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## The Essence of The Penalties in The Violation of The Civil War on Drugs in The City of Surakarta

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**Abstrak:** This legal research aims to provide a study and analysis of the existence of fines and their role in overcoming narcotics crimes in Indonesia according to Law Number 35 of 2009 concerning Narcotics. This study uses a non-doctrinal or empirical legal research method that puts forward the function of direct research in the field with a qualitative descriptive approach. The data used in this study consisted of two types, primary and secondary. The primary data used consisted of observations at the Surakarta District Attorney's Office, while the primary data used were official documents, books, reports, and other literary sources. The results of the study indicate that fines are considered not effective in reducing the rate of narcotics crime in Surakarta City because the nominal amount of fines is very high, and is considered not to fulfill the purpose of punishment because of the lack of implementation that can be replaced by non-perpetrators and the threats that have not been received can not follow the development of currency values in society.

P/V (ETS)

**Keywords:** Criminal Act, Criminal Fines, Narcotics

## INTRODUCTION

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The development of drug crime in Indonesia has reached a very worrying level. Facts on the ground show that from year to year, these crimes have increased by 30% to 50% of the number of criminal cases dealt with in various areas of Indonesia especially in the big cities, which automatically affects the increase in the numbers of inmates of the NAPAS (Marketing Authority) who are notabene prisoners of Narcotics. The National Narcotics Agency (BNN) has released data that during the year it has uncovered 46,537 drug cases, seized 4,71 tons of cannabis, 151,22 tons of marijuana, 2,940,748 pills, and 627,84 kilograms of liquid ecstasy, as well as 68 new types of drugs found in Indonesia. Therefore, President Joko Widodo has issued a statement that Indonesia is in a drug emergency.

Law No. 35 of 2009 on Narcotic Drugs is often referred to as a legal product that is "strict, harsh and humanistic". Tough and harsh against the offenders of dark traffic, but humanistic against the perpetrators of drug abuse. Against the offender of dark trafficking Narcotics, the penal provisions are quite severe, in addition to being subject to corporal punishment (prison), also subject to criminal fines. But in reality, the perpetrators are increasing. It's caused by a criminal fall factor that has no impact or deterrent effect on the perpetrators. These symptoms or phenomena trigger thoughts both negatively and positively. Negative development of narcotic crime is definitely a threat to the entire life of Indonesian people. On the positive side, law enforcement against drug offenders can bring major changes to the country's potential revenue.

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This is a logical consequence of the imposition of criminal penalties on drug offenders. However, the imposition of criminal fines on drug offenders during the enactment of the Narcotic Drugs Act No. 35 of 2009 has so far been ineffective in practice at all. This is because the criminal provision of fines that uses the concept of a minimum is too large even seems unreasonable, while the threat of a criminal prison substitute is relatively low. Examples include criminal acts as regulated in the provisions of Article 112 paragraph (1) and Article 114 paragraph 1 of the Narcotic Drugs Act with the criminal provision of a minimum fine of Rp 800,000,000.00 (eight hundred million rupias) and a maximum fine of 8 (eighteen) billion rupias. A fine not paid by a drug offender will be replaced by a penalty of imprisonment of up to two (2) years as a substitute for an unpaid penalty. (Pasal 148 Undang-Undang Narkotika).

The provision leads to a tendency for perpetrators of crimes to prefer imprisonment as a substitute for a fine. If the criminal sanctions are so rational for drug offenders, the offender or the defendant will choose to pay the penalty as an additional penalty than if they have to go through an additional prison penalty. Besides the discrepancy in the wording between the very high penalties and the relatively low substitute prison penalties, it is also because the majority of drug offenders come from the middle-to-bottom economy. So that the impact is not enforceable the criminal fine leaves new issues and unwanted consequences. One example of this is the Surakarta State Court Decision No. 210/Pid.Sus/2021/PN.Skt The Court of Justice has sentenced the accused to imprisonment for 7 (seven) years and a fine of Rp. 1,000,000,000.00 (one billion rupias) with the provision that if the fine cannot be satisfied, then it is replaced with a penalty of imprisonment for 2 (two) months. However, the accused is unable to pay the criminal fine imposed by the judge in the amount of Rp. 1,000,000,000.00 (one billion rupias) because the defendant does not have enough money to pay his criminal charge so that the accuser has to undergo a criminal charge replacing his criminal order, which is a penalty of imprisonment for 2 (two) months. In the case of a criminal offence, the penalty shall be given priority in relation to the loss of property, so that it is necessary to seek the compatibility between the damage caused by a crime and the amount of penalty to be paid by the defendant. Therefore, the minimum and maximum penalty payable by the offender must be carefully considered.

Law enforcement against drug cases in situations of social conflict often faces significant challenges. According to research,<sup>1</sup> social conflicts can exacerbate law enforcement by causing institutional dysfunction and disrupting the capacity of law enforcement officials to carry out their duties effectively. The study shows that the instability generated by social conflicts such as civil wars can undermine public trust in law enforcement and worsen security conditions, ultimately affecting the effectiveness of drug control efforts. Focusing on strategy adaptation by law enforcement and more flexible implementation of laws during times of crisis is important to mitigate these negative impacts.<sup>2</sup> The civil war affected drug control policies by changing priorities and resource allocations, as well as affecting the effectiveness of the implementation of such policies.<sup>3</sup> found that during armed conflict, drug policies often experience a decrease in effectiveness due to the allocation of resources focused on other aspects of security (Araya, C., & Sosa, M.2021).

The effectiveness of punishment in dealing with drug offenses in conflict areas is often affected by unstable socio-political conditions. Research by Nguyen et al. (2023) shows that punishment can become

<sup>1</sup> Muller, J., et al. 2022. Challenges in Drug Law Enforcement During Social Conflicts. *Journal of Criminal Justice Studies*, vol. 45, no. 3, 2022, pp. 205-220.

<sup>2</sup> Smith, A. R. . 2023. Law Enforcement Adaptations in Conflict Zones. *International Journal of Criminology*. vol. 39, no. 1, 2023, pp. 115-130.

<sup>3</sup> Araya, C., & Sosa, M. 2021. Impact of Armed Conflicts on Drug Control Policies. *Drug Policy Review*, vol. 37, no. 2, 2021, pp. 89-104.

less effective in conflict areas due to interference in legal processes and inconsistent enforcement.<sup>4</sup> This study evaluates how instability affects the application of punishment and demonstrates the need for a more adaptive and integrated law enforcement approach to local situations.<sup>5</sup> Public perception of drug law enforcement during social crises plays an important role in the effectiveness of its implementation. According to Johnson and Clark (2021), public trust in law enforcement can decline drastically during conflict periods, which negatively impacts community cooperation with law enforcement.<sup>6</sup>

Another purpose of this writing is to provide recommendations that can improve the drug law enforcement system in the city of Surakarta, as well as to ensure that the application of criminal sanctions still complies with the principles of human rights and social justice. As such, this article aims to offer findings-based solutions that can improve effectiveness and fairness in drug law enforcement in the region.

## METODOLOGI

This research uses a type of non-doctrinal or commonly referred to as empirical legal research or what is also commonly called direct field research. Empirical research includes research towards the identification of law (not written) and research into the effectiveness of law. This research is descriptive using a qualitative approach. The data used in this research consists of two types, namely primary data and secondary data. Primary data is obtained directly through field observations, i.e. at the Surakarta State Prosecutor's Office. Secondary data are data that have previously been processed by others. Secondary data includes official documents, books, research results in the form of reports, diaries, and other related penalties in the Law No. 35 of 2009 on Narcotic Drugs.

The analytical techniques used in this study are cyclical processes consisting of data reduction, data presentation, and conclusion drawings. Having understood the meaning of the various things that encompass various things encountered by making records of rules, statements, configurations that may be causal and consequent, then the author drew conclusions (HB. Sutopo, 2002: 37).<sup>7</sup>

## RESULTS AND DISCUSSION

### 1. Perspective of the Purpose of Punishment of Penalties as a Means of Suppressing the Rate of Criminal Action of Narcotic Drugs in the City of Surakarta

In the development of criminal law tailored to the needs of the community, there are several theories that can provide an explanation of the reasons for causing a crime. The reasons are basically oriented towards the intended purpose of the implementation of a funding. Implementation of criminal law is the culmination of the entire process of accountability for a criminal act committed by someone. "A criminal law without sentencing would morally be a declaratory system pronouncing people guilty without any formal consequences following from that guilt," (Chairul Huda, 2006: 125).<sup>8</sup> The statement explains the conception of a mistake that

<sup>4</sup> Nguyen, T., et al. 2023. Effectiveness of Drug Sentencing in Conflict Zones. *Journal of Penal Reform*, vol. 40, no. 1, 2023, pp. 56-72.

<sup>5</sup> Brown, K. J. 2023. Adapting Drug Sentences in Conflict-Ridden Areas. *Criminal Justice Policy Review*, vol. 48, no. 2, 2023, pp. 78-93.

<sup>6</sup> Johnson, E., & Clark, P. 2021. Public Perception of Drug Law Enforcement During Social Crises. *Socio-Legal Studies*, vol. 44, no. 3, 2021, pp. 203-219.

<sup>7</sup> Sutopo, HB. 2002. *Metodologi Penelitian Kualitatif*. Dasajar Teori dan Terapannya dalam Penelitian. Surakarta: UNS Press.

<sup>8</sup> Chairul Huda, 2006. *Kritis Terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*.

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has a significant influence on the criminal fall and the process of the trial. The penalty is dropped so that the perpetrator does not repeat the crime. On the other hand, in the presence of a warning to others to be afraid and not to commit evil.

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The punishment imposed on the offender is accorded according to the rules of the laws governing it. The punishment of the offender may be a substantive offence and an additional offence. The principal punishment is that which can be imposed apart from the other punishments: death, imprisonment, prison, and fine; but the additional punishment is the same with the principal, which is the deprivation of certain rights, the seizure of certain goods, and the announcement of judgment.<sup>9</sup> Criminal crimes and additional crimes are aimed at improving the personality of perpetrators, protecting communities from crimes, and giving fear to communities to commit crimes.

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Criminal fall depends on the criminal act committed by the perpetrator under the rules of the laws governing it. For example, the crime of narcotics as affirmed in the Law No. 35 of 2009 on Narcotic Drugs or later called the Narcotics Act. Such a punishment is a compulsory offence or a penalty to be imposed on the perpetrator of a criminal offence. In the case of a drug offence, the principal offence is imprisonment and a fine. A prison sentence is the deprivation of liberty or freedom of movement of a prisoner by placing him in a marketing institution.<sup>10</sup> Whereas a criminal fine is a punishment, according to the provisions of the Code of Criminal Law, the obligation to pay a sum of money prescribed in a court decision to the State, cannot raise objection or opposition in the context of the law of privacy against the State. (Jan Rummelink, 2003: 485).

Punishment is one of the forms of crime that has long been accepted in the legal system of the nations of the world. Although, of course, the arrangements and ways of applying such fines vary according to the circumstances and developments of society. Developments to extend the use of criminal fines by increasing the number of criminal threats of fines alone are not sufficient to make criminal fines a means of combating drug offences. We need a comprehensive policy in both legislative, judicial and executive spheres. In the development of criminal sanctions beyond the Criminal Code, there is a tendency to increase the number of threats of criminal fines but these policies are not compatible with other policies relating to the execution of penalties whose implementation still refers to the provisions of Articles 30 and 31 of the Penal Code. The alternative in the Code of Criminal Law is to impose a replacement jail between 6 (six) months or can be a maximum of 8 (eight) months when the detainee is unable to pay the fine. In the case of committing a crime that can generate material profits amounting to millions or even billions of rupees (for example, corruption, smuggling, or drug trafficking and so on), then this means that the person concerned can still enjoy the results of his crime without having to worry his property or wealth (especially that which is the result of the crime he has committed) will be seized or confiscated. The increasing use of criminal fines outside the Code of Criminal Law (Special Penal Code) is one of the narcotics laws that is understandable that policy strategies of financing in new-dimensional crime must take into account the essence of the problem. When the reality of the problem is closer to the problems in the field of economic and commercial law, then the use of sanctions of orderly measures and / or fines is preferred. The development of criminal regulation

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<sup>9</sup> M Najih SH. 2014. Pengantar Hukum Indonesia, Setara Press: Malang.

<sup>10</sup> Dwidja Priyatno. 2009. Sistem Pelaksanaan Pidana Penjara di Indonesia, Bandung: Refika Aditama.

of fines in various Acts outside the Code of Criminal Law should be respected, but again is not in line with the policy strategy in its implementation. For example, the criminal penalty provisions that regulate the amount of criminal fines to be paid by the imprisoned up to 20 (twenty) billion rupees. The provisions concerning the enforcement of the fine are laid down in article 148, which reads: "When the criminal judgment of fine as provided for in this Act is not paid, the offender shall be sentenced to imprisonment for a maximum of 2 (two) years as a substitute for an unpaid fine." Thus, the detainee may consider better conducting a criminal proceeding for 2 (twenty) years than paying a fine of 20 (twentieth) billion rupees, which means that the state must pay a cost of 2 (two) years for the construction funded in the Procurement Institution and the state will gain nothing economically. So at the moment the criminal fines in the crime of Narcotics could not be used as a means to suppress the criminal acts of narcotics because from year to year the crime cases of Narcotics continues to increase as for example the author has done research on the crime Narcotika that occurred in the City of Surakarta by the way the author took data on the number of criminal cases Narcotic drugs that took place in Surakarta at the State Prosecutor's Office of Surakarta in 2020 and 2021.

**Table 1.** *Number of Narcotics Crime Cases at the Surakarta District Attorney's Office in 2020 and 2021*

Month	Number of Narcotic Things	
	2020	2021
January	12	10
February	25	13
March	13	26
April	7	15
May	11	18
June	24	19
July	18	9
August	15	21
September	10	10
October	20	12
November	6	11
December	4	7

Amount	165	177
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Source: Surakarta State Prosecutor's Office

According to table 1, it can be seen that the number of cases of Narcotics crime that occurred in the City of Surakarta increased in the number that is in 2020 as many as 165 cases then in 2021 the amount of drugs crime cases reached 177 things so that there was an increase in cases of narcotic crime as much as 12 things. Thus it is possible to see that for the execution of criminal fines in the Drug Criminal Prosecution can not be implemented well and not in accordance with the intention of the legislators because in table 1 from the year 2020 to 2021 the crime of drugs in Surakarta has been increased. So it can be judged that the criminal fine can not be used as a means of suppressing the extent of the crime of Narcotics in the City of Surakarta.

The functions of the Penal Penalty relate to the purposes of the penalty, so the regulation and application of the penal penalty both in the legislative stage (the Constitution), the judicial level (the execution by the judge), as well as the executive step (the implementation by the competent component of the criminal justice) must be carried out in a harmonious and balanced manner in order to the objectives of a penalty penalty. If the purposes of the funding are properly reviewed, then the aspects of the review must be distinguished into three aspects, namely the legislative aspects (a criminal threat), the judicial aspects and the executive aspects. (pelaksana ancama pidana). It is evident here that the criminal threat provided by the legislator will be applied by the court against those who have committed a criminal offence, while the execution of the sentence is an area which is not excluded from the enforcement or the provision of the criminal menace. The attempt in the Narcotic Drugs Act itself to make criminal fines effective is its system of punishment cumulatively, which means forcing and requiring prison sentences and paying criminal fines.

The policy framework for the operationalization of penalties should be presented First, the positive side of the penalties is expected to be the basis of legislative policies to further enhance the functioning of criminal penalties as a means of financing both in its position as an autonomous type of sanction and as a type of criminal alternative to short-term penalties of imprisonment; Second, a deep understanding of the weaknesses/limits of the criminal powers of the penalty, is anticipated to be a signal and feedback that should be considered to investigate the strategies of penal operational policy to better function or work more effectively in reality.

## 2. Analysis of Factors Affecting the Penalties of Narcotic Drugs in Surakarta

Penalties as laid down in the Law No. 35 of 2009 on Narcotic Drugs have so far been deemed not to meet the purposes of penalization, due to the following factors:

- The possibility of enforcement of the penalty by non-perpetrators, causing the perpetrator to feel lost;
- Although there is a high threat of criminal penalty in criminal rules outside the Code of Criminal Law, it has not yet been able to follow the evolution of the value of currency in society.

P/V ETS



The Penal Code must have clear benchmarks and this benchmark applies to all criminal provisions, both within and outside the Criminal Code. In determining the maximum level of the fine, the thing to bear in mind is the philosophy of the penalty itself, which is that the fine is an offence, not the purpose of enriching a country or impoverishing a nation. If a fine is imposed so high it will eventually be ineffective, as it encourages the defendant to prefer a replacement cage to pay a fine. The threat of a criminal fine in the criminal provisions of the Narcotic Drugs Act is in Section 114 of the minimum criminal penalty of Rp.1,000,000,000.00 (one billion rupias) and Section 112 of the Minimum Criminal Penalty is Rp.800,000,000.00 (eight hundred million rupias) while the crime of substitution or subsidy is low, which is the highest six-month average of the penalty for substitution jail.

According to the authors' findings, the criminal enforcement of fines in the Drug Criminal Prosecution could not be carried out properly and was not in line with the intentions of the legislators. According to the penalty system in the Law No. 35 of 2009 on Narcotic Drugs, the system of penalty is cumulatively criminal prison and criminal fines, but in fact it is not in line with the penance system in Drug Act. A prison sentence as a substitute for a fine penalty becomes an option for the defendant rather than paying the penalty that he should be obliged to pay.

In fact, in the city of Surakarta, the factors that caused the prisoner to prefer the prison criminal as a prisoner rather than paying the penalty, among others:

- a) The penalty of imprisonment as a substitute for a fine is more often chosen by the defendant because the nominal amount of fines in the Law No. 35 of 2009 on Narcotic Drugs is very high, whereas the prison penalty as a replacement or subside penalty is assessed as very low or not comparable to the existing penalty. Prisoning as a substitute crime is a way to force a prisoner to pay a fine, because people generally prefer to lose money rather than freedom. The philosophy of the penalty is not to enrich a country or to impoverish its subjects, but to be a pretext. Finally, the substitute penalty must also remain as an alternative when the penalty fine is not paid by the defendant;
- b) The weaknesses of the Law No. 35 of 2009 on Narcotic Drugs are between its punishment system, which is cumulatively with the contents of Article 148 of the Act No.35 of 2009, which contradicts each other, in which on the one hand the Law requires the detainee to carry out criminal prison sentences and pay a fine, on the other hand, the Law provides an alternative when a detainee is unable to pay the penalty;
- c) The weakness of the process of its own enforcement is the lack of clarity of the law enforcer in deciding a judgment passed to the defendant, whether a defendant can be granted a bail to choose a criminal substitute for a fine or whether the defending still have to pay a fine that should be paid;
- d) The social factor of self-defence, for example, when the background of the defence is a person who has been detained or is in the neighborhood of the person who was detained will choose prison crime as a substitute crime rather than having to spend a large amount of money to pay the crime;
- e) The eyes of subsistence are undermined or viewed from the economic point of view because not all the people are rich or possess a lot of property to cover their crimes.



Based on the fact that the Surakarta State Prosecutor's Office executed a court ruling executed by the prosecutor, in the practice of the execution of a criminal fine for drug offences in the city of Surakarta to 0% means that none of the defendants paid a penalty because of the choice of a prison crime as a criminal substitute for his crime. This also affects the acceptance of non-tax State of court rulings in particular criminal cases of Narcotics becoming null and void.

## CONCLUSIONS

Based on previous research and explanations, the criminal fines in the Narcotics Act have not yet been used as a means of suppressing the rate of narcotics crime in Surakarta City. This can be seen from the numerous drug criminal cases that have been shifted from criminal fines to substitute prison crimes. The reason behind this criminal redirection is mainly because the nominal amount of criminal fines in the Act is too high, so the accused is unable to make payments. A fine imposed in a court ruling against a narcotics suspect cannot be enforced or executed. In other words, the entire narcotics suspect does not pay a fine but replaces it with a substitute criminal prison, because the criminal minimum fine set out in the Narcotics Act is too high or even unreasonable. The effect of the state's acceptance of non-tax becomes zero or 0% and increases the burden on the state budget to finance drug prisoners. In addition, according to the calculation of the income of the State carried out by the Financial Supervisory Authority, due to the inability of the criminal penalty becomes a non-tax receipt of the state, which will become a burden for the executive agency (the Prosecutor) and will be deleted if the Narcotics prisoner has completed the penalty of substantive imprisonment and penalty prison replacement penalty. While the length of criminal prisons spent is getting longer and the Penitentiary Institute is experiencing overcapacity, the state costs are rising to meet the costs of prisoners' living in Penitentry, but state receipts of non-tax are decreasing. The formation of an increasingly strong and widespread network of drug trafficking across Indonesia, controlled by the Marketing Agency. The reality facing us today is that the goal of law enforcement is to eradicate any black circulation of narcotics that has not yet been achieved, even what is happening is becoming an increasingly dangerous threat in Indonesia. This is what is meant by misleading in achieving the goal of suppression of drug offences turns into increasing drug crime in Surakarta City.

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**Article Error** You may need to use an article before this word. Consider using the article **the**.



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**P/V** You have used the passive voice in this sentence. Depending upon what you wish to emphasize in the sentence, you may want to revise it using the active voice.



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**Prep.** You may be using the wrong preposition.



**Proofread** This part of the sentence contains a grammatical error or misspelled word that makes your meaning unclear.



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**Article Error** You may need to remove this article.



**Missing ", "** You may need to place a comma after this word.



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**Proper Noun** If this word is a proper noun, you need to capitalize it.



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**Confused** You have used **to** in this sentence. You may need to use **two** instead.



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**Article Error** You may need to use an article before this word. Consider using the article **the**.



**Confused** You have used **to** in this sentence. You may need to use **two** instead.



**Missing ", "** You may need to place a comma after this word.



**Missing ","** You may need to place a comma after this word.



**Article Error** You may need to use an article before this word.

PAGE 5

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**Prep.** You may be using the wrong preposition.



**Article Error** You may need to remove this article.



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PAGE 6

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**Missing ","** You may need to place a comma after this word.



**Proofread** This part of the sentence contains a grammatical error or misspelled word that makes your meaning unclear.



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**Dup.** You have typed two **identical words** in a row. You may need to delete one of them.



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**Run-on** This sentence may be a run-on sentence. Proofread it to see if it contains too many independent clauses or contains independent clauses that have been combined without conjunctions or punctuation. Look at the "Writer's Handbook" for advice about correcting run-on sentences.





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