

The Effectiveness of the Prosecution of Narcotics Crime at the Pati District Attorney

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Abstract. *The application of imprisonment for abusers, especially narcotics addicts, is seen as an inappropriate action because imprisonment only gives grief to the perpetrator without curing his dependence on narcotics. This writing aims to analyze the effectiveness of the prosecution of narcotics crimes at the Pati District Attorney's Office in the conception of legal certainty, obstacles to the implementation of prosecutions for narcotics crimes at the Pati District Attorney's Office and their solutions. The approach used in this study is a sociological juridical approach, namely by finding legal realities experienced in the field or an approach that is based on problems regarding juridical matters and existing facts. The research specification used in this research is descriptive analysis. Using descriptive qualitative is one of the types of research that is included in the type of qualitative research. The analytical knife in this paper uses the theory of legal effectiveness and legal certainty. The results of the research show that the effectiveness of the implementation of the prosecution runs well and effectively as long as the Public Prosecutor carries out according to statutory regulations. The effectiveness of the prosecution of narcotics crimes at the Pati District Attorney can run well and effectively if it is carried out in accordance with applicable laws and regulations and pays attention to the implementation carried out by the Attorney General's Office, and the role of the community in helping uncover criminal acts.*

Keywords: *Effectiveness; Narcotics; Prosecution.*

1. Introduction

The State of Indonesia is a constitutional state, which is explained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter

referred to as the 1945 Constitution). Therefore, in the legal order of the state and nation which is based on legal provisions, the government forms and requires several law enforcement agencies such as the police, prosecutors, courts and correctional institutions which play an important role in the law enforcement process. The regulations that are regulated can be classified into civil, administrative, criminal, community, persons or legal entities that commit crimes or violations in the field referred to as criminal acts. Criminal acts in English are called criminal acts or criminal offenses, while in Dutch.¹

One of the crimes that is still rife in Indonesia is the abuse of narcotics. Narcotics are drugs or substances that can calm the nerves, cause unconsciousness, or anesthetize, relieve aches and pains, cause drowsiness or stimulate, can cause stupor effects, and can cause addiction or addiction, and which are stipulated by the Minister of Health as Narcotics.²

In Indonesia, narcotics crimes are indeed very worrying so that they can threaten the security and sovereignty of the country. The crime of psychotropics and narcotics that often occurs in Indonesia is the possession of psychotropics where the act is regulated in Article 62 of Act No. 5 of 1997 concerning Psychotropics and carries a threat of imprisonment for 5 years and a fine of 100 million rupiah. Possession of non-plant narcotics as regulated in Article 112 paragraph (1) of Act No. 35 of 2009 Concerning Narcotics (Narcotics Law) carries a minimum prison sentence of 4 years and a maximum of 12 years with a fine of at least 800 million rupiah and a maximum of 8 billion rupiahs. Meanwhile, the crime of buying and selling Narcotics regulated in Article 114 paragraph (1) of the Narcotics Law,

The role of the Prosecutor's Office as one of the important elements in the SPP occupies a very important role in carrying out its duties and authorities in the context of carrying out prosecutions in cases of narcotics crimes in court hearings. Sociologically, every law enforcer has a position (status) and role (role). Position is a certain position in the social structure that may be high, mediocre or low. This position is actually a container whose contents are certain rights and obligations, where those rights and obligations constitute a role. A person who has a certain position is usually called a role occupant. A right is actually an authority to do or not to do, while an obligation is a burden or duty. A law enforcer and also like other people, usually have several positions and roles at once. Thus that between various positions and roles, conflicts will arise (status conflict and conflict of roles). In fact, there is a gap between the role that should

¹Rodliyah and Salim, 2017, Special Criminal Law, PT Raja Grafindo Persada, Depok, p11.

²Mardani, 2008, Drug Abuse in the Perspective of Islamic Law and National Criminal Law, PT. Raja Grafindo Persada, Jakarta, p. 32

be and the role that is actually carried out or the actual role, so with this there will be a role gap (roledistance).³

2. Research Methods

The approach used in this research is a sociological juridical approach. Sociological juridical, that is by finding the legal reality experienced in the field or an approach that stems from problems regarding juridical matters and existing realities.⁴ Using descriptive qualitative is one of the types of research that is included in the type of qualitative research. The purpose of this research is to reveal events or facts, circumstances, phenomena, variables and circumstances that often occur during research by presenting what actually happened.⁵

3. Result and Discussion

3.1. Implementation of Prosecution of Narcotics Crime at the Pati District Attorney in the Conception of Legal Certainty

The abuse of narcotics at the end of this is felt to be increasing. We can observe from the reports in both print and electronic media that almost every day reports about the arrest of perpetrators of drug abuse by law enforcement officials. The increasing number of narcotics abusers is very worrying for all people.⁶

The application of different crimes is very detrimental and does not reflect a sense of justice because a narcotics user before using narcotics is certain to own or buy it first, and when narcotics have been purchased or owned, before being used they have been arrested by the police or BNN so that automatically the results of a laboratory examination of the urine concerned is negative. Logically, narcotics users are subject to Article 127 with a maximum penalty of 4 years and can even be subject to punishment in the form of medical and social rehabilitation measures.) years, a maximum of 12 (twelve) years plus a minimum fine of IDR 800,000,000,⁷

³Soerjono Soekanto, 2008, Factors Influencing Law Enforcement, PT Raja Grafindo Persada, Jakarta, p. 20.

⁴Hilman Hadi Kusuma, 2012, Methods for Making Working Papers or Legal Studies Thesis, CV. Mandar Maju, Bandung, p. 34

⁵ <https://www.linguistikid.com/2016/09/pengertian-penelitian-dekriptif-kualitatif.html>, accessed on May 11, 2022, at 10.00 WIB.

⁶Andri Winjaya Lakasana, "A Review of Criminal Law Against Narcotics Abusers Using a Rehabilitation System", Journal of Legal Renewal, Vol. II No. 1, 2015, p. 79

⁷Dahlan, "Criminal Application of Narcotics Abusers for Himself", Journal of Legal Renewal, Vol. IV No.1, 2017, p.17

In accordance with the principle of legality, the public prosecutor is obliged to prosecute the perpetrator if there are sufficient reasons to state that the defendant has violated the law. So that the public prosecutor must be careful in carrying out the prosecution's duties because the public prosecutor must pay attention to and prioritize the sense of justice that develops in society. In order for the prosecution to be successful, the public prosecutor must carry out the prosecution in accordance with the procedures contained in the Criminal Procedure Code.

1. Pre Prosecution Stage

Pre-prosecution is the authority of the Public Prosecutor to give instructions to investigators in the framework of completing the case file or pre-prosecution is the actions of the Public Prosecutor to provide instructions in the framework of completing the investigation by investigators.

As for the activities at the pre-prosecution stage in handling cases of criminal acts of narcotics abuse at the Pati District Attorney:

- a. Receipt of the Notification of Commencement of Investigation (SPDP) from the Pati Police investigators to the Pati District Attorney, followed by the appointment of the Public Prosecutor to follow the progress of the investigation into criminal cases (P-16)
- b. Monitoring the progress of the investigation, the public prosecutor requests the results of the investigation, if the case files are not immediately submitted (P-17)
- c. Receipt of case files from investigators (stage 1), followed by research on case files.

From the case dossier research if:

- 1) The research results of the case file are incomplete, so the case file is returned to the investigator to be completed (P-18 = Incomplete Investigation Results) along with instructions for completing the case file (P-19 = Return of Case Files to be Completed).
- 2) The research results of the case dossiers are complete and suitable for trial, so a letter of notification of the complete dossier (P-21) is issued accompanied by an indictment plan (P-29), Minutes of Opinion (P-24), Matrix (P-7) , Minutes of exposure to cases, and list of attendees of exposure to cases.

2. Prosecution Stage

The main task and function of the Prosecutor's Office in the field of Criminal Law is to prosecute defendants who have been charged with committing a crime. There is no other agency that has the authority to prosecute perpetrators of crimes other than the Attorney General's Office of the Republic of Indonesia. Therefore, the face of the Public Prosecutor's Office of the Republic of Indonesia is largely determined by the success of the Public Prosecutor in carrying out his prosecution duties.

As for the activities at the prosecution stage in handling cases of criminal acts of narcotics abuse at the Pati District Attorney:

- a. Acceptance of the transfer of responsibility for the suspect and evidence from the Police investigator to the Attorney General's Office, followed by the appointment of the Public Prosecutor to prosecute or hear cases in Court (P-16.A)
 - b. The Public Prosecutor then conducts research and re-examination of the suspect and his evidence by interviewing and checking the condition of the evidence (BA-4 and BA-18), then if the suspect is detained then the detention period can be extended by the Public Prosecutor for 20 days (T-7)
 - c. The Public Prosecutor submits the case files and evidence to the local District Court for immediate trial (P-33 and P-34)
 - d. The District Court appoints the Panel of Judges to handle the case, then in a letter of determination determines the trial day and extends the detention period (BA-15), then orders the Public Prosecutor to appear before the defendant, evidence and evidence at trial
- After a series of activities to accept the suspect's responsibility and evidence (stage 2) are completed, and based on the opinion of the Public Prosecutor, in cases of criminal acts of narcotics abuse on behalf of the accused, a prosecution can be carried out with the Ordinary Examination Procedure (APB), so that the Public Prosecutor then makes and compiles Indictment (P-29)
 - After the Public Prosecutor has finished drawing up and drafting the Indictment (P-29), the Public Prosecutor then transfers the narcotics abuse crime case on behalf of the defendant to the Pati District Court using the Ordinary Examination Case Transfer Letter (P-31) form along with the Case Files by using the Receipt Form for Transfer of Cases for Ordinary Examination Procedures (P-33), Evidence by using the Evidence Receipt form (P-34), and the Indictment Letter (P-29).

e. The Public Prosecutor within a minimum of 3 days immediately notifies the trial date to the defendants (P-37 and P-38 defendants), then summons the witnesses to appear at the trial (witnesses P-37 and P-38).

From the discussion above, the authors can analyze the results of the research and discussion that the implementation of the prosecution of the perpetrators of the crime of narcotics abuse on behalf of the accused Imam Sofi'I bin Suwardi carried out by the Public Prosecutor at the Pati District Attorney's Office is in accordance with the Criminal Procedure Code as stipulated in the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

The role of the Public Prosecutor at the Pati District Attorney's Office in carrying out the prosecution of the perpetrators of the crime of narcotics abuse as regulated in Article 127 paragraph (1) letter a of Act No. 35 of 2009 concerning Narcotics has been carried out step by step properly, so that law enforcement can be upheld to achieve legal justice.

Prosecution by the Prosecutor's Office can be carried out clearly and with certainty because there are already legal rules governing the handling of criminal cases. This is in line with the theory of legal certainty put forward by Gustav Radbruch. Gustav Radbruch put forward 4 (four) fundamental things related to the meaning of legal certainty, namely:

- a. First, that law is positive, meaning that positive law is legislation.
- b. Second, that law is based on facts, meaning that it is based on reality.
- c. Third, that facts must be formulated in a clear way so as to avoid misunderstandings in meaning, besides being easy to implement.
- d. Fourth, positive law should not be easily changed.

3.2. The Effectiveness of Prosecution of Perpetrators of the Crime of Narcotics Abuse at the Pati District Attorney

Narcotics are substances or drugs that are useful in the field of medicine or health services and the development of science. Narcotics can also cause dependence which is very detrimental if misused or used without strict control and supervision. This will be even more detrimental if it is accompanied by the illicit circulation of narcotics in society which can result in greater danger to the

life and cultural values of the nation which will ultimately weaken national security.⁸

Recently, narcotics and illegal drug crimes have become transnational in nature, carried out with a high modus operandi and sophisticated technology successor of the nation. 1 Drug abuse is closely related to illicit trafficking as part of the world of international crime. The illicit trade mafia supplies drugs so that people become addicted so that the amount of supply increases. The relationship between dealers/dealers and victims makes it difficult for victims to break away from dealers/dealers, it is not uncommon for victims to also be involved in illicit trafficking because of their increased need for and dependence on drugs.⁹

In filing a criminal complaint, the public prosecutor must be based on the facts that were in the trial, both the facts obtained from the statement of the defendant, witnesses and other evidence which are then linked to one another so that convincing facts can be obtained that the crime was indeed committed actually happened and the defendant committed the crime. That it is necessary to know, the provision of punishment is not aimed at retaliation only but to educate the perpetrator of the crime so that he becomes a good human being, who is useful for the nation, the state and for the wider community.

It is possible for the prosecutor as a public prosecutor in the process of prosecuting a crime, will encounter obstacles/obstacles. Regarding the obstacles that arose in the prosecution process, prosecutor Firman Wahyu Octavian, SH said that the obstacles that arose included:

No.	Constraint	Solution
1.	Fulfillment of formal and material requirements in the Minutes of Examination (BAP) made by the investigator.	The public prosecutor must be observant and thorough because it will affect the drafting of an indictment and the success in proving it at trial
2.	New things emerged in the trial.	The public prosecutor must look for new evidence to be submitted

⁸Andita Rizkianto and Gunarto, "The Prosecutor's Role in Handling Narcotics Offenders (Study of Class I Narcotics Abuse Cases Handled by the Semarang City Public Prosecutor's Office)", *Khaira Ummah Law Journal*, Vol. 12 No. 3, 2017, p. 433

⁹Jonner Turnip, et al, "Analysis of the Role of Police Investigators in Handling Drug Crime at the Rembang Central Java Police", *Khaira Ummah Law Journal*, Vol. 13 No. 1, 2018, p. 96

in the evidentiary process at trial

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| 3. | Proof revolves around witness evidence, in this case the average witness is a witness at the time of arrest or a police officer. | Prosecutors are working as much as possible in order to obtain information that sheds light on the cases they are processing |
| 4. | Prosecutors and judges disagree | The Public Prosecutor evaluates the performance that has been carried out, if new evidence is found that is accurate, then the next step is an appeal. |
| 5. | The public prosecution did not find any narcotic substances but the urine test was positive | The Public Prosecutor continues to submit the results of the urine test as documentary evidence. Then the decision is left to the Panel of Judges handling the case. |
| 6. | Types of narcotics have not been included in Act No. 35 of 2009 concerning Narcotics | The Public Prosecutor must always coordinate with related agencies in determining the types of narcotics that have not been included in the narcotics list |
| 7. | The modus operandi is increasingly varied | Public Prosecutors to play an active role in analyzing the workings of each crime of narcotics abuse, which is increasingly varied. |
| 8. | The witness presented was not present at the trial | The Public Prosecutor made more efforts and improved communication with witnesses to be present at trial. |
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Based on the constraints felt by the Public Prosecutor in carrying out the prosecution greatly affect the effectiveness of the implementation of the prosecution. This is as formulated in the theory of legal effectiveness according to Soerjono Soekanto is that the effectiveness or not of a law is determined by 5 (five) factors, namely the legal factor itself (law), law enforcement factors, factors of facilities or facilities that support law enforcement, means and infrastructure, community factors, and cultural factors. If these five factors can be fulfilled then the prosecution will run effectively and as it should.

The effectiveness of the prosecution of narcotics crimes at the Pati District Attorney can run well and effectively if it is carried out in accordance with applicable laws and regulations and pays attention to the implementation carried out by the Attorney General's Office, and the role of the community in helping uncover criminal acts.¹⁰ This is in line with the theory of legal effectiveness according to Soerjono Soekanto which states that whether a law is effective or not is determined by 5 (five) factors, namely:¹¹

a. The legal factor itself (law).

- 1) Existing regulations regarding certain areas of life are quite systematic.
- 2) Existing regulations regarding certain areas of life are quite synchronous, hierarchically and horizontally there is no conflict.
- 3) Qualitatively and quantitatively, the regulations governing certain areas of life are sufficient.
- 4) The issuance of certain regulations is in accordance with existing juridical requirements

b. Law enforcement factors, namely the parties that form and apply the law. In this case, it is the law enforcement officers who determine the effectiveness or not of the performance of the written law. In this connection, it is desirable to have a reliable apparatus so that the apparatus can carry out its duties properly. Reliability in relation here includes professional skills and has a good mentality.

c. Facility factors or facilities that support law enforcement. The facilities and infrastructure in question are infrastructure or facilities that are used as a tool to achieve legal effectiveness. This infrastructure is clearly a part that contributes to

¹⁰The results of the interview with Dr. Firman Wahyu Octavian, SH, MH on October 10, 2022 at the Attorney General's Office in Pati

¹¹Soerjono Soekanto, 2008, Factors Affecting Law Enforcement, PT. Raja Grafindo Persada, Jakarta, p. 8

the smooth running of the tasks of the apparatus at their work place or location. The elements are the presence or absence of infrastructure, sufficient or insufficient infrastructure, good or bad existing infrastructure.

d. Community factors, namely the environment in which the law applies or is applied. There are several elements that measure effectiveness depending on the condition of the community, namely:

- 1) Know and understand the existing rules.
- 2) The reason people do not comply with existing rules.
- 3) Cause people obey the existing rules.
- 4) Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life. This can be seen whether or not there is a treatment of the rules that are made a habit by the community, whether good habits or those that conflict with the rules.

4. Conclusion

The District Court appointed the Panel of Judges to handle the case, then in a decree determining the trial day and extending the detention period (BA-15), then ordered the Public Prosecutor to appear before the defendant, evidence and evidence at trial. The Public Prosecutor within a minimum of 3 days immediately notifies the trial date to the defendants (P-37 and P-38 defendants), then summons the witnesses to appear at the trial (witnesses P-37 and P-38). The effectiveness of the prosecution of narcotics crimes at the Pati District Attorney can run well and effectively if it is carried out in accordance with applicable laws and regulations and pays attention to the implementation carried out by the Attorney General's Office, and the role of the community in helping uncover criminal acts. This is as formulated in the theory of legal effectiveness according to Soerjono Soekanto is that the effectiveness or not of a law is determined by 5 (five) factors, namely the legal factor itself (law), law enforcement factors, factors of facilities or facilities that support law enforcement, means and infrastructure, community factors, and cultural factors.

5. References

Journals:

Andita Rizkianto and Gunarto, "The Prosecutor's Role in Handling Narcotics Offenders (Study of Class I Narcotics Abuse Cases Handled by the Semarang City Public Prosecutor's Office)", *Khaira Ummah Law Journal*, Vol. 12 No. 3, 2017.



Andri Winjaya Lakasana, "A Review of Criminal Law Against Narcotics Abusers Using a Rehabilitation System", *Journal of Legal Renewal*, Vol. II No. 1, 2015.

Dahlan, "Criminal Application of Narcotics Abusers for Himself", *Journal of Legal Renewal*, Vol. IV No.1, 2017.

Jonner Turnip, et al, "Analysis of the Role of Police Investigators in Handling Drug Crime at the Rembang Central Java Police", *Khaira Ummah Law Journal*, Vol. 13 No. 1, 2018.

Books:

Hilman Hadi Kusuma, 2012, *Methods for Making Working Papers or Legal Studies Thesis*, CV. Mandar Maju, Bandung.

Mardani, 2008, *Drug Abuse in the Perspective of Islamic Law and National Criminal Law*, PT. Raja Grafindo Persada, Jakarta.

Rodliyah and Salim, 2017, *Special Criminal Law*, PT Raja Grafindo Persada, Depok.

Soerjono Soekanto, 2008, *Factors Influencing Law Enforcement*, PT Raja Grafindo Persada, Jakarta.

Soerjono Soekanto, 2008, *Factors Affecting Law Enforcement*, PT. Raja Grafindo Persada, Jakarta.

Regulation:

Act No. 35 of 2009 concerning Narcotics.

Criminal Code

The 1945 Constitution of the Republic of Indonesia.

The Criminal Procedure Code