

## Substantive Legal Justice Regarding the Judge's Legal Considerations Towards Perpetrators of the Criminal Acts of Narcotics Distribution

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**Keywords:**

judicial discretion; criminal responsibility; narcotics; intermediaries; disparities in sentencing.

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**ABSTRACT**

Narcotics crimes are complex crimes that raise issues in determining criminal liability, particularly for intermediaries. This study aims to analyze the judge's legal considerations in Decisions Number 79/Pid.Sus/2025/PN Cbn and Decision Number 761/Pid.Sus/2025/PN Bdg and examine the forms of criminal liability for narcotics distributors. The research method used was normative legal research with a statutory, conceptual, and case approach. The data used are primary and secondary legal materials analyzed qualitatively. The results show that the judge's considerations are not only based on the fulfillment of the elements of the offense, but also on the defendant's role in the network, the level of culpability, and the subjective condition of the perpetrator. In the Cirebon District Court Decision, the defendant is considered an active perpetrator and therefore is given a stricter sentence, while in the Bandung District Court Decision, the defendant is considered a subordinate intermediary and therefore is given a relatively lighter sentence despite greater evidence. Criminal liability in narcotics cases requires the fulfillment of the elements of the criminal act, the ability to be responsible, and fault. This study also found sentencing disparities due to differences in judges' assessments of the perpetrator's role.

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### INTRODUCTION

Drug crimes are among the most complex crimes in the Indonesian criminal justice system. One legal issue that frequently generates debate is how judges assess the role of intermediaries in the sale and purchase of narcotics. *Intermediary*, namely a party that connects sellers with buyers without directly owning or enjoying the results of the transaction (Frosio, 2021; Taggart, 2022). This role is often in grey *area*, because Law Number 35 of 2009 concerning Narcotics does not explicitly differentiate between the main perpetrator, distributor, courier or intermediary (Sunaryo, 2012). As a result, the determination of criminal responsibility for intermediaries often depends on the juridical construction and arguments of the judge, thus opening up space for variations in decisions or sentencing *disparity* (Answar, 2025). (Khaled & Adas, 2024)

The problem becomes more important when there are two court decisions that try the same defendant's role, but produce different legal considerations. This is what emerged in Decision No. 79/Pid.Sus/2025/PN Cbn and Decision No. 761/Pid.Sus/2025/PN Bdg, which both involved the defendant as an intermediary in a narcotics transaction. Decision No. 79/Pid.Sus/2025/PN Cbn (Defendant Michael Erlangga Gunawan Alias Mencle Bin (Alm) Hermanto Gunawan) was charged with Article 114 paragraph (2) of the Narcotics Law with evidence of 5.4 grams of crystal methamphetamine, and sentenced to 7 years in prison. Meanwhile, Decision No. 761/Pid.Sus/2025/PN Bdg (Defendant Rian Eko Irawan Bin Iwan

Ridwan) was charged with Article 114 paragraph (2) of the Narcotics Law with larger evidence, namely 14.6002 grams of crystal methamphetamine, but was only sentenced to 7 years and 6 months in prison.

This research is novel in the form of a comparative analysis of two court decisions that share similar characteristics but show differences in legal reasoning and sentencing outcomes. This analysis focuses not only on the application of norms but also on the rationality of the judges' considerations in achieving substantive legal justice. Thus, this study aims to analyze the criminal liability of narcotics distribution perpetrators and examine the judge's legal considerations in Decision Number 79/Pid.Sus/2025/PN Cbn and Decision Number 761/Pid.Sus/2025/PN Bdg, in order to provide academic contributions to the development of criminal law, particularly regarding consistency and justice in sentencing.

Based on the background that has been described, the formulation of the problem in this study is, first, what is the form of criminal liability for narcotics dealers based on the applicable legal provisions, and second, how are the judges' legal considerations in imposing judgments in criminal cases Number 79/Pid.Sus/2025/PN.Cbn and Decision Number 761/Pid.Sus/2025/PN.Bdg. The purpose of this research is to examine and understand the form of criminal liability for narcotics dealers based on the applicable legal provisions, as well as to analyze and understand the judge's legal considerations in imposing a verdict in criminal case No. 79/Pid.Sus/2025/PN.Cbn and Decision No. 761/Pid.Sus/2025/PN.Bdg.

This research is expected to provide benefits, both theoretically and practically. Theoretically, this research contributes to the development of criminal law, especially in the concept of criminal liability for narcotics dealers and intermediaries, criminal theory, the principle of substantive justice, and the understanding of the disparity in judges' decisions in narcotics criminal cases. Practically, this research is useful for law enforcement officials, especially judges and prosecutors, as a material for academic reflection in creating consistency in decisions and reducing criminal disparities; for legal policy makers in formulating clearer limits on the role of intermediaries in Law Number 35 of 2009 concerning Narcotics; for academics and researchers, then as a reference in comparative studies of decisions and the development of normative legal research methods; and for the general public as a means of increasing understanding of the narcotics criminal justice process and the importance of substantive justice in every judge's decision.

## **METHOD**

### **Types of research**

This research used a normative legal research method (*doctrinal*), namely research that focuses on the study of legal norms, legal principles, doctrines, and court decisions to examine legal issues theoretically and conceptually.

### **Types of Research Approaches**

This research uses three types of approaches:

- 1. Legislative Approach (*Statute Approach*):** Law No. 35 of 2009 concerning Narcotics, Criminal Code (KUHP), Criminal Procedure Code (KUHAP).
- 2. Conceptual Approach (*Conceptual Approach*):** Examine the concepts of punishment, principles of justice, legal certainty, and utility.

**3. Case Approach (Case Approach):** Study of the decisions, namely Decision No. 79/Pid.Sus/2025/PN Cbn and Decision No. 761/Pid.Sus/2025/PN Bdg.

### **Research Data Sources**

The data sources for this research are entirely secondary data, which consist of:

1. **Primary Legal Materials:** Legislation, court decisions (main objects), and other official legal documents.
2. **Secondary Legal Materials:** Books, scientific journals, academic articles.
3. Tertiary Legal Materials Legal dictionaries, encyclopedias, and supporting sources.

### **Legal Material Analysis**

The analysis of legal materials is conducted qualitatively using legal interpretation techniques (*grammatical, systematic, and sociological*). The analysis also includes legal construction through comparative legal analysis (*comparative legal analysis*) of the judge's considerations. The analysis process includes the following stages:

1. Analysis of the alleged norms.
2. Interpretation of articles related to sales intermediaries.
3. Decision study (fact extraction and judge's considerations).
4. Comparative legal construction and formulation of legal arguments.

## **RESULTS AND DISCUSSION**

### **Criminal liability for perpetrators of narcotics distribution**

Drug crime in Indonesia continues to increase every year. This has led dealers to view Indonesia as a highly promising market for illicit drug trafficking (Nur'iqbal & Hidayat, 2018). Criminal liability for drug traffickers is one of the most crucial aspects of the Indonesian criminal law system, as it directly relates to how the state assesses a person's culpability and determines whether or not the perpetrator deserves punishment. In the context of drug crimes, the issue of criminal liability concerns not only proving the unlawful act but also encompasses an assessment of the perpetrator's role in the illicit trafficking network, the degree of culpability, and the subjective circumstances underlying the act.

Conceptually, criminal liability stems from the basic principle that a person can only be punished if they fulfil the elements of a crime and are at fault. This principle is known as "*geen straf zonder schuld*," or "*no crime without fault*." Therefore, it is not enough for law enforcement to prove that someone has committed a prohibited act; they must also prove that the perpetrator has the capacity to take responsibility and a reprehensible mental attitude. In criminal law, criminal liability consists of three main elements: the existence of a criminal act (*actus reus*), the capacity to take responsibility, and the existence of fault (*mens rea*). These three elements must be cumulatively fulfilled for a person to be convicted. In narcotics cases, the *actus reus* usually takes the form of offering for sale, selling, buying, receiving, acting as an intermediary, or possessing narcotics. Meanwhile, fault is reflected in the form of intent (*dolus*) or negligence (*culpa*), which indicates the perpetrator's mental attitude towards their actions.

In the context of drug distribution, intent is almost always the basis for criminal liability, as the act is generally committed consciously and premeditated. The perpetrator knows that narcotics are prohibited, yet they continue to distribute them for economic gain. This is evident

in numerous court decisions in which defendants knowingly received narcotics from others and then redistributed them to consumers (Yusuf & Siregar, 2023).

Law Number 35 of 2009 concerning Narcotics explicitly regulates various forms of acts that fall under the category of distribution, particularly in Article 114. This article covers various active actions directly related to illicit trafficking, such as selling, buying, receiving, or acting as an intermediary in the sale and purchase of narcotics. Interestingly, this law does not provide an explicit definition of specific roles within a narcotics network, such as dealer, courier, or intermediary. As a result, determining criminal responsibility for each perpetrator depends heavily on the judge's interpretation of the facts revealed at trial.

The role of intermediaries in drug trafficking is one of the most complex issues in criminal liability (Owen, 2016). Doctrinally, intermediaries fall under the concept of dealing, or participating in a crime. Although they do not always directly possess the narcotics, intermediaries can still be held accountable for their role in facilitating the transaction. In many cases, intermediaries serve as a crucial link connecting suppliers to consumers, without which the transaction would not have occurred. In judicial practice, the criminal liability of intermediaries is often controversial, particularly regarding the degree of culpability and the severity of the punishment imposed. On the one hand, intermediaries are considered active actors who contribute to the smoothing of drug trafficking, thus deserving of severe punishment. On the other hand, intermediaries can also be viewed as actors with a limited role who merely carry out orders from others, thus having a lower level of culpability than the main perpetrator (Sattu et al., 2023).

This can be seen in a concrete case, where a defendant received narcotics from another party and then redistributed them using a specific system, such as a patch system. In this case, the defendant knew that his actions were unlawful, but still committed them due to economic incentives. This situation shows that although the perpetrator acted intentionally, there are social and economic factors that influence his behaviour, which are then taken into consideration in determining the level of criminal responsibility. In addition to the element of intent, the capacity to take responsibility is also an important factor in criminal responsibility. A person is considered capable of taking responsibility if he has a normal mental condition and can understand and control his actions. In narcotics cases, the perpetrator is generally in a mentally healthy condition, so there is no reason to waive criminal responsibility. However, in certain cases, for example if the perpetrator suffers from mental disorders or is heavily dependent on narcotics, the judge may consider these aspects in determining the form and type of punishment imposed (Epilia & Hasan, 2024).

Another equally important aspect is the presence or absence of justification and excusing reasons. Justification removes the unlawful nature of an act, while forgiveness removes the perpetrator's guilt. In the context of drug trafficking, justification is very rare, as drug trafficking is essentially an act expressly prohibited by law. Meanwhile, excuses such as coercive power (*force majeure*) or official orders are also rarely applicable, except in very specific circumstances. In determining criminal responsibility, judges must also consider the perpetrator's relationship to the drug trafficking network. In many cases, perpetrators do not act alone but are part of a larger network. Therefore, it is important to identify each perpetrator's role, whether as the primary perpetrator, an intermediary, a courier, or simply a user.

Determining this role will influence the level of culpability and ultimately determine the severity of the sentence.

For example, in one case, the defendant received a large quantity of narcotics from a supplier to resell to consumers. The defendant even conducted several transactions and profited from these sales. In such a situation, the defendant could be considered an active dealer with a significant role in the distribution of narcotics, thus tending to carry a heavier criminal liability. However, if the defendant merely acted as an intermediary with no control over the goods or prices, then the level of culpability could be assessed as less severe.

Criminal liability in narcotics cases cannot be separated from the objectives of sentencing. In modern criminal law, the objectives of sentencing are not only retaliatory but also encompass prevention, community protection, and rehabilitation of the offender. In this context, judges must consider whether the sentence imposed will provide a deterrent effect for the offender and deter others from committing similar acts. Furthermore, judges must also consider the principle of individualized sentencing, namely that sentences must be tailored to the characteristics of each offender. Factors such as age, educational background, economic situation, and demeanour during the trial are important considerations in determining the type and length of sentence. In many cases, young offenders with no prior convictions tend to receive reduced sentences, as they are considered to have a chance to improve themselves.

However, in practice there are often differences in decisions (*sentencing disparity*) in narcotics cases, despite having similar characteristics. This is due to differences in judges' assessments of the perpetrator's role and level of culpability. For example, there are cases where perpetrators with less evidence are sentenced to almost the same or even heavier sentences than perpetrators with more evidence. This phenomenon shows that criminal responsibility is determined not only by quantitative factors such as the weight of the narcotics, but also by qualitative factors such as the perpetrator's role and intent (Jakupi, 2024; Tsimploulis et al., 2018). From a criminal law policy perspective, criminal responsibility for narcotics traffickers must also be seen as part of a comprehensive narcotics eradication strategy. Strict law enforcement against traffickers is expected to break the chain of illicit trafficking and reduce the negative impact of narcotics on society. However, on the other hand, an overly repressive approach without considering rehabilitation aspects can create new problems, such as overcrowding in correctional institutions and ineffective rehabilitation efforts for perpetrators.

Therefore, a balance between repressive and rehabilitative approaches is necessary in determining criminal responsibility. Perpetrators who act as active dealers and derive substantial profits from drug trafficking should be subject to severe penalties as a form of deterrence. Meanwhile, perpetrators with limited roles or those involved due to economic factors or social pressures may be considered for a more proportionate approach. Overall, criminal responsibility for drug dealers is a complex and multidimensional process. This process involves not only proving the elements of the crime but also assessing the subjective aspects of the perpetrator, their role in the network, and the purpose of the punishment. In practice, judges play a crucial role in determining how the law is applied concretely, ensuring that the resulting justice is not only formal but also substantive.

Thus, it can be concluded that criminal liability in drug trafficking cases cannot be viewed simply as the application of statutory articles. Rather, it is the result of an interaction between legal norms, trial facts, and the judge's assessment of the perpetrator. This complexity also

demonstrates that criminal law enforcement, particularly in drug cases, requires a careful, fair, and proportional approach to optimally achieve legal objectives (Batkorbawa et al., 2025).

### **The judge's legal considerations in handing down the verdict in criminal case Number 79/Pid.Sus/2025/PN.Cbn and Decision Number 761/Pid.Sus/2025/PN.Bdg**

A judge's legal considerations in handing down a criminal sentence are essentially an intellectual and juridical process that reflects how the judge connects the facts revealed in court with applicable legal norms. In narcotics cases, these considerations become even more complex because the judge must not only assess whether the elements of the crime have been fulfilled but also consider the perpetrator's role in the distribution network, the level of culpability, and the purpose of the sentence, which is to provide a deterrent effect while simultaneously reforming the perpetrator so that he can reintegrate into society (Lestari et al., 2023). This is clearly seen in Decision Number 79/Pid.Sus/2025/PN Cbn and Decision Number 761/Pid.Sus/2025/PN Bdg, which both tried the defendant as an intermediary in the sale and purchase of narcotics, but showed different legal considerations.

In Decision Number 79/Pid.Sus/2025/PN Cbn, the judge began his deliberations by reviewing the facts revealed at trial, obtained from witness statements, the defendant's statement, and the evidence presented. The main fact that became the basis for the deliberations was that the defendant Michael Erlangga Gunawan was caught red-handed carrying nine packages of methamphetamine with a gross weight of 5.4 grams stored in a sling bag he was using. In addition, it was revealed that the defendant obtained the narcotics from someone who had not yet been caught and was tasked with resuscitating him using a "paste" system, namely placing the goods in a certain location for later collection by the buyer.

The judge then assessed that the defendant's actions were not isolated, but rather part of an organized narcotics distribution network. The defendant not only acted as a user, but also as a liaison between suppliers and consumers. In this case, the judge determined the defendant as an active perpetrator in the crime, because he consciously accepted the task of distributing narcotics and received compensation from this activity. This is in line with the concept of intermediaries in criminal law, which, although not explicitly regulated in Law Number 35 of 2009, can still be held criminally responsible due to their essential role in narcotics transactions.

Next, the judge conducted an analysis of the elements of Article 114 paragraph (2) of the Narcotics Law that were charged. The element of "every person" was clearly fulfilled because the defendant was a legal subject who was able to take responsibility. The element of "without rights or against the law" was also fulfilled because the defendant did not have permission from the authorities to possess or distribute narcotics. The element of "offering for sale, selling, buying, receiving, or acting as an intermediary in the sale and purchase of narcotics in the form of non-plants weighing more than 5 (five) grams" was proven through the fact that the defendant received narcotics to be redistributed using a patch system. Meanwhile, the element of class I narcotics was proven through the results of a laboratory examination which stated that the evidence contained methamphetamine. With the fulfilment of all these elements, the judge stated that the defendant was legally and convincingly proven guilty of committing the crime as charged.

In terms of criminal responsibility, the judge determined that the defendant acted intentionally (*dolus*), as reflected in his awareness that his actions were unlawful, yet he continued to do so for the sake of profit. No justification or excuse was found to erase the

defendant's guilt. Thus, the principle of no punishment without fault (*geen straf zonder schuld*) was fulfilled, and the defendant deserved to be sentenced.

The judge's deliberations then moved on to assessing the aggravating and mitigating circumstances. The aggravating factor was that the defendant's actions did not support the government's anti-narcotics program and had the potential to harm the younger generation. Meanwhile, mitigating factors included the defendant's admission of his actions, his polite behaviour during the trial, his prior convictions, and his young age, which afforded him the opportunity to improve himself. Based on these considerations, the judge sentenced him to seven years in prison, which was deemed proportionate to the defendant's level of culpability and role.

In contrast, in Decision Number 761/Pid.Sus/2025/PN Bdg, the judge faced a case with factually more serious characteristics, because the amount of evidence found was much greater, namely 14,6002 grams of crystal methamphetamine. However, the legal consideration approach used showed a different nuance. In this case, defendant Rian Eko Irawan was proven to have received narcotics from a person who was a supplier (DPO) to then resell them to consumers. The defendant had even managed to sell some of the narcotics and obtained a sum of money from the sales proceeds.

However, the judge did not immediately consider the defendant to be the main perpetrator in the drug trafficking network. Instead, the judge saw that the defendant only acted as an intermediary in a subordinate position, namely a party who carried out orders from other perpetrators who had greater control. This is evident from the fact that the narcotics the defendant obtained came from another party, and the proceeds from the sale still had to be remitted to the supplier. Thus, the judge considered that the defendant's role was not entirely independent, but rather dependent on other parties in the network.

In analyzing the elements of Article 114 paragraph (2) of the Narcotics Law, the judge stated that all elements had been fulfilled, especially because the weight of the narcotics exceeded five grams so that it was included in the aggravating category. However, in the sentencing stage, the judge did not only rely on the weight of the evidence as the main factor, but also considered the subjective aspects of the defendant, such as motivation, social background, and level of involvement in the crime (Wahyuni et al., 2026).

The judge assessed that although the defendant acted intentionally, his level of culpability was not as high as that of the main perpetrator. The defendant committed the act for economic reasons and did not hold a strategic position within the drug trafficking network. Furthermore, the defendant had not yet obtained a significant profit from his actions. This approach reflects the application of the theory of criminal responsibility, which not only assesses objective aspects but also takes into account the subjective circumstances of the perpetrator.

Regarding aggravating circumstances, the judge continued to consider that the defendant's actions facilitated drug trafficking and endangered the public. However, mitigating circumstances prevailed, including the defendant's cooperative attitude, confession, and limited role in the network. Therefore, the judge sentenced him to seven years and six months in prison, only slightly less than the verdict in the first case, despite carrying a higher penalty.

A comparative comparison of the two decisions reveals fundamental differences in how judges assess the role of intermediaries in narcotics crimes (Purba et al., 2025; Rahayu, 2025). In the Cirebon District Court decision, intermediaries are viewed as active actors who

significantly contribute to narcotics trafficking, thus deserving of relatively severe penalties. Meanwhile, in the Bandung District Court decision, intermediaries are viewed as actors with a limited role under the control of another party, thus deeming their level of culpability lower. This difference demonstrates that in judicial practice, there is no completely uniform standard for assessing the role of intermediaries. This is due to the lack of a clear definition of intermediaries in the Narcotics Law, leaving judges with broad discretion in interpreting this role. Consequently, judges' legal considerations are heavily influenced by the legal constructions established in each case.

Furthermore, both decisions reflect the application of the principle of individualization of punishment, which states that punishment must be tailored to the characteristics of each perpetrator and their actions. Judges consider not only normative aspects such as the article violated and the amount of evidence, but also other factors such as motivation, role within the network, and potential for rehabilitation. This approach aligns with the objective of punishment, which is not only repressive but also preventive and rehabilitative.

However, the differences in sentencing outcomes in the two cases also give rise to a phenomenon known as sentencing disparity, which is a difference in verdicts in cases with similar characteristics. In this context, the defendant in the Bandung District Court case, who had more evidence and was charged with a more severe article, was only sentenced to a slightly higher sentence than the defendant in the Cirebon District Court case. This suggests that non-quantitative factors, such as assessments of role and degree of culpability, have a significant influence on sentencing.

Overall, the judges' legal considerations in both decisions demonstrate that the sentencing process is the result of an interaction between legal facts, legal norms, and the judge's subjective assessment of the perpetrator. Judges act not only as "mouthpieces of the law" but also as active interpreters in determining substantive justice. Therefore, the differences in considerations emerging in the two decisions not only indicate inconsistencies but also reflect the complexity of criminal law enforcement, particularly in narcotics cases involving multiple roles and levels of involvement of perpetrators.

## **CONCLUSION**

From the perspective of criminal responsibility, it can be emphasized that punishment for narcotics traffickers must fulfil the elements of a criminal act, the capacity to be responsible, and the presence of fault. In practice, the element of intent is the primary basis, as perpetrators generally know that their actions are unlawful but still carry them out for economic gain. However, judges also consider subjective factors such as social background, motivation, and level of involvement in the network, which influence the severity of the sentence. This study also shows the phenomenon of sentencing disparity, namely differences in decisions in cases with similar characteristics. This indicates that criminal responsibility is not only determined by quantitative factors such as the weight of the narcotics, but also by qualitative factors such as the role and level of culpability of the perpetrator. Thus, the principle of individualization of punishment is very important in ensuring substantive justice. Overall, it can be concluded that criminal responsibility for perpetrators of drug trafficking is a complex and multidimensional process, involving the interaction between legal norms, trial facts, and the judge's assessment. Therefore, law enforcement in the narcotics sector must be carried out

proportionally, balancing between repressive and rehabilitative approaches, and oriented towards justice that is not only formal, but also substantive.

The judge's legal considerations in narcotics distribution cases are a crucial aspect in determining the substantive direction of criminal law enforcement. In Decisions No. 79/Pid.Sus/2025/PN Cbn and No. 761/Pid.Sus/2025/PN Bdg, it is clear that the judges focused not only on fulfilling the elements of the offense as stipulated in Law No. 35 of 2009 concerning Narcotics, but also conducted a broader assessment of the role, level of culpability, and subjective conditions of each defendant. The judge's legal considerations in both decisions demonstrate that the sentencing process is not mechanical, but rather the result of a legal analysis that comprehensively considers the trial facts. In the Cirebon District Court case, the defendant was viewed as an active perpetrator who had a significant role in narcotics distribution through the patch system, so his criminal responsibility was assessed higher. In contrast, in the Bandung District Court case, the defendant was positioned as an intermediary with a subordinate role under the control of another party, resulting in a lower level of culpability despite the greater amount of evidence. This difference demonstrates a sentencing disparity, particularly due to the lack of a clear definition of an intermediary in the law.

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