



Application of the Theory of *Negatief Wettelijke* for Narcotics Offenders in Narcotics Crimes from A Human Rights Perspective

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Abstract

This research discusses the application of the theory of *negatief wettelijke* by judges in narcotics-related criminal cases, with a focus on the protection of Human Rights (HR). The research adopts a normative juridical approach, which is a legal research method that examines written law from various perspectives. This approach analyzes legal issues based on normative rules in relation to the existing societal context. The study looks at cases in society involving narcotics offenses, in connection with Law Number 35 of 2009 on Narcotics, as well as the Criminal Procedure Code (KUHAP) within the criminal justice system in Indonesia. The application of the theory of *negatief wettelijke* in narcotics offenses, as implemented by judges in the Indonesian criminal justice system, is reflected in several narcotics cases. In these cases, judges, when deciding narcotics-related criminal matters, do not solely rely on the evidence presented in court but also apply their personal convictions after considering the facts revealed during the trial process. As a result, judges also take into account the protection of Human Rights (HR) for the defendant in narcotics criminal cases when delivering their verdicts.

Keywords: *Application; Theory; Negatief Wettelijke; Narcotics; Human Rights*

Introduction

Narcotics and psychotropic substance abuse crimes are classified as extraordinary crimes, similar to corruption and terrorism. This classification is based on the increasing circulation and abuse of narcotics and psychotropic substances in Indonesia. The issue of narcotics abuse is multifaceted and complex, encompassing medical, psychiatric, and psychosocial dimensions (including economic, political, social, cultural, criminal, and other factors). Of particular concern is that the victims of narcotics and psychotropic substance abuse are generally adolescents and young adults, who are at a productive age. Currently, it is estimated that of Indonesia's population of 187,513,456 (one hundred eighty-seven million five hundred thirteen thousand four hundred fifty-six) people, 4,827,616 (four million eight hundred twenty-seven thousand six hundred sixteen) individuals have been exposed to or have used narcotics, and 3,662,646 (three million six hundred sixty-two thousand six hundred forty-six) individuals

have been using narcotics for more than a year. The prevalence of narcotics abuse increased by 1,805 (one thousand eight hundred five) individuals in 2019, reaching 1,955 (one thousand nine hundred fifty-five) in the following year (Puslitdatin BNN, 2022).

Regarding law enforcement, Mahfud MD argues that legal politics is the direction of legal policy that has been or will be implemented nationally by the government. It also involves the understanding of how politics influences law through an examination of the power configuration behind law-making and enforcement, all aimed at achieving the state's objectives. Thus, legal politics involves choices about which laws to enforce and which to repeal, all intended to fulfill the state's goals as outlined in the preamble of the 1945 Constitution.

The Narcotics Law serves as the Indonesian government's legal political effort to combat narcotics and psychotropic substance crimes, aiming to control the illicit circulation and abuse of these substances. It also serves as a guide for judicial authorities, particularly judges, in applying sanctions for narcotics crimes (Kaligis et al., 2002).

The term "criminal justice system" refers to the mechanism used in addressing crimes through a systemic approach (Wijaya, 2019). Remington and Ohlin define the criminal justice system as an administrative approach to criminal law enforcement and adjudication, shaped by the interaction of legislation, administrative practices, and social attitudes or behaviors (Atmasasmita, 1996). Muladi views the criminal justice system as a network of criminal law enforcement mechanisms that operate as the primary tool (Muladi, 1995).

In court proceedings, defendants have the right to defend themselves by presenting evidence that can mitigate criminal charges, receive rehabilitation, or even be acquitted of the charges. However, in practice, narcotics defendants often lack access to legal assistance, which impedes their ability to defend themselves adequately. They face difficulties presenting supporting evidence such as laboratory test results confirming narcotics use, psychiatric evaluations by government-appointed doctors, or evidence showing no involvement in narcotics trafficking. With the ordinary judicial process, many narcotics offenders struggle to present mitigating evidence. A rapid trial policy for narcotics offenders makes it even harder for them to submit comprehensive defenses. Thus, the pursuit of material truth, which is a prerequisite for achieving justice, becomes difficult.

Narcotics addiction is considered a criminal act, and the global community plays a role in combating it. Domestic law has been formulated without considering human rights, and there are several human rights violations resulting from a prohibition-based approach to narcotics control. The following is an example case:

The panel of judges at the Muaro District Court in West Sumatra (Sumbar) rejected an undercover buy case involving Surya Wijaya (41), resulting in the defendant being acquitted of a five-year prison sentence. The case began when the Dharmasraya Police conducted an undercover operation posing as a narcotics buyer. The officer tasked with the operation was Bripka Rion Saputra, who attempted to trap Surya Wijaya. The operation also involved a police informant.

The judge determined that the undercover buy procedure was not in accordance with the provisions of the law, specifically Article 2A of Government Regulation No. 58/2010. Based on the trial's findings, it was revealed that Rion was the one actively purchasing narcotics under cover. Furthermore, in the investigation orders dated March 27, 2014, no written order for an undercover buy was found, as required by Article 79 of Law No. 35 of 2009 on Narcotics.

The judge concluded, "The prosecution against Surya Wijaya is not accepted." In a dissenting opinion, one judge, Agung Darmawan, supported the legitimacy of the undercover buy method.

The Indonesian Supreme Court (MA) had previously expressed concern about such practices, noting that police often engage in entrapment and falsify evidence in narcotics cases, which undermines the integrity of law enforcement. These practices reveal that, under narcotics legislation, the legal system does not always protect individuals from abuse by law enforcement.

The principle of legality sometimes functions as a basic legal tool for the government in regulating societal life but does not always prevent the abuse of law. Even though someone may be deemed a narcotics offender, they still possess human rights that must be respected by the government and criminal justice system. Violations of human rights and constitutional rights frequently occur, particularly in decision-making processes and law enforcement.

In narcotics criminal cases, the principle of presumption of innocence must be upheld, ensuring that the defendant has the opportunity to defend themselves by proving that the evidence is not in their possession or control, and considering their background and any clear legal protections in place. The application of expedited trial procedures for narcotics offenders, however, can neglect the presumption of innocence and hinder defendants from fully presenting their case.

Therefore, this research examines the application of the theory of *negatief wettelijke* in narcotics criminal trials from the perspective of human rights protection. The focus of this study will be on how the theory of *negatief wettelijke* is applied within narcotics criminal trials while considering human rights protection for the defendant.

Methodology

In order to conduct the research effectively, the researcher employs several methods as follows:

Research Approach

A combination research method is useful when either quantitative or qualitative methods alone are insufficiently accurate for understanding the research problem. By combining both quantitative and qualitative methods, a more comprehensive understanding can be achieved, offering better insights than relying on a single method.

Research Specification

This study is descriptive-analytical in nature because it aims to provide as detailed data as possible about the issues discussed and to analyze the data obtained in order to address the research problems.

The data analysis in this study uses qualitative data. Qualitative data analysis involves presenting data in a well-organized, coherent, logical, non-redundant, and effective manner, making it easier to interpret the data and understand the results of the analysis. This qualitative data analysis method is used to enable the researcher to focus more on understanding and reviewing legal materials and legislation related to the topic addressed in this paper.

Result and Discussion

The Application of the *Negatief Wettelijke* Theory in Narcotics Criminal Court Proceedings from the Perspective of Human Rights Protection

In the negative legal proof theory (*negatief wettelijke*), as outlined by the law, there are two essential conditions as follows:

1. *Wettelijke*: This is due to the use of legally recognized and established evidence, as stipulated by the law.
2. *Negatief*: This arises from the fact that legally recognized evidence alone is not sufficient for the judge to consider the defendant's guilt as proven. The judge's conviction is also required (Prodjohamidjojo, 1983).

Based on this explanation, in order to declare a defendant guilty or not, it is not sufficient to rely solely on the judge's conviction or the mere establishment of proof according to the law using the legal tools of evidence. A defendant can only be declared guilty if the alleged wrongdoing can be proven through legally permissible evidence and methods, and this proof must be accompanied by the judge's conviction (Prodjohamidjojo, 1983).

Based on the explanation above, determining whether a defendant is guilty or not according to the legal proof system based on negative legal (*negatief wettelijke*) theory involves two components (Prodjohamidjojo, 1983):

1. Proof must be conducted according to the prescribed methods and with legally valid evidence as established by the law.
2. The judge's conviction, which must also be based on the prescribed methods and valid evidence as stipulated by law.

The *negatief wettelijke* system requires a causal relationship (cause-effect) between the evidence and the judge's conviction. The evidence in the *negatief wettelijke* proof system has been explicitly limited by law, including how it should be used (*bewijsvoering*), and it must be accompanied by the judge's belief that the criminal event truly occurred and that the defendant is guilty.

The *negatief wettelijke* proof system in the Indonesian Criminal Procedure Code (KUHAP), when linked to Law Number 4 of 2004 on Judicial Authority, Article 6, paragraph (2), states: "No one shall be convicted unless the court, through legally recognized evidence according to the law, is convinced that the individual in question is responsible for the criminal act charged." This article explicitly requires the protection of human rights, which are safeguarded by the state based on Pancasila.

Human Rights are inherent rights that every individual possesses from birth; they are absolute and cannot be reduced under any circumstances or by any party. Arief Budiman argues that Human Rights are natural rights of humans that are inseparable from their humanity. These rights are independent of the existing laws, meaning there should be a distinction between a citizen's rights and Human Rights (Kaligis, 2013). Similarly, Ramdlon Naning contends that Human Rights are fundamental rights rooted in the dignity of humans, given by God, and are essentially divine gifts (Kaligis, 2013).

In this context, Wolhoff states that Human Rights are a set of rights embedded in the intrinsic nature of every individual. These rights cannot be revoked by anyone because to revoke them would be to strip the individual of their humanity (Kaligis, 2013).

Regarding the rights and status of suspects or defendants as regulated in Chapter VI of KUHAP, they can be categorized as follows:

a. The Right to an Immediate Examination

The principle of simple, swift, and low-cost justice is emphasized in Article 50 of KUHAP, which grants legal rights to suspects or defendants, including:

1. The right to be immediately examined by an investigator;
2. The right to be promptly brought before court;
3. The right to a swift trial and court decision (Speedy trial right) (Harahap, 2012).

b. The Right to a Defense

To prepare a defense, the law specifies several articles, ranging from Article 51 to Article 57.

c. The Rights of Suspects or Defendants in Detention

These are general rights applicable to suspects or defendants, both in detention and outside of it. In addition to these general rights, the law also grants further protections for those held in detention.

d. The Defendant's Rights During trial Proceedings

KUHAP also provides rights to defendants during court trials, in addition to those afforded during the investigation and prosecution stages.

e. The Defendant's Right to Appeal

As stipulated in the law, defendants who are sentenced have the option to reject or appeal the court's decision.

f. The Right to Compensation and Rehabilitation

KUHAP grants suspects the right to claim compensation and rehabilitation.

In narcotics criminal cases, a restorative justice approach is needed for the judge's decision-making. One such approach involves issuing a criminal sentence in the form of rehabilitation for narcotics offenders, placing them in medical and social rehabilitation institutions. This alternative sentence is considered preferable to incarceration, as narcotics offenders require specialized treatment in both medical and social aspects. Referring to Law No. 35 of 2009 on Narcotics, medical rehabilitation is a comprehensive treatment process aimed at freeing addicts from narcotics dependence, while social rehabilitation involves the integrated recovery of physical, mental, and social aspects, enabling the offender to reintegrate into society.

Article 103 of Law No. 35 of 2009 on Narcotics states that:

- 1) A judge presiding over a narcotics addict's case may:
 - a. Order the individual to undergo treatment and/or rehabilitation if the narcotics addict is found guilty of committing a narcotics crime; or

- b. Order the individual to undergo treatment and/or rehabilitation if the narcotics addict is not found guilty of committing a narcotics crime.
- 2) The time spent undergoing treatment and/or rehabilitation for a narcotics addict as referred to in paragraph (1) letter a is considered part of the sentence served.

The Supreme Court, as the holder of judicial power, has further elaborated on this provision with Circular Letter No. 4 of 2010 regarding the determination of narcotics abuse and addiction cases into medical and social rehabilitation institutions. This circular serves as a guideline for judges in making decisions in narcotics cases. When sentencing rehabilitation, judges must clearly refer to the rehabilitation institutions and the duration of rehabilitation, based on expert testimony. Rehabilitation institutions include:

1. Medical and social rehabilitation institutions managed and/or supervised by the National Narcotics Agency.
2. The Cibubur Narcotics Dependency Hospital (RSKO), Jakarta.
3. Mental Health Hospitals across Indonesia (Depkes RI).
4. Rehabilitation centers under the Ministry of Social Affairs and Regional Technical Implementation Units (UPTD).
5. Accredited rehabilitation centers organized by community groups, accredited by the Ministry of Health or the Ministry of Social Affairs (self-funded).

One aspect of fair trial rights is the right to humane treatment and freedom from torture. Article 103 of Law No. 35 of 2009 on Narcotics and the Supreme Court Circular No. 4 of 2010 regarding the determination of narcotics abuse and addiction cases into medical and social rehabilitation institutions concretely implement this principle.

Referring to the *Negatief Wettelijke* Theory in narcotics criminal cases, judges, in addition to relying on two forms of evidence, must be convinced that the verdict is appropriate for the narcotics offender. While normative law states that the penalty for narcotics offenders is incarceration, narcotics offenders require special handling in terms of medical and social rehabilitation.

The formal truth in adjudicating narcotics abuse criminal cases under the *Negatief Wettelijke* Theory is not entirely accurate because the evidence obtained during the investigation and trial stages is often inadmissible, as it is frequently based on entrapment, which violates human rights according to the Indonesian Criminal Procedure Code (KUHAP). Therefore, judges apply the *Negatief Wettelijke* Theory, which aligns with human rights protection, by utilizing material truth—the complete and thorough truth of a criminal case—through the honest and precise application of criminal procedural law, aimed at identifying the perpetrator and determining whether the alleged crime has occurred, and whether the defendant can be held accountable (Mulyadi, 2012).

Conclusion

Based on the discussion in the previous chapter, the author concludes that the application of the *negatief wettelijke* proof theory used by the panel of judges in adjudicating narcotics criminal cases involves consideration of material truth. This approach emphasizes the acquisition of evidence, which is regulated in the Indonesian Criminal Procedure Code (KUHAP), specifically in Article 184, paragraph (1). This article stipulates five types of legally recognized evidence that are applicable from the investigation stage through to the trial. These pieces of evidence hold evidentiary value in proving the

defendant's guilt. The five types of evidence are: Witness Testimony, Expert Testimony, Documentary Evidence, Indications, and the Defendant's Testimony.

Recommendation

As discussed above, in making decisions, the panel of judges must be given discretion in adjudicating a case, allowing them to consider not only the evidence presented in court but also their own conviction when evaluating the facts that emerge during the trial.

For the panel of judges, it is essential to take into account the aspect of human rights protection for the defendant. If the panel of judges is convinced that the defendant has not been proven, in a lawful and convincing manner, to have committed a narcotics crime, after considering the presented evidence and reviewing the trial facts, the panel may be persuaded to render a verdict of acquittal, while also taking into account the protection of human rights.

References

Adiksi Narkotika.icjr.or.id.

Atmasasmita, R. (1996). *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme*. Jakarta: Bina Cipta.

Atmasasmita, R. (1996). *Sistem Peradilan Pidana: Perspektif eksistensialisme dan abolisionalisme*. Bandung: Putra Abardin.

Atmasasmita, R. (2010). *Sistem Peradilan Pidana Kontemporer*. Jakarta: Kencana.

Harahap, M. (1988). *Pembahasan Permasalahan Dan Penerapan KUHAP*. Jakarta: Pustaka Kartini.

Harahap, M. (2006). *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali: Edisi Kedua*. Jakarta: Sinar Grafika.

Harahap, M. (2007). *Pembahasan Permasalahan dan Penerapan Kuhap (Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali)*. Jakarta: Sinar Grafika.

Harahap, M. (2009). *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika.

Harahap, M. (2012). *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan Edisi Kedua*. Jakarta: Sinar Grafika.

Harahap, M. (2012). *Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Banding, Kasasi, serta Peninjauan Kembali*. Jakarta: Sinar Grafika.

Herindrasti, V. (2018). Drug-free ASEAN 2025: Tantangan Indonesia dalam Penanggulangan Penyalahgunaan Narkoba. *Jurnal Hubungan Internasional*, 7 (1).

<http://koranbaru.com/33-juta-penduduk-indonesia-pecandu-narkoba-sintetis/>.

<https://news.detik.com/berita/d-2665931/ma-polisi-seringkali-melakukan-penjemputan-atau-rekayasa-kasus-narkoba>.

<https://news.detik.com/berita/d-2695345/tok-majelis-hakim-tidak-terima-adili-kasus-penjebakan-narkotika>.

<https://radarbojonegoro.jawapos.com/read/2020/08/28/211021/tuntutan-7-tahun-ditolak-terdakwa-kasus-narkotika-bebas>.

Kaligis, et al. (2002). *Narkoba dan Peradilannya di Indonesia, Reformasi Hukum Pidana Melalui Perundangan dan Peradilan*. Bandung: Alumni.

Kaligis. (2013). *Perlindungan Hukum Atas Hak Asasi Tersangka, Terdakwa dan Terpidana*. Bandung: Alumni.

Marzuki, P. (2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana.

Muladi. (1995). *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro.

Prodjodikoro, W. (1977). *Hukum Acara Pidana Di Indonesia*. Bandung: Sumur Bandung.

Sunggono, B. (1997). *Metodologi Penelitian Hukum*. Depok: Raja Grafindo Persada.

Sunggono, B. (2016). *Penegakan Hukum di Indonesia*. Jakarta: Sinar Grafika.

Sunggono, B. (2018). *Sistem Pembuktian Dalam Peradilan Indonesia*. Jakarta: Sinar Grafika.

Wijaya, S. (2019). *Sistem Peradilan Pidana dan Penanggulangan Tindak Pidana Ringan*. Bandung: Fakultas Hukum Universitas Pasundan.

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