

Implementation of Handling and Destruction of Evidence of Narcotics Crime

Arief Apriando

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: nando07022016@gmail.com

Abstract. *The purpose of this research is to study and analyze the Handling and Destruction of Evidence of Narcotics Crime and to study and analyze Obstacles of Handling and Destruction of Evidence of Narcotics Crime. This research uses a sociological juridical approach. The results of this study indicate that the mechanism for how to store Narcotics Confiscated Objects is carried out by submitting confiscated objects or evidence from the police to the prosecutor's office which is then stored at the Cirebon District Attorney's Office in the Confiscated Objects Storage Room under the supervision of the Head of Evidence and Confiscated Goods Management Section Officer accompanied by Head of Section The General Crime of the Cirebon District Attorney's Office is not in accordance with the laws and regulations. All types of confiscated goods should be stored in the State Storage for Confiscated Objects (Rupbasan) as stipulated in Article 44 of the Criminal Procedure Code and the Mechanism for the Destruction of Narcotics Confiscated Objects carried out by the Cirebon District Attorney through the process of collecting evidence of Narcotics in large quantities first and then destroying them all at once within a period of time. maximum period of 6 (six) months. This differs from the provisions as stipulated in Law number 35 of 2009 concerning Narcotics that the period for Destroying Narcotics Evidence which has permanent legal force must be immediately destroyed for a maximum of 7 (seven) days.*

Keywords: *Evidence; Confiscation; Destruction; Narcotics.*

1. Introduction

Drug abuse in Indonesia has reached an alarming point. In 2015 it was discovered that the prevalence rate of drug abusers in Indonesia had reached 2.20% or 4,098,029 people who had used drugs in the past year (current users) in the age

group 10-59 years.¹In 2022 the National Narcotics Agency (BNN) reports, there are 851 cases of abuse of narcotics and drugs (drugs). That number rose 11.1% compared to the previous year which amounted to 766 cases. Furthermore, BNN managed to confiscate 1,904 tons of crystal methamphetamine as evidence. Confiscation of evidence of marijuana was recorded at 1.06 tons.²

Narcotics crimes are regulated in chapter XV article 111 to article 148 Law Number 35 of 2009 concerning Narcotics which is a special provision, although it is not stated explicitly that the criminal acts regulated in it are crimes, it cannot be doubted that all criminal acts regulated in the said law are crimes. The reason is, if narcotics are only for medicine and science, then if there is an action outside of these interests it is already a crime considering the magnitude of the consequences arising from the illegal use of narcotics which is very dangerous for the human soul.³Narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, destroying life and the future, especially the younger generation.⁴

In enforcing the law on narcotics abuse, storage and destruction of narcotic evidence is very important to note. Regarding the storage of evidence, Article 44 paragraph (2) of the Criminal Procedure Code that the implementation of confiscated objects is carried out as well as possible and the responsibility for them lies with the authorized official according to the level of examination in the judicial process and these objects are prohibited from being used by anyone. Also. It is continued in Article 45 paragraph (4) which states that confiscated objects that are prohibited or prohibited from being distributed, excluding the provisions referred to in paragraph (1), are confiscated to be used for the interests of the state or to be destroyed.

As for destruction, it is a series of investigative actions to destroy confiscated goods, the implementation of which is carried out after a decision from the head of the local District Attorney's Office to be destroyed and witnessed by representative officials, elements of the prosecutor's office, the ministry of health and the drug and food control agency. In the event that the officials

¹Bagas Aditya Kurniawan, Jawade Hafidz and, Djauhari, "Handling Drug Crime in the Context of Creating a Deterrent Effect (Juridical Analysis of the Choice Between Criminal Sanctions or Rehabilitation at the Rembang Police Headquarters)" in *Khaira Ummah V Law Journal* 17, No. 3 September 2022, matter. 145, <https://jurnal.unissula.ac.id/index.php/jhku/article/view/2586/1942>

²Shilvina Widi, "BNN Records 851 Drug Cases in Indonesia in 2022", DataIndonesia.id url: <https://dataindonesia.id/varia/detail/bnn-catat-851-case-narkoba-di-indonesia-pada-2022>

³Supramono, 2001, Indonesian Narcotics Law, Jakarta: Djbatan, p. 5

⁴Hera Saputra and Munsyarif Abdul Chalim, "Implementation of the Penal System for Drug Abuse Offenders (Case Study in the Central Java Regional Police)", in *Daulat Hukum Journal* Volume 1 No. March 1, 2018 : 163 -170, p.

166.Urls: <https://jurnal.unissula.ac.id/index.php/RH/article/view/2630/1979>

cannot attend, then the extermination is witnessed by other parties, namely officials or members of the local community.⁵Based on the provisions of the law, the destruction of confiscated narcotics should be carried out after a court decision has obtained permanent legal force.⁶

Confiscated narcotics objects that have received status determination and have been decided by courts that have permanent legal force are still very large which are not immediately destroyed but are stored first, either due to small amounts or other constraints. Because they are not immediately destroyed, the confiscated narcotics are stored in the confiscated goods storage house which, of course, carries the risk of irregularities where the prohibited items can circulate again in society.⁷Administrative sanctions given to government agencies and government officials who do not comply with statutory provisions are in the form of light administrative sanctions, moderate administrative sanctions, and heavy administrative sanctions.⁸

It is still very necessary to clarify the procedures for storing and destroying confiscated narcotic objects and how to supervise the implementation of the storage and destruction of confiscated narcotics. The implementation of storing and destroying confiscated narcotics still has the potential for irregularities in its implementation and supervision, so it is feared that the narcotics confiscated goods may still be circulating in the community. This can happen because the narcotics confiscated objects that have been decided by the judge and already have legal force must be immediately destroyed, but in practice this is not the case because the narcotic confiscated objects are stored first.

Based on the description above, the objectives to be achieved in this study are to study and analyze handling and destroying evidence of narcotics crime and to study and analyze constraints and solutions for handling and destroying evidence of narcotics crime

2. Research Methods

This study uses a sociological juridical approach, the specifications in this research are analytical descriptive, the data used are primary data and secondary

⁵Ricardo, Paul, 2010, "Efforts to Overcome Drug Abuse by the Police (Case Study of the Bekasi Metro Police Narcotics Unit)", Indonesian Journal of Criminology Vol. 6 No. III. url: <http://journal.ui.ac.id/index.php/jki/article/view/1105>

⁶Hendarta, Handling Narcotics Evidence at the Barru District Court, Vol 2 No 3, Hermeneutics, 2021, p. 3.

⁷Asrudi, Asrudi, 2017, The Role of Investigators in Keeping Evidence of Narcotics Crime at the Wajo Police. Journal of Law: Al Hikam Vol. 4, No. 2.

⁸ Fransiska Nobita Eleanora, *The Dangers of Drug Abuse and Its Prevention and Management*, Journal of Law, Vol XXV, No. 1, April, 2011

data, using data collection by interviews and literature studies, qualitative data analysis, problems are analyzed by theory, law enforcement and legal certainty.

3. Results and Discussion

Based on the provisions of Article 44 of the Criminal Procedure Code, confiscated objects are stored in the State Storage for Confiscated Objects or abbreviated as Rupbasan. With regard to the authority to store confiscated objects or evidence, the District Attorney does not have the authority to store evidence, however, regarding the storage of evidence, his authority is fully owned by the District Attorney's Office of Cirebon Regency. The District Attorney's Office through the prosecutor who handles Narcotics Crime Cases only has the authority to prove it in court. With regard to stored evidence, the prosecutor can take and issue evidence stored in the evidence repository for the purposes of proof at trial with a permit to release evidence from the court judge.⁹

In practice, after the evidence is in the hands of the Public Prosecutor, the evidence that leaves the storage area is fully the responsibility of the Public Prosecutor until the evidence is returned to the storage room. In addition, the prosecutor also has authority over evidence after obtaining a judge's decision in court and has permanent legal force, so the prosecutor has the authority as the executor of the judge's decision to make the stipulations of the decision.¹⁰

If in the rules the storage of confiscated objects or evidence must be kept in Rupbasan, but in the research process using the interview method that was carried out, the practice that took place in the field was not like that. Evidence that should have been kept in the State Confiscated Objects Storage House located on Jl. Salemba, Kel. mt. Sari, Kec. Rappocini, City of Cirebon Regency as the provisions mandated in article 44 of the Criminal Procedure Code were not implemented properly. If in the rules all types of evidence must be stored in the Rupbasan as the only place for storing evidence, but the evidence that was confiscated by the authorities was not all stored in the Rupbasan, but kept at the Cirebon District Attorney's Office. In practice, Evidence is indeed not stored at the Rupbasan and as much as possible it is kept at the Cirebon District Attorney's Office, this is due to its effectiveness when compared to the Rupbasan. Storing evidence at the District Attorney's Office is more effective both because the Cirebon District Attorney's Office is closer to the Cirebon District Court and maximizes time because each time a trial, evidence must be removed and brought to trial at the request of the Judge.

⁹Tabrani, Head of Section for Management of Evidence and Seized Items, Interview, Cirebon Regency, October 18 2018.

¹⁰Ibid

By law, Rupbasan is indeed a place to store all evidence, but in practice, evidence is also stored at the Cirebon District Attorney's Office for more efficient reasons. The evidence is stored in a special room with an ordinary key and is managed by an evidence room officer from the Cirebon District Attorney's Office. The evidence obtained from a crime is attempted to be stored at the Cirebon District Attorney's Office. However, if the form of the evidence is not possible to be stored at the Cirebon District Attorney's Office, then the evidence is stored at Rupbasan such as cars, motorcycles and other evidence whose storage space cannot be accommodated by the Cirebon District Attorney's Office or has elements that are dangerous .

The storage mechanism carried out by the Cirebon District Attorney General's Office is generally the same as the mechanism implemented in Rupbasan, but the mechanism prioritizes effectiveness in all stages of the process of storing confiscated objects. In the management of evidence stored in the evidence storage room at the Cirebon District Public Prosecutor's Office, its management is the full responsibility of the evidence room officer where the evidence room itself can only be accessed by the evidence room officer and no one other than the officer. the evidence room can access the room even the Head of the General Crime Section and the Head of the Cirebon District Public Prosecutor's Office but only as supervisors.

The mechanism for removing confiscated objects or evidence from the evidence storage room at the Cirebon District Attorney's Office for evidence in a trial must go through the prosecutor handling the case with a permit to issue evidence. At first, the prosecutor showed a permit, then filled out the register of expenditure and return of evidence which was submitted by the evidence storage room officer. After filling out the register book and then the evidence is removed from the storage room, the status of the evidence and full responsibility by the prosecutor handling the case until the evidence is returned to the storage room and the prosecutor signs the return receipt, then the responsibility for the evidence becomes the responsibility of the officer evidence storage room.

The storage of special evidence for narcotics is slightly different, narcotics evidence is kept separately from evidence in general. Especially for evidence of narcotics and other dangerous evidence, they are stored in a special room in a storage room which is sealed in a special cell so that the level of security is higher. Narcotics evidence that is in the special storage room will continue to be and be stored in the evidence storage room until the implementation of the court's decision is carried out whether the evidence is returned, auctioned off, confiscated for the state or for destruction.

Destruction of Narcotics Confiscated Objects as based on Regulation of the Head of BNN number 7 of 2010 as regulated in Article 1 point 5. As for the mechanism

for destroying narcotic evidence, initially the Head of the State Prosecutor's Office receives notification about the confiscation of narcotic evidence from the police, within a maximum period of 7 (seven)) the day the Head of the District Attorney issues a stipulation letter against the narcotics evidence with the status of being used for the purposes of proving a case, the interests of science and technology development, training purposes or for destruction. If narcotics evidence is in large quantities it is usually determined to be destroyed and if in small quantities it is used for the purposes of evidence in court and destroyed when a decision has been made on the evidence.

As evidence of narcotics whose status has been assigned to be destroyed, the police investigators who carry out the destruction at the investigative and prosecutorial levels are one of the elements witnessing the destruction. After it is destroyed, the investigator is obliged to make an official report on the destruction and a copy of it is handed over to the Head of the District Attorney and other elements present to witness the destruction as stated in Law number 35 of 2009 concerning Narcotics.

The mechanism for destroying evidence after obtaining permanent legal force from a court judge, the provisions stipulating that the prosecutor's office as the authority to implement a judge's decision must destroy said evidence within a maximum period of 7 (seven) days after receiving a judge's decision which has permanent legal force or can be extended for a maximum of 7 (seven) days from the stipulated limit.

However, in practice, the destruction of evidence that has permanent legal force is not immediately destroyed according to the set time limit because there are obstacles that prevent the destruction from being carried out immediately. Regarding evidence of narcotics and other dangerous goods, the Cirebon District Public Prosecutor's Office through a decree from the Head of the Cirebon District Public Prosecutor's Office stipulates that narcotics evidence must be destroyed no later than 1 (one) month from the issuance of a judge's decision that has permanent legal force.

From the statements obtained through interviews with the Head of the Section for Management of Evidence & Confiscated Goods at the Cirebon District Attorney's Office, it is clear that this is not in line with the provisions of Law Number 35 of 2009 concerning Narcotics which in the provisions of the destruction of evidence that has obtained a judge's decision that has permanent legal force must be destroyed within 7 (seven) days after the issuance of the decision. This should be of quite serious concern to the State Attorney apparatus itself, bearing in mind the evidence of narcotics and other dangerous goods which, if re-circulated, could pose a danger to society.

If evidence of narcotics is misused and can be circulated again in the community, this will certainly have a negative impact on the strategy for dealing with illicit drug trafficking and drug abuse, as follows, one of which is Drug Supply Control.¹¹

However, with so many obstacles that hindered the implementation of the destruction of narcotic evidence after the judge's decision, the Cirebon District Attorney actually carried out the destruction within a maximum period of 6 (six) months even though it was considered that narcotic evidence that had received a decision from a court judge was not safe if kept too long. Because there have been several cases of violations where evidence that has received a court decision that has not been destroyed and is still being stored in a storage room is used by Attorney officers to be sold and redistributed to the public. Therefore, to prevent the same case from happening at the Cirebon District Attorney's Office, then the head of the Cirebon District Attorney's Office issued a circular that the destruction of evidence specifically for narcotics must be carried out immediately no later than 1 (one) month from the issuance of the judge's decision which has permanent legal force. However, in reality, according to the author, the regulation is still not running effectively.

From experience that has occurred regarding the abuse of power over narcotics evidence, sanctions given to officers who commit violations are given strict sanctions in the form of dishonorable dismissal which means revoking their position and being expelled from the prosecutor's office and even being punished. This is a firmness given so that these violations will not be repeated.

Although in practice the prosecutor's office does not carry out the storage and destruction mechanism as mandated by laws and regulations, the prosecutor's official also finds sanctions from supervisors when supervisory actions are carried out which are usually at the end of the year by the prosecutor's supervisory agency. If a discrepancy is found, the prosecutor's office is also given sanctions in the form of light administrative sanctions such as verbal or written warnings and light administrative sanctions such as compensation and temporary suspension.

The Attorney General's Office is an institution authorized to exercise state power as stipulated in the Law, one of its powers is as the executor of court decisions that have permanent legal force. As the executor, the prosecutor's office through the prosecutor has the authority to carry out the decisions of judges who have permanent legal force, one of which is the destruction of confiscated narcotics.

¹¹Bayu Puji Hariyanto, "Prevention and Eradication of Drug Trafficking in Indonesia", in *Daulat Hukum Journal* Volume 1 No. March 1, 2018 : 201 -210, page 208.
url:<https://jurnal.unissula.ac.id/index.php/RH/article/view/2634/1983>

Based on the results obtained from this research through the Head of Evidence Management and Seized Goods at the Cirebon District Attorney's Office, during 2018 the Cirebon District Attorney's Office handled 313 narcotics cases until early December 2018. investigation or after obtaining a court decision. Even though the destruction was not in accordance with the time period stipulated by the Law which was carried out all at once at the end of November 2018.

The Head of the Section for Management of Evidence and Seized Items at the Cirebon District Attorney's Office said that the destruction of this evidence was the result of a crime whose legal status was *inkracht*. Destruction is done by burning. The arson took place at the Cirebon District Attorney's Office, Tuesday (28/8) led by the Head of the General Crimes Section (Kasi Pidum) of the Cirebon District Prosecutor's Office, Andi Muldani accompanied by representatives of the Cirebon District Drug and Food Control Agency (BPOM). Tabrani revealed that the prominent case being handled by the Attorney General's Office was narcotics. According to him, narcotics cases in Cirebon Regency City are very concerning, because from data for 2017, 20 percent of the perpetrators were nominated as minors. Tabrani added that the cases that stood out were the crimes of robbery and mugging. So continued Tabrani,

In addition to carrying out its duties and authorities in carrying out the destruction of confiscated narcotics which have permanent legal force, the Attorney General's Office always experiences obstacles and obstacles so that the implementation of its duties can be different as mandated by law. This is caused by several things that affect the storage and destruction of confiscated narcotic objects.

From the results of interviews with the Cirebon District Attorney's Office, the inhibiting factors that become obstacles to the prosecutor's office in terms of storing and destroying confiscated narcotics include:

- a. The location of the State Confiscated Objects Storage House is not strategic.

The place for all types of confiscated objects based on the provisions of Article 44 of the Criminal Procedure Code must be stored in the State Storage for Confiscated Objects (RUPBASAN). However, in practice, because the location of Rupbasan is far from the location of the Court, the Narcotics and other confiscated objects are kept at the Cirebon District Attorney's Office. The storage of confiscated narcotics at the Cirebon District Attorney's Office is considered to be more effective because during a trial at the Court, the Prosecutor must remove evidence from the evidence storage room and present it at trial.

When the judge asks the Public Prosecutor to present evidence at trial and this can be repeated many times, the Public Prosecutor will be overwhelmed because

he has to travel quite a distance to collect the evidence and return it. In addition to the considerable distance, the responsibility received by the Public Prosecutor will be greater the longer the evidence is out of storage. Therefore, the storage of confiscated narcotics or narcotic evidence is kept at the State Attorney's Office for reasons of effectiveness.

So in this case the storage of narcotics confiscated objects kept at the Cirebon District Attorney's Office is not in accordance with the provisions of the applicable laws and regulations. Confiscated narcotics should have been stored in the Rupbasan because in the Cirebon Regency area there is a State Storage for Confiscated Objects. If there is no Rupbasan, the confiscated goods can be kept at the District Attorney, District Court, Polda, Bank Indonesia Building or other places if under forced circumstances as stipulated in force.

b. Inadequate Storage of Confiscated Objects.

The storage space for confiscated objects or evidence is still very far inadequate than it should be, there is still a lot of evidence that cannot be accommodated at the Cirebon District Attorney's Office, even Rupbasan, for example, in cases other than narcotics, there is a lot of evidence such as ships that should be placed in the State Storage for Confiscated Objects but cannot be placed, so the Attorney General's Office must take its own steps in cooperation with outside agencies to resolve this matter. Things like this often make it difficult for prosecutors to handle cases of evidence.

In addition to Rupbasan, the storage space at the Cirebon District Attorney's Office is still inadequate, the narrow space for storing so much evidence is one of the inhibiting factors so evidence storage is often tricked so that it can fit in that room. However, even with these limitations, the Attorney General's Office is still making every effort to ensure that the security and condition of the goods in the storage room are well maintained.

The storage room at the Cirebon District Attorney's Office is in the form of an ordinary room with a wooden cupboard (shelf) that does not have a door with an ordinary security lock. So when compared to the provisions that should be that the storage room for confiscated objects must be with high security, not flammable, there is a special storage room such as a safe for storing valuable and dangerous objects, and a special storage room for storing evidence of narcotics and other dangerous substances, then the evidence storage space at the Cirebon District Attorney's Office is still far from those provisions.

From the field conditions shown by the Cirebon District Attorney's Office, it can be seen that there is a lot of evidence that should be stored in separate places, but in practice the evidence is stored side by side and crowded together due to

the narrow space conditions so it is feared that the evidence could be damaged and integrity is not guaranteed. Likewise with narcotics evidence which should be stored in a special room with tighter security so that the physical condition of the evidence is not damaged, but in the Cirebon District Attorney's storage room the narcotics confiscated objects are still combined with other evidence and separated only by put in a plastic box labeled "narcotics evidence".

c. Cost Constraints

Cost is the most influential factor so that the implementation of tasks which are the responsibility of the Attorney General can be carried out properly. When the rules say that the place for storage must be safe, spacious and the facilities must be adequate, but the budgeted costs for it are not commensurate with what is regulated, this always makes it difficult for the prosecutor's office to carry out their duties. Likewise with destruction, the government budgets for destruction costs only 2 to 3 times a year, but in narcotics cases it is demanded that the destruction of narcotic evidence be carried out no later than 7 (seven) days after receiving a court decision that has permanent legal force. At very little cost, the Attorney General is forced to carry out and solve the problem without causing any problems.

In carrying out the extermination, often times the prosecutor's office has to do it voluntarily and even pay personal expenses. However, in order to avoid problems in the future, the prosecutor's office must do this. This is what has become a national secret where the custom of work demands must be carried out according to the rules but the issue of cost has always been the main factor as an obstacle.

d. Troublesome Extermination Procedure.

The implementation of the destruction of narcotics evidence which is carried out after a decision has been made by the Head of the local District Attorney for destruction must be witnessed by officials representing elements of the Attorney General's Office, the Ministry of Health and the Drug and Food Control Agency. The extermination procedure with a series of ceremonies that must be carried out is not just annihilation. This is an obstacle in carrying out an extermination with very little implementation cost.

e. The time given to carry out the extermination was very short.

In the rules as contained in article 92 of Law number 35 of 2009 concerning destruction must be carried out 7 days after receiving a stipulation from the Head of the local District Attorney. However, based on the results of interviews with the Head of Evidence and Confiscated Goods Management at the Cirebon

District Attorney's Office, in practice there is still very little implementation in accordance with statutory regulations. This is due to the large number of narcotics cases handled by the prosecutor's office so that sometimes judges' decisions related to narcotics evidence come in close time. So that if within a period of 7 (seven) days the narcotics evidence must be destroyed, then almost every day the prosecutor must destroy narcotics evidence which has been decided by the court and has permanent legal force.

The small amount of narcotics evidence which, if destroyed immediately with a series of ceremonies that must be prepared and carried out, is also an obstacle because it can cost too much money. So that the meager evidence of narcotics is stored first in the storage room and destroyed at once.

Of all the obstacles encountered in the scope of storage and destruction of confiscated narcotics. The Cirebon District Attorney's Office has made efforts to overcome these obstacles. The efforts made include:

- The West Java High Court is coordinating with the Cirebon District Public Prosecutor's Office in overcoming obstacles to storage and destruction of confiscated goods.
- Propose a budget for additional costs to the government for the storage and destruction of confiscated objects.
- Supervise confiscated objects stored at the Cirebon District Attorney's Office as well as those stored at the State Storage for Confiscated Objects (Rupbasan).
- Evaluate constraints-obstacles encountered in the field.

4. Conclusion

Based on the research results from the discussion, it can be concluded that the procedure for storing Narcotics Confiscated Objects is carried out by submitting confiscated objects or evidence from the police to the prosecutor's office which is then stored at the Cirebon District Public Prosecutor's Office in the Confiscated Objects Storage Room under the supervision of the Head of Evidence Management Section and Confiscated Goods Officers accompanied by the Head of General Crime Section at the Cirebon District Attorney's Office were not in accordance with the provisions of the legislation. All types of confiscated goods should be stored in the State Storage for Confiscated Objects (Rupbasan) as stipulated in Article 44 of the Criminal Procedure Code. Regarding the mechanism for the Destruction of Narcotics Confiscated Objects carried out by the District Attorney of Cirebon Regency through the process of collecting

evidence of Narcotics in large quantities first and then destroying them all at once within a maximum period of 6 (six) months. This differs from the provisions as stipulated in Law number 35 of 2009 concerning Narcotics that the period for Destroying Narcotics Evidence which has permanent legal force must be immediately destroyed for a maximum of 7 (seven) days.

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