

Legal Analysis of Criminal Sanctions Policy in Fine Sanctions Based on Justice

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Abstract. *Indonesia as a country of law that upholds justice faces serious challenges in enforcing narcotics criminal law, especially related to the effectiveness of criminal fines in Law Number 35 of 2009. Although criminal fines are set at high nominal values to provide a deterrent effect, the provisions of light substitute sentences actually cause ineffective implementation and the tendency for perpetrators to choose imprisonment rather than pay fines. The results of this study are (1) The current policy of criminal fines in narcotics crimes as regulated in Law Number 35 of 2009 still shows fundamental weaknesses in both normative and implementation aspects, because even though the threat of criminal fines is very high and is intended to create a deterrent effect, it is not accompanied by an adequate implementing regulation mechanism. (2) Weaknesses in the substance of the law are seen from the determination of a very high minimum limit for criminal fines without considering the economic capacity of the perpetrator; Weaknesses in the legal structure, the absence of a mechanism for implementing criminal fines, such as provisions on payment times, execution systems, or legal coercion instruments; Weaknesses in the legal culture, resistance of officials and the community to fines cause criminal fines to only function symbolically without a deterrent effect, coupled with the tendency of judges and prosecutors to prioritize imprisonment in practice. (3) The regulation of criminal fines in Law Number 35 of 2009 concerning Narcotics does not reflect the principle of substantive justice as adopted in Hans Kelsen's legal theory.*

Keywords: *Criminal; Fines; Legal; Narcotics.*

1. Introduction

Indonesia is a country based on law (rechtsstaat), not based on mere power (machtsstaat) this is emphasized in Article 1 paragraph 3 of the 1945

Constitution of the Republic of Indonesia. In addition, Indonesia also has a constitutional system, namely a government based on a constitutional system (basic law), not absolutism (unlimited power). This means that the Republic of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which upholds human rights and guarantees the rights of all citizens with equal standing in law and government without exception¹ and is obliged to uphold the law (supremacy of law) and government without any distinction.¹

Legal regulations that support efforts to eradicate drug crimes are very important, especially because drug crimes are one type of crime that is carried out in a structured manner, utilizes high technology, and often crosses national borders. Drug crimes, as emphasized in the Narcotics Law, are subject to severe sanctions, including imprisonment and fines. However, law enforcement against perpetrators often fails to create a deterrent effect, especially for drug users. This has led to an increase in the number of drug crime perpetrators.²

As a serious effort to overcome the use and illicit trade of narcotics in Indonesia, the Narcotics Law imposes heavier criminal sanctions, both prison sentences and fines, for convicts of narcotics crimes.³ The threat of criminal fines for perpetrators of narcotics abuse and illicit trafficking is emphasized in CHAPTER XV related to criminal provisions, starting from Article 111 to Article 147. In these articles, criminal fines are imposed through a cumulative threat pattern between criminal fines and imprisonment. There are two models for formulating the threat of criminal fines imposed in these articles: a model without a special minimum, as stated in Article 129, and a model with special minimum rules, as found in Articles 111-115, Articles 117-120, Articles 122-125, Article 129, Article 132, Article 137, and Article 147.

The threat of criminal fines in Law No. 35 of 2009 concerning Narcotics has a minimum range of IDR 100,000,000.00 (one hundred million rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah). However, when the fine is calculated based on the provisions of Articles 30 and 31 of the Criminal Code, its application in the Narcotics Law becomes unbalanced. The large amount of this criminal fine makes it ineffective because it tends to deter the convict in deciding on a prison sentence as a substitute, rather than paying a fine. For example, in Law No. 35 of 2009 concerning Narcotics, the minimum criminal fine of IDR 800,000,000.00 (eight hundred million rupiah) for class I narcotics crimes is impractical. Most people will not be able or willing to pay a fine of that size. If

¹CST Kansil, *Introduction to Indonesian Law and Legal System*, Balai Pustaka, Jakarta, 1989, p. 346

²Hafrida, *Criminal Law Policy Against Drug Users as Victims Not Perpetrators of Criminal Acts: Field Study of Jambi Region*, *Padjajaran Journal of Legal Studies*, Vol. 3, No. 1, 2016, pp. 176-189

³Parasian Simanungkalit, *The Ideal Punishment Model for Drug Users in Indonesia*, *Yustisia Journal*, Vol. 1, No. 3, 2012, pp. 80-93

they are unable to pay, the substitute prison sentence is usually a maximum of 6 months. However, in cases of narcotics crimes, many or even all convicts tend to decide to serve a prison sentence rather than pay a fine, even though they are financially capable.

The Narcotics Law has imposed a threat of heavy prison sentences and quite high fines. The high threat of fines seems to be inversely proportional to the provisions of the substitute sentence for fines in the form of imprisonment.⁴ So in reality the perpetrators are actually increasing and the convicts do not seem to be deterred and there is even a tendency to repeat their actions. The imposition of a fairly high criminal fine and can be replaced with a substitute fine in the form of imprisonment which is generally relatively short is what is feared, the convict does not pay the fine imposed on him but prefers a substitute prison sentence. This assumption is also reinforced by the length of the main prison sentence that will be served by the convict as a result of the cumulative pattern between imprisonment and fines which are generally very short when compared to the main prison sentence that will be served. So that imprisonment in the form of imprisonment as a substitute for fines is a more profitable choice for perpetrators of narcotics crimes than having to lose a large amount of money.⁵ This is quite a concern considering that it can affect the implementation of criminal fines imposed by judges on perpetrators of narcotics crimes. Indirectly, it will affect the Prosecutor as the executor of the Judge's decision in carrying out his duties and the success of the goals that the lawmakers want to achieve in threatening criminal fines in the Narcotics Law.

2. Research Methods

The method of approach used in compiling the thesis is normative legal research (normative legal research method). Normative legal research is a process to find a regulation, principle, or legal doctrine to solve a problem. The implementation of normative legal research is to produce new arguments, theories or concepts as prescriptions in solving problems.⁶

3. Results and Discussion

3.1. Current Criminal Sanctions Policy for Fines in Narcotics Crimes

The crime of drug use has become a frightening epidemic for all countries in the world, including Indonesia. Drug users come from various circles and ages and occur in various places in Indonesia. Even a surprising phenomenon has spread

⁴Rastra Prasetyo Aditijono, Criminal Reformulation Policy Replacing Fines in Handling Narcotics Crimes Based on Law Number 35 of 2009 at the Pontianak District Court, *Nestor Master of Laws Journal*, Vol. 1, No. 1, 2017, p. 1-16

⁵Iskandar Wibawa, Community Service and Restitution as Alternatives to Imprisonment in the Reform of Indonesian Criminal Law, *Jurnal Media Hukum*, Vol 24, No 2 (2017), pp. 105-114

⁶Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2005, page 35

with the discovery that the circulation of narcotics is actually driven by people who are behind bars. For this reason, handling drug crime cases cannot be done from just one perspective, but must be done comprehensively and integratedly and involve many parties in society other than law enforcement.⁷

The criminal justice system is a significant element in the effort to eradicate narcotics crimes, so it is interesting to observe the extent to which perpetrators of these crimes are arrested, prosecuted and tried. The discourse that is developing in society about narcotics users who should not receive sanctions in the form of imprisonment but rehabilitation should also be an element that is considered in the overall policy of the criminal justice system in general because some people argue whether the imposition of severe sanctions will have a deterrent effect on suspects/defendants and the wider community or not because of the imposition of sanctions on narcotics users.⁸

Criminal provisions in Law Number 35 of 2009 concerning Narcotics regulated in Articles 110 to 148, as with laws outside the Criminal Code, the formulation of criminal provisions differs in several respects from the formulation of criminal provisions in the Criminal Code. The reflection of the makers of this law can be seen from its considerations which state that narcotics crimes are seen as a major loss and contain very great dangers for Indonesia's national resilience and the lives of humans, society, nation, and state. For this reason, integrated and careful supervision of narcotics abuse is needed.

In the case of someone committing a crime that is only threatened with imprisonment, but if the judge is of the opinion that it is not necessary to impose a prison sentence after considering and considering the things that are the objectives of the punishment, the guidelines for punishment and the guidelines for the application of imprisonment, then the judge can impose a fine. Here the attitude of choosing a fine is truly based on the judge's careful, objective and practical considerations rather than the punishment of deprivation of liberty (imprisonment) or because of calculating the advantages and disadvantages of a fine compared to the punishment of deprivation of liberty.⁹

The formulation of criminal threats in the Criminal Code adopts a maximum system. Therefore, the rules/systems of punishment in the Criminal Code are oriented towards the maximum system. There is no punishment rule to implement a special minimum system. Criminal law is the law of sanctions,

⁷Liky Faizal. "Drug Abuse in the View of Islam (Prevention Efforts and Solutions for Drug Abuse)." *ASAS*, Vol. 7. No. 1, 2015.

⁸Arafat, Muhammad Rusli, Sigid Suseno, and Widiati Wulandari. "Disparity in Sentencing of Criminal Conspiracy Perpetrators to Commit Narcotics Crimes in the Perspective of Legal Objectives." *Kosmik Hukum* Vol. 23, No. 2, 2023, pp. 137-149.

⁹Rico Aldiyanto Batuwael, "The Function of Criminal Fines in the Criminal Justice System in Indonesia." *Lex Crimen* Vol. 9, No. 3, 2020,

because it is on sanctions that criminal law is based to guarantee justice, security, and order. The same thing was stated by Barda Nawawi Arief that the position of criminal law is very important in legal politics, more important than the criminal law itself.¹⁰

Since the issuance of the two government regulations in lieu of laws, in reality there has been no further adjustment of the criminal fines in the Criminal Code to changes in currency values. In fact, since 1960, the rupiah exchange rate has depreciated up to 10,000 times compared to the price of gold in 2012. This lack of adjustment has caused perpetrators of criminal acts who should be charged with Articles 364, 373, 379, 384, 407 paragraph (1), or 482, to be prosecuted under Articles 362, 372, 378, 383, 406, and 480 of the Criminal Code. Because the amount of the criminal fine is too small, judges tend to choose to impose imprisonment rather than a fine in cases where the threat of punishment is an alternative between imprisonment and a fine. Seeing these conditions, the Chief Justice of the Republic of Indonesia then issued Supreme Court Regulation (Perma) Number 2 of 2012. In the Perma, the phrase "two hundred and fifty rupiah" contained in Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code was changed to Rp2,500,000.00. In addition, the maximum criminal fine in the Criminal Code was also multiplied up to 1,000 times, except for the provisions in Article 303 paragraphs (1) and (2) concerning gambling.

There are three important things that should be considered in the enactment of Perma No. 2 of 2012. First, the Criminal Code as a law should only be able to be changed or revoked through a legislative mechanism, namely through a law or government regulation in lieu of law. However, in this case, the Chief Justice actually made changes to the criminal fines in the Criminal Code through an internal regulation of the judiciary. Although in the considerations of the Perma it has been emphasized that the goal is not to change the Criminal Code, but only to adjust it, the use of the term "adjust" according to the author seems to be a form of avoidance of the term "change". This is because, according to positive legal principles, changes to the substance of a law can only be made through a legal product at the level of a law or at least a government regulation in lieu of law.¹¹

The criminal fine sentencing system in the Criminal Code adopts a general minimum and special maximum system. The Criminal Code does not adopt a special minimum and general maximum system for the criminal fine sentencing system. This is different from imprisonment and detention which adopt a general maximum system. The general minimum fine sentencing in the Criminal Code is

¹⁰Barda Nawawi Arief, *Anthology of Legal Policy (Development of the New Criminal Code Concept)*, 2nd ed., Predana Media Group, Jakarta, 2010, p. 193.

¹¹Indung Wijayanto, "Criminal Policy of Fines in the Criminal Code in the Indonesian Criminal System." *Pandecta Research Law Journal*, Vol. 10, No. 2, 2015, pp. 248-257.

Rp. 3.75. The special maximum for criminal fines is contained in the maximum threat of criminal fines listed in each article in Book II and Book III of the Criminal Code.¹²

Article 30 and Article 31 of the Criminal Code do not regulate a definite time limit for when the fine must be paid by the convict. In addition, the Criminal Code does not regulate other actions that can guarantee that the convict can be forced to pay the fine, for example by seizing or confiscating the convict's property or assets (Cecar Tarigan et al., 2013). If the convict states that he is able to pay the fine, then the convict is free for any period of time if he will pay the fine because the time period is not limited by the Criminal Code. This can also be seen in court decisions that never determine in their verdicts the time limit for when the fine must be paid (Muladi and Nawawi Arief, 1992). The regulation regarding the time limit for paying the fine is important to provide a legal basis for the executor to immediately take action against convicts who do not pay the fine within the specified time period.

A convict who is sentenced to a fine if he feels unable to pay the fine, he can immediately serve a substitute sentence without having to wait for the deadline to pay the fine. At any time, the convict can be released from the substitute sentence if he pays the fine. Partial payment of the fine, either before or after serving the substitute sentence, frees the convict from part of the sentence of imprisonment that is equal to the part he has paid. The provisions contained in Article 31 paragraph (3) of the Criminal Code are very difficult to apply to violations of Special Criminal Laws outside the Criminal Code. For example, if someone is charged with Law Number 35 of 2009 concerning Narcotics, then he is sentenced to a fine of Rp. 100,000,000 (one hundred million rupiah) and the person is only able to pay a fine of Rp. 35,000,000 (thirty five million rupiah).¹³

The problem in the application of criminal fines as regulated in the Criminal Code becomes increasingly complex when faced with the reality of law enforcement against special crimes, such as narcotics crimes. The discrepancy between the amount of the fine and the duration of imprisonment in lieu of the fine not only makes it difficult in terms of technical implementation, but also has the potential to cause injustice to the perpetrator, especially when associated with crimes that have special characteristics and have a wide impact such as narcotics trafficking.

The existence of Law Number 35 of 2009 concerning Narcotics is a legal policy product of the Indonesian Government to prevent narcotics crimes. The legal

¹²Ferdricka Nggeboe, "A Review of Criminal Fines in Indonesian Positive Criminal Law and the Draft Criminal Code." *Legalitas: Jurnal Hukum* Vol. 2, No. 1, 2017, pp. 86-105.

¹³Renda Sumber Sari Ramadhan, et. al., "Legal Analysis of Covid-19 Vaccination Refusal Reviewed from Criminal Law (An Analysis of DKI Jakarta Regional Regulation Number 2 of 2020 Concerning Handling of Covid-19 in DKI Jakarta)." *METADATA Scientific Journal*, Vol. 3, No. 2, 2021, pp. 620-637.

product is expected to be able to overcome the illicit drug trafficking business and its abuse, and be used as a guideline and reference for courts, organizers or implementers of court decisions that apply laws, such as judges in imposing sanctions for crimes that occur.

The provisions regarding criminal sanctions in the Narcotics Law are regulated in Chapter XV concerning Criminal Provisions starting from Article 111 to Article 148. Meanwhile, the provisions on criminal sanctions for perpetrators of narcotics abuse and illicit trafficking are regulated in Article 111, Article 112, Article 113, Article 114, Article 115, Article 117, Article 118, Article 119, Article 120, Article 122, Article 123, Article 124, Article 125, Article 129, Article 137 and Article 147. In these criminal provisions, the threat of criminal sanctions for perpetrators of narcotics crimes is regulated by a cumulative threat pattern between imprisonment and fines. The formulation model of criminal threats in these articles can be divided into two models, namely, the formulation model of criminal threats by regulating special minimum provisions and the formulation model of criminal threats that do not regulate provisions regarding special minimums.

In terms of criminal sanctions in the form of fines, the Narcotics Law contains provisions for criminal fines which are relatively high.¹⁴ The lowest criminal fine sanction for the special minimum provisions for perpetrators of narcotics crimes for perpetrators of narcotics abuse and illicit trafficking (Illicit Traffic) is IDR 100,000,000 as stated in Article 147. While the highest criminal fine sanction threatened for perpetrators of narcotics crimes is contained in the provisions of Article 114 which reads as follows: 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).¹⁵

Such a criminal regulation in lieu of a fine is contrary to the threat of a criminal fine that can be imposed on perpetrators of narcotics crimes. The threat of a high criminal fine only needs to be replaced with a maximum imprisonment of 2 years. This can open up opportunities for the obstruction of the process of enforcing and implementing the criminal fines mandated in the Narcotics Law which ultimately also has an impact on the failure to achieve the objectives of sentencing narcotics perpetrators. So that the criminal fine is only a decoration in

¹⁴Meli Indah Sari and Hafrida Hafrida. "Implementation of Imprisonment as a Substitute for Fines in Decisions on Narcotics Crimes." *PAMPAS: Journal of Criminal Law*, Vol. 1, No. 1, 2020, pp. 38-53.

¹⁵Tommy Busnarma, Implementation of Criminal Sanctions of Fines Against Perpetrators of Narcotics Abuse and Illicit Trafficking in Padang District Court, *Soumatara Law Review*, Vol. 2, No. 1, 2019, pp. 172-192

the provisions of the Narcotics Law. In the practice of law enforcement against the eradication of narcotics crimes, there is a tendency for judges to decide on a prison sentence in lieu of a fine with a relatively short period of time, namely only a matter of months. While the criminal fine imposed on the defendant is relatively high, reaching hundreds of millions of rupiah or even billions of rupiah.

In the perspective of the theory of legal certainty, as stated by Gustav Radbruch, legal certainty is one of the main objectives of law besides justice and utility. Legal certainty demands that the law must be formulated clearly, firmly, consistently, and can be applied predictably by all parties. In the context of criminal fines in Law Number 35 of 2009 concerning Narcotics, the provisions of high criminal fines, even reaching billions of rupiah, should reflect the state's efforts to provide a deterrent effect on perpetrators of narcotics crimes. However, there is an imbalance between the severity of the fine and the length of the substitute sentence if the fine is not paid, as regulated in Article 148 of the Narcotics Law which only stipulates a maximum of two years of substitute imprisonment.

In the author's opinion, this inconsistency is a reflection of the weak formulation and harmonization system between the main criminal sanctions and alternative sanctions. In this case, the criminal fine is only a pseudo-symbol that looks firm on paper, but is weak in implementation. The provisions of the criminal fine substitute should consider the proportionality and rationality between the amount of the fine imposed and the length of the substitute imprisonment period if not paid. If a drug offender is sentenced to a fine of one billion rupiah, then two years of imprisonment in lieu of the fine does not reflect a commensurate burden.

3.2. Weaknesses of Current Criminal Fine Sanction Policy in Drug Crimes

The policy of criminal sanctions in the form of fines for narcotics crimes in Indonesia is actually part of the national legal system which aims to ensure the upholding of justice, certainty and legal benefits.¹⁶ As a country based on the rule of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, especially Article 1 paragraph (3) of the 1945 Constitution, all actions in formulating and implementing criminal law policies must reflect the values of substantive justice that uphold human rights and guarantee national order and security. In this context, the handling of narcotics crimes regulated in Law Number 35 of 2009 should reflect a harmony between norms, law enforcement, and society as a complete and effective legal system.

¹⁶Waluyo, Bambang. *Settlement of Criminal Cases*. Sinar Grafika, Jakarta, 2020. p. 24

Friedman's legal system theory can be used as the main analytical tool, because this theory sees law as a system consisting of three interacting elements, namely legal structure, legal substance, and legal culture.

The theoretical framework of Lawrence Friedman's legal system, the weakness of the criminal fine policy in the Narcotics Law is evident from the imbalance between the legal structure (law enforcement agencies and judicial apparatus), legal substance (criminal fine rules and their replacement), and legal culture (behavior of society and law enforcement towards criminal fines). The author describes the weaknesses of the Criminal Fine Sanction Policy in Narcotics Crimes analyzed using Lawrence M. Friedman's legal system theory:

1) Weaknesses of Legal Substance

Criminalization of narcotics in Law No. 35 of 2009, the enforcement process will be carried out through the Criminal Justice System mechanism. The justice that is to be realized through the SPP is Retributive Justice and Just Desert Model (equitable response). In the context of Indonesia, Criminal Law Enforcement must pay attention to the National Law guidelines that function as a Legal Framework as regulated in the 1945 Constitution and the Basic Law on Judicial Power. Therefore, criminal law enforcement is not only interpreted as Legal certainty but also Substantive certainty.¹⁷

The classification of criminal acts has direct implications for the form and purpose of sanctions imposed on the perpetrator, as stated in the study of legal sociology, sanctions have two main dimensions, namely restitutive sanctions and retributive sanctions. In crimes that are *rechtsdelict* and categorized as *mala in se*, retributive sanctions tend to be more dominant because their main purpose is retribution for acts that are considered inherently evil. Meanwhile, for violations that are *wetsdelict* or *mala prohibita*, such as several forms of criminal acts in administrative law or narcotics law, restitutive sanctions that emphasize recovery or prevention can be more relevant. Therefore, distinguishing between types of crimes is important as a basis for consideration in formulating the right type of sanctions, so that the criminalization policy is not only repressive but also reflects a balance between legal certainty, substantive justice, and the effectiveness of law enforcement.

Restitutive sanctions are generally imposed on parties who neglect to carry out obligations to fulfill an achievement or fail to respect the rights of others, while retributive sanctions are usually imposed on perpetrators of violations of a prohibition whose actions actually or potentially endanger the survival of others. Because sanctions are basically "legal reactions to inappropriate behavior of citizens", the selection of the type of sanctions to be applied depends entirely on

¹⁷ Rahman, Daeng. "Criminal Policy Perspective in Efforts to Combat Narcotics Crimes in Indonesia." *Unes Journal of Swara Justisia* Vol. 4, No. 4, 2021, pp. 314-321.

the policy set by the law makers. If an action is considered a crime that endangers the survival of fellow human beings and is therefore strictly prohibited from being carried out, then any violation of the prohibition will be classified as an evil act that deserves to be repaid with retributive suffering. Conversely, if an action is considered an obligation that must be carried out in good faith, then refusal to do so will be seen as a form of denial that must be faced with a coercive mechanism to restore the situation.¹⁸

In relation to the above opinion, then the crime of narcotics can be categorized as a criminal act that threatens the sustainability of community life so that it must be repaid with misery that is retaliatory in nature, namely severe punishment in the form of criminal sanctions for deprivation of liberty or confiscation of property. The issue of imposing criminal sanctions is not a simple process of putting the perpetrator in prison. However, the process of punishment is essentially a depiction of a system of human values, morals, and philosophical views of a human society at that time, so that all problems regarding the punishment system must include three perspectives, namely sociological, philosophical, and criminological perspectives.¹⁹

Sentencing as the most important part of criminal law is the culmination of the entire process of accountability for someone who has been proven guilty of a crime. Andrew Ashworth said "a criminal law without sentencing would merely be a declaratory system pronouncing people guilty without any formal consequences following from that guilt".²⁰ Thus, criminal law without criminal sanctions is the same as declaring someone guilty without any consequences for their mistake. So the concept of guilt has an important influence on punishment and the implementation of the legal process. If a mistake is understood as something that is worthy of blame, then punishment is the manifestation of that blame.

One type of punishment in the general criminal system is a fine. If the object of imprisonment and confinement is a person's right to freedom and the object of the death penalty is a person's soul, then the object of the fine is none other than the convict's property. The property referred to here is in the form of money and not in kind or goods, either movable or immovable property.²¹

¹⁸Supanto, Supanto and Muhammad Rustamaji. "The Existence of Criminal Sanctions in Fines in Law Enforcement of Narcotics Crimes in Indonesia." *Journal of Juridical Insight* Vol. 3, No. 2, 2019, pp. 115-134.

¹⁹Eva Achjani Zulfa and Indriyanto Seno Adji, *Shifting Paradigms of Criminalization* CV. Lubuk Agung, Bandung, 2011, p. 3

²⁰Andrew Ashworth, *Principles of Criminal Law*, Clarendon Press, 1st ed. Clarendon Press, Oxford, 1991, p. 12.

²¹Chairul Huda, *From No Crime Without Fault Towards No Criminal Responsibility Without Fault*, Prenada Media Group, Jakarta, 2011, p. 65.

2) Weaknesses of Legal Structure

Law enforcement is a process of carrying out efforts to uphold or function legal norms in real terms, as a guideline for actors in traffic or legal relations in social and state life.²² Law enforcement is also a process that involves many things.³² Since Indonesia's independence, even long before that, regulations or policies on drugs have been updated several times. This was done because drug crimes have developed along with the development of science. The governments of countries everywhere, including the Indonesian government, agree that the war on the dangers of drugs must be increased with various efforts and strategies, because drugs have penetrated the veins of Indonesian society.

Because the Narcotics Law does not provide separate regulations, law enforcement officers still rely on general provisions in the Criminal Code (KUHP), especially Articles 30 and 31 of the Criminal Code, which do not provide effective operational provisions to guarantee the implementation of criminal fines. In the Criminal Code, there is no time limit for payment of fines or administrative sanctions if the convict does not immediately pay it off. The absence of norms that allow executors to take coercive action such as confiscating the convict's assets to pay the fine, makes law enforcement officers lose their coercive power against convicts who are not cooperative. Thus, the provisions on criminal fines which should be repressive and restorative lose their executive power and actually create a space for legal compromise that is detrimental to the interests of justice.

The policy of rules regarding criminal fines only focuses on increasing the amount of the threat of criminal fines. However, in reality, the policy in an effort to make criminal fines effective is not enough just by increasing the amount of the threat of criminal fines. According to Barda Nawawi, in determining legislative policies related to implementation including operational or functional or enforcement of criminal fines, it is necessary to consider the following:²³

- a. The system for determining the amount or size of a criminal fine;
- b. Deadline for payment of fines;
- c. Coercive measures that are expected to guarantee the payment of the fine in cases where the convict is unable to pay within the specified time limit;

²²Farah Nur Laily. "Enforcement of environmental law as an effort to overcome environmental problems in Indonesia." *Wacana Paramarta: Journal of Legal Studies* Vol. 21, No. 2, 2022, pp. 17-26.

²³Mokhammad Masrur Firmansyah and Eko Wahyudi. "Study of Criminal Fines in Narcotics Crimes." *Indonesian Law Symposium*, Vol. 1, No. 1, 2019, pp. 100-112.

- d. Implementation of criminal fines in special cases (for example against a child who is not yet an adult or has not worked and is still under the care of his parents);
- e. Guidelines or criteria for imposing fines.

In addition, in determining the benchmark for the amount of criminal fines, the philosophy of the purpose of imposing criminal fines must be considered, namely, first, criminal fines are intended as punishment or a deterrent effect for perpetrators of criminal acts for an act with the hope that other people will not commit the act, second, criminal fines are intended to enrich the state or impoverish the convict by imposing a fine that is so high in value. In addition, criminal fines are also used as a way to return state losses as a result of narcotics crimes. With the hope that prevention, mitigation and eradication of narcotics abuse can be carried out.

Therefore, the regulation of criminal sanctions in the form of fines in narcotics crimes needs to be reviewed for its effectiveness when associated with its criminal function. Therefore, an idea or concept of renewal is needed regarding the benchmark for the value of criminal sanctions in the form of fines in this case the legislative institution as an institution authorized to review the validity of a law. Especially criminal sanctions in Law Number 35 of 2009 concerning Narcotics so that they can run effectively and optimally.

3) Weaknesses of Legal Culture

Criminal fines are one of the main forms of punishment that have an important function in the modern criminal system, especially in the context of eradicating narcotics crimes. In Law Number 35 of 2009 concerning Narcotics, criminal fines are used together with imprisonment in the form of cumulative threats, especially for perpetrators of illicit drug trafficking. This provision is intended to increase the criminal burden for perpetrators and provide an economic deterrent effect. However, although the threat of criminal fines is relatively high, implementation in the field shows that the effectiveness of this sanction is still very weak, especially due to the lack of a legal culture that does not yet support it.²⁴

3.3. Legal Analysis of Criminal Sanctions Policy in the Form of Fines in Narcotics Crimes Based on Justice Values

Criminal law policy (penal policy) and non-criminal law policy (non-penal policy) are part of criminal policy, as an effort made to overcome criminal acts that occur in society. Criminal law policy (penal policy) can also be called criminal law

²⁴Fernando I Kansil, "Criminal Sanctions in the Criminal System According to the Criminal Code and Outside the Criminal Code." *Lex Crimen*, Vol. 3, No. 3, 2014

policy. In foreign terms, criminal law policy is also called penal policy, criminal law policy, or strafrechtspolitik.²⁵

Criminal law policy is closely related to efforts to reform criminal law, especially regarding material criminal law which is still a legacy of the Dutch. In penal policy, according to Sudarto, there is a meaning as an effort to realize criminal legislation that is in accordance with the circumstances and situations at a certain time and for the future. From Sudarto's opinion, it can be seen that the parameters in determining ideal criminal legislation are not only those that can be applied at present, but also for the future. The functionalization of criminal law policy/criminal law policy according to Barda Nawawi Arief who quoted Bassiouni's opinion, can be done through three stages, namely the formulation, application, and execution stages.

According to Barda Nawawi, in criminal law policy, the formulation stage is the most strategic stage. If there are weaknesses in the formulation stage, it will have an impact on the obstruction of efforts to prevent and overcome crime in the application and execution stages.²⁶

There are two types of fines, fines in criminal sanctions and fines in administrative sanctions. The principle is the same, namely both are punishments, the difference is how the fine is given and to whom the fine is paid and what are the consequences if the fine is not paid by the convict. The author examines that there are 4 (four) consequences of very high criminal fines in narcotics crimes:

a. *Over Capacity* in Correctional Institutions (Lapas)

Over capacity occurs because the rapid growth rate of prison inmates is not comparable to the provision of prison housing facilities. The number of new prisoner inputs with prisoner output is very unbalanced, the comparison of the percentage of new prisoners far exceeds prisoners who have completed their prison sentences and left prison. Several cases of prisoners have increased very rapidly, this occurs in new crimes, especially those related to narcotics, theft, and violence against children.

Based on data from the Ministry of Law and Human Rights in 2024, there were 271,385 people languishing in correctional institutions (prisons) and state detention centers (rutan) throughout Indonesia. Of that number, 135,823 of them were convicts and detainees in drug cases. Of the more than 135 thousand convicts and detainees caught in drug cases, 21,198 were detainees and 114,625

²⁵ Barda Nawawi Arief, *Legislative Policy in Combating Crime with Imprisonment*, Genta Publishing, Yogyakarta, 2010, p. 17.

²⁶ Barda Nawawi Arief, *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code*, Kencana Prenada Media Group, Jakarta, 2011) p. 4.

were prisoners. Currently, the capacity of all prisons and detention centers in Indonesia is only 140,424 people, but in fact, 271,385 convicts and detainees are filled.²⁷ Drug crimes still rank first in terms of the number of prison inmates in the Republic of Indonesia because the criminal fines are very high so that convicts choose imprisonment rather than paying the criminal fines, causing prisons in the Republic of Indonesia to be over capacity because they are filled with drug convicts.

b. The amount of costs incurred by the state for prisoners

The increase in the sentence that must be served by convicts makes the prison over capacity and will result in an increase in the budget ceiling and budget realization for prisoner food so that the condition of the prison becomes very inadequate. According to the Regulation of the Minister of Finance Number 49 of 2023 concerning the Input Cost Standard for the 2024 Fiscal Year for the cost of prisoner food, it is IDR 23,000 / person in one day in all cities in Indonesia. Meanwhile, according to the Regulation of the Minister of Finance Number 49 of 2023 concerning the Input Cost Standard for the 2024 Fiscal Year concerning the Input Cost Standard for the 2023 Fiscal Year, the Food Cost for Prisoners is IDR 23,000 / person in one day in all cities in Indonesia.²⁸

It is clear that with this calculation, logically the state budget becomes very large. Although on the other hand there are efforts to reduce the number of prisoners with the mechanism of granting remission or conditional sentences, namely prisoners have the right to reduce their sentence and can be released before their sentence ends, this is not significantly proportional to the number of prisoners who enter.

c. Reduction in non-tax state revenue (PNBP)

As a form of punishment, criminal fines are basically not intended to achieve economic goals such as increasing state revenue, but must be linked to the goals to be achieved in punishment. The process of regulating and implementing criminal fines, both at the legislative stage (formation of laws), judiciary (imposition by judges), and executive (execution by law enforcement officers), needs to be designed and implemented optimally in order to be able to meet the targets of the punishment itself. Therefore, criminal fines must always be linked to the function and purpose of the punishment to be realized.

²⁷Bagus Ahmad Rizaldi, Ministry of Law and Human Rights: 52.97 percent of prison inmates are from drug cases, <https://www.antaranews.com/berita/4071018/kemenkumham-5297-percent-of-prisoners-from-narkoba-cases> accessed on May 10, 2025

²⁸Supanto, Supanto, and Muhammad Rustamaji. "The Existence of Criminal Sanctions in Fines in Law Enforcement of Narcotics Crimes in Indonesia." *Jurnal Wawasan Yuridika*, Vol. 3, No. 2 2019, pp. 115-134.

The development in expanding the use of criminal fines by increasing the amount of fines alone is apparently not enough to increase the effectiveness of criminal fines. A new comprehensive policy is needed, both in the legislative, judicial, and executive fields. Muladi and Nawawi Arief argue that in the implementation of criminal fines, it is necessary to consider, among others, the system for applying the amount or size of the criminal penalty, the time limit for implementing the payment of the fine and coercive measures that are expected to guarantee the implementation of the payment of the fine in the event that the convict cannot pay within the specified time limit. Furthermore, the implementation of criminal penalties in special cases (for example against a child who is not yet an adult or has not worked and is still under the care of his parents). Guidelines or criteria are also needed for imposing criminal fines.

Linked to government efforts to increase PNPB through receipts based on court decisions and those originating from the imposition of administrative fines, as stated in Article 2 paragraph (1) letter e of Law Number 20 of 1997 concerning Non-Tax State Revenue. In the executing agency (prosecutor's office), sources of PNPB include those originating from the execution of substitute money for special criminal cases, civil cases, general criminal cases, traffic fines, and others. Therefore, payment of criminal fines for narcotics crimes to the state based on court decisions will be a potential source of PNPB which is not small considering the very high percentage of narcotics crimes in Indonesia. Based on the statement of the Audit Board of Indonesia (BPK) on the 2015 Central Government Financial Report, it was stated that the Attorney General's PNPB receivables reached IDR 15.7 trillion. This amount is ranked second after the Ministry of Energy and Mineral Resources which reached IDR 26.4 trillion. The problem of the absence of state revenue from the criminal fine decision has resulted in the potential for PNPB being lost, thus further burdening the state budget to finance narcotics convicts. In fact, if only the minimum criminal fines regulated in Law Number 35 of 2009 concerning Narcotics were not too high in the sense that they were still within a rational and affordable minimum limit, the criminal fines would certainly be paid by narcotics convicts as was previously the case in Law Number 20 of 1997 concerning Narcotics and Law Number 20 of 1997 concerning Psychotropics. In both laws, the amount of the minimum criminal fine is not regulated so that judges can decide on the imposition of criminal fines according to the convicts' ability. In implementing court decisions, convicts prefer to pay fines rather than serve substitute prison sentences. Automatically, state revenues increase and the provisions on criminal fines are effective and provide benefits to both convicts and state revenues.

d. Formation of a narcotics distribution network in correctional institutions

The circulation of narcotics in prisons has become very rampant and the condition of prisons that are full of drug convicts has a major influence on the

increase in the number of drug abuse crimes, both in terms of quality and quantity. Quality here means that the modus operandi carried out by the perpetrators is increasingly sophisticated and increasingly well organized. Quantity means that the number of perpetrators and the amount of narcotics circulating and found increasingly shows a very significant and surprising number. Ironically, the traffic of the sale of illicit goods is actually controlled from behind the prison. The accumulation of prisoners in prisons and being made in one area, then a community of perpetrators of drug crimes is formed starting from the lowest level, namely couriers to the level of dealers. Thus, it actually becomes a drug distribution network organization that is increasingly strong and safe.²⁹

Prisons should function as an institution that provides guidance for citizens who are caught in legal cases. However, in fact there are still deviations carried out by individuals in prisons, such as the control of drug distribution from within the prison itself. As a result, prisons now receive a negative view from the community in the country. Data has also revealed that 50% of prison inmates have been involved in drug cases. While the remaining 30% come from various cases, such as general criminal acts, corruption, and terrorism.

Referring to Hans Kelsen's theory, it can be concluded that the ideal regulation of criminal fines in narcotics crimes is a regulation that guarantees legal certainty, upholds equality, and allows for individual adjustments based on substantive justice. Justice is not only about the severity of the punishment imposed, but how the law itself is able to adapt to the socio-economic realities of society. Therefore, reform of the fine sanction system in the Narcotics Law is a must in order to present a just criminal system.

4. Conclusion

The current policy of criminal fines in narcotics crimes as regulated in Law Number 35 of 2009 still shows fundamental weaknesses both in normative aspects and in its implementation, because although the threat of criminal fines is very high and is intended to create a deterrent effect, it is not accompanied by an adequate implementing regulatory mechanism. The provisions of criminal penalties in lieu of fine in Article 148 of the Narcotics Law which only provide a maximum imprisonment of two years without considering the amount of the fine imposed further strengthens the view that fines are not an effective punishment instrument in the context of eradicating narcotics.

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