

Criminal Legal Responsibility for Motorcycle Taxi Drivers as Narcotics Couriers

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ABSTRACT

This study examines the legal accountability of motorcycle taxi drivers who act as narcotics couriers in Indonesia. Using a normative juridical method with an analytical prescriptive approach, the research analyzes laws and regulations related to narcotics crimes, the criminal responsibility of drivers, and the juridical review of the Unaaha District Court Decision Number 132/Pid.Sus/2020/PN.UNH. The findings indicate that the driver was proven to have unlawfully distributed Class I narcotics under Article 114 paragraph (2) of Law Number 35 of 2009 on Narcotics. Although the driver initially claimed ignorance of the package contents, evidence from the trial demonstrated elements of intent or gross negligence. The study concludes that criminal liability depends on the driver's awareness and intention; deliberate participation constitutes a punishable offense, whereas genuine unawareness may exempt the driver from liability. This research underscores the importance of assessing *mens rea* (intent) and *actus reus* (action) in determining accountability in narcotics-related offenses.

Keyword: Criminal Liability; Driver; Courier; Narcotics

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1. INTRODUCTION

Technological developments have brought significant changes in various life sectors, including in the field of transportation. The emergence of online motorcycle taxis as one of the modern mobility solutions also presents new challenges in criminal law enforcement. In some cases, online motorcycle taxi drivers have been used by narcotics networks to become delivery couriers. This phenomenon shows the exploitation of the modern transportation system for the benefit of narcotics crimes (P.A.F. Lamintang, 2009).

According to Muladi, the criminal law accountability system must pay attention to the aspect of substantive justice, where the subjective condition of the perpetrator is one of the important elements assessed in the sentencing process. In addition, Moeljatno emphasized that criminal responsibility can only be imposed on individuals who have elements of guilt or *mens rea* in their actions (Muladi, 1995).

Policies that are formed and born in a government can be seen from the programs of the government that is in power, the tool to facilitate power often uses laws by forming laws or revising existing ones. The revision of one law tends to follow the background of the thinking of the cabinet leadership and leads to the platform of the party that carries the government. According to Philip Nonet, the atmosphere of diminishing trust in the law is evident in recent writings, criticism of the law has always been aimed at the inadequacy of the law as a tool for change and as a tool to achieve substantive justice. Discussion about the crisis of legitimacy, conservative red flags of the erosion of authority (Adi Mansar, 2021).

Efforts to overcome the problem of narcotic addiction/dependence require the right steps and policies so that the high rate of narcotics abuse in this country can be suppressed. Handling narcotics using a law enforcement approach has apparently not produced a solution that is in accordance with efforts to prevent, eradicate abuse and illicit circulation of narcotics, which is often abbreviated as P4GN which has been proclaimed (Rinaldo Rinaldo, Triono Eddy, and Alpi Sahari, 2022).

The phenomenon of misuse of online motorcycle taxi driver services as narcotics couriers is a serious problem in law enforcement in Indonesia, especially in the context of the implementation of Law Number 35

of 2009 concerning Narcotics. This law affirms that any person who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in the sale and purchase, exchange, or delivery of narcotics can be subject to severe criminal sanctions.

2. RESEARCH METHOD

The research method used is normative juridical with a philosophical approach, namely *mahzab positivisme* which will be an analytical knife to analyze this problem (Eka N.A.M. Sihombing, Cynthia Hadita, 2022). To achieve a philosophy of the division of authority between regional heads and deputy regional heads, a philosophical approach is needed to answer it.

3. RESULTS AND DISCUSSION

A. *Elements of Error in Narcotics Crime, Analysis of the relevant elements of mens rea (intention) and actus reus (action) in the case of motorcycle taxi drivers as narcotics couriers.*

In criminal law, a criminal act must meet two main elements, namely *mens rea* (malicious intent or inner error) and *actus reus* (actual unlawful act). In the context of narcotics crimes, these two elements must be analyzed to determine whether a person, such as a motorcycle taxi driver who is suspected of being a narcotics courier, can be criminally accounted for.

Along with the development of technology, it is easier for humans to find information in various things whatsoever in the digital era or the current era, and the advancement of telecommunication technology eliminates distance and the world becomes borderless (*borderless world*). World civilization today is characterized by the phenomenon of information technology advancement and globalization that takes place in almost all areas of life. What is meant by the era of globalization basically begins from the 20th life, namely when the transportation and electronics revolution occurred and accelerated trade between nations and countries, in addition to the increase and development of the speed of goods and services traffic (Dikdik M. Arief Mansur and Elisatris Gulton, 2009).

In the development of online buying and selling services, information technology is used to develop a buying and selling business system where buying and selling is only done via conventional, according to the definition of conventional buying and selling itself. Transactions that are carried out in a conventional way are a trading system where sellers and buyers meet directly. The goods to be sold are near the buyer; in this case, the conventional buying and selling itself has been carried out since ancient times and with it the existing developments of buying and selling have developed where the current era of buying and selling, which we usually call the *e-commerce* buying and selling system. The definition of *e-commerce* itself has been explained in Article 1 paragraph (2) of the Information and Transaction Law and has been described in Article 1 number 24 of the Trade Law, where transactions through *e-commerce* are all formalities commonly used in conventional transactions that are reduced.

Because the development of buying and selling, a person or seller is contained in online buying and selling applications that sell freely, one of which is narcotics which has been listed in Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law), which states that narcotics are artificial substances or derived from plants that have a hallucination effect, decreased consciousness, as well as causing addiction. The excessive use of these drugs can result in addiction. Meanwhile, the benefits of the substances contained in these illegal drugs are as painkillers and provide calmness (Hamzah, A., 1994).

However, narcotics are basically very needed and have benefits in the fields of health and science; the use of narcotics becomes very dangerous if there is abuse. On the one hand, narcotics are useful for the interests of health and science; on the other hand, narcotics are actually abused. To prevent the circulation of narcotics which eventually occurs, Law Number 35 of 2009 concerning Narcotics was enacted. These efforts are implemented as one of the countermeasures against the rampant abuse of narcotics. The government has made various efforts to prevent narcotics trafficking in the form of counseling, appeals, and warnings about the dangers arising from narcotics abuse. The target of prevention is for perpetrators and victims of narcotics abuse. Most of the perpetrators of narcotics abuse themselves are victims, perpetrators who accidentally use narcotics because they are persuaded, deceived, coerced, and/or threatened to use narcotics.

Law is something that cannot be separated from human life. Humans are by nature created by God as social creatures who cannot live alone without other human beings. This coexistence causes interaction, contact, or relationship with each other. Contact can mean a pleasant relationship or cause conflict (Sudikno

Mertokusumo, 2003). By collaborating with other humans, of course, it will be easier to achieve their desires or interests. Humans need a means of transportation to move from one place to another in a short time because the shorter the time needed, the faster the activities carried out and many things can be done. Transportation has developed from time to time; in ancient times, transportation was in the form of horse-drawn carriages, but now it has switched to motorized transportation.

The rapid development of transportation technology can be ordered online, or so-called online motorcycle taxis. Online motorcycle taxi is a transportation service that can be ordered through an electronic application and then connected to the driver to receive orders. Orders can be in the form of picking up people according to the address specified in the application, buying food, or delivering goods. The development of information technology in the form of the internet has changed the pattern of people's interactions. The internet has made such a great contribution to society.

Online motorcycle taxis are rampant in society today because they are considered to make their activities easier. However, behind this phenomenon there must also be positive and negative impacts on the existence of online motorcycle taxis in Indonesia. Such as the positive impact, namely: (1) making it easier for people to carry out activities by using online motorcycle taxis. Just by ordering a motorcycle taxi through the application, the motorcycle taxi will come to pick up where we are and deliver according to the destination, so we don't need to get tired of looking for public transportation anymore; (2) the opening of job vacancies for the wider community. After the opening of online motorcycle taxis in Indonesia, many people are interested in working as an online motorcycle taxi. Moreover, there are many bonuses offered by online motorcycle taxi companies whose income can even exceed employees in ordinary companies (<https://ayusyifasfr.wordpress.com/2017/12/19/dampak-positif-dan-negatif-ojek-online/>).

Liability in criminal law is liability according to criminal law. Everyone is responsible for all their actions; only their behavior causes the judge to impose the punishment that is accountable to the perpetrator. This liability is criminal liability. In this case, the principle of "no crime without fault" applies. Guilt is the inner state of the perpetrator who made the act or the intention of the perpetrator (*mens rea*). The mind is seen from the healthy or defective soul (suffering from mental illness or disorder). A person who is mentally disabled cannot be convicted in accordance with the provisions of Article 44 of the Criminal Code. Intentional acts occur when a person wants the act and knows the consequences and purpose of his actions, while negligent acts occur when a person, because of his actions, results in something that he does not want or is unintentional.

The actions of online *Gojek* drivers who deliver narcotics from seller to buyer can be referred to as narcotics intermediaries or couriers. The act of the online *Gojek* driver is an act of "transportation", which is any activity or series of activities to move narcotics from one place to another by any means, mode, or means of transportation (Article 1 Number 9 of the Narcotics Law).

The online *Gojek* driver who deliberately delivered narcotics from the seller to the narcotics buyer, knowing that the goods delivered were narcotics and got wages from the seller, because he had delivered narcotics, he could be charged with Article 114 of the Narcotics Law as an intermediary in buying and selling narcotics. The transportation of narcotics that is deliberately carried out by an online *Gojek* driver can be subject to Article 114 paragraph (1) of the Narcotics Law regarding every person who without the right offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over class-one narcotics. Intermediary in buying and selling means as a liaison between the seller and the buyer and for his actions gets services/profits.

Someone connecting between sellers and buyers, then the person gets goods in the form of narcotics, can be classified as an intermediary as buying and selling. Therefore, services or profits here can be in the form of money or goods and even facilities. Services or profits are an important factor; without the services or profits obtained, it cannot be called an intermediary as a sale and purchase. If a person has brought together the seller with the buyer, but it cannot be clear in the service, then the person is not an intermediary in buying and selling, but as a liaison and criminal act that is at least in conjunction with Article 132 of the Narcotics Law regarding malicious attempts or conspiracies in order to buy or sell and so on. Intermediaries are different from introductions, because the introduction is the act of ordering while the intermediary acts alone in order to bring together the seller and the buyer, and the intermediary has independent responsibility. The elements contained in the act are intentionality, the knowledge that the goods are narcotics, and the existence of wages to the driver.

Actus reus (Real Deed): *Actus reus* is a physical element of a criminal act, namely a real action committed by the perpetrator. In the case of motorcycle taxi drivers as narcotics couriers, *actus reus* can be in the form of carrying, storing, or delivering packages containing narcotics; receiving or taking narcotics packages from someone to be handed over to someone else; mastering narcotics evidence, even if only for a

short time. This act is included in the category of violations as stipulated in Article 112 and Article 114 of the Narcotics Law, namely possessing, storing, carrying, or distributing narcotics without rights or against the law. However, the existence of *actus reus* alone is not enough to declare a person criminally guilty. There must be intention or intentionality, namely the element of *mens rea*.

Mens Rea (Intention or Inner Mistake): *Mens rea* is an element of the inner fault or the inner attitude of the perpetrator towards his actions. In the case of motorcycle taxi drivers as narcotics couriers, this element is crucial to distinguish whether the perpetrator committed the crime consciously or without knowing the contents of the package carried. Therefore, it must be examined whether the motorcycle taxi driver knew that the package he was carrying contained narcotics, received an unreasonable reward, for example much greater than the usual fare, which should raise suspicion, there is an indication of previous cooperation or communication with the dealer, the perpetrator has done something similar before, which shows that he is aware and actively involved. If it is proven that the driver knows the contents of the package and continues to carry out the delivery, then the *mens rea* is met, and the perpetrator can be sentenced as part of the narcotics illicit trafficking network. On the other hand, if there is no evidence that the perpetrator knows the contents of the package (for example, only in charge of delivering the package as an ordinary online courier without knowing the contents), then the element of intentionality is not met, and the perpetrator can be exempt from criminal penalty, or at least only subject to administrative action or become a witness.

B. Criminal Liability for Motorcycle Taxi Drivers as Narcotics Couriers

Online drivers who deliberately deliver narcotics from seller to buyer know that the shipment is drugs. If the online motorcycle taxi driver knows and deliberately transports drugs, then the driver can be subject to Article 114 paragraph (1) of Law Number 35 of 2009 concerning Drugs regarding every person who carries out activities of buying, selling, bartering, or handing over class-one drugs, with the possibility that this can cause harm to the online motorcycle taxi driver (Nuryanta, G. A. R. P., & Mahyani, A., 2022).

In order to avoid the misuse of the online *Gojek* application which is used as a narcotics courier, therefore, it is necessary to conduct a study on legal protection for online motorcycle taxi drivers if they are entangled in the crime of narcotics couriers, which has been regulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. But what if there is ignorance when the goods delivered turn out to be drugs? If the online motorcycle taxi driver does not know the contents of the luggage, because directly the order from the motorcycle taxi application ordered by the customer in question, as the statement of the application shows, the goods sent are "food". In the event that the goods brought by the driver cannot be seen or opened because it will lower the morality of the customer, when the delivery of goods was suddenly raided by the police on the street, after an inspection by the authorities, they did not expect that the goods delivered were drugs.

It cannot be included as an act that can be criminally charged. This is not stated in Law Number 35 of 2009 concerning Narcotics but only mentions intermediaries. Discussing with intermediaries, of course, this is oriented to "dealers". The definition of "dealer" is in Law Number 35 of 2009 concerning Narcotics (Narcotics Law) and in Law Number 5 of 1997 concerning Psychotropics (Psychotropic Law). A dealer is a person who carries out the distribution and delivery of Narcotics/Psychotropics. However, broadly speaking, the definition of "dealer" can also be carried out and boils down to the dimensions of the seller, buyer, to be distributed, transported, stored, controlled, provided, and carried out the act of exporting and importing Narcotics/Psychotropics (Muhamad, F., Kristiawanto, K., & Ismed, M., 2023).

This kind of case will potentially occur to online motorcycle taxis such as GoSend (Goods Delivery) and GoRide (People Transportation Services). For example, a delivery service that is asked to deliver packages that without his knowledge contain drugs or dangerous drugs, of course, this cannot be criminalized because the delivery service does not have malicious intentions to commit criminal acts and does not know that the goods delivered are in the form of narcotics or dangerous drugs. When caught by the police, it can be confirmed that it is charged in Articles 114, 119, and 124 which have a charge as an intermediary. This is what causes an injustice in the application of the Narcotics Law, especially in the Article on Intermediaries.

Narcotics crimes do not recognize the existence of a crime without a victim (*Victimless Crime*). Conceptually, the definition of victim is still relatively dependent on everyone's understanding and point of view; it can be compatible and it can be contrary in terms of law. The definition of victims for now in the context of narcotics abuse that puts addicts as victims, but not only that, online motorcycle taxis that are

intermediaries are also one of the victims in narcotics crimes. This has become important due to the influence of the increasingly advanced times.

From the two paragraphs in the article above, it can be seen that the government is serious in eradicating illegal narcotics trafficking. In the first paragraph, it is stated that intermediaries or couriers of narcotics trafficking can be charged with imprisonment for a minimum of four years and a maximum of twelve years. Meanwhile, perpetrators with more than five grams of evidence can be given life imprisonment and can even be given the death penalty. To understand more deeply about law enforcement for this article, let's look at the example case below (<https://kabar24.bisnis.com/read/20191028/16/1164051/bareskrim-tangkap-lima-kurir-narkoba-jaringan-malaysiaindonesia>).

From the example of the case above, the police arrested five narcotics couriers from foreign networks. The five suspects are Rudi (42), Syafrudin (35), Bayu (26), Risaldi (25), and Bastian (38), and two people are still at large. These five suspects intended to bring narcotics from Malaysia into Indonesia but were thwarted by the police. From the hands of the suspect, several types of narcotics were confiscated, both class I narcotics and class II narcotics. The confiscated class I narcotics included 30 packages of methamphetamine weighing one kilogram each, 40 packages of methamphetamine, 9 packages of ecstasy pills with a total of 40,000 pills, and one package of ketamine. As for class II narcotics, there are 4 bottles of black liquid suspected to be codeine.

The legal relationship between the application provider company and the driver as a service provider for passengers (consumers) is a partnership relationship because it does not have elements of wages and orders, and is not an employment relationship. Referring to the provisions of civil partnership in Article 1618 of the Civil Code to Article 1641 of the Civil Code, namely the legal relationship of the parties between one partner and another by entering a capital as a submission (*inbreng*). The parties are independent and independent subjects of law. The parties are partners who carry out a business cooperation with the principle of business partnership. Partnership according to Article 1 number 13 of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises is cooperation in business relationships, both direct and indirect, on the basis of the principle of mutual need, trust, strengthening, and profitability involving Micro, Small, and Medium Enterprises with Large Enterprises (Rahmanda, B., & Jonathan, L., 2022).

This delivery service is often used by drug dealers to carry out their evil operations, as happened in the case of an online motorcycle taxi driver who was caught as a drug courier in West Jakarta. The Tambora Police Chief, Kompol Faruk Rozi, said that it started from public information related to narcotics transactions sent through online motorcycle taxis. From this information, an arrest was made against the online motorcycle taxi near the Grogol red light, Tanjung Duren, West Jakarta, on Friday, November 13, 2020. When interrogated, the online motorcycle taxi rider admitted that he did not know that the goods he brought to be delivered were drugs (Oktaviani, S., & Yumitro, G., 2022).

Criminal liability is a core concept in criminal law that determines whether a person can be held responsible for an act that violates criminal law. In the context of narcotics crimes, criminal liability for motorcycle taxi drivers who act as narcotics couriers is a complex issue because it must be seen from the extent of the perpetrator's involvement, knowledge or intentions, and role in the structure of the crime.

Motorcycle taxi drivers who carry or deliver narcotics can be charged under the provisions of Articles 112 and 114 of Law Number 35 of 2009 concerning Narcotics, which regulate the possession, possession, and circulation of narcotics without rights. However, it is important to note that in order to establish criminal liability, it is not enough to only look at the outward actions (*actus reus*), but it must also be proven that the element of guilt (*mens rea*), namely whether the driver knew that the goods he was carrying were narcotics and had malicious intentions (*dolus*) or at least negligence (*culpa*) in carrying out his duties.

If it is proven that the driver knew and deliberately delivered narcotics, then criminal liability can be fully charged as a perpetrator of narcotics crimes. He is not only an intermediary, but also participates in illicit narcotics trafficking activities and can be subject to severe penalties as stipulated in Article 114 paragraph (1) or (2), depending on the amount of narcotics and other aggravating circumstances.

In this case, motorcycle taxi drivers are seen as having a fairly strong *mens rea*, and their criminalization reflects the repressive function of the criminal law. However, in many cases, motorcycle taxi drivers simply run orders to deliver packages without knowing that the contents of the packages are narcotics. In such a situation, the application of criminal liability must consider the extent to which the perpetrator has knowledge of the contents of the goods, whether there is malicious intent, or is actually a victim of exploitation by narcotics syndicates.

If there is no real malice or negligence, then the principle of *no crime without fault* (*geen straf zonder schuld*) must be applied, and the perpetrator cannot be held criminally responsible. Therefore, the court has a crucial role in objectively assessing each element that forms a criminal act as well as the socio-economic context of the perpetrator. In the case of motorcycle taxi drivers, it is often found that they are economically vulnerable, do not have adequate legal literacy, and are unaware that they are being exploited by a dark circulation network.

In a fair legal framework, this form of criminal responsibility for perpetrators should be differentiatory and not equated with the main perpetrators. Thus, criminal liability must be seen not only from the aspect of his actions but also from the intentions, motives, and concrete conditions of the perpetrators in the social reality he faces.

4. CONCLUSION

Accountability for narcotics crimes committed by motorcycle taxi drivers as couriers is related to the elements of intentionality and knowledge (*dohus*). If it is proven that the motorcycle taxi driver knew and consciously carried narcotics, then he can be held criminally liable under Article 114 or 112 of the Narcotics Law, depending on his role (dealer or owner). However, if he does not know the contents of the goods delivered, then the element of error is not met.

REFERENCES

- Mansar, A. (2021). Reconstruction of corruption law enforcement in the anti rasuah institution "Corruption Eradication Commission (KPK)" (based on approach "Berani Jujur Pecat" (Dare Honest Fired)). *Randwick International of Social Science Journal*, 2(3), 316–325. <https://doi.org/10.47175/rissj.v2i3.231>
- Mansur, D. M. A., & Gulton, E. (2009). *Cyber law*. PT Refika Adiatma.
- Mertokusumo, S. (2003). *Mengenal hukum: Suatu pengantar*. Liberty.
- Muhamad, F., Kristiawanto, K., & Ismed, M. (2023). Pertanggungjawaban pidana terhadap perantara dalam tindak pidana narkoba. *Blantika: Multidisciplinary Journal*, 1(3), 180–188.
- Muladi. (1995). *Kapita selekta sistem peradilan pidana*. Alumni.
- Nuryanta, G. A. R. P., & Mahyani, A. (2022). Legal standing kurir ekspedisi mengirim barang berupa narkoba karena tidak mengetahui. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 2(3), 675–702.
- Oktaviani, S., & Yumitro, G. (2022). Ancaman bahaya narkoba di Indonesia pada era globalisasi. *Jurnal Education and Development*, 10(2), 137–143.
- Rahmanda, B., & Jonathan, L. (2022). Implementasi perjanjian kerja pengemudi ojek online dengan perusahaan penyedia aplikasi. *Gema Keadilan*, 9(3), 275–286.
- Rinaldo, R., Eddy, T., & Sahari, A. (2022). Penerapan rehabilitasi terhadap pelaku penyalahgunaan narkoba oleh penyidik kepolisian (studi di Direktorat Narkoba Polda Sumut). *Legalitas: Jurnal Hukum*, 14(1), 43. <https://doi.org/10.33087/legalitas.v14i1.281>
- Sihombing, E. N. A. M., & Hadita, C. (2022). *Penelitian hukum*. Setara Press.
- Syifa, A. (2017, Desember 19). Dampak positif dan negatif ojek online. *WordPress.com*. <https://ayusyifasfr.wordpress.com/2017/12/19/dampak-positif-dan-negatif-ojek-online/>
- Tim Redaksi Bisnis.com. (2019, Oktober 28). Bareskrim tangkap lima kurir narkoba jaringan Malaysia-Indonesia. *Bisnis.com*. <https://kabar24.bisnis.com/read/20191028/16/1164051/bareskrim-tangkap-lima-kurir-narkoba-jaringan-malaysiaindonesia>