
Disparity and Policy in Drug Crime Cases Under Articles 112 and 127 of Law No. 35 of 2009 on Narcotics (A Study of Case Decision No. 2453 K/Pid.Sus/2025)

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Abstract

Narcotics crimes are extraordinary crimes that have a wide impact on society. The handling of such cases involves various parties, including judges who play an important role in making fair decisions. However, in practice, disparities often arise in judges' decisions, especially in the application of Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics. Article 112 tends to be applied to perpetrators who are only abusers, thus causing injustice because the threat of punishment is much heavier than under Article 127, which provides space for rehabilitation. The study examines the criminal disparity in the case of a.n. Musa Siagian, which shows significant differences between first-instance decisions, appeals, and cassation—including changes in the legal basis from Article 112 to Article 127 at the cassation level. The method used is a descriptive qualitative approach with an analysis of court decisions and relevant legal norms. The results of the study show two tendencies in the judges' mindsets: positivistic and non-positivistic. The first-instance and appeal judges failed to consider the humanitarian aspect and the penal guidelines in SEMA Number 3 of 2015 Jo. SEMA Number 4 of 2010. In contrast, the Supreme Court in its cassation decision emphasized sociolegal approaches and substantive justice. This disparity is an important concern in reforming the narcotics criminal justice system in Indonesia so that law enforcement becomes more proportionate and humane, especially for narcotics abusers.

Keywords: Disparities; narcotics crimes; Judge.

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INTRODUCTION

The concept of criminal law policy includes criminal policy, criminal law policy, and non-criminal (penal) policy. Criminal policy is the science of crime prevention that can be achieved by combining criminal means and preventive measures (Farrell et al., 2024). Criminal law policy is an effort to combat crime by using legal means. Meanwhile, non-penal policy is a preventive effort before a crime occurs (Sihombing et al., 2025; Dahlan, 2017; Barda, 2010). All these policies have the goal of protecting the community for the sake of achieving community welfare (American College of Physicians, 2017).

One form of crime that is the focus of the implementation of these policies is narcotics crimes. This crime is classified as an extraordinary crime because it has a wide impact on individuals, families, and communities, making it a serious concern for the government in terms of law enforcement, considering the high rate of narcotics abuse that can damage the nation's generation. To overcome this crime, the government has strictly regulated narcotics crimes in Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law).

The crime of narcotics itself can be formulated as a crime without a victim, with the perpetrators also playing the role of victims. According to Hj. Tutty Alawiyah A.S. in Moh. Taufik Makarao et al., narcotics crime is a form of crime known as victimless crime, which has a variety of *modus operandi* and a wide range of victims. Therefore, to prevent and eradicate widespread narcotics crimes, the Government of Indonesia established the Narcotics Law, which aims to: 1) ensure the availability of narcotics for the benefit of health services and/or the development of science and technology; 2) prevent, protect, and save the Indonesian nation from narcotics abuse; 3) eradicate illicit circulation of narcotics and narcotic precursors; 4) ensure the arrangement of medical and social rehabilitation efforts for drug offenders and addicts.

In essence, the main purpose of the Narcotics Law is to regulate the prevention and countermeasures of narcotics abuse and illicit trade, with an orientation towards health, crime prevention, and community protection. Furthermore, David Fogel in Teguh Prasetyo states that punishment aims to apply criminal law based on the belief that human beings act out of freedom of choice and must be seen as individuals who are responsible, have goals, and hold hopes. In Jan Remmelink's view, punishment aims to realize material criminal law in the judiciary.

Based on provisional data from the National Narcotics Agency from 2021 to 2024, there were 3,220 narcotics cases handled. The still high number of narcotics crimes illustrates that the handling of narcotics crimes in Indonesia has not been maximized, which has triggered polemics in the community regarding the enforcement law. One polemic that arises in society is when judges impose different verdicts for the same criminal act (disparity).

In Indonesia, differences in sentencing are often associated with the independence of judges (Testa & Lee, 2021; Tillyer & Hartley, 2016; Yang & Roberts, 2023). According to Professor Harkristuti Harkrisnowo from the Faculty of Law, University of Indonesia, the emergence of criminal disparities in law enforcement practices reflects a reality that raises questions in the community about whether judges or courts have really carried out the functions of law enforcement and justice optimally. Sociologically, criminal disparities are seen by society as a reflection of the absence of justice. However, from a juridical-formal perspective, this condition cannot necessarily be categorized as a violation of the law. It is often forgotten, however, that the element of "justice" should be an inherent part of every judge's decision.

In the context of narcotics crimes, disparities often occur in the application of Article 112 and Article 127 of the Narcotics Law. In law enforcement practice, a person

who should be categorized as a narcotics abuser as referred to in Article 127 is often seen as having fulfilled the elements of possessing or controlling narcotics as stipulated in Article 112. In fact, these two articles contain very different legal consequences. Article 112 regulates the threat of imprisonment for a maximum of 20 years, while Article 127 opens opportunities for rehabilitation and criminal threats regulated for a maximum of 4 years for users of class I narcotics.

A clear example of the difference in judges' understanding in relating trial facts, leading to differences in the application of Articles 112 and 127 in narcotics crimes, can be seen in the case of Musa Siagian. In the first instance, the defendant was sentenced under Article 112 paragraph (1) *jo*. Article 132 paragraph (1) of the Narcotics Law to 5 years in prison. This decision was then appealed to the High Court, reducing the sentence to 4 years, and further appealed to the Supreme Court, which reduced it to 1 year and 6 months. Ironically, the formulation of the article also changed at the cassation level from Article 112 *jo*. Article 132 to Article 127 paragraph (1), which is intended for narcotics users. The implications of the treatment or punishment imposed on perpetrators of narcotics crimes in the *in casu* case result in the emergence of new crimes in narcotics crimes. The perpetrator, who should be rehabilitated, is instead imprisoned, or the length of the sentence does not match the level of wrongdoing committed.

The legal context in the verdict is interesting to research to understand how judges consider aspects of disparity and legal policy in imposing verdicts against perpetrators of narcotics crimes, especially regarding the meaning and application of Article 112 and Article 127 of the Narcotics Law by judges.

This study aims to analyze the disparity in criminal justice and criminal law policies in narcotics criminal cases based on the application of Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics through the study of Decision Number 2453 K/Pid.Sus/2025, by examining the legal considerations of judges at each level of the judiciary, the differences in the paradigm of legal interpretation used, and their relevance to the principles of substantive justice, humanity, and the proportionality of punishment.

The results of this study are expected to provide theoretical benefits for the development of criminal law studies and narcotics criminalization policies, especially related to the issue of disparity in verdicts and positivistic and non-positivistic approaches in judicial practice, as well as practical benefits as a reference for law enforcement officials and policymakers in implementing the provisions of Article 112 and Article 127 in a more precise, fair, and rehabilitation-oriented manner for narcotics abusers to realize a more humane and proportionate criminal justice system.

RESEARCH METHOD

(Method)

RESULTS AND DISCUSSION

Factors that cause criminal disparities by judges in the application of articles 112 and 127 of Law Number 35 of 2009 against narcotics in cases of narcotics crimes

In its implementation, various problems arise related to the implementation of the Narcotics Law, especially in Article 112 paragraph (1) and Article 127 paragraph (1) letter a. This problem is reflected in the increasing number of narcotics cases submitted to follow-up legal remedies, which ultimately contributes to the high number of inmates in narcotics cases in correctional institutions. The submission of legal remedies in narcotics criminal cases is generally motivated by differences in legal interpretations among law enforcement officials, both Public Prosecutors, Legal Advisors, and Judges at each level of justice, even Judges at each level where the Judges of the first level can be different from Judges at the level of appeal and cassation. This can be seen from the existence of different decisions in several cases with the same position case related to the application of the article.

Article 112 of the Narcotics Law provides a formulation of criminal acts, namely every person who without rights or against the law possesses, stores, controls, or provides Class I Narcotics that are not plants, while Article 127 of the Narcotics Law provides criminal provisions for narcotics abusers, even if a person is proven to be a victim of narcotics abuse, medical rehabilitation and social rehabilitation can be carried out.

This arrangement aims to restore the impact of narcotics for the abuser as a victim with the existence of the Narcotics Law regulating rehabilitation. Regarding the definition of abusers, it is regulated in the general provisions of the Narcotics Law Article 1 paragraph 15 (fifteen), namely "that an Abuser is a person who uses narcotics without rights or against the law".

However, the problem is that before people use narcotics, of course, there are acts that precede them, namely he possesses, stores, or controls, and even provides these goods, all of which are regulated in Article 112 which means that in Article 112 it is not explained what the possession, possession, or provision of the narcotics is actually for, whether for their own use or sold to others.

This is very detrimental to the defendant because when he is subject to Article 112, the minimum criminal threat is a minimum prison sentence of 4 (four) years and a minimum fine of Rp. 800,000,000. (eight hundred million rupiah), while if subject to Article 127 letter a, there is no minimum criminal punishment, there is a maximum criminal provision, which is 4 (four) years in prison and can be sentenced to medical and social rehabilitation.

The problem between Article 112 and Article 127 in the Narcotics Law does not solely lie in the overlapping formulation of the criminal acts, but also concerns the difference in the criminal threat and the type of punishment applied. In simple terms, one act can be subject to two different articles, one of which contains a minimum criminal threat, while the other article provides a maximum (lighter) criminal threat, even rehabilitation can be used as a form of punishment for addicts, and the rehabilitation period is counted as part of the sentence period.

At this stage, there are often differences in interpretation between judges who have different perspectives and interests as well. This is influenced by, among other things, differences in background, legal culture, legal education, and related to the freedom of judges, including in passing judgments against perpetrators of narcotics crimes. In the event that the Judge decides outside the indictment in the sense that the facts found in the trial are different from the indictment of the Public Prosecutor, the Judge must be free from all interests and if that is done, the Judge does not need to be afraid as long as the facts of the trial can prove that the defendant is only an Igniter of Narcotics. Regarding the verdict below the special minimum in narcotics cases, relatively small evidence must be met.

The author assesses that in practice there are two mindset tendencies used by judges in handling narcotics abuse cases. First, the positivistic mindset, which is an approach that focuses on the formal interpretation of the text of laws and regulations in finding the truth of the law. Second, a non-positivistic mindset, which is an approach that combines the interpretation of legal texts with consideration of social and juridical (sociolegal) contexts in the process of searching for substantive legal truth.

Legal Considerations of the Panel of Judges Related to the Application of Article 112 and Article 127 of the Narcotics Law in the Decision of Case Number: 2453 K/PID. SUS/2025

The handling of narcotics crimes involves many parties, both the community, agencies and law enforcement officials, especially judges. Judges themselves play an important role in ensuring a fair and appropriate verdict for narcotics abusers. However, regarding the judge's decision in examining and deciding narcotics offenders, there is often a disparity in the judge's decision. This is stated in the decision that has permanent legal force (*inkracht van gewijsde*) with Number: 2453 K/PID. SUS/2025 which had previously been decided at the Medan High Court Number 1970/PID. SUS/2024/PT. MDN and Lubuk Pakam District Court Number: 1091/Pid.Sus/2024/PN Lbp.

The decision of the Lubuk Pakam District Court Number 1091/Pid.Sus/2024/PN Lbp which was amended at the appeal level at the Medan High Court Number 1970/PID. SUS/2024/PT. MDN and Cassation at the Supreme Court Number: 2453 K/PID. SUS/2025 the perpetrator of the narcotics crime named Musa Siagian was charged and prosecuted by the Public Prosecutor on the grounds that the perpetrator had made a malicious conspiracy, without rights or against the law to possess, store, control, or provide Class I Narcotics instead of plants, so that the perpetrator was prosecuted under Article 112 paragraph (1) Jo. Article 132 paragraph (1) of the Narcotics Law.

The prosecutor in his prosecution asked the Panel of Judges to sentence Musa Siagian (the perpetrator) to 6 (six) years in prison and a fine of Rp. 800,000,000 (eight hundred million rupiah) subsidies for 3 (three) months in prison. The prosecutor requested such a charge based on Article 112 paragraph (1) Jo. Article 132 of the Narcotics Law. The author considers that the prosecutor's demands on the perpetrators are still at a reasonable or appropriate stage, because they do not exceed the minimum criminal

sanctions (Manurung et al., 2021; Sepud & Sujana, 2020; Syahputra et al., 2024; Dwi Hariyani, 2020).

The decision of the Lubuk Pakam District Court Number 1091/Pid.Sus/2025/PN Lbp The Panel of Judges gave a verdict in the form of stating that the defendant had been legally and convincingly proven guilty of committing the crime of "malicious consensus, without the right to possess Class I Narcotics not plants", as in the second alternative indictment, namely Article 112 paragraph (1) Jo. Article 132 of the Narcotics Law. Then sentenced the defendant to imprisonment for 5 (five) years and a fine of Rp.800,000,000.00 (eight hundred million rupiah) subsidy of 3 (three) months in prison.

Likewise, the Panel of Judges at the appellate level at the Medan High Court also agreed that the defendant was legally and convincingly proven guilty of committing the crime of "malicious conspiracy, without the right to possess Class I Narcotics not plants" as in the second indictment, but disagreed with the length of the prison sentence and changed the length of the prison sentence to 4 (four) years and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) subsidy 3 (three) months in prison.

However, at the Panel of Judges at the Cassation level, Decision Number: 2453 K/PID. SUS/2025 disagreed with the Panel of Judges at the first level and appealed in terms of the application of the law which stated that Musa Siagiaa was proven guilty of committing the crime of "Malicious agreement without the right to possess Class I Narcotics not plants" violating Article 112 Paragraph (1) Jo. Article 132 Paragraph (1) of the Narcotics Law, Furthermore the Panel of Judges at the Cassation level stated that Defendant II (I.c Musa Siagiaa) was proven to be an "Abuser of Narcotics" in violation of Article 127 paragraph (1) letter a of the Narcotics Law with imprisonment for 1 (one) year and 6 (six) months.

Even though he was not charged and it is not the provisions of Article 114 paragraph (1) or Article 112 paragraph (1) of the Narcotics Law which should only be applied to dealers and dealers, unlike Musa Siagiaa whose mens rea/intention is to buy methamphetamine-type narcotics for consumption. Because it is common knowledge/notoire fact that before using/consuming methamphetamine-type narcotics, a person must first buy methamphetamine-type narcotics before being able to use them as a quo case, unless Musa Siagiaa is given methamphetamine-type narcotics for free or called to use narcotics (Syamsudin, 2010; Dwi Hariyani, 2020; Manurung et al., 2021; Ramadani, 2021).

Judging from the 3 (three) Court decisions, the above explains that in examining and deciding, judges have a very wide freedom to choose the type of crime (strafsort) according to their beliefs, because basically Indonesia's positive criminal law uses an alternative system in the inclusion of criminal sanctions. In the case of the application of the decision, the judge through his consideration decides a case based on the minimum criminal sanction or based on the maximum and/or out of the minimum penalty as stipulated in SEMA Number 3 of 2015.

The author considers that the Panel of Judges at the first level and the appeal did not consider the matters that became guidelines in the trial, namely: 1) Mistakes of the

perpetrator. 2) Motive and purpose of committing criminal acts. 3) How to commit a crime. 4) A Snapshot of the Maker's Background And Socio-Economic Circumstances. 5) The attitude and actions of the perpetrator after committing a criminal act. 6) The influence of criminality on the future of makers. 7) Public views on criminal acts committed.

Furthermore, the Panel of Judges at the first level and the appeal also did not consider human values based on SEMA Number 3 of 2015 Jo. SEMA Number 4 of 2010. This is in line with one of the arguments submitted by the Judge of the Medan High Court regarding SEMA Number 03 of 2015 in the narcotics criminal chamber, Article 111 and Article 112 charged by the Prosecutor can be changed to Article 127. Based on SEMA guidelines Number 03 of 2015, the judge examines and decides the case based on the Public Prosecutor's Indictment in accordance with Article 182 paragraph (3), and (4) of the Criminal Code.

The prosecutor charged Article 111 and Article 112 of the Narcotics Law but based on the legal facts revealed at the trial, it was proven that Article 127 of the Narcotics Law where this article was not indicted, the defendant was proven to be a user and the amount was relatively small as stipulated in SEMA Number 4 of 2010, then the judge decided according to the indictment but could deviate from the special minimum criminal provisions by making sufficient considerations. therefore, Musa Siagian should be punished as a Narcotics Abuser who underwent rehabilitation instead of serving a prison sentence as imposed in the decisions of the Lubuk Pakam District Court and the Medan High Court (Ramadani, 2021; Dahlan, 2017; Barda, 2010; Firmansyah, 2011).

In contrast to the Panel of Judges at the Cassation level, which is non-positivistic in which the Judge is active in relating the facts of the trial by relating to legal texts that are related to the social and juridical context (sociolegal) in the process of seeking legal truth as stipulated in SEMA Number 4 of 2010 Jo SEMA Number 3 of 2015.

CONCLUSION

The implementation of Law Number 35 of 2009 concerning Narcotics, particularly Articles 112(1) and 127(1)(a), faces challenges from overlapping norms and divergent criminal threats, leading to repressive application of Article 112—even for mere abusers who qualify for rehabilitation under Article 127—and verdict disparities due to varying interpretations among law enforcement officials, exacerbated by the unclear intent behind narcotics possession in Article 112, which swells inmate numbers. Judges adopt either a rigid positivistic approach, strictly following legal text, or a non-positivistic one emphasizing social context and humane punishment, as seen in the District and Medan High Courts' failure to heed SEMA Number 3 of 2015 *jo*. SEMA Number 4 of 2010, resulting in imprisonment over rehabilitation, while the Supreme Court's non-positivistic stance better achieves substantive, humanist justice. For future research, a comparative analysis of judicial training programs could explore how integrating non-positivistic paradigms and clearer legislative guidelines on intent might reduce disparities and prioritize rehabilitation in narcotics cases across Indonesian courts.

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