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The Legal Construction of the Authority of the Indonesian National Police and the National Narcotics Agency in the Investigation of Narcotics Crimes in Indonesia

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Abstract

The authority to investigate narcotics crimes is regulated in Law Number 35 of 2009 concerning Narcotics, namely Article 81 of the Law. The investigation authority is given to the Indonesian National Police and the National Narcotics Agency. This division of investigative authority has resulted in overlapping and multiple interpretations of Article 81 of Law Number 35 of 2009 concerning Narcotics. This study aims to analyze the authority of the Indonesian National Police and the National Narcotics Agency in investigating narcotics crimes. It is based on normative research using statute approach, historical approach, conceptual approach, and political approach. The findings showed that the regulation of the authority to investigate narcotics crimes must be clarified and limited, hence in the practice of law enforcement there will be no clash of authority between the Indonesian National Police and the National Narcotics Agency. Additionally, law enforcement agencies in carrying out their duties run effectively and in accordance with the criminal justice system.

Keywords: Authorization, Construction, Investigation.

1. Introduction

The Indonesian criminal justice system consists of the police, prosecutors, courts and correctional institutions as law enforcement officers. Each component of the system should consistently maintain the permanent system of the State of Indonesia which aims to protect the entire Indonesian nation and the entire homeland of Indonesia's descendants and promote general welfare and educate the lives of the nation's people. It can also be an effort by the state to participate in the implementation of a world order based on independence, lasting peace and social justice, meaning that every aspect of life in the social, national and state spheres, including government, must always be based on the law. "To realize the rule of law, legal instruments are needed to regulate all areas of people's lives to maintain balance and justice". Indonesia is currently in a state of drug emergency. This certainly indicates that the situation in Indonesia has been in serious condition regarding cases of drug abuse, so it requires attention and vigilance from various elements of society to overcome and prevent drug trafficking from expanding. The rapid spread of illicit drug trafficking in Indonesia is partly due to the rapid progress and development of information and transportation technology. The development of this technology ultimately has another impact, namely, facilitating the entry of dangerous and prohibited goods into Indonesia, and this is a challenge for the authorities, especially law enforcement officials. Narcotics crimes that have a broad and systematic impact (extra ordinary crime) are crimes that require extra handling and require a separate approach to solving them. "the problem of narcotics in Indonesia is still something that is urgent and complex". Narcotics crimes that have a broad and systematic impact (extra ordinary crime) are crimes that require extra handling and require a separate approach to solving them. "the issue of narcotics in Indonesia is still an urgent and complicated one".

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- a. Narcotics crimes are categorized as special crimes because these crimes are not regulated in the Criminal Code (KUHP) but are regulated in a separate law in accordance with the crime, while Article 81 of Law Number 35 of 2009 concerning Narcotics provides an opportunity for overlapping authority between two law enforcers, namely the National Narcotics Agency and the Indonesian National Police, while the Article reads as follows: "Investigators of the Indonesian National Police and BNN investigators are authorized to conduct investigations into the abuse and illicit trafficking of The crime was committed by an important and influential official.
- b. Receive attention that is disturbing to the wider community.
- c. Concerning 1 kg/10 ounces of drug type.

The National Narcotics Agency must have boundaries or differentiation from the authority of the police. "The National Narcotics Board must have a boundary or differentiation from the police authority, but they must build a paradigm in conducting investigations into narcotics crimes in order to achieve the objectives of the criminal justice system". The authority to investigate and prosecute narcotics crimes is owned by two institutions, namely the Indonesian National Police and the National Narcotics Board plus civil servant investigators in accordance with Article 6 (1) letter (b), Law Number 8 of 1981 concerning Criminal Procedure Code that: "Civil servant investigators are given special authority by the Law The authority of the National Narcotics Board".

In Law Number 35 of 2009 concerning Narcotics provides the authority to conduct investigations explicitly stated in Article 75 to investigators of the National Narcotics Agency (BNN) and other authorities in Article 80. However, the authority of the BNN does not close to apply to investigators of the National Police of the Republic of Indonesia.

As mandated in Article 81 of Law No. 35 of 2009 concerning Narcotics that "investigators of the Indonesian National Police and BNN investigators are authorized to investigate the abuse and illicit trafficking of Narcotics and Narcotics Precursors based on this law". Therefore, investigators of the Indonesian National Police are authorized to conduct investigations under Article 75 and other authorities. However, the authority of the National Narcotics Agency is added in Article 80 of Law 35/2009 on Narcotics, i.e. BNN investigators. The provision shows that the authority of the National Narcotics Board is very broad, so it is possible that it will collide or clash with the authority possessed by other law enforcement institutions such as the Indonesian National Police and civil servant investigators.

The authorities of Article 75 and Article 80 of Law Number 35 of 2009 concerning Narcotics investigations between the National Narcotics Board and the Indonesian National Police in conducting investigations and investigations into narcotics crimes can run together and coordinate but can also raise problems, including: "institutionally as well as for suspects in terms of legal equality when examined at the National Narcotics Board and the police".

The presence of the National Narcotics Agency will certainly be a duet mechanism for law enforcement of narcotics crimes together with other police institutions, namely civil servant investigators. The National Narcotics Agency is authorized to conduct investigations into narcotics

crimes in addition to investigators of the Indonesian National Police. "Both must coordinate with each other and notify each other if they have started investigating narcotics crimes".

Despite the fact that the two agencies must coordinate with each other, they have given signals or clues about their duties and authorities in investigating narcotics crimes. Meanwhile, the authority of the National Narcotics Agency in arrest, detention, search and seizure according to Law No. 35/2009 on Narcotics is the same as the authority given to police investigators. The equality of authority has the potential to cause institutional problems and institutional egoism among law enforcement agencies.

Narcotics and Narcotics Precursors under this Law.". The Indonesian National Police and the National Narcotics Agency are concerning the following matters:

The issue of authority can be an institutional polemic that deserves attention. Authority is a matter of institutional integrity and there are always efforts to prevent and prosecute drug cases. If the reduction of power can lead to misperceptions of the institution that receives the reduction. Institutions may be considered incapable and incompetent to carry out the powers granted by the law and even considered to have never provided adequate accountability in accordance with public expectations, especially when this authority involves power. It is as if the elimination of power is a show of power as a result of which what arises is institutional arrogance as well as structural egoism so that it will interfere with the process of law enforcement on narcotics crimes in a comprehensive manner

Law No. 35/2009 on Narcotics and Law No. 2/2002 on the Indonesian National Police can be said to critically contain weaknesses, namely not providing limits to the authority of each law enforcer. When it is a case of narcotics crime handled by the National Narcotics Agency and when it is a case of narcotics crime handled by the Indonesian National Police.

Investigators of narcotics crimes based on Law Number 35 of 2009 concerning Narcotics are investigators of the National Narcotics Agency and Investigators of the Indonesian National Police. The investigative authority of each investigator has no difference regarding the object of investigation. The law does not divide which criminal acts of narcotics and narcotics precursors are handled by investigators of the National Narcotics Agency and Investigators of the Indonesian National Police.

This has the potential to cause overlapping or overlapping in the investigation of narcotics criminal cases. According to Andrianus Meliala, between the Indonesian National Police and the National Narcotics Agency there needs to be a clear division of labor. The aim is that the public will not be confused as well as being a differentiator related to the quality of the performance of each party. "In the future, both need to make differentiation, whether in the form of the peculiarities of the method of arrest, the object of capture, the specialization of drugs seized and in the future, the National Narcotics Agency and the National Narcotics Agency need to make a clear division of labor".

As a result of this dualism, it is not impossible for overlapping and competing authorities to occur. Therefore, an effective and efficient mechanism must be created, thus minimizing unfair competition.

2. Regulation of the authority of the Indonesian National

Police and the National Narcotics Agency in the Investigation of Narcotics Crimes in Indonesia

Investigation Authority of the National Narcotics Agency based on Law Number 35 of 2009 concerning Narcotics. Regulated in Article 75 and Article 80 of Law Number 35 of 2009 concerning Narcotics. Article 75 reads as follows:

In order to conduct an investigation, BNN investigators are authorized to:

1. Investigating the truth of reports and information about the abuse and illicit trafficking of Narcotics and Narcotics Precursors.;
2. Examining people or corporations suspected of abusing and trafficking Narcotics and Narcotics Precursors;
3. Calling people to be heard as witnesses;
4. Requesting to stop people suspected of abusing and trafficking Narcotics and Narcotics Precursors and checking the identification of suspects;
5. Examining, searching, and confiscating evidence of criminal acts in the abuse and illicit trafficking of Narcotics and Narcotics Precursors;
6. Examining letters and/or other documents regarding the abuse and illicit trafficking of Narcotics and Narcotics Precursors;
7. Arresting and detaining people suspected of abusing and trafficking Narcotics and Narcotics Precursors;
8. Conducting interdiction against illicit trafficking of Narcotics and Narcotics Precursors in all areas of national jurisdiction;
9. Conducting wiretaps related to the abuse and illicit trafficking of Narcotics and Narcotics Precursors after sufficient preliminary evidence is available;
10. Conducting covert purchase and delivery under surveillance investigation techniques;
11. Destroying Narcotics and Narcotic Precursors;
12. Conduct urine tests, blood tests, hair tests, deoxyribonucleic acid (DNA) tests, and/or other body part tests;
13. Taking fingerprints and photographing suspects;
14. Scanning people, animals, and plants;
15. Opening and examining every shipment by post and other means of transportation suspected of having a relationship with the abuse and illicit trafficking of Narcotics and Narcotic Precursors.;
16. Sealing the seized Narcotics and Narcotic Precursors;
17. Conducting laboratory tests on samples and evidence of Narcotics and Narcotics Precursors;
18. Requesting the assistance of experts needed in relation to the task of investigating the abuse and illicit trafficking of Narcotics and Narcotics Precursors; and
19. Stopping the investigation if there is insufficient evidence of alleged abuse and illicit trafficking of Narcotics and Narcotics Precursors.

Article 75 of Law No. 35/2009 on Narcotics authorizes the National Narcotics Agency to conduct the investigation process until the termination of the investigation. Investigation Authority of the Indonesian National Police Based on Law Number 35 of 2009 concerning Narcotics. Law Number 35 of 2009 concerning Narcotics gives authority to the Indonesian National Police in Article 81 which reads:

“Investigators of the Indonesian National Police and investigators of the National Narcotics Agency are authorized to investigate the abuse and illicit trafficking of

narcotics and narcotic precursors under this Law”.

The position of the National Narcotics Board as a Non-Ministerial Government Institution is under and responsible to the President through the coordination of the Chief of the Indonesian National Police and the National Narcotics Board is led by a Chief. The duties of the National Narcotics Agency in Presidential Regulation of the Republic of Indonesia Number 23 of 2010 concerning the National Narcotics Agency Article 2 are:

1. Formulate and implement national policies on the prevention and eradication of drug abuse and illicit trafficking.
2. Prevent and eradicate drug abuse and illicit trafficking.
3. Coordinate with the Chief of the Indonesian National Police in the prevention and eradication of drug abuse and illicit trafficking.
4. Improving the capacity of medical rehabilitation and social rehabilitation institutions for drug addicts, both organized by the government and the community.
5. Empowering the community in the prevention and eradication of drug abuse and illicit trafficking;
6. Monitor, direct, and improve community activities in the prevention and eradication of drug abuse and illicit trafficking.
7. Conduct bilateral and multilateral cooperation, both regionally and internationally, to prevent and eradicate illicit drug trafficking.
8. Develop a narcotics and precursor laboratory.
9. Carry out administration of investigations and investigations into cases of drug abuse and illicit trafficking.
10. Make an annual report on the implementation of duties and authorities

In the previous organizational structure of the National Narcotics Agency, the National Narcotics Agency was still under the Chief of the Indonesian National Police as the Chairperson. Under him is the BNN Daily Chief Executive who oversees the core centers of the P4GN program, namely:

1. Prevention center
2. Law Enforcement Center.
3. Control and Operation Center

Therapy and Rehabilitation Center the Investigation Authority of the Indonesian National Police Based on Law Number 35 of 2009 concerning Narcotics gives authority to the Indonesian National Police Article 81 which reads:

“Investigators of the Indonesian National Police and investigators of the National Narcotics Agency are authorized to investigate the abuse and illicit trafficking of narcotics and narcotics precursors under this Law”.

The investigative authority of the National Narcotics Agency and the Indonesian National Police, when examined from the perspective of the criminal justice system, namely as an integral system, where the division of investigative authority must be clear without overlapping, but even though each component of the sub-system has different functions and authorities, in the concept of the criminal justice system, each sub-system must have the same perception, attitude and goals.

Investigators of narcotics crimes based on Law Number 35 of 2009 concerning Narcotics are investigators of the National Narcotics Agency and Investigators of the

Indonesian National Police. The investigative authority of each investigator has no difference regarding the object of investigation. The law does not divide which criminal acts of narcotics and narcotics precursors are handled by investigators of the National Narcotics Agency and Investigators of the Indonesian National Police. This has the potential to cause overlapping or overlapping in the investigation of narcotics criminal cases. Andrianus Meliala said that the Indonesian National Police and the National Narcotics Agency need a clear division of labor, with the aim that the public is not confused as well as being a differentiator regarding the quality of performance of each party. In the future, both parties need to make differentiation, whether in the form of the peculiarities of the method of arrest, the object of capture, the specialization of drugs seized and so on.

Narcotics criminal investigators are authorized to reveal the abuse and illicit trafficking of narcotics, of course, it will have a good impact on the eradication of narcotics crimes which are increasingly increasing both quantitatively and qualitatively with widespread victims, especially among children, adolescents, and young people in general. However, on the other hand, it is not impossible that it will lead to dualism in the settlement of narcotics crimes because each investigator feels entitled to conduct investigations, which is not impossible in the end will harm or hinder the process of eradicating narcotics abuse and illicit trafficking. As a result of this dualism, it is not impossible that overlapping and power struggles will occur. This is inseparable from the struggle for the achievements of each Investigator because narcotics crimes have a strategic value both in the context of career research or related to the high economic value of abuse and illicit trafficking of narcotics. Therefore, an effective and efficient mechanism must be created, so that unfair competition can be minimized. The mechanism of cooperation between investigators of the National Narcotics Agency and investigators of the Indonesian National Police or with other investigators, has been regulated in Law Number 35 of 2009 concerning Narcotics. In conducting investigations into the abuse and illicit trafficking of Narcotics, investigators of the Indonesian National Police shall notify in writing the commencement of the investigation to investigators of the National Narcotics Board and vice versa.

In the investigation stage, overlapping problems can be avoided due to the obligation to notify each other in writing of the commencement of the investigation, but in the investigation stage because it is closed and there is no obligation to notify each other, it is not impossible that there are similar targets of operations between the intel of the National Narcotics Board and the intel of the Indonesian National Police. So far at the leadership level there have been no significant problems due to close coordination between the leaders of the National Narcotics Board and the Indonesian National Police, but in the field it has happened that the National Narcotics Board and the Indonesian National Police have the same target operation and in this situation the system used is first come, first served.

The conditions described above allowed to continue, and could lead to friction between the two investigating agencies for narcotics crimes. This is because the National Narcotics Agency also established Provincial Narcotics Agencies at the provincial level and Municipal Narcotics Agencies at the district level, which also conduct investigations and

inquiries in their respective areas. Moreover, the existence of these Narcotics Agencies will waste the budget, because each investigator will incur costs in intelligence activities to disclose the case but if without clear coordination it could be that each has the same target operation. However, it is different if there is a suspect from a case handled by investigators of the Indonesian National Police who is part of the same network as the suspect being handled by investigators of the National Narcotics Agency with good coordination, each agency can help each other with information in dismantling a network.

3. The Concept of Formulation in the Investigation of Narcotics Crimes in Indonesia

Investigators of narcotics crimes based on Law Number 35 of 2009 concerning Narcotics are investigators of the National Narcotics Agency, Investigators of the Indonesian National Police. The investigative authority of each investigator has no difference regarding the object of investigation. The law does not divide which criminal acts of narcotics and narcotics precursors are handled by investigators of the National Narcotics Agency, Investigators of the Indonesian National Police. This has the potential to cause overlapping or overlapping in the investigation of narcotics criminal cases.

The Indonesian National Police and the National Narcotics Agency need a clear division of labor, with the aim that the public is not confused as well as being a differentiator regarding the quality of performance of each party. In the future, both need to make differentiation, whether in the form of the peculiarities of the method of arrest, the object of capture, the specialization of drugs seized and so on.

Article 81 of Law Number 35 of 2009 concerning Narcotics provides an opportunity for overlapping authority between two law enforcers, namely the National Narcotics Agency and the Indonesian National Police: Article 81 Investigators of the Indonesian National Police and BNN investigators are authorized to investigate the abuse and illicit trafficking of Narcotics and Narcotics Precursors based on this Law.

The Law No. 35/2009 on Narcotics does not provide a limit to the National Narcotics Agency's investigative authority such as Article 11 paragraph (3) of Law No. 30/2002 on the Corruption Eradication Commission, which if the loss is RP. 1,000,000,000 (1 billion) is handled by the Corruption Eradication Commission. In the future, the government and the House of Representatives must think about and provide solutions to the overlapping authority between the Indonesian National Police and the National Narcotics Agency. Namely by paying attention to the following matters:

Therefore, the authority possessed by the National Narcotics Agency must have limits or differentiation from the authority of the police. However, they must build a paradigm in conducting investigations into narcotics crimes in order to achieve the objectives of the criminal justice system.

4. The Legal Construction of the Regulation of the Indonesian National Police and the National Narcotics Agency in the Investigation of Narcotics Crimes in Indonesia

Narcotics crime requires special and serious handling, this is because narcotics crime can have a bad influence on users and addicts. The future generation of the nation must be guarded by the state in order to avoid narcotics traps.

Narcotics crimes that have a broad and systematic impact (extra ordinary crime) are crimes that require extra handling and require a separate approach to solving them. In practice, the existing national criminal law mechanism in a country is often unable to provide a fair settlement for acts that fall into the extraordinary crime category, including Indonesia. This situation occurs because of the unavailability of appropriate legal instruments to anticipate acts that fall into the qualifications of extraordinary crimes in the national legal system.

This type of crime is categorized as a special crime, because these crimes are not regulated in the Criminal Code (KUHP) but are regulated in separate laws in accordance with the crime. Some examples of laws that regulate crimes that have a broad and systematic impact (extraordinary crimes) are Law No. 7 of 1997 concerning the ratification of the United Nations Convention Against Illicit Traffic in Narcotic, Drugs and Psychotropic Substances, 1988 (United Nations Convention on Combating Illicit Traffic in Narcotics and Psychotropic Substances, 1988); Law No. 31 of 1999 jo Law No. 20 of 2001. 31 of 1999 in conjunction with Law No. 20 of 2001 on Corruption; Law No. 15 of 2002 in conjunction with Law No. 25 of 2003 on Money Laundering; Law No. 15 of 2003 on Terrorism; Law No. 32 of 2009 on Environmental Protection and Management, etc. Although these laws also regulate the implementation of criminal proceedings, the basis of criminal proceedings in Indonesia is KUHAP. However, the location of extra or special handling of these crimes is regulated in each of the laws governing these crimes which are also inseparable from the procedures regulated in the Criminal Procedure Code.

A comparison of the limits of authority between the Corruption Eradication Commission and the National Narcotics Agency can be seen in Article 43 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 in conjunction with Law Number 30 of 2002 concerning the Eradication of Corruption, which states that the Corruption Eradication Commission is a state institution established by law and carries out its duties based on its inherent authority independently and free from the influence of any power. Paragraph 14 of the General Elucidation of the Corruption Eradication Commission Law in conjunction with Article 19 paragraphs (1) and (2) of Law Number 30 of 2002 explains that the Corruption Eradication Commission is established and domiciled in the State Capital. If deemed necessary, in accordance with the needs of the community, the Corruption Eradication Commission may establish representatives in the provinces.

The duties and authorities of the Corruption Eradication Commission in the field of investigation, investigation and prosecution of corruption crimes in Article 11 paragraph (3) of Law Number 30 of 2002 concerning the Corruption Eradication Commission are as follows:

1. Conducting investigation, inquiry, and prosecution of corruption crimes (Article 6 letter c of KPK Law).
2. Empowered to investigate, inquire and prosecute corruption offenses:
 - a. Involving law enforcement officials, state officials, and other people who are related to corruption crimes committed by law enforcement officials or state officials;
 - b. Receives attention that disturbs the community, and/or
 - c. Involve state losses of at least Rp. 1,000,000,000,- (One Billion Rupiah)

The Article 81 of Law Number 35 Year 2009 on Narcotics

provides an opportunity for overlapping authority between the two law enforcers, namely the National Narcotics Agency and the Indonesian National Police, while the article reads as follows:

The investigators of the Indonesian National Police and the investigators of the BNN are authorized to investigate the abuse and illicit trafficking of Narcotics and Narcotics Precursors under this Law.

Law No. 35/2009 on Narcotics does not provide a limit to the National Narcotics Agency's investigative authority such as Article 11 paragraph (3) of Law No. 30/2002 on the Corruption Eradication Commission, which if the loss is RP.1,000,000,000 (1 billion) is handled by the Corruption Eradication Commission. The People's Representative must think about and provide solutions to the overlapping authority between the Indonesian National Police and the National Narcotics Agency, by considering the following matters:

1. The crime was committed by an important and influential official.
2. Receive attention that disturbs the wider community.
3. Involving 1 kg/10 ounces of drug type.

Therefore, the authority possessed by the National Narcotics Agency must have limits or differentiation from the authority of the police. Nevertheless, they must build a paradigm in conducting investigations into narcotics crimes to achieve the goals of the criminal justice system.

5. Conclusions

Based on the findings explained previously, the researcher concludes several main findings as follows:

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