

Judicial Review on The Application of Criminal Offense of Evil Conspiracy to Narcotic Drug Courier Based on Act Number 35 Year 2009 about Narcotics (*Verdict of District Court of Medan Number 1537/Pid.Sus/ 2015/PN.MDN*)

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ABSTRACT

Evil conspiracy/samenspanning is a criminal action, on the other word, the crime is the agreed, prepared, or planned criminal action, which has not been yet happened (inchoate). In Criminal Code Guideline (hereafter KUHP), trying of criminal action and evil conspiracy are punished lightly from the actual punishment. However, it is different from current narcoticsdrug Act that gives the same punishment with the actual punishment on completed offense. It is due to the consideration that narcotic crime has become serious crimes.¹It turns out that according to Narcotics Drug Act, the applicable article of evil conspiracy is also limited. The consideration of evil conspiracy as one of criminal offense may be caused by criminal action of narcotics as stated in Narcotic Drug Act Number 35 Year 2009as an extraordinary crime particularly for young generation.The issues rise in the application of legal process in proving the crime of evil conspiracy. It is due to the difficulty in finding the evidences of the crimes. For instance, what the evidences are that can be considered if evil conspiracy happened in doing the narcotic drug crime.

¹The definition of evil conspiracy in othential term can be read in Article 88 KUHP, which is :*“The evil conspiracy happens, immediately after two or more than two people meet the agreement to do so”*.

1. INTRODUCTION

Drug trafficking and drug offenses are classified as “*organized crime*” and one of the serious criminal offenses. Drug trafficking most of the time is in form of syndicate or network so that the perpetrator of drug dealers cannot be done individually. Therefore, this crime is called as *organized crime*, which starts from the manufacturers, dealers, brokers, and to the users.

Indonesia currently is not only as the drug transit country but also as the country of consumers and manufacturer and even the exporter of marijuana, ecstasy, crystal meth, and so forth. It is acknowledged from packet deliveries and couriers from Indonesia to abroad or otherwise which is addressed to Indonesia. Indonesia as one of dense population countries becomes the potential market or illegal drug distribution. It can be found from many arrestments of foreigners who bring narcotic drugs to Indonesia, the foreigners come to Indonesia via sea lines or air lines.

The research study is about criminal law enforcement as the *criminal policy* or the policy of criminal prevention. It needs two facilities which are by using penal facility or criminal sanction, and by using non penal facility to overcome the crime without criminal sanction (penal).²

Law enforcement to criminal case of drug has been implemented by the official law enforcement and the verdicts have been taken by the Judges for the perpetrators. Therefore, the law enforcement is expected to become the preventive actions on the rampage of drug trafficking as well as drug distribution. However, in reality, the more law enforcement is conducted, the more drug distribution and drug trafficking happen.

The regulation stipulation which regulates drugs has been arranged and applied, however, the narcotic crime has not yet decreased. In many latest cases, many drug brokers or drug dealers have been arrested and punished with heavy sanctions, however, other perpetrators seem to ignore or tend to extend their operational areas.³

It is acknowledged that criminal offense of drugs nowadays is not done individually but involves many people at the same time, even it is an organized syndicate which is organized with

wider network and work very secretly and scrupulously either in national or international level.⁴

Evil conspiracy (*samenspanning*) is a plan and followed by the agreement to do a crime, or the agreed, planned, prepared crime action that has not yet happened (inchoate). In KUHP, the trial of evil conspiracy will be punished lighter from the actual crime.

The definition of evil conspiracy in authentic meaning can be found in Article 188 of KUHP, which is: “*The conspiracy happens, immediately after two or more than two people meet the agreement to do so*”.⁵ However, it is different from Act Number 35 Year 2009 about narcotic drugs (hereafter Narcotic Drug Act) that recently punish the guilty based on the actual punishment.

It does not correspond to the definition of devil conspiracy regulated in Article 88 KUHP, because the evil conspiracy defined in Article 1 Number 18 Narcotic Drug Act is considered *lex specialis* from KUHP. Moreover, the Article 1 Number 18 of Narcotic Act 18 regulates the evil conspiracy as follow: the action of two people or more than two people who conspire or agree to do, perform, help, involve to do, order to do, suggest to do, facilitate to do, give consultation, become the member or organization of drug criminal, or organize a narcotic crime.⁶

Therefore based on the description above, the problems can be formulated as follows:

1. How is the legal arrangement on narcotic crimes that is applied in Indonesia?
2. How can the background of evil conspiracy happen in term of criminal offense?
3. How is the legal application on crime of evil conspiracy that is done by courier of Narcotic crime?

2. THE LEGAL REGULATION ON NARCOTIC OFFENSE ACCORDING TO LEGAL SYSTEM IN INDONESIA

According to normative jurisdiction, the definition of narcotics is formulated in Article 1 Number 1 Act Number 35 Year 2009 About

²Muladiand Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana*, Alumnus, Bandung, 1998, page. 148

³O.C Kaligis & Associates, *Narkotika Dan Peradilannya Di Indonesia, Reformasi Hukum Pidana Melalui Perundangandan Peradilan*, Alumnus, Bandung, 2002, page. 260

⁴AR. Sujonodan Bony Daniel, *Komentar dan Pembahasan Undang-undang Nomor 35 Tahun 2009 tentang Narkotika*, Sinar Grafika, Jakarta Timur, 2011, page. 60

⁵Article 88 Criminal Code Guidelines (KUHP)

⁶Article 1 Number 18 Act No. 35 Year 2009 About Narcotics

Narcotics, which mentions that Narcotics is substances of drugs from plant or non-plant either synthetic or semisynthetic, that can reduce or change consciousness, decrease and blunt the sense of pain, and cause addiction and can be classified into types stated in this Act.

Narcotics Drug Act classifies the narcotics criminals in three types which are: they who are called the dealer, user, and narcotic addict. The qualification of each narcotic crime contributes the different legal consequences to the fulfillment of either criminal substances or criminal sanctions.

This paper intends to provide the legal understanding that narcotic drug courier is part or drug dealer which is the action of evil conspiracy.

Act Number 35 Year 2009 about narcotic drugs, determines the criminal sanctions to drug offenses based on minimal and maximal sanctions. It can be found from Article 111 to Article 125 Narcotics Act.

Each determination from Article 111 to Article 125 is found that the sanction is exacerbated sanctions which are life sentence and capital punishment that is applied to the perpetrators in certain circumstances that according to the regulation is considered as requirement to punish the maximal sanction, death penalty. For example, the term of offering to sell, to be sold, to buy, to receive, to be the broker or distributor in trafficking, to change, or to hand over the Narcotics type II as stated in Article (1) with weight more than 5 (five) grams, the perpetrator is charged with death penalty, life sentence, or jail sentence at least 5 (years) and the longest is 20 (years) and maximum mulct as stated in Article (1) added 1/3 (a third) with stipulations regulated in Article 119 Verse (2).

Criminal sanction punished to the perpetrators of criminal offense categorized as "dealers" is maximal 4 years in prison, and maximal 20 years in jail or a life sentence for type I, meanwhile, for type II at least 3 years and the maximal sanction is 20 years in jail or a life sentence and death penalty sanction. Furthermore, in Article 129 of Narcotic Drug Act describes that minimal and maximal criminal sanctions for each substance arranged in Articles mentioned above, as follows:

Criminal offense with imprisonment minimal 4 (years), and maximal, 20 (twenty) years in jail and mulct IDR5.000.000.000,00 (five billion Indonesian rupiah) for any person without lawful authority or against the law:

- a. *To possess or keep, control, provide Narcotic Drug Precursor for narcotic production;*

- b. *To produce, import, export, or distribute Narcotic Precursor for Narcotic production;*
- c. *To bargain to be purchased, purchase, receive, to be broker in narcotic trafficking, change, or hand over narcotic precursor for narcotic production;*
- d. *To bring, send, embark, transit the narcotic precursor for narcotic production.*

The formulation of Article 129 gives understanding that in Narcotic Drug Act, regulates minimal punishment which is imprisonment at least for 4 (years) and maximal punishment is not exceeding 20 (twenty) years in jail. Therefore, the Judge in deciding the case of narcotic drug crime for category "dealer" or narcotic users cannot be charged with minimal punishment stated in this Act, the stipulation is not applied for them who are guilty as "drug addicts" or the victim of narcotic drug offense.

3. BACKGROUND OF EVIL CONSPIRACY IN CRIMINAL OFFENSE

In analyzing factors of evil conspiracy as broker in narcotic drug distribution and narcotic drug trafficking, the writer more underlines on social aspect by underlying the description analysis on sociological theory. In analyzing the causing factors of the crime in social environment based on sociology theory, it can be classified into three general theories, which are:

1. *Anomie* (the absence of norms) or *Strain* (information)
2. *Cultural Deviance*
3. *Social Control*.⁷
- 4.

1. *Anomie Theory (the Absence of Norms) or Strain (Information)*

Anomie Theory focuses on *social forces* which causes other people do criminal action. The assumption of this theory is that social class and the criminal behaviours are reciprocal. The *anomie theories* consider that all society members follow the instruments of cultural values, which are the values of middle social class, the assumption that the prominent cultural values is economic success. Consequently, the lower class people do not have *legitimate means* to achieve the target such as high salary, developed corporation, and so forth, they become frustrated and switch to *illegitimate means*.

⁷Abintoro Prakoso, *Kriminologi dan Hukum Pidana*, Laksbang Grafika, Jakarta, 2013. page. 32

2. Cultural Deviance Theories

Deviance cultural theories focus on the *social forces* which cause the people to do criminal activities. *Cultural deviance theories* are the crime as the unit of specific values of *lower class*. Self-adaptation process with the lower class system which determines the behaviour in slum areas, cause the collision between legal societies.

3. Social Control Theory

Social control theory refers to every perspective which discusses the behaviour control of human. Meanwhile, the definition of social control theory refers to *delinquency* discussion and the crime related to sociological variables such as family structure, education, and dominant group. In term of social control theory, there is the assumption from some scholars, one of them is Albert J. Reiss, Jr. Reiss, states that there are three components from *social control* to explain the crime as follows:

- a. Lack of adequate internal control during childhood.
- b. Loss control that should be focused on the childhood period.
- c. The absence of social norms in nearby environment, in school, and from parents.⁸

Narcotic drug offense basically is not a criminal action but it is the accumulation of some factors that is sustainable reciprocally and structurally. The main factors are from the situation and condition of society life, it is reveals on the changing phenomena or norms that is quick in every aspect of social life that contributes the shift of value system coming from external sides that triggers the conflict.

In family environment for instance, it can trigger family conflict sustainably and leads to negative human action. Furthermore, in social environment, sometimes the incapability to compete within surrounding environment or due to social environment that encourage negative actions including psychotropic offenses, the crime that is done in organized group and massively done by mafia of drug criminals and it reveals that there is evil conspiracy that is done intentionally to do narcotic crime of drug dealing in Indonesia.

It should be confessed that the foundation or main pillars to support the existence of this country must be started from the family. When a family is broken, the foundation of this country is also vulnerable. Furthermore,

life existence of a society, a state, and nation depend on by future generations which are young generations. If young generations have lost their futures, frivolous in undergoing their life, scarcely are any hope expected for the existence of this country in the future. The actual fact from drug abuse physically, psychologically, socially, economically, culturally, and morally is clear. For instances are the emersion of '*junkies*' generations who are frivolous to undergo their life, the increasing of numbers of HIV/ AIDS sufferers, other social issues that will ruin this country as the consequence on the inclining numbers of narcotics drug users.

Narcotics crime as an organized crime, is a conspiracy crimes which has economic and social backgrounds of a society of the country as stated in Court Verdict Number 1537/Pid.Sus/2015/Mdn. It is unknown certainly about the motivation of Chairul Mustaqim (the defendant) to do evil conspiracy as the broker of narcotic trafficking of 3 ½ pill of ecstasy from a person named EBIT (wanted) in village of Kampung Kubur. However, based on the defendant occupation as an assistant of construction worker, it is assumed as the factor of evil conspiracy happens in narcotics trafficking due to economic motive. It is acknowledged that construction worker assistant is casual work thus, when the defendant is jobless, he is allured to be a drug courier because that is the fast and the easy way to earn money.

The skill of the defendant in preparing narcotics drug that is ordered by Julham (wanted), is considered that the defendant as the courier is caused by social environment of the defendant in narcotic drug network. Chairul Mustaqim, the defendant, has relationship with the drug dealers, thus, when there is a demand, the perpetrator can prepare and fulfil the demand. On court verdict, it clearly reveals that the huge influences of the evil conspiracy in term of narcotic drug crime are economic and social backgrounds.

4. LEGAL APPLICATION ON EVIL CONSPIRACY OF NARCOTICS CRIME

The Act Number 35 Year 2009 about narcotic drug has regulated about the stipulation of criminal offense for anyone who are charged by criminal action as well as mulct that has to be responsible by the drug abuse or the perpetrator of narcotic drug crime. Many of ignorant people consider that the punishment sentenced to the defendant of narcotic drug crime is the same. It turns out that in Narcotic Drug Act, it does not

⁸Yesril Anwar Adang, *Kriminologi*, Refika Aditama, Bandung, 2013, page 178.

differ the perpetrator of narcotic drug criminal as well as the sanctions.⁹

The application of criminal offense on Evil conspiracy and narcotic drug crimes as stated in Article 132 Verse (1) Act No. 35 Year 2009 about Narcotics is exceptional, as the criminal action stated from Article 111 to Article 129. The evil conspiracy is charged and punished with the criminal offense regulated from Article 111 to Article 126.¹⁰

The substances from Article 132 Verse (1) of Narcotic Drug Act are as follows:

1. Inchoate/evil conspiracy
2. Narcotic drug crime or narcotic drug precursor
3. As articulated in Articles from Article 111 to Article 129.

Devil conspiracy/*samenspanningis* a crime to do a agreed, planned, prepared crime as mentioned previously. In Criminal Code Guidance (hereafter KUHP), a crime trial and evil conspiracy will be punished lighter from actual punishment. The application of evil conspiracy in KUHP has significant differences from Narcotic Drug Act in applying evil conspiracy who lately charges the actual punishment as it is charged in complete criminal offense. It is due to the consideration that narcotic drug crime as a serious crime.¹¹

Evil conspiracy has definition as *deelneming*/alternate. Thus, evil conspiracy is dominantly defined as *deelneming*/involment (as mentioned in Article 55 of KUHP). In application, many legal officers in Indonesia still apply Article 132 Vers (1) of Narcotic Drug Act to charge the criminal offense done by two perpetrators or more. It does not correspond with the definition of authentic evil conspiracy because the evil conspiracy defined in Article 1 Number

18 of Narcotic Drug Act is considered as *Lex Specialist* according to 55 KUHP.¹²

The final goal to achieve from law enforcement is justice although the justice is subjective and individualistic. However, in deciding the case, three substances of legal certainty, the utilization and legal justice, theoretically have to get attention proportionally and equally. Although in law enforcement, it is not easy to compromise on the substances of law enforcement, which is not only to meet the certainty, utilization, but also to fulfill the legal justice.

The achievement of legal justice on law enforcement is the judge in deciding a case has to consider the juridical aspect so that the judge has to consider non-juridical and philosophically aspects. In order to achieve legal justice, the judge needs to consider the justice value in society. It is based on the statement in Article 5 Verse (1) Act Number 48 Year 2009 about Judge authority that: "Judge and constitutional Judge obligate to find out, follow, and comprehend the legal value and justice value applied in society".

Based on Court verdict Number 1537/Pid.Sus/2015/Mdn, that the substances in choate or evil conspiracy to do criminal offenses that against the law by bargaining to be sold, to sell, to receive, to be broker in trafficking, to change or hand over narcotics type I (one) was committed guilty according to the constitution. One of the consideration of Judge panel was Evil conspiracy (inchoate) had been convicted and had affected the sociological condition of the state thus the verdict of Judge panel Number 1537/Pid.Sus/2015/PN-Mdn punished imprisonment for 5 (five) and mulct 1 billion to the guilty.

5. CONCLUSION

According to the discussion written by the writer above, it can be concluded that:

1. The arrangement of evil conspiracy in Narcotic Drug Act is formulated in Article 132, the action that against the statement articulated in Article from 111 to 129 is considered has been breached although it is inchoate (evil conspiracy). Based on the Narcotic Drug Act, the lawsuit of evil conspiracy in narcotic crime is considered as

¹²Furthermore, in Act 1 Number 18 of Narcotic Drug Act as follow: "The evil conspiracy is the action of two people or more than two people who conspire or agree to do, perform, help, involve to do, order to do, suggest, facilitate, give consultation, to be the member of narcotic crime organization, or organize a narcotic."

⁹Sekretariat Negara R.I., *Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika*, Media Centre, Surabaya, 2009, page. 186.

¹⁰Please Read, Article 132 Precisely formulated Secara tepat dirumuskan: "Criminal trial or evil conspiracy to do Narcotics crime and narcotic precursor as articulated in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129, the perpetrators is charged with jail sentence based on the stipulation stated in those Articles.

¹¹The definition of evil conspiracy in authentic meaning can be found in Act Number 88 KUHP, as follow: "The conspiracy happens, soon after two people or more than two people meet the agreement to do so".

the complete lawsuit, and is charged the same punishment with the actual perpetrator of narcotic crime (*dader*).

2. The application of evil conspiracy for instance in verdict number No. 1537/Pid.Sus/2015/PN.Mdn, was based on couple considerations which are juridical and sociological consideration. The juridical consideration is the judge' consideration based on legal point of views related to the application of legal material and legal formal. The sociological consideration is the consideration based on the utilization aspect that by jailing the defendant, it can cause the deterrent effect to the defendant so that the defendant will not repeat his/her action in the future.

6. SUGGESTION

The judge, in deciding a case, has to contribute utilization to the guilty as well as to the community. In deciding the case of narcotics distribution the judge has to take into account of the defendant position in the case, if the defendant is as the dealer, the judge has to punish dead penalty to the defendant, considering the effect of narcotics spreading can damage the future and life of young generation which effect

to the fate and the existence of the nation in the future.

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Act Number 35 Year 2009 about Narcotics

Criminal Code