

The Implementation of Rehabilitation against Narcotics Abuser

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Abstract

The purpose of this study is to find out and analyse the implementation of rehabilitation for narcotics abusers, to find out and analyse the obstacles faced by the Public Prosecutor in implementing the rehabilitation of narcotics abusers and their solutions. The research approach method used is the sociological juridical method. The conclusion of this study is that the implementation of rehabilitation for narcotics abusers is carried out entirely by the National Narcotics Agency (BNN). The obstacles faced by the Public Prosecutor in implementing rehabilitation are the absence of juridical qualifications between the types of criminal offenses and violations, the absence of a special rehabilitation centre for narcotics abusers, the lack of rehabilitation technicians and the limited rehabilitation budget owned by the National Narcotics Agency (BNN).

Keywords: Abuser; Narcotics; Rehabilitation; Violence.

1. Introduction

The Indonesian nation and state is a nation that was born "by the grace of Allah the Almighty", and this recognition is officially stated in the highest document of the Preamble to the 1945 Constitution, and Belief in One God is included in Chapter XI concerning Religion Article 29 paragraph (1) of the Constitution NRI 1945. The above statement conveys the understanding and acknowledgment that the existence and origin of the Indonesian nation is due to the intervention and will of God Almighty, not produced by a community agreement from free individuals such as the concept of a liberal state.¹

Criminal sanctions in efforts to eradicate narcotics are steps to provide retaliation for perpetrators for their actions, fostering, or providing protection to the community. Criminal sanctions can also be in the form of placing the perpetrator in a certain place, for example, rehabilitation for narcotics addicts which aims to provide medical and social assistance for recovery from narcotics dependence. The legal basis for giving criminal sanctions for people caught in narcotics cases is Act No. 35 of 2009 concerning Narcotics. Act No. 35 of 2009 concerning narcotics is the basis for law enforcement in order to ensure the availability of drugs for the benefit of science, technology, health and to prevent abuse and illicit trafficking of narcotics.²

Social rehabilitation and medical rehabilitation are considered to be able to replace prison sentences that are no longer appropriate for narcotics abusers, the rehabilitation program is effective because relapse residents (residents who relapse

¹Sri Endah Wahyuningsih. "Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa". *Jurnal Pembaharuan Hukum*. Vol 1 No.1, (2014). p.17, url:<http://jurnal.unissula.ac.id/index.php/PH/article/view/1457/1128> accessed March 15, 2022

²Siswanto S. (2012). *Politik Hukum Dalam Undang-Undang Narkotik*. Jakarta: Rineka Cipta. p.83.

after being rehabilitated) are decreasing from year to year. However, there is still confusion in determining prison terms with rehabilitation for narcotics abusers because Article 127 paragraph 1 of Act No. 35 of 2009 is not in accordance with other articles that recommend rehabilitation. These articles include Article 54 of Act No. 35 of 2009 and Article 103 of Act No. 35 of 2009. This causes narcotics abusers to often get different judges' decisions, some are only in prison, only for rehabilitation, or even both. However,³As a result, prisons in Indonesia are experiencing over capacity due to the accumulation of narcotics abusers who get imprisonment.

Rehabilitation can be used as depenalization in this matter because rehabilitation can fulfill certainty, justice, and legal benefits. In its implementation, it is necessary to affirm Article 127 paragraph 1 of Act No. 35 of 2009 and also the need to view narcotics abusers as victims. This is done so that drug abusers can get the medical and social rehabilitation they need. With this, it is hoped that efforts to eradicate narcotics in Indonesia can be helped.

Article 127 paragraph (3) of Act No. 35 of 2009 concerning Narcotics states: In the event that the abuser as referred to in paragraph (1) can be proven or proven as a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation. The lack of clarity in the qualification of types of offenses in Act No. 35 of 2009 concerning Narcotics is a very complicated problem.⁴ This is because the qualification of the type of offense against narcotics users and dealers should be different, because it relates to the punishment. If the qualifications of narcotics dealers and users are the same, then this can cause problems in law enforcement, such as the problem of not being able to carry out medical rehabilitation and social rehabilitation for narcotics users.

The punishment of narcotics users has not yet been categorized as a criminal offense or violation, besides that there are differences in legal action between narcotics users who have the initiative to report themselves and request rehabilitation from the National Narcotics Agency, and narcotics users who are caught using narcotics for themselves. These differences create difficulties in implementing law enforcement. This problem occurs when law enforcement officers view that all narcotics users are narcotics abusers who are involved in narcotics crimes.⁵ Actually, narcotics abusers are not the same as drug dealers. Narcotics abusers are divided into two different acts of perpetrators, namely narcotics dealers and narcotics users consisting of narcotics addicts and victims of narcotics abusers.

³Saputra, Hera, Abdul Chalim, Munsyarif. (2018). "Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba". *Jurnal Daulat Hukum* Vol. 1. No. 1 (March 2018). p.163 url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/2630/1979> accessed March 16, 2022

⁴Dahlan. (2017). "Penerapan Pidana Terhadap Penyalah Guna Narkotika Untuk Dirinya Sendiri" *Jurnal Pembaharuan Hukum* Vol. IV No. 1 (January - April 2017), p.17 url:<http://jurnal.unissula.ac.id/index.php/PH/article/view/1641/pdf> accessed March 16, 2022

⁵ Andri Winjaya Laksana. (2015). "Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi". *Jurnal Pembaharuan Hukum* Vol 11, No 1 (2015). p. 74, URL:<http://jurnal.unissula.ac.id/index.php/PH/article/view/1417/1090> accessed on March 17, 2022

Narcotics users are people who use narcotics for themselves against the law. Narcotics users in the Narcotics Law consist of addicts and victims of narcotics abusers. Narcotics users can also be linked to narcotics trafficking networks, so law enforcement must be careful in determining which narcotics users are related to narcotics networks and those who are not. So, clarity is needed regarding the form of action of narcotics users who are not involved in narcotics networks in the narcotics legislation in Indonesia. Is the act of a narcotics user worthy of being called a criminal offense or is it just an administrative violation? This study aims to determine and analyze the application of rehabilitation to narcotics abusers,

2. Research Methods

The approach method used in this research is the sociological juridical method, the research specifications are classified in descriptive research with correlative analysis. The types and sources of data used in this research are Primary Data and Secondary Data consisting of Primary Legal Materials, Secondary Legal Materials and Tertiary Legal Materials.

3. Results and Discussion

Looking at the norms of the legislation, the legal basis is the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, Presidential Regulation Number 25 of 2011 concerning the implementation of rehabilitation, Circular Letter of the Supreme Court Number 10 of 2010 concerning the placement of abusers, addicts, and victims of narcotics abusers into medical and social rehabilitation institutions.

The case study comes from the translation in English “A Case Study” or “Case Study”. The word “Case” is taken from the word “Case” which, according to the Oxford Advanced Learner's Dictionary of Current English, is defined as: 1) “instance or example of the occurrence of something, 2) “actual state of affairs; situation”, and 3) “circumstances or special conditions relating to a person or thing”. Sequentially the meanings are: 1). An example of something happening, 2). The actual condition of the state or situation, and 3). A certain environment or condition about a person or thing.⁶

The approach of induction thinking in analyzing narcotics criminal acts in the application of the law in the realm of prosecution. Prosecution area means the Public Prosecutor who is authorized by law to carry out prosecutions and carry out the determination of Judges. Armed with this understanding, the author describes the law enforcement of narcotics crime in a normative or substantive perspective in three main issues of criminal law, namely the first relating to "actions" (criminal offenses, strafbaarfeit, criminal act, actus, reus), the second relating to with "people" (problems of guilt or criminal responsibility, schuld, guilt, criminal responsibility, *mens rea*), the third is related to criminal or sentencing (*straf*, punishment/sentencing, poena). The purpose of this stage is to analyze the legal

⁶Rahardjo, Mudjia. (2017), *Studi Kasus dalam Penelitian Kualitatif: Konsep dan Prosedurnya*. Malang: Universitas Islam Negeri Maulana Malik Ibrahim.

principles used by the Public Prosecutor. As in the indictment article and the indictment article, the indictment is a juridical construction arrangement on the facts of the defendant's actions that are revealed from the results of the investigation by assembling a combination of the facts of the act with the elements of a criminal act in accordance with the provisions of the relevant criminal law⁷. The law charged with the suspect is the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The indictment is an arrangement of juridical construction on the facts of the defendant's actions which are revealed from the results of the investigation by assembling a combination of the facts of the act with the elements of a criminal act in accordance with the provisions of the relevant criminal law. The law charged with the suspect is the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The indictment is an arrangement of juridical construction on the facts of the defendant's actions which are revealed from the results of the investigation by assembling a combination of the facts of the act with the elements of a criminal act in accordance with the provisions of the relevant criminal law. The law charged with the suspect is the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

Based on the fulfillment of the elements in the provisions of Article 127 paragraph (1) letter a of Act No. 35 of 2009 concerning Narcotics, the juridical formulation regulates: Every Narcotics Abuser of Category I for himself shall be sentenced to a maximum imprisonment of 4 (four) year;

Law enforcement in narcotics cases illustrates that the Law Enforcement Apparatus (Public Prosecutor) as a subsystem in the Criminal Justice System (Integrated Criminal Law Enforcement System) has played its role as its function. The Prosecutor's Office operates as a prosecution function by filing indictments and indictments in court. The decision of the Panel of Judges in the narcotics case is to punish the defendant with imprisonment.

In Indonesia, the criminal law reform process is currently underway. Criminal law reform includes reform of formal criminal law, material criminal law and criminal law enforcement. These three areas of law are jointly or integrally improved so that there are no obstacles in their implementation.⁸One of the triggers for changes in criminal law is the advancement of technology and information.⁹

As part of the criminal law policy, the reform of criminal law essentially aims to make criminal law better in accordance with the values that exist in society.¹⁰According to Barda Nawawi Arief, the meaning and nature of criminal law reform can be seen from the point of view of the policy approach and efforts to review and reassess the socio-political, socio-philosophical and socio-cultural

⁷ Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

⁸Mulyadi, Lilik. (2007). *Kapita Selekta Hukum Pidana, Kriminologi dan Victimologi*. Jakarta: Djambatan. p.38

⁹Anwar, Yesmil & Adang (2008), *Pembaharuan Hukum Pidana*. Jakarta: Grafindo. p.1

¹⁰Tongat. (2002). *Pidana Kerja Sosial dalam Pembaharuan Hukum Pidana Indonesia*. Jakarta: Djambatan, p.20

values of Indonesian society that underlie and provide content to the normative and substantive content of criminal law.¹¹

After Act No. 5 of 1997 concerning Narcotics has been running for almost 12 years, in 2009 Act No. 35 of 2009 concerning Narcotics.¹² Problems in Act No. 35 of 2009 concerning Narcotics, one of which is that there is no juridical qualification between the types of crimes and violations. Though both are different substances in law enforcement. It is feared that the absence of juridical qualifications will cause problems or juridical consequences in the practice of law enforcement, both material juridical consequences and formal juridical consequences.¹³ If law enforcement considers that all narcotics users are related to crime, then they will be threatened with severe punishment.

The definition of a user or abuser is a person who uses narcotics without rights and against the law. Narcotics addicts are people who are addicted to narcotics. Then the victim of abuse is a person who accidentally uses narcotics because he is persuaded or seduced or threatened and/or forced by another person. Addicts and victims of narcotics abuse because of persuasion have also used narcotics without rights and against the law. So, the understanding between narcotics users, narcotics addicts, and victims of narcotics abuse is the same, namely people who use narcotics without rights.¹⁴

The legal basis for criminalizing narcotics users for themselves is regulated in Article 127 paragraphs (1), (2). However, to prosecute the crime, the public prosecutor must pay attention to the provisions for assessing whether narcotics users are included in the category of addicts or victims of narcotics abuse. If the user is not proven against both, then the narcotics user is prosecuted for imprisonment in accordance with the results of the assessment at the time of carrying out his criminal prosecution. This has been regulated later with the issuance of the Indonesian Attorney General's Guidelines Number 11 of 2021 concerning Handling of Narcotics Crime Cases and/or Narcotics Precursor Crimes as stated in Chapter IV Criminal Charges number 10:

There are several obstacles faced in implementing rehabilitation for narcotics abusers, namely the limitations of rehabilitation places in each city / district, constraints on human resources for rehabilitation technicians and budget constraints.

4. Conclusion

¹¹Nawawi Arief, Barda. (2008). *nga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana Prenada, p.31-32

¹²Warsito, Dafit Supriyanto Daris. (2018). "Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika". *Jurnal Daulat Hukum* Vol. 1. No. 1(2018). p. 33, URL:<http://jurnal.unissula.ac.id/index.php/RH/article/view/2562/1919> accessed on March 17, 2022

¹³Nawawi Arief, Barda. (2018). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. p.197

¹⁴Article 1 number 13, number 15, and article 54 of Act No. 35 of 2009 concerning Narcotics.

The implementation of rehabilitation for Narcotics abusers is carried out entirely by the National Narcotics Agency (BNN) based on the results of the Judges' Decision which has permanent legal force where the Public Prosecutor acts as the executor of the Judges' Decision. In this case, the decision of the Panel of Judges is handed down based on the submission of demands from the Public Prosecutor on the dossier of the case delegated by the Investigator. The obstacles faced by the Public Prosecutor in implementing rehabilitation for Narcotics abusers are there is no juridical qualification between the types of crimes and violations, there is no special rehabilitation place for narcotics abusers in each Regency and the limited budget owned by the National Narcotics Agency (BNN).

5. References

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