

Legal Studies Concerning the Implementation of Destruction of Confiscated Goods Proceeds of Narcotics Crime



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ABSTRACT: The destruction of evidence in the form of narcotics is one of the efforts to prevent the eradication of narcotics abuse in Indonesia, including preventing the abuse of authority by officials who handle criminal cases and so on. One of the law enforcers who carry out efforts to combat narcotics crime is the Attorney General's Office. In carrying out the destruction of evidence obtained from narcotics crimes by the Prosecutor, the Prosecutor must comply with the procedures regulated by the laws and regulations in force in Indonesia as a legal basis for carrying out his roles and functions in order to achieve the goals and aspirations of eradicating narcotics and other addictive substances. The results of the study show that the prosecutor's authority as the executor in carrying out the destruction of confiscated goods resulting from narcotics crime is that the prosecutor has state power that is independent from the influence of government power and other powers. The destruction of confiscated goods to prevent the re-circulation of narcotics crimes in the community is to destroy the confiscated goods in the form of narcotics. Obstacles in the implementation of the destruction of confiscated narcotics crimes so as to provide the possibility of misappropriation of narcotic evidence are seen in aspects of law enforcement, if fulfilled then the law regarding narcotics crimes in the scope of implementing the destruction of narcotics confiscated goods will be considered to have been effective.

KEYWORDS: Implementation; Extermination; Confiscated goods; Narcotics.

I. INTRODUCTION

A. Research Background

Law is a collection of rules that must be obeyed by all people in society, with the threat of giving compensation or receiving punishment. Basically, as stated in the 1945 Constitution of the Republic of Indonesia which is regulated in article 1 paragraph (3) states that all citizens and organizers must comply with applicable legal regulations. The concept of rule of law is identified with its enforcement. Law enforcement is currently needed to create legal certainty for the wider community. Law enforcement is needed to create legal certainty for the wider community. The community must have more awareness to try to create a harmonious and harmonious situation so as to reduce actions that conflict with the law which are considered to achieve law enforcement, so besides the need for officers, the role of law enforcement is also needed, one of which is the abuse of narcotics which is experiencing dynamics. significant. Narcotics abuse has experienced rapid spread in society. Many efforts have been made to eradicate the spread or use of these narcotics, but it is realized that this is not easy.

Indonesia is one of the founding countries as well as a member of the Association of South East Asian Nations (ASEAN) which has shown concrete steps and activities in tackling narcotics crimes, also at the international level. This has been proven by Indonesia having been a member of the United Nations Narcotics Commission since 1946 and is one of the participating countries in the 1961 Single Narcotics Convention and the 1972 Convention which ratified the protocol for Amending the Single Narcotics Convention, 1961 and the 1988 Vienna Convention.[1, p. 7]. In Indonesia, narcotics crimes are regulated in Law Number 35 of 2009 concerning Narcotics. With the enactment of Law Number 35 of 2009 concerning Narcotics, there are still those who commit narcotics crimes, whether consumed by themselves, traded for personal/group interests, accompanied by various modes. In fact, law enforcement officers also abuse their authority, which law enforcers should carry out the destruction of evidence of narcotics, instead they abuse the narcotics.

Misuse, according to Yosia Herman, is defined as the actions of investigators or other authorized officials in following up on narcotics evidence that are not in accordance with the applicable legal basis so that investigators, including prosecutors, can take actions that are contrary to the law (*onrechtmatighdaad*).[2, p. 131] Law enforcement against narcotics abuse has been carried out with legal processes, especially confiscating the proceeds of crime which are then used as confiscated evidence, then a legal process is carried out, the evidence will be destroyed by law enforcement officials, namely from the Police or the Prosecutor's Office.[3, p. 5]

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Confiscated narcotics objects that have received a determination of their status and have been decided by a court decision that has legal force are still very much not directly destroyed but are stored first, either due to the small amount or other constraints, because they are not immediately destroyed, the narcotic confiscated objects are stored in the state storage house for confiscated objects, this is as regulated in article 44 paragraph (1) of the Indonesian Criminal Code (KUHP). This creates a risk of misappropriation of confiscated narcotics so that they circulate back to the community. Thus, the destruction of evidence in the form of narcotics from the proceeds of narcotics crimes is prone to fraud by law enforcement.

Along with the development of crime in Indonesia, it is also accompanied by an increase in the variety of cases handled by law enforcement officials related to narcotics crimes.[4, pp. 302–303] Law enforcement practices on goods resulting from narcotics crime as evidence of crimes in criminal proceedings are often not in line with the objective of law, namely obtaining proportional truth. One of the law enforcers who carry out efforts to combat narcotics crime is the Attorney General's Office. The legal basis for the existence of the Attorney General's Office is Law Number 16 of 2004 concerning the Attorney General's Office. In carrying out the destruction of evidence obtained from narcotics crimes by the Prosecutor, the Prosecutor must comply with the procedures regulated by the laws and regulations in force in Indonesia as a legal basis for carrying out his roles and functions in order to achieve the goals and aspirations of eradicating narcotics and other addictive substances. From this explanation, the author is interested in discussing the study of the implementation of the destruction of confiscated goods resulting from narcotics crime.

B. Research Problem

1. How the authority of the Prosecutor as the executor in carrying out the destruction of confiscated goods resulting from narcotics crime?
2. How destruction of confiscated goods to prevent the re-circulation of narcotics crimes in the community?
3. How obstacles in carrying out the destruction of confiscated narcotics crimes thus creating the possibility of misappropriation of narcotic evidence?

C. Research Objectives

1. To find out the authority of the Prosecutor as the executor in carrying out the destruction of confiscated goods resulting from narcotics crime
2. To find out the destruction of confiscated goods to prevent the re-circulation of narcotics crimes in the community
3. To identify obstacles in carrying out the destruction of confiscated narcotic crime goods so as to provide the possibility of misappropriation of narcotic evidence

II. RESULTS AND DISCUSSION

1. The Prosecutor's Authority as Executor in the Implementation of the Destruction of Confiscated Goods Proceeds from Narcotics Crime

The Prosecutor's Office is a law enforcement tool which has the duty of being a public prosecutor. The Attorney General's Office is the only state institution that has the authority to delegate criminal cases, prosecute perpetrators of criminal acts in court and carry out decisions and decisions of criminal judges. In carrying out court decisions, a prosecutor has the authority to execute the narcotic evidence by destroying it or seizing it for the benefit of the state.

In essence, the evidence obtained from narcotics crimes will be managed by investigators and officials who have authority in accordance with existing provisions. The destruction of evidence in the form of narcotics is regulated in the provisions of Law Number 35 of 2009 concerning Narcotics and Regulation of the Head of the National Narcotics Agency Number 7 of 2010 concerning technical guidelines for handling confiscated narcotics safely. Implementation of the destruction of confiscated goods in the form of narcotics is carried out by :

- a. BNN investigators and investigators from the National Police of the Republic of Indonesia based on the determination of the Head of the local District Attorney
- b. The prosecutor is based on a court decision that has permanent legal force

Whereas in the provisions of the law, confiscated narcotics objects should be carried out after the court decision has permanent legal force, which is carried out by the prosecutor's office and witnessed by officials representing the police as well as representatives from the Ministry of Health by making a Minutes of Destruction. Article 45 of the Criminal Procedure Code explains that confiscated evidence that is prohibited or prohibited from being circulated, confiscated to be used for other purposes or destroyed, includes narcotics. Regarding the management of evidence prior to destruction, the management of evidence is carried out by the bearer of the evidence management function. At each level in the police unit, the executor is divided into several sections. The management of this evidence is basically supervised both in general and specifically.

In carrying out his authority, the Prosecutor as the executor in carrying out evidence resulting from confiscation of narcotics crimes is regulated in Article 1 point 1 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which explains that "Prosecutors are functional officials who are authorized by this Law to acting as a public prosecutor and executor of court decisions that have been *incracht*". Executor is an execution which means the implementation of a court decision, namely

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the implementation of a judge's decision or the implementation of a court sentence. The prosecutor's executive authority to carry out court decisions that have permanent legal force in criminal cases is regulated in articles 270 to 276 of the Criminal Procedure Code. The provisions in article 270 of the Criminal Procedure Code are in line with the provisions described in article 54 paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers that the implementation of court decisions in criminal cases is carried out by the Prosecutor.

The Attorney General's Office as a law enforcement agency is required to play a greater role in upholding the rule of law, protecting public interests, upholding human rights, and eradicating narcotics crimes. Article 2 paragraph (2) of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that the prosecutor's office has state power which is exercised independently. Thus, the prosecutor's office in carrying out its functions, duties and authorities is independent from the influence of government power and other powers. Based on the Regulation of the Attorney General of the Republic of Indonesia Number PER-006/A/JA/07/2017 article 979, the evidence and confiscation management section has the task of managing evidence and seized goods originating from general crimes and special crimes. In carrying out the tasks referred to in Article 979 of the Regulation of the Attorney General of the Republic of Indonesia Number PER-006/A/JA/07/2017, the evidence and confiscation management section carries out the function :

- a. Preparation of materials for the preparation of work plans and programs
- b. Analysis and preparation of legal considerations for the management of evidence and seized goods
- c. Management of evidence and confiscation includes recording, examining evidence, storing and classifying evidence, safekeeping, maintenance, security, provision and return of evidence before and after trial and settlement of confiscated goods
- d. Preparation of the implementation of coordination and cooperation in the management of evidence and seized goods
- e. Management and presentation of data and information
- f. Implementation of monitoring, evaluation and preparation of reports on the management of evidence and seized goods.[5, p. 16]

Within the authority possessed by the Prosecutor, related to the implementation of the destruction of evidence obtained by investigators, it cannot be immediately managed by the Prosecutor's Office, but has a process that can eventually be confiscated and managed by the Prosecutor's Office. This process is important for the Attorney General's internal bureaucracy as well as the transparency and efficiency of the Attorney's work. The process of changing the status of evidence begins with the evidence at the Attorney General's Office, then the evidence is presented at trial and the evidence changes status to confiscated goods, then the public prosecutor executes the Judge's decision and then the evidence will be managed by destroying it which in this scope is evidence proceeds of narcotics crime.

In Article 27 paragraph (2) of Government Regulation Number 40 of 2013, the implementation of the destruction of confiscated goods carried out by the Prosecutor based on a court decision that has already been in force as referred to in Article 26 paragraph (1) letter b, must make an official report within the latest time is 1 x 24 hours since the destruction was carried out. Extermination is carried out in a safe place through burning or other chemical methods that do not cause adverse effects on health and damage to the local environment.

2. Destroying Confiscated Goods to Prevent Re-circulation of Narcotics Crime in the Community

Destruction is a series of actions carried out by investigators to destroy confiscated goods resulting from narcotics crime, which are carried out after a decision from the Head of the local District Prosecutor's Office to be destroyed and witnessed by a representative official, elements of the prosecutor's office, and also other related institutions.[6, p. 154] The destruction of evidence in the form of narcotics is one of the efforts to prevent the eradication of narcotics abuse in Indonesia, including to prevent abuse of authority by officials who handle criminal cases and so on. Actions to destroy confiscated narcotics are carried out by burning, using equipment, or other methods with or without using chemicals, as a whole, including stems, leaves, flowers, seeds, roots, and other parts in the case of Narcotics in the form of plants, so that confiscated goods, both in the form of plants and non-plants, are no longer available.

If the judge in his decision states that the narcotics are "confiscated for the State", then this is in accordance with the applicable laws and regulations based on Law Number 35 of 2009 concerning Narcotics. According to the existing provisions, evidence of Narcotics confiscation in the community must be destroyed so that it is not misused by irresponsible people. Thus that, through the extermination, it will save the community from the Narcotics.[7, p. 4] The procedure for destroying confiscated goods resulting from narcotics crime is based on the provisions in Article 91 of Law Number 35 of 2009 concerning Narcotics which regulates as follows :

- (1) After receiving notification about the confiscation of narcotics goods and Narcotics Precursors from the investigators of the Indonesian National Police or BNN investigators, the head of the local District Attorney's Office, within a maximum period of 7 days, must determine the status of the confiscated narcotics and narcotics precursors for the purposes of proving the case, for development purposes. science and technology, education and training interests, and/or destroyed.

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- (2) Confiscated narcotics and narcotic precursors which are in the storage and security of investigators who have been assigned to be destroyed, must be destroyed within a maximum of 7 days from the date of receiving the determination of destruction from the head of the local district attorney.
- (3) Investigators are obligated to make minutes of extermination within a maximum period of 1 x 24 hours from the destruction was carried out and submit them to the local Indonesian National Police and copies of the minutes submitted to the Head of the local District Prosecutor's Office, Head of the local District Court, Minister, and Head of Agency Drug and Food Supervisor.
- (4) Under certain circumstances, the destruction period may be extended 1 time for the same period
- (5) Confiscated goods for the purpose of developing science and technology are handed over to the Minister and for the purposes of education and training are handed over to the Head of the National Narcotics Agency and the Head of the National Police of the Republic of Indonesia within a maximum period of 5 days from receiving the stipulation from the head of the local district attorney
- (6) The Head of the BNN and the Head of the Indonesian National Police submit reports to the Minister regarding the use of confiscated goods for the purposes of education and training.

Along with its development, the handling of narcotics crime cases is not only carried out only to punish the perpetrators of criminal acts but also to prevent the re-circulation of narcotics crimes in society as much as possible. Efforts made to prevent evidence in the form of narcotics from being re-circulated are to destroy the confiscated goods in the form of narcotics. The effort to prevent the re-circulation of narcotics in the community is to carry out confiscation of narcotics in accordance with Law Number 35 of 2009 concerning Narcotics. This was done so that the narcotics problem would not continue to grow in society as a bad thing for the development of young people in Indonesia.

3. Obstacles in the Implementation of the Destruction of Confiscated Goods of Narcotics Crime, thus Providing the Possibility of Misappropriation of Narcotics Evidence

Optimizing the implementation of the destruction of confiscated narcotics crimes will affect the outcome of the possibility of misappropriation of narcotic evidence. To prevent this from happening, the implementation of the destruction of confiscated narcotics must be carried out with due observance of law enforcement aspects. The aspect of law enforcement is the core of the implementation of the destruction of confiscated narcotics crimes. Destruction of confiscated narcotics crimes is carried out as a legal process carried out in the context of handling a case resulting from a narcotics crime. Obstacles in the implementation of the destruction of confiscated narcotics crimes so as to provide the possibility of misappropriation of narcotic evidence seen in terms of law enforcement

Law enforcement is an effort by law enforcement officials to be able to provide guarantees and ensure that these legal regulations are carried out as stipulated. In law enforcement put forward by Soerjono Soekanto there are several factors that can have a good or bad influence in terms of these factors. Thus, there is a disturbance in law enforcement if there is something that is inconsistent with the rules and patterns of behavior. Whether or not law enforcement is effective in carrying out the destruction of confiscated narcotics is determined by the existence of 5 factors which include the legal factors themselves (laws), law enforcement factors, facilities or facilities that provide support to law enforcement, community factors in the environment where the law applies, and cultural factors, namely the result of creativity and initiative based on human initiative in social life.[8, p. 5]

By the 5 factors mentioned above, the five are factors that give influence to form an effective law. So, if these 5 factors run optimally, then the law on narcotics crimes in the scope of implementing the destruction of confiscated narcotics will be considered to have been effective. Thus, to assess the obstacles in carrying out the destruction of confiscated narcotics, it is assessed how law enforcement is carried out by the apparatus to prevent misappropriation of confiscated goods in the form of narcotics.

III. CONCLUSION

Based on the explanation above, several conclusions can be drawn, namely :

1. The authority of the Prosecutor as the executor in carrying out the destruction of confiscated goods resulting from narcotics crime is that the Prosecutor has state power which is exercised independently. Thus, the prosecutor's office in carrying out its functions, duties and authorities is independent from the influence of government power and other powers.
2. The destruction of confiscated goods to prevent the re-circulation of narcotics crimes in the community is to destroy the confiscated goods in the form of narcotics. The effort to prevent the re-circulation of narcotics in the community is to carry out confiscation of narcotics in accordance with Law Number 35 of 2009 concerning Narcotics. This was implemented so that the narcotics problem would not continue to grow in society as a bad thing for the development of young people in Indonesia.
3. Obstacles in carrying out the destruction of confiscated narcotics crimes so as to provide the possibility of misappropriation of narcotic evidence are law enforcement, namely the legal factors themselves (laws), law enforcement factors, facilities or facilities that provide support for law enforcement, community factors in the environment where the law applies, and cultural factors. If these 5 factors run optimally, then law enforcement on narcotics crimes in the scope of implementing the destruction of confiscated narcotics will be considered to have been effective. Thus, that to assess the obstacles in carrying out the

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destruction of confiscated narcotics is assessed from how law enforcement is carried out by the apparatus to prevent the misappropriation of confiscated goods in the form of narcotics.

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