

## Legal Study of Null Verdicts in the Context of Narcotics

**Abdul Azis Mustofa, Endang Sutrisno**

Universitas Swadaya Gunung Jati, Indonesia

Email: [abdul.122010205@ugj.ac.id](mailto:abdul.122010205@ugj.ac.id), [endangsutrisno94@gmail.com](mailto:endangsutrisno94@gmail.com)

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### ABSTRACT

A court verdict is a statement issued by a judge in an open hearing, which is a guilty verdict, acquittal, acquittal, legal pardon, or an order to commit certain actions. These types of decisions or verdicts are regulated in Articles 65 and 66 of the 2023 Criminal Code. A null verdict or verdict is not explicitly contained in any law, so it is questionable about its legal certainty. This study aims to analyze judges' considerations in null verdicts to achieve legal certainty and analyze null verdicts based on the 2023 Criminal Code. The method applied was normative juridical by utilizing primary and secondary data as well as legal material triangulation validation techniques. The results of this study are that the decision is null and void starting from the judge's interpretation in interpreting article 67 of the Criminal Code, which if in the 2023 Criminal Code is in article 129. However, legal reform and harmonization need to be carried out to build more substantive legal certainty because it will have implications for legal systematics.

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### INTRODUCTION

Indonesia's legal framework regulates narcotics crimes through the Narcotics Law, which prohibits the manufacture, circulation, and use of narcotics without a license (Wibowo et al., 2025). Anyone who violates the prohibition stipulated in the Law on Narcotics is considered to have committed a criminal act and therefore will be processed legally in accordance with the lawful legislation when a criminal act occurs (Danil et al., 2022; Hulaimi et al., 2022; Laksana et al., 2025; Siregar & Hasibuan, 2023).

Criminal justice in Indonesia has various categories, one of which is the law related to criminal proceedings regulated by the Criminal Code. The law regulates the process of enforcement and implementation of criminal material law in court. This definition is in accordance with R. Soesilo's interpretation that the Criminal Procedure Law regulates the application of criminal material law to ensure the issuance of court decisions and determine the actualization of the decision (Suyanto, 2018). Then Van Bemmelen explained that the criminal procedure law is a legal framework that regulates the behavior of the state in cases where a criminal act is suspected to have occurred. This law establishes ways to uncover the truth, criteria for court decisions related to alleged criminal acts, provisions for resolving cases that have been decided, and mechanisms for enforcing these decisions (Suyanto, 2018). Van Bemmelen stated that one of the purposes of criminal procedure law is the provision of a verdict or statement by a judge which in the context of criminal law is the imposition of a sentence or verdict (Andrisman, et al., 2022).

The types of sentencing or verdicts are regulated in articles 65 and 66 of the 2023 Criminal Code, which then if in the context of narcotics are contained by the Narcotics Law, which only contains prison sentences with a certain time, rehabilitation, and fines.

The Cirebon City District Court in 2015-2023 had examined the narcotics case carried out by Auw Bun Hauw which then had a zero verdict, with the following case numbers: 1) 135/Pid.Sus/2015/PN Cbn with a criminal sentence of 3 (three) years in prison. 2) 189/Pid.Sus/2019/PN Cbn with a criminal sentence of 10 (ten) years in prison. 3) 25/Pid.Sus/2020/PN Cbn with a sentence of life imprisonment. 4) 150/Pid.Sus/2020/PN Cbn with a criminal verdict of zero imprisonment. 5) 135/Pid.Sus/2023/PN Cbn with a criminal sentence of zero imprisonment.

Case No. 189/Pid.Sus/2019/PN Cbn, the court stated that the defendant Auw Bun Hauw, legally and convincingly guilty of the crime of conspiracy to commit narcotics-related crimes and acted as an unlicensed intermediary for Class I narcotics that were not derived from plants.

In Case No. 25/Pid.Sus/2020/PN Cbn, the court ruled that the defendant Auw Bun Hauw, legally and convincingly, was found guilty of the crime of unlawfully conspiring to buy, receive, and transport Class I narcotics, with an amount exceeding five grams and not in the form of plants.

In Case No. 150/Pid.Sus/2020/PN Cbn, the court stated that the defendant Auw Bun Hauw was legally and convincingly proven to have placed, paid, spend, stored, exchanged, concealed, disguised, invested, given, inherited, and/or transferred money, property, or assets in the form of movable, tangible, or intangible property derived from narcotics crimes and/or predecessor narcotics crimes.

In case 135/Pid.Sus/2023/PN Cbn, it was stated that the defendant Auw Bun Hauw was legally and convincingly proven that Auw Bun Haw did not have a permit from the authorities in terms of buying and selling, distributing or being an intermediary of methamphetamine-type narcotics. The proof is based on the legal fact that the defendant does not have a valid permit from an official or authorized agency to carry out buying and selling activities, trafficking, or acting as an intermediary in the narcotics transaction in question (Azad, 2019; Kreitner, 2021; Lubis & Ramadhani, 2021; Octarina et al., 2020).

The novelty of this research lies in its specific examination of null verdicts in narcotics recidivism cases, particularly the Auw Bun Hauw case series at the Cirebon City District Court. This research distinguishes itself by analyzing the effectiveness of null verdicts in achieving criminal law objectives of deterrence and rehabilitation. It also contributes to understanding the legal implications of the transition from the former Criminal Code to the 2023 Criminal Code regarding null verdicts (Anwar et al., 2025; Hreno, 2025; Jackson et al., 2025). The research purpose is to analyze judges' considerations in imposing null verdicts to achieve legal certainty and to examine null verdicts under the 2023 Criminal Code. The research contribution extends to providing guidance for judges, legal practitioners, and policymakers regarding the proper legal basis and application of null verdicts in narcotics cases, particularly involving recidivist offenders.

In the case of Auw Bun Hauw, it is known that the convict has received a verdict 5 (five) times and 2 (two) of them were sentenced to nil. This indicates that when the convict gets the maximum penalty, the convict still commits the crime again.

This zero verdict is a decision that is still not widely known by the Indonesian people, because it is not listed among the sanctions regulated in Articles 65 and 66 of the 2023 Criminal Code and the Narcotics Law. The absence of zero verdicts or verdicts based on Articles 65 and 66 of the 2023 Criminal Code and the Narcotics Law poses considerable obstacles to legal certainty and effectiveness in the criminal justice system. Such conditions ultimately have the potential to create a gap between judicial practices that run in the field and the positive legal framework that should be a reference, thus hindering the achievement of criminal law goals that are fair, certain, and beneficial to all levels of society

Based on the description above, this study focuses on how the legal provisions regulate Zero Verdicts in relation to narcotics crimes as an effort to ensure legal certainty.

## **METHOD**

This study used the normative juridical law research method as proposed by Soerjono Soekanto and Sri Mamudji, namely an approach based on literature studies by utilizing secondary data as the main source, placing law as a system of norms that govern the order of people's lives (Sukmawan, 2025). The normative juridical approach in this study is specifically directed at the assessment of Decision Number 135/Pid.Sus/2023/PN Cbn along with relevant laws and regulations and legal literature. The type of research used is qualitative research that focuses on the study of written legal norms, including laws and regulations, court decisions, and the opinions of legal experts which are analyzed with an emphasis on legal reasoning based on applicable legal norms and principles.

The legal materials in this study are classified into two categories. Primary legal materials include Law Number 8 of 1981 concerning the Criminal Procedure Code, Law Number 1 of 1946 concerning Regulations on Criminal Law, Law Number 35 of 2009 concerning Narcotics, Law Number 1 of 2023 concerning the Criminal Code, and court decisions that are the object of study. Secondary legal materials include textbooks, articles, scientific journals, internet searches, and expert interviews. The collection of legal materials is carried out through literature studies by collecting, reading, and classifying literature materials that are relevant to the research topic. The analysis of legal materials is carried out by analytical descriptive techniques, namely drawing conclusions based on the results of the description of normative juridical data and identifying the ratio decidendi in the imposition of a null verdict that is adjusted between the provisions of the law and the legal reality that occurs.

Validation of legal materials is carried out through the triangulation method which is an effort to verify the truth of facts or information from various perspectives relevant to the research, this is to reduce ambiguity and the potential for various interpretations to emerge during data collection and analysis (Ilhami et al., 2014). The data used consisted of two types, namely triangulation of legal materials and triangulation of legal theory. The triangulation of legal materials is carried out through three paths, namely cross-confirmation between primary legal materials and other primary legal materials to identify similarities, differences, and conflicts of norms between the new Criminal Code, the Narcotics Law, and the Criminal Code. Cross-confirmation between primary legal material and secondary legal material to ensure the conformity of norm analysis with evolving academic views in the legal literature. As well as cross-confirmation between the two with court decisions as the primary legal material of jurisprudence to identify gaps and suitability between law in books and law in action in the

practice of narcotics criminal justice. Meanwhile, the triangulation of legal theory is carried out through two theoretical perspectives, namely the theory of judge's decision which is used to analyze the ratio decidendi and the process of forming judges' confidence in imposing a null verdict, and the penal reform theory which is used to analyze the implications of the enactment of the new Criminal Code on the legal construction of null verdicts and its harmonization aspects with the Narcotics Law.

## **RESULT AND DISCUSSION**

### **Legal Certainty in Zero Verdict for Narcotics Crimes**

The Narcotics Law, the Criminal Code, and the Criminal Procedure Code do not contain the definition of "null verdict" or "null verdict." Article 1 paragraph (11) of the old Criminal Code mentions the forms of decision, namely criminal decisions, free decisions, and free from all charges. Furthermore, the addition to the new Criminal Code stipulates that the verdict can be in the form of a criminal verdict, an acquittal verdict, independent of all charges, a judge's pardon, or a verdict that discusses certain activities. The result of a null verdict does not have explicit requirements in any legislation, so the judge needs to formulate the law through legal discovery (*rechtvinding*) or legal interpretation in accordance with the Judicial Power Law.

Article 5 paragraph (1) of the Judicial Power Law emphasizes the obligation of every judge and constitutional judge to always explore, follow, and understand the legal values and sense of justice that live in society. On the other hand, Article 10 paragraph (1) of the same law explicitly prohibits the court from refusing to examine and adjudicate a case under the pretext of the absence or unclarity of the applicable legal norms, so that the judge is required to always make legal discoveries in every case he faces. Judges are obliged to be involved in legal discoveries by using various methods of interpretation. Therefore, the interpretive process functions as an important tool used by the judiciary to maintain legal certainty.

Grammatical interpretation is a method of interpreting fundamental that involves the analysis of legal provisions through the meaning of phrases used in legal texts and the general use of these terms in Indonesian. This is in line with the principle of legality contained in Article 1 paragraph (1) of the Criminal Code which states "No act can be punished except based on the criminal provisions in the applicable law." Grammatical interpretation requires the courts to begin their understanding of the norms of proper redaction as formulated by the lawmakers (Nurul Aini, et al., 2026).

Article 67 of the Criminal Code is the juridical basis that underlies the imposition of a null criminal verdict, considering that the article stipulates that defendants who have been given a criminal sentence in the form of twenty years in prison, life imprisonment, or the death penalty, can no longer be subject to additional penalties other than the revocation of certain rights and the announcement of the judge's decision to the public. This provision is strengthened by Article 12 paragraph (4) of the Criminal Code which limitatively stipulates that the total prison sentence given must not exceed the maximum limit of twenty years.

These articles are the basis for the judge to interpret that the null sentence is appropriate and does not contradict the law, so that basically the existence of a null sentence comes from the interpretation of the judge himself, but in terms of legal certainty it is still questionable. Legal certainty refers to the ability of law to allow us to predict human actions and their impact to some degree. Therefore, adhering to legal certainty in a value means viewing its existence

as beneficial and therefore acknowledging solid reasons to strive for its achievement or better yet, to optimize it. Certainty is an intrinsic characteristic of a regulation or rule and laws and regulations must be firm and fair. Legal certainty is achieved normatively when rules are formulated and disseminated clearly, because the regulations regulate comprehensively and rationally. Clarity refers to the removal of ambiguity and the establishment of a coherent set of rules to prevent conflicts between rules. Conflicts between regulations will continue to pose actual challenges in the future. This will trigger law enforcement to often fail to meet its main objectives, so that people consider that justice cannot be achieved in dealing with their diverse interests (Yanuarto et al., 2023).

Utrecht argues that legal certainty includes the existence of general regulations that give individuals an understanding of what is and is not allowed. Then it relates to legal protection for individuals against arbitrary government actions, since these regulations allow individuals to understand the obligations that may be imposed on them as well as the actions that the state may take against them (Julyano & Sulistyawan, 2019). Legal certainty is closely related to the positivist interpretation of law, which argues that law is the sole source of law, with courts functioning solely as a mechanism for applying law to specific cases.

John Austin argues that legal certainty is the main achievement of legal positivism to achieve this certainty, it is very important to distinguish rules from morals, so as to create a coherent, stable, and independent system (Julyano & Sulistyawan, 2019). Legal certainty is a concept that greatly influences the application of legal positivism, which seeks to produce objective or codified laws enforced by the state to maintain public order. So, such legislation can provide guarantees for the community.

Jurgen Habermas argues that legal certainty depends on the techniques used to achieve it, as well as discussing the dilemma between legal certainty and legal acceptance (Paunio, 2009). Its essence Procedural rights ensure the implementation of a balanced process in the legal system. Rather than ensuring an absolute outcome in each case, procedural legal certainty offers an in-depth explanation of the relevant legal phenomena and issues. This is not specifically contained in the legislation regarding the context of a null verdict. So, it is quite important to evaluate the way the judge makes a decision. For example, in a scenario where the defendant receives a sentence of 18 years and 9 years in two consecutive cases. The sentence for the latter case should remain 9 years although the cumulative maximum sentence of 20 years remains in effect. So this will represent a clarification of judicial procedures or technical aspects regulated by procedural law. In this regard, the main concern is not predictable outcomes, but guarantees that legal entities can clarify their legal status through judicial processes that comply with recognized procedural norms (Yanuarto et al., 2023).

Criminal law reform in Indonesia has been promulgated through the 2023 Criminal Code and the new Criminal Code. In the context of a null verdict, there is no legal provision that explicitly regulates the granting of a null verdict. However, there have been changes related to the article on which the decision was rendered null. The content that was previously listed in Article 67 of the old Criminal Code has now been moved to Article 129 of the 2023 Criminal Code. Article 129 of the 2023 Criminal Code regulates provisions regarding criminal acts committed simultaneously or in the form of *concursum*, where if the defendant has been sentenced to death or life imprisonment, it is no longer possible to impose other principal crimes on the defendant concerned. In such conditions, the only sanction that can still be

imposed is an additional penalty, which includes three forms, namely the revocation of certain rights inherent in the defendant, the confiscation of certain goods related to the criminal act committed, and the public announcement of the court decision to the wider community. It should be noted that in the provisions of Article 129 there is an addition of an element in the form of "confiscation of certain goods" as one of the additional forms of criminal that can be imposed, which distinguishes it from the previous provision.

Furthermore, these provisions are expanded and strengthened through Article 130 paragraph (2) of the 2023 Criminal Code, which stipulates that the provisions regarding the substitute penalty period in the form of confiscation of certain goods as stipulated in paragraph (1) c also apply to substitute penalties in the form of fines. This expansion of coverage has significant juridical implications, namely that even if the principal penalty can no longer be imposed because the defendant has served or been sentenced to the maximum sentence, the mechanism of imposing additional penalties can still be effectively applied as a sentencing instrument that complements the court's decision.

The emergence of a null criminal verdict in Indonesian criminal justice practice is expected to be a concrete solution to the problem of regulating material law that limits the maximum imposition of prison sentences to twenty years. However, the mere presence of a null verdict is not enough to answer all existing problems comprehensively. Thus, it is considered necessary and urgent to carry out comprehensive updates and reforms to the provisions of the Material Criminal Law and the applicable Criminal Procedure Law, in order to create a normative framework that is more responsive, adaptive, and able to accommodate the development of judicial practice that continues to develop.

The urgency of the legal reform is even stronger considering that the Indonesian state constitutionally adheres to and upholds the principle of the rule of law, as explicitly affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Within the framework of the state of law, every action and decision taken by the state apparatus, including judicial institutions, must always be based on clear, written, and juridically accountable legal norms to all citizens without exception.

Although the judge's authority in interpreting the law is recognized and ratified by the state, this null ruling has triggered systemic legal concerns because procedural law is the basis for the implementation of criminal law by the state, so the procedural law must be based on strict regulatory provisions. Because certainty refers to the behavior that must be carried out in accordance with the norms set in positive law, and justice refers to positive norms that are considered fair by the public (Sutrisno, 2015).

### **Determination of Decision Number 135/Pid.Sus/2023/PN Cbn Narcotics Case**

Decision Number 135/Pid.Sus/2023/PN Cbn is the decision studied in this study because it contains zero criminal results. This decision contains the following rulings in the form of:

1. Declaring that the defendant Auw Bun Hauw Alian Abun Bin Awan was legally and convincingly proven guilty of committing the crime of "malicious attempt or conspiracy without right or against the defendant offering to sell, sell, buy, receive, become an intermediary in the sale and purchase, exchange, or delivery of class I narcotics", as in the primary indictment of the public prosecutor
2. Imposing a criminal sentence on the defendant therefore with a prison sentence for nil.

The judge handed down this verdict after careful consideration. Judges' legal reasons include the reasons or bases used as legal considerations that underlie the decision of a case in a way that reflects justice (*ex aequo et bono*) (Bayu Prasetyo, 2021). In carrying out its judicial functions, the court is obliged to always be guided by the provisions of Article 4 paragraph (1) of the Judicial Power Law, which expressly stipulates that the court has the authority to examine, adjudicate, and decide every case submitted to it impartially, objectively, and impartially, and always based on the provisions of the applicable law. The principle of impartiality is one of the fundamental pillars in a democratic and fair judicial system, because without a consistent impartiality, the integrity and credibility of the judiciary as an enforcer of justice will be doubted by the public. Moreover, in the process of imposing a verdict against a defendant, the panel of judges is not only required to consider juridical aspects alone, but is also required to pay close attention and consider various factors that are non-judicial or extrajudicial. These factors include social, economic, psychological, and life conditions of the defendant that can affect the severity of the sentence that deserves to be imposed. Thus, the resulting verdict is expected not only to meet the element of legal certainty, but also reflect the value of substantive justice and benefits for all parties involved.

The juridical aspect includes indictments, demands, witness statements, evidence, defendants' statements, and laws and regulations. Then the non-judicial aspects include aspects of sociology, psychology, criminology, and philosophy.

From a legal perspective related to the provisions of laws and regulations, it is important to note that criminal sanctions based on Article 64 of the 2023 Criminal Code are categorized into principal punishments, additional punishments, and exclusive punishments in accordance with the law. The main punishments outlined in Article 65 of the 2023 Criminal Code include imprisonment, detention, supervision, fines, and social work. Additional punishments listed in Article 66 paragraph (1) include revocation of rights, confiscation of property, statement of court decision to the public, compensation, cancellation of permits, and fulfillment of customary obligations.

The provisions of Article 68 paragraph (1) of the 2023 Criminal Code stipulate that prison sentences can be imposed in two forms, namely life imprisonment or imprisonment for a certain period of time. The distinction between the two forms of imprisonment reflects the gradation of punishment that is adjusted to the level of seriousness of the crime committed by the defendant as well as various other juridical considerations that are relevant in the decision-making process.

Furthermore, Article 68 paragraph (2) of the 2023 Criminal Code limits the duration of imprisonment within a certain period of time, namely by setting a maximum limit of fifteen consecutive years and a minimum limit of one day. However, the provisions regarding the minimum limit are flexible, in the sense that if a law and regulation has set a specific minimum time limit for a specific criminal act, then the special minimum provision will be enforced and override the general minimum provisions stipulated in this article. Such an arrangement reflects the principle of *lex specialis derogat legi generali* that applies in the Indonesian criminal law system.

Amar decision point 2 (two) uses the phrase "imprisonment for nil", while the phrase "nihil" does not indicate a specific time. This is considered inconsistent with article 68 paragraph (2) of the 2023 Criminal Code which minimizes the minimum prison time of 1 (one)

day. In the results of an interview conducted by the author with one of the judges, it is explained that because the convict has been sentenced to the maximum sentence, the provisions in article 68 paragraph (2) are set aside because they are to protect the human rights of the convict. However, this is still a counter-dictative thing because it is not explained in any laws and regulations. In the judge's consideration of the decision, it was also not explained why article 68 paragraph (2) was set aside. This makes it clearer that there is still disharmony in laws and regulations because the mechanism for imposing zero sentences is not clearly regulated. Although the practice of zero verdict is considered a solution in some cases, this practice is a risk to the legal certainty and stability of the criminal law system in Indonesia.

Regarding the determination of the null verdict, namely the verdict Number 135/Pid.Sus/2023/PN Cbn, it is considered less effective because the convict in the case is a recidivist who has repeated the crime 5 (five) times and received a null verdict 2 (two) times. It should be noted that KBBI defines "effectiveness" as a term derived from the word "effective," which means the ability to produce an effect (effect, influence, impact), produce results, or achieve success (related to efforts or activities). Effectiveness is a measure used to evaluate the extent to which an organization or institution achieves a set goal.

From the perspective of criminal law, the principle of criminal effectiveness is not only measured by the smooth implementation of punishment, but also by the extent to which the system is able to prevent the repetition of criminal acts (deterrence), create a deterrent effect (incapacitation), and open up opportunities for behavior change through rehabilitation and social reintegration approaches. The ideal legal system is one that not only takes on the role of a repressor, but also as a mentor who corrects the behavior of criminals so that they can be accepted again in society (Suryantoro, 2025).

According to Wantu's theory of legal effectiveness and John Rawls's notion of distributive justice, the effectiveness of the criminal justice system should not be judged solely on the length of sentence or the number of inmates, but also on its ability to reduce recidivism rates through the encouragement of sustainable behavior change and the creation of positive social impacts (Suryantoro, 2025).

Goal achievement is a fundamental component of the concept of effectiveness. A program will be considered effective if the goals are successfully achieved as expected. Once these goals are achieved, the expected positive impact will be realized. Effectiveness can be evaluated by comparing the goals that have been set with the results achieved. Thus, the program is considered effective (Yusri, 2020).

The transformation of the Indonesian penitentiary system from a retributive model to a restorative model is in line with the concept of relative punishment, which states that criminal law plays a role as a mechanism to ensure public order. Therefore, punishment is not designed as revenge for the offense committed by the perpetrator, but as a means to achieve harmony and mutual order. This philosophy includes directed prevention, which is directed at the perpetrators, and general prevention, which is directed at the community. This theory focuses on prevention, crime prevention, and rehabilitation. The goal of rehabilitation is to change the criminal tendencies of the perpetrator through supervision and guidance from the competent institutions, thus enabling successful reintegration into society. Zevenbergen, as referred to by Wirjono Projodikoro, emphasized that the application of criminal punishment aimed at rehabilitating perpetrators includes three objectives, namely:

- a. Changes in laws and regulations to ensure compliance of criminals with the law
- b. A change in mindset to ensure that the perpetrators of crimes realize the seriousness of their actions
- c. Moral rehabilitation for perpetrators of crimes related to ethical values (Budhiartha, 2018).

Given that the convict has committed a criminal act 5 (five) times and received a zero sentence 2 (two) times, the sentence is considered not to achieve the current purpose of punishment which hopes to provide a deterrent effect and foster the perpetrator to be able to return to normal life in society. However, the results of the interview explained that the null verdict is still effective because it remains in the corridor of the law, the null verdict also aims to protect the human rights of the convict, namely the right to life. However, in practice, what makes the convict change for the better or not is back to the character of the convict and the way of the prison to provide guidance, because in the prison the convicts must be given useful guidance for them to return to the community better, it's just that the convict wants to be better or not.

## CONCLUSION

The null verdict was based on Article 67 of the Criminal Code, which was later revised through Article 129 of the 2023 Criminal Code. The issuance of a null verdict is based on the judge's authority to interpret the law in accordance with Article 5 paragraph (1) of the Judicial Power Law. Nonetheless, legal reform is essential to establish more substantive legal certainty, as these null rulings have implications at the systemic level of the law. Given that formal law serves as a framework for state power instruments in response to criminal incidents, it must have a clear regulatory basis. Although the determination of a null verdict through judicial interpretation can be justified, permitted, and supported by the state, further clarification and harmonization of the minimum threshold in the determination of criminal penalties is essential to prevent confusion and inconsistency between laws and regulations. Ensuring legal certainty is very important in the Indonesian legal framework which is based on the principle of the rule of law. Therefore, regulatory harmonization must be guaranteed. This aims to prevent legal ambiguity that can cause doubts to the state and law enforcement officials

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