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Polri (Indonesian Police Dept) Investigator Position in Accordance With Criminal Code Procedures on Narcotics Crime Law Enforcement

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Polri authorisation restriction could be watched over by the regulation of investigation authorisation; where the authorisation to do that on certain crime activities is based on certain regulations. Just to be given to certain PPNS, while Polri just has authorisation if required by PPNS. Authorisation on investigation and interrogation is owned by two agencies; Indonesian Police Dept and National Anti-Narcotics Agency as statute no. 8 year 1981 on KUHAP section 6 (1) subsection (b), that civil investigator be given special authorisation by law. From the background above, the author makes some points as follows: what is the legal consequence toward dualism on the interrogation duty of narcotics to the Indonesian state administration, and what is the best proportion toward Polri and BNN investigation on narcotics crime action. The goal of this research is to analyse the legal consequence toward dualism of narcotics crime investigation in the Indonesian state administration and to analyse the best proportion on Polri and BNN investigation authorisation toward narcotics crime activity. The type of research applied is normative research, by using references research method that is law research, used by studying and observing references as primary and secondary law materials. Meanwhile this research is descriptive due to the author wishing to demonstrate the problems as research points. Data analysis is presented descriptively, then the author makes a summary on this research deductively. From this research some points were obtained. First, the same authorisation to national anti-narcotics agency and the Indonesian police department section 81 statute no. 35-year 2009 on narcotics, particularly on interrogation which causes dualism in narcotics investigation. BNN has a wider portion and without differentiation uses the rule on functions between BNN and POLRI. Secondly, regulation on investigation authorisation national anti-narcotics agency statute no. 35-year 2009 toward national narcotics, in order to avoid more organised narcotics crimes, is used. Thus, proper coordination is required between the Police Department and PPNS

BNN. It is recommended that government has constitutional regulation to arrange the limitation of authorisation between law enforcement agencies such as PPNS BNN and Polri, to not having mis-perception, differentiation and dualism on the investigation.

Key words: *Authorisation interrogation, narcotics crime.*

Introduction

Indonesia is a 'law state' as wished by the founding fathers and summarised intensively by the state. The Constitution of the Republic of Indonesia 1945, functions to create, keep it secure, and bring obedience to national life in prosperity and justice. The Constitution of the Republic of Indonesia 1945, as a written constitution, has loaded regulations and fundamental laws to be applied to this state. But as constitution 1945 was applied as the state constitution, and it has been changed 4 times in 1999, 2000, 2001 and 2002. This has caused people to require basic conversion after the Reformation era.

As constitution 1945, the second conversion was MPR RI statement No. VI/MPR/2000 and No. VII/MPR/2000. The domestic security is formulated in the format of the police aim and consistently stated as details of main operational procedure. Indeed, for implementing the police function, the Indonesian Police Department, assisted with a special police force, civil investigators, and voluntary security, through the subsidiary and participation principle (Ni'matul, 2007).

Institutionally, the Indonesian police Department is a state agency, that has the main duty as a law enforcement agency as arranged in the Constitution. However, Polri has no higher position to other agencies formed by the constitution. Polri authorisation has been arranged fundamentally in the constitution in order that the law regulation related to law enforcement, should be harmonious to the Constitution. According to this new law regulation, the duty is held by police who separated to the Indonesian National Army (TNI), Indonesian Police Department and in this case, assisted by (a) special police force, (b) civil investigator, and/or (c) voluntary security; police function implementation based on the constitution (Jimly, 2010).

Police function given to the civil servant in assistance of Police to apply police function, is not being implemented properly. This is proved by the fact that the new regulation gave more authorisation to PPNS as the only state agency authorised to implement police function as the main agency.

The restriction of the Indonesian Police Department could be seen through the interrogation authorisation toward a few criminal acts that was delivered to PPNS and Polri support as required. Even though Polri authorisation still has no obvious restriction, it has the main function institutionally for law enforcement. Authorisation and interrogation for narcotics are submitted by two agencies: Polri and BNN along with the civil investigators with statute. No.

8 year 1981 on KUHAP section 6 (1) point (b) stated that the civil investigator has been given special authorisation by the Constitution.

Authorisation of anti-narcotics agency arranged on section 75 and 80 statute no. 35-year 2009 on narcotics, meanwhile has the right to do an investigation on section 75. Section 75 statute no. 35-year 2009 on narcotics, gives authorisation to anti-narcotics agency for interrogation. This authorisation is added to section 80 statute 35-year 2009 on narcotics i.e BNN. Regulation on section 75 and 80 statute 35-year 2009 on narcotics demonstrated that BNN has a large authorisation and it is worried that it clashes with other authorities, such as the Police Department and the civil investigator. However, the authorisation of the Police Department is arranged on section 16 subsection (1) statute no. 2 year 2002.

Authorisation on interrogation between the anti-narcotics agency and the police Department hopefully could be held in harmony and communicate with each other in spite of problems institutionally and also for equality before the law when investigated at BNN or the Indonesian Police Department.

The existence of the anti-narcotics agency could become a dual mechanism or law enforcement in narcotics with the police Department with another investigator i.e. a civil investigator. The anti-narcotics agency is giving authorisation to investigate the narcotics crime acts and also the police Department's communication and coordination is required for narcotics investigation.

Even though they coordinate with each other, it showed the inability of the police Department to do it's duty and it's authorisation for narcotics crimes. Meanwhile the civil investigator is authorised by constitution no. 35-year 2009 on narcotics, and is still under surveillance of the Indonesian Police Department as arranged on section 7 subsection (2) statute no.8, year 1981 on criminal code procedures (KUHAP).

The authorisation problem could be an institutional polemic. This refers to institutional integrity and there will be always avoidance for power decrease that will show lack of inspection from the institution. That institution will be considered unable to perform its role as listed by the constitution and even has no accountability, as people expect, particularly as this is about the power.

Problems Summary

Based on above summary, then it could be concluded:

1. What is the legal consequence toward dualism on the duty and function of the investigator for narcotics to the Indonesian state administration?
2. How is the best portion for authorisation on investigation and interrogation of the Police Department and anti-narcotics agency (BNN) based on the constitution?

3. What barrier factor in dualism of investigation and interrogation between the Indonesian Police Department and the Anti-Narcotics Agency?

Goal and Benefit of the Research

1. Goal of the Research

Based on the main problem above therefore, the goal of this research is to analyse the legal consequence of dualism in duty and function of the investigator for narcotics based on the constitutional regulation. And what is the barrier factor in dualism of authorisation among Police and BNN based on the constitutional regulation.

2. Benefits of the Research

The benefit of this research is to gain and develop the insight of thoughts by scientific knowledge, particularly for the author to share knowledge to the related institution, government and the people, for some ideas to the answers of some problems, and hopefully as references for the next research and to enrich the scientific knowledge in the academic facility.

Theory Framework

Law-state Concept

Before the third conversion of the Indonesian constitution 1945, there was no terminology of 'law-state', however in the explanation of that constitution there is term about 'the state is based on the law (Rechststaat)'. After the third conversion of constitution 1945 on November 09 and in 2001 it is then listed as 'Indonesia is as law-state' on section 1 subsection 3 constitution 1945, and it is not easy to remove Rechtsstaat from understanding of law-state (Irfan, 2004).

Even the thought of law-state has been started by the writing of Palto about 'nomoi' and then continued to Aristotle who stated that the law-state appeared from the small town, as the small population of a country where all the state administration was solved by discussion of all the people in that country (Moh dan Harmaily, 1999).

The evidence that law and regulation have been functioning well in a country, it could be seen from the attitude, behaviour and implementation of the people, and even in political and law decision-making for the state administration that holds the justice for people in many countries. Functions or law roles in a country are as follows (Nomensen, 2010):

1. To stand for justice to all people.
2. To keep the country safe and have peace for people.
3. To avoid violence among people.

Authorisation Theory

The power is usually equalised to authorisation, the power is always turned to the term of authorisation and in reverse, even the authorisation is usually equalised to the right. The power is usually in a form of relation which means "the rule and the ruled" (Miriam, 1998).

In the literature of political science, administration and law always find the terms authorisation, power and rights. Power is close to authorisation, and power is always turned into authorisation, and in reverse, even the authorisation has a similar meaning to rights. Power is always in the form of relationship, where there is a meaning of the rule and the ruled (Miriam, 1998).

For public law, rights are related to power. Power has the same meaning as rights due to the executive, legislative and judicative formal power (Philipus, 1997). Each implementation of the government and/or public officials must relate to legal authorisation. The authorisation is obtained through 3 sources (Ridwan, 2006):

1. Attribution is the authorisation rights by the constitution makers and by the government organs. That means it sticks close to the officials for the position he/she occupies.
2. Delegation means authorisation of the government from one administration organ to others or on the other hand it's responsibility is on the delegation receivers.
3. Mandate takes place if the government organ permits to its authorisation to be performed by another organ under its surveillance. No responsibility is taking over.

Every authorisation is restricted by the content/ material (materiae), region/space (locus) and term (tempus). If those aspects are broken down, there will be broken authorisation which means the government authorisation is out of line (onbevoegdheid).

Surveillance Theory

In daily life, both in society and work place, the surveillance term is not difficult to understand. This is showed by many definitions appeared for this surveillance. Even though that definition and understanding is not differentiated.

Based on the Indonesian language dictionary, the word "watch out" could be defined as "looking carefully", staring sharp, alert" and etc. meanwhile the word "watch over" could be defined as "looking at something and paying attention" and the word "control" means "to tie up" and the word "controller" means "leader" or someone to rule.

The term of surveillance and controlling in the Indonesian language is obviously different, however, in English literature both those definitions have no difference and include the word "controlling" therefore the term controlling has a larger meaning compared to surveillance (Viktor and Jusuf, 1998). In this case, surveillance is included in controlling (Sujamto, 1986).

Controlling refers to the word control and means to lead, to repair and to act from the wrong to the right (Sujamto, 1986). The direct product of surveillance is to acknowledge, meanwhile controlling is to give the right way to the controlled object.

Surveillance is a process of observation through implementation to all activities of organisation to be sure that the operation runs well according to plan. Surveillance is a determinant process as to what should be done in order to be proper (Viktor and Jusuf, 1998). From all of these definitions it could be summarised that surveillance is a process of observation to all operations of organisation to assure all the operation is proper as per the planning. According to that definition, it is not provided by the aim of the observation process, unless the final goal of that observation is to achieve what has been set as the plan. Surveillance is managerial procedure to guarantee all the operation is going well or obtains the target (Viktor and Jusuf, 1998).

The surveillance itself has the goal to know the operation as a whole, if it is going to the plan or not, and to figure out troubles or problems found in order to take the recovery steps. Surveillance is not aimed just for one institution or agency, but another party has a right to surveillance for development. Because development requires planning, operating and surveillance from the government agencies, both legislative and executive and judicative (Soekartawi, 1990).

Surveillance or what we mention as monitoring, is really required for law enforcement that must be executed by government or the team created by the implementing leaders. Monitoring or surveillance teams have to re-check all aspects of all steps of surveillance, and are the parameters or regulations set to that agency and whether they are operated well or not or, whether the assumptions have been set correctly. And at one point, the monitoring team must give direction or information as recommendation, to continue the process of law if it is broken or in reverse.

Surveillance for the crime procedure on water's zone around the legal regional police Department of Riau Province, is required optimally to prevent the illegal stuff coming in without legal documents. This also prevents abuse of power for the authorised, due to most officials misusing their rights. But the officials who obtained unlimited power will tend to corrupt, but absolute power corrupts absolutely. In the legal state administration science, power abuse by government is named *onrechmatige overheidsdaad (Tri)*.

This surveillance is also aimed to check and balance between the government agencies which have the equal level of authorisation for law enforcement especially on water's zone. This refers to do surveillance among the government agencies toward disadvantageous things for the state.

Legal Security Theory

Security means assured circumstance or certainty. The law must be fair and just. Principally fair and just because the behaviour guidance must support some normal mechanism. Due to the fair and just, the law could perform its function. Legal security is the question that can be answered normatively, not sociologically (Dominikus, 2010).

According to Kelsen, law is a norm system. Norm is the term stated aspect "should be" or *das sollen* by gaining some regulation about what should be done. Norms are products and human actions deliberatively. The Constitution contains the common rule to be the guidance for individuals to behave in society. Those rules will become a restriction to society to perform something to other individuals. The rules then become legal security (Peter, 2008).

Legal security is a normative means when a regulation made and legalised, certainly because it rules obviously and logically. Obviously, this means no doubt at all, and obvious means what is contradictive and appearing as conflicts of the norm. Legal security demonstrated obvious legal implementation, consistent and commitment to its performance that can't be influenced by subjective circumstances. Certainty and justice aren't just a moral charge but demonstrates the type of law factually. The uncertain and unjust law will be bad legal implementation (Kansil et al., 2009).

According to Ultrecht, legal security contains two definitions, firstly there is common rule that makes individuals recognise what they should or shouldn't do. Secondly, it is a legal safety for individuals from the government authorisation because individuals can identify what can be allowed and applied by the state for individuals (Riduan, 1999).

This legal security definition comes from juridical-dogmatic definition based on thought of positivism in law which tends to be something autonomic and independent; this is because the law is as bunches of rules. For they believe this thought, that state that the goal of law is to guarantee the legal security for all. Legal security can be realised by law and categorised to create legal regulation generally. This general type of legal regulation proves that law is not aimed to realise justice and benefit but is to do with certainty (Ali, 2002).

Legal security is insurance of law that contains justice. The norms support justice that must be functioned as the submissive rule. According to Gustav Radbruch, justice and legal security are constant parts of the law. He thought that it must be paid attention to. Legal security must be kept to obtain safety and obedience in the state. Eventually, positive legal procedure must be obeyed. Based on legal security theory and values to achieve, are justice and happiness (Ali, 2002).

Legal Effectiveness Theory

Legal awareness and obedience are two determined parts to perform constitution and custom law effectively (Achmad, 2009). According to Krabbe legal awareness is the value inside of

human beings about existed law or expected to be existing. This statement is to explain what the legal awareness is, but it will be more complete when added by society's values on function to what is to be performed by law in society (Achmad, 1998).

Legal effectiveness means that each person acts as the legal norms and those norms must be obeyed and applied. Etymologically, the word effectiveness comes from the word effective that means the effect (the consequence, the effect, the impression), gets results, usefulness (on effort or action) and the first time to start (on constitution or rules).

Effectiveness is a positive comparison among the achieved outcome with input to utilise in completing the work on time. Meanwhile Soejono Soekanto said it is a condition of failed law to achieve the goal to manage all performance or certain behaviours. Therefore, the achieved one is named positive while for them away from it, is named negative (Soerjono, 1985). The effectiveness concept is multi-dimensional, that defines different levels of effectiveness as the background of knowledge, and the final aim of this effectiveness is quite similar i.e. goal achievement.

Generally, the factors which influence the constitution most are professionalism and applied performance; optimally to undergo the rights and function of the law enforcement, either to do their duty or to enforce the law itself. According Soerjono Soekanto the main problem in law enforcement is some influenced factors. Those factors have neutral meaning. Thus, there are positive and negative impact laid on those factors (Soerjono, 2011). It must be admitted that most societies apply several broken law acts to influence the law enforcers negatively to the process of law enforcement either for personal, family or children/ community (Soerjono, 1996).

Research Method

In this research, the author used the most proper methodology to this research object as follows:

1. Type and Nature of Research

This research can be categorised as normative law research based on the type or references research method, by discussing and researching references for primary and secondary law material (Soerjono dan Sri, 2007). This method, an option based on what was explained by Peter Mahmud Marzuki, is where legal research is a process to figure out legal rule, principle, and doctrine to respond to the problems. This research is annalistic-explorative through references (Peter, 2015). The focus of this research is on the functionality of the investigators of the Police Department and Agency (BNN). Approaches of this research are as follows:

a. Juridical approach, as the approach applied to compare the constitution/regulation related to the problems of research on the Indonesian Constitution year 1945.

b. Historical approach, applied to discuss the background of this research on legal norms in authorisation to do investigation toward narcotics crimes among PPNS, BNN and the Indonesian Police Department by using legal regulation as follows:
    1. Criminal code procedures statute No. 8, year 1981.
    2. Statute No. 2 year 2002 on the Indonesian Police Department.
    3. Statute No. 35-year 2009 on narcotics.
    4. Comparison to this research, by comparing narcotics crime investigators and anti-narcotics agency (BNN) based on the constitution.

2. Data Resource

For normative legal research, data resource comes from secondary. There are three types of this data i.e primary, secondary and tertiary legal material. Primary legal material comes from:

a. Constitution of Republic of Indonesia 1945
b. Riminal Code Procedures statute No. 8 year 1981
c. Statute No. year 2002 on Indonesian Police Dept
d. Statute No. 35-year 2009 on narcotics

Secondary legal material is material that gives explanation aboutu primary legal material such as constitution design, research outcomes, scientific result from the law experts, etc.

Tertiary legal material gives guidelines and explanation such as the Indonesian Language dictionary (Soerjono dan Sri, 2007). The legal dictionary and the articles give assistance to this research.

Data Collection

Data collection is in the normative legal research by applying reference/ documentary study. In a particular circumstance, it could be used as a non-structural interview as support but not as a tool to obtain primary data.

Data Analysis

After the data collection procedure and data processing, the data is analysed as qualitative-descriptive. This analysis does not apply to statistical numbers, but more to obvious explanation. It was analysed and described, then summarised by deductive method, from the general statement into a particular statement.

Research Outcome and Discussion

Legal Consequence toward Dualism in Duty and Function of PPNS BNN and Polri for Narcotics Crime to the Indonesian State Administration System

Constitutional regulation arranges narcotics problems that have been set and legalised. However, narcotics crime still cannot be decreased. In many recent cases, many drugs traders were caught and sentenced but other suspects don't care and tend to enlarge their operational zone (Kaligis and Associates, 2002).

Narcotics and drugs crimes are transactional crimes by using hi-tech and technology. The law enforcers should avoid this and take over this crime to raise morality and human resource quality in Indonesia, especially for the next generation of this country. One of law enforcers is the Anti-Narcotics agency (BNN) that is expected to help the law enforcement process toward narcotics crime (Indriyanto, 2003).

Statute No 35, year 2009 on narcotics, arranged the legal punishment, therefore the anti-narcotics agency hopefully assisted in the case with the completion process to the people who did the narcotics crime. On statute no 35, year 2009 on narcotics, the National Narcotics Agency was given the authorisation to do investigation and interrogation which was arranged in the last constitution. Two authorisations seem necessary to anticipate narcotics crime with more complex operation methods and supported by an organisation. It is not just gaining the authorisation, the status of the Anti-Narcotics Agency also needs to improve.

Other law enforcers take the important role to narcotics crime as "investigators", in this case Polri and BNN, where they are expected to help the process of completing the arrest of the drugs criminals. According to statute No. 35-year 2009 on narcotics, BNN was given authorisation to investigate and interrogate about the abuse, where the narcotics were spread, and the narcotics precursor, with the authorisation to the investigators of BNN. Meanwhile authorisation by Polri investigators was listed on statute no 81 and 35-year 2009 on narcotics, but the investigation by Polri generally was listed on statute section 7 KUHAP and 16 (1) statute 2 year 2002 on the Indonesian Police Dept.

Section 75 statute no 35-year 2009 on narcotics gives authorisation to BNN for investigation. The authorisation of the National Anti-narcotics Agency is added to section 80 statute 35-year 2009 on narcotics. Section 75 and 80 statute no 35-year 2009 on narcotics demonstrated the authorisation of BNN is large enough therefore it is worried about bumping up with other law enforcement authorisation such as the Indonesian Police Dept and civil Investigators.

The case of the Police Department authorisation in investigation on narcotics crime section 16 subsection (1) statute no 2-year 2002 on Indonesian Police Department states:

Authorisation of investigation among BNN and Polri in law enforcement procedure to narcotics crime could run in harmony and coordinate together, but can raise problems particularly institutional problems and for suspects investigated in BNN and Polri (Indriyanto, 2003).

Both BNN and Polri must coordinate and inform each other for the investigation on narcotics crime. Even though both are coordinated, it doesn't mean they demonstrate the inability from the Police Department to overtake the narcotics crime well. Meanwhile, the civil investigator is also given authorisation by statute no 35-year 2009 on narcotics. However, as coordinator and surveyor, the police Department is listed on section 7 subsection (2) statute 8-year 1981 on criminal code procedures (KUHAP)

Even though there is dualism of authorisation owned by Police Dept and Anti-narcotics agency, it has appeared as a legal consequence and institutional polemic worthy to be noticed i.e. authorisation related to institutional integrity and prevention toward power disintegration. This then appears to be a misperception from those institutions. Those institutions are considered unable to hold the power given by the constitution and don't give sufficient accountability as expected.

Statute no 35-year 2009 on narcotics gives authorisation widely to BNN in order to prevent more organised narcotics crime and include to National, regional, and international scope. So that authorisation of BNN on statute no 35-year 2009 on narcotics which covered prevention, illegal narcotics was spread by rehabilitation for the drug users.

The authorisation of investigators at BNN and Polri discussed from the court system perspective is a system of integrity, where the authorisation distribution must be obvious. Nevertheless, each component of the sub-system has its own function and different authorisation, but in the concept of criminal justice, each part of that sub-system must have the same perception, attitude and goal.

However, on the other hand, it is possible that dualism will appear in completing narcotics crime, because each investigator has the right to investigate that eventually will prevent or disadvantage the process of investigation to narcotics crime, due to dualism and also the overlapping of power. This due to each investigator being required to achieve their duty in narcotics crime in their career, because of the high economic value in narcotics abuse and it's spread.

Meanwhile, investigations held by the civil investigator must coordinate with an anti-narcotics agency or the Indonesian Police Department, as the constitution commandment on criminal code procedure. This procedure signs that cooperation step to prevent the abuse of power by one side to others, particularly to the Police Investigator and the Anti-Narcotics Investigator.

Dualism in investigation between Anti-Narcotics Agency and the Police Department for narcotics crimes, will always occur if no attention is given to it. The anti-narcotics agency also establishes their branches in the province and regency, to undergo the investigation and interrogation. The existence of a National Anti-Narcotics Agency has been a superbody agency in preventing and eliminating narcotics abuse. The huge portion of this authorisation could

appear as jealousy among the investigating institutions. The authorisation of BNN as listed on section 75 and 80 statute no 35-year 2009 on narcotics, seems ambiguous as to whether this authorisation is also owned by the Police Dept or on the contrary.

The significant pressure of statute No 35-year 2009, is the authorisation of BNN where this constitution gives a huge portion for the BNN investigator. Authorisation of the BNN investigator based on statute No 35-year 2009, is close to the Corruption Eradication Commission (KPK), the difference being that BNN cannot make any charges but can still use a general charge from the attorney (Punya, 2011).

The huge portion to BNN, particularly to convert BNN to being an investigator, causes the question to arise: is it due to the police Department not being able to do the investigation into narcotics crime? So that the authorisation is given to BNN.

The huge portion of BNN, such as in custody and searching based on statute No 35-year 2009, in fact is not similar to Police and PPNS investigators. This difference potentially causes some issues institutionally and with equality before the law, for the suspect investigated in BNN or Polri.

The issue of this authorisation can potentially be an institutional polemic that must be noticed because it involves institutional dignity. The institutions will be considered unable to run the power given to them and even considered as never giving sufficient accountability as the expectation of the society. Nevertheless, this is about power.

The most proper Polri and PPNS Investigation in the Constitution

a. Investigation Authorisation By Polri in Narcotics Crime

The investigation as arranged on section 1 number 2 KUHAP, is a series of investigators act in a way that has been arranged by constitution, to find out and collect the evidence to make it clear on the crime which is taking place and also to figure out the suspect. De Pinto states that investigation (*opspring*) could be meant as an initial searching by pointed officials to recognise what is happening with violence legally (Lilik, 2012).

Investigation is initial searching activities (*vooronderzoek*) that tends to the searching and data collection of the facts, and through the capture and searching, this could be followed by taking custody of the suspect and the seizure of assets related to the crimes (Ali, 2002).

Investigation is the action to find out the crime as the first act of the law enforcer given authorisation for that, and investigation is as action that must be taken by the investigator if a crime is suspected. That action must be taken soon, as the reality is: has it really happened or not and who is the suspect? (Darwan, 1998). A series of investigation activities are the actions on behalf of the law by Polri investigators who started by calling for the suspect, arrest, custody,

seizure and other steps arranged by law, and the legal constitution, until the investigation process is completed (Hartono, 2010).

The investigation step is the initial searching by investigators including the extra searching as the basic process from the attorney investigation. This investigation is carried out due to the criminal act based on the report (Andi, 1989). The target of the investigation is taking efforts to prove the crime itself, in order to be obviously proven and to figure out the suspect. The evidence procedure is arranged by KUHAP by carrying out to look for, to find, to collect and to seize the valid evidence (Kuffal, 2010).

The authorisation of the investigation is owned by investigators and co-investigators. However, the meaning of investigators based on section 1 number 1 KUHAP, is the official of the Police Department or Civil servants that are given rights by the Constitution. Moreover, Section 6 KUHAP states:

a. The investigator is:
   i. The police officer of the Republic of Indonesia
   ii. The civil official that is given rights by constitution.

B. Condition of ranks as stated on sub-section (1) will be arranged in the state regulation.

From section 6 KUHAP above, it is obviously stated that the investigator consists of two parts: they are Polri and the Civil Investigator. From the functional differential side, KUHAP puts investigating functional responsibility to Polri through investigators and co-investigators. Meanwhile for the civil investigators are given rights from the special crime code procedure, to do investigation so that the authorisation of the civil investigators is restricted and under the coordination and surveillance of Polri investigators (Yahya, 2012).

Authorisation of narcotics investigation is arranged by statute No 35-year 2009 on narcotics, which is not just given to BNN investigators but also to Polri investigators as stated on section 81: that Polri investigators and BNN have rights to do investigation into narcotics abuse and distribution, and also narcotics precursors based on this statute.

Intention on section 81 describes that investigators of Polri, in order to eliminate narcotics also have rights to investigate as BNN did. There is no superiority between Polri and BNN. Both have the same rights and cooperate with each other to eliminate the distribution of narcotics and its precursors.

However, since statute 35-year 2009 on narcotics was legalised, BNN has rights to do investigations into narcotics crime with cases based on the way to arrange in the constitution that must be ruled, in the process of arresting the narcotics abuse suspects and narcotics precursors in Indonesia (Sujono dan Bony, 2013).

b. Authorisation of PPNS BNN in narcotics crime investigation

Duties of National Anti-Narcotics Investigators are arranged on section 70:

a. To arrange and carry out the national policy on prevention and elimination of narcotics abuse, distribution, and its precursors.
b. To prevent and eliminate the narcotics abuse, distribution and narcotics precursor.
c. To coordinate with the Indonesian police Chief in preventing and eliminating the narcotics abuse and distribution and also its precursors.

On the authorisation of the co-investigator, it is arranged on section 11 KUHAP, where the co-investigator has the right as mentioned on section 7 sub-section 1, with the custody that must be given by the authorisation of the investigators. Beside the authorisation as listed on the criminal code procedure (KUHAP), there are also other investigators based on the special constitution of crime as statute no 35-year 2009 on narcotics, giving the authorisation to national anti-narcotics investigators.

On section 71 it states that: "in carrying out the duty to eliminate the narcotics abuse and distribution and its precursors, BNN has rights for investigation and interrogation to the narcotics abusers and distributors and its precursors".

Moreover, section 72 gives regulations to BNN investigators as follows (Lihat Pasal 72 Undang-undang Nomor 35 Tahun 2009):

a. The authorisation as mentioned on section 71 is carried out by BNN investigators.
b. BNN investigators as mentioned on sub-section (1) is activated and inactivated by the BNN chief.
c. Further condition and activation or inactivation of BNN investigators listed on sub-section (2) by BNN chief.

The authorisation of BNN investigators is arranged on section 75 statute no 35-year 2009 on narcotics.

Duties and rights of BNN are arranged on section 70 and 75 statute no 35-year 2009 on narcotics. Authorisation of arresting is carried out unless it is 3 x 24 hours since the procedure is received by investigators, meanwhile sub-section (2) stated that the custody as mentioned on sub-section (1) can be prolonged 3x24 hours. Therefore, on statute no 35-year 2009 on narcotics, it arranged for some investigators to investigate the narcotics abuse and distribution and its precursors:

a. National Anti-Narcotics Agency
b. Police Investigators of the Republic of Indonesia
c. Civil Investigators.

However, section 81 statute no 35 describes the position of PPNS, Polri investigators and the attorney general in carrying out duties as follow:

1) PPNS has the position under coordination and supervision of Polri investigators.
2) For the investigation interest, Polri investigators gives guidance to PPNS and back up for investigation (section 107 sub-section 1 KUHAP).
3) PPNS must give reports to Polri investigators for investigation of the crime case (and report to attorney if necessary), if there is any evidence to the investigation from PPNS to JPU (section 107 sub-section 2 KUHAP).
4) If PPNS has completed the investigation, the outcome must be delivered to the attorney by PPNS "through Polri investigators". Section 107 sub-section (3) KUHAP.

The position of PPNS as under Polri investigators since KUHAP activated, has raised fatal implications. This refers to PPNS being inferior, unconfident to carry out it's duties and rights, and in that system seems to decrease the role, existence, mentality and PPNS ability. PPNS role in the criminal court system is still being lessened in KUHAP. Each ministry which has PPNS to enforce the law and keep the administration Penal Law on his authorisation is still not developing its human resources yet and is tied up by the system.

Obstacles in an investigation of Polri and PPNS narcotics crime

In order to carry out law enforcement of narcotics crime by PPNS BNN and the Police Department however, there are some issues or obstacles to do the investigation of that crime. Some of the obstacles are as follows:

Communication factor

The communication is still not taking place because each institution runs by their own without coordination, so that the result for eliminating the narcotics crime is still away from the law enforcement itself. For carrying out law enforcement on narcotics requires communication interactively between both sides in order to prevent the narcotics abuse and distribution.

Both must be coordinated and communicate in carrying out the investigation of the narcotics crime. Even though both have communicated with each other, it seems that there is an inability to signal from the police Dept in carrying out duty and authorisation to eliminate narcotics abuse and distribution. Besides that, civil investigators are given rights as statute no 35-year 2009 on narcotics, but the coordinator and supervisor are still under the Police Department as noted on section 7 sub-section (2) statute no 8 year 1981 in criminal code procedure (KUHAP).

Some issues such as coordination among investigators, authorisation overlapping, centrically institutional attitude and arrogance among investigators could be kriminogen factors in law enforcement because the power of investigation is as one subsystem in the criminal court system that essentially is as a process of criminal law enforcement, related to the criminal legal

constitution either substantive or procedure of criminal because it is based on the criminal law enforcement system "*in abstracto"* that will be realised to law enforcers *"in conreto"* (Barda, 2005).

Recruitment system of Less Effective PPNS BNN Investigators

Recruitment to police investigators from the civil officials is perhaps rather less effective because it needs more education and training. Meanwhile the narcotics crime and its precursor tend to enlarge and the prevalence of narcotics abuse tends to be higher. However, Anti-Narcotics Agency recruit the investigators from the civil officials just to become the investigator of the Anti-Narcotics agency, in order to eliminate narcotics abuse and distribution. The existence of the National Anti-Narcotics Agency with its authorisation has been the super body institution for narcotics abuse prevention and elimination.

Overlapping Regulation

Larger authorisation of National Anti-Narcotics Agency as in custody and searching, based on statute no 35-year 2009 on narcotics, is not similar to the authorisation to police and Civil investigators. The difference will potentially raise issues institutionally among law enforcement institutions.

This non-structural institution has a duty to coordinate the government institution in association with arranging the policy and the execution, prevention and elimination of narcotics, psychotropic, precursor, and addictive substance abuse and distribution. BNN also has the duty to carry out the prevention and elimination of narcotics, psychotropic, and addictive substance abuse and distribution (P4GN).

Based on the constitution, the National Anti-narcotics Agency has authorisation to form a unit consisting of the government institution as its duty, function and authorisation. BNN could apply policy and strategy for preventing drug abuse by decreasing its availability.

Conclusion

Summary

According to the research, analysis and discussion written by the author of the previous chapters, here are some summaries toward the issue in this research:

1. The same authorisation among the investigators of BNN and the Police Department on section 81 statute no. 35-year 2009 on narcotics, especially in investigation causes dualism in investigation of narcotics crime that potentially overlaps among investigators.
2. Authorisation regulation in investigation of National Anti-narcotics Agency on statute No 35-year 2009 on narcotics, is a response to the development of narcotics crime, as is the

wide authorisation given to the National Anti-narcotics Agency in preventing the more organised narcotics crime covering national and international scope. National Anti-narcotics Agency is on the same level as the Police Department as a sub-system in the criminal code system which takes over the narcotics crime. The position requires it to be restricted among BNN and the Police Department to carry out investigation of narcotics crime.

3. Obstacles in investigation among the Police Department and PPNS BNN for narcotics crime, sometimes raises some issues or obstacles in investigating narcotics crime. A few of those obstacles are as follows: communication or the coordination factor, recruitment system of less effective PPNS BNN investigators, and the regulation is still overlapping.

Suggestion

Based on the outcome of the results of this research, there are still some things lacking that must be fulfilled. That is why the author gives some suggestions as follows:

1. The government should make a constitutional regulation to arrange the restriction of authorisation among the institutions as PPNS BNN and Polri in order that there is no misperception and dualism in investigation in law enforcement of law enforcers in the area of narcotic.
2. Toward section 81 statute no 35-year 2009 on narcotic, a material test could be carried out in constitutional court, because the special authorisation given to PPNS BNN for law enforcement is not in harmony with the constitution of the Republic of Indonesia 1945 to Polri as a law enforcement institution.
3. The government and house of representatives must think and give solution to overlapping authorisation among Polri and BNN by noticing as follows: the criminal act is done by the influenced and important officials, and it gets serious attention from society, in comparison 1 kg/10 ons narcotics type.

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