

Legal Analysis of the Problem of Determining Criminal Responsibility Between Users and Distributors in Narcotics Crimes (Study at the North Sumatra Regional Police)

Riski Robbi Hamonanggan Sitorus¹, Mhd Azhali Siregar², Fitri Rafianti³

Master of Law, Panca Budi Development University, Medan, Sumatera Utara, Indonesia^{1,2,3}

Corresponding email: riski.robby22@gmail.com

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ABSTRACT

This study aims to analyze the legal issues of determining criminal responsibility between users and dealers in narcotics crimes and examine the factors that influence the classification of suspect status in investigative practices at the North Sumatra Regional Police. This issue is important because determining status as a user or dealer has direct implications for the application of criminal sanctions, both through rehabilitative and repressive approaches. The unclear boundaries between these two categories in law enforcement practices often lead to disparities in case handling and potentially ignore the principles of justice and legal certainty. This study uses a normative legal method supported by an empirical legal approach. Data were obtained through a literature review of laws and regulations, books, scientific journals, and interviews with investigators, legal practitioners, and academics. Primary legal materials include Law Number 35 of 2009 concerning Narcotics, Law Number 8 of 1981 concerning the Criminal Procedure Code, and Law Number 1 of 2023 concerning the Criminal Code. Data analysis was conducted qualitatively by examining the alignment between legal norms and their implementation practices. The results show that determining criminal liability between users and dealers still faces various legal obstacles, including differing interpretations of the elements of "possession," "control," and "storage," limited evidence, and the suboptimal implementation of integrated assessments. Furthermore, non-legal factors such as economic pressure, the influence of illicit trafficking networks, community legal culture, and the integrity of law enforcement officers also influence investigation results. In practice at the North Sumatra Regional Police, drug users who should receive rehabilitation are still being processed as dealers. This study concludes that Indonesian positive law provides a normative basis for distinguishing drug users and dealers, but its implementation still requires more consistent guidelines, improved quality of evidence, strengthened inter-agency coordination, and optimization of the rehabilitative approach to achieve legal certainty, justice, and benefits in a balanced manner.



Introduction

Drug abuse and illicit trafficking are a form of crime that remains a serious threat to Indonesia's national security. Drug crimes not only damage the physical and mental health of individuals but also have far-reaching impacts on social, economic, and national security stability. Drug trafficking has evolved into a transnational organized crime involving complex networks, exploiting advances in information technology, modern financial systems, and international distribution channels that are difficult to monitor comprehensively. In this context, law enforcement against drug crimes cannot be carried out solely through repression; it must also pay attention to the accuracy in determining the status and form of criminal responsibility for each perpetrator so that legal objectives can be achieved fairly, certainly, and beneficially.

Indonesia continues to face a drug problem at an alarming level. The National Narcotics Agency (BNN) notes that drug abuse has reached nearly all levels of society, from schoolchildren, university students, private sector workers, civil servants, and law enforcement officers. This phenomenon demonstrates that drugs are not merely an individual criminal issue but have developed into a systemic threat that can damage the quality of human resources and hinder national development. This situation is further complicated by the continued adaptation of drug trafficking networks to technological developments and the exploitation of socio-economic conditions as a means of recruiting perpetrators, including couriers and intermediaries, who often come from vulnerable economic groups.

North Sumatra is a region highly vulnerable to illicit drug trafficking. Its strategic geographic location, with access to international ports, airports, and land routes connecting various provinces, makes it vulnerable to being exploited as a gateway and distribution route for narcotics. In law enforcement, the North Sumatra Regional Police play a crucial role in conducting investigations and prosecutions of narcotics crimes. However, one of the most frequently encountered issues is the difficulty in determining whether individuals found in possession or possession of narcotics should be categorized as users requiring rehabilitation or as dealers subject to severe criminal sanctions.

Normatively, Law Number 35 of 2009 concerning Narcotics provides a comprehensive legal basis for regulating narcotics countermeasures. This law regulates in detail the classification of narcotics, prohibited acts, criminal penalties, the authority of law enforcement officers, and rehabilitation mechanisms for addicts and victims of abuse. Article 54 emphasizes that addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation. Furthermore, for perpetrators proven to produce, distribute, sell, or be part of an illicit trafficking network, the law imposes very severe penalties, including life imprisonment and the death penalty under certain circumstances.

The concept of criminal responsibility in Indonesian criminal law is based on the principle of "geen straf zonder schuld," meaning there is no punishment without fault. This principle asserts that a person can only be punished if proven to have committed a crime,

has the capacity to take responsibility, and there is an element of fault in the form of intent (*dolus*) or negligence (*culpa*). Therefore, the criminalization process cannot be based solely on the discovery of evidence, but must also consider the role, intent, and subjective condition of the perpetrator. In narcotics cases, this concept is crucial because the difference in status as a user or dealer will directly determine the type of criminal responsibility applied.

In law enforcement practice, the distinction between users and dealers is not always easy to determine. A person found in possession of a small amount of narcotics may be considered a user for personal consumption, but under certain circumstances may also be suspected of being a dealer if other evidence is found indicating involvement in distribution. Conversely, there are also perpetrators who are actually part of an illicit trafficking network but attempt to position themselves as users in order to obtain rehabilitation. This situation raises legal challenges related to the interpretation of norms, the quality of evidence, and the application of the principle of proportionality in criminal law.

From the perspective of criminal theory, punishment is not only intended as retribution for the perpetrator's mistakes, but also as a means of protecting society, preventing crime, and reforming the perpetrator. In the context of drug crimes, a rehabilitative approach to users is a manifestation of the recovery-oriented goal of punishment, while firm action against dealers is an effort to protect society from the dangers of illicit drug trafficking. Therefore, errors in determining the perpetrator's status can result in the goal of punishment not being optimally achieved and even giving rise to substantive injustice.

The problem of determining criminal liability is also influenced by the quality of the evidence. In narcotics cases, proof depends not only on the presence of evidence, but also on forensic laboratory results, integrated assessments, witness statements, digital communications, financial transactions, and the results of suspect examinations. Limited evidence often makes it difficult for investigators to uncover the true role of the perpetrator. As a result, case handling focuses more on field actors such as couriers or users, while the main actors and network controllers cannot be optimally reached.

In addition to legal factors, non-legal factors also significantly influence the law enforcement process. Economic conditions, education levels, social environment, community legal culture, and the integrity of law enforcement officers are closely related to the effectiveness of determining criminal responsibility. In many cases, individuals experiencing economic pressure are more easily recruited as drug couriers. On the other hand, low public participation in providing information and fear of the threat of illicit trafficking networks also hamper the investigation process. The integrity of law enforcement officers is also crucial, as even the slightest deviation can undermine public trust in the criminal justice system.

Several studies have shown that the implementation of rehabilitation for drug users has not been fully consistent. Although the law provides for rehabilitation, in practice, users are still sentenced to prison. Conversely, in some cases, perpetrators with broader involvement in illicit trafficking have not been comprehensively uncovered. This

phenomenon demonstrates a gap between *das sollen* and *das sein*, that is, between ideal normative provisions and the reality of legal implementation in practice.

Hypothetically, this study starts from the assumption that the problem of determining criminal responsibility between drug users and dealers is caused by differences in interpretation of the elements of the crime, limited evidence, suboptimal integrated assessments, and the influence of social and institutional factors. Although Law Number 35 of 2009 concerning Narcotics has provided an adequate normative basis, its implementation in the field still faces obstacles that have the potential to create legal uncertainty and injustice for suspects.

This research has both academic and practical relevance. Academically, it is expected to enrich the body of criminal law knowledge, particularly regarding criminal liability and criminal policy in drug countermeasures. Practically, the research findings are expected to contribute to law enforcement in developing more objective standards to differentiate between users and dealers, thus ensuring consistent, proportional, and substantive justice-oriented law enforcement.

Based on all of the above descriptions, it can be emphasized that the problematic issue of determining criminal responsibility between users and dealers in narcotics crimes is a very important legal issue that requires in-depth study. This issue concerns the protection of human rights, the effectiveness of criminal policies, and the quality of law enforcement in Indonesia. Therefore, the study entitled "Legal Analysis of the Problem of Determining Criminal Responsibility between Users and Dealers in Narcotics Crimes (Study at the North Sumatra Regional Police)" is relevant to be conducted to provide scientific analysis and constructive recommendations for the development of the national criminal law system.

Method

This study employs a legal research method with a normative juridical approach supported by an empirical juridical approach. The normative juridical approach is used to examine and analyze legal norms governing criminal liability between users and dealers in narcotics crimes, with an emphasis on the study of relevant laws and regulations, legal principles, doctrines, and court decisions. Normative legal research essentially aims to examine law as a system of norms that regulate human behavior in society.

Meanwhile, an empirical juridical approach was used to determine how these legal provisions are applied in practice, particularly during the investigation phase at the North Sumatra Regional Police. This approach was conducted by gathering information through interviews with investigators from the Narcotics Investigation Directorate, legal practitioners, academics, and other parties with knowledge and experience in handling narcotics cases. By combining normative and empirical approaches, this research is expected to provide a comprehensive picture of the correspondence between applicable legal provisions (*das sollen*) and their implementation in practice (*das sein*).

The types of data used in this study consist of primary data and secondary data. Primary data were obtained directly from interviews with informants selected purposively based on their competence and involvement in handling narcotics cases. Secondary data were obtained through literature studies consisting of: Primary legal materials, namely: Law Number 35 of 2009 concerning Narcotics; Law Number 8 of 1981 concerning the Criminal Procedure Code; Law Number 1 of 2023 concerning the Criminal Code; Supreme Court Circular Letter Number 4 of 2010; Supreme Court Regulation Number 4 of 2014 (as long as relevant). Secondary legal materials, namely books, scientific journals, research results, and articles related to criminal law, criminal liability, and narcotics crimes. Tertiary legal materials, namely legal dictionaries, encyclopedias, and other supporting reference sources.

Results and Discussion

1. Legal Regulations Concerning Criminal Liability between Users and Dealers in Narcotics Crimes Based on Indonesian Positive Law

Criminal liability is one of the most fundamental concepts in criminal law because it serves as the basis for determining whether a person who commits an act prohibited by law can be punished. In Indonesian criminal law doctrine, punishment is not only based on proof that an act fulfills the elements of a crime, but must also be proven that the perpetrator has an element of fault, is able to be held responsible for his actions, and there is no justification or excuse that eliminates the criminal nature. This principle is known as the adage *geen straf zonder schuld*, which means there is no crime without fault. This concept emphasizes that criminal liability is the relationship between the act committed and the mental state of the perpetrator, so that every application of criminal law must be carried out carefully, objectively, and proportionally. In the context of narcotics crimes, this concept has a very important meaning because the difference in the status of the perpetrator as a user or dealer will directly determine the type of sanctions and legal approach applied.

In the Indonesian criminal law system, narcotics crimes have special characteristics because the law clearly differentiates between drug abusers or addicts and dealers and perpetrators of illicit drug trafficking. This distinction is not only terminological, but also has significant legal consequences for the form of criminal liability that will be applied. Abusers and addicts are principally viewed as individuals who, in addition to committing prohibited acts, are also in a state of dependency requiring medical and social treatment. Conversely, dealers are viewed as perpetrators who consciously and actively participate in illicit drug trafficking activities for the purpose of economic gain. Therefore, Indonesian positive law provides different treatment for these two categories as a form of implementing the principles of justice and proportionality in criminal law.

The primary legal basis governing narcotics in Indonesia is Law Number 35 of 2009 concerning Narcotics. This law was established to ensure the availability of narcotics for health and scientific purposes, prevent abuse, eradicate illicit trafficking, and ensure rehabilitation efforts for drug abusers and addicts. This objective is explicitly stated in

Article 4, which indicates that criminal law policy in the narcotics sector adopts a dual approach (double track system): a repressive approach through criminal sanctions against perpetrators of illicit trafficking and a rehabilitative approach for users who become dependent. This policy represents a form of modernization of criminal law that is not solely oriented towards retribution, but also emphasizes community protection and the rehabilitation of perpetrators.

Drug users are specifically regulated in Article 127 of Law Number 35 of 2009 concerning Narcotics. This article stipulates that any person who abuses narcotics for their own use can still be punished according to the class of narcotics used. However, this provision cannot be understood separately from Articles 54, 55, and 103, which expressly stipulate that addicts and victims of drug abuse are required to undergo medical and social rehabilitation, and judges are given the authority to determine rehabilitation measures. Article 127 paragraphs (2) and (3) even emphasize that judges must pay attention to these rehabilitation provisions. Thus, drug users in Indonesian positive law are viewed as perpetrators who, under certain conditions, are also victims of abuse, so that their handling is more directed at recovery than mere punishment.

Unlike users, drug dealers are actively involved in illicit trafficking, whether as sellers, buyers, intermediaries, couriers, distributors, or members of a larger network. These acts are regulated by Articles 111, 112, 114, and 115 of Law Number 35 of 2009 concerning Narcotics. The penalties imposed are very severe, including special minimum sentences, life imprisonment, and the death penalty under certain circumstances. The severity of these penalties demonstrates that Indonesian law views dealers as key actors who consciously seek profit from activities that seriously damage public health, undermine the younger generation, and threaten national security. Therefore, criminal liability for dealers places greater emphasis on deterrence and community protection.

From a criminal law perspective, determining whether someone is a user or a dealer must be done through an analysis of the objective and subjective elements of the crime. The objective element relates to the actual act committed, such as possessing, storing, controlling, selling, or delivering narcotics. The subjective element relates to the perpetrator's intent, knowledge, and purpose. A person found in possession of narcotics cannot automatically be categorized as a dealer if no evidence is found indicating an intent to distribute or sell the narcotics. Therefore, the evidentiary process must be carried out comprehensively and not solely based on the quantity of evidence, but must also consider the results of assessments, expert testimony, communication patterns, financial transactions, and the perpetrator's relationship to the illicit trafficking network.

The quality of evidence plays a crucial role in the application of criminal liability. In practice, differing interpretations of the terms "possession," "storage," and "control" often create difficulties in determining the perpetrator's status. It is not uncommon for users who possess narcotics solely for personal use to be prosecuted under the provisions commonly used against dealers, thereby losing their right to rehabilitation. Conversely, there are also

perpetrators who are actually involved in illicit trafficking but attempt to position themselves as users. This situation demonstrates that the evidentiary process must be conducted professionally, objectively, and based on strong evidence so that criminal liability can be applied appropriately and fairly.

The evidentiary system in narcotics cases remains subject to Law Number 8 of 1981 concerning the Criminal Procedure Code, specifically Article 183, which stipulates that a judge may only impose a sentence if there are at least two valid pieces of evidence and the judge is convinced that the defendant is truly guilty. This provision emphasizes that the classification of a person as a user or dealer must be based on legally valid evidence, not on the subjective assumptions or interpretations of law enforcement officials. Therefore, the application of criminal liability in narcotics cases must still respect the principles of due process of law, the presumption of innocence, and the protection of human rights.

Furthermore, Law Number 1 of 2023 concerning the Criminal Code reinforces the modern sentencing paradigm, which emphasizes a balance between legal certainty, justice, and expediency. In the context of narcotics crimes, this paradigm requires that punishment be carried out proportionally, taking into account the level of culpability of the perpetrator, the condition of dependency, and the social impact of their actions. This means that law enforcement should not be carried out mechanically but must consider the overall objectives of the law, including aspects of rehabilitation, social reintegration, and community protection. Thus, the Indonesian legal system already provides an adequate normative foundation for appropriately distinguishing between users and dealers.

Based on the above description, it can be concluded that the legal provisions regarding criminal liability between users and dealers in narcotics crimes are comprehensively and systematically regulated in Indonesian positive law. Users and addicts are provided with rehabilitation as a form of protection and recovery, while dealers and illicit traffickers are subject to severe criminal sanctions as part of the narcotics eradication policy. Therefore, there is no legal vacuum. The main problem lies in how law enforcement officers apply these norms consistently and objectively so that the determination of criminal liability truly reflects the principles of justice, legal certainty, and expediency.

2. Legal Problems in Determining Criminal Responsibility between Users and Dealers in Narcotics Crimes at the Investigation Stage at the North Sumatra Regional Police

The legal issues in determining criminal responsibility between users and dealers in narcotics crimes are the core issue directly related to the second research question. The issue in question lies not in the existence or absence of a legal basis, but rather in the difficulty of applying norms in investigative practice. Normatively, Law Number 35 of 2009 concerning Narcotics has clearly distinguished between abusers, addicts, victims of abuse, couriers, dealers, and drug lords. However, in investigative practice at the North Sumatra Regional Police, determining whether someone should be held criminally responsible as a user entitled

to rehabilitation or as a dealer who must be subject to severe penalties often gives rise to legal debate. This difference in classification significantly determines the direction of the legal process, the types of articles applied, and the form of sanctions that will be imposed on the suspect.

The first legal problem lies in the broad interpretation of the elements of "possession," "storage," and "control" as stipulated in Article 111 and Article 112 of Law Number 35 of 2009 concerning Narcotics. In practice, these three elements are often used as the basis for the application of articles with very severe criminal penalties, even though the facts found do not necessarily indicate an intention to distribute narcotics. A user who stores narcotics for personal consumption can be subject to the same articles as someone who actively distributes them. This condition creates legal uncertainty because the line between personal use and possession for the purpose of distribution cannot always be easily distinguished. Therefore, the interpretation of these elements of the offense becomes a major legal issue in determining the form of criminal liability.

The second legal issue relates to the evidentiary process. In narcotics cases, determining user or dealer status cannot be based solely on the quantity of evidence but must be supported by other evidence such as forensic laboratory results, integrated assessments, expert testimony, digital communications, financial transactions, and witness statements. If available evidence is limited, investigators will have difficulty determining whether a suspect is solely using narcotics for personal use or is part of an illicit trafficking network. Therefore, the quality of the evidence is a crucial factor in determining criminal responsibility appropriately and proportionally.

The third legal problem is the suboptimal implementation of integrated assessments. Normatively, integrated assessments serve to assess the level of dependence, usage patterns, psychological condition, and involvement of suspects in drug trafficking. Assessment results should be an important basis for determining whether suspects are eligible for rehabilitation or processed as traffickers. However, in practice, assessments are not always conducted consistently due to limited resources, time, and inter-agency coordination. As a result, users who should receive rehabilitation are still processed as dealers, or vice versa.

The fourth legal issue relates to the application of investigators' discretion. During the investigation phase, investigators have extensive authority to determine the articles to be charged against suspects. While this authority is necessary to align the legal framework with the facts, it can also lead to differences in assessments between cases with similar characteristics. If discretion is not based on objective and measurable parameters, the potential for disparities in case handling increases. Therefore, the use of discretion must always be based on the principles of legality, objectivity, and accountability.

In the investigation process at the North Sumatra Regional Police, these problems are further complicated by North Sumatra's strategic location, frequently used as a drug entry and distribution route. Its geographic location, with access by sea, land, and air, means law enforcement officers must handle cases that are not only local in scope but also involve inter-

regional and even international networks. In such situations, investigators are faced with the need to quickly uncover larger networks, resulting in a focus on deepening the individual status of suspects as users or dealers.

Legal issues are also influenced by socioeconomic factors that shape the perpetrator's position within the drug network. Many perpetrators, initially users, are then recruited as couriers or intermediaries due to economic pressures. In such situations, the line between users and dealers becomes increasingly thin. Legally, couriers can still be held accountable as part of the illicit trafficking network, but sociologically, there are conditions that encourage their involvement. Therefore, determining criminal responsibility must carefully consider the legal facts and the social context underlying the act.

Furthermore, the integrity and professionalism of law enforcement officers are crucial factors in addressing these legal challenges. Investigating narcotics crimes requires technical expertise, a thorough understanding of the law, and a commitment to maintaining objectivity. Mistakes in assessing evidence or applying criminal law can result in users losing their right to rehabilitation or, conversely, preventing traffickers from being properly accounted for. Therefore, improving human resource capacity and internal oversight is a crucial need.

From a criminal procedural law perspective, the entire process of determining user or dealer status must remain guided by the principles of due process of law, the presumption of innocence, and the protection of human rights. Every investigator's decision must be based on valid evidence and objective legal analysis, not on mere suspicion or irresponsible considerations. This approach is crucial to ensure that criminal accountability truly reflects the perpetrator's role and level of culpability and prevents injustice in the law enforcement process.

Based on the above description, it can be concluded that the legal problems in determining criminal responsibility between users and dealers during the investigation stage at the North Sumatra Regional Police primarily lie in the interpretation of the elements of the offense, the quality of evidence, the implementation of integrated assessments, the use of investigator discretion, and the influence of social and institutional factors. Therefore, to realize fair and proportional law enforcement, more consistent guidelines are needed, improved quality of evidence, strengthened inter-agency coordination, and a commitment to placing users and dealers according to their respective roles and levels of culpability.

Conclusion

1. Legal provisions regarding criminal liability between users and dealers in narcotics crimes under Indonesian positive law have been comprehensively and systematically regulated. These provisions are primarily found in Law Number 35 of 2009 concerning Narcotics, the Criminal Procedure Code, and Law Number 1 of 2023 concerning the Criminal Code. Indonesian positive law clearly distinguishes between users or abusers, who under certain conditions are considered victims of abuse and are entitled to medical and social rehabilitation, and dealers and perpetrators of illicit trafficking who are

subject to severe criminal sanctions in the form of long-term imprisonment, life imprisonment, or even the death penalty. Thus, normatively, there is no legal vacuum in determining criminal liability between users and dealers. The main issue lies in the consistency of the application of norms and the accuracy of the evidence so that the classification of perpetrators truly corresponds to the role, level of culpability, and the purpose of punishment that balances legal certainty, justice, and expediency.

2. The legal problems in determining criminal responsibility between users and dealers in narcotics crimes during the investigation stage at the North Sumatra Regional Police are influenced by various normative and practical factors. These problems primarily lie in the broad interpretation of the elements of "possession," "storage," and "control," limited evidence, the less than optimal implementation of integrated assessments, the use of investigators' discretion, and the influence of socio-economic factors, community legal culture, and the integrity of law enforcement officers. These conditions still result in the possibility that users who should receive rehabilitation are processed as dealers, or conversely, perpetrators with greater involvement in illicit trafficking networks have not been properly qualified. Therefore, more consistent implementation guidelines are needed, improved quality of evidence, strengthened inter-agency coordination, and increased professionalism of officers so that narcotics law enforcement at the North Sumatra Regional Police can be carried out objectively, proportionally, and fairly.

Declarations

Statement on the Use of Artificial Intelligence. Declares whether or not AI was used in the article.

Author contribution statement. Describes the contribution of each author to the conduct of the research and the preparation of the article, in accordance with the conventions of the specific field of study.

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