

Law Enforcement of Narcotics Crimes Against the Use of Gorilla Tobacco Study Decision no. 99/Pid.sus/2018/PN.PBM

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Abstract. *Criminal Acts of Abuse of Gorilla Tobacco Reviewed from Law No. 35 of 2009 on Narcotics. Recently, there have been many new types of narcotics called gorilla tobacco. This study aims to examine and analyze the law enforcement of the abuse of class 1 non-plant narcotics, to examine and analyze the Judge's Consideration Basis in the Decision of Case Number: 99 / Pid.Sus / 2018 / Pn.Pbm Against Gorilla Tobacco Type of Class 1 Non-Plant Narcotics, to examine and analyze the Enforcement of Gorilla Tobacco Law in the Future. In this study, the approach method used is: a normative legal approach or an approach by means of literature study. The research specification used is Descriptive Analytical, which is an effort to analyze and explain legal problems related to objects with a comprehensive and systematic description of everything related to the enforcement of narcotics crime law against the use of gorilla tobacco. Law enforcement related to class I narcotics in Indonesia is regulated in Law No. 35 of 2009 concerning Narcotics. The judge in the verdict of case number 99/Pid.sus/2018/PN.PBM refers to the fulfillment of the elements in Law no. 35 of 2009 Article 112 with a verdict in the form of Sentencing the defendant to imprisonment for 4 (four) years 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 imprisonment for 2 (two) months. Future law enforcement related to Gorilla tobacco will of course refer to and maximize Law number 35 of 2009 where gorilla tobacco in verdict number 99/Pid.sus/2018/PN.PBM is included in class I narcotics, not plants.*

Keywords: *Enforcement, Narcotics, Tobacco.*

1. Introduction

In a state of law, law is the main pillar in moving the joints of social, national, and state life. One of the main characteristics of a state of law lies in its tendency to

assess actions taken by society on the basis of legal regulations. This means that a state with the concept of a state of law always regulates every action and behavior of its people based on applicable laws.

Criminal law as a tool or means to solve problems in community life. The existence of criminal law can provide justice and appropriate solutions for the community. Because criminal law is a set of regulations that regulate actions, both ordering to do or do something, or prohibiting to do or do something that is regulated in the law with criminal sanctions for those who violate.¹ Meanwhile, the criminal law applicable in Indonesia can be divided into two types, criminal law known in the Criminal Code (KUHP) and Special Criminal Law regulated outside the Criminal Code.²

Drug Crime has long been a problem in this country. Its development is very fast, spreading from cities to villages, its users also touch all groups from old to young, even law enforcement officers enjoy it. Drug abuse has a bad impact because it causes addiction which causes dependence.³

Law enforcement of narcotics crimes, starting from investigation and inquiry, if the files are declared complete by the Public Prosecutor then it is continued to the prosecution level with the aim of obtaining a judge's decision that has permanent legal force (*Inkracht*). In efforts to enforce the law on narcotics crimes, law enforcement officers, namely the Police, Prosecutors, and judges, use Law No. 35 of 2009 concerning Narcotics as their basis.

Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency, which are divided into groups as attached to this Law.⁴ Article 6 of Law No. 35 of 2009 concerning Narcotics, regulates the classification of narcotics into three parts, namely class I narcotics, class II narcotics, and class III narcotics.⁵ In its application, class I narcotics are divided into two parts, namely plant narcotics and non-plant narcotics.

Tobacco is a type of plant that is often consumed by humans. Humans have known tobacco for centuries, both as an item that has economic value because it produces fiber, or because of its vapor that causes pleasure.⁶

Gorilla Tobacco or synthetic marijuana is a herbal or tobacco concoction that is sprayed with a type of synthetic chemical that produces similar psychoactive

¹Rahman Syamsuddin, 2014, *Knitting Law in Indonesia*, Mitra Wacana Media, Jakarta, p. 192

²Rodliyah, 2017, *Special Criminal Law, Elements and Criminal Sanctions*, First Edition, PT. Raja Grafindo Persada, Jakarta, p. 1

³Sudarto, *Selected Chapters on Criminal Law* (Bandung: PTAlumni, 2006), p. 36

⁴Article 1 paragraph (1) of Law No. 35 of 2009 concerning Narcotics.

⁵*Ibid.*, Article 6

⁶M. Arif Hakim, *The Dangers of Drugs and Alcohol: How Islam Prevents, Overcomes & Fights*, (Bandung: Comp. Cijambe Indah, 2004), p. 45

effects of marijuana (cannabis). The way to use Gorilla Tobacco is the same as smoking, for the packaging it is wrapped like tea packaging. Synthetic marijuana is legal in several countries, one of which is in Indonesia with trademarks such as Spice, K2, No More Mr Nice Guy and others. Where synthetic marijuana is very different from marijuana in general. Gorilla tobacco or synthetic marijuana contains chemicals commonly called cannabimimetics which can cause harmful effects to health and are very risky if misused. Most gorilla tobacco users do not know exactly what ingredients are mixed in the tobacco. Synthetic marijuana is a very dangerous and addictive substance. Advances in technology and information have influenced the development of types of narcotics such as the emergence of new types of narcotics, one of which is gorilla tobacco, the type or content of which is not yet included in the appendix to Law No. 35 of 2009 concerning Narcotics. The development of this type of gorilla tobacco narcotics cannot be quickly contained, because the chemical substances contained in it are developing very quickly. Drug manufacturers are trying to continue to explore new types of drugs as their merchandise. Moreover, the basic ingredient of new types of drugs is tobacco.

In determining the basis of evidence for the case of gorilla tobacco abuse in the name of RINALDO PRADANA alias ALDO Bin RIDWAN with Decision Number: 99/Pid.sus/2018/PN.PBM, the judge must determine the basis for determining whether gorilla tobacco is a plant-type narcotic or a non-plant narcotic so as not to be wrong in applying the Article in his decision. The public prosecutor stated that the a quo file was complete (P.21) and the defendant had violated first Article 112 Paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics who without rights or against the law possessed, stored, controlled, or provided Class I Narcotics not plants. Or Second Article 111 Paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics who without rights or against the law planted, maintained, owned, stored, controlled, or provided Class I narcotics in the form of plants. Then the Judge in the a quo case stated that the defendant RINALDO PRADANA alias ALDO Bin RIDWAN had been proven legally and convincingly guilty of committing the crime of "Possessing Class I Narcotics other than GORILA TOBACCO plants" which violated first Article 112 Paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

With the background described above, the author is interested in writing an individual working paper entitled "LAW ENFORCEMENT OF NARCOTIC CRIMES AGAINST GORILLA TOBACCO USE" (Decision Number: 99/Pid.sus/2018/PN.PBM)"

2. Research methods

Research Methods, are basically a function of the problems and objectives of the research. Therefore, discussions in research methods cannot be separated and must always be closely related to the problems and objectives of the research. What is used in this research consists of approach methods, research

specifications, sources and types of data, data collection techniques and data analysis techniques.

➤ Approach Method

In accordance with the title and problems to be discussed in this study and in order to provide useful results, this study was conducted with normative legal research (normative legal research method). The normative legal research method is a library legal research conducted by examining library materials or secondary data alone. This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter.⁷

➤ Research Specifications

The research specification used is Descriptive Analytical, namely an effort to analyze and explain legal problems related to the object, said to be descriptive, meaning that from this research it is hoped that a comprehensive and systematic picture can be obtained regarding all matters related to penal mediation as an alternative resolution of domestic violence disputes.

➤ Data Types and Sources

For the data used in writing this thesis, the author used secondary data consisting of:

- Primary Legal Materials
- Secondary Legal Materials
- Tertiary Legal Materials

➤ Method of collecting data

In normative legal research, data collection is carried out through library research or legal literature searches with the aim of searching for, finding legal materials and then analyzing them.

➤ Data Analysis Methods

In normative legal research, the data analysis method used is qualitative analysis, namely by explaining the relationship between legal facts and legal rules contained in the law, not by using numbers, but in the following way:

- Primary legal materials, analyzed by the method of interpretation according to legal science. For example: authentic interpretation, grammatical interpretation, systematic interpretation.
- Secondary legal materials are analyzed using the content analysis method of the reading materials used.

⁷Soerjono Soekanto and Sri Mahmudji, Normative Legal Research, A Brief Review, (Jakarta: Raja Grafindo Persada, 2003), p. 13.

3. Results and Discussion

3.1. Law Enforcement on the Abuse of Class 1 Narcotics, Not Plants

Initially, narcotics were only used for health and/or development of science and technology carried out by the government or private sector that obtained or received permission from the Minister. However, currently, narcotics are abused by some people without permission from a doctor or the Minister with the use of high doses and not in accordance with what has been recommended.

When viewed from the definition in Article 1 paragraph (1) of Law No. 35/2009 concerning Narcotics, "Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency, which is divided into groups as attached to this Law."

Meanwhile, the definition of Article 1 paragraph (1) of Law No. 22 of 1997 concerning Narcotics, "Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain and can cause dependency, which are divided into groups as attached to this Law or which are later determined by a decision of the Minister of Health". Bambang Gunawan stated the definition of narcotics, namely:

"Drugs that can be used in medical science, but if misused, will cause very deadly diseases for the user and cause very great losses."⁸

In terms of overcoming or preventing the increasing tendency with widespread victims, especially among children, adolescents, and adults, then firm action or regulations are needed that can be used to regulate such actions. Therefore, the enactment of the Law that regulates such actions, such as the objectives of Law No. 22/1997 concerning Narcotics, as follows:

- Ensure the availability of narcotics for the benefit of health services and/or the return of scientific knowledge;
- Prevent drug abuse; and
- Eradicating the illicit trafficking of narcotics.

The basis for creating Law No. 35/2009 concerning Narcotics is to create a just and prosperous society by:

1. Improving the quality of Indonesian human resources in order to realize the welfare of the people is carried out by efforts to improve treatment and health services, including by ensuring the availability of certain types of narcotics needed as medicine and carrying out prevention and eradication of the dangers of abuse and illicit trafficking of narcotics and narcotic precursors.

⁸Bambang Gunawan, "The Principle of Strict Liability in Criminal Law on Narcotics" (Airlangga University, 2016).

2. Integrating legal and health approaches that regulate legal and health efforts in a balanced manner in dealing with drug abuse crimes.

3. Legally regulating the distribution of narcotics for the benefit of health, science and technology concerning all aspects of production, distribution and consumers is strictly and carefully regulated. If it conflicts with statutory regulations, it is a narcotics crime.

4. Encourage law enforcers to improve professionalism in carrying out their duties because narcotics trafficking is transnational in nature, using high modus operandi, sophisticated technology supported by a wide organizational network and abuse is given rehabilitation punishment.

Narcotics, based on the origin of the substance or material, are divided into 2, namely:

1. Plants: Ppium or Morphine, Cocaine and Marijuana.

2. Non-plant: Semi-synthetic, processed by extraction (Heroin, Codeine, and Morphine). Synthetic, obtained from chemical raw materials and required media for research and pain relief (Amphetamine, Methadone, Petadine and Dexamphetamine).

Different groups of narcotics are divided into 3, as in Article 6 of Law No. 35/2009 concerning Narcotics, namely:

1. Class I: for scientific development purposes and not used in therapy, and very high dependency. Examples: Heroin, Opium, Marijuana, Methamphetamine, etc.

2. Class II: for treatment, but used as a last resort, in addition used for therapy and/or for scientific development. Has a high potential to cause dependence. Examples: Morphine, Pethidine, Fentanyl, Methadone.

3. Class III: for treatment and widely used in therapy and/or scientific development purposes, as well as mild potential dependence. Examples: Codeine, Buprenorphine, Ethylmorphine, Nicocodine.

Drug crimes are divided into 2, namely drug abuse crimes and drug dealer crimes. Abusers are people who use narcotics without rights or against the law, with indications of owning, controlling, using narcotics for themselves. Dealers are anyone who is unlawfully and unlawfully involved in drug trafficking with indications of owning, controlling narcotics with the intention of selling and making a profit.

The punishment between abusers and dealers will be different, if abusers will be given light sentences such as being prevented, protected, saved and guaranteed medical rehabilitation and social rehabilitation efforts for abusers and addicts through the rehabilitation justice system. Dealers are threatened with severe punishment through the criminal justice system with the threat of imprisonment of more than 5 years or even the death penalty.

nature of law enforcement on dealers. Regarding the rehabilitation policy for drug abusers, it has not been implemented properly. As a result of the implementation of the law that deviates in enforcing narcotics law by law enforcers, it has become a new problem for the government, especially the Directorate General of the Ministry of Law and Human Rights, namely the overcapacity of prison inmates.

Prisons themselves are places where drug abusers and dealers gather, so it is not surprising that the drug business in prisons is increasingly rampant and is made worse by the presence of drug dealers or lords who can still control their business from within prisons through the available internet facilities.

In law enforcement in overcoming drug abuse, the Government has made a Law that regulates criminal sanctions that are differentiated based on the type of narcotics distributed or used. Criminal sanctions for drug abusers or distributors in Law No. 35/2009 concerning Narcotics are divided as follows:

1. Category I: criminal sanctions are regulated in Articles 111 to 116 and Article 127 paragraph (1) letter a, in accordance with the provisions of each of these Articles.
2. Category II: criminal sanctions are regulated in Articles 117 to 124 and Article 127 paragraph (1) letter b, the type of act and criminal sanctions are determined according to the provisions of each Article.
3. Category III: criminal sanctions are regulated in Article 122 to Article 127 paragraph (1) letter c, criminal sanctions are regulated in each of these Articles.

The government has made various efforts to combat narcotics crimes by working together with the community. Such as through preventive measures, namely countermeasures to prevent narcotics abuse from spreading among the general public who are not yet familiar with narcotics so as not to abuse narcotics.⁹

Preventive methods in dealing with narcotics crimes, namely:

1. Efforts from parents: parents must be alert and know the symptoms of abuse and how to deal with it.
2. Efforts from oneself: mental awareness from oneself to get closer to Allah SWT or to the beliefs held and firmly refuse when offered narcotics.
3. Government efforts: conducting anti-narcotics campaigns in homes and schools.

In addition, there is a repressive method, namely actions taken to eradicate the occurrence of drug abuse through legal channels carried out by law enforcement officers assisted by the community. Repressive actions carried out by law enforcement officers, namely:

1. Catching drug abusers.
2. Conducting treatment and healing for drug abuse.

⁹Soedjono D, *Narcotics and Adolescents* (Bandung: Alumni, 1983).

3. Breaking up the distribution syndicate network.
4. Ongoing investigation and prosecution.
5. The government is cooperating with other countries in the context of fostering and supervising and carrying out raids on narcotics smugglers.

The government and society must work together well to improve knowledge and skills in identifying and prioritizing the needs of the community by making efforts to meet the needs so that the government can carry out prevention of drug abuse properly.

Based on the explanation above, sanctions in enforcing the law on the abuse of class I non-plant narcotics are regulated in:

1. Article 112 paragraph (1) of the Narcotics Law stipulates that anyone who without the right or against the law possesses, stores, controls or provides Class I Narcotics which are not plants, shall be punished with a prison sentence of at least four years and a maximum of twelve years and a fine of at least IDR 800 million and a maximum of IDR 8 billion.

2. Article 112 paragraph (2) of the Narcotics Law stipulates that in the case of an act of possessing, storing, controlling or providing Class I Narcotics which are not plants as referred to in paragraph (1) weighing more than five grams, the perpetrator shall be punished with life imprisonment or a minimum prison sentence of five years and a maximum of twenty years and a maximum fine as referred to in paragraph (1) plus one third.

3.2. The Judge's Consideration in the Decision of Case Number: 99/Pid.Sus/2018/Pn.Pbm Regarding Gorilla Tobacco, a Type of Class 1 Narcotics Not a Plant.

1. Position Case :

Full name: RINALDO PRADANA aka ALDO bin RIDWAN.

Place of birth: Prabumulih.

Age / date of birth: 21 years / March 28, 1996.

Male gender.

Nationality: Indonesian.

Place of Residence: Jalan Ade Irma Gang Dahlia 2 RT 11 RW 05 Mangga Besar Village

North Prabumulih District, Prabumulih City.

Islam.

Occupation: Laborer.

Education: Grade IV of Elementary School.

That the defendant RINALDO PRADANA alias ALDO Bin BASTIAN, on Monday, January 15, 2018 at around 15.30 WIB in front of Indomaret located on Jalan

Jenderal Sudirman, Muara Dua Village, East Prabumulih District, Prabumulih City, where at the time the witness JEFRIANSYAH, witness BOBBY GUSNAWI, (who is a member of the police from the Prabumulih Police) were patrolling on Jalan Jenderal Sudirman, Muara Dua Village, East Prabumulih District, Prabumulih City, then when passing in front of the Indomaret store, witness JEFRIANSYAH saw the defendant with suspicious movements, seeing this, witness Jefriansyah approached the defendant and when approached by witness Jefriansyah, the defendant became increasingly frightened and when a search was carried out by witness Jefriansyah, and from the results of the search, 1 (one) box of black LA Bold brand cigarettes was found in the pocket of the defendant's dark red trousers, inside which there is 1 (one) package of narcotics type gorilla tobacco. Then the defendant along with the evidence was secured to the Prabumulih Police. At the prosecution level RINALDO PRADANA Als ALDO Bin RIDWAN was charged with Article 112 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics and was charged by the Public Prosecutor with a prison sentence of 5 (five) years minus the period of arrest and detention that has been served by the defendant with an order that the defendant remain detained and a fine of Rp. 1,000,000,000, - (one billion rupiah) subsidiary for 6 (six) months in prison. In the trial, the Defendant's actions were proven legally and convincingly guilty of committing the crime of "Possessing Class I Narcotics not plants of the GORILA TOBACCO type" and was decided by the Prabumulih District Court with a prison sentence of 4 (four) years 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 of 2 (two) months.

2. Facts and Legal Analysis

Based on the results of the author's research on the case files in the name of RINALDO PRADANA alias ALDO Bin RIDWAN starting from the investigation level or stage to the verdict, the following facts were obtained:

a. Public Prosecutor's Indictment

That the defendant RINALDO PRADANA alias ALDO Bin RIDWAN, on Monday, January 15, 2018 at around 15.30 WIB or at least at some time in January 2018, or at least at another time in 2018, in front of Indomaret located at Jalan Jenderal Sudirman, Muara Dua Village, Prabumulih Timur District, Prabumulih City or at least at another place that is still included in the Jurisdiction of the Prabumulih District Court, or at least at a place where the Prabumulih District Court has the authority to examine and try this case, who without rights or against the law possessed, stored, controlled, or provided Class I Narcotics that are not plants.

It started when witness JEFRIANSYAH, witness BOBBY GUSNAWI, (who is a member of the police from the Prabumulih Police) was patrolling Jalan Jenderal Sudirman, Muara Dua Village, Prabumulih Timur District, Prabumulih City, then when passing in front of the Indomaret store, witness JEFRIANSYAH saw the defendant with suspicious movements, seeing this, witness Jefriansyah

approached the defendant and when approached by witness Jefriansyah, the defendant became increasingly frightened, then witness Jefriansyah said we are from the Prabumulih Police Narcotics Unit, and after saying this, the defendant was immediately secured and searched by witness Jefriansyah, and from the results of the search, 1 (one) box of black LA Bold brand cigarettes was found in the pocket of the defendant's dark red trousers, which contained 1 (one) package of gorilla tobacco narcotics. Then the defendant and the evidence were secured to the Prabumulih Police for further examination.

That based on the Criminalistic Laboratory Examination Report, dated January 23, 2018 signed by EDHI SURYANTO, S.Si, Apt, MM, and HALIMANTUS SYAKDIAH, ST., M.MTr, ANDRE TAUFIK KURNIAWAN, ST as the person who conducted the examination of 1 (one) brown envelope with a seal complete with evidence labels, and after being opened inside there was 1 (one) clear plastic package containing dry leaves with a net weight of 0.102 (zero point one zero two) grams which was confiscated from the Defendant RINALDO PRADANA alias ALDO Bin RIDWAN with the AB-FUBINACA test results Positive (+), (where AB-FUBINACA is included in Narcotics Class I according to Attachment Number 61 of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics).

Based on the statement of expert EDHI SURYANTO, S.Si., Apt., MM, that AB-FUBINACA from a chemical review is a synthetic result of indazole cannabinoid with its core structure of indazole whose side chain is replaced with fluorophenyl by synthetic chemical experts Drugs designer who aim to create a new variant of narcotics with pharmacological effects that are much higher than the parent narcotic type, namely THC (tetrahydro cannabinol) found in marijuana plants (*cannabis sativa* sp). The synthetic chemical results of AB-FUBINACA are physically in the form of liquids and crystals. In its use, the liquid form or crystal form is then dissolved with a suitable organic solvent (ethanol, chloroform, methanol) to then be sprayed on carrier media such as leaves, stems, roots, paper, cigarettes/tobacco and other herbal simplicia forms. So AB-FUBINACA is not a narcotic substance found in plants resulting from phytochemistry such as THC in marijuana plants or cocaine in coca plant leaves (*erythroxolan coca*).

That the defendant in possessing, storing, controlling, or providing narcotics in the form of gorilla tobacco containing AB-FUBINACA is included in class I narcotics according to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics without permission from the authorized party and not in the context of treatment and/or care.¹⁰

b. Public Prosecutor's Demands

In the indictment, the public prosecutor demanded:¹¹

¹⁰Indictment, Case No. Reg.: PDM – 47 / Euh.2/05/PBM-I/2017, Prabumulih District Attorney's Office.

¹¹Letter of Demand, No.Reg.Case: PDM – 47 /PBM-I /Euh.2/05/ 2018,Prabumulih District Attorney's Office.

1. Declaring the defendant RINALDO PRADANA alias ALDO bin RIDWAN legally and convincingly guilty of committing the crime of "possessing, storing, controlling or providing Class I Narcotics other than gorilla tobacco plants as regulated and threatened with criminal penalties in Article 112 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics in the Public Prosecutor's indictment.

2. Sentencing the defendant RINALDO PRADANA alias ALDO Bin RIDWAN to 5 (five) years in prison minus the period of arrest and detention that the defendant has served with an order that the defendant remain in detention and a fine of Rp. 1,000,000,000,- (one billion rupiah) subsidiary to 6 (six) months in prison.

3. Stating evidence in the form of:

Clear plastic used for gorilla tobacco

LA Bold brand cigarette box in black.

Seized for destruction.

Note: Gorilla tobacco was used up for analysis in the evidence testing process at the Forensic Laboratory.

4. Ordering the defendant to pay court costs of Rp. 2,000,- (two thousand rupiah).

3.3. Basis for Judge's Consideration in Case Decision Number: 99/Pid.Sus/2018/Pn.Pbm

That based on the facts of the ongoing trial, the panel of judges considered several things in handing down the verdict in Case Decision Number: 99/Pid.Sus/2018/Pn.Pbm, including the following;

Considering, that the Panel of Judges will then consider whether based on the legal facts above, the Defendant can be declared to have committed the crime with which he is accused;

Considering that the Defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges, taking into account the legal facts above, directly chose the first alternative charge as regulated in Article 112 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics, the elements of which are as follows:

a. Each person

b. Without rights or against the law to plant, maintain, own, store, control or provide

c. Elements of Narcotics Class I are not plants

Considering, that with regard to these elements, the Panel of Judges considered the following:

a. Each person

Considering that, What is meant by every person is every person as a legal subject/perpetrator of a criminal act who can be considered competent and able to be responsible for his actions according to the law. The perpetrator here is the defendant RINALDO PRADANA alias ALDO Bin RIDWAN as the perpetrator, this is based on the facts revealed in the trial obtained from witness statements, evidence and the defendant's own statement which confirms his identity in the Public Prosecutor's indictment that the defendant was the one who committed the crime.

Considering that based on the above facts, the element of "Whoever" has been proven and fulfilled.

b. Without rights or against the law to plant, maintain, own, store, control or provide

Considering that the element of without rights or against the law of planting, maintaining, possessing, storing, controlling or providing Class I narcotics is alternative in nature, meaning that it is sufficient if one part of this element has been proven and fulfilled.

Considering that Based on the facts in the trial when witness JEFRIANSYAH, witness BOBBY GUSNAWI, (who is a member of the police from the Prabumulih Police) was patrolling Jalan Jenderal Sudirman, Muara Dua Village, East Prabumulih District, Prabumulih City, then when passing in front of the Indomaret store, witness JEFRIANSYAH saw the defendant with suspicious movements, seeing this, witness Jefriansyah approached the defendant and when approached by witness Jefriansyah, the defendant became increasingly frightened, then witness Jefriansyah said we are from the Prabumulih Police Narcotics Unit, and after saying this, the defendant was immediately secured and searched by witness Jefriansyah, and from the results of the search, 1 (one) box of black LA Bold brand cigarettes was found in the pocket of the defendant's dark red trousers, which contained 1 (one) package of gorilla tobacco narcotics. Then the defendant and the evidence were secured to the Prabumulih Police for further examination.

Considering that the elements of being without rights or against the law to plant, maintain, own, store, control or provide have been fulfilled.

c. Elements of Narcotics Class I are not plants

Considering that AB-FUBINACA from a chemical review is a synthetic result of indazole cannabinoid with its core structure indazole whose side chain is replaced with fluorophenyl by synthetic chemical experts Drugs designer who aim to create a new variant of narcotics with pharmacological effects that are much higher than the parent narcotic type, namely THC (tetrahydro cannabinol) found in marijuana plants (*cannabis sativa* sp). The chemical synthetic result of AB-FUBINACA is physically in the form of liquid and crystals. In its use, the liquid form or crystal form is then dissolved with a suitable organic solvent (ethanol, chloroform,

methanol) to then be sprayed on carrier media such as leaves, stems, roots, paper, cigarettes/tobacco and other herbal simplicia forms. So AB-FUBINACA is not a narcotic substance found in plants resulting from phytochemistry such as THC in marijuana plants or cocaine in coca plant leaves (erythroxolan coca).

Considering That based on the Minutes of the Criminalistic Laboratory Examination, dated January 23, 2018 signed by EDHI SURYANTO, S.Si, Apt, MM, and HALIMANTUS SYAKDIAH, ST., M.MTr, ANDRE TAUFIK KURNIAWAN, ST as the person who conducted the examination of 1 (one) brown envelope with a seal complete with evidence labels, and after being opened inside there was 1 (one) clear plastic package containing dry leaves with a net weight of 0.102 (zero point one zero two) grams which was confiscated from the Defendant RINALDO PRADANA alias ALDO Bin RIDWAN with the AB-FUBINACA test results Positive (+), (where AB-FUBINACA is included in Narcotics Class I according to Attachment Number 61 of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics).

. Considering, that because all the elements of Article 112 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics have been fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed the crime as charged in the first alternative charge;

Considering that in this case the Defendant has been subject to lawful arrest and detention, the period of arrest and detention must be deducted in full from the sentence imposed;

Considering, that the evidence presented at the trial will be further considered as follows:

- Clear plastic used to hold gorilla tobacco.
- LA Bold brand cigarette box in black;

Considering that the evidence in the form of clear plastic used to hold Gorilla tobacco and a black LA Bold brand cigarette box which has been used to commit a crime and is feared to be used to repeat the crime / is the result of a crime, it is necessary to determine that the evidence:

- destroyed /

Considering, that in order to impose a criminal penalty on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;

1) Aggravating circumstances:

- The defendant's actions do not support the government's program to eradicate the illegal distribution of narcotics;

2) Mitigating circumstances:

- The defendant openly admitted his actions and promised not to repeat his actions.

- The defendant admitted that he had never been convicted

Considering, that because the Defendant has been sentenced to a criminal penalty, he must also be burdened with paying court costs;

Taking into account Article 112 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

4. Judge's decision

In the Judge's Decision, the ruling stated:¹²

- a. Declaring that RINALDO PRADANA alias ALDO bin RIDWAN has been proven legally and convincingly guilty of committing the crime of "Possessing Class I Narcotics other than GORRILLA TOBACCO plants";
- b. Sentencing the defendant to 4 (four) years imprisonment 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 2 (two) months imprisonment;
- c. Determine that the period of arrest and detention that has been served by the defendant is deducted in full from the sentence imposed;
- d. Ordering that the accused remain in custody;
- e. Determine the evidence in the form of:
 - Clear plastic used to hold gorilla tobacco.
 - LA Bold brand cigarette box in black

Seized for destruction.

- f. Charge the defendant to pay court costs of Rp. 2,500.00 (two thousand five hundred Rupiah)

c. Gorilla Tobacco Law Enforcement in the Future

The law enforcement of gorilla tobacco in the future will certainly pay attention to and implement regulations that are not yet optimal, namely Law No. 35 of 2009 concerning Narcotics. Seeing that gorilla tobacco is included in class I narcotics, not plants.

One of the factors that makes it difficult for individuals to overcome drug addiction is not being afraid of prison sentences, because detention is not effective in preventing the activities of drug dealers. Therefore, the rehabilitation approach is considered a more suitable disciplinary measure to overcome the problem of drug abuse. Law enforcement against drug abuse has the main goal of protecting, saving, and ensuring the welfare of individuals involved in the abuse.¹³

¹²Court Decision, No:99/Pid.Sus/2018/PN.Pbm dated July 10, 2018, Prabumulih District Court

¹³Soekanto, Introduction to Legal Research; R Soesilo, Criminal Code (KUHP) and its Complete Commentaries Article by Article (Palangka Raya: Politeia, 2017).

Receiving rehabilitation aims to prevent re-involvement in drug use, while legal action against dealers is repressive. The mission of law enforcement against drug abuse is rehabilitative, while that against dealers is repressive. Law No. 35 of 2009 concerning Narcotics stipulates different treatment for perpetrators who abuse drugs. For drug abusers or addicts as perpetrators of drug crimes, prison sentences are imposed as a consequence of drug abuse.¹⁴

In his work entitled "Politics of Narcotics Law," Anang Iskandar states that prisons are considered risky environments for individuals who are victims of drug abuse and addicts. This is due to the lack of focus and basic capabilities of the institution in carrying out rehabilitation. As a consequence, when someone is in prison, the drive to recover can be hampered, and there is a tendency to use drugs again as a way to overcome the weaknesses that arise from addiction. After serving a prison sentence, the individual still carries the burden of their addiction out of prison.

The question is, has the condition changed? The answer is of course no. This cycle continues to repeat itself, causing an increasing generation of addiction, even for those who have been detained several times or even imprisoned repeatedly. Therefore, in accordance with Article 103 of the Narcotics Law, it is expected that judges consider the option of medical rehabilitation or social rehabilitation as an alternative treatment approach. Therefore, in accordance with Article 103 of the Narcotics Law, judges are required to decide on medical rehabilitation or social rehabilitation.¹⁵

Since the enactment of the Narcotics Law, the public has distinguished between the elements of the distributor and abuser groups only through the purpose, so that the Supreme Court issued instructions in the form of a Circular Letter (SEMA) to separate the two groups. SEMA aims to allow judges to more clearly assess which should be sentenced to prison and which should undergo rehabilitation. To distinguish it, if the amount of evidence found is small, it falls into the category of abuse. However, if the evidence is in large quantities, sold, or distributed for profit, it falls into the dealer group. Judges are given special authority under the Law to examine cases of addicts (abusers in a state of dependence). Judges have the authority to "may" decide on rehabilitation if found guilty. In some cases, additional specialists may choose to arrange restoration. This restoration arrangement originally came from the 1971 Narcotics Convention and its Protocol, which was later recognized by public authorities through Law Number 8 of 1976, which is the basis for the current Narcotics Law.

Therefore, Rehabilitation Punishment is considered equivalent to imprisonment (according to Article 103 paragraph 2) where judges are required to impose rehabilitation sentences on abusers and addicts. In accordance with the amended single convention on narcotic drugs, rehabilitation sentences are considered more

¹⁴Ridwan, Statistics for Government/Private Institutions and Agencies (Bandung: Alfabeta, 2004)

¹⁵Muladi and Barda Nawawi Arief, Criminal Theories and Policies, 4th Edition (Bandung: Alumni Publisher, 2010).

beneficial for abusers, families, nations, and countries globally than imprisonment. Compared to imprisonment for abusers, the rehabilitation approach is considered more effective in the healing process, reducing negative material and spiritual impacts on society, and preventing the continuation of a systemically unhealthy generation, which can trigger the growth of the drug business and damage public security.

Based on Law No. 35 of 2009, judges have special powers to handle cases of addicts, especially those involved in drug abuse in a state of dependence. Judges are given the authority to decide on rehabilitation options, both in cases of proven guilt or innocence, in accordance with Article 103. Therefore, in trials, rehabilitation sentences are imposed without taking into account whether guilt is proven or not. However, it seems that judges tend to pay less attention to this special provision in the Law, perhaps because they have previously considered SEMA Regulation (Supreme Court Circular) No. 4 of 2010. The use of the word "can" here does not indicate a choice between using it or not in determining cases of addicts. Rather, the term "can" indicates additional authority that must be used by judges, in accordance with the mandatory provisions of our Narcotics Law, as mandated by Article 127 paragraph 2. The article states that judges, when examining cases of drug abuse for themselves (Article 127 paragraph 1), must pay attention to Articles 54, 55, and 103, which discuss rehabilitation. In certain situations, such as the case of Sariah Indiwati Binti Sarfin who clearly used drugs for herself, perhaps the judge does not have special training in deciding cases of drug abuse, because the majority of the judge's experience is related to sentencing perpetrators of criminal acts to prison.

The creation of the Narcotics Law should be intended as a guideline for judges in deciding sentences for drug abusers, with a focus on ensuring that there is an opportunity for rehabilitation through legal decisions. Unfortunately, there are still many cases where judges decide by giving uniform sentences to drug dealers and abusers. Such decisions are very detrimental to abusers, who should have the opportunity to recover from drug addiction through the rehabilitation process, but are instead sentenced to prison without a clear direction and purpose. In resolving a case, judges can refer to regulations that oversee the types of errors, but in deciding the type of error, judges must consider the consequences of the assessment in court and consider what variables forced the plaintiff to make the error. Article 127 of Law Number 35 of 2009 regulates criminal regulations and recovery measures for drug abusers. The main purpose of creating the Narcotics Law should be a benchmark for judges in sentencing drug abusers, where the aim is to guarantee rehabilitation through judges' decisions. There are still many cases and judges' decisions out there that sentence dealers and abusers equally, which is very detrimental to abusers who should have recovered from their addiction but instead end up in prison without knowing the direction and clear purpose in prison.

4. Conclusion

Law enforcement of the abuse of class I non-plant narcotics is regulated in Law Number 35 of 2009, this regulates criminal penalties and rehabilitation measures for perpetrators of drug abuse. Based on the explanation above, sanctions in law enforcement of the abuse of class I non-plant narcotics are regulated in Article 112 paragraph (2) of the Narcotics Law, which stipulates that in the case of an act of possessing, storing, controlling, or providing Class I non-plant narcotics as referred to in paragraph (1) weighing more than five grams, the perpetrator shall be punished with life imprisonment or a minimum imprisonment of five years and a maximum of twenty years and a maximum fine as referred to in paragraph (1) plus one third. The basis for the judge's consideration in handing down the verdict in Case Number: 99/Pid.Sus/2018/Pn.Pbm based on Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics with the fulfilled element "Every person, without rights or against the law, plants, maintains, owns, stores, controls, or provides, Elements of Possession of Class I non-plant Narcotics. The law enforcement of gorilla tobacco in the future will certainly pay attention to and implement regulations that are not yet optimal, namely Law No. 35 of 2009 concerning Narcotics. Seeing that gorilla tobacco is included in class I narcotics, not plants.

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