
HD'S Criminal Liability of Drugs Trafficking Based On Article 114 Section (1) Jo. Article 132 Section (1) Law Number 35 of 2009 On Narcotics

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ABSTRACT

The purpose of this research is to fulfill one of the requirements to earn a Bachelor of Law in Faculty of Law, University of Surabaya. The practical purpose of this paper is to determine whether HD, who buys and sells of narcotics can be held guilty as criminally responsible based on Article 114 paragraph (1) jo. Article 132 paragraph (1) Law Number 35 of 2009 on Narcotics. HD was asked by IJ to buy heroin. HD approved the request by IJ and IJ gave money IDR. 120.000,-. HD bought the heroin from D IDR. 100.000, -, thus he gained profit of 20.000, -, kept in his pockets. The police arrested him before he submitted the heroin to IJ. The judges of South Jakarta District Court adjudicated HD as proven of violating Article 112 paragraph (1) of the Law on Narcotics. The results of the study showed that HD can be held guilty as criminally responsible based on Article 114 paragraph (1) jo. Article 132 paragraph (1) of the Law on Narcotics because it has met the four elements of crime and proper clause on attempted in terms of being an intermediary of drugs transactions.

Keywords: criminal liability; drugs transactions; heroin.

1. INTRODUCTION

Cases of narcotics abuse are increasing rapidly in Indonesia even though various efforts have been taken by the government and community. Drug abuse is difficult to eradicate. Most of the Narcotics, Psychotropic and other Addictive Substances (NAPZA) in the medical field are still beneficial for treatment. However, any misuse and illegal circulation will have a very detrimental effect on individuals and society especially to younger generation. According to AR. Sujono, "The driving force or main motivator of the perpetrators of crimes in narcotics and illegal drugs is an economic motive¹".

Narcotics according to Article 1 paragraph 1 of Law Number 35 Year 2009 are as follows: Substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce pain, and can cause dependence, which are divided into groups as attached to the law.

A narcotics criminal case was conducted by HD on Friday, May 18, 2012. Around 14.30 WIB, HD was asked by IJ to buy narcotics of heroin type. HD agreed to accept IJ request for a fee

¹ AR. Sujono, Bony Daniel, *Komentar dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*, Sinar Grafika, Jakarta, 2013, P. 4.

of Rp 120,000 (one hundred twenty thousand rupiah). HD went to Menteng Tunggulun area, Central Jakarta with the intention of buying heroin narcotics to D. Around 3:00 p.m. HD gave money of Rp 100,000 (one hundred thousand rupiah) to D and D handed over 1 (one) pack of heroin narcotics to HD while the remainder of the purchase money of Rp. 20,000 (twenty thousand rupiahs) was stored in the pocket of the pants that were used at the time. HD then returned to the taxibike base while waiting for IJ to take the heroin².

Around 16.00 WIB, HD was arrested by members of the police from the South Jakarta Metro Police Narcotics Unit. The arrest found 1 (one) pack of narcotics of heroin type wrapped in transparent plastic and wrapped with black duct tape in HD's hand and cash of Rp. 20,000 (twenty thousand rupiahs). Based on the Minutes of Examination of Laboratories Number: 356.E/V/2012/UPT TEST OF DRUGS on May 24, 2012, it was concluded that the evidence carried by the HD was containing Heroin registered in Group I Sequence number 19 attachment to Law Number 35 of 2009 on Narcotics. The decision of the South Jakarta District Court that examined at the first level decided that HD was subject to Article 112 paragraph (1) of Law Number 35 of 2009 on Narcotics³.

In connection with a trial or conspiracy as stipulated in Article 132 paragraph (1) of Law Number 35 Year 2009, it stipulates that:

Actors from conspiracies to commit narcotics and narcotics precursors as referred to in Article 111, Article 112, Article 113, Article 114, Article 116, Article 117, Article 118, Article 119, Article 129, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, Article 129 shall be punished with the same imprisonment in accordance with the provisions referred to in these articles.

Based on the elaboration, the problem discussed is "Can HD who carried out the narcotics trafficking be subject to criminal liability based on Article 114 paragraph (1) jo. Article 132 paragraph (1) Law Number 35 of 2009 on Narcotics?"

2. METHOD

To answer the problems that have been formulated in this paper, the research method used is normative juridical legal research, i.e a study using legal materials to solve legal problems. The approach used in this paper is Statute and Conceptual Approaches. Statute approach is an approach taken by examining all the laws and regulations concerned with the legal issue being examined, i.e

² www.direktoriputusanmahkamahagung.go.id putusan Mahkamah Agung No. 1085/Pid. B/2012/PN.Jkt.Sel.

³ Ibid., p. 11.

the accountability of the perpetrators of drug trafficking. The result of the study is an argument to solve the problem at hand.

Law No. 35 of 2009 on Narcotics and other regulations that have relations with the material discussed are used. Conceptual approach is an approach that comes from the views and doctrines that develop in law. By studying the views and doctrines in law, the researchers find ideas as sources of legal notions, legal concepts, and legal principles relevant to the issues at hand. Understanding of these views and doctrines are the materials for making a legal argument in solving the issues at hand.

This article uses two legal materials of primary and secondary legal material. Primary Law Materials are binding legal materials, in the form of applicable laws and regulations that have to do with the issues discussed in this matter Law Number 35 of 2009 on Narcotics. Secondary legal material is defined as legal material that is not binding but describes primary legal material which is the result of processed opinions or thoughts of experts or experts who study a particular field specifically; such as the opinions of experts in books, legal journals, seminar materials, legal and internet magazine articles.

Legal materials are collected by studying Law Number 35 of 2009 on Narcotics and inventorying legal materials related to the subject matter in writing, classifying them in accordance with the needs and sorting (systematizing) them. Analysis of legal material is carried out to obtain answers to problems with deductive reasoning (from general to specific arguments) that originate from legal material and are related to the subject matter of narcotics cases that occurred and discussed in this study.

3. DISCUSSION

Criminal law recognizes criminal liability as very important, because accountability in criminal law is based on one principle, that is, not convicted if there is no mistake (*geen straf zonder schuld*) to determine whether the criminal offender can be subject to criminal sanctions. Regarding the perpetrators of crime, Sianturi states "Accountability (criminal) leads to the punishment of the act, if it has committed a crime and fulfills the elements specified in the law⁴."

HD can be subject to criminal liability if he fulfills 4 (four) elements, they are:

1. Conducting a criminal act (against the law)

According to A.Z. Abidin Farid, "One of the essential elements of offense is that it is against the law (*wederrechtelijkheid*) which is stated expressly in an article of criminal law; it is

⁴ Sianturi, *Asas-asas Hukum Pidana Di Indonesia dan Penerapannya*, Alumni AHAEM-PETEHAEM, Jakarta, 1986, p. 249.

odd that someone is convicted of an act of not against the law". This is in accordance with the principle of legality as contained in the provisions of Article 1 paragraph (1) of the Criminal Code which determines "No action can be punished except for the strength of criminal rules in existing legislation, before the act is committed." The nature of being against the law consists of the nature of opposing formal laws and the nature of opposing material laws⁵.

2. Conducting criminal acts (illegal behavior)

According to A.Z. Abidin Farid, "One of the essential elements of the offense is that it is against the law (*wederrechtelijkheid*) stated expressly in an article of the criminal law; strange person is convicted of committing an act that is not against the law ". This is in accordance with the principle of legality as contained in the provisions of Article 1 paragraph (1) of the Criminal Code which determines "No action can be punished except for the power of criminal rules in existing legislation, before the act is committed." The nature of being against the law consists of the nature of opposing formal laws and the nature of opposing material laws.

Moeljatno distinguishes nature against formal law and the nature of opposing material law, namely:

- The nature of the fight against formal law occurs when the act matches the prohibition of the law, so that an error arises. Resistance to real law violates the provisions of the law, except if there are exceptions that have been determined by law.
- The nature of opposing material law is not necessarily if all acts are in accordance with the prohibition of laws that are illegal (Roesli, Heri, & Rahayu, 2017). Law is not just a law. In addition to the law (written law) there are also unwritten laws, namely norms or facts that apply in society⁶.

Drug trafficking committed by HD violated the provisions of Article 114 paragraph (1) jo. Article 132 paragraph (1) of the Narcotics Law, the elements of which are:

- Every person

Narcotics Law does not mention the definition of every person. Narcotics Law only describes Narcotics Addicts regulated in Article 1 point 13 of the Narcotics Law, Narcotics Abusers in Article 1 number 15 of the Narcotics Law, and corporations in Article 1 number 21 of Narcotics Law. HD in this case is a legal subject as a person, not a corporation, thus, the element of 'every person' elements are fulfilled.

- without rights or against the law

⁵ A. Zainal Abidin Farid, *Hukum Pidana I*, Sinar Grafika, Jakarta, 1995, p. 47.

⁶ Moeljatno, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2000, p. 130.

In carrying out a narcotics crime HD does not get permission from the authorized party so that HD can be declared to have committed an unlawful act because his actions have fulfilled the formula in the Narcotics Law.

- Attempt to be an intermediary in drugs trafficking

Narcotics Criminal Provisions includes conspiracy or agreements stipulated in the Narcotics Law are applied in Article 132 paragraph (1) of the Narcotics Law, which determines:

Actors or conspiracy to commit narcotics and narcotics precursors as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 119, Article 129, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, Article 129 shall be punished with the same imprisonment in accordance with the provisions referred to in those articles.

According to AR. Sujono and Bony Daniel in Narcotics Law, "The definition of an attempt has been expressly determined in the explanation of Article 132 paragraph (1) of Law Number 35 of 2009, which states that the attempt is the existence of elements of intention, the beginning of implementation, and not complete implementation is not solely due to his own will"⁷.

The definition of business according to the Sianturi based on Article 53 of the Criminal Code is: If an act is prohibited (required) has not been done perfectly, it can be said that it has not fulfilled the formulation of the law so that it is not punished. In order for actions to be convicted, a provision is made which can be called an expansion of punishment. On the contrary it can be said that a series of deeds that have occurred, even though they have not yet fully fulfilled the formulation, are also despicable and deserving of punishment. Therefore, the trial is a despicable act and deserves punishment⁸.

Based on Article 53 of the Criminal Code, Sianturi then mentioned the elements regarding the trial:

- 1) There is an intention or will of an act to commit a crime;
- 2) There is the beginning of implementing the action;
- 3) The implementation of the action is not completed simply because the situation is beyond the will of the action⁹.

The act of HD which agreed to IJ's request to buy heroin narcotics through D could show that HD had an attempt to commit a narcotics crime and in carrying out his actions, HD did it intentionally as intent. The beginning of the implementation of the action according to Pompe is as follows, "The commencement of the implementation of a crime arises when a crime has been

⁷ AR. Sujono, Bony Daniel, Op.Cit., p. 313.

⁸ Sianturi, Op.Cit., p. 310.

⁹ Ibid, p. 317.

committed, in the sense that there is an act of implementation of a crime as defined in the law"¹⁰. An implementation of an action that is not completed because the situation is beyond the will of the perpetrator is referred to as "causes of externals", meaning "if the causes of externals have influenced the decision of the perpetrator to stop the crime, there is an *onvrijwillige* or action to stop the crime that has been started because it is forced"¹¹."

The act of becoming an intermediary in buying and selling according to AR. Sujono is:

If someone connects the seller and the buyer then the person gets the goods in the form of narcotics, then it can be classified as an intermediary in buying and selling. Therefore services or benefits can be in the form of money or goods or even facilities. Regarding the matter of being an intermediary in buying and selling, services or profits is an important factor, because without services or benefits obtained, it cannot be called an intermediary in buying and selling¹².

HD, who was approached by IJ at 2:30 a.m. WIB to buy narcotics of heroin type, approved IJ request and received money in the amount of Rp. 120,000 (one hundred twenty thousand rupiah) from IJ. HD then bought narcotics from D for Rp. 100,000, - (one hundred thousand rupiahs), and he received heroin given by D. The profit earned by the HD is Rp. 20,000 (twenty thousand rupiahs) which is then stored in a pants pocket. HD returned to the taxibike base at Rasuna Said Park to wait for IJ to take the heroin, but before handing over the heroin to IJ, HD was arrested by the police of the South Jakarta Metro Police Narcotics Unit. The HD action has fulfilled the element of the experiment of becoming an intermediary in buying and selling.

- Narcotics Element Group I

The Narcotics Law applies to the type of Narcotics Group I in the form of plants and Narcotics Group I in the form of non-plants. HD is buying and selling narcotics of heroin type, which in the annex of the Narcotics Law is included in the serial number 19 of Narcotics Group I in the form of non-plants (Lestari, 2019).

2. Able to be responsible

According to Sianturi, someone can be held responsible if:

a. The state of his mental:

1) Uninterrupted or temporary illness;

¹⁰ P.A.F. Lamintang, *Dasar-dasar Hukum Pidana Indonesia*, Citra Aditya Bakti, Bandung, 1997, p. 551.

¹¹ *Ibid.*, p. 575.

¹² AR. Sujono, Bony Daniel, *Op.Cit.*, p. 257.

- 2) Not disabled in growth (doubtful, idiot, imbecile etc);
 - 3) Not disturbed by surprise, hypnotism, overflowing anger, unconscious influence/reflex *beweging*, runny/*slaapwandel*, delirious because of fever/*koorts*, cravings and so on.
- b. His mental ability¹³:
- 1) Can realize the nature of his actions;
 - 2) Can determine his will for the action, whether it will be implemented or not and;
 - 3) Can know the deterrence of these actions.
2. When agreeing to an IJ request, the state of the HD soul is not being disturbed by continuous or temporary illness; not disabled in growth; not disturbed by surprise, unconscious influence, and so on. Related to the mental abilities contained in HD, HD can be declared aware of the actions taken; can determine the will for a crime to do; can know the adverse effects of his actions, so that his actions are carried out consciously.

3. Has a form of error

Pompe argued that "Errors are behavior that is contrary to the law which (should) be avoided (*vermijdbare wederrechtelijke gedraging*), i.e the disruption of legal order which (should) be avoided¹⁴". The intentions according to Moeljatno can be categorized into 3 (three) types, namely:

- 1) intentional purpose;
- 2) intentional as certainty, necessity, and;
- 3) *Dolus eventualis*¹⁵.

HD does something deliberate because he knows that there is a purpose or purpose to buy narcotics of heroin type.

3. The absence of forgiving reasons

Forms of actions that can be categorized as forgiving reasons according to the provisions of criminal law are as follows:

- 1) Inability to be responsible;
- 2) Forced defense beyond the limits, and;
- 3) Carrying out unauthorized position orders in good faith¹⁶.

Z. Anidin Farid stated that "The inability to be responsible requires abnormal mental development and diseases caused by psychiatric disorders, as well as conditions for the causal

¹³Sianturi, Op.Cit., p. 249.

¹⁴ Ibid., p. 163.

¹⁵ Moeljatno, Op.Cit., p. 177.

¹⁶ Adami Chazawi, *Pelajaran Hukum Pidana Bagian II*, RajaGrafindo Persada, Jakarta, 2002, p. 19. (Hereinafter referred to as Adami Chazawi II).

relationship between mental illness and deeds¹⁷". The forced defense that surpasses the limits stipulated in Article 49 paragraph (2) of the Criminal Code is also called "*noodweerexces*" which means "the limit of forced defense boundaries, which is caused by a severe mental pressure due to an attack by another person who threatens¹⁸". Regarding the implementation of an invalid position order in good faith, Article 51 Paragraph (2) of the Criminal Code determines "Position orders without authority, do not cause criminal deletion, unless those who are governed, in good faith think that orders are given with authority, and their implementation is included in the work environment ". In connection with HD actions in carrying out narcotics sale and purchase transactions there can be no forgiving reasons.

Based on the description of the elements of the error, HD can be subject to criminal liability because the four elements of error have been fulfilled by HD, namely committing a criminal act, being able to be responsible, having a mistake and not forgiving reasons. Thus, HD can be subject to criminal liability based on Article 114 paragraph (1) jo. Article 132 paragraph (1) Narcotics Law.

4. CONCLUSION

Based on the description and discussion in the previous chapter, HD that carries out drug trafficking can be subject to criminal liability based on Article 114 paragraph (1) jo. Article 132 paragraph (1) of Law Number 35 of 2009 on Narcotics, because it has fulfilled 4 (four) elements of error, they are:

- 1) Criminal acts; HD who attempts to become an intermediary in drugs trafficking violates the provisions of Article 114 paragraph (1) jo. Article 132 paragraph (1) Narcotics Law.
- 2) Ability to be responsible. HD is a man aged 40 (forty), thus, he can be categorized as an adult. HD is not physically or mentally disabled and is not crazy, so it can be stated that HD can be responsible.
- 3) There is a form of committing a mistake. HD who attempted to be an intermediary for buying and selling heroin was intentional because HD knew that his actions violated the provisions of the laws and regulations.
- 4) There is no forgiving reason. HD conducted an experiment in terms of being an intermediary for buying and selling heroin of its own volition without any forced power and no forced circumstances.

¹⁷ A.Zainal Abidin Farid, Op.Cit., p. 191.

¹⁸ Ibid., p. 200.

SUGGESTION

Based on the description of the conclusions, the suggestion of this study is that HD be subject to other criminal provisions other than attempt/trial because there is action that is not complete in the case of becoming an intermediary in buying and selling narcotics.

REFERENCES

- Adami Chazawi.(1995). Pelajaran Hukum Pidana Bagian II, Sinar Grafika, Jakarta.
- Andi Zainal Abidin Farid. (1995). Hukum Pidana I, Sinar Grafika, Jakarta.
- AR. Sujono, dan Bony Daniel. (2013). Komentari dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika, Sinar Grafika, Jakarta.
- Moeljatno. (2000). Asas-Asas Hukum Pidana, Rineka Cipta, Jakarta.
- P.A.F. Lamintang. (1997). Dasar-Dasar Hukum Pidana Indonesia, Citra Aditya Bakti, Bandung.
- Lestari, S. E. (2019). KAJIAN ISLAM TERHADAP SILA KEDUA DALAM PANCASILA SEBAGAI PENJAGA MULTIKULTURALISME. *PENDIDIKAN MULTIKULTURAL*, 3(2), 69–85.
- Roesli, M., Heri, A., & Rahayu, S. (2017). Authority of Land Procurement Committee In The Implementation of Compensation For Land Acquisition. *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, 10(2), 46–59.
- Sianturi.(1986). Asas-Asas Hukum Pidana di Indonesia dan Penerapannya, Alumni AHAEM-PETEHAEM, Jakarta.