

## **The Effectiveness Of The Death Criminal Threat In The Framework Of Narcotics Crime Handling**

Didik Risdiyanto\*)

\*)Master of Law, Faculty of Law, Universitas Islam Sultan Agung, email [drisdiyanto269@gmail.com](mailto:drisdiyanto269@gmail.com)

### **Abstract**

The problems studied and analyzed include how the effectiveness of the death penalty in dealing with narcotics crimes and the death penalty can cause a deterrent effect on narcotics abuse. In Law no. 35 of 2009 concerning Narcotics, there is a death penalty. The eradication of narcotics is not only a discourse, but law enforcement officers such as the police and others must also participate in helping to eradicate narcotics in order to achieve the prosperity and welfare of the Republic of Indonesia that is free from drugs. As a sovereign country, of course, in terms of eradicating narcotics, the government must continue to increase efforts in providing counseling and understanding about the dangers of narcotics and their sanctions as a preventive effort for narcotics circulation so that they can make people aware of the dangers of narcotics. To overcome the widespread circulation of narcotics, in Law no.

Keywords : Criminal act; Narcotics; Narcotics; Penalty.

### **1. Introduction**

Narcotics are needed by humans for treatment so that to meet the needs in the field of medicine and scientific studies, a continuous production of narcotics is needed for these sufferers. On the basis of considering Law Number 35 of 2009 concerning Narcotics, it is stated that narcotics on the one hand are drugs or materials that are useful in the field of treatment or health services and the development of science and on the other hand can also cause dependence which is very detrimental if misused or used without strict and thorough control and supervision. Narcotics if used irregularly according to the dose/dose can cause physical and mental harm to those who use them and can cause dependence on the user himself.

The problem of narcotics abuse is not only a problem that needs attention for the Indonesian state, but also for the international world. Entering the 20th century, international attention to the problem of narcotics has increased, one of which can be seen through the Single Convention on Narcotic Drugs in 1961.<sup>1</sup>The problem of drug abuse in Indonesia is now very concerning. About 80% of prison contents in Indonesia are narcotics criminals. This is due to several things, among others, because Indonesia is located in a position between three continents and considering the development of science and technology, the influence of globalization, very advanced transportation flows and shifting materialistic values with the dynamics of the target of illicit opinion. Indonesian people and even the world community in general are currently faced with a very worrying situation due to the rampant illegal use of various types of narcotics.

---

<sup>1</sup>Kusno Adi, 2011, *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak*, UMM Press, Malang, p. 30.

This concern is further sharpened due to the rampant illicit trafficking of narcotics which has spread to all levels of society, including the younger generation.

The danger of abuse is not only limited to addicts, but can have further consequences, namely disturbances to the order of people's lives which can have an impact on the catastrophic collapse of a nation, state and world. The problem of narcotics abuse is not only a problem that needs attention for the Indonesian state, but also for the international world. To anticipate this problem, various international activities have been held, including conferences which have been held both under the auspices of the League of Nations and under the auspices of the United Nations.

Starting from the efforts of international agencies in preventing and eradicating the international illicit trafficking of narcotics, Indonesia has also sought a set of regulatory instruments to prevent and follow up on narcotics and psychotropic abuse crimes. In response to this, in order to tackle the crime of narcotics abuse, the Presidential Instruction of the Republic of Indonesia Number 6 of 1971 was issued, which regulates efforts to overcome social problems, including those relating to narcotics. However, in its implementation there are weaknesses that lie in the legal basis of narcotics regulation, so that the Presidential Instruction is no longer enforced and at the same time revokes the Verdoovenenden Middelen Ordonantie and finally, Law Number 35 of 2009 was issued.<sup>2</sup>

Furthermore, as evidence of the seriousness of the Indonesian government in tackling narcotics abuse, it has been realized by the issuance of Law Number 9 of 1976 concerning Narcotics. The increasingly widespread illicit trafficking of narcotics with increasingly sophisticated modes, to tackle the crime of narcotics abuse, Indonesia has issued Law Number 35 of 2009 concerning Narcotics.

However, the enactment of the narcotics law with serious criminal threats including death did not make the crime of narcotics abuse decrease but is still widespread and increasing. Thus it appears that the law is not effective in tackling the crime of narcotics abuse. Etymologically the word effectiveness comes from the word effective which means there is an effect (consequently, its effect, its effect); efficacious or efficacious (about medicine); can bring results; effective (about effort or action); terms of entry into force (regarding statutory regulations).<sup>3</sup> According to Soejono Soekanto, a legal situation that does not succeed or fails to achieve its goals is usually regulated on the effect of its success in regulating certain attitudes or behaviors, so that those who achieve goals are called positive, while those who move away from goals are said to be negative.<sup>4</sup> Regarding the benchmark for the effectiveness of the use of law, it depends on 5 things, namely the legal factor itself, law enforcement, facilities or facilities, society, and culture.<sup>5</sup> the extent to which the effectiveness of the law, then we must first be able to measure the extent to which the rule of law is obeyed or not. Of course, if a rule of law is obeyed by most of the targets to whom it is

---

<sup>2</sup> Ibid

<sup>3</sup> Tri Rama K, 2005, *Kamus Lengkap Bahasa Indonesia*, Agung Media Mulia, Jakarta, p.131

<sup>4</sup> Sondang Siagi, 2005, *Filsafat Administrasi*, Gunung Agung, Jakarta p.71

<sup>5</sup> Soerjono Soekanto, 2006, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta, PT. Raja Grafindo Persada p.9

obeyed, we will say that the rule of law in question is effective. However, even though it can be said that the rules that are obeyed are effective, we can further question the degree of their effectiveness.<sup>6</sup> Legal awareness and legal compliance are two things that will determine the effectiveness or not of implementing legislation or the rule of law in society.<sup>7</sup> Thus a regulation can be effective, obeyed by the community and act as a social engineering influenced by factors other than the regulation itself.

From the above background the author is interested in discussing the effectiveness of the death penalty in the context of overcoming narcotics crime in Indonesia and its deterrent effect on narcotics abuse.

Formulation of the problem are Is the Death Penalty Threatened to Overcome Narcotics Crime, and Can the threat of the death penalty have a deterrent effect on perpetrators of drug abuse.

## **2. Methods**

This type of journal writing is normative, referring to and adjusting to the background and problems stated above. This writing uses the Statute Approach. The technique of collecting materials in this writing is obtained through the study of library research (library research), both through searching the legislation, documents and scientific literature and research by experts in accordance with the objects and problems to be discussed. Furthermore, it is classified in such a way as to be analyzed in a prescriptive-analytical manner so as to get answers to the discussion problems.

## **3. Results and Discussion**

### **3.1. The Effectiveness of the Death Penalty in Combating Narcotics Crime.**

The circulation of narcotics in Indonesia has been quite worrying lately, because of the increasing number of narcotics dealers and users in Indonesia. Based on analytical data released by the National Narcotics Agency, in 2013 it was stated that there were 28,788 narcotics suspects, which was the highest number of narcotics cases. This is an increase compared to 2012 which was 13.75%, which amounted to 25,309 suspects. Meanwhile, the trend of increasing Narcotics cases that occurred from 2009 to 2010 was 60.66%.<sup>8</sup>In response to such conditions, Indonesia has issued Law Number 35 of 2009 concerning Narcotics. The enactment of the law is the basis for tackling the illicit trafficking of narcotics, which is increasingly difficult to control. In order for the law to be truly effective in tackling the circulation of narcotics, the law regulates in detail and there are serious criminal threats including the death penalty.

---

<sup>6</sup> Achmad Ali, 2009, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial prudence)*, Kencana Prenada Media Group, Jakarta, p.375

<sup>7</sup> Achmad Ali, 2007, *Menjelajahi Kajian Empiris Terhadap Hukum*, Yarsif Watampone, Jakarta, p.191

<sup>8</sup> BNN, 2014, Data on Narcotics Cases, <http://www.bnn.go.id/portal/index.php/konten/detail/deputy/Depanberantasan-dan-drug-cases/12267/analisa-data-prntahanan-dan-pemantantsan-abuse-and-drug-trafficking>.

Law Number 35 of 2009 basically divides perpetrators of narcotics abuse into 2 (two) classifications, namely: criminals as users (Articles 116, 121 and 127) and non-narcotics users (Articles 112, 113, 114, 119 and 129), narcotics users are further divided into 2 (two), users to be given to other people (Articles 116 and 121) and users for themselves (Article 127). What is meant by narcotics user for himself is the use of narcotics carried out by someone without going through the supervision of a doctor. If the person concerned gets the effects of using narcotics and then suffers from dependence, he must undergo rehabilitation, both medically and socially, and his treatment and rehabilitation period will be counted as serving a sentence.

While sanctions, Law no. 35 of 2009 concerning Narcotics regulates sanctions that consist of several forms. The death penalty is regulated in articles 113, 114, 118, 119, 121, 144. However, the threat of criminal sanctions is quite heavy, in fact the perpetrators of crimes are actually increasing, and for the convicts in reality it is not a deterrent and there is a tendency to repeat it again.<sup>9</sup>The misuse of these illicit goods has touched 5 million people or 2.2 percent of the entire population of Indonesia. The circulation is also increasingly widespread, not only among the lower classes, but also the upper middle class, not only in urban areas but also in rural areas. In fact, a survey by the National Narcotics Agency (BNN) in 2012 showed that around 70 percent of the 5 million drug users in Indonesia are in the productive age group. They are teenagers, students, and young people aged between 11 to 24 years.<sup>10</sup>This shows that the threat of the death penalty in the narcotics law does not make people afraid to commit a criminal act of narcotics abuse. Thus the threat of capital punishment in the narcotics law is not really effective and can have a deterrent effect on perpetrators of narcotics crimes.

However, this is not solely a result of the lack of good rule of law itself, because a legal rule can function properly (effectively) influenced by several factors including the existence of a criminal imposition factor that has no impact or deterrent effect on the perpetrators. In the narcotics law, it turns out that it does not reduce narcotics abuse, in fact it is increasingly widespread and is currently entering the most critical period.

Related to law, to know the extent of the effectiveness of the law, it must be able to measure the extent to which the rule of law is obeyed or not. If a rule of law is obeyed by most of the targets, it can be said that the rule of law is effective. However, even though it can be said that the rules that are obeyed are effective, we can further question the degree of their effectiveness. The effectiveness of legislation depends a lot on several factors, including:<sup>11</sup>

- Knowledge of the substance (content) of legislation;
- Ways to acquire such knowledge;
- Institutions related to the scope of legislation in society;

---

<sup>9</sup> Indah Lestari dan Sri endah Wahyuningsih, Penegakan Hukum Pidana Terhadap Pengguna Narkoba di Polda Jateng, Jurnal Hukum Khaira Ummah, Magister Ilmu Hukum Unissula Semarang, 2021, p. 1 accessed December 30, 2021

<sup>10</sup> <http://www.beritasatu.com/blog/tajuk/3183-menggunting-mafia-narkoba.html> accessed on December 26, 2021 at 15.00 WIB

<sup>11</sup> Achmad Ali, Op.Cit, p.378

- How is the process of the birth of legislation, which should not be born in a hurry for instant (momentary) interests which is termed by Gunnar Myrdall as sweep legislation, which has poor quality and not according to need.

In general, the factors that greatly affect the effectiveness of a law are professional and optimal implementation of the roles, authorities and functions of law enforcement, both in explaining the tasks assigned to them and in enforcing the legislation. According to Soerjono Soekanto that the main problem of law enforcement lies in the factors that might influence it, these factors have a neutral meaning so that the positive or negative impact lies in the content of these factors, as follows:

- The legal factor itself, which is limited by law only;
- Factor law enforcers, namely the parties that make up and apply the law;
- Factor facilities or facilities that support law enforcement;
- Community factors, namely the environment in which the law applies or is applied;
- Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life;

These five factors are closely interrelated, because they are the essence of law enforcement, and are also a measure of the effectiveness of law enforcement.<sup>12</sup> Furthermore, law enforcement officers cover a very broad scope because it involves officers at the upper, middle and lower strata. What is clear is that in carrying out their duties, officers should have guidelines, among others, certain written regulations covering the scope of their duties, this can also be a benchmark for the extent to which law enforcement officers possess quality. officers play an important role in the functioning of the law.<sup>13</sup>

The effectiveness of law enforcement requires physical strength to enforce these legal rules into reality, based on legitimate authority. Sanctions are the actualization of the legal norms of threats and promises, namely a threat will not be legitimized if it is not useful to be obeyed or obeyed. Internal values, are personal judgments according to conscience and have a relationship with what is defined as an attitude of behavior.

The effectiveness of law enforcement is closely related to the effectiveness of the law. In order for the law to be effective, law enforcement officers are needed to enforce the sanctions. A sanction can be actualized to the community in the form of compliance, with these conditions indicating an indicator that the law is effective.

Sanctions are the actualization of legal norms that have the characteristics of being a threat or as a hope. Sanctions will have a positive or negative impact on the social environment. In addition, sanctions are a person's personal assessment related to behavior and conscience that does not get recognition or is considered useless if obeyed. The influence of law and the concept of purpose, it can be said that the concept of influence means an attitude of action or behavior that is associated with a rule of law in reality, has a positive effect or its effectiveness depends on the purpose

---

<sup>12</sup> Soerjono Soekanto, 2011, *Faktor-faktor Yang Mempengaruhi Penegakanm Hukum*, PT. Raja Grafindo Persada, Jakarta p. 8-9

<sup>13</sup> Soerjono Soekanto & Mustafa Abdullah, 2007. *Sosiologi Hukum Dalam Masyarakat*, Rajawali, Jakarta,, p. 17

or intent of a rule of law. A legal purpose is not always identically stated in a rule and is not necessarily the real reason for the maker of the rule.<sup>14</sup>

### **3.2. The deterrent effect of the death penalty against the abuse of narcotics.**

Law enforcement has a goal so that people obey the law. People's obedience to the law is caused by three things, namely: (1) fear of sinning; (2) fear because the power of the authorities is related to the nature of the law which is imperative; (3) afraid of being ashamed of doing evil. Law enforcement with non-penal means has goals and objectives for internalization purposes.<sup>15</sup>

Law Number 35 of 2009 concerning Narcotics has regulated sanctions for severe criminal threats and even the death penalty against narcotics criminals. The imposition of strict sanctions is expected to provide a deterrent effect to dealers and dealers not to violate existing laws in Indonesia. The government through the president also adopted a policy of rejecting the application for clemency of narcotics convicts aimed at providing shock therapy to narcotics criminals.<sup>16</sup> However, the death penalty for convicts of narcotics cases is considered ineffective for preventing narcotics trafficking, as quoted from BBC Indonesia on January 16, 2015 Anti-death penalty activist Ricky Gunawan from LBH Masyarakat said that in the BNN report every year from 2009 until now the number of narcotics crimes continue to rise. The amount of evidence continues to increase, the number of addicts also increases, the death penalty continues to be imposed, executions are carried out, but the number of narcotics crimes has not decreased.<sup>17</sup>

The data shows that the death penalty does not at all have a deterrent effect on narcotics criminals. From the author's observations in carrying out daily tasks, there are many factors that cause narcotics criminals to repeat their actions. These factors include the fact that there are still many judges' verdicts that have not been maximized in imposing criminal penalties, the development program in prisons and remand centers has not been maximized, the influence of association with fellow drug users, and the lack of support from family and society. Apart from that, the effect of dependence (addiction) on Narcotics are also one of the causes of the absence of a deterrent effect on narcotics criminals.

## **4. Conclusion**

---

<sup>14</sup> Siswanto Sunarso, 2006, *Penegakan Hukum Psikitropika Dalam Kajian Sosiologi Hukum*, Raja Grafindo Persada, Jakarta, p.89-90.

<sup>15</sup> Indah Lestari dan Sri Endah wahyuningsih, 2017, *Penegakan Hukum Pidana Terhadap Pengguna Narkoba Di Polda Jateng*, Jurnal Hukum Khaira Ummah, Magister Ilmu Hukum Unissula Semarang, accessed December 29, 2021.

<sup>16</sup> Kompas.com, 2015, April 29, National News, <http://nasionalkompas.com/read/2015/04/29/16043251/BNN.Ada.60/>

Terpidana.Mati.Kasus.Narkoba.yang.Menanti.Diekskusi in Jodya Bintang Herwidianto, 2016, *The Effectiveness of the Death Penalty on Narcotics Crimes in Indonesia*, Final Project of the Faculty of Social and Political Sciences, University of Indonesia, p. 2

<sup>17</sup> Ibid



From the results of the discussion, it appears that the threat of a high crime even death in Law no. 35 of 2009 concerning Narcotics is not effective in controlling or tackling narcotics crimes.

The death penalty in Law no. 35 of 2009 concerning Narcotics and even the death penalty imposed on narcotics criminals in Indonesia does not have a deterrent effect in controlling narcotics crimes in Indonesia.

## 5. Reference

- [1] Achmad Ali, 2007, *Menjelajahi Kajian Empiris Terhadap Hukum*, Yarsif Watampone, Jakarta.
- [2] Achmad Ali, 2009, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial prudence)*, Kencana Prenada Media Group, Jakarta.
- [3] BNN, 2014, Data on Narcotics Cases, <http://www.bnn.go.id/portal/index.php/konten/detail/deputy/Depanberantasan-dan-drug-cases/12267/analisa-data-prntahanan-dan-pemantantsan-abuse-and-drug-trafficking>.
- [4] <http://www.beritasatu.com/blog/tajuk/3183-menggunting-mafia-narkoba.html>
- [5] Indah Lestari dan Sri Endah wahyuningsih, 2017, Penegakan Hukum Pidana Terhadap Pengguna Narkoba Di Polda Jateng, *Jurnal Hukum Khaira Ummah*, Magister Ilmu Hukum Unissula Semarang, accessed December 29, 2021.
- [6] Kompas.com, 2015, April 29, National News, <http://nasionalkompas.com/read/2015/04/29/16043251/BNN.Ada.60/Terpidana.Mati.Kasus.Narkoba.yang.Menanti.Diekskusi> in Jodya Bintang Herwidiyanto, 2016, The Effectiveness of the Death Penalty on Narcotics Crimes in Indonesia, Final Project of the Faculty of Social and Political Sciences, University of Indonesia.
- [7] Kusno Adi, 2011, *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak*, UMM Press, Malang.
- [8] Siswanto Sunarso, 2006, *Penegakan Hukum Psikotropika Dalam Kajian Sosiologi Hukum*, Raja Grafindo Persada, Jakarta.
- [9] Soerjono Soekanto & Mustafa Abdullah, 2007. *Sosiologi Hukum Dalam Masyarakat*, Rajawali, Jakarta.
- [10] Soerjono Soekanto, 2006, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta, PT. Raja Grafindo Persada.
- [11] Soerjono Soekanto, 2011, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo Persada, Jakarta.
- [12] Sondang Siagi, 2005, *Filsafat Administrasi*, Gunung Agung, Jakarta.
- [13] Tri Rama K, 2005, *Kamus Lengkap Bahasa Indonesia*, Agung Media Mulia, Jakarta.