



Criminal Liability for the Abuse of a New Type of Narcotics (Alpha Propylaminopenthiophenone) in Indonesia

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Abstract - With the rapid development of information technology, the types of Narcotics are increasing, one of which is Alpha Propylaminopenthiophenone, which is a new type of Narcotics that is not yet contained in statutory regulations, so there is a void in norms. Propylaminonepenthiophenone) can be held criminally responsible? 2. What are the arrangements for new types of narcotics users such as Alpha Propylaminonpentioneferenone in the future? The use of the method in this study is a type of normative legal research with a statutory regulatory approach, the source of data is through legislation which includes Law Number 35 of 2009 and the purpose of this study is to determine criminal liability for users of a new type of narcotics (alpha propylaminopenthiophenone). in Indonesia. The results of the study can be explained that Alpha Propylaminipenthiophenone has not been regulated in Indonesian Legislation and Users of these substances cannot be held criminally responsible because the Indonesian legal system adheres to the principle of legality, so with regard to this it is necessary to regulate (Alpha Propylaminonpenthiophenone) so that users can be held criminally responsible and should reform the Narcotics Law which states that all substances containing narcotic substances are considered narcotics.

Keywords: Criminal Liability, New Psychoactive Substance., Legality Principles.

VI. INTRODUCTION

In Indonesia, the problem of narcotics and psychotropics has increased due to the emergence of new addictive substances known as New Psychoactive Substances (NPS). To avoid legal action, the manufacture of NPS involves the chemical composition of substances covered by Law no. 35 of 2009 concerning Narcotics. The term drug is no longer a taboo

or new to society considering that there is so much news broadcast through television, newspapers and even the internet that the spread of drugs continues to increase significantly from year to year even though regulations regarding drug abuse have been established, but this cannot reduce the level of distribution and use of the drug [Adiwijaya, \(2019\)](#).

The abuse and distribution of these substances cannot be prosecuted by law. For example, Raffi Ahmad used 3,4-Methylenedioxymethcathinone or Methylone in an incident that occurred in 2014. There are no regulations governing these NPS substances. Interpretation is very necessary because of the development of the variety of narcotics so that legal needs and a sense of justice are also transformed in harmony with the norms prevailing in society, so in order to grant all demands so that they are in accordance with the various values that are developing and believed by the community concerned, [Adami Chazawi, \(2018\)](#).

In essence, the Narcotics Regulations state that this method of law enforcement can be applied by the Minister of Health. Mentioned in Article 6 Paragraph (3) explains regarding

"Provisions regarding changes to the classification of Narcotics as referred to in paragraph (2) are regulated by Ministerial Regulation"

With the case by artist Raffi Ahmad, news about the dangers of the methylole substance became a conversation among the public so that the government immediately included the substance in class 1 narcotics through a ministerial regulation in 2014.

On the official website of the National Narcotics Agency, the authors found that there are substances that resemble methadone because they are both derivatives of Chatinone, namely the Alpha Propylaminonpentiofenone substance which has not been regulated in laws and regulations. There are several similar studies from [Jitaksu Wahendra, \(2018\)](#) entitled "criminal responsibility for perpetrators of criminal acts of new types of narcotics abuse in Indonesia" where the results of his research show that the application of a crime against Raffi Ahmad who uses new types of drugs cannot be carried out fully considering this not contained in Indonesian legislation. The second is [Fazar Siallagan, \(2020\)](#) entitled "Criminal responsibility for perpetrators who abuse narcotics class I (not plants) weighing more than 5 grams" where the results of his research show that there are legal facts, it is very clear that Article 114 in the first alternative indictment is proven to be in accordance with BAP, but the judge had a different opinion so he decided to choose the second alternative indictment. Law enforcement should be in accordance with the principle "Fiat justitia ruat caelum" which means "Let justice be upheld, even though the sky will fall.

Based on the description above, the author is interested in examining the research in more depth and compiling it in a more structured, systematic manner into a thesis by raising the title "Criminal Responsibility Against Users of New Types of Narcotics (Alpha Propilaminonpentiofenone) in Indonesia"

So that the formulation of the problem can be found, namely: First, Can the Perpetrators of New Types of Narcotics Abuse (Alpha Propylaminonpentiofenone) be held criminally responsible? Second, how should regulation of new types of narcotics users such as (Alpha Propylaminonpentiofenone) be used in the future?

II. METHOD

This writing uses normative legal research methods by studying literature or secondary materials. So that normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in in concreto cases, legal systematics, level of synchronization, comparative law and legal history. Meanwhile, in writing this research, namely with a conceptual approach and statutory regulations. A normative research must of course use a statutory approach, because what will be examined are various legal regulations which are the focus as well as the central theme of a research.

This study uses 3 (three) sources of legal materials, including; Primary legal materials are legal materials that are authoritative. Secondary legal materials, namely legal materials that examine legal experts or books and journals, and tertiary legal materials, namely legal materials that complement and support primary and secondary legal materials that aim to provide understanding through digital means, namely the internet and dictionaries.

The technique used is the technique of collecting legal materials in this case systematically by sorting and sorting existing legal materials, in addition to reviewing laws and regulations.

If the legal materials that have a correlation with the problems that have been collected, then the next step is to process the legal materials using interpretation analysis which aims to get the answers that have been proposed from the existing problems. The descriptive system is used to compile research that has been selected so that it is arranged systematically.

III. RESULT AND DISCUSSION

Criminal Liability Against Users of New Types of Narcotics, namely the substance Alpha Propylaminonepentiofenone

Currently, in Indonesian criminal law the system of accountability uses the concept of the principle of legality in determining whether the act can be classified as an act that must be held accountable under criminal law or not. Criminal responsibility focuses on "Persons or Actors" which leads to the conviction of the perpetrator, in the event that the perpetrator completes the elements that have been described in the law.

We are familiar with the concept of liability as criminal responsibility, which from the point of view of legal philosophy is closely related to criminal acts/offences. It can be said that the act is a criminal act when there are rules that prohibit it, because the Indonesian legal system adheres to the principle of legality.

If an act is contrary to the rules, then you can be held accountable if the act is contained in a written rule. People who have the capacity for responsibility can be held accountable from the standpoint of the capacity for responsibility. Toerekenbaarheid or criminal known as accountability with the intention that the suspect or defendant can be held accountable or not [Andi Hamzah, \(1985\)](#).

As time goes by, new problems emerge in narcotics crimes which are difficult to prevent and become the biggest threat to this crime, in addition to covering the extent of narcotics distribution, plus the emergence of new methods, namely creating new narcotics which are not regulated in all regulations, one of which is the emergence of new narcotics, namely the type from chatinone derivatives which are actually old narcotics.

The existence of this derivative substance is very unexpected, the elements that can be dangerous from this substance are to make users feel addicted, hallucinations, depression, and others. With the effects caused by these substances, it is necessary to have clear regulations because in fact the consequences are more harmful to human health compared to pure narcotics.

The substance Aplha Propylaminonepenthiophenone is a derivative of chatinone and indeed cannot be said to be a narcotic, because it has not been included in the Narcotics Law or its attachments. This is of course contrary to the principle of legality so that users and distributors of these substances cannot be held criminally responsible because this is not a crime, this is closely related to the principle of legality.

Three (3) important meanings related to the principle of legality according to Moeljanto namely: First, someone who commits a criminal act cannot be said to be a crime, because if there are no rules then the act cannot be held criminally responsible, Second, an analogy cannot be used to determine whether the act is categorized as a criminal act or not. Third, in criminal law the regulation cannot be retroactive [Hiarij, \(2014\)](#).

Two (2) basic things contained in the principle of legality, namely First, a must be formulated in legislation, and the two regulations must exist before the occurrence of a crime. From the first meaning, it has two consequences, namely someone's actions that are not listed in a regulation which states that the act is a crime, so it cannot be punished, then there is a prohibition on the use of analogies to determine an act to be a crime based on the formulation in the law. And the consequence of the second meaning is that criminal law cannot apply retroactively, the meaning of retroactively in this case is that the regulations must exist before the act, if it is so then it can be formulated into a crime.

So that even though cathinone derivatives such as methylone are said to be a narcotic in the law, they do not include the substance Alpha Propylaminonthiophenone which is also said to be a narcotic because in the principle of legality an analogy is also not allowed.

With the existence of the principle of legality, it is difficult for law enforcement officials to catch perpetrators who use or distribute this New Psychoactive Substance, so that narcotics crimes are even more difficult to prevent and eradicate. Even though in fact the purpose of the principle of legality is not only to emphasize the existence of rules beforehand, but for these actions to be declared prohibited in a criminal law it is mandatory to explain clearly about the act and the criminal sanction, this is intended so that someone who intends to commit a criminal act knows in advance about the criminal threatened when the person did. However, in narcotics crimes, where the modus operandi is high on the

principle of legality, it actually becomes an obstacle to criminal prosecution, so that problems arise in enforcement so that it is in accordance with the objectives of a regulation.

This is actually an urgency for narcotics crime because if things like this often happen, there will be more users and distribution of these new narcotics, and of course it will have a bad impact on society and the country. The impact on society in terms of health, economy, socio-culture will be even more obvious with the consequences that will be caused by the consumption of the New Psychoactive Substance.

What concerns the author about Alpha Propylaminonothiophenone is that this substance has been classified as NPS since 2021 by the National Narcotics Agency, and has been declared a dangerous substance derived from chatinone, while the last change in narcotics classification was carried out in 2022, this is of course a big question why the government established The law does not include this NPS in the annex to the narcotics law. If a situation like this continues to occur, it is possible that the use and distribution of this kind of substance is increasingly widespread because the government is considered negligent and not serious, it could even become a public assumption that the government is not compact in dealing with problems and handling them, moreover colliding with the concept of Indonesian law which uphold the principle of legality.

Arrangements for new types of Narcotics Users such as (Alpha Propylaminopentioneferenone) in the future

Narcotic and psychotropic substances were previously used for medicinal purposes, and with advances in technology and development of knowledge, especially in drug technology, now certain types of narcotics can be used for purposes other than medication, narcotic substances are becoming dangerous and may even cause the extinction of entire generations of humans. Therefore, there must be an Arrangement for Availability of Narcotics and certain types of Narcotics with the aim of preventing the use and distribution of Narcotics [Soedjono, \(1977\)](#).

With the different uses of narcotics, on the one hand as medicinal purposes and on the other hand they are dangerous substances that can threaten human extinction, therefore it is necessary to have clear and firm rules to regulate the availability and grouping of narcotics into predetermined types according to the elements which is sometimes in it. Therefore, narcotics are divided into 3 types or groups, and based on the method of manufacture, narcotics are divided into 3 types, namely natural narcotics, semi-synthetic narcotics and synthetic narcotics.

Transnational in nature, with a high modus operandi, sophisticated technology, and supported by a wide network of organizations, narcotics crimes have claimed many lives, especially among young people. The narcotics crime network spreads from year to year, undermines the roots of human existence, and is difficult to eradicate and its presence is difficult to track because it does not recognize national boundaries and its distribution is everywhere [Hari Sasangka, \(2003\)](#).

All parts of the world are now affected by the spread of illegal drugs. The development of narcotics is greatly assisted by the sophistication, ease and accessibility of transportation and technology. One of the ways that can simplify the process of distributing narcotics is the use of increasingly sophisticated communication tools, which can be used anytime and anywhere. It is very easy and simple to commit this crime, especially with the help of the internet. Even though the government has made many efforts to end drug-related crime, it is still difficult to maintain control of these illegal drugs.

The difficulty of eradicating and preventing this crime lies not only in this in how it is distributed, but with the development of science it also lies in the special method used by narcotics offenders, namely by modifying the chemical structure of the banned substances so that they will form new narcotics which appear to be not narcotics because there are no rules even though effects and consequences can be more dangerous than narcotics, the substance is named New Psychoactive Substance (NPS)

To avoid law enforcement, New Psychoactive Substances (NPS) emerged such as Alpha Propylaminopenthiophenone among the public for consumption and distribution.

The only NPS category that has not been officially recognized through a ministerial regulation is the substance Propylaminopenthiophenone, which is a Cathinone derivative substance which has been regulated in regulations.

Cathinone is a narcotic that has long been included in narcotics regulations, and synthetic cathinones such as Alpha Propylaminopenthiophenone have pharmacological effects and are potentially hazardous to health far from their original substance.

Substances that have not been categorized as narcotics in a regulation cannot be called narcotics, and cannot be held criminally responsible because the legal system in Indonesia adheres to a very, very well-known principle, namely the principle of legality, which states that no act can be punished unless there are regulations that regulate it. This principle is stated in article 1 paragraph (1) of the Criminal Code. The existence of the principle of legality, namely that it has a very visible weakness, even though the use and distribution of New Psychoactive Substance, these actions cannot be criminally accounted for. This will make people more courageous to do it.

The rapidity and the many modes of the spread of New Psychoactive Substance among the public have made it deemed that narcotics regulations cannot be a tool or means to prevent activities in their use and distribution.

Cases of narcotics use will not stop only in the case that ensnare the newest artist Raffi Ahmad but this still happens frequently, usually this New Psychoactive substance comes from abroad, therefore this narcotics crime is declared a transnational crime. With the danger of the effects that will be caused to the state and society, law enforcement officials and the government in charge of making laws should pay more attention to the problems that arise, so that with this legal vacuum, the perpetrators will be more courageous to use and distribute substances. This new type because they believe there will be no regulation that can entice them into legal channels. So the government should update the law to support the existence of the law.

The movement and development of this crime is very fast, making the government make various efforts to prevent it, one of which is like the current system, namely changes to the classification of narcotics regulated in the attachment to the minister of health. This aims to be able to include new types of narcotics at any time. Because revising the law cannot take a short time, but this solution still cannot stop the rate of development of this crime because there are always new substances that have not been touched by all regulations.

In fact, this narcotics crime already has more attention than other types of crime in Indonesia, as evidenced by the existence of a special institution, namely the National Narcotics Agency (BNN), a non-ministerial government agency whose main task is to prevent and eradicate drug abuse, illicit traffic, and narcotics precursors. However, with the delay in changing the regulations, this vacuum still occurs, because basically the BNN has included the Alpha substance in a new type of narcotics which are descendants of cathinone, but the substance has not been included in the annex to the narcotics law, even though the narcotics law was last revised in 2022 and Alpha substances have been included in the new Narcotics Classification by BNN in 2021, this is of course a big question regarding transparency and the Government's method of amending laws. So that regulation on narcotics in the future can be more able to prevent abuse or distribution and narcotics precursors. There is good cooperation between the National Narcotics Agency and the People's Legislative Council as the legislators who form the law must be implemented as well as possible because this concerns the next generation of Indonesia, with the rapid modus operandi of narcotics crimes, it is necessary to harmonize every law enforcement apparatus and other components to go hand in hand to prevent these crimes. and the prevention and eradication of this crime is really being carried out properly and seriously by carrying out various efforts faster than the rate of crime, so that there is no song for NPS users and distributors to be free from the law.

CONCLUSION AND SUGGESTIONS

Based on the studies that have been described in this study, it can be concluded that regulation of the new type of narcotics Alpha Propilaminopentiofenone has not been regulated in all regulations in Indonesia, this has caused the perpetrators of using this substance to be held accountable because the Indonesian legal system recognizes the principle of legality. Requests for accountability for perpetrators of the use of these substances are criminally difficult to implement given that they are not contained in the laws and regulations that apply in Indonesia. Over time, the mode of narcotics crime has experienced significant developments, therefore the legal rules that apply in people's lives must be more clarified and firm, and can be faster than these crimes. With this leeway and vacuum, the legal function does not work properly, and the perpetrators of crimes cannot be criminalized because they adhere to the principle of legality, which is a very well-known principle in civil law countries.

By using the conclusions above, the authors can provide suggestions for the rampant occurrence of a crime, namely the use of a new psychoactive substance that has not been regulated in regulations, so the government must immediately make changes to the narcotics law and it will greatly facilitate law enforcement officials if there is an article in the narcotics law stating that all substances if it contains narcotic elements, it can be punished with the provisions of sanctions in the Narcotics Law so that there is no more abuse of narcotics and NPS users are free from criminal snares because there are no rules governing it, the government that makes laws must be more assertive in dealing with it through regulatory instruments that are made, Moreover, actually there is BNN which is actively looking for the existence of new types of narcotics in Indonesia which are dangerous, when BNN should have stated that the substance contains narcotic elements, users or distributors of these substances can subject to punishment, this is done in order to realize the goals of the Narcotics Law and the realization of an anti-narcotics generation.

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