

Position Foreign Citizens Who Are Deported As A Criminal Acts On Narcotics Abuse

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Abstract

The objectives to be achieved in writing this research are to find out and analyze the legal protection of foreign nationals who were deported due to involvement in the crime of narcotics abuse in Indonesia and to find out and analyze the position of foreign nationals who must be deported due to being involved in criminal acts of abuse and illicit drug trafficking in Indonesia. Indonesia in legal construction and according to the perspective of Islamic law. The research method used is normative juridical. In Act No. 6 of 2011 concerning Immigration and Act No. 35 of 2009 concerning Narcotics, foreign nationals who have been expelled or deported for committing narcotics crimes are entirely prohibited from re-entering the territory of the Republic of Indonesia and foreign nationals who have committed narcotics crimes. Narcotics crimes or Narcotics Precursor criminal acts abroad are also prohibited from entering the territory of the Republic of Indonesia. In this case deportation is carried out for all foreign nationals regardless of their background as drug dealers or users. The author considers that there are weaknesses in the law and assesses that there are injustices and wasted opportunities for foreign nationals who were carried out by the deportation. It should also be necessary to look at and assess the benefits of the existence of these foreign nationals for the Nation and State, meaning that if a foreign citizen who commits a Narcotics Crime and is only a user and his presence in Indonesia has a contribution to the State, it is sufficient to undergo imprisonment and not with additional punishment in the form of deportation. Meanwhile, in the perspective of Islamic law, there is no drug terminology. Only Narcotics are equated with the actions of Khamr. So it can be concluded that the legal status of narcotics is equated with the legal status of khamr.

Keywords: Foreigners; Crime; Narcotics; Deportation.

1. Introduction

At this time the State of Indonesia has entered the era of globalization. In this era, of course, there will be many good impacts for the Indonesian people, coupled with technological advances whose development is difficult to stop, making it easier for us to be more open to the presence of foreign technology in Indonesia. The development of transportation certainly affects the movement of people between countries that can occur easily and quickly. Foreign citizens who enter an area outside their country must also follow the laws and regulations of the country they enter as a

form of respect for the sovereignty of that country.¹In responding to this population movement between countries, Indonesia has various regulations and procedures in accepting residents who are foreign nationals to come to Indonesia. The regulations applied are certainly a reflection of the Indonesian state which is based on the 1945 constitution.

Drugs stands for Psychotropic Narcotics and other dangerous drugs. In addition to drugs, another term that was introduced in particular by the Ministry of Health of the Republic of Indonesia is NAPZA which stands for Narcotics, Psychotropics and Addictive Substances. 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 taste, reduce to eliminate pain, and can cause dependence.² It should be noted together that in the current era, there are quite a lot of drug dealers and users of foreign nationals who are caught in Indonesia.³, and Domestic circulation of narcotics also covers almost all big cities to a number of villages.

Entering the third millennium, which is marked by the passing of globalization in all sectors of the world's public life and the development of technology in the field of information and communication that penetrates state boundaries, aspects of human relations that have been national in nature have developed into transnational ones. Also the rampant circulation of drugs in Indonesia is due to the large number of unofficial ports or commonly known as rat ports which are used as favorite places for drug dealers. There are several ways in which the perpetrators carry out drug transactions, including face to face, transactions via couriers, direct purchases to drug distribution locations, the patch system (mine planting system), and the javelin throwing system.⁴

In this study, the author will discuss the perpetrators of narcotics crimes committed by foreigners in Indonesia as regulated in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.⁵There are several legal issues that are feared to have little effect on our nation's international relations to the international world and its usefulness for the Indonesian nation. Especially how foreign nationals who commit narcotics crimes in Indonesia have finished serving their prison sentences and then directly deported without any sorting in the imposition of articles on their actions either as users or dealers treated equally according to Article 146 of the Narcotics Law which reads:

“(1) Foreign nationals who commit Narcotics crime and/or Narcotics Precursor crime and have served their sentence as regulated in this Law, shall be expelled from the territory of the Republic of Indonesia.

¹Starke, 2007, *Pengantar Hukum Internasional*, Tenth Edition, Sinar Grafika, Jakarta,, p. 467

²Hera Saputra, *Jurnal Daulat Hukum* Vol. 1. No. 1 March 2018 ISSN: 2614-560X, *Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)*

³Mardani, *Penyalahgunaan Narkoba Dalam Perspektif Hukum Islam Dan Hukum Pidana Nasional*, Ed. 1, PT. RajaGrafindo, 2008, Jakarta, p. 4.

⁴Bayu Puji Hariyanto, *Jurnal Daulat Hukum* Vol. 1. No. 1 March 2018 ISSN: 2614-560X, *Pencegahan Dan Pemberantasan Peredaran Narkoba Di Indonesia*

⁵Penghimpun, *Undang-Undang Narkotika UU RI No.35 tahun 2009*, SINAR GRAFIKA, Print: ke-4, 2014

- (2) *Foreign citizens who have been expelled as referred to in paragraph (1) are prohibited from re-entering the territory of the Republic of Indonesia.*
- (3) *Foreign citizens who have committed Narcotics crime and/or Narcotics Precursor crime abroad are prohibited from entering the territory of the Republic of Indonesia.”*

Referring to the article above, it is clear that there is no difference between the perpetrator as a user and the perpetrator as a dealer, they are treated the same way, namely serving their sentence and then deporting them. In fact, if we look together, that foreign citizens come to Indonesia with various motivations and different goals, among others, for the purposes of consulates, tourism, study, work to exchange culture, military cooperation, the police and others. Here the author will only analyze how the application of the law for foreign citizens involved in Narcotics Crime by not abandoning the ideals of a nation with Pancasila justice, especially for perpetrators who are only users and have other benefits for the Indonesian nation such as foreign teaching staff, special experts, or workers needed by our nation's energy and thoughts. They do not mean that they are free from the threat of punishment for narcotics abuse, but they will continue to carry out their sentences but not necessarily with the addition of punishment in the form of deportation for the reasons that have been stated.

The objectives to be achieved in writing this thesis research are to identify and analyze the legal protection for foreign nationals who were deported due to involvement in the crime of narcotics abuse in Indonesia and to find out and analyze the position of foreign nationals who must be deported due to being involved in criminal acts of drug abuse and illicit trafficking in Indonesia in legal construction and according to the perspective of Islamic Law.

2. Research Methods

Based on the formulation of the problem and research objectives, the research approach method used in this study is a normative juridical approach. This research specification uses descriptive analysis with the data sources used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In the method of collecting data, this research is carried out by means of Library Research or known as document study. While the data analysis method used is the theory of legal protection and the theory of Pancasila justice.

3. Results and Discussion

Deportation is carried out against foreign nationals who violate Act No. 35 of 2009 concerning Narcotics, precisely contained in Article 146 of the Narcotics Law which reads:

1. *Foreign nationals who commit Narcotics crime and/or Narcotics Precursor crime and have served their sentence as stipulated in this Law, shall be expelled from the territory of the Republic of Indonesia.*
2. (2) *Foreign nationals who have been expelled as referred to in paragraph (1) are*

prohibited from re-entering the territory of the Republic of Indonesia.

3. Foreign nationals who have committed narcotics crimes and/or Narcotics Precursor criminal acts abroad are prohibited from entering the territory of the Republic of Indonesia."

Meanwhile, in every handling of narcotics abuse cases, the judge in deciding the case is obliged to pay attention to the provisions as referred to in Article 54 and Article 55d. Article 54 states "narcotics addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation"⁶

Referring to the laws and regulations above that the implementation of deportation is carried out after the perpetrator has served his prison sentence first, however, there are cases where, at the discretion of the police, a foreign citizen is found to have violated the Narcotics Crime because, based on consideration only as a user, the police coordinate with Immigration for deportation. In this case, many judges' decisions against perpetrators of narcotics abuse with a weight of less than 1 gram are directed to criminal sanctions (prison) without being given rehabilitation sanctions, this may be one of the references. So that in the implementation of law enforcement in the field carried out by the police against foreign nationals they are also only directly deported in coordination with local immigration.⁷

As one example is the arrest of a foreign citizen (foreigner) from Melbourne, Australia with the initials RTA alias Trent (59th), on Friday, June 18, 2021, which was carried out by the Police of the Directorate of Drugs at the East Nusa Tenggara Police with evidence in the form of narcotics. subboxone film 8/2 in blue and subboxone film 2/0.5 in green and classified as narcotics group 3 (three)

The results obtained that foreigners who have been expelled or deported for committing narcotics crimes are also prohibited from re-entering the territory of the Republic of Indonesia, in addition to foreign citizens (WNA) who commit crimes outside the territory of Indonesia are also prohibited from entering the territory of Indonesia. JGStarke revealed that immigration covers the entire implementation of law enforcement from a country to permit foreign nationals to enter its sovereign territory or refuse it. The law of a country applies to foreign nationals who enter the territory of the country as it applies to its own citizens, although not equally. Deportation is closely related to the field of immigration so it is more or less regulated in Act No. 6 of 2011 concerning Immigration. Deportation is the last resort by the state to follow up on foreign nationals who are suspected of being able to damage public order and endanger the safety of the people or oppose the implementation of the provisions of laws and regulations. Deportation is a forced act, but its implementation must not violate human values and human rights, because Indonesia itself guarantees human rights by having Act No. 39 of 1999 concerning Human Rights, especially in article 34 that "Everyone shall not be exiled or disposed of arbitrarily" which is sourced from Article 9 of the Universal Declaration of Human Rights. Concepts of fundamental

⁶Dafit Supriyanto, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, *Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika*

⁷ Carto Nuryanto, Law Development journal Volume 1 Issue 1, June 2019, (1-6), *Rekonstruksi Sanksi Pidana dan Rehabilitasi Pemberantasan Korban Narkotika Berdasarkan Keadilan Agama*

human rights.

It should be understood again that foreign citizens (WNA) in Indonesia certainly have various interests and goals, including as diplomats, tourist visits, study visits or labor cooperation and others. Here the author will classify the status of the existence of foreign citizens who visit Indonesia based on their benefits for the development of the Indonesian nation. One example is Foreign Workers. Foreign Workers themselves are divided into 2 groups, namely Foreign Workers who bring capital and Foreign Workers who bring skills in the context of technology or skill transfer. The author sees and assesses that the great benefit of having foreign nationals is bringing skills in the transfer of technology and skills. They need special attention and special treatment. From a legal point of view and its application, it is necessary to make a positive breakthrough for them, namely foreign citizens in their legal protection. The theory of legal protection itself, according to Fitzgerald's explanation that Salmond's theory of legal protection, namely the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protection of certain interests can only be done by limiting the various interests of the other party. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected.

Deportation for foreign citizens (foreigners) involved in the abuse of Narcotics according to the description that the author described above that there are weaknesses in Act No. 6 of 2011 concerning Immigration and Act No. 35 of 2009 concerning Narcotics, namely Deportation is carried out applies to all Foreign citizens regardless of whether they are dealers or users, even more so regardless of their profession or function of being in the State of Indonesia, whether they have great benefits or not for the Nation and the State, the treatment is the same, namely if they abuse Narcotics after serving their sentence, they must be deported. Here the author assesses that there is injustice and wasted opportunities for foreign nationals (foreigners) who were carried out by the deportation. According to the author's analysis based on the principle of usefulness in the perspective of legal protection, it is necessary to separate the provisions of articles related to the implementation of deportation by looking at how the benefits of the existence of foreign citizens (foreigners) are for the nation and state. Foreign citizens (foreigners) who have contributed to the State, such as experts because of their abilities and skills, who happen to have problems in Narcotics Crimes and are just users, then have served a sentence, there is no need for deportation, only rehabilitation. Meanwhile, if the dealer, the author agrees with the current law, even though the foreign citizen (WNA) has contributed expertise or skills that benefit the state, then punishment and deportation will still be carried out.

The position of foreign nationals who must be deported due to being involved in criminal acts of drug abuse and illicit trafficking in Indonesia in legal construction and according to the perspective of Islamic Law

Narcotics abuse is a pattern of behavior in which a person uses narcotics, psychotropic drugs, and additives that are not in accordance with their function. This means that any behavior where a person uses these drugs without legal authority is a violation of the law and must be held accountable and have legal consequences for himself, including foreign citizens (WNA) who do so in the jurisdiction of the Republic of Indonesia. In this case, foreign nationals receive additional punishment, namely deportation/expulsion after serving their sentence.

Legal discovery is also known as the argumentation method or better known as legal construction, this method is used when faced with a situation where there is a legal vacuum (*rechts vacuum*). Based on the *ius curia novit* principle (a judge may not refuse a case to be resolved on the grounds that the law does not exist or has not regulated it), this method of legal construction is very important in order to ensure justice. The methods of legal construction can be divided as follows:

- Argumentum Per Analogium (Analogy) method, Analogy is a method of finding law in which judges look for a more general essence of a legal event or legal act, both those that have been regulated by law and those that have not yet been regulated, so this analogy method uses induction reasoning, namely think from specific events to general events
- Argumentum a Contrario Method This method provides an opportunity for judges to make legal discoveries with the consideration that if the law stipulates certain things for certain events, it means that the regulations are limited to certain events and the opposite applies to events outside of them. Because there are times when an event is not specifically regulated by law, but the opposite of the event is regulated by law. So this method puts forward a way of interpreting the opposite meaning between the concrete events encountered and the events regulated in the law.
- Legal Narrowing Method Sometimes the statutory regulations are too general or broad in scope, so they need to be narrowed down to be applicable to a particular event. In narrowing the law, new exceptions or deviations are formed from the regulations that are generally applied to special legal events or relationships with explanations or constructions by giving characteristics.

From the description of the understanding of the legal construction above, the author finds legal loopholes in injustice and neglect of the principle of benefiting foreign citizens (WNA) for the Indonesian people, who happen to be foreign citizens (WNA) who have violated Act No. 35 of 2009 concerning Narcotics, namely in article 146 there is no paragraph that specifically stipulates if the perpetrator has the skills and skills needed by the Indonesian nation, it still ends in deportation and may not return to Indonesia, according to the author, if it meets these criteria, foreign citizens (WNA) who commit the crime Narcotics and only users, preferably after serving the sentence, there is no need for deportation, moreover, they are not allowed to return to visit Indonesia. The potential loss for the Indonesian people will be evident with the deportation action, so that it is also contrary to one of the ideals of the Indonesian nation as stated in the preamble of the 1945 Constitution, namely the intellectual life of the nation and Pancasila, especially in the fifth principle, namely

Social Justice for all Indonesian people.

In the perspective of Islamic law/not found Narcotics terminology. Likewise in the *hadiths* of the Apostles, the term Narcotics is not found because Narcotics is a new term that emerged around the twentieth century. The term Narcotics only appeared around 1998 because there were many incidents of the use or use of goods including narcotics and addictive substances or prohibited additive drugs. Therefore, to facilitate communication and not to mention long terms, the words narcotics, psychotropics and prohibited addictive substances are abbreviated to narcotics.⁸ Even though nash (The Qur'an and the Sunnah of the Prophet SAW) do not mention drugs explicitly, but the texts clearly and firmly regulate the basic principles that can be used as references in finding supporting arguments related to drug problems. In the study of *ushul fiqh*, if something has not been determined its legal status, it can be resolved through the *qiyas* method or other methods. On that basis, before the author explains the definition of narcotics, the author first describes the definition of *khamr*. Etymologically, *khamr* comes from the word *khamara* which means covering and covering.⁹ The purpose of closing is that *khamr* can close one's mind and logic for those who drink it or consume it. While the terminology. al-Isfihani explained that *khamr* means a drink that can close the mind or intoxicate, whether the person who drinks it is drunk or not. So the intoxicating drink is called *khamr* because it can block the human mind. This is one of the strong reasons *khamr* is forbidden in Islam in addition to several other reasons.

Wahbah al-Zuhaili quotes Abu Hanifah (Hanafiyah) that *khamr* is a certain drink made from pure grape juice or dates that is cooked until it boils and bubbles come out and then is left until it is clear and the foam bubbles disappear.¹⁰ while something intoxicating made from other than pure dates or pure grapes is not called *khamr* but is called nabidz. Still in their opinion: that the prohibition of consuming nabidz is due to external factors (external factors), namely the prohibition caused by being "intoxicating", not in the object/substance (*nabidz*) itself. If the prophet is included in the category or called *khamr*, then the prophet will not be called as "*khamr* brother". Judging from the definition above, one of the reasons for the prohibition of alcohol is because it can be intoxicating (closing awareness of thinking). So what is meant by drunkenness itself? And what are the limits? When is a person considered drunk? This understanding is needed considering that illat or the cause of the prohibition of *khamr* is due to intoxicating factors. If a food that is considered *khamr*, it turns out that after eating it is not intoxicating, of course we cannot call it intoxicating food or drink. In Arabic, the intoxicating food or drink is termed the word *muskir*. The word *muskir* is isim fail from the root word *sakara*, its meaning is the opposite of *shahwu*, which means to be aware or to guard. So *sacr* or drunk it means not aware or not in a state of alert, of course we can not call it an intoxicating food or drink. In Arabic, the intoxicating food or drink is termed the word *muskir*. The word *muskir* is isim fail

⁸Gatot Supramono, *Hukum Narkoba Indonesia*, (Jakarta: Djambatan 2001), p. 228.

⁹ Jamluddin Muhammad Ibn al Manzhur al Anshari, *Lisan al-Arab*, (Libanon: Dar al Ma"arif, 1981), Juz V, p.339

¹⁰ Wahbah al Zuhayli, *Al Fiqh al-Islami Wa Adillatuh*, (Beirut: Dar al Fikr, 1998), Juz VI

from the root word *sakara*, its meaning is the opposite of *shahwu*, which means to be aware or guard. So *sacr* or drunk it means not aware or not in a state of alert.¹¹

Imam Ash-Shafi'i mentions that a drunk person is: A drunk person is a person whose regular speech should be confused, and the secret that he has hidden is exposed. This definition actually comes from the words of Ali bin Abi Talib *radhiallahu anhu*. Meaning: "If a person is drunk, then he talks. And when he talks he will hallucinate."

Based on this understanding, *khamr* according to Al-Hanafiyah is food or drink which, if consumed, will make the perpetrator lose his mind, so that he cannot understand something. He cannot tell the difference between a man and a woman, between heaven and earth, between his wife, mother or maid.¹² It can be concluded that anything that can make drunken and cover up, interfere with the functioning of the mind or eliminate the mind is included in the category of *khamr*, whether made from wine, dates or other materials, then in this case including drugs. The author concludes that although the term narcotics was not known at the time of the Apostle, but drugs can be equated with *khamr*, because between *khamr* and narcotics both cause closure or loss of mind for people who consume them, even narcotics are more dangerous, so that the legal status of narcotics is equated with the legal status of *khamr*.

4. Closing

Foreign citizens (foreigners) who are involved in the abuse of Narcotics according to Act No. 35 of 2009 concerning Narcotics, in addition to serving a criminal sentence, deportation is carried out and applies to all foreign nationals regardless of being a dealer or user, even more so regardless of profession or status. The function of being in the State of Indonesia is whether it has great benefits or not for the Nation and the State, the treatment is the same, namely if you abuse Narcotics after serving your sentence, you must be deported. It was concluded that there was injustice and wasted opportunities for foreign nationals (foreigners) who were deported. Based on the principle of usefulness in the perspective of legal protection, it is necessary to separate the provisions of articles related to the implementation of deportation by looking at how the benefits of the existence of foreign citizens (foreigners) are for the nation and state. Foreign nationals (foreigners) who have contributed to the state, such as experts because of their abilities and skills, who happen to have problems and are just users who have then served a sentence, do not need to be deported, they just need to be rehabilitated, while the rest, such as dealers, agree with the law. -According to the current law, even though the Foreign Citizen (WNA) has contributed expertise or skills that benefit the State, punishment and deportation are still carried out. Whereas Position of Foreign Citizens who must be deported due to being involved in criminal acts of Narcotics Abuse in Indonesia in legal construction. Understanding in legal

¹¹Ahmad Warson, *Kamus al-Munawwar* (Beirut: Dar al-Kutub al-Arabiyyah, t.th),

¹²Ahmad Warson Muanwwir, *kamus al-Munawwir: Kamus Arab Indonesia* (Yogyakarta: Pustaka Progresif, 1984, p. 351.

construction, legal loopholes have been found in the form of injustice and neglect of the principle of benefiting foreign nationals (WNA) for the Indonesian people, who incidentally are foreign citizens (WNA) having violated Act No. 35 of 2009 concerning Narcotics, namely in Article 146 There is no verse that specifically stipulates that if the perpetrator has the skills and skills needed by the Indonesian people and is only a user, it will still end up with deportation and may not return to Indonesia. If they meet these criteria, the foreign citizen (WNA) should after serving the sentence, there is no need for deportation, moreover, they are not allowed to return to visit Indonesia. Drug abuse and illicit trafficking in Indonesia in the perspective of Islamic law, that in the Qur'an there is no drug terminology. Likewise, in the *hadiths* of the Apostles, the term drugs is not found because drugs are a new term that emerged around the twentieth century. The term "drugs" only appeared around 1998 because there were many incidents of the use or use of goods including narcotics and addictive substances or prohibited additive drugs. However, drugs are included in the *Khamr* category. According to Ibn Humam, this definition is only limited to drunkenness which requires the *hudud* law, namely in the form of 40 (forty) or 80 (eighty) lashes. The term Narcotics was not known at the time of the Apostle, but drugs can be equated with *khamr*, because between *khamr* and narcotics both cause closure or loss of mind for people who consume them.

It is suggested that : It is necessary to conduct an in-depth study of foreign citizens (foreigners) involved in Narcotics Crimes by classifying them based on the type of violation, namely as dealers or users as well as the losses and benefits for the Indonesian nation if deportation is carried out and may not return to visit Indonesia; It needs to be regulated in Act No. 35 of 2009 concerning Narcotics, which includes in the paragraph that if a Foreign Citizen (WNA) violates it, but its presence in Indonesia is very useful and requires expertise and skills as well as with the classification of only users, then there is no need to do this. Deportation.

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