

The Legal Liability against Criminal Offenders without Right to Sell Narcotics (Decision Study No.128/Pid.Sus/2022/PN.MJI)

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Abstract. *The purpose of this study is to find out and analyze the construction of a crime without the right to sell narcotics in the conception of legal certainty and to find out and analyze legal responsibility for perpetrators of crimes without the right to sell narcotics (Decision Study No. 128/Pid.Sus/2022/PN.Mjl). The theory used in this study is the theory of legal certainty and theory legal responsibility. This study uses a normative juridical approach and the nature of this research is analytical descriptive. Data collection was carried out through a literature study in order to obtain secondary data, whether in the form of primary legal materials, secondary legal materials, or tertiary legal materials. To support the research that has been done, field research was also carried out in order to obtain primary data that supports secondary data. The technical analysis used in this study is a qualitative analysis technique. The results of the study show that the construction of a crime without the right to sell narcotics in the conception of legal certainty is regulated in Act No. 35 of 2009 concerning Narcotics. Regarding narcotics intermediaries based on Act No. 35 of 2009 concerning Narcotics in Indonesia it is regulated in Article 112, Article 114 for class I narcotics, Article 119 for class II narcotics, Article 124 for class III narcotics, Article 129 for narcotic precursors, Article 130 for specialization made by corporations as well as Article 132 for trials or conspiracy related to intermediary narcotics. The form of legal responsibility for a person who acts as a narcotics intermediary in the decision number 128/Pid.Sus/2022/PN.MJI in the eyes of the judge is the defendant Yoni Nopani alias Opan Bin AA by carrying out the sentence imposed by the judge in the form of imprisonment for 10 (ten) years and a fine of IDR 2,000,000,000 (two billion rupiahs) with the provision that if the fine is not paid, the defendant must serve a prison sentence of 6 (six) months, and the defendant does not contest the decision in the form of an appeal or cassation.*

Keywords: *Narcotics; Selling; Perpetrator; Responsibility.*

1. Introduction

The development of the use of narcotics today is increasing and not for the purposes of medical or scientific interests, but aims to obtain enormous profits. Threats and dangers of the development of narcotics to public health, can occur as a side effect of continuous and unsupervised use of narcotics. If treatment and prevention are not immediately carried out, it will cause a dependency effect, both physical and psychological dependence which is very strong for its use. The negative consequences mentioned above are the joint responsibility of all countries to overcome them. This responsibility is an integral part in the life of modern society.¹

The increasing problem of narcotics abuse is an urgent or important and complex matter. Narcotics abuse does not represent a simple and easily overcome problem. Narcotics abuse seems to be increasingly rampant, especially in big cities where the outbreak of narcotics seems unstoppable. Lately, narcotics abuse has not only become an obstacle in big cities but has begun to seep into villages.

The problem of narcotics abuse in Indonesia is currently felt to be serious and international in nature, carried out with a sophisticated modus operandi and technology. As an archipelagic country with a strategic location, Indonesia has participated in tackling narcotics abuse crimes, namely by enacting Act No. 35 of 2009 concerning Narcotics. This law is a new law replacing the old law, namely Act No. 22 of 1997 and Act No. 35 of 2009 concerning Narcotics.²

Based on Act No. 35 of 2009, every perpetrator of a crime without the right to sell narcotics can be subject to criminal sanctions, which means that narcotics sellers can be called perpetrators of narcotics crimes. It must be realized that the problem of narcotics abuse is a very complex problem, therefore efforts and support from all parties are needed in order to achieve the expected goals, because the implementation of the law is very dependent on the participation of all parties, both the government, security forces, families, environment, because it can not disappear by itself. The development of narcotics abuse is increasing and the motives for abuse and the perpetrators are varied, because not a few

¹Mahendra Pangestu, Criminal Responsibility of Perpetrators of the Crime of Narcotics Abuse of the Gorilla Tobacco Type, Faculty of Law, University of Pancasakti Tegal 2020, p 1 <http://repository.upstegal.ac.id/778/1/SKRIPSI.pdf>, accessed on 17/12/2022. At 19.00 WIB.

²Sanna Friani Manalu, Arta Rumiris Sipahutar, Until Raja Sinaga and Messiah JP Sagala, Juridical Analysis of the Abuse of Methamphetamine and Ecstasy Type Narcotics From a Criminal Law Viewpoint in Decision Number: 473/Pid.Sus/2015/Pt.Mdn, JURNAL RECTUM, volume I, Number 2, July 2019 p 117, <https://jurnal.darmaagung.ac.id/index.php/journalrectum/article/download/224/237/>. Retrieved 31/10/2022. At 20.00 WIB

who do it are children and adolescents who are the next generation of the nation.

Efforts to eradicate international narcotics crimes are by means of routine raids or operations on goods containing dangerous substances such as alcohol and drugs. The punishment should be more focused on narcotics dealers because the existence of dealers causes the emergence of narcotics abuse which then gives birth to a narcotics addict, because after all the eradication of narcotics must be seen as the central point, it is difficult for law enforcement officials to track narcotics trafficking because the crime is not carried out illegally individuals but involving many people who together are even an organized syndicate with an extensive network that works neatly and very confidentially both at the national and international levels

The increase in narcotics crimes is generally caused by two things, namely: First, producers and dealers promise huge profits. This cannot be separated from the economic conditions of the community which are increasingly difficult to earn a living so they choose the path of committing crimes as narcotics dealers which in fact promise large wages or profits in a short time. Second, narcotics users promise peace, comfort and serenity. This is due to the user's lack of knowledge about the impact that will be caused by continuous narcotics users and over a long period of time. Given the dangers that can ravage the joints of the Indonesian nation's life, the existence of narcotics abuse must be faced, eradicated and fought together. As for the chronology of Decision No. 128/Pid.Sus/2022/PN.MJI, are as follows:

1. Declare the Defendant Yoni Nopani Alias Opan Bin AA proven legally and convincingly guilty of committing the crime of being an intermediary in the sale and purchase of Narcotics Group I not plants weighing 5 (five) grams
2. Sentenced punishment on the Defendant therefore with imprisonment for 10 (ten) years and a fine of IDR 2,000,000,000.- (two billion rupiahs) provided that if the fine is not paid it is replaced with imprisonment for 6 (six) months
3. Determine the period of arrest and detention that has been served by the Defendant to be reduced in its entirety and the principal sentence of imprisonment imposed
4. Determine that the accused remains in custody
5. Establish evidence in the form of
 - a. 2 (two) Large Size Packages Allegedly Methamphetamine Type Narcotics Wrapped in Clear Plastic Clips With a Gross Weight of 8.31 Grams

- b. 1 (one) Small Size Package Allegedly Methamphetamine Type Narcotics Wrapped in Clear Plastic with a Gross Weight of 0.26 Gram,
- c. 1 (one) Unit of OPPO Brand Mobile Phone Type A39 Rose Goto Color
- d. 1 (one) Fruit of Used Bottle Caps That Have Been Perforated
- e. 2 (two) White Plastic Straws
- f.1 (one) Fruit of Vics Formula 44 Packaging
- g. White Paper Covered in Black Tape
- h. 1 (one) Pipette Made of Clear Glass.

Annihilated;

6. Charged the Defendant to pay court fees in the amount of IDR 2,000 (two thousand rupiah).

Decision ChronologyThe above shows how the circulation of narcotics has reached a point that is worrying and threatens human resources and especially the younger generation and children as the nation's successor. Sometimes even though convicts are in prison due to narcotics crimes, they can still make transactions or buy and sell from inside the prison. Things that are impossible to do if there is no cooperation with human resources in the Correctional Institution where he is serving his sentence

Based on this description, law enforcement against perpetrators of crimes without the right to sell narcotics, such as the cases above, has actually been carried out and received a Judge's decision. The hope of implementing law enforcement is to be an antidote to illicit trade and narcotics circulation, but not as expected. Even a convict can carry out his activities in buying and selling narcotics even though he is in prison. Thus it can be said that even though it has been regulated in statutory provisions, this narcotic crime has not been appeased. The cases as mentioned above and also other cases show that both drug dealers and dealers have been caught and even subject to severe sanctions, but in reality other actors do not care and tend to expand their area of operations.³However, even so, criminal responsibility related to narcotics abuse

³Indah Lestari and Sri Endah Wahyuningsih, 2017 "Enforcement of Criminal Law Against Drug Users in the Central Java Regional Police", *Khaira Ummah Law Journal*, Vol. 12. No. September 3 h. 60.<http://jurnal.unissula.ac.id/index.php/jhku/article/view/1889>, accessed on 19/11/2022. At 07.00 WIB

is needed in enforcing criminal law in Indonesia, this is because narcotics have a very bad effect on human health, which can damage both physically and mentally. The dangers and consequences of narcotics abuse can be a personal hazard for the user and can also be a social or environmental hazard⁴

Efforts to tackle drug trafficking must receive serious attention and be truly implemented so that this narcotics problem does not continue to grow in society as a bad epidemic for the country's development. This legal issue concerns the role of law enforcement officials, among law enforcement officers who have an important role and are authorized to investigate and investigate cases of narcotics crimes including the Police through the Police Narcotics Investigation Unit at the Resort Police level which is regulated in Article 47 of the Regulation of the Head of the State Police Republic of Indonesia Number 23 of 2010 concerning Organizational Structure and Work Procedures at the Resort Police and Sector Police Levels. Its existence is very important in the midst of society as a servant of the state to balance and protect life in society,

One of the efforts to deal with narcotics crimes that can be carried out by the Majalengka Police Narcotics Investigation Unit is to use undercover methods to carry out eradication, as described in Article 6 of Regulation of the Head of the National Police of the Republic of Indonesia Number 06 of 2019 concerning Management of Criminal Investigation. Particularly in the case of drug trafficking, disguise techniques can be used as potential buyers (undercover buy), undercover to be involved in drug distribution to a certain place (controlled delivery), undercover accompanied by prosecution and eradication (raid planning execution).

Prevention of crimes against narcotics crimes has been mostly carried out by the police through the Narcotics Research Unit which has the duties and functions as investigators and investigators who handle narcotics crimes, thus law enforcement carried out by the Majalengka Police Narcotics Research Unit is expected to be a deterrent factor against the spread of illicit trade and trafficking of narcotics.⁵

Today's narcotics and illegal drug crimes are transnational in nature, carried out with a high modus operandi and sophisticated technology so that drug producers continue to try to explore new types of narcotics with the aim of tricking the law. It is hoped that law enforcement officials, especially the police, through the Drug Investigation Unit, will be able to prevent and deal with drug crimes in order to

⁴Moh, Taufik Makarro, Suhasril, H. Moh. Zakky, 2003, *Narcotics Crime*, Ghalia Indonesia Jakarta p 49

⁵OC Kaligis & Associates, 2002, *Drugs and Justice in Indonesia, Criminal Law Reform Through Legislation and Judiciary*, Alumni, Bandung, p. 260.

improve the morality and quality of human resources in Indonesia, especially for the nation's next generation.

Research related to the problem legal responsibility for perpetrators of criminal acts without the right to sell narcotics, had previously been carried out by other researchers, but there were still substantial differences from this study. The research that is almost the same as this research is research that has been carried out by Theo Fazar Siallagan, Jinner Sidauruk, Tulus Siambaton, PATIK: Journal of Law, Volume 09 Number 01 April 2020 entitled Criminal Accountability for Perpetrators Who Abuse Narcotics Group I (Non-Plants) Weighing Exceeding 5 Grams⁶

Research conducted by Fazar Siallagan, Jinner Sidauruk, Tulus Siambaton, discusses the responsibility of criminal actors who abuse class I (non-plant) narcotics weighing more than 5 grams (Decision Study No. the type of indictment used, which should have used a subsidiary indictment but the public prosecutor chose an alternative indictment, in accordance with the existing legal facts, it was very clearly proven that Article 114 in the first alternative indictment was proven to be in accordance with the BAP, but the judge had a different opinion so he decided to choose the indictment second alternative. Law enforcers should be in accordance with the principle "*Fiat justitia ruat caelum*" which means "Let justice be upheld, even though the sky will fall".

Look at the object or scope of the research by Fazar Siallagan, Jinner Sidauruk, Tulus Siambaton, there are similarities and differences with this research. The equation is Accountability of Narcotics Offenders, while the difference is that the focus of research by Fazar Siallagan, Jinner Sidauruk, Tulus Siambaton, focuses on studies on the types of charges used, while the object (focus) of this study is the element of being able to take responsibility and the element of determining the form of the wrong done by the defendant whether it was intentional or due to negligence or negligence. The purpose of this study is to find out and analyze the construction of a crime without the right to sell narcotics in the conception of legal certainty and to find out and analyze legal responsibility for perpetrators of crimes without the right to sell narcotics (Decision Study No. 128/Pid.Sus/2022/ PN. Mjl)

2. Research Methods

The approach method used by the author in this study is a normative juridical approach. The normative juridical approach is an approach based on the main legal material by examining theories, concepts, legal principles and laws and

⁶Theo Fazar Siallagan, Jinner Sidauruk, Tulus Siambaton, Criminal Responsibility for Perpetrators Who Abuse Narcotics Category I (Non Plants) Weighing More Than 5 Grams, PATIK : Journal of Law, Volume 09 Number 01 April 2020

regulations related to this research. This approach is also known as the library approach, namely by studying books, laws and regulations and other documents related to this research.⁷ The specification of this research uses descriptive analysis, namely research that describes the applicable laws and regulations associated with positive legal theories concerning the problems being studied.⁸Source of data comes from primary data and secondary data. Data collection methods include interviews, document studies or library materials. The data analysis method used in analyzing the data is a qualitative analysis technique

3. Results and Discussion

3.1. Construction of a Criminal Act Without the Right to Sell Narcotics in the Conception of Legal Certainty

The word construction is in fact a concept that is quite difficult to understand, the word construction has various interpretations, cannot be defined singly, and is highly dependent on the context. Several definitions of construction based on the context need to be distinguished on the basis of: process, building, activity, language and planning, so that the definitional meaning of construction in the context of its relation to this research means a form, procedure or more broadly the patterns of relationships that exist in in a system that forms a work process in this case is the process of imposing sanctions on victims/narcotics abusers.

A courier in the narcotics trade system is someone who becomes an intermediary for narcotics trade, so this violates the provisions of Act No. 35 of 2009 concerning Narcotics. Thus a class I narcotics intermediary is a construction crime without the right to sell narcotics can be charged with Article 114 of Act No. 35 of 2009 concerning narcotics

Circulation and illicit trade of narcotics are activities carried out without rights and against the law, namely outside the objectives of developing science and technology as well as health services and without the permission of the Minister of Health or an authorized official on a recommendation from the Drug and Beverage Control Agency (BPOM).) can be determined as a narcotic crime. In it there are a series of activities for the distribution or delivery of narcotics, one of which is through a courier as a narcotics intermediary, which continues with buying and selling with profit. Benefits can be in the form of services or in the form of money or goods or even facilities. The goods here can be in the form of

⁷Ronny Hanitijo Soemitro, 2001, *Methodology of Legal Research and Mathematics*, Ghalia Indonesia, Jakarta, p 97

⁸Rony Hanitijo Soemitro, 2013. *Legal and Jurimetric Research Methodology*. Ghalia Indonesia, Jakarta. p. 11.

the narcotics themselves, with the narcotics the profits can be used alone. So, if someone connects sellers and buyers then that person gets goods in the form of narcotics can already be classified as intermediaries in buying and selling. Service or profit is an important factor, without the service or profit obtained, it cannot be called an intermediary in buying and selling.⁹

Narcotics dealers are greatly assisted by the presence of narcotics couriers to reach a wider area. Narcotics couriers operate in a systematic and structured manner which makes it difficult for law enforcement officials to eradicate narcotics which endanger the next generation of the Indonesian nation. Even narcotics will cause the loss of a nation's generation (lost generation) in the future. Narcotics crime is a crime syndicate in which the perpetrators protect one another. This makes the police and the National Narcotics Agency use several techniques to uncover narcotics crimes, such as observation, surveillance, undercover agents, undercover buys, controlled delivery of narcotics,

Arrangements regarding narcotics crimes that involve a person becoming an intermediary in the sale and purchase of narcotics are regulated in Act No. 35 of 2009 concerning Narcotics, namely:

a. Article 114 paragraph (1) and paragraph (2) for class I narcotics

Paragraph (1)

"Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah)".

Paragraph (2)

"In terms of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeds 5 (five) tree trunks or in the form of non-plants weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum

⁹AR. Sujono and Bony Daniel, 2011, Comments & Discussion of Law Number 35 of 2009 concerning Narcotics, Sinar Graphic, Jakarta, p 257.

of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)".

The two paragraphs are correlated with each other so that there are several elements of criminal acts from paragraph (1) contained in paragraph (2), namely the legal subject in the form of "every person", which is carried out "without rights or against the law", the type of action is "offering for sale , selling, buying, being an intermediary in buying and selling, exchanging, delivering, or receiving", the object is "Narcotics Class I". In addition, there is a specialization in paragraph (2) which is aimed at the weight of Narcotics Group I, both in the form of plants that exceed 1 (one) kilogram or 5 (five) tree trunks, as well as in the form of non-plants weighing 5 (grams). This specialization makes punishment both imprisonment and fines that are subject to a heavier threat than in paragraph (1) or it can be said that the minimum and maximum limits of imprisonment are higher, as well as added death penalty option. In addition, the penalty for fines is also higher, namely the maximum fine in paragraph (1) which is IDR 10,000,000,000.00 (ten billion rupiah) plus 1/3 (one third) of it.

b. Article 119 paragraph (1) and paragraph (2) for class II narcotics

Paragraph (1)

"Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category II, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (two) fifteen) years and a minimum fine of IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah).

Paragraph (2)

"In the case of the act of offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Group II as referred to in paragraph (1) weighing more than 5 (five) grams, the offender shall be punished with death penalty, imprisonment for life, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)."

The two paragraphs are correlated with each other so that there are several elements of criminal acts from paragraph (1) which are contained in paragraph (2) as well as Article 114, but the object is different, namely Narcotics Group II. In addition, there is a specialization in paragraph (2) which is aimed at the weight of Narcotics Group II which exceeds 5 (five) grams. This makes the criminal sanctions, both imprisonment and fines, which are threatened with more weight

than in paragraph (1), as well as adding the option of death penalty, life imprisonment to be imposed. The fines that are threatened with more are the maximum fines in paragraph (1) which are IDR 8,000,000,000.00 (eight billion rupiahs) plus 1/3 (one third) of them.

c. Article 124 paragraph (1) and paragraph (2) for class III narcotics

Paragraph (1)

"Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Group III, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten)) years and a minimum fine of IDR 600,000,000.00 (six hundred million rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah).

Paragraph (2)

"In the case of the act of offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Group III as referred to in paragraph (1) weighing more than 5 (five) grams, the offender shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)."

The two paragraphs are correlated with each other so that there are several elements of criminal acts from paragraph (1) contained in paragraph (2) as well as the two previous articles namely Article 114 and Article 119, the only difference being the object, namely Narcotics Group III. In addition, there is a specialization in paragraph (2) which is aimed at the weight of Narcotics Group III which exceeds 5 (five) grams. This makes the criminal sanctions both imprisonment and fines punishable by more severe threats than in paragraph (1), namely with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years. More fines are imposed, namely by imposing a maximum fine of paragraph (1) which is IDR 5,000,000,000.00 (five billion rupiahs) plus 1/3 (one third) of it.

The three articles as a whole contain elements of criminal acts, namely subjective elements and objective elements.

a. subjective element

The element "everyone" which means an individual person. Legal subjects who have rights and obligations and people who are able to understand the meaning

and consequences of the actions they commit and can be held accountable for their actions with no reason for abolition of punishment, namely justification reasons and excuses, in this case are closely related to the ability to be responsible.

b. Objective element.

1) Elements of "without rights or against the law"

"Without rights" namely the freedom to do something not based on law. "Without rights" is part of "against the law" namely any act that violates written law (statutory regulations) as well as general legal principles of unwritten law. "Without rights" in Act No. 35 of 2009 concerning Narcotics in Article 36 it is stated that narcotics can only be distributed after obtaining distribution permits from the Minister. The minister here is the minister administering government affairs in the health sector or the authorized official on the recommendation of the Food and Drug Supervisory Agency (BPOM) based on Act No. 35 of 2009 concerning Narcotics and other relevant laws and regulations. So, without rights or against the law is defined as violating Act No. 35 of 2009 concerning Narcotics

2) Elements of "offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering"

This element is an alternative element, meaning that one of the elements of the formulation is fulfilled, then this element is considered proven, for example, being able to offer for sale, offer to sell. Intermediaries in this element are intermediaries in buying and selling associated with economic value. So there must be a seller and a buyer, so it can be said to be a courier or intermediary.

3) Elements of narcotics both class I, group II and class III.

In addition to narcotics crimes with intermediaries in the sale and purchase of narcotics which are regulated in these three articles, there are also intermediaries in the case that he will control them, namely in his control of Article 112 of Act No. 35 of 2009 concerning Narcotics. In his control, for example buying it is also an intermediary, even though he has not yet given the narcotics to the one who ordered them to buy them but has been caught, the narcotics are in his control. While the elements of the article are alternatives, which make it easy for public prosecutors to use the article to ensnare perpetrators of narcotics crimes because the proof is easy.

The object of narcotic crimes is not only narcotics class I, II and III, but also narcotic precursors which are starting materials used for the manufacture of

narcotics. In this case, "becoming an intermediary" relating to narcotics precursors is regulated in Article 129 letter c, which states:

"To be punished with imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of a maximum of IDR 5,000,000,000.00 (five billion rupiah) each person who is without rights or violates the law:

- a. own, store, control, or provide Narcotics Precursor for the manufacture of Narcotics;
- b. produce, import, export, or distribute Narcotics Precursor for the manufacture of Narcotics;
- c. offer to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over the Narcotics Precursor for the manufacture of Narcotics;
- d. bring, send, transport, or transit the Narcotics Precursor for the manufacture of Narcotics."

Articles 112, 114, 119, 124, 129 the legal subject is not only "everyone" or an individual but can also be carried out by "corporations or organized groups of people and/or assets, both legal entities and non-legal entities". It is clear that a corporation is an association of people who do not have to have a legal entity and that there is a statutes. It is certain that with corporations it is already related to the very large distribution of narcotics, it is impossible for small circulation. Narcotics crimes which are corporate legal subjects, which will later be capital punishment, life imprisonment or imprisonment imposed by judges are carried out by corporation management and fines can be imposed on corporation management or the corporation itself with larger fines. Apart from fines,

Act No. 35 of 2009 concerning Narcotics, in the articles mentioned above, it can be concluded that narcotics crimes, namely:

- a. Does not explicitly stipulate the element of intent or there is a principle of criminal responsibility without proof of guilt (strict liability).

The principle of strict liability is criminal responsibility without fault or absolute liability, in which the perpetrator of a crime can already be punished if he has committed a criminal act as defined in the law without looking at his inner

attitude.¹⁰This can be seen in the elements of the article in the chapter on criminal provisions in Act No. 35 of 2009 concerning Narcotics where there is no mention of the formulation "intentionally or negligently".¹¹In narcotics crimes, the element of guilt does not have to be proven, but a person who is considered to have made a mistake if his actions have fulfilled the formulation of the article in Act No. 35 of 2009 concerning Narcotics. With the existence of this principle of strict liability, it results in being able to ensnare people who actually have no intention of committing narcotics crimes either because of coercion or ignorance. This causes harm to innocent people which results in conflict with the Principles of Justice, Benefit and Legal Certainty.

The application of the principle of strict liability in Act No. 35 of 2009 concerning Narcotics does not mean setting aside the principle of no crime without error, although Act No. 35 of 2009 concerning Narcotics does not clearly explain errors, namely intentional and negligent. However, in fact the principle of no crime without error is also regulated implicitly in Act No. 35 of 2009 concerning Narcotics and in proving narcotics crimes in court it still exists, because of the importance of mistakes in proving a crime.

This principle of strict liability is used in Act No. 35 of 2009 concerning Narcotics for the following reasons:¹²

- 1) Narcotics crime is an extraordinary crime and a transnational crime as well as a crime that endangers society.
- 2) Narcotics crimes are related to goods or objects that are prohibited by law and are categorized as activities that are potentially dangerous to health, safety and public morals. So, the application of the principle of strict liability is essential to ensure compliance with important regulations needed for the welfare of society.
- 3) The regulation of the principle of strict liability in narcotics crimes is aimed at ensuring that the Indonesian state is free from narcotics abuse and illicit narcotics trafficking. This is to prevent narcotics crimes from becoming more widespread.

¹⁰Andy Sahat, Injecting the Principle of Strict Liability In Article 127 of Law Number 35 of 2009 Concerning Narcotics Causing Legal Uncertainty, *Journal of Indonesia Social Technology: p-ISSN:2723-6609, Vol. 2, 2021, p 1281*<https://jist.publicasiindonesia.id/index.php/jist/article/view/209/408>, accessed 15/12/2022. At 23.32 WIB

¹¹Ibid

¹²Bambang Gunawan, *The Principle of Strict Liability in Narcotics Criminal Law*, Dissertation, Faculty of Law, Airlangga University, Surabaya, 2015, h ix,<https://repositories.unair.ac.id/29539/1/HALAMAN%20DEPAN.pdf>, accessed on 16/12/2022

4) Proving the existence of an element of guilt is very difficult in narcotics crimes.

b. There is weighting of narcotics crimes related to narcotic intermediaries based on narcotic class, amount of narcotics, narcotic precursors, and those committed by corporations.

c. The use of a special minimum criminal system and a system for formulating cumulative criminal sanctions in narcotics crimes

d. Criminal equation for trial or conspiracy and criminal acts.

So, Article 112, Article 114, Article 119, Article 124, Article 129, Article 130 and Article 132 of Act No. 35 of 2009 concerning Narcotics show that there are rules governing narcotics crimes which are explicitly or implicitly related to being a narcotics intermediary and in it there are different threats of criminal sanctions. Narcotics crime in proving it is not as difficult as other crimes, because if the goods are in the form of narcotics, an examination has been carried out through a laboratory, and the perpetrator does not have the authority over that matter, for example the possession of narcotics in Article 7 which can only be used for the benefit of health services and/or the development of science and technology, it can be said that it is a narcotics crime

Like the crime in this decision, namely on Wednesday April 24, 2022, The Opsnal Sat Resnarkoba Team for the Majalengka Police received information that at Pamengkang Block RT 001 RW 001 Biyawak Village, Jatipuh District, Majalengka Regency illicit drug trafficking often occurs, then the Opsnal Sat Resnarkoba Team conducted an investigation, at around 20.00 WIB a raid was carried out in Pamengkang Block RT 001 RW 001 Biyawak Village, Jatipuh District, Majalengka Regency and secured 1 (one) man. Yoni Nopani alias Opan Bin AA, during the search was found 2 (two) large packets suspected of methamphetamine-type narcotics wrapped in clear plastic clips with a gross weight of 8.31 grams and 1 (one) small package suspected of methamphetamine-type narcotics wrapped in clear plastic with a gross weight of 0.26 grams,

Likewise Article 63 paragraph (2) of the Criminal Code stipulates that if an act that can be punished is due to general criminal provisions, but there are also special criminal provisions, then only those special criminal provisions are used. From these two provisions it can be concluded that if an act is threatened with general criminal provisions in the Criminal Code article and special criminal provisions, for example Law No. 35 of 2009 concerning Narcotics, what is imposed is a special provision, namely Law No. 35 of 2009 concerning Narcotics. This is a principle (*lex specialis derogate legi generali*) which means that specific laws

override/defeat general laws. This deviation does not occur only in the material law, as stated above, but also in the formal law. Specificity in Law no. 35 of 2009, the material law is:

- a. There is a minimum threat of imprisonment and a minimum fine.
- b. Principal punishment, namely imprisonment and fines can be imposed cumulatively.
- c. The perpetrators of attempts or conspiracy to commit criminal acts of narcotics and narcotics precursors are punished with the same imprisonment as if they were committed perfectly (Article 132 paragraph (1)).

In connection with the descriptions above, if it is related to the construction of a crime without the right to sell narcotics in the conception of legal certainty, the defendant is the defendant Yoni Nopani alias Opan Bin AA found guilty of committing a narcotic crime methamphetamine in the form of intentional means, namely distributing class I narcotics, namely without the right to sell narcotics of the methamphetamine type as stipulated in Article 114 paragraph (1) of Act No. 35 of 2009 concerning Narcotics.

Defendant Yoni Nopani alias Opan Bin AA at trial, he has provided information which is principally as follows:

- a. the defendant understands being examined in connection with buying, selling Narcotics Category I,
- b. The class I narcotics sold by the defendant were of the methamphetamine type,
- c. the defendant sold the narcotics class I type methamphetamine on Wednesday April 24, 2022 selling narcotics class I type methamphetamine

The defendant has been charged by the Public Prosecutor with a subsidiary charge, so the Panel of Judges will first consider the primary charge as stipulated in Article 114 paragraph (1) of Act No. 35 of 2009 concerning Narcotics, the elements of which are as follows:

- a. Each person,
- b. Unlawful or unlawful,
- c. Offering for sale and purchase, exchanging or handing over Narcotics Group I.

3.2. Legal Responsibility for Criminal Offenders Without the Right to Sell Narcotics (Decision Study No. 128/Pid.Sus/2022/PN.Mjl)

The concept of legal responsibility relates to legal responsibility for actions taken by a person or group that violate the law. According to Hans Kelsen¹³

A concept related to the concept of legal obligation is the concept of legal responsibility (responsibility). That a person is legally responsible for certain actions or that he is responsible for a sanction if his actions are contrary. Usually, that is, if the sanction is directed at the direct perpetrator, a person is responsible for his own actions. In this case the subject of legal responsibility is identical to the subject of legal obligation

In general law theory, it states that everyone, including the government, must be held accountable for their actions, whether due to fault or no fault.¹⁴. From general law theory, legal responsibility emerges in the form of criminal responsibility, civil responsibility, and administrative responsibility.

The principle of criminal responsibility can be found in Article 2 of the Criminal Code (hereinafter abbreviated as the Criminal Code), that "criminal provisions in Indonesian legislation apply to anyone who commits a crime in Indonesia". According to WPJ Pompe, criminal law is the entire legal regulation that determines what actions should be punished and what punishment should be imposed. Meanwhile Moeljatno stated that:

Criminal law is part of the overall law in force in a country which provides the basis or rules for; a) determine which actions may not be carried out, are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition; b) determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened; c) determine in what manner the imposition of the penalty can be carried out if there is a person who is suspected of having violated the prohibition.

Basically, criminal law is the entire legal regulation relating to which actions can be punished and what punishment can be imposed.

In criminal law, it recognizes the principle of legality as stated in Article 1 of the Criminal Code, namely "an act cannot be punished, except under the provisions of existing criminal legislation". With regard to criminal law, there are three important/principal elements that are closely related to one another, namely

¹³Munir Fuady, *Modern Law State Theory*, Reflika Aditama, Bandung 2011 p 147

¹⁴*Ibid*

crime, deed, and perpetrator. By Simons, criminal (*straf*) is said to be a special sorrow (*bijzonder leed*). This is because criminal punishment is a more severe punishment compared to punishment in other fields of law. Actions include doing something, while perpetrators are people who commit or have certain involvement in criminal acts, for example helping to commit. In Article 55 paragraph (1) of the Criminal Code it states that:

Sentenced as perpetrators of criminal acts: (1) those who committed, who ordered to do, and who took part in committing the act; (2) those who, by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by providing opportunities, means or information, deliberately encourage other people to commit acts.

Criminal acts only refer to being prohibited and punishable by a crime, because the principle of responsibility in criminal law is not to be punished if there is no mistake.¹⁵. Accountability in criminal law is asked for every person who makes a mistake.

Moeljatno, argued that for an error to occur, a person must commit a criminal act (unlawful in nature), be above a certain age capable of being responsible, have a form of error which is intentional or negligent, and there is no excuse for forgiveness. In criminal law, legal sanctions are called punishments. According to R. Soesilo, punishment is a bad feeling (*miserable*) that is imposed by a judge with a verdict on someone who has violated the criminal law.

A criminal act is an act that violates the law that has been committed either intentionally or unintentionally by someone whose action can be accounted for and by law has been declared as an act that can be punished. If someone commits a crime, he must be held accountable for his actions

Before the author describes how the form of criminal responsibility in the case of Decision No. 128/Pid.Sus/ 2022/ PN.MJI in the eyes of the judge, in this sub-chapter the researcher divides it into several sub-chapters, namely:

a. Case Position

On wednesday date April 24, 2022, The Opsnal Sat Resnarkoba Team for the Majalengka Police received information that at Pamengkang Block RT 001 RW 001 Biyawak Village, Jatipuh District, Majalengka Regency illicit drug trafficking often occurs, then the Opsnal Sat Resnarkoba Team conducted an investigation, at around 20.00 WIB a raid was carried out in Pamengkang Block RT 001 RW 001 Biyawak Village, Jatipuh District, Majalengka Regency and secured 1 (one)

¹⁵Moeljatno, 2008, Principles of Criminal Law, Bina Literacy, Jakarta. p, 165

man. Yoni Nopani alias Opan Bin AA, during the search was found 2 (two) large packets suspected of methamphetamine-type narcotics wrapped in clear plastic clips with a gross weight of 8.31 grams and 1 (one) small package suspected of methamphetamine-type narcotics wrapped in clear plastic with a gross weight of 0.26 grams,

b. Verdict Rule

Taking into account Article 114 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics and Act No. 8 of 1981 concerning Criminal Procedure Code and other relevant laws and regulations;

As for the chronology of Decision No. 128/Pid.Sus/2022/PN.MJL, are as follows:

- 1) Declare the Defendant Yoni Nopani Alias Opan Bin AA proven legally and convincingly guilty of committing the crime of being an intermediary in the sale and purchase of Narcotics Group I not plants weighing 5 (five) grams
- 2) Sentenced punishment on the Defendant therefore with imprisonment for 10 (ten) years and a fine of IDR 2,000,000,000.- (two billion rupiahs) provided that if the fine is not paid it is replaced with imprisonment for 6 (six) months
- 3) Determine the period of arrest and detention that has been served by the Defendant to be reduced in its entirety and the principal sentence of imprisonment imposed
- 4) Determine that the accused remains in custody
- 5) Establish evidence in the form of:
 - a) 2 (two) Large Size Packages Allegedly Methamphetamine Type Narcotics Wrapped in Clear Plastic Clips With a Gross Weight of 8.31 Grams
 - b) 1 (one) Small Size Package Allegedly Methamphetamine Type Narcotics Wrapped in Clear Plastic with a Gross Weight of 0.26 Gram,
 - c) 1 (one) Unit of OPPO Brand Mobile Phone Type A39 Rose Goto Color
 - d) 1 (one) Fruit of Used Bottle Caps That Have Been Perforated
 - e) 2 (two) White Plastic Straws
 - f) 1 (one) Fruit of Vics Formula 44 Packaging

g) White Paper Covered in Black Tape

h) 1 (one) Pipette Made of Clear Glass.

6) Burdened the Defendant to pay court fees in the amount of IDR 2000, - (two thousand rupiahs);

c. Analysis

This case was a case that started with the defendant as a drug user and finally became a narcotics intermediary twice in April 2022 due to the defendant's inability to always buy narcotics for his own use without permission from the authorities. Based on the authors reading and analyzing cases regarding narcotics crimes, the authors will analyze the Majalengka District Court Decision Number 128/Pid.Sus/2022/PN.MJl which states that the defendant Yoni Nopani alias Opan Bin Aaproven legally and convincingly guilty of committing a crime as stipulated in the primary charge of Article 114 Paragraph (1) of Act No. 35 of 2009 concerning Narcotics, which reads:

"Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah)."

The elements are as follows:

a. Each person

The element of "everyone" is a subjective element of a crime. In criminal law, "everyone" indicates a legal subject, namely as the perpetrator of a crime. Legal subjects who have rights and obligations and people who are able to understand the meaning and consequences of the actions they have committed and can be held accountable for their actions with no reason for abolishing crimes, namely justification reasons and excuses. Every legal subject is closely attached to the ability to be responsible, namely a situation that can result in a person who has done something expressly prohibited and threatened with punishment by law.

Memorie Van Toelichting (MVT) emphasized that "the element of ability to be responsible does not need to be proven", because this element is considered to exist in every person who commits an act that violates the law as a silent element in every crime. This element is proven if there is doubt about the responsibility capability of the person who commits a narcotic crime.

Defendant Yoni Nopani alias Opan Bin AA with all of their identities listed in the Public Prosecutor's Indictment and which have been justified by the defendant himself. Based on the facts and facts in the trial the defendant is a person who has a healthy body condition both physically and mentally, so he has the skills and ability to be legally responsible for his actions. In other words, criminal responsibility can be held against the accused Yoni Nopani alias Opan Bin AA because there were no justifications and excuses that could abolish his punishment. So, the element of "everyone" is fulfilled.

b. Which is without rights or against the law

The right is the freedom to do something based on the law while "without rights" is the freedom to do something not based on the law. "Without rights" is part of "against the law" namely any act that violates written law (statutory regulations) as well as general legal principles of unwritten law. "Without rights" in Act No. 35 of 2009 concerning Narcotics in Article 36 it is stated that narcotics can only be distributed after obtaining distribution permits from the Minister. The minister here is the minister who administers government affairs in the health sector based on Act No. 35 of 2009 concerning Narcotics and other relevant laws and regulations.

Regarding subjects who are given the authority to be able to offer for sale, sell, buy, receive, become intermediaries in buying and selling, exchanging or handing over those that have been determined based on permission from the Minister of Health as stipulated in Act No. 35 of 2009 concerning Narcotics. So, as long as he does not have a permit from the Minister in the field of health, then anyone who carries out activities that offer to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging or handing over can be qualified as a subject without rights and his actions are against law

Based on these provisions, the defendant Yoni Nopani alias Opan Bin AA Obtaining narcotics from Mamat, who is not a minister authorized to give permits or whose work has nothing to do with the competent authority, even in the defendant's confession, Mamat is a prisoner in Majalengka Prison. In addition, the defendant himself is not a person whose work is related to the authorities in the use of narcotics. Thus the defendant did not have permission from the competent Minister to distribute, distribute, offer and hand over narcotics. In addition, the existence of narcotics in the form of methamphetamine in the form of crystalline powder at the defendant's house was not based on legal matters, so that the element of "without rights or against the law" has been fulfilled.

c. Offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering.

This element is alternative, meaning that one of the elements of the formulation is fulfilled, then the element is considered proven. In decision number Number 128/Pid.Sus/2022/PN.MJl what was proven was "becoming an intermediary in buying and selling". "Become an intermediary in buying and selling", namely as a liaison between the seller and the buyer and for his actions get profit or services.¹⁶If someone connects the seller and the buyer then that person gets goods in the form of narcotics can already be classified as an intermediary in buying and selling. So that the defendant who was an intermediary between the seller and the buyer of narcotics by contacting Mamat's brother through the WA application message (Whats App) was offered by Mamat's brother to become an intermediary in buying and selling narcotics of the methamphetamine type and the defendant was willing to become an intermediary for selling and buying narcotics of the methamphetamine type.

d. Narcotics Category I

Whereas the object in the elements of this indictment is Narcotics Group I. Thus the elements in Article 114 paragraph (1) of Act No. 35 of 2009 concerning Narcotics in the public prosecutor's primary indictment have been proven legally and convincingly guilty. After fulfilling the elements of the narcotic crime, then determine the criminal responsibility. According to Moeljatno, the conditions for criminal responsibility are:¹⁷

1) Someone who has committed a criminal act.

This was fulfilled when the defendant committed a narcotic crime in the form of being without rights or against the law by acting as an intermediary in buying and selling narcotics class I, not plants. By intermediary for narcotics for 2 times in April 2022 ordered by brother Mamat. The defendant has fulfilled the elements of a crime set out in Article 114 paragraph (1) of Act No. 35 of 2009 concerning Narcotics which has been previously explained

2) The ability to be responsible by someone who has committed a criminal act.

The ability to be responsible according to Moeljatno, namely: the ability to distinguish between actions that are in accordance with the law or those that are against the law, and the ability to determine one's will.¹⁸It can be concluded that there is the ability of the soul, intellect or mind. Reason is defined as common sense or reason, while reason is a mental tool which is a combination of sense

¹⁶AR. Sujono and Bony Daniel, Comments & Discussion, *Loc. Cit*

¹⁷Moeljatno. Principles of Criminal Law. ...Op. Cit h 177

¹⁸Ibid, p 178

and feeling to weigh good and bad intentions.¹⁹Or in other words, the ability to be responsible is related to the state of the defendant being physically and mentally healthy when committing a crime.

That based on the facts at trial the defendant had the ability to refuse to commit these acts by refusing an offer from Mamat's brother, because no threats were given to the defendant and he also realized that the actions he had committed were acts that were prohibited by law which if carried out would have been subject to criminal sanctions.

Because the defendant has the freedom to determine his will whether to commit the act or not and there are no threats given to the defendant so that the act is not beyond the defendant's ability. So the defendant is a person who is able to understand the meaning and consequences of the criminal act he committed in the form of intermediary for narcotics or is a person with a normal mental state. Thus it can be said that people are capable of being responsible.

3) The existence of a form of error, either in the form of intentional or negligence

Article 6 paragraph (2) of Act No. 48 of 2009 concerning Judicial Powers confirms "No one can be sentenced to a crime, except if the court because of valid means of proof according to law, gets the conviction that someone who is considered to be responsible, has been guilty for the acts he is accused of." This provision contains 3 (three) fundamental legal principles as the basis for punishment, namely the principle of legality or the principle of "no crime without existing laws", the principle of culpability, namely the principle of "no crime without guilt", and the principle of "no crime without resistance".

Starting from the principle of "no crime without fault", a normative error is that the perpetrator of the crime can be blamed, because in fact the defendant can do something else if he does not want to do the act. Deliberateness is part of the error. This intention can be seen in the case that the defendant may want to commit his act of becoming a narcotics intermediary driven by the fulfillment of lust that starts with the defendant not being able to fulfill his desire to buy more methamphetamine-type narcotics to be used for himself without permission from the authorities. It was said on purpose, because it would be impossible if it was not intentional that the defendant would accept an offer from Mamat's brother to become a narcotics intermediary.

4) There are no justifications or excuses that abolish punishment.

¹⁹Leden Marpaung. 2017. Principles-Theory-Practice of Criminal Law. Sinar Graphics, Jakarta, p 52

There were no justifications or excuses for both the defendant and the actions committed by the defendant, such as coercion and other circumstances that abolished punishment. So that the defendant can still be held accountable for his actions in the eyes of the law because there is no reason to abolish his conviction

The fulfillment of the requirements for criminal responsibility according to Moeljatno against Decision Number 128/Pid.Sus/2022/PN.MJI. Thus the defendant can be held criminally responsible for the crime of narcotics as an intermediary in the sale and purchase of class I narcotics committed by the defendant.

Based on the principle of no crime without fault for the conviction by the judge of the Majalengka District Court in decision Number 128/Pid.Sus/2022/PN.MJI. was appropriate, because it was in accordance with the severity of the defendant's guilt as seen in the case of the defendant being a narcotics intermediary twice and being a user at the same time, and in accordance with the community's sense of justice. The imposition of a sentence is the most important thing to be considered by the judge because it involves the interests of the convict's life in the form of life, body, honor and property, especially the impact of stigmatization on the convict and his family. With various forms of punishment in the form of capital punishment, imprisonment, fines as for actions in the form of social and medical rehabilitation in Act No. 35 of 2009 concerning Narcotics, sentenced the Defendant therefore to imprisonment for 10 (ten) years and a fine of IDR 2,000,000,000.- (two billion rupiahs) provided that if the fine is not paid it is replaced with imprisonment for 6 (six) months. The two criminal sanctions, both imprisonment and fines, were imposed by the judge because in Article 114 paragraph (1) of Act No. 35 of 2009 concerning Narcotics as in the primary indictment of the public prosecutor contains a system for formulating cumulative criminal sanctions, which requires the judge to impose both, namely criminal sanctions and witness fines.

According to the author, based on the principle of balance, criminal responsibility is based on the principle of legality and the principle of culpability (humanity). Legally the principle of legality is contained in Article 1 paragraph (1) of the Criminal Code which states: "No act can be punished, except for the strength of the criminal rules in existing legislation, before the act is committed", while the principle of error includes all actions committed intentionally (*dolus*) or by negligence (*culpa*).

Criminal liability based on mistakes in principle can be punished if it has been proven wrong in committing a crime. With these considerations, it gives authority to the judge to determine the types and amount of punishment

Based on the principle of error, criminal responsibility requires an error in the form of intentional and/or negligence to impose a sentence against the abuse of narcotics class I for oneself. As for 3 (three) elements of criminal responsibility according to Roeslan Saleh, namely²⁰

- a. The existence of the ability to be responsible for the maker (element capable of being responsible);
- b. The inner relationship between the creator and his actions which are intentional (*dolus*) or negligent (*culpa*) are called forms of guilt (error elements);
- c. There are no excuses for mistakes or excuses forgiving.

Referring to the opinion above regarding this case, the first element is the element of being able to take responsibility, in the case study of the decision Number 128/Pid.Sus/2022/PN.MJI. related to abuse in the crime of abuse of narcotics class I, the defendant Yoni Nopani alias Opan Bin AA where according to Article 45 of the Criminal Code, they can already be held accountable for their actions before the law

The second element is to determine the form of wrongdoing by the defendant whether it was intentional or due to negligence or negligence. From the chronology of events above, it can be concluded that the defendant Yoni Nopani alias Opan Bin AA deliberately kept the class I narcotics of the type of cannabis and intended to sell them to his colleagues. Deliberately here it can be seen from the series of acts committed by the defendant

The third element is that there is no reason for criminal abolition or reasons for forgiveness. The reason for forgiveness is the reason that eliminates the guilt of the perpetrator of the crime in criminal law. In the case of abuse of narcotics class I, the type of cannabis was committed by the defendant Yoni Nopani alias Opan Bin AA. No reason was found that could erase the mistake of deliberately keeping class I narcotics, a type of cannabis, for oneself as well as for sale

Regarding the sentence that the judge handed down against the defendant, the defendant has accepted what the judge has decided against him, because of the defendant's mistake. In fact, the defendant did not file an appeal or cassation against the judge's decision at the Majalengka District Court against him. Therefore, the defendant is ready to take responsibility for what the defendant has done, just as the judge has sentenced the perpetrators of narcotics crimes by deliberately giving an appropriate punishment to the defendant who committed

²⁰Roeslan Saleh, 1982, Thoughts About Criminal Responsibility, First Printing, Ghalia Indonesia, Jakarta, p.33

the narcotics crime to suffer for what the defendant has done. The punishment was not a form of revenge but it was to provide a deterrent effect both for the person as the perpetrator and as the general public. So the defendant is responsible for his actions with the defendant's obligation to undergo his sentence properly and correctly according to the provisions in the decision. However, according to the authors of the judge in handing down his decision too high the judge should have paid attention to mitigating matters including the defendant being polite in giving testimony at trial and admitting his actions, regretting it and promising not to do it again; The accused has never been convicted

4. Conclusion

The construction of criminal acts without the right to sell narcotics in the conception of legal certainty is regulated in Act No. 35 of 2009 concerning Narcotics. Regarding narcotics intermediaries based on Act No. 35 of 2009 concerning Narcotics in Indonesia it is regulated in Article 112, Article 114 for class I narcotics, Article 119 for class II narcotics, Article 124 for class III narcotics, Article 129 for narcotic precursors, Article 130 for specialization made by corporations as well as Article 132 for trials or conspiracy related to intermediary narcotics.

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