

## **Eradication Of Criminal Acts Of Narcotics Using Undercover Buy And Delivery Control**

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### **ABSTRACT**

This prociding was written for objective reasons from an issue raised regarding undercover buy and delivery control investigation techniques, as well as their application which in fact requires a lot of understanding of the impacts that occur as a result of undercover buy and delivery control investigation techniques, so that the problems in this scientific work are obtained. Based on this, it is necessary to do an academic explanation because an understanding of narcotics abuse is very important in the context of eradicating and preventing the spread of illegal narcotics. Law No. 35 of 2009 concerning Narcotics is a law in Indonesia which has status as a sub-system of criminal justice in Indonesia, which in the application of this law is always related to the actions of law enforcement officials. Likewise, in carrying out efforts to eradicate and prevent the spread of illegal narcotics through investigative techniques for covert purchases and delivery control carried out by law enforcement officials based on the authority granted by law.

***Keywords: Narcotics, Undercover buy, Delivery control***

### **ABSTRAK**

Prociding ini ditulis karena alasan obyektif dari isu yang diangkat mengenai teknik investigasi undercover buy and delivery control, serta penerapannya yang ternyata membutuhkan banyak pemahaman tentang dampak yang terjadi akibat teknik investigasi undercover buy and delivery control, sehingga diperoleh permasalahan dalam karya ilmiah ini. Berdasarkan hal tersebut, perlu dilakukan penjelasan secara akademis karena pemahaman tentang penyalahgunaan narkotika sangat penting dalam rangka pemberantasan dan pencegahan peredaran gelap narkotika. Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika merupakan undang-undang di Indonesia yang berstatus sebagai subsistem peradilan pidana di Indonesia, yang dalam penerapan undang-undang ini selalu terkait dengan tindakan aparat penegak hukum. Demikian pula dalam melakukan upaya pemberantasan dan pencegahan peredaran gelap narkotika melalui teknik penyidikan pembelian terselubung dan pengawasan penyerahan dilakukan oleh aparat penegak hukum berdasarkan kewenangan yang diberikan undang-undang.

***Kata kunci: Narkotika, Undercover buy, Delivery control***

## A. Introduction

Narcotics and Psychotropics are very controlled by their distribution. The targets for its spread are not only nightclubs, but have penetrated into residential areas, campuses and even schools.

Several Asian regions have long been identified as one of the main sources of the world's largest drug producers, such as the Golden Crescent region which includes the border areas of Afghanistan and Pakistan, the Golden Triangle region which includes the border areas of Myanmar, Laos and Thailand, which are suspected to produce Huge profit for drug offenders.<sup>1</sup>

The availability of narcotics, on the one hand, is a drug that is useful in the field of medicine or health services and the development of science, but on the other hand, it creates dependence which is very detrimental if it is misused. To prevent and supply narcotics for the benefit of treatment and health services, one of the government's efforts is to legally regulate the distribution, import, export, planting, use of narcotics in a controlled manner and under strict supervision.<sup>2</sup>

The declaring of a war on drugs may falter considering that many law enforcement officials who should be at the forefront of efforts to eradicate narcotics and psychotropics, are instead playing along, even participating in the abuse and/or distribution of drugs. Not a few unscrupulous law enforcement officers are directly or indirectly involved in the abuse and/or distribution of narcotics and psychotropics. If a few years earlier, the guts of law enforcement officials involved in drug crimes were brave enough because there were dealers who took drugs at the law enforcement officers' offices, there were even elements from law enforcement officials who sent drugs directly to drug dealers or dealers.<sup>3</sup>

In current conditions, the spread of narcotics abuse tends to always use intermediaries or couriers, making it very difficult for law enforcement officials to be able to directly arrest narcotics dealers and dealers, so law enforcement officials through

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<sup>1</sup> Achmad Rifai, *Narkoba Di Balik Tembok Penjara*, Ctk kesatu, Yogyakarta: Aswaja Pressindo, 2014, h. 1.

<sup>2</sup> Siswanto S, *Politik Hukum dalam Undang-Undang Narkotika (UU Nomor 35 Tahun 2009)*, Ctk pertama, Jakarta: Rineka Cipta, 2012, h. 1.

<sup>3</sup> Achmad Rifai, *Op.cit*, h.12.

Law Number 35 of 2009 concerning Narcotics and Psychotropics use the provisions in article 75 letter j which contains "carrying out undercover buy investigative techniques and delivery under supervision", then based on this article it is easier for law enforcement officials to approach narcotics intermediaries or couriers to make purchases with undercover buy and delivery control.

In preventing and enforcing the law against the spread of narcotics, the government and law enforcement officials have taken various methods, one of which is to carry out undercover buys under the guise of buying narcotics in order to reduce the spread of narcotics in society. support the anti-drug movement.

In Skolnick's opinion, "in undercover operations, lying is a necessity and is perfectly legal", meaning "in undercover operations, lying is a necessity and very legal". Skolnick explained that in carrying out disguises, law enforcement officers can commit acts of deceit in carrying out their duties. Meanwhile, according to Schoeman, Sherman, Pollock, "Undercover officers lie about who they are, informants lie and are lied to, suspects are lied to on the street and in the interrogation room. In undercover investigations, there is a continuum of deception that starts with a simple buy-bust scenario where an officer lies about wanting to buy drugs. At the other end of the continuum are the most elaborate and profound deception scenarios where officers engage in fairly intimate relationships in order to gather information on suspects. which means "the officers who carried out the disguise lied about their identities, the informants lied and were lied to, the suspects were also lied to on the streets and in the interrogation room. In undercover investigations, there is a ruse that starts with a simple buy-and-grab scenario where officers engage in intimate relationships with the aim of gathering information on suspects." Then according to Carter, "Undercover work carries risks to officers as well. Carter discusses the phenomenon of police officers who go undercover and become socialized to the drug culture. They may adapt norms conducive to drug taking".<sup>4</sup>

Undercover buy and delivery control carried out by law enforcement officials is carried out with the intention of collecting evidence by carrying out hand-catching as a form of eradicating narcotics circulation, because in making arrests of narcotics criminal

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<sup>4</sup> <http://books.google.co.id/books>, diakses pada tanggal 29 Desember 2022

acts such as dealers and dealers it is quite difficult to arrest without proper efforts because they belong to a very secretive, careful and well-organized narcotics crime syndicate.

## **B. Focus of Problem**

1. How is the implementation of undercover buy and delivery control techniques?
2. Explain the things that hinder the enforcement of undercover buy and delivery control?

## **C. Research Methodology**

The writing of these proceedings is based on normative law, which uses the Act, KUHAP, PERKAP, and other regulations as a source of primary legal material, then to support the writing of these proceedings books, journals, electronic media, the internet and other scientific works are also used. as a secondary source of law.

## **D. Finding and Discussion**

### **1. Implementation Of Undercover Buy And Delivery Control Techniques**

It is common to find the use of undercover buy and delivery control investigative methods by law enforcement officials, where the authorities in this case the Police and/or PPNS (BNN) disguise themselves as narcotics buyers, this is done because they are taking action against the crime of illegally buying and selling narcotics. sometimes the police have to take a personal approach with the criminals because of the confidentiality and caution of the criminals.

Based on reports from the public regarding allegations of illegal narcotics trading, the police can act to investigate by collecting clues that lead investigators to be able to arrest perpetrators of criminal acts along with collecting evidence, namely narcotics, so that further proceedings can be carried out before the court. Undercover buy investigations are regulated in Article 75 letter j in conjunction with Article 79 of Law Number 35 of 2009 concerning Narcotics.

Undercover buy (Undercover buy) is different from the delivery of narcotics

under supervision (Controlled Delivery), Controlled delivery is a special technique carried out by investigators of drug crime at the investigation stage and there is a suspension/arrest/detention/seizure of evidence, where a suspect who wants to cooperate with the police or recipient informants, with the intention that at the time of receipt people involved in drug crimes can be arrested along with the evidence.<sup>5</sup>

Even though investigations using the undercover buy method often result in pros and cons regarding witnesses who usually only come from members of the authorities (police and/or PPNS) so that they appear to be contrary to the principle of *Unus Testis Nullus Testis*, the facts obtained are that the testimony obtained from the statement of the member of the authorities is considered valid because Article 185 paragraph (3) of the Criminal Procedure Code states that, "The provisions referred to in paragraph (2) do not apply if accompanied by other valid evidence", which means that although testimony is only obtained from Police or PPNS but considered valid if accompanied by other evidence in the form of narcotics and other evidence that has conformity.

Whereas in the undercover buy process, officials must disguise themselves as an illegal narcotics buyer, which means that in a buying and selling transaction process there must be capital funds as an inducement in buying narcotics from the perpetrators. The law itself does not specifically regulate the budgetary funds provided for undercover buy transactions, therefore rules regarding the budget need to be made so that law enforcement officials can work optimally under supervision.

In carrying out an undercover buy, it is necessary to have a rule governing the undercover buy investigation process so as to avoid abuse of authority and arbitrariness by investigators, this rule has been made and contained in the 2012 Standard Operating Procedures concerning Supervision of Criminal Investigation in the Environment of the Directorate of Narcotics Investigation of the Metrojaya Police, even though the SOP is currently intended specifically for the environment of the Directorate of Drug Investigation of the Metrojaya Police, it is great hope that every level of law enforcement officials has an SOP like this so that they can carry out their work with full responsibility and always be based on the law.

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<sup>5</sup><https://news.detik.com/berita/d-3317950/mengenal-undercover-buying-dan-control-delivery-dalam-penanganan-kasus-narkoba>, diakses pada tanggal 29 Desember 2022

These rules are guidelines for police officers in carrying out the undercover buy investigation process in the hope of reducing arbitrary actions or abuse of authority by investigators. In the 2012 Standard Operating Procedures concerning Supervision of Investigations of Crimes within the Directorate of Narcotics Investigation of Polda Metro Jaya, there are regulations and guidelines for investigators, especially those engaged in Narcotics in carrying out investigative processes with the presence of internal supervisors in supervising the performance of law enforcement officials.

Whereas in the 2012 Standard Operating Procedures concerning Supervision of Investigations of Crimes within the Directorate of Narcotics Investigation at the Metrojaya Police, there is a standard made specifically for members of the Ditreskoba at Polda Metrojaya, therefore apart from being members of the Ditreskoba Polda Metrojaya, members of the Police are still guided by the Book of Laws Law on Criminal Procedure (KUHAP), Perkap No. 14 of 2012 concerning Criminal Investigation Management, Perkap No. 14 of 2011 concerning the Professional Code of Ethics for the Indonesian National Police, Perkap No. Pol. Skep/1205/IX/2000 concerning Guidelines for Administrative Investigation of Criminal Acts, Law No. 35 of 2009 concerning Narcotics, with so many laws that cover the performance of the Police, it is hoped that there will be no room and loophole for arbitrary actions and abuse of authority.

Whereas in undercover buy investigations which are increasingly being carried out by the Police and/or PPNS due to the increasing number of illegal narcotics trading processes which have resulted in a very necessary and urgent situation for the Police and/or PPNS to immediately follow up on reports from the public, the Police and/or PPNS may conduct a search using a search warrant signed by the investigator or the investigator's supervisor as an investigator without prior permission from the Head of the local District Court in accordance with Article 58 paragraph (1) PERKAP RI No. 14 of 2012 concerning Criminal Investigation Management.

The convenience obtained from Article 58 paragraph (1) PERKAP RI No. 14 of 2012 concerning the Management of Criminal Investigations does not necessarily make investigators arbitrary in carrying out their duties, because searches without a permit

from the Head of the local District Court must also be considered in depth by the investigator or the investigator's supervisor because it can adversely affect the rights of the investigator. rights of the suspect which is a setback for the law enforcement process.

It is not valid if an investigation is carried out without the correct administrative investigation process, that in accordance with the contents of Article 10 paragraph (1) of the Regulation of the Chief of Police Number 14 of 2012 concerning Management of Criminal Investigation, what is meant by Investigation Administration is "Investigation administration is the administration and all the completeness required by law in the investigative process includes recording, reporting, data collection, and filing or documentation to ensure order, smoothness, and uniformity of administration both for the benefit of justice, operations and Investigation supervision.

The undercover buy investigation process includes carrying out an act of searching clothes which is the investigator's authority at the time of arresting the suspect if there is a strong allegation and sufficient reason that the suspect has objects that can be confiscated, in accordance with the contents of Article 37 paragraph (1) of the Criminal Procedure Code. The investigator's authority to search clothes and/or body is stated in Article 37 paragraph (2) of the Criminal Procedure Code.

What is meant by body search is including examination of the body cavity. For this reason, female suspects are carried out by female police officials. If the investigator is of the opinion that it is necessary to examine the body cavity, the investigator requests assistance from a health official.<sup>6</sup>

## **2. Things That Hinder The Enforcement Of Undercover Buy And Delivery Control**

In everyday life humans are often faced with an urgent need, the need for self-satisfaction and sometimes even because of the desire or pressure to maintain one's status. In general, the needs of every human being can be fulfilled, although not completely, in circumstances that do not require pressure from within or from other

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<sup>6</sup> Hari Sasangka, *Penyidikan, Penahanan, Penuntutan, dan Praperadilan dalam Teori dan Praktek untuk praktisi, dosen dan mahasiswa*, Ctk kesatu, Bandung: CV. Mandar Maju, 2007, h.55.

people. For needs that are urgent and must be fulfilled immediately, they are often carried out without careful thought, which can harm the environment or other humans.<sup>7</sup>

Narcotics crime comes from the term crime as a translation of strafbaar feit which was introduced by the government, cq the Ministry of Justice.<sup>8</sup>

In Law No. 35 of 2009 concerning Narcotics, criminal sanctions in the form of imprisonment and fines are contained among others in Articles 111, 112 and 113 paragraphs (1), 114 paragraphs (1), 115 paragraphs (1) and paragraphs (2) as well as Article 116 paragraph (1), while provisions regarding life imprisonment or death penalty are contained in Article 113 paragraph (2), 114 paragraph (2), 116 paragraph (2), 118 paragraph (2), 119 paragraph (2) and Article 121 paragraph (2).<sup>9</sup>

Drug dealers are people who have strong capital, and many of them are foreign nationals. They bring drugs into Indonesian territory from abroad with the aim of fulfilling the demand for the very large drug market in Indonesia. In fact, not infrequently these dealers do not use drugs for themselves or not as drug users, but only seek the maximum profit from the results of the drug business in Indonesia, so that it can be said that Indonesia is an easy market for drug dealers in distributing goods. the unlawful.<sup>10</sup>

In relation to efforts to eradicate drug crime, the politics or criminal policy carried out by the government is reflected in Law No. 5 of 1997 concerning Psychotropics and Law No. 35 of 2009 concerning Narcotics, which are mostly focused on punishment policies or a penal policy that is strict and strict in nature, as seen from the threat of imprisonment and very high fines, even though the provisions of the law include efforts to prevent and deal with drug crimes that are non-penal policies, and this has almost escaped the attention of law enforcement officials law, so that most of the handling of drug offenders, penal policy is a policy that is often chosen by law enforcement officials, especially judges as the final authority to sentence drug offenders.<sup>11</sup>

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<sup>7</sup> Teguh Prasetyo, *Hukum Pidana edisi revisi*, Ctk keenam, Jakarta: Rajawali Pers, 2015, h. 3

<sup>8</sup> Ibid h.49.

<sup>9</sup> Achmad Rifai, *op.cit.*, h. 52.

<sup>10</sup> Ibid, h. 163.

<sup>11</sup> Ibid, h. 161.



Whereas in narcotics cases it can be seen that there are similarities regarding illegal narcotics transactions which are carried out with care and secrecy, besides that only with undercover buy investigative techniques the arrest of perpetrators along with evidence can occur. Because it is often found in several cases that only through informants or undercover police can approach and buy and sell Narcotics by perpetrators. So that when compared with the usual investigative techniques, it can be ascertained that law enforcement officials will experience difficulties in arresting and even approaching narcotics criminals.

It does not rule out the possibility of abuse of authority, arbitrary actions or negligence by investigators in carrying out undercover buy investigation techniques so that it can cause harm to people who are victims of wrongful arrests for undercover buys, this can happen if there is a lack of information, coordination and internal control the investigative process carried out from within law enforcement agencies, because basically it is better to prevent than to regret.

According to **Herbert**, *“another problem with lying at the investigative phase is that it sometimes leads to a temptation to lie at the trial stage. One of the most well-known cases of testilying occurred in Tulia, Texas. In this small town, 43 people were arrested after an undercover drug operation. The police officer who gathered evidence was hired from outside the town and targeted mostly African Americans. Convictions were obtained almost solely on his testimony with no corroborating evidence. After investigation by the ACLU and NAACP, it was discovered that the officer had lied in his affidavits and on the witness stand and there was ample exculpatory evidence in many cases, which should have alerted the prosecutor and the officer’s superiors to the problem. In their zeal to obtain convictions, however this evidence was ignored. The scandal resulted in sanctions against the prosecutor, criminal charge against the narcotic officer, and a special gubernatorial pardon for all convicted but not before many had served many months in jail and/or prison”*.<sup>12</sup> Which means “another problem with lying during the investigative phase is that it sometimes leads to a temptation to lie in the experimental phase. One of the most famous cases of lying occurred in Tulia, Texas. In this small town, 43 people were arrested after carrying out an undercover buy

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<sup>12</sup><http://books.google.co.id/books>, diakses pada tanggal 29 Desember 2022

narcotics operation. The police officers who collected the evidence were appointed from out of town and targeted mostly African Americans. Confidence was obtained almost entirely from his testimony in the absence of corroborating evidence. Following investigations by the ACLU and NAACP, which found that the officer lied in his statement and about the witnesses presented and there was sufficient acquittal evidence in some cases, the prosecutors and the officer's superiors should be alerted to this matter. In their zeal to gain conviction however, this evidence is ignored. The scandal resulted in sanctions against prosecutors, criminal charges against narcotics officers and special governor pardons for all convicts, but many have already served months of detention and/or prison.

Apart from the fact that the investigative techniques used are quite difficult, proving at trial also requires quite a bit of effort. Which actions taken by investigators must be in accordance with the law, for example when carrying out body searches and house searches, until when delivery control is carried out which becomes controversial because witnesses are usually only from the investigator's own statement (other than the perpetrators of the crime).

Whereas based on Article 184 paragraph (1) of the Criminal Procedure Code, valid evidence consists of: a. Witness testimony, b. Expert testimony, c. Letter, d. Hint, e.g. Defendant's Statement. Furthermore, Article 185 paragraph (1) of the Criminal Procedure Code explains that "Witness testimony as evidence is what the witness states in court."

Witness testimony as evidence is what the witness stated at trial, and the statement of a witness alone is not sufficient to prove that the defendant is guilty of the act he was charged with, and the statement of a witness must be accompanied by other valid evidence. Meanwhile, the statements of several independent witnesses regarding an event or situation can be used as a legal means of evidence if the statements of the witnesses are related to one another in such a way as to justify the existence of a certain event or situation. The witness statement does not include information obtained from other people or *de auditu* testimony.<sup>13</sup>

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<sup>13</sup> Siswanto S, *Op.Cit*, h. 276.

In undercover buy and delivery control investigations priority is given to the arrest of the suspect accompanied by the confiscation of narcotics evidence controlled by the suspect, that the meaning of evidence is regulated in Article 39 paragraph (2) of the Criminal Procedure Code which contains: "Objects that are in confiscation due to civil cases or due to bankruptcy can be also confiscated for the purposes of investigation, prosecution and trial of criminal cases, insofar as they comply with the provisions of paragraph (1)".

In the practice of undercover buy investigations, investigators are given the authority to confiscate narcotics that are traded by criminal offenders, this is in accordance with Article 40 of the Criminal Procedure Code which states: "In the event of being caught red-handed investigators can confiscate objects and tools which are in fact or which are reasonably suspected to have been used to commit a crime or other objects that can be used as evidence".

In collecting evidence on narcotics crimes, investigators can obtain evidence other than what is meant by the Criminal Procedure Code, this is in accordance with the contents of Article 86 paragraph (1) and paragraph (2) of Law Number 35 of 2009 concerning Narcotics which containing:

*"(1) Investigators can obtain evidence other than those referred to in the Law on Criminal Procedure Law";*

*"(2) The evidence as referred to in paragraph (1) is in the form of:*

- a. Information spoken, sent, received, or stored electronically with optical devices or something similar; and*
- b. Recorded data or information that can be seen, read, and/or heard, which can be issued with or without the help of a facility, whether written on paper, any physical object other than paper or recorded electronically, including but not limited to:*
  - 1. Writing, sound, and/or images;*
  - 2. Maps, plans, photos or the like, or;*
  - 3. Letters, numbers, signs, symbols, codes or perforations that have meanings that can be understood by people who are able to read or*

*understand them.”*

**Van Bemmelen**, in his book "*leerboek van het Nederlandse Strafprocesrecht*", cited by **Achmad S. Soema Dipradja**, stated that in essence the Criminal Procedure Code regulates matters:

1. Investigate the truth of the alleged prohibition of criminal law, by means of the state, specially made for this purpose;
2. Trying to investigate the perpetrators of the act;
3. Every effort is made so that the perpetrators of the previous act can be arrested, if necessary, detained;
4. The evidence that has been obtained and collected as a result of the investigation of the truth of the suspicion earlier is submitted to the Judge, likewise efforts are made so that the suspect can be brought before the Judge;
5. Submitting to the judge to make a decision regarding whether or not the act allegedly committed by the suspect is proven and what action or punishment will then be taken or imposed;
6. Determining legal remedies that can be used against decisions taken by Judges, and,
7. The decision that is ultimately taken is in the form of a crime or action to be implemented.<sup>14</sup>

## **E. Conclusion**

1. 1. In the sale and purchase of narcotics which are regulated in Law no. 35 of 2009 concerning Narcotics, that in this Law adheres to the principle of Strict Liability where the perpetrator must be held accountable or can already be punished if he has fulfilled the elements formulated in this Law without looking at the inner attitude of the perpetrator, Strict Liability is usually applied in Laws that are special in nature (*Lex Specialis*), because of the attitude of absolute criminal responsibility adhered to in these laws, therefore law enforcement officials in their efforts to carry out undercover buy

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<sup>14</sup> Sophar Maru Hutagulung dan Tim Penulis Dosen FH UNKRIS, *Buku Ajar Pengantar Hukum Indonesia*, Pustaka Mandiri: Tangerang, 2018, h. 119.

investigative techniques must be carried out carefully and carried out with internal supervision, so that can reduce acts of arbitrariness and abuse of authority, which can impact on the human rights of legal subjects.

2. Things that impede the enforcement of undercover buy and delivery control investigative techniques arise from the external and internal sides, the intentions of the things that hinder this from the external side are the collection of valid evidence, procedural law which investigators usually pay little attention to, for example a house search that must be using environmental witnesses, as well as obstacles from the internal side, namely the increasingly complicated investigation process due to the KKN (Corruption, Collusion and Nepotism) factor that exists in the human resource structure of law enforcement so that it can cause leakage of information and gratuities.

#### **F. Recommendation**

1. Undercover buy and delivery control investigation techniques for narcotics crimes must be carried out through the correct procedures, proper planning and internal control by law enforcement agencies. undercover buy. Do not let law enforcers carry out their duties by violating the law, for example: entrapment by law enforcement officials against victims by placing narcotics evidence in the victim's bag or vehicle.
2. In order to reduce things that hinder the undercover buy and delivery control investigation process, the law enforcement human resource structure must improve itself, as well as the community environment must also provide mutual education and reasonable supervision of suspicious matters, this is necessary carried out as in the example of narcotics dealer villages which have become news and are no longer a secret where the kingpins of narcotics dealers already control the community environment.

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