Implementation of Criminal Sanctions Against Foreign Narcotics Courier Performers

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Abstract

Criminal sanctions that regulate narcotics crimes have emphasized the sanctions that will be given to anyone who violates them, ranging from rehabilitation to the death penalty. However, there are still many who commit these violations, until now, there are various forms of modus operandi for committing a criminal act in distributing narcotics. Perpetrators do not run out of wits to do all kinds of ways to achieve their goals. This mode is developed because law enforcement officers are intensively carrying out prevention efforts to eradicate narcotics crimes. One form of the mode that is carried out is through drug intermediaries or couriers, by neatly wrapping and inserting into plastic capsules, stored in boxes or cans, tucked in candy or food, to places that have been specially designed so as not to be penetrated by detection equipment. The perpetrators of these drug couriers are not only carried out by Indonesian nationals, but have also been carried out between foreign countries through foreign nationals. Narcotics distribution is carried out in various ways through land, sea and air transportation. From the various modes carried out by the perpetrators of drug couriers, it is not uncommon for them to be unsuspected so that they can escape various forms of examination by the authorized law enforcement officers.

I. Introduction

The development of narcotics abuse at this time, indirectly shows that the increasing number of criminal acts that occur in all foreign countries. One of the developments occurred due to the interest in meeting all needs in the health (medical) field as well as the development of science. In its development, the purpose of using narcotics has actually experienced deviations. It has violated applicable laws and regulations, such as the emergence of illegal narcotics trade transactions to generate profits with a higher nominal value. The profits obtained by the syndicate actors use international trade routes by land, sea, and air so that the smuggling of illicit goods can reach their destination countries. Traffic in illegal narcotics trade routes occurs not only transnationally but also internationally throughout the world, so it is increasingly difficult to trace it by law enforcement due to various kinds of modus operandi that continue to develop. (Husni Syam, 2012).

Narcotics are substances or illegal drugs derived from plants or non-plants, either synthetic or semisynthetic, the impact of which causes a decrease in the level of consciousness, loss of taste, relieves pain and can lead to dependence. Narcotics abuse that is carried out illegally without directives and instructions from the medical field can cause very dangerous impacts on human health, such as damage to the central nervous system, and damage to the lungs, heart and kidneys. This is very dangerous and threatens the younger generation as the nation's successor. This illegal use of narcotics will be a bad influence for a very long period until, finally, it can damage the survival of a nation. (Nani Supriyatni, 1999).

Because Indonesia is regulated as a constitutional state, as referred to in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, all actions of the Indonesian people must be based on law. So far, the common form of crime is a drug crime, whether committed by the Indonesian people themselves or by citizens of foreign countries in Indonesia. According to the territorial principle, the application of criminal law in a country only depends on the place where the crime or act was committed. That place must be within the sovereignty or territory of that country.

The development in the abuse of narcotics crime is seen as a serious crime (the most serious crime) because it causes social influence so that many global countries from abroad, including Indonesia, apply very strict criminal sanctions for perpetrators of the illegal narcotics trade. Indonesia is known as a state of law that upholds the values of sovereignty until now. The implementation of capital punishment is given to perpetrators who have been proven legally and convincingly guilty of being dealers, users, couriers, and narcotics dealers. In Indonesia, the application of the death penalty is a form of government firmness to make efforts to eradicate narcotics crime in Indonesia, which is applied to its

citizens and foreign citizens who commit crimes within the jurisdiction of the Republic of Indonesia. (Ade Mahmud, 2021).

The increasing number of drug crimes shows that the Narcotics Law has failed to achieve the goal of punishment intended by the theory of punishment. It is stated that, the purpose of sentencing is explained to provide a deterrent effect, to frighten and restore the social conditions of the community as a result of the crimes committed and to guide prisoners through reintegration by re-socializing them, but in the case of narcotics crimes all of the goals seem very far from what they are meant to be. Desired. One of the factors that can lead to the application of criminal sanctions, especially fines, which still cannot be applied to perpetrators of criminal acts. (Tommy Busnarma, 2019).

Criminal law is one of the sources of law that applies in Indonesia with the basis and legal rules that regulate: 1) forming rules in a legal act that cannot be done, what is prohibited along with certain sanctions or criminal threats for anyone who commits a violation. of the prohibition; 2) provide provisions for time and place as well as what legal actions have been violated so that sanctions can be given as regulated; 3) determine what punishment can be carried out if a person is suspected of having violated the rule. (M.Jamil, 2019).

The imposition of criminal sanctions on all forms of narcotics crime committed by foreign citizens within the Indonesian jurisdiction needs to be enforced based on the laws and regulations Number 35 of 2009 concerning Narcotics, especially as stated in Article 67 paragraph (1), which reads. Every citizen in Foreign countries that smuggle narcotics are given criminal sanctions for 3 (three) years. However, it is necessary to review the elements contained in the judge's consideration to make a criminal decision, whether they have aggravating elements or not. (Gede Esa Surya Pramana, 2022).

In the Criminal Code (from now on referred to as the Criminal Code), Article 10 states the types of crimes: 1) the main punishment consisting of the death penalty, imprisonment, confinement and fines, and 2) additional punishment consisting of the revocation of rights. And the announcement of the judge's decision. Based on the provisions mentioned in Article 10 of the Criminal Code, there are 4 (four) types of crimes in the Narcotics Law: capital punishment, imprisonment, fines and confinement. Therefore, as far as nothing else is specified in the narcotics legislation, the sentencing rules follow the Criminal Code.

Types of narcotics such as marijuana (cannabis genus), shabu-shabu (methamphetamine) and ecstasy are the most popular narcotics abused. Despite continuing efforts to eradicate narcotics, the network of narcotics manufacturers and dealers continues to grow, involving Indonesian Citizens (WNI) to Foreign

Citizens (WNA). Because of its very dangerous effects, experts believe that narcotics abusers are considered victims of crime (narcotics users).

The function of law in community development is very important to bring about change in society itself. Similarly, the role of government provides a tool to influence the magnitude of the role of government in making a difference in society. One of these tools is criminal law. Due to the existence of criminal law, the government has determined many certain acts as new criminal acts. According to W.L.G., Lemaire, criminal law consists of punishment, a norm that contains what should and should not be combined (by legislators) with sanctions in the form of a certain suffering. Therefore, criminal law is also a system of norms that determine what actions and under what circumstances the punishments can be imposed, and what penalties can be imposed for those acts.

The emergence of the level of spread of narcotics crimes across countries, whether carried out by smuggling or illegal narcotics trade carried out by narcotics intermediaries or couriers, is inseparable from the modernization era that supports the rapid advancement of information and communication technology making it easier for countries to carry out intense Communication. . Communication is needed to speed up the exchange of information between regions and between countries easily. On the other hand, it provides opportunities for domestic and global actors to increase the intensity of their criminal operations. (Simela Victor Muhamad, 2015) As stated by Thomas L. Friedman, that technological progress is the trigger for the level of globalization that causes global renewal, and he even argues that the world is like a global village (global village). (Thomas L. Friedman, 1999).

The use of narcotics originally prevailed only among vagrants and disreputable persons, who occasionally associated together to partake of this substance, but since it has extended itself among the members and descendants of reputable families, students, and officers of government. Many of them are so infatuated with their attachment to the drug as to make habitual use of it. (Ian G. Waddell, 2017).

Law enforcement is a series that cannot be separated from efforts or processes. Barda Nawawi Arief argued that law enforcement is a series of processes that need to be carried out to uphold legal values or norms based on the guidelines for events in the mobility of people's daily lives. Then Indriyanto Seno Adji said that the enforcement system is divided into 2 (two) in terms of the subject of enforcement and the object of law enforcement. The subject can be divided into 2 (two), namely law enforcement in a broad sense and in a narrow sense. Law enforcement is carried out in a broad sense. Namely, the law enforcement process covers all legal subjects in every event that occurs. Everyone implements the rule of law based on

what cannot and can be done, so in this case, he has made efforts to enforce the rule of law. While in a narrow sense, the law enforcement process is carried out by all law enforcers to provide guarantees and ensure that the norms or values in the rule of law continue to run based on applicable provisions. (Ahmad Dwi Nuryanto, 2019).

All kinds of efforts in prevention have been carried out, but until now, there are still many perpetrators of users, dealers, couriers and narcotics dealers in the community. This emphasizes that more attention is needed to reduce the rate of decline in the abuse and illicit trafficking of narcotics at the global, national and international levels. So far, to prevent and overcome this turmoil, the government has established Law No. 22 of 1997, which has now been amended and added to Law No. 35 of 2009 concerning Narcotics, in conjunction with Government Regulation No. 40 of 2013 concerning the Implementation of Law No. 35 of 2009 2009 on Narcotics. (I Komang Suparta, 2016).

The general theory of crime is that crimes are caused by low self-control. In contrast, it proposes a very different mechanism: low self-control also causes low education, which is linked with criminality. According to theory, low self-control is caused by ineffective parenting. (Sanna Kailaheimo-Lonnqvist, 2022).

The provision of criminal witnesses against narcotics perpetrators, both dealers, dealers or couriers, and users must always be given firmness by the government through law enforcement so that it can cause a deterrent effect felt by narcotics syndicate actors. The government's seriousness in this matter has been regulated in Law Number 35 of 2009 concerning Narcotics, which not only regulates criminal sanctions for narcotics abuse but also for narcotics precursors for their manufacture. (Gede Esa Surya Pramana et al, 2022).

II. Research Method

This research is descriptive research. The type of research in this writing includes the type of doctrinal/normative legal research. Meanwhile, if viewed from its nature, it includes descriptive research. According to its form, this research is a diagnostic research, namely research that aims to obtain information about the causes of a symptom or several symptoms. The type of data used in this study is secondary data, namely data or information from the review of similar research documents that have been done before, library materials such as books, literature, newspapers, magazines, journals or archives that are following the research to be discussed. . (Abdul Kadir Jaelani, I Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, 2019).

The type of research data used is secondary data in the field of law in terms of binding strength can be divided into 3 (three). The authors use the following data primary, secondary and tertiary legal materials. Literature studies carry out data collection techniques to collect and compile data related to the problem under study. The data obtained in this paper are qualitative, so the analysis in this paper is qualitative data analysis with a problem approach, namely the Statute Approach. In this case, a normative research must use a statutory approach, because what will be studied are various legal rules that are the focus and the central theme of a research.

III. Results and Discussion

Application of Sanctions Against Narcotics Courier Actors Who are Foreign Citizens

Narcotics abuse has an impact that cannot be considered a trivial matter, because this narcotic crime case is the same as a corruption crime where both have in common, namely threatening the security and progress of a nation and state. Narcotics crime is still disturbing the community and is still the dominant crime case or in other forms of violation. It is no secret that many narcotics crimes have been resolved through "peace" so that the findings in cases like this are not very visible or recorded (dark numbers).

The application of criminal sanctions carried out against narcotics couriers who are foreign nationals, by committing crimes within the territory of the Republic of Indonesia will apply the criminal law adopted in Indonesia. This has been confirmed by the existence of the principle of territoriality, which is the principle of Indonesian criminal law applicable throughout the territory of the Republic of Indonesia, for every person who commits a criminal offence. This principle has been mentioned in Article 2 in conjunction with Article 3 of the Criminal Code, where criminal law provisions apply to everyone inside and outside the Indonesian jurisdiction who commits a crime through water (sea) or aeroplane (air) routes.

The imposition of criminal sanctions is a concrete form of crime where the imposition of criminal sanctions can only be carried out by judges who examine the criminal case in question. To make a decision, the judge must have wise considerations so that the decision follows the principle of justice. The criminal provisions contained in all laws and regulations, especially outside the Criminal Code, are a special part (subsystem) of the entire criminal system. Thus, the criminal system in special laws outside the Criminal Code must be integrated into (consistent with) general rules), but in special laws outside the Criminal Code can

make special rules that deviate or differ from the general rules. (Keke Wisma Purba, 2016).

Sanctions imposed by the Indonesian government for foreign nationals who commit narcotics crimes will be deported based on the provisions in Article 146 of Law Number 35 of 2009 concerning Narcotics that: 1) every foreign citizen who has committed a narcotic crime and or other crime criminal precursor of narcotics and has served his sentence based on statutory regulations, will be expelled from the territory of the Unitary State of the Republic of Indonesia (NKRI). 2) any colour of a foreign country that has been expelled above is strictly prohibited from re-entering the territory of the Republic of Indonesia. 3) and every foreign citizen who has committed a narcotic crime abroad, it is also prohibited from entering the territory of the Republic of Indonesia.

The imposition of criminal sanctions on all forms of narcotics crime committed by foreign citizens within the Indonesian jurisdiction needs to be enforced based on the laws and regulations Number 35 of 2009 concerning Narcotics, especially as stated in Article 67 paragraph (1), which reads. Every citizen in Foreign countries that smuggle narcotics are given criminal sanctions for 3 (three) years. However, it is necessary to review the elements contained in the judge's consideration to make a criminal decision, whether they have aggravating elements or not. (Gede Esa Surya Pramana, 2022).

The Criminal Code (KUHP) states that Article 10 concerning types of crimes: 1) the main punishment consisting of the death penalty, imprisonment, confinement and fines, and 2) additional penalties consisting of the revocation of certain rights and announcements. Judge's decision. Based on the provisions mentioned in Article 10 of the Criminal Code, there are 4 (four) types of crimes in the Narcotics Law: capital punishment, imprisonment, fines and confinement. Therefore, as far as nothing else is specified in the narcotics legislation, the sentencing rules follow the Criminal Code.

Article 127 of Law Number 35 of 2009 concerning Narcotics states that: 1) anyone who abuses: a) class I narcotics is threatened with a maximum imprisonment of 15 (fifteen) years; b) narcotics class II is threatened with a maximum imprisonment of 12 (twelve) years, and c) narcotics class III is threatened with a maximum imprisonment of 10 (ten) years. 2) To give a decision in paragraph (1) above, the judge must pay attention to the provisions in Article 116. 3) the abuser mentioned above can be proven as a victim of narcotics abuse. He is obliged to carry out medical and social rehabilitation.

Based on the opinion expressed by Barda Nawawi Arief that the importance of using penal facilities to carry out crime prevention efforts, namely: a) criminal witnesses are very much needed, everyone cannot live without criminal sanctions,

b) criminal sanctions are the best means to be able to face the crime and to face all forms of dangerous threats, and c) criminal sanctions are the provision of guarantees when facing threats from freedom of the social environment. Policies are given to overcome good crimes by using penal facilities that several criminologists have suggested in a repressive manner. Repressive measures focus on efforts to eradicate crime by imposing criminal sanctions. (Wenda Hartanto, 2017).

The law on narcotics itself does not provide a clear distinction or line between criminal offences in Article 127 of the narcotics law and other criminal offences contained in the narcotics law, where narcotics users who obtain narcotics legally must fulfil the element of "control", "possess", "keeps", and "buys" narcotics. It is also regulated as a separate crime in the narcotics law. In practice, law enforcement officers also link (including include/junction) between the criminal offence of narcotics users and the criminal offence of controlling, possessing, storing or purchasing narcotics without rights and against the law, where the criminal threat becomes much higher and uses special minimum sanctions, namely minimum 4 years in prison and a fine of at least IDR 800,000,000 (eight hundred thousand rupiahs). (Sarosa, 2018)

Factors Inhibiting the Implementation of Sanctions Against Narcotics Courier Actors Who Are Foreign Citizens

The obstacle in implementing sanctions against narcotics couriers who are foreign nationals cannot be separated from the policies given by the Government of the Republic of Indonesia to the President. The President is given the authority to grant amnesty, rehabilitation, abolition and clemency based on the considerations of the Supreme Court and the DPR as stipulated in Article 14 of the 1945 Constitution, which affirms that: 1) the President has the authority to grant pardons and rehabilitation at the discretion of the Supreme Court, 2) the President has the authority to grant amnesty and abolition at the discretion of the DPR. Sentencing decisions can be submitted for clemency, namely the death penalty, life imprisonment or a minimum imprisonment of 2 (two) years. The President has the authority to grant or reject the application for clemency after obtaining consideration from the Supreme Court, granting clemency by the President in the form of: a) reduction or change in the type of crime, b) reduction in the number of crimes; or, c) the abolition of the execution of a criminal offence. Everyone has the right to receive rehabilitation when: 1) applying for rehabilitation through a pretrial process, which is caused by the illegality of an arrest or detention, or due to the legal termination of a series of investigations and prosecutions up to the determination of the status of a suspect. 2) if he is acquitted or released from all

legal claims where the decision has permanent legal force, then rehabilitation will be given in the decision.

Based on the above policy, in the application of the criminal sanctions given, it actually gets relief so that the deterrent effect, which should be the main impact for the perpetrators of narcotics syndicates, has instead become a breath of fresh air for the perpetrators of criminal acts. In this case, the government should pay more attention to the policies that will be taken following the crimes committed. Narcotics crime is an extraordinary crime that has occurred all over the world.

Then the inhibiting factor in the application of sanctions by narcotics couriers who are foreign nationals lies in the cross-country and regional routes, namely: a) circulation carried out by air, many modus operandi carried out by narcotics couriers. The mode that is growing is increasingly making things up, starting from sticking to the body (body pack), being swallowed and so on that law enforcement officials never thought of before. b) land routes carry out smuggling, law enforcement officers conduct street raids or rely on information from various community groups. In this case, for the use of land routes, it is still minimal to be found directly carrying narcotics, plus the number of rat trails which may indeed have been known by the syndicate actors, which does not allow law enforcement officers to exist. c) by sea, where there are still illegal ports that the government has not discovered, and a rat route frees them to transact easily. The smuggling of narcotics by couriers through sea routes has not been able to be handled optimally by the seaport interaction team. (Kesno Adi, 2009).

Obstacles to implementing the death penalty policy for foreign nationals who are perpetrators of narcotics crimes are not only felt at the pre-implementation stage, but also after implementing the death penalty policy for foreign nationals who are perpetrators of narcotics crimes. Both countries are related to implementing the death penalty policy for foreign nationals who are perpetrators of narcotics crimes. On the one hand, the country concerned must enforce the applicable law while foreign governments try to save their citizens. 2) Withdrawal of representative ambassadors in countries carrying out the death penalty policy for foreign nationals who are perpetrators of narcotics crimes. This is related to the form of protest by foreign governments regarding implementing the death penalty policy for foreign nationals who are perpetrators of narcotics crimes. 3) Obstacles related to the fulfilment of the last request of the death row convict that the relevant government must carry out before finally the body of the death row convict is returned to his country of origin. 4) Obstacles related to the repatriation of bodies to their countries of origin, where bilateral relations between the two countries have been strained, making it difficult for permits and correspondence to be dealt with, due to the lack of participation of the targeted country to

repatriate the bodies of its citizens. 5) Obstacles related to the death of convicts whose families are not clear so that the bodies do not know where to return, and in the end, the government is obliged to bury the bodies of the dead convicts concerned. (Keke Wisma Purba, 2016).

IV. Conclusion

Based on the results of the discussion, the following conclusions can be drawn; First, the sanctions imposed by the Indonesian government for foreign nationals who commit narcotics crimes will be deported based on the provisions in Article 146 of Law Number 35 of 2009 concerning Narcotics that: 1) every foreign citizen who has committed a narcotic crime and or criminal act of narcotic precursor and has served his sentence based on the laws and regulations, will be expelled from the territory of the Republic of Indonesia. 2) any colour of a foreign country that has been expelled above is strictly prohibited from re-entering the territory of the Republic of Indonesia. 3) and every foreign citizen who has committed a narcotic crime abroad, it is also prohibited from entering the territory of the Republic of Indonesia. And the second obstacle in implementing sanctions against narcotics couriers who are foreign nationals cannot be separated from the policies given by the Government of the Republic of Indonesia to the President. The President is given the authority to grant amnesty, rehabilitation, abolition and clemency at the discretion of the Supreme Court and the House of Representatives (DPR).

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