

Effectiveness of Death Penalty Against Crime of Abuse of Narcotics Agents or Statutory RI Number 35 of 2009 Concerning Narcotics Law as Viewed From The Principles of Justice And Humanity

Yuke Sinayangsih¹ and Umar Ma'ruf²

Abstract. In the process of law enforcement, the public prosecutor in demanding and Judge deciding cases narcotic crime in particular is not arbitrary impose the death penalty. Death penalty if that is the legal facts in the examination in the court proceedings indicates decent offender sentenced to death, for example: consideration of the type categorized as narcotics or weight considerations of narcotics to be sold or distributed. Narcotics law enforcement has become a concern for legislators us and see the impact of drug abuse. No doubt the legislators also provides severe criminal purpose that is the death penalty in order to provide a deterrent effect for the offender dealers or drug dealers. Although the death penalty is still ongoing and has not been abolished in Indonesia, people differ in responding as the number of countries that abolished the death penalty. On the one hand, there are groups of people expressed support that the death penalty is still needed in Indonesia moreover legally still recognized. Meanwhile, on the other hand there are groups of people who want the death penalty abolished. They argue that the provisions which apply the death penalty in Indonesia is not in accordance with the basic principles of the fundamentals of this country, namely 1945.

Keywords: Criminal Die; Abuse Of Narcotics; Principle Of Justice And Humanity.

1. Introduction

Indonesia as part of the international community co-aware the impact of the drug for life and the future viability of the nation, nationally declared war on drugs by establishing the rule of law to ensnare the doers of this. There are laws that can be associated with drug references, Act No. 35 Of 2009 on Narcotics (Narcotics Law abbreviated).

The pros and cons of capital punishment for drug criminals re-bloom discussed, a group of human rights activists, for example, they protested the executions that are considered contrary to human rights. A protest vote not only come from within the country but also from abroad are citizens exposed to the death penalty as Australia.

According Parasian Simanungkalit states:

"That drug abuse is an extraordinary crime (extraordinary crime) and transnational crime (transnational crime) because of the effects of drug abuse has not only destroyed themselves drug users but also can damage the structure of the life of society, nation and country".³

Many more are now common for young people who have abused narcotic addicted extraordinary and this of course greatly affect the behavior and thought patterns of the

¹ Student of Master of Law, Universitas Islam Sultan Agung Semarang and Attorney email: sinayangsih99@gmail.com

² Lecturer of Faculty of Law UNISSULA Semarang

³ Wahyuni Ismail 2014 *Remaja dan penyalahgunaan Narkoba* Alaudin University Press Makasar Ed. p. 7.

wearer being personally not a real self.

Drug abuse is not confined to the self-user / pecandunya but it can endanger national stability of a country, where people's lives can be disrupted system which leads to the collapse of an entire nation. So if there is a country that can not cope with abuse and illicit trafficking / trafficking of narcotics will be claimed as a hotbed of narcotics. It certainly would have a negative impact for the image of a country. To anticipate these problems have held various activities are international, including the conference held under the auspices of the United Nations.

That a substance called narcotic offered or distributed in various types and forms adapted to its effects and it is certainly very attractive among the youth / young woman against the backdrop of lower education both religious education and formal so that it is used by drug dealers to gain as much as possible and also destroys the human morals.

When entering the 20th century, international attention to the problem of narcotics is increasing, one can be seen through a "Single Convention On Narcotic/Drugs" in 1961.⁴

The problem of drug abuse in Indonesia are now very alarming. This is due to several things such as Indonesia which is located at the position between three continents and also the effects of globalization, the current highly developed transport and a shift in moral values of human beings. Basically now the Indonesian people the world community even amid faced dire circumstances due to rampant illegal drug use.

That the Law of the Republic of Indonesia Number 35 of 2009 about Narcotics, in Article 1 (1) states that:

"Narcotics are substances or drugs derived from plant or not plant, either synthetic or semisynthetic, which can cause a reduction or alteration of consciousness, loss of taste, reduce to relieve pain and can lead to dependence, which differentiated into factions as attached this legislation."⁵

Drug trafficking that occurred in Indonesia is contrary to Indonesia's national development objectives to achieve complete Indonesian man and the Indonesian society that is just, prosperous, prosperous, orderly and peaceful manner based on Pancasila and the 1945 Constitution.

Islamic law in the matter of narcotic seen as a very dangerous substance. In the Al-Quran and Al-Hadith although not mentioned directly the problem of narcotics, but because of both the nature and the dangers posed by the abuse of drugs at even more powerful than the liquor, then because of the nature and effect of the drug was equally intoxicating and make users become aware of the act of doing so, verses of the Al Qur'an and Hadith that forbid or proscribe liquor can be used as a basis or proposition against drug abuse.⁶

That consume drugs is forbidden, the prohibition of drugs in qiyaskan with the prohibition of drinking wine. Destructive elements contained in the wine are also in drugs. Because of the similarities illat is this which makes drugs is prohibited.

Thus, the drug in the view of Islam is forbidden, on the grounds that pose a great danger

⁴Kusno Adi 2009 *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak* UMM Press Malang p. 30.

⁵Law of the Republic of Indonesia Number 35 Of 2009 on Narcotics 2013 the Center for Legal Education the National Legal Development Agency Ministry of Justice and Human Rights Jakarta p. 4.

⁶Direktorat Diseminasi Informasi Deputi Bidang Pencegahan 2010 *Narkotika dalam Pandangan Agama* Jakarta p. 15.

and harm that can threaten and mental damage, life, property and descent. Resulting in increased control and supervision is crucial in efforts to control and eradicate abuse and illicit trafficking, because narcotics are generally not carried by an individual stand-alone basis, but conducted jointly in the form of networking is done by a syndicate of national and international organized and highly secret and advanced technology including in terms of securing the proceeds of crime narcotics.

That is not only in terms of taking only into something dangerous and forbidden, but the terms of the transaction and distribution is also forbidden, in terms of Islamic Economic Law. Islamic economics view that buying and selling goods that bring *madharat* was forbidden. Because in this case the consequences caused by narcotic substances more dangerous than liquor (*khamr*), in addition to the heady also cause dependence and are killed slowly. Trade in narcotics, both types of cannabis, crystal meth or whatever the content of substance equally or more powerful than those species, both those who sell or offer it is a criminal, however, the legislation in force, namely by Act No. 35 of 2009 on Narcotics, in particular in Article 127 paragraph (1) a, b and c mentioned an order Abuse Narcotics Group I, II and III for themselves shall be imprisoned. Exception to paragraph (3) In the case mentioned Abuse order referred to in paragraph (1) can be proved or proved to be the victims of drug abuse, Abuse order shall undergo medical rehabilitation and social rehabilitation.

The positive law and Islamic law considers that the existence of narcotics is prohibited if they are misused and not for the purpose of the benefit. However, when viewed from the side of the negative consequences of drug use that can be life-threatening, reason, religion and wealth for human, so it is actually a comparison between the benefits and disadvantages of narcotics was very little benefit compared *madharat* that will result when the left and rampant drug abuse.

Therefore, with respect to the proliferation of drug abuse, the MUI Fatwa Commission also issued a fatwa related to penal sanctions for drug abuse in order to provide a deterrent effect and create a healthy society physically and emotionally safe from drugs almighty harmful effects on the case These are contained in the plenary meeting of the MUI Fatwa Commission Number 53 of 2014 on December 30, 2014, MUI decided that:

"The state may impose punishment up to death penalty *ta'zir* to producers, the city, dealers and drug abusers according to drug levels that are owned or repetitive actions to uphold the public good, the government should not be pardoned and / or dried to those who have proven be manufacturers, airports, dealers and drug abusers, and law enforcement officers involved in the production and trafficking of drugs should be given a weighting of law. "⁷

Drug abuse is a crime that is widespread over time. Almost all of the elements contained in the public regardless of social status can be poisoned by substances narcotics, whether it is from the level of children, students, professionals, government officials and workers in the entertainment world. Narcotics can easily fit into these elements, so it is natural that our country is now referred to "the state of emergency drugs," what do you mean, that our country is being intensively in combating drug abuse for drug trafficking is very worrying so it can said a state of emergency due to the spread of this drug.

⁷Statement MUI death verdict drug crime Thursday October 18 2012 which has been refurbished December 30 2014 By Prof. DR. H. Hasanuddin AF MA. (Chairman) and DR.HM Asrorun Ni'am Sholeh MA (secretary).

Because the drug has become the common enemy of the nations in the world, because of its devastating impact on the younger generation, so there mutual agreement of the countries in the world to combat drugs.

However, in practice, the law on drugs is not implemented effectively, so penyalaguna drug tends to increase and the more concern that the increasing number of teenagers or young people who are caught using drugs.

Based on the background described above, the principal problem is formulated as follows: How Setup Criminal Sanctions Against Drug Abuse? How Effective Criminal Dead In Tackling Crime Narcotics in Indonesia?; Is Dead Against Crime Drug abusers accordance with principle of justice and humanity?

2. Results and Discussion

Lately, narcotics and drugs have transnational done with the modus operandi of the high and sophisticated technology, law enforcement officers are expected to prevent and tackle crime in order to promote morality and quality of human resources in Indonesia, especially for the generations nation's next generation.

Abuse of drugs, especially narcotics is a danger latent whenever eradicated not necessarily run out but will grow in new place with different modes. The fact a criminal offense narcotics in the community showed a trend increasingly increased both quantitatively and qualitatively with victims widespread, especially among children, adolescents, and generation in general. The younger generation is the main target of business development narcotics, because the curiosity to try of souls The young bigger than adults. Dealers and airports narcotics deserve severe punishment on this criminal act. But for drug users especially children who initially persuaded and offered free of charge by the dealer, then used defendants and sentenced to deprivation of liberty in the form of application is still to be assessed again.

Drug abuse can result in syndrome dependence if use is not under the supervision and guidance of health personnel who have the expertise and authority to do so. This is not only detrimental to the abuse, but it also affects the social, economic and national security, so this is a threat to the life of the nation.

In Indonesia general criminal sanctions against drug abuse and illicit trafficking stipulated in the Act No. 35 of 2009 on Narcotics. The threat of punishment against narcotics is very hard and determined where the penalties are cumulative, ie between a criminal agency or restraint of liberty the form of imprisonment, life imprisonment to the death penalty coupled with a fine as stipulated in the provisions of Article 111 to Article 148 of Act No. 35 2009 on Narcotics.⁸

Act No. 35 of 2009 on Narcotic Drugs as its legal basis. Act No. 35 Of 2009 on Narcotics is a special criminal laws. These laws apply in practice the principle of *lex specialis derogate legi generalist* means that special laws override the common law.

Other forms of imposed actions are criminal acts send, give, or promise something, giving opportunity, encourage, provide convenience, forcing the threats, force by force, deceit or persuade children not old enough to use narcotics subject to criminal.⁹ The death penalty

⁸ Achmad Rifai 2014 Narkoba Di Balik Tembok Penjara Aswaja Pressindo Yogyakarta p. 35-36.

⁹ Ibid p. 36.

imposed against abuse narcotics group I and group II. The threat of the death penalty, can be imposed against narcotics group I in terms of the deed is done by producing, importing, exporting or distribute narcotics Category I or deed in the form of offers for sale, sells, buys, mediates in purchase, exchange, deliver or receive narcotics group I or use of narcotics group I act towards others or provide for others to use, provided that Category I drug in the form of plants that weighs more than 1 (one) kilogram or exceeding 5 (five) trunks and not in the form of plants that exceed five (5) grams.

The death penalty in Indonesia has long been underway, ie since the Dutch colonized the Indonesian nation, up until now is still applied even though in the Netherlands has abolished capital punishment began in 1987. The Criminal Code (*Wetboek van Strafrecht*) was enacted on January 1, 1981. According to the experts criminal at the time, the retention of the death penalty because of the special circumstances in Indonesia demanded the greatest villain villain can be combated with the death penalty. With such a vast territory with a population of heterogeneous, appliance State Police can not guarantee security.¹⁰

The diversity of attitudes and opinions on the death penalty caused by different reasons and perspectives in view of the death penalty. Groups that support the implementation of the death penalty argue that:

- Permanently sentence or the death penalty can eliminate criminals from public life that requires peace and tranquility;
- The death penalty has the effect of which can provide a sense of retributive justice, especially to the victims and their families who have suffered;
- The death penalty has a preventive effect for other community members who want to carry out the crime;
- The death penalty is not an act that is prohibited by religion although it still has strict requirements.¹¹

Discussing the death penalty in Indonesia is still a lot of controversy, and even tend to be a debate between the pro and cons, especially those of human rights activists. Many of the pros and cons of the application of the death penalty in Indonesia, but there are many who argue; when viewed from the point of juridical with the removal of the death penalty, then there goes an important tool for better application of criminal penalties.¹²

Although the death penalty is still ongoing and has not been abolished in Indonesia, people differ in responding as the number of countries that abolished the death penalty. On the one hand, there are groups of people expressed support that the death penalty is still needed in Indonesia moreover legally still recognized. Meanwhile, on the other hand there are groups of people who want the death penalty abolished. They argue that the provisions which apply the death penalty in Indonesia is not in accordance with the basic principles of the fundamentals of this country, namely 1945.

Efektifitas law enforcement is very closely related to the effectiveness of the law. To be an effective law, it would require law enforcement agencies to enforce the sanctions. A sanction can be actualized to the public in the form of adherence (compliance), with these

¹⁰Ministry of Justice and Human Rights Journals Legislation Indonesia. Vol. 4 No. 4 December 2007. Jakarta: Directorate General of Legislation Ministry of Justice and Human Rights 4

¹¹Arie Siswanto 2009 *Pidana Mati dalam Perspektif Hukum Internasional Refleksi Hukum* p. 10.

¹²Teguh Prasetyo 2014 *Hukum Pidana Edisi Revisi* RajaGrafindo Persada Jakarta p. 119.

conditions indicates an indicator that the laws are effective.¹³

3. Closing

After a discussion and analysis of the principal issues raised regard the writer can draw the conclusion that:

3.1. Conclusion

The rule of law on drugs regulated in Act No. 35 of 2009 challenged narcotics and Act No. 5 of 1997 on Psychotropic Substances. In both these laws very clearly indicate the class of narcotic drugs and psychotropic substances, the classification of offenders abusers and penalties will be accepted for the perpetrators of the abuse of drugs, one of which is the death penalty in law narcotic regulated in articles 113, 114, 118 , 119, 121, 144, and in article 59 legislation Psychotropic however, since the enactment of Act No. 35 of 2009 on narcotics, psychotropic where Class I and II abolished and incorporated into the Law on narcotics. Then article 59 was considered no longer valid.

3.2. Suggestion

The death penalty for drug traffickers is not effective against the reduction of drug users in Indonesia, is evident in brackets the last 12 years from 2004 to 2016 the number of perpetrators of drug cases that have been in the execution of as many as 19 people, but the number of abusers each year even more increased to 5.9 million people in november, 2015.

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