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## **Implementation Of Death Crime Executions for Class I Narcotics Distributors**

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### **Abstract**

The enactment of Law Number 35 of 2009 concerning Narcotics, types of Psychotropics class I and class II as stated in the attachment to Law Number 5 of 1997 concerning Psychotropics have been moved to Narcotics class I in Law Number 35 of 2009 concerning Narcotics and the attachment regarding types of Psychotropics class I and class II in Law Number 5 of 1997 concerning Psychotropic Substances are revoked and declared invalid. With this figure, the level of narcotics use in Indonesia is the largest in Asia. Indonesia is considered a drug emergency, the process of executing the death penalty does not have a deterrent effect on drug dealers or smugglers. The problem is, how to carry out the execution of the death penalty for class I narcotics dealers and what are the obstacles to not immediately carrying out the death penalty for class I narcotics dealers. The research method used is Empirical Normative Legal Research. In conclusion: The death penalty imposed by a court in a general court or military court environment is carried out by being shot to death. This provision does not reduce existing provisions in the criminal procedural law regarding carrying out court decisions. Based on Law No. 35 of 2009 concerning Narcotics. And the factors that cause obstacles in the implementation of the death penalty include legislative factors (legal substance), law enforcement factors, means and facilities factors, and community factors.

**Keywords:** Execution, Death Penalty, Trafficking, Narcotics

**INTRODUCTION**

According to Narcotics Law Number 35 of 2009 concerning Narcotics, the definition of narcotics is a substance or drug derived from plants, either synthetic or semi-synthetic which can cause a decrease or change in consciousness, loss of pain and can cause dependence. A narcotics user is a drug abuser who has experienced dependence on one or more narcotics, psychotropic substances and other addictive substances (drugs), whether psychologically heavy or mild. Withdrawal symptoms depend on the type of drug, the dose used, and the length of use.

In Indonesia currently, the imposition of criminal sanctions in the form of the death penalty by judges for perpetrators of narcotics crimes is one of the policies adopted in the Narcotics Law and cannot be separated from the criminal law norms that have been adhered to by criminal law so far, for example in Article 10 of the Criminal Code. . Another thing is that in other parts of the world there has been quite significant development towards narcotics users by carrying out depenalization actions against their users which aims to replace the prison sentence which is sometimes applied by other criminal sanctions such as social work sanctions.

Regulation of criminal sanctions in Law Number 35 of 2009 concerning Narcotics. This law also regulates sanctions for narcotics abuse so that they can have a deterrent effect on perpetrators of narcotics abuse. It regulates the severity of criminal sanctions, carried out based on the class, type, size and quantity of narcotics. Criminal liability for narcotics abuse is not only carried out by matching the defendant's actions with the elements of the offense in the law, but the judge must also adhere to the terms of punishment which have also been rigidly determined in the law.

The enactment of Law Number 35 of 2009 concerning Narcotics, types of Psychotropics class I and class II as stated in the attachment to Law Number 5 of 1997 concerning Psychotropics have been moved to Narcotics class I in Law Number 35 of 2009 concerning Narcotics and the attachment regarding types of Psychotropics class I and class II in Law Number 5 of 1997 concerning Psychotropic Substances are revoked and declared invalid. Then, what is no less interesting is the discovery of several article formulations which indirectly try to assign victim status to perpetrators of certain narcotics crimes, such as narcotics addicts. Narcotics users who are classified as class I narcotics abusers basically fulfill the qualifications as perpetrators of narcotics crimes, but in certain circumstances narcotics addicts will be more positioned towards victims.

In terms of regulations, the Indonesian government issued Law Number 35 of 2009 concerning Narcotics, which has encouraged the government to treat Narcotics addicts specifically so that they receive rehabilitation sanctions, both medical and social, as stated in Article 54 of the Narcotics Law, that drug addicts are required to undergo medical rehabilitation and rehabilitation. social. In other words, addicts are not placed in correctional institutions or prison sanctions. Therefore, the availability of medical and social rehabilitation facilities is a must from the government for victims of narcotics addiction.

In this research, the author examines Decision Number 2267/Pid.Sus/2012/PN.JKT.BAR and Constitutional Court Decision Number 2-3/PUU-V/2007. In Decision Number 2267/Pid.Sus/2012/PN.JKT.BAR with the defendant Fredi Budiman Als Budi Bin H. Nanang Hidayat, an entrepreneur whose address is Jl. Bahagia Number 14 Blok D. Rt.005/Rw.07 Menteng Village, District, Cengkareng - West Jakarta. Fredi Budiman Als Budi Bin H Nanang Hidayat is legally and convincingly guilty of committing the crime of criminal conspiracy without right and against the law, offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over Class I Narcotics, not heavy plants. 5 (five) grams, as charged by the Public Prosecutor, namely the Primair indictment of Article 114 paragraph (2) in conjunction with Article 132 (1) of Law Number 35 of 2009 concerning Narcotics.

The contents of the decision on activities, especially narcotics, have been strengthened by the decision of the Constitutional Court of the Republic of Indonesia Number 2-3/PUUV/2007 dated 30 October 2007, explaining that the application of death penalty sanctions for perpetrators of narcotics crimes does not violate human rights, because there is a derogable right principle. namely a person's rights that can be limited, but instead these perpetrators have violated other human rights, which has an impact on the destruction of the younger generation in the future. The death penalty is regulated in Article 10 of the Criminal Code which is part of the national legal system. The implementation of the death penalty does not conflict with the 1945 Constitution.

## **RESEARCH METHODS**

In this research, the type of research used is normative legal research/normative juridical legal research. This research was conducted to identify the execution of the death penalty for class I narcotics users. This type of research is prescriptive in nature because it describes the applicable laws and regulations and is linked to legal theories in the practice of implementation related to the problem, as well as describing/describing the facts that actually occur as a reflection of the implementation of the existing laws and regulations. in this case it is implementation of the death penalty for class I narcotics users.

The data used in this research is secondary data. Secondary data is data used to answer the problems in this research through literature study. Secondary data is the main data used in this writing. The legal materials used in this research are primary data and secondary data. Primary data is data obtained directly from the source using the interview method. The secondary data used in this research was obtained directly through searching the literature or official documents, namely books on legal theory, legal philosophy and books on legal discovery and legal interpretation.

In this research, the collection of legal materials is collected based on the topic of the problem by conducting a literature study, namely the researcher collects legal materials from various statutory regulations used in research, books, articles, scientific journals, papers, research results of legal experts and newspaper clippings related to the problem under study. The legal materials that have been collected are then classified to facilitate analysis and construction.

All data obtained from the research results will be analyzed qualitatively. Qualitative analysis is carried out by grouping the data obtained, then sorting it based on its relevance to the research topic. The data is then compiled systematically to be connected and analyzed with related regulations, so that conclusions can then be drawn to answer the problem. Data presentation is carried out descriptively by describing and explaining the results obtained in the field with existing data and theory, thereby answering the problem. The form of research results according to the type of research is prescriptive, namely describing/describing facts that actually occur as a reflection of criminal code, and other laws containing provisions regarding the execution of the death penalty for class I narcotics users.

## **DISCUSSION**

### **Implementation of the Death Penalty Execution for Class I Narcotics Dealers**

With the enactment of Law Number 35 of 2009 concerning Narcotics, types of Psychotropics class I and class II as stated in the attachment to Law Number 5 of 1997 concerning Psychotropics have been moved to Narcotics class I in Law Number 35 of 2009 and the attachment regarding types of Psychotropics class I and group II in Law Number 5 of 1997 concerning Psychotropic Substances is revoked and declared invalid. Then, what is no less interesting is the discovery of several article formulations which indirectly try to assign victim status to perpetrators of certain narcotics crimes, such as narcotics addicts. Narcotics

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Narcotics are a serious threat to the continuity of human development, especially in Indonesia. The threat of punishment for Narcotics dealers is very serious in Indonesia, but why are Narcotics dealers never afraid and many foreign nationals have even been arrested by the police for daring to bring Narcotics into Indonesia. While the sentence for narcotics traffickers in Indonesia is a minimum of 4 years and a maximum penalty of death, Indonesian national law applies the death penalty and this is regulated in Article 10 of the Criminal Code.

The time for executing sentences for death row convicts in drug cases is in accordance with Law Number 35 of 2009 concerning Narcotics Articles 113, 114, 116, 118, 119, 121, 133. In Indonesia, the procedures for carrying out the death penalty are regulated in the Criminal Code. , is only regulated in Article 11 which R. Soesilo formulated as follows: The execution of the death penalty imposed by a court within the general judiciary or military judiciary, is carried out by being shot to death, according to the provisions of Law No. 2 (Pnps) of 1964.

The death penalty imposed by a court in the general judiciary or military judiciary is carried out by being shot to death. This provision does not reduce existing provisions in the criminal procedural law regarding carrying out court decisions. Based on Law No. 35 of 2009 concerning Narcotics, we can study the following:

Article 113 paragraph (2) reads: In the event of the act of producing, importing, exporting or distributing Class I Narcotics as intended in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) trees or in the form of If the plant does not weigh more than 5 (five) grams, the perpetrator will be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as intended in paragraph (1 ) plus 1/3 (one third).

Article 114 paragraph (2) reads: In the event of an act of offering for sale, selling, purchasing, becoming an intermediary in buying and selling, exchanging, handing over or receiving Class I Narcotics as intended in paragraph (1) which in the form of plants weighs more than 1 (one) kilograms or exceeding 5 (five) tree trunks or in the form of non-plants weighing 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and the maximum fine as intended in paragraph (1) plus 1/3 (one third).

Article 116 paragraph (2) states that in the event that the use of narcotics against another person or the provision of Category I narcotics for use by another person as intended in paragraph (1) results in the death or permanent disability of another person, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as intended in paragraph (1) plus 1/3 (one third).

Article 118 paragraph (2) states that if the act of producing, importing, exporting or distributing Class II narcotics as intended in paragraph (1) weighs more than 5 (five) grams, the perpetrator will be punished with the death penalty, life imprisonment or imprisonment. a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as

referred to in paragraph (1) plus 1/3 (one third).

Article 119 paragraph (2) reads: In the event that the act of offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over Class II Narcotics as intended in paragraph (1) weighs more than 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as intended in paragraph (1) plus 1/3 (one third).

Article 121 paragraph (2) In the event that the use of Narcotics against another person or the provision of Class II Narcotics for use by another person as intended in paragraph (1) results in the death or permanent disability of another person, the perpetrator shall be punished with the death penalty, life imprisonment or criminal imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as intended in paragraph (1) plus 1/3 (one third).

Article 133 paragraph (1) Every person who orders, gives or promises something, provides an opportunity, recommends, provides convenience, coerces with threats, coerces with violence, commits deception, or persuades a child who is not yet old enough to commit a criminal act as intended in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129 shall be punished with the death penalty or life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp. 2,000,000,000.00 (two billion rupiah) and a maximum of Rp. 20,000,000,000.00 (twenty billion rupiah). Based on Article 35 of 2009, there is no paragraph that regulates the time for carrying out the threat of the death penalty for Narcotics convicts. So many death row inmates have not yet been executed.

Extraordinary crime is a crime that is very detrimental and is very worrying, so it is very appropriate for the perpetrators of this crime to be given the most severe punishment, even the death penalty, because the impact is very broad in scope, not only detrimental to society but a serious threat to this country. The death penalty is imposed based on the judge's considerations selectively and carefully and is carried out after legal measures have been taken. Even though it is very harsh, the death penalty is still needed, especially for perpetrators of serious crimes who cannot be reformed in order to maintain greater public safety and protect the interests of the nation and state. The existence of the death penalty is recognized in our positive law. The right to life as a human right is guaranteed, but in reality this right is limited by law so it must be implemented for the sake of legal certainty.

Imposing the death penalty for criminal cases of narcotics trafficking is one of the inappropriate steps taken by a country that upholds human rights. However, executing drug dealers/dealers who can damage the nation's generation does need to be considered. However, this consideration must be based on human rights arguments, therefore, in the Criminal Code Law, considering the provisions of Article 100, the death penalty is alternative and special.

There is current thinking that the existence of Law Number 35 of 2009 concerning Narcotics can ensnare drug dealers/dealers by providing the most severe punishment, namely the death penalty and the death penalty for drug dealers does not conflict with human rights because it does not conflict with international conventions on civil and political rights. so that the death penalty can be implemented in Indonesia to provide a deterrent effect not only for perpetrators but also potential perpetrators of crimes so as to prevent the recurrence of similar crimes.

However, the argument above, which in 2009, was used to provide legitimacy for the application of the death penalty as intended by Article 111 has experienced a paradigm shift in line with the development of human rights understanding. The Criminal Code Law which was just passed by the DPR RI in mid-December 2022 and will only come into effect 3 years

after its promulgation has placed the death penalty as a special crime and has an alternative nature with stricter conditions. The idea of the death penalty as a special and alternative punishment is in accordance with the opinion of Colin Howard and Sue Titus Reid. Meanwhile, currently, making the death penalty not an alternative crime but a basic crime is a concept for forming laws that uses an absolute punishment system.

According to Colin Howard, this system is called an indefinite system, or what is better known as the absolute traditional system. In other words, the indefinite system or maximum system, is the determination of the maximum penalty for each crime. This system can also be called the or system traditional approach or in the Criminal Code of various countries this system is called with an absolute system. In general, this system means that every criminal offense is defined its own weight or quality, namely by determining the threat maximum penalty. The advantages of this system are:

- Can show the level of seriousness;
- Providing flexibility and discretion to the sentencing power;
- Protecting the offender's own interests by setting boundaries freedom from the power of punishment.

Colin Howard went on to say that besides the benefits in implementing the maximum system as is known in above, this system also has several weaknesses as below:

- a) By adopting a maximum system, it will bring quite difficult consequences in determining a specific maximum for each criminal act;
- b) In every criminalization process, every legislator is always faced with the problem of giving weight by determining maximum criminal threat qualification;
- c) In determining the maximum penalty to indicate the level of seriousness or quality of the criminal act, it is not an easy job simple;
- d) To overcome all this, sufficient knowledge is needed regarding the order of levels or gradations of values from the central norms of society and legal interests to be protected.

Colin Howard's opinion is that the Criminal Code and Law Number 35 of 2009 concerning Narcotics contain an absolute punishment system or a theory of maximum criminal imposition contained in Court Decision Number 2267/Pid.Sus/2012/PN.Jkt.Bar in the Fredi Budiman case which is a narcotics dealer, in line with Sue Titus Reid's thoughts.

### **Obstacles to Not Immediately Implementing the Death Penalty for Class I Narcotics Dealers**

Talking about inhibiting factors in the implementation of the execution of the death penalty, it has been explained that in Indonesia convicts subject to the death penalty are given the right to submit legal remedies, either in the form of ordinary legal remedies or extraordinary legal remedies as regulated in the Criminal Procedure Code. (KUHP) as well as legal remedies outside the Criminal Code, including legal remedies for clemency. Legal remedies are the rights given by the judge to the parties in a case to be able to disagree with a court decision. Clemency is a form of forgiveness from the president after the convict submits a request to the President, while amnesty and abolition are pardons given by the president to the convict taking into account the considerations of the House of Representatives, without any request from the convict.

Looking at the relationship between pardon and the purpose of punishment, apart from the matters mentioned above, the granting of pardon must be based on the purpose of punishment, whether the president grants or rejects the submitted request for clemency, it must be based on the purpose of punishment. This means that in this request for clemency the president must consider the issue of retribution and also not forget to consider issues regarding the protection of legal order in society, whether granting or rejecting the request for clemency

from the petition. In this case, input from the Supreme Court is really needed by the president as a body that is truly competent for this, in making decisions by the president.

In the case of Narcotics control from within a correctional institution carried out by prisoners who have been sentenced to death more than once but while serving their sentence can still commit Narcotics crimes from within the prison. After in *kracht* the execution of the death penalty should be carried out immediately, however, the death penalty can only be carried out if the criminal offense has been sentenced to in *kracht* or no legal action has been taken by the convict and his legal advisor. In determining the execution time for the death penalty, it is the Attorney General who is responsible. However, the Attorney General's Office is not the only one responsible. Because the Attorney General's Office must collaborate with parties from other agencies such as the Police, Brimob, Hospital and the place where the execution will be carried out.

Factors that cause obstacles to the implementation of the death penalty include legislative factors (legal substance), law enforcement factors, means and facilities factors, and community factors. The explanation is as follows:

1. Legislative factors (legal substance) relate to the practice of implementing law enforcement. In determining the time for the execution of the death penalty, the prosecutor's office is given the authority to determine it based on existing considerations. Because there is no regulation regarding the duration of time from the in *kracht* decision to the day the death penalty is carried out. The prosecutor's considerations are policies that are not entirely based on written law but can be considered as something that can be justified as long as the policy does not conflict with the law. One example of the statutory factor is the Constitutional Court Decision Number 107/PUU-XIII/2015 concerning Review of Law Number 5 of 2011 concerning Amendments to Law Number 22 of 2002 concerning Pardons for the Constitution of the Republic of Indonesia of 1945 which remove the enactment of Article 7 paragraph 2 of Law No. 5 of 2010 concerning Clemency. This decision changes the rules for convicts applying for clemency to any time, from previously applying for clemency was no later than a year after the decision had permanent legal force, so the implication is that with no time limit for applying for clemency, the implementer of the sentence decision is affected by this provision. There is legal uncertainty in carrying out the execution of the death penalty because the convict delays the execution of the death penalty. The clemency procedure is quite long which often hinders executions, so that pardon is used as an effort to avoid the death penalty.
2. Law enforcement factors relate to the mentality or personality of law enforcers. Again, because determining the implementation of the death penalty is left to the prosecutor's office, the attitude and role of the prosecutor personally plays a very important role in this matter. How is the prosecutor responsible for the tasks that have been entrusted to him, such as the death penalty which should be carried out immediately so as not to increase the suffering of the convict.
3. Facilities and facilities factors play a very important role in the implementation of the death penalty. The execution of the death penalty is regulated in Law Number 2/PNPS/1964 concerning Procedures for the Implementation of Death Sentences Imposed by Courts in the General and Military Justice Environment.

## CONCLUSION

The death penalty imposed by a court in the general judiciary or military judiciary is carried out by being shot to death. This provision does not reduce existing provisions in the criminal procedural law regarding carrying out court decisions. Based on Law No. 35 of 2009 concerning Narcotics.

Factors that cause obstacles in the implementation of the death penalty include: (a) First, convicts often take advantage of the provisions in Article 264 paragraph (3) of the Criminal Procedure Code (KUHP). Paragraph (3) regulates not limiting the time period for a request for reconsideration. Namely, by not immediately submitting a PK attempt. This has the effect of convicts taking advantage by stalling for time; (b) Second, the publication of the Constitutional Court (MK) decision No.34/PUU-XI/2013. In essence, stating that PK can be submitted more than once. so that this decision has the potential to hinder the execution of death row inmates which have permanent legal force at the cassation level; (c) Third, there are legal remedies that are not normal. For example, the lawsuit tests the president's decision regarding pardon. Such is the case with death row inmates who filed a lawsuit with the PTUN before the death execution volume II was carried out; (d) Fourth, the publication of MK decision no. 107/PUU-XIII/2015. In essence, this decision removes the provisions on the time period for submitting a pardon application, namely one year from the time the decision becomes legally binding. According to him, the convicts have the potential to misuse this decision by applying for clemency shortly before the execution of the death penalty.

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