

# Arrest Authority by Police Investigators and BNN Investigators on Narcotics Crimes

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## ABSTRACT

Agents from the Indonesian National Police (Polri) and agents from the National Narcotics Agency (BNN) have the specialist to conduct examinations into narcotics crimes. However, in the case of arrests, there are differences in authority regarding the time limit for arrests. This study aims to find the ideal arrangement regarding the difference in the time limit for arresting authority by Polri investigators and BNN investigators on narcotics crimes. This sort of investigation is standardizing legitimate investigation employing a statutory approach. Sources of information utilized are essential information through interviews and auxiliary information within the frame of library materials. Legitimate materials were analyzed utilizing qualitative descriptive techniques. This comes about from the considered contrasts within the specialist of the time restrained for captures between Polri investigators and BNN investigators. The specialist of Polri investigators on opiates wrongdoings is expressed in Article 16 jo. Article 19 of Law Number 8 of 1981 concerning the Criminal Strategy Code (KUHAP), specifically captures are made no afterward than 1 x 24 hours, whereas BNN is given specialist by Article 75 letter (g) jo. Article 76 of Law Number 35 of 2009 on the Narcotics, specifically the execution of captures for a greatest of 3 x 24 hours and can be expanded for a greatest of 3 x 24 hours. With the difference in the time limit for arresting authority by Polri and BNN investigators, it is necessary to use the same legal basis for narcotics crimes regarding the regulation of the authority for arresting time limits between Polri investigators and BNN investigators.

**Keywords:** Arrest, Authority, BNN, Police.

## 1. INTRODUCTION

Indonesia is a legal country where everything that deviates from Pancasila and the law must go through a legitimate process. The point of criminal procedure law is to seek and obtain material truth, that is, the full truth of a criminal case. According to Wirjono Prodjodikoro, former Chief Justice of the Supreme Court, criminal procedural law is closely related to criminal law and is a series of regulations

that contain the ways in which the ruling government bodies (police, prosecutors, and courts) act to achieve state goals by enacting criminal law (Sofyan & Asis, 2014).

In the formulation of Article 14 (1) (g) of Law No. 2 of 2002, it is declared that in implement the main tasks mentioned in Article 13, the task of the National Police of the Republic of Indonesia is to conduct investigations and investigate all criminal

acts in accordance with the provisions of the Criminal Procedure Code and other legislation.

Law No. 8 of 1981 on the Code of Criminal Procedure gives the Indonesian National Police the task of investigating and investigating criminal acts (in general) as long as it remains within the scope of public law, so basically the Code of Criminal Procedure gives the police Powers to investigate and investigate criminal conduct. Although, the Code of Criminal Procedure also authorizes certain Civil Service Investigators (PPNS) to conduct investigations under special powers conferred by the law, which is the legal basis for everyone (Asrudi, 2017).

With reference to Article 4 of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), an investigator is every officer of the National Police of the Republic of Indonesia. Then, in Law No. 35 of 2009 on Narcotics, it is clearly stated that there are two agencies that have the power to conduct investigations, namely the Indonesian National Police Agency (hereinafter referred to as Polri) and the National Narcotics Agency (hereinafter referred to as BNN) (UURI, 2009).

Pursuant to Law No. 35 of 2009 on Narcotics, with regard to the eradication of narcotics, the BNN is empowered to conduct investigations and investigations into the abuse, illicit trafficking of narcotics and narcotic precursors, while empowering BNN investigators and investigators. Meanwhile, Article 81 of Law No. 35 of 2009 on Narcotics also provides for the competence of investigators of the National Police, but investigations conducted by the Indonesian National Police are usually covered under Article 7 of the Criminal Procedure Code, as well as Article 7 on the Republic of Indonesia, and paragraph 16 (1) of Law No. 2 of 2002 of the National Police (Permadi, 2014).

BNN is expressly authorized by Article 75 letter (g) jo. Article 76 of Law No. 35 of 2009 on Narcotics, where the maximum arrest time for BNNs is 3 x 24 hours, which can be extended by up to 3 x 24 hours. Also, within the purview of Polri investigators under Article 16. Article 19 of Law No. 8 of 1981 on the Code of Criminal Procedure, in other words arrest not later than 1x24 hours.

Legal uncertainty has arisen between the two agencies mandated to investigate the misuse and

illicit affairs of narcotics, the National Narcotics Agency and the National Police, which use different legal bases to limit arrest times. So that this can have an impact on a sense of injustice for perpetrators of narcotics crimes.

From the juridical aspect, namely the formal law in the Narcotics Law, it causes problems in its application. In the enforcement of the Narcotics Law, there is a different time limit for arrests between Polri investigators and BNN investigators. The arrests made by the National Police using the legal basis of the Criminal Procedure Code, which is 1x24 hours, have not been able to guarantee the accuracy of the data. Meanwhile, BNN using the legal basis of the Narcotics Law is given the authority to arrest 3x24 hours and can be extended 3x24 hours or for 6 (six) days based on the importance of data accuracy and supported by the results of sample testing at the Forensic Laboratory. Of course, this difference creates legal uncertainty and injustice.

From the philosophical aspect, there are differences in the arrangements for the arrest of narcotics criminals by the National Narcotics Agency and the National Police. With the difference in the time limit for arrests used by the National Narcotics Agency and the National Police, this can be done by improving the Narcotics Law, for example, articles relating to the authority to arrest must carefully observe the principles in the legislation.

From the sociological aspect, Polri investigators and BNN investigators have different authority to use arrest time limits, then these issues need to be coordinated and based on an integrated criminal justice system to keep laws and regulations in harmony. In this way, there will be no difference in treatment between one perpetrator and another in the face of legal proceedings. Therefore, anti-drug laws must pay attention to the needs of all aspects of society, especially when it comes to the regulation of arrests for drug offenses.

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accuracy which is supported by the results of sample testing at the Forensic Laboratory. In this case the Police investigators using the legal basis in the Criminal Procedure Code using a 1x24 hour arrest time do not pay attention to the role of forensic or criminalistic medicine where both fields can accurately prove the presence or absence of hazardous substances in narcotics criminals.

The legitimate basis of the Code of Criminal Procedure in the execution of its duties and powers, namely regarding the arrest of narcotics offenders, declares that the arrest will take no later than one day used by the Indonesian National Police. In this case, investigators Polri and BNN were also found to have opposing views on the legal basis for applying different time limits for arrest. The negative point is that the basic use of criminal procedure law, 1x24 hours, is that a suspect who must be released can eliminate other evidence that can support the accuracy of the collected evidence. On a positive note, the Criminal Procedure Code embraces the principle of presumption of innocence as an effort to safeguard human rights (HAM) (Hutabarat, 2020).

In summary, the aim of this study was to find an ideal setting regarding the difference in the time frame of arrest power for Polri investigators and BNN investigators for narcotics crimes.

## **2. METHOD**

The kind of legal research utilized was normative legal research supported by empirical data. Beginning from the written legal provisions applicable to specific legal events in society, his research always has a combination of two research stages, namely:

1. The study of the applicable normative laws.
2. The specific application of events to achieve the stated goals. This application can be achieved through specific actions and legal documents (Muhammad, 2004).

In this study, the authors used several methods or approaches, namely statutory method (one method), conceptual method, analytical method, comparative method, historical method, philosophical method and case method.

Two sources of data were used in this legal research, primary data in the form of interviews with

respondents and secondary data in the form of library materials such as laws and binding decisions, which were able to support the primary data. Then, the data that has been collected is then analyzed using qualitative descriptive techniques. In using this analysis technique, all the data that has been collected is presented, grouped, and described so that conclusions can be drawn.

## **3. DISCUSSION**

### **3.1 Ideal Arrangements Regarding Time Limits for Arrest by Police Investigators and BNN Investigators on Narcotics Crimes.**

Law No. 35 of 2009 on Narcotics provides for narcotic precursors, criminal sanctions for the misuse of narcotic precursors to manufacture narcotics, and the role of communities in efforts to prevent and eradicate the misuse of narcotics and narcotic precursors, including awards for community members who have contributed to prevention efforts, and eradication of narcotic and narcotic precursors abuse (iii, 2009). Regarding the definition of narcotics, according to Prof. Sudato, SH. In his book *Kapita Selekta Penal Code*: "The word narcotics comes from the Greek word 'narke', which means to drug so you don't feel anything" (Prakoso, 2015).

Arrest is a form of coercive effort and is the power of the investigator. As a general provision (*legi generali*), the Code of Criminal Procedure enforces mandatory arrest for all types of crimes. Investigators under the Criminal Procedure Code are officers of the Indonesian National Police or certain civil servants who are given specific powers by law to conduct investigations. These provisions provide the basis for the specific appointment of investigators by law. In law No. 35 of 2009 on Narcotics, the Special Investigator established is the National Narcotics Agency (Rahman, 2020).

Yesmil Anwar and Adang stated that the authority to investigate is an urgent matter in criminal law. This is because the investigative authority is one of the stages of functionalization in criminal law (Wicaksono, 2015).

According to M. Yahya Harahap, the definition of an investigation is a follow-up to an investigation

activity with strict requirements and restrictions on the use of coercive measures after the collection of sufficient preliminary evidence, in order to know that an incident is reasonably suspected of being a criminal act.

According to the understanding of investigation in Article 1, Paragraph 2 of the Criminal Procedure Law, the main task of investigators is to find and collect evidence that can reveal the crime that has occurred, and to find the suspect. "The police's authority to investigate includes police discretion (polite beleid: police discretion) which is very difficult to consider what action will be taken in a very short time in the first handling of an offense".

According to Article 1 (1) of the Criminal Procedure Code, an investigator is a police officer of the Republic of Indonesia or a civil servant official who is given special authority by law to arrange an investigation. The powers are as follows.

1. Receiving a report or complaint from someone regarding a criminal act;
2. Take the first action at the scene;
3. Ordering the cessation of the criminal suspect and checking the identity of the criminal suspect;
4. arrest, detention, search and confiscation;
5. Check and confiscate letters;
6. Collect fingerprints and take photos of persons suspected of committing crimes;
7. The summoned person appears in court as a suspect or witness;
8. Hiring experts related to case review;
9. Engage experts related to case review; and
10. To stop the investigation;

In the meantime, article 6 passage (2) of the Criminal Method Code states that:

"Investigators as referred to in Article 6 paragraph (1) letter (b) have the authority in accordance with the law which is the legal basis for each and in carrying out their duties are under the coordination and supervision of the investigators referred to in Article 6 paragraph (1) letter (a) ) KUHAP" (President of the Republic of Indonesia, 1981).

As has been expressed in Article 1 point (1) and Article 6 passage (1) of the Criminal Method Code that what can be said as examiners are authorities of the State Police of the Republic of Indonesia and

certain gracious worker authorities who are given extraordinary specialist by law. An individual named as an agent must meet the necessities that bolster the assignment, such as having competence, having information and skill in expansion to the rank necessities. These necessities must be met by an agent. In any case, with respect to the arrangements of encouraging prerequisites, the Criminal Strategy Code does not particularly control the issue. Legislation exists where the law functions as social control and forces the public to comply with the applicable laws and regulations. The law that regulates narcotics is a law that must be obeyed, because it was formed in collaboration between representatives of the people and the government. This means that there has been an agreement between the people and the government regarding narcotics regulations, which must be obeyed by all. "The goal is that the law can be enforced smoothly in accordance with the expected goals" (Mulyarsi & Sarwoningtyas, 2014).

Examination is an imperative arrangement within the system of criminal procedural law in Indonesia, since at this organization the agent looks for to reveal the realities and prove of the event of a criminal act, as well as discover the suspect who committed the wrongdoing. The Criminal Method Code (KUHAP) as defined gives agents with the expectation that the individual conducting the examination comprises authorities of the Republic of Indonesia State Police (Polri) who are isolated into full exploring officers and right hand examiners, as well as Government Employees (PPNS). Which are particularly authorized by law (Government of Indonesia, 1981).

In Law No. 8 of 1981 on the Criminal Strategy Code, it is expressed that what is implied by agents are state Police authorities or certain Government Employees authorities who are given uncommon specialists by law to conduct examinations (Article 1 point 1 of the Law). Law No. 8 of 1981 on the Criminal Method Code (Government of Indonesia, 1981).

Examination is the arrangement of settling a criminal case after the examination which is the beginning of seeking out for the nearness or nonappearance of a criminal act in an occasion. When it is known that a wrongdoing has happened, at that point an examination can be carried out based on the outcome of the examination. Within the act of

examination, the emphasis is put on the act of "looking and finding" an "event" that's considered or suspected to be a criminal act. Whereas within the examination, the accentuation is put on the act of "looking and gathering proof". The reason for the examination is to shed light on the violations found additionally to decide the culprits.

Based on the detailing of Article 1 (2) of the Criminal Method Code, the components contained within the definition of an examination are:

- a. An examination may be a arrangement of activities containing interrelated activities;
- b. The examination is carried out by a open official called an examiner;
- c. The examination is carried out in agreement with the laws and controls; and
- d. The reason for the examination is to discover and collect proof that can make light of the wrongdoing that happened and discover the suspect.

Examiners concurring to Article 1 point 1 of the Criminal Method Code are officers of the State Police of the Republic of Indonesia or certain Government Employees authorities who are given extraordinary specialist by law to conduct examinations. The Criminal Strategy Code assists examiners in Article 6, which gives limits on exploring officers in criminal procedures. The limits for authorities within the examination organization are Police examiner officers and Gracious Estate agents. In expansion to being directed in Article 1 point 1 of the Criminal Strategy Code and Article 6 of the Criminal Strategy Code, there's moreover Article 10 which directs the presence of partner agents in expansion to examiners. To discover who is implied by a person who has the proper to be an agent in terms of organization and rank, it is certified in Article 6 of the Criminal Strategy Code. In this article, the office and rank of an examining officer are decided. Beginning from the arrangements of Article 6 of the Criminal Method Code in address, those who are entitled to be named as examining officers incorporate:

- a. **Police Examining Officer**, that in order for a police official to be given a position as an agent, he must meet the rank prerequisites as expressed in Article 6 passage (2) of the Criminal Strategy

Code. Concurring to the illustration of Article 6 passage (2), the positions and positions controlled in Government Controls are harmonized and adjusted with the positions and positions of open prosecutors and judges of open courts. The Government Direction that directs the issue of the rank of agent is within the frame of Government Control No. 58 of 2010 concerning Alterations to Government Direction No. 27 of 1983 on the execution of the Criminal Method Code (KUHAP).

- b. **Government Employees Examiner**, that what is expressed in Article 7 section (2) of the Criminal Method Code which peruses: "Government Employees Examiners as alluded to in Article 6 passage (1) letter b have the specialist in understanding with the law which is the legitimate premise for each and in carrying out their obligations are beneath coordination and supervision of Police agents.
- c. **BNN investigators (National Narcotics Agency)**, that in Article 71 of Law No. 35 of 2009 on Narcotics states that in carrying out the assignment of killing, mishandling, and unlawful opiates and opiates antecedents, BNN has the specialist to conduct examinations and examinations related to the manhandle and illegal activity of opiates and opiates antecedents (UURI, 2009).

Tri Andrisman clarified that the examination of opiates violations in expansion to the arrangements within the Criminal Strategy Code (KUHAP), moreover applies the arrangements stipulated in Law No. 35 of 2009 concerning Opiates as controlled in Chapter XII Article 73 to 92 of the Law. -Law Number 35 of 2009 on Narcotics. In police and criminology opiate cases are called violations without casualties, opiates are distinctive from cases such as kill or others that cause casualties. Within the case of opiates, the casualty and the culprit are the same individual who employs it and he is additionally the casualty.

Within the exertion to annihilate opiates, it cannot be isolated from the back of law requirement officials who are included within the criminal equity framework, beginning from the police, prosecutors, legal, to remedial teach, all of which have gotten to be an indistinguishable unit, but since the birth of

the Law No. 35 of 2009 on Narcotics, there's one other institution that moreover plays an vital part, to be specific the National Narcotics Agency (BNN).

Agreeing to the arrangements of Article 81 of Law No. 35 of 2009 on Narcotics, the specialist of examiners at the National Narcotics Agency (BNN) and agents of the Republic of Indonesian National Police (POLRI) is the same within the framework of killing opiates additionally BNN examiners and examiners of the Republic of Indonesian National Police are authorized to carry out examination of mishandle, unlawful trafficking of opiates and opiates antecedents based on Law No. 35 of 2009. Polri examiners in carrying out endeavors to annihilate opiates moreover have investigative specialist as well as the examination specialist by BNN examiners. There's no prevalence between BNN examiners and the Police. Both are the same, participate with each other (Prime, 2018).

As already clarified, the lawful control of the examination specialist of the police and the BNN against opiate wrongdoings is that the BNN is explicitly authorized by Article 75 letter (g) jo. Article 76 of Law No. 35 of 2009 on Narcotics. BNN is given a most extreme capture time of 3 x 24 hours and can be amplified for a maximum of 3 x 24 hours. In the meantime, inside the specialist of Polri agents as expressed in Article 16 jo. Article 19 of Law No. 8 of 1981 on the Criminal Strategy Code, in other words captures are made no afterward than 1x24 hours. The contrast in specialists can lead to strife so that courses of action are required with respect to the specialist inside the time constraint for captures between the two educators.

The ideal regulatory reformulation regarding the time limit for arresting authority by Polri investigators and BNN investigators on narcotics crimes can be carried out by:

1. Revise or add certain articles to all or part of articles that have been disharmony in laws and regulations by the agency or institution authorized to make them.

In terms of the investigative authority possessed by BNN Investigators and Polri Investigators in handling criminal acts of abuse and illicit narcotics trafficking is to revise or add certain articles to all or part of articles that have been disharmony in laws and regulations related to the time limit for arresting

authority, so that the Police and BNN using the same legal basis in handling criminal acts of abuse and illicit narcotics trafficking.

2. Submitting a judicial review to the judiciary as follows:

- a. For legal audit of the Structure to the Protected Court; and
- b. For testing the legislation under the law against the law to the Supreme Court.

#### **4. CONCLUSION**

The difference in the time limit for arrests used by BNN and Polri requires a solution in terms of harmony between the two parties, it is necessary to use the same legal basis for narcotics crimes regarding the regulation of the authority for the arrest time limit between Polri investigators and BNN investigators. The ideal setting regarding the time limit for arrests by Polri investigators and BNN investigators on narcotics crimes can be done by revising and adding certain articles that have been harmonized with the laws and regulations, and submitting a material review to the judiciary.

#### **AUTHOR'S CONTRIBUTION**

In the making of the preparation of this scientific article, of course it cannot be separated from the role of each author who has made a full contribution so that the process of making and compiling this scientific article can run well. The contributions of each author are as follows:

- 1) Paradongan Hasibuan contributed in collecting data, both field data and library data, and in compiling articles.
- 2) Andi Muhammad Sofyan contributed in providing advice and assisting in the data processing.
- 3) M. Said Karim contributed in providing advice and assisting in the data analysis process.
- 4) Haeranah contributed to data processing.

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## REFERENCES

- [1] Asrudi. (2017). The Role of Investigators in the Storage of Evidence for Narcotics Crimes at the Wajo Police Station. *Al Hikam*, 1(2), 58–74.
- [2] Hutabarat, SA (2020). Legal Studies on the Investigative Authority between the Indonesian Police and the KPK in the Eradication of Corruption Crimes Seen from State Institutions. *Journal of the Legal Spectrum*, 17(1), 59–71. <https://doi.org/10.35973/sh.v17i1.1477>
- [3] III, CHAPTER (2009). Andi Hamzah, RM. Surachman, *Narcotics and Psychotropic Crime*, (Jakarta: Sinar Graphic, 1994), p. 13. 35, 43–59.
- [4] Muhammad, A. (2004). *Law and Legal Research*. Bandung: PT. Image of Aditya Bakti.
- [5] Mulyarsi, CR, & Sarwoningtyas, M. (2014). Investigation of Narcotics Cases with Under Cover Buy Method. *Verstek Journal*, 2(1), 60–69.
- [6] Indonesian government. *Criminal Law Procedures (1981)*. Ministry of Law and Human Rights of the Republic of Indonesia. Taken from [www.djpp.kemenumham.go.id](http://www.djpp.kemenumham.go.id)
- [7] Prime, IA (2018). Technical Analysis of Finding Evidence Against Perpetrators of Narcotics Abuse at the Investigation and Investigation Stage. In Thesis. Lampung University.
- [8] Permadi, DF (2014). Form of Coordination between the Police and BNN in Conducting Investigations on Narcotics Abuse Cases (Studies at the Blitar City Police and BNN Blitar Regency). *Scientific Journal*, 3(2), 1–19. <http://journal.stainkudus.ac.id/index.php/equilibrium/article/view/1268/1127>
- [9] Prakoso, BY (2015). Juridical Analysis of Sentencing Decisions Against Narcotics Criminal Acts (Decision Number 159/PID.B/2010/PN.YK). In Thesis. University of Jember.
- [10] President of the Republic of Indonesia. (1981). Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). *Kpk*, 1951(8), 1–142. [https://www.kpk.go.id/images/pdf/Law/uu\\_8\\_1981.pdf](https://www.kpk.go.id/images/pdf/Law/uu_8_1981.pdf)
- [11] Rahman, K. (2020). The Problem of Regulating the Forced Arrest of Perpetrators of Narcotics Crimes. *Journal of Law Ius Quia Iustum*, 27(3), 481–500. <https://doi.org/10.20885/iustum.vol27.iss3.art3>
- [12] Sofyan, A., & Asis, A. (2014). *Criminal Procedure Code An Introduction*. Jakarta: Kencana.
- [13] UURI. (2009). RI Law. Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, 96. Retrieved from <http://e-pharm.depkes.go.id/front/pdf/UU352009.pdf>
- [14] Wicaksono, R. (2015). Investigation of the National Narcotics Agency in Narcotics Cases. In Thesis.