



Prevention of Criminal Acts of the Drug Trade Through the Internet Media Based on Positive Law in Indonesia

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Abstract: The era of Technology 4.0 triggers the emergence of a recent pattern in society known as the digital economy in the people's daily buying and selling process. The digital economy itself adopts the use of information and communication technology innovations that give rise to a variety of products, production processes and new services. Changes in the process of producing goods and distributing them become critically dependent on the use of information technology and electronic media. One of the goods that has experienced a shift in distribution is narcotics. Narcotics transactions are facilitated via online and payment via transfer, so that sellers and users do not need to meet face-to-face to conduct transactions. The legal vacuum of online narcotics transactions causes Indonesia to not yet have a complete and clear legal rule regarding the eradication of narcotics through cyberspace. This study aims to analyze the existing legal regulations in Indonesia for narcotics offenders and providers. Through this research, it is expected to obtain a legal vacuum in the narcotics trade through the internet and provide ideas and ideas to fill this void.

Keywords: Legal Vacuum, Narcotics Trade, Internet

INTRODUCTION

The era of technology 4.0 resulted in a fundamental disruption of social interaction in business and trade. One of them is the shift in the business paradigm from the emphasis on owning to sharing (collaboration) such as shifting the retail business (physical store) to e-commerce which offers better ease. (Prasetyo, 2018) Narcotics are one of the goods that are experiencing this shift. Indonesia is the target of international narcotics trafficking which present a critical problem that can cause disturbances in national security and order. (Gafar, 2012)

Indonesia is prone to drug trafficking due to the shape of an archipelagic country with extensive beaches and Indonesia's cross position as a trade route. Indonesia is considered by the dealers, as well as suppliers and international drug dealers as a very potential and

promising market. It is estimated that in the near future, Indonesia, which was initially only a transit point, will become a destination market for international drug trafficking.

As a result of the multidimensional economic crisis in Indonesia, many companies went out of business, resulting in high unemployment in society. This factor is also a driving force for the rise of crime and crime in society. People are vulnerable with the lure for prosperity and happiness in life. For teenagers, drugs are considered as the god of happiness who can bring them into a world full of joy. Moreover, there is also an assumption that by using drugs they are considered modern and not left behind.

Undoubtedly, if this condition continues, Indonesia is prone to become the number one drugs consumer and producer in the world. With an exceptionally massive population, exceeding the 200 million populations, this certainly makes Indonesia a target for illicit drug trafficking. This problem is definitely an absolutely critical problem which in the end can cause disturbances in national security and order.

This is exacerbated by the integration of technology and the internet which made the sale and purchase of narcotics easier. This is then referred to as cybercrime, a crime that implements technological sophistication as its primary means. (Mansur, 2005) In fact, Indonesia at present has Law no. 35 of 2009 which regulates penalties for offenders of narcotics transactions. However, there are no specific rules regarding buying and selling. In fact, in article 86 of Law no. 35 of 2009, it is possible to prove narcotics trading activities using electronic media. However, there is no further explanation regarding internet transaction.

The legal vacuum for proving narcotics trafficking in cyberspace itself causes narcotics cases in Indonesia to be regulated only in Law no. 35 of 2009 on Narcotics only and does not pay attention to other laws related to electronic transactions in cyberspace. This has been seen in the case with Decision number 451/Pid.Sus/2019/PN Bks. This case occurred when the defendant, Abdul Rohman Subekti, was proven guilty of committing a crime as regulated in Article 112 paragraph (2) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics. The defendant was found in possession of a synthetic marijuana type of tobacco for his own consumption. The defendants purchased the drugs through Line's social media by contacting and transacting with the "@petani Belale" account. The judge in this decision only used Article 112 of Law no. 35 of 2009 and does not show proof of the defendant's actions which were carried out through the mobile phone electronic media and occurred in the Line virtual world application.

Another example also occurs in the case with Decision number 345/Pid.Sus/2018/PN. Bgr. The defendant here named Irwansyah was also caught in possession of synthetic tobacco purchased through the Line application with the account "@LAUGHTIME". The judge in this case also only considered Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics as the basis for deciding and did not pay attention to the involvement of electronic media and virtual world applications. This legal vacuum means that Indonesia does not yet have a complete and clear legal regulation regarding the eradication of narcotics through cyberspace.

LITERATURE REVIEW

The problem of Narcotics in Indonesia has indeed received significant attention from the government, namely with the enactment of Law Number 35 of 2009 concerning Narcotics. That law aims to strictly monitor the use and distribution of drugs for the benefit of health services or the development of science.

The increase and expansion of drug abuse are triggered by the development of globalization and information technology, where communication between users, dealers, and

suppliers can easily take place via the internet. Globalization is like two different sides of a coin. Not only has a positive impact, but also has a negative impact that cannot be avoided.

The impact of globalization, especially the negative impact, has a tremendous impact on a country. This impact can make a country experience a crisis in various aspects of life because there are no boundaries. (Padmanagara,2007) Ultimately, this development allows interaction between one country and another and also represents interaction between humans possible in a short time. The more sophisticated advances in communication technology and transportation technology make drug trafficking transactions easier. Transactions can be carried out through internet media under the guise of packages, so that sellers and buyers do not need to meet face-to-face which includes the risk of being more clearly detected by the police.

UNODC noted that although the number of drug transactions carried out via the internet is however limited, the number of transactions each year is projected to increase by 50% every year. (PNN 4, 2018) Based on the mode of distribution of drugs, UNODC stated three types of trends were currently developing, namely (PNN 4, 2018):

- a. Surface Web Market; drug trafficking is carried out through social media and websites
- b. Deep Web Market; drug trafficking is carried out through a hidden internet network and is extremely difficult to trace.

Crypto market; transactions using crypto-currency via the internet. It is complex to trace because the identity of the offender of the transaction is concealed.

Circulation of Narcotics through the internet is categorized as Cyber Narcotic. Cyber Narcotic itself is part of cybercrime. Cybercrime can be defined as an unlawful act committed using the internet as the primary medium based on technological sophistication. (PNN 4, 2018)

Indonesia at present has a legal product managed to tackle cybercrime, namely Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE/ ITE Law). The ITE Law serves as a guideline, norm and control over the behavior of internet users. It aims to prevent, detect or reduce internet crime, fraud and unethical internet user behavior, carried out through the use of information technology. Guidelines, norms and control functions are reflected in the provisions contained in the chapters and articles of UU ITE 11/2008. This provision refers to the regulator's efforts to direct and manage the behavior of internet users and increase users' compliance with UU ITE 11/2008. The increase in compliance of internet users is expected to be able to reduce the occurrence of cybercrime and negative behavior of internet users.

RESEARCH METHODS

Based on the formulation of the problem and research objectives, the research method used is a normative juridical approach. The normative juridical approach is utilized to provide a qualitative description of the legal rules for drug trafficking in cyberspace. In conducting this normative juridical research, the method used is a qualitative method. This method is used for several reasons, namely: first, adapting this method is easier when recognizing multiple realities; second, this method presents directly the nature of the relationship between the researcher and the respondent; third, this method is more sensitive and more adaptable to the numerous sharpening of the joint influence on the patterns of values.

FINDINGS AND DISCUSSION

Narcotics Transaction In The Virtual World

Trading activities through cyberspace can be categorized as electronic transactions or electronic commerce (e-commerce). E-commerce is the activity of buying or selling goods or services electronically through the internet. E-commerce is based on the needs of sellers and buyers in conducting these transactions.

Parties involved in electronic transactions include: (Makarim, 2003)

- a. A seller or entrepreneur who offers a product via the internet as a business actor.

- b. Buyer or consumer is any person who is permitted by law, which accepts offers from sellers or business actors and wishes to conduct buying and selling transactions of products offered by sellers/actors.
- c. Banks as distributors of funds from buyers or consumers to sellers or business actors, because in electronic buying and selling transactions, sellers and buyers do not confront each other directly, because they are in various locations so that payments can be made through intermediaries, in this case the bank.
- d. Provider as an internet access service provider. The provider is another party in buying and selling electronically, in this case the provider has an obligation to provide 24-hour access services to prospective buyers to be able to conduct buying and selling transactions electronically through internet media with sellers who offer products via the internet, in this case there are cooperation between the seller/business actor and the provider in running a business through the internet.

Technological advances, in addition, require the law to be responsive to the times. This can be seen in Article 5 of the ITE Law by expanding legal evidence as in the applicable procedural law. Expanding the intended evidence, like recognizing electronic information, electronic documents and printouts of electronic documents as valid evidence.

Electronic contracts in e-commerce have the same legal force as conventional contracts. Electronic contracts must also bind the parties as stated in Article 18 paragraph (1) of the ITE Law. The parties in electronic transactions possess the freedom to decide the laws that apply to electronics as stipulated in article 18 of the ITE Law. According to the law, the parties have the authority to determine the laws that apply to international electronic transactions they conduct. In addition, the parties also have the authority to determine dispute resolution forums, either through courts or alternative dispute resolutions.

Narcotics Circulation Case Study In The Virtual World

Most narcotics cases that are circulated through online media often do not take into account Law No. 11 of 2008 concerning Electronic Information and Transactions in the judicial system. First cases on Decision no. 451/Pid.Sus/2019/PN Bks. In this case, the defendant, Abdul Rohman Subekti, was caught in the Pondok Gede area, Bekasi when he was transacting narcotics Category I, not plants. The evidence found in the defendant was 1 pack of white paper containing materials with a net weight of 0.4116 grams and after Examination of Lab Results with the remaining evidence: 1 pack white paper containing ingredients/leaves with a final net weight of 0.3022 grams which after inspection is identified as Cannabis containing THC (Tetra Hydro Cannabinol) and registered in Group I serial number 8 Attachment to the Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

The defendant was initially looking for a narcotics tobacco leaf seller on Instagram and then found an Instagram account called @petanibelale that sells tobacco. The defendant then contacted the proboscis farmer's account through the LINE application and bought 29 grams of tobacco at a price of IDR 1,000,000 (one million rupiah). Furthermore, the Balalai Farmer account provided the BCA account number and then the defendant made a cash deposit of IDR 1,000,000 to the BCA account provided. When the courier from the JNE expedition was about to deliver the package, the defendant and the courier made an appointment to meet at a supermarket. It was at this time that a team from the Directorate of Drugs and Crime of the National Police conducted a search and discovered the evidence mentioned above.

The Judges decided the defendant was declared legally and convincingly guilty of committing a crime as regulated in Article 112 paragraph (2) of the Republic of Indonesia Law no. 35 of 2009 concerning Narcotics. The defendant was then sentenced to imprisonment for 6 (six) years and a fine of Rp. 1,000,000,000 (one billion rupiah), provided that if the fine was not paid, it was replaced with imprisonment for 3 (three) months.

In this case, the fact shows that the defendant has synthetic tobacco marijuana for his own consumption by buying through social media Line by contacting and transacting with the “@petani belale” account. The judge in this decision only used article 112 of Law no. 35 of 2009 and does not show proof of the defendant's actions which were carried out through the mobile phone electronic media and occurred in the Line virtual world application.

Next, on Decision 88/Pid.Sus/2019/PN Smd. In the case at the Sumedang District Court, the defendant, Restu Susanto bin Mulyanto, obtained narcotics by buying methamphetamine drugs through online social media Instagram on the @PEACE3889 account. The account @PEACE3889 offered marijuana type Narcotics. The Defendant sent a message to the site via Direct Message (DM) to order 1 (one) marijuana type Narcotics package, then the site asked for the money to be transferred in the amount of Rp. . 500,000, - (five hundred thousand rupiah) to the account number that has been given.

The defendant then transferred Rp. 500,000, - (five hundred thousand rupiah) to purchase a package of marijuana type Narcotics sent through the JNE freight forwarder. After being received by the Narcotics Defendant, the type of marijuana was brought for his own use/consumption. The defendant then re-ordered cannabis-type narcotics through online social media Instagram with the PEACE3889 site as many as 1 (one) package of cannabis-type narcotics with a total price of Rp. 500,000, - (five hundred thousand rupiah). After the marijuana was received through JNE, he then brought it to the area, Lembang, Bandung City with the intent for their own use and the rest stocked in a cupboard at the defendant's house.

In its decision, the Judges stated the Defendant had been legally and convincingly proven guilty of committing a criminal act "without the right to possess, store and control narcotics Category I in the form of plants." Therefore, he was sentenced to imprisonment for 4 (four) years and a fine of Rp. 800,000,000, - (eight hundred million rupiah) provided that if the fine is unpaid, it will be replaced with imprisonment for 1 (one) month.

Similar with the first case, in this verdict, the defendant bought narcotics through the Instagram social media account “@PEACE3889”. Again, in this case, the judge only used Article 111 of Law no. 35 of 2009 and does not show proof of the defendant's actions which were carried out through the Instagram virtual world application.

Third case on Decision 345/Pid.Sus/2018/PN. Bgr. In the decision of the Bogor District Court, the defendant, Irawansyah, and his colleague, Dian Gusentianto, were at the Cafe Food in the city of Bogor. The defendant together with his partner planned to buy synthetic narcotics. The defendant then borrowed the defendant's friend's cellphone and opened the Line application and contacted an account called @LAUGHTIME. They ordered Synthetic Tobacco Narcotics for Rp. 450.000,- (four hundred and fifty thousand rupiah). The account provided a bank account number, after which the defendant and his partner transferred Rp. 450.000,- (four hundred thousand rupiah).

At that time the defendant and his partner went taking 1 (one) pack of Filter cigarettes containing 1 (one) black plastic clip pack containing Synthetic Tobacco Narcotics, and returned to the Cafe Food Station to prepare for departure to the beach. After that, the defendant and his partner went to Sawarna Beach and the Narcotics, the type of Synthetic Tobacco, the defendant kept in his trouser pocket. After arriving at the beach, the defendant and his partner used the Synthetic Tobacco Narcotics and the rest of the defendants kept it back.

After the defendant and his partner returned home, the defendant went to the Cafe Food Station and there the defendant divided some of 1 (one) black plastic clip into a small plastic wrap and handed it over to his partner. On the same day, members of the Narcotics Unit of the Bogor City Police were suspicious when they identify the defendant, and his partner immediately woke up the defendant and a search was carried out and found from under the long bench where the defendant was sleeping in the form of 1 (one) black plastic clip package

containing Synthetic Tobacco Type Narcotics. The Judges decided to sentence the Defendant to imprisonment for 4 (four years and 6 (six) months and a fine of Rp. 800,000.00 (eight hundred million rupiah), if not paid, it will be replaced with imprisonment for 2 (two months).

On this case, the judges also only consider Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics as the basis for deciding and does not pay attention to the involvement of electronic media and virtual world applications.

The three cases above are the cases in Decision 451/Pid.Sus/2019/PN Bks, Decision 88/Pid.Sus/2019/PN Smd. And Decision 345/Pid.Sus/2018/PN. Bgr in the settlement process only considers one regulation, namely Law no. 35 of 2009 concerning Narcotics.

Case Analysis

On this case, the judges also only consider Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics as the basis for deciding and does not pay attention to the involvement of electronic media and virtual world applications.

One of the reasons for not considering the use of cyberspace in narcotics transactions is shown in Decision 345/Pid.Sus/2018/PN. Bgr. The Panel of Judges in their consideration stated:

"Considering, that from the testimony of witnesses at trial that the Defendant obtained from buying through online media, but in the evidence at trial the Panel of Judges did not discover any evidence that could show that the Defendant's confession was buying narcotics online, but only a one-sided confession from the Defendant. Whereas a form of confession is only considered as one piece of evidence, in order to fulfill an element of a criminal act, a minimum of 2 (two) valid pieces of evidence are required. Considering, that the other supporting evidence that there has been a sale and purchase of narcotics is not proven. Therefore, against this element, the Panel of Judges is of the opinion that this element is not proven;"

Based on the consideration in the above case, it can be identified one of the difficulties in using cyber law in narcotics trafficking cases is proving the involvement of cyberspace in buying and selling transactions. In the criminal justice system, evidence is regulated in the Criminal Procedure Code. The Criminal Procedure Code contains the role of proof in Article 183 which states that a judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has in fact occurred and that the defendant is guilty of committing it. The types of legal evidence according to the law, as stipulated in Article 184 paragraph (1) of the Criminal Procedure Code, namely:

1. witness testimony;
2. expert testimony;
3. letters;
4. hint; and
5. Defendant's statement

Article 183 of the Criminal Procedure Code shows the Criminal Procedure Code uses a system of proof theory according to a negative law. This means that in terms of evidence, research must be carried out, whether the defendant has sufficient reasons supported by the evidence specified by law (at least two pieces of evidence) and if there is sufficient, and then the question is whether or not the judge believes in the defendant's guilt. According to this theory, the judge may only impose a sentence if at least the evidence that has been determined by law exists, plus the judge's conviction obtained from the existence of the evidence. (Prins, 1998)

Indeed, the negative proof system (negative wettelijk) has advantages in terms of proving the defendant's guilt in committing the crime he is accused of, the judge does not fully rely on evidence and in the ways determined by law, but must also be accompanied by

the belief that the defendant guilty of a crime. The conviction formed must be based on the facts obtained from the evidence specified in the law. So that in proving absolutely expecting the ultimate truth, there is very little possibility of incorrect decisions or the application of the law used. (Eddyono, 2014)

The weakness of this theory is the judge may only impose a sentence if at least the evidence that has been determined by law exists, coupled with the judge's conviction obtained from the existence of such evidence, so that it will slow down the time in proving and even deciding a case. Since the proof must go through research.

This deficiency is seen in proving a cyber-case. If we look at articles 27 - 37 of the ITE Law, we can examine actions related to Information and Electronic Transactions that are prohibited by the Act. In this regard, the evidence is regulated in Chapter X concerning Investigations, in particular Article 43 paragraph 5 e.

If we analyze the Criminal Procedure Code and Law Number 19 of 2016 concerning Electronic Information and Transactions, it can be explained several requirements regarding evidence that can be used in cybercrimes:

a. Witness testimony

Witness testimony is regulated in KUHAP article 1 number 27 KUHAP. In Article 7 of Law no. 19 of 2016 concerning the ITE Law, witness statements in cybercrime cases can be taken into consideration by judges in deciding cases. Under the ITE Law, a witness who wants to give his/her statement does not need coming to court, and can use communication media. This is regulated in Article 44 of the ITE Law. However, Article 1 paragraph (27) of the Criminal Procedure Code requires that witnesses who will provide witness testimony must be present in courts that are open to the public.

b. Expert Description

Expert testimony according to article 1 number (28) of the Criminal Procedure Code is someone who has special expertise to explain according to his expert. Meanwhile, in a cybercrime case, an expert is required to provide information that takes place in cyberspace as described in Article 1 paragraph (1) of the ITE Law.

c. Evidence

Article 187 of the Criminal Procedure Code describes the documentary evidence consisting of 4 (four) points. Electronic Documents cannot be used as evidence if against a letter. Furthermore, this letter must be in written form.

Meanwhile, documentary evidence used in cybercrime evidence is legal evidence as long as it is in accordance with the electronic system regulated in Article 5 paragraph (1) of the ITE Law.

It is necessary to expand the evidence of the instructions contained in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) to regulate the evidence that occurs in cybercrime cases. The expansion of legal evidence is regulated in the Criminal Procedure Code (KUHAP) in article 188 paragraph (2) which is meant by evidence of guidance of cyber case form: (Lestari, 2011)

- a. Other evidence in the form of information spoken, sent, received or stored electronically by means or optics similar to that;
- b. Document, which is any recorded data or information that can be seen received, read and or heard which can be issued with or without the help of a means, whether written on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, pictures, maps, designs, photographs, letters, signs, numbers or perforations that have meaning.

CONCLUSION

Because of the influence of advances in science and technology and globalization, more and more narcotics are found which are carried out through online buying and selling through internet and e-commerce intermediaries. Looking at the decisions of the cases that have been described, it appears that the judicial process for narcotics trafficking cases in cyberspace has not taken into account Law Number 11 of 2008 concerning Information and Electronic Transactions in its balance, which has created a legal vacuum for cyber cases of narcotics trafficking through the world. virtual. One of the difficulties in using cyber law in narcotics trafficking cases is proving the involvement of cyberspace in buying and selling transactions. For this reason, it is necessary to expand the evidence of instructions contained in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) to regulate the evidence that occurs in cyber crime cases.

REFERENCES

- B, Prasetyo, Trisyanti U, Revolusi Industri 4.0 Dan Tantangan Perubahan Sosial, Prosiding SEMATEKSOS 3 "Strategi Pembangunan Nasional Menghadapi Revolusi Industri 4.0", Available from <http://iptek.its.ac.id/index.php/jps/article/view/4417>
- Eddyono, Supriyadi Widodo. Catatan Kritis Terhadap Undang-Undang No 13 tahun 2006 tentang Perlindungan Saksi dan Korban, Jakarta. Elsam
- DMA, Mansur, Gultom E, Cyber Law Aspek Hukum Teknologi Informasi, Bandung: Refika Aditama; 2005
- Makarim, Edmon, Kompilasi Hukum Telematika, Raja Grafindo Perkasa, Jakarta, 2003
- Moleong, Lexy J., Metodologi Penelitian Kualitatif, PT. Remaja Rosda Karya, Bandung, 2000,
- Prinst, Darwan, Hukum Acara Pidana Dalam Praktik, Djambatan, Jakarta, 1998
- Lestari, Anis Dewi, *Cakupan Alat Bukti sebagai Upaya Pemberantasan Kejahatan Siber (Cyber Crime)*, Al Kalam JURNAL ILMU SYARIAH DAN HUKUM Vol. 3, Nomor 1, 201
- Y, Gafar, (2012), *Penanggulangan Peredaran Narkotika di Wilayah Perbatasan Kalimantan Barat (Indonesia) – Serawak (Malaysia) (Studi Terhadap Peranan Badan Narkotika Nasional)*, J NESTOR Magister Hukum Universitas Tanjungpura
- Padmanagara, Makbul, Kejahatan Internasional, Tantangan dan Upaya Pemecahan, Majalah Interpol, Indonesia, 2007