

Normative Vacuum and Implementation Obstacles of the Undercover Buy Technique in Combating Illicit Narcotics Trafficking in Bandung City, Indonesia

Sidik Sugiharto¹, Ujuh Juhana²

^{1,2} Faculty of Law, Universitas Muhammadiyah Sukabumi, Indonesia

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ABSTRACT

The undercover buy technique is an indispensable investigative instrument for uncovering organized narcotics trafficking networks, yet its regulation within Indonesian positive law contains critical normative gaps that compromise both enforcement effectiveness and the rule of law. This study aims to juridically analyze the regulation of the undercover buy technique under Law No. 35 of 2009 on Narcotics and the newly enacted Code of Criminal Procedure (Law No. 20 of 2025, "New CPPC"), and to examine the juridical and practical obstacles to its implementation in narcotics law enforcement in Bandung City. A normative-empirical legal research method was employed, combining statutory, conceptual, and sociological approaches. Primary data were obtained from the Narcotics Detective Unit of Bandung Metropolitan Police (Polrestabes Bandung) and secondary data from legislation, Constitutional Court decisions, and legal literature. The findings demonstrate that Articles 75(j) and 79 of the Narcotics Law satisfy only the *lex scripta* element of the legality principle but systematically fail the *lex certa* and *lex stricta* standards due to the complete absence of an operational definition, technical procedures, an anti-entrapment mechanism, and evidence authentication standards. The enactment of the New CPPC, which imposes strict authentication requirements through Article 235(3), does not remedy this gap but instead sharpens it, creating a structural evidentiary paradox. Empirically, six juridical and six practical obstacles interact cumulatively to render the most effective narcotics investigation technique the least deployed. This study contributes an original tripartite matrix analysis and argues for the urgent adoption of an anti-entrapment doctrine modeled on the Dutch Tallon criterium and European Court of Human Rights standards.

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Corresponding Author:

Name: Sidik Sugiharto

Institution Address: Faculty of Law, Universitas Muhammadiyah Sukabumi, Indonesia

e-mail: sidiksugiharto@ummi.ac.id

1. INTRODUCTION

Organized narcotics trafficking constitutes one of the gravest threats confronted by states grounded in the rule of law. The clandestine, multi-layered character of such networks renders them systematically resistant to conventional investigative methods, demanding proactive techniques capable of penetrating organized criminal structures from within. In Bandung City Indonesia's second-largest metropolitan center the Narcotics Detective Unit of Bandung Metropolitan Police recorded at least 175 narcotics cases throughout 2025, spanning dried cannabis, synthetic tobacco, ecstasy, certain controlled pharmaceuticals, and methamphetamine. This figure is widely understood to represent only a fraction of the actual phenomenon, given the characteristically high dark number of victimless narcotics offenses. At the global level, the United Nations Office on Drugs and Crime has identified Southeast Asia, including Indonesia, as one of the primary markets for synthetic narcotics, featuring increasingly sophisticated distribution networks that exploit digital platforms and legitimate logistics channels [1].

Against this backdrop, the undercover buy technique in which an investigator or assigned individual poses as a buyer to conduct a direct transaction with a narcotics seller emerges as an investigative instrument without equivalent in its capacity to reach core trafficking networks. Indonesian law formally acknowledges this technique through Article 75(j) of Law No. 35 of 2009 on Narcotics, which authorizes the National Narcotics Agency (BNN) to conduct "undercover purchase and controlled delivery" investigative techniques, supplemented by Article 79, which conditions execution on a written order from a superior. However, beyond this nominal recognition,

the law is silent: no operational definition, no technical procedure, no oversight mechanism, no documentation standard, and no anti-entrapment boundary.

This normative inadequacy has become acutely problematic following the enactment of Law No. 20 of 2025 on the Code of Criminal Procedure (hereinafter "New CPPC"), which entered into force on 2 January 2026. The New CPPC imposes significantly elevated standards for special investigative techniques (Arts. 108–116) and evidence admissibility, particularly the strict authentication requirement under Article 235(3). Rather than resolving the regulatory void, the New CPPC has sharpened it: evidence gathered through undercover buy operations may now be more broadly recognized in category yet simultaneously more vulnerable to procedural exclusion if gathered without standards that the Narcotics Law never required.

A review of existing scholarship reveals that the field remains fragmented. A juridical analysis of the undercover buy technique under the Narcotics Law conducted without reference to the New CPPC or empirical field data [2] established legalitas concerns but left open the question of practical consequences. A study of narcotics investigation obstacles at the Surabaya Metropolitan Police focused on general investigative challenges without examining undercover buy as a distinct object. A post-enactment analysis of evidentiary admissibility under the New CPPC addressed authentication standards without examining regional implementation [3]. The present research addresses this three-fold gap: it integrates normative analysis of the tension between the Narcotics Law and the New CPPC with empirical documentation of implementation obstacles in Bandung City,

producing original matrix-based findings with direct policy implications.

This study is guided by two research questions: First, how is the undercover buy technique regulated in Indonesian criminal law, particularly in light of the New CPPC, and where does the regulation fail to satisfy the legality principle? Second, what juridical and practical obstacles impede the effective deployment of this technique in narcotics law enforcement in Bandung City? The study aims to produce a comprehensive juridical analysis of existing normative gaps and to formulate actionable policy recommendations for legislative, prosecutorial, and operational reform.

2. LITERATURE REVIEW

2.1 *The Legality Principle in Criminal Law*

The legality principle encapsulated in the maxim *nullum crimen, nulla poena sine lege* constitutes a foundational constraint on state penal power. It requires that before any person may be subjected to criminal sanction, their conduct must have been defined as an offense by a prior, written, clear, and non-analogous law. In its full articulation, the principle comprises four interrelated components: *lex scripta* (law must be written), *lex certa* (law must be clear and precise), *lex stricta* (prohibition of analogy to the detriment of the accused), and *lex praevia* (law must not apply retroactively) [4], [5].

In the Indonesian constitutional order, the legality principle is anchored in Article 1(1) of the Criminal Code and

reflects the constitutional commitment to the rule of law (*rechtsstaat*) articulated in Article 1(3) of the 1945 Constitution, as well as the guarantee of legal certainty and equal treatment under Article 28D(1). The Constitutional Court, through Decision No. 21/PUU-XII/2014, has affirmed that the presumption of innocence and protection against arbitrary arrest are non-derogable constitutional rights, regardless of the nature of the offense under investigation.

For the purposes of this study, the legality principle functions not merely as a constraint on criminal liability, but as a standard for evaluating the normative adequacy of investigative technique regulation. Every investigative action that infringes upon fundamental rights as undercover buy operations inevitably do must satisfy all four components of the legality principle to be constitutionally valid. This analysis identifies at which component the existing regulation fails and with what consequences.

2.2 *Anti-Entrapment Doctrine in Comparative PerspectiveSecond Literature (10pt)*

The Criminal Justice System (CJS) theory conceptualizes law enforcement as an integrated chain of interdependent institutions investigation, prosecution, adjudication, and corrections in which systemic

weakness at any link propagates throughout the entire chain [4], [6]. Applied to undercover buy operations, this framework illuminates why normative inadequacy at the investigative stage cascades into evidentiary failures at trial, acquittals of factually guilty defendants, and diminished deterrence at the systemic level. The CJS framework also highlights coordination failures as a structural variable that compounds normative gaps, distinguishing individual investigator error from systemic institutional dysfunction.

2.3 *Anti-Entrapment Doctrine in Comparative Perspective*

The boundary between a lawful undercover buy operation and unlawful entrapment represents one of the most contested issues in comparative criminal procedure. The European Court of Human Rights held in *Teixeira de Castro v. Portugal* that when state agents incite a person to commit an offense they would not otherwise have committed, the resulting prosecution violates the right to a fair trial under Article 6 of the European Convention on Human Rights. The Netherlands, whose legal tradition has profoundly influenced Indonesian criminal law, has formalized this boundary through the Tallon criterion: undercover agents may not induce a person to commit a crime that they would

not have committed absent the agent's intervention [7]. Indonesia currently possesses no equivalent doctrine, rendering it an outlier relative to established comparative and international standards.

3. RESEARCH METHODS

This study employs a normative-empirical legal research design (normative empirical legal research), in which normative analysis constitutes the primary analytical basis and empirical data serve as a verificatory instrument for identifying the gap between law in the books (*das sollen*) and law in action (*das sein*). Although legal research is fundamentally normative in character, understanding how law operates in society necessarily requires examination of legal facts as they manifest in practice [8].

Three complementary approaches are deployed. The statutory approach (statute approach) examines the full hierarchy of applicable norms from the 1945 Constitution through the Narcotics Law, the New CPPC, and relevant implementing regulations to identify internal inconsistencies, normative gaps, and hierarchical conflicts. The conceptual approach operationalizes the four components of the legality principle and the Criminal Justice System theory as evaluative frameworks applied to the regulatory and empirical findings. The sociological approach situates normative analysis within the institutional reality of narcotics law enforcement in Bandung City.

Primary data sources include: case statistics from the Narcotics Detective Unit of Polrestaes Bandung (2025) and documentary analysis of completed court case files relating to narcotics offenses tried in Bandung. Secondary data sources encompass applicable legislation, Constitutional Court decisions,

international and comparative jurisprudence, legal doctrine, and peer-reviewed academic literature. Data are analyzed through three techniques: normative analysis to identify gaps and inconsistencies; systematic analysis to evaluate vertical and horizontal harmonization across the regulatory hierarchy; and limited normative-empirical analysis to benchmark field procedures against applicable legal standards.

4. RESULTS AND DISCUSSION

4.1 Regulatory Framework Analysis: Undercover Buy Between Recognition and Legal Vacuum

The undercover buy technique receives formal legal recognition in precisely two provisions of Indonesian positive law: Article 75(j) of the Narcotics Law and Article 79 of the same statute. The former grants BNN investigators authority to conduct "undercover purchase and controlled delivery" operations; the latter conditions execution on a written order from a superior officer. These two provisions exhaust the entirety of the normative material governing a technique that, by its very nature, temporarily suspends standard rights protections and creates asymmetric information between the state and its target. The inadequacy of this regulatory foundation becomes immediately apparent when subjected to the four-component legality principle test.

From the perspective of *lex scripta*, the minimum requirement is met: legal authority for the technique exists in written statutory form. This is where compliance ends. The *lex certa* standard demands that legal norms be sufficiently clear and precise that all parties can understand what is permitted, what is prohibited, and on what terms. Imprecision in legal formulation is not

merely a technical-linguistic problem; it is a substantive problem of legal certainty for all parties involved [9]. The Narcotics Law provides no operational definition of "undercover purchase," no criteria governing when the technique may be deployed, no step-by-step procedural guidance, no specification of the format or minimum content of the mandatory written order, no multi-layered oversight structure, and no documentation standards to enable evidence authentication. The absence of precise procedural requirements directly weakens the prosecution's capacity to establish evidentiary admissibility at trial [3].

The *lex stricta* standard, which prohibits analogical interpretation to the detriment of the accused, is structurally violated not through explicit over-broad interpretation but through the operational dynamic that normative absence necessarily produces: investigators lacking guidance are compelled to fill the void through informal practice, producing divergent field procedures across units. This constitutes a systemic violation not one of explicit textual excess but of norm-enforced interpretive freedom. The *lex praevia* dimension complicates the picture further: undercover buy operations conducted prior to the New CPPC's entry into force are now evaluated at trial against authentication standards that did not serve as operational guidance when the evidence was gathered, generating a form of retroactive procedural exposure that contradicts the spirit of *lex praevia*.

The New CPPC's enactment, rather than remedying these gaps, has produced what this study terms a normative amplification effect. Articles 108–116 acknowledge special investigative techniques in more systematic terms than the former CPPC, but defer to sectoral statutes for technical definitions precisely the level at

which the Narcotics Law's vacuum is most acute. Article 235(3) then introduces a strict authentication standard requiring proof that evidence was obtained lawfully, making the manner of collection as consequential as the content of the evidence itself [10]. Without standardized documentation procedures mandated by the Narcotics Law, evidence that is materially compelling may be formally inadmissible a structural evidentiary paradox. Courts lacking a definitive operational standard against which to assess the investigative conduct cannot consistently determine whether the authenticity threshold has been crossed [6].

The absence of an anti-entrapment doctrine represents the most critical normative deficit in human rights terms. Where no legal boundary demarcates the lawful undercover buy from unlawful state-

induced criminality, the investigative technique that is intended to detect and prevent crime carries an inherent risk of producing it. Entrapment constitutes a grave form of abuse of authority because the state becomes the instigator of the very offense it purports to prosecute [11]. Indonesia's failure to adopt any equivalent of the Dutch Tallon criterium or the European Court of Human Rights standard from *Teixeira de Castro v. Portugal* places it in a legally untenable position relative to both comparative and international human rights law.

Matrix 1 below presents a comprehensive ten-dimension comparative analysis of the undercover buy regulatory framework under the Narcotics Law and the New CPPC, together with the legality principle assessment for each dimension.

Aspect	Law No. 35/2009 on Narcotics	Law No. 20/2025 (New CPPC)	Legality Principle Assessment
Jurisdictional basis	Art. 75(j): explicitly names only the National Narcotics Agency (BNN) as the authorized investigator	Arts. 108–116: extends to all legally authorized investigators without distinction	National Police (Polri) not explicitly named in the Narcotics Law inconsistency of legal subjects; violates <i>lex certa</i>
Operational definition	No definition of 'undercover purchase' is provided whatsoever	Acknowledges special investigative techniques but defers to sectoral laws for technical definitions	Definitional vacuum in the Narcotics Law is unaddressed by the New CPPC violates <i>lex certa</i>
Conditions of execution	Art. 79: only requires written order from superior; no detail on format, minimum content, or issuing authority	Establishes stricter procedural standards including multi-layered oversight mechanisms	New CPPC standards exceed what Art. 79 of the Narcotics Law can satisfy
Technical procedures	Not regulated at all complete absence of step-by-step operational guidance	Arts. 108–116 provide general framework but lack operationally specific detail	No implementing regulation provides sufficient detail violates <i>lex certa</i>
Oversight mechanism	Written order is the sole oversight tool; no further accountability structure exists	Multi-layered oversight: investigator, prosecutor, and court coordination (Arts. 77–107)	Narcotics Law oversight mechanism is grossly inadequate relative to New CPPC standards

Evidence authentication	No regulation on categorization or authentication of evidence obtained through undercover buy operations	Art. 235(3): strict authentication required; evidence must be shown to be lawfully obtained	Absence of documentation standards in the Narcotics Law creates a critical gap in satisfying New CPPC requirements
Suspect rights protection	No specific protection for suspects who are the target of undercover buy operations	Arts. 50–80: comprehensive guarantee of suspect rights from the initial investigation stage	Absence of anti-entrapment boundaries contradicts the human rights protection spirit of the New CPPC
Anti-entrapment doctrine	No doctrine distinguishing lawful undercover buy from unlawful entrapment	No specific anti-entrapment regulation; issue unaddressed in the new code	Complete vacuum Indonesia lags significantly behind international standards (Dutch Tallon criterium; ECHR case law)
Informant legal status	Completely unregulated no provisions on recruitment, control, protection, or accountability of police informants	General protective standards apply but no informant-specific provisions	Total legal vacuum creates uncertainty, vulnerability, and potential for abuse and misidentification
<i>Overall legality assessment</i>	<i>Satisfies lex scripta only; fails lex certa; does not meet lex stricta; risks violating lex praevia</i>	<i>Sets higher standards but does not fill the Narcotics Law's normative gaps</i>	<i>Combined normative gaps create a legal vacuum undermining the legality principle as a whole</i>

Matrix 1. Comparative Regulatory Analysis: Law No. 35/2009 on Narcotics and Law No. 20/2025 (New CPPC)

Matrix 1 demonstrates that the normative gap between the Narcotics Law and the New CPPC is not a matter of technical detail but a systemic deficiency spanning the entire architecture of undercover buy regulation. In a genuine rule-of-law state, no gap may be left in the regulation of investigative action that infringes upon fundamental rights [12]. The result is a legal vacuum of considerable gravity: the technique is nominally authorized yet substantively ungoverned.

4.2 Juridical Obstacles to Implementation in Bandung City

The Narcotics Detective Unit of Polrestaes Bandung recorded 175 narcotics cases in 2025, distributed across 17 dried cannabis cases, 57 synthetic tobacco cases, 15 ecstasy cases, 22 pharmaceutical abuse cases, and the remainder involving methamphetamine and other psychotropic substances. This figure captures only a fraction of the actual prevalence, given the high dark number inherent in narcotics offenses where no complaining victim typically comes forward (BNN, 2023). Analysis of the implementation of undercover buy in Bandung City reveals conditions that qualify as systemic implementation failure rather than individual operational error a condition that originates in the normative

vacuum documented in Matrix 1 and interacts with institutional capacity constraints to produce compound adverse effects.

Inconsistency in investigative procedure at the operational level is a diagnostic indicator that regulation has failed to translate legislative mandate into uniformly applicable technical guidance [13]. Entrapment by state agents is a form of serious abuse of authority because it makes

the state the cause, rather than the prevention, of crime [11]. The use of informants in investigative operations must be grounded in clear rules to prevent abuse and wrongful targeting [14]. Matrix 2 presents the six juridical obstacles identified, together with their normative root causes, the Criminal Justice System components affected, and the resulting legal implications.

No.	Juridical Obstacle	Normative Root Cause	Affected CJS Component	Legal Implication
1	Procedural ambiguity in execution	Art. 79 of the Narcotics Law fails to specify format, minimum content, or issuing authority for the mandatory written order	Investigation: non-uniform procedures across different police units and task forces	Evidence vulnerable to judicial exclusion; practice violates lex certa; no standardized operational baseline exists
2	Absent operational definition of undercover buy	The Narcotics Law provides no definition of 'undercover purchase,' leaving scope and boundaries entirely to individual interpretation	Investigation & adjudication: courts lack an authoritative standard by which to assess operational legality	Divergent interpretations across units; violates lex certa and lex stricta; creates systematic inconsistency
3	Misalignment of evidentiary standards	Narcotics Law contains no authentication provisions; Art. 235(3) of New CPPC mandates strict authentication of evidence	Prosecution & adjudication: prosecutors unable to reliably establish evidentiary admissibility in court	Operationally valid evidence may be formally inadmissible a structural evidentiary paradox undermining convictions
4	Absence of anti-entrapment doctrine	No positive legal norm distinguishes a lawful undercover buy from an unlawful act of entrapment by state agents	Investigation & adjudication: no clear legal boundaries for investigators operating in the field	Risk of prosecuting innocent persons; violates presumption of innocence (Constitutional Court Decision No. 21/PUU-XII/2014)
5	Ambiguity of authorized investigative subject	Art. 75(j) explicitly authorizes only BNN investigators, while the National Police (Polri) conducts the majority of narcotics operations in practice	Investigation: Polri operates without an equally explicit legal basis as BNN under the Narcotics Law	Potential grounds for legal challenge to the validity of undercover buy operations conducted by Polri in criminal proceedings
6	Unregulated informant legal status	No regulation on recruitment, supervision, protection, remuneration,	Investigation: informants operate without legal protection, formal	Informant-derived evidence is legally vulnerable; elevated risk of information

		or accountability of police informants	status, or institutional accountability	manipulation and wrongful arrests
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Matrix 2. Juridical Obstacles to Undercover Buy Implementation in Bandung City

Matrix 2 reveals that each juridical obstacle is causally traceable to a specific normative gap documented in Matrix 1. There is a clear and direct causal chain: each unregulated dimension in the Narcotics Law generates one or more operational juridical obstacles in the field. This is not a collection of isolated deficiencies but a coherent regulatory failure that cannot be remedied through investigator discretion without violating the *lex stricta* principle that prohibits precisely such gap-filling by enforcement actors. The quality of investigation is the foundation upon which the quality of the entire criminal justice process rests [4]; when that foundation is structurally compromised by normative absence, the entire system is at risk.

Beyond the juridical obstacles rooted in normative inadequacy, implementation of the undercover buy technique in Bandung City is impeded by six practical obstacles that originate in institutional capacity deficits. Safety risks in undercover buy operations are systematically underweighted in operational planning despite being the most operationally decisive factor [15]. Budget constraints constitute the primary structural barrier preventing regional narcotics units from deploying specialized investigative techniques at optimal frequency [13]. Matrix 3 presents these practical obstacles together with their operational root causes, the Criminal Justice System components they affect, and their impact on law enforcement effectiveness.

4.3 Juridical Obstacles to Implementation in Bandung City

No.	Practical Obstacle	Operational Root Cause	Affected CJS Component	Impact on Law Enforcement
1	Insufficient operational budget	No dedicated or adequate budget allocation; funds used to purchase narcotics are lost if the operation fails, with no recovery mechanism	Investigation: operations rarely authorized given high costs and irrecoverable fund loss risk	The most effective technique is the least used; core trafficking networks remain unreachable; only low-level offenders are arrested
2	Safety risks for investigators and informants	No standardized safety protocols or institutional guarantees of protection for undercover investigators	Investigation: operational success entirely dependent on individual skill and personal courage	Investigators avoid the technique; operational quality is inconsistent; informants face physical threats without institutional recourse
3	Legal uncertainty and informant vulnerability	No regulation on recruitment, supervision, protection, or compensation of informants used in operations	Investigation: informants operate in conditions of acute legal and physical vulnerability	Informants reluctant to cooperate; intelligence quality deteriorates; risk of betrayal and manipulation increases significantly

4	Weak coordination between Polri and BNN	Two agencies with parallel jurisdiction operate without effective information-sharing or joint operational coordination mechanisms	Investigation: risk of overlapping operations and premature exposure of trafficking networks	Resource wastage; operations may fail because networks are inadvertently exposed by uncoordinated parallel activities
5	Inadequate investigator-prosecutor coordination	Prosecutors are engaged only after case files are submitted, not during operational planning of undercover buy operations	Prosecution: prosecutors cannot specify the type and quality of evidence needed for successful prosecution from the outset	Evidence collected does not match trial requirements; charges are weakened at court; perpetrators may be acquitted on procedural grounds
6	Absence of specialized training for undercover buy	No structured training program specifically prepares investigators to execute undercover buy techniques	Investigation: operational competence entirely dependent on individual experience and personal initiative	Inconsistent operational quality; elevated risk of procedural errors; investigators' legal standing is undermined in court

Matrix 3. Practical Obstacles to Undercover Buy Implementation in Bandung City

Matrix 3 reveals that practical obstacles do not operate independently of juridical obstacles but interact with them in mutually reinforcing ways that produce cumulative adverse effects disproportionate to either set of obstacles in isolation. The resulting dynamic is a structural paradox: the investigative technique best suited to penetrating organized narcotics networks is simultaneously the most expensive, the most legally uncertain, the most operationally dangerous, and the least likely to produce admissible evidence under current regulatory conditions. Criminal policy instruments that lack adequate enforcement infrastructure lose their effectiveness and create a sense of impunity among organized crime perpetrators [16].

5. CONCLUSION

This study reaches two interrelated conclusions. First, the regulation of the undercover buy technique in Indonesian positive law contains a critical normative vacuum that fails to satisfy the legality

principle in its full articulation. Law No. 35 of 2009 on Narcotics satisfies only the *lex scripta* element through Articles 75(j) and 79, but fails the *lex certa* standard by providing no operational definition, technical procedures, anti-entrapment mechanism, or evidence authentication standards. The enactment of the New CPPC [17] does not remedy this vacuum but amplifies it, generating a normative amplification effect in which higher evidentiary standards cannot be met without procedural guidance that was never legislated.

Second, the implementation of the undercover buy technique in narcotics law enforcement in Bandung City is demonstrably suboptimal, impeded by the cumulative interaction of six juridical obstacles rooted in normative inadequacy and six practical obstacles rooted in institutional capacity deficits. The combined effect constitutes systemic implementation failure: the investigative technique best suited to penetrating organized narcotics networks is rendered the least deployable in practice.

Core trafficking networks remain effectively shielded, while low-level offenders continue to constitute the overwhelming majority of those prosecuted.

These findings have implications beyond Indonesia. In legal systems characterized by rapid legislative change particularly the concurrent adoption of new codes of criminal procedure and the persistence of older sectoral legislation the risk of normative amplification is structurally inherent. Policymakers should treat the gap between sectoral authorization and

procedural operationalization not as a transitional artifact but as a systemic vulnerability requiring active legislative intervention. The adoption of an explicit anti-entrapment doctrine is a necessary, not merely desirable, component of any comprehensive legislative reform in this domain.

The content of the conclusion should be an answer to the question and research objectives. Conclusions are presented in one paragraph, not bullet points, and are expressed not in statistical sentences.

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