

## Juridical Review of the Formulation of Criminal Sanctions Against Narcotics Crime Actors Based on Positive Criminal Law

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### Abstract

*The purpose of this study is to describe, examine, and analyze the formulation of criminal sanctions against narcotics criminals based on positive criminal law and the weaknesses of the formulation of criminal sanctions against narcotics criminals based on positive criminal law and policies for formulating criminal sanctions against narcotics criminals in reform future criminal law. This study uses a normative juridical approach. The results of the study state that (1) The formulation of criminal sanctions against narcotics criminals in Law Number 35 of 2009 is regulated in Article 111 - Article 148, with the provisions: (a) sanctions in the form of crime and action; (b) criminal sanctions in the form of capital punishment, imprisonment, confinement, and fines as well as additional penalties in the form of: revocation of certain rights against corporations; (c) action sanctions in the form of medical and social rehabilitation as well as expulsion and prohibition from entering Indonesia for foreigners; (d) the number/length of criminal sanctions varies; (e) criminal sanctions are formulated in single, alternative, cumulative and combination forms; (f) there is a specific minimum criminal penalty; (g) the weighting of the crime; (g) trial and conspiracy shall be punished with the same crime as committing a crime; and (h) a fine that cannot be paid, is sentenced to a maximum imprisonment of 2 years. (2) the weaknesses of the policy on the formulation of criminal sanctions in Law Number 35 of 2009 are: (a) criminal sanctions are formulated in a cumulative manner, there are no rules for corporations that do not pay fines and the types of sanctions are not specific; (b) a minimum criminal threat specifically deviating from the Criminal Code system,*

*Keywords: Criminal Sanctions, Criminal Acts, Positive Criminal Law, Narcotics*

### 1. Introduction

The development of narcotics crime as a transnational crime and organized crime has made Indonesia a country that has a drug emergency status. Initially, narcotics were only used as a tool for religious ritual ceremonies, and besides that they were also used for treatment. The first type of narcotics used at first was opium or commonly referred to as opium or opium.<sup>1</sup>

Actually narcotics is something that has many benefits, while what is prohibited is its abuse. As stated in Article 7 of Law Number 35 of 2009 concerning Narcotics it is stated that: "Narcotics can only be used for the benefit of health services and/or the development of science and technology". In an effort to improve in the field of medicine and health services, it is necessary to have sufficient availability of narcotics. However, there have been many acts of abusing these narcotics until their circulation is very

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<sup>1</sup> Kusno Adi, 2009, *Diversi Sebagai Upaya Alternatif Penanggulangan Tindak Pidana Narkotika Oleh Anak*, Cetakan Pertama, UMM Press, Malang, p. 3.

disturbing to the public. Narcotics abuse will have a dangerous impact on its users because the user will experience a very detrimental dependence, so strict and careful control and supervision must be carried out.

Indonesia is also a target for drug dealers, because in Indonesia drug dealers can sell illicit goods easily because there is still a lack of supervision.<sup>2</sup>Narcotics abuse by several groups is generally caused because they have the assumption that these substances promise something that can provide a sense of pleasure, comfort, pleasure, tranquility, and eliminate problems. With this assumption, narcotics victims become interested and trapped in narcotics abuse, even though it is actually only felt in a pseudonym. Many people have told about the effects of narcotics on the body and spirit. On the body, the effect can relieve pain, maintain stamina, and increase energy. On the spiritual, its effect can be calming, sleep a little longer, increase the spirit. Some narcotics cause hallucinations, namely imaginary vision, imaginary smell, and imaginary hearing.<sup>3</sup>

In its development, many perpetrators of narcotics abuse are neither dealers nor involved in narcotics illicit trafficking syndicates, often their motivation to use narcotics is simply driven by curiosity, following in the footsteps of their friends, trying to find their own existence in the wrong way.<sup>4</sup>The illicit circulation of narcotics raises concern for the international community, given the impact caused by narcotics abuse which is very dangerous for the life of the nation and state, especially for the sustainability of the growth and development of the younger generation. The perpetrators of narcotics crimes, especially the group of users, are young people, some even involve officials and law enforcement officers themselves. The increase in narcotics crime is generally caused by 2 (two) things, namely:<sup>5</sup> For dealers it promises big profits, while for users it promises peace and tranquility in life, so that the psychological burden experienced can be removed; The promise given by narcotics causes the fear of being caught to be reduced, and on the contrary it will create a sense of courage.

Such a situation causes the creation of convenience for the formation of a chain of narcotics circulation, and it continues to develop along with the development of science and technology, it is even possible that in big cities in Indonesia there is a chain of international narcotics trade. The scope of criminal law policy actually covers broad issues, which include evaluating the substance of the applicable criminal law (*ius constitutum*) for the renewal of criminal law substance in the future (*ius constituendum*), by implementing this criminal law through the components of the criminal justice system, to find out whether the substance of the criminal law has fulfilled the community's sense of justice or vice versa.<sup>6</sup>

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<sup>2</sup> Bayu Puji Hariyanto, "Pencegahan Dan Pemberantasan Peredaran Narkoba Di Indonesia", *Jurnal Daulat Hukum*, Vol 1 No. 1 Maret 2018, p.201-210

<sup>3</sup> Andi Hamzah dan RM. Surachman, 1994, *Kejahatan Narkotika Dan Psikotropika*, Edisi Kesatu, Cetakan Pertama, Sinar Grafika, Jakarta, p. 4.

<sup>4</sup> Dafit Supriyanto Daris Warsito, "Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika", *Jurnal Daulat Hukum*, Vol. 1. No. 1 Maret 2018, pp.31-42

<sup>5</sup> Moh. Taufik Makaro, Suhasril, dan Moh. Zakky A.S., 2005, *Tindak Pidana Narkotika*, Cetakan Kedua, Ghalia Indonesia, Bogor, p. 6.

<sup>6</sup> Dahlan, 2017, *Problematika Keadilan Dalam Penerapan Pidana Terhadap Penyalahgunaan Narkotika*, Cetakan Pertama, Deepublish, Yogyakarta, p. 2 - 3.

Social justice is sometimes difficult to realize in this Indonesian legal state. As in the case of narcotics crime, as it is known that the form of criminal sanctions that can be imposed on perpetrators of criminal acts proven in court are imprisonment, fines and rehabilitation. However, for addicts or victims of narcotics abuse it is not appropriate to be sentenced to prison, and this is contrary to Law Number 35 of 2009 jo. SEMA Number 4 of 2010. However, there are still judges who impose prison sentences on addicts or victims of narcotics abusers, thus creating a contradiction to legal regulations and practices that run in the field. Imposing imprisonment on addicts and victims of narcotics abuse has violated the provisions of Law Number 35 of 2009 jo. SEMA Number 4 of 2010, one of which regulates that addicts or victims of narcotics abuse must be rehabilitated. It is not easy to say that the perpetrator is an addict, a victim of narcotics abuse or a dealer. Judging from the aspect of improving the perpetrator, the measure of effectiveness lies in the special prevention aspect of the crime. So, the size lies in the problem of how far the crime (prison) has an influence on the perpetrator or convict. There are two aspects of criminal influence on convicts, namely the early prevention aspect (deferent aspect) and the reformative aspect. where one of them regulates addicts or victims of narcotics abuse to be rehabilitated. It is not easy to say that the perpetrator is an addict, a victim of narcotics abuse or a dealer. Judging from the aspect of improving the perpetrator, the measure of effectiveness lies in the special prevention aspect of the crime. So, the size lies in the problem of how far the crime (prison) has an influence on the perpetrator or convict. There are two aspects of criminal influence on convicts, namely the early prevention aspect (deferent aspect) and the reformative aspect. where one of them regulates addicts or victims of narcotics abuse to be rehabilitated. It is not easy to say that the perpetrator is an addict, a victim of narcotics abuse or a dealer. Judging from the aspect of improving the perpetrator, the measure of effectiveness lies in the special prevention aspect of the crime. So, the size lies in the problem of how far the crime (prison) has an influence on the perpetrator or convict. There are two aspects of criminal influence on convicts, namely the early prevention aspect (deferent aspect) and the reformative aspect. The measure of effectiveness lies in the special prevention aspect of the crime. So, the size lies in the problem of how far the crime (prison) has an influence on the perpetrator or convict. There are two aspects of criminal influence on convicts, namely the early prevention aspect (deferent aspect) and the reformative aspect. The measure of effectiveness lies in the special prevention aspect of the crime. So, the size lies in the problem of how far the crime (prison) has an influence on the perpetrator or convict. There are two aspects of criminal influence on convicts, namely the early prevention aspect (deferent aspect) and the reformative aspect.<sup>7</sup>

The purpose of this study is to describe, examine, and analyze the formulation of criminal sanctions against narcotics criminals based on positive criminal law and the weaknesses of the formulation of criminal sanctions against narcotics criminals based on positive criminal law and policies for formulating criminal sanctions against narcotics criminals in reform future criminal law.

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<sup>7</sup> Dawud Budi Sutrisno, 2012, *Pengaturan & Penerapan Hukum Pidana Narkoba*, Cetakan Pertama, Yuma Pustaka, Surakarta, p. 54.

## 2. Writing method

The approach method used in this legal research is normative juridical. Normative juridical research is research that is focused on examining the application of rules or norms in positive law,<sup>8</sup> which in this case relates to the policy of formulating criminal sanctions against perpetrators of narcotics crimes in the context of eradicating narcotics crimes.

In research or study of normative legal science, activities to explain the law do not require data support or social facts, because normative legal science does not recognize social data or facts which are known only as legal materials, so to explain the law or to seek meaning and give values will The law only uses legal concepts and the steps taken are normative steps.<sup>9</sup> Normative legal research includes research on legal principles, legal systematics, and legal synchronization.<sup>10</sup>

## 3. Research Results and Discussion

### 3.1. Formulation of Criminal Sanctions Against Narcotics Crime Actors Based on Positive Criminal Law

The development of colonization, the narcotics trade, especially opium, grew and thrived and the use of opium on a large scale was carried out among ethnic Chinese, especially in colonial countries at that time, including Indonesia, which was under the rule of the Dutch colonial government.<sup>11</sup> Determination of drug abuse as a crime begins with placing the abuse of Narcotics and Psychotropics as a crime in the law, which is commonly referred to as criminalization.<sup>12</sup>

Law Number 35 of 2009 is a public law, because Law Number 35 of 2009 regulates the interests of the community in general and involves the government as a supervisor for the enactment of the Act. Law Number 35 of 2009 is included in criminal law, namely the law that regulates all provisions regarding narcotics and there are criminal sanctions for those who violate the law, so that in an effort to eradicate narcotics crimes, Law Number 35 The year 2009 must be enforced regardless of the position or social status of the perpetrator of the crime.

The following can be described regarding the criminal policies in Law Number 35 of 2009 along with the policies for the formulation of criminal sanctions that are regulated and the perpetrators of criminal acts:

#### 3.1.1. Policies for the formulation of criminal sanctions in Law Number 35 of 2009;

Policies to tackle narcotics crimes are an integral part of protecting the public from the dangers of narcotics, and the long-term goal is to achieve social welfare, so

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<sup>8</sup> Jhonny Ibrahim, 2011, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Malang, p. 295.

<sup>9</sup> Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, p. 87.

<sup>10</sup> Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, p. 51.

<sup>11</sup> Kusno Adi, *Diversi...*, loc.cit., hlm. 3.

<sup>12</sup> Hera Saputra, Munsyarif Abdul Chalim, "Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)", *Jurnal Daulat Hukum*, Vol. 1. No. 1 Maret 2018, p.164

that the main goal of criminal policy is protection to achieve public welfare.

The criminalization policies in Law Number 35 Year 2009 are as follows:<sup>13</sup>

- a. Just as in the previous law, in Law Number 35 of 2009, narcotics are classified into three groups based on their use and potential for dependence. With this classification, criminal acts and the severity of sanctions are adjusted to each group;-
- b. The majority of narcotic crimes are formulated with the concept of a formal offense. There were no constitutive consequences that were prohibited in Law Number 35 of 2009. Only Article 116, Article 121 and Article 126 were formulated with the formulation of offenses with qualified consequences. The article regulates the prohibition of giving narcotics class I, class II, and group III without rights and against the law to other people for use. In these articles there are prohibited consequences, namely death or permanent disability of another person. If the prohibited result occurs, it will be subject to weighting;
- c. There is no qualification of a criminal act in this Law, whether it is classified as a crime or a violation;
- d. The application of Indonesian criminal law according to place is expanded by Article 145 of Law Number 35 of 2009. The article stipulates that the criminal provisions in this Law apply to anyone who commits a narcotic crime and/or narcotics precursor crime as referred to 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 126, Article 127 paragraph (1), Article 128 paragraph (1), and Article 129 outside the territory of the Republic of Indonesia;
- e. Acts without rights and against the law planting, maintaining, possessing, storing, controlling, providing narcotics group I in the form of plants, and not plants, narcotics group II, group III (Article 111, Article 112, Article 117, and Article 122) ;
- f. Acts without rights and against the law producing, importing, exporting, or distributing narcotics class I, narcotics class II, narcotics class III (Article 113, Article 118, and Article 123);
- g. Acts without rights and against the law offering for sale, selling, buying, receiving, intermediary, in buying and selling, exchanging, or delivering narcotics class I, narcotics class II, narcotics class III (Article 114, Article 119, and Article 124);
- h. Acts without rights and against the law against the law of carrying, sending, transporting, or transiting narcotics class I, narcotics class II, and narcotics class III (Article 115, Article 120, Article 125);
- i. Acts without rights or against the law using narcotics class I against other people or giving narcotics class I to be used by others, narcotics class II, and narcotics class III (Article 116, Article 121, and Article 126);
- j. Every abuser of class I narcotics for the use of others, class II narcotics and class III narcotics for oneself (Article 127);
- k. Acts of parents or guardians of addicts who are not old enough, as referred to in Article 55 paragraph (1), who deliberately do not report (Article 128);
- l. Possessing, storing, controlling, or providing, producing, importing, exporting, or distributing, offering for sale, selling, buying, receiving, intermediary in buying and

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<sup>13</sup> Dahlan, op.cit., p. 59-61.

- selling, exchanging, or delivering narcotics precursors for the manufacture of narcotics carrying, send, transport, or transit narcotics precursors for the manufacture of narcotics (Article 129);
- m. The act of deliberately not reporting the existence of a criminal act as regulated in Article 111-Article 129 (Article 131);
  - n. The act involves a child who is not old enough to commit a narcotic crime as regulated in Article 111, Article 126, and Article 129 (Article 133);
  - o. Narcotics addicts who are old enough, families of drug addicts who are old enough to intentionally fail to report the matter (Article 134);
  - p. The management of the pharmaceutical industry who does not carry out the obligations under Article 45 (Article 135);
  - q. Money laundering related to narcotics crime (Article 137);
  - r. The act of obstructing or complicating the investigation as well as the prosecution and examination of criminal cases of narcotics and/or narcotics precursors before a court session (Article 138);
  - s. The pilot or flight captain who unlawfully does not implement the provisions as referred to in Article 27 or Article 28 (Article 139);
  - t. Acts of law enforcement officials that are not in accordance with the provisions of Law Number 35 of 2009 (Article 140-Article 142);
  - u. A witness who gives incorrect information during an examination of criminal cases of narcotics and narcotics precursors before a court session (Article 143);
  - v. The actions of the leaders of hospitals, community health centers, medical centers, government-owned pharmaceutical storage facilities, and pharmacies that distribute class II and class III narcotics are not for the benefit of health services (Article 147 letter a);
  - w. The actions of the leadership of a scientific institution that plant, buy, store, or control narcotics plants are not for the benefit of scientific development (Article 147 letter b);
  - x. The actions of certain pharmaceutical industry leaders who produce class I narcotics are not for the benefit of scientific development (Article 147 letter c);
  - y. Leaders of pharmaceutical wholesalers who distribute class I narcotics that are not for the benefit of scientific development or distribute class II and class III narcotics not for the benefit of health services and/or not for the benefit of scientific development (Article 147 letter d).

As is known, the criminal sanctions in Law Number 35 of 2009 are regulated in Article 111 - Article 148. The criminal law policies related to criminal sanctions, sentencing, actions and weights in Law Number 35 of 2009 are:<sup>14</sup>

- a. The sanctions used are in the form of criminal sanctions and action sanctions;
- b. Criminal sanctions include the main criminal sanctions, namely: capital punishment, life imprisonment, imprisonment with a certain time limit, imprisonment, fines and additional penalties in the form of: revocation of certain rights against corporations in the form of revocation of business licenses and/or revocation of corporate status. law;

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<sup>14</sup> Ibid., p. 62 and 63.

- c. For action sanctions in the form of medical and social rehabilitation as well as expulsion and prohibition from entering Indonesian territory for foreign nationals who commit criminal acts in Indonesia after serving criminal sanctions;
- d. The amount/length of criminal sanctions varies, namely: for criminal fines ranging from Rp. 1,000,000, - (one million rupiah) to Rp. 10,000,000. 000, - (ten billion rupiah). If the crime is committed by a corporation, it can be subject to a weighting of 3 (three) times that of the fine that is threatened, and for imprisonment ranging from 1 (one) year to 20 (twenty) years;
- e. Criminal sanctions are formulated in 4 (four) forms, namely:
  - 1) In the singular (jail or fine only);
  - 2) In an alternative form (choice between imprisonment or a fine);
  - 3) In cumulative form (imprisonment and fines);
  - 4) In a combination/mixed form (prison and/or fine);
- f. There is a specific minimum criminal threat (jail or fine);
- g. The weighting of criminal acts is based on the amount or narcotics, the consequences, carried out in an organized manner, carried out by corporations, carried out using children who are not old enough, and if there is a repetition (recidive) within a period of 3 (three) years. This weighting is excepted for the death penalty, life imprisonment, or 20 (twenty) years imprisonment;
- h. Attempts and conspiracy are punishable by the same punishment as committing a crime;
- i. If the fine cannot be paid, the perpetrator may be sentenced to a maximum imprisonment of 2 (two) years in lieu of a fine.

### 3.1.2. *Narcotics criminals;*

In imposing criminal sanctions, narcotics criminals have different roles, positions, and sanctions, both based on the laws and regulations governing them, as well as based on the roles and impacts caused by their actions.

The classification of perpetrators of narcotics crimes must be observed by law enforcers in the application of Law Number 35 of 2009. Criminal provisions against perpetrators of narcotics crimes in Law Number 35 of 2009 are regulated in Articles 111 to 148.

In Law Number 35 of 2009, there are 4 (four) categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely:<sup>15</sup>

- a. The first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors (Article 111 and Article 112 for narcotics class I, Article 117 for narcotics class II and Article 122 for narcotics class III and Article 129 letter a);
- b. The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotics precursors (Article 113 for narcotics class I, Article 118 for narcotics class II, and Article 123 for narcotics class III and Article 129 letter b);

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<sup>15</sup> Siswanto, 2012, *Politik Hukum Dalam Undang-Undang Narkotika*, Rineka Cipta, Jakarta, p. 256.

- c. The third category, namely acts in the form of offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or delivering narcotics and narcotics precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for class I narcotics). II, Article 124 and Article 126 for narcotics class III and Article 129 letter c;
- d. The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotics precursors (Article 115 for narcotics class I, Article 120 for narcotics class II and Article 125 for narcotics class III and Article 129 letter d).

The classification of narcotics criminals can be seen from several aspects as stipulated in Law Number 35 of 2009 and other statutory provisions relating to narcotics crimes. Criminal provisions against narcotics criminals in Law Number 35 of 2009, as stated in Article 111 to 147. Based on Law Number 35 of 2009, narcotics criminals can generally be classified as:<sup>16</sup>

- a. Acts without rights or against the law planting, maintaining, possessing, storing, controlling, or providing narcotics or narcotics precursors, as regulated in Article 111, Article 112, Article 117 and Article 122 and Article 129;
- b. Unlawful or unlawful acts of producing, importing, exporting, or distributing narcotics, as regulated in Article 113, Article 118 and Article 123, and Article 129;
- c. Acts without rights or against the law offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering or receiving narcotics, as regulated in Article 114, Article 119, Article 124, and Article 129;
- d. Acts without rights or against the law carrying, sending, transporting, or transiting narcotics, as regulated in Article 115, Article 120 and Article 125, as well as Article 129;
- e. Acts without rights or against the law using narcotics against other people or giving narcotics to be used by others, as regulated in Article 116, Article 121 and Article 126;
- f. The act of narcotics abuser for oneself is regulated in Article 127, namely people who use narcotics without rights or against the law (Article 1 point 15), while narcotics addicts, as regulated in Article 128 and Article 134, are people who use or abuse narcotics and in a state of dependence on narcotics, both physically and psychologically (Article 1 point 13);
- g. Attempt or conspiracy to commit a crime against narcotics and narcotics precursors 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 126, and Article 129, as regulated in Article 132.

In Law Number 35 of 2009, there are 4 (four) definitions of narcotics users, namely addicts, abusers, victims of abuse, and narcotics patients.<sup>17</sup>

- a. Narcotics addict is defined as a person who uses narcotics and is in a state of dependence, multiplying physically and psychologically;

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<sup>16</sup>Dahlan, op.cit., p. 64 and 65.

<sup>17</sup>Ibid., p. 72.

- b. Abusers are people who use narcotics without rights or against the law;
- c. Narcotics abuse victim is defined as a person who accidentally uses narcotics because he is persuaded, tricked, cheated, forced, and/or threatened to use narcotics;
- d. Narcotics patients are not found in their understanding, but referring to Article 53 of Law Number 35 of 2009, it can be interpreted that a patient is someone who is given the right to own, store, and/or carry narcotics in limited quantities and types in accordance with the doctor's approval. for the sake of treatment.

This difference in understanding also results in differences in the imposition of criminal sanctions, and will be even more complicated if it is associated with the imposition of sanctions in the form of medical rehabilitation. Of course, this criminal imposition aims to provide a deterrent effect and improve the perpetrators.

### 3.1.3. *Special minimum punishment in Law Number 35 Year 2009;*

Law Number 35 of 2009 contains a special minimum threat in order to protect the public from the dangers of narcotics and eradicate narcotics abuse which is very detrimental to the community.

The existence of a special minimum penalty in Law Number 35 of 2009, indicates that the legislators want rules to deviate from the general rules as stipulated in the Criminal Code, and this deviation is possible as stipulated in Article 103 of the Criminal Code which states that: The provisions mentioned in the first eight chapters of this book also apply to acts which according to other laws and regulations are punishable by punishment, unless otherwise stipulated by law by a general regulation of the government or by an ordinance.

The emergence of articles that regulate the provisions of special minimum criminal threats are not only contained in Law Number 35 of 2009 alone, but also in other laws, such as the Corruption Eradication Law or the Law on Human Rights Courts. The prevailing laws and regulations in Indonesia are more or less influenced by international trends. According to Muladi, the development of special minimum sanctions for certain criminal acts is one of 7 (seven) international trends.<sup>18</sup>The 7 (seven) international trends are as follows:<sup>19</sup>

- a. Tendency to seek alternative sanctions from the crime of independence (alternative sanctions);
- b. The development of specific minimum sanctions for certain criminal acts;
- c. Regulation of a cumulative criminal system for certain crimes;
- d. Polarization of the death penalty;
- e. The development of criminal penalties against corporations;
- f. The use of a two-track system (double track system);
- g. Special arrangements for the juvenile criminal system.

Basically, the purpose of the imposition of a special minimum criminal threat in Law Number 35 of 2009, which can be concluded from the statement of the legislator itself, which in the Elucidation of Law Number 35 of 2009 states: deterrent to

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<sup>18</sup> Muladi, 2002, *Hak Asasi Manusia, Politik, dan Sistem Peradilan Pidana*, Badan Penerbit Universitas Diponegoro, Semarang, p. 15.

<sup>19</sup> *Ibid.*, p. 155.

perpetrators of abuse and illicit trafficking of narcotics and narcotics precursors, it is regulated regarding the weighting of criminal sanctions, both in the form of special minimum punishments...”.

As for the regulation of minimum criminal threats in Law Number 35 of 2009, which includes imprisonment and fines. This can be seen from the sound of the articles contained in the law which state: ... the minimum imprisonment ... and the minimum fine ... The provisions for imprisonment are divided into several categories, namely:<sup>20</sup>

- a. Minimum 1 (one) year for: Article 135, Article 139, Article 140, Article 141, Article 143, and Article 147;
- b. Minimum 2 (two) years for: Article 122 paragraph (1) and Article 125 paragraph (1);
- c. Minimum 3 (three) years for: Article 117 paragraph (1), Article 120 paragraph (1), Article 122 paragraph (2), Article 123 paragraph (1), Article 124 paragraph (1), Article 125 paragraph (2) , Article 126 paragraph (1), and Article 137 letter b;
- d. Minimum 4 (four) years for: Article 111 paragraph (1), Article 112 paragraph (1), Article 115 paragraph (1), Article 118 paragraph (1), Article 119 paragraph (1), Article 121 paragraph (1) , and Article 129;
- e. Minimum 5 (five) years for: Article 111 paragraph (2), Article 112 paragraph (2), Article 113, Article 114 paragraph (1), Article 115 paragraph (2), Article 116, Article 117 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), Article 120 paragraph (2), Article 121 paragraph (2), Article 123 paragraph (2), Article 124 paragraph (2), Article 126 paragraph (2), Article 133, and Article 137 letter a;
- f. Minimum 6 (six) years for: Article 114 paragraph (2).

While the provisions for criminal penalties are also divided into several categories, namely:<sup>21</sup>

- a. At least Rp40,000,000 (forty million rupiah) for: Article 135;
- b. At least Rp. 60,000,000 (sixty million rupiah) for: Article 143;
- c. At least Rp100,000,000 (one hundred million rupiah) for: Article 139, Article 140, Article 141, and Article 147;
- d. At least IDR 400,000,000 (four hundred million rupiah) for: Article 122 and Article 125;
- e. At least Rp. 500,000,000 (five hundred million rupiah) for: Article 137 letter b;
- f. At least Rp600,000,000 (six hundred million rupiah) for: Article 117, Article 120, Article 123, Article 124, and Article 126;
- g. At least Rp800,000,000 (eight hundred million rupiah) for: Article 111, Article 112, Article 115, Article 118, Article 119, and Article 121;
- h. At least Rp1,000,000,000 (one billion rupiah) for: Article 113, Article 114, Article 116, Article 133 paragraph (2), and Article 137 letter a;
- i. At least Rp2,000,000,000 (two billion rupiah) for Article 133 paragraph (1).

In addition to stipulating specific minimum criminal threats for the types of crimes that can be imposed on perpetrators of narcotics crimes, namely imprisonment

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<sup>20</sup>Dahlan, op.cit., p. 69.

<sup>21</sup>Ibid.

and fines, Law Number 35 of 2009 also regulates legal subjects or perpetrators of criminal acts that can be subject to minimum criminal threats, where one of the the only one is the person (everyone), this is as contained in the sound of the articles in the criminal provisions of Law Number 35 of 2009. For example, the sound of Article 111 paragraph (1) of Law Number 35 of 2009, namely: "Everyone who without rights or against the law plant, maintain, possess, store, control, or provide narcotics class I ... shall be punished with a minimum imprisonment ... and a minimum fine of ...

Law No. 35 of 2009 does not provide specific provisions regarding who is meant by everyone, therefore it can be interpreted that everyone here is a person, both children and adults, so that criminal offenders who violate article in Law Number 35 of 2009 which regulates the provisions of the minimum criminal threat, the judge can impose a sentence in accordance with the provisions of the minimum criminal threat.

### **3.2. Weaknesses of Formulation of Criminal Sanctions Against Narcotics Criminal Act Actors Based on Positive Criminal Law and Criminal Sanctions Formulation Policy Against Narcotics Criminal Act Actors in Future Criminal Law Updates**

Regarding narcotics crime in the world, especially in Indonesia, this crime is already so terrible and increasingly terrible. Although according to Law No. 35 of 2009 concerning Narcotics, the heaviest penalty that can be imposed on drug offenders is the death penalty, but this crime continues.

Seeing how dangerous and heavy the risk that must be borne if drug syndicates operate freely in a country, several countries have implemented severe legal sanctions for drug syndicate members who are caught, including Japan, Malaysia, Thailand, and Korea. has become a real target for drug marketing, especially heroin and cocaine, along with the increase in the welfare of its citizens, since 1992, these countries have declared war on drug syndicates. The sanctions that he applies are not kidding, namely the death penalty for drug dealers.<sup>22</sup>

Weaknesses in the formulation of criminal sanctions against narcotics criminals in Law Number 35 of 2009 concerning Narcotics, including:

- (a) in terms of the formulation of criminal sanctions, namely most of the criminal sanctions in Law Number 35 of 2009 are formulated in a cumulative manner, in the cumulative formulation the most are between imprisonment and large fines, there are no special rules for corporations that do not pay fines, and there is no visible type of sanction (criminal/action) that is specific to corporations
- (b) related to the issue of criminal threats, namely: there are offenses that are given a special minimum criminal threat which is a deviation from the Criminal Code system, there are no specific guidelines or rules for the application of minimum punishment, and there are no special criminal rules for implementing the minimum system. "participation, trial, concursus, recidive, reduction/criminal weighting, expiration, and so on".

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<sup>22</sup> O.C. Kaligis dan Soedjono Dirdjosisworo, 2006, *Narkoba & Peradilannya Di Indonesia, Reformasi Hukum Pidana Melalui Perundangan dan Peradilan*, Cetakan Kedua, Edisi Revisi, O.C. Kaligis & Associates, Jakarta. p. 247.

In addition to these problems, there are other problems, namely regarding: the position of narcotics users as perpetrators or victims, the implementation of Law Number 35 of 2009 depending on the implementing regulations, overlapping criminal articles for narcotics users, there is no clear expiration limit for narcotics users, Narcotics users are vulnerable to torture and cruel treatment or punishment, and the difficulty of implementing SEMA Number 04 of 2010.

The policy of formulating criminal sanctions against perpetrators of narcotics crimes in future criminal law reforms can be carried out by:

- a. ratification of the Criminal Code Bill. In the 2017 Criminal Code Bill, criminal sanctions against narcotics criminals are in the form of imprisonment and cumulative fines. The provisions for imprisonment have minimum and maximum limits, as well as the mechanism for imposing fines and their payments are regulated in detail;
- b. reconstruction of several articles in Law Number 35 of 2009,
- c. pay attention to international conventions on narcotics, as well as
- d. imitating law enforcement efforts against narcotics crimes and their criminal law policies in East and West Asian countries

#### **4. Closing**

The policy of formulating criminal sanctions against perpetrators of narcotics crimes in Law Number 35 of 2009 concerning Narcotics in the context of eradicating narcotics crimes is regulated in Article 111 - Article 148, namely with the provisions: (a) sanctions are used, namely in the form of criminal sanctions and sanctions action; (b) criminal sanctions include basic punishments, namely in the form of: death penalty, life imprisonment, imprisonment with a certain time limit, confinement, fines and additional penalties in the form of: revocation of certain rights against corporations in the form of revocation of business licenses and/or revocation of legal entity status; (c) action sanctions in the form of medical and social rehabilitation as well as expulsion and prohibition from entering Indonesian territory for foreign nationals who commit criminal acts in Indonesia after serving criminal sanctions; (d) the amount/length of criminal sanctions varies, namely: for criminal fines ranging from Rp. 1,000,000, - (one million rupiah) to Rp. 10,000. 000. 000, - (ten billion rupiah). In addition, Law No. 35 of 2009 stipulates special minimum threats and criminal threats in Law No. 35 of 2009 stratified according to the act and amount of weight of each type. 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 Law Number 35 of 2009 states that there is a death penalty in addition to imprisonment and a fine, but the established mechanism for the imposition of a death penalty must also be accompanied by a fine. Considering that from a juridical perspective, this cannot be justified. Thus, in the provisions of criminal sanctions Law Number 35 of 2009, there are still juridical weaknesses. This will be able to affect its implementation by law enforcement.

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