

## **PROBLEMS OF LAW ENFORCEMENT IN THE CRIME OF ABUSE OF DANGEROUS DRUGS (NARCOTICS)**

**Mujito, Pratolo Saktiawan, Didit Darmawan, Rio Saputra, Yeni Vitrianingsih**

Correspondence: dr.riosaputra@gmail.com

Universitas Sunan Giri Surabaya

### **ABSTRACT**

Narcotics as a substance or drug that can cause a decrease in consciousness and changes in behavior, has benefits in the fields of health and scientific development. In Indonesia, the distribution of narcotics is not absolutely prohibited, but its abuse and illicit trafficking remain a violation of the law. Drug abuse creates problems that involve physical, psychological, and environmental factors. The research method applied in this study is a statutory approach, or what is often referred to as a normative juridical approach or socio legal research. This research focuses on various legal regulations that are the subject of discussion. The results of this analysis show that narcotics is an extraordinary crime that threatens the safety of the nation. To overcome this problem, cooperation from all levels of society is needed. However, its implementation faces obstacles in law enforcement, especially related to differences in perceptions of who should be considered a criminal who deserves to be punished, and who should be seen as a victim who needs rehabilitation.

**Keywords:** Law Enforcement, Criminal Offenses, Abuse, Drugs.

### **INTRODUCTION**

Narcotics have an important role in the fields of medicine and scientific study, meeting patients' needs for treatment and scientific investigation. Law No. 35/2009 on Narcotics indicates the duality of the role of narcotics recognizing that on the one hand, these substances have benefits as drugs that contribute to treatment and health services and the development of science. However, on the other hand, it is important to remember that the use of narcotics without strict supervision can lead to harmful dependence if abused. The law emphasizes the need for strict control and supervision of narcotics to prevent potential abuse and harmful effects on the physical and mental health of users. Irregular use or exceeding the recommended dose can lead to negative impacts, including the risk of dependence caused by a strong psychological drive to continue using drugs on an ongoing basis due to emotional factors (Pardo & Reuter, 2018; Hadiyanto, 2021).

The international community has increased its attention to the problem of

narcotics, which is reflected in the Single Convention on Narcotic Drugs. This continued attention indicates an awareness of the serious impact that narcotics can have on the physical and mental health of individuals when used without supervision and prescription. A global focus on the issue of narcotics is important given the destructive potential inherent in their use. Joint efforts between countries within the framework of international treaties, such as the Single Convention on Narcotic Drugs, reflect the need to work together globally to address the complex challenges of drug abuse to safeguard the health of the world's people.

Drug abuse is a threat to individual health that has a serious impact on the social stability and security of the country as a whole. This phenomenon is complex and requires serious handling in terms of law enforcement. Appropriate and effective law enforcement efforts are essential in dealing with this problem. However, the implementation of drug-related regulations and law enforcement is often faced with a number of challenges that complicate these enforcement measures. The vagueness of legal norms can be a major obstacle. Confusion or varying interpretations of certain aspects of drug regulations can hinder consistency in law enforcement. Insufficiently clear or ambiguous norms can leave room for multiple interpretations, which in turn can affect the success of law enforcement (Hiola, 2023).

Evidentiary issues are also a serious challenge. Establishing sufficient evidence to support drug-related charges can be difficult. Factors such as the complexity of the case, limited evidence, or the inability to gather sufficient evidence can complicate the judicial process, slow down law enforcement, and potentially even undermine justice. In addition, the lack of rehabilitative approaches is also an important concern. An overly punishment-oriented focus on law enforcement without attention to rehabilitation efforts can trigger more problems in society. A well-integrated rehabilitative approach can help drug offenders to return to society in a positive way and reduce the risk of recurrence of drug abuse behavior.

Law enforcement efforts in tackling drug crimes have shown effectiveness in prosecuting perpetrators and rehabilitating victims or drug addicts. However, problems have arisen regarding the lack of explicit provisions in some regulations regarding the definition of perpetrators and victims (addicts/users) in narcotics. This creates confusion and difficulty in determining the appropriate treatment of the individuals involved, whether as perpetrators who are entitled to punishment or as victims who require rehabilitation. Therefore, further studies and regulatory updates are needed to provide clear and adequate definitions of the status of perpetrators and victims in drug abuse, so that the legal system can be more effective and fair in handling drug-related cases.

The Narcotics Law No. 35/2009 falls short in providing adequate boundaries regarding the definitions of dealers and addicts. This lack of clarity creates varying interpretations and legal uncertainty, particularly in determining who can be categorized as a dealer and who can be considered an addict. Moreover, the law only contains

rehabilitation obligations for addicts and victims of drug abuse without providing clear boundaries on who is categorized as a victim (Sumaragatha et al., 2021). Article 54's elucidation of "victims of drug abuse" attempts to provide some definition, detailing that a victim is someone who uses drugs unintentionally due to various factors such as being persuaded, tricked, or threatened. On the other hand, the definition of an addict includes a person who uses drugs and is in a state of dependence, both physical and psychological (Tamba et al., 2022). However, further studies and legislative updates are needed to provide more accurate clarification, so that the implementation of the law can be more precise and fair in dealing with drug-related cases.

The abuse of dangerous drugs, especially narcotics, is a serious problem that involves health, social and security aspects. This phenomenon has become a challenge for the legal system and law enforcement in various countries, including Indonesia. For this reason, this research will discuss various issues related to law enforcement against dangerous drug abuse crimes. In addition, this study aims to identify obstacles in law enforcement and analyze the effectiveness of existing policies and regulations.

## **METHODS**

The research approach used in this study is a statutory approach. The statutory approach is often referred to as a normative juridical approach or socio-legal research. The statutory approach emphasizes the study of existing legal texts, including laws and regulations, to understand the legal framework that regulates a particular problem or theme. In this case, the research is more focused on analyzing regulations related to the abuse of dangerous drugs, especially narcotics. The normative juridical approach emphasizes researchers to approach the problem by evaluating the applicable legal norms. Meanwhile, socio-legal research allows researchers to see the implementation of law in society and its impact, thus providing a more holistic picture of the problematics of law enforcement related to the abuse of dangerous drugs.

## **RESULTS AND DISCUSSION**

### **1. The Role of Law Enforcement in Handling Crimes of Dangerous Drug Abuse (Narcotics)**

The role of law enforcement in dealing with criminal acts of abuse of dangerous drugs, especially narcotics, is very important and consists of several factors. The following are some factors of law enforcement of narcotics abuse crimes:

#### **A. Law Enforcement as Deterrence**

Law enforcement acts as a deterrence tool or an effort to prevent criminal acts of narcotics abuse. Legal sanctions aim to provide a deterrent effect to individuals or groups involved in drug abuse activities. The threat of legal sanctions creates a clear legal basis and provides serious consequences for perpetrators of drug abuse crimes (Afrizona et al., 2022). This is expected to create a deterrence effect, where potential perpetrators or

potential perpetrators will reconsider their actions for fear of severe legal sanctions. This law enforcement is reactive to cases that occur.

Strict penalties create a deterrent effect for offenders and the general public, which in turn can contribute to reducing acts of abuse of dangerous drugs, particularly narcotics. The existence of strict penalties creates legal order and confirms that violations of drug-related regulations will have serious consequences. The existence of severe penalties shows that society and the government consider drug abuse as an unacceptable act. The deterrent punishment serves as a warning to other individuals who may be tempted to engage in drug abuse activities. Strict punishment can shape social norms that reject drug abuse, change people's views on drug abuse behavior and encourage them in prevention efforts (Putra, 2017).

### **B. Law Enforcement**

Legal action against perpetrators of drug abuse is carried out through court proceedings and law enforcement subject to applicable legal provisions. Each step in this process has the aim of upholding justice and tackling criminal acts of dangerous drug abuse. Enforcement begins with an investigation by law enforcement officials to gather strong evidence related to drug abuse cases. Next, the legal process continues to the court stage, where the offender will face a legal decision for his actions. In court, the judge considers the evidence presented by the public prosecutor and the offender's legal defense. The judge's decision is based on the principles of justice, transparency, and the strictness of the applicable legal provisions.

Court proceedings must be transparent, fair and respectful of human rights. After the decision is made, law enforcement officials will carry out the sanctions that have been determined in accordance with the law which consists of imprisonment, and fines (Maringan, 2022). This legal action is punitive in nature which consists of rehabilitation efforts. Especially in drug abuse cases, a rehabilitative approach can help offenders to return to society as better individuals after serving their sentences. For this reason, law enforcement is an effort to enforce rules and as a means to build a fair and effective system in responding to the problem of dangerous drug abuse.

### **C. Prevention and Education**

Prevention and education through law enforcement is an important strategy in tackling drug abuse. Law enforcement can act as extension agents by providing accurate and educative information to the public. Through activities such as seminars, workshops, and public campaigns, law enforcement can raise public awareness of the serious legal consequences associated with drug abuse. This education is not only aimed at potential offenders, but also at the general public so that they can recognize the signs of drug abuse and participate in prevention efforts. In this way, law enforcement is not only responsive to concrete cases, but also proactive in shaping collective understanding of the risks of drug abuse, and providing a foundation for people to make wiser, more knowledge-based

decisions.

Prevention and education by law enforcement plays an important role in creating awareness of the legal consequences and negative impacts of drug abuse as the first step in prevention efforts. Through an emphasis on legal implications, the public is given a deeper understanding of the sanctions that can be received for engaging in drug abuse. It also includes an understanding of the negative health, social and economic impacts of drug abuse. By raising this awareness, people have a stronger knowledge base to make informed decisions about drug abuse, so they can more effectively avoid this behavior. This first step is key to building a society that is aware of the risks of drug abuse, forming attitudes that reject it, and ultimately creating a safer and healthier environment (Idris et al., 2022).

#### **D. Rehabilitation**

Law enforcement focuses on considering rehabilitation efforts for drug abusers (Cullen & Janson, 2011). Rehabilitative approaches are important in addressing the root causes of abuse, by providing opportunities for individuals to recover and return to contributing positively to society. The rehabilitation process involves a variety of programs, including counseling, therapy, and medical approaches designed to overcome dependence and rebuild a healthy life. By providing opportunities for offenders to change and get the support they need, law enforcement has the potential to change the course of their lives, reduce the risk of drug abuse relapse, and ultimately assist in the shaping of society. With a rehabilitative approach, law enforcement plays a role in enforcing rules that support the recovery process of individuals involved in drug abuse.

A rehabilitative approach to law enforcement has an important role to play in assisting the reintegration of people who abuse drugs into society, while effectively reducing the risk of relapse into abusive behavior. Through rehabilitation programs, individuals involved in drug abuse receive support to overcome the challenges underlying their dependence. Therapy, counseling, and skills training become the main instruments to help them understand and address the root of the problem. In addition, it also provides training that can increase independence and help them develop the social skills needed to socialize positively in society. By providing this support, the rehabilitative approach creates opportunities for individuals to regain control over their lives that reintegrate into society and reduce the likelihood of relapse of drug abuse behavior and create an environment that supports long-term recovery.

#### **2. Law Enforcement Efforts for Criminal Acts of Narcotics Abuse**

Basically, criminal law enforcement in the field of narcotics follows a similar process to criminal law enforcement in general, as regulated in the Criminal Procedure Code (KUHAP). Although narcotics and psychotropic crimes have their own provisions regulated in special laws, this does not exclude the possibility of using the Criminal Code (KUHP). Although the applicable legal principle is "Lex specialis derogate legi generalis",

law enforcement in narcotics cases must also refer to the Criminal Code and Criminal Procedure Code as the material and formal legal framework in criminal matters.

The steps in handling criminal cases always begin with the investigation and investigation process. Investigation or what is often referred to as research is the first step or effort to clarify whether a criminal event actually occurred or not (Massora et al., 2022). In criminal cases, investigation or research involves a series of steps in accordance with laws and regulations, aiming to ascertain the truth of the occurrence of the criminal event. Article 1 point 2 of the Criminal Procedure Code explains that investigation refers to the actions of investigators in searching for evidence that can support the belief that criminal acts or actions that violate criminal provisions have occurred.

Descriptions of issues and challenges in drug law enforcement often involve differences in views between investigators, public prosecutors, judges, and legal counsel during the trial process. In the early stages of the drug law process, investigators and prosecutors usually include elements of Article 112 of Law No. 35/2009 in their charges against individuals suspected of being drug dealers. According to Saputra and Slamet (2019), despite having two pieces of evidence that are recognized as valid and convincing, this creates problems because the Narcotics Law confirms that to determine a person's status as a dealer or addict, evidence of drug use positivity needs to be tested first through a series of tests. Article 112 of Law No. 35/2009 determines the punishment for those who without rights possess, store, control, or provide narcotics group I not plants. However, this provision cannot be equated with the concept of "bezit" or mastery found in the Civil Code, indicating in determining the status of drug offenders based on the applicable law.

Meanwhile, in the criminal element of Article 112 paragraph (1), the Supreme Court of the Republic of Indonesia in its decision number 1386/K/Pid.sus/2011 provided legal considerations stating that possession or control of narcotics and the like must be assessed based on the intent, purpose, or context, not just based on the legal text alone by linking the sentences in the Law. This means that the investigator or public prosecutor must prove the intent or purpose of the individual who possesses the narcotics during the criminal trial. The Supreme Court emphasized that a person cannot be punished just for carrying the illicit goods, so it cannot be directly concluded that he is a dealer. Therefore, the investigator or public prosecutor must prove whether the perpetrator is a dealer, victim, or even not fully involved, in line with the Supreme Court decision number 1071/K/Pid.sus/2012 which states that article 112 is flexible and can cover various situations.

MARI Decision No. 1071/K/Pid.Sus/2012 states that the provisions of article 112 can be considered a flexible regulation or can cover various situations, often referred to as a waste basket article or rubber article. The actions of users or addicts who possess or control narcotics for personal consumption or use can still be caught under article 112, but this understanding is considered erroneous because it does not consider the factors

or conditions underlying a person controlling or possessing the goods with personal intent or intention. Therefore, it is important to first prove the existence of the element of guilt (*schuld*) in the accused perpetrator. In criminal justice, the determination of a person as a suspect or defendant must be assessed based on the extent of guilt attributable to him, and his legal liability can be measured according to the degree of guilt.

Evidence has a central role in the examination stage at trial, where the fate of the defendant is determined through the results of the evidence. If the results of proof using the evidence provided for by law are unable to "sufficiently" prove the guilt of the accused, then the accused will be "acquitted" from punishment, in accordance with the provisions of article 191 paragraph (1) of the Criminal Procedure Code which states that if the court considers that the results of the examination at trial cannot legally and convincingly prove the guilt of the defendant for the acts charged, then the defendant will be acquitted. Conversely, if the defendant's guilt can be proven using the evidence described in article 184, the defendant will be considered "guilty" and punished. Returning to the formulation of Article 112 paragraph (1) of the Narcotics Law, the element "without right and against the law" is mentioned. Van Hattum explains this "*wederechtelijkheid*", and there are different views regarding what is referred to as "*materiele wederechtelijkheid*" or "*wederechtelijkheid*" in the formal and material sense.

According to the concept of *wederrechtelijkheid* in the formal sense, an act can be considered unlawful if it fulfills all the elements listed in the formulation of the offense according to the law. In contrast, according to the concept of *wederrechtelijkheid* in the material sense, the assessment of whether an act is considered unlawful is not only based on the provisions of written law, but must also consider unwritten principles of common law. For adherents of the concept of *wederrechtelijkheid* in the formal sense, the determination of whether a person's actions are considered unlawful is sufficient to see whether the actions fulfill all the elements of the offense formulation or not. If the act meets all the elements and there is no positive legal basis that negates the nature of *wederrechtelijkheid*, then it is considered that the act is unlawful and punishable. Meanwhile, for adherents of the concept of *wederrechtelijkheid* in the material sense, the assessment is more complex. Even though a person has fulfilled all the elements of the offense formulation, to determine whether the act is *wederrechtelijkheid* or not, it must involve a review of written law and general legal principles, taking into account the possibility of provisions or general legal principles that negate the *wederrechtelijkheid* nature of the act. If the judge concludes that there are grounds that negate the unlawfulness of a person's conduct, then the person will not be punished.

## **CONCLUSIONS**

Law enforcement problems related to the criminal abuse of dangerous drugs, particularly narcotics, involve a number of challenges that require serious attention. Some key aspects that emerged from the analysis include the complexity of defining the elements of a

criminal offense, inconsistent interpretation of legal regulations, and evidentiary challenges related to possession and intended use of drugs. Rehabilitation and prevention processes are also important factors to consider in law enforcement strategies.

Suggestions include strengthening the evidentiary system by ensuring that the evidence used meets legally recognized standards. Increased training for law enforcement officers in collecting and presenting valid evidence could be an important step. Integrate prevention and rehabilitation approaches in law enforcement strategies. This could include community education and outreach programs, as well as paying special attention to the rehabilitation of drug abusers to support their reintegration into society.

## REFERENCES

- Afrizona, A., I. Artadi, & T. Asmara. (2022). Penerapan Sanksi Pidana Terhadap Penyalahgunaan Narkotika dalam Perkara Pidana Nomor: 54/Pid. Sus/2021/Pn Cbn di Pengadilan Negeri Cirebon. *Syntax Literate; Jurnal Ilmiah Indonesia*, 7(11), 17322-17340.
- Cullen, F. T. & C. L. Jonson. (2011). Rehabilitation and Treatment Programs. *Crime and Public Policy*, 293-344.
- Hadiyanto, I. P. (2021). Penyalahgunaan Narkotika Ditinjau dari Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika. *Fenomena*, 19(2), 149-174.
- Hiola, F. (2023). Analisis Aspek Hukum Pidana dalam Menangani Kejahatan Perdagangan Narkotika Studi Kasus: Putusan Pengadilan Negeri Jakarta Selatan No. 133/Pid. Sus/2023/PN JKT. SEL. *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora*, 1(3), 24-40.
- Idris, A., Ardiansyah, A., & Silaban, R. (2022). Penyalahgunaan Narkotika (Studi Kasus Putusan Pengadilan Negeri Sibolga Nomor 444//Pid. Sus/2020/PN Sibolga). *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana*, 4(2), 397-409.
- Maringan, L. (2022). Sanksi Pidana Bagi Pengedar Narkotika Berdasarkan Undang-Undang 35 Tahun 2009. *Lex Crimen*, 11(2), 126-133.
- Massora, L. M., Asis, A., & Mirzana, H. A. (2022). Penegakan Hukum dalam Penyidikan Penyalahgunaan Narkotika di Kabupaten Tana Toraja (Studi Kasus Pada Pengadilan Negeri Makale). *PETITUM*, 10(1), 77-84.
- Pardo, B. & P. Reuter. (2018). Narcotics and Drug Abuse: Foreshadowing of 50 Years of Change. *Criminology & Public Policy*, 17(2), 419-436.
- Putra, W. W. S. A. (2017). Upaya Badan Narkotika Nasional Provinsi (BNNP) Jawa Timur Dalam Memberantas Penyalahgunaan Narkotika di Kota Surabaya. *Novum: Jurnal Hukum*, 4(1), 166-173.
- Saputra, A. & S. Slamet. (2019). Upaya Penanggulangan Peredaran dan Penyalahgunaan Narkotika di Kabupaten Sukoharjo. *Jurnal Hukum Pidana dan penanggulangan Kejahatan*, 5(2), 273-286.
- Sumaragatha, I. G. B. S. S., O. Saputra, S. Swarnagita, N. L. Ginastini, & H. S. Wardi. (2021). Politik Hukum dalam Penanggulangan Pecandu Narkotika. *Jurnal Kompilasi Hukum*, 6(2).
- Tamba, J., D. Tafonao, & G. T. Siregar. (2022). Analisis Yuridis Pelaku Tindak Pidana Penyalahgunaan Narkotika (Putusan No. 2361/Pid. Sus/2019/Pn. Medan). *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana*, 4(2), 200-205.
- Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.