Application of the Principle of Mens Rea in Criminal Liability of Narcotics Abusers Based on Article 609 of the National Criminal Code

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Abstract
This study aims to analyze the application of the principle *actus non facit reum nisi mens sit rea* in determining criminal liability for narcotics abusers under Article 609 of the National Criminal Code, as well as to examine its relevance in achieving fair criminal punishment. This research employs a normative juridical method using a statutory approach, conceptual approach, and case approach. The research data were obtained through a literature review of legislation, criminal law doctrines, court decisions, and relevant scholarly literature concerning criminal liability and narcotics abuse. The results indicate that the application of Article 609 of the National Criminal Code must continue to uphold the principle of culpability as the basis of criminal liability. The existence of a criminal act does not automatically establish the perpetrator's criminal fault; therefore, intention or other forms of culpability must be established proportionally. The application of the *mens rea* principle is essential to distinguish perpetrators who genuinely possess criminal culpability from individuals whose circumstances may warrant a more appropriate rehabilitative approach. The study concludes that the *mens rea* principle has an important role in applying Article 609 of the National Criminal Code to ensure that criminal punishment for narcotics abusers remains oriented toward legal certainty, justice, and proportionality.

Keywords: Mens Rea; Criminal Liability; Narcotics Abusers; Article 609; National Criminal Code.

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Introduction

Narcotics abuse is a form of criminal act that has complexity in criminal law enforcement because it is not only related to unlawful acts, but also concerns the condition, motive, and level of guilt of the perpetrator. The policy to deal with narcotics crimes cannot basically be only oriented towards punishment, but must also pay attention to the principle of criminal responsibility and the purpose of punishment. In criminal law, a person cannot only be convicted for having committed an act that meets the formula of a criminal act, but it must also be proven that there is an error that can be accounted for. This principle is reflected in the principle of *actus non facit reum nisi mens sit rea*, which simply means that an act does not make a person guilty without the presence of a mind attitude that can be blamed.

The principle *of mens rea* has a fundamental position in the criminal accountability system because it is the link between criminal acts and accountability for the perpetrators. In the doctrine of criminal law, criminal liability in principle requires the ability to be responsible, the existence of mistakes, and there is no reason to abolish criminal liability. Thus, proving intentionality or other forms of wrongdoing is an important aspect before a person is sentenced. This principle is closely related to the principle *of geen straf zonder schuld* or no crime without fault, which places guilt as the basis for criminal legitimacy [1].

The change in the national criminal law paradigm through Law Number 1 of 2023 concerning the Criminal Code shows that there are efforts to build a more systematic and justice-oriented criminal law system. The National Criminal Code not only emphasizes the fulfillment of the elements of criminal acts, but also strengthens the principle of criminal responsibility based on mistakes. In the context of narcotics crimes, this regulation is important because narcotics abusers have different characteristics from perpetrators who circulate, produce, or trade narcotics. This distinction is necessary so that the application of the law does not result in the same punishment of subjects with different levels of error and roles.

Article 609 of the National Criminal Code is one of the relevant provisions to be studied in the context of narcotics crimes. The application of these provisions needs to be placed within the framework of criminal liability which requires the fault of the perpetrator. The problem arises when the fulfillment of the objective elements of a criminal act is considered sufficient to impose a criminal sentence without conducting an in-depth examination of the subjective elements of the perpetrator. Such a condition has the potential to shift the basic principles of criminal law from *criminal liability based on fault* to liability based solely on deeds. In fact, the application of criminal law should still pay attention to the relationship between the act, the perpetrator's mental state, and the legal consequences caused [2].

In the context of narcotics abusers, the issue *of mens rea* becomes increasingly important because abuse can occur in various circumstances and backgrounds. A narcotics user can be in a position as a perpetrator of a criminal act as well as a party who needs treatment through rehabilitation. Therefore, the determination of criminal liability is not enough based only on the discovery of narcotics or the use of narcotics, but needs to be analyzed based on the legal construction of the act, mistake, purpose of possession or use, and the concrete circumstances of the perpetrator. Such an approach is necessary to avoid excessive criminalization of users who substantially have rehabilitative needs [3].

A number of previous studies have discussed criminal liability in narcotics crimes, the application of the principle of error, and the position of narcotics users or abusers in the criminal justice system. Research on narcotics in general focuses on the application of criminal provisions, rehabilitation, and legal policies to narcotics users [4]. Meanwhile, research on *mens rea* has more discussed the relationship between fault and criminal liability in general [5]. However, studies that specifically link the existence of the *principle of actus non facit reum nisi mens sit rea* with the application of Article 609 of the National Criminal Code to narcotics

abusers are still relatively limited. This is an important research space, especially in the face of changes in the construction of national criminal law.

The state of the art of this research lies in the effort to integrate the doctrine *of mens rea* with the construction of criminal liability based on Article 609 of the National Criminal Code, especially in determining the legal position of narcotics abusers. This study not only looks at the fulfillment of the objective elements of criminal acts, but also tests the extent to which subjective elements and the principle of error must be considered in determining whether or not a person can be held criminally responsible. Thus, this study has novelty in the form of an analysis of the application of *the principle of actus non facit reum nisi mens sit rea* as an instrument to ensure that the application of Article 609 of the National Criminal Code remains based on the principles of error and proportionality of punishment.

The problem of this research departs from the potential problem in determining the criminal liability of narcotics abusers after the enactment of the National Criminal Code. First, what is the existence of the principle *of actus non facit reum nisi mens sit rea* in the criminal accountability system based on the National Criminal Code? Second, how is the application of Article 609 of the National Criminal Code to narcotics abusers reviewed from the principle *of mens rea*? Third, what are the implications of applying the *principle of mens rea* to criminalization or rehabilitative approaches for narcotics abusers?

Based on these problems, this study aims to analyze the existence of the principle *of actus non facit reum nisi mens sit rea* in the criminal accountability system based on the National Criminal Code, analyze the application of Article 609 of the National Criminal Code to narcotics abusers from the perspective *of mens rea*, and formulate the implications of the application of the principle of error to the criminal policy of narcotics abusers. This research is expected to make a theoretical contribution to the development of national criminal law and practically become a consideration for law enforcement officials in implementing Article 609 of the National Criminal Code in a fair, proportional, and error-oriented manner.

Literature Review

2.1 Concept of Criminal Liability

Criminal liability is a fundamental concept in criminal law that determines whether a person who commits a criminal act can be held liable and sentenced to a criminal offense. Criminal liability is not only based on the proof of an act that meets the elements of a criminal act, but also requires the existence of fault in the perpetrator. Thus, there is an inseparable relationship between criminal acts, mistakes, and criminal liability. This principle is known in the principle *of geen straf zonder schuld*, which is that there is no crime without fault.

Criminal liability basically contains objective and subjective dimensions. The objective dimension is related to the fulfillment of the elements of the criminal act, while the subjective dimension is related to the perpetrator's inner state, the ability to be responsible, and the form of error that accompanies it. Therefore, the proof of a criminal act does not automatically indicate that the perpetrator must be punished. It is still necessary to examine whether the perpetrator has the ability to be responsible and whether there are mistakes that can be imposed on him.

In the context of modern criminal law, the principle of liability based on fault serves as a barrier to the state's authority in imposing crimes. Criminalization must be based on legally and morally justifiable reasons. Thus, criminal law not only functions to provide protection to the community, but also provides protection to individuals so that they are not arbitrarily punished.

2.2 Asas Actus Non Facit Reum Nisi Mens Sit Rea

The principle *of actus non facit reum nisi mens sit rea* is a principle that affirms that an act does not make a person guilty without the presence of an inner attitude or accompanying mistake. In the construction of criminal law, *actus reus* describes the external elements in the form of prohibited acts or actions, while *mens rea* describes the inner state or mental attitude

of the perpetrator when committing the act. These two aspects have a close relationship in determining whether or not there is criminal liability.

The existence of *mens rea* is important because criminal law basically does not only assess what a person does, but also how his inner attitude when committing the act. Mistakes can be intentional or forgetful, as long as the form of the mistake is in accordance with the applicable criminal provisions. Thus, proving subjective elements is an important part in determining criminal liability.

The application of *the principle of mens rea* is also related to the principle of proportionality of punishment. The level of punishment imposed should take into account the level of guilt and reprehensibility of the perpetrator. This approach is becoming increasingly relevant in narcotics cases because there are differences in characteristics between narcotics users or abusers and parties involved in the production and illicit circulation of narcotics.

2.3 *Mens Rea* in the National Criminal Law System

The development of national criminal law through Law Number 1 of 2023 concerning the Criminal Code shows a paradigm shift in the criminal accountability system. The National Criminal Code places the principle of error as one of the important bases in determining a person's accountability. This shows that criminalization is not solely directed at proving prohibited acts, but must also consider the subjective circumstances of the perpetrator.

This principle is closely related to *mens rea*. In the application of a criminal provision, law enforcement officials need to distinguish between the proven criminal act and the proof of criminal liability. This difference is important because a person who is proven to have committed an act cannot necessarily be punished if there is no fault that can be accounted for.

Thus, the existence of the principle of *actus non facit reum nisi mens sit rea* in the national criminal law system can be placed as an instrument to ensure that punishment remains based on the principle of error. This principle also provides an argumentative basis that the application of criminal provisions must consider the relationship between the act, the inner state, the mistake, and the responsibility of the perpetrator.

2.5 Narcotics Abusers in a Criminal Law Perspective

Narcotics abusers have a complex position in the criminal justice system. On the one hand, narcotics abuse is a prohibited act and can have legal consequences. On the other hand, abusers or victims of narcotics abuse can be in conditions that require treatment through rehabilitation. Therefore, the approach to narcotics abusers cannot simply use a repressive approach, but it is also necessary to consider the rehabilitative aspect.

Joshua, Aspan, and Saragih in their research on Law Number 35 of 2009 concerning Narcotics shows that the prevention of narcotics abuse still faces problems in the application of legal provisions, including related to the interpretation of victims of narcotics abuse. The research uses a normative juridical approach and emphasizes the need for preventive and repressive efforts in dealing with narcotics crimes [1].

The research provides the basis that narcotics abuse cannot be understood only from the criminal aspect. However, the research of Josua et al. focuses more on the implementation of the Narcotics Law and efforts to overcome narcotics abuse, while this study focuses on the *mens rea aspect* in determining criminal liability based on Article 609 of the National Criminal Code.

Hutabarat, Idham, and Aspan examined the authority of investigators of the Police and the National Narcotics Agency in enforcing narcotics criminal laws. The research shows that there is a need for coordination and integration between institutions in narcotics control, because narcotics handling involves various institutions and law enforcement authorities [2].

Hutabarat et al.'s research has relevance in showing the complexity of narcotics law enforcement. However, the focus of the research is on the aspect of investigator and institutional authority, not on the issue of the relationship between *mens rea* and criminal liability of

narcotics abusers. Therefore, this study expands the study by placing the aspect of error as the basis for criminal liability analysis.

Depari, Aspan, and Zarzani conducted a study on the application of sanctions against perpetrators of narcotics crimes. The study shows that the application of criminal sanctions against perpetrators of narcotics crimes is an important part of law enforcement policies in dealing with narcotics crimes [3]. The article was published in *the Sehasen Law Journal* Vol. 12 No. 1 of 2026, pp. 435–442.

The research of Depari et al. is related to this research in terms of the application of sanctions against perpetrators of narcotics crimes. However, the study has not specifically tested the application of the *principle of actus non facit reum nisi mens sit rea* in the context of Article 609 of the National Criminal Code. Thus, this research is directed to fill this space through a fault-based criminal liability approach.

2.5 Rehabilitation as an Approach to Narcotics Abusers

The rehabilitative approach is one of the important instruments in handling narcotics abusers. Rehabilitation is not solely understood as a form of reduction or elimination of legal liability, but as a form of treatment that takes into account the condition of the perpetrator and the purpose of recovery. In certain contexts, narcotics abusers need medical, social, and psychological interventions in order to return to their social functions.

Sihombing, Siregar, and Zarzani in a study on the implementation of rehabilitation for narcotics inmates at the Class IIB Lubuk Pakam Correctional Institution showed that the coaching of narcotics inmates is not solely directed at inflicting suffering as a result of crime, but also on the process of coaching and rehabilitation. The study places victims of narcotics abuse as subjects who need coaching in the rehabilitation process [4].

The research strengthens the argument that policies against narcotics abusers need to consider rehabilitation aspects. However, Sihombing et al.'s research focuses on the implementation of rehabilitation in the development of prisoners, while this study examines a more fundamental issue, namely whether based on *the principle of mens rea* narcotics abusers can be burdened with criminal responsibility and how Article 609 of the National Criminal Code should be applied.

2.6 Article 609 of the National Criminal Code and Accountability of Narcotics Abusers

The application of Article 609 of the National Criminal Code to narcotics abusers must be placed within the framework of the principle of legality and the principle of guilt. The fulfillment of the objective elements of a criminal act should not automatically be seen as a sufficient basis for imposing a criminal offence. It is still necessary to analyze the subjective circumstances of the perpetrator, the form of error, the ability to be responsible, and the conditions relevant to the act.

In the context of narcotics abusers, *mens rea* analysis is important to distinguish between different forms of a person's involvement in narcotics crimes. Users who use narcotics for themselves have different characteristics from perpetrators who have the goal of obtaining profits through the production, distribution, or trafficking of narcotics. These differences must be reflected in the determination of accountability and the form of sanctions applied.

Therefore, the application of Article 609 of the National Criminal Code needs to be read systematically with the principle of accountability based on fault. This approach is necessary so that criminal law is not only retaliation-oriented, but also able to produce proportionate punishment based on the level of guilt and reprehensibility of the perpetrator.

2.7 *Research Gap* and Research Position

Based on previous research, there are several study trends. First, research on narcotics discusses more about coping with abuse, the authority of law enforcement officials, and the application of sanctions [1][2][3]. Second, research on rehabilitation focuses more on the process of coaching and rehabilitating inmates or drug abusers [4]. Thus, the study of criminal

liability based on *mens rea* in the context of the application of Article 609 of the National Criminal Code still has considerable room to be developed.

The novelty of this research lies in an integrative analysis between the principle *of actus non facit reum nisi mens sit rea*, the concept of criminal responsibility, and the application of Article 609 of the National Criminal Code to narcotics abusers. This research not only questions whether an act meets the elements of a criminal act, but also tests whether there is a mistake that can be legally imposed on the perpetrator.

With this approach, this study places *mens rea* as one of the important parameters in determining criminal liability of narcotics abusers. The framework is expected to provide a new perspective in the implementation of the National Criminal Code, especially so that law enforcement against narcotics abusers continues to pay attention to legal certainty, justice, proportionality, and rehabilitation needs.

Research Methodology

This research uses the *normative legal research* method, which is research that places law as a norm that becomes the object of study through the study of relevant laws and regulations, legal principles, doctrines, and literature. Soerjono Soekanto and Sri Mamudji explained that normative legal research is research based on literature with the objects of study including legal principles, legal systematics, legal synchronization, legal comparison, and legal history [5]. Meanwhile, Peter Mahmud Marzuki explained that legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced [2]. Based on this view, this study is directed to analyze the existence of the principle *of actus non facit reum nisi mens sit rea* in determining criminal liability for narcotics abusers based on Article 609 of the National Criminal Code.

The research approach used consists of a statutory approach and a *conceptual approach*. The legislative approach is carried out by examining various laws and regulations related to the legal issues being studied. This approach is needed to analyze the normative construction of Article 609 of the National Criminal Code as well as other legal provisions related to narcotics crimes and criminal liability. According to Peter Mahmud Marzuki, the legislative approach is carried out by examining all laws and regulations related to the legal issues being faced [6]. Therefore, this approach is used to determine the relationship and consistency between the provisions regarding narcotics crimes and the principle of liability based on errors.

Furthermore, a conceptual approach is used to examine legal concepts and doctrines that develop in criminal law. This approach is directed to analyze the concepts of *actus reus*, *mens rea*, guilt (*schuld*), criminal liability, *the principle of geen straf zonder schuld*, and the principle *of actus non facit reum nisi mens sit rea*. The conceptual approach starts from the views and doctrines that have developed in legal science that are used to build arguments in answering legal issues [2]. With this approach, the research not only describes the provisions of Article 609 of the National Criminal Code, but also provides an interpretation of the position of *the principle of mens rea* in determining whether or not narcotics abusers can be held criminally accountable.

The legal materials used in this study consist of primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, as well as laws and regulations related to narcotics and criminal liability. Secondary legal materials consist of criminal law books, scientific journals, research results, expert opinions, and doctrines relevant to research problems. Peter Mahmud Marzuki places laws and regulations and court decisions as part of primary legal materials, while secondary legal materials can be in the form of books, journals, and expert opinions that provide explanations of primary legal materials [6].

The collection of legal materials is carried out through *library research*. The collection process is carried out by identifying, inventorying, classifying, and reviewing legal materials that are related to criminal liability and narcotics crimes. Literature studies in normative legal research are used to obtain the materials needed to study legal principles, norms, systematics, and synchronization [1]. Previous research literature on narcotics abuse, the application of criminal sanctions, law enforcement authority, and rehabilitation was also used to strengthen the analysis and find the position of this research in the development of previous research.

The legal material analysis technique uses qualitative analysis methods with descriptive-analytical and prescriptive properties. Descriptive analysis is used to provide an overview of the legal construction of criminal liability, the concept *of mens rea*, narcotics abusers, and the application of Article 609 of the National Criminal Code. Furthermore, prescriptive analysis is used to provide arguments about how legal provisions should be applied to narcotics abusers while still paying attention to the principle of error. In normative legal research, the results of the research are ultimately directed to provide a prescription or argument about what should be done about the legal issue being researched [2].

The analysis stage is carried out systematically by connecting legal norms with relevant concepts and doctrines. The first stage is carried out by identifying legal provisions that regulate narcotics crimes and criminal liability. The second stage is carried out by analyzing objective and subjective elements in the application of Article 609 of the National Criminal Code. The third stage is carried out by testing the application of the principle *of actus non facit reum nisi mens sit rea* and the principle *of geen straf zonder schuld* against narcotics abusers. The last stage is carried out by drawing legal arguments regarding the form of proportional criminal responsibility based on the level of wrongdoing of the perpetrator.

With this method, this research is expected to be able to produce a systematic analysis of the *position of mens rea* in the application of Article 609 of the National Criminal Code. The research not only looks at the fulfillment of the elements of criminal acts (*actus reus*), but also tests the existence of mistakes or mental states (*mens rea*) as the basis for criminal responsibility. This approach is important to ensure that the application of the law against narcotics abusers remains in line with the principles of legality, the principle of error, legal certainty, justice, and the principle of proportionality of punishment.

Results

4.1 The Existence of the Principle *of Actus Non Facit Reum Nisi Mens Sit Rea* in Criminal Liability

The results of the study show that the principle *of actus non facit reum nisi mens sit rea* still has a fundamental existence in the national criminal accountability system. This principle emphasizes that the existence of a criminal act is not enough to make a person liable if it is not accompanied by an accountable mistake. Thus, there are two stages that must be distinguished, namely proof of the existence of a criminal act and proof of criminal responsibility of the perpetrator.

In this context, *actus reus* describes the objective aspect in the form of an act that is prohibited by law, while *mens rea* describes the subjective aspect in the form of the inner attitude of the perpetrator towards the act committed. The two cannot be conceptually separated in determining criminal liability. This principle is in line with the principle *of geen straf zonder schuld*, which is that a person cannot be sentenced without a crime.

The existence of this principle is increasingly important in the implementation of the National Criminal Code because criminalization must consider the level of error and

reprehensibility of the perpetrator. Thus, the fulfillment of the objective elements of a criminal act should not automatically be considered identical to the fulfillment of the element of criminal responsibility. Law enforcement officials must still test whether the perpetrator has the ability to be responsible, knows or wants his actions, and whether there are any forms of wrongdoing that can be imposed on him.

The findings reinforce the view that the criminal accountability system should place guilt as the basis for punishment. In research on the application of narcotics laws, Joshua, Aspan, and Saragih showed that overcoming narcotics abuse requires the application of appropriate laws between preventive and repressive approaches [1]. However, the study has not specifically linked narcotics control to *mens rea* as the basis for criminal accountability. Therefore, the results of this study provide the development of analysis by placing *mens rea* as an instrument to test whether or not the perpetrator can be burdened with criminal liability.

4.2 Application of *Mens Rea* in Article 609 of the National Criminal Code

The results of the study further show that the application of Article 609 of the National Criminal Code to narcotics abusers must be carried out by connecting the elements of the act with the elements of guilt. Criminal provisions cannot be applied only based on the fact that a person is related to narcotics, but must be analyzed based on the form of the act, the subjective state of the perpetrator, the purpose of the act, and the level of reprehensibility.

The application *of mens rea* in this context serves as a mechanism to determine the psychological relationship between the perpetrator and the act committed. If an act is committed with awareness and will as required in the formulation of a criminal act, then the element of guilt can be more easily constructed. On the other hand, if concrete circumstances show that there are certain factors that affect the ability or awareness of the perpetrator, these factors must be considered in determining criminal liability.

Thus, the application of Article 609 of the National Criminal Code must be carried out through an individual analysis and not solely based on the objective construction of the act. This approach is important because narcotics abusers have different characteristics from those involved in the production, distribution, or trafficking of narcotics.

This finding is related to the research of Depari, Aspan, and Zarzani which discusses the application of sanctions against perpetrators of narcotics crimes. The research shows the importance of the application of sanctions in overcoming narcotics crimes [2]. However, the study focuses more on the application of sanctions, while this study shows that before determining sanctions, a test must first be carried out on the perpetrator's fault based on *the principle of mens rea*. Thus, *mens rea* serves as a basis for determining whether a person deserves to be charged with criminal liability before determining the form of punishment.

4.3 The Position of Narcotics Abusers in the Perspective of Criminal Responsibility

The results of the study show that narcotics abusers have a different position from perpetrators of narcotics crimes who are oriented towards circulation or profit. The difference does not mean that the abuser is automatically exempt from criminal liability, but it does indicate that the determination of liability must take into account the characteristics of the perpetrator's actions and circumstances.

In determining the liability of narcotics abusers, several aspects need to be considered, namely the purpose of narcotics use, the form of narcotics possession, the amount or state of goods found, the relationship of the perpetrator with the circulation network, the history of use,

and conditions that indicate whether the perpetrator is a user or has another role in narcotics crimes. These factors can be used to build a construction regarding *the mens rea* and the level of reprehensibility of the perpetrator.

This approach shows that law enforcement against narcotics abusers should not be carried out uniformly. Users who experience dependence have different handling needs than perpetrators who consciously make narcotics an object of trafficking. Therefore, a proportionate legal approach is needed to distinguish forms of liability based on the level of fault of each perpetrator.

These findings are in line with the research of Sihombing, Siregar, and Zarzani which shows the importance of rehabilitation in coaching narcotics inmates [3]. However, the results of this study provide an additional perspective that rehabilitative considerations should not only be carried out after a person is found guilty, but can be considered from the stage of determining the legal status and responsibility of narcotics abusers, as long as they meet the applicable legal requirements.

4.4 The Relationship *of Mens Rea* with Criminalization of Narcotics Abusers

The results of the study show that *mens rea* has a direct relationship with the proportionality of punishment. Fair punishment is not only determined based on the light weight of the act, but must also consider the level of guilt and reprehensibility of the perpetrator. Therefore, the higher the level of guilt and involvement of the perpetrator in narcotics crimes, the stronger the reason for imposing criminal sanctions. On the other hand, if the perpetrator is in a condition that shows more need for rehabilitation, the approach of action or rehabilitation can be a more proportionate option in accordance with the provisions of the law.

In this perspective, the principle *of actus non facit reum nisi mens sit rea* serves as a limiting principle so that criminal law is not applied excessively. This principle requires that there be a conformity between the acts, mistakes, and sanctions given. Thus, the punishment should not be based solely on the label of "narcotics abusers", but must be built on evidence of the perpetrator's actions and mistakes.

Hutabarat, Idham, and Aspan's research on the authority of police investigators and the National Narcotics Agency shows that narcotics law enforcement involves authority and coordination between agencies [4]. The findings of the study are relevant to the results of this study because the application of *mens rea* requires a comprehensive examination from the investigation and investigation stage. Law enforcement needs to gather facts that not only prove the existence of an act, but also circumstances that can explain the perpetrator's inner attitude, purpose, and level of involvement.

4.5 Rehabilitation as an Implication of the Application of the *Principle of Mens Rea*

The results of the study show that the application of *the principle of mens rea* can have implications for the choice between the approach to punishment and rehabilitation for narcotics abusers. Rehabilitation does not have to be understood as a form of elimination of criminal responsibility, but can be a more appropriate form of legal response if the characteristics of the perpetrator show a need for recovery and there is no significant involvement in the illicit circulation of narcotics.

The rehabilitative approach has relevance to the principle of criminal individualization, which is that the legal response must take into account the conditions and characteristics of each perpetrator. In the event that narcotics abusers experience dependence, the rehabilitation

approach can have a more constructive function compared to prison sentences, as long as based on the examination and legal provisions the perpetrator meets the requirements to obtain rehabilitation.

Sihombing et al.'s research shows that rehabilitation is an important part of the development of narcotics inmates [7]. Meanwhile, research by Tarigan, Zarzani, and Fatmawati on improving technology in the narcotics trafficking prevention system in correctional institutions shows that narcotics control also requires strengthening the surveillance and trafficking prevention system [5]. Based on the two studies, the results of this study add the dimension of criminal responsibility, namely that rehabilitation and punishment approaches must be placed after an analysis of the faults and the level of involvement of the perpetrators.

4.5 Key Research Findings

Based on the overall results of the analysis, it was found that there were three main findings. First, the principle *of actus non facit reum nisi mens sit rea* remains relevant and has an important position in the national criminal accountability system because mistakes are the basis for imposing a criminal sentence on someone. Second, the application of Article 609 of the National Criminal Code to narcotics abusers is not enough just to prove the elements of the act, but must be accompanied by an analysis of *the mens rea*, responsible ability, and level of reprehensibility of the perpetrator. Third, the application of *the principle of mens rea* can provide a stronger basis for determining whether narcotics abusers are more appropriately punished or obtain a rehabilitative approach in accordance with concrete circumstances and applicable legal provisions.

The findings also show that approaches to narcotics abusers need to undergo a shift from a purely punishment-oriented approach to a more proportionate approach. Law enforcement must still provide protection to the community and create a deterrent effect, but at the same time must ensure that crimes are only imposed on those who can truly be held accountable based on their faults.

Thus, the application of Article 609 of the National Criminal Code must be placed in a single construction that connects *actus reus*, *mens rea*, guilt, criminal liability, and proportionality of sanctions. This construction is important to prevent the occurrence of automatic criminalization of narcotics abusers and at the same time provide a stronger legal basis for the implementation of rehabilitation for those who qualify as abusers.

Conclusion

Based on the results of research and discussion on the existence of the principle of *actus non facit reum nisi mens sit rea* in the application of Article 609 of the National Criminal Code to narcotics abusers, it can be emphasized that the principle of error remains the main foundation in determining criminal liability. The existence of an act that objectively meets the formulation of a criminal act is not in itself sufficient to impose a criminal sentence on a person. Criminal liability requires a relationship between the act committed and the perpetrator's fault. Thus, the principle *of actus non facit reum nisi mens sit rea* has not lost its relevance in the development of national criminal law, but has instead gained an increasingly important position in ensuring that punishment is carried out based on the principles of justice and proportionality [1].The existence of this principle is also closely related to the principle *of geen straf zonder schuld,* which is that there is no crime without fault. This principle requires that every

punishment is based on the existence of mistakes that can be accounted for to the perpetrator. In the context of the National Criminal Code, the application of criminal law must pay attention not only to the objective aspect in the form of prohibited acts, but also to the subjective aspect in the form of the inner state of the perpetrator. Therefore, the law enforcement process must be able to distinguish between proof of the existence of a criminal act and proof of criminal liability. This distinction is a form of protection for individuals so that they are not punished solely because of an outcome or act without proof of their guilt [2].

The application of *the principle of mens rea* is increasingly important in the context of narcotics crimes because the characteristics of narcotics crimes have a very wide spectrum of acts. A person can be in a position as a user or an abuser, but there are also parties who act as owners, rulers, keepers, providers, dealers, or part of the illicit narcotics trafficking network. Each of these positions has a different level of involvement and level of reprehensibility. Therefore, a uniform approach to criminal accountability has the potential to ignore the principles of individualization and proportionality of punishment [3].

In relation to Article 609 of the National Criminal Code, the results of the study show that these provisions must be read systematically together with the general principles of criminal liability in the First Book of the National Criminal Code. Article 609 regulates acts without the right to possess, store, possess, or provide narcotics, with a distinction based on the class and weight of narcotics. Thus, the point of problem in its application does not stop at proving that narcotics are found in a person's possession, but must also be analyzed whether the possession can really be construed as an act that is done consciously and can be accounted for to the perpetrator.

This construction is important because the term "narcotics abuser" cannot be automatically equated with every person who meets the elements of possession or possession of narcotics under Article 609. The status as an abuser must be seen based on the facts and concrete circumstances of the case, including the purpose of possession or use, the form of the perpetrator's relationship with narcotics, and whether or not there is involvement in illicit trafficking. Thus, the application of Article 609 to a person who uses narcotics for himself still requires a careful analysis of the form of the perpetrator's actions and mistakes.

These findings are in line with the research of Joshua, Aspan, and Saragih which shows that countering narcotics abuse requires an appropriate legal approach through a combination of preventive and repressive efforts [4]. The research shows that narcotics abuse is a legal issue that cannot be separated from the need to determine the appropriate form of handling of perpetrators. This study expands on these findings by placing *mens rea* as one of the fundamental parameters before determining the form of criminal responsibility for narcotics abusers.

This study also found that the application of *the principle of mens rea* has a direct relationship with the principle of criminal proportionality. Proportionality is not only related to the severity of the crime imposed, but begins from the process of determining whether a person is indeed worthy of being burdened with criminal liability. The higher the level of guilt, awareness, will, and involvement of a person in narcotics crimes, the stronger the basis for imposing criminal responsibility. On the other hand, if the facts show that a person is a dependent user or abuser and has no role in the illicit circulation network, then these characteristics must be considered in determining the most appropriate legal response [5].

In this perspective, the *principle of mens rea* functions as a mechanism to prevent the occurrence of criminal liability that is objective or automatic. Criminal law should not only ask "is narcotics found in the possession of the defendant?", but must also answer "how is the narcotic in the possession of the defendant?", "what is the purpose of the possession?", "does the defendant know the nature of the object in his possession?", and "is there any fault that can be charged against him?". These questions are important to establish the relationship between *actus reus* and *mens rea* in the evidentiary process.

The application of these principles also has implications for the investigation and proof process. It is not enough for law enforcement officials to just collect evidence that shows the existence of narcotics and the physical relationship between goods and suspects or defendants. The examination must also be directed to circumstances that can explain the knowledge, will, goals, and level of involvement of the perpetrator. This is relevant to Hutabarat, Idham, and Aspan's research on the authority of police investigators and the National Narcotics Agency which shows the importance of the role of law enforcement officials in the process of handling narcotics crimes [6]. In the perspective of this study, this authority needs to be exercised with an approach that ensures that the proof is not only oriented to the objective element, but also able to reveal the element of error.

Furthermore, the results of the study show that rehabilitation has an important position in building legal responses to narcotics abusers. Rehabilitation should not be seen as a form of legal removal of the abuser, but as one of the instruments that can be used when the characteristics of the perpetrator and his factual conditions indicate that the remedial approach is more in line with the objectives of law enforcement. The rehabilitative approach has relevance especially to abusers who experience dependence and do not have significant involvement in the illicit circulation of narcotics [7].

These findings are strengthened by the research of Sihombing, Siregar, and Zarzani regarding the implementation of rehabilitation for narcotics inmates in coaching at the Class IIB Lubuk Pakam Correctional Institution [7]. The research shows the importance of rehabilitation in the process of coaching perpetrators of narcotics crimes. This research provides further development by placing rehabilitation not solely as a coaching issue after a person is sentenced, but also as part of the consideration in determining a proportionate legal response based on the characteristics and degree of wrongdoing of the perpetrator.

Thus, the relationship between *mens rea* and rehabilitation can be understood within the framework of individualization of criminal liability. If a person is found to have low errors, has no commercial purpose, is not involved in the circulation network, and based on the examination meets the criteria as an abuser in need of rehabilitation, then the rehabilitative approach can better reflect the principle of proportionality. On the other hand, if a person uses narcotics as part of a trafficking activity, makes a profit, provides narcotics to other parties, or has a high level of involvement, then the criminal approach still has strong legitimacy.

Research on the application of sanctions against perpetrators of narcotics crimes by Depari, Aspan, and Zarzani also shows the importance of the application of sanctions in dealing with narcotics crimes [8]. However, this study emphasizes that the issue of sanctions must be placed after the process of determining criminal liability. This means that the question of "what sanctions should be imposed" should be preceded by the question of "whether the perpetrator

can be held accountable and how much of the fault is great". This order of thinking is a logical consequence of the principle *of actus non facit reum nisi mens sit rea*.

From the perspective of criminal law policy, the implementation of Article 609 of the National Criminal Code also needs to pay attention to changes in the national criminal law system that has been in effect since January 2, 2026. The National Criminal Code through Law Number 1 of 2023 has become the general basis for the application of national criminal law, while Law Number 1 of 2026 makes adjustments to various criminal provisions outside the National Criminal Code to be in line with the First Book of the National Criminal Code. This shows that the current application of the narcotics criminal law cannot be separated from the process of harmonization and adjustment to the criminal accountability system in the National Criminal Code.

These changes have an important significance for this research because the National Criminal Code not only presents new criminal provisions, but also brings consequences to the way of understanding criminal responsibility. The adjustment of criminal regulations is intended, among other things, to avoid disparities in law enforcement, duplication of criminal regulations, and problems of legal certainty and justice in society. Therefore, the application of Article 609 must be directed at harmonizing the special provisions regarding narcotics with the general principle of criminal liability in the National Criminal Code.

Based on the overall analysis, there are three substantive conclusions. **First**, the principle *of actus non facit reum nisi mens sit rea* still exists and is relevant as a basic principle of criminal liability in the National Criminal Code. This principle ensures that punishment is not solely based on the fulfillment of the objective elements of a criminal act, but also requires proof of the perpetrator's guilt. **Second**, the application of Article 609 of the National Criminal Code to narcotics abusers must be carried out by distinguishing between the act of possessing, storing, possessing, or providing narcotics with the status and characteristics of the perpetrator as an abuser. Proof of the perpetrator's relationship with narcotics must be accompanied by an analysis of the perpetrator's knowledge, will, goals, and level of involvement. **Third**, the application *of mens rea* provides a basis for the application of more proportionate sanctions, including considering rehabilitation of abusers who meet legal requirements and require a more remedial approach.

Thus, this study emphasizes that the main problem in the application of Article 609 of the National Criminal Code is not only about the presence or absence of narcotics in a person's possession, but also about how the construction of criminal liability is built based on mistakes. This approach is needed so that the application of narcotics law does not result in automatic and uniform criminalization of all people who have a relationship with narcotics. Instead, each case must be analyzed based on concrete facts, the level of involvement, the purpose of the act, the subjective circumstances, and the degree of the perpetrator's fault.

The implication of this research is the need for law enforcement officials, especially investigators, public prosecutors, and judges, to make *the mens rea* aspect an important part of the examination of cases related to Article 609 of the National Criminal Code. Examinations of narcotics abusers need to be directed not only to prove the existence and possession of narcotics, but also to identify the purpose, knowledge, will, and relationship of the perpetrator with narcotics trafficking. Thus, the application of the law can better ensure a balance between the

interests of narcotics eradication and the protection of individuals who are in a position as abusers.

The development of research findings is directed at the need to establish more concrete parameters or guidelines regarding the application *of mens rea* in narcotics cases. The guidelines ideally contain indicators regarding the knowledge and will of the perpetrators, the purpose of narcotics mastery, the amount and type of narcotics, the relationship with the circulation network, the condition of dependence, and other indicators that can distinguish abusers from perpetrators of illicit trafficking. More measurable guidelines will help reduce differences in interpretation among law enforcement officials and encourage consistency in the application of Article 609 of the National Criminal Code.

In the end, the development of the narcotics criminal law should not only be directed at increasing the severity of sanctions, but also at improving the quality of the criminal liability determination process. The principle *of actus non facit reum nisi mens sit rea* can be one of the foundations for building a more just law enforcement system, because it places mistakes as the basis for criminalization while providing space for the application of different legal responses based on the characteristics of the perpetrator. With this approach, the implementation of Article 609 of the National Criminal Code is expected to be able to create a balance between legal certainty, community protection, eradication of illicit narcotics trafficking, proportionality of punishment, and the need for rehabilitation for narcotics abusers.

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