

Legal Aspects and Legal Implications of Auctioning Goods Through Social Media Platforms

Soni Barumuli*, Ismail, Dewi Iryani

Universitas Bung Karno, Indonesia

Email: sonibaramuli28@gmail.com*, ubkismail@gamil.com, iryani.dewi77@gmail.com

ABSTRACT

KEYWORDS

Death Penalty; Narcotics
Offenders; Positive Law

The purpose of this study is to determine and analyze the application of the death penalty to perpetrators of narcotics crimes according to Indonesian positive law. In discussing this research, the author uses the theory of legal certainty and the theory of punishment. This research is a normative legal study using library methods that focus on reading and analyzing primary and secondary legal materials. The results indicate that the death penalty remains in Indonesian positive law, as seen in various provisions in the Criminal Code and other laws and regulations. With the enactment of Law No. 1 of 2023 concerning the Criminal Code, the death penalty is no longer a principal punishment but a special punishment threatened using an alternative system. This means the execution can be postponed with a 10-year probationary period; if the convict shows improvement, it can be commuted to life imprisonment or 20 years' imprisonment, but if no behavioral improvement is shown, the death penalty can be carried out. The Criminal Code and Law No. 35 of 2009 explicitly impose the death penalty for serious drug offenders. This penalty is the harshest sanction for drug offenders because it deprives them of their right to life; however, it is commensurate with the consequences of their actions.

INTRODUCTION

Narcotics crimes have been frequently reported in various circles of the country, with the development of narcotics crimes in Indonesia now at a stage that threatens the next generation of the nation. Year after year, the number of narcotics crime cases has increased, both in terms of suspects and victims (Anderson et al. 2017; Grela et al. 2018). This increase has been sharp, affecting both the quality and quantity of the issue. The abuse of narcotics and dangerous drugs (drugs) in Indonesia in recent years has become a serious problem, reaching a worrying state of affairs and becoming a national issue. Victims of drug abuse now span various social strata, age groups, and genders. Narcotics abuse is no longer confined to urban areas; it has also spread to rural areas and beyond national borders, causing significant harm to individuals, communities, and the state, particularly the younger generation. This issue can even pose a greater threat to national life and cultural values, ultimately weakening national resilience (Helled et al. 2024; Reznikova 2022; Rogers et al. 2020).

Transnational narcotics crimes are carried out using modern methods and advanced technology, including securing the proceeds of narcotics crimes (Omelchuk et al. 2021). The development of narcotics crime quality has become a severe threat to humanity. Narcotics trafficking crimes are characterized by organized crime syndicates, significant financial support, and the use of advanced technology for circulation (Berry 2018; Kabra et al. 2023; LeVine Jr 2024; Luong 2020).

The problem of narcotics abuse is not only a concern for Indonesia but also for the international community (Ariyanti 2017; Hartono et al. 2023). By the 20th century, international attention to narcotics issues increased, one of the key milestones being the Single Convention on Narcotic Drugs of 1961. Therefore, in efforts to counter and eradicate the abuse and illicit circulation of narcotics, it is essential to enhance control and supervision both nationally and internationally (Hall 2018; Ramadani 2024; Wulandari et al. 2023). Narcotics crimes are generally not carried out by individuals independently but by networks organized by clandestine syndicates that operate steadily, efficiently, and covertly.

International illicit narcotics trafficking involves foreign nationals and impacts two or more countries (Fukumi 2016; Simmons et al. 2018). It is usually preceded by planning outside the territorial boundaries of a specific country. Increasingly sophisticated technology, such as the use of submarines and airplanes, has been employed by illegal narcotics traffickers to smuggle narcotics between countries. Another method involves using women as couriers. This method is considered a safer approach as it often avoids suspicion from security forces (Price et al. 2024). Regarding illegal narcotics trafficking, three critical elements are involved: the source area, the individuals or organizations distributing the narcotics, and the users or consumers of the narcotics (Bright et al. 2016; Giommoni et al. 2022).

The Narcotics Law is evidence of the state's seriousness in its efforts to eradicate drug crimes. Drug crimes are considered *lex specialis*, a specialization compared to other criminal acts. The Narcotics Law imposes severe punishments for drug traffickers, including the death penalty for narcotics crime offenders.

The imposition of the death penalty is not arbitrary but applies specifically to perpetrators of exceptional crimes (extraordinary crimes) who are considered highly dangerous to society. Such individuals must be removed from society or social life (via the death sentence). One figure who supports the existence of the death penalty is R. Santoso Poedjosoebroto, a former vice president of the Supreme Court, who argued that the death penalty is the ultimate measure of justice. However, he emphasized that when applying the death penalty, the convicted person's rights must be considered, and the execution should be carried out in an appropriate and humane manner.

The consistency of the application of the death penalty in Indonesian positive law was reinforced by the Constitutional Court's decision (Case Number 2-3/PUU V/2007) regarding the testing of Law No. 22 of 1997 concerning Narcotics, which rejected the application to cancel the death penalty. In the decision, it was stated that the death penalty does not violate the constitution because it does not contradict the right to life guaranteed by the 1945 Constitution, as the Indonesian constitution does not adhere to the principle of absolute human rights.

Several previous studies have examined the issue of the death penalty in relation to narcotics crimes. Ariyulinda (2014) explored the relationship between the death penalty for narcotics offenders and human rights protection, highlighting the legal and ethical debates surrounding the punishment. Meanwhile, Prakoso and Nurwachid (1984) analyzed the effectiveness of the death penalty as a criminal sanction in Indonesia, questioning whether it truly acts as a deterrent to serious crimes. These studies generally focus on the human rights dimension or the effectiveness of the death penalty. However, there is still a need for further analysis regarding the application of the death penalty within the framework of Indonesian positive law, particularly after the enactment of Law No. 1 of 2023 concerning the new Criminal

Code, which introduces a new approach to the death penalty by classifying it as a special punishment that can be postponed through a probationary system.

Based on the issues presented above, the author is interested in discussing and studying the application of the death penalty for perpetrators of narcotics crimes according to positive law. Therefore, the author has titled this research: "Imposition of the Death Penalty for Perpetrators of Narcotics Crimes According to Positive Law in Indonesia." This study aims to analyze the application of the death penalty for narcotics offenders under Indonesian positive law and to examine the legal considerations that underlie its implementation. The objective of this research is to understand the legal framework governing the death penalty for narcotics offenders and to evaluate its position within the Indonesian criminal justice system. The results of this study are expected to provide both theoretical and practical contributions. Theoretically, this research contributes to the development of criminal law studies, particularly regarding the regulation and implementation of the death penalty in Indonesia. Practically, the findings of this research are expected to provide insights for policymakers, law enforcement officials, and academics in understanding the legal aspects and implications of imposing the death penalty on narcotics offenders.

METHOD

This research is normative legal research, namely library research or document studies. In this case, the author chooses legal research that examines laws and regulations and legal principles. The data used by the author is primary legal material, which includes various laws and regulations related to the research topic. Materials that provide explanations of primary legal materials, such as research results, opinions of legal experts, books, articles and research reports.

Materials that provide instructions and explanations of primary legal materials and secondary legal materials such as legal dictionaries, encyclopedias, cumulative indexes and so on. Analyzed in a "qualitative descriptive" manner (because the data used is not in the form of statistics), which is a method of analyzing the results of literature studies in the form of describing problems using theories and describing them in the form of sentences and concluded using the deductive method, which is a way of drawing conclusions from general to specific postulates.

RESULT AND DISCUSSION

Imposition of the Death Penalty for Perpetrators of Narcotics Crimes

Criminal law is a concept that requires further explanation to fully understand its meaning and essence. According to Roeslan Saleh, "crime is a reaction to a crime, and this takes the form of a penalty deliberately inflicted on the perpetrator by the state." Criminal law determines sanctions for any violations of the law. These sanctions, in principle, involve a deliberate addition of suffering. The intentional infliction of suffering is one of the most important distinctions between criminal law and other areas of law.

The consideration of the application of the death penalty mainly revolves around the enforcement of justice in society. However, it should be noted that the death penalty is also viewed as a violation of human rights, particularly the right to life. This opposing point of view, represented by retentionist and abolitionist groups, remains a point of contention. Nonetheless,

there is still an urgent need to enforce the death penalty for individuals proven to have committed narcotics crimes. There are several theories that support the death penalty in relation to the purpose of punishment.

These theories include absolute theory, relative theory, and combined theory. The absolute theory views punishment as a means of retribution, aiming to achieve a balance between the crime committed and the satisfaction of the victim and society. However, this theory is no longer applicable in Indonesia, as the purpose of punishment in this country has shifted to a more utilitarian form. This shift is evident in the application of the death penalty for individuals involved in narcotics crimes.

Based on the various theories of punishment, it is concluded that the main aspects of the purpose of punishment include: (1) The Aspect of Community Protection, which essentially aims to prevent, reduce, or control criminal acts and restore the balance of society; and (2) The Aspect of Protection for Individuals, which focuses on rehabilitating and influencing the behavior of criminal offenders to ensure compliance with the law. This aspect of individual protection is also called the criminal individualization aspect. The imposition of the death penalty is designed to signal to the public that the government will not tolerate disturbances to peace, which is a significant concern for society.

When discussing the imposition of the death penalty on narcotics crime offenders, it is essential to consider the impact that narcotics crimes themselves have. Narcotics crimes are classified as extraordinary crimes, as they have large, multi-dimensional impacts on social, cultural, economic, and political aspects. The negative consequences of these crimes are immense. Therefore, the imposition of the death penalty on narcotics offenders aims to provide a deterrent effect, signaling to perpetrators that such crimes will not be tolerated. The death penalty, in this context, seeks to fulfill the ultimate goals of the law: justice, utility, and legal certainty. The Criminal Code and Law No. 35 of 2009 on Narcotics explicitly provide severe punishment for serious narcotics offenders, including the death penalty. This is reaffirmed by the Constitutional Court's decision that the death penalty for narcotics offenders does not violate human rights, as these offenders have already violated the rights of others, leading to the destruction of the future generation.

However, it remains unproven whether the death penalty is an effective tool for eliminating crime. Despite the imposition of death sentences, the illegal trade in narcotics continues. Based on the provisions of several articles above, it can be seen that the death penalty is still considered the most capable criminal sanction in fulfilling the purpose of punishment. Discussing criminal sanctions cannot be separated from the purpose of punishment as retribution, imposed by the state as a strong reaction to acts that are prohibited or ordered by criminal law, committed by individuals or groups, and have caused harm to others. In criminal law theory, leading scholars agree that the purpose of criminal law is prevention, which includes both general prevention (*generale preventie*) and special prevention (*speciale preventie*).

Many scholars have delved into the goal of criminal law and its sanctions. Criminal sanctions are considered the most special form of sanction because the legal interests to be protected by criminal law rules (*schultznorm*) include life, liberty (freedom), honor, and property, in addition to the interests of the state.

Factors That Lead to the Imposition of the Death Penalty for Perpetrators of Narcotics Crimes in Indonesia

Narcotics crimes are no longer only carried out individually, but involve many people who together, even become an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels. The mafia's wrestling seems to be unable to be stopped by the breakthrough of law enforcement officials in various parts of the world despite the intense fighting. Not a few world bodies are involved, but the distribution of illicit narcotics continues to be rampant. Based on this, in order to increase efforts to prevent and eradicate narcotics crimes, the criminal law applies strict sanctions to perpetrators of narcotics crimes, one of the heaviest of which is the death penalty.

In general, what is meant by narcotics is a type of substance that causes certain effects on the people who have used it, namely by introducing it into the body where certain effects are on the user's body, namely:

1. Affects consciousness
2. Provide encouragement that can affect human behavior c.
3. Influences such as: Sedative; and Stimulants

Law Number 35 of 2009 concerning Narcotics, classifies perpetrators of narcotics abuse into 2 (two), namely: perpetrators of criminal acts who have the status of users (Articles 116, 121 and 127) and non-users of narcotics (Articles 112, 113, 114, 119 and 129), for the status of narcotics users can be further divided into 2 (two), namely users to be given to people (Articles 116 and 121) and users of narcotics for themselves (Article 127). What is meant by a dealer is a person who imports, exporters, offers to sell, distributes, becomes a buyer, submits, receives, becomes an intermediary in buying and selling or exchanging narcotics without rights and against the law in an organized manner.

The factors that cause the imposition of the death penalty against the perpetrators of narcotics crimes are as follows: 1. The perpetrators are drug dealers of groups I and II which are carried out in an organized manner. 2. The perpetrator is the owner of class I and II narcotics, as much as 300 grams or more. 3. The perpetrator is a processor or person who produces class I and II narcotics. 4. The perpetrator is a carrier of class I and II narcotics. 5. The perpetrator is an introduction to class I and II narcotics. 6. The perpetrator is related to a large narcotics syndicate.

So it is clear here that the imposition of the death penalty on the perpetrators of narcotics crimes is intended only for the perpetrators of narcotics crimes intended only for perpetrators who are classified as narcotics abuse, especially narcotics class I and II as dealers, owners, processors, carriers and transporters, especially if the perpetrators are involved with a large network of dealers.

Moreover, narcotics crimes are a crime that is classified as an extra ordinary crime that has a considerable adverse impact on the life of the community and the state. The death penalty is the harshest sanction for perpetrators of narcotics crimes because with the imposition of the death penalty, the perpetrators have been deprived of their right to life. However, it will feel worth it if you look at the consequences of the actions of these narcotics crime perpetrators. In addition, the imposition of the death penalty is also in line with the understanding of the principle of punishment that is as severe as it is for narcotics criminals as a form of extra

ordinary punishment that aims to compensate for narcotics crimes which are extra ordinary crimes.

CONCLUSION

The existence of the death penalty in Indonesia's positive law is still maintained, albeit with more limited provisions. With the amendment to Law No. 1 of 2023 concerning the Criminal Code, the death penalty is no longer considered a principal crime but rather a special crime that can be postponed for a probationary period of 10 years. If the convict shows improvement during this period, the death penalty can be replaced with imprisonment or life imprisonment. On the other hand, in the context of narcotics crimes, the death penalty remains regulated as the most severe sanction, considering that narcotics crimes are classified as extraordinary crimes, which require punishment commensurate with the impact they cause. This understanding underlies the use of the death penalty as an extraordinary punishment for narcotics crime perpetrators.

Based on these findings, it is recommended that the government and law enforcement institutions implement the death penalty with careful consideration and strict legal procedures to ensure justice and legal certainty. Additionally, policymakers should continue to evaluate the effectiveness of the death penalty in preventing narcotics crimes, while strengthening preventive efforts such as public education, rehabilitation programs for drug users, and stricter supervision of narcotics distribution networks. Strengthening cooperation between law enforcement agencies at both national and international levels is also essential to combat transnational narcotics trafficking more effectively. Through a balanced approach that combines strict law enforcement and preventive strategies, efforts to address narcotics crimes in Indonesia can be carried out more comprehensively and sustainably.

REFERENCES

- Anderson, Laura Jane, Asher Flynn, and Jennifer Lucinda Pilgrim. 2017. "A Global Epidemiological Perspective on the Toxicology of Drug-Facilitated Sexual Assault: A Systematic Review." *Journal of forensic and legal medicine* 47: 46–54.
- Ariyanti, Vivi. 2017. "The Victims of Drugs Abuse and Their Legal Status in the Indonesian Narcotics Law." *International Journal of Business, Economics and Law* 13(4): 119–23.
- Berry, Mark. 2018. "Technology and Organised Crime in the Smart City: An Ethnographic Study of the Illicit Drug Trade." *City, Territory and Architecture* 5(1): 1–11.
- Bright, David A, and Jordan J Delaney. 2016. "Evolution of a Drug Trafficking Network: Mapping Changes in Network Structure and Function across Time." In *Advances in Research on Illicit Networks*, Routledge, 120–42.
- Fukumi, Sayaka. 2016. *Cocaine Trafficking in Latin America: EU and US Policy Responses*. Routledge.
- Giommoni, Luca, Giulia Berlusconi, and Alberto Aziani. 2022. "Interdicting International Drug Trafficking: A Network Approach for Coordinated and Targeted Interventions." *European Journal on Criminal Policy and Research* 28(4): 545–72.
- Grela, Agatha, Lata Gautam, and Michael D Cole. 2018. "A Multifactorial Critical Appraisal of Substances Found in Drug Facilitated Sexual Assault Cases." *Forensic science international* 292: 50–60.

- Hall, Wayne. 2018. "The Future of the International Drug Control System and National Drug Prohibitions." *Addiction* 113(7): 1210–23.
- Hartono, Teguh, Vadira Hanami, and Fanniya Dyah Prameswari. 2023. "Drug Abuse Rehabilitation Policies in Indonesia: A Comparison with Vietnam, Australia and Portugal." *Wacana Hukum* 29(2): 163–80.
- Helled, Alon, and Carlo Pala. 2024. "When Nations Adapt: National Resilience between State (s) and Identity (Ies)." *Political Studies Review* 22(1): 93–107.
- Kabra, Sankul, and Saira Gori. 2023. "Drug Trafficking on Cryptomarkets and the Role of Organized Crime Groups." *Journal of Economic Criminology* 2: 100026.
- LeVine Jr, Leonard H. 2024. "The Changing Face of Drug Trafficking: The Dynamic World of Transnational Organized Crime and the Narcotic and Dangerous Drug Section's Special Operations Response." *Dep't of Just. J. Fed. L. & Prac.* 72: 19.
- Luong, Hai Thanh. 2020. "The Organisational Structure of Transnational Narcotics Trafficking Groups in Southeast Asia: A Case Study of Vietnam's Border with Laos." *Trends in Organized Crime* 23(4): 385–411.
- Omelchuk, Oleh et al. 2021. "Illicit Trafficking in Narcotic Drugs and Their Analogues Using Computer Technology: A Criminal Law Study."
- Price, Jeffrey, and Jeffrey Forrest. 2024. *Practical Aviation Security: Predicting and Preventing Future Threats*. Elsevier.
- Ramadani, Suci. 2024. "The Role of Government and Society in Preventing Narcotics Crime in Indonesia." In *International Conference Epicentrum of Economic Global Framework*, , 632–37.
- Reznikova, Olga. 2022. "National Resilience in a Changing Security Environment." *National Institute for Strategic Studies, Kyiv*.
- Rogers, Peter, Jim J Bohland, and Jennifer Lawrence. 2020. "Resilience and Values: Global Perspectives on the Values and Worldviews Underpinning the Resilience Concept." *Political Geography* 83: 102280.
- Simmons, Beth A, Paulette Lloyd, and Brandon M Stewart. 2018. "The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking." *International Organization* 72(2): 249–81.
- Wulandari, Sinar Aju, and Putri Kirana. 2023. "ASEAN States Cooperation in the Control and Prevention of Illicit Drugs Trafficking." *Yuridika* 38(3): 665–84.