RECONSTRUCTION OF POLITICAL LAW ERADICATION OF CYBER CRIME RELATED TO ABUSE OF JUSTICE VALUE-BASED NARCOTIC

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ABSTRACT

Countermeasures against illegal narcotics trafficking through digital media have not been able to materialize in Indonesia, such a situation is a result of the absence of regulation of illegal narcotics circulation through digital in Law Number 35 of 2009 concerning Narcotics. The method in this research is descriptive analytical with constructivism paradigm.

Based on existing research, it can be concluded that there is still a legal vacuum regarding the regulation of narcotics trafficking through digital media against the law. The factor of the inability of narcotics legal politics in tackling the problem of digital narcotics circulation is the substance factor in the form of the unregulated provisions regarding the illegal circulation of narcotics through digital means, the structural factor in the form of the lack of digital facilities and infrastructure in overcoming the problem of digital narcotics circulation, the cultural factor in the form of the problem of poverty and socio-cultural order which causes many victims of the damaged social environment to become users by making digital media the latest modus operandi. So it is necessary to reconstruct Law Number 35 of 2009 concerning Narcotics by adding the provisions of Article 35A which reads:

The act as a name is regulated in the provisions of Article 1 paragraph (6) is threatened with a criminal offense of trafficking narcotics against the law with a life imprisonment and an additional penalty in the form of a fine of Rp. 8,000,000,000.00 (eight billion rupiah).

The act as referred to in paragraph (1) carried out through electronic digital means shall be punished with life imprisonment and a fine of Rp. 10,000,000,000.00 (ten billion rupiah).

Keywords: Cyber Crime, Narcotics, Crime, Reconstruction

PRELIMINARY

A. Background

Through the Proclamation of Indonesian Independence, the founders of the country endeavored to unite and rebuild Indonesian civilization, which had been scattered and damaged for hundreds of years by exploitation and colonialism. The efforts of the founding fathers of the country are clearly reflected in the formulation of the objectives of the Unitary State of the Republic of Indonesia (NKRI) as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), namely "... the independence of the State of Indonesia, which is independent, united, sovereign, just and prosperous." In addition, in the Preamble to the 1945 Constitution of the Republic of Indonesia, it is also emphasized that the objectives of the establishment of the Unitary State of the Republic of Indonesia are:

... protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace, and social justice....

The objectives of the State of Indonesia as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia have not yet been realized. The country's goals have not been realized due to the threat of globalization that has been and is ongoing.[1] According to Mansour

1 *Mansour Fakih, Misguided Theory of Development and Globalization, Student Library, Yogyakarta, 2001, p. 210. In addition to the notion of globalization according to Mansour Fakih, there are many definitions of globalization, Anthony Giddens in the vortex of the debate on the concept of globalization between skeptics and radicals said that "globalization is related to the thesis of the existence of life in a new world, so that globalization is a new world system in which*

Fakih, globalization is "the process of integrating the national economy into the world economic system with the belief in the free market that was proclaimed during the colonial period." In line with the understanding of globalization according to Mansour Fakih, according to Syed Muhammad Atif, Mudit Srivastav, Moldir Sauytbekova, and Udeni Kathri Arachchige in an article entitled "Globalization on Income Inequality" said that "there are social, political, cultural origins of globalization, but most concerns are related to economic globalization and its consequences."[2]

Advances in information, communication, and transportation technology that are increasingly shortening the distance between countries can lead to various national security problems, namely the problem of transnational crime, environmental damage, illegal immigrants, pirates, illegal fishing, terrorism, weapons smuggling, child trafficking. -children and women, drugs, and the transmission of new diseases such as AIDS, SARS Evian Flu. This situation is supported again by the advancement of information and communication technology which strengthens the borderless state crisis. This situation is due to globalization giving rise to a skills revolution that increases the capabilities of criminal groups.[3]

It has been explained above that globalization and the proliferation of crime have simultaneously entered third world countries. Including in Indonesia, the problem of narcotics has mushroomed in various generations and all levels of society. Narcotics have become a crime that destroys the future of this nation. This is because narcotics can cause damage to the younger generation as the successor of this nation.

The narcotics problem today continues to develop along with technological advances which have resulted in the birth of a borderless state so that the media for distributing narcotics is easier and more sophisticated so that prevention and eradication methods can no longer use traditional tools but must use adequate information and communication technology. This is shown by the online narcotics trade that has used computerized technology tools and the internet which continues to grow.

Head of Public Relations of the National Narcotics Agency (BNN) Police Commissioner Sumirat Dwiyanto in a report made by VOA said that "Indonesia is one of the largest internet user countries in the world with the number of internet users reaching 40 million people".[4]

there is integration between political, socio-cultural, legal and economic systems on a world scale, however, the various sub-systems of the globalization system are always in a contradictory relationship, this is due to the influence of super power countries. Read: Anthony Giddens, Runaway World, How Globalization Changes Our Lives, Gramedia Pustaka Utama, Jakarta, 2004, Translators: Andy Kristiawan S. and Yustina Koen S., p. 1-8. Furthermore, the era of globalization according to Moetojib in the book Management in the Era of Globalization, is an era where thanks to the advancement of information technology, telecommunications, and transportation that are increasingly rapidly and sophisticated, the orientation of thoughts, interests, as well as all human efforts to realize thoughts and achieve their interests, the scope includes increasingly global area. Read: Emil Salim, Sri Edi Swasono, Yudo Swasono, Tanri Abeng, Yaumil C. Agoes Achir, and Marco P. Sumampouw, Management in the Era of Globalization, Elex Media Komputindo, LEMHANNAS, Labora Management College, Jakarta, 1997, p. ix.Meanwhile, according to John Baylis and Steve Smith Globalization is a process of increasing interconnection between various communities between countries so that events that take place in one country can have an impact on other countries. Read: John Baylis and Steve Smith, The Globalization of World Politics, Oxford University Press, New York, 2002, p. 8.

Furthermore, Don MacIver stated that there are two important periods in the history of the development of globalization in today's world. The first period was the 1914 period when the world's political and economic system was controlled by Europeans. The second period was post-World War I. During this period there were major changes to the world's political and economic systems due to a transition that took place in two stages. The first stage began after World War I between 1914 and 1945. At that stage the hegemony and domination of European countries had faded with the presence of America and Japan in the world's political and economic structure. The second stage is the post-World War II transitional period. During this period, two countries that dominated the world's political structure were born, namely the United States and the Soviet Union. Read: Don MacIver, Political Issues in World Treaty, Manchester University Press, Manchester, 2005, p. 2.

2 *Syed Muhammad Atif, Mudit Srivastav, Moldir Sauytbekova, dan Udeni Kathri Arachchige, Globalization on Income Inequality, A Panel Data Analysis of 68 Developing Countries, EconStor, 2012, www.ECONSTOR.EU, Downloaded On January 12, 2020*

3 *Budi Winarno, Dinamika Isu-Isu Global Kontemporer,Jakarta, PT.Buku Seru, 2014, hlm. 168 dan 329, baca juga Globalisasi Sebabkan Wabah Penyakit Sulit Terbendung diakses melalui https://tirto.id/globalisasi-sebabkan-wabah-penyakit-sulit-dibendung-vXT, on February 18, 2020 at 21.00 WIB*

4 *Fathiyah Wardah in https://www.voaindonesia.com/a/indonesia-diduga-jadi-sasaran-transaksi-narkotika-*

[5] This is then used by a syndicate of international network narcotics dealers as a medium to market narcotics online. In Indonesia, said Sumirat, this mode is indeed new, but in a number of countries, such as India and China, this mode has been practiced for a long time. [6]Then in 2020 there was a case of narcotics trafficking on intragrams with the name of the account owner "kuy ah", where on Instagram, dry marijuana of various weights was offered under the name "super tobacco". On June 20, 2020, the perpetrator was arrested by the National Narcotics Agency.

In its development, the circulation of narcotics via the internet first appeared after the police arrested a number of people who ordered packages containing drugs via online from Malaysia. This drug transaction case is the first case revealed by the police. Sumirat further reiterated clearly that:[7]

Most of the perpetrators of distributing narcotics through the internet use facilities such as Facebook. The dealers use the Facebook media to place orders, communicate via Facebook after a long time I have this item and so on. Or they openly open a kind of "pharmacy", pharmacies as if he was selling official drugs. However, the goods must be sent through completely intact goods in the sense of via express package, official deposit, by post or courier and so on. So what you need to understand is that the internet is only a means of ordering.

In its development related to the regulation of the national narcotics law, there are still many regulatory weaknesses, both in the Narcotics Law and in other technical regulations such as SEMA[8] and SEJA[9]. This can be seen from the use of terms that are inconsistent with one another to the arrangement that is still inclined towards imprisonment, especially for users who are not drug dealers. In practice, the view of addicts and/or victims of narcotics abuse as perpetrators of crime is still more dominant than the health and healing approach to drug dependence. However, in reality, a shift in views from imprisonment to a health approach is often put forward by many groups and eventually becomes a trend in other countries.

Then secondly, in terms of law enforcement, Indonesia still views the use of narcotics as a crime or a legal issue, not as a health problem. Including child addicts and/or victims of narcotics abusers, they must face legal problems while their health problems are neglected. Although there have been various kinds of rules regarding children in conflict with the law, such as the Juvenile Justice System Act (UU SPPA) and the Child Protection Law, substantively the existing regulations have not fully protected the rights of children addicts and/or victims of narcotics abusers in conflict. with the law.[10]

In addition to the various problems above, in its development Law Number 35 of 2009 concerning Narcotics has not clearly regulated the distribution of narcotics through internet facilities or advances in information and communication technology. Regulations related to narcotics distribution instruments through cyberspace or the internet are only regulated in the explanation of Article 75 letter (i) g of Law Number 35 of 2009 concerning Narcotics which states that:

In this provision what is meant by "tapping" is an activity or series of investigation and/or investigation activities carried out by BNN investigators or State Police Investigators of the Republic of Indo-

online--143476876/106349.html, Indonesia is Allegedly Targeted for Online Narcotics Transactions, Accessed on March 12, 2020.

5 *Merdeka.com, Drugs Touch the Virtual World, Downloaded On August 12, 2020.*

6 *Loc, cit.*

7 *Loc, cit.*

8 *Circular Letter of the Supreme Court No. 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions and Circular Letter of the Supreme Court No. 3 of 2011 concerning Placement of Victims of Abuse of Narcotics in Rehabilitation Institutions.*

9 *Circular of the Attorney General's Circular Letter of the Attorney General's Office Number 002/A/JA/02/2013 concerning the Placement of Narcotics Addicts in Rehabilitation Institutions.*

10 *Correctional Database System of the Directorate General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia, http://smslap.ditjenpas.go.id/public/krl/current/monthly/year/2016/month/9, Accessed 12 February 2020.*

nesia by using electronic devices in accordance with technological advances towards conversations and/or sending messages by telephone. or other electronic means of communication. Included in wiretapping is electronic monitoring by means of, among others:

a. installation of a transmitter in the target room/room to hear/record all conversations (bugging);
b. installation of transmitters on cars/people/goods whose whereabouts can be tracked (bird dogs);
c. internet interception;
d. pager cloning, short service delivery (SMS), and fax;
e. CCTV (Close Circuit Television);
f. suspect location tracker (direction finder).

The expansion of the notion of wiretapping is intended to anticipate the development of information technology used by perpetrators of narcotics crimes and narcotics precursors in developing their networks both nationally and internationally because technological developments have the potential to be exploited by criminals which greatly benefit them. In order to disable/erase Narcotics networks/syndicates and Narcotics Precursors, their communication/telecommunication systems must be penetrated by investigators, including tracking the existence of these networks.

Meanwhile, the regulation regarding the handling of narcotics trafficking and circulation in the community which is also included in the cyber crime category is not explicitly and clearly regulated in Law Number 35 of 2009 concerning Narcotics, regarding the use of the internet is only used in terms of regulations related to wiretapping. So that efforts to eradicate narcotics crimes use alternative uses of Law Number 11 of 2008 jo. Law Number 19 of 2016 concerning Information and Electronic Transactions.

In its development, Law Number 11 of 2008 concerning Information and Electronic Transactions has not yet covered all aspects of cyber crime. For example, Drug Traffickers, drug transactions through the internet network are still regulated by using Law no. 5 of 1997 concerning Psychotropics and Law No. 22 of 1997 jo. Law Number 35 of 2009 concerning Narcotics, while in the Act it is not explicitly and clearly regulated regarding the transaction of illegal drugs if it is carried out using the internet network.

So it is clear that Law No. 11 of 2008 jo. Law Number 19 of 2016 has a weakness in the form of not specifically regulating matters relating to cyber crime. The General Provisions Chapter does not clearly describe the explanation of crimes using computers. Computer crimes known in cyberspace are not clearly depicted. This includes the crime of drug abuse.

So it is clear that technological advances have resulted in the birth of new facilities in the occurrence of criminal acts, including narcotics crime which is currently often referred to as cyber crime. Therefore, the politics of narcotics criminal law should change its basic paradigm. So it is also clear that the problem of criminal acts that occur today must also be viewed from the perspective of justice in terms of the criminal system in this country. In addition, the lack of technical clarity in eradicating narcotics trafficking through cyberspace also results in ambiguity in terms of coordination between related agencies. Sri Endah Wahyuningsih stated that there needs to be good coordination between existing law enforcement agencies regarding a problem of violating the law or existing crimes.[11]

In its development, the reform of the criminal justice system is no longer oriented towards retaliation against the perpetrators but is also oriented towards the values of justice and human values. Sudarto[12] is of the opinion that in dealing with the central problem in developing criminal law, the following points must be taken into account:

11 *Sri Endah Wahyuningsih dan Agus Sunaryo, THE ROLE OF PROSECUTOR OFFICE IN THE ERADICATION OF CORRUPTION CRIMINAL ACTS IN INDONESIA, Jurnal Pembaharuan Hukum Volume IV No. 2 Mei - Agustus 2017, hlm. 248.*

12 *Sudarto, 1977, Hukum dan Hukum Pidana, hlm.44-48 , dalam Barda Nawawi Arief, 2011, , op.cit., hlm.31.*

1. The use of criminal law must take into account the goals of national development, namely realizing a just and prosperous society that is evenly distributed in spiritual material based on Pancasila; In connection with this, the (use) of criminal law is aimed at tackling crime and making changes to the countermeasures themselves, for the welfare and protection of the community.
2. Acts that are attempted to be prevented or overcome by criminal law must be undesirable acts, namely actions that bring harm (material/spiritual) to the community.
3. The use of criminal law must also take into account the cost and benefit principle.
4. The use of criminal law must also pay attention to the capacity or working power of law enforcement agencies, i.e. there should not be an overload of duties (overbelasting).

This social policy-oriented approach was also seen in the National Criminal Law Reform symposium in August 1980 in Semarang. One of the reports stated, among other things:[13]

The problem of criminalizing and discriminating an act must be in accordance with the criminal politics adopted by the Indonesian people, namely the extent to which the act is contrary to the fundamental values that apply in society and is considered appropriate or inappropriate by the community to be punished in the context of providing community welfare.

Furthermore, to determine an act as a crime, it is necessary to pay attention to the following general criteria:[14]

1. Whether the action is disliked or hated by the community because it is detrimental, or can cause harm, bring victims or can bring victims.
2. Is the cost of criminalizing balanced with the results to be achieved, meaning that the cost of making laws, monitoring and enforcing the law, as well as the burden borne by victims and perpetrators, the crime itself must be balanced with the situation of law and order to be achieved.
3. Is it increasing the burden on law enforcement officers that is not balanced or clearly cannot be carried out by their capabilities.
4. Do these actions hinder or hinder the ideals of the nation, so that it is a danger to the whole society.

According to Bassiouni, in carrying out criminal law policies, a policy-oriented approach is needed that is more pragmatic and rational, as well as a value-oriented approach. It is further stated that the policy approach and the value-oriented approach should not be seen as a dichotomy, because in the policy approach, value factors should be considered.[15]

It can be said that criminal law reform in essence must be pursued with a policy oriented approach as well as a value oriented approach:[16]

1. Seen from the policy oriented approach;

a. As part of social policy, in essence it is part of efforts to overcome social problems (including humanitarian problems) in order to achieve/support national goals such as community welfare and so on.
b. As part of a criminal policy, it is essentially part of an effort to protect society.
c. As part of law enforcement policies, in essence it is part of efforts to improve legal substance in order to make law enforcement more effective.

2. Seen from the value oriented approach;

Criminal law reform is essentially an effort to review and re-evaluate (re-orient and re-evaluate) the socio-political, socio-philosophical, and socio-cultural values that underlie and

13 *Laporan Simposium Pembaruan hukum Pidana Nasional, 1980 di Semarang, dalam Barda Nawawi Arief, 2011, Undip, Semarang, 2000, hlm. 31-32.*
14 *Ibid.,hlm.32.*
15 *Ibid.,hlm.37.*
16 *Ibid,.hlm.29-30.*

provide content for the normative and substantive content of the criminal law that is aspired to. aspire. It is not a criminal law reform, if the value orientation of the aspired criminal law is the same as the value orientation of the old criminal law inherited from the colonialists.

A humanistic approach in policy/reform of criminal law, Sudarto argues, "When talking about crime, then we have to talk about the person who committed the crime. So the reform of criminal law still revolves around humans, so that he should never leave the human values of compassion for others.[17] The humanistic value approach also demands attention to the idea of "criminal individualization" in criminal law policies/reforms, this refers to the view of Marc Ancel who sees crime as a manifestation of the personality of the perpetrator. The idea of criminal individualization, among others, contains the following characteristics:[18]

1. Accountability (criminal) is personal/individual (personal principle).
2. Criminals are only given to guilty people (culpability principle: no crime without guilt).
3. The crime must be adapted to the characteristics and conditions of the perpetrator; This means that there must be leeway/flexibility for judges in choosing criminal sanctions (type and severity of sanctions) and there must be the possibility of criminal modifications (changes/adjustments) in their implementation. So it contains the principle of flexibility and the principle of criminal modification.

In its development, the politics of narcotics law is still based on the traditional criminal law system, meanwhile on the one hand the politics of narcotics criminal law must deal with the digitalization era where crime is no longer with the traditional mode but is more advanced into a mode in the form of cyber crime. This is clearly contrary to the perspective of progressive law where according to progressive law, law is not only limited to autonomous or repressive law, but law is a dynamic institution tasked with dividing humans, therefore law is always dynamically also aimed at realizing true legal justice. So that the law does not exist in a vacuum, or in other words the law must be able to adapt to various developments in society. So that the restoration of the social system of society that has been damaged due to the circulation of narcotics in cyberspace is also the main goal of the existing criminal justice system. But in reality, the legal politics of narcotics eradication is not able to keep up with the progress of information and communication technology today. This situation has resulted in the violation of the Pancasila mandate, especially the Second and Fifth precepts which have also resulted in the violation of the mandate of the fourth paragraph of the opening of the 1945 Constitution which states that the Indonesian state also has duties in the form of:

1) Protect the entire nation and the entire homeland of Indonesia;
2) Promote the general Welfare;
3) educating the nation's life;
4) Participate in carrying out world order, based on freedom, eternal peace and social justice.

This situation has clearly resulted in the political irrelevance of narcotics eradication so far. In its development, the politics of eradicating narcotics in Indonesia is different from that of Saudi Arabia. Arab countries are tightening the prevention and handling of narcotics crimes through advances in communication and information technology, this is because the circulation of narcotics in Arabia comes from the rebels who have networks in Lebanon and Egypt where the organization of narcotics trafficking is carried out by the rebels in order to subsidize its movement and be under control. a shadow organization where the shadow organization is under the control of the world narcotics organization where all modes of movement use advances in communication and information technology.[19]

This can also be seen in the case of narcotics trafficking through social media carried out by the @

17 Ibid,.hlm.43
18 Ibid,.hlm.39
19 CIA, Narcotics And The Arab Worlds, CIA Directorate of Intelligence, 2012, Accessed via www.CIA.gov on 12 May 2020.

dr.bankbong account, through this account the perpetrator with the initials AB offered and sold narcotics with the type of methamphetamine. Kombes Pol Viktor Togi Tambunan as the Head of the Soekarno-Hatta Airport Police explained that the perpetrators had offered narcotics with the type of methamphetamine for a long time through his social media accounts. Then Kombes Pol Viktor Togi Tambunan as the Head of the Soekarno-Hatta Airport Police added that his team had succeeded in apprehending the AB perpetrators in Pontianak on July 25, 2019.[20]

Based on the problems related to the obstacles to the development of criminal law politics in dealing with cyber crime related to the circulation of narcotics through internet facilities in cyberspace, it would be interesting to discuss it more deeply related to "Reconstruction of Legal Politics for the Eradication of Cyber Crime Related to the Misuse of Narcotics Based on Justice Values".

B. **Formulation of the problem**

1. How is the implementation of the legal politics of eradicating cyber crime related to narcotics abuse today?
2. Why is the implementation of the legal politics of eradicating cyber crime related to narcotics abuse not based on the value of justice?
3. How is the legal political reconstruction of the eradication of cyber crime related to narcotics trafficking based on the value of justice?

C. **Theoretical Framework**

a) Talcot Parson's Theory of Justice and Cybernetics As Grand Theory

1) John Rawls's Theory of Justice

John Rawls gives the meaning of justice is the main virtue of the presence of social institutions. However, virtue for the whole community cannot override or challenge the sense of justice of everyone who has obtained a sense of justice. Especially the weak people seeking justice.[21] Furthermore, John Rawls basically sees social justice as more about the aspect of the distribution of justice in society. Justice is translated as fairness where the principle is developed from the utilitarian principle. The theory is adopted from the maximization principle, namely the process of maximizing a minimum in a society carried out by each individual who is in an initial position where in that position there has not been a bargain on the role and status of a member of the community. This principle seeks to answer as far as possible about maximizing a minimum that is closely related to the benefits of the weak lower class.[22]

Based on John Rawls' Theory of Justice, there are two main objectives to be conveyed, namely: First, this theory wants to articulate a series of general principles of justice that underlie and explain certain conditions of a person specifically to get justice seen from the social actions that a person takes. Second, the concept of distributive justice is basically developed from the concept of utilitarianism by providing more appropriate boundaries for individuals. That justice is seen as a more appropriate and ethical way to provide benefits to individuals in accordance with ethical moral decisions.[23]

The pattern of giving the concept of justice according to Rawls must be initiated based on a person's original position not because of his status and position in the social space. The way to obtain the original nature, one must reach the original position which is called the veil of ignorance. The condition of the veil of ignorance intends to place someone in the same condition as one another as a member of society in a condition of ignorance. So with such a situation, other people do not know the benefits of

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20 Zaki Ari Setiawan, Selling Methamphetamine Through Social Media, Account Owner @dr.Bankbong Arrested by Police, Downloaded via https://wartakota.tribunnews.com/2019/08/08/jual-sabu-via-medsos-pemilik-akun-drbankbong-arrested-police, on June 12, 2020.

21 Pan Muhammad Fais, Teori Keadilan John Rawls, Jurnal Konstitusi, 2009, hal 135.

22 John Rawls, Teori Keadilan, Pustaka Pelajar,Yogyakarta, 2011, diterjemahkan oleh Uzair Fauzan dan Heru Prasetyo, hlm.12-40.

23 John Rawls, A Theory of Justice, Oxford University, London,1973,hlm.50-57.

giving something to someone who has reached the point of "the veil of ignorance".[24]

Furthermore, in the condition of "veil of ignorance" the community is tasked with distributing the main things that each person wants to have (primary good). Primary good is a basic human need as a right that must be fulfilled. Thus, the way for the community to distribute rights is to apply the principles of justice which consist of: a) freedom to play a role in political life; b) freedom of speech; c) freedom of belief; d) freedom to be himself; e) freedom from arbitrary arrest and detention; f) Right to retain private property.[25]

In conclusion, John Rawls's justice tries to place the rights of every individual as it should be by releasing the attributes of the position they have in the social structure. So that the distribution of rights is done equally.

2) Talcott Parson's Cybernetic Theory

Parsons is a sociologist who initiated the Cybernetic Theory which was later known as Structural Functionalism Theory. In this theory, Parsons stated that from a sociological point of view, society is seen as living in a series of a unified system consisting of interrelated parts. Parson's view was developed from the model of the development of organizational systems found in biology where the theory is based on the assumption that all elements must function so that society can carry out its functions properly.[26]

> As a system, the theory places law as one of the sub-systems within a larger social system. In addition to law, there are other sub-systems that have different logics and functions. The sub-systems in question are culture, politics, and economy. Culture discusses with values that are considered noble and noble, and therefore must be maintained. This sub-system functions to maintain ideal patterns in society. Law refers to the rules as the rules of the game (rule of the game). The main function of this sub system is to coordinate and control all deviations to comply with the rules of the game. Politics has to do with power and authority. The task is to utilize power and authority to achieve goals. While the economy refers to the material resources needed to support the system. The task of the economic sub-system is to carry out the adaptation function in the form of the ability to master the means and facilities for system needs.[27]

The four sub-systems, apart from being a reality inherent in society, are simultaneously challenges that must be faced by each unit of social life. The life and death of a society is determined by the functioning or not of each sub-system according to their respective duties. To ensure that, it is the law that is tasked with managing the harmony and synergistic movement of the other three sub-systems. This is called the integration function of the law in Parsons Theory.[28] The configuration scheme for the sub-systems based on Parsons Cybernetics Theory above can be described as follows:[29]

I. chart

Configuration of Sub-Systems Based on Parsons' Cybernetic Theory

Sub-Sub System	Primary Functions	Information Flows

24 John Rawls yang disarikan oleh Damanhuri Fattah, Teori Keadilan Menurut John Rawls, Jurnal TAPIs Volume 9 No.2 Juli-Desember 2013, hlm.42

25 Ibid., hlm.43.

26 Bernard Raho, SVD, Teori Sosiologi Modern, Prestasi Pustaka, Jakarta, 2007, hlm.48.

27 Bernard L. Tanya, dkk. Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi, Genta Publishing, Yogyakarta, 2010, hlm. 152.

28 Loc.Cit..

29 Satjipto Rahardjo, Ilmu Hukum Cetakan Ketujuh 2012, PT. Citra Aditya Bakti, Bandung, 2012, hlm. 135.

		High Information Level (control)
Culture	Maintaining Pattern	
Social	Integration	Hierarchy of factors- Hierarchy of factors-
		Factors that factors that
Political	Pursuit of Goals	Conditioning control
Economy	Adaptation	
		High energy level (condition)

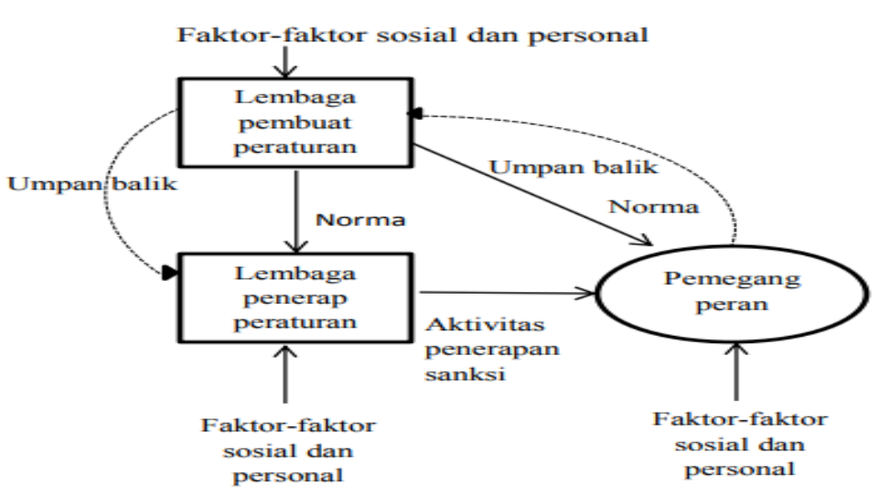
b) Chambliss and Seidman's Laws Work as Middle Range Theory

This theory states that any action to be taken by the role holders, implementing agencies and lawmakers is always within the scope of the complexity of social, cultural, economic and political forces and so on. All social forces always work together in every effort to function the applicable regulations, apply sanctions, and in all activities of implementing institutions. Finally, the role played by legal institutions and institutions is the result of the work of various factors.[30]

The influence of social forces in the operation of this law, Seidman clearly describes it as follows:[31]

Chart II

Work of personal and social forces



30 *William J. Chambliss dan Robert B. Seidman dalam Esmi Warassih, Pranata Hukum Sebuah Telaah Sosiologis, Ibid., hlm. 10.*

31 *Ibid., hlm. 11.*

c) Satjipto Rahardjo's Progressive Legal Theory

Progressive is a word that comes from a foreign language (English) whose origin is progress which means progress. Progressive Law means advanced law. The term progressive law, introduced by Satjipto Rahardjo, is based on the basic assumption that law is for humans. Satjipto Rahardjo is concerned about the low contribution of legal knowledge in enlightening the Indonesian nation, in overcoming crises, including the crisis in the legal field itself.

As for the understanding of progressive law, it is changing rapidly, making fundamental reversals in legal theory and practice, and making various breakthroughs. The liberation is based on the principle that the law is for humans and not the other way around and the law does not exist for itself, but for something broader, namely for human dignity, happiness, welfare, and human glory.[32]

> The understanding as stated by Satjipto Rahardjo means that progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that the law is more useful, especially in raising self-esteem and ensuring human happiness and welfare. In simpler terms, progressive law is a law that makes liberation, both in the way of thinking and acting within the law, so that it is able to let the law flow only to complete its task of serving humans and humanity. So there is no engineering or partiality in enforcing the law. Because according to him, the law aims to create justice and prosperity for all people.

Satjipto Rahardjo tries to highlight the above conditions into the situation of the social sciences, including law, although not as dramatic as in physics, but basically there has been a phenomenal change in the laws that are formulated in sentences from simple to complex and from fragmented ones. box into a single unit. This is what he calls a holistic view of science (law). This holistic view provides a visionary awareness that something in a certain order has parts that are interrelated either with other parts or with the whole.

> Progressive law means law that cares about humanity so that it is not merely dogmatic. Specifically progressive law, among others, can be referred to as pro-people law and just law. The concept of progressive law is that the law does not exist for its own sake, but for a purpose that is outside of itself. Therefore, progressive law leaves the tradition of analytical jurisprudence or rechtsdogmatiek. These schools only look into the law and discuss and carry out internal analysis, especially law as a building regulation which is considered as systematic and logical. Progressive law is responsive which in this responsive law will always be linked to goals outside the textual narrative of the law itself.[33]
>
> Legal progressivism teaches that the law is not a king, but a tool to describe the basis of humanity that functions to give grace to the world and humans. The assumptions underlying legal progressiveism are that first the law exists for humans and not for itself, the second law is always in the status of law in the making and is not final, and the third law is an institution with human morality.
>
> The difference between dogmatic law and legal theory is that positive/dogmatic legal science discusses legal issues with reference to the applicable positive legal regulations, so that they are very "as is" (das Sein), but on the other hand legal theory does not analyze law with reference to positive law. prevailing dogmatic. Legal theory refers to its theoretical arguments through deep reasoning, so that in contrast to positive law, legal theory sees law as "what it should be" (das Sollen). In other words, what legal science is looking for is the validity of a rule of law and legal action, while legal theory is looking for truth and achieving justice from a rule or rule of law.

32 *Satjipto Rahardjo, Ilmu Hukum; Pencarian, Pembebasan dan Pencerahan, Surakarta: Muhammadiyah Press University, 2004*

33 *Achmad Roestandi, Responsi Filsafat Hukum, Bandung: Armico, 1992,hlm.1*

D. Research methods

According to E. G. Guba and Y.S Lincoln,[34] the constructivism paradigm is ontologically interpreted as relativism, namely, the understanding of reality that is constructed based on local and specific individual social experiences. Epistemologically, paradigm is a form of subjectivity to the findings created by researchers and related investigation objects interactively so that findings are created or constructed together with a methodology.

Methodologically, the paradigm uses the hermeneutic or dialectical method, which means that construction is traced through the interaction between the researcher and the object of investigation with hermeneutic techniques.[35] In this study using the constructivism paradigm because in addition to using library data and legislation, it also uses data in the form of hermeneutic interviews.[36]

The paradigm in this dissertation research is constructivism where research is not only on textual legislation but also includes field research to informants in a hermeneutic manner so that holistic data is found, besides that this paradigm is used considering the approach in this research is not only doctrinal but also philosophical, sociological. , and normative.

The type of legal research used is descriptive analytical. In this analytical descriptive legal research, law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in the interactions between them. That the real reality of life does not exist in the empirical realm which is also the observable realm, does not appear in the form of objectively (especially normative) patterned and structured behavior and therefore can be measured to produce quantitative data. The reality of life actually only exists in the realm of meaning that appears in the form of symbols that can only be understood after being interpreted. Such a reality cannot be easily "captured" through external observation and measurement. These realities can only be "captured" through experience and internal appreciations that produce a complete picture of understanding.[37]

The approach method used in this qualitative legal research is a sociological juridical approach, which is an approach by seeking information through direct interviews with informants empirically first and then proceeding with conducting secondary data research contained in the literature study through theoretical steps.[38]

The primary data used in the formulation of policies related to criminal law dealing with the circulation of narcotics online is that at least there are several government agencies that will be used as informants, including:

1. National Narcotics Agency,
2. Court,
3. Prosecutor's Office,
4. Police,
5. Perpetrators,
6. Victim,
7. Academics, and
8. Online Narcotics Related Institutions.

Secondary data in this study is divided into 3 (three) types: Primary Legal Materials, Secondary

34 *E. G. Guba dan Y. S. Lincoln, Kontroversi Paradigmatik, Kontradiksi dan Arus Perpaduan Baru, dalam Norman K. Denzin dan Y. S. Lincoln, Tha Sage Handbook Of Qualitative Research Edisi Ketiga, dialihbahasakan oleh Dariyatno, Pustaka Pelajar, Yogyakarta ,2011, hlm. 205.*

35

36

37 *Soetandyo Wignjosoebroto, Hukum, Paradigma, Metode, dan Dinamika Masalahnya, HUMA,Jakarta,2002, hlm.198*

38 *Ibid, hlm. 7*

Legal Materials and Tertiary Legal Materials. The Primary Legal Materials in question are:

a) Legislation as follows:
(1) the 1945 Constitution of the Republic of Indonesia;
(2) Law Number 39 of 1999 concerning the Protection of Human Rights;
(3) the Criminal Procedure Code;
(4) Law Number 11 of 2008 concerning Information and Electronic Transactions;
(5) Law Number 35 of 2008 concerning the Eradication of Narcotics Crime.

The secondary legal materials used are: literature, books and literature; Scientific work; Relevant References. While the Tertiary Legal Materials uses a legal dictionary; and Encyclopedia. The data collection techniques carried out are as follows:

a. Literature review
b. Observation
c. Interview

The data obtained in this study were then selected and arranged systematically for further analysis and presentation using qualitative analysis methods.[39] The logic of thinking used in this research is the logic of deductive thinking, where this research departs from things (rules/norms/theories/rules of law) that are general to things that are specific (particular). The basic principle is:[40] everything that is considered true for all events in one class/type, is also true for all events that occur in a particular thing, as long as this particular thing is really a part/element of that general thing. “

E. Research Results and Discussion

a) Illicit Regulation of Narcotics Circulation Through Digital Media in the Perspective of Justice Rawls

The definition of Narcotics is based on the provisions of Article 1 point 1 of Law Number 35 of 2009 concerning Narcotics, that what is meant by Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste. , reduce to eliminate pain, and can cause dependence.[41]

The famous narcotics in Indonesia today are derived from the word “Narkoties”, which has the same meaning as the word narcosis which means to anesthetize. In Indonesia, it was known as madat. General Elucidation of Law Number 35 of 2009 concerning Narcotics has a wider scope both in terms of norms, material scope and the threat of aggravated criminal. This wider coverage is not only based on the above factors but is also due to the development of needs and the fact that the values and norms in the applicable provisions are no longer adequate as an effective means to prevent and eradicate narcotics abuse and illicit trafficking.

Narcotics and psychotropic substances are the result of technological progress to be used for medical and scientific purposes. Narcotics development can be used for health services as regulated in Chapter IX Article 53 to Article 54 of Law Number 35 of 2009 especially for the benefit of Treatment including also for the benefit of Rehabilitation.[42]

Narcotics, Psychotropics and other addictive substances are various kinds of drugs that should be used in accordance with certain interests, for example in the medical world to assist the doctor’s work

39 *Mukti Fajar ND dan Yulianto Achmad, Dualisme Penelitian Hukum Normatif dan Empiris, Pustaka Pelajar, Yogyakarta, 2010, hlm. 183.*
40 *Soetriono dan SRDm Rita Hanafie, Filsafat Ilmu dan Metodologi Penelitian, ANDI, Yogyakarta, 2007, hlm. 153.*
41 *Siswanto, Sunarso, Penegakan Hukum Psikotropika Dalam Kajian Sosiologi Hukum, Pt.Raja Grafindo Persada, Jakarta, 2004, hlm. 111*
42 *Loc, cit.*

process in performing surgical operations. However, at this time these illegal drugs have been consumed, circulated and traded without the permission of the authorities for the sake of obtaining profit and pleasure for a moment. Narcotics are divided into 3 (three) groups as follows:

1) Narcotics Group 1 (one)
2) Narcotics Category 2 (two)
3) Narcotics Category 3 (three)

The regulation of narcotics in Indonesia in its development is regulated in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Article 1 paragraph (6) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics states that:

Illicit Trafficking of Narcotics and Narcotics Precursors is any activity or series of activities carried out without rights or against the law which is determined as a crime of Narcotics and Narcotics Precursors.

Then Article 35 of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics reads:

Circulation of Narcotics includes any activity or series of distribution or delivery of Narcotics, both in the context of trade, not trade or transfer, for the benefit of health services and the development of science and technology.

Based on the above regulation, it is clear that the circulation of narcotics is divided into two, namely the circulation of narcotics illegally or against the law or illegally and trafficking legally. The definition of illicit narcotics trafficking is regulated in Article 1 paragraph (6) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, while legally or legally regulated in Article 35 of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

Based on the explanation above, it shows that narcotics circulation is all actions related to processes, cycles, activities or a series of activities that distribute/move something (goods, services, information, etc.), imports, exports, buying and selling domestically and storage and transportation of narcotics against the law where the objects that are an element in this offense are narcotics in order to gain economic benefits or to be consumed illegally.

John Rawls gives the meaning of justice is the main virtue of the presence of social institutions. However, virtue for the whole community cannot override or challenge the sense of justice of everyone who has obtained a sense of justice. Especially the weak people seeking justice.[43] Furthermore, John Rawls basically sees social justice as more about the aspect of the distribution of justice in society. Justice is translated as fairness where the principle is developed from the utilitarian principle. The theory is adopted from the maximization principle, namely the process of maximizing a minimum in a society carried out by each individual who is in an initial position where in that position there has not been a bargain on the role and status of a member of the community. This principle seeks to answer as far as possible about maximizing a minimum that is closely related to the benefits of the weak lower class.[44]

The legal vacuum related to regulating the circulation of narcotics digitally will result in ambiguity for the enforcement and application of criminal law related to cases of illegal narcotics trafficking where the modes that use digital media and the conventional modes are charged with the same or even different where digital proof is still difficult and has not been regulated legally. firm, so it is possible that the punishment of narcotics dealers through digital means will be lighter. This is clearly unfair, because

43 Pan Muhammad Fais, Teori Keadilan John Rawls, Jurnal Konstitusi, 2009, hal 135.

44 John Rawls, Teori Keadilan, Pustaka Pelajar,Yogyakarta, 2011, diterjemahkan oleh Uzair Fauzan dan Heru Prasetyo, hlm.12-40.

although using more effective and more efficient means, the impact of damage to a social order is no different from traditional circulation. This is clearly contrary to Rawls's concept of justice which requires justice which sees social justice more in terms of the form of distribution of justice in society. Justice is translated as fairness where the principle is developed from the utilitarian principle.

b) **Factors Influencing the Implementation of Legal Politics for the Eradication of Cyber Crime Related to Narcotics Abuse**

Basically, effectiveness is the level of success in achieving goals. Effectiveness is a measurement in the sense of achieving predetermined goals or objectives. In the sociology of law, law has a function as a tool of social control, namely an effort to create balanced conditions in society, which aims to create a harmonious state between stability and change in society. In addition, the law also has another function, namely as a tool of social engineering, which means as a means of renewal in society. Law can play a role in changing people's thinking patterns from traditional thinking patterns into rational or modern thinking patterns. Legal effectiveness is a process that aims to make the law effective.

When we want to know the extent of the effectiveness of the law, then we must first be able to measure the extent to which the law is obeyed by most of the targets that are the target of its obedience, we will say that the rule of law in question is effective. However, even though it is said that the rules that are obeyed are effective, we can still further question the degree of effectiveness because someone obeys or does not obey a rule of law depending on his interests.[45] As previously stated, there are various interests, including compliance, identification, and internalization.

Weaknesses that measure compliance with the law in general include:[46]

a. The relevance of the rule of law in general, with the legal needs of the people who are the target of the rule of law in general.
b. Clarity of the formulation of the substance of the rule of law, so that it is easily understood by the target of the enactment of the rule of law.
c. Optimal socialization to all targets of the rule of law.
d. If the law in question is legislation, then the rules should be prohibitive, and not mandatory, because prohibiting laws (prohibitors) are easier to implement than mandatory laws (mandaturs).
e. The sanctions threatened by the rule of law must be matched with the nature of the rule of law being violated.
f. The severity of the sanctions threatened in the rule of law must be proportionate and allow for implementation.
g. The possibility for law enforcement to process if there is a violation of the rule of law, is indeed possible, because the actions that are regulated and threatened with sanctions are indeed concrete actions, can be seen, observed, therefore it is possible to be processed at every stage (investigation, investigation, prosecution). , and punishment).
h. Legal rules that contain moral norms in the form of prohibitions will be relatively much more effective than legal rules that are contrary to the moral values held by the people who are the targets of enactment of these rules.
i. The effectiveness or ineffectiveness of a rule of law in general, also depends on the optimal and professional level of law enforcement officials to enforce the rule of law.

45 *Achmad Ali, Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence), Penerbit Kencana, Jakarta, 2009, hlm. 375.*
46 *Ibid.,hlm. 376.*

j. The effectiveness of a rule of law in general also requires the existence of a minimum socio-economic standard of living in society.

1. Substance Factor

The elements of Article 1 paragraph (6) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics are:

a) Any Activity or Series of Circulation Activities

The definition of activity or series of circulation activities according to the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics is a process, cycle, activity or series of activities that distributes/moves something (goods, services, information, and others). Circulation can also be interpreted as import, export, buying and selling in the country as well as storage and transportation. This activity is carried out by someone who can be accounted for. This element of the subject (normadressaat) is the element of every person as a legal subject, in the sense of a person personally or referring to a certain legal entity capable of being responsible according to law.[47]

Then the subject can be said to be responsible because in addition to the terms of the subject, there is also a condition of intentionality in his actions. In connection with the conditions of intentionality, which contain will and know, then in the science of criminal law there are two theories, namely:[48]

1) The will theory (wilstheorie) was put forward by Von Hippel (die grenze von vorsatz und fahrlassigkeit, 1903). Deliberation is the will, the will to make an action and the will to cause a result because of that action. In other words, intentional is when the result is the true intention of the action taken.
2) The theory of imagining (voorstelling-theorie), this theory was put forward by Frank in "Festschrift Gieszen 1907" by Ueber and Aubuf des schuldbegriffs. According to Frank, based on psychological reasons, it is impossible for an effect to be desired by an action, humans cannot want an effect. Frank's formula reads: it is intentional when an effect (caused by an action) is imagined as an intention (that action), and therefore the action concerned is carried out in accordance with the previously created image.

According to Vos in his leerbok, there are three forms of intentionality, namely intentional as an intention, intentional as a certainty or necessity, and intentional with an awareness of the magnitude of the possibility. The three forms of intentionality in some literature are known as the three types of intentionality. The types of intent are as follows:[49]

1) Deliberation as an intention (opzet als oogmerk) is an intention to achieve a goal. That is, between a person's motivation to do an action, the action, and the consequences are actually realized.
2) Deliberation as certainty or necessity (opzet bij noodzakelijkheids of zekerheidsbewustzijn), which is intentional which has two consequences. The first effect is desired by the perpetrator, while the second effect is unwanted but certain or occurs.
3) Intentional awareness of the magnitude of the possibility (opzet met waarschijnlijkheidsbewustzijn) is an intentional act that causes uncertain consequences but is a possibility.
4) Conditional intentionality (dolus eventualis) is basically a person doing an action but does not want the result. It can be said that even though a person does not want the consequences, but the act is still carried out, then that person must bear whatever risks arise.
5) Intentional color (opzetgekleur) is that a person committing an act must know in advance that the act

47 Duwi Handoko, Asas-Asas Hukum Pidana Dan Hukum Penitensier Di Indonesia, Hawa dan Ahwa, Pekan Baru, 2017, hlm. 39.
48 Loc, cit.
49 Edy O.S. Hiariej, Prinsip-prinsip Hukum Pidana, Universitas Atmajaya, Yogyakarta, 2016, hlm.172-182.

he has committed is a criminal act or an act that is prohibited by law.

6) Intentional colorless (opzetkleurloos) is an act intentionally, does not require the knowledge of the perpetrator, whether the act he has committed is a criminal act or not.
7) The intentionality that is objectified is not a type of intent but a way to ensure that there is intentionality, that is, if in the event that it cannot be determined with certainty whether a person has committed a crime or not, then the presence or absence of an intentional act must be inferred from an apparent act.
8) Dolus directus is a term that refers to the intentional pattern as a certainty or necessity, requiring not only a high level of knowledge, but the consequences of the act, even though it is not desired, but an awareness of necessity must occur.
9) Dolus indirectus is an intentional act to commit an act that is prohibited but the consequences that arise are undesirable.
10) Dolus determinus starts from the assumption that in essence an intention must be based on a certain object, a variant that is no longer used and is more intentional as a certainty.
11) Dolus indeterminus is an intentional act aimed at just anyone.
12) Dolus alternatives are intentional acts that are prohibited and require one result or another.
13) Dolus generalis is an intentional act aimed at someone but more than one action is taken to achieve that goal.
14) Dolus repentinus or impetus is the intentional act of doing something that appears suddenly.
15) Dolus premeditates is an intentional act with a prior plan.
16) Dolus antecendenes is defined as a deliberate act that is placed too far before the action is taken.
17) Dolus subsequences is a dolus that puts the intention of an action that has already occurred.
18) Dolus malus is defined as an intentional act.

b) Unlawfully

According to R. Soeroso, legal acts are all actions carried out by legal subjects (both humans or legal entities) whose consequences are regulated by law, because the consequences can be considered as the will of the person committing the act. law. The types of actions included in the category of legal acts are:[50]

i. One-sided legal actions, unilateral legal actions are legal actions that are carried out by one party only and give rise to rights and obligations by one party as well. For example, making a will which is regulated by Article 875 of the Civil Code.
ii. Two-party legal actions, two-party legal actions are legal actions carried out by two parties and give rise to rights and obligations for both parties (reciprocity). For example, the sale and purchase agreement is regulated in Article 1457 of the Civil Code.

Meanwhile, according to R. Soeroso, an act which is an illegal act is an act that is carried out but the result is not desired. As for actions that are not included in legal actions, they are actions that are prohibited by law or onrechtmatige daad. An act that is prohibited by law or an act against the law which is usually called onrechtmatige daad is an act that causes harm to another person and requires the guilty actor to compensate for the loss caused.[51]

Then the notion of unlawful acts is also known in criminal law. According to Lamintang in Indonesian, the word wederrechtelijk means illegally which can include the notion of being contrary to objective law or legislation and contrary to the rights of others or subjective law.[52]

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50 R. Soeroso, Pengantar Ilmu Hukum, Sinar Grafika, 2009, hal. 291-294.
51 Loc, cit.
52 Teguh Prasetyo dan Abdul Hakim Barkatullah, Politik Hukum, Pidana Kajian Kebijakan Kriminalisasi dan Dekriminalisasi, Pustaka Pelajar, Yogyakarta, 2005, hlm. 32.

c) Criminal Acts of Narcotics and Narcotics Percussion

Narcotics crime is a criminal act of abusing narcotics without rights or against the law other than those specified in the law. According to Article 1 paragraph (2) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics: Narcotics Precursors are substances or starting materials or chemicals that can be used in the manufacture of Narcotics which are distinguished in the table as attached to this Law.

In this element, the object that is used as the source of the occurrence of a crime is narcotics which are traded or circulated against the law, so that this element distinguishes narcotics crime from other prohibited goods trafficking crimes.

Based on the sound of the elements above, it can be seen that the modus operandi of the distribution or distribution or delivery of narcotics against the law has not been an element in the formulation of offenses related to narcotics trafficking crimes. This is further exacerbated by the unregulated circulation of digital narcotics in Law no. 19 of 2016 Jo. Law No. 11 of 2008 concerning ITE.

2. Structural Factor

Basically, state problems are also problems related to the enforcement of the rule of law in Indonesia which are the biggest and most urgent, so it is appropriate that our criticism of these legal problems must also be accompanied by alternative solutions.[53] When talking about the rule of law which positions the law upright with the support of its three legal pillars into a humane social justice frame, it turns out that up to this day it is nothing more than a utopian act that is always directed in idealistic rhetoric for every apparatus and legal figures and experts. especially in Indonesia. In addition, the legal concept of upholding the rule of law that is processed by the state is not necessarily perfect in its implications, although it is recognized that in general it has fulfilled the ideal framework according to the framework of the maker (it is common in Indonesia, especially to make laws, always ignore the real characteristics of society). very important and functional).[54]

A separate problem in improving legal services in Indonesia, including qualified human resources, is not enough just to be highly educated, but must also be accompanied by a quality personality level. This is important because law enforcers are the spearhead as well as role models in implementing the law itself, but it is ironic that the existence of law enforcers in Indonesia still needs to be questioned, how many judges and/or other law enforcers are suspected of. and or have been exposed to bribery cases and or other disgraceful cases.[55]

Reflecting on this fact, it can be drawn into a spotlight that the culture of the Indonesian people is indeed not a law-conscious society. This is even more evident, when we easily witness not only law enforcement officers who abuse power, but how many and often nuances of violence occur which directly with mass mobility and or communal violence have tried and judged themselves the perpetrators of violating the law, especially which is in direct contact with the community so that arson, beatings, looting, and murder by the masses are the other side of the way the community implements the meaning of justice or the proper way in which they carry out their laws, because state institutions are no longer considered as a place to process and find justice (the state). we are like a factory machine making laws and regulations, not gushing for the interests of the community, most of them are very ordinary.[56] Basically law enforcement in Indonesia must cover three very basic important aspects, namely the culture of the community where legal values will be enforced, the structure of the law enforcement itself, then the substance of the

53 Ibid, hlm. 76 – 77.
54 Sabian Ustman, op,cit, hlm. 15.
55 Loc, cit.
56 Ibid, hlm. 16.

law to be enforced.[57]

Based on the explanation above, we can find that social phenomena related to the problems of law enforcement in Indonesia are as follows "the occurrence of deterioration (degradation) of the rule of law which is marked by the increasing number of irregularities committed by law enforcement officers, which is accompanied by the increasing number of mass judgments against crimes committed by law enforcement officers. crime in society, correlated with positivistic law. [58]The problem of law enforcement in Indonesia is actually difficult to investigate, like looking for the starting point or the end of a vicious circle that makes crime more sovereign (rampant).

It has been explained previously that related to narcotics trafficking it has not been as effective as described in chapter III. This is because not all law enforcement areas in Indonesia have adequate facilities and infrastructure and adequate human resources in terms of advances in information and communication technology, thus making prevention related to the circulation of narcotics digitally unable to run properly.

3. Cultural Factor

The issue of national security in its development cannot be separated from the problems of the world's political economy, starting with the monopoly of the world economy through imperialism and colonialism as well as military power against third countries to the monopoly of the world economic system in the era of globalization where technological progress and a capital surplus are driving the country. move forward to perpetuate the capital surplus by expanding the influence of economic intervention to third countries that have abundant natural resources and energy, moreover the current state borderless phenomenon has resulted in problems in the form of dependence between countries, both developed and developing countries, which has an impact on policy stability. national and local, so that when a country's economic stability is disturbed, it will also result in other countries as an organizational unit being affected, this leads to the instability of a country's security. and people in a country in various sectors where the economic sector in the form of poverty is the center of national security disturbances. Poverty and the destruction of social order have resulted in the consumption of narcotics, especially among teenagers, this occurs as a chain effect of poverty and the destruction of the family ethical order as well as the pressure of economic life and low human resources due to the lack of access to adequate education which is the main factor for a person to fall into a narcotics trap.[59]

3. Reconstruction of Legal Politics for Countering Narcotics Circulation Digitally

The existence of Pancasila as the basis of the state in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia can be seen clearly, this is indicated by the sound of the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia which states that:

Then from that to form an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice, the independence of the Indonesian nationality was drawn up. in a Constitution of the State of Indonesia, which is formed in an arrangement of the Republic of Indonesia which is sovereign by the people based on the One Supreme Godhead, Just and Civilized Humanity, Indonesian Unity, Democracy led by Wisdom in Deliberation/ Representation, and by realizing a Social Justice for All Indonesian People.

This has clearly resulted in the consequence that in Indonesia, human rights of all groups of people are recognized, respected, and protected. In order to achieve this, the Indonesian state adheres to the

57 Loc, cit.
58 Ibid, hlm. 15-16.
59 Kenichi Ohmae, The End of Nation State, The 1995 Panglaykim Memorial Lecture, Jakarta, 1995, hlm. 18.

Pancasila democratic system which makes the law as the basis. In other words, Pancasila is a guide for the state to realize the concept of a democratic, religious, and humanist state of law.

The position of Pancasila as Philosofische Grondslag or by Nawiasky called Staatsfundamentalnorm as well as rechtsidee or legal ideals, has the consequence that the making of all legal regulations until their implementation must be in accordance with all the values contained in each of the Pancasila precepts as described above.

Based on the explanation above, it can be stated that legal politics is basically a direction of legal development that is based on the national legal system to achieve the goals of the state or the ideals of the state and nation.[60] The goals of the state that depart from the ideals of the nation's people have been summed up in the five precepts of Pancasila. So in other words, the implementation of legal politics is based on the five principles of Pancasila, namely Belief in One Supreme God, Just and Civilized Humanity, and Indonesian Unity.

Democracy led by wisdom in deliberation/representation, and social justice for all Indonesian people. Legal politics based on the value of God Almighty means that legal politics must be based on the moral value of God. Legal politics based on just and civilized human rights means that the existing legal politics must be able to guarantee respect and protection for human rights in a non-discriminatory manner.

Legal politics must be based on the value of Indonesian Unity, meaning that legal politics must be able to unite all elements of the nation with all their primordial ties. Legal politics based on populist values led by wisdom in deliberation/representation means that legal politics must be able to create state power which is under the power of the people or in other words legal politics must be able to create a democratic country where the greatest power is in the hands of the people (democracy). populist). Then the last one is that legal politics must be based on the value of Social Justice for All Indonesian People, meaning that legal politics must be able to create a socially just society that is able to create justice for the weak community both in the social sector and in the economic sector, so that there is no oppression between the power community. full of marginalized people.[61]

The various values contained in the five precepts of Pancasila are then concretized in the state goals as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia. The Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that:

The state and nation have an obligation to realize: The protection of the entire nation and the entire homeland of Indonesia. Advancing the general welfare. Enrich the life of a nation. Participate in carrying out world order, based on freedom, eternal peace and social justice.

So it is also clear that legal politics must be based on the four principles contained in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia. In this regard, Mahfud MD stated that:[62] In the context of legal politics, it is clear that law is a "tool" that work within a certain "legal system" to achieve the "goals" of the state or the "ideals" of the Indonesian people. Therefore, the discussion on the politics of national law must be preceded by an affirmation of the purpose of the state.

Based on the opinion of Mahfud M. D., it is clear that Pancasila is the basis and source of all

60 Basically there is almost no difference between the ideals of the state and the goals of the state. However, in the context of legal politics, Mahfud MD distinguishes the two things, according to Mahfud MD, ideals are the spirit that resides in the hearts of the people, while the goals of the state are constitutive statements that must be fulfilled. be used as a direction or orientation for the implementation of the state. See: Moh. Mahfud M. D., op, cit, p. 17.

61 Ibid, hlm. 16.

62 Ibid, hlm. 17.

sources for national legal politics. This is because Pancasila and the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia contain various ideals of the Indonesian nation which are rechtsidee, namely to create a state capable of creating social justice based on the moral values of God, humanity, and unity through mutual democracy instead of through western democracy. In order to realize this, it is clear that a Pancasila state law is needed.

According to Padmo Wahyono, the Pancasila legal state is a legal state rooted in the principle of kinship where social interests are the most important but still respect and recognize and protect individual human rights. In line with Wahyono's view, Muhammad Tahir Azhary re-added the principle of harmony in thinking related to the Pancasila legal state which is rooted in the principle of kinship. So that the life of the nation and state will continue to uphold the values of togetherness and kinship which makes the life of the nation and state an inseparable unit, so that in carrying out the life of the nation and state, efforts will be made to maintain national unity and the territorial integrity of the Unitary State of the Republic of Indonesia.[63]

Then according to Philipus M. Hadjon the elements of a Pancasila legal state consist of:[64]

a. Harmony of relations between the people and the state based on harmony;
b. The proportional functional relationship between state powers;
c. The principle of dispute resolution by deliberation and the judiciary is the last means;
d. Balance between rights and obligations.

So it is clear that the state of law in Indonesia is a state based on Pancasila law, which in addition to being based on law, is also based on the highest norm, namely Pancasila. This includes the national land law, which should be based on Pancasila, which aims to realize things as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia.

With regard to Pancasila as the source of all legal sources, Kaelan stated that:[65] The values of Pancasila as the basis of the philosophy of the Indonesian state are essentially a source of all sources of law in the Indonesian state. As a source of all sources of law, objectively it is a view of life, awareness, legal ideals, and noble moral ideals which include the psychological atmosphere, as well as the character of the Indonesian nation.

Then with regard to legal objectives, Sri Endah suggested that:[66] If what national law aspires to is the Pancasila legal system, then it is appropriate to study and develop laws that contain Pancasila values, meaning laws that are oriented towards the value of the One Godhead, law oriented on the values of just and civilized humanity, laws based on the values of Unity, and laws that are imbued with democratic values led by wisdom in deliberation/representation and the value of social justice for all Indonesian people.

In line with Sri Endah's view above, Notonagoro stated that:[67] The benchmark for the practical philosophy of Indonesian national law is Pancasila which is an abstraction of the noble values of the Indonesian people which contains the nation's ideals, namely a just and prosperous society both materially and spiritually. , and the life of the Indonesian people as a whole.

Barda Nawawi Arief stated that:[68] Legal development is an effort to revive the values that live in society, to then be studied in depth as material for drafting national laws, it is clearly an obligation of the

63 *Sarja, Negara Hukum Teori Dan Praktek, Thafamedia, Yogyakarta, 2016, hlm. 67-68.*
64 *Ibid, hlm. 68-69.*
65 *Kaelan, op, cit, hlm. 77.*
66 *Sri Endah Wahyuningsih, Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia, UNDIP, Semarang, 2013, hlm. 68.*
67 *Ibid, hlm. 69.*
68 *Barda Nawari Arief, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum, Universitas Diponegoro, Semarang, 1984, hlm. 125.*

academic world. It is indeed a very ironic thing if most law faculty graduates understand and master the legal values that live among their own people. Even more so if he feels foreign and even unconsciously has been hostile or even killed him.

The various explanations above show that the regulation regarding the digital countermeasures against narcotics trafficking has not yet been regulated so it is necessary to add provisions related to the digital countermeasures of narcotics trafficking through a dictum change in Article 35 of Law Number 35 of 2009 concerning Narcotics. Article 35 of Law Number 35 of 2009 concerning Narcotics reads:

Circulation of Narcotics includes any activity or series of distribution or delivery of Narcotics, both in the context of trade, not trade or transfer, for the benefit of health services and the development of science and technology.

It is necessary to add the provisions of Article 35A of Law Number 35 of 2009 concerning Narcotics which states that:

1) The act as a name is regulated in the provisions of Article 1 paragraph (6) is threatened with a criminal offense of trafficking narcotics against the law with a life imprisonment and an additional penalty in the form of a fine of Rp. 8,000,000,000.00 (eight billion rupiah).
2) The act as referred to in paragraph (1) carried out through electronic digital means shall be punished with life imprisonment and a fine of Rp. 10,000,000,000.00 (ten billion rupiah).

The following will also be explained through the legal reconstruction table below:

LEGAL PROVISIONS BEFORE RECONSTRUCTION	WEAKNESS	LEGAL PROVISIONS AFTER RECONSTRUCTION

Article 35 of Law Number 35 of 2009 concerning Narcotics: Circulation of Narcotics includes any activity or series of distribution or delivery of Narcotics, both in the context of trade, not trade or transfer, for the benefit of health services and the development of science and technology.	Has not regulated the illegal distribution of narcotics through digital means	It is necessary to regulate the illegal circulation of narcotics through digital means, so it is necessary to add Article 35A which states that: 1) The act as a name is regulated in the provisions of Article 1 paragraph (6) is threatened with a criminal offense of trafficking narcotics against the law with a life imprisonment and an additional penalty in the form of a fine of Rp. 8,000,000,000.00 (eight billion rupiah). 2) The act as referred to in paragraph (1) carried out through electronic digital means shall be punished with life imprisonment and a fine of Rp. 10,000,000,000.00 (ten billion rupiah).

F. Closing

1. Conclusion

a. Countermeasures against illegal narcotics trafficking through digital media have not been able to materialize in Indonesia, such a situation is a result of the absence of regulation of illegal narcotics circulation through digital in Law Number 35 of 2009 concerning Narcotics;

b. The factor of the inability of narcotics legal politics in tackling the problem of digital narcotics circulation is the substance factor in the form of the unregulated provisions regarding the illegal circulation of narcotics through digital means, the structural factor in the form of the lack of digital facilities and infrastructure in overcoming the problem of digital narcotics circulation, the cultural factor in the form of the problem of poverty and socio-cultural order which causes many victims of the damaged social environment to become users by making digital media the latest modus operandi.

c. So it is necessary to reconstruct Law Number 35 of 2009 concerning Narcotics by adding the provisions of Article 35A which reads:

1. The act as a name is regulated in the provisions of Article 1 paragraph (6) is punishable by a criminal offense of trafficking narcotics against the law with a life imprisonment and an additional penalty in the form of a fine of Rp. 8,000,000,000.00 (eight billion rupiah).
2. The act as referred to in paragraph (1) carried out through electronic digital means shall be punished with life imprisonment and a fine of Rp. 10,000,000,000.00 (ten billion rupiah).

2. Suggestions

a. For the Government, it is necessary to make provisions regarding the illegal distribution of narcotics through digital media, both at the level of legislation and implementing regulations at the level of government regulations and regional regulations at the Provincial and/or Regency level, even at the Village Regulation level.
b. For law enforcement, it is necessary to increase human resources and improve facilities and infrastructure in tackling the illegal circulation of narcotics through digital media.
c. For the community, there is a need for counseling on the dangers of narcotics trafficking through digital media and how to overcome it and the need for community involvement through partners between the community and law enforcement in tackling and eradicating narcotics trafficking through digital media against the law.

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