

**CRIMINAL DISPENSATION AGAINST NARCOTIC ABUSES AND ADDICTIVES  
REVIEW FROM UU NO 35/2009**

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**Abstract:** This writing examines or analyzes secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in the legal system that regulates human life (library research). Based on the results of the study, it is known that law enforcement against narcotics crimes according to the Narcotics Law is subject to imprisonment, fines, life imprisonment and other sanctions. , Narcotics circulation in terms of international law, namely the policy of dealing with narcotics crimes was originally stated in The United Nation's Single Convention on Narcotic Drugs 1961.

**Keywords:** *Narcotic Crimes, the Era of International Free Trade, Security and State Sovereignty.*

## **INTRODUCTION**

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic which can cause a decrease or change in consciousness, loss of taste, reduce and eliminate pain, and cause dependence.<sup>1</sup> Likewise with psychotropics, are substances or drugs, both natural and synthetic, not narcotics, which have psychoactive properties through selective effects on the central nervous system that cause characteristic changes in mental activity and behavior.<sup>2</sup>

Narcotics use is often associated with crime, both drugs are considered to have a negative influence and cause users to commit crimes. The crime is basically a relative formulation. Mustafa said that what is called a crime as a social phenomenon is not merely an act that is prohibited by law, an act that is a biological disorder or psychological disorder, but these actions are detrimental and violate public sentiment.<sup>3</sup> If we refer to the formulation of

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<sup>1</sup> Fransiska Novita Eleanora, "Bahaya Penyalahgunaan Narkoba Serta Usaha Pencegahan Dan Penanggulangannya (Suatu Tinjauan Teoritis)," *Jurnal hukum* 25, no. 1 (2022): 49.

<sup>2</sup> Rahmad Teguh, "Kedudukan Hukum Pidana Terkait Adanya Peredaran Narkotika di Indonesia Ditinjau dari Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika," *JURNAL RECHTENS* 9, no. 1 (2020): 53.

<sup>3</sup> Umar Anwar dan DPKWK Hukum, "Penjatuhan Hukuman Mati Bagi Bandar Narkoba Ditinjau Dari Aspek Hak Asasi Manusia (Analisa Kasus Hukuman Mati Terpidana Kasus Bandar Narkoba; Freddy Budiman)," *Jurnal Legilasi Indonesia* 13, no. 3 (2016): 21.

crime as described by Mustafa, the point of determining whether a behavior is considered a crime or not is not using formal rules as a reference.

The production and circulation of narcotics is massively circulating in our society. The role of the narcotics mafia seems to be unstoppable. The narcotics mafia has poisoned law enforcers as users and as dealers in the Indonesian nation and various parts of the world, even though all nations are fighting this crime. People often hear statements about building commitments or fighting together in eradicating narcotics in Indonesia and in the world.

Narcotics abuse has spread in some circles of society in big cities and small towns even the circulation is difficult to stop. Narcotics abuse is used not for the purpose of treating disease, but is used intentionally to achieve "certain consciousness" because of the effect of drugs on the soul. As Indonesian people in general, we are currently faced with a very difficult situation to worry about due to the widespread use of various kinds of narcotics and psychotropic substances indiscriminately.<sup>4</sup>

Basically the circulation of narcotics in Indonesia is very wide. UU no. 35 of 2009 concerning Narcotics has given different treatment to perpetrators of narcotics abuse. Narcotics users or addicts as perpetrators of narcotics crimes are sentenced to imprisonment for narcotics abusers. Based on the explanation above, the author will take the focus of the research, namely:

1. How is the criminal law system in Indonesia related to narcotics crimes?
2. What are the forms of legal protection for perpetrators and victims as traffickers of narcotics?

## **LITERATURE REVIEW**

### **Drugs In Islam**

Textually, drugs do not have any arguments that explicitly directly forbid drugs. At the time of the Prophet Muhammad, drugs not yet. However, the Qur'an and al-Hadith teach us to stay away from intoxicating objects. At that time, it was called khamr or liquor.<sup>5</sup>

Etymologically, drugs are translated into Arabic with the word "al-muhadira>tu" which comes from the word "khaddara - yukhaddiru – takhdi>ra>n" which means feeling lost, confused, anesthetized, unconscious, closed, dark, or drunk. Meanwhile, in terms of drug

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<sup>4</sup> A. Anditha Sari, "Pendampingan Pembuatan Blog Sebagai Media Kampanye Sosial Penyalahgunaan Zat Adiktif Pada BKR Kelurahan Kratonan, Kota Surakarta," *Jurnal Pengabdian Pada Masyarakat* 1, no. 1 (2016): 32.

<sup>5</sup> Muhamad Rezi, Sasmiarti Sasmiarti, dan Helfi Helfi, "MEROKOK DALAM TINJAUAN HUKUM ISLAM (Studi Nash-Nash Antara Haram Dan Makruh)," *Al Hurriyah: Jurnal Hukum Islam* 3, no. 1 (2018): 56.

terminology is any substance that if it is consumed it will damage the body and mind, also make people get drunk or crazy.

The legal status of drugs in the context of fiqh is not stated directly, both in the Qur'an and hadith, because it was not known at the time of the Prophet. The Qur'an only talks about harm khamr. <sup>6</sup>So that drugs are a new problem in Islam. However, if there are new problems that have not been stipulated the law while there are other events or objects similar to it and the legal provisions have been determined, the scholars agree to analogy with something that has been determined by law.

Because sometimes the Qur'an and Hadith only mention arguments in general. So drugs are analogous to khamr. The Prophet's Hadith regarding things that damage the mind usually associated with an intoxicating thing without distinguishing one type from another. And without being tied to eaten or drunk. But khamr which is usually always used complement the conversation in his hadith

There is Khamr that is drunk and some is eaten while marijuana is also eaten and some is drunk. So all This type of drug is illegal. Even though the action The violation was carried out after the time of the Prophet Muhammad SAW

It is proven that the caliphs never hinder the categorization of intoxicating objects into the hadith of the Prophet Muhammad. Even though the drink ade after the Prophet died, but still included in the scope of discussion of the book and sunnah. That is a summary of the opinion of Ibn Taimiyah in his fatwas. The conclusion from his view is that intoxicants, those who eat them and trying to justify it is a factor in wrath Allah, His Messenger and the Muslims. This is also what can deliver perpetrators into the torment of Allah sw

Drugs contain ugliness for religion, reason, morals and the character of the perpetrator. Drugs can also damage the mind so that it can arise humans who are out of their minds and humble and various other moral diseases. Excavation of this law is based on the direct effect of substances. Where narcotics and khamr substantially have the same effect same thing, which is fun, intoxicating and ultimately creates addicted and can cover the mind.

All types of drugs also include khamr. That's according to affirmation of the Messenger of Allah in the hadith, which reads "kullu muskirin" h}ara>mun" which means "everything that intoxicates is included" khamr". Besides that, what has been narrated by more friends? know about the meaning of the prophet's words that what is meant by khamr is all things that are

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<sup>6</sup> Syarifuddin Syarifuddin, "Napza Dalam Perspektif Hukum Islam," *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 1, no. 2 (2012): 267.

intoxicating. Based on the words of the prophet's editor, namely "kullu muskirin" which includes all kinds of intoxicating drinks.

As a religion, Islam cares about this because of abuse Drugs have a very negative effect on the nervous system more than that, drugs can interfere with the purity of the soul, destroys morale, undermines achievement motives, and weakens feelings. Behind it all, drugs can also spend money anywhere only used for something that has no use

## **METODE**

This paper uses a normative legal research method, namely examining law from an internal perspective with the object of research being legal norms. In other words, legal research that puts the law as a building system of norms.

The system of norms in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). The approach used is a statutory approach and a conceptual approach. The statutory approach or statute approach is used if the research problem concerns a conflict of norms that occurs vertically or horizontally. In any research or survey of a problem, various methods or methods can be used, such as conducting research or surveys in the literature, conduct interviews and so on.<sup>7</sup>

The conceptual approach or conceptual approach departs from the views and doctrines that develop in the science of law, so as to find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the law. issues faced.

## **DISCUSSION AND FINDING**

### **Indonesian Criminal Law System In Indonesia Regarding the Action Narcotics Crime**

Narcotics are substances or drugs that derived from plants or not, both synthetic and semi-synthetic, which may cause a decrease or change consciousness, loss of taste, reduced to relieve pain, and can cause dependence. Can be said that, on the one hand narcotics are drugs or substances that are useful in medicine, health services, and scientific development.

In this case, when reviewed From a juridical aspect, the presence of narcotics is legal. The Narcotics Law only prohibits inappropriate use of narcotics with the provisions of the law. This kind of situation in empirical level resulted in narcotics often misused not for medical and scientific interests, but as a business event promising and rapidly growing, which this activity

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<sup>7</sup> Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 25.

has an impact on all physical and mental damage society. In terms of age, narcotics not only enjoyed by teenagers only, but also the middle-aged as well as the old age group. Deployment Narcotics are no longer confined to big cities, but has entered the small towns and penetrated into sub-districts and even villages.<sup>8</sup>

Causes of drug use illegally carried out by the Teenagers can be grouped into three desires that is:<sup>9</sup>

- a. The Experience Seekers
- b. The Oblivien Seekers
- c. Personality Change

Drug eradication of course cannot be suppressed if the enforcement officers the law only focuses on the para level user. Should the user and addicts are placed as victims or patients who need to be rehabilitated, and who became the target of police operations are dealers / dealers Logically, by capturing the user then Of course it can help to catch the dealer who then the user with certain categories can be sentenced to rehabilitation as mandated in the Supreme Court Circular (SEMA) Number 7 of 2009 concerning Placing Drug Users in Therapy and Rehabilitation Homes.

As for the dealer, it is given strict criminal sanctions even if meet the conditions can be immediately sentenced death penalty. It can be said that On the one hand there is an extraordinary spirit in the eradication of narcotics and precursor of narcotics in the Narcotics Law, nam On the other hand, it also reflects the spirit protect drug abuse as addicts and as victims drug abuse.

The scope of criminal law includes three provisions, namely criminal acts,accountability, and punishment. Provision criminal law contained in Law no. 35 of 2009 concerning Narcotics is formulated in Chapter XV of the Criminal Provisions Article 111 to Article 148. Laws Law No. 35 of 2009 concerning Narcotics, There are four categories of action against the law prohibited by the law and can be threatened with criminal sanctions, namely:

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<sup>8</sup> EVAN MURDIANTO, "PERMASALAHAN PENEGAKAN HUKUM DALAM MENGUNGKAPTINDAK PIDANA PEREDARAN NARKOTIKA DI WILAYAH BETING KELURAHAN KAMPUNG DALAM BUGIS PONTIANAK TIMUR OLEH POLRESTA PONTIANAK," *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura* 2, no. 1 (t.t.).

<sup>9</sup> Wenda Hartanto dan Jl Jenderal Sudirman Nomor, "Penegakan Hukum Terhadap Kejahatan Narkotika Dan Obat-Obat Terlarang Dalam Era Perdagangan Bebas Internasional Yang Berdampak Pada Keamanan Dan Kedaulatan Negara," *Jurnal Legislasi Indonesia* 14, no. 1 (2017): 1–16.

- a. The first category, namely actions in the form of owning, keeping, control or provide narcotics and narcotic precursors (Article 111 and 112 for class I narcotics, Article 117 for narcotics class II and Article 122 for class III narcotics and Article 129 letter (a));
- b. The second category, namely actions producing, importing, export, or distribute narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for narcotics class II, and Article 123 for narcotics class III and Article 129 letter(b));
- c. The third category, namely actions in the form of offering to sell, sell, buy, receive, be an intermediary in buying and selling, exchange, or hand over narcotics and narcotic precursors (Articles 114 and Article 116 for class I narcotics, Article 119 and Article 121 for narcotics class II, Article 124 and Article 126 for narcotics class III and Article 129 letters(c));
- d. The fourth category, namely actions in the form of carrying, sending, transporting or transiting narcotics and narcotic precursors (Article 115 for narcotics class I, Article 120 for narcotics class II and Article 125 for narcotics class III and Article 129 letters (d)).

Article 136 of Law no. 35 Year 2009 impose sanctions in the form of narcotics and narcotic precursors and the results obtained from narcotics crime Is it a movable or immovable asset? or tangible or intangible as well as goods or equipment used for the crime of narcotics confiscation for the country.

Article 146 of Law no. 35 of 2009 too impose sanctions on citizens foreigners who have committed a crime narcotics or undergoing narcotics crime that is, expulsion of territory Republic of Indonesia and prohibited re-enter the territory of the Republic of Indonesia Indonesia. Whereas in Article 148 if fines stipulated in the law this is not paid by the perpetrator narcotics crime, the perpetrator sentenced to a maximum of two years as a substitute for a fine that is not can be paid.

BNN, Police, Prosecutor, Judge and other law enforcers including Community components have a responsibility responsible for countermeasures and prevention of abuse narcotics. It is mandate of the laws and regulations, including in this case the Arkotika Law.

### **Forms of Legal Protection for Perpetrators and Victims As Narcotics Trafficking Abusers**

Definition of Narcotics Abuse According to Article 1 number 15 of the Law No. 35 of 2009 narcotics abuser is a person who uses narcotics without rights or against the law. For

determine that an action is without rights or against the law necessary know in advance the basic rules the law that determines people to be able use narcotics. In the regulations Law No. 35 years old 2009 considers that narcotics users and victims of drug abuse are two different things, Drug abuse is the use of without rights and against the law performed not for the purpose of treatment, but wanting to enjoy its influence, in excess, less regular, and lasts long enough, so that cause health problems physical, mental and social life.

According to the explanation of Article 54 of the Law No. 35 of 2009, the victim drug abuse is a person who accidentally uses narcotics being persuaded, deceived, deceived, coerced, and/or threatened to use narcotics. Thus a victim Narcotics abuse must be proven not to have an element of intentional use narcotics against law due to circumstances (such as being forced or threatened) which make him want to use it or not narcotics or because of ignorance that concerned if what is used are narcotics (such as being tricked, coaxed, or tricked).

Meanwhile, to explain how the position of the drug victim in the knowledge of law and its rights, as well as the importance of existence of rehabilitation for offenders use narcotics, then the victim of abuse narcotics are not punished, because the user narcotics, especially those already in addiction stage is placed as a victim who should be well rehabilitated medically or socially.

Perpetrators and victims of abuse narcotics must be protected law. Narcotics crime by abuser is a problem that related to the treatment improvement mission human, and very large as well very big influence in preventing and reduce crime, especially in narcotics crime. This problem is not only meant to protect interests individuals but also protect the interests of the interests of society and the state.

Implementation of rehabilitation for addicts drugs as a substitute for sanctions imprisonment adopted from the model of the double track system, i.e. which is a two-way system regarding sanctions in criminal penalties, namely types of criminal sanctions and types of sanctions action. That is, the focus of criminal sanctions aimed at wrongdoing that has been done by someone through imposition suffering so that the person concerned becomes deterrent. While the focus of action sanctions more focused on giving efforts help the perpetrator to change. In another sense, that criminal sanctions aim at retaliation against the perpetrator the perpetrator, while the sanction of action is aimed at to provide protection, care and community development, especially for drug addicts.

Guaranteed legal protection given to drug addicts is regulated through Law No. 35 of 2009 concerning Narcotics by providing rehabilitation both medical and social rehabilitation as

listed in Article 54 on the narcotics law. Namely that “drug addicts and abusers narcotics must undergo rehabilitation medical and social rehabilitation.

Government policy on protection and coaching for addicts narcotics is supported by the issuance of the Letter of Supreme Court Circular Number 4 Year 2010 in order to become the grip of the enforcers law in the criminal justice system, especially the judgment of the judge. Coaching against drug addicts supported by the issuance of Government Regulation No 25 of 2011 concerning Mandatory Implementation Report Narcotics Addict. The goal, so that the drug addicts were not afraid to report himself to the Institution Compulsory Reporting Recipients (IPWL) who have appointed by the government, because with an umbrella Article 54 and 103 paragraph (1) para Narcotics addicts will not be thrown go to jail if proven to only consume narcotics and will receive rehabilitation services.

However, when referring to the policygovernment earlier and compared with the number of drug users in the country this, which reached 5.1 million people, Then there will be confusion and inconsistency in implementation. That indication seen from the handling of addicts drugs in the field, including:

- a. First, the penitentiary (Lapas) in Indonesia are inhabited by drug cases. indeed, condition of many prison inmates because drugs need to be classified between addicts, couriers, dealers or drug dealer
- b. Second, another indication seen above government inconsistency in implementation Law No. 35 of 2009 concerning Narcotics is not expected evenly or in proportion to the amount IPWL in various regions with a total of drug addict
- c. Third, the implementation of decriminalization in the form of drug addicts get rehabilitation both medical and rehabilitation social, still not fully understood the community, especially the community who are not aware or literate law. So that it encourages fear and worries for those who report.
- d. Fourth, drug addicts or involved drugs are still considered a disgrace or reproach by most of the people.
- e. Fifth, public access to law centers or offices yet equally. That is, access to the office the police or the IPWL agency did not as easy as access in urban areas or big cities, that is relative very easy to reach, transportation easily accessible and infrastructure which is relatively better than other areas in the region The Unitary State of the Republic of Indonesia.

With these five things, then government policies in tackling drug addicts are not completely implemented as mandated by Law No 35 of 2009 concerning Narcotics, namely provide coaching, care for drug addict. That is, the government still not consistent aka inconsistency in implementing Law No. 35 Years 2009 About Narcotics.

## **CONCLUSION**

1. The eradication of narcotics is certainly not can be suppressed if the enforcement officers the law only focuses on the para level user. Should the user and addicts are placed as victims or patients who need to be rehabilitated, and the target of the operation the police are dealers / dealers. In capturing the user then of course can help to catch later dealer users with certain categories can be sentenced to rehabilitation such as: mandated in the Circular Supreme Court (SEMA) Number 7 of 2009 concerning Placing Drug Users in a Therapy Home and Rehabilitation. Legal scope criminal law includes three provisions, namely: crime, liability, and sentencing. Criminal provisions that contained in Law no. 35 Year 2009 about Narcotics is formulated in Chapter XV Criminal Provisions Article 111
2. Government policy on protection and coaching for addicts narcotics is supported by the issuance of the Letter of Supreme Court Circular Number 4 2010 to be a guide law enforcement in the system criminal justice, in particular the considerations to the judge. Development of drug addicts are supported by the publication Government Regulation Number 25 Year 2011 About Implementation Mandatory Report Narcotics Addict. The goal is for drug addicts to was not afraid to report himself to the Mandatory Recipient Institution Report (IPWL) that has been appointed by the government, because with the legal umbrella of Article 54 and 103 paragraph (1) addicts narcotics will not be thrown into the in prison if proven only consume narcotics and will get rehabilitation services.

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