

## LAW ENFORCEMENT PROBLEMS AGAINST DRUG USERS (Study Decision Number: 214/Pid.Sus/2024/PN.Mdn)

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### Abstract

Narcotics circulation and abuse is one of the national problems that are taken seriously by the government, because it can cause damage to the nation's morale, perpetrators of narcotics crimes often get punishment based on court decisions that lack a sense of justice and legal certainty. In narcotics cases, there are several articles that are often used to ensnare perpetrators, namely Article 114, Article 112, and Article 127 of Law Number 35 of 2009 concerning Narcotics. The three articles, there are two articles that have multiple interpretations and unclear formulations, namely in Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics. The multi-interpretation article will result in narcotics crime perpetrators (dealers) taking refuge as if they were victims of narcotics crimes. That this will have an impact on the imposition of punishment with a short sentence so that it causes injustice in the implementation process. This research is normative juridical, which is a method that describes or explains a fact systematically and then the analysis is carried out juridically by linking the data and facts obtained by analyzing court decisions related to criminal sanctions against perpetrators of narcotics crimes and related to applicable laws and regulations. The results of this study However, in the field of narcotics law enforcement, this seems to be much more difficult. Prioritizing criminal punishment seems to be very inherent in our law enforcement body. It takes extraordinary encouragement both at the local, national and international levels. Therefore, in relation to the case in this study, the Judge of the Medan District Court decided that the defendant was legally and convincingly guilty in accordance with the provisions of article 112 paragraph (1) of UURI No.35 of 2009 concerning Narcotics by imposing a criminal sentence on the defendant Veri Suriana als Veri, therefore with a prison sentence for 6 (six) years and a fine of Rp.1,000,000,000,- (one billion rupiah) with the provision that if the fine is not paid, it must be replaced with imprisonment for 6 (six) months.

### Abstract :

Law Enforcement, Narcotics Abuse.

### A. Introduction

Narcotics Law Number 35 of 2009 does not provide sufficient restrictions on who is meant by a dealer and who is meant by an addict. Likewise, Law Number 35 of 2009 concerning Narcotics

explains that Narcotics Addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. This means that the law only requires rehabilitation for addicts and victims. What is meant by victims is only a few and very limited explained in the explanation of Article 54 that "victims of narcotics abuse" are someone who accidentally uses narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use narcotics, while the definition of addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically.

In Indonesia, the issue of law enforcement is in the endless spotlight, especially in the issue of the criminal justice system. One of the problems that is highlighted is the relationship between the criminal justice system and the problem of drugs (Narcotics, Psychotropics and other Addictive Substances) which should be handled with various approaches, but in practice, a punitive approach is the main pillar. In the international world, drug policy has developed after the birth of 3 UN Conventions on Drugs, namely the 1961 Single Convention on Narcotics, the 1971 Psychotropic Convention and the United Nations Convention on Eradication Illicit Circulation of Narcotics and Psychotropics 1988.

The revision of the drug policy in Indonesia follows many developments in the world with the birth of Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961, along with the Protocol that amends it,<sup>3</sup> as well as Law Number 7 of 1997 concerning the Ratification of the United Nations Convention on the Eradication of Illicit Narcotics and Psychotropic Trafficking 1988, followed by the issuance of Law Number 5 of 1997 concerning Psychotropics and Law Number 22 of 1997 concerning Narcotics. After Law Number 5 of 1997 was replaced by Law Number 35 of 2009 concerning Narcotics, this latest law became a law that combines the rules of substances contained in the provisions of Psychotropics and Narcotics and parties who have certain authorities.<sup>1</sup>

In contrast to the policy in Indonesia, ideas and debates have emerged in various parts of the world to find alternative solutions to the drug problem. Of these various approaches that are increasingly developing, criminalization is the only solution that exists. The public health approach and the provision of economic alternatives to the drug problem are the main centers that are now increasingly seen as effective approaches. The UK, for example, now admits that their drug policy must be reformed, one of which is the policy on criminalization of users. The same thing was also conveyed by the President of Guatemala, Otto Perez, who pushed for the legalization of certain drug use by saying that, "Drug abuse, alcoholism and tobacco should be treated as public health problems, not criminal justice issue".<sup>2</sup> In contrast, with the two countries, Portugal has made an extraordinary legal breakthrough. Since 10 (ten) years ago, the Portuguese government has abolished criminal provisions against people with drug dependence and even to abusers in certain categories.<sup>3</sup>

The problems that are often faced regarding narcotics are narcotics abusers or addicts who use narcotics beyond their interests or medical needs, even to exceed the dose that can be tolerated by the body, causing overdose users. The impact of narcotics abuse is that it can cause damage to the resilience of society, nation, and state.

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<sup>1</sup> AR. Sujono and Bony Daniel, *Comments and Discussion of Law Number 35 of 2009 concerning Narcotics*. (Jakarta: SinarGrafika, 2011) p. 127

<sup>2</sup> The Guardian, "Drugs Policies are not working, believe 75% of MPs", [http://www.guardian.co.uk/politics/2012/Sep/08/MPS-drugs-policies-not-working?CMP=twit\\_gu](http://www.guardian.co.uk/politics/2012/Sep/08/MPS-drugs-policies-not-working?CMP=twit_gu), retrieved on July 19, 2024.

<sup>3</sup> Abidin Az and Andi Hamzah, *Introduction to Indonesian Criminal Law*, (Jakarta: PT. Yarsif Watampone, 2010) pages 42-43.

Parties who abuse narcotics according to Law No. 35 of 2009 consist of narcotics addicts regulated in Article 1 number 13 and abusers regulated in Article 1 number 15. A Narcotics Addict is a person who uses or abuses Narcotics and is in a state of dependence on Narcotics, both physically and psychologically. An abuser is a person who uses narcotics without rights or against the law. The factors that cause the occurrence of narcotics crimes are divided into 2 (two) groups, namely internal factors and external factors.<sup>4</sup>

Internal factors usually come from things in the perpetrator of narcotics crimes, such as a shaken soul and a sense of hopelessness that requires a sense of calm, security, and comfort for the perpetrator so that he can eliminate the feelings of anxiety and despair felt. External factors come from things outside the perpetrator of narcotics crimes, such as associations, environmental influences, and pressure or urgency from certain parties.

Perpetrators and victims of narcotics abuse come from all ages, both from children, teenagers, to adults. The spread of illegal drugs has spread and spread throughout the world. The problem of narcotics abuse in Indonesia is now very concerning. This situation is caused by several things, including the awareness of the Indonesian people about the lack of obedience to religious teachings, norms and laws and regulations. The sophistication and ease of transportation facilities and technology greatly facilitate the development of narcotics abuse and the spread of narcotics so that many cases occur, both cases of narcotics users, narcotics dealers, and narcotics smuggling.<sup>5</sup>

Based on the victim's diagnosis, a person who is deceived into drug trafficking is also part of the victim, but in practice he is sometimes considered a perpetrator of a drug crime. For example, a very innocent person is approached by someone else to bring an item that will be given to another person's friend, with the intention of helping this very innocent person bring the item and then not long after that is caught by law enforcement who turns out that the item he is carrying is a package of drugs.<sup>6</sup>

The case that is the object of this study is in Decision Number: 214/Pid.Sus/2024/PN.Mdn. Against the defendant named Veri Suriana als Veri is legally and convincingly guilty of committing a criminal act "without rights and unlawfully possessing, storing, controlling or providing Class I Narcotics other than plants", as regulated and threatened with criminal violation of Article 112<sup>7</sup> paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (Second Indictment).

In this Decision, the defendant is sentenced to imprisonment for 7 (seven) years of imprisonment minus the period of detention that has been served and with an order that the defendant remain in custody and a fine of Rp.1,000,000,000,- (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence for 6 (six) months.

Chapter VI of Law Number 35 of 2009 concerning Narcotics has been regulated regarding the Circulation, Distribution and Delivery of Narcotics, in Article 35 of this law it is determined that

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<sup>4</sup> Haris Sasangka, 2003, *Narcotics and Psychotropics in Criminal Law for Students and Practitioners and Extension Workers on Drug Problems*, Print 1, Mandar Maju, Bandung, page 33.

<sup>5</sup> Rahmandani Sinar, et al., "Legal Certainty of the Application of Article 112 of Law Number 35 of 2009 concerning Narcotics in the Jurisdiction of the East Kalimantan Regional Police" *Lex Suprema 2 Journal*, No. 2 (2020).

<sup>6</sup> Prayogo, R. Tony. "Application of the Principle of Legal Certainty in Supreme Court Regulation Number 1 of 2011 concerning the Right to Material Examination and in Constitutional Court Regulation Number 06/PMK/2005 concerning Procedural Guidelines in Testing Laws" *Indonesian Legislation Journal* 13. No. 2 (2016)

<sup>7</sup> **Article 112 paragraph (1) of the Narcotics Law stipulates** that every person who without rights or unlawfully possesses, stores, controls, or provides Class I narcotics other than plants, shall be sentenced to a minimum of four years in prison and a maximum of twelve years and a fine of at least Rp800 million and a maximum of Rp8 billion.

Narcotics Circulation includes every activity or series of activities of distribution or delivery of narcotics, either in the context of trade, not trade or transfer, for the benefit of health services and the development of science and technology, then based on Articles 7 and 8 The Narcotics Law stipulates that Class I Narcotics can only be used for the development of Science and Technology.<sup>8</sup>

It is further stated that in the context of the circulation, distribution and delivery of Narcotics in Law Number 35 of 2009 concerning Narcotics, it has regulated the licensing of agencies or institutions in the circulation of Narcotics and does not know the existence of individuals or individuals to control, possess, store or hand over Class I Narcotics and even Class I Narcotics must not be used for the purpose of Health Services.

However, in this case, the defendant without rights or against the law offered to sell, sell, buy, receive, become an intermediary in the sale, sale, exchange or delivery of Class I Narcotics. where Hanafi Als Napi instructed the defendant to sell the methamphetamine-type narcotics to other persons, the defendant in this case did not have a permit from the authorities in buying, selling and becoming an intermediary in the sale and purchase of narcotics, due to the defendant's actions as regulated and threatened in article 114 paragraph (1)<sup>9</sup> of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

The punishment imposed for perpetrators who violate Article 114 of the Narcotics Law is a criminal threat of imprisonment for a minimum of five years and a maximum of twenty years and a fine of at least Rp1 billion and a maximum of Rp10 billion for those who without the right or against the law have the right to offer to sell, sell, buy, receive, become an intermediary in buying and selling, exchange, or hand over Class I Narcotics.

## **B. Problem Formulation**

From the description of the problem above, there are two things that can be used as a problem formulation in this study, namely:

1. How does the Regulation of Narcotics Policy in Indonesia have a solutive impact on efforts to combat illegal narcotics trafficking?
2. What is the basis for the judge's consideration in issuing a verdict against the perpetrator of the crime of narcotics abuse?

## **C. Research Methods**

In research, research methods are used to solve the problem to be researched. According to Sugiyono (2012), methology is a scientific way to obtain data with certain purposes and uses. Meanwhile, according to Surakhmad (2004), it is explained that method is the main way used to achieve a goal, for example to examine a series of hypotheses using analytical techniques.

The type of research used is normative juridical (legal research), normative legal research is referred to as doctrinal research, library research or document study. Data sources are everything that can provide information about the data to be researched. In this study, there are two data sources used by the author, namely primary data and secondary data. The object of research is one of the references

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<sup>8</sup> Rahmandani Sinar, et al., "Legal Certainty of the Application of Article 112 of Law Number 35 of 2009 concerning Narcotics in the Jurisdiction of the East Kalimantan Regional Police" *Lex Suprema 2 Journal*, No. 2 (2020).

<sup>9</sup> **Article 114 paragraph (1) of the Narcotics Law** regulates every person who without rights or unlawfully offers to sell, sell, buy, receive, become an intermediary in the sale, sale, exchange, or delivery of Class I Narcotics, shall be sentenced to life imprisonment or imprisonment for a minimum of five years and a maximum of twenty years and a fine of at least Rp1 billion and a maximum of Rp10 billion.

used as a research object with the aim of finding out the truth and facts about the research being researched. The object of research to be studied is in the Surakarta district court.

The research techniques used in the data collection process are through interviews, documentation and literature studies. This analysis is used to understand the relationships and concepts in the data studied. In this case, the researcher analyzes the data generated through interviews with the research subjects, According to Miles and Humberman (1984), the data analysis used in qualitative research includes data reduction, data presentation and conclusion drawn.

## **D. Research Results and Discussion**

### **1. Regulation of Narcotics Policy in Indonesia to have a solutive impact on efforts to combat illegal narcotics trafficking**

In terms of data, it can be seen the implications of drug policy in Indonesia since the last 15 years. One of them is the increasing number of people with HIV/AIDS which is closely related to the use of injectable drugs. The available data states that as many as 21,591 people with HIV in 2010 and 21,031 people with HIV in 2011, while as of March 2012 it has reached 9,883 people with HIV. The number of people with AIDS in 2010 reached 5,744 people, in 2011 it reached 4,162 people and in March 2012 it reached 2,224 people.<sup>17</sup> Syringe users (donors) still contribute a large number of HIV/AIDS cases, which is around 10,265 people with AIDS or account for 53% of the total AIDS cases over a 5-year period.<sup>18</sup> In addition to infectious diseases, Drug cases also contribute to the high difficulty in overcapacity of prisons. The number of cases due to drug consumption is 37.5% of the total drug cases in Indonesia since 2007-2011 or a total of 10,851 people. Only 0.2% or about 17 cases are producers or about 0.2% of planting cases or 85 cases.<sup>19</sup> According to information from the Directorate General of Housing, excess capacity reached 56.81% in 2009. A total of 140,423 inmates, 37,295 of whom are those with drug cases, of which 285 people died in prisons and 89 of them died of HIV/AIDS.<sup>10</sup>

Seeing the problems above, it is appropriate that the drug policy in Indonesia is immediately reformed. Not to mention the emergence of stigma and discrimination experienced by drug users or abusers which causes many drug users or abusers to be reluctant to report themselves by admitting the use of drugs that they do to enter the rehabilitation program.<sup>11</sup>

Although in 2010 the Supreme Court issued a Circular recommending that every judge handling drug cases should give a rehabilitation verdict for addicts or people who carry drugs for personal consumption in the amount under the circular, there are still many cases of users or abusers who are placed in prison and eventually lose access to their health. This complicates and even reverses the drug policy in Indonesia which is not in line with Human Rights (HAM), one of which is due to the arbitrariness of law enforcement authority in conducting investigations, investigations, and verdicts in criminal law proceedings.

In fact, currently there are 3 (three) basic points of drug policy that must be considered, namely: 1) Public health, 2) Development and 3) human safety. Drug policy in Indonesia needs to be updated in its model or method to be in accordance with the important principles of effective drug policy. In evaluating drug policies, the debate between social and health policies must also be considered in addition to political issues and purely diplomatic sensitivity. The International Drug Policy Concorsium (IDPC) formulates 5 important principles in making effective drug policies:

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<sup>10</sup> Resnawardhani, Fitri. "Legal Certainty in Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics" *Legal Lantern* 6, No. 1 (2019).

<sup>11</sup> Siburian, Jhon Nover. "Juridical Analysis of the Application of Article 112 Paragraph (1) and Paragraph (1) Associated with the Application of Article 127 Paragraph (1) Letter a, and Paragraph (3) of Law Number 35 of 2009 concerning Narcotics in Providing Legal Certainty in Indonesia" *JOM* 10, No. 1 (2023).





1. drug policies should be developed through a structured and objective assessment of priorities and evidence
2. all activities should be undertaken in full compliance with international human rights law
3. drug policies should focus on reducing the harmful consequences rather than the scale of drug use and markets
4. policy and activities should seek to promote the social inclusion of marginalised groups
5. governments should build open and constructive relationships with civil society in the discussion and delivery of their strategies.<sup>12</sup>

In the first principle, it has been stated that it is important to have an objective assessment of priorities and based on scientific evidence. In drug policy in Indonesia, the problem of drugs is often found solely as a criminal law policy, it is not surprising that the number of criminalization of drug users remains high even though the government has repeatedly stated that humanist and health approaches have been prioritized. In the second principle, it is stated that the policy must be based on the fulfillment of international human rights, which in its implementation in Indonesia is still far from expectations.

Human rights violations that have occurred have been reported by various Non-Governmental Organizations from year to year. This third policy is often not implemented in Indonesia. Drug policy in Indonesia is considered to pursue drug dealers and producers, but it turns out that in the data presented, users and addicts are the biggest targets in the drug penal system. In fact, the biggest consequence of drug use is the health of its users, and not just the drug trade itself.<sup>13</sup>

The fourth principle prioritizes the concept of protection specifically for marginalized groups. In many realities, the target of law enforcement is the economically marginalized groups. This can be seen from the number of drug case suspects, most of whom only get education in elementary school, which is 11.8%, while those who get education in junior high school are 27.7% and around 61.9% of those who sit in high school out of a total of 181,426 people and only 2.6% of the suspects come from universities with a total of 4,868 people.<sup>21</sup> BNN data also states that the unemployed group is the second The most suspects in drug cases amounted to 6,487 people in 2007 out of a total of 85,689 suspects.<sup>22</sup> Cooperation with NGOs is something that should be done in accordance with the fifth principle. This is still a question because if cooperation between state institutions is still very difficult to do, then closeness between the government and civil society will be difficult to achieve.

The basic question that often arises is, is it true that there is a drug policy that is punitive and often violates human rights due to the arbitrariness of law enforcement? The importance of this question has led the UN Human Rights Commission to issue a set of principles for the protection of all persons in legal proceedings in custody and in prison.<sup>23</sup> In various drug cases, these existing principles are often violated and ostensibly negated for users or persons with drug dependence. The principle that legal sanctions must be given appropriately and impartial justice are some of the principles that are often violated when it comes to drug use cases.<sup>14</sup>

In this case in the Medan District Court Decision, the panel of judges decided that the defendant had fulfilled the elements of article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, Law Number 8 of 1981 concerning the Criminal Procedure Law and other legal provisions related to this case so that the Defendant Veri Suriana als Veri with the identity mentioned above has been legally and convincingly proven guilty of committing the crime "Without the Right to Possess

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<sup>12</sup> Suryaputra, I Made Esa and Mulyadi. "Legal Protection for Addicts and Victims of Narcotics Abuse" *Justitia: Journal of Law and Humanities* 8, No. 3 (2021).

<sup>13</sup> Warsito, Dafit Supriyanto Daris. "Criminal System Against Perpetrators of Narcotics Abusers" *Journal of Law Sovereignty* 1, No. 1 (2018).

<sup>14</sup> Laoly, Yasonna, 2019, *The Deadly Snare: A Perspective on Economic Well-Being in Drug Abuse*, Tangerang: Alfabeta Library page 52.



or Mastering Class I Narcotics. and imposing a criminal sentence against the defendant Veri Suriana als Veri, therefore with a prison sentence for 6 (six) years and a fine of Rp.1,000,000,000,- (one billion rupiah) with the provision that if the fine is not paid, it must be replaced with a prison sentence for 6 (six) months.<sup>15</sup>

## **2. Judge's Considerations in Imposing Criminal Penalties on Perpetrators of Narcotics Abuse in the Medan District Court Decision Number: 214/Pid.Sus/2024/PN.Mdn.**

If you look at the flashback of this case, before the judge issues a verdict against the defendant after it has been legally and convincingly proven guilty of committing the crime of "Without the Right to Possess or Control Class I Narcotics, with a sentence of imprisonment for 6 (six) years and a fine of Rp.1,000,000,000,- (one billion rupiah) with the provision that if the fine is not paid, it must be replaced with imprisonment for 6 (six) months, then there are several things that are considered by the judge which in this case is included from the author's research study.

### **a. Consideration of Elements of Everyone**

In the view of the Panel of Judges, the definition of "Everyone" is the Subject of Law as the Perpetrator or the one who commits a legal act or legal event, namely an individual, a group of people or a Legal Entity which in this case is the perpetrator of the act as described in the indictment.

The defendant is a person, so according to Legal Science, a person is included in the sense of a Subject of Law or the Perpetrator of a legal act or event, then the submission of the Defendant as a Subject of Law is proven to have fulfilled the provisions of the law, then this element is declared to have been proven and fulfilled according to the law and therefore it will be considered next whether the defendant is proven to have committed the act charged against him.

The perpetrator in question is a criminal offender, meaning a person who commits a criminal act, in the sense of a person who with an intention or an unintentional act as declared by the Law, whether it is a subjective element or an objective element, regardless of whether the decision to commit the criminal act arises from himself or not because of the movement of a third party.<sup>16</sup> Criminal Acts are a formulation of acts that are prohibited from being done (in laws and regulations) accompanied by criminal threats for those who violate the prohibition. The act (feit) referred to here is the main element of a criminal act that is formulated.<sup>17</sup> Criminal acts can be distinguished on certain grounds, namely as follows:

Based on the description above, regarding the criminal provisions stipulated in Law Number 35 of 2009 concerning Narcotics, if the set of criminal sanctions that have been implemented are the result of inappropriate choices or are no longer in accordance with developments, then it is natural that these developments are slightly disturbed. In this case, the increase and development of criminal acts on the one hand with the limited number of criminal sanctions available to judges and prosecutors on the other hand is one of the problems in the field of criminal policy that is quite difficult.<sup>18</sup>

The elements of criminal acts in criminal law in general are as follows:

1. Human deeds; Both acts (criminal acts) that are active or passive acts (criminal acts).
2. The act is contrary to or contrary to the law.
3. The threat of punishment must be provided in the law.
4. It must be proven that there is an act on the person who did it, that is, the person must be accountable.
5. The act must be done by a person who is lawless and can be accounted for.<sup>19</sup>

<sup>15</sup> Sunarso, Siswanto, *Politics of Law in the Narcotics Law (Law Number 35 of 2009)*, Jakarta: Rineka Cipta, 2012.

<sup>16</sup> Barda Nanawi Arief, Sari Lecture on Criminal Law II, Faculty of Law, Undip, 1984, page 37

<sup>17</sup> P.A.F Lamintang, *Basics of Criminal Law in Indonesia Cet-1*, PT Sinar Grafika, Jakarta, 2014, page 179.

<sup>18</sup> B Simandjuntak, *Introduction to Criminology and Social Pathology*, Parsito, Bandung, 1981, p. 200.

<sup>19</sup> Tresna, *Principles of Criminal Law*, PT. Tiara Limited, Jakarta, 1959, page 27.



There are two types of additional elements for criminal mitigation, namely objective and subjective. Therefore, the elements of a criminal act consist of:

1. It is a human act;
2. Meet the formulation in the law (formal requirements); and
3. The human act is against the applicable law (material requirements)

Formal requirements are needed to meet the principle of legality of the law itself. The point is that an act can be categorized as a criminal act if it has been regulated in the law. Human actions that are not or have not been regulated in the rule of law cannot be sanctioned by the relevant rule of law. Usually new legal rules will be formed to regulate these actions. When detailed, the elements of a criminal act consist of subjective and objective elements. Subjective element, which describes the human being in question which can be interpreted as every person, state administrator, civil servant, or corporation or group of people who organize.

Subjective elements include:

1. Intentionality (*dolus*) where this is found in violations of morality (Article 281 of the Criminal Code), deprivation of independence (Article 333 of the Criminal Code), murder (Article 338).
2. Forgetfulness (*culpa*), where this is contained in the deprivation of independence (Article 334 of the Criminal Code), and others.
3. Intention (*voormemen*), where this is contained in the experiment or pinging (Article 53 of the Criminal Code)
4. Intent (*oogbrandk*), where this is found in theft (Article 362 of the Criminal Code), extortion (Article 368 of the Criminal Code), fraud (Article 378 of the Criminal Code), and others.
5. With a prior plan (*met voorbedachte rade*), where this is contained in the act of throwing away one's own child (Article 308 of the Criminal Code), killing one's own child (Article 341 of the Criminal Code), killing one's own child with a plan (Article 342 of the Criminal Code).

In general, or most criminal acts according to Law Number 35 of 2009 concerning Narcotics, are criminal acts of narcotics abuse, namely the abuse of people who do not have the right and are not authorized. The problem in Law No. 35 of 2009 that threatens more criminal acts of narcotics abuse is that users, transaction actors, providers and so on are people who are in good health, not sick. The concept of abuse stems from the existence of a person's rights or authority guaranteed by law. Narcotics abuse is a form of deviation, action or act of people who do not have the right, are not authorized to use or distribute narcotics.<sup>20</sup>

In many cases, narcotics crimes in particular and drugs in general are always related to transnational crimes, corporate crimes, money laundering crimes, and so on. Narcotics crimes in particular and drugs in general are transnational crimes, because they occur beyond the country's territorial boundaries, such as networks or syndicates originating from abroad that bring narcotics into Indonesian territory. As a corporate crime according to Marwan Effendy, corporate crime (crime by corporation) is often identified with white-collar crime related to organized crime.

3. Consideration of Elements Without Rights or Against the Law of Storing, Controlling, or Providing Class I Narcotics Not Plants.

The element of no rights is equated with unlawful so that what is meant by "without rights or unlawful" is the existence of an act committed by the perpetrator that is contrary to the provisions of

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<sup>20</sup> HarimanSatria, *Anatomy of Special Criminal Law*, UII Press, Yogyakarta, 2014, page 76.



the law which in the case of aquo is an act related to the Control, Possession, Illicit Circulation of Narcotics and Narcotics Precursors which is determined as a criminal act.

In criminal law, there is a known doctrine of unlawful nature. It is true that the panel of judges has applied one of the teachings of unlawfulness, namely the doctrine of formal unlawfulness. This can be justified considering Article 1 paragraph (1) of the Criminal Code as the principle of legality, namely *nullum delictum noella poena, sine praevia legi poenali* (no act can be criminalized except for the existing laws and regulations first). In addition to the existence of the teachings of the nature of violating the formal law, it is also known about the teaching of the nature of the nature of the material law, where the act can be said to be against the law (*onrecht*) in addition to being contrary to the sound of the law and also because it is contrary to the sense of justice or the view of life that exists in society. Regarding the element of the act (as one of the criminal requirements) these two things (against formal and material law) must be fulfilled first, then it can be said that the act is against the law.

Furthermore, if you observe the elements of criminal acts in the provisions of Articles 111 to 126 of the Narcotics Law, the Law contains the phrase "every person who is without rights or against the law" which is connected with several criminal acts of narcotics abuse. The Narcotics Law contains four categories of criminal acts without rights or against the law that are prohibited by the Law and can be threatened with criminal sanctions, namely:

1. The first category, namely acts in the form of possessing, storing, possessing, or providing narcotics and narcotic precursors (Articles 111 and 112 for narcotics group I, Article 117 for narcotics group II and Article 122 for narcotics group III and Article 129 letter (a));
2. The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for class II narcotics and Article 123 for class III narcotics and Article 129 letter (b));
3. The third category, namely acts in the form of offering to sell, selling, buying, receiving, becoming an intermediary in the sale, exchange, or delivery of narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for class II narcotics, Article 124 and Article 126 for class III narcotics and Article 129 letter (c));
4. The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotic precursors (Article 115 for narcotics class I, Article 120 for narcotics class II and Article 125 for narcotics class III and Article 129 letter (d)).

In the case that the author studied, the defendant, who is known to be named Veri Suriana als Veri, was legally and convincingly proven guilty of committing a criminal act without rights or unlawfully possessing, storing, possessing, or providing class I narcotics other than shabushabu plants (Article 112 paragraph (1) of the Narcotics Law). The Judge sentenced the Defendant to imprisonment for 6 (six) years and required the Defendant to pay a fine of Rp1,000,000,000 (one billion rupiah) with the provision that if it is not paid, it will be replaced with a prison sentence of 3 (three) months.

In general, if an element of unlawfulness is included in a formulation of a criminal act, it can be interpreted that unlawful means without rights or without authority. So it can be concluded that the element of "without rights" is part of the element of "unlawful" when referring to the meaning of formal law as regulated in the Narcotics Law. In line with this, Pompe said that against the law (*wederrechtelijk*) means against the law, which has a broader meaning than just being against the law.

However, the Narcotics Law does not provide further explanation regarding the element of "possessing, storing, possessing, or providing". In the Great Dictionary of Indonesian (KBBi) (<https://kbbi.web.id/milik>, accessed on July 18, 2024), it is defined as (1) possessing, (2) taking illegally to be used as possession. The element of possession or possession in the Article means that it must be truly the owner, regardless of whether the goods are physically in the hands of the person or not.



However, in the context of the Narcotics Law, the possession must be seen from the element of how the goods can be owned by the Defendant (the origin), whether the Defendant obtained the narcotics from the gift, by planting himself, buying or by other means, the essence of which must be a direct relationship between the perpetrator and the narcotics so that they can be referred to as "owners" (Sujono and Daniel<sup>21</sup>).

Furthermore, when referring to KBBI, the word save is interpreted as putting it in a safe place so that it is not damaged, lost, and so on (<https://kbbi.web.id/simpan>, accessed on July 18, 2024). In the Narcotics Law, there is also no specific regulation regarding the definition of mastering, whether the narcotics are controlled only for consumption, circulation or just to possess. Where the word possession is the main problem in this law is the lack of explanation of the definition and limitations in the elements of controlling narcotics, causing many perpetrators of narcotics crimes who are caught in possession of narcotics for the purpose of consumption, subject to articles intended for narcotics dealers. Regarding the element of domination, AR Sujono and Bony Daniel<sup>22</sup> stated that: "Dominating means ruling over (something); hold power over something."

A person is said to control an item if he can control what he controls, he can control something that is in his power, it is not necessary whether the object is in his power physically or not, the important thing is that the perpetrator can take actions such as selling, giving to others or other actions that show that the perpetrator really has power over the item".

If referring to the Civil Law, the Civil Code (KUH Perbanyak) defines control as "bezit" which is meant as a matter of position in power. Article 529 of the Civil Code formulates: "The so-called position of power is the position of a person who controls a material, either with oneself or through the intermediary of others, and who maintains or enjoys it as a person who owns that material".

Furthermore, article 1977 of the Civil Code formulates "For movable objects that are not in the form of interest, nor receivables that do not have to be paid to the bearer, whoever controls them is considered to have them". It can be seen that the position for a person who can control a material thing, either by himself or with the intermediary of another person and to maintain and enjoy it is a person who has nothing but that material, then it can be called powerful.

The Constitutional Court in Decision Number: 31/PUU-XV/2017 gave an opinion regarding the confusion contained in Article 112 paragraph (1), "The Court is of the opinion that the assessment of a case in a concrete case is actually the domain of law enforcement in this case investigators, so that the implementation of the norms contained in Article 112 paragraph (1) of the Narcotics Law, especially the phrase, "control, possess, and keeping" which must be associated with the existence of evidence on a person who is suspected of being an abuser, according to the Court in terms of terminology it is actually a very clear meaning. The use of the element of possessing, storing or controlling in Article 112 paragraph (1) must be seen from the purpose for which the narcotics are controlled, possessed, or stored.

The thing that needs to be emphasized is whether it is only for its own use or to be traded either in the position of being produced, exported, imported, transited, distributed or handed over. With the threat of a minimum criminal penalty for both imprisonment and fines, this provision is more appropriate to ensnare the parties involved in the illicit trade of narcotics as producers or distributors of narcotics, not to abusers who have their own threat of punishment for the act of abusing narcotics. In narcotics abuse, judges have a role to decide the severity of drug dealers or syndicates with the maximum punishment.

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<sup>21</sup> A.R. Sujono and Bony Daniel. 2011. Comment & Discussion of Law Number 35 of 2009 concerning Narcotics. Jakarta : Sinar Grafika

<sup>22</sup> A.R. Sujono and Bony Daniel. 2011. Comment & Discussion of Law Number 35 of 2009 concerning Narcotics. Jakarta : Sinar Grafika

This aims to achieve the ideals and objectives of the state mentioned in the preamble to the fourth paragraph of the Constitution of the Republic of Indonesia in 1945, namely to form a government of the State of Indonesia that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the life of the nation, and participate in implementing a world order based on independence, lasting peace, and social justice.

## E. Conclusion

1. Looking at the narcotics policy in Indonesia, which has changed the Narcotics Law for the second time, it can be concluded that there is still a great failure in meeting the objectives of an effective narcotics policy: reducing the supply of narcotics, reducing the adverse impact of drugs with the principles of human rights, and legal justice. Narcotics policy in Indonesia must be acknowledged to have tried to reform itself in a better direction with a health approach, namely the application of rehabilitation punishment. Unfortunately, however, these reform efforts are still inconsistent among each level of law enforcement. Narcotics policy reform cannot necessarily change. It takes time to make plans and harder efforts to make effective narcotics policies in Indonesia. But in the field of narcotics law enforcement, this seems to be much more difficult. Prioritizing criminal punishment seems to be very inherent in our law enforcement body. It takes extraordinary encouragement both at the local, national and international levels. Therefore, in relation to the case in this study, the Judge of the Medan District Court decided that the defendant was legally and convincingly guilty in accordance with the provisions of article 112 paragraph (1) of UURI Number 35 of 2009 concerning Narcotics by imposing a criminal sentence on the defendant Veri Suriana als Veri, therefore with a prison sentence for 6 (six) years and a fine of Rp.1,000,000,000,- (one billion rupiah) with the provision that if the fine is not paid, it must be replaced with imprisonment for 6 (six) months.
2. Meanwhile, what is considered by the judge of the Medan District Court Panel of Judges by paying attention to these legal facts directly chooses the indictment as stipulated in Article 112 paragraph (1) of Law of the Republic of Indonesia No.35 of 2009 concerning Narcotics, whose elements have been fulfilled, namely the Element of every person and the Element of Without Rights or Against the Law of Storing, Controlling, or Providing Class I Narcotics not plants. The defendant in this case is a person who is included in the definition of a Legal Subject or Perpetrator of a legal act or event, then the submission of the Defendant as a Legal Subject is proven to have fulfilled the provisions of the law, then this element is declared to have been proven and fulfilled according to the law, while the element of no rights is equated with unlawful so that what is meant by "without rights or unlawful" is the existence of an act committed by the Perpetrator who contrary to the provisions of the law which in the aquo case is an act related to the Control, Possession, and Illicit Circulation of Narcotics and Narcotics Precursors which is determined as a criminal act of Narcotics and Narcotics Precursors as referred to in Law Number 35 of 2009 concerning Narcotics.

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