

Implementation Of Criminal Fines In Law Number 35 Of 2009 Concerning Narcotics Crimes In The Perspective Of Punishment

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Abstract. The implementation of a judge's decision in applying a fine according to Law Number 35 of 2009 concerning Narcotics is considered ineffective due to a criminal substitute for fines. This led to many narcotics criminal cases that have completed the imprisonment of the principal and would prefer to be in prison for the sake of complete replacement imprisonment penalties. For this reason, it is necessary to update the concept of criminal fines in the Narcotics Law. In this case, a reformulation of the acceptable criminal policy should be carried out where the fine must be paid, e.g., by installments or imprisonment in place of a fine is also made longer).

Keyword: Mulct Criminal, Narcotics Crimes, Penalty

1 Introduction

Punishment in Indonesia can be interpreted as the stage of determining sanctions and also the stage of providing sanctions in criminal law. The word "criminal" is generally interpreted as law, while "conviction" is interpreted as punishment. Basically, a crime is imposed not because someone has done evil but so that people who are considered to have done evil (evildoers) stop doing evil and others are reluctant to do similar deeds and cause [1] *a deterrence effect*. The conviction was not intended as an attempt at all as an attempt at revenge but rather as an attempt at coaching a perpetrator [2].

Unfortunately nowadays in all types of crimes are increasingly rampant and there is no change. The prison as a place of coaching has become a place for criminals to exchange knowledge so that the criminals come out of the prison construction instead of being a deterrent but are more adept at carrying out their actions. In the end, with the increasing number of criminals ahli adds a burden to society because the threat that arises is getting bigger. Sanctions against the evildoer distance human values or dehumanization or seclusion from society as long as he loses his right to independence. The ineffectiveness of the criminal sanksi applied as salah one fa k tor plus another faktor i.e. there is no shame arising from the perpetrators after committing evil. The complainants are even more courageous to act without showing guilt after the previous crimes. There are 2 (two) types of crimes in Article 10 of the Criminal Code, namely:

1. The main crimes consist of the death penalty, imprisonment, confinement and fines.
2. Additional criminal penalties consisting of the deprivation of certain rights, the deprivation of certain goods and the announcement of the judge's ruling.

Criminals for violations of the law in Law Number 35 of 2009 concerning Narcotics are subject to two main crimes, namely imprisonment and fines. However, almost all fines imposed are not paid by the convict but the convict chooses an alternative sanction in lieu of a fine, namely a subsidiary of imprisonment which in the Act ad a maximum of 1 (one) year.

Currently in international and Indonesia itself is looking for alternatives to the criminal deprivation of independence/prison considerations because this type of crime is increasingly frowned upon in terms of humanitarian approaches, philosophical approaches and economic considerations. Head of the Public Relations and Protocol Section of the Directorate General of Corrections of the Ministry of Law and Human Rights Akbar Hadi Prabowo said that the proposal to reduce the portion of prison sentences came to the fore as one of the solutions to reduce prison overcrowding. Of the 180,000 inmates and detainees nationwide, 60 percent are narcotics inmates, who are actually much more in need of treatment and rehabilitation [3] [4].

This condition raised a questions, how is the implementation of the judge's decision in Law Number 35 of 2009 regarding narcotics related to the application of criminal fines? Does the current criminal fine meet the purpose of punishment in tackling narcotics crimes? What kind of criminal formulations can be imposed on perpetrators of Narcotics crimes in order to have a deterrent effect?

2 Method

The research presented is a sociological legal science research because the research concerns the reciprocal relationship between law and other social institutions so it is a non-doctrinal social study that is empirical in essence based on data that occurs in the field [5].

The data analysis used in this study is descriptive qualitative, that is, the data obtained from the research is presented descriptively and analyzed qualitatively with the following steps:

1. Research data are classified according to the problems in the study.
2. The results of the data classification are further systematized.
3. The data that has been systematized is then analyzed to be used as a basis for drawing conclusions.

The theoretical theories used include integrative theory and the theory of the purpose of punishment.

3. Results

3.1 Implementation of Judges' Decisions in the Application of Criminal Fines according to Law Number 35 of 2009 concerning Narcotics

A criminal offense is a suffering or a punishment that is deliberately imposed on a person who commits an act that meets certain elements and conditions, while Roslan Saleh asserts that a crime is a reaction to a delik, and this is in the form of a deception that the State deliberately devolves to the delik maker. The giving of any harm or suffering is carried out through criminal sanctions. Criminal Sanctions is a type of sanction that is threatened or imposed on criminal acts or perpetrators of criminal acts or criminal acts that can interfere with or harm legal interests. Criminal sanctions are basically a guarantor to rehabilitate the behavior of the perpetrator of the crime, but it is not uncommon that criminal sanctions are created as a threat to human freedom itself [6] [7] [8].

The types of crimes as stipulated in Article 10 of the Criminal Code (KUHP) are the main criminal and additional criminals. The principal sentence consists of the death penalty, confinement, and fines. Additional criminal charges consist of the deprivation of certain rights,

the deprivation of certain goods, and the announcement of the judge's ruling. A fine is the oldest form of punishment, older than imprisonment, as old as the death penalty. Fines exist in every society, including primitive societies, although the form is primitive as well. The Indonesian state itself knows this fine since the time of Majapahit and other traditional communities. Criminal fines are regulated in Article 30 of the Criminal Code, namely as follows: [9]

1. The amount of the fine is at least twenty-five cents;
2. If a fine is imposed, and the fine is not paid, then it is replaced by a sentence of confinement;
3. The duration of the substitute confinement sentence is at least 1 day and for a period of 6 (six) months;
4. In the decision of the judge it is determined, that for a fine of half a rupiah or less, the length of the sentence of confinement in lieu of a fine is 1 (one) day, for a fine greater than that, then each half of the rupiah is replaced no more than 1 (one) day, and for the rest that is not enough half a rupiah, the duration is one day;
5. The sentence of confinement may be imposed for a period of 8 (eight) months, in which case the maximum fine is increased, for several crimes committed, for repeatedly committing crimes or because of the matters specified in Article 52;
6. The sentence should never exceed 8 (eight) months.

When observed the development of criminal law today in Indonesia, especially the Special Criminal Law or criminal legislation outside the criminal code (KUHP), there is a tendency to use a two-channel system in its sanctions stelsel which means that criminal sanctions and action sanctions are regulated at once.

As in Law Number 35 of 2009 concerning Narcotics, it only prohibits the use of narcotics without a license. Understanding Narcotics itself is a substance or drug that is very useful and necessary for the treatment of certain diseases. However, many people misuse or not comply with medical standards can have very detrimental consequences for individuals or society, especially the younger generation. In some cases of narcotics crimes that occur, it is not uncommon for judges to impose prison sentences and fines. If it is connected with a narcotics crime that is a special criminal offense, the criminal sanctions are imprisonment and fines. Criminal fines can be replaced by confinement, and can even be calculated on a daily basis according to balance, therefore it is considered unfair if the fines imposed are equated between the rich and the poor, so that in the Scandinavian Countries the fines are calculated according to the day, so that the amount of fines to be paid is as much as the daily opinion of each convict.

In criminal acts regulated in the Criminal Code (KUHP) and non-criminal acts regulated outside the Criminal Code such as narcotics crimes, fines, the judge must immediately determine how long the replacement confinement must be paid by the defendant if he is unable or unwilling to pay the fine with various considerations of the judge.

Article 148 of Law No. 35 of 2009 concerning the Narcotics Law states that for perpetrators of narcotics crimes who cannot pay a fine, the perpetrator is sentenced to a maximum of 2 years in prison. This means that even for special crimes such as narcotics, if the convict cannot pay the fine, it can be replaced with a maximum imprisonment of 2 years in accordance with the judge's later considerations, but in narcotics crimes which are special crimes, if the fine is not paid, it is replaced with another prison sentence in the case of a criminal act regulated in the Criminal Code which is replaced by a sentence of confinement.

Because with the principle of *Lex Specialist Derogaat Legi Generalis*, where special rules override general rules.

In the development of punishment in Indonesia, fines as an alternative to punishment have been accommodated by the state as criminal politics. This has been reflected in the many laws and regulations that also include criminal fines as well as criminal sanctions, even in the criminal code the threat of fines is almost found in criminal threats in every article that regulates crime. The regulation of fines in Law Number 35 of 2009 concerning Narcotics is carried out by accumulating the threat of criminal fines with the threat of deprivation of independence. Thus, against perpetrators of crimes who violate the articles in which it is regulated compulsively, fines and deprivation are regulated *kemerdekaan* maka hakim harus memutuskan pidana denda dan pidana penjara secara bersama-sama [10].

In the Law, the threat of fines that can be applied to perpetrators of criminal acts is very high, when compared to Law Number 22 of 1997 concerning narcotics. Meanwhile, Law Number 22 of 1997 only regulates a maximum threat of Rp. 7,000,000,000 (seven billion rupiah). So in the current narcotics law, a maximum criminal threat of Rp. 10,000,000,000 (ten billion rupiah) is regulated. The threat of a fairly high fine accumulated with the criminal deprivation of independence in the narcotics law shows that narcotics cases are very serious cases so they need to be given the threat of severe criminal sanctions that are not only imprisonment but also fines to drug offenders [11].

The threat of fines regulated in Law Number 35 of 2009 is threatened cumulatively with imprisonment. Thus, for offenders who violate the articles in which cumulative imprisonment and fines are regulated, the judge must decide on fines and imprisonment jointly. Almost all judges held that fines in narcotics cases aim to strengthen criminal sanctions. Meanwhile, few other judges have stated that fines in narcotics cases aim to teach a lesson that narcotics do not benefit offenders. This indicates that judges mostly view narcotics as a serious matter, and need to be given a severe criminal threat, which is not only imprisonment but also a fine [12].

The criminal threat accumulated with imprisonment is indeed to increase criminal sanctions on the offender. It is intended to provide and ensure a sense of justice for society as intended by sentencing. This goal is not only aimed at criminals but also learning for many people ([13] *general preventie*), so that it can be preventive in educating the public as well as curative for crimes that have already occurred. If referring to the criminal law, then this is in line with the fact that there is a maximum increase in threats as stipulated in the applicable law with the threat of a fine of billions of rupiah. It must be remembered that the purpose of criminal law is to fulfill a sense of justice, so to realize it is necessary to consider things in the form of the next goal, namely (1) to scare people not to commit crimes, both aimed at the crowd (*general preventie*) and to scare certain people who have committed crimes, so that in the future they do not commit crimes again (*speciale preventie*), or (2) to educate or improve those who have indicated that they like to do evil, in order to become good people of character, so as to benefit society [14].

Examples of Malang District Court decisions related to narcotics crimes whose verdicts are as follows:

1. Malang District Court Decision Number 225/Pid.Sus/2017/PN.Mlg

In view of the provisions of Article 112 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics and other regulations related to this case:

ADJUDICATE

- a. Declaring the accused HENDRA HERMAWAN validly and conclusively guilty of committing the criminal offence of "POSSESSING, STORING AND POSSESSING CLASS I NARCOTICS NOT PLANTS";
- b. Sentence the defendant to imprisonment for 5 (five) years;
- c. Establishes that the period of detention that has been served by the defendant is deducted entirely from the sentence imposed;
- d. Establish the defendant remains in custody;
- e. Punishing the defendant to pay a fine of Rp 800,000,000 (eight hundred million rupiah);
- f. Stipulate that if the fine is not paid, it is replaced by imprisonment for 3 (three) months;
- g. Establish evidence in the form of:
 - 1) 1 pack of LA Mild cigarettes contains 1 (one) small plastic clip containing Gol Narcotics. I type of methamphetamine rolled aluminum foil paper containing methamphetamine weighing 0.017 gr,
 - 2) 1 (one) ACER brand mobile phone
Confiscated to be destroyed;
- h. Charge the defendant to pay the cost of the case in the amount of Rp.5.000,- (five thousand rupiah)

In addition to the decision related to Law Number 35 of 2009 concerning Narcotics, as a comparison, the author also includes a decision related to fines based on Law Number 36 of 2009 concerning Health, namely the Malang District Court Decision Number 639 / Pid.Sus / 2016 / PN.Mlg, whose verdict is as follows:

Recalling, Article 197 of Law No. 36 of 2009 concerning Health and related laws and regulations;

ADJUDICATE:

1. Stated defendant CAHYO WARDOYO ALS. CILOK has been validly and conclusively proven guilty of the criminal offence of "KNOWINGLY CIRCULATING PHARMACEUTICAL PREPARATIONS THAT DO NOT HAVE A DISTRIBUTION LICENSE";
2. Sentence the defendant therefore to imprisonment for 3 (three) years and a fine of Rp. 1,000,000,- (one million rupiah) provided that if the fine is not paid, it is replaced by imprisonment for: 3 (three) months;
3. Establishes the period of arrest and detention that the defendant has undergone is deducted entirely from the sentence imposed;
4. Establish the defendant remains in custody;
5. Stipulate that the evidence in the form of: 1 (one) pack of grendel cigarettes containing 53 ticks each containing 9 grains and 1 tick containing 8 grains of white tablets with a ££ logo and 1 plastic pack containing 43 grains of white color pills with a ££ logo are seized for destruction;
6. Charge the defendant to pay a case fee of Rp. 5,000,- (five thousand rupiah).

Based on the above considerations on the one hand in imposing a criminal judgment on a fine the judge determines for himself what crime is appropriate for the defendant, but on the other hand the judge also gives the convict the freedom to choose whether he can afford to pay the fine or carry out the sentence of confinement in lieu of a fine. Because it is the right of the convict to choose what criminal he will carry out. In practice, more convicts choose to carry out confinement than to pay fines, especially in narcotics cases where one example is where the fine is set at 800 million to 1 billion. Just whatever person would not want to spend such a

large sum of money, it is better for him to run a replacement confinement for only 2 years at most which in the above verdict is only 2-3 months.

If the articles only mention the threat of a fine, then this results in a person not paying or paying the fine imposed on him cannot be sanctioned with other types of sanctions, so that the judgment cannot be implemented and this will certainly result in the difficulty of upholding a justice in the midst of society, therefore, this fine is given an alternative payment, namely imprisonment or criminal imprisonment (for narcotics crimes), because not all convicts will be able to afford to pay a large fine. Therefore, for the criminal confinement in lieu of a fine, this fine must be viewed as a coercive tool so that the fine itself can be best complied with without neglecting the purpose of the law itself, which is to make a person aware of the mistakes committed that are detrimental to themselves and others.

From the above considerations, it is appropriate if the penalty of the fine has an alternative payment, because not everyone will be able to pay a certain amount of money. Where the purpose of the crime itself is to deter the perpetrator not to impoverish the offender. The method of calculating the length of imprisonment in lieu of a fine is stipulated in Article 30 paragraph (4) of the Criminal Code, but if you look at the nominal amount of money contained in the Criminal Code is no longer in accordance with today, this is even much different. If this rule remains the judge's benchmark in determining the amount of the fine with the length of confinement in lieu of the fine, it is considered unbalanced and unfair.

However, in the above decision between Law Number 35 of 2009 concerning Narcotics and Law Number 36 of 2009 concerning Health in the criminal imposition of fines there is a very glaring gap, namely the fines given in Law Number 35 of 2009 concerning Narcotics ranging from Rp.800 million-Rp.1 billion while in Law Number 36 of 2009 concerning Health only Rp.1 million is terminated.

3.2 Fulfillment of the Purpose of Criminal Punishment in Tackling Narcotics Crimes

The application of criminal fines in the fulfillment of the purpose of conviction is considered to provide many advantages and a sense of justice as stated by Sutherland and Cressey that:

1. Payment of fines is easy to implement and revise if there is a mistake, viewed with other types of punishment.
2. Criminal fines are a type of punishment that benefits the government because the government does not spend much, if it is not accompanied by subsidy losses
3. The penalty of fine does not carry or result in the reprehension of good name or honor as experienced by the convict
4. Criminal fines will make the world a relief
5. The penalty of fines will be income for the region/city. [15]

In narcotics cases, the judge when deciding a case by awarding a fine for a narcotics case considers various things, including the amount and type of evidence, the economic condition of the perpetrator of the crime, the role of the offender, recidivist, the proceeds of the crime, the opinion of the community, and the prosecutor's demands.

The lightness of the substitute imprisonment sentence, which is considered a matter of applying the fine criminal, is based on the idea that the effectiveness of the application of the fine is judged by the imposition of the fine and paid by the convict. If the penalty of the fine has been imposed by the judge, while the convict does not pay the fine then the application of

the fine is ineffective. The fine imposed by the judge was not paid by the convict other than because the convict could not afford to pay, also because the confinement in lieu of the fine was quite light, so that in the end the convict preferred to undergo substitute confinement instead of having to pay the fine.

Drug abusers in this case are addicts and victims of drug abuse have a slightly different position from other criminal offenders, namely the problem of drug addicts according to the provisions of the law, on the one hand are perpetrators of drug abuse crimes, but on the other hand are also victims.

Narcotics addicts according to Law Number 35 of 2009 on the one hand are criminal offenders of narcotics abuse is the existence of criminal provisions in the narcotics law that regulate the prison sentence given to drug abusers. Then, on the other hand, it can be said that according to the narcotics law, the drug addict is a victim is indicated by the existence of a provision that against a drug addict can be sentenced to rehabilitation. This means that the law on the one hand still considers drug addicts to be criminals, and on the other hand are victims of their drug abuse [16].

Narcotics abuse in criminology literature is considered a *victimless crime* where the victim and the perpetrator are singular or one, in the sense that the victim is the perpetrator and the perpetrator is the victim. He became both a perpetrator and a victim at the same time, this naming refers to the nature of the crime, that is, the existence of two parties who enter into a transaction or relationship but both do not suffer losses to the other party. Unlike the case with the crime of murder, theft, rape where the fall of the victim is clearly visible.

3.3 Evaluation and Reformulation of Crimes That Can Be Imposed on Narcotics Criminals that can Have a Deterrent Effect

Narcotics crimes with a tendency to involve many people with an increasing number of victims. So that the Indonesian government takes a firmer step by issuing Law Number 35 of 2009 which contains provisions regarding the imposition of criminal sanctions, including here in the form of a special minimum crime, with the intention and purpose of none other than to prevent or eradicate the narcotics crime.

Departing from the idea that the criminal law system is a unified system that aims and criminal is only a tool / means of achieving goals, the concept / draft of the New Criminal Code formulates the purpose of punishment contrary to the balance of two main objectives, namely community protection and individual protection / guidance. This is as contained in Chapter III of Book I of the Draft Concept of the New Criminal Code, in particular Article 54 which regulates the purpose of punishment, which reads as follows: Punishment aims to: [17]

1. Prevent criminal acts by enforcing legal norms for the sake of community protection;
2. Make corrections to convicts and thus make them good and useful people, and capable of living in society;
3. Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society;
4. Acquitting guilt in convicts
5. Punishment is not meant to suffer and is not allowed to degrade human dignity.

From several opinions regarding the purpose of punishment, with the existence of a special minimum criminal threat in Law Number 35 of 2009, it aims to provide a deterrent effect and fear, both for the criminal perpetrator himself and for others as general prevention and for other parties as *special prevention*, which can be explained as follows: [18]

1. General prevention is intended, that the existence of punishment will have an influence on the behavior of people other than the perpetrator, in other words, namely

with the threat of minimum punishment, it is expected that others will be afraid to do similar acts, because the punishment imposed on the perpetrator is certainly more severe because of the minimum limit.

2. Special prevention is the direct influence of the punishment felt by the convicted person (both physically and mentally) and he will become a better citizen of society than before or in other words, that with a minimum limit of conviction, it is hoped that the convict will become a deterrent so that later there will be no more repetition of the crime by the convicted person.

Thus, the establishment of a special criminal law is included in the framework of criminal politics, namely the efforts of the community with the intermediary of various government organs to rationally tackle crime, so it is hoped that with the emergence of this special minimum criminal threat can support the achievement of the objectives of criminal politics. The prevailing laws and regulations in Indonesia are more or less influenced by international trends. According to Muladi, the development of special minimum sanctions for certain criminal acts is one of the 7 (seven) international tendencies. As for the 7 (seven) international tendencies, it can be explained: [19] [20] [21]

1. Tendency to seek alternative sanctions from criminal *sanction (alternative sanction)*;
2. Development of special minimum sanctions for certain criminal acts;
3. Regulating the cumulative criminal system for certain criminal offences;
4. Polarization of the death penalty;
5. The development of criminal charges against corporations;
6. The use of a *double track system*;
7. Regulation specifically of the juvenile penal system.

The development of specific criminal minimum sanctions is aimed at reducing criminal disparities and demonstrating the severity of the crime in question. That the need for this particular minimum can be felt from the unrest of the community or the lack of satisfaction of the citizens of the community towards the prison sentences that have been imposed in practice, especially crimes that are not much different between the perpetrators of snapper class crimes and the perpetrators of *teri* class crimes [22] [23].

As one of the serious crimes, narcotics crimes should be handled seriously, one of which is to apply a special minimum criminal threat against the perpetrator with the intention of causing a deterrent effect. Therefore, it can be said that the purpose of enacting a special minimum criminal threat in Law Number 35 of 2009 can be inferred from the statement of the lawmaker himself, which in the explanation of the law states: To cause a deterrent effect on perpetrators of abuse and illicit circulation of Narcotics and Narcotic Precursors.

Convicted drug offenders who have completed a principal prison sentence will choose to be in a penitentiary in order to complete a prison sentence in lieu of a fine. It should be noted that convicted drug offenders who are serving time in lieu of fines are assisted citizens who during the course of imprisonment apply for parole after serving 2/3 of the sentence of the principal prison sentence so that they can complete the basic prison sentence faster. The convicted narcotics offender who has been on parole is a resident who has been serving time in prison since 2010.

4 Conclusion

1. The implementation of the judge's decision in the application of fines according to Law Number 35 of 2009 concerning Narcotics is considered ineffective due to the existence of a penalty in lieu of a fine. This has led to the large number of convicted drug offenders who have completed their principal prison sentences will choose to be in prisons in order to complete prison sentences in lieu of fines. It should be noted that convicted drug

offenders who are serving time in lieu of fines are assisted citizens who during the course of imprisonment apply for parole after serving 2/3 of the sentence of the principal prison sentence so that they can complete the basic prison sentence faster.

2. Criminal fines for narcotics cases are the main crimes that must be applied along with imprisonment. The amount of fines stipulated in Law Number 35 of 2009 concerning Narcotics ranges from Rp. 1,000,000.00 (one million rupiah) to Rp. 20,000,000,000.00 (twenty billion rupiah). The minimum and maximum limits on the criminal provisions of these fines should also be used by judges in imposing criminal judgments in lieu of fines. If the maximum limit of the fine is Rp. 20,000,000,000.00 (twenty billion) in accordance with the provisions of Article 148, it can be interpreted as commensurate with the penalty of replacing a maximum fine of 2 years. So the judge should be able to determine a substitute fine commensurate with a fine of Rp. 1,000,000,000.00 (one billion rupiah) which is for one month. Such consideration will avoid too high a disparity in criminal convictions in lieu of fines and will help the convict or the public to obtain justice as well as legal certainty. However, the current fines have not fulfilled the purpose of punishment in tackling narcotics crimes.
3. The existence of a special minimum criminal threat in a law, including Law Number 35 of 2009, basically has a close correlation with the purpose of punishment which aims to provide a deterrent and fear effect, both for the criminal perpetrator himself and for others. The implementation of fines in Law Number 35 of 2009 has not been effective, besides that convicted drug crime cases will automatically be required to carry out a penalty in lieu of a fine in the form of imprisonment. Thus, the formulation of the threat of criminal fines with a very high amount is also not appropriate to be used as a tool to achieve the purpose of punishment, for this reason, it is necessary to make an update on the concept of criminal fines in the Narcotics Law. In this case, a reformulation of the fine criminal policy should be carried out where the fine must be paid, for example by installments or imprisonment in lieu of a fine is also made longer. This policy reform follows the new Criminal Code Bill, for example by maximizing fines by means of payment in installments, tracing existing assets or in "The other criminal alternatives are sort of, social labor crimes.

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