

Legal Analysis of Criminal Fines in Criminal Offences of Drug Class I (Case Study of Decision Number 179/Pid.Sus/2022/Pn Skg)

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Abstract. *The purpose of the research on the application criminal fines for Class I Narcotics crimes at the Sengkang District Court, Judge's considerations in the Sengkang District Court's decision regarding the Class I Narcotics crime case. The sociological legal approach method examines the legal reality experienced in the field based on problems concerning legal matters and existing realities, using the Theory of Criminalization, Theory of Legal Systems, and the Theory of Pancasila Justice. The results of the research and discussion are that (1) Implementation criminal fines for Class I Narcotics crimes at the Sengkang District Court considered not to have fulfilled the purpose of punishment. The large fine was not carried out by the convict without giving a deterrent effect to the convict, the convict preferred his imprisonment. (2) The judge's consideration in the Sengkang District Court's decision on the Class I Narcotics crime case, the defendant's actions have been proven legally and convincingly to fulfill the formulation of the crime as charged in the Primary Indictment. The basis for the Judge's consideration at the Sengkang District Court in imposing criminal sanctions on the defendant for the misuse of Class I Narcotics is to look at the legal, philosophical, and sociological truth. In the trial process, no forgiving reasons were found in the defendant that could eliminate the unlawful nature of the criminal act committed by the defendant.*

Keywords: *Criminalization; Fines; Narcotics.*

1. Introduction

The legal basis of the Indonesian state is Pancasila and the 1945 Constitution of the Republic of Indonesia. Pancasila as a source of basic state law contains values that must be applied in society. Meanwhile, in running the government, all

behavior and actions of citizens must be based on applicable laws, as explained in Article 1 paragraph (3) of the 1945 UUDNRI that: "*The Indonesian state is based on law and not merely on power.*" So the basic principle that is the foundation of a state of law means that all aspects of life, including the implementation of government, must be based on law and legislation, not on arbitrary power and protection of human dignity and honor.¹

A country of law or has the term *rechtsstaat* or the rule of law is a country that in carrying out an action, all are based on rules or in accordance with applicable laws. If someone commits an act that violates the rules, then he has the right to receive a punishment, because it is considered to have violated the law. This aims to ensure that the law can protect all citizens without any intervention from any party by enforcing and placing the law in the highest position. In this case, every person can only be subject to legal sanctions when the person concerned commits a violation. One manifestation of the rule of law in Indonesia can be seen from the implementation of laws and regulations as the foundation for the role of state institutions and administrative services.²

The imposition of sanctions for perpetrators of criminal acts is a formulation of acts that are prohibited from being carried out (in laws and regulations) accompanied by a criminal threat for anyone who violates the prohibition. The act (*feit*) referred to here is the main element of a criminal act that is formulated.³ In this case, the application of sanctions against perpetrators of drug abuse. Drug abuse is a crime and violation that threatens safety, both physically and mentally for users and also for the surrounding community socially.⁴

The crime of drug abuse is a special crime outside the Criminal Code as explained in Law Number 35 of 2009 concerning Narcotics. In this case, the provisions are regulated specifically (special criminal law) which is determined for special groups of people, including military criminal law (special groups of people) and fiscal criminal law (special acts) and economic criminal law.⁵

The definition of narcotics is contained in Law Number 35 of 2009 concerning Narcotics Article 1 number (1) namely:

¹Rully Abdi and Piatu Pangarimbun, 2019, Perpetrators of Criminal Acts of Illicit Trafficking of Class I Narcotics Are Not Plants, K-Media, Yogyakarta, p.1

²Zaid Afif, The Concept of the Rule of Law State in the Indonesian State System, Pioneer Journal of LPPM Asahan University, Vol. 2 No. 5, July-December 2018. Url: <https://yptb.org/index.php/sultanadam/article/view/183>

³PAF Lamintang, 2014, Basics of Criminal Law in Indonesia, 1st Edition, PT Sinar Grafika, Jakarta, p.179

⁴Taufik Makaro, 2005, Narcotics Crimes, Ghalia Indonesia, Bogor, p. 49

⁵Tri Andrisman, 2010, Special Criminal Acts Outside the Criminal Code (Economic Crimes, Corruption, Money Laundering and Terrorism), University of Lampung, Bandar Lampung, p.9

Narcotics are substances or drugs that come from plants or not. plants, both synthetic and semi-synthetic, which can cause decreased or altered consciousness, loss of sensation, reduced to relieves pain and can cause dependency, which divided into groups as attached in the Law This.

According to Mardani, what is meant by narcotics is as follows:

Narcotics are drugs or substances that can calm the mind, cause unconsciousness or anesthesia, eliminate pain and discomfort, cause drowsiness or stimulation, can cause stupor, and can cause addiction or dependency and are determined by the Minister of Health as narcotics.

According to Smith Kline and French Clinical in his book Mardani, who defines narcotics as:

Narcotics are drugs which produce insensibility or stupor due to their depressant effect on the central system. Include in this definition are opium, opium derivatives (morphine, codien, heroin) and synthetic opiates (meperidine, methadone).

Meaning: Narcotics are substances that can cause unconsciousness or anesthesia because these substances work to affect the central nervous system. In this definition of narcotics, it includes types of opium, such as morphine, cocaine and heroin or substances made from opium, such as (meripidine and methadone).⁶

The description above can be understood that the existence of narcotics is a serious threat to the Indonesian nation. Narcotics, corruption, and terrorism are types of extraordinary crimes that are categorized as cross-country organized crimes and can be a threat to society, can damage the joints of a nation's life.⁷ Proven by the results of the N misuse data Drug abuse in Indonesia will affect 3.3 million people or 1.73 percent of the total population of Indonesia in 2023. The data On average, drug users are citizens who fall into the productive age category, around 15-30 years old. One of the reasons why people of a very productive age become victims of using drugs for the first time is because of an invitation from friends of the same age, peers, or teenagers.⁸

The occurrence of tDrug crimes are the cause of various categories of criminal acts or, which directly cause consequences in society, the younger generation, especially drug users themselves. Drug crimes are one form of crime known as victimless crimes. Victimless crimes are crimes where the relationship between

⁶Mardani, 2008, Drug Abuse in the Perspective of Islamic Law and National Criminal Law, Raja Grafindo, Jakarta, p. 78

⁷Darda Syahrizal, 2013, Narcotics Law & Its Application, Laskar Aksara, Jakarta, p.1

⁸ Head of the National Narcotics Agency (BNN) of the Republic of Indonesia, Commissioner General of Police. Marthinus Hukom, Url: <https://www.antaranews.com/berita/4274191/bnn-prevalensi-penyalahgunaan-narkoba-papar-33-juta-jiwa-pada-2023> accessed October 29, 2024.

the perpetrator and the victim is not visible. There are no target victims, because all parties are involved and included in the crime, becoming both perpetrators and victims of the crime or crime.⁹

According to Gatot Supramono in his book divides the categories of narcotics crimes based on the rules contained in the narcotics law.¹⁰ The categories of narcotics crimes commonly known in Law Number 35 of 2009 concerning Narcotics can be grouped as follows:

- 1) Articles 111 to 112 regulate criminal acts narcotics related to planting, maintaining, having in stock, or controlling narcotics (in plant or non-plant form).
- 2) Article 113 regulates the production, export, import and distribution of class I narcotics.
- 3) Article 114 regulates the criminal act of offering for sale, buying, selling, receiving, being an intermediary in buying and selling, exchanging or handing over class I narcotics.
- 4) Article 115 regulates the criminal act of carrying, sending, transporting or transiting class I narcotics.
- 5) Article 116 regulates criminal acts against any person who, without right or against the law, uses class I narcotics against another person or provides class I narcotics for use by another person.
- 6) Article 117 regulates the unlawful crime of storing, possessing, controlling or providing class II narcotics.
- 7) Article 118 regulates criminal acts involving unauthorized or unlawful importing, exporting, producing or distributing Class II narcotics.
- 8) Article 119 regulates the criminal act of offering for sale, selling, buying, receiving, exchanging narcotics or being an intermediary in buying and selling, class II.
- 9) Article 120 regulates the criminal act of carrying, transporting, sending or transiting class II narcotics.
- 10) Article 121 regulates criminal acts concerning any person who without the right to use narcotics class II against the law. to other people or provide class II narcotics for use by other people.

⁹Lestari I, Criminal Law Enforcement Against Drug Users at the Central Java Regional Police, Jurnal Daulat Hukum Vol. 14. No. 1 Year 2019.
Url:<https://jurnal.unissula.ac.id/index.php/jhku/article/view/1889>
Url:<https://jurnal.unissula.ac.id/index.php/jhku/article/view/1889> accessed October 20, 2024.

¹⁰Gatot Supramono, 2009, Indonesian Narcotics Law, Djambatan, Jakarta, p.90

11) Article 122 regulates criminal acts concerning any person who without the right or against the law stores, owns, provides or controls Class III narcotics.

12) Article 123 regulates criminal acts concerning any person who without the right or against the law produces, distributes, exports or imports Class III narcotics.

13) Article 124 regulates criminal acts regarding every person who without right or against the law offers to, buys, receives, sells, becomes an intermediary in buying and selling, exchanges or delivers Narcotics in group III

14) Article 125 regulates the criminal act of carrying, transporting, sending or transiting class III narcotics.

15) Article 126 regulates criminal acts concerning any person who, without the right or against the law, uses Class III narcotics against another person or gives them for use by another person.

16) Article 127 paragraph 1 regulates every person who abuses class I narcotics, class II narcotics, class III narcotics for themselves.

17) Article 128 regulates drug addicts who deliberately do not report.

Explanation of the category of narcotics crimes in Law Number 35 of 2009 concerning Narcotics, in reality has not provided a clear concept of drug addicts, drug abusers, and victims of drug abuse. The same treatment between drug addicts, drug abusers, and victims of drug abuse with drug dealers or distributors causes injustice in handling it. The position of drug users becomes difficult to position whether as perpetrators or victims of drug crimes. If positioned as a perpetrator, they will be punished and fined, while positioned as a victim, they will be directed to rehabilitation. The ambiguity of these regulations will lead to misinterpretation in providing criminal sanctions.¹¹

The threat of criminal sanctions for perpetrators of narcotics crimes is regulated by a cumulative threat pattern between imprisonment and fines. The formulation of criminal threats can be divided into two models, namely, the model of formulating criminal threats by regulating special minimum provisions and the model of formulating criminal threats that do not regulate provisions regarding special minimums. So that the regulation of criminal sanctions in the form of fines against perpetrators of crimes as a preventive effort as state revenue with the provision of additional penalties in the form of fines. In reality, so far the application of criminal fines with the enactment of Law Number 35 of

¹¹Public Relations Bureau of Legal Cooperation, Ministry of Law and Human Rights of the Republic of Indonesia Retrieved from Revision of the Narcotics Bill, DPR Discusses Six Points of the Government's Proposal, <https://www.kemenkumham.go.id/berita/revisi-ruu-narkotika-dpr-bahas-enam-poin-usulan-pemerintah> accessed October 2024 at 09.10 WIB.

2009 concerning Narcotics until now has not run in accordance with the expectations of the Narcotics Law.

The provisions regarding high criminal fines are not inversely proportional to the provisions regarding criminal penalties in lieu of fines as regulated in Article 148 of Law Number 35 of 2009 concerning Narcotics, which reads as follows:

If the criminal fine as stipulated in this Law cannot be paid by the perpetrator of a narcotics crime or a narcotics precursor crime, the perpetrator will be sentenced to a maximum of 2 (two) years in prison as a substitute for the fine that cannot be paid.

The reality so far is that criminals prefer to serve a prison sentence instead of a fine. If the provisions of the criminal fine sanctions are regulated rationally for criminals, it is likely that narcotics perpetrators or convicts will choose to pay a fine as an additional punishment rather than serving an additional prison sentence. The disparity between very high fines and relatively low substitute prison sentences is also because most criminals come from lower to middle economic classes.¹²In fact, the imposition of a criminal fine is an obligation to pay a sum of money as determined in the judge's decision which is imposed on the convict for the violation or crime that has been committed.¹³

An example of a case that occurred regarding the imposition of a high criminal fine and a relatively short substitute fine occurred in the decision of the Sengkang District Court regarding the Class I narcotics crime committed by the defendant on Tuesday, August 9, 2022, at the Patrol Post at Bulete Kel. Bulete Kec. Pitumpanua Kab. Wajo. Starting from witnesses RA and FB along with the Wajo Police Narcotics Investigation Unit team who arrested witness JM, evidence was found in the form of 1 (one) large sachet of methamphetamine which was admitted to have been obtained from the defendant, so that development was carried out and immediately went to the defendant's house located at Bulete Kel. Bulete Kec. Pitumpanua Kab. Wajo, but the defendant fled and police officers managed to secure him and then evidence was found in the form of 1 (one) yellow plastic jar containing 10 (ten) small sachets of methamphetamine, 6 (six) large sachets of methamphetamine, 3 (three) empty sachet packages, 1 (one) digital scale unit in the defendant's possession.

Based on observations of criminal fines in the above narcotics case decisions, it is considered that they have not fulfilled the purpose of punishment because the large fines have not been implemented by the convict, as a provision for when the criminal fine is implemented, according to Article 273 paragraph (1) and (2)

¹²Eva Achjani Zulfa and Indriyanto Seno Adji, 2011, *Paradigm Shift in Criminal Procedure*, CV. Lubuk Agung, Bandung, p.3

¹³Sakidjo, A., & Poernomo, B, 1990, *Basic Criminal Law General Rules of Codified Criminal Law*, Ghalia Indonesia, Jakarta, p. 87

of the Criminal Procedure Code, the convict is given one month and can be extended for a maximum of one month if there is a strong reason, except for the decision of the express examination procedure which must be paid immediately. On the other hand, for other cases, the substitute criminal fine in the form of imprisonment can be implemented immediately without waiting for the deadline for paying the fine (Article 31 paragraph (1) of the Criminal Code).

Meanwhile, the verdict of the narcotics case does not contain the time for the payment of the criminal fine, so that Article 273 paragraph (1) and (2) of the Criminal Procedure Code is applied at the time of the execution of the verdict. Meanwhile, the limitation of the expiration time for the payment of the criminal fine applies to defendants who commit narcotics crimes whose cases have been decided by the court and have definite legal force (*in kracht van gewijsde*). The time limit for the implementation of the criminal fine is a maximum of 2 (two) months, calculated from the time the convict carries out the verdict, 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 paid the criminal fine, then legally the convict will serve the length of imprisonment as a substitute for the criminal fine as stated in the verdict.

2. Research Methods

The research method is a series of steps carried out in a planned and systematic manner in order to find a solution to a problem or get answers to certain questions. The steps taken must be harmonious and mutually supportive so that the research conducted provides unquestionable conclusions.¹⁴ The research methods that the author used in this thesis research are: The approach method used is sociological juridical, namely the approach of studying to find the legal reality experienced in the field or an approach that is based on problems regarding legal matters and existing realities. Sociological juridical legal research mainly examines primary data in addition to data sourced from secondary data.¹⁵ In this research, it is more appropriate to use sociological juridical, because in the formulation of the problem the data obtained is more accurate, by using this approach it is intended to obtain a clear picture and understanding of the problems that will be discussed in the research.¹⁶ The approach in this study is intended to determine and describe the imposition of fines in class I narcotics crimes (Case Study of Decision Number 179/Pid.Sus/2022/PN Skg).

3. Results and Discussion

¹⁴Sumadi Suryabrata, 2006, *Research Methodology*, PT Raja Grafindo Persada, Jakarta, p.11

¹⁵Amiruddin and Zainal Asikin, 2014, *Introduction to Legal Research Methods*, Raja Grafindo Persada, Jakarta, p.30

¹⁶Hilman Hadi Kusuma, 2012, *Method of Making Working Papers or Legal Thesis*, CV. Mandar Maju, Bandung, p.34

3.1. Implementation of criminal fines in Class I Narcotics crimes at the Sengkang District Court

Crime prevention through various means as a reaction that can be given to perpetrators of crime, in the form of criminal and non-criminal law means.¹⁷ Criminal acts are the basic part of a mistake made against someone in committing a crime. The existence of a mistake in the relationship between the circumstances and the act that causes blame must be intentional or negligent.¹⁸ The existence of drug crimes is generally not only done by one individual but is done together and even done in an organized, neat and secret manner, besides that drug crimes have become a serious threat to human life. To improve control and supervision of drug trafficking, joint efforts are needed by law enforcement officers and the community.¹⁹ Efforts in law enforcement are efforts to realize the legal ideas and concepts that the people hope for into reality.²⁰

Law enforcement against narcotics crimes has been widely carried out by law enforcement officers and has received many judges' decisions. Although it has clear legal regulations, the reality is that during drug abuse, it has been resolved optimally, in fact, from year to year it has increased in its handling.²¹ Drug abuse is a crime and violation that threatens the safety, both physically and mentally, of the user.²² The effects of narcotics besides being sedative and reducing consciousness, cause delusions/hallucinations (marijuana), cause stimulation or stimulant (cocaine). These narcotics can cause dependency.²³

The classification of narcotics into 3 (three) groups, based on the provisions in Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, is classified as follows:

1) Class I narcotics is a narcotic that can only be used for scientific development purposes and is not used in therapy, and has a very high potential to cause dependency.

¹⁷Soedarto, 1986, Selected Chapters on Criminal Law, Alumni, Bandung, p. 109

¹⁸Wirjono Prodjodikoro, 2003, Principles of Criminal Law in Indonesia, Refika Aditama, Bandung, p. 33

¹⁹Fuad Hasan in Hetic, 1996, Juvenile Delinquency and Drug Abuse and Its Management, Bahagia, Pekalongan, p. 19

²⁰Dellyna, Shant, 1988, Concept of Law Enforcement, Liberty, Yogyakarta, p.32

²¹Andri Winjaya Laksana, The Legal Position Of Islamic Boarding School (Pesantren) As A Rehabilitation Effort For Narcotics Abuse, IJLR: International Journal of Law Reconstruction Vol.05, No.2 Tahun 2021.
Url:<https://jurnal.unissula.ac.id/index.php/lawreconstruction/article/view/17756>

²²Hafrida, H., Herlina, N & Adamy Z. The Protection of Women and Children as Victims of Human Trafficking in Jambi Province. Jambe Law Journal, Vol. 01 No.2 of 2019.
Url:<https://ilj.unja.ac.id/index.php/home/article/view/20>

²³Sylviana, 2001, Narcotics Anthology: A Multi-Dimensional Review, Sandi Kota, Jakarta, p. 8

2) Class II narcotics is a narcotic with medicinal properties used as a last resort and can be used in therapy and/or for scientific development purposes and has a high potential to cause dependency.

3) Class III narcotics is a narcotic with medicinal properties and is widely used in therapy and/or for scientific development purposes and has a low potential to cause dependency.²⁴

The incident from the Sengkang District Court decision above can be analyzed that generally the criminal fine as an alternative and the criminal fine as a cumulative of the main criminal penalty stipulated in Law Number 35 of 2009 concerning Narcotics, the convict is unable to pay a sum of money as a criminal fine to the State. In fact, the implementation of criminal fines should bring changes, great benefits for state revenue as a consequence of the implementation of criminal fines for perpetrators of narcotics crimes. The reality in the implementation of criminal fines is not effective, proven by the provisions of criminal fines that use the concept of a minimum that is too large and even seems irrational, while the threat of substitute imprisonment is relatively low. There is an imbalance between very high fines and relatively low substitute imprisonment, and most perpetrators of criminal acts come from the lower middle class. Thus, the application of fines in Class I Narcotics crimes in the implementation of the Sengkang District Court's decision is considered not to have fulfilled the purpose of punishment, because the large fines are not carried out by the convicts by providing a deterrent effect for the convicts who are expected to pay the fines to the state is not achieved with the convicts preferring their imprisonment.²⁵

Meanwhile, for other reasons, there is no article that regulates it. "*Acts of Coercion or Coercion*" against convicts who are unable or unwilling to pay the fine before the end of the specified time limit. In fact, if the fine is paid by the convict, the money becomes a source of non-tax state revenue (PNBP) that can be used by the government to finance infrastructure development. Thus, in order for the implementation of the fine to run effectively, there should be a balance between the amount of the fine and the length of the substitute prison sentence, especially the ability of the convict to pay the fine that has been set. Realistically, the amount of the fine imposed in the decision is according to the economic ability and social status of the defendant.

Article 148 of Law Number 35 of 2009 concerning Narcotics states that if the criminal fine as regulated in this Law cannot be paid by the perpetrator of a narcotics crime and a narcotics precursor crime, the perpetrator will be sentenced to a maximum of 2 (two) years in prison as a substitute for the fine

²⁴Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics

²⁵Results of the interview with the Sengkang District Court Judge.

that cannot be paid.²⁶ Judging from the regulation of the implementation of criminal fines in the Narcotics Law, it is slightly different from the regulation of the implementation of criminal fines in the Criminal Code. The difference lies in the type of punishment as a substitute for criminal fines where in the Criminal Code the substitute for criminal fines is in the form of a maximum imprisonment of 6 (six) months to 8 (eight) months in the case of concurrent, repeated, or committing crimes in office, while in the Narcotics Law states a maximum imprisonment of 2 (two) years as a substitute for criminal fines. So it is clearly illustrated that the substitute for criminal fines in narcotics crimes is heavier than the criminal acts regulated in the Criminal Code.

Criminal fines in the Criminal Code are mostly formulated as alternative punishments, especially for criminal offenses. The Criminal Code (KUHP) regulates criminal fines as the fourth most severe principal punishment after the death penalty, imprisonment and detention.²⁷ The implementation of criminal fines in the Criminal Code (KUHP) system recognizes the existence of a substitute sentence, where the fine can be replaced with another sentence. Convicts who are unable to pay the fine are replaced with corporal punishment in the form of imprisonment. Article 30 of the Criminal Code states that the substitute imprisonment sentence is a maximum of 6 (six) months with a maximum aggravation of 8 (eight) months. This is intended to anticipate convicts who do not have enough money so that they cannot meet the provisions for paying the fine imposed and choose to serve a prison sentence.

Thus the description above shows that in criminal law, several theories have developed about the purpose of punishment, namely absolute theory (retributive), relative theory (deterrence/utilitarian), integrative theory, treatment theory, and social defense theory. The theories of punishment consider various aspects of the targets to be achieved in the imposition of punishment.²⁸ The application of criminal punishment which means punishment, the punishment in question is related to the imposition of a criminal sentence and the justification for imposing a criminal sentence on a person who, by a court decision that has permanent legal force (*incracht van gewijsde*), has been declared legally and convincingly proven to have committed a crime.²⁹ The application of criminal objectives through several theories of punishment, namely:

²⁶Bakhtiar, Cumulation of Prison Sentences and Fines in Narcotics Cases Kanun, Journal of Legal Studies Volume 21, No. 1 Year 2019. Url:<https://jurnal.usk.ac.id/kanun/article/view/11319>

²⁷IA Budivaja and Y. Bandrio, The Existence of Criminal Fines in Their Implementation, Jurnal Hukum, Volume 20, No. 19, 2015. Url:<https://ejournal.unsrat.ac.id>

²⁸Dwidja Priyanto, 2009, Imprisonment Sentence Implementation System in Indonesia, PT. Rafika Aditama, Bandung, p.22

²⁹Soetikno, 2008, Philosophy of Law Part I, Pradnya Paramita, Jakarta, p.67.

a. Absolute Theory or Retribution that something that does not know compromise to be given as retaliation for a crime. So in this theory, punishment is a form of retaliation given by the state to the perpetrator of a crime to suffer as a result of his actions. The punishment in the form of sanctions or punishments given must be accepted by the perpetrator of the crime for his mistake, the punishment becomes a fair retribution for the losses from the consequences caused.³⁰

b. The Relative or Objective Theory bases sentencing on the purpose and intent of the punishment, finding the benefits of a punishment (nut van de straf).³¹This theory views that punishment is not as retaliation for the perpetrator's mistake but a means to achieve a useful goal to protect society towards the welfare of society. Sanctions are emphasized on their purpose, namely to prevent people from committing crimes, is the goal of absolute satisfaction of justice.³²

c. Combined Theory a form of combination between absolute theory and relative theory that refers to the combination between the angle of retaliation and the defense of the legal order of society. This theory in its elements of retaliation and the defense of the legal order of society cannot be ignored between one and the other. This theory can also be divided into 2 large groups, namely the theory that prioritizes retaliation and the theory that prioritizes the protection of the social order.³³

Criminal fines in narcotics crimes can be assessed through an approach in the theory of legal systems that can provide an overview of the implementation of law enforcement, which was put forward by Lawrence M. Friedman stating that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure (structure of law), legal substance (substance of the law) and legal culture (legal culture). The legal structure concerns law enforcement officers, the legal substance includes legislative instruments and legal culture is a living law that is adopted in a society.³⁴

According to Lawrence M. Friedman, the fulfillment of terms and conditions the following for the formation of ideal regulations:

1) Legal Structure

³⁰Leden Marpaung, 2009, Principles, Theory, Practice of Criminal Law, Sinar Grafika, Jakarta, p.105.

³¹Andi Hamzah, 2004, Principles of Criminal Law, Revised Edition, Rineka Cipta, Jakarta, p. 34

³²Hamdi Hamzah, Op.cit, p.27

³³Adami Chazawi, 2003, Criminal Law Lessons Part 1 Criminal system, criminal acts, theories of punishment & the limits of the validity of Criminal Law, PT. Raja Garfindo, Jakarta, p. 162

³⁴Friedman, M. Lawrence, 2001, American Law An Introduction Second Edition, Translator Wishnu Basuki, Tetanusa, Jakarta, pp. 8-10

The structure of a legal system consists of several parts: the number and size of courts, their jurisdiction (including the cases they are entitled to try), and the procedures for appeals from one court to another. Structure also refers to the structure of parliament, the police, the powers of the president, and so on. The legal structure, also known as the "legal structure", consists of the existing legal institutions designed to implement the existing laws. This structure shows how the courts, parliaments, agencies, and judicial processes work and are carried out. Lawrence M. Friedman explains about the legal structure:

"To begin with, the legal system has the structure of a legal system consisting of elements of this kind: the number and size of courts; their jurisdiction ...Structure also means how the legislature is organized ...what procedures the police department follows, and so on. Structure, in a way, is a kind of cross section of the legal system...a kind of still photograph, with freezes the action."

2) Legal substance

The content is an additional component of the legal system. The material includes the rules, norms, and actual behavioral patterns of individuals involved in the system. Therefore, legal content refers to applicable and binding laws that help law enforcement agencies act. Legal substance according to Friedman:

"Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioral patterns of people inside the system...the stress here is on living law, not just the rules in law books."

3) Legal culture

Legal culture refers to the attitude of society (including the legal community and law enforcement officers) towards the law and the legal system. Law enforcement will not succeed without the support of the community that participates in the legal system and its legal culture. Regarding legal culture, Friedman argues:

"The third component of legal system, of legal culture. By this we mean people's attitudes toward law and legal system, their beliefs ...in other words, is the clarification of social thought and social forces that determine how law is used, avoided, or abused".³⁵

These three components, legal substance, legal structure, and legal culture, can be achieved in a legal system. Legal structure and legal culture are interrelated, as shown by how the law functions. Legal culture consists of regulations. The

³⁵Lawrence M. Friedman, *Legal System A Social Science Perspective*, Irussellage Foundation, New York, 1975, p. 11-20,

social control framework is involved in the formation of the legal system in relation to social behavior.³⁶

Thus, in relation to the application of criminal fines in class I narcotics crimes, it can be understood that the application of criminal fines to perpetrators of criminal acts is intended as a preventive measure to prevent criminal acts from causing unrest, so that peace, comfort and security are created in social life. society. The existence of "Criminal Fines" has been around for quite a long time, Criminal fines as the main punishment have long been regulated in the Criminal Code (Law Number 1 of 1946) and when viewed from its source, namely the *Wetboek van Strafrech voor Nederlands-Indie* which was enforced by *Staatsblad* 1915 Number 732 on January 1, 1918. The existence of criminal fines is not effective in narcotics cases which prefer imprisonment or detention, so it is often used as an alternative punishment or even though criminal fines are the main criminal sanction in the formulation of criminal acts.

It should be that criminal fines can provide a sense of suffering and regret to perpetrators of criminal acts. It all depends on law enforcement. (*The enforcement of law*) carried out by Investigators, Public Prosecutors, and Judges as the trident of law enforcement. The court does not only function as a Court of Law but is also expected to play a role as a Court of Justice.

3.2. Judge's considerations in the Sengkang District Court's decision regarding the Class I Narcotics crime case

In essence, the application of criminal law is an imposition of unpleasant suffering or misery imposed by the state through a judge's verdict on a person who commits a punishable act. In the implementation of criminal law, there is a criminal law system that is divided into two types of sanctions. All have the same position, namely criminal sanctions and action sanctions. Criminal sanctions are the type of sanctions most widely used in sentencing someone found guilty of committing a criminal act.³⁷ Criminal sanctions are the ultimate sanction in law enforcement or often referred to as *ultimum remedium*. Sudikno Mertokusumo defines *ultimum remedium* as the last sanction. Criminal sanctions are positioned as the ultimate move, if mechanisms outside criminal law are not effective. This shows that criminal sanctions are ideally the "last resort" after efforts outside criminal law (non-penal) are operationalized.³⁸

Criminal sanctions are the imposition of suffering on a person who is found guilty of committing a criminal act or crime through a series of judicial processes by the authority (law) specifically given for that matter, which with the imposition of

³⁶Ibid,

³⁷Mahrus Ali, 2015, *Basics of Criminal Law*, Sinar Grafika, Jakarta, p.193

³⁸Mertokusumo, Sudikno, 2006, *The Discovery of Law: An Introduction*, Liberty, Yogyakarta, p. 128

criminal sanctions is expected that people will not commit crimes again and aims to maintain peace and security. In criminal law, to achieve a fair decision requires a long process through the trial stages. The main purpose of this process is to find the material truth that is the basis for imposing criminal sanctions in order to create a sense of justice. A fair decision can be achieved if handled by a judge who not only has in-depth legal knowledge, but is also based on good morals.

Law Number 48 of 2009 concerning Judicial Power reflects a strong commitment to building a judicial power that is truly independent and free from interference from outside parties that can disrupt justice, benefits, and legal certainty. Judicial power is recognized as one of the highest powers, as stated in Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, Judicial Power is the independent state power to organize trials to uphold law and justice based on Pancasila and the 1945 Constitution, in order to realize the Republic of Indonesia's Legal State.³⁹

The authority given to the Judge to take a policy in deciding a case is regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning judicial power which stipulates that "Judges and constitutional judges are required to explore, follow and understand the legal values and sense of justice that live in society." To fulfill this norm, the judge must take legal policy. Determination of the demands of the sense of justice that must be applied by the judge in deciding a case. So that the judge will see the concepts of justice that have been standardized, the concept of justice throughout history has had many types, since the time of ancient Greece and Rome justice was considered one of the main virtues (cardinal virtue). In this concept, justice is a moral obligation that binds members of society in their relationship with each other.⁴⁰

In the context of a judge's decision, legal rules or norms play a role as guidelines (leiding) and testing instruments (toetsingrecht) for human or individual activities that are regulated within the scope of applicable laws and regulations. In handing down a criminal decision related to narcotics crimes, the judge considers various factors, including legal aspects, trial facts, and sociological considerations. Legal considerations include charges, demands, witness statements, and evidence. Trial facts include the defendant's statement and valid evidence. Sociological considerations, such as the defendant's condition and its impact on society, are also important considerations.

³⁹Josef M. Monteiro, 2014, *State Institutions after the Amendment of the 1945 Constitution*, Pustaka Yustisia, Yogyakarta, p. 97

⁴⁰Yusril Ilza Amri, Bambang Tri Bawono and Ira Alia Maerani. Criminal Investigation of Motorcycle Stealing Goods. *Law Development Journal* Volume 3 Issue 1, March, 2021. Url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/14866>

As for the judge in examining a criminal case, he tries and proves the material truth based on the facts revealed in the trial. Before the researcher analyzes the basis for the Judge's consideration in imposing criminal sanctions on the defendant of Class I Narcotics abuse, it is necessary to know the position of the case first, namely as follows:

The defendant on Tuesday, August 9, 2022, was at the Ronda Post located at Bulete Kel.Bulete Kec.Pitumpanua Kab.Wajo. Starting from Witness RA and witness FB along with the Wajo Police Narcotics Investigation Unit team have arrested witness JM, found evidence in the form of 1 (one) large sachet of methamphetamine which was admitted to have been obtained from the defendant, so that development was carried out and went straight to the defendant's house located in Bulete, Bulete Village, Pitumpanua District, Wajo Regency, but the defendant fled and police officers managed to secure him and then found evidence in the form of 1 (one) yellow plastic jar containing 10 (ten) small sachets of methamphetamine, 6 (six) large sachets of methamphetamine, 3 (three) empty sachet packages, 1 (one) digital scale unit in the defendant's possession.

The defendant obtained the methamphetamine from Y (DPO) on Thursday, August 4, 2022 in front of the defendant's house, precisely in Bulete, Bulete Village, Pitumpanua District, Wajo Regency, previously Y (DPO) came to the defendant's house in December 2021 and offered the defendant to sell the methamphetamine with a payment system that would be paid later when it was sold, and after an agreement was reached with Y (DPO), about 1 week after Y (DPO) came from the defendant's house, then the driver of the Pare-Poso passenger car delivered a package in the form of a black plastic bag which was handed over to the defendant, then the defendant opened the package containing 6 (six) large sachets.

The defendant has repeatedly purchased narcotics 5 (five) times and each purchase was 6 (six) large sachets for IDR 38,000,000,- (*thirty eight million rupiah*) per sachet so that the total price is IDR 228,000,000 (two hundred twenty eight million rupiah). Furthermore, the defendant resold the methamphetamine and the defendant obtained a profit of IDR 2,000,000,- (Two Million Rupiah) in 1 (one) large sachet/1 (one) ball plus 10 (ten) small sachets of methamphetamine given for free by Y (DPO).⁴¹

4. Conclusion

The application of criminal fines in narcotics crime Class I in Sengkang District Court is considered not to fulfill the purpose of punishment, because the prison sentence is 13 (thirteen) years and a fine of IDR 1,000,000,000.00 (one billion

⁴¹Case File Number 179/Pid.Sus/2022/PN Skg Sengkang District Court.

rupiah) with the provision that if the fine is not paid then it is replaced with a prison sentence of 4 (four) months. The large fine is not implemented by the convict by providing a deterrent effect for the convict is expected to pay the fine to the state is not achieved with the convict preferring his prison sentence. In order for the implementation of criminal fines to run effectively, there should be a balance between the amount of the criminal fine and the length of the substitute prison sentence, especially the ability of the convict to pay the fine that has been set. Realistically, the amount of the criminal fine imposed in the decision is according to the economic ability and social status of the defendant.

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