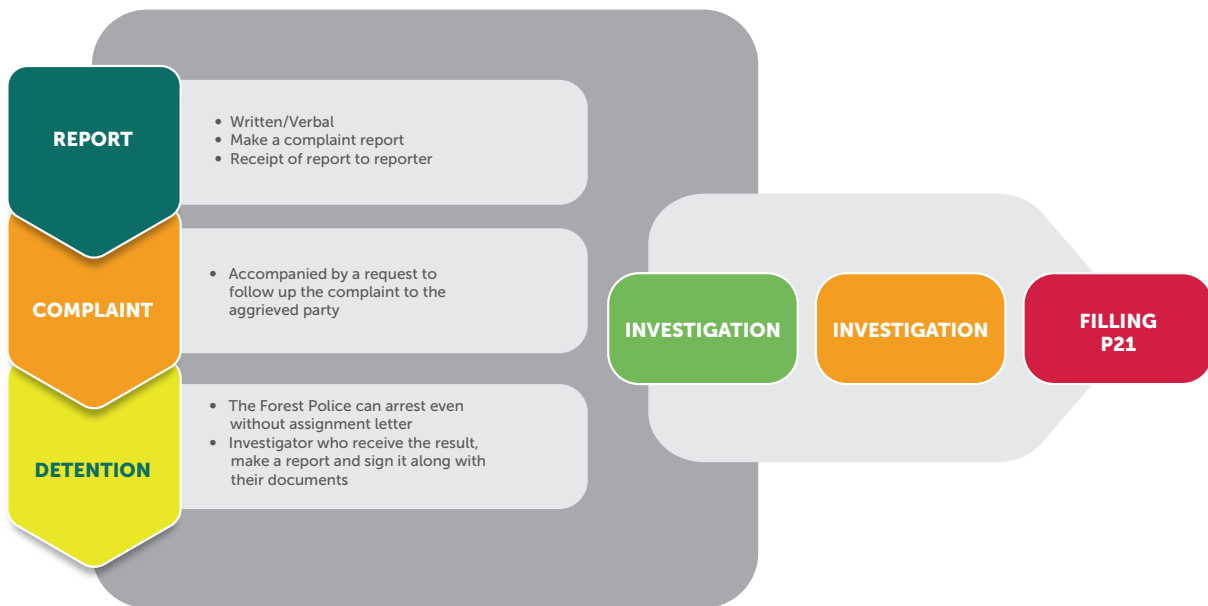
1. Examine the information relating to crimes of environmental protection and management;
2. Examination of every person suspected of committing a crime of environmental protection and management;
3. Request information and evidence from everyone regarding crimes of environmental protection and management;
4. Examine books, records, and other documents relating to crimes of environmental protection and management;
5. Conduct inspections in places where evidence, books, records, and other documents are suspected;
6. Seize materials and goods resulting from violations that can be used as evidence in criminal cases of environmental protection and management;
7. Request expert assistance in the context of carrying out the task of investigating crimes of environmental protection and management;

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<sup>76</sup> Law No.32/2009, Article 94

8. Terminate the investigation;
9. Entering certain places, taking pictures, and/or making audio-visual recordings;
10. Conduct a search of the body, clothing, room, and/or other places suspected where the crime was committed and/or arrest and detain the perpetrators of the crime.
11. Coordinates with INP related to arrests and detentions of defendant
12. Notify the INP related to assistance for the investigation.
13. Notify the investigation to the public prosecutor and INP.
14. Submit the result to the public prosecutor.

**Pic 3.6 Procedure in Handling of EAF’s Crimes**

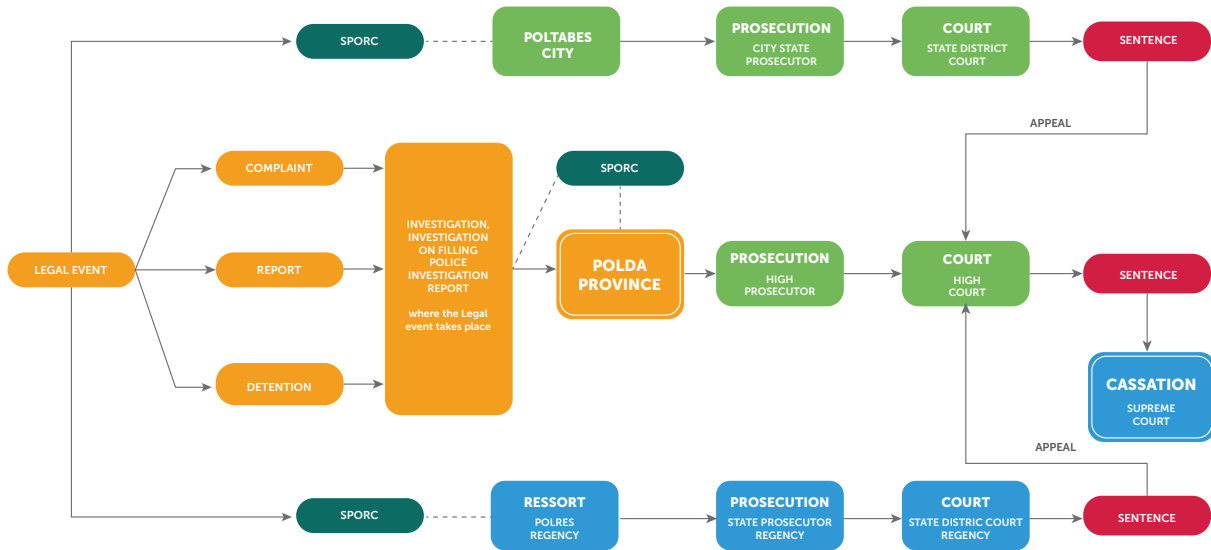


The handling of EAF crime begins with public reports, complaints, and red-handed. Meanwhile, in the handling of forest crimes

submitted by the Forest Police (Ranger), the mechanism can be seen in the following picture.



Pic 3.7 Forestry Crime Settlement Mechanism



The CSI of EAF has wide authority to deal with crimes in the forestry and NR sector, which most are cross-sectoral crimes. Therefore, the case handling must be carried out in collaboration between relevant agencies through a multi-door approach using various legal regimes, where the limitations of one regime of law covered with other laws to caught predicate crimes; related crimes; and other associated crimes.

There are 4 (four) advantages offered by the multidoor approach, namely: (1) building coherence between investigation, investigation, and prosecution; (2) maximizing the deterrent effect and accountability of the perpetrators; (3) prevent perpetrators from escaping legal snares due to the limitation of

law; and (4) returning state losses by tracing the proceeds of crime and perpetrators of crime

### 3. HR OF CSI OF EAF

The total amount of investigators as per April 5<sup>th</sup>, 2019 is 208 personnel, which consist of: Structural Officers, Environmental Supervisory Officer (ESO), Fast Reaction Ranger Unit, Ranger and Field Officer as can be seen in the following table :<sup>77</sup>

<sup>77</sup> The regulation on the names of CSI of EAF positions is currently still following the sector law, which consists of: Ranger, ESO, and CSI. All three have authority over the investigation process in the natural resources sector in accordance with the laws and regulations which are the legal basis.

Table 3.2 CSI of DTG in 2019

CENTRAL				UPT			
Work Unit	Jumlah	Total	Work Unit	Jumlah	Total		
Sec of DTG	3	3	BPPHLHK Sumatra Area	1	44		
			Administration	0			
			Section I	10			
<b>Directorate of PPSA</b>	1	6	Section II	20			
Sub-Dir Complaint	3		Section III	13			
Sub-Dir Environmental Supervisory	2		<b>BPPHLHK Jabalusra Area</b>	1	31		
Sub-Dir of Administrative Sanction			Administration	0			
			Section I	9			
<b>Directorate of PSLH</b>		2	Section II	12			
Sub-Dir PSLH			Section III	9			
Sub-Dir PSLH			<b>BPPHLHK Sulawesi Area</b>	1	37		
Sub-Dir PSLH	2		Administration	0			
			Section I	22			
<b>Directorate PHP</b>	1	22	Section II	7			
Sub-Dir Environmental Pollution Investigation	3		Section III	7			
Sub-Dir Forest Encroachment Investigation	6		<b>BPPHLHK Kalimantan Area</b>	1	35		
Sub-Dir Environmental Destruction	4		Administration	1			
Sub-Dir Illegal Logging Investigation	8		Section I	12			
			Section II	10			
<b>Directorate PPH</b>	1	7	Section III	11			
Sub-Dir PPH Sumatra Area	1		<b>BPPHLHK Maluku Papua</b>	1	21		
Sub-Dir PPH Jawa Bali Area	1		Administration	1			
Sub-Dir PPH Kalimantan and Nusa Tenggara Area	2		Section I	9			
Sub-Dir PPH Sulawesi Maluku and Papua	2		Section II	1			
			Section III	9			
<b>TOTAL</b>		<b>40</b>	<b>TOTAL</b>		<b>168</b>		

Every year the Ministry of EAF recruits and trains investigators. Details of the training

from 2015 to 2019 are as follows:

Table 3.3 EAFLE Personnel

Apparatus	2015	2016	2017	2018	2019	Total
Ranger	0	0	0	74	105	179
CSI	29	0	30	60	30	149
ESO	0	30	32	72	60	194
Total	29	30	62	206	195	522

**Table 3.4 Number of Participants in EAFLE's Training**

Apparatus	2015	2016	2017	2018	2019	Total
Ranger	2266	448	833	2448	1198	7593
CSI	168	238	277	375	172	1230
ESO	0	360	45	110	239	754
Total	2834	1048	1155	3334	1609	9577

#### 4. EAFLE CRIME HANDLING PROBLEMS

Based on the Annual Report of the Ministry of EAF in 2019, the DTG have several problems related to budget and institutions that affecting the achievement of performance and targets of each activity, which are as follows:<sup>78</sup>

1. Unpredictable crime activities;
2. Crimes handling mechanism is time-consuming and not suitable with the timetable;
3. The number of personnel is not equal to the problems faced and the forest area that must be protected;
4. Case settlement depends on the report; delegation; complaint; and/or the occurrence of damage and/or pollution (cannot refer precisely to the Annual Work Plan);
5. Lack of technical competence and expertise of personnel in implementing EAF dispute verification;
6. Lack of awareness of the investigators at the regional level to be active in filing environmental disputes;
7. Lack of additional data related to perpetrators which can be used in calculating the loss of the environment.
8. The trial process in court is taking longer time than the expected time;
9. Difficulty in getting expert who can verify environmental losses and willing to deliver academic explanation in the court;
10. Insufficiency of data and supervision results from investigators in supporting claims;
11. Lack of regulations that can support evidence in court;
12. Lack of advocates who are willing to deliver legal counsel for EAF in preparing lawsuits;
13. Difficulties in getting witnesses who know and see the occurrence of damage; and/or environmental pollution;
14. Difficulties in collecting defendant documents that can be used as evidence in the court;

<sup>78</sup> Ministry of Environment and Forestry, Annual Report 2019, Jakarta: Ministry of Environment and Forestry, 2020.

15. The different perceptions among law enforcement officials while applied evidence submitted to the court;
16. Difficulties in catching perpetrators outside the jurisdiction of Indonesia;
17. Insufficiency duration/time of investigation which regulated in Law No. 18/2013;
18. Insufficiency complain handling mechanism (which regulated no more than 30 days);
19. The implementation of supervision activities still refers to the Ministerial Decree (MD) of Environmental No. 56/2002 on General Guidelines for ESO and MD of Environmental No. 58/2002 on regional PPLH Work Procedures which are less relevant to actual conditions;
20. Lack of competency of PPLH (Environmental Supervision Officers) which do not meet the standards.

## C. CSI OF PLANTATION

### 1. ORGANIZATIONAL OVERVIEW

In general, the plantation is the main contributor to the trade balance surplus in the agricultural sector nationally, both in terms of investment value and value of strategic commodities. The Central Bureau of Statistics recorded that the contribution of the plantation to the national economy in 2018 increased by 22.48% compared to the contribution in 2014. The Gross Domestic Product (GDP) of plantation in 2014 – 2018 was recorded at Rp. 2,192.9 trillion and the provisional figure for the GDP of the

agricultural sector in the first quarter first year of 2019 reached Rp. 3.7 trillion, of which plantation crops contributed Rp. 106.95 billion.<sup>79</sup>

Referring to the MD of Ministry of Agriculture No. 43/2015 on Organization and Work Procedures of the Ministry of Agriculture, plantation affairs are under the DTG of Plantations with the task of carrying out the formulation and implementation of policies to increase the production of sugarcane and other plantation crops.

In carrying out its duties, the Directorate General of Plantation carries out the following functions:<sup>80</sup>

1. Formulating policies of seed supply, cultivation implementation, post-harvest improvement, processing, and marketing of sugarcane production and other plantation crops, development of bio-energy raw materials, sustainable plantation business development, as well as pest control and plantation protection;
2. Implementing policies of seed supply, cultivation, post-harvest improvement, processing, and marketing of sugarcane production and other plantation crops, development of bio-energy raw materials, sustainable plantation business development, as well as pest control and plantation protection;
3. Formulating norms, standards, procedures, and criteria in the field of

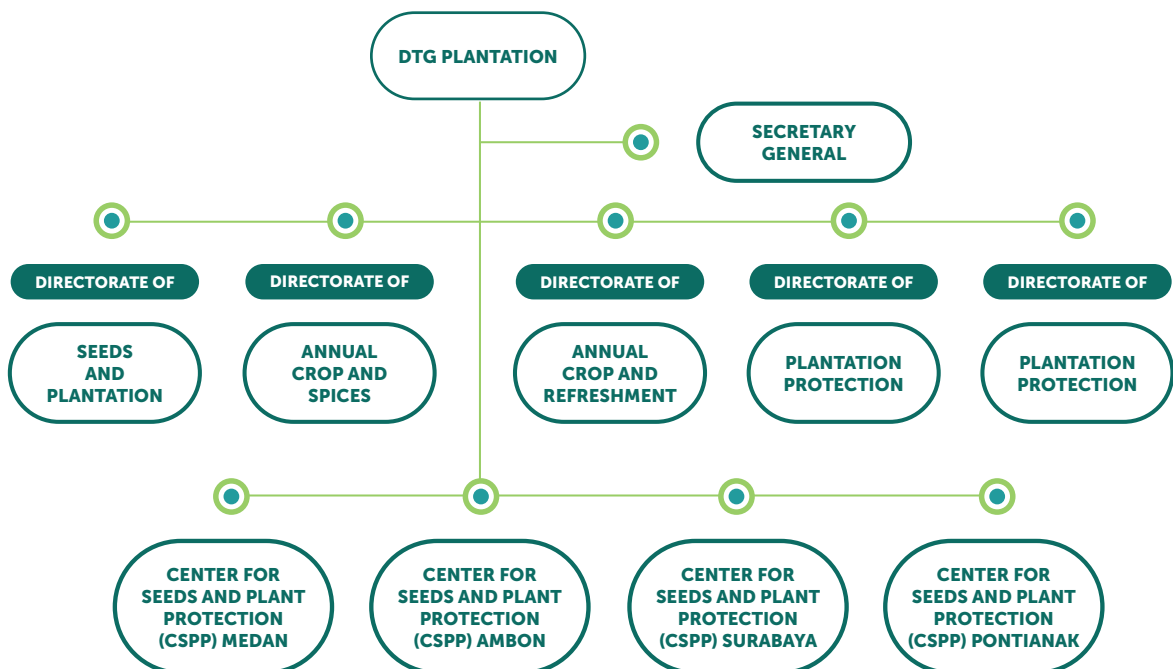
<sup>79</sup> Media Indonesia, Plantation Sector Mainstay of Foreign Exchange and Farmers' Welfare, <https://mediaindonesia.com/read/detail/269617-mentan-sector-perkebunan-andalan-devisa-dan-kesejahteraan-petani>, downloaded 22 November 2020.

<sup>80</sup> MD of Agriculture No. 43/2015 on Organization and Work Procedure of the Ministry of Agriculture, Article 3.

- seed provision, cultivation management, post-harvest improvement, processing and marketing of sugarcane and other plantation crops, development of bio-energy raw materials, sustainable plantation business development, and pest and disease control and plantation protection;
4. Providing technical guidance and supervision of seed provision, cultivation management, post-harvest improvement, processing, and marketing of sugarcane and other plantation crops, development of bio-energy raw materials, sustainable plantation business development, and pest control and plantation protection;
  5. Implementing evaluation and reporting of seed supply, cultivation, post-harvest improvement, processing, and marketing of sugarcane production and other plantation crops, development of bio-energy raw materials, sustainable plantation business development, as well as pest control and plantation protection;
  6. Organizing administration of the Directorate General of Plantations; and
  7. Implementing other functions assigned by the Minister.

**Pic 3.8 Organizational Structure of DTG of Plantation**

The CSI of Plantation is under the DTG of Plantation, Ministry of Agriculture. However, the CSI of



Plantation structure is not mentioned in the Minister of Agriculture No. 43/2015 as shown in the picture above.

## 2. THE AUTHORITY OF CIS OF PLANTATION

Law No. 39/2014, in addition to INP Investigators, certain civil servants who are in the plantation sector are also given special authority as CSI as referred to in the CPC to investigate crimes in the plantation sector.

Based on the Operational Guidelines for CSI of the plantation, what is meant by CSI of plantation is certain civil servants who are at least the rank of Young Registrar Level I (Group II/b) or the equivalent who are given special authority by law to conduct investigations.<sup>81</sup>

The main task of the CSI of plantations is to enforce the law in accordance with the law.

In dealing with plantation criminal cases, CSI is authorized to:<sup>82</sup>

1. Examine the information relating to plantation crimes;
2. Summon a person to be heard and examined as a suspect or as a witness in a plantation crime;
3. Examine a person or legal entity suspected of committing a plantation crime;
4. Identify a person who is in the plantation development area;
5. Search and confiscate evidence of plantation crimes;

6. Request for information and evidence from individuals or legal entities in connection with plantation crimes;
7. Conduct and sign minutes of investigation report;
8. Terminate the investigation if there is not enough evidence regarding the existence of a plantation crime; and
9. Request expert assistance in the context of carrying out the task of investigating plantation crimes.

Based on Article 102 paragraph (4), (5) and (6) of Law No. 39/2014 the mechanism for handling plantation criminal cases by CSI of Plantation as follows:

1. Notify the start of the investigation and reports the results of the investigation to the Public Prosecutor through the National Police Investigator;
2. If the exercise of authority requires arrest and detention, the CSI shall coordinate with INP Investigators in accordance with the provisions of the legislation;
3. Submits the results of the investigation to the Public Prosecutor through the INP Investigator in accordance with the provisions of the legislation.

## 3. HR OF CSI OF PLANTATION

As of July 2020, there are currently 200 investigators spread across several provinces who were trained and inaugurated before 2018. This number has likely decreased due to promotion, transfer, or retirement.

On actual case handling, so far there has been no assistance from the investigators at the central level for investigators at regions

<sup>81</sup> The Law referred to in the Operational Guidelines is Law No. 12/1992 on Plant Cultivation System; Law No. 29/2000 concerning the Protection of Plant Varieties; and Law No. 39/2014.

<sup>82</sup> Law No. 39/2014, Article 102 paragraph (2).

level even though in essence the working areas of the investigators at the central level are throughout Indonesia.

#### 4. PROBLEMS IN HANDLING PLANTATION CRIMES

There are several issues related to CSI of the plantation, including:<sup>83</sup>

1. The non-exist unit internal of Ministry who supervise and monitor investigators;<sup>84</sup>
2. Investigators are transferred to another unit that does related to carry out investigations in the plantation sector;<sup>85</sup>
3. The short service period of investigators due to the newly appointed investigators approach the retirement period;
4. Limited budget for investigations;
5. Lack of training for investigators;
6. The emergence of mutual claims between CSI of Plantation and CSI of EAF related to the investigation authority in handling cases.

<sup>83</sup> Proceeding of the FGD between Auriga, the KPK, and the Directorate General of Plantations of the Ministry (held online on 26 June 2020)

<sup>84</sup> The existence of CSI is spread across various directorates because the Ministry of Agriculture does not have a separate Directorate of Law Enforcement. The absence of a coordinator has also made data on case handling since 2004 not collected properly. Apart from being not mandatory (there is no obligation to report investigations from PCSI of Plantations at the regional level to CSI of Plantations at the central level), a special work unit to monitor this is also absent. In practice, CSI of Plantations in the regions work alone and are only accompanied by CSI of Plantations at the center if needed so they do not always have to report to the Directorate General of Plantations. For example, in the case of seeds, assistance by CSI of Plantations at the center has been provided to CSI of Plantations in East Kalimantan; Bengkulu; Palembang, and Jambi based on the recapitulation of seed problems led by the Directorate General of Plantations. From the recapitulation, the Directorate General of Plantations wrote to all CSI of Plantations in the regions to inform them if they needed assistance from CSI of Plantations at the center.

<sup>85</sup> In carrying out the investigation, the CSI in question requires the permission of the superior from the directorate where he is placed.

## D. CSI OF FISHERY

### 1. ORGANIZATION OVERVIEW

The Directorate General of Supervision of Marine and Fishery Resources (DTG of SMFR) is the implementing element in the Ministry of Maritime Affairs and Fisheries (MMAF). Based on the MMAF Regulation No. 6/2017 on Organizational Management of the Ministry of Maritime Affairs and Fisheries, the DTG of SMFR has the task of carrying out the formulation and implementation of policies of monitoring the management of marine and fishery resources. The DTG of SMFR carries out the following functions:<sup>86</sup>

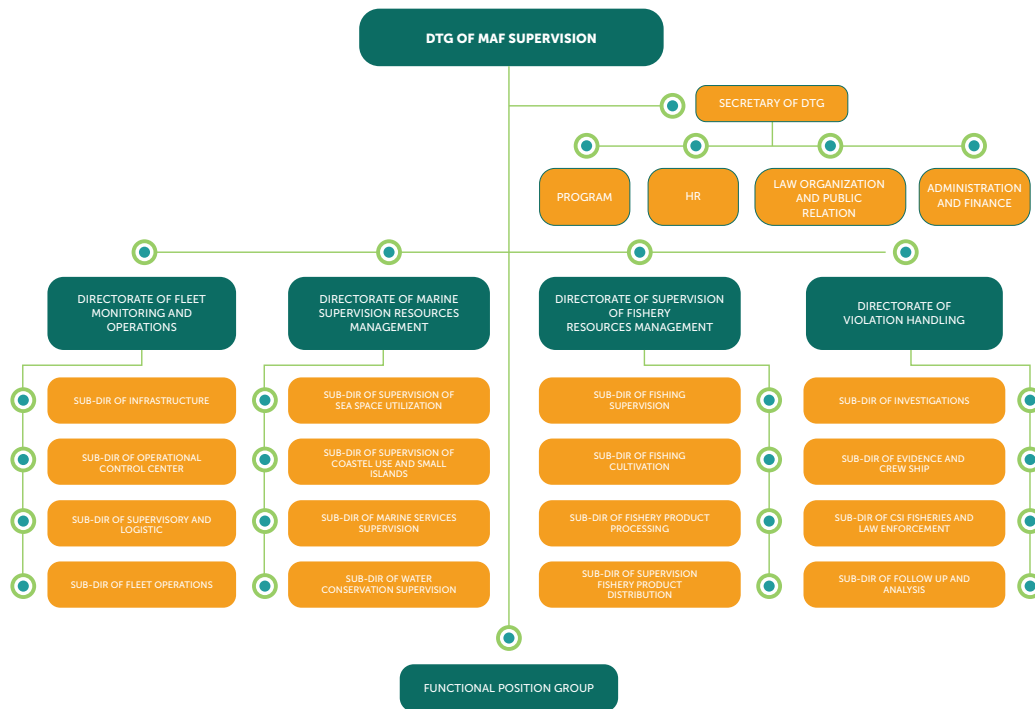
1. Formulating policies of supervision of fishing, supervision of aquaculture, supervision of strengthening the competitiveness of marine and fishery products, and supervision of marine space management, operation of supervisory vessels, monitoring and improvement of marine and fishery resource infrastructure, and handling of marine crimes and fisheries;
2. Implementing policies on supervision of fishing; aquaculture; strengthening the competitiveness of marine and fishery products; and marine spatial management, operation of supervision vessels, monitoring and improvement of marine and fishery resource infrastructure, and handling of marine crimes and fisheries;

<sup>86</sup> MD of MMAF No. 6/2017, Article 537.



3. Formulating norms; standard; procedure; and criteria of the implementation of supervision of fisheries; cultivation business; strengthening the competitiveness of marine and fishery products; marine spatial management; the operation of the supervision vessel; monitoring and improvement of marine and fishery resources infrastructure; and handling of marine and fishery crimes;
  4. Conducting guidance and supervising the implementation of fisheries; cultivation business; strengthening the competitiveness of marine and fishery products; marine spatial management; operation of the supervision vessel; monitoring and improvement of marine and fishery resources infrastructure; and handling of marine and fishery crimes;
  5. Evaluating and reporting implementation of fisheries; cultivation business; strengthening the competitiveness of marine and fishery products; marine spatial management; operation of the supervision vessel; monitoring and improvement of marine and fishery resources infrastructure; and handling of marine and fishery crimes;
  6. Administration of the DTG of SMFR; and
  7. Implementation of other functions assigned by the Minister.
- The DTG of SMFR consists of: Secretariat of the Directorate General; Directorate of Fleet Monitoring and Operations; Directorate of Marine Resources Management Supervision; Directorate of Supervision of Fishery Resources Management; Directorate of Violation Handling; and Functional Position Groups<sup>87</sup> as attached in Figure 11.

**Pic 3.9 Organizational Structure of DTG of SMFR**



<sup>87</sup> Ibid., Article 538.

The handling of violations and investigations of marine and fishery crimes are under the coordination of the Directorate of Violations Handling. This Directorate has the task of carrying out the formulation and implementation of policies, drafting norms, standards, procedures, and criteria, providing technical guidance and supervision as well as evaluation and reporting of handling violations. The Directorate of Violation Handling has the following functions:<sup>88</sup>

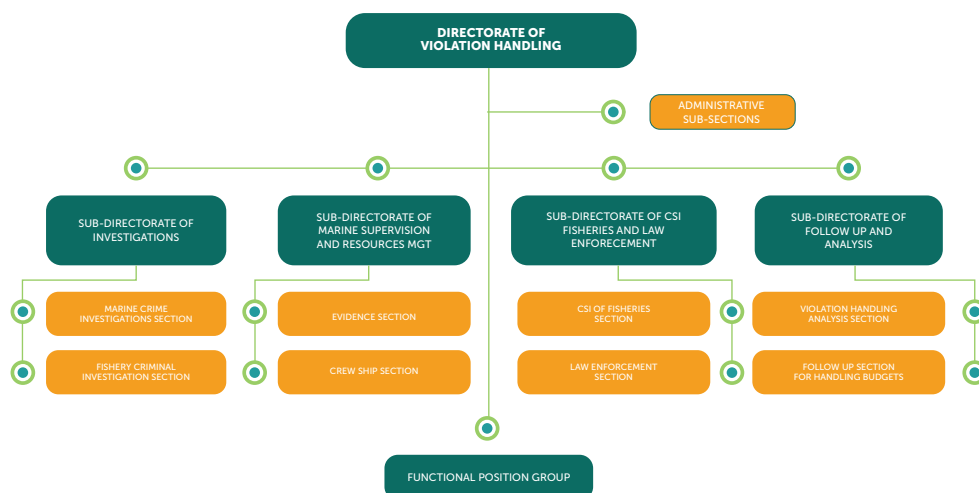
- a. Preparation of policy formulation in the field of investigation, handling of evidence and ship crew, personnel of investigators and law enforcement cooperation, as well as preparation of follow-up actions;
- b. Preparation the implementation of policies of investigation, handling of evidence and ship crew, personnel of investigators and law enforcement cooperation, as well as preparation of follow-up actions;
- c. Preparation of norms; standard; procedure; and criteria in the field of investigation, handling of evidence and ship crew, fisheries investigators personnel and law enforcement

cooperation, as well as preparation of follow-up actions;

- d. Preparation of the implementation of the provision of technical guidance and supervision of investigation; handling of evidence and crew; personnel of investigators and cooperation in law enforcement, as well as preparation of follow-up actions;
- e. Preparation of evaluation and reporting of investigation; handling of evidence and crew; personnel of investigators and law enforcement cooperation; and preparation of follow-up;
- f. Implementation of administrative and household affairs of the directorate.

Article 620 of the MD of MMAF No. 6/2017 Directorate of Violation Handling consists of: Sub-directorate of Investigation; Sub-directorate of Evidence Handling and Crew; Sub-directorate of CSI of Fisheries and Law Enforcement Cooperation; Sub-directorate of Analysis and Follow-up; and Subdivision of Administration.

**Pic 3.10 Organizational Structure of DTG of Violation Handling**



<sup>88</sup> MD of MMAF No. 48/2020 on the Organization and Work Procedure of the Ministry of Marine Affairs and Fisheries, Article 127.

## 2. THE AUTHORITY OF CSI OF FISHERIES

Special provisions in the investigation stage of crimes of fisheries involving 3 (three) authorized agencies. Article 73 paragraph (1) of Law No. 31/2004, the investigation of criminal acts of fisheries in the Indonesian fishery management area is carried out by the CSI of Fisheries; Investigators of the Indonesian National Navy (INA-NAVY) and/or INP Investigators.

Law No. 31/2004, Article 73 underwent changes, by adding two paragraphs, namely paragraph (2) and paragraph (3). Article 73 paragraph (2) states: "In addition to INA-NAVY investigators, the CSI of fisheries has the authority to conduct investigations into crimes of fisheries that occur in the Indonesian EEZ." Meanwhile, Article 73 paragraph (3) states: "Investigations into criminal acts of fisheries that occur at fishing ports are prioritized to be carried out by CSI of fisheries.

CSI of Fisheries has the following authorities:<sup>89</sup>

1. Receive a report or complaint from a person regarding the existence of a fishery crime;
2. Summons and examines suspects and/or witnesses for their statements to be heard;
3. Take up a person as a suspect and/or witness to be heard;
4. Search fishery facilities and infrastructure suspected of being used in or being a place to commit a fishery crime;
5. Terminate, examine, caught, carry and/or detain ships and/or people suspected of committing a fishery crime;

6. Verify the completeness and validity of fishery business documents;
7. Filing a photograph of the suspect and/or evidence of a fishery crime;
8. Request for necessary experts related to fisheries crime;
9. Prepare and sign the minutes of the investigation report;
10. Confiscate the evidence used and/or the proceeds of a criminal act;
11. Terminate the investigation; and
12. Take other actions that according to the law can be accounted for.

Crimes of fisheries are regulated in Chapter XV, Article 84 to Article 104 of Law No. 31/2004. As for the procedural law of investigation; prosecution; as well as trial examinations are carried out according to the CPC unless specifically provided for in the Act.

The implementation of the duties and authorities of the CSI of Fisheries is further regulated in the Director General's Decree (DGD) SMFR No. 372/2011 on Technical Guidelines for Investigation of Fisheries Crimes. According to the Director General's Decree, the investigation begins with a preliminary examination; acceptance; and research on fishery cases submitted by the Fishery Supervisory Vessel. The decree also regulates the investigation process which includes an Assignment Order; Investigation Warrant; Notification of Commencement of Investigation; Summons; Arrest; Detention; Search; Foreclosure; Examination; and In Absentia.

The flows of handling fisheries crimes according to the Director General's Decree of SMFR No. 372/2011 are as follows:

<sup>89</sup> Law No. 45/2009, Article 63A jo. Article 73 paragraph (3) Law No. 31/2004

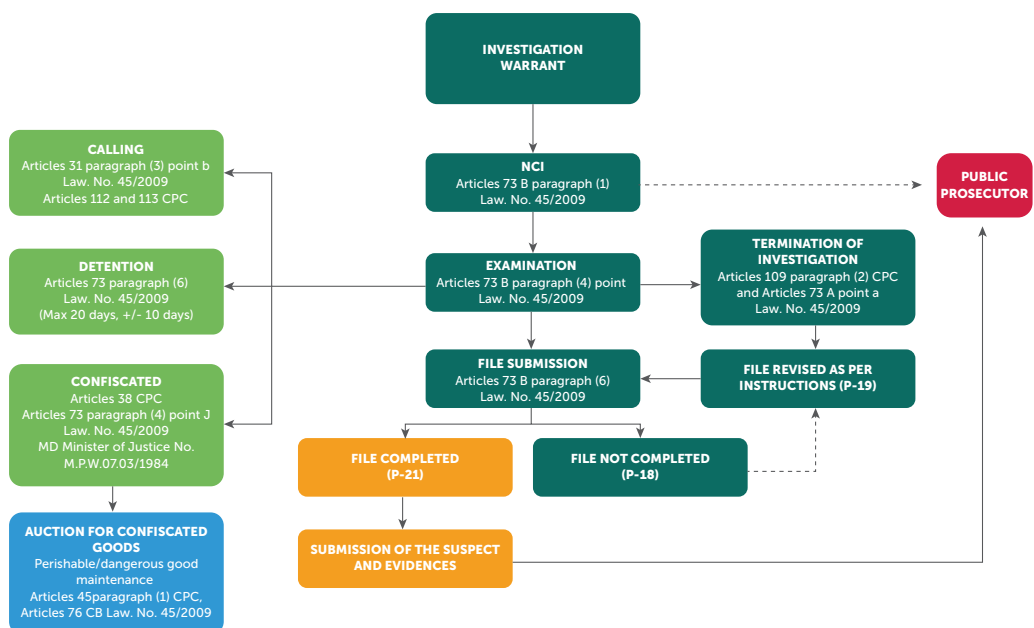
Pic 3.11 Procedure in Fishery's Crimes<sup>90</sup>



The decision also regulates technical investigations that lead to arrest operations and preliminary examination activities from investigators as well as investigation activities carried out by the Police and the Prosecutor's Office.

Meanwhile, the flow of investigations into fisheries crimes is regulated in the Director General's Decree of SMFR No. 372/2011 on Technical Guidelines for Investigation of Fisheries Crimes as attached in the following picture:

Pic 3.12 Procedure in Investigation of Fishery's Crimes



### 3. HR OF CSI OF FISHERIES

MMAF's data for 2020, the number of CSI of fisheries throughout Indonesia as of August 2020 is 525 people, with details: 90 personnel at the central level; 183 personnel in the SMFR's Technical Implementation

Unit; and 252 personnel at the regional level.<sup>91</sup> This amount is clearly not balanced to the total Indonesian waters which reach more than 3,500,000 K2.

**Tabel 3.5. Data of CSI Fishery in 2020**

AGENCY	GENDER		TASK FIELD		TOTAL
	MALE	FEMALE	MFR SUPERVISION TECHNIC	OUTSIDE OF MFR SUPERVISION TECHNIC	
CENTER	83	7	87	3	90
TIU SMFR	179	4	174	9	182
MAF	228	24	235	17	252
<b>TOTAL</b>	<b>490</b>	<b>35</b>	<b>496</b>	<b>29</b>	<b>525</b>

Base on 2016 MMAF's data, the distribution of investigators in the Technical Service Unit (UPT) of the DTG of SMFR and the MMAF as attached in the following table is not

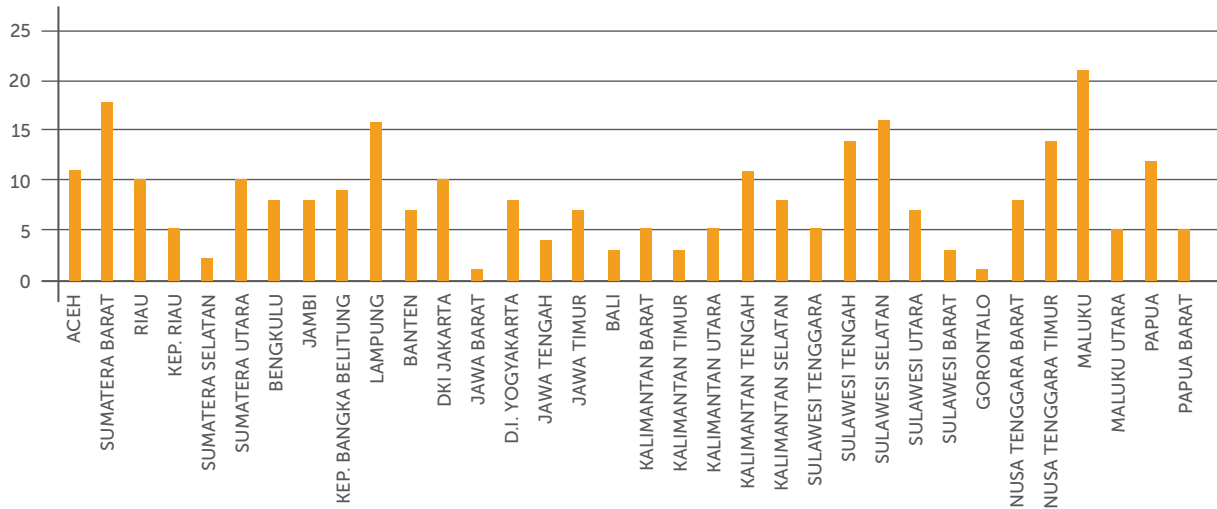
evenly distributed. This amount is clearly not proportional to the total Indonesian waters which reaches more than 3,500,000 K2.

**Tabel 3.6. Deployment of CSI of Fishery in Technical Unit Service in 2016**

No	Unit Kerja	Jumlah
1	SMFR'S BASE JAKARTA	60
2	SMFR'S BASE BITUNG	35
3	SMFR'S STATION PONTIANAK	30
4	SMFR 'S STATION BELAWAN	26
5	SMFR'S STATION TUAL	18
<b>TOTAL</b>		<b>169</b>

<sup>91</sup> Of the 525 personnel, 35 of them were women. Of the 35 women, 24 of them served in the provinces and districts.

**Tabel 3.7. Deployment of CSI Fishery in 2016**



To overcome this, the DTG of SMFR made changes to the work area of the CSI of Fisheries, where the CSI of Fisheries at the regional level was increased to the provincial level, while the CSI at the central and UPT levels were increased to cover all of Indonesia.

#### 4. PROBLEMS IN HANDLING CRIME OF FISHERIES

There are several problems in the process of investigating fisheries crimes by the CSI of fisheries, namely as follows:<sup>92</sup>

1. Coordination and overlapping the authorities with other law enforcement officers;
2. Inadequate infrastructure;
3. Limited investigation budget;

4. The number of PPNS is limited and not evenly distributed;<sup>93</sup>
5. The investigation management is not yet optimal.<sup>94</sup>

The main issue of the conflict is the authority of investigation between agencies. There are 3 (three) investigation agencies that are in an equal position that have the authority to investigate fisheries crimes. Based on the agreement on the division of the investigation area for fisheries crime, CSI of Fisheries; INA-NAVY investigators; and INP Investigators may conduct investigations into fisheries crime in Indonesian waters. If a crime occurs in the EEZ, the investigation is carried out by INA-NAVY investigators and

<sup>92</sup> Processed from various sources, including: Puteri Hikmawati, Legal Issues in the Investigation of Criminal Acts in the Fisheries Sector, Journal of the State of Law, Vol. 3 No. 1, June 2012.

<sup>93</sup> Many CSI of Fisheries have been transferred; do not have the support from supervisors; or received multiple tasks that are not related to investigation activities. The investigation seems to be only an additional task.

<sup>94</sup> Not all investigators understand their authority in terms of investigation properly. Some of them also did not doubt to do the investigation. One of the reasons is because the CSI of Fisheries Investigator's Identity Card is issued by a work unit that is not on authority in the field of investigation.

CSI of Fisheries. The CSI of fisheries gets the widest share of the investigation area including the EEZ, Indonesian water, and fishing ports. Meanwhile, INP investigators get the narrowest part of the investigation area, namely the Indonesian waters.

To minimize conflicts of authority between investigators of fisheries crime, the signing of a Collective Agreement between the MMAF is carried out; INA-NAVY and INP, as well as the establishment of 2 (two) coordination forums, namely: (1) Coordination Forum for

Handling Fisheries Crimes; and (2) Joint Task Force (TF) 115.

**A. CSI OF ENERGY AND MINERAL RESOURCES (EMR)**

**1. ORGANIZATIONAL OVERVIEW**

CSI within the Ministry of Energy and Mineral Resources (MEMR) is authorized by law to carry out investigations in mining and EMR, namely: (1) CSI of Geothermal; (2) CSI of MAC; (3) CSI of OAG; (4) and CSI of Electricity.

**Tabel 3.8. Data of CSI of MEMR**

CSI	LAW
CSI of Oil and Gas	Law No. 22/2021 on Oil and Gas
CSI of Electricity	Law No.30/2009 on Electricity
CSI of Mineral and Coal	Law No.4/2009 jo. Law No. 3/2020
CSI of Geothermal	Law No.21/2014

MEMR does not have a DTG of Law Enforcement that manages law enforcement functions. Thus, the management of each CSI in the MEMR is left to their respective directorates.<sup>95</sup>

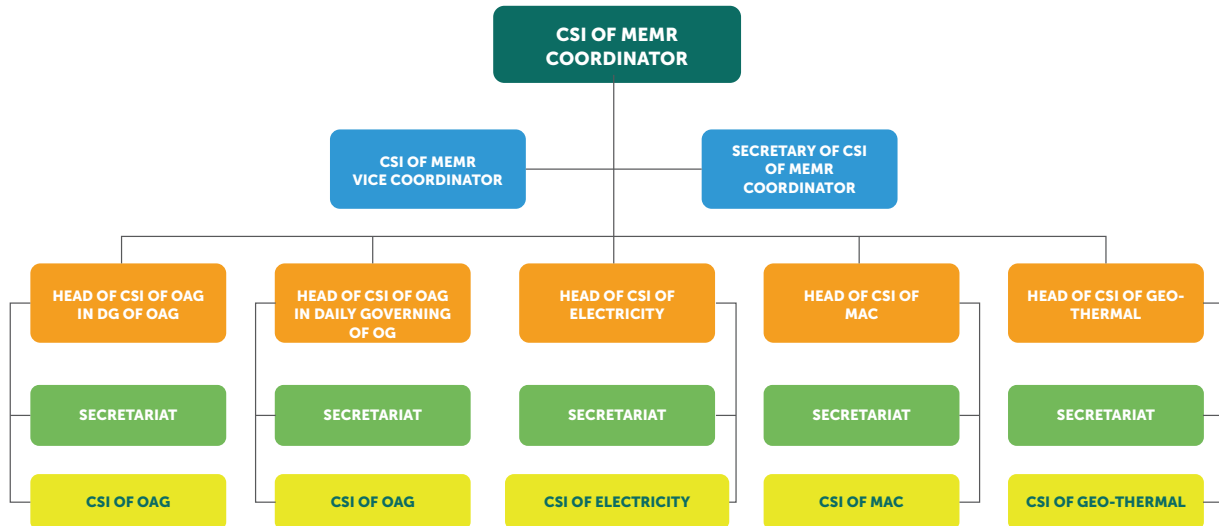
MEMR’s Decree No. 31/2016 on the Organization and Work Procedures of CSI in the MEMR, all CSI in the MEMR are coordinated into an organization led by the

CSI of EMR Coordinator who is assisted by the Deputy Coordinator of the CSI of EMR and the Secretary to the Coordinator of the CSI of EMR. CSI of EMR is responsible to the Minister. CSI of EMR is in charge of supervision; observation; research; inspections and investigations according to their authority, as well as providing administrative and technical support related to the implementation of CSI of EMR duties.

<sup>95</sup> For example: CSI of OAG is under the Directorate General of Oil and Gas; CSI of MAC under the Directorate General of Mineral and Coal.



Pic 3.13. Organizational Structure of CSI of MEMR



Law No. 4/2009 jo. Law No. 3/2020 stipulates investigators from INP officials, CSI whose scope of duties and responsibilities in the mining sector are given special authority as investigators in accordance with the provisions of the legislation. This investigator is led by the Head of CSI of EMR who is appointed by the DG of MAC. The Head of CSI of EMR is one of the Primary High Leadership Officers within the DTG of MAC based on the considerations of the CSI of EMR Coordinator.

The head of CSI of EMR is under and responsible to the Coordinator of CSI of EMR. The head of CSI of EMR has the following duties:<sup>96</sup>

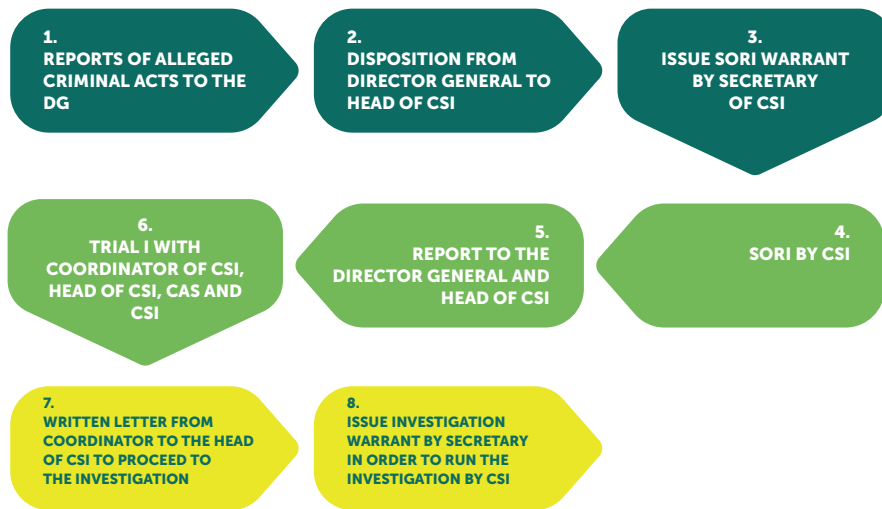
1. Provide detailed and clear instructions related to investigation activities, in order to avoid mistakes in carrying out the duties of CSI of EMR;

2. Resolve problems that arise in the investigation professionally by coordinating with the INP; Ministry of Law and Human Rights; Attorney General's Office; and related ministries/institutions/agencies;
3. Coordinate with internal and external parties to smooth the investigation process;
4. Signing letters related to the investigation;
5. Provide a report on the implementation of tasks every semester or at any time if necessary to the Coordinator of CSI of EMR with a copy to the DG of MAC.

The procedure for assigning CSI of EMR especially CSI of MAC is as attached in the following picture:

96 Minister of Energy and Mineral Resources No. 31/2016 on the Organization and Work Procedures of CSI within the MEMR, Article 19 paragraph (3).

**Pic 3.14 Procedure of Assignment for CSI of MAC<sup>97</sup>**



The CSI of MAC organizational structure is regulated in the Decree of the DG of MAC No. 370/2017 on Organizational Establishment, Appointment of Head and Secretary of CSI in the DTG of MAC. In general, there are notes on the procedures and management of CSI of MAC that can affect its performance.<sup>98</sup>

Each case disposition from the CSI Coordinator or the SORI's<sup>99</sup> report for the CSI Head must go through the DG in charge of his affairs. The DG has the authority to give approval or not to continue handling cases, thus allowing for intervention or conflicts of interest considering that the DG also has

other main tasks related to the regulation and issuance of business licenses in each sector.

The same thing also happened to the position of the Head of CSI which was held by the Director of Technical and Mineral Environment. A conflict of interest may occur between the duties of the Head of CSI and the structural duties of a Director. In fact, the Head of CSI has broad authority, including issuing warrants and approval letters for CSI.<sup>100</sup>

The organizational structure is also a challenge in developing coordination related to case handling. CSI at MEMR is not included in functional or structural positions. They are civil servants who hold concurrent positions and are appointed as CSI and are scattered in separate directorates. This dual position system makes it difficult for CSI to coordinate and investigate NR crimes. Moreover, he does not work full time as an

<sup>97</sup> Decree of the Director-General of Mineral and Coal No. 370/2017 on Organizational Formation, Appointment of Head and Secretary of Civil Servant Investigators in the Directorate General of Mineral and Coal.

<sup>98</sup> For example: decision-making related to cases is not explicitly regulated in this decision. On the other hand, the head of the technical CSI is under the Director-General in charge of his affairs

<sup>99</sup> SORI is a series of actions to seek and find an event that is suspected of being a criminal offense through Supervision, Observation, Research, Inspection, and Investigation activities regulated in-laws and regulations.

<sup>100</sup> The Decree of DG of EMR No. 370/2017.

investigator, so it is often difficult to focus on handling cases because his focus is divided with other structural tasks. As a result, investigations often only reach the stage of gathering materials and information.

This dual position also makes it difficult for CSI to handle a case because their participation in handling a case must be with the permission of the superior and not necessarily the CSI of EMR superior also serves as CSI and does not prioritize investigative work. On the other hand, CSI of EMR itself is spread across several directorates so that coordination between CSI and the Head of CSI is not effective.

Another obstacle is that officials in the CSI organizational structure as the direct supervisor of CSI is not an investigator. So that the signing of Investigation Orders is done not by the official who is supposed to manage law enforcement functions.

DG's Decree of MAC No. 370/2017 on Organizational Establishment, Appointment of Head and Secretary of Civil Servant Investigators in the DTG of MAC. Director of MAC Environmental Engineering concurrently as PCSI's head. However, because the ex officio who serves as the Director of MAC Environmental Engineering is not an investigator, the one who signs the Investigation Order is the CSI Secretary who is held by the Head of the Sub-Directorate of Mineral Production Operations, considering that the person is an investigator.

## **2. THE AUTHORITY OF CSI OF EMR**

CSI of EMR is in charge of carrying out the SORI of crimes in mining business activities. In carrying out these tasks, CSI of EMR is authorized to<sup>101</sup>

1. Examine the information relating to criminal acts in mining business activities;
2. Examine persons or entities suspected of committing crimes in mining business activities;
3. Take up person to be heard and examined as witnesses or suspects in cases of criminal acts of mining business activities;
4. Searching places and/or facilities suspected of being used to commit criminal acts in mining business activities;
5. Examine the facilities and infrastructure of mining business activities and stop the use of equipment suspected of being used to commit criminal acts;
6. Confiscate mining business activity equipment used to commit criminal acts as evidence;
7. Request the assistance of experts needed in connection with the examination of criminal cases in mining business activities; and/or
8. Terminate the investigation of criminal cases in mining business activities;
9. Arrest perpetrators of criminal acts in mining business activities.

<sup>101</sup> MD of MEMR No. 31/2016 Article 18 Number 3

### 3. HR OF CSI OF EMR

The number of CSI of EMR personnel is very limited, which is 107 personnel.<sup>102</sup> Especially for the CIS of MAC, the number of CIS of MAC personnel is very limited, namely 34 personnel in 2017 and 27 personnel in 2020. In 2017 there are 34 personnel and in 2020 there are 27 personnel. All CSI in the MEMR all at the central level. The position of CSI in the EMR is indeed underdeveloped, both in terms of number and capacity. This happens because the EMR investigator has two other duties besides being an investigator.

### Problems Related to the Handling of EMR Crimes

In addition to the problems related to the organizational structure that has been mentioned previously, other obstacles faced by CSI of EMR in the investigation are: (1) the absence of facilities and infrastructure to support operational activities; and (2) the absence of an independent budget for investigations considering that the budget is still attached to the Secretariat of the DG of MAC.

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<sup>102</sup> Discussion with CSI of MAC, MEMR, June 29th, 2020

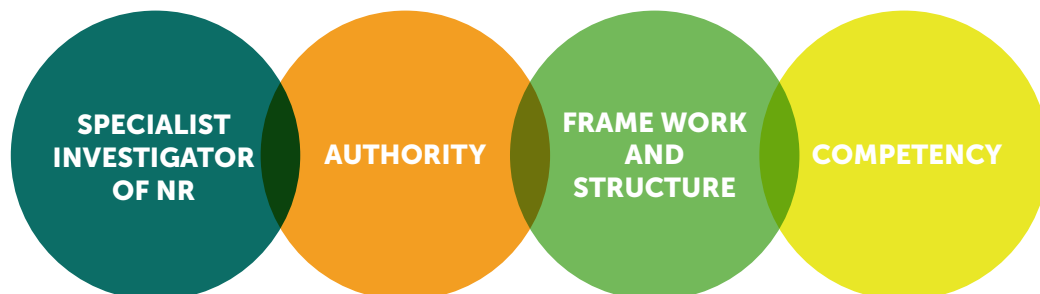
## CHAPTER IV

# CAPACITY OF CSI IN NATURAL RESOURCES SECTOR

Based on the juridical approach related to the authority of CSI in the NR, and considering the implementation of the investigative authority in the NR in accordance with the legislation that surrounds it, as well as the description

of sector institutions as the working umbrella of CSI of NR, it can be formulated that the capacity of CSI of NR is a slice of four things as shown in the figure. following:

**Diagram 4.1 Cross-Cutting Capacity of CSI in NR Sector**



The figure shows that the CSI of NR capacity can be structured as follows:

1. The existence of CSI of NR is as a subsystem of the INP Investigator with the special authority of NR investigations;
2. In carrying out its function as CSI of NR in addition to having general investigatory authority, CSI of NR has law enforcement authority in the NR sector according to the type of crime per sector as regulated in the legislation;
3. To carry out its duties and authorities, structures and framework are needed for the CSI so that the law enforcement process can be carried out optimally;
4. Technical competence is required to be able to play a role as CSI of NR, basic and other competencies as an investigator related to NR in order to be able to carry out their duties; function; and its role in law enforcement in the NR sector.

## A. THE EXISTENCE OF CSI IN THE NR SECTOR

Some of the laws and regulations governing the existence of CSI, including:

1. Article 1 point 1 of the CPC: "Investigators are INP officers or certain civil servants who are given special authority by law to conduct investigations.
2. Article 6 paragraph (1) point b of the CPC: "Investigators are certain civil servants who are given special authority by law."<sup>103</sup>
3. Article 1 number 11 of Law No. 2/2002 concerning the INP: "CSI are certain civil servants who based on laws and regulations are appointed as investigators and have the authority to investigate crimes within the scope of the law."
4. Article 1 point 5 GR No. 43/2012 concerning Procedures for Implementing Coordination, Supervision, and Technical Guidance to Special Police, Civil Servant Investigators and Forms of Self-Security: "CSI is a certain civil servant official who based on the laws and regulations is appointed as an investigator and has the authority to conduct crimes investigations within the scope of the law."
5. Article 1 point 6 GR No. 58/2010 on Amendments to GR No. 27/1983 on the Implementation of the CPC: "CSI are certain civil servants as referred to in the CPC, located at the center and regions who are given special authority by law."

If the law which is the legal basis does not explicitly regulate the authority given, the CSI has the authority to:<sup>104</sup>

1. Receiving a report from someone regarding the existence of a criminal act;
2. Taking the first action at the time at the scene and carry out the inspection;
3. Ordering a suspect to stop and checking the suspect's identification;
4. Taking fingerprints and photographing the suspect;
5. Summoning people to be heard and examined as suspects or witnesses;
6. Requesting necessary experts in connection with the examination of the case;
7. Terminate the investigation after receiving instructions from the investigator due to not enough evidence or if the event is not a criminal act, and subsequently through the investigator notify the suspect or his family and the public prosecutor;
8. Carry out other actions according to the law that can be accounted for.

Within the criminal justice system, the role of the investigator is the main gate to begin the task of searching for material, through the investigation process. The NR sector requires investigators who understand several aspects that are often very technical in nature according to their sector, thus requiring certain expertise or specialization to conduct investigations, which is difficult to expect from INP investigators.

<sup>103</sup> Elucidation of Article 6 paragraph (1) letter b of the CPC: "The position and rank of the investigator as regulated in the GR is harmonized and balanced with the position and rank of the Public Prosecutor and Judge of the General Court."

<sup>104</sup> INP Headquarters, Technical Instructions No. 16/VII/1991 on CSI, Jakarta, 1991

The need for investigators specializing in NR is based on the technical complexity of natural resource crimes concerning the very wide scope of handling with potential linkages between sectors and the limitations of INP investigators in technical understanding of the NR. Therefore, CSI in the NR sector is required to have technical competence in investigations in accordance with their duties and functions as well as technical capabilities in the NR sector. Although CSI of NR has its own duties and authorities, it does not mean that CSI is an independent subsystem in the criminal justice system.

In accordance with its existence, it can be said that CSI is part of the INP Investigative subsystem as one of the criminal justice subsystems. The relationship of CSI of NR with other law enforcers as part of the criminal justice system is regulated in several provisions of the CPC as follows:

1. Working relationship with the INP:

- a. Coordination and supervision between CSI and INP related to investigation process (Article 7 paragraph 2);
- b. Guidance and assistance from INP to CSI related to the investigation process. (Article 107 paragraph 1);
- c. Notification of the termination of the investigation CSI to INP (Article 109 paragraph 3) on legal assistance;
- d. Submission of the investigation results to public prosecutor through INP (Article 110).

2. Working relationship with the Public Prosecutor:

- a. Notification from CSI to public prosecutor related to the starts of investigation process (Article 109 paragraph 1);
  - b. Notification of the termination of the investigation of CSI to public prosecutor [Article 109 paragraph (2)];
  - c. Submission of the investigation results to public prosecutor [Article 110 paragraph (1)];
  - d. Additional investigation based on the instructions of the public prosecutor due to the incomplete issues that submitted in the investigation files.
3. Working relationship with the District Court (DC):
- a. Confiscation by CSI must be with a permit from the Head of the DC (Article 38);
  - b. Inspections by CSI must have special permission from the Head of the DC (Article 47);
  - c. In the examination of minor crimes, CSI directly confronts the defendant, evidence, witnesses, experts, and or interpreters to the DC (Article 205).

Looking at the overall working relationship above, in terms of capacity, CSI of NR is expected to be able to carry out working relationships and coordinate with other law enforcement officers, both to INP investigators as Coordinators and Supervisors of CSI of NR, as well as with the Public Prosecutor in filing cases, as well as DC in coercion the investigation process.



## B. AUTHORITY OF CSI IN THE NR SECTOR

Referring to the CSI investigation work process in the NR sector, there are 3 (three) matters of authority arrangement for carrying out the investigation, namely:

1. Based on Article 7 paragraph (1) of the CPC on the obligations and authorities of investigators adopted in the Regulation of the Chief of Police Decree (CDP) No. 6/2010 on Management of CSI Investigations that CSI as investigators are obliged to:
  - a. Receiving a report on the existence of a criminal act;
  - b. Carrying out security, handling, and processing of the Crime Scene (CSc);
  - c. Notifying the start of the investigation;<sup>105</sup>
  - d. Summons which are carried out in accordance with the criminal procedure law and the laws and regulations which are the legal basis for CSI of NR;
  - e. Making arrests;<sup>106</sup> and detentions;<sup>107</sup>
  - f. Carrying out searches in accordance with the criminal procedure law by requesting for a search permit to the Head of the local DC with a copy to the INP Investigator;

- g. Carrying out seizures in accordance with the criminal procedure law by making a request for a confiscation permit to the Head of the local DC with a copy to the INP Investigator;
- h. Examining;<sup>108</sup>
- i. Providing legal assistance to a person being investigated as a suspect is carried out according to the procedure in the criminal procedure law;
- j. Completing case files as the final activity of the investigation;
- k. Submitting case files;<sup>109</sup>
- l. Carrying out the termination of the investigation;<sup>110</sup>
- m. Carrying out investigation administration as investigation administration to ensure order, uniformity, and smooth investigation;
- n. Delegating investigations;<sup>111</sup>
- o. Controlling the investigation at the planning stage; organizing; and conduct of investigations.

<sup>105</sup> CSI in the NR sector must first notify the Public Prosecutor of the commencement of an investigation through a INP Investigator with a Notice of Commencement of Investigation (NCI), unless the law on the sector provides otherwise.

<sup>106</sup> CSI of NR who do not have the authority to make arrests, ask for help from the INP Investigator in accordance with the legislation.

<sup>107</sup> CSI of NR who do not have the authority to make arrests, ask for help from the National Police Investigator in accordance with the legislation.

<sup>108</sup> In the case of CMI, CSI has the authority to examine witnesses, experts and suspects.

<sup>109</sup> Submission of cases resulting from investigations by CSI of NR is the transfer of responsibility for a case from CSI to the Public Prosecutor which includes the first stage, namely submission of case files; and the second stage, the submission of the suspect and evidence after the case file is declared complete by the Public Prosecutor.

<sup>110</sup> The investigation is terminated in the event that: (i) there is insufficient evidence; (ii) the incident does not constitute a criminal offence; (iii) terminated by law because the suspect dies, the criminal charge has expired, and/or the criminal act has obtained a judge's decision which has permanent legal force.

<sup>111</sup> The delegation of investigations from CSI of NR to officers of the INP Investigator is carried out in the case of: (i) criminal events being handled, covering more than one CSI jurisdiction; (ii) based on security and geographical considerations, CSI cannot conduct investigations; and (iii) the criminal cases handled are a combination of certain crimes and general crimes, except for crimes that are not under the authority of the INP Investigator.

2. The law which is the legal basis for CSI of NR per sector:
  - a. Spatial Planning Sector as regulated in Article 69 to Article 73 of Law No. 26/2007;
  - b. The Environmental Sector as regulated in Article 39 of Law No. 5/1990; Article 77 of Law No. 41/1999; Law 18/2013; and Article 94 of Law No. 32/2009;
  - c. Plantation Sector as regulated in Article 102 Paragraph 2 U No. 39/2014;
  - d. Fisheries Sector as regulated in Article 73 paragraph (3) of Law No. 31/2004;
  - e. Mining Sector as regulated in Article 149 and Article 150 of Law No. 4/2009 jo. Law No. 3/2020.
3. Other laws related to NR crime :
  - a. The authority to investigate money laundering crimes found in criminal acts in the NR sector;
  - b. The authority to investigate criminal acts of corruption found in criminal acts in the NR sector;
  - c. The authority to investigate narcotics (cannabis plants) found in criminal acts in the NR sector.

### **C. ORGANIZATIONAL STRUCTURE OF CSI IN NR SECTOR**

Organizing is one of the most basic functions in management to achieve the goals and objectives set by the institution. Organizing is closely related to the working structure, namely the grouping of activities; personnel, and other resource arrangements; as well as the arrangement of working process

between units or the delegation process from individuals/units to certain individuals/units to run them.

Organizing is described through a work structure to clarify the function of each section and the nature of the relationship between these sections based on the work process, including the arrangement of job positions; communication line; and authority. Likewise with the work structure of CSI of NR which should have a clear organization so that the functions and process are more effective and optimal in dealing with NR cases.

From the 5 (five) NR sectors mentioned in the previous section, it can be seen that the working structure and organization of CSI of EAF can be used as a reference. The organizational management of the DTG of EAFLE describes a workflow based on the scope and authority of EAFLE so that a work structure is available that is able to support the performance of CSI of EAF.

Also found in CSI of Fisheries. The division of sub-directorates allows for management of the investigation process and separates operational investigations from the management of evidence, including the analysis process and cooperation between law enforcement and related agencies. There is potential for overlapping lines of coordination and investigative authority with INA-NAVY and INP Investigators, which has been anticipated by mutual agreement.

Improving the work structure for CSI of SP; CSI of Plantation; and CSI of EMR become important for the implementation of optimal law enforcement as a whole. Moreover, spatial problems/issues; plantation; and mining are so numerous and interrelated.

#### D. COMPETENCY OF CSI IN NR SECTOR

Technical competence for CSI of NR is an absolute requirement for the realization of law enforcement in the broad and complex natural resource sector. The types of NR crimes also vary in the typology of criminal acts and punishments. SP crimes will be different from mining crimes, and also very different from fisheries crimes.

This document did not find a specific competency model for CSI in the NR Sector. So the case with the Dictionary of Competency<sup>112</sup> and setting the level of competence.<sup>113</sup> In this case, the ministry/institution that oversees CSI of NR should create a competency model, competency dictionary, and competency standards (including a competency level scheme for CSI of NR) in order to make the right decisions for the development of CSI of NR.

In general, the competence of CSI refers to GR No. 11/2017 on Management of Civil Servants (CS). However, the GR does not explain the technical competence of CSI positions but only mentions that in general the competencies of civil servants include:

1. Technical competence, namely knowledge; skills; and observable attitudes/behaviors; be measured; and developed specifically related to the technical field of the position.
2. Managerial competence, namely knowledge; Skills; and observable

attitudes/behaviors; be measured; developed to lead and/or manage organizational units.

3. Socio-cultural competence, namely knowledge; skills; and observable attitudes/behaviors; be measured; and developed related to the experience of interacting with a pluralistic society in terms of religion; tribe; culture; behavior; national insight; ethics; values; moral; emotions; and principles that must be met by each position holder in order to obtain work results in accordance with the role; function; and positions.

In Article 7 CPD No. 26/2011 on the Implementation of Education and Training for CSI, it is stated that the Competency Standards of Graduates of Training and Education for the formation of CSI include:

1. Have a mental attitude and personality that is in accordance with the CSI code of ethics as a law enforcement officer;
2. Understand and be able to apply the procedures and processes of investigation of criminal acts;
3. Understand and be able to apply the techniques and tactics of investigation;
4. Understand and be able to apply the laws and regulations that form the legal basis in the implementation of the criminal act/violation investigation process;
5. Understand and be able to carry out the relationship of CSI work procedures with those carrying out CSI Coordinator and Supervisory functions, as well as internal and external coordination;
6. Understand the investigation management by CSI;

<sup>112</sup> MD of CSBR No. 38/2017 on Competency Standards for Positions of State Civil Apparatus, Appendix for Preparation of a Technical Competency Dictionary: a technical competency dictionary is prepared by the ministry/institution that carries out certain Government affairs under the authority of the ministry/institution.

<sup>113</sup> Competency level is an individual's ability to fulfill a certain role or function.

7. Have physical endurance/aptitude that supports the investigation of criminal acts; and
8. Able to show courage and confidence in carrying out duties as CSI.

The standards of competency for CSI Management Training graduates include:<sup>114</sup>

1. Have a mental attitude and personality that is in accordance with the CSI code of ethics as a law enforcement officer;
2. Have the ability to plan investigations into the cases being handled;
3. Able to organize investigation resources;
4. Understand knowledge of technical and tactics of investigations;
5. Have managerial ability in controlling the investigation process by CSI members in their environment;
6. Understand knowledge of laws and regulations that apply in the environment of the agency;
7. Understand the knowledge that supports the implementation of investigative tasks; and
8. Have the ability to coordinate with related agencies.

Considering that CSI of NR is a sub-system of INP Investigators, the technical competence of CSI of NR can be said refers to the standard of technical competence of INP investigators. In general, technical competency standards for investigators and assistant investigators consist of:<sup>115</sup>

1. Technical investigation
2. Investigation technique:
  - a. Investigation planning;
  - b. Coercive activities;
  - c. Examination of witnesses, experts, and suspects;
  - d. Settlement of cases;
  - e. Submission of suspects and evidence;
  - f. Termination of criminal investigations.

Civil Services And Bureaucracy Reform (CSBR) Regulation No. 38/2017 states that there 5 (five) levels to measure the level of competence, containing the type or name of the competence along with descriptions and behavioral indicators, which are as follows:

**Level 1: Understanding/being developed with the following criteria:**

- a. Indicates the ability to works with clear processes and rules, requiring direct supervision/assistance from others;
- b. Indicates mastery of knowledge and skills that do not require special training;
- c. Indicates having a basic understanding of theoretical and practical principles, but still requires direct supervision and/or assistance from other parties; and
- d. Indicates the ability to take responsibility for their own work.

**Level 2: Basic with the following criteria:**

- a. Indicates the ability to perform technical activities/tasks with tools; procedure; and standard work methods;
- b. Indicates an understanding of theoretical

<sup>114</sup> CPD No. 26/ 2011, Article 8.

<sup>115</sup> EAT of INP, Certification Scheme of Investigator's Assistant, Jakarta: 2016.

and practical principles in carrying out tasks without direct assistance and/or supervision;

- c. Indicates mastery of knowledge and skills that require basic level training; and
- d. Indicates the ability to take responsibility for their own work and can be assigned to be responsible for helping others with simple technical tasks.

**Level 3: Intermediate with the following criteria:**

- a. Indicates the ability to perform more specific technical tasks by analyzing limited information and the choice of methods to solve problems that arise in the task;
- b. Indicates an understanding of the principles of theory and practice without direct assistance and/or supervision, with an appropriate pace of faster completion of work;
- c. Indicates confidence and ability and demonstrates fluency and dexterity in the practice of carrying out technical work;
- d. Indicates mastery of knowledge and skills that require intermediate-level training; and
- e. Indicates the ability to be responsible for their own work and can be given responsibility for group/teamwork.

**4: Advanced with the following criteria:**

- a. Indicates the ability to develop science/ technology; concepts/theories and practices until they are recognized at the agency level;
- b. Indicates the ability to produce

improvements; technical updates; and work methods;

- c. Indicates the ability to adapt to various situations; increased complexity; and risks and the ability to solve technical problems that arise in the work;
- d. Indicates the ability to develop and apply a mono-disciplinary/one scientific field approach and the ability to conduct competency tests and have teaching skills as well as become a reference or mentor at the agency level; and
- e. Indicates mastery of knowledge and skills that require further training.

**Level 5: Expert with the following criteria:**

- a. Indicates the ability to develop science/ technology, concepts/theories, and practices to obtain national or international recognition;
- b. Indicates the ability to produce creative works; original; and tested;
- c. Demonstrate initiative and adaptability to special problem situations and can lead others in carrying out technical activities;
- d. Indicates the ability to be able to coordinate; lead; and assessing others, the ability to perform competency tests; and the ability to become a mentor/mentor;
- e. Indicates the ability to develop and apply an interdisciplinary approach;
- f. Indicates mastery of knowledge and skills that become national or international level referrals or mentors.

The competency model as regulated by the Management of the Civil Service (CS);

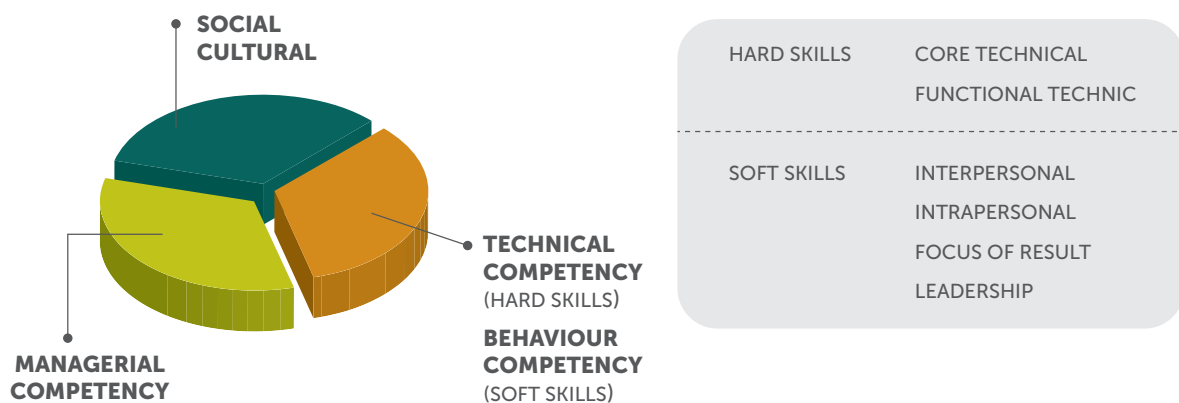
Competency Standards for Graduates of the Formation of CSI; and Competency Standards for INP Investigators can be used as a reference in defining the technical competence of CSI of NR. In addition, from the business understanding of the investigation process carried out by CSI of NR, it can be concluded that there are similarities in the technical competence of investigations in general and there are some differences in technical law enforcement in each sector due to several factors, namely differences in the types of crimes; characteristics of the NR sector; as well as the scope and span of control per area of NR.

In theory, the use of the competency model is highly dependent on the conditions of the organization. However, in principle, the competency model includes 2 (two) contexts, namely: (1) an individual's ability to be able to work according to his job; and (2) individual

abilities required to achieve success at work. The first point is formed with knowledge and skills in doing the job (hard skills).<sup>116</sup> While the second point is more on the personal attributes that make individuals successful in doing their jobs (soft skills).<sup>117</sup>

Referring to the foregoing and considering that CSI of NR is a sub-system of INP Investigators, in order to carry out its duties and functions as investigators of NR, it can be mapped that CSI of NR at least requires technical competence which involves: (1) hard skills (core technical competence); and (2) soft skills (behavioral competence which includes interpersonal competence; intrapersonal competence; and leadership competence). The categorization of technical competence is solely to facilitate the management of CSI of NR from the recruitment process; placement; and career management.

**Diagram 4.2 Scheme of Competence of CSI in NR Sector**



<sup>116</sup> Hard skills are different from the abilities that must be installed to be able to carry out their work and special functional skills that need to be possessed to carry out their work (functional competency).

<sup>117</sup> Ganesh Shermon, *Competency Based HRM: A Strategic Resource for Competency Mapping, Assesment & Development Centres*. New York: Tata McGraw-Hill Publishing Company Limited, 2006.

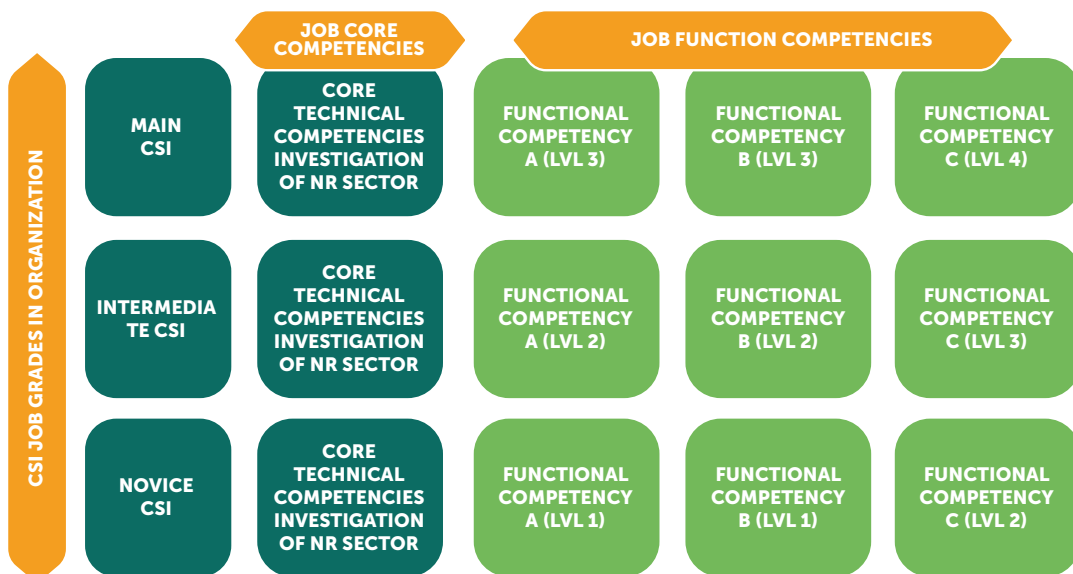
Core technical competencies are technical competencies that must be possessed by every CSI of NR so that the personnel is able to do investigative tasks with their objectives and functions. The core technical competencies for CSI of NR are divided into 2 (two) categories, namely: (i) core technical competencies for investigation and (ii) core technical competencies for the NR sector. While functional competence is the technical competence that CSI of NR needs to have to support core technical competencies so that the personnel is effective in carrying out work as investigators according to their NR sector.

Behavioral competence is a combination of characteristics, traits, abilities, and motivations to produce effective performance. Behavioral competence or soft skills can be applied to all jobs in an organization if required. Behavioral competencies also apply specifically to workgroups; positions; or a certain career level. In the case of CSI

of NR, behavioral competence describes the characteristics needed by CSI of NR to be successful as an investigator. Soft skills refer to the requirements for success in carrying out investigations.

Base on CSBR regulation No. 38/2017, the level of competence indicates the condition of the individual's ability to gradation of knowledge/skills/characteristics; responsible; and their impact on the organization. The change from one level to a higher level requires the individual concerned to mobilize and improve efforts to grow higher skills or even innovate. The higher the level of competence, the more it shows the appearance of "extraordinary" performance and the rarer (few) people can achieve it. The placement of the mastery level follows the requirements of the CSI of NR position (Young, Intermediate, or Main). In general, the mastery of PPNS SDA competencies is illustrated as follows:

Diagram 4.3 Competency of CSI in Natural Resources Sector





## E. CORE TECHNICAL COMPETENCIES OF INVESTIGATION<sup>118</sup>

The components of the core investigative technical competencies consist of:

1. Legal techniques include understanding the overall criminal law and describing crimes in general; identify legal and technical evidence; explain the stages of handling criminal cases from the stage of the investigation, prosecution to execution.
2. The technical investigation includes understanding of searching and finding an event that is suspected of a criminal act in order to determine whether an investigation can be carried out according to the method regulated by law.
  - a. Planning of investigations;
  - b. Reviewing source of information;
  - c. Mapping regulation that applied to the crimes;
  - d. Research activities;
  - e. Analysis the results of data gathering in the investigation process;
  - f. Techniques of case exposing.

### 3. Technical Investigation

Is a technical competency regarding the search, collection, and examination of goods/evidence which makes clear about the crime that occurred and in order to find the suspect.

- a. Investigation planning;

- b. Investigation activities (open and closed methods);
- c. Search, confiscation, and security techniques for evidence and crime scene;
- d. Electronic evidence handling techniques;
- e. Surveillance/undercover/intelligence techniques;
- f. Techniques for arresting suspects;
- g. Techniques for examining witnesses, experts, and suspects;
- h. Techniques for preparing case files;
- i. Analysis of data/information on the results of the investigation;
- j. Case management techniques;
- k. Techniques for establishing cooperation networks in the context of investigations;
- l. Technical exposure of cases and filing with the Public Prosecutor;
- m. Evaluation of investigative activities.

## F. CORE TECHNICAL COMPETENCIES OF THE NR SECTOR<sup>119</sup>

In principle, the core technical competencies of the NR sector are technical competencies that every CSI of NR must possess to carry out the investigation process. The core technical competencies of the natural resources sector proposed in this Mapping are as follows:

<sup>118</sup> The level of mastery of the components of the Core Investigation Technical Competence can be seen in the appendix.

<sup>119</sup> The level of mastery of the components of the Core Technical Competence of the Natural Resources Sector can be seen in the appendix.

1. Legislation in the NR sector

Understand the regulations of the NR sector, and identify the form of policies and permits in the management of NR.

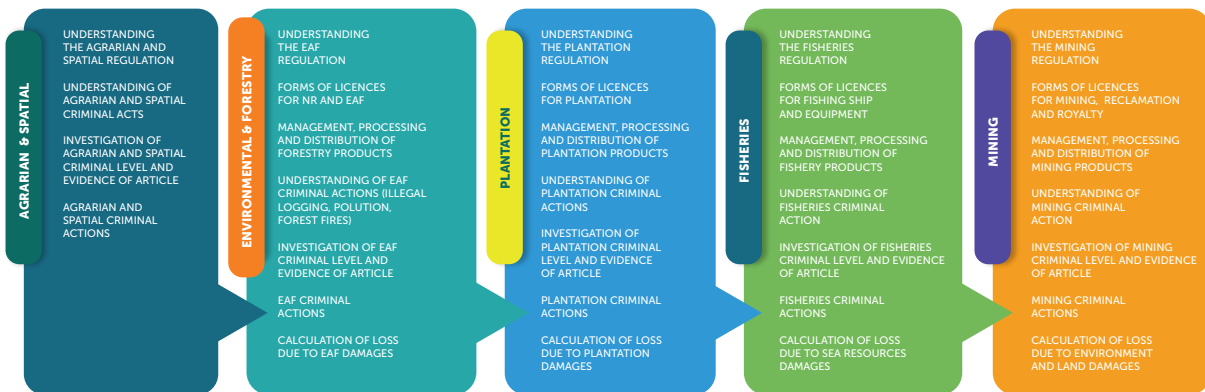
2. Law enforcement against NR crime

- a. Understanding the types of NR crimes; the elements of the article that are violated; coercive measures that need to be taken; legal subjects that can be held accountable; sanctions that may be imposed;

- b. Describe a series of investigations into criminal acts in the NR sector, including evidence that needs to be secured at an early stage.

In principle, the components of the core technical competencies of the natural resources sector are adjusted to the context and perspective of the natural resources sector which is diagrammatically described as follows:

Diagram 4.4 Core Technical Competency of CSI in Natural Resource Sector



3. MAPPING OF FUNCTIONAL TECHNICAL COMPETENCIES OF THE NR SECTOR

To support the CSI of NR in carrying out investigative duties in the NR sector, their abilities and skills must be supported by related knowledge. Such knowledge and skills may come from best practices at the national, regional, and international levels.

In principle, functional technical competence is a form of development of the core

technical competence of the NR sector with characteristics; perspective; and different needs. However, it is still possible to have generic functional technical competencies across NR fields.

4. BEHAVIORAL COMPETENCY MAPPING

The behavioral competence of CSI of NR is a set of substantial behaviors that align the target of investigative work performance with measurable behaviors that can assist in achieving successful performance.

Behavioral competence includes at least 4 (four) things, namely: (1) interpersonal or skills related to a person's ability to interact with other people; (2) intrapersonal or related to a person's character in developing his personality. Individuals who are strong in intrapersonal skills are able to be aware of their own emotional, feelings, motivations and feel positive about what they are doing in their lives; (3) focus on results, which are related to skills and motivation to achieve optimal performance results; and (4) leadership as knowledge and skills to take on the role of controller/leader.

By referring to the investigation work process, the proposed behavioral competencies that must be possessed by CSI of NR at least include:<sup>120</sup>

- a. Intrapersonal Skills
  - Self-Confident (SCF)
  - Persistence (PER)
  - Communication (COM)
  - Self-Control (SCT)
- b. Focus of Result
  - Achievement (ACH)
  - Analytic Thinking (AT)
  - Information Seeking (INF)
- c. Leadership Skills
  - Team Leader (TL)
  - Teamwork (TW)
  - Planning & Organization (PO)

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<sup>120</sup> The definition and level of mastery through behavioral criteria are described in the appendix.

# CHAPTER V

## CAPACITY MAPPING AND TRAINING NEEDS FOR CSI IN NATURAL RESOURCES SECTOR

### A. MAPPING HANDLING OF CRIMINAL ACTIONS

The following is a mapping of the handling of NR crime cases based on the sector or ministry that handles them.

#### 1. SP CRIMES

The Ministry of ASP/GLO recorded 6,621 cases of violations of spatial use that occurred in the 2015-2018<sup>121</sup> period. In 2019, there were 61 cases detected by the Ministry which were followed up with an investigation by the INP and have been submitted to the Prosecutor's Office.<sup>122</sup> However, there is no recapitulation data of SP crimes for the last five years from 2015 to 2019 either handled by the CSI is SP and by the INP.

The number of active CSI of SP which is not balanced to the area being supervised makes

the number of criminal SP cases delegated to the Prosecutor's Office and Courts are low. It is also influenced by the number of material offenses regulated in Law No. 26/2007, thus making the law enforcement approach in SP solved by the administrative sanctions.

#### 2. ENVIRONMENTAL AND FORESTRY CRIMES

There are 6 (six) typologies of environmental and forestry criminal cases, namely illegal logging; forest encroachment; illegal circulation of wild plants and animals; environmental pollution; forest and land fires; and land damage.

From 2015 to August 2020, the number of EAF crimes that have been declared complete and ready for prosecution is 892 cases. Illegal logging and forest encroachment are the most crimes handled by the CSI of EAF. In addition, CSI of EAF has also carried out an investigation into forestry crimes that involving corporations.

<sup>121</sup> Kompas, 6.621 SP Violation cases in three years, <https://properti.kompas.com/read/2019/08/27/203621421/6621-kasus-pelanggaran-tata-ruang-terjadi-dalam-tiga-tahun>, downloaded on November 22nd, 2020.

<sup>122</sup> Ministry of ASP/GLO, Annual Report of 2019, Jakarta: Ministry of ASP/GLO, 2020.

**Table 5.1 Cases Ready for Prosecution**

NO	CASE TYPOLOGI	2015	2016	2017	2018	2019
1	Illegal Logging	43	66	66	94	104
2	Encroachment	28	29	8	26	65
3	Illegal Distribution of	43	51	55	41	11
4	Environmental Pollution	4	3	4	2	6
5	Forest and Land Fires	0	1	1	1	2
6	Environmental Damage	0	0	0	2	2
	<b>TOTAL</b>	<b>118</b>	<b>150</b>	<b>134</b>	<b>166</b>	<b>190</b>

However, the percentage of cases handled is small when compared to the number of EAF criminal complaints submitted during 2015 - August 2020 (reaching 4,942 reports). This is due to the limited number of investigators that are not proportional to the problems and the area being protected.<sup>123</sup>

### 3. PLANTATION CRIMES

Data from the Ministry of Agriculture, until now there has not been a single plantation criminal case handled by CSI of Plantation that has P-21 status or has been transferred to the court. This is due to the work structure of CSI of Plantation as mentioned on the previous chapter.

### 4. FISHERIES CRIMES

The number of cases of fisheries crime from 2015 to August 2020 handled by the CSI of Fisheries amounted to 1,058 cases. This amount is not balanced with the current number investigators. Of these, 877 cases have been transferred to the legal process. 723 cases of which have legally binding. 154 other cases are still in the investigation process; ready for prosecution; still in the trial process; still in the appeal or cassation process; and terminated in the investigation phase.

<sup>123</sup> EAFLE, Annual Report 2019, Jakarta: EAFLE, 2020.

Table 5.2 Data of Fishery's Criminal Case

YEAR	CASES	PRE-EXAMINATION	ADMINISTRATIVE SANCTION	OTHER ACTIONS	LAW PROCESS
2020	82	1	14	1	66
2019	151	1	32	4	114
2018	193	-	31	1	161
2017	197	-	27	7	163
2016	237	1	12	4	220
2015	198	-	41	4	153
TOTAL	1058	3	157	21	877

Table 5.3 Data of Fishery's Criminal Proceedings Case

YEAR	CASES	LAW PROCESS								
		WARRANT FOR TERMINATION OF INVESTIGATION	INVESTIGATION	P-21	STAGE TWO	COURT PROCESS	LEGAL EFFORTS			LEGALLY BINDING
							APPEAL	CASSATION	JUDICIAL REVIEW	
2020	66	-	7	7	2	32	1	-	-	17
2019	114	3	2	1	1	-	8	2	-	97
2018	161	1	2	1	-	-	7	6	-	144
2017	163	2	1	1	-	-	11	7	-	141
2016	220	8	-	3	-	-	9	17	-	183
2015	153	-	2	-	-	-	2	8	-	141
<b>JUMLAH</b>	<b>877</b>	<b>14</b>	<b>14</b>	<b>13</b>	<b>3</b>	<b>32</b>	<b>38</b>	<b>40</b>	<b>0</b>	<b>723</b>

The comparison between cases handled and the number CSI of Fisheries ranges from 30% - 40%.

none of the files has been declared complete and ready for prosecution.<sup>124</sup> The lack of legal

## 5. EMR CRIMES

Data from the MEMR in 2019, the EMR criminal case handled by the CSI of EMR is still in the investigation or CIM stage and

<sup>124</sup> Based on the information from the Director of Engineering and Environment for Mineral and Coal in 2018, CSI of EMR conducted an investigation into 7 cases of illegal mining in Palu; Kutai Kartanegara Regency; and Muara Enjim Regency. Meanwhile in 2019, CSI investigators together with the CSI Coordination and Supervision Bureau (CAS) of the INP investigated 3 illegal mining cases in Bintan; Kutai Kartanegara Regency; and Hulu Sungai Tengah District (see: Policy Coherence with the EMR in Small-Scale Gold Mining, Presentation by the Director of Engineering and Environment for Mineral and Coal, 22 July 2019).

processes for EMR criminal acts cannot be separated from the limited number of CSI of MAC which only numbered 27 personnel in 2020. This condition is also aggravated by the non-functioning investigators' management and aspects of criminal law enforcement which are not a priority.

## **B. KEY FACTORS FOR HANDLING CRIMINAL ACTIONS IN THE NR SECTOR**

The measure of success in handling NR crime can be seen from 2 (two) indicators:

1. The quantity and quality of criminal acts handling, especially at the stage of the investigation. The quantity is related to the number of cases whose files are declared complete by the Prosecutor's Office so that they are ready for prosecution. While the quality aspect is the number of cases that are finally transferred to the court; the perpetrator is found guilty; and the successful rescue of state finances.
2. Appreciation from external parties related to law enforcement efforts undertaken. Although subjective and debatable, awards from external parties can be assessed as public appreciation for the success of law enforcement performance, especially in the NR sector.

From several ministries that handle law enforcement efforts in the NR sector, there are 2 (two) ministries that are considered to meet these two indicators, namely MOEF and MMAF.

During the 2015-2019 period, the DTG of EAFLE at MOEF has successfully carried out more than 1,180 forest security operations; brought 760 cases to court; and enforce 1,094 administrative sanctions on companies

violating environmental and forestry laws. DTG of EAFLE has succeeded in winning a civil lawsuit worth USD 1.3 billion, saving millions of hectares of tropical forests and protected plants and animals from illegal logging; forest encroachment; poaching, and illegal wildlife trade, as well as forest and land fires.<sup>125</sup>

In 2019 DTG of EAFLE received an international award, namely the Asian Environmental Enforcement Awards. The Asian Environmental Enforcement Awards aims to publicize the outstanding achievements of organizations and individuals in Asia in combating EAF crimes.<sup>126</sup>

Meanwhile in the fisheries, in 2018 there were 134 cases that were successfully handled directly by Task Force 115. These cases consisted of 76 cases of IUUF; 48 multi-door cases (law enforcement using various laws and regulations); and 10 cases of advocacy for fishermen. Of the total cases, 73 cases have legally binding; 9 cases are still under trial; and the rest are still under investigation and prosecution process. The total potential for state revenue from fines is Rp. 24,951 Billion and Rp. 28.933 billion from the auction proceeds of the stolen fish evidence.

Minister of Marine Affairs and Fisheries Mrs. Susi Pudjiastuti also received an international award in 2017, namely Excellence in National Stewardship. According to Peter Benchley

<sup>125</sup> JPNN, EAFLE wins the Asia Environmental Enforcement Awards, <https://www.jpnn.com/news/gakkum-klhk-raih-penghargaan-asia-environmental-enforcement-awards-2019?page=2>, downloaded on November 22nd, 2020.

<sup>126</sup> Medcom, The Best Law Enforcement in Asia Pacific, <https://www.medcom.id/nasional/politik/aNrQyAaK-penegakan-hukum-klhk-terbaik-se-asia-pasifik>, downloaded on November, 22nd 2020.



Ocean Awards, Mrs. Susi is considered active in protecting the economic interests and marine environment of the Indonesian nation by eradicating the operations of foreign vessels that carry out massive theft in Indonesian seas. Mrs. Susi's courage to explode and drown more than 200 illegal fishing ships and has also succeeded in preventing international organized crime attempts that have been operating in Indonesian seas.<sup>127</sup>

Observing the performance of the two ministries, several key success factors and supporting factors for success in handling NR crime cases can be mapped, including:

### 1. ORGANIZATIONAL STRUCTURE THAT SUPPORTS THE EXISTENCE OF CSI

The existence of a Directorate or at least an echelon II level work unit in the Ministry that specifically handles law enforcement and oversees the CSI. Law enforcement in the MMAF, for example, is specifically handled by the Directorate of Violations, while in the MOEF it is handled by the DTG of EAFLE. The existence of a work unit or a special directorate of law enforcement has an influence on the clarity of the work process and the availability of budget, personnel, facilities, and infrastructure.

### 2. GOVERNMENT COMMITMENT IN LAW ENFORCEMENT IN THE NR SECTOR

Prevention and eradication of illegal logging and illegal fishing has been President

Jokowi's work program for two terms. These two issues are included in the Government's work program which is compiled in the National Medium-Term Development Plan (NMPD) which is the vision, mission, and agenda of the elected President and Vice President. The Nawa Cita of President and Vice President programs is contained in the 2015-2019 NMPD through PD No. 2/2015. While the 2020-2024 NMPD is stipulated in PD No. 18/2020.

The Government's commitment is also realized through PD No. 115/2015 on Task Force 115. Task Force 115 is under the command of the MMAF Task Force and reports directly to the President. The task force is to develop and carry out law enforcement operations in an effort to eradicate illegal fishing by optimizing the utilization of personnel and operating equipment belonging to the MMAF; INA-NAVY; INP; Attorney; Marine Security Agency; Special Task Force for Oil and Gas, PT Pertamina and related institutions.

To strengthen law enforcement against illegal logging, MEAF, Mrs. Siti Nurbaya in 2017 was built an Intelligence Center under the coordination of the DTG of EAFLE. The Intelligence Center utilizes data and information obtained from various internal systems of the MEAF, relevant ministries/institutions (such as DTG of Legal Administration of the Ministry of Law and Human Rights; DTG of Population and Civil Registry of the Ministry of Internal Affairs; the National Aeronautics and Space Agency; and various other related sources.<sup>128</sup> The

<sup>127</sup> Republika, MMAF, Mrs. Susi Pudjiastuti Wins International Award, <https://republika.co.id/berita/ekonomi/makro/17/02/14/olc133383-menteri-susi-raih-penghargaan-internasional>, downloaded on November 22nd, 2020.

<sup>128</sup> With the integrated data management through the Intelligence Center, the DTG of EAFLE was able to handle significant forest and land fire hotspots, especially in the company's

commitment and support from the President and the Minister have a significant influence on law enforcement efforts in the NR sector.

### **3. HAVING A LAW ENFORCEMENT PROGRAM**

MMAF and MEAF annually make plans and work programs related to law enforcement efforts, including efforts to establish and increase the capacity of CSI.

### **4. SYNERGY AND COORDINATION WITH OTHER LAW ENFORCEMENT AGENCIES**

One of the important keys to enforce NR law is synergy and coordination with other law enforcement agencies. The effort to eradicate illegal fishing and the success of the MMAF Task Force 115 has membership from across institutions. The operation to arrest the perpetrators of illegal logging carried out by the MEAF also involves the INP; Indonesian Military Personnel; and the Forestry Service, as well as in collaboration with the Corruption Eradication Commission in tracking assets of corporations as perpetrators of corruption in the NR sector.

The cross-agency coordination forum in handling sectoral crimes is carried out routinely by these two ministries. For fisheries crimes, the coordination forum of coordination was mandated by Article 73 paragraph (5) of Law No. 31/2004 jo. Law No. 45/2009. At the central level, members of this Coordination Forum include MMAF;

INA-NAVY; INP; Attorney General's Office; Supreme Court; Ministry of Finance; Ministry of Transportation; Ministry of Law and Human Rights; and the Ministry of Manpower. This Coordination Forum has been established in 33 provinces in Indonesia.

## **C. CHALLENGES AND OPPORTUNITIES OF LAW ENFORCEMENT BY CSI IN THE NR SECTOR**

To analyze the capacity of the CSI of NR, one method that can be used is through a SWOT analysis of the condition of CSI. This approach is useful for evaluating strengths and weaknesses as well as opportunities and threats in ongoing conditions and those that are still in the planning process.

The data used in the SWOT analysis is based on the juridical description of the legislation governing the authority of CSI in the NR sector; institutional framework; the existence of CSI in the NR sector; and external institutional factors that affect the implementation of the duties and functions of CSI in the NR sector as described in previous chapters.

The CSI of NR SWOT analysis that has been carried out can be summarized as follows:

### **1. STRENGTH**

- a. Legitimacy of CSI
  - The existence of CSI is legally recognized and regulated in a number of laws such as the CPC and the Law on Police.
  - Article 1 point 1 of the CPC: "Investigators are INP or certain civil servants who are given special authority by law to conduct investigations."

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concession area on August 22, 2019 after law enforcement and other preventive actions were carried out. The handling of the criminal case of forest and land fires that ensnared the PT Kumai Sentosa corporation in Central Kalimantan covering an area of 2,600 hectares started from the results of data analysis by the EAFLE Intelligence Center team.

- Article 6 paragraph (1) point b of the CPC: "Investigators are certain civil servants who are given special authority by law." The explanation: "the positions and ranks of investigators regulated in the GR are harmonized and balanced with the positions and ranks of public prosecutors and judges of general courts."
- Article 1 number 11 of Law No. 2/2002 on the INP also explains the existence of CSI: "CSI are certain civil servants who based on legislation are appointed as investigators and have the authority to investigate criminal acts within the scope of the law."

b. Authority based on laws and regulations

The authority of CSI in the NR sector is clearly regulated in the relevant law. The authority of the CSI of SP is regulated in Law No. 26/2007. The authority of CSI of EAF has regulated in 4 (four) laws, namely: such as Law No. 5/1990; Law No. 41/1999; Law No. 32/2009; and Law No. 18/2013. The authority of the CSI of Plantation is regulated by Law No. 39/2014. PPNS of MAF is regulated in Law No. 31/2004 jo. Law No. 45/2009. While the CSI of MAC authority is regulated in Law No. 4/2009 jo. Law No. 3/2020.

## 2. WEAKNESSES

There are a number of weaknesses that arise related to the current condition of CSI in the NR sector, namely:

- a. The Coordination and Supervision (CAS) Bureau is a technical implementing elements of the INP Criminal Investigation

Unit. The CAS Bureau is in charge of planning, analyzing, and evaluating the implementation of the coordination, supervision, and investigation development tasks for CSI. In carrying out its duties, the CAS Bureau carries out the following functions: (1) coordinating and supervising investigations conducted by CSI; (2) providing investigation assistance to CSI; and (3) implementation of cooperation in the development of CSI starting from the education of CSI candidates, data collection on the number of CSI to the implementation of operational investigations.

However, there is a lack about the framework and mechanism for coaching and evaluating the performance of CSI between ministries/agencies and the CAS Bureau. The CSI Formation Training and Education was carried out by the CSA Bureau, but after the CSI's training, the bureau could not interfere with the placement of CSI regarding whether they functioned as investigators or not. The CSI inauguration and the issuance of Investigator Identity Cards are also managed by the Ministry of Law and Human Rights. While the CSI performance appraisal refers to the internal processes of the ministry/institution that oversees it.

- b. Strength less commitment of leadership;
- c. HR management of CSI is not optimal and ineffective.
- This condition can be seen from a number of facts, including: (1) the number of CSI in the NR sector (compared to the work area) is less and not evenly well distributed; (2) placements that are not in line with their

duties and functions as investigators;  
(3) the short working period of CSI due to entering retirement period.

- CSI in the NR sector also does not have a competency model as outlined in the competency standards. Even though competency arrangements are regulated in CS management, there is no specific regulation regarding CSI in general and specifically related to the NR sector.
  - There is no clear performance appraisal and non-availability of CSI competency standards. This condition makes the capacity development of CSI of NR not planned properly. Capacity-building programs in the form of education and training are not yet available and do not refer to training needs analysis.
- d. Framework; minimal supporting infrastructure for CSI, especially CSI of SP, EMR, and plantations.

### 3. OPPORTUNITY

Opportunities for improving the quality of CSI include:

- a. Increasing the number of investigators;
- b. Improvement of laws and technical regulations;
- c. Improving and developing the capacity of investigators.

### 4. THREATS

There are a number of threats to the existence of CSI in the NR sector, namely:

- a. Overlapping authority between CSI and

INP Investigators;

- This overlapping authority arises because of a number of regulations in the NR sector, not only CSI who are authorized for investigations, but also investigators from the INP. Even for fisheries crimes, apart from CSI and INP investigators, there are INA-NAVY Investigators who are also authorized to handle fisheries and marine crimes.
- The potential for overlapping the authority of CSI with other investigators in carrying out their authority can be seen in terms of dealing with fires on plantation land. CSI of Plantations feels they have the authority to investigate. Meanwhile, CSI of EAF also feels that they have authority over fires on plantation land because they cause environmental damage.
- Other potential conflicts can also occur between CSI of EAF and CSI of MAF related to the protection of marine animals, where CSI of EAF has a mandate from Law No. 5/1990, while the CSI of Fisheries has the authority of Law No. 31/2004.<sup>129</sup>

- b. The competence of the Public Prosecutor in constructing the handling of criminal cases in the NR sector. If the Public Prosecutor's competence is not sufficient to provide feedback to CSI in developing a case, then the capacity of CSI will also be stagnant and the quality of case handling is not optimal.

<sup>129</sup> Badan Pembinaan Hukum Nasional (BPHN)/National Legal Development Agency and Komisi Pemberantasan Korupsi (KPK)/Corruption Eradication Commission, Harmonization Analysis of Regulations in Natural Resources Sector, Jakarta: BPHN dan KPK 2018, hlm. 252.

From the SWOT analysis mentioned above, it can be recommended forms of improvement in increasing the capacity of CSI in the NR sector in the future.

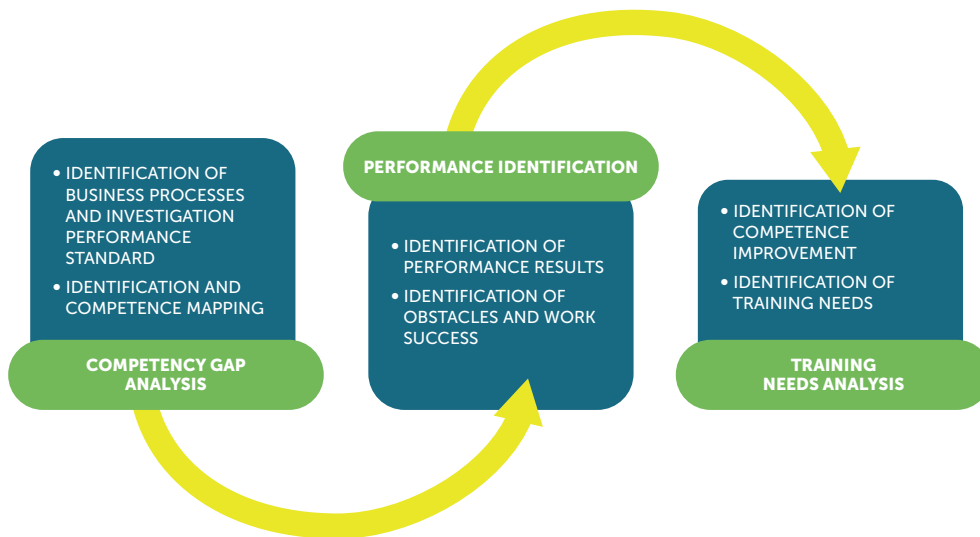
**D. TRAINING NEEDS ANALYSIS FOR CSI OF NR**

One of the follow-ups in increasing the capacity of CSI in the NR sector from the SWOT results is the Training Needs Analysis through the identification of the required training based on gaps of competency. Training Needs Analysis is carried out before training is implemented and becomes an integral part of the training design. So the training can be useful in improving the

competence of CSI in the NR sector as well as supporting the organization’s strategy. Based on the results of the Training Needs Analysis it can be seen which training is appropriate for an organization now and in the future.<sup>130</sup>

Training Needs Analysis uses 3 (three) basic approaches as attached in Diagram 5.1, namely: (1) identifying differences between performance standards and technical competencies of CSI in the NR sector (Competency Gap Analysis);<sup>131</sup> (2) identifying the results of the factual performance of CSI in the NR sector; and (3) identifying list of additional training for CSI based on the results of these gaps.

**Diagram 5.1 Training Need Analysis for CS in NR Sector**



<sup>130</sup> HR Management, Practical Guide Compiling Training Need Analysis, <http://manajemen-sdm.com/training-development/panduan-praktis-menyusun-training-need-analysis/>, downloaded on November 22nd 2020.

<sup>131</sup> The competency gap analysis is limited to the core technical competencies of the investigation and the NR sector. Behavioral competencies require elements of self-assessment and feedback in the employee assessment system to identify gaps in the soft skills involved.

## **1. IDENTIFICATION OF COMPETENCY GAPS OF CSI IN NATURAL RESOURCES SECTOR**

Ideally, the competency gap analysis compares the competency and performance standards that CSI should have in the NR sector with the installed CSI competencies in the NR sector (actual performance), as well as the factual performance results of CSI of NR. Competency standards are obtained from the ministry in the form of establishing models and competency standards. However, there is no competency model document that regulates CSI competency standards in the NR sector at each relevant ministry/institution. So, the competency standards in this document are mapped from: (1) the results of identification of the job duties of CSI in the NR sector based on the authority granted by the law; and (2) description of the organization and management of CSI resources.

The results of the technical competency mapping as described in the previous chapter consist of CSI Technical Competencies in the NR sector which include: (1) core investigation technical competence; (2) core technical competence of the NR sector; (3) functional technical competence; and (4) behavioral competence.

The core technical competencies of investigation and core competencies of the NR sector have basically been provided by the CAS Bureau of CSI during the Training for the Establishment of the CSI of NR. However, based on the CSI Formation Training and Education data provided by the CAS Bureau and considering the results of the mapping of the CSI of NR core technical competencies, several investigation technical competencies, and the NR sector technical competencies

still need to be completed or added in order to support the performance of CSI in handling cases in line with the development of crime modes in NR sector.

## **2. IDENTIFICATION OF PERFORMANCE OF CSI IN NATURAL RESOURCES SECTOR**

The investigator's performance target is the notification from the Public Prosecutor that the Investigation Results are complete and ready for prosecution. However, as described in the previous section, the results of mapping of NR crime by sector show that the investigation of criminal acts by CSI in the NR sector from 2015 to 2020 shows significant work results in only 2 (two) sectors, namely: EAF<sup>132</sup> and MAF.<sup>133</sup>

In fact, the CSI Formation Education and Training received by each CSI is the same or there is no difference both in terms of methods and the number of lesson hours. In fact, referring to the statutory material that must be mastered, CSI of EAF gets more complex material because the authority and scope of work for EAF investigations is regulated by at least 4 (four) laws.

## **3. IDENTIFICATION OF IMPROVEMENT COMPETENCY FOR CSI IN NATURAL RESOURCES SECTOR**

In general, the performance of CSI in the NR sector related to several technical issues of the investigation, especially the evidence has not been maximized. Although knowledge has been given, from a technical point of

<sup>132</sup> 892 case handled by DTG of EAFLE in 2015 - 2020

<sup>133</sup> 769 case handled by DTG SMFR of MMAF in 2015-2020

view, the issue of evidence needs to be strengthened so that evidence and suspects can be obtained according to the target period of the investigation.

Understanding of the investigation process that must be carried out by CSI is still not optimal, especially in CSI in spatial planning; plantation; and EMR. In addition, the business processes that are not well organized and the absence of a unit in the organization that regulates the work procedures and standard operations of investigations make it more difficult for CSI in the 3 (three) ministries to carry out their duties and authorities as investigators.

Referring to the gap above, in order to achieve maximum performance, it is necessary to increase the technical competence of investigations for CSI in the NR sector as follows:

1. Electronic evidence handling techniques
2. Asset tracing techniques
3. Analysis of the data/information of the results of the investigation
4. Establishment of a collaborative investigation network

Meanwhile, the improvement of the technical competence of NR required for each field of CSI is as follows:

**Tabel 5.4 Technical Competency Needs Assessment for CSI in Natural Resources**

PPNS di Sektor SDA	Penambahan Kompetensi Teknis Sektor SDA
CSI of SP	<ul style="list-style-type: none"> <li>• Policy and licensing in management and processing of spatial</li> <li>• Spatial criminal law enforcement</li> </ul>
CSI of EAF	<ul style="list-style-type: none"> <li>• Policy and licensing in management and processing of EAF</li> <li>• EAF criminal law enforcement</li> <li>• Concept of environmental recovery as a criminal action</li> </ul>
CSI of Plantation	<ul style="list-style-type: none"> <li>• Policy and licensing in management and processing of plantation</li> <li>• Plantation criminal law enforcement</li> </ul>
CSI of MAF	<ul style="list-style-type: none"> <li>• Policy and licensing in management and processing of MAF</li> <li>• Fisheries Criminal law enforcement</li> </ul>
CSI of EMR	<ul style="list-style-type: none"> <li>• Policy and licensing in management and processing of EMR</li> <li>• EMR Criminal law enforcement</li> </ul>



## E. ADDITIONAL TRAINING FOR CSI IN NATURAL RESOURCES SECTOR

Basically, training is given to answer any mismatch of competence or ability in terms of knowledge and skills to the required job competencies. Referring to the mapping of technical competencies that must be possessed by CSI in the NR sector to be able to carry out their functions and duties as investigators, the proposed training provided is adjusted to the dimensions of technical competence which include: (1) investigation technical training; (2) technical training in the NR sector; and (3) functional technical training. Meanwhile, behavioral competency improvement is not included in the training proposal because a separate assessment is needed or other appropriate approaches to increase the soft skills capacity.

In this mapping, the Auriga Nusantara Foundation in collaboration with the KPK conducted a survey regarding training needs. The survey was given after an online discussion process in June 2020 aimed at 60 (sixty) CSI in the NR sector representing 5 (five) NR fields. This training proposal refers to the training data that has been provided to CSI in the NR sector so that the proposed training only complements the existing training and is a development of the previous training. The proposed training from the survey results are as follows:

1. Water pollution investigation;
2. Destructive fishing;
3. Policies and regulations of NR in Indonesia;
4. Utilization and management of NR;
5. Methods, techniques of investigation, and case handling mechanism (advanced level)

6. Biota of marine;
7. Procedure of environmental rehabilitation;
8. Method and techniques of plantation of seeds;
9. Permit and management of plantation of seeds.

The capacity-building program certainly does not only stop at the fulfillment of training which is expected to increase the competence of CSI but also has to improve the structure and framework of CSI in order to be able to achieve higher performance. From the proposed training, the types of training have been grouped as follows:

### 1. TECHNICAL TRAINING

This training can be given to all CSI in the NR sector to strengthen their competencies. Technical training is divided into 2 (two) categories, namely: (1) part of the core technical competence of investigation; (2) part of the technical competence of the NR sector.

#### 1.1. Technical Investigation Trainings:

- 1.1.1. Refresher training related to technical investigations, with the following material coverage:
  - a. Investigation administration;
  - b. Profiling data investigation;
  - c. Investigation planning;
  - d. Techniques of confiscation and security of evidence and crime scenes;
  - e. Containment techniques;

- f. Intelligence techniques;
  - g. Witnesses and suspects examining techniques.
- 1.1.2. Electronic evidence management, with the following material coverage:
- a. Definition of electronic evidence;
  - b. The basic principles of electronic evidence management;
  - c. The scope and types of electronic evidence;
  - d. Stages of electronic evidence management;
  - e. ISO 27037;
  - f. Legislation regarding electronic evidence as legal evidence.
- 1.1.3. Asset tracking, with the following material coverage:
- a. Definition of asset tracking;
  - b. Source of asset information;
  - c. Asset tracking method.

**1.2. Technical Training for the NR Sector:**

- 1.2.1. Training on the mastery of laws and regulations and the form of licensing provided in the management of the NR sector.
- 1.2.2. Corporate criminal responsibility, with the following material coverage:
- a. Conception of corporate criminal liability;
  - b. Corporations as legal subjects;

- c. Corporate responsibility theory;
  - d. Corporate crime and its characteristics in the NR sector;
  - e. Corporate crime in the NR sector.
- 1.2.3. Environmental rehabilitation.

**2. THEMATIC TRAINING**

Thematic training is given to CSI in the NR sector to fulfill their functional competencies. Thematic training is tailored to the needs of each NR field, namely:

- a. Survey and investigation of environmental pollution in waters;
- b. Destructive fishing training;
- c. Biota of marine;
- d. Identification of counterfeit plantation products;
- e. The international law of the sea training and criminal acts in the EEZ;
- f. Alternative dispute resolution related to customary rights.

# CHAPTER VI

## CONCLUSIONS AND RECOMMENDATIONS

### A. CONCLUSIONS

The NR crimes handling mechanism by CSI has been running with mixed results in each ministry and has not been optimal due to a number of problems, including:

1. In terms of organizational structure and working mechanism, MEMR and the Ministry of Agriculture do not have a DTG or Directorate that handles investigations and law enforcement, and specifically accommodates CSI (including in providing guidance; empowerment; and monitoring the performance of CSI). This condition causes: (1) the unavailability of a work plan or program as well as clear targets for CSI both at the national and regions level; (2) no special allocation budget for law enforcement operations and also budget for capacity building for CSI in NR sector; (3) no unavailability of management; performance assessment; competency standards and dictionaries for CSI, as well as a list of training needs for CSI.
2. There is a competency gap between the competencies which has been built in through Education and Training for the Establishment of CSI in NR Sector and the competencies required for CSI in NR sector.
3. The pattern of cooperation between CAS of CSI and ministries/agencies is unclear in terms of framework; coaching; and evaluation of CSI performance in the NR sector. Cooperation between CAS Bureau and related ministries is limited to the education and training for the establishment of CSI candidates; data collection on the number of CSI; and mutual investigations (which is based on a request).
4. The coordination between CSI and the Prosecutor's Office in terms of handling cases has not gone well and affects the number of cases that continue to the prosecution process.
5. The number of CSI in the NR sector as a whole is still low and not evenly well distributed compared to the area that must be covered. The placement of CSI is not entirely accordance with its duties and functions. Some of these CSI also has a short service period because they were only appointed to be CSI when they entered their retirement period.

### B. SUGGESTIONS

In order to increase the capacity of CSI in the NR sector to support the optimization of Government programs as regulated in the NMDP on 2020-2024, and to encourage quantity and quality of CSI in handling NR crimes, there are a number of recommendations that need to be carried out by each ministry in the natural resources sector, as follows:

1. Improving the HR management pattern of CSI to monitoring and career development of CSI based on expertise;
2. Create a standard for CSI of NR (core technical competence for investigation and core competence for NR);
3. Provide sustain and periodic capacity building to CSI based on training needs assessment;
4. Improving facilities and infrastructure for investigation.

Exclusively for the Ministry of ASP/GLO; MEMR and the Ministry of Agriculture, there is 1 (one) additional recommendation, namely establishing a special law enforcement working unit that directly supervises CSI in order to optimize law enforcement in the NR sector.

Each of these ministries also needs to sit together with: (1) CAS Bureau to enhance the mechanism of coordination in the investigation process and also the development competencies plan of CSI; (2) The Attorney General's Office to enhance the mechanism of coordination in developing cases and preparing evidence since investigation process starts.

# BIBLIOGRAPHY

## JOURNAL

BPHN and KPK. 2018. *Harmonization Analysis of Regulation on Natural Resources and Environment*, Jakarta: Ministry of Law and Human Rights and the KPK.

Limbong, Bernhard. 2012. *National Agrarian Law*. Jakarta: Margaretha Pustaka.

Indonesian Center for Environmental Law (ICEL). 2020. *Legal Criticisms of Amendments to Law No. 4/2009 on Minerals and Coal*. Jakarta: ICEL.

Sasvia, Hayyu. 2019. *Enforcement of Fisheries Law in the Indonesian Sea Territory*. Unnes: Lex Scientia Law Review, Volume 3 No. 2.

Sodikin. 2017. *The Existence of Civil Servant Investigators in Law Enforcement Against Spatial Violations*. Jakarta: Faculty of Law, University of Muhammadiyah, August 2017.

## ANNUAL REPORT

Ministry of Environment and Forestry, *Annual Report 2019*, Jakarta: Ministry of Environment and Forestry, 2020.

Ministry of Energy and Mineral Resources, *Inspectorate Performance Report 2019*, Jakarta: Ministry of Energy and Mineral Resources, 2020.

## REGULATIONS

The Republic of Indonesia. Law Number 3/2020 on Amendments to Law Number 4/2009 on Mineral and Coal Mining, State Gazette of 2020 Number 147, Supplement of State Gazette Number 6525.

----- Law Number 1/2014 on Amendments to Law Number 27/2007 concerning Management of Coastal Areas and Small Islands, State Gazette of 2014 Number 2, Supplement of State Gazette Number 5490.

----- Law Number 21/2014 on Geothermal, State Gazette of 2014 Number 217, Supplement of State Gazette Number 5585.

----- Law Number 32/2014 on Marine Affairs, State Gazette of 2014 Number 294, Supplement of State Gazette Number 5603.

----- Law Number 39/2014 on Plantations, State Gazette of 2014 Number 308, Supplement of State Gazette Number 5613.

----- Law Number 18/2013 on Prevention and Eradication of Forest Destruction, State Gazette of 2013 Number 130, Supplement of State Gazette Number 5432.

- Law Number 4/2009 on Mineral and Coal Mining, State Gazette Year 2009 Number 4, Supplement of State Gazette Number 4959.
- Law Number 30/2009 on Electricity, State Gazette of 2009 Number 133, Supplement of the State Gazette Number 5022.
- Law Number 32/2009 on Environmental Protection and Management, State Gazette Year 2009 Number 140, Supplement of State Gazette Number 5059.
- Law Number 45/2009 on Amendments to Law Number 31/2004 on Fisheries, State Gazette of 2009 Number 154, Supplement of the State Gazette Number 5073.
- Law Number 26/2007 on Spatial Planning, State Gazette of 2007 Number 68, Supplement of State Gazette Number 4725.
- Law Number 27/2007 on Management of Coastal Areas and Small Islands, State Gazette of 2007 Number 84, Supplement of State Gazette Number 4739.
- Law Number 19/2004 on Stipulation of Government Regulation in Lieu of Law Number 1/2004 on Amendment to Law Number 41/1999 on Forestry, State Gazette Year 2004 Number 86, Supplement of State Gazette Number 4412.
- Law Number 31/2004 on Fisheries, State Gazette Year 2004 Number 118, Supplement of State Gazette Number 4433.
- Law Number 22/2001 on Oil and Gas, State Gazette of 2001 Number 136, Supplement of the State Gazette Number 4152.
- The Republic of Indonesia. Law Number 5/1990 on Conservation of Biological Natural Resources and Their Ecosystems, State Gazette of 1990 Number 49, Supplement of State Gazette Number 3419.
- Government Regulation Number 68/2010 on Forms and Procedures for Community Roles in Spatial Planning.
- Government Regulation Number 16/2004 on Land Use,
- Presidential Regulation Number 16/2015 on the Ministry of Environment and Forestry.
- Minister of Agrarian and Spatial Planning/Head of the National Land Agency Regulation Number 3/2017 on Investigators of Civil Servants of Spatial Planning.
- Minister of State Apparatus Empowerment and Bureaucratic Reform Regulation Number 38/2017 concerning Competency Standards for State Civil Apparatus Positions.
- Minister of Environment and Forestry Regulation Number P.15/MEAF/SecGen/OTL.0/1/2016 on the Organization and Work Procedures of the Center for Environmental and Forestry Security and Law Enforcement.
- Minister of Agrarian and Spatial Planning / Head of the National Land Agency Regulation Number 8/2015 concerning the Organization and Work Procedure of the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency.

----- Chief of Police Regulation Number 26/2011 concerning the Implementation of Education and Training of Civil Servant Investigators.

----- Director-General of Supervision of Marine and Fishery Resources Decree Number 372/2011 concerning Technical Guidelines for Investigation of Fisheries Crimes.

----- Chief of Police Regulation Number 18/2009 concerning the Implementation of Training for the Special Police and CSI by INP

----- Supreme Court Circular Letter Number 3/2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2015 as Guidelines for the Implementation of Duties for the Court.

## NEWS

Greenpeace. 2015. *Position of Civil Society Against Law No 39/2014 on Plantations*, <https://greenku.com/2015/02/17/position-community-civil-terhadap-uu-no-39-tahun-2014-about-perkebunan>.

Compass. 27 August 2019. 6,621 *Spatial Infringement Cases Occurred in Three Years*, <https://properti.kompas.com/read/2019/08/27/203621421/6621-case-pelaksanaan-tata-ruang-terjadi-dalam-tiga-year>

JPPN. November 15, 2019. *EAFLE Wins Asia Environmental Enforcement Awards*, <https://www.jpnn.com/news/gakkum-klhk-raih-penghargaan-asia-environmental-enforcement-awards-2019?page=2>

Indonesian Media. 5 November 2019. *Minister*

*of Agriculture: Plantation Sector Mainstay of Foreign Exchange and Farmer Welfare*, <https://mediaindonesia.com/read/detail/269617-mentan-sector-perkebunan-andalan-devisa-dan-kesejahteraan-petani>

Republica. 14 February 2017. *Minister Susi Wins International Award*, <https://republika.co.id/berita/ekonomi/makro/17/02/14/olcl33383-menteri-susi-raih-penghargaan-internasional>

Subagyo, Agus. 2019. *Strategies and Programs for CAS Bureau to Support Law Enforcement in the Context of Realizing Internal Security*, <https://agussubagyo1978.wordpress.com/2019/05/07/strategi-dan-program-karo-ppns-bareskrim-polri-for-korwasbin-ppns-to-support-law-enforcement-in-the-context-of-the-realization-of-kamdagri/>

Sultan, Sudirman. 2019. *Community Participation of Polhut Partners*. <https://www.slideshare.net/sudirmansultan/peran-serta-masyarakat-mitra-polhut-dalam-pengamanan-hutan>.

Supriyadi. 2015. *Determination of Crimes as Crimes and Violations in the Special Criminal Law*, *Jurnal Pulpit Hukum* Volume 27 Number 3, p. 389-403, <https://jurnal.ugm.ac.id/jmh/article/download/15878/10487>,

## PRESENTATION

Director of Engineering and Environment for Mineral and Coal, *Policy Coherence with the EMR Sector in Small-Scale Gold Mining*. Technical Working Meeting on Mercury Reduction and Elimination held by the DTG of MAC, Jakarta 22 July 2019. <http://sib3pop.menlhk.go.id/uploads/news/dbtklhk-rakernis-22072019r3-f02ac84960.pdf>



## **SURVEY**

AURIGA and ACLC KPK, 2020, *Survey on the Need for Capacity Building for Law Enforcement Officials*, June 2020

# ATTACHMENT I

## EDUCATION AND TRAINING OF CSI BY INP

The CSI education and training process is organized by the INP, in this case under the coordination of the National Police Education and Training Institute (EAT). The implementation of CSI Training is regulated in CPD No. 26/2011 concerning the Implementation of CSI Training.

EAT for CSI training consist of: (1) Form of CSI; (2) Establishment of CSI Enforcing Regional Regulations, Minor Crimes and Violations; and (3) CSI Management. Based on Article 5 of the CPD, CSI training is carried out with the following pattern:

1. 400 (four hundred) hours or 60 (sixty) days. Conducted for training and education for the formation of law enforcement CSI which is the legal basis for the ordinary procedural law.
2. 300 (three hundred) hours or 45 (forty-five) days. Implemented for training and education on the formation of CSI enforcers of regional regulations, minor crimes, and violations with short or fast procedural laws
3. 200 (two hundred) hours or 30 (thirty) days. Conducted for CSI management training.

Previously, based on CPD No. 18/2009 on the Training for the Special Police and CSI by the

INP, CSI Training is divided into:

- a. EAT with a pattern of 400 hours or 60 (sixty) days in the context of the formation and as a requirement to become a CSI;
- b. EAT with a pattern of 100 hours or 12 (twelve) days in the context of refresher and/or capacity building; and
- c. EAT with a pattern of 100 hours or 12 (twelve) days for structural officials who supervise CSI and have not attended the EAT as referred to in letter a.

EAT of CSI aims to produce CSI who have the knowledge and skills in investigating criminal acts in accordance with the provisions of the laws and regulations which are the legal basis. While CSI management training aims to produce CSI who are able to plan, organize, implement and control the investigation process carried out by CSI under their responsibility (Article 6 CPD No. 26/2011).

Based on Article 7 CPD No. 26/2011, competency standards for CSI formation training graduates include:

1. Have a mental attitude and personality that is in accordance with the CSI code of

- ethics as a law enforcement officer;
- 2. Understand and be able to apply the procedures and processes of investigation of criminal acts in the field of duty;
- 3. Understand and be able to apply the techniques and tactics of investigation;
- 4. Understand and be able to apply the laws and regulations which are the legal basis in the implementation of the criminal act/violation investigation process in accordance with their field of duty;
- 5. Understand and be able to carry out the relationship between CSI work procedures with the CAS of CSI function bearer, as well as internal and external coordination;
- 6. Understand the investigation management by CSI;
- 7. Have physical endurance/aptitude that supports the investigation of criminal acts in the field of duty; and
- 8. Able to show courage and confidence in carrying out their duties as CSI.

While the competency standards for CSI EAT management graduates according to Article 8 of the CPD No. 26/2011 includes:

- 1. Have a mental attitude and personality that is in accordance with the CSI code of ethics as a law enforcement officer;
- 2. Have the ability to prepare plans for investigations and investigations of cases being handled;
- 3. Able to organize investigation resources;
- 4. Understand knowledge of technical and investigative tactics and investigations;

- 5. Have managerial ability in controlling the investigation process by CSI in their agency environment;
- 6. Understand knowledge of the laws and regulations that apply within the agency;
- 7. Understand the knowledge that supports the implementation of investigative tasks; and
- 8. Have the ability to coordinate with related agencies.

The requirements for participants who can take part in the EAT for CSI are as follows:

- 1. It is proposed by the Minister of Law and Human Rights and/or the head of the ministry or non-ministerial government agency in charge of the civil servant concerned to the Head of the National Police c.q. Special Crime Unit of INP
- 2. The minimum period of work as a civil servant is 2 (two) years;
- 3. The lowest rank is Young Stylist/Group III/a;
- 4. Minimum education of law degree or other equivalent degrees;
- 5. Served in the technical field of law enforcement operations;
- 6. Physically and mentally healthy as evidenced by a government hospital doctor's certificate;
- 7. The maximum age is 45 (forty-five) years for participants of 400 (four hundred) and 300 (three hundred) hours, and the maximum age of 50 (fifty) years is for participants of 200 (two hundred) training patterns hours; and

8. Each element of the evaluation of the work implementation in the List of Appraisal for the Implementation of the Work of Civil Servants has at least good value in the last 2 (two) years.

The Design of EAT is structured in a standard manner by referring to the CPD No. 26/2011. The designs that have been prepared specifically for the ministry of the NR sector are as follows:

1. CSI of MEAF Curriculum 2016;
2. CSI of MEMR Curriculum 2016;
3. CSI of Ministry of Agriculture Curriculum 2016;
4. CSI of MMAF Curriculum 2016;
5. CSI of ASP/GLO Curriculum 2016.

The curriculum compiled consists of the 400 hours CSI Formation Curriculum and the 200 hours CSI Management Curriculum. The majority of curriculum materials prepared between ministries are almost the same. The material for the CSI formation curriculum consists of:

1. General competence in the form of self-defense training for the Police;
2. Main Competencies consist of two parts. First, laws and regulations. The material taught is the criminal justice system; CPC; CLC; proof; pre-trial; the legal basis of CSI; Human Rights; investigation management; Coordination, supervision, and development of CSI.

Second, investigative techniques and tactics consisting of: procedures for making reports; criminal investigation process; investigation; crime scene

handling; prosecution; examination of suspects; filing; investigation administration; case title.

3. Special Competencies which consist of two main materials, namely First, the CSI code of ethics; the relationship between CSI work procedures and the Police. Second, crimes which consist of criminal psychology; the role of forensic laboratories in investigations.

EAT consisting of application exercises in the form of technical training/work training; work tours; final knowledge test. Other rounds of EAT were lectures from Head of Special Crime Unit/Karo Korwas PPN; Minister/Directorate General/Director/Leadership; Head of Criminal Investigation and Education and Training Center; Ministry of Law and Human Rights.

The difference in the curriculum is only related to material related to sectoral laws and regulations.



