

The Dualism of Indonesian Narcotics Investigations

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This study aims to analyse the implementation of the current narcotics crime investigation model to propose a reconstruction of the narcotics crime investigation model in accordance with the integrated criminal justice system. This research is an empirical study. Data analysis was conducted using qualitative methods, based on systematic analysis of legal material based on statutory regulations. The results show that the current narcotics crime investigation needs to be reconstructed. The authority to investigate narcotics crimes, which was previously only carried out by the police agency, are currently carried out through Law Number 35 Year 2009 Regarding Narcotics. The National Narcotics Agency has been given a new authority of narcotics crime investigation even though this institution is not included in the criminal justice subsystem in Indonesia. This has implications for new problems in investigating narcotic crimes, including dualism of law enforcement, overlapping authority, and certain legal issues related to efforts to investigate narcotic crimes. Based on these problems, this research recommends a model for investigating narcotic crime in accordance with the integrated criminal justice system. This research recommends to return the authority to investigate narcotic crime back to its original status, namely the Police, as the authorised party in conducting investigations in accordance with formal law that has been in force in Indonesia so far. In addition, the National Narcotics Agency has also returned to its original function of carrying out the preventive and rehabilitation functions for narcotics addicts.

Keywords: *Investigations, Narcotics Crimes, Integrated Criminal Justice, legal certainty.*



Introduction

Narcotics circulation has been transnational in nature which is carried out using high modus operandi and sophisticated technology. This creates many victims especially among the young generation of the nation which is very dangerous to the life of the nation and state. Victims of narcotics abuse have expanded in such a way that they transcend social, age, and gender boundaries. Technological advances and ongoing globalisation have made it easier to access and reach narcotics distribution. Therefore, the impact of the development of narcotics distribution and business in developing countries is the destruction of the country's economic system. This is especially relevant to Indonesia, which has many remote areas making it very suitable for narcotics distribution through the sea and the river channels due to inadequate supervision, so efforts to eradicate narcotics are very necessary to do because the number of narcotics abusers is increasing.

Efforts to eradicate narcotics are inseparable from the support of law enforcement officers that are included in the criminal justice system, which starts from the police, prosecutors, judiciary, to the penitentiary, all of which become a single entity that cannot be separated. However, since the birth of the Law Number 35 of 2009 concerning Narcotics, there is one other institution that also plays a role, namely the National Narcotics Agency. This agency is given a large portion in conducting investigations, including collaborating with other institutions to eradicate narcotics distribution. According to Law No. 35 of 2009, in the case of eradicating narcotics, the National Narcotics Agency is given the authority to conduct investigations and inquiries into the abuse, distribution of narcotics, and narcotics precursors accompanied by the authority granted to investigators and National Narcotics Agency investigators.

The granting of authority in conducting narcotics crime investigations to the National Narcotics Agency has been conceived out of the government's enthusiasm in efforts to eradicate narcotics crime. This is because narcotics distribution is considered to be an extraordinary crime because the distribution network is already very broad, and the police are considered to be less effective in eradicating acts narcotics crime. However, the granting of investigative authority to the National Narcotics Agency shows inconsistency in the application of formal law that has been in force so far in Indonesia, namely, Law No. 8 of 1981 concerning Criminal Procedure. The inconsistency of the Criminal Procedure Law referred to is related to Article 6 of the Criminal Procedure Code relating to the definition of an investigator. Under Article 6 of the Criminal Procedure Code, investigators are officials of the Indonesian National Police and certain Civil Servants who are given special authority by law. Based on these definitions, it is clearly seen that if the National Narcotics Agency is authorised to conduct narcotic criminal investigations. It is an inconsistency of the Criminal Procedure Code because the National Narcotics Agency is not a civil servant or a police



official, although members of the National Narcotics Agency almost all of their leaders come from the police, but its status is merely a Tour of Duty assignment, so it cannot be said to be a division of the police.

The serious implication related to the inconsistency in giving the investigation authority to the Criminal Procedure Code is the dualism of the act of investigation from two different institutions because they were given the same authority. The problem can be found in the technical investigation in the field which can be found in the example of the case that the authors encountered. In May 2015, there were members of the police who received a shipment of methamphetamine to be given to one of the people in Mojolaban District that has been monitored by the Provincial National Narcotics Agency (BNNP). Upon receiving the package by the police officer, the police officer was arrested by BNNP investigators. The police officer claimed that he was also conducting an investigation by presenting a letter of assignment, and in the end the police officer was released. Examples of cases that have occurred are examples of technical obstacles in the field in conducting investigations of narcotics crimes by two different institutions. This is exacerbated by Law No. 35 of 2009 . This law currently provides the authority to investigate narcotics crimes to two different institutions namely the Police and the National Narcotics Agency. However, the law does not have clear rules and mechanisms to regulate the two institutions which are authorised as the same one. Synchronisation of the Police and the National Narcotics Agency has been widely proposed by many parties, but in reality the two different institutions have never been able to go hand in hand in conducting an investigation due to the ineffective coordination between institutions expected by legislators.

The granting of a large authority over the National Narcotics Agency makes the National Narcotics Agency as an investigator raises the question whether the police are considered unable to properly investigate narcotics crime. Therefore, the authority to conduct investigations and investigations is also given to the National Narcotics Agency. The portion of the authority of the National Narcotics Agency that is too large as in investigations, arrests, detention, and search according to Law Number 35 Year 2009 is apparently not the same as the authority given to police investigators and PPNS. This difference raises institutional issues, as well as a sense of legal equality for suspects examined by National Narcotics Agency investigators to those examined by Police investigators. The emergence of various problems such as weak coordination between investigators, overlapping authority, attitude of centric agencies, and arrogance among investigators can be a criminogenic factor in the criminal law enforcement process. This is because the power of investigation is one of the sub-systems in the criminal justice system and the criminal justice system itself, in essence, is a criminal law enforcement process that is very closely related to criminal law itself. This is related to both substantive criminal law and criminal procedural law, because criminal

legislation is basically a criminal law enforcement system "in abstracto" which will be realised in enforcement the law "in concreto".

The presence of the National Narcotics Agency institution in conducting narcotics crime investigations is feared to only be a product of legal politics. This is because all the leaders of the National Narcotics Agency are drawn from members of the police force and are accompanied by a much larger institutional budget related to narcotics crime handling. This is certainly not in accordance with the idea related to the ineffectiveness of the police in eradicating narcotics crimes so that the issuance of Law Number 35 of 2009 concerning Narcotics to be given the authority of an investigation. In addition, of course this will become a dual mechanism for narcotics law enforcement along with police agencies. Both must coordinate with each other, and notify each other when they have begun investigating narcotic crimes. Although the two must coordinate with each other, they have signalled or hinted about the inability of the police in carrying out their duties and authority in investigating narcotics crimes properly. Whereas the PPNS position is also an investigator granted authority by Law Number 35 of 2009 concerning Narcotics. However, the coordinator and supervisor remain on the part of the POLRI investigator as outlined in Article 7 paragraph (2) of Law Number 8 of 1981 concerning the Law Criminal Procedure Code (KUHAP).

The issue of authority and the indication of this inability can be an institutional polemic that deserves attention because the issue of authority concerns the issue of institutional prestige and there are always efforts to prevent the reduction of power. Institutions can be considered incapable of exercising the powers granted, even considered as never providing adequate accountability in accordance with the expectations of the community let alone this authority concerning power. It is like the elimination of power is a show of power, the consequence that arises is institutional arrogance as well as structural egoism so that it will interfere with the integrated criminal justice system process comprehensively. The existence of investigative authority of the National Narcotics Agency is so extensive as regulated in Law Number 35 Year 2009 about Narcotics. This includes the ability of social and medical rehabilitation carried out by the community in developing laboratories, entering into bilateral, multilateral, regional, and international agreements. This authority also includes the ability to carry out investigations, capture, and make reports on the implementation of duties. The authority of the investigation by the National Narcotics Agency tends to deviate from the principles of the Criminal Procedure Code and universal principles that have prevailed so far in criminal law. Taking into account the description of the authority of the investigation in the criminal justice system for the prevention and eradication of narcotics crime, surely it cannot be separated from the context of the discussion on criminal politics. Efforts to eradicate narcotics crime can be both penal and non-penal, which is carried out through the steps of

formulating criminal law norms which contain substantive, structural and cultural elements in the community where the criminal law system is implemented.

Efforts to overcome and eradicate misuse in narcotics crime through these penalties are operated through a system that is a criminal justice system (criminal justice system). This contains the systemic motion of its supporting subsystems, namely the Police, National Narcotics Agency, Prosecutors' Office, Courts and Penitentiaries. The Agency National Narcotics itself is not included in the criminal justice sub-system so the inclusion of the National Narcotics Agency into investigation is a deviation from the criminal justice system itself.

Considering that there are still many institutions that have the authority to handle narcotics and there are no clear legal subjects regulated in narcotics laws, this can naturally overlap, resulting in dispute between institutions, as well as the potential takeover of case handling by one of these institutions. Conversely, there are no sanctions at all both administrative and legal if the institution is unwilling/reluctant to submit the case being handled. This provision is inconsistent with the principle of legal certainty, because the authority to conduct investigations, and prosecutions should also have the authority to stop cases. In the provisions of the narcotics legislation, it is not clearly regulated so that it creates legal uncertainty and a sense of justice for those who are in the narcotics case process.

After giving the authority to investigate narcotics crime accompanied by giving a large budget, there has been no signal of reducing narcotics crime, but instead it has increased. This example can be seen from the data revealed by cases of narcotics abuse after the birth of Law Number 35 of 2009 concerning Narcotics are as follows:

Year	Number of cases
2010	17.898
2011	19.128
2012	19.081
2013	21.269
2014	23.134
2015	28.588

Source: National Narcotics Agency

Based on the data above, after giving the authority to investigate narcotics crime to the National Narcotics Agency, it has not shown that the National Narcotics Agency has been effective in preventing and controlling narcotics crime. This is because from year to year there is an increasing trend of narcotics crime cases, which means that there is still a high demand for narcotics. Prevention and mitigation referred to are efforts in the context of upholding both the use, production and illicit trafficking of narcotics. The granting of

authority in the investigation process to the National Narcotics Agency certainly results in overlapping duties and authorities of the legal apparatus as evidenced in the case examples above.

This is caused because the eradication of narcotics crime does not adhere to a one-door system and there is no clear division of authority for each investigator involved in the provisions of the Narcotics Act. This is exacerbated by the inability among institutions to create effective coordination and cooperation which creates the impression that each institution works alone with authority given under the law as the legal basis for such actions. If synchronisation is pursued between the two institutions, it will be very difficult to try because the responsibilities of each institution are hierarchically very different. The investigator of the National Narcotics Agency is responsible to the president, while the investigating POLRI Officer is responsible to the KAPOLRI. The absence of a hierarchical relationship between institutions results in difficulties in the coordination that is sought, resulting in the difficulty of the synchronisation concept which is widely proposed to be applied. Therefore this study proposes the existence of a reconstruction of narcotics crime investigation according to the integrated criminal justice system.

Results and Discussion

Barriers to Legal Substance Aspects

In the context of narcotics crime, efforts to eradicate the criminal act can be both penal and non-penal in nature. This is carried out through the formulation of norms of criminal law which contain substantive, structural, and cultural elements of the community where the criminal law system is enforced. Therefore it is very necessary to pay attention to aspects in the legal system, namely: the legal substance, legal structure, and legal culture. Integrated Criminal Justice System handle narcotics cases, but in its implementation there are several obstacles that occur in the implementation of the investigation process narcotics crime with an integrated criminal justice system.

The substance of the law, according to Lawrence M. Friedman (DATE), states that "Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioural patterns of people in the system ... the stress here is on living law, not just rules in law books ". What is meant by the substance is the rules, norms and patterns of real human behaviour within the system. Thus, the substance of the law concerns the applicable laws and regulations which have binding power and become guidelines for law enforcement officers. The substance of the law in this study is the problem with the narcotics law in force in Indonesia.

The presence of the National Narcotics Agency to carry out investigations becomes a dual mechanism for narcotics law enforcement, although in the narcotics law it expects coordination in investigations, but in reality it cannot be done because each institution has a different hierarchical structure and has a different the responsibility of different institutions. This makes it difficult to create coordination between institutions and is exacerbated by the potential for competing cases between competent institutions because there is no clear regulation related to legal subjects in this narcotics law, therefore this is what constitutes overlapping authority. Overlapping authority also has the potential to cause friction and conflict in using authority. The friction and conflict are because the two institutions have the same authority. The equality of authority between the police and the National Narcotics Agency is not in accordance with the concept of the Indonesian criminal justice system. Basically the Indonesian criminal justice system is made so that the stages in the criminal procedure process in Indonesia are clear. The purpose of making the criminal justice system process in stages as one of the ways in which there is a horizontal control system, therefore the narcotics law needs to be adjusted to the criminal justice system in order to create an integrated criminal investigation in accordance with formal law in Indonesia.

Barriers to Legal Structure Aspects

The legal structure concerns law enforcement officers, the legal substance includes the legislation and legal culture is a living law that is embraced in a society. Regarding the legal structure, Lawrence M. Friedman (DATE) explains

To begin with, the legal system has the structure of a legal system consists of elements of this kind: the number and size of courts; their jurisdiction ... Structure also means how the legislature is organised ... what procedures the police department follow, and so on. Structure, in a way, is a kind of cross section of the legal system ... a kind of still photograph, with freezes the action.

This structure shows how lawmakers and their bodies and legal processes operate and are carried out. In the context of narcotics investigation in Indonesia, which inhibits the realisation of investigating narcotics crime with an integrated criminal justice system caused by the same authority in narcotics crime, so with the same authority, the police are considered ineffective in eradicating narcotics crime. This is compounded by the existence of the ego sectoral of each institution due to the *prit de corps* spirit of each institution.

Barriers to Legal Cultural Aspects

According to Lawrence M. Friedman (DATE), legal culture is "The third component of the legal system, of legal culture. By this we mean people 's attitudes towards their law and legal system ... in other words, is the climate of social thought and social force which determines

how law is used, avoided, or abused". Legal culture is related to legal culture which is a human attitude (including the legal culture of law enforcers) towards law and the legal system. In the context of the investigation of narcotics crime in Indonesia, with the existence of two law enforcement agencies in handling narcotics crime, each institution occurs an ego sectoral phenomenon of each institution. Each institution is given such authority which of course this will greatly hamper the process of eradicating narcotics crime. This is because each institution is not focused in carrying out its functions but is fighting each other under the legality of their respective authorities. In addition, the narcotics crime investigation has a strategic value in the career research of the authorised institution personnel. Therefore, there will be a battle for cases and competition between institutions without coordination between institutions as expected by the legislators. This is what is being used by narcotics dealers so that narcotics distribution can run more smoothly because each institution that has the authority to handle narcotics crime does not focus on carrying out its functions.

Conclusions

Based on the results of the research and discussion, the following conclusions can be drawn. There are three factors that hinder the implementation of narcotics crime investigation with an integrated criminal justice system so that the dualism of narcotics investigation in Indonesia. These can be seen from the aspect of legal substance barriers in the form of problems in the Narcotics Act in force in Indonesia which are inconsistent with formal law applies in Indonesia and also causes overlapping authority between the National Narcotics Agency and the National Police. The legal structure aspect constraints in the form of problems related to ineffective coordination between National Narcotics Agency and National Police in the investigation of narcotics criminal acts due to the ice prit de corps of each institution. Therefore, the investigation of narcotics crime becomes ineffective because each institution does not allow for effective coordination due to the different hierarchical structure of the institution with the same authority. The latter as an aspect that impedes the realisation of the investigation of narcotics crime with an integrated criminal justice system is a legal culture in the form of ego sectoral that occurs between agencies, namely, the National Police with the National Narcotics Agency where each institution competes with each other to investigate narcotics crime. This is not in accordance with the intent and the goal expected by lawmakers is for each institution to cooperate and coordinate with each other in eradicating narcotics, because the investigation of narcotics crime has a strategic value in career research for the institution's personnel, because narcotics itself has high economic value.

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