

# LEGAL CERTAINTY ON INTEGRATED LAW ENFORCEMENT AS STIPULATED BY ARTICLE 95 VERSES (1) LAW NUMBER 32 YEAR 2009 ON ENVIRONMENTAL PROTECTION AND MANAGEMENT AFTER CONSTITUTIONAL COURT'S DECISION NUMBER: 18/PUU-XII/2014

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**Abstract:** *One of the law enforcement available in environmental problems is criminal law enforcement. Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management regulates that in integrated law enforcement of environmental crime, integrated law enforcement can be carried out between investigators of civil servants, the police, and prosecutors under the coordination of the Minister. Since the law was published until now, there has been no implementing regulation of the article. The process of law enforcement in the field, especially regarding environmental crime has not been carried out in an integrated manner as mandated by law. In 2015, the Constitutional Court through decision number: 18/PUU-XII/2014 stated that the provisions in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management are conditional constitutional as long as the integrated law enforcement is not interpreted. environmental crime is carried out with integrated law enforcement. Decisions of the Constitutional Court that are final and binding and erga omnes in this case are binding on all citizens including government officials to realize legal certainty in environmental law enforcement by carrying out integrated law enforcement on environmental crime. The realization of legal certainty regarding the integrated law enforcement referred to is an effort that is carried out in synergy and integral way to improve the effectiveness and efficiency of environmental criminal law enforcement by elements of the Ministry of Environment of the Republic of Indonesia, the Republic of Indonesia's Police, and the Attorney General's Office of the Republic of Indonesia. The decision of the Constitutional Court also encouraged the establishment of an ideal arrangement regarding integrated law enforcement for environmental crime in Indonesia. The establishment of an ideal arrangement can be made by considering and comparing several integrated criminal law enforcement models that already exist in Indonesia.*

**Key Words:** *Environmental crime, Integrated law enforcement, Legal certainty.*

## 1. INTRODUCTION:

Environmental problems to date have always been an actual issue and have not been addressed to the maximum, especially in the era of reforms that have not escaped the demands of democratization and transparency. Anticipating the widespread unfavorable impact on the environment, especially due to the rapid development of the industrial world, law enforcement in the environmental field becomes a necessity. Efforts in resolving environmental problems that occur in Indonesia are to ensure legal certainty in law enforcement. Enforcement of environmental law is an effort to achieve compliance with regulations and requirements in the provisions of applicable law in general and individually, through supervision and application in administrative, civil, and criminal matters.[1]

Complicated and many diverse violations in the field of the Environment, so that the Law on Environmental Protection and Management has provided space for Environmental Civil Servant Investigators and National Police Investigators and Prosecutors Office to be able to work together in handling Environmental cases regulated in Article 95 paragraph (1) The Law on Protection and Management of the Environment which reads as "In the context of law enforcement against perpetrators of environmental crimes, integrated law enforcement can be carried out between Civil Servant Investigators, the Police, and the Prosecutor's Office under the coordination of the Minister." provisions of Article 95 paragraph (1) of the Law on Environmental Protection and Management has been followed up with a Joint Agreement between the Minister of Environment of the Republic of Indonesia, the Head of the Indonesia National Police and the Attorney General's Office of the Republic of Indonesia in 2011 Number: 11/MENLH/07/2011, Number: B/20/VII/2011, Number: Kep-156/A/JA/07/2011 concerning Integrated Environmental Law Enforcement.

In 2014 a company employee of PT. Chevron Pacific Indonesia, which submitted a material test, one of which was against Article 95 Paragraph (1) of the Environmental Protection and Management Act which was stated to be in conflict with the Petitioner's constitutional rights to "recognition, guarantee, protection and fair legal certainty" as regulated in Article 28D Paragraph (1) of the 1945 Constitution. The Constitutional Court ruled the proposed material test application on January 21, 2015 by granting the entire request of the applicant, specifically regarding the petition test for article 95 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management, the word "can" in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management does not have binding legal force and Article 95 Paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management complete into "In the framework of law enforcement against perpetrators of environmental crimes, including other crimes originating from violations of this law, integrated law enforcement is carried out between Civil Servant Investigators, Police, and Prosecutors under the coordination of the Minister." [2]

The Constitutional Court's decision resulted in the Environmental Civil Servant Investigator and the National Police Investigator no longer being able to walk independently in conducting investigations and investigations but instead together synergized and integrated with the Attorney General's Office to increase the effectiveness and efficiency of Law Enforcement and Joint Agreement between the Minister of the Environment Republic of Indonesia, The Head of Indonesian National Police and the Attorney General's Office of the Republic of Indonesia in 2011 on Integrated Environmental Law Enforcement. This is compounded by the absence of implementing regulations regarding the mechanism and form of integrated law enforcement as mandated in Article 95 paragraph (2) of the Law on Environmental Protection and Management, so there is legal uncertainty regarding integrated law enforcement based on Article 95 paragraph (1) Law No. 32 of 2009 concerning Environmental Protection and Management after the issuance of the Constitutional Court Decision Number 18/PUU-XII/2014

## 2. CONCEPTUAL FRAMEWORK:

### a. Legal Certainty

Normative legal certainty is when certain regulations are made and promulgated because they regulate clearly and logically. Obviously in the sense of not causing doubts (multi-interpretation) and logical in the sense that it becomes a norm system with other norms so that they do not clash or cause norm conflicts. [3]

### b. Integrated Environmental Law Enforcement

Integrated environmental law enforcement is an effort carried out in synergy and integral way to improve the effectiveness and efficiency of environmental criminal law enforcement by elements of the Ministry of Environment of the Republic of Indonesia, the Republic of Indonesia's Police, and the Attorney General's Office of the Republic of Indonesia.

### c. Decision of the Constitutional Court

Decision of the Constitutional Court according to the explanation of the Constitutional Court Law is final, that is the decision of the Constitutional Court directly obtains permanent legal force since it was pronounced and no legal remedies can be taken. The final nature in the decision of the Constitutional Court in this Act also includes binding legal force

## 3. THEORITICAL FRAMEWORK:

### a. Legal Certainty Theory

According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions may or may not be done, and secondly, in the form of legal security for individuals from the arbitrariness of the government because with the existence of general rules that individuals can know what the state may charge or do to individuals. [4]

### b. Law Enforcement Theory

Soerjono Soekanto said that law enforcement is an activity to harmonize the relations of values that are set out in the rules / views of values that are steady and manifest and act as a series of translation of the final stage of value to create (as social engineering), preserve and maintain (as social control) social peace of life. [5]

### c. Theory of the Integrated Criminal Justice System

According to Barda Nawawi Arief the Integrated Criminal Justice System is implemented in four subsystems of power, namely investigative power, prosecution power, criminal prosecution / criminal power, and criminal

execution / enforcement power, in essence identical to the Criminal Law Enforcement System and the "law enforcement" system basically is a "system of power / authority to enforce the law"[6]

#### **4. LITERATURE REVIEW:**

Enforcement of environmental law can be interpreted as the use or application of instruments and sanctions in the field of administrative law, criminal law and civil law with the aim of forcing the subject of law subject to compliance with environmental legislation. Enforcement of environmental law is an attempt to achieve full compliance with the rules and requirements of generally applicable and individual legal provisions through supervision and application of administrative, civil and criminal sanctions that can be imposed on offenders in an effort to achieve the harmonized environment reported. Enforcement of environmental law is actually very necessary for developing countries, because the legal awareness of the community is weak to be able to preserve the environment.[7]

According to Soerjono Soekanto so that law enforcement efforts run well and perfectly, then there must be at least four factors that must be met:[8]

- a. The rule of law or the regulation itself.
- b. Officers who apply or enforce.
- c. Facilities that are expected to be able to support the implementation of the rule of law.
- d. Citizens affected by the scope of the regulation.

According to Koesnadi, Environmental Law in Indonesia can cover the following aspects:[9]

- a. Environmental Management Law, regulates the arrangement of the environment in order to achieve harmony between humans and the environment, both the physical environment and the socio-cultural environment. Environmental Management Law is a juridical instrumentarium for environmental management that can include aspects of the physical environment and the socio-cultural environment. It regulates the structure of the use and use of the environment for various purposes through concrete procedures in order to preserve a harmonious and balanced environmental capability.
- b. Environmental Protection Law, is a statutory regulation in the field of environmental management relating to the biotic environment.
- c. Environmental Health Law is a law that deals with policies in the field of environmental health, with the maintenance of water, soil and air conditions, and noise prevention.
- d. Environmental Pollution Law, for example in connection with industrial pollution.
- e. Transnational / International Environmental Law, in relation to relations between countries.
- f. Environmental Dispute Law, for example in relation to the resolution of compensation issues.

The integrated criminal justice system is an integration that connects Law Enforcement Officials. The relationship exists between the subjects or people who guarantee and ensure that a rule of law runs as it should. The subject narrowly consisted of witnesses, police, prosecutors, judges, legal counsel and correctional officers.[10] The Integrated Criminal Justice System has two characteristics consisting of: First, the specific objectives to be achieved by the system itself and secondly the existence of subsystems in the system that are interrelated to one another.[11] The implementation of the Integrated Criminal Justice System is a joint function consisting of legislators, investigators, prosecutors, courts and correctional institutions and related bodies both within the government and beyond. The main objective of the combined function within the framework of the Integrated Criminal Justice System is to enforce, implement and decide on criminal law.[12]

Decisions made by the Constitutional Court are final, have no legal remedies to be reviewed. Basically the judge's decision must not be discussed nor blamed, this is the principle that applies universally.[13] Decisions of the Constitutional Court are decisions that not only bind the parties but must also be obeyed by anyone. The principle of erga omnes is reflected in the provision that states that the Constitutional Court's decision can be carried out immediately without requiring the decision of the competent official unless the statutory regulations govern otherwise. These provisions reflect the binding legal force and because of the legal nature of the public then it applies to anyone, not only applies to litigants.[14]

#### **5. METHOD:**

This research uses normative legal research. Normative legal research is library law research. In this normative study, the approaches used are:

- a. Statutory Approach, is carried out by examining the statutory regulations from the highest norm to the lowest,
- b. Case Approach, is carried out by examining cases related to the legal issues at hand. The cases examined are cases that have obtained a court decision of permanent legal force.

## 6. DISCUSSION:

### A. Law Enforcement in Environmental Crimes based on Law Number 32 of 2009 Concerning Environmental Protection and Management before the Constitutional Court Decision Number: 18/PUU-XII/2014

The Law on Environmental Protection and Management has amended the provisions that have so far given authority to the National Police as the only institution that can submit investigation files to the Public Prosecutor as stated in Article 8 paragraph (2) of the Criminal Procedure Code. The change occurred through Article 94 paragraph (6) of the Law on Environmental Protection and Management which states: "the results of investigations conducted by investigators of civil servants are submitted to the public prosecutor." Civil Servant Investigators can and are authorized to submit investigation result files directly to the Public Prosecutor without going through the National Police investigator again.[15] The authority granted by the Environmental Protection and Management Act to the authority of the Environmental Civil Servant Investigator is almost the same as the authority granted in Article 7 of the Criminal Procedure Code to the Civil Servant Investigator. However, the Law on Environmental Protection and Management of Environmental Civil Servant Investigators is given the authority to arrest and detain perpetrators of criminal acts, whereas in the Criminal Procedure Code this detention and arrest authority is not given to Civil Servant Investigators.

Article 95 of the Law on Environmental Protection and Management states "In the context of law enforcement against perpetrators of environmental crimes, integrated law enforcement can be carried out between Civil Servant Investigators, the Police, and the Prosecutor's Office under the coordination of the Minister." The purpose of the law itself can be synergized and integrated between the Environmental Civil Servant Investigator and the National Police Investigator and the Prosecutor's Office to be able to have the same understanding of environmental crime and avoid the occurrence of different perceptions that result in impeded handling of environmental criminal cases by the Investigator Environmental Civil Servants as well as Police and Prosecutors investigators. The word "can" Article 95 of the Law on the Protection and Management of the Environment is a form of choice or integrated law enforcement referred to as a form of choice or law enforcement (facultative) so that in practice the law enforcement on environmental crime is more likely to be carried out individually by Environmental Civil Servant Investigators and Police Investigators.

The lax choice to carry out integrated law enforcement can be seen since 2009 in the range of the Law on Environmental Protection and Management no integrated law enforcement has been carried out by the Environmental Civil Servant Investigator and the National Police Investigator and Prosecutor's Office as mandated in Article 95 paragraph (1), this also cannot be separated from the absence of regulations or further provisions governing the implementation of integrated law enforcement itself which is the legal umbrella in integrated law enforcement as mandated in Article 95 paragraph (2) of the Law Protection and management of the environment.

Achmad Santosa's statement and debates with experts and the opinions of Parliamentarian the Republic of Indonesia Commission VII can be seen from the intent of integrated law enforcement contained in Article 95 paragraph (1) of the Law on Environmental Protection and Management, the Crest One Roof End Forcement System, or one-stop law enforcement, where the selected prosecutors are placed, the selected police are under one roof under the command of the Ministry of Environment. The same thing is what is meant by integrated law enforcement contained in a Joint Agreement between the Minister of Environment of the Republic of Indonesia, the Head of the Indonesian National Police and the Attorney General's Office of the Republic of Indonesia of 2011 concerning Integrated Environmental Law Enforcement Number: 11/MENLH/07/2011, Number: B/20/VII/2011, Number: Kep-156/A/JA/07/2011 concerning Environmental Law Enforcement. Integrated law enforcement enforcement, namely Integrated Environmental Law Enforcement, is an effort that is carried out in synergy and integrally to improve the effectiveness and efficiency of environmental criminal law enforcement by elements of the Ministry of Environment of the Republic of Indonesia, the Republic of Indonesia National Police and the Republic of Indonesia Attorney Office coordinated by the State Minister for the Environment Life.

### B. Law Enforcement in Environmental Crimes based on Law Number 32 of 2009 Concerning Environmental Protection and Management after the Constitutional Court Decision Number: 18/PUU-XII/2014

Decision of the Constitutional Court Number: 18/PUU-XII/2014 dated January 21, 2015 which is conditionally unconstitutional namely a decision stating that a norm in a law is considered contrary to the constitution if it is not in accordance with what is determined, so Article 95 paragraph (1) The Environmental Protection and Management Act was changed to "In the context of enforcing the law against perpetrators of environmental crimes, including other criminal acts originating from violations of this law, integrated law enforcement is carried out between investigators of civil servants, the police, and prosecutors at under the coordination of the Minister."

Decision of the Constitutional Court Number: 18/PUU-XII/2014 dated January 21, 2015 then Article 95 paragraph (1) of the Law on Environmental Protection and Management must be interpreted to be by law enforcement officials as follows "In the framework of law enforcement against perpetrators of environmental crimes life, including other criminal acts originating from violations of this law, carried out integrated law enforcement between investigators of civil servants, police and prosecutors under the coordination of the Minister"so that Environmental Civil Servants and Police Investigators can no longer go their own way -one in conducting an investigation but it is obligatory jointly synergized and integrated with the Attorney General's Office to increase the effectiveness and efficiency of Law Enforcement.

However, since the issuance of the Constitutional Court's decision Number: 18/PUU-XII/2014 dated January 21, 2015, there have been many cases of the Environment handled by the Investigator of the Civil Servants Directorate General of Law Enforcement of the Ministry of Environment and Forestry from 2015 to 2019 already 784 there are ten cases involving corporations which have been declared complete by the Public Prosecutor. All investigations are carried out by the Environmental Civil Servant Investigator individually, so there is no legal certainty in Integrated Law Enforcement Based on Article 95 paragraph (1) of Law Number 32 of 2009 Concerning Environmental Protection and Management after the Constitutional Court Decision Number: 18/PUU-XII/2014.

## 7. ANALYSIS:

The Environmental Protection and Management Act does not explain what is meant by integrated law enforcement, both in Article 95 of the Environmental Protection and Management Act and in its explanation. However, this integrated understanding of law enforcement can be seen from the Joint Agreement between the Minister of Environment of the Republic of Indonesia, the Head of the Indonesian National Police and the Attorney General's Office of the Republic of Indonesia in 2011 concerning Integrated Environmental Law Enforcement Number: 11/MENLH /07/2011, Number: B/20/VII/2011, Number: Kep-156/A/JA/07/2011 concerning Environmental Law Enforcement. Where the above agreement has revoked the enactment of the Joint Decree Number: KEP-04/MENLH/0412004, Number: KE, P-208/A/JA/04/2004, Number: KEP-1,9/N/2004 concerning Enforcement Integrated Environmental Law (One Roof). Chapter I in the general provisions section of the Joint Agreement explains the understanding of integrated Environmental Law Enforcement.

*"Integrated Environmental Law Enforcement is an effort carried out in synergy and integral way to improve the effectiveness and efficiency of environmental criminal law enforcement by elements of the Ministry of Environment of the Republic of Indonesia, the Republic of Indonesia National Police and the Republic of Indonesia Attorney Office coordinated by the State Minister of the Environment."*

Article 95 paragraph (2) of the Law on Environmental Protection and Management states "Further provisions regarding the implementation of integrated law enforcement are regulated by statutory regulations. The provision of Article 95 paragraph (2) of the Law on Environmental Protection and Management means ordering further regulations regarding integrated law enforcement regulated in the legislation referred to in Article 7 and Article 8 of Law No. 12 of 2011 concerning Formation of Regulations. Guided by Article 7 and Article 8 of the Law Formation of Regulations, joint agreement between the Minister of Environment of the Republic of Indonesia, Head of the Indonesian National Police and the Attorney General's Office of the Republic of Indonesia in 2011 concerning Integrated Environmental Law Enforcement Number: 11/MENLH/07/2011, Number: B/20/VII/ 2011 concerning Environmental Law Enforcement is not included in the types of regulations.

Regulations regarding integrated law enforcement based on Article 95 paragraph (1) of the Law on Environmental Protection and Management, are further ordered in Article 95 paragraph (2) to be regulated by statutory regulations. Integrated law enforcement so that it can be implemented as referred to in Article 95 paragraph (1), the government must make regulations as a legal basis in the form of regulation. An ideal arrangement regarding integrated law enforcement based on Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management after the Constitutional Court Decision Number:

18/PUU-XII/2014 is by referring to integrated law enforcement in other regulatory fields such as integrated law enforcement in the regulation of elections in the Election Law and Regulation of the Election Supervisory Agency of the Republic of Indonesia Number 31 of 2018 concerning Integrated Law Enforcement Centers and regulations on fisheries that exist in the Fisheries Law and Presidential Regulation of the Republic of Indonesia Number 115 of 2015 concerning the Illegal Fishing Task Force, so for the implementation of integrated law enforcement the government must make regulations governing the implementation of law enforcement integrated in the form of a Presidential Regulation, in the Presidential Regulation must contain the main material on the Elements of Law Enforcement integrated in which there must be involvement of elements of the Environmental Civil Servant Investigator, Police Investigator and the Attorney General's Office under the coordinator of the Minister in this case the Minister of the Environment, then must be clear position, duties and authority as stated in Article 95 paragraph (2) of the Law on Environmental Protection and Management.

Following up on the Presidential Regulation in the implementation of integrated law enforcement in the environmental crime, the Minister of Environment can issue a Ministerial Regulation with specific content regarding operational standards for integrated law enforcement procedures for environmental crimes. The Minister of the Environment Regulation is detailed and clear regarding the working procedures of the integrated law enforcement itself, as can be taken as an example of how in the Minister of Maritime Affairs and Fisheries Regulation No. 37/Permen-KP/2017 regulates the operational standard procedure of the Task Force on Combating Illegal Fishing by involving the Police and Attorney General's Office in drafting Ministerial regulations to implement law enforcement in an integrated manner in the environmental crime.

Reviewed from the aspect of Legal Certainty theory, in addition there must be a common understanding of the special case for law enforcement officials in understanding and interpreting integrated law enforcement as referred to in Article 95 paragraph (1) of the Law on Environmental Protection and Management after the issuance of the Constitutional Court ruling Number: 18/PUU-XII/2014 dated January 21, 2015 also needs to be regulated regulations regarding integrated law enforcement so that law enforcement officials can implement law enforcement in an integrated manner as mandated in Article 95 paragraph (2) of the Law on Environmental Protection and Management.

Reviewed from the aspects of the theory of the Integrated Criminal Justice System as described by Muladi and Barda Nawawi Arief and Hiroshi Ishikawa, it suggests that there must be integration that connects Law Enforcement Officials with efforts that are carried out in synergy and integrally to increase the effectiveness and efficiency of environmental criminal law enforcement by elements of the environment The Ministry of Environment of the Republic of Indonesia, the Indonesian National Police, and the Attorney General's Office of the Republic of Indonesia under the coordination of the Minister to carry out integrated law enforcement on environmental crime as referred to in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Protection and Management Environment after the issuance of the Constitutional Court ruling Number: 18/PUU-XII/2014 dated January 21, 2015.

Reviewed from the aspect of the theory of the Integrated Criminal Justice System as described by Muladi and Hiroshi Ishikawa, in connection with the ideal arrangement regarding integrated law enforcement based on Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management after the Constitutional Court Decision Number: 18/PUU-XII/2014 is by referring to integrated law enforcement in two examples of integrated law enforcement models in election criminal offenses and in illegal fishing crimes. So that in order to carry out the mandate of Article 95 paragraph (2) of the Law on Environmental Protection and Management, a regulation must be made in the form of a Presidential Regulation and to follow up on it, a Minister of the Environment Regulation concerning Integrated Law Enforcement can also be issued. The existence of an ideal regulation or regulation, it is expected that integrated law enforcement as referred to in Article 95 paragraph (1) of Law Number 32 Year 2009 concerning Environmental Protection and Management after the Decision of the Constitutional Court Number: 18/PUU-XII/2014 can be implemented.

## **8. CONCLUSION:**

From the discussion as explained earlier, several conclusions can be drawn, including:

- a. Integrated law enforcement based on Article 95 paragraph (1) of Law Number 32 of 2009 concerning Protection and Management of the Environment has shifted from an optional form of law enforcement (facultative) to an imperative law enforcement obligation in accordance with the Decision of the Constitutional Court Number 18 / PUU -XII / 2014. Therefore, since the issuance of the Decision, the investigation and investigation activities in environmental criminal cases cannot be carried out individually anymore by the Environmental Civil Servant Investigator or the National Police investigator but must be carried out in an integrated manner between the Civil Servant Investigators, the Police, and the Prosecutors' Office under the coordination of the Minister.
- b. Integrated law enforcement as referred to in Article 95 paragraph (1) of the Law on Environmental Protection and Management after the issuance of the Constitutional Court Decision Number: 18/PUU-XII/2014 in its implementation requires implementing regulations at the level of the statutory regulations which as of this writing. The regulations have not been made yet, where the ideal implementation regulation referred to is by comparing the examples of the two Integrated Law Enforcement models namely the model in election criminal acts and illegal fishing.

## **9. SUGGESTIONS:**

From the discussion as explained earlier, several conclusions can be drawn, including:

- a. Decision of the Constitutional Court Number: 18/PUU-XII/2014 expressly states that integrated law enforcement in environmental crime is imperative, the Environmental Civil Servant Investigator and the National Police Investigator and Attorney General must synergize in handling Environmental cases in the container one-roof investigation, as

stipulated in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management. So as to provide legal certainty and clarity of legal position in conducting investigations of environmental crimes and there is no disobedience to the Constitutional Court's Decision by the Government through its Law Enforcement Officials.

- b. The government must immediately make implementing regulations regarding integrated law enforcement based on Article 95 paragraph (1) of Law Number 32 Year 2009 concerning Environmental Protection and Management. The form of the implementing regulations is the Presidential Regulation on Integrated Law Enforcement which accommodates the involvement of Environmental Civil Servant Investigators, Police Investigators and Attorney General's Office under the coordinator of the Minister, in this case the Minister of the Environment. The regulation also explains the organizational structure, position, duties and authority of Integrated Law Enforcement. The Presidential Regulation is then followed up with a Minister of Environment and Forestry Regulation regarding the standard operational procedures of the Integrated Law Enforcement itself.

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