

**JURIDICAL ANALYSIS OF LAW ENFORCEMENT OF THE DISCRETION  
EFFORTS RESEARCH IN POLRESTA BARELANG**

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**Abstract.** *Circulation is increasingly widespread in the current case of drug abuse, and the mode of operation is increasingly diverse; the police must develop their own law enforcement strategies. However, there is also a need for some form of supervision and control of actions policing to reduce the possibility of abuse of discretion so that the negative impact of implementing the discretion does not result in injustice. The law only contains the basic rules in practice enforcement, which always depends on the community context. Therefore The police are given the authority to exercise police discretion, a concept giving authority to take actions based on careful consideration of the conscience of the police on duty or the consideration of police institutions. This study aims to determine how law enforcement is above the Circulation of methamphetamine-type narcotics through discretionary efforts factors that become obstacles/obstacles to Law Enforcement on Circulation Narcotic Type of Methamphetamine Through Discretionary Efforts. This research uses empirical normative legal research is legal research that uses Secondary data sources combined with legal research that uses primary data sources The results of the study show that the factors that influence the implementation of police discretion in solving criminal cases, narcotics, legal substance factors, namely the existence of a legal basis give authority to members of the police to take action discretion so that the implementation of the task does not harm the context of law enforcement and must be done professionally and by the police code of ethics as must for police officers, given the power of discretion without being accompanied restrictions can potentially abuse authority. For this reason, the discretion taken by the investigator must be aimed at getting a sense of fairness even though it is not contained in the Criminal Code will but, in essence, to maintain legal certainty and internal order Public.*

**Keywords:** *Narcotics, Discretion and Law Enforcement*

## **BACKGROUND**

Narcotics abuse for oneself, on the one hand, is a victim and, on the other hand, as a perpetrator of a crime; Law Number 35 of 2009 concerning Narcotics regulates 2 (two) provisions against narcotics abusers; the first provision is the obligation of rehabilitation and the second imprisonment, medical rehabilitation according to Article 1 paragraph 16 of Law Number 35 of 2009 concerning Narcotics is an integrated activity to free addicts from narcotics dependence. Meanwhile, social rehabilitation, according to Article 1, paragraph 17 of Law Number 35 of 2009 concerning Narcotics, is a process of recovery

activities in an integrated manner, both physically, mentally, and socially so that former narcotics addicts can return to carrying out social functions in people's lives, even more, so that today's society does not hesitate to provide information or reports regarding a suspicion related to narcotics to the authorities security forces or the police, so it is not surprising that lately, some of the narcotics cases that the security or the police, so it is not surprising that lately, some of the narcotics cases uncovered by the security forces are a follow-up to reports from members of the public<sup>1</sup>.

According to the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics in Chapter I Article I, narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of pain and can Similarly<sup>2</sup>, according to H. Mardani in his book, Narcotics are substances or drugs derived from plants or plant materials, both synthetic and semi-synthetic, which can cause a decrease or increase in consciousness, loss of taste, reduce or eliminate pain and can create dependency<sup>3</sup>.

Conversely, according to Wahyuni Ismail in his book, drug abuse is someone who has problems that are directly related to drugs. These problems can arise in physical, mental, emotional, and spiritual realms<sup>4</sup>. Narcotics abuse is the distribution of narcotics outside of medicine where the results are very harmful physically and mentally. Narcotics abuse in Indonesia is a very worrying problem because Indonesia's current position is not only a transit and marketing area for narcotics but has become a narcotics-producing area.

The norms and rules that apply in today's society are no longer obeyed and respected, so many violations are committed. For this reason, society needs a law that regulates all human actions in society; therefore, in carrying out this legal function, the government can use a more stringent means of coercion, namely in the form of sanctions. Sanctions are a consequence that arises from a reaction to an act; for example, criminal sanctions can also be given to perpetrators of narcotics abuse, which at this time is something that needs special attention considering the effects that can arise from the abuse of narcotics.

Abuse of narcotics among the wider community tells us to care and pay more particular attention to overcoming it because the danger posed can threaten the existence of the younger generation, whom we hope will one day inherit and continue the nation's

struggle in the future. To regulate the problems above, the existence of criminal law is necessary. Criminal law, as a part of the law in general, does not differ from other laws, namely that all of these laws contain several provisions to ensure that the norms contained in the law are obeyed by society.

However, on the other hand, narcotics are often used outside of medical and scientific interests. Ultimately, it will become a danger for the user, which can also influence the social life of the community, nation, and state<sup>5</sup>. Almost every country declares war on drug abuse and considers it a serious crime, especially for planting seeds, producing, mixing illegally, and illegal traffickers. Narcotics abuse is contrary to current laws and regulations; narcotics abuse covers all levels of society, whether poor, rich, old, young, or even children. The abuse of narcotics from year to year has increased, which ultimately harms the cadres Nation's next generation. Narcotic abuse encourages illicit traffic that is increasingly widespread and has an international dimension. Therefore, it is necessary to prevent and control narcotics and make efforts to eradicate illicit traffic, bearing in mind the advances in the development of communication, information, and transportation in the current era of globalization<sup>6</sup>.

## **FORMULATION OF THE PROBLEM**

- a. What are the legal arrangements for law enforcement to circulate methamphetamine-type narcotics through discretionary efforts (Barelang Police Research Study)?
- b. Factors that become obstacles and solutions for Law Enforcement of the Distribution of Methamphetamine-type Narcotics through Discretionary Efforts (Research Study of the Barelang Police)?

## **METHODOLOGY**

### **Research Approach**

The research method is a way to solve problems or develop knowledge using the scientific method. More broadly, Sugiyono explained that research methods are scientific ways to obtain valid data, to find, develop, and prove specific knowledge so that it can be used to understand, solve and anticipate problems.<sup>7</sup> In this study, the authors used the following research methods: Normative legal research is legal research that places law as a building system of norms. The system of norms in question regards principles, norms, rules of law and regulations, court decisions, agreements, and doctrines

(teachings).<sup>8</sup> Empirical (sociological) legal research uses empirical facts from human behavior, both verbal behavior obtained through interviews and actual behavior carried out through direct observation<sup>9</sup>. Based on the explanation above, this type of thesis research is empirical normative legal research.

The approach method used in this research is. The sociological (empirical) juridical approach identifies and conceptualizes law as a natural and functional social institution in a real-life system<sup>10</sup>. Research with an empirical approach is always directed at identifying (recognizing) the real, applicable law, which is implicitly applicable (fully), not explicitly (clearly, strictly regulated) in legislation or described in the literature.<sup>11</sup> Likewise directed to the effectiveness (applicability) of the law in public life.

### **Data Sources And Data Collection Tools**

Data collection is a critical stage in research. Correct data collection techniques will produce data that has high credibility, and vice versa. Therefore, this stage must be correct and carried out carefully according to the procedures and characteristics of qualitative research. This is because errors or imperfections in the data collection method will have fatal consequences, namely in the form of data that is not credible so that the research results cannot be verified. Be held accountable. The results of such research are hazardous, mainly if they are used as a basis for consideration in making public policies.

#### **a. Primary Legal Materials**

Primary legal material, namely legal material consisting of statutory regulations in the field of binding law<sup>12</sup>, including the 1945 Republic of Indonesia Law, the Criminal Code (KUHP), Law Number 2 of 2002 concerning the Police State Gazette Number; 2 Dated January 8, 2002; Government Regulation of the Republic of Indonesia Number 58 of 2010 concerning Amendments to Government Regulation Number 27 of 1983 concerning Implementation of the Code of Procedure; Law no 35 of 2009 concerning Narcotics, the State Gazette of 2009 Number 143 dated 12 October 2009.

#### **b. Secondary Legal Materials**

Secondary legal material is interpreted as legal material that is not binding but explains primary legal material, which results from processing the opinions or

thoughts of experts or experts who study a particular field that will guide where the researcher will lead. 13 What is meant by material secondary here by the author are the doctrines in books, law journals, and the internet.

### **Data analysis**

The data obtained, both primary data from field research and secondary data obtained from library research, are generalized, which are then analyzed qualitatively. This data analysis is an effort to find and organize data systematically to increase the researcher's understanding of the problem under study and present it as a research finding. (Idham, 2014).

## **RESULTS AND DISCUSSION**

In the legal system in Indonesia, narcotics abuse is qualified as a crime in the narcotics sector, which is regulated in UU no. 35 of 2009 concerning Narcotics. Narcotics crime is seen as a form of crime that has severe consequences for the future of this nation, destroying life and the future, especially for the younger generation. According to Article 127 paragraph (1) Law no. 35 of 2009, Every person who abuses Narcotics Category I for himself shall be punished with imprisonment for a maximum of 4 (four) years; Every person who abuses Narcotics Category II for himself shall be punished with imprisonment for a maximum of 2 (two) years; and Every abuser of Narcotics Category III for himself shall be punished with imprisonment for a maximum of 1 (one) year.

The Narcotics Law contains acts related to narcotics, both towards producers, distributors, consumers, and the public, by including criminal provisions in 39 of the 150 articles regulated in the law. 14 The narcotic crimes referred to in this study are criminal acts related to the distribution of narcotics (distributors) and users/users of narcotics (consumers). The characteristics of the criminal formulation in the Narcotics Law are<sup>15</sup>:

- a. Do not attach importance to the element of intent in narcotics crime. The phrase "everyone is without rights and against the law" in several articles of the Narcotics Law implies no requirement for an element of intent. Laws can ensnare people who have no intention of committing narcotics crimes but do so out of coercion, pressure, or ignorance<sup>16</sup>

- b. Minimal use of the penal system. Using a minimal criminal system in the Narcotics Law reinforces the assumption that the law is enacted to punish narcotics-related people. Using a minimum sentence will also prevent judges from passing too light a decision. However, in practice, judges can make decisions less than the minimum sentence, which the Chief Justice of the Supreme Court permits.
- c. Criminalization for parents and society. The Police Law provides for criminal penalties (6 months in prison) for parents who deliberately do not report their children using narcotics to obtain rehabilitation. Although the element of 'intentional failure to report' must be proven first, this element does not exclude parents who do not know that the substance their child is consuming is narcotics.
- d. Sentence equality for probation and felony was completed Law No. 35/2009 equates criminal penalties for non-criminal offenders with non-criminal offenders on probation. Narcotics Crime is a crime because the act has a harmful effect. <sup>17</sup>

A person can be blamed for committing an act as defined in the narcotics possession offense if it can be proven based on the presence of at least 2 (two) valid pieces of evidence, which can therefore convince the Panel of Judges that the defendant's actions have fulfilled all the elements of the offense contained in Article 111 paragraph (1), Article 112 paragraph (1), Article 117 paragraph (1), and Article 122 paragraph (1) Law No. 35 of 2009 concerning Narcotics. The contents of the Law consist of 18 a) The element of "everyone"; b) The element of "without rights or against the law"; c) The element of "owning, storing, controlling, or providing"; d) Elements of "narcotics group I in the form of plants, a group I non-plants, group II and group III."

According to Law No. 35 of 2009 concerning narcotics, article 127 regulates crimes for narcotics users, namely:

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

According to Law No. 35 of 2009 concerning Narcotics: a) Regarding criminal provisions relating to the possession of class I narcotics contained in articles 111 and 112.19 b) Regarding criminal provisions concerning the production and sale and purchase of class I narcotics contained in articles 113 and 114; c) Regarding criminal provisions relating to the carrying, sending and use of class I narcotics contained in articles 115 and 116; d) Criminal provisions relating to the possession and production of class II narcotics are contained in articles 117 and 118; e) Regarding the criminal provisions relating to buying and selling and carrying class II narcotics contained in articles 119 and 120; f) Regarding the criminal provisions relating to the use and possession of class II narcotics contained in articles 121 and 122 g) Regarding the criminal provisions concerning the production and trading of class II narcotics contained in articles 123 and 124 h) Criminal provisions concerning the carrying and using narcotics class III contained in articles 125 and 126; i) Concerning criminal provisions relating to the abuse of narcotics contained in Articles 127 and 128.

From the various laws and regulations governing the duties of the Indonesian Police as mentioned above, it is clear that the duties of the Indonesian Police are extensive, covering all agencies, from the Ministry of Defense and Security to small communities, all of whom need the police as security and public order. In order to carry out their duties and maintain public security and order, the Indonesian National Police are obliged to carry out all their work and activities to foster public security and order.

As for what is meant by abusers are people who use narcotics without rights or are against the law<sup>20</sup>. From this understanding, it can be said that abusers are in circulation. However, the law does not contain what "narcotics circulation" means as a subject (person); what is often found in circulation as a verb. When associated with the definition of Narcotics as stated in Article 1 point 1 of Law no. 35 of 2009, then Trafficking of Narcotics is a person who uses substances or drugs derived from plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which is differentiated into groups - class as attached in this Law.

Circulation, the term "Narcotics Trafficking," is used to facilitate the mention of people who use narcotics and to distinguish them from narcotics growers, producers,

dealers, couriers, and dealers.<sup>21</sup> According to the Head of the Narcotics Unit, AKP Abdul Rahman also uses narcotics, but in this paper, what is meant by narcotics circulation is people who use narcotics for themselves, not narcotics growers, producers, dealers, couriers, and dealers. If it is associated with people who use narcotics, in Law No. 35 of 2009, various terms can be found, namely:

- a. Narcotics addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics,<sup>23</sup> both physically and psychologically.<sup>24</sup>
- b. Abusers are people who use Narcotics without rights or against the law
- c. Victims of Narcotics abuse accidentally use Narcotics because they are persuaded, deceived, tricked, coerced, and threatened to use Narcotics.
- d. Former Narcotics Addicts are people who have recovered from dependence on narcotics physically and psychologically

Furthermore, abusers who receive rehabilitation guarantees under Article 4 of Law no. 35 of 2009, but in Article 127, abusers are made subjects who can be convicted and lose their rehabilitation rights unless they can be proven to be victims of narcotics. Proving that narcotics abusers are victims of narcotics is a complex matter because it must be seen from the beginning of the circulation of narcotics using narcotics. In addition, it is necessary to prove that the distribution of narcotics when using narcotics is in a condition of being persuaded, tricked, deceived, coerced, and threatened to use narcotics.

## **CONCLUSION**

- a. Whereas the legal arrangements governing discretion in the Criminal Procedure Code and Law no. 2 of 2002 concerning the Indonesian National Police are extensive without any boundaries and criteria as a guideline for the police to act, it tends to imply vague legal norms. In its application, police discretion requires interpretation in acting so that deviant discretionary actions by the police will cause consequences and legal responsibility in criminal, civil, and administrative law. In other words, the discretionary powers of the police cannot be used arbitrarily but are based on the principle of obligation in the sense that they are bound by the limits of their obligations so that the action remains within the scope of their obligations.
- b. Considering that the discretionary powers of the police in the criminal justice system are so extensive and to anticipate any abuse of this discretionary authority, the



oversight factor is significant so that the implementation of this discretionary policy authority does not deviate from the aims and objectives as stipulated in the laws and regulations.

## **SUGGESTION**

- a. It is hoped that there will be strict and clear legal rules for members of the Indonesian National Police as a reference, guideline, and legal certainty in acting in the field, playing the duties and discretionary powers of the police to act appropriately, quickly, responsively, on target and professionally in order to avoid irregularities and consequences. And legal responsibility for self-harm from the Indonesian National Police institution.
- b. It is hoped that the discretionary actions taken by the investigator aim to obtain a sense of justice for all parties and continue to uphold human rights. However, there must also be limitations and accountability, even though this is not contained in the Criminal Code. However, it is to maintain legal certainty and order in society.

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