

LEGAL ANALYSIS OF THE AUTHORITY OF NATIONAL NARCOTICS AGENCY (BNN) INVESTIGATIONS IN IMPLEMENTING SEARCHES BASED ON THE NARCOTICS LAW AND THE KUHAP

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Abstract

Action criminal narcotics is crime outside usual that requires enforcement law effective . Research This aim analyze authority National Narcotics Agency (BNN) investigators in do search based on Constitution Number 35 of 2009 Concerning Narcotics and the Criminal Procedure Code (KUHAP) as well as implications the law if No in accordance with applicable provisions . Research This use method juridical normative with approach legislation . Research results show that Article 75 letter e of the Law Number 35 of 2009 Concerning Narcotics give authority to National Narcotics Agency (BNN) investigators , however in implementation still must comply Article 113 of the Criminal Procedure Code. If action search done without procedure valid law so the result can stated No valid and give rise to accountability law , so that required synchronization For ensure certainty law .

Keywords: Authority , BNN Investigators , Searches , Narcotics , Criminal Procedure Code.

BACKGROUND

Narcotics crimes are a form of extraordinary crime that has wide impact to life social, economic, And security National. Illegal drug trafficking not only damages the younger generation but also threatens national stability because it is carried out in an organized manner, across regions, and involves international networks. Criminal law enforcement is part of the state's criminal policy, which aims to protect society from crime through effective and just law enforcement. ¹Therefore, the state needs to grant special authority to law enforcement officials, particularly the National Narcotics Agency (BNN), to take effective legal action to eradicate this crime.

Wrong One authority important in process investigation action criminal narcotics is an act of searching. In criminal procedure law, a search is one of the acts force Which done by investigator For look for And find goods proof related to with something criminal act. ²In legal context national, this authority regulated in two main legal instruments, namely Law Number 35 of 2009 concerning Narcotics And Book Constitution Number 20 Year 2025 Law Program Criminal (KUHAP). These two regulations have a close relationship, where the Narcotics Law provides a substantive legal basis for BNN investigators to carry out searches, while The Criminal Procedure Code regulates the procedures formal so that its implementation not contradictory with the principles of valid criminal procedure law.

Normatively, Article 75 letter e of the Narcotics Law states that investigators from the National Narcotics Agency (BNN) have the authority to examine, search and confiscate evidence. criminal acts in abuse And circulation illicit trafficking of narcotics and narcotic precursors. This authority is part of the special legal regime (*lex specialis*) granted by the state to the National Narcotics Agency (BNN) in in order to expedite the law enforcement process for complex narcotics crimes. However, in its implementation, searches by investigators from the National Narcotics Agency (BNN) National (BNN) still No can released from provision Chapter 113 Criminal Procedure Code which requires written permission from the Head of the local District Court before a search is carried out, except in urgent circumstances. Condition the cause problem juridical about synchronization between Constitution Narcotics Number 35 of 2009 and the Criminal Procedure Code in implementation search . In one side , Law Number 35 of 2009 Concerning Narcotics give broad authority to National Narcotics Agency (BNN) investigators to act fast and firm in eradication narcotics . However on the side otherwise , the Criminal Procedure Code demands existence compliance

¹Barda Nawawi Arief, Criminal Law Policy : Developments Compilation Concept of the New Criminal Code (Jakarta: Kencana , 2021), p . 45.

²Andi Hamzah, Indonesian Criminal Procedure Law (Jakarta: Sinar Grafika , 2020), p . 120.

to procedure strict laws to protect rights citizens . Disharmony between second rule the potential cause problem law , in particular if action search done without permission court or beyond authority Which given Constitution . Success enforcement law No only determined by rule law , but Also influenced by factor enforcer law , facilities and infrastructure , community , and culture laws that develop in society.³

METHOD

This research uses a normative juridical method, namely research that focuses on assessment to norms law positive Which applies. Study law normative is study Which emphasize on analysis to norm law Which contained in regulation legislation and doctrine law.⁴ Study This using a legislative approach by examining the provisions in Law Number 35 of 2009 concerning Narcotics, Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP). The legal materials used consist of primary, secondary, and tertiary legal materials collected through literature studies, then analyzed descriptively and analytically to assess the suitability and synchronization between the Narcotics Law and the KUHAP in the implementation of search authority by investigators of the National Narcotics Agency (BNN). Legal research aims to find regulations law, principle law, as well as doctrine law in order to answer issue law Which being researched. ⁵The approach in legal research is not only normative, but also requires theoretical analysis to understand the relationship between legal norms and law enforcement practices.⁶

RESULTS & DISCUSSION

Arrangement Authority National Narcotics Agency (BNN) investigators in Carry out Search To Narcotics Crimes Based on Constitution Number 35 of 2009 Concerning Narcotics and Based on the Criminal Procedure Code

Investigation is stages important in the judicial process criminal offenses aimed at For gather tool proof use make bright something action criminal And find the suspect .⁷ In perspective theory law administration state, authority is element important in organization government . According to Ridwan HR, authority is power formal Which given by Constitution to something government organs For act in field law public . With thus , every action Which carried out by the authorities enforcer law must own base clear authority in regulation legislation .⁸ Authority Agency investigators National Narcotics Agency (BNN) in carry out search is part from implementation task investigation Which nature special in field eradication action criminal narcotics .

Based on Article 75 letter e of Law Number 35 of 2009 concerning Narcotics, investigators from the National Narcotics Agency Narcotics National (BNN) has the authority to examine, search and confiscate evidence criminal acts involving the abuse and illicit trafficking of narcotics and narcotic precursors. This authority is granted because narcotics crimes are classified as extraordinary crimes *that require* swift , precise , and effective law enforcement measures . In in practice , authority The searches by the National Narcotics Agency (BNN) are intended to support the effectiveness of investigations into the illicit trafficking of narcotics, which is generally carried out in an organized, covert, and cross-regional manner. law against narcotics crimes requires authority Effective investigations are essential to ensure optimal disclosure of illegal drug trafficking networks⁹ . Theoretically, investigators' authority to conduct searches is part of the concept of authority in state administrative law. According to Ridwan HR, authority is the formal power granted by law to government officials or agencies to carry out legal actions in the administration of government.

Therefore that , every law enforcement actions law, including investigator Body Narcotics National (BNN), must implemented based on authority Which legitimate as well as No may beyond limit Which has determined by statutory regulations. The search authority granted to BNN investigators through Article 75 letter e of Law Number 35 of 2009 concerning Narcotics is form attribution authority from former Constitution to state institutions to carry out law enforcement functions against narcotics crimes. However thus, implementation authority the still must pay

³ Soerjono Soekanto, *Factors that Influence Law Enforcement* (Jakarta: Rajawali Pers, 2022), p . 8

⁴ Johnny Ibrahim, *Theory and Methodology Normative Legal Research* (Malang: Bayumedia Publishing, 2021), p . 57

⁵ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana , 2021), p . 35.

⁶ Suteki and Galang Taufani, *Methodology Legal Research (Philosophy , Theory and Practice)* (Depok: Rajawali Pers, 2020), p . 23.

⁷ Leden Marpaung, *Handling Process Case Criminal Law* (Jakarta: Sinar Grafika , 2021), p . 78.

⁸ *Administrative Law* (Jakarta: PT RajaGrafindo) Persada , 2020), p . 101.

⁹ S. Bahri, H. Iskandar, and ZA Badar, "Analysis of Implementation Authority National Narcotics Agency investigation in Action Criminal Narcotics in Gayo Lues Regency ," *Journal Student Scientific Paper of the Faculty of Law, Malikussaleh University* , Vol. 6 No. 4, 2024.

attention to the principles *due process of law*, namely that every action enforcement law must carried out through legitimate legal procedures and guaranteeing the protection of human rights.¹⁰ However, although the National Narcotics Agency (BNN) has this special authority, implementation No nature absolute, but still must notice provision regulated formalities in the Criminal Procedure Code (KUHAP). Every action officials government must based on on authority valid and implemented in accordance with applicable legal principles.¹¹

Based on Article 113 paragraph 1 of the Criminal Procedure Code, a search may only be conducted based on a request for permission from the Head of the local District Court, except in urgent circumstances that allow the search to be conducted first, provided that the results must be reported in writing to the Head of the District Court within two days after the action is taken. This provision aims to maintain balance between authority apparatus enforcer law And protection right basic citizens, particularly the right to privacy, home and place residence .

Constitution Narcotics Number 35 Year 2009 give authority The National Narcotics Agency (BNN) grants substantive authority to investigators to conduct searches, while the Criminal Procedure Code (KUHAP) regulates the formal or procedural aspects of such actions. This authority also demonstrates the division of tasks and coordination between BNN investigators and other law enforcement officials in handling narcotics crimes.¹² This means that the Narcotics Law only confirms that the National Narcotics Agency (BNN) has the right to conduct searches, but does not outline the procedures. technical, permit mechanisms, and limitation implementation action the force. Therefore, the Criminal Procedure Code remains become guidelines the main thing that must be made reference in conducting a search by investigator Body Narcotics National (BNN) so that action the does not conflict with the principle of *due process of law*.¹³

In a way doctrinal, relationship between Narcotics Law Number 35 of 2009 and the Criminal Procedure Code can be explained through the principle of *lex specialis derogat legi generali*, the application of the principle *lex specialist derogat legi generali* in connection between the Narcotics Law and the Criminal Procedure Code shows that special laws can override other laws. Which nature common throughout arrange the material that The same in a way more specific .

However Thus, according to Barda Nawawi Arief, the application of the *lex specialis* principle cannot eliminate principles base law program criminal Which aim protect right human rights as well as ensure certainty law in process justice criminal.¹⁴ in where special laws (Narcotics Law Number 35 of 2009) can deviate from law Which nature general (Criminal Procedure Code), throughout arrangement special This does not eliminate the protection of human rights. In this context, although the National Narcotics Agency (BNN) has special authority, its implementation must still uphold the principles of legal certainty, justice, and proportionality as mandated in the theory. enforcement law progressive .

Therefore that, can It was concluded that the regulation of the authority of investigators of the National Narcotics Agency (BNN) in searches was the result of synergy between two legal regimes:

- a. Constitution Narcotics Number 35 of 2009 as base law special that provides authority substantive to investigator Body Narcotics National (BNN); and
- b. Criminal Procedure Code (KUHAP) as base law general rules that regulate procedures implementation action search to remain is at in corridor valid criminal procedure law .

Legal Implications of Search Actions Carried Out by BNN Investigators If They Are Not in Accordance with the Law With Provision Law Enforcement or Beyond Regulated Authority In Constitution Narcotics

From a legal enforcement theory perspective, Soerjono Soekanto states that the success of law enforcement is influenced by five factors: legal factors, law enforcement officers, facilities, society, and legal culture. each other related in determine effectiveness implementation law in practice.¹⁵ In carrying out searches by BNN investigators, legal factors in the form of statutory regulations clear become very important to guarantee certainty If search

¹⁰Mahrus Ali, Basics of Criminal Law, Jakarta: Sinar Grafika, 2022, p. 67.

¹¹Ridwan HR, State Administrative Law (Jakarta: Rajawali Pers, 2022), p. 96.

¹²AR Daenuu, LW Badu, and J. Puluulawa, " Analysis of the Limits of Authority between Investigator The Republic of Indonesia Police and the BNN in Do Coordination Investigation of Narcotics Crime Cases ," Prosecutor: Journal of Legal and Political Studies, Vol. 1 No. 4, 2023.

¹³Andi Hamzah, Indonesian Criminal Procedure Law, (Jakarta: Sinar Grafika, 2020), p. 214.

¹⁴Barda Nawawi Arief, Criminal Law Policy, Jakarta: Kencana, 2021, p. 89.

¹⁵ Soerjono Soekanto, Factors that Influence Law Enforcement (Jakarta: PT RajaGrafindo Persada, 2019), p. 8.

procedures are not carried out in accordance with the provisions of the Criminal Procedure Code and the Narcotics Law, such actions have the potential to violate criminal procedure law and may affect the validity of the evidence obtained. The act of searching is a form of coercive action *dwangmiddelen* in the investigative process is strictly regulated by law Criminal procedure. Based on Article 113 of the Criminal Procedure Code (KUHAP), any search of a person's house, place, or body must be carried out with the permission of the Chief Justice. Country, except in urgent circumstances that allow A search must be conducted first, with the results required to be reported within two days. This provision demonstrates that a search is a form of coercive action that must be carried out carefully and in accordance with criminal procedure.¹⁶

In the context of narcotics law enforcement, Law Number 35 of 2009 concerning Narcotics, specifically Article 75 letter e, provides authority to investigators from the Narcotics Agency. Narcotics National (BNN) For inspect, search, And confiscate evidence of criminal acts in the form of misuse and illicit trafficking narcotics and precursors narcotics. However, this authority must still be exercised within the corridor of criminal procedural law, because Law Number 35 of 2009 2009 on Narcotics does not regulate in detail procedures and search mechanism as regulated in Criminal Procedure Code. ¹⁷If investigators from the National Narcotics Agency (BNN) conduct a search without following the provision Criminal Procedure Code for example without letter permission court, No There is report to court, or done No in accordance procedure so action the can be stated No legitimate in a way law.

Search without permission court can cause consequence law in the form of No legitimacy action investigation as well as can tested through a pretrial mechanism. ¹⁸The legal implication is that the evidence obtained from results search the No can used as tool proof in court, Because contradictory with principle tool proof Which legitimate as arranged In Article 235 of the Criminal Procedure Code, the evidence referred to in paragraph 3 must be authenticated and obtained in a lawful manner. In paragraph 4, the judge has the authority to assess the authenticity and legality of the submitted evidence. In paragraph 5, the evidence Which by Judge stated No authentic and/or obtained in a way oppose law cannot be used as evidence on examination at court hearing and has no evidentiary force. Besides That, if investigator beyond his authority as arranged in Under Article 75 of the Narcotics Law Number 35 of 2009, such actions can be categorized as abuse of authority. Administratively, investigators can be subject to disciplinary sanctions. Under procedural law, the injured party can file a pretrial motion, as stipulated in Article 158 letter a of the Criminal Procedure Code, to challenge the validity of the search. If the pretrial motion declares the search invalid, all investigative findings derived from the search will be void. the search was rendered null and void by law.

Thus, the legal implications of searches carried out by investigators from the National Narcotics Agency (BNN) without complying with the provisions of the Criminal Procedure Code or exceeding the limits of authority regulated in the Narcotics Law Number 35 of 2009 are:

- a. In a way formal , action search can stated No valid ;
- b. In a way material , goods proof Which obtained No can used in court ; And
- c. Personally , the investigator can charged sanctions discipline and criminal on violation authority .

Therefore, the search was carried out by investigators from the National Narcotics Agency (BNN) must still follow provision law program criminal so that action investigation what is done has legal validity and can be legally accounted for.

CONCLUSION

In a way normative authority investigator Body Narcotics National (BNN) in do search No only must based on the provisions Constitution Narcotics as *lex specialis* , but also must implemented in accordance with principle *legality* , *due process of law* , and protection right basic man as arranged in the Criminal Procedure Code. Authority National Narcotics Agency (BNN) investigators in carry out search to action criminal narcotics based on on Chapter 75 letter e Constitution Number 35 of 2009 concerning Narcotics , which provide base law substantive for the National Narcotics Agency (BNN) to inspect , search and confiscate goods proof action criminal in abuse And circulation dark narcotics and precursors narcotics . However Thus , the authority the No

¹⁶RSD Sumampouw , "Legal Study on Search Actions According to Constitution Number 8 of 1981 concerning the Criminal Procedure Code," Lex Crimen, 2018.

¹⁷Andi Hamzah, Indonesian Criminal Procedure Law , (Jakarta: Sinar Grafika , 2020), p . 215.

¹⁸BJ Topah , " Analysis about Search Without Permission in Article 34 Paragraph (1) of the Criminal Procedure Code ," Lex Crimen, 2025.

nature absolute. Because implementation still must comply provisions of Article 113 of the Criminal Code Program Criminal (Criminal Procedure Code) Which arrange procedure formal search, including must get permission from Chairman Local District Court. With Thus, there are relationship that is complementary between Constitution Narcotics Number 35 Years 2009 as *lex specialist* and Criminal Procedure Code as *lex generalis*, in where is the law Narcotics give authority substantive while the Criminal Procedure Code regulates the procedures its implementation to remain in accordance with principle *due process of law*.

Legal implications to action searches carried out by investigators from the National Narcotics Agency (BNN) without comply provisions of the Criminal Procedure Code or exceeding the limits of regulated authority in Constitution Narcotics Number 35 Year 2009 is that action the can stated No legitimate in a way law. The evidence obtained from search the No can made into tool valid evidence in court and the investigator concerned can asked accountability law Good in a way discipline, administrative, and criminal, as arranged in Article 158 letter a. Criminal Procedure Code. By Because that, in carry out authority, investigators from the National Narcotics Agency (BNN) are required to uphold tall principle legality, certainty law, and proportionality, so that the investigation process still valid and can accountable in a way juridical.

It should be required synchronization and harmonization regulation legislation between Constitution Number 35 of 2009 Concerning Narcotics and the Criminal Procedure Code, in particular regarding procedures implementation search by investigators from the National Narcotics Agency (BNN). Synchronization This it is important not to happen overlapping overlap authority as well as For ensure uniformity procedure law in enforcement action criminal narcotics. It should be government through the Ministry of Law, Ministry of Human Rights together with the National Narcotics Agency (BNN), the Republic of Indonesia Police and institution enforcer law related others, necessary compile guidelines technical in the form of a more standard operational procedure (SOP) details about implementation search. Guidelines the required so that each action investigation implemented in accordance with provision criminal procedure law as well as prevent occurrence abuse authority abuse of power that can harm rights citizens and lower credibility enforcement law.

REFERENCES

- Ali, Zainuddin. Metode Penelitian Hukum. Jakarta: Sinar Grafika, 2021. Ali, Mahrus. Dasar-Dasar Hukum Pidana. Jakarta: Sinar Grafika, 2022.
- Arief, Barda Nawawi. Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru. Jakarta: Kencana, 2021.
- Atmasasmita, Romli. Sistem Peradilan Pidana Kontemporer. Jakarta: Kencana, 2022. Chazawi, Adami. Pelajaran Hukum Pidana. Jakarta: Rajawali Pers, 2021.
- Atmasasmita, Romli. Teori dan Kapita Selekta Kriminologi. Bandung: Refika Aditama, 2021.
- Badan Narkotika Nasional Republik Indonesia. "Peran dan Kewenangan BNN dalam Pemberantasan Narkotika." <https://www.bnn.go.id>
- Bahri, S., Iskandar, H., & Badar, Z. A. (2024). Analisa terhadap pelaksanaan kewenangan penyidikan Badan Narkotika Nasional dalam tindak pidana narkotika di Kabupaten Gayo Lues. Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh, 6(4). Daenunu, A. R., Badu, L. W., & Puluhalawa, J. (2023). Analisis batas kewenangan antara penyidik Kepolisian Republik Indonesia dan BNN dalam melakukan koordinasi penyidikan kasus tindak pidana narkotika. Jaksa: Jurnal Kajian Ilmu Hukum dan Depok: Rajawali Pers, 2020.
- Direktorat Jenderal Badan Peradilan Umum Mahkamah Agung RI. "Prosedur Izin Penggeledahan dan Penyitaan oleh Penyidik." <https://badilum.mahkamahagung.go.id>
- Hamzah, Andi. Hukum Acara Pidana Indonesia. Jakarta: Sinar Grafika, 2020.
- Ibrahim, Johnny. Teori dan Metodologi Penelitian Hukum Normatif. Malang: Bayumedia Publishing, 2021.
- Indonesia. Undang-Undang Nomor 20 Tahun 2025 tentang Hukum Acara Pidana. Lembaran Negara Republik Indonesia Tahun 2025 Nomor 188, Tambahan Lembaran Negara Republik Indonesia Nomor 7149.
- Indonesia. Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 143, Tambahan Lembaran Negara Republik Indonesia Nomor 5062.
- Lamintang, P.A.F., dan Theo Lamintang. Pembahasan KUHP Menurut Ilmu Pengetahuan Hukum Pidana dan Yurisprudensi. Jakarta: Sinar Grafika, 2021.

- Marpaung, Leden. *Proses Penanganan Perkara Pidana*. Jakarta: Sinar Grafika, 2021. Marzuki, Peter Mahmud. *Penelitian Hukum (Edisi Revisi)*. Jakarta: Kencana, 2021.
- Moeljatno. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2020.
- Muladi. *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit UNDIP, 2020. Ridwan HR. *Hukum Administrasi Negara*. Jakarta: Rajawali Pers, 2022.
- Politik, 1(4).
- Samosir, Djisman. *Hukum Acara Pidana*. Bandung: Nuansa Aulia, 2021.
- Sasangka, Hari. *Narkotika dan Psikotropika dalam Hukum Pidana*. Bandung: Mandar Maju, 2020.
- Soekanto, Soerjono. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Pers, 2022.
- Sumampouw, R. S. D. (2018). *Kajian hukum tentang tindakan penggeledahan menurut UU Nomor 8 Tahun 1981 tentang KUHP*. Lex Crimen.
- Sunarso, Siswanto. *Penegakan Hukum Psikotropika dan Narkotika*. Jakarta: Rajawali Pers, 2021.
- Supramono, Gatot. *Hukum Narkotika Indonesia*. Jakarta: Sinar Grafika, 2022.
- Suteki, dan Galang Taufani. *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)*.
- Teguh Prasetyo. *Hukum Pidana*. Jakarta: Rajawali Pers, 2023.
- Topah, B. J. (2025). *Analisis tentang penggeledahan tanpa izin pada Pasal 34 ayat (1) Kitab Undang-Undang Hukum Acara Pidana*. Lex Crimen.