

The Criminal Proof Mechanism for Gorilla Tobacco-Type Drug Crimes Under Guideline Number 11 of 2021 in Indonesia

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Abstract

This study explores the legal intricacies of drug crimes involving substances like Gorilla Tobacco under Indonesia's Narcotics Law, aiming to address disparities in penalty severity. Employing legal normative methods, conceptual approaches, and statutory analysis, it examines key provisions of the law, particularly the proving mechanism for Gorilla Tobacco offenses and the significance of Guideline No. 11 of 2021. Emphasizing the need to standardize evidence calculation and suspect qualifications for a fair legal foundation, the research highlights the complexities in investigating and prosecuting Gorilla Tobacco-related crimes. It underscores the importance of international collaboration and community involvement in addressing these challenges. Through structured analysis, this study provides valuable insights into the evolving mechanism of criminal proof for Gorilla Tobacco offenses, advocating for fairness and effectiveness within the criminal justice system. The incorporation of Guideline No. 11 proves pivotal in this pursuit, offering a balanced response to the dynamic nature of drug-related crimes and the evolving legal landscape in Indonesia. **Keywords:** Criminal Proof Mechanism; Gorilla Tobacco; Narcotics Law

1. INTRODUCTION

The narcotics issue continues to be a latent challenge in law enforcement in Indonesia.¹ Pharmacologically, narcotics are referred to as drugs, substances that, when consumed, exert specific influences on the user's body, such as altering consciousness and inducing tranquility, stimulation, and hallucinations.² According to Article 1, Paragraph 1 of Law Number 35 of 2009 concerning Narcotics in Indonesia, narcotics are defined as substances or drugs derived from plants or non-plants, be they synthetic or semi-synthetic, capable of causing a decrease or alteration in consciousness, loss of sensation, reduction or elimination of pain, and can lead to dependency, categorized into various groups.³

On March 11, 1997, Law No. 22 of 1997 concerning Narcotics was enacted, which was later revised by Law No. 35 of 2009 concerning Narcotics. Article 6, paragraph (1) of Law No. 35 of 2009 categorizes narcotics into three groups. The provisions regarding the reclassification of narcotics in Law No. 35 of 2009 concerning Narcotics are subsequently regulated by the Indonesian Ministry of Health, which oversees health-related government affairs. The reclassification of narcotics refers

¹ Aloysius Wisnubroto, 'The Development of Narcotics Legislation in Indonesia and Singapore', *International Journal of Social Science and Human Research* 06, no. 06 (28 June 2023), <https://doi.org/10.47191/ijsshr/v6-i6-66>.

² Alan Peter Garfoot, 'On Drugs: Substance Rehabilitation, The "War On Drugs" Moral Panic & The Future of International Psychoactive Policy', *European Journal of Biology and Medical Science Research* 11, no. 3 (15 March 2023): 9–48, <https://doi.org/10.37745/ejbmsr.2013/vol11n3948>.

³ Nurul Widhanita Badilla, 'Efektivitas Pidana Penjara Bagi Pecandu Narkotika Di Lingkungan Lembaga Pemasarakatan Narkotita Kelas IIA Jayapura', *Jurnal Komunikasi Yustisia* 5, no. 2 (2022).

to adjusting the classification based on international agreements and considerations of national interest.⁴ Furthermore, in the previous regulation, Minister of Health Regulation No. 9 of 2022 concerning the Classification of Narcotics, it was explained that there were 201 narcotics categorized under Group I.⁵ One example of narcotics covered by the provisions of Minister of Health Regulation No. 36 of 2022 concerning the Reclassification of Narcotics is Gorilla Tobacco Narcotics. This is due to the presence of the substance AB-CHMINACA, which is a type of synthetic cannabinoid (SC) or synthetic marijuana that can cause addictive effects. The effects induced by Gorilla Tobacco vary, depending on the chemical composition within the New Psychoactive Substances (NPS) products.

This has sparked its debate because Gorilla Tobacco is classified in Group I, where Gorilla Tobacco is a regular tobacco plant that is sprayed with the chemical AB-CHMINACA. If Gorilla Tobacco is equated with marijuana plants, the implication is that Gorilla Tobacco will fall into Narcotics Group I and can be dealt with according to Article 114 paragraph (2) and Article 112 paragraph (2) of Law No. 35 of 2009 concerning Narcotics. Article 114 of Law No. 35 of 2009 concerning Narcotics is a provision that involves a criminal act categorized as the possession or distribution of narcotics, where the key element of the article is the "person" as the subject of the criminal act.

Generally, the subject of criminal acts, according to Hamzah, is "any person" or "every person," involving distribution, carrying, sending, transporting, transiting, offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or delivering narcotics in Group I. It is threatened with imprisonment for a minimum of five years and a maximum of 20 years and a fine of at least one billion rupiahs if the weight exceeds one kilogram or exceeds five plants (for plants) and exceeds five grams (non-plants). If the offense is more severe, carrying a minimum sentence of six years and a maximum sentence of life imprisonment or the death penalty, the maximum sentence and fine are increased by one-third. The emergence of new psychoactive substances, such as gorilla tobacco, in Indonesia presents challenges in terms of authorization and law enforcement mechanisms. Assessing the compatibility of regulations governing gorilla tobacco is essential to determine whether they meet legal requirements in Indonesia. Evaluation involves scrutinizing existing laws and regulations to

⁴ Andriyani Andriyani et al., 'Rehabilitation Sanctions Against The Narcotics User According To The Perspective Of Maqashid Shariah', *Nurani* 20, no. 2 (2020): 233–46, <https://doi.org/10.19109/nurani.v20i2.6926>.

⁵ Nurhaedah Nurhaedah et al., 'My Drugs Your Drugs, Indonesia', *International Journal of Membrane Science and Technology* 10, no. 2 (21 June 2023): 193–96, <https://doi.org/10.15379/ijmst.v10i2.1179>.

ensure they adequately address the unique characteristics and potential risks associated with gorilla tobacco.

A previous study by Ajlin, investigates the legal basis and judge's considerations in the decision numbered 281/Pid. Sus/2021/PN RNI. The legal facts of the case reveal the defendant's apprehension with marijuana, classified as Class I narcotics, considered legal under prevailing regulations. Another study by Oki Suwandi et al all understands the implementation of the execution process of criminal law and Narcotics Law.⁶ The study seeks to elucidate the procedures for implementing criminal case decisions related to narcotics evidence seized for the state. The last study by Fahri Fuad et al focuses on providing knowledge to investigators regarding the identification and proof of the main perpetrators in the criminal act of narcotics abuse during the investigation process involves several stages, including receiving reports, conducting investigations, arrests, searches, confiscations, examination of suspects and witnesses, detention, and filing the case to the prosecutor's office. Importantly, in the investigation process, there must be at least two valid pieces of evidence.⁷

The strengths of the three related studies lie in their comprehensive exploration of various facets of narcotics crimes in Indonesia, providing valuable insights into legal intricacies, execution of court decisions, and proof of main actors in narcotics abuse. The diverse perspectives of authors associated with different universities contribute to a nuanced understanding of the subject matter. However, there is room for improvement through increased collaboration and cross-referencing among the studies, as well as a more extensive geographical focus and comparative analysis to enhance the generalizability of findings.

In constructing an article on the mechanism of criminal proof for Gorilla Tobacco-type drug crimes, achieving novelty can be facilitated by synthesizing insights from existing studies to offer a unified perspective on challenges and solutions. By incorporating analyses and providing recommendations, the article can elevate its significance and practical relevance, contributing an examination of the legal framework for Gorilla Tobacco offenses. The research aims to investigate the legal framework for Gorilla Tobacco-type drug crimes under Indonesia's Narcotics Law, focusing on disparities in penalty severity. It seeks to understand the proving mechanism for these offenses and the significance of Guideline No. 11 of 2021. The study strives to standardize evidence calculation

⁶ Oki Suwandi, Natangsa Surbakti, and Muchamad Iksan, 'Execution Of Court Decisions In The Form Of Confirmation Of Narcotics Evidence For The State (Case Study Of Execution Of Decision No 39/Pid.Sus/2020/PN, BYL)', *Jurnal Indonesia Social Teknologi* 4, no. 8 (15 August 2023): 1099–1109, <https://doi.org/10.59141/jist.v4i8.684>.

⁷ Fahri Fuad, Syamsul Haling, and Mulyadi Mulyadi, 'Proof of the Main Actors of Narcotics Abuse in the Investigation Process', *International Journal of Health, Economics, and Social Sciences (IJHES)* 4, no. 3 (20 July 2022): 222–31, <https://doi.org/10.56338/ijhess.v4i3.2643>.

and suspect qualifications for a fair legal foundation, emphasizing international collaboration and community participation. Ultimately, it aims to provide insights into the evolving mechanism of criminal proof for Gorilla Tobacco offenses and advocate for fairness and effectiveness within Indonesia's criminal justice system.

2. METHOD

This research investigates the complex legal landscape surrounding Gorilla Tobacco-type drug crimes under Indonesia's Narcotics Law, with a primary focus on rectifying disparities in penalty severity. Employing legal normative methods, conceptual approaches, and statutory analysis, the study delves into key provisions of the Narcotics Law and explores the proving mechanism for Gorilla Tobacco offenses.⁸ An essential aspect of the analysis involves emphasizing the role of Guideline No. 11 of 2021, particularly in standardizing evidence calculation and suspect qualifications. The research aims to provide valuable insights into the evolving nature of criminal proof for Gorilla Tobacco offenses, offering a balanced response to the challenges posed by synthetic narcotics and advocating for a more equitable legal foundation. The literature review underscores the significance of understanding Indonesia's Narcotics Law and its historical context, shedding light on existing disparities in penalty severity for synthetic narcotics.⁹ Theoretical frameworks, such as legal normative methods, guide the research in comprehensively analyzing legal provisions and conceptual approaches. The research design outlines a meticulous methodology for data collection and analysis, ensuring a thorough examination of the proving mechanism for Gorilla Tobacco offenses, with a specific emphasis on the application and impact of Guideline No. 11. By presenting the results and discussing the role of this guideline in standardizing evidence calculation, the study aims to contribute to legal reforms that promote fairness and effectiveness within Indonesia's criminal justice system.

3. RESULT AND DISCUSSION

3.1 Drug Law in Indonesia and the Position of Gorilla Tobacco Narcotics

The discovery and evolution of narcotics or drugs date back to 2000 BC when opium (poppy flower) was found in Samaria.¹⁰ Subsequently, in 1806, morphine was discovered by a Westphalian doctor, and in 1989, the pharmaceutical company Bayer identified and began producing heroin. Initially, narcotics,

⁸ Philip Langbroek et al., 'Methodology of Legal Research: Challenges and Opportunities', *Utrecht Law Review* 13, no. 3 (13 December 2017): 1, <https://doi.org/10.18352/ulr.411>.

⁹ Yoefanca Halim et al., 'Transformative-Participatory Legal Research Method for Harmonizing The Existence of The Living Law in Indonesia', *Jurnal Media Hukum* 26, no. 2 (30 December 2019): 146–57, <https://doi.org/10.18196/jmh.20190130>.

¹⁰ Raharni et al., 'Relapse in Drugs, Psychotropic, Addictive Abuse Post Rehabilitation: "Policy and Prevention Programs"', *Proceedings of the 4th International Symposium on Health Research (ISHR 2019)*, 22 February 2020, 56–59, <https://doi.org/10.2991/ahsr.k.200215.011>.

especially narcotic and psychotropic substances, were recognized as specific medications used in the medical field for therapeutic purposes, such as pain relief. However, over time, these drugs have been abused, leading to dependency issues. Governments worldwide are now actively combating drug abuse, considering its potential to harm human lives. Archaeological evidence indicates that humans began extracting opium from peculiar fungi around 10,000 years ago.¹¹

In 1874, Alder Wright, a London-based chemist, experimented by boiling morphine liquid with anhydrous acid compounds found in certain fungi. The resulting mixture was tested on dogs, revealing effects such as prostration, fear, drowsiness, and vomiting.¹² In 1898, Bayer Pharmaceuticals produced this compound under the name heroin, initially used as an official pain reliever. However, today, only morphine is employed for medicinal purposes. Cocaine, derived from coca plants in Peru and Bolivia, also has a significant historical background.¹³

By 1970, drug abuse had surged, particularly affecting the younger generation. The problem originated among American youth and eventually spread worldwide, including Indonesia.¹⁴ To address the escalating issue of drug trafficking and abuse, the Indonesian government enacted Law Number 9 of 1967 concerning Narcotics. This legislation focused on combating smuggling and highlighted the specific roles of doctors and hospitals, following guidelines from the Minister of Health. However, despite efforts, the impact of narcotics remains difficult to contain.¹⁵ In response to the increasing drug-related challenges in Indonesia, President RI issued Instruction No. 6 of 1971, establishing the coordinating body Bakolak Inpres 6/71. Bakolak Inpres 6/71 was created to address various threats to national security, including narcotics, smuggling, currency counterfeiting, juvenile delinquency, and surveillance of foreigners.¹⁶

The legislative journey of narcotics in Indonesia reflects a dynamic response to the evolving challenges posed by drug-related crimes. Beginning in 1976 with

¹¹ Imawan Sugiharto and Imawan Sugiharto, 'Juridical Review of Child Drugs User in Indonesia', *The International Journal of Science and Society*, 24 December 2019, <https://doi.org/10.54783/ijssoc.v1i4.282>.

¹² Wijaya Dewabrata et al., 'Mental Health, Environmental, and Socioeconomic Geographic Factors of Severe Drug Addiction: Analysis of Rehabilitation Center Data in Indonesia', *Substance Abuse: Research and Treatment* 17 (1 January 2023), <https://doi.org/10.1177/11782218231203687>.

¹³ Andri Yanto and Faidatul Hikmah, *Sapiens 3.0: Riwayat Evolusi, Revolusi, Hingga Replikasi Realitas* (Penerbit Megalitera, 2023).

¹⁴ Annisa Nadaa, Shabrina M. Afdal, and Siti Monalisa, 'Comparison Of K-Means, K-Medoids, and Fuzzy C-Means Algorithms for Clustering Drug User's Addiction Levels', *Jurnal Sistem Cerdas*, 2023, <https://doi.org/10.37396/jsc.v6i2.313>.

¹⁵ Hafiz Prasetya Akbar, 'Analysis of the Effectiveness of Drugs Interdiction Strategy in Indonesia: A Study on the National War on Drugs Policy', *Jurnal Litbang Polri*, 2023, <https://doi.org/10.46976/litbangpolri.v26i3.213>.

¹⁶ Miftahul Farida Rusdan, 'Jatuh Bangun Lepas Dari Jeratan Narkoba', 2023, <http://www.ditjenpas.go.id/jatuh-bangun-lepas-dari-jeratan-narkoba>.

Law No. 9 concerning Narcotics, subsequent laws were enacted to address the complexities of drug abuse, its impact on individuals and society, and the need for international cooperation. This essay explores the historical development of narcotics legislation in Indonesia, examining key laws and their objectives.¹⁷ Law No. 9 of 1976 marked the initiation of Indonesia's legislative response to narcotics issues. This law aimed to combat drug-related crimes that posed significant threats to individual well-being, societal harmony, and the nation's overall resilience. Prohibiting the manufacture, storage, distribution, and use of narcotics without restrictions and supervision, set the foundation for subsequent legal developments.¹⁸

Recognizing the dual nature of narcotics, which can be misused for criminal activities or utilized for medical and scientific purposes, subsequent amendments focused on regulating drug use, preventing abuse, and rehabilitating addicts.¹⁹ The 1976 law was amended in 1997 with Law No. 22, aligning with technological advancements and societal changes, and emphasizing the need for a balanced approach.²⁰ The year 2009 marked another milestone with the enactment of Law No. 35 concerning Narcotics. This legislation addressed the transnational nature of drug-related crimes, emphasizing advanced modus operandi, sophisticated technology, and organized criminal networks. The law aimed to protect society, particularly the younger generation, from the severe consequences of narcotics abuse.²¹

Law No. 35 of 2009 introduced enhanced investigative techniques to address the sophisticated nature of drug-related crimes.²² The expansion of tools like wiretapping, undercover buys, and controlled deliveries empowered law enforcement to trace and expose drug abuse and trafficking more effectively.²³ Recognizing the global dimensions of drug crimes, the law emphasized the

¹⁷ Ahmad M. Ridwan Saiful Hikmat and Ahmad M Ridwan Saiful Hikmat, 'Efektivitas Pelaksanaan Rehabilitasi Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika', *Jurnal Pemuliaan Hukum* 3, no. 2 (16 November 2021): 39–64, <https://doi.org/10.30999/jph.v3i2.1439>.

¹⁸ Andriyani Andriyani et al., 'Rehabilitation Sanctions Against The Narcotics User According To The Perspective Of Maqashid Shariah'.

¹⁹ Utari Dwi Pratiwi, Margaretha Hanita, and Kurniawaty Iskandar, 'A Study of Drug Abuse Prevention and Law Enforcement in Indonesia From The Perspective of Social Control and Neurocriminology', *Technium Social Sciences Journal* 45 (9 July 2023): 460–68, <https://doi.org/10.47577/tssj.v45i1.9171>.

²⁰ Indra Widyastuti, 'Dampak Narkoba Terhadap Kriminalitas: Ini Lingkaran Setan', 2023, <https://www.rri.co.id/lain-lain/278494/dampak-narkoba-terhadap-kriminalitas-pengamat-ini-lingkaran-setan>.

²¹ Susi Delmiati and Irsal Irsal, 'Implementation of Medical Rehabilitation and Social Rehabilitation for Addicts and Victims of Narcotics Abuse', *Ekasakti Journal of Law and Justice* 1, no. 1 (19 May 2023): 19–26, <https://doi.org/10.60034/ejll.v1i1.3>.

²² Anton Sudanto, 'Penerapan Hukum Pidana Narkotika Di Indonesia', *Jurnal Hukum* 7, no. 1 (2023).

²³ Muhammad Shobirin et al., 'Concept of Protection for Victims of Narcotics Abuse in Indonesia Fairly Based on Pancasila', *Journal of Law and Sustainable Development*, 2024, <https://doi.org/10.55908/sdgs.v12i1.2445>.

importance of international cooperation. Bilateral, regional, and international collaborations were promoted to create a united front against organized transnational crimes associated with narcotics.²⁴

Community participation became a focal point of anti-narcotics efforts under Law No. 35. The legislation encouraged active involvement from the community and instituted recognition and awards for individuals, law enforcement agencies, and the community contributing significantly to the prevention and eradication of drug abuse.²⁵ The emergence of Gorilla Tobacco, or synthetic tobacco, posed new challenges. In response to its dangers, the Minister of Health classified it as a Class 1 narcotic in 2017. This recognition highlights the ongoing efforts to address emerging threats in the narcotics landscape and reflects the commitment to controlling substances with potential societal harm.

This commitment to evolving strategies is evident in the legislative journey, from the foundational Law No. 9 of 1976 to the comprehensive approach of Law No. 35 of 2009. The continuous amendments reflect Indonesia's responsiveness to the changing dynamics of drug-related crimes, incorporating advanced investigative techniques and fostering global cooperation.

The expanded investigative toolbox provided by Law No. 35 of 2009 equips law enforcement with the means to combat increasingly sophisticated drug operations.²⁶ Techniques such as wiretapping and controlled deliveries enhance the authorities' ability to track and apprehend those involved in drug abuse and trafficking. This adaptability in enforcement strategies demonstrates Indonesia's dedication to staying ahead of the challenges posed by the evolving narcotics landscape. Law No. 35's emphasis on community participation signals a paradigm shift towards a holistic approach. Acknowledging that anti-narcotics efforts require collective action, the legislation encourages active involvement from citizens, law enforcement agencies, and community organizations. The introduction of awards and recognition serves as an incentive for exemplary contributions, fostering a sense of shared responsibility in the campaign against drug abuse.²⁷

²⁴ Siswanto Sunarso, *Politik Hukum Dalam Undang-Undang Narkotika* (Jakarta: Rineka Cipta, 2012).

²⁵ Andri Yanto, *Hukum dan Manusia: Riwayat Peralihan Homo Sapiens Hingga Homo Legalis* (Yogyakarta: Segap Pustaka, 2022).

²⁶ Jubir et al., 'Relapse Rate and Associated Factors Among Participants of Drug Detoxification-Rehabilitation Program in Indonesia: A Retrospective Study', *Proceedings of the Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2019)*, 20 May 2020, 6–8, <https://doi.org/10.2991/assehr.k.200515.002>.

²⁷ Adrian Adrian et al., 'Law Enforcement Against Narcotics Crime through Rehabilitation in a Restorative Justice Perspective', *Scholars International Journal of Law Crime and Justice* 4, no. 4 (15 April 2021): 205–11, <https://doi.org/10.36348/sijlcj.2021.v04i04.003>.

The inclusion of Gorilla Tobacco as a Class 1 narcotic showcases the legislative system's adaptability to emerging threats. The timely classification of this synthetic tobacco variant reflects a proactive stance in controlling substances that pose potential harm to society. By swiftly addressing new challenges, Indonesia demonstrates its commitment to staying vigilant and responsive in the ongoing battle against narcotics.

3.2 Compatibility of Proving Mechanism for Gorilla Tobacco Drug Crime After Guideline No. 11 of 2021

The proving mechanism for Gorilla Tobacco drug crimes within Indonesia's criminal justice system is a multifaceted challenge that has evolved with the introduction of Guideline No. 11 of 2021. Gorilla Tobacco, a synthetic substance with psychoactive effects, demands a nuanced approach to identifying, prosecuting, and penalizing those involved in its production and distribution. This essay explores the impact of Guideline No. 11 on the legal framework, key elements of the proving mechanism, and the challenges faced in addressing this emerging threat.²⁸ The foundation for addressing Gorilla Tobacco drug crimes still lies in Indonesia's narcotics laws, primarily Law No. 35 of 2009.²⁹ However, Guideline No. 11 introduces significant changes to the proving mechanism. It emphasizes the need for a standardized approach in calculating narcotics evidence, including synthetic narcotics like Gorilla Tobacco, to ensure fairness and consistency in legal proceedings. The guideline's focus on integrated assessments for suspect qualifications aligns with a balanced approach that includes rehabilitation alongside punitive measures.

The proving mechanism involves several critical elements under the influence of Guideline No. 11. Firstly, law enforcement must adeptly use advanced investigative techniques sanctioned by Law No. 35, such as wiretapping and undercover operations, in conjunction with the new guidelines. The guideline's provisions regarding evidence calculation and suspect qualifications provide a structured framework for building a robust legal case against those involved in Gorilla Tobacco-related activities. The proving mechanism still faces challenges inherent in combating synthetic substances, including the clandestine nature of operations and the ever-evolving landscape of synthetic drugs.³⁰ However,

²⁸ Bahtiyar Efendi and Widhi Handoko, 'Implementation of Criminal Law in Handling Narcotics Cases in Indonesia', *Pena Justisia Media Komunikasi Dan Kajian Hukum* 21, no. 2 (31 December 2022), <https://doi.org/10.31941/pj.v21i2.2678>.

²⁹ Muchamad Ikhsan, 'Implementation of the Principles of Legal Certainty and Legal Justice in Free Decisions Defendant of Narcotics Crime (Study Decision Number 281/Pid. Sus/2021/Pn Rni)', *JCH (Jurnal Cendekia Hukum)*, no. 281 (2022).

³⁰ Ilham Gunawan Putra et al., 'Judgment Considerations On The Decision Against The Indict Abuses Of Narcotic Drugs Which Have Been Running Rehabilitation In The Stage Of The Investigation' 3, no. 4 (30 January 2020), <https://doi.org/10.31933/ujsj.v3i4.175>.

Guideline No. 11's introduction of standardized measures provides a clearer path for law enforcement and the legal system. Continuous adaptation to emerging trends, technological advancements, and international collaboration remains crucial, and the guideline serves as a tool for addressing these challenges effectively.

Guideline No. 11 of 2021 significantly influences the proving mechanism for Gorilla Tobacco drug crimes by introducing standardized measures and emphasizing a balanced approach. This guideline reflects an adaptive response to the complexities posed by synthetic substances, ensuring that the criminal justice system remains effective and equitable in addressing emerging threats like Gorilla Tobacco. The issuance of Guideline No. 11 of 2021 serves a singular purpose: to address the issue of disparity in legal facts surrounding drug crime charges. It aims to tackle the challenge posed by the overlapping criminal threat levels outlined in the 2009 Narcotics Law (UU 35/2009) when dealing with both small and large quantities of evidence. This has resulted in an unjust situation where there is no distinction between minimal and substantial evidence, creating a sense of injustice. Furthermore, the guideline seeks to rectify the shortcomings of the Attorney General's Circular (SE)-013/A/JA/12//2011 concerning Guidelines for Criminal Prosecution in General Criminal Cases.

Guideline 11 of 2021 introduces several key provisions. Firstly, it addresses the calculation of evidence in narcotics and/or precursor narcotics cases, utilizing standardized weight units. This includes determining the weight of non-plant narcotics (synthetic narcotics) like Gorilla Tobacco, which falls under the narcotics category. For substances like Gorilla Tobacco, categorized as non-plant narcotics, the guideline ensures a consistent approach to handling evidence. Additionally, it aims to overcome the logistical challenges related to the mobility of narcotics and/or precursor narcotics evidence (raw materials for narcotics/psychotropics production) by interpreting the term "local" in Article 38 of the Criminal Procedure Code (KUHAP) in a flexible manner.³¹

This guideline represents a crucial step in promoting fairness and addressing the complexities associated with drug-related cases. It provides a standardized approach to calculating and categorizing evidence, particularly in instances involving synthetic narcotics like Gorilla Tobacco, ensuring a more equitable and just legal system. Article 38 paragraph (1) of the Criminal Procedure Code (KUHAP) stipulates, "Seizure of evidence can only be carried out by investigators with the permission of the local district court chief." According to the interpretation, the term "local" in Article 38 paragraph (1) of the KUHAP is

³¹ S Butt and T Lindsey, 'The Criminal Code. In Crime and Punishment in Indonesia', *Routledge*, 2020, 21–43, <https://doi.org/10.4324/9780429455247-3>.

explained concerning movable objects, and the seizure permit is issued by the Chief Justice of the District Court (KPN) in the jurisdiction according to the relative competence authorized to examine and adjudicate the case. In the case of movable objects, the seizure permit is issued by the KPN in the location where the seized object is found.

Secondly, suspect qualification. Based on integrated assessments, a suspect can be categorized as a narcotics abuser subject to Article 127 of Law No. 35/2009. If the integrated assessment recommends rehabilitation for the suspect, the public prosecutor considers it in the requisition (criminal indictment) with attention to trial facts based on evidence examination. "The provisions for criminal charges against narcotics abusers are regulated in this Guideline," said Erni Mustika in a webinar titled "Critical Study of Guideline No. 11 of 2021" on Friday (6/8/2021).

Thirdly, the qualification of the crime by the charged articles. For instance, conspiracy to commit narcotics crimes and/or precursor narcotics crimes (Article 132 paragraph (1) of Law No. 35/2009). Furthermore, participation in committing narcotics crimes and/or precursor narcotics crimes. Similarly, narcotics crimes and/or precursor narcotics crimes are committed in an organized manner (Article 132 paragraph (2) of Law No. 35/2009). Moreover, narcotics crimes and/or precursor narcotics crimes committed by corporations (Article 130 paragraph (1) of Law No. 35/2009). Additionally, money laundering crimes in narcotics and/or precursor narcotics crimes cases (Article 137 of Law No. 35/2009).

Fourthly, the guilt (*mens rea*) of the suspect. the men's rea element in the suspect is examined by the prosecutor as part of the prosecution and proof of criminal responsibility.³² The criminal law recognizes the dualistic concept as an embodiment of the principle *geen staff zonder Schuld*, where there is no criminal responsibility without guilt, and guilt is not automatically proven if the criminal act is already proven. Fifthly, the examination of the suspect. In cases where the suspect volunteers as a cooperating witness (justice collaborator) during the investigation stage, the public prosecutor examines both the formal and material completeness.³³ The suspect must be one of the perpetrators of narcotics crimes and/or precursor narcotics crimes, admitting to the committed crime, and not the main perpetrator of the crime. Subsequently, the suspect provides significant information and evidence.

³² Failin, 'Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia', *Jurnal Cendekia Hukum* 3, no. 1 (2017): 14–29.

³³ Robiatul Adawiyah and Umi Rozah, 'Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System', *Law Reform* 16, no. 2 (27 September 2020): 149–62, <https://doi.org/10.14710/lr.v16i2.33783>.

In this way, investigators and/or public prosecutors can effectively uncover the crime, including revealing other perpetrators with more significant roles. Moreover, the suspect provides testimony as a witness in the judicial process and signs a stamped statement letter to cooperate with law enforcement agencies, attaching a written recommendation letter from the Witness and Victim Protection Agency (LPSK) in the case file. Sixthly, criminal charges. Criminal charges in narcotics cases are made based on the general criminal prosecution guidelines unless otherwise specified in Guideline 11/2021. Furthermore, criminal charges for narcotics abuse violating Article 127 of Law No. 35/2009 are listed in Appendix I of Guideline 11/2021, an integral part of this Guideline.

The issuance of Guideline No. 11 of 2021 aims to address the issue of disparities in legal facts regarding criminal charges for narcotics offenses. It specifically addresses the challenge of determining criminal penalties under Law No. 35/2009 that intersect between small and large quantities of evidence. This issue has led to a lack of fairness in the justice system. Additionally, the guideline seeks to rectify the Attorney General's Circular (SE)-013/A/JA/12//2011 regarding the Guidelines for Criminal Prosecution in General Crime Cases.

The guideline covers several aspects. First, it deals with the evidence of narcotics offenses and/or precursor narcotics offenses. The calculation of narcotics evidence is based on standard weight units, including synthetic narcotics like gorilla tobacco, which is classified under narcotics offenses not involving plants. This provision aims to address the high mobility of narcotics evidence, utilizing a flexible interpretation of the term "local" in Article 38 of the Criminal Procedure Code (KUHP). Now, analyzing the broader implications, this guideline signifies a shift towards a more nuanced and context-specific approach to handling narcotics cases. By introducing standardized units for calculating narcotics evidence, it attempts to create a fairer system that considers the varying degrees of offenses. The flexibility in interpreting the term "local" reflects an understanding of the challenges posed by the transnational nature of narcotics crimes.

The guideline also emphasizes the importance of integrated assessments in determining suspect qualifications. It introduces a balanced approach by recommending rehabilitation for suspects, aligning with the broader goal of addressing narcotics issues not only through punitive measures but also through rehabilitation and reintegration into society. Moreover, the guideline clarifies the legal procedures for seizing evidence, ensuring that the process is consistent and follows jurisdictional considerations. This contributes to the overall transparency and legitimacy of the criminal justice system. The recognition of the mens rea element in suspects underlines the importance of individual culpability in criminal offenses. This aligns with legal principles that demand a careful examination of

the mental state and intent of the suspect, reinforcing the idea that criminal responsibility should be based on proven guilt.

4. CONCLUSION

In conclusion, the analysis of the criminal proof mechanism for Gorilla Tobacco-type drug crimes under Indonesia's Narcotics Law reveals a dynamic legal landscape shaped by evolving challenges. Guideline No. 11 of 2021, introduced to address disparities in legal facts and rectify issues related to criminal threat magnitudes, incorporates standardized weight units for narcotics. This inclusion aims to ensure sentencing fairness and bridge gaps between cases with varying evidence amounts. Additionally, the guideline clarifies suspect qualifications, emphasizing comprehensive assessments to categorize individuals as narcotics abusers or candidates for rehabilitation. This aligns with the broader objective of balancing punitive measures with rehabilitation efforts, recognizing narcotics' dual nature for misuse and medical purposes. The guideline's focus on the mens rea element underscores the importance of proving intent in criminal proceedings, aligning with the principle that criminal liability requires careful examination of guilt rather than automatic assumption. By acknowledging dualism, wherein criminal responsibility hinges on fault, the guideline aims to prevent unwarranted culpability. Lastly, the inclusion of community participation and international cooperation in the guideline reflects a holistic approach to combating Gorilla Tobacco-related offenses. Encouraging active community involvement and fostering international collaboration are crucial components of a comprehensive strategy to address the challenges posed by transnational and organized crime. In essence, Guideline No. 11 of 2021 serves as a crucial tool in refining the criminal justice response to the complexities of Gorilla Tobacco-type drug crimes within the Indonesian legal framework.

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