

**LEGAL ANALYSIS OF THE PUBLIC PROSECUTOR'S  
CONSIDERATIONS TO DETERMINE THE SEVERITY OF THE  
CLAIMS AGAINST THE DEFENDANT IN NARCOTICS CRIME  
(STUDYING AT THE PROSECUTOR'S PROSECUTION IS  
REALLY FUN)**

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**ABSTRACT**

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*Prosecution to something follow criminal narcotics is functions carried out by the Prosecutor's Office , in matter This prosecutor general . In letter demands mentioned , are included consideration in submit demands the punishment consists of from aggravating things and mitigating things \_ \_ defendant . In determine heavy its light demands in case follow criminal narcotics , then prosecutor Prosecutor General in general \_ refers to regulation legislation . Study This use study law normative . In study law normative research \_ more emphasize study of principles law and synchronization law to regulation governing legislation. Rule governing law \_ about heavy it's light demands made \_ prosecutor Prosecutor General in Act Criminal Narcotics arranged in the Guidelines Number 24 of 2021 Concerning Handling Case Act Criminal General and Guidelines Number 11 of 2021 concerning Handling Case Act Criminal Narcotics and/ or Act Criminal Precursor Narcotics , no only That in Law no. 35 of 2009 concerning Narcotics also regulate about its weight sanctions imposed \_ based on group . Procedure giving demands For determine heavy its light criminal as material consideration prosecutor Prosecutor General to case follow criminal narcotics started from listen information witnesses and defendants added information expert at trial.*

**Keywords: Consideration , Prosecutor General , Criminal Narcotics.**

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## INTRODUCTION

The Prosecutor's Office of the Republic of Indonesia is a state institution that exercises state power, especially in the field of prosecution.<sup>1</sup> Prosecuting an incident or criminal act, including narcotics crimes, is a function carried out by the Prosecutor's Office, in this case the public prosecutor. According to the Criminal Procedure Code, prosecution is the public prosecutor's action to delegate a case criminal offense to the competent district court in the matter and according to the manner regulated in the Criminal Procedure Code with a request to be examined and decided by a judge at a court hearing.<sup>2</sup>

Constitution No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, indicates that the Prosecutor's office is in a central position with a strategic role in strengthening the nation's resilience because the Prosecutor's Office is at the axis and becomes a filter between the investigation process and the examination process at trial as well as implementing court decisions and decisions (*executive*). *ambtenaar*). So that the Prosecutor's Office is the controller of the criminal case process (*Dominus Litis*), this is because only the Prosecutor's Office can determine whether a case can be submitted to court or not based on valid evidence according to the Criminal Procedure Law.<sup>3</sup>

In the examination stage at a court hearing, filing a lawsuit is one part of that stage. Filing a lawsuit is regulated in Article 182 paragraph 1 letter (a) of the Criminal Procedure Code, which states that after the investigation is declared complete, the Public Prosecutor submits a criminal complaint. The submission of this claim is based on a series of facts revealed in the trial which form a construction of the actual event and the legal analysis of the incident is carried out by the Public Prosecutor, Legal Advisor and Judge according to their respective points of view. By the Public Prosecutor this analysis is included in a letter called a letter of demand (*requisitoir*).<sup>4</sup> In the demand letter, considerations are stated in filing a criminal complaint, consisting of aggravating factors and mitigating factors for the defendant. At the end of the letter of demand, the Public Prosecutor will state criminal charges against the defendant. In material criminal law there is a specific maximum limit for threats. The criminal penalties listed in each criminal offense formulation, as well as the general minimum threshold for criminal threats, refer to Article 12 paragraph (2) of the Criminal Code (KUHP). So that in filing criminal charges, the prosecution revolves around the specific maximum limit and general minimum limit of criminal threats, except for criminal provisions which specifically regulate the specific minimum limits of criminal threats.<sup>5</sup> Special minimum criminal limit and there is also a

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<sup>1</sup> Alfitra, *Hapusnya Hak Menuntut dan Menjalankan Pidana*, Jakarta: Penebar Swadaya Grup, 2012, p 123

<sup>2</sup> Moch. Faisal, *Hukum Acara Pidana Dalam Teori & Praktek*. Bandung: Mandar Maju, 2001, p 207.

<sup>3</sup>Dimas Indianto Wahyudi, dkk., *Implementasi Dasar Pertimbangan Jaksa Penuntut Umum Dalam Menentukan Berat Ringannya Tuntutan Pidana Terhadap Terdakwa Kasus Tindak Pidana Korupsi (Studi di Kejaksaan Negeri Semarang)*, Jurnal: Diponegoro Law Journal, olume 10, Nomor 1, Tahun 2021, p 98.

<sup>4</sup>Surat Tuntutan (*requisitoir*) memuat hal-hal mengenai: (a) hal tindak pidana yang didakwakan; (b) fakta-fakta yang diperoleh dalam persidangan; (c) analisis hukum terhadap fakta-fakta untuk memberikan konstruksi hukum atas peristiwa yang didakwakan; (d) pendapat tentang hal terbukti tidaknya dakwaan; (e) permintaan Jaksa Penuntut Umum pada majelis hakim. Lihat Adami Chazawi, *Kemahiran Praktek Hukum Pidana*, Malang: Banyumedia Publishing, 2006, halaman 151.

<sup>5</sup>Dimas Indianto Wahyudi, dkk., *Op. Cit.*, p 99.

maximum penalty in the case follow criminal narcotics . It's here role prosecutor Prosecutor General in determine submission demands criminal for the defendant has do follow criminal narcotics with various base consideration in accordance with rule applicable law.

In determine the severity of the demands in case follow criminal narcotics , then Prosecutor .Generally speaking , it refers to Guidelines Number 11 of 2021 concerning Handling Case Act Criminal Narcotics and/ or Act Criminal Precursor Narcotics . The above guidelines from the Attorney General can be used as a legal basis and/or reference for the Public Prosecutor to determine the severity of the criminal charges for the suspect/defendant so that in the future there will be no more criminal charges filed by the Public Prosecutor which are felt to be too light. viewed from the perspective of the maximum criminal threat and viewed from the perspective of the sense of justice that is developing in Indonesian society today.

Consideration prosecutor Prosecutor General in the determine demands There are 2 ( two ) , namely : possible considerations burdensome and possible considerations \_ lighten up . Demands prosecutor Prosecutor General proposed \_ at trial very influential to the verdict ( verdict ) handed down by the Judge against Defendant .

## **METHOD**

Study This use study law normative . In study law normative research \_ more emphasize study of principles law and synchronization law to regulation governing legislation \_ about heavy its light demands made by the Prosecutor Prosecutor General to defendant in follow criminal narcotics . Study This nature descriptive analytical It means describing or describing facts analytically and systematically, which means taking the problems as they were when the research was carried out, the research results are then processed and analyzed to draw conclusions.<sup>6</sup> The type of approach used in this research is the statutory approach ( *the statute approach* ) , approach case ( *Case approach* ) . Collected data with use studies literature and interviews . The data that has been collected will then be analyzed analysis with a qualitative approach .

## **DISCUSSION**

### **Governing Legal Rules About Heavy It's light Claims Made-Prosecutor Prosecutor General To Defendant In Act Criminal Narcotics**

Narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases. However, if it is misused or used not in accordance with treatment standards, it can have very detrimental consequences for individuals or society, especially the younger generation. This will be more detrimental if accompanied by the abuse and illicit trafficking of narcotics which can result in greater danger to the life and cultural values of the nation which will ultimately weaken national resilience.

The legal system in Indonesia, narcotics abuse is qualified as a crime regulated in Law No. 35 of 2009 concerning Narcotics. According to Article 127 paragraph (1 ) Law

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<sup>6</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Jakarta : Raja Grafindo Persada, 2001, p 30.

No. 35 of 2009 concerning Narcotics mention that S every Abuse \_ Class I narcotics for oneself is punishable by a maximum imprisonment of 4 (four) years; Every person who abuses Class II narcotics is personally liable to a maximum imprisonment of 2 (two) years; and Every person who abuses Class III narcotics is personally liable to imprisonment for a maximum of 1 (one) year.<sup>7</sup>

Eradicating Narcotics crimes through Law no . 35 of 2009 is carried out by increasing criminal sanctions, one of which is the threat of a special minimum penalty, based on the explanation of Law No. 35 of 2009 which states that:

"In reality, narcotics crimes in society show an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, teenagers and the younger generation in general. Narcotics crimes are no longer carried out individually, but involve many people together, even forming an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels. "Therefore, in order to have a deterrent effect on perpetrators of the abuse and illicit trafficking of Narcotics and Narcotics Precursors, it is regulated regarding the severity of criminal sanctions, either in the form of a special minimum penalty, imprisonment of 20 (twenty) years, life imprisonment, or the death penalty."

In material criminal law there is a specific maximum limit for threats The criminal penalties listed in each criminal offense formulation, as well as the general minimum threshold for criminal threats, refer to Article 12 paragraph (2) of the Criminal Code (KUHP). So that in filing criminal charges, the prosecution revolves around the specific maximum limit and general minimum limit of criminal threats, except for criminal provisions which specifically regulate the specific minimum limits of criminal threats.<sup>8</sup>

According to Muladi , special minimum sanctions for certain crimes are aimed at reducing criminal *disparities of sentencing* ) and indicates the seriousness of the criminal offense in question.<sup>9</sup> This shows that Law No. \_ 35 of 2009 regulates special minimum criminal provisions because the crime of narcotics is a serious and serious crime . The increase in punishment in Law No. \_ 35 of 2009 can also be seen from its cumulative nature, meaning that if someone is proven to have committed a Narcotics crime, they will be subject to imprisonment and a fine, whereas towards the authorities enforcer laws that commit Narcotics crimes basic criminal sanctions and additional criminal sanctions may be imposed.<sup>10</sup>

In Law no. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely:<sup>11</sup>

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<sup>7</sup> Soedjono *Dirdjosisworo*, *Hukum Narkotika Indonesia*, Bandung: Alumni, 1987, p 14.

<sup>8</sup> Dimas Indianto Wahyudi, dkk., *Op.Cit.*, p 99.

<sup>9</sup> Muladi, *Hak Asasi Manusia, Politik, dan Sistem Peradilan Pidana*, Semarang: Universitas Diponegoro, 2002, p. 15.

<sup>10</sup> Wijayanti Puspita Dewi, *Penjatuhan Pidana Penjara Atas Tindak Pidana Narkotika Oleh Hakim Di Bawah Ketentuan Minimum Ditinjau Dari Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika*, *Jurnal Hukum Magnum Opus*, Volume 2, Nomor 1, Februari 2019, p. 63.

<sup>11</sup> Siswanto Sunarso, *Politik Hukum Dalam Undang-Undang Narkotika*, Jakarta: Rineka Cipta, 2012, p 256.

1. The first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics and Article 122 for class III narcotics and Article 129 letter (a)) ;
2. The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for class II narcotics, and Article 123 for class III narcotics and Article 129 letter (b)) ;
3. The third category, namely acts in the form of offering for sale, selling, buying, receiving, becoming an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for narcotics group II, Article 124 and Article 126 for class III narcotics and Article 129 letter (c));
4. The fourth category, namely acts in the form of bringing, sending, transporting or transiting narcotics and narcotics precursors (Article 115 for class I narcotics, Article 120 for class II narcotics and Article 125 for class III narcotics and Article 129 letter (d))

In Constitution narcotics heavy and light criminal use system maximum special and special minimum . Penalty existing special minimum penalties \_ in Constitution Narcotics arranged For protect all over public from danger narcotics , for eradicate abuse harmful narcotics \_ society , and for give effect deterrent to the culprit . There is penalty special minimum sentence This have close relationship \_ with objective from punishment that is as a process of accountability is somebody guilty do follow criminal .<sup>12</sup> Whereas penalty Criminal maximum special in accordance with threat regulated sanctions \_ in each article .

Besides that , for know and determine heavy its light demands also depend to type , group , size , and quantity Narcotics used by the defendant . So that prosecutor must notice The objective circumstances regarding the perpetrator's actions must look at the defendant's life background and the gravity of the actions committed. Or in other words, in dropping The severity of the crime must take into account the factors that exist in the defendant and the factors of the actions carried out by the defendant.

Demands criminal is part final from task prosecution which is part most importantly , because is a resume of the prosecution's events in advance hearing court . In compile letter demands criminal must pay attention to :<sup>13</sup>

1. Demand letter criminal must arranged in a way systematic
2. Must use good and correct Indonesian grammar
3. Content and purpose must clear and easy understandable
4. If use theory law must mention the source .

A letter of demand ( *requisitoir* ) is made in a way written and read out in court as referred to by Article 182 paragraph (1) letter c KUHAP. The letter of demand ( *requisitoir* ) includes: demands prosecutor Prosecutor General to Defendant , OK form

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<sup>12</sup> Dayang Debby Aulia Hakim, dkk., *Penerapan Asas The Binding Persuasive of Precedent Di Bawah Ketentuan Minimum Khusus Dalam Tindak Pidana Narkotika*, jurnal: Risalah Hukum, Volume 17, Nomor 2, Desember 2021, p. 88-89.

<sup>13</sup> *Ibid*, p 163-164

punishment or release and drafted based on inspection witness, expert, tool evidence, and information defendant. In the letter of indictment by the public prosecutor, considerations are stated in filing criminal charges, consisting of aggravating factors and mitigating factors for the defendant.

Submission of charges by the prosecution refers to the articles charged by the public prosecutor against the defendant. This means that the articles charged against the defendant are the basis for filing a demand for punishment against the defendant. Meanwhile, regarding the severity of the punishment required for defendants in narcotics cases, there are several things that are taken into consideration by the public prosecutor. There are 2 (two) considerations for the Public Prosecutor in determining charges, namely: considerations that could be aggravating and considerations that could be mitigating.

Determination heavy its light defendant in follow criminal narcotics can see the Guidelines Number 24 of 2021 Concerning Handling Case Act Criminal General. Guidelines This arrange about prosecution in the follow criminal general. In the prosecution, There are several possible circumstances influence demands criminal that is aggravating circumstances and mitigating circumstances. As for the aggravating circumstances namely:<sup>14</sup>

1. Bother state stability and security;
2. Contain sentiment, treat discriminatory, Harassment, or use violence towards people based on identity, descent, religion, nationality, ethnicity, or group certain;
3. Defendant No regret his actions;
4. Give rise to widespread unrest \_ for society;
5. Give rise to loss for countries and/ or society;
6. Give rise to deep and prolonged suffering \_ for victims and their families;
7. Damage generation young;
8. Done in a way sadistic;
9. Defendant has enjoy results follow criminal; and/ or
10. other aggravating circumstances of a casuistic nature based on the facts of the trial or other consideration factors regulated in the legislation.

Whereas mitigating circumstances \_ is as following:<sup>15</sup>

1. Defendant in circumstances pregnant;
2. The defendant and the victim have do peace;
3. Defendant regret his actions;
4. Defendant has replace loss or has do repair consequence follow criminal like circumstances again;
5. Defendant Still young and hopeful Still can repair his behavior;
6. Defendant Not yet enjoy results follow criminal;
7. Defendant deliver self after do follow criminal;
8. Defendant is witness working actors \_ the same (*justice collaborator*); and/ or
9. Circumstances other mitigating nature casuistry based on fact the judge or factor other regulated considerations in legislation. \_ \_

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<sup>14</sup> Lihat Bab II angka 6 butir e Pedoman Nomor 24 Tahun 2021 Tentang Penanganan Perkara Tindak Pidana Umum

<sup>15</sup> *Ibid.*

Room scope Guidelines Handling Case Act Criminal General This Also including one related to narcotics crimes. Criminal charges narcotics crime cases contained in Guideline Number 24 of the Year 2021 About Handling Case Act Criminal General (Chapter IV Part First regarding Narcotics) is also specifically regulated in Guideline Number 11 of the Year 2021 about Handling Case Act Criminal Narcotics and/or Act Criminal Precursor of Narcotics, which these two guidelines are related to each other. However For see heavy/light demands criminal in case a Narcotics crimes can be seen clearly in Guideline Number 11 Year 2021 about Handling Case Act Criminal Narcotics and/or Act Criminal Narcotics Precursor.

On Guidelines Number 11 Year 2021 about Handling Case Act Criminal Narcotics and/ or Act Criminal Precursor Narcotics , in determining the severity of criminal charges towards legal subjects, people , prosecutors prosecutor general must see to is something deed follow criminal narcotics the enter into the follow criminal abuse narcotics or follow criminal circulation dark narcotics . As for determination demands criminal case follow criminal abuse narcotics done with consider :<sup>16</sup>

- a. Class and weight of narcotics evidence;
- b. The defendant's qualifications are as a narcotics addict , victim of abuse narcotics, or narcotics abusers ;
- c. The defendant's involvement in the illicit narcotics trafficking network; And
- d. K objective classification and subjective classification join follow criminal abuse narcotics .

Whereas determination criminal case follow criminal circulation narcotics done with consider :<sup>17</sup>

- a. Type , class and weight goods proof narcotics ;
- b. Classification accompanying objectives \_ follow criminal circulation dark narcotics ;
- c. Aggravating and mitigating circumstances ; \_ And
- d. Provision special related weight and light demands criminal based on provision regulation legislation .

Based on matter said , prosecutor general in determine criminal charges for criminal cases of narcotics abuse and criminal acts of illicit trafficking of narcotics perform step analysis ( *path analysis* ) sequentially according to the instructions stated in the Guideline Number 11 of 2021 concerning Handling of Narcotics Crime Cases and/or Narcotics Precursor Crimes .

Prosecutor prosecutor General in filing criminal charges against accused abusers narcotics, first must determine the qualifications as following :<sup>18</sup>

1. P abuser Narcotics ; \_

Abuser Narcotics is the person who uses it Narcotics without right or oppose law as arranged in the Article 1 point 15 of Law no. 35 of 2009 concerning Narcotics

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<sup>16</sup>Lihat Bab IV angka 5 Pedoman Nomor 11 Tahun 2021 tentang Penanganan Perkara Tindak Pidana Narkotika dan/atau Tindak Pidana Prekursor Narkotika

<sup>17</sup>Lihat Bab IV angka 6 Pedoman Nomor 11 Tahun 2021 tentang Penanganan Perkara Tindak Pidana Narkotika dan/atau Tindak Pidana Prekursor Narkotika

<sup>18</sup>Lihat Bab IV angka 10 Pedoman Nomor 11 Tahun 2021 tentang Penanganan Perkara Tindak Pidana Narkotika dan/atau Tindak Pidana Prekursor Narkotika

- . As for the qualifications the defendant is a narcotics abuser determined as follows:<sup>19</sup>
- 1.1 Based on the results of the forensic laboratory examination, the defendant was positive using narcotics;
  - 1.2 Based on the results of the investigation, evidence and legal facts at trial, the defendant was the final user (*end user*);
  - 1.3 the accused is arrested or caught red-handed without goods proof narcotics or with evidence of narcotics that does not exceed 1 (one) day's use;
  - 1.4 *deliberately* possessed narcotics for himself; and ;
  - 1.5 The defendant is not dependent on narcotics either physique nor psychic.
2. K sacrifice P abuse Narcotics ; or  
A victim of narcotics abuse is someone who accidentally uses narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use narcotics .<sup>20</sup>This is the defendant 's qualification as a victim abuse Narcotics determined as follows:<sup>21</sup>
- 2.1 Based on the results of the forensic laboratory examination, the defendant was positive using narcotics;
  - 2.2 Based on the results of the investigation, evidence and legal facts at trial, the defendant was the final user (*end user*);
  - 2.3 T he defendant was arrested or caught red-handed without goods proof narcotics or with evidence of narcotics that does not exceed the quantity use 1 (one) day; And
  - 2.4 T he defendant did not intentionally use narcotics because he was persuaded, tricked, deceived, forced, and/or threatened to use narcotics.
3. P addict Narcotics . \_  
Narcotics addicts are people who use or abusing narcotics and being dependent on them Narcotics, both physical and psychological.<sup>22</sup> The defendant's qualifications as a narcotics addict are determined as follows:<sup>23</sup>
- 1.1 Based on the results of the forensic laboratory examination, the defendant was positive for using narcotics;
  - 1.2 Based on the results of the investigation, evidence and legal facts at trial, the defendant was the final user (*end user*);
  - 1.3 The defendant was arrested or caught red-handed without evidence of narcotics or with evidence of narcotics not exceeding 1 (one) day's use; And
  - 1.4 The defendant is in a state of dependence on narcotics, both physically nor psychic.

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<sup>19</sup>Lihat Bab IV angka 11 Pedoman Nomor 11 Tahun 2021 tentang Penanganan Perkara Tindak Pidana Narkotika dan/atau Tindak Pidana Prekursor Narkotika

<sup>20</sup> Lihat Penjelasan Pasal 54 Undang-Undang No. 35 Tahun 2009 tentang Narkotika.

<sup>21</sup>Lihat Bab IV angka 12 Pedoman Nomor 11 Tahun 2021 tentang Penanganan Perkara Tindak Pidana Narkotika dan/atau Tindak Pidana Prekursor Narkotika

<sup>22</sup> Lihat Pasal 1 angka 13 Undang-Undang No. 35 Tahun 2009 tentang Narkotika.

<sup>23</sup> Lihat Bab IV angka 13 Pedoman Nomor 11 Tahun 2021 tentang Penanganan Perkara Tindak Pidana Narkotika dan/atau Tindak Pidana Prekursor Narkotika



Based on Guideline Number 11 of 2021 concerning Handling Cases of Narcotics Crimes and/or Narcotics Precursor Crimes , Before determining criminal charges, the Public Prosecutor considers aggravating and mitigating circumstances, namely :<sup>24</sup>

a. Aggravating Circumstances : \_

1. The defendant has previous convictions;
2. The defendant is not cooperative in following the judicial process;
3. The defendant tried to remove/hide/damage evidence/evidence ;
4. The defendant is a law enforcement officer;
5. The defendant is a public figure or community figure who is considered respectable;
6. The defendant fled after committing the crime;

b. Mitigating Circumstances : \_

1. Defendant Not yet Once convicted previously;
2. The defendant is cooperative in following the trial process;
3. The defendant surrenders or reports the crime he has committed;
4. The defendant committed a criminal act without resisting/threatening law enforcement;
5. The defendant is experiencing economic/financial difficulties;
6. The defendant , because of his vulnerable position and/or because of a power relationship with perpetrator other utilized For involved in follow criminal narcotics;
7. The Defendant was still young and committed his actions because of encouragement or influence from the environment or other people, still on the Defendant is expected to improve its future;
8. Defendant has aged on 70 (seven twenty) year;

Besides aggravating and mitigating circumstances \_ above is also available provision specifically , namely :<sup>25</sup>

a. Special Provisions for Aggravating Criminal Charges :

1. The defendant was proven guilty of committing cumulative criminal acts as intended in Article 65 of the Criminal Code ( *concursum realis*).  
In matter In this case , criminal charges can be increased by 1/3 (of the most serious criminal charge). The 1/3 weighting does not apply if the defendant is charged with the death penalty, life imprisonment, or imprisonment for 20 (twenty ) years.
2. Narcotics crimes are carried out in an organized manner as intended in Article 132 paragraph (2) of the Narcotics Law.  
In matter In this case , criminal charges are increased by 1/3 , where the 1/3 increase does not apply if the defendant is charged with the death penalty , life imprisonment or imprisonment for 20 (twenty) years.

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<sup>24</sup> Lihat Lampiran II Pedoman Nomor 11 Tahun 2021 tentang Penanganan Perkara Tindak Pidana Narkotika dan/atau Tindak Pidana Prekursor Narkotika, halaman 47-48

<sup>25</sup> *Ibid*, p 50-51

3. The defendant committed repeated criminal acts as intended in Article 144 of the Narcotics Law.  
In matter In this case , criminal charges are increased by 1/3 , where the 1/3 increase does not apply if the defendant is charged with the death penalty, life imprisonment or imprisonment for 20 (twenty) years .
- b. Special Provisions for Mitigating Criminal Charges :
  1. The status of the defendant as a cooperating witness to the perpetrator ( *justice* ) . In matter In this case , the defendant can be charged with the lightest crime among other defendants.
  2. The defendant committed his actions motivated by intentions that deserved respect and/or a sense of humanity. In matter Here , Defendant can sued criminal under threat minimum penalty .
  3. The defendant is a child as intended in Article 81 paragraph (2) of Law Number 11 of 2012 about System Justice Child Crime . In matter this , demands criminal lightened by 1/2.
  4. The defendant committed a narcotics crime as intended in Articles 56 and 57 of the Criminal Code . In matter this , demands Criminal can lightened by 1/3, however If follow criminal threatened with criminal dead or criminal prison lifetime alive , dropped criminal imprisonment for a maximum of 15 ( fifteen ) years .

Basically , Guideline Number 11 of 2021 concerning Handling of Narcotics Crime Cases and/or Narcotics Precursor Crimes , provides benefit to prosecutor Prosecutor General in overcome disparity in fact the same law from demands follow criminal related narcotics with magnitude threat criminal law in Law no. 35/2009 between a little evidence , but it is no different from a lot of evidence . So that As a result , this does not provide a sense of justice. With consider tool evidence and facts law at trial , in matter there is conflicting circumstances between certainty law with justice or expediency , Prosecutor General submit demands with put forward justice or usefulness .

According to Agus Suroto , determination heavy its light demands made by the Prosecutor Decider General Already in accordance with Guidelines Number 11 of 2021 concerning Handling Case Act Criminal Narcotics and/ or Act Criminal Precursor Narcotics . Where deep guidelines the arrange about heavy group goods decisive evidence possible punishment worn defendant narcotics .<sup>26</sup>

### **Procedure Giving Demands In Determine Heavy It's light Criminal To Defendant As Material Consideration prosecutor Prosecutor General To Case Act Criminal Narcotics**

Implementation prosecution as part from the judicial process criminal guided by the provisions law criminal material and legal formal punishment . In field formal law , maker Constitution on purpose create horizon full criminal procedural law \_ sprinkled decoration right basic as light sheen guide at a time become shield for those facing each

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<sup>26</sup>Agus Suroto, selaku Kepala Kejaksaan Negeri Bener Meriah, Tanggal 31 Juli 2023 di Kantor Kejaksaan Negeri Bener Meriah.

other with authority given \_ Constitution to apparatus enforcer law .<sup>27</sup> Prosecution to something incident or follow criminal , incl follow criminal narcotics is authority from prosecutor prosecutor general as stated in the Article 1 point 7 of the Criminal Procedure Code. Based on provision that , then prosecution is no authority \_ can carried out by institutions other than attorney through prosecutor general .<sup>28</sup> attorney as one \_ subsystem in system Justice Criminal law in Indonesia is regulated in Law no. 16 of 2004 concerning attorney Republic of Indonesia. In Law no. 16 of 2004 is mentioned that attorney operate duties and functions based on principle equation ahead \_ law ; simple and fast ; effective and efficient ; as well as accountability .<sup>29</sup>

Prosecution Action is something important thing \_ in Criminal Procedure Law<sup>30</sup> Because of action prosecution is stages of the inspection process on something follow criminal , continued stage inspection investigation to level of the examination process at trial trial by judge. <sup>31</sup>At stage investigation in system Justice criminal carried out by the police To use gather proof , there is proof make bright something incident follow criminal as well as at a time find perpetrator follow criminal . On action investigation focused on action seek and find something considered event \_ or allegedly as follow criminal .

The role of the public prosecutor in the prosecution process begins when the prosecutor receives a Notice of Commencement of Investigation (SPDP), then the Head of the District Prosecutor's Office makes P-16, namely an Order for the Appointment of a Public Prosecutor to follow the progress of the investigation of criminal cases made by police investigators, appointed prosecutors. The Head of the Bener Meriah District Prosecutor's Office has the authority to supervise the investigation process until the Investigation Report (BAP) is submitted to the Bener Meriah District Prosecutor's Office. When the BAP is submitted, the Head of the Bener Meriah District Prosecutor's Office makes P-16A, namely an Order for the Appointment of a Public Prosecutor to resolve criminal cases. This is when the prosecutor actually becomes a public prosecutor where the public prosecutor has the authority to carry out pre-prosecution and prosecution .<sup>32</sup>

Furthermore , the public prosecutor in filing charges against perpetrators of narcotics crimes is based on the investigation case files submitted by investigators. The investigation report (BAP) received from the investigator is then examined by the Public Prosecutor. At this stage the public prosecutor is required to be careful and careful. The BAP must meet the requirements to be able or not to be submitted to court, as outlined by Article 139 of the Criminal Procedure Code. If deficiencies are found during the BAP examination, the public prosecutor issues P-18, namely a letter stating that the results of the investigation are incomplete and returning the case files to be completed accompanied by detailed instructions. If the BAP is complete, the public prosecutor issues P21, namely

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<sup>27</sup> M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP, Penyidikan dan Penuntutan*, Jakarta : Sinar Grafika, 2009, p 1.

<sup>28</sup> Dio Ashar Wicaksana, *Bunga Rampai Kejaksaan Republik Indonesia*, Depok: Fakultas Hukum Universitas Indonesia, 2015, p 323

<sup>29</sup> Joko Sriwidodo, *Perkembangan Sistem Peradilan Pidana Di Indonesia*, Yogyakarta : Kepel Press, 2020, p 114

<sup>30</sup> Moch Faisal, *Hukum Acara Pidana Dalam Teori & Praktek*, Bandung : Mandar maju, 2001, p 207

<sup>31</sup>M. Yahya Harahap, *Op. Cit.*, p 386

<sup>32</sup>Hasil Wawancara dengan Bapak Agus Suroto, selaku Kepala Kejaksaan Negeri Bener Meriah, pada tanggal 31 juli 2023

the Notification of Investigation Results is complete. After the BAP is declared complete and the suspect and evidence have been handed over, the first step taken by the public prosecutor is to prepare an indictment (P-29). The public prosecutor must be observant and careful in formulating the criminal offense and the provisions of the articles that can be imposed on the defendant, because errors in making the indictment, whether errors in formulating the criminal act or the provisions of the article, can result in the case being null and void and can result in the defendant being acquitted. After the public prosecutor makes an indictment, the next step is to make P-31, namely a Letter of Transfer of Cases for an ordinary examination procedure which is addressed to the District Court for a trial.<sup>33</sup>

Therefore, before the delegation and trial, the main task of the public prosecutor is to prepare an indictment.<sup>34</sup> The purpose of the indictment is to serve as a basis or foundation for case examination in court. When examining a case, a judge must not deviate from what is formulated in an indictment.<sup>35</sup> In principle, judges cannot examine and adjudicate outside the scope of the charge. What happens at trial is very decisive, so that the defendant's guilt can be proven as stated in the indictment, then the court will sentence him. On the other hand, if the defendant's guilt can be proven, but not charged, the court will acquit the defendant. Considering that the role of the indictment occupies a central position in the examination of criminal cases in court.<sup>36</sup>

With Thus, the public prosecutor must be able to prove his charges accompanied by supporting evidence in prosecuting the case. The public prosecutor must be active, corrective and professional in the evidence process. So that the material truth and elements of criminal acts in the articles imposed on the defendant can be proven. Narcotics crime, to prove the existence of a narcotics crime, it is necessary to have an official report on Psychotropic and/or Narcotics Examination recommended by the Public Prosecutor for suspects who are declared positive for using narcotics based on a rapid test tool in the form of a urine test kit, so that laboratory test results for urine, *blood* and /or hair, this evidence is very important to find out whether there is an unlawful act or not and to know the consequences of an act, in this case narcotics abuse.<sup>37</sup>

After the examination process at trial is complete, the Public Prosecutor is then ordered by the Judge to make a letter of demand or P-42, this is the application of article 182 paragraph (1) letter a of the Criminal Procedure Code. The systematics of the demand letter are as follows:<sup>38</sup> Identity defendant.

- a. Indictment, as there is in letter indictment

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<sup>33</sup> *Ibid*

<sup>34</sup> M. Yahya Harahap, *Op.Cit*, p 386

<sup>35</sup> *Ibid*, p 390

<sup>36</sup> Freddy Simanjuntak dkk, *Penerapan Surat Dakwaan oleh Jaksa Penuntut Umum Berdasarkan Hukum Positif Indonesia*, Doktrina: Journal of Law, volume 3, Nomor 2, Oktober 2020, p 120.

<sup>37</sup> Hasil Wawancara dengan Bapak Agus Suroto, selaku Kepala Kejaksaan Negeri Bener Meriah, pada tanggal 31 juli 2023 di Kantor Kejaksaan Negeri Bener Meriah..

<sup>38</sup> *Ikhtisar Ketentuan Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang*, Jakarta: The Indonesia Netherlands National Legal Reform Program (NLRP), 2010. Lihat juga, Anton Sutrisno, Tesis: *Kemandirian Jaksa Sebagai Penuntut Umum (Analisis Terhadap Kebijakan Rencana Tuntutan)*, Program Pascasarjana Hukum Dan Sistem Peradilan Pidana, Universitas Indonesia, 2011, p 58-59.

- b. Considerations drawn up in a way concise regarding facts and circumstances along with tool evidence obtained \_ from results examination at the trial \_ base determination error defendant .
- c. Chapter regulation violated laws \_ defendant accompanied aggravating and mitigating circumstances \_ defendant .
- d. Statement error defendant / statement has fulfillment all element in formulation follow criminal accompanied his qualifications .
- e. Demands criminal .
- f. Provision to Who cost case charged , with mention definite amount . \_
- g. Provision about goods evidence ( if goods proof sued returned to those who are entitled to it , so that mentioned in a way firm who has the right it ) .
- h. Order so defendant still detained or still in prisoner or released ( if No Enough evidence ) .

Guidelines for Public Prosecutors in preparing letters of indictment are contained in the Decree of the Attorney General of the Republic of Indonesia Number: Kep-518/A/JA/11/2001 (KEPJA P-42) concerning the Administration of Criminal Cases. In terms of procedures for presenting charges by the prosecutor prosecutor general in follow criminal narcotics done with by namely : The prosecutor looks first at the formal completeness and material completeness, especially regarding:<sup>39</sup>

- a. evidence of narcotics crimes and/or narcotics precursor crimes;
- b. suspect qualifications;
- c. qualifications of criminal acts and compliance with the alleged articles;
- d. element of guilt ( *mens rea* ) in the suspect; And
- e. examination of suspects.

Before making a letter of indictment for a narcotics crime, the Public Prosecutor first makes a Criminal Prosecution Plan (RENTUT), then submits it to the Head of the District Prosecutor's Office to determine the severity of the criminal charges that will be prosecuted against the defendant for a narcotics crime . This prosecution plan is an internal policy of the Prosecutor's Office and has become a practice in the prosecution process for various reasons, including:<sup>40</sup>

1. In many cases, legal considerations by prosecutors are considered less mature and less *comprehensive*
2. There is a *judgement policy* established by the Attorney General
3. There is principle in prosecution, that prosecutor in dopower Country in field prosecution is One And No inseparable (Look Chapter 2 Paragraph (3) Constitution Number 16Year 2004)
4. Prevent happen abuse authority by prosecutor Prosecutor General.

Based on Circular Letter Attorney General SE-003/A/JA/02/2009 dated 26 February 2009 concerning authority control wrinkled case follow criminal general incoming \_ in category case important (PK-Ting), there is a number of procedures and mechanisms from plan demands For case narcotics is as following :

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<sup>39</sup>Hasil Wawancara dengan Bapak Agus Suroto, selaku Kepala Kejaksaan Negeri Bener Meriah, pada tanggal 31 juli 2023 di Kantor Kejaksaan Negeri Bener Meriah.

<sup>40</sup> Suhadibroto, *Kualitas Aparat Kejaksaan Dalam Upaya Melaksanakan Penegakan Hukum*, Makalah Disampaikan Pada Lokakarya Pemantau Kejaksaan yang diselenggarakan di Jakarta oleh MAPPI FHUI, tanggal 28-30 Nopember 2004

1. The District Attorney has the authority For determine heavy its light demands criminal with category heavy goods proof between 0 to with 100 grams.
2. The High Prosecutor's Office has the authority For determine heavy its light demands criminal with category heavy goods proof between 100 to with 1000 grams
3. The Attorney General 's Office has authority For determine heavy its light demands criminal with category heavy goods proof 1000 grams/ 1 kg and above . Things \_ the on Now has implemented and implemented by the Attorney General's Office to all over The High Prosecutor's Office and the District Attorney's Office in Indonesia, as one effort for :<sup>41</sup>

1. Delegate authority to High Prosecutor's Office and District Prosecutor's Office
2. Avoid disparity demands criminal .
3. Created table yardstick measuring For things certain .
4. So that hearing No hampered with exists wrinkled the

According to Mr. Erwin Siregar , the stages carried out prosecutor prosecutor general in do prosecution in follow criminal narcotics is in the trial process , after listen information witnesses and defendants added information expert , prosecutor prosecutor general will submit plan demands to head sexy follow criminal common to units it works , then next submit plan demands to head general district attorney's office in the unit work , if needed For things Narcotics with heavy more big from 10 kg or interesting thing \_ Attention , Prosecutor prosecutor general obliged send plan his demands to High Prosecutor's Office unit it works Then next to Attorney General of the Republic of Indonesia, then when plan demands Already issued by an official authorized so prosecutor Prosecutor General will pouring fill plan demands on the demands that will be made read at the hearing .<sup>42</sup>

Based on description according to Mr Agus \_ Suroto , Submission wrinkled the done in a way tiered , from prosecutor to Head Section at the District Attorney's Office after get approval from the Head of Criminal Investigation Unit , Prosecutor General continue suggestions / opinions about wrinkled the to Head State Prosecutor's Office . After that submitted to Prosecutor General For read in trial . However if criminal special the including into the category case important , then after get agreement Head District Attorney's Office , suggestions / opinions about wrinkled the sent to Head High Prosecutor's Office , after get agreement from Head High Court , then Head The High Court will continue to Attorney General's Office. After that The Attorney General's Office will give instruction about the weight a must - have read by the Prosecutor General to Head High Prosecutor's Office , then instruction about wrinkled the continued to Head District Attorney's Office for submitted to Prosecutor General to read at trial .<sup>43</sup>

From aspect normative , no know or No arranged about exists mechanism submission grumble , regarding letter demands only regulated in Article 182 paragraph (1) letters a and c of the Criminal Procedure Code (KUHAP), the mechanism wrinkled is policies made by the Attorney General as holder control task prosecution in system Justice

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<sup>41</sup>Anton Sutrisno, *Op. Cit.*, p 103

<sup>42</sup> Hasil Wawancara dengan Bapak Erwin Siregar, selaku Jaksa penuntut Umum, pada tanggal 02 Agustus 2023, di Kantor Kejaksaan Negeri Bener Meriah

<sup>43</sup> Hasil Wawancara dengan Bapak Agus Suroto, selaku Kepala Kejaksaan Negeri Bener Meriah, Tanggal 31 Juli 2023 di Kantor Kejaksaan Negeri Bener Meriah.

criminal . Authority prosecution by the Attorney General later delegated by the ranks below , namely Head High Prosecutor's Office and Chief District Attorney's Office , so mechanism submission wrinkled from Prosecutor General must to Head District Attorney's Office and cases certain , to Head High Prosecutor's Office or Attorney General. There is intervention leader to determination Demands Criminal This is one of them matter influencing points \_ Independence prosecutor as Prosecutor General in implementation guidelines demands criminal .<sup>44</sup>

According to Mr. Erwin Siregar , who became base consideration prosecutor prosecutor general in do prosecution For determine heavy it's light demands criminal to case follow criminal narcotics namely :<sup>45</sup>

1. Consider background behind deed defendant
2. Amount goods evidence used \_ defendant
3. Confession defendant in advance the judge
4. Consequence deed the defendant can unsettling society .

With Thus , the submission of charges by the public prosecutor in a narcotics crime case is carried out after the case examination process is complete, starting from hearing statements from the defendant, witnesses, expert witnesses and the submission of other evidence. In other words, the prosecution process by the public prosecutor is only carried out after the case examination process has been completed before the court. Thus, prosecution by the public prosecutor is the final stage of the criminal justice process before the verdict is handed down by the panel of judges. The Public Prosecutor's demands submitted at trial greatly influence the decision ( *sentence* ) that will be handed down by the judge against the defendant

## CONCLUSION

Mode Rule governing law \_ about heavy it's light demands made \_ prosecutor Prosecutor General to Defendant in Act Criminal Narcotics arranged in the Guidelines Number 24 of 2021 Concerning Handling Case Act Criminal General and Guidelines Number 11 of 2021 concerning Handling Case Act Criminal Narcotics and/ or Act Criminal Precursor Narcotics , no only That in Law no. 35 of 2009 concerning Narcotics also regulates heavy its light perpetrator follow criminal shared narcotics \_ into 4 categories that is The first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics and Article 122 for class III narcotics and Article 129 letter (a) ) ; The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for class II narcotics, and Article 123 for class III narcotics and Article 129 letter (b) ) ; The third category, namely acts in the form of offering for sale, selling, buying, receiving, becoming an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for narcotics group II, Article 124 and Article 126 for class III narcotics and Article 129 letter (c)); The fourth category,

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<sup>44</sup> Vivi Arfiani Siregar, *Analisis Kebijakan Rencana Tuntutan (Rentut) di Internal kejaksaan Indonesia*, Jurnal: Hukum Das Sollen, Vol. 4, No. 2, 2020, p. 6-7.

<sup>45</sup> Hasil Wawancara dengan Bapak Erwin Siregar, selaku Jaksa penuntut Umum, pada tanggal 02 Agustus 2023, di Kantor Kejaksaan Negeri Bener Meriah

namely acts in the form of bringing, sending, transporting or transiting narcotics and narcotics precursors (Article 115 for class I narcotics, Article 120 for class II narcotics and Article 125 for class III narcotics and Article 129 letter (d)) .

Procedure giving demands in determine heavy its light criminal to defendant as material consideration prosecutor Prosecutor General to case follow criminal narcotics that is in the trial process , after listen information witnesses and defendants added information expert , prosecutor prosecutor general will submit plan demands to head sexy follow criminal common to units it works , then next submit plan demands . Submission wrinkled the done in a way tiered , from prosecutor to Head Section at the District Attorney's Office after get approval from the Head of Criminal Investigation Unit , Prosecutor General continue suggestions / opinions about wrinkled the to Head State Prosecutor's Office . After that submitted to Prosecutor General For read in trial . However if If things Narcotics with heavy more big from 10 kg or interesting thing \_ attention , then after get agreement Head District Attorney's Office , suggestions / opinions about wrinkled the sent to Head High Prosecutor's Office , after get agreement from Head High Court , then Head The High Court will continue to Attorney General's Office. After that The Attorney General's Office will give instruction about the weight a must - have read by the Prosecutor General to Head High Prosecutor's Office , then instruction about wrinkled the continued to Head District Attorney's Office for submitted to Prosecutor General to read at trial .

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