

## CHAPTER ONE

### INTRODUCTION

#### A. Background of Research

Indonesia is currently considered as a great market in marketing of international trafficking drugs. One reason of increasing the cases of international trafficking drugs in Indonesia is because of the easier of foreign syndicate who commit an illicit traffick on drugs into the country with their sophisticated modus operandi. Due to globalization, illicit traffick on drug is no longer carried out individually but committed by a lot of people in vast network, neatly, and secretly even on national or international levels.<sup>1</sup>

Indonesia has become the target of international drugs syndicate. The fact is that there are number of foreigners who were caught and prosecuted in Indonesia. They are proof guilty in attempting to smuggle drugs. Some of them have been convicted in death penalties by the court. Based on the data taken by BNN<sup>2</sup> per January 2015, there were 66 persons sentenced to death in

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<sup>1</sup> WA Fricilia, "Perkembangan Jaringan Peredaran Gelap Narkotika" taken from <http://repository.usu.ac.id/bitstream/123456789/37008/6/Chapter%20III-VI.pdf> downloaded on October 3<sup>th</sup>, 2015 at 11:57 a.m

<sup>2</sup> BNN (*Badan Narkotika Nasional*) is Indonesian Non-Government Organization whose task of carrying out government duties in the field of prevention, eradication, abuse, and illicit traffic in psychotropic substances, precursors and other addictive substances except for tobacco and alcohol addictive substances. Further information: <http://www.bnn.go.id/>.

drug cases and they were waiting to be executed; it is known that the number of foreigners who are sentenced to death are 39 people.<sup>3</sup>

The development of offense's quality shows that the territorial boundaries between one or more countries in the world, either on a region or different regions are increasingly disappearing. International community incorporated in United Nations recognizes that the development of criminal acts that crosses territorial border is impacting the difficulty of cooperation among the countries in its prevention and eradication, especially if the criminal act involving foreign nationals.<sup>4</sup>

It causes the problem when the offender is foreigner or it means that the foreigner who commit an international trafficking drugs in Indonesia. The problem is related on which state jurisdiction can be claimed and also a matter of law enforcement itself. Whether it causes the problem into the state concerned or not because when the crime crosses a state national border it is concerning on two or more states territorial whatever on the offenses occurred, offenses impacted, or the preparation or planning that were conducted.

International law, on the other hand, permits a State to exercise its domestic jurisdiction over persons (natural or legal) or things in its territory and, sometimes, abroad. This issue is an aspect of the sovereignty of States,

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<sup>3</sup> Simela Victor Muhamad, 2015, *Diplomasi-Anti Narkoba*, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI, Vol. VII, No. 05/I/P3DI/Maret

<sup>4</sup> Romli Atmasasmita, 2006, *Pengantar Hukum Pidana Internasional*, Bandung, Refika Aditama, p. 5

as reflected in the principles of the equality of States and non-interference in another State's domestic affairs.<sup>5</sup>

The assessment of penalties of foreigner who commit an international trafficking drugs in Indonesia will bring two important problems discussion. First is on the consideration of the applicable law to impose penalties for the foreigners who commit an international trafficking drugs in Indonesia concerning on which state jurisdiction that will be applied between the state based on the perspective of International law and National law.

International criminal law entered the International law approach in the assessment of criminal law which issues a jurisdiction to reach the applicability of criminal law against any crime which crosses a state boundaries or transnational crime or known as extraterritorial jurisdiction. While the aspects of national criminal law refer to the International Conventions on crime.<sup>6</sup> Here the researcher will discuss further which criminal jurisdiction is being applied. Whether the offender will be deported into his/her government of the State origin and receive their punishment there or the offender will be punished directly by Indonesian government.

The second is the implementation of Indonesian law upon the case of Mary Jane. Mary Jane is a *Philipino*, who was sentenced to death in drug cases. She was arrested in Adi Sutjipto Airport, Yogyakarta for smuggling 2.6 kilograms of heroin in 2010. Indonesian government decided to postpone the

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<sup>5</sup> Anthony Aust, 2010, *Handbook of International Law; Second Edition*, New York, Cambridge University Press, p. 42

<sup>6</sup> Romli Atmasasmita, "Hukum Pidana Internasional dan Hukum Hak Asasi Manusia" taken from [http://pusham.uii.ac.id/upl/article/id\\_Hukum%20Pidana%20Internasional.pdf](http://pusham.uii.ac.id/upl/article/id_Hukum%20Pidana%20Internasional.pdf) downloaded on September 15<sup>th</sup>, 2015 at 6:17 a.m

execution of Mary Jane. The reason is the the Philippine government needs the witness testimony of Mary Jane after the alleged recruiter of Mary Jane, Maria Kristina Sergio, surrendered to the Philippine police.<sup>7</sup> In the Philippine's proceeding, Maria Kristina Sergio has confessed that she has recruited Mary Jane into drugs trafficking.<sup>8</sup> In recent days, organizations such as the National Commission for Women and KontraS stated that Mary Jane is a victim of human trafficking and the death sentence against her should be canceled.<sup>9</sup> Besides, the Executive Director of Migrant Care, Anis Hidayah also stated that, "*Based on International Convention for the human trafficking criminal acts or Palermo Protocol, the victim witnesses should not be convicted.*"<sup>10</sup>

This problem is related to the state concerned the Philipinne, because Indonesia has imposed the death penalties to the Mary Jane while on the Philipine's court proceeding assumed that Mary Jane is only a victim of human trafficking. So in this second problem discussion, it will be analyzed further in regard to the implementation of Indonesian law which faces

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<sup>7</sup> Harian Kompas, "Ini Sosok Mary Jane, Terpidana Mati Kasus Narkoba Asal Filipina" taken from <http://nasional.kompas.com/read/2015/04/29/07000051/Ini.Sosok.Mary.Jane.Terpindahan.Mati.Kasus.Narkoba.Asal.Filipina> accessed on October 5<sup>th</sup>, 2015 at 10 a.m

<sup>8</sup> TEMPO.CO Nasional, "Filipina Tetap Yakin Mary Jane Korban Perdagangan Manusia" taken from <http://nasional.tempo.co/read/news/2015/08/27/058695365/filipina-tetap-yakin-mary-jane-korban-perdagangan-manusia> accessed on January, 10<sup>th</sup>, 2016 at 10:11 a.m

<sup>9</sup> UCAN Indonesia, "Petisi online, selamatkan korban human trafficking Mary Jane" taken from <http://indonesia.ucanews.com/2015/04/27/petisi-online-selamatkan-korban-human-trafficking-mary-jane/> accessed on October 5<sup>th</sup>, 2015 at 10:32 a.m

<sup>10</sup> Bilal Ramadhan, "Jika Terbukti Kasus Trafficking, Mary Jane Harus Dilepaskan" taken from <http://www.republika.co.id/berita/nasional/hukum/15/05/06/nxf2i-jika-terbukti-kasus-trafficking-mary-jane-harus-dilepaskan> accessed on October 5<sup>th</sup>, 2015 at 10:35 a.m

international issues of Mary Jane's case that will connect also to the International Convention for the human trafficking criminal acts or Palermo Protocol.

In accordance with those discussion, it needs to be studied further on assessing penalties of foreigners who commit an international trafficking drugs in Indonesia for understanding on what the consideration of the applicable law to impose penalties for the foreigners who commit an international trafficking drugs in Indonesia concerning on state jurisdiction that will be applied based on the perspective of International law or National law and also about the implementation of Indonesian law upon the case of Mary Jane who commit a drugs syndicate on international trafficking drugs in Indonesia.

## **B. Research Problem**

1. What is the consideration of the applicable law to impose penalties to the foreigners who commit an international trafficking drugs in Indonesia?
2. How is the implementation of Indonesian law upon the case of Mary Jane?

## **C. Objectives of Research**

1. To explain the consideration of the applicable law to impose penalties for the foreigners who commit an international trafficking drugs in Indonesia concerning on which state jurisdiction that will be applied between the

state concerned based on the perspective of International law and National law.

2. To understand the implementation of Indonesian law which faces international issues of Mary Jane's case that will be connected also to the International Convention for the human trafficking criminal acts or Palermo Protocol.

#### **D. Benefits of Research**

1. Theoretical Benefits

This research will bring benefit to know the penalties of foreigners who commit an international trafficking drugs in Indonesia by considering which state jurisdiction will be applied also on the implementation of Indonesian law upon the case of Mary Jane by applying related regulation such as International Law; United Nations Convention against Transnational Organized Crime 2000 and The Protocols Thereto, United Nations Convention against Illicit Traffic on Narcotic Drugs and Psychotropic Substances 1988, United Nations Convention on Psychotropic Substances 1971, and United Nations Single Convention on Narcotic Drugs 1961 and National Law; Indonesian Penal Code, Law No. 35 of 2009 about Narcotics, and Law No. 5 of 1997 about Psychotropic.

## 2. Practical Benefits

This research will give better understanding on how International Law and National Law regulate the penalties of foreigners who commit an international trafficking drugs in Indonesia considering which state jurisdiction will be applied and about the implementation of Indonesian law upon the case of Mary Jane.

### **E. Overview of the Chapters**

The research contains of five chapters, namely, Chapter I: Introduction, Chapter II: Literature Review, Chapter III: Research Methods, Chapter IV: Research and Analysis, Chapter V: Conclusion and Suggestion.

Chapter I, consisting of Introduction, is elaborating general matters, such as background, research question, research objective, benefit of research, and overview of the chapters. The background contains about the issue of international trafficking drugs in Indonesia. The researcher delivers some problems dealing with trafficking drugs committed by foreigners. It concerns with issuing jurisdiction between state concerned and a matter of law enforcement itself. Here, the researcher uses the case of Mary Jane by focusing on the implementation of Indonesian law for supporting the thopic research.

The second chapter (Chapter II) is about Literature Review in which researcher will elaborate each variable on this undergraduate thesis. The researcher explains about narcotic drugs and psychotropic substances,

international trafficking drugs, International Convention on drugs, Indonesian regulation on drugs, criminal sanction for foreigner in Indonesia, and about jurisdiction.

Then Chapter III discusses about Research Methode. The researcher describes the research methods used for conducting this undergraduate thesis. The research method consists of type of research, legal materials, method of collecting data and method of data analysis. Type of this research is a normative legal research. The research approach uses statute approach and analytical approach. This research uses material research taken from some literatures consist of primary legal material, secondary legal material, and tertiary legal material. Then, the methods of collecting data in this research are conducted through library research, and analyzed systematically through descriptive qualitative.

The fourth is Chapter IV which elaborates Research and Analysis. The researcher analyzes the consideration of the applicable law to impose penalties of foreigners who commit an International trafficking drugs in Indonesia. The issue considered on which state jurisdiction that will be claimed between the state concerned. The researcher discusses the matter by using International law and National law perspective. Then, the researcher analyzes the implementation of Indonesian law upon the case of Mary Jane. Before that, the researcher should describe the chronology of Mary Jane's case. Legal analysis of Mary Jane's case will be conducted based on the



Provision of International Convention for the Human Trafficking Criminal Acts or Palermo Protocol and based on Indonesian law.

The last is Chapter V, Closing. The author will conclude what has been discover in previous chapter about penalties of foreigner who commit an international trafficking drugs: a case of Mary Jane also will give the suggestion based on what the author expects reffering on Indonesian government facing Mary Jane's case.

The last part is Chapter V, Closing. In this chapter the researcher concludes what have been discovered in previous chapters about the penalties of foreigners who commit an international trafficking drugs: a case of Mary Jane. This chapter is closed by giving some suggestions to Indonesian government concerning Mary Jane's case.