

Research Article

The Urgency of Regulatory Reform in the Treatment of Narcotics Abusers Following Immediate Arrests

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Abstract: The purpose of the study was to analyze the legal status of narcotics abusers after the hand-holding operation. This type of research is normative legal research with a legislative approach, a case approach and a conceptual approach. The analysis used in this study is qualitative data analysis through the management of legal materials in a deductive way. Based on the research, the results of the research were obtained that in Law Number 35 of 2009 concerning Narcotics, it is stated that after the arrest operation or after the seizure, within a minimum of 3 x 24 hours an evidence test must be carried out to ensure the narcotic content found, then this can have implications for the legal status of a person arrested in the arrest operation. A person caught in a narcotics case can have several possible legal statuses, including; as an arrested witness, if he is only at the scene of the incident without direct evidence of his involvement; as a suspect, if there is preliminary evidence that he possesses or uses narcotics; as a person without legal status who is temporarily detained, if his status is still waiting for the results of laboratory tests of evidence. Therefore, it is necessary to update regulations through the revision of the Narcotics Law which must contain clear time limits on how a person who is caught must be treated before the results of the evidence test come out.

Keywords: Legal Status; Narcotics abusers; Catch the Hand.

1. Introduction

Nowadays, narcotics and illegal drug crimes have become transnational crimes committed with a high modus operandi and sophisticated technology, so there is a need for anticipation from enforcement officials. Drug crime in Indonesia is very serious, Indonesia today is not just a country that is a consumer of this crime, where previously Indonesia was only a country that became a marketing place for drug crimes, but now Indonesia has turned into one of the production countries for narcotics and other illegal drugs.

The presence of criminal procedure law has the purpose of finding the material truth. In achieving this goal, law enforcement officials are obliged to comply with evidence, proof systems, and evidentiary procedures as determined in the applicable laws and regulations. Narcotics abuse in Indonesia has reached a very worrying level, facts on the ground show that 50% of the inmates of correctional institutions in Indonesian territory are caused by drug or narcotics cases. Meanwhile, data from the National Narcotics Agency (BNN) shows that in 2023, around 3.3 million people (1.73% of the population) are involved in the abuse of this illicit substance.

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Narcotics crimes are no longer carried out individually, but involve organized groups and syndicates with a wide network, both at the national and international levels. Based on this, in order to increase efforts to prevent and eradicate narcotics crimes, amendments have been made to Law Number 22 of 1997 concerning Narcotics with the promulgation of Law Number 35 of 2009 concerning Narcotics. This reason is also to prevent an increasing tendency both quantitatively and qualitatively with widespread victims, especially among children, adolescents, and the nation's next generation in general.

The legal implications for the construction of Article 4 letter d, Article 54 and Article 127 of the Narcotics Law, according to Satrio Putra Kolopita, are used to determine the victim or perpetrator of narcotics users, namely narcotics users as perpetrators of criminal acts and at the same time as victims. In principle, the "dealer" of narcotics in legal terminology is categorized as a perpetrator (dader), however, "user" can be categorized either as a "perpetrator and/or victim". As victims, narcotics "users" are citizens who must be protected and respected for their rights both in the legal process and in the health and social dimensions.

Law enforcement officials in dealing with the narcotics problem are required to pay attention to the principle of prudence as stated by Andri G Wibisana:

“The precautionary principle can be seen as guidance for decision makers when facing scientific uncertainty regarding threats to human health or the environment”

(Prinsip kehati-hatian dapat digunakan sebagai pedoman bagi pengambil keputusan ketika dihadapkan pada ketidakpastian ilmiah mengenai ancaman terhadap kesehatan manusia atau lingkungan).

Referring to this opinion, law enforcement officials have certain methods, which are basically through preventive, repressive and rehabilitative efforts against the crime of narcotics abuse, and are always carried out. Therefore, in addition to the National Narcotics Agency (BNN), the police always carry out and are firm in repressive efforts as a form of eradicating the circulation of narcotics itself, ideally the legal goal will still have to be guided by these efforts, in terms of the implementation of the arrest of Narcotics Abusers has been regulated, both according to the Criminal Code and according to Law Number 35 of 2009 concerning Narcotics.

Narcotics crimes have been transnational in nature which are carried out using a high modus operandi, advanced technology, supported by a wide network of organizations, and have caused many victims, especially among the nation's young generation who are very dangerous to the life of the community, nation, and state. In conducting investigations and investigations, BNN Investigators and Police Investigators specifically refer to the Narcotics Law related to the timing of the arrest of suspected narcotics crimes.

Investigators are expressly given authority by Article 75 letter (g) jo. Article 76 of Law Number 35 of 2009 concerning Narcotics, which explains that the time of arrest is a maximum of 3 x 24 hours and can be extended for a maximum of 3 x 24 hours (6 working

days), this means that Law Number 35 of 2009 concerning Narcotics is a *lex specialis* of the Criminal Procedure Code.

While the facts on the ground, this will be problematic when there is an arrest in an alleged narcotics crime case. In Article 1 Number 19 of the Criminal Procedure Code, the definition of being caught is as follows:

"Caught in the act is the arrest of a person while committing a criminal act, or immediately after a few moments the criminal act is committed, or shortly afterwards called by the public as the person who committed it, or if a moment later an object that is suspected of having been used to commit the criminal act is found on him which shows that he is the perpetrator or participated in the commission or helps to commit the criminal act"

Based on the above article, there are four circumstances in which a person is said to be caught:

1. the arrest of a person while committing a criminal act;
2. the arrest of a person immediately after a few moments of the criminal act;
3. The arrest of a person shortly afterwards was called by the public as the person who did it
4. If a moment later, on the person who committed the criminal act, an object that is suspected of having been used to commit the crime is found.

The definition in Article 1 Number 19, the Criminal Code not only regulates the circumstances in which a person is called arrested, more than that, the Criminal Code provides coverage to the perpetrator. Not only the *materiele dader* (material perpetrators), but also other participant actors—whether it is the person who orders them to do, participates in doing or the person who advocates—even to help. If it is drawn in the context of the arrest of the hand in a narcotics case, then of course it must be followed by preliminary evidence so as to bring him to the status of a suspect.

In the principle of law it is said that "*In criminalibus probantiones bedent esse luce clariores*" (in criminal cases, the evidence must be lighter than light), then it is clear that to prove a person as a perpetrator of a criminal act is not based only on suspicion. The existing evidence must be clear, clear, and accurate in order to convince the judge to impose a sentence without the slightest doubt.

Referring to this, the arrest of hands in narcotics cases must have at least 2 (two) preliminary evidence to determine that the case can be continued. Referring to that, problems will arise when related to the grace period of arrest regulated in the Narcotics Law in Article 76 paragraphs (1) and (2) the arrest is made for a maximum of 3 x 24 then can be extended 3 x 24 hours, on the one hand in the Criminal Procedure Code it is explained that in the event of being caught a hand there is no need to make a warrant or interpret the provisions that are assessed by the investigator based on Article 1 point (19) of the Criminal Procedure Code and then its implementation is regulated in Article 18 paragraph (2) as follows:

"In the event of being caught, the arrest is carried out without a warrant, with the provision that the arrestee must immediately hand over the arrested person and the available evidence to the nearest investigator or assistant investigator."

Referring to the above provisions, after the decision of judge Sarpin Rizaldi regarding the expansion of pretrial material in terms of determining suspects, in the case of Budi Gunawan stated that the Investigation Warrant Number Sprin.Dik-03/01/01/2015 which designated Budi Gunawan as a suspect was invalid, becoming a polemic in itself, according to judge Sarpin interpreted the fulfillment of 2 sufficient and strong pieces of evidence as stipulated in Article 184 of the Criminal Code. Meanwhile, if it is withdrawn in the context of arrest in narcotics cases with preliminary evidence, then in the Narcotics Law the arrest operation is carried out 3 x 24 hours then can be extended 3 x 24 hours, this has implications for the status of the arrested person there has been a legal status vacancy. There is no clarity regarding the status of the person who was arrested, considering that this delicacy is a material offense which in essence the evidence must go through a test process first according to the procedure, for example through the POM Center agency which has an SOP and the duration is around 3 working days.

Furthermore, in this regard, in the provisions of Article 1 point (14) of Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHAP) it is stated that the suspect is a person who, because of his actions or circumstances, based on preliminary evidence, should be suspected of being the perpetrator of a criminal act. There is no explicit provision that mentions what is sufficient preliminary evidence, but then, in the Constitutional Court decision Number 21/PUU-XII/2014, it has been affirmed and declared conditionally unconstitutional to the phrases "preliminary evidence", "sufficient preliminary evidence", and "sufficient evidence" in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Code as long as it is interpreted as at least two pieces of evidence in accordance with Article 184 of the Criminal Code. Valid evidence according to Article 184 paragraph (1) of the Criminal Code is:

- a. witness statements;
- b. expert testimony;
- c. letters;
- d. Petunjuk;
- e. defendant's statement.

The Court considers the minimum requirement of two pieces of evidence and the examination of potential suspects for transparency and protection of a person's human rights so that before a person is designated as a suspect he has been able to give evidence in a balanced manner, this avoids arbitrary actions by investigators, especially in determining sufficient preliminary evidence.

Looking at the Narcotics Law, in Article 75 after making a seizure at least within 3 x 24 hours and in principle must have been tested for evidence, while the person concerned has been detained, then related to that the problem that occurs is regarding the status of the arrested person, whether it can be said to be a witness who was arrested and the detention process was carried out or a person without legal status was arrested within 3 x 24 hours then can be extended 3 x 24 hours (6 days), while the results of the narcotics test (evidence) are still in process.

Based on the description of the background of the problem above, the problems in this study can be formulated, namely: What is the legal status of narcotics abusers after the arrest operation?

2. Research Methods

This type of research is normative legal research with a statutory approach (statue approach), case approach (case approach) and conceptual approach (conceptual approach). The analysis used in this study is qualitative data analysis through the management of legal materials in a deductive way, namely describing something that is general and then drawing it into a more specific conclusion.

3. Discussion

Legal Status of Narcotics Abusers After Operation Arrest

Referring to the provisions of Article 76 of the Narcotics Law regarding the time period for arresting hands in narcotics, after the seizure is carried out, within a period of no later than 3 x 24 hours, testing of evidence should have been carried out. In practice, the detention of individuals suspected of being involved has been carried out before the results of the evidence test are available. The problems that arise are related to the legal status of the arrested individual, namely whether the narcotics abuser can be qualified as a witness who is arrested and detained, or precisely as someone who does not have a clear legal status but has been arrested for 3 x 24 hours which can be extended to 6 days, even though the results of laboratory examinations of narcotics evidence are still in process. Based on this, a comprehensive study of the legal status of narcotics abusers after the arrest operation is an urgency.

The change in the regulation of articles regulating narcotics crimes in the New Criminal Code seems at first glance to be good news. The reason is because since the enactment of the New Criminal Code in 2026, several provisions of Article in Law Number 35 of 2009 concerning Narcotics which are often charged against narcotics users, have been revoked and declared invalid, such as Article 111. However, if you pay attention to the formulation that is a reference, such as Article 609 paragraph (1) letter a and paragraph (2) letter a, then it can be said that the reference articles in the New Criminal Code are only copy-pasted articles of Law

Number 35 of 2009 concerning Narcotics. Because the difference lies only in the categorization of fine crimes. In addition, all the elements have something in common.

In turn, problems that arise in the application of the law against drug abusers and addicts when all provisions in Law Number 35 of 2009 concerning Narcotics are still in force, will reappear even after the New Criminal Code has come into effect. Problems such as the unstrict limitation of important definitions in Law No. 35 of 2009 concerning Narcotics that result in the bias of further regulation (such as between Article 4 and Article 54 of Law No. 35 of 2009 concerning Narcotics), will still occur. More than that, the use of Article 112 which will later be changed to Article 609 paragraph (1) letter a and paragraph (2) letter a of the New Criminal Code is still possible to be a priority to be used as a Primary Indictment and First Indictment in an alternative indictment. With this situation, of course, SEMA, both SEMA Number 4 of 2010, SEMA Number 3 of 2015, and SEMA Number 1 of 2017, will still be needed to be a temporary remedy in overcoming problems arising in the application of the law in a caustic manner.

Furthermore, regarding the weaknesses of the legal regulation regarding the time period of arrest in narcotics crimes can be described, although the regulation regarding the arrest of hands in narcotics crimes refers to the Criminal Code and the Narcotics Law, there are several weaknesses that can be criticized, including:

1. There is no clarity on the legal status of narcotics abusers within the time limit of arrest. The status of the arrested narcotics abuser is still unclear: whether as detained witnesses, suspects, or individuals without legal status, even though laboratory results are not yet available.

2. Potential abuse of authority. a) The absence of explicit regulation on the legal status of arrested narcotics abusers allows the authorities to claim an arrest as legitimate even though there are no laboratory results. b) This can open up opportunities for arbitrariness in law enforcement.

3. Lack of supervision and control mechanisms for hand-holding procedures. a) There is no rapid test mechanism to ensure the legality of the arrest act. b) Arrest procedures are rarely strictly supervised, creating a risk of deviation from the provisions of the Criminal Code. c) The absence of strict evidentiary standards regarding the time relationship between criminal acts and arrests raises subjectivity in law enforcement.

4. Incompatibility with human rights principles. a) Many perpetrators were immediately arrested and processed without legal assistance from the beginning. b) Some individuals who are only at the scene of the incident are often immediately designated as suspects without sufficient evidence. c) This violates the principle of presumption of innocence and the principle of due process of law.

5. There is no standardization of evidence in the operation to arrest narcotics cases. a) Evidence is often used as the sole basis for determining the status of suspects without

considering the context of their relevance. b) The case of "trapping" in an undercover buy also shows the manipulation of evidence to ensnare individuals. c).

A more objective standard of proof is needed so that there is no wrongful criminalization.

Thus, the current regulations still have fundamental weaknesses:

1. Thus, the current regulations still have fundamental weaknesses:
2. It is unclear the legal status of narcotics abusers during the arrest period based on the Narcotics Law.
3. There is a potential for abuse of authority in defining hand-holding.
4. Lack of oversight mechanisms and procedural transparency.
5. Human rights protection has not been maximized, especially in terms of suspects' rights.
6. There is no objective standard of evidence to distinguish between perpetrators, victims, and uninvolved parties.

Therefore, more specific regulatory reforms are needed in the Narcotics Law or through the revision of the Criminal Procedure Code to clarify provisions regarding the legal status during the arrest period, evidentiary standards, and supervision in legal procedures so that there is no abuse of authority.

Through the Principles that govern the right to health, every country is obliged to make a policy that must be able to realize the right to health for every individual. In this case, the state is required to respect, fulfill and protect the right to health. In the context of protecting the right to health, the state is obliged to develop policies that ensure the fulfillment of these rights. The state's responsibilities include: (1) respect, i.e. the prohibition of taking policies that block an individual's access to his or her rights; (2) fulfillment, namely the state's obligation to take legislative, administrative, judicial, or budgetary steps to guarantee these rights; and (3) protection, namely preventing and overcoming violations both intentional and as a result of neglect.

Specifically, the arrest operation in narcotics crimes is one of the law enforcement methods that is often used. Based on Article 75 letter (g) jo. Article 76 of the Narcotics Law, after confiscation, investigators are required to conduct evidence tests within a maximum of 3 x 24 hours to ascertain the narcotics content. In practice, however, the legal status of the arrested person is often uncertain: whether he is a witness, a suspect, or an individual simply waiting for laboratory results. This uncertainty has the potential to lead to human rights violations, especially if detention is carried out without a clear legal status.

Arrest is regulated in Article 1 number 19 of the Criminal Code which defines it as the arrest of a person who:

- 1) There are signs that he has just committed a criminal act.

- 2) Crime
- 3) Person who has committed a crime;

In practice, arrests are carried out through raids or undercover buys. However, the legal position of the arrested person is often still uncertain, because there are no laboratory results yet. As a result, the person can:

1. Categorized as a witness if only at the location without evidence of direct involvement;
2. Be made a suspect if there is a strong indication of possession or use of narcotics;
3. Being in legal status is unclear if the detention was made simply for waiting for laboratory results.

The Narcotics Act does not provide a firm time limit on how a person caught is treated before laboratory results come out. This creates legal uncertainty. In fact, based on the Narcotics Law, the evidence test must be carried out within 3 x 24 hours. In practice, however, test results are often late, raising the question of whether detention remains legal without clarity on the legal status. If the detention process is carried out without a definite legal basis, it has the potential to violate human rights and the principle of due process of law. In some cases, courts even cancel detention if legal procedures are not legally carried out.

Regulatory reform is urgently required to ensure legal certainty. This includes setting a clearer time limit and establishing legal protection mechanisms for narcotics users apprehended in sting operations, particularly during the period prior to the issuance of laboratory test results. The following conclusions can be drawn:

1. There is currently no legal certainty regarding the status of an individual caught in the act in a narcotics case before laboratory test results are available.
2. Detention within the 3 x 24 hour period, which may be extended, potentially violates individual rights if conducted without a clear legal foundation.
3. Existing regulations need to be clarified to prevent potential abuse of authority in the detention of narcotics users.

Moreover, delays in laboratory testing significantly affect the legal process. If the results later reveal that the seized substances are not classified as narcotics, the detained individual would have already suffered legal and social harm. Therefore, there must be a mechanism for expedited laboratory testing or a more flexible legal procedure in handling narcotics cases.

One way to address this issue is through regulatory amendments that set more precise time limits and legal safeguards for narcotics users arrested in sting operations, particularly during the interim period before laboratory results are issued.

Recommendations for determining the legal status of narcotics users following sting operations should ideally be incorporated through a revision of the Narcotics Law. The uncertainty surrounding the legal status of narcotics users within the 3 x 24 hour window after arrest has become one of the core issues in Indonesia's criminal justice system. Narcotics users are often criminalized without undergoing a fair and objective integrated assessment.

Therefore, a revision of Law No. 35 of 2009 on Narcotics is necessary to ensure legal justice and to promote a rehabilitative approach for narcotics users.

The following fundamental principles should guide this reform effort:

1. Principle of Balance – Harmonizing law enforcement and health-based approaches toward narcotics users.
2. Principle of Restorative Justice – Prioritizing rehabilitation over imprisonment for users not involved in narcotics trafficking networks.
3. Principle of Legal Certainty – Providing clear rules and firm mechanisms for determining the legal status of users post-sting operation.
4. Principle of Human Rights Protection – Ensuring that the rights of narcotics users are upheld throughout legal proceedings and protected from arbitrary criminalization.

Furthermore, the following are several recommendations that may be included in the revision of the Narcotics Law to clarify the legal status of narcotics abusers following a sting operation (OTT):

1. Clarification of Categories: Users vs. Dealers
 - a) Narcotics users apprehended during a sting operation with evidence below a certain threshold, as determined by regulation, should be treated as victims and granted access
 - b) Users who show indications of being dealers or part of a narcotics distribution network (e.g., based on quantity of evidence, presence of transaction tools, or involvement of other parties) must be processed through legal channels.

Article 127: Add a clause that abusers who meet the requirements for rehabilitation are required to undergo an integrated assessment a maximum of 1 x 24 hours after OTT.

2. Mandatory and Expedited Integrated Assessment Mechanism
 - a) The Integrated Assessment Team (IAT) must be required to conduct an assessment within 1 x 24 hours following a sting operation to determine the legal status of the individual.
 - b) The IAT must consist of the following elements:
 - (1) Investigator (Police/BNN)
 - (2) Prosecutor
 - (3) Doctor/Psychiatrist
 - (4) BNNP/Social Service

Article 13: Add a provision requiring mandatory assessment within 1 x 24 hours post-OTT.

3. Standardization of Evidence Limits for Rehabilitation:
 - (1) Set a threshold for the amount of evidence to distinguish abusers and traffickers
 - (2) Examples (referring to countries such as Portugal & Thailand):
 - a) Cannabis: ≤ 5 grams \rightarrow User
 - b) Methamphetamine: ≤ 1 gram \rightarrow User

- c) Ecstasy: ≤ 2 pills \rightarrow User
- d) Heiroid/Cocaine: ≤ 0.5 grams \rightarrow User
- (3) If the quantity of narcotics exceeds the threshold, it shall be considered as an indication of illicit distribution and may be prosecuted accordingly.

Articles 112 and 114: Add clear quantitative thresholds to distinguish between users and dealers in sting operation cases.

4. Prohibition of Criminalization for Users Who Have Undergone Rehabilitation

- (1) Individuals who have completed rehabilitation may not be prosecuted for the same offense.
- (2) Users who voluntarily report themselves to rehabilitation centers must be guaranteed protection from criminal prosecution.

Article 128: Add a clause stating that users who have completed rehabilitation cannot be criminally charged for the same case.

Accordingly, the revision of the Narcotics Law must affirm that drug users are not criminals, but victims in need of rehabilitation. Integrated assessments must be conducted within a maximum of 1 x 24 hours post-OTT to determine legal status swiftly and objectively. This approach is expected to minimize the criminalization of users, reduce overcrowding in correctional facilities, and create a more just and humane legal system.

4. Conclusion

The regulation of narcotics crimes in the current laws and regulations still does not fully guarantee legal protection for narcotics abusers and addicts, especially in the context of arrest through the arrest mechanism. The unclear legal status of the arrested individuals is often a polemic, considering that the legal process runs before there is certainty about the results of laboratory tests on the evidence found. A person who is caught in a narcotics case can be in three possible legal statuses, namely: (1) As a witness, if the individual is only at the scene without any direct involvement that can be proved; (2) As a suspect, if there is preliminary evidence that shows the possession or use of narcotics; (3) As an individual without a clear legal status, if the detention process is carried out temporarily while waiting for the results of the laboratory test of evidence. Law Number 35 of 2009 concerning Narcotics does not expressly regulate how legal procedures must be carried out against a person who is caught before the results of a laboratory test are issued. The absence of such specific arrangements creates legal uncertainty, opens up opportunities for abuse of authority by law enforcement officials, and has the potential to ignore human rights principles, including the principle of presumption of innocence and due process of law. Therefore, regulatory updates are needed to ensure clarity on the legal status of narcotics abusers and the protection of their rights at every stage of the legal process.

5. Suggestion

1. For the legislature, it can make changes to regulations explicitly to regulate the legal status of narcotics abusers in the period before the results of the evidence test come out (revising the Narcotics Law).
2. For law enforcement officials, it is better to pay attention and seriousness to a stricter supervision mechanism for arrest and detention procedures in narcotics cases, especially in narcotics abuse arrest operations, besides that improving the quality of laboratories for BPOM is also a strategic step in this problem.
3. For the community, they must be active and participate in providing reports to the authorities (Police or BNN) regarding suspicions of narcotics abuse activities in the surrounding environment, so that the eradication of narcotics abuse can be realized.

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