



Criminal Execution of Special Minimum Amercement Sanctions in Law of the  
Republic of Indonesia Number 35 of 2009 Concerning Narcotics  
(Case In jurisdiction of the Dharmasraya State Prosecutor's Office Jurisdiction)

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**Abstract**

This study discusses about In this thesis discusses the execution of criminal fines specifically in narcotics crimes in the Dharmasraya District Attorney from 2014 to 2017 which have never been carried out, because the amount of criminal fines imposed is too high so that the convicted person is unable to pay. The convicted person prefers to pay a fine as regulated in article 148 undang-undang nomor 35 tahun 2009 about narkotika concerning Narcotics to be replaced with a maximum imprisonment of 2 (two) years. problem of the execution of a special minimum amercement sanctions in undang-undang nomor 35 tahun 2009 about narkotika and to resolve the problem of the execution of a the execution of a special minimum amercement sanctions in undang-undang nomor 35 tahun 2009 about narkotika in the jurisdiction of the Dharmasraya State Prosecutor's Office. The research method used in this thesis is a sociological (empirical) juridical research method. Theories used to analyze these problems are Criminal Theory and Law Enforcement Theory. The technique of collecting and processing data from document studies and interviews and analyzed with qualitative analysis is to use percentages. The method used is the type of empirical research with the location Dharmasraya State Prosecutor's Office Jurisdiction. The results is all of narcotics criminal cases handled by the Dharmasraya State Prosecutor's Office Jurisdiction, none of the convicted persons carried out criminal fines decided by the judge. The convicts chose to carry out imprisonment in lieu of fines rather than pay criminal fines. This is due to two main factors namely the economic limitations of the convicted persons and the possibility of the perpetrators to replace the fines with substitute imprisonment which is very short term and is considered more profitable. Efforts to resolve it need improvement in three aspects, namely the law enforcement aspect by increasing the professionalism of prosecutors, regulatory aspects need to be improved so that criminal fines can be applied in accordance with economic conditions, and aspects of society by increasing Knowledge and public opinion of criminal fines also need to be improved in particular that criminal fines are also one of the main criminal sanctions that can also fulfill the purpose of criminal fines.

**Keywords:** *Executio; Minimum amercement sanctions; Narcotics Criminal*

## **Introduction**

Law enforcement against narcotics crimes has been carried out by law enforcers and has also received a judge's decision at the court hearing. Law of the Republic of Indonesia Number 35 Year 2009 concerning Narcotics has been completed in accordance with the provisions issued by this law. Law enforcement is expected to be able to act as a deterrent against the easing of illicit drug trafficking and narcotics trafficking, but the higher the improvements made to law enforcement, the better the circulation of narcotics and narcotics drugs. Criminal sanctions against narcotics abuse offenders are actually quite severe, in addition to imprisonment and fines, the most important thing is the imposition of a minimum limit of criminal threats, both imprisonment and fines.

Criminal provisions in the Law of the Republic of Indonesia Number 35 Year 2009 concerning Narcotics are regulated starting from Article 111 to Article 148. Types of criminal sanctions that are threatened in those articles include capital punishment, imprisonment, confinement and fines. These types of crimes are formulated in several forms but the most numerous are cumulative forms between imprisonment and fines. Penalty fines apply to all narcotics groups, with a minimum fine of Rp. 400,000,000 (four hundred million rupiah) and a maximum of Rp. 8,000,000,000 (eight billion rupiah). The application of imprisonment and fines according to this law are cumulative, namely imprisonment and fines. So there is no alternative choice in criminal determination. The purpose of the amount of the fine is to give a more deterrent effect on narcotics offenders.

One of the peculiarities of criminal formulations in the Law of the Republic of Indonesia Number 35 Year 2009 concerning Narcotics is the formulation of special minimum penalties. This shows that the legislators really want rules to deviate from the general rules. Actually, of course without reason, if the legislators formulate special minimum penalties which are considered criminal offenses, according to Barda Nawawi this is based on:

1. There is a fact of criminal disparity that is very striking for offenses which essentially do not differ in quality.
2. There is a desire to meet the demands of society that requires the existence of a minimum standard of objects for certain offenses which are highly reprehensible and harm / endanger the community / country, as well as offenses that are qualified or exacerbated by the consequences.
3. There is a desire to make the effect of general prevention more effective on certain offenses that are considered harmful and disturbing to the community.

The reasons above are indeed acceptable, given the current situation felt a deep concern in the field of law enforcement in Indonesia. What must be considered is that the minimum specific criminal formulation actually harms the sense of justice itself.

Regarding the implementation of criminal penalties for fines, the process of implementing court decisions that have permanent legal force (in kracht van gewijsde) is carried out by prosecutors as stipulated in article 1 number 6 letter a of the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure. Implementation of the decision (execution) is basically one of the authorities prosecutor as stipulated in Article 1 paragraph 1 and article 30 paragraph (1) letter b Law of the Republic of Indonesia Number 16 of 2004 on the Prosecutor of the Republic of Indonesia, as well as Article 270 of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law. The Prosecutor in carrying out a court decision (execution) refers to the Regulation of the Prosecutor General of the Republic of Indonesia Number: PER-036 / A / JA / 09/2011 concerning Standard

Operating Procedures (SOPs) for Handling Criminal Cases on 21 September 2011 in Chapter IX concerning the Implementation of Decisions The court (execution) in Article 48 paragraph (8) which reads the implementation of the court's decision is carried out completely (body criminal, fine, evidence, restitution and case fee) no later than 7 (seven) days after receipt of the Order for the Implementation of the Court's Decision made News. Then based on article 273 paragraph (1) of the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law it is stated that if a court ruling imposes a criminal fine, the convict will be given a period of 1 (one) month to pay the fine except in a quick examination that must be paid off immediately. This time period can be extended for a maximum of 1 (one) month, if there is a strong reason as regulated in paragraph (2). If the fine is not paid, then it is replaced with imprisonment. Because the implementation period is too short so that no criminal penalties will be carried out and the substitute criminal penalties can be carried out.

The author's experience as a prosecutor in carrying out executions of court decisions that have obtained permanent legal force (in kracht van gewijsde) who were sentenced to a minimum criminal penalty in narcotics in the Dharmasraya District Attorney from 2014 to 2017 has never been carried out, because the convicted person is unable to to pay by making a Statement of Not Being able to pay off the fine payer with a letter code (D-2). The convicted person prefers to replace the fine with a maximum imprisonment of 2 (two) years as regulated in article 148 of the Republic of Indonesia Law No. 35/2009 concerning Narcotics. Unlike the convicted person who commits a crime that does not have a specific minimum limit, the convicted person is able to pay criminal penalties given to them in accordance with financial conditions so that law enforcement is carried out properly.

From the description above it is interesting to do research as outlined in the paper with the title **“CRIMINAL EXECUTION OF SPECIAL MINIMUM AMERCEMENT SANCTIONS IN LAW OF THE REPUBLIC OF INDONESIA NUMBER 35 OF 2009 CONCERNING NARCOTICS (Case In jurisdiction of the Dharmasraya State Prosecutor's Office Jurisdiction)”**

### ***Research Methods***

The method used in this thesis research is empirical juridical research, which is research based on field research to get primary data in the field of law. The specifications of this study are descriptive analysts, because this study is expected to obtain data that clearly illustrate what is discussed in this study. The type of data used in this study are primary and secondary data, where secondary data consists of Primary, Secondary and Tertiary Legal Materials. The data collection techniques used for research in the field are interviews and study of documentation documents. While the data obtained from this research will be analyzed using qualitative methods, namely analysis of data without using statistical formulas because the data used are not in the form of numbers. Thus what is used is only by logical explanation of the sentence based on the rules and opinions of experts.

### ***Result of Reasearch***

As one of the efforts to make criminal penalties effective, which have so far been rarely given because the threat of fines is too low so as not to be able to achieve the expected criminal goals, the regulation of the number of criminal penalties for fines in criminal provisions outside the Criminal Code (KUHP) also then improved. The number of threats of fines in several criminal provisions outside the Criminal Code (KUHP) are formulated in such a way with a high nominal value in the hope that it can encourage the high impose of fines by the judge.

In narcotics crime, there are criminal provisions outside the Criminal Code (KUHP) with a high nominal value. Criminal fines are applied to all narcotics groups, with a minimum fine of Rp. 400,000,000 (four hundred million rupiah) and a maximum of Rp. 8,000,000,000 (eight billion rupiah). For this reason, the author feels it is necessary to present the formulation of a crime and the type of narcotics crime based on the groups in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

For types of violations against narcotics with elements of weighting, the application of a maximum fine for each article violated is added by 1/3 (one-third). The application of imprisonment and fines according to this law are cumulative, namely imprisonment and fines. With this application, the narcotics offenders have no alternative choice in the determination of imprisonment or fines, this is a new development in this penal system.

From the above, there are several things that become important points. One of them is about increasing the threat of punishment for narcotics traffickers. The increase in criminal threats is not only regulated against imprisonment but also governs criminal fines. The increase in the criminal threat itself is formulated in the form of an increase in the number of special minimums and special maximums for each of the principal crimes, including criminal fines.

Group I narcotics should not be produced for health services, but only for the benefit of the development of science and technology. In the narcotics criminal system in category I there are 4 (four) categories, namely a minimum of 4 (four) years in prison and up to 20 years in prison. The minimum fine of Rp. 800,000,000 (eight hundred million rupiah) and a maximum of Rp. 10,000,000,000 (ten billion rupiah). Life sentence and capital punishment apply to violations of narcotics in group I in the form of plants that weigh more than 1 kg (one kilogram), or exceed 5 (five) tree trunks.

The criminal system is carried out against the abuse and illicit trafficking of narcotics class II. The formulation of narcotics crime class II, regulated from article 117 to article 121 of the Law of the Republic of Indonesia Number 35 Year 2009. In the narcotics criminal system class II there are 4 (four) categories, namely a minimum imprisonment of 3 (three) years in prison up to a maximum of 20 (twenty) years in prison.

The minimum fine of Rp. 600,000,000 (six hundred million rupiah) and a maximum of Rp. 8,000,000,000 (eight billion rupiah). Life imprisonment and capital punishment or imprisonment of 5-20 years imprisonment, apply to class II narcotics violations in the form of weighing more than 5 (five) grams, and provide narcotics to others resulting in another person dying or permanently disabled. In the formulation of a crime based on the Law of the Republic of Indonesia Number 35 of 2009 is very different from the provisions stipulated in the Law of the Republic of Indonesia Number 22 of 1997, where the new law applies a minimal pattern ie the weight exceeds 5 (five) grams, although this rule is still not systemic.

Furthermore, the criminal justice system is implemented for the abuse and illicit trafficking of narcotics group III. The formulation of narcotics crime class III is regulated starting from Article 122 up to Article 126 of the Law of the Republic of Indonesia Number 35 Year 2009. In the narcotics criminal system class III there are 2 (two) categories, namely a minimum imprisonment of 2 (two) years in prison up to a maximum of 15 (fifteen) years in prison. The minimum fine of Rp. 400,000,000 (four hundred million rupiah) and a maximum of Rp. 5,000,000,000 (five billion rupiah). Life imprisonment and capital punishment or imprisonment of 5-20 years imprisonment shall not apply to class III narcotics violations. From a series of normative regulation regarding the above criminal fine, then we need to see the implementation of a factual field. Is the provision of criminal minimum fines specifically in narcotics crime running as it should. In the execution of the execution by the prosecutor referring to the Regulation

of the Attorney General of the Republic of Indonesia Number: PER-036 / A / JA / 09/2011 dated September 21, 2011 concerning Standard Operating Procedures (SOPs) for Handling Criminal Cases in General Crimes. In Chapter IX concerning the Implementation of Court Decisions (Execution) in article 48.

In the process of execution, the prosecutor at the Dharmasraya District Attorney was carried out based on a Court Decision Implementation Letter (P-48). In accordance with the provisions of the letter, the Prosecutor is obliged to carry out the execution of criminal fines to ask the convicted person about being able / not able to pay the fine payment with a Statement with a code letter (D-2). This is where the starting point of the problem in the implementation of the execution of this fine started.

If the convict states his ability to pay the fine, then it is stated in the Receipt of Payment of Penalty / Penalty / Substitute Fee / Case Fee with a letter code (D-3). This means that problems regarding criminal fines can be resolved. However, if the convicted person states that he is unable to pay the payment, a criminal substitute will be executed in accordance with the sound of a decision that has permanent legal force with a Minutes of the Implementation of the Court's Decision with a letter code (BA-17). If referring to the criminal substitute fines are replaced with imprisonment of no longer than 2 (two) years as stipulated in article 148.

At the Dharmasraya District Attorney's Office, on average narcotics convicts cannot afford to pay a specific minimum Penal Crime as explained above. Based on the data obtained by the author, it can be seen that from 31 narcotics criminal cases in 2014-2017, none of the convicted narcotics criminal offenses in the Dharmasraya District Attorney's legal area were able to pay a special minimum fine imposed on him, amounting to Rp. 800,000,000 (eight hundred million rupiahs) so that Rp. 1,000,000,000 (one billion rupiah). With the non-payment of the penalties handed down in the judge's decision, the convicted person is obliged to carry out the substitute criminal penalties in the form of imprisonment as determined in the court's decision.

The problems in executing the criminal minimum fines specifically in the jurisdiction of the Dharmasraya District Attorney's Office are:

- 1) Convicted economic factors.

The prosecutors also acknowledged that the low economic conditions of society and a sense of community justice influenced the decisions of judges. The low economic conditions of the people indeed greatly affect the payment of criminal fines. In the Narcotics Act has indeed been set penalty of a fine, even with a fairly high threat. So as for the handling of narcotics crimes, given that most of the perpetrators presented to the court are economically weak, imprisonment is still the main criminal sanction, while criminal fines are only criminal accessories.

Based on the testimony of narcotics convicts who were sentenced to a specific minimum fine that is currently undergoing a crime at Muaro Class II Penitentiary in Sijunjung, one of them is HIDRI's Convicted Pgl ERI said that the reason was not able to pay off the criminal penalty fines imposed on him due to criminal penalties given to him a fine. too big, not worth the cases they face. When compared to the price of 1 gram (one gram) of methamphetamine for Rp. 2,000,000.- (two million rupiah), while a criminal fine must pay Rp. 1,000,000,000 (one billion rupiah), so it is not comparable. If the criminal fine is between Rp. 10,000,000 (ten million rupiah) up to Rp. 25,000,000 (twenty five million rupiah) is still comparable and the fine can be paid.

This was also emphasized by Mr. SAHLAN, SH., As the Head of the Section of Development and Education (Kasi BINADIK) Penitentiary Class II B Muaro in Sijunjung stated that the convicted narcotics criminal cases who were sentenced to criminal fines were unable to pay, inversely proportional

to convicts of other cases that do not have high minimum limits in providing sentences. The reasons for convicted narcotics crimes are not able to pay because:

- a. It is not possible to pay the amount of criminal fines
  - b. The minimum amount of criminal penalties that are too large also does not allow the defendant to pay.
  - c. Limited economic conditions of the convicts.
  - d. If there is such a large sum of money, they better use it to improve the family's economy.
- 2) Criminal substitute fines are very light.

The economic limitation factor is not the only factor that causes narcotics convicts not to pay criminal penalties, i.e. criminal penalties can be replaced with a maximum imprisonment of 2 (two) years as stipulated in article 148 of the Republic of Indonesia Law No. 35/2009 concerning Narcotics. A substitute criminal sentence, a maximum jail sentence of 2 (two) years is considered lighter than paying a fine with a very large amount.

- 3) The execution period is too short.

In practice, prosecutors implement court decisions that have obtained permanent legal force in the form of criminal fines only holding to the provisions of Article 270 Jo Article 273 paragraph (1) and (2) Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law, namely with a grace period of 1 (one) month and can be extended for 1 (one) month. So the time period used by prosecutors to carry out executions is too short. With such a short period of time it is certainly difficult to be able to collect a very large amount of money.

The formulation of the threat of a high number of fines in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics initially intended to provide a deterrent effect considering the impact caused is quite large in the community itself, but on the other hand, in the Act itself also provides another options as a substitute if the criminal penalty cannot be carried out, moreover the criminal penalty is fairly mild to be carried out compared to paying a very large fine. Therefore, if it is related to criminal theory, the purpose of punishment is to improve the behavior of the perpetrators of criminal acts and to foster convicts and not even have the opportunity to repeat the crime.

To anticipate the problem of the application of criminal fines in the future, it needs improvement in three aspects, namely aspects of law enforcement, regulatory aspects, and aspects of society.

- a. Legislative aspects.  
Conduct a more in-depth study by the government and lawmakers of the Special Minimum Penal Penalty in Law 35 of 2009 concerning Narcotics, and examine criminal substitutes for fines which are considered too light. For this reason, it is noted that the Criminal Penalty in Lieu of a Criminal Penalty must be balanced with the Criminal Penalty given.
- b. Law Enforcement Aspects.
  - 1) Persuasive approach by the Prosecutor towards the convicted person to pay a fine.
  - 2) Improving the professionalism of judges is very important, because they are the ones who have the role in determining the imposition of criminal sanctions, and they are also those who directly see how the situation is on the ground, so that they are able to judge the right criminal to be imposed.
- c. Community Aspects.

Knowledge and opinion of the public regarding criminal fines need to be improved especially that criminal fines are also one of the main criminal sanctions that must be met, because criminal fines are imposed in order to give a deterrent effect to the concerned.

### **Conclusion**

Probelmatics of the execution of special minimum amercement sanctions in the Law of the Republic of Indonesia Number 35 Year 2009 concerning Narcotics in the jurisdiction of the Dharmasraya District Attorney in all narcotics crime cases handled from 2014 to 2017, none of the convicts carried out criminal fines as required by the verdict the court due to economic factors of the convicted, substitute criminal penalties which are very lightly apprehended are more profitable, and the execution time period is too short so that the public prosecutor cannot make the maximum effort so that criminal penalties can be carried out.

Efforts to overcome the problem of the execution of special minimum amercement sanctions in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, namely improvement in three aspects, namely the law enforcement aspect by increasing the professionalism of prosecutors, regulatory aspects need to be improved so that criminal fines can be applied in accordance with economic conditions , and aspects of society by increasing public knowledge and opinions on criminal fines also need to be improved in particular that criminal fines are also one of the main criminal sanctions that can also meet the objectives of criminal fines penalties.

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- The results of an interview with Mr. SAHLAN, SH., As the Section Head of Development and Education (Kasi BINADIK) of Class II B Penitentiary Muaro in Sijunjung on April 10, 2018 at 12.00 WIB.

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