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Problems of Law Enforcement Against Drug Users (Decision Study Number: 214/Pid.Sus/2024/PN.Mdn)

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Abstract

The distribution and abuse of narcotics are serious national issues that the government considers a threat to the nation's moral integrity. Perpetrators of narcotics crimes often receive sentences from the courts that do not align with justice or legal certainty. In narcotics cases, key articles such as Articles 114, 112, and 127 of Law Number 35 of 2009 on Narcotics are commonly used. However, Articles 112 and 127 are often criticized for their vague formulations, leading to multiple interpretations. These ambiguities allow drug dealers to disguise themselves as victims, which may result in lighter sentences and contribute to legal injustice. This research adopts a normative legal approach, systematically analyzing court decisions and applicable laws to understand the criminal sanctions imposed on narcotics offenders. The study found that law enforcement in narcotics cases faces significant challenges, with a strong reliance on criminal penalties. The study further highlights the need for enhanced efforts at local, national, and international levels to combat narcotics-related crimes. In the specific case studied, the Medan District Court sentenced the defendant, Veri Suriana, to six years in prison and a fine of one billion rupiah. Failure to pay the fine would result in an additional six-month prison sentence.

Keywords: Narcotics law, legal uncertainty, criminal sanctions.

Introduction

Narcotics Law Number 35 of 2009 does not provide sufficient limitations on who is meant by a dealer and who is meant by an addict. Likewise, Law Number 35 of 2009 concerning Narcotics explains that Narcotics Addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. This means that the law only requires rehabilitation for addicts and victims. What is meant by victims is only a little and is very limited explained in the explanation of Article 54 that "victims of Narcotics abuse" are someone who accidentally uses Narcotics because they are persuaded, tricked, deceived, forced, and/or threatened to use Narcotics, while the definition of an addict is a person who uses or abuses Narcotics and is in a state of dependence on Narcotics, both physically and psychologically.

In Indonesia, the issue of law enforcement has been in the spotlight, especially in the issue of the criminal justice system. One of the issues in the spotlight is the relationship between the criminal justice system and the problem of narcotics (narcotics, psychotropics and other

addictive substances) which should be handled with various approaches, but in practice, the punitive approach is the main pillar. In the international world, drug policies have developed further after the birth of 3 UN Conventions on Drugs, namely the Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971 and the UN Convention on the Eradication of Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

The changes in drug policy in Indonesia followed many of these world developments with the enactment of Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961, along with the Protocol amending it,3 and Law Number 7 of 1997 concerning the Ratification of the UN Convention on the Eradication of Illicit Trafficking in Narcotics and Psychotropics 19884, then the issuance of Law Number 5 of 1997 concerning Psychotropics and Law Number 22 of 1997 concerning Narcotics. After Law Number 5 of 1997 was replaced by Law Number 35 of 2009 concerning Narcotics, this latest law became a law that combines the rules on substances contained in the provisions on Psychotropics and Narcotics and parties with certain authorities.[1]

In contrast to the policies in Indonesia, ideas and debates have emerged in various parts of the world to find alternative solutions to the drug problem. Of the various approaches that are increasingly developing, criminalization is not the only solution. The public health approach and providing economic alternatives to the drug problem are the main focus which is now increasingly seen as an effective approach. England, for example, now acknowledges that their drug policy must be reformed, one of which is the policy on criminalizing users. The same thing was also conveyed by the President of Guatemala, Otto Perez, who pushed for the legalization of the use of certain drugs by saying that, "Drug abuse, alcoholism and tobacco should be treated as public health problems, not criminal justice issues".[2]In contrast, with the two countries, Portugal has made an extraordinary legal breakthrough. Since 10 (ten) years ago, the Portuguese government has abolished criminal provisions against people with drug addiction and even against abusers in certain categories.[3]

The problem that is often faced regarding Narcotics is drug abusers or addicts who use narcotics outside of medical interests or needs, even exceeding the dose that can be accepted by the body, causing the user to overdose. The impact of drug abuse is that it can damage the resilience of society, the nation, and the state.

Parties who abuse narcotics according to Law No. 35 of 2009 consist of narcotics addicts as regulated in Article 1 number 13 and abusers as regulated in Article 1 number 15. Narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically. Abusers are people who use narcotics without rights or against

[1]AR. Sujono and Bony Daniel, Comments and Discussion of Law Number 35 of 2009 concerning Narcotics. (Jakarta: SinarGrafika, 2011) Page 127
[2]The Guardian, "Drugs Policies are not working, believe 75% of MPs", http://www.guardian.co.uk/politics/2012/sep/08/mps-drugs-policies-not-working?CMP=twit_gu, traced 19 July 2024.
[3]Abidin Az and Andi Hamzah, Introduction to Indonesian Criminal Law, (Jakarta: PT. Yarsif Watampone, 2010) pages 42-43.

the law. The factors that cause narcotics crimes are divided into 2 (two) groups, namely internal factors and external factors.[4]

Internal factors usually come from things within the perpetrator of drug crimes, such as a shaken soul and a sense of despair that requires a sense of calm, security, comfort for the perpetrator so that it can eliminate the feelings of anxiety and despair that are felt. External factors come from things outside the perpetrator of drug crimes, such as socializing, environmental influences, and pressure or pressure from certain parties.

The perpetrators and victims of drug abuse come from all ages, from children, teenagers, to adults. The spread of illegal drugs has spread and expanded throughout the world. The problem of drug abuse in Indonesia is now very concerning. This situation is caused by several things, including the awareness of the Indonesian people about their lack of obedience to religious teachings, norms and laws. The sophistication and ease of transportation and technology greatly facilitate the development of drug abuse and the spread of narcotics so that many cases occur, both cases of drug users, cases of drug dealers, and drug smuggling.[5]

Based on the above, in terms of victimology, someone who is tricked into distributing drugs is also part of the victim, but in practice, it is sometimes considered a perpetrator of drug crimes. For example, someone who is very naive is approached by someone else to bring something that will be given to the other person's friend, with the intention of helping this very naive person carry the item and then not long after that is caught by law enforcement who turns out that the item he is carrying contains a drug package.[6]

The case that is the object of this research is onDecisionNumber: 214/Pid.Sus/2024/PN.Mdn. Against the defendant namedVeri Suriana als Veri is legally and convincingly guilty of committing the criminal act "without right and against the law of possessing, storing, controlling or providing non-plant class I narcotics", as regulated and punishable by violation of Article 112[7]Article (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics (Second indictment).

In this decision, the defendant was sentenced to 7 (seven) years in prison minus the time already served and with an order that the defendant remain in detention and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 6 (six) months.

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[4]Haris Sasangka, 2003, narcotics and psychotropics in criminal law for students and practitioners as well as drug problem educators, 1st edition, Mandar Maju, Bandung, page 33.

[5]Rahmandani Sinar, et al., "Legal Certainty of the Implementation of Article 112 of Law Number 35 of 2009 concerning Narcotics in the Jurisdiction of the East Kalimantan Regional Police" Lex Suprema Journal 2, No. 2 (2020).

[6]Prayogo, R. Tony. "Implementation of the Principle of Legal Certainty in Supreme Court Regulation Number 1 of 2011 Concerning the Right to Material Review and in Constitutional Court Regulation Number 06/PMK/2005 Concerning Guidelines for Proceedings in the Review of Laws" Indonesian Legislation Journal 13. No. 2 (2016)

[7] **Article 112 paragraph (1) of the Narcotics Law**regulates that any person who without rights or against the law possesses, stores, controls, or provides Class I Narcotics other than plants, shall be punished with a minimum prison sentence of four years and a maximum of twelve years and a fine of at least IDR 800 million and a maximum of IDR 8 billion.

Chapter VI of Law Number 35 of 2009 concerning Narcotics has regulated the Circulation, Distribution and Delivery of Narcotics, in Article 35 of this law it is determined that the Circulation of Narcotics includes every activity or series of activities for the distribution or delivery of Narcotics, whether in the context of trade, non-trade or transfer, for the benefit of health services and the development of science and technology, then based on Articles 7 and 8 of the Narcotics Law it is determined thatClass I narcotics may only be used for the development of science and technology.[8]

Further, it is stated that in the context of the distribution, delivery, and handing over of narcotics, Law Number 35 of 2009 on Narcotics regulates the licensing of institutions or agencies involved in narcotics circulation, and it does not recognize individuals or private persons who can control, possess, store, or distribute Class I narcotics. Furthermore, Class I narcotics cannot be used for healthcare purposes.

In this case, the defendant, without authorization or unlawfully, offered to sell, sold, bought, received, acted as an intermediary in the sale, exchanged, or handed over Class I narcotics. When officers from the Medan Timur Police Station conducted a search on the defendant, they found a sum of Rp. 215,000 (two hundred fifteen thousand rupiah) in the defendant's pocket, along with three small transparent plastic packages containing methamphetamine. Hanafi Als Napi instructed the defendant to sell the methamphetamine to someone else. The defendant did not have the required authorization from the relevant authorities to buy, sell, or act as an intermediary in the narcotics trade. As a result, the defendant's actions are regulated and punishable under Article 114 paragraph (1) of Law Number 35 of 2009 on Narcotics.

The penalty for those who violate Article 114 of the Narcotics Law is a prison sentence of at least five years and up to twenty years, as well as a fine of at least Rp. 1 billion and up to Rp. 10 billion for those who unlawfully offer for sale, sell, buy, receive, act as an intermediary in the trade, exchange, or hand over Class I narcotics.

Based on the issues presented above, there are two key research questions:

1. How is narcotics policy regulated in Indonesia, and how does it provide effective solutions in the effort to combat illegal narcotics trafficking?
2. What factors do judges consider when delivering verdicts on narcotics abuse offenders?

Method

In research, the research method is used to solve the problems that will be investigated. According to Sugiyono (2012), methodology is the scientific way to obtain data with specific objectives and purposes. Meanwhile, according to Surakhmad (2004), the method is the main approach used to achieve a goal, such as examining a series of hypotheses using analytical techniques.

[8]Rahmandani Sinar, et al., "Legal Certainty of the Implementation of Article 112 of Law Number 35 of 2009 concerning Narcotics in the Jurisdiction of the East Kalimantan Regional Police" Lex Suprema Journal 2, No. 2 (2020).

The type of research used is normative juridical (legal research), normative legal research is referred to as doctrinal research, library research or document study. Data sources are anything that can provide information about the data to be studied. In this study, the data sources used by the author are two, namely primary data and secondary data. The object of research is one of the references used as a research target with the aim of finding out the truth and facts about the research being studied. The object of research to be studied is in the Surakarta district court.

The research techniques used in the data collection process are through interviews, documentation and literature studies. This analysis is used to understand the relationships and concepts in the data being studied. In this case, researchers analyze data generated through interviews with research subjects. According to Miles and Humberman (1984), data analysis used in qualitative research includes data reduction, data presentation and drawing conclusions.

Regulation of Narcotics Policy in Indonesia to have a solution-oriented impact in efforts to combat illegal narcotics trade

Based on the data, the implications of drug policies in Indonesia over the past 15 years can be seen. One of them is the increasing number of people with HIV/AIDS which is closely related to the use of injecting drugs. The available data states that there were 21,591 people with HIV in 2010 and 21,031 people with HIV in 2011, while up to March 2012 it had reached 9,883 people with HIV. Cases of people with AIDS in 2010 reached 5,744 people, in 2011 it reached 4,162 people and in March 2012 it reached 2,224 people.17 Injecting Needle Users (IDUs) still contribute a large number of HIV/AIDS cases, namely around 10,265 IDUs with AIDS or contributing 53% of the total AIDS cases during the 5-year period.18 In addition to infectious diseases, drug cases also contribute to the high difficulty in prison overcapacity. The number of cases due to consuming narcotics is 37.5% of the total narcotics cases in Indonesia since 2007-2011 or amounting to 10,851 people. Only 0.2% or around 17 cases are producers or around 0.2% of planting cases or 85 total cases.19 According to information from the Director General of Corrections, excess capacity reached 56.81% in 2009. A total of 140,423 prisoners, 37,295 of whom were those with narcotics cases, of whom 285 died in prison and 89 of whom died due to HIV/AIDS.[9]

Seeing the above problems, it is right if the drug policy in Indonesia is immediately reformed. Not to mention the emergence of stigma and discrimination experienced by drug users or abusers which causes many drug users or abusers to be reluctant to report themselves by admitting their drug use to enter the Rehabilitation program.[10]

Although in 2010 the Supreme Court has issued a Circular Letter recommending that every judge handling a drug case should give a rehabilitation decision for addicts or people who

[9]Resnawardhani, Fitri. "Legal Certainty in Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics" Lentera Hukum 6, No. 1 (2019).

[10]Siburian, Jhon Nover. "Legal Analysis of the Implementation of Article 112 Paragraph (1) and Paragraph (1) Linked to the Implementation of Article 127 Paragraph (1) Letter a, and Paragraph (3) of Law Number 35 of 2009 concerning Narcotics in Providing Legal Certainty in Indonesia" JOM 10, No. 1 (2023).

bring drugs for personal consumption in amounts below the circular, there are still many cases of users or abusers who are placed in prison and eventually lose their access to health. This is what complicates and even regresses the drug policy in Indonesia which is not in line with Human Rights (HAM), one of which is caused by the arbitrariness of law enforcement in conducting investigations, inquiries and decisions in the criminal law process.

In fact, currently there are 3 (three) basic principles of drug policy that must be considered, namely: 1) Public health, 2) Development and 3) human security. Drug policy in Indonesia needs to be updated in its model or method to be in accordance with the important principles of effective drug policy. In evaluating drug policy, the debate between social and health policies must also be considered in addition to political issues and diplomatic sensitivity alone. The International Drug Policy Concorsium (IDPC) formulated 5 important principles in making effective drug policy:

1. Drug policies should be developed through a structured and objective assessment of priorities and evidence
2. all activities should be undertaken in full compliance with international human rights law
3. Drug policies should focus on reducing the harmful consequences rather than the scale of drug use and markets
4. policies and activities should seek to promote the social inclusion of marginalized groups
5. governments should build open and constructive relationships with civil society in the discussion and delivery of their strategies.[11]

In the first principle it has been stated that it is important to have an objective assessment of priorities and based on scientific evidence. In the drug policy in Indonesia, it is often found that the drug problem is solely a criminal law policy, it is not surprising that the number of criminalizations of drug users remains high even though the government has repeatedly stated that the humanist and health approaches have been prioritized. In the second principle it is stated that the policy must be based on the fulfillment of international human rights, the implementation of which in Indonesia is still far from expectations.

Human rights violations that have occurred have been reported by various Non-Governmental Organizations from year to year. This third policy is often not implemented in Indonesia. The Drug Policy in Indonesia is considered to be pursuing drug dealers and producers, but in fact in the data presented, users and addicts are the biggest targets in the drug criminalization system. In fact, the biggest consequence of drug use is the health of the user, and not just the drug trade itself.[12]

The fourth principle emphasizes the concept of special protection for marginalized groups. In many cases, the target of law enforcement is the economically marginalized group. This can be seen from the number of drug case suspects, most of whom only received an

[11]Suryaputra, I Made Esa and Mulyadi. "Legal Protection for Drug Addicts and Victims of Drug Abuse" Justitia: Journal of Law and Humanities 8, No. 3 (2021).

[12]Warsito, Dafit Supriyanto Daris. "The Criminal System for Narcotics Abuse Criminal Acts" Journal of Legal Sovereignty 1, No. 1 (2018).

elementary school education, which is 11.8%, while those who received a junior high school education are 27.7% and around 61.9% of those who are in high school from a total of 181,426 people and only 2.6% of the suspects come from universities with a total of 4,868 people.21 BNN data also states that the unemployed group is the second largest group of drug case suspects, which is 6,487 people in 2007 from a total of 85,689 suspects.22 Cooperation with NGOs is something that should be done in accordance with the fifth principle. This is still a question because when cooperation between state institutions is still very difficult to do, then closeness between the government and civil society will be difficult to achieve.

The basic question that often arises is, is it true that there is a punitive drug policy that often violates human rights due to the arbitrariness of law enforcement? The importance of this question has led the UN Human Rights Commission to issue a series of principles to protect everyone in the legal process in detention and in prison.23 In various drug cases, these existing principles are often violated and seem to be negated for drug users or people with drug addiction. The principle that legal sanctions must be given appropriately and impartial trials are some of the principles that are often violated when related to drug use cases.[13]

In this case in the Medan District Court Decision, the Panel of Judges decided that the defendant had fulfilled the elements of Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, Law Number 8 of 1981 concerning Criminal Procedure Law and other legal provisions related to this case so that the Defendant Veri Suriana alias Veri with the above identity has been proven legally and convincingly guilty of committing the crime of "Without the Right to Own or Control"Class I Narcotics.and sentenced the defendant Veri Suriana alias Veri to a prison sentence of 6 (six) years and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid, it must be replaced with a prison sentence of 6 (six) months.[14]

Judge's Considerations in Sentencing Perpetrators of Narcotics Abuse Crimes in Medan District Court Decision Number: 214/Pid.Sus/2024/PN.Mdn.

If we look back at this case, before the judge handed down the verdict against the defendant, after...has been proven legally and convincingly guilty of committing the crime of "Without the Right to Own or Control"Class I Narcotics, with a criminal sentence of 6 (six) years imprisonment and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid then it must be replaced with a prison sentence of 6 (six) months, then there are several things that are the subject of consideration for the judge which in this case are included in the author's research study.

a. Consideration of each person's elements

[13]Laoly, Yasonna, 2019, Deadly Traps: Perspectives on Economic Welfare in *Drug Abuse*, Tangerang: Alvabet Library page 52.

[14]Sunarso, Siswanto, Legal Politics in the Narcotics Law (Law Number 35 of 2009), Jakarta: Rineka Cipta, 2012.

In the view of the Panel of Judges, the definition of "Every Person" is a Legal Subject as an Actor or one who carries out a legal act or legal event, namely an individual, a group of people or a Legal Entity who in this case is the perpetrator of the act as described in the indictment.

The defendant is a person, so according to legal science, a person is included in the definition of a legal subject or perpetrator of a legal act or event, so the submission of the defendant as a legal subject has been proven to fulfill the provisions of the law, so this element is declared to have been proven and fulfilled according to the law and therefore it will be considered next whether the defendant is proven to have committed the act that he is accused of.

The perpetrator referred to is the perpetrator of a crime, meaning a person who commits a crime, in the sense of a person who intentionally or unintentionally as implied by the Law, whether it is subjective elements or objective elements, regardless of whether the decision to commit the crime arose from himself or not due to the movement of a third party.[15]Criminal Act is a formulation of an act that is prohibited to be 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.[16]Criminal acts can be differentiated on certain grounds, namely as follows:

Based on the description above, regarding the criminal provisions regulated in Law Number 35 of 2009 concerning Narcotics, if a set of criminal sanctions that have been applied are the result of inappropriate choices or are no longer in accordance with developments, then it is natural that this development is slightly disturbed. In this case, the increase and development of criminal acts on the one hand with the limited number of criminal sanctions available to judges and prosecutors on the other hand is one of the problems in the field of criminal policy that is quite difficult.[17]

The elements of a crime in criminal law in general are as follows:

1. Human actions; both active actions (criminal acts) or passive actions (criminal acts).
2. The act is contrary to or against the law.
3. The act must be subject to a threat of punishment in the law.
4. It must be proven that the act was committed by the person who committed it, that is, the person must be accountable.
5. The act must be carried out by a legally competent and accountable person.[18]

There are two types of additional elements for mitigating criminal acts, namely objective and subjective. Therefore, the elements of a criminal act consist of:

1. It is a human act;
2. Fulfilling the formulation in the law (formal requirements); and

[15]Barda Nanawi Arief, Summary of Criminal Law Lecture II, Faculty of Law, Diponegoro University, 1984, page 37

[16]PAF Lamintang, Basics of Criminal Law in Indonesia, 1st Edition, PT Sinar Grafika, Jakarta, 2014, page 179.

[17]B Simandjuntak, Introduction to Criminology and Social Pathology, Parsito, Bandung, 1981, page 200.

[18]Tresna, Principles of Criminal Law, PT. Tiara Limited, Jakarta, 1959, page 27.

3. The human act is against applicable law (material requirements)

Formal requirements are needed to fulfill the legality principle of the law itself. This means that an act can be categorized as a crime if it has been regulated in legal regulations. Human actions that are not or have not been regulated in legal regulations cannot be subject to sanctions from the relevant legal regulations. Usually, new legal regulations will be formed to regulate these actions. If detailed, the elements of a crime consist of subjective and objective elements. Subjective elements, which explain the person in question, can be interpreted as every person, state administrator, civil servant, or corporation or group of people who are organized.

Subjective elements include:

1. Intention (dolus) where this is found in violation of morality (Article 281 of the Criminal Code), deprivation of liberty (Article 333 of the Criminal Code), murder (Article 338).
2. Negligence (culpa), which is found in the deprivation of liberty (Article 334 of the Criminal Code), and others.
3. Intention (voormemen), where this is found in the attempt or poging (Article 53 of the Criminal Code)
4. Intent (oogmerk), where this is found in theft (Article 362 of the Criminal Code), extortion (Article 368 of the Criminal Code), fraud (Article 378 of the Criminal Code), and others.
5. With prior planning (met voorbedechte rade), which is found in the act of abandoning one's own child (Article 308 of the Criminal Code), killing one's own child (Article 341 of the Criminal Code), killing one's own child with planning (Article 342 of the Criminal Code).

In general or most of the criminal acts according to Law Number 35 of 2009 concerning Narcotics, are criminal acts of drug abuse, namely abuse by people who are not entitled, not authorized. The problem in Law Number 35 of 2009 that is more threatening to the crime of drug abuse, is that users, transaction actors, providers and so on are people in healthy conditions, not sick. The concept of abuse stems from the existence of a person's rights or authority guaranteed by law. Drug abuse is a form of deviation, action or deed from people who are not entitled, not authorized to use or distribute narcotics.[19]

In many cases of narcotics crime in particular and drugs in general, it is always related to transnational crime, corporate crime, money laundering crime, and so on. Narcotics crime in particular and drugs in general as transnational crime, because the crime occurs beyond the borders of the country, such as networks or syndicates originating from abroad that bring narcotics into the territory of Indonesia. As a corporate crime according to Marwan Effendy, corporate crime (crime by corporation) is often identified with white collar crime which is related to organized crime.

[19]HarimanSatria, Anatomy of Special Criminal Law, UII Press, Yogyakarta, 2014, page 76.

Consideration of the Elements Without Rights or Against the Law of Storing, Controlling, or Providing Class I Narcotics other than plants.

The element of being without rights is equated with being against the law so that what is meant by "being without rights or against the law" is the existence of an act carried out by the perpetrator that is contrary to the provisions of the law which in the aquo case is an act related to the Control, Ownership, Illegal Distribution of Narcotics and Narcotics Precursors which is determined as a criminal act.

In criminal law, there is a doctrine of unlawful nature. It is true that the panel of judges has applied one of the unlawful nature teachings, namely the formal unlawful nature teaching. This can be justified considering Article 1 paragraph (1) of the Criminal Code as the principle of legality, namely nullum delictum noella poena, sine praevia legi poenali (no act can be punished except by existing laws and regulations). In addition to the formal unlawful nature teaching, there is also a material unlawful nature teaching, where an act can be said to be unlawful (onrecht) in addition to being contrary to the wording of the law and also because it is contrary to the sense of justice or outlook on life that exists in society. Regarding the elements of the act (as one of the requirements for punishment), these two things (formal and material unlawfulness) must be fulfilled first, only then can the act be said to be unlawful.

Furthermore, if we observe the elements of criminal acts in the provisions of Article 111 to Article 126 of the Narcotics Law, the Law contains the phrase "any person who is without rights or against the law" which is connected to several criminal acts of narcotics abuse. The Narcotics Law contains four categories of criminal acts without rights or against the law that are prohibited by the Law and can be subject to criminal sanctions, namely:

1. The first category, namely acts in the form of possessing, storing, controlling, or providing narcotics and narcotic precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics and Article 122 for class III narcotics and Article 129 letter (a));
2. The second category, namely acts in the form of producing, importing, exporting or distributing narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for class II narcotics and Article 123 for class III narcotics and Article 129 letter (b));
3. The third category, namely acts in the form of offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for class II narcotics, Article 124 and Article 126 for class III narcotics and Article 129 letter (c));
4. The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotic precursors (Article 115 for class I narcotics, Article 120 for class II narcotics and Article 125 for class III narcotics and Article 129 letter (d)).

In the case that the author studied, the defendant known as Veri Suriana alias Veri was proven legally and convincingly guilty of committing a criminal act without rights or against the law of possessing, storing, controlling, or providing Class I narcotics other than plants of the

shabu-shabu type (Article 112 paragraph (1) of the Narcotics Law). The judge sentenced the defendant to 6 (six) years in prison and required the defendant to pay a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if it is not paid, it will be replaced with a prison sentence of 3 (three) months.

In general, if a criminal act formulation includes an element of unlawfulness, then it can be interpreted that unlawfulness means without rights or without authority. So it can be concluded that the element of "without rights" is part of the element of "unlawfulness" if referring to the formal legal understanding as regulated in the Narcotics Law. In line with this, Pompe said that unlawfulness (wederrechtelijk) means contrary to the law, which has a broader meaning than simply contrary to the law.

However, the Narcotics Law does not provide further explanation regarding the elements of "possessing, storing, controlling, or providing". In the Big Indonesian Dictionary (KBBI) (https://kbbi.web.id/milik, accessed July 18, 2024), possessing is defined as (1) having, (2) taking illegally to be owned. The element of possessing or having in this Article means that one must truly be the owner, regardless of whether the goods are physically in the hands of the person or not.

However, in the context of the Narcotics Law, ownership must be seen from the element of how the goods can be owned by the Defendant (their origin), whether the Defendant obtained the narcotics from a gift, by planting them himself, buying them or in other ways, the point being that there must be a direct relationship between the perpetrator and the narcotics so that they can be called the "owner" (Sujono and Daniel[20].

Furthermore, when referring to KBBI, the word save is interpreted as putting in a safe place so that it is not damaged, lost, and so on (https://kbbi.web.id/simpan, accessed July 18, 2024). In the Narcotics Law, there is also no specific regulation regarding the definition of control, whether the narcotics are controlled only for consumption, distribution or just for possession. Where the word control is the main problem in this law is that the lack of explanation of the definition and limitations in the elements of controlling narcotics has caused many perpetrators of narcotics crimes who are caught red-handed controlling narcotics for the purpose of consumption, are subject to the article intended for narcotics dealers. Regarding the element of control, AR Sujono and Boby Daniel[21]states that: "To control means to have power over (something); to hold power over something.

A person is said to have control over goods if he can control what he controls, he can control something that is in his power, it is not necessary whether the object is in his physical control or not, what is important is that the perpetrator can carry out actions such as selling, giving to other people or other actions that show that the perpetrator really has power over the goods."

[20]AR Sujono and Bony Daniel. 2011. Comments & Discussion of Law Number 35 of 2009 Concerning Narcotics. Jakarta: Sinar Grafika

[21]AR Sujono and Bony Daniel. 2011. Comments & Discussion of Law Number 35 of 2009 Concerning Narcotics. Jakarta: Sinar Grafika

Referring to Civil Law, the Civil Code (KUH Perdata) defines control as "possession" which is intended as something about a position in power. Article 529 of the Civil Code formulates: "What is called a position of power is the position of a person who controls an object, either by himself, or through another person, and who maintains or enjoys it as the person who owns the object."

Furthermore, Article 1977 of the Civil Code states, "For movable objects that are not in the form of interest or receivables that do not have to be paid to the bearer, whoever controls them is considered to own them." It can be seen that the position of a person who can control an object either by himself or through another person and to maintain and enjoy it is a person who is none other than the owner of the object, so this can be called power.

The Constitutional Court in Decision Number: 31/PUU-XV/2017 gave an opinion regarding the confusion contained in Article 112 paragraph (1), "The Court is of the opinion that the assessment of a case in a concrete case is actually the domain of law enforcement in this case the investigator, so that regarding the implementation of the norm contained in Article 112 paragraph (1) of the Narcotics Law, especially the phrase, "controlling, possessing, and storing" which must be linked to the existence of evidence in the person of a person suspected of being an Abuser, according to the Court, in terms of terminology, this is actually a very clear meaning." The use of the elements of possessing, storing or controlling in Article 112 paragraph (1) must be seen from the purpose for which the narcotics are controlled, owned, or stored.

The thing that needs to be emphasized, whether it is only for personal use or for trading either in the position of being produced, exported, imported, transited, distributed or handed over. With the threat of a minimum criminal penalty for both imprisonment and a fine, this provision is more appropriate to be applied to parties involved in the illicit drug trade as producers or distributors of narcotics, not to Abusers who have their own threat of punishment for the act of abusing narcotics. In drug abuse, the judge has a role to decide as severely as possible the perpetrators of drug dealers or syndicates with the maximum penalty.

This aims to achieve the ideals and goals of the state as stated in the opening of the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, namely to form an Indonesian state government that protects all Indonesian people and all Indonesian territory and to advance general welfare, improve the life of the nation, and participate in implementing world order based on independence, eternal peace, and social justice.

Conclusion

1. Looking at the drug policy in Indonesia, which even though it has changed the Narcotics Law for the second time, it can be concluded that there is still a big failure in meeting the objectives of an effective drug policy: reducing the supply of drugs, reducing the negative impacts of drugs with the principle of human rights, and legal justice. The drug policy in Indonesia must be recognized as having attempted to reform itself in a better direction with a health approach, namely by implementing rehabilitation punishment. However, unfortunately, these reform efforts are still inconsistent among each level of law enforcement. Drug policy reform cannot

change immediately. It takes time to make plans and harder efforts to create an effective drug policy in Indonesia. However, in the field of drug law enforcement, this seems to be much more difficult. Prioritizing criminal penalties seems to be very much embedded in our law enforcement. Extraordinary encouragement is needed at the local, national and international levels. So in relation to the case in this research, the Medan District Court Judge decided that the defendant was legally and convincingly guilty in accordance with the provisions of Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics by sentencing the defendant Veri Suriana alias Veri to a prison sentence of 6 (six) years and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid, it must be replaced with a prison sentence of 6 (six) months.

2. Meanwhile, the considerations of the Medan District Court Panel of Judges, by paying attention to the legal facts, were to directly choose the charges as regulated in Article 112 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics, the elements of which have been fulfilled, namely:Elements of every person and Elements Without Rights or Against the Law of Storing, Controlling, or Providing Class I Narcotics other than plants. The defendant in this case isa person who is included in the definition of Legal Subject or Actor of a legal act or event, then the submission of the Defendant as a Legal Subject has been proven to meet the provisions of the law, then this element is declared to have been proven and fulfilled according to the law, while the element without rights is equated with against the law so that what is meant by "without rights or against the law" is the existence of an act carried out by the Actor that is contrary to the provisions of the legislation which in the aquo case is an act related to Control, Ownership, Illegal Distribution of Narcotics and Narcotics Precursors which is determined as a criminal act of Narcotics and Narcotics Precursors as referred to in Law Number 35 of 2009 concerning Narcotics.

References

A.R. Sujono dan Bony Daniel. 2011. Komentar & Pembahasan Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika. Jakarta : Sinar Grafika

Abidin Az dan Andi Hamzah, Pengantar Dalam Hukum Pidana Indonesia, (Jakarta: PT. Yarsif Watampone, 2010)

AR. Sujono dan Bony Daniel, Komentar dan PembahasanUndang-UndangNomor 35 Tahun 2009 tentangNarkotika. (Jakarta: SinarGrafika, 2011)

B Simandjuntak, Pengantar Kriminologi Dan Patologi Sosial, Parsito, Bandung, 1981

Barda Nanawi Arief, Sari Kuliah Hukum Pidana II, Fakultas Hukum Undip, 1984

HarimanSatria, Anatomi Hukum Pidana Khusus, UII Press, Yogyakarta, 2014

Haris Sasangka, 2003, narkotika dan psikotropika dalam hukum pidana untuk mahasiswa dan praktisi serta penyuluh masalah narkoba, cetakan 1, Mandar Maju, Bandung

Laoly, Yasonna, 2019, Jerat Mematikan: Prespektif Kesejahteraan Ekonomi dalam

P.A.F Lamintang, Dasar-Dasar Hukum Pidana di Indonesia Cet-1, PT Sinar Grafika, Jakarta, 2014

Penyalahgunaan Narkoba, Tangerang: Pustaka Alvabet

Prayogo, R. Tony. "Penerapan Asas Kepastian Hukum dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil dan dalam Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 Tentang Pedoman Beracara dalam Pengujian Undang-Undang" Jurnal Legislasi Indonesia 13 No. 2 (2016)

Rahmandani Sinar, dkk, "Kepastian Hukum Penerapan Pasal 112 Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika di Wilayah Hukum Kepolisian Daerah Kalimantan Timur" Jurnal Lex Suprema 2, No. 2 (2020).

Resnawardhani, Fitri. "Kepastian Hukum dalam Pasal 112 dan Pasal 127 UndangUndang Nomor 35 Tahun 2009 tentang Narkotika" Lentera Hukum 6, Nomor 1 (2019).

Siburian, Jhon Nover. "Analisis Yuridis Penerapan Pasal 112 Ayat (1) dan Ayat (1) Dikaitkan dengan Penerapan Pasal 127 Ayat (1) Huruf a, dan Ayat (3) Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika dalam Memberikan Kepastian Hukum di Indonesia" JOM 10, No. 1 (2023).

Sunarso, Siswanto, Politik Hukum dalam Undang-Undang Narkotika (UU Nomor 35 Tahun 2009), Jakarta: Rineka Cipta, 2012.

Suryaputra, I Made Esa dan Mulyadi. "Perlindungan Hukum Terhadap Pecandu dan Korban Penyalahgunaan Narkotika" Justitia: Jurnal Ilmu Hukum dan Humaniora 8, Nomor 3 (2021).

The Guardian, "Drugs Policies are not working, believe 75% of MPs", http://www.guardian.co.uk/politics/2012/sep/08/mps-drugs-policies-not-working?CMP=twit_gu, ditelusuri tanggal 19 Juli 2024

Tresna, Asas-asas Hukum Pidana, PT Tiara Limited, Jakarta, 1959, halaman 27

Warsito, Dafit Supriyanto Daris. "Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyelahguna Narkotika" Jurnal Daulat Hukum 1, No. 1 (2018).