

Application of Phrase Elements: “Owning, Receiving, Storing, Controlling without Rights and Against the Law in Article 112 and Article 114 of the Narcotics Law in Indonesia in ensnaring Narcotics Couriers

Ifahda Pratama Hapsari

Faculty of Law, Muhammadiyah Universitas of Gresik, Indonesia

lfa.zegeeg@gmail.com

Abstract

Narcotics crime in Indonesia is a problem that until now has never ended. One of the problems is the increasing number of drug abusers. In our country, narcotics users / narcotics addicts can already be said to be criminals. In the Narcotics Law no. 35 of 2009 it is explained that what is meant by narcotics abusers are people who use narcotics without rights or against the law. 35 of 2009 concerning Narcotics. Narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, especially the younger generation. There is an ambiguity problem in the Narcotics Law, and the problem is that Article 112 of the Narcotics Law Article 112 of the Narcotics Law contains the phrase "owning, storing, controlling" narcotics. Therefore, narcotics abusers are more appropriately charged with Article 127 of the Narcotics Law. The method used in this writing uses the normative method which examines the problems of legislation. Which aims to: and explore the application of the phrase Article and the meaning contained therein.

Keywords

receiving; keeping; possessing, mastering; narcotics courier



I. Introduction

Narcotics crime in Indonesia is a problem that until now has never ended. One of the problems is the increasing number of drug abusers. In our country, narcotics users / narcotics addicts can already be said to be criminals. In the Narcotics Law no. 35 of 2009 it is explained that what is meant by narcotics abusers are people who use narcotics without rights or against the law. (WP 2017).

People who use narcotics without rights and against the law here can be classified as addicts and dealers who use and distribute them. In the narcotics law, an addict who is a victim of narcotics abuse is required to undergo medical rehabilitation and social rehabilitation. But in reality, the article for narcotics abuse is more directed at another position, namely in the position of dealers whose criminal consequences are imprisonment (Eleanora 2022). This is not appropriate for the author. So that the efforts made in resolving cases of criminal acts become part of criminal policy in the context of overcoming narcotics crimes. The problems that the author raises are regarding the relevance of imprisonment and the application of meaning for narcotics abuse with the aim of sentencing and how to apply alternative penalties for narcotics couriers in Indonesia, which is one of the countries in the world, which is one of the goals of narcotics circulation. This can be proven by the number of cases revealed by law enforcement officials related to the international-scale drug trafficking network (Hartanto 2018). With

the increasingly mushrooming circulation of narcotics, various related elements must try to immediately eradicate it. Another thing, which is no less important, is not only the problem of narcotics circulation that occurs in the community, but also regarding the number of people who are trapped as narcotics users who are carried out against the law.

More than half of the prisoners / detainees are narcotics cases from a number of prisoners in Indonesia as many as 127,301 are narcotics abusers and even 3080 people unfortunately the average prisoner is sentenced to 5-6 years. With evidence under grams and status as a user. Imprisonment and detention are contrary to the principle of protection because prison life, apart from being mentally deadly, full of violence and discrimination, becomes a medium for internalizing higher crimes, has the potential to cause psychological trauma, as well as stigmatizing or labeling life throughout its life. Moreover, the prison situation in Indonesia is crammed with a number of problems, such as overcapacity, legal uncertainty due to the slow administration of justice, poor basic services such as sanitation, food, rooms, and communication access. (Hapsari 2019).

In the legal system in Indonesia, narcotics abuse is qualified as a crime in the narcotics sector which is regulated in Law no. 35 of 2009 concerning Narcotics. Narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, destroying life and the future, especially the younger generation. There is an ambiguity problem in the Narcotics Law, and the problem is in Article 112 of the Narcotics Law. In this case, the Government and the DPR need to explain in more detail in the article. This is because the article does not distinguish between abusers and narcotics dealers or dealers. The phrases in the article are also not explicitly formulated. (Novitasari and Rochaeti 2021).

Law enforcers in Indonesia, often use Article 112 of the Narcotics Law, the article should only apply to narcotics dealers or dealers. This is because Article 112 of the Narcotics Law contains the phrase "possessing, storing, controlling" narcotics. Therefore, narcotics abusers are more accurately charged with Article 127 of the Narcotics Law. Because, automatically the abuser must have, store or control narcotics. (Hartanto 2018).

This article seeks to explore how to apply the phrase element in Article 112 and Article 114 regarding the meaning of Possessing, storing and controlling the Narcotics Law No. 35 of 2009 in ensnaring narcotics couriers and is associated with the element of criminal responsibility inherent in it.

II. Research Method

The type of research used is normative legal research, namely research that examines statutory regulations that have relevance to the object of research studies, especially regarding the legal principles and norms contained in laws and regulations. In this research, the approach used is the Legislative Approach. (Statute Approach) and Concept Approach (Conceptual Approach).

The Legislative Approach (Statute Approach), which is an approach by reviewing and reviewing laws and regulations and regulations related to the subject matter of the research. Conceptual Approach, which is an approach by studying views and doctrines in legal science, concepts, legal principles that are relevant to the subject matter of the research.

III. Result and Discussion

3.1 Application of the Phrases Receive, Keep, Control in Article 112 and Article 114

Narcotics crime as described in Law No. 35 of 2009 concerning Narcotics, regarding the qualification of the act, proof of the predicate crime that precedes the act, it can be said that Narcotics Based on Law No. 35 of 2009 is a substance/drug derived from plants or not. both synthetic and semi-synthetic plants that can cause decreased consciousness, loss of taste, reduce, to eliminate pain that can cause dependence. To be considered a narcotics crime, based on the Narcotics Law Number 35 of 2009 it must be included in the qualifications for the formulation of the offense which includes: Narcotics Precursor, Illicit Trafficking of Narcotics and their precursors and Narcotics Abuse and its Precursors. (Eleanora 2022).

The use of the term "narcotics users" is used to facilitate the designation of people who use narcotics and to distinguish them from narcotics growers, producers, distributors, couriers and dealers. (WP 2017). Although growers, producers, distributors, couriers and dealers of narcotics sometimes also use narcotics, in this paper what is meant by narcotics users are people who use narcotics for themselves, not growers, producers, distributors, couriers and narcotics dealers. If it is associated with people who use narcotics, in Law no. 35 of 2009 can be found various terms, namely:

- a) Narcotics addict is a person who uses or abuses Narcotics and is in a state of dependence on Narcotics,25 both physically and psychologically.
- b) Abusers are people who use Narcotics without rights or against the law.
- c) Narcotics abuse victim is someone who accidentally uses Narcotics because he is persuaded, tricked, cheated, forced, and/or threatened to use Narcotics. (Novitasari and Rochaeti 2021).
- d) Former Narcotics Addicts are people who have recovered from dependence on narcotics physically and psychologically.
- e) Narcotics Courier is a person who acts as an intermediary between sellers and buyers of narcotics, although they do not consume them, they are still subject to criminal sanctions because they are intermediaries between sellers and buyers of narcotics.

The many terms can confuse law enforcement officers in applying the articles in Law no. 35 of 2009. The position of "Narcotics Courier" has a slightly different position from other criminal offenders, namely the problem of Narcotics "Couriers" according to the provisions of the law, on the one hand are perpetrators of narcotics abuse crimes, but on the other hand are victims. In fact, he didn't know that. (Sugiharto 2019). Narcotics couriers according to the law on the one hand are perpetrators and also intermediaries for crimes that other people commit. With the provisions of the narcotics law which regulates prison terms given to perpetrators of Narcotics Couriers, then, on the other hand, it can be said that the Narcotics Couriers are victims, as indicated by the provision that Narcotics Couriers can be sentenced to prison. This means that the law on the one hand still considers narcotics couriers as perpetrators of criminal acts, and on the other hand they are victims of narcotics abuse.((US) and (US) 2016).

It is explained in legal regulations based on Law Number 35 of 2009 which applies in Indonesia in Article 112 concerning Narcotics, explaining that anyone who does not have rights or can be said to be against the law if he owns, keeps, controls, or even provides Narcotics Category I is not a plant species, it can be punished with imprisonment for a minimum of 5 (five) years to a maximum of 12 (twelve) years in prison and a minimum fine of 800 million to a maximum of 8 billion. Regarding the limitation of elements without rights and against the law as referred to in Article 112 of Law Number 35

of 2009 If the Narcotics are circulated without using a ministry permit, using them without rights and against the law, elements without rights or against the law if Narcotics can only and can be used for the benefit of Health Services and or the Development of Science based on Article 7 of the Narcotics Law no. 35 of 2009. and strengthened by the existence of a permit from the official on duty in this case the minister as regulated in Article 11 paragraph (1) which may only produce narcotics for the purpose of the pharmaceutical industry in accordance with the procedures of the legislation. (WP 2017).

The Minister guarantees the need for the availability of Narcotics, only for the benefit of health services and for the development of science and technology. Based on Article 9 paragraph (1) of Law no. 35/2009. As for the limitation of the element without rights and against the law, what is meant here is when the narcotics are misused by using narcotics without rights or against the law for prohibited purposes by circulating narcotics and their precursors. (Hernandez 2019).

The element of receiving narcotics is one of the elements contained in Article 111 paragraph (1) and Article 112 paragraph (1) of Law no. 35 of 2009 concerning Narcotics. However, the element of controlling narcotics is not explained in terms of its meaning or limitations in the law. The lack of explanation of the meaning or limits in the element of controlling narcotics has resulted in many narcotics criminals who are caught in the hands of controlling narcotics for the purpose of being consumed, subject to articles intended for narcotics dealers. This article has become a rubber article that can ensnare abusers with the provisions of the dealer article. (Novitasari and Rochaeti 2021) The element of Accepting in English in the Black Law Dictionary: To Receive With approval or Satisfaction in terms of the context Accepting contained in Article 114 paragraph (1) there is a limitation on the word accept: When the goods are actually in the hands of the recipient and the recipient is in the hands of the recipient. this thing, know about it. Of the goods handed over to him, (the person who gets the real delivery of the goods/approval). (Hernandez 2019)

Narcotics Law No. 35 of 2009 concerning Narcotics, the formulation of Article 112 further states that indeed The element of controlling narcotics is one of the elements contained in Article 111 paragraph (1) and Article 112 paragraph (1) of Law no. 35 of 2009 concerning Narcotics. However, the element of controlling narcotics is not explained in terms of its meaning or limitations in the law. The lack of explanation of the meaning or limits in the element of controlling narcotics has resulted in many narcotics criminals who are caught in the hands of controlling narcotics for the purpose of being consumed, subject to articles intended for narcotics dealers. (US) 2016) This article has become a rubber article that can ensnare abusers with the provisions of the dealer article. Article 112 of Law No. 35/2009 concerning control is in the Civil Code Article 529 of the Civil Code. So what happens is that there is a legal consequence in the form of a control limit which explicitly explains that "As long as a person holds an item, it can be said that the item is in his control." (Hernandez 2019).

The scope of acceptance is contained in Article 114 of the Narcotics Law Number 35 of 2009 if the goods are actually in the hands of the "Recipient" and the person who receives it knows about the goods handed over to him. So that the scope of acceptance that occurs is "there is someone who obtains goods from other people through a real form of delivery"/Agreement with the aim of receiving. (Hardian Iskandar 2020).

Law No. 35 of 2009 does not mention that it is related to the phrase "control" in the Narcotics Law by not having an explicit understanding, however, understanding the meaning of mastering. put forward by HA Demeersmen regarding the study "De Autonomie van bet Materiele Strafrecht" (Autonomy of the Material Criminal Law). (Demeersseman 1985). The point is to question whether there is harmony and disharmony

between the same understanding between Criminal Law, especially with Civil Law and State Administrative Law as another branch of law. Here, we will try to link the same understanding between the branches of Criminal Law and other branches of law. That what is meant by disharmony in matters where we provide understanding in the Criminal Law Act with other contents regarding the same meaning in other branches of law, or putting aside theory, fiction and construction in applying criminal law to other branches of law. (Demeersseman 1985).

In conclusion, it is said that regarding the same words, Criminal Law has the autonomy to provide a different understanding from the understanding contained in other branches of law, but if Criminal Law does not specify otherwise, then the understanding contained in other branches of law is used. Thus, if the definition of "abusing authority" is not found explicitly in Criminal Law, then Criminal Law can use the same meaning and words that exist or come from other branches of law. "Control" contained in the Civil Code, namely Article 529: (Hardian Iskandar 2020) "What is called power here is the position of a person who controls an object either by himself or by the intermediary of other people and who maintains or enjoys it as a person who has that right. That the teaching on "Autonomie van het Materiele Strafrecht" was accepted by the North Jakarta District Court, which was further confirmed by the Decision of the Supreme Court of the Republic of Indonesia. No. 1340 K/Pid/1992 dated 17 February 1992 when there was a corruption case known as the "Export Certificate" case.

3.2 Narcotics Courier Criminal Liability

The element has as stated in the formulation of Article 112 of Law no. 35 of 2009 is related to the principle of no crime without error (Geen Straf Zonder Schuld) if there is an error, then what is meant is separate from criminal responsibility. (Yudianto 2018). A criminal act is basically something that is prohibited and is threatened with a criminal act, then whether the person who commits the act is also sentenced to be punished as threatened will depend on the question: "whether the act of the perpetrator also has a fault". In most formulations of a crime, the factor of intent or what is called "opzet" is an important element in determining a crime. In relation to this "intentional element", then if in a formulation of a criminal act there is an act intentionally or commonly referred to as "opzettelijk", then this intentional element dominates or includes all other elements placed behind it and must be proven. (Romli Atmasasmitta 2017).

Deliberation can also be interpreted as a form of conscious will intended to commit a certain crime. So that in terms of proving the act he did, if it was done intentionally, it must contain the meaning of wanting and knowing or what is commonly referred to as "willens en wetens". What is meant here is that if a person is said to have committed an act intentionally, then he must fulfill the Willens formula or must desire something for what he did and fulfill the wettens element or must know the consequences of his action. So that it can be said that what is meant by intentionality is the will to perform an action that results in the consequence of that action which is aware of the consequences and arises from the intention to do so. If the element of will or wills and knows in relation to the element of intentionality cannot be clearly proven materially -because it is indeed difficult to prove a person's intention and will materially-then proving that there is an element of intentionality in the perpetrator committing an unlawful act so that his act can be accounted for the perpetrator is often only associated with the circumstances and actions of the perpetrator at the time he committed the unlawful act he was accused of. (Huda 2015).

The formulation of narcotics offenses in "special rules" is only part of the overall criminal law system (criminal system). (Waluyo 2014). The word possess in Law no.

35/2009 is not mentioned and defined in detail, however, this element has been included in the qualification of the offense of Article 112 of Law no. 35 of 2009 but we can find the phrase possessing in the provisions of other laws, namely in Article 570 of the Civil Code. (Hardian Iskandar 2020). That is, the right to use an object freely and to act freely on that object, with full sovereignty, as long as it is not guilty according to the law or general regulations against it. Whereas an act can be categorized as violating the law and can be subject to criminal sanctions, it must at least meet two elements, namely "actus reus" (physical element) and "mens rea" element (mental element). (Waluyo 2014). The element of "actus reus" can be interpreted as the essence of the evil act itself, while the element of mens rea is the mental condition or mental attitude of the perpetrator at the time of the act. In criminal law, external acts are termed actus reus, while the mental condition or attitude of the perpetrator is termed mens rea. So "actus reus" is an external element, while mens rea is a fault element or a mental element. (Romli Atmasasmitta 2017).

A person can be punished not enough just because that person has committed an act that is against the law or is against the law. Thus, even though the act is in accordance with the formulation of the offense in the legislation and there is no reason to justify the act (objective violation of criminal provisions). Therefore, it must also be seen the inner attitude (intention or purpose) of the perpetrator of the act when committing an act that is categorized as contrary to the law or against the law. The element of "Actus Reus" must be proven through the existence of an act. (Hanafi Amrani 2019). Crimes based on the provisions of the act are determined after the act, then determined or searched for "Mens Rea" (the attitude of the Inner Perpetrator) thus the element of the criminal act must take precedence in order to find out the guilt of the defendant, which is an element of criminal responsibility. Apart from that, the element of intentionality or called the element of negligence or negligence or Culpa which in the criminal law doctrine is an element of negligence or culpa which is called negligence is realized where in this element, the most important factor is that the perpetrator can suspect the consequences of his actions or the perpetrator is not careful where the "Culpa" is located." is somewhere between "Intentionally" and "Coincidentally". In negligence, the most important element is that the perpetrator has awareness or knowledge of which the perpetrator should be aware that it can endanger the consequences of his actions. (Hamzah 2012).

The formulation of the offense which includes: elements, types of offenses, as well as types of punishment/sanctions and duration of punishment, is not a stand-alone system. Therefore, the formulation of the offense must still receive support from other parts of the system, such as rules/guidelines and the principle of punishment as contained in the general rules of the Criminal Code as well as special rules in special laws that discuss narcotics, in this case Law No. 35/2009. Narcotics acts are formal criminal offenses, namely the existence of narcotics crimes enough to fulfill the elements of the formulated actions, not with the emergence of consequences. Can already be convicted. (Huda 2015).

IV. Conclusion

Phrase The meaning of the word accept in the Narcotics Law no. 35/2009 is not or has not been formulated explicitly, however, Receiving in the Black Laws Dictionary: "To Receive With Satisfaction" (obtaining based on approval) "To Receive with intent to retain". The scope of receiving is contained in Article 114 of the Narcotics Law No. 35 of 2009 when the item is actually in the hands of the "Recipient" and the recipient in this case, knows about this from the goods handed over to him. Scope of Receiving in this case When "People who obtain goods from other people through real delivery"/Agreement to

receive. 35 of 2009 Scope of Control of things that arise because the person holds the item and is not handed over to someone else.

Criminal liability and criminal acts are two different things, a person is said to be able to be responsible if his soul is healthy so that he is able and knows and realizes that his actions are against the law and can determine his will in accordance with that awareness, able to understand the value of the consequences of his own actions, able to realize that his actions according to the community are not permissible and are able to determine his will for those actions.

References

- (US), Substance Abuse and Mental Health Services Administration, and Office of the Surgeon General (US). 2016. "Facing Addiction in America." *Facing Addiction in America* 82.
- Demeersseman, HA 1985. "De Autonomie van Het Materiële Strafrecht." 762.
- Eleanora, Fransiska Novita. 2022. "Dangerous Abuse And Its Prevention And Control Effort (A Theoretical Review)." *Journal of Law* 25(1):439–52. doi:10.26532/JH.V25I1.203.
- Hamza, Andi. 2012. "Comparative Criminal Law of Several Countries." Retrieved March 23, 2022 (<https://lontar.ui.ac.id/detail?id=20497913>).
- Hanafi Amrani. 2019. "Criminal Law Renewal Politics."
- Hapsari, Ifahda Pratama. 2019. "Effectiveness Of Implementation Of The Death Criminal On Criminal Acts Of Narcotics In Indonesia." Retrieved March 9, 2022 (<http://journal.umg.ac.id/index.php/justiciabelen/article/view/831/701>).
- Hardian Iskandar. 2020. "View of the Application of Engagement with the Threat of Punishment in the Endorsement Agreement." *Justiciabelen*. Retrieved April 6, 2022 (<http://journal.umg.ac.id/index.php/justiciabelen/article/view/1169/900>).
- Hartanto, Wenda. 2018. "Law Enforcement Against Drug Crimes And Illegal Drugs In The Era Of International Free Trade That Impact On State Security And Sovereignty." *Indonesian Legislation Journal* 14(1):1–15. doi:10.54629/JLI.V14I1.65.
- Hernandez, Ana Paula. 2019. "Drug Laws and Prisons in Mexico | Transnational Institute." Retrieved March 30, 2022 (<https://www.tni.org/es/node/16656>).
- Huda, Chairul. 2015. "From No Crime Without Errors Towards No Criminal Accountability Without Errors: A Critical Review of The Theory of Separation of Crime and Criminal Liability." Retrieved March 23, 2022 (<https://lib.ui.ac.id/detail?id=20162732&location=lokal>).
- Novitasari, Novi, and Nur Rochaeti. 2021. "Law Enforcement Process Against Criminal Acts of Narcotics Abuse Perpetrated by Children." *Indonesian Journal of Legal Development* 3(1):96– 108. doi:10.14710/JPHI.V3I1.96-108.
- Romli Atmasasmitta. 2017. "Reconstruction of the Zero-Criminal Principle without Errors: Geen Straf Zonder Schuld." Retrieved March 23, 2022 (<https://lib.ui.ac.id/detail?id=20487730&location=lokal>).
- Sugiharto, Bayu Prasetyo and. 2019. "Criminal Law Enforcement Against Narcotics Abuse by Children as Perpetrators at the Bantul Police Station – BIMAWA-UAD." Retrieved March 21, 2022 (<https://bimawa.uad.ac.id/prosiding-seminar-ucms-penegakan-law-pidana-terhadap-abuse-narkotika-oleh-anak-as-pelaku-di-polres-bantul-by-bayu-prasetyo-dan-sugiharto/>).

- Waluyo, Bambang. 2014. "Criminal and Criminal." Retrieved March 23, 2022 (<https://lib.ui.ac.id/detail.jsp?id=20164961>).
- WP, Ratna. 2017. "Criminal Aspects of Narcotics Abuse: Rehabilitation versus Prison / Ratna WP; Editor, Sony Adams | OPAC of the National Library of Indonesia." Retrieved March 23, 2022 (<https://opac.perpusnas.go.id/DetailOpac.aspx?id=1138784>).
- Yudianto, Harris. 2018. "Application of the Principle of Errors As The Basis Of Corporate Criminal Responsibility Yudhianto | Lecturer's Scientific Work." STKIP PGRI Trenggalek. Retrieved March 9, 2022 (<https://journal.stkipgri trenggalek.ac.id/index.php/kid/article/view/158>).