

CRIMINAL RESPONSIBILITY OF WARDS PARTICIPATING IN NARCOTICS CRIMES: A LEGAL ANALYSIS IN THE CRIMINAL CODE

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Abstract

This study analyzes the criminal liability of prison guards who participate in narcotics crimes based on the perspective of the Indonesian Criminal Code (KUHP 2023). The focus of the study is directed at the legal construction of the concept of participation as regulated in Article 20 of the KUHP 2023, and its application to prison guards who abuse their position in narcotics trafficking in correctional institutions. This study uses a normative legal method with a legislative approach and conceptual analysis, supported by a study of court decisions, including the Palangka Raya District Court Decision Number 286/Pid.Sus/2024/PN Plk. The results of the study indicate that normatively, the KUHP 2023 has provided an adequate legal basis to ensnare prison guards as co-conspirators. This study emphasizes that prison guards who knowingly facilitate narcotics trafficking must be positioned as joint perpetrators, with criminal responsibility equivalent to the main perpetrator and subject to aggravated criminal liability due to abuse of official authority.

Keywords: *Criminal Responsibility, Warden, Narcotics, Participation, Criminal Code*

BACKGROUND

Drug crimes are extraordinary crimes with serious impacts on security, public order, and the future of the nation. Illicit drug trafficking not only involves the general public but also often implicates state officials, including correctional officers and prison guards. The involvement of prison guards in drug networks within prisons raises complex legal issues, as prison guards hold a strategic position as state officials who are supposed to supervise and guide inmates. This involvement does not always involve direct actions such as possessing or distributing narcotics, but also involves participation in supporting or facilitating the crime. For example, wardens may inform dealers about gaps in prison security, leak raid or inspection schedules, provide facilities or means for drug trafficking within the prison, and even destroy or eliminate evidence to protect the main perpetrator. These actions clearly contribute to the ongoing illicit drug trafficking, but they are not yet explicitly regulated in Law Number 35 of 2009 concerning Narcotics. In the Indonesian criminal law system, the concept of participation is generally regulated in the Criminal Code (KUHP 2023), specifically Article 20. This provision emphasizes that a person is punished as a perpetrator if they commit, order, or participate in committing a crime. This formulation demonstrates that criminal law views not only the main perpetrator as the subject of responsibility, but also anyone who consciously and actively cooperates in the commission of a crime.

To determine whether an act constitutes participation as stipulated in the Criminal Code, three basic elements must be analyzed. First, there must be cooperation between two or more individuals in the commission of the crime. This cooperation does not have to be in the form of a written agreement, but can be demonstrated through communication, coordination, or the allocation of roles. For example, a warden communicates with an inmate to arrange the time and method for bringing narcotics into the prison. This coordination demonstrates a purposeful cooperative relationship. Second, there must be a shared will or goal. This means that the perpetrators not only know about the crime but also share the same intention to carry it out. In this context, if the warden knows that the goods being brought in are narcotics and still helps ensure its smooth distribution, he or she has a unity of will with the principal perpetrator. This awareness and inner agreement distinguishes participation from mere negligence or ignorance. Third, there must be an active role in the commission of the crime. This role does not have to be identical to that of the principal perpetrator, but must have a real contribution and a causal relationship to the crime. For example, a guard who intentionally leaks a raid schedule or opens communication access to a convicted drug dealer has directly contributed to the success of drug trafficking. If these three elements are met, the act can be classified

as complicity, so the perpetrator is held accountable as a joint perpetrator, not simply an accessory. Many previous studies have been conducted on the criminal liability of prison guards involved in narcotics trafficking, such as those conducted by Chandra et al. (2023), who empirically examined the role of prison guards in Class II A Prison in Jambi. ¹Rinaldi (2017) also discussed the criminal liability of prison officers in narcotics crimes, but his study focused on the old regulations without integrating aspects of the new Criminal Code. ²Furthermore, Sattu, Salmon, and Tita (2023) focused more on administrative law enforcement against prison officers involved in narcotics trafficking without fully examining the legal aspects of criminal law based on the latest Criminal Code. ³Furthermore, discussions tend to confuse participation and assistance, even though conceptually the two have different legal consequences. Therefore, a study is needed that explicitly focuses on the elements of participation and their application to prison guards as state officials, as well as analyzing the regulatory system for criminal participation and the forms of prison guards' accountability based on Criminal Code No. 1 of 2023.⁴

One case that can be used as a concrete example is the Palangka Raya District Court Decision Number 286/Pid.Sus/2024/PN Plk in the name of defendant Donny Martinus Samad, a warden at the Class IIA Palangka Raya State Detention Center. In this case, the defendant was proven to be involved in an attempt to bring narcotics in the form of crystal methamphetamine into the detention center weighing approximately 4 kilograms. The Public Prosecutor charged the defendant with Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics because he was considered to have committed a criminal conspiracy in the distribution of narcotics. Based on the trial facts, it was revealed that the defendant communicated and agreed with the inmate who acted as the network controller, received a sum of money in return, and actively took and brought narcotics packages into the detention center environment. The panel of judges in their considerations stated that the defendant knew for certain that the goods he was carrying were narcotics, and was aware that his actions were aimed at facilitating the distribution of crystal methamphetamine within the detention center. For his actions, the defendant was sentenced to imprisonment and a fine as stated in the verdict.

When analyzed using the perspective of Law Number 1 of 2023 concerning the Criminal Code, specifically Article 20, the defendant's actions fulfill the element of "participating in a criminal act." Article 20 of the 2023 Criminal Code stipulates that a person is punished as a perpetrator if they participate in a criminal act, which doctrinally contains three main elements: cooperation between two or more people, a common will or goal, and an active role in the commission of the crime. In this case, cooperation is evident from the communication and agreement between the defendant and the inmate. The shared will is evident from the defendant's awareness that his actions were aimed at supporting narcotics distribution. Meanwhile, the active role is reflected in the defendant's actual actions in taking and bringing narcotics into the detention center. Thus, the most appropriate legal construction is to place the defendant as a co-perpetrator, not merely an accomplice. The defendant's position as a warden has significant relevance in assessing criminal responsibility. As a state official with an obligation to maintain security and prevent criminal acts within the detention center, the defendant abused his authority to facilitate the crime. From the perspective of the 2023 Criminal Code, such abuse of office can be considered an aggravating circumstance in sentencing. Therefore, integrating the narcotics offense in Law Number 35 of 2009 concerning Narcotics with the concept of participation in Article 20 of the 2023 Criminal Code provides a more precise and systematic construction in assessing the criminal responsibility of guards who collaborate with inmates in drug trafficking.

In Law Number 1 of 2023 concerning the Criminal Code, provisions regarding participation are clearly formulated in Article 20 of the Criminal Code. Problems begin to arise when this provision is applied to prison guards as state officials in narcotics crime cases. Law Number 35 of 2009 concerning Narcotics does regulate various forms of prohibited acts, such as offering, selling, acting as an intermediary, or conspiring to commit crimes. However, the law does not specifically regulate what happens if the perpetrator is a state official who abuses their position to facilitate the commission of narcotics crimes. This ambiguity is not due to the absence of rules on participation, but rather to the absence of regulations that explicitly qualify the involvement of state officials as a form of abuse of office that impacts the aggravation of criminal penalties in the context of narcotics crimes. As a

¹Chandra, R., Pratama, A., & Putri, S., "The Role of Wardens in Narcotics Distribution in Class II A Prison in Jambi: An Empirical Study," *Journal of Law and Development*, Vol. 53, No. 2, 2023, p. 187.

²Rinaldi, "Criminal Liability of Prison Officers in Narcotics Crimes," *Legal Opinion Journal of Law*, Vol. 5, No. 1, 2017, p. 45.

³Sattu, J., Salmon, R., & Tita, R., "Administrative Law Enforcement Against Prison Employees Involved in Narcotics Distribution," *Ius Quia Iustum Law Journal*, Vol. 30, No. 1, 2023, p. 102.

⁴Law Number 1 of 2023 concerning the Criminal Code, State Gazette of the Republic of Indonesia 2023 Number 2.

result, in law enforcement practice, prison guards are often treated the same as ordinary perpetrators, without special consideration for their position as public officials with a legal obligation to prevent crime. Based on this background, this study specifically aims to examine the legal construction of participation in the 2023 Criminal Code and analyze how criminal liability for prison guards who participate in narcotics crimes should be formulated and implemented. By consistently focusing on the concept of participation, this study is expected to provide conceptual clarity, legal certainty, and academic contributions to strengthening law enforcement against state officials who abuse their positions to commit narcotics crimes.

METHOD

This study uses a normative-juridical approach to analyze the criminal liability of prison guards who participate in narcotics crimes based on the provisions of the 2023 Criminal Code.⁵ The normative-juridical approach was chosen because the main focus of the study is the study of applicable legal norms, particularly in the Criminal Code, as well as legal interpretations related to the assistance and criminal liability of prison guards.⁶ The data sources used are secondary data in the form of laws and regulations, specifically the 2023 Criminal Code and laws related to narcotics. In addition, court decisions and other legal documents related to cases of prison guards' involvement in narcotics crimes are also analyzed to strengthen the scientific and legal foundations.⁷ Data collection techniques are carried out through literature studies by collecting, reading, and analyzing various primary, secondary, and tertiary legal materials related to the research theme.⁸ Data analysis is carried out using qualitative methods, namely exploring and describing legal norms and relevant criminal law theories to answer the research problem formulation.⁹

RESULTS & DISCUSSION

Regulation and Implementation of Warden Participation in Narcotics Crimes from the Perspective of the 2023 Criminal Code

The criminal law system for wardens who participate in narcotics crimes, according to the perspective of the Criminal Code (KUHP), specifically the 2023 Criminal Code as stipulated in Law Number 1 of 2023, is based on the concept of criminal responsibility through the doctrine of participation. Article 20 of the new Criminal Code emphasizes that a person can be punished as a perpetrator of a crime if he or she commits it himself, orders it to be committed, participates in it, or encourages others to commit it. This provision emphasizes that in the Indonesian criminal law system, criminal responsibility is not only imposed on the main perpetrator, but also on anyone who consciously and actively participates in the commission of a crime.

In the context of prison guards, involvement in drug crimes can take the form of actions such as informing dealers of prison security gaps, leaking raid or inspection schedules, providing facilities or resources for drug dealers, or even destroying or eliminating evidence. Based on Article 20 letter c of the 2023 Criminal Code, these actions fall under the category of "participating in a crime" due to the element of awareness and active cooperation with the main perpetrator. Therefore, guards who intentionally provide support or facilitation for drug trafficking can be punished as co-perpetrators, not simply as accomplices.

Normatively, the provisions regarding participation in the Criminal Code (KUHP 2023) have provided a sufficient legal basis to prosecute anyone who cooperates in committing a crime, including prison guards involved in narcotics trafficking. Article 20 of the KUHP 2023 stipulates that a person is punished as a perpetrator if they commit, order, or participate in a crime. This formulation demonstrates that Indonesian criminal law adheres to the doctrine of participation, which allows criminal responsibility to be imposed not only on the main perpetrator, but also on those who knowingly and actively cooperate in the commission of the crime.¹⁰ In criminal law doctrine, participation implies close cooperation and a unity of will between the perpetrators. Moeljatno explained that in participation, each participant must have a spiritual connection and a real contribution to the commission of the crime.¹¹ This means that a person cannot be convicted as a participant if they only know about it or are present at the

⁵ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia, 2006), p. 57.

⁶ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: Rajawali Pers, 2015), p. 14.

⁷ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017), p. 133.

⁸ Bambang Sunggono, *Legal Research Methodology* (Jakarta: PT RajaGrafindo Persada, 2016), p. 112.

⁹ Moleong, Lexy J., *Qualitative Research Methodology* (Bandung: PT Remaja Rosdakarya, 2019), p. 6.

¹⁰ Law Number 1 of 2023 concerning the Criminal Code, Article 20.

¹¹ Moeljatno, *Principles of Criminal Law* (Jakarta: PT Rineka Cipta, 2015), pp. 108–110.

scene without playing an active role. In the context of a prison guard facilitating the entry of narcotics into a correctional institution, these elements can theoretically be fulfilled. For example, when a prison guard coordinates with a drug dealer, knowing that the goods being transported are narcotics, and consciously helps ensure the goods pass inspection, there is cooperation, a shared will, and an active role. In such a situation, the prison guard is no longer merely an assistant, but a co-perpetrator whose criminal responsibility is equal to that of the principal perpetrator. Andi Hamzah emphasized that in participation, each perpetrator is viewed as a full perpetrator, not as an additional perpetrator.¹²

However, although the 2023 Criminal Code is normatively adequate, problems arise at the implementation level. Law Number 35 of 2009 concerning Narcotics primarily defines material acts such as possession, sale, intermediary, or conspiracy. The law does not explicitly regulate the form of involvement by state officials who abuse their position. As a result, when a prison guard acts as a facilitator, debate often arises as to whether he or she qualifies as a principal perpetrator, a co-conspirator, an accessory, or simply subject to administrative sanctions. This is where the normative ambiguity lies. The 2023 Criminal Code does regulate participation in general, but does not specifically address the quality of perpetrators who hold public office. Meanwhile, the Narcotics Law does not explicitly impose criminal penalties on state officials who abuse their authority in the context of participation. Barda Nawawi Arief emphasized that criminal law policy should consider the quality of the perpetrator, especially when the crime is committed by abusing public office, as this concerns the protection of the broader public interest.¹³

Furthermore, there is potential overlap between the concepts of "participation" in the Criminal Code and "conspiracy" in the Narcotics Law. Conspiracy emphasizes an agreement to commit a crime, while participation emphasizes cooperation in carrying out the crime. If not analyzed systematically, law enforcement officials may directly apply the conspiracy article without examining the element of functional cooperation required for participation. This has the potential to lead to inconsistencies in determining the level of culpability and the severity of the sentence.

The provisions for participation in the 2023 Criminal Code are normatively sufficient to prosecute prison guards involved in narcotics crimes. However, in practice, its implementation remains unclear and normatively flawed, particularly regarding the synchronization between the Criminal Code and the Narcotics Law, as well as the lack of clarity regarding the aggravating penalties for state officials who abuse their positions. Therefore, a systematic interpretation and harmonization of the application of both laws are needed to create legal certainty, consistent sentencing, and substantive justice in assessing the criminal accountability of prison guards.

Implementation and Criminal Accountability for Prison Guards Involved in Narcotics Distribution

In criminal law, accountability is not sufficient to simply point to the article violated. What is most important is how an act is properly qualified based on the elements of the crime stipulated in the law. In the context of participation, Article 20 letter (c) of the Criminal Code (KUHP 2023) stipulates that a person is punished as a perpetrator of a crime if they "participate in committing a crime."¹⁴ This means that a person does not have to be the main perpetrator to be held criminally responsible; it is sufficient if they consciously and actively cooperate in the commission of the crime. To determine whether a prison guard is a perpetrator participating in narcotics trafficking, it is necessary to analyze the elements of participation doctrinally. These elements include: (1) cooperation between two or more people; (2) a common will or goal; and (3) an active role in the commission of the crime.

In the case of a warden who leaked the raid schedule to a convicted drug dealer and provided communication access for the transaction, the first element is fulfilled because there is real cooperation between the warden and the inmate in carrying out drug trafficking within the prison. This cooperation can be demonstrated through communication, coordination, or the division of roles. The second element, mutual intent, is evident in the warden's awareness that the information and facilities he provided would be used to facilitate drug trafficking. This intention cannot be considered negligence, because the act of leaking the raid schedule is an active act logically aimed at preventing the disclosure of the crime. In other words, there is a unity of intent between the warden and the main perpetrator. The third element, namely an active role in the commission of the crime, is also fulfilled. Although the warden did not directly hand over the drugs, his contribution has a close causal relationship with the success of drug trafficking. Without the protection, information, and access provided by the warden, drug transactions within the correctional institution have the potential to fail. Thus, the role of the warden is no longer an accessory, but an

¹²Andi Hamzah, *Principles of Criminal Law in Indonesia and Their Implementation* (Jakarta: Sinar Grafika, 2022), pp. 247–249.

¹³Barda Nawawi Arief, *Anthology of Criminal Law Policy* (Jakarta: Kencana, 2018), pp. 45–47.

¹⁴Law Number 1 of 2023 concerning the Criminal Code, Article 20 letter (c).

integral part of the commission of the crime. In terms of criminal liability, the 2023 Criminal Code affirms the principle of "no punishment without fault" as stipulated in Article 37.¹⁵ This means that a person can only be punished if proven to have committed a prohibited act intentionally or negligently. In the case of a warden, the form of fault is generally intentional. When he consciously provides information about a raid, provides communication facilities, or even destroys evidence, he knows and intends the consequences of his actions. This fulfills the element of fault as a basis for criminal liability. Therefore, based on Article 20 letter (c) of the 2023 Criminal Code, wardens who participate in narcotics trafficking are positioned as joint perpetrators, so their criminal liability is equivalent to that of the main perpetrator. The applicable offenses still refer to the provisions of Law Number 35 of 2009 concerning Narcotics, for example Article 114 or Article 112, which are then linked to Article 20 of the 2023 Criminal Code as a form of accomplice.

However, there is one aspect that distinguishes wardens from other perpetrators, namely their position as state officials. Wardens have a legal obligation to maintain security and prevent crime within correctional institutions. When they use their authority and access to facilitate drug trafficking, they constitute an abuse of office. This abuse of office has important implications for sentencing. Article 21 (d) of the 2023 Criminal Code stipulates that the use of power or dignity of office to commit a crime constitutes an aggravating circumstance.¹⁶ This means that in addition to being punished as an accomplice, wardens can also be subject to aggravating circumstances for abusing the public authority inherent in their positions. Legally, their guilt is even more serious because they violate two norms simultaneously: criminal norms and public office norms. Morally, their actions undermine public trust in state institutions.

In addition to criminal liability, prison guards also face administrative consequences. Based on Article 250 of Government Regulation Number 11 of 2017 concerning Civil Servant Management, civil servants convicted of crimes related to their positions can be dishonorably discharged.¹⁷ This provision is reinforced by Regulation of the Minister of Law and Human Rights Number 28 of 2019, which regulates the procedures for imposing disciplinary sanctions and dismissal for criminal acts. Thus, prison guards' liability is dual: general criminal liability and administrative sanctions in the form of dismissal as State Civil Apparatus (ASN). The application and accountability of criminal penalties for prison guards involved in narcotics trafficking are carried out through three main stages: (1) proving the element of participation based on Article 20 of the 2023 Criminal Code; (2) applying narcotics offenses based on the Narcotics Law; and (3) considering abuse of office as a basis for increasing the sentence. This approach provides legal certainty, reflects substantive justice, and maintains the integrity of the correctional system from practices of abuse of authority.

In the case of the warden of the Class IIA Palangka Raya Detention Center, which was decided by the Palangka Raya District Court, the application of the law against the warden was carried out through the provisions of the offense in Law Number 35 of 2009 concerning Narcotics, specifically Article 114 paragraph (2) in conjunction with Article 132 paragraph (1). In this case, the warden was proven to have acted as an intermediary who facilitated the entry of narcotics into the detention center by exploiting the access and authority of his position. The judge considered that the elements of "without rights or against the law", "acting as an intermediary", and cooperation in a criminal conspiracy had been fulfilled based on the facts of the trial. Therefore, the defendant was sentenced to prison because he was legally and convincingly involved in the distribution of narcotics.¹⁸

If analyzed more deeply using a general criminal law perspective, the construction of the warden's actions is in line with Article 20 letter (c) of the Criminal Code (KUHP 2023), which states that a person is punished as a perpetrator if they participate in committing a crime. In this case, there was real cooperation between the warden and the inmate in bringing narcotics into the detention center. Furthermore, there was a shared intention because the warden realized that his actions were aimed at facilitating the distribution of narcotics. The warden's active role is also evident, because without his access and protection, narcotics would not easily enter the detention center environment, which is supposed to be sterile from prohibited goods. Thus, conceptually, the warden can be qualified as a participant, not just a passive assistant.

From a criminal liability perspective, the warden in this case met the principle of culpability because he acted intentionally. He knew and intended the consequences of his actions, namely the successful distribution of narcotics

¹⁵Law Number 1 of 2023 concerning the Criminal Code, Article 37.

¹⁶Law Number 1 of 2023 concerning the Criminal Code, Article 20 letter (d).

¹⁷Government Regulation Number 11 of 2017 concerning Civil Servant Management, Article 250.

¹⁸The decision of the Palangka Raya District Court against a warden at the Palangka Raya Class IIA Prison who was found guilty of violating Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics (decided on August 26, 2025).

within the detention center. This responsibility is full and equal to that of the principal perpetrator because his contribution was integral to the commission of the crime. In fact, his position as a state official actually exacerbated his culpability. He had a legal obligation to maintain security and prevent crime, yet he abused his position and authority to facilitate the crime. The application of the sentence to the warden in this case is not only appropriate under the Narcotics Law but can also be conceptually strengthened through Article 20 of the 2023 Criminal Code concerning complicity. Criminal liability reflects the fact that state officials who abuse their authority are not treated merely as ordinary perpetrators but as joint perpetrators who knowingly contributed to the crime, with strict and proportionate criminal consequences.

CONCLUSION

The criminal liability provisions for prison guards who participate in narcotics crimes demonstrate that the 2023 Criminal Code provides a clearer and more systematic legal basis than before. In the 2023 Criminal Code, a prison guard's involvement can be classified as participation (Article 20) if it meets the elements of participation, such as cooperation between two or more people, a shared intention, and an active role in the commission of the crime. Any form of conscious, active, and collaborative involvement with the main perpetrator, such as leaking raid schedules, providing communication facilities, or protecting narcotics distribution, must be classified as participation. A prison guard's involvement constitutes a form of abuse of office that must always be treated as an aggravating circumstance, as it violates the legal obligations inherent in his position as a state official. Therefore, sentencing a prison guard is not sufficient only using narcotics offenses in conjunction with participation, but must be accompanied by aggravating factors for abuse of authority and administrative sanctions in the form of dishonorable dismissal as a civil servant.

His criminal responsibility is equal to that of the main perpetrator, because the warden's contribution has a direct causal relationship to the commission of the crime. The correct construction of the article is to link narcotics offenses, for example Article 114 paragraph (2) or Article 112 paragraph (2) of Law No. 35 of 2009, with Article 20 letter (c) of the 2023 Criminal Code as a form of inclusion, so that the warden is punished equally with the main perpetrator. The warden's position as a state apparatus makes his actions have a more serious quality of error, because there is an element of abuse of office. This is a circumstance that aggravates the crime as regulated in Article 21 letter (d) of the 2023 Criminal Code, namely if the crime is committed by abusing power, opportunity, or means obtained because of the position. The warden's responsibility is also administrative in nature. Based on Article 250 of PP No. 11 of 2017, civil servants convicted of crimes related to their positions can be dishonorably dismissed. This provision is strengthened by Permenkumham No. 28 of 2019 concerning the imposition of disciplinary sanctions for correctional officers. Prisoners found guilty of narcotics offenses are not only subject to criminal penalties under general criminal law but also to administrative sanctions, including dismissal as civil servants. The combination of criminal penalties under the Narcotics Law in conjunction with Article 20 letter (c) of the 2023 Criminal Code, with the aggravating penalties under Article 21 letter (d) of the 2023 Criminal Code, and administrative sanctions under Article 250 of Government Regulation 11/2017, provides legal certainty, a deterrent effect, and maintains the integrity of the correctional system.

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