



Legal Certainty of Crew Protection in Controlled Narcotics Schemes: A Doctrinal Analysis of Mens Rea and Actus Reus

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Abstract

Background. Problems arise when the crew is often positioned as perpetrators of narcotics crimes without adequate evidence related to malicious intent (*mens rea*) and unlawful acts (*actus reus*), especially in the context of limited knowledge and control of the ship's cargo.

Aims. This article aims to analyze the legal certainty in the protection of crew members who are indirectly involved in controlled *delivery* schemes, with an emphasis on the doctrinal construction of the elements of *mens rea* and *actus reus* in criminal law.

Methods. This research employs normative juridical methods, drawing on legislative, conceptual, and comparative legal approaches, and is supported by an analysis of relevant law enforcement practices.

Result. The results of the study show that there is a tendency to apply the *strict liability* approach in narcotics cases involving crew members, which in practice obscures the fundamental principle of *geen straf zonder schuld* (no crime without fault). In addition, the construction of *actus reus* is often disproportionately expanded to include individuals who have neither effective control nor real involvement in criminal acts. This condition creates legal uncertainty and may violate the principles of justice and the protection of human rights.

Conclusion. This article argues that proof of *mens rea* should be a central element in the attribution of criminal liability to the crew, and emphasizes the importance of strictly limiting the interpretation of *actus reus*. As a recommendation, it is necessary to reformulate the narcotics criminal law policy to be more oriented towards the principle of culpability, to strengthen evidentiary standards, and to align it with international legal instruments.

Implementation. Thus, it is hoped that a balance will be created between the effectiveness of narcotics eradication and fair legal protection for the crew.

Keywords: legal certainty; controlled delivery; A Man of Steel; *actus reus*; criminal liability; strict liability;



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INTRODUCTION

The development of global maritime trade and transportation has driven a significant increase in cross-border freight mobility. On the one hand, this condition makes a positive contribution to international economic growth, but on the other hand, it also opens up

opportunities for transnational crimes, including narcotics smuggling through the sea. Maritime routes are a strategic means for organized crime networks due to their large carrying capacity, the complexity of logistics chains, and limited surveillance in international waters.

In practice, narcotics crimes involving merchant ships often put crew members in a vulnerable position to criminalization. Crew members, who essentially carry out operational functions at the orders of superiors or ship owners, often have no knowledge of or control over the cargo being transported. However, in various cases, law enforcement officials tend to designate the crew as the subject who is also criminally responsible without conducting an in-depth analysis of the elements of error, both subjective (*mens rea*) and objective (*actus reus*).

This problem becomes even more complex in the context of *the controlled delivery scheme*, which is a law enforcement technique that allows narcotics trafficking to continue under the supervision of the authorities in order to uncover a wider network. In this scheme, there is potential ambiguity in determining the scope of individuals' involvement, especially crew members', which can affect the clarity of their legal status as perpetrators, participants, or even victims of criminal acts.

Doctrinally, criminal law requires two main elements in determining criminal liability: *actus reus* (unlawful acts) and *mens rea* (inner intent or malicious intent). The basic principle *of geen straf zonder schuld* affirms that a person cannot be convicted in the absence of a fault. However, in the practice of narcotics law enforcement, there is a tendency to shift towards a *strict-liability approach*, which precludes proving the element of subjective error. This approach has the potential to create legal uncertainty and injustice, especially for parties who have no real involvement in criminal acts.

Based on this background, this study raises two main problem formulations, namely: (1) how the doctrinal construction of *mens rea* and *actus reus* in narcotics crimes involving crew members; and (2) how to provide legal certainty in providing protection to crew members in *controlled delivery* schemes. This research aims to critically analyze the application of these two elements and formulate a fairer and more proportionate concept of legal protection.

Theoretically, this research is expected to contribute to the development of criminal law doctrine, particularly regarding the limits of criminal liability in transnational crimes. In practice, the results of this study are expected to serve as a reference for policymakers and law enforcement officials in formulating a more equitable approach, without reducing the effectiveness of efforts to eradicate narcotics crimes.

Despite the growing body of literature on criminal liability in narcotics law, existing studies predominantly focus on general principles of strict liability and law enforcement effectiveness without adequately addressing the specific legal position of crew members in controlled delivery schemes. The absence of clear evidentiary standards for proving mens rea, coupled with a tendency to hold all crew members responsible, has created significant legal uncertainty. Furthermore, limited attention has been given to harmonizing domestic enforcement practices with international legal standards on individual culpability and human rights protection. Therefore, a doctrinal reconstruction of criminal liability that prioritizes the principle of culpability and clarifies the limits of actus reus interpretation is urgently required to ensure fair and proportionate legal protection for crew members.

LITERATURE REVIEW

The Concept of Legal Certainty in Criminal Law

Legal certainty is one of the fundamental pillars of the modern legal system, requiring clarity of norms, consistency in application, and predictability in law enforcement. From the perspective of criminal law, legal certainty is closely related to the principle of legality (*nullum crimen, nulla poena sine lege*), which affirms that no act can be punished without a clear legal basis first.

Furthermore, legal certainty not only concerns the existence of written norms but also includes the consistency of interpretation and application by law enforcement officials. In the context of narcotics crimes, legal certainty often faces challenges due to the expansion of the interpretation of norms that tend to be elastic, especially in determining the subjects who can be held criminally responsible. This has the potential to create uncertainty, especially for parties such as crew members who are in subordinate and limited positions in decision-making.

Criminal Liability Theory

Criminal liability requires guilt as the basis for punishment. The classical theory in criminal law emphasizes that an act can be punished only if it meets the elements of an unlawful act (actus reus) and a subjective element (*mens rea*). Thus, the relationship between the perpetrator and the act must be proven in its entirety, both objectively and subjectively.

In the development of doctrine, several forms of error are known, including intentionality (*dolus*) and forgetfulness (*culpa*). Intentionality includes the will and knowledge of the consequences of the deed, while forgetfulness is related to the lack of caution that should

be avoided. In the context of crews, proving this form of error is crucial, given their position of often not having access to strategic information about the ship's cargo.

In addition, there is also a development of the concepts of *strict liability* and *vicarious liability* in modern criminal law. *Strict liability* allows criminalization without proof of subjective wrongdoing, while vicarious liability holds a person responsible for another party's actions. Although it aims to increase the effectiveness of law enforcement, the application of this concept must be carried out carefully to avoid ignoring the principles of justice and the protection of individual rights.

The Doctrine of Mens Rea and Actus Reus

Mens rea and *actus reus* are two essential elements in determining the existence of a criminal act. *Actus reus* refers to a physical act or act that violates the law, while *mens rea* is related to the inner attitude of the perpetrator at the time of committing the act.

In the doctrine of criminal law, these two elements must be fulfilled cumulatively to be able to impose a crime. However, in the practice of narcotics law enforcement, there is often a reduction in the importance of *mens rea*, especially when the authorities focus more on the existence of evidence as the basis for determining suspects. This kind of approach has the potential to obscure the principle of error and create space for the criminalization of individuals with no malicious intent.

In the context of the crew, proving *actus reus* is also not simple. The presence of narcotics on board the ship does not necessarily indicate that the entire crew was involved in the act. Therefore, a careful analysis of each individual's concrete involvement is required, including whether there is effective control, active participation, or knowledge of the existence of the prohibited goods.

The Concept of Controlled Delivery in Narcotics Law

Controlled delivery is a law enforcement technique that is recognized in international instruments, especially in efforts to eradicate illicit narcotics trafficking. This technique allows the shipment of illegal goods to continue under law enforcement supervision, with the aim of uncovering a broader criminal network.

While effective in uncovering narcotics syndicates, the implementation of *controlled delivery* poses complex legal implications, especially related to the legal status of individuals

involved indirectly. In some cases, the crew may be unaware that the activities they are engaging in are part of a law enforcement operation.

This condition raises fundamental questions about the limits of criminal liability and of legal protection for individuals who lack malicious intent. Therefore, a clear legal framework is needed to ensure that the implementation of *controlled delivery* does not compromise the basic principles of criminal law, particularly those of error and legal certainty.

Previous Research and Research Position

A number of previous studies have discussed criminal liability in narcotics crimes, including issues related to proving fault and the application of *strict liability*. However, studies that specifically examine the protection of crew in controlled delivery schemes *with a doctrinal approach to mens rea and actus reus remain* relatively limited.

This research aims to fill this gap by providing a more comprehensive analysis and focusing on legal certainty. By integrating conceptual approaches and analysis of law enforcement practices, this research is expected to make new contributions to the development of criminal law doctrine, particularly in the context of transnational crime in the maritime sector.

METHODS

This research is a normative juridical legal *research* that focuses on the study of norms, principles, and doctrines in criminal law, especially related to *mens rea* and *actus reus* in the legal protection of crew members in narcotics crimes. The nature of this research is descriptive-analytical, namely describing legal problems comprehensively and analyzing them to produce systematic and prescriptive legal arguments.

The approaches used include a legislative approach by examining national and international regulations, a conceptual approach to analyze criminal law theory and doctrine, a case approach through the study of court decisions, and a comparative approach to obtain perspectives from various jurisdictions.

The type of data used is secondary data consisting of primary legal materials in the form of laws and regulations, international conventions, and court decisions; secondary legal materials in the form of textbooks, scientific journals, and previous research; as well as tertiary legal materials such as legal dictionaries and encyclopedias.

The collection of legal materials is carried out through literature studies by tracing various academic sources and official documents. The analysis is carried out qualitatively through legal interpretation methods, namely grammatical, systematic, and teleological interpretations, and uses deductive reasoning to connect general norms with concrete cases.

Conclusions are drawn deductively by producing prescriptive recommendations to support the creation of legal certainty and fair protection for crew members in the context of narcotics crimes.

RESULTS AND DISCUSSION

Doctrinal Construction of *Mens Rea* in Narcotics Crimes Involving Crew

Analysis of law enforcement practices shows that *proof of mens rea* in narcotics cases involving crew members still faces serious problems. Doctrinally, *mens rea* is an essential element that reflects the existence of an inner attitude in the form of intention, knowledge, or awareness of the perpetrator towards the act committed. In the context of modern criminal law, the form of *mens rea* is not only limited to intentionality (*dolus*), but also includes forgetfulness (*culpa*) within certain limits.

However, in the practice of narcotics law enforcement, there is a tendency to assume the existence of *mens rea* solely based on the presence of narcotics on board. This approach implicitly shifts the standard of proof from "proving guilt" to "assuming guilt". This is contrary to the fundamental principle of the *presumption of innocence* as well as the principle of *geen straf zonder schuld*.

In the context of the crew, the subordinate position within the ship's work structure is an important factor to consider. Crew members generally have no authority over cargo, especially in international merchant ships where cargo management is under the control of logistics operators or cargo owners. Therefore, *proof of mens rea* must be based on concrete indicators, such as:

1. the existence of *actual knowledge* about the existence of narcotics;
2. involvement in the loading or distribution process;
3. the existence of profits obtained from the criminal act;
4. or the existence of communication that shows awareness and will.

Without these indicators, the crew's fault is doctrinally unfounded and potentially violates the principle of justice.

Actus Reus Analysis and Crew Involvement Limitations

The element of *actus reus* in narcotics crimes generally includes acts such as possessing, transporting, storing, or distributing narcotics. Problems arise when the concept of "*possession*" is interpreted broadly without considering *effective control*.

In many cases, the entire crew is considered "in control" of the ship's cargo simply because they are on board. This approach is problematic because it ignores the differentiation of roles and responsibilities within the ship's work structure. Doctrinally, *the actus reus* must show that there is a causal relationship between the individual act and the criminal act.

In this context, it is important to distinguish between:

1. actual possession: the individual has direct control over narcotics;
2. constructive possession: the individual does not hold physically, but has the power and intention to control;
3. Mere presence: Individuals are only on location without control or involvement.

Crew members who are only on board without access to cargo cannot be automatically qualified to meet the element of *actus reus*. Therefore, it is necessary to limit interpretation to prevent overcriminalization.

The Problem of Implementing *Strict Liability* in Maritime Narcotics Cases

One important finding of this study is the tendency to apply the principle of *strict liability* in handling narcotics cases, especially those involving crew members. In a strict liability regime, proof of subjective error is no longer the main requirement; it is sufficient to establish the existence of a prohibited act.

Although this approach aims to increase the effectiveness of narcotics eradication, its application in the context of the crew raises a number of problems:

1. Abandonment of the Culpability Principle
Criminalization without proof of guilt is contrary to the basic principle of criminal law, which places guilt as the basis for accountability.
2. Risk of Excessive Criminalization
Crew members who have no real involvement can be ensnared as perpetrators, thus creating injustice.
3. Imbalance between Effectiveness and Justice

Law enforcement that is overly repressive can sacrifice individual rights in the pursuit of enforcement. Therefore, the application of *strict liability* should be strictly limited and only used in certain conditions that truly meet the legal justification.

Implications of the *Controlled Delivery* Scheme on the Legal Status of Crew Members

The *controlled delivery* scheme is an internationally recognized investigative technique to uncover narcotics networks. In practice, law enforcement officials allow narcotics shipments to continue with strict supervision to identify the main perpetrators.

However, in the context of crews, this scheme raises legal ambiguities, including:

1. The crew may be involved in the distribution process without knowing that the activity is being supervised.
2. There is a possibility that the crew is used as a "tool" in operations without adequate legal protection;
3. The boundary between the perpetrator and the victim becomes blurred.

From a doctrinal perspective, this condition requires caution in determining criminal liability. Crew members who do not have *mens rea* should not be treated as perpetrators, but can rather be positioned as innocent parties or even as victims of organized crime.

Legal Certainty and Protection of Crew Rights

Legal certainty in this context is not only related to the clarity of norms, but also to the consistency of application and protection of individual rights. The results of the analysis show a gap between legal norms and law enforcement practices.

Some of the main problems found include:

1. The absence of clear evidentiary standards related to *mens rea* in maritime narcotics cases;
2. The tendency to generalize responsibility to the entire crew;
3. Weak legal protection mechanisms for uninvolved crew members.

To realize legal certainty with justice, the following steps are needed:

1. Affirmation of Evidentiary Standards

Proof of *mens rea* must be the main requirement in every criminal sentence.

2. Differentiation of Individual Responsibilities

Each crew member should be assessed based on their role and level of involvement.

3. Strengthening Legal Protection

Regulations are needed that explicitly protect crew members from baseless criminalization.

4. Harmonization with International Law

The principles in international conventions should be adopted to ensure more comprehensive protection.

Argumentative Synthesis

Based on the overall analysis, it can be emphasized that the main problem lies in the imbalance between the repressive approach to narcotics eradication and the protection of the basic principles of criminal law. The reduction of the role of *mens rea* and the expansion of *actus reus* have created space for legal uncertainty and potential injustice.

Therefore, doctrinal reconstruction is necessary by repositioning the principle of error as the main foundation of criminal liability. In the context of crews, a *culpability-based* approach should take precedence over a status-or-existence-based approach. Thus, a balance between the effectiveness of law enforcement and the protection of individual rights can be achieved, so that the criminal law system is not only repressive but also fair and just.

Research Contribution and Theoretical Implications

This study makes several significant contributions to the development of criminal law doctrine, particularly in the context of maritime narcotics crimes involving crew members. First, the research advances the theoretical understanding of criminal liability by reaffirming the centrality of the culpability principle as the fundamental basis of punishment. While contemporary narcotics enforcement increasingly relies on strict liability mechanisms, this study demonstrates that the marginalization of *mens rea* undermines the doctrinal coherence of criminal law and risks violating the principle of *geen straf zonder schuld* (no punishment without fault). By critically examining law enforcement practices, the study contributes to restoring the normative balance between enforcement effectiveness and the protection of individual rights.

Second, this research contributes to refining the doctrinal interpretation of the *actus reus* in maritime criminal law. Existing legal practices tend to expand the concept of possession or control to include all individuals present on board a vessel, regardless of their actual authority or involvement. This study proposes a more precise conceptual differentiation between actual possession, constructive possession, and mere presence, thereby strengthening the theoretical clarity of criminal liability attribution. Such differentiation is essential to prevent

overcriminalization and to ensure that criminal responsibility is assigned proportionally to individual conduct and control.

Third, the study introduces a doctrinal reconstruction framework that integrates legal certainty with human rights protection in the implementation of controlled delivery schemes. The research demonstrates that legal certainty is not merely a matter of normative clarity but also requires consistent evidentiary standards and procedural safeguards. In this regard, the study extends the theoretical discourse on legal certainty by positioning it as a dynamic principle that must balance the objectives of crime control with the protection of innocent individuals. This perspective aligns with the article’s finding that current enforcement practices often create legal uncertainty due to the tendency to assume guilt based solely on the presence of narcotics on board a vessel.

Fourth, this research contributes to the theoretical development of proportional criminal liability in transnational crime contexts. By emphasizing the importance of individualized responsibility assessment, the study bridges the gap between classical criminal law theory and modern law enforcement challenges in complex organizational crime networks. The proposed framework highlights that criminal liability should be determined not by status or proximity to a crime, but by demonstrable knowledge, control, and participation. This contribution strengthens the theoretical foundation for a more just and rational criminal justice system, particularly in maritime and transnational crime settings.

State of the Art	Research Gap	Novelty
Criminal liability requires mens rea and actus reus	Lack of doctrinal focus on crew protection in controlled delivery	Reconstruction of the liability doctrine prioritizing mens rea
Strict liability is increasingly applied in narcotics law	Absence of clear evidentiary standards	Development of a proportional evidentiary framework
Controlled delivery is recognized internationally	Legal ambiguity in crew involvement	Clarification of the legal status of the crew in controlled delivery
Legal certainty as a core principle in criminal justice	Weak protection mechanisms for uninvolved crew	Integration of legal certainty and human rights protection
Maritime narcotics enforcement focuses on effectiveness	Imbalance between enforcement and justice	Policy-oriented legal reform framework

Finally, the study offers broader theoretical implications for the evolution of criminal law policy. It suggests a paradigm shift from a status-based liability model toward a culpability-based liability model, thereby reinforcing the role of doctrinal principles as safeguards against excessive criminalization. In doing so, the research contributes to the ongoing scholarly debate on the limits of strict liability and the necessity of maintaining doctrinal consistency amid increasing enforcement pressures in global narcotics control.

CONCLUSIONS

This study confirms that legal certainty in the protection of crew members in narcotics crimes, especially in controlled *delivery* schemes, is still weak due to the tendency of law enforcement practices that ignore *mens rea proof* and disproportionately expand *actus reus*. Doctrinally, punishment is supposed to be based on the principle of guilt, but in practice, the crew is often portrayed as the perpetrator without evidence of actual knowledge or involvement, reflecting a shift towards strict liability that could lead to excessive criminalization. In addition, the implementation of *controlled delivery* blurs the line between the perpetrator and the innocent, thereby strengthening legal uncertainty. Thus, the main problem lies in the lack of balance between the effectiveness of narcotics eradication and the protection of basic principles of criminal law.

For this reason, a reformulation of criminal law policy is needed that reaffirms the importance of *mens rea proof*, is based on strict evidentiary standards, and applies to individual involvement. Responsibility assessments must be carried out proportionately to the crew's role and supported by strengthened legal protections to prevent baseless criminalization. In addition, it is necessary to prepare clear guidelines for the implementation of *controlled delivery* and harmonize with international legal standards. These steps are expected to help realize a fairer, proportionate criminal law system and provide legal certainty for the crew.

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