

APPLICATION OF CRIMINAL RESPONSIBILITY LAWS FOR OFFENDERS PARTICIPATING IN NARCOTICS ABUSE

IGM Seli Pudjawijaya^{1*}, Siswantari Pratiwi², Mardani³

^{1,2,3}Universitas Krisnadwipayana, Jakarta, Indonesia

selipudjawijaya.se@gmail.com^{1*}, sistariwangi@gmail.com², mardani@unkris.ac.id³

Abstract

The consequences caused by narcotics abuse are very detrimental to the continuity of life of the younger generation as the majority, which ultimately impoverishes a country because it does not have a quality next generation to replace the generation that has entered retirement age. The problem is : How is the application of the law on criminal liability for perpetrators who participate in narcotics abuse (Case Study of Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam ? How do judges consider decisions regarding perpetrators who participate? narcotics abuse (Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam)? The research method used is normative legal research. The conclusion is that participating in Indonesian narcotics criminal law is an act that can be punished as considered by the panel of judges in decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam and the basis for the judge's consideration is that it can be analyzed, namely considering all aspects related to the main case that occurred and then looking for statutory regulations that are relevant to the main disputed case as a legal basis. in rendering a decision.

Keywords: Implementation, Liability, Narcotics

INTRODUCTION

According to Article 1 number 1 Law No. 35 of 2009 concerning Narcotics, what is meant by narcotics are : Substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce or eliminate pain, and can cause dependency, which is differentiated into categories as attached in this Law .

Narcotics abuse is the use of drugs outside of medical indications, without instructions or a doctor's prescription, and the use is pathological (causing abnormalities) and creates obstacles in all activities and causes dependence. Even though narcotics and psychotropic substances are very necessary for treatment and health services, if they are misused or used not in accordance with treatment standards, especially if accompanied by illegal drug trafficking, they will have very detrimental consequences for individuals and society, especially the younger generation. It can even pose a huge danger to the life and cultural values of the nation which will ultimately weaken national resilience.

In Law Number 35 of 2009 concerning Narcotics, the classification of narcotics is formulated which consists of 3 (three) groups. Narcotics Class I, Narcotics Class II, and Narcotics Class III. The classification of narcotics is determined for the first time as stated in Appendix I, which is an inseparable part of Law Number 35 of 2009 concerning Narcotics. Narcotics can only be used for the purposes of health services and/or the development of science and technology. Class I narcotics are prohibited from being used for health service purposes. In limited quantities, Category I narcotics can be used for the purposes of developing science and technology and for diagnostic reagents and laboratory reagents after obtaining approval from the Minister of Health on the recommendation of the Head of the Food and Drug Supervisory Agency.

Along with advances in technology and information accompanied by developments in technology in the fields of medicine and pharmacy, on the one hand it has a positive influence in improving the level of human health, but on the other hand there are also impacts resulting from this technology. Especially in the pharmaceutical sector, it has a negative influence on society, because there are irresponsible individuals who deliberately misuse this progress. Such as distributing and buying and selling drugs that are dangerous to health without supervision from doctors and health workers, and in the end these narcotics end up in the hands of users who use them without doctor supervision (narcotics abuse). Narcotics abuse can be done individually or jointly.

In this research, the author examines the case of Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam. Decision Number 46/Pid.Sus/2017/PN Mln in the criminal case stated that the Defendant TUPAK Pardongan Tarigan, a child from Reli Tarigan, was legally and convincingly proven guilty of committing the crime of Participating in and Abusing Class I Narcotics for Himself as in the Third Indictment of the Public Prosecutor. Meanwhile, Decision Number 89/Pid.B/2015/PN Mam , in a criminal case stated that the defendant ZAENAL ARIFIN alias AKEW Bin JUMRI (deceased) as mentioned above, was legally and convincingly proven guilty of committing a criminal act of participating in abusing class I narcotics for himself. as in the second indictment.

In connection with this, the problem in this research is how to apply the criminal liability law for perpetrators who participate in narcotics abuse (Case Study of Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam)? And what are the judge's considerations in deciding whether perpetrators participate in narcotics abuse (Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam)?

RESEARCH METHODS

In this research, the author uses normative legal research, namely a legal research method that examines applicable legal provisions, based on the topic of the problem by conducting a literature study, namely the researcher collects legal materials from various statutory regulations used in research, books, articles, scientific journals, papers, research results of legal experts and newspaper clippings related to the problem being studied. The legal materials that have been collected are then classified to facilitate analysis and construction.

DISCUSSION

Application of criminal liability law for perpetrators participating in narcotics abuse (Case Study of Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam)

In the Criminal Code, criminal responsibility is based on two aspects, namely: physical ability and moral ability, which are stated in article 44 paragraph 1 and paragraph 2 of the Criminal Code. Physical ability here means that a person does not experience developmental disabilities or disabilities due to diseases such as blindness, deafness, idiots, minors and the like. Meanwhile, moral ability here means that a person is not mentally disturbed, such as mental illness, epilepsy and other mental illnesses. In this case it can be said that, if a person's physical abilities and moral abilities are good then the person concerned can be responsible for their actions.

Accountability criminal in term foreign also called *Kenbaardheid theory* or *criminal responsibility*. In accountability criminal there is principle, that is No convicted if no there is error (Geen *straf zonder schuld*; *Actus non facit reum nisi mens sir rea*). Can interpreted If somebody can sentence criminal, then somebody the No only has do deed criminal, but rather there is element error in his actions as well as somebody the has fulfil element ability in responsible.

The judge's decision is peak from inspection case criminal in the entire judicial process criminal, in The judge's decision is expected will found reflection values justice and truth true, right basic human, mastery law and facts in a way established, capable and factual. The judge's decision reflects the visualization of the judge's ethics, mentality, morality and conscience, and can be accounted for by legal science/legal doctrine, "For the sake of justice based on belief in the Almighty God."

Decision making by the panel of judges is carried out after each judge member of the panel expresses opinions or considerations and beliefs regarding a case and then deliberations are held to reach a consensus. The chairman of the assembly tries to obtain a unanimous consensus. There are times when the judges have different opinions or considerations so that a consensus cannot be reached. If this happens, the decision chosen is the judge's opinion that is most favorable to the defendant.

In terms of This there are 2 (two) characteristics decision from the judge, namely:

- a. Article 191 of the Criminal Procedure Code determines:
 - 1) If the court opinion that results examination at trial, error defendant on the alleged act to her No proven in a way valid and convincing, then defendant disconnected free;
 - 2) If the court opinion that the alleged act to defendant proven, but deed That No is something follow criminal, accused disconnected free from all demands;
 - 3) In terms of as intended in paragraphs (1) and (2), existing defendants in prison status order For released instantly That If except There is other valid reasons, defendant need detained.
 - b. Article 193 paragraph (1) of the Criminal Procedure Code determines: If the court opinion that defendant guilty do follow the crime charged to him, then court drop criminal.
- From the provisions above, then there are 2 (two) characteristics the judge's decision is:

- 1) Decision punishment, if charged by the prosecutor general in letter the accusation has proven in a way valid and convincing according to law;
- 2) The verdict is not punishment can form decision acquittal (*vrijpraak*) and verdict free from all demands.

After the examination process at trial is complete, the judge must make an appropriate decision. For this reason, before imposing criminal sanctions, the judge is required to take action, namely to first examine the truth of the incident presented to him by looking at the existing evidence and accompanied by his beliefs. After that, consider and provide an assessment of the events that occurred and relate them to the applicable law and then provide a conclusion by determining a criminal sanction for the actions committed.

In relation to what is described above and in accordance with Decision 46/Pid.Sus/2017/PN Mln, which was carried out by the defendant named Angga Sulistiyo Nugroho alias Angga bin Saryono, in the application of article 55 of the Criminal Code which is a participatory teaching, this is can be seen as follows:

Decision 46/Pid.Sus/2017/PN Mln, charged by the Public Prosecutor with an alternative form of indictment, so that the Panel of Judges will immediately prove the correct indictment against the Defendant, namely the Third Indictment of the Public Prosecutor as regulated in Article 127 letter a of the Law Republic of Indonesia Number 35 of 2009 concerning Narcotics in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code, the elements of which are as follows:

1. The element "Every Class I Narcotics Abuser" ;
2. The element "For yourself Alone ";
3. The element "doing, ordering to do, or participating in doing".

aggravating circumstances;

- The defendant disturbed the community and was in conflict with the government's program to eradicate narcotics trafficking;

Extenuating circumstances:

- The defendant behaved politely at trial ;
- The defendant regretted his actions;
- The defendant promised not to repeat his actions again;

Then in Decision Number 89/Pid.B/2015/PN Mam , the Public Prosecutor charged him with alternative charges, so that the Panel of Judges, taking into account the legal facts mentioned above, immediately chose the second alternative charge as regulated in Article 127 Paragraph (1) letter a Republic of Indonesia Law no. 35 of 2009 concerning Narcotics, the elements of which are as follows:

1. Every Abuser ;
2. Class I narcotics for oneself;

Participating in Indonesian narcotics criminal law is an act that can be punished as considered by the panel of judges in decision Number 46/Pid.Sus/2017/PN Mln Taking part is an act of assistance which is prohibited in narcotics crimes because according to Pompe, saying that the relationship between the perpetrator and his actions is viewed from the perspective of "Will" (*de will*), the perpetrator's fault is part of the will (*binnekant*). The principle that arises from it is: "There is no crime without guilt".

According to Barda Nawawi Arif and Roeslan Saleh, it can be concluded that the use of criminal law in dealing with crime is still very necessary at this time, considering that criminal law, apart from having a repressive side, also has a preventive side to prevent law-abiding people from committing or committing crimes. think twice if you want to commit a crime.

The judge's considerations in deciding whether the perpetrator was involved in narcotics abuse (Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam)

A judge's decision is basically a work of discovering the law, namely determining what should be according to the law in every event that concerns life in a legal state. Another definition of a judge's decision is the result of deliberations starting from the indictment with everything that was proven in the examination at the court hearing. Sudikno Mertokusumo believes that legal discovery is the process of forming law by judges or other legal officers who are given the task of applying the law to concrete legal events.

Judges are basically free to interpret the provisions of the law regarding a legal problem that is presented to the judge before the court, including the authority to interpret the special minimum criminal provisions in the narcotics crime law which are then realized in decisions. The duties of judges are normatively regulated in the Law. Law Number 48 of 2009 concerning Judicial Power.

Concerning that the decision must take into account things that aggravate or mitigate the defendant, this is a fact that must be clearly explained in accordance with what was found in the trial court examination. The criminal sentence that will be imposed on the defendant cannot be separated from the aggravating and mitigating facts and circumstances, because the legal considerations that aggravate and mitigate the defendant are part of the provisions of Article 197 of the Criminal Procedure Code, then if a decision does not include considerations that aggravate and mitigate the defendant, This will influence the decision, the absence of a formulation of criminal rules/guidelines in most special laws outside the Criminal Code which include a special minimum sentence in the formulation of the offense, in turn has the potential to give rise to juridical problems at the application level. At least when the judge who hears the criminal case in question is faced with the fact that there are many factors that mitigate the crime.

Before making considerations regarding factors that could aggravate or mitigate the crime, the judge will consider the facts and circumstances obtained from the examination during the trial which are the basis for determining the defendant's guilt. There must be a statement that all elements in the formulation of a criminal act have been fulfilled along with the qualifications as stipulated in Article 197 letter d of the Criminal Code.

Considering the factors that can aggravate and mitigate the defendant as stated above, it is hoped that the sentence imposed by the judge is in accordance with the defendant's actions and mistakes, is not excessive and is truly necessary to maintain legal order. Thus, the criminal efforts carried out are not only based solely on the purpose of retaliation, but also contain certain objectives to be achieved such as prevention, protection for the community and for guidance.

To determine the severity of criminal sanctions, when considering the punishment to be imposed on the defendant, the judge must pay attention to the objective circumstances of the perpetrator's actions, the judge must look at the defendant's life background and the gravity of the actions committed. Or in other words, the judge in handing down the severity of the crime must consider the factors existing in the defendant and the factors of the actions carried out by the defendant.

In Article 27 of Law Number 48 of 2009 concerning the Principles of Judicial Power, the issue of consideration factors, especially those concerning defendants, receives the following confirmation:

1. Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that exist in society.
2. In considering the severity of the sentence or sentence, the judge is obliged to pay attention to the good and bad characteristics of the accused.

Related to what is described above and in accordance with Decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89 /Pid.B/2015/PN Mam the judge's considerations in this decision are as follows.

In the decision Number 46/ Pid.Sus /2017/PN Mln , consideration the judge that is:

Ad.1. Element " Every abuser Narcotics Group I";

Everything regarding narcotics has been determined in Law number 35 of 2009 concerning Narcotics, apart from what is specified in this law, narcotics are declared as prohibited items. That in Constitution Number 35 of 2009 concerning Narcotics outlined that narcotics in essence own a very useful and necessary purpose For treatment disease particular and for development knowledge knowledge specifically in field medical However narcotics also have very high potential result dependency , so if misused or used No in accordance with standard treatment can give rise to very detrimental consequences for individual or public specifically generation young . This matter will more harm If accompanied with misuse and distribution dark Possible narcotics result more danger big for life and values culture nation at last will can weaken resilience national .

In the case of This without right is someone who doesn't have right For use narcotics, in matter this is what is meant with entitled is somebody has get permission or agreement from the top Minister recommendation from the Food and Drug Monitoring Agency or other authorized officials . Meanwhile, what is meant with oppose law is somebody use narcotics is contradictory or No fulfil provision governing laws about use narcotics, so his actions besides No rights are also contradictory with Constitution as well as No own capacity which narcotics are narcotics only can owned , carried or saved For objective knowledge knowledge only permitted by hospitals, pharmacies , medical centers, health centers and doctors.

That what is meant by Narcotics as stated in Article 1 number (1) of Law Number. 35 of 2009 concerning Narcotics are substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce or eliminate pain, and can cause dependence, which are divided into groups—groups as attached in this Law.

Based on the facts revealed at the trial, the legal fact was obtained that when the Defendant was arrested, the Police found evidence in the form of: 1 (one) black and silver Samsung brand cellphone with IMEI number: 35240606063856/9 01 and IMEI: 35240706063856/7 01 along with telephone number: 082114324309, 1 (one) bong or methamphetamine suction device made from a Coca Cola bottle, 1 (one) unbranded green match and 1 (one) match needle.

The way the Defendant obtained this type of methamphetamine narcotics was that the Defendant together with Witness Herlina used a black Suzuki Smash SR motorbike with No. Pol: KT 3625 TB, No. Engine: MH8BE4DUACJ309063, No. Frame: E470-ID338526, which belongs to Witness Herlina, went to Libang Village, Nunukan Regency, to buy crystal methamphetamine from Brother Awi. Considering, that the Defendant used methamphetamine-type narcotics on Friday 7 April 2017 at around 03.30 WITA at the Defendant's rented house in Malinau Hulu Village RT 008 Malinau Kota District, Malinau Regency. Considering, that the Defendant's way of using crystal methamphetamine is to put the crystal methamphetamine into a glass pipette and then connect it to a small straw tube attached to a bong made from a small bottle, then burn the methamphetamine in the pipette and the defendant sucks it through one straw tube until the narcotics This type of methamphetamine is gone. The defendant did not have a permit to carry, control or consume methamphetamine.

As the Panel of Judges has explained above regarding the benefits of narcotics when used in treatment but they also have bad effects if not used properly, so to avoid inappropriate use of narcotics, the law regulates the ways in which a person can use these narcotics. that is, the person must be equipped with a permit from the competent authority.

If there is no permission from the authorities and the Defendant obtained the methamphetamine not based on a doctor's prescription, it can be categorized as an abuser. This will be very different if the Defendant purchased the methamphetamine at a pharmacy, medical center, certain health center based on a prescription from a doctor. concerned.

Based on the considerations above, the Panel of Judges concluded that the methamphetamine type narcotics consumed by the Defendant had been misused. Thus, the person referred to as the abuser in this case is the Defendant Tupak Pardongan Tarigan Anak from Rally Tarigan whose identity, after checking his identity with the Public Prosecutor's Indictment, turns out to be the same between the person referred to as the perpetrator of the crime in the Public Prosecutor's indictment and the person presented as the Defendant at the trial, so that There is no legal subject matter error.

That based on the Drug Examination Certificate from the Malinau District General Hospital Number: 445/961/ RSUD dated April 10 2017 which was signed by the Examining Doctor, Dr. Angeline Sutjianto, M.Kes, Sp.PK with the Defendant's urine testing positive for methamphetamine and amphetamine, listed in Group I (one) serial number 61 of Appendix I to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

Furthermore, to find out whether methamphetamine is included in Category I, the Panel of Judges will look at the results of the Surabaya Branch Forensic Laboratory Examination, evidence in the form of 1 (one) pocket containing white crystals with a net weight of 0.016 grams belonging to the Defendant Herlina Alias Lina Alias Ladu Anak from Sepiner Baru. Criminalistic laboratory tests have been carried out. Minutes of Criminalistics Laboratory Examination, Surabaya Branch No. Lab. : 4078/NNF/2017 with evidence number: 4779/2017/NNF executed and signed by Arif Andi Setiyawan, S.Si, Luluk Muljani, Aniswati Rofiah, A.Md and acknowledged by the Head of the Surabaya Branch Forensic Laboratory, Ir. R. Agus Budiharta with the following examination results that the evidence of 1 (one) bag containing white crystals with a net weight of 0.016 grams above is indeed Crystal Methamphetamine, registered in group I (One) serial number 61 Appendix I Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

Based on the description above, the element "Every Class I Narcotics Abuser" has been fulfilled.

Ad.2. "For yourself" element;

Based on the facts revealed at trial, the legal fact was obtained that the Defendant used methamphetamine on Friday 7 April 2017 at around 03.30 WITA in the Defendant's rented house in Malinau Hulu Village, RT 008, Malinau Kota District, Malinau Regency.

The defendant used methamphetamine-type narcotics, namely inserting the methamphetamine-type narcotics into a glass pipette then connecting it to a small straw tube attached to a bong made from a small bottle, then burning the methamphetamine in the pipette and the defendant sucking it through one straw tube until the methamphetamine-type narcotic was finished.

Based on the Drug Examination Certificate from the Malinau District General Hospital Number: 445/961/ RSUD dated April 10 2017 which was signed by the Examining Doctor, Dr. Angeline Sutjianto, M.Kes, Sp.PK with the Defendant's urine testing positive for methamphetamine and amphetamine, listed in Group I (one) serial number 61 of Appendix I to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

Based on the description above, the element "for yourself" has been fulfilled.

Ad.3. The element "Doing, ordering to do, or participating in doing";

These elements are alternative in nature so that if one of them is proven then it is sufficient to fulfill this element as a whole. Considering, that in Article 55 paragraph (1) 1 of the Criminal Code, it is stated that whoever commits, orders or participates in committing, shall be punished as the perpetrator of a punishable act.

That what is called "the person who committed the act" is if he alone, without including other people, has committed all the elements of a criminal act that have been proven, and what is called "the person who ordered the act to be committed" is if there is another person as the person who ordered to do it so that in carrying out the act as a whole there are 2 (two) people or more, that the "person who was told to do it" in this case is only a tool or instrument for the person who ordered it to be done and the person who acted as an instrument cannot be held responsible, while those referred to as The person who participates in the act is if there are 2 (two) or more perpetrators who carry out the act together in such a way that there must be cooperation and it is also realized that without the role of one of the persons said to be involved in the act, the criminal act in question is will not come true.

By looking at the Public Prosecutor's indictment in this case, what is the focus of Article 55 Paragraph (1) 1 of the Criminal Code is "participating in committing acts".

That "Other people who participate in committing the crime can be considered as perpetrators, then there can be a medepleger or also participating in the crime. Mededaderschap shows physical cooperation to carry out an action. Physical cooperation must be based on the awareness that they are working together.

Based on the Jurisprudence of the Supreme Court of the Republic of Indonesia in decision Number: 1395.K/Pid/1985 dated September 24 1987, it decided as follows: "The application of Article 55 paragraph (1) to 1 of the Criminal Code 'participates in committing', the initiative to commit an offense does not have to arise from the person who committed the offense (Defendant)".

Whereas in decision Number 89/ Pid.B /2015/PN Mam, considerations the judge that is: Ad. 1 Element Every Abuser:

According to Article 1 number 15 of the Law Number 35 of 2009 concerning Narcotics, in question with "Every Blame guna" is the person who uses narcotics without right or oppose law.

That's what is meant Every Abuser means is a person as subject the law can insured answer on his actions. Every Abuser This people intended as perpetrator something deed criminal. For prove is Every Abuser as subject the law can insured answer on his actions the is The defendant must proven moreover formerly about deed the material alleged to him, so can is known is Correct that perpetrator follow criminal the defendant or No defendant.

Every Abuser here pointing to person the defendant can become subject law from something deed criminal, which justifies named, Mara Sultoni alias Toni Bin Haeruddin Ritonga, who acknowledged his identity confirmed by the Defendant as person presented at trial The same with what was proposed Public Prosecutor in circumstances physically and mentally healthy so that person presented at trial the capable become subject law from something deed criminal at trial.

That fact from consequence law as considered the on during examination at trial defendant with carefully can follow the way trial because That The panel of judges concluded in a way psychological defendant is a healthy person spiritual and physical so that to her Every Abuser is Defendant proposed at trial has capable become subject law from something deed criminal, yes requested coverage answer criminal in the eyes law on his actions . based on considerations mentioned above so according to The Panel of Judges said that element Abuser has proven in a way legitimate has fulfilled according to law.

Ad. 2 elements of "Class I narcotics for oneself";

Elucidation of Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, what is meant by "class I narcotics" are narcotics which can only be used for the purpose of developing science and are not used in therapy and have a very high potential to cause dependence. According to Article 7 of Law Number 35 of 2009, Narcotics can only be used for the purposes of health services and/or the development of science and technology.

That in Article 8 of Law Number 35 of 2009, it is stipulated that class I narcotics are prohibited from being used for health service purposes and in limited quantities class I narcotics can be used for the purposes of developing science and technology and for diagnostic reagents and laboratory reagents after receiving ministerial approval of the recommendation of the head of the Food and Drug Supervisory Agency;

On Monday, March 9 2015, at around 22.00 WITA, at the house of witness Arman G. Salipaayya, in Kakulasan Village, Tommo District, Mamuju Regency, the defendant Mara Sulitoi alias Toni Bin Haeruddin Ritonga together with witness Andarias Sattu alias Mr Pendy and witness Arman G. Salippaya alias Arman was arrested by witness Peri Bin Mali Tinggi, a police member from the Mamuju Police drug investigation unit in connection with narcotics abuse.

Based on the description above, the judge's consideration can be analyzed, namely considering all aspects related to the main case that occurred and then looking for statutory regulations that are relevant to the main disputed case as the legal basis for making a decision and in accordance with the judge's theory of consideration according to Mackenzie. in A. Rivai's book, namely the Ratio Decidendi Theory. This theory is based on a fundamental philosophical basis which considers all aspects related to the subject of the disputed case and then looks for statutory regulations relevant to the subject of the disputed case as the legal basis for passing a decision and the judge's considerations must be based on a clear motivation to uphold the law. and provide justice for the accused.

CONCLUSION

Participating in Indonesian narcotics criminal law is an act that can be punished as considered by the panel of judges in decision Number 46/Pid.Sus/2017/PN Mln and Decision Number 89/Pid.B/2015/PN Mam. Taking part is an act of assistance which is prohibited in narcotics crimes because according to Pompe, saying that the relationship between the perpetrator and his actions is viewed from the perspective of "Will" (de will), the perpetrator's fault is part of the will (binnekant). The principle that arises from it is: "There is no crime without guilt".

The basis for the judge's consideration is that it can be analyzed, namely considering all aspects related to the main case that occurred and then looking for statutory regulations that are relevant to the main disputed case as the legal basis for passing a decision and in accordance with the judge's theory of consideration according to Mackenzie in his book A Rivai is the Ratio Decidendi Theory.

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