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# Optimization of Legal Protection for Informants in Covert Purchases for the Disclosure of Narcotics Crimes

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#### ABSTRACT

This study aims to analyze the strength of the law and protection for informants in the implementation of covert purchases (undercover buy) as a narcotics crime disclosure strategy in Gorontalo province. The issues discussed include the dualism of covert purchasing arrangements between investigative actions, as well as legal and informant safety risks that have not been expressly regulated in the regulations. This research uses normative method with legislation, case, and conceptual approach, and supported by interviews with relevant parties. The results showed that covert purchases are regulated in Article 75 letter j of Law No. 35 of 2009 on narcotics, but the regulation is still less detailed, causing inconsistency in implementation in the field. Informants, although instrumental, often face high risks without adequate legal protection. Therefore, it is necessary to revise the legislation in order to clarify the definition, procedure and legal protection in the implementation of this technique.

Keywords: covert purchase, informant protection, narcotics

#### **Background**

Law No. 35 of 2009 on narcotics defines narcotics as substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause changes in consciousness, loss of taste, reduce pain, and cause dependence. This notion describes the dual nature of narcotics, which, on the one hand, can be used for medicinal purposes, but on the other hand, can damage the health and life of a person. This phenomenon makes narcotics a serious threat, especially in Indonesia, which is often a potential market for dealers and traffickers. Narcotics crime is classified as a transnational crime that uses sophisticated modus operandi, involves cutting-edge technology, and continues to grow every year.

The Indonesian government takes this issue seriously, as stated by President Joko Widodo who emphasized the attitude of not giving clemency to drug dealers who have been sentenced to death. This policy aims to create a deterrent effect and demonstrate the country's strong commitment to combating the circulation and abuse of narcotics. Data from the National Narcotics Agency (BNN) and the United Nations Office on Drugs and Crime (UNODC) show an increase in the number of narcotics users globally. During the pandemic, the number reached 275 million users, with more than 36 million people experiencing disorders due to drug abuse. Most users are at a productive age, thus causing deep concern for the future of the younger generation.<sup>2</sup> In Indonesia, the high rate of narcotics crime is also influenced by the economic crisis that has hit many regions, where this situation is used by producers, distributors, and consumers to expand drug trafficking networks.

Law No. 35 of 2009 on narcotics became the main legal basis to reduce the number of abuse and circulation of narcotics. This law specifically regulates narcotics, from investigation to sanctions for criminal offenders. The legal provisions provided for in articles 73 to 103 include the process of investigation, prosecution and examination in court. Investigation plays an important role in combating narcotics abuse because through this process evidence is collected, suspects are identified, and evidence is seized. One of the regulated investigation techniques is undercover buying, as stated in Article 75 letter J. This technique allows the investigator, who has obtained a warrant, to pretend to be a buyer in an illegal transaction in order to collect evidence and identify the perpetrator.

The implementation of covert purchases often involves informants providing information related to narcotics networks. Although the role of informants is crucial in uncovering narcotics crimes, legal protection for them has not been expressly regulated. In some cases, informants directly involved in

<sup>&</sup>lt;sup>1</sup> Hulukati, Y. R., Ismail, D. E., & Nggilu, N. (2020). Penyalahgunaan Narkotika Oleh Pegawai Negeri Sipil Dilihat Dari Perspektif Kajian Kriminologi. *Jurnal Legalitas*, 13(01), 16-30.

<sup>&</sup>lt;sup>2</sup> Tuta, R., Ismail, D. E., & Moha, M. R. (2024). Peran lembaga pemasyarakatan dalam upaya pembinaan terhadap pelaku residivis tindak pidana narkotika: Studi kasus Lembaga Pemasyarakatan Kelas IIA Gorontalo. Dinamika Sosial: Jurnal Pengabdian Masyarakat dan Transformasi Kesejahteraan, 1(2), 1–23.

operations run the risk of being arrested by other investigative teams if caught making transactions, resulting in potential criminal charges. Informants themselves do not have a clear legal position in the legislation, although their presence greatly helps the police in carrying out the task of combating narcotics.<sup>3</sup>

Covert buying techniques proved to be an efficient method of accessing criminal networks and gathering information. Based on data from the Gorontalo Police Narcotics Unit, the use of this technique has succeeded in revealing many narcotics cases. In 2021, the drug unit dealt with 34 cases with 39 suspects, including 37 men and 2 women. In 2022, the number of cases increased to 40 with 54 suspects, while in 2023, 43 cases with 57 suspects were recorded. Most cases are successfully uncovered through covert buying techniques, which also involve the use of informants. Informants provide valuable information related to narcotics networks and the best way to approach offenders without arousing suspicion.

A vivid example of the application of covert purchasing techniques can be seen in the case handled by the Gorontalo City Police in 2021. Based on information from an informant, investigators managed to identify a rented house used by a perpetrator named ELFIS as a place to sell narcotics of the methamphetamine type. The investigation process begins with observation of the location and recognition of the target. After obtaining sufficient evidence, two narcotics purchase transactions were carried out using the services of informants. In the operation, investigators seized 44 packages of methamphetamine along with other evidence such as digital scales and suction devices. This technique shows how the role of informants can speed up the process of collecting evidence and arresting perpetrators.

Although the covert buying technique has many advantages, there are challenges to be aware of. One of them is the high risk faced by informants. Since informants are not an official part of the police force, legal protection against them has not been adequately provided for in the legislation. In some situations, informants directly involved in narcotics transactions may be criminalized if there is no clear legal protection. In addition, narcotic networks often have a disconnected structure, in which the members of the network do not know each other, making it difficult to develop cases up to the level of bookmakers.

In an effort to increase the effectiveness of narcotics eradication, it is necessary to strengthen regulations governing legal protection for informants. In addition, there needs to be better coordination between law enforcement agencies such as the National Police and BNN to minimize operational risks. Covert buying techniques must be carried out with strict procedures and supervised directly by investigators who have received official warrants. Strict and fair law enforcement, along with protection for all parties involved, is expected to have a significant impact in reducing the circulation and abuse of narcotics in Indonesia.<sup>4</sup>

With the Law No. 35 of 2009, the government has shown its commitment in combating narcotics crime. However, the success of law enforcement depends not only on regulation, but also on implementation on the ground. Strengthening legal protection for informants and investigators, as well as the use of technology to monitor and uncover narcotics networks, are important steps that need to be taken to create a Drug-Free Indonesia.

### Formulation Of The Problem

- 1. What is the legal force against the Undercover purchase of narcotics carried out by non-police members (informants)?
- 2. What is the form of legal protection against informants used in drug crime investigations?

#### Research Methods

This research is included in the type of normative research that aims to obtain relevant data to support the study conducted through literature research methods. This method, also known as library research methods, involves collecting data from various library sources. This library source consists of general references, such as books, encyclopedias, and various other theoretical information, as well as special references, such as journals, research reports, theses, dissertations, and other scientific works relevant to the research topic. In normative legal research, this approach includes the study of legal principles, legal Systematics, vertical and horizontal synchronization, comparative law, and legal history. This research often conceptualizes law as a written norm that guides human behavior that is considered appropriate, otherwise known as the "law in books" approach."

Approaches used in this study include legislation approach, case approach, and conceptual approach, which is supported by field interviews with relevant parties. The legislative approach aims to examine the various laws and regulations that are relevant to the legal issues under study, with the view that law is a closed system, systematic, and able to accommodate various legal problems. Through this approach, the researcher analyzed the arrangements related to legal protection for informants in covert purchasing practices in narcotics disclosures, both materially and formally. The case approach is used to examine court decisions that have permanent legal force, with the aim of analyzing and developing the concept of appropriate legal protection for the informant in the investigation technique. The conceptual approach involves the study of views and doctrines in the legal Sciences to establish concepts

<sup>&</sup>lt;sup>3</sup> Rahim, M. H. P., Ismail, D. E., & Apripari, A. (2024). Hambatan pelaksanaan restorative justice pada tindak pidana narkotika di Kepolisian Resort Gorontalo Kota. Jaksa: Jurnal Kajian Ilmu Hukum dan Politik, 2(2), 258–266.

<sup>&</sup>lt;sup>4</sup> Taniyo, K. F., Ismail, D. E., & Rahim, E. (2023). PENERAPAN KEBIJAKAN HUKUM PIDANA DALAM MENANGGULANGI TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA JENIS BARU. *PALAR (Pakuan Law review)*, 9(1), 102-115.

and principles that are relevant to the research problem. Through this approach, researchers construct legal arguments that can provide solutions to the problems faced.

This normative legal research uses various sources of legal materials that are grouped into primary, secondary, and tertiary legal materials. Primary legal materials include relevant legislation, such as the Constitution of the Republic of Indonesia in 1945, the Criminal Code, The Code of Criminal Procedure, Law No. 35 of 2009 on narcotics, as well as field instructions related to narcotics investigation techniques, including Pol.Juklap/04/VIII / 1983 and Pol.Juklap / 69 / II / 1993. Secondary legal materials include a variety of legal literature, such as books, scientific journals, theses, dissertations, and other scientific works that provide an explanation or analysis of primary legal materials. Tertiary law materials include additional sources such as dictionaries, encyclopedias, and internet sites that help explain information relevant to the research topic.

The collection of legal materials is carried out through literature studies of primary, secondary, and tertiary legal materials, as well as relevant non-legal materials. The process of analyzing legal materials involves grouping the obtained legal materials according to their categories. The collected primary and secondary legal materials were qualitatively analyzed using an analytical descriptive approach. The researcher describes the data obtained and then analyzes them on the basis of applicable legal theories and principles. The results of the analysis were used to provide a clear and complete picture of the legal protection for informants in covert purchasing practices on narcotics disclosures, as well as the implications of such arrangements. This study not only aims to describe the data, but also to build a legal argument that can provide solutions to the problems that are the focus of the study.

#### Discussion

#### 1. Legal force against Undercover purchase of narcotics carried out by non-members of the police (informants)

Implementation of covert purchasing techniques as set out in the field manual on research does not immediately make this technique as a stand-alone research technique. This technique must be related to other investigation techniques and cannot be applied independently. In practice, covert purchases must be made by investigators who obtain a written order from the leadership. This is in line with Article 79 of Law No. 35 of 2009 on narcotics, which regulates that all actions carried out by investigators must have a written order basis. Investigators who violate this provision, for example, make a covert purchase without a written order, may be subject to sanctions. However, problems arise when this provision is compared with Decree No. SKep/1205 / IX / 2000 which revised the field manual related to the investigation. In these field instructions, covert purchases fall into the category of investigative actions, while in narcotics legislation, these actions are considered part of the investigation. This difference creates a dualism in the setting, which can be confusing in the practice of implementation in the field.

In practice, both investigators and investigators often carry out actions that can legally be categorized as criminal acts for the successful operation of disclosing narcotic networks. The field manual explains that such actions are allowed as long as they meet certain requirements, such as the presence of urgent circumstances or a very important need, and their implementation is known and approved by the leadership. Nevertheless, the Criminal Procedure Code as the main legal framework does not recognize the concept of informants, but only accommodates reports and complaints as stipulated in Article 102 and Article 106. Article 102 states that an investigator who receives a report or complaint about a criminal event is obliged to immediately carry out investigative actions. Article 106 provides for something similar for investigators in the context of investigative actions. Under this provision, the report and the complaint have fundamental differences. A report is a notification that is mandatory for the authorities to follow up, while a complaint is only followed up upon the request of the aggrieved party.

In the context of narcotic crimes, only the report is the basis for initiating legal action. Informants often provide important information related to the existence of narcotics abuse. This information can come from various parties, including ordinary people, non-governmental organizations, narcotics users, or even other dealers who have certain motives. Informants from ordinary people usually report the existence of narcotics networks as a form of participation in the eradication of narcotics. Community participation in the eradication of narcotics is regulated in Article 104 of the Narcotics Law, which provides the widest opportunity for the community to assist in the prevention and eradication of narcotics. This provision indicates that the public has the right to report narcotics crimes to the authorities, as further explained in Article 106 of the Narcotics Law. This article gives the right to the public to seek, obtain, and provide information about suspected narcotics crimes, as well as obtain legal protection when exercising their rights.

Nevertheless, problems arise when informants are involved in the investigation phase, especially in the implementation of covert purchases. The actions committed by the informant in this process can legally be categorized as criminal offenses. Article 114 of the narcotics law expressly states that any person who without the right to offer, sell, buy, or become an intermediary in the sale and purchase of class I narcotics may be subject to life imprisonment or a minimum of five years with a minimum fine of one billion rupiah. In this context, the actions of informants who make purchases of narcotics in the interests of the investigation may be considered unlawful. However, there is debate as to whether such actions can be regarded as "without rights" or "against the law." According to J.M. van Bemmelen, unlawful acts include not only violations of the rights of others, but also of propriety or decency. In this case, the actions of the informant committed by order of the investigator can be considered not against the law as they are within the framework of police duties.<sup>6</sup>

<sup>&</sup>lt;sup>5</sup> Arief, S., Muhtar, M. H., & Saragih, G. M. (2023). Upaya pembelaan diri dalam perspektif persamaan di hadapan hukum. Jurnal Yudisial, 16(1), 25–47.

<sup>&</sup>lt;sup>6</sup> Suhendar, S., Rezki, A., & Yunus, N. R. (2022). Legal Certainty in the Application of the Crime of Narcotics Abuse Judging from the Disparity of Judges' Decisions. *SALAM Jurnal Sosial Dan Budaya Syar I*, 9(1), 121–132. https://doi.org/10.15408/sjsbs.v9i1.24487

However, another problem arises when informants who do not have legal authority are actively involved in investigative operations, in particular in the absence of adequate legal protection. The discretion given to the police force allows the investigator to act outside of ordinary procedure as long as the act is legally responsible. This discretion is provided for in Article 7 letter j of the code of Criminal Procedure, which states that the investigator is authorized to carry out other actions according to the responsible law. In addition, Law No. 2 of 2002 on the Indonesian National Police also gives discretionary authority to the police to act in the public interest. However, the use of this discretion must pay attention to the principle of necessity, the principle of purpose, the principle of the problem, and the principle of balance. In the implementation of covert purchases, the use of discretion often does not meet the principle of necessity because the role of the informant as a buyer can actually be performed by the investigator himself.

Weaknesses in the implementation of covert purchasing techniques involving informants include a lack of legal protection for informants, a high risk to their safety, and potential violations of discretionary principles. In some cases, informants involved in covert purchases can face serious threats if their identities are exposed. This is contrary to the provisions of Article 99 paragraph (1) of the Narcotics Law, which prohibits the mention of the identity of the complainant in judicial proceedings. In addition, the instructions field Police Chief Pol.JUKLAP / 69/II / 1993 explicitly states that informants should not be presented as witnesses in court to protect their identity. Unfortunately, in practice, informants are often actively involved until their identity is revealed, potentially putting their safety and that of their families at risk.

In the process of implementing covert purchasing techniques, the obstacles encountered can be categorized into internal and external factors. Internal factors include the lack of necessary equipment, limited operational costs, and threats to the safety of investigators. Equipment such as eavesdropping tools is essential to support successful operations, but often their availability is limited. Operational costs for the implementation of covert purchases are also higher compared to conventional cases, which require special budget allocations. In addition, investigators often face a direct threat from narcotics networks, which can compromise their personal security. External factors include difficulties in obtaining reliable informants, the determination of safe locations for transactions, and the development of new techniques by narcotics networks, such as the mine technique, which avoids direct contact between bookmakers and buyers.

To overcome these obstacles, various efforts are made, both internally and externally. From the internal side, investigators need to maximize the use of available human resources and equipment, propose an increase in the operating budget, and be professional and careful in carrying out their duties. From the external side, the police are trying to get informants through a more strategic approach and determine safe transaction locations by considering aspects of surveillance and communication. In addition, more innovative strategies need to be developed to deal with new techniques used by narcotics networks, such as mine techniques.

Although the implementation of covert buying techniques has contributed greatly to uncovering narcotics networks, weaknesses in legal regulation and informant protection require further attention. It is important for policymakers to review the existing legal framework and ensure that all parties involved, including informants, get adequate legal protection. Thus, covert purchasing techniques can be implemented more effectively and fairly, without compromising the safety or rights of the individuals involved in the process.

#### 2. Forms Of Legal Protection Against Informants Used In Drug Crime Investigations

The implementation of covert purchases in the case of narcotic crimes is carried out by investigators who have received a warrant or assignment from the leadership. This technique is an important part of the investigation provided for in the Narcotics Act and is protected by other regulations such as the Criminal Procedure Code and the Police Act. In addition, Decree No. Pol SKep/1205 / IX / 2000 on the revision of the set of rules and Technical Guidelines for the criminal investigation process is an internal legal basis that supports the actions of investigators in the implementation of covert purchases in the field. In practice, covert buying techniques often involve informants coming from ordinary people, non-governmental organizations, users, or even drug dealers themselves. The role of informants in narcotics crimes is very important, but it should be limited to providing information, searching and collecting data in accordance with Article 106 of the Narcotics Law. This provision expressly prohibits informants from being directly involved in the process of purchasing narcotics in order to protect them from harm that may arise during the operation.

However, in some cases, investigators nevertheless use informants to impersonate buyers in covert purchases. This is done with the strict supervision and approval of the leadership, as required by the regulations. Nevertheless, this practice still carries a high risk to the safety of informants. Article 100 of the Narcotics Law provides that the state is obliged to provide protection to witnesses, whistleblowers, investigators, public prosecutors and judges involved in the examination of Narcotics Criminal Cases. This protection also includes people who help the process of combating narcotics abuse. However, the use of informants as covert buyers in operations often has no explicit legal basis. This is based on the discretion of the police as stipulated in Article 18 of the law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia. In this context, police officers are allowed to act on their own judgment, but must ensure that the informant does not get hold of the purchased narcotic item. This action requires the speed and accuracy of the investigator to immediately make an arrest before the handover of the goods.

In practice, the technique of covert purchases is often not executed in accordance with existing provisions. Investigators often use informants to make purchases of narcotics more than once, which should not be done given that this technique requires immediate purchase followed by arrest. This indicates a misunderstanding by the officer towards the application of covert purchasing techniques. Some officers still consider that the covert purchase is part of

<sup>&</sup>lt;sup>7</sup> Handoko, I. F., & Zakaria, C. a. F. (2018). Optimalisasi Profesionalisme Polri Guna Mewujudkan Tugas Pokok Polri Dihubungkan dengan Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia. *Prosiding Ilmu Hukum*, 408–413. https://doi.org/10.29313/.v0i0.8912

the investigation, as mentioned in the investigation Field Manual which has been revised by Decree No. SKep/1205/IX / 2000. In fact, Law No. 35 of 2009 on narcotics clearly classifies covert purchases as an investigative technique that can only be carried out by investigators.

Informants used in covert purchasing operations are usually selected through a recruitment process that considers the confidentiality of their identity, credibility, and readiness to cooperate without coercion. In some cases, this recruitment is done on the condition that the informant is not currently involved in any other criminal case and has an understanding of the risks to be faced. Although the role of informants is very important in the success of operations, regulations regarding the rights and obligations of informants are often not regulated in detail. Informant rights typically include identity protection, physical safety, appropriate remuneration, access to information related to operations, and legal protection. However, they also have an obligation to cooperate with law enforcement officials, maintain the confidentiality of operations, comply with the law, carry out the role professionally, as well as be responsible for the actions taken during operations.

Legal protection of informants in covert purchasing operations is one of the issues that requires serious attention. Informants often face a variety of obstacles, including safety threats, intimidation from those involved in narcotics networks, as well as a lack of protection for their identity. Regulations governing informant protection are often insufficiently detailed or not effectively implemented, increasing the risks faced by informants. In addition, the lack of resources possessed by law enforcement institutions to provide adequate protection is also a major obstacle. Many informants feel reluctant to cooperate due to a lack of trust in law enforcement officials, often caused by cases of corruption, information leakage, or abuse of power within the institution.

Unethical use of information provided by informants is also a problem, as this can harm informants and decrease their trust in the legal system. In addition, the psychological and social burden faced by the informant during and after the operation often does not receive adequate attention. Tension from constant threats, fear of revenge, and social isolation can affect their mental health. In some cases, informants also face legal pressure, especially if they are accused of violating the law during the performance of their duties.

To overcome these obstacles, improvements are needed in the regulations governing the protection of informants, including clarity about their rights, effective protection mechanisms, and sanctions for those who violate such protection. The capacity of law enforcement institutions also needs to be strengthened, both in the aspect of physical security, transfer to a safe location, and legal and psychological support. In addition, it is important to build public confidence in the legal system through greater transparency, accountability, and oversight. With these steps, informants are expected to feel more secure and protected in assisting law enforcement, especially in the eradication of narcotics crimes.

The implementation of covert purchases also faces other internal and external obstacles. From the internal side, the main obstacles include the lack of adequate equipment, limited operating budget, and threats to the safety of investigators. In many cases, investigators do not have adequate eavesdropping tools to support a successful operation. The limited budget is also a big problem, considering that covert purchasing operations require higher costs compared to conventional crime investigations. Threats to investigators, whether in the form of physical violence or intimidation, are also a frequent challenge. From the external side, the difficulty in obtaining reliable informants, determining secure transaction locations, and facing new techniques used by narcotics networks, such as mine techniques, are obstacles that require specific strategies to overcome.

Efforts to overcome these obstacles involve various steps, such as improving the quality of human resources through intensive training, applying for additional operating budgets, and ensuring the professionalism of investigators in carrying out their duties. In addition, more effective informant recruitment strategies, strategic transaction location selection, and technology development to support operations are important steps that need to be taken. Although covert purchasing techniques have contributed greatly to eradicating narcotics networks, their success depends largely on the implementation in accordance with legal procedures and the protection of all parties involved. With strengthened regulation, increased institutional capacity, and efforts to build public trust, covert purchasing operations are expected to run more effectively and fairly, without compromising the safety or rights of the individuals involved.

#### Conclusion

Based on research on legal protection for informants in undercover buying as a strategy for disclosing narcotics crimes in Gorontalo province, it can be concluded that covert purchasing techniques have been regulated in Law Number 35 of 2009 on narcotics, especially Article 75 letter j and Article 81. The implementation of this technique is legally valid if it is carried out by the investigator on the basis of a written order from the leadership, as also provided for in Article 79 of the Narcotics Law. However, settings that are not detailed often cause differences in interpretation, so that its application in the field often diverge. The informant in this technique is supposed to act only as an informer in accordance with Article 106, but is often directly involved as a buyer, which can endanger their safety.

To increase effectiveness, the covert buying arrangement needs to be revised to be more detailed about its definition, implementation, and limitations. Strict supervision in its application as well as legal protection for informants should be strengthened to avoid safety risks. The government also needs to improve facilities, infrastructure, and police budgets, as well as encourage community participation through socialization supported by guarantees of

<sup>&</sup>lt;sup>8</sup> Fitri, S., & Yusran, R. (2020). Implementasi Kebijakan Rehabilitasi Pengguna Narkoba pada Badan Narkotika Nasional Provinsi Sumatera Barat. Journal of Civic Education, 3(3), 231–242. https://doi.org/10.24036/jce.v3i3.400

protection. The implementation of this technique must follow clear procedures and be supervised through internal audits to prevent abuse of authority. With better regulation, covert buying can be an effective strategy in combating narcotics without compromising the safety of informants or investigators.

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