



## Legal Vacuum in the Regulation of Unregistered New Narcotics Types and the Absence of Legislation

Iwansyah<sup>1\*</sup>, Zudan Arief Fakrulloh<sup>2</sup>

<sup>1-2</sup> Universitas Borobudur, Indonesia

Email : [iwansyahpermana77@gmail.com](mailto:iwansyahpermana77@gmail.com)<sup>1\*</sup>, [cclsis@yahoo.com](mailto:cclsis@yahoo.com)<sup>2</sup>

**Abstract.** *The study aims to analyze the legal gaps related to the regulation of new types of narcotics that have not been registered. This research employs a normative legal research method, which focuses on analyzing the existing legal provisions as stated in the relevant laws and regulations. The purpose is to examine how these legal frameworks address the emergence of new types of narcotics, especially those not yet registered in Indonesia. With the rapid development of synthetic drugs and other new narcotic substances, existing laws often struggle to keep up with emerging challenges. The normative legal research approach is particularly suitable for this study because it enables a critical examination of how the current legal system responds to these developments and whether it provides adequate legal tools to address such issues. Through this approach, the study will explore the gaps in existing positive law and assess how these legal voids impact the implementation of anti-drug policies and law enforcement in Indonesia. One key issue identified is the inability of current narcotics laws to effectively regulate or prevent the circulation of new, unregistered substances. This lack of legal recognition creates challenges for law enforcement agencies in controlling the distribution and use of such narcotics. Furthermore, the study will analyze the implications of these legal gaps on public health, law enforcement practices, and the overall effectiveness of anti-drug efforts in Indonesia. By identifying the shortcomings in the regulation of new narcotics types, the research aims to provide recommendations for improving legal frameworks and ensuring that laws evolve in tandem with emerging drug trends. Ultimately, this study contributes to enhancing the legal response to narcotic-related issues and supports the development of more effective drug control policies in Indonesia.*

**Keywords:** Drug Regulation, Indonesia, Law Enforcement, Legal Gaps, Narcotics

### 1 INTRODUCTION

Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause decreased or altered consciousness, loss of feeling, reduce or eliminate pain, and cause dependence, which can be categorized into several groups (Wattimena, 2022). In Indonesia, narcotics are not completely prohibited because they have many medical benefits, especially in medicine and health services. However, drug abuse poses a significant challenge due to its broad negative consequences, which affect psychosocial well-being, economic stability, social cohesion, cultural norms, national defense, and security (Prambana, 2020). During the global era, drug abuse has developed into a criminal act that has resulted in many deaths and has had a major and ongoing impact on humanity (Wattimena, 2022).

Initially, narcotics were used in the medical field to support treatment and improve the quality of health services. However, over time, drug abuse has gone beyond its medical applications and has become detrimental (Hakim, 2020). Consuming narcotics without proper supervision or compliance with applicable regulations can have adverse effects on users (Risqi, 2022). The resulting dependency can lead to addiction, which can gradually damage an individual's life, affecting their physical well-being, mental health, and social interactions

(Refeiatier, 2011). As a result, due to the significant risks associated with drug abuse, strict supervision and regulation are essential to maintain control over their use and prevent them from exceeding established limits.

Narcotics are divided into several types, namely natural, semi-synthetic, and synthetic narcotics. Natural narcotics are narcotics whose addictive substances are taken from plants (nature). Examples include marijuana, hashish, coca, and opium. Then, semi-synthetic narcotics are natural narcotics that are processed and their essence is taken so that they have stronger properties so that they can be used for medical purposes. Examples include morphine, codeine, heroin, and cocaine. Synthetic narcotics are narcotics made from chemicals. These narcotics are usually used for anesthesia and treatment for people who are addicted to drugs. Examples include Pethidine, Methadone, and Naltrexone (Partodiharjo, 2009).

The development of narcotics has reached a concerning point, not only becoming a domestic challenge but also internationally (Tuba, 2023). This phenomenon harms society, nation, and state. Along with advances in technology and the proliferation of information, new forms of narcotics have also emerged. These prohibited substances include narcotics whose types or compositions are registered or unregistered based on the provisions of Law Number 35 of 2009 concerning Narcotics.

The United Nations Office on Drugs and Crime (UNODC) defines new psychoactive substances (NPS) as substances that are abused either in pure form or in a form that has been dispersed in such a way that has the potential to be a threat to public health (Prambana, 2020). According to the European Monitoring Center for Drugs and Drug Addiction (EMCDDA), there are at least 3 types of new psychoactive substance (NPS) groups that are most often abused, namely synthetic cathinones, synthetic cannabinoids, and opioid groups. Synthetic cannabinoids have 134 types, including synthetic cathinones with 77 types including methylone. In addition to these 3 types, there are also several other types of new psychoactive substances (NPS) that are also often abused, for example, ketamine, gamma hydroxybutyrate (GHB), 1-benzylpiperazine (BZP), krokodil, as well as natural new psychoactive substances (NPS) such as salvia, khat, kratom (Lukman, 2021).

With the development of new types of narcotics entering and circulating in Indonesia, not all of these new types of narcotics are regulated by positive law in Indonesia. This results in a legal vacuum. This legal gap can be used by irresponsible individuals as a loophole to distribute narcotics that are not yet included in positive law in Indonesia.

## 2 METHOD

The research method used in this study is normative legal research with a statutory approach (Zainuddin, 2023). This journal focuses on the study of laws and regulations governing narcotics. This approach aims to analyze the relevance and application of existing legal provisions, as stated in the relevant laws, in order to understand how the law can respond to the development of new types of narcotics that have emerged in Indonesia. With this approach, this study will explore the gaps in existing positive law, and analyze how these legal gaps affect anti-drug policies and law enforcement in Indonesia.

## 3 RESULT AND DISCUSSION

### Identification of Legal Gaps related to New Types of Unregistered Narcotics

Along with the development of society, criminal acts, including drug abuse, have undergone significant changes. Cases of drug crimes show a stable increasing trend. It was recorded that in 2019, cases of drug abuse experienced a significant increase, namely by 0.03%. This increase was caused by the emergence of new types of narcotics, especially New Psychoactive Substances (NAPZA), which are not yet classified as narcotics based on Law Number 35 of 2009. In response to these developments, the government has proactively implemented the Prevention and Eradication of Narcotics Abuse and Illicit Trafficking (P4GN) program (Herindrasti, 2018).

The main objective of P4GN is to achieve a harmonious balance between efforts to reduce demand through prevention efforts and reduce supply through eradication efforts (Kartini, 2024).

The rampant circulation of narcotics has necessitated a revision of the existing legal framework to address the evolving nature of crime. The gap between societal progress and legal development often creates a legal gap, known as a legal vacuum. In the context of narcotics regulation, Law No. 35 of 2009 serves as the basic regulatory framework. However, given the increasing abuse of narcotics, it is imperative to consider updating this law to ensure its continued relevance and effectiveness in combating this ever-growing crime (Shadiq, 2017). The result of the legal vacuum related to narcotics regulation is the abuse of new types of narcotics. One example of a new type of narcotic that is being abused is ketamine. Ketamine, a drug in the health sector, has become the subject of widespread abuse among adolescents and adults due to its illegal distribution and smuggling. This rapid and widespread distribution has made it easy for many people to obtain it. Usually, ketamine is used as an illicit hallucinogenic substance. To possess ketamine, a person must have the necessary authority, especially a doctor

or pharmacist who is currently practicing their profession. These people must have valid documents and be equipped with a COA (Creative Of Analysis). In addition, ketamine is not permitted to be carried in large quantities by individuals (Angelita, 2022).

In the medical world, ketamine is a very effective treatment. However, due to its addictive nature, its use is often misused by irresponsible individuals. In the medical field, ketamine is usually given intravenously by injection or infusion to induce anesthesia during medical procedures such as surgery. In addition, ketamine is available in tablet, capsule, or liquid form, and can be inhaled. Although ketamine consumption can cause a dissociative state, characterized by a feeling of floating, the effects are generally short-lived (Rianti, 2024). However, prolonged or improper use of ketamine can have adverse psychological effects. Misuse of ketamine in combination with other drugs, such as benzodiazepines, barbiturates, and opiates, can be fatal. The odorless and tasteless nature of ketamine makes it very susceptible to abuse. People under the influence of ketamine can experience amnesia, which interferes with their ability to remember events during its effects (Risqi, 2022).

Unlike other anesthetics, ketamine has different characteristics. While other anesthetics can cause respiratory disorders as a side effect, ketamine's side effects mainly involve respiratory stimulation. In particular, the most prominent effect of ketamine is causing hallucinations. In addition, ketamine has analgesic properties, which act as a pain reliever, sedative, or reduce the level of consciousness. Furthermore, ketamine can cause amnesia or forgetfulness (Zainuddin, 2023).

If abused, the effects of ketamine are the same as narcotics, as defined in Article 1 of Law No. 35 of 2009, namely narcotics include substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause changes or decreased consciousness, reduce sensation, relieve pain, and cause dependence. Given the rampant drug abuse, it is critical for the Indonesian nation and state to address this problem, as well as the international community.

Long-term ketamine consumption can disrupt a person's psychological health. Ketamine can cause urinary tract problems, including difficulty holding urine and bloody urine accompanied by pain. In addition, ketamine can be fatal when combined with other drugs such as benzodiazepines, barbiturates, and opiates. Furthermore, consuming ketamine with alcohol can have negative impact on health. Ketamine is very popular among teenagers, who often use it during social gatherings. Its odorless nature and lack of taste when mixed into drinks contribute to its ease of abuse. Unfortunately, ketamine is also often abused to calm individuals who are intended for sexual assault. Under the influence of ketamine, victims may experience

a sense of helplessness and amnesia, which can interfere with their ability to remember the incident (Hutagalung, 2021).

In some cases, ketamine is abused as a narcotic. For example, in Blitar in 2020, a veterinarian was arrested for selling ketamine for illegal purposes. The veterinarian intended to sell ketamine as a substitute for other narcotics. As a result, the veterinarian was charged solely under Article 197 of Law No. 36 of 2009, which relates to the production and distribution of pharmaceutical preparations or devices without a permit. This crime carries a maximum penalty of fifteen years in prison and a fine of IDR 1,500,000,000.00 (one billion five hundred million rupiah) (Hakim, 2020).

Another prominent case related to ketamine abuse occurred in North Jakarta in 2021. In this case, the Soekarno-Hatta Airport Police arrested a Foreign National (WNA) who was found carrying a package containing 1,028 kilograms of ketamine. This case is a continuation of the previous case, where the WNA was charged under Article 197 of Law No. 36 of 2009 (Hakim, 2020).

Judging from the two examples of cases above, someone who abuses ketamine cannot be charged under the Narcotics Law, but can only be charged under Law No. 36 of 2009 concerning Health. If the perpetrator is a dealer, he can be charged under Law No. 36 of 2009 for distributing pharmaceutical preparations without a permit, but if the perpetrator is a user, they cannot be charged with any regulations because there are no regulations governing ketamine. Ketamine needs to be included in class II psychotropic drugs and class I narcotics, because based on article 153 letter b of Law no. 35 of 2009, class I and II psychotropic drugs are the same as class I narcotics (Puluhulawa, 2016). From several examples of cases above, it can be seen that there is a legal vacuum regarding new types of narcotics. Thus, law enforcement is less than optimal, which should have provided a deterrent effect on the perpetrators (Fatahilla, 2022). Cases of new types of narcotics like this will continue to occur, and usually these goods are obtained from abroad. So it is only right for law enforcement to be one step ahead in handling narcotics which are always developing and giving rise to new types (Delyanti, 2022). With several examples of cases above, Law No. 35 of 2009 is seen as unable to be a solution for law enforcement related to new types of narcotics that have not been registered.

In reality, if certain types of narcotics are not or have not been classified as narcotics based on Law No. 35 of 2009, then perpetrators of narcotics abuse cannot be charged with a crime. By these provisions, this is in line with the Principle of Legality of Criminal Law contained in Article 1 Number 1 of the Criminal Code which states that an act cannot be

threatened with a criminal offense before some laws and regulations regulate it first. As a result, there are weaknesses in the imposition of criminal penalties for narcotics abuse, especially the legal vacuum that exists in law enforcement officers (Situngkir, 2018).

### **Legal Efforts to Address Legal Voids Related to New Types of Unregistered Drugs**

To anticipate the use of new types of unregistered drugs, the National Narcotics Agency (BNN) has made efforts, such as reducing the demand for drugs in society. This is supported by the government by issuing Presidential Instruction (Inpres) Number 6 of 2018 concerning the National Action Plan for the Drug Prevention and Eradication Program and Illicit Trafficking (P4GN). P4GN is a comprehensive national strategy in Indonesia, addressing challenges related to narcotics from various perspectives, coordinated by the National Narcotics Agency (BNN), this program includes various stakeholders, including the government, law enforcement, the community, and the private sector. Some of the steps taken by P4GN are socialization, rehabilitation, increased supervision, and law enforcement. The main objective of P4GN is to create a drug-free environment and protect the community from the negative consequences associated with drug use (Kartini, 2024). In addition, there are things like making periodic laws and regulations related to narcotics, especially when new types of drugs are detected entering Indonesia, which can be a solution to overcome the legal vacuum related to new types of narcotics that have not been registered.

An example of a new law and regulation related to new types of narcotics is the issuance of the Minister of Health Regulation (Permenkes) No. 50 of 2018. Then, after that, Permenkes No. 44 of 2019 was issued, and Permenkes No. 50 of 2018 was officially declared invalid. In Permenkes No. 44 of 2019, it added class I narcotics to 175 types, whereas in the previous Permenkes, there were 161 types, and for classes II and III the number remained the same. The relationship between Permenkes No. 44 of 2019 and Law No. 35 of 2009 is that if someone abuses a new type of narcotics that has been registered, then that person can be sentenced according to the provisions contained in Law No. 35 of 2009 (Hakim, 2020).

In the judicial process, a legal vacuum can occur, especially in handling cases of abuse of new types of narcotics that have not been registered. Under the provisions of Article 50 paragraph (1) of Law No. 48 of 2009, it states that "In addition to containing the reasons and basis for the decision, a court decision must contain certain articles of the relevant laws and regulations or unwritten legal sources that are used as the basis for trying the case. In this regard, the judge's main responsibility is to ensure the existence and potential dangers related to the goods or drugs used by the defendant. To do this, the judge, legal advisor, or public prosecutor can work with narcotics experts or ask for assistance from the National Narcotics

Agency (BNN) and the Food and Drug Supervisory Agency (BPOM). If both agencies agree that the substance of abuse does not pose a significant risk, the defendant can be released, and the trial is closed. Conversely, if one or both agencies identify the substance as dangerous, the defendant fails to meet the legal requirements and is subject to criminal penalties (Hakim, 2020).

#### **4 CONCLUSION**

Narcotics have uses in the medical field, especially in treatment and health services. However, their misuse can have wide-ranging negative impacts, including psychological, social, economic, cultural, and national defense and security aspects. With the advancement of technology, various types of new narcotics or New Psychoactive Substances (NPS) have begun to emerge, where not all types have been regulated in applicable laws. This creates legal loopholes that can be exploited by irresponsible parties to distribute these prohibited substances. Therefore, stricter ongoing supervision is needed to prevent the circulation of new types of narcotics and protect the public from the negative impacts they cause. In addition, periodic regulatory updates, especially when new types of narcotics are detected entering Indonesia, are an essential solution in overcoming the legal vacuum related to unregistered narcotics.

#### **REFERENCES**

- Angelita, A. C. (2022). Kriminalisasi penggunaan ketamine sebagai narkotika berdasarkan Undang-Undang Nomor 35 Tahun 2009 tentang narkotika. *Jurnal Hukum Adigama*, 5(1), 1291-1314.
- Delyanti, S. A. (2022). Analisa yuridis bagi pelaku narkotika yang jenis narkobanya tidak terdaftar dalam Undang-Undang Narkotika. *Mahadi: Indonesia Journal of Law*, 1(1), 112-124.
- Fatahilla, K. R. (2022). Efektifitas pemidanaan dalam proses penegakan hukum tindak pidana penyalahgunaan narkotika. *Journal of Lex Generalis (JLG)*, 3(4), 743-757.
- Hakim, R. M. (2020). Penguatan hukum terhadap narkotika jenis-jenis baru yang belum terdaftar. *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum*, 6(1).
- Herindrasti, V. L. (2018). Drug-free ASEAN 2025: Tantangan Indonesia dalam penanggulangan penyalahgunaan narkotika. *Jurnal Hubungan Internasional*, 7(1), 19-33.
- Hutagalung, Y. F. (2021). Penanganan nyeri pascabedah menggunakan ketamin dosis rendah. *Jurnal Biomedik: JBM*, 13(2), 199-206.

- Kartini, K. U. (2024). Drugs are nation's enemy: BNN demanded to implement P4GN policy in reducing prevalence rate. *Devotion: Journal of Research and Community Service*, 5(5), 589-596.
- Lukman, G. A. (2021). Kasus narkoba di Indonesia dan upaya pencegahannya di kalangan remaja. *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)*, 2(3), 405-417.
- Partodiharjo, S. (2009). *Kenali narkoba dan musuhi penyalahgunaannya*. Jakarta, Indonesia: Esensi.
- Prambana, T. (2020). Penyidikan kasus penyalahgunaan narkotika jenis baru. *Jurnal Ilmu Kepolisian*, 14(1), 10-10.
- Puluhulawa, J. (2016). Reformulasi pengaturan aplikasi i-Doser sebagai narkotika digital. *Arena Hukum*, 9(3), 1-15.
- Refeiater, U. H. (2011). Penyalahgunaan narkoba. *Jurnal Health and Sport*, 2(1).
- Rianti, R. D. (2024). CASE REPORT: Efek penggunaan low dose ketamin 0, 5 mg IV terhadap kejadian post and PONV paska insersi LMA. *Jurnal Kesehatan Tambusai*, 5(3), 6078-6088.
- Risqi, D. M. (2022). Urgensi pengaturan ketamin dalam Undang-Undang Nomor 35 Tahun 2009 tentang narkotika. *Mimbar Keadilan*, 15(1), 11-26.
- Shadiq, G. F. (2017). Penegakan hukum terhadap tindak pidana narkotika new psychoactive substances berdasarkan Undang-Undang Nomor 35 Tahun 2009 tentang narkotika. *Jurnal Wawasan Yuridika*, 1(1), 35-53.
- Situngkir, D. A. (2018). Asas legalitas dalam hukum pidana nasional dan hukum pidana internasional. *Soumatara Law Review*, 1(1), 22-42.
- Tuba, S. H. (2023). Bahaya penyalahgunaan napza dan rokok: The dangers of illicit drugs and cigarette abuse. *Jurnal Pengabdian Masyarakat Bidang Sains dan Teknologi*, 2(1), 8-16.
- Wattimena, M. B. (2022). Penerapan ajaran turut serta dalam pertanggungjawaban pelaku tindak pidana narkotika. *TATOHI: Jurnal Ilmu Hukum*, 2(3), 262-271.
- Zainal, R. I. (2023). Peran ketamin pada nyeri di tingkat sel. *JAI (Jurnal Anestesiologi Indonesia)*, 15(1), 86-94.
- Zainuddin, M., &. (2023). Penggunaan metode yuridis normatif dalam membuktikan kebenaran pada penelitian hukum. *Smart Law Journal*, 2(2), 114-123.