

**Review Article****THE FUNCTION OF ARREST AND DETENTION IN THE PROCESS OF INVESTIGATION OF CRIMINAL ACTIONS OF NARCOTICS ABUSE FROM A CRIMINAL PROCEDURE LAW PERSPECTIVE;**¹Daniel Prastya Utama, ²MuhammadYusuf Siregar, ³Wahyu Simon TampubolonEmail : danielbaganbatu@gmail.com, siregaryusuf90@yahoo.co.id, Wahyu.tampubolon@yahoo.com,**Article History**

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Journal homepage:<https://jurnal.arjunajusticia.com/index.php/ijeck>**Abstract:**

Narcotics crimes have been categorized as unordinary crimes (extraordinary crimes) and even narcotics crimes are classified as special crimes. The criminal act of narcotics abuse is regulated in Law Number 35 of 2009 concerning Narcotics and is a special criminal act related to Narcotics Abuse. The Republic of Indonesia Police has the authority to carry out inquiries and investigations into criminal cases. Indonesian National Police investigators and BNN investigators have the authority to carry out investigations into abuse. Narcotics. This research uses normative legal research. Normative Legal Research is legal research carried out by examining library materials or secondary data. We can understand the results of the discussion of the function of arrest and detention implicitly in Article 21 paragraph (1) of the Criminal Procedure Code which states that an order for detention or further detention is carried out against a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient evidence, in the event that there are circumstances that give rise to concerns that the suspect or defendant will flee, damage or destroy evidence and/or repeat a criminal act.

Keywords: *Arrest, Detention, Criminal Investigation, Narcotics Abuse, Criminal Procedure Law*

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INTRODUCTION

Nowadays, narcotics abuse can be said to exceed normal limits. From adolescence to adulthood, people are contaminated with narcotics abuse. Every effort has been made to provide education to the public regarding the impacts of narcotics abuse. In fact, legal education at the

school and village level has also been carried out, but this has not reduced the number of narcotics abuse in several regions in Indonesia. The National Narcotics Agency or often abbreviated as BNN is an institution that handles the problem of narcotics abuse. BNN, through the Provincial BNN and Regency BNN, collaborates with law enforcement officials, namely the Indonesian National Police, in tackling narcotics abuse in several regions in Indonesia.

Eradicating narcotics has the same spirit as eradicating corruption. As explained previously, narcotics crimes have been categorized as unordinary crimes)¹ even narcotics crimes are classified as special crimes. Narcotics abuse in Indonesia is regulated in Law Number 35 of 2009 concerning Narcotics. The Law on Narcotics is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The Law on Narcotics is implemented based on:

- a) Justice;
- b) Protection;
- c) Humanity;
- d) Order;
- e) Protection;
- f) Security;
- g) Scientific values; And
- h) Legal certainty.

The Law on Narcotics aims to:

- a) Guarantee the availability of Narcotics for the purposes of health services and/or development of science and technology;
- b) Prevent, protect and save the Indonesian people from Narcotics abuse;
- c) Eradicating the illicit trafficking of Narcotics and Narcotics Precursors; And
- d) Ensure the arrangement of medical and social rehabilitation efforts for drug abusers and drug addicts.

The arrest and detention of perpetrators of criminal acts of narcotics abuse is regulated by law. Arrests can be carried out by BNN in collaboration with law enforcement, namely the Indonesian Republic Police. As law enforcers, the duties of the police have been strictly regulated in the provisions of Article 14 paragraph 1 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia. The police have the main duties, namely: maintaining security and public order; enforce the law; and provide protection, protection and services to the community. In carrying out this main task, the Republic of Indonesia Police is tasked with:

- a) Carrying out regulation, guarding, escorting and patrolling community and government activities as needed;
- b) Carrying out all activities to ensure security, order and smooth traffic on the roads;
- c) Developing the community to increase community participation, community legal awareness and community compliance with laws and regulations;

¹AR. Sujono dan Bony Daniel, Komentor & Pembahasan UU No 35 Tahun 2009 tentang Narkotika, Sinar Grafika, Jakarta Timur, 2011, h. 32

- d) Participate in national legal development;
- e) Maintain order and ensure public security;
- f) Coordinating, supervising and providing technical guidance to special police, civil servant investigators and other forms of independent security;
- g) Carry out inquiries and investigations into all criminal acts in accordance with the criminal procedural law and other statutory regulations;
- h) Organizing police identification, police medicine, forensic laboratories and police psychology for the purposes of police duties;

Another provision of the Police is that the police have the authority to carry out investigations into criminal cases. An investigation is defined as a series of investigative actions to search for and discover a situation or event that is suspected of being a crime or criminal act in order to obtain the initial evidence needed to decide whether an investigation is needed or not in accordance with the orders of the law. Furthermore, Article 1 paragraph (5) of the Criminal Procedure Code states that an investigation is a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law.

The authorities possessed by investigators, as stated in Article 7 Paragraph (1) of the Criminal Procedure Code, include: Carrying out arrests, detention, searches and confiscations. This authority is a very broad authority given by law to investigators in carrying out arrests for investigative purposes, this is in accordance with the provisions of article 16 paragraph (2) of the Criminal Procedure Code, but to guarantee the suspect's human rights, the arrest order must be based on sufficient preliminary evidence. According to the Decree of the Chief of Police of the Republic of Indonesia (Kapolri) No. Pol. SKEP/04/1/1982, sufficient initial evidence is the information and data contained in two of them as follows:

- a. Police report
- b. Police Investigation Report
- c. Investigation report
- d. Witness/expert testimony
- e. Evidence.

If during the investigation process it turns out that sufficient evidence is not found and it is reasonable to suspect that the incident is not a criminal incident, the investigation will be stopped by law. The investigator is obliged to issue an Order to Terminate the Investigation. After the issuance of the order to stop the investigation, the investigator must notify the public prosecutor, the suspect and his family.

Arrests and detentions that are not carried out based on the law are invalid because they do not comply with the formal provisions of the applicable law. The provisions of Articles 75 and 76 of Law Number 35 of 2009 concerning Narcotics, state that in the context of carrying out investigations, BNN investigators have the authority to: arrest and detain people suspected of committing abuse and illicit trafficking of Narcotics and Narcotics Precursors Article 75 (g), the authority is no longer than 3 x 24 (three times twenty four) and can be extended for a maximum of 3 x 24 (three times twenty four) hours is the authority of BNN investigators (Article 76).

RESEARCH METHODS

This research uses normative legal research. Normative Legal Research is legal research carried out by examining library materials or secondary data. Normative legal research is also called doctrinal legal research. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced. In this type of legal research, law is often conceptualized as what is written in statutory regulations or law is conceptualized as rules or norms which are benchmarks for human behavior that is considered appropriate.²

RESULTS AND DISCUSSION

1. The Function of Arrest and Detention in the Criminal Investigation Process of Narcotics Abuse in the Perspective of Criminal Procedure Law;

Arrest is an investigator's action in the form of temporary restraint on the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or justice in matters and according to the methods regulated in this law. Article 1 point 20 of the Criminal Procedure Code provides the following definition of arrest: arrest is an investigator's action in the form of temporarily restraining the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or justice in matters and according to the method regulated in this law.

The arrest period is only valid for a maximum period of 1 day (24 hours). Before an arrest is carried out by the police, there are material and formal requirements that must be met first. What is meant by material requirements is the existence of sufficient preliminary evidence that there has been a criminal act. Meanwhile, the formal requirements are a letter of assignment, an arrest warrant and a copy thereof. If within more than 1 x 24 hours, the suspect continues to be questioned and there is no warrant for detention, then the suspect has the right to be immediately released.

An arrest order according to the provisions of Article 17 of the Criminal Procedure Code is issued against a person who is strongly suspected of committing a criminal act based on sufficient preliminary evidence. Based on the explanation of Article 17 of the Criminal Procedure Code, the definition of "sufficient initial evidence" is initial evidence to suspect the existence of a criminal act in accordance with the provisions of Article 1 point. This article shows that arrest orders cannot be carried out arbitrarily, but are directed at those who truly actually committed a crime. The reasons for arrest or conditions for arrest are implied in Article 17 of the Criminal Procedure Code, namely:

- a person who is strongly suspected of committing a criminal act;
- the strong suspicion is based on sufficient preliminary evidence.

The explanation of Article 17 of the Criminal Procedure Code states that this article determines that arrest orders cannot be issued arbitrarily, but are directed at those who have actually committed a criminal act. In relation to the function of arrest itself, from the definition

² Amiruddin dan H. Zainal Asikin, Pengantar Metode Penelitian Hukum, Jakarta:PT. Raja Grafindo Persada, 2006, hal. 118

of arrest above we can draw the conclusion that arrests are carried out for the purposes of investigation or prosecution and/or justice. The function of arrest is a form of authority given to investigators where within this authority, investigators have the right to reduce a person's freedom and human rights. based on legal rules or foundations. One form of reducing a person's freedom and human rights is by arrest. In other words, the investigator's actions regarding the arrest are actions that are truly proportionate for the purposes of the investigation and are truly necessary.

Detention is the placement of a suspect or defendant in a certain place by an investigator, or public prosecutor or judge with his or her determination, in the terms and according to the method regulated in this law (Article 1 point 21 of the Criminal Procedure Code). In practice, detainee status is often prolonged because the police investigation process is still ongoing. According to Article 7 paragraph (1) letter d of the Criminal Procedure Code, investigators (in this case the police) because of their obligations have the authority to carry out detention. Apart from that, detention can also be carried out by a legal prosecutor or judge according to the stages of the criminal justice process (Article 20 of the Criminal Procedure Code).

Regarding the investigation of narcotics crimes, Law No. 35 of 2009 concerning Narcotics has provided strict regulations regarding the process of investigation, prosecution and examination at court hearings related to narcotics crimes, as stated in the provisions of Article 73 to Article 103 of the Law. No. 35 of 2009 concerning Narcotics. In every series of handling narcotics cases, the investigation process is the most important process in eradicating narcotics abuse. This is because investigation is a process of collecting evidence that can determine who the suspect is. It is during the investigation process that evidence can be collected that can be used to prove crimes involving narcotics use. Apart from that, it is also at this stage that the suspect's status as a user or dealer of narcotics can be determined.

Article 81 of Law No. 35 of 2009 states that Indonesian National Police investigators and BNN investigators have the authority to carry out investigations into Narcotics abuse based on this Law. Based on Law No. 35 of 2009, legally they have given authority to the Indonesian National Police and Civil Servants to carry out investigations into Narcotics abuse. We can see the arrest and detention of perpetrators of narcotics abuse in the provisions of Law No. 35 of 2009 concerning Narcotics, Article 75 letter (g), Article 76, Article 80, and Article 82 paragraph (2) letter (h). In the provisions of Article 75 letter g of Law No. 35 of 2009 concerning Narcotics, it is stated that: In the context of carrying out investigations, BNN investigators have the authority to: arrest and detain people suspected of committing abuse and illicit trafficking of Narcotics and Narcotics Precursors; Furthermore, Article 82 of Law No. 35 of 2009 concerning Narcotics states that: (1) The implementation of the authority to arrest as referred to in Article 75 letter g shall be carried out no later than 3 x 24 (three times twenty four) hours from the time the arrest warrant is received by the investigator. (2) The arrest as intended in paragraph (1) can be extended for a maximum of 3 x 24 (three times twenty four) hours.

The conclusion is that the implementation of the arrest authority referred to in article 75 letter g of Law Number 35 of 2009 concerning Narcotics is not the same as what is stated in the Criminal Procedure Code where according to Article 75 letter g it is stated that arrests are carried out no later than 3 x 24 hours. and can be extended up to 3 x 24 hours. Meanwhile, in the

Criminal Procedure Code, arrest orders are executed once every 24 hours. The difference in authority arrangements during the arrest period between BNN and Polri investigators has resulted in implications for differences in the regulation of forced arrests for perpetrators of narcotics crimes.

We can find the purpose of detention in Article 20 of the Criminal Procedure Code, namely:

- 1) For investigative purposes, the investigator or assistant investigator, on the orders of the investigator, is authorized to carry out detention;
- 2) For prosecution purposes, the public prosecutor has the authority to carry out detention or further detention;
- 3) For the purposes of the judge's examination at the court hearing, by his decision he has the authority to carry out detention.

The period of detention at each level of criminal investigation can vary.

We can understand the function of detention implicitly in Article 21 paragraph (1) of the Criminal Procedure Code which states that an order for detention or further detention is carried out against a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient evidence, in the event that there are circumstances that give rise to concerns that the suspect or the defendant will run away, destroy or destroy evidence and/or repeat the crime. So, the conclusion that the author draws is that the function of arrest and detention is to prevent suspects or defendants from running away, destroying or destroying evidence and/or repeating the crime in question..

CONCLUSION

Based on the description above, it can be concluded that: Law No. 35 of 2009 has given authority to the Indonesian National Police and Civil Servants to carry out investigations into Narcotics abuse. The function of detention is implicit in Article 21 paragraph (1) of the Criminal Procedure Code which states that an order for detention or further detention is carried out against a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient evidence, in the event that there are circumstances that give rise to concerns that the suspect or defendant will flee. themselves, destroying or destroying evidence and/or repeating criminal acts.

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