

Implementation of Criminal Law in Narcotics Cases in Indonesia

Clarissa

Universitas Jambi, Jambi, Indonesia

Email : icvals1812@gmail.com

ABSTRACT

Issues related to drug-related crimes have become a major concern around the world and an ongoing topic of discussion at the national and international levels. The problem of drug abuse is not only a national, but also a global challenge that is troubling various nations. The adverse effects of drug abuse involve damage to physical, mental health, emotional, and societal values. Narcotics abuse has become a serious threat faced by society and the nation, forming a national and international organized crime. With this background, it raises a topic entitled "The Application Of Narcotic Penal Law In Indonesia". Which reviews how criminal law is used to regulate narcotics crimes in Indonesia, including the criminal law system applied. The research method applied in this journal is a normative juridical approach, in which the author analyzes the problem by considering legal principles and referring to legal norms in legislation. The data used in this scientific journal is secondary.

Keyword: Narcotics' Criminal Law, Implementation of Law, Narcotic Abuse

INTRODUCTION

Article 28H(1) of the 1945 Constitution establishes the right of every individual to a life of physical and mental well-being, including having a good and healthy home and environment, as well as access to health services. Therefore, Indonesian citizens have the right to have a drug-free home and environment. Narcotics, which are known to cause addiction and harm the body and endanger human life, require attention in maintaining a life free from health problems. This effort is reflected in

Law No. 35 of 2009 on Narcotics, which aims to regulate, supervise, and crack down on the distribution and abuse of narcotics. Apart from potentially causing addiction, narcotics can cause death quickly and unnaturally. Therefore, initiatives are needed to create a clean environment and ensure the health of the body so that humans can live life well. Narcotics abuse is considered a crime against humanity, making narcotics an enemy to Indonesia's efforts in forming a healthy future generation free from the influence of narcotics.

Narcotics are substances or drugs that can come from plants or non-plants, both in the form of synthetic and semisynthetic products, which have the ability to reduce or change the level of consciousness, reduce or eliminate pain, and cause dependence. Psychotropic, a type of substance or drug both natural and synthesized, which is not included in the narcotic category, has a

psychoactive effect through selective influence on the central nervous system that can cause characteristic changes in mental activity and behavior. Narcotics also refer to substances or drugs that can be derived from plants or non-plants, including those that are synthesized or semi-synthesized, which have the ability to reduce or change the level of consciousness, cause loss of taste, reduce to eliminate pain, and have the potential to cause dependence. Types of narcotics are divided into certain categories, as described in this law.

Drug use is often associated with crime, where drugs are considered to have a negative impact and encourage users to commit criminal acts. According to Mustafa (2007), the concept of crime as a social symptom includes not only actions that violate the law, but also actions that harm and violate the values of society. Formal rules are not the only benchmark to determine whether a behavior is considered a crime or not, as explained by Mustafa.

As a form of crime that has long been an enemy of the nation, drug abuse is currently a serious threat to Indonesia and the rest of the world. The production and circulation of narcotics is massive in society, with the role of the narcotics mafia being difficult to suppress. The drug mafia has even managed to poison law enforcement officials, both as users and dealers, in Indonesia and in various parts of the world, despite continued drug eradication efforts. Despite frequent statements about building commitment and unity to eradicate drugs, this challenge remains a complex problem in our country and around the world.

Combating drug-related crimes involves global participation, but illicit drug trafficking continues to increase. Drug-related crimes are considered extraordinary acts with major impacts on society, culture, economy and politics. To respond to this transnational crime, extraordinary punishment is required.

The issue of narcotics has become a global concern, recognized by the majority of UN members through the approval of the United Nation Convention Against the Illicit Traffic in Narcotics Drugs and Psychotropic Substances in 1988. The Convention aims to combat the illicit trade in narcotics and psychotropic substances. The content of the 1988 Convention reflects international efforts in tackling transnational crime organizations, involving aspects such as extradition, mutual legal assistance, handling drug trafficking by sea, controlled delivery, strengthening anti-money laundering regimes, criminalization of precursor diversion, and precursor control.

The development of handling drug issues around the world shows a holistic approach that

involves countermeasures from both the supply and demand sides. The Convention, with a focus on national interests, ensures legal certainty and justice in the enforcement of illicit drug and psychotropic trafficking involving cross-border criminals. Although Indonesia's Narcotics Law allows the juridical distribution of narcotics, their use is only for the purposes of medicine and science.

Article 7 of Law No. 35/2009 on Narcotics emphasizes that "Narcotics can only be used for the benefit of health services and/or the development of science and technology." However, the reality shows that narcotics use is often abused, especially in Indonesia, with massive circulation. Although juridically considered legal, the Narcotics Law prohibits the unauthorized use of narcotics. The use of narcotics is often done without considering the purpose of treatment or science, creating a detrimental negative impact. Narcotics crime is growing as a business that harms physical and psychological well-being, especially of the younger generation, and involves various layers of society, including law enforcement officials, politicians, private officials, students, and even children.

The National Narcotics Agency (BNN) reported the disclosure of various drug crimes during 2015, with 50,178 suspects arrested in 40,253 cases. Narcotics seized included 23.2 tons of marijuana, 1,072,328 items of ecstasy, and 2.3 tons of crystal meth, while heroin and cocaine were few in number. Despite law enforcement with many suspects sentenced to death, drug trafficking has increased.

Drug law enforcement in Indonesia, despite having regulations, has not been able to reduce this crime. Many drug dealers and traffickers have been caught and sentenced to death, but this has not stopped drug trafficking. Law enforcement in Indonesia is expected to provide protection and public welfare through social policies, including law enforcement and legislative policies.

The study of criminal law enforcement highlights the law enforcement system or criminal law enforcement, which includes crime prevention policies. In crime prevention, criminal and non-criminal sanctions are used to enforce the law. Law enforcement has the goal that people obey the law. Public obedience to the law is caused by three things, namely: (1) fear of sin; (2) fear because of the power of the authorities related to the imperative nature of the law; (3) fear because of shame of doing evil. Law enforcement with non-penal means has targets and objectives for the benefit of internalization.

The existence of the Narcotics Law, namely Law No. 35 of 2009 concerning Narcotics, is

an effort of the Indonesian government's legal politics towards overcoming narcotics crimes. The establishment of narcotics laws is expected to tackle illicit trafficking and abuse of narcotics by using criminal or penal means.

METHODS

1. Research Method

The research method in this writing is carried out with a normative juridical approach, namely by analyzing the problem through a legal principles approach and referring to legal norms contained in laws and regulations.

2. Data and Data Source

The data used in this thesis is secondary data. The secondary data referred to by the author are as follows:

- a. Primary legal materials, namely binding legal materials, consisting of the 1945 Constitution, laws and regulations in the form of the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), Law No. 35 of 2009 concerning Narcotics and those related to criminal law policy issues on the regulation of narcotics crimes in Indonesia.
- b. Secondary legal materials in the form of books related to narcotics crimes, articles, research results, reports and so on.
- c. Tertiary legal materials, namely supporting legal materials that include primary legal materials, secondary legal materials such as general dictionaries, legal dictionaries, magazines, scientific journals, as well as materials outside the relevant field and can be used to complement the data needed in writing.

3. Data Collection Method

The writing of this Journal uses a data collection method, namely library research, namely research conducted using data from various reading sources such as laws and regulations, books, magazines and the internet which are considered relevant to the issues to be discussed in this journal.

4. Data Analysis

Data analysis is qualitative analysis. The secondary data obtained is analyzed qualitatively to answer the problems in this journal.

DISCUSSION

The application of criminal law in tackling crime in Indonesia

According to Soedarto, legal politics includes efforts to realize regulations that are in accordance with certain conditions. Furthermore, legal politics is explained as a state policy that uses its equipment to establish regulations that are desired and considered to reflect the values of society in order to achieve the desired goals. Solly Lubis agrees that legal politics is a political policy that determines the legal regulations that should regulate aspects of social and political life. Mahmud M.D. also defines legal politics as government policy regarding laws that are applied nationally. This understanding involves the way in which politics influences law making and enforcement by considering the configuration of power behind it. In this context, law is seen as a subsystem that can be strongly influenced by politics, both in its formulation (articles) and in its law enforcement.

Based on the definition of legal politics above, it can be concluded that criminal law politics is an effort to direct the implementation of Indonesian criminal law into the future by considering current enforcement. This is also related to the concept of the most optimal criminal law to be applied. Soedarto emphasized that implementing criminal law politics means making a selection to achieve the best criminal legislation that meets the requirements of justice and effectiveness.

According to Marc Ancel, the politics of criminal law is a science and art that aims practically to formulate positive legal regulations better, providing guidance to lawmakers, courts, and executors of court decisions. A.Mulder elaborates the scope of criminal law politics by considering changes in criminal provisions, crime prevention, as well as investigation, prosecution, trial, and criminal execution. Mulder's definition is based on the concept of "criminal law system" by Marc Ancel, which consists of criminal law regulations, criminal law procedures, and criminal enforcement mechanisms in organized society.

Efforts and policies to make good criminal law regulations cannot be separated from the goal of crime prevention, making the politics of criminal law a part of criminal politics. Thus, the politics of criminal law can be considered as a crime prevention policy with criminal law. Crime prevention efforts with criminal law are actually also part of law enforcement efforts, especially criminal law enforcement. Criminal law politics or policy can be seen as an integral part of social welfare policy. Criminal law policy becomes reasonable if it is considered as an integral part of social policy.

Based on the dimensions that have been described, criminal law policy is basically an effort to create criminal legislation that is in accordance with the circumstances at a certain time (*ius constitutum*) and the future (*ius constituendum*). Therefore, criminal law policy can be identified as penal reform in a narrow sense, considering that law as a system involves culture, structure, and legal substance, with the law as part of the legal substance. Criminal law reform does not only involve changes in legislation, but also includes updates to the basic ideas and science of criminal law.

Essentially, criminal law policy (penal policy, criminal policy, or *strafrechtspolitik*) covers the process of criminal law enforcement as a whole or total. According to Wisnubroto, criminal law policy involves aspects such as the government's efforts in tackling crime with criminal law, the formulation of criminal law to suit the conditions of society, the regulation of society with criminal law by the government, and the use of criminal law to regulate society in achieving greater goals.

By considering the definition of criminal law politics explained by A. Mulder and others, the scope of criminal law policy includes evaluating the substance of the current criminal law, updating the substance of criminal law in the future, implementing criminal law through the Criminal Justice System, and crime prevention efforts. Crime prevention implies that criminal law must function as an instrument to prevent potential crimes, and the application of criminal law must have an effective influence in preventing the occurrence of previous crimes.

Current Criminal Law System on the Regulation of Narcotics Crime in Indonesia

a. Types of prohibited acts in law no.35 of 2009 concerning narcotics

The scope of criminal law includes three provisions, namely criminal acts, responsibility, and punishment. The criminal provisions contained in Law No. 35/2009

on Narcotics are formulated in Chapter XV Criminal Provisions Article 111 to Article 148. Law No. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts prohibited by law and can be threatened with criminal sanctions, namely:

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

Law No.35/2009 on Narcotics has regulated the types of transactions provided for narcotics offenses, among others:

1. Criminal offenses for abusers or as victims of narcotics abuse, the abusers are obliged to undergo medical rehabilitation and social rehabilitation.
2. Criminal Acts of Parents/Guardians of Narcotics Addicts who are not old enough (Article 128) shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp1,000,000.00 (one million rupiah).
3. Criminal Offenses Committed by Corporations (Article 130) shall be punished with imprisonment and fine with 3 (three) times aggravation. Corporations may be subject to additional punishment in the form of: a. revocation of business license

and/or b. revocation of legal entity status.

4. Criminal offense for Person Who Does Not Report the Existence of Narcotics Crime (Article 131). Shall be punished with imprisonment of 1 (one) year or a maximum fine of Rp50,000,000.00 (fifty million rupiah).
5. Crime on Attempt and Conspiracy to Commit Narcotics and Precursor Crime (Article 132) Paragraph (1), shall be punished with the same imprisonment in accordance with the provisions as referred to in the aforementioned Articles. Paragraph (2), shall be punished with imprisonment and maximum fine increased by 1/3 (one third).
6. Criminal Offenses for Ordering, Giving, Persuading, Coercing with Violence, Deceit, Inducing Children (Article 133) paragraph (1), shall be punished with death penalty or life imprisonment, or imprisonment for a minimum period of 5 (five) years and a maximum period of 20 (twenty) years and a fine of at least Rp2,000,000.000.00 (two billion rupiah) and a maximum of Rp20,000,000,000.00 (twenty billion rupiah). paragraph (2), shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).
7. Criminal Offenses for Narcotic Addicts Who Do Not Report Themselves (Article 134) paragraph (1), shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp2,000,000.00 (two million rupiah). paragraph (2), shall be punished with a maximum imprisonment of 3 (three) months or a maximum fine of Rp1,000,000.00 (one million rupiah).
8. Criminal Offenses for the Management of the Pharmaceutical Industry Who Does Not Carry Out Their Obligations (Article 135). Shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 7 (seven) years and a fine of at least Rp40,000,000.00 (forty million rupiah) and a maximum of Rp400,000,000.00 (four hundred million rupiah).
9. Criminal Offenses against the Proceeds of Narcotics and/or Narcotics Precursors (Article 137) letter (a), shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least

Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah). Letter (b), shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp500,000,000,000.00 (five hundred million rupiah) and a maximum of Rp5,000,000,000.00 (five billion rupiah).

10. Criminal Offenses against Persons who Obstruct or Complicate Investigation, Prosecution and Case Examination (Article 138). Shall be punished with imprisonment of 7 (seven) years and a maximum fine of Rp500,000,000.00 (five hundred million rupiah).
11. Criminal Offenses for Captains or Captains of Aviators Who Do Not Implement the Provisions of Article 27 and Article 28 (Article 139) shall be punished with imprisonment of not less than 1 (one) year and not more than 10 (ten) years and a fine of not less than Rp100,000,000.00 (one hundred million rupiah) and not more than Rp1,000,000,000.00 (one billion rupiah).
12. Criminal Offenses for PPNS, Police Investigators, BNN Investigators who Do Not Implement the Provisions on Evidence (Article 140) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 10 (ten) years and a fine of at least Rp100,000,000.00 (one hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).
13. Criminal Offenses for the Head of the State Attorney's Office who Does Not Implement the Provisions of Article 91 Paragraph (1) (Article 141) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 10 (ten) years and a fine of at least Rp100,000,000.00 (one hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).
14. Criminal Offenses for Laboratory Officers who Falsify Testing Results (Article 142) shall be punished with a maximum imprisonment of 7 (seven) years and a maximum fine of Rp500,000,000.00 (five hundred million rupiah).
15. Criminal Offenses for Witnesses Who Give False Statements (Article 143) shall be punished with imprisonment of not less than 1 (one) year and not more than 10 (ten) years and a fine of not less than Rp 60,000,000.00 (sixty million rupiah) and not more than Rp 600,000,000.00 (six hundred million rupiah).

16. Criminal Offense for Every Person Who Commits Repetition of Criminal Offense (Article 144) shall be punished with the maximum punishment increased by 1/3 (one third).
17. Criminal Offenses committed by Heads of Hospitals, Heads of Science Institutions, Heads of Pharmaceutical Industries, and Heads of Pharmaceutical Traders (Article 147) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 10 (ten) years and a fine of at least Rp100,000,000,000.00 (one hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

Article 136 of Law No. 35/2009 provides penalties in the form of narcotics, narcotics precursors, and all proceeds obtained from narcotics crimes, including movable or immovable, material or immaterial assets, and goods or equipment used in narcotics crimes, which will be confiscated for the benefit of the state. Article 146 also stipulates sanctions against foreign nationals involved in narcotics offenses, namely expulsion from the territory of the Republic of Indonesia and a ban on returning to the territory. In addition, Article 148 states that if the perpetrator of a drug crime does not pay the fine in accordance with the verdict of this law, then the perpetrator can be sentenced to imprisonment for a maximum of two years in lieu of the fine that cannot be paid.

b. Functions and Roles of BNN Investigators According to Law No. 35/2009 on Narcotics

Preventive measures and efforts to eradicate drug abuse, illicit drug trafficking, and drug precursors are considered essential. Therefore, in Law No. 35/2009, the National Narcotics Agency (BNN) needs to be established. BNN is a non-ministerial government agency that is under the President and has direct responsibility to the President. BNN is based in the national capital and has operational coverage throughout the Republic of Indonesia. In addition, BNN also has representatives at the provincial and district/city levels. The provincial BNN is located in the provincial capital, while the district/city BNN is located in the capital of each district/city, forming an organized vertical structure.

The duties and authorities of BNN in article 70 of Law No.35/2009 on Narcotics are:

1. To formulate and implement national policies regarding the prevention and eradication of the abuse and illicit trafficking of Narcotics and Narcotics Precursors;
2. Prevent and eradicate the abuse and illicit trafficking of Narcotics and Narcotic Precursors;
3. Coordinating with the Chief of the Indonesian National Police in the prevention and eradication of the abuse and illicit trafficking of Narcotics and Narcotic Precursors.
4. Improve the capacity of medical rehabilitation and social rehabilitation institutions for drug addicts, both organized by the government and the community;
5. Empowering the community in the prevention of abuse and illicit trafficking of Narcotics and Narcotic Precursors;
6. Monitor, direct, and improve community activities in the prevention of abuse and illicit trafficking of Narcotics and Narcotic Precursors;
7. Conduct bilateral and multilateral cooperation, both regional and international, to prevent and eradicate illicit trafficking in Narcotics and Narcotic Precursors;
8. Developing a laboratory for Narcotics and Narcotic Precursors;
9. Carry out administration of investigations and investigations into cases of abuse and illicit trafficking of Narcotics and Narcotic Precursors; and
10. Make an annual report on the implementation of duties and authorities.

CONCLUSION

Drug abuse in Indonesia involves various elements, including drug cartels that have a major role in drug trafficking. Various groups, ranging from officials, pilots, law enforcement officers, students, to children are victims of drug abuse. Ironically, law enforcement officials can even cooperate with drug cartels. Weak law enforcement and bribery further exacerbate the situation, making drug abuse remain high. The concept of criminal law for drugs covers criminal acts, both criminal and non-criminal. Law enforcement aims to protect society to achieve prosperity.

Criminal action against drug abuse in Indonesia includes the criminal liability of humans and corporations as subjects of criminal acts. Prohibited acts involve the distribution and abuse of narcotics or narcotic precursors. Criminal sanctions involve basic crimes such as death penalty, imprisonment, confinement, and fines, as well as additional crimes in the form of revocation of business licenses and legal entity status. In addition, there are action sanctions in the form of treatment and rehabilitation for addicts or victims of narcotics abuse. The National Narcotics Agency (BNN) has a role and function as an investigator in efforts to prevent and eradicate narcotics and narcotics precursor crimes.

REFERENCE

BOOK

- , , Politik Hukum Pidana Bahan Kuliah, Fakultas Hukum Universitas Sumatera Utara, Medan, 2011.
-, Politik Hukum Dalam Undang-Undang Narkotika, Jakarta: Rineka Cipta, 2004.
- Hamdan, M. Politik Hukum Pidana, Jakarta: Raja Grafindo Persada, 1997. Lamintang, P.A.F. Dasar-Dasar Hukum Pidana Indonesia, Bandung: Citra Aditya Bakti, 1997.
- Mulyadi, Lilik. Bunga Rampai Hukum Pidana: Perspektif, Teoritis, dan Praktik., Bandung: PT Alumni, 2008.
- Mulyadi, Mahmud. Criminal Policy: Pendekatan Integral Penal Policy dan Non Penal Policy dalam Penanggulangan Kejahatan Kekerasan, Medan: Pustaka Bangsa Press, 2008.
- Mustafa, Muhammad, Kriminologi: Kajian Sosiologi terhadap Kriminalitas, Perilaku menyimpang, dan Pelanggar Hukum, FISIP UI Press, 2007, hlm.17.
- Nawawi Arief, Barda. Bunga Rampai Kebijakan Hukum Pidana (*Perkembangan Penyusunan Konsep KUHP Baru*), Kencana Prenada Media Group, Jakarta :2008.
- Soekanto, Soerjono. Mamudji, Sri., Penelitian Hukum Normatif, Jakarta: Rajawali Press, , 2010.
- Sunarso, Siswantoro. Penegakan Hukum Dalam Kajian sosiologis. Jakarta: Raja Grafindo Persada, 2004.

LAW

- Indonesia. *Kitab Undang-Undang Hukum Pidana*.
- Indonesia. *Undang-Undang No. 8 Tahun 1981 tentang Hukum Acara Pidana (KUHP)*.
- Indonesia. *Undang-Undang No. 35 Tahun 2009 tentang Narkotika*.
- Indonesia. *Undang-Undang tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. UU No. 8 tahun 2017*

INTERNET

A . Kadamanta, *Kejahatan narkoba: Extraordinary crime dan extraordinary punishment*,
<http://kejahatan-narkotika-extraordinary-crime.html>, diakses tanggal 21 Maret 2012.

Bismar Nasution, *Kejahatan Korporasi dan Pertanggungjawabannya*
<http://www.google.com>, diakses tanggal 3 Juli 2012.

BNN Portal: *Kejahatan Transnasional, Masalah Narkoba, dan Diplomasi Indonesia*,
<http://bnn.narkotika.htm>, diakses tanggal 21 Maret 2012.

Hindari keluarga kita dari narkoba, <http://BNN.com>, diakses tanggal 21 Maret 2012.

Pertanggungjawaban Korporasi, <http://www.ensiklopediaindonesia.mnt>, diakses tanggal 3 Juli 2012.

Bhakti Eko Nugroho .

<http://catatan-orang-biasa.blogspot.com/2008/12/benarkah-penggunaan-drugs-adalah.html>.

Media.iyaa.com/article/2016/03/7-pejabat-yang-ditangkap-karena-narkotika.html.

<https://www.arah.com/article/10071/daftar-artis-yang-tertangkap-narkoba.html>.