

**JLPH:**
Journal of Law, Politic
and Humanities<https://dinastires.org/JLPH>dinasti.info@gmail.com

+62 811 7404 455

E-ISSN: 2962-2816
P-ISSN: 2747-1985DOI: <https://doi.org/10.38035/jlph.v5i3>
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Application of Elements of Article 112 Paragraph (1) of Law Number 35 of 2009 Concerning Narcotics

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Abstract: Narcotics crimes often involve economically unstable individuals who store or distribute drugs as a shortcut to profit. The Ridho Fahmi Nurlete case (Number 108/PID.SUS/2024/PT AMB) shows ambiguity in the application of Article 112 paragraph (1) of Law Number 35 of 2009, which creates uncertainty in proving drug possession and is often considered unfair in distinguishing the role of users or dealers. This study aims to analyze the elements of the crime and the judge's consideration in the verdict. This type of research is legal research. By using the method of Legislative Approach and case approach. And analyzed using juridical qualitative. The results of the study state that the elements of Article 112 paragraph (1) of the Narcotics Law have been fulfilled in the Ridho Fahmi Nurlete case. The element of "every person" was proven through the presence of the defendant, and the element of "without the right to possess narcotics Group I" was proven by the evidence of synthetic narcotics. The judge considered the defendant as a user, not a dealer, because the evidence was less than 1 gram, in accordance with Supreme Court Circular Letter No. 1 of 2017. The sentence of 1 year and 6 months was upheld, with consideration of the defendant's minor role and the applicable legal provisions.

Keyword: Narcotics, Court of Appeal, Crime.

INTRODUCTION

The problem of drug abuse in Indonesia is now very concerning. This is due to several things, among others, because Indonesia is located in a position between three continents and given the development of science and technology, the influence of globalization, the flow of highly developed transportation and the shift in materialistic values with the dynamics of the target of illicit trafficking opinions. Indonesian society and even the world community in general are currently faced with a very worrying situation due to the rampant illegal use of various types of narcotics. This concern is further sharpened by the rampant illicit drug trafficking that has poisoned all levels of society, including among the younger generation. This will greatly affect the future life of the nation and state (Nugroho et al., 2019).

Narcotics crime is an extraordinary crime, so it requires extraordinary efforts to eradicate it. In this regard, to anticipate the widespread abuse of narcotics and to carry out the eradication of illicit drug trafficking, the government issued legislation that specifically regulates matters relating to narcotics, where currently the applicable law is Law Number 35 of 2009 concerning Narcotics which is the result of renewal of the old law, namely Law Number 22 of 1997 (Anindita, 2015).

The discussion of how to determine a drug offender as a perpetrator and/or victim is the main problem faced by law enforcement. Narcotics abuse in Indonesia has reached a very alarming and dangerous point with targets that have touched all levels of society. Where it can be seen in narcotics cases, there are articles that are often used to ensnare offenders, namely Article 114, Article 112, and Article 127 of Law Number 35 of 2009 concerning Narcotics. The three articles, there are two articles that have multiple interpretations and unclear formulations, namely in Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics. The multi-interpretive articles will result in the perpetrators of narcotics crimes (dealers) taking cover as if they were victims of narcotics crimes. This will have an impact on sentencing with short sentences, causing injustice in the implementation process (Rambe et al., 2022). Article 112 of Law No.35/2009 on Narcotics essentially provides a formulation of a criminal offense for a person, namely every person who without the right or against the law owns, stores, controls, or provides Narcotics Group I not plants. It should be understood that before people use these narcotics, of course, there are actions that precede it, whether he owns, or he stores, or he controls, or he provides the goods and among the actions mentioned earlier, namely owning, storing, controlling, and providing, all of which have been regulated in article 112 (Asropi, 2020).

In narcotics crimes, the actions that are often revealed in Indonesia are the acts of storing or distributing narcotic goods which are often carried out by people with an unstable economy with the intention of being a shortcut in reaping various benefits or intended to increase personal wealth. (Agustono & Yusuf, 2024) This was experienced by the defendant in case Number 108/PID.SUS/2024/PT AMB on behalf of the defendant Ridho Fahmi Nurlete. The inaccuracy or ambiguity in the application of the article is mainly related to different interpretations of the elements required to prove legal and prohibited possession of narcotics. In addition, the application of this article often causes polemics because it is considered not in accordance with the principles of justice. In some cases, the sentence imposed is seen as too severe or disproportionate to the defendant's actions, for example whether the defendant is a user or a dealer, whose legal and criminal implications can be very different. The treatment of defendants is also a concern, especially if there are indications of unfairness in the trial process, such as a lack of sufficient evidence, improperly executed legal procedures, or mitigating factors that were not properly considered in the final verdict. In addition, this verdict may reflect how drug-related legal policies are implemented in the Ambon High Court, allowing for certain patterns in the handling of similar cases, which merit further examination in the context of juridical criticism or analysis.

METHOD

The type of research conducted in this research is legal research. The approach in this research uses the Statute Approach and Case Approach methods. The data sources used in this research are divided into three types, namely primary, secondary, and tertiary legal materials. Primary legal materials are binding materials and consist of Ambon High Court Decision Number 108/PID.SUS/2024/PT AMB, Law Number 35 of 2009 concerning Narcotics. Furthermore, secondary legal materials include the works of legal experts that provide further explanation of primary legal materials, such as legal science books and opinions of scholars related to the topic of this research. Tertiary legal materials, or supporting materials, play a role

in providing guidance or clarifying the meaning of primary and secondary legal materials, which include sources such as legal dictionaries and the Big Indonesian Dictionary.

Researchers use data collection techniques through library research, the data obtained are then read, studied, and make more specific notes from books or literature, as well as laws and regulations, to explain the subject matter according to the research objectives. In this research, primary legal materials, secondary legal materials, tertiary legal materials obtained through literature studies are analyzed using juridical qualitative, namely analysis that does not use formulas and numbers so that conclusions or descriptions are obtained in accordance with problem identification.

RESULTS AND DISCUSSION

Elements of Criminal Offense in Article 112 Paragraph (1) of Law Number 35 Year 2009 Concerning Narcotics in the Decision of the Ambon High Court.

Based on the case decided by the Judges' Panel in the Decision of the Ambon High Court Number 108/PID.SUS/2024/PT AMB regarding the defendant Ridho Fahmi Nurlete, the charges in the case are as follows:

He has committed an attempt or conspiracy to commit a narcotics offense unlawfully or without right, offering for sale, selling, buying, receiving, acting as an intermediary in the sale, exchanging, or delivering Narcotics of Schedule I non-plant form. The defendant's actions as regulated and penalized under Article 114 paragraph (1) juncto Article 132 paragraph (1) of Law No. 35 of 2009 on Narcotics. Or;

He has committed an attempt or conspiracy to commit a narcotics offense to possess, store, control, or provide Narcotics of Schedule I non-plant form. The defendant's actions as regulated and penalized under Article 112 paragraph (1) juncto Article 132 paragraph (1) of Law No. 35 of 2009 on Narcotics.

In this case, the defendant Ridho Fahmi Nurlete was charged under three articles. However, the focus here is only on the application of the elements of Article 112 paragraph (1) of Law No. 35 of 2009 on Narcotics. The text of Article 112 paragraph (1) of Law No. 35 of 2009 on Narcotics reads: "Anyone who unlawfully or without right possesses, stores, controls, or provides Narcotics of Schedule I non-plant form, shall be punished with imprisonment for at least 4 (four) years and at most 12 (twelve) years and a fine of at least Rp800,000,000.00 (eight hundred million rupiah) and at most Rp8,000,000,000.00 (eight billion rupiah)."

The provisions of Article 112 need to be elaborated regarding the meaning of each word contained in the article such as without right or unlawfully, possess, store, control, and provide. The Legal Dictionary defines without right or unlawfully as acting contrary to the legal obligations of the perpetrator or violating someone else's rights; doing something or failing to do something, which is contrary to legal obligations of propriety, or the prudent attitude expected in social dealings, on oneself or someone else's property; the formal nature of an act can only be regarded as unlawful if the act fulfills all the elements contained in the formulation of a delict in the law; the material nature of an act can be considered unlawful or not, not only based on written legal provisions but also on the general principles of unwritten law (Yuliandri, 2009, p. 217). Unlawful is defined as against the law, hence this view is called the formal nature of unlawfulness. Conversely, not all acts against the law are always contrary to statutory regulations, and an act that contravenes the law can be excepted as not unlawful. Unlawful can be interpreted as against both statutory and non-statutory law, hence this view is called the material nature of unlawfulness (Yuliandri, 2009, p. 217).

Additionally, several terms need to be understood, such as the meaning of possess, which comes from the root word 'ownership.' 'Ownership' means having the right, while "to possess" means to have, to take unlawfully to make one's own. "Store/To store" means to put in a safe place so as not to be damaged or lost, to save (money), to firmly keep (a secret), to hide, to

have (knowledge, magical powers, etc.), to contain something within. "To control" means to have power over (something), to hold power over (something) to exert influence (and so on) over, to be able to manage the situation, to manage, to restrain, to control, to be very capable in a field of knowledge. "To provide" means to prepare, to set up, to make (prepare, arrange, etc.), something for, to reserve (Asropi, 2020).

Article 112 only states that the possession, storage, control, or provision of Schedule I non-plant narcotics unlawfully or without right is an act prohibited by the state without further explanation of whether the possession, storage, control, or provision of narcotics is for personal use or for sale to others, while the explanation of the article also states this quite clearly (Asropi, 2020).

According to the Ambon High Court Number 108/PID.SUS/2024/PT AMB, the defendant has fulfilled the elements contained in Article 112 paragraph (1) of Law No. 35 of 2009 on Narcotics. The first element, "every person," has been met with the Public Prosecutor presenting Ridho Fahmi Nurlete as the defendant. The second element, "unlawfully or without right to possess, store, control, or provide Narcotics of Schedule I non-plant form." This has been met, evidenced by the presence of four (four) brown folded paper packets containing dry tobacco, and one (one) rolled/gulungan paper cigarette containing dry tobacco, suspected to be Synthetic Schedule I non-plant narcotics. One (one) white folded paper packet containing dry tobacco suspected to be Synthetic Schedule I non-plant narcotics. Seven (seven) white cigarette papers.

Judges' Considerations in the Provision of Article 112 Paragraph (1) of Law Number 35 of 2009 Concerning Narcotics in the Ambon High Court Decision

The judges' considerations in applying Article 112 paragraph (1) of Law No. 35 of 2009 on Narcotics in the decision of the Ambon High Court Number 108/PID.SUS/2024/PT AMB regarding the defendant Ridho Fahmi Nurlete are as follows:

The defendant Ridho Fahmi Nurlete was brought before the Ambon District Court with the following alternative charges: First, the defendant is accused of attempting or conspiring to commit a narcotics offense unlawfully or without right by offering for sale, selling, buying, receiving, acting as an intermediary in the sale, exchanging, or delivering Narcotics of Schedule I non-plant form, which is regulated and penalized under Article 114 paragraph (1) jo Article 132 paragraph (1) of Law No. 35 of 2009 on Narcotics. Second, the defendant is charged with attempting or conspiring to commit a narcotics offense by possessing, storing, controlling, or providing Narcotics of Schedule I non-plant form, which is regulated and penalized under Article 112 paragraph (1) jo Article 132 paragraph (1) of Law No. 35 of 2009 on Narcotics.

The Ambon District Court, through decision Number 86/Pid.Sus/2024/PN.Ambon dated June 27, 2024, found the defendant guilty of the second charge in a lawful and convincing manner. The Court sentenced the defendant to 1 year and 6 months in prison, with the order that the period of detention already served by the defendant be deducted from the sentence imposed. The defendant was also ordered to remain in custody. In addition, evidence consisting of dry tobacco suspected to be synthetic narcotics, along with several cell phones, was confiscated to be destroyed or turned over to the state. The defendant was also ordered to pay case fees of Rp 5,000.

On July 3, 2024, the Public Prosecutor appealed the decision, arguing that the punishment imposed by the Ambon District Court was too lenient given the defendant's role in this case. The Public Prosecutor requested that the sentence be adjusted to their demand, which was 5 years in prison and a fine of Rp 800,000,000, with an alternative 6 months of imprisonment. The defendant, through his legal counsel, submitted a counter-memorandum of appeal requesting that the decision of the Ambon District Court be upheld.

After considering the memorandum of appeal and the counter-memorandum of appeal and reviewing the entire case file, the Panel of Judges of the Ambon High Court opined that the decision of the Ambon District Court was correct and appropriate. The first-level judges' consideration was based on the fact that the evidence found in the defendant's boarding room was small, amounting to less than 1 gram, in accordance with the provisions of the Supreme Court Circular Letter Number 1 of 2017. Additionally, the defendant was considered a user, not a dealer. Therefore, the Panel of Judges of the Ambon High Court decided to affirm the decision of the Ambon District Court and ordered that the defendant remain in custody. The defendant was also ordered to pay the case fees at both levels of the judiciary.

In this case, the judges considered that the defendant Ridho Fahmi Nurlete had proven to violate Article 112 Paragraph (1) of the Narcotics Law, which states that anyone who unlawfully or without right possesses, stores, controls, or provides Schedule I non-plant narcotics can be sentenced to a minimum of four years in prison. However, in making their decision, the judges also considered the Counter-Memorandum of Appeal submitted by the Defendant's Legal Counsel, asserting that the defendant acted more as a narcotics user rather than a distributor. The evidence found on the defendant, consisting of a very small amount of synthetic Schedule I narcotics, less than one gram, was an important consideration in determining the sentence.

CONCLUSION

Based on the Ambon High Court Decision Number 108/PID.SUS/2024/PT AMB, the elements of the criminal offense in Article 112 paragraph (1) of the Narcotics Law have been fulfilled. The first element, namely "every person," has been proven by the Public Prosecutor who presented the defendant Ridho Fahmi Nurlete. The second element, "without the right or against the law to possess, store, control, or provide Class I non-plant narcotics," was also proven through the evidence found on the defendant, namely Class I synthetic narcotics. The defendant was proven to have kept the illicit goods without rights, which fulfills the elements of the criminal offense in the article.

In considering the defendant's sentence, the panel of judges at the Ambon District Court and Ambon Court of Appeal decided that the evidence of synthetic narcotics found on the defendant was below 1 gram, in accordance with Supreme Court Circular Letter Number 1 of 2017, which allows for lighter sentences for users than dealers. The judge also considered that the defendant acted more as a drug abuser, not a dealer. Therefore, the first instance verdict of 1 year and 6 months imprisonment was upheld by the Ambon Court of Appeal. The panel of judges also took into account the defendant's minor role in this case and that the sentence was in accordance with the applicable legal provisions.

REFERENCE

- Agustono, F., & Yusuf, H. (2024). Analisis Yuridis Penerapan Pasal 112 Ayat 1 Undang-undang 35 Tahun 2009 (Studi Kasus Putusan PN Depok Nomor: 375/PID. SUS/2023/PN. Dpk). *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat*, 3(11). <https://comserva.publikasiindonesia.id/index.php/comserva/article/view/1197>
- Anindita, T. (2015). Penjatuhan Pidana Di Bawah Batas Ancaman Minimum Khusus Pasal 112 Ayat (1) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Dalam Tindak Pidana Narkotika. *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 4(3), 330–336.
- Asropi, S. F. (2020). Analisis Yuridis terhadap Penerapan Hukum Pasal 112 Ayat (1) dan Ayat (2) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Kaitannya dengan Penerapan Hukum Pasal 127 Ayat (1) Huruf A, Ayat (2), dan Ayat (3) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika. *Mizan: Jurnal Ilmu Hukum*, 7(1), 83–98.

- Nugroho, B., Sumarso, S., Yustianti, S., & Roesli, M. (2019). Penerapan Pasal 112 Dan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika. *Jurnal Media Hukum Dan Peradilan*, 5(2), 305–313.
- Rambe, N., Syahrin, A., & Mulyadi, M. (2022). Penerapan Pasal 112 Dan Pasal 127 Ayat 1 Huruf A Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika: Studi Kasus Putusan Pengadilan Negeri Rantau Prapat Nomor 1023/Pid. Sus/2018/PN. RAP; 762/Pid. Sus/2017/PN. Rap; 712/Pid. Sus/2017/PN. Rap. *Locus: Jurnal Konsep Ilmu Hukum*, 2(4), 176–184.
- Yuliandri. (2009). *Asas-Asas Pembentukan Peraturan Perundang-Undangan yang Baik*. Raja Grafindo Persada.