

## Reconstruction of Controlled Delivery Regulations in Humanitarian Value-Based Narcotic Act Investigations

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### Abstract

The problem raised in this study is what are the weaknesses in the implementation of controlled delivery in the investigation of narcotics crimes in realizing the protection of human rights and How to reconstruct it in order to realize the protection of human rights. To find answers to these problems, the study uses a sociological juridical research type where The method of qualitative analysis is used on the data obtained, and presented in the form of written words supported by quantitative and qualitative data to then draw an inductive conclusion. The Result Shows that the weakness referred to is contained in the definition of Controlled Delivery which is still ambiguous and the usefulness of Controlled Delivery is as stated in Law number 35 of 2009 article 45 (j) and article 49 where even though it is used to uncover drug trafficking networks, controlled delivery make investigators pretend to be drug dealers so that those caught are drug users who are the last link in the drug network (end users) so that the information obtained is certainly not as much as when investigators pretend to be buyers (Undercover Buying) even though the view is that drug users are perpetrators need to be reviewed because their condition is not as "perpetrators", but as "victims" who need a helping hand in order to recover, not punishment. So that the reconstruction referred to in Article 49 of Law Number 35 of 2009 through the addition of the word "while still respecting and protecting the rights of victims of drug abuse as victims" can mean that the rights of victims of drug abuse are recognized and not treated as "Perpetrators" anymore.

**Keywords:** Reconstruction, Controlled Delivery, Narcotics, Humane.

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### INTRODUCTION

The regulations regarding narcotics in the course of time in Indonesia have gone through several changes. The first is Law Number 9 of 1976 concerning Narcotics. This law is a special legal basis for conducting investigations, prosecutions, and examinations before a court of narcotics crimes. After the promulgation of this law, the international community has increased efforts to eradicate narcotics abuse internationally, among others, by the holding of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Which has been ratified by Indonesia through Law Number 7 of 1997. The ratification of this convention has made the government consider it necessary to enact a new law on narcotics. For this reason, Law Number 22 of 1997 concerning Narcotics has been made. However, because Law Number 22 of 2007 concerning Narcotics is no longer in accordance with the development of the

situation and conditions that develop to overcome and eradicate these criminal acts, it is replaced by Law Number 35 of 2009 concerning Narcotics.

Seeing the difficulty of the investigation process on the disclosure of drug cases, there must be special rules that regulate the process or authority of investigators in handling drug cases. Therefore, Article 75 letter J of Law Number 35 of 2009 concerning Narcotics regulates the authority of investigators in conducting investigations; the techniques are undercover buy and controlled delivery. Controlled delivery investigations or CDs have been used by law enforcement officials for years to identify recipients of both domestic and international narcotics shipments. The implementation of covert purchasing investigation techniques and delivery under supervision is very important in uncovering illicit trafficking networks and narcotics abuse. Disclosure of drug cases is like a floating "iceberg" where on the surface it looks small

but under or in the water is very large (Soedjono, 1990). Likewise with narcotics cases, in fact in the community, it is known that only a few use or distribute but when investigated intensively there is often a very large network in the world of illicit drug trafficking. Therefore, the flow of drug trafficking must be eradicated till its roots.

The technique of disclosing narcotics illicit trafficking which is regulated in Article 75 letter j of the Narcotics Law which states "*to carry out covert purchase investigation techniques and delivery under supervision*", The Controlled delivery is a technique by supervising the execution of narcotic evidence that has been detected 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 directly 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 (Putra, 2022).

Problems arise when the recipient whose address is the package in the form of narcotic evidence turns out to be materially unaware that the item or package to which the address is intended is narcotics. As a result, the recipient of the package, even though some of them even underaged, can still be named a suspect, even though in fact he does not know it at all. The investigator's subjectivity is very high in assessing whether the recipient is designated as a suspect or not. The assumption that may arise is that someone may trap the recipient by sending the recipient a narcotics package so that the recipient becomes a suspect and in the end, this can be used as a model of a system that can lead people who do not know at all to become a suspect (Prasetyo, 2020).

The norms governing controlled delivery, namely the Narcotics Law and the technical regulations under it are still unable and able to clearly describe the problems above, in particular how the recipients who incidentally are people are deliberately used or framed to become recipients of narcotics packages.

Based on the background of the problem above, this research contains the following 2 (two) problem formulations, namely:

1. What are the weaknesses in the implementation of controlled delivery in the investigation of narcotics crimes in realizing the protection of human rights?
2. How is the reconstruction of regulations on controlled delivery in the investigation of narcotics crimes in realizing the protection of human rights?

## METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the

social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses in the Implementation of Controlled Delivery in the Investigation of Narcotics Crimes in Realizing the Protection of Human Rights

Article 75 letter (j) of the Narcotics Law stipulates that Investigators of the State Police of the Republic of Indonesia are authorized to carry out investigations of supervised submissions and covert purchasing techniques. Provisions similar to this are also contained in the Law on Psychotropics (Law Number 5 of 1997), namely 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 the Law of Criminal Procedure (State Gazette of 1981 Number 76, Supplement to the State Gazette Number 3209), investigators from the State Police of the Republic of Indonesia may carry out investigative techniques. Supervised delivery and covert buying techniques. In the explanation of the articles of

the two laws, it is emphasized that these investigative techniques can only be carried out on a written order from the Head of the Indonesian National Police or an official appointed by him.

But neither in the articles nor in the explanations of the articles of the two laws it is not explained what is meant by the terms "*supervised delivery*" and "*covered purchase*". In other words, there is no authentic interpretation, namely the understanding given by the legislators themselves, to these terms.

Thus, what can be used for the meaning of these terms are other forms of interpretation. The form of interpretation that will generally be used first is the interpretation according to grammar, namely the interpretation "*according to grammar or according to custom, namely the meaning in everyday use*". Hence this form of interpretation will be used here.

The word "*surrender*" in everyday usage refers to a situation where one person gives something to someone else. For this reason, several things need to be clarified, namely: (1) who gave/given something; (2) who is entrusted/given something; and (3) what was the object that was given/given?

Controlled delivery as a method used by investigators in drug crimes can be seen in the National Police Chief's Field Instructions Police Number: Juklap/03/ VIII/1993 concerning tactics and techniques for controlled drug delivery, it is stated that:

*"Controlled delivery is a special technique in the investigation of drug crimes at the investigation stage and there is a suspension/ arrest/ detention/ confiscation, evidence, where a suspect who wants to cooperate with the police or informants or other officials (undercover agent) is justified/ the drug to the recipient, with the intention that at the time of receipt people who are involved in drug crimes and their evidence can be arrested".*

Controlled Delivery is the delivery and delivery of narcotics to the recipient by a courier who is a suspect who wants to cooperate with the police or by an undercover agent who acts as a courier. The delivery is supervised to find out who the recipient or network is and then arrest the suspect and reveal his network and confiscate narcotic evidence.

In this case, there are several types of Controlled Delivery (Fathurrohman, 2020), namely:

1. Controlled import or export "pass-through", which is a Controlled Delivery investigation technique on the import or export of goods suspected of being misappropriated for the purpose of producing/manufacturing drugs. One of them can be through an expedition service or delivery service which has recently become increasingly common.

2. Controlled Delivery with a cooperating dependant or narcotics courier 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 a narcotics syndicate. After receiving evidence of narcotics from the results of transactions carried out with perpetrators of narcotics crimes, the evidence is photographed and an Undercover Agent's Minutes is made.

In the Narcotics Law and the Psychotropic Law, it is stated that this is the authority of the State Police Investigator of the Republic of Indonesia. Thus, the party submitting it is the Investigating Officer of the State Police of the Republic of Indonesia. In the case of investigators according to the Criminal Procedure Code regarding investigators, certain Police Officers are at least a Second Lieutenant Assistant (*Pelda* = Assistant Police Inspector II/Aipda) who are appointed (appointed) by the National Police Chief. And PNS Investigators are certain PPNS with the lowest rank of Group II-b who are appointed by the Minister of Justice at the suggestion of the Department in charge of the Officer concerned.

Because this is an investigative technique, it means that the party who is entrusted/given something is the party who is the target of the Inquiry/investigation. In this case, the party who is the target of an investigation/investigation in a narcotics or psychotropic crime.

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

What is described above is different from the incident where the Investigator obtains information about the imminent sale and purchase of narcotics or psychotropic substances, for which the Investigator conducts surveillance. When the sale and purchase transaction is actually carried out, the investigators will also conduct an ambush at that time.

Actions regulated in Article 75 letter j of the Narcotics Law and Article 55 letter a of the Psychotropic Law are actions where the initiative is on the side of the Investigator. In this case, it is the investigator who acts, for example, as a narcotics or psychotropic seller.

Violations that may occur in covert purchases and delivery under supervision are the perfect example of an engineered case of criminal acts committed by unscrupulous investigators. This engineering can be interpreted as a form of abuse of power by investigators and cannot be measured objectively (Andi, 1990). The mechanism used by the suspect in protecting his rights is through the pretrial institution regulated in the Criminal Procedure Code. The pretrial process is actually a mechanism to test the investigative authority possessed by the National Narcotics Agency, in particular, to test the validity of covert purchasing techniques and submissions under supervision.

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

With the investigation technique of supervised delivery and covert purchases, investigators can directly enter the narcotics distribution network. This is because, with these techniques, investigators act as people who are part of the narcotics distribution network, namely as sellers or buyers.

Thus, these investigative techniques have a role in effectively obtaining evidence of a narcotic crime, namely the buyer or seller of narcotics in a state of being caught red-handed. The definition of being caught red-handed, according to Article 1 point 19 of the Criminal Procedure Code, is the arrest of a person while committing a crime, or immediately after a while the crime is committed, or a moment later it is called out by the general public as the person who did it, or if a moment later he is found. The object that is suspected to have been used to commit the crime which indicates that he is the perpetrator or has participated in or assisted in committing the crime.

Thus there are four things in which a person can be called caught red-handed, namely (Soetarna, 2011):

- a. Being caught while committing a crime, or,
- b. caught immediately after the crime was committed, or

- c. a moment later being called out by the crowd as the one who did it, or
- d. if a short time later objects are found which are suspected to have been used to commit the crime.

The meaning or essence of these actions is more of an entrapment. With this method, narcotics addicts or dealers are tricked into buying or selling narcotics to investigators. Historically, covert buying and controlled delivery techniques in narcotics crimes began to be known in the 1960s. These changes the paradigm of policing that used to be reactive to be proactive. The police do not only act when a crime has occurred and then arrest the perpetrator, but are more proactive, trying to catch the perpetrator before a crime occurs.

The first and second patterns above can be categorized as trapping in a negative sense or engineering, while the third and fourth patterns are categorized as traps in a positive sense. In the first example, the first pattern, the second pattern, and the third pattern are commonly known as Cepus or trappers. Cepus are usually members of the community or non-police, but in some situations, Cepus are members of the police (Hardianto, 2021). The first and second patterns are common because the police themselves seem to have an incentive that if they succeed in catching many criminals (regardless of whether those arrested are really perpetrators or innocent people), their performance will be appreciated. In the context of narcotics, it is commonly known by the narcotics user community that the police have a system of pursuing narcotics suspects.

## **2. Reconstruction of Regulations on Controlled Delivery in the Investigation of Narcotics Crimes in Realizing the Protection of Human Rights**

As discussed in the previous sub-chapter. That the Controlled Delivery technique as mandated in Law number 35 of 2009 article 45 requires strict control from the police, and it is a fact that the recipient whose address is the package in the form of narcotic evidence turns out to be materially unaware that the item or package to which the address is intended is narcotics. As a result, the recipient of the package can still be named a suspect, even though in fact he does not know it at all. The investigator's subjectivity is very high in assessing whether the recipient is designated as a suspect or not. The assumption that may arise is that someone may trap the recipient by sending the recipient a narcotics package so that the recipient becomes a suspect and in the end, this can be used as a model of a system that can lead people who do not know at all to become a suspect. However, the author highlights this in terms of the suspects caught from the Investigation Process with Controlled Delivery because it is different from Undercover Buying which targets parties who "Sell" drugs, Controlled Delivery is an Investigation Process where the Police or people under them disguise

themselves as drug sellers so that the target audience is "buyers" who, according to the author, are actually victims of a drug syndicate network.

Article 1 number 15 states that "*abusers are people who use narcotics without rights or against the law*". The article above states that a narcotics user is a person who without rights or unlawfully uses narcotics outside of medical needs, without a doctor's instructions or prescription, and will cause dependence (become an addict) to the user.

Narcotics abuse victim is defined in the explanation of Article 54 of Law Number 35 of 2009 concerning narcotics which states that a Narcotics abuse victim is a person who accidentally uses narcotics because he is persuaded, tricked, cheated, forced, and/or threatened to use narcotics (Cunha, 2019). From this term, it can be concluded that someone who is a victim of narcotics abuse is persuaded, tricked, cheated, forced, and threatened by others to use narcotics.

Victims of narcotics abuse not only refer to Article 54 of Law Number 35 of 2009 concerning narcotics, but from another point of view the so-called victims of narcotics abuse are addicts and narcotics abusers for themselves, they are also victims of other people's crimes in the form of narcotics trafficking.

From a medical perspective, many experts argue that in fact, the abusers are victims of syndicates or narcotics trafficking links that are difficult to break away from dependence. Even though these users may actually want to break away from the narcotics they experience, because the nerves are already addicted to addictive substances it is difficult to do so. Therefore, narcotics addicts and abusers should be treated as "victims", not as "perpetrators".

Furthermore, According to the author, this condition is not without evidence because of the many perpetrators of narcotics abuse crimes who are in prison, most of them are drug users where one of the underlying reasons for this is the many controlled delivery practices carried out by investigators from the police under the pretext of uncovering drug networks, (Detik.com, 2021) although this pretext is questionable because users who are at the very end of the chain often don't know much about drug networks that are far above them, therefore the information that can be extracted from them is minuscule.

Based on the foregoing, the author then considers it necessary to carry out legal reconstruction of Controlled Delivery carried out by Police Investigators contained in Law Number 35 of the Year 2009 Article 75 (j) which is further elaborated in article 79. The Reconstruction as intended by the author is in article 79 of this law which originally read: "*The technique of investigating covert purchases and delivery under supervision as referred to in Article 75 letter j is carried out by investigators on a written order from the leadership*".

*delivery under supervision as referred to in Article 75 letter j is carried out by investigators on a written order from the leadership*". Become: "*The investigation technique of covert purchases and delivery under supervision as referred to in Article 75 letter j is carried out by the Investigator on a written order from the leadership while still respecting and protecting the rights of the Victim of Drug Abuse as a Victim*". With the addition of words "*while still respecting and protecting the rights of victims of drug abuse as victims*", it can mean that the rights of victims of drug abuse are recognized and are not treated as "perpetrators" anymore. However, this means that there needs to be a drastic change in the narcotics criminal law system in Indonesia, which so far still considers "victims of drug abuse" as "perpetrators" so that in addition to reconstruction in legal substance, structural reconstruction is also needed within the police and culturally in society that The "*victim of drug abuse*" is not the "*perpetrator*" so they must get a helping hand so that they can return to society as they should.

## CONCLUSION

Based on the discussion described above, several things can be concluded as follows:

1. The weakness referred to is contained in the definition of Controlled Delivery which is still ambiguous and the use of Controlled Delivery is as stated in Law number 35 of 2009 article 45 (j) and article 49 where although it is used to uncover drug trafficking networks, controlled delivery makes investigators or someone under them pretending to be a drug seller so that those caught are drug users who are the last link in the drug network (end users) so that the information obtained is certainly not as much as if investigators pretend to be buyers (Undercover Buying) even though the view that drug users are perpetrators needs to be obtained re-examination because their condition is not as "perpetrators", but as "victims" who need a helping hand in order to recover, not punishment.
2. Legal reconstruction of Controlled Delivery carried out by Police Investigators contained in Law Number 35 of 2009 Article 75 (j) which is further elaborated in article 79. The reconstruction as intended by the author is in article 79 of this law which originally reads: "*The technique of investigating covert purchases and delivery under supervision as referred to in Article 75 letter j is carried out by investigators on a written order from the leadership*". Become: "*The investigation technique of covert purchases and delivery under supervision as referred to in Article 75 letter j is carried out by the Investigator on a written order from the leadership while still respecting and protecting the rights of the Victim of Drug Abuse as a Victim*". With the addition of words "*while still respecting and protecting the rights of victims of drug abuse as victims*", it can be interpreted that the rights of victims of drug abuse are recognized, and

are not treated as "perpetrators" anymore. However, this means that there needs to be a drastic change in the narcotics criminal law system in Indonesia, which so far still considers "victims of drug abuse" as "perpetrators" so that in addition to reconstruction in legal substance, structural reconstruction is also needed within the police and culturally in society that The "victim of drug abuse" is not the "perpetrator" so they must get a helping hand so that they can return to society as they should.

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