

DETERMINATION OF SUSPECTS IN NARCOTICS CRIMES THROUGH SUPERVISED SUBMISSION (*CONTROLLED DELIVERY*)

Anang Shophan Tornado;

Lambung Mangkurat University Banjarmasin
Email: anang.tornado@ulm.ac.id

* *Corresponding Author*

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Abstract: Considering that the crime of illicit drug trafficking is already very horrific, both coming from abroad and those circulating within the country, a special method is needed to deal with it. Narcotics and psychotropics are substances or drugs that are very useful and necessary for certain diseases. However, if it is misused or used not in accordance with the standard of treatment, it can have very detrimental consequences for individuals or society, especially the younger generation. Seeing the difficulty of the investigative process for disclosing drug cases, there must be special rules governing the process or authority of investigators in handling drug cases. The authority of investigators in carrying out investigations, these techniques are undercover buys and controlled delivery. The norms governing controlled delivery, namely the Narcotics Law and the technical regulations under it, still cannot clearly describe the problems above, especially how the recipient, who incidentally is a person, is intentionally used or framed to become a recipient of narcotic packages.

Keywords: suspect; criminal acts in Indonesia; narcotics; controlled delivery.

1. INTRODUCTION

Efforts to supply narcotics have crossed the line, no matter where they come from, whether obtained through their own production in this country or obtained from other countries, innovation or creativity is urgently needed in reducing and blocking their circulation. Narcotic crime is a phenomenon that cannot be separated from human life. Investigations into narcotics crimes are carried out by law enforcement officers using several methods. Law enforcement officials in Indonesia engaged in activities to prevent and combat illicit drug trafficking are the National Narcotics Agency (BNN). One of the methods used *by* BNN to investigate narcotics smuggling is controlled *delivery*. Supervised delivery (*Controlled delivery*) can pave the way to catch the perpetrators and dismantle the network of illicit drug trafficking.

The rules regarding narcotics in the course of time in Indonesia have gone through several changes, the first being Law Number 9 of 1976 concerning Narcotics. This law is a special legal basis for carrying out investigations, prosecutions and examinations before the court of criminal acts of Narcotics. Enter into the technique of disclosing the illicit traffic of narcotics which is regulated in Article 75 letter j of the Narcotics Law which stated "conduct undercover purchase investigation techniques and delivery under supervision". Controlled *delivery*, namely a technique by supervising the execution of narcotic evidence that has been detected in advance by investigators, in this case the investigator wants to know who received this narcotic evidence, is it true that the intended address is the actual narcotics recipient, or just fictitious. In simple terms, it can be explained that if the narcotic evidence is immediately taken on the way via a package or courier, it will not be found who the recipient is, so here the urgency of receiving the narcotic evidence is very high.

The norms governing controlled delivery, namely the Narcotics Law and the technical regulations under it, still cannot clearly describe the problems above, especially how the recipient, who incidentally is a person, is intentionally used or framed to become a recipient of narcotic packages. Based on the problems above, the writer is interested in submitting an article with the title: **Determination of Suspects in Narcotics Crimes Through Supervised Submission (*Controlled Deliver*)**.

2. METHODS

The type of research that the author uses is Normative legal research, namely research that obtains legal materials by collecting and analyzing legal materials related to the issues to be discussed. The problem approach used in this research is a *statute* approach to solving existing problems. Peter Mahmud Marzuki conveyed that legal research at the dogmatic level of law cannot be separated from the statutory approach (Marzuki, 2015). Besides that, a conceptual approach is also used *which* is carried out because Indeed, there are no or no rules for the problems faced (Marzuki, 2015) by the case approach, what researchers need to understand is the ratio decidendi, namely the legal reasons used by judges to arrive at their decisions.

The nature of the research in writing this thesis is the nature of prescriptive research, prescriptive research is research to get suggestions in overcoming certain problems. Soerjono Soekanto said that prescriptive research is a study aimed at obtaining suggestions for solving certain problems (Soekanto, 1981). The type of research in legal writing here is the blurring of norms regarding Article 75 letter J of Law Number 35 of 2009 concerning Narcotics, regarding delivery under control in terms of preliminary evidence and legal protection for recipients of controlled *delivery* with

good intentions. the gaps identified through research analysis. In this way, the methodological approach has been adopted.

3. RESULTS AND DISCUSSION

Initial evidence that investigators determine the suspect against the recipient of controlled delivery *will* be explained further in the discussion below, before that it is explained that an investigation according to Article 1 point 2 of the Criminal Procedure Code is a series of investigative actions in matters and according to the manner regulated in the law. this law is to seek and collect evidence of what happened and to find the suspect. Investigative action is a way to collect initial evidence to find suspects who are suspected of committing crimes and witnesses who know about these crimes.

Because this is an investigative technique, it means that the party to whom something is entrusted/given is the party that is the target of investigation/investigation. In this case the party who is the target of investigation/investigation into narcotics or psychotropic crimes.

Goods handed over/given, because they involve criminal acts of narcotics or psychotropics, are narcotics or psychotropics. The word "supervised" indicates that the handover was carried out under supervision, in this case it was clearly supervised by Investigators from the State Police of the Republic of Indonesia. In short, the Investigator hands over/provides narcotics or psychotropic substances to the person who is the target of the investigation/investigation; where the delivery/gift can be for reasons such as buying and selling, where the Investigator is the seller. The act of handing over/giving was carried out under the supervision of the Investigator.

The means that can be used in exercising control over covert purchasing investigation techniques and delivery under supervision is to apply the principles of *good governance* in the administration of criminal case investigations. The term that is very commonly known for this principle is the general principles of good governance. This principle provides a benchmark for investigators when exercising their authority so as not to commit violations to other parties. Unwritten provisions in the principles of *good governance* in investigations provide uncertainty of interpretation or discretion that is not measurable.

According to (Mulyadi, 2007), from the definition definition (*begrips bepaling*) in accordance with the context of Article 1 number 2 of the Criminal Procedure Code, with a concrete and factual dimension the investigation begins when a crime occurs so that through the investigation process information should be obtained about the following aspects:

1. Crimes that have been committed.

2. The place where the crime was committed (*locus deli cti*).
3. How the crime was committed.
4. By what instrument was the crime committed?
5. Background until the crime was committed.
6. Who did it.

3.1. Preliminary Evidence In Investigating Narcotics Crimes

Investigation Procedures are generally carried out immediately after a report or complaint of a criminal act. Investigators who know, receive reports or complaints about the occurrence of an event that should be suspected of being a criminal act must immediately carry out the necessary investigative actions (Article 106 of the Criminal Procedure Code). Investigations by civil servant investigators were given instructions by Polri investigators.

For the purposes of investigation, Polri investigators provide instructions to certain civil servant investigators and provide the necessary investigative assistance. In the event that an event that is reasonably suspected to constitute a crime is under investigation by certain civil servant investigators and then strong evidence is found to be submitted to the public prosecutor, the said civil servant investigator reports this matter to the Polri investigators. In the event that a criminal act has been investigated by certain civil servant investigators, it is immediately submitted the results of their investigation to the public prosecutor through Polri investigators (Article 107 paragraph (1) to (3) of the Criminal Procedure Code) (Makarao & Suhasril, 2010).

In investigations, the emphasis is placed on the act of "searching for and collecting evidence" so that the crimes found can become clear, and find and determine the perpetrators. (Harahap, 2000) At this stage of the investigation, witnesses were presented for the first time to be heard and examined as contained in Article 7 paragraph (1) point g of the Criminal Procedure Code. Articles 116 to 121 of the Criminal Procedure Code also regulate issues related to the examination of witnesses and suspects.

The rationale for the 2 (two) pieces of evidence seems to be in the continuity between legal processes in the Criminal Justice System as stated by Lamintang as follows (Harahap, 2000):

Practically enough initial evidence in the formulation of Article 17 of the Criminal Procedure Code must be interpreted as "minimum evidence" in the form of evidence as referred to in Article 184 paragraph (1) of the Criminal Procedure Code, which can guarantee that investigators will not be forced to stop the investigation of a person suspected of committing a crime, after the person is arrested.

The provisions and explanations above place the position of initial evidence as a limitation or basis in carrying out the process of determining suspects, arrests, detentions and wiretapping in narcotics crime proceedings. This is because the important role of wiretapping is because it is difficult to find valid evidence in the investigation of narcotics crimes. Then to prevent arbitrary wiretapping from the investigator to protect the right to privacy of an individual.

3.2. *Controlled Delivery in Narcotics Crime*

In the Narcotics Law there is a Chapter XII entitled "Investigation, Prosecution and Examination at Court Sessions", which includes Articles 73 to Article 103, which regulates, among other things, the illicit investigation of Narcotics crimes, carried out based on Laws and Regulations, unless otherwise stipulated in this law.

In carrying out the process of investigating narcotics crimes, the police are given the same authority as the National Narcotics Agency by Law Number 35 of 2009 concerning Narcotics. This can be seen from the provisions in Article 81 of Law No. 35 of 2009 which states: Indonesian National Police investigators and BNN investigators have the authority to conduct investigations into the abuse and illicit traffic of Narcotics and Narcotics Precursors based on this Law.

In Article 75 letter j of the Narcotics Law it is stipulated that Investigators from the State Police of the Republic of Indonesia have the authority to carry out controlled delivery investigation techniques and covert purchasing techniques. Provisions similar to this are also contained in the Law on Psychotropics (Law Number 5 of 1997), namely in Article 55 letter a. According to Article 55 letter a of this Psychotropic Law, in addition to what is stipulated in Law Number 8 of 1981 concerning Criminal Procedure Code (State Gazette of 1981 Number 76, Supplement to State Gazette Number 3209), investigators from the Indonesian National Police can carry out investigative techniques supervised delivery and covert buying techniques. In the elucidation of the articles of the two laws, it is emphasized that these investigative techniques can only be carried out on a written order by the Head of the Indonesian National Police or an official appointed by him.

Controlled Delivery is the Delivery and delivery of Narcotics to recipients by couriers who are suspects who wish to cooperate with the Police or by *Undercover agents* who acts as a courier, the delivery is supervised to find out who the recipient or network is and then arrests the suspect and uncovers his network and confiscates evidence of narcotics.

In this case, there are several types of *Controlled Delivery*, namely:

1. *Controlled import or export "pass through"*, which is a *Controlled Delivery* investigation technique for the import or export of goods suspected of being misused for the purpose of producing/manufacturing narcotics. One of them

can be through courier services or delivery services, which have been happening more and more lately.

2. *Controlled Delivery* with cooperating dependants or narcotics couriers who can be invited to cooperate, in this case the courier is a former user or former dealer.
3. *Controlled Delivery* with an undercover agent acting as a syndicate courier. Undercover agents are police officers who infiltrate the targets of syndicates or criminal organizations. In this case, police investigators have made their own transactions with members of the narcotics syndicate. After obtaining the narcotics evidence from the results of transactions conducted with the perpetrators of narcotics crimes, the evidence was photographed and an *Undercover Agent BAP* was made.

In the context of narcotics, it is commonly known by the narcotics user community that the police have a system to target narcotics suspects.

3.3. Linkage of Initial Evidence with Determination of Suspect Recipient of *Controlled Delivery*

So far, what is understood by the public is that if a person is designated as a suspect who is suspected of having committed a crime, then the status of the suspect often creates legal uncertainty, this is more due to the absence of a time limit given by law enforcement officials for how long a person is convicted. suspected of having committed the crime has the status of a suspect or when the status of the suspect he bears ends. Of course, this has a very high chance of causing injustice, because during the investigation it is possible that this condition will be used as a tool for criminalization. For too long holding the status of a suspect without being accompanied by significant progress in the legal process of investigation, especially if there is not enough evidence so that the legal process is kept silent without any certainty as to when to follow up, then this is the same as restricting people's freedom. Ratna Dewi Umar, former director of medical services at the Ministry of Health, experienced this, who held the status of a suspect for quite a long time.

The term Preliminary Evidence is closely related to investigative activities. In Article 1 point 5 of the Criminal Procedure Code (KUHP) it is stated that an investigation is a series of investigative actions to search for and find an event suspected of being a crime in order to determine whether or not an investigation can be carried out according to the method stipulated in the law. In Article 4 of the Criminal Procedure Code what is meant as an investigator in this case is the police. Based on Article 1 number 14 of the Criminal Code (KUHP), what is meant by a suspect is someone who because of his actions or circumstances based on preliminary evidence should be suspected of being the perpetrator of a crime. Furthermore, in Article 66 paragraph (1) and paragraph (2) of the Chief of Police Regulation No. 12 of 2009 Jo.

Chief of Police Regulation No. 14 of 2012 concerning Criminal Investigation Management states that:

- 1) The status of a suspect can only be assigned by an investigator to someone after the results of the investigation carried out have obtained sufficient initial evidence, namely at least 2 (two) types of evidence.
- 2) To determine whether to obtain sufficient preliminary evidence, namely at least 2 (two) types of evidence as referred to in paragraph (1) shall be determined through a case title.

Whereas in order to designate a person as a suspect, sufficient initial evidence must be obtained, namely at least 2 (two) types of evidence, and this is determined through a case title. So there must be a process beforehand in determining someone to be a suspect.

Based on Article 14 paragraph (1) of Perkap 12/2009, the procedure for settling cases, including investigations and determination of suspects, must be carried out in a professional, proportional and transparent manner so that there is no abuse of authority and furthermore it does not merely have a tendency to make someone a suspect.

Article 185 paragraph (2): *"The testimony of a witness alone is not enough to prove that the defendant is guilty of the act he was charged with"*. Article 185 paragraph (3): *"The provisions referred to in paragraph (2) do not apply if accompanied by other valid evidence"*.

The testimony of a witness alone cannot become a valid piece of evidence, because it must be accompanied by another valid piece of evidence. Even then, it must comply with other existing evidence, as further stipulated in the provisions of Article 185 paragraph (6) of the Criminal Procedure Code, namely: "In assessing the truth of the testimony of a witness, the judge must seriously pay attention to:

- a. Correspondence between the testimony of one witness and another;
- b. Correspondence between witness testimony and other evidence.

Starting from a law enforcement process that is in accordance with the corridors of law, it is hoped that justice will be born for people in need, and the Indonesian nation is in the process of achieving that justice. Of course this goal will be achieved if there is good will to apply the law without being ridden by 'interests' and only purely in accordance with the legal process.

4. CONCLUSIONS

In investigations, the emphasis is placed on the act of "searching for and collecting evidence" so that the crimes found can become clear, and find and determine the perpetrators. At this stage of the investigation, witnesses were presented for the first time to be heard and examined as contained in Article 7 paragraph (1) point g of

the Criminal Procedure Code. Articles 116 to 121 of the Criminal Procedure Code also regulate issues related to the examination of witnesses and suspects. Sufficient initial evidence should be related to the provisions of Article 183 of the Criminal Procedure Code which regulates the minimum limit of evidence, namely that there must be at least 2 (two) valid pieces of evidence and a judge's conviction (Reform, 2014) . In the investigation of narcotics crimes, those who have authority as investigators besides the National Police are National Narcotics Agency investigators. Other specialties include the method of investigation which gives authority to wiretapping suspected parties as suspects. Wiretapping plays an important role in the investigation of narcotics crimes. The narcotics case is a special crime that cannot be equated with criminal acts in general, so that it requires a "special" handling process in the investigation. Because most drug addicts cannot be detected easily by the naked eye. Likewise in the handling of narcotics dealers or dealers who strictly guard the secrets of narcotic transactions. So the wiretapping process is needed to drag the perpetrators in court.

5. SUGGESTION

Norms should be immediately made regarding the assistance of legal advisors to witnesses, especially witnesses who have the potential to become suspects, for the sake of carrying out investigations that have legal certainty and the guarantee of human rights in general for citizens, who due to their circumstances become witnesses in the investigation stage.

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