



Conspiracy Crime in Drug Offenses: Decision Study Number 277/Pid.Sus/2022/PN.Mjk

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ABSTRACT

Drug-related conspiracy is an act committed by some individuals who cooperate or concur to conduct, assist, or support drug-related activities. These activities can include ordering, encouraging, facilitating, consulting, or becoming a member of a drug syndicate. All of this is regulated in Law No. 35/2009 on Drugs. This research aims to find out about the legal application by judges in the Mojokerto District Court and Surabaya High Court in drug conspiracy cases. The research method used is the normative method, which examines each element of the drug-related crime of class I methamphetamine. The results showed that the Mojokerto District Court and Surabaya High Court imposed sentences in accordance with Article 114 Paragraph (1) in appropriate with Article 132 Paragraph (1) of the Law No. 35/2009 on drugs. The conclusion of this research emphasizes the need for more assertive and comprehensive law enforcement in handling cases of drug-related criminal conspiracy. Recommendations are also provided to integrate efforts between law enforcement authorities and intensify preventive efforts through education and socialization of the dangers of narcotics.

Keywords: *Drug Conspiracy, Judicial Decision, Narcotics Law*

INTRODUCTION

Drug abuse and trafficking in Mojokerto is currently increasing globally. This situation makes every country must be aware of drug abuse and trafficking. Drug addiction affects almost all age and professions, especially productive age groups such as students, unemployed and employees. Drugs is an acronym for narcotics and dangerous drugs. It is also sometimes referred to by the acronym NAZA (Narcotics, Alcohol, and Addictive Substances) or NAPZA (Narcotics, Alcohol, Psychotropic, and Addictive Substances). Illegal drug terminologies are often used by community and law enforcers. They are illegal to use because they are dangerous and against the law.¹

Drug addicts who attend rehab receive therapy to help them overcome their addiction, and the time spent in rehab is added to the time serving their sentence. Rehabilitating drug addicts is another type of social protection that serves to ingratiate addicts into society to stop them from abusing drugs.² There are at least 2 (two) forms of rehabilitation, namely medical and social rehabilitation, as per Article 54 of Law No. 35/2009 on narcotics.

However, in Article 1 Point 16 of the Narcotics Law No. 35/2009, it is explained that plant-based or non-plant-based substances or drugs, both synthetic and semisynthetic, have the potential to reduce or change self-awareness, eliminate taste, reduce or even eliminate pain, and cause addiction. These drugs or substances, although they have benefits in the medical and health care fields, and the advancement of science, can still cause dangerous dependence if used improperly or without strict rules. Therefore, comprehensive control and supervision are needed to prevent their misuse.

In a research conducted by Claudio A. Kermite regarding criminal conspiracy against corruption, it was stated that the scope of the offense of criminal conspiracy (samenspanning) as an expansion of criminal acts does not include all crimes in Book II of the Criminal Code, but only for offenses referred to in Article 110 (treason and rebellion), Article 116 (secret letters and objects relating to national defense), Article 125 (providing assistance to the enemy in time of war), and Article 139c of the Criminal Code (treason directed against the state partner). In addition, the Constitutional Court Decision Number 21/PUU-XIV/2016 has emphasized the definition of criminal conspiracy in Article 15 of Law No. 31/1999 in appropriate with Law No. 20/2001 as more specific than

¹ L.P.Mirah Kusuma Dewi, A.A.Diah Widya Lestari, and I M.A.Gelgel Wirasuta, "Studi Tingkat Penyalahgunaan Narkotika Dan Psikotropika Pada Pelajar SLTA (SMA/SMK) Di Kota Denpasar," *Indonesian Journal of Legal and Forensic Sciences* 4 (2014): 1–4.

² Asmakul Hosna, "Rehabilitation as A Punishment for Narcotics Addicts," *Journal Research and Analysis: Law Science* (2018).

Article 87 of the Criminal Code, namely for the crime of corruption, criminal conspiracy is when one or more persons of equal ability agree to do crime.³

Meanwhile, in research conducted by Putu Agus Satya Prabawa Putra regarding criminal conspiracy in assisting terrorism crime, it was state that The accountability of criminal offenders of criminal conspiracy who assist terrorism is stipulated in Article 12B Paragraph (2) of Law No. 5/2018, anyone who intentionally recruits, accommodates, or sends people to participate in training as referred to in Paragraph (1) shall be punished with a minimum imprisonment of 4 (four) years and a maximum of 15 (fifteen) years, whereas the judges' consideration in issuing a verdict must consider the good and bad characteristics of the defendant, besides that an objective of punishment is to repair individual and social damage due to criminal offenses. It contains a certain of punishment objectives that must be accomplished.⁴

Then, in research conducted by Okta Kurniawan regarding criminal conspiracy for money laundering derived from narcotics crimes, it was state that special crimes as money laundering is stipulated in Law No. 8/2010, the defendant of case No. 366/Pid.Sus/2020/PN was sentenced to 2 years 1 month imprisonment and a fine of IDR 100,000,000, or 3 months imprisonment if the fine is not paid. The defendant was found guilty of violating Article 3 and Article 10 of Law No. 8/2010, which included several acts related to criminal assets. This verdict was based on the prosecutor's indictment, examination of witnesses and defendants, and court evidence, with consideration of aggravating and mitigating factors.⁵ This research was conducted to find out the legal application by judges in Mojokerto District Court and Surabaya High Court in criminal conspiracy cases in drugs offenses.

LITERATURE REVIEW

Narcotics are substances or drugs that can calm, reduce pain, or alter a person's mental state. Narcotics can be of plant or non-plant origin, and can be natural, synthetic, or semisynthetic substances. They are commonly used in the medical field to treat severe pain, help patients with certain conditions to feel more comfortable, or in anesthesia procedures to relieve pain during surgery.⁶ In

³ Claudio A. Kermite, "Delik Permufakatan Jahat Dalam Kitab Undang-Undang Hukum Pidana Dan Undang-Undang Pemberantasan Tindak Pidana Korupsi," *Lex Crimen* 6, no. 4 (2017).

⁴ Putu Agus Satya Prabawa Putra, "Pertanggungjawaban Pidana Pelaku Tindak Pidana Permufakatan Jahat, Membantu Dalam Tindak Pidana Terorisme" (Universitas Mahasaraswati Denpasar, 2023).

⁵ Okta Kurniawan, "Tinjauan Yuridis Pertanggungjawaban Pidana Pemufakatan Jahat Dalam Tindak Pidana Pencucian Uang Berasal Dari Tindak Pidana Narkotika (Studi Kasus: Putusan Nomor 366/Pid.Sus/2020/PN Smg)" (Universitas Islam Sultan Agung Semarang, 2023).

⁶ Alexander Alexander, Zainal Abidin Pakpahan, and Nimrot Siahaan, "The Effectiveness of the National Narcotics Agency (BNN) in Preventing and Controlling Drug Trafficking in Rokan Hilir Regency," *International Journal of Educational Research & Social Sciences* 5, no. 1 (February 28, 2024): 127–131, <https://ijersc.org/index.php/go/article/view/768>.

addition to their medical benefits, narcotics also have the potential to be abused due to their effects that may cause impairment or alteration of consciousness, and lead to physical and psychological addiction. Drug abuse can have adverse effects on physical and mental health, and lead to social and legal problems.⁷ These include opium, morphine, heroin, and various powerful painkillers such as oxycodone and fentanyl. As addictive and potentially hazardous, drug consumption is strictly regulated in many countries to ensure that these are only used legally and in accordance with legitimate medical needs.⁸

Law No. 35/2009 on Narcotics is the basis for preventing and combating drug abuse and illicit trafficking which is very serious and threatens social life, nation and state.⁹

Article 112

- (1) A minimum imprisonment of 4 (four) years and a maximum imprisonment of 12 (twelve) years and fines of minimum IDR 800,000,000 (eight hundred million rupiahs) and maximum IDR 8,000,000,000 (eight billion rupiahs);
- (2) Life imprisonment is imposed for a minimum of 5 (five) years and a maximum of 20 (twenty) years, and the maximum fine as referred to in Paragraph (1) is increased by one third.

Article 114

- (1) Every person who improperly or illegally sells, buys, receives, participates as an intermediary in the transaction, exchange, or delivery of Class I Narcotics, shall be punished with life imprisonment or a maximum imprisonment of 5 (five) years or a maximum imprisonment of 20 (twenty) years and a fine of at least IDR 1,000,000,000,000 (one billion rupiah) and a maximum of IDR 10,000,000,000,000 (ten billion rupiah).
- (2) The criminal is punished by imprisonment for death, life imprisonment, or imprisonment for a minimum of 6 years and a maximum of 20 years for the sale, purchase, or intermediation in selling, exchanging, distributing, or receiving. Category I narcotics as intended in Paragraph (1) are in plant form which weighs more than 1 kilogram or more than 5 trees, or in non-plant form which weighs more than 5 grams.

⁷ Hadi Winarno, Bahrul Amiq, and Wahyu Prawesthi, "Law Enforcement on Drug Abuse Perpetrators Committed by Indonesian Policemen," *Journal Of Law Theory And Law Enforcement* (March 9, 2023): 16–29, <https://journal.jfpublisher.com/index.php/jlte/article/view/281>.

⁸ and Information Center National Narcotics Board Research, Data, *Health Research on Drugs Abuse*, 2019.

⁹ Pemerintah Pusat Indonesia, *Undang-Undang (UU) Nomor 35 Tahun 2009 Tentang Narkotika* (Jakarta, 2009).

Article 127

- (1) Any Abuser :
 - a. Narcotics Group I for personal use shall be punished with a maximum imprisonment of 4 (four) years;
 - b. Narcotics Group II for personal use shall be punished with a maximum imprisonment of 2 (two) years; and
 - c. Narcotics Group III for personal use shall be punished with a maximum imprisonment of 1 (one) year.¹⁰

Article 132

- (1) Attempting to commit or planning to commit a criminal offense of narcotics or narcotic precursors as referred to in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 129; the perpetrators of such crimes shall be punished with equal time behind bars in accordance with the provisions mentioned in the articles.
- (2) If the crimes referred to in Articles 111 to 129 are committed with premeditation and systematization, the maximum prison sentence and fine will be increased by one-third;
- (3) “Criminal aggravation” as referred to in Paragraph (2) shall not apply to criminal offenses punishable with death sentence, life imprisonment, or imprisonment of 20 (twenty) years.

Deployment of Drug Abusers, Drug Victims, and Drug Addicts into Medical and Social Rehabilitation Institutions, Supreme Court Circular Letter No. 04/2010 which contains such following below:¹¹

1. The issuance of Law of Indonesia No. 35/2009 on October 12, 2009 on Narcotics, it is considered appropriate to revise the Circular Letter of the Indonesian Supreme Court No. 07/2009 on March 17, 2009 concerning the Placement of People Who Use Narcotics in Therapeutic and Rehabilitation Centers;
2. The criminal sanctions as intended in Article 103 letter a and b of Law No. 35/2009 on Narcotics can be imposed only on criminal offense classifications:
 - a. They were arrested after being apprehended by Police and BNN investigators;

¹⁰ Hadi Winarno, Bahrul Amiq, and Wahyu Prawesthi, “Law Enforcement on Drug Abuse Perpetrators Committed by Indonesian Policemen,” *Journal Of Law Theory And Law Enforcement* (March 9, 2023): 16–29, <https://journal.jfpublisher.com/index.php/jlte/article/view/281>.

¹¹ Chrysto Fransco Siletty and R. Rahaditya, “Implementation of Sanctions for Abuse of Narcotics Reviewed from Circular Letter of the Supreme Court Number 4 of 2010 Concerning the Placement of Victims of Abuse and Drug Administration into Medical Rehabilitation and Social Rehabilitation Institutions;,” 2022, <https://www.atlantis-press.com/article/125973011>.

- b. When apprehended as described in Point A above, evidence was obtained in this case of one-time use, with these details as follows:
 - (1) Metamphetamine (meth) group: 1 gram
 - (2) MDMA (ecstasy) group: 2.4 grams= 8b
 - (3) Heroin group: 1.8 grams
 - (4) Cocaine group: 1.8 grams
 - (5) Marijuana group: 5 grams
 - (6) Koka Leaf: 5 grams
 - (7) Meskalin: 5 grams
 - (8) Psilocybin Group: 3 grams
 - (9) LSD group: 2 grams
 - (10)PCP group: 3 grams
 - (11)Fentanyl group: 1 gram
 - (12)Methadone group: 0.5 gram
 - (13)Morphine group: 1.8 grams
 - (14)Petidine group: 0.96 grams
 - (15)Codeine group: 72 grams
 - (16)Bufrenorphine group: 32 grams
 - c. Positive lab results using drugs at the request of the investigator.
 - d. Requires certification from a judge-appointed psychiatrist or government psychiatrist.
 - e. There is no evidence that the subject is involved in the illegal trade of illegal drugs.
3. If the judge decides not to implement the order to conduct legal action in rehabilitation of the defendant, then the panel of judges must include the closest rehabilitation facility in its decision. The designated treatment facilities will involve:
 - a. Social and medical rehabilitation institution under the development, maintenance, and monitoring of the National Narcotics Agency;
 - b. RSKO (Hospital for Drug Dependence) Cibubur Jakarta;
 - c. Mental Health Facilities in Indonesia (Ministry of Health);
 - d. Regional Technical Implementation Units (UPTD) and Rehabilitation Centers of the Indonesian Ministry of Social Affairs; and
 - e. Referral centers for community-based rehabilitation facilities that have been accredited by their respective Health Ministry or Social Ministry (at their own expense).
 4. In order to determine the duration of rehabilitation proceedings, the court must properly analyzed the defendant's character and his

addiction level. Therefore, expert evidence should be considered and applied as guidelines in the treatment and rehabilitation process.

- a. Detoxification and Stabilization Program: the duration is 1 (one) month;
 - b. Primary Program: the duration is 6 (six) months;
 - c. Re-entry Program: the duration is 6 (six) months.
5. Supreme Court Circular Letter No. 07/2009 on March 17, 2009 regarding the same subject matter is declared invalid as of the date of this circular letter.

RESEARCH METHODOLOGY

The normative method in legal research is a method that focuses on analyzing existing legal materials, such as laws, regulations, court decisions, and legal doctrine.¹² This research usually aims to understand, explain, and interpret legal rules and applicable principles. Primary data sources in this research are derived from data collected directly from laws and regulations related to narcotics crimes and criminal conspiracy, such as Law No. 35/2009 on Narcotics. Meanwhile, secondary data sources come from library materials such as books, scientific journals, legal articles, and opinions of legal experts relevant to the research topic. Analysis of court decision number 277/Pid.Sus/2022/PN.Mjk as the main focus of the research. This normative method allows the research to provide a clear and structured picture of how the law on criminal conspiracy in narcotics offenses is applied in the court decisions studied, and how the application is in accordance with the applicable legal provisions and principles.

RESULT AND DISCUSSION

Case Position

The defendants were arrested on Monday, 23 May 2022, at 15.45 pm at their home on St. Ronggo Lawe RT 003 RW 003 Sumengko Village, Jatirejo, Mojokerto. The defendants were arrested because they were caught controlling and possessing methamphetamine. The arrest started with information from the community that the defendants were possessed of methamphetamine to be used at their home. The witness together with Murdani, SH and Febriyanto Slamet Raharjo, SH, raided the house and arrested three people which included: Mohamad Kotip, Arya Adam Maulana, and a man who ran away. They also found one package of methamphetamine. In addition to methamphetamine, a bottle cap with a piece of straw, glass pipette, gas lighter, Vivo cellphone, and IDR 100,000 were found in Arya Adam Maulana's room. Mohamad Kotip received an order for methamphetamine worth IDR 400,000 from a person named Adi on Monday,

¹² Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris*, Cet.2. (Depok: Prenada Media Group, 2018).

May 23, 2022, at around 13.00 pm at a stall near his house. Mohamad Kotip told Arya Adam Maulana to buy methamphetamine from Agus Supriadi at around 13.30 pm at his house. Mohamad Kotip asked Arya Adam Maulana to contact Agus Supriadi via WhatsApp because he could not operate a cellphone. Arya Adam Maulana sent a message claiming to be Mohamad Kotip to buy methamphetamine for IDR 300,000. Meanwhile, Arya Adam Maulana took the methamphetamine from Agus Supriadi as instructed by Mohamad Kotip. He received IDR 100,000 as profit from the purchase of one package of methamphetamine. Arya Adam Maulana has conducted methamphetamine transactions on the orders of Mohamad Kotip four times in the last two months. Based on the Criminalistic Laboratory Examination Report No.Lab: 04175/NNF/2022 on May 30, 2022, the methamphetamine evidence was tested at the East Java Police Forensic Laboratory and the results were positive for methamphetamine.

Judges' Consideration in Mojokerto District Court

SEMA No. 3/2015 stipulates that judges must decide cases based on the charges of the public prosecutor in accordance with Article 182 paragraphs 3 and 4 of the Criminal Procedure Code. If the prosecutor charges Article 114 or Article 112 of the Narcotics Law, but the facts of the trial show a violation of Article 127 of the Narcotics Law, the judge can decide according to the charges but deviate from the minimum sentence with sufficient consideration.

Supreme Court Decision No. 1386 K/Pid.Sus/2021 emphasizes that if the narcotics found on the defendant are in large quantities, it is possible that the narcotics are for sale, not just for personal use. However, if the amount is small, the defendant should be charged with Article 127 of the Narcotics Law.

In the case of the defendant who possessed 0.18 grams of methamphetamine, according to the facts of the trial, the defendant was considered a user of methamphetamine. The sentence given was in accordance with the sense of justice. Considering Article 114 Paragraph (1) and Article 132 Paragraph (1) of the Narcotics Law, as well as the provisions in the Criminal Procedure Code and Supreme Court Circular Letter No. 3/2015 and No. 1/2017.

Consideration of the High Court Judges

According to the Panel of Judges of the Surabaya High Court in Decision No. 1306/PID.SUS/2022/PT SBY, based on the case file, the cassation memory of the Public Prosecutor, and the counter cassation memory of the Defendants, the following facts were found: (1) The defendant Mohamad Kotib received a request to purchase methamphetamine from Adi on 23 May 2022. Kotib then told Arya Adam Maulana to buy methamphetamine from Agus Supriadi. Arya contacted Agus via WhatsApp because Kotib could not operate a cellphone. Arya sent a message to Agus to buy methamphetamine for IDR. 300,000 and pick it up

according to Kotib's order; (2) The High Court agreed with the decision of the Mojokerto District Court which stated that the defendants were proven to have violated Article 114 Paragraph (1) in conjunction with Article 132 Paragraph (1) of the Narcotics Law. The defendants were found guilty of conspiracy to commit narcotics crime. The defendants Arya Adam Maulana and Mohamad Kotib were found guilty of conspiracy to commit narcotics crime. The accused were imposed a prison sentence of 2 years and 6 months and a fine of IDR 1,000,000,000, if the fine is not paid, then it shall be substituted with 3 months imprisonment.

The court considered that the element of "conspiracy to commit a drug crime" had been fulfilled and decided that the defendants were part of a drug trafficking network. The Panel of Judges followed Supreme Court Circular Letter No. 3/2015 in deciding this case, in accordance with the charges of the Public Prosecutor.

CONCLUSION

The defendants, Mohamad Kotib and Arya Adam Maulana, were arrested on May 23, 2022 for possessing and controlling methamphetamine at their home. The arrests stemmed from community information. Evidence found included one package of methamphetamine and other equipment. Kotib received a methamphetamine order from Adi and told Arya to buy methamphetamine from Agus Supriadi. Arya contacted Agus via WhatsApp because Kotib could not operate a cell phone. Arya sent a message to buy methamphetamine for IDR 300,000 and picked it up as instructed by Kotib. Arya has conducted four methamphetamine transactions on Kotib's orders in the last two months. Based on laboratory examination, the evidence was positive for methamphetamine. The Surabaya High Court agreed with the Mojokerto District Court's decision that the defendants are guided by the law and are guilty of an offense Article 114 Paragraph (1) in appropriate with Article 132 Paragraph (1) of the Narcotics Law. The accused were imposed a prison sentence of 2 years and 6 months and a fine of IDR 1,000,000,000, if the fine is not paid, then it shall be substituted with 3 months imprisonment. The court considered that the element of "conspiracy to commit a drug crime" had been fulfilled, following the provisions in Supreme Court Circular Letter No. 3/2015.

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