

JURIDICAL ANALYSIS OF THE EVIDENTIARY PRACTICE IN CRIMINAL CONSPIRACY IN NARCOTICS CASES

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Abstract

This research aims to analyze the implementation of evidence and criminal liability in the offense of conspiracy to commit narcotics crime, as well as to evaluate the legal considerations of judges in delivering a not guilty verdict to the defendant based on the Supreme Court Decision Number 1488 K/Pid.Sus/2021. The problems in this case highlight the complexity of proving the involvement of actors in a conspiracy, especially in narcotics cases classified as extraordinary crimes. This study also examines the validity of the evidence and the conformity of law enforcement with the principles of justice and legality. The method used in this research is normative juridical, using statutory, conceptual, and case approaches. The data is collected through literature review and judicial decisions, then analyzed qualitatively using the theory of justice, theory of evidence, and theory of criminal responsibility. This approach allows the researcher to examine the application of legal norms and principles in the practice of law enforcement against conspiracy in narcotics crime. The results of the research show that the process of proving conspiracy in narcotics cases does not fully align with the principle of due process of law due to the lack of technical evidence convincing enough for the judges. Criminal liability in this case cannot be imposed collectively without strong individual evidence. Moreover, the Supreme Court's decision to reject the prosecutor's cassation reflects the limited scope for legal correction in not guilty verdicts. This highlights the need for regulatory reform and strengthening the capacity of law enforcement officers to handle narcotics crimes in a more comprehensive and fair manner.

Keywords : Evidence, Criminal Conspiracy, Narcotics

INTRODUCTION

The abuse of narcotic substances continues to pose a serious threat to public health, social order, and the legal system in Indonesia. Categorized as both serious and extraordinary crimes due to their transnational, covert, and organized nature, narcotics offenses undermine not only individual welfare but also national legal integrity (Law No. 35 of 2009). Indonesia responds with a dual-track approach: Article 54 offers rehabilitation for users, reflecting a restorative model, while Articles 112 to 114 impose severe sanctions, including life imprisonment and the death penalty, on those involved in trafficking and possession.

This dualism stems from the theory of legal protection (*teori perlindungan hukum*), which mandates that the state protect citizens from threats to moral, physical, and generational health (Muladi, 2002). Narcotics-related crimes often trigger secondary criminality—such as theft, violence, and money laundering and are typically tied to transnational organized crime networks. The global dimension of this issue has resulted in collective international efforts, including the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

While extensive legal and scholarly focus has addressed institutional capacity, punishment policies, and procedural enforcement, few studies have examined the evidentiary architecture in narcotics-related conspiracy cases. Article 132(1) of Law No. 35 of 2009 criminalizes mere agreement or intent to commit a narcotics offense, even in the absence of execution making it a *delik formil*, or formal offense, based solely on *mens rea* and consensus (Simons, 2016). This formulation deviates from the general principle under Article 53 of the Indonesian Penal Code (KUHP), where attempted or incomplete action is typically required for penal liability. By contrast, Article 132(1) allows for punishment based solely on the existence of a plan raising serious concerns about over-criminalization, especially when based on circumstantial evidence such as ambiguous communication, proximity, or association.

Judicial practice shows inconsistencies in applying this provision, and its broad interpretation risks undermining the principle of *in dubio pro reo* (Andi Hamzah, 2005). In several cases, individuals have been charged for merely introducing contacts or lending a phone, despite lacking intent or direct involvement. This indicates a disconnect between the legal doctrine and the standards of proof actually applied in courtrooms. This paper seeks to fill that gap by examining how evidentiary standards are interpreted in Indonesian narcotics conspiracy cases. Using Supreme Court Decision No. 1488 K/Pid.Sus/2021 as a primary case study, the research analyzes the evidentiary reasoning behind the acquittal of the defendant, Bayu Van Hauten, who was initially accused of conspiracy under Article 132(1) despite the lack of material evidence or active involvement.

By integrating doctrinal review, jurisprudential comparison, and case analysis, this study aims to clarify the evidentiary threshold required for conspiracy charges, emphasizing the need for credible and corroborated proof of shared criminal intent. The novelty of this research lies in bridging normative legal doctrine with empirical courtroom realities, contributing to the discourse on proportionality, legal certainty, and the protection of constitutional rights in Indonesia's narcotics enforcement system.

RESEARCH METHODS

This research adopts a normative juridical approach supported by a case-based empirical perspective. The normative approach is used to analyze laws, legal principles, and jurisprudence related to criminal conspiracy in narcotics cases, particularly under Article 132(1) of Law No. 35 of 2009. The empirical aspect is reflected in the critical examination of a specific judicial decision, namely Supreme Court Decision No. 1488 K/Pid.Sus/2021, which serves as the central case study to explore how legal norms are applied in practice.

The scope of the study encompasses the statutory construction, evidentiary requirements, and judicial interpretation of conspiracy offenses in narcotics law. The main object of the research is the evidentiary process and legal reasoning applied in the assessment of conspiracy charges, especially where indirect evidence and assumptions of joint intent are involved.

The research focus centers on the operational implementation of the concept of “permufakatan jahat” (criminal conspiracy) as a formal offense where the existence of a criminal agreement suffices for prosecution, regardless of whether the crime is executed. The study aims to identify how courts evaluate elements such as *mens rea* (criminal intent), the sufficiency and reliability of supporting evidence, and the implications for the principle of due process.

This study was conducted through library research and digital case document analysis, particularly utilizing the Indonesian Supreme Court’s online decision repository. The geographical context of the primary case study is the city of Samarinda, East Kalimantan, where the original District Court decision underlying the Supreme Court ruling was issued.

Given the normative juridical character of the research, there is no population in the statistical sense. However, a purposive selection of informants was carried out to provide qualitative insights. These included legal academics, judges, and practitioners with expertise in criminal law and narcotics offenses. Informal semi-structured interviews were conducted to support the doctrinal analysis with expert perspectives.

The main materials used in this study include primary legal sources such as legislation (especially Law No. 35 of 2009), judicial decisions, and case records, as well as secondary sources such as books, journal articles, and legal commentaries. Research tools included legal text analysis frameworks, interview protocols, and comparative legal reasoning matrices.

Data collection techniques included:

1. Document analysis of statutory texts and jurisprudence to extract legal principles and patterns of interpretation;
2. Literature review to provide theoretical foundations and identify scholarly gaps; and
3. Expert interviews to clarify interpretative nuances in legal practice.

For data analysis, the study employed a qualitative-descriptive method with a normative-analytical framework, focusing on statutory interpretation (grammatical, systematic, and teleological). Judicial decisions were analyzed comparatively to identify interpretive trends, with emphasis on the logical coherence and legal justifications used by judges. The synthesis of normative evaluation and empirical case study allows the research to critically assess the evidentiary and doctrinal integrity of conspiracy charges in narcotics-related cases.

RESULT AND DISCUSSION

A. Proof in Criminal Law

In Indonesian criminal law, the burden of proof is governed by Article 183 of the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, or KUHAP), which mandates that a defendant may only be convicted if the judge has obtained at least two legal items of evidence and is personally convinced that a crime has been committed. This legal standard enshrines the classical principle *in dubio pro reo* when in doubt, the benefit must go to the accused (Harahap, 2019). This principle plays a critical role in ensuring that criminal adjudication remains grounded in fairness and does not rely on speculation or mere presumption. Unlike civil law systems, where evidentiary standards revolve around a balance of probabilities, criminal law universally demands a higher burden of proof: *beyond reasonable doubt*. This heightened standard is designed to protect individuals from unjust deprivation of liberty, particularly in legal systems such as Indonesia’s, where custodial sentences—even life imprisonment or the death penalty are applicable in narcotics cases. Thus, the physical element

(*actus reus*) and mental element (*mens rea*) must be substantiated through lawful and convincing means.

However, in the context of *permufakatan jahat* (criminal conspiracy), particularly under Article 132(1) of Law No. 35 of 2009 on Narcotics, this principle faces significant doctrinal tension. The law defines conspiracy as a *formal offense*, meaning that criminal liability arises from the existence of an agreement to commit a narcotics offense, regardless of whether the planned act was executed or not (Muladi, 2002). This departs from the general formulation in Article 53 of the Penal Code (KUHP), where attempt or preparation must be accompanied by some form of overt conduct to be punishable.

The case central to this study Supreme Court Decision No. 1488 K/Pid.Sus/2021 provides a revealing example of the challenges in applying conspiracy provisions. The defendant, Bayu Van Hauten, was implicated based solely on alleged indirect involvement in communication related to a drug transaction. He was neither caught in possession of drugs nor observed participating in any illicit activity. The prosecution failed to present forensic evidence, surveillance, or digital correspondence that would support a finding of criminal intent. The only evidence provided was that he lent a mobile phone to another person, without proof that he knew or intended it to be used for criminal purposes. The Supreme Court rightly exercised judicial restraint by emphasizing the insufficiency of evidence to establish the required *mens rea*. This position contrasts with several prior decisions where courts inferred guilt based on proximity to the crime scene, recurring communication patterns, or vague associations—often without corroborating evidence of knowledge or intent (Simons, 2016). This inconsistency underscores the absence of a coherent standard for interpreting the evidentiary requirements in conspiracy charges under narcotics law.

Under Article 184 KUHP, Indonesian law recognizes five forms of admissible evidence: witness statements, expert testimony, written documents, indications (*petunjuk*), and the statements of the accused. Yet, in narcotics cases particularly those involving organized or digital networks prosecutors frequently supplement traditional evidence with wiretaps, GPS tracking, forensic toxicology, and metadata from electronic devices (Yahya Harahap, 2019). Although these tools enhance detection capacity, their usage must comply with due process protections, including judicial authorization and proper chain of custody procedures.

The evidentiary challenges in narcotics conspiracy cases are not unique to Indonesia. In many jurisdictions, including the United States and the UK, conspiracy charges are similarly controversial due to their reliance on subjective inferences regarding intent and agreement. However, both systems have developed safeguards, such as the requirement of an "overt act" or demonstrable steps toward execution, to mitigate the risk of punishing mere thought or association. Indonesia's legal framework currently lacks such safeguards, placing defendants at a greater risk of wrongful conviction based on minimal involvement or circumstantial links.

From a human rights perspective, criminalizing an individual without sufficient evidence of active participation may contravene constitutional guarantees, particularly the right to a fair trial and the presumption of innocence as outlined in Article 28D of the Indonesian Constitution and reinforced by international norms such as the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a party. The principle of legality (*nullum crimen sine lege*) also mandates that criminal norms must be applied strictly and not extended through analogical reasoning or judicial assumption. This research finds that current judicial practice in conspiracy-related narcotics cases reveals a dangerous elasticity in evidentiary interpretation. While the intention of Article 132(1) is to enable early intervention against organized crime, its open-textured formulation has, in some cases, enabled prosecutors to pursue individuals whose involvement is speculative at best. The legal system must therefore implement a more structured evidentiary threshold, one that distinguishes between mere

association and culpable participation, and that demands demonstrable proof of criminal intent and voluntary alignment with a shared unlawful objective.

In conclusion, the contribution of this study lies in clarifying the evidentiary doctrine applicable to conspiracy under narcotics law and exposing the latent risks of excessive criminalization. Courts must develop consistent interpretive frameworks that preserve both the effectiveness of law enforcement and the procedural rights of the accused. Without such balance, the enforcement of narcotics law risks undermining the rule of law itself.

B. Criminal Liability of Conspirators in Narcotics Offenses

The notion of *permufakatan jahat* (criminal conspiracy) represents one of the most intricate constructs in criminal law, particularly due to its preventive nature and the loosened evidentiary requirements that often accompany its application. In Indonesian law, conspiracy is codified under Article 132(1) of Law No. 35 of 2009 on Narcotics, where it is defined as an agreement between two or more persons to commit a narcotics offense. Importantly, no actual execution of the crime is required; the agreement alone suffices to constitute a completed offense (*delik formil*) (Muladi, 2002). This formulation departs from the general theory of criminal liability under the Indonesian Penal Code (KUHP), where a punishable act typically requires material realization, or at minimum, an overt attempt as outlined in Article 53 KUHP. The doctrinal shift evident in Article 132(1) reflects a legislator's intent to employ a *preventive penal model*, aiming to disrupt criminal networks before their operations manifest physically. However, such anticipatory criminalization must be carefully balanced with legal safeguards to avoid infringing upon civil liberties (Hamzah, 2005).

In comparative law, particularly in Anglo-American systems, criminal conspiracy is also recognized but typically requires the commission of an *overt act* in furtherance of the agreement. For example, U.S. federal law mandates that at least one conspirator must take a concrete step beyond mere agreement to actualize the plan (Simons, 2016). The absence of such a requirement in Indonesian law means that individuals may be held criminally liable based on the presumption of intent, which poses serious challenges to the principle of *presumption of innocence* as guaranteed under Article 28D(1) of the 1945 Indonesian Constitution and Article 14 of the ICCPR.

The Supreme Court's ruling in *Putusan No. 1488 K/Pid.Sus/2021* provides a landmark reaffirmation of this concern. The Court emphasized that the defendant's act of lending a phone absent any corroborative evidence indicating knowledge or intent could not legally constitute conspiracy. The judgment clearly reflects a concern that speculative association should not replace solid evidentiary grounding in criminal law (Harahap, 2019).

This approach reflects an essential tension in criminal law between the state's obligation to ensure public safety and the individual's right to not be penalized for thoughts, intentions, or associations unaccompanied by criminal action. The ruling reinforces a modern penal theory that criminal responsibility must be based on clear, credible, and corroborated proof of both *conscious agreement* and *criminal intent*, rather than on proximity to crime or social connection alone (Simons, 2016). The concept of *penyertaan* (criminal participation) in Indonesian law, codified in Articles 55 and 56 of the KUHP, expands the scope of liability to various actors involved in the commission of a crime. These articles distinguish between principal offenders (*pelaku*), instigators (*penganjur*), and accomplices (*pembantu*), all of whom may bear criminal responsibility if a clear nexus is established between their conduct and the offense (Hamzah, 2005). However, when applied in the context of *permufakatan jahat*, where the crime remains in a preparatory stage, this broad attribution becomes doctrinally contentious.

Legal scholars contend that criminal liability in conspiracy should only attach when three key elements are present: (1) a demonstrable contribution to the criminal plan, (2) alignment of intent among co-conspirators, and (3) active participation or knowledge of the

criminal purpose (Harahap, 2019). Without these elements, liability risks becoming collective rather than individualized a contradiction to the principle of *personal culpability* in criminal law. The line between passive association and culpable involvement is often blurred in narcotics cases, where individuals may be criminalized for marginal actions, such as introducing acquaintances or facilitating incidental logistics, without knowledge of the criminal purpose. This prosecutorial overreach undermines the legitimacy of drug enforcement and poses a threat to procedural fairness.

In *Putusan Mahkamah Agung No. 1488 K/Pid.Sus/2021*, the Supreme Court clarified that the mere act of lending a phone without any further evidence of planning, knowledge, or benefit did not meet the threshold for participation under Article 132(1). The Court underlined the absence of coordinated communication, material evidence, and active engagement as decisive in affirming the acquittal. This is a significant step toward enforcing *evidentiary proportionality*, a concept that seeks to ensure that the gravity of legal consequences is matched by the weight and clarity of the evidence (Muladi, 2002). Furthermore, the ruling can be seen as reinforcing the core doctrine of *individual accountability* in criminal law. Liability cannot be inferred solely from group association or spatial proximity. This principle has also been supported in European criminal jurisprudence, where courts increasingly demand specific and individualized proof of participation in collective crimes, especially when human rights standards are at stake (Simons, 2016).

In light of this, the Supreme Court's decision serves as a check against indiscriminate application of conspiracy laws and emphasizes the judiciary's role in maintaining proportionality and legal certainty. It also underscores the necessity for law enforcement and prosecutors to base accusations on factual coherence and evidentiary sufficiency, rather than relying on assumptions or overbroad interpretations of intent.

C. Judicial Analysis of the Acquittal in Criminal Conspiracy to Commit a Narcotics Offense in Relation to Drug Law Enforcement

Supreme Court Decision No. 1488 K/Pid.Sus/2021 stems from a cassation request filed by the Public Prosecutor against a defendant, Bayu Van Hauten, who had previously been acquitted by the Samarinda District Court in a narcotics conspiracy case. The prosecution accused the defendant of engaging in a criminal conspiracy to distribute methamphetamine, invoking Article 114(2) in conjunction with Article 132(1) of Law No. 35 of 2009 on Narcotics. The prosecution's argument relied on the assumption that the defendant had facilitated communication between narcotics dealers, based solely on the allegation that he lent a mobile phone to an individual later arrested in a drug transaction. However, no physical evidence was presented linking the defendant to the possession, transport, or handling of narcotics. Nor was there any testimony or electronic surveillance proving his awareness of or agreement to the criminal act (Harahap, 2019).

The lower court ruled in favor of the defendant, citing lack of *actus reus* and insufficient evidence to prove shared intent. Dissatisfied, the prosecutor appealed, arguing that the act of lending the phone constituted participation in a larger criminal enterprise. The Supreme Court, in its final ruling, upheld the acquittal and affirmed the evidentiary insufficiency.

During the trial proceedings, it became evident that the prosecution's case was constructed primarily on speculative links. Testimonies from police officers did not place the defendant at the scene of any narcotics transaction. No controlled delivery operation was conducted, and no surveillance footage or intercepted communication directly implicated him in planning or coordinating a narcotics crime. The defendant's explanation that he lent his phone without knowledge of its unlawful use was not refuted by factual evidence. Even key prosecution witnesses acknowledged that they did not observe any incriminating conduct. Importantly, there was no discovery of narcotics on the defendant, nor any forensic traces

connecting him to packaging, distribution, or profit-related activities (Muladi, 2002). The court emphasized that, in accordance with Article 183 KUHAP, a criminal conviction requires a minimum of two valid items of evidence and the judge's personal conviction. Since the only evidence was indirect and uncorroborated, the requirements were not met.

From a juridical standpoint, this decision underscores the necessity of strict evidentiary standards in conspiracy cases, particularly when no overt acts are present. The court's reasoning reflects adherence to the *nullum crimen sine lege* and *in dubio pro reo* principles, both of which serve to protect defendants from arbitrary or speculative punishment (Hamzah, 2005). Unlike other narcotics conspiracy cases in which the courts have accepted circumstantial and electronic evidence to establish collective intent (Simons, 2016), the present case demanded material proof of involvement. This shift represents a correction toward proportionality and individualized justice, particularly in the context of criminal conspiracy a charge that inherently risks overextension.

Moreover, the ruling aligns with international standards, such as those found in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which mandates the presumption of innocence and the right to a fair trial. The judges' restraint in expanding the definition of participation ensures conformity with these protections, especially when the law's preventive intent (as in Article 132(1)) clashes with procedural fairness. In the broader context of drug law enforcement, the decision raises important implications. While the state holds a legitimate interest in dismantling narcotics networks, prosecutorial overreach without solid evidence undermines the credibility of legal institutions. This case highlights that strong drug law enforcement must be balanced with a rights-based approach to criminal procedure, lest it sacrifice individual liberties for perceived efficiency.

This decision sets a precedent that mere proximity or association with actors in a drug case is not sufficient to establish guilt. It clarifies the evidentiary line between social contact and criminal collaboration. Thus, the Supreme Court's judgment not only preserves the integrity of criminal trials but also contributes to refining the operational standards in Indonesia's legal framework for narcotics eradication.

CONCLUSIONS

This study concludes that the application of Article 132(1) of Law No. 35 of 2009 criminalizing conspiracy in narcotics offenses—demands stricter evidentiary standards to avoid the risk of overreach and unjust criminalization. As demonstrated in Supreme Court Decision No. 1488 K/Pid.Sus/2021, establishing criminal liability in conspiracy cases requires more than indirect links or passive associations; it must be based on clear, credible, and corroborated evidence proving shared criminal intent and active agreement among parties involved. The case underscores the importance of aligning conspiracy charges with core principles of due process and individual culpability. Without proper evidentiary safeguards, there is a risk that law enforcement may penalize individuals who lack actual participation or intent, thereby undermining the presumption of innocence.

To promote legal certainty and fairness in criminal proceedings, it is recommended that judicial authorities develop clearer interpretive guidelines regarding the terms "agreement" and "intent" in the context of conspiracy. Moreover, legislative reform should be considered to incorporate an "overt act" requirement, thereby aligning Indonesia's conspiracy provisions with international legal standards and practices. Ultimately, while strong legal measures are necessary to combat narcotics-related crimes, such efforts must be carried out within a framework that respects constitutional rights and upholds the integrity of the justice system. Only through such balance can the goals of public protection and fair trial be equally fulfilled.

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