

IMPLEMENTATION OF REGULATION OF CRIMINAL NARCOTICS IN INDONESIA

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ABSTRAK

Undang-Undang No. 9 Tahun 1976 tentang Narkotika ini merupakan pengganti dari Undang-Undang tentang Obat Bius warisan pemerintah kolonial Belanda, yaitu *Verdoovende Middelen Ordonnantie* 1927 (Stbl.1927 No. 278 jo No. 536) tanggal 12 Mei 1927. Ordonansi ini terdiri dari 29 pasal yang pada dasarnya telah cukup banyak mengatur masalah penggunaan dan peredaran narkotika. Ordonansi ini mengatur mengenai bagaimana ekspor dan impor narkotika dapat dilakukan. Selain itu ordonansi ini juga telah memberikan larangan-larangan terhadap penggunaan beberapa jenis narkotika. Dalam hal terjadi pelanggaran, ordonansi ini juga telah dilengkapi dengan aturan pidana. Sebagai upaya untuk melindungi masyarakat dari bahaya penyalahgunaan narkotika mencegah serta memberantas peredaran gelap narkotika, maka dalam undang-undang ini diatur juga mengenai prekursor narkotika, karena prekursor narkotika merupakan zat atau bahan pemula atau bahan kimia yang dapat digunakan dalam pembuatan narkotika. Selain itu diatur pula mengenai sanksi pidana bagi penyalahgunaan prekursor narkotika untuk pembuatan narkotika. Dalam rangka menimbulkan efek jera terhadap pelaku penyalahgunaan dan peredaran gelap narkotika maupun precursor narkotika, dalam undang-undang ini juga mengatur mengenai pemberatan sanksi pidana, baik dalam bentuk pidana minimum khusus, pidana penjara 20 (dua puluh) tahun, pidana penjara seumur hidup, maupun pidana mati. Adapun pemberatan pidana tersebut dilakukan dengan mendasarkan pada golongan, jenis, ukuran, dan jumlah Narkotika.

Kata Kunci : narkotika, pidana, Indonesia, konvensi internasional

ABSTRACT

Law No. 9 of 1976 concerning Narcotics is a substitute for the Law on Drugs inherited from the Dutch colonial government, namely Verdoovende Middelen Ordonnantie 1927 (Stbl.1927 No. 278 jo No. 536) dated May 12, 1927. Basically, it has pretty much regulated the problem of the use and distribution of narcotics. This Ordinance regulates how the export and import of narcotics can be carried out. In addition, this ordinance has also provided prohibitions on the use of several types of narcotics. In the event of a violation, this

ordinance has also been equipped with criminal rules. In an effort to protect the public from the dangers of narcotics abuse, prevent and eradicate illicit narcotics trafficking, this law also regulates narcotics precursors, because narcotic precursors are substances or starting materials or chemicals that can be used in the manufacture of narcotics. In addition, it also regulates criminal sanctions for abuse of narcotic precursors for the manufacture of narcotics. In order to create a deterrent effect on perpetrators of abuse and illicit trafficking of narcotics and narcotics precursors, this law also regulates the weighting of criminal sanctions, both in the form of a special minimum sentence, imprisonment of 20 (twenty) years, life imprisonment, and death penalty. The weighting of the crime is carried out based on the class, type, size, and amount of Narcotics.

Keywords: *narcotics, crime, Indonesia, international conventions*

INTRODUCTION

The development of illicit trafficking and abuse of narcotics and other addictive substances has become an important topic. This has become a serious problem and has reached a state of concern because it occurs on a national scale and has crossed national boundaries when viewed from the convergence and technology it uses. Illicit trafficking and drug abuse has spread beyond the boundaries of social strata, age, gender. Urban is no longer a priority for dealers but has penetrated into the countryside and beyond state borders which consequently is very detrimental to individuals, communities, and the state (Hasan Asy'ari, 2013). Such a situation places the illicit trafficking and abuse of narcotics into a common enemy of the nations of the world because their impact is very damaging to humanity, especially the younger generation. That is why there is a mutual agreement from countries in the world to fight narcotics and other addictive substances that are circulated illegally.

Several Asian regions, identified as one of the main sources of the world's largest narcotics producer, such as the golden crescent region which covers the border area of Afghanistan and Pakistan, the golden triangle region which includes the border region of Myanmar, Laos and Thailand, are suspected to generate huge profits for perpetrators (producers and dealers) of narcotics crimes (Hartanto, 2017). This is done because the illicit trafficking of narcotics is a very profitable business area economically. Producers, dealers, and couriers enjoy enormous financial benefits in the not too distant future, while users or users are promised an unlimited enjoyment after using narcotics.

From the description above, it is undeniable that Indonesia is a potential market for narcotics and other addictive substances due to supply and demand activities. In addition, many parties argue that Indonesia is also a black market for illicit narcotics trafficking run by local and international narcotics syndicates. The entrance of narcotics into Indonesia is very open, either by land, sea or air. Recruitment to find narcotics networks is very easy and cheap, so it is not surprising that in Indonesia there are many users, and narcotics addicts (Santoso, 2013). It is predicted that the

number of people involved in the illicit trafficking of narcotics and narcotics abuse is increasing from year to year, if there are no serious and consistent efforts to prevent, tackle, and eradicate.

The increasing illicit trafficking of narcotics and narcotics abuse can be seen through BNN data which shows that the number of narcotics circulating during 2004 was 567.2 tons per year for marijuana types, while for heroin/putau as many as 20.4 tons per year. If 1 (one) package of heroin/putau is absorbed by the addict market in Indonesia. This condition at least confirms that Indonesia is a lucrative market for domestic and international narcotics producer and dealer syndicates, which provide a very large amount of income with very abundant profits to the syndicate (Achmad Rivai, 2014).

Meanwhile, data from 2008, it can be stated that the number of narcotics abusers has reached 1.5% of the total population of Indonesia or around 3.1 million to 3.6 million people. Of the number of abusers, 26% tried to use it, 27% regularly used 40% of non-injecting addicts and 7% of injecting addicts. Narcotics abuse in non-student groups (40%). Meanwhile, according to gender, male (88%) is much larger than female (12%). The estimated economic cost loss due to narcotics crime in 2008 was 37% higher than in 2004, with a total cost loss of around Rp. 32.4 trillion (2008) consisting of Rp. 26.5 trillion individual (private) losses and Rp. 5.9 trillion is a social cost. Most of the private costs (58%) are for the cost of consuming narcotics, while the majority of the social costs (60%) are for the loss of costs due to death due to narcotics (premature death). The results of the projections of the Research Institute of the University of Indonesia in collaboration with the National Narcotics Agency (BNN) show that economic losses due to narcotics abuse have increased from Rp. 32.4 trillion in 2008 to Rp. 57 trillion in 2013. Research data from the University of Indonesia (UI) in collaboration with the National Narcotics Agency (BNN) mentioned above, shows that the actions of producers and dealers in producing and circulating narcotics illegally on their networks to be traded to users or users continue to increase. . This condition certainly threatens and endangers the life of the community, nation and state.

The picture above, at least illustrates the situation of Indonesia entering a narcotics emergency. Every line of human life of drug users and dealers exists. Users certainly need to be rehabilitated, as well as socialization needs to be done to prevent potential users. However, producers and dealers who produce and distribute narcotics must be severely punished. The death penalty is not inappropriate for them. Many lives and victims are dependent on narcotics abuse. Not to mention those who are affected by the disease due to drug use. Likewise, the crime rate related to circulation and use continues to increase. The circulation of narcotics in Indonesia has reached the point where it has transformed Indonesia from a transit country to a destination country. Even in Indonesia, many parties produce narcotics (Hikmahanto Juwana, 2015).

RESEARCH METHODS

Types of legal research can be seen from the data sources and objectives. Judging from the data sources, legal research can be divided into normative legal research and empirical legal research (Soemitro, 1994). Legal research that is carried out by sorting and collecting library legal materials or secondary data is called normative legal research, while legal research that primarily examines primary data is called empirical legal research (Maria S.W. Sumardjono, 2014). In this

regard, Sudikno Mertokusumo explained that library research can stand alone without being accompanied or supplemented by field research. Legal research can be solely based on library research (normative legal research). Literature research can be complemented by field research (Sudikno Mertokusumo, 2010). Based on the data sources, this research is a normative legal research, which requires primary data to strengthen secondary data.

The research material used in this research method is a normative legal research method. The normative legal research method is a legal research that puts the law as a building system of norms. The system of norms in question is about principles, norms, rules of laws and regulations, agreements and doctrines (teachings) (Achmad, 2010). The writing method is based on an analysis of several legal principles and legal theories as well as laws and regulations that are appropriate and related to the problems in this research. Normative legal research is a procedure and method of scientific research to find the truth based on the logic of legal scholarship from a normative perspective (Johni Ibrahim, 2006).

The problem approach used in this study consists of two approaches, namely the statutory approach and the conceptual approach. The statutory approach is used to examine statutory regulations in which there are still shortcomings in their normalization. In the statute approach, two interpretations are used, namely interpretation according to language (grammatical) and historical interpretation. Grammatical interpretation is a way of interpretation or explanation to find out the meaning of the provisions of Law Number 35 of 2009 concerning Narcotics and Law Number 8 of 1981 concerning the Criminal Procedure Code, by describing according to language, wording or sound (Sudikno Mertokusumo, 2007).

RESULTS AND DISCUSSION

Implementation of Narcotics Criminal Law Regulation in Indonesia

The problem of abuse of narcotics and illegal drugs (narcotics) in the last three decades has not only become a national and regional problem in ASEAN but also an international problem. Efforts to overcome the problem of narcotics abuse in the country must be synergized and integrated with policies to overcome narcotics problems through regional and international cooperation (I Nyoman Nurjaya, 2005).

In Indonesia, regulations regarding efforts to overcome the problem of drug abuse have been implemented. This is as contained in several laws and regulations that specifically regulate narcotics crimes, or in other words special criminal laws, including:

a. Law of the Republic of Indonesia Number 9 of 1976 concerning Narcotics (LN RI of 1976 No. 36, TLN of the Republic of Indonesia No. 3086)

Initially, the global policy of overcoming narcotics crime was outlined in The United Nation's Single Convention on Narcotic Drugs 1961. In this convention, it is basically intended to:

1. Creating international conventions that are accepted by countries in the world and can oversee regulations regarding international supervision of narcotics abuse which are separated in 8 treaty materials;
2. Improving the methods of controlling the circulation of narcotics and limiting their use, especially for the benefit of treatment and the development of science;
3. Ensure the existence of international cooperation in controlling the circulation of narcotics to achieve the above objectives.

In addition, in the 1961 Single Convention on Narcotics, which was established in New York, Article 1 contains definitions for the purposes of the convention, including: Cannabis (marijuana), Cannabis plant, cannabis seeds, coca plant, coca leaf, Medical opium (drug opium), Opium, Opium poppy (papaver plant), Poppy straw (straw papaver plant).

Indonesia as one of the countries that also signed the convention, then ratified it through Law Number 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotics and the Protocol that changed it. Furthermore, the legal instrument which was later created by the government to tackle narcotics crime in the country is Law no. 9 of 1976 concerning Narcotics.

Law No. 9 of 1976 concerning Narcotics is a substitute for the Law on Drugs inherited from the Dutch colonial government, namely *Verdoovende Middelen Ordonnantie 1927* (Stbl.1927 No. 278 jo No. 536) dated May 12, 1927. Basically, it has pretty much regulated the problem of the use and distribution of narcotics. This Ordinance regulates how the export and import of narcotics can be carried out. In addition, this ordinance has also provided prohibitions on the use of several types of narcotics. In the event of a violation, this ordinance has also been equipped with criminal rules (Dirjosisworo, 1990).

In addition to being a substitute for the Law on Drugs inherited from the Dutch colonial government, Law Number 9 of 1976 was issued with the consideration: That narcotics are drugs that are needed in the fields of medicine and science and narcotics can also cause very detrimental dependence if used without restrictions and careful supervision. The manufacture, storage, distribution, and use of narcotics without strict restrictions and supervision and contrary to applicable regulations is a crime that is very detrimental to individuals, society and is a great danger to human life and the life of the state in the political, security, economic, social, cultural fields. , as well as the national resilience of the Indonesian nation which is developing. Rules for the preparation and use of narcotics for medical and or scientific purposes as well as to prevent and overcome the dangers that may be caused by the side effects of narcotics use and abuse as well as rehabilitation of new narcotic addicts

In the criminal provisions contained in Law Number 9 of 1976, it has regulated the threat of capital punishment, life imprisonment, imprisonment for a maximum of 20 (twenty) years and accumulated fines ranging from Rp. 1.00.00, - (one million rupiah) to Rp. 50,000,000,- (fifty million rupiah).

b. Law of the Republic of Indonesia Number 22 of 1997 concerning Narcotics (State of the Republic of Indonesia Year 1997 No. 67, TLN of the Republic of Indonesia No. 3698)

Indonesia has ratified the 1998 United Nations Convention on the Eradication of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations Convention Against illicit Traffic in Narcotic Drugs and Psychotropic Substance, 1988) with Law No. 7 of 1997. Those who have ratified are obliged to combat illicit drug trafficking and provide severe sanctions for perpetrators (Associates, 2007).

Law Number 22 of 1997 was then issued on September 1, 1997 to replace Law Number 9 of 1976, in addition to the consideration that narcotics crimes have a transnational nature which are carried out using high *modus operandi* and sophisticated technology. the existing legislation is no longer in accordance with the development of the situation and developing conditions to tackle the crime.

In Law No. 22 of 1997 stipulates a special minimum criminal threat. This is as contained in the criminal provisions, especially in Articles 78, 83 and 87, or in other words only a few articles that regulate the specific minimum penalty. However, this minimum criminal threat is only intended to amplify the sentence, not be imposed on the main act. This minimum criminal threat can only be applied to certain circumstances, namely if it is preceded by a malicious conspiracy, carried out in an organized manner or carried out by a corporation.

The aspects that have changed in Law Number 22 of 1997 (as well as Law Number 5 of 1997 concerning Psychotropics) are as follows:

1. The reality of gradation due to the variety of groups in narcotics and psychotropics with different threats of punishment from the heaviest Category I, followed by Groups II and III (not beaten evenly), something that deserves to be commended is precisely in the weighting of imprisonment there is a minimum sentence (shortest). This is a new thing in the rules of criminal law.
2. The provisions on weighting are not only based on classification but also on the reality that drug abuse is mostly carried out by groups through evil conspiracies (conspiracies), so if the abuse of several people by conspiracy, the punishment will be increased.
3. Likewise, weighting is carried out if the perpetrators of narcotics abuse are organized. This shows that narcotics abuse has syndicates that are well organized in their operations.
4. Likewise, if the corporation is involved, the fine is increased, but the corporate criminal responsibility is not yet clear. Can the director be sentenced to imprisonment? This may have to go through jurisprudence.

c. Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (State of the Republic of Indonesia Year 2009 No. 143, TLN of the Republic of Indonesia Number 5062).

Initially during the General Assembly of the People's Consultative Assembly (MPR) of the Republic of Indonesia, the MPR had recommended to the DPR and also to the President to make changes to Law Number 22 of 1997 concerning narcotics (this is as stated in MPR Decree Number VI/ MPR/2002), with the aim of preventing and eradicating the abuse and illicit trafficking of narcotics which is very detrimental and endangers the life of the community, nation and state. Although it is realized that Law No. 22 of 1997 has been enacted, which has firmly regulated efforts to eradicate narcotics crimes through threats of fines, imprisonment, life imprisonment, and death sentences, and also regulates the use of narcotics for the benefit of the community. treatment and health and regulates medical and social rehabilitation, but in reality narcotics crime in society shows an increasing trend both in quality and quantity with more widespread victims, especially among children, adolescents, and the younger generation in general.

In Law Number 35 of 2009, there has also been a minimum criminal threat, in which the provisions of the minimum criminal threat in this law are a refinement of the provisions that existed previously in Law Number 22 of 1997. In other words, if the Act -The previous law, namely Law Number 22 of 1997, the regulation regarding the minimum criminal threat was only contained in a few articles in the criminal provisions, then in Law Number 35 of 2009, the minimum criminal threat was contained in all articles with criminal provisions. In addition, the minimum penalty in this law is not only intended for aggravating punishment and is applied to certain circumstances, such as if the crime was preceded by a conspiracy or if it was carried out in an organized manner, but also applies to the main act committed by any person or person. every individual who acts as a narcotics criminal.

In an effort to protect the public from the dangers of narcotics abuse, prevent and eradicate illicit narcotics trafficking, this law also regulates narcotics precursors, because narcotic precursors are substances or starting materials or chemicals that can be used in the manufacture of narcotics. In addition, it also regulates criminal sanctions for abuse of narcotic precursors for the manufacture of narcotics.

In order to create a deterrent effect on perpetrators of abuse and illicit trafficking of narcotics and narcotics precursors, this law also regulates the weighting of criminal sanctions, both in the form of a special minimum sentence, imprisonment of 20 (twenty) years, life imprisonment, and death penalty. The criminal weighting is carried out based on the class, type, size, and amount of Narcotics.

The first international convention that regulates narcotics is The Haque Convention 1912, and subsequently the Geneva International Opium Convention 1925, The Geneva Convention for the Manufacture and Regulating the Distribution of Narcotic Drugs 193, Single Convention on Narcotic Drugs 1961, as amended and supplemented by the 1972 Protocol and the 1971 Convention on Psychotropic Substances.

Based on the development of the International Convention on Narcotics, it is limited to the Single Convention on Narcotics 1961 and the Vienna Convention 1988, because these two conventions are the resultant of the previous convention on narcotics and psychotropics and are the most important conventions in the history of international regulation in the field of narcotics and psychotropic substances, after the establishment of the United Nations. Romli Atmasasmita, 1997).

The Single Convention on Narcotics 1961 is the result of a United Nations conference held in New York, March 24-25, 1961, after the Convention was effective for 11 years, on March 6-24 1972 in Geneva, a conference was held, the United Nations Conference to Consider Amendments to the Single Convention on Narcotic Drugs, 1961 which resulted in the Protocol amending the Single Convention 1961. The signing of the protocol amending the Single Convention 1961, was carried out by the government of the Republic of Indonesia on March 25, 1972. -bodies involved in the production and distribution of narcotics and their control.

In the explanation of the Republic of Indonesia Law Number 8 of 1976 concerning the ratification of the Single Convention on Narcotics 1961, among other things it is stated:

Our country is building a just and prosperous society. To do this, it takes all the energy and thoughts of every Indonesian citizen. This goal will soon be achieved if the people are in good physical and mental health, free from the bad effects of narcotics, stimulant drugs, tranquilizers and alcoholic beverages. With Indonesia's participation in the 1961 Single Convention on Narcotics and the protocol that changed it and ratified it as a law, international cooperation in the field of prevention and eradication of narcotics crimes can be carried out more securely and steadily. In addition, the provisions in the single convention and the protocol that amends them generally do not conflict with the interests of Indonesia and thus can be accepted and used as the basis for drafting national legislation in the narcotics sector.

Furthermore, it can be stated that the 1961 Single Convention on Narcotics focuses on aspects of regulation and supervision, while the 1988 Vienna Convention focuses on aspects of law enforcement. The 1988 Vienna Convention is a fundamental renewal of the international narcotics convention in general, and of the 1961 Single Convention on Narcotics in particular, because the 1988 Vienna Convention strategy was aimed at increasing law enforcement against narcotics crimes in its time. The difference between these two conventions is in purpose and substance.

The Single Convention on Narcotics 1961 aims to consolidate the previous agreements on narcotics and facilitate the mechanism for controlling narcotics. The 1972 amendment protocol to the Single Narcotics Convention mentioned above, aims to improve the provisions of the convention so that it includes provisions on the treatment and rehabilitation of narcotic addicts.

In relation to these objectives, it is described in six sub-objectives, as follows:

- a. Codification of existing multilateral agreements on narcotics;
- b. Simplify international oversight mechanisms;
- c. Expanding the surveillance system on the cultivation of other narcotic natural medicines as a complement to opiates that produce dependence, such as marijuana or coca leaves;
- d. Restrict the trade and import of narcotics;
- e. Supervise the illegal narcotics trade; and
- f. Take appropriate measures for the treatment and rehabilitation of drug addicts.

The scope, target, and objective of the 1988 Vienna Convention is to increase law enforcement cooperation among participating countries against trafficking in illegal narcotics and psychotropic substances, both from the legislative, administrative and technical operational aspects. In carrying out these obligations, it is hoped that the convention participants take the steps deemed necessary in accordance with the national laws of each country.

The embodiment of the scope, goals and objectives mentioned above can be seen from several provisions contained in the 1988 Vienna Convention, including:

1. Article 3, Crimes and sanctions;
2. Article 4, Jurisdiction;
3. Article 5, Confiscation or Confiscation;
4. Article 6, Extradition;
5. Article 7, Treaty of mutual assistance in criminal matters;
6. Article 8, Transfer of Procedures or transfer of proceedings;
7. Article 9, Other forms and training;
8. Article 10, International cooperation and assistance to transit countries;
9. Article 11, Controlled delivery.

The nine provisions mentioned above are the main characteristics that distinguish the 1988 Vienna Convention from previous international narcotics conventions, so that the convention is a repressive narcotics convention. In addition, there are other narcotics conventions that have the same goal, although they are not as advanced and complete as the Vienna Convention, 1988.

The first initiative to give birth to a narcotics convention that is repressive in nature comes from the International Criminal Police Organization (ICPO) which argues that there is a need for a special convention aimed at establishing preventive and repressive measures against transnational narcotics crimes to overcome the gap between the provisions of the previous conventions. namely the 1912 Narcotics Convention, the 1925 Convention, and the 1931 Narcotics Convention. These conventions can be grouped into three groups of provisions as follows:

1. A group of provisions aimed at improving domestic regulations, preventing and eradicating transnational narcotics crimes;
2. The group of provisions aimed at preventing the perpetrators and perpetrators of the crime from escaping from criminal conviction on technical grounds and to confiscate all narcotics used in the crime;
3. A group of provisions relating to administration and international cooperation, and the most important is the provisions that stipulate this crime as an extraditable offense.

Another difference, and relevant to law enforcement against transnational narcotics crimes, is the provision regarding criminal jurisdiction. The Single Convention, 1961 does not specifically regulate this issue, while the 1988 Vienna Convention has regulated and stipulates the possibility for each participating country to expand criminal jurisdiction over transnational narcotics crimes..

CONCLUSION

In an effort to protect the public from the dangers of narcotics abuse, prevent and eradicate illicit narcotics trafficking, this law also regulates narcotics precursors, because narcotic precursors are substances or starting materials or chemicals that can be used in the manufacture of narcotics. In addition, it also regulates criminal sanctions for abuse of narcotic precursors for the manufacture of narcotics. In order to create a deterrent effect on perpetrators of abuse and illicit trafficking of narcotics and narcotics precursors, this law also regulates the weighting of criminal sanctions, both in the form of a special minimum sentence, imprisonment of 20 (twenty) years, life imprisonment, and death penalty. The weighting of the crime is carried out based on the class, type, size, and amount of narcotics.

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