



**Elements of Possessing and Controlling Narcotics Class I Not Plants Article 112 Paragraph (1) of Law Number 35 of 2009 Concerning Narcotics (Study of Lamongan District Court Decision Number: 221/Pid.Sus/2021/PN.Lmg)**

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**Abstract**

The state of Indonesia is a state of law. This is stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) as a result of the Third Amendment to the 1945 Constitution. The State of the Republic of Indonesian a state of law respects and protects those who are suspected or suspected of committing criminal acts by granting rights to them in an effort to prove whether the person concerned is really a criminal offender or not. Based on the elements of possessing and mastering, it can be concluded that the element of possessing Article 112 paragraph (1) of Law No. 35 of 2009 can mean that the perpetrator illegally took the item (narcotics) to be used as his possession. While the element of "control" can mean that the perpetrator may not be a narcotics but can perform other actions that show the perpetrator really has power over the item. Based on the description, the public prosecution should be able to accommodate the provisions of Article 127 paragraph (1) of Law Number 35 of 2009, so that there is an alternative charge Third to entangle the Defendant with three alternative charges, namely First: Article 114 paragraph (1), Second: Article 112 paragraph (1), and Third Article 127 paragraph (1) of Law Number 35 of 2009.

**Keywords :** Narcotics, Judge Verdict, Possession and Control

**INTRODUCTION**

The development and advancement of technology in the era of globalization is very influential in human life. All aspects of life, including the fields of science and technology, economics, social, politics, culture, and defense and security are inseparable from the influence of globalization that occurs today. Globalization not only brings change for the better, but also has a bad impact on anyone who is not ready to accept change.

Narcotics crime is one of the special crimes because it does not use the Criminal Code as the basis for its "regulation" but is regulated in a special law outside the Criminal Code, namely Law No. 35 Year 2009. All drug abuse as stipulated in Law No. 35 Year 2009 is a drug crime. The term criminal offence comes from a term known in Dutch criminal law, namely



*strafbaar feit*<sup>1</sup>. The definition of criminal acts or criminal acts has been widely put forward by criminal law experts. According to Simons, *strafbaar feit* is an unlawful act that has been done intentionally or unintentionally by someone who can be held accountable for his actions and by law has been declared a punishable act<sup>292</sup>.

The problem of narcotics seems to be increasingly becoming a serious problem, so there is often a moral movement that calls for anti-narcotics or better known as drugs through posters or other media with slogans such as "Beautiful World Without Drugs", "Say No to Drugs", and so on are often found on the roadsides or often carried by volunteers who care about drug eradication.

The rise of the anti-drug movement in the midst of society is caused by a fact that reveals that the spread of narcotics has almost penetrated all corners of the country. The danger of narcotics really threatens the lives of the Indonesian nation. News of the circulation and abuse of narcotics, as well as people dying of overdose (OD) are often aired in electronic media (television) and reported in print media (newspapers).

As is known, the Indonesian state is a state of law. This is stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) as a result of the Third Amendment to the 1945 Constitution. The State of the Republic of Indonesia as a state of law respects and protects those who are suspected or suspected of committing criminal acts by granting rights to them in an effort to prove whether the person concerned is really a criminal offender or not.

People suspected of committing criminal acts may not necessarily have committed a criminal act, because based on Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power<sup>3</sup>, states that everyone who is suspected, arrested, detained, prosecuted, or faced before the court must be presumed innocent before a court decision stating his guilt and has obtained permanent legal force.

<sup>1</sup> Adami Chazawi, *Criminal Law Studies I; Stelsel Criminal, Crime, Theories of Penal & the Limits of the Enactment of Criminal Law*, Raja Grafindo Persada, Jakarta, 2002, p. 67.

<sup>2</sup> Erdianto Effendi, *Indonesian Criminal Law An Introduction*, Refika Aditama, Bandung, 2011, p. 98.

<sup>3</sup> State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076.



The problem to be discussed in this study is the basis for consideration by the judge of the Lamongan District Court applying Article 112 paragraph (1) of Law No. 35 of 2009 in decision Number: 221 / Pid.Sus / 2021 / PN.Lmg. This case began with the defendant TEGUH MARSUDI Bin MARBA MARJONI who was charged with an alternative charge, FIRST as stipulated in Article 114 paragraph (1) of Law No. 35 of 2009. The SECOND alternative as stipulated in Article 112 paragraph (1) of Law No. 35 of 2009. In this study, the focus is on the SECOND alternative charge as stipulated in Article 112 paragraph (1) of Law No. 35 of 2009.

This case began with the arrest of the accused and was secured by Lamongan Police Drug Task Force officer IMAM SUDIRJO, SH and witness RAMA PUTRA HASANDI on Wednesday, September 13, 2021, at approximately 12.00 on the roadside of Deket Wetan Village, Deket District, Lamongan Regency, East Java Province. As for the summary chronology of cases carried out by the defendant in the following ways:

- The accused wanted to buy methamphetamine-type narcotics which then went to sdr's house. AGUS (DPO) who was in the Sawa Pulo area of Surabaya City after meeting with sdr. AGUS (DPO) then the defendant handed over his money in the amount of Rp. 300,000,- (three hundred thousand rupiah);
- That the purpose and purpose of the defendant buying methamphetamine-type narcotics from AGUS's brother was that some of it was consumed by himself and some of it was the entrustment of Rendi's brother, Tlogoanyar address, Lamongan Regency;
- That before the defendant got married or about 1 (one) year ago, RENDI often asked for help from him to buy methamphetamine-type narcotics to be consumed with him at home, but after he got married, only this time RENDI asked the defendant again to buy methamphetamine-type narcotics.
- That the defendant before marriage often bought or obtained methamphetamine type narcotics from AGUS but after the defendant got married only twice this time bought methamphetamine type narcotics from AGUS's brother.
- That the evidence in the form of 1 (one) unit of the blue Samsung M20 cellphone belongs to him which he used as a communication tool when he was an intermediary for buying and selling methamphetamine type narcotics with Rendi's brother.



- That the evidence in the form of 1 (one) unit of black Honda Vario 150 motorcycle nopol S-4816-MP belongs to the defendant which was used as a means of transportation when the defendant bought methamphetamine type narcotics and when he wanted to deliver methamphetamine type narcotics.
- That the Defendant TEGUH MARSUDI Bin MARBA MARJONI does not have permission from the competent authority or does not have a valid permit or official document from the Ministry of Health of the Republic of Indonesia or from the authorities entitled to it and has nothing to do with the defendant's work to sell, buy, receive and intercede in the sale and purchase of Class I Narcotics not plants in the form of 1 (one) plastic clip of 0.30 grams and contains white crystals with a gross weight of 0.08 grams (Narcotics Group I types of methamphetamine);
- That the defendant TEGUH MARSUDI Bin MARBA MARJONI does not have permission from the competent authority or does not have a valid permit or official document from the Ministry of Health of the Republic of Indonesia or from the authorities entitled to it and has nothing to do with the defendant's work to sell, buy, receive and intercede in the sale and purchase of Class I Narcotics not plants in the form of 1 (one) plastic clip of 0.30 grams and weight±contains white crystals with a gross weight of 0.08 grams (Class I methamphetamine narcotics);

The actions of the Defendant are regulated and threatened with crime as stipulated in Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics<sup>4</sup>.

As is known, the defendant TEGUH MARSUDI Bin MARBA MARJONI was submitted to the trial by the Public Prosecutor charged based on the FIRST indictment: Article 14 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and SECOND: Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Meanwhile, the criminal charges filed by the Public Prosecutor are based on Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

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<sup>4</sup> Page 14 Decision Number 221/Pid.Sus/2021/PN.Lmg.



Article 112 paragraph (1) of Law No. 35 of 2009 states: "Any person who without rights or against the law possesses, stores, controls, or provides non-plant Class I Narcotics, shall be punished with a prison sentence of not less than 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000, 00 (eight billion rupiah)".

## DISCUSSION

### **a. The element of owning and controlling in Article 112 paragraph (1) of Law Number 35 of 2009**

#### a. Definition of criminal act

In Indonesian laws and regulations, there is no definition of a criminal act. The understanding of criminal acts understood so far is a theoretical creation of legal experts. The definition of criminal act is a definition used to describe an act that can be criminalized, in Dutch it is better known as strafbaarfeit. Moeljatno prefers criminal acts to the term criminal act According to Moeljatno, what is meant by criminal acts is actions prohibited by a rule of law accompanied by threats (sanctions) in the form of criminal for anyone who violates the prohibition.

According to Simons as quoted by Moeljatno, mentioning that strafbaarfeit is a conduct (handeling) that is threatened with crime, that is unlawful, that is related to mistakes and that is committed by people who are able to be responsible. Meanwhile, Komariah E. Supardjaja, said a criminal act is a human act that fulfills the formulation of delict, against the law, and the maker is guilty of committing the act. So, it can be concluded that criminal acts are human actions, these acts meet the formulation of delicacies, are unlawful, the perpetrator is guilty of committing the act and is able to account for his actions.

#### b. Definition of narcotics crime

In Law No. 35 of 2009 there is no definition of narcotics crimes, but Law No. 35 of 2009 provides a definition of narcotics as stated in Article 1 number 1 which reads "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and



semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to the point of relieving pain, and may give rise to dependence, which is divided into the classes as attached to this Act".

Although Law No. 35 of 2009 provides limitations on the understanding of narcotics crimes, there is one article in Law No. 35 of 2009 that shows towards understanding the meaning of narcotics crimes or assists in providing an understanding of narcotics crimes, namely Article 5 which states: "Narcotics Regulation in this Law includes all forms of activities and / or actions related to Narcotics and Narcotic Precursors".

If you pay attention to the provisions of Article 5 of Law No. 35 of 2009, it can be concluded that narcotics crime is a set of legal rules that regulate all forms of activities and / or actions related to Narcotics and Narcotics Precursors.

c. Narcotic abuse

In Law No. 35 of 2009, the terms and definitions of drug addicts and abusers are known as referred to in Article 1 numbers 13 and 15 as follows: Article 1 number 13 of Law No. 35 of 2009 reads: "Drug addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically". While Article 1 number 15 of Law No. 35 of 2009 reads: "Abusers are people who use narcotics without rights or against the law". Considering letter c of Law No. 35 of 2009 states: "that narcotics on the one hand are drugs or materials that are useful in the field of medicine or health services and scientific development and on the other hand can also cause very detrimental dependence if misused or used without strict and careful control and supervision".

Considering letter c of Law No. 35 of 2009, it can be understood that the use and use of narcotics that deviate from the purpose in the field of medicine or health services and the development of science means that there is abuse of narcotics, there are unlawful acts. Misuse of narcotics is an act that deviates from the provisions of Article 7 of Law No. 35 of 2009 which states: "Narcotics can only be used for the benefit of health services and / or the development of science and technology".



**b. Study of the elements of "Owning and Mastering" Article 112 paragraph (1) of Law No. 35 of 2009.**

To examine the elements of "Owning and Mastering" Article 112 paragraph (1) of Law No. 35 of 2009, it is necessary to cite the legal considerations of the Lamongan District Court in Decision Number 221/Pid.Sus/2021/PN Lmg. In legal considerations, the panel of judges of the Lamongan District Court stated:

*Considering that the Defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges by taking into account the legal facts mentioned above directly chose the second alternative charge as stipulated in Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics whose elements are as follows:<sup>5</sup>*

1. The element of each person;
2. Elements without rights or against the law;
3. Elements of possessing, storing, possessing, or providing non-plant Group I Narcotics;

The element of possessing, storing, possessing, or providing Non-Plant Class I Narcotics as referred to Article 112 paragraph (1) of Law No. 35 of 2009 in the judge's understanding is always referred to that this third element is alternative, meaning that if one element of action in this element has been proven, then the other elements do not need to be proven and this third element is declared to have been fulfilled.

The formulation of Article 112 of Law No. 35 of 2009 is as follows:

Paragraph (1) Any person who without rights or against the law possesses, stores, controls or provides non-plant Class I narcotics, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000 (eight billion rupiah).

Paragraph (2) In the case of possessing, storing, possessing, possessing, or providing narcotics, Group I is not a heavy plant; exceeding 5 grams, the offender shall be sentenced to life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one-third).

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<sup>5</sup> Page 14 Decision Number 221/Pid.Sus/2021/PN.Lmg.



As already mentioned, the elements of Article 112 paragraph (1) of Law No. 35 of 2009 are:

1. The element of each person;
2. Elements without rights or against the law;
3. Elements of possessing, storing, possessing, or providing non-plant Group I Narcotics;

In this writing, what will be studied is the element of "owning and mastering". If you look at the explanation of Article 112 of Law No. 35 of 2009, it only says "quite clearly". To get an explanation of the meaning of the element "possess and master", it is necessary to find the answer both in non-legal materials (dictionaries) and the opinions of scholars.

The word has according to the Big Indonesian Dictionary (KBBI) consists of 2 meanings, namely "v 1 has and 2 takes illegally to be used as possession"<sup>6</sup>. While the word master in KBBI means "v 1 power over (something), holding power over (something); 2 imposing power (influence etc.) on, can overcome circumstances; 3 manage, 4 hold; very capable in the field of science"<sup>7</sup>. Mastering according to the definition of KBBI is associated with the elements in Article 112 paragraph (1) of Law No. 35 of 2009, it can be interpreted that the perpetrator has power over the narcotics or the perpetrator holds power (power) over the narcotics.

According to Naharuddin Rambe, et al., that what is meant by "to have is to have, and it must really be the owner regardless of whether the goods are physically in his hands or not. Possession must also be seen from how the item belongs to him or the origin of the item"<sup>8</sup>.

Then what is meant by mastering means:

To have power over (something), to hold power over something. That a person is said to be in possession of goods if he can control what is controlled, he can control something that is in his power, it is not necessary whether the object is in his power physically or not, the important thing is that the perpetrator can perform actions such as

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<sup>6</sup> Ministry of National Education, *Kamus Besar Indonesian*, Third Edition, Balai Pustaka, Jakarta, 2005, p. 744.

<sup>7</sup> *Ibid.*, p. 604.

<sup>8</sup> Naharuddin Rambe, et al., "Application of Article 112 and Article 127 paragraph 1 letter a of Law Number 35 of 2009 concerning Narcotics (Case Study of Rantau Prapat District Court Decision Number 1023 /Pid.Sus/2018/PN. RAP; 762/Pid.Sus/2017/PN. Rap; 712/Pid.Sus/2017/PN. Rap)", *Locus Journal of Legal Science Concepts*, Volume 2, Number 1 January - April 2022 ( 178 - 186 ).





selling, giving to others or other actions that show that the perpetrator really has power over the goods.<sup>9</sup>

Meanwhile, A.R. Sujono and Bony Daniel argued regarding the element of "owning" Article 112 paragraph (1) of Law No. 35 of 2009 as follows:

To have here is to have, meaning to be truly the owner, no matter whether the goods are physically in his hands or not. The element of possession must also be seen from how the item belongs to / the origin of the item.

If a person is only caught carrying narcotics cannot automatically be considered an owner, to become an owner it must be proven that this carrier has a basis that results in being called an owner. Ownership can be obtained from giving, by planting yourself, buying or by other means such as grants and so on, which clearly must have a direct relationship between the perpetrator and the goods, so that it can be called "owning"<sup>10</sup>.

Furthermore, regarding the element of "mastering" Article 112 paragraph (1) of Law No. 35 of 2009, A.R. Sujono and Bony Daniel expressed their views as follows:

To rule means to rule over something, to hold power over something. A person can be said to control goods if he can control what is controlled, he can control something that is in his power is not needed whether the object is in his power physically or not which is important the perpetrator can perform actions such as selling, giving to others or other actions that show that the perpetrator really has power over the item. This meaning of "master" is broader than "to have". The person who controls can occur not as the owner and the existence of goods may not be physically in his hands because they are stored and guarded by others.<sup>11</sup>

Based on the description of the discussion of the elements of "owning" and "mastering" above, it can be concluded that the element of "possessing" Article 112 paragraph (1) of Law No. 35 of 2009 can mean that the perpetrator illegally took the item (narcotics) to be used as his possession. While the element of "control" can mean that the perpetrator may not be the owner of the narcotics but can perform other actions that show the perpetrator really has power over the item.

**c. Analysis of the Application of Article 112 paragraph (1) of Law No. 35 of 2009 in Decision Number 221/Pid.Sus/2021/PN. Lmg.**

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<sup>9</sup> *Ibid.*

<sup>10</sup> A.R. Sujono and Bony Daniel, *Comments & Discussion of Law Number 35 of 2009 concerning Narcotics*, Sinar Grafika, Jakarta, 2011, pp. 229-231.

<sup>11</sup> *Ibid.*



The panel of judges of the Lamongan District Court in its ruling stated, among others:

**ADJUDICATE:**

1. Declaring the above defendant TEGUH MARSUDI Bin MARBA MARJONI, legally and conclusively guilty of committing a criminal offence "without the right to possess, store, possess or provide Class I Narcotics" as in the second alternative indictment;
2. Sentence the Defendant to imprisonment for 4 (four) years and a fine of IDR 1,000,000,000 (one billion rupiah) provided that if the fine is not paid it is replaced by imprisonment for 1 (one) month;

Decision Number 221/Pid.Sus/2021/PN. Lmg. mentioned above, is said to be in accordance with the JPU indictment/demand, because the judge is only faced with two choices, namely trying based on the first charge, namely Article 114 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics or based on the second alternative charge, namely Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Then the panel of judges chose the application of Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

Decision Number 221/Pid.Sus/2021/PN.Lmg., in accordance with the provisions of the law, is based on at least 2 (two) pieces of evidence in the law (KUHP), namely 2 (two) witnesses presented in the trial, (witness Imam Sudirjo, S.H. and witness Rama Putra Hasandi, SH) the defendant's statement (TEGUH MARSUDI Bin MARBA MARJONI). Based on the statements of 2 (two) witnesses and the statements of the defendant, the panel of judges of the Lamongan District Court obtained a belief that the event / act as charged had violated Article 112 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics and the accused was the perpetrator. In deciding the case, the panel of judges of the Lamongan District Court adheres to the Evidence System according to the Judge's Belief Arising from Evidence in the Law negatively (*negatief wettelijk bewijs theorie*) and complies with Article 183 of the Code of Criminal Procedure which states that "A judge may not convict a person unless by at least two valid evidences he obtains a conviction that a



crime has actually been occurred and that it was the defendant who was guilty of doing so".

The thing that needs to be studied in my opinion is the examination of the accused in the Minutes of Examination (BAP) of the investigator, where it is known:

- That the purpose and purpose of the defendant buying methamphetamine-type narcotics from AGUS's brother was that some of it was consumed by himself and some of it was the entrustment of Rendi's brother, Tlogoanyar address, Lamongan Regency;
- That before the defendant got married or about 1 (one) year ago, RENDI often asked for help from him to buy methamphetamine-type narcotics to be consumed with him at home, but after he got married, only this time RENDI asked the defendant again to buy methamphetamine-type narcotics.
- That the defendant before marriage often bought or obtained methamphetamine-type narcotics from AGUS but after the defendant was married only twice this time bought methamphetamine-type narcotics from AGUS's brother;
- That based on the Minutes of Criminalistic Laboratory Examination Lab No. : 08935 / NNF / 2021 from the East Java Police Forensic Laboratory dated November 1, 2021 that 1 (one) plastic bag containing 0.005 grams of ±white crystals with a net weight of approximately belongs to the defendant TEGUH MARSUDI Bin MARBA MARJONI is true to contain Methamphetamine which Methamphetamine is listed in Narcotics Class I Number 61 in the Appendix to Law of the Republic of Indonesia No. 35 of 2009 about Narcotics is true to contain Methamphetamine which Methamphetamine is listed in Narcotics Class I Number 61 in the Annex to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics<sup>12</sup>;

In the BAP it is stated that the purpose of the defendant buying meth is for his own consumption and before the defendant got married or about 1 (one) year ago the defendant often asked RENDI to buy methamphetamine type narcotics to be consumed with him at home. Before marriage, the defendant also often bought or obtained methamphetamine-type narcotics from AGUS, but after the defendant got

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<sup>12</sup>Decision No. 221/Pid.Sus/2021/PN. Lmg., page 14.



married, only twice did they buy methamphetamine-type narcotics from AGUS's brother.

The statement of the defendant who had consumed shabu before and after marriage until the defendant was arrested by police officers, namely witness Imam Sudirjo, SH, and witness Rama Putra Hasandi, SH on Wednesday, October 13, 2021 at approximately 6.45 pm on the roadside of Deket Wetan Village, Deket District, Lamongan District, because they were found to be in possession and storing narcotics, should be carried out by investigators first physical and psychological examinations whether the defendant became a dependent person. Because based on considerations Considering letter c of Law Number 35 of 2009 it is stated that "Narcotics on the one hand are drugs or materials that are useful in the field of medicine or health services and scientific development and on the other hand can also cause very detrimental dependence if misused or used without strict and careful control and supervision".

The importance of psychological examination of the accused is as an effort to find out whether the defendant is a dealer, addict or drug abuser? To answer this problem, it is necessary to review the related articles of Law Number 35 of 2009 and scholarly opinions. "If you look at the definition itself, as stated in Article 1, number 13 and number 15, there is an assumption that drug addicts are abusers"<sup>13</sup>.

In fact, a drug addict or abuser is a criminal offender in terms of when he obtains narcotics without rights, against the law. This can be read in Article 1 number 13 of Law Number 35 of 2009 which states that Drug Addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically.

This element is cumulative so that if narcotics dependence is not fulfilled both physically and psychologically, then Article 112 paragraph (1) of Law Number 35 of 2009 may be imposed on the defendant. However, addicts are people who are dependent both physically and psychologically on narcotics so that they are classified as victims

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<sup>13</sup> A.R. Sujono and Bony Daniel, *Comments and Discussion of Law Number 35 of 2009 concerning Narcotics*, Sinar Grafika, Jakarta, 2011, p. 124.



who should be treated with rehabilitation as stated in Article 54 of Law Number 35 of 2009.

Therefore, Article 112 paragraph (1) cannot necessarily be imposed on him, even if this addict is found to possess, store, control or provide narcotics. Since there is a kind of *specialist lex* that regulates against these addicts can be rehabilitated<sup>14</sup>.

If you pay attention to the criteria for drug addicts and abusers, it can be concluded that drug addicts are part of drug abusers. So that drug abusers themselves are:

1. People who use drugs without rights or against the law who are already in a state of dependence on narcotics both physically and psychologically.
2. People who use drugs without rights or against the law who have not entered into a state of dependence<sup>15</sup>.

For abusers, it may be subject to Article 112 paragraph (1) of Law Number 35 of 2009, because the definition of abusers is included in the elements of Article 112 paragraph (1). Abusers according to Article 1 number 15 of Law Number 35 of 2009 are people who use narcotics without rights or against the law, but these drug abusers are also regulated separately in Article 127 paragraph (1) of Law Number 35 of 2009. If threatened also with Article 112 paragraph (1) of Law Number 35 of 2009, it raises a dilemma as to which article will be imposed on the defendant TEGUH MARSUDI Bin MARBA MARJONI, because Article 112 paragraph (1) and Article 127 paragraph (1) of these two articles can prove to be elements of delicacy, but the length of punishment is different.

Based on this description and discussion, the public prosecution should be able to accommodate the provisions of Article 127 paragraph (1) of Law Number 35 of 2009, so that there is an alternative third charge to entangle the defendant with three alternative

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<sup>14</sup> Tri Agus Gunawan, *Juridical Analysis of the Provisions of Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics in Drug Addicts and Abusers*, Thesis, Master Program (S2) of Law Postgraduate Program Faculty of Law, Universitas Islam Indonesia Yogyakarta, 2013, p. 138.

<sup>15</sup> A.R. Sujono and Bony Daniel, *Op. Cit.*, pp. 125-126



charges, namely One: Article 114 paragraph (1), Second: Article 112 paragraph (1), and Third Article 127 paragraph (1) of Law Number 35 of 2009.

### **Closing**

Narcotics crimes are included in special crimes, because as a basis for regulating narcotics crimes, they do not use the Criminal Code but use Law Number 35 of 2009 concerning Narcotics. In Decision Number 221/Pid.Sus/2021/PN. Lmg., the defendant was charged with the second alternative charge, namely Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The elements of the offense of Article 112 paragraph (1) include the element of the act of "having", the element of the act of "mastering". The act of "possessing" or the element of "having" in Article 112 paragraph (1) of Law No. 35 of 2009 means that the perpetrator (defendant TEGUH MARSUDI Bin MARBA MARJONI) took illegally, or against the law the item (narcotics class I not plants) to be his property. Because the Narcotics Law states that possessing narcotics without permission from the authorities means possessing unlawfully. While the element of "control" can mean that the perpetrator (defendant) may not be the owner of the narcotics but can commit other actions that show that the perpetrator (defendant) really has control over the goods (narcotics).

Application of Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics for defendants (TEGUH MARSUDI Bin MARBA MARJONI) Decision Number 221/Pid.Sus/2021/PN. Lmg. in accordance with the Second alternative demand of the public prosecutor. Lamongan District Court Decision Number 221/Pid.Sus/2021/PN.Lmg., has fulfilled the provisions of the law, which is based on at least 2 (two) pieces of evidence in the law (KUHAP), namely 2 (two) witnesses presented in the trial, and the defendant's statement.

Based on the statements of 2 (two) witnesses and the statements of the defendant, the panel of judges of the Lamongan District Court obtained a belief that the event / act as charged had violated Article 112 paragraph (1) of the Law of the Republic of



Indonesia Number 35 of 2009 concerning Narcotics and the accused was the perpetrator. Lamongan District Court Decision Number 221/Pid.Sus/2021/PN.Lmg., adheres to the Evidence System according to the Judge's Belief Arising from Evidence in the Law negatively (*negatief wettelijk bewijs theorie*) and complies with Article 183 of the Criminal Procedure Code However, the thing that must also be considered by the public prosecutor is the defendant's statement in the BAP that the purpose and purpose of the defendant buying methamphetamine-type narcotics from AGUS's brother is Some of his own consumption and consumption of narcotics have also been done before marriage, so it is necessary to conduct a physical and psychological examination of the defendant. Therefore, it should also include an alternative third charge through Article 127 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009.



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### Court Judge Negeri Lamongan's Verdict:

**Decision Number 221/Pid.Sus/2021/PN. Lmg**