

LEGAL STATUS ISSUES OF DRUG ABUSERS FOLLOWING STING OPERATIONS IN INDONESIA

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Abstract

The purpose of this study is to analyze the legal status of drug abusers after a sting operation. This type of research is normative legal research with a legislative approach, case approach and conceptual approach. The analysis used in this study is qualitative data analysis through the processing of legal materials in a deductive manner. Based on the research, the results of the study show that in Law Number 35 of 2009 concerning Narcotics, it is stated that after a sting operation or after a confiscation, within a minimum of 3 x 24 hours, evidence must be tested to ensure the narcotics content found, so this can have implications for the legal status of someone arrested in a sting operation. A person caught red-handed in a narcotics case can have several possible legal statuses, including; as a witness who is arrested, if he is only at the scene without direct evidence of his involvement; as a suspect, if initial evidence is found that he has or uses narcotics; as a person without legal status who is temporarily detained, if his status is still awaiting the results of laboratory tests of evidence. Therefore, it is necessary to update the regulations through a revision of the Narcotics Law which must include a clear time limit on how someone caught red-handed must be treated before the results of the evidence test are out.

Keywords: legal status, drug abuser, caught red-handed

A. Background

Nowadays, narcotics and illegal drug crimes have become transnational crimes that are carried out with high modus operandi and sophisticated technology, so that anticipation is needed from law enforcement officers.⁴ Drug crimes in Indonesia are very serious, Indonesia is currently not only just a country that is a consumer of this crime, where previously Indonesia is just a country that is a marketing place for narcotics crimes, but now Indonesia has now become one of the producing countries for narcotics and drugs, other prohibited.⁵

The presence of criminal procedural law aims to seek material truth, to realize this goal, the components of the judicial system are bound by the evidence, the evidentiary system and the evidentiary process that have been regulated in the applicable laws and regulations.⁶ Drug abuse in Indonesia has reached a very worrying level, facts on the ground show that 50% of correctional inmates in Indonesia are caused by drug or narcotics cases.⁷ Meanwhile, data from the National Narcotics Agency (BNN) shows

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⁴ Chyndida Rezlila Mulyarsi & Mustikasari Sarwoningtyas. 2014. *Investigation of Narcotics Cases Using the Under Cover Buy Method*. Verstek Journal Vol. 2. No. (1). Page 61

⁵ Mohammad Geraldine Nurhadi. 2021. *Drug Crimes as Transnational Crimes (Cross-Border Crimes)*. BNN Kepri. <https://kepri.bnn.go.id/kejahatan-narkoba-sebagai-kejahatan-transnasional-kejahatan-lintas-negara/> (Accessed on October 1, 2024 at 21.00 WITA)

⁶ Syafruddin Kalo, Mahmud Mulyadi, Edi Yunara. 2017. *Legal Analysis of Determining the Position of Witnesses as Justice Collaborators in Narcotics Crimes at the Pematang Siantar District Court*. USU Law Journal. Vol.5. No. (3). Page 108 - 117

⁷ Fransiska Novita Eleanora. 2011. *The Dangers of Drug Abuse and Efforts to Prevent and Overcome It*. MPU Tantular University Jakarta: Journal of Law Vol XXV No. (1), Page 440

that in 2023, around 3.3 million people (1.73% of the population) were involved in the misuse of this illegal substance.⁸

Narcotics crimes are no longer committed by individuals, but rather involving many people who work together, even forming a syndicate organized with a wide network and working neatly and very secretly both in national and international levels. Based on this, in order to increase efforts prevention and eradication of narcotics crimes, changes have been made against Law Number 22 of 1997 concerning Narcotics with the enactment of Law Number 35 of 2009 concerning Narcotics. This reason is also to prevent there is an increasing tendency both quantitatively and qualitatively with widespread victims, especially among children, teenagers, and the nation's future generations in general.

The legal implications of the construction of Article 4 letter d, Article 54 and Article 127 of the Narcotics Law according to Satrio Putra Kolopita are used to determine whether a drug user is a victim or a perpetrator, namely a drug user. Narcotics as a perpetrator of a crime and also as a victim. In principle, "Drug dealers" in legal terminology are categorized as perpetrators (dader). However, "users" can be categorized as either "perpetrators and/or victims". As victims, drug "users" are citizens who must be protected and their rights are respected both in the legal process and in the health dimension and social.⁹

Law enforcement officers in dealing with narcotics problems are required to pay attention to the precautionary principle as stated by Andri G Wibisana:¹⁰ "The precautionary principle can be seen as guidance for decision makers when facing scientific uncertainty regarding threats to human health or the environment."

Referring to this opinion, law enforcement officers have certain methods, which are basically through preventive, repressive and rehabilitative efforts against criminal acts. The crime of drug abuse, and is always carried out.¹¹ Therefore, apart from the National Narcotics Agency (BNN), the police always carry out and are firm in their repressive efforts as a form of eradicating the circulation of narcotics itself, ideally the objectives of the law must continue to be guided by In this effort, in terms of implementation, arrests of drug abusers have been regulated, both according to the Criminal Procedure Code and according to Law Number 35 of 2009 concerning Narcotics.

Narcotics crimes have become transnational in nature, carried out using high modus operandi, sophisticated technology, supported by a wide network of organizations, and have caused many victims, especially among the young generation of the nation, which is very dangerous for the lives of society, the nation, and the state.¹² In conducting investigations and inquiries, BNN Investigators and Polri Investigators specifically refer to the Narcotics Law regarding the timing of arrests of suspected narcotics crimes.

Investigators are expressly given authority by Article 75 letter (g) in conjunction with Article 76 of Law Number 35 of 2009 concerning Narcotics, which explains that

⁸ Maryam Kamati, Fenty U. Puluhulawa, Avelia Rahmah Y. Mantali. 2025. *Legal Analysis of Integrated Assessment Services in Handling Narcotics Crimes*. Journal of Law and Public Administration. Vol. 3. No. (1). Page 64

⁹ Satrio Putra Kolopita. 2013. *Law Enforcement of the Death Penalty Against Criminal Acts Narcotics*. Lex Crimen Journal. Vol. 2. No. (4). Page 66.

¹⁰ Andrew G. Wibisana. 2011. *"The Development of the Precautionary Principle in International and in Indonesian Environmental Law"*. Asia Pacific Journal of Environmental Law. Vol. 14. No. (1 - 2). Page 169

¹¹ Agung S et iawan. 2017. *Narcotics Crime (Study on Judge 's Legal Consideration in Deciding on Police as Defendants in Boyolali District Court)*. Thesis : Muhammadiyah University of Surakarta. Page 2.

¹² I Made Mas Mahayuna, et al. 2023. *Arrest Period in Narcotics Crime Investigations Carried Out by Police Investigators*. UNES Journal of Swara Justisia. Vol. 7. No. (1). Page 251

the maximum arrest time is 3 x 24 hours and can be extended for a maximum of 3 x 24 hours (6 working days), this means that Law Number 35 of 2009 concerning Narcotics is *the Lex specialis* of the Criminal Procedure Code.

While the facts on the ground, this will be problematic when there is a red-handed arrest in an alleged narcotics crime case. In Article 1 Number 19 of the Criminal Procedure Code, the definition of being caught red-handed is as follows:

"caught red-handed is the arrest of a person while committing a crime, or immediately after the crime has been committed, or shortly afterwards being called out by the public as the person who committed it, or if shortly afterwards an object is found on him which is strongly suspected of having been used to commit the crime, indicating that he is the perpetrator or has participated in or helped commit the crime."

Based on the article above, there are four situations in which a person is said to be caught red-handed: ¹³someone is caught while committing a crime; the arrest of a person immediately after the crime was committed; the arrest of a person shortly afterwards is publicly proclaimed as the person who committed the crime; and if shortly afterwards, an object is found on the person who committed the crime which is strongly suspected of having been used to commit the crime.

Definition in Article 1 Number 19, KUHAP not only regulates the circumstances of a person being called caught red-handed, more than that, KUHAP provides coverage to the perpetrator. Not only *materiele dader* (material perpetrator), but also other participating perpetrators - whether it is the person who ordered it to be done, participated in it or the person who encouraged it - even to assistance. If drawn in the context of being caught red-handed in a narcotics case, then of course this must be followed by preliminary evidence so that it brings him to the status of a suspect.

In the legal principle it is stated that *"In criminalibus probantiones bedent esse luce clariores"* (in criminal cases, the evidence must be clearer than light), so it is clear that to prove someone as a perpetrator of a crime is not only based on suspicion alone. The evidence must be clear, transparent, and accurate in order to convince the judge to impose a sentence without the slightest doubt.¹⁴

Referring to this, then a sting in a narcotics case must have at least 2 (two) pieces of initial evidence to determine that the case can be continued. Referring to this, the problem will arise when it is related to the grace period for arrests regulated in the Narcotics Law in Article 76 paragraph (1) and (2) arrests are carried out for a maximum of 3 x 24 hours then can be extended for 3 x 24 hours, on the one hand in the Criminal Procedure Code it explains that in the case of being caught red-handed there is no need to make a warrant or interpret the provisions that are assessed by investigators based on Article 1 point (19) of the Criminal Procedure Code then its implementation is regulated in Article 18 paragraph (2) as follows:¹⁵

"In the case of being caught red-handed, the arrest is carried out without a warrant. Order, with the provision that the catcher must immediately hand over the arrested person along with the evidence to investigators or the closest assistant investigator".

Referring to the provisions above, after the decision of Judge Sarpin Rizaldi regarding the expansion of pretrial material in terms of suspect determination, in the Budi

¹³ Eddy OS Hiariej. 2017. *Understanding Being Caught Red-Handed*. Indonesia Corruption Watch. <https://antikorupsi.org/id/article/memaknai-tertangkap-tangan> (Accessed September 5, 2024 at 20.30 WITA).

¹⁴ Ibid

¹⁵ See Criminal Procedure Code Article 18 paragraph (2)

Gunawan case, the Investigation Order Letter Number Sprin.Dik-03/01/01/2015 which determined Budi Gunawan as a suspect was invalid,¹⁶ became a separate polemic, according to Judge Sarpin it was interpreted as the fulfillment of 2 sufficient and strong pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code. Meanwhile, if it is drawn in the context of sting operations in narcotics cases with preliminary evidence, then in the Narcotics Law, sting operations are carried out for 3 x 24 hours and can then be extended for 3 x 24 hours, this has implications for the status of the person arrested, there has been a legal vacuum. There is no clarity regarding the status of the person who was caught stinging, considering that this offense is a material offense which in essence the evidence must first go through a testing process according to procedure, for example through the POM Office which has an SOP and the duration is around 3 working days.

Furthermore, in relation to this, the provisions of Article 1 point (14) of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) state that a suspect is a person who, due to his actions or circumstances, based on initial evidence, is reasonably suspected of being the perpetrator of a crime.¹⁷ There are no explicit provisions stating what sufficient initial evidence is, but later, in the Constitutional Court decision Number 21/PUU-XII/2014, it was confirmed and declared conditionally unconstitutional against the phrases "initial evidence", "sufficient initial evidence", and "sufficient evidence" in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code as long as they are interpreted as a minimum of two pieces of evidence in accordance with Article 184 of the Criminal Procedure Code. Valid evidence according to Article 184 paragraph (1) of the Criminal Procedure Code is: witness statement; expert testimony; letter; instructions; and the defendant's statement.

The Court considers the minimum requirement of two pieces of evidence and examination of potential suspects to be for transparency and protection of a person's human rights so that before a person is named a suspect, they can provide balanced information. This avoids arbitrary actions by investigators, especially in determining sufficient initial evidence.¹⁸

Looking at the Narcotics Law, in Article 75 after carrying out a confiscation within a minimum of 3 x 24 hours and in principle an evidence test must have been carried out, while the person concerned has been detained, then related to this the problem that occurs is regarding the status of the person who was arrested, whether it can be said to be a witness who was arrested and the detention process was carried out or a person without legal status who was arrested within a period of 3 x 24 hours which can then be extended for 3 x 24 hours (6 days), while the results of the narcotics test (evidence) are still in process.

B. Identified Problems

Based on the description of the background of the problem above, the problem in this study can be formulated, namely: to what extent is the legal status of drug abusers after a sting operation?

¹⁶ Kelly Manthovani. 2016. *Polemic of Determining Suspects as Objects of Pretrial Trial*. <https://www.ui.ac.id/polemik-penetapan-tersangka-sebagai-objek-praperadilan/> (Accessed September 5, 2024 at 20.50 WITA).

¹⁷ See Article 17 and Article 1 point (14) of Law Number 8 of 1981 concerning Criminal Procedure Law

¹⁸ See Constitutional Court Decision Number 21/PUU-XII/2014

C. Research Method

This type of research is normative legal research with a statute approach, case approach and conceptual approach. The analysis used in this study is qualitative data analysis through the processing of legal materials in a deductive manner, namely explaining something that is general and then drawing it into a more specific conclusion.

D. Research Findings and Discussions

Legal Status of Drug Abusers After Sting Operation

Referring to the provisions of Article 76 of the Narcotics Law regarding the time period for sting operations in narcotics, after confiscation, within a maximum period of 3 x 24 hours, evidence testing should have been carried out. In practice, the detention of individuals suspected of being involved has been carried out before the results of the evidence testing are available. The problem that arises is related to the legal status of the arrested individual, namely whether the drug abuser can be qualified as a witness who is arrested and detained, or as someone who does not yet have a clear legal status but has been arrested for 3 x 24 hours which can be extended up to 6 days, even though the results of laboratory tests on narcotics evidence are still in process. Based on this, a comprehensive study of the legal status of drug abusers after sting operations becomes urgent.

The changes in the provisions on the articles governing narcotics crimes in the New Criminal Code at first glance seem to be good news. The reason is that since the New Criminal Code will come into effect in 2026¹⁹, several provisions of the Articles in Law Number 35 of 2009 concerning Narcotics that are often charged to narcotics users have been revoked and declared invalid, such as Article 111. However, if we pay attention to the formulations that are used as references, such as Article 609 paragraph (1) letter a and paragraph (2) letter a, then it can be said that the reference articles in the New Criminal Code are only copy-pasted articles from Law Number 35 of 2009 concerning Narcotics. Because the difference lies only in the categorization of criminal fines. Apart from that, all the elements are the same.

In turn, the problems that arise in the application of the law to drug abusers and addicts when all provisions in Law Number 35 of 2009 concerning Narcotics are still in effect, will re-emerge even though the New Criminal Code has been enacted. Problems such as the unclear boundaries of important definitions in Law Number 35 of 2009 concerning Narcotics which result in bias in further regulations (such as between Article 4 and Article 54 of Law Number 35 of 2009 concerning Narcotics), will still occur. Moreover, the use of Article 112 which will later be replaced by Article 609 paragraph (1) letter a and paragraph (2) letter a of the New Criminal Code is still possible to be a priority to be used as the Primary Charge or the First Charge in the alternative charge. With these circumstances, of course SEMA, both SEMA Number 4 of 2010, SEMA Number 3 of 2015, and SEMA Number 1 of 2017, will still be needed to be a temporary remedy in overcoming problems that arise in the application of laws in a casuistic manner.

Furthermore, regarding the weaknesses of the legal regulations regarding the time period for arrests in narcotics crimes, it can be described that, although the regulations regarding arrests in narcotics crimes refer to the Criminal Procedure Code and the Narcotics Law, there are several weaknesses that can be criticized, including:

¹⁹ Article 621 of the New Criminal Code states, “*Implementing regulations for this Law must be stipulated no later than 2 (two) years from the date this Law is enacted.*”

1. Lack of Clarity on the Legal Status of Drug Abusers within the Time Limit of Arrest
The problem that arises is related to the legal status of the arrested individual, namely whether the drug abuser can be qualified as a witness who is arrested and detained, or as someone who does not yet have a clear legal status but has been arrested for 3 x 24 hours which can be extended to 6 days, even though the results of the laboratory examination of the narcotics evidence are still in process.
2. Potential for Abuse of Authority
 - a. The absence of explicit provisions regarding the legal status of drug abusers caught red-handed and whether it can still be considered legal, means that law enforcement officers have the potential to commit abuse by claiming an arrest as a red-handed catch, even though in fact the results of laboratory tests are still being carried out.
 - b. This abuse can lead to the practice of arbitrariness in the legal process.
3. Lack of Monitoring and Control Mechanisms for Hand-Catching Procedures
 - a. The absence of a rapid testing mechanism and transparency regarding claims of stings in narcotics crimes makes it difficult to prove whether a sting was carried out using legitimate procedures.
 - b. Investigators are often not closely supervised when carrying out sting operations, so there is no mechanism to guarantee that the procedure is truly in accordance with the Criminal Procedure Code.
 - c. The absence of strict standards of proof regarding the proximity of time between the criminal incident and the act of arrest can make law enforcement subjective.
4. Not Always in Line with Human Rights (HAM)
 - a. In some cases, perpetrators caught red-handed in narcotics crimes are often processed quickly without receiving their rights as guaranteed in the Criminal Procedure Code, such as the right to be accompanied by a legal advisor from the start of the examination.
 - b. There are many cases where a person who was simply at the scene during a raid was immediately arrested and treated as a suspect, even though there was insufficient evidence of his involvement.
 - c. This has the potential to violate the principle of presumption of innocence and injure the principle of *due process of law*.
5. No Standardization of Evidence in Arrests in Narcotics Cases
 - a. In practice, evidence found on a person is often used as an absolute basis for determining suspect status without considering the context or its connection to the crime that is occurring.
 - b. Entrapment cases in undercover operations are often problematic because the evidence can be arranged in such a way as to trap someone in a narcotics trafficking scheme.
 - c. There needs to be stricter evidentiary standards regarding evidence that can be used as a basis for valid arrests in narcotics crimes.

The legal regulations regarding the time period for arrest in narcotics crimes still have several fundamental weaknesses, such as:

1. There is no clarity regarding the legal status of drug abusers who are arrested within the time limit in accordance with the Narcotics Law.
2. Potential for abuse by law enforcement in defining sting operations.

3. Lack of oversight mechanisms and transparency in sting procedures.
4. Lack of guarantee of human rights protection, especially in terms of the rights of suspects and the presumption of innocence.
5. There is no standardization of evidence that can objectively distinguish between the main perpetrator, the victim, or individuals who are not involved in drug crimes.

Therefore, more specific regulatory reforms are needed in the Narcotics Law or through a revision of the Criminal Procedure Code to clarify provisions regarding the legal status during the period of arrest, standards of evidence, and supervision in legal procedures to prevent abuse of authority.

Through the Principles that regulate the right to health, every country is required to create a policy that must be able to realize the right to health for every individual. In this case, the state is required to respect, fulfill and protect the right to health. The aspect of respect as referred to is a policy that requires the state not to take steps that will result in individuals or groups failing to achieve or fulfill their rights. While fulfillment is the state must take legislative, administrative, budgetary, judicial or other steps to ensure the realization of the fulfillment of rights. While protection is how the state implements policies to prevent and overcome deliberate violations or neglect including in the problem of the legal status of drug abusers after a sting operation.

Specifically, regarding sting operations in narcotics crimes, it is one of the law enforcement methods often used to prosecute drug abusers and illicit drug traffickers. In Article 75 letter (g) in conjunction with Article 76 of Law Number 35 of 2009 concerning Narcotics (Narcotics Law), it is stated that after a confiscation is carried out, within a minimum of 3 x 24 hours, evidence testing must be carried out to ensure the narcotics content found.

The problem that arises in practice is the legal status of a person arrested in a sting operation. The person can be placed in an uncertain legal situation, whether as an arrested witness, a suspect whose involvement has not been confirmed, or a person without legal status who is only waiting for the results of the evidence test. In addition, there is ambiguity in the detention period which is carried out in 3 x 24 hours which can then be extended for 3 x 24 hours (a total of 6 days), while the results of the narcotics test are still in process.

This condition has the potential to cause legal uncertainty and violations of human rights, especially if the detention is carried out without clear legal status. Arrest in the act is regulated in Article 1 number 19 of the Criminal Procedure Code which defines it as the arrest of a person who:

1. While committing criminal
2. At time committing
3. When are signs that he has committed.

In narcotics cases, stinging is often done in the form of raids or undercover buys. However, in practice, the legal status of someone who is arrested is often debated because there is no strong evidence before the results of the laboratory tests of the evidence come out. Someone who is caught red-handed in a narcotics case can have several possible legal statuses, including:

1. As a witness who was arrested, if he was only at the scene without direct evidence of his involvement.
2. As a suspect, if initial evidence is found that he possesses or uses narcotics.

3. As a person without legal status who is temporarily detained, if his status is still awaiting the results of laboratory tests on evidence.

The Narcotics Law does not provide a clear time limit on how someone caught red-handed should be treated before the results of the evidence test are out, thus potentially creating legal uncertainty.

Based on the Narcotics Law, investigators are required to test evidence within 3 x 24 hours after confiscation. However, test results often only come out after this time limit, raising the question of whether someone who is arrested can continue to be detained without clear legal status. The legal implications if detention is carried out without certainty of legal status, someone is detained without clear status, this has the potential to violate human rights and the principle of due process of law in the Criminal Procedure Code. In some cases, the court has canceled the detention if it is found that legal procedures were not followed legally.

Regulatory reform to ensure legal certainty is very necessary as a form of regulatory improvement that provides clearer time limits and legal protection mechanisms for drug abusers who are caught red-handed, especially in the period before the laboratory test results come out, so it can be concluded that:

1. There no certainty regarding status people handed in narcotics cases the of the examinatio evidence.
2. Detention for a period of 3 x 24 hours which can be give rise of rights if it is carried without basis.
3. The current region implemented intuitive way to the for criminal in the abusers.

In addition, the delay in the results of the evidence test and its impact on the legal process are very influential. The slow results of the narcotics evidence test have an impact on the uncertainty of the suspect's legal status. If the test results show that the goods found are not narcotics, the individual who has been detained could suffer legal and social losses. Therefore, there should be a mechanism for accelerating laboratory tests or more flexible legal procedures to handle this case.

One of the is me then improvements that provide mechanisms offenders handed, during the laboratory test.

There a conceimmendation in the offenders, it is to go vision law. Uncertainty legal status offenses 3 23 hours a sting operation one problems in criminal system in Indonesia Abuse often without through integrated framework that fair. Therefore the review Law Number of 2009 to carried ensure justice law as a narcotics abusers. As a principle of this:

1. Principle Balance. Balancing the offenses and detection.
2. The principle restorative. We rehabilitation rather tan for not in the networks.
3. Principle law of providing a clear and that clear the of narcotics law.
4. Principles of Protection Right. We the right narcotics in the process remain.

Apart that the are of the that can be in of the that the main of OTT regfulations:

1. Penegasan Emphasis on Category
 - 1) Narcotics offenders caught in evidence below amount by the of must receive
 - 2) Offenders who indications of or part narcotics network (juddged from the goods, tools, of other processed to legal)

Article Revision: 127 Narcotics Act is to add clause offenders who have the rehabillition processed an integration maximum time of according the OTT

2. Mandatory and Abuse
 - 1) Integrated Team (TAT be required carry assessment within 1 hours post deteremine the abuse.
 - 2) TAT consist:
 - a) Investigators (Police/BNN)
 - b) Procecutor
 - c) Doctor/Psychiatrist
 - d) BNNP/Social Services
 - 3) If results the state that only an without criminal the be to habilitation and detained. Article Revision: 13 the adding the that every offender caught by undergo a within 24 hours that it wheter will or more countinue.
3. Standardization Limits Rehabilitation
 - 1) This that threshold narcotics evidence that to the of traffichers.
 - 2) Example (on other such Thailand)²⁰
 - a) Marijuana: ≤ 5 grams \rightarrow abuse
 - b) Shabu: ≤ 1 gram \rightarrow abuse
 - c) Extation: 2 grain \rightarrow abuse
 - d) Heroin/Cocaine: ≤ 0.5 gram \rightarrow abuse
 - 3) If it be considered as indication of illegal trafficking can be prosecuted criminal. Article Revition: 112 & 114 Narcotics Act adding clear limits the of abuse trafficking cases.
4. Criminalization of that rehabilitation
 - 1) If person has declared abuser and rehabilitation, then criminal be carried.
 - 2) Abusers who to must guaranteed to be in criminal.

Article Revision: 128 narcotics Act clause states that offenders who may not prosecuted same case.

Based the above, the Narcotics law must that narcotics abusers criminals, but who rehabilitated. Therefore integrated mechanism must be carried within a 24 hours after order ensure the law order a objective manner. Through this concept, it can the of, prosons well ensuring fairer justice and sweeter.

E. Conclusions

There are regulations on narcotics crimes that do not guarantee legal protection for drug abusers and addicts, especially in cases of being caught red-handed. The legal status of someone who is arrested is often debated because there is no strong evidence before the results of the laboratory tests of the evidence come out. Someone who is caught red-handed in a narcotics case can have several possible legal statuses, including; (1) as an arrested witness, if he was only at the scene without direct evidence of his involvement; (2) as a suspect, if initial evidence is found that he has or uses narcotics; (3) as a person without legal status who is temporarily detained, if his status is still awaiting the results of the laboratory tests of the evidence. The Narcotics Law does not provide a clear time limit on how someone who is caught red-handed should be treated before the results of the tests of the evidence come out, thus potentially creating legal uncertainty.

²⁰ Ximene Rego, et al. 2021. *20 Years of Portuguese Drug Policy – Developments, Challenges and The Quest for Human Rights* . BMC Substance Abuse Treatment, Prevention, and Policy. 59:2021.

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