

**ANALYSIS OF THE CRIMINAL LIABILITY OF FANDI AS A CREW MEMBER WHO CLAIMS TO HAVE NO KNOWLEDGE OF THE NARCOTICS CARGO IN LIGHT OF LAW NUMBER 35 OF 2009 ON NARCOTICS**

**Hasiholan Sihaloho<sup>1</sup>, Faisal Santiago<sup>2</sup>**

Borobudur University<sup>1</sup>, Borobudur University<sup>2</sup>

Email : [hasiholansihaloho40@gmail.com](mailto:hasiholansihaloho40@gmail.com)<sup>1</sup>, [faisalsantiago@borobudur.ac.id](mailto:faisalsantiago@borobudur.ac.id)<sup>2</sup>

**Citation:** Hasiholan Sihaloho., Faisal Santiago. Analysis Of The Criminal Liability Of Fandi As A Crew Member Who Claims To Have No Knowledge Of The Narcotics Cargo In Light Of Law Number 35 Of 2009 On Narcotics. *MALA IN SE: Jurnal Hukum Pidana, Kriminologi dan Viktimologi* 3.1.2026. 82-96

**Submitted:**02-01-2026 **Revised:**01-03-2026 **Accepted:**01-04-2026

**Abstract**

This study analyzes the criminal liability of Fandi as a crew member (Anak Buah Kapal / ABK) who claims to have had no knowledge of the presence of narcotics cargo, reviewed under Law Number 35 of 2009 on Narcotics and the general principles of Indonesian criminal law. The problem focuses on the construction of criminal liability and the relevance of the element of fault (*mens rea*), particularly intent (*dolus/opzet*) and negligence (*culpa*), in determining whether Fandi can be held criminally responsible. This research employs a qualitative method with a normative legal approach (doctrinal legal research), utilizing a statute approach, conceptual approach, and a complementary case approach. Legal materials are analyzed qualitatively through grammatical, systematic, and teleological interpretation, as well as deductive legal reasoning. The findings indicate that Fandi's presence on board a vessel transporting narcotics does not automatically fulfill the elements of a criminal offense without proof of the subjective element. The principle of *geen straf zonder schuld* (no punishment without fault) affirms that criminal punishment requires legally and convincingly proven culpability. In the context of the subordinate position of a crew member, the analysis must consider authority, access to information, and control over the ship's cargo. In the absence of evidence of knowledge, conscious cooperation, or significant violation of the standard of due care, criminal liability cannot be imposed. Therefore, the application of the Narcotics Law must be carried out proportionally to maintain a balance between the effectiveness of narcotics eradication and substantive justice.

**Keywords:** Criminal Liability, *Mens Rea*, Crew Member, Narcotics Offense.

**I. INTRODUCTION**

The circulation and smuggling of narcotics in Indonesia have evolved into systematic and organized crimes, involving transnational networks<sup>1 2</sup>. Data indicate that narcotics abuse has continued to increase, even during the pandemic period, with a significant percentage involving children and adolescents<sup>3 4</sup>. This condition indicates that narcotics crimes do not only target adults, but also threaten the younger generation. As an archipelagic state with thousands of islands and an extensive coastline, Indonesia has a high level of vulnerability to

<sup>1</sup> C. Devi, Y. Fajrin, S. Alam, dan Y. Wardoyo, "Principle of Strict Liability in Narcotics Crimes and Efforts to Protect The Rights of Perpetrators," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 8, No. 6, 2021, hlm. 1783

<sup>2</sup> A. Hidayat, S. Anam, dan M. Helmi, "Perlindungan Hukum Terhadap Anak Sebagai Kurir Narkotika," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 5, No. 3, 2019, hlm. 307

<sup>3</sup> A. Kristian, T. Chandra, dan M. Ismed, "Penerapan Sanksi Rehabilitasi Terhadap Anak Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 9, No. 5, 2022, hlm. 1473

<sup>4</sup> M. Romdoni, "Konsekuensi Legal Kegagalan Upaya Diversi Terhadap Anak yang Berhadapan dengan Hukum dalam Tindak Pidana Narkotika," *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol. 8, No. 2, 2022, hlm. 192

smuggling through maritime routes<sup>5</sup>. Ships and ports have become strategic points for narcotics distribution because maritime surveillance is more complex than land-route monitoring<sup>6</sup>. The impact of narcotics crimes is multidimensional, encompassing social deterioration, economic burdens on the state, and threats to national security due to their linkage with other crimes such as money laundering<sup>7</sup>. Therefore, law enforcement against narcotics offenses carries a high level of urgency in order to maintain public order and ensure the sustainability of national life<sup>8</sup>.

Normatively, the regulation of narcotics in Indonesia is based on Law Number 35 of 2009 on Narcotics, which governs the production, distribution, use, and eradication of illicit narcotics trafficking. This law aims to protect society while combating the illegal circulation of narcotics through a *double-track system*, namely penal and non-penal approaches<sup>9</sup>. The prescribed criminal sanctions are extremely severe, ranging from imprisonment and life imprisonment to the death penalty. The use of the phrase “any person” in its provisions reflects the broad scope of legal subjects who may be held criminally liable<sup>10</sup>. However, criminal liability still requires the existence of fault or *mens rea*, meaning that proof does not merely rest on the external act (*actus reus*), but also on the perpetrator’s mental element<sup>11</sup>.

In Indonesian criminal law, criminal liability constitutes the basis for determining whether a person is eligible to be punished for the act they have committed<sup>12 13</sup>. Its elements include the existence of an unlawful act, the presence of fault in the form of intent (*dolus* or *opzet*) or negligence (*culpa*), as well as the capacity to be held responsible. The principle of

---

<sup>5</sup> C. Devi, Y. Fajrin, S. Alam, dan Y. Wardoyo, “Principle of Strict Liability in Narcotics Crimes and Efforts to Protect The Rights of Perpetrators,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 8, No. 6, 2021, hlm. 1783

<sup>6</sup> A. Hidayat, S. Anam, dan M. Helmi, “Perlindungan Hukum Terhadap Anak Sebagai Kurir Narkotika,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 5, No. 3, 2019, hlm. 307

<sup>7</sup> C. Devi, Y. Fajrin, S. Alam, dan Y. Wardoyo, “Principle of Strict Liability in Narcotics Crimes and Efforts to Protect The Rights of Perpetrators,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 8, No. 6, 2021, hlm. 1783

<sup>8</sup> M. Romdoni, “Konsekuensi Legal Kegagalan Upaya Diversi Terhadap Anak yang Berhadapan dengan Hukum dalam Tindak Pidana Narkotika,” *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol. 8, No. 2, 2022, hlm. 192

<sup>9</sup> A. Suryono dan E. Ratnawati, “Penjatuhan Sanksi Pidana Penjara Tanpa Rehabilitasi Terhadap Penyalahguna Narkotika,” *Law, Development, & Justice Review*, Vol. 5, No. 2, 2022, hlm. 148

<sup>10</sup> A. M. Thoriq, “Tinjauan Viktimologi dan Kriminologi Terhadap Penyalahgunaan Ganja di Indonesia,” *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal (IPMHI Law Journal)*, Vol. 2, No. 1, 2022, hlm. 101

<sup>11</sup> H. Wijaya, B. Santoso, dan M. Azhar, “Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup,” *NOTARIUS*, Vol. 14, No. 1, 2021, hlm. 206

<sup>12</sup> A. Munthe, V. Hanifa, I. Hamadi, dan C. Nurfaiza, “Fenomena Preman Berkelompok di Indonesia (Bentuk Praktik Hirabah dalam Hukum Islam),” *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol. 9, No. 2, 2023, hlm. 236

<sup>13</sup> F. Aryani, “Kriminalisasi dan Penegakan Hukum Tindak Pidana Korporasi,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 10, No. 3, 2023, hlm. 833

geen straf zonder schuld affirms that there can be no punishment without fault<sup>14 15</sup>. In narcotics offenses, proving the element of “knowledge” becomes highly significant because knowledge constitutes a component of intent. Debate arises when this is linked to the application of *strict liability*, which has the potential to set aside a thorough examination of the element of fault. Therefore, an analysis of the relationship between *opzet* (intent) and *culpa* (negligence) becomes crucial in determining whether a person can be held criminally liable.

The issue becomes more complex when it involves a crew member (Anak Buah Kapal / ABK) who operates within a subordinate employment structure under the orders of the ship’s captain or vessel owner<sup>16</sup>. In the maritime system, crew members generally do not have authority over the ship’s cargo, creating the potential for them to be “carried along” without knowing the actual contents of the shipment. Literature on the protection of crew members indicates that seafarers often occupy a vulnerable position within the national legal system. The phenomenon of defendants claiming lack of knowledge regarding the presence of narcotics frequently arises in judicial practice. The primary challenge lies in proving the element of intent against subordinate workers. If the principle of fault is not examined thoroughly, there is a risk of injustice toward individuals who, in fact, had neither knowledge nor intention to be involved.

The case of Fandi as a crew member presents a concrete issue concerning the limits of criminal liability. Fandi asserts that he was unaware of the presence of narcotics cargo on the vessel where he was employed. This statement raises the question of whether lack of knowledge may negate criminal liability under Law Number 35 of 2009 on Narcotics. From a doctrinal perspective, it is necessary to analyze whether Fandi can be classified as a co-perpetrator (*medepleger*), an accomplice (*medeplichtige*), or merely a victim of circumstances within a subordinate employment structure. This determination largely depends on the construction of the relevant statutory provisions and the proof of the element of fault as regulated under the law.

Theoretically, criminal law requires proof of fault before imposing punishment. However, in practice, there remains a tendency to rely on the construction of possession or control (*bezit*) as the basis for conviction without conducting a thorough analysis of the element

---

<sup>14</sup> A. Kristian, T. Chandra, dan M. Ismed, “Penerapan Sanksi Rehabilitasi Terhadap Anak Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 9, No. 5, 2022, hlm. 1473

<sup>15</sup> H. Wijaya, B. Santoso, dan M. Azhar, “Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup,” *NOTARIUS*, Vol. 14, No. 1, 2021, hlm. 206

<sup>16</sup> A. Hidayat, S. Anam, dan M. Helmi, “Perlindungan Hukum Terhadap Anak Sebagai Kurir Narkotika,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 5, No. 3, 2019, hlm. 307

of knowledge. This discrepancy between theory and practice indicates a gap that needs to be examined through a normative juridical approach. The debate regarding the application of strict liability and its limitations in narcotics offenses has also not been fully resolved. Therefore, a normative analysis of the criminal liability of crew members becomes an urgent necessity.

This study is important to strengthen legal certainty in the application of the Narcotics Law, particularly with regard to proving the element of knowledge as part of *mens rea*<sup>17</sup>. This study is expected to contribute to the development of the doctrine of criminal liability, particularly in cases involving subordinate workers within organizational structures<sup>18 19</sup>. The findings of this study also have practical relevance for law enforcement authorities in handling similar cases, ensuring that efforts are not solely oriented toward the effectiveness of narcotics eradication, but also uphold substantive justice. Academically, this research enriches the body of Indonesian criminal law literature concerning maritime narcotics offenses and the protection of seafarers who occupy vulnerable positions.

## **II. Research Problems**

Based on the background previously elaborated, the research problems can be formulated as follows:

1. How is the construction of criminal liability against Fandi as a crew member who claims to have been unaware of the presence of narcotics cargo, reviewed in light of the provisions of Law Number 35 of 2009 on Narcotics and the general principles of criminal liability in Indonesian criminal law?
2. What is the relevance of the element of fault (*mens rea*), particularly the aspects of intent and negligence, in determining whether or not Fandi as a crew member who claims to have had no knowledge of the narcotics cargo can be held criminally liable under Law Number 35 of 2009 on Narcotics?

## **III. RESEARCH METHOD**

### **1. Type and Research Approach**

---

<sup>17</sup> A. Suryono dan E. Ratnawati, "Penjatuhan Sanksi Pidana Penjara Tanpa Rehabilitasi Terhadap Penyalahguna Narkotika," *Law, Development, & Justice Review*, Vol. 5, No. 2, 2022, hlm. 148

<sup>18</sup> F. Aryani, "Kriminalisasi dan Penegakan Hukum Tindak Pidana Korporasi," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 10, No. 3, 2023, hlm. 833

<sup>19</sup> A. Munthe, V. Hanifa, I. Hamadi, dan C. Nurfaiza, "Fenomena Preman Berkelompok di Indonesia (Bentuk Praktik Hirabah dalam Hukum Islam)," *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol. 9, No. 2, 2023, hlm. 236

This research is a qualitative study employing a library research approach. Its focus is to understand, interpret, and construct scholarly arguments from relevant written sources to address the issue of criminal liability of a crew member who claims to have been unaware of narcotics cargo, particularly through examining legal norms, principles, and doctrines of criminal law under Law Number 35 of 2009 on Narcotics. The qualitative framework emphasizes reasoning, interpretation, and in-depth analysis of the ideas, concepts, and normative constructions under review<sup>20</sup>.

## 2. Approach Type

The type of approach employed in this study is normative legal research (doctrinal legal research), as the primary object of analysis consists of legal norms, principles, and doctrines governing narcotics offenses and criminal liability. The approaches applied include:

- a. Statutory approach (statute approach), by examining the provisions of Law Number 35 of 2009 and other relevant regulations to assess the elements of the act and the element of fault, such as *mens rea* and *actus reus*.
- b. Conceptual approach (conceptual approach), by analyzing the concepts of criminal liability, intent and negligence (*dolus* and *culpa*), as well as the principle of *geen straf zonder schuld* derived from criminal law literature.
- c. Case approach (case approach), as a complementary method, applied when relevant court decisions are available in order to observe judicial reasoning patterns concerning the element of “knowledge” and the construction of control or possession in narcotics cases.<sup>21</sup>

## 3. Legal Materials and Data Sources

The data sources in this research are library-based, consisting of:

- a. Primary legal materials  
Law Number 35 of 2009 on Narcotics and other regulations directly related to criminal liability and evidentiary requirements in narcotics offenses.
- b. Secondary legal materials

---

<sup>20</sup> Sugiyono, *Metode Penelitian Kualitatif (untuk Penelitian yang Bersifat: Eksploratif, Interpretif, Interaktif dan Konstruktif)*, Cet. 6, Bandung: Alfabeta, 2023.

<sup>21</sup> J. Efendi dan P. Rijadi, *Metode Penelitian Hukum Normatif dan Empiris*, Ed. 2, Jakarta: Prenada Media Group (Kencana), 2023.

Books, journal articles, and scholarly works discussing narcotics offenses, proof of the element of fault, participation (*complicity*), and the position of crew members within the maritime employment structure are used. Literature on qualitative research methodology and legal research methodology is also employed to ensure that the research process is carried out systematically<sup>22 23</sup>.

c. Tertiary legal materials

Legal dictionaries, encyclopedias, indexes, and other reference sources to assist in clarifying terminology and tracing relevant legal materials.

#### 4. Technique for Collecting and Analyzing Legal Materials

The collection of legal materials is conducted through library-based documentation study, with the following stages:

a. Inventory and source tracing

Collecting primary, secondary, and tertiary legal materials from reliable sources such as official legislation, methodological textbooks, scholarly journals, and relevant court decisions where available.

b. Selection and evaluation of source quality

Assessing the relevance, authority of the author or institution, recency, and consistency of arguments in order to avoid weak or unreliable references<sup>24</sup>.

c. Classification and systematization of legal materials

Grouping the materials based on themes, such as the elements of a criminal offense, the element of fault, proof of the element of “knowledge,” participation, and the position of crew members.

The analysis is conducted in a qualitative-normative manner using interpretative techniques and legal reasoning, including:

a. Norm interpretation

---

<sup>22</sup> Sugiyono, *Metode Penelitian Kualitatif (untuk Penelitian yang Bersifat: Eksploratif, Interpretif, Interaktif dan Konstruktif)*, Cet. 6, Bandung: Alfabeta, 2023.

<sup>23</sup> J. Efendi dan P. Rijadi, *Metode Penelitian Hukum Normatif dan Empiris*, Ed. 2, Jakarta: Prenada Media Group (Kencana), 2023.

<sup>24</sup> Sugiyono, *Metode Penelitian Kualitatif (untuk Penelitian yang Bersifat: Eksploratif, Interpretif, Interaktif dan Konstruktif)*, Cet. 6, Bandung: Alfabeta, 2023.

Applying grammatical, systematic, and teleological interpretation to understand the formulation of statutory provisions and their relation to the principles of criminal liability.

b. Content analysis and argumentative construction

Deriving meaning from doctrines and literature to assess whether the claim of lack of knowledge can negate the element of fault, as well as how distinctions of roles such as *medepleger* and *medeplichtige* are doctrinally explained.

c. Deductive conclusion drawing

Formulating conclusions from general legal principles toward answers to the specific issues examined, ensuring that the analysis remains consistent with the principles and system of criminal law <sup>25</sup>.

## IV. DISCUSSION

### 4.1 The Construction of Criminal Liability against Fandi as a Crew Member Who Claims to Have No Knowledge of the Narcotics Cargo

Law Number 35 of 2009 on Narcotics regulates various forms of conduct classified as criminal offenses, including possessing, storing, controlling, carrying, and transporting narcotics. The formulation of these provisions generally employs the phrase “any person,” indicating that the legal subject is not limited to the principal perpetrator, but encompasses anyone who fulfills the elements of the offense <sup>26</sup>. In a case involving Fandi as a crew member, it is relevant to identify whether his conduct fulfills the objective elements of “transporting” or “controlling” narcotics.

The objective element (*actus reus*) in narcotics offenses is generally associated with the existence of physical possession or control over the evidence. In judicial practice, possession is often interpreted as a form of actual control (*bezit*) over the narcotics <sup>27</sup>. However, a person’s presence in the same location as narcotics does not automatically prove possession in the juridical sense. Therefore, it is necessary to distinguish between mere physical presence and possession accompanied by awareness.

---

<sup>25</sup> J. Efendi dan P. Rijadi, *Metode Penelitian Hukum Normatif dan Empiris*, Ed. 2, Jakarta: Prenada Media Group (Kencana), 2023.

<sup>26</sup> A. Hidayat, S. Anam, dan M. Helmi, “Perlindungan Hukum Terhadap Anak Sebagai Kurir Narkotika,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 5, No. 3, 2019, hlm. 307

<sup>27</sup> C. Devi, Y. Fajrin, S. Alam, dan Y. Wardoyo, “Principle of Strict Liability in Narcotics Crimes and Efforts to Protect The Rights of Perpetrators,” *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 8, No. 6, 2021, hlm. 1783

In addition to the objective element, proving the subjective element (*mens rea*) becomes crucial. Criminal liability within the Indonesian legal system requires the existence of fault, whether in the form of intent (*dolus/opzet*) or negligence (*culpa*)<sup>28</sup>. Although there is debate regarding the possible application of strict liability in narcotics offenses, the majority of legal doctrine maintains that the element of fault cannot be disregarded<sup>29</sup>. Accordingly, Fandi's claim that he was unaware of the presence of narcotics cargo must be examined through proof of whether the element of knowledge, as part of intent, existed or not.

Criminal liability is a legal consequence imposed upon a person for an act that fulfills the elements of a criminal offense and is committed with fault<sup>30</sup>. Doctrinally, there are three main requirements: the existence of an unlawful act, the presence of fault, and the capacity to be held responsible. The principle of *geen straf zonder schuld* affirms that there is no punishment without fault<sup>31</sup>.

Intent (*opzet*) in criminal law encompasses several forms, namely intent as purpose, intent with certainty awareness, and intent with possibility (*dolus eventualis*). In Fandi's case, it is necessary to analyze whether there are indications that he knew or at least was aware of the possibility of narcotics being present in the ship's cargo. If there is no evidence of such will or awareness, then the element of intent is not fulfilled.

In addition to intent, negligence (*culpa*) may also serve as a basis for criminal liability. However, negligence must be established based on a reasonable standard of care in Fandi's position as a crew member. If he did not have authority or access to information regarding the ship's cargo, then the imposition of negligence must be assessed proportionally.

Within the maritime employment structure, crew members occupy a subordinate position under the command of the ship's captain. This position limits their authority in making decisions related to the vessel's cargo. Literature on the protection of seafarers indicates that crew members are often placed in vulnerable situations and do not have full control over the ship's operational activities.

---

<sup>28</sup> H. Wijaya, B. Santoso, dan M. Azhar, "Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup," *NOTARIUS*, Vol. 14, No. 1, 2021, hlm. 206

<sup>29</sup> A. Kristian, T. Chandra, dan M. Ismed, "Penerapan Sanksi Rehabilitasi Terhadap Anak Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 9, No. 5, 2022, hlm. 1473

<sup>30</sup> A. Munthe, V. Hanifa, I. Hamadi, dan C. Nurfaiza, "Fenomena Preman Berkelompok di Indonesia (Bentuk Praktik Hirabah dalam Hukum Islam)," *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol. 9, No. 2, 2023, hlm. 236

<sup>31</sup> A. Kristian, T. Chandra, dan M. Ismed, "Penerapan Sanksi Rehabilitasi Terhadap Anak Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 9, No. 5, 2022, hlm. 1473

Therefore, the analysis of Fandi must take into account whether he exercised effective control or played an active role in the transportation of the narcotics. If Fandi merely performed technical duties without involvement in the arrangement or management of the cargo, the construction of possession becomes weak. Furthermore, it must be examined whether there was conscious cooperation (*bewuste samenwerking*) that could lead to his qualification as a co-perpetrator (*medepleger*) or an accomplice (*medeplichtige*). In the absence of evidence of an agreement or a concrete contribution to the criminal act, attributing participation would lack legal foundation.

In narcotics adjudication practice, there is a tendency to rely on the construction of possession as the basis for conviction without conducting a thorough analysis of the element of knowledge. This approach risks approximating a *strict liability* pattern that disregards *mens rea*. In fact, proof of the element of “knowledge” must be established through lawful evidence as regulated under criminal procedural law.

The standard of proof in criminal cases requires the judge’s conviction to be based on at least two lawful pieces of evidence. Therefore, Fandi’s claim of lack of knowledge cannot be summarily dismissed without contrary proof presented by the public prosecutor. A principle of caution is necessary to ensure that law enforcement remains effective without sacrificing substantive justice.

Based on normative analysis, the construction of criminal liability against Fandi must begin with examining the fulfillment of both the objective and subjective elements. If it is proven that Fandi had neither control nor knowledge of the narcotics, then the element of intent is not satisfied. If there is also no evidence of significant negligence, the principle of *geen straf zonder schuld* requires his release from criminal liability.

Conversely, if evidence is found of communication, coordination, or benefits obtained by Fandi from the transportation, he may be qualified as a perpetrator or at least as an accomplice. Such determination must be based on the construction of the relevant provisions in Law Number 35 of 2009 and the doctrine of participation in criminal law.

The construction of criminal liability against Fandi cannot be based solely on his presence on board a vessel transporting narcotics. Proving the *mens rea* element, particularly the element of “knowledge”, is an absolute requirement in accordance with the principle of *geen straf zonder schuld*. Although the Narcotics Law prescribes severe sanctions and broadly defines the scope of legal subjects, its application must remain consistent with the general

principles of Indonesian criminal law. Accordingly, an ideal model for constructing liability requires a comprehensive analysis of both the objective and subjective elements, while also taking into account the subordinate position of crew members, so that a balance can be achieved between the effectiveness of narcotics eradication and substantive justice.

#### **4.2 The Relevance of the Element of Fault (Mens Rea) in Determining Fandi's Criminal Liability**

In the Indonesian criminal law system, the element of fault (*mens rea*) constitutes a fundamental component in determining whether a person can be held criminally liable. Fault represents the subjective aspect that must attach to the perpetrator in addition to the fulfillment of the element of the act (*actus reus*)<sup>32</sup>. The relationship between *actus reus* and *mens rea* is cumulative in nature, meaning that the mere fulfillment of the prohibited act is insufficient without the presence of fault on the part of the perpetrator.

The principle of *geen straf zonder schuld* affirms that there can be no punishment without fault. This principle forms the foundation for evaluating the relevance of the elements of intent (*dolus/opzet*) as well as negligence (*culpa*) in every criminal case<sup>33 34</sup>. In narcotics cases, although the law prescribes severe criminal sanctions, proof of the element of fault remains a primary requirement to ensure that punishment does not conflict with the principles of justice and legal certainty.

Intent in criminal law doctrine encompasses three forms: intent as purpose, intent with certainty awareness, and intent with possibility (*dolus eventualis*). The relevance of these forms in Fandi's case lies in proving whether he knew or at least was aware of the possibility that narcotics were present in the ship's cargo.

Law Number 35 of 2009 on Narcotics regulates acts such as possessing, controlling, carrying, or transporting narcotics. Although it does not always explicitly include the word "knowingly," the element of knowledge is implicitly embedded in the construction of these

---

<sup>32</sup> A. Munthe, V. Hanifa, I. Hamadi, dan C. Nurfaiza, "Fenomena Preman Berkelompok di Indonesia (Bentuk Praktik Hirabah dalam Hukum Islam)," *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol. 9, No. 2, 2023, hlm. 236

<sup>33</sup> A. Kristian, T. Chandra, dan M. Ismed, "Penerapan Sanksi Rehabilitasi Terhadap Anak Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 9, No. 5, 2022, hlm. 1473

<sup>34</sup> H. Wijaya, B. Santoso, dan M. Azhar, "Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup," *NOTARIUS*, Vol. 14, No. 1, 2021, hlm. 206

offenses, as it relates to intent<sup>35</sup>. Therefore, proving that Fandi had knowledge of the presence of the narcotics becomes a crucial element in determining whether *mens rea* is fulfilled.

If Fandi truly had no knowledge of the narcotics cargo, then the element of intent is not fulfilled. However, such a claim of ignorance must be tested through objective evidence, such as the existence of communication with the principal offender, involvement in the loading process, or benefits obtained from the transportation. If it is proven that he was aware of the possibility of narcotics being present yet nevertheless allowed or accepted that risk, then the form of *dolus eventualis* may be considered as a basis for establishing intent.

In addition to intent, negligence (*culpa*) may constitute a form of fault when a person fails to comply with the standard of due care that should have been observed. Negligence differs from intent in that there is no will to commit the criminal act, but rather a failure to act with the required level of caution.

The relevance of negligence (*culpa*) in Fandi's case depends on whether the Narcotics Law accommodates offenses that may be punished on the basis of negligence. Most narcotics offenses are formulated as intentional crimes, meaning that proof of negligence alone is not always sufficient to impose criminal sanctions. Nevertheless, an analysis of negligence remains important to assess whether Fandi violated a particular standard of due care as a crew member.

As a crew member, Fandi occupies a subordinate position under the command of the ship's captain. If he had no authority over the vessel's cargo and no access to information regarding its contents, then attributing negligence must be approached cautiously. In the absence of a clear legal obligation to know the contents of the cargo, it would be difficult to conclude that Fandi acted negligently.

The hierarchical structure in maritime operations demonstrates that crew members have limited authority in operational decision-making. Literature on the protection of crew members highlights their vulnerability within the national legal system. This subordinate position is relevant in assessing fault, since criminal responsibility is individual in nature and cannot be imposed solely on the basis of an employment relationship.

Accordingly, if Fandi merely carried out technical duties without knowledge of or control over the cargo, both intent and negligence would be difficult to establish. The relevance

---

<sup>35</sup> C. Devi, Y. Fajrin, S. Alam, dan Y. Wardoyo, "Principle of Strict Liability in Narcotics Crimes and Efforts to Protect The Rights of Perpetrators," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 8, No. 6, 2021, hlm. 1783

of mens rea in this case lies in the necessity of a thorough examination of the perpetrator's knowledge and will, rather than merely his presence at the same location as the narcotics.

In judicial practice, there is a tendency to rely on the construction of physical possession as the basis for conviction without a comprehensive analysis of the element of knowledge. This approach risks approximating a strict liability pattern that disregards proof of mens rea. In fact, the Indonesian criminal law system continues to place fault as the primary requirement for criminal liability<sup>36</sup>.

The burden of proving the element of fault rests with the public prosecutor. In the absence of convincing proof of intent or negligence, the principle of *geen straf zonder schuld* must be applied. This ensures that narcotics law enforcement does not sacrifice the principle of substantive justice.

The relevance of the element of fault in Fandi's case is decisive in determining whether criminal liability may be imposed. If intent is not proven and there is no significant negligence, Fandi cannot be held criminally liable under Law Number 35 of 2009. Conversely, if it is established that he knew or at least was aware of the possibility of the presence of narcotics and nevertheless remained involved in the transportation, then the element of mens rea is fulfilled and criminal liability may be imposed.

An analysis of intent and negligence is therefore central to determining the relevance of mens rea in this case. A proportional approach grounded in the general principles of criminal law is necessary to ensure that narcotics eradication efforts remain effective without disregarding the principles of justice and legal certainty.

## **V. CONCLUSION AND RECOMMENDATIONS**

### **1. Conclusion**

Based on the discussion presented above, the following conclusions may be drawn:

- a. The construction of criminal liability against Fandi as a crew member cannot be based solely on his presence on board a vessel transporting narcotics or merely on the construction of physical possession. Pursuant to Law Number 35 of 2009 on Narcotics and the general principles of Indonesian criminal law, the imposition of punishment requires the fulfillment of the element of fault (*mens rea*), whether in the form of intent

---

<sup>36</sup> A. Kristian, T. Chandra, dan M. Ismed, "Penerapan Sanksi Rehabilitasi Terhadap Anak Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak," *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, Vol. 9, No. 5, 2022, hlm. 1473

(dolus/opzet) or negligence (culpa). The principle of *geen straf zonder schuld* requires proof of knowledge or at least awareness of the possibility of the criminal act. If the element of “knowledge” is not legally and convincingly proven, criminal liability cannot be imposed.

- b. The relevance of the element of fault is a determining factor in assessing whether Fandi may be held criminally liable. In his subordinate position as a crew member, the analysis must take into account the limits of authority, access to information, and degree of control over the ship’s cargo. In the absence of evidence of conscious cooperation, active involvement, or significant violation of the standard of due care, Fandi cannot be qualified as a perpetrator or participant. Accordingly, the application of the Narcotics Law must be carried out proportionally, maintaining a balance between the effectiveness of crime eradication and the protection of substantive justice within Indonesian criminal law.

## **2. Recommendations**

The following recommendations may be proposed:

- a. For Judges

Judges should conduct a comprehensive analysis of the element of fault (*mens rea*), particularly the aspects of intent and negligence, before rendering decisions in narcotics cases involving subordinate workers such as crew members. The assessment should not rely solely on the construction of physical possession, but must also thoroughly consider the existence of knowledge and will, in order to ensure the consistent application of the principle of *geen straf zonder schuld*.

- b. For Public Prosecutors

Public prosecutors are advised to concretely and measurably establish the element of “knowledge” through lawful evidence, including indications of communication, coordination, or benefits obtained by the defendant. A careful evidentiary approach will strengthen the legitimacy of the prosecution and prevent disproportionate punishment.

- c. For Policymakers

Policymakers are recommended to consider formulating interpretative guidelines or regulatory reforms that clarify the limits of criminal liability in narcotics cases, particularly for workers in subordinate positions. Clearer norms will enhance legal certainty and prevent the disproportionate application of strict liability.

d. For Academics and Legal Researchers

Academics and legal researchers should further develop studies on the boundaries of the element of fault in narcotics offenses, including comparative analyses with other legal systems. Such enrichment of the literature will strengthen the theoretical foundation and contribute to the development of a more responsive and justice-oriented doctrine of criminal liability.

**REFERENCES**

- Aryani, F. (2023). Kriminalisasi dan Penegakan Hukum Tindak Pidana Korporasi. *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, 10(3), 833-842. <https://doi.org/10.15408/sjsbs.v10i3.32575>
- Devi, C., Fajrin, Y., Alam, S., & Wardoyo, Y. (2021). Principle of Strict Liability in Narcotics Crimes and Efforts to Protect The Rights of Perpetrators. *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, 8(6), 1783-1798. <https://doi.org/10.15408/sjsbs.v8i6.23026>
- Hidayat, A., Anam, S., & Helmi, M. (2019). Perlindungan Hukum Terhadap Anak Sebagai Kurir Narkotika. *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, 5(3), 307-330. <https://doi.org/10.15408/sjsbs.v5i3.10416>
- Kristian, A., Chandra, T., & Ismed, M. (2022). Penerapan Sanksi Rehabilitasi Terhadap Anak Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak. *SALAM: Jurnal Sosial Budaya Syar-i (SJSBS)*, 9(5), 1473-1482. <https://doi.org/10.15408/sjsbs.v9i5.27636>
- Munthe, A., Hanifa, V., Hamadi, I., & Nurfaiza, C. (2023). Fenomena Preman Berkelompok di Indonesia (Bentuk Praktik Hirabah dalam Hukum Islam). *Al-Jinayah: Jurnal Hukum Pidana Islam*, 9(2), 236-265. <https://doi.org/10.15642/aj.2023.9.2.236-265>
- Romdoni, M. (2022). Konsekuensi Legal Kegagalan Upaya Diversi Terhadap Anak yang Berhadapan dengan Hukum dalam Tindak Pidana Narkotika. *Al-Jinayah: Jurnal Hukum Pidana Islam*, 8(2), 192-213. <https://doi.org/10.15642/aj.2022.8.2.192-213>
- Suryono, A., & Ratnawati, E. (2022). Penjatuhan Sanksi Pidana Penjara Tanpa Rehabilitasi Terhadap Penyalahguna Narkotika. *Law, Development, & Justice Review*, 5(2), 148-158. <https://doi.org/10.14710/ldjr.v5i2.17170>

- Thoriq, A.M. (2022). Tinjauan Viktimologi dan Kriminologi Terhadap Penyalahgunaan Ganja di Indonesia. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal (IPMHI Law Journal)*, 2(1), 101-107. <https://doi.org/10.15294/ipmhi.v2i1.53746>
- Wijaya, H., Santoso, B., & Azhar, M. (2021). Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup. *NOTARIUS*, 14(1), 206-220. <https://doi.org/10.14710/nts.v14i1.38863>
- Efendi, J., & Rijadi, P. (2023). *Metode penelitian hukum normatif dan empiris (Ed. 2)*. Prenada Media Group (Kencana).
- Sugiyono. (2023). *Metode penelitian kualitatif (untuk penelitian yang bersifat: eksploratif, enterpretif, interaktif dan konstruktif) (Cet. 6)*. Alfabeta.