

Reinforcing the Legal Basis of Undercover Buy as an Investigative Method in Criminal Procedure

Asari Suci Maharani

Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

Supardi Supardi

Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

Email: assarisuci@gmail.com

Abstract: *In an effort to combat illegal drug trafficking, Law Number 35 of 2009 concerning Narcotics authorizes the National Narcotics Agency (BNN) to conduct special investigation techniques, one of which is the undercover buy technique. The research problem studied is how to regulate undercover buy techniques in the legal system in Indonesia and how to formulate the regulation of undercover buy provisions in an ideal criminal procedure law that does not conflict with legal principles. This study is a normative legal study that uses a regulatory approach and a contextual approach. The data sources are from regulations and legal literature. The results of the study indicate that the regulation of undercover buy techniques is normatively contained in the Narcotics Law and the implementation instructions that have been updated through the Decree of the Head of BNN Number SKEP/1205/IX/2000. However, these regulations are still minimal and not comprehensive, thus creating legal limitations that have the potential to cause investigators to apply for permits, especially in obtaining valid evidence according to criminal procedure law.*

Keywords: *Criminal Procedure, Narcotics, Undercover Buy*

Abstrak: Dalam upaya memberantas peredaran gelap narkoba, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika memberikan kewenangan kepada Badan Narkotika Nasional (BNN) untuk melakukan teknik penyidikan khusus, salah satunya adalah teknik pembelian terselubung (undercover buy). Masalah penelitian yang dikaji adalah bagaimana pengaturan teknik pembelian terselubung dalam sistem hukum di Indonesia dan bagaimana formulasi pengaturan teknik ketentuan pembelian terselubung dalam hukum acara pidana yang ideal dan tidak bertentangan dengan prinsip-prinsip hukum. Penelitian ini merupakan penelitian hukum normatif menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Data bersumber dari peraturan perundang-undangan, literatur hukum. Hasil penelitian menunjukkan bahwa pengaturan mengenai teknik pembelian terselubung secara normatif terdapat dalam Undang-Undang Narkotika dan petunjuk pelaksanaan yang telah diperbarui melalui Surat Keputusan Kepala BNN Nomor SKEP/1205/IX/2000. Namun, pengaturan tersebut masih bersifat minimal dan belum komprehensif, sehingga menimbulkan kekosongan hukum yang berpotensi menyebabkan penyalahgunaan kewenangan oleh penyidik, khususnya dalam memperoleh alat bukti yang sah menurut hukum acara pidana.

Kata Kunci: Hukum Acara Pidana, Narkotika, Pembelian Terselubung

A. Introduction

Law enforcement against narcotics crimes is one of the priorities in the criminal justice system in Indonesia. This is because narcotics crimes are a form of serious crime that poses a serious threat to the stability, security, and welfare of society in various countries, including Indonesia. This crime is not limited to violations of the law at the domestic level, but has also developed into a criminal network that is organized on an international scale. Drug trafficking involves syndicates that operate across national borders with a complex and structured system. These criminals take advantage of technological advances, global trade routes, and loopholes in the legal system to run their illegal business.¹

Currently, the legal basis governing efforts to eradicate illicit drug trafficking in Indonesia is contained in Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law). This law is a *lex specialis* that applies specifically to the regulation of narcotics, and therefore has a more specific position compared to the provisions of other general laws and regulations. The Narcotics Law contains material provisions governing the classification of narcotics, prohibitions, and obligations related to the possession, use, and distribution of narcotics. In addition, the Narcotics Law also regulates formal legal provisions or criminal procedural law specifically applicable in handling narcotics crimes, including the mechanisms for investigation, prosecution, and implementation of court decisions.²

In this case, there is a difference with the provisions of the Criminal Procedure Code (hereinafter referred to as the KUHP), namely in Article 1, numbers 1 and 2, which states that the authority for investigation and inquiry lies with the Indonesian National Police (hereinafter referred to as Polri). Meanwhile, the Narcotics Law specifically provides additional authority to the National Narcotics Agency (hereinafter referred to as BNN).³ BNN is given a role together with Polri as an institution that has

¹Arif Purnama Oktora and Hilaire Tegnan, "Strategy for Implementing Operations to Handle the Crime of Narcotics," *Journal of Human Rights, Culture and Legal System* 1, no. 3 (2021); Achmad Yuliandi Erria Putra, Mirawaty Nurhamidin, and Dede Cairul, "Law Enforcement in The Eradication of Narcotics Crimes Against Drug Addicts and Abusers," *Jurnal Dinamika Hukum* 22, no. 1 (2022); Sulastiana Sulastiana, "Shifts in Geographical Preference for Illegal Production and Distribution of Synthetic Narcotics in Indonesia," *Cogent Social Sciences* 10, no. 1 (2024); Gazali Ahmad, "Kebijakan dan Strategi Badan Narkotika Nasional Republik Indonesia Dalam Menghadapi Ancaman Nonmiliter Kejahatan Terorganisir Transnasional Peredaran Gelap Narkotika Di Indonesia," *Syntax Literate; Jurnal Ilmiah Indonesia* 9, no. 4 (2024): 2338–54.

²Dina Eriza Valentine Purba et al., "Penerapan Pasal 112 Ayat (1) dan Pasal 127 Ayat (1) Huruf A Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika dalam Kaitannya dengan Surat Edaran Mahkamah Agung Nomor 3 Tahun 2015," *Jurnal Ilmiah Penegakan Hukum* 9, no. 1 (2022): 14–22; David N. Nurco et al., "A Comparison by Race/Ethnicity of Narcotic Addict Crime Rates in Baltimore, New York, and Philadelphia," *American Journal of Drug and Alcohol Abuse* 12, no. 4 (1986); Novie Amalia Nugraheni, "The Implementation of Restorative Justice for Narcotics Addicts Based on Legal Benefits," *Jurnal Pembaharuan Hukum* 11, no. 1 (2024); Lisnawaty W. Badu and Julisa Aprilia Kaluku, "Restorative Justice in The Perspective of Customary Law: A Solution to The Settlement of Narcotics Crimes Committed by Children," *Jambura Law Review* 4, no. 2 (2022).

³Sahuri Lasmadi, "Issuance of a Search Warrant for Narcotics Crime in Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 16, no. 1 (2020); Muhammad Shobirin et al., "Concept of Protection for Victims of Narcotics Abuse in Indonesia Fairly Based on Pancasila," *Journal of Law and Sustainable*

the responsibility to conduct investigations and inquiries into narcotics crimes. This provision is emphasized in Article 81 of the Narcotics Law, which states that both Polri and BNN have the authority to handle cases related to narcotics crimes.⁴

The Narcotics Law introduces a number of special investigation techniques that are not found in the current Criminal Procedure Code. One of these techniques is undercover buying and controlled delivery as stated in Article 75 letter j which states "BNN investigators have the authority to carry out undercover buying and controlled delivery investigation techniques". This technique is intended to be used only for the purpose of dismantling organized and transnational crime networks, and not to prosecute individual drug abusers or addicts. So its use must be very limited and its accountability must be guaranteed.⁵

BNN is a non-ministerial institution that is legally and functionally mandated by the state to carry out tasks and authorities in the context of preventing, eradicating, misuse, and illicit trafficking of narcotics and narcotic precursors. Along with the increasing complexity of illicit trafficking of narcotics, both in terms of modus operandi, organized transnational networks, and the social impacts caused, the existence of BNN as a law enforcement and public policy institution has become increasingly strategic and cannot be ignored. In this case, the role of BNN is not only operational, but also normative, in the sense of carrying out a coordinating function with other law enforcement officers such as the Indonesian National Police, the Prosecutor's Office, and other related agencies in order to ensure effectiveness and integration in the implementation of national policies in the field of narcotics.⁶

The authority of the BNN in conducting investigations has been clearly regulated in the normative provisions of the Narcotics Law, but investigations conducted by the BNN related to undercover buy techniques are not regulated in detail regarding their implementation in the context of criminal procedure law in detail with clear limitations. This ambiguity is exacerbated by the absence of an explicit definition of what is meant by undercover buy in the law. In fact, in the explanation of the article

Development 12, no. 1 (2024); Annisa Refi Daenunu, LisnawatyW Badu, and Jufryanto Puluhulawa, "Analisis Batas Kewenangan Antara Penyidik Kepolisian Republik Indonesia dan BNN dalam Melakukan Koordinasi Penyidikan Kasus Tindak Pidana Narkotika," *Jurnal Ilmiah Penegakan Hukum* 1, no. 4 (2023).

⁴Mohamad Syarhan, Nyoman Serikat Putra Jaya, and Bambang Hartono, "Prevention of the Crime of Using Narcotics by Children as a Form of Opened System," *International Journal of Criminology and Sociology* 10 (2021); I Made Karnadi, I Nyoman Gede Sugiarta, and Ida Ayu Putu Widiati, "Fungsi Badan Narkotika Nasional (BNN) dan Polisi dalam Tindak Pidana Narkotika," *Jurnal Preferensi Hukum* 2, no. 1 (2021): 114–18.

⁵Ageng Fajar Wicaksono, Siti Rodhiyah Dwi Istinah, and Andi Aina Ilmih, "The Investigation Process of Children Suspects in Narcotics Crime in National Anti Narcotics Agency (BNN)," *Law Development Journal* 4, no. 3 (2022); Rodirko Kembuan, Mario Gerungan, and Donna Setiabudhi, "Teknik Penyidikan Pembelian Terselubung dan Penyerahan di Bawah Pengawasan Menurut Undang-Undang Nomor 35 Tahun 2009 about Narcotics," *Lex Crimen* IX, no. 4 (2020): 188–96.

⁶Asif Ibrahim and Syed Khurram Hassan, "The Role of Analytical Techniques in Crime Investigation," *International Journal for Electronic Crime Investigation* 6, no. 4 (2022); Ramadhan Emhasan1 and Amsori, "Pengaturan Hukum Tentang Penyelidikan Tindak Pidana Narkotika Berdasarkan Pasal 5 Undang-Undang Nomor 2 Tahun 2002 about the Police," *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 5 (2022): 8215–23.

regulating this technique, it is only stated that the provisions are considered "quite clear", without providing a description or details that can be used as a guideline by law enforcement officers or other interested parties. As a result, the implementation of this technique is highly dependent on the interpretation and initiative of each law enforcement officer, without any standard or accountable supervision.⁷

Further ambiguity regarding the description of the implementation in the law causes problems in practice in the field, especially related to the existence of legal loopholes for law enforcers in obtaining narcotics for their own interests or obtaining them through abuse of authority. One of the most crucial forms of abuse of authority in law enforcement practice is the abuse of evidence. This is clearly reflected in the case that ensnared Inspector General Teddy Minahasa, where he was proven to have engineered evidence by setting aside some of the confiscated narcotics evidence for personal gain. In the context of investigative techniques such as undercover buy, the abuse of evidence becomes a very real risk if it is not balanced with strict and accountable procedures.⁸

This study uses a juridical-normative method, namely legal research that focuses on literature studies by analyzing secondary legal materials, without conducting field observations. The approach used includes a legislative approach, by examining legal instruments such as the Criminal Procedure Code, Law Number 35 of 2009 concerning Narcotics, Regulation of the Chief of Police Number 6 of 2019 concerning Criminal Investigation, Decree of the Chief of Police of the Republic of Indonesia Number: SKEP / 1205 / XI / 2000 concerning the Revision of the Collection of Implementation Guidelines and Technical Guidelines for the Criminal Investigation Process, Field Guidelines Number: Juklap / 04 / VIII / 1983, as well as a conceptual approach to understand the concept and legal doctrine related to the undercover buy method in investigating narcotics crimes. The data sources used consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of legal literature, and tertiary legal materials. Data collection was carried out through literature studies, while data analysis was carried out descriptively-analytically to link applicable legal norms with legal theories and concepts in order to answer research problems systematically and argumentatively.⁹

Based on the background description, the problems raised in this study are focused on two main problem formulations. First, how is the regulation of undercover buy techniques in the legal system in Indonesia. Second, how is the formulation of the ideal undercover buy provisions in Indonesian criminal procedure law.

⁷Dadang Hartanto and Nasrullah Hidayat, "Application of Reverse Evidence for The Crime of Money Laundering Based on The Origin of Narcotics," *Croatian International Relations Review* 27, no. 88 (2021); Kembuan, Gerungan, and Setiabudhi, "Teknik Penyidikan Pembelian Terselubung dan Penyerahan di Bawah Pengawasan Menurut Undang-Undang Nomor 35 Tahun 2009 about narcotics."

⁸Maskun Maskun, "Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore, and Vietnam," *Indonesia Law Review* 7, no. 1 (2017); Muhammad Ilham, "Tindak Pidana Narkoba yang di Lindungi oleh Aparat Kepolisian (Studi Kasus Irjen Teddy Minahasa) dalam Penyelundupan Narkoba di Sumatera Barat," *Legal System Journal* 1, no. 1 (2024): 1–15.

⁹Muhaimin, *Metode Penelitian Hukum* (Mataram, NTB: Mataram University Press, 2020), 65.

B. Undercover Buy Technique Regulation in the Indonesian Legal System

In the framework of positive Indonesian law, the undercover buy technique is a form of special investigation technique that has been normatively accommodated in the Narcotics Law. This provision is explicitly stated in Article 75 letter j, which gives BNN investigators the authority to conduct investigations using the undercover buy method and controlled by delivery.¹⁰

Conceptually, undercover buy are an investigative technique that aims to uncover organized, closed, and difficult-to-reach illicit drug trafficking networks using conventional investigative methods. This technique is implemented by disguising the identity of the investigator who then interacts directly, in the form of a drug transaction, with the perpetrator of the crime. The term "undercover" here reflects the actions of investigators who consciously hide their identities and capacities as law enforcement officers, in the interests of obtaining sufficient preliminary evidence, reaching the network structure of other perpetrators, and arresting the main perpetrators.¹¹

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In terms of benefits, the undercover buy technique has strategic value in law enforcement against narcotics crimes, especially in dismantling large-scale narcotics distribution networks that have covert operational patterns and complex distribution systems. This technique is not only oriented towards revealing acts of abuse alone, but is also directed at intervening and stopping the narcotics distribution channel to the main controller level. Therefore, the application of this technique is not appropriate if it is aimed at small users or dealers who have no connection to the network structure. Incorrect application will have an impact on the deviation of legal objectives and has

¹⁰Irwansyah Muhammad Jamal, "The Early Preventive Effort of Narcotic Abuse at Senior High School (SMA) in Aceh Besar and Sabang (A Study According to Islamic Law)," *Samarah* 4, no. 1 (2020); Komang Tri Sundari Dewi, Ni Putu Rai Yulianti, and Dewa Gede Sudika Mangku, "Implementasi Pasal 75 Huruf (j) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Terkait Teknik Penyidikan Pembelian Terselubung dan Penyerahan di Bawah Pengawasan di Polres Buleleng," *Jurnal Komunitas Yustisia* 4, no. 1 (2021): 76–84.

¹¹Kembuan, Gerungan, and Setiabudhi, "Teknik Penyidikan Pembelian Terselubung dan Penyerahan di Bawah Pengawasan Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika."

¹²Kumbul Kusdwidjanto Sudjadi and Surajiman, "Perlindungan Hukum Bagi Penyidik Polri dalam Pengungkapan Tindak Pidana Narkotika dengan Menggunakan Teknik Pembelian Terselubung," *Journal of Law and Nation* 1, no. 1 (2022): 33–47.

the potential to harm the principles of restorative justice and the principle of proportionality.¹³

Undercover buying techniques have actually been known and applied in law enforcement practices in Indonesia long before they were explicitly regulated in Law Number 35 of 2009 concerning Narcotics. This is reflected in Field Instructions Number: Juklap/04/VIII/1983, which was later amended through the Decree of the Chief of the Republic of Indonesia National Police Number: SKEP/1205/XI/2000 concerning the Revision of the Collection of Implementation Instructions and Technical Instructions for the Criminal Investigation Process. The guidelines state that undercover buying is a special method or technique in the investigation of narcotics and psychotropic crimes. This technique is carried out by placing an informant, a police officer (undercover), or another official who is authorized to act as a buyer in illegal narcotics transactions. The main purpose of implementing this method is to enable law enforcement officers to arrest perpetrators of criminal acts, whether as sellers, intermediaries, or other parties involved in the illicit trafficking chain of narcotics, along with the evidence they have at the time the transaction takes place.¹⁴

In Decree No. SKEP/1205/XI/2000, undercover buy is classified as one form of investigative action. This shows that in the early stages of the law enforcement process, undercover buys are used as a method to obtain information and evidence to uncover ongoing or planned crimes. However, when referring to the provisions of the Narcotics Law Article 75, undercover buys are expressly stated as part of the investigative technique. Both provisions indicate conceptual differences, although both investigations and inquiries do not stand alone and are interrelated. However, this has the potential to cause legal problems that ultimately relate to the evidence process in court.¹⁵

Furthermore, the regulation of undercover buy is regulated in Article 79 of the Narcotics Law, which states that investigations through undercover buy techniques, as referred to in Article 75, letter j, must be carried out by investigators based on written orders from the head of the investigation. This provision emphasizes the importance of formal legality in the implementation of undercover buy techniques, namely through an administrative mechanism in the form of an official letter of order from the leader.

¹³Sudjadi and Surajiman.

¹⁴I.V. Berdnik, "On the Peculiarities of Investigating Criminal Offenses Related to Illicit Trafficking in Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors in Modern Conditions," *Analytical and Comparative Jurisprudence*, no. 5 (2023); Miko Susanto Ginting, *Buah Yang Baik Dari Pohon Yang Baik: Menyoal Beberapa Teknik Investigasi Dan Kewenangan Penangkapan Dalam Kasus Narkotika* (Jakarta: Institute for Criminal Justice Reform (ICJR), 2022), 11-16.

¹⁵Imran Hamid et al., "Law Enforcement in Handling Narcotics Abuse Cases Based on Justice Values," *Journal of Law and Sustainable Development* 12, no. 1 (2024); Emhasan1 and Amsori, "Pengaturan Hukum Tentang Penyelidikan Tindak Pidana Narkotika Berdasarkan Pasal 5 Undang-Undang Nomor 2 Tahun 2002 about the police."

Thus, undercover buy cannot be carried out arbitrarily, suddenly, or only based on verbal orders.¹⁶

The legitimacy of the use of undercover buy techniques is also reaffirmed in the General Explanation of Paragraph 8 of the Narcotics Law, which states that the expansion of investigative techniques such as undercover buy is a response to the increasing complexity of the modus operandi in the abuse and illicit trafficking of narcotics and narcotic precursors. The development of increasingly sophisticated and hidden modus operandi, including the use of communication technology and decentralized distribution systems, requires an unconventional investigative approach that is able to reach the dark spaces of these crimes. Therefore, undercover buy techniques are an important instrument in dismantling narcotics crime networks comprehensively and precisely.

In the current Criminal Procedure Code, there is ambiguity and inconsistency because it does not explicitly recognize or regulate special investigative techniques such as undercover buy as part of the investigation process. The Criminal Procedure Code only contains general provisions regarding the procedures for investigating criminal acts, which emphasize formal and open administrative steps. This includes, among others, the issuance of arrest warrants, seizure warrants, notification letters of commencement of investigation (SPDP), letters of suspension of detention, and letters of termination of investigation (SP3). Each of these actions is regulated by normative standards that guarantee accountability, transparency, and protection of the rights of suspects in the criminal justice process.¹⁷

Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation in Article 6 paragraph (1) also regulates several forms of investigative techniques included in the series of investigative activities, namely crime scene processing, observation, interviews, surveillance, undercover, undercover buy, controlled delivery, tracking, and document research and analysis. Meanwhile, within the framework of the Narcotics Law, investigative techniques such as undercover buy and controlled delivery are included in the authority of investigators as stated in Article 75 letter j.¹⁸

Criminal procedure law through the Criminal Procedure Code as formal law should clearly distinguish the definition of investigative techniques and which actions are categorized as investigative techniques and which are coercive measures. Without clear regulations, both in general criminal procedure law (*lex generalis*) and in special laws (*lex specialis*), the use of investigative techniques in the form of undercover buy has the potential to create legal uncertainty. This uncertainty arises because there is no clear procedural basis that regulates the implementation mechanism, limitations of use, and standards of legal accountability for the actions of investigators who use these

¹⁶Dewi, Yuliartini, and Mangku, "Implementasi Pasal 75 Huruf (J) Undang-Undang Nomor 35 Tahun 2009 about narcotics Terkait Teknik Penyidikan Pembelian Terselubung Dan Penyerahan di Bawah Pengawasan Di Polres Buleleng."

¹⁷Miko Susanto Ginting et al., *Diskursus dan Pemetaan Kepentingan Para Aktor dalam Pembaruan Kitab Undang-Undang Hukum Acara Pidana* (Jakarta: Institute for Criminal Justice Reform (ICJR), 2021).

¹⁸Ginting et al.

techniques. The absence of strict procedural law at the statutory level also results in difficulties in testing which undercover buy actions are legitimate and which are illegitimate.¹⁹

The absence of clear regulations regarding the definition and procedures for implementing undercover buy techniques in the law, especially in the Narcotics Law, raises the potential for violations of human rights. This ambiguity results in the absence of legal certainty regarding the legality or otherwise of investigators' actions in implementing this technique, because there are no provisions in the regulations that are public and generally binding. As a result, legal subjects who are the targets of these actions have the right to question the legality of the actions of law enforcement officers. In addition, this uncertainty opens up space for defendants or their legal counsel to question the legality of evidence obtained through undercover buy, as well as to question the investigation procedures carried out without an explicit and detailed legal basis.²⁰

Within the framework of the Indonesian criminal law system, the principle of legality (*nullum crimen sine lege, nulla poena sine lege*) demands that any restrictions on human rights, including invasive investigative actions, must be expressly and clearly regulated in laws and regulations. If undercover buy techniques are implemented without adequate legal basis, then such actions risk being qualified as a form of abuse of power. Consequently, evidence obtained from such actions can be declared invalid in the trial process (unlawful evidence) and has the potential to cancel the entire evidence process. Not only that, parties who feel aggrieved by such actions can also file legal remedies in the form of pretrial lawsuits to test the validity of such investigative actions. Thus, detailed and explicit regulations regarding undercover buy techniques are a necessity in order to maintain the principle of due process of law, guarantee the protection of human rights, and ensure the legitimacy and accountability of the criminal justice process.²¹

The limited regulation of undercover buy techniques in both the Criminal Procedure Code and the Narcotics Law creates a real legal vacuum (*rechtsvacuum*) in law enforcement practices. This vacuum has a serious impact on the effectiveness of investigative efforts, the legitimacy of evidence in court, and guarantees of protection of the rights of suspects, especially in the context of the principle of legality and the principle of due process of law. In this situation, the renewal of criminal procedure law, especially through the preparation of the Draft Law on the Criminal Procedure Code of Indonesia (RUU KUHAP), is an urgent need to create a criminal justice system that is

¹⁹Ginting et al.

²⁰D. Gerlach, "Post-Mortem Investigations of Fatal Cases of Narcotic Addiction," *Forensic Science International* 15, no. 1 (1980); Emhasan1 and Amsori, "Pengaturan Hukum Tentang Penyelidikan Tindak Pidana Narkotika Berdasarkan Pasal 5 Undang-Undang Nomor 2 Tahun 2002 about the police."

²¹Kembuan, Gerungan, and Setiabudhi, "Teknik Penyidikan Pembelian Terselubung dan Penyerahan di Bawah Pengawasan Menurut Undang-Undang Nomor 35 Tahun 2009 about narcotics."

more responsive to the dynamics of modern crime, based on the principles of justice, legal certainty, and protection of human rights.²²

Currently, the renewal of criminal procedure law in Indonesia shows significant developments, one of which is through the Draft Law on Criminal Procedure Code. One important aspect accommodated in this bill is the regulation of special investigation techniques, including undercover buys. This technique was previously only known in sectoral regulations such as the Narcotics Law, but is now beginning to be regulated as part of general investigation techniques. This development marks a shift in the approach of criminal procedure law that is more proactive in eradicating crime. The inclusion of undercover buy techniques in the Draft Law on Criminal Procedure Code is an important momentum to review the concept, scope, and implementation mechanisms. This step is not only important in terms of the effectiveness of law enforcement, but also in order to encourage the renewal of criminal procedure law that is more accountable, transparent, and guarantees the protection of human rights.²³

However, as with the problems in the Narcotics Law, the draft of the Criminal Procedure Code Bill circulating in 2025 also only states that an investigation can be carried out using undercover buy techniques, so that there is still a legal vacuum regarding the operational mechanism of undercover buy techniques, both in terms of procedure, supervision, and legal accountability. The absence of this technical regulation opens up space for abuse of authority and arbitrary actions by law enforcement officers. Therefore, a comprehensive study is needed on the regulation of this technique in the context of the Criminal Procedure Code Bill, in order to ensure that its implementation remains in line with legal principles and does not violate citizens' rights.²⁴

C. Ideal Formulation of Undercover Buy Technique Regulation in Indonesian Criminal Procedure Law

In the context of current law enforcement, undercover buy techniques have strategic significance in criminal procedure law. This technique functions as one of the active investigation methods to uncover hidden and organized crimes. By disguising themselves as parties who appear to be involved in a crime, law enforcement officers can obtain authentic initial evidence and uncover criminal networks that are difficult to access through conventional methods. Therefore, in the Indonesian criminal justice system, the regulation of undercover buy techniques is an important element to ensure the effectiveness of crime eradication without ignoring the principles of the rule of law.²⁵

²²Joko Sriwidodo, *Perkembangan Sistem Peradilan Pidana di Indonesia* (Yogyakarta: Penerbit Kepel Press, 2020).

²³Ginting et al., *Diskursus dan Pemetaan Kepentingan Para Aktor dalam Pembaruan Kitab Undang-Undang Hukum Acara Pidana*.

²⁴Supriyadi Widodo Edyono et al., *Memperkuat Revisi Undang-Undang Narkotika Indonesia Usulan Masyarakat Sipil* (Jakarta: Institute for Criminal Justice Reform (ICJR), 2017).

²⁵Syarhan, Jaya, and Hartono, "Prevention of the Crime of Using Narcotics by Children as a Form of Opened System."; Syamsuddin, Hambali Thalib, and Askari Razak, "Analisis Kriminologis Terhadap

The undercover buy technique, which was initially only known in a limited way in the Narcotics Law, has now gained wider legitimacy through its regulation in the Criminal Procedure Code Bill. The formulation of this technique in the Criminal Procedure Code Bill shows the expansion of the scope of its use which is no longer limited to narcotics crimes, but can also be applied to other types of crimes that are hidden and organized, such as human trafficking, corruption, and other transnational crimes.²⁶

Although the normative recognition of undercover buy techniques in the Criminal Procedure Code Bill is an important step forward, it is necessary to be aware of a number of legal risks inherent in their use. One of the main risks is the potential for violations of human rights, especially the right to personal liberty, the right to legal protection, and the principle of due process of law. This technique, which involves disguise and direct interaction with perpetrators of crimes, if not strictly regulated, can open up space for abuse of power, entrapment, and actions that exceed legal limits.²⁷

As a normative basis, the principle of due process of law must be the main foundation in formulating regulations regarding undercover buy techniques in criminal procedure law. This principle demands that every action by law enforcement officers, including the use of special investigative methods such as undercover buy, be carried out legally, fairly, transparently, and not arbitrarily. By referring to the due process of law, the formulation of regulations regarding undercover buy techniques not only serves to strengthen the effectiveness of investigations, but also prevents abuse of authority that can damage the legitimacy of the criminal justice system.²⁸

The lack of regulation on undercover buy techniques in current positive Indonesian law has created a legal vacuum that has serious impacts on legal certainty, protection of human rights, and the effectiveness of criminal law enforcement. Therefore, both the Criminal Procedure Code Bill and the Narcotics Law need to formulate regulations by further expanding and deepening the regulation on undercover buy techniques. One crucial step in this update is the importance of including an explicit legal definition of undercover buy techniques in the text of the law. The addition of this definition aims to provide normative clarity, establish firm conceptual boundaries, and establish operational standards that can be legally accounted for.

In addition, a clear definition also serves to provide a better understanding to law enforcement officers, legal practitioners, academics, and the general public regarding the nature, purpose, and scope of this technique. Thus, misconception or error in distinguishing undercover buy from other investigative techniques such as

Tindak Pidana Penyalahgunaan dan Peredaran Narkotika dan Obat-Obatan Terlarang," *Journal of Lex Philosophy (JLP)* 4, no. 2 (2023).

²⁶Ginting et al., *Diskursus dan Pemetaan Kepentingan Para Aktor dalam Pembaruan Kitab Undang-Undang Hukum Acara Pidana*.

²⁷Supriyono, "Sistem Peradilan Pidana Berdasarkan Rancangan Undang-Undang Hukum Acara Pidana," *Fenomena* 17, no. 2 (2023): 194–205.

²⁸Supriyono.

undercover operations can be avoided. Clarity of definition is also important to ensure that the use of this technique remains within the legal corridor, avoids violations of individual constitutional rights, and strengthens the legitimacy of evidence obtained through this technique in the evidentiary process in court.

inclusion of undercover buy regulations in the Criminal Procedure Code Bill makes undercover buy a general investigative technique. Therefore, objective criteria are needed regarding when and to what crimes this technique can be applied. These objective criteria are needed to limit the use of undercover buy techniques so that they are not carried out arbitrarily against ordinary crimes that can actually be revealed by conventional investigative methods. In other words, this technique may only be applied when ordinary methods are ineffective or inadequate to reveal the crime.

Substantive requirements in the form of written permission or orders from authorized officials are crucial elements that must be strictly regulated in the use of undercover buy techniques. As in Article 79 of the Narcotics Law which states that undercover buy are carried out by investigators on written orders from superiors. This provision normatively shows a commitment to the principles of accountability and legality in investigative actions.²⁹ The absence of this temporal limit has the potential to cause legal uncertainty and abuse of authority, because operations can take place in an uncontrolled time and delay the original purpose of the investigation. In order to maintain the effectiveness and proportionality of the investigation, undercover buy permits should ideally be accompanied by provisions regarding the validity period of the permit and an extension mechanism if necessary.

In addition, in its implementation, the use of undercover buy techniques must be accompanied by systematic recording in the form of Implementation Reports. Every undercover activity and interaction carried out by investigators must be documented in detail, to ensure operational transparency and accountability. This recording must be reported periodically to authorized institutions, such as the Police or BNN, as part of the internal and external monitoring system according to the principle of checks and balances in criminal procedure law.

However, the granting of this permit is not accompanied by provisions on the implementation period of the covert purchase, of course this can result in a delay in the implementation time. In implementing this technique, it is also necessary to include notes in the minutes and require law enforcers who carry out covert purchases to record every activity carried out which is then reported to the police or BNN as a form of supervision in accordance with the provisions of laws and regulations.

In the implementation of undercover buy techniques, setting strict limits on what is permitted and what is prohibited is a must in order to maintain the principles

²⁹Indra Kusuma Haryanto et al., "Ratio Legis of Special Minimum Limit Regulation in Narcotics Law," *International Journal of Research in Business and Social Science* (2147- 4478) 10, no. 7 (2021); Yosua Alexander Martua, Milda Istiqomah, and Ladito Risang Bagaskoro, "Urgensi Reformulasi Ketentuan Pembelian Terselubung dalam Undang-Undang Narkotika untuk Mencegah Penyalahgunaan Wewenang oleh Penegak Hukum," *RechtJiva* 1, no. 1 (2024): 62–79.

of due process of law and fair trial in the criminal justice system. For example, investigators are allowed to carry out fake transactions but are prohibited from provoking new criminal acts. Investigators are also not allowed to use violence, threats, or trickery that exceeds reasonable limits. This provision is very important to ensure that investigators' actions remain proportional, do not violate the principles of fair trial, and to avoid misuse that can cause evidence to become invalid in the eyes of the law.³⁰

Concerns about investigators' actions that are beyond the limits, it is also necessary to add criminal sanctions and administrative sanctions for investigators who misuse this technique, for example by engineering cases or carrying out illegal traps. The regulation of these sanctions has a preventive function to prevent deviations, as well as a repressive function to take firm action against any violations, in order to ensure that the undercover buy technique is truly used legally, proportionally, and aims to find material truth without sacrificing the principle of justice.³¹

By making the principle of due process of law a fundamental principle in the criminal justice system, every action of law enforcement officers must be subject to fair, rational, and legally accountable legal procedures. The undercover buy technique, as an interventionist investigation method and containing the risk of violating individual constitutional rights, such as the right to privacy and the right to be free from arbitrary treatment, must be strictly regulated in positive legal norms.³²

In this context, due process of law demands that covert buy techniques can only be carried out based on regulations that explicitly regulate: (1) the types of criminal acts that can be the object of this technique; (2) the existence of written permission from an independent authority, such as a district court judge; (3) procedures for implementation that are documented through official minutes; and (4) monitoring and accountability mechanisms, both internally and externally. This is in line with the view that actions that limit human rights can only be justified as long as they are regulated by applicable law, with a strong basis of legality and proportionality.³³

The ideal formulation in the Criminal Procedure Code Bill and the revised Narcotics Law must guarantee that this technique is only used as a last resort, in urgent conditions, and against organized crimes that are difficult to uncover by conventional means. In addition, the validity of evidence obtained through this technique must also be assessed based on the principle of justice, by considering whether the investigator's

³⁰Faisal Matogu and Elis Rusmiati, "Prinsip Due Process of Law dalam Ketentuan Pasal 29 Undang-Undang Nomor 46 Tahun 2009 Tentang Pengadilan Tindak Pidana Korupsi," *Jurnal Mercatoria* 16, no. 2 (2023).

³¹Kembuan, Gerungan, and Setiabudhi, "Teknik Penyidikan Pembelian Terselubung Dan Penyerahan di Bawah Pengawasan Menurut Undang-Undang Nomor 35 Tahun 2009 about narcotics."

³²Supriyono, "Sistem Peradilan Pidana Berdasarkan Rancangan Undang-Undang Hukum Acara Pidana."

³³Martua, Istiqomah, and Bagaskoro, "Urgensi Reformulasi Ketentuan Pembelian Terselubung dalam Undang-Undang Narkotika untuk Mencegah Penyalahgunaan Wewenang oleh Penegak Hukum."

actions are in accordance with legitimate procedures and do not violate the basic rights of the suspect.³⁴

Thus, the regulation of undercover buy techniques that are in line with the due process of law will strengthen the legitimacy of Indonesian criminal procedure law, increase public trust in law enforcement institutions, and provide assurance that the law enforcement process is not carried out in a manner that violates the principles of justice and human rights.

D. Conclusion

The undercover buy technique has been recognized in the Narcotics Law as a special investigation method, but has not been regulated in detail in the Criminal Procedure Code. This ambiguity creates legal uncertainty, opens up the potential for human rights violations, and complicates evidence in court. Although the 2025 Criminal Procedure Code Bill has begun to accommodate this technique, the regulations are still general and do not include technical procedures or monitoring mechanisms. Therefore, a firm and comprehensive update of criminal procedure law is needed to ensure the legality, accountability, and protection of citizens' rights in the application of undercover buy techniques.

Undercover buy techniques are an important and strategic investigative method in dealing with hidden and organized crimes. Although it has now received normative recognition in the Narcotics Law and the Criminal Procedure Code Bill, the existing regulations are still inadequate to guarantee protection of human rights and legal certainty. Therefore, a more comprehensive and in-depth regulatory formulation is needed, by making due process of law a basic principle in every stage of its implementation. These regulations must include limitations on the types of crimes that can be applied, strict and time-limited licensing procedures, systematic operational documentation, and transparent and accountable monitoring mechanisms. In addition, it is necessary to emphasize the prohibition on investigators' actions that exceed their authority and the imposition of sanctions on violators as a form of legal control. Thus, undercover buy techniques regulations based on the principles of justice and legality will not only increase the effectiveness of investigations, but also strengthen the legitimacy of the criminal justice system in a democratic state of law.

As a follow-up step to the urgency of regulating undercover buy techniques in the Indonesian criminal law system, it is necessary to prepare comprehensive technical regulations. These regulations must include implementation requirements, operational procedures, monitoring mechanisms, and legal accountability of investigators so that the use of this technique does not deviate from the principles of criminal procedure law and human rights protection. Harmonization between the Criminal Procedure Code as *lex generalis* and sectoral laws such as the Narcotics Law also needs to be carried out, in order to avoid norm conflicts and ensure uniformity in

³⁴Matogu and Rusmiati, "Prinsip Due Process of Law dalam Ketentuan Pasal 29 Undang-Undang Nomor 46 Tahun 2009 Tentang Pengadilan Tindak Pidana Korupsi."

investigative practices. In addition, strengthening supervision both internally and externally is crucial to ensure the accountability of investigators in using this technique.

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