



#### **IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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# The 3<sup>rd</sup> PROCEEDING

"Legal Development in Various Countries"

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"Legal Development in Various Countries"

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#### INFORMATION OF THE CONFERENCE AND CALL PAPER



This Conference And Call Paperwas held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

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Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455 Semarang 50112

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**PREFACE** 

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser** from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discus views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5<sup>th</sup> 2017

Chairman of the Committee,

Dr. AnisMashdurohatun, S.H., M.Hum

NIDN: 06-02105-7002

GREETING FROM THEDEANOF FACULTY OFLAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the

International Conference and Call for Paper by theme: "Legal Development in Various

Countries" which is held by Faculty of Law, Sultan AgungIslamic University

(UNISSULA) Semarang, on September5<sup>th</sup> 2017.

This conference tries to reviews different theories of legal development in order to

highlight their similarities and differences. In the end, as in contract theories, no monist

view of legal development possesses the explanatory power needed to understand how law

has come to be and where it may take us in the future. What we do have is a foundation

built on at least two millennia of legal history. The intellectual starting point for this

project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view

of legal development takes issue with Henry Sumner Maine's thesis that development in

advanced legal systems is progressive in nature. And, more importantly for the current

undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands

of years of Jewish legal development indicated that legal development perpetually

progressed in cycles.

Therefore, to discuss more about legal development or law reform, Faculty of Law,

Sultan Agung Islamic University is confidence to conduct a conference by the theme "

Legal Development in Various Countries" focusing on the development of law in both

developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have

contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September5<sup>th</sup> 2017

Dean,

Prof. Dr. Gunarto, SH, SE, Akt, M.Hum

NIDN.062004670

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## GUARANTEE OF RICE FARMS HAVE NOT YET BEEN HARVESTED IN SIMALUNGUN REGENCY

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#### **ABSTRACT**

Food availability as a basic needs peoples is the governments responsibility. But the crop failure is experienced the people who in this case are the rice farmers who are due by natural factors such as climate change and pest attacks, in this case the government instead of responsibility, so that rice farmers always bear their own risks losses suffered due to crop failure. This research discusses on government's guarantee of unprofitable crops in Kabupaten Simalungun, especially in tackling the losses experienced farmers in case of crop failure. Then the problem formulation of the problem in this study is the extent of government responsibility for the availability of food in the community, how the government's strategy in anticipating the availability of food, and how the government's responsibility to farmers who fail to harvest caused by natural factors. This research uses empirical law research method. While the data analysis is qualitative method. From the results of this study can be concluded that the agricultural insurance is the right strategy in ensuring the loss of farmers in case of crop failure, then the planned agricultural insurance requires a pilot area as a benchmark of success for the regulator. From this pilot project it is hoped that there will be a source of experience and knowledge and useful information about the agricultural insurance system. To that end, the government must support insurance to overcome crop failure in order to achieve food security.

Keywords: guarantee, agricultural products, crop failure

#### A. Background

Indonesia as a developing country is an agrarian country that plays an important role in the agricultural production sector. The role of the agricultural sector is as a source of food for the community, the source of national income, opens employment opportunities, sources of investment, and producers of foreign exchange when the products are exported to other countries. On the other hand, businesses in the agricultural sector are faced with a high degree of uncertainty risk and farmers themselves bear the risks. The state has an important role to balance the needs of the people widely. This is related to the economic wheels which are duly maintained in a balanced state by the provisions of Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945).

Food is a very basic need for human beings, so this must be fulfilled by every country. Enough food needs of quality and nutritious also play an important role in determining human resources and the level of public health in a country. Similarly with the Republic of Indonesia, always strive to achieve sufficient food needs for the prosperity of its people. In Indonesia alone, one of the most primary needs is rice. The strategic value of rice is also due to rice is the staple food in Indonesia. Rice is also a major source of nutritional fulfillment which includes carbohydrates, energy, sugars, fiber, protein, fat, water, calcium, magnesium, vitamins.

So important is the need for food in Indonesia, the Indonesian government always strives to increase food security especially from the increase of domestic production. These considerations are becoming increasingly important for Indonesia as the population is growing, with wide population distribution and unequal geographic coverage. To meet the food needs of its population, Indonesia needs the availability of adequate and scattered food, which meets the adequacy of consumption and sufficient national stock, in accordance with broad and dispersed logistic operational requirements.

The definition of food security according to the Law of the Republic of Indonesia Number 18 Year 2012 on Food is "the condition of the fulfillment of Food for the state up to the individual, which is reflected from the availability of adequate food, both quantity and quality, safe, diverse, nutritious, equitable, not contrary to religion, belief, and culture of society, to be able to live healthy, active, and productive in a sustainable manner ".

Indonesia itself is an area with a very high frequency of natural disasters and is often referred to as the "disaster prone area". A number of natural disasters often occur that include volcanic eruptions, earthquakes, tsunamis, floods, drought, and so on.<sup>2</sup> Business activities in this agricultural sector will always be faced with a high degree of uncertainty risk.<sup>3</sup> Besides the risk of market price uncertainty, natural disasters as mentioned above also become an influence. Each farmer should bear the risks that affect the production of agricultural products and the risk of natural disasters.<sup>4</sup> However, farmers sometimes turn to other business which has higher economic value. The agricultural sector is often affected by the greatest natural disasters that result in the destruction of agricultural infrastructure, severely reducing agricultural and food productivity.

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<sup>&</sup>lt;sup>1</sup> Insyafiah and Wardhani, Indria, 2014, Preparation Study of National Agricultural Insurance Implementation, Research Report, Ministry of Finance Fiscal Policy Office Central Fiscal Risk Management, Jakarta, page 1.

Strategic Plan of the Ministry of Agriculture 2015-2019 by Regulation of the Minister of the Republic of Indonesia Number 19 / Permentan / HK. 140 / 4 / 2015 on Strategic Plan of the Ministry of Agriculture 2015-2019, page 98.

Pasaribu, Sahat M., Implementation of Farm Insurance in Indonesia: Alternative Scenario to Protect Farmers and Farmers, Research Report, Center for Socio-Economic and Agricultural Policy through IAARD, Jakarta, page 1.

<sup>&</sup>lt;sup>4</sup> Insyafiah and Wardhani, Indria, Op.cit., page 3.

Indonesia's food security can not be separated from the nature of the production of food commodities themselves are seasonal and fluctuate because it is very easily influenced by climate / weather. The climate-affected production behavior affects national food availability. If the production behavior that is vulnerable to climate change is not equipped with a strong food policy it will be very harmful, both for producers and consumers, especially small-scale producers and low-income consumers. Characteristics of perishable food commodities, limited farmer production areas, inadequate agricultural support facilities and infrastructure and poor harvest and post harvest handling encourage the Government to intervene by realizing food security policy.

In addition, other emerging problems are in the distribution system. Most available food stocks in production areas must be distributed between regions / inter-island. The length of the supply chain will result in large price differentials between producers and consumers. On the other hand, there are forces with the mastery of food trade in certain groups (monopoly, cartel and oligopoly). While in terms of consumption, food is the largest expenditure for households (above 50% of total expenditure). And that is quite unfortunate if rice imports become one way that is done to meet food needs in Indonesia.

Some of the real problems faced by the government in meeting rice needs are population growth, farmland unfavorable paddy fields, unexpected drought, which also lead to disruption of water supply to rice fields, not to mention pest attacks such as rodents and plant hopper. From the above problems, the most common is the prolonged drought and pest attacks. This is in stark contrast to the quantity and well-being of farmers, where farmers are often caught in debt in terms of capital and agricultural land management. Though the government has given its role in the form of counseling and mentoring. The government also provides assistance in the form of agricultural tools that support the performance of farmers, even the provision of subsidized fertilizer. However, there are many instances where crop failure is facing farmers. So that felt the form of assistance and responsibility of the government seemed to be in vain, because the harvest failure was more dominant due to natural facts.

From the above problems, the authors feel the need to conduct research that refers to the assurance of agricultural crops that failed to harvest the harvest by the government, so the authors take the title of research "GUARANTEE OF RICE FARMS HAVE NOT YET BEEN HARVESTED IN SIMALUNGUN REGENCY".

#### **B.** Problem Formulation

That food availability as the basic needs of the community is the responsibility of the government. But the crop failure experienced by the community which in this case is the farmers of paddy fields (rice) due to the natural factors of climate change, and pest attacks, in this case the government actually off the responsibility, so that farmers, especially rice farmers always bear their own risk of loss experienced by the harvest failure.

Starting from the background mentioned above, it can be formulated problem as follows:

- 1. To what extent is the government's responsibility for food availability in the community?
- 2. What is the government's strategy in anticipating the availability of food?
- 3. What is the responsibility of the government to the farmers who fail to harvest caused by natural factors?

#### C. Objectives Research

Any activities or activities undertaken by human beings whether done individually or in groups must have certain goals to be achieved. Likewise with this study.

The objectives to be achieved in this study are as follows:

- 1. To find out the extent of government responsibility for the availability of food in the community.
- 2. To find out how the government's strategy in anticipating the availability of food.
- 3. To find out how the government's responsibility to farmers who fail to harvest caused by natural factors.

#### C. Limitations of Research

Given the many developments that can be found in this issue, there needs to be clear boundaries of the problem, of what is made and will be resolved. The limitations of the problem in this study are as follows:

- 1. Government responsibility for food availability in the community?
- 2. Government strategy in anticipating the availability of food?
- 3. The responsibility of the government to farmers who fail to harvest caused by natural factors?

#### **D.** Benefits Research

The benefits of this study are expected to contribute thoughts, namely:

- 1. Theoretically, this research is expected to contribute thinking and development in law science, especially the science of legal insurance and other legal sciences.
- 2. Practically, this research is expected to provide useful information for writers, law faculty students, academics, law and business practitioners, and society in general, regarding insurance in Indonesia.

#### E. Methodology Research

1. Type of Research

This legal research is included in empirical legal research, with the form of research:

- a. Observation That searches the data or information by doing direct observation of the agricultural process in Simalungun Regency.
- b. InterviewsThey obtained the data by holding direct question and answer with the parties who related to the agricultural process in Simalungun Regency.
- c. Methods Research Library (Library Research Method) Is a type of research conducted by collecting data related to the topic of the problem of the title that the author made. This is done by reading books, papers, lectures and articles to get adequate theoretical foundation
- 2. Research Sites

This research is planned to be implemented in Simalungun District.

- 3. Source / Data Type
  - a. Primary data

Data obtained from the field research results by asking questions orally (interview) or by asking questions in writing.

b. Secondary Data

The data obtained from research library materials by collecting data contained in laws and regulations, books, and articles that have to do with the problem to be studied, among others:

- 1) Primary legal materials, including legislation.
- 2) Secondary legal substances, ie materials that provide an explanation of the primary legal material, which consists and books, journals, papers, related writings.
- 3) Tertiary legal matter, which is material providing guidance as well as explanation of primary legal materials and secondary legal materials; consisting of legal dictionaries, major Indonesian dictionaries, journals, newspapers and so forth.

#### 4. Data Collection Technique

- a. Primary data obtained by:
  - 1) Unstructured interviews or in-depth interviewing, that is, the way to obtain data by asking questions orally with answers given to respondents. Unstructured interviews are often referred to as in-depth interview techniques, as researchers feel they do not know what they do not yet know. Thus the interview is conducted with open-ended questions, and leads to the depth of information, and done in a way that is not formally structured to explore the views of the subject studied about many things that are very useful to be the basis for extracting the information further and deeper. Therefore in this case the subject under study his position more role as an informant than as respondents.
  - 2) The interview guide is a way to support the interviews in order to stay focused on the subject under study by asking openly written questions (no choice answers).
- b. Secondary data obtained by document or literature study is a way to obtain data by studying and analyzing library materials related to research problems.

#### 5. Data Analysis

Analysis techniques used in this study is a qualitative method, while the meaning of the qualitative analysis is: An ordinance of research that produces descriptive data analysis, that is what is stated respondent in writing or orally and actual behavior, who researched and studied as the intact.

While the qualitative analysis used an interactive model, the components of data reduction, data is done together with the data collection, and after the data is collected, then these components interact, if the conclusions implemented less strong, then there needs to be verified and researchers back to collect data in the field.

#### **BIBLIOGRAPHY**

- Code of Civil Law (Burgerlijke Wetboek voor Indonesie)
- Constitution of the Republic of Indonesia 1945.
- Insyafiah and Wardhani, Indria, 2014, Preparation Study of National Agricultural Insurance Implementation, Research Report, Jakarta: Ministry of Finance Fiscal Policy Office Central Fiscal Risk Management.
- Law of the Republic of Indonesia Number 18 Year 2012 on Food.
- Pasaribu, Sahat M., Implementation of Farm Insurance in Indonesia: Alternative Scenario to Protect Farmers and Farmers, Research Report, Jakarta: Center for Socio-Economic and Agricultural Policy through IAARD.
- Regulation of the Government of the Republic of Indonesia Number 17 Year 2015 on Food Security and Nutrition.
- Soemitro, Ronny H., 1989, Social Perspective in Understanding The Problem, Serang: CV Agung.
- Strategic Plan of the Ministry of Agriculture 2015-2019 by Regulation of the Minister of the Republic of Indonesia Number 19 / Permentan / HK.140 / 4 / 2015 on Strategic Plan of the Ministry of Agriculture 2015-2019.
- Synthetic Team on BBSDLP Policy, 2008, Climate Change Impact on Agricultural Sector, and Adaptation Technology and Anticipation Strategy, Bogor: Agricultural Innovation Development.

# CRIMINAL ACCIDENT OF NARCOTICS, APPLICATION OF LAW NUMBER 35 YEAR 2009 AND JUDICIAL DECISIONS IN THE COURT COUNTRY KISARAN.

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#### **ABSTRAK**

Narcotics are our common enemy, because narcotics can damage the joints of the nation's life. Moreover, if the nation is falling for such illicit goods, then this country must be affected by the decline. Narcotics are now at an alarming point, illicit drug trafficking is now rampant everywhere. Whether in town or up into the countryside, which is not immediately overcome then this country will become a country colonized by narcotics.

The type of research in this Journal is normative legal research. The study of normative law, the elaboration of legal principles such as research on the legal principles that live in society.

How to apply the law to narcotics and what the judges consider in the decision in the Kisaran District Court.

The setting up of positive law in Indonesia about narcotics continues to evolve in an era, starting from Law no. 8 of 1976 on the Ratification of the Narcotics Single Convention until the latest Supreme Court Circular No. 7 of 2009 on Rehabilitation for Narcotics Addicts.

Keywords: criminal offense, Narcotics Abuse Victim, Judge verdict.

#### A. INTRODUCTION

Drug abuse is increasingly prevalent in society. Drugs also do not regard the status, who and from which faction, could be a user and even a dealer. According to Asahan District Police Department data - North Sumatera, during 2015 until July 2017, there were 550 cases of Drugs with a total of 755 suspects arrested.

This number is somewhat less than the previous year which reached 181 cases said KAURMINTU SATNARKOBA Asahan Police, IPTU. S. Siahaan.<sup>1</sup>

IPTU. S. Siahaan admitted that even members of the police force in 2015 - 2017 have been detained as many as 1 (one) person because of the case of users / users of narcotics type shabu. He said:

"Drugs do not distinguish age, old-young alike, including members of the police. Currently we are holding one (1) of our members for bringing has been using the type of methamphetamine drug. So we should be able to protect ourselves early and declare war on drugs ". And he said that Drugs are the biggest case in Asahan even in Indonesia, defeating other cases. And there is more about juvenile delinquency using goat glue and comic cough mixed with autan oil mosquito, but this can not be punished because there is no / no law regulating it, but we as police apparatus can only appeal and suggests that they do not engage in or disuse and use the item by misusing its real usefulness.

Since January 2015 to 25 July 2017 Drugs Type Savings are captured tens of kilos, hundreds of kilos and tons. Types of ecstasy, hundreds of thousands to millions of grains, cannabis hundreds of kilos to tons. Attempt, thwart smuggling 1

Interview with Kaurmintu Satnarkoba Asahan Police, IPTU. S. Siahaan. dated August 15, 2017. At 10:15 pm.

ton sabu in anyer, banten by joint team of Police Drug Detective Directorate of Metro Jaya and Depok Polresta last week became its own history in eradicating Drugs in Indonesia.<sup>2</sup>

The government issued the most recent regulation is the Law of Republik Indonesia Number 35 Year 2009. Previous law regulation that regulate the narcotics is Law Republik Indonesia Number 22 Year 1997 about Narcotics and Law Number 5 Year Year 1997 About Psikotropika.<sup>3</sup> Being the obligation of the judge to bring equality before the law.<sup>4</sup> Law enforcement as a process is essentially an application of discretion which involves making decisions not strictly governed by the rule of law, but having elements personal judgment (Wayne La Favre 1964) by quoting Roscoe Pond, then La Favre states that the discretion is essentially between law and morals (ethics in the strict sense).<sup>5</sup>

On March 17, 2009 the Supreme Court issued a circular number: 07 of 2009 on placing drug users into the rapeutic and rehabilitation parlors. In the circular of the Supreme Court mentioned in paragraph 4 that:

In the event that a judge handed down a criminal offense in the form of an order for a legal action in the form of rehabilitation of the Defendant, the Assembly shall designate explicitly and clearly the location of the nearest rehabilitation, in its ruling the places of rehabilitation are:

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<sup>&</sup>lt;sup>2</sup>. Hidayat Banjar, Indonesia dikepung Narkoba, Daily Waspada, Friday, August 11, 2017

 $<sup>^{\</sup>rm 3}$ . Siswanto Sunarso, Penegakan Hukum Psikotropika Dalam Kajian Sosiologi Hukum, PT. Raja Grafindo Persada, Jakarta, 2004, Page 1

<sup>&</sup>lt;sup>4</sup>.Bambang Sutiyoso, Metode Penemuan Hukum Upaya Mewujudkan Hukum Yang Pasti dan Berkeadilan, Yogyakarta, UII Press, 2007.

<sup>&</sup>lt;sup>5</sup>. Andy Hamzah, dkk, Delik-Delik Terhadap Penyelenggaraan Peradilan (Conterm Of Court), Sinar Grafika, Jakarta, 1998, Page 5

- a) Technical Implementation Unit of T & R BNN Lido Bogor.
- b) Hospitals Drug Dependence, Cibubur Jakarta and all over Indonesia (health department of the republic of indonesia).
- c) Rehabilitation Center of social Department Republic of Indonesia and UPTD; Mental Hospital throughout Indonesia; or
- d) Rehabilitation center places hosted by community accredited by the Ministry of Health or Ministry of Social Affairs (at their own expense)

Surely the judge's decision based on consideration of evidence. In paragraph 3 point 2 of the circular of the Supreme Court namely:

At the time of being caught, one piece of evidence was found. Example:

No	Type of Drug	Usage	Amount / gram
1	Heroin/putauw	Maksimum	0,15 gram
2	Kokain	Maksimum	0, 15 gram
3	Morphin	Maksimum	0, 15 gram
4	Cannabis	Maksimum 1 linting cigarette	0,005 gram
5	Ekstacy	Maksimum	1 butir / tablet
6	Shabu	Maksimum	0,25 gram

And others included in narcotics Group I to III and psychotropic Group I s / d IV.

Seeing the above, it is clear there is a change in the implementation of narcotics crime in Indonesia. Where the rights of addicts more attention, given the addict is actually a victim of illicit drug trafficking. Naturally

addicts are placed in Rehabilitation homes. Because if viewed from the aspect of health, addiction is a disease that is duly treated.

Article 47 of Law Number 22 Year 1997 concerning narcotics states:

- (1) Judge Checking Narcotics addicts may:
  - a. Decides to order the concerned person to undergo treatment and / or treatment, if
     the Narcotics addict is found guilty of committing a Narcotics crime or

- b. Determine to order the concerned person to undergo treatment and / or treatment, if the Narcotics addict is not proven guilty of committing Narcotics crime.
- (2) the period of treatment and / or treatment for Narcotics addicts as referred to in paragraph (1) letter a shall be calculated as the duration of the sentence.

The judge must pay attention to the matters under consideration.

#### Article 127 Paragraph (2):

"In deciding the case as referred to in paragraph (1), the judge shall pay attention as referred to in Article 54, Article 55, and Article 103".

#### Article 54 is mentioned:

Narcotics addicts and Narcotics Abuse Victims are required to undergo medical rehabilitation and social rehabilitation.

#### Article 55 mentioned:

- (1) A parent or guardian of an addicted Narcotics addict is required report to public health centers, hospitals, and / or social rehabilitation and rehabilitation institutions designated by the Government for treatment and / or treatment through medical rehabilitation and social rehabilitation.
- (2) Adequate Narcotics addict shall be reported or reported by his / her family to community health centers, hospitals and / or social rehabilitation and rehabilitation institutions designated by the Government.
- (3) Provisions concerning the implementation of compulsory report as referred to in paragraph (1) and paragraph (2) shall be regulated by Government Regulation.

#### Article 103 mentioned:

- (1) Judge Checking Narcotics addicts may:
  - a. Decides to order the concerned person to undergo treatment and / or treatment.

- b. Determine to order the concerned person to undergo treatment and / or treatment, if the Narcotics addict is not proven guilty of committing Narcotics crime.
- (2) the period of treatment and / or treatment for addicts is taken into account as the duration of the sentence. On 7 April 2010 the Supreme Court issued Circular No. 04 of 2010 on the placement of abuse, abuse victims and narcotics addicts into medical rehabilitation and social rehabilitation institutions. Republic Law

Indonesia Number 35 Year 2009 on Narcotics can be imposed on the classification of criminal acts that is:

Defendant at the time of arrest by Police investigator and BNN investigator under arrest of hand;

a. At the time of hand capture in accordance with point a above found 1 (one) day of usage evidence with details as follows:

No	Type of Drugs	Usage	Amount / gram
1	metamphetamin (sabu)	Maksimum	1 gram
2	MDMA (ekstasi)	Maksimum	2,4gram=8 butir
3	Heroin	Maksimum	1,8 gram
4	Kokain	Maksimum	1,8 gram
5	Marijuana	Maksimum	5 gram
6	Leaf Koka	Maksimum	5 gram
7	Meskalin	Maksimum	5 gram
8	Psilosybin	Maksimum	3 gram
9	LSD (d-lysergic acid diethylamide)	Maksimum	2 gram
10	PCP (phencyclidine)	Maksimum	3 gram
11	Fentanil Group	Maksimum	1 gram
12	Metadon	Maksimum	0,5 gram
13	Morfin	Maksimum	1,8 gram
14	Petidin	Maksimum	0,96 gram

15	Kodein	Maksimum	72 gram
14	Bufrenorfin	Maksimum	32 mg

#### **BIBLIOGRAPHY**

#### Books:

Hidayat Banjar, Indonesia dikepung Narkoba, Daily Waspada, Friday, August 11, 2017

Siswanto Sunarso, Penegakan Hukum Psikotropika Dalam Kajian Sosiologi Hukum, PT. Raja Grafindo Persada, Jakarta, 2004.

Bambang Sutiyoso, Metode Penemuan Hukum Upaya Mewujudkan Hukum Yang Pasti dan Berkeadilan, Yogyakarta, UII Press, 2007.

Andy Hamzah, dkk, Delik-Delik Terhadap Penyelenggaraan Peradilan (Conterm Of Court), Sinar Grafika, Jakarta, 1998.

#### Law:

Republic Indonesia law, Number 35 of 2009.

#### **Interview**:

Interview with Kaurmintu Satnarkoba Asahan Police, IPTU. S. Siahaan. dated August 15, 2017. At 10:15 pm.