



---

## **Law Enforcement of Narcotics Abuse: Case Study of Investigation Process in Narcotics Criminal Acts in the Kolaka District National Narcotics Agency**

**Basrawi<sup>1</sup>, Sukri<sup>2</sup>, Riezka Eka Mayasari<sup>3</sup>**

Faculty of Law, Universitas Sembilanbelas November Kolaka, Indonesia | basrawisakib@gmail.com<sup>1</sup>

Faculty of Law, Universitas Sembilanbelas November Kolaka, Indonesia<sup>2</sup>

Faculty of Law, Universitas Sembilanbelas November Kolaka, Indonesia | maysariesop@gmail.com<sup>3</sup>

*Received: 20-07-2023*

*Reviewed: 30-07-2023*

*Accepted: 04-08-2023*

### **Abstract**

Narcotics abuse recently has always increased, not only among adults but also among adolescents and children. The cause of this abuse consists of two factors, namely factor internal and external. Therefore, cases of drug abuse are increasing every year. This study was conducted with the aim to find out the form of law enforcement against narcotics abusers in the process of investigating narcotics crimes. The research method used in this study was normative juridical approach which is supported by empirical juridical by detailing the description and collecting primary data through interviews. The results of this study show that there are two forms of law enforcement against narcotics abusers, namely repressive law enforcement and rehabilitative law enforcement as regulated in Law Number 35 of 2009 concerning narcotics. Based on the interviews conducted, it is known that there are several obstacles in law enforcement on narcotics cases at the Kolaka National Narcotics Agency, namely the lack of personnel, the unresponsive community in providing information to investigators as the key to successful law enforcement and decreasing of operational costs in supporting facilities and infrastructure.

**Keywords:** law enforcement, narcotics abuse, narcotics crime, investigation

### **Introduction**

Crime which is currently a big problem throughout the world is the crime of drug abuse and illicit trafficking so that it is included in the category of extraordinary crimes. The crime of abuse and illicit trafficking of narcotics is a structured or systematic crime that has a massive impact (Anton S., 2017).

The young generation, as a state asset who aspires to be agents of change for the nation, is currently heavily involved in the use of narcotics. Lack of legal awareness for the younger

## ***Law Enforcement of Narcotics Abuse: Case Study of Investigation Process in Narcotics Criminal Acts in the Kolaka District National Narcotics Agency***

generation is one of the factors for the younger generation to use these illicit goods. The role of the government, law enforcers, and all elements of society is the importance of providing legal education to the younger generation as a form of our concern for their future (Andriawan, 2021).

Technological advances also have a big influence on the increase in drug crime. The rapid increase and expansion of drug abuse is also triggered by developments in information technology, where communication between users and suppliers can easily take place via the internet (Herindrasti, 2015).

The geographical location of Kolaka district which connects the regions of South Sulawesi and Southeast Sulawesi makes Kolaka very vulnerable to drug trafficking. This is a challenge for security forces in minimizing drug trafficking in Kolaka. Beside that factor of curiosity of the young people to try, want to be different, and lack of confidence until finally dependence on drugs become internal factor for consuming drugs. Stress due to problems that befall someone so that looking for an outlet can be one of the factors people take drugs. The National Narcotics Agency and police of Kolaka district prioritize the field of prevention in tackling the occurrence of narcotics crimes (Handrawan, 2022).

The General Session of the People's Consultative Assembly of the Republic of Indonesia Number VI/MPR/2022 has recommended to the House of Representatives of the Republic of Indonesia to amend Law No 22 of 1997 Concerning Narcotics. This act to prevent and eradicate the abuse and illicit traffic of narcotics which is very detrimental and endangers the life of the community, nation and state. Law No 22 of 1997 concerning Narcotics regulates efforts to eradicate narcotics crimes through the threat of fines, imprisonment, life imprisonment and death penalty. Besides that, Law No 22 of 1997 also regulates the use of narcotics for medical and health purposes and regulates medical and social rehabilitation. However, in reality narcotics crimes in society show an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, adolescents and the younger generation in general (Agha et al., 2023).

Based on Presidential Regulation Number 83 of 2007 concerning the National Narcotics Agency, Provincial Narcotics Agency, Regency/City Narcotics Agency, the National Narcotics Agency's status was upgraded to become a non-ministerial government institution and its authority to conduct investigations and inquiries was strengthened.

In the investigation process many things become problems that are carried out by investigators, such as in imposing an article on a person suspected of committing narcotics abuse, because in article 54 of Law No 35 of 2009 concerning narcotics it is explained that "narcotics addicts and abusers are obliged to undergo medical rehabilitation and social rehabilitation". This explains that prison is a last resort "*ultimum remedium*".

In practice, so far investigators have not separated or differentiated between crimes of abuse and trafficking crimes, as a result, abusers are treated as participating in or assisting dealers. Even though the purpose of Law No 35 of 2009 concerning narcotics is to differentiate in treating narcotics abusers and dealers. Abusers are guaranteed to get rehabilitation efforts,

both medical and social rehabilitation, while narcotics dealers are eradicated. As a result, abusers are prosecuted as if they were dealers, subject to detention in the process of investigation and prosecution. Such practice is a deviation from the intent and purpose of Law No 35 of 2009 concerning narcotics. The imposition of prison sentences for narcotics abusers for quite a long time will create new problems, namely the abusers will experience dependence as a result of not being given any recovery efforts from the effects caused by narcotics, which will make the abusers become recidivists due to the dependence they experience.

The level of narcotics crimes in Kolaka Regency in 2022 handled by the National Narcotics Agency and police of Kolaka are 30 cases with a total of 42 suspects. The number of prisoners caught in drug cases at the Kolaka Detention Center was 164 people and the arrests secured 1 kg of cannabis. The increasing of drug cases in Kolaka Regency, it is hoped that law enforcers, especially the National Narcotics Agency of Kolaka Investigators, will be more serious in eradicating narcotics crimes in Kolaka Regency, for the sake of realizing a law-abiding and orderly society.

## **Literature Review**

The distribution and usage of drugs are regulated, monitored, and dealt with by Act No. 35 Years 2009 Concerning Narcotics. In addition to becoming people hooked, drugs have the potential to hasten and cause an unnatural death. In order to continue living, humans require both a clean environment and a healthy body. The government's job is to set up law enforcement, one of which is the police, to stop drug usage. The police are all issues pertaining to the roles and institutions of the police as per the rules and laws. The future police officer is a policeman who is capable of overcoming present difficulties and acting in line with societal advancement (Dafit, 2018).

The Indonesian National Police must be able to defend itself, keep the peace, and guarantee the safety of the populace. The Republic of Indonesia's National Police now has a wider range of responsibilities under Act No. 2 of 2002, which includes preserving human rights while also enforcing law enforcement, keeping security and public order, and providing services to the community. issued Article 10 of the Criminal Code, which outlines the offences that drug suspects will be charged with. In recent years, drug misuse in Indonesia has escalated to a major problem and reached a worrying level, making it a national issue (Hera, 2018).

According to the National Narcotics Agency in 2020, drug crime is a particularly serious crime that all nations in the globe should be concerned about since it can harm an entire generation of a nation's citizens. The COVID-19 epidemic, which affects all human systems and joints and even results in millions of deaths, is currently sweeping the globe. The global rise of new forms of illicit drug trafficking has also been significantly impacted by the COVID-19 epidemic. Around 269 million people abuse drugs worldwide, according to the 2020 UNODC World Drug Report (study in 2018). More than 35 million people are estimated to be drug users, which is a 30% increase from 2009. (The Third Booklet of the World Drugs Report, 2020). As of December 2019, it was stated that more than 950 different types of new compounds had been discovered, according to a global phenomenon published by UNODC.

## ***Law Enforcement of Narcotics Abuse: Case Study of Investigation Process in Narcotics Criminal Acts in the Kolaka District National Narcotics Agency***

As of now, 83 NPS have been successfully found in Indonesia, according to data from the National Narcotics Agency Laboratory, of which 73 NPS have been included in the Minister of Health Regulation No. 22 of 2020 (Andriawan, 2021).

### **Research Method**

Type research used that is normative juridical approach research used is approach legislation (State Approach) and Approach Case (Case Approach) by taking primary sources of legal materials obtained through interviews, legislation and jurisprudence, then secondary legal materials sourced from literature, books, opinions of legal experts, research results, as well as tertiary legal materials originating from from dictionaries and encyclopedias.

Method analysis study, this is with decipher condition nor facts about object research. Legal facts This analyzed with various law, theory as well as doctrine or opinion purposeful expert. In order to find the answer on problem to be discussed more further, the data obtained from study This in the form of data from results studies libraries and studies document to ingredients primary, secondary, and law tertiary.

### **Result and Discussion**

#### **Forms of Law Enforcement Against Narcotics Abusers in the Process of Investigating Narcotics Crimes**

The law enforcement mission based on Law No 35 of 2009 is to enforce the law in a repressive and rehabilitative manner. The main mission of law enforcement is repressive law enforcement targeting dealers, not only by imprisoning the perpetrators but also by prosecuting separately with charges of money laundering and breaking up the narcotics business network. As explained by the investigator from the Kolaka District National Narcotics Agency, Mr. Muh. Amrullah, SH, explained that:

"Different between abusers and victims of narcotics abusers, abusers are people who buy and use narcotics for themselves while victims of abusers are people who are seduced, cajoled, forced to use narcotics"

There are differences between abusers and victims of abuse, although basically they both use narcotics, abusers are people who use narcotics for themselves, while victims of abuse are people who are seduced, persuaded and forced to use narcotics. Even so, the punishments regulated in Law No 35 of 2009 concerning Narcotics are the same, namely that each person receives rehabilitation services as a form of punishment. The purpose of the rehabilitation sentence is to restore the state of abusers and victims of abuse from a health and social perspective so that they can carry out their activities such as returning as if they had never used narcotics.

The spectrum of narcotics abusers in the Narcotics Law starts from: first, narcotics abusers for the first time are referred to as victims of narcotics abusers, because they are

cajoled, seduced, deceived, and forced to use narcotics. Second, abusers for themselves, abusers of their own free will use narcotics periodically, they use narcotics because the demands of narcotic addiction, if not fulfilled, can cause withdrawal, namely physical and mental illness and psychiatric disorders. Third, addicts, namely abusers for themselves and physically and psychologically are already in a state of severe dependence on narcotics so that their lives are "dependent" on narcotics (Anang, 2020).

As a sick person, a narcotics abuser is threatened with imprisonment, but if imprisoned they will suffer from withdrawal and become recidivists. Therefore, the law specifically regulates that abusers are guaranteed medical and social rehabilitation efforts to recover or recover as before.

Based on the results of interviews with Kolaka National Narcotics Agency investigators, Mr. Sumarhadi B. Saputra, S. A.P, explained that:

“That is why the Narcotics Law adheres to two law enforcement systems, namely repressive law enforcement and rehabilitation law enforcement. The difference between the two systems lies in coercion and sanctions. The law enforcement system of forced efforts is to be detained or imprisoned while the law enforcement system to rehabilitate forced efforts is to be placed in a rehabilitation institution based on Article 13 PP No 25 of 2011 (Derivation of Law No 35 of 2009) and the imposition of sanctions is in the form of rehabilitation based on (Article 103) absolute emancipation of judges to impose rehabilitation sanctions on narcotics abusers”

What is regulated in laws and regulations does not always work as it should. There are several things that are sometimes inappropriate in law enforcement, such as the application of articles in the investigation process of narcotics crime cases.

Basically, in law enforcement against narcotics crimes based on Law No 35 of 2009 concerning Narcotics there are two, namely rehabilitative law enforcement and repressive law enforcement. Rehabilitative law enforcement is given to narcotics abusers and addicts regulated in (article 54 and article 103), while repressive law enforcement is given to narcotics dealers which is regulated in (articles 111, 112, 113, 114) Law No 35 of 2009 concerning Narcotics. However, in practice, sometimes investigators apply articles that are not in accordance with the application where narcotics abusers and narcotics addicts are applied (articles 111, 112, 113, 114) where these articles should be applied to narcotics dealers. which is not appropriate.

According to Mr Muh. Amrullah, SH, in an interview explained that:

"There are two forms of law enforcement against abusers, namely through legal assessments and medical assessments. What is meant by legal assessment is repressive law enforcement such as detention or imprisonment while medical assessment is law enforcement in the form of providing rehabilitation services”.

There are basically two forms of law enforcement regulated in Law No 35 of 2009 concerning Narcotics, the first is law enforcement in the form of rehabilitation for narcotics abusers and addicts which aims to restore the state of narcotics abusers and addicts so they

## ***Law Enforcement of Narcotics Abuse: Case Study of Investigation Process in Narcotics Criminal Acts in the Kolaka District National Narcotics Agency***

don't return to using narcotics. When we talk about abusers, it means we are talking about health where the most effective way for drug abusers and addicts to stop using narcotics is to provide rehabilitation services as stipulated in Law No 35 of 2009 concerning Narcotics. The second is a form of repressive punishment for narcotics dealers, this form of punishment is very effective to apply, because the beginning of the occurrence of narcotics crimes was caused by narcotics dealers who wanted to benefit from their actions.

Forms of formulation of criminal sanctions in the Narcotics Law can be grouped as follows:

- a. In the singular (imprisonment or fine only)
- b. In alternative form (choice between fine or imprisonment)
- c. In cumulative form (imprisonment and fine)
- d. In combination/mixed form (imprisonment and/or fine).

The legal position of narcotics abusers in Law Number 35 of 2009 concerning Narcotics is as follows:

- 1) As a criminal actor, the abuser is threatened with a sentence of less than 5 (five) years, the abuser does not meet the conditions for detention under Article 21 of the Criminal Procedure Code. It is guaranteed that the Narcotics Law (article 4) has arrangements for medical rehabilitation and social rehabilitation. Law enforcers are given the authority to place abusers in rehabilitation institutions based on Government Regulation No 25 of 2011 in Article 13.

Specifically, judges in examining cases of abusers in a state of narcotics dependence called addicts are given extra authority or absolute authority "can" impose rehabilitation sentences if proven guilty and determine the defendant to undergo rehabilitation if proven innocent.

- 2) As a victim of narcotics abuse, if you act as a narcotics user for the first-time using narcotics because you were persuaded, tricked, tricked, or forced to use narcotics. If you are caught red-handed or arrested, then based on article 54 you must undergo rehabilitation. The judge can use absolute authority based on article 103 paragraph 1 by imposing a rehabilitation sentence.
- 3) As an addict, if the abuser has undergone a post mortem *visum et repertum* or an assessment by a doctor or a team of appointed doctors. Because, based on article 1 No 13 of the Narcotics Law that addicts are abusers and in narcotics dependence, both physically and psychologically. If the abuser is caught red-handed or arrested and asked for *visum et repertum* or an assessment, then based on Article 54 he is obliged to undergo rehabilitation. The judge can use absolute authority based on article 103 paragraph 1 by imposing a rehabilitation sentence (Anang, 2020).

According to Ms. Murni, SH, in an interview she explained that:

"Assessment is a process carried out to determine whether the person is a narcotics abuser or dealer".

In order to find out if someone is acting as a narcotics abuser and narcotics dealer, it is necessary to carry out several stages or processes, namely by conducting an assessment. It is

important to analyze the integrated assessment mechanism from the perspective of criminal law policy, guided by the *ius constitutum*, *ius operatum* and *ius constituendum*. Judging from the formulation stage, application stage and execution stage in terms of the involvement of law enforcement officials, both investigators, public prosecutors, judges in the integrated assessment mechanism, it becomes a challenge in itself to solve the problems that arise in it due to cross-agency, both in terms of technical regulations and their application.

An integrated assessment mechanism that combines the results of the analysis between the medical team and the legal team in determining whether a suspect in a narcotics crime belongs to the category of narcotics abuser or narcotics dealer, has an important role especially as a screening process for categorizing the status of narcotics abusers and/or narcotics dealers. Likewise, in view of the position of suspects/defendants of narcotics abusers as sick people or as perpetrators of criminal acts by including the rehabilitation process during the trial, it can be considered by the judge to decide on the case with imprisonment or criminal rehabilitation.

There are ten weaknesses in the regulation of the integrated assessment of narcotics abusers, namely, first, the contradiction in the regulation of the article on rehabilitation in Law No 35 of 2009 concerning Narcotics, secondly, the scope of narcotics in the Supreme Court Circular Letter SEMA No 04 of 2010, does not follow developments in the types of narcotics newest, third, the inconsistency of the terms abuser, victim of abuser and narcotics addict between SEMA No 04 of 2010 and Joint Regulation of 7 (seven) State institutions, PERJA No 29 of 2015 and PERKA BNN No 11 of 2014, fourth, the classification of the term "caught in the act" in SEMA No 04 of 2010 is multi-interpretative, the five differences in the requirements for the results of laboratory examinations and rehabilitation places in the arrangement between Joint Regulation 7 (seven) State institutions in 2014 and Regulation of the Head of BNN No 11 of 2014, the six initial arrangements are out of sync starting from the calculation of the deadline for issuing results assessment from the integrated assessment team between the Joint Regulations of 7 (seven) State institutions in 2014 and the Regulation of the Head of BNN No 11 of 2014, seventh, the use of the word "can be placed" in the Joint Regulation of 7 (seven) State institutions in 2014 with PERJA No 29 of 2015 which eliminates the use of the word "can" in terms of placing drug suspects and/or defendants in rehabilitation institutions. ninth, the difference in the standard length of rehabilitation period in the Minister of Health Regulation Number 50 of 2015 and SEMA No 04 of 2010, tenth, the limitation of the rehabilitation period before a Judge's decision is limited to a maximum of 3 (three) months in the Minister of Health Regulation No 50 of 2015.

Therefore, the Narcotics Law integrates legal aspects and health aspects, so as a solution to government legal policies in solving the problem of abuse and illicit narcotics trafficking, it prioritizes rehabilitative efforts against abusers and is followed by repressive efforts against dealers (Anang, 2020).

Article 10 of the Criminal Code (KUHP) determines the types of crimes, namely:

- 1) Principal punishment consisting of death penalty, imprisonment, confinement and fines; as well as

## ***Law Enforcement of Narcotics Abuse: Case Study of Investigation Process in Narcotics Criminal Acts in the Kolaka District National Narcotics Agency***

- 2) Additional punishment consisting of revocation of certain rights, confiscation of certain items, and announcement of a judge's decision

In line with Article 10 of the Criminal Code, there are 4 (four) types of punishment in the Narcotics Law, namely death penalty, imprisonment, fines, and confinement. For this reason, as long as it is not specified otherwise in the Narcotics Law, the sentencing rules are in accordance with the Criminal Code. Conversely, if it is determined separately in the Narcotics Law, then it will be enforced in accordance with the Narcotics Law.

In article 127 of the Narcotics Law which states that:

- 1) Every abuser:
  - a. Narcotics class I for oneself shall be punished with imprisonment for a maximum of 4 (four) years;
  - b. Narcotics class II for oneself shall be punished with imprisonment for a maximum of 2 (two) years; and
  - c. Narcotics class III for oneself shall be punished with imprisonment for a maximum of 1 (one) year.
- 2) In deciding the case as referred to in paragraph (1), the judge must pay attention to the provisions referred to in Article 54, Article 55 and Article 103.
- 3) In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics abuser, the abuser is required to undergo medical rehabilitation and social rehabilitation

Even though abusers and dealers are both criminal offenders, the investigation and prosecution of abuse cases may not be investigated, prosecuted in subsidiarity, or even prosecuted cumulatively under the distribution article because of different goals and different law enforcement missions. Technically, abusers for themselves (article 127) cannot be prosecuted under the dealership article (articles 111, 112, 113, 114).

Table 1. Data on Drug Case Handling in Kolaka Regency from 2018-2022

Years	Rehabilitated Abusers	Detained/In Prison Abuses
2018	27	35
2019	20	38
2020	24	35
2021	25	37
2022	24	40

Table 1 shows that investigators in practice still prioritize repressive law enforcement, because in 2018-2022 there has been a significant increase in repressive law enforcement, namely abusers detained or in prison, compared to rehabilitative law enforcement which is still relatively small when compared to law enforcement. in a reflexive manner to narcotics abusers and even in the investigation process investigators suspected the article on narcotics dealers to narcotics abusers.



## **Conclusion**

Based on the description previously described, the writer can conclude that:

- a. There are basically two forms of enforcement against abusers, namely repressive law enforcement and rehabilitative law enforcement. Repressive enforcement is law enforcement in the form of detention or imprisonment, this action is given to narcotics dealers, while rehabilitative law enforcement is law enforcement that provides rehabilitation services, both medically and socially, to narcotics abusers. As regulated in Law No 35 of 2009 concerning Narcotics.
- b. Law enforcement does not always run well because there are several obstacles encountered such as the lack of personnel for the Kolaka National Narcotics Agency, the lack of sensitivity of the public in providing information to investigators as the key to successful law enforcement against narcotics abusers, and the lack of an operational budget provided.

## **References**

- Agha H.S., Kristiawanto, Joko S., and Ramlani L.S. 2023. Law Enforcement of Criminal Actions About Narcotics Class I in The Criminal Justice System in Indonesia. *World Bulletin of Management and Law*. Vol. 20, pp: 21-25.
- Anang Iskandar. (2020). *Politik Hukum Narkotika*, Kompas Gramedia (Pt Alex Media Komputindo), Jakarta.
- Andriawan F., Maerani I.A., Sulchan A. (2021). The Process of Investigation Against The Criminal Action of Narcotics. *Law Development Journal*. Vol. 3(4), pp: 819-826.
- Anton Santoso. (2017). Penerapan Hukum Pidana Narkotika di Indonesia. *Adil: Jurnal Hukum*, Vol. 8(1), pp: 137-161, doi:10.33476/ajl.v8i1.457.
- A.R. Sujono dan Bony Daniel. 2012. *Komentar Dan Pembahasan Undang-Undang Nomor 35 Tahun 2009*. Bandung
- Dafit Supriyanto Daris Warsito. 2018. Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika, *Jurnal Daulat Hukum*. Vol. 1(1).
- Handrawan, Ali Risky (2022). Penyalahgunaan Narkotika Dalam Perspektif Teori Kriminologis (Studi Kasus Wilayah Hukum Kepolisian Resort Kolaka), *DELAREV*. Vol. 1(2), 133-146.
- Hera Saputra, Munsharif Abdul Chalim. 2018. Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika (Studi Kasus di Polda Jateng). *Jurnal Daulat Hukum* Vol. 1(1).
- Herindrasti V.L.S, *Drugs-Free Asean 2015: Tantangan Indonesia Dalam Penanggulangan Narkotika*, *Jurnal Hubungan Internasional*, Vol. 7(1), pp: 19-33.
- Muhammad Syahrur, 2022. *Pengantar Metodologi Penelitian Hukum Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis*, Dotplus Publisher, Bengkalis-Riau.

***Law Enforcement of Narcotics Abuse: Case Study of Investigation Process in Narcotics Criminal Acts in the Kolaka District National Narcotics Agency***

Subagyo Partodiharjo. 2007. *Kenali Narkoba Dan Musuhi Penyalahgunanya*, Esensi, Jakarta.