

Criminal Responsibility Of Women As Instrumentalities In Drug Trafficking

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ABSTRACT

This study aims to analyse the criminal responsibility of women involved in drug trafficking, especially those who are used as tools by other parties by using their names or identities as recipients of narcotics packages. The main focus of this research is to understand the factors that influence women's involvement in drug networks as well as the legal implications faced by women in the criminal justice system. The hypothesis of this research is whether women involved in drug trafficking as recipients of narcotics packages, whose names are used by other parties, can be exempted from criminal liability if there is no proven intent and power over the goods. The approach used in this research is normative law by analysing legislation and related literature. The results show that women are often trapped in narcotics networks due to exploitation and manipulation of other parties. Therefore, there is a need for legal policy reforms that are more responsive to gender issues and the protection of women's rights in drug cases. This research contributes to the development of criminal law that is more just and sensitive to social and gender factors in drug law enforcement.

Keywords: Criminal responsibility, women, drug trafficking.

Introduction

The involvement of women in illegal activities, particularly in drug trafficking, is a complex issue that requires serious attention from various perspectives. Despite progress in gender equality, male dominance remains strong in many aspects of life, including the drug trade. This phenomenon demonstrates the close relationship between men's involvement in drug networks and issues of gender equality and human rights. Women, in this context, are often caught up in drug trafficking networks as victims who participate in the activity, either with or without full awareness of the consequences.

Women involved in drug trafficking generally have vulnerable socioeconomic characteristics, such as limited education, low economic status, and often have a history of violence in their lives (Putra & Windiani, 2016; Wulandari, 2021; Damayanti, 2019; Meilawati & Rudiansah, 2022; Anggraeni & Rinaldi, 2024; Batu, 2022). These factors contribute greatly to the increased risk of victimisation experienced by women in drug trafficking networks. Therefore, it is important to understand the dynamics that influence women's participation in drug-related crimes, as well as the impact on their welfare and basic rights.

The phenomenon of women's participation in drug offences cannot be seen as an anomaly. In practice, the modus operandi used to involve women in drug trafficking is often similar to human trafficking, involving stages of recruitment, delivery, and detention. This process is often carried out through illegitimate means, such as intimidation, both physical and psychological, kidnapping, fraud, and exploitation of authority. These tactics allow certain parties to exploit women, either knowingly or unknowingly.

In the legal context, when a woman is involved in drug trafficking, for example as a recipient of a narcotics package, the authorities will apply the law stipulated in Law Number

35 Year 2009 on Narcotics. Article 112 paragraph (1) of the Law regulates the possession of Class I narcotics, which includes purchasing, controlling, or even just knowing the existence of the narcotics. If proven to be involved in drug possession or dealing, a woman can be charged with the criminal offences set out in the law, although in some cases, ignorance or inadvertence can be a defence in the judicial process.

If a female defendant denies involvement in drug possession, this can be an important consideration in the evidentiary process at trial. The Court of Appeal, in this case, needs to examine two important elements contained in Article 112 of the Narcotics Law, namely "power over the object" and "willingness to possess the object." If these two elements are not proven, then the defendant is entitled to an acquittal. The acquittal can be further strengthened by other evidence, such as urine test results that prove that the defendant was not involved in drug use at the time of arrest. Thus, the judicial process must ensure that every decision taken is based on valid and fair evidence, so that women who are victims in drug networks are not trapped in a legal system that does not favour them. Overall, the issue of women's involvement in drug trafficking is not only related to legal aspects, but also touches on social, economic, and gender dimensions. Therefore, this research aims to examine the criminal responsibility of women who are used as tools in drug trafficking networks, as well as to clarify the legal impact on those trapped in such situations. The purpose of this study is to analyse and examine the criminal responsibility of women involved in drug trafficking, especially those who are used as tools by other parties by using their names or identities as recipients of narcotics packages. This research aims to understand the factors that influence women's involvement in drug networks and the legal implications faced by these women in the criminal justice system.

Based on the description that has been presented in the introduction, the hypotheses proposed in this study are: Can women involved in drug trafficking as recipients of drug parcels, whose names are used by other parties, be exempted from criminal liability if there is no proof of intent and control over the goods? This hypothesis aims to explore whether proving intent and control over the illicit goods is a key factor in determining whether women can be exonerated, especially if there is no evidence of active or deliberate involvement in the drug transaction.

This research is expected to make a significant contribution to the development of legal science, particularly in the fields of criminal law and gender. The main contribution of this research is to enrich the understanding of how criminal law handles cases where women become victims or tools in drug trafficking networks. In addition, this research also aims to provide a critical perspective on the implementation of the law in cases involving women, as well as to open further discourse on the protection of the rights of women caught up in criminal networks, particularly in the context of narcotics. This research is also expected to provide recommendations for legal policy reforms that are more responsive to gender issues in the enforcement of narcotics criminal law. The conceptual framework in this study focuses on the interaction between several key concepts, namely *criminal responsibility*, *gender*, and *drug trafficking*. Criminal responsibility will be analysed through a legal framework that refers to Law No. 35/2009 on Narcotics, specifically the articles that regulate the possession and distribution of narcotics, as well as the judicial procedures that female defendants must undergo. The concept of gender in this case will be analysed in the context of social and economic inequalities that often position women as victims in the drug trade. Meanwhile, the concept of drug trafficking will be explained in relation to the *modus operandi* that often involves the exploitation of women, as well as the factors that influence their participation in drug networks, both consciously and unconsciously. Using a qualitative approach, this research aims to build a comprehensive understanding of how the law views and addresses

the role of women in drug offences, as well as examining the role of the legal system in providing justice for women involved in these situations.

Criminal responsibility in Indonesian criminal law refers to the principle of guilt (Rahmadanti, Fikri, & Khairo, 2022; Nurlaily & Supriyo, 2022) combined with the principle of legality, which requires individuals who commit criminal offences to be held accountable for their actions. This concept is closely related to the principle of justice, which requires a philosophical approach in analysing criminal guilt. Roeslan Saleh (in Grace Yurico Bawole, 2018) stated that in order to understand criminal wrongdoing, further examination of philosophical and justice aspects is necessary. In this case, justice refers not only to the offender's behaviour, but also to the social context and the existing legal system, which determine the limits of criminal liability (Lamintang & Lamintang, 2022).

In the context of Indonesian criminal law, narcotics offences are regulated in Law Number 35 Year 2009 on Narcotics (Narcotics Law), which defines narcotics as a substance that can cause changes in the state of consciousness and has the potential to cause addiction. The criminal offence of narcotics itself includes acts that are contrary to the provisions in Article 111 to Article 148 of the Narcotics Law. According to Supramono (in Syaiful Bakhri, 2012), any activity involving drugs outside of medical and scientific purposes is considered a criminal offence. Drug trafficking, which is a transnational crime, not only involves aspects of criminal law, but also includes social and economic dimensions that affect individuals, especially women.

Gender issues in drug trafficking are important because women are often caught up in this crime network, both as perpetrators and victims. Research by Nursanti et al. (2021) points to the need to determine the appropriate level of criminal responsibility for children or individuals involved in drug trafficking. This is in line with international efforts to eradicate trafficking in persons, especially women and children, which forms part of transnational organised crime (Rose, 2020; Jahn & Dandurand, 2022). A focus on gender in the context of drug trafficking is also highly relevant, given that many women are trapped in these networks due to various social and economic factors. Moreover, a gendered approach to drug policy is also recognised by the United Nations Office on Drugs and Crime (2021) to address gender-based violence and the social burden women face in the justice system. Drug trafficking often involves organised crime that links human trafficking with drug distribution networks (United Nations Office on Drugs and Crime, 2021), requiring international cooperation in its eradication.

Methods Research

This research uses a normative legal approach with a focus on document studies to analyse relevant legal regulations and standards. In accordance with the concept of normative law, this research aims to understand the legal norms that apply in the Indonesian legal system, particularly those relating to the criminal responsibility of women in drug trafficking. The method of collecting legal materials is through literature study, which includes primary legal documents such as laws and regulations, as well as secondary legal materials such as law books, academic journals, scientific articles, and relevant online sources (Soerjono Soekanto, 2012; Zainuddin Ali, 2010).

All legal materials collected were analysed qualitatively to gain a deeper understanding of the research topic. This analysis is conducted by organising, cohering and structuring information from various legal sources into a systematic and clear argument, without repetition, in order to obtain substantial and impactful conclusions (Jazim Hamidi, 2005). Thus, this research aims to provide a comprehensive understanding of women's criminal responsibility in the context of drug law in Indonesia through document review and qualitative analysis.

Result and Discussion

The role of women in drug trafficking in Indonesia has increasingly come under the spotlight in criminal law studies, particularly in relation to social, economic and gender contexts. Based on the findings of this study, women's involvement in drug trafficking is often influenced by a number of factors, including economic necessity, exposure to violence, and the patriarchal structures that dominate the drug trade. Although women are often trapped in more subordinate roles, such as couriers or middlemen in drug networks, their criminal liability remains an important issue in Indonesian law.

In Indonesia, drug-related criminal law is governed by Law No. 35/2009 on Narcotics (the Narcotics Law), which regulates various criminal offences related to drug trafficking, ranging from possession, control, to being an intermediary in drug trafficking. Narcotics-related criminal offences, as stipulated in Articles 111-114 of the Narcotics Law, explain that anyone who is involved in narcotics transactions without the right or against the law, either as a main actor or as an intermediary, can be subject to criminal sanctions. This includes women who play a role in narcotics transactions, whether they are directly involved in the distribution of the prohibited goods or as parties who only receive narcotics packages unknowingly.

Criminal Liability of Women as Recipients of Narcotics Packages

One of the issues at the centre of this research is how criminal liability is applied to women involved in drug trafficking as recipients of narcotics packages, especially if their names are used by other parties without their knowledge. In this context, Indonesian law provides a clear basis for the conditions that must be met in order to link a person to a drug offence. Under Article 112(1) of the Narcotics Law, individuals who intentionally control or possess class I narcotics without the right to do so may be subject to criminalisation. The element of guilt (*mens rea*), which includes intent or negligence, is an important factor in determining whether a person can be held criminally responsible or not.

If a woman is the recipient of a package of narcotics sent on her behalf without her knowledge or consent, then she can be exempted from criminal liability, provided that it can be proven that she did not have the intention or power over the narcotics received. In this case, proving intent (*mens rea*) is crucial. If the woman can show that she did not know the contents of the package and had no control over the goods, and was not involved in the drug transaction, then she can be acquitted of criminal charges. This demonstrates the importance of proving intent and control over the drugs in determining criminal liability (Tatara & Timur, 2023; Haksama et al., 2022).

On the other hand, if there is evidence to suggest that the woman was actively involved in the drug transaction, either through communication with other perpetrators or if there are indications that she had a role in controlling the drugs received, then she can still be subject to criminal sanctions. Proof of intent and control is crucial in determining whether a person is criminally responsible for their actions in a drug trafficking network.

The Social and Economic Context of Assessing Women's Criminal Responsibility

Women's involvement in the drug trade is often influenced by deep socio-economic factors. Several studies have shown that many women become entangled in the drug trade due to economic inability, threats of violence, or coercion by other individuals (Sumter et al., 2022; Jeffries & Chuenurah, 2019). In this context, women often serve as "*mules*" or tools in drug trafficking networks, trapping them in situations that lead to their criminalisation. This leads to the importance of a more sensitive approach to gender issues and social conditions in determining women's criminal liability.

Legal Approaches that Take into Account Gender and Social Circumstances

In practice, Indonesian courts may take into account the socio-economic and psychological conditions of women involved in drug trafficking, particularly in the case of receiving packages of drugs of unknown contents. In some cases, if it can be proven that the woman is a victim of manipulation or coercion, a more humane and sensitive approach to victims of exploitation may be considered. For example, women who are victims of human trafficking and coerced into becoming drug couriers may receive more appropriate legal protection, which takes into account the external factors that influenced their actions (Yuliartini & Mangku, 2022; Pasaribu, 2023).

Overall, the criminal accountability of women involved in drug trafficking should take into account not only the physical and legal evidence of their involvement in drug dealing, but also the social and psychological conditions underlying their involvement in drug trafficking. Therefore, an approach that considers gender, exploitative, and socio-economic aspects is essential to provide more holistic justice in cases involving women in the drug trade.

Conclusion

Women's criminal liability in the context of drug trafficking in Indonesia, particularly as recipients of drug parcels whose names are used without their knowledge, may be exempted from criminal liability if it is proven that they had no intent or control over the drugs. However, in this case, proof of intent (*mens rea*) and control over the drugs is crucial. Furthermore, women involved in drug trafficking are often in situations of socio-economic stress, which influences their decision to engage in this illegal activity. Therefore, a more sensitive approach to women's gender and socio-economic context is necessary in assessing criminal liability in drug trafficking cases.

Suggestion And Recommendation

Based on the research results, it is recommended that law enforcement related to women involved in drug trafficking be more sensitive to social and gender factors. Many women are trapped in drug networks not because of their will, but because of manipulation or exploitation by other parties. Therefore, the criminal justice system should take more account of their socio-economic and psychological context. Legal policy reforms, such as a review of the Narcotics Law to incorporate a gender perspective, are needed to ensure that women involved in drug cases can obtain legal protection if they become victims. In addition, it is important to educate the public, especially women, about the risks and legal consequences associated with drug trafficking. The application of restorative justice principles can also be an effective alternative, providing women with opportunities for rehabilitation and social reintegration, rather than simply punishing them. With these measures, it is hoped that a fairer and more responsive legal system to gender issues in drug cases will be created.

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