

IMPLEMENTATION OF THE DEATH PENALTY AGAINST DRUG DEALERSTHOSE WHO COMMIT EVIL CONSPIRACY (SAMENSPANNING) IN THE DISTRIBUTION OF NARCOTICS (AnalysisSupreme Court DecisionNumber 2761 K/Pid.Sus/2020)

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ARTICLE INFO

History of the article:

Received: 08/10/2024

Corrected: 13/10/2024

Accepted : 30/10/2024

Published: 30/10/2024

Keywords:

Death Penalty,
Narcotics Dealer, Evil
Deeds

ABSTRACT

Criminal imposition of a person who commits a criminal act is a very important part of realizing the criminal justice system. The formulation of the problem in this is how the law regulates criminal conspiracy (samenspanning) in the distribution of narcotics, what is the criminal responsibility of narcotics dealers who commit conspiracy (samenspanning) in the distribution of narcotics, what are the considerations of judges in imposing capital punishment on narcotics dealers who commit conspiracy (samenspanning) in the circulation of narcotics. The results of the study show that the criminal responsibility of narcotics dealers who engage in conspiracy (samenspanning) in the distribution of narcotics is the death penalty because the defendant is dominant and can be categorized as the main actor and added to the amount of crystal methamphetamine evidence weighing 30 (thirty) kilograms. The judge's considerations in imposing capital punishment on narcotics dealers who committed conspiracy (samenspanning) in the distribution of narcotics because the Defendant's actions are very contrary to the government's program to eradicate narcotics, Indonesia is in a narcotics emergency situation which could endanger the nation's generation, the amount of evidence of methamphetamine-type narcotics is very large, The suspect was already included in the international/international narcotics distribution network and the defendant had a dominant role in bringing the methamphetamine from Malaysia to Indonesia

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is the supreme law, the fundamental norm, and the source of all applicable laws in the Republic of Indonesia. It is a written, binding fundamental law; it binds the government, state institutions, and community institutions, as well as every Indonesian citizen everywhere and every resident within the territory of the Republic of Indonesia.

Drug crimes are currently a matter of concern for many people and are constantly discussed and publicized. They are a concern for various groups, and everyone is reminding and urging Indonesians to never try or consume drugs. The facts, witnessed almost daily in both print and electronic media, clearly indicate that drug trafficking has spread everywhere, regardless of age, especially among the nation's next generation, contributing to the nation's future development.

Narcotics are currently being abused for consumption, distribution, and trade without authorization from the authorities. This is done by irresponsible parties for economic gain. Crime has now reached a dangerous level, as perpetrators of drug crimes are often children or adolescents. The number of drug offenders who are still children or adolescents continues to increase each year, proving that children are the targets of drug trafficking.

A person involved in narcotics crimes certainly does not appear suddenly, but rather through a process of consideration from criminal organizations or narcotics trafficking syndicates, where the crime does promise tempting profits. In its development, society has several things that encourage the acceleration of the rampant criminal organizations or narcotics trafficking syndicates to expand their networks and move across countries or internationally, especially those related to the advancement of communication and transportation technology so as to facilitate the mobility of people throughout the world, in addition, because the promising profits influence the efforts of criminal organizations or narcotics trafficking syndicates to enter all regions of the world and all levels of society, this is increasingly driven by changes

According to Article 1 number 15 of Law Number 35 of 2009 concerning Narcotics, it is stated that A drug abuser is someone who uses narcotics without permission or against the law. Based on these provisions,

the definition of drug abuse is the use of narcotics without permission or against the law.

The evil conspiracy as referred to in the provisions of Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics is exceptional, which means it is considered a crime in the criminal acts mentioned in Law Number 35 of 2009 concerning Narcotics only, namely Articles 111 to 126 and Article 129. Evil conspiracy (*samenspanning*) is a crime to commit a crime, it can be said that the crime that was agreed upon, prepared or planned has not yet occurred. Attempts and evil conspiracy in the Criminal Code are punished less than the main sentence. This is different from Law Number 35 of 2009 concerning Narcotics which punishes the same as the main sentence for a completed crime because narcotics crimes are considered to have become serious crimes.

Article 1 number 18 of Law Number 35 of 2009 concerning Narcotics states that criminal conspiracy is the act of two or more people who collude or agree to carry out, implement, assist, participate in, order, encourage, facilitate, provide consultation, become members of a narcotics crime organization, or organize a narcotics crime.

Perpetrators of narcotics crimes will be given criminal sanctions and pThe imposition of criminal sanctions in the form of imprisonment by judges for perpetrators of narcotics crimes is one of the criminal policies adopted by Law Number 35 of 2009 concerning Narcotics and cannot be separated from the criminal law norms adopted by criminal law to date, for example in Article 10 of the Criminal Code.

One of the criminal sanctions in Law Number 35 of 2009 concerning Narcotics is the death penalty, namely in Article 114 paragraph (2) which states: "In the case of acts of offering for sale, selling, buying, acting as an intermediary in buying and selling, exchanging, handing over or receiving Class 1 Narcotics as referred to in paragraph 1 which in the form of plants

weighs more than 1 kg or more than 5 tree trunks or in non-plant form weighs 5 grams, the perpetrator shall be punished with the death penalty."

Drug dealers may face the death penalty, as stipulated in Articles 114, 115, 118, and 119 of Law Number 35 of 2009 concerning Narcotics, depending on the category or severity of the crime. Drug crimes have infiltrated all aspects of life, and therefore the death penalty remains necessary and must be consistently implemented in Indonesia.

The death penalty is the most severe punishment of all types of punishment, therefore the threat of the death penalty is only aimed at perpetrators of serious crimes such as crimes directed against the head of state and deputy head of state as regulated in Article 104 of the Criminal Code, crimes against the soul of a person, namely premeditated murder (Article 340 of the Criminal Code) and narcotics crimes.

The death penalty can be imposed by a judge after careful consideration based on the legal facts at trial and sufficient evidence to allow the judge to decide whether an individual deserves one of these punishments. The death penalty is given to a defendant who commits a serious or extraordinary crime. One such serious crime is drug trafficking, which can destroy the ideals and future of the nation's future generations. Drug trafficking has become a transnational crime, committed between countries without borders or territory. Drug crimes are considered the deadliest crimes because their primary target is the younger generation.

The death penalty for drug dealers is a demonstration of the state's seriousness in handling drug cases in this country. This includes the death penalty for drug dealer Freddy Budiman. The death sentence was handed down to Ibnu Hajar bin Muhamad All, also known as Benu, in Supreme Court Decision Number 2761 K/Pid.Sus/2020 who has been proven guilty of committing the crime of conspiracy to commit the crime of selling, buying, receiving, acting as an intermediary in buying and selling, and/or

delivering Class I Narcotics not plants weighing more than 5 (five) grams as regulated and threatened with punishment in Article 114 Paragraph (2) in conjunction with Article 132 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics is a form of deterrent punishment so that perpetrators of narcotics dealers and dealers feel deterred from distributing them and as a form of lesson for narcotics criminal cases that still exist and are currently circulating.

RESEARCH METHODS

This research is descriptive analytical in nature, meaning that this research is a study that describes, examines, explains and analyzes the problem of criminal conspiracy (samenspanning) in drug crimes committed by children in relation to laws and regulations which are then analyzed. This research is a scientific activity based on certain methods, systematics and thinking that aims to study a particular law by analyzing it.

Analysis of legal aspects both in terms of the provisions of applicable regulations regarding application of the death penalty to drug dealers who carry out criminal conspiracy (samenspanning) in the distribution of narcotics and to research and examine the application and implementation of these regulations in relation to the application of the death penalty to criminal conspiracy (samenspanning) in narcotics crimes committed by narcotics dealers.

The approach used in this research is the case approach, which is carried out by examining cases related to the issues faced which have become court decisions, namely court decisions. Supreme Court Number 2761 K/Pid.Sus/2020. The conceptual approach is carried out by studying views and doctrines in legal science, which will uncover ideas that can give rise to legal definitions, legal concepts, and legal principles relevant to the issue at hand. Understanding these views and doctrines serves as a basis for researchers in constructing legal arguments to resolve the issue at hand.

Data collection is a crucial stage in the research process, as it serves as the source of the research. Data collection focuses on the underlying problem, ensuring that the research avoids any deviations or ambiguities in its discussion. This study utilized both primary and secondary data.

To obtain objective results that can be proven to be true and whose results can be accounted for, the data in this study was obtained using data collection tools that were carried out using a method, namely library research, namely research carried out by collecting data by reviewing library materials or secondary data which include primary legal materials, secondary legal materials and tertiary legal materials.

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This research uses materials obtained from library research. Based on the library research, secondary data was collected, including primary, secondary, and tertiary legal materials. For normative research, the data required is secondary data. This secondary data has a very broad scope, including personal letters, diaries, and official documents issued by the government.

RESULTS AND DISCUSSION

A drug dealer can be defined as someone who secretly controls or finances a drug crime. In practice, a drug dealer includes the masterminds behind drug smuggling, drug conspiracy, and so on.

Meanwhile, the meaning of narcotics distribution itself includes every activity or series of activities for distributing or handing over narcotics, whether in the context of trade, non-trade or transfer, for the benefit of health services and the development of science and technology.

Implicitly and narrowly, a narcotics/psychotropic drug dealer can be defined as a person who distributes and delivers narcotics/psychotropic drugs. Broadly, the definition of a dealer can also be applied and oriented to the dimensions of sellers and buyers for distribution, transport, storage, control, provision, exporting, and importing narcotics/psychotropic drugs. This means that a dealer is not necessarily a drug dealer. The term "drug dealer" is also not recognized in the Narcotics Law.

Sanctions for drug dealers vary depending on the offense. Regarding the offenses punishable by death, here are some crimes punishable by death under the Narcotics Law.

The death penalty is the most severe punishment of all the penalties imposed on criminals. The death penalty, hereinafter referred to as the death penalty, is one of the principal punishments imposed by a judge on a convicted person whose sentence has obtained permanent legal force. According to experts, the death penalty is justified if the perpetrator of the crime has demonstrated through his actions that he is an individual who is extremely dangerous to society. Therefore, he must be rendered powerless by being removed from society or social interaction.

The death penalty is the most severe punishment imposed on convicted criminals. Judges may consider imposing a severe sentence (the death penalty) for various serious crimes if sufficient evidence can be proven in court and points to the defendant.

According to SR. Sianturi, punishment is "a general name for all legal consequences for violating a legal norm." Furthermore, according to Roeslan Saleh, criminal law is "a reaction to a crime, and this is in the form of misery that the state deliberately inflicts on the perpetrator of the crime." According to Pompe, as quoted by SR. Sianturi, criminal law is "all legal rules that determine what actions should be punished and what kind of punishment is appropriate."

In relation to this definition of criminality, the late 19th century saw the development of sanctions in criminal law in the form of actions. In Indonesia, these actions were applied in certain cases, under conditions stipulated in law, in addition to punishments deliberately imposed as suffering. These actions were primarily applied to children and those with mental retardation or disorders.

These actions are not intended to inflict suffering, but rather to reform, heal, and educate individuals in order to protect society. "If these actions result in suffering, then this is clearly not intended."

Title II of Book I of the Criminal Code, entitled 'punishment' (straffen), describes the criminal law system followed in Indonesia. This system is simple, only mentioned in Article 10 of the Criminal Code. There are four main types of punishment, plus three additional types of punishment, namely:

The death penalty is regulated in Article 11 of the Criminal Code, which states: The death penalty is carried out by the executioner at the place of hanging, by using a noose around the neck of the condemned person and tying the noose to the gallows and dropping the board on which the person is standing.

As time went by, the provisions regarding the procedures for carrying out the death penalty were no longer in accordance with the development of the cultural conditions of the Indonesian nation and the spirit of the Indonesian revolution, so with Presidential Decree No. 2/1964 the execution of the death penalty was carried out by being shot to death in a place within the jurisdiction of the Court that issued the verdict in the first instance.

Life inevitably ends with death. That's an undeniable fact. Even though it seems scary, death is often not scary. The above expression can also be applied without exaggeration to the threat of the death penalty.

The definition of the death penalty, in simple terms, is a punishment imposed by a judge on a convict by taking their life according to the method prescribed by applicable law. Therefore, the death penalty is the most severe form of punishment in the Indonesian criminal justice system.

The aim of imposing and carrying out the death penalty is always directed at the general public, so that those who are threatened with the death penalty will be afraid of committing cruel acts that will result in them being sentenced to death. In connection with this, in ancient times the death penalty was carried out in public.

In 1943 the Dutch Government reinstated the death penalty in the Civil Criminal Court, specifically for serious crimes committed by war criminals in the territory of the Netherlands in Continental Europe during the occupation of the German Army. As is known, in the Criminal Code, it turns out that the death penalty is only threatened for serious crimes, crimes directed against the head of state and deputy head of state, including this group, treason against the President and Vice President as regulated in Article 104 of the Criminal Code, crimes against the soul of a person, namely premeditated murder (Article 340 of the Criminal Code). While for crimes outside the Criminal Code, crimes that can be sentenced to death are in cases of narcotics and psychotropic drugs, terrorism and crimes in the economic sector.

Drug crimes are considered the most serious crimes, and their consequences can even destroy the future of the nation's children. However, several studies have shown no positive correlation between the death penalty and a reduction in crime rates. In Indonesia, there has actually been an increase in users and dealers, leading to an increase in producers. In this regard, drug prevention efforts in developed countries have begun, including improving early childhood education, anti-drug campaigns, and providing education about their dangers. The seriousness of the drug

problem in human life has encouraged international cooperation in combating drug crime.

Drug crime doesn't just kill lives, it kills human life, and even society at large. Drug crime not only takes tens of thousands of lives each year, but also destroys the lives and future of future generations. If we want this nation and state to survive, we must not tolerate drug crime, corruption, and terrorism.

The imposition of the death penalty is also regulated in the Criminal Code and outside the Criminal Code which is a positive law, meaning the law currently in force in Indonesia. The death penalty is contrary to Article 28 paragraph 1 of the 1945 Constitution¹⁵ and violates Article 4 of Law Number 39 of 1999 concerning Human Rights (HAM).¹⁶ The consideration of not imposing the death penalty should be by not comparing it with the Constitution, because Indonesia still maintains the death penalty to this day.

The Constitutional Court (MK) also stated that the imposition of the death penalty does not violate the constitution. Therefore, law enforcement and the government must be consistent in seriously addressing and responding to the decisions and/or policies made by the panel of judges in deciding cases, particularly drug cases, at the first instance, high court, cassation, and judicial review (PK). This is to ensure that these decisions are truly accepted and implemented without any elements that could weaken law enforcement in Indonesia and in accordance with the provisions of the Law.

The 1945 Constitution and Human Rights (HAM). The death penalty is one of the objectives of criminal punishment to prevent and create a deterrent effect for perpetrators of criminal acts. According to Muzakir in "Quotation of the Decision of the Constitutional Court of the Republic of Indonesia Number 2-3/PUU-V/2007 concerning the Judicial Review of

Law Number 22 of 1997 concerning Narcotics against the 1945 Constitution" (Sindo: 2007: 5) the death penalty is imposed as a last resort to protect society, so as to provide protection for the principle of community protection. The essence of the death penalty or the death penalty is actually to protect society, namely to provide a channel for people who want revenge. Because if there is no channel through legislation, namely through criminal law, it is feared that society will take the law into their own hands.

According to the Constitutional Court, this includes implementing severe punishments, namely the death penalty. By implementing severe punishments such as the death penalty for serious crimes such as drug trafficking, the Constitutional Court argued that Indonesia did not violate any international treaties, including the International Convention on Civil and Political Rights (ICCPR), which advocates for the abolition of the death penalty. The Constitutional Court even emphasized that Article 6, paragraph 2 of the ICCPR itself allows for the continued application of the death penalty to participating countries, specifically for the most serious crimes.

Every human being has the fundamental right to life and livelihood. As stated above, one human right is limited by other human rights. An analysis of Freddy Budiman's death penalty case reveals that Freddy Budiman possesses a fundamental human right, namely the right to life. However, Freddy Budiman's right to life is limited by the right to life of others. Furthermore, his right to life is being used to threaten the lives of others by illegally distributing drugs that could kill others.

CONCLUSION

The legal provisions for criminal acts of conspiracy (samenspanning) in the distribution of narcotics are regulated in Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics, namely a criminal act conspiracy

without authority or against the law to act as an intermediary in the sale and purchase of Class I (one) narcotics, not plants, weighing more than 5 (five) grams

Criminal liability drug dealer who carry out criminal conspiracy (samenspanning) in the distribution of narcotics is the death penalty because the defendant is dominant and can be categorized as the main perpetrator and added to the amount of evidence of crystal methamphetamine weighing 30 (thirty) kilograms with the consequences that will arise if the crystal methamphetamine is used which will damage many generations of the Indonesian nation, the Panel of Judges is of the opinion that the maximum criminal demand of the death penalty is appropriate to be imposed on the Defendant.

The judge's considerations in imposing the death penalty on drug dealers who carry out criminal conspiracy (samenspanning) in the distribution of narcotics because the Defendant's actions are very contrary to the government's program in eradicating narcotics, Indonesia is in a narcotics emergency situation that can endanger the nation's generation, the amount of evidence of narcotics in the form of crystal methamphetamine is very large, the Defendant has entered the international/inter-country narcotics distribution network and the defendant has a dominant role in bringing the crystal methamphetamine from Malaysia to Indonesia.

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