

**Review Article****CRIMINAL LIABILITY FOR MISUSE OF NARCOTICS BY POLICE MEMBERS ACCORDING TO THE KUHP AND LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS;**<sup>1</sup>Ganda Sucipta, <sup>2</sup>Muhammad Yusuf, <sup>3</sup>Wahyu Simon TampubolonEmail : <sup>1</sup>. [gandasucipta@gmail.com](mailto:gandasucipta@gmail.com), <sup>2</sup>. [yusufsiregarshimh@gmail.com](mailto:yusufsiregarshimh@gmail.com),  
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**Journal homepage:**<https://jurnal.arjunajusticia.com/index.php/ijeck>**Abstract:**

The National Police carries out the following duties: maintaining security and public order; enforce the law; and provide protection, protection and services to the community. Regarding the description of police duties, it is regulated in article 14 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia. In carrying out its Duties, Principals and Functions or abbreviated as TUPOKSI, the National Police often face many challenges and obstacles. Not only towards the community, but within the National Police Institution itself. These challenges are very diverse and increasingly complex, including: eradicating drugs, corruption and money laundering, terrorism, cybercrime, human trafficking, radical and intolerant groups and others. These crimes are national but transnational. The National Police dealing with the public has often happened, so what if the National Police faced its own members in the scope of law enforcement for criminal acts of narcotics abuse. The type of research used is normative legal research. Normative research is legal research carried out by examining library materials or secondary data. Discussion Results: 1. Criminal Responsibility for Narcotics Abuse by Police Members According to the Criminal Code and Law Number 35 of 2009 concerning Narcotics: a. For Category I Narcotics, Articles 111 to 116 apply; b. For Class II Narcotics, Articles 117 to 121 apply and for Class III Narcotics, Articles 122 to 128 apply; and c. Article 129: Any person who without rights or violates the law: a. possess, store, control, or provide Narcotics Precursors for the manufacture of Narcotics; b. producing, importing, exporting, or distributing Narcotics Precursors for the manufacture of Narcotics; c. offering for sale, selling, buying, receiving, becoming an intermediary in buying and selling, exchanging, or delivering Narcotics Precursors for the manufacture of Narcotics; d. carrying, sending, transporting, or transiting Narcotics Precursors for the manufacture of Narcotics. 2. Factors causing Narcotics Abuse by Police Members, namely: 1) Internal Factors. This factor comes from oneself/individual. 2) External Factors. This factor comes from outside, which is included in this factor, namely: Environmental Factors. Divided into 2, namely the work environment and the social environment.

**Keywords:** *Criminal Responsibility, Narcotics Abuse, Police Members;*

## INTRODUCTION

The Republic of Indonesia Police, or hereinafter abbreviated as Polri, is one of the Law Enforcement institutions in Indonesia. Duties, Principals and Functions are hereinafter abbreviated to (Tupoksi) which are clearly regulated by the Laws of the Republic of Indonesia. The Indonesian Police Law is regulated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

In Indonesia, one of the law enforcement institutions is the National Police. The National Police of the Republic of Indonesia is the National Law Enforcement agency/Institution and the State Police in the territory of Indonesia. The National Police is directly responsible under the President of the Republic of Indonesia. The National Police carries out the following duties: maintaining security and public order; enforce the law; and provide protection, protection and services to the community. Regarding the description of police duties, it is regulated in article 14 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia.

In carrying out the main duties as intended, the National Police has the following duties:

- 1) Carry out regulation, guarding, escorting and patrolling community and government activities as needed;
- 2) Organizing all activities to ensure security, order and smooth traffic on the roads;
- 3) Fostering the community to increase community participation, community legal awareness and community compliance with laws and regulations;
- 4) Participate in national legal development;
- 5) Maintain order and ensure public security;
- 6) Coordinating, supervising and providing technical guidance to the special police, civil servant investigators and other forms of independent security;
- 7) Carry out inquiries and investigations into all criminal acts in accordance with the criminal procedural law and other statutory regulations;
- 8) Organizing police identification, police medicine, forensic laboratories and police psychology for the purposes of police duties;
- 9) Protect the safety of body and soul, property, society and the environment from disturbances of order and/or disasters, including providing aid and assistance by upholding human rights;
- 10) Serve the interests of community members temporarily before being handled by the authorities and/or authorities;
- 11) Providing services to the community in accordance with their interests within the scope of police duties; as well as
- 12) Carry out other duties in accordance with statutory regulations.

Meanwhile, in the context of carrying out the tasks referred to above, the National Police has the following authority:

- 1) Receive reports and/or complaints;
- 2) Help resolve community disputes that could disrupt public order;

- 3) Prevent and overcome the growth of community diseases;
- 4) Monitoring trends that can cause division or threaten the unity and integrity of the nation;
- 5) Issue police regulations within the scope of police administrative authority;
- 6) Carrying out special inspections as part of police actions in the context of prevention;
- 7) Take first action at the scene;
- 8) Taking fingerprints and other identification and photographing a person;
- 9) Search for information and evidence;
- 10) Organizing a National Crime Information Center;
- 11) Issue permits and/or certificates required for community service;
- 12) Providing security assistance in trials and implementation of court decisions, activities of other agencies, and community activities;
- 13) Receive and store found items temporarily.

In addition, the National Police, in accordance with other statutory regulations, has the authority to include:

- 1) Grant permits and supervise public crowd activities and other community activities;
- 2) Organizing registration and identification of motorized vehicles;
- 3) Providing a motor vehicle driving license;
- 4) Receive notifications about political activities;
- 5) Grant permits and monitor firearms, explosives and sharp weapons;
- 6) Provide operational permits and supervise business entities in the field of security services;
- 7) Provide guidance, educate and train special police officers and independent security officers in the technical field of policing;
- 8) Cooperating with the police of other countries in investigating and eradicating international crimes;
- 9) Carry out functional police supervision of foreigners residing in Indonesian territory with the coordination of related agencies;
- 10) Represent the government of the Republic of Indonesia in international police organizations;
- 11) Carry out other authorities that are included in the scope of police duties.

In carrying out its Duties, Principles and Functions or abbreviated as TUPOKSI and even its authority within the country, the Police often face many challenges and obstacles. Not only towards the community, but within the National Police Institution itself. These challenges are very diverse and increasingly complex, including: eradicating drugs, corruption and money laundering, terrorism, cybercrime, human trafficking, radical and intolerant groups and others. These crimes are not only national in nature but sometimes many are also in the transnational category which has global networks in all countries in the world. One of the challenges that the author will discuss in detail here is related to the crime of narcotics abuse where the perpetrators are from the National Police Institution itself. We should know that the National Police institution is a law enforcement institution, so how can this institution carry out law enforcement if what happens in the field is that individuals from the National Police Unit are part of the perpetrators. How can the public believe that the National Police will take a firm stance against Narcotics Abuse if this position is played by members of the National Police? So the question

arises whether the enforcement of the law is the same when it comes to narcotics abuse committed by the public and individual members of the National Police? Will Law Number 35 of 2009 concerning Narcotics be applied equally for narcotics abuse whose perpetrators are ordinary people and individual members of the National Police? ? This is what sometimes arises in people's minds regarding law enforcement against narcotics abuse in Indonesia. With this research, it is hoped that the public can understand the criminal responsibility for narcotics abuse by members of the National Police according to the Criminal Code and Law Number 35 of 2009 concerning Narcotics.

### **1. Rumusan Masalah**

From the explanation that the author has given above, the problem formulation that the author raises is as follows:

- 1) What is the criminal responsibility for narcotics abuse by members of the National Police according to the Criminal Code and Law Number 35 of 2009 concerning Narcotics?
- 2) What are the factors that cause narcotics abuse by members of the National Police?

### **RESEARCH METHODS**

The type of research used is a juridical-empirical research method, namely a research and understanding process based on a methodology that investigates a social phenomenon and human problem. Conduct field research related to efforts to handle the crime of motor vehicle theft (curanmor). The approach taken is sociological juridical, namely the occurrence of social phenomena in society;

### **RESULTS AND DISCUSSION**

#### **1. Pertanggungjawaban Pidana Penyalahgunaan Narkotika Oleh Anggota Polri Menurut KUHP dan Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika;**

##### **A. Narkotika;**

**Understanding Criminal Acts** The definition of criminal acts in the Criminal Code (KUHP) is known as strafbaar feit and in the literature on criminal law the term offense is often used. Moeljatno is of the opinion that: "an act is called a criminal act if the act committed violates the prohibitions determined by legal regulations and is threatened with criminal sanctions."<sup>1</sup>

According to E, Utrecht, the meaning of strafbaar feit is a criminal event in the form of a delict, because the event is a handelen or doen-positive act or a negative negligent act, as well as the consequences (conditions caused by the act or neglect). A criminal event is a legal event (rechtsfeit), namely a social event that has consequences regulated by law.<sup>2</sup>

According to Wirjono Prodjodikoro: "a criminal act means an act for which the perpetrator can be subject to criminal punishment", while according to Soerjono Soekanto and Purnadi Purwacakara: "a criminal act is defined as a criminal act or human behavior that falls

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<sup>1</sup> Moeljatno, 1987, *Asas-asas Hukum Pidana*, Bina Aksara, Jakarta, hlm. 54.

<sup>2</sup> Utrecht, 1965, *Hukum Pidana II*, Universitas, Bandung, hlm. 15

within the scope of behavior in the formulation of criminal law rules, which violates the law and is based on error".<sup>3</sup>

In English, criminal liability is called responsibility, or criminal liability. According to Roeslan Saleh, criminal responsibility is defined as continuing the objective blame that exists in a criminal act and subjectively fulfilling the requirements to be punished for that act.<sup>4</sup> The concept of criminal responsibility actually does not only concern legal matters but also concerns moral values or general decency adhered to by a society or groups in society, this is done so that criminal liability is achieved by fulfilling justice.<sup>5</sup>

Based on the provisions of Article 1 number 1 of Law no. 35 of 2009 concerning Narcotics, narcotics are defined as: "substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce until the disappearance of pain, and can cause dependence."

According to Mardani, narcotics are: "drugs or substances that can calm the condition, cause unconsciousness or anesthesia, relieve aches and pains, cause drowsiness or stimulate, can cause a stupor effect, and can cause addiction and are determined by the Minister of Health as narcotics." Narcotics crime can be interpreted as an act that violates the provisions as regulated in Article 111 to Article 148 of Law Number 35 of 2009 concerning Narcotics. Supramono stated that if narcotics are only for medical purposes and scientific purposes, then actions outside of these interests are crimes (criminal acts).<sup>6</sup>

Dadang Hawari menggolongkan penyalahgunaan narkotika menjadi tiga bagian yaitu:<sup>7</sup>

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(1) Narcotics as intended in Article 5 are classified into:

a. Narkotika Golongan I;

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<sup>3</sup> Soerjono Soekanto dan Purnadi Purwacaraka, 1992, *Sendi-Sendi dan Hukum Indonesia*, Citra Aditya Bakti, Bandung, hlm. 85.

<sup>4</sup> Roeslan saleh, 2015, *Pikiran-Pikiran Tentang Pertanggung Jawaban Pidana*, Cetakan Pertama, Jakarta, Ghalia Indonesia, hlm-33

<sup>5</sup> Hanafi, Mahrus, *Sisitem Pertanggung Jawaban Pidana*, Cetakan pertama, Jakarta, Rajawali Pers, 2015, hlm-16

<sup>6</sup> Supramono, G. , 2001. *Hukum Narkotika Indonesia*. Djambatan, Jakarta. hlm. 12

<sup>7</sup> Dadang Hawari, 1997, *Al-Quran, Ilmu Kedokteran Jiwa dan Kesehatan Jiwa*, Dana Bakti Primayasa, Yogyakarta, hlm. 102

- b. Narkotika Golongan II; dan
  - c. Narkotika Golongan III.
- (2) Penggolongan Narkotika sebagaimana dimaksud pada ayat (1) untuk pertama kali ditetapkan sebagaimana tercantum dalam Lampiran I dan merupakan bagian yang tak terpisahkan dari Undang-Undang ini.
- (3) Ketentuan mengenai perubahan penggolongan Narkotika sebagaimana dimaksud pada ayat (2) diatur dengan Peraturan Menteri.

## 2. Factors causing Narcotics Abuse by Police Members

There are 2 factors that cause narcotics abuse by members of the National Police, including::

### 1. Faktor Intern

This factor comes from oneself/individual

This self/individual factor is influenced by several things, including:

- A person's lack of faith and piety can cause them to be influenced to do negative things, one of which is drug abuse;
- Starting from trial and error and great curiosity about narcotics, members of the National Police abuse narcotics without thinking about the impact of narcotics abuse on themselves and their profession;
- The hedonistic/luxurious lifestyle influences Polri members to abuse narcotics, in order to reap large profits and achieve the desire to live a luxurious life without having to work hard, Polri members usually abuse narcotics;
- The use of narcotics as the most effective drug in solving a problem. Usually this is influenced by a depressed mind so that they choose the shortcut of using narcotics, hoping that the problem can be resolved by using these narcotics.

### 2. Faktor Ekstern

This factor comes from outside, which is included in this factor, namely: Environmental Factors. Environmental factors are very influential for police officers in narcotics abuse. This factor consists of 2, namely:

#### - Work Environmental Factors

National Police members are tasked with narcotics eradication, so it is sometimes possible for a National Police member as a law enforcer and perpetrator in narcotics abuse, to think that what he is doing will not be known by his institution because the National Police member works in the same field. The chances of being discovered and caught are very small.

#### - Social Environmental Factors

Social environmental factors often influence police officers to do or not do something. Why is that? Because social environmental factors have a very big influence on someone to do negative things. Associations not only have positive impacts but also negative

impacts. If the association is more with people who always do negative things, such as abusing narcotics, then it is not impossible that other people will also be influenced to do the same thing. Because the temptation is very big. Unless someone leaves the social environment, it is unlikely that other people will be influenced by these negative things.

## CONCLUSION

Criminal Responsibility for Narcotics Abuse by Police Members According to the Criminal Code and Law Number 35 of 2009 concerning Narcotics:

- a. For Category I Narcotics, Articles 111 to 116 apply,
  - b. For Class II Narcotics, Articles 117 to 121 apply and for Class III Narcotics, Articles 122 to 128 apply and
  - c. Article 129: Any person who without rights or violates the law: a. possess, store, control, or provide Narcotics Precursors for the manufacture of Narcotics; b. producing, importing, exporting, or distributing Narcotics Precursors for the manufacture of Narcotics; c. offering for sale, selling, buying, receiving, becoming an intermediary in buying and selling, exchanging, or delivering Narcotics Precursors for the manufacture of Narcotics; d. carrying, sending, transporting, or transiting Narcotics Precursors for the manufacture of Narcotics.
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