

Jurydic Analysis of Narcotics Circulators of Shabu Type (Decision Number: 92 / Pid.Sus / 2018 / Pn.Mdn)

Ovani Natalia Tarigan¹, Novriana Pandiangan², Memory Juahtha Sembiring³

¹ Faculty of Law, Prima Indonesia University, Medan-Indonesia, ovaninataliatarigan@gmail.com

² Faculty of Law, Prima Indonesia University, Medan-Indonesia, novrianapandiangan@gmail.com

³ Faculty of Law, Prima Indonesia University, Medan-Indonesia, memoryjuahtha@gmail.com

ABSTRACT

Drug abuse and dangerous drugs or drugs is a phenomenon that has long existed and experienced by all countries in the world. The circulation of narcotics among Indonesian people is also directly proportional to the development of other types of narcotics. One type of narcotics found today is a type of narcotics made with chemicals that are very dangerous for the body. One type of narcotics that is abused is methamphetamine. As Narcotics Group I, then methamphetamine has a very disturbing effect on the body's performance, namely prolonged hallucinations and dependence. Circulation involves all groups who are very troubling and worried about the nation's successors. Traders in this case means the act of offering to sell, buy, becoming an intermediary in buying and selling, exchanging, sending or receiving Narcotics Group I. Therefore, countermeasures are needed so narcotics crime can be minimized

ARTICEL INFO

Keywords:

Actor; Traders;
Methamphetamine

How to cite:

Tarigan, O. N.,
Pandiangan, N., Sembiring,
M. J. (2020). Jurydic
Analysis Of Narcotics
Circulators Of Shabu Type
(Decision
Number:92/PID.SUS/2018/
PN.MDN.. Musamus Law
Review, 2(2), 118-124

Copyright © 2018 MuLaRev.
All rights reserved.

1. INTRODUCTION

The irresponsible distribution of narcotics has become increasingly widespread among the public, this will certainly be more worrying especially now that all people in the community have been using narcotics from the younger generation to the elderly and even minors are already very much using illegal drugs such as narcotics. Currently narcotics circulation is increasingly rampant because Indonesia is no longer a transit point, but is a target for marketing, and even a place of production of narcotics by the international narcotics syndicate network. If drug abuse continues to run rampant, the terrible threat is getting closer.¹

¹ A. Kadarmanta. (2010), *Narkoba Pembunuhan Karakter Bangsa*, Jakarta: PT. Forum Media Utama, p.18.

Here we need strict supervision and eradicate the free distribution of narcotics both in Indonesia and shipping from other countries into their own country. Because until now the distribution and abuse of narcotics has been almost unavoidable. Illicit narcotics circulation in Indonesia through several channels, namely land, air and sea routes. Narcotics trafficking over land can occur because of weak surveillance and security systems in border areas. Illicit drug trafficking through the sea is also often done, due to the rampant drug trade in Indonesia the number of drug abuse in Indonesia has increased almost all provinces in Indonesia have cases of drug abuse. One of the criminal sanctions in the Narcotics Act is the Death Penalty sanction, namely in Article 114 paragraph (2) "In the case of offering acts.

In accordance with the provisions of Article 1 point 1 of the Narcotics Law referred to narcotics are substances or drugs derived from plants or not plants both synthetic and semi-synthetic that can cause a decrease or change of consciousness, loss of taste, reduce to eliminate pain and can cause dependency.²

Like that, but it directly provides a causal relationship, that Narcotics can cause a decrease in consciousness, loss of taste, reduce to eliminate pain. Both Narcotics and Psychotropics have an effect on dependency. In connection with the understanding of Narcotics, according to Prof. Sudarto, SH, in his book *Kapital Selekta Criminal Law* said that: Narcotics distribution covers every activity or series of narcotics distribution or delivery activities both in the context of trade, not trade, or transfer for the benefit of health services and scientific development (Article 32 of the Narcotics Act).

Narcotics circulation is the same as psychotropic drugs, only the difference between narcotics distribution is more complete than psychotropic circulation. The lack of psychotropic circulation lies in the health and development of science.

Even so, but the real intentions and objectives of psychotropics can be understood for this purpose, because the Psychotropic Law also limits the scope of the use of psychotropics for the benefit of health services. According to Article 183 of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) it was found that a judge must not convict a person unless if with at least two valid evidences he obtains health and scientific confidence. According to the provisions of Article 8 paragraph (2) Law Number 48 of 2009 concerning Judicial Power, it is found that in considering the severity of a crime, the judge must pay attention to the good and evil nature of the defendant so that the verdict handed down is appropriate and fair with the mistakes made. Furthermore, according to Article 183 of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) it was found that judges should not impose a criminal on a person unless if with at least two valid evidences he gains confidence.

2. METHOD

This research uses a type of empirical juridical research that is studying, investigating and reviewing in accordance with what has been determined by the applicable laws and regulations and the reality that actually occurs in the community. The goal is to be able to study and find data from real events that actually occur that are needed in this

² H. Siswanto. S. (2012), *Politik Hukum Dalam Undang-Undang Narkotika*, Jakarta: PT. Rineka Cipta, p. 250.

research³. The method of this research approach is to use the statute approach and case approach. This research has the descriptive nature of analysis, which provides a description of the problems discussed in this study and analyzes the relevant legal regulations and is linked to the results of interviews conducted on the research object to provide answers to the problems formulated.⁴ The type used in this research is secondary data type. Secondary data includes official documents, books, research results in the form of reports, diaries and so on. The trait used in this research is descriptive analysis which refers to normative juridical research.⁵ Data obtained from reading and analyzing materials in writing. This research is a monodisciplinary research that is an analysis of findings that are only based on one discipline, namely law.

3. RESULTS AND DISCUSSION

3.1. Obstacles Arising in Efforts to Abuse Narcotics

Narcotics abuse is worldwide, this is because the impact of narcotics abuse has an effect on the lives of the people, nation and state. In 1971 Indonesia was suspected of being a transit country for international narcotics smuggling and its illicit circulation received the support of its addicts who were not small in number.

In general, obstacles in the enforcement of narcotics abuse are caused by the costs that must be spent by the government are very large, while the funds owned by the government are very limited. Thus, there are still many deviations in the implementation of laws related to enforcement of narcotics abuse.⁶

In addition, enforcement and law enforcement efforts against narcotics crimes in Indonesia, criminal sanctions are very light. If the perpetrators are caught, only a very mild prison sentence is imposed. Then it turns out that even from prison, someone can still run their business.

Obstacles in tackling Narcotics abuse, the first is the lack of extra funds to facilitate the provision of counseling, seminars on Narcotics in the community. Because in counseling and seminars require no small cost. In addition, lack of funds can result in limited facilities in the form of tracking devices and other tools that support narcotics countermeasures.

The second obstacle is that people do not have the courage to report to the police when they see users consuming drugs. This is due to the lack of public awareness of the environment itself, and the fear when it will be a witness.

³ Julianto Jover Jotam Kalalo, Chyntia Novita Kalalo. (2018). Legal Protection Against Health Workers in Taking First Aid Medical Measures. *Musamus Law Review*, 1 (1), pp 40-52, <https://doi.org/10.35724/mularev.v1i2.1263>

⁴ Yana Ardila, Julianto Jover Jotam Kalalo. (2019). Arrangement for Issuance of Certificate of Substitute of Land Rights. *Musamus Law Review*, 2 (1), 36-49, <https://doi.org/10.35724/mularev.v2i1.1076>

⁵ Soerjono Soekanto. (2014), *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia, p. 12.

⁶ *Advokasi Pencegahan Penyalahgunaan Narkoba*. (2007), Jakarta:Badan Narkotika Nasional, p. 97.

3.2. Legal Efforts Against Criminal Acts of Narcotics Distribution of Methamphetamine Type

3.2.1. Preventive measures

Preventive efforts are, to form a society that has resistance and immunity to drugs. Prevention is better than eradication, prevention of drug abuse can be done in various ways, such as coaching and supervision in the family, counseling by competent parties both in schools and communities, pengajian by the scholars, supervision in places of night entertainment by the security , monitoring the distribution of illegal drugs and taking other actions aimed at reducing or eliminating opportunities for drug abuse.⁷

3.2.2. Repressive effort

Repressive program, in the form of legal abolition of producers, bookie, traders, and addicts based on applicable legal provisions. In Indonesia there is the National Narcotics Agency (BNN), a non-structural institution that is located under and reports directly to the President of the Republic of Indonesia. BNN was formed based on Presidential Decree of the Republic of Indonesia Number 17 of 2002 (now replaced by Presidential Regulation Number 83 of 2007). BNN Has the duty to coordinate the relevant government agencies in the formulation of policies and their implementation in the fields of availability, prevention and eradication of narcotics, psychotropic, precursor and other addictive substances.

For actors who are under the age of handling tend to be faster no later than fifteen days the file must be sent. The trial is different from other suspects of offenders who were tried in juvenile court and sentenced to half of what they should have been, for example if he was sentenced to four years then the sentence he got was approximately two years.

3.2.3. Curative effort

Curative program is a treatment program only intended for drug addicts to be cured, the treatment has a special method and must be based on medical supervision.

The curative program is aimed at drug users, the aim of which is to treat addiction and cure illnesses as a result of drug use, while stopping drug use.

Treatment of drug users is very complicated and requires extraordinary patience from doctors, families, and sufferers. This is why the treatment of drug users requires huge costs but many results fail, the key to successful treatment is good collaboration between doctors, families and sufferers.

3.3. Judge's Considerations in Imposing Criminal Sanctions Against Narcotics Traffickers (DECISION NUMBER: 92/PID.SUS/ 2018/PN.MDN)

The development of human rights enforcement has received this top priority as human rights have also become a priority in law enforcement.⁸ Before imposing a criminal

⁷ *Proses Penanganan Perkara Pidana*, (2013), Jakarta, p. 52.

⁸ Arhjayati Rahim. (2019). Diversion in the Form of Protection of Human Rights. *Musamus Law Review*, 1 (2), 87-94. <https://doi.org/10.35724/mularev.v1i2.1126> p. 91

sentence on the defendant, the panel of judges will first consider based on the legal facts revealed at the trial, including:

Considering whereas that the Defendant's Legal Advisory Note, the public prosecutor stated that he remained in his charge, and the defendant's legal counsel stated that he remained on his Defendant Note;

Considering, that the Public Prosecutor filed the defendant before the trial on Wednesday, February 14, 2018 based on the indictment for Case Registration Number: PDM-43 / Euh.2 / 01/2018, as follows;

Observing, Article 112 Paragraph (2) of Law No. 35 of 2009 concerning Jo Narcotics. Article 132 paragraph (1) RI Law No. 35 of 2009 concerning narcotics;

Stating, the defendant ANDI SYAHPUTRA or AAN mentioned above was proven legally and convincingly guilty of committing a criminal offense "without the right or against the law conducting a trial or conspiracy of evil, surrendering, or receiving class 1 narcotics in non-plant form weighing more than 5 (five) grams;⁹

Dropping the criminal with the Defendant is therefore a death sentence.

3.3.1 Analysis of Decision No.:92/PID.SUS/2018/PN.MDN

As stated in Law Number 35 Year 2009 concerning Narcotics states: Article 114 paragraph (2) "in the case of acts offering to sell, sell, buy, accept, become intermediaries in buying and selling or submitting Narcotics class 1 as referred to in paragraph (1) in the form of a plant weighing more than 5 grams the offender is sentenced to DEAD, life imprisonment, a minimum of 6 years, a maximum of 20 years and a maximum fine of Rp. 10,000,000,000 (or 10 billion rupiah). "That the defendant has fulfilled the elements in Article 114 paragraph (2) Jo. Article 132 paragraph (1) of Law No. 35 of 2009 concerning Narcotics with the following elements.

3.3.2 Elements of Everyone

That what is meant by "everyone" is anyone, as a legal subject, supporting rights and obligations, who are held accountable for their actions.¹⁰

That based on the facts in the trial, the defendant ANDI SYAHPUTRA Als AAN is a legal subject supporting the rights and obligations requested for accountability for his actions, where the defendant's identity has been thoroughly examined and matched with the Indictment, which turned out to be appropriate and true and has also been justified by the defendant , so the judge argued that there was no error in persona on the defendant's body. Based on the description above, then each person's element is fulfilled and proven legally and convincingly according to the law.

a. Elements without rights or against the law offer to be sold, exchanged, delivered or received narcotics category I not plants that weigh more than 5 (five) grams;

⁹ Decision Number 92 / Pide.SUS / 2018 / PN.MDN.

¹⁰ *Ibid.*

Whereas what is meant as without rights or against the law are acts that are prohibited by law or Law with the threat of punishment due to such actions which are challenged with the customs, habits, morality, and politeness that live in the community:

That because the criminal act charged with the Defendant is regulated in Law No. 35 of 2009 concerning narcotics, then what is meant by without rights or against the law must pay attention to the provisions in this Law;

That it was true that in July 2017 in sending and receiving Narcotics of 50 Kg methamphetamine methamphetamine, Abdul KAWI Als Ade was promised a wage of Rp. 150,000,000, - but has only been paid Rp. 80,000,000, - then Witness ABDUL KAWI Als ADE gave the defendant Rp. 30,000,000, - as wages to help witness ABDUL KAWI Als ADE send the narcotic type of methamphetamine from Idi Reyeuk, East Aceh to Medan, North Sumatra and Witness ABDUL KAWI Als ADE received Rp. 68,500,000;

Based on the description of the elements above, then "Elements without rights or against the law offer to sell, sell, buy, become intermediaries in buying and selling, exchanging, delivering or receiving group I narcotics not plants that weigh more than 5 (five) grams" have been proven.

b. Elements of attempted or unanimous agreement to commit Narcotics crime:

Whereas what is meant by criminal agreement in Article 1 number 18 of Law Number 35 of 2009 concerning narcotics is the act of two or more people who have conspired or agreed to carry out, carry out, assist, participate in carrying out, order, encourage, facilitate, facilitate, provide consultation, become a member of a narcotics crime organization or organize a narcotic crime;

That it was true that at the end of July 2017 in the sending and receiving of narcotics type of methamphetamine 70 kg methamphetamine, Witness ABDUL KAWI Als ADE was promised a wage of Rp. 210,000,000, - but was only paid Rp. 90,000,000, - then witness ABDUL KAWI Als ADE gave the defendant Rp. 21,500,000, - as a reward for assisting witness ABDUL KAWI Als ADE sent the narcotic type of methamphetamine from Rayeuk Acehnese idiot. East towards medan, North Sumatra and witness ABDUL KAWI Als ADE received Rp. 68,500,000;

That because all the elements of are regulated and threatened with criminal sanction in Article 114 paragraph (2) Jo Article 132 UURI No. 35 of 2009 concerning Narcotics has been fulfilled, then the defendant must be declared legally proven and convicted of committing a criminal offense as charged in the indictment;

Based on the description above, "the element of trial or conspiracy to commit narcotic crime" is appropriate and proven.

4. CONCLUSION

Obstacles in the prevention of narcotics distribution which are based on: Lack of cooperation between apparatuses and the public in uncovering narcotics distribution syndicates. The mode used by narcotics dealers is increasingly varied, so that the authorities experience obstacles in their disclosure. Uncertainty of sanctions given to narcotics traffickers. The role of the government in efforts to prevent narcotics abuse is to supervise all forms of exports and imports. In order to prevent all forms of drug smuggling. The supervision must be in accordance with the Narcotics Act. Judge's consideration in imposing capital punishment for narcotics dealers is appropriate, because it can provide a deterrent effect for the perpetrators and the public.

REFERENCES

Arhjayati Rahim. (2019). Diversion in the Form of Protection of Human Rights. *Musamus Law Review*, 1 (2), 87-94.
<https://doi.org/10.35724/mularev.v1i2.1126>

Indrati, Maria Farida. (2013). Ilmu Perundang-Undangan. Kanisius.

Julianan, Nengeh. (2013). Narkoba Psikotropika dan Gangguan Jiwa. Yogyakarta: Nuha Medika.

Julianto Jover Jotam Kalalo, Chyntia Novita Kalalo (2018). Legal Protection Against Health Workers in Taking First Aid Medical Measures. *Musamus Law Review*, 1 (1), pp 40-52 <https://doi.org/10.35724/mularev.v1i2.1263>

Kitab Undang-Undang Hukum Acara Pidana (KUHAP).

Makarao, Taufik dan Suhasril. (2003). Tindak Pidana Narkotika. Jakarta: Ghalia Indonesia.

Marpaung, Leden. (2013). Proses Penanganan Perkara Pidana. Jakarta: Sinar Grafika.

Samosir, C. Djisman. (2013). Hukum Acara Pidana. Bandung: Penerbit Nuansa Aulia.

Sasangka, Hari. (2003). Narkotika dan Psikotropika Dalam Hukum Pidana. Bandung: Mandar Maju.

Siswanto, S. H. (2012). Politik Hukum Dalam Undang-Undang Narkotika. Jakarta: Rineka Cipta.

Soedjono. (2013). Segi Hukum Narkotika di Indonesia. Bandung: PT.Karya Nusantara.

Soerjono, Sri Mamudji. (2015). Penelitian Hukum Normatif. Jakarta: Rajawali Pers

Supramono, Gatot. (2004). Hukum Narkoba Indonesia. Jakarta: Djambatan.

Undang-Undang Negara Republik Indonesia Nomor 35 Tahun 2009 Tentang Narkotika.

Yana Ardila, Julianto Jover Jotam Kalalo. (2019). Arrangement for Issuance of Certificate of Substitute of Land Rights. *Musamus Law Review*, 2 (1), 36-49, <https://doi.org/10.35724/mularev.v2i1.2270>