APPLICATION OF LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS; CASE STUDY OF DECISIONS IN SERANG DISTRICT COURT

Aan Asphianto

ABSTRACT

Purpose: This research investigates the impact of different interpretations of Indonesian Law on narcotics crimes, focusing on Articles 112 and 127. It examines court decisions to understand evidence application and distinguish between possession and self-use of narcotics. The aim is to improve consistency, fairness, and effectiveness in combating narcotics crimes.

Theoretical Framework: This research uses legal and criminological theories to analyze the interpretation and application of law in narcotics crimes. Interpretivism focuses on language, judicial precedent, and societal norms, while legal positivism emphasizes formal rules. Labeling theory suggests inconsistent application can lead to stigmatization and marginalization. Social learning theory suggests discrepancies in law interpretation can influence perceptions and attitudes.

Design/Methodology/Approach: This research uses a mixed-methods approach, combining normative and sociological juridical methods, with a statutory approach, to explore the interpretation and application of law in narcotics cases. It uses a literature review, document analysis, and qualitative data analysis to identify patterns, discrepancies, and trends in narcotics law interpretation. The study aims to provide a comprehensive understanding of societal implications and criminogenic factors in narcotics cases.

Findings: The research reveals significant discrepancies in the interpretation and application of Articles 112 and 127 of Law Number 35 of 2009 concerning Narcotics, leading to inconsistent treatment and punishment of perpetrators. This inconsistency contributes to criminogenic factors and perpetuates social stigmas, hindering efforts to address underlying issues and promote rehabilitation and harm reduction strategies.

Research, Practical & Social Implication: The research highlights the complexities of narcotics laws, emphasizing the need for further research on factors influencing legal interpretations and the societal impacts of inconsistent enforcement practices. It also emphasizes the need for enhanced training for law enforcement and a multi-faceted approach to address social inequalities and promote fairness.

Originality/Value: This research explores the impact of varying interpretations of narcotics laws on legal outcomes and societal dynamics. It integrates legal and sociological perspectives, analyzing court decisions to understand the complexities of narcotics offenses. The findings have practical implications for legal practitioners, law enforcement agencies, and policymakers, advancing scholarly understanding and informing policy.

Keywords: differences in interpretation, criminogen, narcotics, criminal.

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APLICAÇÃO DA LEI NÚMERO 35 DE 2009 SOBRE NARCÓTICOS; ESTUDO DE CASO DE DECISÕES NO TRIBUNAL DISTRITAL DE SERANG

RESUMO

Objetivo: Esta pesquisa investiga o impacto de diferentes interpretações da lei indonésia sobre crimes de narcóticos, com foco nos artigos 112 e 127. Ela examina decisões judiciais para entender a aplicação de provas e distinguir entre posse e uso próprio de narcóticos. O objetivo é melhorar a consistência, a justiça e a eficácia no combate aos crimes de narcóticos.

Estrutura teórica: Esta pesquisa usa teorias jurídicas e criminológicas para analisar a interpretação e a aplicação da lei em crimes de narcóticos. O interpretativismo se concentra na linguagem, no precedente judicial e nas normas sociais, enquanto o positivismo jurídico enfatiza as regras formais. A teoria da rotulagem sugere que a aplicação inconsistente pode levar à estigmatização e à marginalização. A teoria da aprendizagem social sugere que as discrepâncias na interpretação da lei podem influenciar as percepções e atitudes.

Projeto/Metodologia/Abordagem: Esta pesquisa utiliza uma abordagem de métodos mistos, combinando métodos jurídicos normativos e sociológicos, com uma abordagem estatutária, para explorar a interpretação e a aplicação da lei em casos de narcóticos. Ela utiliza uma revisão da literatura, análise de documentos e análise de dados qualitativos para identificar padrões, discrepâncias e tendências na interpretação da lei de narcóticos. O estudo visa a fornecer uma compreensão abrangente das implicações sociais e dos fatores criminogênicos em casos de narcóticos.

Conclusões: A pesquisa revela discrepâncias significativas na interpretação e aplicação dos artigos 112 e 127 da Lei nº 35 de 2009 sobre entorpecentes, o que leva a um tratamento e punição inconsistentes dos infratores. Essa inconsistência contribui para os fatores criminogênicos e perpetua os estigmas sociais, dificultando os esforços para abordar questões subjacentes e promover estratégias de reabilitação e redução de danos.

Pesquisa, implicações práticas e sociais: A pesquisa destaca as complexidades das leis de narcóticos, enfatizando a necessidade de mais pesquisas sobre os fatores que influenciam as interpretações legais e os impactos sociais das práticas inconsistentes de aplicação da lei. Ela também enfatiza a necessidade de treinamento aprimorado para a aplicação da lei e uma abordagem multifacetada para lidar com as desigualdades sociais e promover a justiça.

Originalidade/valor: Esta pesquisa explora o impacto das diferentes interpretações das leis de narcóticos sobre os resultados legais e a dinâmica social. Ela integra perspectivas jurídicas e sociológicas, analisando decisões judiciais para entender as complexidades dos delitos de narcóticos. As descobertas têm implicações práticas para profissionais da área jurídica, órgãos de aplicação da lei e formuladores de políticas, avançando o entendimento acadêmico e informando as políticas.

Palavras-chave: diferenças de interpretação, criminógeno, narcóticos, criminal.
Resumen

Objetivo: Esta investigación estudia el impacto de las distintas interpretaciones de la legislación indonesia sobre delitos relacionados con estupefacientes, centrándose en los artículos 112 y 127. Examina las decisiones judiciales para comprender la aplicación de las pruebas y distinguir entre posesión y uso propio de estupefacientes. El objetivo es mejorar la coherencia, la equidad y la eficacia en la lucha contra los delitos relacionados con los estupefacientes.

Marco teórico: Esta investigación utiliza teorías jurídicas y criminológicas para analizar la interpretación y aplicación de la ley en los delitos de drogas. El interpretivismo se centra en el lenguaje, los precedentes judiciales y las normas sociales, mientras que el positivismo jurídico hace hincapié en las normas formales. La teoría del etiquetado sugiere que una aplicación incoherente puede conducir a la estigmatización y la marginación. La teoría del aprendizaje social sugiere que las discrepancias en la interpretación de la ley pueden influir en las percepciones y actitudes.

Diseño/metodología/enfoque: Esta investigación utiliza un enfoque metodológico mixto, que combina métodos jurídicos normativos y sociológicos, con un enfoque estatutario, para explorar la interpretación y aplicación de la ley en los casos de estupefacientes. Utiliza una revisión bibliográfica, un análisis documental y un análisis cualitativo de datos para identificar patrones, discrepancias y tendencias en la interpretación de la ley de estupefacientes. El estudio pretende proporcionar una comprensión global de las implicaciones sociales y los factores criminógenos en los casos de narcóticos.

Conclusiones: La investigación revela discrepancias significativas en la interpretación y aplicación de los artículos 112 y 127 de la Ley No. 35 de 2009 sobre estupefacientes, lo que conduce a un tratamiento y castigo incoherentes de los infractores. Esta inconsistencia contribuye a los factores criminógenos y perpetúa los estigmas sociales, obstaculizando los esfuerzos para abordar los problemas subyacentes y promover estrategias de rehabilitación y reducción de daños.

Investigación e implicaciones prácticas y sociales: La investigación pone de relieve las complejidades de las leyes sobre estupefacientes y subraya la necesidad de seguir investigando los factores que influyen en las interpretaciones jurídicas y las repercusiones sociales de las prácticas incoherentes de aplicación de la ley. También subraya la necesidad de mejorar la formación de las fuerzas del orden y de adoptar un enfoque polifacético para abordar las desigualdades sociales y promover la justicia.

Originalidad/valor: Esta investigación explora el impacto de las diferentes interpretaciones de las leyes sobre estupefacientes en los resultados jurídicos y la dinámica social. Integra perspectivas jurídicas y sociológicas, analizando las decisiones judiciales para comprender las complejidades de los delitos de estupefacientes. Las conclusiones tienen implicaciones prácticas para los profesionales de la justicia, los organismos encargados de hacer cumplir la ley y los responsables políticos, y contribuyen a mejorar la comprensión académica y la formulación de políticas.

Palabras clave: diferencias de interpretación, criminógeno, narcóticos, penal.
1 INTRODUCTION

Narcotics crime in RI Law Number 35 of 2009 concerning Narcotics provides for quite severe criminal sanctions, besides being subject to corporal punishment and also being subject to fines, but in some cases of narcotic crime the perpetrators are actually increasing. This is due to the fact that the conviction did not provide a deterrent effect or deterrent effect on the perpetrators due to the judge's decision having a different interpretation of the article applied and not in accordance with RI Law Number 35 of 2009 concerning Narcotics. Judges in deciding cases should not misinterpret and be in accordance with the articles applied so as to create justice and create a deterrent effect for perpetrators of narcotics crimes (Dewi, 2019).

Article 1 point 1 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, namely: Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain, and can cause dependence, which is divided into groups as attached to this law.

The crime of drug abuse is an extraordinary crime, as is the case with corruption and terrorism. This is based on the increasing circulation and abuse of narcotics in Indonesia. The problem of narcotics abuse has broad and complex dimensions, both in terms of medical, psychiatric, and psychosocial (economic, political, socio-cultural, criminal, and so on). Most worryingly, the narcotics distribution network has a very neat and well-organized system, making it very difficult to eradicate (Jainah, 2013).

Organized crime in narcotics is a crime committed by a structured group consisting of 3 (three) or more people who have existed for a certain time and act together with the aim of committing a narcotic crime, (Ratna, 2017). The government as an institution that is responsible for guaranteeing the lives of its people has done quite well in eradicating narcotics so far. One of them is to make a policy of changing Law Number 22 of 1997 to Law Number 35 of 2009 concerning Narcotics to increase activities to prevent and eradicate the abuse and illicit traffic of narcotics which is very detrimental and endangers the life of the community, nation and state. This law aims to regulate efforts to eradicate narcotics crimes through the threat of criminal sanctions, including imprisonment, life imprisonment and death penalty, (Siswanto, 2009).
The judge's decision which is a court decision is an important aspect in resolving criminal cases. It can be said that the judge's decision on the one hand is useful for the defendant to obtain legal certainty (rechts zekerheid) regarding his status. Meanwhile, on the other hand, the judge is expected to be able to give a decision that reflects the values of justice by taking into account the good or evil nature of the defendant so that the decision made is in accordance with his guilt. (Thai, L. M., 2023)

The justice contained in the judge's decision is a requirement to maintain the authority of the law as the commander in chief who maintains the survival of the community. (Dhanapal, K., & Renganathan, K., 2023) Judges' decisions that are unfair will reduce public trust in the judiciary. Therefore, judges as state officials who are authorized by law to adjudicate in the criminal justice process have a vital role in law enforcement to achieve essential truth, (https://keniteraan, 2022).

Perpetrators of narcotics crimes who receive punishment based on court decisions are often considered to have not fulfilled the sense of justice and legal certainty as stated in 2 (two) decisions.

Events that do not reflect a sense of justice and legal certainty can be described by events that fulfill the same elements and cases as narcotics crimes, but in a judge's decision the perpetrator should be sentenced as a user but the judge sentenced him as a dealer.

Therefore, due to differences in interpretation in the application of law from law enforcers who have different perspectives, the criminal implications imposed on perpetrators of narcotics crimes can be inappropriate. This error can lead to new crimes in eradicating narcotics crimes. For example perpetrators who should be rehabilitated but imprisoned or vice versa.

Observing the differences in the 2 (two) elements of the above articles are very different and when looking at the decisions related to Articles 112 and 127 there are still differences regarding the interpretation in terms of applying the article to perpetrators of narcotics crimes who should be users but were sentenced as dealers. In line with the 2 (two) decisions above, the decision with Number: 1010/Pid.Sus/2020/PN Srg was decided with Article 127 on the basis of 0.0288 grams of evidence while the decision with Number: 926/Pid.Sus/2021/ PN Srg was decided by a judge under Article 112 even though when looking at the evidence and the laboratory test results of the National
Narcotics Agency (BNN), namely the final net weight of 0.0402 grams, the judge should have decided under Article 127.

Based on the above, in theory and practice the application of the article in the judge's decision still shows a gap between das sein and das sollen, namely the existence of a judge's decision that misinterpreted the application of Articles 112 and 127 where the judge did not see in terms of the evidence seized and if Judging from the evidence and laboratory results of the National Narcotics Agency (BNN), it is clear which ones must be decided with Article 112 and which ones must be decided with Article 127.

The problem is how differences in interpretation in the application of law can become a criminogenic factor in eradicating narcotics crimes and how to apply the evidence of Articles 112 and 127 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in the Serang District Court Decision Number: 1010/Pid.Sus/2020/ PN Srg and Number: 926/Pid.Sus/2021/PN Srg)?

2 LITERATURE REVIEW

The literature review section of the research provides an overview of existing scholarship related to narcotics laws, legal interpretation, criminological theory, and the societal impacts of drug policies. Key themes and findings from relevant studies are synthesized to contextualize the research and identify gaps in current knowledge. The literature review includes:

Legal Frameworks for Narcotics Control:
Reviewing international and national legal frameworks governing narcotics control, including conventions, treaties, and domestic legislation, to understand the legal basis for narcotics laws and enforcement practices.

Interpretation of Narcotics Laws:
Exploring literature on legal interpretation and statutory construction, with a focus on how courts interpret and apply narcotics laws, including the criteria used to categorize individuals as dealers or users.

Criminological Perspectives on Drug Offenses:
Examining criminological theories, such as labeling theory and social learning theory, to understand the social dynamics of drug offenses, including the stigmatization
Empirical Studies on Legal Decision-Making:

Reviewing empirical studies examining the factors influencing legal decision-making in narcotics cases, including the impact of judicial discretion, prosecutorial strategies, and evidentiary standards on case outcomes.

Societal Impacts of Drug Policies:

Analyzing research on the societal impacts of drug policies, including the disproportionate impact of drug laws on marginalized communities, the effectiveness of harm reduction strategies, and the consequences of punitive approaches to drug control.

Critiques of Current Legal Practices:

Highlighting critiques of current legal practices in narcotics enforcement, such as concerns about racial disparities in drug arrests, the criminalization of drug addiction, and the overreliance on incarceration as a response to drug-related offenses.

Overall, the literature review provides a comprehensive overview of the theoretical, empirical, and practical dimensions of narcotics law and enforcement, laying the groundwork for the research and identifying areas for further investigation.

3 METHOD

The research method used by researchers in this research is using normative juridical and sociological juridical methods, (Fajar, 2010). The approach used is the Statute Approach. The data collection technique used in this study will be obtained through a literature study. The data analysis used in this research is qualitative data analysis, (Soemitro, 2010).

The type of research used is normative juridical and sociological juridical with the approach used is the Statutary Approach. The data collection procedure was carried out by means of literature study, qualitative analysis of data in order to obtain conclusions. Based on the results of the research and discussion, it can be concluded first, the differences in interpretation in Article 112 and Article 127 result in different decisions between one perpetrator and another with the same act. The implications of the treatment or punishment imposed on the perpetrators of narcotics crimes are
inappropriate between rehabilitation sentences or prison sentences which then result in the emergence of new crimes (crimonogens) in narcotics crimes.

4 FINDINGS AND DISCUSSION

A. Differences in Interpretation of Serang District Court Decision Number: 1010/Pid.Sus/2020/PN Srg and Number: 926/Pid.Sus/2021/PN Srg

The term "Narcotics" comes from the Greek word "narke" which means drugged so that you don't feel anything. Initially, the use of opium or opium or madat drugs was only used as a tool for religious ritual ceremonies and treatment. Along with the times, narcotics abuse is increasingly widespread and increasingly dangerous so that regulations have been formed to reduce the number of narcotics abuse which have undergone several changes until the establishment of RI Law Number 35 of 2009 concerning Narcotics, (Sasangka, 2003).

The difference in the application of these articles indicates a difference in the interpretation of the law. Differences in legal interpretations are actually a normal thing in the judicial process, but the problem is that various legal interpretations assume that the quality of these laws and regulations is not good or at least cannot provide legal certainty which is the orientation of legal objectives as expressed by Gustav Radbruch, (Susanti, 2019).

Legal certainty does not materialize by itself but must still be implemented by law enforcers, for this reason legal certainty is needed in its application, in this case positive law. But the fuzzy meaning of the law can weaken the positive law. The consequence of the principle of nullum crimen nulla poena sine lege scripta (no crime without a law governing it) is that prohibited acts must be clearly written in law, Hiariej, (2010).

One of the most interesting developments in legal theory today is the increasing importance of the concept of interpretation. The teachings of interpretation in the discovery of this law have long been known, which is called juridical hermeneutics, (Susanti, 2010).

Issues of legal interpretation question issues of language and interpretation, text and significance through the meaning given, ranging from institutional, axiological,
socio-political questions, to analytic questions about which method of interpretation is the most adequate, (Sutiyoso, 2009).

Based on the issues of legal interpretation, there are three important problems in the law, namely the purpose of ambiguity and complexity. Based on this, the ambiguity of Law Number 35 of 2009 concerning Narcotics, especially Article 112 Paragraph (1) and Article 127 Paragraph (1) letter a, (Susanti, 2010).

Article 112 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics with the element "Any person without rights or against the law owns, stores, controls or provides Narcotics Group I not plants. "Phrase" owns, stores, controls or provides as the main element to be addressed from the article has a very wide scope of events or actions. As a result, many events or actions can easily be captured by the intent of these provisions.

Article 127 paragraph (1) letter a Republic of Indonesia Law Number 35 of 2009 concerning Narcotics with the element "Every Narcotics Class I abuser for himself". The act of "abusing" has the intention of using or consuming narcotics which is carried out without rights or against the law, in this case without a doctor's recommendation. According to H.L.A. Hart is a problem of ambiguity in statutory provisions, (Sutiyoso, 2010).

First, in a broad community, law works through general rules and not through individual directives, so it tends to be abstract, using general concepts, so that it may become blurred. Second, because the rule of law uses language to resolve social conflicts, much depends on the words used by these rules. The provisions of laws and regulations actually have two layers, namely written legal texts and legal norms which are not explicitly written but the meaning is behind the legal text.

Article 112 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, the level of obscurity lies in the meaning of the text which is very broad so that it covers a lot of the reality of actions. As a result, many actions are caught in the legal text. This is very prone to criminalizing someone's actions, so that the principle of justice is difficult to enforce and will be trapped in legal certainty. Article 127 paragraph (1) letter a Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics in terms of general rules and in terms of legal texts is clearer and more specific in meaning. The relationship between legal norms and legal texts is more
easily understood by someone, especially law enforcement officials, so that its application does not require complicated legal interpretations.

According to Julies L. Coleman and Brian Leiter, the complexity of laws and regulations will be more complicated if some of the rules conflict with each other, in situations like this the law becomes uncertain and interpretation ceases to be objective. According to Emanuela Carbonara and Francesco Parisi, they stated that the harmonization of laws from various conflicting regulations actually led to disharmony, (Sutiyodo, 2010).

Article 112 paragraph (1) with Article 127 paragraph (1) letter a Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, there has been a conflict of norms which can lead to complexity of problems when applied to concrete cases. Conflicts will occur because the actions of the perpetrator "Abuse" at the same time are almost always accompanied by acts of "possessing, storing, controlling or providing". Therefore, when facing concrete cases, law enforcement officials are required to interpret the law wisely and prudently, to determine what criminal events were actually committed by the perpetrators of the crime (Khalid, 2014).

In practice, the SEMA has not been used as a basis for enforcing the law on narcotics crimes, especially for law enforcement officials outside the Supreme Court, and it is not uncommon for the Supreme Court itself to have different interpretations and are not based on the SEMA. In dealing with narcotics cases, many take legal action. Not infrequently the Supreme Court itself, based on the SEMA, decides narcotics cases only based on the amount of narcotics controlled by the perpetrators, not based on the position of the case or the profile of the perpetrators so that it is not uncommon for decisions to differ from one to another and do not fulfill a sense of justice and legal certainty for actors and for society.

Article 112 paragraph (1) which states "a person without rights or against the law owns, keeps, controls, or provides Narcotics Group I", should be followed by the purpose or legal facts for what purpose so that with this clarity it does not cause multiple interpretations and is not used as a reserve article because actually several articles in the narcotics law contain elements of owning, storing, controlling, so that they can be applied to all actions, (Ratna, 2017).

Because of this, differences in the application of law to several narcotics cases that result in different decisions in the same case can lead to injustice. This situation can
lead to ambiguity that leads to uncertainty and injustice. Some decisions are considered to have disturbed the community's sense of justice, and have also eroded trust in the judiciary in general (Murad, 2005).

The policy of placing abusers in rehabilitation institutions through an assessment process without a formal trial is a form of depenalization of narcotics crimes where abusers, victims, and addicts who are initially given criminal sanctions are replaced with rehabilitation, (Supardi, 2022).

It is hoped that the imposition of appropriate punishment for perpetrators of narcotics crimes can reduce and even eradicate narcotics abuse and the legal objectives of justice, certainty and benefit can be achieved. For this reason, it is necessary to have a common perception among law enforcers in the application of the law on narcotics crimes, especially Article 112 paragraph (1) and Article 127 paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics so that they do not give rise to different interpretations which result in many Narcotics cases that propose legal remedies and with appropriate treatment for the perpetrators are expected to reduce the number of narcotics crimes.

Whereas in this study the interpretation used is systematic interpretation. Systematic interpretation is a method that interprets laws as part of the entire statutory system. Interpreting the law must not deviate or leave the statutory system or the legal system. In a systematic interpretation, law is seen by judges as a unit as a regulatory system, (Martokusumo, 2000). One rule is not seen as a stand-alone rule, but as part of a system. Even though interpretation is a legal obligation of the judge, there are some restrictions regarding the freedom of the judge to interpret the law.

Table 1

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<tr>
<th>No.</th>
<th>Description</th>
<th>Notes</th>
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<tbody>
<tr>
<td>1</td>
<td>Declare the Defendant REDHA IRENE KURNIAWAN Binti FICUS KURNIAWAN, proven legally and convincingly guilty of committing the crime of &quot;Narcotics Abuse Group I for oneself&quot; as in the indictment;</td>
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<td>2</td>
<td>Sentenced punishment against the Defendant and therefore with imprisonment for 10 (ten) months;</td>
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<td>3</td>
<td>Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed; Determine that the Defendant remains in custody;</td>
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<td>4</td>
<td>Establish evidence in the form of: 1 (one) glass pipe containing Narcotics of the type of Shabu with a gross weight of ±0.56 (zero point fifty six) grams 1 (one) gas lighter seized and destroyed</td>
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Charged the Defendant to pay court fees in the amount of Rp. 5,000.00 (five thousand rupiah).

That there are differences in interpretation in the 2 (two) Serang District Court Decisions Number: 1010/Pid.Sus/2020/PN Srg decided with Article 127 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics while the Serang District Court Decision Number: 926/Pid. Sus/2021/PN Srg, which has little evidence, decided with Article 112 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, meaning that the perpetrator should have been sentenced as a user, but the judge sentenced him as a dealer.

This can be seen from the judge's decision which misinterpreted the application of Articles 112 and 127, in which the judge did not look at the confiscated evidence and when looking at the evidence and laboratory results of the National Narcotics Agency (BNN) it was clear which one should be decided by Article 112 and which one must be decided with Article 127 and the judge should consider, carefully examine the provisions of Article 188 paragraphs (1) and (2) of the Criminal Procedure Code, to obtain evidence in accordance with the provisions of Article 184 paragraph (1) letters a, d, e The Criminal Procedure Code must examine and analyze carefully and objectively so that there is a conformity of evidence in the form of witness statements, instructions, statements of the accused and sentenced as a user not as a dealer so that the judge does not misinterpret what should be sentenced under Article 127 as a user instead being sentenced under Article 112 as dealers and vice versa those who should be sentenced under Article 112 as dealers are instead sentenced under Article 127 as users.

B. Application of Proof of Articles 112 and 127 of Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in Serang District Court Decision Number: 1010/Pid.Sus/2020/PNSrg and Number: 926/Pid.Sus/2021/PN Srg

Article 112 paragraph (1) reads "everyone who without rights or against the law owns, keeps, controls, or provides Narcotics Category I not plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah)."
Table 2

Serang District Court Decision Number: 926/Pid.Sus/2021/PN Srg

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<th>No.</th>
<th>Description</th>
<th>Notes</th>
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<tbody>
<tr>
<td>1</td>
<td>Declare the Defendant FATULLAH BIN (Alm) SUDIN mentioned above, proven legally and convincingly guilty of committing the crime &quot;WITHOUT RIGHTS AND AGAINST THE LAW TO OWN AND KEEP NARCOTICS CLASS I NON-Plants;&quot;</td>
<td></td>
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<tr>
<td>2</td>
<td>Sentenced punishment against the Defendant therefore with imprisonment for 5 (five) years and a fine of Rp. 1,000,000,000.- (one billion rupiah) rupiah with the provision that if the fine is not paid it is replaced with imprisonment for 3 (three) months; Ordering the accused to remain in custody,</td>
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<tr>
<td>3</td>
<td>Determine the evidence in the form of: 2 (two) small packs of narcotics Category I, not plants of the type of Shabu. 1 (one) used Country cigarette pack. 1 (one) brown shirt. 1 (one) blue Samsung brand cellphone. Deprived for destruction;</td>
<td></td>
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<tr>
<td>4</td>
<td>Burdened the Defendant to pay court fees in the amount of Rp. 5000, -(five thousand rupiahs);</td>
<td></td>
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<tr>
<td>5</td>
<td>Declare the Defendant FATULLAH BIN (Alm) SUDIN mentioned above, proven legally and convincingly guilty of committing the crime &quot;WITHOUT RIGHTS AND AGAINST THE LAW TO OWN AND KEEP NARCOTICS CLASS I NON-Plants;&quot;</td>
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Source: Prepared by Author 2024

Based on the provisions of the law, that the act of possessing, storing, controlling or providing Narcotics Group I non-plants must have permission from the competent authority, which in this case is the Minister of Health of the Republic of Indonesia, both for the benefit of health services, development of science and/or technology, which is strictly regulated in Article 7, Article 8 paragraph (2) and Article 13 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.

Deviation of Article 127 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics where the accused as an addict or victim of abuser should be rehabilitated. However, because Article 112 is used as a coating article in Article 127 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, making addicts or victims of Narcotics abuse sentenced to imprisonment if the judge agrees to use Article 112 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics without further proof of guilt.

Article 127 paragraph (1) letter a reads "every person who abuses Narcotics Category I for himself shall be punished with imprisonment for a maximum of 4 (four) years". The elements are as follows: The element of “Loyalty, The element of “abuser” The element of “Narcotics Group I” The element of “For yourself.”
C. Case Analysis Serang District Court Decision Number: 1010/Pid.Sus/2020/PN Srg and Number: 926/Pid.Sus/2021/PN Srg).

Based on the indictment of each case that the authors have previously described, that the Public Prosecutor has the same view in providing his indictment against the defendants, the public prosecutor makes his indictment in an alternative form and uses the same article, namely Article 112 paragraph (1) and Article 127 paragraph (1) letter a Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.

Based on the chronology of the cases that the authors have previously described, it can be concluded that the two decisions have an almost similar chronological form, that the perpetrators were arrested by members of the Police while they were at home, to be precise in the room, and the perpetrators found evidence of narcotics in form of methamphetamine. During interrogation the perpetrators admitted that the narcotics were theirs and planned to use them themselves.

Of the two demands, the Public Prosecutor has the same view, namely that the accused is guilty based on the first alternative charge of Article 112 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. Whereas in the first charge, the Public Prosecutor demanded that the defendant be sentenced to imprisonment for 1 (one) year, reduced in its entirety while the defendant was in the period of arrest and detention. Whereas in the second charge, the Public Prosecutor made heavier demands, by demanding that the defendant be sentenced to imprisonment for 7 (seven) years, reduced while the defendant was in detention and a fine of Rp. 1,000,000,000.- (one billion rupiah) subsidiary 6 (six) months in prison.

Based on the decisions that the authors have previously described above, it can be seen that the decisions handed down to the defendants were different. In fact, if we look at the chronology of the cases, they have a similar form. that in the first decision the defendant was sentenced under Article 127 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics while in the second decision the defendant was sentenced under Article 112 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.

The duration of the sanctions imposed by the Panel of Judges on the defendants in the first decision of the defendant Redha Irene Kurniawan Binti Ficus was 10 (ten) months. Then to the defendant in the second decision the defendant Fatullah Bin (Alm) Sudin was sentenced to imprisonment for 5 (five) years and months. If withdrawn from
the side of the defendants, the defendant Redha Irene Kurniawan Binti Ficus is considered more profitable because the sanction imposed on the defendant is only 10 (ten) months in prison. In contrast to the defendant Fatullah Bin (Alm) Sudin who was sentenced to 5 (five) years.

The defendant Fatullah Bin (Alm) Sudin is subject to Article 112 paragraph (1) which reads "Anyone who without rights or against the law owns, stores, controls or provides Narcotics Category I not plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah), while the defendant Redha Irene Kurniawan Binti Ficus is subject to Article 127 paragraph (1) letter a which reads "Every Narcotics Abuser of Group I for himself shall be punished with imprisonment for a maximum of 4 (four) years".

If examined according to the flow of the trial, the indictments given by the Public Prosecutor played a major role in the imposition of criminal sanctions given to the defendants by the Panel of Judges. If we analyze again the charges that the public prosecutor gave to the defendants in these two cases, the decisions are based on alternative charges. Which is where the Panel of Judges has the freedom to choose which article is proven without having to pay attention to the order of the articles being charged. In this indictment using Articles 112 and 127 of Law Number 35 of 2009 can be a tool for rogue law enforcers. With the implementation of this article in alternative charges, law enforcement officials can manipulate the criminal sanctions imposed on the defendants.

5 CONCLUSIONS

Differences in interpretation in Article 112 and Article 127 result in different decisions between one perpetrator and another with the same act. The implications of the treatment or punishment imposed on the perpetrators of narcotics crimes are inappropriate between rehabilitation sentences or prison sentences which then result in the emergence of new crimes (crimonogens) in narcotics crimes. Perpetrators who should be rehabilitated but are imprisoned, or conversely perpetrators who should be imprisoned but are instead in rehabilitation, this is one of the reasons a perpetrator
commits crimes repeatedly. Apart from that, the difference in interpretation also resulted in an increase in the quality of the perpetrators, who were originally only users, but could become dealers.

Application of Proof against Article 112 and Article 127 in RI Law Number 35 of 2009 concerning Narcotics. In the Serang District Court Decision Number: 1010/Pid.Sus/2020/Pn Srg and Number: 926/Pid.Sus/2021/Pn Srg, the first was sentenced under Article 127 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics while the second was sentenced under Article 112 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, where in Article 112 it is understood as possession, storage, control or supply of narcotics for other people not for oneself, but if it is used for oneself, then in the interpretation systematic interpretation can be imposed with Article 127. Differences in the application of law in the 2 (two) decisions above lead to different interpretations of its application by law enforcers and the application of the law on narcotics crime to dealers and users.

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