

ISSN 2809-672X (Online)
IUS POSITUM: Journal of Law Theory and Law Enforcement
https://journal.jfpublisher.com/index.php/jlte
Vol. 5 Issue 3, July 2026
doi.org/10.56943/jlte.v5i3.1126

Overlapping Jurisdiction and Coercive-Circumstance Accountability in Indonesian Narcotics Investigation

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ABSTRACT

This study analyzes how Law Number 35 of 2009 concerning Narcotics allocates investigative authority between the Indonesian National Police (Polri) and the National Narcotics Agency (BNN), and how the accountability of police officers is assessed, including under Article 42 of Law Number 1 of 2023 concerning the Criminal Code. Using doctrinal legal research with statutory, conceptual, and case approaches, the study analyzed legislation, court decisions, and scholarly literature through descriptive, evaluative, and prescriptive steps. The analysis found that the two institutions hold concurrent and coequal investigative competence under Article 81, yet no provision sets a rule of precedence. This gap allows divergent coercive regimes to coexist. For example, Article 76 permits arrest of up to three days, extendable by three, whereas the Criminal Procedure Code limits arrest to one day unless another law provides otherwise. Special techniques such as undercover buying and wiretapping are authorized without statutory procedure, and the accountability of officers who are suspects remains within the same organization, because most BNN investigators are Polri members. These findings indicate that fragmentation originates in statutory design. Potential implications include challenges to evidence integrity and inconsistent treatment of suspects, which require empirical testing. The study recommends a statutory rule of precedence with case notification, procedures for special techniques, a shared evidence protocol, a uniform standard for classifying users and traffickers, and independent review of cases involving officers.

Keywords: *Coercive Circumstances, Due Process, Jurisdictional Overlap, Narcotics Investigation, Police Accountability*

INTRODUCTION

In August 2025, during the drafting of the new Criminal Procedure Code, the Director of Legal Affairs of the National Narcotics Agency (Badan Narkotika Nasional, BNN) warned that the draft did not list BNN investigators among those exempt from Indonesian National Police (Polri) coordination and supervision. As drafted, BNN would have needed Polri's coordination before making arrests, ordering detention, and submitting case files to prosecutors.[1] The warning exposed a question that narcotics law has left partly open since 2009, namely how investigative authority is divided when both institutions may lawfully investigate the same offense. The question remains pressing because BNN itself reported that past-year drug use fell from 1.95 percent in 2022 to about 1.7 percent in 2023, a decline that still leaves a continuing demand for effective enforcement.[2]

The dual structure has a policy background. Before 2009, BNN operated mainly as a coordinating body, and investigation of narcotics offenses rested with Polri. Law Number 35 of 2009 concerning Narcotics established BNN as a statutory institution, charged it with preventing and eradicating narcotics abuse and illicit trafficking, and gave it authority to conduct inquiries and investigations.[3] The statute left Polri's general authority intact, and Article 81 recognizes investigators from both institutions as competent to investigate abuse and illicit trafficking.[4] The statute does not state whether concurrent authority was a deliberate design or a by-product of that arrangement, and the analysis below returns to this point.

The overlap is therefore textual and not merely hypothetical. Polri holds general investigative authority under Article 14(1)(g) of Law Number 2 of 2002 concerning the Indonesian National Police, whereas BNN investigators hold the specific powers listed in Article 75 of the Narcotics Law, including interception, undercover buying, and controlled delivery.[5] The two regimes have also diverged on coercive measures. Under Article 19(1) of the 1981 Criminal Procedure Code, arrest was limited to one day, while Article 76 of the Narcotics Law permits arrest of up to three days, extendable by a further three.[6] Rahman identified this difference

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[1] Ady Thea, "RUU KUHAP Luput Mengatur Peran Penting Penyidik BNN," hukumonline.com, 2025, https://www.hukumonline.com/berita/a/ruu-kuhap-luput-mengatur-peran-penting-penyidik-bnn-lt689c3389b8c8d/.

[2] Moch Mardiansyah Al Afghani and Yuniardi Ferdinan, "BNN Sebut Prevalensi Penyalahgunaan Narkotika Turun Pada 2023," ANTARA News Jawa Barat, 2023, https://jabar.antaranews.com/berita/486720/bnn-sebut-prevalensi-penyalahgunaan-narkotika-turun-pada-2023.

[3] Republik Indonesia, "UU No. 35 Tahun 2009 Tentang Narkotika," Pub. L. No. 35, Sekretariat Negara (2009), https://peraturan.bpk.go.id/details/38776/uu-no-35-tahun-2009.

[4] Republik Indonesia.

[5] Republik Indonesia, "UU No. 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia," Sekretariat Negara § (2002); Republik Indonesia, UU No. 35 Tahun 2009 tentang Narkotika.

[6] Republik Indonesia, "UU No. 8 Tahun 1981 Tentang Hukum Acara Pidana ," Sekretariat Negara § (1981); Republik Indonesia, UU No. 35 Tahun 2009 tentang Narkotika.

as a source of legal uncertainty.[7] Whether the Code applicable since 2 January 2026 settled the concern that BNN raised at the drafting stage requires examination.[8] Whether such differences have produced documented jurisdictional disputes in practice is a separate empirical question. This study does not assert such disputes. It treats the overlap as a normative problem arising from the text and asks what the text leaves undetermined: which institution takes precedence, on what criteria, and with what consequences for the validity of arrests and evidence.

The problem carries more weight because narcotics investigation relies on intrusive techniques that need clear limits. In this article, legality means that a measure rests on an express statutory basis. Necessity means that less intrusive means were inadequate, and proportionality means that the intrusion matches the gravity of the offense and the evidence available. Accountability means that the officer and the institution answer for the measure. In narcotics investigation, these principles are enforced through judicial authorization where the statute requires it, through pretrial review, and through the trial judge's assessment of the evidence. Procedural irregularities at the investigation stage can therefore affect the validity of evidence and the outcome of the case.

Earlier studies show why these limits matter. Udin and Widoyoko, analyzing District Court Decision Number 936/Pid.Sus/2021/PN.SDA, found that criminal responsibility in narcotics cases depends on proof of the elements of the offense and on valid evidence sufficient to establish the judge's conviction.[9] This finding underscores the importance of legally obtained evidence, which in turn depends on clear and coordinated investigative authority. Winarno, Amiq, and Prawesthi examined narcotics offenses committed by police officers and concluded that an officer who receives a final criminal sanction from a general court also faces sanctions under the police professional ethics code, including dishonorable dismissal.[10] Budiarsih and Sushanty found that criminal proceedings against officers follow the same mechanism as those against the public, while the enforcement of professional ethical accountability remained problematic.[11] These

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[7] Kholilur Rahman, "Problem Pengaturan Upaya Paksa Penangkapan Terhadap Pelaku Tindak Pidana Narkotika," *Jurnal Hukum Ius Quia Iustum* 27, no. 3 (September 1, 2020), https://doi.org/10.20885/iustum.vol27.iss3.art3.

[8] Pemerintahan Republik Indonesia, "UU No. 20 Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana," Sekretariat Negara § (2025), https://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025.

[9] M. Bachrul Ulum Udin and Wreda Danang Widoyoko, "THE LAW ENFORCEMENT OF NARCOTICS CRIME," *Journal of Court and Justice* 1, no. 4 (December 1, 2022): 11–21, https://doi.org/10.56943/jcj.v1i4.207.

[10] Hadi Winarno, Bahrul Amiq, and Wahyu Prawesthi, "LAW ENFORCEMENT ON DRUG ABUSE PERPETRATORS COMMITTED BY INDONESIAN POLICEMEN," *Journal of Law Theory and Law Enforcement* 2, no. 2 (March 9, 2023): 16–29, https://doi.org/10.56943/jlte.v2i2.281.

[11] Budiarsih Budiarsih and Vera Rimbawani Sushanty, "LAW ENFORCEMENT AGAINST POLICE OFFICERS INVOLVED IN DRUG ABUSE BASED ON JUSTICE VALUES," *Journal of Court and Justice* 3, no. 4 (December 27, 2024): 25–40, https://doi.org/10.56943/jcj.v3i4.662.

findings are relevant here because officers who investigate narcotics may themselves become suspects, which raises the question of which institution should investigate them and whether institutional conflicts of interest arise.

Other research has addressed operational conditions. Sumaryanto and colleagues studied narcotics enforcement by the Tanjung Perak Port Police Narcotics Unit and reported obstacles including limited personnel, weak facilities, low public legal awareness, and the size of the area covered.[12] Capacity constraints of this kind bear on how cases are allocated between Polri and BNN, although that study did not address the allocation itself. The studies reviewed here concentrate on a single institution, on sanctions, or on substantive criminal law. None of them, as far as this review could establish, analyzes the relationship between Polri and BNN investigative authority as a problem of legal design, and this is the gap the present study addresses.

The question of who investigates and who answers for the investigation is sharpest where Polri's own officers are involved. They may be suspects in narcotics cases, as in the studies above, or actors whose coercive conduct must be assessed under Article 42 of Law Number 1 of 2023 concerning the Criminal Code, which has been in force since 2 January 2026.[13] Article 42 can determine whether an officer's conduct is treated as a criminal, disciplinary, or civil matter, and the institution that makes that assessment is usually the officer's own. Where the investigating agency, the officer under scrutiny, and the body supervising investigators belong to one organization, the allocation of investigative authority and the standard for assessing coercive circumstances become connected questions of institutional accountability. This study therefore treats the Polri and BNN overlap and the application of Article 42 to police conduct as two aspects of a single problem, which is the legal limits of police investigative power in narcotics enforcement.

Accordingly, this study analyzes how Law Number 35 of 2009 allocates investigative authority between Polri and BNN, examines the safeguards governing special investigative techniques and evidence handling, and assesses the accountability of police officers, including under Article 42 when coercive circumstances are invoked. Its contribution is a doctrinal account of the points at which overlapping authority remains undefined, together with specific parameters for coordination and procedural safeguards that follow from that account.

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[12] Dr. A. Djoko Sumaryanto et al., "THE IMPLEMENTATION OF LEGAL NORM AGAINST DRUGS ABUSE OF DOUBLE L PILLS AT TANJUNG PERAK PORT POLICE SURABAYA," *Journal of Law Theory and Law Enforcement* 3, no. 3 (November 15, 2024): 53–62, https://doi.org/10.56943/jlte.v3i3.646.

[13] Republik Indonesia, "UU No. 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," Pub. L. No. 1, Sekretariat Negara (2023), https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023.

RESEARCH METHODOLOGY

This study used doctrinal legal research, which provides a systematic exposition of the rules governing a legal category, analyzes the relationships among those rules, and explains areas of difficulty.[14] The study applied the statutory, conceptual, and case approaches commonly used in Indonesian normative legal research.[15] The statutory approach was used to analyze Law Number 35 of 2009 concerning Narcotics, Law Number 2 of 2002 concerning the Indonesian National Police, the 1981 Criminal Procedure Code and its successor, Law Number 20 of 2025, Law Number 1 of 2023 concerning the Criminal Code, and Police Regulation Number 7 of 2022 concerning the Professional Code of Ethics. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials served as a comparative standard for assessing police use of force.[16] These materials were selected because each of them allocates investigative authority, regulates the measures investigators may take, or sets the standard of accountability for police conduct in narcotics cases.

The conceptual approach was used to define and relate four concepts that organize the analysis.[17] Investigative authority was examined to determine which institution may act, and over what subject matter. Special investigative techniques were examined to identify the safeguards attached to interception, undercover buying, and controlled delivery. Overlap was examined to distinguish provisions that are complementary, because they assign different functions to each institution, from provisions that are redundant, conflicting, or ranked against each other under the principles of lex specialis and lex posterior. Accountability was examined across criminal, professional, and civil responsibility, including the application of Article 42 of the Criminal Code to police conduct under coercive circumstances. The case approach examined published court decisions, beginning with District Court Decision Number 936/Pid.Sus/2021/PN.SDA, to see how courts treat evidence and criminal responsibility in narcotics investigations.[18] Constitutional Court Decision No. 21/PUU-XII/2014 and Supreme Court Decisions No. 10 K/Pid.Sus/2015 and No. 329 K/Pid.Sus/2016 were also analyzed for their treatment of initial evidence, entrapment, and the authenticity of evidence.[19] Decisions were selected when they concerned narcotics

[14] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (October 1, 2012): 83, https://doi.org/10.21153/dlr2012vol17no1art70.
[15] Peter Mahmud Marzuki, *Penelitian Hukum*, Revision Edition (KENCANA, 2021).
[16] United Nations, "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" (1990).
[17] Marzuki, *Penelitian Hukum*.
[18] Udin and Widoyoko, "THE LAW ENFORCEMENT OF NARCOTICS CRIME."
[19] Miko Susanto Ginting, *Buah Yang Baik Dari Pohon Yang Baik: Menyoal Beberapa Teknik Investigasi Dan Kewenangan Penangkapan Dalam Kasus Narkotika*, ed. Maidina Rahmawati (Jakarta Selatan: Institute for Criminal Justice Reform (ICJR), 2022).

investigation and the evidentiary consequences of how it was conducted, and each was read for its facts, the legal issue, and the reasoning of the court. Secondary materials consisted of peer-reviewed journal articles, which were used to identify doctrinal positions, and official and professional documents, including reports of legislative deliberations, which were used to establish institutional context.

All materials were gathered through library research and analyzed in three connected steps. The descriptive step catalogued the relevant provisions and decisions and recorded, for each institution, its powers, the conditions attached to them, and the safeguards that apply. The evaluative step compared the two institutional regimes with each other and measured them against the principles of legality, necessity, proportionality, and accountability, in order to identify gaps, inconsistencies, and unresolved questions of precedence. The prescriptive step used the results of the evaluation to formulate parameters for coordination and procedural safeguards, so that each recommendation rests on a specific deficiency identified earlier in the analysis.

RESULT AND DISCUSSION

Concurrent Authority without a Rule of Precedence

The analysis found that the legal bases of Polri and BNN are concurrent, not hierarchical. They are therefore overlapping in a stronger sense than complementary. Polri holds general investigative authority over all criminal offenses under Article 14(1)(g) of Law Number 2 of 2002, and Article 81 of the Narcotics Law grants Polri and BNN investigators the same competence over narcotics abuse and illicit trafficking. Lasmadi reached a similar reading and rejected the claim that BNN holds broader investigative powers than Polri.[20] The Narcotics Law is lex specialis in that it adds special powers listed in Article 75, such as wiretapping, undercover buying, and controlled delivery. Lex specialis explains which rules govern the substance of the powers, but it does not explain which institution should investigate a given case. None of the provisions examined supplies a rule of precedence, a subject-matter limit, or a territorial limit that would allocate a case to one institution.

The personnel structure deepens the overlap. According to the Head of BNN, most BNN investigators are Polri members assigned to the agency, assisted by civil service investigators.[21] The two institutions are therefore not separate bodies with different professional origins. They draw on the same corps, which makes a rule of precedence more necessary and also makes coordination failures harder to detect from outside. The statute does not state whether concurrent

[20] Sahuri Lasmadi, "Issuance of a Search Warrant for Narcotics Crime in Indonesia," *LAW REFORM* 16, no. 1 (March 27, 2020): 45–57, https://doi.org/10.14710/lr.v16i1.30304.

[21] Ady Thea, "BNN Minta Penguatan Kewenangan Dalam Revisi UU Narkotika," hukumonline.com, 2026, https://www.hukumonline.com/berita/a/bnn-minta-penguatan-kewenangan-dalam-revisi-uu-narkotika-lt69d4f424296aa/.

competence was a deliberate design or an unresolved compromise. The dispute remained active after 2009. In 2025, BNN objected that the draft Criminal Procedure Code omitted its investigators from the list of those exempt from Polri coordination, and in 2026 BNN asked that its name and investigative role be preserved in the Narcotics Bill.[22] This continuing dispute indicates that the allocation of authority was never settled by the text.

Divergent Coercive Measures and Their Practical Consequences

The clearest example of divergence concerns arrest. Under the 1981 Criminal Procedure Code, arrest was limited to one day. Article 76 of the Narcotics Law, by contrast, permits arrest for up to three days and allows one extension of the same length, which gives a maximum of six days.[23] Rahman identified this difference as a source of legal uncertainty.[24] The Criminal Procedure Code that has applied since 2 January 2026 limits arrest to one day, but it does so "unless provided otherwise by law," as the enacted text has been reported.[25] On this reading, Article 76 survives as a statutory exception, so the divergence continues in a new form. The new Code also provides that investigators from civil service and "certain investigators" may arrest only on the order of a Polri investigator, with exceptions for the Attorney General's Office, the Corruption Eradication Commission, and the Navy.[26] Whether BNN investigators fall within the category of certain investigators is, on the sources consulted, unsettled, and it is exactly the question BNN raised.

The practical consequences of the divergence can be stated with different degrees of confidence. Because the arrest period depends on the statute under which an investigator acts, the same suspect could be held for one day or for up to six days depending on the institution that made the arrest and the legal basis it invoked. This is a consequence that follows from the text. Whether it has produced forum selection, inconsistent arrest practice, or successful challenges to the legality of arrests cannot be shown from the materials examined, and this study treats those outcomes as hypotheses. The available evidence on review mechanisms is nonetheless relevant. Pretrial review has been described as limited largely to checking that arrest documents exist, without testing whether the

[22] Thea, "RUU KUHAP Luput Mengatur Peran Penting Penyidik BNN."
[23] Ginting, *Buah Yang Baik Dari Pohon Yang Baik: Menyoal Beberapa Teknik Investigasi Dan Kewenangan Penangkapan Dalam Kasus Narkotika*.
[24] Rahman, "Problem Pengaturan Upaya Paksa Penangkapan Terhadap Pelaku Tindak Pidana Narkotika."
[25] "KUHAP Baru: Bunyi Pasal Penyitaan, Penyadapan, Penangkapan Dan Penahanan," Liputan6, 2025, https://www.liputan6.com/news/read/6215840/kuhap-baru-bunyi-pasal-penyitaan-penyadapan-penangkapan-dan-penahanan; Pemerintahan Republik Indonesia, UU No. 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana.
[26] Pemerintahan Republik Indonesia, UU No. 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana.

grounds for arrest were adequate.[27] Where an arrest period varies by institution, a weak review mechanism leaves the divergence uncorrected.

Special Investigative Techniques and the Gap in Safeguards

Article 75 letter i authorizes wiretapping once sufficient initial evidence exists, and Article 75 letter j authorizes undercover buying and controlled delivery. The provisions that follow do not describe how these techniques are to be carried out. The main safeguard identified in the statute is a written order from a superior for undercover operations under Article 79. Ginting observed that the procedure for undercover buying rests on police field guidelines issued before the Narcotics Law, and that the technique closely resembles entrapment, which is generally prohibited.[28] A Supreme Court judge reported that the lack of a uniform technical procedure leads units to apply the technique differently and that evidence obtained through it is often contested. The same account cites a Medan case in which the defendant was acquitted because the operation lacked superior approval, although the account does not give the case number.[29] Annisa and colleagues likewise examined the legal distortions that arise from the use of undercover buying by police investigators.[30] According to Ginting, Supreme Court Decision No. 10 K/Pid.Sus/2015 treated entrapment as a concern and required that, for an undercover or controlled-delivery operation to be valid, the defendant must have had prior knowledge of the offense and criminal culpability.[31]

For wiretapping, the safeguards are even less developed. Article 136 of the new Criminal Procedure Code states that detailed rules on wiretapping are to be set in a separate law, which had not been enacted when the provision was commented on.[32] Until that law exists, the conditions under which narcotics investigators may intercept communications depend on the general terms of Article 75 letter i. These findings mean that the principle that special powers must remain subject to legality, necessity, proportionality, and accountability cannot yet be applied through concrete rules. Legality is only partly met, because the powers have a statutory basis but no statutory procedure. Necessity and

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[27] Ginting, *Buah Yang Baik Dari Pohon Yang Baik: Menyoal Beberapa Teknik Investigasi Dan Kewenangan Penangkapan Dalam Kasus Narkotika*.

[28] Ginting.

[29] Ardiansyah Iksaniyah Putra, "Problematika Pembuktian Melalui Undercover Buy Perkara Narkotika," Dandapala, 2025, https://dandapala.com/article/detail/problematika-pembuktian-melalui-undercover-buy-perkara-narkotika.

[30] Febrina Annisa et al., "Distorsi Hukum Penggunaan Teknik Undercover Buy Dalam Tindak Pidana Narkotika Oleh Penyidik Kepolisian Republik Indonesia," *Nagari Law Review* 7, no. 2 (2023).

[31] Ginting, *Buah Yang Baik Dari Pohon Yang Baik: Menyoal Beberapa Teknik Investigasi Dan Kewenangan Penangkapan Dalam Kasus Narkotika*.

[32] Muhammad Raihan Nugraha, "Jenis Upaya Paksa Baru Dalam KUHAP Baru," Klinik Hukumonline, 2026, https://www.hukumonline.com/klinik/a/jenis-upaya-paksa-baru-dalam-kuhap-baru-lt697b43bc4dcae/.

proportionality depend on internal judgment because no external authorization standard is specified in the provisions examined. Accountability is exercised mainly at trial, where defense counsel must challenge the evidence after the intrusion has already occurred. The special nature of narcotics investigation therefore remains a justification for departing from ordinary safeguards only to the extent that the legislature has not yet defined those safeguards.

Evidence Management under Concurrent Investigation

The evidentiary requirements of narcotics cases make the absence of coordination rules consequential. Article 75 empowers investigators to seal seized narcotics and to order laboratory testing of samples, and the validity of the resulting evidence is judged against Article 184 of the Criminal Procedure Code. Constitutional Court Decision No. 21/PUU-XII/2014 held that "sufficient initial evidence" must be understood as evidence within the meaning of that article, which raises the standard that investigators of both institutions must meet. Ginting also reported that the Supreme Court, in Decision No. 329 K/Pid.Sus/2016, treated the authenticity of evidence as doubtful when laboratory testing was absent.[33] Udin and Widoyoko analyzed a narcotics case decided in the Sidoarjo District Court and concluded that the court's assessment of criminal responsibility rested on the elements of the offense and on valid evidence sufficient to support the judge's conviction.[34] Their analysis confirms that the evidentiary record, and not the identity of the investigating institution, determines the outcome at trial.

This point bears on the question of whose evidence is admissible when both institutions have investigated. Because Article 81 makes both competent investigators, evidence is not inadmissible solely because it was gathered by one rather than the other. The risk lies elsewhere. If two institutions act on the same case without a shared registry or transfer protocol, the custody record of a seized item may be incomplete at the point of handover, and a defense challenge to authenticity then has a documentary basis. The provisions examined contain no rule governing the transfer of seized narcotics or case files between the two institutions. This study does not claim that such failures have occurred. It identifies the gap and notes that the consequences of a broken custody record fall on the integrity of the prosecution, whatever the intentions of the investigators.

Classification of Users and Traffickers as a Jurisdictional Question

The distinction between users and traffickers affects jurisdiction because the first classification of a suspect is made by whichever institution investigates. Laksana and colleagues found that Articles 111, 112, and 127 of the Narcotics Law overlap in practice, with officials sometimes charging persons holding small

[33] Ginting, *Buah Yang Baik Dari Pohon Yang Baik: Menyoal Beberapa Teknik Investigasi Dan Kewenangan Penangkapan Dalam Kasus Narkotika*.
[34] Udin and Widoyoko, "THE LAW ENFORCEMENT OF NARCOTICS CRIME."

quantities under the heavier provisions that carry up to twenty years, instead of Article 127, which carries up to four years for users of Class I narcotics.[35] They attributed the inconsistency to unclear boundaries between the categories and to the lack of technical guidelines. Ginting added that the integrated assessment team that informs rehabilitation decisions operates without a basis in the statute itself.[36] In the present context, this means that classification depends on discretion exercised at the investigation stage and that no common standard binds both institutions. Differences in institutional priorities could therefore produce different outcomes for similar suspects. The head of BNN described the agency's mandate as covering prevention, enforcement, and rehabilitation, whereas Polri's mandate is general.[37] Whether these mandates lead to different classification practices is a hypothesis that requires empirical testing, but a common statutory standard would remove the need for it.

Police Officers as Suspects and the Structure of Accountability

The position of police officers who are suspected of narcotics offenses adds a further layer. Winarno, Amiq, and Prawesthi concluded that an officer who receives a final criminal sanction from a general court also faces sanctions under the police professional ethics code, including dishonorable dismissal.[38] Budiarsih and Sushanty found that the criminal process against officers follows the same mechanism as that for the public, while the enforcement of ethical accountability remained a problem.[39] Ismail, Hapsoro, and Rezaldy argued that accountability for police officers who violate the law requires fair proceedings, effective remedies for victims, and the elimination of impunity.[40] Their study concerned police violence generally. The accountability framework it describes applies to narcotics enforcement because officers who abuse investigative powers may also violate procedural and human rights.

The jurisdictional question is whether Polri or BNN investigates an officer suspected of a narcotics offense. Article 81 does not distinguish by the status of the suspect, so both are competent. Because BNN's investigators are largely Polri members, neither route removes the investigation from the officer's own

[35] Andri Winjaya Laksana et al., "The Disparities in Punishment for Narcotic Addiction: Does It Reflect the Value of Justice?," *Jurnal Media Hukum* 32, no. 1 (May 14, 2025): 134–50, https://doi.org/10.18196/jmh.v32i1.25678.

[36] Ginting, *Buah Yang Baik Dari Pohon Yang Baik: Menyoal Beberapa Teknik Investigasi Dan Kewenangan Penangkapan Dalam Kasus Narkotika*.

[37] Thea, "BNN Minta Penguatan Kewenangan Dalam Revisi UU Narkotika."

[38] Winarno, Amiq, and Prawesthi, "LAW ENFORCEMENT ON DRUG ABUSE PERPETRATORS COMMITTED BY INDONESIAN POLICEMEN."

[39] Budiarsih and Sushanty, "LAW ENFORCEMENT AGAINST POLICE OFFICERS INVOLVED IN DRUG ABUSE BASED ON JUSTICE VALUES."

[40] Ismail Ismail, Fakhris Lutfianto Hapsoro, and Andi Muhammad Rezaldy, "Akuntabilitas Penegakan Hukum Terhadap Aparat Kepolisian Yang Melakukan Tindak Kekerasan," *Jurnal Hukum Ius Quia Iustum* 30, no. 3 (September 1, 2023): 602–21, https://doi.org/10.20885/iustum.vol30.iss3.art7.

institution. This structure creates an institutional conflict of interest that the statute does not address. The accountability channels are also separate. Criminal liability follows the Criminal Procedure Code, professional accountability follows Police Regulation Number 7 of 2022, and civil responsibility follows the general law on unlawful acts.[41] The existence of three channels does not guarantee consistency among them, and no provision examined requires the channels to inform one another.

Coercive Circumstances under Article 42 of the Criminal Code

Article 42 of Law Number 1 of 2023 provides that a person who commits an offense is not punished if the act was compelled by an irresistible force or by threat, pressure, or force that could not be avoided.[42] The Dutch term *overmacht* is rendered in Indonesian as *daya paksa* and in English as coercion or duress. It should be distinguished from *noodtoestand*, or necessity, which the new Code treats separately as *keadaan darurat* in Article 33, and from self-defense, or *pembelaan terpaksa*, in Article 34. The earlier Criminal Code addressed coercion and necessity together in Article 48, a fact reflected in the doctrinal literature.[43] Absolute coercion refers to a force so complete that the actor is merely an instrument and no will is exercised. Relative coercion refers to pressure so strong that a reasonable person could not be expected to resist, although the actor's will remains present. Necessity refers to a conflict of legal interests or duties in which the actor chooses to protect the higher interest. These distinctions matter for police conduct because they determine which defense is available and which standard is applied. In many cases of police use of force, the relevant question is whether the officer repelled an unlawful attack, which falls under Article 34 or Article 43 on excessive defense, and not whether the officer's will was overborne, which is the subject of Article 42. A claim of coercive circumstances by a police officer should therefore be classified correctly before it is assessed.

The relevance of Article 42 to the main focus of this study lies in who assesses such claims and under what standard. An officer's conduct during a narcotics arrest or operation may be examined as a criminal, disciplinary, or civil matter. As argued above, the investigating institution and the institution of the officer under scrutiny are in practice the same organization. The application of Article 42 therefore cannot be separated from the structural question of institutional independence. Even where coercive circumstances are accepted as grounds that exclude punishment, the conduct remains open to professional assessment under Police Regulation Number 7 of 2022, because criminal liability,

[41] Republik Indonesia, "Perpol No. 7 Tahun 2022 Tentang Kode Etik Profesi Dan Komisi Kode Etik Kepolisian Negara Republik Indonesia," Sekretariat Negara § (2022).
[42] Republik Indonesia, UU No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.
[43] Raldo Rattu, "Daya Paksa (Overmacht) Dalam Pasal 48 KUHP Dari Sudut Doktrin Dan Yurisprudensi," *LEX CRIMEN* 8, no. 11 (2019), https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/27385.

professional ethics, and institutional discipline pursue different objectives. The use of force is also governed by international standards that require restraint and proportionality, so that an emergency may explain an officer's action without justifying every response to it.[44]

Civil accountability must be assessed separately. Under the general principle of unlawful acts in the Civil Code, a person who causes loss through an unlawful act is obliged to compensate it. An act that is excused from criminal punishment may still cause legally recognized loss. Reported decisions in which victims of narcotics-related police action obtained damages were not identified in the materials examined, so this discussion remains doctrinal. The same limit applies to institutional solidarity. Budiarsih and Sushanty reported that institutional mechanisms were perceived as not always responding firmly to violations by officers, and this finding supports the concern that solidarity may impede independent assessment, although it does not establish how often that occurs.[45] The Criminal Code is intended to align domestic law with due process standards, but a review of the new Code found significant gaps between its provisions and international norms on human rights and due process, which supports the case for clear implementing parameters.[46]

The assessment of police claims also contains a tension. Training and legal authority justify a more demanding standard, since an officer is expected to judge what is necessary under pressure. The same authority gives officers special powers and access to institutional resources, which is why a stricter standard cannot become a presumption of liability. The resolution proposed here is an objective assessment that asks whether a reasonably trained officer in the same circumstances could have acted in the same way, and that weighs the danger, the available alternatives, necessity, and proportionality on the basis of documented evidence and not on the officer's account alone.

Fragmentation and the Reforms It Requires

The analysis identifies four mechanisms through which authority and accountability are fragmented. The first is concurrent competence without a rule of precedence. The second is the coexistence of different coercive regimes, which the new Criminal Procedure Code has reshaped without removing. The third is special techniques that are authorized in statute but not governed by procedure. The fourth is the separation of criminal, professional, and civil accountability, which are not required to inform one another. The first mechanism is the most significant because the others matter only because either institution may take the

[44] United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
[45] Budiarsih and Sushanty, "LAW ENFORCEMENT AGAINST POLICE OFFICERS INVOLVED IN DRUG ABUSE BASED ON JUSTICE VALUES."
[46] Ridwan Arifin et al., "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?," *Lex Scientia Law Review* 8, no. 1 (September 27, 2024): 561–94, https://doi.org/10.15294/LSLR.V8I1.14271.

same case. They interact in a predictable way. A case may be taken by either institution, handled under a different arrest period, supported by techniques with no common procedure, and, when an officer is involved, reviewed within the same organization. The root cause is statutory design and not the conduct of individual officers.

Specific reforms follow from these findings. The legislature should state a rule of precedence, with a notification or registration mechanism so that each institution learns when the other has opened a case, and it should state whether BNN investigators are certain investigators under the new Criminal Procedure Code. Where Article 76 is retained as an exception to the one-day arrest period, the statute should state the justification for it. Undercover buying and controlled delivery require a statutory procedure that provides for written orders, records, and review after the operation. The separate wiretapping law contemplated by the new Code should set conditions for authorization and duration. Both institutions should follow one protocol for the handling and transfer of seized narcotics, with a shared custody record. A single statutory standard should bind both institutions in classifying users and traffickers. Finally, cases in which police officers are suspects should be reviewed by a body independent of the investigating unit, and Polri should issue guidance that distinguishes Article 42 from Articles 33, 34, and 43 when force is assessed. Each of these measures addresses a deficiency identified above and is not a general proposal for stronger enforcement.

CONCLUSION

This study analyzed how Law Number 35 of 2009 allocates investigative authority between Polri and BNN, and it found that the two institutions hold concurrent and coequal competence without a rule of precedence. Article 81 gives both the same authority over narcotics abuse and illicit trafficking, and no provision examined limits that authority by subject matter, territory, or priority. The analysis revealed four mechanisms through which authority and accountability become fragmented: concurrent competence without precedence, coexisting coercive regimes, special techniques without statutory procedure, and separate channels of criminal, professional, and civil accountability. Of these, the absence of a rule of precedence is the root problem, because the divergence in arrest periods, the thin safeguards on undercover buying and wiretapping, and the risk to custody records matter only because either institution may take the same case. The same structure affects police officers who become suspects. Because most BNN investigators are Polri members, neither institution places the investigation outside the officer's own organization, which creates an institutional conflict of interest that the statute does not address. The application of Article 42 of the Criminal Code to police conduct is part of this problem, since the assessment of coercive circumstances is made

within the same institutional setting. That assessment should be kept distinct from necessity under Article 33 and self-defense under Articles 34 and 43.

These findings suggest that the weaknesses of narcotics enforcement lie in the design of the legal framework more than in the conduct of individual officers. Whether they have already produced excluded evidence, inconsistent judicial decisions, or erosion of public trust cannot be established from the materials examined, so these outcomes are best understood as potential implications. The specific contribution of this study is that it ties each recommendation to an identified deficiency. The legislature should adopt a rule of precedence with a case registration or notification mechanism, state whether BNN investigators are certain investigators under the new Criminal Procedure Code, and justify any retained exception to the one-day arrest period. It should also provide a statutory procedure for undercover buying and controlled delivery, enact the separate wiretapping law that the new Code contemplates, and bind both institutions to a single protocol for evidence handling and to a single standard for classifying users and traffickers. Cases in which officers are suspects require review by a body independent of the investigating unit, together with police guidance on assessing claims of coercion.

The study has limits that frame its conclusions. It is doctrinal, so it describes the structure and consistency of the legal framework and does not measure how often jurisdictional disputes occur or how investigators resolve them in practice. The new Criminal Procedure Code and Criminal Code have little judicial interpretation so far, and the Narcotics Bill is still under deliberation, so conclusions on their application may change as case law and legislation develop. Future research should therefore examine reported disputes between the two institutions, the treatment of evidence transferred between them, and decisions applying Article 42 to police conduct, using case files, official reports, or interviews with investigators and judges.

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