

# Reconstruction of the Synergic Implementation of Narcotics Case Handling of Bnn and Polri Based on Justice Value

Gunarto<sup>1\*</sup>, Mursito<sup>2</sup>, Sri Endah Wahyuningsih<sup>3</sup>

<sup>1</sup>Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

<sup>2</sup>Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

<sup>3</sup>Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

DOI: [10.36348/sijlcrj.2021.v04i09.003](https://doi.org/10.36348/sijlcrj.2021.v04i09.003)

| Received: 09.08.2021 | Accepted: 14.09.2021 | Published: 18.09.2021

\*Corresponding author: Gunarto

## Abstract

The purpose of this study is to analyze and find weaknesses in the regulation of the synergistic implementation of the duties of the National Narcotics Agency (BNN) and the National Police (POLRI) in Narcotics Cases and how to reconstruct the law on the synergistic implementation of the duties of the National Narcotics Agency and the National Police in Narcotics Cases based on the Value of Justice. The method used in this study is a normative-judicial approach that uses a constructivist paradigm. The results of the study indicate that the weaknesses of the Synergy Arrangement for the Implementation of the Duties of BNN and POLRI are that they have not been regulated in the realm of the Act or other statutory regulations. However, at least in article 70 c and article 84 the regulation of the authority of the BNN and POLRI has been regulated but in need of communication factors, proper recruitment of investigators, and rules that do not overlap, therefore Reconstruction is required in Law Number 35 of 2009 Article 70c; By adding the word "mutually" Coordinate with the Chief of the Indonesian National Police in prevention and eradication. "And synergize in every activity related to both". Then in Article 84; wherein conducting investigations into the abuse and illicit trafficking of Narcotics and Narcotics Precursors, the investigators of the Indonesian National Police shall notify in writing of the commencement of the investigation to the BNN investigators and vice versa, "And carry out work synergies by both". By adding the word synergy, it means that there are efforts that bind the occurrence of good cooperation in the form of an MOU between BNN and the Police.

**Keywords:** Reconstruction, BNN, Police, Narcotics, Justice Value.

**Copyright © 2021 The Author(s):** This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

## INTRODUCTION

The problem of narcotics is a classic problem but is still a big obstacle in law enforcement and for the development of the nation. Criminal acts are no longer carried out secretly but have been very openly carried out by users and dealers in carrying out the operation of these dangerous goods as these illicit goods have spread everywhere indiscriminately, especially among the younger generation who are highly expected to become the nation's next generation in the future. Narcotics and psychotropics, in the span of their history, have been known in civilization, which was originally useful for health. In line with its rapid development, it turns out, not only as a medicine but, on a certain dosage, can also give pleasure that ultimately paralyzes the productivity of humanity, which has the potential to degrade humanity. Therefore, the illegal distribution of all types of narcotics and psychotropic substances has finally become a concern for all civilized human beings and

has even become a new nomenclature in crime, namely drug crimes.

Awareness about the importance of handling the problem of drug abuse in Indonesia is increasing from time to time along with the increasing threat of disruption caused by the problem. This is because at first, the danger of narcotics abuse was a latent danger, but now the danger is real which is marked by the increasing level of narcotics abuse that occurs in Indonesia. Related to the legal position of the National Narcotics Agency (BNN) and the National Police (POLRI) in the context of synergizing the handling of narcotics cases, there are several facts as follows:

1. Until 2009 (before the enactment of Law No. 35 of 2009 on narcotics), the existence of BNN was based on the Presidential Instruction, Presidential Decree, and Presidential Regulation as the implementation of the law on narcotics. With the

enactment of Law no. 35 of 2009 concerning narcotics, the existence of BNN until now is based on law. This increase in the "status" of the existence of BNN shows the increasing role of BNN in the context of handling narcotics cases.

2. Meanwhile, the existence of the National Police is always based on the law.
3. Since its inception until now, the task of BNN is very specific, namely specifically related to narcotics cases. Meanwhile, the duties of the National Police are more general in nature, namely those related to the handling of the nation's internal security. However, handling the "narcotics problem" still remains part of the task of the National Police.
4. Although the current existence of BNN and POLRI is based on the law, Article 1 paragraph (1) of Presidential Regulation No. 23 of 2010 stipulates that: "...BNN is a non-ministerial government agency located under and responsible to the President through the coordination of the Head of the State Police of the Republic of Indonesia". This provision has placed BNN as if it were under the National Police (*das sein/facts*). Meanwhile, according to Article 64 paragraph (2) of Law no. 35 of 2009, BNN is located under the President and is responsible to the President. This article does not require other regulations as an explanation (*das sollen/should be*). The BNN's accountability to the President is direct as referred to in the explanation of Article 64 paragraph (1) of Law no. 35 of 2009: "... with the establishment of the National Narcotics Agency which is directly responsible to the President who has the task and function of coordinating and operating in the management of Narcotics and Narcotics Precursors, prevention and eradication of abuse and illicit trafficking of Narcotics and Narcotics Precursors,...".

Based on the description above, it can be concluded that the study of this problem stems from the fact that according to Presidential Decree no. 23 of 2010, the position and responsibility of BNN is to the President through the coordination of the National Police (not directly). This can be seen as contradicting the provisions of Article 64 and the Elucidation of Article 64 of Law no. 35 of 2009 as a condition that should be. This can interfere with the implementation of the duties of the BNN itself as the laws and regulations regulate it.

The laws and regulations related to the formation of the BNN define one of the tasks of the BNN as being the coordinator of the relevant agencies and forming a task force to take action. In fact, as an independent institution, both the National Narcotics Agency and the National Police can take action against narcotics crimes individually. This has the potential to create unfair conditions, both experienced by the National Narcotics Agency, the National Police, and the

perpetrators of narcotics crimes themselves. These unfair conditions can be in the form of differences in facilities or differences in work procedures. To a certain extent, the mass media (print and electronic) play a role in providing space for these unfair conditions to arise. As an example; The mass media tend to report on the success of BNN in eradicating narcotics crimes on a larger scale, while the success of the National Police in eradicating narcotics crimes tends to be reported on a smaller scale. On the other hand, narcotics criminals who are "arrested" by the National Narcotics Agency tend to receive more coverage than narcotics criminals who are "arrested" by the National Police. This condition actually creates unfair conditions for the perpetrators of a narcotics crime [1].

Through the background mentioned above, to find out about the position of each institution, both BNN and POLRI, in uncovering narcotics criminals so that they can synergize the implementation of BNN and POLRI duties so that good and fair cooperation is felt, both BNN and POLRI. Therefore, the author raise this problem into a study with the main problem as follows:

1. What are the Weaknesses in Regulating the Synergy in the Implementation of the Duties of BNN and POLRI in Narcotics Cases in Indonesia?
2. How is the Legal Reconstruction of the Synergy in the Implementation of the Duties of BNN and POLRI in Narcotics Cases based on Justice Values?

## METHOD OF RESEARCH

In this study, the research method that the author uses is a normative, juridical method with constructive paradigm. With the method, researchers examine issues based on the juridical aspect, i.e. norms, regulations, legislation, legal theories, opinions of legal experts [2]. The specification of research used in this study is descriptive-analytical: it provides a relevant description of the nature or characteristics of a problematic situation in research to be analyzed based on legal theories and general practices of implementing positive law on solving problems.

The type of data used in this research is secondary data, obtained from laws and regulations, official documents, textbooks, academic papers concerning with the research problems. The secondary data in the field of law consists of [3]:

1. Primary legal materials, or main legal materials. They are authoritative, i.e. legal materials that have authority. They include statutory regulations and official documents that contain legal provision.
2. Secondary legal materials. They are documents or legal materials that provide explanations for primary legal materials such as textbooks, articles, scientific journals, research results, scientific papers which are relevant to the research topics, i.e. electronic medical records, data interoperability of

medical records, legal aspects of electronic medical records and data interoperability of medical records.

3. Tertiary legal materials. They provide instructions or explanations for primary and secondary legal materials, such as dictionaries, encyclopedias, and cumulative indexes.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses in Regulating the Synergy in the Implementation of the Duties of BNN and POLRI in Narcotics Cases in Indonesia

Investigations into narcotics cases are carried out by the police in collaboration with BNN. In conducting investigations, the police must coordinate with BNN (article 70 point c of the Narcotics Law), and notify BNN regarding the investigations carried out on narcotics cases (article 84 of the Narcotics Law). The police have some of the same powers as the investigative authority of BNN. Some of these authorities are to prevent the distribution and misuse of narcotics, confiscate narcotics, notify the District Attorney of the confiscation, set aside a small portion of confiscated goods as samples in the laboratory, and destroy narcotics. Abdul Gaffar Ruskhan [4] stated that in addition to the existence of BNN, the police also have units that handle narcotics, namely the Narcotics Task Force, Narcotics Unit V, Police Narcotics Unit I, Narcotics Directorate, and the Narcotics Directorate at the National Police Headquarters.

The Overlapping of this same authority has the potential to cause friction and conflict in the use of authority. The friction and conflict is because the two institutions have the same authority. The similarity of authority between the police and the National Narcotics Agency is not in accordance with the concept of the Indonesian criminal justice system as the Indonesian criminal justice system is made so that the stages in the criminal proceedings in Indonesia are clear. The purpose of making the criminal justice system process in stages is one way so that at any stage, there is a horizontal control system. In addition to aiming for control, the differences in duties and authorities in each component of the criminal justice system also recognize the limits of their respective duties and authorities and do not overlap.

KUHAP adheres to an integrated criminal justice system or integrated criminal justice process. As a system, the criminal law enforcement process is marked by the differentiation of authority between each component or law enforcement apparatus, namely the police as investigators, prosecutors, and judges as officers authorized to try. The differentiation is intended so that every law enforcement officer understands the scope and limits of their authority. Thus, it is hoped that on the one hand there will be no overlapping implementation of authority, on the other hand, there will be no cases that are not handled by the apparatus at

all. This means that when there is a case, there is a special apparatus that handles it.

In addition, the differentiation of functions is a way to create a supervisory function or supervise each other horizontally between law enforcement officers, so that the integrated implementation of authority can be carried out effectively and harmoniously. The horizontal monitoring mechanism is also intended to prevent abuse of authority by law enforcement officers that could potentially violate a person's human rights.

This difference in function also implies a sharing of power between the investigative authority carried out by the police and the prosecution authority by the prosecutor's office. This differentiation is internal, namely the difference in authority between law enforcement officers in the executive realm. Meanwhile, in one system, even though each component is given certain powers that are different from other components, to realize the goals of an integrated system, each component must coordinate with other components. However, for certain reasons, it is possible to grant special authority to certain components as an exception. This will result in overlapping between law enforcement officers if there is no good coordination and/or clear and firm provisions regarding these exceptions.

The purpose of making a criminal justice system consisting of several stages and each officer with different authority in each stage such as the police in charge of conducting investigations and the public prosecutor in charge of prosecuting are as follows [5]:

- a. Understand the scope of duties and authorities
- b. So that there is no overlap in the implementation (to avoid being unclear who will handle it when an incident occurs because there are two components that have the same task)
- c. There is no case that is not handled by law enforcement officers
- d. The existence of a supervisory function or horizontal control from one component to another so that there is no abuse of authority from law enforcement officers.

To achieve this goal, a criminal justice system is created which consists of Initial investigation, investigation, prosecution, trial, and execution of decisions. In each of these stages, there is one officer who specifically carries it out, namely investigations by the police, investigations are also the duty of the police, prosecutions are carried out by prosecutors, and so on. The police investigation does involve civil servants, but the position of the civil servant is only as an assistant investigator. The division of this task in order to avoid overlapping in its implementation. The overlap referred to here is that there is no process that is under the authority of two officers so that no officer feels most entitled to carry out a task from another officer (the

struggle for authority). If this overlapping authority occurs, a criminal act will not be processed quickly because the officer in charge is more focused on determining who is entitled, not focusing on solving a crime.

In investigating narcotics cases, the police and the National Narcotics Agency both have the authority to carry out investigations. This has the potential to create a situation where there will be overlap. It is not impossible if, in a case of narcotics abuse and distribution, the police and BNN feel they have the right to investigate each other or vice versa, both feel they are not entitled to carry out an investigation for certain reasons. This overlapping authority has the potential to occur considering that both of them have the right to conduct investigations in cases of narcotics abuse and trafficking.

Authority is power, but power is not always authority. Authority is a power that has legitimacy (legitimate power), while power does not always have legitimacy. The authority to conduct investigations between the police and BNN when examined from the perspective of the criminal justice system, namely the criminal system as an integral system, where the division of investigative authority must be clear so that there is no overlap. In the Narcotics Law, it is not clearly stated how the limits of the authority of narcotics cases can be handled by the police and which are the authority of the National Narcotics Agency. This has the potential to cause overlapping. Narcotics cases require fast handling, which is to be submitted as soon as possible so that they can be resolved as soon as possible. The fast process starts from the inspection to the next process. This is as stated in the explanation of article 74 paragraph (1) of the Narcotics Law as follows "In this provision what is meant by *"immediate settlement"* is starting from the examination, decision making, up to the execution of the decision or execution.

Because overlapping authorities can cause delays in the investigation process, the mandate of the Narcotics Law so that cases of abuse and trafficking of narcotics must be resolved as soon as possible will not be achieved. Moreover, investigation of narcotics cases, as explained in the previous chapter, disclosure of narcotics cases must be carried out by people who are truly professional because disclosure is very difficult. Therefore, investigators are also given the authority to follow suit, make covert purchases, and even wiretap people suspected of drug abuse or trafficking therefore, investigators need time and concentration and clear coordination to be able to uncover narcotics cases and can be processed quickly in accordance with the mandate of the Narcotics Law.

The role of investigators to uncover narcotics crime cases is very meaningful and has a good impact

on the process of eradicating narcotics crimes which are increasing day by day both qualitatively and quantitatively with increasingly widespread victims, especially children, adolescents, and other young generations. However, the problem that arises in the eradication of narcotics is the existence of dualism because each investigator feels entitled to carry out an investigation. This condition can create losses because it can hinder the investigation process. As a result, this dualism has the potential for overlapping. This is inseparable from the prestige and achievements of each investigator because narcotics crimes have a fairly strategic value both in the context of career development or related to the high economic value of narcotics abuse and trafficking.

Yesmil Anwar and Adang [6] stated that the authority to investigate is an urgent matter in criminal law. This is because the investigative authority is one of the stages in the functionalization of criminal law. Criminal law enforcement policy is a series of processes consisting of three policy stages, namely the legislative-formulation policy stage, the judicial-applicative policy stage, and the executive-administrative policy stage. Based on these policy stages, the functionalization stage of criminal law, one of which is the determination of policies or investigative authority can be achieved.

According to Didik Endro Purwoleksono [7], stating that the process of how the imposition of a crime can be carried out if there are people who are suspected of having violated laws and regulations (including one of the processes is an investigation) is the most important part of criminal law. According to him, criminal law (including narcotics crime) is part of the overall law that applies in a country that establishes the basics and rules, one of which is to determine the process of handling violations of statutory regulation.

Investigative authority is an important matter for clarity in criminal acts, including narcotics crimes. If the investigative activities are disrupted due to the unclear boundaries of the investigation function, which ultimately results in overlapping and tugging of authority, the narcotics eradication process will be disrupted. Whereas Nana Supriatna [8] stated that narcotics crime is a crime that requires quick action to eradicate.

For the international community, if this keeps up, Indonesia will no longer be seen as a destination country but more of a narcotics-producing country. Therefore, all things related to narcotics (which have bad effects) must be eradicated quickly. The intended adverse effects of narcotics are HIV/AIDS infection, hepatitis C/B, hardening of the liver, heart inflammation, heartburn, senile or dementia, depression, and psychology. In addition, it results in bad relations with family, expulsion from school or work, financial problems, involvement in illegal acts,

accidents, and even death. If narcotics abusers use syringes, then HIV/AIDS and hepatitis B/C can increase and be transmitted to their partners. In addition, the reason why do narcotics need clear and definite authorities and rules is because narcotics are a crime that is difficult to eradicate. Even though the suspect has been given the death penalty, narcotics crimes are still rampant. Narcotics are difficult to eradicate because narcotics abusers are given rehabilitation sanctions, not sentenced to prison because they are considered victims.

## 2. Legal Reconstruction of the Synergy in the Implementation of the Duties of BNN and POLRI in Narcotics Cases based on Justice Values

The reconstruction of the synergy between the National Narcotics Agency and the National Police in Narcotics Cases is a hope to realize the pillars of mutual cooperation as a state institution that is responsible to the president so that in the realm of mutual cooperation there is growing uniformity and harmony both in ideas for tackling or prevention as well as for prosecution or eradication, although some things internally respect each other on their respective performance. In addition, law enforcement carried out between BNN and the POLRI is a focus that must be synergized so that between BNN and POLRI and Narcotics Crime Perpetrators are fair and eliminate the impression of mutual confusion, an example related to detention by BNN in Article 75 letter (g) jo. Article 76 of Law Number 35 of 2009 BNN is given 3 x 24 hours of arrest and can be extended 3 x 24 hours. Meanwhile, within the authority of POLRI investigators as stated in Article 16 jo. Article 19 of Law Number 8 of 1981 concerning the Criminal Procedure Code, namely that an arrest is carried out for a maximum of one day. This is an example of a form of legal injustice that is also felt by the suspect.

The synergy between the BNN and POLRI institutions is carried out in order to improve the quality of work or performance of the two institutions starting from the realm of investigation, investigation, arrest, and further processes in the realm of justice. However, a strategy is needed that is able to reduce various problems, both in investigations that require a lot of money, because the narcotics case is a case with a fantastic number of transactions. all Indonesian people, and Law No. 31/1999 in conjunction with Law No. 20 of 2001. In the 2nd and 5th precepts, the responsibility of the state in addition to providing welfare for the people is also to provide the value of social justice which is imbued with a sense of humanity. Guidelines for law enforcement in carrying out and enforcing the law for justice for all Indonesian people, law enforcers must contain elements of juridical values (legal certainty), sociological values (benefit), and philosophical values (justice).

Legal certainty emphasizes that the law or regulation is enforced as desired by the sound of the law. Sociological value emphasizes the benefits in society itself. The community expects that the birth of law in the form of a rule of law will provide benefits and justice. Even though justice and legal certainty are in conflicting polemics. More and more laws have met the requirements of "fixed rules", eliminating as much uncertainty as possible. Van Apeldoorn [9] emphasized that the more precise and sharp the rule of law is, the more pressing justice will be.

Thus, the researcher tries to use the philosophical ideas of David Hume, Jeremy Bentham (utility theory) [10] where the point of view of the value of justice and social values that to achieve happiness one must be fair so that justice is also closer to social giving social happiness to others, this was also conveyed by Hume with brilliant critical-rational thinking that undermined the theoretical basis of natural science at that time. Hume emphasized that something useful must be able to bring happiness to the individual human being. All legal decisions must guarantee human happiness both as individuals and socially [11].

David Hume was an important philosopher who greatly influenced Bentham's thinking. The principle of association refers to the relationship between ideas and language, the relationship between ideas and ideas. While the principle of greatest happiness refers to the goodness of an individual. Judging from the background of his ideas, we can understand that Bentham's thoughts were inspired by the rise of humanism at that time which glorified the intrinsic value of the human dignity of each individual. The value of humanism seems to be the basic spirit that is closely attached to Bentham's legal thought.

As a supporter of utility theory, Bentham said that the purpose of law must be useful for individuals in society in order to achieve maximum happiness. -the consequences are good for as many people as possible. Here the punishment given to a criminal must also consider the positive side as well. Punishment must pay attention to the consequences itself [12].

In Conclusion, a punishment value can mean fair if the position of each institution and also the community has the same position without any legal discrimination. Based on this, the reconstruction of Article 70c and Article 84 of Law Number 35 of 2009 concerning Narcotics, namely in that article there is a need for synergy between BNN and POLRI, both in authority and implementing duties, which incidentally states that BNN and POLRI are responsible for the completion of Narcotics in Indonesia by reconstructing 1). Article 70c; By adding the word "Mutually" Coordinate with the Chief of the Indonesian National Police in prevention and eradication. "And synergize in every activity related to both". 2). Article 84 ; In

conducting investigations into the abuse and illicit trafficking of Narcotics and Narcotics Precursors, the investigators of the Indonesian National Police shall notify in writing of the commencement of the investigation to the BNN investigators and vice versa, "*And carry out work synergies by both*". By adding the word synergy, it means that there are efforts that bind the occurrence of good cooperation in the form of an MOU between BNN and the Police.

## CONCLUSION

1. Weaknesses in Regulating the Synergy of the Implementation of the Duties of BNN and POLRI in Narcotics Cases in Indonesia are closely related to Article 74 paragraph (1) of the Narcotics Law in "*immediate settlement*" starting from examination, decision making, and up to the execution of the decision or execution. Because this overlapping authority causes delays in the investigation process, the mandate of the Narcotics Law so that cases of abuse and trafficking of narcotics must be resolved as soon as possible will not be achieved. The division of authority should be made with an effective and efficient mechanism so that unfair competition can be avoided. So that friction between BNN and the police does not occur in the future. Apart from the friction between the two sides, another thing to consider is the scattering. If POLRI and BNN institutions both conducting this investigation, there needs to be a strategic coordination step between the two institutions because the investigation requires very expensive and large costs, especially for the parties who carry out these state institutions which in practice, have many obstacles in the investigation stage. between the Police and the BNN PPNS in narcotics crimes such as communication or coordination factors, the Ineffective Recruitment System for BNN PPNS Investigators, Overlapping Rules.
2. Based on research results Reconstruction is required in Law Number 35 of 2009 Article 70c; By adding the word "*mutually*" Coordinate with the Chief of the Indonesian National Police in prevention and eradication. "*And synergize in every activity related to both*". Then in Article 84; wherein conducting investigations into the abuse and illicit trafficking of Narcotics and Narcotics Precursors, the investigators of the Indonesian National Police shall notify in writing of the

commencement of the investigation to the BNN investigators and vice versa, "*And carry out work synergies by both*". By adding the word synergy, it means that there are efforts that bind the occurrence of good cooperation in the form of an MOU between BNN and the Police.

## REFERENCES

1. Setiaawan, I. B. T., Widiati, I. A. P., & Sudibya, D. G. (2020). Peranan Badan Narkotika Nasional (BNN) dalam Upaya Pencegahan terhadap Tindak Pidana Narkotika. *Jurnal Analogi Hukum*, 2(3), 361-365.
2. Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta.
3. Johnny, I. (2005). *Teori Dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.
4. Abdul, G. R. (2007). *Kompas Bahasa Indonesia*, Grasindo, Jakarta, p.50.
5. Noer, P. (2021). *Prespective and Implementative of The Basis of The Single Prosecution System of The Prosecution of The Prosecution Bill*. *Jurnal Independent*. 1. 18. 10.30736/ji.v9i01.133.
6. Yesmil, A. A. (2012). *Pembaruan Hukum Pidana: Reformasi Hukum Pidana*, Grasindo, Jakarta, p.339.
7. Didik, E. P. (2013). *Hukum Pidana*, Airlangga University: Surabaya, p.3.
8. Nana, S. (2008). *IPS Terpadu*, Grafindo Media Pratama, Jakarta, p.142.
9. van Apeldoorn, L. J. (2000). *Inleiding tot de Studie van het Nederlandse Recht*, Indonesian-Translated by Oetarid Sadino, Pengantar Ilmu Hukum Cet. XXV Pradnya Paramita, Jakarta, p.11.
10. Bentham, H., Bilqis, V., Anggraeni, R., Erastio Harfi, D., Prasetyo, D., & Firdaus, Y. (2021). *Teori-Teori dalam Sosiologi Hukum*. Widya Karya, Surabaya. p.51.
11. Widodo, W., & Galang, T. (2019, October). Poverty, Evictions and Development: Efforts to Build Social Welfare Through the Concept of Welfare State in Indonesia. In *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (pp. 260-263). Atlantis Press.
12. Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*, 13(8), 1307-1311.