

**THE CRIMINAL DEAD AGAINST THE PERPETRATORS OF THE CRIME
OF NARCOTICS
(CASE STUDY NOMOR09/PID. B/2015/PN. PINRANG)**

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ABSTRACT

Research conducted in Pinrang Regency District Court. The expected goal of research is to know the elements of the crime of narcotics number 09/Pid. B/2015/PN.Prg.

Data obtained by direct interviews with the resource person, and search the archives/documents as well as reading literature related to the problems discussed. Data analysis was done using qualitative analysis.

The research results showed that: (1) the elements of a criminal offence are contained in the Court ruling number 09/Pid. B/2015/PN. Prg has been proven by the defendant fulfills the elements in section 114 subsection (2) of the Act of the Republic of Indonesia Number 35 in 2009. (2) the form of consideration given by the defendant before giving an award is to pay attention to the aspect of incriminating the accused and defendants as well as relieve the aspect social values contained in its community environment with reference to the existing legislation.

Keywords: criminal dead, against the perpetrators, narcotics

INTRODUCTION

Setting the Narcotics based on Act No. 35 of 2009 (Law No. 35 of 2009), aims to ensure the availability to the benefit of health and science, preventing the abuse of narcotic drugs, as well as illicit narcotics.

Narcotic drug or criminal offence on the basis of Act No. 35 of 2009 (Law No. 35 of 2009), gave a pretty heavy criminal sanctions, in addition to penalties the Agency and also subject to criminal fines, but in fact the culprit is thus increasing. This is caused by the overthrow of criminal sanctions do not provide a deterrent effect or impact against the perpetrators.

Symptoms or phenomena against narcotics and abuse efforts is currently sticking out and become law experts debate. Abuse of the drug or narcotic was nearing to an action that is very dangerous, not only the use of drugs alone, but has already escalate to the use a syringe of HIV will transmit in the end.

Development of crime narcotics at this point has a frightening public life. In some countries, including Indonesia, have been working to improve prevention

programs from the level of legal counselling to drug supply reduction programs or narcotics.

On the basis of the above considerations, then the author chose the title of the research "Criminal to death Against the perpetrator of a criminal offence (Narcotics case study number 09/Pid. B/2015/PN. Pinrang) ".

2. Problems

The focus of research: (1) whether the elements of the crime of narcotics has proven to be the award Nomor09/Pid. B/2015/PN. Prg and (2) what is the basis of the consideration of judges in meting out Criminal dead to the perpetrators of the crime of narcotics.

3. Research Objectives

The goals expected from these results is to know the elements of the crime of narcotics has proven to be the award Nomor09/Pid. B/2015/PN. Prg Basic Considerations and to know the judge in the Criminal Dead Perpetrators Dropping Crime Narcotics.

LITERATUTE REVIEW

1. Understanding criminal and Pemidanaan

Criminal theory is usually divided into three large groups, can be described as follows:

- a) Absolute theory or the theory of retribution (retributive/vergeldings theorieen). According to this theory the criminal was dropped solely because the person has committed a crime or criminal offence (quia est peccatum). The criminal is a result which must be absolute as a retaliation to persons who commit crimes.
- b) Relative theory or the theory of the purpose (utilitarian/doeltheorieen). The criminal is not just for vengeance or pengimbangan to the person who has committed a criminal offence, but has a specific purpose which bermafaat. Basic membenar the existence of a criminal according to this theory is located on the goal. Crime dropped not because of the people who make the crime (quia peccatum est) but rather so that people do not commit crimes (ne peccetur). According to this theory, pemidanaan is a means to protect the interests of the community.
- c) A combined theory. To achieve that goal, then had three kinds of criminal nature, i.e.:
 - Are scare (afschrikking).
 - Are repair (verbetering/reclasering).
 - Are destroy (onschadelijk maken).

2. Criminal Legislation Dead In Indonesia

The criminal to death laid out in the Criminal Code which is a legacy of colonial rule that had been nationalised by Act No. 1 of 1946. But after Indonesia became independent some laws that were issued later, turned out to be listed also criminal threats to die in it..

a. The criminal dead in the Criminal Code

In the Criminal Code listed the articles containing the threat of the death penalty, among others, the following:

- a) Treason, killing the head of State (article 104 of the Criminal Code)..
- b) To persuade foreign countries to hostile or belligerent, if hostilities do or so war (article 111 paragraph (2) of the Criminal Code).
- c) Succour to the enemy time Indonesia in a State of war (article 124 paragraph (1) of the Criminal Code)
- d) Kill the head of the foreign countries (article 140 paragraph (3) of the Criminal Code)
- e) The planned first homicide (article 140 paragraph (3) and article 340 of the Penal Code).
- f) Theft with violence by two or more persons berkawan, at night or with its dismantling and so forth, which makes some people are wounded or dead (article 365 paragraph (4) of the Criminal Code).
- g) Piracy at sea, in coastal and river so that there are dead (article 444 of the Penal Code).
- h) In times of war advocated rah-rah, rebellion and so on (article 124 bis of the Criminal Code).
- i) In times of war cheats time to convey the force of necessity (article 127 and article 129 of the Criminal Code)
- j) With the eradication of extortion (article 368 paragraph (2) of the Criminal Code).

b. The criminal dead in Legislation outside the Criminal Code

- a) In Act No. 22 of 1997 concerning Narcotics, article 80 paragraph (1), article 80 paragraph (2) letter a, article 80 paragraph (2) letter a, article 81 paragraph (2) letter a, article 82 paragraph (1) letter a, article 82 paragraph (2) letter a, article 82 paragraph (2) letter a.
- b) In Act No. 5 of 1997 on psychotropic drugs. Criminal threats dead in Act No. 5 of 1997 on psychotropic substances is regulated in article 59 paragraph (2)
- c) In Act 20 of 2001 About a change in the Law Number 31 of 1999 regarding the eradication of criminal acts of corruption. Criminal threats dead in Act 20 of 2001 About a change in the Law Number 31 of 1999 regarding the eradication of criminal acts of Corruption can be seen in the article 2 paragraph (2).
- d) In Act No. 23 of 2002 On child protection. Criminal threats dead in terms of this Act is as specified in article 89 paragraph (1).

- e) In law number 26 of 2000 On Human Rights Court (of HUMAN RIGHTS). As for the threat of death in criminal law is regulated by article 36 and article 37.
- f) In the law number 15 Year 2003 concerning the eradication of criminal acts of terrorism. Criminal threats dead in Act No. 15 of 2003 about the eradication of criminal acts of Terrorism are listed in several articles, among others, article 6, article 9 and Article 14.

3. Criminal Sanctions Are Dead in the Narcotics Act

In Act No. 35 of 2009 about Illegals there are criminal sanctions are dead on article 113, 114, 118, 119, 121, 144 who will author mentioned as follows:

Article 113

Verse 1: any person without rights or unlawfully producing, importing, expose or ducted Narcotics Group I, are convicted with imprisonment the shortest 5 (five) years and the longest 15 (fifteen) years and criminal fines of at least Rp. 1,000,000,000.00 (one billion dollars) and at most Rp. 10,000,000,000.00 (ten billion rupiah).

Verse 2: in the event of any act producing, importing, exporting, or channeling the Narcotics Group I referred to in subsection (1) in the form of the plants weighed exceeds one (1) kilogram or exceed 5 (five) or in the form of tree trunks are not the plants weighed exceed 5 (five) grams, the perpetrators are convicted criminal with death, imprisonment for life, or most criminal short 5 (five) years and the longest 20 (twenty) years and criminal fines the maximum referred to in paragraph (1) plus 1/3 (one third).

Article 114

Verse 1: any person who unlawfully or without the right offer for sale, sell, buy, receive, being an intermediary in the sale, Exchange, or submit the Narcotics Group I, are convicted with imprisonment for life, or imprisonment of shortest 5 (five) years and the longest 20 (twenty) years and criminal fines of at least Rp. 1,000,000,000.00 (one billion dollars) and at most Rp. 10,000,000,000.00 (ten billion rupiah).

Verse 2: in the case of works is offering to sell, selling, buying, being an intermediary in the sale, Exchange, submit or receive Narcotics Group I

referred to in subsection (1) which is in the form of plant weighs exceed 5 (five) or in the form of tree trunks rather than plant it weighs five grams, the perpetrators are convicted with a criminal a criminal death, life imprisonment, or imprisonment of most short 6 (six) years old and at most 20 (twenty) years and criminal fines the maximum referred to in paragraph (1) plus 1/3 (one third).

Article 118

Verse 1: any person without rights or unlawfully producing, producing, importing, exporting, or distributes Class II Narcotics, are convicted with imprisonment the shortest four (4) years and the longest 12 (twelve) years are convicted and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and at most Rp. 8,000,000,000.00 (eight billion dollars).

Verse 2: in the case of works manufacture, import, export or transmit the Narcotics Group II as referred to in subsection (1) its weight exceeding 5 (five) grams, the perpetrators are convicted with a criminal a criminal death, life imprisonment, or imprisonment of shortest 5 (five) years and the longest 20 (twenty) years and criminal fines the maximum referred to in paragraph (1) plus 1/3 (one third).

Article 119

Paragraph 1: everyone who is against the law without the right offer for sale, sell, buy, receive, being an intermediary in the sale, Exchange, or submit the Narcotics Group II, are convicted short 4 (four) years and the longest 12 (twelve) years are convicted and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and at most Rp. 8,000,000,000.00 (eight billion dollars).

Verse 2: in the case of works is offering to sell, selling, buying, being an intermediary in the sale, Exchange, submit or receive Narcotics Group I referred to in subsection (1) which is in the form of plant weighs exceed 5 (five) or in the form of tree trunks rather than plant it weighs five grams, the perpetrators are convicted with a criminal a criminal death, life imprisonment, or imprisonment of most short 5 (five) years and the longest 20 (twenty) years and criminal fines the maximum referred to in paragraph (1) plus 1/3 (one third).

Research Methods

Research conducted in the Court Districts Pinrang. The dwarf Leverage data using how interview and documentation. All data obtained (primary and secondary) are analyzed qualitatively descriptive

Research Results

1. Elements of the crime of narcotics number 09/Pid. B/2015/PN. Prg

As for the elements of the crime of narcotics as the Court ruling number 09/Pid. B/2015/PN. Prg, are as follows :

a) The Elements Of Each Person

In the elements everyone of this, JDG explains that at the indictment the defendant had evidently premar doing criminal, then the Tribunal judges will take over the entire consideration of the elements of each person in this claim. And thus the element of every person on the next claim should also be stated are met.

Tribunal judges will consider the application of Article 55 paragraph (1) of the following Criminal Code In criminal sciences mention article 55 inclusion as Criminal Code (deelneming). The sense of inclusion is an event where there are several people (at least two) involved in one (1) criminal acts or criminal events. So in this case, each offender can be said to partake (deel = part, neming = uptake) or participate in the implementation of the criminal acts in question or at least each of the perpetrator intentionally participated and led to a criminal act.

b) Elements Without rights or against the law

In this second element, the judge gave the explanation with regard to the award, is the following Items without the right against the law to find out if the defendant's deed-defendant who proves to be a buy and sell narcotics type Shabu-Shabu weighing exceed 5 (five) grams of that is carried out without any rights or against the law.

Formula uses the word "or" between without rights and against the law, it is therefore not necessary to the second formulation (without the rights or against the law), proved this item have been met does that mean can occur without the right only or against the law, or even both of them proved to be.

c) **The elements of the offer for sale, sell, buy, be an intermediary in the Sale, Exchange, Submit or receive Narcotics Group I in the form of the plants Weighed Exceeds one (1) Kilogram or Exceed 5 (five) Or in the form of tree trunks are not the Plants Weighed 5 (five) Grams.***

The authors analyze that since the defendant-the defendant has been proven to do the deed that stipulated in existing Undang-Undangan then the Tribunal judges set the defendant the defendant guilty-by-law that is set up in it.

In the writing of this scientific work, the author will attach in the form of columns retrieved from Pinrang District Court relating to a similar case from the above description correspond to the titles of scientific papers written by the author. As for the data that you want to attach are as follows :

**Data Handling Cases of narcotics Cases In Pinrang District Court
from 2011-2015**

No.	Years	Types Of Cases	Number Of Cases
1	2011	Narcotics Case	23 Case
2	2012	Narcotics Case	48 Case
3	2013	Narcotics Case	86 Case
4	2014	Narcotics Case	70 Case
5	2015	Narcotics Case	48 Case

Source: District Court Pinrang, 2015.

From the table above, the author provides his analysis that by 2011 the number of cases is lower when compared on the year 2012 of 48 cases. This means that the increase with a similar case experiencing increases of over 50% from the previous year. Whereas from 2012 to 2013, the number of the case increased from previously being 86 cases, where an increase in far greater than the previous year. While the decline in 2014 cases to 70 cases. Whereas by 2015 from January to August, the number of cases for a while only 48 cases.

Therefore, the author gives his analysis that the relation with the application of special legislation against on the criminal use of the narcotic delik then contained in Act No. 35 of 2009, turned out to be the judge in giving sanctions against terdakwa considered appropriate use of narcotics rampant minimize.

2. Basic Consideration of Judges in Meting Out Criminal Dead to the Perpetrators of the Crime of Narcotics

In the blurb writers on writing scientific papers, that before dropping a criminal against the defendant, then according to the Chief Justice who handled this case directly i.e. Mak Ade Stated that, based on the Court ruling number 09/Pid. B/2015/PN. PRG basic considerations, the judge in the criminal perpetrators are dead to drop a criminal offence is as follows. :

Based on its analysis that after paying attention to things that are incriminating and lighten as aforesaid, then the punishment to the defendant reasonably fair well based on the community's sense of fairness or sense of Justice according to the laws and other regulations related to this matter.

According to the author, based on explanation above, that the force of law that are assumed to be based on the logic of the law used by the judges in meting out criminal sanctions against a defendant is indeed based on moral values and values of justice so that it deserved according to judge if the accused were given criminal sanctions are dead.

CONCLUSION

Based on the results of the study it can be concluded that:

1. Elements of a criminal offence are contained in the Court ruling number 09/Pid. B/2015/PN. Prg has been proven by the defendant fulfills the elements in section 114 subsection (2) of the Act of the Republic of Indonesia Number 35 in 2009
2. Forms of consideration given by the defendant before giving an award is to pay attention to the aspect of incriminating the accused and defendants as well as relieve the aspect social values contained in its community environment with reference to the existing legislation.

ADVICE

1. Narcotics law enforcement against criminal acts of narcotics, particularly in terms of pemidanaan, it should refer to the approach of the legal norms that are punishing the perpetrators of the crime of narcotics so as to give deterrent effect.
2. The existence of the law enforcement apparatus in terms of vision and mission of law enforcement, both of the level of investigation, prosecution, to the level of the judiciary, should have that same perception corresponds to the demands of the law and justice community and the consistency of law enforcement.

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