

RESEARCH ARTICLE



The legal existence of sentencing for perpetrators of narcotics abuse crimes

Fariaman Laia✉

Faculty of Law, Universitas Nias Raya, Nias, Indonesia

ABSTRACT

In recent developments, narcotics crimes constitute a violation of both legal and moral norms. This issue is not new but remains a significant public concern, particularly regarding its impact on the future of the nation's youth. This study employs a normative legal research method with a conceptual and legislative approach. The findings indicate that law enforcement in sentencing drug addicts or users includes not only rehabilitation but also criminal sanctions such as imprisonment. These sanctions aim to deter drug use and mitigate its negative effects on offenders. Furthermore, it is crucial to identify the sources of narcotics distribution, as only through such measures can the circulation of drugs in Indonesia be minimized. The author suggests that in enforcing existing regulations, law enforcement efforts should place greater emphasis on targeting drug dealers. Focusing solely on users will make it challenging to achieve sustainable narcotics eradication in Indonesia.

KEYWORDS

Criminal imposition, criminal acts, narcotics crime, sentencing, law enforcement

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1. Introduction

The narcotics problem has now become a national and even world case. It is hazardous to the world because narcotics crimes damage the nation's children and have become extraordinary crimes. Of course, this crime is undoubtedly very concerning to the world. In addition, being prohibited by law is contrary to the norms that apply in society. Along with the current development that is increasingly rapid and competitive, the demands for fulfillment of human needs will be increasingly diverse. These needs can only be fulfilled through building mutually beneficial interaction patterns that do not conflict with the values that live, grow, and develop in society. They are subject to and obey the prevailing laws. Many patterns of interaction have been built because human nature cannot live alone, humans must live in an organized society to achieve common goals (Laia, 2022).

CORRESPONDING AUTHOR Fariaman Laia ✉ fariamanlaia292@gmail.com 📍 Faculty of Law, Universitas Nias Raya, Nias, Indonesia

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Basically, narcotics are drugs that are prohibited according to applicable laws. This narcotic also has a terrible impact on the perpetrators of narcotics abuse without realizing the end of dependence. Narcotics, according to Law Number 35 of 2009, are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause several types of diseases so that there is a decrease or change in consciousness, loss of taste, reduction to eliminate pain, and can cause dependence, which is divided into groups as attached to the Law or which are later determined as a decision of the Minister of Health. The problem of narcotics trafficking in Indonesia is now very concerning. This is due to several things, among others, because Indonesia is located in a position between three continents, and given the development of science and technology, the influence of globalization, the flow of highly developed transportation, and the shift in materialistic values with the dynamics of the target of illicit trafficking opinions. Indonesian society and even the world community, in general, are currently faced with a very worrying situation due to the rampant illegal use of various types of narcotics. This concern is further sharpened by the rampant illicit trafficking of narcotics that has circulated at all levels of society, including among the younger generation.

Types of Narcotics in Law Number 35 of 2009 in Chapter III Article 6 states that Narcotics are classified into:

1. Class I Narcotics

What is meant by narcotics group 1 is narcotics that can only be used for scientific development and not used in therapy and have a very high potential to cause dependence. Among them are the following: (a) Marijuana - Marijuana is the name of a tree that in plant science is called *cannabis sativa*. This tree is classified as a shrub. This tree can grow worldwide, including in India, Turkey, southern Africa, Morocco, Brasilia, the Netherlands, America, and Indonesia. According to research, this tree has been planted in Indonesia since 1825 through experiments conducted by a Dutchman, Mr. Bouma. In East Java, twenty marijuana fields were found, most of which were in the Malang prefecture, and as many as approximately three thousand trees were found to have been destroyed (Sudiro, 2000); (b) Cocaine - Cocaine comes from the coca plant, obtained by picking the leaves. After drying, the leaves are distilled in a factory. The result is a white cocaine powder with a bitter taste. The old powder will become moist and wet; (c) Opium - Opium is a type of plant that causes opium for people who use it; opium is a type of flower commonly called poppy, this

type of poppy plant in the world has been widely developed in order to fulfill the desires of addicts.

2. Class II Narcotics

Narcotics with medicinal properties are used as a last resort and can be used in therapy or scientific development purposes and have a high potential to cause dependence. The types include: (a) Morphine - Morphine is a drug with a function to relieve severe aches or pains. Morphine falls into the category of narcotic analgesics (opiates). It works in the brain to change the way the body responds to and feels pain; (b) Pethidine - Pethidine is a drug used for pain relief during childbirth. Pethidine is a morphine-like drug used by prescription, so it does not cause addiction.

3. Class III Narcotics

Narcotics that have medicinal properties are widely used in therapy and or scientific development purposes and have a mild potential to cause dependence therapy and or scientific development purposes and have mild potential to cause dependence. The types: (a) Codeine and its derivatives - codeine and its derivatives, namely, methylmorphine, are opium (morphine derivatives) of the phenanthrene group; (b) Methadone - Methadone is a powerful synthetic opiate (narcotic) like heroin (putaw) or morphine, but does not cause strong sedative effects; (c) Naltrexone - Naltrexone is a medication used to prevent people who have become addicted to certain drugs (opiates) from retaking them. It is used as part of a complete treatment program for drug abuse (e.g., adherence monitoring, counseling, behavioral contracts, and lifestyle changes).

Criminalization is one of the most important parts of criminal law because it is the culmination or the last part of holding someone accountable for committing a criminal offense. Criminalization is also a speech or process in which all cases are declared according to the basis of the law and proven by substantial evidence. Criminal law without punishment means declaring someone guilty without any definite consequences for his guilt (Laia, [2022](#)).

Law enforcement must also look at the achievement of the principles of justice, expediency, and legal certainty because the Indonesian state is a state of law, so all violations committed by everyone must deal with the applicable law. If the offense is understood as "can be reproached", then the punishment is the "realization" of the "reproach" (Huda, [2006](#)).

The Existence Law Number 35 of [2009](#) on Narcotics is a form of legal umbrella for the fulfillment of the rights of victims of narcotics abuse. The formulation of the

articles in the law is considered a bold breakthrough in imposing criminal sanctions on dealers and emphasizing the human side towards those who are addicted to narcotics. It is also about rehabilitation so that it provides an opportunity for people with addiction and victims of narcotics abuse to get side healing. With that in mind, we are very hopeful that in handling cases of narcotics abuse, we should be more concerned about the things that are beneficial to them for sanctions that are decided by the judicial panel.

2. Methodology

The type of research used in this research is normative legal research. Normative legal research finds dogmatic legal truths and requires secondary data from positive law (Das Sollen) (Butarbutar, 2018). Normative legal research is legal research that examines document studies using secondary data with primary, secondary, and tertiary legal materials. Normative legal research focuses on legal norms and legislation by examining existing legal documents and theories. The subject of study is law, conceptualized as the rules that apply in society and become a reference for everyone's behavior. The normative legal research aims to explain how to apply applicable legislation (Laia et al., 2024).

3. Results and discussion

3.1. Definition of narcotics

The politics of law in Law Number 35 of 2009 concerning Narcotics, which in general understanding implies a controversial side, namely Article 1 number 13 states that narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically. Furthermore, Article 54 states that drug addicts and victims of drug abuse are required to participate in the media and social rehabilitation process. In the explanation of Article 54, what is meant by "victim of narcotics abuse" is someone who accidentally uses narcotics because they are persuaded, tricked, cheated, forced, and/or threatened to use narcotics. Meanwhile, Article 1 point 15 states that a misuser is someone who uses narcotics without the right or is against the law. The qualification of narcotics abusers as regulated and threatened with punishment in Article 127 of the criminal provisions is relatively light, namely a maximum of 4 years imprisonment without a fine. This is a gap of disintegrity for law enforcement officials in handling cases at every stage, both at the investigation, prosecution, and court stages. The existence

of Article 127 is very beneficial for narcotics offenders because the punishment imposed on narcotics abusers themselves can be in the form of rehabilitation, both medical rehabilitation and social rehabilitation. This condition is very lame and not in harmony (Supanto & Rustamaji, 2019).

The General Elucidation of Law Number 35 of 2009 concerning Narcotics outlines that Narcotics is a substance or drug that is very useful and necessary for the treatment of certain diseases, if misused or used not under treatment standards, can cause very detrimental consequences for individuals or communities, especially the younger generation, this will be more detrimental if accompanied by abuse and illicit trafficking of narcotics which can cause more significant harm to the life and cultural values of the nation which will ultimately weaken national resilience.

The definition of Narcotics is based on the provisions of Article 1 number 1 of Law No. 35 of 2009 concerning Narcotics. What is meant by Narcotics in the law is a substance or drug derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to disappear pain, and can cause dependence, which can be divided into groups as attached to this Law.

3.2. Narcotics crime

In the Indonesian legal system, drug abuse is qualified as a crime in the field of narcotics, regulated in Law No. 35 of 2009 on Narcotics. Narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, destroying lives and the future, especially the younger generation. According to Article 127 paragraph (1) of Law No. 35 of 2009, every person who uses Class I Narcotics for themselves is sentenced to a maximum imprisonment of 4 (four) years; every person who uses Class II Narcotics for themselves is sentenced to a maximum imprisonment of 2 (two) years; and every person who uses Class III Narcotics for themselves is sentenced to a maximum imprisonment of 1 (one) year. What is meant by misuse is a person who uses narcotics without the right or against the law (Saputra & Chalim, 2018).

Narcotics Crime is regulated by Law Number 35, 2009. As stated by Muslim et al. (2024jj), the law regulates society properly and beneficially by determining what is required or permitted and vice versa. The law can qualify an act in accordance with the law or discuss it as against the law. Actions that follow the law are not a problem and do not need to be questioned; what is a problem is actions that are against the law. In fact, the law pays attention to and works on this latter act, both unlawful acts

that actually occur (onrecht in actu) and unlawful acts that may occur (onrecht in potentie). The attention and cultivation of the act constitute law enforcement. Against unlawful acts, sanctions are available.

Looking at the legal system schematically, three law enforcement systems can be distinguished: the civil law enforcement system, the criminal law enforcement system, and the administrative law enforcement system. Specifically, it includes the civil law sanction system, the criminal law sanction system, and the administrative law sanction system (state administration). The three law enforcement systems are supported and implemented by state equipment or law enforcement officials (tools), which also have their own rules (Diyono, 2020). Types of Narcotics Crimes regulated in Law Number 35 of 2009 concerning Narcotics:

- a. Every person who without right or against the law plants, maintains, possesses, stores, controls or provides narcotics of Class I in the form of plants, Article 111; Every person who without right or against the law plants, maintains, possesses, stores, controls or provides narcotics of Class I not plants, Article 112;
- b. Any person who without right or unlawfully produces, imports, exports, or distributes Class I Narcotics, Article 113;
- c. Any person who without right or unlawfully offers for sale, sells, buys, receives, mediates in the sale, purchase, exchange, or delivery of Class I Narcotics, Article 114;
- d. Every person who without the right or against the law carries, sends, transports, or transmits Class I Narcotics, Article 115;
- e. Every person who without right or unlawfully uses Class I Narcotics against another person or provides Class I Narcotics for the use of another person, Article 116;
- f. Every person who without right or unlawfully possesses, stores, controls, or provides Class II Narcotics, Article 117;
- g. Any person who without right or unlawfully produces, imports, exports, or distributes Class II Narcotics, Article 118;
- h. Any person who without right or under the law offers for sale, sells, buys, receives, mediates in the sale, purchase, exchange, or delivery of Class II Narcotics, Article 119;
- i. Every person who without the right or against the law carries, sends, transports, or transmits Class II Narcotics, Article 20;

- j. Every person who without right or against the law uses Class II Narcotics against another person or provides Class II Narcotics for the use of another person, Article 121;
- k. Every person who, without the right or against the law, plants, maintains, possesses, stores, controls, or provides Class III Narcotics, Article 122;
- l. Any person who without right or unlawfully produces, imports, exports, or distributes Class III Narcotics, Article 123;
- m. Any person who without right or under the law offers for sale, sells, buys, receives, mediates in the sale, purchase, exchange, or delivery of Class III Narcotics, Article 124;
- n. Every person who without the right or against the law carries, sends, transports, or transmits Class III Narcotics, Article 125;
- o. Every person who without right or unlawfully uses narcotics of Class III against another person or provides narcotics of Class III for the use of another person, Article 126;
- p. Article 127: Parents or guardians of addicts who are not yet of age, as referred to in Article 55 paragraph (1) who deliberately do not report, Article 128;
- q. Possessing, storing, controlling, or providing Narcotic Precursors for the production of Narcotics; Producing, importing, exporting, or distributing Narcotic Precursors for the production of Narcotics; Offering for sale, selling, buying, receiving, intermediating in the sale, purchase, exchange, or transfer of Narcotic Precursors for the production of Narcotics; Carrying, sending, transporting, or transiting Narcotic Precursors for the production of Narcotics Article 129;
- r. Every person who intentionally does not report a Narcotics crime Article 130;
- s. Attempt or conspiracy to commit the crime of Narcotics and Narcotic Precursors Article 131;
- t. Every person who orders, gives, or promises something, provides an opportunity, encourages, provides convenience, forces with threats, forces with violence, deceives, or persuades a child who is not yet of age to commit a Narcotics crime, To use Narcotics Article 133;
- u. Narcotics addicts who are of legal age and deliberately do not report themselves; Families of narcotics addicts who deliberately do not report the narcotics addict Article 134.

Based on these provisions and considering the legal facts revealed during the trial, the defendant was caught red-handed by POLRI investigators while using

Category 1 Non-Plant Narcotics (Sabu/Methamphetamine). In such cases, in accordance with applicable regulations, it is also necessary to identify the source of the narcotics—where they were obtained or discovered—during the process of addiction.

In addition to rehabilitation, a deterrent must be imposed to restrict future users. The implementation of rehabilitation for narcotics addicts should be prioritized to ensure recovery while also helping to identify the root causes or sources that contribute to the addict's deviant behavior.

Article 7 of Law Number 35 of 2009 concerning Narcotics: "Narcotics can only be used for the benefit of health services and/or the development of science and technology." However, many people in the world, especially in Indonesia, misuse narcotics. Even the circulation of narcotics is very massive. The circulation of narcotics in Indonesia, when viewed from a juridical aspect, is legal. The Narcotics Law only prohibits the use of narcotics without permission by the Law in question. (Nugraningsih, [2023](#)).

The sentencing policy will differ in the imposition of imprisonment sanctions given to the content of abusers, dealers, and users Pradana et al. ([2024](#)). Based on the research findings obtained by the author, where there are so many considerations made by the panel of judges in accordance with the prosecutor's demands, it is still decided by imprisonment, of course in the decision, the panel of judges should pay attention to considerations that are beneficial to the defendant or drug addict, This is because it is only limited to addicts who can still be recovered by giving sanctions (undergoing medical treatment, and referring to social institutions in this case rehabilitation) in accordance with the applicable laws. In fact, as a manifestation of the seriousness of the Supreme Court, it has issued Circular Letter No. 4 of [2020](#) concerning the Placement of Victims of Narcotics Abuse and Addiction in Medical and Social Rehabilitation Institutions. The circular letter contains the for the placement of drug abusers, drug abuse victims, and drug addicts in medical rehabilitation institutions and social rehabilitation institutions, namely that the application of punishment is as intended in Article (1) of the Law Republic Indonesia Number 35 of [2009](#) concerning Narcotics.

4. Conclusion

Based on the findings of the research and the discussion, it is that this rehabilitation center is one of the places that is useful for drug addicts to recover from what has happened. It can be concluded that the consideration of the judge in imposing the

sentence on the perpetrators of narcotics abuse is that law enforcement can consider the circumstances committed by each person because there are so many narcotics crimes that are very dangerous. It could be that the user is also a dealer, and it must also be found where the source of the narcotics found. So, according to the author, it should not only be rehabilitation but can also be applied punitive sanctions so that in the future, people will be more afraid to use narcotics.

The suggestion in this research is that in law enforcement, in accordance with applicable laws and regulations, it must be as far as possible able to consider the applicable law and be able to examine the circumstances of the person in order to catch the actual perpetrator if only the user then the root of the drug never stops. The focus of law enforcement is actually to catch dealers.

Disclosure statement

The authors declare that there is no conflict of interest regarding the publication of this paper.

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