

CRIMINAL LAW REVIEW OF METH SALES TRANSACTIONS WHICH ARE EVIDENCED BY POLICE OFFICERS ACCORDING TO LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS IN THE JURISDICTION OF THE BUKIT TINGGI POLICE

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ABSTRACT

Article 44 of Law Number 8 of 1981 concerning the Criminal Procedure Law regulates the governance of evidence. This study aims to find out and analyze criminal law arrangements for police members who abuse narcotics and psychotropics. As well as knowing and analyzing the policies of the chief of police of the Republic of Indonesia regarding law enforcement against members of the Indonesian national police who are involved in criminal acts of drug abuse. This research belongs to the normative type of research. So that it can be known that the legal process against the police who commit criminal acts is in accordance with Article 29 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Police officers must carry out a police code of conduct hearing, and if proven guilty by being sentenced to more than 5 (five) years. Then the police officer can be immediately dismissed with disrespect from his agency or removed from office if the sentence imposed is less than 5 (five) years. In addition, the increasing number of Narcotics cases among Police officials is a result of the weak implementation of the law among the police.

Keywords: *Evidence, Police, Narcotics*

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INTRODUCTION

Article 44 of Law Number 8 of 1981 concerning the Criminal Procedure Law regulates the governance of evidence.

In the midst of criticism and attention directed at the police institutions recently, the public was again presented with news of the arrest and special placement to the Chief of Regional Police (Kapolda) of West Sumatra, Inspector General Teddy Putra Minahasa.

Based on preliminary information, Teddy was allegedly involved in trafficking 5 Kg of drug evidence from West Sumatra.

The National Police Chief, General Listyo Sigit Prabowo, said that his party had discovered Teddy's alleged involvement in selling 5 Kg of Sabu involving a number of police officers.

For this reason, Listyo ordered the Police Chief of Police, to directly arrest Teddy. "Yesterday I asked Kadiv Propam to pick up and conduct an examination of Irjen TM," said Listyo, Friday (14/10) at the Police Headquarters, Jakarta.

In this case, Listyo National Police Chief Sigit Prabowo immediately asked The Head of The National Police's Propam Syahar Diantono to conduct an ethics examination of Teddy to conclude whether there were any ethical violations committed by the man who had previously been transferred to be the East Java Police Chief.

Teddy himself was sentenced to Disrespectful Dismissal (PTDH) from the National Police institution and continued with criminal proceedings thereafter.

The case of trafficking in evidence of a 5 Kg drug abuse crime that happened to Teddy, of course, presents the question of how the governance of evidence of criminal proceeds should be carried out.

For information, Article 44 of Law Number 8 of 1981 concerning the Criminal Procedure Law regulates this matter. Subsection (1) reads:

Confiscated objects are stored in state confiscated objects storage houses".

Then subsection (2) provides for the storage of confiscated objects to be carried out to the best of their ability and the responsibility for them rests with the authorized officer in accordance with the level of examination in the judicial process and the seized objects are prohibited from being used by anyone.

In the explanatory part of Article 44 paragraph (1) it is stated that as long as there is no house for storing objects of state goods in the place concerned.

The storage of such confiscated objects may be made at the police station (MANUAL, n.d.), at the district attorney's office, at the district court office, at the government Bank, and in a force majeure at another storage place or remaining where the object was originally seized.

Article 44 of Law Number 8 of 1981 concerning the Criminal Procedure Law regulates the governance of evidence.

In the context of a case involving drug trafficking by police officers, as allegedly carried out by Irjen Teddy Minahasa and a number of police officers in the West Sumatra area,

there is a Regulation of the Chief of Police Number 8 of 2014 concerning Procedures for Managing Evidence within the National Police of the Republic of Indonesia.

Evidence Management. Article 9 of the Perkapolri Number 8 of 2014 stipulates that the management of evidence is carried out by the Carrying out of the Evidence Management Function. At each level in the police unit, this implementation is divided into several parts.

Evidence management activities are carried out with supervision both in general and specifically (Chortareas et al., 2012).

If there is a special incident, a supervision team can be formed based on a warrant.

Article 26 paragraph (3) of Perkapolri Number 10 of 2010 concerning Procedures for Managing Evidence within the National Police of the Republic of Indonesia states that the purpose of the special incident includes:

- a. the presence of reports or the discovery of irregularities;
- b. misuse of evidence;
- c. loss of evidence; and
- d. the existence of disasters that can result in lost or damaged evidence.

Article 36 paragraph (3) of Perkapolri No. 6 of 2019 concerning Criminal Investigations states that there is supervision and control over investigators.

This is a further step of supervision of the management of evidence (Watkins Jr, 2015). Supervision of investigators is carried out by the investigator's superiors and officials carrying out the supervisory function of the investigation.

According to Article 39 of perkapolri Number 6 of 2019, the targets of supervision and control of investigations and investigations include:

- a. investigators and auxiliary investigators/investigators;

- b. investigation and investigation activities; and
- c. administration of the investigation.

(Honig & Rainey, 2019) In addition to routine supervision, there is also incidental supervision carried out by carrying out the supervisory function of the investigation based on a warrant to the authorized investigator if there are allegations of violations / irregularities committed by investigators and / or auxiliary investigators in handling cases based on community complaints; and investigations and/or investigations of public concern.

Article 42 paragraph (1) of Perkapolri Number 6 of 2019 states that if violations are found in the process of investigation and/or investigation carried out by investigators and/or auxiliary investigators, they are carried out:

- a. coaching, in case of violation of procedures;
- b. the investigation process, if an alleged criminal offense is found; or
- c. preliminary examination, if allegations of violations of the code of ethics and discipline are determined.

Regarding this norm, it can be the legal basis for the enforcement of Irjen Teddy Minahasa as in the case above. The purpose of this study is to know and analyze criminal law arrangements for police officers who abuse narcotics and psychotropics (Zulyadi, 2020). And now and analyze the policy of the chief of police of the Republic of Indonesia regarding law enforcement against members of the Indonesian national police who are involved in criminal acts of drug abuse.

METHOD

The nature of this study is a descriptive analysis that leads to normative juridical legal research (Indriati & Nugroho, 2022).

Namely a study based on the applicable laws and regulations as well as other legal materials that are 10 related to criminal acts of narcotics abuse committed by the Indonesian National Police (Asmadi, 2020).

Data sources the data sources used by researchers are secondary data (Hasanudin et al., 2022), namely data obtained from literature studies or literature studies and other legal materials related to this discussion, which consist of:

- a. Primary legal materials, in the form of basic norms or rules such as the preamble to the 1945 Constitution (UUD 45), basic regulations such as provisions in the torso of the 1945 Constitution (UUD 45), legal materials that include regulations related to this research material, namely Law Number 35 of 2009 concerning Narcotics, Law Number 2 of 2002 concerning the Police and other laws and regulations related to research.
- b. Secondary legal materials are in the form of books and legal scientific writings related to the object of research that can provide explanations of primary legal materials and are relevant to this research.

Tertiary legal materials, in the form of legal dictionaries, general dictionaries, magazines and journals of scientific journals in the field of law, and other materials that provide explanations of primary materials and secondary materials above (Barkatullah, 2018).

RESULTS AND DISCUSSION

Criminal Law Arrangements For Police Officers Selling Methamphetamine

The Narcotics Law No. 35 of 2009 has regulated the sanctions given to narcotics crimes, including:

- a. Criminal acts for persons who do not report narcotics crimes (Article 131). Sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 50,000,000 (fifty million rupiah).
- b. Criminal acts for civil servants, Police Investigators, BNN Investigators, who do not implement the provisions on evidence (Article 140) are punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum sentence of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
- c. Criminal acts for the Head of the District Attorney's Office who do not implement the provisions of Article 91 paragraph (1) (Article 141) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 10 (ten) years and a fine of at least Rp. 1,00,000,000.00 (one hundred million rupiah) and a maximum of Rp. 1000,000,000.00 (one billion rupiah).

In handling the provision of criminal sanctions against police personnel who abuse narcotics, Law No. 35 of 2009 concerning Narcotics is enforced. The provision does not only apply to members of the police but also to other communities who are proven to have abused narcotics.

The provisions for narcotics crimes (forms of criminal acts committed and the threat of criminal sanctions for the perpetrators) regulated in Law No. 35 of 2009 are contained in several articles.

These articles include Article 111 Article 127, Article 129 and Article 137. In addition to the criminal sanctions listed in Law No.35 of 2009, police officers who abuse narcotics are also given administrative sanctions, namely sanctions given by the relevant agencies.

In accordance with the main duties of the National Police of the Republic of Indonesia, as stated in Article 13 letter b, namely enforcing the law, every member of the National Police is required to be able to investigate and investigate every form of a criminal act.

This will be very contrary if a member of the National Police himself commits a criminal act because he should be a role model for the community in implementing applicable laws and regulations.

The law applies to anyone who violates it, including members of the police so in addition to being subject to sanctions as stated in Law Number 35 of 2009, administrative sanctions are also given to these officers from the agency concerned.

Police officers who use narcotics mean that they have violated the rules of discipline and code of ethics because every member of the national police is obliged to maintain the upholding of the law and maintain the honor, reputation, and dignity of the Indonesian National Police. Violations of disciplinary rules and codes of conduct will be examined and if proven will be sanctioned.

The imposition of disciplinary sanctions and sanctions for violations of the code of ethics does not remove criminal charges against the police members concerned (Article 12 paragraph (1) PP 2/2003 jo. Article 28 paragraph (2) of Perkapolri No. 14 of 2011).

Therefore, police officers who use narcotics will still be processed by the criminal procedure law even though they have undergone disciplinary sanctions and sanctions for violations of the code of ethics.

Police officers suspected of using narcotics and processed investigations must still be considered innocent until proven through a court decision that has permanent legal force (the principle of presumption of innocence) as regulated by Article 8 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power.

If the criminal conviction against the police officer has permanent legal force, he is threatened with dismissal without respect based on Article 12 paragraph (1) letter a of Government Regulation No. 1 of 2003 concerning Dismissal of Members of the National Police of the Republic of Indonesia.

Based on article 12 paragraph (1) letter states that members of the National Police of the Republic of Indonesia are dismissed not with respect from the National Police service of the Republic of Indonesia capable "Sentenced to imprisonment based on a court decision that has permanent legal force and according to the consideration of authorized officials cannot be maintained to remain in the service of the National Police of the Republic of Indonesia.

The policy of the Chief of Police of the Republic of Indonesia regarding Law Enforcement against Members of the Indonesian National Police Involved in Narcotics Abuse Crimes

As affirmed in the 1945 Constitution, the amendment was affirmed that Indonesia is a country based on law (*rechtstaat*), not based on power (*machstaat*), let alone characterized by a night watchman state (*nachtwachterstaat*).

Since the beginning of independence, the fathers of the nation have wanted the Indonesian state to be managed based on the law.

In this case, the law is needed and must be carried out in a legal country like in Indonesia.

Law as a norm or a collection of norms. There are also those who use the law not only the norms contained in the law (*wetboek*) but also the social symptoms and confusion that occur in society.

As a norm, the applicable law is binding and must be obeyed by those affected by the regulation (Rahardi et al., 2014).

The above notion of law is also not only a theory that is simply left and ignored. In law there are rules that must be carried out by people in the jurisdiction. Then with it the law must be carried out in accordance with the existing rules and norms.

The law can be enforced with the enforcement of the law. Law enforcement here is the way or how the law can stand alone and can work as it should.

Law enforcement is the process of implementing efforts to function legal norms in a real way as a code of conduct in society and the state.

Examples of law enforcement are very many around, for example, the arrest of Narcotics dealers and so on (*Dasar Hukum Perlindungan Dan Penegakan Hukum*, n.d.).

Thus, in the case of narcotics abuse cases, there must be law enforcement as in the example above, especially those involved are members / police officers.

Criminal acts of narcotics abuse committed by members of the police must be minimized and eradicated so that no one defames the police in Indonesia anymore, because the police is an institution that is a protector, servant, and protector of the community.

Thus, police officers who commit criminal acts of drug abuse must be strictly acted upon in accordance with existing laws, because the law is made to be enforced indiscriminately and regardless of social status or position.

Sometimes many people misunderstand the law, some say whoever is strong wins, the meaning is strong here is who is in power and has a lot of wealth then the law does not apply to him.

Such thinking is very wrong because the law in Indonesia has the principle of non-discrimination or the same principle before the law.

Including members of the legal police in Indonesia, this applies to him. In accordance with Article 29 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, which reads that members of the National Police of the Republic of Indonesia are subject to general judicial power.

This shows that members of the national police are civilians and are not subject to military law. Thus, for any criminal act committed by members of the police, the punishment or sanction given is the same as that of civil society and the judiciary and the courts are also the same as those of civil society.

Law enforcement made for police members involved in criminal acts of narcotics abuse must have a policy for these police members/personnel. Policymakers here can be carried out by the government or officials authorized by the policymakers.

All policies issued by the government or authorized officials regarding the misuse of narcotics are certainly very influential on all strategies carried out in overcoming the problem of narcotics abuse in Indonesia, especially those carried out by members of the police.

The policy choices in overcoming the problem of narcotics abuse have actually been responded to well by various government bureaucracies which later gave birth to a special law on narcotics, namely Law Number 35 of 2009 concerning Narcotics.

In addition, a special national strategy in the field of law enforcement based on the policy of the National Narcotics Agency (BNN) is also in the prevention and eradication of narcotics abuse and illicit circulation in Indonesia which involves members of the police especially the field of law enforcement is an integrated effort in the comprehensive eradication of Narcotics, narcotics crime organizations by applying laws and regulations firmly, consistently and taken seriously. As well as the existence of cooperation between agencies and mutually beneficial international cooperation. The strategy implemented in law enforcement is intended to uncover and break the network of narcotics trafficking and illicit trafficking syndicates both nationally and internationally. Carry out the process of handling cases from investigation to prison consistently and earnestly, revealing the motivation/background of the crime of drug abuse and illicit circulation.

Law enforcement carried out on members of the police is in accordance with or subject to the general judiciary and is considered the same as a civil society based on Article 29 paragraph (1) of Law Number 2 of 2002.

Although members of the police force are civilians, the provisions of the Disciplinary Regulations and the Code of Professional Ethics also apply. Police Disciplinary Regulations of the Republic of Indonesia (Polri) which are regulated in Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Members of the National Police of the Republic of Indonesia.

Meanwhile, the police code of ethics is regulated in the Regulation of the Chief of Police of the Republic of Indonesia Number 14 of 2011 concerning the Code of Professional Ethics of the National Police of the Republic of Indonesia.

The policy in terms of law enforcement made by the Chief of Police of the Republic of Indonesia is the existence of the Regulation of the Chief of Police of the Republic of Indonesia Number 14 of 2011 concerning the Code of Professional Ethics of the National Police of the Republic of Indonesia.

Narcotics abuse involving the police is one of the violations of the police professional code of ethics. Because in the regulations of the Indonesian National Police has been regulated for the rights, obligations, and prohibitions on police members.

In accordance with Article 13 of the Regulation of the Chief of Police of the Republic of Indonesia regarding the prohibition of members of the National Police of the Republic of Indonesia which reads:

Article 13:

- (1) Any Member of the National Police shall not:
 - a. Committing, ordering to do, or participating in corruption, collusion, nepotism, and/or gratification;
 - b. Take decisions that are contrary to the provisions of laws and regulations due to the influence of family, fellow members of the National Police, or third parties;
 - c. Conveying and disseminating information that cannot be accounted for the truth about the Polri institution and/or the personality of Polri Members to other parties;
 - d. Evading and/or rejecting official orders in the context of internal inspections carried out by supervisory functions related to community reports/complaints;
 - e. Abusing authority in carrying out official duties;
 - f. Removing detainees without a written order from the investigator, the investigator's superior or public prosecutor, or an authorized judge; and
 - g. Carry out duties without official orders from authorized officials, unless otherwise specified in the provisions of laws and regulations.
- (2) Any Member of the National Police who is domiciled as a Superior is prohibited from:
 - a. Giving orders contrary to legal norms, religious norms, and moral norms; and
 - b. Using his authority irresponsibly.
- (3) Any Member of the National Police who is domiciled as a Subordinate is prohibited from:
 - a. Resisting or opposing the Superior with profanity or actions; and
 - b. Submitting an incorrect report to the Superior.
- (4) Fellow Members of the National Police are prohibited from:
 - a. Mutual insults and/or insults;
 - b. Leaving other members of the national police who are together carrying out their duties;

- c. Perform discriminatory actions;
- d. Committing violations of kepp or discipline or criminal acts; and
- e. Behave rudely and inappropriately.

The policies attached to the Regulation of the Chief of Police of the Republic of Indonesia above concern the discipline of police members so as not to violate prohibited legal rules, but there are still police members involved in the misuse of narcotics.

Discipline is an honor that is closely related to credibility and commitment. The discipline of Polri members is an honor that shows credibility and commitment as a member of the National Police (Rahardi et al., 2014).

CONCLUSION

Based on the explanation above, it can be concluded that criminal liability for police members involved in drug abuse can be seen from the actions they do.

Criminal law enforcement against members of the police force who commit criminal acts of drug abuse applies to everyone, namely in the eyes of the same law.

Legal proceedings against police officers who commit criminal acts are in accordance with Article 29 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

Police officers must conduct a police code of conduct hearing, and if found guilty by being sentenced to more than 5 (five) years.

Then the police officer can be immediately dismissed with disrespect from his agency or removed from office and if the sentence imposed is less than 5 (five) years then the police officer can still be considered, whether only given disciplinary sanctions or mutilated somewhere far from drugs.

In addition, the increasing number of Narcotics cases among Police officials is a result of the weak application of the law by the police.

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