

## **Legal Analysis of Criminal Responsibility for Intermediaries in the Sale and Purchase of Narcotics with Priority to the Aspects of Justice**

**Bertu Haridyka Eka Anwar<sup>1)</sup> & Jawade Hafidz<sup>2)</sup>**

<sup>1)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [bertuharidykaekaanwar.std@unissula.ac.id](mailto:bertuharidykaekaanwar.std@unissula.ac.id)

<sup>2)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [jawadehafidz@unissula.ac.id](mailto:jawadehafidz@unissula.ac.id)

**Abstract.** *This study is entitled "Legal Analysis of Criminal Liability for Intermediary Actors in Narcotics Trading by Prioritizing the Aspect of Justice". The background of this study is based on the fact that intermediary actors in narcotics crimes often only act as a liaison, but are sentenced to the same punishment as the main perpetrator. This condition raises the issue of justice in criminal law enforcement, especially in the application of sanctions for intermediary actors which are sometimes disproportionate to their role and level of error. This type of research is normative legal research, with a juridical approach based on literature studies. The data sources used include primary, secondary, and tertiary legal materials, which are analyzed qualitatively. This study examines the principles of criminal liability, the construction of the role of intermediary actors according to Indonesian positive law, and how the value of justice can be interpreted in the context of law enforcement against intermediary actors. The results of the study show that the construction of criminal liability for intermediary actors in the sale and purchase of narcotics still tends to be generalized and does not take into account the concrete role of each actor. In some cases, intermediary actors are subject to the same article as the main perpetrator, even though their role is not dominant.*

**Keywords:** *Criminal; Intermediaries; Justice; Legal.*

### **1. Introduction**

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "The State of Indonesia is a state based on law." This provision is not only a normative statement about the Indonesian state system, but also reflects the philosophical basis that power in the state must be exercised based on law,

not merely the will of the ruler.<sup>1</sup>From an ideological perspective, the principle of the rule of law is based on Pancasila as the foundation of the state, especially the fourth and fifth principles, which emphasize the importance of deliberation, justice, and dignified law enforcement.<sup>2</sup>

The philosophical background of this article is the rejection of the absolute form of government and the desire to build a state system that guarantees justice, equal rights, and protection of human rights. As a state ideology, Pancasila places the values of humanity, social justice, and the supremacy of law as the basis for managing state power. Therefore, a state of law in the context of Indonesia is not just a rule of law, but must also be a *rechtstaat* that is moral, just, and based on human values.<sup>3</sup>

By making Indonesia a country of law, all forms of state power must be limited by law, and the law must reflect the values of substantive justice that live in society. This is also an affirmation that the ideology of the Indonesian state rejects rigid legal dictatorship, and prioritizes humanistic and just law, as reflected in the opening of the 1945 Constitution which emphasizes the purpose of the state, namely "protecting the entire Indonesian nation and all of Indonesia's blood, ... and realizing social justice for all Indonesian people."

Every form of society can be said to always have crime. Furthermore, it is said that deviant behavior is a threat to the norms that are the basis of social life which if not handled causes disruption to social life itself, both individual and social, becoming a potential or real threat to social life, there is tension in society.<sup>4</sup>

Another opinion says that crime is a human act that violates or contradicts what is stipulated in the rule of law. Acts that violate the prohibitions stipulated in the rule of law do not fulfill or contradict the commands that have been stipulated in the rule of law that applies in the society where the person concerned resides.<sup>5</sup>

Crime can be broken down into various types, depending on the target. One significant form of crime is drug crime. The phenomenon of drug crime has developed into a complex issue and is often a topic of conversation in society. Drug crimes not only involve the main perpetrators, but also intermediaries who play an important role in the process of buying and selling narcotics.

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<sup>1</sup>Jimly Asshiddiqie. 2011. Introduction to Constitutional Law. Jakarta: RajaGrafindo Persada, p. 33

<sup>2</sup>Asshiddiqie, J. 2006. The Constitution and Constitutionalism of Indonesia. Jakarta: Konstitusi Press, p. 94

<sup>3</sup>Kaelan. 2013. Pancasila Education. Yogyakarta: Paradigma, p. 145

<sup>4</sup>Muladi and Barda Nawawi Arief, 2013, Criminal Theories and Policies, Alumni, Bandung, p. 42.

<sup>5</sup>Anggit Sinar Sitoresmi, Sanctions for Law Enforcement Officers Who Violate the Criminal Procedure Code in Combating Crime, Jurnal Hukum, Vol. 8 No. 2, Year 2018, p. 68.

In this context, it is very important to conduct a legal analysis of criminal liability for intermediary actors in narcotics sales. Intermediary actors are often considered as actors who receive less attention in law enforcement. In fact, they have a crucial role in the narcotics distribution network that is detrimental to the wider community. Therefore, this study aims to examine how the law regulates criminal liability for intermediary actors and assesses the aspect of justice in the application of the law. This analysis will refer to Law Number 35 of 2009 concerning Narcotics, which regulates various aspects related to narcotics crimes, sanctions including for intermediary actors.

Acting as an intermediary in the sale and purchase of narcotics is a form of criminal act that is strictly regulated in Indonesian positive law. The main legal provisions can be found in Article 114 of Law Number 35 of 2009 concerning Narcotics, which states<sup>6</sup>:

Article 114 paragraph (1):

"Any person who without rights or against the law offers for sale, sells, buys, receives, acts as an intermediary in the sale and purchase, exchanges, or delivers Class I Narcotics, shall be punished with imprisonment for a minimum of 5 years and a maximum of 20 years, and a fine of at least IDR 1 billion and a maximum of IDR 10 billion."

Article 114 paragraph (2):

"If the act involves Class I Narcotics in an amount exceeding a certain limit, then the punishment imposed is life imprisonment or a minimum of 6 years and a maximum of 20 years imprisonment, as well as a fine of between IDR 1 billion and IDR 10 billion, plus one third."

This article clarifies that the position of intermediaries in narcotics transactions has the same legal standing as the main perpetrators. This is intended to break the chain of narcotics distribution which often involves third parties as intermediaries between dealers and consumers. Then, with the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), there is a new approach to several forms of criminal acts, including narcotics crimes, although the substance of the regulations on narcotics still refers to Law Number 35 of 2009 as *lex specialis*. In Article 604 of the New Criminal Code, it is stated that provisions in laws that are special in nature remain in effect as long as they are not specifically regulated in the New Criminal Code.<sup>7</sup>

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<sup>6</sup>Republic of Indonesia. 2009. Law Number 35 of 2009 concerning Narcotics. State Gazette of the Republic of Indonesia 2009 Number 143, Supplement to the State Gazette of the Republic of Indonesia Number 5062.

<sup>7</sup>Republic of Indonesia. 2023. Law Number 1 of 2023 concerning the Criminal Code. State Gazette of the Republic of Indonesia 2023 Number 1

In addition, this study will also examine relevant court decisions to understand how judges consider certain factors in sentencing intermediary actors. Therefore, this study not only aims to provide an in-depth understanding of the legal aspects of criminal liability for intermediary actors, but also to explore the values of justice that should be prioritized in law enforcement. Etymologically, the term "narcotics" comes from the word "narcissus," which refers to a type of plant that can cause someone to lose consciousness. In addition, in medical pharmacology, narcotics are defined as drugs that can relieve pain originating from the visceral area and can cause stupor (a state of being dazed or conscious but must be bluffed) and addiction. With this arrangement, information is conveyed in a more structured and clear manner, making it easier to understand the topic being discussed. The effects of narcotics, in addition to causing unconsciousness, can also cause imagination/hallucinations and cause stimulation/stimulants.<sup>8</sup>

For some middlemen from the lower classes, there are even more extreme reasons, namely that middlemen in drug trafficking can often be tempted by the lure or offer of being able to consume narcotics for free as part of the reward or incentive for their role in the transaction. This offer may be intended to strengthen the involvement of middlemen in the drug trafficking network by providing free access to the goods they help to trade. This is not only intended to maintain the middlemen's compliance with drug operations, but can also be intended to increase their dependence on drug consumption.<sup>9</sup>

Finally, there are other factors such as pressure from the social or family environment that can influence a person's decision to become involved as an intermediary in the drug trade. Especially in cases where the individual has been involved in a social circle that supports or promotes this illegal activity, there is great pressure to participate in order to maintain relationships or reputation within the group. This kind of pressure can make it difficult for individuals to refuse or reject offers made by those closest to them who are involved in the drug trade.<sup>10</sup>

In this regard, Law No. 1 of 2023 concerning the Criminal Code has also begun to provide a more just perspective on punishment, including alternative criminal regulations and differentiation of perpetrators based on the level of guilt and their role in the crime. It is therefore important to review whether the criminalization system for intermediaries in the current Narcotics Law is in line with the principles of justice and humanity as referred to in the latest national criminal law and has included criminal provisions for intermediaries as stipulated in Article 114 paragraph (2), but the latest legal developments through Law Number 1 of 2023 concerning the Criminal Code have also provided a direction

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<sup>8</sup>Paisol Burlian, 2016, *Social Pathology*, PT Burlian Aksara, Jakarta, p. 192.

<sup>9</sup>Moeljatno, 2008, *Principles of Criminal Law*, Revised Edition, Rineka Cipta, Jakarta, p. 177.

<sup>10</sup>Salahuddin, 1991, *Sanctions System in Criminal Law*, Pradnya Paramitha, Jakarta, p. 3.

for reforming the criminalization system that prioritizes a balance between justice, benefit, and legal certainty. This is in line with the philosophy of Article 1 paragraph (3) of the 1945 Constitution which emphasizes that Indonesia is a country of law, where the law must not stop at punishment alone, but must also guarantee the protection of human rights and social justice for all people.

The case began with the Defendant DANIEL ESSUE ALIAS DANIEL on Friday, May 24, 2024 at around 04.30 WIT or at least at some time in May 2024 or at least in 2024 at the Samabusa Port Pier, Jalan Samabusa Nabire, precisely on the KM Labobar ship deck 3 rear left, Nabire Regency, Central Papua Province or at least at a place that is still included in the jurisdiction of the Nabire District Court which has the authority to examine and try cases has committed an act "without rights or against the law offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over Class I Narcotics" which was carried out by the Defendant in the following manner:

That on Friday, May 24, 2024 at around 04.30 WIT at the Samabusa Port Pier, Jalan Pelabuhan Samabusa, Nabire, Teluk Kimi District, Nabire Regency, precisely on the KM Labobar ship, deck 3, rear left, Witness Ricky Yoel Sambara together with Witness Verry SDT Sembor together with members of the drug investigation unit received information about the abuse of marijuana narcotics, then searched for one of the passengers who was going to make a transaction on the KM Labobar ship. Then at around 04.30 WIT, Witness Verry SDT Sembor together with Witness Ricky

Furthermore, after being interrogated, the Defendant DANIEL ESSUE ALIAS DANIEL admitted to receiving 7 (seven) medium packages/wraps of marijuana narcotics stored in a medium-sized black plastic bag and 1 (one) roll-up stick of marijuana narcotics on Tuesday, May 21, 2024 at around 21.00 WIT from Mr. Yulianus (DPO) while on Jalan Biak, Lingkaran Abe, Jayapura City. Then after the Defendant DANIEL ESSUE ALIAS DANIEL received the goods, the Defendant delivered the goods to Mr. Welem (DPO) who was in Manokwari using the KM Labobar ship.

Then on May 22, 2024 at around 20.00 WIT, the Defendant together with Brother Yakob (DPO) boarded the KM Labobar ship and sailed to Manokwari Port, then when the KM Labobar ship docked at Serui Port, there were 3 (three) people who approached the Defendant and said "bro, do you have any extra cigarettes, we'll exchange them for three bottles of Bobo", after that the Defendant exchanged one handful of cigarettes (marijuana) with the three people for a local drink of the Bobo type, then the Defendant DANIEL ESSUE met a friend who brought 5 (five) liters of local Bobo drink and together consumed the liquor while smoking the Defendant's marijuana narcotics. Then the Defendant felt very drunk and walked towards deck 3 (three) at the back on the left and fell asleep there, then the Defendant woke up and the Defendant returned to rolling 1 (one) stick of

marijuana narcotics which the Defendant had taken in 1 (one) medium package/wrap then when the KM Labobar ship docked at Nabire Port,

The defendant was arrested and taken by members of the Nabire Police Narcotics Unit along with evidence.

Based on the Minutes of Urine Examination Number BA-URINE/20/V/2024/Sidokkes dated May 24, 2024 which was made and signed with the power of the oath of office by Dr. Marina who examined the Defendant's urine with the results of the urine examination as stated in the Results of the Urine Examination Number SKPN/60/V/2024/SIDOKKES with the conclusion showing Tetrahydrocannabinol (THC) / Marijuana POSITIVE (+).

Based on the Minutes of Forensic Laboratory Examination Number 205/NNF/V/2024 dated May 30, 2024 which was made and signed with the power of the oath of office by Herlia, S.Si., Ade Jodi Harmawan, ST, Fathur Rozzi SHI, MH as examiners with the conclusion that the evidence contained marijuana (THC) which is listed in Group I (one) Number 8 of the Attachment to the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.

That based on the Letter of the Branch Manager of PT Pegadaian Nabire Branch Office Number 065/11798/2024 dated May 27, 2024 regarding the Certificate of Weighing of Evidence of Marijuana Narcotics which explains the following:

7 (seven) medium packages/wraps suspected of containing marijuana narcotics packed in clear plastic with a gross weight of 175.02 (one seven five point zero two) grams and a total net weight of 163.52 (one six three point five two) grams, then set aside for laboratory testing 0.50 (zero point five zero) grams and a weight of 1.00 (one point zero zero) grams for evidence in court and the remaining weight of 162.02 (one six two point zero two) grams was destroyed at the investigation stage.

That the actions of the Defendant DANIEL ESSUE ALIAS DANIEL do not have the right to sell, sell, buy, receive, act as an intermediary in buying and selling, exchange, or hand over Class I Narcotics in the form of Marijuana from the authorities.

The Defendant's actions are as regulated and subject to criminal penalties in Article 114 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.

From the case, it states that the Defendant DANIEL ESSUE ALIAS DANIEL above has been proven legally and convincingly guilty according to the law of committing the crime of "Without rights or against the law committing the crime of offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging or handing over Class I Narcotics", as regulated and

threatened with criminal penalties in Article 114 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. and the perpetrators were sentenced to imprisonment of 5 (five) years and a fine of Rp. 1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid it must be replaced with imprisonment for 3 (three) months.

The question of justice regarding the five-year prison sentence with an additional three months in prison for failure to pay the fine for the perpetrators of intermediaries in the drug trade raises several complex considerations. On the one hand, this prison sentence is considered light for some people, because intermediaries in the sale and purchase of narcotics not only involve serious violations of the law, but also have the potential to cause damaging social impacts, such as drug abuse that leads to health damage and loss of life.

However, there are other aspects that need to be considered in assessing the fairness of this kind of punishment. Some may argue that a long sentence such as five years and three months is not always in line with the concrete role played by the intermediary, especially if they do not have a high hierarchical position in the drug trafficking network, may also need to be considered in determining whether the sentence meets the principles of justice that apply in a fair and just legal system.

## **2. Research Methods**

In compiling a scientific work, data is needed that can be accounted for its truth. This can be done by conducting research in a certain environment or scope in order to obtain accurate and factual data in accordance with the objectives desired by the author. The approach method used in this study is the legal analysis approach. Legal analysis is a research or review method used to study a legal problem by emphasizing the applicable positive legal norms. In an academic context, this approach is used to study legal rules, legal principles, legal principles, legal doctrines, and jurisprudence that are relevant to the issue being studied.<sup>11</sup>

## **3. Results and Discussion**

### **3.1. Legal Analysis of Criminal Responsibility for Intermediary Actors in the Sale and Purchase of Narcotics by Prioritizing the Aspect of Justice**

#### **1) Decision Number 87/Pid.Sus/2024/PN Nab**

In the research raised by the author as a thesis, about the legal analysis of criminal liability for intermediary actors in the crime of buying and selling narcotics, with an emphasis on the aspect of justice. This analysis is based on

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<sup>11</sup>Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Review), Rajawali Press, Jakarta, pp. 13-14



Decision Number 87/Pid.Sus/2024/PN Nab which is the main case study. In this section, the chronology of events that underlie the decision will be described as a basis for understanding the application of law and justice in this case.

a. Chronology of Events of Decision Number 87/Pid.Sus/2024/PN Nab

On Friday, May 24, 2024, at around 04.30 Eastern Indonesian Time (WIT), the defendant Daniel Essue alias Daniel was on the KM Labobar ship, precisely on the rear left deck 3. At that time, the ship was docked at the Samabusa Port Pier, located in Nabire Regency, Central Papua Province. The defendant's presence at that location was inseparable from the series of sea journeys he had taken since Jayapura to Manokwari, with several transit ports in between, including Serui and Nabire.

Previously, law enforcement officers from the Nabire Police Narcotics Investigation Unit had obtained information indicating alleged abuse of marijuana on the ship. Based on the report, two officers, Brigadier Ricky Yoel Sambara and Brigadier Verry SDT Sembor, immediately conducted an inspection on the KM Labobar ship to follow up on the information received. The two then found two people suspected of rolling marijuana, one of whom was the defendant Daniel.

When officers conducted a raid, one of the two people immediately fled and was not caught. Meanwhile, the defendant was successfully secured. From the results of a direct search of the defendant's body and belongings, a number of pieces of evidence were found in the form of seven medium packages of marijuana packed in black plastic bags and one unused marijuana joint.

The defendant was then taken by officers to the Nabire Police Headquarters (Polres) for further examination and investigation into the case in question. During the examination process before investigators, the defendant openly admitted that he obtained the illegal goods in the form of marijuana from someone named Yulianus who is currently still on the Wanted List (DPO) in the Jayapura area. The handover of the marijuana to the defendant was carried out on May 21, 2024, or about three days before the defendant was caught at Samabusa Port, Nabire.

Furthermore, from the results of the interrogation of the defendant, it was discovered that the marijuana was not for personal consumption alone, but was intended to be handed over to another person named Welem, who is also currently a DPO and domiciled in Manokwari. The defendant acted as an intermediary for delivering marijuana from Yulianus to Welem, thus placing himself in the chain of cross-regional narcotics distribution via sea transportation.

In addition, during the trip on the KM Labobar, the defendant had exchanged some of the marijuana he was carrying with a local liquor known as "Bobo",



precisely when the ship was docked at Serui Harbor. The drink was then consumed by the defendant along with manually rolled marijuana. The combination of marijuana and alcohol caused the defendant to be intoxicated. In this unconscious state, the defendant rolled marijuana again to consume, before finally being caught by officers at Samabusa Harbor.

The defendant's behavior in carrying, storing, consuming, and acting as an intermediary in the distribution of marijuana-type narcotics reflects his active involvement in the crime of narcotics abuse, as regulated in the provisions of Law Number 35 of 2009 concerning Narcotics. With the arrest of the defendant along with evidence, the next legal process is carried out to ensnare the perpetrator with the appropriate criminal provisions based on the evidence and legal facts obtained from the results of the investigation.

**b. Legal Facts in Case Decision Number 87/Pid.Sus/2024/PN Nab**

Based on the results of the examination at the trial, supported by valid evidence as regulated in Article 184 paragraph (1) of the Criminal Procedure Code—which includes witness statements, expert statements, letters, clues, and statements from the defendant—a number of legal facts were revealed which convincingly showed the defendant's involvement in narcotics crimes. These legal facts can be described as follows:

1) The defendant possessed and controlled narcotics of the marijuana type which is included in Class I

Based on the results of a search by officers from the Nabire Police Narcotics Investigation Unit, seven medium packages of marijuana wrapped in black plastic were found, as well as one roll of marijuana that was ready to be consumed. Marijuana is included in class I narcotics as listed in the Appendix to Law Number 35 of 2009 concerning Narcotics, which means that possession of it without the right or permission of the authorities is a serious violation of the law. This fact is supported by the testimony of the arresting witness and the confiscation report (BAP).

2) The defendant obtained marijuana without permission from an unauthorized person.

In the statement given to the investigator and confirmed in court, the defendant admitted that the marijuana was obtained from someone named Yulianus, who is currently on the Wanted List (DPO). There is no evidence that Yulianus has an official permit to distribute or deliver narcotics, so the marijuana was obtained illegally. Thus, the element of "without rights" in the criminal article imposed has been fulfilled.

3) The defendant had the intention of being an intermediary in the distribution of marijuana from Jayapura to Manokwari.

The defendant's confession shows that he did not only control marijuana for personal interests, but also intended to deliver the illegal goods to someone named Welem who was in Manokwari. This fact shows that the defendant acted as a courier or intermediary in narcotics transactions, which is a criminal act as regulated in Article 114 paragraph (2) or Article 111 paragraph (2) of the Narcotics Law, depending on the proof of the defendant's intention and role in the distribution process.

4) The results of the defendant's urine test showed positive for THC (Tetrahydrocannabinol)

The urine test of the defendant conducted by Dr. Marina, as the doctor appointed to conduct the toxicology test, showed a positive result for containing THC, which is the main active compound in marijuana. This strengthens the suspicion that the defendant not only stored, but also consumed marijuana-type narcotics. This evidence strengthens the violation of Article 127 paragraph (1) letter a of Law No. 35 of 2009, which regulates the misuse of narcotics for oneself.

5) The results of forensic laboratory tests concluded that the evidence contained marijuana.

Based on the letter of the results of the forensic laboratory examination of the evidence samples, it was found that the substance contained in the black plastic wrap and the defendant's marijuana rolls were positive for containing marijuana. These laboratory results are legal written evidence and strengthen the validity of the imposition of narcotics articles on the defendant.

6) The net weight of the marijuana evidence reached 163.52 grams

A statement from PT Pegadaian as the party that assisted in weighing the evidence stated that the total net weight of the marijuana confiscated from the defendant was 163.52 grams. Some of the evidence was then destroyed in accordance with legal procedures, while the rest was set aside for the purpose of evidence in court. The weight of this evidence shows that the amount of marijuana controlled by the defendant is not small, so it can be interpreted as an attempt to distribute on a medium to large scale, in accordance with the interpretation of the Supreme Court of the Republic of Indonesia's Jurisprudence regarding the amount of narcotics in the criminal process.

Based on all the legal facts above, it can be concluded that the elements of the crime charged against the defendant have been cumulatively fulfilled, both in terms of ownership, control, unauthorized acquisition, use, and role as an intermediary in the narcotics distribution network. These facts are the basis for

legal considerations in sentencing the defendant in accordance with the provisions of Law Number 35 of 2009 concerning Narcotics.

c. Legal Considerations in Case Decision Number 87/Pid.Sus/2024/PN Nab

Legal considerations in a criminal case are an essential part that reflects the application of legal norms to the legal facts revealed in court. In this case, legal considerations can be grouped into three main aspects, namely the considerations of the Public Prosecutor, the defense of the defendant and legal counsel, and the reply or response from the Public Prosecutor to the defense. Here is a complete description:

1) Public Prosecutor's Considerations

The Public Prosecutor in this case stated that based on the legal facts revealed in the trial and the legally valid evidence as referred to in Article 184 of the Criminal Procedure Code, the defendant Daniel Essue alias Daniel has been proven legally and convincingly to have committed a criminal act without the right to act as an intermediary in the sale and purchase of Class I narcotics in the form of marijuana, as regulated in Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

The prosecutor's considerations are based on the following matters:

- a) That the marijuana controlled by the defendant was not for personal consumption alone, but was intended to be delivered or handed over to another party (Welem, DPO) in Manokwari, so that the defendant's role is qualified as an intermediary in the distribution of narcotics.
- b) That the amount of marijuana found was quite significant, namely 163.52 grams, which shows that the distribution was not on a small scale.
- c) That the defendant does not have the right or permission to control or distribute any type of narcotics, so that all actions taken are classified as serious crimes and have an impact on the wider community.

Based on the above considerations, the Public Prosecutor charged the defendant with imprisonment for 8 (eight) years, and a fine of Rp1,000,000,000.00 (one billion rupiah) with a subsidiary provision of 3 (three) months imprisonment if the fine is not paid. In addition, the prosecutor also submitted a request to the panel of judges to determine that the evidence in the form of marijuana be destroyed, as regulated in Article 91 of the Narcotics Law.

2) Request for Leniency from the Defendant and his Legal Counsel

In the defense hearing (plea), the defendant through his legal counsel submitted a request for the panel of judges to consider several mitigating factors (plea of mitigation), including:

- a) The defendant is still young, so he still has a long future and it is hoped that he can improve himself and not repeat his actions.
- b) The defendant had no previous convictions (first offender), indicating that this was his first violation of the law, and was not part of an organized syndicate.
- c) The defendant showed a cooperative attitude and sincerely regretted his actions, both during the investigation process and during the trial, and admitted all his mistakes without trying to evade or complicate the trial.

The defense asked the panel of judges to impose a lighter and more proportional sentence, while still considering the humanitarian aspects, restorative justice, and the principle of *ultimum remedium* in criminal law.

### 3) Public Prosecutor's Response to Defendant's Request

Responding to the defense of the defendant and his legal counsel, the Public Prosecutor stated that he would stick to the original charges, on the grounds that:

- a) That drug crimes are extraordinary crimes that have a wide impact on society, so law enforcement must be firm and not too lenient.
- b) That even though the defendant is still young, he is fully aware of what he is doing, and even has the intention of being an intermediary in the narcotics distribution process, so he cannot be considered just an ordinary user.
- c) That the regret expressed by the defendant does not erase the legal consequences of his actions, especially considering that the narcotics he brought were not for his own personal consumption in their entirety, but rather some were intended to be handed over to another party who had not yet been caught (DPO).

Therefore, the prosecutor is of the opinion that all elements of the crime have been proven legally and convincingly, and there is no reason to reduce the criminal charges that have been previously filed. Strict law enforcement is considered necessary to provide a deterrent effect to the defendant and the wider community so that they are not involved in the abuse or distribution of narcotics.

### 2) Criminal Liability for Intermediary Actors in the Sale and Purchase of Narcotics based on Decision Number 87/Pid.Sus/2024/PN Nab

The intermediary actor not only acts as a liaison, but can be held criminally responsible if they fulfill the elements of a crime as regulated in Law Number 35 of 2009 concerning Narcotics. In the case analyzed, the intermediary actor acted as a party that facilitated the sale and purchase of narcotics between the seller and the buyer without directly controlling the narcotics evidence. This role can include communication liaison, delivery, and payment collection. Based on the trial facts, the defendant played an active role in arranging the time and place of the transaction, as well as ensuring the smooth circulation of narcotics. Thus, the intermediary is not a passive party, but rather an integral part of the narcotics distribution chain.

Article 114 paragraph (1) and (2) of the Narcotics Law stipulates that anyone who offers, sells, buys, acts as an intermediary, or becomes a distributor of narcotics can be subject to criminal penalties. In this case, the intermediary can be punished the same as the main perpetrator if proven to have played an active role in the transaction.

In this case, the criminal liability of the intermediary defendant is based on evidence that shows his real involvement and awareness of the crime he committed. This is in accordance with the theory of criminal liability which emphasizes the elements of intent (*mens rea*) and real actions (*actus reus*). Evidence obtained from the investigation and trial strengthens the role of the defendant as an intermediary, for example communication recordings, witness statements, and evidence of money from transactions. This strengthens that the defendant not only knew but also controlled the narcotics buying and selling process.

However, in this case, several challenges were also found, such as proving the defendant's intent or knowledge of the type and amount of narcotics, which must be proven convincingly so that criminal responsibility can be enforced. The judge in the verdict took into account the defendant's active role as an intermediary, but also considered mitigating aspects such as not directly physically controlling the narcotics and the possibility that the defendant was influenced by the main perpetrator. Therefore, the verdict handed down was lighter than that of the main perpetrator, but still emphasized criminal responsibility for the intermediary perpetrator.

The application of criminal liability to the intermediary in this case shows that the Indonesian legal system places the intermediary as an inseparable part of the narcotics chain and must be punished in order to break the chain. However, the difference in punishment treatment also indicates the need for stricter and fairer law enforcement and handling that pays attention to aspects of rehabilitation and prevention.

### **3.2. Weaknesses of Criminal Liability of Intermediary Actors in the Sale and Purchase of Narcotics**

In practice, there are a number of weaknesses that often hinder the effectiveness of imposing criminal sanctions on intermediaries. These weaknesses not only impact the evidence process in criminal cases, but also have implications for substantive justice and the goal of preventing drug abuse. In the context of the drug trafficking cases analyzed, these weaknesses are seen from the difficulty of proving the real involvement of intermediaries, ambiguity in roles and limitations of authority, and the potential for abuse in the law enforcement process that causes an imbalance between legal treatment of the main perpetrators and intermediaries. Therefore, it is important to examine these weaknesses in depth so that criminal liability for intermediaries can be carried out fairly and effectively in accordance with applicable legal principles.

#### **1) Limited Evidence Supporting the Role of Intermediaries**

One of the most fundamental weaknesses in ensnaring intermediary actors in narcotics trafficking crimes is the limited evidence that can strengthen the active and real role of the perpetrator. In many cases, including the case analyzed, intermediary actors often only act as a liaison or information connector between the main perpetrator and the buyer, without taking direct action that is easy to prove legally.

In this case, the middleman was known to only act as a liaison between the main perpetrator and the buyer, without any direct evidence that the perpetrator physically sent or handed over the narcotics. The evidence presented by the Public Prosecutor was more in the form of communication recordings and testimonies showing that the perpetrator had made contact with the main defendant and the buyer, but no evidence of narcotics was found directly on the middleman.

In addition, during the examination, the intermediary perpetrators also often evade or provide inconsistent information, thus raising doubts about their involvement. Investigators often face obstacles in proving that the intermediary perpetrators truly knew and were intentionally involved in the distribution of narcotics, not just by chance or being the victim of manipulation by other parties. The judge considered that indirect recordings of conversations and communications were not sufficient as a strong basis to prove that the intermediary perpetrators intentionally and consciously carried out narcotics transactions. This is because the evidence does not prove the involvement of the perpetrators in the physical distribution of narcotics or actions that clearly support the distribution of narcotics. In addition, during the examination at the trial, the intermediary perpetrators gave ambiguous statements and did not fully admit their involvement, thus raising doubts in the judge's mind. The testimony

of the witnesses was also not strong enough to eliminate these doubts, so the judge chose to apply the principle of *in dubio pro reo* doubt must benefit the defendant.

Due to the limited evidence, judges must be careful in determining the level of involvement of intermediaries, because the principle of the presumption of innocence requires strong and convincing evidence. This causes the criminal sentences imposed on intermediaries to tend to be lighter or even released if insufficient evidence is found. In the cases analyzed, this can be seen from the less than optimal decisions in sentencing intermediaries, even though socially and morally their role greatly contributes to the narcotics distribution chain. This shows that in law enforcement practices, the limited concrete and direct evidence is a serious obstacle to firmly prosecuting intermediaries, which ultimately has an impact on the effectiveness of eradicating narcotics networks as a whole.

## 2) Ambiguity of Roles and Actions

intermediary actors often do not directly touch or control narcotics, but only act as a liaison between the seller and the buyer. This ambiguity also occurs in Decision Number 87/Pid.Sus/2024/PN Nab, where the defendant acted as an intermediary between someone with the initials YP (supplier) and the buyer, without being proven to have directly stored, carried, or delivered the narcotics.

In the panel of judges' considerations, there was no evidence that the defendant had ever physically held or controlled narcotics evidence. Therefore, his legal position became unclear: whether the defendant could be qualified as the main perpetrator based on Article 114 of the Narcotics Law, as an assistant in Article 56 of the Criminal Code, or only as a witness who knew about the transaction plan. This ambiguity resulted in the suboptimal sentencing because the court had difficulty in clearly placing the defendant's role within the framework of criminal law.

## 3) Potential for Inconsistent Legal Treatment

When the legal position of the intermediary perpetrator is not clear, the judge's decision can vary from case to case, depending on each judge's interpretation of the facts and the law. In this case, the defendant was only given a relatively light sentence compared to the main perpetrator YP who was given a heavier sentence.

This inequality indicates the potential for inconsistency in legal treatment, which can be considered unfair. If in a similar case another defendant is given a heavier sentence just because there is evidence of similar communication, then the principle of justice and equality before the law can be disturbed. The absence of



standard standards in assessing the role of intermediaries creates legal uncertainty, especially for law enforcement officers and defendants.

#### 4) Limitations in the Protection of the Human Rights of Intermediaries

The accused as an intermediary tends to be positioned passively in the judicial process. His rights to obtain optimal defense, such as presenting mitigating witnesses or experts who can explain the complexity of the intermediary's role, are not fully implemented to the maximum. In fact, as a defendant who does not directly hold evidence of narcotics, the court should provide proportional legal treatment and pay attention to the principle of non-self-incrimination (not forcing the accused to admit his guilt).

The lack of attention to the rights of the accused in the evidentiary process indicates a lack of protection of human rights, especially in the aspect of fair trial. This has the effect of giving the impression that the intermediary perpetrator was not given sufficient opportunity to defend himself against the accusations addressed to him.

#### 5) Lack of Specific Regulation Regarding Intermediaries

Positive Indonesian law, especially in Law Number 35 of 2009 concerning Narcotics, has not explicitly regulated the responsibility of intermediaries in the sale and purchase of narcotics. Article 114 targets the main perpetrators (distributors) who "sell, buy, deliver, or receive", without elaborating on how the law treats perpetrators who only act as intermediaries.

In the case of Decision Number 87/Pid.Sus/2024/PN Nab, the panel of judges must interpret the defendant's legal position themselves based on a limited role, so that there is no specific legal reference in assessing the actions of the intermediary. This reflects the absence of norms that have an impact on multiple interpretations and legal uncertainty in the criminalization process.

### **Conclusion**

Legal Analysis of Criminal Responsibility for Intermediary Actors in the Sale and Purchase of Narcotics by Prioritizing the Aspect of Justice. Legal analysis of the criminal liability of intermediary actors in narcotics trading confirms that the role of intermediaries cannot be viewed as the main actors, but also cannot be separated from the construction of the crime as a whole. In the context of justice, the law must be able to distinguish the weight of the involvement of intermediary actors compared to the main dealers or distributors. In Decision Number 87/Pid.Sus/2024/PN Nab, the court should not only focus on criminalization, but also consider factors such as intent (*mens rea*), factual role, and economic pressure that drives someone to become an intermediary. In this case, it is based on the provisions of Article 114 paragraph (1) and (2) of Law

Number 35 of 2009 concerning Narcotics. The perpetrator who acts as a liaison between the seller and buyer of narcotics is considered to have an important role in the occurrence of narcotics transactions, so that he can be subject to criminal responsibility even though he does not have or control the goods directly.

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