

The Implementation of Criminal Sanctions against Narcotics Distributor

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Abstract. *Narcotics crime and its abuse include extraordinary crimes or commonly called Extra Ordinary Crimes, a crime that has a large and multidimensional impact on the social, cultural, economic and political as well as the tremendous negative impact that this crime has. Law enforcement in Indonesia against narcotics crimes is carried out based on Act No. 35 of 2009 concerning Narcotics. The thesis entitled Application of Criminal Sanctions against Narcotics Dealers (Case Study at the Semarang District Court) aims to examine and analyze criminal sanctions; consideration of judges in applying criminal sanctions and obstacles and solutions in applying criminal sanctions against narcotics dealers in the Semarang District Court. This research uses a case study approach and is a type of normative juridical research. The data used is secondary data using legal materials related to narcotics and judicial power. The existence of Act No. 35 of 2009 confirms that there are rehabilitation penalties for victims, and prison sentences even up to the death penalty as in case Number 731/Pid.Sus/2019/Pn.Smg. In the last cases many drug dealers were caught and received severe sanctions, but other perpetrators actually expanded their area of operations. Law enforcement against crime in Indonesia, especially in the case of capital punishment, should refer to a legal norm approach that fosters criminals by providing guidance in correctional institutions. This is based on the reality on the ground that,*

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1. Introduction

Drugs have become a threat to the sovereignty of the nation and state, eradicating drugs requires the role of all parties to narrow the movement of drug dealers who are still trying to market these illicit goods in Indonesia. Matters regulated in the regulations on narcotics crimes include the death penalty, life imprisonment, clear laws and regulations containing stricter legal sanctions, which are believed to

narrow the space for drug trafficking, especially based on data from the national narcotics agency disclosed by the head BNN itself stated that there was an increase in the prevalence of drug users in Indonesia in 2021 of 0.15% so that it became 1.95% or 3.66 million drug users.¹

The Constitutional Court through its two decisions No. 2/PUU-V/2007 and No. 3/PUU-V/2007 dated 30 October 2007 has stated that the crime of abuse of narcotics and psychotropics is an extraordinary crime. Not only that, the National Narcotics Agency also identified several characteristics of drug crime as: (1) international crime, (2) organized crime, (3) in the form of a network/syndicate, (4) covert, (5) transportation and communication systems by utilizing sophisticated technology. Actors in narcotics crimes can be categorized as producers, dealers, dealers as well as addicts/abusers and addicts/abusers.²

The problem of drug abuse in Indonesia is now very worrying.³This situation is caused by several things, among others, because Indonesia is located between three continents and considering the development of science and technology, the influence of globalization, highly advanced transportation flows and shifting materialistic values to the dynamics of the target opinion of illicit drug trafficking. The concern of the Indonesian people is increasingly sharpened due to the rampant illicit trafficking of narcotics which has been circulating at all levels of society, including among the younger generation. This will even become more difficult with the development of the mode of operation of drug offenders, as well as the increasing trend of illicit drug trafficking from year to year.⁴

According to the Narcotics Act No. 35 of 2009 concerning narcotics, narcotics are substances or drugs derived from plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of pain and can lead to dependence. Even so according to the Law it is also stated that narcotics on the one hand are drugs or useful substances in the field of medicine or health services and the development of science if used properly. If abused, narcotics can make users experience dependence on one or more narcotics, psychotropics, and other addictive substances (drugs), both psychologically and mildly.

In Indonesia today, the imposition of criminal sanctions in the form of death penalty by judges for narcotics offenders is one of the policies adopted in the

¹www.antaranews .com BNN: The prevalence of drug users in 2021 will increase to 3.66 million people. February 2022 accessed on 22 May 2022.

²Renny Gladis Karina, Criminalization of Traffickers and Narcotics Addicts in the Perspective of Criminal Purposes, (Bapeace Law Journal, Vol. 4, Issues 1, March 2019). p. 356.

³Turnip, J., & Wahyuningsih, SE (2018). Analysis of the Role of Police Investigators in Handling Drug Crime at the Rembang Police, Central Java. Khaira Ummah Law Journal, 13(1), p. 96.

⁴Jimmy Simangunsong, Drug abuse among adolescents (a case study at BNN Kota Tanjungpinang). (E-journal, 2015) p. 1

Narcotics Law and cannot be separated from the norms of criminal law adhered to by criminal law so far. Various efforts have been made by the government and law enforcement. Where one of these efforts is to increase threats and even multiply in the form of death penalty which is stipulated for drug offenders as contained in the Narcotics Law and the Psychotropic Law.⁵

Reporting from jateng.bnn.go.id, the level of drug use / risk of drug abuse in Central Java is quite high but has decreased in 2019-2020, the decrease is considered very small or not very significant. Head of BNNP Central Java, Drs. Muhammad Nur, SH., M.Hum said that based on data for 2020 the prevalence of drug users in Central Java reached 1.16% of the total population of 34.26 million people. This number decreased when compared to data in 2019. In 2019, the prevalence of drug users in Central Java was almost close to 2% or 1.96% to be precise, namely around 671,496 people. In other words, drug users in Central Java currently reach 397,416 people. Meanwhile, the number of drug crime cases uncovered in Central Java during 2020 reached 1,765 cases, while those involved in drug abuse during 2019 were 195,081 people. This shows that narcotics are very dangerous if narcotics abusers are not eradicated immediately.

This research aims to review and analyze criminal sanctions against narcotics dealers in the Semarang District Court.

2. Research Methods

This research is a normative juridical research, with the specification of a descriptive research analysis using secondary data collection methods which are analyzed qualitatively.

3. Results and Discussion

3.1 Criminal Sanctions against Narcotics Dealers at the Semarang District Court

Sanctions for drug dealers are contained in Article 114 and Article 119, with different types/classes of narcotics, this criminal sanction is manifested in the form of a special minimum sentence, 20 years imprisonment, life imprisonment, or death penalty based on class, type, size and the number of narcotics, with the hope that there will be an even distribution of criminal sanctions, the eradication of narcotics crimes will be effective and achieve maximum results.

It is possible for drug dealers to be subject to death penalty, which are stated in Article 114, Article 119 which are adjusted to the category or severity of the crime committed. Act No. 35 of 2009 concerning Narcotics contains capital punishment,

⁵Ibid.

that the death penalty for dealers is regulated in Article 114 paragraph (2) and Article 119 paragraph (2). The article reads as follows:

Article 114 Paragraph 2: in terms of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 5 (five) tree trunks or in non-plant forms weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1)) which in plant form weighs more than 1 (one) kilogram or exceeds 5 (five) tree trunks or in non-plant form weighs 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

Article 119

Paragraph 2: in terms of the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Group I as referred to in paragraph (1) which in the form of plants weighs more than 5 (five) tree trunks or in non-plant forms weighing 5 (five) grams, the offender shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1)) plus 1/3 (one third).

In Article 114 paragraph 2 it explains that the sanctions for narcotics dealers are death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third). Whereas in Article 119 paragraph 2 the sanctions are death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

The death penalty for narcotics traffickers is an aggravation of punishment for extraordinary crimes where these crimes are organized transnational crimes with extraordinary impacts.

3.2 Judge's Consideration Alam Implements Death Penalty Sanctions for Decision Number 731/Pid.Sus/2019/Pn.Smg

Legal facts based on what was revealed at trial in decision No. 731/Pid.Sus/PN.Smg the process of arresting the defendant was carried out by Central Java National Narcotics Agency officers at the Tanjung Mas Port Pier, Tanjung Mas Village, Kec. North Semarang, Semarang City on Tuesday 9 July 2019 at around 01.30 WIB, the

defendant Sultan Andi Widakso was carrying methamphetamine weighing approximately 200 (two hundred) grams brought from Pontianak which was obtained from Zupandi Oktari on the intermediary of the defendants Minggu Irdiansyah alias Anong and Yusuf alias Suf. The arrest of the defendants was carried out by a series of investigations conducted by the BNNP. From this investigation, BNNP found out that on Saturday 6 July 2019 at around 12.00 WIB or at least at another time still in July 2019.⁶

The judge has several considerations in imposing a sentence on the defendant before prosecuting a case. One of them is in the death penalty case for drug dealers found in the Semarang District Court with Decision Number 731/Pid.Sus/PN.Smg. The judge considered several aggravating and mitigating factors and matters before imposing a sentence on the defendant. Considerations The judge handed down a criminal verdict on the Defendant during the trial and heard the testimony of the Defendant's legal advisors who argued about the Defendant's struggle in terms of defending his human rights to seek justice but the Panel of Judges considered that the Defendant's actions had neglected to pay attention to the human rights around him. The Panel of Judges has also applied the law correctly and has not misapplied because it has taken into account legal facts that are legally relevant along with the means of proof which form the basis for determining the Defendant's guilt. Apart from that, the Defendant's reasons were only a repetition of everything that had been properly considered by the *judex facti*. The court did not exceed its authority in considering sufficiently all the circumstances surrounding the defendant's actions, both aggravating circumstances and the nature of the actions committed by the defendant.

In order to provide a deterrent effect for Indonesian citizens to love the Indonesian people more, one way is by protecting the next generation of the nation, instead of destroying it by distributing narcotics to Indonesian society. The Panel of Judges was of the opinion that mitigating circumstances against the Defendant were declared non-existent.

The Judge's view from the humanitarian and sociological aspects in the decision number 731/Pid.Sus/2019/PN.Smg 2020, the Judge's considerations in making the decision there were several things that were burdensome to the Defendant, the Judge in deciding a case did not look at it from the humanitarian and sociological aspects. In decision number 731/Pid.Sus/2019/PN.Smg of 2020 the Judge handed down a decision that did not take into account the humanitarian aspect at all including human rights because in the Judge's Decision he considered that the Defendant's actions had neglected to pay attention to the human rights around him even human rights Humans in general are affected by drug users.

⁶Decision Number 731/Pid. Sus/2019/PN.Smg

Considering the factors that can be aggravating and mitigating for the Defendant as contained above, the sentence imposed on the Defendant is considered fair, both based on the sense of justice in society and the sense of justice according to the law. Remembering and paying attention to the provisions of Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Republic of Indonesia Act No. 35 of 2009 concerning Narcotics and other legal regulations related to this case:

JUDGE

- 1) Declare the Defendant Minggu Idriansyah alias Anong Bin Idris DuSulai guilty of committing the crime of trial or conspiracy to commit the crime of Narcotics and the Narcotics Precursor, any person without rights against the law, offering for sale, selling, buying, being an intermediary in buying and selling, exchanging, hand over or receive Narcotics Group 1, in non-plant form weighing more than 5 (five) grams,
- 2) Sentenced Defendant Minggu Idriansyah alias Anong Bin Idris DuSulai to death;
- 3) Stating the evidence in the form of: 1 (one) black cellphone brand "Realme" with simcard number 089694403866 to be confiscated for destruction.
- 4) To burden the defendant with the burden of paying court fees to the State in the amount of IDR 2,000, - (two thousand rupiah).

3.3 Constraints and Solutions in Implementing Death Penalty for Narcotics Dealers

3.3.1 Constraint in Implementing Death Penalty for Narcotics Dealers

The Indonesian government has the desire to abolish death penalty but sees the trend of serious crimes is still quite high, especially narcotics crimes. Until now the current rejection of death penalty, if the government continues to enforce the execution of death penalty against narcotics convicts means that the government has violated Article 28 A of the 1945 Constitution.

The death penalty is considered not in line with the nature and nature of the punishment itself.⁷The essence of imposing a sentence is to provide learning for convicts to become individuals who realize their mistakes and become better. Criminal imposition is intended to change the behavior of criminals for the better.

⁷Ratna Ajeng Tedjomukti and Halimatus Sa'diyah, Foreign Pressure is Strengthening, Republika Tuesday 29 April 2015 page 1.

If the convict is sentenced to death, it means that the government does not provide an opportunity to improve and from a social point of view, the community will not be able to experience changes in the behavior of the convict.

Until now, the death penalty is still threatened in Act No. 35 of 2009 concerning Narcotics as one of the sentencing policies which continues to be debated whether the death penalty is able to achieve the goal of punishment, because the purpose of punishment is to provide social protection for society (general prevention) and to improve narcotic crime behavior (special prevention),⁸ by imposing capital punishment on narcotics offenders, the two aspects of the objective of punishment will not be achieved.⁹

3.3.2 Solution in Implementing Death Penalty for Narcotics Dealers

Through the principle of balance, the RKUHP provides signs that the application of capital punishment must be careful, prudent, selective and pay attention to individual legal interests. On that basis, the formulation of the RKUHP stipulates that there is a "postponement of execution of death penalty" or "conditional death penalty" with a probationary period of 10 (ten) years. The legal policy for dealing with the death penalty problem in the RKUHP seeks to accommodate the wishes of those who support and oppose whether or not death penalty is necessary within the framework of the national legal system. Those who are pro focus more on the public interest (society), while those who are against prioritize individual interests (the right to life of the perpetrator)

The RKUHP applies conditional death sentences because of a probationary period of 10 years. This means that narcotics convicts are given the opportunity during this time to realize their mistakes and behave properly, so that the death penalty that has been imposed on them can be replaced with life imprisonment or 20 (twenty) years in prison. With the regulation of death penalty sanctions through the principle of balance, it is expected to be able to resolve the constraints on death penalty sanctions because the 10-year probationary period basically aims to protect the individual's right to life with the condition that the convict must correct his mistakes, but if while in the Correctional Institution there are no signs of improvement the death penalty can be imposed.

4. Conclusion

Criminal sanctions against narcotics dealers at the Semarang District Court based

⁸Andrew Von Hirsch and Andrew Asworth, *Proportionate Sentencing, Explorate Principle*, Oxford University Press Inc, New York, translated by Andri Sumitro, in *Criminal Proportionality*, 2005, p. 14.

⁹Juhaya S Praja, Syahrul Anwar, *Criminal Law and Crime Numbers*, (Bandung, Globe, 2014), page 66.

on Act No. 35 of 2009 confirms that there are rehabilitation sentences for victims, and prison sentences even up to the death penalty as in case Number 731/Pid.Sus/2019/Pn.Smg. The judge's considerations in applying criminal sanctions against narcotics dealers at the Semarang District Court were sentenced to death in case Number 731/Pid.Sus/2019/Pn.Smg. In that case drug dealers were caught and received severe sanctions, but other perpetrators actually expanded their area of operation and controllers as convicts could still operate while serving a criminal sentence. Obstacles and solutions in applying criminal sanctions against narcotics dealers in the Semarang District Court related to law enforcement when convicts are serving sentences that are still weak for crimes in Indonesia, should refer to a legal norm approach that fosters criminals by providing guidance in correctional institutions. This is based on the reality on the ground that the death penalty does not have a deterrent effect on drug dealers. The solution to dealing with problems like this is to implement correctional governance and coaching for inmates as well as institutional administrators. The death penalty does not have a deterrent effect on drug traffickers. The solution to dealing with problems like this is to implement correctional governance and coaching for inmates as well as institutional administrators. The death penalty does not have a deterrent effect on drug traffickers. The solution to dealing with problems like this is to implement correctional governance and coaching for inmates as well as institutional administrators.

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