

## The Formulation Of Justice-Based Narcotic Addictive Law Enforcement

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**Abstract.** *In Act No. 35 of 2009 as a penal facility for tackling narcotics crimes, it is regulated regarding the problem of narcotics offenses every imposition of criminal sanctions must be able to provide benefits for the perpetrators of criminal acts personally, namely to be able to correct the mistakes of the perpetrators and make the perpetrators not repeat their actions again. Research Objectives: to describe and analyze the formulation of criminal sanctions against perpetrators of narcotics crimes based on positive criminal law; to examine and analyze the weaknesses in the formulation of criminal sanctions against perpetrators of narcotics crimes based on positive criminal law and to find out and analyze the policy of formulating criminal sanctions against perpetrators of narcotics crimes in the upcoming reform of criminal law. The approach method used in this legal research is normative juridical. The formulation of criminal sanctions against perpetrators of narcotics crimes in positive law is contained in Act No. 35 of 2009 concerning Narcotics in the context of eradicating narcotics crimes regulated in Article 111 - Article 148. Regarding the provisions of Article 113 paragraph (2), Article 114 paragraph (2), Article 115 paragraph (2), Article 116 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), Article 121 paragraph (2) and Article 38 paragraph (2) of Act No. 35 of 2009 it is stated that there is an imposition of capital punishment in addition to imprisonment and fines, but the mechanism established for the imposition of capital punishment must also be accompanied by fines. In the framework of formulating sanctions policies.*

**Keywords:** *Formulation; Narcotics; Sanctions.*

### 1. Introduction

The State of Indonesia is a state of law which can be defined simply as a country that places the most important law as the basis and the way the exercise of power

in all its forms is carried out under the rule of law and obeys existing laws.<sup>1</sup> Law enforcement is the process of making efforts to uphold or function real legal norms as guidelines for behavior in the life of society and the state.<sup>2</sup>

Narcotics abuse has reached an alarming level, not only is the quantity of abuse increasing and widespread, but its users have also spread to almost all levels of society, from students to state officials who are also involved in narcotics crimes. The circulation of narcotics in Indonesia has a tendency to increase, and what is very unfortunate is that narcotics users are currently being carried out by government officials and law enforcers. Narcotics abuse is actually a crime, so the perpetrators must carry out legal processes like other law enforcement in criminal cases.<sup>3</sup>

At present, the development of narcotics use is increasing rapidly and not for medicinal purposes or scientific development purposes, but with the aim of obtaining huge profits, namely by illegally trading narcotics or illicit narcotics to various countries.

The illicit circulation of narcotics raises concern for the international community, given the impact caused by the abuse of narcotics which is very dangerous for the life of the nation and state, especially for the sustainable growth and development of the younger generation.<sup>4</sup>

Law enforcement against crimes in Indonesia, specifically in terms of punishment, should refer to a normative approach that punishes criminals so that it can create a deterrent effect.<sup>5</sup>

With the large number of narcotics cases that have occurred recently, it indicates that there have been actions that are not in line with Act No. 35 of 2009. In other words, there are some members of society who do not comply with narcotics laws.

Against these deviant acts, the law must be upheld. The law functions as social control, forcing citizens to comply with applicable laws and regulations. Act No. 35 of 2009 which regulates narcotics is a law that must be obeyed by all Indonesian citizens, without exception.

The scope of criminal law policy actually covers a wide range of issues, which include evaluating the substance of the applicable criminal law (*ius constitutum*) for the renewal of the substance of criminal law in the future (*ius constituendum*),

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<sup>1</sup>Sulaiman Nandihanta Rezzi Suharso<sup>1</sup> and Andri Winjaya Laksana, The Role and Functions of Prosecutors in the Implementation of Destroying Evidence of Narcotics Abuse in the City of Semarang, UNISSULA STUDENT SCIENTIFIC CONFERENCE (KIMU) 3, 2021, Page. 293-310

<sup>2</sup>Melisa Dewi Nur Aeni and Bambang Tri Bawono, Imposition of Death Penalty in a Human Rights Perspective, UNISSULA STUDENT SCIENTIFIC CONFERENCE (KIMU) 4, 2019, Page. 448-463

<sup>3</sup>Andri Winjaya Laksana, The Legal Position Of Islamic Boarding School (Pesantren) As A Rehabilitation Effort For Narcotics Abuse, IJLR: International Journal of Law Reconstruction Volume 5, Number 2, September 2021, Page. 317-328

<sup>4</sup>Rian Prayudi Saputra, Counseling About Narcotics and Legal Sanctions in Merangin Village, Community Development Journal Vol.3, No.2 June 2022, Page. 1233-1238

<sup>5</sup>Andri Winjaya Laksana, Review of Criminal Law Against Narcotics Abusers Using a Rehabilitation System, Journal of Legal Renewal Volume II No. January 1 - April 2015, Page. 74-86

by applying this criminal law through the components of the criminal justice system, to address -find out whether the substance of the criminal law has fulfilled the people's sense of justice or vice versa.<sup>6</sup>

Viewed from the improvement aspect of the offender, the measure of effectiveness lies in the special prevention aspect of the crime. So, the measure lies in the problem of how far the punishment (prison) has an influence on the perpetrator or convict. There are two aspects of criminal influence on convicts, namely the initial prevention aspect (deferent aspect) and the reformative aspect.<sup>7</sup>

A good law will work if there is a substance that can be useful as a means of upholding justice and is supported by law enforcement officials who consistently adhere to this substance and consistently uphold human rights.<sup>8</sup>

## **2. Research Methods**

To answer the writing questions that have been formulated above, the authors will use the normative research method.<sup>9</sup> The research specifications used in this study used descriptive analytical.<sup>10</sup>

## **3. Results and Discussion**

### **3.1. Formulation of Criminal Sanctions Against Narcotic Offenders Based on Positive Criminal Law**

The use of narcotics in accordance with the rules will not have a harmful effect, but will provide benefits. In the Preamble to Act No. 35 of 2009 in letter c it is stated that narcotics, on the one hand, are drugs or materials that are useful in the field of medicine or health services and the development of science, and on the other hand, they can also cause dependence which is very detrimental if used without strict and thorough control and supervision. Thus, narcotics are indeed needed in the health sector, but efforts must be made not to be misused, because they can lead to dependence (becoming an addiction) and cause losses that have a very broad impact, therefore narcotics abuse is a crime that is quite dangerous. As mandated in the Preamble to Act No. 35 of 2009 that the availability of certain types of narcotics that are urgently needed as medicine is intended to improve public health status, but on the other hand considering, the impact that can be caused and the level of the danger that exists if used without proper doctor

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<sup>6</sup>Dahlan, Problems of Justice in the Application of Crime Against Narcotics Abusers, First Edition, Deepublish, Yogyakarta, 2017, Page. 2 and 3.

<sup>7</sup>Dawud Budi Sutrisno, Regulation & Application of Drug Criminal Law, First Edition, Yuma Pustaka, Surakarta, 2012, Page. 54.

<sup>8</sup>Dahlan, op. cit., Page. 4.

<sup>9</sup>Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, Law Development Journal, Volume 3 Issue 2, June 2021, Page 223-231

<sup>10</sup>Julizar Bimo Perdana Suka, Bambang Tri Bawono, and Andri Winjaya Laksana, The Implementation of Code of Conduct for Members of Police as Accurators of Murder, Law Development Journal, Vol 4 No 2, June 2022, Page 197-204

supervision and strict, it must be done to prevent and eradicate the dangers of abuse and illicit narcotics.

Thus, the use of narcotics must be controlled and monitored, because excess doses in their use will result in bad things, especially for the user's health. According to the influence of its use (effect), due to overdosage (over dose), and symptoms free of influence (withdrawal syndrome).

This criminal sanction can be known by reading the provisions of the legislation. A citizen can trace an act or action threatened with criminal sanctions or not in the laws and regulations. Citizens can know and make choices including considering the consequences of the actions they will do, of course, provided that the formulation or the sound of the provisions of the law is clear enough,<sup>11</sup> and basically, sentencing is not meant to make someone suffer or make them miserable and humiliate them because someone has committed an act that violates the law.

Likewise in Act No. 35 of 2009, it has been regulated regarding criminal sanctions for perpetrators of narcotics crimes, namely those regulated in Chapter XV concerning Criminal Provisions from Articles 111 - Article 148. Act No. 35 of 2009 regulates the imposition of a special minimum sentence. The imposition of this special minimum sentence is based on a sense of justice by using conscience within the framework of fair law enforcement.

The existence of a special minimum criminal threat in Act No. 35 of 2009, aims to provide a deterrent effect and fear, both for the criminal himself and for others as general prevention, and for other parties as special prevention.

### **3.2. Weaknesses in the Formulation of Criminal Sanctions against Narcotic Offenders Based on Positive Criminal Law.**

Regarding narcotics crimes in this world, especially in Indonesia, these crimes are already so terrible and increasingly devastating. Even though according to Act No. 35 of 2009 concerning Narcotics the most severe punishment that can be imposed on drug offenders is the death penalty, this crime continues.

Seeing how dangerous and serious the risks that must be borne if drug syndicates are free to operate in a country, several countries have implemented severe legal sanctions for members of drug syndicates who are caught, including Japan, Malaysia, Thailand and Korea actually became the target of drug marketing, especially heroin and cocaine, along with increasing the welfare of their citizens, since 1992, these countries have declared war on drug syndicates. The sanctions he applied were no joke, namely the death penalty for drug dealers.<sup>12</sup>

Singapore has also introduced similar penalties. In terms of seriousness in countermeasures, perhaps the Indonesian state can follow the example of Malaysia. Shortly before the plane landed in Singapore, a warning was given

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<sup>11</sup>Dahlan, op. cit., Page. 31.

<sup>12</sup>OC Kaligis and Soedjono Dirdjosisworo, *Drugs & the Judiciary in Indonesia, Criminal Law Reform Through Legislation and Judiciary*, Second Print, Revised Edition, OC Kaligis & Associates, Jakarta, 2006, Page. 247.

clearly "no carrying drugs (drugs)", as well as when entering the inspection gate. This has a fairly good deterrent effect, because it emphasizes that the problem of drugs is of great concern and reminds of the high risk for offenders because the penalties are harsh and non-negotiable.<sup>13</sup>

Regarding criminal sanctions, Act No. 35 of 2009 found juridical problems, including:

1. Formulation of criminal sanctions:<sup>14</sup>
  - a. Most criminal sanctions in Act No. 35 of 2009 are formulated cumulatively. In fact, there is a death penalty/life imprisonment that is cumulative with a fine. This can cause problems because with the cumulative formulation which is "requiring" (imperative), a person who is sentenced to death or life imprisonment must also be sentenced to a fine;
  - b. The most cumulative formulation is between imprisonment and a fine that is quite large (hundreds of millions and there are billions of rupiah). It is feared that this is not effective and can cause problems. For example, the provisions in Article 148 of Act No. 35 of 2009 that: "If the fines as stipulated in this Law cannot be paid by the perpetrators of narcotics crimes and narcotics precursor crimes, the perpetrators are sentenced to imprisonment for a maximum of 2 (two) years as a substitute for a fine that cannot be paid. Thus, it is very likely that the threat of a very large fine will not be effective because if it is not paid, at most you will only be subject to a substitute imprisonment for a maximum of 2 years. Therefore, it is unlikely that he will pay the fine;
  - c. Likewise, the high fines will not be effectively imposed on corporations because in this Narcotics Law there are no special provisions for corporations that do not pay fines. The general rule in Article 30 of the Criminal Code is aimed at legal subjects in the form of "persons" not aimed at "corporations". In Act No. 35 of 2009 there is a provision that regulates criminal liability for corporations (Article 130), which is subject to a fine of 3 times the fine for the offense in question and can be subject to additional punishment in the form of revocation of business license and/or revocation of legal entity status. However, in this Article 130 there is no alternative criminal regulation if the fine is not paid by the corporation. The provisions of Article 148 above (substitute punishment in the form of imprisonment),

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<sup>13</sup>Ibid.

<sup>14</sup>Barda Nawawi Arief, *Kapita Selekta...*, op. cit., Page. 97-99.

- d. In Act No. 35 of 2009 there is no visible type of sanction (criminal/action) specific to corporations, unless there is an additional penalty in the form of revocation of a business license in the Psychotropics Law.
2. The problem of criminal threats:<sup>15</sup>
    - a. In Act No. 35 of 2009 there are offenses that are given a special minimum criminal threat. Such a policy formulation is a deviation from the Criminal Code system;
    - b. Such deviations can indeed be made. However, it should be accompanied by guidelines or rules for the application of a minimum punishment that is specific in nature as well. Without specific guidelines/rules, this can lead to problems because in the general rules of the Criminal Code there are no criminal provisions to apply a specific minimum sentence;
    - c. The absence of specific sentencing rules to implement this minimal system may not be a problem for perpetrators (plegers) who have committed a completed offense (voltage delict). However, it can become a problem if there is "participation, trial, concursus, recidive, mitigating/aggravating sentences, expiration, and so on". In practice, judges have difficulty implementing this minimum threat, so there are judges who impose sentences under minimal threat.

In addition to the juridical problems in Act No. 35 of 2009, other legal problems were also found in law enforcement of Act No. 35 of 2009, namely: Narcotics users are victims or perpetrators. One of the problems in Act No. 35 of 2009 is related to the position Narcotics users are perpetrators or victims; The implementation of Act No. 35 of 2009 depends on implementing regulations; Overlapping criminal convictions for narcotics users; There is no clear expiry date for drug users; Drug users are vulnerable to torture and cruel treatment or punishment; The difficulty of implementing the Supreme Court Circular Letter (SEMA) Number 04 of 2010.

### **3.3. Policy Formulation of Criminal Sanctions Against Narcotic Offenders in Upcoming Criminal Law Reforms**

In the framework of formulating sanctions policies, especially for narcotics users in the future, namely by applying action sanctions, it is necessary to consider the type or form of sanctions that are appropriate and useful in order to save narcotics abusers for themselves (addicts). To determine the type of sanction for this action,

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<sup>15</sup>Ibid.

it is necessary to pay attention to several things, such as the conventions of countries in the world that reflect a new paradigm to avoid criminal justice. Restorative justice (hereinafter translated into restorative justice) is a popular alternative in various parts of the world for handling criminal offenders who have problems with the law because it offers a comprehensive and effective solution. However, even if the act of using narcotics for oneself fulfills the qualifying elements of a criminal act regulated in another article, as long as the intention (*mens rea/criminal intention*) of the perpetrator is for his own use as a result of a dependency on this type of narcotics, the offender may not be subject to criminal sanctions. Imprisonment but must strictly regulate sanctions in the form of medical rehabilitation and social rehabilitation. Or in a simple sense, every narcotics abuser for himself without being accompanied by other types of criminal qualifications such as distribution, selling, import, production is not subject to criminal sanctions in prison but is obliged to be rehabilitated.

The best experience (best practice) in overcoming the use of narcotics in foreign countries, especially in Australia, also shows that diversion to treatment and rehabilitation for drug users is proven to be more effective and cheaper than imprisonment. This spirit is compatible with the philosophy of reintegration of the correctional program itself which already exists in Act No. 35 of 2009 which is stated in Article 127 paragraph (3) and Article 128 paragraph (3). These articles should be a priority in law enforcement for users and addicts.

Regarding the formulation/legislative policy that will be carried out by the government, how about death penalty sanctions in the upcoming narcotics law, in this case the correct understanding of the imposition of the death penalty in relation to extraordinary crimes such as narcotics crimes must be seen as an effort to protect the "rights of life" (the right to life) of many people".<sup>16</sup>

Oemar Senoadji is of the opinion that "as long as our country is still resolute, still struggling with its own life which is threatened by danger, as long as the legal order of society is disrupted and endangered by elements that do not recognize humanity, it still requires the death penalty."<sup>17</sup>The death penalty is also aligned with the aim of realizing several legal functions, including the function of education for other members of the community, that is an extraordinary crime which is very troubling to society as a whole, if it is proven to have been committed , the perpetrator will be subject to death penalty. Furthermore, Achmad Ali, argued that the death penalty for the Indonesian state is still needed for perpetrators of serious crimes, premeditated murders that are carried out sadistically, including perpetrators of "genocide" and "crime against humanity", drug dealers, "big- class" corruptors, and terrorists.

#### **4. Conclusion**

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<sup>16</sup>Decision of the Constitutional Court of the Republic of Indonesia Number 2-3/PUU-V/2007 Page. 135

<sup>17</sup>Andi Hamzah and A. Sumangelipu, Op, Cit, Page, 28

The formulation of criminal sanctions against perpetrators of narcotics crimes in positive law is contained in Act No. 35 of 2009 concerning Narcotics in the context of eradicating narcotics crimes regulated in Article 111 - Article 148. Regarding the provisions of Article 113 paragraph (2), Article 114 paragraph (2) ), Article 115 paragraph (2), Article 116 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), Article 121 paragraph (2) and Article 38 paragraph (2) of Act No. 35 of 2009 it is stated that there is an imposition of capital punishment in addition to imprisonment and fines, but the mechanism established for the imposition of capital punishment must also be accompanied by fines. Weaknesses in the formulation of criminal sanctions against perpetrators of narcotics crimes in Act No. 35 of 2009 concerning Narcotics,

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