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CRIMINALIZATION OF UNLAWFUL ACTS DOES NOT DETERMINE THE STATUS OF NARCOTIC CONFISCATED GOODS AND NARCOTIC PRECURSORS FOR THE PURPOSE OF PROVING CASES

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Abstract
One of the areas of law in carrying out the duties of the Prosecutor's Office according to Article 30 paragraph (1) letter b of the Prosecutor's Law states that the prosecutor's office carries out prosecutions and executors of court decisions that have permanent legal force related to the crime of Narcotics Law Number 35 of 2009 concerning Narcotics (abbreviated Narcotics Law). In this regard, Article 141 of Law number 35 of 2009 concerning Narcotics states that the Head of the District Attorney who unlawfully does not implement the provisions referred to in Article 91 paragraph (1) may be punished. Determination of Sanctions in a criminal law is not merely a matter of mere technical legislation, but is an integral part of the substance or material of the law itself. So that the imposition of sanctions is not necessarily enforced based on the sound of the article but must pay attention to other aspects contained in the regulation, in this case must pay attention to the principles of applicable law. This research is normative legal research by combining conceptual approaches, statutory approaches and case approaches. The results of the research show that the issues of penalization, depenalization, criminalization and decriminalization must be understood comprehensively with all aspects of issues of substance or statutory material at the stage of legislation policy. Based on this concept, care must be taken so that criminalization remains in the correct corridor, namely paying attention to the principles of criminalization (the principle of legality, the principle of subsidiarity, and the principle of equality/equality).

Keywords: Prosecutor's Authority; Sanctions; Criminalization.

INTRODUCTION

Pancasila and the 1945 Constitution of the Republic of Indonesia emphasize that upholding law and justice is an absolute requirement in achieving national goals.[1] One of the pillars of the Government that functions in realizing national goals is the Attorney General's Office of the Republic of Indonesia which is given the task, function and

[1] Supriadi, *Ethics & Responsibilities of the Legal Profession in Indonesia* (Jakarta: Sinar Graphic, 2006).

authority as a Public Prosecutor.[2] One of the areas of law in carrying out the duties of the Prosecutor's Office according to Article 30 paragraph (1) letter b of the Prosecutor's Law, is to prosecute and implement (executor) court decisions that have permanent legal force related to the crime of Narcotics. Law Number 35 of 2009 concerning Narcotics (abbreviated as the Narcotics Law)[3], laying the groundwork for the Attorney General's Office to play a role in carrying out its duties in the field of prosecution which are inseparable from the Criminal Justice System or *Criminal Justice System*.

The confiscation action carried out by the investigator must be notified to the Head of the local District Attorney within a maximum period of 3 x 24 (three times twenty-four) hours after the confiscation was carried out and a copy of it must be submitted to the Head of the local District Court, the Minister and the Head of the Drug and Food Control Agency.[4] This article emphasizes that the Prosecutor's Office only knows that investigators have carried out a confiscation. The head of the local District Attorney's Office is obliged to determine the status of confiscated Narcotics and Narcotics Precursors for the purposes of proving cases, the interests of developing science and technology, the interests of education and training, and/or destroying them.[5] If the Head of the district attorney unlawfully does not carry out his obligations to determine the status of confiscated Narcotics and Narcotics Precursors, according to Article 141 of the Narcotics Law, he can be punished with imprisonment and fines.

The important role of the Prosecutor's Office in carrying out prosecutions at court hearings in Narcotics cases is to prove the guilt of the defendant in the trial. If an error occurs in determining insufficient evidence, it can result in the acquittal of the defendant from all charges.[6] If it does not meet the elements mentioned in Article 183 of the Criminal

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[2] Tri Wahyu Kusuma Negara, "Peranan Jaksa Penuntut Umum dalam Penuntutan Tindak Pidana Narkotika," *Journal of Law (Jurnal Ilmu Hukum)* 5, no. 1 (2018): 309–14.

[3] Law No. 35 of 2009 concerning Narcotics replaces two previous laws, namely Law No. 22 of 1997 concerning Narcotics and Law No. 5 of 1997 concerning Psychotropics. The two laws have been declared no longer valid or have been revoked through Articles 153 and 155 of Law No. 35 of 2009 concerning Narcotics.

[4] Article 87 paragraph (2) Law No. 35 of 2009 concerning Narcotics.

[5] Hendarta Hendarta, Muhammad Said Karim, dan Nur Azisa, "Penanganan Barang Bukti Narkotika Di Pengadilan Negeri Barru," *HERMENEUTIKA: Jurnal Ilmu Hukum* 5, no. 2 (2021): 301–9, https://doi.org/10.33603/hermeneutika.v5i2.5698.

[6] Ismail Syam, Alpi Sahari, dan Rizkan Zulyadi, "Analisis Hukum Pertimbangan Jaksa Penuntut Umum Untuk Menentukan Berat Ringannya Tuntutan Terhadap Terdakwa dalam Tindak Pidana Narkotika (Studi

Procedure Code, the judge's decision-making in the trial results in ambiguity so that it can have an impact on the defendant's sentence. Such a situation can result if the prosecution is not carried out by fulfilling sufficient evidence.

The Head of the State Prosecutor's Office as the head of a government institution that exercises state power in the field of prosecution and other powers based on laws in its jurisdiction, should be free from the influence of power and pressure from any party.[7] The criminalization of the Head of the State Prosecutor's Office is not in line with the mandate of the Indonesian nation's constitution as contained in Article 24 of the 1945 Constitution. The function of judicial power exercised by the prosecutor's office as stated in paragraph (3) is the main authority in carrying out prosecutions in the criminal justice system in Indonesia, as well as other powers which are later granted by law relating to judicial functions.[8] Carrying out this judicial function must be in line with the nation's constitution which provides protection and independence in carrying out the duties and functions of the prosecutor's office to uphold law and justice. The article explains clearly and definitely that the Attorney General's Office of the Republic of Indonesia, regardless of the influence of government power and the influence of other powers which results in pressure and fear for a law enforcer in carrying out its functions, duties and powers.[9]

Accommodating the importance of oversight of prosecutors in carrying out their duties, functions and authorities The Law on the Prosecutor's Office has regulated the mechanism of internal oversight of prosecutors by enabling no violations of the prohibition of the prosecutor's intervention.[10] The oversight mechanism for the Attorney General's Office of the Republic of Indonesia as mandated by Article 13 paragraph (3) of the Prosecutor's Law is already regulated in the Attorney General's Regulation Number PER 22/A/JA/03/2011 concerning the Implementation of Oversight of the Republic of

Di Kejaksaan Bener Meriah)," *Iuris Studia: Jurnal Kajian Hukum* 4, no. 2 (2023): 100–111, https://doi.org/10.55357/is.v4i2.364.

[7] Niru Anita Sinaga, "Kode Etik Sebagai Pedoman Pelaksanaan Profesi Hukum Yang Baik," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020): 1–34, https://doi.org/10.35968/jh.v10i2.460.

[8] Achmad Budi Waskito, "Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi," *Jurnal Daulat Hukum* 1, no. 1 (2018): 287–304, https://doi.org/10.30659/jdh.v1i1.2648.

[9] Constitutional Court Decision No. 68/PUU-XV/2017.

[10] Edi Saputra Hasibuan dan M H SH, *Hukum kepolisian dan criminal policy dalam penegakan hukum* (Depok: PT. RajaGrafindo Persada-Rajawali Pers, 2021).

Indonesia's Attorney General's Office and its amendments to the Attorney General's Regulation Number PER-015 /A/JA/07/2013 which basically regulates the form of supervision of each Prosecutor at the Attorney General's Office of the Republic of Indonesia.

As stipulated in Article 45 of the Prosecutor's Office Supervision that the imposition of sentences on prosecutors at the Attorney General's Office of the Republic of Indonesia can only be carried out by the Attorney General and other officials as stipulated in Article 16 of Government Regulation Number 53 of 2010 concerning Civil Servant Discipline juncto Number IV. 2. letters a through g Regulation of the Head of the State Civil Service Agency Number 21 of 2010 concerning Provisions for the Implementation of Government Regulation Number 53 of 2010 concerning Discipline for Civil Servants. So that it cannot be dropped by other officials such as judges in court.[11]

Violation of the obligations of the Head of the Prosecutor's Office is threatened with administrative witnesses in the form of release from the duties of a prosecutor for a minimum of three months and a maximum of one year or transfer of duties to another work unit, a minimum of one year and a maximum of two years. And when referring to Article 13 paragraph (1) letter b of the Prosecutor's Law, if the negligence of these obligations is carried out continuously, the sanction that can be imposed is dishonorable dismissal.[12]

The existence of these supervisory instruments and the code of ethics means that there is no need for external forms of supervision from other institutions, in this case the criminal justice system, to monitor and correct the performance of prosecutors in carrying out their powers in a criminal justice system with constitutional provisions regarding independence. judicial power and independence of related special officials.[13] Provisions that contain criminal threats to the Head of the Prosecutor's Office have criminalized

[11] Arifin Daulay, "Pelaksanaan Peraturan Pemerintah Nomor 53 Tahun 2010 Tentang Disiplin Pegawai Negeri Sipil di Lingkungan Kantor Wilayah Badan Pertanahan Nasional," *Jurnal Kewarganegaraan* 6, no. 4 (2022): 6677–87, https://doi.org/10.31316/jk.v6i4.4228.
[12] S H Topo Santoso, Choky Risda Ramadhan, dan L L M SH, *Prapenuntutan dan Perkembangannya di Indonesia* (De: PT. RajaGrafindo Persada-Rajawali Pers, 2022).
[13] Andi Hakim Lubis, Junaidi Lubis, dan Said Rizal, "Optimalisasi Pengawasan dan Pembinaan Hakim Menuju Kekuasaan Kehakiman Yang Berintegritas dan Bermartabat," *Ilmu Hukum Prima (IHP)* 5, no. 1 (2022): 12–24, https://doi.org/10.34012/jihp.v5i1.2456.

administrative violations which of course have a negative impact on special officials who exercise judicial power. The negative impact is an unnecessary psychological impact, namely in the form of fear and anxiety in carrying out tasks in adjudicating a case. This creates legal uncertainty and injustice, which means it is contrary to Article 28D paragraph (1) of the 1945 Constitution.[14]

The legal content that is the subject of study in this study is the rule in Article 141 of Law number 35 of 2009 concerning Narcotics it says that the head of the district attorney who unlawfully does not carry out the provisions referred to in Article 91 paragraph (1), shall be punished with imprisonment for a maximum short 1 (one) year and maximum 10 (ten) years and fined a minimum of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).[15]

Article 91 mandates that the head of the local district attorney after receiving notification about the confiscation of Narcotics goods and Narcotics Precursor from investigators from the Indonesian National Police or BNN investigators, within a maximum period of 7 (seven) days must determine the status of the Narcotics and Narcotics Precursor confiscated goods for the purposes of proof. cases, the interests of science and technology development, the interests of education and training, and/or destroyed.[16]

Administrative violations in carrying out the duties of a head of the Public Prosecutor's Office in the determination of evidence and their destruction which should have been imposed with administrative sanctions, turned into a criminal act. The criminalization of unconstitutional law enforcement officials also occurs in Article 96, Article 100 and Article 101 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System after a judicial review by the Constitutional Court was declared contrary to the 1945 Constitution of the Republic of Indonesia. and does not have binding legal force, as set forth in the Constitutional Court Decision No. 37/PUU-X/2012,

[14] Liza Agnesta Krisna, *Hukum Perlindungan Anak: Panduan Memahami Anak yang Berkonflik dengan Hukum* (Yogyakarta: Deepublish, 2018).
[15] http://luk.staff.ugm.ac.id/atur/UU35-2009Narkotika.pdf.
[16] Emir Ardiansyah, Ulya Kencana, dan S A Romli, "Konstitusionalitas Ancaman Pidana Terhadap Kejari (Penetapan Status Barang Sitaan dan Prekursor Narkotika)," *Wajah Hukum* 5, no. 2 (2021): 481–94, https://doi.org/10.33087/wjh.v5i2.540.

Constitutional Court Decision No. 110/PUU-X/2012, and Constitutional Court Decision No. 68/PUU-XV/2017.[17]

The criminalization of the head of the prosecutor's office for the determination of confiscated objects in the form of narcotics should naturally be reviewed more by government agencies which are obliged to make a rule because it has a negative impact in the form of unnecessary psychological impacts, namely in the form of fear and worry in carrying out duties and authority in adjudicating a case, which is also inconsistent with the constitution.[18] Determination of the status of confiscated narcotics evidence which is given a maximum period of 7 days from when the notification is submitted by the investigator accompanied by a penalty of imprisonment and a fine if it is not carried out within the given time limit, and declared as a crime is an act of criminalizing the head of the district attorney which shouldn't be needed. The punishment for the head of the prosecutor's office is not proportional to the actions committed.[19] Failure to determine the status of Narcotics Confiscated Goods and Narcotics Precursors can occur for various reasons other than reasons against the law, such as natural disasters, or other reasons beyond the will of the Head of the State Prosecutor's Office which may hinder the performance, duties and responsibilities of a chief state attorney.

METHOD

The research method used in this study is normative legal research, namely research on legal principles, legal principles, laws and regulations and expert opinions. The research was carried out by examining library materials to obtain secondary data, therefore this research focuses on types of library research.

RESULT AND DISCUSSION

[17] Muhammad Amin Putra, "Eksistensi Lembaga Negara dalam Penegakan Hak Asasi Manusia di Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 9, no. 3 (2015): 256–92, https://doi.org/10.25041/fiatjustisia.v9no3.600.
[18] H Siswanto Sunarso, *Viktimologi dalam sistem peradilan pidana* (Jakarta: Sinar Grafika, 2022).
[19] M Dedy Iskandar Harahap, M Yamin Lubis, dan Nelvitia Purba, "Peran Intelijen Kejaksaan dalam Mengungkap Perkara Tindak Pidana Korupsi," *Jurnal Ilmiah METADATA* 3, no. 3 SE- (29 Oktober 2021): 1122–46, https://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/102.

1. The Principle of Criminalization Against the Head of the District Attorney

Criminalization*(criminalization)* is one of the objects of study of material criminal law *(substantive criminal law)* which discusses the determination of an act as a criminal act (criminal act or crime) which is subject to certain criminal sanctions.[20] Disgraceful acts that previously did not qualify as prohibited acts are justified as criminal acts that are punishable by criminal sanctions. According to Mokhammad Najih, criminalization is a policy *(Criminalization Policy)*, which focuses on efforts to formulate criminal acts as renewed criminal acts or new forms of formulation in draft laws, such as drafting the Criminal Code Bill or certain criminal acts.[21] Criminalization, according to Sudarto, can be interpreted as the process of determining a person's actions as criminal acts. The process ends with the formation of a law, where the act is threatened with a sanction in the form of a crime.[22] Legal politics is needed to make laws and regulations. According to Sudarto, legal politics is a policy from the state through the authorized bodies to implement regulations that are.

Expected to be used to express what is contained in society and to achieve what is aspired to. Criminalization is also part of the politics of criminal law, which in essence is a policy on how to formulate good criminal law and provides guidelines in making (legislative policies), application (judicative policies), and implementing (executive policies) criminal law. Criminal law politics itself is part of legal politics which according to Sudarto is defined as a series of efforts to create legal norms that are in accordance with the circumstances at a certain time.[23]

Based on research conducted by Anugerah Rizki Akbari, the meaning of criminalization has expanded so that there are many regional laws or regulations that contain criminal provisions (overcriminalization).[24] As a result, more and more regulated

[20] John Kenedi, *Buku Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2017).
[21] Muhammad Najih, *Politics of Criminal Law* (Malang: Setara Press, 2014).
[22] Teguh Prasetyo, *Criminalization in Criminal Law.* (Bandung: Nusa Media Publishe, 2010).
[23] Vivi Ariyanti, "Kebijakan Penegakan Hukum dalam Sistem Peradilan Pidana Indonesia," *Jurnal Yuridis* 6, no. 2 (2019): 33–54, https://doi.org/10.35586/jyur.v6i2.789.
[24] Syamsul Fatoni, "Penghapusan Kriminalisasi terhadap Hakim dan Jaksa dalam Rangka Mewujudkan Sinkronisasi Sistem Peradilan Pidana Anak," *Jurnal Konstitusi* 17, no. 1 (2020): 224–42, https://doi.org/10.31078/jk17110.

actions can be punished; investigators have more and more powers to be able to detain and what is punished is disproportionate to the sentence. According to him, in 1998-2014, Indonesia issued 156 laws and 112 of them had criminal provisions (there were 1,601 criminal acts out of 112 laws) and 716 new criminal acts.[25] The function of criminal law as ultimum remedium should be placed as the final option, including for the head of the state attorney who is considered to have made an administrative error.

There are things that must be considered so that criminalization remains in the right direction, namely paying attention to the principle of criminalization[26] (the principle of legality, the principle of subsidiarity, and the principle of equality/sameness), in addition to synchronization between the criminal transitional system, both structural synchronization, substantial synchronization and cultural synchronization. In criminalizing an act (including those related to the criminalization of the head of the state prosecutor) the following principles must be considered:

a. Legality Principle

This principle is contained in the expression nullum delictum, nulla poena sie praevia lege poenali by von Feurbach which implies that no act can be punished unless it has been previously regulated by criminal legislation that existed before the act was committed. The principle of legality contains seven meanings:[27]

1. Cannot be punished except based on criminal provisions according to law;
2. There is no application of criminal law based on analogy;
3. Cannot be punished only based on habit;
4. There cannot be a formulation of the delict that is not clear (lex certa conditions);
5. There is no retroactive power from criminal provisions;
6. There are no other crimes except those determined by law;
7. Criminal prosecution is only according to the method determined by law.

On the other hand, the function of the legality principle to secure the legal position of the people towards the state and the function to protect members of the public from

[25]https://www. Hukumonline.com/berita/baca/lt5a5861c1c99e1/ini-beda-kriminalisasi--overkriminalisasi--dan decriminalization/, accessed 17 March 2023.
[26] Roesian Saleh, *Policies on Criminalization and Decriminalization: What Legal Sociology Talks About in Reforming Indonesian Criminal Law* (Yogyakarta: Faculty of Law UII, 1993).
[27] J.E. Sahetapy (Ed.), *Criminal Law* (Yogyakarta: Libeety, 1999).

arbitrary actions by the government is the legal political dimension of the legality principle.[28] This means that the policy of criminalizing actions related to advances in technology and information should not, in fact, hinder the state's protection of its citizens and have the potential to create government arbitrariness. In a broad sense, in relation to the criminalization of the chief prosecutor according to Article 141 of Law Number 35 of 2009, the word "unlawful" is used, which is interpreted not only as an act that is contrary to written regulations, but also a disgraceful act, because it is contrary to a sense of justice, or norms of deep social life public.[29] In the context of this research it can be said that with this criminalization policy the actions of a chief prosecutor who "unlawfully" violates duty obligations administratively can be punished, if you look at the functions and objectives of the prosecution whether the act is by not carrying out the task to determine the status of confiscated evidence is a disgraceful act and violates the norms of community life so that it has a big impact on the community, which means that freedom in carrying out tasks becomes chaotic because of the criminalization of the rules made.

b. Asas Subsidiarity

Criminal law is placed as an ultimum remedium in crime prevention, not as a primium remedium. The application of the principle of subsidiarity in criminalization policies requires an investigation into the effectiveness of the use of criminal law in overcoming crime. The use of the principle of subsidiarity in practice places criminal law as primum remedium instead of ultimum remedium, causing a heavy and excessive burden on the justitiables and criminal law institutions.[30] This is supported by the conviction of legislators to make laws and regulations with severe criminal penalties on the assumption that society will be deterrent and will not commit crimes regardless of their effectiveness in society. This means that the use of the principle of subsidiarity is important because criminal law is not the only means of tackling crime.

Arguments for the use of the subsidiarity principle in determining prohibited acts. First, it encourages the birth of a just criminal law. Second, the practice of legislation has

[28] Roeslan Saleh, *Principles of Criminal Law in Perspective* (Jakarta: New Script, 1981).
[29] Emir Ardiansyah, "Konstitusionalitas Tentang Ancaman Bagi Kepala Kejaksaan Negeri Atas Sitaan Narkotika," *Simbur Cahaya* 28, no. 2 (2021): 295–311, https://doi.org/10.28946/sc.v28i2.1127.
[30] Heny Novyanti dan Pudji Astuti, "Jerat Hukum Penyalahgunaan Aplikasi Deepfake Ditinjau Dari Hukum Pidana," *Novum: Jurnal Hukum*, 2021, 31–40, https://doi.org/10.2674/novum.v0i0.43571.

a negative impact on the criminal law system due to overcriminalization and overpenalization so that criminal law loses its influence in society. In addition, it increases the workload of the legal apparatus in the criminal justice process so that the criminal law does not function properly and loses its authority.[31]

c. Basis of Equality/Similarity

According to Servan and Letrossne, the principle of equality is not a statement of aspirations for a more just criminal law, but a wish for a clearer and simpler criminal law system.[32] Meanwhile, Lacretelle argues that the principle of equality is not encouraged for a just criminal law, but for an appropriate criminal sentence. Thus the criminalization of an act must be appropriate, the legal ratio must be clear. The ratio legis here is intended to mean legal thinking according to common sense, reason/reasoning which is the reason or purpose for the birth of legal regulations so that a head of the prosecutor's office violates administrative rules based on the law.[33] Narcotics law can be punished only for not being able to carry out their duties and responsibilities in accordance with the rules:

1) Law Number 35 of 2009 concerning Narcotics

In Indonesia, laws and regulations governing narcotics have existed since the enactment of the Verdoovende Middelen Ordonnantie Staatsblad Number 278 jo. Number 536 of 1927, then replaced by Law Number 9 of 1976 concerning Narcotics and subsequently Law Number 9 of 1976 was replaced by Law Number 22 of 1997 concerning Narcotics, and underwent several revisions because several weaknesses were found during its implementation or application, so that the Law was ratified into Law Number 35 of 2009 concerning Narcotics.[34]

Narcotics crime or narcotics crime is a form of crime known as victimless crime. Victimless crime is the relationship between the perpetrator and the victim, the consequences are invisible, there is no target victim because all parties are involved and

[31] M Ali Zaidan, *Menuju pembaruan hukum pidana* (Jakarta: Sinar Grafika, 2022).
[32] Ika Lusiana Fatmawati, "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Obstruction of Justice Dilihat Dari Perspektif Hukum di Indonesia" (Universitas Islam Sultan Agung, 2023).
[33] Oemar Moechthar, *Eksistensi, Fungsi, Dan Tujuan Hukum: Dalam Perspektif Teori Dan Filsafat Hukum* (Jakarta: Prenada Media, 2020).
[34] Ernest Sengi, "Upaya Kepolisian Resor Halmahera Utara dalam Menanggulangi Kejahatan Narkotika Kabupaten Halmahera Utara," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 1 (2019): 61–76, https://doi.org/10.24246/jrh.2019.v4.i1.p61-76.

included in the crime, become perpetrators as well as victims of the crime or crime. Victimless crime is a crime whose graph continues to increase due to the involvement of certain groups, this crime developed into an organized crime. Every action related to narcotics that is directly or indirectly related is part of a criminal act. Currently, narcotics crimes are regulated in Law Number 35 of 2009 concerning Narcotics

2) Forms of Criminalization of the Head of the District Attorney in Article 141 conjunction with Article 91 of Law Number 35 of 2009 concerning Narcotics

Based on article 141 in conjunction with article 91 of Law Number 35 of 2009 concerning Narcotics where one of the duties of the head of the state prosecutor after receiving a notification about the confiscation of Narcotics goods and Narcotics Precursors from investigators with the Indonesian National Police or BNN investigators, within a maximum period of 7 (seven) day shall determine the status of the confiscated Narcotics and Narcotics Precursor for the purposes of proving the case to conduct testing and adjudicating at the first and final levels whose decision is final.

Furthermore, Article 141 states that the head of the district attorney who unlawfully does not carry out the provisions referred to in Article 91 paragraph (1) 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. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

In connection with the existence of Law Number 35 of 2009 concerning Narcotics where there are provisions that are considered to have resulted in the criminalization of the head of the state prosecutor in carrying out his profession, the article that is vulnerable to the birth of criminalization of the head of the state prosecutor as contained in Article 141 of Law Number 35 of 2009 concerning Narcotics states that the head of the general public prosecutor's office who deliberately does not carry out the obligations as stipulated in Article 91, shall be subject to imprisonment for a minimum of 1 year and a maximum of 10 years. Article 141 refers to the provisions of Article 91 whereby if the head of the state prosecutor does not determine the status of the confiscated Narcotics and Narcotics Precursors for the purposes of proving the case, he will conduct an examination and adjudicate at the first and final levels. administrative sanctions and not punishment.

Article 141 is not based on the principles of the rule of law, legality and democracy as regulated in Article 1 paragraph (3) of the 1945 Constitution. How about settling through a professional code of ethics, without going straight to the legal route because it is considered that institutions that know more about real conditions concerned, let alone more on administrative issues.

Thus, the content material contained in the provisions of Article 91 and Article 141 of the Narcotics Law must reflect the legal principles that apply in criminal law. in determining an act as a crime along with the threat of criminal sanctions, the Determination of Sanctions in a criminal law is not just a mere technical matter of legislation, but is an integral part of the substance or material of the law itself. This means that the issues of penalization, depenalization, criminalization and decriminalization must be understood comprehensively with all aspects of the substance or material issues of legislation at the stage of legislation policy.[35]

In fact, in the context of criminalization, principles are interpreted as basic conceptions, normative and legal principles that guide the formation of criminal laws and regulations where there are three principles of criminalization that must be considered by legislators, namely the principle of legality, the principle of subsidiarity and the principle of equality. The principle of legality is a basic principle in determining criminalization, to limit the scope of criminal law. The principle of subsidiarity means that criminal law must be placed as an ultimum remedium in crime prevention. Meanwhile, the principle of equality/similarity is to establish a clear and simple criminal law system, so that it can encourage the birth of a just criminal law. The principles mentioned above can be used as parameters to assess the just nature of criminal law and function to regulate government policies in the field of criminal law.

2. The Responsibility of the Head of the State Prosecutor for Negligence in Establishing Evidence of Narcotics Confiscation.

a. Law Number 16 of 2004 concerning the Attorney General's Office.

Referring to Law no. 16 of 2004 which replaced Law no. 5 of 1991 concerning the Attorney General's Office of the Republic of Indonesia, the Prosecutor's Office as a law

[35] Sholehuddin, *Sanctions System in Criminal Law, First Publication* (Jakarta: PT Raja Grafindo, 2003).

enforcement agency is required to play a more active role in upholding the rule of law, protecting public interests, upholding human rights, and eradicating Corruption, Collusion and Nepotism (KKN). In this new Prosecutor's Law, the Attorney General's Office of the Republic of Indonesia as a state institution that exercises state power in the field of prosecution must carry out its functions, duties and authorities independently, regardless of the influence of government power and other powers (Article 2 paragraph 2 of Law Number 16 2004).

In carrying out its duties and powers, the Attorney General's Office is led by the Attorney General who oversees six Junior Attorney Generals and 31 Heads of High Prosecutors in each province. UU no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia also indicates that the Attorney's institution is in a central position with a strategic role in consolidating national resilience. Because the Attorney General's Office is in the center and acts as a filter between the investigative process and the examination process at trial and also as the executor of court decisions and decisions. Thus, the Prosecutor's Office controls the case process (Dominus Litis), because only the Prosecutor's Office can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Code.

It should be added that the Attorney General's Office is also the only executing agency for criminal decisions (executive ambtenaar). Apart from playing a role in criminal cases, the Attorney General's Office also has other roles in Civil and State Administrative Law, namely being able to represent the Government in Civil and State Administrative Cases as a State Attorney Attorney. The prosecutor as the executor of this authority is given authority as a public prosecutor and to carry out court decisions and other powers based on the law.

b. Determination of Narcotics evidence

Evidence is goods belonging to the suspect/defendant obtained through crime or intentionally used to commit a crime, as stipulated in Article 39 of the Criminal Code paragraph (1) Items belonging to the legal system obtained by means of a crime or which are intentionally used to commit a crime can be confiscated.[36] The evidence obtained from

[36] R. Soesilo, *The Criminal Code (KUHP) and its Comments Complete* (Bogor: Politeia Publisher, 1996).

the crime will be returned to the rightful person, but the evidence that was used will be returned to the rightful person committing a crime is seized to be destroyed or confiscated for the State through a court decision.[37]

Based on the law, the definition of storing confiscated narcotics is not specifically stated. In the Narcotics Law itself, the storage of evidence is not strictly regulated, which is regulated only regarding the mechanism for examining laboratory tests, confiscation and handing over procedures. However, by looking at the process and purpose of storage itself, an understanding can be drawn that storage is an investigator's action to secure confiscated objects so that they are not used by unauthorized parties and to avoid outside influences that can cause the confiscated objects to be damaged, deformed or lost. As for the essential differences regarding evidence and evidence, according to Jan Remmelink criminal law is aimed at upholding the rule of law, protecting the legal community.[38] Because the Narcotics Law Number 35 of 2009 regulates the mechanism for storing narcotic evidence in article 87 which is as follows:

Article 87, Indonesian National Police investigators or BNN investigators who confiscate Narcotics and Narcotics Precursors, or are suspected of Narcotics and Narcotics Precursors, or contain Narcotics and Narcotics Precursors are required to carry out sealing and make minutes of confiscation on the day the confiscation is carried out, which at least contains: a. name, type, nature, and amount; b. information regarding the place, time, day, date, month, and year the confiscation was carried out; c. information regarding the owner or control of Narcotics and Narcotics Precursor; and D. signature and full identity of the investigator who carried out the confiscation[39].

Storage of evidence carried out by investigators on evidence allegedly used in a crime is kept in a certain place for examination purposes at the level of investigation, prosecution and trial. The storage of evidence is carried out through a series of stages, the first of which is to make a Minutes of the Confiscation of the evidence.[40] This action was

[37] Andi Hamzah, *Indonesian Criminal Procedure Code* (Jakarta: Sinar Graphic Publisher, 2004).
[38] R.O. Siahaan, *Criminal Law I* (Cibubur: RAO Press, 2009).
[39] Law number 35 of 2009 article 87 concerning narcotics.
[40] Romy Boby Manumpahi, "Pengembalian Barang Bukti dalam Penyelesaian Perkara Pidana Berdasarkan Kuhap," *LEX CRIMEN* 10, no. 5 (2021), https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/33438/31641.

carried out in order to find out the party responsible for the evidence at the time of confiscation, and to identify the form, type and amount of evidence during the storage process at the police. 88 law number 35 of 2009 concerning narcotics which contains the following:

Article 88 Certain civil servant investigators who confiscate Narcotics and Narcotics Precursor are required to make minutes of confiscation and submit said confiscated goods along with the minutes to BNN investigators or local Indonesian National Police investigators within a maximum period of 3 x 24 (three times twenty four) hours after the confiscation was carried out and a copy of the minutes was submitted to the head of the local district attorney, the head of the local district court, the Minister and the Head of the Drug and Food Control Agency.[41]

The next stage is to label the evidence for the evidence, this action is intended so that the stored evidence can be easily identified in the event that it is needed at any time during the investigation and pre-prosecution process.

c. Supervision of the head of the State Attorney

Supervision can be understood as a series of processes of observing the overall performance of the organization with the aim that all organizational performance is in accordance with what has been previously planned. Clearly supervision must be guided by: plan (planning), orders (orders) on the implementation of work (performance), goals or policies that have been determined previously.[42] Supervision as a process for determining what work has been carried out, assessing it and correcting it if necessary with the intention that the implementation of activities is in accordance with a predetermined plan.

The basis for supervision at the Attorney General's Office can be found in Article 8 paragraph (2) of Law no. 25 of 2009 concerning Public Services. As a public service provider organization, the Attorney General's Office must have at least 6 (six) forms of public service and one of them is supervision, meaning that as an organization, the

[41] Stefano Junio Muaja, "Sanksi Pidana Terhadap Penyidik Dalam Penanganan Perkara Narkotika," *Lex Crimen* 2, no. 6 (2012): 5–17, https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/3124/2668.
[42] Sofyan Safri, *Management Control System (Management Control System)* (Jakarta: Quantum Library, 2004).

Prosecutor's Office must have a supervisory system that aims to encourage the creation of clean and authoritative government apparatus and encourage the implementation of an orderly sound administration and work discipline in carrying out its duties and functions.

The Prosecutor's Commission exists as a supervisory institution to prevent abuse of power. The Prosecutor's Commission has a role to realize the President's Vision and Mission in the legal sector, namely, Enforcement of a Corruption-free, Dignified and Trusted Legal System. The Prosecutor's Commission itself has three main tasks. That is:

1. Supervise, monitor and evaluate the performance and behavior of the Prosecutor and/or the Attorney General's staff in carrying out their duties and authorities as stipulated in laws and regulations and the code of ethics;
2. Supervise, monitor and evaluate the behavior of the Prosecutor and/or Prosecutor's staff both inside and outside their official duties;
3. Monitoring and assessing organizational conditions, work procedures, completeness of facilities and infrastructure, and human resources within the Attorney General's office

Mechanisms in carrying out supervision, from research, namely carrying out repressive supervision or preventive supervision related to improving the performance of the Prosecutor in this case the responsibility of the head of the prosecutor who does not determine the status of evidence of confiscated narcotics in accordance with article 141 in conjunction with article 91 of the narcotics law number 35 of 2009.

3. the Responsibility of the Head of the State Prosecutor Who Does Not Carry Out the Task of Determining Evidence of Confiscated Narcotics.

Definition of responsibility. According to the Indonesian Dictionary, accountability comes from the word "responsibility", meaning the condition of being obliged to bear everything (if there is something, one can be sued, blamed, sued, and so on).[43] Meanwhile, according to the legal dictionary there are two terms that indicate accountability, namely liability and responsibility.[44] Therefore accountability can be said as a form of mindset

[43] WJS Poerwadarminta, *Indonesian General Dictionary* (Jakarta, 1976).
[44] Hendry Campbell Black, *Black's Law Dictionary, Fifth Edition* (USA: St Paul Minn, West Publishing Co, 1979).

and pattern of action to provide understanding and awareness to a person or several people who are given a task to carry out by using various available resources properly and correctly, so that errors and irregularities do not occur. creating losses by the institution or organization concerned.

In the event that the head of the state prosecutor does not carry out his duties to determine the status of evidence confiscated narcotics, it is an administrative error in handling and carry out tasks. Looking at the elements of the legal action, it can be seen that not determining the confiscation of narcotics does not violate the criminal element in it. Based on the opinions of experts and the elements of a criminal act, the accountability of the head of the district attorney's office in carrying out his duties and functions as a prosecutor, in this case the duties and responsibilities of determining the status of confiscated narcotics evidence, determines that Law number 35 of 2019 cannot be criminalized because of this action. included in the duties and functions of a prosecutor. So that it cannot be criminalized because it is an administrative violation. In the future, as head of the state attorney general's office and as head of the state attorney general's office in a region, it must be carried out with the principles of professionalism and technical competence, which are carried out responsibly so as to achieve proper, effective and efficient results for the public interest.

CONCLUSION

Issues of penalization, depenalization, criminalization and decriminalization must be understood comprehensively with all aspects of substance or statutory material issues at the legislative policy stage. Based on this concept, care must be taken so that criminalization remains in the correct corridor, namely paying attention to the principle of criminalization (the principle of legality, the principle of subsidiarity, and the principle of equality/sameness) and must pay attention to the elements of a criminal act, the accountability of the head of the head of the state prosecutor in the case of not carrying out his duties and the function of being a prosecutor, in this case the duties and responsibilities of determining the status of evidence of confiscated narcotics according to law number 35 of 2019 cannot be criminalized because the act of not carrying out their

obligations is included in the duties and functions of a prosecutor. So that it cannot be criminalized because it is an administrative violation.

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