

Rehabilitation Policy for Drugs Abuse in Indonesia

Yusuf Saefudin¹, Hartiwiningsih², Isharyanto³

¹ Doctoral Student, Department of Criminal Law, Faculty of Law, Universitas Muhammadiyah Purwokerto,

² Professor, Department of Criminal Law, Faculty of Law, Universitas Sebelas Maret, ³ Associate Professor,

Department of Constitutional Law, Faculty of Law, Universitas Sebelas Maret

Abstract

Narcotics Abuse and Distribution are the main causes of the continuing number of narcotics addicts in Indonesia. Therefore, the Indonesian government has formulated a policy to deal with narcotics crimes, which will allow the handling of narcotics addicts and non-narcotics addicts. This article discusses the rehabilitation policy for narcotics addicts in Indonesia. This research is a normative juridical research. Designed using the statute approach and conceptual approach. The results of the research show that: first, the issue and distribution of narcotics are narcotics crimes; Second, Indonesia makes a policy regarding the handling of narcotics addicts and non-narcotics addicts; Third, the means to determine someone in narcotics or not is done through an assessment that is governed by an assessment made through a Joint Regulation of the relevant state institution.

Keywords: Indonesian Drugs Policy, Rehabilitation, Drugs Abuse

Introduction

Problems in society that require special attention are the abuse and illicit trafficking of narcotics. Narcotics are used in a limited way in the medical world, but recently there has been a deviation in their function and use. The use of various types of narcotics and other addictive substances is currently increasing, especially among the younger generation.¹

Abuse and illicit trafficking of narcotics is an extraordinary crime. Crimes that are qualified as extraordinary crimes are then the responsibility of the state (orga omnes obligation) to try them, because extraordinary crimes fall into the domain of humanist generic hosts or enemies of all humanity. The Head of the National Narcotics Agency (BNN) in the End of 2016

Press Release said that the abuse and illicit trafficking of narcotics is an extraordinary crime that threatens the world and can be used as one of the weapons in the proxy war to paralyze the power of the nation. Therefore, this crime must be eradicated. Narcotics crime is a crime that has a large and multi-dimensional impact on social, cultural, economic and political as well as the enormity of the negative impact caused.²

The sanction provisions stipulated in Law Number 35 Year 2009 concerning Narcotics adhere to a double track system in the form of criminal sanctions and sanctions for actions. Rehabilitation is a form of action sanction. However, based on empirical facts on the ground it shows that judges tend to impose sanctions on prison addicts. As a result, narcotics addicts languish in the Penitentiary (Lapas) without being given the opportunity to be rehabilitated, so that the implementation of rehabilitation has not been running optimally. At present the number of prisoners in Indonesia reaches 23,779 people who are drug abusers undergoing imprisonment in correctional facilities.³

This condition results in other problems such as the burden of correctional institutions, hereinafter abbreviated as Lapas to over capacity,⁴ Lapas actually

Corresponding Author:

Yusuf Saefudin, S.H. M.H.

Ph.D. Student at Universitas Sebelas Maret;

Departement of Criminal Law

Universitas Muhammadiyah Purwokerto

Purwokerto, Central Java, Indonesia, 53182

Mob. +62 85647946633,

Email. yusuf.saefudin12@ump.ac.id

becomes a safe place for drug abuse and the emergence of other criminal acts caused by drug abuse in Lapas, besides that drug trafficking is also rife in Lapas and even several times drug production is found in Lapas.

Therefore there must be a new paradigm in dealing with drug addicts. In dealing with drug addicts, law enforcement officials must be oriented to sanctions in the form of rehabilitation to save their future. To be able to function the role of judges in deciding or establishing rehabilitation, it needs support from other law enforcement officials. Of course this must be based on mutual understanding and agreement that drug abuse is a serious problem for the nation and the enemy of the nation. The government and law enforcement officials must unite to unite the vision and mission to tackle drug abuse in order to realize the noble ideals of the nation to make a healthy generation of the nation.

Research Method

The research method used in this study is a normative juridical, statutory approach, conceptual approach, and historical approach. The specification of this research is descriptive research. The data used in the form of secondary data with the main material in the form of primary legal material (legislation) and secondary legal material in the form of literature textbooks and scientific journals. The data obtained were analyzed using qualitative analysis.

Result and Discussion

Criminal Policy Against Narcotics Crimes in Indonesia

The problem of overcoming crime in the community cannot be separated from the context of the discussion regarding criminal politics. The meaning or definition of criminal politics itself, according to Sudarto, is a rational effort by the community in tackling crime. Efforts to tackle these crimes can be both penal and nonpenal in nature.⁵

Criminalization policy is a policy in determining an act that was not a criminal offense (not convicted) into a criminal act (an act that can be convicted). So in essence the criminalization policy is part of the criminal policy by using the means of criminal law (penal) so that it is part of the penal policy.⁶

The use of legal remedies, including criminal law, as an effort to overcome social problems, including in the field of law enforcement policies. In addition, because the aim is to achieve public welfare in general, this law enforcement policy is also included in the field of social policy, namely all rational efforts to achieve public welfare. As an issue that is a policy issue, the use of criminal law is not a necessity. There is no absolute in the field of policy, because in essence in the policy problem people are faced with the problem of policy assessment and selection of various alternatives.⁷

Criminal law policy is essentially also a policy of criminal law enforcement. Criminal law enforcement policy is a series of processes that consist of three policy stages. First, the stage of formulative policy or legislative policy stage, namely the stage of formulation / formulation of criminal law. The second stage, the judicial / applicative policy stage, namely the stage of applying criminal law. The third stage, the stage of administrative / executive policy, namely the stage of implementation / execution of criminal law.⁸

M. Cherif Bassiouni called the three stages in terms of: the stage of formulation (the legislative process), the application stage (the judicial process) and the execution stage (the administrative process). The first stage (legislative policy) which is part of the author's current research study is the "in abstracto" law enforcement stage, while the second and third stages (the judicial and executive policy stage) are the "in concreto" law enforcement stage.¹³

The three stages of the criminal law enforcement policy mentioned above contain three legislative powers or authorities that formulate or determine actions as acts that can be convicted (criminal acts) and criminal sanctions, powers / authorities of law application by law enforcement officials, and power / authority to execute or carry out concretely law by the authorized apparatus / agency. These three powers / authority are similar to the term used by Masaki Hamano when describing the scope of jurisdiction.⁹

An integral legislative policy in the field of criminal law enforcement does not mean that it must be set forth in one book of the law. Various laws such as the present (there are material criminal laws inside and outside the Criminal Procedure Code; and there are criminal

implementing laws). Errors / weaknesses at the legislative / formulation policy stage are strategic mistakes that can become obstacles to “in concreto” law enforcement efforts. Strategic policies provide the basis, direction, substance, and limits of authority in law enforcement to be carried out by the judiciary and executive authorities. The strategic position has the consequence that the weakness of the criminal law formulation policy will affect the criminal law enforcement policy and crime prevention policy.¹⁴

Narcotics crime needs special countermeasures. Drug abuse and drugs (drugs) are closely related to illicit trafficking as part of the world of international criminal acts. The illicit mafia supplies drugs so that people are dependent so that the amount of supply increases. Establishing a relationship between the dealer / dealer and the victim makes it difficult for the victim to break away from the dealer / dealer, not infrequently the victim is also involved in illicit trafficking due to the increasing need and their dependence on drugs.¹⁴

Seeing the rampant abuse of narcotics in the community, it is feared that it will hamper national development with material-spiritual aspects. The dangers of drug use have a profound effect on the country, if there is massive drug use in the community, then the Indonesian nation will become a sick nation, if so the country will be fragile from the inside because national security is declining.¹⁰

The use of criminal law as a means of preventing and overcoming the abuse of narcotics is actually a last resort (*ultimum remedium*) given the nature of criminal law that can cause misery or suffering. In the framework of criminal law, Law No. 35 of 2009 concerning Narcotics as a means of punishment in the effort. Some actions related to narcotics abuse have been criminalized as a criminal act with various criminal threats attached to them. However, there is one interesting thing about this issue is the opportunity for law enforcers (judges) to order narcotics addicts to undergo treatment and / or treatment through rehabilitation (for those who are guilty or innocent), and for those who are guilty the treatment period is counted as a period serving a sentence (Article 103). Article 103. The article stipulates that:

(1) Judges examining Narcotics addicts cases can:

a. decide to order the person to undergo medication and / or treatment through rehabilitation if the Narcotics addict is proven guilty of Narcotics crime; or

b. determine to order the person to undergo medication and/or treatment through rehabilitation if the Narcotics addict is not proven guilty of Narcotics crime.

(2) (2) The period of treatment and / or treatment for Narcotics Addicts as referred to in paragraph (1) letter a is calculated as the period of serving sentence.

Judges are given full authority to determine whether an offender is an addict or not, and are given the freedom to make a decision to provide rehabilitation or not. This authority actually began at the time the case reached the level of investigation, but based on this law, only the judge has the right to decide. The problem that arises is who is referred to as an addict.¹¹

Article 1 number 13 determines that what is meant by a narcotics addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically. This definition gives rise to a broad interpretation, because every person who is arrested will always put forward the argument that he is an addict, not a narcotics criminal to get treatment or decision as determined in Article 103. Law enforcement (police, prosecutors, judges) must be observant in seeing things This is so that it is not deceived by narcotics offenders.

Joint Regulation: Determining Instrument for the Narcotics Addict Rehabilitation in Indonesia

The 1988 Vienna Convention produced a political declaration on narcotics disaster management with a balanced approach between the legal approach and the health approach. The Narcotics Law which is in effect when balancing these two aspects. In addition to increasing criminal threats, the Narcotics Act also emphasizes the rehabilitation of addicts and / or narcotics abusers. In order to optimize the efforts of the legal approach and the health approach in a law enforcement process, a Joint Regulation was born in handling drug addicts and drug abusers to be rehabilitated.

This understanding and agreement from the government and law enforcement officers was then realized through a Joint Regulation of the Chairperson of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia Number: 01 / PB / MA / III / 2014, Number: 03 of 2014, Number: 11 of 2014, Number: 03 of 2014, Number: PER-005/A/ JA / 03/2014, Number: 1 of 2014, Number: PERBER/01/ III/2014 / BNN concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse into the Rehabilitation Institution, which is referred to hereinafter referred to as the Joint Regulation. Thus drug addicts no longer lead to sanctions imprisonment but rather lead to rehabilitation, because sanctions for addicts agreed in the form of rehabilitation.

Based on the Joint Regulation, an integrated assessment team was formed at the central, provincial, district/ city levels consisting of a team of doctors and a legal team. The team then carried out legal analysis, medical analysis and psychosocial analysis and made a rehabilitation plan that included how long rehabilitation was needed.

The results of the assessment as a complete case file function as information such as *visum et repertum*. The establishment of this Joint Regulation, among others, aims to be a technical guide in the handling of narcotics addicts as suspects, defendants, or prisoners in undergoing medical rehabilitation and / or social rehabilitation. Besides aiming also that the process of medical rehabilitation and social rehabilitation at the level of investigation, prosecution, and trials can be carried out synergistically and integrated.

Basically the act of using and abusing narcotics is a criminal act, so that the perpetrators should have carried out a legal process as is the case for law enforcement against other criminal cases. But for now law enforcement against addicts does not always use a means of punishment, because there is a need for rehabilitation for addicts who report themselves to certain agencies the recipient must report, as determined in Article 54 of Law

Number 35 Year 2009 concerning Narcotics.

According to Mudzakar¹⁴, shifting the form of punishment from corporal punishment to action punishment is a process of depenalization. Depenalization is due to the development or shift in the value of law in people's lives that affects the development of legal value in the norms of criminal law. The act is still a despicable act, but does not deserve to be subjected to severe criminal sanctions, more precisely subject to minor criminal sanctions or actions.

With the Joint Regulation, the process of investigation of addicts and drug abuse has changed. For addicts and narcotics abuse caught or caught red-handed, an assessment will be carried out by an integrated assessment team consisting of a team of doctors consisting of doctors and psychologists, as well as a legal team consisting of elements of the National Police, BNN, Attorney General and Kemenkumham. The task of the integrated assessment team is to stop the illicit trafficking of narcotics and narcotics abuse and conduct medical, psychosocial assessment and analysis and recommend a therapeutic and rehabilitation plan for drug addicts and drug abuse.

The integrated assessment team also has several authorities which include several things such as requests from investigators to analyze the role of a person who is captured or caught red-handed; the role of someone as a victim of abuse, addicts or narcotics dealers; determine the criteria for the severity of narcotics users according to the type of content consumed; recommend treatment and rehabilitation plans for addicts and victims of narcotics abuse.

Conclusion

Drug addicts must be rehabilitated. Narcotics addicts who report voluntarily, will be directed to the IPWL for an assessment to determine whether or not they can be rehabilitated. Handling of suspected addicts arrested is to conduct an assessment by the integrated assessment team, the case will still be further processed by law. However, in the case of a suspected addict who also doubles as a BNN dealer will not provide an opportunity for assessment.

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