

## Criminal Sanctions Against Narcotics Traffickers

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### Abstract

Drug-related crimes have increasingly become a pressing issue in recent times. Law No. 35 of 2009 on Narcotics lacks specific definitions for categories such as users, sellers, distributors, and dealers, focusing instead on the types and quantities of narcotics. This ambiguity often leads to confusion when determining ownership of illicit substances, as roles among users, owners, and dealers sometimes overlap, particularly when large quantities are involved. In the case of Decision Number: 327/Pid.Sus/2023/PN.Mdn, the imposition of the death penalty on a suspect identified as a drug dealer aligns with Article 114, paragraph (2) of the Narcotics Law. This study employs normative legal research, utilizing statutory and philosophical approaches to explore the application of criminal sanctions for narcotics dealers. The findings reveal that the death penalty is the most severe punishment prescribed for drug dealers, as regulated in Article 114, paragraph (2). In narcotics-related offenses, investigators use evidence as outlined in Article 184 of the Criminal Procedure Code, which includes witness testimonies, expert opinions, documentary evidence, indications, and defendant statements. Article 114, paragraph (2) and Article 119, paragraph (2) of the Narcotics Law specify that individuals involved in offering, selling, buying, brokering, exchanging, transferring, or receiving narcotics in defined quantities and types qualify as dealers and are subject to the death penalty.

**Keywords:** Criminal Sanctions, Narcotics, Distribution.

### INTRODUCTION

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

Drug abuse is a deviant behavior that is more directed at the problem of obedience or compliance with social norms. Individuals who have low self-control are not stimulated by the environment, like to take risks, lose emotional control due to easy frustration, then

<sup>1</sup>Abdullah, Zainuddin. "Death Penalty for Drug Dealers in the Perspective of Islamic Law." Al Amin: Journal of Islamic Science and Culture Studies Vol. 1, No. 2 (2018). page 87.

someone who is cut off from social ties with their environment has no social control so they are free to commit deviations.<sup>2</sup>

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

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

1. Class I narcotics for personal use are punishable by a maximum prison sentence of 4 (four) years;
2. Class II narcotics for oneself are punishable by a maximum imprisonment of 2 (two) years; and
3. "Use of Class III narcotics for oneself is punishable by a maximum imprisonment of 1 (one) year."<sup>3</sup>

To achieve a proper trial process, the criminal procedural law must be implemented properly. If there is a violation of the criminal procedural law, then the trial cannot achieve material truth, and a fair and impartial trial will also not be achieved. In criminal law, what is sought is material truth. Material truth is obtained in a trial, but it can also not be obtained in a trial. If this happens, it can be said that a fair and impartial trial or fair and trial has not been created.

The judicial institution is not only a place to try and punish the accused. The judicial institution as the only institution to try and seek justice is expected to reveal the truth of the legal process that was taken previously to obtain material truth.

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

In the case of Decision Number: 327/Pid.Sus/2023/PN.Mdn. The defendant has been charged by the Public Prosecutor with the charges as contained in Article 114 Paragraph (2)

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<sup>2</sup>Arifin, Zainul. "The Position and Urgency of the Death Penalty in Combating Drug Trafficking in Indonesia and Several Countries in the World." *Journal of State and Justice* Vol. 9, No. 2 (August 2020).

<sup>3</sup>Aruro, Pictor. "Death Penalty for Drug Dealers in the Context of Law No. 22 of 1997 and Amendments to Law No. 35 of 2009." *Jurnal Lex Administratum* Vo. 4, No. 3 (March 2016).

<sup>4</sup>Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta: 2017, page 8.

of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with Article 55 paragraph (1) 1 of the Criminal Code with evidence in the form of 75,000 (seventy five thousand) grams of crystal methamphetamine and 40,000 (forty thousand) ecstasy pills. Based on Article 8 paragraph (2) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, Class I Narcotics can only be used for the purposes of developing science and technology and for diagnostic reagents, as well as laboratory reagents after obtaining the Minister's approval on the recommendation of the Head of the Food and Drug Supervisory Agency

Defendant's Actions violating Article 114 paragraph (2) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, there are 7 (seven) qualifications of acts that are determined as Narcotics Crimes, namely:

1. Offered For Sale;
2. Sell;
3. Buy;
4. Become an Intermediary in Buying and Selling;
5. Exchange;
6. Deliver;
7. Accept;

If we analyze the seven qualifications of acts that are elements of the criminal act above, then there is a sub-element, namely the necessity of more than one party or subject that must be proven according to the law of evidence in order for the act to be realized, namely that in "offering for sale" there must be at least one party offering and another party accepting the offer, in "selling" as well as in "buying" each must have at least one party as a seller and another party as a buyer, in "becoming an intermediary in buying and selling" requires a minimum of three parties, namely the seller and the buyer and an intermediary who can act as an intermediary trader/broker or as a liaison or as a media between the seller and the buyer.<sup>5</sup>

In "exchanging" there must be an exchange so that there must be a party who exchanges and a party who is exchanged, in "surrendering" as well as in "receiving" there must be a party who surrenders and a party who receives, and the seven acts that are qualified as criminal acts are making goods as the object, namely narcotics.

From the above case, taking into account Article 114 paragraph (2) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics In conjunction with Article 55 paragraph (1) point 1 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other laws and regulations, the person concerned has been proven legally and convincingly guilty of committing the crime of "Jointly and unlawfully acting as an intermediary in the sale and purchase of Class I Narcotics other than Plants weighing more

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

than 5 (five) grams", then the Panel of Judges sentenced the Defendant to death.<sup>6</sup>

The formulation of the problem in this research is as follows:

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

## **METHOD**

Research is defined as theory disbursement, theory testing or problem solving. Research method is a procedure or way to obtain correct knowledge or truth through systematic steps. To obtain or obtain accurate, relevant data and to find out what legal consequences arise from this problem, in this research activity the author uses the following research methods:

### **Types of research**

This study uses a normative research method using a legislative, case and conceptual approach. The legislative approach is to study using laws and regulations that regulate sanctions and their prevention, then the case approach is an approach using cases that have received court decisions and the conceptual approach is to use the concepts of legal experts and is connected to law enforcement.

### **Data source**

The data sources used in this study are library research consisting of primary legal materials and secondary legal materials. The primary legal materials in this writing are:

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

While the secondary legal materials in this study are explanations of matters related to writing, for example decisions related to narcotics. The technique used in this study is the technique of collecting legal materials or document studies from laws and regulations and related documents such as judges' decisions, the data collected is then analyzed using legal arguments and arranged descriptively.

### **Data analysis**

Data and materials collected and obtained from the research will be processed, compiled and analyzed qualitatively. Data collection in solving this problem is carried out by library research, which is then analyzed qualitatively. This analysis technique is a technique in

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<sup>6</sup>Eleanora, Fransiska Novita. "The Dangers of Drug Abuse and Efforts to Prevent and Overcome It (A Theoretical Review)." *Journal of Law* Volume XXV Number 1 (2011). page 42.

which the legal materials or literature will be studied so that they can provide descriptions of the research topic so as to help the author make a correct conclusion.

## RESULTS AND DISCUSSION

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

To find material truth, formal truth must be obtained first, in terms of finding formal truth, formal law must be implemented properly, formal criminal law is regulated in the Criminal Procedure Code. "Formal criminal law or criminal procedure law to regulate how the government maintains the continuity of the implementation of material criminal law".<sup>7</sup>

In this case, the defendant Yogi Saputra Dewa has been proven legally guilty of committing a criminal act "jointly without the right to do so".the act of offering for sale, selling, buying, being an intermediary in buying and selling, exchanging, handing over or receiving non-plant Class I Narcotics weighing more than 5 (five) grams"As in the Primary Indictment, violating Article 114 Paragraph (2) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code and sentencing the Defendant Yogi Saputra Dewa to the death penalty.

In short the case is thatThat the Defendant Yogi Saputra Dewa together with witness Syahril Bin Syamsudin together with witness Sergeant Yalpin Tarzun and witness Private Rian Hermawan (Tried at the Medan Military Court I-02) on Monday, December 5, 2022, at approximately 14.15 WIB or at least still included in the year 2022, located at Jalan Pemuda Number 22, AUR, Medan Maimun District, Medan City, North Sumatra Province, precisely in front of the Hermes Palace Hotel Medan Lobby or at least in a place included in the jurisdiction of the Medan District Court. "together without rights or against the law, offered for sale, sold, bought, be an intermediary in buying, selling, exchanging, handing over or receiving narcotics"Class I is not a plant weighing more than 5 (five) grams", the Defendant committed the act.

That these defendants committedSmuggling of methamphetamine and ecstasy drugs in the North Sumatra region. This is based on reports from the community, so the police combed the location believed to be where they carried out the smuggling transaction, namely at the locationDoorsmer Car wash on Jalan Sp. Kebon Jagung in front of Battalion 121 Macan Kumbang Complex, Galang District, Deli Serdang Regency using a black Fortuner vehicle with Police Number BK 1549 SR. After the police found out about their actions while conducting transactions in the car, the police then secured the defendants, namely Yogi Saputra Dewa and witnesses Syahril Bin Syamsudin, witnesses Sergeant Yalpin Tarzun and witness Private Rian Hermawan as well as 3 (three) green plastic bags containing narcotics of the type of crystal methamphetamine as much as 75 (seventy five) packs of Chinese tea weighing 75,000 grams and 8 (eight) clear plastic packages wrapped in black plastic containing narcotics of the type of ecstasy as much as 40,000 (forty thousand) pills and 3 mobile phones.

<sup>7</sup>LJ Van Apeldoorn, "Introduction to Legal Science", Balai Pustaka, Jakarta, 2015 page 335

In this case the defendant is Yogi Saputra Dewa In being proven to be an intermediary in the sale and purchase of narcotics weighing around 75,000 (seventy five thousand) grams gross of crystal methamphetamine and 40,000 (forty thousand) ecstasy pills, where if these narcotics were able to get onto the market they would be able to damage the future of thousands of young generations of Indonesia and in turn could damage the security stability of the Republic of Indonesia, as a result of his actions, the defendant has violated the provisions of Article 114 paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. In conjunction with Article 55 paragraph (1) point 1 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.<sup>8</sup>

So that it is legally and convincingly guilty of committing the crime of "Jointly and unlawfully becoming an intermediary in the sale and purchase of Class I Narcotics, not Plants, weighing more than 5 (five) grams. Sentencing the Defendant Yogi Saputra God with the death penalty.

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

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

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

1. Investigators may obtain evidence other than that referred to in the Criminal Procedure Code;
2. The evidence referred to in paragraph (1) consists of:
  - a. Information that is spoken, sent, received or stored electronically by optical or similar means and
  - b. Recorded data or information that can be seen, read and/or heard, which can be produced with or without the aid of a medium, whether written on paper, any physical object other than paper or recorded electronically, including but not limited to:
    1. Text, sound, and/or images;
    2. Maps, designs, photographs or the like; or letters, signs, figures, symbols, codes or perforations which have a meaning which can be understood by a person who is able to read or understand them.

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<sup>8</sup>Heriyono. "Implementation of the Death Penalty in the Perspective of Human Rights." Indonesian Journal of Law and Policy Studies Vol. 1, No. 1 (May 2020). page 121.

The existence of evidence is very important in determining whether a person meets the elements of a crime against the criminal provisions charged to him so that it can be determined whether the person can be held accountable for his actions or not. "Evidence is the provisions that contain outlines and guidelines on the procedures that are permitted by law to prove the guilt charged to the defendant."<sup>9</sup>

So proof is a provision that regulates the evidence permitted by law that may be used by the judge to prove the guilt of the accused. "The law of proof is part of the criminal procedure law that regulates the types of evidence that are valid according to law, the system adopted in proof, the requirements and procedures for submitting the evidence and the authority of the judge to accept, reject and assess evidence."

To declare a defendant guilty or not, it is not enough to rely solely on the judge's conviction or solely on the evidence according to the provisions and methods of proof with the evidence determined by law. A defendant can only be declared guilty if the crime charged against him can be proven in a manner and with that "accompanied" by the judge's conviction." (Harahap, 2012, p. 280) So that based on the evidence with at least two valid pieces of evidence, the judge gains the conviction that the crime really happened and that the defendant was guilty of committing it. "The reason the legislator formulated Article 183 of the Criminal Procedure Code was aimed at realizing a provision that could at least guarantee the upholding of true truth and the upholding of justice and legal certainty."

In this case, the evidence and evidence collected (as mentioned above, namely 3 (three) green bags containing 75 (seventy five) packages of narcotics of the type of crystal methamphetamine weighing approximately 75,000 (seventy five thousand) grams, 8 (eight) packages of ecstasy totaling approximately 40,000 (forty thousand) pills, 1 (one) blue Oppo brand cellphone with the number 081372198495) and supported by the existence of legal facts, namely that Defendant Yogi Saputra Dewa was caught red-handed by the police while carrying out a transaction as an intermediary for the distribution of narcotics.

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

In the process of proving a narcotics case, often the evidence used is two witnesses, evidence of a number of drugs, urine test results or blood tests belonging to the defendant. This is indeed strong enough in the evidence as referred to in the Criminal Procedure Code, but the negative evidence system adopted by the Criminal Procedure Code requires the Judge's conviction so that the defendant can be subject to criminal sanctions, so here the role of investigators and investigators is very much needed in finding evidence that can convince the Judge.<sup>10</sup>

In addition to the evidence that is often used in the process of proving narcotics cases,

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<sup>9</sup>Hutapea, Bungasan. "Alternatives to the Death Penalty in Indonesia Seen from a Human Rights Perspective." *Human Rights Research Journal* Vol. 7, No. 2 (December 2016). page 59.

<sup>10</sup>Kolopita, Satrio Putra. "Law Enforcement on the Death Penalty for Narcotics Crime Offenders." *Lex Crimen Journal* Vol. 2, No. 4 (August 2013). page 92

there is fingerprint evidence that can be used as an indication of ownership or control of narcotics. Explanation of Article 75 letter f of the Narcotics Law explains that, "urine tests, blood tests, hair tests, and other body part tests are carried out in accordance with the development of science and technology to prove the presence or absence of narcotics in the body of one person or several people.

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

### **Elements Contained in Article 114 Paragraph (2) of the Narcotics Law that Can Be Applied to Defendants**

Criminal acts are the translation of the word strafbaarfeit in Dutch. Viewed from a literal perspective, strafbaarfeit consists of the word feit which in Dutch means part of a reality or eengedeelte van de werkelijkheid, while strafbaar means punishable. Literally the word strafbaarfeit can be translated as part of a reality that can be punished.<sup>11</sup> Criminal act is just one translation of the Dutch term strafbaarfeit. Actually, the term is elliptical (short for) part of the sentence that is omitted. The actual sentence is feit tarzaake van het welke een person stafbaar is (an act for which a person can be punished).<sup>12</sup>

Thus, based on the understanding of strafbaafeit above, criminal law experts interpret strafbaafeit differently, some translate it as a criminal event, criminal act, punishable act, and some also abbreviate it as a crime. So in the crime there are elements of a crime, namely:<sup>13</sup>

1. Objective Elements Elements that exist outside the perpetrator. Elements that are related to circumstances, namely the circumstances in which the perpetrator's actions must be carried out
2. Subjective Elements Elements that exist or are attached to the perpetrator or are connected to the perpetrator and include everything that is contained in his heart.

In the provisions of Law Number 35 of 2009 concerning Narcotics, several narcotics crimes are determined, namely in Article 111 to Article 148 of Law Number 35 of 2009 concerning Narcotics. In Law Number 35 of 2009 concerning Narcotics, it is determined

<sup>11</sup>PAF Lamintang, 1997, Basics of Indonesian Criminal Law, Citra Aditya Bakti, Bandung, page 181.

<sup>12</sup>Megawaty Runtunuwu, Gabriela. "Imposing the Death Penalty for Narcotics Crime Offenders." *Lex Crimen Journal* Vol. 2, No. 6 (October 2013). Page 81

<sup>13</sup>Mulyadi, Lilik. "Punishment of Drug Dealers and Users: Research on Principles, Theories, Norms and Judicial Practices." *Journal of Law and Justice* Vol. 1, No. 2 (July 2012). page 61



that the penalties that can be imposed are the death penalty, imprisonment, imprisonment and fines. Criminal penalties can also be imposed on corporations, namely in the form of revocation of business licenses; and/or revocation of legal entity status.

In this case, the legal basis for imposing a criminal penalty on the defendant's actions is Article 114 Paragraph (2) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, whose elements are as follows:<sup>14</sup>

1. Each person;
2. Without rights or against the law;
3. Offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging or handing over class I narcotics weighing more than 5 (five) grams;
4. Class I narcotics are not plants;
5. Doing it, those who order it to do it and those who participate in doing it;

Narcotics according to the provisions of Article 1 number 1 of the Republic of Indonesia Law Number: 35 of 2009 concerning 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 dependence and in the General Explanation of Law of the Republic of Indonesia Number 35 of 2009 about Narcotics It is stated that narcotics are substances or drugs that are very useful and needed for the treatment of certain diseases and furthermore in Article 6 paragraph (1) it is stated that narcotics are classified into a. Class I narcotics, b. Class II narcotics and c. Class III narcotics.<sup>15</sup>

Judging from the dangers and level of circulation, the government finally established the Narcotics Law, namely Law Number 35 of 2009, with the issuance of this Law it is hoped that it can prevent and suppress the increasing circulation and use of narcotics in the territory of Indonesia. With a law that specifically concerns narcotics, all parties hope that it can run well and existing sanctions can be determined fairly for perpetrators of narcotics crimes. The narcotics law is very necessary to enforce because of the enormous influence of narcotics on the survival of a nation, especially for the younger generation of the nation's successors. Various efforts have been made by the government and non-governmental organizations that care about the dangers of narcotics.<sup>16</sup>

Very fatal dangers can occur to drug users and the surrounding environment, as well as the nation and state in general, in this case the government and society and related parties are trying to campaign the dangers of drug abuse, this aims to make many people aware of the impact of drug abuse. The implementation of increased control and supervision measures

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<sup>14</sup>Panjaitan, Budi Sastram. "Placing the Perpetrators of Illicit Drug Trafficking Crimes as Perpetrators of Genocide Crimes." *Pioneer Journal of LPPM, Asahan University* Vol. 5, No. 2 (2019). page 71.

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

<sup>16</sup>Rukman, Auliah Andika. "Death Penalty Reviewed from a Sociological Perspective and Human Rights Enforcement." *Journal of Equilibrium Sociology Education* Vol. 4, No. 1 (May 2016). page 87.

as an effort to prevent and eradicate drug abuse and illicit trafficking is very necessary. Because drug crimes are generally not carried out by individuals alone but are carried out together and even carried out by syndicates that are neatly organized and very secretive.

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

Article 114 paragraph (2) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code contains 7 (seven) qualifications of acts that are determined as Narcotics Crimes, namely:<sup>17</sup>

1. Offered For Sale;
2. Sell;
3. Buy;
4. Become an Intermediary in Buying and Selling;
5. Exchange;
6. Deliver;
7. Accept;

If we analyze the seven qualifications of acts that are elements of the crime above, then there is a sub-element, namely the necessity of more than one party or subject that must be proven according to the law of evidence in order for the act to be realized, namely that in "offering for sale" there must be at least one party offering and another party accepting the offer, in "selling" as well as in "buying" each must have at least one party as a seller and another party as a buyer, in "becoming an intermediary in buying and selling" requires a minimum of three parties, namely the seller and the buyer and an intermediary who can be positioned to carry out work as an intermediary trader/broker or as a liaison or as a media between the seller and the buyer, in "exchanging" requires an exchange so that there must be a party exchanging and a party being exchanged, in "surrendering" as well as in "receiving" there must be a party submitting and a party receiving, and the seven acts that are qualified as criminal acts are making goods as objects, namely narcotics.<sup>18</sup>

Based on the facts revealed at the trial, the Defendant Yogi Saputra Dewa together with the Witness Syahril bin Syamsudin, Yalpin Tarzun and Rian Hermawan, have been arrested by the NIC Task Force Team Officers of the Directorate of Narcotics Crimes of the National Police Criminal Investigation Unit, on suspicion of committing narcotics crimes in the form of crystal methamphetamine and ecstasy. Defendant Yogi Saputra Dewa together with Syahril bin Syamsudin met with Sergeant Yalpin Tarzun at the location to carry out a transaction to hand over narcotics in the form of crystal methamphetamine and ecstasy, so

<sup>17</sup>Salundik. "Enforcement of the Death Penalty in Narcotics Crimes." *Tambun Bungai Journal of Legal Studies* Vol. 1, No. 2 (September 2016). page 132.

<sup>18</sup>Sumanto, Atet. "The Effectiveness of the Death Penalty in the Process of Law Enforcement of Narcotics Crimes." *Jurnal Perspektif* Vol. 22, No. 1 (January 2017). page 79.

that the actions of the Defendant Yogi Saputra Dewa together with Syahril bin Syamsudin in offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over class I narcotics weighing more than 5 (five) grams did not have permission from the authorities.

In order to realize the implementation of the law against narcotics trafficking crimes, there is a police institution that is formed as an institution that enforces the law in accordance with Article 81 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, which states that: "Investigators of the Republic of Indonesia National Police and BNN investigators are authorized to conduct investigations into the misuse and illicit trafficking of narcotics and narcotic precursors based on this Law."<sup>19</sup>

In implementing law enforcement efforts, narcotics trafficking crimes can be carried out preemptively, preventively and repressively.<sup>20</sup> Preemptive is a proactive and interactive effort in the framework of fostering, organizing, and utilizing community potential in an effort to win the sympathy of the people. Preventive is an effort that is preventive and eliminates all forms of threats to public order and security by providing protection, protection, and services to the community. Meanwhile, repressive is an effort that is law enforcement by ensuring the upholding of the law, legal order that is implemented firmly, professionally, and thoroughly while still upholding human rights.<sup>21</sup>

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

Decision on case number:327/Pid.Sus/2023/PN.Mdn.is appropriate because the panel of judges chose the second charge which stated that the defendant violated Article 114 paragraph (2) of Law. RI Number 35 of 2009 concerning Narcotics. Based on the facts revealed in the trial, the elements of this article were legally proven and convinced that the defendant was guilty. So that in the verdict it was stated that Yogi Pratama Dewa legally and guilty of committing the crime of drug abuse class one which was used for himself. The determination of the verdict was made at the will of the judge and his considerations, which was appropriate because in the considerations used by the judge in the form of facts revealed and evidence presented in the trial, as well as statements from witnesses. Other additional supporting evidence is the letter of the results of the Narcotics examination which was

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

<sup>20</sup>Frans Simangunsong, "Law Enforcement Against Narcotics Crime Offenders", *Journal of Legal Studies*, Faculty of Law, UNSA, Vol. 8, No. 1, (2014), page 12.

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

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

examined by a crime laboratory. In addition, the main element in this case is that the defendant is an individual who can be responsible for his actions, at the time of committing the act he was aware of the consequences that would arise, and of his own will without any coercion from any party.

The panel of judges did not find any elements that could be used as justification, forgiveness, or exceptions so that the defendant could be released from all charges. The panel of judges also considered the aggravating factors, one of which was the act of ignoring the government's work program in its efforts to eliminate and prevent all forms of drug abuse practices, especially since what the defendant had done could damage him and also affect the development of other young generations. In addition, the mitigating factors for the defendant in this case were his role as the backbone of the family, and he had also admitted his actions and was cooperative during the examination at the trial.

## **CONCLUSION**

1. Evidence Used by Investigators to Determine Suspects in Drug Abuse Crimes Similar to evidence for other crimes, in drug abuse the evidence used is also in accordance with the provisions of Article 184 of the Criminal Procedure Code which states that: "Valid evidence is: a. Witness testimony b. Expert testimony c. Letters d. Instructions e. Defendant's statement". Evidence in cases of drug abuse crimes must also be proven by a urine test through a Forensic Laboratory or Investigator's laboratory. Positive results from urine tests that are stated in the form of a test report are included in written evidence. The test report still requires other evidence to be able to ensnare the provisions of drug crimes on suspects.
2. The application of the provisions of Article 114 paragraph 2 concerning the distribution of narcotics, the sanction is the death penalty for narcotics dealers regulated in Law Number 35 of 2009 concerning Narcotics, technically contained in Article 114 paragraph (2) and Article 119 paragraph (2). Narcotics dealers are those who are proven in terms of the act of offering for sale, selling, buying, being an intermediary in buying and selling, exchanging, handing over or receiving narcotics by fulfilling the type and conditions, as well as the amount or level of narcotics they have. Threatened with the death penalty as one of the types of punishment contained in these articles and is the most severe punishment.

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