

Implementation of Article 45 of the Criminal Procedure Law in Narcotics Criminal Cases – Case Study in Malang State Court and Kepanjen State Court

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Abstract. The abuse of narcotics and dangerous drugs in Indonesia in recent years has become a severe problem and creates a very worrying situation. Victims of drug abuse have expanded in such a way beyond the boundaries of social strata, age, and gender. Drugs have penetrated not only urban areas but also rural areas and beyond national borders, which results in very detrimental consequences for individuals, society, the country, and especially the younger generation. It can even threaten the nation's life and cultural values, weakening national resilience. The law functions as the protection of human interests. For human interests to be protected, the law must be implemented.

Keywords: Crime; Criminal Code; Narcotics.

INTRODUCTION

The law functions as the protection of human interests. For human interests to be protected, the law must be implemented. The law's implementation can occur normally and peacefully, but it can also happen because of law violations [1]. In this case, the law that has been violated must be upheld. It is through law enforcement that this law is made a reality. The 1945 Constitution of the Republic of Indonesia regulates human rights related to the right to life, particularly in Article 28A, Article 28D, Article 28G § 1, and Article 28H §§ 1, 3. Then, Article 28I § 1 states that these matters cannot be reduced under any circumstances. For this reason, Article 28I § 4 says that protecting, promoting, enforcing, and fulfilling human rights is the state's responsibility, especially the government.

It is necessary to change the regulations regarding drugs to prevent and eradicate the abuse and distribution of narcotics, which are very detrimental and endanger the life of the community, nation and state [2]. To regulate efforts to eradicate narcotics crimes, namely through the threat of criminal sanctions in the form of imprisonment, life imprisonment, or

death penalty. In addition to regulating the use of narcotics, it holds medical and health interests and medical and social rehabilitation.

In addition to the several efforts mentioned above, one of the efforts to eradicate narcotics is by confiscating or confiscating evidence in narcotics crimes. The types of evidence that can be used as evidence that a narcotic crime has occurred include the kinds of narcotics found, cash, motorized vehicles and other evidence [3]. Confiscation and confiscation of evidence in narcotics crimes are regulated in Article 87 and Article 101 of Law No 35 of 2009 concerning Narcotics [4].

Article 87:

1. Investigators from the State Police of the Republic of Indonesia or BNN investigators who confiscate Narcotics and Narcotics Precursors, or who are suspected of Narcotics and Narcotics Precursors, or who contain Narcotics and Narcotics Precursors are required to carry out sealing and make minutes of confiscation on the day the confiscation is carried out, which at least lack of loading: a) Name, type, nature, and amount; b) Information regarding the place, time, day, date, month, and year the confiscation was

carried out; c) Information regarding the owner or control of Narcotics and Narcotics Precursor; d) Signature and complete identity of the investigator conducting the confiscation.

2. As referred to in § 1, the investigator must notify the head of the local district attorney's office within 3 x 24 (three times twenty-four) hours after the confiscation is carried out. A copy of it is submitted to the head of the local district court, the Minister and the Head of the National Agency of Drug and Food Control.

Article 101:

1. Narcotics, Narcotics Precursor, and tools or goods used in the crime of Narcotics and Narcotics Precursor or relating to Narcotics and Narcotics Precursor and the results are declared confiscated for the state.

2. If the tools or goods confiscated, as referred to in § 1, belong to a third party in good faith, the owner may file an objection against said confiscation to the court concerned within 14 days after the announcement of the decision of the first level court.

3. All assets or property resulting from the crime of Narcotics and Narcotics Precursor and the crime of money laundering from the crime of Narcotics and Narcotics Precursor based on a court decision that has permanent legal force are confiscated for the state and used for a) implementation of prevention and eradication of abuse of illicit traffic of Narcotics and Narcotics Precursor, and b) medical and social rehabilitation efforts.

4. Further provisions regarding procedures for using assets or assets obtained from the proceeds of crime, as referred to in § 3 are regulated in a Government Regulation.

If seen from the provisions of the article above, especially Article 101 of Law No 35 of 2009, it is clear that Narcotics, Narcotics Precursors, and tools or goods used in the crime of Narcotics and Narcotics Precursors or those involving Narcotics and Narcotics Precursors and the results are declared confiscated for the country. This is proof of the government's seriousness in providing a deterrent effect to the people who commit narcotics crimes [5].

Furthermore, Article 45 of Law No 8 of 1981 concerning the Criminal Procedure Code (KUHAP) in § 4 confirms:

1. If the confiscated goods consist of objects which can be easily damaged or which are dangerous so that it is impossible to keep them until the court's decision on the case concerned has obtained permanent legal force or if the cost of storing said goods will become too high, as far as possible with the approval of the suspect or his attorney. The following actions are taken:

a) If the case is still in the hands of the investigator or public prosecutor, said object can be sold at auction or can be secured by the investigator or public prosecutor, witnessed by the suspect or his attorney;

b) If the case is already in the hands of the court, then the object can be secured or sold by the public prosecutor with the permission of the judge who is studying the case and witnessed by the defendant or his attorney.

2. The auction results of the object in question in the form of money are used as evidence.

3. In the interest of proof, small parts and objects, referred to in § 1, are set aside as far as possible.

4. Objects confiscated which are prohibited or prohibited from being distributed, excluding the provisions referred to in § 1, are confiscated to be used for the benefit of the state or to be destroyed.

Included in the category of confiscated goods that are prohibited for distribution are liquor, narcotics, psychotropics, weapons and explosives, as well as books or pictures that are included in the pornography group".

As an example of the Malang District Court Decision, No 184/Pid.Sus/2022/PN.Mlg. The judge decided that the cellphone evidence in the narcotics case was confiscated to be destroyed, where there was no basis for the judge's consideration regarding the cellphone that was seized to be destroyed belonging to the convict. Meanwhile, in the Decision of the Kepanjen District Court, No 108/Pid.Sus/2023/PN.Kpn. When the decision was made, the judge decided that the mobile phone evidence belonging to the convict was confiscated for the state. Of course, the differences in judges' considerations in decisions on the same case can raise many questions and perceptions for the convict, the convict's family, and the community.

METHODS

Types of research. This study uses the empirical legal research method, which examines and discusses the legal issues put forward so that the results are indeed based on the facts in society [6]. This study determines the juridical aspects and looks at the laws and regulations relating to the implementation of the application of Article 45 of the Criminal Procedure Code in narcotics crime cases at the Malang District Court and the Kepanjen District Court tries to analyze in terms of the criminal procedural law policy as well as from its implementation.

Research Approach. The author of this empirical legal research uses a Juridical Sociological approach (social, legal research) to identify social problems appropriately so that they can formulate appropriate formal laws to regulate them and discuss the issues raised [7]. They are concerned with the implementation of the application of Article 45 of the Criminal Procedure Code in cases of narcotics crimes at the Malang District Court and the Kepanjen District Court.

The research location is the place where the author conducts his research studies. In this case, the thesis research is shown at the Malang District Court and Kepanjen District Court based on the pre-survey obtained data and facts in the field of the decision with cases No 184/Pid.Sus/2022/PN.Mlg, No 108/Pid.Sus/2023/PN.Kpn.

Data Collection Technique. Researchers collecting data used open interview techniques and literature studies, then analyzed them using quantitative and descriptive techniques. The data collection techniques used in this study are:

1. Primary data. Interviews are a method used to obtain information verbally to achieve specific goals. This is done by holding open interviews or direct questions and answers with respondents, using interview guidelines prepared in advance without deviating from the problem [8]. Interviews were conducted directly with respondents and several judges at the Malang District Court and the Kepanjen District Court who had decided cases of narcotics crimes.

2. Secondary data.

a) Literature Study. The literature study in this study was obtained from searches related to documents and records from various sources,

including books, articles, papers, journals and the results of previous studies that support the level of this research, as well as searches of laws and regulations related to the implementation of Article 45 of the Criminal Procedure Code in narcotics crime case.

b) Documents. Secondary data in this document are all documents, archives and event files obtained by the author during research at the location. The documents used in this study include the implementation of Article 45 of the Criminal Procedure Code in narcotics crime cases.

Population, Sample and Respondents. The population is all objects, individuals, symptoms, patterns of attitudes, behaviour, and so on that have the same characteristics and are the units being studied [9]. The population chosen was all judges at the Malang District Court and the Kepanjen District Court.

The sample is part of the research as a consideration of efficiency. It leads to the centralization of the problem by focusing on a portion of the population needed to answer research questions. In this case, the author uses a purposive sample, namely, choosing a sample based on a specific assessment because the selected elements represent the population. Objectively, these traits or characters are obtained based on experience and knowledge in deciding narcotics criminal cases. The sample in this case is the Panel of Judges examining cases at the Malang District Court and the Kepanjen District Court.

Respondents are related parties who provide answers and information on the questions asked to obtain data from this study. Respondents who will be examined in this case include:

a) Malang District Court Judge: Mohamad Indarto, SH., M. Hum; Arief Karyadi, SH., M. Hum.

b) Judge of the Kepanjen District Court: Muhammad Aulia Reza Utama, SH; Rakhmat Rusmin Widyarta, SH.

RESULTS AND DISCUSSION

General Overview of the Judge's Considerations

Definition of Judge Consideration. The judge's consideration is one of the most essential aspects in determining the value of a judge's decision. It contains justice (*ex aequo et bono*) and legal

certainty, including benefits for the parties concerned. This judge's consideration must be addressed carefully [10]. If the judge's consideration is not thorough, excellent and careful, then the decision originating from the judge's consideration will be cancelled by the High Court / Supreme Court.

Proof aims to obtain certainty that the proposed event/fact occurred to get a correct and fair judge's decision. The judge cannot pass a judgment before it becomes clear to him that the event/fact has happened. The truth has been proven, so the parties appear to have a legal relationship.

In addition, in essence, the judge's consideration should also contain the following matters :

- a) Main issues and things that are recognized or arguments that are not denied.
- b) There is a juridical analysis of the decision concerning all the facts/things that were proven in the trial.
- c) The existence of all parts of the plaintiff's petite must be considered/tried one by one so that the judge can conclude whether or not the claim is proven and can be granted/not in the verdict.

The Basis for the Judge's Consideration. The basis for judges in passing court decisions must be based on interrelated theory and research results so that maximum and balanced research results are obtained at the theoretical and practical levels [11]. One of the efforts to achieve judicial legal certainty, where judges are law enforcement officers through their decisions, can be a benchmark for achieving legal certainty.

The 1945 Constitution Chapter IX Articles 24 and 25 and Law No 48 of 2009 regulate the principal judicial powers. The 1945 Constitution guarantees the existence of an independent judicial power. This is explicitly stated in Article 24, especially in the elucidation of Article 24 § 1 and the explanation of Article 1 § 1 of Law No 48 of 2009, namely judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the sake of the implementation of the Republic of Indonesia.

The judicial power is independent in this provision, which implies that the judicial power is free from all interference from extra-judicial

authorities, except for matters stated in the 1945 Constitution [12]. Then, Article 24 § 2 stipulates that judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a constitutional court.

The freedom of judges also needs to be explained in the position of impartial judges (impartial judge) Article 5 § 1 of Law No 48 of 2009. The term neutral here must not be literal because the judge must take the right side in deciding. In this case, it does not mean that it is not one-sided in its considerations and judgments. More precisely, the formulation of Law No 48 of 2009 Article 5 § 1: "The court shall judge according to law without discriminating against people". Judges' decisions are not only based on legal values that live in society. This is explained in Article 28 § 1 of Law No 40 of 2009, namely: "Judges are obliged to explore, follow, and understand the legal values that live in a society".

Overview of Confiscation of Evidence in Criminal Justice

Deprivation is taking action, taking, obtaining, or seizing by force. In criminal justice, this confiscation attempt must go through the confiscation process first [13]. Then, the objects that have been confiscated will not be arbitrarily confiscated but must be based on the panel of judges' decision. Article 10 of the Criminal Code explains that confiscating certain items is an additional punishment. Article 10 of the Criminal Code also stipulates that punishment consists of Principal and Additional Crimes. Principal punishment consists of: 1) Death penalty; 2) Imprisonment; 3) Confinement; 4) Fines. At the same time, the additional sentence is 1) Revocation of certain rights, 2) Confiscation of certain goods, 3) Announcement of the judge's decision.

However, suppose there has been confiscation of assets. In that case, it means that there has been a judge's decision stating that the evidence was taken from the owner without paying compensation because it was proven to be the result of a crime. Confiscation of certain goods is within the additional criminal provisions, so it has different characteristics and consequences than the main punishment [14]. The difference

between the main punishment and further punishment is:

1. It can only be determined if the principal sentence has been imposed. If the judge cannot apply one main punishment, he cannot automatically determine additional punishments. There is an exception in Article 40 of the Criminal Code where the judge may impose confiscation of goods without a principal penalty for the crime of minors who are subject to a decision being returned to their parents, guardians, or carers.

2. The additional punishment has a facultative nature, so the judge has the right to use or not use this option because criminal law no longer recognizes the appropriation of all the convict's assets, previously referred to as general confiscation.

Article 39 of the Criminal Code has classified items that can be confiscated into two, namely:

1. Items belonging to the convict obtained due to crime, such as counterfeit money from the corruption of counterfeiting money, money received from bribery and so on. Then, these items are referred to as *corpus delicti* and can be confiscated.

2. Items belonging to a convict intentionally used to commit a crime, such as knives, machetes, swords, and so on, are then referred to as *instrumental delict*.

In the contents of Article 39 § 2 of the Criminal Code, items included in the above classification are not necessarily subject to confiscation, namely for crimes not committed intentionally (with an element of *culpa*). In the past, this confiscation has also been related to destroying goods. This is because if confiscation has been carried out, the seized goods have completely transferred ownership to become state property. Therefore, the state has the right to carry out these actions, including the destruction of goods that have been confiscated.

Confiscation of assets has also been regulated in the Criminal Procedure Code (KUHP), Article 39 § 1 of the Criminal Procedure Code states. Those subject to confiscation are:

1. Objects or bills of the suspect or defendant which are wholly or partly alleged to have been obtained from a criminal act or as the result of a criminal action.

2. Objects that have been used directly to commit criminal acts to prepare them.

3. Objects used to obstruct the investigation of criminal acts

4. Items specifically made or used to commit a crime.

5. Other objects that have a direct relationship with the offence committed.

Article 40: In the event of being caught red-handed, investigators may confiscate objects and tools that are, in fact, reasonably suspected to have been used to commit a crime or other objects that can be used as evidence.

Article 45:

1. Suppose the confiscated goods consist of objects that can be easily damaged or are dangerous. In that case, it is impossible to keep them until the court's decision on the matter concerned obtains permanent legal force or if the cost of storing said goods becomes too high, as far as possible with the consent of the suspect or their attorney may take the following actions:

a) If the case is still in the hands of the investigator or public prosecutor, said object can be sold at auction or can be secured by the investigator or public prosecutor, witnessed by the suspect or his attorney;

b) If the case is already in the hands of the court, then the object can be secured or sold at auction by the public prosecutor with the permission of the judge who hears the case and is witnessed by the defendant or his attorney.

2. The auction results for the object in question in the form of money are used as evidence.

3. In the interest of proof, as much as possible, set aside a portion of the objects referred to in § 1.

4. Confiscated objects prohibited or prohibited from being distributed, excluding the provisions referred to in § 1, are seized for the state's benefit or destroyed.

Article 46:

1. Objects subject to confiscation are returned to the person or to those from whom the object was confiscated, or to the person or to those who are most entitled if:

a) The interests of investigation and prosecution are no longer required;

b) The case was not prosecuted because there was insufficient evidence or it turned out that it was not a crime;

c) The case is set aside in the public interest, or the matter is closed for the sake of law unless the object is obtained from a crime or used to commit an offence.

2. If the case has been decided, then the objects subject to confiscation are returned to the person or those named in the decision, unless according to the judge's decision, the goods are confiscated for the state, to be destroyed or to be damaged until they can no longer be used or, if the goods are still required as evidence in other cases.

Then, in Article 194 § 1, it can be seen that a court decision that can determine the next course of action regarding evidence that previous investigators, namely, have confiscated:

- a) Returned to the most entitled party;
- b) It was confiscated for the benefit of the state;
- c) Seized to be destroyed or damaged so that it can no longer be used;
- d) Remain in the power of the attorney because the evidence is still needed in other cases.

Based on the understanding (authentic interpretation) as formulated in Article 1 point 16 of the Criminal Procedure Code, it can be concluded that the confiscated objects/objects confiscated are in several Articles of the Criminal Procedure Code (Article 8 § 3 letter b; 40; 45 § 2; 46 § 2; 181 § 1; 194; 197 § 1 letter I; 205 § 2 also known as "Evidence" is functioning (proper) for evidence in investigations, prosecutions and trials.

The Criminal Procedure Code does not explain the meaning of evidence in detail, such as an explanation of the evidence. However, in the Herzien Indlandsch Regulation (HIR), Articles 63 to 67 state that items that can be used as evidence are divided into 1) Items that are the object of a criminal event; 2) Goods are products of criminal events; 3) Goods are used as a means of carrying out criminal acts; 4) Items related to the criminal incident.

Therefore, proof is an integral part of the Criminal Procedure Code, where the task is to seek and find material and actual truth – proving and backing in concluding the provenness of what must be established [15]. Before looking at the evidentiary system adopted by the Indonesian Criminal Procedure Code, the following will describe several theories regarding the evidentiary system.

1. Proof Based on Judge's Conviction (*Conviction in Time*). In this evidentiary system, the judgment about the guilt or innocence of a defendant is only determined by the judge's conviction. The weakness of this system is that judges have enormous and unlimited discretion and freedom in making decisions [16]. It doesn't matter whether the defendant's guilt is proven or not through the evidence presented at trial. If the judge has no confidence in the defendant's guilt, the defendant will be acquitted, and if the judge believes the defendant is guilty, the defendant will be found guilty.

2. Proof Based on Judge Confidence for Logical Reasons (*Laconviction Raisonnee*). This evidentiary system has an identical principle with evidence based on the judge's conviction, in which the judge's conviction plays a vital role in determining the defendant's guilt [17]. However, in this system, the judge's belief is limited, and the judge's opinion must be supported by reasons that are clear, logical and acceptable to reason.

3. Positive Proof Based on Law (*Positive Wettelijk Bewijstheorie*)

Positive proof based on law is contrary to evidence based on the judge's belief or conviction when the judge's conviction does not take part in proving the defendant's guilt. Proof in this system is based on evidence that has been regulated in laws and regulations [18]. This positive system or theory of evidence based on law seeks to eliminate all subjective considerations of judges. It binds judges strictly according to factual evidentiary regulations. Once the assembly judge finds objective evidence by the methods and means of evidence determined by law, there is no need to question and test the results of proof with the conviction of his conscience.

4. Negative Proof Based on Law (*Negatief Wettelijk Stelsel*). The formulation of this evidentiary system is whether or not a defendant is guilty or not is determined by the judge's conviction based on methods and legal means of evidence according to law. The judge's belief in a defendant's guilt must be supported by evidence [19]. Thus, this system combines subjective and objective elements. The subjective element is an element that comes from within the actor. The objective element is an element from outside the actor which consists of human actions and the results of human activities.

Circular of the Attorney General's Office No B-69/E/9/1997 concerning the Law of Proof in Criminal Cases. Article 183 of the Criminal Procedure Code stipulates that judges may not impose a sentence on a person unless, with at least two valid pieces of evidence, he gains confidence that a crime has occurred. It is the accused who is guilty of committing it, unlike the case with evidence, which is expressly stated in the article on the system of proof, namely Article 183 of the Criminal Procedure Code, which explains if, with at least two valid pieces of evidence, he has obtained confidence that a crime has occurred and that the defendant is guilty of committing it. Legal means of evidence, by Article 184 § 1 of the Criminal Procedure Code, are only limited to: 1) Witness Statement; 2) Expert Statement; 3) Letter; 4) Instruction; 5) Defendant's Statement.

CONCLUSIONS

The abuse of narcotics and dangerous drugs in Indonesia has escalated into a serious and

concerning issue, affecting people from all walks of life, regardless of age and gender, and spreading from urban to rural areas and even across national borders. This problem poses significant risks to individuals, society, the nation, and particularly the younger generation, potentially undermining the nation's vitality and cultural values.

In light of the constitutional provisions related to the right to life and the responsibility of the state, it is imperative to address the persistent issue of narcotics abuse and crimes. There is a need for more effective enforcement of existing laws and regulations and more robust measures to combat corruption within law enforcement agencies. It is crucial to enhance the protection, promotion, and fulfilment of human rights, especially in the context of narcotics control, and to ensure that the legal system is better equipped to handle cases involving narcotics crimes, thus contributing to a safer and healthier society.

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