

LEGAL ADVISORY STRATEGIES IN DEFENDING DRUG DEALERS

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Abstract

Legal counsel plays a central role in safeguarding the rights of defendants at every stage of the criminal justice process, particularly in narcotics cases that are characterized by high complexity and severe criminal sanctions. This study aims to analyze the defense strategies employed by legal counsel in handling defendants involved in drug trafficking, as well as examine the practical challenges faced in the Indonesian legal system. This research adopts a normative legal method with statutory and conceptual approaches. The findings indicate that defense strategies generally include refuting the elements of the offense, submitting objections regarding procedural defects, and utilizing humanitarian approaches through rehabilitation and restorative justice. However, the implementation of these strategies often encounters substantial obstacles, including limited access to case files, pressure from law enforcement authorities, social stigma against advocates, and a legal system that remains predominantly repressive. The originality of this study lies in its integrative analysis of legal defense strategies within narcotics cases using a normative.

Intisari

Penasihat hukum memainkan peran sentral dalam melindungi hak-hak terdakwa di setiap tahapan proses peradilan pidana, terutama dalam kasus narkotika yang bercirikan kompleksitas tinggi dan sanksi pidana yang berat. Penelitian ini bertujuan untuk menganalisis strategi pembelaan yang digunakan oleh penasihat hukum dalam menangani terdakwa yang terlibat dalam perdagangan narkoba, serta mengkaji tantangan praktis yang dihadapi dalam sistem hukum Indonesia. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan konseptual. Temuan penelitian

Kata kunci:

Penasihat Hukum, Narkotika, Strategi Pembelaan, Prosedur Pidana, Tantangan Advokasi

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menunjukkan bahwa strategi pembelaan umumnya mencakup bantahan terhadap unsur-unsur delik, pengajuan keberatan atas cacat prosedural, dan pemanfaatan pendekatan kemanusiaan melalui rehabilitasi dan keadilan restoratif. Namun, implementasi strategi-strategi ini seringkali menghadapi kendala substansial, termasuk keterbatasan akses terhadap berkas perkara, tekanan dari aparat penegak hukum, stigma sosial terhadap advokat, dan sistem hukum yang masih didominasi represif. Orisinalitas penelitian ini terletak pada analisis integratifnya terhadap strategi pembelaan hukum dalam kasus narkotika dengan menggunakan pendekatan normatif.

1. Introduction

The phenomenon of drug abuse and illicit trafficking in Indonesia continues to show a worrying trend and has a wide impact on social, economic and national security aspects (BNN, 2025; Niswaty, 2025). Narcotics-related crimes are now developing into transnational crimes involving organized networks, increasingly complex modus operandi, and distribution that reaches various levels of society (Hasan, 2018). Narcotics, which are supposed to have medical uses, are being misused, leading to high rates of dependency, crime, and disruption of social stability and family resilience. The government has responded through Law Number 35 of 2009 concerning Narcotics as an effort to monitor, eradicate, and prosecute illicit drug trafficking (*UU No. 35 Tahun 2009*, n.d.). However, the intensity and expansion of narcotics crimes show that this problem is still a serious threat to the legal system and social order of Indonesia.

Several studies discuss how law enforcement against drug abuse is carried out in Indonesia, the supporting and inhibiting factors, and efforts to overcome these obstacles (Budiarrah & Sushanty, 2024; Pambudi & Redi, 2024a; Utama et al., 2024). Several studies have found several obstacles, such as limited facilities and capacity of rehabilitation institutions, differences in understanding among law enforcement officials regarding rehabilitation priorities, and the continued strong orientation of prison punishment for drug users (Logan & Gaes, 1993; Meseret, 2018; Phelps, 2011). Therefore, the article recommends strengthening technical regulations, increasing cooperation between the police, the National Narcotics Agency (BNN), and rehabilitation

institutions, and changing the paradigm of the authorities to more consistently position users as victims who have the right to recovery (Arny et al., 2025; Maskanah & Mulyana, 2025; Pertasari et al., 2023)

Previous studies have focused largely on aspects of law enforcement regarding drug crimes, the effectiveness of criminal policies, rehabilitation mechanisms for users, and the role of law enforcement officials in the investigation and prosecution process. Some studies have also highlighted problems with procedural law, regulatory ambiguity, and repressive tendencies in the application of criminal sanctions to drug offenders. However, research specifically addressing the defense strategies of legal counsel in drug trafficking cases, including how advocates construct arguments, interpret legal loopholes, and address structural and social barriers, remains relatively limited. This situation indicates a research gap: the lack of literature that combines normative analysis of the role of advocates with the real challenges they face in defending drug traffickers.

Based on this gap, this study aims to analyze in-depth the defense strategies used by legal counsel in drug trafficking cases in Indonesia. This research uses a normative legal approach by examining legislation, doctrine, and court decisions as a basis for mapping commonly applied defense patterns. Furthermore, this study also aims to identify various obstacles that arise in the practice of legal assistance, such as limited access to case files, pressure from law enforcement officials, social stigma, and the repressive nature of narcotics laws. This analysis is expected to provide a comprehensive picture of how advocates use legal mechanisms to ensure the fulfillment of defendants' rights in the criminal justice process. This research is important because there is a significant gap between legal norms that guarantee the rights of suspects/defendants and their implementation in practice. Although advocates are normatively positioned as law enforcers with strategic authority, in reality they often face systemic obstacles that reduce the effectiveness of their defense, especially in high-risk and pressure-prone narcotics cases. By uncovering defense strategies and their challenges, this study provides theoretical and practical contributions to the development of legal science, particularly criminal procedure law and advocacy. Furthermore, the results of this study are expected to serve as a basis for policy improvements and strengthening protection for advocates in carrying out their profession to ensure the upholding of due process of law and substantive justice for all citizens.

2. Method

This research employs a normative legal method, focusing on the study of the principles, norms, and rules of positive law governing the role of legal counsel in defending perpetrators of drug trafficking crimes. Normative research is conducted to identify, understand, and analyze the legal constructions applicable in the criminal justice system, including how advocates' arguments and defense strategies are constructed based on relevant legal provisions.

This research employs two primary approaches: a statutory approach and a conceptual approach (Negara, 2023). A legislative approach was used to examine various regulations governing narcotics crimes and the rights of suspects/defendants, such as Law Number 35 of 2009 concerning Narcotics, Law Number 18 of 2003 concerning Advocates, and the Criminal Procedure Code (KUHAP). Meanwhile, a conceptual approach was used to examine legal theories and doctrines regarding the function of advocates, the principles of criminal justice, and strategic concepts for legal defense in narcotics cases.

The legal sources used in this research include primary legal materials, in the form of laws and court decisions (jurisprudence); secondary legal materials, in the form of books, scientific journals, and expert opinions related to advocacy and narcotics law; and tertiary legal materials, such as legal dictionaries and encyclopedias to clarify the meaning of legal terms. All legal materials were collected through a systematic literature review.

Data analysis was carried out in a qualitative normative manner, namely by interpreting legal norms through legal interpretation methods, compiling legal arguments based on theories and provisions of statutory regulations, and systematizing the law to build a structured analytical framework (Yusuf, 2025). Through this analysis technique, the research seeks to produce a comprehensive understanding of the patterns of legal counsel's defense strategies, their consistency with positive legal norms, and their relevance in the context of narcotics criminal justice practices in Indonesia.

3. Analysis and Discussion

Theoretically, discussions regarding legal counsel's strategies in defending drug dealers cannot be separated from the framework of the rule of law, human rights principles, and fundamental principles of criminal law and criminal procedure. In a state

based on the rule of law, every person, including those accused of drug trafficking, remains a legal subject with dignity and rights that must be protected. Therefore, the law enforcement process must be based on the principles of the presumption of innocence and equality before the law.

Advocates, as law enforcers, have a strategic position to bridge the tension between the state's interest in eradicating narcotics and the constitutional obligation to protect the rights of defendants from arbitrary criminalization. In this context, the theory of the role of advocates, due process of law, and the human rights approach serve as the conceptual foundation for formulating defense strategies. This ensures that defense is not merely a legal technicality but also reflects the advocate's function as a guardian of fairness, humanity, and a check on the potential abuse of power in narcotics cases, which are fraught with stigma and public pressure.

Legal Counsel's Strategy in Defending Drug Dealers

During the criminal justice process, the role of legal counsel or advocate is crucial in guaranteeing the legal rights of the accused. In drug trafficking cases, defense strategies are complex because the penalties for drug dealers are typically severe, even up to the death penalty. Therefore, legal counsel must develop a defense plan that not only considers the formal aspects of procedural law but also exploits normative loopholes within the law. For example, observing the defendant's demeanor from the beginning of the trial until the verdict can be one of the legal counsel's defense strategies in representing the accused or their client.

In drug crimes, the role of legal counsel is crucial for the survival and human rights of the accused. This type of drug crime often draws intense public scrutiny due to its significant social impact, such as drug abuse, which can damage the younger generation and affect social stability. However, although drugs remain a significant problem, everyone involved in a drug case must be entitled to a fair defense in accordance with applicable law. In this case, advocates not only act as defenders representing their clients in court, but they are also responsible for protecting their clients' fundamental rights, such as the right to a free examination, freedom from abuse by state officials, and freedom from arbitrary treatment.

Drug cases often involve multiple parties from various legal perspectives, from police investigations to prosecutions by prosecutors and the trial process, which can impact the defendant's fate. In this case, advocates are tasked with providing a defense that is not only based on legal technicalities but also on a more in-depth analysis of the facts of the case, the defendant's social circumstances, and the possibility of relevant justifications, such as drug abuse or dependence (Bintang & Widjajanti, 2024).

Article 5 paragraph (1) of the Advocates Law establishes the status of advocates as law enforcers with equal standing with other law enforcers in upholding law and justice. Article 28 paragraph (1) of the Advocates Law states that "The Advocates Organization is the only free and independent professional organization for Advocates formed in accordance with the provisions of this Law with the intent and purpose of improving the quality of the Advocate profession," which means that the organization is the only professional organization for Advocates. Thus, the advocate profession plays an important role in law enforcement. Every legal process, whether criminal, civil, state administrative, or even state administration, always involves the advocate profession which has the same status as other law enforcers. Especially in drug trafficking cases, the legal advisor or advocate profession plays a very large role in guaranteeing the rights of the accused. Especially in narcotics crime cases, the role of legal advisors or advocates is very crucial. This is because defendants in narcotics cases are often in a weak position before law enforcement officers, especially regarding the process of arrest, examination, and evidence. Legal counsel is tasked with ensuring that each stage of the case complies with applicable procedural law and guarantees the defendant's constitutional right to defense and a fair trial. Therefore, the strategies employed by legal counsel in drug trafficking cases relate not only to the technical aspects of the defense but also to upholding the principles of justice, humanity, and human rights.

Defense strategies commonly used by legal counsel in drug dealer cases include:

- (1) Refuting the elements of the crime charged by the public prosecutor, for example by emphasizing that the defendant is not a dealer but only a victim of abuse or the defendant was playing at the drug dealer's house but he did not know that it was the drug dealer's headquarters;
- (2) Submitting a defense based on flaws in legal procedures, such as arrests without a warrant, searches without witnesses, or examinations without the presence of legal counsel;
- (3) Emphasizing the aspects of humanity and restorative justice, for

example by showing that the defendant was a user who was forced to become a dealer, or the defendant was the backbone of the family who did not have evil intentions (*mens rea*) to harm society (Utami et al., 2023). If the defendant is a user who became involved in drug trafficking due to pressure or dependence, legal counsel may direct that the defendant be sentenced to rehabilitation rather than imprisonment. Legal counsel may also invoke the principle of *ultimum remedium*, which states that imprisonment is not a final measure.

Rehabilitation efforts for drug abusers are the primary sanction for those who do so, as rehabilitation efforts help people avoid using these illegal drugs. Drug use can be addictive. Because drugs have harmful effects on a person's mental and psychological health, efforts are needed to prevent this by involving the National Narcotics Agency (BNN) by disseminating information and educating the public, then using relevant legal regulations and rehabilitation programs to treat users and help them overcome the effects of drug addiction. Counseling on the risks and physiological consequences of treatment can be provided through webinars, seminars, or lectures. Killer posters can be distributed as another effort to raise awareness of the risks of drugs and increase public sensitivity to drugs (Pardo & Reuter, 2018).

Legal counsel or advocates have a very strong normative basis to defend the rights of defendants in narcotics cases, both in the realm of national law, constitutional, and human rights. In the context of national law, advocates can emphasize the principle of the presumption of innocence, the right to legal assistance from the beginning of the examination, and attack the validity of evidence obtained not in accordance with the Criminal Procedure Code, while simultaneously encouraging the implementation of rehabilitation provisions for users as stipulated in the Narcotics Law. At the constitutional level, the 1945 Constitution guarantees fair legal certainty, self-protection, a sense of security, and the fulfillment of human rights, so that any form of intimidation, torture, or process that violates procedures can be used as a basis for challenging the validity of the law enforcement process against the defendant. The human rights dimension and international treaties, particularly the ratified International Covenant on Civil and Political Rights (ICCPR), strengthen the defendant's right to a lawyer, sufficient time to prepare a defense, the prohibition of forced confessions, and the right to a fair and open trial, while guaranteeing various rights while in detention such as communicating with

legal counsel, family, doctors, and clergy. On the other hand, professional ethical norms and the Advocates Law provide immunity for advocates who act in good faith, thus ensuring their legal protection when defending narcotics cases, which are often considered sensitive and stressful. This entire normative framework, coupled with general principles such as the principle of legality, allows advocates to formulate defense strategies that are not only technically legal but also oriented towards protecting the dignity and human rights of the accused, without having to submit to the stigma that defending drug offenders is condoning crime.

The principle of Equality before the Law, which means the law applies equally to all citizens, and everyone has the right to recognition, guarantees, protection, and certainty. The Presumption of Innocence, which is the belief that their client is right based on the data and information provided to them, must be firmly upheld by legal counsel or advocates when defending their clients. This principle is used to ensure that legal counsel must firmly carry out their duties and profession properly when defending their clients. If people in the community are unable or unaware of the laws applicable in court cases, they can ask local agencies to provide information to defend and protect their rights. Legal counsel or advocates can also represent the rights of their clients.

Challenges and Limitations of Legal Counsel's Strategy in Defending Drug Dealers

Legal counsel plays a crucial role in the criminal justice system, particularly in protecting the rights of individuals involved in drug cases and ensuring that the legal process is conducted fairly in accordance with the principle of due process of law. However, in practice, when defending drug offenders, particularly dealers, legal counsel faces a number of significant challenges and limitations. These limitations are not only technical and legal in nature, but also social, psychological, and even political (Ohoiwutun & Soekorini, 2024).

Advocates face numerous challenges in the Indonesian criminal justice system. Limited access to case files and evidence, which are crucial for building a strong defense, is a major issue. This often poses a significant obstacle to an advocate providing an effective and comprehensive defense for their client. Furthermore, interference from other parties, such as the police, often poses a significant obstacle to the effective and independent performance of an advocate's duties (Dewi et al., 2017).

An advocate's ability to defend their client can be significantly impacted by limited access to evidence and case documents. Advocates may struggle to develop an effective and comprehensive defense strategy if they lack adequate access to necessary information. This can also prevent them from challenging or refuting evidence presented by the public prosecutor. Furthermore, if there is interference from external sources, such as political pressure or police action, advocates may feel limited in performing their work according to expected ethical and professional standards.

One of the greatest challenges facing legal counsel in defending drug dealers is the negative stigma from society. Drug traffickers are often viewed as serious criminals who destroy the nation's future, leading to the perception that defending them is tantamount to supporting crime. This situation creates social pressure, even threats, that have the potential to compromise the independence of advocates in carrying out their profession to the fullest. In this context, the legal profession is often "victimized" by public opinion, even though the 1945 Constitution and Law Number 18 of 2003 concerning Advocates guarantee the right of legal counsel to practice their profession without intimidation. (Pambudi & Redi, 2024b; Wananda et al., 2025).

Law Number 35 of 2009 concerning Narcotics applies a repressive approach with high criminal penalties, including the death penalty for large-scale dealers. Problems arise when this approach does not disproportionately differentiate between major perpetrators (dealers) and minor perpetrators (couriers). Consequently, in practice, many intermediaries or couriers are still charged under Article 114 of the Narcotics Law, which carries severe penalties. This situation makes it difficult for legal counsel to advocate for a more humane defense approach or seek lighter sanctions, such as conditional sentences or rehabilitation.

Procedural flaws also pose a serious obstacle to defending narcotics cases. Many cases begin with arrests without warrants, searches without independent witnesses, or initial examinations without the presence of legal counsel, contradicting the principles of the Criminal Procedure Code (KUHAP), which mandates respect for the basic rights of suspects and defendants. Despite this, the results of these procedural irregularities are often used as evidence in court, and legal counsel face difficulties in annulling illegally obtained evidence due to the strong culture of "justifying the results" within the judicial system, which severely limits the scope for criticism of the investigative process.

In many cases, legal counsel is only involved when the case has entered the advanced investigation stage or is nearing its transfer to court. This delay deprives legal counsel of the opportunity to accompany the suspect during the initial examination, even though the initial testimony is crucial for the subsequent construction of evidence. This violates Articles 54 and 56 of the Criminal Procedure Code, which expressly guarantee the suspect's right to legal counsel from the outset of the examination process.

In drug cases, the burden of proof is heavily dominated by physical evidence, such as the quantity and type of narcotics seized. Furthermore, the defendant and legal counsel often lack counter-evidence to refute the charges. For example, when a search is conducted illegally, but there is no video evidence, independent witnesses, or CCTV to support the defendant, the court tends to side with the officers' statement. The limited evidence available on the defendant's side presents a significant factual challenge for legal counsel. Evidence in narcotics cases is heavily dominated by physical evidence, such as the type and quantity of narcotics seized, and statements from law enforcement officers. On the other hand, defendants and their legal counsel often lack sufficient counter-evidence to refute the charges, such as video recordings, independent witnesses, or documentation of the search process. When a search is conducted illegally but there is no evidence to support the defendant's version, the court tends to place greater trust in the officers' statement, thus severely limiting the defense's room for maneuver. The Difficulty of Promoting Rehabilitation in a Punitive System.

Although Constitutional Court Decision No. 25/PUU-X/2012 affirms that drug users have the right to rehabilitation, in practice, this is difficult to implement because law enforcement officials tend to favor criminal prosecution. Defense strategies that attempt to direct defendants to rehabilitation are often hampered by authorities' interpretation that defendants are not users, but rather dealers, based solely on the quantity of evidence. In fact, Article 127 of the Narcotics Law and the integrated assessment system should be used to differentiate between addicts and dealers. The lack of clarity in implementing this regulation presents a unique challenge for legal counsel.

The challenges and limitations faced by legal counsel in defending drug dealers demonstrate the disparity between the ideals of the criminal justice system and the reality of its implementation on the ground. These obstacles range from social stigma, strict legal provisions, weak procedural enforcement, to limited protection for advocates. Therefore,

reforms are needed in both regulation and legal culture, so that the role of legal counsel in ensuring justice for all parties can be carried out optimally and professionally, without intervention from outside the legal process (Amalia et al., 2024).

Based on the description in the analysis and discussion, the novelty of this research can be explained as in the following table 1.

Table 1. Summary Discussion

Aspect	Research Novelty
Focus on the advocate's role	Positioning defense strategies in drug-dealing cases within the framework of the rule of law, human rights, and due process of law, rather than viewing advocates merely as formal legal representatives.
Dimension of defendants' human rights	Conceptualizing advocates as guardians of the dignity and human rights of defendants who face extremely severe penalties (including the death penalty) in highly stigmatized drug cases.
Technical defense strategies	Systematically combining analysis of rebuttal of offence elements, procedural flaws, rehabilitation claims, and the principle of ultimum remedium as an integrated strategic package for drug-dealer cases.
Structural and cultural barriers	Explicitly linking defense strategies to social stigma, a strongly punitive system orientation, limited counter-evidence, and a “result-oriented” culture in judicial practice.
Use of constitutional and international frameworks	Demonstrating how advocates can rely on the 1945 Constitution and ICCPR to challenge intimidation, torture, and procedural violations, even when the defendant is classified as a dealer.
Advocate's position in drug policy	Framing advocates as key actors who bridge drug-control objectives with the protection of defendants' constitutional rights through rehabilitation options and more humane approaches.

4. Conclusion

The most interesting finding of this study is the stark gap between the ideal position of advocates as guarantors of the rights of drug suspects/defendants under the

Advocates Law and the principle of equality before the law, and the practical reality, which remains constrained by social stigma, pressure from authorities, and limited access to case files. This study also shows that normative-theoretical defense strategies (denying elements of the offense, procedural flaws, and restorative approaches) are the dominant patterns used by advocates in drug cases, yet they have not been systematically studied in the context of this stigma and social pressure.

Theoretically, this study enriches the study of the role of advocates in drug cases by linking three dimensions simultaneously: the principle of equality before the law, normative defense strategies, and socio-moral barriers that affect advocate independence. Practically, the research findings can serve as the basis for recommendations for advocate organizations, legal aid institutions, and law enforcement officials to formulate guidelines for narcotics case representation that better protect the rights of defendants and provide advocates with stronger protection from pressure and stigma.

This research is still limited to a normative approach and has not been supplemented with extensive empirical data (e.g., in-depth interviews with advocates, officials, and clients, or analysis of a large number of decisions), so it cannot measure the actual success rate of defense strategies in court. Furthermore, its scope focuses more on conceptual analysis in the context of narcotics cases, so generalizations to other types of cases and throughout Indonesia need to be done with caution and require further research.

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