

The Law Enforcement on Criminal Acts of Narcotics New Psychoactive Substance

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Abstract.

This research aims to analyze the Law Enforcement on the Crime of Narcotics New Psychoactive Substance. To analyze the factors that influence law enforcement against narcotics crime of new psychoactive substances. To analyze the Law Enforcement against the Crime of Narcotics New Psychoactive Substance. The method used by the researcher is a juridical empirical legal approach and the specifications in this study are descriptive-analytical. The sources and types of data in this study are primary data obtained from field study interviews with investigators at the Kudus Police. And secondary data was obtained from the literature study. The data were analyzed qualitatively using law enforcement theory, law discovery theory and law enforcement theory in Islam. Based on the results of the research that Law Enforcement against the Crime of Narcotics New Psychoactive Substance is to improve the legal substance and legal culture, and pay attention to legal factors as the main obstacle in law enforcement against users of herbal addictive substances. The factors that influence Law Enforcement against the Crime of Narcotics New Psychoactive Substance are difficulties with witnesses, financial ability, and mental attitude of law enforcers. Law Enforcement against the Crime of Narcotics New Psychoactive Substance is based on the principle of legality, it is not possible to apply Act No. 35 of 2009 concerning Narcotics to the Crime of Narcotics New Psychoactive Substances (NPS) because narcotics that are abused must first be included in the Attachment of the Act. Law and to Act No.35 of 2009 concerning Narcotics, it is necessary to make changes.

Keywords: Criminal; Enforcement; Narcotics.

1. Introduction

Drug abuse is still a chronic problem that afflicts Indonesia, cases of shabu trafficking and the many arrests of international drug dealers in recent years are evidence that Indonesia is in a state of drug emergency. The Indonesian government puts forward the role of the Police and the National Narcotics Agency (BNN) in preventing and eradicating drug trafficking in Indonesia. The efforts to prevent and eradicate drugs are carried out in three stages, namely first, preemptive, namely prevention efforts that are carried out early. Second, Prevention is an effort that is strategic in nature and is a medium-term and long-term action plan but must be seen as an urgent action to be implemented immediately. Third, Repressive is a countermeasure that is a law enforcement action, starting from intelligence.¹

Drugs or drugs are substances that, when they enter the body, will affect the body, especially the central nervous system/brain, so that if misused, they will cause

¹ Bayu Puji Hariyanto, (2018) *Pencegahan Dan Pemberantasan Peredaran Narkoba Di Indonesia*, dalam Jurnal Daulat Hukum Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 201, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2634/1983>

physical, psychological/mental disorders and social functions. Therefore, the Government enacted a law for drug abuse, namely Act No. 5 of 1997 concerning Psychotropics and Act No. 35 of 2009 on Narcotics.²

Narcotic use is often associated with crime, both drugs are considered to have a negative influence and cause users to commit crimes. The crime is a relative formulation. Social phenomena are not merely actions that are prohibited by law, actions that are biological or psychological disorders, but these actions are detrimental and violate public sentiment. If we refer to the formulation of crime as described by Mustafa, the point of determining whether a behaviour is considered a crime or not is not using formal rules as a reference.

The United Nations Office on Drugs and Crime (UNODC) calls these new narcotics and psychotropic substances the New Psychoactive Substance (NPS). The Global SMART Program report prepared by the United Nations Office on Drugs and Crime (UNODC) ³ stated that: *"This New Psychoactive Substance (NPS) have been known in the market by terms such as "designer drugs", "legal highs", "herbal highs", "bath salts", "research chemicals", "laboratory reagents"*

Based on this, the types of psychotropic substances that are often misused, such as marijuana, methamphetamine, and Ecstasy, are included in Category I Narcotics so that these substances are considered narcotics. Any misuse of these substances may be subject to the legal provisions contained in Act No. 35 of 2009 concerning Narcotics. Some countries have criminalised new psychoactive in domestic law, even though they are not controlled under international drug treaties.⁴

The illicit trafficking of narcotics is a very dangerous threat to the survival of the younger generation. The younger generation is the target of the illicit trafficking of narcotics targeting the younger generation who are psychologically unstable so they are easy to be influenced to use narcotics. The younger generation is very vulnerable to becoming a strategic target of the narcotics trafficking mafia.⁵ Adolescents are a group that is vulnerable to narcotics abuse because they tend to want to try which is driven by curiosity.⁶ This study aims to analyze Law Enforcement on New Psychoactive Substance Narcotics.

² Sepha Dwi Hananto, Anis Mashdurohatun, Jawade Hafidz (2018) *Penegakan Hukum Pidana Terhadap Terdakwa Pengguna Narkoba Yang Menjalani Rehabilitasi Di Polda Jateng*, Jurnal Hukum Khaira Ummah, Vol. 13. No. 1, Universitas Islam Sultan Agung Semarang

³ United Nations Office on Drugs and Crime, Global SMART Programme : *The Challenge Of New Psychoactive Substance*, Vienna: United Nations Publicationm (2013) p 1

⁴ Evans-Brown, M. and Sedefov, R. (2017) *New psychoactive substances: driving greater complexity into the drug problem*. *Addiction*, 112(1), p.36-38. <https://onlinelibrary.wiley.com/doi/pdf/10.1111/add.13528>

⁵ Herlina Martono dan Satya Joewana (2008) *Belajar Hidup Bertanggungjawab, Menangkal Narkotika dan Kekerasan*, Balai Pustaka, Jakarta, p. 26.

⁶ Dafit Supriyanto Daris Warsito (2018) *Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika*, dalam Jurnal Daulat Hukum Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 31, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2562/1919>

2. Research Methods

This research uses an approach method in discussing the problems in this study in an empirical juridical manner. The research specifications used by researchers in discussing the problems contained in this study are analytical and descriptive. Data collection methods in this study used library research and field studies. The method of data analysis was carried out with a qualitative juridical method.

3. Results and Discussion

3.1. The Law Enforcement on Narcotics Crime New Psychoactive Substance

According to Soedarto, legal politics is an effort to realise good regulations with certain situations and conditions. In depth, it is also stated that legal politics is a state policy through its authorised equipment to determine the desired regulations and is expected to be used to express what is contained in society to achieve what is aspired.⁷

Marc Ancel stated that the politics of criminal law is a science as well as an art that has a practical aim to enable positive legal regulations to be formulated better and to provide guidance to legislators, courts that apply the law and to the implementers of court decisions.⁸ Marc Ancel stated that the politics of criminal law is a science as well as an art that has a practical aim to enable positive legal regulations to be formulated better and to provide guidance to legislators, courts that apply the law and to the implementers of court decisions.⁹

Mulder's definition departs from the notion of a "criminal law system" according to Marc Ancel which states that every organized society has a criminal law system consisting of (a) criminal law regulations and sanctions, (b) a criminal law procedure, and (c) a criminal enforcement mechanism.¹⁰

Efforts and policies to make good criminal law regulations essentially cannot be separated from the purpose of crime prevention. Thus, the policy or politics of criminal law is also part of criminal politics. In other words, from the point of view of criminal politics, the politics of criminal law is synonymous with the notion of "crime prevention policy with criminal law".¹¹

Criminal law is a means of punishment to overcome crime that leads to the achievement of people's welfare and social protection.¹² Social policy can be interpreted as all rational efforts to achieve public welfare and at the same time

⁷ Mahmud Mulyadi (2008) *Criminal Policy: Pendekatan Integral Penal Policy dan NonPenal Policy dalam Penanggulangan Kejahatan Kekerasan*, Pustaka Bangsa Press, Medan, p. 65-66.

⁸ M. Hamdan (1997) *Politik Hukum Pidana*, Jakarta:Raja Grafindo Persada, p. 20.

⁹ Barda Nawawi Arief (2007) *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Kencana Prenada Media Group, Jakarta, p.23-24

¹⁰ *Ibid*

¹¹ *Ibid*

¹² I Putu Angga Feriyana, Anis Mashdurohaturun and Arpangi (2020) *Development Of The Criminal Justice System: Initiating LPSK As A Criminal Justice Subsystem In Indonesia*, dalam Jurnal Daulat Hukum Volume 3 (1), Published Master Of Law, Faculty of Law Unissula, p. 123, <http://jurnal.unissula.ac.id/index.php/RH/article/view/8386/4060>

include community protection. This means that the concept of social policy includes social welfare policy and social defence police fenced on the above-mentioned dimensions, criminal law policy is essentially an attempt to realize criminal laws in accordance with the the circumstances at a given time (*ius constitutum*) and the future (*ius constituendum*).

The constituent sequence is that criminal law policy is identical to penal reform in a narrow sense because as a system, law consists of culture (cultural), structure (structural), and substance (substantive) law. The law is part of the legal substance, the renewal of criminal law, in addition to updating the legislation, also includes the renewal of basic ideas and knowledge of criminal law.¹³

In general, what is meant by narcotics are a type of substances that can cause certain effects or effects for people who use them, namely by inserting them into the body. The term narcotics used here is not narcotics in pharmacology (pharmaceuticals) but has the same meaning as a drug, which is a kind of substance that when used and enters a person's body will bring certain effects and influences on the wearer's body, among others, can affect consciousness, give impulses that can affect human behaviour, and these influences can be: sedative, stimulant, causing hallucinations (the wearer is unable to distinguish between fantasy and reality, loses awareness of time and place).¹⁴

Drug abuse encourages the existence of an increasingly widespread and international dimension of illicit trafficking. Therefore, efforts to prevent and control narcotics and efforts to eradicate narcotics illicit trafficking are needed considering the progress of the development of communication, information and transportation in the current era of globalization.¹⁵ The term narcotics is no longer a foreign term for the public considering that there is so much news from both print and electronic media that reports about narcotics abuse from year to year are growing rapidly even though there are regulations that regulate narcotics and narcotic precursors. However, not many people know what narcotics are, what forms of narcotics are, and what the signs of drug addiction look like. This is understandable because considering narcotics are goods that are prohibited from being circulated in the community.

Law enforcement in the process of criminalizing narcotics crimes must be carried out to enforce or function legal norms as a guide for perpetrators in traffic or legal relationships in social and state life. Law enforcement is an effort to realize ideas and concepts. the law that the people expect becomes a reality. Conceptually, the essence and meaning of law enforcement lie in social life.¹⁶

Law enforcement is the entire activity of the implementers of law enforcement, justice, and protection of human dignity, peace and legal certainty, in accordance with the 1945 Constitution.¹⁷ Law enforcement is the entire activity of the

¹³ Lilik Mulyadi (2008) *Bunga Rampai Hukum Pidana: Perspektif, Teoretis, dan Praktik*, Alumni, Bandung, p 356.

¹⁴ Soedjono Dirjoswisworo (1986) *Segi Hukum Tentang Narkotika*, Karya Nusantara, Bandung, p. 14

¹⁵ Lydia Harlina Marton (2006) *Membantu Pecandu Narkotika dan Keluarga*, Balai Pustaka, Jakarta, p.1

¹⁶ Soekanto, Soerjono (2005) *Faktor-faktor yang mempengaruhi Penegakan Hukum*, Rajagrafindo Persada, Jakarta, p. 5.

¹⁷ Barda Nawawi Arief (1998) *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, p. 8

implementers of law enforcement, justice, and protection of human dignity, peace and legal certainty, in accordance with the 1945 Constitution.¹⁸ Law enforcement is the entire activity of the implementers of law enforcement, justice, and protection of human dignity, peace and legal certainty, in accordance with the 1945 Constitution.¹⁹

The theory of policy formulation is used to review and evaluate the application of Act No. 35 of 2009 concerning Narcotics against New Psychoactive Substances (NPS) Narcotics Offenders. Whereas in this paper it has been mentioned that it is possible to apply Act No. 35 of 2009 concerning Narcotics to Narcotics Crimes New Psychoactive Substances (NPS) as an example of a case in West Nusa Tenggara, there are examples of judges who carry out extensive interpretations by including one type of New Psychoactive Substances (NPS) into the attachment of Act No. 35 of 2009 concerning Narcotics.

The application of Act No. 35 of 2009 concerning Narcotics to New Psychoactive Substances (NPS) through extensive interpretation has several obstacles, namely regarding the independence of judges in deciding cases, so in deciding these cases each judge is different in interpreting Narcotics Crimes New Psychoactive Substances (NPS). In addition, at the level of investigation and prosecution, there are problems regarding the application of Act No. 35 of 2009 concerning Narcotics to New Psychoactive Substances (NPS) Narcotics, namely regarding differences in views about whether there are new types of narcotics that the Narcotics Law can apply.

The Law Enforcement on the Crime of Narcotics New Psychoactive Substance is to improve the legal substance and legal culture and pay attention to legal factors as the main obstacle in law enforcement against users of herbal addictive substances.

3.2. Factors Affecting Law Enforcement on Narcotics Crime New Psychoactive Substance

The progress achieved in the reform era is enough to give better hope, but on the other hand, the swift currents of globalization have caused many problems in almost all aspects of human life. All social, cultural, religious, political, economic, educational, scientific and technological aspects are vulnerable areas due to fundamental changes and require a legal umbrella for housing.²⁰

As a narcotics crime that has long been an enemy of the nation, narcotics are now very worrying for our nation and all nations in the world today. The production and circulation of narcotics are so massive that it circulates 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 Indonesia and various parts of the world,

¹⁸ Siswanto Sunarso (2004) *Penegakan Hukum Psikitropika dalam Kajian Sosiologi Hukum*, Rajawali Press, Jakarta, p. 142

¹⁹ Ach. Tahir (2010) *Cyber Crime (Akar Masalah, Solusi, dan Penanggulangannya)*, Suka Press, Yogyakarta, p. 46

²⁰ Heni Agustiningih and Sri Endah Wahyuningsih (2018) *Decision of Linked with Narcotics Convicted in Act No. 35 Of 2009 in The District of Sumber Court*, dalam *Jurnal Daulat Hukum* Volume 1 (3), Published Master Of Law, Faculty of Law Unissula, p. 597, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3343/2471>

even though all nations are fighting this crime. People often hear statements about building commitment or fighting together in eradicating narcotics in our country and around the world.

The eradication of narcotics crimes involves all nations in the world, but it turns out that the level of illicit narcotics trafficking is increasingly high and rampant. This public disease has become a problem for all countries in the world so the majority of UN members agreed to the United Nations Convention Against the Delicate Traffic in Narcotics Drugs and Psychotropic Substances in 1988. The 1988 convention aimed at eradicating illicit trafficking in narcotics and psychotropic substances.

When viewed in terms of the content of the 1988 Convention, a beginning emerged from international efforts to overcome the problems of transnational crime organizations which, among other things, could be identified with the rules concerning extradition; mutual legal assistance; handling illicit drug trafficking by sea; controlled delivery; strengthening the anti-money laundering regime (including the issue of confiscation and confiscation of the proceeds of drug crimes), and criminalization of precursor diversion and precursor surveillance.

Another thing that is quite impressive in the development of the world narcotics problem is the effort to improve the handling of the narcotics problem not only on the supply side but also on the demand side.²¹ Viewed from the aspect of national interest, this convention can guarantee legal certainty and justice in efforts to enforce the law on the illicit trafficking of narcotics and psychotropic substances involving perpetrators of crimes across Indonesia's territorial borders. In addition, for the national interest, especially the domestic interest, a certainty and benefit will be obtained in the context of regulating the circulation of narcotics and psychotropic substances for the benefit of medicine and science.²²

Act No. 35 of 2009 concerning Narcotics aims to (a) ensure the availability of narcotics for the benefit of health services and/or the development of science and technology; (b) prevent, protect and save the Indonesian people from narcotics abuse; (c) eradicate illicit trafficking of narcotics and narcotic precursors; (d) ensure the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts (Article 4 of Act No. 35 of 2009).

The factors that influence Law Enforcement Against the Crime of Narcotics New Psychoactive Substance are difficulties with witnesses, financial ability, and mental attitude of law enforcers. A huge number of the drugs that produce today's problems have extensive histories of accepted medical utility.²³

3.2. Suggestions for Law Enforcement on the Crime of New Psychoactive Substance

Establishing a criminal system in the legislation as a means of tackling the problem of crime is one part of a criminal policy or criminal politics. Included in

²¹ BNN Portal: *Kejahatan Transnasional, Masalah Narkoba, dan Diplomasi Indonesia*, <http://bnn.narkotika.htm>, diakses pada hari Sabtu, 3 Oktober 2020, pukul 14:53 WIB.

²² Siswanto Sunarso (2004) *Penegakan Hukum dalam kajian Sosiologis*. Raja Grafindo Persada. Jakarta, p 1

²³ Shulgin, A.T. (1975) *Drugs of abuse in the future*. *Clinical Toxicology*, 8(4), p.405-456. <https://chemistry.mdma.ch/hiveboard/rhodium/shulgin.futuredrugs.html>

formulating Act No. 35 of 2009 on narcotics. Carrying out criminal politics, among other things, means making plans in dealing with or overcoming problems related to crime. Included in this plan are, in addition to formulating what actions should be made into criminal acts, it also establishes a criminal system that should be applied to the convicts while still considering the rights of the convicts.

From the 1st and 2nd criminalization criteria, it appears that there is an awareness of the consequences of the crime against the victim. Of course, this awareness existed long ago when certain actions were formulated as prohibited acts in the rule of law, so they need to be prevented or overcome. One of the criteria used by lawmakers to determine whether the act is a prohibited act or not is the factor of loss or suffering caused to other parties.²⁴

The eradication of narcotics trafficking cannot be confused with the criminal provisions imposed on narcotics abusers. Especially the abuser who when examined uses it for himself or is indicated to be an addict. Act No. 35 of 2009 concerning Narcotics has separated dealers and users and the sanctions or consequences attached to them.

However, this difference must be observed so that criminal sanctions are not misdirected. Because from the criminology side of narcotics crime in certain cases, it can be said to be included in the definition of crime without victims, which means that it is not that there are no victims in the occurrence of a crime but that the perpetrator is the perpetrator himself. Users themselves are distinguished again, namely addicts and abusers.

With the provisions of article 112 paragraph (1) the author provides an outline of the problems that arise from the enactment of this article, namely:

- Can criminalize addicts and narcotics abusers who should be given the right to rehabilitation.
- Vulnerable to use case engineering against people who do not know anything or are not actively involved in narcotics crimes. What is meant here is the vulnerability of this article to be used to criminalize people who are not involved in a criminal act but are fabricated as if they are carrying or possessing narcotics.
- Overlaps with other criminal laws. (Article 114, Article 115 and Article 116). Article 112, Article 114, Article 115 and Article 116 carry different threats of imprisonment. It is not imaginary in the field that one person can be given multiple layers of articles which result in disproportionate punishment.
- If there is a case of an abuser, the sentence will be subject to a lengthy sentence based on which article, whether 127 paragraphs (1) or article 112. This is related to the frequency with which these two articles are indicted in the form of alternative charges in which these two articles have different punishment policies. vary. Article 112 paragraph (1) is purely imprisonment and a fine, while in Article 127 it is possible to imprison, and rehabilitation is possible.

Law Enforcement Against the Crime of Narcotics New Psychoactive Substance is based on the principle of legality, it is not possible to apply Act No. 35 of 2009 concerning Narcotics to the Crime of Narcotics New Psychoactive Substances (NPS) because narcotics that are abused must first be included in the Attachment of the

²⁴ G. Widiartana (2009) *Viktimologi Perspektif Korban Dalam Penanggulangan Kejahatan*, Universitas Atma Jaya, Yogyakarta, P 5

Act No. and to Act No. 35 of 2009 concerning Narcotics, it is necessary to make changes.

4. Conclusion

The conclusions drawn from Law Enforcement against Narcotics Crime New Psychoactive Substance are to improve the legal substance and legal culture and pay attention to legal factors as the main obstacle in law enforcement against users of herbal addictive substances. The factors that influence Law Enforcement Against the Crime of Narcotics New Psychoactive Substance are difficulties with witnesses, financial ability, and mental attitude of law enforcers. Law Enforcement Against the Crime of Narcotics New Psychoactive Substance is based on the principle of legality, it is not possible to apply Act No. 35 of 2009 concerning Narcotics to the Crime of Narcotics New Psychoactive Substances (NPS) because narcotics that are abused must first be included in the Attachment of the Law and to Act No. 35 of 2009 concerning Narcotics, it is necessary to make changes. There should be awareness in law enforcement officers in the form of binding rules that narcotics abuse and addicts are not pure criminals but rather victims through the law enforcement process the implementation of rehabilitation is the best choice for narcotics users. It is hoped that law enforcement officers can provide comprehensive counselling to the community about the dangers of narcotics so that the public knows the impact or consequences of narcotics and the introduction of categories that can be sought for rehabilitation so that victims of narcotics abuse are aware of the law for their actions. There needs to be a change in Act No. 35 of 2009 especially weak articles such as article 112 paragraph (1) or at least a further study is needed to criticize the articles in this law, especially those that regulate the article on punishment for abusers. and/or drug addicts. Do not forget to also clarify the articles of punishment that should be aimed at narcotics dealers.

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