

LEGAL RESPONSIBILITY FOR THE ROLE OF ONLINE TRANSPORTATION COURIER SERVICES IN DRUG TRAFFICKING

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Abstract

In this modern period, drug trafficking in Indonesia has adopted a new mode of operation, with drug traffickers utilizing online transportation courier services to facilitate drug delivery to their destination, in an effort to avoid and/or reduce the risk of legal proceedings. The purpose of this research is to analyze and determine the existence of law enforcement problems in handling the role of online transportation courier services that help drug trafficking. This research uses Normative Juridical methodology. The data used for the formulation of the problem is secondary data consisting of primary, secondary and tertiary legal documents. The results of the analysis show that with regard to law enforcement and accountability, each construction of the Intermediary Articles contained in Law Number 35 of 2009 concerning Narcotics relating to acts committed by couriers does not all fulfill the offense elements of each article. Based on Article 132 when couriers are unable to prove good faith as an online driver, such as not having the authority to inspect goods to be sent, courier service companies do not or have not supported goods scanning facilities, so they can enter into a conspiracy offense. However, even though the actions carried out by online couriers have fulfilled the formulation offense, they are not necessarily accountable. For the sake of creating a sense of justice for society, it is necessary to add new norms to the provisions of Article 114 paragraph (1) of the Narcotics Law and Article 114 paragraph (2) of the Narcotics Law.

Keywords: Courier Services, Drug Trafficking, Online Transportation

1. INTRODUCTION

The current rampant drug abuse, especially in Indonesia, has become one of the problems troubling Indonesian society. Drug circulation in Indonesia at this time can be said to be very rapid and attacks young people who are the next generation of the nation. If the next generation of this nation has been poisoned by drugs, it can have an impact on state losses in the form of nominal money, and the destruction of the nation's next generation which decreases human resources and can even cause various diseases such as HIV/AIDS, tuberculosis, hepatitis, and others.

In the framework of the Indonesian government's efforts to carry out national development at this time, drug trafficking and abuse with various implications and negative impacts have reached a very alarming and dangerous level for this community. The Indonesian government together with law enforcement officials must take firm action in law enforcement against drug trafficking and abuse.

Based on data from the Directorate of Drug Crime Bareskrim Polri that the development trend of drug crimes in Indonesia during the 2008-2010 period there were 86.856 cases with 116.536 suspects who were able to be arrested consisting of 107.219 men and 9.317 women, suspects who were Indonesian citizens totaling 116.196 as well as involving 330 foreign nationals of Nigeria, Pakistan, South Africa, India, France,

United States, Thailand, China, Brazil, Malaysia, Cordova, Nepal, Zimbabwe, Austria, Saudi Arabia, Liberia, Netherlands, China, Singapore and Iran. While the evidence that could be confiscated during the 2008-2010 period Dittipidnarkoba Criminal Investigation Police was 12.107,79 grams of heroin, 1.307.321,5 grams of cannabis, 90.783 items of Ecstasy, 49.180,91 grams of methamphetamine and 28.168.535 items of Psychotropics Group IV. Indeed, this is only a small part of the existing cases because drug crimes are like an iceberg that much more that is not visible than can be uncovered. Indonesia is one of the most drug user, and this is an iceberg phenomenon, where the number of people associated with drug abuse is greater than the figure above because it includes dealers, couriers, producers and workers. Indonesia is no longer just a transit and circulation area but has become a potential narcotics production area because of its large population and strategic location, even for ecstasy it can export abroad, such as to Malaysia and China, even drug exports to Malaysia reach 150.000 items per month.

Laws and regulations that support efforts to eradicate drug crime are urgently needed, moreover drug crime is a form of unconventional crime that is carried out systematically, uses a high *modus operandi* and sophisticated technology and is carried out in an organized manner (*organize crime*) and is already a transnational crime. Laws and regulations governing narcotics in Indonesia have existed since the entry into force of the Dope Ordinance (*Verdoovende Middelen Ordonnantie*, *Staatsblad* Number 278 Jo. 536 of 1927). This Ordinance was later replaced by Law Number 9 of 1976 concerning Narcotics which came into effect on July 26, 1976. Subsequently, Law Number 9 of 1976 was replaced by Law Number 5 of 1997 concerning Psychotropics and Law Number 22 of 1997 concerning Narcotics which came into force on September 1, 1997. Then, it was updated with Law Number 35 of 2009 concerning Narcotics (Narcotics Law), which has a minimum criminal penalty threat and a maximum criminal penalty even though its implementation has not gone as well as it should because there are still many drug offenders sentenced under the minimum penalty.

The Narcotics Law provides for strict and severe sanctions, namely 20 (twenty) years in prison, life imprisonment and even the death penalty for anyone who becomes the perpetrator or part of a drug-related crime. However, in reality the Narcotics Law has not been able to provide a preventive effect on the increasing crime of drug trafficking. Irianto (2006) said “The process of law enforcement for perpetrators of drug trafficking in Indonesia refers to the Narcotics Law”. In its implementation, a lot of law enforcement has been carried out with reference to the Narcotics Law, but we can see clearly that the desired deterrent effect with the implementation of the Narcotics Law does not appear significant enough, even drug trafficking in Indonesia seems to be getting more systematic and organized. Penitentiary institutions, which are expected to be the spearhead in fostering drug abusers so that they get a new and better way of life, are even involved and have even become one of the epicenters for this process of trafficking in illicit goods (Purnama, 2021).

Narcotics crimes are no longer carried out individually, but involve many people together, even as an organized syndicate with an extensive network that works neatly and in great secrecy. Recently, drug offenders have used online transportation courier services to carry out the business of buying and selling drugs.

As we all know, the Narcotics Law regulates the abuse of narcotics, however, we do not find any regulations that explicitly regulate couriers. The term courier itself can refer to someone who is in charge of delivering a package (Herman & Kansil, 2022). So

in this case we can conclude that a courier in the narcotics trade system is someone who is entrusted with narcotics to be given to other people or in simple terms we call an intermediary. Thus, if we refer to the above understanding that a courier in the narcotics trade system is someone who becomes an intermediary who helps buy and sell narcotics, then the provisions in Article 114 of the Narcotics Law only emphasize someone who “everyone who without rights or against the law offers to sell, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or handing over Narcotics Group I” can be charged with a crime. In other words, it can be ascertained that the Narcotics Law does not differentiate a person's role specifically when carrying out drug trafficking, whether he is a user, intermediary or dealer. If the elements have been fulfilled, all perpetrators can be charged and prosecuted.

The presence of online transportation couriers in Indonesia is a new tool for drug offenders in the country. By using this online transportation courier service, drug trafficking has become rife, apart from the reason for fast delivery, drug trafficking is also not suspected by law enforcement officials (Subandri & Widyarsono, 2021).

In practice, online transportation couriers such as Grab, Gojek, Maxim, and so on, when delivering an order of goods from one place to another which turns out to contain drugs, admit that he does not know the contents of the goods to be delivered to their destination, because they have limited information on the contents of the goods only through an application filled in by the consumer, they do not have the authority to inspect the goods, and they are not equipped with a scanning tool used to detect these goods.

In this case, these couriers have a role in drug trafficking, so responsibility and punishment are attached to them. Couriers are considered to be participating in drug trafficking. Then what about handling?

Based on the background as described above, the aim of the research to be conducted is to analyze and find the existence of law enforcement problems in the context of handling the role of online transportation courier services that help drug trafficking. Analyze and develop what legal steps are appropriate in the framework of law enforcement and legal accountability for the role of online transportation courier services that assist drug traffickers in order to obtain legal certainty.

2. LITERATURE REVIEW

2.1. Criminal Law Liability Theory

There are two terms that refer to accountability in the legal dictionary, namely liability and responsibility. Liability is a broad legal term that refers to almost any type of risk or responsibility that is certain, depends on, or may include all of the characteristics of actual or potential rights and obligations such as losses, threats, crimes, costs, or conditions that create the duty to obey the law (Yanto, 2016). Responsibility means something that can be accounted for under an obligation, and includes decisions, skills, abilities including the obligation to be responsible for the laws that are implemented. In terms of understanding and practical use, the term liability refers to legal responsibility, namely accountability due to mistakes committed by legal subjects, while the term responsibility refers to political responsibility (Irianto, 2006).

2.2. Law Enforcement Theory

According to Soerjono Soekanto, law enforcement is an activity of harmonizing the relationships of values that are described in solid principles and attitudes as a series of

final stages of value translation to create, maintain, and sustain social peace (Soekanto, 2015).

Criminal law enforcement is the concrete application of criminal law by law enforcement officials (Ariyanti, 2019). In other words, criminal law enforcement is the implementation of criminal regulations. Thus, law enforcement is a system that involves harmonization between values and norms and real human behavior. These rules then become guidelines or benchmarks for behaviors or actions that are considered appropriate or appropriate. The behavior or attitude of the act aims to create, maintain, and promote peace.

2.3. The Role of Online Transportation Couriers in Drug Trafficking

Online transportation is a mode of transportation or public transportation that is only available through the internet (Pratama & Suradi, 2016). The difference between online transportation and transportation or public base transportation as usual is that online transportation is application-based, we must use an application connected to the internet if we want to order online transportation services while transportation or public base transportation still uses conventional methods. Online transportation has a socially minded technology company that aims to improve the welfare of workers in various informal sectors in Indonesia (Riani, 2021). Around 200.000 experienced and trusted online transportation drivers in Indonesia provide a wide range of services, including transportation and ordering food or delivering goods. Online transportation, which is becoming increasingly popular, has played a significant role in today's transportation in the capital and regions. The term online transportation is becoming increasingly popular. Online transportation is currently thriving in society because it is thought to make people's lives easier. However, behind this phenomenon there must also be positive and negative impacts on the existence of online transportation in Indonesia.

The actions of online transportation drivers who deliver narcotics from sellers to buyers can be referred to as narcotics intermediaries or couriers. The online transportation driver's actions constitute an "act of transportation" namely any activity or series of activities moving narcotics from one place to another by any method, capital or means of transportation (Article 1 Number 9 of the Narcotics Law). Online transportation drivers who deliberately deliver narcotics from sellers to narcotics buyers, these drivers know that the goods delivered are narcotics and get wages from the seller for delivering narcotics, they can be charged with Article 114 of the Narcotics Law as intermediaries in buying and selling narcotics. The intention to be punished or not returns to the decision of the judge who decided the case, because the transportation driver was a person who was ordered by the narcotics seller but without the knowledge of the driver that the goods being confirmed were narcotics, but this must first be proven by valid evidence in court.

2.4. The Role of Online Transportation Courier Services in Drug Trafficking in Law Enforcement Dynamics

In this study, this dynamic arises because of the provisions of Article 114 paragraph (1) of the Narcotics Law which states *"Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of Rp1.000.000.000,00 (one billion rupiah) and*

a maximum of Rp10.000.000.000,00 (ten billion rupiah)”. Then article 114 paragraph (2) of the Narcotics Law states “In the case of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)”.

The provisions of article 114 of the Narcotics Law do not provide a special categorization for people who offer to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or handing over Narcotics Group I if we take a nomenclature or editorial approach. Surely, this is a dangerous weapon for everyone who suddenly has drugs in their hands even though they don't know where the drugs came from, as well as an online transportation courier who accepts orders for delivery of goods which turn out to be drugs. Surely, the mastery of these goods can be questioned even run the risk of being prosecuted.

3. RESEARCH METHODS

In this research, we used normative juridical research conducted with a particular methodology to analyze and reconstruct a problem (Soekanto, 2015). The method to be used was normative juridical. Both the statutory research approach and the case research approach were utilized in the course of this investigation. The data collection stage employs a secondary data approach (data obtained from a literature review) which in the form of written materials that were related to the problems addressed in this paper, including:

- a. Primary legal materials, including the Criminal Code, the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics and the Decision of the Court of First Instance at the Makassar District Court Number 1434/Pid.Sus/2018/PN
- b. Secondary legal materials, including literature in the form of books, papers, journals and research results
- c. Tertiary legal materials, such as legal dictionaries, language dictionaries, articles in newspapers or newspapers and magazines.

Collection of legal materials was carried out by identifying and inventorying positive legal rules, examining literature (books, scientific journals and research reports) and other sources of legal materials relevant to the legal issues being studied. Analysis of legal materials was done by means of legal interpretation. The legal interpretation techniques used were grammatical interpretation techniques, systematic interpretation techniques and theological interpretation techniques.

4. RESULTS AND DISCUSSION

4.1. 4Efforts to Enforce and Legal Accountability for Online Transportation Courier Services' Role in Drug Trafficking Crime

Drugs are goods and drugs that are common in the lives of Indonesians. In Indonesia, the term narcotics stands for narcotics and dangerous drugs. Then there is also the term Narcotics which stands for Narcotics, Psychotropics and Addictive Substances.

Drugs are another term specifically introduced by the Ministry of Health of the Republic of Indonesia.

Referring to the provisions of Article 1 Point (1) of the Narcotics Law “*Narcotics are substances or drugs derived from plants or not, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain and can cause dependence, which is differentiated into groups as attached in this law*”. In addition, narcotics in the Narcotics Law are also known as Narcotics Precursors as referred to in the provisions of Article 1 Point 2 of the Narcotics Law which states that “*Narcotics Precursors are substances or starting materials or chemicals that can be used in the manufacture of Narcotics which are differentiated in the table as attached to this law*”.

In almost all countries in the world including Indonesia, drugs consisting of narcotics, psychotropics and other addictive substances have been used as substances or drugs that are important and needed in the medical world for treatment.

Behind this medical need, drug use has been widely abused without rights or against the law, where drugs are used as a tool for exploitation of black business (black market) in order to gain huge profits regardless of the impact it has on users when drugs are misused. Possessing drugs for purposes other than science and medicine without a doctor's prescription is illegal and can result in charges under Narcotics Law Number 35 of 2009.

The Narcotics Law is designed to reduce the amount of narcotics circulation and reduce the number of victims of narcotics abuse in Indonesia. The purposes mentioned above can be seen in the preambles of Letters a to f of the Narcotics Law.

In the Narcotics Law there are several important chapters in efforts to enforce narcotics law, namely as follows:

- 1) CHAPTER I regulates General Provisions;
- 2) CHAPTER II regulates the Basis, Principles and Objectives;
- 3) CHAPTER III regulates Scope;
- 4) CHAPTER IV regulates Procurement;
- 5) CHAPTER V regulates import and export;
- 6) CHAPTER VI regulates the distribution of narcotics;
- 7) CHAPTER VII regulates Labels and Publications;
- 8) CHAPTER VIII regulates the Narcotics Precursor;
- 9) CHAPTER IX regulates Treatment and Rehabilitation;
- 10) CHAPTER X regulates Guidance and Supervision;
- 11) CHAPTER XI regulates Prevention and Eradication;
- 12) CHAPTER XII regulates Investigation, Prosecution and Examination at Court Sessions;
- 13) CHAPTER XIII regulates Community Participation;
- 14) CHAPTER XIV regulates Awards;
- 15) CHAPTER XV regulates Criminal Provisions;
- 16) CHAPTER XVI regulates Transitional Provisions; and
- 17) CHAPTER XVII regulates Closing Provisions.

However, in practice, the Narcotics Law as a legal instrument for enforcing the law against the distribution and abuse of narcotics has not been viewed as optimal in meeting all the requirements for preventing and eliminating narcotics crimes in Indonesia.

Currently, the development of drug trafficking operations in Indonesia is experiencing unusual changes and indicates new ways of distributing narcotics in Indonesia. In general, drug trafficking is carried out using the traditional *modus operandi*, namely transactions carried out by and between sellers and buyers, just like the transaction process for drug merchandise. However, along with the advancement of time and technology, the *modus operandi* has developed into a network with a disconnected communication system (Jainah, 2013). One of the changes in drug transactions in this era is where drug dealers use online transportation courier services to deliver drugs to their buyers.

Online transportation couriers are currently booming in society because they are considered to make their activities easier. However, behind this phenomenon there must also be positive and negative impacts on the existence of online transportation couriers. The positive impacts of having an online transportation courier are as follows:

- 1) Facilitate the community in carrying out activities by using online transportation couriers. Only by ordering an online transportation courier through the application, the online transportation courier will come to pick up where we are and deliver according to the destination, so we don't have to be tired anymore looking for public transportation.
- 2) The opening of job vacancies for the wider community. After the opening of online transportation in Indonesia, many people are interested in jobs as online transportation couriers. Moreover, there are many bonuses offered by online transportation courier companies where their income can even exceed employees in ordinary companies (Basir, 2017).

Technological developments in today's era, drug dealers have utilized online transportation courier services as a new tool/*modus operandi* in smoothing drug distribution transactions. The use of online transportation courier services is quite reasonable, apart from the fast delivery time, drug delivery via online transportation courier services is not suspected by law enforcement officials. The problem in general is that online transportation couriers do not know about drug crimes involving themselves as intermediaries for drug trafficking, couriers are considered or used as victims to send these drugs, unless transportation couriers deliberately want to be used as drug couriers, hence online transportation couriers cannot be categorized as a victim. The online transportation courier is the person who delivers the seller's goods to the buyer (which turn out to contain drugs). For this delivery service, the online transportation courier is paid by a fee.

However, according to the provisions of Article 114 of the Narcotics Law, online transportation couriers can be classified as drug distribution intermediaries because, through their services, drug buying and selling transactions occur between sellers and buyers, as well as the transfer of drug goods from the hands of sellers to buyers, resulting in legal events of drug trafficking.

Following article 114 paragraph (1) of the Narcotics Law states *"Anyone who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)"*. Then article 114 paragraph (2) of the Narcotics Law states *"In the case of the act of offering to sell,*

sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)".

Referring to the provisions of article 114 of the Narcotics Law, if we take a nomenclature or editorial approach to the article, article 114 of the Narcotics Law does not provide a special categorization for people who offer to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or hand over Narcotics Group I. Surely, this is a dangerous weapon for everyone who suddenly has drugs in their hands even though they don't know where the drugs came from, as well as an online transportation courier who accepts orders for delivery of goods which turn out to be drugs, surely mastery over these goods can be questioned even at risk of being prosecuted criminally.

The above scenario calls for a legal review and/or analysis by law enforcement. To avoid the risk of criminal prosecution of innocent people, the legal review and/or legal analysis presented must fulfill a sense of legal justice for all parties. They must follow the entire law enforcement process, beginning with the investigation, prosecution, and sentencing stages, as stated in the provisions of Article 114 of the Narcotics Law.

Focus on online transportation couriers who are proven to have carried drugs to be sent to their destination addresses, may be punished for actions without rights or against the law offering to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or handing over Narcotics Category I. However, if explored further through the approach of law enforcement theory and legal responsibility theory, online transportation couriers who are proven to have carried drugs to be sent to the destination address, may not be criminalized for reasons of non-fulfillment of errors followed by intent.

According to the theory of criminal responsibility, a person is responsible for the crime he has committed. Sudarto said that a person's sentence was not enough if that person had committed an unlawful act, but it had to be seen whether the person who had committed the act had a mistake followed by intention or not.

In criminal law the concept of responsibility is a central concept known as the teaching of error. In Latin, heresies are known as *mens rea*. The *mens rea* doctrine is based on an act that does not make a person guilty unless the person's thoughts are evil.

A person who commits a crime can be punished if he meets the requirement that the crime he has committed fulfills the elements specified in the law. If a prohibited act occurs, a person will be held responsible if the act was committed intentionally against the law and there is no reason to justify or negate the unlawful nature of the act committed. And when viewed in terms of the ability to be responsible, only people who are capable of being responsible can be held accountable for their actions. In the event that a person is found guilty of committing an act such as breaking the law, depending on whether in carrying out the act the person has made a mistake that is intentionally against the law, then that person may be punished.

The element of error accompanied by intent to violate the law is the main element in criminal responsibility. In the sense that a criminal act does not include matters of criminal liability, a criminal act only refers to whether the act is unlawful or prohibited by law, Whether a person who commits a crime is then sentenced depends on whether the

person who committed the crime has an element of guilt or not. In other words, will someone who is suspected of having committed a crime be punished or acquitted. If he is convicted, it must be proven that the act committed was against the law and that person is capable of being held responsible. This ability shows the error of action that is intentional or negligent. This means that it is disgraceful for the accused to be aware of the actions he has committed.

Law enforcement is an attempt to realize the ideas of justice, legal certainty and social benefits into reality. Law enforcement is essentially a process of embodiment of ideas. "Law enforcement" refers to the process of carrying out efforts to uphold or function real legal norms as a guideline in the legal relations of social and state life. Law enforcement is an attempt to bring legal ideas and concepts that the public expects to become reality to fruition. Law enforcement is a process that involves many things.

Based on a legal perspective, in everyday life the term legal association (*rechtsverkeer*) is known, which implies the existence of legal actions (*rechtshandeling*) and legal relations (*rechtbetrekking*) between legal subjects. Association, action, and legal relationship are conditions or circumstances that are regulated by law and/or have legal relevance. In that case there is an interaction of rights and obligations between two or more legal subjects, each of which is bound by rights and obligations (*rechten en plichten*). The law was created to regulate legal association so that each legal subject carries out their obligations properly and obtains their rights fairly. In addition, law also functions as an instrument of protection (*bescherming*) for legal subjects. In other words, law is made to ensure that justice is carried out in legal relationships. When there are legal subjects who neglect legal obligations that should be carried out or violate those rights, they are burdened with responsibility and are required to restore the rights that have been violated. The burden of responsibility and demands for compensation or rights are shown to every legal subject who violates the law, regardless of whether the legal subject is a person, legal entity, or the government.

The Narcotics Law regulates law enforcement efforts in the form of criminal provisions contained in the Narcotics Law which were formulated starting from Chapter XV of the Criminal Provisions covering Article 111 to Article 148. In the Narcotics Law, there are categories of unlawful acts prohibited by the Narcotics Law which then provide threats of sanctions crimes, namely every act of offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors as referred to in the provisions of Article 114 and Article 116 of the Narcotics Law for class I narcotics, provisions of Articles 119 and Article 121 of the Narcotics Law for class II narcotics, Article 124 and Article 126 of the Narcotics Law for class III narcotics and Article 129 letter (c) of the Narcotics Law

As an effort to enforce the law against the distribution of narcotics, the Narcotics Law specifically regulates the prohibition of narcotics distribution. Based on Law 35 of 2007 concerning Narcotics article 114 reads "*Anyone who without rights or against the law offers to sell, sell, buy, receive, act as intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah).* (2) *In the case of acts of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeds 5 (five) tree trunks or in the form of non-plants*

weighing 5 (five) grams, the offender shall be subject to death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a fine maximum as referred to in paragraph (1) plus 1/3 (one third)”.

As well as emphasized in Article 132 of the Narcotics Law which states “*Which mentions Attempt or conspiracy to commit criminal acts of Narcotics and Narcotics Precursors as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129, the perpetrators are punished with the same imprisonment in accordance with the provisions referred to in these articles”.*

In terms of the acts referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126 and Article 129 being carried out in an organized manner, imprisonment and a maximum fine shall be increased by 1/3 (one third).

The criminal penalty as referred to in paragraph (2) does not apply to crimes punishable by death penalty, life imprisonment, or 20 (twenty) prison terms.

The role of couriers in narcotics trafficking often occurs with technological developments that are increasingly rapid due to accelerated delivery times and are not suspected by law enforcement officials. In this case, there are several online transportation couriers who do not know this but there are also online transportation couriers who deliberately become narcotics couriers. Accountability for his actions must be viewed through the lens of error, then intentionality.

In the case of being an intermediary in buying and selling or handing over narcotics class 1, to be held accountable for his actions must be seen from the mistakes he made, whether the actions were intentional or acts due to negligence. Criminal responsibility is the responsibility of a person for the crime he has committed. Sudarto said that a person's sentence was not enough if that person had committed an unlawful act, but it had to be seen whether the person who had committed the act had a mistake followed by intention or not.

Couriers who accidentally deliver narcotic goods can also be charged with Article 132 paragraph (1) jo. Article 114 of the Narcotics Law regarding attempts or conspiracy to commit narcotic crimes. The accident is to be punished or the act returns to the decision of the judge who decided the case, because the courier is a person who is ordered by the narcotics seller but without the knowledge of the courier that the goods delivered are narcotics, but this must first be proven by evidence that legal in court. Legal evidence as stipulated in the provisions of Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP) states “valid evidence consists of: (a) witness statements, (b) expert statements, (c) letters, (d) evidence of instructions, and (e) testimony of the accused”.

Apart from that, there is also valid evidence in court with technological developments, namely electronic evidence which has been regulated in Article 5 of Law Number 11 of 2008 concerning information and electronic transactions/electronic documents/printed results which are legal evidence that legitimate.

Regarding law enforcement and accountability, each construction of the Intermediary Articles contained in Law Number 35 of 2009 concerning Narcotics relating to acts committed by couriers does not all fulfill the elements of offense in each article, based on Article 132 when the courier or is unable prove good faith as an online driver,

such as not having the authority to check the goods to be sent, the courier service company does not or does not yet support goods scanning facilities, so it can enter into a conspiracy offense, but even though the actions carried out by online couriers have fulfilled the formulation of the offense, they have not certainly accountable.

4.2. Legal Justice Against Online Transportation Courier Services' Role in Drug Trafficking Crimes

Justice is one of the legal ideals that must always be achieved in law enforcement so as to create legal certainty. Justice is also one of the related concepts which can be interpreted as a reciprocal of what has been done. Whether it's a good deed or a bad deed. In law enforcement itself, justice is still relative and has many views related to the concept of justice which still seems difficult to understand because each person has different perspectives regarding the concept of justice. The concept of justice itself is contained in the fifth precept of Pancasila which reads "social justice for all Indonesian people".

Every crime contained in the Criminal Code can generally be broken down into elements which can be divided into two kinds of elements, namely subjective elements and objective elements. What is meant by these objective elements are the elements that are attached to the actor himself, and which are included in it, namely everything that is contained in his heart, while what is meant by these objective elements are elements that have to do with circumstances. circumstances, that is, in the circumstances under which the actions of the actor must be carried out.

The subjective elements of a crime are:

- 1) Intentional or accidental (*dolus* or *culpa*);
- 2) Intent or *voornemen* on an attempt or pogging as referred to in Article 53 paragraph 1 of the Criminal Code;
- 3) Various purposes or *ogbrands* as contained, for example, in the crimes of theft, fraud, extortion, forgery, and others;
- 4) Planning in advance or *voorbedachte raad* as for example contained in the crime of premeditated murder article 340 of the Criminal Code;
- 5) Feelings of fear or *vrees* such as those contained in the formulation of criminal acts according to article 308 of the Criminal Code.

The objective elements of a crime are:

- 1) The nature of breaking the law or *wederrechtelijkheid*;
- 2) The quality of the perpetrator, for example "state as a civil servant" in a crime of office according to Article 451 of the Criminal Code or "state of being a manager or commissioner of a limited liability company" in a crime according to Article 398 of the Criminal Code;
- 3) Causality, namely the relationship between an action as a cause with a reality as a result.

In couriers who deliberately deliver narcotics from sellers to narcotics buyers, the driver knows that the goods delivered are narcotics and get wages from the seller, because he has delivered narcotics, he can be charged with Article 114 of the Narcotics Law as an intermediary in buying and selling narcotics. If a courier intentionally transports narcotics, the courier may be subject to Article 114 paragraph (1) of the Narcotics Law regarding any person who without the right to offer for sale, sell, buy, receive, become an intermediary in buying and selling, exchanging or handing over narcotics class one.

Intermediary in buying and selling means acting as a liaison between the seller and the buyer and receiving services or benefits in exchange for his actions. Someone connects the seller and the buyer and then that person gets goods in the form of narcotics which can be classified as intermediaries as buying and selling, therefore services or benefits here can be in the form of money or goods and even facilities. Services or profits are an important factor, without services or benefits obtained, it cannot be referred to as an intermediary for buying and selling if someone has brought the seller together with the buyer, but cannot be clear about the service, then that person is not an intermediary in buying and selling. However, as a liaison and a criminal offense that is imposed at least in conjunction with Article 132 of the Narcotics Law, whether in the context of buying or selling, and so on. An intermediary is different from an intermediary, because an intermediary is an act on orders while an intermediary acts alone in order to bring together sellers and buyers and intermediaries have independent responsibilities. The elements contained in the act were intentional, knowing the goods were narcotics, paying the courier.

As for the case regarding the courier who was acquitted of a narcotics crime in Makassar District Court Decision Number 1434/Pid.Sus/2018/PN. Mks. Result of Decision 1434/Pid.Sus/2018/PN.Mks. The Public Prosecutor used the alternative charge of Article 114 paragraph (2) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics or Article 112 paragraph (2) Jo. Article 132 paragraph (1), where the elements and articles are mutually compatible, but based on the facts of the trial and the testimony of witnesses, especially witnesses a de charge, where the article charged contains a subjective element, namely every person, but the facts between what was charged were elements of each person (the defendant) had no connection with the development of the narcotics case, so based on this statement the panel concluded that the elements of each person in this article were not proven, therefore it was fitting for the defendant to be released from indictment, bearing in mind the provisions of Article 191 of the Criminal Code paragraph (1) and legal provisions other interrelated matters, judges as enforcers of law and justice are obliged to explore and understand the laws that live in society. This is so that judges can make decisions in accordance with the law and the sense of justice in society. In the case of Decision Number 1434/Pid.Sus/2018/PN. Mks, the judge has made an expansion regarding the interpretation of Article 114 of the Narcotics Law.

It can be concluded that based on Article 114 of the Narcotics Law that anyone who without rights or against the law becomes an intermediary for the sale and purchase of narcotics can be directly punished by law, this threatens the absence of legal justice, because in the form of accountability it must be seen from the element of guilt first. Previously, in Article 114 of the Narcotics Law there was no specific explanation regarding intent. If the courier is not proven guilty, then he should not be punished, but Article 114 of the Narcotics Law states that he can still be criminalized because he does not clearly mention the element of intent, if you look at the Makassar District Court Decision No. 1434/Pid.Sus/2018/PN . Mks. The results of the Decision 1434/Pid.Sus/2018/PN.Mks, in his consideration the judge decided to acquit the defendant because the elements of each person in this article were not proven, therefore he saw that there was legal injustice in Article 114 of the Narcotics Law.

Based on the explanation above, in order to create a sense of justice for society, it is necessary to add a new norm in the provisions of Article 114 paragraph (1) and the

Narcotics Law which states “Any person who without rights or against the law offers to sale, sell, buy, receive, being an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)”. Then article 114 paragraph (2) of the Narcotics Law states “In the case of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)”.

The addition of the norm is meant by adding an element of intent in the article so that it changes to: Article 114 paragraph (1) of the Narcotics Law states “Every person intentionally and without rights or unlawfully offers for sale, sells, buys, receives, becomes an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)”. Then adding the norm in Article 114 paragraph (2) of the Narcotics Law states “In the event of an intentional act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Category I as referred to in paragraph (1) which in plant form weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)”.

5. CONCLUSION

5.1. Conclusion

The conclusions that can be drawn in this study are as follows:

- 1) Whereas with regard to law enforcement and accountability, every construction of the Intermediary Articles contained in Law Number 35 of 2009 concerning Narcotics relating to acts committed by couriers does not all fulfill the elements of offense in each article, based on Article 132 when the courier or not able to prove good faith as an online driver, such as not having the authority to check the goods to be sent, the courier service company does not or does not yet support goods scanning facilities, so it can enter into an offense of conspiracy, but even though the actions carried out by online couriers have fulfilled the formulation of the offense, not necessarily justifiable.
- 2) For the sake of creating a sense of justice for society, it is necessary to add new norms to the provisions of Article 114 paragraph (1) and the Narcotics Law which states “Any person who without rights or against the law offers to be sold, sells, buys, receives, becomes an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years

and a fine of at least Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)". Likewise, article 114 paragraph (2) of the Narcotics Law states "In the case of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)".

The addition of norms is meant by adding an element of intent in the article so that it changes to:

Article 114 paragraph (1) of the Narcotics Law states "Every person intentionally and without rights or unlawfully offers to sale, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of a minimum of Rp1.000.000.000,00 (one billion rupiah) and a maximum of Rp10.000.000.000,00 (ten billion rupiah)". Then adding the norm in Article 114 paragraph (2) of the Narcotics Law states "In the event of an intentional act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Category I as referred to in paragraph (1) which in plant form weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third)".

5.2. Suggestion

Based on the findings and conclusions above, this study suggest that in law enforcement and criminal liability for the role of online transportation courier services in drug trafficking, law enforcement officials must ensure that the online transportation courier is intentional. In addition, the government can add more rules to the provisions of Article 114 of the Narcotics Law in order to establish justice.

REFERENCES

- Ariyanti, V. (2019). Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia. *Jurnal Yuridis*, 6(2), 33–54.
- Basir, A. (2017). *Dampak Positif dan Negatif Kurir Transportasi Online*. <https://ayusyifasfr.wordpress.com/2017/12/19/dampak-positif-dan-negatif-ojek-online/>
- Herman, J. V., & Kansil, C. S. T. (2022). Perlindungan Hukum Pengguna Marketplace Terhadap Dugaan Pelanggaran Hak Pribadi Yang Dilakukan Jasa Pengiriman Berdasarkan Hukum Positif Di Indonesia (Contoh Kasus Viral Transaksi Jual Beli "Cash On Delivery"). *Jurnal Hukum Adigama*, 4(2), 2739–2763.
- Irianto, S. (2006). *Perdagangan perempuan dalam jaringan pengedaran narkotik*.

- Yayasan Obor Indonesia.
- Jainah, Z. O. (2013). Kejahatan Narkoba Sebagai Fenomena Dari Transnational Organized Crime. *Pranata Hukum*, 8(2).
- Pratama, G. Y., & Suradi, A. (2016). Perlindungan Hukum Terhadap Data Pribadi Pengguna Jasa Transportasi Online Dari Tindakan Penyalahgunaan Pihak Penyedia Jasa Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. *Diponegoro Law Journal*, 5(3), 1–19.
- Purnama, K. (2021). Pertanggung Jawaban Pidana Terhadap Kurir Dalam Tindak Pidana Penyalahgunaan Narkotika. *LEX CRIMEN*, 10(4).
- Riani, T. I. (2021). *Tinjauan Hukum Terhadap Pengemudi Transportasi Online Yang Dimanfaatkan Sebagai Kurir Narkotika*. Universitas Islam Kalimantan MAB.
- Soekanto, S. (2015). Pengantar Penelitian Hukum, Jakarta: UI-Press, 2014. *Supriadi Dan Alimuddin, Hukum Perikanan Di Indonesia*,(Jakarta: Sinar Grafika.
- Subandri, A., & Widyarsono, T. (2021). *Menumpas Bandar Menyongsong Fajar: Sejarah Penanganan Narkotika di Indonesia*. Prenada Media.
- Yanto, O. (2016). Prostitusi Online sebagai Kejahatan Kemanusiaan terhadap Anak: Telaah Hukum Islam dan Hukum Positif. *AHKAM: Jurnal Ilmu Syariah*, 16(2), 187–196.