

Criminal Acts of Narcotics Abuse According to Law Number 35 of 2009 and the Criminal Code

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Abstract

Narcotics abuse is a serious issue in Indonesia that continues to escalate, causing significant harm to society. Narcotics, which are intended for medical and research purposes, are often misused, leading to profound social, physical, and mental impacts. This study examines the criminal acts of narcotics abuse under Law Number 35 of 2009 and the Indonesian Criminal Code (KUHP) as regulated in Law Number 1 of 2023. Law Number 35 of 2009 introduces strict criminal sanctions as well as rehabilitation for narcotics addicts. Meanwhile, the Criminal Code addresses the classification of criminal acts and the penalties imposed, including life imprisonment and the death penalty for severe offenses. The study aims to explore the legal provisions governing narcotics abuse and identify the differences in legal enforcement between the two regulations. The findings highlight that, despite stringent regulations, the rate of narcotics abuse remains high, indicating a need for a more integrated approach between law enforcement and rehabilitation efforts.

Keywords: Narcotics Abuse, Law Number 35 of 2009, Criminal Code, Rehabilitation.

INTRODUCTION

Basically, narcotics are substances or drugs that are very useful and needed in the health sector. However, if there is misuse such as being used not in accordance with treatment standards, it can have very detrimental consequences for society. In the medical world, narcotics are widely used, especially in the process of anesthesia before a patient is operated on, considering that narcotics contain substances that can affect the feelings, thoughts, and consciousness of the patient. Narcotics, if used not in accordance with the dosage, can cause physical and mental harm to those who use them and can cause dependence on the user themselves.¹

Drug abuse has become a complex problem and needs serious handling from the government. Indonesian society is currently facing a very worrying situation due to the rampant illegal drug abuse. As a result of all this abuse, there will be victims of drug abuse, for that it is necessary to make efforts to overcome it from the government.

The problem of drug abuse has now penetrated all elements of the nation, from children to adults, from the lower classes to officials, even politicians and law enforcers are not free from drug abuse, so that eradication efforts are not sufficient to be handled by the government and law enforcement officers alone but also need to involve the entire community to play a role and actively participate in the prevention and eradication of drug abuse and distribution.²

¹ Iman Arliandi. "Legal Analysis of the Criminal Act of Drug Abuse Committed by Police Members (Batu Raja District Court Decision No. 184/Pid. Sus/2019/Pn. Batu Raja)". Faculty of Law, University of Muhammadiyah North Sumatra, Medan, 2021, p.1

² Meylani Putri Utami. "Legal Review of Drug Abuse (Case Study of Makassar District Court Decision No: 516/Pid.Sus/2015/PN.Mks)". Faculty of Law, Hasanuddin University, Makassar. 2016, p.2

Drug abuse is a type of crime that has (potential) very broad and complex social impacts, especially when committed by children. The social impact of drug abuse committed by children is not only caused by the consequences that will give birth to suffering and destruction both physically and mentally that are very long, but also because of the complexity in overcoming it, especially when the choice falls on the use of criminal law as a means.

That the problem of drug abuse is a very complex problem, therefore efforts and support from all parties are needed in order to achieve the expected goals, because the implementation of the law is very dependent on the participation of all parties, both the government, security forces, families, the environment, because it cannot disappear by itself. The impact of drug abuse is clearly very detrimental and dangerous to the lives of society, the nation and the state if it is misused without strict control and supervision and fellow human beings.³

Narcotics are like a double-edged sword, on the one hand they are very much needed in the medical and scientific world, and on the other hand their misuse is very dangerous for the future of the younger generation, public order and threatens the existence of a nation's national resilience, so that regulations are needed in the form of laws that regulate them so that they can reduce the amount of misuse and distribution of narcotics, especially in Indonesia.

The drug problem in Indonesia has now become a serious problem that requires all parties to play a role in finding a solution that is complete, straightforward and as soon as possible.⁴Indonesia's seriousness in eradicating narcotics which has become a complex problem is through the enactment of Law Number 35 of 2009 concerning Narcotics replacing the old law, namely Law Number 22 of 1997 concerning Narcotics and also its inclusion in the chapter on special criminal acts in Law Number 1 of 2023 concerning the Criminal Code.

Law Number 35 of 2009 concerning Narcotics regulates criminal provisions for anyone who can be punished for committing a crime, as well as fines that must be paid by those who abuse or commit narcotics crimes. According to the Criminal Code (KUHP) concerning participation in committing a crime, both the perpetrator who orders the act to be carried out, those who participate in carrying it out, as well as advocates and their assistants can be considered as perpetrators of the crime in that context.⁵

Criminal liability for drug abuse addicts is not solely based on the defendant's actions with elements in the "law, but the judge must also adhere to the sentencing requirements stipulated in the law. The sentencing requirements are grouped into 2, namely criminal acts and criminal liability. The elements of a criminal act are acts that contain the formulation of a crime, are against the law and there is no justification. While the elements of responsibility

³ Emilia Fedika, Maria Ferba Editya S and Rayani Saragih. "Legal Review of the Crime of Narcotics Abuse Class 1 (Study of the Decision of the Kabanjahe District Court Number. 146/Pid.Sus/2020/Pn Kbj)". *Journal Recht* Vol.01 No.2 September 2022, p.15

⁴ Siti Zubaidah. *Healing Drug Victims Through Integrated Therapy and Rehabilitation*. Medan: IAIN Press, 2020. p. 13

⁵Putri Haffidati. "Legal Review of Criminal Acts of Drug Abuse Against Students. *Journal of Law Supremacy*" Volume 19 Number 1, January 2023, p.88

contain the ability of the perpetrator to be responsible, mistakes and no excuses. The judge who considers the defendant's mistakes comprehensively by considering the form of the mistake up to the qualification of the pattern of the mistake.⁶

Empirical reality in the field of criminalization in general still adheres to the concept of only punishing convicts in correctional institutions, thus providing a picture that the crime is only stopped for a moment and will reappear in the social life of the community. Narcotics crimes referred to in Law Number 35 of 2009 concerning Narcotics provide quite severe criminal sanctions, however, in reality the perpetrators of the crime are actually increasing, and for the convicts in reality they are not deterred and there is a tendency to repeat it again. This can be caused by the existence of a criminal imposition factor that does not provide an impact or deterrent effect for the perpetrators.

Law Number 35 of 2009 also maximizes the role of the National Narcotics Agency (BNN) in preventing and eradicating drug abuse, so that with this law, it is hoped that the performance of the agency will be more optimal because the BNN is also given the authority to conduct investigations and inquiries, as well as the role of judges in considering decisions on narcotics cases.⁷

Law Number 35 of 2009 concerning Narcotics explicitly supports the concept of a double track system for narcotics abusers and addicts. This is because the imposition of criminal sanctions is not the only way to deal with narcotics abusers and addicts, but there are still rehabilitation sanctions in its regulations. Based on the authority given to judges in Law Number 35 of 2009 concerning Narcotics, the imposition of rehabilitation sanctions for narcotics abusers and addicts can be in the form of providing care and treatment through medical rehabilitation or social rehabilitation. The imposition of this rehabilitation sanction cannot be applied to all narcotics abusers.

The granting of rehabilitation sanctions does not mean that the abuser and addict of narcotics is free from criminal responsibility. Because the period of undergoing rehabilitation for abusers or addicts of narcotics is calculated as the period of serving their sentence. Based on the background above, the author chose the title of this research, namely: "**Criminal Acts of Narcotics Abuse Based on Law Number 35 of 2009 and the Criminal Code**"

Formulation of the problem

The main problems in this research are:

1. How is the Criminal Law for Drug Abuse in Indonesia? Law Number 35 of 2009 concerning Narcotics?
2. How is the Criminal Code for Drug Abuse Criminal Acts Arranged??

⁶Ratna WP, Criminal aspects of drug abuse rehabilitation versus prison, Yogyakarta, Legality, Tahu 2017, page 76

⁷Ismaya Dwi Agustina. Agus Salim. Merinnisa Nurussathi. "Legal Review of the Abuse of Marijuana as a Medical Treatment (Case Study of the Decision of the Sanggau District Court Number: 111/Pid.Sus/2017/Pn. Sag)". Justice Pro Journal of Legal Studies, page 59

Research purposes

The objectives of this research are:

1. To find out and study the legal regulations for criminal acts of drug abuse in Law Number 35 of 2009 concerning Narcotics
2. To find out and study the legal provisions for the crime of narcotics abuse in the Criminal Code

LITERATURE REVIEW

Drug Abuse

The term “abuse” comes from the root word “misuse” which means doing something inappropriately. In the big dictionary of the Indonesian language, abuse is defined as a process, method, act of misusing. Abuse can be interpreted as a process, method, act of deviating to do something inappropriately or using something inappropriately.⁸ Article 1 paragraph (15) of Law Number 35 of 2009 concerning Narcotics defines a drug abuser as a person who uses narcotics without permission or against the law.

Abuse in drug use is the use of drugs or dangerous substances for purposes other than treatment and research and is used without following the rules or the correct dosage. In conditions that are quite reasonable/according to the recommended dosage in the medical world, continuous drug use will result in dependence, dependency, addiction or addiction.⁹

Common forms of narcotics crimes include the following:¹⁰

- a. Abuse/overdose
- b. Distribution of narcotics;
- c. Buying and selling narcotics

Drug abuse can occur for several reasons, which are influenced by:¹¹

1. Internal factors (from within himself)
 - a. As a process of challenging an authority against parents, teachers, law or authorized agencies.
 - b. Facilitating sexual transmission and acts
 - c. Proving courage in carrying out dangerous and risky actions
 - d. Trying to find or seek meaning in life
 - e. Breaking away from loneliness and wanting to gain sensational and emotional experiences
 - f. Filling the void and filling feelings of boredom, caused by lack of busyness,
 - g. Following the wishes of friends and to foster a sense of solidarity and loyalty
 - h. Driven by curiosity and just for fun.

⁸ Salim, Peter, & Yenny Salim. Contemporary Indonesian Dictionary. Jakarta: Modern English Press, 2011. p. 37

⁹ Gede Arya Aditya Darmika, et al. “Law Enforcement against Police Members Who Commit Narcotics Crimes”. Journal of Legal Analogy, Volume 1, Number 1, 2019 page 273

¹⁰ Ratna WP. Op.Cit, p. 45.

¹¹ AW Widjaja, Problems of juvenile delinquency and drug abuse. Bandung, Armico, 2005, page 73

2. External Factors

- a. There are subversive efforts to drag the younger generation into the valley of narcotics torture,
- b. There is a disharmonious situation (broken home) in the family, there is no feeling of affection (emotional), there is a strained relationship between father and mother, parents and children and between the children themselves,
- c. Because politics wants to discredit its opponents by misleading the younger generation or teenagers.
- d. Drug abuse is an epidemic that must be dealt with seriously and comprehensively. Handling and prevention must be carried out with high priority and integrated. Legal action needs to be imposed severely and maximally, so that it becomes a deterrent and does not repeat it again or an example for others not to do it.

Impact / Consequences of Drug Abuse

In general, narcotics are substances that can cause changes in feelings, observations or visions because these substances affect the central nervous system. Narcotics abuse is the use of narcotics not for medical purposes, but in order to enjoy their effects, in excessive amounts, more or less regularly, lasting long enough, causing physical health disorders, mental health disorders, and social life.

Physically, drug users generally have very visible signs, including drastic weight loss, pale face, difficulty urinating, constipation for no apparent reason, red spots or cuts, lips can turn black, sweat and tears, and frequent coughs and colds.¹²

Viewed emotionally, drug users generally show signs including becoming very sensitive, easily bored, emotional and easily angered, and liking to hurt themselves. Also viewed from their behavior, drug users generally show the following signs:¹³

1. Drugs can change the victim's personality to become moody, angry, and even rebellious towards anyone.
2. It creates a feeling of indifference towards oneself, such as no longer paying attention to one's clothes, the place where one sleeps.
3. Not hesitant to have sex, because his views on social norms, customary norms, religious norms no longer exist in him.

According to Hari Sasangka, narcotics also affect the individual user with the following symptoms:¹⁴

- a. *Euphoria* is a stimulus of excitement that is not in accordance with the reality and condition of the user's body.

¹²Jefrianto Sembiring, "Factors Causing Drug Abuse Among Teenagers and Children in Medan City and Its Handling According to Law Number 35 of 2009", Mahupiki Journal, 2012, p. 5

¹³Akbar Kurniawan, Prevention of Drug Abuse by School Communities, Jakarta. RajaGrafindo Persada, 2013, page 37

¹⁴Suspect Day, Narcotics and Psychotropics in Criminal Law, Bandung, Mandar Maju, 2003, page 25

- b. *Deliriumis* a decrease in the user's mental awareness accompanied by rather severe anxiety that occurs suddenly, which can cause disturbances in the coordination of motor muscles.
- c. *Hallucinationsis* a misperception of the five senses, so that what is seen and heard does not correspond to the actual reality.
- d. *Weaknessis* a physical or mental weakness or both that occurs as a result of dependence and addiction to narcotics.
- e. *Drowsinessis* decreased consciousness, or a state between conscious and unconscious, such as a half-sleep state accompanied by very confused and confused thoughts.
- f. *Collapsee* is a state of fainting and if the user overdoses, it can result in death

In addition to affecting individual users, drug abuse also has an impact on the environment and society. The consequences of drug users for society include:¹⁵

- 1. Increased crime or disturbance of national order and security.
- 2. Causing violence either against individuals or between groups.
- 3. The emergence of illegal businesses in society, for example the black market for narcotics and so on.
- 4. Many traffic accidents.
- 5. Causes certain diseases through needles used by addicts. For example, hepatitis B, Hepatitis C, and HIV/AIDS

Narcotics Crimes

Drug crimes are a form of crime known as victimless crime. A victimless crime is a relationship between the perpetrator and the victim that has no visible consequences. There is no target victim, because all parties are involved and included in the crime, becoming both the perpetrator and the victim of the crime or crime.¹⁶

In terms of criminalization policy, the acts stated as criminal acts in Law Number 35 of 2009 concerning Narcotics are as follows:¹⁷

- a. Planting, maintaining, having in stock, possessing, storing, or controlling narcotics (in plant or non-plant form) is regulated in (articles 111 to 112).
- b. Produce, importing, exporting, or distributing narcotics class I (article 113).
- c. Offering to sell, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over class I narcotics (article 114).
- d. Carrying, sending, transporting or transiting Class I narcotics (Article 115).
- e. Any person who, without right or against the law, uses Class I narcotics against another person or provides Class I narcotics for use by another person (Article 116).

¹⁵ Department of Religion of the Republic of Indonesia, *The Dangers of Drug Abuse Viewed from the Perspective of Islam*, Department of Religion of the Republic of Indonesia, Jakarta, 2010, page 4

¹⁶ Chaerudin, *Victimology, Several Aspects of Crime Victims*, Bandung. Faculty of Law, As-Syafiah Islamic University. 2007, page 63

¹⁷ Nurul Kurnia. "Legal Review of the Implementation of Criminal Sanctions for Narcotics Abusers (Case Study at Sidrap District Court 2010-2014)". Faculty of Sharia and Law, Uin Alauddin Makassar. 2016, p.33

- f. Without rights or against the law, possessing, storing, controlling or providing class II narcotics (Article 117).
- g. Without rights or against the law producing, importing, exporting or distributing class II narcotics (Article 118).
- h. Offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging or handing over class II Narcotics (article 119).
- i. Carrying, sending, transporting or transiting class II narcotics (Article 120).
- j. Any person who, without right or against the law, uses Class II narcotics against another person or provides Class II narcotics for use by another person (Article 121).
- a. Any person who without rights or against the law possesses, stores, controls, or provides narcotics class III (Article 122).
- l. Any person who without authority or against the law produces, imports, exports or distributes class III narcotics (Article 123).
- m. Any person who without right or against the law offers for sale, sells, buys, receives, becomes an intermediary in buying and selling, exchanges, or delivers Narcotics in category III (article 124).
- n. Carrying, sending, transporting or transiting class III narcotics (article 125)
- o. Any person who without right or against the law uses Class III narcotics against another person or provides Class III narcotics for use by another person (Article 126)
- p. Every abuser: (article 127 paragraph 1)
 - 1) Class I narcotics for personal use
 - 2) Class II narcotics for personal use
 - 3) Class III narcotics for personal use
- q. Drug addicts who are under age (Article 55 paragraph 1) who deliberately do not report (Article 128)
- r. Any person without rights against the law: (Article 129)
 - 1) Possessing, storing, controlling, or providing Narcotics Precursors for the manufacture of Narcotics
 - 2) Producing, importing, exporting or distributing Narcotics Precursors for the manufacture of Narcotics
 - 3) Offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over precursors of narcotics for the manufacture of narcotics
 - 4) Carrying, sending, transporting, or transiting narcotic precursors for the manufacture of narcotics.

METHOD

Types of research

This type of research is normative legal research using a statutory approach and a conceptual approach. The normative legal approach is by analyzing the problem through a legal principles approach and referring to the legal norms contained in the laws and

regulations. Meanwhile, the conceptual approach is an approach that uses legal concepts that are related to law enforcement regarding abuse.

Problem Approach

The problem approach is carried out using a library research approach, namely by examining various literature sources such as laws and regulations, books, research, journals, expert opinions and other materials.

Source of Legal Material

Primary legal materials consisting of laws and government regulations, court decisions that have permanent legal force, other related regulations such as the Criminal Code, Law Number 35 of 2009 concerning Narcotics, Law Number 1 of 2023 concerning the Criminal Code. Secondary legal materials, namely materials that provide explanations regarding primary legal materials such as research, proceedings related to research. Tertiary legal materials, namely materials that provide instructions or explanations for primary legal materials and secondary materials such as dictionaries, encyclopedias (wikipedia) and tables related to the object of research.

RESULT AND DISCUSSION

Efforts to combat crime with criminal law are essentially also part of law enforcement efforts (especially criminal law enforcement). Criminal law politics or policies can be said to be part of law enforcement policies. In addition, efforts to combat crime through the creation of criminal laws are essentially also an integral part of efforts to protect society (social welfare). Criminal law policies are very reasonable if they are an integral part of social policies or politics.¹⁸

In essence, criminal law policy (penal policy, criminal policy, or strafrechtspolitik) is a process of enforcing criminal law in a comprehensive or total manner. According to Wisnubroto, criminal law policy is an action related to matters such as:¹⁹

1. How does the government try to combat crime with criminal law?
2. How to formulate criminal law so that it is in accordance with social conditions;
3. How is the government's policy to regulate society with criminal law;
4. How to use criminal law to regulate society in order to achieve greater goals.

Prevention or handling of drug abuse is an effort taken in the framework of enforcement against the use, production and illicit trafficking of narcotics that can be done by everyone, both individuals, society and the state. The Indonesian National Police in the prevention and handling of narcotics, takes the following strategic steps:²⁰

¹⁸ Anton Sudanto. "Implementation of Criminal Law on Narcotics in Indonesia". ADIL: Jurnal Hukum Vol. 7 No.1, 2019, page 148

¹⁹ Lilik Mulyadi, Criminal Law Anthology: Perspectives, Theories, and Practices, Bandung: PT Alumni, 2018, page 356

²⁰ Roni Gunawan Raja Gukguk, Nyoman Serikat Putra Jaya. "Narcotics Crime as Transnational Organized Crime". Journal of Indonesian Legal Development Volume 1, Number 3, Year 2019, p.346

a. Pre-emptive

In the form of educational activities (education/teaching) with the aim of influencing the causal factors that drive and opportunity factors, which are usually referred to as "criminological correlative" factors of drug crimes, so that awareness, alertness, deterrence, and fostering and creating conditions of behavior/norms of living free from narcotics are created. Preventive educational activities are carried out using educational information communication methods, which are carried out through various means, including family, education, religious institutions, and community organizations.

b. Preventive

Preventive efforts where these efforts are made to prevent the occurrence of drug crimes through control and supervision of official channels and direct supervision of illegal distribution channels with the aim that police hazards do not develop into factual threats, and repressive efforts or action against drug crimes are carried out by arresting drug users and dealers. Arrests are not only made against Indonesian citizens, but arrests are also made against foreign citizens who are involved.

Legal Regulations for Criminal Acts of Narcotics Abuse in Law Number 35 of 2009 concerning Narcotics

According to 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. Law Number 35 of 2009 concerning Narcotics has the following objectives:²¹

1. Ensure the availability of narcotics for the benefit of health services and/or the development of science and technology.
2. Prevent, protect and save the Indonesian nation from drug abuse
3. Eradicating the illicit trafficking of narcotics and narcotic precursors; and
4. Ensure the provision of medical and social rehabilitation efforts for drug abusers and addicts.

Law Number 35 of 2009 concerning Narcotics divides narcotics into 3 groups as regulated in Article 6, namely:

a. Class I Narcotics

- 1) Narcotics Class I are prohibited from being used for health service purposes. In limited quantities, Narcotics Class I may be used for the development of science and technology and for diagnostic reagents, as well as laboratory reagents after obtaining the Minister's approval on the recommendation of the Head of the Food and Drug Supervisory Agency (Article 8)
- 2) Class I narcotics are prohibited from being produced and/or used in the production process, except in very limited quantities for the purposes of developing science and technology, and their production is strictly supervised by the Food and Drug Supervisory Agency (Article 12).

²¹Article 4 of Law Number 35 of 2009 concerning Narcotics

3) Class I narcotics may only be distributed by certain pharmaceutical wholesalers to certain scientific institutions for the purposes of developing science and technology (Article 41).

b. Class II Narcotics

For the purpose of treatment and based on medical indications, doctors can provide Class II Narcotics in limited quantities and certain preparations to patients. Patients can own, store, and/or bring Narcotics for themselves with valid evidence that the Narcotics owned, stored, and/or brought for use were obtained legally in accordance with the provisions of laws and regulations (Article 53)

c. Class III Narcotics.

For medical purposes and based on medical indications, doctors may prescribe Class III Narcotics in limited quantities and certain preparations to patients (Article 53)

Article 61 regulates the form of government supervision relating to narcotics, which includes:

1. Narcotics and Narcotics Precursors for the benefit of health services and/or the development of science and technology
2. Potential tools that can be misused to commit narcotics and narcotics precursor crimes
3. Evaluation of product safety, efficacy and quality before distribution
4. Production
5. Import and export
6. Circulation
7. Labeling
8. Information; and
9. Research and development of science and technology

To protect the public from the dangers of narcotics abuse and to prevent and eradicate the illicit trafficking of narcotics, it is regulated that narcotics precursors are substances or starting materials or chemicals that can be used in the manufacture of narcotics. This law is attached to narcotics precursors by classifying the types of narcotics precursors. To create a deterrent effect on perpetrators of abuse and illicit trafficking of narcotics and narcotics precursors, it is regulated regarding the aggravation of criminal sanctions, either in the form of a special minimum sentence, imprisonment of 20 (twenty) years, life imprisonment, or the death penalty. The aggravation of the sentence is carried out based on the group, type, size and amount of narcotics.²²

In order to prevent and eradicate the abuse and illicit trafficking of narcotics and narcotic precursors, the government is strengthening the position of the National Narcotics Agency (BNN), which is a non-ministerial government institution that is positioned under the President and is responsible to the President.²³ The BNN is based on Presidential Regulation Number 83 of 2007 concerning the National Narcotics Agency, Provincial Narcotics Agency and Regency/City Narcotics Agency. In this Law, the BNN was upgraded

²²Doni Albert Kela. "Drug Abuse Reviewed from Law No. 35 of 2009 Concerning Narcotics". *Lex Crimen Journal* Vol. IV. Number. 6. August 2015, p.108

²³Article 64 of Law Number 35 of 2009 concerning Narcotics

to a Non-Ministerial Government Institution (LPNK) and its authority to conduct investigations was strengthened. In carrying out the task of eradicating the abuse and illicit trafficking of Narcotics and Narcotics Precursors, the BNN has the authority to conduct investigations and inquiries into the abuse and illicit trafficking of Narcotics and Narcotics Precursors (Article 71). The BNN has the following duties:²⁴

- a. Formulate and implement national policies regarding the prevention and eradication of abuse and illicit trafficking of narcotics and narcotic precursors.
- b. Prevent and eradicate the abuse and illicit trafficking of narcotics and narcotic precursors
- c. Coordinate with the head of the Republic of Indonesia National Police in preventing and eradicating the abuse and illicit trafficking of narcotics and narcotic precursors.
- d. Improving the capabilities of medical rehabilitation institutions and social rehabilitation for drug addicts, both those organized by the government and the community.
- e. Empowering communities in preventing abuse and illicit trafficking of narcotics and narcotic precursors
- f. Monitor, direct and improve community activities in preventing the abuse and illicit trafficking of narcotics and narcotic precursors.
- g. Conducting bilateral and multilateral cooperation, both regional and international, to prevent and eradicate the illicit trafficking of narcotics and narcotic precursors.
- h. Developing narcotics and narcotics precursor laboratories
- i. Carrying out administrative investigations and inquiries into cases of abuse and illicit trafficking of narcotics and narcotic precursors and
- j. Making annual reports regarding the implementation of duties and authorities.

In order to further strengthen the Institution, it is also regulated that all assets or property that are the result of criminal acts involving Narcotics and Narcotics Precursors and criminal acts of money laundering from criminal acts involving Narcotics and Narcotics Precursors based on court decisions that have obtained permanent legal force are confiscated for the state and used for the purposes of implementing prevention and eradication of the misuse of illicit trafficking of Narcotics and Narcotics Precursors and medical and social rehabilitation efforts.²⁵

In order to prevent and eradicate the abuse and illicit trafficking of narcotics and narcotic precursors, the modus operandi of which is increasingly sophisticated, this Law also regulates the expansion of wiretapping investigation techniques, undercover buy techniques, and controlled delivery techniques, as well as other investigation techniques to track and uncover the abuse and illicit trafficking of narcotics and narcotic precursors.²⁶

In order to prevent and eradicate the abuse and illicit trafficking of Narcotics and Narcotics Precursors which are carried out in an organized manner and have a wide network that goes beyond national borders, this Law regulates cooperation, both bilaterally, regionally, and internationally. This Law also regulates the role of the community in efforts

²⁴Article 70 of Law Number 35 of 2009 concerning Narcotics

²⁵Doni Albert Kela, Op.Cit, page 109

²⁶OC Kaligis and Soedjono Dirdjosisworo, Drugs and Justice in Indonesia, Criminal Law Reform through Legislation and Justice, Kaligis Associates, Jakarta, 2006, p.22

to prevent and eradicate the abuse of Narcotics and Narcotics Precursors, including the provision of awards for members of the community who have contributed to efforts to prevent and eradicate the abuse and illicit trafficking of Narcotics and Narcotics Precursors.²⁷

Criminal provisions for abuse and crimes related to narcotics are regulated in Chapter XV consisting of 37 articles, starting from Article 111 to Article 148. Sanctions for narcotics crimes against oneself are regulated in Articles 111 to 128. The forms of sanctions in Law Number 35 of 2009 concerning Narcotics are as follows:

1. The death penalty, life imprisonment, or a minimum of 6 (six) years and a maximum of 20 (twenty) years imprisonment and a maximum fine of 10,000,000.00 (ten billion rupiah) plus 1/3 (one third) as regulated in Article 114 paragraph (2)
2. The death penalty or life imprisonment, or a minimum prison sentence of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least IDR 2,000,000,000.00 (two billion rupiah) and a maximum of IDR 20,000,000,000.00 (twenty billion rupiah) as regulated in Article 133 paragraph (1)
3. The death penalty, life imprisonment, or a minimum of 5 (five) years and a maximum of 20 (twenty) years imprisonment and a maximum fine of 8,000,000.00 (eight billion rupiah) plus 1/3 (one third) as regulated in Article 121 paragraph (2)
4. The maximum prison sentence is 7 (seven) years and a maximum fine of IDR 500,000,000.00 (five hundred million rupiah) as regulated in Article 138, Article 142
5. The minimum prison sentence is 5 (five) years and the maximum is 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah) plus 1/3 as regulated in Article 113 paragraph (2), Article 116 paragraph (2)
6. The minimum prison sentence is 5 (five) years and the maximum is 20 (twenty) years and a maximum fine of IDR 8,000,000,000.00 (eight billion rupiah) plus 1/3 as regulated in Article 111 paragraph (2), Article 112 paragraph (2), Article 115 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), Article 121 paragraph (2)
7. The minimum prison sentence is 5 (five) years and the maximum is 15 (fifteen) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and at most Rp. 10,000,000,000.00 (ten billion rupiah) as regulated in Article 113 paragraph (1), Article 114 paragraph (1), Article 116 paragraph (1), Article 133 paragraph (2), Article 137 paragraph (1)
8. The minimum prison sentence is 5 (five) years and the maximum is 15 (fifteen) years and a fine of at least Rp. 600,000,000.00 (six hundred million rupiah) and at most Rp. 5,000,000,000.00 (five billion rupiah). plus 1/3 (one third) as regulated in Article 117 paragraph (2), Article 120 paragraph (2), Article 123 paragraph (2), Article 124 paragraph (2), Article 126 paragraph (2)
9. The minimum prison sentence is 4 (four) years and the maximum is 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah) as regulated in Article 129.

²⁷Ibid, page 23

10. The minimum prison sentence is 4 (four) years and the maximum is 12 (twelve) years and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah) and at most IDR 8,000,000,000.00 (eight billion rupiah) as regulated in Article 111 paragraph (1), Article 112 paragraph (1), Article 115 paragraph (1), Article 118 paragraph (1), Article 119 paragraph (1), Article 121 paragraph (1)
11. A maximum prison sentence of 4 (four) years as regulated in Article 127 paragraph (1) point 1
12. The minimum prison sentence is 3 (three) years and the maximum is 10 (ten) years and a fine of at least IDR 600,000,000.00 (six hundred million rupiah) and at most IDR 5,000,000,000.00 (five billion rupiah) as regulated in Article 117 paragraph (1), Article 120 paragraph (1), Article 123 paragraph (1), Article 124 paragraph (1), Article 126 paragraph (1)
13. The minimum prison sentence is 3 (three) years and the maximum is 10 (ten) years and a fine of at least IDR 500,000,000.00 (five hundred million rupiah) and at most IDR 5,000,000,000.00 (five billion rupiah) as regulated in Article 137 paragraph (2)
14. The minimum prison sentence is 3 (three) years and the maximum is 10 (ten) years and a fine of at least IDR 600,000,000.00 (six hundred million rupiah) and at most IDR 3,000,000,000.00 (three billion rupiah) as regulated in Article 122 paragraph (2), Article 125 paragraph (2)
15. The minimum prison sentence is 2 (two) years and the maximum is 7 (seven) years and a fine of at least IDR 400,000,000.00 (four hundred million rupiah) and at most IDR 3,000,000,000.00 (three billion rupiah) as regulated in Article 122 paragraph (1), Article 125 paragraph (1)
16. A maximum prison sentence of 2 (two) years as regulated in Article 127 paragraph (1) point 2
17. The minimum prison sentence is 1 (one) year and the maximum is 10 (ten) years and a fine of at least IDR 100,000,000.00 (one hundred million rupiah) and at most IDR 1,000,000,000.00 (one billion rupiah) as regulated in Article 139, Article 140 paragraph (1), Article 141, Article 147
18. The minimum prison sentence is 1 (one) year and the maximum is 10 (ten) years and a fine of at least IDR 60,000,000.00 (sixty million rupiah) and at most IDR 600,000,000.00 (six hundred million rupiah) as regulated in Article 143.
19. The minimum prison sentence is 1 (one) year and the maximum is 7 (seven) years and a fine of at least IDR 40,000,000.00 (forty million rupiah) and at most IDR 400,000,000.00 (four hundred million rupiah) as regulated in Article 135.
20. A maximum prison sentence of 1 (one) year or a maximum fine of IDR 50,000,000.00 (fifty million rupiah) as regulated in Article 131
21. A maximum prison sentence of 1 (one) year as regulated in Article 127 paragraph (1) point 3
22. The maximum imprisonment is 6 (six) months or a maximum fine of IDR 2,000,000.00 (two million rupiah) as regulated in Article 134 paragraph (1).

23. The maximum imprisonment is 6 (six) months or a maximum fine of IDR 1,000,000.00 (one million rupiah) as regulated in Article 128 paragraph (1).
24. The maximum imprisonment is 3 (three) months or a maximum fine of IDR 1,000,000.00 (one million rupiah) as regulated in Article 134 paragraph (2).
25. Imprisonment and fines for its managers, the punishment that can be imposed on corporations is a fine with an increase of 3 (three) times the fine as referred to in Article 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and Article 129
26. Confiscation of assets for the state as regulated in Article 136

Legal Regulations for Criminal Acts of Narcotics Abuse in the Criminal Code

This criminal law policy actually covers quite a broad range of issues, namely an evaluation of the substance of the current criminal law for the renewal of the substance of the criminal law in the future, and how to implement this criminal law through the components of the Criminal Justice System, especially the current regulation of narcotics crimes, and no less important is the effort to prevent crime. This prevention effort means that criminal law must also be one of the instruments to prevent the possibility of crime.²⁸

The Criminal Code in force in Indonesia categorizes two types of criminal incidents, namely:²⁹

1. Crime (Misconduct)

Crime is "Rechtsdelicten" namely "acts which, although not specified in the law, as criminal acts have been felt as onrecht, as acts which are contrary to the legal system.

2. Violation (Overtrading)

Violations are "Wetsdelicten", namely "Acts which are unlawful in nature can only be known after there is a law which determines this."

The Criminal Code does not provide provisions/requirements to distinguish between crimes and violations. The Criminal Code only determines that all provisions contained in book II are crimes, while all those contained in book III are violations. Crimes are generally subject to heavier penalties than violations. Narcotics crimes are categorized as crimes.

If we look closely at the categories of criminal acts or criminal events, then in criminal law there are several categories of criminal acts or criminal events, namely:³⁰

1. *Dolus* and *Culpa* *Dolus* means intentional, *delict dolus* is an intentional act that is prohibited and is punishable by criminal law

Narcotics crimes are formulated as requiring deliberate action the existence of a criminal act.

2. *Commissionis*, *Omissionis* and *Commissionis per Ommissionem*.

²⁸ Basuki, "Tackling narcotics crimes is linked to the purpose of punishment," *Jurnal Hukum Aktualita*, Volume 1 No.1 (June 2018), page 195

²⁹F. Lamintang, *Basics of Criminal Law*, Bandung: Sinar Baru, 2014, p. 71.

³⁰Moh. Taufik Makarao, Suhasril, H. Moh Zakky AS, *Narcotics Crimes*, Jakarta: Ghalia Indonesia, 2003, p. 8

Commissionera crime that occurs because someone violates a prohibition, which can include both formal and material crimes.

3. Material and Formal.

Material crime is a crime whose formulation emphasizes the consequences that are prohibited and threatened with punishment by law. Formal crime is a crime whose formulation emphasizes the actions that are prohibited and threatened with punishment by law.

Narcotics crimes are formulated in formal crimes which formulate in detail the criminal acts committed.

4. *Without Victim* and With Victim - Without Victim

Crimes committed without victims and crimes committed with several or a particular person as victims

Narcotics crimes can be formulated as crimes without victims, where the perpetrators also act as victims.

In the Criminal Code (KUHP) which is a change from the Wetboek van Strafrecht voor Netherlands Indie to the Wetboek van Strafrecht (WvS) there is no specific regulation of narcotics crimes, but in Law Number 1 of 2023 concerning the Criminal Code (KUHP) it is specifically regulated in Chapter XXXV concerning Criminal Acts, specifically part five concerning Narcotics Crimes. Provisions regarding the classification and quantity of narcotics refer to the Law governing Narcotics.

Article 609 of Law Number 1 of 2023 concerning the Criminal Code (KUHP) states:

(1) *Any person who without the right owns, stores, controls or provides:*

- a. *Class I narcotics that are not plants are punishable by imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least category IV and at most category VI.*
- b. *Class II narcotics are punishable by imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least category IV and at most category VI.*
- c. *Class III narcotics are punishable by imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of at least category IV and at most category VI.*

(2) *In the event that the action as intended in paragraph (1) is committed against:*

- a. *Class I narcotics that are not plants and weigh more than 5 (five) grams are punishable by life imprisonment or a minimum of 5 (five) years and a maximum of 20 (twenty) years imprisonment and a fine of at least category V and at most category VI.*
- b. *Class II narcotics weighing more than 5 (five) grams are punishable by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least category V and at most category VI.*
- c. *Class III narcotics weighing more than 5 (five) grams are punishable by imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least category V and at most category VI.*

Article 610 of Law Number 1 of 2023 concerning the Criminal Code (KUHP) states:

- (1) *Any person who without authorization produces, imports, exports or distributes:*
- a. *Class I narcotics are punishable by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least category IV and at most category V.*
 - b. *Class II narcotics are punishable by imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least category IV and at most category V.*
 - b. *Class III narcotics are punishable by imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least category IV and at most category V.*
- (2) *In the event that the act as referred to in paragraph (1) is committed against:*
- a. *Narcotics Class I in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks, or Narcotics Class I which are not plants weighing more than 5 (five) grams are punishable by the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least category V and at most category M.*
 - b. *Class II narcotics weighing more than 5 (five) grams are punishable by the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least category V and at most category VI.*
 - c. *Class III narcotics weighing more than 5 (five) grams are punishable by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least category V and at most category VI.*

CONCLUSION

Drug crimes are transnational crimes that are currently a transnational crime that occurs in Indonesia. Drug crimes have now become a major threat to the Republic of Indonesia. Therefore, the Indonesian government needs to be serious in combating or eradicating drug crimes.

Regulations on narcotics in Indonesia based on Law No. 35 of 2009 concerning Narcotics, prohibit and threaten criminal penalties against narcotics abusers, which can be individuals or legal entities (corporations). Law No. 35 of 2005 concerning Narcotics broadly regulates the procedural process in the context of law enforcement in 2 (two) broad outlines, namely action based on criminal provisions regulated in Chapter XIV, and the treatment and rehabilitation process as regulated in Chapter IX.

Law Number 1 of 2023 concerning the Criminal Code (KUHP) broadly regulates 2 matters regarding special criminal acts regarding narcotics abuse, namely producing, importing, exporting, or distributing and producing, importing, exporting, or distributing

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