

JURIDICAL REVIEW OF THE IMPOSITION OF CRIMINAL SANCTIONS AGAINST NARCOTICS TRAFFICKING PERPETRATORS AS AN EFFORT TO ERADICATE DRUGS

(Decision Study Number: 327/Pid.Sus/2023/PN.Mdn)

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Abstract

Narcotics crimes have recently become more and more common. Law Number 35 of 2009 concerning Narcotics does not provide a specific definition of the categories of users, sellers, dealers and dealers. The law only makes formulations about the types of drugs, there are many. This is sometimes a bit confusing in determining who owns the illegal goods. In reality, in the field, people who are just users even though in large numbers with dealers and owners and bookmakers overlap. In this case, Decision Number: 327/Pid.Sus/2023/PN.Mdn. imposes the death penalty on suspects as narcotics dealers in accordance with the provisions in article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics. The methodology used in this study is normative legal research, using a statutory and philosophical approach. The result of this study is that the death penalty is a threatened criminal sanction and is the heaviest penalty against narcotics dealers, regulated in article 114 paragraph (2). Evidence Used by Investigators to Identify Suspects of Narcotics Abuse Similar to other criminal evidence, in the abuse of narcotics, the evidence used is also in accordance with the provisions of Article 184 of the Criminal Procedure Code which states that: "Valid evidence is: a. Witness statement b. Expert testimony c. Letter d. Instructions e. Defendant's statement. The application of the provisions of Article 114 paragraph 2 concerning narcotics trafficking, the sanction is the death penalty against narcotics dealers regulated in Law Number 35 of 2009 concerning Narcotics, technically contained in article 114 paragraph (2) and article 119 paragraph (2). Narcotics dealers are those who are proven in terms of the act of offering to sell, selling, buying, being an intermediary in buying and selling, exchanging, handing over or receiving narcotics by fulfilling the types and conditions, as well as the amount or level of narcotics they have.

Keywords:

Criminal Sanctions. Narcotic. Distribution

A. Introduction

One of the crimes that is very detrimental and very complex as well as crimes that damage the order of life of the community, nation and state is the abuse of narcotics. In Indonesia, narcotics abuse crimes have touched an alarming level based on data from the Indonesia Drugs Report 2022 data and information research center of BNN, in 2019 the prevalence was 1.80 percent and then in 2021 it was around 1.95 in this case up 0.15 percent, this figure increased from the previous year around 4.5 million people.³ Lifestyles balanced by the increasingly rapid globalization trend also affect the increase in narcotics and drug crime forbidden. The problem regarding narcotics is a complex and very dangerous problem in which in this case the perpetrators of the abuse are mostly young people, this is dangerous because young people should indeed be the next generation of the nation for their country, therefore it is very important to eradicate the abuse of narcotics and illegal drugs.¹

Narcotics abuse is a deviant behavior that is more aimed at the problem of obedience or compliance with societal norms. Individuals who have low self-control are not stimulated by the environment, like to take risks, lose emotional control because they are easily frustrated, then someone who is disconnected from social ties with their circle then there is no social control so they are free to deviate.²

This narcotics crime is very complex so that this crime is a crime network that is not easy to trace because this crime is an organized and neatly arranged crime with a changing mode of crime. So that in suppressing this narcotics crime needs support from various parties, with this problem the existence of social control is an effort to prevent deviations, then in order to create order and security, then one of the decisions regarding the crime of narcotics trafficking is the Medan District Court Decision Number: 327/Pid.Sus/2023/PN.Mdn, the decision is regarding the crime of narcotics trafficking involving TNI apparatus personnel.

The meaning of narcotics abusers is mentioned in Article 1 number (15) of the Narcotics Law which reads "An abuser is a person who uses narcotics without rights or against the law". Meanwhile, narcotics themselves according to the Narcotics Law are divided into 3 groups, namely groups I, II, III. The criminal provisions for abusers are regulated in Article 127 paragraph of the Narcotics Law: "Paragraph 1 Every Abusers:

1. Class I narcotics for themselves shall be sentenced to a maximum of 4 (four) years in prison;
2. Class II narcotics for themselves shall be sentenced to a maximum of 2 (two) years in prison; and
3. Class III narcotics for themselves shall be sentenced to imprisonment for a maximum of 1 (one) year".³

To achieve a correct judicial process, the criminal justice procedural law must be carried out correctly. If there is a violation of the criminal procedure law, then the court cannot achieve the material truth nor will a fair and fair trial be achieved. In criminal law, what is sought is the material truth. Material truth is obtained in a trial, but it may not be obtained in a trial. If this happens, it can be said that there is no fair and impartial justice or called fair and trial.

¹ Abdullah, Zainuddin. "The death penalty for drug dealers in the perspective of Islamic law." *Al Amin: Journal of Islamic Science and Culture Studies* Vol. 1, No. 2 (2018). Page 87.

² Arifin, Zainul. "The Position and Urgency of the Death Penalty for Countering Narcotics Trafficking in Indonesia and a Number of Countries in the World." *Journal of State and Justice* Vol. 9, No. 2 (August 2020).

³ Aruro, Piktör. "The death penalty for narcotics dealers in the context of Law No. 22 of 1997 and amendments to Law No. 35 of 2009." *Lex Administratum Journal* Vol. 4, No. 3 (March 2016).

The judiciary is not only a place to try and punish the defendant. The judiciary as the only institution to adjudicate and seek justice is expected to be able to reveal the truth about the procedural legal process taken previously to obtain the material truth.

"Material truth is the most complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and appropriately with the aim of finding out who the perpetrator can be accused of committing a violation of the law, and then requesting an examination and prosecution from the court to find out whether it is proven that a criminal act has been committed and whether the person charged can be blamed".⁴

In the case of Decision Number: 327/Pid.Sus/2023/PN.Mdn. The defendant has been charged by the Public Prosecutor with the charges as contained in Article 114 Paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Jo Article 55 paragraph (1) 1 of the Criminal Code with evidence in the form of methamphetamine weighing 75,000 (seventy five thousand) grams and ecstasy 40,000 (forty thousand) grains. Based on Article 8 paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, Class I Narcotics can only be used for the purpose of scientific and technological development and for diagnostic reagents, as well as laboratory reagents after obtaining the Minister's approval on the recommendation of the Head of the Food and Drug Supervisory Agency

The Defendant's actions violated Article 114 paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics jo Article 55 paragraph (1) 1 of the Criminal Code, there are 7 (seven) qualifications for acts that are determined as Narcotics Crimes, namely:

1. Offer for sale;
2. Sell;
3. Buy;
4. Becoming an intermediary in buying and selling;
5. Exchange;
6. Submit;
7. Receive;

If the seven qualifications of the act which are the elements of the criminal act mentioned above, there is a sub-element, namely the necessity of more than one party or subject that must be proven according to the law of proof to be able to realize the act, namely that in "offering for sale" there must be at least one party who offers and there is another party who accepts the offer, In "selling" as well as in "buying" each must have at least one party as the seller and the other party as the buyer, in "being an intermediary in buying and selling" requires the existence of at least three parties, namely the seller and the buyer as well as the intermediary who can be in the position of carrying out the work as an intermediary/broker as well as a liaison or as a medium between the seller and the buyer.⁵

In "exchange" requires an exchange so that there must be a party who exchanges and there is a party who is exchanged, in "submitting" as well as in "receiving" there must be a party who submits

⁴ Andi Hamzah, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta: 2017, page 8.

⁵ Basuki, Udiyo. "Human Rights, Constitution and Democracy: Dynamics of Human Rights Protection in the Indonesian Constitution from a Democratic Perspective." *In Right: Journal of Religion and Human Rights* Vol. 8, No. 2 (November 2019). Page 62.

and there is a party who receives, and the seven acts that are qualified as criminal acts are making goods as the object of the crime, namely narcotics.

From the case mentioned above with Attention, Article 114 paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Jo Article 55 paragraph (1) 1 of the Criminal Code and Law Number 8 of 1981 concerning the Criminal Procedure Law and other laws and regulations, the person concerned is legally and convincingly proven guilty of committing a criminal act "Jointly and unlawfully becoming an intermediary in the sale and purchase of Class I Narcotics other than Plants whose weight exceeds 5 (five) Gram", the Panel of Judges sentenced the Defendant to death .⁶

B. Problem Formulation

1. Can the application of evidence in Decision Number 327/Pid.Sus/2023/PN Mdn prove that the defendant is a dealer?
2. Can the element of "accepting" Article 114 paragraph (2) of the Narcotics Law be applied to the defendant?

C. Research Methods

Research is defined as theory dilution, theory testing or problem solving. Research methods are procedures or ways to obtain correct knowledge or truth through systematic steps. In order to obtain or obtain accurate, relevant data and to find out what legal consequences arise from this problem, in this research activity the author uses the following research methods:

1. Type of Research

This study uses normative research methods using legislation, case and conceptual approaches. The legislative approach is to examine using laws and regulations that regulate sanctions and their prevention, then the case approach is the approach using cases that have obtained court decisions and the conceptual approach is to use the concepts of legal experts and is linked to law enforcement.

2. Data Source

The data source used in this study is library research which consists of primary legal materials and secondary legal materials. The primary legal materials in this writing are:

- a. Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics
- b. Criminal Code
- c. Criminal Procedure Code
- d. Decision Number: 327/Pid.Sus/2023/PN.Mdn
- e. laws and regulations related to narcotics,

Meanwhile, the secondary legal material in this study is an explanation of matters related to writing, for example decisions related to narcotics. The technique used in this study is the technique of collecting legal materials or studying documents from laws and regulations as well as related documents such as judges' decisions, the data collected is then analyzed using legal arguments and compiled descriptively.

3. Data Analysis

⁶ Eleanora, Fransiska Novita. "The dangers of drug abuse and its prevention and control efforts (a theoretical review)." *Journal of Law* Volume XXV Number 1 (2011). Page 42.

The data and materials collected and obtained from the research will be processed, compiled and analyzed qualitatively. Data collection in solving this problem, is carried out by library research, which is then analyzed qualitatively. This analysis technique is a technique by which the materials or legal literature will be studied so that it can provide an overview of the research topic so as to help the author make a correct conclusion.

D. Discussion Analysis

1. Analysis of the Application of Evidence in Decision Number: 327/Pid.Sus/2023/PN.Mdn.

To find the material truth, the formal truth must be obtained first, in the case of finding the formal truth, the formal law must be carried out as it should, the criminal formal law is regulated in the Criminal Code. "Formal criminal law or criminal procedure law to regulate how the government maintains the continuity of the implementation of material criminal law".⁷

In this case, the defendant Yogi Saputra Dewa has been legally proven guilty according to the law to commit the Criminal Offense "jointly without the right to commit the act of offering to sell, selling, buying, becoming an intermediary in buying and selling, exchanging, handing over, or receiving Class I Narcotics that are not plants weighing more than 5 (five) grams" As in the Primary Indictment, he violated Article 114 Paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Jo Article 55 paragraph (1) 1 of the Criminal Code and sentenced the Defendant Yogi Saputra Dewa to the death penalty.

Briefly, this case is that the defendant Yogi Saputra Dewa together with the witness Syahril Bin Syamsudin together with the witness Sertu Yalpin Tarzun and the witness Pratu Rian Hermawan (Heard at the Military Court I-02 Medan) on Monday, December 5, 2022, at approximately 14.15 WIB or at least still included in 2022, located on Jalan Pemuda Number 22, A U R, Medan Maimun District, Medan City, North Sumatra Province, precisely in front of the Lobby of Hermes Palace Hotel Medan or at least in a place that is included in the jurisdiction of the Medan District Court. "together without rights or against the law, offering to sell, selling, buying, becoming an intermediary in buying and selling, exchanging, handing over or receiving Class I Narcotics that are not plants weighing more than 5 (five) grams", the act was committed by the Defendant.

That these defendants smuggled methamphetamine and ecstasy drugs in the North Sumatra region. This is based on community reports, so the police combed the location where they are believed to have carried out the smuggling transaction, namely at the location of the Doorsmer Car Wash on Jalan Sp. Kebon Jaagung in front of the 121 Macan Panther Battalion Complex, Galang District, Deli Serdang Regency using a black Fortuner vehicle with Police Number BK 1549 SR. The police then secured the defendants, namely Yogi Saputra Dewa and witness Syahril Bin Syamsudin, witness Sertu Yalpin Tarzun and witness Pratu Rian Hermawan as well as 3 (three) green bags containing methamphetamine-type narcotics as many as 75 (seventy-five) packs of Chinese tea weighing 75,000 grams and 8 (eight) clear plastic packs wrapped in black plastic containing 40,000 (forty thousand) grains of ecstasy narcotics and 3 units of mobile phones.

In this case, the defendant Yogi Saputra Dewa Dalam has been proven to be an intermediary in the sale and purchase of narcotics weighing around 75,000 (seventy-five thousand) grams of shabu-shabu type narcotics and 40,000 (forty thousand) grains of ecstasy, where if the narcotics can pass

⁷ L.J. Van Apeldoorn, "Introduction to Legal Science", Balai Pustaka, Jakarta, 2015 page 335

into the market will be able to damage the future of thousands of young generations of Indonesia and in turn can damage the security stability of the unitary state of the Republic of Indonesia. As a result of his actions, the defendant has violated the provisions of Article 114 paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Jo Article 55 paragraph (1) 1 of the Criminal Code and Law Number 8 of 1981 concerning the Criminal Procedure Law and other relevant laws and regulations.⁸

So that legally and convincingly guilty of committing a criminal act "Jointly and unlawfully becoming an intermediary in the sale and purchase of Class I Narcotics other than Plants whose weight exceeds 5 (five) grams. Imposing a criminal sentence on the defendant Yogi Saputra Dewa with the death penalty.

In determining the truth in the event as charged, the public prosecutor must be accompanied by valid proof to convince or ensure that something is true. Article 184 paragraph (1) of the Criminal Procedure Code regulates valid evidence for proof in criminal cases, namely:

1. Witness statements;
2. Expert testimony;
3. Letter;
4. Instructions, and;
5. Defendant's statement

In addition to the evidence specified in the Criminal Procedure Code, the Narcotics Law also regulates its own evidence regulated in Article 86, namely:

1. Investigators can obtain evidence other than those referred to in the Criminal Code;
2. Evidence as intended in paragraph (1) in the form of:
 - a. Information spoken, transmitted, received, or stored electronically by an optical device or similar and
 - b. Recorded data or information that can be seen, read, and/or heard, which can be issued with or without the aid of a means whether contained on paper, any physical object other than paper or recorded electronically, including but not limited to:
 1. Writing, sound, and/or images;
 2. Maps, designs, photographs or the like; or letters, signs, numbers, symbols, ciphers, or perforations that have meanings that can be understood by people who are able to read or understand them

The existence of evidence is very important in determining whether a person meets the criminal elements of the criminal provisions charged against him so that it can be determined whether the person can be held accountable for his actions or not. "Proof is a provision that contains outlines and guidelines on the procedures that are justified by the law to prove the wrongdoing charged to the defendant."⁹

So proof is a provision that regulates the evidence that is justified by the law that can be used by the judge to prove the wrongs charged. "The law of proof is part of the criminal procedure law

⁸ Heriyono. "The implementation of the death penalty in the perspective of human rights." *Indonesian Journal of Law and Policy Studies* Vol. 1, No. 1 (May 2020). page 121.

⁹ Hutapea, Bungasan. "The alternative to the death penalty in Indonesia is seen from a human rights perspective." *Journal of Human Rights Research* Vol. 7, No. 2 (December 2016). Page 59.

that regulates various types of evidence that are valid according to the law, the system adopted in proof, the conditions and procedures for submitting such evidence as well as the authority of the judge to receive, reject and assess evidence."

To declare a defendant guilty or not is not enough, it is not enough to be based solely on the judge's conviction or solely based on evidence according to the provisions and methods of proof with the evidence prescribed by law. A new defendant can be found guilty if the offense charged against him can be proven in a way and thus "bared" with the judge's conviction." (Harahap, 2012, p. 280) So that on the proof with at least two valid evidences, the judge obtained confidence that the criminal act really occurred and that the defendant was guilty of committing it. "The reason why the lawmakers formulated Article 183 of the Criminal Procedure Code is aimed at realizing a provision that can at least guarantee the upholding of true truth as well as the upholding of justice and legal certainty."

In this case, the evidence and evidence collected (as mentioned above, which includes 3 (three) bags with green wama containing 75 (seventy-five) packs of Methamphetamine type narcotics weighing approximately 75,000 (seventy-five thousand) grams, 8 (eight) packs of extacy totaling approximately 40,000 (forty thousand) pieces, 1 (one) piece of Oppo brand mobile phone number 081372198495) and supported by legal facts, namely that The defendant Yogi Saputra Dewa had been caught by the police while transacting as an intermediary in narcotics trafficking.

The burden of proof basically lies with the investigator, the investigator tries his best to fulfill the provisions of the Law, namely that an event that occurs is suspected or constitutes a criminal act, then an investigation is carried out with the aim of seeking information and evidence to find the truth in a criminal event.

In the process of proving narcotics cases, often the evidence used is two witnesses, evidence of a number of drugs, urine test results or blood tests belonging to the defendant. This is indeed quite strong in the proof as referred to in the Criminal Procedure Code, but the negative proof system adopted by the Criminal Procedure Code requires the Judge's confidence so that the defendant can be sentenced to criminal sanctions, so here the role of investigators and investigators is needed in finding evidence that can convince the Judge.¹⁰

In addition to the evidence that is often used in the process of proving narcotics cases, there is fingerprint evidence that can be used as a clue to the possession or control of a narcotics. The explanation of Article 75 letter f of the Narcotics Law explains that, "urine tests, blood tests, hair tests, and other body parts tests are carried out in accordance with the development of science and technology to prove the presence or absence of narcotics in the body of one person or several people.

Based on this explanation, it appears that the fingerprint test is an identifiable part of the body and is a means of evidence to determine who owns or controls a Narcotics. Based on Article 187 letter c of the Criminal Procedure Code, the results of the fingerprint test in the form of laboratory minutes are letters made by a dactyloscopy expert in conducting specimen tests to determine whose fingerprints belong to the narcotics package. The form of the letter referred to in letters a, b, and c is an "official letter" made by an authorized official or based on provisions or a special expert certificate regarding certain circumstances made on oath of office or strengthened by oath.". The letter itself has value as valid evidence, since the letter was made."

¹⁰ Kolopita, Satrio Putra. "Law Enforcement on the Death Penalty Against Perpetrators of Narcotics Crimes." *Lex Crimen Journal* Vol. 2, No. 4 (August 2013). Page 92

b. Elements contained in Article 114 paragraph (2) of the Narcotics Law to be applicable to the defendant

Criminal acts are a translation of the word *strafbaarfeit* in Dutch. Viewed from a literal point of view, *strafbaarfeit* consists of the word *feit* which in Dutch means part of a reality or *eengedeelte van de werkelijkheid*, while *strafbaar* means punishable. Literally, the word *strafbaarfeit* can be translated as part of a punishable reality.¹¹ Criminal acts are just one translation of the Dutch term, namely *strafbaarfeit*. Actually, the term is elliptical (short for) some sentences that are omitted. The actual sentence is *feit tarzaake van het welke een person strafbaar is* (an act by which a person can be convicted).¹²

Thus, based on the definition of *strafbaarfeit* above, criminal law experts translate *strafbaarfeit* differently, some translate it as a criminal event, criminal act, punishable act, and some with the abbreviation call it a *delik*. Therefore, in the criminal act there are elements of criminal acts, namely:¹³

1. Objective Elements Elements that exist outside the perpetrator. Elements that are related to the situation, that is, in the circumstances in which the actions of the perpetrator must be carried out
2. Subjective Element: An element that exists or is attached to the perpetrator or that is connected to the perpetrator and includes everything contained in his heart.

The provisions of Law Number 35 of 2009 concerning Narcotics determine several narcotics crimes, namely in Articles 111 to 148 of Law Number 35 of 2009 concerning Narcotics. In Law Number 35 of 2009 concerning Narcotics, it is determined that the crimes that can be imposed are in the form of the death penalty, imprisonment, imprisonment and fine. Criminal penalties can also be imposed on corporations, namely in the form of revocation of business licenses; and/or revocation of legal entity status.

In this case, the legal basis for the imposition of criminal penalties on the defendant's actions is Article 114 Paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Jo Article 55 paragraph (1) 1 of the Criminal Code, the elements of which are as follows:¹⁴

1. Everyone;
2. Without rights or against the law;
3. Offer to sell, sell, buy, receive, act as an intermediary in the sale, purchase, exchange or delivery of class I narcotics weighing more than 5 (five) grams;
4. Class I narcotics are not plants;
5. Doing, those who tell to do and those who participate in doing;

Narcotics in accordance with the provisions of article 1 number 1 of the Law of the Republic of Indonesia Number: 35 of 2009 concerning Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in

¹¹ P.A.F. Lamintang, 1997, Basics of Indonesian Criminal Law, Citra Aditya Bakti, Bandung, page 181.

¹² Megawaty Runtunuwu, Gabriela. "Imposing the Death Penalty for Perpetrators of Narcotics Crimes." *Lex Crimen Journal* Vol. 2, No. 6 (October 2013). Page 81

¹³ Mulyadi, Lilik. "Criminalization of Drug Dealers and Users: A Study of Principles, Theories, Norms and Judicial Practice." *Journal of Law and Justice* Vol. 1, No. 2 (July 2012). Page 61

¹⁴ Panjaitan, Budi Sastram. "Placing the perpetrators of the crime of illicit circulation of narcotics as perpetrators of crimes against genocide." *Journal of Pioneer LPPM Asahan University* Vol. 5, No. 2 (2019). Page 71.

consciousness, loss of taste, reduce to eliminate pain, and can cause dependence and in the General Explanation of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics It is stated that Narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases and further in Article 6 paragraph (1) it is stated that Narcotics are classified into a. Class I Narcotics, b. Class II Narcotics and c. Class III Narcotics.¹⁵

Judging from the danger and the level of its circulation, the government finally stipulated the Narcotics Law, namely Law number 35 of 2009, with the issuance of the Law is expected to prevent and suppress the increase in the circulation and use of narcotics in Indonesian territory. With a law that specializes in narcotics, all parties hope that it can run well and the existing sanctions can be set fairly for perpetrators of narcotics crimes. Narcotics laws are very necessary to be enforced because of the huge influence of narcotics on the survival of a nation, especially for the younger generation of the nation's successors. Various efforts have been made by the government and non-governmental organizations that are concerned about the dangers of narcotics.¹⁶

A very fatal danger can occur to narcotics users and the surrounding environment, as well as the nation and state in general, in this case the government and the community as well as ± related parties are trying to campaign for the danger of narcotics abuse, this aims to make many people aware of the impact of narcotics abuse. The implementation of measures to increase control and supervision as an effort to prevent and eradicate the abuse and illicit circulation of narcotics is very necessary. Because narcotics crimes in general are not committed by individuals alone, but are carried out jointly and even by syndicates that are neatly organized and very secret.

In addition to narcotics crimes, the development of the quality of narcotics crimes has become a very serious threat to human life. Preventive measures are still prioritized through the development of preventive principles and the principle of general police obligations, namely maintaining public security and order. In this case, every official of the National Police of the Republic of Indonesia has the authority of Discretion, namely the authority to act in the public interest based on their own judgment.

Article 114 paragraph (2) of Law of the Republic of Indonesia No.35 of 2009 concerning Narcotics jo Article 55 paragraph (1) 1 of the Criminal Code there are 7 (seven) qualifications for acts that are determined as Narcotics Crimes, namely:¹⁷

1. Offer for sale;
2. Sell;
3. Buy;
4. Becoming an intermediary in buying and selling;
5. Exchange;
6. Submit;
7. Receive;

¹⁵ Purnomo, Agus. "The Death Penalty for Narcotics Crimes in Indonesia: A Sociology of Law Perspective." *De Jure: Journal of Law and Sharia* Vol. 8, No. 1 (2016). Page 28.

¹⁶ Rukman, Auliah Andika. "The death penalty is reviewed from a sociological perspective and human rights enforcement." *Journal of Sociology Education Equilibrium* Vol. 4, No. 1 (May 2016). page 87.

¹⁷ Salundik. "Enforcement of the Death Penalty in Narcotics Crimes." *Tambun Bungai Journal of Law* Vol. 1, No. 2 (September 2016). Page 132.



If the seven qualifications of the act which are the elements of the criminal act mentioned above, there is a sub-element, namely the necessity of more than one party or subject that must be proven according to the law of proof to be able to realize the act, namely that in "offering for sale" there must be at least one party who offers and there is another party who accepts the offer, In "selling" as well as in "buying" each must have at least one party as the seller and the other party as the buyer, in "becoming an intermediary in buying and selling" requires the existence of at least three parties, namely the seller and the buyer and the intermediary who can be in the position of carrying out work as an intermediary/broker or as a liaison or as a medium between the seller and the buyer, in "exchange" requires an exchange so that there must be a party who exchanging and there is a party who is exchanged, in "handing over" as well as in "receiving" there must be a party who gives and there is a party who receives, and the seven acts that are qualified as criminal acts are making goods as the object of the crime, namely narcotics.¹⁸

Based on the facts revealed at the trial, the defendant Yogi Saputra Dewa along with Witnesses Syahril bin Syamsudin, Yalpin Tarzun and Rian Hermawan, have been arrested by the NIC Task Force Team Officer of the Directorate of Narcotics Crimes of the National Police Criminal Investigation Department, on suspicion of committing the crime of narcotics of the type of shabu and ecstasy. The act of the Defendant Yogi Saputra Dewa together with Syahril bin Syamsudin meeting with Sertu Yalpin Tarzun at the place was to carry out a transaction to hand over methamphetamine and ecstasy narcotics, so that the act of the Defendant Yogi Saputra Dewa together with Syahril bin Syamsudin offering to sell, sell, buy, receive, become an intermediary in the sale, exchange, or delivery of class I narcotics weighing more than 5 (five) grams does not have a permit from the authorities.

In order to realize the implementation of the law against the crime of narcotics trafficking, there is a police institution which is formed as an institution that carries out law enforcement in accordance with Article 81 of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, stating that: "Investigators of the National Police of the Republic of Indonesia and BNN investigators are authorized to conduct investigations into the abuse and illicit circulation of narcotics and narcotics precursors based on this Law."¹⁹

In carrying out law enforcement efforts, narcotics trafficking crimes can be carried out in a preemptive, preventive and repressive manner.²⁰ Preemptive is a proactive and interactive effort in the context of fostering, structuring, and utilizing the potential of the community in an effort to win the sympathy of the people. Preventive is an effort that is preventive and preventative against every form of threat of kamtibmas disturbances by providing protection, protection, and services to the community. Meanwhile, repressive is an effort that is law enforcement by ensuring the enforcement of the law, with legal tips that are implemented firmly, professionally, and thoroughly while still upholding human rights.²¹

¹⁸ Sumanto, Atet. "The Effectiveness of the Death Penalty in the Law Enforcement Process of Narcotics Crimes." *Perspective Journal* Vol. 22, No. 1 (January 2017). page 79.

¹⁹ Viswandro, et al, *Getting to Know the Law Enforcement Profession*, (Jakarta: Medpress Digital, 2015), page 2.

²⁰ Frans Simangunsong, "Law Enforcement Against Perpetrators of Narcotics Crimes", *Journal of Rechtsstaat Law*, Faculty of Law, UNSA, Vol. 8, No. 1, (2014), page 12.

²¹ Suyono Yoyok, *The Law of the Police Position of the National Police in the Indonesian Constitutional System After the Amendment of the 1945 Constitution*, (Yogyakarta: Laksbang Grafika, 2013), page 2.

Law enforcement agencies must carry out their duties properly and in accordance with their respective roles regulated in laws and regulations. In carrying out their duties, they must prioritize justice and professionalism, so that they become role models for the community and are trusted by all parties, including members of the community.²⁶ Based on Law Number 35 of 2009 concerning narcotics, it is emphasized that narcotics trafficking can be subject to criminal sanctions of imprisonment, fines, and the maximum penalty for drug makers and dealers is the death penalty.²²

Case Decision Number: 327/Pid.Sus/2023/PN.Mdn. It is appropriate because the panel of judges chose the second indictment which states that the defendant violated Article 114 paragraph (2) of the Law. RI Number 35 of 2009 concerning Narcotics. Based on the facts revealed in the trial, the elements of this article are legally proven and believe that the defendant is guilty. So in the verdict it was stated that Yogi Pratama Dewa was legally and guilty of committing the crime of abusing first-class narcotics used for himself. The determination of the verdict is carried out on the will of the judge and his considerations, which is appropriate because the considerations used by the judge are in the form of facts revealed and evidence presented in the trial, as well as statements from witnesses. Another additional supporting evidence is the letter of the results of the narcotics examination examined by the criminal laboratory. In addition, the main element in this case is that the defendant is an individual who can be held accountable for his actions, when he commits the act he is aware of the consequences that will be caused, and of his own volition without any coercion from any party.

The panel of judges did not find any elements that could be used as justifications, excuses, or exceptions for the defendant to be released from all charges. The panel of judges in terms of also assessing from the aggravating matters, one of which is the act of violating the government's work program in its efforts to eliminate and prevent all forms of narcotics abuse practices, moreover what the defendant has done can damage him and also affect the development of other young generations. In addition, the mitigating factor for the defendant in this case is his role as the backbone of the family, and also he has admitted his actions and been cooperative during the examination at the trial.

D. Conclusion

1. Evidence Used by Investigators to Determine Suspects of Narcotics Abuse Crimes Similar to other criminal evidence, in the abuse of narcotics, the evidence used is also in accordance with the provisions of Article 184 of the Criminal Procedure Code which states that: "Valid evidence is: a. Witness statement b. Expert testimony c. Letter d. Instructions e. Defendant's statement". Evidence in the case of narcotics abuse must also be proven by a urine test through the Forensic Laboratory or the Investigator's laboratory. The positive result of the urine test is stated in the form of a test report including evidence of the letter. The minutes of the test still need other evidence to be able to ensnare the provisions of narcotics crimes on suspects.
2. The application of the provisions of Article 114 paragraph 2 concerning narcotics trafficking, the sanction is the death penalty against narcotics dealers regulated in Law Number 35 of 2009 concerning Narcotics, technically contained in article 114 paragraph (2) and article 119 paragraph (2). Narcotics dealers are those who are proven in terms of the act of offering to sell, selling,

²² Sinta Herindrasti. "Drug-Free ASEAN 2025: Indonesia's Challenges in Combating Drug Abuse." *Journal of International Relations* Vol. 7, No. 1 (2018). page 70.



buying, being an intermediary in buying and selling, exchanging, handing over or receiving narcotics by fulfilling the types and conditions, as well as the amount or level of narcotics they have. It is threatened with the death penalty as one of the types of crimes contained in these articles and is the heaviest crime.

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