

Legal Policy in the Prevention of Narcotics in Indonesia

Muhammad Yunus Idy¹, Marif¹, Handar Subhandi Bakhtiar²

¹Faculty of Law, Universitas Islam Makassar, Indonesia, ²Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

Abstract

The purpose of law enforcement against criminal acts of narcotics and psychotropic abuse is to improve the health status and human resources of Indonesia. The new law concerning narcotics has two approaches to parties using narcotics illegally or in other words, abusing narcotics. The first approach is to see the drug users as victims so that they must be rehabilitated, and the second approach is to look at drug users as perpetrators of criminal acts. Criminal acts related to narcotics crimes can generally be divided into 3 (three) types, namely supplying which is usually done by producers or importers, The act of distributing narcotics and other illegal drugs carried out by dealers or sellers and then the users or people who abuse the narcotics. Therefore, the efforts to eradicate narcotics abuse must include all those three types of activities or actions. The efforts to eradicate it must start from the upstream part of the supplier. The policy in combating narcotics abuse is a positive legal policy which is not only merely the implementation of normative juridical laws, but also requires a factual juridical approach that is comprehensive and integral.

Keywords: *Legal Policy, Narcotics, Psychotropics.*

Introduction

Each country has a legal system that reflects the history and experience of the country's people in the development of their economic, political, cultural and traditional structures. A good legal system seeks to limit actions that harm the society for the security of the community itself. When people feel insecure, vigilante acts will occur.

The opening of the Constitution of the Republic of Indonesia, the fourth paragraph, states that the state intends to protect the entire Indonesian nation, and the whole of the Indonesian bloodshed, The philosophical juridical statement contains 2 (two) fundamental meanings, namely: one of the principles of the administration of the state (government) which

must be oriented towards the goal of protecting all Indonesian people, and the principle of protecting the state (government) based on equality before the law. The relationship between the principle of protection and the principle of equality before the law in the overall activities of state administration leads to the framework of law enforcement.

Law enforcement¹ is closely related to the legal system and legal objectives, explain that discussing law enforcement can begin by examining the issue of what will be upheld. When talking about law enforcement, it is essentially talking about the enforcement of ideas and concepts which are beneath abstract. Law enforcement is an attempt to turn these ideas into reality and the state must intervene to realize abstract laws by holding various bodies for this purpose. The legal system² which consists of legal substance, legal structure, and legal culture are always directed towards achieving legal objectives, namely: to achieve legal certainty, benefit, and justice. Radbruch³ taught that we must use the principle of priority where the first priority is justice,

Corresponding author:

Handar Subhandi Bakhtiar

Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

Email: handar_subhandi@yahoo.com

benefit, and finally the certainty. Law enforcement which is controlled by the legal system will be able to realize legal objectives when positioned on a balance between the formal law enforcement which tends to pursue legal certainty and the substantial law enforcement which seeks to achieve legal benefit and justice.

Law Enforcement is covering the duty and authority to defend the law (*handhaving van het recht*) against a person or group of people who violate the law or committed an unlawful act or denial of a legal commitment including enforcing the law, namely the act of establishing the law regarding things such as the status of an object or objects. Both in theory and tactics, this traditional understanding is incomplete because of the connotation of law enforcement only by mere repressive actions. Whereas in a broader sense, law enforcement also includes preventive measures even broader than that. Law enforcement in the context of the rule of law/legal state (*rechtstaat*)⁴ has 3 (three) main pillars, namely: (1) the legality of all actions of law enforcement officers including citizens; (2) the guarantees for the recognition, protection, respect and enforcement of human rights, and (3) the implementation of a free, fair and impartial court. The imbalance between the three pillars of law enforcement causes discrimination and arbitrariness, and leads to the destruction of the joints of legal life in the legal state.

The relevance of law enforcement (various legal fields) in the context of a legal state with its main pillars (principle of legality, human rights, the impartial court) requires a good judicial system and is able to accommodate all the sub-systems of the judiciary. One justice system that has direct contact with law enforcement against narcotics crimes is the criminal justice system (hereinafter referred to as SPP)⁵. The discussion in the field of criminal law policy (penal policy) will be oriented towards the efforts to criminal law reform in the future, specifically related to legislative policy against criminal acts of narcotics abuse in Indonesia. The Criminal Justice System is essentially a criminal law enforcement process. therefore it is very closely related to criminal law itself, because criminal

law is basically a criminal law enforcement system *in abstracto* which will be realized in law enforcement *in concreto*. For this reason, this article will discuss about the concept of government policy in the efforts to combat the criminal acts of the narcotics and psychotropic abuse in Indonesia.

Research Methods

This research is a normative-legal research using a statute and conceptual approaches. Those legal material collected are analysed descriptively related to the problems and prescriptively.

Analysis and Discussion

Today's law enforcement has a broader meaning, which not only concerns law enforcement, but also includes preventive measures. This is different from the English term of law enforcement; the Indonesian law enforcement is more repressive. While the preventive form is the provision of information and instructions called law compliance, which means compliance or legal arrangement.

Law enforcement is essentially an effort to enforce legal norms, both in the form of orders and prohibitions. The purpose of law enforcement against criminal acts of narcotics and psychotropic abuse is to improve the health status and human resources of Indonesia. Therefore, in order to realize people's welfare, efforts should be made to improve the field of medicine and health services, among others by seeking the availability of certain types of narcotics which are urgently needed as medicines and preventing and eradicating the danger of abuse and illicit trafficking of narcotics and narcotics precursors. The policy of eradicating crime through the making of criminal laws is an integral part of the public protection policy and is an integral part of social politics. Social politics can be interpreted as all rational efforts to achieve people's welfare and at the same time protect the community.

Pancasila is the source of all legal sources. Therefore, the values contained in Pancasila should be the basis of law enforcement in combating narcotics and psychotropic

crimes, especially the values of justice, legal certainty and the same legal treatment for everyone as contained in Article 27 paragraph (1) of the 1945 Constitution of Republic of Indonesia regulates that all citizens are equal in law and government and are obliged to uphold the law and government with no exception. Whereas the values of humanity as contained in the second principle of Pancasila are closely related to the purpose of punishment. In this case, the punishment imposed on the perpetrators of narcotics and psychotropic crimes must not exclude the values of humanity, in the sense that the punishment continues to uphold human dignity.

Provisions that give the authority to the National Narcotics Agency to carry out arrests that exceed the arrest period in the Criminal Procedure Code states that the Arrest as referred to in Article 17, can be carried out for a maximum of one day, are contrary to the principles of justice and legal certainty as contained in Article 3 of Law No. 35 of 2009 concerning Narcotics, and the same legal treatment for each person.

One of the authorities possessed by the National Narcotics Agency as an investigator is to make arrests for 3 x 24 hours from the date the arrest letter is received by the investigator and can be extended for a maximum of 3 x 24 hours. This is one form of difference in authority between the National Narcotics Agency and other law enforcement officers, namely the police. The authority to arrest done by the police is based on the Criminal Procedure Code. Based on the provisions of Article 19 paragraph (1) of the Criminal Procedure Code that arrests can be made for a maximum of one day. This difference in authority will lead to differences in treatment of suspects who are allegedly involved in narcotics and psychotropic crimes. Suspects in narcotics and psychotropic crimes can only be arrested by the police for a maximum of 1 day, while suspects arrested by the National Narcotics Agency can be held for up to 6 days.

The difference in treatment between the suspects arrested by the National Narcotics Agency and the police will lead to injustice and legal uncertainty.

Therefore, in order to realize justice, legal certainty and equal treatment for every suspect of narcotics crime, efforts need to be made to provide the same basis to the National Narcotics Agency and the police in handling or enforcing the law against narcotics and psychotropic crimes. This effort can be done by formulating a separate regulation that gives the same authority to the police and the National Narcotics Agency, or by revising the narcotics law specifically related to the authority of the two law enforcement agencies.

The regulation concerning the Narcotics and Psychotropic Crime in Indonesia cannot be separated from international policies related to the Criminal Actions of Narcotics and Psychotropic abuse. This international policy is formulated in various kinds of conventions. The UN Conventions on Narcotics and Psychotropics include Single Convention on Narcotic Drugs in 1961 and United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988. Single Convention on Narcotic Drugs in 1961 along with protocols that change the convention namely Protocol Amending the Single Convention on Narcotic Drugs in 1961 was accepted and ratified by Indonesia with the enactment of Law No. 8 of 1976. While the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988 has also been accepted and ratified by Indonesia with the enactment of Law No. 7 of 1997.

The United Nations Single Convention on Narcotic Drugs 1961 is an international agreement that prohibits the production and supply of narcotics and illegal drugs except under licenses for certain purposes such as medical care and research. The convention was aimed at renewing the Paris Convention on July 13, 1931. This Convention included a number of synthetic opioid products found in the last 30 years and also to facilitate the incorporation of new types of narcotics into the agreement. The previous agreement only controlled the production and illicit traffic of opium, coca, and derivatives such as morphine, heroin and cocaine. This 1961 Single Convention was a consolidation of the previous agreements that expanded the coverage by

including marijuana and other drugs which effects were similar to certain types of narcotics.

The international conventions mentioned above become a reference for Indonesia in making regulations relating to narcotics and psychotropic crimes. These regulations are formulated in several forms of legislation, the last of which is Law No. 5 of 1997 concerning Psychotropic and Law No. 35 of 2009 concerning Narcotics.

Based on the new narcotics law, the use of narcotics can be seen from two perspectives. The first is the legal use of narcotics which is used in accordance with the applicable legal provisions. The second is the use of narcotics which is illegal or contrary to the law which is referred to as narcotics abuse. Narcotics can be used legally and not against the law, if it is done for medical purposes and the development of science.

The new law concerning narcotics has two approaches to parties using narcotics illegally or in other words, abusing narcotics. The first approach is to see the drug users as victims so that they must be rehabilitated, and the second approach is to look at drug users as perpetrators of criminal acts. Elucidation to Article 54 of Law No.35 of 2009: What is meant by victims of Narcotics abuse is someone who unintentionally uses Narcotics because he was persuaded, tricked, deceived, forced, and / or threatened to use Narcotics.

Criminal acts related to narcotics crimes can generally be divided into 3 (three) types, namely supplying which is usually done by producers or importers. The act of distributing narcotics and other illegal drugs carried out by dealers or sellers and then the users or people who abuse the narcotics. Therefore, the efforts to eradicate narcotics abuse must include all those three types of activities or actions. The efforts to eradicate it must start from the upstream part of the supplier. The supplier of narcotics or psychotropics can be a producer or importer. The efforts to eradicate upstream parts can be carried out in the form of strict supervision so that the illegal production and importation of narcotics can be prevented. If this can be done well, the illegal

circulation can also be reduced. Furthermore, if the illegal distribution is reduced or even eliminated, then its illegal use can also be reduced or even eliminated.

The focus of efforts to eradicate narcotics and psychotropic crimes should be directed towards the efforts to prevent the occurrence of illegal distribution, not only solely focusing on efforts to eradicate the abuse. If illegal drug trafficking can be handled properly, the distributors will find it difficult to get narcotics to be traded. If they still can get the drug, the price will be very expensive because the supply of the drug is very limited. Thus, illegal users will also find it difficult to obtain narcotics and other illegal drugs because of the limited supply, and the very high prices. The main objective to be achieved in this regard is the creation of a condition that can make it difficult for dealers and illegal users to easily get narcotics and illegal drugs.

The law enforcement in the effort to eradicate criminal acts of narcotics and psychotropics should be more focused on efforts to prevent the occurrence of illegal circulation. This effort can be realized in the form of strict supervision to the producers and importers. Based on the results of the research conducted in 5 (five) sample regions, it is known that the current effort to eradicate narcotics crimes is more focused on the aspect of abuse, not on the efforts to prevent illegal distribution of the drugs. It shows that the law enforcement efforts are directed more at the illegal users. This is difficult to be expected to reduce the occurrence of criminal acts of narcotics abuse because narcotics and other illegal drugs can still be easily obtained. The main factor that causes the crime of narcotics abuse is because narcotics and other illegal drugs can be obtained easily. If the narcotics and illegal drugs cannot be obtained illegally, the use of illegal drugs can also be reduced or even eliminated. Therefore, the efforts to eradicate narcotics crimes must be carried out comprehensively starting from the upstream part, which is the suppliers, either producers or importers, up to the downstream, which is the users.

The policy in eradicating criminal acts of narcotics abuse is a positive legal policy which in essence is not

merely an implementation of normative juridical laws. In addition to the normative juridical approach, criminal law policy also requires a comprehensive and integral factual juridical approach. The law has provided a sufficient legal umbrella and has regulated the suppliers, importers or producers, and the users, but at the level of implementation, law enforcement efforts still need to be improved. This is more related to the performance of the law enforcement officers themselves.

Based on the description in the previous sections, it can be understood that the fundamental problem faced in eradicating criminal acts of narcotics abuse is the lack of legal factors, namely legislation in anticipating the development of the modus operandi of narcotics crime and because of internal systems and performance law enforcement itself. As stated by Friedman, there are 3 (three) main components in the legal system that are effectively related and affecting each other in the law enforcement efforts. The three components are the factors of law (the substance), the structure, and the legal culture. If the legal factors are weak but the law enforcement officers are consistent and firm and supported by adequate management and facilities, then supported by a conducive community legal culture, the performance of law enforcement will take place effectively. However, if the legal arrangements are good but the law enforcement agencies are not firm and inconsistent; the facilities and management are disproportionate; the society is not conducive, the performance of law enforcement becomes ineffective.

Based on the provisions of Article 4 of Law No. 35 of 2009 concerning Narcotics, it can be understood that the policies related to narcotics and psychotropic crimes are inseparable from the objectives of the law, namely: (a) guarantee the availability of Narcotics for the benefit of health services and / or the development of science and technology; (b) prevent, protect and save the Indonesian people from narcotics abuse; (c) eradicate narcotics and narcotics precursors illicit traffic and; (d) guarantee the regulation of medical and social rehabilitation efforts for abusers and drug addicts. Therefore, the formulation of the offense in the narcotics law covers planting,

production, distribution, traffic, circulation to the users, including personal use.

Even the results obtained from criminal acts of narcotics and psychotropic abuse, whether in the form of movable or immovable assets, tangible or intangible assets as well as goods or equipment used to carry out narcotics and narcotics precursors crimes are confiscated for the state. This is in accordance with the provisions of Article 136 of Law No. 35 of 2009 concerning Narcotics.

The policy of eradicating crime by using penal means is a form of repressive action that focuses on prosecution after the crime has occurred, namely the imposition of criminal sanctions. The success of the efforts to eradicate psychotropic crime is largely determined by the existence of good integration and cooperation between law enforcement officials both the police and the National Narcotics Agency. This integration will ultimately lead to harmony and balance of life in the society.

Law enforcers have made serious efforts to eradicate criminal acts of narcotics and psychotropic abuse. There have been many parties who have been arrested and have even been convicted, ranging from illegal users, dealers, importers, to the producers. However, other facts show that the level of abuse of narcotics and psychotropic substances in Indonesia continues to increase from year to year. This shows that law enforcement efforts carried out by the law enforcement officials in eradicating criminal acts of narcotics and psychotropic abuse are still less effective.

Conclusion

The policy in eradicating criminal acts of narcotics abuse is a positive legal policy which in essence is not merely the implementation of normative juridical laws. In addition to the normative juridical approach, criminal law policy also requires a comprehensive and integral factual juridical approach. The new narcotics law also has two approaches to the parties using narcotics illegally or in other words, abusing narcotics. The first approach is to see the drug users as victims so that they

must be rehabilitated and the second approach is to see the drug users as perpetrators of criminal acts. Criminal acts related to narcotics crimes can generally be divided into 3 (three) types, namely supplying narcotics and other illegal drugs, which is usually done by producers or importers; distributing the drugs, which is carried out by dealers or sellers; and using the drugs or abusing the drugs. Therefore, efforts to eradicate it must also include all three types of activities or actions.

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