



Authority of the national narcotics agency (BNN) in performing execution of assets resulting from the criminal act of money laundering results in narcotics crimes

Rokhmad Sunanto

Universitas Jayabaya, Jakarta, Indonesia

Abstract

One of law's functions is to direct human behavior. As a guide, the law is also tasked with regulating conduct or attitudes, which it accomplishes through the use of negative consequences in the form of punishment. Additionally, the legislation seeks to safeguard and prevent anyone from acting as a judge against themselves. The purpose of law is not just to safeguard citizens from abuse of power, but also to ensure their happiness and fairness. This study employs a qualitative research strategy that combines a literature review and a statute analysis. According to the study's findings, the law is a tool for social control. In this scenario, the law serves as a tool of coercion, defending civilians against threats and actions that jeopardize their lives and property. The narcotics problem in Indonesia was only a minor issue at the time, and the New Order Government maintained the position and belief that the drug problem in Indonesia would not develop since the Indonesian nation was religious and dedicated to Pancasila. This perspective blinds the government and the entire Indonesian nation to the risks of drugs, to the point where when the drug problem surged in mid-1997 in response to the regional currency crisis, the Indonesian government and nation appeared unable to cope with it. In comparison to Singapore, Malaysia, and Thailand, which have fought the risks of narcotics regularly and relentlessly since 1970.

Keywords: authority; national narcotics agency (BNN); money laundering; asset execution

Introduction

The relationship between punishment and crime can be found in the theory of criminal law. Punishment can simply be interpreted as punishment. The punishment referred to is related to the imposition of a crime and the reasons for the imposition of a crime against a person, with a court decision that has permanent legal force (*incracht van gewijsde*), and is declared legally and convincingly proven to have committed a crime. Of course, the right to impose a crime and the reasons to justify a criminal sentence and its implementation are fully in the hands of the state. In accordance with what Barda Nawawi Arief said: "That the purpose of the criminal policy, namely determining a criminal offense, cannot be separated from the political objectives of the criminal. In the overall sense, namely the protection of society to achieve prosperity. Therefore, to answer and know the purpose and function of punishment, it cannot be separated from the existing theories of punishment."

Sentencing can be given to perpetrators of narcotics crimes based on Law Number 35 of 2009 concerning Narcotics. Indonesian society is currently faced with a very worrying situation due to the increasing prevalence of illegal use of various types of narcotics. Narcotics on the one hand are drugs or substances that are useful in the field of treatment or health services and the development of natural science, but on the other hand they can also cause very detrimental dependence if misused or used without strict and careful control and supervision (Gayo, 2014) ^[4].

Today's evil is no longer always using the old ways that have occurred over the years along with the age of this earth. You can see examples such as cybercrime, corruption, money laundering, terrorist crimes, narcotics crimes, and other crimes. One of the crimes that become enemies of all nations in the world is the crime of money laundering resulting from narcotics crimes. Law enforcement officers here play a major role in protecting, supervising, and protecting the community. Moreover, now a non-ministerial institution has been formed, namely the National Narcotics Agency (BNN) which is tasked with handling narcotics cases throughout Indonesia. BNN must be truly professional in carrying out state duties and must be ready to face narcotics polemics, both small and large (Willy, 2005) ^[13]. Crimes and violations that threaten the safety, both physically and psychologically of the wearer and also to the local community socially. Circulation and abuse of narcotics in society must be prevented and addressed. This prevention effort must really be carried out in accordance with the issuance of the Narcotics Law so that this problem does not continue to grow in society as a bad epidemic for the development of the nation and state (Willy, 2005) ^[13].

The National Narcotics Agency was formed based on the history of overcoming the dangers of narcotics and its institutions in Indonesia starting in 1971 when the Presidential Instruction of the Republic of Indonesia (Inpres) No. 6/1971 was issued to the Head of the National Intelligence Coordinating Board (BAKIN) to tackle 6 (six) prominent national problems, namely eradicating counterfeit money, tackling drug abuse, tackling smuggling, tackling juvenile delinquency, tackling subversion, and supervising foreigners. The Presidential Instruction

stated that the Head of BAKIN established the 1971 Bakolak Inpres, one of whose duties and functions was to tackle the dangers of drugs. Bakolak Inpres is a small coordinating body consisting of representatives from the Ministry of Health, Ministry of Social Affairs, Ministry of Foreign Affairs, Attorney General's Office, and others, who are under the command of and are responsible to the Head of BAKIN. This agency does not have operational authority and does not receive its own budget allocation from ABPN but is provided based on internal BAKIN policies (Ariani, 2016) ^[2].

The problems faced by narcotics tend to continue to increase. The Government and the House of Representatives of the Republic of Indonesia (DPR-RI) ratified Law Number 5 of 1997 concerning Psychotropics and Law Number 22 of 1997 concerning Narcotics. Based on these two laws, the Government (President Abdurrahman Wahid) formed the National Narcotics Coordinating Board (BKNN) with Presidential Decree No. 116/1999BKNN is a Coordination Agency for drug control, which consists of 25 related government agencies. BKNN is chaired by the Chief of the Indonesian National Police (Kapolri) ex-officio. Until 2002 BKNN did not have its own personnel and budget allocation. The BKNN budget is obtained and allocated from the Indonesian National Police Headquarters (Mabes Polri), so it cannot carry out its duties and functions to the fullest. BKNN as a coordinating body is no longer adequate to deal with the increasingly serious threat of drug danger. Therefore, based on Presidential Decree Number 17 of 2002 concerning the National Narcotics Agency, BKNN was replaced with the National Narcotics Agency (BNN). BNN, as a forum institution with the task of coordinating 25 relevant government agencies and coupled with operational authority, has the following duties and functions: 1). Coordinate relevant government agencies in the formulation and implementation of national drug control policies; and 2). Coordinate the implementation of national drug control policies.

In 2003, BNN only received a budget allocation from the APBN with the APBN budget allocation. BNN continues to improve its performance together with BNP and BNK. However, because without an institutional structure that has a firm command line and is only coordinating (mere functional similarities), then BNN is considered unable to work optimally and will not be able to deal with drug problems that continue to increase and become more serious. As a result, Presidential Regulation Number 83 of 2007 is quickly issued by the President of the Republic of Indonesia. It deals with the National Narcotics Agency, the Provincial Narcotics Agency (BNP), and the Regency/City Narcotics Agency (BNK), which all have operational authority through the authority of the relevant BNN members in their unit tasks. The BNN-BNP-BNKab/City are working partners at the national, provincial, and district/city levels. Responding to the development of drug problems that continue to increase and become increasingly serious, the MPR established MPR-RI Decree Number VI/MPR/2002 through the General Assembly of the People's Consultative Assembly of the Republic of Indonesia (MPR-RI) in 2002 which has recommended to the DPR-RI and the President of the Republic of Indonesia to make changes to Law Number 22 of 1997 concerning Narcotics. Therefore, the Government and the DPR-RI passed and enacted Law Number 35 of 2009 concerning Narcotics to revoke Law Number 22 of 1997 concerning Narcotics.

Based on Law Number 35 of 2009, BNN is given the authority to investigate and investigate narcotics crimes and narcotics precursors. The institutional status of BNN becomes a Non-Ministerial Government Institution (LPNK) with a vertical structure to the province and district/city. In the province a Provincial BNN is formed, and in a Regency/City a Regency/City BNN is formed. BNN is led by a Head of BNN who is appointed and dismissed by the President. BNN is located under and is responsible to the President. The Head of BNN is assisted by a Main Secretary, Principal Inspector, and 5 (five) Deputies, namely the Deputy for Prevention, Deputy for Community Empowerment, Deputy for Rehabilitation, Deputy for Eradication, and Deputy for Law and Cooperation. The National Narcotics Agency currently has regional representatives in 33 provinces. Meanwhile, at the district and city levels, BNN already has 100 Regency/City BNNs. Gradually, this representative will continue to grow in line with the development of the level of vulnerability to drug abuse in the region. With the presence of BNN representatives in each region, it provides a wider and strategic space for BNN in its P4GN (Eradication, Prevention and Combating Narcotics Abuse) efforts.

Drug abuse is the use of drugs outside of medical indications, without a doctor's appointment or prescription, and their use is pathological (causing abnormalities) and creates obstacles in activities at home, school or campus, workplace, and social environment. Drug addiction is a condition that is mostly caused by substance abuse accompanied by substance tolerance (higher doses) and withdrawal symptoms (Baraza, 2001) ^[3].

All substances that are included in the category of drugs, marijuana, opiates (morphine, heroin, putaw), cocaine, amphetamine (ecstasy, methamphetamine, sedatives/hypnotics (nitrazepam, barbiturates) can cause addiction (addiction) which results in dependence (dependence) which has the following characteristics: properties as follows: 1). An overpowering desire for the substance in question; 2). Tendency to increase the dose (dose); 3). Psychological dependence, ie when substance use is stopped it will cause psychiatric symptoms; 4). Physical dependence, ie when the use of the substance is stopped will cause physical symptoms (drug withdrawal symptoms).

The problem of abuse and dependence on narcotics and dangerous drugs (drugs) has broad and complex dimensions, both from a medical and psychosocial point of view (economic, political, social, cultural, criminality, mass riots, and so on). Often occurs in society, the effects of drug dependence abuse include: damaging family relationships, drastically reducing learning abilities and work productivity, difficulty distinguishing between good and bad actions, behavioral changes to antisocial behavior (maladaptive behavior), health problems (physical and mental), increasing the number of traffic accidents, acts of violence, and other crimes (Hawari, 1997) ^[5].

In addition, narcotics crime has also led to money laundering. The perpetrators of money laundering proceeds from narcotics crimes use banking facilities in carrying out their crime business, so that banking products offered to the public can potentially be misused and make benefits for narcotics criminals to disguise and hide the proceeds of their crimes. Article 137 of Law Number 35 of 2009 concerning Narcotics states: "Everyone who:

- a. Placing, paying or spending, depositing, exchanging, hiding or disguising, investing, storing, donating, bequeathing, and/or transferring money, property, and objects or assets either in the form of movable or immovable objects, tangible or intangible originating from Narcotics crime and/or Narcotics Precursor crime, shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 1,000,000,000, - (one billion rupiah) and a maximum of Rp. 10,000,000,000,- (ten billion rupiah);
- b. Receiving placement, payment or expenditure, safekeeping, exchange, concealment or disguise of investment, deposit or transfer, grant, inheritance, property or money, object or asset, whether in the form of movable or immovable, tangible or intangible object which he knows to originate from Narcotics crime and/or Narcotics Precursor crime, shall be punished with a minimum imprisonment of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp. 500,000,000, - (five hundred million rupiah) and a maximum of Rp. 5,000,000,000,- (five billion rupiah)."

BNN as a law enforcement institution that is responsible for handling the Prevention, Eradication of Drug Abuse and Illicit Trafficking (P4GN) is very interested in the proceeds of money laundering crimes resulting from narcotics crimes. Currently, BNN's efforts to obtain the proceeds of the crime of money laundering are not running smoothly because after a court decision has legal force, control over assets originating from money laundering narcotics crimes is under the Ministry of Finance as the State treasurer.

Perpetrators of narcotics crimes keep the proceeds of their criminal acts by conducting money laundering which is carried out in the following ways: 1). To the bank by opening an account with the pick up method; 2). Use of accounts by prisoners in prisons; 3). Transactions avoid tracking; 4). Use of money changer services; 5). Immovable assets; 6). Using the hawala system; 7). Money laundering fictitious export import mode. 8). Using fictitious invoices.

The proceeds of money laundering crimes from narcotics crimes can be used by BNN to combat narcotics crimes. The problem that arises is that BNN is not an executor of the proceeds of money laundering crimes of narcotics crime, and BNN is not a public prosecutor for narcotics crime cases. Unlike the case with the Corruption Eradication Commission (KPK), where investigators and prosecutors are in the same corridor. BNN is formed through a presidential regulation, while the KPK is formed through law. Whereas narcotics crime is an extra-ordinary crime. BNN must be given the authority to execute the proceeds of money laundering crimes originating from narcotics crimes.

In this study, the authors focus on two questions in the discussion, namely: What is the authority of BNN in using assets resulting from the crime of money laundering originating from narcotics crimes? How does BNN carry out P4GN activities by using assets obtained from the crime of Money Laundering for Narcotics Crimes?

Methods

Regarding the type of research used is normative juridical research, according to Johnny Ibrahim, it is said that the approach used in a normative research does not rule out the possibility for a legal researcher to use normative legal research by utilizing the findings of empirical legal science. In addition to using it for legal purposes and analysis in accordance with the character of legal science as a normative science. This normative legal research then examines various legal materials, many of which have empirical properties, but are contained in norms such as legal history, and legal cases that have been decided (Ibrahim, 2010) ^[7]. In this type of research, the approaches used are the statutory approach, the conceptual approach, and the case approach. The approach to legislation is used by researchers in this study to examine and explain various legal rules and principles related to the legal principles of BNN's authority in carrying out executions of assets for money laundering crimes originating from narcotics crimes. The laws and regulations referred to are the laws and regulations governing BNN as a law enforcement agency that has the authority in P4GN.

Results and Discussion

1. The Authority of BNN in Using Assets Proceeds from the Crime of Money Laundering Derived from Narcotics Crimes

Money Laundering can be termed as money laundering or money laundering, money laundering or money laundering from the proceeds of crimes such as corruption, narcotics crime, gambling, smuggling, and other serious crimes. Money Laundering is one aspect of a criminal act because its criminal nature is related to the background of obtaining a sum of money that is dark, illicit or dirty, then managed with certain activities by forming a business, transferring or converting it to a bank or foreign exchange as a step to eliminate the background of the dirty funds (Hutahaean; Pujiyono; Sukinta, 2016) ^[6].

The Center for Financial Transaction Reports and Analysis (PPATK) and the National Narcotics Agency (BNN) are committed to supporting the realization of a prosperous, just and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Based on Law Number 35 of 2009 concerning narcotics, the National Narcotics Agency is given great authority, one of which is to prevent and eradicate abuse and illicit trafficking of narcotics and narcotics precursors. In addition, the National Narcotics Agency is also in power and has the right to conduct investigations,

investigations of narcotics abuse and illicit trafficking of narcotics and narcotic precursors (Setiawan; Widiati; Sudibya, 2020) ^[11].

Cases of money laundering crimes related to narcotics are mostly carried out by individuals and companies within national borders and across other countries' borders.

The confiscation procedure is the same as the procedure when conducting an investigation. To carry out a confiscation, you must also go through the procedure for submitting a request for permission from the Head of the local District Court. With the permission/approval of the Head of the District Court, it is the duty of the District Court to decide on the confiscated goods. The request for a confiscation permit must be accompanied by a resume or summary of the results of the examination that has been carried out, so that it is clear that the direct relationship of the goods to be confiscated with the criminal act being investigated is clear. The chairman of the local District Court here means the place where the goods to be confiscated are included in his jurisdiction and this needs to be known so that there is no mistake (Marpaung, 2009) ^[8].

The amount of profit obtained by the perpetrators or drug dealers is very large. During January to July 2019, BNN has confiscated assets worth 60 billion from 22 suspects. The assets purchased by the suspect in order to disguise the proceeds of his crime include houses, apartments, land, vehicles, jewelry, and even establishing a company. In addition, there are bank accounts, both in their own names and in the names of other people (Afriza, 2020) ^[1].

Law Number 35 of 2009 provides a large portion for BNN. One of the powers of the National Narcotics Agency is to prevent and eradicate the abuse and trafficking of narcotics and narcotic drugs. In addition, BNN can use the community by monitoring, directing, and increasing their capacity to prevent drug abuse by empowering community members.

In terms of eradicating narcotics, BNN is given the authority to conduct investigations and investigations into abuse, distribution of narcotics, and narcotic precursors along with the powers of investigators and investigators such as arrests for 3 × 24 hours and can be extended for 3 × 24 hours plus wiretapping (See: Pasal 76 UU No.35/2009).

This is done in accordance with the national plan for the prevention and eradication of abuse of illicit trafficking in narcotics and narcotics precursors, medical and social rehabilitation efforts, and the payment of premiums to members of the public who have been instrumental in revealing narcotics crimes and narcotics precursors (See: PP No. 40/2013).

The national plan is prepared in an integrated manner by the relevant ministries/institutions (Ministry of Law and Human Rights, Ministry of Health, Ministry of Social Affairs, Attorney General's Office, National Police of the Republic of Indonesia, National Narcotics Agency (BNN), and Food and Drug Supervisory Agency) coordinated by BNN (See: Pasal 46 ayat (2) PP 40/2013).

The national plan serves as the foundation for developing programs for preventing and eradicating narcotics abuse and illicit trafficking, medical and social rehabilitation efforts, and awarding premiums to community members who assist in exposing the existence of narcotics crimes and narcotics precursors. These programs are further elaborated in the activity plans prepared by each relevant ministry/institution in accordance with its author (See: Pasal 46 ayat (3) PP 40/2013).

In the case of a special interest, the Minister of Finance on the recommendation of the Attorney General may make a decision on the use of proceeds from narcotics crime assets. The proposal from the Attorney General of the Republic of Indonesia is submitted to the Minister of Finance based on a request from the National Narcotics Agency and/or the Indonesian National Police (See: Pasal 47 PP 40/2013).

2. BNN Conducts P4GN Activities by Using Assets Obtained From the Crime of Money Laundering Narcotics Crimes

In the field of eradication, several national action plans have been presented, namely the rescue of assets originating from criminal acts of Narcotics and Narcotics Precursors and or money laundering related to Narcotics and Narcotics Precursors, Supervision of Narcotics Correctional Institutions, and the establishment of Narcotics Detention Centers. Prevention and Eradication of Abuse and Illicit Trafficking of Narcotics and Narcotics Precursors, hereinafter abbreviated as P4GN, is a government program in implementing prevention and eradication of abuse and illicit trafficking of narcotics and narcotics precursors.

In the handling of narcotics cases which continued to money laundering cases, initially the suspect was arrested and several pieces of evidence were confiscated. One of the pieces of evidence, among others, is a financial transaction of buying and selling narcotics which is then traced using a bank account. After the investigator finds out, the investigator asks for bank mutation data concerning the receipt and issuance of narcotics transactions from the related bank. From the bank mutation data, investigators can find out where the flow of funds resulting from narcotics transactions is whether they are spent in the form of cars, houses and other luxury goods, whether they are movable or immovable objects, tangible or intangible, which are then called assets. Investigators in examining the suspect's evidence make presumptions. Usually, the suspect uses various bank accounts that are only controlled/on behalf of one person and this can be referred to as one of the modes of money laundering because the large number of accounts he has will be used to disguise the results of the crime committed (Yuda, 2020) ^[14].

In article 2, P4GN within the Ministry consists of the following activities: a). Prevention; b). Eradication; c). Rehabilitation (Permen/BPN RI No. 1/ 2022). In Article 4 related to eradication, Eradication activities in the P4GN effort as referred to in Article 2 letter b consist of:

- a. To collaborate in the exchange of information and attempts to remove criminal activities involving Narcotics and Narcotics Precursors, as well as money laundering offenses with narcotics and precursors as their sources.

- b. Optimizing activities and cooperation in efforts to eradicate criminal acts of Narcotics and Narcotics Precursors as well as money laundering crimes whose origins are criminal acts related to Narcotics and Narcotics Precursors in the context of saving assets; and
- c. Carry out asset rescue activities originating from criminal acts of Narcotics and Narcotics Precursors and/or money laundering crimes whose origins are criminal acts related to Narcotics and Narcotics Precursors.

Law No. 35 of 2009 on Narcotics and Presidential Instruction No. 2 of 2020 on the National Action Plan for the Prevention and Eradication of Narcotics and Narcotics Precursors Abuse and Illicit Trafficking 2020-2024 (RAN P4GN) are two commitments to protect the Indonesian nation, particularly the younger generation, from drug abuse. The two provisions are preventative and eradicated measures.

Four strategies of the National Narcotics Agency in an effort to overcome the problem of narcotics and narcotics precursors. The strategies are:

1. Soft power approach, in this case is the implementation of prevention, community empowerment and rehabilitation functions..
2. Hard power approach, in this case is the implementation of the eradication function.
3. Smart power approach, namely optimizing the use of technology to support the implementation of tasks.
4. Cooperation, namely carrying out cooperation with ministries/agencies, local governments and other organizations both nationally, regionally, and internationally.

Conclusion

In order to make the prevention and eradication of illicit narcotics and narcotics precursors more effective, the Narcotics Law regulates the strengthening of existing institutions, namely the National Narcotics Agency (BNN). The formation of BNN is based on Presidential Regulation Number 83 of 2007 concerning the National Narcotics Agency, the Provincial Narcotics Agency, and the Regency/City Narcotics Agency. In this Presidential Regulation, BNN is a non-structural institution that is located under and directly responsible to the President, which only has the task and function of coordinating.

The issuance of Law no. 35 of 2009 gives the national narcotics agency the authority to conduct investigations and investigations in cases of abuse of this dangerous substance. The presence of this national body is to be able to speed up the process to help victims in this case of hazardous substances.

Government strategy is interconnected with numerous facets of life in society, including economic, social, cultural, and other ancillary facets. Today, however, the term strategy is utilized by a variety of organizations, and while the fundamental concepts contained in the original definition remain, their application is tailored to the type of company that implements them.

References

1. Afriza Riki. Optimalisasi Pemberantasan Tindak Pidana Narkotika melalui Pengusutan Tindak Pidana Pencucian Uang Terhadap Pengedar Narkotika., SIMBUR CAHAYA, 2020. ISSN: 1410-0614., <http://journal.fh.unsri.ac.id/index.php/simburcahaya/article/download/416/307>
2. Ariani Ineke. Motif (*et.al*), Upaya Penanggulangan Penyalahgunaan Narkotika oleh Badan Narkotika Nasional Kabupaten/Kota (BNNK) Karawang Terhadap Remaja di Kabupaten Karawang, Law Journal, 2016, 5(3).
3. Baraza Lutfi. Gangguan Mental dan Perilaku Akibat Narkotika, Makalah, SMK IPTEK Jakarta, tanggal 20 Agustus, 2001.
4. Gayo Akhyar Ari. (*et.al*), *Pemberantasan Gelap Narkotika*, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI), Jakarta, 2014.
5. Hawari Dadang. *Konsep Islam Memerangi AIDS dan NAZA*. Cet. XI, Dhana Bakti Priayasa, Yogyakarta, 1997.
6. Hutahaean, Osel Hapusan BM, Pujiyono Sukinta. Peran Penyidik Badan Narkotika Nasional (BNN) Dalam Penegakan Hukum Tindak Pidana Pencucian Uang (TPPU)., *Diponegoro Law Review*, 2016, 5(2).
7. Ibrahim Johny. *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2010.
8. Marpaung Leden. *Proses Penanganan Perkara Pidana (Penyelidikan & Penyidikan)*, Jakarta, Sinar Grafika, 2009.
9. Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 1 Tahun Tentang Pencegahan Dan Pemberantasan Penyalahgunaan Dan Peredaran Gelap Narkotika Dan Prekursor Narkotika Di Lingkungan Kementerian Agraria Dan Tata Ruang/Badan Pertanahan Nasional, 2022.
10. Peraturan Pemerintah Nomor 40 Tahun tentang Pelaksanaan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika, 2013.
11. Setiaawan, Ida Bagus Trisnha, Widiati Ida Ayu Putu, Sudibya Diah Gayatri. Peranan Badan Narkotika Nasional (BNN) Dalam Upaya Pencegahan Terhadap Tindak Pidana Narkotika., *Jurnal Analogi Hukum*, 2020;2(3):361-365.
12. Undang-Undang No. 35 Tahun tentang Narkotika, 2009.
13. Willy Heriady. *Berantas Narkotika tak cukup hanya bicara (Tanya Jawaban dan Opini)*, UII Press, Yogyakarta, 2005.
14. Yuda Indra Waspada, Thalib Hambali, Ahmad Kamri. Penegakan Hukum Tindak Pidana Pencucian Uang Yang Berasal Dari Tindak Pidana Narkotika, 2020, 1(2).