
The Role of Law in Facing Asymmetric Warfare Through Illicit Drug Trafficking in Indonesia

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Abstract

Illicit drug trafficking is a global problem that spreads widely and causes extraordinary negative impacts. Illicit drug trafficking was used as asymmetric warfare. The UN Convention of 1961 on Narcotic Drugs and Psychotropic Substances sets the international standards for drug regulation, and in Indonesia it is governed by the Law No.35 of 2009 on Narcotics. This research uses qualitative analysis method, with data collection technique in the form of literature study. The purpose of this research is to analyze the role of law in asymmetric warfare through illicit drug trafficking. The results of this research shows that the role of law in asymmetric warfare through illicit drug trafficking is related to: first, drug eradication, law provides the legal basis for law enforcement to take action against illicit drug traffickers. Second, legal channel regulation, law can be used to regulate and control legal channels that are used to provide drugs needed for medical and research purposes. Third, international sanctions, law can be used to take action against countries or groups that are suspected of being involved in the drug trade. Fourth, rehabilitation and recovery, law can be used to provide legal basis for rehabilitation and recovery programs for drug victims, both individuals or society. However, as an asymmetric warfare, illegal drug trafficking is a complex issue that cannot be solved solely by relying on law. Cooperation between agencies and government, as well as community participation is needed to overcome it.

Keywords: *Role of Law; Asymmetric Warfare; Illicit Drug Trafficking.*

INTRODUCTION

The war that is currently happening no longer uses the conventional methods of warfare that prioritize military and weaponry. War now tends to be asymmetric in nature. The National Research Council defines asymmetric warfare as a model of warfare developed from unconventional thinking and outside of the rules of warfare, with a very wide spectrum of war that encompasses aspects of all aspects of war, which is a combination of the trigatra namely geography, demography, and natural resources and pancagatra namely ideology, politics, economy, social-culture and defense-security (Pranoto & Hendrajit, 2016). Asymmetric warfare targets have various aspects that can be done simultaneously or simultaneously with different intensities, with the aim of controlling the economy and controlling the natural resources of a country. The effects of asymmetric warfare are very devastating, in addition to complete paralysis for the nation and state, it also requires high costs and a long time for recovery.

Asymmetric warfare is conducted indirectly to influence power and exploit the weaknesses of the opponent by utilizing technology and societal instability. Examples include terrorism, weapons of mass destruction, organized transnational crime, cyber warfare and the illicit drug trafficking (Filomeno et al., 2018). Drugs are a real threat to every country, and all countries regulate and create laws related to the importation, manufacture, distribution, sale and use of various drugs. The illicit drug trafficking is increasingly worrying as they can form a

nexus with other crimes such as terrorism, which is commonly referred to as narco-terrorism and is particularly prominent in Colombia where drugs from Cannabis plants are sold to purchase weapons (Dwicahyono et al., 2021) and in Afghanistan, the Taliban finances their actions through the sale of opium (Cimeta, 2016). In Mexico, drug cartels are increasingly strengthening their armaments with commercial drones, using asymmetric war tactics similar to those used by terrorists and other non-state actors (Bryant, 2021). In Indonesia, the relationship between drug crimes and terrorism was revealed when Fadly Sadama, one of the leaders of a terrorist group directly linked to the Bali bombing perpetrator Imam Samudera, engaged in drug business. Then the proceeds from the drug business were used to buy weapons and finance robbery actions in Medan, North Sumatera and Aceh. The proceeds from the robberies were used to support the financing of activities related to the terrorist group Majelis Mujahidin Indonesia Timur and Majelis Mujahidin Indonesia Tengah (Akmalina et al., 2019).

Police General Inspector (Ret.) Bambang Abimanyu, former Secretary General of the National Narcotics Board in his book entitled "Perang Narkoba di Indonesia" reveals that the drug problem in Indonesia is a complex one, not just a crime ridden by business activities. Within the drug trade there is a hidden mission to conquer the sovereignty of a nation. So, the illicit drug trafficking is not only a business that earns a lot of profit, but also weakens a country (Abimanyu, 2019). This is something that Venezuela has also used, where the illicit drug trafficking is not only used for business that is economically profitable, but also used for asymmetric war purposes against the United States (Grantham & Arocha, 2022). In Indonesia, National Narcotic Board (BNN) in National Narcotics Board Regulation Number 4 of 2018 Concerning the Grand Design of the National Narcotics Board 2018-2045 states that illicit drug trafficking in Indonesia is an asymmetric war. In line with BNN, Abimanyu (2019) also states that the illicit drug trafficking is an asymmetric war that pits the attackers, namely drug syndicates, mafia, dealers and traffickers against the targeted countries. Drugs become a tool for asymmetric war by other countries that want to control Indonesia (Filomeno et al., 2018). The latest research by Tatara et al., (2022) revealed that the illicit drug trafficking in Indonesia is an asymmetric warfare. Based on the above explanation, this study aims to analyze the role of law in facing asymmetric war through illicit drug trafficking.

RESEARCH METHODS

This research uses qualitative method with descriptive approach. In qualitative research method, the researcher poses research questions that are answered through understanding, not through hypothesis, because the core of qualitative research is to understand a phenomenon, not to prove a phenomenon (Herdiansyah, 2011). Regarding the approach used in this research, Kenneth D. Bailey (2007) defines descriptive research as research that aims to provide a detailed picture of a phenomenon (to describe what is happening). The data collection technique used is from literature study. In literature study, there are at least four main characteristics that need to be considered by the writer, namely: first, that the writer or researcher directly faces the text or numerical data, not with direct knowledge from the field. Second, the library data is "ready to use" meaning the researcher does not directly go to the field because the researcher directly faces the existing data sources in the library. Third, that the library data is generally a secondary source, meaning the researcher obtains material or data from a second hand and not original data from first hand in the field. Fourth, that the condition of library data is not limited by space and time (Zed, 2014). According to Creswell (Creswell & Poth, 2018) a literature study is research that is conducted by examining qualitative

documents such as books, journals, newspapers, magazines, reports, and other documents that are relevant to the research. Based on the above, the data collection in this research is done by examining and/or exploring several journals, books, and documents (both in print and electronic form) as well as other data sources and/or information that are considered relevant to the research. The data analysis technique used in this research consists of several steps, namely data collection, data condensation, data presentation, and conclusion drawing (Miles et al., 2014).

RESULT AND DISCUSSION

Asymmetric Warfare Through Illicit Drug Trafficking

The National Research Council defines asymmetric warfare as a warfare model developed from an unconventional way of thinking, and outside of the existing rules of war, with a very wide spectrum of war and covering aspects of astagatra which is a combination of trigatra, that is geographical, demographic, and natural resources aspects, and pancagatra which is ideological, political, economic, social-cultural and defense-security aspects (Pranoto & Hendrajit, 2016). In Venezuela, the illegal drug trade is not only a profitable business, but also used as an asymmetric warfare against the United States (Grantham & Arocha, 2022). Illicit drug trafficking in Indonesia can be categorized as asymmetrical warfare that occurs between state actors and non-state actors (gangsters, mafias, criminal organization) or vice versa, where the traffickers arm themselves with firearms to fight against law enforcement. The impact of illicit drug trafficking includes various aspects of life and state in Indonesia such as demographic, economic, social-cultural and defense-security aspects (Tatara et al., 2022).

In terms of demographics, the impact of drug crimes results in the potential for a lost generation, considering the dangerous effects caused by drugs on mental health, as drugs can cause psychological disorders (Pusat Penelitian Data dan Informasi Badan Narkotika Nasional, 2019), physically it can cause lung, heart, stroke, cancer, HIV and Hepatitis (United Nations Office on Drugs and Crime, 2017), even death. According to data from the National Narcotics Board (Pusat Penelitian Data dan Informasi Badan Narkotika Nasional, 2017), deaths caused by drugs reach 11,071 people per year or 30 people per day. In terms of economy, the estimated economic loss to the country from illicit drug trafficking is 84.7 trillion per year, the loss is calculated from the amount of personal cost loss and social cost loss. Personal cost loss mostly used for the cost of drug consumption amounting to 77.42 trillion, while social cost loss mostly caused by deaths related to drugs is 7.27 trillion (Pusat Penelitian Data dan Informasi Badan Narkotika Nasional, 2017).

In terms of social-cultural aspects, illicit drug trafficking has a negative impact on the original culture of the nation. Many drug addicts and victims of drug abuse apply foreign cultures that are not in line with the personality of the Indonesian nation, resulting in social problems such as alcohol, drugs, gang fights, theft, gambling, and prostitution. In addition, drug addicts and victims of drug abuse are socially sanctioned by being avoided, hated and ostracized (Pusat Penelitian Data dan Informasi Badan Narkotika Nasional, 2022). In terms of security, the consequences of drug abuse can have an impact on the criminal behavior of its users. As a result, criminal behavior in Indonesia such as theft, robbery, rape is often caused by drug use by the perpetrators. They cannot think clearly, thus dared to do anything to buy drugs and used them. According to data from the National Narcotics Board, the prevalence of drug abuse in Indonesia reaches 1.95%, meaning about 3,662,646 people aged 15-64 years become drug addicts and victims of drug (Pusat Penelitian Data dan Informasi Badan Narkotika

Nasional, 2017). This greatly affects the Defense aspect, where the young generation of the nation's future who should participate in national defense efforts become weak due to drugs, they are not able to think logically, thus resulting in the weakness of national defense that has the concept of a defense system for all people.

Illicit drug trafficking is considered a form of asymmetric warfare because it has several characteristics similar to asymmetric war. Some of them are:

- a. Uneven strength: Illicit drug trafficking can be controlled by criminal groups that have much greater economic and military power than the government or security forces.
- b. Uneven targets: Illicit drug trafficking targets civilians, specifically vulnerable populations, including children and teenagers, while the government and security forces are not the main targets of this trade.
- c. Uneven techniques: Illicit drug trafficking uses uneven techniques such as propaganda, intimidation, and violence, while the government and security forces have to follow the rules in place.
- d. Detrimental impacts: Illicit drug trafficking causes severe detrimental impacts on society, such as physical and mental harm, violence, and crime.
- e. Highly Complex: Illicit drug trafficking is highly complex because it involves many parties and factors, such as criminal organizations, government, society, and socio-economic factors.

Therefore, a multidisciplinary approach and cooperation between agencies and countries must be applied to overcome it. Cooperation between agencies and government, as well as community participation is needed.

Laws related to Narcotics

Drugs, in this case narcotics, are actually substances that are needed for medical purposes such as anesthetic for patients undergoing surgery. Drugs are legal when used in accordance with applicable laws and regulations. Drugs are considered illegal when they are abused and traded outside of the laws and regulations and therefore their circulation is not controlled. The regulations that govern drugs are as follows:

1. Single Convention on Narcotic Drugs 1961

Fathurrohman in his book entitled "Wajah Kejahatan Narkoba di Indonesia" (2020) explains that the United Nations Single Convention on Narcotic Drug Convention 1961 resulted in a decision regarding the classification of dangerous substances or drugs by dividing them into four based on the level of danger (Harmfulness). In short, the classification of narcotics according to the 1961 single convention is as follows:

- a. The first group is substances with addictive properties that cause serious abuse risks. Control is highly strict, drugs that fall into this category include marijuana and its derivatives, cocaine, heroin, methadone, morphine, and opium.
- b. The second group is substances that are usually used for medical purposes and have the lowest risk of abuse. Control level for group two is less strict. Included in this category are codeine, dihydrocodeine, and propiram.
- c. The third group is substances or preparations of substances (codeine, dehydrocodeine, propiram) and substances or preparations of cocaine. The control level for this category is soft. According to WHO, these preparations do not pose a risk of abuse.
- d. The fourth group is the most dangerous substances, the control level for this category is very strict. Control measures include a total ban on production, manufacture, export and

import, trade, ownership or use of these drugs. Use is only allowed if for medical and scientific research. Included in this category are: marijuana, marijuana resin, and heroin

2. ASEAN Declaration of Principles to Combat The Abuse of Narcotic Drugs

This declaration was implemented in Manila, Philippines on June 26, 1976. The signing of this declaration was carried out by the Foreign Ministers of ASEAN countries. The contents of this declaration include:

- a. The organization of cooperation between ASEAN countries in efforts to combat drug abuse, which includes the exchange of information, education, research, combating illicit drug trafficking, and making laws related to drug eradication.
- b. Cooperation between national drug-related agencies in each member country with regional drug-related agencies, in this case, the Colombo Plan.
- c. Each member country is obliged to exchange information and experiences in the field of drug crime control, including research, the modus operandi of drug criminals, technical skills in drug eradication, education in society, prevention, treatment, and rehabilitation.

In order to carry out the convention, the ASEAN member countries each established a national Board that handles drug issues in their respective regions. These agencies will later work with other drug-related agencies in the ASEAN region in terms of drug control. This is one of the things that underlies the establishment of the National Narcotics Board in Indonesia.

3. The Narcotics Drug and Psychotropic Substance Law for Asean

The agreement on the imposition of punishment for drug trafficking activities agreed upon by ASEAN members (Sari & Putrawan, 2016) :

- a. Cultivating, processing, transporting, distributing, shipping, transferring, or forcing the abuse of narcotic drugs and psychotropic substances carries a minimum sentence of 5 years in prison and a maximum of 10 years and may also result in a fine.
- b. Possessing drugs for resale carries a minimum sentence of 10 years in prison and a maximum of an unlimited sentence.
- c. Producing, distributing, selling, importing, and exporting drugs carries a minimum sentence of 15 years in prison and a maximum of an unlimited sentence or death penalty.

4. Law No. 35 of 2009 on Narcotics

The United Nations Convention of 1961 has a major impact on how countries regulate drug laws. In Indonesia, the United Nations Convention of 1961 was adopted into Law Number 35 of 2009 on Narcotics. The law states that narcotics are classified into three groups:

- a. Group I narcotics (narcotics that can only be used for the development of scientific knowledge and technology and not used in therapy, and have a very high potential for addiction) Examples include marijuana, cocaine, morphine, opium, and others that are listed in the appendix of Law Number 35 of 2009 as Group I narcotics.
- b. Group II narcotics (narcotics that are used as a last resort and can be used in therapy, and have a high potential for addiction) Examples include petidine, benzethidine and others that are listed in Law Number 35 of 2009 as Group II narcotics.
- c. Group III narcotics (narcotics that are used for medical treatment and have a low potential for addiction) Examples include codeine and its derivatives and others that are listed in Law Number 35 of 2009 as Group III narcotics.

In addition to classifying narcotics into 3 groups, Law Number 35 of 2009 also regulates penalties for drug traffickers and dealers, as well as treatment for victims of drug abuse. Articles 111 to 126 of the law outline the legal provisions for drug traffickers and dealers. Penalties outlined in Law Number 35 of 2009 on Narcotics range from a minimum of 3 years in prison to the death penalty, with a minimum fine of IDR 400,000,000 (Four hundred million rupiahs) and a maximum fine of IDR 10,000,000,000 (Ten billion rupiahs). Law Number 35 of 2009 on Narcotics also lays out provisions for the treatment of victims of drug abuse. Article 54 stipulates that drug addicts and victims of drug abuse must undergo medical and social rehabilitation.

The role of law in facing asymmetric warfare through illicit drug trafficking

The role of law is a function that is embodied by the law itself in a particular legal problem. The legal problem discussed in this research is related to asymmetric warfare through the illicit drug trafficking that occurs in Indonesia. The legal regulations that govern the circulation of narcotics in Indonesia are Law Number 35 of 2009 on Narcotics. In this law, provisions have been established regarding the handling of narcotic crime. The handling regulated in Law Number 35 of 2009 is maximum criminal punishment for actors involved in the illicit drug trafficking, such as the mafia, drug lords, criminal groups, and dealers. Meanwhile, for drug addicts and victims of drug abuse, access to health services in the form of rehabilitation is provided to treat their addiction so that the demand for drugs decreases as addicts and victims of drug abuse recover.

Sections 111 to 126 of Law Number 35 of 2009 regulates legal provisions for drug dealers and traffickers. The punishment threats under UU No. 35 of 2009 on Narcotics consist of the lightest punishment of 3 years imprisonment and the heaviest punishment of death, with fines ranging from at least IDR 400,000,000 (four hundred million rupiah) to the highest fine of IDR 10,000,000,000 (ten billion rupiah). With the enforcement of the law in accordance with Law Number 35 of 2009, the circulation of drugs in Indonesia should decrease, considering that drug lords who are arrested will receive maximum punishment up to death penalty. This will serve as a deterrent effect on illicit drug traffickers in Indonesia. But the fact is, there are many cases where drug traffickers are still able to carry out their actions by controlling from within prison. As stated by the former head of the National Narcotics Board (BNN) Heru Winarko in an interview that 90% of drug trafficking is controlled from within prison (Taufiqurrahman, 2019). Even some major drug traffickers did not receive the maximum penalty of death (Badan Narkotika Nasional, 2017). This makes the illicit drug traffickers do not have a deterrent effect. Law enforcement is not running as it should, especially law enforcement is one of the effective ways in dealing with non-military threats such as the illicit drug trafficking faced by Indonesia as stated in the Indonesian Defense White Paper (Kementerian Pertahanan RI, 2015). Supply reducing methods with law enforcement should be effective in tackling drug crimes if it is not tainted by corrupt behavior of law enforcement officials.

In addition to regulating efforts to eradicate drugs or supply reducing, Law Number 35 of 2009 on Narcotics also regulates the handling of drug addiction victims. In Article 54, it is explained that drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation. By carrying out treatment, in this case rehabilitation for drug addicts and victims, it is hoped to reduce the level of demand for drugs illegally, in accordance with the objectives of Law Number 35 of 2009. This is in line with the opinion of Commissioner General of Police (Ret.) Anang Iskandar, who served as the Head of the National Narcotics Board, who said that imprisonment for drug users is contrary to Law Number 35 of 2009 on Narcotics, because the special Narcotics Law has removed or does not

use imprisonment sanctions for drug users, instead they will undergo rehabilitation and rehabilitation is the main punishment, just like imprisonment (Iskandar, 2020). In fact, 70 percent of prisons are inhabited by drug criminal actors, including drug addicts and drug users, so the BNN proposed for drug addicts to be rehabilitated, not imprisoned in accordance with the report of UNODC in the World Drug Report 2011 which emphasizes that law enforcement to reduce drug trafficking (Supply Reduction) must be accompanied by policies to reduce drug demand (Demand reduction) (Badan Narkotika Nasional, 2021).

Basically, Law Number 35 of 2009 on Narcotics, which is a legal instrument in addressing the problem of drugs, already has clear regulations regarding criminal sanctions for actors involved in the illicit drug trafficking such as dealers and traffickers, by providing punishments up to the maximum penalty of death. In addition, for drug addicts and victims of drug abuse, access to health services is provided to treat their addiction through rehabilitation and rehabilitation itself is a form of punishment similar to imprisonment. However, in practice, many law enforcement officials do not enforce punishments in accordance with the applicable laws and regulations.

In asymmetric warfare through the illicit drug trafficking, the role of law can be described as follows:

- a. Drug eradication: Law can be used to create laws that regulate drug eradication and provide a legal basis for taking action against actors in the illicit drug trafficking.
- b. Regulation of legal channels: Law can be used to regulate and control legal channels used to provide drugs needed for medical and research purposes. This can make it difficult for drug traffickers to provide illegal drugs to the market.
- c. International sanctions: Law can be used to take action against countries or groups suspected of involvement in drug trafficking. Countries suspected of being a source or transit point for drugs can be diplomatically isolated or subject to economic sanctions by other countries.

Rehabilitation and recovery: Law can be used to provide legal basis for rehabilitation and recovery programs for drug victims, both individuals or communities. As an asymmetric warfare, illicit drug trafficking is a complex problem and cannot be resolved by relying on law alone. Cooperation among institutions and governments, as well as public participation is needed to address it.

CONCLUSION

Therefore, a multidisciplinary approach and cooperation between agencies and countries must be applied to overcome it. Cooperation between agencies and government, as well as community participation is needed. In asymmetric war through illegal drug trafficking, the role of law can be described as follows:

- a. Drug eradication: Law can be used to create laws regulating drug eradication and provide legal basis for action against illegal drug traffickers.
- b. Legal channel regulation: Law can be used to regulate and control legal channels used to provide drugs for medical and research purposes. This can make it difficult for drug traffickers to provide illegal drugs to the market.
- c. International sanctions: Law can be used to take action against countries or groups suspected of being involved in drug trafficking. Countries suspected of being sources or transit for drugs can be diplomatically isolated or face economic sanctions from other countries.

d. Rehabilitation and recovery: Law can be used to provide a legal basis for rehabilitation and recovery programs for victims of drugs, both individuals or society.

As an asymmetric war, illegal drug trafficking is a complex issue that cannot be solved solely by relying on law. Cooperation between agencies and government, as well as community participation is needed to overcome it

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