

## **Qualification Of Criminal Act Of Drug Abuse With Relatively Small Amount Of Drugs Evidence**

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### **Abstract**

*The method used in this article's research is normative legal research, namely research into problems by looking at the sources of applicable regulations relating to the title. Qualifications for Criminal Acts of Drug Abuse with Relatively Small Amounts of Narcotics Evidence. The Supreme Court as the Highest Judicial Institution has given Authority to the Panel of Judges who examine and try Narcotics cases to escape the minimum limit provisions of Article 111 or Article 112 of Law No. 35 of 2009 if indeed based on the legal facts revealed in the trial it is proven to violate the provisions of Article 127 of Law No. 35 of 2009 concerning Narcotics.; then in accordance with the provisions Article 127 of the Narcotics Law stipulates that: "Any person who abuses: a. Class I narcotics for themselves shall be punished with a maximum imprisonment of 4 (four) years;", therefore the Panel of Judges in deciding cases related to narcotics abuse, even though the public prosecutor does not charge Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the Defendant's actions can be categorized as Class I narcotics abuse for themselves, so in other words the judge has the authority to impose a maximum imprisonment of 4 (four) years.*

**Keywords:** *Qualifications, Criminal Acts, Drug Abuse, Narcotics Evidence, Relatively Small Amount;*

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## **INTRODUCTION**

Regulations on narcotics and psychotropics in Indonesia were initially regulated in Law No. 5 of 1997 concerning Psychotropics and Law No. 22 of 1997 concerning Narcotics (Wiharti, 2024). Along with the development of both laws, it was considered to provide a threat of quite severe punishment for producers, distributors and users, even causing criminalization of legal subjects as narcotics abusers. Furthermore, in 2009 the Government together with the Indonesian House of Representatives issued Law No. 35 of 2009 concerning Narcotics as a replacement for Law No. 22 of 1997, but still maintained Law No. 5 of 1997 concerning Psychotropics. In Law No. 35 of 2009, the threat of criminal penalties has been increased and fines have been increased as well as adding to the list of types of narcotics groups which every year there are more and more new psychoactive substances packaged in various forms to deceive the general public.

Law Number 35 of 2009 concerning Narcotics, (Kristiyani & Cornelis, 2023) Article 127, which explains the criminal act of drug abuse, actually mandates that addicts and victims of drug abuse must undergo medical rehabilitation and social rehabilitation, but the provisions for rehabilitation are placed in paragraph (2), while paragraph (1) mentions imprisonment. Although in the order of paragraph 2, it is still related to paragraph (1) which requires judges when deciding cases as referred to in paragraph (1) to pay attention to the provisions in Article 54, Article 55 and Article 103 of Law No. 35 of 2009 concerning Narcotics (Djaelani, 2023).

Proof that the suspect is an abuser or victim of abuse through an assessment process. The assessment process is a series of activities carried out by the Integrated Assessment Team (TAT) consisting of a medical team and a legal team appointed based on a decree of the Head of the National Narcotics Agency at the Central (Romdoni & Fitriasih, 2022), Provincial and Regency/City levels to determine the condition of addicts/victims of drug abuse from medical and social aspects, by:

1. Interview activities include medical history, history of drug use, history of treatment and care, history of involvement in criminal acts, psychiatric history, and family and social history of drug addicts.
2. Observation activities include observation of the behavior of drug addicts, both verbal and non-verbal.
3. Physical and psychological examination of addicts/victims of drug abuse;

(Antika, 2019)The assessment process can be carried out at the investigation stage (assessment submitted by the Investigator) or during prosecution in court (assessment submitted by the Public Prosecutor or Judge). If the assessment is carried out at the investigation stage, the results of this assessment are part of the formal completeness of the case files being handled, but if the assessment is carried out at the prosecution stage in court, the results of this assessment are one of the factors considered by the Public Prosecutor in prosecuting and the Panel of Judges in deciding the case.

According to Article 1 paragraph (15) of Law Number 35 of 2009 concerning narcotics, a drug abuser is a person who uses narcotics without rights or against the law. The element of against the law refers to Article 7 of Law Number 35 of 2009 concerning Narcotics which mandates that narcotics can only be used for the benefit of health services and/or the development of science and technology(Dewi, 2019), so that if narcotics are used without rights or permission from the relevant party, they meet the category of abuse.

According to Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, narcotics are substances/drugs derived from plants/non-plants, either synthetic or semi-synthetic, which can cause decreased/altered consciousness, loss of feeling, reduce or eliminate pain and can cause dependency.

According to Article 1 paragraph (15) of Law Number 35 of 2009 concerning narcotics, a drug abuser is a person who uses narcotics without rights or against the law. The element of against the law refers to Article 7 of Law Number 35 of 2009 concerning Narcotics which mandates that narcotics can only be used for the benefit of health services and/or the development of science and technology, so that if narcotics are used without rights or permission from the relevant party, they meet the category of abuse.

In the provisions of Law Number 35 of 2009, (SHELEMO, 2023)provisions have been provided regarding minimum limits in terms of imposing criminal sentences on perpetrators of drug abuse, for example the provisions of Article 111 or Article 112 of Law Number 35 of 2009.Applicable to the crime of planting, maintaining, possessing, storing, controlling, or providing narcotics class I in the form of plants, the threat of imprisonment is a minimum of 4 years and a maximum of 12 years and the threat of a fine of a minimum of IDR 800 million and a maximum of IDR 8 billion. However, in terms of imposing a sentence in the provisions of the violationArticle 111 or Article 112 of Law No. 35 of 2009 of the Supreme Court provides judges with enormous authority in deciding cases of drug abuse, the number of which is relatively small.

Based on the description that has been put forward above, it is important to conduct a study on the Qualifications Of Criminal Acts Of Drug Abuse With Relatively Small Amount Of Drugs Evidence.

## **RESEARCH METHODS**

This study uses a normative legal research method. Normative legal research is researching law from an internal perspective with the object of research being legal norms. In other words, legal research that places law as a building of a norm system. The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements

and doctrines (teachings). This study uses a legislative approach and a conceptual approach. The legislative approach is used to obtain an overview of the Qualification Of Criminal Acts Of Drug Abuse With Relatively Little Narcotic Evidence.

## RESULT AND DISCUSSION

### 1. Qualifications for Criminal Acts of Drug Abuse with Narcotics Evidence in Relatively Small Amounts;

According to Article 1 paragraph (13) of Law Number 35 of 2009 concerning Narcotics, a drug addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically.

(Dairse, 2009) Drug addiction according to Article 1 paragraph (14) is a condition characterized by the urge to use narcotics continuously with increasing doses to produce the same effect and if the use is reduced and/or stopped suddenly it causes typical physical and psychological symptoms. 9. Victims of drug abuse according to Article 1 paragraph (3) of the Joint Regulation are people who use narcotics because they are persuaded, tricked, deceived, forced and/or threatened.

Prevention and eradication of abuse and illicit trafficking of narcotics and narcotic precursors is an effort to maintain and improve the health of Indonesia's human resources, which is carried out synergistically and continuously so that the state's goal of realizing a prosperous, (Ahmad Dzulkifli Rahmatullah & Muhamad Hasan Sebyar, 2024) just and prosperous Indonesian society based on Pancasila and the 1945 Constitution can be implemented properly.

In the Narcotics Law, there are specific regulations regarding the forms of narcotics abuse, for example in Article 114 Paragraph (1) of the Narcotics Law which states that:

***"Any person who without rights or against the law offers for sale, sells, buys, receives, acts as an intermediary in the sale and purchase, exchanges, or delivers Class I Narcotics, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah)."***

The prohibitions as stated in Article 114 Paragraph (1) of the Narcotics Law above show that the law determines all acts without rights or against the law to offer for sale, sell, buy, receive, act as an intermediary in buying and selling, exchange, or hand over Class I Narcotics because they are very dangerous and have an impact on increasing crime. (Indonesia et al., 2009) If these acts are carried out by someone without rights, then they can be categorized as acts of narcotics abuse or are a special crime that can be threatened with severe legal sanctions.

Article 112 of the Narcotics Law explains the following provisions. Article 112 paragraph (1) of the Narcotics Law stipulates that:

***"Any person who without rights or against the law possesses, stores, controls, or provides Class I Narcotics that are not plants, shall be punished with a minimum prison sentence of four years and a maximum of twelve years and a fine of at least IDR 800 million and a maximum of IDR 8 billion."***

Furthermore, based on the provisions of Article 112 paragraph (2) of the Narcotics Law, it is stated that:

***"In the case of the 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)."*

Furthermore, based on the provisions of Article 127 of the Narcotics Law, it is stated that:

*"Any person who abuses: a. Class I narcotics for themselves shall be punished with a maximum imprisonment of 4 (four) years;"*.

In Law Enforcement Practice, a person who fulfills the Narcotics abuse as stated in Article 127 of Law 35/2009 is considered to have entered the element of possessing or controlling narcotics in Article 111 and Article 112. In fact, if examined further, the two articles have different punishment threats. As in the formulation of the norms of Article 111 and Article 112, the threat of a maximum prison sentence of 20 years. While in the formulation of the norms of Article 127, the threat of a maximum prison sentence of 4 years for users of class I narcotics.

The formulation of the norm in Article 127 explicitly regulates that users who are proven to be victims of drug abuse must undergo medical and social rehabilitation. "The practice of implementing the two articles has a very different disparity, (Pipit Mulyah, Dyah Aminatun, Sukma Septian Nasution, Tommy Hastomo, Setiana Sri Wahyuni Sitepu, 2020)so that legal uncertainty ultimately leads to injustice. To overcome the problem of implementing the article, the Supreme Court once issued a Circular of the Supreme Court (SEMA) Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2015 as a Guideline for the Implementation of Duties for the Court. lack of understanding of how to create criminal sentencing guidelines, to the lack of synergy between law enforcers.

## **2. Legal Regulations Regarding Drug Abusers With Relatively Small Amounts of Narcotics Evidence**

The Supreme Court as the Judicial Institution that examined the Case Aquo provided limitations or measurements or weight limits of evidence regarding the circumstances of who is the distributor and who is the user based on SEMA No. 4 of 2010 Jo SEMA No. 3 of 2011 Jo SEMA No. 3 of 2015;

That based on the provisions that have been stated in SEMA No. 3 of 2015 in the legal formulation of the Plenary Meeting of the Medan High Court Chamber of the Republic of Indonesia in 2015, the Legal Formulation of the Criminal Chamber number 1 Narcotics, namely: "The judge examines and decides the case must be based on the indictment of the Public Prosecutor (Article 182 paragraph 3, and 4 of the Criminal Procedure Code). The prosecutor charges with Article 111 or Article 112 of Law No. 35 of 2009 concerning Narcotics but based on the legal facts revealed in the trial it is proven that Article 127 of Law No. 35 of 2009 concerning Narcotics which this article was not charged, the defendant is proven to be a user and the amount is relatively small (SEMA No. 4 of 2010) then the Judge decides according to the indictment but can deviate from the provisions of the special minimum sentence by making sufficient considerations";

SEMA No. 3 of 2015 was born as a guideline for the implementation of duties for the courts based on the results of the plenary meeting of the Supreme Court Chamber in 2015. SEMA is an abbreviation of the Circular Letter of the Supreme Court. SEMA No. 3 of 2015 contains the implementation of the formulation of the results of the plenary meeting of the Supreme Court Chamber in 2015. (Hidayat, 2021)The formulation of the results of the plenary meeting becomes a guideline for the courts in carrying out their duties. The consistency of the Supreme Court's opinion since the birth of SEMA No. 3 of 2015 has become Jurisprudence in the Supreme Court.

Next inThe Plenary Meeting of the Criminal Chamber of the Supreme Court held on 22-24 November 2017 at the Intercontinental Hotel Bandung, has produced a legal formulation, namely that in the case where the public prosecutor does not charge Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, but the legal facts revealed in the trial show that

the defendant is proven to be a Class I Narcotics Abuser for himself, the Supreme Court remains consistent with the Circular of the Supreme Court Number 03 of 2015 number 1, because in addition to judges in examining and trying a case still basing their decisions on the legal facts proven in court, deliberations must also be based on the indictment as referred to in Article 182 paragraph (3) and paragraph (4) of the Criminal Procedure Code.

(Wibowo & Widiyasmoko, 2021) In the event that the Defendant was not caught red-handed using narcotics and at the time the Defendant was found to have narcotics evidence in a relatively small quantity/weight (in accordance with Supreme Court Circular Letter Number 7 of 2009 in conjunction with Supreme Court Circular Letter Number 4 of 2010) and the results of the Defendant's urine test were positive for containing Methacretamlne, but the public prosecutor did not charge Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, then the Defendant's actions can be categorized as Class I Narcotics Abuse for himself while the qualifications for the crime still refer to the indictment.

Thus, referring to the provisions above, the category of the perpetrator as a Class I Narcotics Abuser for himself, then the Judge in deciding the case can refer to the indictment but can deviate from the special minimum criminal provisions by making sufficient considerations. Based on the provisions of this regulation, the Supreme Court as the highest judicial institution has given the authority to the panel of judges to escape from the minimum limit provisions of Article 111 or Article 112 of Law No. 35 of 2009 if indeed based on the legal facts revealed in the trial, Article 127 of Law No. 35 of 2009 concerning Narcotics is proven.

## CONCLUSION

The Supreme Court as the Highest Judicial Institution has given Authority to the Panel of Judges who examine and try Narcotics cases to escape the minimum limit provisions of Article 111 or Article 112 of Law No. 35 of 2009 if indeed based on legal facts revealed in court it is proven to violate the provisions of Article 127 of Law No. 35 of 2009 concerning Narcotics.; then in accordance with the provisions Article 127 of the Narcotics Law stipulates that: "Any person who abuses: a. Class I narcotics for themselves shall be punished with a maximum imprisonment of 4 (four) years;"; therefore the Panel of Judges in deciding cases related to narcotics abuse, even though the public prosecutor does not charge Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the Defendant's actions can be categorized as Class I narcotics abuse for themselves, so in other words the judge has the authority to impose a maximum imprisonment of 4 (four) years.

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