

# Issuance of a Search Warrant for Narcotics Crime in Indonesia

*by Sahuri Lasmadi*

---

**Submission date:** 06-Jul-2021 10:17AM (UTC+0700)

**Submission ID:** 1616211032

**File name:** ssuance\_of\_a\_Search\_Warrant\_for\_Narcotics\_Crime\_in\_Indonesia.pdf (94.79K)

**Word count:** 6205

**Character count:** 32548

## Issuance of a Search Warrant for Narcotics Crime in Indonesia

Sahuri Lasmadi  
Faculty of Law, Universitas Jambi  
sahurilasmadi@gmail.com

### ABSTRACT

Concerning narcotics crime in Indonesia in addition to the Police Investigator, the National Narcotics Agency (BNN) also has the authority to conduct investigations and investigations. Search is part of the investigation process, but is often constrained by a search warrant. The research method used is a normative legal research<sup>19</sup> method. This method uses a statutory approach and a conceptual approach. This research puts forward secondary data in the form of binding legal material such as Law Number 35 of 2009 concerning Narcotics (Narcotics Law), books and other legal research<sup>12</sup> umals. The results of this study indicate Article 81 of the Narcotics Law states that Police Investigators and BNN investigators are authorized to conduct investigations of the abuse and illicit trafficking of Narcotics and Narcotics Precursors. One of them is that an ordinary search or normal search can be carried out by the investigator after first obtaining permission from the head of the District Court, then searching under extraordinary and urgent circumstances, ie the investigator can search without first obtaining permission<sup>11</sup> from the head of the local District Court, however after a search the investigator must immediately seek the approval of the head of the District Court.

**Keywords:** Investigator; Search Warrant; Narcotics Crimes.

### ABSTRAK

20  
Terhadap tindak pidana narkoba di Indonesia selain Penyidik Kepolisian, Badan Narkotika Nasional (BNN) juga memiliki kewenangan untuk melakukan penyelidikan dan penyidikan. Penggeledahan merupakan bagian daripada proses penyidikan, namun sering terkendala dengan adanya izin penggeledahan. Metode penelitian yang digunakan adalah metode penelitian hukum normatif. Metode ini menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Penelitian ini mengedepankan data sekunder berupa bahan hukum yang sifatnya mengikat seperti Undang-Undang Nomor 35 Tahun 2009 tentang Narkoba (UU Narkotika), buku-buku serta jurnal penelitian hukum lainnya. Hasil penelitian ini menunjukan Pasal 81 UU Narkotika menyatakan bahwa Penyidik Kepolisian dan penyidik BNN berwenang melakukan penyidikan terhadap penyalahgunaan dan peredaran gelap Narkoba serta Prekursor Narkotika. Salah satunya adalah upaya penggeledahan secara biasa atau dalam keadaan normal dapat dilakukan penyidik setelah lebih dulu mendapat izin dari ketua Pengadilan Negeri, kemudian penggeledahan dalam keadaan luar biasa dan mendesak, yaitu penyidik dapat melakukan penggeledahan tanpa lebih dulu mendapatkan izin dari ketua Pengadilan Negeri setempat, namun sesudah penggeledahan penyidik wajib segera meminta persetujuan ketua Pengadilan Negeri.

**Kata Kunci:** Penyidik; Izin Penggeledahan; Tindak Pidana Narkoba.

## A. INTRODUCTION

The implementation and enforcement of legal provision of criminal law regulated in Criminal Code Procedure (KUHP) does not automatically go without disruption as expected by the legislators (Rofiq, Disemadi & Jaya, 2019). As a matter of fact, in the practice of law, citizens often experience forced action committed by law enforcement officers particularly in conducting a search which is not fully following procedures regulated in Criminal Code Procedures (Ricardo, 2010).

A search can be conducted based on an accusation. An accused may at any time be searched for investigation reason and law enforcement, and this forced search may lead to an arrest (Yanti, & Andri, 2018). However, sometimes a search to find evidence particularly in narcotics crime is illegally arranged by unethical officers or dirty cops (Amriansyah, Wisaksono, & Baskoro, 2016).

As for example, a defendant denied police accusation because he, indeed, did not know how the methamphetamine could get in his pocket or where it was from. However, <sup>10</sup> Law Number 35 Year 2009 concerning Narcotics (Narcotics Law) regulates that when narcotics is found in someone possession, he will then considered against the law and threaten with crime law. West Sumatra High Courts which handled the case said that there two important elements that must be proven over the accusation of narcotics possession according to Article 112 Narcotics Law stating that the element "possession of a contraband" and "The willingness to possess the contraband".

For this reason, judge in his jurisprudence released the defendant from charge of Article 112 Narcotics Law. The Judge jurisprudence was also based on his belief that the defendant was innocent because he did not have any knowledge concerning where the narcotics was from and how it could get in his pocket, the judge belief that the defendant was innocent was strengthened by the fact that the result of the defendant's urine test conducted immediately on the night of the arrest was negative (Pramesti, 2014).

Although a search is normally conducted for an individual who has been a suspect or defendant, it does not mean that when someone is searched, he has become a suspect, a defendant, or a convict. This search of conduct can be done to anyone (Abbas, 2013).

A search does not always mean to look for proof that someone is guilty. Sometimes it also aims to prove that someone is innocent. <sup>13</sup> Universal Declaration of Human Rights Article 12 states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation." Every person has a right to get legal protection from any interference or such violations. Because it directly deals with someone human right, a search has to be done according to law. If a search is conducted without following the provisions in the law, the one who did the search may be charged as regulated in Criminal Code Article 167 and Article 429.

Article 167 section (1) Penal Code/ Criminal Code states that "Any person who forces his way into

the dwelling or the enclosed room or grounds, used by another, or staying there illegally does not move away immediately at the demand of or on behalf of the rightful claimant, shall be punished by a maximum imprisonment of nine months or a maximum fine of four thousand five hundred Rupiahs".

4 Article 429 section (1) Penal Code states that "Any official who, overstepping his competence or without observance at the formalities determined by general regulation, enters the house or the enclosed room or grounds in use by another and against his will or, staying unlawfully at said place, does not immediately moves away at the demand of or on behalf of the rightful claimant, shall be punished by a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs.

A search is part of an investigation. A search is an act of a ruler to limit people freedom. This is disrupting the serenity of the dwelling. There is this one proverb saying that "my home is my castle" (*my home is my castle*)" (Hamzah, 1986).

Meanwhile, according to Bonn Sosrodanu Kusumo, " Searching or entering a house or other people dwelling for investigation purpose of a legal case according to criminal law procedure must be limited and carefully regulated. Searching a house or a dwelling is an effort to seek for truth, to know whether someone is innocent or guilty" (Kusumo, 1987).

In Indonesia, a search is a part of investigation process. For narcotics crime, apart from police investigators, National Narcotics Agency (BNN) is also given authority by law to conduct an investigation and examination (Amriansyah, Wisaksono, & Baskoro, 2016).

10 Article 81 Law Number 35 Year 2009 concerning Narcotics states that " Police Investigators of Republic of Indonesia and BNN Investigators have authority to conduct investigation of abuse and illicit traffic of narcotics and narcotics precursors according to this Law".

As aforementioned, the conduct of search can also be taken based on an accusation. A person can at any time be searched for investigation and law enforcement purpose. This forced effort of search may lead to an arrest (Amriansyah, Wisaksono, & Baskoro, 2016).

Article 75 letter j L Narcotics Law gives authority to investigators in order to conduct an investigation to do undercover buy, one of investigation technique, and control delivery. Undercover buy is followed by a search which looks like the person is caught red handed. In this situation, sometimes the investigators use some tricks or entrapment to the targeted individual or to a despised individual or for financial reason.

Based on the aforementioned elaboration, the effort of law enforcement should not be done by violating the law. When the urge to limit and restrict the implementation of human rights for law enforcement purpose, the limits and ways of law

enforcing must be regulated legally and clearly. If this guideline is not followed and implemented well, it is expected that the effort to enforce law will still be in the corridor of respecting humanity. Criminal Code Procedure regulates ten principles as a guideline on how human rights are implemented in practice. These principles are rules concerning law enforcement<sup>15</sup> in Indonesia. The principles are mentioned in Law Number 8 Year 1981 concerning Criminal Law Procedure. These rules are general and become a guideline of every action of law enforcement and, in practice, it is known as KUHP or Criminal Law Procedure.

For certain crime cases, such as narcotics crime, there are special conditions stated and regulated in special law (*lex specialis*). In KUHP or Criminal Code Procedure, it is mentioned that "The state of the Republic of Indonesia is a nation governed by law based on the Pancasila and the Constitution of 1945 which upholds human rights and which guarantees that all its citizens shall have equal status in law and government and shall be obligated to respect law and government without exception" , Furthermore, It is also stated<sup>1</sup> in Criminal Code Procedure that the realization and implementation of human rights along with the rights as citizen of The Republic of Indonesia should always be put into practice by each citizen<sup>3</sup>, officials, and government institutions. Article 9 International Covenant on Civil and Political Right (ICCPR), "No one can take liberty of a person except with reasons and by following the procedure regulated by the law".

Based on the discussion aforementioned, some basic problems that will be examined in this study are as follows: 1). How is the mechanism of issuing search warrant for narcotics crime; and 2). How is regulation concerning the time limit of search warrant issuance for narcotics crime?

Considering that a study focusing on narcotics crime has ever been done, such as by Karyoto and Defi Aprilia on the role of BNN (National Narcotics Agency) in realizing drug-free citizens in Blitar district (Karyoto, & Aprilia, 2019); by Roni Gunawan Raja Gukguk and Nyoman Serikat Putra Jaya on narcotics crime as transnational organized crime (Gukguk, & Jaya, 2019); by Firdaus Pasue on Police authority as investigators in conducting forced effort of a search in Article 32-37 Penal Code (KUHP) (Pasue, 2017); by Richard D. Hartley, Dae-Hoon Kwak, MiRang Park, and Min-Sik Lee<sup>21</sup> on the analysis of how gender difference affects punishment of narcotics abuse in South Korea (Hartley, & et al., 2011); by Shi Wei on the analysis of trade problems and narcotics transporting in the practice of justice (Wei, 2013).

Based on previous researches, this study will focus on different issue. Although theme is the same which is about narcotics crime, this study focuses more on awarding search warrant for narcotics crime in Indonesia so that the discussion will all be about important and actual matter.

## B. RESEARCH METHOD<sup>9</sup>

Research method used in this study was normative legal research method. This method is a



part of doctrinal legal research method which prioritizes secondary data. The secondary data are collected through literature study which then are grouped into some legal materials (Disemadi & Roisah, 2019). The legal materials consist of primary, secondary, and tertiary legal materials (Wibisana, 2019). Primary legal materials consist of binding legal materials such as KUHP or Penal Code, KUHP or Criminal Code Procedure, Law Number 35 Year 2009 concerning Narcotics and other regulations. Meanwhile, secondary legal materials consist of books related to this study, and tertiary legal materials consist of law research journals relevant to the issue of search warrant for narcotics crime in Indonesia.

## C. RESULT AND DISCUSSION

### 1. The Mechanism of Issuing Search Warrant for narcotics Crime

Forced effort performed by investigators of Police of The Republic of Indonesia (Polri) or National Narcotics Agency (BNN) is implied in Article 75 Narcotics Law in letter e, letter f, and letter g. In this Narcotics Law, it is mentioned that for an investigation, BNN investigators have authority to examine, search, and seize evidence of the crime concerning drug abuse and illicit traffic of narcotics and its precursors, check letters and/or other documents concerning the crime concerning the abuse of drugs and illicit traffic of narcotics and its precursors, and to arrest and detain the person suspected to do the crime concerning drug abuse

and illicit traffic of narcotics and its precursors. BNN investigators authority is not far different from Polri investigators authority. As a matter of fact, BNN investigators have more authority than Polri investigators (Kurniawan, & Hafidz, 2018).

However, the statement stating that BNN investigators have more authority than Polri investigators is misled. Because according to provisions in Article 81 Law number 35 Year 2009, the authority of BNN investigators and Polri investigators is the same in terms of narcotics eradication. Article 81 Law Number 35 Year 2009 regulates that investigators of The Police Of The Republic of Indonesia and investigators of BNN have authority to conduct an investigation for the abuse and illicit traffic of narcotics and its precursors. It is explained in Article 81 that Polri investigators in an effort to eradicate narcotics also have authority to investigate the same as the authority of BNN investigators.

No institution is more superior than the other. Both are the same. Both institutions, Polri and BNN, work together hand in hand in an effort to eradicate illicit traffic of narcotics and its precursors. This is the action that must be prioritized (Tamawiwiy, 2015). Article 74 Narcotics Law stipulates that: 1). The case of the abuse and illicit traffic of narcotics and its precursors is the case that is prioritized to be filed to the court in order to reach settlement as soon as possible; and 2). The examination process of the case of narcotics abuse and illicit traffic of narcotics and its precursors in is an appeal, cassation, and

judicial review level. Meanwhile, the execution of death penalty, and the process of granting pardon, must be hastened by referring to the Law (Amriansyah, Wisaksono, & Baskoro, 2016).

Routine search for narcotics is particularly conducted in border areas, Air Port and Sea Port by Immigration and Customs officers. Whenever evidence is found during the search, the evidence must be given to local Polri investigators. This kind of search does not need warrant from any parties because it is international regulation. (Romadzoni, Junaidi & Zakariya, 2018).

A search is a part of investigation. It is an act of a person in power to limit people freedom which disrupts the serenity of a dwelling. A conduct of search can be done based on an accusation. Therefore, a person may at any time be searched for the sake of the investigation and law enforcement. A search can even lead to an arrest. Although a search is usually conducted to a person who has become a suspect or a defendant, it does not mean that the person has become a suspect or a defendant or a convict (Yanti, & Andri, 2018).

A search can be done to anyone. Because it is closely related to a person's human rights, a search must be done by referring to the law. Regulation concerning a search is stated in Law Number 8 Year 1981 concerning crime law. In an investigation, the authority to search is only assigned to investigators, either Polri investigators or civil official investigators. Public prosecutors as well as judges in all levels of trial do not have authority to conduct a search. A

search is specific only for an investigator, not for the next level of examination in prosecution level or trial examination. The placement of this special function is in accordance with the purpose and definition of a search. The purpose of a search is to find and collect facts and evidences as well as a person who is highly suspected as the person who commits the crime (Amriansyah, Wisaksono, & Baskoro, 2016).

However, in carrying out a search, investigators do not stand alone. They are supervised by and connected to the Head of District Court. In every conduct of search, investigators need assistance and supervision from the Head of District Court. The assistance is a necessity in the following situation: 1). In normal condition, a search can be done after investigators obtain a search warrant from the Head of District Court; and 2). In an urgent or compelling condition, investigators may conduct a search without first obtaining search warrant from the Head of District Court. However, after the search is done, investigators have to ask for an approval from the Head of local District Court.

Some studies mention about the purpose of a search. A study by M. Yahya Harahap stated that "the purpose of a search is for an investigation so that fact and evidence of a crime can be collected, or a person in a house or other places who is suspected of committing a crime can be arrested" (Harahap, 2010). In addition, Bonn Sosrodanu Kusumo explained that "searching or entering a house or other places in order to investigate a case, according to crime law, must be restricted and regulated

carefully (Kusumo, 1987). Searching a house or a dwelling is an effort to seek for the truth, and to find out whether a person is innocent or guilty" (Yudowidagdo, 1987).

Therefore, it can be concluded that Police Investigators or BNN investigators conduct a search on a house and/or clothes and/or body for the abuse of narcotics crime for investigation purpose. The purpose of an investigation is to find and collect (seize) evidences in the form of narcotics and/or any goods related to the abuse of narcotics. These evidences will help investigators solve the case from investigation, prosecution, to trial process and also helps them to find the convict of narcotics abuse crime. Even though a search is normally conducted to a person who has become a suspect, it does not mean that when a person is being searched, he will become a suspect because a search can be done to anyone.

Going far from the purpose of the search is considered against the law. If there are intentions other than for the purpose of the investigation, those are beyond the territory of the law. Each search must be conducted accurately and carefully with limitation and ways regulated by law so that it will not cause a loss on other people while, at the same time, the aim of the investigation can still be achieved (Sumampouw, 2018).

To conduct a search on a house or indoor place or a body, investigators must follow the mechanism in provision of Article 33 Criminal Code Procedure stating that : "1). with a warrant from the

Head of the local District Court, an investigator in carrying out an investigation may perform a house search as required; 2). Where required upon a written order from an investigator, an officer of the state police of the Republic of Indonesia may enter a house; 3). Each instance of entry of a house where the suspect or occupant has given his consent must be witnessed by the village head or the head of the neighborhood with two witnesses; 4). Each instance of entry of a house where the suspect or occupant has refused or is not present must be witnessed by the village head or the neighborhood with two witnesses; and 5). Within two days after entering and/or searching a house, minutes must be made and the copies thereof provided to the owner or occupants of the house concerned.

There are two models of a search based on the degree of importance and procedure of the search itself. The first is a normal search and the second is a search which is performed in an urgent and compelling situation.

The use of term "normal" and "urgent" search is only to distinguish between the two. This means that in normal condition, a search is performed by referring to general rules determined by Article 33 Criminal Code Procedure.

Therefore, a search in urgent and compelling condition regulated in Article 34 Criminal Code Procedure is an irregularity of a normal search regulated in Article 33 Criminal Code Procedure. Procedure regulated in Article 33 Criminal Code Procedure is basically a general guideline of a



search. It is highly recommended that every search be based on Article 33 Criminal Code Procedure as a general rule. Then, only for an extraordinary condition or an urgent condition, provisions in Article 34 Criminal Code Procedure can be applied.

It is important to note that a search regulated in Article 34 Criminal Code Procedure should be avoided whenever possible unless the situation forces the investigators to do the other way. In this case, if it is not possible to conduct a normal search, a search as stated in Article 34 Criminal Code Procedure can be performed as an urgent and emergency action.

After the search is performed, investigators must make minutes of a search signed by the suspect or his family or by a person who owns the searched place or a person who is given the power to do so. If the suspect or his family or a person who owns the searched place or a person who is given the power refuses to sign the minutes, minutes of objection to sign the search minutes must be made (Sumampouw, 2018). A search on a house/vehicle and other indoor places can only be performed after investigators obtain search warrant from the Head of local District Court. The search warrant is signed by investigators or his superintendent as an investigator (Amriansyah, Wisaksono, & Baskoro, 2016). A search must be witnessed by the head of the village of the head of local neighborhood or a person who is in charge of the place.

## 2. Time Limit of Search Warrant Issuance for Narcotics Crime

Based on Article 33 section (1) Criminal Code Procedure, a search can be conducted with a search warrant from Head of District Court. Before conducting the search, investigators initially request a search warrant from Head of District Court by explaining every instances related to the search for investigation purpose as regulated in Article 33 section (1) Criminal Code Procedure.

There is no mention about how long the court will process the search warrant. What is mentioned is that "no later than 2 (two) days after entering or searching, minutes must be made along with its copies, and these documents must be handed in to all related occupants of the house/ other places".

It is mentioned in Article 33 section (2) that "If it is necessary, under written order from investigators, Police officers of The Republic of Indonesia may enter a house". This means that investigators do not need to obtain a search warrant from Head of District Court during the search as long as after the search, the investigators make a report of the search.

In the search process, Investigators are not allowed to take anything that is not related to the crime. They are also not allowed to seize and check letters, books, or any texts that are not properties related to the crime. If the Investigators find the properties/person they are looking for, when securing the evidence, the person who is searched and other parties from nearby resident have to be there as witnesses and receipt letter must be made. No longer than 2 (two) days after entering or searching, investigators must made search minutes and its

copies to be given to all occupants in the house/ other places which has been searched. (Yuniarti, 2016).

Administration Technical Guidelines and Trial procedure of Common Crimes and Particular Crimes of Republic Of Indonesia Supreme Court are mentioned about a search stating that : 1). According to Article 33 section (1) Criminal Code Procedure, it is only investigators who are able to conduct a house search with search warrant from Head of District Court; 2). If the house that will be searched is located in other District Court territory, Head of District Court in that area must be noticed; 3). If the case has not been reported <sup>1</sup> to the District Court in the area of the crime scene, which, according to the law, is the District Court which <sup>1</sup> has authority to conduct a trial of the crime case, the <sup>1</sup> Head of the District Court in the area where <sup>1</sup> the searched house is located is obliged to give permission for the search; 4). In a crime, the party who has authority to award search warrant is The Head of District Court where the case is filed; 5). In an urgent and emergency situation, investigators may <sup>1</sup> conduct a search without initially acquiring search <sup>1</sup> warrant from the Head of local district Court (Article 34 Criminal Code Procedure). The <sup>3</sup> investigators then <sup>3</sup> have to report to the District Court in order <sup>1</sup> to get an approval; and 6). The word "prompt" is the time which is reasonable at first if the situation and condition make it possible, and the head of The District Court shall not refuse the application

By following Administration Technical Guidelines and Procedure of Common Crime and Particular Crime trial Supreme Court of The Republic of Indonesia, it can be concluded that <sup>1</sup> search warrant is issued as soon as possible, even <sup>1</sup> The Head of the Court shall not refuse <sup>1</sup> the issuance of <sup>1</sup> the search warrant.

<sup>1</sup> The purpose of having search <sup>1</sup> warrant from the Head of District Court in conducting a search is meant to guarantee a person's human rights over his/her house, as well as to restrict investigators from conducting a search without limitation and supervision. In order to restrict the conduct of irresponsible and arbitrary search, <sup>3</sup> legislators obliged investigators to first obtain search <sup>3</sup> warrant from the Head of District Court. However, it is not mentioned the time limit of the search warrant.

Furthermore, Article 34 Criminal Code Procedure stipulates a search in an emergency situation. The Article states that: 1). "In urgent and compelling circumstances, where an investigator must act immediately and cannot possibly first ask for a warrant, without detracting from the provision of Article 33 section (5) the investigators may carry out a search: *a.* in the yard of the house where the suspect resides, is staying or is present and of those things which may lie thereupon; *b.* in every other place where the suspect resides, stays or is present; *c.* at the location where the offense was committed or where traces are found; *d.* in lodgings and other public places"; and 2). "Where an investigator performs a search as intended by section (1), the

investigator shall not be allowed to examine or seize documents, books, and other written materials which are not goods connected with the offense concerned, except goods which are connected to the offense concerned or are presumed to have been used in committing said offense and for which purpose he shall be obliged to immediately report to the head of the local district court to obtain his approval."

It is mentioned in Article 34 section (1) Criminal Code Procedure that an urgent and compelling situation is when it is presumed that in the place where the search is intended, there is a worry that the suspect may escape or redo the crime, or it is presumed that the properties that are intended to be seized may be destroyed or moved to other places whereas it is not possible to obtain a search warrant from Head of District Court properly and promptly.

Based on the elaboration aforementioned, it can be concluded that in an urgent situation, investigators may conduct a search without the need to obtain search warrant from the Head of local District Court. This measure is taken if in the place where the search is intended, it is presumed that the suspect or the defendant may run away or recommit his crime, or goods that are intended to be seized may be destroyed or moved to other places (Yanti & Andri, 2018). This explanation is still subjective in the investigators side. It is definite that every search conducted particularly in finding narcotics evidences must be considered urgent (Harahap & et.al, 2016).

It is need to be understood that a search is not a domain of pretrial so that although the officers conduct a search arrogantly by damaging the properties such as cupboard or a room such as bathroom, or even entering female rooms and taking properties which are not related to the case in order to find narcotics evidence, no sanction is given for such actions. (Sumampouw, 2018). Judge jurisprudence only orders to return the properties to the owners. We can see on television how arrogant the investigators are in conducting a search for narcotics crime.

Considering the circumstance aforementioned, the time limit for search warrant issuance from Head of District Court for forced search is not regulated. What matters is that during the search, there is a Letter of Assignment for conducting a search from investigators. After the search, the investigators have to make minutes then the copies is given to the house owner or the owner of the searched place

For the process of crime case settlement, Investigators often find it difficult to find and collect evidences whereas without evidence particularly for narcotics crime, the crime cannot be followed up although there are witnesses stating that "A" is a drug dealer.

The suspect usually tries to remove his traces in order to avoid the prosecution (Sumampouw, 2018). They try to escape, or seek for shelter to someone with power that can back him up to drop the charges. Even most often there is an effort to influence using threat to make other parties tell a lie.

Considering the circumstance aforementioned, in order for law enforcers to avoid the obstacles in conducting an examination of a case in order to acquire information from the suspect and to collect materials needed as evidences during the trial, investigators need to order that each person that is considered related to the case to stay in the searched place during the search and to seize properties from the owner in order to be given to the authorized officers (Sumampouw, 2018).

To properties, investigators are required to obtain a search warrant from <sup>1</sup>Head of District Courts in order to conduct a search of a house and to check or examine papers or seize books, any texts related to the suspected crime. Meanwhile, to the suspect, investigators have authority to conduct a search of clothes or body search and if a contraband is found, it can be seized (Anshari, 2018).

Based on the aforementioned elaboration, a search is conducted in order to implement law enforcement. Thus, especially for officials who have the authority to conduct a forced search, violating the human rights of the suspect in the form of arrest, detain, search, seizure, and document examination. All of those measures are effort made by the officials to collect evidences in criminal process according to the law.

#### D. CONCLUSION

Based on the elaboration of the discussion, there are some points that can be concluded: 1) The mechanism of awarding a search warrant for

narcotics crime has been regulated in Criminal Code Procedure or KUHP. However, for an emergency search, which in this case is not possible to get permission from the Head of District Court, and the scope is wide covering any possible places, as a movement that can penetrate and expand to all directions based on the need of the investigation itself. In addition, punishment for investigators who conduct a search arbitrarily has not been regulated;

2). The time limit for search warrant issuance for narcotics crime has not been regulated in Criminal Code Procedure. However, each search warrant from Head of District Court is only valid for one Police Report and an Investigator. This search warrant is attached in Investigation Administration file.

Based on this conclusion, the author suggestions are: a). Legislative and Executive Institutions should make clear regulation concerning the mechanism of search warrant issuance for narcotics crime in Criminal Code Procedure. Moreover, this institution should also make regulation concerning punishment for investigators who conduct a search arbitrarily; and b). It is necessary to make a regulation concerning time limitation of a search warrant for narcotics crime so that there is a guideline for investigators to conduct a search and seizure.

#### REFERENCES

##### BOOKS

Abbas, Imam S. (2013). *Tahukah Anda? Hak-Hak Saat Digeledah*. Jakarta: Dunia Cerdas.

- Hamzah, A. (1986). *Pengusutan Perkara Kriminal Melalui Sarana Teknik dan Sarana Hukum*. Jakarta: Ghalia Indonesia.
- Harahap, Muhammad Y. (2010). *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*. Jakarta: Sinar Grafika.
- Kusumo, Bonn S. (1987). *Tuntutan Pidana*, Jakarta: Bina Aksara.
- Yudowidagdo, H. (1987). *Kapita Selekta Hukum Acara Pidana Di Indonesia*. Jakarta: Bina Aksara.
- Gukguk, Roni Gunawan Raja, & Jaya, Nyoman Serikat Putra. (2019). Tindak Pidana Narkotika Sebagai Transnasional Organized Crime. *Jurnal Pembangunan Hukum Indonesia*, Vol.1, (No.3), pp. 337-351.
- Harahap, C., et al. (2016). Peranan Kejaksaan Dalam Melakukan Penuntutan Perkara Tindak Pidana Narkotika. *USU Law Journal*, Vol.4, (No.3), pp. 14-26.
- Hartley, Richard D., et al. (2011). Exploring sex disparity in sentencing outcomes: A focus on narcotics offenders in South Korea. *International Journal of Offender Therapy and Comparative Criminology*, Vol.55, (No.2), pp. 268-286.

#### JOURNALS

- Amriansyah, Virda., Wisaksono, Budhi., & Baskoro, Bambang Dwi. (2016). Kajian Yuridis Terhadap Proses Penyidikan Dalam Tindak Pidana Narkotika Oleh Polres Bantul. *Diponegoro Law Journal*, Vol. 5 (No.2), pp. 1-7.
- Anshari. (2018). Faktor-Faktor Pertimbangan Hakim Dalam Menjatuhkan Putusan Pidana Terhadap Pelaku Tindak Pidana Narkotika Di Pengadilan Negeri Yogyakarta. *Res Judicata*, Vol.1, (No.1), pp. 1-18.
- Disemadi, Hari Sutra., & Roisah, Kholis. (2019). Urgency of the Contempt of Court Criminalization Policy to Overcome Harassment Against the Status and Dignity of Courts. *Brawijaya Law Journal*, Vol.6, (No.2), pp. 224-233.
- Karyoto., & Aprilia, Defi. (2019). Peran Badan Narkotika Nasional Kabupaten Blitar Dalam Mewujudkan Masyarakat Kabupaten Blitar Bebas Narkoba. *MIZAN: Jurnal Ilmu Hukum*, Vol.7, (No.2), pp. 13-19.
- Kurniawan, Bagas Aditya., & Hafidz, Jawade. (2018). Penanganan Tindak Pidana Narkoba Dalam Rangka Untuk Menimbulkan Efek Jera (Analisis Yuridis Terhadap Pilihan Antara Sanksi Pidana Atau Rehabilitasi Di Polres Rembang). *Jurnal Hukum Khaira Ummah*, Vol.13, (No.1), pp. 85-94.
- Pasue, F. (2017). Kewenangan Polisi Selaku Penyidik Dalam Melaksanakan Upaya Paksa Pengegeledahan Dalam Pasal 32-37 KUHAP. *Lex Et Societatis*, Vol.5, (No.5), pp. 167-175.



- Ricardo, P. (2010). Upaya Penanggulangan Penyalahgunaan Narkoba oleh Kepolisian (Studi Kasus Satuan Narkoba Polres Metro Bekasi). *Indonesian Journal of Criminology*, Vol.6, (No.3), pp. 232-245.
- Rofiq, Ahmad., Disemadi, Hari Sutra., & Jaya, Nyoman Serikat Putra. (2019). Criminal Objectives Integrality in the Indonesian Criminal Justice System. *Al-Risalah*, Vol.19, (No.2), pp. 179-190.
- Romadzoni, Rika., Junaidi, Amir., & Zakariya, Hafid. (2018). Proses Penyidikan Perkara Tindak Pidana Narkotika (Studi Kasus SAT RES Narkoba Polresta Surakarta). *Wajah Hukum*, Vol.1, (No.1), pp. 38-52.
- Sumampouw, Rafely D. (2018). Kajian Hukum Tentang Tindakan Penggeledahan Menurut UU Nomor 8 Tahun 1981 Tentang KUHP. *Lex Crimen*, Vol.7, (No.1), pp. 56-64.
- Tamawiwiy, Firman S. (2015). Tatacara Melakukan Penggeledahan Rumah Tempat Tinggal (Kajian Pasal 33 Dan 34 Undang-Undang Nomor 8 Tahun 1981). *Lex Crimen*, Vol.4, (No.5), pp.113-121.
- Wei, Shi. (2013). Analyze Diicult Problems of Traicking and Transporting Narcotic Drug in Judicial Practice. *Journal of Shanghai Police College*, Vol. 3, p. 18.
- Wibisana, Andri G. (2019). Menulis di Jurnal Hukum: Gagasan, Struktur, dan Gaya. *Jurnal Hukum & Pembangunan*, Vol.49, (No.2), pp. 471-496.
- Yanti, Shilvi Richi., & Andri, Alsar. (2018). Peranan Penyidik Dalam Penanganan Penyalahgunaan Narkoba di Wilayah Hukum Polisi Resort Kuantan Singingi. *UIR Law Review*, Vol.2, (No.1), pp. 244-255.

#### ONLINE SOURCES

- Pramesti, Tri Jata A. (2014). Bisakah Dipidana Jika Tanpa Disadari Kedapatan Membawa Narkotika?. Retrived from <https://www.hukumonline.com/klinik/detail/ulasan/lt539fe90d95fd4/bisakah-dipidana-jika-tanpa-disadari-kedapatan-membawa-narkotika>.
- Yuniarti, S. (2016). Penggeledahan. Retrived from <https://business-law.binus.ac.id/2016/06/29/penggeledahan/>.

# Issuance of a Search Warrant for Narcotics Crime in Indonesia

## ORIGINALITY REPORT

13%

SIMILARITY INDEX

13%

INTERNET SOURCES

4%

PUBLICATIONS

2%

STUDENT PAPERS

## PRIMARY SOURCES

1

[vdocuments.site](http://vdocuments.site)

Internet Source

3%

2

[download.garuda.ristekdikti.go.id](http://download.garuda.ristekdikti.go.id)

Internet Source

2%

3

[lbhmasyarakat.org](http://lbhmasyarakat.org)

Internet Source

1%

4

[www.unodc.org](http://www.unodc.org)

Internet Source

1%

5

[mafiadoc.com](http://mafiadoc.com)

Internet Source

1%

6

[www.hukumonline.com](http://www.hukumonline.com)

Internet Source

1%

7

[www.scribd.com](http://www.scribd.com)

Internet Source

1%

8

[ojs.unud.ac.id](http://ojs.unud.ac.id)

Internet Source

<1%

9

[jurnal.iain-bone.ac.id](http://jurnal.iain-bone.ac.id)

Internet Source

<1%

10	<a href="http://ijmmu.com">ijmmu.com</a> Internet Source	<1 %
11	<a href="http://es.scribd.com">es.scribd.com</a> Internet Source	<1 %
12	Submitted to University of Melbourne Student Paper	<1 %
13	<a href="http://www.casemine.com">www.casemine.com</a> Internet Source	<1 %
14	<a href="http://repository.unair.ac.id">repository.unair.ac.id</a> Internet Source	<1 %
15	<a href="http://junetbungsu.wordpress.com">junetbungsu.wordpress.com</a> Internet Source	<1 %
16	<a href="http://ejournal2.undip.ac.id">ejournal2.undip.ac.id</a> Internet Source	<1 %
17	Armunanto Hutahaeen, Erlyn Indarti. "Implementation of investigation by the Indonesian national police in eradicating corruption crime", Journal of Money Laundering Control, 2020 Publication	<1 %
18	Karyoto Karyoto, Defi Aprilia. "PERAN BADAN NARKOTIKA NASIONAL KABUPATEN BLITAR DALAM MEWUJUDKAN MASYARAKAT KABUPATEN BLITAR BEBAS NARKOBA", MIZAN, Jurnal Ilmu Hukum, 2019 Publication	<1 %

19

garuda.ristekdikti.go.id

Internet Source

<1 %

20

jurnalptik.id

Internet Source

<1 %

21

onlinelibrary.wiley.com

Internet Source

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On