



Reconstruction of courier's criminal responsibility on illegal drug trading based on justice value

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Abstract

As an extraordinary criminal offense in general, judges are allowed to punish two charges at once on illegal narcotics traffickers that generally consists of fines and physical penalty, but if the same is applied to narcotics trafficking intermediaries or courier who sometimes do not even know what they're doing will make human values and justice in Indonesian criminal law becomes questionable. The problem in this research is why criminal sanctions against illegal narcotics courier in Indonesia are not based on justice values yet and How is the Reconstruction of criminal penalties against illegal narcotics courier based on justice values. The study was conducted in the perspective of the Constructivism paradigm with the type of socio-legal research and qualitative approach methods. Data used in this research are from interviews and questionnaires supported by literature, legislation and various public documents, while the data analysis was carried out by the method of qualitative critical analysis.

The results showed that narcotics illicit trafficking is an extra ordinary crime because it is a transnational crime regulated in a special law namely Law No. 35/2009 concerning Narcotics. Actors of narcotics trafficking intermediaries can be held criminally liable if they adhere to Article 114, 119, 124, 129 of Law Number 35 Year 2009 concerning Narcotics by not seeing whether the intermediaries know that their actions are criminal or not. This is not in accordance with the value of justice so that reconstruction needs to be carried out in Law Number 35 of 2009 concerning Narcotics, especially in the Penalty for Intermediaries in Narcotics transactions both belonged in to Narcotics Group I, Group II and Group III (article 114 paragraph [1] of Law No. 35/2009 concerning Narcotics) so as not to be equated with other subject so that it is in accordance with the value of justice.

Keywords: reconstruction, illegal drug, courier, justice value

Introduction

Drug Dealing and abuse of narcotics with potential targets of the younger generation have reached various parts of the region and their misuse is evenly distributed across all social strata of people throughout the world including Indonesia. Narcotics are basically very necessary and have benefits in the fields of health and science if used appropriately, but the use of narcotics becomes dangerous if abuse occurs. In Indonesia, in Chapter IV article 9 paragraph (1) of the Narcotics Act guarantees the availability of narcotics for the sake of health and science yet on the other hand in Chapter XI article 64 paragraph (1) and articles 70-72 of the Law on Narcotics regulates the prevention of illicit trafficking of narcotics which always leads to the occurrence of abuse, it is necessary to regulate in the field of narcotics Law enforcement against drug crimes that has been carried out by law enforcement officers and has received a judge's decision in a court hearing. This law enforcement is expected to be able to act as a deterrent against the spread of drug trafficking and abuse, but in reality the more intensive the law enforcement is, the increased the circulation of the drug becomes ^[1].

Based on Law No. 5 of 1977 concerning Psychotropics and

Law No. 22 of 1997 concerning Narcotics, criminal sanctions against drug offenders are quite severe, in addition to being subjected to corporal punishment, the subject also received fines and even death penalty, but in reality the sentence does not make other refrain from doing the same thing but even more increasingly and repetitive because after serving their time in prison, most of them are caught again doing the same thing (Recidive). This is caused by the factor of imposing a criminal does not have an effect or different effect on the perpetrators.

Drug crime is a special crime. As with specific criminal offenses, judges are allowed to punish two main crimes at once, in general corporal sentences and criminal fines. Corporal punishment in the form of capital punishment, life sentence, or imprisonment. The goal is that the punishment will burden the perpetrators so that the crime may never happen again in the community, because drug crime is very dangerous for the interests of the nation and state.

The criminal sanctions imposed by the judges on the perpetrators of crimes are still considered not to give fear and are influenced by norms outside the legal norms, seem to be still inherent and become obstacles to consistent law enforcement. Also the authority of judges is so great in deciding cases that result in a lot of disparity in decisions in similar cases. This is indicated by the existence of substantially sharp differences between the decisions of one District Court judge and another or a High Court judge and a Supreme Court judge regarding the same case, even

¹ Suryandari, Amalia & Soerachmat, Benny. (2019). Indonesia Darurat Narkoba (Peran Hukum dalam Mengatasi Peredaran Gelap Narkoba). Law, Development and Justice Review. 2. 246-360. 10.14710/ldjr.v2i2.6429.

though all of them refer to the same regulations.

Decisions made by judges are often controversial. It is not uncommon for the perpetrators of criminal offenses to be sentenced to severe crimes while the other perpetrators are given light sentences or even released, even though the article they violated is the same.

The regulation also becomes even more complicated when the law is confronted with illegal drug courier. Sales of drugs for illegal consumption are often carried out in various ways. But what's interesting here is the position of intermediaries or courier in buying and selling drugs. He or she is just a "courier" whose job is to deliver drugs from the seller to the buyer. As a courier, the intermediary sometimes does not know what items he is delivering and this is often used by dealers to market his illegal products far from authorities supervision.

As one of the pillars to uphold law and justice, judges have a determining role so that their position is guaranteed by the law. Therefore, it is expected that there will be no directive / interference from any party towards the judges when handling cases. In relation to this intermediary or courier, the judge is faced with the choice of whether to punish him or her or not, because on the one hand the essence of the law is a justice that does not look at what is in someone's mind and only assesses the actions carried out (Law Certainty) but on the other hand if the law enacts the same things to intermediaries or courier, it is feared that this will violate human rights.

This problem attracts the author's interest to examine further into a study with the following main issues :

1. Why are criminal sanctions against illegal drug courier in Indonesia are currently not based on justice values?
2. How is the reconstruction of criminal sentences against the courier of the illegal narcotics trade based on justice value?

Method of Research

The paradigm that is used in the research this is the paradigm of Constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge ^[2]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of *Socio-Legal* ^[3], which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

In this study, researchers uses data collection techniques, namely interview and questionnaire supported with literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data ^[4].

Research Result and Discussion

1. Reason Why Criminal Sanctions Against Illegal Drug Courier in Indonesia Are Currently Not Based on Justice Values

Criminal liability are basically contains the principle of error (the principle of culpability), which is based on a monodualistic balance that the principle of error are based on the value of justice must be aligned in pairs with the principle of legality based on the value of certainty.

Although the concept is based on the principle that criminal liability is based on mistakes, in some cases it does not rule out the possibility of vicarious liability and strict liability. The problem of error, both error about the situation (*error facti*) and error regarding the law in accordance with the concept of forgiving reasons so that the perpetrators are not convicted unless the error is to be blamed.

Criminal liability is applied by punishment, which aims to prevent the commission of criminal acts by enforcing legal norms in order to protect the community in resolving conflicts caused by criminal acts to restore balance to bring about a sense of peace in the community to popularize the convict by providing guidance so that they become good people and free the guilt of the convicted person.

These errors consist of two types, namely intentional (*opzet*) and negligence (*culpa*). In accordance with the theory of Indonesian criminal law, intentions consist of three kinds, namely as follows ^[5]

a. Intentional purpose

That with intentional Purpose, the perpetrator can be accounted for and can easily be understood by the general public. If this kind of intent is a criminal offense, the offender deserves criminal punishment. Because with this intentional purpose, it means that the perpetrator really wants to achieve a result which is the main reason for the threat of punishment.

b. Intentional with certainty

This intentional with certainty occur if the perpetrator, by his actions, does not aim to achieve the consequences which are the basis of offense, but he is well aware that the consequences will inevitably be done by doing his or her act.

c. Intentional with Possibility

This Intention occurrence is not clearly accompanied by the shadow of a certainty that will occur due to the concerned's action, but only imagined a mere possibility of that effect. Furthermore this negligence that causes the offense can produces accountability to be presented in the court of criminal due to his or her actions.

Negligence (*culpa*) lies between intentional and accidental, however culpa is seen as lighter than deliberate, therefore this offense is categorized as an apparent offense (*quasideliet*) so that criminal sentence deduction can be held. Culpa offense are divided in to two categories, namely negligence offense that causes an effect and offenses which does not cause an effect, but can also be threatened with crime sentences because of the act of carelessness itself, the difference between the two is very easy to understand namely negligence are the results from the occurrence of that effect to then creates offense negligence, and teh second occur for those who do not need to cause consequences with

² Faisal, (2010), "Menerobos Positivisme Hukum", Rangkang Education, Yogyakarta.

³ Johnny Ibrahim, (2005), "Teori dan Metodologi Penelitian Hukum Normatif", Bayumedia, Surabaya.

⁴ L. Moleong, (2002), "Metode Penelitian Kualitatif", PT Remaja Rosdakarya, Bandung.

⁵ Suhartini, Endeh & Roestamy, Martin & Yumarni, Ani. (2019). PREVENTION AND ERADICATION OF DRUG TRAFFICKING IN INDONESIA. UNTAG Law Review. 3. 39. 10.36356/ulrev. v3i1.1063.

negligence itself but has been threatened with crime penalty. The required elements that must exist in the omission of negligence are as follows

a. Not making presumptions as required by the law, this requirement is to point out the fact that the defendant thinking that the consequences will not occur because of his actions, even though the view is then incorrect. The mistake lies in the wrong view / view that should be removed as the defendant did not have the thought that the prohibited consequences might arise because of his actions. The mistake lies in not having a thought at all that the consequences might arise from their dangerous action.

b. Not exercising caution as required by the law, this requirement refers to the non-conduct of a policy research, skills / prevention efforts in the way they do their act that have consequences as mentioned above.

Criminal responsibility is a mechanism to determine whether a defendant or suspect is responsible or not for a criminal act that had occurred. To be able to convict the offender, it is required that the crime committed did meet the elements specified in the law. As seen from the point of occurrence of prohibited actions, a person will be held accountable for his or her actions, if the actions are against the law and there is no justification or exclusion for their unlawful nature for the crimes they have committed. From the point of view of being responsible, only someone who is able to take responsibility can be held accountable for his actions. Criminal action occur if there are no mistakes is a principle of criminal liability, therefore in the case of imprisonment of someone who commits their act, it depends on whether in conducting this act he has an error.

Based on this, the criminal liability or error according to criminal law, consists of three conditions, namely ^[6]

- a. The ability to be held responsible or accountable from the perpetrator.
- b. The existence of acts against the law that is a psychological attitude of the perpetrators associated with his behavior that is intentional and inadvertent or negligent
- c. No justification or excuse to eliminate criminal liability for the maker

One of the element of error in criminal law is the ability to be responsible, so to prove the its existence a proof is needed. Considering that it is difficult to prove and requires a considerable amount of time, the element of responsibility is assumed to be secretly always present because in general everyone is normal and capable of being responsible, except if there are signs that indicate that the defendant may have an abnormal psyche. In this case, the judge ordered a special examination of the defendant's mental state even if it was not requested by the defendant. If the results still cast doubt on the judge, that means that the ability to take responsibility does not cease, so that mistakes do not exist and the criminal cannot be imposed based on the principle of not being convicted if there are no errors.

If Someone does something that is against the law, or does something which is suitable in the formulation of criminal law as a criminal act, does not mean that he or she is immediately convicted. He may be convicted, depending on his mistakes.

Should a person be convicted, first there must be a condition that must be fulfilled, namely acts that are against the law as a joint criminal act, and acts committed that can be accounted for as joints of mistakes. The decision to convict a criminal must be determined by the existence of a criminal act and the existence of a proven error from the evidence with the conviction of the Judge against an accused who was prosecuted before the court.

In relation with acts that are against the law, Vos ^[7] explains that without the unlawful nature of the act it is impossible to think of an error as the nature of the unlawful act may have existed without error as seen. In connection with acts that are against the law as mentioned above, Moeljatno ^[8] states that a person cannot be held responsible (convicted) if he does not commit a criminal act, and even though he or she committ a criminal act he or she is not always punishable.

For this reason a person suspected of being a narcotics intermediary or courier must be able to prove the elements of the act to be held accountable (convicted), namely

- a. Any person who, without rights or violates the law offers to sell, selling, buying, accepting, or be an intermediary or courier in buying and selling, exchanging or submitting Narcotics Group I, (Article 114).
- b. Any person who without rights or under the law offers to sell, selling, buying, accepting, be an intermediary or courier in buying and selling, or exchanging or submitting Narcotics Group II, (Article 119).
- c. Any person who without rights or under the law offers to ssell, selling, buying, accepting, be an intermediary or courier in buying and selling, exchanging or submitting Narcotics Group III, (Article 124).
- d. Having, storing, controlling, or providing Narcotics Precursors for Narcotics acts; Producing, importing, exporting, or distributing Narcotics Precursors for Narcotics manufacturing; Offering to sell, selling, buying, accepting, be an intermediary or courier in buying and selling, exchanging, or handing Narcotics Precursors for Narcotics manufacturing; Carrying, sending, transporting, or transferring Narcotics Precursors for Narcotics manufacturing (Article 129).

2. Reconstruction Of Criminal Sentences Against The Courier Of The Illegal Narcotics Trade Based On Justice Value

Basically, the policy to deal with narcotics abuse can not be separated from the State's goal to protect the entire nation of Indonesia and to advance public welfare based on Pancasila and the 1945 Constitution. As citizen, it is obliged to pay attention to educational services through scientific development. On the other hand, the government's attention to the security and order of the community, in particular those that have an impact on the interference and actions of narcotic criminals. The policy adopted in dealing with narcotics aims to protect the community itself from the dangers of narcotics abuse.

The policy to deal with narcotics misuse is a positive legal policy which in essence is not merely the implementation of laws which can be carried out in a normative and systematic, dogmatic manner. In addition to the normative juridical approach, criminal law policy also requires a

⁶ Popescu, Tiberiu. (2018). Criminal Aspects of Drug Trafficking. SSRN Electronic Journal. 10.2139/ssrn.3303505.

⁷ Vos, In Bambang Poernomo, (1983). Asas-asas Hukum Pidana. Ghalia Indonesia, Jakarta. p. 134.

⁸ Moeljatno, (1993), Perbuatan Pidana dan Pertanggung jawaban Dalam Hukum Pidana, Jakarta. Bina Aksara, p. 46.

factual juridical approach that can be a sociological, historical approach, and even requires a comprehensive approach from various other scientific disciplines and an integral approach with social policy and national development in general.

Crime prevention efforts or commonly known as "Criminal Politics", which means a politics that can cover a fairly broad scope, namely through the "criminal" path (criminal law) and through the "non-penal" path (not / outside criminal law). Efforts to tackle crime through the "penalty" line are more focused on the nature of "repressive" (Oppression/ suppression / eradication) after the crime occurred. While the "non-penalty" pathway is more focused on the nature of "preventive" (prevention / deterrence / control) before the crime occurs. It is said as a gross distinction, because the action is essentially a repressive act can be seen as a preventive measure in the broadest sense.

Efforts to overcome and eradicate this narcotics crime will be preceded by preventive and repressive efforts, namely in the form of prevention / deterrence / control before the crime occurs through a non-penal policy which is then followed by "penal" efforts or with repressive efforts (repression / eradication / crackdown) after the narcotics crime took place.

The non-penal policy on prevention and eradication of narcotics abuse is very important to be carried out as early as possible because prevention is certainly better than "curing" it, in the sense that prevention efforts are better and way effective than repressive approach^[9].

Strategic efforts to eliminate risk in Prevention, as referred to above, is an effort to help individuals avoid starting or trying to abuse narcotics and psychotropic substances, by adopting healthy ways and lifestyles, as well as changing the living conditions that make individuals prone to narcotics abuse. This effort is sometimes ignored by the state and focuses more on repressive efforts, namely by giving severe penalties to perpetrators involved in illegal drug use, but these efforts are often criticized because the use of coercion against perpetrators who have "done" basically it is easier and cheaper than doing preventive measures and not to mention with repressive measures, it can drag those who do not know anything into prison like intermediaries, and therefore this regulation must be reconstructed immediately.

Regulatory reconstruction needs to be done based on formal and substantive aspects. The formal aspect is the fulfillment of orderly authority and the fulfillment of requirements as a sturdy regulation (robust regulation).

The order of authority as stated by Susanti and Ahmad^[10] includes the suitability of the contents of the regulations with the type and hierarchy and the accuracy of the institutions that have the authority to make regulations with the following provisions in mind

- a. Solid rules, ie; rules whose norms are clear, detailed and in harmony with other rules in the same statutory regulation or other statutory regulations.
- b. A clear rule, ie; a rule whose norm formulation is strict, straightforward, does not cause much interpretation and

uses terms in Indonesian language that are commonly known.

- c. Detailed rules, ie; norms that contain steps or parts that explain the stages of a procedure.
- d. A harmonized rule, ie; a rule whose norm formulation does not conflict with other norms in the same regulation or other norms in different regulations, which are equal or different in hierarchy.

Substantive aspect includes three things. First is the constitutionality of regulations. This means that the material contained in the regulations does not contradict the 1945 Constitution. Second is the conformity of the material content with the general principles stipulated in Law Number 12 of 2011. The third is the conformity with the principles contained in the regulations.

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Furthermore, the substantive aspect includes three things. First is the constitutionality of regulations. This means that the material contained in the regulations does not contradict the 1945 Constitution. Second is the conformity of the material content with the general principles stipulated in Law Number 12 of 2011. The third is the conformity with the principles contained in the regulations.

Based on the *Kamus Bahasa Indonesia* as seen in the official website of the Ministry of National Education, a courier (Or *Perantara* in Indonesian) is a person who mediates and provides services to arrange things based on wages; intermediary; realtor.

In Law Number 35 Year 2009 regarding Narcotics ("Narcotics Law") there are a number of criminal sanctions for people who become brokers / intermediaries in narcotics transactions / buying and selling. These sanctions vary depending on the type of narcotics group, its weight, and its form (whether it is still in the form of plants or narcotics ready for use). The sanction is considered by the author to be unfair because it is equated with a dealer or dealer so it needs to be changed to

- a. Intermediary in Narcotics Category I transactions (article 114 paragraph [1] on Narcotics Law which states that : Any person who without rights or against the law offers to sell, selling, buying, accepting, be an intermediary in buying and selling, exchanging, or submitting Group I Narcotics, convicted with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp.500,000,000.00 (five hundred million rupiah) and a maximum of Rp.5,000,000,000.00 (five billion rupiahs).
- b. In the case of offering to sell, selling, buying, become an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics of Group I as referred to in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) stems a tree or in the form of a non-plant weighing 5 (five) grams, the offender is sentenced to life imprisonment, or a maximum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years.
- c. Any person who without rights or violates the law offers to sell, selling, buying, accepting, be an intermediary in buying and selling, exchanging or

⁹ Salatun, Riswan & Mina, Risno. (2019). PENYULUHAN NARKOBA Sebagai Upaya Preventif Peredaran Gelap Narkoba Di Masyarakat. MONSU'ANI TANO: Jurnal Pengabdian Masyarakat. 2. 10.32529/tano.v2i1.223.

¹⁰ Susanti, Ahmad Sofian, (2018), Ajaran Kausalitas Hukum Pidana, Prenadamedia Group, Jakarta, p.156.

- submitting Narcotics Group II, shall be sentenced to a maximum imprisonment of 2 (two) years and a maximum of 10 (ten) year and a fine of at least Rp. 500,000,000.00 (five hundred million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah).
- d. In the event that the act offers to sell, selling, buying, accepting, be an intermediary in buying and selling, exchanging, or submitting Narcotics Group II as referred to in paragraph (1) weighing more than 5 (five) grams, the offender is sentenced to death sentence, imprisonment for life imprisonment life, or imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years.
 - e. Any person who without rights or violates the law offers to sell, selling, buying, accepting, be an intermediary in buying and selling, exchanging, or submitting Narcotics Group III, shall be sentenced to a maximum imprisonment of 2 (two) years and a maximum of 8 (eight) year and a fine of at least Rp. 500,000,000.00 (six hundred million rupiah) and a maximum of Rp. 4,000,000,000.00 (four billion rupiah).
 - f. In the case of acts offering to sell, selling, buying, accepting, become intermediaries in buying and selling, exchanging, or submitting Narcotics Group III as referred to in paragraph (1) weighing in more than of 5 (five) grams, the offender is sentenced to a minimum of 3 prison sentences (three) years and a maximum of 10 (ten) years and a maximum criminal fine

Illicit narcotics trade is an extra ordinary crime because it is a transnational crime regulated in a special law namely Law Number 35 Year 2009 concerning Narcotics that needs to be immediately handled to protect the child that will become the future of the nation. But that does not mean that all the actors involved in it are punished with the same sentence. The Perpretator, in this case the courier often do not know what he is doing is a criminal offense but an ordinary delivery and because of this they got dragged into prison. Therefore, with the reconstruction as above it is expected that justice for Courier can be achieved.

Conclusion

1. Narcotics illegal trade is an extraordinary crime because it is a transnational crime regulated in a special law, namely Law No. 35/2009 concerning Narcotics. This is what makes narcotics courier falls under criminal liability and must be presented in the court as regulated in Article 114, 119, 124, 129 of Law Number 35 Year 2009 concerning Narcotics. With the threat of Death Penalty, Criminal Prison and Criminal Penalty, even though the intermediaries often does not know that the actions they have committed are criminal.
2. Reconstruction as referred to by the author is in Law Number 35 of 2009 concerning Narcotics, are contained especially on Penalties for Intermediaries in Narcotics transactions, both Narcotics who belonged in Group I, Group II and Group III (article 114 paragraph [1]) so as not to be confused with the other perpetrators (Buyer, Seller, and Offering to sell, or receiver) This is based on the fact that the Courier often does not know what he is doing is a criminal offense as they only deliver the thing asked by the buyer without knowing the content of the package and this makes them dragged into prison. With the reconstruction as above, justice is expected for the courier in the illegal

narcotics trade can be achieved.

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