



SALAM

Jurnal Sosial dan Budaya Syar-i

P-ISSN: 2356-1459. E-ISSN: 2654-9050

Vol. 8 No. 6 (2021), pp.1783-1798

DOI: 10.15408/sjsbs.v8i6.23026

<http://journal.uinjkt.ac.id/index.php/salam/index>



Principle of Strict Liability in Narcotics Crimes and Efforts to Protect The Rights of Perpetrators*

Cony Dehas Ratna Devi¹, Yaris Adhial Fajrin², Syariful Alam³,
Yohana Puspitasari Wardoyo⁴

Law Faculty of Muhammadiyah Malang University, Indonesia



[10.15408/sjsbs.v8i6.23026](https://doi.org/10.15408/sjsbs.v8i6.23026)

Abstract:

Narcotics abuse cases in Indonesia have been at an alarming level, which causes all levels of society to become targets of victims of narcotics abuse. Efforts to overcome this use two approaches in the narcotics law that regulate it, namely the penal approach and the non-penal approach, which are commonly referred to as the double-track system. As a form of transnational organized crime, narcotics crimes need special efforts to overcome them. Among the many substances of criminal legislation, one of the special measures that can be used is applying the benefits of the existence of the principle of strict liability. The discussion regarding the existence of the principle of strict liability will be the object of study in this paper, namely by using the normative legal research method which prioritizes the study of positive legal provisions and general legal principles. So, it can be found what the strict liability principle is in the teachings of criminal law and the use of the strict liability principle in enforcing criminal law in the field of narcotics in Indonesia. The principle of strict liability can be an option for a new breakthrough in the effectiveness and efficiency of combating narcotics crimes in Indonesia. Although the existence of the principle of strict liability in its implementation provides convenience and practicality for law enforcement officials in carrying out their duties, it also provides an opportunity for injustice. So that the focus of the application of the principle of strict liability is not only used as a means of making it easier but is more used to overcome injustice for the victim or the perpetrator in cases of narcotics abuse so that it will no longer cause an injustice that can injure the basic human rights contained in the paragraph 1 Article 28D of the Indonesia Constitution.

Keywords: Narcotics, strict liability, transnational organized crime.

Abstrak:

Kasus penyalahgunaan narkotika di Indonesia sudah berada pada level yang mengkhawatirkan, yang menyebabkan semua lapisan masyarakat menjadi sasaran korban penyalahgunaan narkotika. Upaya penanggulangannya menggunakan dua pendekatan

* Received: Nov 12, 2021, Revision: Nov 15, 2021, Published: December 22, 2021.

¹ **Cony Dehas Ratna Devi** adalah Mahasiswa Fakultas Hukum pada Universitas Muhammadiyah Malang. Email: rconydehas@gmail.com

² **Yaris Adhial Fajrin** adalah Dosen Fakultas Hukum pada Universitas Muhammadiyah Malang. Email: yaris@umm.ac.id

³ **Syariful Alam** adalah Dosen Fakultas Hukum pada Universitas Muhammadiyah Malang. Email: syarifulalam@umm.ac.id

⁴ **Yohana Puspitasari Wardoyo** adalah Dosen Fakultas Hukum Universitas Muhammadiyah Malang. Email: joanna.wardoyo@yajoo.com

dalam undang-undang narkoba yang mengaturnya, yaitu pendekatan penal dan pendekatan non penal yang biasa disebut dengan sistem jalur ganda. Sebagai salah satu bentuk kejahatan transnasional terorganisir, kejahatan narkoba memerlukan upaya khusus untuk menanggulangnya. Di antara sekian banyak substansi peraturan perundang-undangan pidana, salah satu upaya khusus yang dapat digunakan adalah dengan menerapkan manfaat dari adanya prinsip pertanggungjawaban yang tegas. Pembahasan mengenai adanya asas strict liability akan menjadi objek kajian dalam tulisan ini, yaitu dengan menggunakan metode penelitian hukum normatif yang mengutamakan kajian ketentuan hukum positif dan asas hukum umum. Sehingga dapat diketahui apa prinsip strict liability dalam ajaran hukum pidana dan penggunaan prinsip strict liability dalam penegakan hukum pidana di bidang narkoba di Indonesia. Prinsip strict liability dapat menjadi pilihan terobosan baru dalam efektivitas dan efisiensi pemberantasan tindak pidana narkoba di Indonesia. Meskipun adanya prinsip strict liability dalam pelaksanaannya memberikan kemudahan dan kepraktisan bagi aparat penegak hukum dalam menjalankan tugasnya, namun juga memberikan peluang terjadinya ketidakadilan. Sehingga fokus penerapan prinsip strict liability tidak hanya digunakan sebagai sarana untuk mempermudah tetapi lebih banyak digunakan untuk mengatasi ketidakadilan bagi korban atau pelaku dalam kasus penyalahgunaan narkoba sehingga tidak lagi menimbulkan kerugian. ketidakadilan yang dapat mencederai hak asasi manusia yang terkandung dalam ayat 1 Pasal 28D Undang-Undang Dasar Negara Republik Indonesia.

Kata Kunci: Narkoba; Strict Liability; Kejahatan Terorganisir Transnasional.

A. INTRODUCTION

The State of Indonesia is a country that uses a national development policy, which has a goal to realize its citizens who are peaceful, prosperous, just and prosperous in accordance with the provisions contained in Pancasila and the 1945 Constitution of the Republic of Indonesia (Indonesia Constitution/UUD 1945).⁵ To realize these national goals, it is necessary to maintain the quality and quantity of medicines so that their availability can benefit all Indonesian people. Therefore, the availability of narcotics, as one of the basic ingredients for drug production, needs to be guaranteed by the state. The guarantee is also needed so that all forms of irregularities and narcotics abuse can be anticipated, as an effort to prevent the occurrence of criminal acts or narcotics crimes. Narcotics are drugs containing certain substances which, if misused, can cause negative impacts such as changes in self-awareness, decreased metabolism in the body, giving effect to dependence, and even death. Drug abuse is a very serious problem, which has the potential to hinder national development, thus threatening the security and sovereignty of the state.⁶

The act of drug abuse itself is interpreted as a condition of using narcotics continuously which has no purpose for a treatment, as well as its use that does not follow the dosage rules of use from a doctor's prescription. The development of narcotics abuse and distribution has been around for several years. The phenomenon of narcotics abuse in recent years has been widely carried out by teenagers because of mistakes in relationships that result in negative habits in their lives. Based on the facts on the ground, it is stated that narcotics abuse has not shown a condition of a decline from year to year, but continues to experience a significant increase both in number and quantity. Not only

⁵ Triwijaya, Fajrin, and Wibowo, "Quo Vadis: Pancasila Sebagai Jiwa Hukum Indonesia." p.116.

⁶ Jainah, "Kejahatan Narkoba Sebagai Fenomena Dari Transnational Organized Crime." p. 96-103.

that, the facts on the ground also show that irresponsible people are getting smarter by continuing to legalize the circulation of narcotics, one of which is by changing the appearance of the shape of these drugs into a food or drink so that it doesn't look like the actual situation.⁷

Narcotic abuse is already at an alarming level, which has resulted in all levels of society becoming targets for narcotics abuse victims. Based on the results of the national final report survey on the development of narcotics abuse in Indonesia by Indonesia National Anti Narcotics Agency (BNN), stated that almost all provinces in Indonesia have become places for cases of drug abuse and illicit trafficking, as well as the BNN also stated that the number of cases in the last 3 years in Indonesia (2017, 2018 and 2019) did not decrease, instead, it increased by 2.53%. The number of increases that occurred due to narcotics abuse cases in 2017 was 4.661 people, which then in 2018 increased to 4.800 people, and in 2019 continued to increase until narcotics abuse cases reached 4.921 people.⁸

Taking into account the increasingly worrying trend of narcotics abuse in Indonesia, it is necessary to tackle narcotics crime through a criminal law approach. As is known, the Indonesia Law Number 35 of 2009 concerning Narcotics (Narcotics Law) uses two approaches to crime prevention efforts, namely the penal approach (in the form of criminal sanctions) and the non-penal approach (in the form of action sanctions), commonly referred to as a double track system. As a form of transnational organized crime, narcotics crimes need to be carried out with special efforts, including in terms of the substance of the legislation that regulates crime and punishment (material criminal law). Among the many substances of criminal legislation, there is one important principle as the object of study in this paper, namely regarding the existence of the principle of strict liability, especially related to narcotics abuse crimes. The principle of strict liability can be an option for a new breakthrough in the effectiveness and efficiency of the prevention of narcotics crime in Indonesia. This is reflected in the settlement of civil cases in environmental law, where the implementation of the strict liability principle is seen as more efficient in the accountability process.⁹

Taking into account the brief description above, the author raises two points as follows: First, how is the principle of strict liability in the teachings of criminal law?, and second, how is the implementation of the principle of strict liability in the Narcotics Law? Through these two problems, it is possible to provide an analysis of the implementation of the principle of strict liability while still paying attention to basic human rights in Indonesian criminal law, especially regarding narcotics crimes.

⁷ Saleh, Rokhmah, and Nafikadini, "Fenomena Penyalahgunaan NAPZA Di Kalangan Remaja Ditinjau Dari Teori Interaksionisme Simbolik Di Kabupaten Jember." p. 468-475.

⁸ Herindrasti, "Drug-Free ASEAN 2025: Tantangan Indonesia Dalam Penanggulangan Penyalahgunaan Narkoba." p. 20-33

⁹ Gunawan, "Dekriminalisasi Pecandu Narkotika: Pergeseran Pendekatan Dan Implikasi Kebijakan Penanganan Pecandu Narkotika Di Indonesia." p. 239-258.

B. METHODS

The research method used by the author is a normative legal research method, which is research that prioritizes the study of positive legal provisions and general legal principles. The normative legal research method is research by making benchmarks on both primary and secondary legal materials.¹⁰ This research was obtained through research or documents of laws and regulations, books, legal journals, and various court decisions related to the object of research, namely the principle of strict liability and also related to narcotics crimes. The research materials used are primary legal materials and secondary legal materials. Primary legal materials are sourced from laws and regulations related to narcotics, while secondary legal materials include books, scientific journals and scientific articles. The research method used by the author is expected to provide answers to the formulation of the problems contained in this paper and then can be used as an evaluation and interpretation of the law to solve the legal problems that exist in this study.¹¹

C. RESULTS AND DISCUSSION

1. *Strict liability* Principle In The Teaching Of Criminal Law

The principle of *strict liability* in the teachings of criminal law is defined as direct responsibility as a result of an act of violating criminal law, without the need to further prove the element of guilt. So that the perpetrator will only be subject to criminal sanctions if the perpetrator has been proven to have committed an act that has been stated by the law without looking at his inner attitude. Barda Nawawi Arief provides two explanations regarding this principle, namely: first, that *strict liability* is absolute liability, in which there is a reason the perpetrator is said to have carried out a prohibited act (*actus reus*) and this is stated in a statutory regulation; second, that strict liability is different from absolute liability, which means that the perpetrator has carried out an unlawful act that has been mentioned in a law that regulates it, but that may not necessarily be subject to criminal sanctions.¹² Based on this elaboration, *strict liability* and absolute liability are something different, especially with regard to whether or not a person can be subject to criminal sanctions.

The principle of *strict liability* was first used in England in 1868 in a settlement of a case concerning coal mining which was popular with the content of the case "Fletcher vs Rylands". The decision of the case becomes jurisprudence on the implementation of this principle in every effort to enforce civil environmental law. This ultimately underlies the emergence of a rule for anyone who commits an act that harms another person can be given consequences for it in the form of an effort to compensate for all the consequences it causes. In practice, the rule in the application of the principle of strict liability without questioning the element of error remains the legal basis and is still being

¹⁰ Soekanto and Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. p.20.

¹¹ Amirudin and Asikin, *Pengantar Metode Penelitian Hukum*. p.18.

¹² Pandiangan, "Penerapan Prinsip Strict Liability Dalam Pertanggungjawaban Korporasi Yang Dianggap Bertanggungjawab Atas Kebakaran Hutan Di Provinsi Riau." p. 1-14

followed and developed. This development occurs because there are consequences of demands that require the creation of a protection and legal certainty for certain cases such as environmental protection, consumer protection, occupational health and safety, and also for cases of distribution and misuse of food or illegal drugs.¹³

In addition, the history behind the strict liability principle is the legacy of a consequence of an ancient teaching system which has the aim that anyone who does something, if it can harm others, is the person himself who must be held accountable for his actions.¹⁴ Through Presidential Decree No. 18 of 1978, Indonesia ratified the Civil Liability Convention for Oil Pollution Damage (CLC) in 1969 as a milestone in the recognition of the principle of strict liability in Indonesia. Then the principle of strict liability is contained in several laws, such as the Forestry Law, the Nuclear Law, and the Law on the Environment.¹⁵

The use of the principle of strict liability is motivated by several reasons.¹⁶ *First*, according to J.E. Krier, proving is expensive for the victims, and not an easy thing to prove the element of guilt. *Second*, as a consequence of industrial development or industrialization, especially in areas that endanger safety with a major impact on people's lives, and must also be followed by an appropriate responsibility. So thus, this direct or absolute liability is actually a logical risk of industrial society and technological progress. Because the more advanced a society, the greater the responsibility. Based on this background, then legally there is a shift in accountability based on errors and then shifts to accountability without errors. The background of the existence of the principle of strict liability originally came from a doctrine that existed in England, the Netherlands, and America. The regulation itself in England is based on the criminal law system which applies to an offense with the nature of a misdemeanor rather than a serious offense, which belongs to the class of offences, namely, offenses against public order, violations of court order, and Criminal Libel or defamation or defamation of someone.¹⁷

Meanwhile, the regulation regarding the principle of strict liability in the Netherlands itself applies to certain categories as well, which according to Moeljatno, in the Netherlands the application of the principle of strict liability means that criminal liability such as this is called material action or *Leer van heit materielle feit* or *fait materielle*. In addition, the strict liability principle is an responsibility based on risk, with the form of criminal liability not based on the element of error, which in its application is applied only to cases of violation and applies to the extent of prohibited acts such as the management of hazardous materials, waste management installations, and drilling mining activities. However, there is an exemption from liability on the condition that if the loss caused is caused by an extraordinary natural event and there is a loss caused as

¹³ Handayani, Arifin, and Virdaus, "Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia." p. 1-19

¹⁴ Imamulhadi, "Perkembangan Prinsip Strict Liability Dan Precautionary Dalam Penyelesaian Sengketa Lingkungan Hidup Di Pengadilan." p. 417-432.

¹⁵ Wibisana, *Penegakan Hukum Lingkungan Melalui Pertanggungjawaban Perdata*. p. 50.

¹⁶ *Ibid.*

¹⁷ Siahaan, *Hukum Lingkungan Dan Ekologi Pembangunan*. p. 29.

a result of a disturbance or war and there is a loss that is the result of your obedience to the orders of the existing rulers. In Indonesia itself, in applying the principle of strict liability, it has been applied for a long time to traffic violations in addition to issues regarding the environment, where every motorized vehicle driver has violated traffic regulations, such as continuing to drive in a red traffic light condition, a fine will be issued. by a police officer, who will then be given a sanction and a trial will be carried out in court. In the trial, the judge will give a decision on the violation he has committed without questioning whether or not there is an error owned by the driver who has violated the traffic rules.¹⁸

In the provisions of the Indonesia Criminal Code (KUHP) at this time, it is not explained about the regulation of the principle of strict liability and still adheres to the principle of error or what we usually know as the principle of no crime without any errors, but actually, this strict liability is indirectly reflected in the articles of infringement, where these articles include exceptions regarding the principle of error.¹⁹ In addition, the formulation of the principle of strict liability can be found in the Indonesian Criminal Code Bill 2019 (RKUHP) in Article 37 letters a and b, which state that:

Article 37 (a and b) :

“In the event that it is determined by law, everyone can:

- a) be punished solely because the elements of the Crime have been fulfilled without regard to any errors; or
- b) be held accountable for crimes committed by others.”

Therefore, the principle of *strict liability* in the formulation of the RKUHP provides an overview of the purpose of social protection from actions that can cause negative impacts on society in the form of economic and social cultural losses. So that in the existence of the principle of strict liability, it is more aimed at cases with certain consequences that can endanger safety, social interests in society, and public morality.²⁰ Muladi also justified the use of the *strict liability* principle in Indonesian criminal law in the future, particularly for “cases of violation of regulations concerning public welfare”. The element of error in the evidentiary process for accountability is a difficult thing to do, so that the principle of strict liability in its formulation in the Indonesian Criminal Code can later be used as a tool to facilitate solving the process of proving errors which in the process is not easy to implement, as well as facilitating criminal accountability.²¹

The existence of the Strict Liability principle, apart from being a new breakthrough because of its practicality and convenience for law enforcement officers in

¹⁸ Moeljatno, *Asas-Asas Hukum Pidana*. p. 16.

¹⁹ Bawole, “Analisis Hukum Terhadap Bentuk Pertanggungjawaban Pidana Berdasarkan Konsep Strict Liability Dan Vicarious Liability.” p. 16-20

²⁰ Nurhidayat and Sutiana, “Pertanggungjawaban Pidana Korporasi Pada Kasus Pembakaran Lahan Di Indonesia Berdasarkan Teori Strict Liability.” p. 43-63

²¹ Hatrik, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia (Strict Liability Dan Vicarious Liability)*. p. 34

carrying out their duties for an investigation and arrest, which in the case of a case being caught red-handed, it is certain that an arrest can immediately be carried out, because the perpetrator is proven to have done what he had already done. Prohibited by law, especially in cases of transnational organized crime, the principle of strict liability is also a tool capable of realizing the achievement of legal reform by realizing the principles of justice and balance that are appropriate for the victims, perpetrators, and other affected communities. In addition, it is felt that it provides a great opportunity for the perpetrators who may be innocent to obtain proper justice, because they are able to alleviate the obstacles when proving a fault, which is considered to be burdensome which results in proving his guilt cannot be done, or in other words it is considered a lot. provide useful things by creating a juridical protection effort for other people who are affected by the existence of the crime. Although initially the use of the Strict Liability principle was only intended for handling civil cases, but along with the development of legal reform, it can cross over to the issue of criminal cases by bringing a lot of advantages and conveniences for all the elements involved in it.²²

The principle of *strict liability* is included in a special case (*lex specialis*) so that it deviates from the principle of error (according to the principle of "no crime without error") as one of the fundamental principles in the teaching of criminal law. Most of the use of the strict liability principle is regulated in an offense which is generally found in complaints offenses for the general welfare, such as cases of sale and illicit trafficking of illegal drugs that can be dangerous and violations of traffic regulations which are included in the category of regulatory offenses (written law). The exception to the principle of error is a development in legal reform, because the element of error or *mens rea* has so far been fundamental to the process of accountability for the consequences of a crime. So that *mens rea* becomes an element whose existence is absolutely there in order to determine and determine which law violations have been committed by the perpetrator, so that he can be held accountable for it. If the actions and mistakes have been fulfilled, then the perpetrator can be subject to criminal sanctions.²³

The element of error in the application of the principle of strict liability can be seen from the extent to which it expands the meaning of the element of error or criminal liability. That is, the perpetrators who can be held accountable need to pay attention to whether or not there is a reasonable relationship between the actions and the consequences that have been caused, and by not forgetting the balance between the interests of the community and the interests of individuals. So, the absence of an element of error does not matter because it only requires an element of action. In addition, the principle of strict liability does not need to prove beforehand whether it has fulfilled the elements of being against the law or not. So that it can streamline, streamline, and facilitate the handling of a criminal case, so that it is no longer a complicated problem in proving cases as long as the perpetrator has indeed committed an unlawful act or not.²⁴

²² Michael, "Implementasi Undang-Undang Narkotika Ditinjau Dari Perspektif Hak Asasi Manusia." p. 415-432

²³ Praja et al., "Strict Liability Sebagai Instrumen Penegakan Hukum Lingkungan." p. 42-62

²⁴ Adhyaksa and Laksana, "Pertanggungjawaban Pidana Terhadap Pengemudi Transportasi Online Sebagai Kurir Narkotika." p. 1-18

The qualifications or requirements for the application of the strict liability principle are, firstly, applicable to laws aimed at ensuring the welfare of the community so that they need to be adhered to in order to realize the objectives of the law; second, in a process of proving the element of guilt for a crime that is very difficult to carry out; and third, for criminal cases that have the potential to have a serious impact on public safety or the general public. Examples include cases of environmental pollution, possession of illegal drugs, consumer protection, possession of liquor, and possession of weapons, all of which are cases where it is possible to apply the principle of strict liability.²⁵

The existence of the strict liability principle is not simply accepted, because on the other hand there are several views that reject the existence of this principle. Most of those who reject it are based on the argument that this principle is a loophole for imposing a criminal sanction unfairly, because it can be imposed on innocent people (because they don't fulfill the element of guilt) or against people who are not against the law (because they don't fulfill the element of being against the law). In addition, in the principle of strict liability there is negligence which is deemed sufficient for a law to obtain a balanced result between protecting the interests of the general public and threatening the potential perpetrators.²⁶

Although there are views that reject the existence of the strict liability principle, according to L.B. Curzon, this principle has benefits, including:²⁷

- a. There is an interest in ensuring that its citizens comply with certain important regulations aimed at maintaining the welfare and prosperity of the community. The interest in ensuring this is able to provide justice and legal certainty in social life. So that indirectly the existence of a guarantee is what causes the public to be aware of the existence of a law that regulates a system of criminal responsibility;
- b. There are obstacles with the existence of proof of guilt that is not easily obtained from actions that have violated regulations, which have links to welfare in the community. This is because it is not uncommon for evidence to be lost or destroyed; and
- c. It can be found that there is a high potential that can be socially harmful, as a result of these activities or actions. This dangerous thing can lead to problems of social turmoil in the life of the community itself, which is a very dangerous situation because it can result in huge losses.

Based on the opinion of L.B. Curzon, it can be concluded that the principle of *strict liability* is a legal concept that can provide benefits for the victim in bearing the responsibility of the perpetrator. The principle of strict liability is the right thing to apply because in the current era of technology, many people can be found as victims of the

²⁵ Haritia and Hartiwingsih, "Penerapan Asas Strict Liability Dalam Tindak Pidana Kebakaran Hutan Dan Lahan Yang Dilakukan Oleh Korporasi (Studi Putusan Nomor 186/PID.SUS/2015/PTPBR)." p. 111-121

²⁶ Sjawie, *Pertanggungjawaban Pidana Korporasi Pada Tindak Pidana Korupsi*. p. 45

²⁷ Darma and Redi, "Penerapan Asas Polluter Pay Principle Dan Strict Liability Terhadap Pelaku Pembakaran Hutan." p. 1-27

impact of modernization, not to mention there is also a lot of manipulation of the data on evidence so that many victims feel disappointed in the case. what happened to him. The most important thing is that it is not easy for the victim to be able to provide complete evidence to be used as evidence against him.²⁸

Furthermore, Barda Nawawi Arief explained that there are limitations that should not be missed when using the principle of strict liability. That is about the extent of the consequences of the actions caused and the potential/threats to the interests of the general public, as well as the extent to which it can cover the principle of no fault as a justice (justice based on the values of justice in Pancasila). So it can be concluded that the application of the principle of strict liability must pay attention to the extent to which the ability to expand the meaning of the element of error (as well as its criminal liability), without neglecting / leaving the essence of the value of balance between the interests of the community and the interests of individuals proportionally. Because this is a reflection of being able to see to what extent the value of justice in Pancasila can be realized.²⁹

As explained in the previous paragraph, the application of the principle of strict liability is mostly generally used in complaints offenses for public welfare, such as cases of sale and illicit trafficking of illegal drugs that can endanger public welfare. So it has the possibility to be implemented in the Narcotics Law. Even though the formulation of the statutory provisions has not been implemented and explained in a concrete way regarding the principle of strict liability, if the understanding of the formulation is not defined as a whole, or only by looking at certain articles where the principle of strict liability can be applied to the formulation of the article, it will at first glance give rise to an opinion. that the formulation of this Narcotics Law has implemented and used the principle of strict liability. This condition opens up great opportunities for legal uncertainty, whether it is due to the lack of understanding of law enforcement in applying this principle, or due to the abuse of authority by law enforcement officers. Even though it provides a loophole for legal uncertainty, the application of this principle needs to be attempted as a breakthrough in the field of law enforcement, as long as it is carried out correctly, carefully, and with caution, so that the obstacles experienced by sufferers or perpetrators who may be innocent can be minimized.³⁰

2. Application of the *Strict liability* Principle in Criminal Law Enforcement Against Narcotics Abuse In Indonesia Without Injuring Basic Human Rights

Efforts to enforce the law on narcotics abuse cases as a preventive and countermeasure step will be related to criminal and sentencing issues for the subject of criminal acts, which include individuals and corporations. In this paper, the author will focus on "people" as the subject of a crime because the narcotics abuse case which

²⁸ Ibid.

²⁹ Resnawardhani, "Kepastian Hukum Dalam Pasal 112 Dan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika." p.117

³⁰ Sujasmin, "Rasionalitas Penetapan Pidana Tambahan Dalam Penanggulangan Kejahatan Korporasi Di Bidang Narkoba." p. 67-91

contains an element of error is only intended for the subject of people.³¹ The use of the strict liability principle in law enforcement of narcotics abuse cases is seen as still rarely used, because the formulation of the Narcotics Law does not clearly and explicitly explain the regulation of the principle. Moreover, the teaching of criminal law in general recognizes the principle of "no crime without an error", so that the absence of an element of error in the principle of strict liability is something new and quite inviting debate, especially for legal practitioners. In addition, the principle of strict liability is implemented in a case that is not general in nature, so that a deeper understanding is needed in terms of doctrine and dogmatics of criminal law. Most experts argue that the implementation of this principle is only against acts against the law that are violations or special prohibitions. So that the principle of strict liability is very suitable to be applied to the Narcotics Law, where the Narcotics Law stands alone or in other words as a special law whose existence is regulated separately outside the Indonesia Criminal Code.³²

The existence of "no crime without a fault" itself is seen as less relevant as the sole principle for determining responsibility for a criminal act because today's crime or crime continues to develop in terms of form, perpetrator, and victim. It is still undeniable that the principle of "no crime without fault" remains a fundamental principle because only special or certain cases can apply this strict liability principle. The principle of strict liability can be implemented in cases that experience difficulties during the evidentiary process, especially regarding the element of guilt. The principle of strict liability is used as a basis for being able to provide criminal sanctions to parties whose actions mentioned by law have caused a serious impact.³³ However, the inaccuracy in the application of these principles can also injure the values of human rights and justice possessed by the perpetrators, which should be protected by law. Inaccuracies that cause injustice due to the improper application of the strict liability principle will only injure basic human rights contained in the Indonesia Constitution in Article 28 D paragraph 1, namely: *"Everyone has the right to recognition, guarantee, protection and legal certainty fair and equal treatment before the law."*

Although it is not clearly explained about the principle of strict liability in the formulation of the Narcotics Law, the application of this principle can be interpreted as existing and contained in several articles in the Narcotics Law, such as: Article 111 paragraph (1) and paragraph (2), as well as Article 112 paragraph (1) and paragraph (2), which reads as follows:

Article 111

- (1) *Any person who without rights or against the law plant, maintain, possess, store, control, or provide Narcotics Category I in the form of plants,*

³¹ Witanto, *Hukum Acara Praperadilan Dalam Teori Dan Praktek*. p.32

³² Suartha, *Hukum Pidana Korporasi: Pertanggungjawaban Pidana Dalam Kebijakan Hukum Pidana Indonesia*. p.54.

³³ Kusumah, "Kebijakan Penerapan Sanksi Hukum Terhadap Pelaku Tindak Pidana Narkosa Berdasarkan Undang-Undang No.35 Tahun 2009 Tentang Narkotika." P.160-169.

- (2) *In the event that the act of planting, maintaining, possessing, storing, controlling, or providing Narcotics Category I in the form of plants as referred to in paragraph (1) weighs more than 1 (one) kilogram or exceeds 5 (five) tree trunks,*

Article 112

- (1) *Any person who without rights or against the law owns, keeps, controls, or provides Narcotics Category I is not a plant,*
- (2) *In the event that the act of possessing, storing, controlling, or providing Narcotics Category I is not a plant as referred to in paragraph (1) the weight exceeds 5 (five) grams...."*

In these articles there are elements of actions that make narcotics the object of their actions, namely actions: "planting", "maintaining", "having", "keeping", "controlling", or "providing". These actions are not followed by an element of error, whether it is an element of intention or an element of negligence, so that it can be used as a basis for being able to apply direct or immediate responsibility in accordance with the provisions of the strict liability principle. So that law enforcement officers do not have to prove the element of error, but it is enough to prove the existence of an element of action as the perpetrator of the crime has done.³⁴ In connection with this statement, Sutan Remy Sjahdeni stated that in recent developments in criminal law the responsibility of a crime can be charged to the maker even though he has no element of guilt, so that it is sufficient to prove against him that he has fulfilled the elements of actions prohibited by statutory provisions. Thus, if the elements of the actions contained in the article have been fulfilled, then the actions mentioned in the article have been fully fulfilled and have been deemed guilty of the events that have occurred.³⁵

The possibility to apply the principle of strict liability in the articles mentioned above, can not be denied can lead to an injustice in its implementation. However, as long as the strict liability principle is implemented properly in accordance with the terms and conditions, the feared injustice can be avoided and fundamental rights are protected. The conditions for these limitations that must be considered in order to avoid injuring basic human rights include: having to look at the extent to which the meaning of the element of error or criminal liability is extended, and must continue to consider a justice that can be accepted by those who are criminally prosecuted for their mistakes.³⁶ In addition, the judge must also consider overriding the element of guilt of the defendant so that it is easy to determine accountability for his actions, namely with strict accountability where the judge simply considers whether all the requirements for the elements of a criminal act have been met. In the principle of strict liability, this kind of consideration is sufficient to direct directly to the defendant who has been guilty of what has been proven to him.³⁷

³⁴ Aminnullah, "Asas Strict Liability Dalam Tindak Pidana Narkotika." p.723-737.

³⁵ Kristian and Gunawan, *Tindak Pidana Perbankan Dalam Proses Peradilan Di Indonesia*. p. 65

³⁶ Resnawardhani, "Kepastian Hukum Dalam Pasal 112 Dan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika." p.117

³⁷ Ibid.

The writer can simulate in a concrete case as follows: when someone is caught red-handed by the police while carrying one type of narcotics. Although he does not admit that the narcotics are his, he must continue to undergo the legal process as it should, which does not rule out the possibility of being convicted and subject to criminal sanctions. This is what is referred to as direct or absolute responsibility for the evidence of unlawful acts encountered by law enforcement officers, based on the formulation of the provisions of the Narcotics Law. If so, it is possible for an error to occur in his arrest, because there is a possibility that the suspect could actually be in the position of a victim, namely a victim who should receive legal protection and certainty but suffers a loss of his fundamental rights because the arrest process is only based on the elements of his actions. This is the result of an arrest which is only in the form of proving the element of action alone, giving rise to injustice on the accusation of guilt of another person charged to him, on the condition that criminal sanctions can be imposed on a person, namely with an element of action (*actus reus*) and an element of error (*mens rea*). In addition, basically the element of error in humans can be tested and proven normatively, so that a person's inner state determines whether or not there is an error when committing a crime, which can then be forwarded in the form of reproach to him. And it will definitely provide convenience and practicality for law enforcement officers in carrying out their duties.³⁸

From the description of the example above, it is difficult to carry out the process of proving the element of guilt of a criminal act that has been committed. This leads to how a person is said to have committed an unlawful act with the fulfillment of the elements of action mentioned in the Narcotics Law in accordance with the principle of strict liability. As a result, the application of the strict liability principle often creates injustice because the perpetrator is only proven to be carrying or storing narcotics, even though it is not his property. With the burden of being responsible for the mistakes and actions of others more than what should be borne by people who have legal links with them, as the intent of the strict liability principle, that is, whoever is claimed to be responsible for the actions of a criminal act (*actus reus*) even without bad intentions or his fault (*mens rea*). Although in its application it provides a lot of convenience and practicality, but if it is done without caution, it will certainly give an injustice to the perpetrator and the victim.³⁹

Difficulties in proving the element of guilt and its relation to a causal relationship with the element of action and the resulting consequences arise in the case of the discovery of narcotics possession. So for such cases it is very possible to apply the principle of strict liability. Because if the prosecutor is unable to prove the element of guilt in the narcotics possession case, it can result in the judge's release of the perpetrator. Therefore, the principle of strict liability must be understood and implemented carefully and carefully so that the function of the existence of this principle in overcoming narcotics abuse can be achieved, namely as a means of protecting society effectively and efficiently by arresting perpetrators of criminal acts of narcotics abuse directly or

³⁸ Huda, *Dari Tiada Pidana Tanpa Kesalahan, Menuju Kepada Tiada Pertanggungjawaban Pidana Tanda Kesalahan*. p. 37

³⁹ Ibid.

absolutely with there is no need to prove beforehand whether or not it has fulfilled the elements of being against the law, as well as law enforcement as a means of obtaining justice for victims, perpetrators, and the community. As the main function of law from reforming the existing criminal law is the existence of a balance of justice in law enforcement.⁴⁰

Therefore, the principle of strict liability should be implemented and understood correctly by prioritizing the principles of accuracy and prudence. The implementation of the principle of strict liability in law enforcement against criminal acts of narcotics abuse must not conflict, and must be in line with the mandate of Pancasila and the Indonesia Constitution. If it is ignored in its implementation, instead of wanting to provide new law enforcement breakthroughs to make it easier, it will actually cause the basic rights of every Indonesian citizen to obtain legal certainty as stated in Article 28D paragraph (1) of the Indonesia Constitution. So that the ideals of positive Indonesian criminal law which should be able to provide protection, the guarantee of recognition, and fair legal certainty and equal treatment before the law for all Indonesian citizens will not be achieved.

D. CONCLUSION

The principle of strict liability is used as direct responsibility as a result of an act of violating criminal law, without the need to further prove the element of guilt. So that the perpetrator can be sentenced to a criminal sentence if the perpetrator has been proven to have committed an act that is prohibited by a law. The principle of strict liability is in the form of a form of specificity (*lex specialis*) so that it deviates from one of the fundamental principles in criminal law, namely the principle of "no crime without fault". The current Indonesian Criminal Code does not stipulate concretely on the principle of strict liability, but in the 2019 draft Indonesian Criminal Code the principle is regulated in it as a guarantor of balance and social protection from all actions/crimes that are bad for the community, both economic losses and losses from the socio-cultural side. The use of the principle of strict liability requires carefulness and caution, especially for crimes that have the potential to have a serious impact on public safety or the general public.

The principle of strict liability in law enforcement of narcotics abuse is still rarely used, because in the Narcotics Law its existence is not clearly explained. However, it is possible to apply this principle in several formulations of its articles, such as in Article 111 paragraph (1) and paragraph (2), as well as Article 112 paragraph (1) and paragraph (2). In these articles, the elements of action mentioned therein can be used as the basis for the application of direct or immediate responsibility, in accordance with the principle of strict liability. In addition to its application in law enforcement against narcotics crimes, it can provide convenience and practicality because in its application there is no need to prove in advance whether or not it has fulfilled the elements against the law, especially in the effort to prove. However, it should be underlined that to apply this

⁴⁰ Ibid.

principle, you must still pay attention to the conditions for the application of the strict liability principle, because later if you do not pay attention to this, the implementation of the strict liability principle will not be in accordance with its functions and objectives which results in injustice, both to the perpetrators and the perpetrators. victims and society. Especially in narcotics crimes, which on the other hand are seen as victimless crimes because of the thin line between a person's position as a perpetrator and his position as a victim. The application of the principle of strict liability itself is more towards law enforcement efforts in order to obtain justice for both the victim and the perpetrator, so as not to injure the basic human rights contained in paragraph 1 of Article 28D of the Indonesia Constitution.

REFERENCE:

- Adhyaksa, Satya Gita, and I Gusti Ngurah Dharma Laksana. "Pertanggungjawaban Pidana Terhadap Pengemudi Transportasi Online Sebagai Kurir Narkotika." *Kertha Wicara* 8, no. 4 (2019): 1–18.
- Aminullah, Sakti. "Asas Strict Liability Dalam Tindak Pidana Narkotika." *Juris-Diction* 1, no. 2 (2018): 723–37. <https://doi.org/10.4337/9781786433725.00013>.
- Amirudin, Amirudin, and Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada, 2012.
- Bawole, Grace Yurico. "Analisis Hukum Terhadap Bentuk Pertanggungjawaban Pidana Berdasarkan Konsep Strict Liability Dan Vicarious Liability." *Lex Et Societatis* 6, no. 8 (2018): 16–20. <https://doi.org/10.1051/mateconf/201712107005>.
- Darma, Malvin Edi, and Ahamad Redi. "Penerapan Asas Polluter Pay Principle Dan Strict Liability Terhadap Pelaku Pembakaran Hutan." *Jurnal Hukum Adigama* 1, no. 1 (2018): 1–27.
- Gunawan, Gunawan. "Dekriminalisasi Pecandu Narkotika: Pergeseran Pendekatan Dan Implikasi Kebijakan Penanganan Pecandu Narkotika Di Indonesia." *Sosio Informa* 02, no. 03 (2016): 239–58.
- Handayani, Emi Puasa, Zainal Arifin, and Saivol Virdaus. "Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia." *ADHAPER: Jurnal Hukum Acara Perdata* 4, no. 2 (2018).
- Haritia, Bayu, and Hartiwiningsih. "Penerapan Asas Strict Liability Dalam Tindak Pidana Kebakaran Hutan Dan Lahan Yang Dilakukan Oleh Korporasi (Studi Putusan Nomor 186/PID.SUS/2015/PTPBR)." *Recidive* 8, no. 2 (2019): 111–21.
- Hatrik, Hamzah. *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia (Strict Liability Dan Vicarious Liability)*. Jakarta: Raja Grafindo Persada, 1996.
- Herindrasti, Valentina Lusiana Sinta. "Drug-Free ASEAN 2025: Tantangan Indonesia Dalam Penanggulangan Penyalahgunaan Narkotika." *Jurnal Hubungan Internasional* 7, no. 1 (2018). <https://doi.org/10.18196/hi.71122>.
- Huda, Chairul. *Dari Tiada Pidana Tanpa Kesalahan, Menuju Kepada Tiada*

Pertanggungjawaban Pidana Tanda Kesalahan. Jakarta: Kencana, 2011.

Imamulhadi, Imamulhadi. "Perkembangan Prinsip Strict Liability Dan Precautionary Dalam Penyelesaian Sengketa Lingkungan Hidup Di Pengadilan." *Mimbar Hukum* 25, no. 3 (2013): 417–32. <https://doi.org/10.22146/jmh.16070>.

Jainah, Zainab Ompu. "Kejahatan Narkoba Sebagai Fenomena Dari Transnational Organized Crime." *Pranata Hukum* 8, no. 2 (2013): 96–103.

Kristian, and Yopi Gunawan. *Tindak Pidana Perbankan Dalam Proses Peradilan Di Indonesia*. Jakarta: Prenadamedia Group, 2018.

Kusumah, Haidan Angga. "Kebijakan Penerapan Sanksi Hukum Terhadap Pelaku Tindak Pidana Narkosa Berdasarkan Undang-Undang No.35 Tahun 2009 Tentang Narkotika." *ADHUM* 6, no. 3 (2016): 160–69.

Michael, Donny. "Implementasi Undang-Undang Narkotika Ditinjau Dari Perspektif Hak Asasi Manusia." *Jurnal Penelitian Hukum De Jure* 18, no. 3 (2019): 415–32.

Moeljatno, Moeljatno. *Asas-Asas Hukum Pidana*. Keempat. Jakarta: Bina Aksara, 1985.

Nurhidayat, Syarif, and Arif Rusman Sutiana. "Pertanggungjawaban Pidana Korporasi Pada Kasus Pembakaran Lahan Di Indonesia Berdasarkan Teori Strict Liability." *Undang: Jurnal Hukum* 1, no. 1 (2018): 43–63. <https://doi.org/10.22437/ujh.1.1.43-63>.

Pandiangan, EKO Ardiansyah. "Penerapan Prinsip Strict Liability Dalam Pertanggungjawaban Korporasi Yang Dianggap Bertanggungjawab Atas Kebakaran Hutan Di Provinsi Riau." *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau* 3, no. 2 (2016): 1–14.

Praja, Chrisna Bagus Edhita, Dasep Nurjaman, Dian Arifa Fatimah, and Nilma Himawati. "Strict Liability Sebagai Instrumen Penegakan Hukum Lingkungan." *Varia Justicia* Vol 1 2, no. 1 (2016): 42–62.

Resnawardhani, Fitri. "Kepastian Hukum Dalam Pasal 112 Dan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika." *Lentera Hukum* 6, no. 1 (2019): 117. <https://doi.org/10.19184/ejhl.v6i1.8978>.

Saleh, Hesty Damayanti, Dewi Rokhmah, and Iken Nafikadini. "Fenomena Penyalahgunaan NAPZA Di Kalangan Remaja Ditinjau Dari Teori Interaksionisme Simbolik Di Kabupaten Jember." *E-Jurnal Pustaka Kesehatan* 2, no. 3 (2014): 468–75. <http://jurnal.unej.ac.id/index.php/JPK/article/download/2349/1929>.

Siahaan, Nommy Horas Thombang. *Hukum Lingkungan Dan Ekologi Pembangunan*. Jakarta: Erlangga, 2004.

Sjawie, Hasbullah F. *Pertanggungjawaban Pidana Korporasi Pada Tindak Pidana Korupsi*. Kedua. Jakarta: Kencana, 2017.

Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. 17th ed. Jakarta: Rajawali Pers, 2015.

- Suartha, I Dewa Made. *Hukum Pidana Korporasi: Pertanggungjawaban Pidana Dalam Kebijakan Hukum Pidana Indonesia*. Malang: Setara Press, 2015.
- Sujasmin, Sujasmin. "Rasionalitas Penetapan Pidana Tambahan Dalam Penanggulangan Kejahatan Korporasi Di Bidang Narkoba." *Jurnal Wawasan Yuridika* 22, no. 1 (2010): 67–91. <https://doi.org/10.25072/jwy.v22i1.4>.
- Triwijaya, Ach Faisol, Yaris Adhial Fajrin, and Arif Prasetyo Wibowo. "Quo Vadis: Pancasila Sebagai Jiwa Hukum Indonesia." *Jurnal Pendidikan PKN (Pancasila Dan Kewarganegaraan)* 1, no. 2 (2020): 115–29. <https://doi.org/10.26418/jppkn.v1i2.41083>.
- Wibisana, Andri Gunawan. *Penegakan Hukum Lingkungan Melalui Pertanggungjawaban Perdata*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2017.
- Witanto, D.Y. *Hukum Acara Praperadilan Dalam Teori Dan Praktek*. Depok: Imaji Cipta Karya, 2019.