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Criminal Liability of Narcotics Traffickers under Law No. 35/2009: Proving Intent to Distribute

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ABSTRACT

This study analyses criminal liability for narcotics traffickers under Law Number 35 of 2009, focusing on the evidentiary requirement of intent to distribute. The background stems from the persistent difficulty in distinguishing traffickers from users, which leads to misclassification, sentencing disparities, and excessive criminalisation of personal abuse. The research employs a normative legal method with statutory, conceptual, and case approaches, using primary, secondary, and tertiary legal materials analysed qualitatively through descriptive-analytical reasoning. The findings show that criminal liability requires cumulative proof of an unlawful act, fault, and capacity to bear responsibility. However, the Narcotics Law does not clearly differentiate between addicts and dealers, creating interpretive uncertainty. Judicial practice demonstrates that intent to distribute cannot be established solely by quantity of narcotics seized; it must be inferred from totality of evidence, including packaging, communications, financial transactions, and the defendant's role. Sentencing disparities often arise from differences in legal construction rather than evidentiary weight. Law Number 20 of 2025 introduces stronger procedural safeguards, including recognition of undercover buy techniques, but its effectiveness depends on consistent implementation and clear evidentiary guidelines. The novelty lies in integrating substantive, procedural, and sentencing dimensions to offer a coherent framework linking statutory elements with the new procedural framework. The study recommends strengthening evidentiary mechanisms, investigative capacity, and guidelines for assessing intent to distribute to promote legal certainty, proportionality, and fairness.

Keywords: *Criminal Liability, Narcotics Traffickers, Intent to Distribute, Criminal Procedure, Law Number 35 of 2009*

INTRODUCTION

Narcotics offences continue to pose a serious threat to public health, social order, and national security in Indonesia. The illicit distribution of narcotics generates substantial social and economic costs and sustains organised criminal networks that operate across multiple levels of supply and distribution. Law enforcement authorities, particularly the Indonesian National Police and the National Narcotics Agency, play a central role in investigating narcotics offences and securing evidence capable of establishing the connection between a suspect and the alleged criminal conduct. The effectiveness of prosecution in narcotics cases depends heavily on the ability of investigators and prosecutors to establish the statutory elements of the offence and attribute criminal responsibility to the perpetrator.

Within this enforcement framework, the element of intent to distribute has emerged as a persistent source of legal difficulty. The distinction between trafficking and personal abuse carries substantial legal consequences under Law Number 35 of 2009 concerning Narcotics.[1] Trafficking offences attract significantly more severe sanctions than offences involving personal consumption. Prosecutors frequently encounter situations where the evidence establishes possession but falls short of demonstrating that the narcotics were intended for distribution. Evidence concerning transactions, communications between participants, the quantity and packaging of narcotics, financial transfers, surveillance records, and controlled delivery operations may become decisive in determining the applicable provision, yet the assessment of such evidence often depends on judicial interpretation that varies across cases.[2]

The evidentiary dimension of narcotics enforcement has become increasingly complex with the growing use of electronic communications and digital transactions in distribution networks. Messaging applications, social media platforms, and electronic payment records may contain information concerning negotiations, orders, delivery arrangements, and communication between participants.[3] Indonesian law provides a legal basis for the use of digital evidence, although its acquisition, authentication, integrity, and presentation before the court require careful procedural compliance. The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code introduces a new procedural framework that strengthens the regulation of investigative powers, judicial safeguards, and

[1] "Undang-Undang (UU) Nomor 35 Tahun 2009 Tentang Narkotika," Pub. L. No. 35 (2009), https://peraturan.bpk.go.id/Details/38776/uu-no-35-tahun-2009.
[2] Ari Wibowo and Ivan Agung Widiyasmoko, "Pertimbangan Hakim Dalam Penjatuhan Pidana Di Bawah Minimum Khusus: Studi Perkara Tindak Pidana Narkotika," *Undang: Jurnal Hukum* 4, no. 2 (November 21, 2021): 345–69, https://doi.org/10.22437/ujh.4.2.345-369.
[3] "Undang-Undang (UU) Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," Pub. L. No. 11 (2008), https://peraturan.bpk.go.id/Details/37589/uu-no-11-tahun-2008.

pretrial review.[4] This new Code provides an important normative context for assessing whether the collection and presentation of evidence in narcotics investigations comply with contemporary procedural safeguards.

Several studies have examined narcotics law enforcement in Indonesia from different perspectives. Faridah and Kunarso analysed judicial considerations in decisions involving children who committed narcotics offences and found that judges considered the child's status as a victim of trafficking networks in determining appropriate sanctions.[5] Their study demonstrates that judicial reasoning in narcotics cases involves considerations beyond the statutory elements, including the personal circumstances of the accused and the broader context of the offence. Budiarsih and Sushanty examined law enforcement against police officers involved in drug abuse and concluded that accountability mechanisms under the Narcotics Law could be applied to law enforcement personnel, although disciplinary sanctions often operated in parallel with criminal proceedings.[6] These studies contribute to understanding how criminal responsibility is assessed in practice but focus on specific categories of offenders.

Other research has addressed sentencing outcomes and evidentiary challenges in narcotics cases. Rahmatullah and Sebyar conducted an empirical examination of ten narcotics decisions and found that judges had, in certain circumstances, imposed sentences below the statutory special minimum, with judicial considerations including both offence-related and defendant-related circumstances.[7] Wulandari analysed a substantial dataset of narcotics sentencing decisions and identified recidivism and several offender characteristics as relevant to variations in sentencing outcomes.[8] These studies reveal continuing tensions between legal certainty and proportionality in narcotics adjudication. However, they do not specifically examine the construction of intent to distribute as an evidentiary element or the implications of the new Criminal Procedure Code for narcotics investigations.

This study offers a distinct contribution by integrating three analytical dimensions that have generally been examined separately in prior scholarship. First,

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[4] "Undang-Undang (UU) Nomor 20 Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana" (2025), https://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025.

[5] Idah Faridah and Kunarso Kunarso, "THE JUDGE CONSIDERATIONS IN MAKING DECISION AGAINST NARCOTICS IN CHILDREN," *Yuris: Journal of Court and Justice* 1, no. 4 (December 1, 2022): 22–33, https://doi.org/10.56943/jcj.v1i4.208.

[6] Budiarsih Budiarsih and Vera Rimbawani Sushanty, "LAW ENFORCEMENT AGAINST POLICE OFFICERS INVOLVED IN DRUG ABUSE BASED ON JUSTICE VALUES," *Yuris: Journal of Court and Justice* 3, no. 4 (December 27, 2024): 25–40, https://doi.org/10.56943/jcj.v3i4.662.

[7] Ahmad Dzulkifli Rahmatullah and Muhamad Hasan Sebyar, "Analisis Yuridis Putusan Kasasi Dibawah Ancaman Minimal Dalam UU Narkotika," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 1, no. 3 (May 27, 2024): 170–85, https://doi.org/10.62383/demokrasi.v1i3.266.

[8] Yuli Wulandari, "THE IMPACT OF LEGAL AND EXTRA-LEGAL FACTORS ON SEVERITY OF JUDGES SENTENCING REGARDING NARCOTICS OFFENDERS," *JHP: Jurnal Hukum Dan Peradilan* 11, no. 2 (July 31, 2022): 219–56, https://doi.org/10.25216/jhp.11.2.2022.219-256.

it analyses the statutory construction of criminal liability for narcotics traffickers under Law Number 35 of 2009, focusing specifically on the evidentiary requirements for establishing the purpose of distribution. Second, it examines how Indonesian courts have addressed the distinction between trafficking and personal abuse in practice, identifying patterns and inconsistencies in judicial reasoning. Third, it assesses the implications of Law Number 20 of 2025 concerning the Criminal Procedure Code for the investigation and prosecution of narcotics offences. Prior studies have addressed narcotics law enforcement, sentencing disparities, and evidentiary issues, yet no study has systematically connected the substantive elements of trafficking offences with the procedural framework introduced by the new Criminal Procedure Code.

The existing literature reveals a significant gap concerning the relationship between substantive criminal responsibility and procedural proof in narcotics cases. While previous research has examined statutory provisions, judicial decisions, and sentencing patterns, the specific problem of proving the intent to distribute has not received sustained analytical attention.[9] The difficulty of establishing an internal state of mind through objective evidence creates practical challenges for prosecutors and courts, particularly where the accused claims to be a user, courier, or intermediary. Additionally, the procedural changes introduced by Law Number 20 of 2025 have not yet been examined in relation to narcotics investigations, leaving uncertainty about how the new framework will affect evidentiary practices in trafficking cases. This gap is particularly significant because an inaccurate qualification of the offence may result either in the excessive criminalisation of persons whose conduct constitutes personal abuse or in the failure to impose appropriate criminal liability on persons who participate in illicit distribution.[10]

This study aims to analyse the legal construction of criminal responsibility for narcotics traffickers under Law Number 35 of 2009 concerning Narcotics, with particular attention to the evidentiary requirements for establishing the intent to distribute. It specifically examines the statutory elements that must be proven to attribute criminal responsibility to a narcotics trafficker, the approaches adopted by Indonesian courts in distinguishing trafficking from personal abuse, and the implications of Law Number 20 of 2025 concerning the Criminal Procedure Code for the investigation and prosecution of narcotics offences. The research is intended to contribute to a more coherent understanding of the relationship between substantive criminal responsibility and procedural proof in narcotics cases, while identifying the legal safeguards necessary to ensure that enforcement of narcotics

[9] Rahmatullah and Sebyar, "Analisis Yuridis Putusan Kasasi Dibawah Ancaman Minimal Dalam UU Narkotika."
[10] Gazali Ahmad, Nashriana Nashriana, and Henny Yuningsih, "Reassessing Penal Dominance in Indonesian Narcotics Law Through International Legal Comparison," *Jurnal Ilmiah Kebijakan Hukum* 20, no. 1 (March 31, 2026): 67–84, https://doi.org/10.30641/kebijakan.2026.V20.67-84.

law remains effective, proportionate, and consistent with the principles of due process.

LITERATURE REVIEW

Bawono et al. examined the implementation of rehabilitation for narcotics abusers under Law Number 35 of 2009 and found that law enforcement authorities continued to apply imprisonment to addicts and abusers, despite the statutory preference for rehabilitation in such cases.[11] Their study identified this practice as one of the principal obstacles to effective rehabilitation, alongside family factors and the unwillingness of abusers to disclose their condition. The persistence of custodial responses to persons whose conduct more closely resembles abuse than trafficking reflects a broader difficulty in distinguishing traffickers from users within the Indonesian criminal justice system. This finding aligns with broader concerns regarding the potential for excessive criminalisation of persons whose conduct constitutes personal abuse. Setiawan and Arpangi analysed Supreme Court Decision Number 1306 K/Pid.Sus/2025 and observed that the application of mandatory minimum sentences often conflicts with substantive justice, particularly in cases involving small quantities of narcotics and defendants who function primarily as users or low-level distributors.[12] Their analysis demonstrates that judicial discretion, guided by Supreme Court Circular Letter Number 3 of 2023, has been used to deviate from statutory minimums in circumstances where the defendant's limited role justifies a more proportionate response.

A second strand of research addresses sentencing outcomes and the persistent tension between legal certainty and proportionality. Ahmad, Nashriana, and Yuningsih compared Law Number 35 of 2009 with the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and found that Indonesian legislation adopts a predominantly enforcement-centred orientation, including the possibility of capital punishment for certain trafficking offences, while international standards emphasise proportionality, preventive mechanisms, and rehabilitation.[13] The study identifies normative and institutional shortcomings in coordination between the National Narcotics Agency, the police, the Ministry of Health, and international bodies. These findings complement earlier empirical work by Wibowo and Widiyasmoko, who documented judicial deviation

[11] Bambang Tri Bawono, Dwi Wahyono, and Andri Winjaya Laksana, "IMPLEMENTATION OF REHABILITATION FOR DRUG ABUSES ACCORDING TO LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS," *Jurnal Hukum* 38, no. 1 (March 27, 2022): 1, https://doi.org/10.26532/jh.v38i1.20869.

[12] Arif Setiawan and Arpangi Arpangi, "Legal Analysis Of Judicial Discretion In Deviation Of Special Minimum Sentence Imposition In Narcotics Criminal Cases From The Perspective Of Justice (Case Study Of Supreme Court Decision Number 1306 K/Pid.Sus/2025)," *RJL: Ratio Legis Journal* 5, no. 1 (2026): 65–80, https://doi.org/http://dx.doi.org/10.30659/rlj.5.1.65-80.

[13] Ahmad, Nashriana, and Yuningsih, "Reassessing Penal Dominance in Indonesian Narcotics Law Through International Legal Comparison."

from statutory special minimums in ten narcotics decisions, and by Wulandari, who identified recidivism and offender characteristics as relevant to sentencing variation. Together, these studies reveal that sentencing in narcotics cases cannot be understood exclusively from the statutory penalty and that individual circumstances must be considered transparently to avoid arbitrary outcomes.

A third area of inquiry concerns the evidentiary dimension of narcotics enforcement, particularly the challenges posed by digital evidence. Ibrahim, Soekorini, and Aranggraeni examined narcotics distribution through the dark web and found that digital evidence can be recognised as valid under the Electronic Information and Transactions Law if its collection and management follow strict chain of custody procedures in accordance with ISO/IEC 27037:2012, including data integrity verification using hash values.[14] Their study highlights the volatility of electronic communication data and the legal complexity arising from cross-border transactions, recommending strengthened international cooperation, increased capacity in digital forensics, and regulatory updates to the Criminal Code and Criminal Procedure Code. The findings underscore that the evidentiary framework for narcotics cases must adapt to technological developments while maintaining procedural safeguards. However, existing scholarship has not systematically connected these evidentiary concerns with the substantive construction of intent to distribute under Law Number 35 of 2009, nor has it examined the implications of Law Number 20 of 2025 concerning the Criminal Procedure Code for narcotics investigations. This gap provides the analytical space for the present study.

RESEARCH METHODOLOGY

This study employs a normative legal research method, which views law as a system of norms and examines primary, secondary, and tertiary legal materials to address the legal issues under investigation.[15] This method was selected because the problems examined centre on the construction of criminal liability and evidentiary requirements in narcotics offences, not on social behaviour or empirical data in the field. The approaches used consist of the statutory approach, the conceptual approach, and the case approach.[16] The statutory approach involves

[14] Muhammad Habil Alif Ibrahim, Noenik Soekorini, and Renda Aranggraeni, "PENEGAKAN HUKUM TERHADAP PEREDARAN NARKOTIKA MELALUI DARK WEB," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 5, no. 3 (2025): 3911–22, https://doi.org/https://doi.org/10.53363/bureau.v5i3.850.

[15] Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2, 2023): 1–9, https://doi.org/10.22219/aclj.v4i1.24855.

[16] Desia Rakhma Banjarani, Rudi Natamiharja, and Ria Wierma Putri, "The Intersections in Legal Research: Intercade Between Normative and Social Methods," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 15, no. 1 (May 30, 2026): 63–76, https://doi.org/10.24843/JMHU.2026.v15.i01.p05.

reviewing all legislation relevant to the criminal liability of narcotics traffickers, particularly Law Number 35 of 2009 concerning Narcotics, the Criminal Code, and Law Number 20 of 2025 concerning the Criminal Procedure Code. The conceptual approach is used to understand criminal law doctrines concerning fault, unlawfulness, and criminal responsibility, while the case approach is employed to examine judicial decisions relevant to the distinction between trafficking and narcotics abuse for personal consumption.

The legal sources used in this study comprise primary, secondary and tertiary sources. Primary legal sources include legislation, court rulings and other official legal documents that have the force of law.[17] Secondary legal sources consist of legal textbooks, academic journal articles, criminal law doctrine, as well as previous research relevant to criminal liability, drug offences, criminal procedure and the enforcement of drug laws. Tertiary legal sources include legal dictionaries, encyclopaedias and other supporting sources that provide explanations of the legal terms used in this study. The references used encompass a range of legal literature and academic articles relevant to the focus and issues of the study.[18]

The analysis of legal materials is conducted qualitatively using a descriptive-analytical method.[19] The analytical process begins with inventorying and classifying legal materials according to the research questions, followed by interpretation of relevant legal norms, particularly the elements of articles in Law Number 35 of 2009 governing trafficking offences. The analysis also includes an examination of judicial reasoning in narcotics decisions to identify patterns of legal argumentation used in distinguishing traffickers from users. All legal materials are analysed using deductive and inductive legal reasoning, that is, by applying general norms to concrete cases and drawing generalisations from specific cases to formulate a coherent construction of criminal liability. The results of the analysis are presented in the form of a prescriptive account explaining how the criminal liability of narcotics traffickers should be constructed under the applicable normative framework.

RESULT AND DISCUSSION

The Statutory Construction of Criminal Liability for Narcotics Traffickers

The analysis of the statutory construction of criminal liability for narcotics traffickers under Law Number 35 of 2009 reveals three cumulative elements that must be established, namely an unlawful act, a form of fault, and the capacity of the

[17] Putri Wulandari, "Normative Legal Research Methodology from the Experts' Perspective: A Comparative Analysis of Concepts and Approaches," *Archipel: Journal of Indonesian Interdisciplinary Studies* 1, no. 6 (February 28, 2026): 12–25, https://doi.org/10.65739/archipel.v1i6.34.
[18] Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches."
[19] Wulandari, "Normative Legal Research Methodology from the Experts' Perspective: A Comparative Analysis of Concepts and Approaches."

perpetrator to bear criminal responsibility.[20] These elements reflect the general doctrine of criminal liability in Indonesian criminal law, which holds that punishment may only be imposed where the prohibited conduct can be attributed to the accused through culpability. The element of intent *(dolus)* occupies a central position because trafficking offences generally require knowledge concerning the nature of the narcotic substance together with an intention to distribute it. Article 114 paragraph (1) confirms that the offence of offering for sale, selling, purchasing, receiving, or acting as an intermediary requires proof that the accused acted without right or unlawfully and that the narcotics were intended for circulation.[21] However, the law does not clearly distinguish between addicts and dealers within its substantive provisions, creating interpretive uncertainty that can lead to the misapplication of trafficking provisions to persons whose conduct more closely resembles personal abuse. Bawono et al. similarly found that the legal substance of the Narcotics Law does not clearly distinguish between addicts and dealers, creating gaps in interpretation that are detrimental to justice.[22] Dewi and Nurhidayat, in their examination of Decision Number 93/Pid.Sus/2018/PN.Rap, found that law enforcement officers frequently make errors in distinguishing whether a criminal act constitutes narcotics abuse or narcotics trafficking, and that the application of Article 112 to narcotics abusers does not align with the principles of justice.[23]

The statutory formulation of trafficking offences in Law Number 35 of 2009 criminalises a broad range of conduct within the illicit distribution chain, including offering for sale, selling, purchasing, receiving, acting as an intermediary, exchanging, delivering, transporting, possessing, storing, controlling, supplying, producing, importing, exporting, and distributing narcotics.[24] This breadth reflects the legislative objective of preventing persons involved at different stages of the supply chain from escaping criminal responsibility merely because they do not occupy the position of principal seller or organiser. The element of "for distribution" functions as the principal dividing line between trafficking offences and offences involving personal consumption.[25] Since the purpose of distribution is an internal state of mind that cannot ordinarily be observed directly, its existence must be inferred from objective circumstances demonstrated through admissible evidence, including the quantity and packaging of the narcotics, the presence of

[20] Undang-undang (UU) Nomor 35 Tahun 2009 tentang Narkotika.
[21] Bawono, Wahyono, and Laksana, "IMPLEMENTATION OF REHABILITATION FOR DRUG ABUSES ACCORDING TO LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS."
[22] Bawono, Wahyono, and Laksana.
[23] Febbyola Sintya Dewi and Syarif Nurhidayat, "Kesalahan Penggunaan Pasal 112 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Terhadap Penyalahguna Narkotika(Studi Putusan PN Nomor: 93/Pid.Sus/2018/PN.Rap Jo. Putusan PT Nomor: 413/Pid.Sus/2018/PT.MDN Jo. Putusan Kasasi Nomor: 2410 K/Pid.Sus/2018)," in *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* (Universitas Islam Indonesia, 2025), 1–14, https://journal.uii.ac.id/psha/article/view/45865/19278.
[24] Undang-undang (UU) Nomor 35 Tahun 2009 tentang Narkotika.
[25] Undang-undang (UU) Nomor 35 Tahun 2009 tentang Narkotika.

equipment associated with distribution, communications relating to transactions, witness testimony, and financial circumstances. The analysis demonstrates that the statutory framework does not provide a clear hierarchy of evidentiary indicators, leaving courts with considerable discretion in determining whether the element of distribution has been fulfilled. This absence of hierarchy contributes to the interpretive inconsistency that characterises narcotics adjudication in Indonesia.

Judicial Practice in Distinguishing Traffickers from Users

The examination of judicial practice demonstrates that the classification of an accused person cannot be determined solely by the quantity of narcotics seized, although quantity remains an important indicator.[26] The Supreme Court has issued guidance through Supreme Court Circular Letter Number 4 of 2010 and Number 3 of 2015 to assist judges in distinguishing users from traffickers.[27] SEMA Number 4 of 2010 establishes a threshold for personal daily use, which for methamphetamine is set at a maximum of one gram, and requires cumulative conditions for classification as an abuser eligible for rehabilitation, including being caught in the act, a positive laboratory test, a psychiatrist's certificate, and the absence of evidence of involvement in the illicit narcotics trade.[28] The analysis of judicial reasoning reveals several recurring patterns in the assessment of the intent to distribute, including reliance on the quantity of narcotics as a primary indicator, consideration of supporting evidence such as scales and communication records, and assessment of the defendant's role in the alleged distribution activity. Setiawan and Arpangi, in their analysis of Supreme Court Decision Number 1306 K/Pid.Sus/2025, found that although the defendant's actions formally fulfilled the elements of narcotics trafficking, the minimum quantity of evidence and the defendant's limited role justified judicial deviation from the mandatory minimum sentence.[29]

The analysis further demonstrates that the misclassification of users as traffickers continues to occur in practice. Empirical evidence indicates that users are frequently misclassified as traffickers through the routine use of Article 112,

[26] "Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 Tentang Penempatan Penyalahgunaan,Korban Penyalahgunaan Dan Pecandu Narkotika Ke Dalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial" (2010), https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-4-tahun-2010/detail.

[27] "Edaran Mahakmah Agung Nomor 3 Tahun 2015 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan" (n.d.); Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 Tentang Penempatan Penyalahgunaan,Korban Penyalahgunaan Dan Pecandu Narkotika Ke Dalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial.

[28] Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 Tentang Penempatan Penyalahgunaan,Korban Penyalahgunaan Dan Pecandu Narkotika Ke Dalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial.

[29] Setiawan and Arpangi, "Legal Analysis Of Judicial Discretion In Deviation Of Special Minimum Sentence Imposition In Narcotics Criminal Cases From The Perspective Of Justice (Case Study Of Supreme Court Decision Number 1306 K/Pid.Sus/2025)."

even for small personal-use quantities suited to Article 127.[30] This misclassification has significant consequences, including the imposition of disproportionately severe sanctions, the denial of rehabilitation, and the stigmatisation of persons whose conduct does not warrant the label of trafficker. The analysis suggests that the absence of clearer statutory criteria for distinguishing between users and traffickers, combined with the discretionary nature of the SEMA guidelines, contributes to the persistence of this problem. The cumulative requirements established by SEMA Number 4 of 2010, particularly the requirement that the accused be caught in the act and possess a psychiatrist's certificate, may also function as practical barriers that prevent genuine abusers from accessing rehabilitation.[31] These findings indicate that the judicial practice of distinguishing traffickers from users remains inconsistent and that clearer statutory criteria are necessary to ensure that criminal liability is imposed accurately and proportionately.

Sentencing Disparities and the Tension between Legal Certainty and Proportionality

The analysis of sentencing patterns reveals a persistent tension between the legal certainty demanded by statutory minimum penalties and the proportionality required by substantive justice.[32] Law Number 35 of 2009 contains special minimum penalties for a number of narcotics offences, yet judicial practice demonstrates that courts have, in certain circumstances, imposed sentences below the statutory special minimum. Wibowo and Widiyasmoko's empirical examination of ten narcotics decisions found that judges had imposed sentences below the statutory special minimum, with judicial considerations including both offence-related and defendant-related circumstances.[33] Wulandari's analysis of a substantial dataset of narcotics sentencing decisions similarly identified recidivism and several offender characteristics as relevant to variations in sentencing outcomes.[34] The analysis of judicial decisions reveals that the most significant source of sentencing disparity is not the quantity of narcotics evidence alone but the construction of the offence charged. Safira and Septianita, in their comparative analysis of two court decisions, found that differences in sentence length primarily

[30] Dewi and Nurhidayat, "Kesalahan Penggunaan Pasal 112 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Terhadap Penyalahguna Narkotika(Studi Putusan PN Nomor: 93/Pid.Sus/2018/PN.Rap Jo. Putusan PT Nomor: 413/Pid.Sus/2018/PT.MDN Jo. Putusan Kasasi Nomor: 2410 K/Pid.Sus/2018)."
[31] Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 Tentang Penempatan Penyalahgunaan,Korban Penyalahgunaan Dan Pecandu Narkotika Ke Dalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial.
[32] Wibowo and Widiyasmoko, "Pertimbangan Hakim Dalam Penjatuhan Pidana Di Bawah Minimum Khusus: Studi Perkara Tindak Pidana Narkotika."
[33] Wibowo and Widiyasmoko.
[34] Wulandari, "THE IMPACT OF LEGAL AND EXTRA-LEGAL FACTORS ON SEVERITY OF JUDGES SENTENCING REGARDING NARCOTICS OFFENDERS."

arose from differences in the legal construction of the offence.[35] The first decision applied Article 127 paragraph (1) letter a to a drug abuser, with a maximum imprisonment of four years and an orientation permitting rehabilitation, while the second decision applied Article 114 paragraph (1) to a distributor, which establishes a special minimum of five years.[36]

The analysis also reveals that judicial discretion in narcotics sentencing has been exercised with increasing attention to the defendant's actual role and level of culpability. SEMA Number 3 of 2023 provides guidance for judges in deviating from mandatory minimum sentences in circumstances where the defendant's limited role or the small quantity of narcotics justifies a more proportionate response.[37] Setiawan and Arpangi found that the Supreme Court's correction of an appellate decision in Decision Number 1306 K/Pid.Sus/2025 demonstrated an effort to balance individual justice with systemic consistency and to prevent excessive sentencing disparities.[38] The analysis indicates that this approach reflects an ongoing shift from a rigid retributive orientation toward a more corrective and rehabilitative paradigm, although the shift remains incomplete and inconsistently applied. The development of clearer sentencing guidelines, grounded in the defendant's role, knowledge, intention, and level of control over the distribution activity, would strengthen both legal certainty and proportionality in narcotics adjudication. Such guidelines would also reduce the risk that sentencing outcomes are determined primarily by the choice of provision rather than by the defendant's actual degree of culpability.

Evidentiary Challenges and the Implications of Law Number 20 of 2025

The analysis of the evidentiary framework demonstrates that the evidentiary process in narcotics cases faces significant challenges, particularly concerning the integrity of physical evidence and the admissibility of electronic evidence.[39] The prosecution must establish the continuity of the evidence from seizure and weighing through laboratory examination, storage, transfer, and presentation before the court. A weakness in this evidentiary chain may weaken the prosecution's case, particularly where the defendant disputes ownership or argues that the substance was not intended for distribution. Golovin finds identified weaknesses in the

[35] Sarah Safira and Hesti Septianita, "Analisis Disparitas Pidana Dalam Penerapan Hukuman Terhadap Pelaku Tindak Pidana Narkotika," *Jurnal Hukum Lex Generalis* 7, no. 7 (2026): 1–17, https://doi.org/https://doi.org/10.56370/jhlg.v7i7.4691.
[36] Undang-undang (UU) Nomor 35 Tahun 2009 tentang Narkotika.
[37] "Surat Edaran Nomor 3 Tahun 2023 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2023 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan," Pub. L. No. 3 (2023), https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-3-tahun-2023/detail.
[38] Setiawan and Arpangi, "Legal Analysis Of Judicial Discretion In Deviation Of Special Minimum Sentence Imposition In Narcotics Criminal Cases From The Perspective Of Justice (Case Study Of Supreme Court Decision Number 1306 K/Pid.Sus/2025)."
[39] Dmytro Golovin, "Electronic Evidence in Proving Crimes of Drugs and Psychotropic Substances Turnover," *Access to Justice in Eastern Europe* 5, no. 2 (May 15, 2022): 156–66, https://doi.org/10.33327/AJEE-18-5.2-n000217.

management of evidence as a factor that reduces the credibility of law enforcement officers and undermines the effectiveness of narcotics prosecution.[40] The analysis further indicates that the increasing use of electronic communications in narcotics distribution has transformed the evidentiary landscape. Messaging applications, social media platforms, and electronic payment records may contain information concerning negotiations, orders, delivery arrangements, and communication between participants in a distribution network.[41] However, electronic evidence presents particular challenges concerning acquisition, authenticity, integrity, preservation, and presentation before the court. Ibrahim et al. found that digital evidence can be recognised as valid under the Electronic Information and Transactions Law if its collection and management follow strict chain of custody procedures in accordance with ISO/IEC 27037:2012, including data integrity verification using hash values.

The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code introduces a new procedural framework that has significant implications for narcotics investigations.[42] The new Code strengthens the regulation of investigative powers, judicial safeguards, coordination between investigators and prosecutors, mechanisms of compulsory measures, and pretrial review. Article 16 paragraph (1) letter (f) of Law Number 20 of 2025 formally recognises undercover buy techniques as an investigative measure, providing a clearer legal basis for investigative techniques that have long been used in narcotics enforcement. The analysis suggests that the new procedural framework has the potential to strengthen the evidentiary basis for narcotics prosecutions by providing clearer standards for the acquisition and presentation of evidence. However, the effectiveness of the new framework will depend on the capacity of law enforcement institutions to implement its provisions consistently and on the development of clear guidelines for the assessment of digital evidence in narcotics cases. The analysis further indicates that the new procedural framework does not eliminate the fundamental requirement that evidence must be lawfully obtained, relevant, sufficiently reliable, and capable of establishing the elements of the offence.

Synthesis and Implications

The synthesis of the findings reveals a coherent picture of the challenges and opportunities in the construction of criminal liability for narcotics traffickers in Indonesia. The statutory framework of Law Number 35 of 2009 provides a comprehensive but not fully coherent basis for attributing criminal responsibility to traffickers.[43] The law criminalises a broad range of conduct within the illicit distribution chain, yet it does not clearly distinguish between traffickers and users

[40] Golovin.
[41] Golovin.
[42] "Undang-Undang (UU) Nomor 20 Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana" (2025), https://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025.
[43] Undang-undang (UU) Nomor 35 Tahun 2009 tentang Narkotika.

within its substantive provisions. This normative weakness creates interpretive uncertainty that manifests in judicial practice as inconsistent application of trafficking provisions, misclassification of users as traffickers, and sentencing disparities. The administrative guidelines provided by SEMA Number 4 of 2010 and SEMA Number 3 of 2015 have partially addressed these problems but have not fully resolved them. The analysis further demonstrates that the construction of criminal liability for narcotics traffickers must be understood as a relationship between substantive criminal responsibility and procedural proof. The element of intent to distribute cannot be established through the mere discovery of narcotics in the accused's possession, nor can it be presumed solely from the quantity of narcotics seized.[44]

The findings of this study contribute to the existing literature by integrating the substantive, procedural, and sentencing dimensions of criminal liability for narcotics traffickers. Prior studies have examined these dimensions separately, focusing on statutory analysis, judicial decisions, or sentencing patterns.[45] This study demonstrates that these dimensions are interconnected and that the effectiveness of narcotics law enforcement depends on their coherent integration.[46] The analysis further demonstrates that the new procedural framework introduced by Law Number 20 of 2025 provides an opportunity to strengthen the evidentiary basis for narcotics prosecutions, but its effectiveness will depend on the development of clear guidelines for its implementation and on the capacity of law enforcement institutions to adapt to its requirements.[47] The study therefore recommends that future research examine the implementation of Law Number 20 of 2025 in narcotics investigations once the new procedural framework has been in operation for a sufficient period, with particular attention to the assessment of digital evidence and the application of the intent to distribute standard in judicial practice. Strengthening investigative and prosecutorial capacity, improving the management and integrity of physical and electronic evidence, and developing clearer guidelines for assessing the intent to distribute are necessary to promote legal certainty and reduce sentencing disparities in narcotics adjudication.

CONCLUSION

This study concludes that criminal liability for narcotics traffickers under Law Number 35 of 2009 is constructed through cumulative elements, namely an

[44] Golovin, "Electronic Evidence in Proving Crimes of Drugs and Psychotropic Substances Turnover."
[45] Wibowo and Widiyasmoko, "Pertimbangan Hakim Dalam Penjatuhan Pidana Di Bawah Minimum Khusus: Studi Perkara Tindak Pidana Narkotika."
[46] Setiawan and Arpangi, "Legal Analysis Of Judicial Discretion In Deviation Of Special Minimum Sentence Imposition In Narcotics Criminal Cases From The Perspective Of Justice (Case Study Of Supreme Court Decision Number 1306 K/Pid.Sus/2025)."
[47] Undang-undang (UU) Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana, 2025.

unlawful act, a form of fault, and the capacity of the perpetrator to bear criminal responsibility. The law criminalises a broad range of conduct within the illicit distribution chain, yet it does not clearly distinguish between traffickers and users within its substantive provisions. In judicial practice, the element of intent to distribute cannot be established solely by the quantity of narcotics seized. It must be inferred from the totality of legally admissible evidence, including packaging, storage, supporting equipment, communications, witness testimony, expert evidence, and financial circumstances. The analysis further shows that sentencing disparities often arise from differences in the legal construction of the offence, particularly the choice between trafficking and abuse provisions. Law Number 20 of 2025 concerning the Criminal Procedure Code introduces a stronger procedural framework for investigations, including formal recognition of undercover buy techniques, but its effectiveness depends on consistent implementation and clear evidentiary guidelines.

This study has several limitations. It relies on normative legal research and library-based materials, so it does not measure how investigators, prosecutors, and judges apply the law in daily practice. The analysis is limited to statutory provisions, selected judicial decisions, and secondary literature, and it does not include field interviews or large scale sentencing data. The new Criminal Procedure Code had not been fully implemented at the time of writing, so its practical effects on narcotics investigations remain uncertain. The study also does not examine regional variations in judicial practice or the specific experiences of defendants who claim to be users, couriers, or intermediaries. These limitations mean that the findings should be understood as a normative assessment of legal construction, not as an empirical evaluation of enforcement outcomes.

Future studies should examine the implementation of Law Number 20 of 2025 in narcotics investigations after the new framework has been in operation for a sufficient period. Empirical research could assess how investigators and prosecutors handle digital evidence, undercover buy operations, chain of custody requirements, and pretrial review in trafficking cases. Further research could also evaluate the effectiveness of sentencing guidelines, including Supreme Court Circular Letters, in reducing unjustified disparities. Comparative studies with other jurisdictions could identify legal safeguards that help distinguish traffickers from users more accurately. Researchers could also develop clearer evidentiary indicators for the intent to distribute, covering quantity, packaging, communication records, financial transfers, and the defendant’s role in the distribution network. Such studies would strengthen legal certainty, proportionality, and fairness in narcotics law enforcement while supporting rehabilitation for persons whose conduct does not satisfy the elements of trafficking.

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