

Legal Analysis of Drug Traffickers Based on: Analysis of Supreme Court Decision Number 5832 K/Pid.Sus/2022

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Abstract: *The 2009 Narcotics Law, also known as Law 35, demonstrates a clear intention to deter people from committing drug-related offences. To achieve this, the law applies stricter penalties, including the possibility of the death penalty, with minimum and maximum sentences set based on the severity of the threat posed by drug abuse and illicit trafficking. These measures are crucial in maintaining national security and safeguarding the resilience of our society. This research consists of a legal review of the criminal offence of drug trafficking and the eradication of drug trafficking in Indonesia. This includes an analysis of Supreme Court Decision Number 5832 K/Pid.Sus/2022. The research methodology used is normative legal research, with a descriptive approach. The data for this research is collected from primary and secondary sources through the literature research method. The death penalty is expressly mentioned as an appropriate punishment for serious drug offenders in Law Number 35 Year 2009 on Narcotics. The implementation of this punishment in Indonesia is essential to protect the state, society, and public interest. The act of trafficking narcotics poses a great threat to these three interests so it is justifiable to impose the death penalty on the perpetrators. In line with Supreme Court Decision Number 5832 K/Pid.Sus/2022, the author agrees with the decision of the panel of judges who revoked the defendant's acquittal and imposed the death penalty. This decision is very appropriate for drug dealers who continue to carry out illegal activities even though they have been imprisoned.*

Keywords: *Death Penalty, Offender, Peddling Narcotics*

INTRODUCTION

In Indonesia, the foundation of the state lies in the observance of the rule of law. Therefore, every individual and collective endeavour, as an integral part of life, must abide by the established rules and norms of society. The importance of law cannot be underestimated, as it serves as a guiding principle in regulating human behaviour and shaping the order of society. Without the presence of law, the nature of our nation would be unimaginable.

The human rights set out in Article 28(1) of the 1945 Constitution may not be diminished under any circumstances; they include the right to life, the right not to be tortured, the right to thought and conscience, the right to religion, the right not to be enslaved, the right to be legally recognised as an individual, and the right to be protected from retroactive prosecution".

Drug trafficking is a growing criminal activity that affects all walks of life, including individuals of all social statuses. This includes children, students, celebrities, professional organisations, and even some corrupt officials. Often, it starts with experimentation or a desire

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to impress friends. The source of these substances is often not hard to find, as they can come from wealthy friends or acquaintances.

These elements are vulnerable to drug infiltration. Drug trafficking and abuse knows no boundaries, affecting individuals of all ages, economic status, religious beliefs, and levels of harmony. It is important to tackle this problem and give the law the attention it deserves in a firm and clear manner as it is a threat to the life of the country.

Despite controversy and conflicting views, the application of the death penalty in Indonesia remains prevalent and justified within the formal legal framework. Proponents argue that the death penalty serves as a deterrent and a means to combat crime. President Joko Widodo has specifically emphasised the importance of carrying out executions to ensure legal certainty and reduce crime. On the other hand, opponents view the death penalty as state-sanctioned murder and a violation of human rights, particularly the fundamental right to life, which should not be compromised under any circumstances, including in emergencies. In an era of development like today, the death penalty is a must for those who hinder progress, because narcotics trafficking can be considered an obstacle because of its adverse effects on human life, society, nation, state, and Indonesian national security.

Motivated by the recent Supreme Court decision Number 5832 K/Pid.Sus/2022 which granted the cassation filed by the prosecutor in the case of possession of 92 kilograms of methamphetamine by the defendant Muhamad Sulton, resulting in the death penalty, the researcher was inspired to conduct research. The Supreme Court cassation decision overturned the previous decision of the Tanjung Karang District Court (Number: 13/Pid.Sus/2022/PN TJK, dated 21 June 2022).

THEORETICAL REVIEW

A theoretical framework is an abstract concept derived from intellectual contemplation or a perspective that seeks to identify relevant social aspects recognised by the researcher. Theoretical musings always accompany any research effort due to the interrelationship between theory and the process of collecting, organising and examining data. Research as a scientific endeavour requires the use of theories that contain assumptions, concepts, definitions, and frameworks to systematically explain social phenomena by establishing relationships between various concepts. Given the above research problems, various theories are used as analytical instruments to deconstruct the research problems discussed in this thesis. The following theories can be mentioned as follows:

a. *Grand Theory* : Soerjono Soekanto's Theory of Law Enforcement

In Dutch, the term law enforcement is *rechtstoepassing* or *rechtshandhaving*. In English, law enforcement includes macro and micro notions. Macro includes all aspects of the life of society, nation and state. In micro terms, it is only limited to the judicial process which includes the stages of investigation, prosecution, and implementation of criminal decisions that have permanent legal validity.

Law enforcement has the same goal as the law, which is to achieve certain desired results. The purpose of law is to uphold order and justice, and if the law is ignored, then order will not be achieved. The observance and understanding of the law by the public not only impacts order and justice, but also contributes to shaping the legal culture of a society by regulating its behaviour.

b. *Middle Theory* : Barda Namawi Arief's Theory of Crime Management

The fight against crime is an important component of safeguarding society (social defence) and promoting well-being (social welfare). Crime prevention policies, also known as criminal policy, have two main objectives: to ensure the protection of society and the achievement of social welfare. These policies are an important element of law enforcement strategy.

The field of law enforcement policy falls under the umbrella of social policy and legislative policy. Criminal policy, which is a fundamental component of social policy, includes various strategies and initiatives aimed at improving social welfare. According to Muladi, crime prevention policy, if studied comprehensively, covers a variety of issues and has a fairly high level of complexity. This complexity is natural, because crime is not only a humanitarian issue but also a societal issue that requires a unique understanding.

Therefore, preventive efforts through non-criminal means do have great strategic importance and occupy an important position that must be strengthened and streamlined in order to achieve the ultimate goal of criminal policy. Given that crime control efforts through non-criminal means are crime prevention efforts, the main objective is to overcome the factors that cause crime.

c. *Applied Theory* : Effectiveness Theory and Legal Certainty Theory

The word "effective" means "effective" in English, and means "success" or "success". The general scientific dictionary defines effectiveness as accuracy of application, useful result, or support of a goal. According to the Kamus Besar Bahasa Indonesia, "effective" means a law or regulation that has an impact (effect, influence, impression) since its enactment.

On the other hand, effectiveness itself is a situation used for supervision. from a legal point of view "he" here means the authorities, namely the police. The word effectiveness itself comes from the word effective which means an action produces the desired effect or result. Efficient work is effective because it is viewed in terms of the outcome of the goal achieved or attained by the action.

If one wants to know the level of effectiveness of a law, then it can be said that the legal rule in question is effective, unless it can first be measured to what extent the law is followed by the majority of subjects. However, even if the rules adopted are said to be valid, their validity can still be questioned, because whether a person follows a legal rule depends on that person's interests As mentioned, there are various concerns, including compliance, identification and internalisation.

Legal Certainty Theory

Gustav Radbruch's theory of legal certainty states that everything that is created must have a purpose. All legal regulations have a purpose, and the purpose is the value that society wants to realise. There are three main legal objectives, namely:

- a. Justice for balance;
- b. Certainty for stability;
- c. Beneficence for happiness.

Because legal certainty is tied to legal justice, the two are often incompatible. This is because on the one hand legal certainty often ignores the principles of legal justice, and on the other hand legal justice often ignores the principles of legal certainty. If there is a conflict between legal certainty and legal justice, then legal justice must be prioritised. This is because legal justice generally comes from the conscience of the lawmaker, while legal certainty comes from something concrete.

Theory of Legal Certainty According to Utrecht

Mr Utrecht emphasises that legal certainty has two meanings First, the existence of general rules allows individuals to know which actions they can and cannot take. Second, legal certainty against state arbitrariness in general rules allows individuals to know what the state can impose on them and what they can do.

Legal certainty requires the creation of general regulations or general rules that apply universally, and general laws to achieve legal certainty (for the sake of order and justice for all Indonesian people, an obligation arises).

RESEARCH METHODS

In this article the author uses qualitative analysis to analyse data obtained from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions, or researchers' own opinions. Data analysis is an explanation of how data processing works. Therefore, it can be information and materials used in research. This type of research is normative legal research. In other words, research on legal norms contained in laws and regulations, the type of data used in this research is secondary data. Namely data from official documents, reports, articles, legal regulations, and other research results. Secondary data consists of: a. Primary legal materials. Consists of: The 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. b. Secondary legal sources. Component: Books related to the research c. Tertiary legal materials. Composition: Indonesian Dictionary. Data Collection Methods Library research is used when prospective researchers seek answers to problem formulations in reading sources such as the 1945 Constitution, laws, books, journals, the internet and other sources.

RESULTS AND DISCUSSION

The law also provides for the expansion of telephone tapping, secret purchase and controlled delivery techniques, and other investigative techniques to prosecute and detect the abuse and illegal trafficking of drugs and drug precursors. Matters regulated in Law Number 35 of 2009 concerning narcotics include:

1. Regulates the classification and types of narcotics

This law divides narcotics into three groups: narcotics of Class I and 65 types, 86 types of narcotics of Class 2, and 14 types of narcotics of Class 3. There was a change in the addition of types of Class I, with Law No. 22 of 1997, Class I only numbered 26 types. Changes also occurred in Class II, and based on Law No. 22 of 1997, Class II consists of 87 types. However, for Group III there is no change in the type of reduction or addition. The types of drugs only change in group III. In Law Number 35 of 2009, narcotic or opiate preparations mixed with other materials other than narcotics are no longer included in group III and replaced with buprenorphine.

2. Treatment and Rehabilitation

Under this law, addicts and victims of drug abuse are no longer given the discretion and freedom to recover on their own accord. Addicts are required to undergo medical and social rehabilitation. The law also requires drug addicts to report to health centres, hospitals, and medical and rehabilitation facilities. This obligation is also the responsibility of parents and family members. Medical and social rehabilitation can also be organised by

state authorities or local governments, which are regulated by ministerial regulation. (Article 54)

3. BNN's Authority and Investigations

The Narcotics Law Number 35 Year 2009 allocates a large portion to the BNN. One of BNN's missions is to prevent and disrupt the abuse and distribution of drugs and drug precursors. In addition, BNN can also utilise the public to search for, obtain, and provide information regarding alleged violations of narcotics and drug precursors (Article 106). In relation to drug eradication, BNN has the authority to conduct investigations and inquiries into the abuse and distribution of drugs and drug precursors, as well as the authority to investigate and prosecute.

4. Community Participation

Law No. 35/2009 gives broad authority to law enforcement officials, especially BNN, and also obliges the public to play an active role in drug prevention and eradication efforts. Citizens must act like investigators by seeking, obtaining and providing information and receiving services on this issue. The law does not give citizens the right to provide advice, assistance and support to drug addicts.

5. Criminal provisions

The Narcotics Law Number 35 Year 2009 contains criminal provisions in 39 of the 155 articles regulated by the law. These penalties are contained in Articles 111 to 148. Factors external to the drug abuser, among which the most prominent in narcotics cases, are:

If drugs are easily available in such an environment, then the tendency for drug crime will automatically increase. The family and community environment is also a factor in drug use. The family is one of the most important organisations among social groups, and the family is the institution of society primarily responsible for ensuring the social and biological well-being of human children. One of the causes of drug use is a family with the following characteristics: Families with a history of drug use (including parents), high conflict families, families with authoritarian parents, and disharmonious families. Environment. The condition of an unhealthy or vulnerable community environment can be a contributing factor to deviant behaviour that inhibits intellectual development and ultimately leads to drug abuse and addiction. Vulnerable community environments include:

- 1) The number of unemployed, school dropouts, and street children is increasing.
- 2) Entertainment venues that are open at night or in the early hours of the morning are frequent.
- 3) Drug trafficking locations. Speeding, making graffiti, destroying public spaces. open and covert drug trafficking locations.

Lack of supervision, namely Supervision here aims to control the supply, use and distribution of drugs. So this does not only include community monitoring. The government plays an important role in limiting the cycle of drug suppression, production and use.

The stipulation of criminal provisions aimed at eradicating drug offences involving drug precursors is developed in the hope that it can be effective and achieve the desired goal, therefore Law Number 35 Year 2009 on Drugs The application of the criminal provisions in the subparagraph should also be done with caution. A thorough understanding of each of the applicable penal provisions will help avoid practical errors. There are at least two main aspects that can be discerned from the criminal text of Law No. 35/2009 on Narcotics: the prevention of drug offences and the spread of drug precursors, and the spirit of protection of drug users.

They realise that drugs have become an extraordinary form of crime, and law enforcement will be increasingly vigilant against drug trafficking operations. They do not want their livelihood, which is now a golden land, to be disrupted by the swift and skilful actions of law enforcement officers. Because drug dealers who use drugs often dislike laws and regulations. They always break the law for personal gain. For them, the threat of crime is just a theory. The drug business still exists in prisons, so there are still many drugs smuggled and distributed to correctional institutions. This should be an assessment of law enforcement. Regarding the Supreme Court Decision Number 5832 K/Pid.Sus/2022, the author argues that the decision of the panel of judges to cancel the release of the defendant and replace it with the death penalty is appropriate.

Especially if we look at the wording of Article 114 Paragraph 2 of the Narcotics Law, namely by the act of recruiting, selling, buying, brokering the sale, exchange, transfer, or receipt of Class I drugs in its sense. Paragraph 1, if the weight is more than 1 kilogram for plants, or in the form of more than 5 tree trunks, or non-plant drugs weighing more than 5 grams, the perpetrator is sentenced to death. Life imprisonment or imprisonment for a minimum of 6 years and a maximum of 20 years and the maximum imprisonment is specified in Article Add 1/3 (1/3) in paragraph (1). In the case of Supreme Court Decision Number 5832 K/Pid.Sus/2022, the defendant attempted to distribute class 1 narcotics, namely 92 kg of methamphetamine.

Therefore, the defendant's actions fall under the provisions of the Narcotics Law and are punishable by death. The defendant's status as an inmate serving a prison sentence for his past drug offences also proves that the management of the drug business in correctional institutions is indeed very concerning. Eradicating drug trafficking and abuse in correctional institutions requires cooperation to strengthen supervision and law enforcement. One of them

is to deny a second chance for the parties involved, namely by applying the death penalty. Every human being has the right to life and survival.

As mentioned above, human rights are limited by other human rights. For example, in the analysis of the death penalty case, Freddie Budiman has a human right, the right to life. However, Freddie Budiman's right to life is limited by the right to life of others. In addition, the right to life is abused by threatening the lives of others through the distribution of illegal drugs that take the lives of others.

Based on Article 114 Paragraph 2 of Law Number 35 Year 2009, the imposition of the death penalty against drug dealer Mohammad Sulton Bin H. Layan is appropriate and is not a violation of human rights. Because the death penalty imposed on a person who destroys and destroys many people is better than him staying alive, but the destruction of other countries is greater. The application of the death penalty against drug dealers is in line with the consequences of international conventions from a human rights perspective. Because it is better to kill one person than to destroy many people because of his actions and deeds.

International conventions and treaties on civil and political rights also state that the death penalty is not prohibited. The actions of the perpetrators of drug trafficking offences, or drug dealers who run their business behind bars in Resolution Number 5832 K/Pid.Sus/2022, have destroyed humanity as a whole, thus requiring the abolition of the death penalty to be applied. A person who commits a crime and saves one or more people. The author also praises the courage and determination of the jury by saying that it is appropriate to impose the death penalty on a drug dealer who despite being imprisoned still dares to run his illegal business.

CONCLUSIONS AND SUGGESTIONS

1. Narcotics Law Number 35 Year 2009. This is reinforced by the decision of the Constitutional Court that imposes the death penalty on offenders who commit narcotics offences as follows, which stipulates that the appropriate punishment for serious narcotics offences is only the death penalty: There is no human rights violation,
2. The urgency of imposing the death penalty against drug trafficking offenders in Indonesia must be seen in the context of community protection, namely the protection of national interests, community interests, and public interests. In this case, the crime of drug trafficking endangers three interests that must be protected, and it is reasonable if the perpetrators of the crime are sentenced to death.
3. Regarding Supreme Court Decision Number 5832 K/Pid.Sus/2022, the author argues that the decision of the panel of judges to cancel the release of the defendant and replace it with the death penalty was correct. I also really appreciate the courage and judgement of the

Supreme Court judges. Because it is right to impose the death penalty on drug dealers who have been imprisoned but still dare to carry out their illegal business.

Advice

1. The participation of the local community is highly desirable, because without community support, all efforts, initiatives and activities of law enforcement officers will fail.
2. Regulations prohibiting drug trafficking remain relevant, as prison sentences alone are not enough to deter offenders, and some drug convicts can even run businesses in prison.
3. It is hoped that law enforcement officials, especially judges, will immediately impose the death penalty on prisoners who are proven to be able to control drug trafficking in correctional institutions, in accordance with the decision of the Supreme Court Panel of Judges, Decision No.5832 K /Pid .Sus/202.

REFERENCES

Books

- Adi, K. (2017). *Diversi tindak pidana narkoba anak*. Jakarta: Media Pustaka.
- Adi, P. (2015). *Tindak pidana narkoba*. Jakarta: Raja Grafindo.
- Ali, M. (2012). *Dasar-dasar hukum pidana*. Jakarta: Sinar Grafika.
- Ali, M. H. (2014). *Harmonisasi keadilan dan kepastian dalam hukum*. Bandung: Sinar Grafika.
- Amri, M. A. (2017). *Narkoba ancaman generasi muda*. Samarinda: Pustaka Timur.
- Ari, G. A. (2014). *Pemberantasan peredaran gelap narkoba*. Jakarta: P.T Badan Penerbit Indonesia Raya.
- Assegaf, S. (2014). *Kedudukan hukum bagi pengguna dan pecandu narkoba*. Makassar: Griya Pustaka.
- Daniel, B. (2013). *Komentar & pembahasan Undang-Undang Nomor 35 Tahun 2009 tentang narkoba*. Rawamangun: Sinar Grafika.
- Hatta, M. (2018). *Penegakan hukum penyalahgunaan narkoba di Indonesia*. Jakarta: Berdikari Book.
- Iskandar, A. (2014). *Politik hukum narkoba*. Jakarta: Elex Media Komputindo.
- Jainah, Z. O. (2017). *Budaya hukum penegak hukum dalam pemberantasan tindak pidana narkoba*. Jakarta: Raja Grafindo.
- Lastarya, D. (2016). *Narkoba perlukah mengenalnya*. Jakarta: Pakarkarya.
- Mahrus, A. (2012). *Dasar-dasar hukum pidana*. Jakarta: Sinar Grafika.
- Makaro, T. (2013). *Tindak pidana narkoba*. Bandung: Ghalia Indonesia.

- Manullang, F. (2013). *Legalisme dan kepastian hukum*. Jakarta: Raja Grafindo.
- Mardani. (2018). *Penyalahgunaan narkoba dalam perspektif hukum pidana nasional*. Jakarta: Raja Grafindo Persada.
- Marlina. (2016). *Hukum penitensier (Cet. II)*. Bandung: Refika Aditama.
- Marwan. (2014). *Pengantar ilmu hukum*. Bogor: Ghalia Indonesia.
- Nadack, W. (2013). *Korban ganja dan masalah narkoba*. Bandung: Indonesia Publishing House.
- Nainggolan, J. (2015). *Energi hukum sebagai faktor pendorong efektivitas hukum*. Bandung: Sinar Media.
- P., M. A. (2017). *Narkoba ancaman generasi muda*. Samarinda: Pustaka Timur.
- Partodiharjo, S. (2007). *Kenali narkoba dan musuhi penyalahgunanya*. Jakarta: Esensi.
- Priyanto, P. (2009). *Sistem pelaksanaan pidana penjara di Indonesia*. Bandung: Rafika Aditama.
- Purnomo, B. (2014). *Asas-asas hukum pidana*. Jakarta: Ghalia Indonesia.
- Ratna, W. (2016). *Aspek pidana penyalahgunaan narkoba: Rehabilitasi versus penjara*. Jakarta: Sinar Grafika.
- Sahetapy, J. E. (2007). *Pidana mati dalam negara Pancasila*. Jakarta: PT Citra Aditya Bakti.
- Santoso, A. (2019). *Hukum, moral, dan keadilan: Sebuah kajian filsafat hukum*. Yogyakarta: Sinar Media.
- Sasangka, H. (2013). *Narkoba dan psikotropika dalam hukum pidana*. Jakarta: Mandar Maju.
- Setiawan, Y. (2018). *Penegakan hukum tindak pidana narkoba*. Jakarta: Sinar Grafika.
- Siswanto. (2012). *Politik hukum dalam Undang-Undang Narkotika*. Jakarta: Rhineka Cipta.

Legislation

Undang-Undang Dasar RI Tahun 1945.

Undang-Undang Nomor 1 Tahun 1946 tentang Pengaturan Hukum Pidana.

Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

Scientific Journals

- Sembiring, I. A. B., Krisna, R., & Zarzani, T. R. (2023). Perlindungan hukum terhadap anak sebagai pelaku tindak pidana dalam sistem peradilan anak di Indonesia. *Jurnal Darma Agung*. Retrieved from <https://jurnal.darmaagung.ac.id> on December 11, 2023 at 02:14 WIB.
- Simbolon, V. E. B., Simarmata, M., & Rahmayanti. (2017). Tinjauan yuridis terhadap tindak pidana pembunuhan berencana menggunakan besi padat di Medan: Tinjauan kasus nomor 2305/Pid.B/2017/Pn.Mdn. *Jurnal Mercatoria*, 12(1).