

The Implementation of Cumulative Criminal Sanctions on the Psychotropic Abuse Criminal Act Based on Law Number 5 of 1997 Concerning Psychotropics (Study of Decision Number 1193/Pid.Sus/2020/PN. Jkt.Brt)

Edi Subhan

Universitas Islam Jakarta, Indonesia
edysubhan30@gmail.com

Abstract

This study aims to identify and explain the application of cumulative criminal sanctions and judges' legal considerations in imposing cumulative penalties based on Law Number 5 of 1997. The research method uses a normative juridical approach to legislation. The results show that the application of cumulative criminal sanctions on criminal acts of psychotropic abuse from ineffectiveness to the degree of effectiveness in the clarity of the formulation of the substance of the legal rules regulated in the Psychotropic Law requires sentencing guidelines for judges in determining the limit on the number of illegal psychotropic possessions in order to determine the weight. The lightness of cumulative criminal sanctions against the adverse effects of illicit trafficking and abuse of psychotropic substances in the life of society, nation, and state. The judge's legal considerations in imposing cumulative penalties through the ratio descending approach are based on the subject matter of the Public Prosecutor's indictment and prove the elements of the indicted articles are the basis for the judge's decision in the application of cumulative criminal sanctions based on the Psychotropic Law.

Keywords

counterfeiting; credit cards; law enforcement



I. Introduction

Psychotropics are stated in Article 1 of Law Number 5 of 1997 concerning Psychotropics are substances or drugs, both natural and synthetic, not narcotics, which have psychoactive properties through selective effects on the central nervous system that cause distinctive changes in mental activity and behavior. Psychotropics in Law Number 5 of 1997 are classified into four groups. This classification is based on the level of dependence or syndrome, namely:

- a) Psychotropic Group I have a very strong potential to cause dependence syndrome. Usually Group I Psychotropics are only intended for scientific purposes. Example: DMA, MDMA, Mescaline.
- b) Psychotropic Group II has a strong potential and causes dependency syndrome. Psychotropic Group II, can be used in therapy, and/or science. Examples: Amphetamines, Methaqualone, Secobarbital.
- c) Psychotropic Group III has a moderate potential for the level of dependence syndrome. Class III psychotropics are used for therapeutic and/or scientific purposes. Examples: Amorbarbital, Flunitrazepam, Pentobarbital.
- d) Psychotropic Group IV has a mild potential for the level of dependence syndrome. Class IV psychotropics are used for therapeutic and/or scientific purposes. Examples: Diazepam, Lorazepam, Nitrazepam, Alprazolam, Chlordiazpoxide, Triazolam.

The psychotropic types from Groups I and II above have been revoked and transferred to Narcotics Category I based on the stipulation of Law Number 35 of 2009 concerning the Eradication and Prevention of Narcotics Crimes.

Consuming psychotropics as substances/drugs that are abused can reduce brain activity or stimulate the central nervous system and cause behavioral disorders, accompanied by hallucinations (imagining), illusions, thinking disorders, and changes in mood and cause dependence and have a stimulating effect (stimulating) for the users.

From the point of view of psychotropic users, it has entered all levels, both the upper, middle, and lower classes. From the point of view of age, psychotropic substances are not only enjoyed by teenagers but also by middle-aged and old people. The spread of psychotropic substances is no longer in big cities but has also spread to small towns and has penetrated the countryside. Users have entered various professions such as company managers, businessmen, doctors, lawyers, and so on. Even more sadly, it has spread among bureaucrats and law enforcement.

Many users consume substances/drugs classified as psychotropics without a doctor's permission. Most of the users of psychotropic abuse have experienced addiction, starting from the satisfaction obtained after consuming the substance/drug in the form of a feeling of pleasure and calm which causes over time their use is increased, causing dependence on psychotropic substances which can result in death. Misuse of substances/drugs classified as psychotropic can be threatened with criminal penalties.

Law Number 5 of 1997 views criminal acts in the field of psychotropics as a very serious problem so the Act does not recognize a reduction in punishment for the perpetrators of the crime but increases the sentence, by setting aside the KUHP (Book of Criminal Law) as *lex generalis*. Judges in applying criminal sanctions against perpetrators of criminal acts in the field of psychotropics refer to the *lex specialis* of the provisions of the Psychotropic Law.

Based on the provisions stipulated in Law Number 5 of 1997 concerning Psychotropics as one of the special criminal legislation outside of codification, it can apply cumulative criminal sanctions as stipulated in several articles in Chapter XIV of Law Number 5 of 1997 concerning Psychotropics with the provisions Criminal sanctions contain the threat of cumulative criminal sanctions, including Article 62 which reads, "Whoever without rights, possesses and/or carries psychotropic substances is sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiahs).

The case of the arrest of Vanessa Angel as a public figure with the full name Vanessa Adzania aged 26 years as a defendant in a criminal case of psychotropic abuse, has been decided by the West Jakarta District Court with a decision number 1193/Pid.Sus/2020/PN.Jkt.Brt. The criminal charges filed by the Public Prosecutor in a single indictment stated that the defendant Vanesza Adzani with evidence in the form of Xanax Alprazolam tablets and 1 doctor's prescription had been proven to have violated Article 62 of Law Number 5 of 1997 concerning Psychotropics in conjunction with the Regulation of the Minister of Health of the Republic of Indonesia Number 49 2018 concerning Changes to the Classification of Psychotropics in the Attachment to Law Number 5 of 1997 concerning Psychotropics with the threat of imprisonment for 6 (six) months in prison minus a temporary detention period and a fine of Rp. 10,000,000 (ten million rupiah) subsidiary 3 (three) months in prison.

In their decision, the panel of judges at the West Jakarta District Court sentenced the defendant to a lighter sentence than the single indictment proposed by the Public Prosecutor by deciding to sentence the defendant Vanesza Adzania to a prison term of 3

(three) months and a fine of Rp. 10,000,000.00 (ten million rupiahs) provided that if the fine is not paid, it is subject to imprisonment for 1 (one) month. The application of cumulative criminal sanctions raises questions about its ability to suppress the number of psychotropic crimes caused by various factors that influence it, including those related to insufficient seriousness in law enforcement, less stringent supervision, and so on indicating the ineffectiveness of criminal threats against psychotropic abusers who tend to show an increase. number of cases.

II. Research Method

This research is included in the type of legal research that is carried out in a normative juridical manner where the law is conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.

The normative juridical research used in this thesis is based on the rules or norms regulated in Law Number 5 of 1997 concerning Psychotropics against criminal acts of psychotropic abusers which are investigated through the application of cumulative criminal sanctions through the study of the decision of the West Jakarta District Court Number 1193/Pid.Sus/2020/PN.Jkt.Brt.

The source of data in this research comes from secondary data. The secondary data that the researcher uses consists of primary legal materials, secondary legal materials, and tertiary legal materials.

- 1) The primary legal materials that the researcher uses are sourced from legal materials in the form of laws and regulations that apply in Indonesia and are related to the legal issues being analyzed, including consisting:
 - a. The 1945 Constitution of the Republic of Indonesia.
 - b. the Criminal Code.
 - c. Law Number 5 of 1997 concerning Psychotropics.
 - d. Other regulations related to psychotropic crimes.
- 2). The secondary legal materials that researchers use are sourced from legal materials obtained from textbooks, journals, scientific works, and opinions of criminal law experts who can support primary legal materials in analyzing legal issues related to the application of cumulative criminal sanctions against criminal acts of psychotropic abuse in Indonesia.
- 3). The tertiary legal materials that researchers use are sourced from legal materials that provide meaningful instructions or explanations of primary and secondary legal materials obtained from legal dictionaries, encyclopedias, and internet searches that are relevant to the legal issues under study.

III. Result and Discussion

3.1 The Application of Cumulative Criminal Sanctions Against Criminal Acts of Psychotropic Abuse based on Law Number 1997

Law Number 5 of 1997 concerning Psychotropics is one of the many criminal laws, especially those that are spread outside the Criminal Code. According to Article 3 of Law Number 5 of 1997, the main purpose of regulation in the field of Psychotropics is to:

- a. Guarantee the availability of psychotropics for the benefit of health services and science;

- b. Preventing the occurrence of psychotropic abuse;
- c. Eradicating the illicit traffic of psychotropics.

According to Article 4 of Law Number 5 of 1997. It states as follows:

- a. Psychotropics can only be used for the benefit of health services and/or science.
- b. Class 1 psychotropics can only be used for scientific purposes. 3. In addition to the use as referred to in paragraph
- c. Class 1 psychotropic substances are declared as prohibited items.
- d. Further provisions for the determination and change of psychotropic types as referred to in paragraph 3 shall be regulated by the Minister.

From the formulation of Article 4 of Law Number 5 of 1997, it can be seen that basically psychotropic substances can be used for the benefit of health services or science, while group 1 is affirmed that it can only be used for scientific purposes and is declared a prohibited item.

Law Number 5 of 1997 concerning Psychotropics was promulgated in the State Gazette of the Republic of Indonesia of 1997 Number 10, coming into force on March 11, 1997. Prior to the issuance of this law, there were many cases involving Psychotropics in the form of distribution and abuse of Psychotropics. At that time these cases would not be easy to handle because the legal instruments were weak. In addition, the background for the birth of the Psychotropic Law is because national development, especially health development, is directed to achieve awareness, willingness, and ability to live a healthy life for every citizen.

In the consideration of the law, among others, it is considered in health development by paying attention to health services in this case the availability and prevention of drug abuse and eradication of illicit trafficking, especially psychotropics. Therefore, the misuse of psychotropic substances can harm human life and the life of the nation, so that in turn it can threaten national security.

Based on Article 153 of Law Number 35 of 2009, regulates the types of Psychotropics Group I and Group II as contained in the attachment of Law Number 5 of 1997 concerning Psychotropics (State Gazette of the Republic of Indonesia Number 10), Supplement to the State Gazette of the Republic of Indonesia Number 2671, which have been transferred into Category I narcotics according to this new law, are revoked and declared invalid.

In Law Number 5 of 1997 concerning Psychotropics, they are classified into four groups. This classification is based on the level of dependence or syndrome, namely:

- a. Psychotropic Group I, has a strong potential to cause dependence syndrome. Usually, Class I Psychotropics are only intended for scientific purposes.
- b. Group II psychotropics have a strong potential and cause dependence syndrome. Psychotropic Group II, can be used in therapy, and/or science.
- c. Group III psychotropics have a moderate potential for the level of dependence syndrome. Class III psychotropics are used for therapeutic and/or scientific purposes.
- d. Group IV psychotropics have a mild potential for the level of dependence syndrome. Class IV psychotropics are used for therapeutic and/or scientific purposes

In the Psychotropic Law, provisions are specifically regulated for criminal provisions as mentioned in Chapter XIV and Articles 59 to 72. Criminal acts in the field of Psychotropics include, among others, acts such as producing, distributing illicitly, or abusing psychotropic substances which are detrimental to society and the state. Producing and circulating wildly which will eventually be consumed by others and people who consume them freely become sick. The use of such psychotropic substances when there are large numbers of people will become weak.

Judging from the consequences of the crime, the effect is very detrimental to the nation and state which can shake national resilience. Because of that, the perpetrators are threatened with high and severe penalties with the aim of making people who will commit criminal acts in the field of psychotropics think twice about doing so.

If further investigated, Group I Psychotropics are threatened with the provisions of Article 59, namely:

a. Whoever:

- Using Psychotropics, group I other than those referred to in Article 4 paragraph 2.
- Produce and/or use in the production process Psychotropic group I as referred to in Article 6, or
- Circulating group, I Psychotropics does not meet the provisions in Article 12 paragraph 3 or
- Importing group, I Psychotropics other than for scientific purposes or
- Illegally possessing, storing and/or carrying psychotropic group I, shall be punished with a minimum imprisonment of 4 (four) years. A maximum of 15 (fifteen) years and a minimum fine of Rp. 150,000,000, - and a maximum of Rp. 750,000,000, -

b. If the crime as referred to in paragraph (1) is carried out in an organized manner, the penalty is death penalty or life imprisonment or imprisonment for 20 years and a fine of Rp. 750,000,000.-.

c. If the criminal act in this article is committed by a corporation, in addition to being convicted of a criminal act, the corporation is subject to a fine of Rp. 5.000.000.000, -.

Law Number 5 of 1997 concerning Psychotropics views criminal acts in the field of Psychotropics as a very serious problem, therefore this law does not recognize karting or reducing the punishment for the perpetrators of the crime, but on the contrary the law increases the punishment, by excluding Criminal Code as *lex generalis*. Judges in applying the rules against perpetrators of criminal acts in the field of Psychotropics refer to the *lex specialis* of the provisions of the Psychotropic Law.

Article 71 of the Psychotropic Law also regulates malicious conspiracy which is limited to the act of conspiring or agreeing to commit, recommend or organize a criminal act as referred to in Article 60, Article 61, Article 62, or Article 63. These crimes are very dangerous if consensus is reached. evil can be carried out because it can affect the speed of illicit circulation of Psychotropics which in the end also affects the abuse of Psychotropics. In this crime of conspiracy in the field of Psychotropics, the penalty is added to one-third of the sentence that should have been imposed.

Foreigners who are involved in criminal acts of Indonesian Psychotropics, in addition to being sentenced to the main criminal sentence, can also be sentenced to a cumulative (additional) punishment based on Article 67 in the form of expulsion outside the territory of the Indonesian state. In crimes in the field of Psychotropics, there is a question of who is the victim of the crime. If we look again at crimes in the field of Psychotropics, including those involving production, distribution, export, and import, it is clear that there is a party that is harmed in this case, namely the state. If the psychotropic crime is a psychotropic user, the perpetrator of the crime is also a victim of the psychotropic crime.

IV. Conclusion

The application of criminal sanctions in Law Number 5 of 1997 concerning Psychotropics under Article 59 can be imposed on the principal and cumulative or

additional penalties. The principal punishment includes imprisonment for 20 years, life imprisonment, and the death penalty, while the cumulative punishment is in the form of revocation of business licenses imposed on corporations and foreigners following the qualifications of prohibited acts, namely possessing, carrying, distributing, and using psychotropic substances. That the criminal can be imposed legally means that for that action there are already rules in a certain legal system, and the legal system applies to the act. The action (punishment) is justified by the legal system. Criminal liability, according to Sudarto, in addition to the ability to be responsible, error (schuld) and against the law (wederechtelijk) as a condition for imposition of a crime, is the harm to society by the perpetrators of the crime.

References

- Ahmad Ariwibowo. (2011). 'Tinjauan Kriminologis Terhadap Penyalahgunaan Psikotropika Dan Penanggulangannya Di Kalangan Remaja Di Jambi', *Jurnal Law Reform*, 6.2, 45
- Algra, N.E. (2003). *Mula Hukum* (Bandung: Bina Cipta)
- Aminuddin dan ainal Asikin. (2012). *Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada)
- BNN. (2022). 'Badan Narkotika Nasional. "Apa Itu Psikotropika Dan Bahayanya?"', Diakses Melalui <https://bnn.go.id/apa-itu-psikotropika-dan-bahayanya/> Tanggal 12 September 2021.
- Eddy O.S Hiarriej. (2009). *Asas Legalitas Dan Penemuan Hukum Dalam Hukum Pidana* (Jakarta: Erlangga)
- Gatot Supramono. (2001). *Hukum Narkoba Indonesia* (Jakarta: Jambatan)
- Hari Sasangka. (2003). *Narkotika Dan Psikotropika Dalam Hukum Pidana* (Bandung: CV Mandar Maju)
- . (2003). *Narkotika Dan Psikotropika Dalam Hukum Pidana* (Bandung: Mandar Maju)
- Harlina Martono. (2006). *Pencegahan dan Penanggulangan Narkoba Berbasis Sekolah* (PT Balai Pustaka, (Persero)
- Siswanto Sunarso. (2004). *Penegakan Hukum Psikotropika Dalam Kajian Sosiologi Hukum* (Jakarta: PT Raja Grafindo Persada)
- Soedjono Dirdjosisworo. (2004). op-cit, hal 61, 'Tindak Pidana Hukum.
- Sunarso, Siswanto. (2004) *Penegakan Hukum Psikotropika Dalam Kajian Sosiologi Hukum* (Jakarta: PT Raja Grafindo Persada)
- 'Undang-Undang Nomor 5 Tahun 1997 Tentang Psikotropika.'