

## The Effectiveness on Fine Criminal Sanctions against Dark Circulation on Narcotics Category I

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**Abstract.** *The aim of the research is to examine and analyze the Effectiveness of Fine Criminal Sanctions against the Illicit Trafficking of Group I Narcotics. The research method used is normative juridical, the research is conducted by examining literature or secondary data only. The results of the study show that abuse and dealers in criminal arrangements in lieu of fines are in contrast to the threat of fines criminal sanctions that can be imposed on perpetrators of narcotics crimes. The threat of high fines only needs to be replaced with imprisonment for 4 (four) months. This can open up opportunities for delays in the process of imposing fines as mandated in the Narcotics Law, which in turn will result in the failure to achieve the objective of criminalizing narcotics offenders.*

**Keywords:** *Effectiveness; Fines; Narcotics.*

### 1. Introduction

The problem of narcotics is a problem that must be seriously addressed by all elements of society. The existence of narcotics abuse in Indonesia has reached an alarming condition for the community.<sup>1</sup> Social changes in society cause changes in behavior, perceptions, feelings, and awareness due to drug abuse. In addition to being addicted to the wearer, it is also a dependency that affects the life of the community.<sup>2</sup>

Narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases. However, if it is misused or used not in accordance with medical standards, it can have detrimental consequences for a person or society, especially the younger generation. It will be more detrimental if it is accompanied by the abuse and distribution of Narcotics which can result in

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<sup>1</sup>Yulizar Gafar, Countermeasures against Narcotics Trafficking in the West Kalimantan (Indonesia)-Sarawak (Malaysia) Border Area (Study of the Role of the National Narcotics Agency), Nestor's Journal Master of Law 2, No. 2, 2012, p.5

<sup>2</sup>Atet Sumanto, The Effectiveness of the Death Penalty in the Law Enforcement Process for Narcotics Crime, Perspectives: Study of Legal and Development Issues 22, No. 1, 2017, : 21-31, p.22.

greater danger to life. Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain, and can lead to dependence.<sup>3</sup>

If viewed from a juridical perspective, the distribution of narcotics in Indonesia is legal, the narcotics law and the psychotropic law only prohibit the use of narcotics without permission by the law in question. This situation is at the empirical level, the use of narcotics is often misused not for the benefit of medicine and science. However, far from that, it is used as a promising and rapidly growing business arena, where this activity has an impact on the mental and physical and psychological damage of drug users, especially the younger generation.<sup>4</sup>

Law enforcement against narcotics crimes has been widely carried out by law enforcement officials and has received many judge's decisions. Thus, it is hoped that law enforcement will be able to become a deterrent factor against the outbreak of illicit narcotics trade and narcotics distribution, but in reality the more cases there are, the more illicit narcotics trafficking and trade will increase.<sup>5</sup>

Criminal law is a law that regulates a violation of a predetermined law, a violation and a crime against a public interest and an individual interest, and whoever does what is prohibited in a criminal law will be threatened with criminal sanctions that have been determined committed by the offender. Criminal law is also a law that maintains a stability and a moral institution that has a role in rehabilitating criminal offenders.<sup>6</sup>

The fact that the existence of legislation that regulates the problem of narcotics has been drafted and enforced, however this crime related to narcotics has not been appeased. In the last cases, many drug dealers and dealers have been caught and given severe sanctions, but other perpetrators seem to have ignored them and even tended to expand their area of operations.<sup>7</sup>

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<sup>3</sup>Article 1 Law Number 35 of 2009 concerning Narcotics.

<sup>4</sup>Bastian Nugroho, et al, Implementation of the Restorative Justice System Policy on Narcotics and Psychotropics Abuse, *Maksigama: Volume 14 Number 1 Period May, 2020*, p.39

<sup>5</sup> Achmad Budi Waskito, Implementation of the Criminal Justice System in an Integration Perspective. *Journal of Sovereign Law* Vol. 1.No. March 1, 2018, p.6

<sup>6</sup>Edi Sutomo, Law Enforcement on Merger of Indemnity Claims in Criminal Case Persecution, *Law Development Journal* Volume 2 No 2, June, 2020, p.8

<sup>7</sup>OC Kaligis, 2002, *Drugs and other judiciary in Indonesia, Criminal Law Reform Through Legislation and Judiciary*, Alumni, Bandung, p.260

The existence of Act No. 35 of 2009 concerning Narcotics has brought positive and negative changes in the development of narcotics crimes in its implementation. Positively, law enforcement for perpetrators of criminal acts of narcotics abuse can bring big changes to state revenues with the provision of additional penalties in the form of fines. However, negatively, the large number of perpetrators of narcotics crimes is a threat to all people's lives. In fact, the application of fines with the enactment of Act No. 35 of 2009 concerning Narcotics until now has not worked as expected in the Narcotics Law. Provisions for fines that use the minimum concept are too large and even seem irrational, while the threat of alternative imprisonment is relatively low.

## 2. Research Methods

Approach method using juridical normative, meaning that it focuses on the principles or norms in laws and regulations. Normative juridical research is legal research conducted by examining library materials or secondary data as the basic material for research by conducting searches and literature on regulations related to the problem under study.<sup>8</sup>The specifications used are analytical descriptive in nature, provide systematic, logical explanations, analyze them in order to review literature, legislation, applicable legal norms and analyze them to draw conclusions.<sup>9</sup> The data source used by secondary data consists of primary legal materials in the form of legislation relating to legal research conducted.

## 3. Results and Discussion

### 3.1. The effectiveness of the application of fine criminal sanctions against the perpetrators of the criminal act of illicit trafficking of class I narcotics in Decision Number: 36/Pid.Sus/2022/Pn Trk.

Legal certainty as one of the goals of law can be said as part of efforts to achieve justice. The real form of legal certainty is the implementation or law enforcement of an action regardless of who does it. With legal certainty, everyone can predict what will happen if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.<sup>10</sup> Normatively, legal certainty can be interpreted as a statutory regulation that is made and promulgated with certainty. This is because legal certainty can regulate clearly and logically so that it will not raise doubts if there

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<sup>8</sup>Soerjono Soekanto and Sri Mamudji, 2016, Normative Legal Research-A Brief Overview, Rajawali Press, Jakarta, p.14

<sup>9</sup> Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p.118

<sup>10</sup> Muhammad Erwin, 2012, Philosophy of Law, Raja Grafindo, Jakarta, p.123

are multiple interpretations. So that it will not clash and not cause conflict in the norms that exist in society.<sup>11</sup>

Regulations regarding Narcotics since the existence of Act No. 22 of 1997 concerning Narcotics, then no longer in accordance with the current situation and conditions to overcome and eradicate criminal acts of narcotics abuse instead, Act No. 35 of 2009 concerning Narcotics which regulates narcotics is issued. .

The birth of this law is often said to be a law that is firm and harsh against the perpetrators of illicit traffickers, but humane towards the perpetrators of narcotics abuse. The provisions of severe criminal law apply to perpetrators of illicit drug trafficking, in addition to receiving corporal punishment (prison), perpetrators are also subject to fines, but in reality the number of perpetrators of this crime is actually increasing. This is due to the fact that the imposition of a sentence does not really have an impact or deterrent effect on the perpetrators.<sup>12</sup>

Explicit definition of distributors in narcotics law based on Indonesia Dictionary ("KBBI"), dealers are people who distribute, namely people who carry (deliver) something from one person to another. As previously explained by Lilik Mulyadi in his research entitled: "Criminalization of Drug Dealers and Users" he explained that implicitly and narrowly it can be said that narcotics/psychotropics dealers are people who carry out distribution and delivery of narcotics/psychotropics.

Broadly speaking, the definition of a dealer can also be carried out and is oriented to the dimensions of the seller, buyer to distribute, transport, store, control, provide, carry out acts of exporting and importing narcotics/psychotropics.<sup>13</sup> So from the explanation the above can be described as acts that are considered as narcotics distribution, namely: 1) distributing narcotics, 2) handing over narcotics, 3) selling narcotics, 4) buying narcotics and then re-circulating them, 5) transporting narcotics, 6) storing narcotics, 7 ) who control narcotics, 8) who supply narcotics, 9) who export and/or import narcotics.<sup>14</sup> So, if we look at the definition of dealers, both from KBBI and Lilik

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<sup>11</sup>Yusril Ilza Amri, Bambang Tri Bawono and Ira Alia Maerani. Criminal Investigation of Motorcycle Stealing Goods. *Law Development Journal* Volume 3 Issue 1, March, 2021, p.9

<sup>12</sup>Indah Lestari and Sri Endah Wahyuningsih, Criminal Law Enforcement Against Drug Users in the Central Java Regional Police, *Khaira Ummah Law Journal* 12, No. 3 (nd): 601-610, p.10

<sup>13</sup>Tri Jata Ayu Pramesti, Maximum Criminal Crimes for Drug Manufacturers and Dealers, Article <https://www.Hukumonline.com/klinik/a/jerat-pidana-maximal-bagi-pembuat-dan-pengedar-narkoba-lt52688677e81e4>.

<sup>14</sup> Ahmad Ghifar Al Ahfaqsyi and Siti Rodhiyah Dwi Istinah, Manifestation Of Criminal Sanctions In The Judicial Process On Criminal Actor Of Negligence (Culpa), *Law Development Journal* Volume 2 No 2, June, 2020, p.12

Mulyadi, a person who takes narcotics, transports them, moves them from one place to another, and hands them over to another person can be categorized as a narcotics dealer.

Penalties for Narcotics dealers regulated in narcotics Law Chapter XV criminal provisions ranging from Article 111 to Article 148. Meanwhile, provisions for criminal sanctions for perpetrators of abuse and illicit trafficking of narcotics are regulated in Article 111, Article 112, Article 113, Article 114, Article 115, Article 117, Article 118, Article 119, Article 120, Article 122, Article 123, Article 124, Article 125, Article 129, Article 137 and Article 147. What distinguishes the sanctions from this article is that they depend on the type/class of narcotics and the weight of the narcotics. In this criminal provision, the threat of criminal sanctions for perpetrators of narcotics crimes is regulated by a pattern of cumulative threats between imprisonment and fines. The model for formulating criminal threats in these articles can be divided into two models, namely, the model for formulating criminal threats by regulating special minimum provisions and the model for formulating criminal threats which do not regulate provisions regarding special minimums.

Regulating the existence of fines criminal sanctions against perpetrators of criminal acts with the aim of being a preventive effort to prevent criminal acts so that there is no unrest so as to create peace, a sense of comfort, and security in the social life of the community. Also, fines should be able to give a sense of suffering and remorse to the perpetrators of criminal offenses. All of this is highly dependent on law enforcement (The enforcement of law) carried out by Investigators, Public Prosecutors, and Judges as the trident of law enforcement in Indonesia. The court does not only function as a Court of Law but is also expected to play a role as a Court of Justice.<sup>15</sup>

The problem with applying sanctions to narcotics dealers is that they have a negative impact on their implementation. The negative impact of the large number of perpetrators of narcotics crimes is a threat to all people's lives, in the application of fines with the enactment of Act No. 35 of 2009 concerning Narcotics until now the practice has not gone as expected in the Narcotics Law. Provisions for fines that use the minimum concept are too large and even seem irrational, while the threat of alternative imprisonment is relatively low. The imposition of high fines and relatively short fines also occurred in the decision of the Trenggalek District Court regarding the narcotics class I crime committed by D Bin M.

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<sup>15</sup>Mas Hushendar, Tt, Effectiveness of Criminal Fines in Narcotics Cases Deputy Chairperson of the High Court of East Kalimantan.

Incident on Sunday, January 23, 2022 at 08.00 WIB, located in Kab. Trenggalek. During a search at the defendant's house, 1 (one) bag of plastic clip packaging was found with a gross weight of + 0.14 (zero point fourteen) grams stored on top of a cupboard as well as evidence in the form of 4 (four) pieces plastic clip, 2 (two) sheets of proof of transfer to an EN account with no. Reference 000006009506 and No. Reference 000008413750, 1 (one) black wallet, 1 (one) brown semplang bag, 1 (one) blue Oppo A 15 brand cellphone with simcard 085334530350 , IMEI Number 1 : 866200051268414 and IMEI 2 : 866200051268406, and 3,500,000, - (three million five hundred thousand rupiah) in cash.

Based on the decision of the Trenggalek District Court in the trial which stated that Defendant D bin M above was proven legally and convincingly guilty of committing a crime without the right to sell and buy Narcotics Group as in the first alternative indictment. The panel of judges sentenced the defendant to a prison term of 5 (five) years and a fine of IDR 1,615,000,000.- (one billion six hundred and fifteen million rupiah) provided that if the fine is not paid it is replaced by imprisonment for 4 (four) months.

From the description above, it can be concluded that the penalty for fines in Act No. 35 of 2009 concerning Narcotics is a minimum of IDR 400,000,000.00 (four hundred million rupiah) and a maximum of IDR. 10,000,000,000.- (ten billion rupiah). This fine, when compared with the calculation of fines for Articles 30 and 31 of the Criminal Code applied to the Narcotics Law, is of course disproportionate. Such a high fine is ultimately ineffective, because it only encourages the convict to choose a substitute prison sentence instead of having to pay a fine. The decision above stated that the defendant received a prison sentence of 5 (five) years and a fine of IDR 1,615,000,000.- (one billion six hundred and fifteen million rupiah) provided that if the fine is not paid it is replaced by imprisonment for 4 (four) months. The defendant will not be able and willing to pay IDR 1,615,000,000.- (one billion six hundred and fifteen million rupiah) and if unable to pay, imprisonment if the fine is not paid is replaced by imprisonment for 4 (four) months. So that if the above decision is actually implemented, only convicts who are super-rich, of course, are able and willing to pay these fines. Because people prefer to lose money than freedom in general assumptions. However, in narcotics crime cases, most convicts prefer to serve prison terms rather than pay fines even though they are relatively capable.

The provisions for criminal sanctions for high fines are not followed or are inversely proportional to the criminal provisions for substituting fines stipulated in Article 148 of the Narcotics Law which reads as follows: "If the fines as stipulated in this Law cannot be paid by the perpetrators of the Narcotics Precursor crime, the offender is sentenced to a maximum of 2 (two) years in

prison as a substitute for an unpaid fine. So that the perpetrators of criminal acts prefer to serve imprisonment as a substitute for criminal fines. In fact, if the provisions for fines are regulated in such a rational way for the perpetrators of criminal acts, surely the perpetrators or convicts of narcotics will choose to pay fines as an additional punishment compared to serving additional prison sentences. In addition to the imbalance between very high fines and relatively low replacement prison sentences, it is also because the perpetrators of these crimes mostly come from the lower middle class of the economy. The impact on the non-implementation of these fines creates new problems and unwanted consequences.

Anthony Allot's opinion put forward about the effectiveness of the law, he argued that a law can be effective if the purpose of the existence of the law and the application of the law can prevent unwanted actions and can dispel chaos. The law is said to be effective in general if it makes what is designed to be realized. If there is a failure, the rectification process will be easy because there is a necessity to implement or apply the law in a new, different situation, here the law can solve it.<sup>16</sup>

The effectiveness of law according to Soerjono Soekanto is that whether or not a law is effective is determined by 5 (five) factors:

- a. The legal factor itself (law).
- b. Law enforcement factors, namely the parties that form and apply the law.
- c. Facility factors or facilities that support law enforcement.
- d. Community factors, namely the environment in which the law applies or is applied.
- e. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.<sup>17</sup>

According to Soerjono Soekanto above which states that the effectiveness or failure of a law is determined by 5 factors, namely the legal factors themselves (laws), law enforcement factors (parties who form or apply the law), factors of facilities or facilities that support law enforcement, Community factors

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<sup>16</sup>Salim HS and Erlies Septiana Nurbani, 2016 Application of Legal Theory in Thesis and Dissertation Research, 2 ed., Raja Grafindo Persada, Jakarta, p.203.

<sup>17</sup>Soerjono Soekanto, 2008, Factors Affecting Law Enforcement, PT. Raja Grafindo Persada, Jakarta, p.8

(environment where the law applies or is applied), cultural factors (as a result of work, creativity and taste based on human initiative in social life).

Meanwhile, if the fine is not converted to confinement/prison, but by confiscation of goods or assets so that the fine is paid, the execution will still be very difficult. Because actually the philosophy of fines is not in the context of enriching the country or impoverishing the convict because it is only a deterrent tool. Finally, replacement prison sanctions are still needed because not all perpetrators of criminal acts are rich people or have a lot of property so that if their assets are confiscated, then fines can be covered.

#### **4. Conclusion**

The application of fine criminal sanctions to the perpetrators of the criminal act of illicit trafficking of narcotics class I in Decision Number: 36/Pid.Sus/2022/Pn Trk as abusers and dealers in the criminal arrangement in lieu of such fines is contrary to the threat of fines criminal sanctions can be imposed on the perpetrators of the narcotics crime. The threat of high fines only needs to be replaced with imprisonment for 4 (four) months. This can open up opportunities for delays in the process of imposing fines as mandated in the Narcotics Law, which in turn will result in the failure to achieve the objective of criminalizing narcotics offenders.

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