

Rehabilitation System as Legal Protection Efforts for Victims of Narcotics Crime

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ABSTRACT

Drug abuse has become a problem in the world. For addicts, the government has sought to reduce the adverse effects of drug use by providing rehabilitation facilities. Rehabilitation aims for victims of drug users to recover, be productive, and become the nation's successors in the future. Meanwhile, the position of a user in the Narcotics Law is still as a perpetrator. So, the user does not get the maximum care and recovery because he has to stay in prison. This study discusses the legislation regarding the legal protection of narcotics crimes victims and the law enforcement efforts in protecting victims of narcotics crimes in Indonesia. The research method in this study is normative juridical. This research is an analytical descriptive. The results of the study show that the effectiveness of regulations regarding rehabilitation by victims of narcotics crimes does not always go well. The interpretation of law enforcement officers regarding rehabilitation is not the same so that there are multiple interpretations. Some law enforcement officers make victims as perpetrators of crime. Therefore in the future, law enforcement will prioritize the rights of victims of narcotics crimes for legal certainty and legal justice.

Keywords: rehabilitation, victims, narcotics

1. INTRODUCTION

Narcotics have become popular in society, but there are still a few people who understand the meaning of drugs. Narcotics is a drug which when entered into the human body, either orally (through the mouth), or inhaled or through a syringe will affect the brain workings or central nervous system. Narcotics can make the user feel addicted [1]. Drug abuse and illicit trafficking have significant dynamics. Nowadays, the problem of drugs is not only a national issue but also international. The threat of drug abuse and awareness has been so alarming [2]. The 2011 National Narcotics Agency survey on drug abuse in Indonesia ranged from 9.6 million to 12.9 million people or 5.9% of the population aged 10-59 years in Indonesia had tried using drugs at least once in their lives (ever used). Thus, about one out of 17 people in Indonesia aged 10-59 years have used drugs before the survey was conducted. Based on that number, there are around 3.7 million to 4.7 million people (2.2%) who were still using drugs in the past year since the survey. In other words, 1 out of 45 people is still using drugs. Thus, an increase in the prevalence of drug abuse in recent years is from 1.9% to 2.2% [3]. Some of the side effects of drug abuse on body organs include HIV, hepatitis, heart and blood vessel disease, respiratory disorders, stomachache, muscle

paralysis, kidney failure, neurological disorders, mental disorders, hormone disorders, cancer, pregnancy disorders [4]. All types of drugs have the potential to change overall bodily functions. Based on its effects on users, drugs are classified as follows:

1. A depressant is an effect of consuming drugs that can suppress the central nervous system and cause mild depression and can make users feel calm even make them sleep. Types of depressants are morphine, opium, heroin, codeine, pentazocine, and naloxone.
2. Stimulant is the effect of consuming drugs that can cause some organs such as the heart and brain work faster than usual, resulting in someone who more powerful for a moment, and tends to make him more happy for a moment. Examples of stimulants are caffeine, ephedrine, nicotine, cocaine, amphetamine, and ecstasy.
3. Hallucinogens are the effects of drugs consumption that can make someone hallucinates. For examples: datura, ketamine, cocaine, LSD, PCP, and canibas.
4. Addiction is the effect of consuming drugs that can cause a person addicted to certain substances they contain and can also cause a person to be passive. For examples: marijuana, heroin, and putaw [5].

According to Haryanto, there are several characteristics of drugs abuser:

1. The majority of abusers is the youth group. This group of age is mentally unstable, easily influenced by the environment, and is looking for self-identity and happy to involve in a group.
2. The people who have a "high risk" personality are easily affected. For instance, those who are childish and impatient as well as those with low tolerance towards frustration, love to take risks, a closed personality, low self-confidence, and low self-esteem, and lack of religiosity.
3. The reasons for abusing are physically want to relax, be active, relieve the pain, become stronger, bolder, more manly and so on. While emotionally the drugs are needed to escape, reduce tension, change moods, rebel, revenge, want to be alone. Intellectually, they are needed since the people are bored with routine, curious, trial and error. Socially, because people need to be recognized, group pressure, and solidarity, so they are not considered different. Based on religion is because of a religious and customary requirement.
4. Family characteristics vary greatly, ranging from workers, employees, employers, officials to conglomerates. The reason is because of communication patterns, educational patterns, and lack of psychological needs. Children have basic human rights, while protection of children's rights is not too much thought in general. The protection efforts themselves are violated by the state and various places in the country, adults, even their own parents [6].
5. Pharmacological effects of drugs abuse are such as ecstasy, hallucinogenic effects, and others.
6. The social value of drug abuse is to give freedom, and modernity, even though it is artificial since when the influence of the drug disappears, it returns to normal.
7. The influence of the group, the first introduction to narcotics came from group friends. The influence of friends can create attachment and togetherness, so they are difficult to escape [7].

The number of people involved in drugs increases so that it requires serious attention and a shared commitment to prevent and eliminate them. One solution to deal with narcotics abuse is criminal sanctions in the form of prison. Prison sanctions for narcotics users are not effective enough, as evidenced by the increasing number of narcotics users. In an effort to tackle the problem of drug abuse and illicit trafficking, the government has ratified the United Nations Convention on the Eradication of the Dark Circulation of Narcotics and Psychotropic in 1988 (Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988) and the 1971 Psychotropic Convention (Convention on Psychotropic Substances 1971)) by issuing Law No. 7 of 1997 concerning Ratification of the United Nations Convention Regarding the Eradication of the Illicit Narcotics and Psychotropic Circulation and Law No. 8 of 1996 concerning Ratification of the Psychotropic Convention. The government issued Law Number 5 of 1997 concerning

Psychotropic and Law Number 22 of 1997 concerning Narcotics as a substitute for the old Law namely Law Number 9 of 1976 concerning Narcotics. Furthermore, Law Number 35 of 2009 concerning Narcotics has given different treatment for narcotics abuse offenders. Besides that, it can be said that the narcotics addict is a victim, so he gets rehabilitation. Law Number 35 the Year 2009 concerning Narcotics also contains article 54, which regulates rehabilitation. Article 54 says Narcotics addict and narcotics abuse victims must undergo medical rehabilitation and social rehabilitation. Narcotics laws to prevent and deal with narcotics crimes are good efforts [8, 9]. However, the role of the family is an appropriate mean to be able to prevent someone from becoming a user or victim of narcotics [11].

2. RESEARCH METHOD

The type of research is normative. Normative legal research uses secondary data sources or examined existing library materials. The research is descriptive-analytical. Processing, analysis, and construction of data on normative legal research were carried out by analyzing legal rules. The construction process was carried out by inserting articles into the legal system category. The logic of deductive thinking was used to conclude the results. The deductive method was conducted by reading, interpreting and comparing the relationships of concepts and related rules.

3. RESULTS AND DISCUSSION

3.1. *Regulations Regarding Law Protection for Victims of Narcotic Crime in Indonesia*

Law enforcement must be conducted as well as possible. The realization of law enforcement always has obstacles in practice such as obstacles from the authorities, regulations, facilities, society, and culture [12]. Law enforcement officials must carry out law orders in preventing and taking action against public crimes. So, there is harmony between the law and law enforcement in carrying out the law. The regulation of criminal sanctions against drug users for themselves is found in Article 127 of Law Number 35 of 2009 regarding Narcotics. Using drugs for oneself implies that the use occurs without the supervision of a doctor. Drug use without medical supervision is against the law which means that as long as the legislation still includes, the threat of imprisonment for drug users, even though for his self will always there. However, Law Number 35 of 2009 concerning Narcotics also regulates rehabilitation for users or addicts in Article 54, Article 55, Article 56, Article 57, Article 58, and Article 103. Law Number 35 of 2009 concerning Narcotics also provides a legal basis for the possibility of non-inclusion of narcotics users as stipulated in Article 128 paragraph (2) and (3) of Law Number 35 of 2009

concerning Narcotics which provides guarantees with the following criteria:

1. Narcotics addicts who are not old enough and their parents or guardians have reported as in Article 55 paragraph (1) are not prosecuted.
2. Narcotics addicts who are old enough as in Article 55 paragraph (2) and undergoing medical rehabilitation for 2 (two) treatments of doctors in the hospital are not prosecuted.

From these provisions, it is clear that drug users are not convicted, because drug users, especially those in the stage of addiction are victims who should receive rehabilitation, both medically and socially. Article 54 of Law Number 35 of 2009, regarding Narcotics in line with the Supreme Court Letter (SEMA) Number 4 of 2010 concerning the Placement of Abuse, Victims of Abuse, and Narcotics Addicts into Medical and Social Rehabilitation Institutions. Item 3 SEMA Number 4 of 2010 stated that judges impose conviction in the form of an order to take legal action as rehabilitation of the defendant; the Panel of Judges must clearly and designate the nearest rehabilitation location in their decision. This is based on the consideration that:

1. Most prisoners and detainees of narcotics cases fall into the category of users or even victims. From the health aspect of the real culprit those who suffer from illness, therefore imprisoning the person is not the right step because it has ignored the importance of care and treatment.
2. Prison conditions that do not support can further worsen the mental and health conditions of narcotics prisoners. When the judge examines drug cases with the specifications of the amount of evidence as mentioned in the provisions of SEMA Number 4 of 2010, the judge should not hesitate to decide immediately. Besides as an effort to carry out rehabilitation, the Indonesian government has the duty and responsibility in organizing health efforts for the people. Private parties conducting rehabilitation must follow the standardization guidelines issued by the Minister of Health through KEPMENKES 996/MENKES/SK/VIII/2002 concerning Guidelines for Providing Drug Abuse and Dependency Rehabilitation Service Facilities and Social Minister Regulation Number 56/HUK/2009 concerning Social Services and Rehabilitation Victims of Narcotics, Psychotropic and Other Addictive Substance Abuse. Other legal provisions in placing victims of drug users in medical and social rehabilitation are also stated in Government Regulation Number 25 of 2011 concerning the Implementation of Narcotics Addicts Obligatory Implementation. Based on these government regulations, there is a guarantee for drug addicts to get treatment and care through medical rehabilitation and social rehabilitation [14].

3.2. Legal Enforcement Efforts in Protecting Victims of National Drugs in Indonesia

Law Number 2 of 2002 concerning the Republic of Indonesia National Police stated that the police is a state tool that plays a role in maintaining public order and security, enforcing the law, and providing shelter and services to the public. Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police also regulated the main tasks of the Indonesian National Police such as:

1. Maintaining public security and order
2. Upholding the law
3. Providing protection and service to the community

When carrying out their duties, the Indonesian National Police, as stated in article 15 (c) of Law Number 2 of 2002 concerning the Indonesian National Police are the authority of the police to prevent and cope with the growth of community ills. The police have almost the same duties throughout the world. The points of similarities or common thread include:

1. The main tasks are almost the same as enforcing the law and maintaining security and public order.
2. Police actions for prevention and enforcement.
3. As law enforcers of the process of implementing the Criminal Justice System (CJS), the police have the potential to abuse the authority entrusted to them. To be able to behave politely and ethically the police must be consistent.
4. In preventive actions, the police have the right to take discretionary [13].

Parties involved in combating narcotics abuse are as follows:

- a) National Narcotics Agency (*BNN*)

In combating narcotics abuse, *BNN* has the duties and authorities regulated in Act Number 35 of 2009 concerning Narcotics contained in Article 70, while the duties of *BNN* are to:

1. Develop and implement national policies regarding the prevention and eradication of narcotics abuse, illicit trafficking, and narcotics precursors.
2. Prevent and eradicate abuse, illicit trafficking of narcotics and narcotics precursors.
3. Coordinate with the head of the police of the Republic of Indonesia in the prevention and eradication of narcotics abuse, illicit trafficking and narcotics precursors.
4. Improve the ability of medical rehabilitation institutions and social rehabilitation of narcotics addicts, both organized by the government and the community.
5. Empower the public in preventing narcotics abuse, illicit trafficking and drugs precursor
6. Monitor, direct and improve community activities in preventing narcotics abuse, illicit trafficking and narcotics precursors.

7. Establish bilateral and multilateral cooperation, both regional and international, to prevent and eradicate illicit trafficking of narcotics and narcotics precursors.
8. Develop narcotics laboratories and narcotics precursors.
9. Carry out administrative investigations on cases of narcotics abuse, illicit trafficking and narcotics precursors.
10. Make an annual report on the implementation of duties and authority.

b) Civil Servant Investigator (*PPNS*)

In national legislation, there are several laws that can be used as a legal basis to give authority to *PPNS* to conduct investigations including:

1. Article 6 paragraph (1) of the Criminal Procedure Code; Investigators are state police officers of the Republic of Indonesia, certain civil servant officials who are given special authority by law.
2. Article 1 number 11 of Act Number 2 of 2002 concerning the Indonesian National Police, the Indonesian National Police; *PPNS* is a specific civil servant official who based on the statutory regulations is appointed as an investigator and has the authority to conduct criminal investigations within the scope of the law on which each legal basis is based. Certain *PPNS* whose scope of duties and responsibilities are in the field of narcotics and narcotics precursors are the Ministry of Health, the Ministry of Finance, in this case, the Directorate General of Customs and Excise, and the Drug and Food Control Agency. *BNN* institution was formed in Indonesia with the consideration that the existing institutions have been felt unable to eradicate or at least suppress the growth rate of acts of abuse, drug smuggling because they have not functioned effectively and efficiently in combating narcotics crime. Law enforcement to eradicate narcotics crimes committed conventionally has proven to be experiencing various obstacles [14].

4. CONCLUSION

Drug users are victims of crime, not criminals who must be physically and spiritually experience rehabilitation. Personal control and social control must be strengthened as a fortress that must be had in efforts to eradicate drugs. On the other hand, law enforcement officials must also be responsive to the unrest that arises in the community and begin to realize the rule of law, to foster public confidence regarding their seriousness in handling this problem.

REFERENCES

- [1] Ahmad Syafii, 2009, Penyalahgunaan Narkoba Dalam Perspektif Hukum Positif Dan Hukum Islam, *Jurnal Studia Islamika*, Vol.6, No.2
- [2] Andri Winjaya Laksana, 2015, Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahgunaan Narkotika Dengan Sistem Rehabilitasi, *Jurnal Pembaharuan Hukum*, Vol.2, No.1
- [3] Bambang Hariyono, 2009, Kebijakan Formulasi Sanksi Pidana Terhadap Pelaku Tindak Pidana Narkoba Di Indonesia, *Diponegoro University, Institutional Repository (UNDIP-IR)*
- [4] Dewi Iriani, 2015, Kejahatan Narkoba: Penanggulangan, Pencegahan, Dan Penerapan Hukuman Mati, *Jurnal Islamica*, Vol.12, No.12
- [5] Joyo nur suryanto gono, 2011, narkoba: bahaya penyalahgunaan dan pencegahan, *Forum Majalah pengembangan ilmu social*, Vol.39, No.2
- [6] F.Aras,The criminal Responsibility on the Under Age Children Exploitation in Indonesia, , *Advances in Social Science,Education and Humanities Research*,2018,Vol192,79-82
- [7] Maryatul Kibtyah, 2015, Pendekatan Bimbingan Dan Konseling Bagi Korban Pengguna Narkoba, *Jurnal Ilmu Dakwah*, Vol. 35, No.1
- [8] Nuni Nurhidayati Dan Duta Nurdibyanandaru, 2015, Hubungan Antara Dukungan Sosial Keluarga Dengan *Self Esteem* Pada Penyalahgunaan Narkoba Yang Direhabilitasi, *Jurnal Psikologi Klinis Dan Kesehatan Mental*, Vol.3, No.2
- [9] Parasian Simanungkalit, 2012, Model Pemidanaan Yang Ideal Bagi Korban Pengguna Narkoba Di Indonesia, *Yustisia Jurnal Hukum*, Vol.1, No.3
- [10] Paul Ricardo, 2010, Upaya Penanggulangan Penyalahgunaan Narkoba Oleh Kepolisian (Studi Kasus Satuan Narkoba Polres Metro Bekasi), *Jurnal Kriminologi Indonesia*, Vol. 6, No.3
- [11] Puteri Hikmawati, 2011, Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika, *Jurnal Ilmiah Hukum*, Vol.2, No.2
- [12] Ucok Hasian Refeiate, Penyalahgunaan Narkoba ,*Jurnal Health & Sport*, Vol.2, No.1
- [13] Wasi Wisnu Setyawan Adyka Putra Dan Pudji Astuti, 2017, Upaya Badan Narkotika Nasional Provinsi (BNNP) Jawa Timur Dalam Memberantas Penyalahgunaan Narkoba Di Kota Surabaya, *Jurnal Hukum Novum*, Vol.2, No.2
- [14] Zainab Ompu Jainah, 2011, Membangun Budaya Hukum Masyarakat Penegak Hukum Dalam Pemberantasan Tindak Pidana Narkotika (Studi Tentang Lahirnya Badan Narkotika Nasional), *Jurnal Keadilan Progresif*, Vol.2, No.2