



## LEGAL DISCOVERY BY JUDGES IN ADDRESSING THE AMBIGUITY OF “DEALER” AND “USER” ELEMENTS IN ARTICLES 114, 112, AND 127 OF THE NARCOTICS LAW

### PENEMUAN HUKUM OLEH HAKIM DALAM MENGATASI AMBIGUITAS UNSUR “PENGEDAR” DAN “PENGGUNA” PADA PASAL 114, 112, DAN 127 UU NARKOTIKA

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#### Abstract

The ambiguity of the elements “dealer” and “user” in Articles 114, 112, and 127 of Law Number 35 of 2009 on Narcotics creates legal uncertainty in the practice of criminal justice. These three provisions often overlap in law enforcement, particularly when investigators and public prosecutors apply more severe charges without comprehensively examining the legal construction of the defendant’s actions, including the social and situational context behind them. This study is a normative legal research that examines the doctrine of judicial legal discovery, principles of criminal law, and the principle of proportionality in sentencing in a more in-depth and structured manner. The results of the study indicate that judges have the authority to interpret the elements of narcotics criminal acts systematically, grammatically, and teleologically to clearly distinguish between “abusive users” and “dealers with the intent to distribute.” Legal discovery is needed to prevent overcriminalization and to ensure the protection of the rights of suspects and defendants throughout the entire criminal justice process. This study concludes that the appropriate method of interpretation is an integration of systematic interpretation, teleological interpretation, and the ratio legis of the Narcotics Law.

**Keywords :** legal discovery, judge, dealer, user, Narcotics Law.

#### Abstrak

Ambiguitas unsur “pengedar” dan “pengguna” dalam Pasal 114, 112, dan 127 Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika menimbulkan ketidakpastian hukum dalam praktik peradilan pidana. Ketiga pasal tersebut sering tumpang tindih dalam penegakan hukum, terutama ketika penyidik dan penuntut umum menerapkan pasal yang lebih berat tanpa melihat secara komprehensif konstruksi perbuatan pelaku, termasuk konteks sosial maupun situasional yang melatarbelakanginya. Penelitian ini merupakan penelitian hukum normatif yang mengkaji doktrin penemuan hukum oleh hakim, asas-asas hukum pidana, serta prinsip proporsionalitas dalam pemidanaan secara lebih mendalam dan terstruktur. Hasil penelitian menunjukkan bahwa hakim memiliki kewenangan untuk menafsirkan unsur tindak pidana narkotika secara sistematis, gramatikal, dan teleologis untuk membedakan secara tegas antara



“pengguna yang menyalahgunakan” dan “pengedar yang memiliki niat menyebarkan”. Penemuan hukum diperlukan untuk mencegah overcriminalization serta memastikan perlindungan hak tersangka dan terdakwa dalam seluruh tahapan proses peradilan pidana. Penelitian ini menyimpulkan bahwa metode penafsiran yang tepat adalah integrasi antara systematic interpretation, teleological interpretation, dan ratio legis dari UU Narkotika.

**Kata Kunci :** penemuan hukum, hakim, pengedar, pengguna, UU Narkotika.

## 1. INTRODUCTION

Law Number 35 of 2009 on Narcotics was formulated as a legal framework to regulate all aspects related to possession, distribution, abuse, and eradication of narcotics-related criminal acts (Salwa & Rasji, 2024). However, in the practice of law enforcement, particularly during the investigation and trial stages, significant issues arise concerning the ambiguity between the elements of “drug dealers” and “drug users” contained in Articles 114, 112, and 127 (Adrian, 2021). The unclear boundaries between these provisions often lead to inconsistent application among law enforcement officers—investigators, public prosecutors, and judges. Such inconsistency creates a gap between the objectives of the law and its practical implementation, ultimately affecting legal certainty and the protection of defendants’ rights.

Articles 114 and 112 are essentially constructed to target perpetrators of narcotic crimes in their capacity as individuals who distribute, sell, or act as intermediaries (Aulia, 2023). These provisions emphasize the eradication of illicit drug distribution networks and therefore fall into the category of serious offenses. In contrast, Article 127 is intended to address narcotics abusers or users who are considered to be in greater need of rehabilitation rather than repressive punishment (Hidayatun & Widowaty, 2020). Although conceptually the distinction between these objectives appears clear, in practice the line separating “possession for distribution” and “possession for personal use” is often blurred. This ambiguity frequently results in narcotics users being perceived as dealers solely based on the amount of evidence or statements that may not accurately reflect the true intent behind their actions (Wijayanti et al., 2025).

Such conditions have the potential to cause overcriminalization, wherein drug users are subjected to provisions with significantly heavier penalties without thorough assessment of their intent, motive, or the context of their actions (Yofarrel, 2025). On the other hand, overly broad interpretation of the criminal elements in Articles 114 and 112 opens opportunities for injustice, as the process of proving the “intent to distribute” is often not conducted comprehensively. The tension between rehabilitative and repressive objectives within the Narcotics Law is one of the core sources of ambiguity in distinguishing between “dealers” and “users” (Putra, 2025).

In this situation, the role of judges becomes highly crucial. Judges cannot merely act as the mouthpiece of the law by interpreting the text literally; they must actively engage in legal discovery to address gaps, incompleteness, and ambiguity in legal norms (Harini & Rahmat, 2025). Through grammatical, systematic, and teleological interpretation, judges can objectively determine whether a person truly intends to distribute narcotics or is merely a user



who requires a different form of intervention. Judicial legal discovery functions as a corrective mechanism to prevent disproportionate application of legal provisions and to ensure that law enforcement remains aligned with the principles of justice, legal certainty, and usefulness (Setyawan, 2025).

Based on this background, this study aims to analyze in greater depth the ambiguity of legal elements in Articles 114, 112, and 127 of the Narcotics Law, as well as to explain how judicial legal discovery can serve as an important instrument to resolve it. By understanding the patterns of ambiguity and the methods of interpretation used by judges, this research is expected to contribute to the development of criminal law doctrine and to improvements in judicial practice. Theoretically, this research enriches the body of legal knowledge, while practically it may serve as a guideline for investigators, public prosecutors, and judges in applying narcotics provisions proportionally in accordance with the legislative intent..

## 2. RESEARCH METHOD

This study employs a normative legal research approach, which positions law as written norms analyzed through statutory regulations and relevant legal doctrines. The primary focus of the research is directed at the provisions contained in Law Number 35 of 2009 on Narcotics, the Indonesian Criminal Procedure Code (KUHAP), and various implementing regulations governing the mechanisms of law enforcement related to narcotics crimes. This normative approach was chosen because the core problem of the study concerns the ambiguity in the formulation of criminal elements and the necessity of legal interpretation by judges, making the examination of normative structures an essential starting point of the analysis.

To deepen the understanding of the regulation and application of the elements “dealer” and “user,” this study also examines secondary legal materials in the form of criminal law literature, textbooks, scientific journals, previous research findings, and expert opinions discussing the conceptualization of narcotics crimes and theories of legal discovery. Through this literature review, the study obtains a solid theoretical foundation to assess how the concept of narcotics possession is interpreted in various doctrinal perspectives and how the legal construction should be proportionally applied in judicial processes. The application of statute approach, conceptual approach, and analytical approach provides the basis for tracing the relationship between written norms, conceptual ideas, and the reasoning practices of judges.

All collected legal materials were analyzed using qualitative analytical techniques by interpreting, classifying, and systematically connecting various legal provisions and scholarly views. The analysis was conducted using deductive reasoning, beginning with general statutory provisions and legal concepts and then deriving conclusions concerning the ambiguity in criminal elements that form the focus of this research. Through this method, the study is expected to produce comprehensive and logical legal arguments that accurately explain how judges should undertake legal discovery to address the normative ambiguity in Articles 114, 112, and 127 of the Narcotics Law.



### 3. RESULT AND DISCUSSION

The phenomenon of ambiguity in distinguishing between “dealers” and “users” in narcotics crimes is a crucial issue that has long colored judicial practice in Indonesia (Fahlevi et al., 2025). This lack of conceptual boundaries not only affects inconsistency in the application of the law, but also raises the potential for injustice for defendants who are actually victims of narcotics abuse yet are placed in the position of perpetrators of illicit distribution (Hilman, 2025). In the dynamics of case examination, law enforcement officials often adhere to a formal construction that views the possession of narcotics as a form of involvement in distribution networks, even though in many situations such possession is purely related to personal consumption needs. The tension between the State’s repressive interest in eradicating illicit drug trafficking and the rehabilitative interest toward abusers demonstrates a disharmony that must be addressed through legal discovery by judges as the final determiner in constructing criminal acts (Farhan et al., 2024).

In this context, the role of judges becomes increasingly important because the ambiguity of norms in Articles 114, 112, and 127 requires careful, proportional interpretation aligned with the legislative intent. Judges cannot merely follow the investigative construction or the prosecutor’s indictment, but must conduct an in-depth examination of whether the elements of the charged act truly reflect the intent to distribute or instead demonstrate the characteristics of a narcotics abuser (Amrudi, 2018). Through systematic, teleological, and analytical interpretation, judges have the authority to direct the application of norms so as not to lead to excessive criminalization of narcotics users. Therefore, this chapter will elaborate in a structured manner the sources of ambiguity in offender elements under the Narcotics Law, the methods of legal discovery used by judges, and their implications in establishing legal certainty and fairer sentencing.

#### a. Ambiguity of the Elements “Dealer” and “User” in the Narcotics Law

The ambiguity between the categories of “dealer” and “user” mainly arises because the Narcotics Law does not provide clear normative boundaries regarding the purpose of narcotics possession (Parulian, 2021). Articles 114 and 112 are intended to ensnare perpetrators of illicit trafficking, while Article 127 is directed at users. However, elements such as “possessing”, “owning”, and “storing” are often applied too broadly, allowing users to be easily positioned as dealers when analysis of the purpose of possession is not conducted carefully (National Center for Legal Analysis and Evaluation et al., 2021). This situation creates room for excessive criminalization of individuals who should fall within a rehabilitative regime.

The ambiguity is further worsened by the tendency of law enforcers to use the amount of evidence as the main indicator of intent to distribute. However, quantities do not always reflect distribution because consumption patterns and tolerance levels among users vary widely. The absence of clear criteria related to the phrase “for personal use” causes inconsistencies among court decisions: a small amount may be considered for personal use in one case but used to allege dealing in another. This phenomenon even creates a hidden strict liability practice, where



the presence of narcotics is deemed sufficient to prove trafficking without analyzing motive, context, or intent (Munawar, 2023).

The lack of uniform interpretive guidelines for investigators, prosecutors, and judges makes the application of the articles heavily dependent on the subjectivity of law enforcement officers. As a result, many users face heavier charges solely because of the possession of evidence, without considering their usage history or proof of personal consumption (Indonesia Judicial Research Society, 2022). This situation undermines legal certainty and deviates from the humanistic goal of the Narcotics Law toward users (Yanti et al., 2025). Thus, more proportional interpretation is required so that the distinction between dealers and users can be consistently applied and aligned with the legal protection goals of justice.

### **b. Legal Discovery by Judges in Interpreting Ambiguous Elements**

In narcotics cases, judges have an important role to ensure that norms are not applied rigidly, especially when elements such as “possessing”, “owning”, or “storing” have the potential to place users as dealers (Indonesia Judicial Research Society, 2022). Legal discovery becomes a means for judges to overcome normative ambiguities and ensure that sentencing remains proportional and in accordance with the offender’s characteristics (Davis & Maharani, 2024).

Legal discovery allows judges to safeguard the objectives of the Narcotics Law so that protection toward users is not overshadowed by a repressive approach. With consistent use of interpretive methods, judges can avoid excessive criminalization and ensure that user cases are directed to the appropriate regime, specifically Article 127.

#### **1) Systematic Interpretation**

Systematic interpretation is conducted by reading Article 112 together with Article 127 as a unified whole. Thus, judges can understand that possession for personal consumption is not always appropriately positioned as illicit trafficking (Hariyani, 2020). This approach prevents the equalization of users and dealers. This approach also places each norm within its proper function in the Narcotics Law, which actually distinguishes between the regime of eradicating illicit trafficking and the rehabilitation regime for users. By reading the legal structure holistically, Article 112 is no longer used as a “multipurpose” provision.

#### **2) Teleological Interpretation**

Teleological interpretation guides judges to view the purpose of the Narcotics Law, namely to protect society and save users from dependency (Mardiman et al., 2025). By understanding this objective, judges can prevent users who require rehabilitation from being treated as dealers without strong legal grounds. This method also helps assess whether the defendant has economic motives or involvement in a trafficking network. If not, then teleologically they are more appropriately categorized as users.

#### **3) Identification of Intent to Distribute**

Identification of the intent to distribute is crucial in distinguishing users from dealers. The amount of evidence should not be considered the sole basis, as users often store stock for personal needs (Mulyadi, 2012). Therefore, judges must assess other evidence that reflects



personal consumption patterns. Additionally, the absence of transactional evidence such as conversations or financial records strongly indicates a lack of intent to distribute (Fadli, 2022). A history of dependency also strengthens the argument that narcotics are intended for personal use.

#### 4) Application of the In Dubio Pro Reo Doctrine

The in dubio pro reo doctrine requires judges to choose the interpretation that is most favorable to the defendant if doubt exists (Rahmadani, 2024). In narcotics cases, this principle is highly relevant because the mere existence of evidence is often insufficient to prove the intent to distribute. This doctrine safeguards against punishment based on assumptions, ensuring that conviction is based only on truly strong evidence (Iskandar, 2021).

#### c. Application of Legal Discovery for Legal Certainty

The application of legal discovery by judges in narcotics cases is essentially an effort to ensure that the norms applied truly align with the nature of the offender's actions (Permana, 2023). In practice, accurate interpretation of the ambiguous elements "dealer" and "user" affects not only the articles imposed but also directly impacts the defendant's future, especially when they are users requiring rehabilitation. Through systematic and teleological approaches, as well as identification of intent to distribute, judges can strictly filter whether narcotics possession genuinely leads to illegal trafficking or merely to personal consumption (Saputra, Joeda, & Daman, 2025). In this way, legal discovery is positioned as a control mechanism to ensure that severe articles are not applied carelessly.

The implementation of these interpretive methods also strengthens legal certainty, as judges provide more objective parameters in distinguishing two categories of offenders that have frequently been conflated in law enforcement practice (Priono, Novianto, & Handayani, 2017). When judges consistently connect norms with legislative purposes, more measurable, transparent, and predictable judicial patterns are formed. This offers guidance not only to other judges but also to investigators and prosecutors in preparing charges and case files.

Ultimately, the application of legal discovery serves as a corrective mechanism against rigidity and errors in investigative and prosecutorial constructions (Lakada et al., 2024). Through deep understanding of context and legislative goals, judges can balance the repressive and rehabilitative aspects of the Narcotics Law (Salwa & Rasji, 2024). Thus, the sentencing imposed not only achieves legal certainty but also justice and societal benefit. Legal discovery in narcotics cases proves that judges are not merely the "mouthpiece of the law," but key actors ensuring that the law operates humanely, proportionally, and in accordance with the development of modern legal values.

## 4. CONCLUSION

The ambiguity surrounding the elements of "dealer" and "user" in Law Number 35 of 2009 on Narcotics essentially stems from the lack of clear normative boundaries regarding the perpetrator's intent, the purpose of possession, as well as quantitative and qualitative criteria in assessing the evidence. This uncertainty causes Article 114 and Article 112 to be frequently



applied in the same manner as Article 127, resulting in narcotics users being treated as dealers merely based on their physical possession of the substance. In practice, this situation leads to overlapping interpretations among law enforcement authorities and creates a risk of excessive criminalization against substance abusers.

Through the judicial process of legal discovery, judges play a central role in correcting normative obscurities by applying systematic and teleological interpretation and ensuring that the principle of *in dubio pro reo* is implemented when the elements of the offense cannot be clearly proven. These interpretive efforts ensure that sentencing remains proportional, fair, and aligned with the main objective of the Narcotics Law, which places users within a rehabilitative framework.

The legislature must establish a more explicit normative reconstruction regarding the parameters distinguishing users from dealers, particularly by formulating measurable standards that can be applied consistently by all law enforcement authorities. Clear limits on quantities for personal use, indicators of intent to distribute, and the operational definition of “possession” must be explicitly articulated to avoid multi-interpretation in law enforcement. Additionally, law enforcement officials—from investigators to public prosecutors—must prioritize a rehabilitative approach for offenders proven to be users. Strengthening technical guidelines and enhancing the capacity of law enforcement personnel in understanding the characteristics of narcotics cases are strategic measures to prevent unnecessary criminalization and to ensure that criminal justice policies operate in harmony with the principles of justice and utility.’

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