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Construction of New Norms for the Implementation of Fines in Narcotics Cases in Indonesia

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Abstract: Narcotics abuse constitutes a violation of statutory regulations, particularly Article 7 of Law No. 35 of 2009 on Narcotics, which restricts the use of narcotics to health services and the advancement of science and technology. Narcotics abuse may result in serious consequences not only for individuals but also for society, especially the younger generation. In Indonesia, narcotics misuse has spread across all levels of society, from lower to upper classes. Apart from causing dependency, narcotics consumption frequently leads to death. This circumstance poses a significant threat to the sustainability of society, the nation, and the state, placing Indonesia in a state of narcotics emergency. Accordingly, the Narcotics Law prescribes stringent sanctions, including the death penalty, imprisonment, and fines as additional or substitute penalties for convicted offenders. This study examines the imposition of fines as a substitute for imprisonment and explores judicial considerations in delivering such decisions. The study employs a normative legal method. Findings reveal that convicted persons tend to prefer imprisonment to paying fines, mainly because the fines imposed are excessively high and beyond their financial capacity. As a result, the potential state revenue from fines is not realized, while the state must instead bear substantial expenses to maintain prisoners during their incarceration. Therefore, a reconstruction of legal norms is necessary to achieve a more proportional and effective regulation of fines and imprisonment.

Keywords: Narcotics, Imprisonment, Fines

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Abstrak: *Penyalahgunaan narkotika merupakan perbuatan yang bertentangan dengan peraturan perundang-undangan sebagaimana termaktub dalam Pasal 7 Undang-Undang No. 35 Tahun 2009 tentang Narkotika yang menyatakan bahwa narkotika hanya dapat digunakan untuk kepentingan pelayanan kesehatan dan/atau pengembangan ilmu pengetahuan dan teknologi. Penyalahgunaan narkotika tidak hanya dapat menimbulkan akibat yang sangat merugikan bagi perseorangan tetapi juga masyarakat, khususnya generasi muda. Penggunaan narkotika di Indonesia telah meluas di berbagai kalangan, mulai dari masyarakat bawah hingga masyarakat kalangan atas. Tidak hanya menimbulkan ketergantungan, penggunaan narkotika juga sering berujung pada kematian. Hal ini sangat berbahaya bagi kelangsungan kehidupan masyarakat, bangsa, dan negara. Indonesia berada dalam kondisi darurat narkotika. Oleh karena itu Undang Undang Narkotika wajib menjatuhkan hukuman relatif berat baik berupa hukuman mati, penjara/kurungan, maupun hukum denda pengganti kurungan terhadap terpidana penyalahgunaan narkotika. Penelitian ini fokus pada penjatuhan hukum denda pengganti hukuman kurungan/penjara dan sikap hakim dalam menjatukan putusan tersebut. Penelitian ini dilakukan dengan menggunakan penelitian normatif. Hasil penelitian menunjukkan bahwa dalam pelaksamnaannya terpidana memilih hukuman denda dari pada hukuman penjara dengan alasan jumlah denda sangat besar sehingga tidak mampu dibayar. Sehingga potensi pemasukan uang untuk negara dari denda tersebut tidak tercapai dan bahkan negara mengalami kerugian relatif besar untuk membiayai kebutuhan para terpidana selama berada dalam penjara. Oleh karena itu perlu konstruksi norma baru untuk mengatur hukuman denda dan hukuman penjara.*
Kata Kunci*: Narkotika, Hukuman Penjara, Hukuman Denda*

Introduction

In response to the growing problems caused by narcotics abuse, the Government of the Republic of Indonesia enacted Law Number 35 of 2009 on Narcotics. This law is intended to prevent the misuse of narcotics and replaces the earlier Law Number 22 of 2007 on Narcotics. However, the spirit and objectives behind the enactment of this Narcotics Law have not yet been fully realized. This is evident in the continued rise in narcotics abuse cases in Indonesia, which now affect all segments of society, from the poor to the wealthy, the elderly to the young, and even children. The distribution of narcotics has spread to nearly every region of the country.[1] If this situation continues to be left unchecked without

[1]Anatoliy Terletskii et al., "International Practice for Prevention of Illegal Narcotic Drug Trafficking: Legal Basis and Directions for Improvement," *Journal of Drug and Alcohol Research* 13, no. 3 (2024); Inry Rohany Sumajow, "Assessing the Concept of Depenalization Policy in Handling Criminal Cases of Narcotics Abuse," *Hasanuddin Law Review* 10, no. 1 (2024); Andri

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effective and targeted intervention, it will inevitably endanger and undermine the future of the nation's generations.[2]

Empirical evidence indicates that narcotics abuse has continued to rise over time, both nationally and globally. According to a survey conducted by the United Nations Office on Drugs and Crime (UNODC) between 2009 and 2013, the prevalence of narcotics abuse was estimated at 4.8% in 2009, increased to 5.2% in 2011, and remained at that level through 2013.[3]

As noted above, in its effort to eradicate the illicit trafficking of narcotics, the Government of the Republic of Indonesia enacted Law Number 35 of 2009 on Narcotics. This law provides not only for preventive and rehabilitative measures but also for repressive actions in the form of criminal sanctions. The criminal provisions governing narcotics offenses are set out in Chapter XV, Articles 111 to 148. For non-corporate offenders, the law prescribes four types of penalties: the death penalty, life imprisonment, fixed-term imprisonment, and fines.[4] The law further emphasizes that the sanctions of death penalty, life imprisonment, and fixed-term imprisonment are mandatory in nature, unlike fines. Article 148 of the Narcotics Law provides that if a fine imposed on an offender for a narcotics or narcotics precursor offense cannot be paid, it shall be substituted with a term of imprisonment of up to two (2) years.

Under Law Number 35 of 2009 on Narcotics, the death penalty is not mandatory but may be imposed at the discretion of the judge, based on juridical considerations and the demands of justice in a particular case, as provided in Article 114 paragraph (2). Accordingly, judges are vested with the authority to choose among the death penalty, life imprisonment, or a determinate term of

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Winjaya Laksana et al., "Criticism of Legal Protection for Victims of Drug Abuse: The Disharmony in Legal Substance Regulation," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025).

[2]Bin Liang, Hong Lu, and Melanie Taylor, "Female Drug Abusers, Narcotics Offenders, and Legal Punishment in China," *Journal of Criminal Justice* 37, no. 2 (2009); Sulistya Eviningrum and Vasco Fronzoni, "The Model of Coaching Narcotics Prisoners in the Correctional Penitentiary," *Journal of Human Rights, Culture and Legal System* 2, no. 2 (2022); Lydia Harlina Marton, *Membantu Pencandu Narkotika Dan Keluarga* (Jakarta: Balai Pustaka, 2006), p. 1; Talal Yassin Aleissa et al., "Principle of Legality in International Criminal Law," *Pakistan Journal of Criminology* 15, no. 4 (2023).

[3]UNODC, "Report Pada Special Session of the UN General Assembly on Drugs" (New York, 1998); Leba Max Nandoko Rohi and Tanudjaja Tanudjaja, "Sentencing of Juvenile Narcotics Offenders in the Sidoarjo District Court," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 13, no. 2 (2024); Richard D. Hartley, "Sentencing Reforms and the War on Drugs: An Analysis of Sentence Outcomes for Narcotics Offenders Adjudicated in U.S. District Courts on the Southwest Border," *Journal of Contemporary Criminal Justice* 24, no. 4 (2008).

[4]The criminal provisions set out in the Narcotics Law also consist of principal penalties (imprisonment, fines, and the death penalty) as well as additional penalties (revocation of business licenses or certain rights, revocation of legal entity status, and deportation measures for foreign nationals). Nursiti and Fakhrullah, "Disparitas Penjatuhan Pidana Kurungan Pengganti Pidana Denda Dalam Putusan Kasus Narkotika," *Kanun Jurnal Ilmu Hukum* 17, no. 2 (2015), p. 303–25.

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imprisonment, depending on the circumstances and legal facts established during the trial.[5]

Law of the Republic of Indonesia Number 35 of 2009 on Narcotics constitutes a criminal statute outside the Criminal Code that explicitly regulates the simultaneous imposition of imprisonment and fines in a court decision, reflecting the cumulative nature of the prescribed sanctions.[6] The legal basis relied upon by judges in imposing cumulative sanctions is the determination that offenders have violated the provisions of Article 114 paragraph (1) of Law Number 35 of 2009 on Narcotics.[7]

The findings of this study indicate that the majority of narcotics cases examined and decided by the Sigli District Court involve violations of Articles 111 to 116 of the Narcotics Law. In all of these cases, the court imposed cumulative sanctions consisting of imprisonment and fines, with the stipulation that failure to pay the fine would result in a substitute term of imprisonment. This pattern is illustrated by a sample of court decisions presented in the following table.

Table 1. Narcotics Case Decisions of the Sigli District Court in Aceh Province (2019-2024)

No.	Decision	Defendant	Article Violated	Sentence
1	327/Pid.Sus/2018/ PN Sgi	M. Syukur	Art. 114(2) in conjunction with Art. 132(1)	Imprisonment for 13 years and a fine of IDR 1,500,000,000; substitute imprisonment of 6 months for the fine
2	327/Pid.Sus/2018/ PN Sgi	M. Nur Hasmi	Art. 111(1) in conjunction with Art. 132(1)	Imprisonment for 4 years and 8 months and a fine of IDR 1,000,000,000; substitute

[5]Fauzan, "Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022); Nuria Pastor Muñoz, "Why International Criminal Law Can and Should Be Conceived With Supra-Positive Law: The Non-Positivistic Nature of International Criminal Legality," *Criminal Law and Philosophy* 17, no. 2 (2023).

[6]Heri Zuniarto, "Pertimbangan Hakim Dalam Menjatuhkan Putusan Denda Bersifat Minimum Khusus Dalam Delik Narkotika," *Jurnal Lex Renaissance* 5, no. 2 (2020);

[7]Jumriani Nawawi and Farida Patittingi, "Advanced System Of Medical Rehabilitation And Criminal Sanctions For Narcotics Abuse," *Journal of Legal, Ethical and Regulatory Issues* 24 (2021); Prihananto Prihananto and Anis Mashdurohatun, "Implementation of Criminal Sanctions by Public Prosecutor against Narcotics Abuse," *Law Development Journal* 2, no. 3 (2020).

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				imprisonment of 5 months for the fine
3	247/Pid.Sus/2021/ PN Sgi	Mukhtar Bin Pakeh	Art. 112(1)	Imprisonment for 4 years and 6 months and a fine of IDR 1,200,000,000; subsidiary imprisonment of 2 months
4	178/Pid.Sus/2022/ PN Sgi	Syahrul Bin Umar	Art. 114(2) in conjunction with Art. 132(1)	Imprisonment for 7 years and a fine of IDR 2,640,000,000; subsidiary imprisonment of 1 month
5	178/Pid.Sus/2022/ PN Sgi	Mursalin Bin Abdullah	Art. 114(1) in conjunction with Art. 132(1)	Imprisonment for 8 years and a fine of IDR 1,000,000,000; subsidiary imprisonment of 3 months
6	34/Pid.Sus/2024/ PN Sgi	Syafruddin Bin Yusuf	Art. 112(1) in conjunction with Art. 132(1)	Imprisonment for 6 years and a fine of IDR 800,000,000; subsidiary imprisonment of 2 months

Source: Sigli District Court, Aceh (2019–2024)

As seen in Table 1 above, all convicted persons elected to serve a term of imprisonment in lieu of paying the imposed fine. Under the Criminal Code (KUHP), fines constitute one of the principal forms of punishment. However, the substitute sanction for unpaid fines under Law Number 35 of 2009 on Narcotics differs from that provided in the Criminal Code. Article 30 paragraph (2) of the Criminal Code stipulates that an unpaid fine is substituted with confinement rather than imprisonment. In contrast, the Narcotics Law expressly provides that failure to pay a fine shall be substituted with imprisonment. The tendency shown in Table 1, whereby convicts prefer imprisonment over payment of fines, is not limited to cases adjudicated by the Sigli District Court but is also evident in courts across Indonesia. The following table presents decisions from several District Courts demonstrating this tendency, in which offenders predominantly choose imprisonment as a substitute for fines.

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Table 2. Narcotics Case Decisions of the Tanjung Karang, Surabaya, and North Jakarta District Courts

No.	Decision	Defendant	Article Violated	Sentence
1	736/Pid.Sus/2022/ PN Tjk	Ajad Sudrajad Bin Wahyudin	Art. 114(2)	Imprisonment for 7 years and a fine of IDR 1,145,000,000; substitute imprisonment of 6 months for the fine
2	736/Pid.Sus/2022/ PN Sby	Muzayinul Ihsan Bin Suharto	Art. 114(2) in conjunction with Art. 111(1)	Imprisonment for 5 years and a fine of IDR 1,500,000,000; substitute imprisonment of 2 months for the fine
3	1220/Pid.Sus/2022/ PN Sby	Baharuddin Bin M. Sidik	Art. 112(1)	Imprisonment for 5 years and a fine of IDR 1,500,000,000; substitute imprisonment of 3 months for the fine
4	118/Pid.Sus/2019/ PN Jkt. Utr	Rudi Bin Alm. Daeng Dangko	Art. 114(2) in conjunction with Art. 132(1)	Imprisonment for 6 years and a fine of IDR 1,500,000,000; substitute imprisonment of 6 months for the fine

Source: Directory of Decisions of the Supreme Court of the Republic of Indonesia (2022)

Table 2 above shows that, to date, none of the prisoners convicted of narcotics offenses have paid the fines imposed by the court. Instead, all have chosen to serve a term of imprisonment in lieu of payment. This tendency is largely attributable to the disproportionate severity of the fines, which often amount to billions of rupiah, compared with the relatively short duration of substitute imprisonment, typically measured in months. As a result, convicts are inclined to opt for a brief period of additional imprisonment rather than incur substantial financial loss.[8] The cumulative imposition of imprisonment and fines under the Narcotics Law has therefore proven ineffective, as in practice the fines are almost never paid by offenders, who instead choose to serve the substitute

[8]Bakhtiar Bakhtiar, "Kumulasi Pidana Penjara dan Denda dalam Perkara Narkotika," *Kanun Jurnal Ilmu Hukum* 21, no. 1 (2019), p. 25.

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penalty of imprisonment. This pattern reinforces the view that the underlying issue lies in the relatively short duration of substitute imprisonment for unpaid fines, which makes this option pragmatically more advantageous for convicted persons.[9] Accordingly, the concept and structure of fines in narcotics offenses require reconsideration and reconstruction.

As displayed in Tables 1 and 2, convicted persons consistently prefer imprisonment over the payment of fines. This practice has financial implications for the state, as the incarceration of offenders requires the government to bear the costs of food, healthcare, and other basic necessities. One of the principal reasons for this preference is the exceptionally high amount of fines imposed in narcotics cases. Law Number 35 of 2009 on Narcotics stipulates specific fine amounts, which are set at relatively high levels, thereby encouraging offenders to opt for substitute imprisonment rather than monetary payment.[10]

The penalties prescribed for offenses under Articles 111 to 116 of the Narcotics Law include the death penalty, life imprisonment, or fixed-term imprisonment, with a minimum term of four years as provided in Articles 111 paragraph (1), 112 paragraph (1), and 115 paragraph (1), and a maximum term of twenty years as stipulated across Articles 111 to 116. One of these principal punishments is imposed cumulatively with a fine.

The minimum fine set under the law is IDR 800,000,000 (eight hundred million rupiah), as provided in Articles 111, 112, and 115. By contrast, the maximum fine may reach approximately IDR 13,300,000,000 (thirteen billion three hundred million rupiah), calculated as IDR 10,000,000,000 (ten billion rupiah) plus an additional one-third, as stipulated in Articles 113 paragraph (2), 114 paragraph (2), and 116 paragraph (2). With respect to the imposition of fines in narcotics cases, Law Number 35 of 2009 on Narcotics, as set out in Article 112, stipulates that any person who, without lawful authority, possesses, stores, controls, or provides Category I narcotics not in plant form shall be subject to imprisonment for a minimum of four years and a maximum of twelve years, as well as a fine ranging from at least IDR 800,000,000 (eight hundred million rupiah) to a maximum of IDR 8,000,000,000 (eight billion rupiah).

In light of this background, the present study focuses on the central issue of why convicted persons tend to choose imprisonment instead of paying fines. It aims to examine judicial attitudes toward the imposition of fines in narcotics cases. This study employs a normative juridical (doctrinal) research method. Data

[9]Travis W. Franklin and Noelle E. Fearn, "Sentencing Asian Offenders in State Courts," *Crime & Delinquency* 61, no. 1 (2015).

[10]Lisnawaty W. Badu and Julisa Aprilia Kaluku, "Restorative Justice in The Perspective of Customary Law: A Solution to The Settlement of Narcotics Crimes Committed by Children," *Jambura Law Review* 4, no. 2 (2022).

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were collected through library research, and primary legal materials were analyzed by examining relevant national laws and regulations.[11]

Judicial Attitudes Toward the Imposition of Fines

A fine is a form of punishment that involves an obligation to pay a specified sum of money. Fines may be classified into two types: criminal fines and administrative fines. In principle, both constitute punitive measures; however, they differ in terms of the manner in which they are imposed, the party to whom payment is made, and the consequences arising from non-payment. In practice, the enforcement of criminal fines is influenced by various factors, including the depreciation of currency value, which has led law enforcement authorities to be less inclined to impose fines.[12]

In criminal law practice, the imposition of a fine must be based on a court decision that determines the amount payable, and such a fine cannot be contested through civil legal mechanisms.[13] Law of the Republic of Indonesia Number 35 of 2009 on Narcotics is one of the criminal statutes outside the Criminal Code that explicitly provides for the simultaneous imposition of imprisonment and fines in a judicial ruling, in accordance with the cumulative nature of the penalties. Such regulation under Law Number 35 of 2009 is based on the gravity of the offenses, which are considered to endanger public interests and may even be deemed detrimental to the state. As a *lex specialis*, the law prescribes cumulative sanctions in the form of imprisonment and fines.

Several articles in Law Number 35 of 2009 on Narcotics stipulate fines imposed cumulatively with imprisonment, with varying amounts subject to specified minimum thresholds. The provisions governing cumulative penalties of imprisonment and fines with minimum limits are set out in Articles 111, 112, 113,

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[11]According to Soetandyo Wignjosoebroto, as cited by Mukti Fajar and Yulianto Ahmad, the term *normative legal research* is synonymous with *doctrinal research*, namely legal research that is conceptualized and developed on the basis of the doctrines adhered to by its originators or developers. Normative juridical research examines law as it is conceived as principles of natural law within a moral system in accordance with natural law doctrine. The term normative or doctrinal legal research is also sometimes referred to as theoretical legal research. Soetandyo Wignjosoebroto, *Hukum Konsep Dan Metode* (Malang: Setara Press, 2013); Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2013), p. 36–37; Jonaedi Efendi and Johnny Ibrahim, *Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Kencana, 2016).

[12]Suhariyono AR, *Pembaharuan Pidana Denda Sebagai Sanksi Alternatif* (Jakarta: Papas Sinar Sianti, 2012), p. 9.

[13]Syaiful Bahri, *Pidana Denda Dinamikanya Dalam Hukum Pidana Dan Praktik Peradilan* (Yogyakarta: Total Media UNJ Press, 2016), p. 3; Denis Zaykov, "The Institution of a Judicial Fine as a Measure of Procedural Responsibility: Issues of Determining the Subject Composition," *Journal of Russian Law* 29, no. 4 (2025); Boris Gavrilov and Evgeniya Rogova, "Criminal Law Sanctions and the Practice of Their Implementation in Counteracting Some Crimes of Corruption," *Russian Journal of Criminology* 15, no. 5 (2021).

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114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, and 126. The imposition of fines is considered to offer several advantages and a sense of justice, as argued by Sutherland and Cressey, [14] namely that:

1) The payment of fines is relatively easy to implement and revise in the event of an error, compared with other forms of punishment.
2) Fines are beneficial to the government because they do not require significant expenditures, provided they are not accompanied by subsidiary losses.
3) Fines do not result in the stigma or damage to reputation and honor often experienced by convicted persons.
4) Fines contribute to the mitigation of humanitarian concerns.
5) Fines may become a source of revenue for regional or municipal governments.

The regulation of fines under Law Number 35 of 2009 differs from that under the Criminal Code. Imprisonment and fines, as stipulated in Article 10 of the Criminal Code, are two distinct types of punishment, both of which are classified as principal penalties. Imprisonment constitutes a corporal punishment, while a fine is a monetary sanction that, if unpaid, may be substituted with confinement for a minimum of one day and a maximum of six months, as provided in Article 30 paragraph (2) of the Criminal Code.[15] Only one of these penalties, either imprisonment or a fine, may be imposed by a judge in a decision.

The cumulative regulation of imprisonment and fines under Law Number 35 of 2009 on Narcotics obliges public prosecutors to seek both sanctions in their indictments and similarly requires panels of judges to impose them in their verdicts. In exercising their adjudicative function, judges face the challenge of determining the appropriate amount of the fine, as the Narcotics Law itself does not provide clear guidelines for assessing fines in proportion either to the gravity of the defendant's conduct or to the defendant's financial capacity to pay. Moreover, judges are unlikely to deviate from the statutory provisions by imposing fines below the prescribed minimum, as doing so may undermine

[14]Joko Sriwidodo, *Perkembangan Sistem Peradilan Pidana Di Indonesia* (Yogyakarta: Penerbit Kepel Press, 2020); Indra Kusuma Haryanto et al., "Ratio Legis of Special Minimum Limit Regulation in Narcotics Law," *International Journal of Research in Business and Social Science (2147- 4478)* 10, no. 7 (2021); Michael O. Maume and Matthew J. Greife, "Giving the Green Light: Corporate Environmental Crimes, the Treadmill of Production, and Environmental Justice," *Crime, Law and Social Change* 79, no. 3 (2023).

[15]Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2002); R. Soesilo, *Kitab Undang-Undang Hukum Acara Pidana* (Bogor: Politea, 1996), 16; Sumajow, "Assessing the Concept of Depenalization Policy in Handling Criminal Cases of Narcotics Abuse."; Maret Priyanta and Cut Sabina Anasya Zulkarnain, "Sustainable Infrastructure Legal Policy in Indonesia: A National Strategic Project Approach for National Development," *Sriwijaya Law Review*, 2023.

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perceptions of justice in the ruling and potentially lead to inconsistencies among judges in other cases. A further consequence of these differing approaches to the imposition of fines is the emergence of disparities between judicial decisions.

The imposition of a fine cannot be carried out without due consideration of the defendant's ability to pay the amount stipulated in a judgment, particularly since Law Number 35 of 2009 on Narcotics clearly prescribes minimum limits for fines. A further issue that may arise is whether a judicial decision can be said to reflect a sense of justice when a defendant is ordered to pay a fine that exceeds his or her financial capacity, notwithstanding the fact that the fine may be substituted with imprisonment if unpaid, as provided in Article 148 of Law Number 35 of 2009 on Narcotics, which states: "*If a fine as stipulated in this Law is not paid by the perpetrator of a narcotics offense or a narcotics precursor offense, the offender shall be sentenced to imprisonment for a maximum of two (2) years as a substitute for the unpaid fine*."[16] This situation gives rise to a further legal question concerning the effectiveness of imposing fines in judicial decisions. According to Johannes Andenaes, in the theory of social defense, punishment is not designed to satisfy absolute notions of justice. Retribution has no intrinsic value in itself, but functions solely as a means of protecting societal interests.[17]

The facts described above create a dilemma for judges in rendering decisions against perpetrators of narcotics offenses, whose sanctions are regulated cumulatively with special minimum limits, as well as for public prosecutors as executors of judicial decisions. On the other hand, society expects court judgments to embody a sense of justice and not to result in rulings that are ineffective in their implementation.

Law Number 35 of 2009 on Narcotics serves as the legal basis for criminal law enforcement in the eradication and control of narcotics offenses in Indonesia. Law enforcement against narcotics offenses is carried out by the authorities through investigation, prosecution, and trial, culminating in a court decision. However, obstacles may arise in the judicial process. In this context, the challenges relate to law enforcement efforts to combat narcotics abuse and illicit trafficking. One such obstacle concerns judicial decisions on principal fines that are regulated with special minimum thresholds.

Several provisions of Law Number 35 of 2009 on Narcotics prescribe principal sanctions in the form of imprisonment and fines imposed cumulatively, meaning that both sanctions are combined into a single punishment for an offense and, in practice, must be imposed together on the defendant. In addition to their cumulative nature, the strong commitment to combating narcotics in Indonesia,

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[16]Law of the Republic of Indonesia Number 35 of 2009 on Narcotics

[17]Mufatikhatul Farikhah, "The Judicial Pardon Arrangement as a Method of Court Decision in the Reform of Indonesian Criminal Law Procedure," *Padjadjaran Jurnal Ilmu Hukum* 8, no. 1 (2021).

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given their severe societal impact, has also shaped the formulation of legal provisions that impose cumulative penalties accompanied by special minimum limits.

Given the cumulative form of sanctions with specific minimum thresholds, the court, particularly the judge as the final authority in the judicial process, must base the imposition of punishment on at least two valid pieces of evidence, from which the judge attains conviction that a criminal act has indeed occurred and that the defendant is proven guilty of committing it. This requirement is stipulated in Article 183 of the Criminal Procedure Code (KUHAP).

In addition to referring to Article 183 of the Criminal Procedure Code, a judge, in rendering a decision, must also take into account the provisions of Law Number 48 of 2009 on Judicial Power. Article 50 paragraph (1) stipulates that a court decision, in addition to containing the reasons and legal grounds for the ruling, must also specify the relevant statutory provisions or unwritten legal principles used in adjudicating the case.[18]

In practice, judicial considerations in deciding narcotics offenses are essentially similar to those applied in other criminal cases, including considerations of grounds for the exclusion of criminal responsibility (whether justifications or excuses), as well as aggravating and mitigating factors relating to the defendant. These matters are then deliberated by the panel of judges before being set out in the judgment.

In deciding criminal cases, judicial consideration, apart from establishing the elements of the charged offense, ultimately leads to deliberation by the panel of judges to determine the punishment to be imposed on the defendant. This process is particularly noteworthy in narcotics cases, as several provisions of Law Number 35 of 2009 on Narcotics prescribe principal sanctions that are cumulative in nature and include special minimum thresholds for both imprisonment and fines.

The existence of cumulative sanctions and specific minimum limits under Law Number 35 of 2009, particularly with regard to fines, has implications for the application and execution of judgments, even though Article 148 provides for imprisonment as a substitute for fines if the convicted person is unable to pay. Therefore, judicial decisions concerning fines must be made carefully and comprehensively, taking into account all aspects relating to the defendant.

Among the provisions of Law Number 35 of 2009 on Narcotics that impose cumulative sanctions with special minimum penalties and that frequently arise in practice within the jurisdiction of the Mungkid District Court, Magelang Regency, is Article 112 paragraph (1), which prescribes imprisonment for a minimum of four years and a maximum of twelve years, as well as a fine ranging

[18] Article 50 paragraph (1) of Law Number 48 of 2009 on Judicial Power

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from at least IDR 800,000,000 to at most IDR 8,000,000,000. In addition, narcotics offenses under Article 114 paragraph (1) are punishable by imprisonment for a minimum of five years and a maximum of twenty years, with fines ranging from at least IDR 1,000,000,000 to at most IDR 10,000,000,000.

Narcotics cases within the jurisdiction of the Mungkid District Court are relatively numerous each year. The cases brought before the court involve different elements of criminal conduct and are prosecuted under various statutory provisions. For example, an indictment may primarily charge a defendant with violating Article 112 paragraph (1) of Law Number 35 of 2009 on Narcotics, subsidiarily Article 127 paragraph (1) letter (a) of the same law. Based on the legal facts established at trial through admissible evidence, the defendant's conduct may ultimately be proven to constitute abuse as referred to in Article 127 paragraph (1) letter (a), which results in a sentence of imprisonment only, since that provision does not stipulate a fine.

In narcotics cases, when determining fines, judges take various factors into account, including the quantity and type of evidence, the offender's economic condition, the offender's role, recidivism, the proceeds of the crime, public opinion, and the prosecutor's sentencing demands. With regard to the quantity and type of evidence, judges generally consider these aspects to influence the amount of the fine imposed. The greater the quantity of evidence, the higher the fine that is likely to be imposed. Judges also agree that the offender's economic condition should be taken into account in setting the amount of the fine. When the circumstances are regarded as minor, the fine is adjusted to the offender's financial capacity.

Some judges are of the view that the offender's role, such as acting as a dealer, courier, or member of an international syndicate, is a significant factor in their considerations. Recidivism constitutes another important element. All judges stated that where the offender is a repeat offender, this serves as a basis for imposing a higher fine. Regarding the question of who benefits from the proceeds of the crime, a small number of judges (2 out of 8) indicated that the enjoyment of criminal proceeds is taken into account in determining the fine. In addition, several judges (3 out of 8) stated that if the community perceives the offender's conduct as highly disturbing and harmful, such perceptions may influence the imposition of a fine. Others further noted that the amount sought by the prosecutor is also a consideration in determining the fine.[19]

Thus, the determination of the amount of a fine may be understood as resting on considerations that stem both from the offender and from factors external to the offender. Offender-related considerations include the quantity and type of evidence, the offender's economic condition, the role played in the offense, recidivism, and the extent to which the offender benefited from the

[19] Article 50 paragraph (1) of Law Number 48 of 2009 on Judicial Power

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proceeds of the crime. External considerations, on the other hand, encompass public opinion and the sentencing demands put forward by the prosecutor.

Judges also acknowledge that the community's low economic conditions and the public sense of justice influence their decisions. These factors are recognized as major obstacles to the imposition of fines. The limited economic capacity of society significantly affects the ability of convicted persons to pay. Although the Narcotics Law stipulates fines, often at relatively high levels, when judges, based on economic considerations, believe that a convicted person will be unable to pay, the fine imposed may be reduced.

Consequently, in efforts to combat narcotics crimes, considering that most offenders brought before the court come from economically disadvantaged backgrounds, imprisonment remains the primary sanction, while fines function merely as accessory penalties. Another difficulty experienced by judges in applying fines is the absence of clear statutory guidance on how such fines should be determined.

Regarding the public sense of justice, which is likewise perceived as an obstacle in the application of fines, the problem lies in the prevailing view that fines are not considered sanctions capable of producing a deterrent effect. As a result, in the eyes of society, the primary focus of punishment remains imprisonment. Thus, even when a substantial fine has been imposed, which in theory should reduce the need for a severe custodial sentence, or where the sanction is formulated in the alternative, imprisonment is still expected to be executed.

From the foregoing description, it may be emphasized that, from the perspective of legal system theory in relation to narcotics crimes, its implementation must prioritize comprehensive law enforcement. This includes strict penal measures such as the death penalty and imprisonment for traffickers, as well as the application of restorative justice and rehabilitation for addicts, together with community involvement in efforts to prevent and combat narcotics abuse, in accordance with Law Number 35 of 2009 on Narcotics.

Based on the findings of this study, the application of fines in narcotics cases as regulated under Law Number 35 of 2009 appears to be ineffective. Normatively, fines are conceived as punitive instruments imposed cumulatively with imprisonment, intended both to generate a deterrent effect and to contribute to state revenue. In judicial practice, however, these objectives are rarely realized, as convicted persons tend to opt for substitute imprisonment rather than pay fines that are set at extremely high levels.

This phenomenon indicates an imbalance between the magnitude of the fines and the duration of substitute imprisonment. Fines that reach billions of rupiah are not proportional to substitute imprisonment terms that last only a few months. Such conditions create a form of pragmatic rationality for convicted persons to opt for substitute imprisonment, as it is economically far more

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advantageous. As a result, fines lose their primary function as instruments for recovering state losses and as a means of special deterrence.

From the perspective of sentencing theory, particularly the theory of social defense, punishment should function to protect social interests and prevent the repetition of criminal acts. However, the prevailing pattern of sentencing in narcotics cases has the potential to undermine these objectives. When fines are not effectively enforced, the penal system becomes merely symbolic and fails to produce a tangible impact either on the offender or for the state. In such circumstances, the state in fact bears a double burden in the form of the costs of maintaining prisoners during the period of substitute imprisonment.

Moreover, the absence of clear guidelines for judges in determining the amount of fines based on the defendant's economic capacity gives rise to concerns of substantive justice. Judges are constrained by the statutory minimum fines prescribed by law, leaving very limited discretion to adjust the penalty to the defendant's socio-economic conditions. This situation leads to sentencing disparities and has the potential to generate injustice, as fines are imposed without adequate consideration of their executability.

Structurally, the regulation of fines in the Narcotics Law reveals an internal contradiction. On the one hand, the law prescribes very high fines to demonstrate the state's seriousness in combating narcotics crimes. On the other hand, the availability of substitute imprisonment for non-payment, with relatively short durations, actually weakens the coercive force of the norm. Consequently, fines no longer function as optimal repressive instruments but instead become a normative formality in judicial decisions.

Thus, it can be argued that the core problem lies not in the absence of regulations on fines, but in their normative design, which is inconsistent with the social and economic realities of narcotics offenders. The reconstruction of the fine system has therefore become an urgent necessity, whether through a more proportional relationship between the amount of the fine and the duration of substitute imprisonment, or through alternative mechanisms such as the confiscation of assets derived from narcotics crimes or a more realistic installment-based payment scheme. Without such normative reform, fines will continue to be sanctions that are formally imposed but substantively never executed. This situation risks undermining the authority of the law, diminishing the function of punishment, and contradicting the primary objective of combating narcotics offenses as extraordinary crimes.

Conclusion

The implementation of fines in narcotics cases as regulated under Law Number 35 of 2009 on Narcotics has, in practice, not operated effectively. This is largely due to the high level of the fines, which is disproportionate to the relatively short duration of substitute imprisonment. Such conditions encourage convicted

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persons to opt for the substitute custodial sentence rather than pay the fine, with the result that the objectives of fines as instruments for state revenue recovery and deterrence are not achieved. This tendency also increases the state's financial burden, as the government must bear the cost of maintaining prisoners during the substitute term of imprisonment. Moreover, the cumulative sentencing system combining imprisonment and fines loses its effectiveness because the fine does not function as intended. Therefore, a reconstruction of the legal norms governing fines in narcotics cases is necessary, particularly with regard to ensuring proportionality between the amount of the fine and the substitute penalty. Judges generally consider several factors when imposing fines, including the quantity and type of evidence, the offender's economic condition, the offender's role in the crime, recidivism status, and the benefits derived from the offense. However, limited normative guidance on how fines should be imposed has led to sentencing disparities and reduced the effectiveness of this criminal sanction. Reforms in narcotics sentencing policy that are more equitable, proportional, and workable are therefore urgently needed so that the objectives of punishment, namely justice, utility, and legal certainty, can be achieved more fully. In practice, the imposition of fines on narcotics offenders has not been capable of creating a deterrent effect, partly due to the weak commitment of law enforcement authorities to apply sanctions to their fullest extent.

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