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## The regulation of corporate narcotics offenses in Indonesia

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### Abstract

The purpose of this paper is to analyze and identify corporations as legal subjects of narcotics crimes in Indonesia. So far, only individuals are often the subject of criminal acts. In its development, narcotics crimes have increasingly sophisticated modes, networks and technology, of course this is inseparable from the existence of corporations behind narcotics crimes. The normative legal method is used in reviewing and identifying research with a statutory approach. With this research, the norm regulation of narcotics crimes by corporations in Indonesia needs to add special norms related to corporate regulation, in order to provide legal certainty in the form of prosecution.

**Keywords:** Narcotics, criminal act, corporation

### Introduction

Narcotics crimes are no longer committed individually, but involve many people together, even an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels, using a high modus operandi, sophisticated technology, it is very difficult to prove criminal acts and perpetrator responsibility<sup>[1]</sup>.

Efforts to reduce the demand for drugs in the community include education, socialization, and mass campaigns by utilizing the masses such as at car free day, visiting schools, or through other publications such as billboards. Meanwhile, efforts to reduce the supply of narcotics are carried out, among others, by raiding locations suspected of being drug trafficking sites, conducting smuggling failures, or raiding drug dealers by police officers and the National Narcotics Agency<sup>[2]</sup>.

The Narcotics Law does not specify the differences in criminal liability between organized crime, corporations and participation in criminal acts. Narcotics crimes committed by organized crime are committed in a systematic, structured manner, and supported by a strong network<sup>[3]</sup>. Corporations have an increasingly important role in the development of the global economy. Corporations today as legal subjects have a stronger compressive power than individuals. This can be seen from the impact of losses committed by corporations, which are greater than individuals<sup>[4]</sup>. Indonesia currently does not regulate Corporations as legal subjects in the Criminal Code (KUHP). The regulation of Corporations is specifically regulated in the Law outside the Criminal Code<sup>[5]</sup>.

Criminal offenses involving corporations in general, both in quality and quantity, will cause

<sup>1</sup> Wibowo, A., Eddy, T., & Sahari, A. (2020). Tindak Pidana Korporasi Bagi Perusahaan Yang Terlibat Dalam Pencucian Uang Hasil Penjualan Narkotika. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 3(1), 52-60.

<sup>2</sup> Martin, J. A. (1990). Drugs, crime, and urban trial court management: The unintended consequences of the war on drugs. *Yale L. & Pol'y Rev.*, 8, 117.

<sup>3</sup> Hatta, M., Sumiadi, S., Zulfan, Z., Johari, J., Husni, H., & Zahir, M. Z. M. (2023). Criminal Liability Towards Corporations Acting As Narcotics Traffickers In Indonesia. *International Journal of Law, Environment, and Natural Resources*, 3(1), 55-66.

<sup>4</sup> Djuniarti, E. (2021). The criminal liability of corporations as crime perpetrators. *Jurnal Penelitian Hukum De Jure*, 21(3), 311-320.

<sup>5</sup> Rübenthal, M., & Brauns, C. (2015). Trial and Error – A Critique of the New German Draft Code for a Genuine Corporate Criminal Liability. *German Law Journal*, 16(4), 871-886.

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greater harm. This is because corporations tend to have larger capital, have a lot of resources, there are corporate managerial, and have the ability to influence law enforcement bureaucrats and society <sup>[6]</sup>. The current development of criminal law in Indonesia shows that the regulation of corporation as the subject of criminal offense can be seen in three systems of corporate responsibility: <sup>[7]</sup>

- a) The management of the corporation as the maker, then the management is responsible;
- b) The corporation as the maker, then the management is responsible, and
- c) The corporation as the maker and is responsible.

It has now evolved back to four systems, with the addition of the corporation and the board as the maker and both are liable <sup>[8]</sup>. Although corporations as subjects of criminal law have pros and cons, in Indonesia alone there have been 97 laws and regulations that include corporations as perpetrators of criminal acts that can be held criminally responsible <sup>[9]</sup>, Law No. 35/2009 on Narcotics is one of them. This law stipulates that the subjects who can become perpetrators of criminal acts are individuals, corporations, and organized crime. Currently, the trend of narcotics crime is that it is no longer committed individually, but can involve many people who are jointly involved as an organized syndicate with a wide network that works neatly and very secretly. This occurs both at the national and international levels <sup>[10]</sup>.

So far, narcotics crime has been synonymous with organized crime, which is an organization specifically created to commit crimes and is an illegal institution. However, developments show that narcotics crimes can also be committed by legal organizations or corporations (organizational crime/corporate crime), so legislation needs to formulate corporations as perpetrators of narcotics crimes. Given that corporations as a form of organized business entity make them more vulnerable to becoming perpetrators of narcotics crimes, the regulation of criminal liability by corporations in the legislation must be regulated in such a way that <sup>[11]</sup>.

The Draft Criminal Code to date has included corporations as a subject of criminal law that can be burdened with criminal liability. Furthermore, at the practical level, the Attorney General has issued Regulation of the Attorney General of the Republic of Indonesia Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects.

As described above, the importance of regulating corporations as subjects in narcotics crimes.

### Research Methods

This research uses normative research methods that use legal materials. In collecting legal materials, literature study techniques are used. Literature study is needed to collect the necessary legal materials, such as primary legal materials which include laws and regulations governing narcotics crimes that apply in Indonesia. This research uses a statutory approach. The statutory approach is carried out by examining the rules and regulations relating to narcotics crimes. Legal materials that have been collected will be processed and analyzed qualitatively.

### Results and Discussion

Narcotics have actually been regulated since 1926-1927, the Dutch Government which occupied Indonesia saw that there was a lot of opium trade carried out by traders from China. Thus the policy taken by the Dutch East Indies Government was to issue regulations on the opium business or the use of narcotics with the *Verdoovende Middelen Ordonantie* (*Staatsblad* 1927 Number 278 which was updated with *Staatsblad* number 635) <sup>[12]</sup>.

During the Dutch East Indies era, the *Verdoovende Middelen Ordonantie* (V.M.O) *Stbl.* 1927 No.278 Jo. No.536 which has been amended and supplemented and became known as the Drugs Act. At that time, the problem of Narcotics in Indonesia could still be considered a small problem. The Narcotics problem was considered by people who had the belief that Narcotics in Indonesia did not develop because the Indonesian nation was a Pancasila and religious nation. As a result of this view, the Government and the entire Indonesian nation were not aware of the dangers of narcotics <sup>[13]</sup>.

The Indonesian government has a great commitment in controlling the transnational narcotics trafficking trade, by authorizing the 1961 Single Convention on Narcotics and its amending Protocol through Law Number 8 of 1976. In the same year, Law No. 9/1976 on Narcotics was also issued, which aims to "regulate the supply and use of narcotics for medical and/or scientific purposes and to prevent and overcome the dangers that can be caused by the side effects of narcotics abuse, narcotics users and rehabilitation of addicts". In this law, there are regulations on the treatment and rehabilitation of victims of narcotics abuse and their countermeasures.

This Narcotics Law sees corporations as legal entities, which are considered to be able to act as perpetrators of criminal acts, where the corporation itself is not criminally liable but the management must be responsible. The VMO views that corporations cannot be held accountable for criminal offenses that occur with the thought that it is the corporate management that de facto commits the act <sup>[14]</sup>.

<sup>6</sup> Henning, P. J. (2009). Corporate criminal liability and the potential for rehabilitation. *Am. Crim. L. Rev.*, 46, 1417.

<sup>7</sup> Setiyono, *Kejahatan Korporasi: Analisis Viktimologis dan Pertanggungjawaban Korporasi dalam Hukum Pidana Indonesia*. (Malang, Bayumedia Publishing, 2003), 2.

<sup>8</sup> Sjahdeini, Sutan Remy. *Pertanggungjawaban Pidana Korporasi*, (Jakarta, Grafiti Pers, cetakan ke II, 2007), 62-63.

<sup>9</sup> Kristian. (2014). *Hukum Pidana Korporasi: Kebijakan Integral (Integral Policy) Formulasi Pertanggungjawaban Pidana Korporasi di Indonesia* (Bandung, CV. Nuansa Aulia), 263.

<sup>10</sup> Taufik Makarao, Suharsil dan Zakky. *Tindak Pidana Narkotika*, (Jakarta, Ghalia Indonesia, 2013), 43.

<sup>11</sup> Drug Problems in Indonesia and Their Countermeasures, BNN Paper at Training of Trainers in the Prevention of Drug Abuse and Illicit Trafficking 2015.

<sup>12</sup> Maroef, M. Ridha Sale. (2010). *Narkotika: Masalah dan Bahayanya, sebagaimana dikutip oleh Rido Triawan, dkk., Membongkar Kebijakan Narkotika*, (PBHI-Kemitraan Australia Indonesia), 3.

<sup>13</sup> Dirdjosisworo, Soedjono. (1990). *Hukum Narkotika Indonesia*, (Bandung, Citra Aditya Bakti), 20.

<sup>14</sup> Muladi dan Priyatno, Dwidja. (2013). *Pertanggungjawaban Pidana Korporasi*, cet. 4, (Jakarta, Prenadamedia Grup), 87.

This first period of the Narcotics Law has begun to see the regulation of corporations, namely regulated in Article 49 which explains that "if a criminal offense concerning narcotics is committed by or on behalf of a legal entity, a company, an association of other persons or a foundation, then criminal charges are brought and criminal penalties and disciplinary measures are imposed, both against the legal entity, company, association or foundation, as well as against those who give orders to commit the narcotics crime or who act as leaders or responsible for the act or omission, or both".

In this Law, a corporation can be the perpetrator of a criminal offense and the management is responsible, as well as the corporation can be the perpetrator of a criminal offense and the corporation itself is responsible. This indicates that when Law No. 9 of 1976 was made, the importance of criminalizing corporations that commit narcotics crimes was already felt, because the criminalization of corporate administrators alone is not enough to see the amount of losses caused by narcotics crimes and the amount of profit obtained by the corporation from the proceeds of narcotics crimes.

This law does not provide aggravated punishment to corporations that commit narcotics crimes, the punishment for corporations is equalized with narcotics crimes committed by individuals. Furthermore, there is no regulation regarding other sanctions in the form of disciplinary sanctions for the corporation itself. This indicates that drug crimes committed by corporations under this law are considered the same as crimes committed by individuals.

Based on the above description, we can see that this Law does not provide a definition of what constitutes a legal entity or corporation. The definition of corporation itself may be classified into groupings, namely group I in accordance with Article 4 paragraphs (1) and (2) and Article 5 paragraphs (1) and (2). Based on Articles 4 and 5, it can be concluded that a corporation by law is as follows:

- a) Institute of Science and Education,
- b) Pharmacies
- c) Pharmaceutical factories
- d) Pharmaceutical wholesalers
- e) Hospitals.

Group II regarding corporations or public legal entities that do not obtain / have a license from the Minister of Health who commit acts that have been prohibited in Article 23 paragraph (1) to paragraph (6) of this Law. The use of two models of responsibility for corporations that commit narcotics crimes shows that punishment for corporate administrators alone is not enough, when compared to the losses caused and the benefits obtained by the corporation.

#### **There are weaknesses in the regulation of corporate liability in this Law which we can see in**

- a) There is no explanation of the definition of corporation/legal entity.
- b) There are no types of criminal sanctions against corporations that commit criminal offenses.
- c) There is no aggravation of punishment for corporations that commit criminal offenses.

Indonesia's commitment in the world community is to play an active role in eradicating narcotics and psychotropic

substances. The Government of Indonesia on March 27, 1989 signed the United Nations Convention on the Eradication of Illicit Trafficking in Narcotics and Psychotropic Substances. After almost 8 (eight) years later the Government of Indonesia issued a new Act on Narcotics, namely Act No. 7 Year 1997 and Act No. 22 Year 1997 on Psychotropic as an effort to support the fight against narcotics crimes in the world in accordance with the results of the Vienna Convention <sup>[15]</sup>.

The regulation of corporations as legal subjects of narcotics crimes in this Law can be seen in the main criminal provisions for corporations that commit criminal offenses, which are regulated in:

- a) Article 78 paragraph (1) and paragraph (4)
- b) Article 79 paragraphs (1) and (4)
- c) Article 80 paragraphs (1) and (4)
- d) Article 81 paragraphs (1) and (4) and
- e) Article 82 paragraph (1) and paragraph (4)

The actions of the corporation are carried out contrary to the license granted, either in the form of exceeding the limits of the provisions in terms of the quality and quantity of narcotics permitted or in terms of the permitted business field. Category I corporations can take the form of legal entities such as Limited Liability Companies, Limited Liability Partnerships (CV), N.V., Cooperatives and other forms as broadly mentioned in Article 1 paragraph (18) of Law No. 22 of 1997. "Corporation is an organized collection of persons and or assets, whether or not it is a legal entity".

The definition of "organized" according to the Big Indonesian Dictionary is to have been arranged and arranged in one unit <sup>[16]</sup>. The definition of "wealth" according to the Big Indonesian Dictionary is equated with treasure, namely (1) goods (money, etc.) that become wealth; a person's property; (2) tangible and intangible wealth that is valuable and that is legally owned by a company <sup>[17]</sup>.

Corporations in this law are interpreted to be very broad in scope because they do not need to be legal entities. Such a broad interpretation of the provisions in the legislation is intended to streamline the eradication of narcotics crimes, but the breadth of the interpretation can also cause problems. Category II corporations can take many forms:

- a) Narcotics exporters
- b) Drug importers
- c) Pharmaceutical wholesalers
- d) Drug manufacturers
- e) Hospital
- f) Treatment centers
- g) Institute of science and
- h) Pharmacies/medicine stores

Letters a through h above are corporations as long as they meet the criteria as determined by Article 1 paragraph (19) of Law No. 22 of 1997. This is also confirmed by the opinions of Muladi and Dwidja Priyatno, as can be seen in the definition of "drug factory" is a company in the form of a legal entity that ..." (Article 1 sub 10), thus drug factories

<sup>15</sup> Maroef, M. Ridha Sale. *Op. Cit.*, 5.

<sup>16</sup> Kamus Besar Bahasa Indonesia Online, <http://kbbi.web.id/organisasi>

<sup>17</sup> Ibid

can be categorized as corporations<sup>[18]</sup>.

Can this kind of corporation be subject to criminal sanctions? It turns out that those who can be subject to criminal sanctions are the leaders and the types of criminal sanctions imposed are imprisonment and fines (Article 99). If we examine it, it turns out that the system of sanctions formulation is cumulative, so it cannot provide opportunities for judges to choose one of the appropriate sanctions that can be imposed on corporations (for example fines)<sup>[19]</sup>.

When viewed from who should be responsible for criminal acts committed by corporations in category I above, the corporate liability system adopted by this law is that the corporation is the perpetrator of the criminal act (maker) and the corporation is responsible, because if the criminal act is committed by the corporation, the punishment is only in the form of a fine, there is no physical punishment such as imprisonment or confinement. The fine imposed is also aggravated compared to the fine imposed if the criminal act is committed by an individual, this law also distinguishes the criminal punishment if the criminal act is committed in an organized manner, if it is committed in an organized manner then there is still a physical punishment in the form of imprisonment plus a fine, but in the event that it is committed by a corporation then only a fine. The punishment is also aggravated to almost 7 (seven) times the fine for individuals. This indicates that this law has recognized corporation as a separate subject of criminal law that can be charged with criminal responsibility<sup>[20]</sup>.

Meanwhile, drug factories, pharmaceutical wholesalers, or scientific institutions can be categorized as corporations, but cannot be held criminally liable. Thus, based on the corporate criminal liability system, in this Law, the criminalization for category II corporations is the management of the corporation which is made the maker and the responsible management. Unfortunately, in this Law there is no additional punishment for corporations, such as revocation of business license.

With regard to the criminal formulation process, the purpose of establishing the law becomes the basis of consideration in the process. Such is the case with Narcotics Law Number 35 Year 2009 on Narcotics. The criminal formulation stipulated in Article 110 up to Article 148 cannot be separated from the ideals of this Law<sup>[21]</sup>.

There are differences with the old Narcotics Law, in this Narcotics Law regulates general provisions that did not exist in the previous Narcotics Law. This Law contains the definition of precursor narcotics, organized crime and also the definition of drug dependence<sup>[22]</sup>.

With the existence of Law Number 35 of 2009 concerning Narcotics, the previous Law on Narcotics Number 22 of 2009 was declared revoked and invalid. This law also contains the provisions used in the Psychotropic Act which are regulated in groups I and II are included in this Narcotics Act<sup>[23]</sup>.

Law No. 35/2009 mandates the establishment of the National Narcotics Agency (BNN). The National Narcotics Agency is tasked with preventing and eradicating the abuse and illicit trafficking of narcotics and narcotics precursors. The Act specifically authorizes the BNN to conduct investigations and inquiries conducted by BNN investigators. The authority that is specifically only possessed by other investigators is limited to the provisions of criminal procedure law. This law also authorizes civil servant investigators to investigate narcotics cases, so that with Law No. 35/2009 there are 3 narcotics case investigators<sup>[24]</sup>.

This law also established an agency to strengthen the authority of the National Narcotics Agency (BNN), which has the function to handle the prevention and eradication of narcotics abuse. The National Narcotics Agency is also authorized to conduct investigations and prosecutions. If we refer to the previous law, the BNN was only a non-structural institution. BNN is now at the same level as a Ministry under the President. The National Narcotics Agency also has representatives of vertical agencies in the region called the Provincial National Narcotics Agency and the Regency / City National Narcotics Agency<sup>[25]</sup>.

BNN as a forum institution in charge of coordinating 25 related government agencies, plus operational authority, has duties and functions in terms of coordinating related government agencies in the formulation and implementation of national drug control policies and coordinating the implementation of national drug control policies<sup>[26]</sup>.

A corporation in this law is defined as an organized collection of persons and/or assets, whether a legal entity or not. The definition has not changed, it is still the same as the definition of corporation in the previous narcotics law. Thus, the scope of corporations referred to and can be ensnared in this law is also still very broad, this is intended to be able to ensnare more corporations suspected of committing narcotics crimes. However, this has shortcomings, because the regulation in such a broad article results in the article becoming a rubber article, and can be

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reduced and/or stopped suddenly, it causes typical physical and psychological symptoms.

<sup>18</sup> Muladi dan Priyatno, Dwidja. *Op. Cit.*, 69.

<sup>19</sup> Ibid.

<sup>20</sup> Asicioglu, F., Kucukibrahimoglu, E. E., & Ilingi, U. (2010). Psychotropic drugs evaluated in the context of narcotic drugs according to the new Turkish criminal law. *Klinik Psikofarmakoloji Bülteni-Bulletin of Clinical Psychopharmacology*, 20(4), 314-320..

<sup>21</sup> Alpert, A., Powell, D., & Pacula, R. L. (2018). Supply-side drug policy in the presence of substitutes: Evidence from the introduction of abuse-deterrent opioids. *American Economic Journal: Economic Policy*, 10(4), 1-35.

<sup>22</sup> Narcotics dependence is a condition characterized by the urge to use narcotics continuously with increasing doses in order to produce the same effect and if its use is

<sup>23</sup> Daniels, C., Aluso, A., Burke-Shyne, N., Koram, K., Rajagopalan, S., Robinson, I., ... & Tandon, T. (2021). Decolonizing drug policy. *Harm Reduction Journal*, 18(1), 120.

<sup>24</sup> Emerson Yuntho, Narkotika dan Korupsi, Opini, Kompas, Tanggal 11 Agustus 2016

<sup>25</sup> Roberts, S. C., Thompson, T. A., & Taylor, K. J. (2021). Dismantling the legacy of failed policy approaches to pregnant people's use of alcohol and drugs. *International Review of Psychiatry*, 33(6), 502-513.

<sup>26</sup> Wahyu, Y. F. D. (2022). Strategi Dalam Pencegahan Penyalahgunaan Narkoba Pada Kalangan Remaja Oleh Badan Narkotika Nasional Kabupaten (BNNK) Temanggung. *Journal of Politic and Government Studies*, 11(2), 475-486.



utilized by certain parties <sup>[27]</sup>.

The punishment given to the Corporation is in accordance with the provisions of Article 130 of this Law is imprisonment and a fine against the management. The imprisonment is carried out in accordance with the provisions of Article 111 up to Article 126 and Article 129. The aggravating punishment for corporation as the subject of criminal offense is also applied in this Law with the aggravation of 3 (three) times the fine stipulated in the provisions of Article 111 up to Article 126 and Article 129. Article 130 paragraph (2) in addition to fines, Corporations may be subject to additional punishment in the form of revocation of business license and/or revocation of legal entity status.

From the author's point of view, there are several interesting things when viewed from the history of Corporations in narcotics crimes that have long been regulated in the Narcotics Law. First, the Law Enforcement Agency that handles the problem of narcotics crimes, namely the Indonesian Police and the National Narcotics Agency (BNN), until now there has been no law enforcement against corporations as perpetrators of narcotics crimes. Then the question arises whether there have never been perpetrators of criminal acts committed by corporations or there is a need for technical guidelines for the implementation of these institutions so that they can be used as guidelines in law enforcement against corporations in narcotics crimes.

Second, seen from the regulation of Corporations in other laws, for example in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, which not only regulates the Corporation but also regulates the Corporate Control Personnel. Penalties also imposed on Corporations that commit money laundering crimes are clearly outlined, namely carried out or ordered by the controlling personnel of the corporation, carried out in order to fulfill the purpose and objectives of the corporation, carried out in accordance with the duties and functions of the perpetrator or order giver and carried out with the intention of providing benefits to the corporation. In terms of additional punishment imposed on corporations as perpetrators of criminal acts, it is not only revocation of business license and revocation of legal entity status. There are several other additions such as the announcement of a judge's decision, freezing part or all of the corporation's business activities, seizing corporate assets for the State and taking over the corporation for the State.

Third, there is a regulation that if the fine is not paid by the convicted person, the fine can be replaced by the confiscation of assets belonging to the corporation or the controlling personnel of the corporation with the same value as the imposed fine. If the sale of the confiscated assets of the corporation is insufficient, there is a substitution of imprisonment for a maximum of 1 (one) year and 4 (four) months. So, if we look at the regulation of Corporations in narcotics crimes, there is still a need for additional content material about corporations so that there is no multi-interpretation.

<sup>27</sup> Erasmus A. T. Napitupulu dan Miko S. Ginting, A Snapshot of the Implementation of Criminal Policy Against People Who Use Drugs, ICJR and LeIP, Jakarta 2013, <http://icjr.or.id/potret-situasi-implementasi-kebijakankriminal-terhadap-pengguna-narkotika>.

## Conclusion

The first period of the Narcotics Law has begun to see the regulation of corporations, namely regulated in Article 49 which explains that "if a criminal offense concerning narcotics is committed by or on behalf of a legal entity, a company, an association of other persons or a foundation, then criminal charges are brought and criminal penalties and disciplinary measures are imposed, both against the legal entity, company, association or foundation, as well as against those who gave the order to commit the narcotics crime or who acted as leader or responsible for the act or omission, or both. The regulation of corporations as legal subjects of narcotics crime in this Law can be seen in the main criminal provisions for corporations that commit criminal offenses, namely regulated in Article 78 paragraph (1) and paragraph (4), Article 79 paragraph (1) and paragraph (4), Article 80 paragraph (1) and paragraph (4), Article 81 paragraph (1) and paragraph (4) and Article 82 paragraph (1) and paragraph (4). The actions of the corporation are carried out contrary to the license granted, either in the form of exceeding the limits of the provisions in terms of the quality and quantity of narcotics permitted or in terms of the permitted business field. Category I corporations can take the form of legal entities such as Limited Liability Companies, Limited Liability Partnerships (CV), N.V., Category II corporations can take the form of drug exporters, drug importers, pharmaceutical wholesalers, drug factories, hospitals, treatment centers, scientific institutions and pharmacies / drug stores. Corporations in this third period of legislation are defined as an organized collection of persons and/or assets, whether or not they are legal entities. The definition has not changed, it is still the same as the definition of corporation in the previous narcotics law. The scope of corporations referred to and can be ensnared in this law is also still very broad, this is intended to be able to ensnare more corporations suspected of committing narcotics crimes. However, this has shortcomings, because the regulation in such a broad article results in the article becoming a rubber article, and can be utilized by certain parties.

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