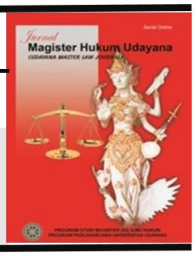
JURNAL MAGISTER HUKUM UDAYANA
(UDAYANA MASTER LAW JOURNAL)
Vol. 14 No. 2 July 2025
E-ISSN: 2502-3101 P-ISSN: 2302-528x
http: //ojs.unud.ac.id/index.php/jmhu



Interpretation of Analogy in the Crime of Possession of a New Psychoactive Substance

Carissa Tita Zhafirah[1], Setiawan Noerdajasakti[2], Abdul Madjid[3]

[1]Universitas Brawijaya, E-mail: carissatitaz@student.ub.ac.id
[2] Universitas Brawijaya, E-mail: setiawan.sakti@ub.ac.id
[3] Universitas Brawijaya, E-mail: majid@ub.ac.id

Article Info

Submitted: 23rd Pebruari 2025
Accepted: 11st July 2025
Published: 15th July 2025

Keywords:
New Psychoactive Substances; Legal Discovery; Analogy

Corresponding Author:
Carissa Tita Zhafirah, E-mail: carissatitaz@student.ub.ac.id

DOI:
10.24843/JMHU.2025.v14.i02.p02

Abstract

This study aims to analyze the juridical implications of the application of analogy interpretation by judges in the case of possession of new psychoactive substances, especially in Decision Number 1352/Pid.Sus/2024/PN Mdn on behalf of the Defendant Lindawati. There is one case that applies an analogous interpretation by the judge in the case of possession of a new psychoactive substance, namely Decision Number 1352/Pid.Sus/2024/PN Mdn on behalf of the Defendant Lindawati. This study uses a normative juridical method with a legislative approach, a case approach, and a conceptual approach. Analysis was carried out on primary, secondary, and tertiary legal materials using anticipatory and teleological interpretation methods. The results of the study showed that the Panel of Judges used Article 62 of the Psychotropic Law to punish the Defendant, even though the substance ketamine was not listed in the official psychotropic appendix. This action reflects the findings of the law through analogy, which is doctrinally contrary to the principle of legality in criminal law. Nevertheless, from a progressive legal perspective, the application reflects a response to rapidly changing social realities as well as the need for adaptive legal protection. This study concludes that although analogies in criminal law are prohibited, their application in the context of a legal vacuum for psychoactive substances can only be understood as an effort to realize substantive justice and public protection through a progressive approach in criminal law enforcement.

1. Introduction

In principle, changes in the social life of the community are an undeniable inevitability. The phenomenon of social change basically has an inherent characteristic, namely dynamic and continuous without an end point. These changes arise as a consequence of interactions between individuals and between social groups that bring differences in interests and values. The potential for conflict to arise that results in social

dysfunction is a logical consequence of the dynamics of these interactions. Social deviations that arise in society can be accommodated and adjusted through legal instrumentation as a form of social control mechanism.[1]

Implementively, the law has a strategic position as a guardian of stability as well as an agent of change in the structure of society.[2] However, laws often fail to provide a rapid response to evolving social change.[3] Therefore, the law is expected to be able to transform adaptively to the social changes that occur. However, these expectations have not been fully actualized, especially in the civil law legal system as embraced by Indonesia. Legal responses to social change tend to be late and faltering, as reflected in several laws and regulations, such as:[4]

1. Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code);
2. Law No. 35 of 2009 concerning Narcotics (Narcotics Law);
3. Law No. 5 of 1997 concerning Psychotropics (Psychotropics Law), which has undergone changes and partial revocation through Law No. 6 of 2023 concerning the Determination of the Job Creation Perppu into Law (Ciptaker Law).

In the four legal umbrellas, namely the New Criminal Code, the Narcotics Law, the Psychotropic Law, and the Ciptaker Law, there is no criminal law on the possession of new psychoactive substances.[5] The New Criminal Code regulates special criminal acts regulated in Chapter XXXV. Special criminal acts in chapter a quo also regulate narcotics. Although the law has undergone changes, the New Criminal Code has not yet regulated the criminal act of possession of new psychoactive substances. Moreover, the Narcotics Law and the Psychotropic Law regulate the regulation of new psychoactive substances only limited to changes in classification. However, the government has proposed to make changes to the Narcotics Law. One of the amendments accommodates the addition of a new article on the criminal act of possession of psychoactive substances.[6]

Attention to the phenomenon of the global spread of new psychoactive substances has actually emerged since 2009, in line with a report published by the United Nations Office on Drugs and Crime (UNODC).[7] UNODC identifies that the abuse of new psychoactive substances has the potential to pose serious health risks, including decreased productivity and premature death, as well as impact socio-economic losses on both national and international scales.[8] Over the past decade, the rate of spread of these substances has increased by 314%, as reported through secondary data by UNODC and BNN.

---

[1] Prija Djatmika, *Legal Correlation and Social Change: In a Theoretical Perspective* (Malang: Brawijaya University, 2011).

[2] Soetandyo Wignjotosoebroto, *Paradigm Shift in Social and Legal Studies* (Malang: Setara Press, 2013).

[3] Satjipto Rahardjo, *Legal Sciences* (Bandung: Citra Aditya Bhakti, 2006).

[4] Djatmika, *Legal Correlation and Social Change: In a Theoretical Perspective*.

[5] Ivan Maulana Pratama, "Legal Regulation of New Types of Narcotics That Have Not Been Registered," *Independent Justice* 6, no. 1 (2020): 25–28.

[6] Muhammad Faisal Riswanto, "New Types of Narcotics Abuse (Study of Law Number 35 of 2009 Concerning Narcotics)," *E-Print Uniska*, 2021, 1–7.

[7] Zulfahmi Khairil Step, "Abuse of Methylone Use as a Narcotics Crime," *E-Journal Unsrat*, 2021, 1–14.

[8] Christina, "Law Enforcement Breakthroughs in Dealing with the Threat of New Psychoactive Substances (NPS): Adoption of International Legal Provisions," *Journal of National Resilience Strategic Studies* 3, no. 1 (2020): 75.

Table 1.
Table of Numbers of New Identified Psychoactive Substances

Year	UNODC	Indonesia	Minister of Health Regulation	NPS at Permenkes
2019	542	76	Minister of Health Regulation Number 44 of 2019	74
2020	950	77	Permenkes Number 5 of 2020	72
2021	1.100	83	Permenkes Number 4 of 2021	83
2022	1.182	87	Permenkes Number 36 of 2022	75
2023	1.230	94	Permenkes Number 36 of 2023	91

Source: Secondary Legal Materials, processed, 2025

Based on the ius constitutum criminal in Indonesia, legal subjects who possess new psychoactive substances cannot be subject to criminal sanctions, because they are clashed with the principle of legality that does not justify the application of the law by analogy.[9] This principle is in line with the postulate of Paul Johann Anselm von Feuerbach, who formulated three important adagiums, namely:

1. *Nulla poena sine lege* (no crime without law),
2. *Nulla poena sine crimine* (there is no crime without crime), and
3. *Nullum crimen sine poena legali* (no crime without criminal threat according to applicable law).[10]

The third adage, namely *nullum crimen sine poena legali*, affirms that all forms of criminal acts can only be criminalized based on written law, and judges are prohibited from imposing criminal sanctions on the basis of analogous interpretation.[11] This principle has been institutionalized in the national criminal law system, both in the Old Criminal Code (Law Number 1 of 1946) and the New Criminal Code.

Based on this explanation, it can be concluded that judges are not allowed to designate an act as a criminal act outside the existing framework of ius constitutum, using the analogy method. The absolute prohibition on the use of analogy interpretation by judges actually creates a contradiction between the principles of legality and social reality, as illustrated in Decision Number 1352/Pid.Sus/2024/PN Mdn. In the decision, the Panel of Judges of the Medan District Court handed down a verdict against the defendant in the case of possession of ecstasy and ketamine, even though there is no explicit legal basis governing the new psychoactive substance.

According to Marjanne Termoshiuzen, criminal law experts do not have the function of fortune tellers (astrologers) who are able to predict all potential future crimes.[12] Therefore, the vacancy of criminal law regulation for new psychoactive substances is a natural inevitability, considering that the law is unable to keep up with

[9] Moeljanto, *Criminal Code* (Jakarta: Bumi Aksara, 2008).
[10] Hasnan, *Translation of Criminal Law 1: Material Criminal Law General Section* (Bandung: Alumni, 1987).
[11] Komariah Emong Sapardjaja, *The Teaching of Material Lawlessness in Indonesian Criminal Law (Case Study on Its Application and Development in Jurisprudence)* (Bandung: Alumni, 2002).
[12] Aris Hardjanto, "The Benefits of Analogy in Criminal Law to Address Modernized Crime," *Journal of Jurisprudence* 31, no. 2 (2016): 21–22.

the acceleration of social change. However, problems arise when the logic of the judge's thinking in adjudicating cases is no longer in line with the principle of legality, especially related to new legal events that have not been accommodated normatively.

The limitations in the regulation of narcotics in Indonesia that are unable to reach future developments require a progressive legal interpretation, one of which is through an analogous approach as an alternative to the development of criminal law. Although analogies are considered to be contrary to the principle of legality, this approach has an important juridical function in avoiding legal rigidity and providing adaptive space to changes in science and technology.[13] This shift in criminal law thinking began to be seen from the doubts of a number of legal experts about von Feuerbach's stance, including Van Hamel, who offered a more responsive and adaptive approach to criminal law.

This research has differences with several previous studies such as Erwin Susilo's research which explains in terms of how to understand the nature and position of narcotics cases presented in trials, the focus of this first research is general only limited to the practical level of the interpretation of narcotics crimes.[14] The next research is Aditya Hadmanto's research which explains the status of the position of new types of narcotics as evidence according to the Narcotics Law, this research is general because there is no interpretation method used.[15]

The two studies have a different concentration from the author's research which focuses on the application of analogous interpretation by judges to cases of possession of new psychoactive substances that deserve to be critically studied as a form of law enforcement that is reflective of social change and as part of efforts to reformulate criminal law doctrine.

2. Method

This research is a type of normative juridical research that is carried out through a statutory approach, a case approach, and a conceptual approach. The author analyzes legal materials consisting of primary, secondary, and tertiary legal materials using anticipatory interpretation methods and teleological interpretation in order to obtain legal understanding in accordance with the goals and development of society.

3. Result and Discussion

3.1. Chronology of the Crime of Narcotics Possession in Decision Number 1352/Pid.Sus/2024/PN Mdn a.n. Defendant Lindawati

The case of the crime of abusing narcotics and psychoactive substances began from a public report received by the Officer of the National Narcotics Agency of North Sumatra Province, who informed of allegations that a woman had mixed ecstasy pills into the milo milk drink she consumed. Based on this information, North Sumatra BNNP

[13] Hardjanto.

[14] Erwin Susilo, "Application of Theory in Essence in Interpreting Narcotics Crimes," *Nagari Law Review* 8, no. 1 (2024): 51–64.

[15] Aditya Hadmanto, "The Position of New Types of Narcotics in the Evidence of the Narcotics Law No.35 of 2009," *Badamai Law Journal* 31, no. 2 (2021): 196–214.

officers then carried out a series of investigation efforts. On Saturday, March 9, 2024, at around 20.30 WIB, two officers on behalf of Muktiono, S.H., and Roni O. Harefa, carried out an arrest of a woman who was later identified as the defendant Lindawati. The arrest was made in front of a boarding house located at Jalan Jose Rizal Number 132, Rengas Permata Village, Medan Area District, Medan City. After the arrest, BNN officers continued to search the Defendant's boarding house on the second floor, witnessed by the local Neighborhood Head, Muhammad Fazly.

Based on the results of the search, a number of evidence was found and confiscated, including: four plastic clip packages containing chocolate powder suspected of containing narcotics weighing 55.93 grams each; 56.7 grams; 55.49 grams; and 56.81 grams; one plastic clip package containing white powder suspected of containing a ketamine-type psychotropic substance with a net weight of 21 grams; five slices of dried deer antler; and one piece of milled wood powder. Based on information from the Defendant, he obtained ecstasy pills from a man he did not know through a transaction in front of the Capital Building, Jalan Putri Hijau, West Medan District, Medan City, at a price of IDR 300,000.00 per item, and bought ketamine for IDR 1,000,000.00 per bottle. The defendant then grinded the four ecstasy pills and mixed them with one gram of ketamine that had been dried, then mixed again with 55 grams of milo milk. The mixture is stirred and put into plastic clips, resulting in four plastic wrappers filled with brown powder.

Based on the results of a laboratory examination from the Deli Serdang Regional Laboratory in Medan dated March 15, 2024 Register Number SSDS1FC/III/2024, signed by the Head of the Laboratory Center, it is known that the four plastic clip packages containing chocolate powder contain MDMA (methylenedioxymethamphetamine) and N,N-dimethylpentylone. Meanwhile, white powder in a plastic clip package was found to contain ketamine. Based on the legal facts revealed at the trial, the Public Prosecutor demanded that the Defendant Lindawati be legally and convincingly proven guilty of committing a criminal act without rights or against the law of possessing, storing, or controlling class I narcotics not plants in an amount of more than five grams, as well as possessing, storing, and/or carrying psychotropic drugs of the type ketamine, as stipulated in the Second Primary Indictment Article 112 paragraph (2) of Law Number 35 of 2009 About Narcotics Jo. Article 62 of Law Number 5 of 1997 concerning Psychotropics.

The Public Prosecutor demanded that the Defendant be sentenced to imprisonment for thirteen years and a fine of Rp2,000,000,000.00 with the condition that if the fine is not paid, it will be replaced with imprisonment for one year. The sentence imposed was requested to be reduced entirely by the period of detention that had been served by the Defendant, and ordered that the Defendant remain in custody. In addition, the Public Prosecutor also requested that the evidence be in the form of: (1) four plastic clip packs containing chocolate powder with a total weight of 224.93 grams; (2) one pack of plastic clips containing white powder weighing 21 grams; (3) five pieces of dried deer horn slices; and (4) one piece of milled wood powder, confiscated for destruction. Finally, the Public Prosecutor also requested that the Defendant be burdened to pay the case fee of Rp5,000.00.

In the a quo case, the Panel of Judges assessed the fulfillment of the elements in Article 112 paragraph (2) of Law Number 35 of 2009 concerning Narcotics and Article 62 of Law Number 5 of 1997 concerning Psychotropics. Before passing the verdict, the Panel of Judges carefully examined the elements of the two articles, as follows:

a. **The "Everybody" Element**

The phrase "everyone" is interpreted as a subject of law, both in the form of an individual (naturlijke persoon) and a legal entity (rechtpersoon). A naturlijke persoon is an individual who is able to exercise legal rights and obligations, is physically and spiritually healthy, and can be held accountable for his actions according to the law. This element is not related to a person's position or status.

At the beginning of the trial process, the Public Prosecutor presented the Defendant Lindawati before the Panel of Judges with an identity that was in accordance with the description in the indictment. The identity has been confirmed and justified by the Defendant at trial. During the trial process, the Defendant showed the ability to provide clear and consistent information about his actions. Therefore, the Panel of Judges concluded that the Defendant was in a state of physical and spiritual health and was legally responsible for his actions. So, the element of "everyone" is stated to have been fulfilled.

b. **Element "Without rights or against the law to possess, store, control, or provide Class I Narcotics in non-plant form weighing more than 5 (five) grams of ecstasy/MDMA pills, and possessing, storing, and/or carrying psychotropic drugs of the type ketamine"**

The Panel of Judges divided this element into several sub-elements, namely:

1) **Unencumbered or unlawful**

Based on the provisions of Article 2 of the Psychotropic Law, regulations regarding the scope of use of psychotropics include all activities related to psychotropics that have the potential to cause dependence. Psychotropics can only be used in health services and/or scientific interests, while Group I psychotropics can only be used in scientific terms and are included in the category of prohibited substances.[16]

Thus, activities related to psychotropics can only be carried out by parties who have a special permit or approval letter from the Minister of Health. Therefore, a person who commits an act of possession or possession of psychotropic drugs without having the permit is considered to have committed an unlawful act.

2) **Possessing, storing, possessing, or providing Class I narcotics in non-plant form that weigh more than 5 grams of ecstasy/MDMA pills and possessing, storing, and/or carrying ketamine-type psychotropic drugs**

This element is alternative because it uses the conjunction "or", which means that proof of one element alone is sufficient to declare that this element is met. **Possess** is defined as the existence of a legal relationship between the Defendant and goods in the form of narcotics or psychotropics that allow the Defendant to treat the goods as his own. **Storing** means the act of placing goods in a certain location with the intention of keeping the goods safe. **Controlling** means the ability of the Defendant to actually or potentially control or regulate the goods, including actions such as selling, giving, or using the goods.

[16] A.R. Sujono, *Comments and Discussion of Law Number 35 of 2009 Concerning Narcotics* (Jakarta: Sinar Grafika, 2011).

Based on the testimony of witnesses Muktiono and Roni O. Harefa as officers from the National Narcotics Agency of North Sumatra Province, the defendant was arrested on Jalan Jose Rizal No. 132, Rengas Permata Village, Medan Area District, Medan City. In the arrest, a search was carried out which resulted in the confiscation of a number of evidence, namely: 1 white plastic clip containing ketamine powder weighing 21 grams, 4 white plastic clips containing chocolate powder mixed with milo milk, ketamine, and ecstasy pills weighing 224.93 grams, 1 wooden grinder; and 5 slices of deer antler.

Based on the results of a laboratory examination of evidence with registration number SSDS1FC/III/2024 from the Deli Serdang Laboratory, it was concluded that four plastics containing positive chocolate powder contained MDMA (Methylenedioxymethamphetamine) and N,N-Dimethylpentylone, while one plastic containing white powder was identified as ketamine.

The defendant, when asked for a response to the testimony of the witnesses, stated that he justified the entire content of the statement. Thus, based on the facts revealed in the trial, the Panel of Judges stated that the elements of possession, storage, and control had been fulfilled legally and convincingly.

Regarding this, the Panel of Judges imposed a criminal sentence on the Defendant on the basis of the following legal considerations:

1) All elements in Article 112 paragraph (2) of the Narcotics Law and Article 62 of the Psychotropic Law charged by the Public Prosecutor are proven to be fulfilled;
2) The evidence submitted, namely witness statements, letters, and confessions of the Defendant, has been appropriate and corroborated in the trial;
3) There is no justification or excuse in the Defendant that can remove criminal liability;
4) The Panel of Judges was convinced that the Defendant was legally and convincingly proven to have committed the criminal act as charged.

3.2. Juridical Implications of the Application of Analogy by the Panel of Judges by Punishing the Defendant a.n. Lindawati uses Article 62 of Law Number 5 of 1997 concerning Psychotropics in Decision Number 1352/Pid.Sus/2024/PN Mdn in the Perspective of Progressive Legal Theory

a. Analysis of the Application of Article 62 of the Psychotropic Law by the Panel of Judges to Punish the Defendant a.n. Lindawati reviewed based on Crime Theory and Evidence

The basic conditions of a criminal act (delictum or *strafbaar feit*) in principle consist of two categories, namely subjective elements and objective elements. The subjective element refers to things that are inherent in the perpetrator's personality, including his inner condition or will. Meanwhile, the objective element is related to circumstances outside of the perpetrator who are part of the criminal act, namely the conditions that must exist in the act as formulated in the criminal provisions.

The Panel of Judges who examined and tried the case considered the fulfillment of the following subjective conditions:

1) The act is carried out by the perpetrator as a subject of law (naturlijke persoon). The Panel of Judges stated that the Defendant is a subject of law who can be held criminally liable with the following considerations:
   "Considering that the phrase 'everyone' in criminal law is understood to be equivalent to 'whom', even though the law does not provide an explicit definition of the term. Doctrinally, 'whoever' is defined as an individual, male or female, who is not discriminated against on the basis of sex and has the legal capacity to account for his or her actions. Furthermore, the Public Prosecutor at the beginning of the trial had presented the Defendant Lindawati as his identity was stated in the indictment. When questioned by the Panel of Judges, the Defendant confirmed the identity and throughout the trial process was able to provide a clear explanation of his actions. Therefore, the Panel concluded that the Defendant was in a healthy physical and spiritual condition and had the ability to account for his actions. Therefore, this element is seen as fulfilled."
2) The defendant has the ability to legally account for his actions. The Panel of Judges affirmed that this element was fulfilled because the Defendant demonstrated mental and physical prowess to understand and explain his actions, as stated:
   "Considering that during the course of the trial, the Defendant was able to understand and explain his actions in its entirety, and did not show any mental or physical incapacity that could preclude criminal liability, the Panel declared that this element had been proven."
3) There is no justification or excuse. The Panel of Judges also considered that the Defendant had no basis to be acquitted of criminal responsibility by justification or pardon, as stated:
   "Considering that based on the results of observations during the trial, the Panel did not find any circumstances that could eliminate the unlawful nature of the Defendant's actions or eliminate his guilt. Therefore, the Defendant deserves to be sentenced to a sentence that is proportionate to his guilt."

Based on this description, it can be concluded that the subjective conditions in a quo case have been fulfilled juridically. Furthermore, the assessment is directed to the fulfillment of the objective elements of the indicted offense, which in this case refers to the provisions of Article 62 of Law Number 5 of 1997 concerning Psychotropics. Assessment of the fulfillment of objective elements requires a formal proof process.[17]

According to the logical basis in the evidentiary process, a conviction can only be imposed if two cumulative conditions have been met. First, there are at least two pieces of evidence that are valid according to the criminal procedure law. Second, there is the Judge's belief that is built on the basis of the evidence. Thus, the Judge's conviction cannot stand alone without the support of valid evidence as stipulated in Article 183 of the Criminal Code.

In the a quo case as stated in Decision Number 1352/Pid.Sus/2024/PN Mdn, the Panel of Judges has based its consideration on three valid pieces of evidence, namely witness statements, letters, and defendant statements. However, there are serious problems related to the fulfillment of objective elements, especially regarding the mastery of psychotropic drugs of the type ketamine.

Ketamine, based on the ius constitutum that applies in Indonesia, is not included in the classification of psychotropics either according to the Psychotropic Law or in the

[17] Alfredo Laughter, "The Principle of Legality of the Crime of Misuse of New Psychoactive Substances in the Study of Criminal," *Journal of Civil Medicine* 5, no. 1 (2021): 62–72.

latest classification appendix by the Ministry of Health. Therefore, the element of 'possessing psychotropics' as referred to in Article 62 of the Psychotropic Law cannot be declared juridically proven because the object of the act (ketamine) does not fall into the category referred to by legal norms.

Thus, only the subjective elements are proven, while the objective elements are not met. Therefore, the decision of the Panel of Judges in a quo case can be interpreted as a form of applying rechtsvinding (legal discovery) through the analogia legis method, namely by expanding the meaning of legal norms to a situation that has not been explicitly regulated by laws and regulations. Although the method of interpreting analogies can be used to a limited extent in civil law, in criminal law it is problematic because it is contrary to the principle of legality (*nullum crimen sine lege stricta*).

b. Analysis of the Application of Article 62 of the Psychotropic Law by the Panel of Judges to Punish the Defendant a.n. Lindawati is reviewed based on Analogy Theory and Legal Discovery

During the court process, it is not uncommon for judges to be faced with legal problems that cannot be resolved solely by referring to the applicable positive legal provisions (ius constitutum). In such circumstances, the judge has the obligation to make legal discoveries (rechtvinding) to provide certainty and justice in the decision. There are two main methods in legal discovery, namely the interpretation method and the construction method. The interpretation method focuses on the interpretation of the norms that have been written in the law, while the construction method is an attempt at juridical reasoning carried out by judges to develop legal norms through logical and systematic reasoning of existing provisions.[18]

One form of application of the legal construction method is the use of analogy. However, both in the old Criminal Code (KUHP) and in the new National Criminal Code, the criminal law system in Indonesia expressly adheres to the principle of prohibiting the use of analogies in criminal law enforcement, in order to ensure legal certainty and protection of the principle of legality (nullum crimen sine lege, nulla poena sine lege).

When associated with legal considerations and the validity of Decision Number 1352/Pid.Sus/2024/PN Mdn, the Panel of Judges in the a quo case has made legal discoveries through construction methods, especially by using an analogous interpretation approach. The legal discovery was made to fill the legal vacuum (recht vacuum) in Law Number 5 of 1997 concerning Psychotropics, considering that the substance ketamine is not explicitly listed as a type of psychotropic in the provision or in the applicable derivative regulations, including changes in the classification of psychotropics by the Ministry of Health. However, the construction of the law through analogy applied by the Panel of Judges in a quo case is actually contrary to the principles of criminal law that apply in Indonesia, especially the principle of prohibition of analogy in criminal law (verbod van analogie). Therefore, the action of the Panel of Judges cannot be justified according to the principle of legality in criminal law. In a quo case, the Panel of Judges appears to apply a method of legal discovery that is a mixture between a heteronomous approach, namely as an enforcer of the law (la bouche de la loi), and an

[18] Adelia Yunita, "No Juridical Analysis of New Types of Narcotics Crimes Based on Law No. 35 of 2009 Concerning Narcotics," *JOM Faculty of Law* 1, no. 2 (2014): 1–15.

autonomous approach, namely by considering the dynamics and values that live in society as the basis for imposing a crime.

c. Juridical Implications of the Application of Article 62 of Law Number 5 of 1997 concerning Psychotropics in Decision Number 1352/Pid.Sus/2024/PN Mdn in the Perspective of Progressive Legal Theory

In essence, the dynamics of human life are constantly changing and are not stagnant. As time goes by, humans will continue to develop, which ultimately gives rise to gradual social changes.[19] Existing legal provisions are often unable to keep up with the pace of social change in a balanced manner, causing a lag between the law and social reality. This lag is the basis for the emergence of legal construction as an adaptive effort to bridge the gap.[20]

When associated with social reality and legal developments in Indonesia, it can be seen that the national legal system tends to stagnate and even regress in responding to social changes. This constellation of thought gave birth to a progressive legal paradigm that gave rise to a new orientation in law enforcement. Progressive law places human beings as the main subject, by making law a means to serve and ensure the fulfillment of the values of justice, welfare, and happiness. In this paradigm, human beings are not just objects of law, but the purpose of the existence of law itself.

When humans are positioned as a benchmark in assessing the goodness or badness of a law, the law is required to always be dynamic and able to adapt to the development of human civilization.[21] Thus, the position of the law becomes relative and no longer within the framework of legal absolutism. Law must be integrated with humanitarian issues as a whole, so that progressive law plays an important role in the process of national legal development.[22]

The role of progressive law in legal development in Indonesia can be analyzed from three main aspects, namely the nature of its liberation, its function as a solution, and its role as a liberation movement in the stages of law enforcement.

First, progressive law is liberating. In the a quo case, the Panel of Judges has made a juridical innovation by including the substance ketamine as a type of psychotropic substance, although it is not explicitly listed in the appendix to Law Number 5 of 1997 concerning Psychotropics. Thus, the definition of "psychotropics" in Article 62 of the Psychotropic Law is not interpreted narrowly based on written norms, but is interpreted contextually and casucatistically in accordance with the concrete conditions faced.

Second, progressive law plays a role as a solution to legal problems that cannot be solved through a normative approach alone. In a quo case, the Panel of Judges showed a change of orientation by not only adhering to the text of Article 62 of the Psychotropic Law, but also providing greater space for the value of justice and human welfare. By interpreting ketamine as a psychotropic, the Panel of Judges has accommodated the public's need for effective legal protection against the abuse of dangerous substances.

---

[19] Hwian Christianto, "Progressive Legal Interpretation in Criminal Cases," *Journal of the Law Pulpit* 23, no. 3 (2011): 31–45.

[20] Christianto.

[21] AM Mujahideen, "Progressive Law: A Way Out of the Decline of the Law in Indonesia," *Progressive Law: A Way Out of the Decline of the Law in Indonesia." Varia Judiciary*, 2007, 58.

[22] Christianto, "Progressive Legal Interpretation in Criminal Cases.", 31-45

Third, progressive law serves as a liberation movement in the entire law enforcement process. When the Panel of Judges qualified ketamine as a psychotropic in a quo case, it reflected the law-in-the-making process carried out by the judiciary. Thus, the Panel of Judges does not only become the implementer of the law, but also plays a role in shaping and developing the law through a progressive interpretation approach. The approach shows the courage to break out of the rigid confines of legal positivism and pay greater attention to human behavior and needs as part of legal life.

Nevertheless, the progressive legal construction applied by the Panel of Judges in a quo case has two sides. On the one hand, this approach is contrary to the principle of legality in Indonesian criminal law, especially the prohibition of using analogies in determining criminal offenses and sanctions. But on the other hand, these actions reflect the transformation of the legal paradigm towards a system that is more responsive to the needs of the community. Juridically, the application of progressive law in a quo cases has implications for the basic principles of criminal law, especially in relation to the method of discovery of the law by judges that must remain within the limits of the principle of legality but also not ignore the evolving social realities.

4. Conclusion

The juridical implications of the application of Article 62 of Law Number 5 of 1997 concerning Psychotropics in Decision Number 1352/Pid.Sus/2024/PN Mdn based on the Theory of Legal Discovery and Analogy Theory, the actions of the Panel of Judges can be understood as a form of rechtsvinding or legal discovery with an analogous construction method. The judge sought to fill the legal void (recht vacuum) through an analogy legis approach, by including ketamine within the scope of the meaning of "psychotropic" in an analogous way. However, in criminal law, the analogy method in interpreting the offense actually creates a serious conflict with the principle of legality that is imperative, because the analogy has the potential to expand the scope of punishment beyond what is explicitly determined by law. Therefore, normatively, the application of the analogy is unjustifiable and risks causing legal uncertainty and deviations from the basic principles of the national criminal law system.

However, from the perspective of Progressive Legal Theory, the actions of the Panel of Judges are seen as a form of legal breakthrough that reflects the courage not to submit absolutely to static legal positivism. Progressive law places human beings at the center of legal orientation and encourages the realization of substantive justice through a responsive interpretation of social dynamics. Judges not only act as law enforcers, but also as active subjects in the law-making process, which seeks to answer the need to protect the public from the dangers of the abuse of hazardous substances that have not been adequately accommodated in the existing normative system.

Reference

Book

A.R. Sujono. *Comments and Discussion of Law Number 35 of 2009 Concerning Narcotics*. Jakarta: Sinar Grafika, 2011.

Djatmika, Prija. *Legal Correlation and Social Change: In a Theoretical Perspective*. Malang: Brawijaya University, 2011.

Hasnan. *Translation of Criminal Law 1: Material Criminal Law General Section*. Bandung: Alumni, 1987.

Moeljanto. *Criminal Code*. Jakarta: Bumi Aksara, 2008.

Rahardjo, Satjipto. *Legal Sciences*. Bandung: Citra Aditya Bhakti, 2006.

Sapardjaja, Komariah Emong. *The Teaching of Material Lawlessness in Indonesian Criminal Law (Case Study on Its Application and Development in Jurisprudence)*. Bandung: Alumni, 2002.

Wignjotosoebroto, Soetandyo. *Paradigm Shift in Social and Legal Studies*. Malang: Setara Press, 2013.

Journal

Christianto, Hwian. "Progressive Legal Interpretation in Criminal Cases." *Journal of the Law Pulpit* 23, no. 3 (2011): 31–45.

Christina. "Law Enforcement Breakthroughs in Dealing with the Threat of New Psychoactive Substances (NPS): Adoption of International Legal Provisions." *Journal of National Resilience Strategic Studies* 3, no. 1 (2020): 75.

Hadmanto, Aditya. "The Position of New Types of Narcotics in the Evidence of the Narcotics Law No.35 of 2009." *Badamai Law Journal* 31, no. 2 (2021): 196–214.

Hardjanto, Aris. "The Benefits of Analogy in Criminal Law to Address Modernized Crime." *Journal of Jurisprudence* 31, no. 2 (2016): 21–22.

Laughter, Alfredo. "The Principle of Legality of the Crime of Misuse of New Psychoactive Substances in the Study of Criminal." *Journal of Civil Medicine* 5, no. 1 (2021): 62–72.

Mujahideen, AM. "Progressive Law: A Way Out of the Decline of the Law in Indonesia." *Progressive Law: A Way Out of the Decline of the Law in Indonesia." Varia Judiciary*, 2007, 58.

Pratama, Ivan Maulana. "Legal Regulation of New Types of Narcotics That Have Not Been Registered." *Independent Justice* 6, no. 1 (2020): 25–28.

Riswanto, Muhammad Faisal. "New Types of Narcotics Abuse (Study of Law Number 35 of 2009 Concerning Narcotics)." *E-Print Uniska*, 2021, 1–7.

Step, Zulfahmi Khairil. "Abuse of Methylone Use as a Narcotics Crime." *E-Journal Unsrat*, 2021, 1–14.

Susilo, Erwin. "Application of Theory in Essence in Interpreting Narcotics Crimes." *Nagari Law Review* 8, no. 1 (2024): 51–64.

Yunita, Adelia. "No Juridical Analysis of New Types of Narcotics Crimes Based on Law No. 35 of 2009 Concerning Narcotics." *JOM Faculty of Law* 1, no. 2 (2014): 1–15.

Law

Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code)

Law No. 35 of 2009 concerning Narcotics (Narcotics Law)

Law No. 5 of 1997 concerning Psychotropics (Psychotropics Law)

Decision Number 1352/Pid.Sus/2024/PN Mdn