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THE EFFECTIVENESS OF THE IMPLEMENTATION OF FINE  
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01 OF 2023 CONCERNING THE CRIMINAL CODE (A FIELD STUDY  
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# THE EFFECTIVENESS OF THE IMPLEMENTATION OF FINE PENALTIES IN NARCOTICS CRIMES FOLLOWING LAW NUMBER 01 OF 2023 CONCERNING THE CRIMINAL CODE (A FIELD STUDY IN THE JURISDICTIONAL REGION OF KEDIRI REGENCY)

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## ABSTRACT

The goal of this research is to investigate the factors that judges take into account when imposing fines on individuals convicted of narcotics offenses under Article 112 of Law Number 35 of 2009 on Narcotics. It also seeks to explore how fine penalties are carried out if the offender is unable to make the payment after the implementation of Law Number 1 of 2023 on the Criminal Code. This research employs a socio-legal method with conceptual, statutory, and case approaches, as well as descriptive qualitative analysis through observation, interviews, document studies, and literature review in the jurisdictional area of the Kediri Regency District Court. The results show that the application of fine penalties still does not align with the principle of proportionality. Judges prioritize consideration of the defendant's economic capacity without adequate juridical reasoning, resulting in the majority of convicts opting for a relatively short substitute imprisonment term rather than paying an exceedingly high fine. This condition causes the objectives of sentencing, particularly deterrence, to remain unachieved. Furthermore, there is no mechanism for coercive measures to ensure the execution of fine penalties. In conclusion, the imposition of fine penalties in narcotics cases under Article 112 is ineffective and disproportionate, necessitating the strengthening of the fine execution mechanism in accordance with the provisions of Law No. 1 of 2023 to ensure more just and optimal sentencing.

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## KEYWORDS

Fine Penalty, Narcotics, Principle of Proportionality, Fine Execution Mechanism

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## 1. Introduction.

The Indonesian government has not effectively tackled the problems of drug abuse and illegal drug trafficking. The issue of drug abuse is a significant challenge for the Indonesian nation and needs urgent attention from all sectors of society (Mappaseng, 2002). The prevalence of drug abuse in Indonesia is a result of ineffective enforcement of laws, as well as a widespread belief that law enforcement officials can be easily manipulated through bribery, creating opportunities for illicit activities. Consequently, the problem of narcotics abuse has become highly complex.

Information disclosed by the National Narcotics Board (BNN) reveals the narcotics market in Indonesia is experiencing rapid growth. As presented, the provinces of North Sumatra (1,192), East Java (1,162), and Lampung (903) were recorded as having the most narcotics-prone areas. This situation is compounded by current data showing a 30% to 50% annual escalation in criminal cases handled across Indonesian regions, a trend that has automatically led to a corresponding rise in the number of inmates incarcerated for narcotics violations (Hidayat, 2018).

The aforementioned problem has claimed many victims, particularly among the younger generation, and is characterized by high narcotics circulation and the lack of firm legal application in sanctioning narcotics traffickers, resulting in an absence of a deterrent effect on narcotics offenders. At the same time, there is uncertainty surrounding the legal classification of drug users, as they could be seen as either culprits or sufferers of drug-related offenses. When viewed as culprits, drug users may face legal consequences, but if seen as victims, they may be guided towards seeking help and recovery. This regulatory ambiguity leads to misinterpretation in imposing criminal penalties. These provisions can cause confusion within the Narcotics Law, particularly regarding rehabilitation provisions for users.

According to the rulings in drug-related criminal cases at the Kediri Regency District Court, the high fines imposed indicate that the minimum amounts set are too high and do not make sense. On the other hand, the possibility of serving substitute prison time is not very likely. Therefore, despite fines being meant to decrease the use of imprisonment as a punishment, the way they are implemented in court shows that they are not effective. Therefore, reform in the sentencing mechanism is necessary, including strengthening fine execution and providing alternative non-custodial sentences that are more adaptive to the convicts' socio-economic conditions.

There is a significant disparity between the very high fine penalties and the relatively low substitute imprisonment. Another empirical fact is that defendants in narcotics crime trials are often merely couriers or distributors seeking minimal profit for personal needs; consequently, the imposition of fine penalties does not function as intended by the legislators. Ideally, fine penalties should target large-scale distributors (kingpins), not couriers. As a result, the legal objectives of justice and utility are not achieved, and the application merely emphasizes legal certainty textually, rendering the imposition of fine penalties misdirected (Supanto & Rustamaji, 2019).

The present study is motivated to undertake an in-depth investigation with the following aims: first, to elucidate and critically examine the basis of judicial consideration in the application of fine penalties for offenses under Article 112 of the Narcotics Law, assessing their concordance with the principle of proportionality. The second aim is to delineate and analyze the procedural mechanism governing the execution of unpaid fines in narcotics cases, particularly within the new juridical context established by the 2023 Criminal Code.

## 2. Research Method

The research methodology utilized is known as socio-legal research. This type of research involves examining how social and political elements impact how legal institutions interpret and enforce laws, utilizing an interdisciplinary approach (Afandi, 2022). Several stages for conducting socio-legal research include: Research Topic, Literature Review, Problem Formulation, Theoretical (or Conceptual) Framework, Research Method, Research Ethics, Empirical Data/Materials, and Analysis and Conclusion (Afandi, 2022).

The investigation is grounded in three principal research approaches: a conceptual analysis of key terms, including effectiveness, fine penalties, and narcotics crimes; a statutory analysis of relevant legal instruments, namely the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), Law Number 35 of 2009 concerning Narcotics, and Law Number 1 of 2023 concerning the Criminal Code; and a jurisprudential analysis, conducted through the examination of court rulings that have attained permanent legal force on related issues (Afandi, 2022; Dewanto & Susanti, 2023).

The researcher in this case is utilizing a descriptive qualitative method. This is consistent with Moleong's view that qualitative methods result in descriptive information in the form of verbal or written accounts from

sources and observed actions that are not categorized as variables or hypotheses (Moleong, 2016). The research location chosen by the author for data collection to support this research is the jurisdictional area of the Kediri Regency District Court. The reason for selecting this location is that the author utilizes several decisions from the Kediri Regency District Court related to the imposition of fine penalties in narcotics crimes.

In this study, the population and sample consist of convicts who have been sentenced / have obtained permanent legal force (*inkracht*) regarding Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics in the jurisdictional area of Kediri Regency. The sampling technique uses Purposive Random Sampling, where the researcher combines two approaches: Purposive Sampling (selecting samples based on specific criteria) and random sampling (selecting samples randomly).

The methodology for this study encompassed distinct phases for data collection and examination. The collection phase involved the sequential application of observation, interviews, document studies, and literature review. The ensuing analysis was qualitative, with data presented narratively. Utilizing deductive reasoning, a logical pattern that progresses from general matters to specific conclusions, the qualitative data were analyzed by grouping and selecting information obtained from the literature review. (Marzuki, 2017).

### 3. Result and discussion

#### 3.1. The basis for judges' considerations in imposing fine penalties in narcotics criminal cases violating Article 112 of Law Number 35 of 2009 concerning Narcotics and its conformity with the principle of proportionality in sentencing

Historically, narcotics abuse is a highly complex problem. It is evident that narcotics abuse is difficult to eradicate because the narcotics issue is not solely a matter of unlawful acts under the responsibility of law enforcement officials (Police, Prosecutors, Judges) alone; rather, public participation is essential in combating narcotics abuse. Discussing criminal law enforcement involves examining the method known as the criminal law enforcement system as part of criminal policy or crime control policy (Alimuddin et al., 2021).

A concrete effort by the Indonesian government in enforcing laws on narcotics crimes is the enactment of Law Number 35 of 2009 concerning Narcotics (Nugroho et al., 2020). This law functions as a statutory improvement, designed to address the perceived shortcomings of its predecessors. Laws Number 22 of 1997 and Number 5 of 1997 were found to be lacking in the requisite punitive force to effectively deter and diminish the qualitative complexity and quantitative volume of narcotics abuse and trafficking. The various regulations implemented in Law Number 35 of 2009 concerning Narcotics are expected to serve as references and guidelines for the courts and officials or executors of court decisions applying the Law, particularly judges in imposing criminal sanctions for occurring crimes (Amri et al., 2021).

The core issue in narcotics criminal cases has long revolved around fine penalties, particularly in Article 112 of Law Number 35 of 2009 concerning Narcotics, concerning several substantial and practical aspects of its implementation (Marbun & Ismed, 2023). A fine penalty is one type of principal or supplementary penalty imposed on perpetrators of narcotics crimes. The following is an explanation of the articles regulating fine penalties, the range of fine amounts, and the nature of the penalty (mandatory or alternative), along with the fine amounts under Law Number 35 of 2009 concerning Narcotics. The summary of these provisions is presented in Table 1.

**Table 1.** Fine Penalties for Narcotics-Related Criminal Acts Under Law Number 35 of 2009

Type of Criminal Offense	Article	Narcotics Category	Maximum Fine
Cultivating / possessing plants	111	Category I	Rp1 - Rp10 billion
Possessing / controlling	112	Category I	Rp800 million - Rp8 billion
Carrying / transporting	113	Category I	Rp1 - Rp10 billion
Selling / acting as intermediary	114	Category I	Rp1 - Rp10 billion
Carrying for personal use	115	Category I	Rp100 million - Rp1 billion
Category II / III (Articles 116-119)	-	Category I/III	Rp50 million - Rp1 billion

The application of fine penalties under the old Criminal Code system recognized penalty substitution, where a fine could be replaced by another penalty. A convict unable to pay a fine would have it replaced by corporal punishment in the form of confinement. Article 30 of the old Criminal Code stipulated substitute confinement for a maximum of 6 (six) months, with an aggravated maximum of 8 (eight) months. This was intended to anticipate convicts lacking sufficient funds to meet the payment obligation of the imposed fine,

thus opting for confinement. However, the substitution of penalties under Law Number 35 of 2009 regarding Narcotics is specified in Article 148. It mentions that if a perpetrator of a Narcotics offense or a Narcotics Precursor offense is unable to pay the prescribed fine, they will be imprisoned for up to 2 years as an alternative to the outstanding penalty (Bakhtiar, 2019).

In its implementation, the author presents several judge's decisions from the Kediri Regency District Court that have adjudicated several narcotics crimes as follows:

### *3.1.1. Decision of the Kediri Regency District Court Number: 107/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Moh Kanzul Amri alias Sidqi alias Zola bin Nur Ali, is legally and convincingly guilty of the crime of unlawfully possessing, storing, controlling, or providing more than five grams of Category I methamphetamine narcotics, as defined and penalized under Article 112 Paragraph (2) of Law Number 35 of 2009. The sentence adjudged is imprisonment for a duration of six years and six months, in addition to a fine of one billion rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a two-month period of imprisonment.

The judge's considerations related to the fine penalty are contained in Decision of the Kediri Regency District Court Number: 107/Pid.Sus/2024/PN Gpr as follows:

"Considering, that the penalty imposed according to the applicable Narcotics legislation is a cumulative penalty of imprisonment and a fine, the nominal value of which has been regulated limitatively, therefore the amount of the fine imposed in this case will be determined in the operative part of the decision."

"Considering, that since the defendant is sentenced to a fine, according to the provisions of Article 148 of Law Number 35 of 2009 concerning Narcotics, namely if the fine cannot be paid, a substitute penalty is stipulated, namely imprisonment, the duration of which will be determined in the operative part of this decision."

### *3.1.2. Decision of the Kediri Regency District Court Number: 232/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Achmad Andi Pranata alias Jalimun bin Siswoyo, is legally and convincingly guilty of the crime of possessing, storing, controlling, or providing more than five grams of Category I Narcotics not in plant form. The sentence adjudged is imprisonment for a duration of eight years and six months, in addition to a fine of one billion rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a six-month period of imprisonment.

The judge's considerations related to the fine penalty are contained in Decision of the Kediri Regency District Court Number: 232/Pid.Sus/2024/PN Gpr as follows:

"Considering, that according to the Narcotics Legislation, besides imprisonment, a fine penalty is also imposed on the Defendant, and if the fine is not paid, it shall be replaced by imprisonment, the duration of which will be determined in the operative part of the decision."

### *3.1.3. Decision of the Kediri Regency District Court Number: 262/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, M. Habib Indra Irfana alias Kucir bin Sujito, is legally and convincingly guilty of participating in the unlawful storage and control of Category I Narcotics. The sentence adjudged is imprisonment for a duration of six years and six months, in addition to a fine of one billion rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a six-month period of imprisonment.

The judge's considerations contained in Decision of the Kediri Regency District Court Number: 262/Pid.Sus/2024/PN Gpr do not include considerations regarding the imposition of the fine penalty on convict M. Habib Indra Irfana Alias Kucir Bin Sujito.

### *3.1.4. Decision of the Kediri Regency District Court Number: 166/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Imam Basori alias Geret bin Jani, is legally and convincingly guilty of the crime of unlawfully possessing, storing, controlling, or providing Category I Narcotics Not in Plant Form. The sentence adjudged is imprisonment for a duration of five years, in addition to a fine of eight hundred million rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a one-month period of imprisonment, and that the defendant shall receive full credit for all time spent in pre-sentencing custody.

The judge's considerations related to the fine penalty are contained in Decision of the Kediri Regency District Court Number: 166/Pid.Sus/2024/PN Gpr as follows:

"Considering, that according to the Narcotics Legislation, besides imprisonment, a fine penalty is also imposed on the Defendant, and if the fine is not paid, it shall be replaced by imprisonment, the duration of which will be determined in the operative part of the decision"

### 3.1.5. *Decision of the Kediri Regency District Court Number: 236/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Pri Wahyudi alias Kampret bin Sumaryono, is legally and convincingly guilty of the crimes of possessing, storing, controlling, or providing Category I narcotics without right and circulating non-compliant pharmaceutical preparations, as regulated under Article 112 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. The sentence adjudged is imprisonment for a duration of five years, in addition to a fine of eight hundred million rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a three-month period of imprisonment.

The judge's considerations related to the fine penalty are contained in Decision of the Kediri Regency District Court Number: 236/Pid.Sus/2024/PN Gpr as follows:

"Upon the Defendant's proven guilt in engaging in criminal activities under Article 112 paragraph (1) of the Republic of Indonesia Law Number: 35 of 2009 regarding Narcotics as the First Charge Second Alternative and Article 435 of the Republic of Indonesia Law Number 17 of 2023 Concerning Health as the Second Charge First Alternative, it is decided that in addition to the main penalty, a monetary penalty will also be enforced, the specifics of which will be outlined in the section below."

According to the judgments on narcotics crime cases in the Kediri Regency District Court, it is evident that the fines imposed are unreasonably high and seem unjustified, whereas the possibility of serving substitute imprisonment is quite low. The contrast between the exorbitant fines and the minimal threat of substitute imprisonment is apparent. This is evidenced by interview results at the Class II A Correctional Institution in Kediri Regency, consistent with the decisions above, indicating that convicts do not pay the fines, citing personal economic factors, preferring the substitute penalty over the fine. Furthermore, based on Statement Letters (D-2) from the Kediri Regency Prosecutor's Office, the convicts cannot/are unable to settle the fine payment and/or execute the imposed fine penalty, based on the Kediri Regency District Court decisions. Consequently, the convicts serve the stipulated substitute imprisonment for the fine penalty. This undoubtedly occurs due to specific factors causing the convicts' inability to execute the fine penalty.

As per the above, it is evident that when someone commits a criminal act, especially related to narcotics, the punishment should bring justice and serve a purpose for everyone involved, especially judges who base their decisions on the concept of proportionality. The purpose of sentencing perpetrators of criminal acts, particularly Narcotics crimes, is to create a deterrent effect, prevent recidivism, and enable reintegration into society for a normal life after serving the sentence. Therefore, the judges on the panel review the information presented during the trial. Judicial deliberations play a crucial role in shaping a judge's decision, which should reflect justice, legal certainty, and benefit the involved parties. Thus, proper attention needs to be given to the judicial factors, ensuring they are handled with great care, attention to detail, and precision. Failure to carefully address these factors could result in the High Court/Supreme Court overturning the judge's decision based on them (Arto, 2004). Consequently, from the 5 (five) decisions at the Kediri Regency District Court, it must be assessed whether narcotics criminal cases violating Article 112 of Law Number 35 of 2009 concerning Narcotics have fulfilled the principle of proportionality or not.

Based on interviews with Judges of the Kediri Regency District Court, the consideration used by judges in imposing fine penalties on defendants is that judges only consider the defendant's capacity by examining their income and expenses. This is done to ensure that the fine penalty imposed by the judge can be properly implemented according to the defendant's capacity. Therefore, before imposing a fine penalty decision on the defendant, the judge will always elicit information from the defendant related to this matter, such as the defendant's occupation, income, expenses, or other factors influencing the defendant's ability to execute the fine penalty. This is aimed at creating a just decision. Additionally, the judge explained that there is no specific internal regulation from the Supreme Court regulating fines in Narcotics Crimes.

The factors taken into account by Judges at the District Court of Kediri Regency when deciding on a fine for a defendant are essentially in agreement with Article 80 of Law Number 1 of 2023 on the Criminal Code. This law stipulates that judges must assess the defendant's financial situation by analyzing their real earnings and expenditures when determining a fine, while also ensuring that the minimum fine amount is not reduced. In this situation, even though the regulation is not yet active, the actions of the Judges from the Kediri Regency District Court can be seen as a way to enforce Law Number 1 of 2023 on the Criminal Code in order

to achieve fairness. This is because, before imposing a criminal sentence on someone, it is crucial to make sure that the person is able to handle the consequences of the punishment.

Regarding the judge's consideration in issuing a decision linked to proportionality, it can be understood in two aspects. First, concerning the overall level of the sentencing scale, both the maximum penalty and the severity of the penalty that should be imposed, which is a consequence of the perpetrator's guilt. Second, the penalty imposed on a perpetrator compared to other incidents where the perpetrator's level of guilt is comparable. In other words, this proportionality concerns the balance between the imposed penalty and the committed offense, and also concerns disparity in decisions, an issue often referred to as a "disturbing issue" or "universal issue" (Setiawan et al., 2021). Related to the principle of proportionality, it is a criminal law principle that requires a balance between the severity of the perpetrator's guilt or action and the type and severity of the imposed penalty. This means the imposed penalty must be commensurate with the degree of guilt, the impact of the action, and the circumstances of the perpetrator. Thus, the judge's decision is a crucial part, as the decision imposed by the Judge must be accompanied by the quantity and quality of the Judge themselves. Quantity requires a balance between the number of Judges and the number of cases, while quality relates to the conviction of a judge in delivering a verdict, whether it is perceived as just and appropriate for the perpetrators of these narcotics crimes. Therefore, as the final party in the trial determination, the justice intended is objective justice, not subjective (Setiawan et al., 2021).

Based on the explanation above, it can be analyzed that the application of fine penalties in reality shows that judges imposing fine penalties alongside imprisonment will stipulate imprisonment as a substitute for the fine penalty, and this substitute imprisonment will be served by the convict if they cannot fulfill the fine payment obligation. A perpetrator sentenced to a cumulative penalty, both imprisonment and a fine, by a court decision, is required to undergo both types of penalties. However, if the perpetrator is unable to meet the obligation to pay the fine, there is an alternative penalty as a substitute for the fine (Suhariyono, 2009). It is established that in the five sampled decisions from the Kediri Regency District Court, judges have uniformly levied fines in narcotics cases. For convictions under Article 112 Paragraph (1) of the Narcotics Law, the average financial penalty adjudged against defendants is eight hundred million rupiah.

In narcotics criminal cases that violate Article 112 of Law Number 35 of 2009 concerning Narcotics, judges must ensure that the fines imposed are in line with the principle of proportionality. The findings indicate that sentencing based on the principle of proportionality related to the purposes of sentencing has not been fully realized. This means the application of the proportionality principle in sentencing decisions has not become the primary "principle." However, similar to the discussion on fine penalties, this remains entirely the "prerogative right" of the judge as the final determiner in a judicial process.

A judge, having conviction and consideration as a basis for decision-making according to the trial facts they handle, especially regarding Narcotics Crimes charged under Article 112, is key. Moving forward, decisions should prioritize the proportionality principle as a guideline, particularly to ensure the sentencing purposes of achieving a deterrent effect for the perpetrator and breaking the chain of narcotics circulation can be realized. The application of firm, precise, and impartial criminal sanctions against any perpetrator of Narcotics Crimes charged under Article 112 is crucial, especially to achieve the legal objectives of justice, certainty, and utility. The reason for this is that according to the principle of proportionality, the criminal justice system in law enforcement must be founded on a harmony of the concerns of society, the state, the individual who committed the crime, and the well-being of the victim. With this principle, the criminal justice system is not merely about executing and implementing the law but also about how far the law application is reasonably justified and meets the desired targets.

### **3.2. The mechanism for executing fine penalties in narcotics crimes, if the convict is unable to pay the fine following the enactment of Law Number 01 of 2023 concerning the Criminal Code**

The law explicitly dictates the consequence for defaulting on a financial penalty. As per Article 148, if an individual found guilty of a crime under this Law is incapable of paying the stipulated fine, the court shall enforce a substitute sentence of imprisonment for a maximum period of two years. Thus, Article 148 provision for substituting unpaid fines with imprisonment creates a statutory loophole. The deterrent effect of monumental fines is effectively neutralized by the limited maximum substitute sentence of two years. This disparity encourages narcotics offenders to accept the shorter prison term rather than fulfill the financially crippling penalty, thereby illustrating a fundamental incongruity in the application of criminal sanctions.

As a result of this legal option, many convicts choose to serve imprisonment as a substitute for the fine. They tend to think it is better to serve a few months, up to a maximum of 2 (two) years in prison, rather than

having to spend a large sum of money. By serving the prison sentence, it is as if the fine penalty has been fully paid by the convict. As seen in several example decisions presented by the author in this research, namely:

*3.2.1. Decision of the Kediri Regency District Court Number: 107/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Moh Kanzul Amri alias Sidqi alias Zola bin Nur Ali, is legally and convincingly guilty of the crime of unlawfully possessing, storing, controlling, or providing more than five grams of Category I methamphetamine narcotics, as defined and penalized under Article 112 Paragraph (2) of Law Number 35 of 2009. The sentence adjudged is imprisonment for a duration of six years and six months, in addition to a fine of one billion rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a **two-month** period of imprisonment.

*3.2.2. Decision of the Kediri Regency District Court Number: 232/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Achmad Andi Pranata alias Jalimun bin Siswoyo, is legally and convincingly guilty of the crime of possessing, storing, controlling, or providing more than five grams of Category I Narcotics not in plant form. The sentence adjudged is imprisonment for a duration of eight years and six months, in addition to a fine of one billion rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a **six-month** period of imprisonment.

*3.2.3. Decision of the Kediri Regency District Court Number: 262/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, M. Habib Indra Irfana alias Kucir bin Sujito, is legally and convincingly guilty of participating in the unlawful storage and control of Category I Narcotics. The sentence adjudged is imprisonment for a duration of six years and six months, in addition to a fine of one billion rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a **six-month** period of imprisonment.

*3.2.4. Decision of the Kediri Regency District Court Number: 166/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Imam Basori alias Geret bin Jani, is legally and convincingly guilty of the crime of unlawfully possessing, storing, controlling, or providing Category I Narcotics Not in Plant Form. The sentence adjudged is imprisonment for a duration of five years, in addition to a fine of eight hundred million rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a **one-month** period of imprisonment, and that the defendant shall receive full credit for all time spent in pre-sentencing custody.

*3.2.5. Decision of the Kediri Regency District Court Number: 236/Pid.Sus/2024/PN Gpr*

The Court establishes that the defendant, Pri Wahyudi alias Kampret bin Sumaryono, is legally and convincingly guilty of the crimes of possessing, storing, controlling, or providing Category I narcotics without right and circulating non-compliant pharmaceutical preparations, as regulated under Article 112 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. The sentence adjudged is imprisonment for a duration of five years, in addition to a fine of eight hundred million rupiah. It is further ordered that a default in the payment of the fine shall be substituted by a **three-month** period of imprisonment.

According to the examples mentioned, it is clear that when a Judge imposes a fine in their ruling, it is often accompanied by the option of serving substitute jail time if the fine is not paid as specified in the official decision. If the fine is not paid, the perpetrator will have to serve time in jail instead. Talking about penalties is linked to the goals of sentencing. Law Number 35 of 2009 on Narcotics imposes harsh punishments for drug offenses, including the possibility of receiving the death penalty, as well as imprisonment and fines. Considering that narcotics crimes fall under the category of special criminal acts, the threat of penalties can be imposed cumulatively by imposing 2 (two) types of principal penalties simultaneously, for example, imprisonment and a fine or the death penalty and a fine.

The presence of Law Number 1 of 2023 concerning the Criminal Code (KUHP) in the Indonesian criminal law system brings many changes (Fathia, 2021; Taurisanto et al., 2023). Per the General Explanation of Article 67, Law Number 1 of 2023 confines the imposition of special penalties to the most severe categories of criminality. These are delineated as extraordinary crimes, exemplified by narcotics trafficking, terrorism, corruption, and severe human rights violations. In its development, the context of sentencing perpetrators of narcotics crimes has undergone many updates. Certainly, the inclusion of narcotics crimes into the National

Criminal Code represents a renewal in handling narcotics abuse, which in principle is considered a sufficiently serious crime.

The rules for dealing with drug-related offenses are specifically outlined in Articles 609 to 611 of Law Number 1 of 2023, which pertains to criminal law (Djanggih, 2024). The explanations are as follows:

1) Article 609 states that, (1) Every Person who without right possesses, stores, controls, or provides:

(a) For Category I Narcotics (non-plant form): A prison sentence ranging from four to twelve years, plus a financial penalty classified between category IV and VI.

(b) For Category II Narcotics: A prison sentence of three to ten years, accompanied by a fine within category IV to VI.

(c) For Category III Narcotics: A prison sentence of two to seven years, along with a fine falling within category IV to VI.

(2) In the event the act as referred to in Paragraph (1) is committed against:

(a) For over 5 grams of Category I Narcotics (non-plant form): The punishment escalates to either life imprisonment or a fixed term of five to twenty years, plus a higher fine within category V to VI.

(b) For over 5 grams of Category II Narcotics: A prison sentence of five to fifteen years and a fine within category V to VI.

(c) For over 5 grams of Category III Narcotics: A prison sentence of three to ten years and a fine within category V to VI.

2) Article 610 states that, (1) Every Person who without right produces, imports, exports, or distributes:

(a) For Category I Narcotics: A prison sentence of five to fifteen years and a fine within category IV to V.

(b) For Category II Narcotics: A prison sentence of four to twelve years and a fine within category IV to V.

(c) For Category III Narcotics: A prison sentence of three to ten years and a fine within category IV to V.

(2) In the event the act as referred to in Paragraph (1) is committed against:

(a) For large quantities of Category I Narcotics (over 1 kilogram or 5 plants/stalks in plant form, or over 5 grams in non-plant form), the penalties include the death penalty, life imprisonment, or a prison term of five to twenty years, plus a fine within category V to VI.

(b) For over 5 grams of Category II Narcotics: The penalties are the death penalty, life imprisonment, or a prison term of five to twenty years, plus a fine within category V to VI.

(c) For over 5 grams of Category III Narcotics: A prison sentence of five to fifteen years and a fine within category V to VI.

3) Article 611 states that, Provisions regarding the categorization and quantity of narcotics refer to the Law regulating Narcotics.

Article 54 Paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code outlines provisions that in sentencing, the following must be considered:

- a. The defendant's level of intent or negligence.
- b. The underlying reasons and objectives for the crime.
- c. The defendant's state of mind and demeanor.
- d. The presence or absence of prior planning.
- e. The specific methods employed in committing the act.
- f. The defendant's conduct following the offense.
- g. The defendant's personal background, social environment, and financial situation.
- h. The potential impact of the sentence on the defendant's future life.
- i. The consequences of the crime for the victim or the victim's family.
- j. Whether the victim or the victim's family has granted pardon.
- k. Societal norms and expectations regarding law and justice.

The explanation provided indicates that the severity of the action, the individual's background, the specific circumstances surrounding the crime, and subsequent events can all be factors in deciding whether or not to administer a punishment or alternative measure, with a focus on fairness and compassion.

Judges, in applying fine penalties, must still consider the defendant's capacity by examining their actual income and expenses, but without reducing the specific minimum fine amount, as regulated in Article 80 of Law Number 1 of 2023 concerning the Criminal Code. Additionally, judicial authority to impose a fine as an exclusive sanction for imprisonable offenses of less than five years is codified in Article 71, Paragraph (1) of the Criminal Code. The exercise of this authority is conditional upon the judge's prior consideration of the sentencing aims and guidelines prescribed in Articles 51 to 54. The law explicitly confines the value of such a fine to a band from fifty million rupiah (category III) to five hundred million rupiah (category V). Besides the requirement of a prison threat below 5 (five) years, there are other requirements as regulated in Article 71 Paragraph (2), (3), and (4), namely that the act was without a victim, the victim does not object, or it is not a repetition of the criminal act. However, the requirement of non-repetition is excepted for offenders who are minors (Pakpahan, 2023).

Based on Chapter II letter E number 3 of the Attorney General's Guideline Number 7 of 2022 Concerning Demands and Execution of Fine Penalty Decisions in General Criminal Cases, it is explained that the Public Prosecutor can demand a fine penalty paid in installments with the following requirements:

- a. the defendant admits and regrets their action;
- b. the defendant submits a written request to the Public Prosecutor to be demanded with a fine penalty paid in installments;
- c. the defendant is also demanded with imprisonment (cumulative penalty threat); and
- d. the defendant has deposited a sum of money for the fine payment.

If these requirements are met, the Public Prosecutor submits the demand plan through the hierarchical chain of command to the leading organizational unit / authorized official by attaching a memorandum of opinion and the defendant's request as referred to in number 1 letter b. The period for demanding a fine penalty paid in installments is at most equal to the length of the imprisonment demand.

Besides determining the fine penalty demand, the Public Prosecutor also determines the demand for a substitute fine penalty, calculated proportionally. The substitute fine penalty demand is applied if the convict does not fulfill or pay the fine penalty. Based on Chapter II letter D number 3 of the Attorney General's Guideline Number 7 of 2022 Concerning Demands and Execution of Fine Penalty Decisions in General Criminal Cases, it is explained that the demand for a substitute fine penalty can be in the form of confinement, imprisonment, supervision, social work, or other substitute penalties according to statutory regulations.

Pursuant to Chapter IV of the Attorney General's Guideline Number 7 of 2022, the execution of a court-imposed fine penalty grants the convict a one-month period for payment. An exception is made for cases processed under speedy trial procedures, which require immediate settlement. Furthermore, this stipulated period may be extended by a maximum of one additional month, provided that strong and substantiated reasons are presented. These provisions do not apply if:

- a. legislation stipulates otherwise;
- b. the court decision stipulates that the fine penalty payment can be paid in installments; or
- c. the convict submits a request to pay the fine penalty in installments, if the convict is also sentenced to imprisonment. The payment period for the fine is at most before the convict completes the imprisonment sentence, considering the convict's economic capacity calculated proportionally by the Prosecutor.

In the event that during the execution of the fine penalty decision the convict fails to settle the fine payment within the stipulated period, the Prosecutor, based on their authority as regulated by legislation, executes a seizure of assets, property, wealth, income, or goods of the convict or assets related to the convict to fulfill the fine penalty based on Chapter V number 10 of the Attorney General's Guideline Number 7 of 2022 Concerning Demands and Execution of Fine Penalty Decisions in General Criminal Cases. For this purpose, the Prosecutor conducts an asset trace of the convict.

The implementation of the fine penalty during execution takes into account the financial ability of the convict to pay the fine and the rights of innocent third parties involved. If after the execution seizure the convict still fails to settle the fine payment, the assets, property, wealth, income, or goods of the convict that have been seized are auctioned by the Prosecutor within a maximum of 3 (three) months after the seizure. If the auction proceeds exceed the fine payment obligation, the excess must be returned to the convict/their family or a third party with a valid legal basis. If the enforcement and selling of assets do not generate enough money, or cannot be done at all, the delinquent

fine will be replaced with a different penalty as determined by the court. The offender must not opt for or serve the alternative penalty until their assets have been properly identified and seized.

Based on the exposition above, it is represented that currently the Indonesian Attorney General's Office does not yet have a specific mechanism to support the execution of fine penalties for convicts unable to pay the imposed fine penalty in narcotics crimes. However, the Indonesian Attorney General's Office already has a mechanism to support Law Number 1 of 2023 within the scope of general crimes based on the Attorney General's Guideline Number 7 of 2022 Concerning Demands and Execution of Fine Penalty Decisions in General Criminal Cases.

#### 4. Conclusions

Based on the exposition of the previous results and analysis, several important conclusions can be drawn. The implementation of the basis for judges' considerations in imposing fine penalties in narcotics criminal cases violating Article 112 of Law Number 35 of 2009 concerning Narcotics shows that sentencing grounded in the principle of proportionality has not been fully realized. Instead of functioning as a guiding principle, proportionality often appears to operate merely as the judge's prerogative in determining the final outcome of a case. In various District Court decisions examined in this study, the considerations underlying the imposition of fines are not explicitly explained. Interviews conducted with judges at the Kediri Regency District Court further confirm that their assessments tend to focus solely on the defendant's economic condition, which is frequently deemed insufficient to support the fine penalty. In practice, many convicts are indeed unable to fulfill their fine obligations, as supported by Statement Letters (D-2) from the Kediri Regency Prosecutor's Office and interviews with the convicts themselves, ultimately resulting in substitute imprisonment.

The principle of proportionality requires that law enforcement balance the interests of society, the state, perpetrators, and victims; thus, sentencing should not only implement the law but also ensure that its application is justified and aligned with intended goals. However, the current system reflects significant disparities, where minimum fine penalties are excessively high, even seeming irrational, while substitute imprisonment remains relatively low. This disparity becomes more apparent when judges impose cumulative penalties both imprisonment and fines because failure to pay the fine automatically results in serving the substitute imprisonment. Although the convict is formally required to undergo both penalties, inability to pay effectively shifts the burden toward substitute punishment.

Law Number 1 of 2023 concerning the Criminal Code introduces several mechanisms intended to reduce the persistent issue of unpaid fines being converted into corporal punishment. These include categorizing fines, setting payment deadlines, allowing full or installment payments, enabling confiscation and auction of a convict's assets, and providing substitute penalties such as imprisonment, supervision, or social work. Nonetheless, this law remains ius constituentum and will only take effect in 2026. In the meantime, the Indonesian Attorney General's Office, through the Attorney General's Guideline Number 7 of 2022 concerning Demands and Execution of Fine Penalty Decisions in General Criminal Cases, has already adopted procedures consistent with the upcoming Criminal Code. This guideline grants prosecutors the authority to consider a defendant's financial capacity through asset tracing, to propose installment payments, to determine proportional substitute penalties whether confinement, imprisonment, supervision, or social work to extend payment deadlines, and to carry out asset seizure for convicts who fail to settle their fines within the prescribed period.

For future legal development, several recommendations emerge from this study. Judges issuing decisions are encouraged to align sentencing with its intended purposes, ensuring that high fines imposed on offenders are matched with proportionate substitute imprisonment to promote fairness and quality in judicial outcomes. Judges are also advised to involve public prosecutors in tracing the defendant's assets before determining fines, allowing imposed penalties to more accurately reflect the defendant's actual financial capacity.

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