

ENTRAPMENT AND INVOLVEMENT OF FOREIGN CITIZENS ON DRUGS SMUGGLING CASES IN INDONESIA

Written by : Rima Gravianty Baskoro, S.H.
Managing Partner of Rima Baskoro & Partners Law Office

Many times we watched the news in mass media about drugs smuggling from other country to Indonesia (import) or from Indonesia to other country (export) conducted by foreign citizen(s). In Indonesia, drugs crime regulated in the Law of Republic of Indonesia number 35 year 2009 regarding Narcotics (Narcotics Law), in which its maximum punishment is death penalty.

Based on our experience in the field, some foreigners who caught smuggling the narcotics admitted that he/she was set up by a group of people. The entrapping was very structured , systematic and professional because carried out by a syndicate international narcotics trafficking, so that foreigners are not realize that the narcotics have been slid in his goods. The type of narcotics that usually smuggled is *metamphetamine*, with various weights. Foreigners often said that they were not aware that there are narcotics in their bag. They even just knew that there are narcotics in their bag after the customs officer at the airport check their bag.

There are also foreigners stated that the efforts of entrapping conducted very well organized by the narcotics smuggling syndicate. Started from greetings and introduction with new friend (opposite sex, also as the trapper) at social media, those flirts finally drag the foreigner into decision to visited the trapper and continue into romance situation which was set up by the trapper. After the trapper spent all foreigner s money, then the trapper act like they were trying to save such foreigner by offering a job to deliver a bag in which such foreigner never know its content inside the bag. Of course such foreigner has no choice except accepting such job offered to him, to survive at the trapper s country.

Sequence of entrapment finally dragged the foreigners into drugs crime. Such drugs import or export regulated in Republic of Indonesia Law no. 35 of 2009 regarding Narcotics, article 113, as follows:

*(1) Any person who is not entitled or **against the law to produce, import, export, or distribute Narcotics Group I** shall be sentenced for imprisonment at a minimum of 5 (five) years and a maximum of 15 (fifteen) years and penalty at a minimum of Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).*

*(2) In case of the action to produce, import, export, or distribute Narcotics Group I as referred to in paragraph (1) thereto in the form of plants whose weight exceeds **1 (one) kilogram** or which exceed 5 (five) trees or not in the form of plants whose weight exceeds 5 (five) grams, **the perpetrator shall be sentenced to death, or imprisonment for life**, or imprisonment at a minimum of 5 (five) years and a maximum of 20 (twenty) years and penalty at a maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).*+

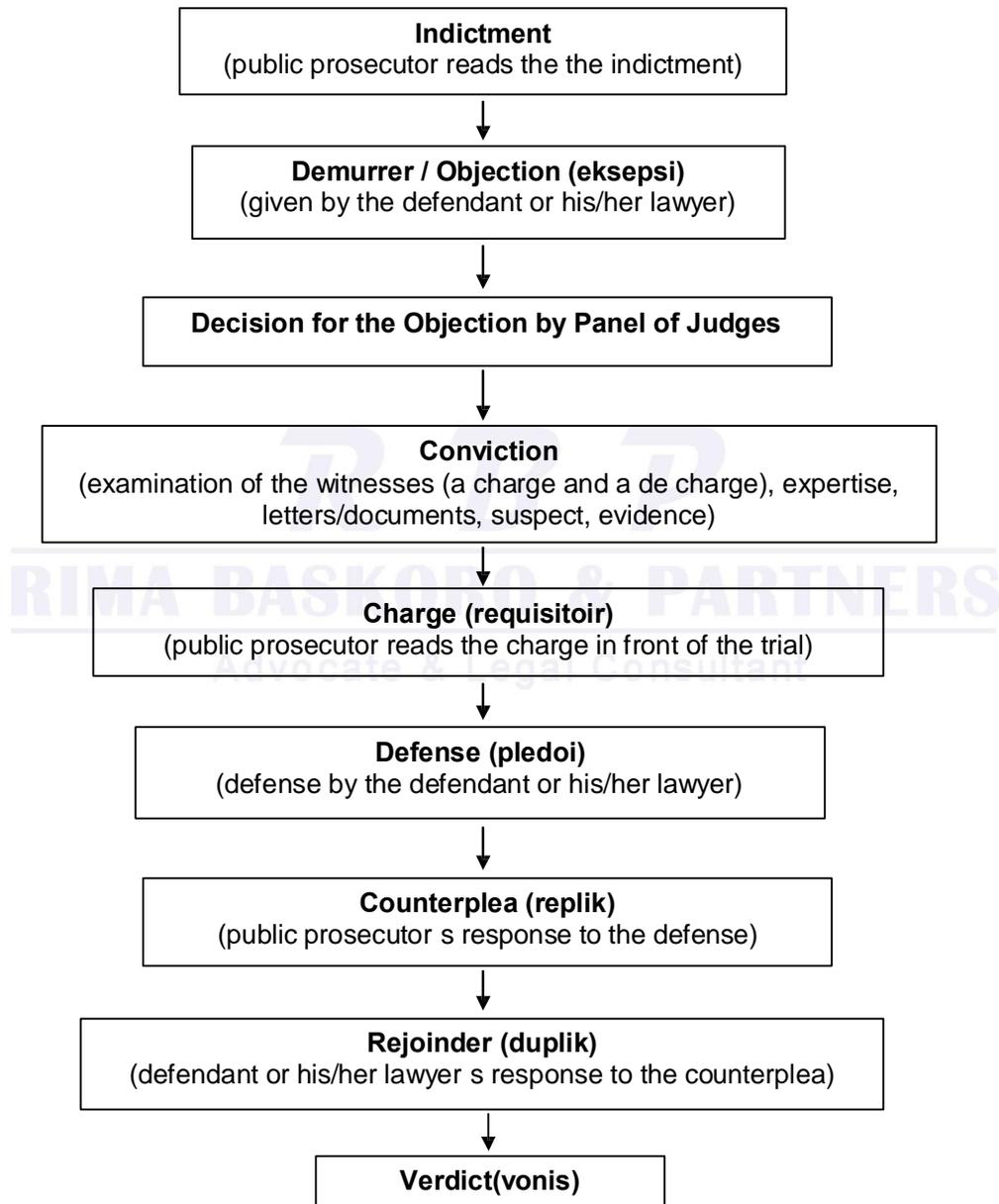
Meanwhile, for ownership, depository, and/or possession of narcotics not in the form of plants, regulated in Article 112 Narcotics Law, as follows:

Article 112

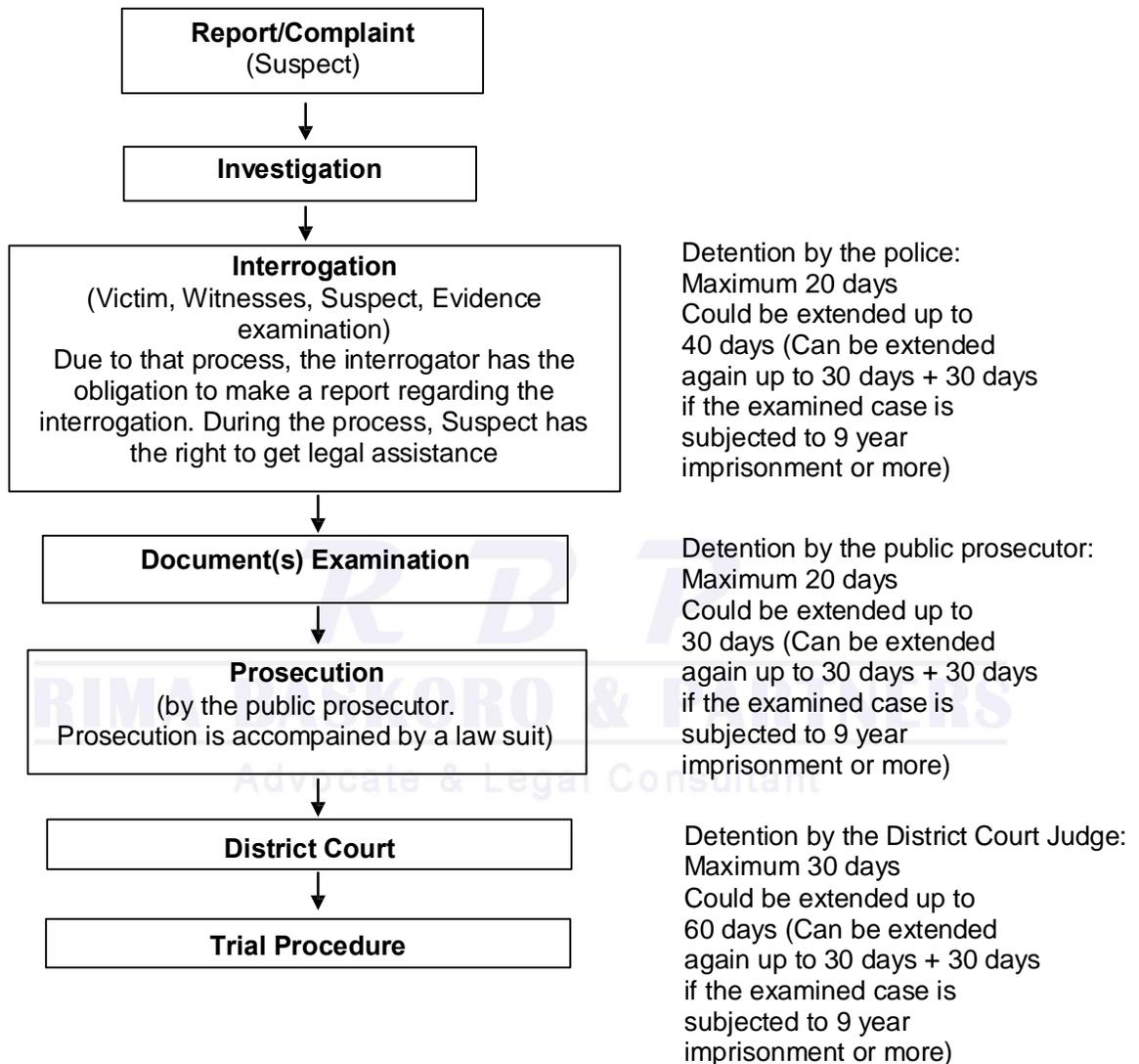
(1) Any person who is not entitled or against the law to own, keep, control, or provide Narcotics Group I not in the form of plants shall be sentenced for imprisonment at a minimum of 4 (four) years and a maximum of 12 (twelve) years and penalty at a minimum of Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah)."

*(2) In case of the action to own, keep, control or provide narcotics Group I not in the form of plants as referred to in paragraph (1) whose weight exceeds 5 (five) gram, **the perpetrator shall be sentenced imprisonment for life**, or imprisonment at a minimum of 5 (five) years and a maximum of 20 (twenty) years and penalty at a maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).*+

After the interrogation process conducted by interrogator, the dossiers of suspects conferred into public prosecutor then the public prosecutor will compile the indictment. Indictment is a letter consist of complete identity of the accused and a completely detail chronology of such crimes, by stating place and time where such crime conducted. The indictment will be the base of the examination of the accused at the trial (the title of suspects will be improve into the accused by the time of trial in court), in which such examination and criminal procedure in court comply into Republic of Indonesia Law number 8 years 1981 regarding Criminal Procedure Law. Here are the criminal trial procedures:



The term trial in Indonesia cannot be predicted. But as the basis of a term trial criminal can be referred into the time limit of suspects and/or accused detention. For when suspects and / or the accused detention has reach the time limit but the examination was not yet over, then the suspects and / or the accused, by the law, should be free. The following is a chart of suspects and / or the accused detention during the investigation to examination in court:



Going back to the entrapment and the involvement of foreign citizens in drugs smuggling, as a matter of facts, there are important legal aspects, legal doctrin and/or legal facts that need to be considered, which are:

1. Crimes (*strafbaar feit*) dan accused mental conditions

According to Professor POMPE, the phrase %*strafbaar feit*+ can be theoretically formulated as %a violation of norms (disturbance against legal order) which is intentionally or unintentionally committed by an offender, where the sentencing of the offender is required in order to preserve legal order and guarantee public interest+or as

“de normovertreding (verstoring der rechtsorde), waaraan de overtreder schuld heeft en waarvan de bestraffing dienstig is voor de handhaving der rechts orde en de behartiging van het algemeen welzijn.” . Or in other words, besides the violation of norms committed by the offender, whether the offender committed the violation of norms intentionally or unintentionally should not be ignored.

In relation to *Dolus* (Intent) and *Culpa* (Negligence), Prof. Satochid Kertanegara in his book entitled *Hukum Pidana: kumpulan kuliah bagian I*, Publisher: Balai Lektor Mahasiswa, page 342, is of the following opinion:

No.	INTENT (<i>DOLUS/OPZET</i>)	NEGLIGENCE (<i>CULPA/SCHULD</i> IN A NARROW SENSE)
1.	The act is committed intentionally	The act is committed due to negligence
2.	Such act is called <i>doleuse delicten</i>	Such act is called <i>colpeuse delicten</i> or <i>schuld delicten</i>
3.	Threatened with a heavier sentence than <i>culpose delicten</i>	Threatened with a lighter sentence than <i>doleuse delicten</i>

Indonesia s Criminal Law qualifies two mental conditions (intent and negligence) into unwritten elements of an offense (*element van het delict*) that must be observed by the judge in examining and deciding every criminal case.

2. Controversion of Death Penalty Implementation in Indonesia

Generally, the death penalty may be accepted or imposed on crimes which fall within the category of the „most serious crimes“. However, there is dispute over whether other offences, such as drug offences, economic and financial crimes or corruption offences, fall within that category.

Two elements of most serious crime that must be fulfilled are:

- a. There is an intention to kill;
- b. Such action directly causes death.

Meanwhile, narcotics crimes do not fulfill those two elements because the purpose of a narcotics transaction is not to take a life, but to gain financial benefits.

Based on the explanation above, it is clear that the Indonesian Regulation strictly forbid the narcotics abuse, either is own, use, posses, import and/or export. That strictly forbidden of narcotics abuse can be seen from the implementation of death penalty as the heaviest punishment for the accused. In fact, there were also several execution of death penalty to the foreigners in Indonesia, therefore it is clear that such death penalty is not just a snapping of toothless tiger. Therefore for those foreign citizens who would like to travel to or out of Indonesia, kindly be careful and always keeps your belonging, so it wont be missused by the narcotics syndicate. But if foreign citizens caught by the officers in case of drugs smuggling, such foreign citizen can immediately request for a lawyer companion, because based on article 56 paragraph (1) Indonesian Criminal Procedure Law which stated that every suspects who suspected of committing crimes with death penalty as its maximum punishment, must be provided a lawyer by the officer on every level of examination in trial.