

## Legal Position Between Narcotics Addicts and Narcotics Abusers in the Perspective of Law Number 35 of 2009 Concerning Narcotics

Miftahul Munir<sup>1</sup>, Riswadi<sup>2</sup>, Evita Isretno Israhadi<sup>3</sup>

<sup>1,2,3</sup> Universitas Borobudur

Email: [wirata.munir321@gmail.com](mailto:wirata.munir321@gmail.com)<sup>1</sup>, [riswadi@borobudur.ac.id](mailto:riswadi@borobudur.ac.id)<sup>2</sup>,  
[evita\\_isretno@borobudur.ac.id](mailto:evita_isretno@borobudur.ac.id)<sup>3</sup>

*Corresponding Author: wirata.munir321@gmail.com*

ARTICLE INFO	ABSTRACT
<p><b>Submitted</b> :22-04-2023</p> <p><b>Received</b> :25-04-2023</p> <p><b>Approved</b> :05-05-2023</p> <p><b>Keywords:</b> Legal Position; Addict; Narcotics Abusers; Narcotics Law.</p>	<p>In the overall set of laws in Indonesia, opiates misuse is qualified as a wrongdoing in the opiates area which is controlled in Regulation no. 35 of 2009 concerning Opiates. Opiates wrongdoing is viewed as a type of wrongdoing that has serious ramifications for the eventual fate of this country, obliterating life and the future, particularly for the more youthful age. As indicated by Article 127 passage (1) Regulation no. 35 of 2009, Each individual who mishandles Opiates Classification I for himself will be rebuffed with detainment for a limit of 4 (four) years; Each individual who manhandles Opiates Classification II for himself will be rebuffed with detainment for a limit of 2 (two) years; and Each victimizer of Opiates Class III for himself will be rebuffed with detainment for a limit of 1 (one) year. Concerning what is implied by victimizers are individuals who use opiates without privileges or are illegal. The Opiates Regulation plans to: Guarantee courses of action for clinical and social restoration endeavors for opiates victimizers and fiends", be that as it may, Article 54 of the Law states "Opiates Junkies and Casualties of Opiates Victimizers are expected to go through clinical recovery and social recovery". In light of Article 54, the right of victimizers to get recovery isn't perceived. Moreover, victimizers who get recovery ensures under 4 Regulation no. 35 of 2009, however in Article 127 victimizers are created subjects who can be sentenced and lose their recovery freedoms except if they can be demonstrated or shown to be survivors of opiates. Demonstrating that opiates victimizers are survivors of opiates is a troublesome matter since it should be seen from the start that opiates clients use opiates. Likewise, it is important to demonstrate that opiates clients while utilizing opiates are in a state of being convinced, deceived, misdirected, constrained, as well as taken steps to utilize opiates.</p>

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



## 1. Introduction

Life in modern times is far from friendly, it can be seen from the high level of activity in society, the high rate of depression, the large number of children who lack the attention of their parents, and the wide variety of activities carried out up to the hectic activities at night viewed from the multiple nightlife venues that are open and thriving. It greatly affects the pattern of people's lives, one of which is the presence of drugs and narcotic substances. (Lisa & Sutrisna, 2013).

Opiates and unlawful medication violations are transnational in nature, done with a high business-as-usual and complex innovation. Policing is supposed to have the option to forestall and manage these violations to work on the profound quality and nature of HR in Indonesia, particularly for the country's future. [(Satria, 2014)]

Opiates comprise substances or medications got from plants or non-plants, both manufactured and semi-engineered, which can prompt a diminishing or change in cognizance, loss of taste, decrease to kill torment and lead to reliance. On the off chance that the opiates are utilized without cautious limitations and oversight, it can imperil the well-being and, surprisingly, the existence of the client. [3]

The use of discipline in instances of opiates maltreatment to opiate victimizers, by and large, has 2 (two) criminal approvals chosen by judges, to be specific detainment and assents as recovery for opiates victimizers, and the choices given over to opiates victimizers or clients appear to be a long way from good anticipated by the legal arrangements on opiates, ought to be.

Decided settling on choices should focus on 3 (three) significant components, specifically: equity, lawful conviction, and practicality. Regulation No. 35 of 2009 concerning Opiates has given different treatment to culprits of misuse or clients of Opiates. Opiate clients or friends as culprits of Opiates wrongdoings can be likely to sanctions as detainment, aside from being liable to sanctions as restoration. Restoration is a work to endlessly reestablish the state of previous medication fiends/wards back to wellbeing regarding physical, mental, social, and otherworldly/strict (confidence) wellbeing. With this ailment, it is trusted that they will actually want to get back to working typically in their day-to-day routines, both at home, at school/grounds, at work, and in their social climate. (Hawari, 2009)

Regulation No. 35 of 2009 concerning Opiates contains Article 54 which manages restoration. Article 54 peruses "Opiates friends and survivors of Opiates misuse should go through clinical restoration and social recovery". Clinical restoration is a course of coordinated treatment exercises to liberate junkies from opiate reliance.

Clinical restoration of opiate junkies can be completed in medical clinics assigned by the Priest of Wellbeing, in particular clinics coordinated by the public authority or the local area. Notwithstanding therapy or care through clinical restoration, the mending system for Opiates fiends can be brought out by the local area through strict and customary methodologies. While social restoration is a course of coordinated recuperation exercises both truly, intellectually, and socially with the goal that previous opiate fiends can promptly get back to completing social capabilities in doing local area life. What is implied by previous Opiates fiends here are individuals who have recuperated from reliance on Opiates truly and mentally.

The presence of the Opiates Regulation and Psychotropics Regulation is a lawful political exertion by the Indonesian government to handle the wrongdoing of Opiates and Psychotropics. Counteraction of Opiates wrongdoing with restoration sanctions is supposed to have the option to plan an administrative idea that can handle illegal traffic and maltreatment of Opiates and Psychotropics, as well as turned into a reference and rule for

courts and directors or court choice implementers who apply the Law, particularly decided in overwhelming authorizations discipline for the violations that happened.

Opiates wrongdoing as directed in Regulation No. 35 of 2009 concerning Opiates accommodates very serious crook sanctions. Nonetheless, as a general rule, the quantity of culprits of wrongdoings is expanding, and convicts are not stopped and there is an inclination to rehash it. It is brought about by the presence of criminal inconvenience factors that significantly affect the culprits (Arief, 2001) .

The utilization of expression "Opiates Client" is utilized to work with the notice of individuals who use opiates and to separate them from opiates cultivators, makers, sellers, dispatches, and vendors. 24 Despite the fact that cultivators, makers, merchants, opiates dispatch, and vendors some of the time additionally use opiates, what is implied by opiates clients are individuals who use opiates for themselves, not opiates cultivators, makers, sellers, messengers, and sellers.

Assuming that it is related to individuals who use opiates, in Regulation no. 35 of 2009 different terms can be found, to be specific:

- a. Narcotics junkies are individuals who use or misuse Opiates and are in a condition of reliance on Opiates, both genuinely and mentally.
- b. Abusers are individuals who use Opiates without privileges or are illegal.
- c. Victims of Opiates misuse are somebody who coincidentally utilizes Opiates since they are convinced, deceived, deceived, pressured, as well as taken steps to utilize Opiates.
- d. Former Opiates Junkies are individuals who have recuperated from reliance on opiates truly and mentally.

The diversity of terms for narcotics users creates ambiguity in the formulation of the law. It can confuse law enforcement officials in their implementation. One of the problems that may arise due to the many terms is regulatory confusion, where Article 4 letter d of Law no. 35 of 2009 says "The Narcotics Law aims to: Ensure arrangements for medical and social rehabilitation efforts for narcotics abusers and addicts", but Article 54 of the Law states "Narcotics Addicts and Narcotics Abuse Victims are required to undergo medical rehabilitation and social rehabilitation". Based on Article 54, the right of abusers to receive rehabilitation is not recognized.

The problem in this paper is What is the Legal Position Between Narcotics Addicts and Narcotics Abusers in the Perspective of Law Number 35 of 2009 Concerning Narcotics?

## 2. Materials and Methods

The strategy utilized recorded as a hard copy this applied paper is a scientific elucidating technique, to be specific by utilizing information that plainly portrays the issues straightforwardly in the field, then, at that point, the examination is completed and afterward finished up to break a trouble. Strategies for information assortment through perception and writing study to get critical thinking in the readiness of this paper. In line with the research objectives to be achieved, the realm of this research is included in the realm of qualitative research, thus a qualitative approach method will be used. According to Petrus Soerjowinoto et al., a qualitative method is a method that emphasizes the process of understanding researchers on the formulation of problems to construct a complex and holistic legal phenomenon.(Soerjowinoto, 2006)

Regularizing juridical methodology, specifically the juridical methodology technique used to look at issues from a legitimate and legal viewpoint, in particular guidelines that can be utilized as a reason for concentrating on issues and their legitimate outcomes, in particular

Regulation Number 35 of 2009 concerning Opiates. Normative juridical approach carried out against specific laws and regulations or written law, relating to the Legal Position Between Narcotics Addicts and Narcotics Abusers in the Perspective of Law Number 35 of 2009 Concerning Narcotics.(Soemitro, 1990) This study describes the condition of the object under study, namely focusing on regulation and the legal position between narcotics addicts and dopes abusers in the perspective of Law Number 35 of 2009 concerning narcotics in practice.

### 3. Results and Discussions

#### 3.1. Legal Position Between Narcotics Addicts and Narcotics Abusers in the Perspective of Law Number 35 of 2009 Concerning Narcotics.

On September 14, 2011, the Indonesian Parliament passed the Bill on Narcotics as a substitute for Law no. 22 of 1997 concerning Narcotics, became Law. The replacement was made because Law no. 22 of 1997 is considered unable to prevent narcotics crimes which are increasing quantitatively and qualitatively as well as organized forms of crime. Substantially, the new Narcotics Law (UU No. 35 of 2009) has not undergone any significant changes compared to the previous Law, except for the emphasis on the provisions on rehabilitation obligations, the excessive use of criminal penalties, and the BNN's enormous authority. The imposition of prison sentences against narcotics users was not enough to deter perpetrators. Many of the perpetrators who had been convicted, when they were released from prison were arrested again for the same case.

In the general set of laws in Indonesia, opiates misuse is qualified as a wrongdoing in the opiates area which is controlled in Regulation no. 35 of 2009 concerning Opiates. Opiates wrongdoing is viewed as a type of wrongdoing that has serious ramifications for the eventual fate of this country, obliterating life and the future, particularly for the more youthful age. As per Article 127 section (1) Regulation no. 35 of 2009, Each individual who manhandles Opiates Class I for himself will be rebuffed with detainment for a limit of 4 (four) years; Each individual who mishandles Opiates Classification II for himself will be rebuffed with detainment for a limit of 2 (two) years; and Each victimizer of Opiates Class III for himself will be rebuffed with detainment for a limit of 1 (one) year. Concerning what is implied by victimizers are individuals who use opiates without privileges or are against the guideline. From this interpretation, it can be said that abusers are users. However, the law does not contain what is meant by "narcotics user" as a subject (person), what is often found is its use as a verb. When related with the meaning of Opiates as expressed in Article 1 point 1 of Regulation no. 35 of 2009, Opiates Clients are individuals who use substances or medications got from plants, both manufactured and semi-engineered, which can cause a decline or change in cognizance, loss of taste, lessen to take out torment, and can cause reliance, which is separated into gatherings - class as joined in this Regulation (Latumaerissa, 2019).

The utilization of the expression "Opiates Client" is utilized to work with the notice of individuals who use opiates and to separate them from opiates cultivators, makers, sellers, dispatches, and vendors. Despite the fact that opiates cultivators, makers, vendors, dispatches, and sellers now and again likewise use opiates, in this paper what is implied by opiates clients are individuals who use opiates for themselves, not opiates producers, makers, sellers, messengers, and vendors.

Assuming that it is related with individuals who use opiates, in Regulation no. 35 of 2009 different terms can be found, in particular: [6]

- a. Narcotics junkies are individuals who use or misuse Opiates and are in a condition of reliance on Opiates ((Article 1 number 14), both genuinely and mentally (Article 1 number 13 Regulation No. 35 of 2009).

- b. Abusers are individuals who use Opiates without privileges or illegal (Article 1 number 15 of Regulation No. 35 of 2009).
- c. A casualty of Opiates misuse is somebody who coincidentally utilizes Opiates since he was convinced, deceived, constrained, as well as taken steps to utilize Opiates (Clarification of Article 54 Regulation No. 35 of 2009).
- d. Former Opiates Junkies are individuals who have recuperated from reliance on opiates genuinely and mentally (Clarification of Article 58 Regulation No. 35 of 2009).

The diversity of terms for narcotics users creates ambiguity in the formulation of the law. It can confuse law enforcement officials in their implementation. One of the problems that may arise due to the many terms is regulatory confusion, where Article 4 letter d of Law no. 35 of 2009 declares "The Narcotics Law aims to: Ensure arrangements for medical and social rehabilitation efforts for narcotics abusers and addicts", but Article 54 of the Law states "Narcotics Addicts and Narcotics Abuse Victims are required to undergo medical rehabilitation and social rehabilitation". Based on Article 54, the right of abusers to receive rehabilitation is not recognized.

Besides, victimizers who get recovery ensures under 4 Regulation no. 35 of 2009, yet in Article 127 victimizers are created subjects who can be sentenced and lose their recovery freedoms except if they can be demonstrated or shown to be casualties of opiates. Demonstrating that opiates victimizers are casualties of opiates is a troublesome matter since it should be seen from the start that opiates clients use opiates. Furthermore, it is important to demonstrate that opiates clients while utilizing opiates are in a state of being convinced, deceived, hoodwinked, pressured, or potentially took steps to utilize opiates. (Adi, 2009)

An enormous number of these terms can befuddle policing in applying the articles in Regulation no. 35 of 2009. The place of opiates junkies has a somewhat unique situation from the culprits of different wrongdoings, in particular the issue of opiates fiends as per legal arrangements, from one perspective, they are culprits of criminal demonstrations of opiates misuse, yet then again, they are casualties.

Opiates junkies as per the law from one viewpoint are culprits of criminal demonstrations of opiates misuse is the presence of arrangements in the opiates regulation which direct jail sentences given to culprits of opiates misuse. Then, at that point, then again, one might say that an opiates fiend is a casualty. This is shown by the arrangement that opiates junkies can be condemned to recovery. This implies that the law, from one viewpoint, actually considers opiates junkies to be culprits of criminal demonstrations, and then again, they are casualties of the maltreatment of opiates they carry out.

A victimology review classifies narcotics addicts as "self-victimizing victims", in particular survivors of wrongdoings they have carried out themselves. Therefore, the most appropriate way for judges to pass a verdict in cases of narcotics addicts is to impose a rehabilitation sentence. Because narcotics addicts are essentially victims of a crime who need to get treatment and/or care, and because they are parties who also suffer losses from a wrongdoing, specifically the wrongdoing of opiates misuse.

The criminalization of medication clients can't be isolated from the law enforcement framework took on by the overall set of laws in Indonesia. The reason for the criminal framework is basically the operationalization of policing out by the equity framework in view of legitimate instruments that direct the criminalization of chronic drug use and unlawful traffic, in particular Regulation Number 35 of 2009 concerning Opiates as a substitute for Regulation no. 22 of 1997 concerning Opiates. Improvements in this day and age show a propensity for solid changes in survey opiates clients who are not generally seen as hoodlums, however as casualties or patients who should be given compassion.

In the event that an opiates junkie has been sentenced by an adjudicator for the opiates

wrongdoing he perpetrated, to furnish the individual worried about a chance to be liberated from his fixation, the adjudicator might conclude to arrange the individual worried to go through treatment as well as treatment. Moreover, on the off chance that an opiates fiend isn't demonstrated at legitimate fault for being blamed for perpetrating an opiate wrongdoing, as in he is just an opiates client who is convinced, the adjudicator can conclude to arrange the individual worried to go through treatment or potentially treatment.

Criminal authorizations forced on opiates fiends as self-misleading casualties are through carrying out a punishment in jail, while the activity sanctions given to opiates junkies as casualties are as treatment or potentially care held as recovery offices. The execution framework during treatment or potentially care is considered the time of carrying out a punishment. UU no. 22 of 1997 and Regulation no. 35 of 2009 concerning Opiates have embraced a twofold track framework in planning sanctions against criminal demonstrations of opiates misuse, despite the fact that it is still opportunity for decided in overwhelming decisions/choices in dealing with instances of opiates clients/compulsion, in light of the adjudicator's faith regarding endorsing activity (Hikmawati, 2016).

Regulation Number 35 of 2009 concerning opiates has given different treatment to opiates victimizers, under the steady gaze of this regulation came into force there was the same treatment between opiates clients, vendors, sellers, and makers. Opiates clients or fiends from one viewpoint are culprits of criminal demonstrations, yet then again, they are casualties. (Adi, 2009) This narcotic abuse is dangerous because it will have an impact on the user himself, where he will be addicted and his life will depend on narcotic substances, which if not prevented (treated), the type of narcotics used will be stronger and the dose will be greater. exacerbate the condition of the addict himself.

In all actuality, judges frequently don't give freedoms to opiates clients to do recovery, despite the fact that in Regulation no. 35 of 2009 there is a recovery ensure for opiates junkies. Likewise, as a result of the set number of collaborators or instructors, the quantity of opiates fiends who are arrived at by the restoration program is restricted. Executive of the Certificate Chamber for Indonesian Fixation Instructors Benny Ardjil expressed, out of a sum of around 3.6 million medication fiends, just 10% were reached by treatment and restoration programs.

Regulation Number 35 of 2009 concerning Opiates has ensured clinical recovery and social restoration for junkies and survivors of opiates misuse. This clinical and social restoration is expected for opiates fiends and casualties of opiates misuse, not really for vendors. The public authority's endeavors are contained in Article 54 of Regulation number 35 of 2009 concerning Opiates, which expresses that opiates junkies and survivors of opiates misuse should be restored medicinally and socially. (Irmawanti & Arief, 2021)

In light of the examination, the current juridical structure in Regulation no. 35 of 2009 ought to be utilized by decided in concluding medication junkies and clients, in particular Article 127 of Regulation no. 22 of 1997 concerning Opiates. Putting opiates victimizers/clients into recovery organizations through an appointed authority's choice is a brilliant option in contrast to forcing criminal approvals in the system of different perspectives and reformative parts of medication victimizers and countermeasures of medication dealing when contrasted with forcing wrongdoers with detainment (Barda Nawawi Arief, 2018), criminal approvals recovery is brought out through clinical restoration and social restoration. Recovery is planned so clients/friends of illegal medication dealing are set free from reliance on drug use. (Sudarto, 1983)

#### 4. Conclusion

The diversity of terms for narcotics users creates ambiguity in the formulation of the

law. It can confuse law enforcement officials in their implementation. One of the problems that may arise due to the many terms is regulatory confusion, where Article 4 letter d of Law no. 35 of 2009 says "The Narcotics Law aims to: Ensure arrangements for medical and social rehabilitation efforts for narcotics abusers and addicts", but Article 54 of the Law states "Narcotics Addicts and Narcotics Abuse Victims are required to undergo medical rehabilitation and social rehabilitation". In view of Article 54, the right of victimizers to get recovery isn't perceived. Moreover, victimizers who get recovery ensures under 4 Regulation no. 35 of 2009, however in Article 127 victimizers are dependent upon discipline and lose their right to recovery except if they can be demonstrated or shown to be casualties of opiates.

An enormous number of these terms can befuddle policing in applying the articles in Regulation no. 35 of 2009. The place of opiates fiends has a marginally unique situation from the culprits of different wrongdoings, specifically the issue of opiates junkies as per legal arrangements, from one viewpoint, they are culprits of criminal demonstrations of opiates misuse, yet then again, they are casualties.

Opiates fiends as per the law from one viewpoint are culprits of criminal demonstrations of opiates misuse is the presence of arrangements in the opiates regulation which direct jail sentences given to culprits of opiates misuse. Then, then again, one might say that an opiates fiend is a casualty. This is shown by the arrangement that opiates fiends can be condemned to recovery. This implies that the law, from one viewpoint, actually considers opiates junkies to be culprits of criminal demonstrations, and then again, they are casualties of the maltreatment of opiates they carry out. A victimology review classifies narcotics addicts as "self-victimizing victims" namely victims of crimes they have committed themselves. Therefore, the most appropriate way for judges to pass a verdict in cases of narcotics addicts is to impose a rehabilitation sentence. Since Opiate junkies are basically survivors of a wrongdoing who need to seek treatment or potential care, and in light of the fact that they are parties who likewise experience the ill effects of wrongdoing, specifically the wrongdoing of opiates misuse. The discipline for drug clients can't be isolated from the law enforcement framework embraced by the overall set of laws in Indonesia. The motivation behind the criminal framework is basically the operationalization of policing out by the equity framework in light of legitimate instruments that manage the criminalization of chronic drug use and illegal traffic, in particular, Regulation Number 35 of 2009 concerning Opiates as a substitute for Regulation no. 22 of 1997 concerning Opiates.

## 5. References

- Adi, K. (2009). *Kebijakan Kriminal dalam penanggulangan tindak pidana narkotika oleh anak*. Umm Press.
- Arief, B. N. (2001). *Masalah penegakan hukum dan kebijakan penanggulangan kejahatan*. Citra Aditya Bakti.
- Barda Nawawi Arief, S. H. (2018). *Masalah penegakan hukum dan kebijakan hukum pidana dalam penanggulangan kejahatan*. Prenada Media.
- Hawari, D. (2009). *Penyalahgunaan & Ketergantungan NAZA (Narkotika, Alkohol & Zat Adiktif) Edisi Kedua*. Jakarta: FKUI.
- Hikmawati, P. (2016). Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika. *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 2(2), 329–350.
- Irmawanti, N. D., & Arief, B. N. (2021). Urgensi tujuan dan pedoman pemidanaan dalam rangka

- pembaharuan sistem pemidanaan hukum pidana. *Jurnal Pembangunan Hukum Indonesia*, 3(2), 217–227.
- Latumaerissa, D. (2019). Penerapan Sanksi Pidana Minimum Khusus Pada Tindak Pidana Narkotika (Studi Putusan Nomor 111/Pid. Sus/2017/PN Sag). *Jurnal Belo*, 5(1), 67–85.
- Lisa, J., & Sutrisna, N. (2013). Narkoba, psikotropika dan gangguan jiwa. *Yogyakarta: Nuha Medika*.
- Satria, H. (2014). Anatomi Hukum Pidana Khusus. *Yogyakarta: UII Press Cetakan Pertama*.
- Soemitro, R. H. (1990). Metodologi penelitian hukum dan jurimetri. *Ghalia Indonesia, Jakarta*, 167.
- Soerjowinoto, P. (2006). Buku Pedoman Metode Penelitian Karya Hukum & Skripsi. *Semarang: Fakultas Hukum Unika Soegijapranata*.
- Sudarto. (1983). *Hukum Pidana dan Perkembangan Masyarakat*. Sinar Baru.