

The Enforcement of Criminal Law on Criminal Activities of Drug Buying Buying Intermediates

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Abstract.

The purpose of this paper is to examine and analyze law enforcement against intermediaries buying and selling Narcotics. In this paper, the author uses a normative juridical method. In the conclusion of the discussion, Act No. 35 of 2009 does not only regulate the eradication of criminal sanctions for narcotics abuse, but also for the misuse of narcotics precursors for the manufacture of narcotics. This leveling of criminal sanctions is manifested in the form of a special minimum sentence, 20 years imprisonment, life imprisonment, or death penalty based on the class, type, size and amount of narcotics, with the hope that this criminal sanction will be more effective in eradicating narcotics crime and achieve maximum results. In line with the provisions of Article 10 of the Criminal Code, the types of crimes in Act No. 35 of 2009 concerning Narcotics which are formulated are 4 (four) types of principal crimes, namely capital punishment, imprisonment, fines and confinement, so that as long as it is not stipulated otherwise in Act No. 35 of 2009 concerning Narcotics, the criminal law applies to punishment in the Criminal Code, on the contrary if it is determined separately in Act No. 35 of 2009, then the rules of punishment in the Act apply. Narcotics. In Act No. 35 of 2009 of plants or narcotics that are ready to be used.

Keywords: Brokers; Enforcement; Narcotics; Selling.

1. Introduction

Law is generally defined as the whole rule or rule in living together. Overall the rules of behavior that apply in common life that can be enforced in the form of sanctions, from this understanding the law is seen as a means to regulate society which is a reflection and goal to be achieved. This gives direction about the purpose of the law.¹

Some expert opinions regarding the purpose of law, among others, which are currently very popular and are embraced by many legal experts are the objectives of law according to Gustav Radbruch, the objectives of law are: provide certainty; achieve justice; benefit.²

The three objectives of the law are not independent goals, each of which is an inseparable unit that synergizes with each other and runs and is realized in a harmonious and balanced manner. One of the law enforcement instruments to achieve legal goals of certainty, justice and benefit is a clean and authoritative

¹Esmi Warasih. (2005). *Pranata Hukum sebuah Telaah Sosiologis*, Semarang, PT.Suryandaru utama, p. 23-25.

²Wina Febriana. (2010). *Tinjauan Yuridis Mengenai Upaya Hukum Peninjauan Kembali (PK)/Herziening Yang Diajukan Oleh Jaksa (Analisa Terhadap Putusan MA RI No. 55 PK/Pid/1996, Putusan MA RI No. 109 PK/Pid/2007 dan Putusan MA RI No. 07 PK/Pidsus/2009)*, p.1

criminal justice system.³ A judicial institution is called good, not only if the process is honest, clean and impartial, but besides that, there are other criteria that must be met, namely the principles of being open, corrective and record- ing . In this case, one aspect that deserves attention from judicial management is the existence of a good legal remedy system as part of the principles of fairness and trial independence which are universally recognized principles.⁴

Indonesia is a state of law, the statement is contained in the Elucidation of the 1945 Constitution of the Republic of Indonesia stating that "the Indonesian state is based on law (*rechtstaat*) not based on mere power (*machtstaat*)".⁵ As a state of law, Indonesia has a series of regulations or laws so that the interests of the community can be protected.⁶ The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which is the constitutional basis of this country, states that one of the goals of the state is to create public welfare. So all efforts and developments carried out by this country must lead to this goal so as to create people's welfare.⁷

Criminal law is often used to solve problems of social pathology, especially in crime prevention. Especially the problem of narcotics abuse as a form of social disease, a form of social pathology.⁸The enforcement of criminal law to tackle narcotics abuse as a deviant behavior must continue. This is very reasonable because narcotics abuse is a real threat to social norms that can cause individual tensions as well as social tensions. Narcotics abuse is a real and potential threat to the ongoing social order.⁹

Then translated into Act No. 35 of 2009 concerning Narcotics which regulates, supervises and takes action on the circulation and abuse of Narcotics. Narcotics not only make humans addicted, but can result in the death of a person quickly and unnaturally. Humans really need a clean place in their environment and a healthy body in order to carry on their life. Drug abuse has been called a crime against humanity. Narcotics are certainly the enemy of our nation in terms of printing the next generation of the nation that is healthy and free from narcotics.

Drug abuse encourages illicit trafficking, while illicit drug trafficking causes abuse that is increasingly widespread and has an international dimension. Therefore, it is necessary to prevent and overcome drug abuse and efforts to

³Tafta Aji Prihandono and Sri Kusriyah. (2018). *Awareness on Constitutional Rights of Citizens and Form of Protection of Constitutional Rights of Citizens in Indonesia*, Jurnal Daulat Hukum, 1 (4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4145/2895>

⁴Parman Soeparman. (2007). *Pengaturan Hak Mengajukan Upaya Hukum Peninjauan Kembali dalam Perkara Pidana bagi Korban Kejahatan*, Bandung, PT.Refika Aditama, p.2

⁵Anton Susanto, Ira Alia Maerani, and Maryanto. (2020). *Legal Enforcement by the Police against Child of Criminal Doer of a Traffic Accident Who Caused Death (Case Study in Traffic Accident of Police Traffic Unit of Cirebon City Police Jurisdiction)*, Jurnal Daulat Hukum: 3 (1), <http://jurnal.unissula.ac.id/index.php/RH/article/view/8402/3928>

⁶Asep Sunarsa. (2018). *Attorney Role In Fighting Crimes Of Motorcycle Gang In Cirebon*, Jurnal Daulat Hukum, 1 (2), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3291/2424>

⁷Sri Praptini, Sri Kusriyah, and Aryani Witasari. (2019). *Constitution and Constitutionalism of Indonesia*, Jurnal Daulat Hukum, 2 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4149/2897>

⁸Kartini Kartono. (2005). *Patologi Sosial*, Jakarta: Raja Grafindo Persada, p. 12

⁹Muladi dan Barda Nawawi Arief. (1998). *Teori-Teori dan Kebijakan Pidana*, Cet. II, Bandung, Penerbit Alumni, p. 25

eradicate illicit trafficking considering the progress of the development of communication, information and transportation in the current era of globalization. Drug abuse is closely related to illicit trafficking as part of the world of international crime. The illicit trade mafia supplies drugs so that people become dependent so that the supply increases. The relationship between the dealer and the victim makes it difficult for the victim to escape from the dealer.¹⁰

The increase in illicit drug trafficking is inseparable from the activities of transnational crime organizations operating in various countries in an international crime network. Because of the huge profits, these criminal organizations are trying in every way possible to maintain and continue to develop the illicit drug trafficking business by infiltrating, interfering and undermining government structures, legitimate trade and financial businesses and influential groups in society.

Transnational drug crimes are carried out using the *modus operandi* and advanced technology, including securing the proceeds of drug crimes. The development of the quality of drug crimes has become a very serious threat to human life. Although drugs are very useful and necessary for treatment and health services, if they are misused or used not in accordance with treatment standards, especially if accompanied by illicit drug trafficking, it will have very detrimental consequences for individuals and society, especially the younger generation, and can even cause more danger for the life and cultural values of the nation.

Based on this background, the purpose of this paper is to examine and analyze law enforcement against intermediaries buying and selling Narcotics.

2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method. This study uses a writing specification with a descriptive method with the process of solving a problem investigated by describing or describing the current state of the subject or object of research based on the facts that appear or as they are.¹¹The data used for this research is secondary data. To obtain the data in this paper, secondary data collection methods were used which were obtained from literature books, laws, presidential decrees, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

3. Result and Discussion

3.1. Law enforcement against narcotics sales and purchase intermediaries

The problem of drug abuse has broad and complex dimensions, both from a medical, psychiatric, mental health, and psychosocial point of view. Drug users can damage the order of family life, the community and the school environment, even directly or indirectly a threat to the continuity of development and the future of the Indonesian nation and state. Facing the problem of drug abuse and illicit trafficking requires the government to think about how to overcome these

¹⁰Lydia Harlina Martono & Satya Joewana. (2006). *Membantu Pemulihan Pecandu Narkoba dan Keluarganya*, Balai Pustaka, Jakarta, p.1.

¹¹Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, p. 24

problems, the government finally issued a law. Drug abuse has broad and complex dimensions, both from a medical, psychiatric, mental health, and psychosocial point of view. Drug users can damage the order of family life, the community and the school environment,

Proving that narcotics abusers are victims of narcotics as regulated in Act No. 35 of 2009 concerning narcotics is a difficult thing, because it must see the beginning of narcotics users using narcotics and it is necessary to prove that the use of narcotics when using narcotics is in a condition of being persuaded, deceived, deceived, forced, and/or threatened to use narcotics. In its implementation, the Supreme Court of the Republic of Indonesia issued SEMA No. 04 of 2010 Jo. SEMA No. 03 of 2011 concerning Placement of Abuse, Victims of Abuse, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions which are the guidelines for Judges of District Courts and High Courts in deciding narcotics cases.¹²

The debate that often arises in discussing the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics is the position of Narcotics Users, whether as perpetrators or as victims, and what are the legal consequences? is to prevent and eradicate the abuse and illicit trafficking of narcotics. Between abuse and trafficking of narcotics it is difficult to separate, but they cannot be equated and efforts to overcome them must also be distinguished.

The tug of war whether narcotics users are victims or perpetrators is very much felt in Article 127 of Act No. 35 of 2009 concerning Narcotics which states:

- Abusers:
 - Narcotics Category I for oneself shall be sentenced to a maximum imprisonment of 15 (fifteen) years;
 - Narcotics Category II for oneself shall be sentenced to a maximum imprisonment of 12 (twelve) years; and
 - Narcotics Category III for oneself shall be sentenced to a maximum imprisonment of 10 (ten) years.
- In deciding the case as referred to in paragraph (1), the judge is obliged to pay attention to the provisions as referred to in Article 116.
- In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation.

Abuse, which initially received rehabilitation guarantees, but by looking at the legality principle applied in Indonesia, in its implementation narcotics users must face the risk of criminal threats as regulated in Article 127 of Act No. 35 of 2009 concerning Narcotics. If narcotics users are considered criminals, then the question then is who is the victim of crimes committed by narcotics users, because in criminal law it is known "there is no crime without victims", some literature that the victim is because of himself (Crime without a victim) from the perspective of the victim's responsibility, Self-victimizing victims are those who become victims because of a crime they have committed themselves.

¹²Elrick Christovel Sanger. (2013). *Penegakan Hukum Terhadap Peredaran Narkoba di Kalangan Generasi Muda*. Lex Crimen, II (4), p 8

In Act No. 35 of 2009 concerning Narcotics, it regulates sanctions against narcotics couriers or intermediaries. The sanctions imposed on these couriers vary depending on the class of narcotics, their weight, and the form of the narcotics, whether they are in the form of plants or narcotics that are ready to be used. The following will describe some criminal sanctions against narcotics couriers based on group I, weight and form of plant or non-plant narcotics or ready to use:

- Become a courier or intermediary in class I narcotics transactions
Any person who without the right to violate the law offers for sale, sells, buys, accepts, becomes an intermediary in buying and selling, exchanging, or delivering narcotics class I, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 5 (five) years. 20 (twenty years) and a minimum fine of IDR 1,000,000,000 (one billion rupiah) and a maximum of IDR 10,000,000,000 (ten billion rupiah).¹³
- Become a courier or intermediary for class I narcotics in the form of plants
In the event of an act of offering for sale, selling, buying, being an intermediary in buying and selling, exchanging, delivering, or receiving narcotics class I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeds 5 (five) tree trunks or in the form of non-plants weighing 5 (five) grams, the perpetrator is sentenced to death, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) in paragraph (1) plus 1/3 (one third).¹⁴

In Act No. 35 of 2009 concerning Narcotics, the regulation of narcotics groups is contained in the provisions of Article 6 number (1). In this provision, narcotics are divided into several groups, namely:

- Narcotics Category 1 is Narcotics that can only be used for the purpose of developing science and not used in therapy, and has a very high potential to cause dependence. Narcotics Category I and Category II of Act No. 5 of 1997 concerning Psychotropics. Types of narcotics in this group include marijuana, opium, cocaine and the best known types of methamphetamine or shabu-shabu.
- Narcotics Group II is Narcotics with medicinal properties used as a last resort and can be used in therapy and/or for the purpose of developing science and has a high potential to cause dependence. There are 86 types of narcotics in this group.
- Narcotics Category III Narcotics have medicinal properties and are widely used in therapy and/or for scientific development purposes and have mild potential to cause dependence. There are 14 types of narcotics in this group.¹⁵

In addition to the provisions regarding couriers for buying and selling narcotics, Act No. 35 of 2009 also regulates provisions regarding couriers or intermediaries for narcotics precursor transactions. In Article 1 paragraph 2 of Act No. 35 of 2009 concerning Narcotics, what is meant by narcotic precursors are substances or starting materials or chemicals that can be used in the manufacture

¹³Article 114 paragraph (1) of Act no. 35 of 2009 concerning Narcotics

¹⁴Article 114 paragraph (1) of Act No. 35 of 2009 concerning Narcotics

¹⁵Article 6 number (1) of Act No. 35 of 2009 concerning Narcotics

of narcotics. The criminal provisions for couriers or intermediaries for buying and selling narcotics precursors are Article 129 of Law NO. 35 of 2009 which reads: Sentenced to a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah), any person who has rights or violates the law:

- possess, store, control, or provide narcotics precursors for the manufacture of narcotics;
- producing, importing, exporting, or distributing narcotics precursors for the manufacture of narcotics;
- offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering narcotics precursors for the manufacture of narcotics;
- carrying, sending, transporting, or transiting narcotic precursors for the manufacture of narcotics.

Criminal sanctions against couriers regulated in Act No. 35 of 2009 concerning Narcotics is appropriate to ensnare narcotics couriers. However, sometimes it is necessary to look at the application of sanctions against couriers who only deliver without knowing what is in it, who are ordered to do so, are forced to do so, and are threatened to do so.¹⁶ Don't let the criminal sentence be equated with a courier who is aware and wants to become a courier. Like the case of the death row inmate Rani Andriani who did courier work because she was forced to do that, if Rani Andriani did not do it, her husband would beat her later. Even though Rani Andriani had applied for clemency to President Joko Widodo, but his clemency was rejected. This tarnishes the name of justice, even though Rani is only doing her job under pressure, not of her own will. Rani should not be punished with the death penalty. Judges and Public Prosecutors (JPU) in this case must really consider this aspect, so that justice can be realized for all Indonesian people.

4. Conclusion

So serious is the spirit of eradicating narcotics crime, that Act No. 35 of 2009, not only regulates the eradication of criminal sanctions for narcotics abuse, but also for abuse of narcotic precursors for the manufacture of narcotics. This leveling of criminal sanctions is manifested in the form of a special minimum sentence, 20 years imprisonment, life imprisonment, or death penalty based on the class, type, size and amount of narcotics, with the hope that this criminal sanction will be more effective in eradicating narcotics crime and achieve maximum results. In line with the provisions of Article 10 of the Criminal Code, the types of crimes in Act No. 35 of 2009 concerning Narcotics which are formulated are 4 (four) main types of crimes, namely capital punishment, imprisonment, fines and confinement, so that as long as it is not stipulated otherwise in Act No.35 of 2009 concerning Narcotics, then the punishment rules apply to punishment in the Criminal Code, otherwise if it is determined separately in Act No.35 of 2009, then the criminal rules in the Narcotics Law apply. In Act No. 35 of 2009 concerning Narcotics, it regulates

¹⁶AR. Sujono, Bony Daniel. (2011). *Komentar dan Pembahasan Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika*. Ctk. Pertama, Sinar Grafika Offset, Jakarta, p.214

sanctions against narcotics couriers or intermediaries. The sanctions imposed on these couriers vary depending on the class of narcotics, their weight, and the form of the narcotics, whether they are in the form of plants or narcotics that are ready to be used.

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