

---

## THE VICTIMS OF DRUGS ABUSE AND THEIR LEGAL STATUS IN THE INDONESIAN NARCOTICS LAW

Vivi Ariyanti

---

### Abstract

The Indonesian Law Number 35/2009 on Narcotics in the elucidation section of article 54 differentiates the term "addicts" and "victims of drugs abuse", even though many experts contend that the addicts and the individual self-use drug abusers are in fact both victims of syndicates of illicit narcotics trafficking that are difficult to escape from the addiction. Meanwhile, the term victims in the Law refers to a person who inadvertently uses narcotics, for being persuaded, tricked, deceived, coerced, and / or threatened to use narcotics. This definition makes someone who actually uses narcotics being persuaded or induced difficult to prove it before the court. Actually, the abusers want to get rid of the narcotics trap that twisted it, but because the nerve has been poisoned by addictive substances and narcotics, then it is difficult to do so. Therefore, the drugs abusers or addicts require different handling from the legal instruments, because they are different from the perpetrators of narcotics crimes in general, i.e. the perpetrators of illicit trafficking of narcotics. The Indonesian Law Number 35/2009 stipulates addicts and narcotics abusers as unlawful subjects for illegal use of narcotics. The criminalization of self-use narcotics abusers is established by penalty for perpetrators through a system of criminal prosecution in Indonesia. This article describes how the provision and application of criminal law in dealing with victims of narcotics abuse based on the prevailing laws and regulations in Indonesia.

**Keywords:** Drugs Abusers, Narcotics Law, Victims of Drugs Abuse, Indonesian Law

---

### Introduction

Narcotics crime is a transnational crime, as its dissemination and illicit trafficking are carried out across borders (Bakhri;5;2012). Although law enforcement officers have been working maximally and even the government has specifically established an agency that deals with narcotics abuse, the National Narcotics Agency (BNN), the problem of drug abuse is not decreasing, but it is increasingly complex. This is proved by the evidence of increasing number of users and traffickers who caught, as well as the disclosure of syndication of drug factory by BNN which was built in Indonesia (Parasian;80;2012). The importance of narcotics circulation is closely monitored because it is currently utilizing a lot for negative things illicitly Arif;100;2008).

The problem of narcotics abuse is not only a matter that needs to get the attention of the state through its law enforcement apparatus, but also needs to be the attention of all elements of the nation. This problem becomes so important considering narcotic drugs have an effect on the physical and mental health of the nation's next generation. Narcotics abuse is a serious threat to the strengthening of the young generation who will lead the nation in the future. Therefore, narcotics crime is a grave crime of humanity, because it has a tremendous impact, especially for the younger generation.

With regard to the problem of narcotics abuse, it is needed a criminal law policy that positions drug addicts as victims, not perpetrators of crime, because abusers and even addicts are essentially victims of abuse of narcotics in violation of state legislation, and they are all citizens of the country that is expected to build civilization of the country better (Taufik;75;2003).

This article discusses the position of victims of narcotics abuse in Indonesian law. This article answers the issue of how the application of criminal law in dealing with victims of narcotics abuse based on the prevailing laws and regulations in Indonesia. This article is divided into four sections. The first section is defining victims of drug abuse in the Indonesian narcotics law; the second discusses drug abuser as a victim of Narcotics crime; the third elaborates legal status of narcotics abuse victims; and the last section concludes the issue discussed in this article.

### Victims of Drugs Abuse in Indonesian Narcotics Law

The criminal law policy on narcotics in the Indonesian law focuses on narcotics abuse and its distribution, because narcotics basically have benefits. General Explanation of Law Number 35/2009 (Narcotics Act) states that narcotics is a substance or drug that is very useful and necessary for the treatment of certain diseases, if misused or used not in accordance with standard treatment can cause adverse consequences for individuals or society, especially the younger generation.

Law Number 35/2009 focuses on protecting the public from dangers of illegal drug abuse and trafficking. Under the law, the main task of the government through its apparatus is to prevent, eradicate, and protect the public from illicit drug trafficking. Narcotics crime is generally not done by individuals on a stand-alone basis, but done jointly and even done by syndicates that are organized in a steady, neat and very secret, so that criminal acts of narcotics including

transnational criminality (transnational criminality) (Mulyadi;31;2012). One of the rational efforts used to combat narcotic crime is by using a criminal law policy approach.

The laws and regulations in Indonesia have clearly set severe penalties for narcotic manufacturers and narcotic dealers. Law Number 35/2009 also stipulates addicts and narcotics abusers to the subject of committing the narcotics crime, whereas they can be categorized as victims of illegal narcotics syndicates.

Law Number 35/2009 has in fact provided for the possibility of medical rehabilitation and social rehabilitation for addicts and drug abusers as mentioned in Articles 54, 103 and 127. In addition to the Law Number 35/2009, the Supreme Court also issued Circular Letter (SEMA) Number 4/2010 concerning Placement of Abusers, Victims of Narcotics Abuse, and Narcotics Addicts into Medical Rehabilitation and Rehabilitation Institutions; as well as the existence of Joint Regulation of Seven State Institutions of 2014 on Handling Narcotics Addict and Narcotics Abuse Victims into Rehabilitation Institution. All such laws and regulations are legal substance that can guarantee fair law enforcement.

Problems that arise in the practice of enforcement of narcotics law is the number of cases found where addicts and self-use drug abusers who are caught by the police are subsequently treated like an illicit narcotics dealer. This is based on the provisions of Article 112 paragraph (1) of Law Number 35/2009. The provisions of Article 112 paragraph (1) expressly imply that anyone connected with narcotics, whether narcotics dealer or addicts and narcotics abusers, can be applied to the article, since the elements in this article are too general and not specific to whom by using the editorial "Any person who is unlawfully possesses, retains, controls, or provides Narcotics".

The above provision confirms that to the drug addicts and narcotics abusers, the Law Number 35/2009 clearly states that the self-use abuse of narcotics without going through the rules or supervision of a doctor is an act of "using narcotics without rights and against the law". The act of using narcotics without such right has been stipulated as an unlawful act, and has been stipulated in Law Number 35/2009, such action may be subject to criminal sanctions. This is in accordance with the principle of legality contained in Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP), in which a person cannot be convicted except for the actions formulated in a pre-existing legislation (Parasian).

The legal substance contained in Law Number 35/2009 as a reference for law enforcement officers (as part of legal structure) becomes unclear because the law uses various terms namely "addict", "drug abuser", "drug abuse victim", and "patient". The number of terms to name drug users/abusers in the Law Number 35/2009 has the potential to differentiate addicts with abusers, and drug abuse victims. This creates confusion, both in the formulation of other provisions and their implementation. It also makes society stigmatize and discriminate against addicts and drug abusers, resulting in understanding in society including in the law enforcement officials that anyone found possessing or storing or holding illegal narcotics means that he has committed a crime.

Article 54 of the Law Number 35/2009 in its elucidation distinguishes the term "addict" with "drug abuse victims" of narcotics, although many experts argue that in fact the addicts and narcotics abuser individuals (abusing narcotics for themselves) are victims of syndicates of illicit narcotics trades that difficult to escape from the addiction. Actually the abusers want to escape from the narcotics trap that twisted him, but because his nerves are poisoned by addictive substances and opium, then it is difficult to do so. Therefore, abusers or addicts require different treatment from the perpetrators of narcotic crime in general, namely the perpetrators of illicit drug trafficking (Parasian;81;2012). The law Number 35/2009 stipulates addicts and narcotics abusers as unlawful subjects for illegal use of narcotics. The criminalization of self-use narcotics abuse is established by punishment of perpetrators through a system of criminal prosecution in Indonesia.

In contrast to the general view of sentencing, C. Ray Jeffery argues that one of the punishment systems is to apply and impose penal sanctions for the perpetrator through a judge's verdict aimed at restorative justice based on non-retaliatory treatment, which is different from the notion commonly held by the punishment system in Indonesia in the form of imposition of criminal sanctions (Ray;79;2008). Some other countries have firstly revoked all regulations that punish drug abusers/addicts by not imposing criminal charges against those abusers/drug addicts (Sujono;121;2011).

Countries in Europe such as the Netherlands have eliminated criminal provisions for users/addicts but are accompanied by very strict supervision of drug trafficking. The policy of tolerance to the purchase and use of marijuana has been imposed by the Dutch government since the 1970s. Licensed cannabis cafes are allowed to sell up to 5 grams of cannabis per visitor each day. Under this policy, the Dutch government controls the sale of marijuana in order not to be managed by the black market (John Doe).

Self-use abusers and narcotics addicts are victims of illegal drug trafficking, but in the Indonesian legal system the norms contained in the Law Number 35/2009 contain very strict preventive elements, so that anyone who owns and/or storing illegally narcotics is considered to have acted against the law. The proof of narcotics abuse as a victim will be difficult to realize when the use or even holding and storing of narcotics illegally is still subject to criminal penalties for being considered against the law, as contained in Article 127 of Law Number 35/2009.

In addition, the 2014 Joint Regulation of Seven State Institutions also mentions in Article 3 paragraphs (1) and Article 4 paragraphs (1) and (2) that "...narcotics abuse victim as a suspect and/or defendant in narcotics abuse crime...". The rule clearly states that the victim of narcotics abuse can be treated as a suspect. Therefore, the above rules do not provide a clear distinction between criminal acts in Article 127 of the Law Number 35/2009 (narcotics abuse for self-

using) with other crimes contained in other articles of the Law Number 35/2009, where drug users who obtain narcotics without rights or against the law must meet the element of "owning", "storing", "controlling" or "buying" narcotics, where it is also regulated as a separate crime. The provision also implies that the proof of the victims of narcotics abuse lies with the victim himself.

As long as the rules in the legislation still implies a penalty of imprisonment for a narcotics abuser even if it is for himself (in reality as a victim of another party), the punishment will always be there. On that basis, self-use narcotics abusers or drug addicts may be criminalized (Parasian;81). In addition, in practice, law enforcement officials may link (include/juncto) between a narcotics crime with the offense of possession, owning, storing or purchasing narcotics illegally and against the law whose penalty is more than 5 (five) years imprisonment and in some cases exceeds 9 (nine) years in prison (Lilik;175;2012). Narcotics addicts and self-use of narcotics for themselves are not only categorized as 'crime victims', but also, according to the law, as narcotics criminals.

### **Self-Use Drug Abuser as a Victim**

According to Law Number 35/2009 (Narcotics Act) Article 1 point 15, "abusers are people who use narcotics without rights or against the law". Unlawful narcotics users mean the use of narcotics beyond medical indication, without medical instructions or prescriptions, and their use is pathological and causes obstacles to activities at home, at school, or on campus, workplace, and Social environment, and it creates dependency which is accompanied by the existence of substance tolerance (higher dose) so that he/she becomes an addict. The definition of drug addicts according to Narcotics Act Article 1 point 13 is "a person who uses or misuses Narcotics and in a state of dependence on Narcotics, both physically and psychologically".

From a medical perspective, many scholars argue that in fact individual narcotics abusers are victims of narcotics syndicates and illicit narcotics trafficking who are difficult to escape from dependency. Therefore, narcotics abusers or addicts require different treatment than patients in general (Parasian;81).

In the Narcotics Act section Elucidation of Article 54 it is stated that "the meaning of 'narcotic abuse victim' is someone who accidentally uses narcotics for being persuaded, deceived, cheated, forced, and/or threatened to use narcotics". The definition of narcotic abuse victim in the Elucidation of Article 54 is also formulated similarly in the Article 1 of the Joint Regulation of 2014. Therefore, according to the juridical perspective, narcotics abusers cannot be categorized as perpetrators of crime, since the nature of the crime must result in a victim, and the victim must be someone else. In other words, an act must take place that involves harm inflicted on someone by the actor. This view then leads to the understanding that the abuser of narcotics is one form of crime without a victim. It means that if only the one self is victimized, then it cannot be said as a crime, so it cannot be punished (Parasian).

In the case of narcotics, there are 2 (two) main components that cause a person to be the victim, namely the narcotics producers (especially the illegal ones) and their traffickers (illegal dealers). These two components are then by all means looking for consumers, although sometimes it happens otherwise, consumers who need them. Illegal manufacturers and dealers are then become agent of victimization and lead to victimization by making the user as a target market, so the users experience at least 2 (two) things, namely: (1) the narcotics user is a victim of the actions of others, in this case is the illegal producer and narcotics dealers, and (2) the narcotic users experience victimization of himself/herself due to his/her own actions, which is to abuse narcotics outside the legal or medical provisions.

In the judicial process, the component of victimization is a producer (the illegal one) and distributors, which certainly does not become a problem in the perspective of criminal justice system. The problem is the legal handling of the abuser and the addict who are basically victims of the other party actions. In the Narcotics Act (Law No. 35/2009) Article 127 paragraph (1) it is mentioned that the narcotics users for themselves may be subject to imprisonment of 1 (one) to 4 (four) years depending on the narcotics class. The provision reads as follows:

Any abuser of:

- a. Narcotics Group I for himself shall be punished with imprisonment for a maximum of 4 (four) years;
- b. Narcotics Group II for himself shall be punished with imprisonment for a maximum of 2 (two) years; and
- c. Narcotics Group III for himself shall be punished with imprisonment for a maximum of 1 (one) year.

However, the Narcotics Act provides protection for self-use of narcotics abusers. Such safeguards are summarized in Articles 54, 103, and 127 Paragraph (2) and Paragraph (3), which essentially are for rehabilitation, both medical and social rehabilitations. The descriptions in those articles focus on the power of judges in deciding narcotics cases.

The provisions of those articles have clearly established that the abusers and narcotics addicts are victims of the criminal act of others in the form of illegal drug trafficking. Therefore, the provisions of those articles stipulate the obligation to undergo medical rehabilitation and social rehabilitation for self-use of drug abusers, if the concerned can be proven as a victim of narcotics abuse.

### **Legal Status of Drugs Abuse Victims**

Many factors influence a person to abuse narcotics. Among these factors include: the first is the individual factor, among others due to weak personality, easily discouraged and disappointed; the second is the substance factor of the narcotic itself, which can lead to dependency; the third is the environmental factor, for example the family environment that is not harmonious (Marcus;91;2006).

Speaking of appropriate efforts for prevention of narcotics crimes, the worldview should not only focus on various matters related to the cause of the crime or what method is effectively used in the prevention of the crime. However, another thing that is not less important to understand is the problem of the victim of the crime itself, which in certain circumstances can trigger the emergence of crime in the Narcotics offense.

The view of victims in narcotic crime cannot be separated from the victimization. Through victimization, we can know various aspects related to the victim, such as factors causing the crime of narcotics abuse, how one can become victim of narcotics abuse, and effort to reduce the happening of victim of narcotics abuse crime, and rights and obligation of victim of crime in the narcotics offense.

Victims within the scope of victimology have a broad meaning, because they are not only limited to individuals who actually suffer losses but also groups, private as well as government, whereas what is meant by the result of victimization is the attitude or action to the victim and/or the perpetrator and those who directly or indirectly involved in the occurrence of a crime. The importance of crime victims in the narcotics crime gained the primary concern because the victims were an inseparable part of the crime. Therefore, the victim has a very important role in this issue.

With the condition of increasing abuse of narcotics, the government with the Narcotics Act (Law No. 35/2009) is expected to intensively seek rehabilitation for the abusers and drug addicts. If it is said to be a victim, it is clear that an abuser and an addict should be kept away from criminal stigma and should be given treatment.

In addition, the Supreme Court with the benchmark of Article 103 of the Narcotics Act took a step forward in establishing the paradigm of cessation of criminalization of drug addicts by issuing Supreme Court Circular Letter Number 4 of 2010 on the Placement of Abusers and Narcotics Addicts into the Medical Rehabilitation and Social Rehabilitation. The Circular Letter Number 4 of 2010 can be used as a basis for consideration or reference for judges in imposing rehabilitation for self-use narcotics abusers and narcotics addicts.

The law enforcement structures have their own roles in performing the functions of the law: the police, prosecutors, and judges. So, it can be understood that even the substance of our law is good but it is not necessarily functional because it requires a reliable law enforcement structure in carrying out the substance. From a legal point of view, the court is the last place for the seeker of truth and it constitutes the last foundation in a law enforcement effort.

The self-use of narcotics implies that the use of narcotics without supervision of a doctor and it is considered an act of "without rights and against the law". The Narcotics Act provides for the decisions ordering the narcotics abusers to undergo medical rehabilitation and social rehabilitation (Article 54), and judges examining narcotics cases may decide to order the person to undergo treatment through rehabilitation if the narcotics addict is found guilty of committing narcotics crime (i.e. unlawfully possessing, retaining, storing, or providing Narcotics) and the duration of treatment and/or care for the narcotics addict shall be calculated as the duration of the sentence (Article 103 Paragraph (1) (a) and Paragraph (2)).

The dual system in formulating sanctions against narcotics abuse is a criminal law policy in the formulation of provisions regulating the sanctions given to the perpetrators of narcotics abuse, namely in the form of criminal sanctions and action sanctions considering the perpetrators of narcotics abuse has a slightly different position with other offenders. On the one hand he is a perpetrator of criminal acts that must be punished, but on the other hand he is also a victim of criminal acts committed by others so that an action needs to be done in the form of rehabilitation.

Determining sanctions against drug abusers (and addicts) whether to apply criminal sanctions or rehabilitation is in the hands of judges, because according to the provisions of the Narcotics Act, judges are given the authority to determine and impose a jail or rehabilitation action against the narcotics addicts. In other words, to determine whether in handling cases of narcotics addicts the judge will apply the provisions of Article 127 (regulating criminal sanctions) or applying the provisions of Article 103 (regulating the "sanction" of rehabilitation) is ultimately up to the judge's conviction whether the perpetrators of narcotics abuse are appropriate to be said as an addict who must be rehabilitated or they are more properly said as perpetrators of criminal acts of narcotics abuse to be punished by imprisonment. The decision of the judge should be based on evidence, based on laboratory results stating that the perpetrator is dependent on narcotics thus requiring treatment and / or rehabilitation.

Under the rule of Narcotics Act, it is explicitly understood that drug addicts and narcotics abusers on the one hand are still considered as perpetrators of crime, and on the other hand they are victims of drug abuse by other criminal of drug dealers.

## **Conclusion**

According to the Indonesian Narcotics Act, self-use of narcotics abuse means that the use of narcotics is not through the supervision of a physician and is considered an "unlawful and against the law". However, the Indonesian legislation policy relating to narcotics does not clearly distinguish whether the narcotics abusers include addicts and victims of narcotic abuse, who, in the legal view, all share the common ground to be accused as narcotic criminal because

of possessing narcotics illegally and unlawfully. And to prove that someone is a victim of narcotics abuse becomes very difficult to do.

The Narcotics Act authorizes the judge to impose a verdict on a person who is proven to be a victim of narcotics abuse and a narcotic addict to perform rehabilitation, both medical and social rehabilitations. Implicitly, the rule in the Indonesian Narcotic Act recognizes that drug addicts besides as perpetrators of crime are also as victims of the crime itself. Since the abusers and the narcotics addicts have committed a criminal act, he/she should receive a penalty, even though the punishment is in the form of medical rehabilitation and social rehabilitation as a sanction. Therefore, the notion behind the Indonesian Narcotic Act is that victims of narcotic abuse, narcotic addicts, and self-use of narcotic abusers are persons who commit narcotic crime by possessing the drugs and they are should be punished by a form of sanction.

## BIBLIOGRAPHY

- Bakhri, Syaiful. *Kejahatan Narkotika dan Psicotropika: Suatu Pendekatan Melalui Kebijakan Hukum Pidana*. Bekasi: Gramata Publishing, 2012.
- Doe, John. "An Insider Look at Drug Policy in Amsterdam", *Students for Sensible Drug Policy*, accessed from <http://ssdp.org/news/blog/an-insiders-look-at-drug-policy-in-amsterdam/>
- Gunarto, Marcus Priyo, et. al. *Bunga Rampai Hukum Pidana Khusus*. Jakarta: Pena Pundi Aksara, 2006.
- Jeffery, C. Ray. *Criminal Policy: Pendekatan Integral Penal Policy dan Non-Penal Policy dalam Penanganan Kejahatan Kekerasan*. Medan: Pustaka Bangsa Press, 2008.
- Makara, Moh. Taufik, Suhasril, and Moh. Zakky A.S. *Tindak Pidana Narkotika*. Jakarta: Ghalia Indonesia, 2003.
- Mansur, Dikdik M. Arief, and Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan*. Jakarta: PT. Raja Grafindo Persada, 2008.
- Mulyadi, Lilik. *Pemidanaan terhadap Pengedar dan Pengguna Narkoba: Penelitian Asas, Teori, Norma dan Praktik Penerapannya dalam Putusan Pengadilan*. Jakarta: Badan Litbang Diklat Kumdil Mahkamah Agung RI, 2012.
- Simanungkalit, Parasian. "Model Pemidanaan yang Ideal bagi Korban Pengguna Narkoba di Indonesia", *Yustisia*, Vol. 84, September-Desember 2012.
- Simanungkalit, Parasian. "Rehabilitasi Korban Pengguna Narkoba", accessed from <http://www.gepenta.com/a,public-m,dinamic-s,detail-ids,12-id,57-lang,id-c,artikel-t,Rehabilitasi+Korban+Pengguna+Narkoba-.phpx>.
- Sujono, A.R., and Bony Daniel. *Komentar dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*. Jakarta: Sinar Grafika, 2011.

### Author:

Vivi Ariyanti

Faculty of Law, Gadjah Mada University, Yogyakarta, Indonesia

Lecturer at Faculty of Sharia, State Institute of Islamic Studies of Purwokerto, Indonesia