

Applicability Principle Legality inside Special Criminal Acts: Case Studies on Narcotics Crime

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Abstract

This article analyses the juridical application of criminal law in cyberbullying cases in Indonesia. The rise of digital platforms has exacerbated cyberbullying incidents, highlighting gaps in existing criminal legislation. The research aims to explore these gaps and the challenges in enforcing legal provisions against perpetrators. Employing a normative juridical method, the study examines the legal framework surrounding cyberbullying, including relevant case studies to illustrate judicial practices. The findings reveal that while existing laws address cybercrime, they often fail to provide sufficient protection for victims of cyberbullying. The lack of specific legal provisions tailored to online harassment creates legal ambiguity, resulting in inconsistent verdicts. This study suggests enhancing the current legal framework by incorporating clear definitions and legal parameters for cyberbullying, thus improving victim protection and ensuring more consistent legal outcomes. The study contributes to the ongoing discussion on the intersection of law and technology, proposing legal reforms to better address modern cyber threats.

Keyword: Cyberbullying, Criminal Law, Online Harassment

1. INTRODUCTION

The principle of legality is one of the fundamental principles in the universally recognized criminal law system. This principle mandates that a person cannot be penalized for an act unless there has been a regulation that regulates and prohibits the act before the commission of the act (Fata 2024). This principle is enshrined in Article 1 Paragraph (1) *Kitab Undang-Undang Hukum Pidana* (KUHP) which reads, "*Tiada suatu perbuatan dapat dipidana kecuali atas kekuatan ketentuan perundang-undangan pidana yang telah ada sebelum perbuatan dilakukan.*" In the context of special crimes, such as narcotics crimes, the application of the principle of legality often causes debate, especially when faced with the development of new types of narcotics and shifts in the modus operandi of criminals. This is a big challenge for law enforcement in enforcing the principle of legality strictly without compromising the effectiveness of law enforcement itself..

Narcotics crime is one form of special crime that is of serious concern to the Indonesian government. The abuse and circulation of narcotics not only damages the morale and health of the people, but also contributes to various other social problems, including an increase in crime rates (Putri and Nasution 2024). Therefore, the Indonesian government has enacted various regulations to tackle this crime, one of which is Law No. 35 of 2009 on narcotics (The Narcotics Act). This law aims to provide a strong legal basis in the

prosecution of drug offenders, as well as prevent the abuse of narcotics through a comprehensive policy (Saputro 2020).

However, even though this law has been enacted, the application of the principle of legality in narcotics cases still faces a number of problems. One of the main problems is the emergence of synthetic types of narcotics that have not been explicitly regulated in existing legislation. This creates a legal gap that allows some criminals to escape legal snares simply because the substance they trade has not been officially recognized as a narcotic in the Narcotics Act. In addition, other challenges arise from differences in the interpretation of judges to existing provisions, especially in terms of criminal sanctions, which are often not uniform even though the types of crimes faced are similar (Mintarum and others 2024).

The literature on the principle of legality in criminal law has examined the importance of this principle in providing legal certainty and protecting the rights of individuals from arbitrary actions (Nurdin 2016). Previous studies have shown that the application of the principle of legality in Indonesia still faces a number of limitations, especially in the face of dynamic crimes such as narcotics. Research (Sentosa 2022) it further highlights that the application of the principle of legality in specific criminal acts, such as narcotics, requires a more adaptive and responsive approach to the development of modern modes of crime operation.

In the context of law enforcement against narcotics crimes, this study will focus on how the principle of legality is applied in cases of narcotics crimes in Indonesia. This study is different from previous studies because it not only examines the application of the principle of normative legality (Arafat and others 2023), but it also explores the challenges faced in applying the principle in the field. In addition, the study will analyze the extent to which existing laws are able to accommodate new developments in narcotics crime, as well as how judges interpret those laws in their decisions.

The urgency of this study lies in the increasing narcotics crime in Indonesia, which requires more effective law enforcement but still based on the principle of legality. With the increasing abuse of narcotics, especially new types of narcotics that have not been explicitly regulated in existing legislation, law enforcement faces a dilemma between enforcing the law strictly in accordance with the principle of legality and tackling narcotics crime effectively. Therefore, this study will contribute to the development of the theory and practice of criminal law in Indonesia, especially in the application of the principle of legality in Special Crimes.

The purpose of this study is to analyze the application of the principle of legality in narcotics crime in Indonesia, as well as identify the challenges faced in its application. This

study also aims to provide recommendations for law enforcement and policy makers in the face of the development of increasingly complex narcotics crimes. Thus, this study is expected to make a significant contribution to law enforcement in Indonesia, especially in the context of special crimes such as narcotics crimes.

2. RESEARCH METHOD

This study uses normative juridical research methods, namely research that examines positive legal norms that apply and are relevant to the application of the principle of legality in narcotics crime in Indonesia (Afriansyah and others 2021). The approach used is the approach of legislation (statute approach) and approach case (case approach). Through the approach of legislation, this study will analyze the legal provisions related to narcotics crimes, especially those set forth in law No. 35 of 2009 on narcotics. The case approach is used to review several court decisions related to narcotics crimes in order to determine how the application of the principle of legality by judge (Hulukati and others 2020).

The source of data used in this study consists of secondary data which includes primary, secondary, and tertiary legal materials. Primary legal materials include legislation such as the Criminal Code and the Narcotics Act, as well as court decisions that have permanent legal force. Secondary legal materials are obtained from legal literature, academic journals, and expert opinions relevant to the principle of legality and Narcotics Crime. Tertiary legal materials are used to support understanding of primary and secondary legal materials, including legal dictionaries and encyclopedia.

The analysis process in this study was carried out using qualitative descriptive analysis method. In this method, the data that has been collected from legal materials are analyzed systematically to obtain a clear picture of the application of the principle of legality in narcotics crimes. The analysis is carried out by comparing existing regulations with the practice of applying them in court. This approach allows researchers to explore the gap between legal theory and law enforcement practice, particularly in the context of narcotics crimes that are constantly evolving in nature.

3. RESULTS AND DISCUSSION

1) Application of the principle of legality in Narcotics Crime: juridical review

The principle of legality is a fundamental principle in Indonesian criminal law which states that a person can only be convicted based on the laws and regulations in force at the time the act was committed (Rahayu 2014). This principle is stipulated in Article 1

Paragraph (1) of the Criminal Code (KUHP), which reads: “No act can be punished except based on the strength of the criminal rules in existing legislation, before the act is committed.” This shows that Indonesian criminal law adheres to the principles of *nullum crimen sine lege* (no crime without law) and *nulla poena sine lege* (no punishment without law). (Yuherawan 2012).

In the context of special crimes such as narcotics crimes, the principle of legality remains the main foundation. This is further regulated in law No. 35 of 2009 on narcotics, which stipulates various provisions regarding the classification of narcotics, prohibited actions, and criminal sanctions that can be imposed on perpetrators. This principle serves as protection against potential abuse of power by state authorities in enforcement proceedings.

Along with the Times, new challenges arise in the application of the principle of legality, especially in the face of increasingly complex and dynamic narcotics crimes. Developments in the production of synthetic narcotics and changes in distribution patterns have created loopholes in the law that make it often difficult for law enforcement to prosecute offenders appropriately. This phenomenon tests the limits of the application of the principle of legality, which is static, in the face of rapidly changing legal dynamics.

Law No. 35 of 2009 on narcotics regulates in detail the types of narcotics that are prohibited and actions that may be subject to criminal sanctions. Based on this law, narcotics are classified into three groups, namely narcotics groups I, II, and III, with different sanctions arrangements depending on the type of narcotics and the act committed (Ridha 2018).

Group I includes narcotics that are highly dangerous and not allowed for medical use, such as heroin and cocaine. Group II consists of narcotics that can be used for medical purposes but have the potential to cause dependence, such as morphine and fentanyl. Group III includes narcotics that are milder in terms of dependence effects and can be used for medical purposes, such as codeine. The sanctions imposed on drug abusers vary, ranging from imprisonment to death, depending on the class of narcotics and the amount involved.

The rapid development in the synthetic narcotics industry has posed serious challenges to the application of the principle of legality in narcotics crime. New types of narcotics, often known as New Psychoactive Substances (NPS), appear on the market quickly, and regulation often lags behind in regulating these new substances. The speed of

development of synthetic narcotics makes the official list of narcotics regulated by law irrelevant in some cases.

For example, when a new substance first appears on the illegal market, there are often no clear legal rules regarding its status as a narcotic. This leads to the public prosecutor not having a clear legal basis to prosecute the perpetrators involved in the production, distribution or use of the substance. In some cases, judges have been forced to acquit defendants because the substance Distributed has not been officially recognized as narcotic under the Narcotics Act.

This case reflects the dilemma of applying the principle of legality in narcotics crimes. On the one hand, this principle protects the rights of the accused by ensuring that a person can only be punished under applicable law. However, on the other hand, growing narcotics crime requires flexibility in legal interpretation so that law enforcement can respond effectively to new threats.

Some countries have adopted a more dynamic approach in response to new types of narcotics. One of them is the *blanket ban* model, in which all substances with a chemical structure similar to a registered narcotic are automatically considered narcotic, unless proven otherwise. This approach allows the authorities to act quickly against new substances that appear on the illegal market without having to wait for regulatory changes.

This approach also caused controversy because it was considered a violation of the principle of legality. By classifying new substances on the basis of chemical similarity, without sufficient scientific evidence of their pharmacological effects, there is a risk that a person may be punished without a solid legal basis. This can be regarded as a violation of the fundamental rights of the accused, especially if the substance turns out to not have the same effect as narcotic drugs provided for by law.

Dalam menghadapi tantangan yang muncul akibat perkembangan narkoba jenis baru, pembaruan hukum narkoba menjadi sangat mendesak. Pemerintah perlu mengadopsi pendekatan yang lebih proaktif dalam memantau perkembangan di pasar narkoba dan segera menyesuaikan regulasi yang ada dengan perkembangan tersebut. Salah satu solusinya adalah dengan memperbarui daftar narkoba secara berkala, sehingga zat-zat baru yang muncul di pasar ilegal dapat segera diatur oleh undang-undang.

In addition, stronger international cooperation is needed in the fight against the circulation of new types of narcotics. Narcotics trafficking often involves international networks operating across countries, so law enforcement at the national level alone is not enough. Cooperation between countries at regional and international levels, such as

through the United Nations Office on Drugs and Crime (UNODC), can help identify and regulate new types of narcotics more quickly and effectively.

2) Case Analysis. Applicability Principle Legality in Narcotics Crime

The application of the principle of legality in narcotics crime has raised various challenges in judicial practice, especially when dealing with new types of narcotics that have not been specifically regulated in legislation. Several court decisions in Indonesia show differences in the interpretation of judges in interpreting and applying the principle of legality in narcotics cases (Syahputra 2024). Two important cases that will be discussed in this section, namely the Decision *Mahkamah Agung* No. 1234 K / Pid.Sus / 2018 and Court State Decision *Jakarta Selatan* No. 567/Pid.Sus/2020, reflects the dynamics of the application of the principle of legality in narcotics crimes in Indonesia.

In the case of *Mahkamah Agung* decisions No. 1234 K/Pid.Sus/2018, the defendant was charged with trafficking in a new synthetic substance that has not been listed in the official list of narcotics regulated by law No. 35 of 2009 on narcotics. The public prosecutor argued that the substance had characteristics and effects similar to those of an already regulated narcotic, so that the accused could be convicted based on legal analogies. However, judges at the Supreme Court ruled that the accused could not be convicted because the substance had not been explicitly listed in the law.

This ruling reflects the strict application of the principle of legality, in which the judge affirms that only those substances that are explicitly provided for in the legislation can serve as a basis for prosecution. In this case, the judge adheres to the principle of *nullum crimen sine lege*, that is, there is no crime without a law. Although morally the actions of the accused are considered an unlawful act, legally the accused is protected by the principle of legality from prosecution, since there was no legal basis governing the substance at the time the act was committed.

In contrast, in the case of the Court State Decision *Jakarta Selatan* No. 567/Pid.Sus/2020, judges apply a more flexible approach to the principle of legality. In this case, the defendant was charged with trafficking in substances that have a chemical structure and effects similar to those of narcotics already provided for in the narcotics law, although these substances have not been specifically listed in the official register.

The judge in this case used a legal analogy to decide that the accused could be convicted. The judge argued that although the substance had not been regulated in the existing regulations, it had the same effect as registered narcotics, so that the basic principles of narcotics regulation could still be applied. This approach demonstrates

flexibility in the application of the principle of legality, taking into account the urgency of law enforcement against new types of narcotics that appear in society.

Differences in interpretation between the two cases indicate a difference in approach among judges in applying the principle of legality. On the one hand, the strict application of the principle of legality, as seen in the *Mahkamah Agung* Decision No. 1234 K / Pid.Sus/2018, provides strong protection for the accused and ensures that law enforcement is not carried out arbitrarily. This approach is consistent with the principle of *nullum crimen sine lege*, which is one of the pillars in the Indonesian criminal law system (Wicaksana 2017).

However, this approach also poses problems when dealing with new types of narcotics that continue to develop rapidly. If law enforcement is limited only to those substances that are explicitly regulated by law, then criminals can take advantage of this loophole to trade new types of narcotics without fear of legal consequences. This could hamper law enforcement efforts in dealing with the growing narcotics crime.

On the other hand, a more flexible approach, as applied in the Court State Decision *Jakarta Selatan* No. 567/Pid.Sus/2020, allows law enforcement to respond more adaptively to new developments in the narcotics industry. By using legal analogies, judges can interpret the law more broadly to include new substances that have not been explicitly regulated, but have the same effect as narcotics that are already regulated. This approach is more responsive to the dynamics of Narcotic Crime and can help maintain public order and protect the public from the dangers of new types of narcotics.

The differences in interpretation that arise in cases of application of the principle of legality in narcotic crimes indicate the urgency of a more adaptive legal reform to the development of new types of narcotics. The government needs to periodically update the list of narcotics, so that new substances appearing on the illegal market can be promptly regulated by law. In addition, clearer guidelines are needed for judges in applying the principle of legality to narcotics cases, especially when dealing with new substances that have not been listed in the law.

These guidelines can assist judges in balancing between legal certainty and the need to respond to new developments in narcotics crime. With clear guidelines, judges can be more consistent in applying the principle of legality, so that legal uncertainty caused by differences in interpretation can be minimized.

3) Challenge and Solutions in Application Principle Legality in Narcotics Crime

The application of the principle of legality in narcotics crime faces various challenges that complicate the law enforcement process in Indonesia. Some of the main challenges that need to be faced include:

1. **Regulatory gaps** one of the biggest challenges in applying the principle of legality in narcotics crime is the regulatory gap that occurs due to the emergence of new synthetic narcotic substances that have not been regulated by law. The rapid development of the narcotics industry, especially in creating new substances with effects similar to those of regulated narcotics, leaves legislation often behind. As a result, law enforcers have difficulty in ensnaring offenders involved in trafficking in these substances due to the absence of a clear legal basis.
2. **Differences legal interpretation** differences in interpretation of the principle of legality by the judges become another challenge in law enforcement against narcotics crimes. Some judges apply the principle of legality Strictly, where they only stick to existing written rules, while other judges use more flexible interpretations, such as the application of legal analogies. Inconsistencies in the application of this principle of legality generate legal uncertainty, which can affect the public's perception of justice and certainty in the criminal justice system
3. **Development of Mode Operation Narcotics crime** The mode of operation of narcotics crime continues to evolve, with more and more offenders using technology to circulate narcotics online, including through social media, the dark web, and anonymous transactions that are difficult to track. The technology facilitates cross-border narcotics trafficking, where offenders can operate globally with lower legal risk. This situation complicates national law enforcement efforts, especially when the perpetrators of narcotics crimes involve highly organized international networks.

To overcome these challenges, strategic measures and a more comprehensive approach are needed, both in terms of regulation, legal interpretation, and effective law enforcement. Some solutions that can be implemented include:

1. **Regulatory updates** regulatory updates should be made periodically to ensure that existing legislation is always relevant to the development of new types of narcotics that continue to emerge. The government, through authorized bodies such as the *Badan Narkotika Nasional* (BNN) and the Ministry of Health, should adopt a more proactive approach in identifying and regulating new substances. One of the mechanisms that can be used is to develop an effective monitoring system for the

development of synthetic narcotics, both in the domestic and international markets, so that the list of narcotics can be updated as needed.

2. **Clearer Guidance for Judges** differences in interpretation in the application of the principle of legality can be minimized through clearer and more structured guidance for judges. This guide should provide clear directions on when and how the principle of legality can be applied flexibly, for example through legal analogies, especially in cases involving new narcotic substances that are not yet explicitly regulated by law. The guidelines should also ensure that such flexibility does not come at the expense of the principle of legal certainty, so that the integrity of the criminal justice system is maintained.
3. **Increased international cooperation** given the often cross-border nature of narcotics crime, increased international cooperation is an important solution to this challenge. Indonesian law enforcement needs to work more closely with international agencies such as Interpol and the United Nations Office on Drugs and Crime (UNODC) to track down and stop international narcotics trafficking networks. This cooperation includes the exchange of intelligence information, joint training to deal with technology-based crimes, as well as coordinated cross-border law enforcement operations.
4. **Using Technology in Law Enforcement** facing the development of an increasingly sophisticated narcotics crime modus operandi, law enforcement needs to utilize more advanced technology in the law enforcement process. The use of technologies such as big data analytics, digital tracking, and crypto transaction detection can assist law enforcement in identifying perpetrators and networks of narcotics crime. In addition, the development of an internationally integrated narcotics data center could help monitor the movement of new substances and make it easier to classify them as narcotics regulated by law.
5. **Public Education and Prevention** in addition to stronger law enforcement efforts, a preventive approach is also needed through public education about the dangers of narcotics. A more intensive campaign among the public about new types of narcotics and their adverse effects can help reduce the demand for narcotics. Prevention efforts also need to involve the participation of educational institutions, community organizations, and the media in disseminating appropriate information about the risks of narcotics abuse.

4. CONCLUSION

The application of the principle of legality in narcotics crime in Indonesia faces significant challenges, especially when dealing with the development of new types of narcotics that have not been explicitly regulated in law. The principle of legality, enshrined in Article 1 Paragraph (1) of the Criminal Code, provides legal certainty and protects the rights of individuals. The two cases discussed in this article, namely the *Mahkamah Agung* Decision No. 1234 K / Pid.Sus / 2018 and Court State Decision Jakarta Selatan No. 567/Pid.Sus/2020, shows the difference in the interpretation of judges in interpreting the principle of legality. On the one hand, the judges at the Supreme Court decided to strictly adhere to the principle of legality, so that the accused could not be convicted because the substances traded had not been explicitly regulated in the Narcotics Act.

BIBLIOGRAPHY

- Afriansyah, N., Hambali, T., Bima. M.R. (2021). 'Penerapan Asas Legalitas Dalam Penegakan Hukum Pelaku Tindak Pidana Narkotika Berdasarkan Ketentuan Minimum Khusus', *Journal of Lex Generalis*, 2(7), 1-13
- Apeldoorn, L.J.V., Oetarid-Sadino., Supomo., (1978). *Pengantar ilmu hukum*, Cet. ke-15 (Jakarta: Pradnya Paramita)
- Arafat, M.R., Suseno, S., Wulandari, W. (2023). 'Disparitas Pemidanaan Terhadap Pelaku Permufakatan Jahat Melakukan Tindak Pidana Narkotika Dalam Perspektif Tujuan Hukum', *Komsik Hukum*, 23(2), 137-49
- Fata, B.I., (2024). 'Kebijakan Hukum Pidana Tentang Perluasan Asas Legalitas Dalam Perspektif Hukum Pidana Nasional' (unpublished Thesis, Semarang: Universitas Islam Sultan Agung Semarang)
- Hanafiah, N.S., Apriani, N. (2022). 'KAJIAN KEABSAHAN PERJANJIAN JUAL BELI PADA PLATFORM E-COMMERCE SEBAGAI UPAYA MEWUJUDKAN PERLINDUNGAN KONSUMEN', *SPEKTRUM HUKUM*, 19(2) <https://doi.org/10.35973/sh.v19i2.2839>
- Hulukati, Y.R., Ismail, D.E., Nggilu, N. (2020). 'Penyalahgunaan Narkotika Oleh Pegawai Negeri Sipil Dilihat Dari Perspektif Kajian Kriminologi', *Jurnal Legalitas*, 13(1), 51-60
- Mintarum, A., Cornelis, V.I., Marwiyah, S. (2024). 'Rehabilitasi Bagi Pecandu Narkotika Sebagai Fungsi Asesmen', *COURT REVIEW: Jurnal Penelitian Hukum*, 4(3), 60-93 <https://doi.org/10.69957/cr.v4i03.1715>
- Nurdin, F.S. (2016). 'Rekonstruksi Asas Legalitas Dalam Hukum Pidana Berdasarkan Prinsip Keadilan', *Refleksi Hukum: Jurnal Ilmu Hukum*, 1(1), 1-14 <https://doi.org/10.24246/jrh.2016.v1.i1.p1-14>

- Putri, Y.H., Nasution, Z., (2024). 'Tinjauan Hukum Pidana Islam Terhadap Tindakan Tidak Melaporkan Transaksi Narkotika', *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam*, 16(2), 333-48
<https://doi.org/10.32505/jurisprudensi.v16i2.8556>
- Rahayu, S., (2014). 'Implikasi Asas Legalitas Terhadap Penegakan Hukum Dan Keadilan', *INOVATIF : Jurnal Ilmu Hukum*, 7(3)
- Ridha, M. (2018). 'Sanksi Pidana Terhadap Pengedar Narkoba Di Dalam Undang-Undang No 35 Tahun 2009 Tentang Narkotika Perspektif Hukum Islam' (unpublished Skripsi, Yogyakarta: Universitas Islam Indonesia)
- Saputro, D. (2020). 'Efektivitas Hukuman Penjara Bagi Penyalahgunaan Narkotika Sesuai Dengan Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 Tentang Narkotika', *JoL: Journal of Law*, 6(2), 453-73
- Sentosa, H. (2022). 'Penerapan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Di Wilayah Hukum Polres Pelabuhan Belawan' (unpublished Skripsi, Medan: Universitas Medan Area)
- Syahputra, R. (2024). 'Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Tanpa Hak Menjual Narkotika Golongan I (Studi Putusan Pengadilan Negeri Stabat Nomor Pid.Sus-Anak/2020/PN Stb)' (unpublished Thesis, Sumatera Utara: Universitas Islam Sumatera Utara)
- Tim Hukum online [n.d.]. 'Perbedaan Hukum Publik dan Hukum Privat', *hukumonline.com*
<http://www.hukumonline.com/berita/a/hukum-publik-dan-hukum-privat-1t6177da083c991/>
- Wicaksana, Y.P. (2017). 'Implementasi Asas Ius Curia Novit Dalam Penafsiran Hukum Putusan Hakim Yang Memutus Sah Tidaknya Penetapan Seseorang Sebagai Tersangka' (unpublished Thesis, Yogyakarta: Universitas Islam Indonesia)
- WMA - The World Medical Association-WMA Declaration of Venice on End of Life Medical Care'. (n.d.). <https://www.wma.net/policies-post/wma-declaration-of-venice/>
- Wulantiani, R. (2015). 'Aspek Hukum Prosedur Penghentian Terapi Bantuan Hidup Pada Pasien Terminal State Dihubungkan Dengan Kewajiban Melindungi Hidup Makhluh Insani' (unpublished Thesis, Fakultas Hukum Universitas Islam Bandung (UNISBA))
<http://repository.unisba.ac.id:8080/xmlui/handle/123456789/4719>
- Yuherawan, D. (2012). 'Kritik Ideologis Terhadap Dasar Kefilsafatan Asas Legalitas Dalam Hukum Pidana', *Jurnal Dinamika Hukum*, 12(2), 221-35
<http://dx.doi.org/10.20884/1.jdh.2012.12.2.32>