

Implementation Of Criminal Fine on Criminal Acts of Narcotics Based on Law No. 35 Year 2009 Regarding Narcotics

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ABSTRACT

Narcotics crimes themselves are extraordinary crimes. Narcotics is one of the most common actions carried out by the community. Indeed, this type of violation does not harm others, but its actions have been regulated and stipulated in Law Number 35 of 2009 concerning Narcotics as a type of criminal act. Sanctions given to violators of this law are in the form of imprisonment, fines, death sentences, and even imprisonment and cumulative fines. In reality, none of the convicts of narcotics crimes have paid the fine, the convicts prefer not to pay the fine and replace the criminal fine with a substitute for a fine in the form of imprisonment. Based on this background, the problems studied in this study are the forms of crime in narcotics crimes based on Law Number 35 of 2009 concerning Narcotics and regarding the application of fines to narcotics crimes based on Law Number 35 of 2009 concerning Narcotics. The type of research used is normative juridical research which is qualitative. This research is descriptive analysis. The source of data used in this study to support the results of the study is secondary data and then analyzed qualitatively. This research is descriptive analysis. The results of the study show that the application of criminal sanctions for criminal acts of narcotics based on Law Number 35 of 2009 concerning Narcotics, in the Serang District Court has been applied in accordance with applicable regulations, namely Law Number 35 of 2009 concerning Narcotics with the amount of the fine depending on the The article was charged to the defendant, but at the time of execution at the prosecutor's office none of the defendants paid the fine on the grounds that the defendants were unable to pay the fine because the fine was very large. Regarding the very large fines, it is hoped that the government in the future in determining the fines will pay more attention to the condition of the Indonesian people, most of whom are at the lower middle economic level.

Keywords: Narcotics, Criminal Fines, Imprisonment in Lieu of Criminal Fines.

INTRODUCTION

All human actions that harm others, commit acts that deviate from the applicable norms or rules will be subject to sanctions according to what they have done. The use of illegal drugs or narcotics is one of the most common acts carried out by the community. Indeed, this type of violation does not harm others, but its actions have been regulated and stipulated in Law Number 35 of 2009 concerning Narcotics as a type of criminal act. Sanctions given to violators of this law are in the form of imprisonment, fines, death sentences, and even imprisonment and fines at the same time.

Narcotics abuse is an act that is contrary to the laws and regulations as stipulated in article 7 of

the narcotics law which states that narcotics can only be used for the benefit of health services and/or the development of science and technology.¹ Narcotics crime itself is included in the category of *extraordinary crimes*. Narcotics is one of the most common actions carried out by the community. Indeed, this type of violation does not harm others, but its actions have been regulated and stipulated in Law Number 35 of 2009 concerning Narcotics as a type of criminal act. Sanctions given to violators of this law are in the form of imprisonment, fines, capital punishment, and even imprisonment and cumulative fines.

Regarding the criminal fine, Aisah argues that a fine is one of the main types of punishment that

¹Tommy Busnarma, "Penerapan Sanksi Pidana Denda Terhadap Pelaku Tindak Pidana Penyalahgunaan Dan Peredaran Gelap Narkotika

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is threatened and is primarily aimed at the assets or property of an offender for violating the provisions of the applicable criminal law. Mas Suhendar as Deputy Chairperson of the East Kalimantan High Court explained that:

"The existence of a criminal fine is inferior to imprisonment or imprisonment so that it is often used as an alternative crime, even though fines are the main criminal sanctions in the formulation of criminal acts, but in essence it applies to minor crimes. In addition, there is also a fine which is an additional sanction from the main crime in a criminal act. Fines are also included in environmental crimes, corruption crimes, money laundering crimes, shipping crimes, and narcotics crimes.

Regulations for perpetrators of narcotics crimes are contained in Law Number 35 of 2009 concerning Narcotics, which is contained in chapter XV regarding criminal provisions starting 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 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 129, Article 137, and Article 147. Regarding the criminal provisions, it is in the form of imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and also a penalty of a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah). The threat of imprisonment and fines is based on the type of narcotics group and also the type of unlawful act committed.

Narcotics crime violations in the city of Serang itself are increasing every year, this can be seen from the number of narcotics cases at the Serang District Court where in 2019 there were 324 cases at the Serang District Court, in 2020 there were 445 narcotics crime cases, and in From 2021 to mid-June, narcotics crime cases at the Serang District Court have reached 172 cases.

THEORY OF CRIMINAL LAW

Criminal law according to WLG Lemaire consists of norms that contain the requirements and prohibitions that have been regulated in a law which if the prohibition in the regulation is violated, the violator will receive sanctions in the form of punishment, namely a suffering. of a special nature. The term criminal law itself is a translation of the Dutch term "Strafrecht", where it is divided into 2 (two) words, namely the first "Straf" which means criminal, and "Recht" which means law.

Crime etymologically comes from the word "*strafbaar feit*" which according to Moeljatno is defined as a criminal act that is prohibited by a prohibition rule which is accompanied by threats in the form of certain criminal sanctions, for anyone who violates the prohibition.² According to Leden Marpaung, the word "Straftbaar Feit" is more suitable to use the word "delict", where the offense comes from the word "delict" (Germany and Dutch), "delit" (France) which means an act that can be punished because it is a violation of the law. Criminal act.

The definition of criminal law according to Moeljatno is that criminal law can be seen as part of the overall law that applies in a country and contains the basics of regulations and provisions regarding what not to do, prohibitions and criminal threats for those who do it. Meanwhile, according to W FC Van Hattum, criminal law is

A whole of the principles and regulations followed by the state or other general legal community, where they as custodians of public law and order have prohibited the conduct of acts that are violating the law. law and has linked the violation of its rules with a special suffering of punishment".

Meanwhile, according to SR Sianturi, criminal acts are actions that are not only formulated by the Criminal Code (KUHP) as crimes or criminal acts. According to Barda Nawawi Arief, the basis for criminalizing an act is closely related to the problem of the source of law or the legal basis for declaring an act as a criminal act or not. The criminal act in the Criminal Code is not formulated explicitly but only mentions the

²Moeljatno, Op. Cit hlm 54

elements of the crime, but in the concept of that has been formulated or formulated, for example in the concept of the Criminal Code formulated in Article 11 which states that:

(1) A criminal act is an act of doing or not doing something which is declared as an act that is prohibited and is punishable by punishment.

(2) To be declared a criminal act, in addition to being prohibited and punishable by law, it must also be against the law or against the public's legal awareness.

(3) Every criminal act is always considered to be against the law, unless there is a justification.

Pipin Syarifin explained about 3 main problems related to criminal law as follows:

1. Prohibited actions

Where in the articles regarding the issue of prohibited acts and also regarding criminal matters as contained in Title XXI Book II of the Criminal Code.

2. People who commit prohibited acts

Regarding people who commit prohibited acts (criminal acts), namely: every actor who can be held criminally responsible for his actions that are prohibited in a law.

3. Threatened penalties Regarding the punishments that are threatened against the perpetrators, namely punishments that can be imposed on any perpetrator who violates the law, both punishments in the form of principal punishments or as additional punishments.

THEORY OF SENTENCING

The Absolute Theory is often referred to as the theory of retaliation, the theory of retaliation justifies punishment because someone has committed a crime. The proponent of this theory is Immanuel Kant who says that *Fiat Justitia Ruat Coelum* means that even though tomorrow is the end of the world, the last criminal must carry out his crime. Kant based his theory on moral/ethical principles. Another proponent of this theory is Hegel who said that:

"Law is the embodiment of freedom, while crime is a challenge to law and justice. Therefore, the law must be maintained because the law is the embodiment of freedom and justice, crimes

absolutely must be eliminated by giving "injustice" (criminal) to criminals".

Theory Relative or Objective Theory This theory bases its view on the purpose of punishment, namely for the protection of society or the prevention of crime. This means that prevention is also considered for the future. The figure of this theory is Paul Anselm von Feuerbach. According to him, merely imposing criminal threats will not be sufficient, but it is necessary to impose a criminal sentence on the criminal.

The Combined Theory Is that the purpose of the crime is not only to avenge the crimes of criminals, but also to protect society by creating order. This combined theory arises as a result of objections to the theory of retaliation as well as the theory of purpose, this is based on the opinion of Muladi and Barda Nawawi Arief that:

"This combined theory bases the idea that punishment should be based on the objectives of the elements of retaliation and maintaining public order. which is applied in combination by emphasizing on one of its elements without eliminating the other elements, as well as on all existing elements.

This combined theory uses the two theories above (absolute theory and relative theory) as the basis for sentencing, with the consideration that both theories have weaknesses, namely:

a. The weakness of absolute theory is that it creates injustice because in sentencing it is necessary to consider the existing evidence and the intended retaliation does not have to be the state that carries out.

b. The weakness of the relative theory is that it can cause injustice because perpetrators of minor crimes can be severely punished, people's satisfaction is ignored if the goal is to improve society, and preventing crime by intimidating is difficult to implement.

APPLICATION OF CRIMINAL

Law Number 35 of 2009 Concerning Narcotics
The forms of violation of narcotics crime based on Law Number 35 of 2009 concerning Narcotics, are: planting, maintaining, possessing, storing, controlling, or providing Narcotics

Category I in the form of plants (Article 111), possessing, storing, controlling, or providing Narcotics Category I (plants and not plants), Category II, and Category III (Article 112, Article 117, and Article 122), producing, importing, exporting, or distributing Narcotics Category I (plants and non-plants), Category II, and Group III (Article 113, Article 118, and Article 123), offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering Narcotics Category I (plants and not plants), Group II, and Group III (Article 114, Article 119, and Article 124), carrying, sending, transporting, or transiting Narcotics Category I (plants and non-plants), Category II, and Group III (Article 115, Article 120, and Article 125), using Narcotics Category I, Group II, and Group III against other people or giving Narcotics Category I, Group II, and Category III for use by other people (Article 116, Article 121, and Article 126), Narcotics abusers of Category I, Group II, and Group III (Article 127), parents or guardians of underage addicts who intentionally fail to report (Article 128), produce, possess, store, control , providing, importing, exporting, distributing, offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging, delivering Narcotics Precursor, bringing, sending, transporting and transiting for makers (Article 129), a crime in Article 111 up to 126, as well as Article 129 committed by a corporation (Article 130), a person who intentionally does not report a criminal act as referred to in Article 111 to Article 126, Article 127 to 128 (paragraph (1)), and also Article 129, an attempt or conspiracy to commit a criminal act of Narcotics and Narcotics Precursor as referred to in Article 111 to Article 126 and also Article 129 (Article 132), ordering, giving or promising something, providing opportunities, recommending, providing facilities, forcing with threats, coercion with violence, deceit, or persuading children who are not yet old enough to commit a crime or to use narcotics (Article 133), addicts who are old enough and families of Narcotics Addicts who intentionally do not report themselves and report Narcotics Addicts (Article 134), pharmaceutical industry management who do not carry out the obligations as referred to in Article 45 (Article 135), placing, paying or spending, depositing,

exchanging, hiding or disguising, investing, storing, donating, inheriting, and/or transferring money, accept placement, payment or purchase, deposit, exchange, concealment or disguise of investments, deposits or transfers, grants, inheritances, assets, and objects or assets in the form of movable or immovable objects, tangible or intangible origins from Narcotics crime and/or Narcotics Precursor crime (Article 137), hinder or complicate the investigation and prosecution and examination of criminal cases of Narcotics and/or Narcotics Precursor crimes before a court hearing (Article 138), the captain or pilot captain who unlawfully does not implement the provisions as referred to in Article 27 or Article 28 (Article 139), civil servant investigators who unlawfully do not implement the provisions as referred to in Articles 88 and 89, and Indonesian National Police investigators and BNN investigators who do not implement the provisions as referred to in Article 87 to Article 90, Article 91 paragraph (2) and paragraph (3), and Article 92 paragraph (1) to paragraph (4) (Article 140), k the head of the district attorney's office who unlawfully does not carry out the provisions as referred to in Article 91 paragraph (1) (Article 141), laboratory officers who falsify test results or unlawfully do not carry out the obligation to report test results to investigators or public prosecutors (Article 142), witnesses who provide incorrect information in the examination of criminal cases of Narcotics and Narcotics Precursors before a court hearing (Article 143), leaders of hospitals, community health centers, medical centers, government-owned pharmaceutical storage facilities, and pharmacies that distribute Narcotics Category II and III not for the benefit of health services, leaders of scientific institutions that grow, buy, store, or control Narcotics plants not for the benefit of developing science, leaders of certain Pharmaceutical Industries that produce Narcotics Category I not for the benefit of scientific development, leaders of traders g most of the pharmacies that distribute Narcotics Category I which are not for the benefit of developing knowledge or circulating Narcotics Groups II and III are not for the benefit of health services and/or not for the benefit of developing knowledge (Article 147).

The Application of Fines to Narcotics

Crimes according to Teguh Prasetyo is a punishment in the form of a person's obligation to restore the legal balance or atone for his sins by paying a certain amount of money. Meanwhile, according to R. Soesilo, a fine is a punishment imposed on wealth, so that in the case of imposing a fine, the judge also determines how many days of imprisonment must be served as a substitute punishment if the fine is not paid. The regulation regarding unpaid fines is regulated in Article 30 Paragraph (2) which reads: "If a fine is imposed, and the fine is not paid, then it is replaced with imprisonment". Agreeing with R. Soesilo, Teguh Prasetyo also argues about the convict who is unable to pay the fine imposed that:

"If the convict is unable to pay the fine imposed on him, it can be replaced with imprisonment. This punishment is then called a substitute imprisonment, the maximum imprisonment for a substitute is 6 months, and may be 8 months in the event of repetition, concurrent or application of Article 52 or Article 52 a of the Criminal Code.

In the context of applying the criminal sanctions of fines to narcotics crimes, there are several things that need to be considered, one of which is that not all criminal sanctions in Law Number 35 of 2009 concerning Narcotics have criminal sanctions of fines, where the criminal sanctions of fines in this narcotics law are contained in chapters 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 141, 142, 143 The cumulative threat is in Articles 128, 131, and 134 of Law Number 35 of 2009 concerning Narcotics. Judging from the threat of sanctions contained in the narcotics law, in which almost all of the articles contain a threat of criminal fines, the criminal sanctions for fines in the narcotics law are relatively high, where the lowest sanction for perpetrators of abuse and trafficking of narcotics is Rp. 100,000,000 (one hundred million rupiah) as stated in Article 128 of Law Number 35 of 2009 concerning Narcotics. And the highest sanctions are contained in Article 114.

The criminal arrangement for substitute fines is contrary to the threat of fines that can be imposed

on perpetrators of narcotics crimes, the threat of a high fine only needs to be replaced with a maximum imprisonment of 2 years. This can hinder the process of enforcing and implementing the criminal sanctions of fines mandated in the Narcotics Law which in the end also has an impact on not achieving the objectives of criminalizing narcotics perpetrators. The application of high fines and relatively short penalties in lieu of fines seems to be justified in court decisions related to narcotics crimes. This can be seen from the decision of the Serang District Court on the decision Number 648 /Pid.Sus/2021/PN Srg on behalf of Feri Permadi Bin Hamimi and Andi Basarudi Bin Alm Edi Ependi. The two defendants violated Article 112 of the Narcotics Law in which both were legally proven without rights or against the law in possessing, storing, controlling or providing Narcotics class I, not methamphetamine, weighing 0.63 (zero point six three) grams stored in plastic. clear clips wrapped in blue Kiss candy cans. In the decision, the two defendants were fined Rp. 800,000,000 (eight hundred million rupiah) and if it is not paid, the defendant must replace it with imprisonment in lieu of a fine of 2 (two) months in prison.

Regarding the prison sentence in lieu of a relatively short or fast fine that was imposed by the judge on the defendant, based on the results of an interview with the Serang District Court judge Ali Murdiat, it was found that the legal advisors of the defendant only focused on the main crime, namely imprisonment because on average they had been from the start. for the fine they will not pay. Ali Murdiat added that the application of sanctions at the Serang District Court had been applied in accordance with applicable regulations, namely Law Number 35 of 2009 concerning Narcotics, depending on the article indicted against the defendant. Regarding the criminal fines that have been applied at the Serang District Court which are in accordance with applicable regulations, but at the time of execution at the Prosecutor's Office none of the defendants paid a fine for narcotics crimes, this is based on the results of interviews with Mrs. Endang Prasetyawati as Kaurdaskrimti Serang District Attorney. which stated that none of the defendants had paid a fine for a narcotic crime

that had been decided by the court, the defendants did not pay the fine on the grounds that the fine was very large. Meanwhile, if the defendant pays the criminal fine, the fine paid will become income for the government, because the government does not incur a lot of costs if it is not accompanied by subsidiary losses and the process of implementing the law is easier and cheaper in its implementation, besides that the defendant pays the fine. can avoid the social costs incurred in maintaining prisons, avoid unnecessary detention, and avoid wasting capital by the state.

CONCLUSION

The forms of crime in narcotics crimes based on Law Number 35 of 2009 concerning Narcotics, are as follows: planting, maintaining, possessing, storing, controlling, or providing Narcotics Category I in the form of plants, possessing, storing, controlling, or providing Narcotics Category I (plants and non-plants), Category II, and Group III, producing, importing, exporting, or distributing Narcotics Category I (plants and non-plants), Category II, and Group III, offering for sale, selling, buying, receiving, acting as intermediaries in buying and selling, exchanging, or delivering Narcotics Category I (plants and not plants), Category II, and Category III, carrying, sending, transporting, or transiting Narcotics Category I (plants and non-plants), Category II, and Group III, using Narcotics Category I, Group II, and Group III against other people or giving Narcotics Category I, Group II, and Golongan III for use by other people, Narcotics abusers of Category I, Category II, and Group III, produce, possess, store, control, provide, import, export, distribute, offer for sale, sell, buy, receive, become intermediaries in selling buying, exchanging, delivering Narcotics Precursor, carrying, sending, transporting and transiting for makers, people who intentionally do not report Narcotics crime, attempts or conspiracy to commit Narcotics crime and Narcotics Precursors, addicts and families of Narcotics Addicts who intentionally not report, place, pay or spend, deposit, exchange, hide or disguise, invest, store, grant, bequeath, and/or transfer money, accept placement, payment or spending, deposit, exchange, conceal or disguise investment, deposit or transfer , grants, inheritance, property, and other objects or assets

in the form of movable or immovable objects, tangible or intangible originating from Narcotics crime and/or Narcotics Precursor crime, hindering or complicating the investigation and prosecution and examination of Narcotics crime cases and/or Narcotics Precursor criminal acts in advance court hearings, laboratory officers who falsify test results or unlawfully do not carry out the obligation to report their test results to investigators or public prosecutors, witnesses who provide incorrect information in the examination of criminal cases of Narcotics and Narcotics Precursors before a court session. 2. The application of fines for narcotics crimes based on Law Number 35 of 2009 concerning Narcotics, the Serang District Court has been applied in accordance with applicable regulations, namely Law Number 35 of 2009 concerning Narcotics with the amount of the fine depending on the Article was charged to the defendant, but at the time of execution at the prosecutor's office none of the defendants paid the fine on the grounds that the defendants were unable to pay the fine because the fine was very large.

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