

Criminal Responsibility for Perpetrators of Narcotics Trafficking Crimes Based on Positive Law in Indonesia (Case Study: Decision Number 152/Pid.Sus/2024/PN Smg)

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Abstract. *Law enforcement against narcotics crimes according to the Narcotics Law is subject to criminal sanctions in the form of imprisonment, fines, life imprisonment and other sanctions as considered by the judge in Decision Number 152/Pid.Sus/2024/PN Smg, so it is interesting to study how criminal responsibility is imposed on perpetrators of crystal methamphetamine narcotics crimes in the Semarang City area. The purpose of this study is to analyze criminal responsibility for perpetrators of narcotics trafficking crimes, analyze obstacles to criminal responsibility for perpetrators of narcotics trafficking crimes and solutions to these obstacles. The approach method used in this study is the sociological juridical method. The results of this study are (1) Criminal responsibility for perpetrators of narcotics trafficking crimes, as in Decision Number 152/Pid.Sus/2024/PN Smg, reflects the application of the theory of criminal responsibility which requires the fulfillment of elements of unlawful acts, mistakes, and capacity to be responsible. DEP, who consciously and intentionally sold, possessed, and stored methamphetamine without permission, has fulfilled the elements in accordance with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Through strong evidence, DEP was found guilty and sentenced to five years in prison and a fine of IDR 1 billion, which reflects legal accountability for his actions. This decision is not only a form of individual responsibility of the perpetrator but also an instrument of justice that provides a deterrent effect and maintains social order. (2) Obstacles in criminal accountability for perpetrators of narcotics trafficking crimes, when analyzed through Lawrence M. Friedman's legal system theory, include weaknesses in legal substance, legal structure, and legal culture. The legal substance does not clearly distinguish between addicts and dealers, creating gaps in interpretation that are detrimental to justice. The legal structure has weaknesses in the management of evidence, which reduces the credibility of law enforcement officers. Legal culture shows the influence of internal factors*

such as egoism and trauma on the perpetrator. The solution includes revising the legal substance to clarify the role of the perpetrator, implementing a technology-based evidence management system and strengthening character education.

Keywords: *Crimina; Narcotics; Perpetrator; Responsibility.*

1. Introduction

Every citizen is obliged to "uphold the law" in everyday reality, citizens are negligent or intentionally do not carry out their obligations so that they harm other people. It is said that the citizen "violates the law" because the obligation has been determined by law. Starting from the idea that humans are wolves to other humans (*homo homini lupus*) always prioritizing themselves and not prioritizing others. So with such conditions, it is not impossible for humans to make mistakes, either intentionally or unintentionally, so that the act harms others and not infrequently violates the law, the mistake can be a criminal act (*delict*).¹

The dangers of drug use have a very large impact on the country, if there is large-scale drug use in society, then the Indonesian nation will become a sick nation, if this happens the country will be fragile from within because national resilience is declining. It is very reasonable if then the circulation of drugs must immediately seek a rational solution for a solution, because it is clear that drug crimes are a social problem that can disrupt the social function of society. In addition, drug crimes are generally not carried out by individuals alone, but are carried out together and even carried out by syndicates that are organized firmly, neatly and very secretly. One of the rational efforts used to overcome the circulation of drugs is the criminal law policy approach.²

There are approximately 85 types of narcotics in group 2, including Morphine and Alfaprodine. Narcotics in this group can be used for treatment if prescribed by a doctor. This group also has a high potential for causing dependency. Meanwhile, narcotics in group 3 have a fairly mild risk of dependency and are widely used for treatment and therapy. However, all types of drug abuse can be subject to criminal sanctions.³

¹Fahrizal S. Siagian, Criminal Liability of Marijuana Growers Based on the Law on Narcotics, Scientific Study of Law and State (KIHAN), Vol. 2, No. 2, 2023, pp. 65-78

²Adi, Kusno. Criminal Policy in Handling Drug Crimes by Children. UMM Press. Malang, 2009. p. 56

³Anggalana (et. al), Criminal Responsibility for Perpetrators of Narcotics Crimes (Methamphetamine) Type of Crystal Shabu Consumed by an Addict (Study of Decision Number: 5/PID.SUS/2022/PN.TJK), Unizar Law Review, Volume 5 Issue 2, December 2022, pp. 246-254

Legislative provisions governing narcotics issues have been drafted and enforced, however, crimes involving narcotics have not been reduced.⁴ Law enforcement has also been carried out by law enforcement officers, consisting of the Police, Prosecutors, and Judges. However, criminal responsibility for abusers, both drug lords and dealers who are caught, has not provided a deterrent effect, even the perpetrators seem to ignore it and tend to expand their operational areas.⁵

Indonesia itself has a law that regulates narcotics, namely Law Number 35 of 2009 concerning narcotics. In Law Number 35 of 2009 there are 155 articles which contain the types of narcotics, how the role of the National Narcotics Agency in the rehabilitation of victims or drug addicts, how the sanctions are obtained for perpetrators or violators according to the type of drug, and sanctions against corporations and involvement in narcotics crimes.⁶

Criminal law that can be imposed on drug abusers is differentiated based on the drug class. Regulated in Article 127 of Law Number 35 of 2009 Article 127, drug abusers of class 1 for themselves will be punished with a maximum of 4 years in prison. Class 2 will be punished with a maximum of 2 years, and class 3 with a maximum of one year. In 2015 the President issued a firm statement that Indonesia was in a drug emergency so that the government must formulate a policy strategy to overcome drug abuse.⁷

Law enforcement against narcotics crimes according to the Narcotics Law is subject to criminal sanctions in the form of imprisonment, fines, life imprisonment and other sanctions.⁸ as considered by the judge in Decision Number 152/Pid.Sus/2024/PN Smg, so it is interesting to study how criminal responsibility is imposed on perpetrators of narcotics crimes (methamphetamine) in the form of crystal methamphetamine in the Semarang City area and what is the basis for the judge's consideration in imposing criminal sentences on narcotics addicts (methamphetamine) in the form of crystal methamphetamine in the Semarang City area.

The purpose of this study is to examine criminal liability for perpetrators of narcotics trafficking crimes; analyze the obstacles to criminal liability for perpetrators of narcotics trafficking crimes and solutions to these obstacles.

⁴Sudanto, A. Implementation of Criminal Law on Narcotics in Indonesia. ADIL: Journal of Law, 8 (1), (2017). p. 143

⁵Hartanto, W. Law Enforcement Against Narcotics and Illegal Drug Crimes in the Era of International Free Trade that Impacts State Security and Sovereignty. Indonesian Legislation Journal, 14(1), (2017). pp. 16-27

⁶Putu Gede Suriawan, Criminal Liability for Someone Who Does Not Report Drug Abuse (Case Study of Decision No. 78/Pid.Sus/2019/Pn Srp), YUSTHIMA: Journal of Agrarian Law & Spatial Planning, Vol. 2 No. 1, 2022, pp. 50-58

⁷Zainudin Hasan. Criminal Responsibility for Narcotics Abuse Perpetrators Committed by Prisoners at Way Huwi Penitentiary, Lampung Province. Legal Institution, Vol.13, No.2. 2018., pp. 34-45

⁸Hikmawati, P. Analysis of Criminal Sanctions for Narcotics Users. State of Law, 2(2), 2011, pp. 340-353

2. Research methods

The approach method used in compiling this journal is empirical legal research. The specifications in this study are descriptive analytical. The types and sources of data use secondary data. The data analysis used in this study is qualitative analysis.⁹

3. Results and Discussion

3.1 Implementation Criminal Responsibility for Perpetrators of Narcotics Distribution Crimes in Decision Number 152/Pid.Sus/2024/PN Smg

The Narcotics Law contains a special minimum threat in order to protect the public from the dangers of narcotics and eradicate narcotics abuse which is very detrimental to the public. The existence of a special minimum sentence in the Narcotics Law shows that the legislators want the rules to deviate from the general rules as stipulated in the Criminal Code, and this deviation is possible as stipulated in Article 13 of the Criminal Code which reads: the provisions stated in the first eight chapters of this book, also apply to acts which according to other laws and regulations are threatened with punishment, unless otherwise stipulated by law by general regulations from the government or by an ordinance.

The effectiveness of the law in combating narcotics depends on the role of law enforcers and the role of the community which plays a major role in law enforcement.¹⁰ Therefore, cases of abuse and illicit trafficking of narcotics and narcotic precursors are cases that are given priority over other cases to be submitted to court for expedited resolution.¹¹ The functions of law that can be carried out in society are, firstly as a means of social control and secondly as a means of making changes, so that in this way the law will find it easier to ensure that society remains within the behavioral patterns that are accepted by it.

Law Number 35 of 2009 concerning Narcotics uses various confusing terms. There are several terms in this law, namely: drug addicts, abusers, victims of abuse, patients and former drug addicts. Many terms for naming drug users/users have the potential to differentiate addicts from abusers, and victims of abuse. This causes chaos, both in the formulation of punishment provisions and their implementation in Law Number 35 of 2009 concerning Narcotics. This also causes stigmatization and discrimination in society against drug addicts and abusers.

Drug abuse can result in dependency syndrome if its use is not under the supervision and guidance of health workers who have the expertise and authority to do so. This is not only detrimental to abuse, but also has social, economic and national security impacts, so this is a threat to the life of the nation and state.

⁹Bambang Sunggono, *Legal Research Methodology*, Rajawali Press, Jakarta, 2010, p. 38.

¹⁰Suharismi Arikunto, *Understanding Drug Crimes*, Pernada Media, Jakarta, 2017, p. 111

¹¹Law Number 35 of 2009 concerning Narcotics, Article 74 paragraph (1).

Drug abuse encourages illicit trafficking, while illicit drug trafficking causes widespread abuse and international dimensions. Therefore, efforts are needed to prevent and overcome drug abuse and efforts to eradicate illicit trafficking considering the progress of communication, information and transportation in the current era of globalization.

Chronology of the case of methamphetamine abuse occurred in the jurisdiction of Semarang City which occurred on January 16, 2024, at around 00.10 WIB in front of the Sompok Baru Hotel on the edge of Jl. Sompok Baru No. 86, Lamper Kidul Village, South Semarang District, Semarang City, Central Java Province, the suspect Mr. DEP was arrested because based on sufficient initial evidence, he was suspected of having committed the Criminal Act of Methamphetamine Abuse by possessing, storing, controlling Methamphetamine, as referred to in Article 114 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

The evidence confiscated from the suspect was 2 (two) plastic clip packages, each wrapped in white paper and insulated with yellow containing crystal powder suspected of being methamphetamine with a total net weight of 0.52513 grams of crystal powder, after being tested by the Forensic Laboratory; 2 (two) plastic clip packages, each wrapped in red and white VIPER cigarettes, insulated with yellow and black containing crystal powder suspected of being methamphetamine with a total net weight of 0.57539 grams of crystal powder; 1 (one) package of Shabu-type narcotics wrapped in clear plastic clips wrapped in black duct tape with a gross weight of 0.23719 grams. 1 (one) gray OPPO F7 brand cellphone. 1 (one) pair of black Levis pants.

In this case, DEP was legally found guilty of committing a crime that will be subject to Article 114 of Law No. 35 of 2009 concerning narcotics which states "Any person who without rights or against the law offers for sale, sells, buys, receives, acts as an intermediary in the sale and purchase, exchanges, or delivers Class I Narcotics, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah)".

In the case of acts of offering for sale, selling, buying, acting as an intermediary in buying and selling, exchanging, handing over or receiving Class I Narcotics as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or more than 5 (five) tree trunks or in non-plant form weighs 5 (five) grams, the perpetrator shall be punished with the death penalty, 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) plus 1/3 (one third).

Based on the results of the interview with Mr. Haruno Patriadi, SH., MH, as a Judge at the Semarang District Court, he said that criminal responsibility for perpetrators

of criminal acts without rights or against the law of conspiracy to control Class I narcotics other than plants is carried out through the criminal justice process, namely bringing someone before the court to be held accountable for their actions which will likely end in a criminal verdict, free from all legal charges or acquittal is because there is an indication or indicator that the person has committed an act that is accused of him.¹²

Mr. Haruno Patriadi, SH., MH, as a Judge at the Semarang District Court explained that accountability is an act that must be accounted for that has been done, namely an act that is reprehensible by society and is accounted for by the perpetrator in other words the consciousness of the soul of a person who can assess, determine his will, about the criminal act committed based on a decision that has permanent legal force. For there to be criminal accountability, it must first be clear who can be held accountable, this means that it must first be ascertained who is stated as the perpetrator of a criminal act.¹³

In the theory of criminal responsibility, every act that is declared unlawful must meet certain elements in order to be subject to criminal sanctions. These elements include the existence of an unlawful act, a perpetrator who is capable of being responsible, and an error in the form of intentional or negligent. In the case of suspect DEP, the act of selling, possessing, and storing narcotics in the form of crystal methamphetamine without legal rights fulfills the elements of an unlawful act in accordance with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The existence of evidence and the suspect's confession are the basis that the act was carried out consciously and violated applicable regulations.

The suspect's ability to be responsible is also an important element in the theory of criminal responsibility. Based on the case analysis, the suspect DEP does not have a mental disorder or other conditions that can eliminate his ability to be responsible. This means that DEP is considered legally competent to understand that his actions are unlawful and can be held criminally responsible. In the theory of responsibility, this element is very important to ensure that the perpetrator has the capacity to control his actions in accordance with legal norms.

DEP knowingly and actively sold, possessed, and stored narcotics in the form of crystal methamphetamine for economic purposes. This shows that there was an intention (*mens rea*) underlying his actions, which is in accordance with the element of error in the theory of criminal responsibility. DEP's intention was not only proven by his confession but also by the evidence found, which confirmed that he had full control over his actions.

¹²Results of an interview with Mr. Haruno Patriadi, SH., MH, as Judge at the Semarang District Court, on September 16, 2024, at 13.35 WIB

¹³Results of an interview with Mr. Haruno Patriadi, SH., MH, as Judge at the Semarang District Court, on September 16, 2024, at 13.35 WIB

DEP's actions are not only unlawful but also potentially damaging to social order and endangering society. The impact of its actions directly contributes to the increase in drug abuse, which in turn exacerbates social and public health problems. This causal relationship is an important basis for determining a sentence that is balanced with the impact of the perpetrator's actions.

The judge's decision to sentence the suspect to five years in prison and a fine of Rp1 billion reflects an effort to balance justice with a deterrent effect. The sentence not only serves as a form of accountability for the perpetrator for his actions but also as a warning to the community about the consequences of violating narcotics laws. In this context, the theory of criminal responsibility is not only a normative guideline but also a tool to realize substantive justice..

3.2 Obstacle And Solution Criminal Responsibility for Perpetrators of Narcotics Trafficking Crimes

The occurrence of drug abuse is influenced by several factors, one of which is a factor from within the addict of narcotics and psychotropic drugs. Where this includes intelligence, age, gender and problems faced. Many factors can cause someone to start abusing drugs, which can eventually lead to dependence. In general, overall the factors that cause someone to commit a drug crime can be distinguished as internal factors and external factors. Internal factors are factors that come from within oneself, while external factors are factors that come from outside the perpetrator.

The role played by the government is very large in preventing the abuse of narcotics and the like. Through direct control and supervision of the illicit drug trafficking channels with the aim that the potential for crime does not develop into a factual threat. With the many cases that have occurred in the Semarang City area, it indicates that there are some members of society who are not in line with the laws and regulations, in other words there are some residents who do not comply with the narcotics law. Based on the results of the author's research, the obstacles experienced by the Semarang City Police Narcotics Investigation Unit in criminal responsibility for drug trafficking in Semarang City if analyzed using Lawrence M. Friedman's legal system theory, are as follows:

a. Legal Substance

The weakness of the legal substance related to the lack of clarity in the regulation regarding the difference between addicts and dealers in Law Number 35 of 2009 concerning Narcotics is a significant challenge in judicial practice. In an interview with Mr. Haruno Patriadi, SH., MH., as a Judge at the Semarang District Court, he stated that this lack of clarity often makes judges face a dilemma in determining the legal status of the perpetrator. "In many cases, it is difficult for us to distinguish whether someone is truly an addict who needs rehabilitation or a dealer who must

be given a heavy sentence, because there are no explicit technical criteria in the law,"¹⁴

The lack of a specific definition of addicts and dealers creates a gap in legal interpretation that can be exploited by certain parties. In some cases, perpetrators who actually act as dealers often claim to be addicts to get a lighter sentence or even be referred to a rehabilitation program. On the other hand, addicts who are unable to prove their medical dependence are often treated the same as dealers. This inconsistency not only creates injustice but also weakens efforts to eradicate drug trafficking.

b. Legal Structure

Weaknesses in the legal structure related to criminal liability for drug trafficking in Semarang City include gaps in the administration and supervision system for drug evidence. In several cases, evidence confiscated from drug traffickers was not managed properly, opening up opportunities for misuse or removal of evidence. This condition indicates weaknesses in internal procedures that are the responsibility of law enforcement officers. Without a transparent and accountable evidence management system, the credibility of law enforcement in drug cases is questioned by the public.

In an interview with Mr. Haruno Patriadi, SH., MH., Judge at the Semarang District Court, he emphasized the importance of integrity in the management of evidence. He stated, "Evidence is a crucial element in the criminal justice process. If its management is not transparent and accountable, it can damage public trust in the justice system and hinder effective law enforcement efforts."¹⁵

This condition indicates weaknesses in internal procedures that are the responsibility of law enforcement officers. Non-standardized administrative procedures, minimal supervision, and weak accountability in the management of evidence are the main causes of this problem. Narcotics evidence, which should be the main tool to prove criminal acts in court, is often threatened with integrity due to gaps in the management system. For example, the lack of detailed documentation or inadequate security makes evidence vulnerable to misuse by certain individuals.

c. Legal Culture

Drug abuse is often triggered by internal factors of the perpetrator, which are driven from within the individual himself. One factor that is often found is a feeling of selfishness. The perpetrator feels that he is the center of everything, so they tend to prioritize personal pleasure or needs without thinking about the impact on others or the surrounding environment. This egoism makes them more

¹⁴Results of an interview with Mr. Haruno Patriadi, SH., MH, as Judge at the Semarang District Court, on September 16, 2024, at 13.35 WIB

¹⁵Results of an interview with Mr. Haruno Patriadi, SH., MH, as Judge at the Semarang District Court, on September 16, 2024, at 13.35 WIB

vulnerable to making wrong decisions, including using drugs as an escape or a way to get momentary happiness.¹⁶

In addition, the desire for freedom is often the main driver for someone to fall into narcotics. Individuals with this view usually reject rules, norms, or control from other parties, including family, society, or even the law. According to Iptu S. Toni Hendro, SH, Head of Sub-unit Idik I/investigator of the Semarang Police, "Several perpetrators we arrested admitted that they felt constrained by various rules, so that narcotics became a symbol of freedom for them, even though they knew the consequences." This desire for freedom eventually became the beginning of destructive behavior that harmed oneself.¹⁷

Mental turmoil is also a significant factor that is often overlooked. People who experience trauma, psychological stress, or loss often look for ways to ease their pain. In the same interview, Iptu S. Toni Hendro explained that most of the drug users he handled admitted to experiencing emotional problems or conflicts in their lives. "For them, drugs are considered a shortcut to forgetting problems, even though it only adds to the burden later on," he explained.¹⁸

The solution to overcome abuse is to strengthen character education from an early age through families, schools, and communities. Counseling and psychological support programs need to be expanded to help individuals manage trauma, stress, and emotions in a healthy way. In addition, interactive and technology-based anti-narcotics campaigns must be intensified, especially for the younger generation, to instill awareness of the dangers of narcotics. Rehabilitation support for drug users must also be strengthened, so that they do not feel isolated but are empowered to recover and return to society.

4. Conclusion

Criminal liability for perpetrators of narcotics trafficking crimes, as in Decision Number 152/Pid.Sus/2024/PN Smg, reflects the application of the theory of criminal liability which requires the fulfillment of elements of unlawful acts, mistakes, and capacity to be responsible. DEP, who consciously and intentionally sold, possessed, and stored methamphetamine without rights, has fulfilled these elements in accordance with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Through strong evidence, DEP was found guilty and sentenced to five years in prison and a fine of IDR 1 billion, which reflects legal accountability for his actions. This decision is not only a form of individual responsibility of the perpetrator but also an instrument of justice that provides a deterrent effect and maintains social order. This shows that the theory of criminal liability is not only a normative guideline but also a tool to ensure justice and

¹⁶AW Widjaya, *Problems of Juvenile Delinquency and Drug Abuse*, Armico, Bandung, 1985, p. 25.

¹⁷Results of the interview with Iptu S. Toni Hendro, SH as Head of Sub-unit Idik I/investigator at the Semarang Police, on November 15, 2024, at 10.55 WIB

¹⁸Results of the interview with Iptu S. Toni Hendro, SH as Head of Sub-unit Idik I/investigator at the Semarang Police, on November 15, 2024, at 10.55 WIB

prevent the wider impact of narcotics crimes. Obstacles in criminal accountability for perpetrators of narcotics trafficking crimes, when analyzed through Lawrence M. Friedman's legal system theory, include weaknesses in legal substance, legal structure, and legal culture. The legal substance does not clearly distinguish between addicts and dealers, creating gaps in interpretation that are detrimental to justice. The legal structure has weaknesses in the management of evidence, which reduces the credibility of law enforcement officers. Legal culture shows the influence of internal factors such as egoism and trauma on the perpetrators. The solution includes revising the legal substance to clarify the role of the perpetrator, implementing a technology-based evidence management system with strict supervision, and strengthening character education.

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