

The Effectiveness of Cumulation of Imprisonment and Fines against Narcotics Offenders

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Abstract. *The aim of the research is to find out and analyze the effectiveness of cumulative imprisonment and fines based on Act No. 35 of 2009 concerning Narcotics, to find out and analyze the principle of expediency that can be applied in the accumulation of fines and imprisonment in narcotics crimes. The approach method used in this legal research is normative juridical. Based on the approach method used, namely normative juridical, the specifications in this study are analytical descriptive. The Narcotics Law recognizes that there are two types of formulation systems for types of criminal sanctions (strafsoort), namely the cumulative formulation system between imprisonment and fines, the cumulative-alternative formulation system (mixed/combined) between death penalty, life imprisonment or imprisonment and fines (Articles 114, 115, 118, 119 of the Narcotics Law and Article 59 of the Psychotropic Law). Then for the formulation system for the duration of criminal witnesses (strafmaat) in the Narcotics Law there are also two formulations, namely the fixed/indefinite sentence system or the maximum system. Accumulation with imprisonment is indeed to aggravate criminal sanctions for perpetrators of crimes with the aim of ensuring a sense of justice in society as intended by sentencing. The community expects benefits in implementing or enforcing the law. Law is for humans, so the implementation of law or law enforcement must provide benefits or uses for society.*

Keywords: *Fines; Narcotics; Prison.*

1. Introduction

The circulation of narcotics in Indonesia has a tendency to increase, and what is very unfortunate is that narcotics users are currently being carried out by government officials and law enforcers. Narcotics abuse is actually a crime, so the

perpetrators must carry out legal processes like other law enforcement in criminal cases.¹

According to Fransiska Novita Eleanora, drug abuse in Indonesia has reached a very alarming level. The facts on the ground show that 50% of prison inmates are caused by cases of drug abuse. The victims of drug abuse extend to all levels of society from students, university students, artists, housewives, traders, public transportation drivers, street children, workers, and so on. Drugs are easily obtained, they can even be prepared themselves which are difficult to detect, even illegal drug factories have been found in Indonesia.²

Law enforcement against narcotics crimes has been carried out by many law enforcement officers and has received many judge's decisions. In empirical reality in the field of punishment, in general, the concept of only punishing convicts in correctional institutions can provide an illustration that these crimes only stop for a moment and will reappear in the social environment of society. This can be caused by the existence of criminal imposition factors that have no impact or deterrent effect on the perpetrators.³

Based on Public SDP data issued by the Directorate General of Corrections, Narcotics offenses hold the highest number of WBP with a total of 133,844 out of 271,775 WBP throughout Indonesia. This shows that this crime is not a small problem faced by Indonesian society.⁴

Fines are one of the main crimes regulated in the Criminal Code. However, regarding the punishment in lieu of fines, the Narcotics Law is different from the Criminal Code. Article 30 paragraph (2) of the Criminal Code states that a penalty in lieu of a fine is imprisonment, while the Narcotics Law states that a penalty in lieu of a fine is imprisonment. So far, not a single prisoner of narcotics has paid a fine. All of them chose to serve prison terms in lieu of fines. This is based on the fact that fines amount to billions of rupiah, while imprisonment in lieu of fines is only a matter of months. These considerations make people prefer to be imprisoned for a matter of months than to lose money.

¹Andri Winjaya Laksana, The Legal Position Of Islamic Boarding School (Pesantren) As A Rehabilitation Effort For Narcotics Abuse, IJLR: International Journal of Law Reconstruction Volume 5, Number 2, September 2021, pp 317-328

²Fransiska Novita Eleanora, Dangers of Drug Abuse and Prevention and Control Efforts (A Theoretical Review), Journal of Law, Vol XXV, No. 1, April 2011, p. 440

³Indah Lestari and Sri Endah Wahyuningsih, Criminal Law Enforcement Against Drug Users in the Central Java Regional Police, Khaira Ummah Law Journal Vol 12, No. 3, p. 602,

⁴Danang Wisnu Santoso, Mitro Subroto, The Effectiveness of Fines Against Narcotics Crime Cases, Journal of Citizenship Education Undiksha, Volume 10, No. 2, May 2022, pp 132-134

The cumulative criminal arrangement between imprisonment and fines in Act No. 35 of 2009 concerning Narcotics requires the public prosecutor to implement it in a letter of demand, as well as the panel of judges in their decision to impose the cumulative sentence.

The imposition of fines cannot be dismissed without looking at the defendant's ability to pay the fines that will be imposed in a decision, especially in Act No. 35 of 2009 concerning Narcotics which clearly stipulates the minimum limit of fines that must be imposed. The next problem that may arise is whether a decision has fulfilled a sense of justice for a defendant who is sentenced to a fine that exceeds his ability to pay the fine. although the fine can be replaced by serving prison if unable to pay as stipulated in Article 148 of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics which reads "If the fine sentence as stipulated in this Law is not paid by the perpetrator of the crime of Narcotics and crime of the Presecutor of Narcotics, the perpetrator is sentenced to imprisonment for a maximum of 2 (two) years as a substitute for a fine that cannot be paid"⁵, thus bringing back a legal issue regarding the effectiveness of imposing fines on decisions handed down by judges. According to J. Andenaes in the theory of social defense, punishment is not to satisfy absolute demands for justice. Vengeance itself has no value,⁵

The purpose of this study is to determine the effectiveness of the implementation of cumulative imprisonment and fines based on Act No. 35 of 2009 concerning Narcotics.

2. Research Methods

The approach method used in this legal research is normative juridical. Normative juridical research is research that is focused on examining the application of principles or norms in positive law⁶ which in this case relates to the policy of formulating criminal sanctions against perpetrators of narcotics crimes in the context of eradicating narcotics crimes.

3. Result and Discussion

3.1. Cumulation of Consolidation of Imprisonment and Fines Based on Act No. 35 of 2009 concerning Narcotics

⁵Mohammad Taofik Makarao, *Renewal of Indonesian Criminal Law*, First Print, (Yogyakarta: Creation of Discourse, 2005), page 44

⁶Jhonny Ibrahim, *Theory and Methodology of Normative Law Research*, Bayumedia Malang, 2011, p. 295.

Narcotics Crime is regulated in Act No. 35 of 2009 concerning Narcotics, namely the existence of narcotics crimes that have an impact or result in immaterial state losses by damaging the next generation of this nation. In the absence of regulations on coercive measures so that fines can be paid, then referring to the provisions of Article 148 of Act No. 35 of 2009 concerning Narcotics states that if the fines as stipulated in this Law cannot be paid by the perpetrators of Narcotics Crimes and Narcotics Precursor Crime, the offender is sentenced to imprisonment for a maximum of 2 (two) years as a substitute for an unpaid fine.

Article 148 Act No. 35 of 2009 concerning the Narcotics Law states that for perpetrators of narcotics crimes who cannot pay a fine, the perpetrators are sentenced to a maximum of 2 years in prison. This means that even for special crimes such as narcotics, if the convict cannot pay a fine then it can be replaced with a maximum imprisonment of 2 years according to the judge's considerations later, but in narcotics crimes which are special crimes, if the fine is not paid then replaced with imprisonment other than the case with crimes regulated in the Criminal Code replaced with imprisonment. Because with the principle of *Lex Specialist Derogaat Legi Generalis*, where special rules override general rules.

The threat of fines regulated in Act No. 35 of 2009 is cumulatively threatened with imprisonment. Thus, for perpetrators of crimes that violate the article in which cumulative imprisonment and fines are regulated, the judge must decide on fines and imprisonment together. Almost all judges are of the opinion that fines in narcotics cases aim to aggravate criminal sanctions. Meanwhile, only a few other judges stated that fines in narcotics cases aim to teach a lesson that narcotics do not provide benefits to criminals. This indicates that most of the judges view that narcotics is a serious matter, so that they need to be given a severe punishment, not only imprisonment but also a fine.

Among the articles in Act No. 35 of 2009 concerning Narcotics which regulate criminal sanctions in the form of cumulative with special minimum restrictions and in practice many occur is Article 112 paragraph (1) whose criminal sanction is in the form of imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah). For paragraph (2) the criminal sanction is in the form of imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).⁷

⁷Heri Zuniarto, Judge's Considerations in Imposing Special Minimum Punishment Against Narcotics Crime Defendants and the Effectiveness of Its Implementation by the Public Prosecutor, *Journal of Lex Renaissance*, Vol. 2 No. 5 p. 323-343, 2020

3.2. The Effectiveness of the Application of Cumulation of Fines and Imprisonment in Narcotics Crimes

Several articles in Act No. 35 of 2009 concerning Narcotics regulate the main criminal sanctions between imprisonment and fines which are arranged cumulatively, which means that the two criminal sanctions are combined into one sanction against an offense which in practice criminal convictions against defendants must be imposed both . Not only the regulation of criminal sanctions cumulatively, but even the spirit of eradicating narcotics in Indonesia, taking into account its enormous impact, has influenced the formation of laws that regulate cumulative criminal sanctions.

In practice, the judge's considerations in deciding a narcotics crime are basically the same as the judge's considerations in deciding other criminal cases, such as considerations regarding the reasons for eliminating criminal responsibility (both justifying and forgiving reasons), as well as things that are aggravating and mitigating for the defendant, then deliberation between the panel of judges before finally set forth in a decision.

In practice, it is very clear that judges are bound by the provisions stipulated in Act No. 35 of 2009, namely the special minimum, whereas as a support for judges in judicial practice in this case there is only SEMA Number 35 of 2015 which does not explicitly provide guidelines regarding a special minimum for criminal offenses. fines stipulated in Act No. 35 of 2009 concerning Narcotics in full, but if in front of the trial the defendant's actions are proven to have committed a crime that fulfills the elements of Article 127 or as a user/abuser, while the public prosecutor does not indict the article, then the judge can deviate from the minimum provisions special. This means that special minimum deviations according to SEMA Number 35 of 2015 can only be applied to one particular case or are limited, that is, if the judge believes the defendant is proven to be a user, but on the one hand the charge as a user (Vide Article 127) is not charged by the public prosecutor. Then what about a case where the defendant was charged with Article 112 or Article 114, but based on the evidence at trial the judge did not have confidence that the defendant was a user even though the amount of evidence was relatively small, so in that case the judge was still guided by the special minimum stipulated in the Narcotics Act No. 35 of 2009 concerning Narcotics or it can be concluded that judges still cannot deviate from these special minimum provisions. This shows that the judge prioritizes the precautionary principle in applying fines. but based on the evidence at trial the judge did not have confidence that the defendant was a user even though the amount of evidence was relatively small, so in this case the judge was still guided by the special minimum stipulated in the Narcotics Act No. 35 of 2009 concerning Narcotics or it can be concluded that the judge still cannot deviate from the provisions this particular minimum. This shows that the judge

prioritizes the precautionary principle in applying fines. but based on the evidence at trial the judge did not have confidence that the defendant was a user even though the amount of evidence was relatively small, so in this case the judge was still guided by the special minimum stipulated in the Narcotics Act No. 35 of 2009 concerning Narcotics or it can be concluded that the judge still cannot deviate from the provisions this particular minimum. This shows that the judge prioritizes the precautionary principle in applying fines.

Another view on the application of this fine, the judge also saw that apart from the provisions regarding the special minimum, there is also no special regulation in Act No. 35 of 2009 concerning Narcotics as a coercive measure or action that can be taken to ensure that the fine can be paid by the convict. as a forced attempt by confiscation and confiscation of property or wealth from the convict as stipulated in the provisions of Article 18 paragraph (2) of Act No. 20 of 2001 concerning Amendments to Act No. 31 of 1999 concerning the Eradication of Corruption Crimes regarding replacement money. Although the concept of coercive measures by confiscating the defendant's property in the Corruption Law is intended as an alternative if the convict is unable to pay compensation, which in this case the state has been harmed in a material sense for the criminal act of corruption committed by the defendant, it is different according to Act No. 35 of 2009 concerning Narcotics, namely that the existence of narcotics crimes resulted in immaterial state losses, namely damage to the nation's next generation. In the absence of regulations on coercive measures so that fines can be paid, referring to the provisions of Article 148 of Act No. 35 of 2009 concerning Narcotics, it can be concluded that the only consequence of non-payment of fines imposed can only be imprisonment for a maximum of 2 (two years).

It can be understood that justice is basically not determined by the equality of sanctions imposed by a judge for a particular crime but rather based on all judges' considerations which include juridical and non-juridical considerations of judges where the circumstances of each perpetrator of a crime are different. The existence of different circumstances for the perpetrators of criminal acts serves as the basis that the needs of the perpetrators from the consequences caused by the crimes they have committed also vary. According to the author, it is mandatory that in a decision imposing a fine, it must be correlated or balanced with a replacement prison sentence, if the replacement prison sentence is too light, the convict tends to choose not to pay the fine and prefers to serve a replacement prison sentence.

In this case the legal substance as one of the components in the legal system to review the effectiveness of the application of fines criminal sanctions in a rule of law, especially in the Narcotics Law, can be said to have not been achieved. So it

can be concluded that the validity of a norm that departs from "what should be" (das Sollen) is not in line with what is reality (das Sein).

In practice, the provisions for payment of narcotics fines are ineffective because no one has paid the fine, even though if the fine is paid by the convict, the money becomes Non-Tax State Revenue (PNBP) which can be used by the government to finance infrastructure development, etc. According to the author, the payment of fines should be adjusted to the economic capacity of the defendant, this is difficult to implement because the minimum fine for the lowest fine in this law is at least IDR 40,000,000.00 (forty million rupiah), while the maximum fine is IDR 20,000.000,000.00 (twenty billion rupiah). For certain narcotic crimes, the offender is subject to a penalty of "maximum fine plus 1/3 (one third),

In general, fines as an alternative and fines as a cumulative of the principal crimes specified in the Narcotics Law are quite high so that the convict is unable to pay a sum of money as a fine to the State. For convicts who have the ability to pay fines as narcotics kingpins (large dealers), it is better to use the money as capital to control the buying and selling of narcotics within the Penitentiary rather than paying fines. As a guide when fines are carried out, according to Article 273 paragraphs (1) and (2) of the Criminal Procedure Code the convict is given one month's time and can be extended for a maximum of one month if there is a strong reason, unless the decision of the express examination procedure must be paid immediately.

The decision on the narcotics case does not contain the timing of the payment of fines so that Article 273 paragraph (1) and (2) of the Criminal Procedure Code is applied at the time the decision is executed. The time limit for the expiration of the payment of this fine applies to defendants who commit narcotics crimes whose cases have been decided by a court and have definite legal force (in kracht van gewijsde). The maximum time limit for implementing a fine is 2 (two) months, starting from the time the convict implements the decision, the implementation of which is carried out by the Prosecutor (Article 270 of the Criminal Procedure Code). If within this period the convict has not carried out the payment of the fine, then juridically the convict will serve the length of imprisonment as a substitute for the fine as stated in the verdict.⁸

In fact, if the fine is paid by the convict, then the money becomes PNBP which can be used by the government to finance infrastructure development. Contradiction with the traffic ticket case, the convict prefers to pay a fine rather than imprisonment instead. To note that fines are implemented effectively there must

⁸Mas Hushendar, Effectiveness of Criminal Fines in Narcotics Cases, https://badilum.mahkamahagung.go.id/index.php?option=com_attachments&task=download&id=679

be a balance between the amount of the fine and the length of the replacement prison sentence, especially the ability of the convict to pay the fine that has been determined.

Realistically, the amount of fines imposed in a decision is in accordance with the economic capacity and social status of the defendant. It is different with narcotics cases, the judge cannot make a decision like this because the law has provided a minimum limit or at least the amount of criminal fines which postscript is quite high. The minimum fine for the lowest fine in this Law is at least IDR 40,000,000.00 (forty million rupiah), while the maximum fine for IDR 20,000,000,000.00 (twenty billion rupiah). For certain narcotic crimes, the offender is subject to the penalty of "a maximum fine plus 1/3 (one third), such as: Narcotics abuse weighing more than 5 (five) grams (Article 133 paragraph (1), Article 114 paragraph (2) and Article 118 paragraph (2))".

Legal certainty with justice cannot be one or very difficult to enforce jointly, as Sudikno Mertokusumo argues, there are twoThe poles that attract each other in law enforcement are the poles of justice and certainty.⁹ Basically, if justice and legal certainty are difficult to uphold jointly, it is hoped that the benefits will be a solution to legal problems, especially cases of narcotics crimes. Based on the principle of expediency, the judge's decision is not necessarily guided by the provisions of the law. However, more than that, the judge must consider that society and the state. The community expects benefits in implementing or enforcing the law. Law is for humans, so the implementation of law or law enforcement must provide benefits or uses for society.

Accumulation with imprisonment is indeed to aggravate criminal sanctions for perpetrators of crimes with the aim of ensuring a sense of justice in society as intended by sentencing.¹⁰ This goal is not only aimed at the perpetrators of crime but also is learning for many people (general prevention), so that it can be preventive in educating the public as well as curative for crimes that have already occurred. Referring to the criminal law, this is in line because there has been an increase in the maximum penalty as stipulated in the applicable law, which carries a penalty of billions of rupiah in fines. It should be remembered that the purpose of criminal law is the fulfillment of a sense of justice, so in its embodiment it is necessary to consider matters in the form of the following objectives, namely (1) to frighten people from committing crimes, both aimed at the general public and to frighten scare certain people who have committed crimes,

⁹Sudikno Mertokusumo, *Anthology of Law Studies*, Liberty, Yogyakarta, 1984, h. 6

¹⁰Sudarto, *A Dilemma in Reforming the Indonesian Criminal System*, Center for Law and Community Studies, Faculty of Law, UNDIP, Semarang, 1994, p. 34

4. Conclusion

Criminal conviction in Narcotics Crime Case in Act No. 35 of 2009 concerning Narcotics uses the accumulation of imprisonment and fines, but in practice, especially in the implementation of fines in narcotics crimes, so far this has not been effective because in the implementation of fines in narcotics crimes the basis is the high number of criminal charges exorbitant fines, economic factors of convicts who commit narcotics crimes, factors of alternative options for fines, lack of good faith from convicts, and the absence of rules for the implementation of confiscation of proceeds from narcotics crimes as payment of fines.

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