

# The Handling of Narcotics Criminal Acts with the Penal Effort: Analysis on the Implementation of Imprisonment and Fine Penalty Sanctions

Nurmalawaty<sup>1</sup>

<sup>1</sup>*Criminal Law Department, Universitas Sumatera Utara, Jl. Dr. Mansyur No.7, Medan, Indonesia*

**Keywords:** Handling, Narcotics Criminal Acts, Penal Effort.

**Abstract:** The narcotics criminal act in Indonesia is still urgent and complex. From the disclosure of drug crimes cases that increasingly diverse patterns and circulation networks, narcotics abuse also increased significantly both from quantity and quality. Law No. 35 of 2009 on Narcotics is a criminal law policy in which regulates the actions and penal sanctions that can be imposed for the perpetrators. The number of narcotics criminal acts that perpetrators are punished does not significantly affects the decline in crime rates. Even, the prisoners who are undergoing imprisonment are still able to control the circulation of narcotics from prison. This study focuses on judicial review, to find how the implementation of judicial policy in deciding narcotics criminal act cases in Medan District Court. The type of the research is normative legal research in the order of judicial policy with descriptive approach. The application of criminal sanctions with imprisonment and fine penalties for drug criminal act has not reached the goal of criminal prosecution, as evidenced by the lightness of court decisions and the existence of criminal disparities of judicial decisions against narcotics offenders.

## 1 INTRODUCTION

Drugs abuse and illegal narcotics trafficking in Indonesia from year to year shows an increasing development, and even reaching an alarming level. Indonesia is not only a narcotics distribution place, but has become a drug production site. It is said, Indonesia is a drug market, because the existence of supply & demand activities (Nugroho Prasetyo Hendro, 2014). The problem of narcotics abuse is not only a problem that needs attention for the State of Indonesia, but also for the international community. Entering the 20th century, International attention to the narcotics problem is increasing, One of them can be seen through the Single Convention on Narcotic 1961 (Kusno Adi, 2009).

The chief of National Anti-Narcotics Agency (BNN) of North Sumatra, Andi Loedianto, conveyed the distribution of narcotics and illegal drugs in North Sumatra Province has entered an alarming stage, and is currently in the "North Sumatra Emergency Drugs" condition. Based on data from the National Anti-Narcotics Agency, there are around 350 thousand people or 2.5 percent of the

total population of North Sumatra with 13,937,797 people living in 6,101 villages or 33 districts/cities. The Chief of the National Anti-Narcotics Agency (BNN) of North Sumatra Brigadier General Andi Loedianto said this number can be said 10 thousand people in every district/city who became drug user (Republika, 2015).

From the narcotics criminal cases which are processed in the Medan District Court, the data in 2017 has received at least 4,075 case files, all the files included consist of 3,946 General Criminal Cases and Special Criminal Cases including Corruption Criminal Act as many as 129 files.

The efforts of handling crime can be achieved by criminal law application, prevention without punishment, influencing views of society on crime and punishment/mass media (G. Peter Hoefnagels, 1973). The effort of handling crime by using sanctions (criminal law is the oldest way of human civilization itself. Until now, criminal law is still used and relied as one of the criminal political means (Barda Nawawi Arief, 1998).

This paper analyzed how to handle narcotics criminal acts through the penal effort (criminal

justice system) and how is the implementation of the criminal sanction that is given by the judge to the defendant that done the narcotics criminal acts in Indonesia.

## 2 RESEARCH METHODOLOGY

The type of the research is normative legal research in the judicial policy setting, namely reviewing and analyzing the regulations which related to narcotics crime. This research uses descriptive analytical approach by exposing various judge decisions in narcotic crime cases. The data sources in this research are secondary data. The data obtained through documentation studies from books, research journals, magazines, and internet sites to support this research.

The data analysis was carried out with qualitative and descriptive normative analysis methods. Qualitative normative method is based on the rules in legislative policy, then descriptive will describe the application of rules in various narcotics cases at the Court level, which further analyzes the implementation of the judge's decision. The analyzed data was strengthened by library data through the books and regulations that related to the problems in this research.

## 3 RESULT AND DISCUSSION

### 3.1 The Effort of Handling Narcotics Criminal Acts in Indonesia

The effort of handling narcotics criminal acts in Indonesia has begun since the enactment of the drug ordinance (*Verdoovend Middelen Ordonnantie*, Stbl. 1927 Number 278 Jo Number 536). This ordinance was replaced by Law No. 9 of 1976 on Narcotics Criminal Act. In 1997, a new law was made, namely Law No. 5 of 1997 on Psychotropic and Law No. 22 of 1997 on Narcotics replacing Law No. 9 of 1976. The birth of the two laws was preceded by the issuance of Law No. 8 of 1996 on the ratification of psychotropic convention in 1971 and Law No. 7 of 1997 on the ratification of the convention to eradicate illicit drug trafficking and psychotropic drugs in 1988.

As the technology and information progresses, narcotics criminal act is growing not only in local dimension but also in international dimension that is carried out by using sophisticated modus supported

by a wide network of organizations, and cause a lot of victims, especially the young generation of the nation. Narcotics circulation has penetrated national borders in the world, entered Indonesia as a transit country state or even as a point of market-state (Lilik Muliadi, 2012).

In the Law Number 35 of 2009 on Narcotics, there is a type of criminal sanction formulation (*strafsoort*) and the formulation of the duration of criminal sanction (*strafmaat*) which can be seen in the table below:

Table 1: Form of Sanctions (*Strafmaat*) in Law No. 35 of 2009 on Narcotics.

Article	Form of sanctions
Article 111,112	(1) Imprisonment minimum 4 (four) years and maximum 12 (twelve) years and fine minimum Rp. 800.000.000,- (eight hundred million rupiah) and maximum Rp. 8.000.000.000.000,- (eight billion rupiah). (2) Life imprisonment or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and fine maximum 20 (twenty) years and fine minimum Rp. 800.000.000,- (eight hundred million rupiah) and fine maximum as referred to in paragraph (1) there to plus 1/3 (one-third).
Article 113,116	(1) Imprisonment minimum 5 (five) years and minimum 15 (fifteen) years and fine minimum Rp. 1.000.000.000,- (one billion rupiah) and maximum Rp. 10.000.000.000.000,- (ten billion rupiah). (2) Death penalty, or life imprisonment, or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and fine maximum as referred to in paragraph (1) there to plus 1/3 (one-third).
Article 128	Detention maximum 6 (six) months and fine maximum Rp. 1.000.000,- (one million rupiah).
Article 134	(1) Detention maximum 6 (six) months and fine maximum Rp. 1.000.000,- (two million rupiah). (2) Detention maximum 3 (three) months and fine maximum Rp. 1.000.000,- (one million rupiah)

The formulation of criminal sanctions in the Act consists of: the first is the primary punishments are

imprisonment, death penalty, detention, fine, additional punishment (revocation of business licenses/revocation of certain rights and the eviction of foreigners). The second is the duration of imprisonment is various. Imprisonment of 1 year to 20 years and/or life imprisonment. For detention ranged from 6 months. The third is the number of criminal penalties ranges from 60 million rupiah to 10 billion rupiah for psychotropic crimes, and between 1 million rupiah to 7 billion rupiah for narcotics crime. The fourth is criminal sanctions are generally threatened cumulatively (especially imprisonment and fine).

The handling of criminal acts through the penal means (criminal justice system) is used the theory of criminal policy. According to G.P. Hoefnagels, the efforts to handle criminal acts include: The criminal law application which focuses on the repressive nature (suppression of eradication, crackdown) after the occurrence of a crime (Barda Nawawi Arief, 1996).

### 3.2 The implementation of Criminal Sanction for Narcotics Criminal Acts

In connection with the application of criminal sanctions for narcotics criminal acts, several cases examined and decided in the Medan District Court can be seen in the table below:

Table 2: Case of Narcotics Sent by Medan District Court .

Number of case	72/Pid.Sus/2017/PN MDN, Thursday, January 19 <sup>th</sup> , 2017
Name of defendant	ZAINI HARAINDO Man
Gender	Man
Age	19 years old/ June 20 <sup>th</sup> , 1997
Occupation	Nothing
The violated article	Subsidiary, primary Article 112 Paragraph (1) Jo. Article 132 Paragraph (1) Law No. 35 of 2009 on Narcotics, subsidiary Article 127 Paragraph (1) Jo. Article 55 Paragraph (1) of Criminal Code
Decision	<ol style="list-style-type: none"> <li>To declare the defendant ZAINI HARAINDO was not proven legally and convincingly guilty of committing a criminal offense charged in primary indictment.</li> <li>To release the defendant from the primary indictment.</li> </ol>

	<ol style="list-style-type: none"> <li>To declare the defendant has been proven legally and convincingly guilty of committing a criminal act "Participate in abusing the Narcotics Group I not in form of plant for self".</li> <li>To impose the criminal sanction to the defendant by imprisonment for 1 (one) year.</li> </ol>
Number of case	73/Pid.Sus/2017/PN MDN, Thursday, January 19 <sup>th</sup> , 2017
Name of defendant	M.HELVIN FLANTINO Man
Gender	Man
Age	32 years old/ July 18 <sup>th</sup> ,1984
Occupation	Employee
The violated article	Subsidiary, primary Article 112 Paragraph (1) Jo. Article 132 Paragraph (1) Law No. 35 of 2009 on Narcotics, subsidiary Article 127 Paragraph (1) Jo. Article 55 Paragraph (1) of Criminal Code
Decision	<ol style="list-style-type: none"> <li>To declare the defendant ZAINI HARAINDO has been proven legally and convincingly guilty of committing a criminal offense charged in primary indictment.</li> <li>To release the defendant from the primary indictment.</li> <li>To declare the defendant has been proven legally and convincingly guilty of committing a criminal act "Participate in abusing the Narcotics Group I not in form of plant for self".</li> <li>To impose the criminal sanction to the defendant by imprisonment for 1 (one) year.</li> </ol>
Number of case	292/Pid.Sus/2017/PN MDN, Monday, February 6 <sup>th</sup> , 2017
Name of defendant	IVO ISMAWAN i.e. IVO Man
Gender	Man
Age	40 years old/ March 25 <sup>th</sup> , 1976
Occupation	Labor
The violated article	Alternative, First Article 112 Paragraph (1) of Law No.35 Year 2009 on Narcotics, Or Second, Article 111 Paragraph (1) of Law No.35 Year 2009 on Narcotics, and Third Section Article 127

Decision	<p>Paragraph (1) Sub-Paragraph a Law No. 35 of 2009 on Narcotics.</p> <ol style="list-style-type: none"> <li>1. To declare the Defendant IVO ISMAWAN i.e. IVO has been proven legally and convincingly guilty of committing a criminal offense charged in primary indictment.: Without the right and illegally possessing Narcotics Group I not in form of plants as regulated and threatened in Article 112 paragraph (1) of Law No.35 of 2009 on Narcotics and subsidiary indictment: Without the right and against the law controlling Narcotics Group I form of plants as regulated and threatened in Article 111 paragraph (1) of Law No.35 of 2009 on Narcotics and the third indictment misconduct Narcotics Group for self "as regulated and threatened criminal in Article 127 Paragraph (1) Sub-Paragraph a of Law No. 35 of 2009 on Narcotics as regulated and threatened in Article 127 Paragraph (1) Sub-Paragraph a of Law No.35 Year 2009;</li> <li>2. To impose criminal sanction on Defendant IVO ISMAWAN i.e. IVO with imprisonment for 6 (six) years and fine of Rp.1.000.000.000 (one billion rupiah) provided that the unpaid fine shall be replaced with imprisonment for 2 (two) months.</li> </ol>
----------	--

From some cases that have explained above, it can be said that there is a disparity of the judge's decision in imposing criminal sanction of imprisonment and fine for the perpetrators of narcotics crime. The main aspect of the punishment purpose is to emphasize the offenders, so in this case, an imprisonment will be effective if it can change the offender to be a better person. If it is linked to criminal purposes in providing community protection, imprisonment is said to be effective if the criminal can prevent or reduce the occurrence of crime. The criteria of effectiveness can be seen from how far the frequency of crimes that can be suppressed, both quantitatively and qualitatively. So, this case generally emphasizes on prevention aspect

or in the other words, can prevent others from committing a crime.

In Law No. 35 of 2009, there are some fundamental changes, especially in the increasingly high criminal penalties both imprisonment and fine. From the several cases examined, the judge's decision was relatively very low compared to the criminal threat contained in the law. Moreover, the penalty of fines imposed so much in number, but because it is given an alternative with a very light prison criminal substitute. Even there are judges who do not drop their criminal penalties at all. It can be said that the imposition of imprisonment and fines in narcotics crime will not affect the decrease in the number of narcotic criminal acts.

The issue of imprisonment arose criticisms suggesting that the imprisonment is a less effective type of crime; this is attributed to the comparative rate of recurrence or reconviction rate for the person who first commits a crime compared to the age of the perpetrator. According to Jackson, reconviction rate becomes even higher after people are sentenced to imprisonment rather than criminal instead of imprisonment (R.M. Jackson, 1972).

It is further said that some states have confidence crisis in the effectiveness of imprisonment, and there is a tendency to ignore the ability of prison institutions to support crime control or reduction. Seen from a criminal politics perspective that people do not get better but even more evil after serving a jail term, the prison is a college crime. Therefore, criminal punishment of imprisonment (punitive imprisonment) today is not an effective deterrent to people who are criminals in prison.

#### 4 CONCLUSIONS

One of the efforts to overcome the narcotics criminal acts is through criminal law. As a legal umbrella, Law No. 35 of 2009 on Narcotics has regulated various prohibited actions along with its criminal sanctions, both in the form of imprisonment and fine. In law enforcement for the perpetrators of narcotics crime in Medan District Court, in general, the Judge impose sanction in the form of imprisonment and fine is still far below the criminal sanction as regulated in the Law. The high level of narcotics criminal act that occurs in the community shows that the imposition of imprisonment and fines for the perpetrators can be said to be not effective in preventing and overcoming narcotics criminal act. Therefore, another study is needed with regard to

criminal politics in relation to the prevention and control of narcotics criminal act.

## ACKNOWLEDGEMENTS

We gratefully thank University of North Sumatera for financial support in accordance with TALENTA University of Sumatera Utara Research Contract Year of Fiscal 2018 No. 2590/UN5.1.R/PPM/2018.

## REFERENCES

- Adi, K., 2009. *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak*. Malang: UMM Press
- Arief, B., 1996. *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Yogyakarta: Genta Publising
- Arief, B., 1998. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, PT Bandung: Citra Aditya Bakti
- Hendro, N., 2014. 'Kualifikasi Penyalah Guna, Pencandu dan Korban Penyalahgunaan Narkotika', *Varia Peradilan* No. 344
- Hoefnagels, G.P., 1973. *The Other Side of Criminology*, Holland: Klower-Denver
- Jackson, R.M., 1972. *Enforcing the Law*, Pelican Books
- Muliadi, L., 2012. 'Pemidanaan terhadap Pengedar dan Pengguna Narkoba', *Jurnal Hukum dan Peradilan*, Vol. 1 No. 2
- Republika., 2015. *BNN Sebut Ada 350 Ribu User Narkoba di Sumut* [Online]. Available at <http://nasional.republika.co.id/berita/nasional/daerah/17/08/27/ovc1pk384-bnn-sebut-ada-350-ribu-user-narkoba-di-sumut>, (Accessed: 5 Juli 2018)