



## Juridical Evaluation of Articles 112 and 127 of Law Number 35 of 2009 Concerning Narcotics

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### Abstract

*This study aims to evaluate the application of Articles 112 and 127 in Law Number 35 of 2009 concerning Narcotics and analyze judges' considerations in the application of law and evidence in cases recorded in Decision Number: 154/Pid.Sus/2023/PN.Bnj and Decision Number: 294/Pid.Sus/2023/PN.Bnj. This research uses qualitative research methods with a normative juridical approach and case studies. The results of the study show that the application of Article 112 often does not distinguish between users and drug dealers, so that drug users are often sentenced to heavier penalties even if they are not involved in narcotics trafficking. Meanwhile, Article 127 which provides space for rehabilitation has not been consistently applied by judges in handling cases of narcotics users. Analysis of the two decisions shows that there are inconsistencies in the use of Articles 112 and 127, which have implications for justice for perpetrators of narcotics crimes. Therefore, it is recommended that judges consider the rehabilitation factor for drug users more and not only focus on prison sentences. This research is expected to contribute to the development of a fairer and more humane narcotics law policy in Indonesia.*

## Introduction

Narcotics circulation and abuse is one of the serious problems faced by almost all countries in the world, including Indonesia (Suyatmiko, 2021). The adverse effects caused by narcotics not only affect individuals, but also families, communities, and even the social and economic stability of a country (Majid, 2020; Harahap et al., 2024; Cohen et al., 2024). The Indonesian government, through various regulations, continues to strive to overcome this problem with a firm legal approach. One of the main regulations that has become a foothold in the eradication of narcotics crimes is Law Number 35 of 2009 concerning Narcotics (Widiastuti & Zein, 2024).

In Law Number 35 of 2009 concerning Narcotics, Article 112 and Article 127 are two important articles that are often used in handling narcotics cases (Indonesia & Number, 35 C.E.). Article 112 regulates the illegal possession and storage of narcotics, while Article 127 regulates narcotics users. These two articles have a strategic role in distinguishing between perpetrators who play the role of narcotics dealers or dealers and narcotics users who need more rehabilitation than severe criminal sanctions (Siregar & Hasibuan, 2023; Chandra, 2021; Hermawan & Wulansari, 2024; Putra et al., 2022).

However, the application of these two articles often reaps debate among legal practitioners, academics, and the wider community. One of the main issues that arises is the potential for overlap or error in applying the two articles, especially when a person who should be processed as a user (Article 127) is charged with Article 112. This not only has the potential to cause injustice, but also hampers the rehabilitative approach mandated in the law.

In judicial practice, the process of proving whether a defendant is a user or a dealer is often a major challenge (Situmeang et al., 2024; Pangestu & Hanim, 2021). This proof involves an in-depth interpretation of the law and an analysis of the evidence submitted. Unfortunately, it is not uncommon for this process to be colored by a lack of understanding or inconsistency in the application of the law at various levels of justice. This condition encourages the need for a juridical evaluation of Articles 112 and 127 so that their application is in accordance with the spirit of justice and legal objectives.

In addition, the dominant repressive approach in handling narcotics cases is often considered incapable of answering the root of the problem of narcotics abuse (Saputra & Slamet, 2019; McCoy & Block, 2021). Reliance on prison sentences without being balanced with adequate rehabilitation efforts will only exacerbate the situation. Therefore, the evaluation of Article 112 and Article 127 is also important to ensure that these laws are not only oriented towards punishment, but also on the recovery and prevention of recurrence of narcotics offenses.

From a juridical point of view, this evaluation includes several important aspects. First, an analysis of the material legal provisions contained in Articles 112 and 127, including the elements of the offense that must be met to prove the violation of the two articles. Second, a study of procedural law used in the process of enforcing the two articles, including procedures for collecting and assessing evidence. Third, identify the obstacles faced in the application of these two articles in the field.

Furthermore, this juridical evaluation also needs to consider the social impact of the application of Article 112 and Article 127. The disproportionate use of criminal sanctions can cause social stigma for perpetrators who actually need a rehabilitative approach. On the other hand, disregard for the principle of justice can also weaken public trust in the criminal justice system in Indonesia.

A comparative approach with other countries can also be part of this evaluation. Many countries have adopted more progressive approaches to dealing with narcotics cases, such as decriminalization for users and increased rehabilitation programs (Ferdian, 2024; Stevens et al., 2022; Scott, 2021). By learning best practices from other countries, it is hoped that Indonesia can adopt more effective measures in dealing with the narcotics problem.

On the other hand, this evaluation is not only relevant for policymakers, but also for law enforcers such as police, prosecutors, and judges. A deeper understanding of the substance of Article 112 and Article 127 will help them in carrying out their duties more professionally and accountably. This is also important to avoid the occurrence of abuse of authority that can harm the perpetrators who are actually entitled to justice.

This juridical evaluation also has an important academic dimension. Academic studies can provide objective and in-depth input on the issues faced in the application of Article 112 and Article 127. Thus, the results of this evaluation can be the basis for the improvement of legal policies in the future.

Overall, the juridical evaluation of Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics is an important step to ensure that these regulations can be applied fairly, effectively, and in accordance with legal objectives. This evaluation not only aims to improve the existing legal framework, but also to improve the quality of the criminal justice system in handling narcotics cases (Aburili, 2017; Wilson et al., 2006).

With the right approach, this evaluation is expected to provide concrete solutions to various existing problems, as well as encourage the realization of a legal system that is more responsive to the dynamics of narcotics problems in Indonesia. Therefore, this study is not only

theoretically relevant, but also has great practical significance for law enforcement efforts in Indonesia.

## **Methods**

This research is a normative legal research that is evaluative (Muhammad Syahrums, 2022). This research not only focuses on normative analysis of articles in the law, but also evaluates their implementation in practice. Thus, this research includes normative studies (legal theories and legal documents) as well as empirical studies (data from interviews or case reports).

The study uses two main approaches: a) Statute Approach: Analyze Articles 112 and 127 in the Narcotics Law and other relevant regulations; b) Case Approach: Analyze legal cases involving the application of Article 112 and Article 127 to see how these articles are applied by law enforcement officials.

Primary data was obtained through interviews with sources, such as law enforcement officials (judges, prosecutors, and police), legal practitioners, and academics who have expertise in the field of criminal law and narcotics. Secondary data includes legal documents such as Law Number 35 of 2009, Government Regulations, court decisions, textbooks, scientific journals, and relevant official reports.

### **Data Collection Techniques**

Document Study: The researcher collects and analyzes legal documents, including laws, implementing regulations, and court rulings related to the application of Article 112 and Article 127. The researcher conducted interviews with law enforcement officials and legal practitioners to gain a deeper understanding of the practice of applying the two articles. This study examines several legal cases that reflect the application of Article 112 and Article 127 in practice, both at the level of investigation, prosecution, and court decisions.

### **Data Analysis Techniques**

The data that has been collected is analyzed using descriptive-qualitative analysis methods. The analysis is carried out through the following stages (Saleh, 2017): Data Reduction: Summarizing and simplifying data obtained from documents and interviews to identify key issues. Data Presentation: Organize data in the form of narratives, tables, or diagrams to make it easier to understand and interpret. Drawing conclusions: Interpreting the data that has been analyzed to answer research questions and provide recommendations based on the findings.

## **Results and Discussion**

### **General Study of Narcotics Crimes in Indonesia**

Narcotics crimes in Indonesia are a very serious problem, considering the increasingly massive drug trafficking. Indonesia has become one of the countries with the highest rate of drug abuse in the world, and this has prompted the government to continue to tighten the laws governing narcotics. Narcotics crimes involve various levels of society, from users to dealers, which not only impacts the health of individuals, but also damages social and economic structures.

In general, narcotics crimes can be divided into several categories, including abuse, illicit trafficking, and narcotics production. Law Number 35 of 2009 concerning Narcotics is the main legal basis in the eradication of narcotics crimes. This law regulates various types of narcotics-related criminal acts, ranging from possession to trafficking and production of narcotics.

However, the main obstacle in the eradication of narcotics in Indonesia is law enforcement that has not been fully effective. The large number of cases of narcotics abuse and illicit trafficking

shows that the application of existing laws needs to be evaluated and improved to provide more justice, both for users and dealers. In addition, inconsistencies between regulations and their implementation in the field often create legal uncertainty, which makes the eradication of narcotics a major challenge.

Narcotics crimes in Indonesia are one of the most serious crimes and high risks to public health. According to (Nainggolan et al., 2010) In his research that discusses the narcotics legal system in Indonesia, the phenomenon of drug abuse has developed into a social problem that affects almost all levels of society, from teenagers to adults. In response to this problem, the Indonesian government introduced Law Number 35 of 2009 on Narcotics to provide a legal framework in handling and eradicating narcotics (Fokusmedia, 2009).

The theory of retributive justice, as explained by John Rawls in his theory of social justice, states that punishment must be proportional to the crime committed (Rawls, 1971). Therefore, in the context of Article 112, which imposes severe penalties on anyone who is proven to possess or possess narcotics, there needs to be fair consideration in applying it, considering that not all narcotics offenders play the role of dealers, many of them are only users.

However, the theory of restorative justice put forward by Howard Zehr offers a different approach (Zehr, 1990). In this theory, which emphasizes more on restoring the relationship between perpetrators and the community, drug users who are not involved in drug trafficking should be given the opportunity for rehabilitation, not imprisonment that will actually worsen their situation. This is in line with the spirit of Article 127 which provides space for rehabilitation for narcotics users.

### **Narcotics Crimes in Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics**

Article 112 and Article 127 in Law Number 35 of 2009 have a very important role in tackling narcotics crimes: 1) Article 112 regulates the possession or possession of narcotics. In this article, a person who is found to possess, store, possess, or provide narcotics for himself or others can be sentenced to quite severe imprisonment; 2) Article 127 focuses on narcotics users who are proven to have consumed narcotics without a valid license. This article provides the possibility for narcotics users to obtain rehabilitation, not imprisonment, if proven to be a user and not a dealer.

However, in practice, there are several problems in the application of these two articles. Article 112 is often imposed on narcotics users who are not involved in the circulation or production of narcotics, which can cause injustice to them. Meanwhile, Article 127, while providing rehabilitation opportunities, is often not applied consistently, and many drug users end up in prison.

Table 1. Main Differences Between Article 112 and Article 127 in Law Number 35 of 2009

<b>Article</b>	<b>Criminal</b>	<b>Threat of Punishment</b>	<b>Information</b>
Article 112	Possessing, storing, and controlling narcotics without a permit	4 years to life imprisonment or the death penalty	This article emphasizes more on narcotics dealers or owners.
Article 127	Narcotics use for oneself	Rehabilitation or imprisonment for a maximum of 1 year	This article provides the possibility of rehabilitation for users.

Based on the results of the research conducted, the application of Article 112 and Article 127 in practice still shows several obstacles. Article 112 is often applied to narcotics users who are not involved in trafficking. This is in line with the findings (Priyo, 2019) in his research on the implementation of Article 112 which shows that many drug users are sentenced under this article even though they should get a rehabilitation approach. The use of Article 112 on narcotics users can lead to overcriminalization, where individuals who should be treated as victims actually get punishments comparable to drug dealers.

On the other hand, Article 127 provides a solution for narcotics users to obtain rehabilitation, but in practice, not all judges or law enforcement officials use this provision consistently. Research conducted by (Herman et al., 2022) shows that many drug users who should have received rehabilitation but were instead sentenced to prison, which is not in accordance with the principle of restorative justice.

**Juridical Analysis of Judges' Considerations on the Application of Law and Evidence of Articles 112 and 127 of Law Number 35 of 2009 concerning Narcotics in Decision Number: 154/Pid.Sus/2023/PN.Bnj and Decision Number: 294/Pid.Sus/2023/PN.Bnj**

Based on the analysis of two court decisions, namely Decision Number: 154/Pid.Sus/2023/PN.Bnj and Decision Number: 294/Pid.Sus/2023/PN.Bnj, it can be concluded that the application of Articles 112 and 127 is not always consistent and is often influenced by certain factors, such as the type of narcotics involved, the role of the defendant in the case, and the policy of the judge concerned. The following are details of the analysis of the judges' considerations in the two decisions: a) Decision Number: 154/Pid.Sus/2023/PN.Bnj: In this case, the defendant was sentenced under Article 112 of the Narcotics Law because he was found to have a large number of narcotics. However, even though the defendant was a narcotics user, the judge preferred to impose a prison sentence rather than rehabilitation. The judge's consideration was more directed to the gravity of the amount of narcotics found, which was considered to indicate an intention to distribute, although there was no hard evidence that the defendant was involved in a narcotics trafficking network; b) Decision Number: 294/Pid.Sus/2023/PN.Bnj: In this case, the defendant who was proven to be a narcotics user was only sentenced to a light sentence with a rehabilitation recommendation based on Article 127. The judge considered that the defendant only used narcotics for personal consumption and was not involved in trafficking. This decision shows the application of Article 127 which is more humane and in accordance with the provisions of the law that allows rehabilitation for narcotics users.

Table 2. Comparison between the two rulings

Verdict	Applicable Articles	Types of Criminal Acts	Judge's Considerations	Punishment
Decision Number: 154/Pid.Sus/2023/PN.Bnj	Article 112	Possession of narcotics without a license	Judge considers the amount of narcotics to be quite large, prison sentence chosen	5 years in prison
Decision Number: 294/Pid.Sus/2023/PN.Bnj	Article 127	Narcotics use for oneself	Narcotics users are prioritized for rehabilitation, not imprisonment.	Rehabilitation for 6 months

Based on these two decisions, it appears that judges have different considerations in applying the law, depending on the facts and circumstances in each case. Although Article 112 threatens

with harsher punishments, Article 127 provides room for a rehabilitation approach for narcotics users, which prioritizes rehabilitation over punishment.

In the analysis of two court decisions, namely Decision Number: 154/Pid.Sus/2023/PN.Bnj and Decision Number: 294/Pid.Sus/2023/PN.Bnj, there are differences in the application of Articles 112 and 127. In Decision Number 154, the judge preferred to sentence the defendant to prison even though there were indications that the defendant was a narcotics user and not a dealer. The judge's consideration prioritized the amount of narcotics found as a reason to apply Article 112, even though there was no evidence to show that the defendant was involved in drug trafficking.

This is different from the decision Number 294, where the judge prioritizes rehabilitation based on Article 127, considering that the defendant is a narcotics user who is not involved in the circulation network. This decision is in line with the view (Nayundari, 2020) in a study that discusses the differences between narcotics users and dealers in the Indonesian criminal justice system. Nayundari emphasized the importance of distinguishing between users and dealers, so that users who are proven to only use narcotics must be treated differently, namely with rehabilitation, not with prison sentences.

According to the Theory of Functionalism developed by Émile Durkheim, law should function to maintain social stability (Durkheim, 2018). Therefore, in the context of narcotics cases, the application of the law must consider the aspect of social recovery, not just retributive punishment. In this case, Article 127 which provides rehabilitation options can be seen as part of a more functional approach to improving social conditions, especially for narcotics users.

## Conclusion

Based on the results of the research and discussions that have been carried out, it can be concluded that the implementation of Article 112 and Article 127 in Law Number 35 of 2009 concerning Narcotics in Indonesia still shows a number of challenges and inconsistencies, both in terms of law enforcement and the implementation of rehabilitation policies. Article 112 which regulates criminal acts related to narcotics possession, although intended to tackle narcotics trafficking, is often applied to users who are not involved in the circulation or production of narcotics. This causes injustice, because narcotics users, who should have received rehabilitative treatment, are sentenced to prison. On the other hand, Article 127 provides space for rehabilitation for narcotics users who are proven to consume it for themselves. However, in practice, this article is not always applied consistently. There are many cases in which drug users, even if they are only involved in personal use, are still sentenced to prison, which is not in line with the spirit of the law that puts forward rehabilitation for individual recovery. The judge's considerations in the two decisions analyzed, namely Decision Number: 154/Pid.Sus/2023/PN.Bnj and Decision Number: 294/Pid.Sus/2023/PN.Bnj, show that there is a difference in the application of the two articles. In some cases, judges have favored imprisonment under Article 112, despite indications that the defendant is a narcotics user. On the other hand, there are also cases that show the application of Article 127 by providing rehabilitation opportunities, as stipulated in the law. This research also underscores the importance of improving understanding and implementation of the law in the context of narcotics crimes. Given the differences between users and drug dealers, as well as the importance of rehabilitation for users, there needs to be increased capacity and consistency in the application of the law, especially in distinguishing between these categories of criminals. A more humane and restorative approach is needed so that narcotics users have a chance to recover, while narcotics dealers who should have been sentenced to stricter punishments can be processed in accordance with the provisions of the

applicable law. Thus, the results of this study contribute to the improvement of the legal system in Indonesia in dealing with narcotics crimes, especially in the application of Articles 112 and 127. It is hoped that future legal policies will prioritize balanced justice, provide appropriate treatment for narcotics users, and provide appropriate punishment for narcotics traffickers.

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