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# Norm Reformulation and Reconstruction of Narcotics Abuser in Indonesia Criminal Justice System

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***ABSTRACT--Mistakes in understanding a legal concept will lead to errors in making an interpretation, so that it will lead to mistakes in making a decision. However, misunderstanding of the concept of law is very dependent on mistakes in understanding the nature of an object in the form of written legal norms. As is the case in Law Number 35 Year 2009 concerning Narcotics, relating to the concept of narcotics abusers and the concept of narcotics victims with the obligation to implement rehabilitation in Article 127 paragraph (3) of Law no. 35/2009. This study aims to show the location of the errors in the formulation of these two concepts and to reconstruct norms that are aligned with the philosophical foundation of Law No. 35/2009. This study uses a normative juridical method by using secondary data consisting of three legal materials, namely primary, secondary and tertiary. This study also uses the method of philosophical approaches, conceptual approaches, and case approaches.***

***Keywords: narcotics, abuse, victim, antinomy norma, reconstruction***

## I. INTRODUCTION

Legal studies contributes to the discovery of law, and thus also to the formation of law. One discovers, determines, what in a concrete situation to be elaborated further must be seen as an applicable law that can be applied, and so people also carry out activities in a further determination and formulation, of the law.[1] In an attemp of making a legal discovery, one cannot distinguish between application and interpretation.

An activity in applying the law means establishing what is the legal norm for concrete events. Where basically is formulating a hypothesis about the meaning of a text.

To this, Aulis Aarnio explained that the science of law is the science of meanings/interpretation.[2] Therefore, the application of law in the judicial process is related to the problem of the legal paradigm, and a legal decision itself is a set of processes of interpretation and application based on authoritative / juridical texts,[3] or positive law. Whereas Meuwissen uses another term to describe "legal discovery" which is "rechtsbeoefening" or legal development, which explains that legal discovery or rechtsbeoefening is human activity regarding the existence and the entrance of force of law into society, which includes activities forming, implementing, finding, interpreting systematically , study and to teach the law. Whereas legal development itself is further divided into practical legal performance and theoretical legal performance.

Practical legal performance includes activities relating to realizing the law in daily life, while the theoretical legal performance includes the activities of legal formation, legal discovery, and legal aid.[4]

In general, people can define legal discovery as a reaction to problematic situations (problematical) that are described by people in the terminology of law. Legal discoveries, in this case, relate to legal questions (rechtsvragen), legal conflicts or juridical disputes. The discovery of the law is directed at providing answers to questions about the law brought about by concrete events. Related to it, questions are asked about explanations (interpretation) and the application of legal rules, and questions about the meaning of the facts to which the law must be applied. Legal discovery, with regard to finding solutions and answers based on legal norms, which are more or less precise (carefully detailed), suggest how certain types of problematic situations should be sanctioned.[5]

Why the positive law requires this further determination, why does it in the application birth questionsin it? This question looks simple; but the fact is very complex and involves (bringing in) many philosophical analysis to it. That precisely expressed by Satjipto Rahardjo, that the sophistication of a legal development as a complicated institution (sophisticated). This sophistication must be paid by the community, namely the presence of one system isolated from the community. To create and bring justice in society, the law is more often more a problemof completioninstead ofa problem of justice.[6]

The science of law is not automatic like casualistic-deterministic law, it waits to be found by the juris and other subjects in interpretation. According to F. Budi Hardiman that the truth inter-subjective, it is not a total objectivism that is excluded from the subject relation or even total subjectivism that is excluded from the object relation, yet it is built between subjects and subjects.[7] The knowledge of truth is intersubjective, is the result of consensus with other subjects. This means that one realizes his limitation whrn it comes to his knowledge so that the truth can not be achieved solely by a single subject, but is a communicative-intersubjective reciprocity of the recipes with other subjects. In the process of judiciary, the justice as a legal goal, can be

 

obtained through rational arguments with other subjects.[8]

As a result of the existence of the legal activities, then according to Padmo Wahyono, the revocation / replacement of the old regulations to accelerate the development should be implemented when it comes to existing regulations of the pre-independence that come with the foreign fundamental philosophies that are essentially different, although technically they're adequate. The use of more modern and democratic theory is so we can be able to carry out the principles of countries based on law is one of the things to be really pay attention for, lest it won't cause the impression that the old is still better technically and juridically.[9] Although the context he explains in relation to the transition of colonial law to national law, but, the revocation / replacement of the old regulation, not only transformed into the spirit of decolonialization alone. Because of the treatment and election of the theoretical study based on the level of the theoretical study of the level of relevance of the regulation is vis a vis visa reality.

Thus, according to Paul Scholten, the discovery of law is not a simple job, he demands, the relations that are already slightly compounded, the work of the mind and education (educated expertise), the matter of knowing the contents and abilities merge with the legal structure, which can only be achieved by an expert.[10] Thus, the activities of legal science require academic is not limited to understand the abstraction of a value, but also has a coherent understanding with the understanding of its distillation into the realm of praxis.

The amendment, revocation and replacement of the laws and regulations, of course, get input from the results of the study of Legal Studies regarding anomalous and antinomic conditions, both in the form of values and norms. The emergence of anomalies and antinomies is not a necessity due to the realm of law application. Therefore, every legal norm can be traced to truth through the activities of the minds of every jurist. That is, it is not obligatory to obtain empirical facts. That is, it is not obligatory to obtain empirical facts. Why is that? Because, according to Jimly Asshiddiqie, norms or rules (method) are the institutionalization of good and bad values in the form of rules that contain permissions, suggestions, or orders. Both the advice and the command can contain rules that are positive or negative so that it includes norms of recommendations for doing or recommendations for not doing something, and norms of orders to do or orders not to do something.[11] He further explained, that the rule of law can also be distinguished between general and abstract (general and abstract norms) and those that are concrete and individual (concrete and individual norms). The general rule is always abstract because it is addressed to all related subjects without appointing or linking them to specific concrete subjects, parties or individuals. These general and abstract legal norms are usually the subject of legal regulations that apply to everyone or anyone who is subjected to the formulation of the legal rules contained in the relevant laws and regulations.[12]

However, it has become a legal habitus that the study of the das sollen should give rise to a discrepancy with the das sein. Therefore, this study tries to raise one side in the context of antinomies and anomalous values in legal norms, especially in Law Number 35 Year 2009 regarding Narcotics (Law No. 35/2009) relating to the chaos in the application of the concept of Abusers and its obligation to rehabilitate them. As a normative study, this research found a legal norm in Law Number 35 Year 2009 concerning Narcotics (Law No. 35/2009) which gave rise to an improper interpretation model as a result of the uncertainty of the formulation of values in legal norms, which is related to the concept of 'abuser'. Where in Article 1 number 15 of Law No. 35/2009 emphasizes "Abusers are those who use narcotics without rights or against the law." However, in Article 54 of Law no. 35/2009 there is the concept of "Narcotics Addicts" and the concept of "Victims of Abuse".

The application of the law to these concepts becomes important for the study material when linked to Article 127 paragraph (3) jo Article 54 of Law No. 35/2009. Therefore, in the deduction step, the law approach is different from the precedent approach in the civil law system. With an authoritative text approach in dealing with legal facts, relevant legal provisions are traced to legal provisions that are in the articles that contain norms. Norms in logic are propositions (normative). Explaining the norm must begin with a conceptual approach, because the norm as a form of proposition is composed of a series of concepts. Thus, misconceptions result in misguided reasoning and misleading conclusions. [13].

Based on the description above, the problem statement that should be raised is "How does the reformulation and reconstruction of legal norms work as a result of the occurrence of antinomies and value anomalies in the concept of abusers and victims of narcotics?

## II. RESEARCH METHOD

This study uses normative juridical research methods (normative law research) that uses normative case studies in the form of legal behavior products, such as reviewing the law. The subject of the study is the law which is conceptualized as a norm or rule that applies in society and serves as a reference for everyone's behavior. So that normative legal research focuses on an inventory of positive law, principles and doctrines of law, legal discovery in concreto cases, systematic law, synchronization levels, comparative law and legal history.[14].

The logical consequence of this type of research is normative legal research or dogmatic law research or doctrinal research. Then as a normative legal research the approach method applied to discuss research problems is through statutory approach, conceptual approach, analytical and conceptual approach, case approach, and philosophical approach using the intersubjective reasoning model.

Legal materials are collected through an inventory procedure and identification of laws and regulations, as well as classification and systematization of legal materials in accordance with the research problem. In legal research, especially normative juridical sources, legal research is obtained from literature rather than from the field, for that the term known is legal material,[15]. namely primary legal material, secondary legal material, and tertiary legal material.

## III. FINDINGS AND DISCUSSION

The understanding of Law No. 35/2009 should be constructed from a philosophical foundation and the purpose of the law maker (der wessenchau) which is the legitimacy of the legal politics to be applied in the legal system in Indonesia. Strictly considering the letter a of Law No. 35/2009 confirms the following:

> "That in order to bring people of Indonesia prosperous, fair and wealthy, and evenly materially and spiritually based on Pancasila and the Constitution of the Republic of Indonesia year 1945, the quality of Indonesian human resources as one of the national development capital, need to be maintained and improved continuously, including the health status;"

The philosophy explained that the preservation of the quality of Indonesian people is a constituent of Indonesian people guaranteed in the context of state life. This is as stated by Jean Jacques Rousseau, where each individual surrenders himself and all his power for the common good, under the highest interest of the public will (volante generale) and they accept each of its members as an inseparable part of the whole. That means there has been a change from the natural state to the state.[16]. Then, if so in a country there is no recognition of the will of the individual. Individual inequalities towards the community are not eliminated but are accommodated in the country with a limitation through laws and regulations.

However, the general will (volante generale) cannot be equated with 'mass deliberation' or the will of the masses.[17]. Therefore, the public will (volante generale) refers to the public interest. Based on this understanding, the state is tasked with organizing the welfare of the people, including creating conditions, facilities and infrastructure that are conducive so that people can live in peace, and prosperity. Therefore, the state must, as far as possible and consistently try to ensure that the rights of its citizens are guaranteed and protected against various violations.[18].

Based on this philosophical basis, self-awareness arises in the minds of legislators who view that the security of Indonesian human health is guarantees the continuity of life as a nation and the state of the availability of human resources as the basic capital of the existence of the state and nation. Self-awareness is manifested in the legal political foundation contained in the Considering Considering letter b of Law No. 35/2009 which confirms "that in order to improve the health status of Indonesian human resources in order to realize the welfare of the people it is necessary to improve efforts in the field of medicine and health services, among others by seeking the availability of certain types of Narcotics that are urgently needed as medicines and to prevent and eradicate the dangers of abuse and illicit trafficking of Narcotics and Narcotics Precursors.

The philosophical and political basis of the law is still in a form of abstraction, so that the legislators make a distillation as a manifestation of efforts to guarantee the health of Indonesian people by shifting the concept of punishment which is dominated by criminal threats into rehabilitation measures for every drug addict and abuser, as contained in Article 54 UU no. 35/2009 which confirms "Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation.

The problem of the meaning of the concept becomes an antinomy with the legal concept normalized in Article 1 number 15 of Law No. 35/2009 which confirms "Abusers are people who use Narcotics without rights or against the law." While the concept of 'Narcotics addicts' is regulated in Article 1 number 13 of Law no. 35/2009 which states "Narcotics addicts are people who use or abuse Narcotics and in a state of dependency on Narcotics, both physically and psychologically." So, conceptually, Law No. 35/2009 has a legal concept only on subjects classified as "Abusers" and "Narcotics Addicts", but in reality, Law No. 35/2009 also gave rise to the concept of "Victims of Narcotics Abuse".

Although the concept of "victims of narcotics abuse" is not stated in the General Provisions, it can be found in the Elucidation of Article 54 of Law No. 35/2009 explains that "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." That is, Article 54 of Law No. 35/2009 has no explanation of how to interpret the concept of "Narcotics addicts". Of course, the author can construct an argument in interpreting the set of concepts by establishing a presupposition that the "Narcotics addict" comes from someone who has been a victim in an act of narcotics abuse.

As a result of the authoritative text in Article 54 of Law No. 35/2009 becomes an antinomy of the norm when it is associated with Article 127 of Law No. 35/2009, which confirms the following:

(1). Every abusers:
   a. Narcotics Category I for themselves shall be punished with imprisonment of 4 (four) years;

b. Narcotics Category II for themselves shall be punished with imprisonment of 2 (two) years, and
c. Narcotics of category III for themselves shall be punished with imprisonment of 1 (one) year.

(2). In deciding the case referred to in paragraph (1), the judge shall also consider the provisions of Article 54, Article 55, and Article 103.

(3). In the case of abusers referred to in paragraph (1) may be proven or proved to be a victim of abuse narcotics, the abusers shall undergo medical rehabilitation and social rehabilitation.

When examined, it can be concluded that the legislators distill the concept of the Abuser as a victim of narcotics abuse (vide Article 127 paragraph (3) of Law No. 35/2009), and not as a 'Narcotics Addict'. That is, the legal subject who becomes the norm addresat (norm address) is someone who is categorized as a 'victim of narcotics abuse', and not for a 'Narcotics addict'.

However, pay attention to Article 103 of Law No. 35/2009 which confirms the following:

(1).The judge who examined the case of Narcotics Addicts, may:
a. decided to ordered the concerned to undergo treatment and/or treatment through rehabilitation, if the Narcotics Addict are proven guilty of a crime of Narcotics, or
b. sets out to order the concerned to undergo treatment and/or treatment through rehabilitation, if the Narcotics Addict is not found guilty of a crime of Narcotics.

(2).The period of treatment and/or care for Narcotics addicts as described in paragraph (1) letter a is calculated as the time serving his sentence.

In the explanation of Article 103 of Law No. 35/2009 explains Article 103 paragraph (1) letter a of Law no. 35/2009 uses the word "decide" which means that the use of the word decides for "Narcotics addicts" who are proven guilty of Narcotics crime means that the judge's decision is a sentence (sentence) for the Narcotics addict concerned. While in Article 127 paragraph (1) jo paragraph (3) of Law no. 35/2009 only has norm addresat only "victims of narcotics abuse" and does not refer to "Narcotics addicts". Therefore, the question of the Judge in implementing Article 103 paragraph (1) letter a of Law no. 35/2009 which secondary legal norms (sanctions) will be used?

Thus, the authoritative text series actually invalidates the Researcher's own assumption that Narcotics Addicts are an extension of a person's process of becoming a 'victim of narcotics abuse' in their use, which in turn becomes routine. Therefore, Article 103 paragraph (1) letter a of Law No. 35/2009 firmly states the existence of punishment through a judge's ruling on the proof of 'Narcotics addicts' as a narcotics crime.

The word 'addict' itself refers to subjects who use or abuse for themselves. Therefore, the word 'addict' is subject to a state of addiction. That is, someone seen as an addict is someone who has a state of addiction or has an excessive desire for something that only he himself feels the condition of addiction. So, in essence, the phrase "... for oneself ..." in Article 127 paragraph (1) of Law no. 35/2009 is right to become legitimacy for 'Narcotics addicts'.

However, Article 127 paragraph (3) of Law No. 35/2009 raises the norm antinomy which implies that if a person who uses narcotics 'for himself' can prove himself to be a 'victim of narcotics abuse', then he must be rehabilitated. However, if a person charged under Article 127 paragraph (1) is unable to prove himself as a 'victim of narcotics abuse', then starting from the word 'addict' which implies 'for himself' will still be found guilty first, before carrying out the Article 103 paragraph (1) letter a of Law No. 35/2009.

Another anomaly and antinomy of norms is when the Public Prosecutor is unable to prove the arguments of his claim - if he uses Article 127 paragraph (1) of Law No. 35/2009, then Article 127 paragraph (3) of Law No. 35/2009 cannot be applied by Judges. Therefore, the judge will automatically continue to adhere to Article 127 paragraph (1) of Law no. 35/2009. This means, automatically, the meaning is that the 'Abuser' is a 'Narcotics addict', so it must be rehabilitated based on Article 103 paragraph (1) letter a of Law No. 35/2009. If when the Public Prosecutor is also unable to prove Article 127 paragraph (1) of Law No. 35/2009, then referring to Article 191 paragraph (1) of the Criminal Procedure Code, the verdict must be acquitted. However, referring to Article 103 paragraph (1) letter b of Law No. 35/2009, the inability of the Public Prosecutor to prove and the judge's conviction of the innocence, precisely directed to the obligation for the judge to issue his legal product is the determination that orders the addict to carry out rehabilitation.

Another anomaly is how it is possible for a process of hearing against a criminal case that is 'contentiosa' (then there is a dispute), which then ends up - when the Defendant's actions are declared not legally proven and convincingly guilty, to a decision which is of a determination - as in a case of a nature 'voluntair. In fact, if the whole process of proof is understood by presenting all of the evidence and evidence by the Public Defender to justify his argument, then when the judge gains the conviction that the Defendant has not been legally and convincingly proven, the binding force of the entire evidence and evidence is also nullified.

The foregoing is the result of a cognitive process based on the interpretation of concepts through philosophical and conceptual approaches. Meanwhile, when using the case approach, it will increasingly appear discrepancy between der Wessanchau with praxis. For example in Bangkalan District Court Decision Number 14 / Pid.B / 2014 / PN.Bkl, where the Defendant was charged

under Article 112 paragraph (1) of Law No. 35/2009 in the Primair Indictment and Article 127 paragraph (1) of Law no. 35/2009 in the Subsidair Indictment.

After going through the evidentiary process, the Judge gained the conviction that the Defendant was proven to be legitimate and convincingly guilty based on Article 127 paragraph (1) of Law No. 35/2009 by imprisonment for 6 (six) months. While in the facts of the trial it was revealed that the recommendations from the Surabaya Menur Mental Hospital No. 05 / KM / I / 2014 dated January 16, 2014.

The verdict of Bangkalan District Court Number 14 / Pid.B / 2014 / PN.Bkl is a fallacy phenomenon from the Panel of Judges, due to the inability to understand the values, principles, and norms in Law No. 35/2009. However, the fallacy must also be understood, because the legislators formulated Article 127 of Law No. 35/2009 with unclear concept of Narcotics addicts with the concept of Narcotics Abuse Victims, which imperatively should prioritize rehabilitation (vide Article 127 paragraph (2) of Law No. 35/2009). The anomaly was precisely due to the existence of legal norms that obliged Judges to impose convictions based on Article 127 paragraph (1) of Law No. 35/2009. Meanwhile, the interpretation of a criminal act based on Article 127 paragraph (1) must be interpreted simultaneously with Article 127 paragraph (2) jo paragraph (3) of Law no. 35/2009.

In this case, the obligation to use Article 127 paragraph (2) jo paragraph (3) of Law no. 35/2009 is in conflict with Article 182 paragraph (4) of the Criminal Procedure Code. So, normatively, the judge's decision cannot be blamed absolutely. Although, in the end, it can be classified as an inability to fusion of horizons from various authoritative texts with a systematic interpretation model.Dalam hal ini, kewajiban menggunakan Pasal 127 ayat (2) *jo* ayat (3) UU No. 35/2009 tersebut berbenturan dengan Pasal 182 ayat (4) KUHAP.

Another consequence of the ambiguity of legal norms, in the context of law enforcement in the realm of pre-adjudication, seems that the law has been revoked from the existing social reality. As explained by Alfiana,19 researchers from the Indonesian Drug Victims Association (PKNI), where in through PKNI research in 2017 in 10 (ten) cities throughout Indonesia showed data that in the process of assisting drug victims as many as 145 people, but only 17 people obtained rehabilitation right. Furthermore, Alfiana explained through her research, that the rehabilitation assessment process has become a commodity by law enforcement officials. Mostly, the right to rehabilitation is only given to people who have money. So that a different treatment appears, where throughout 2017 there are 7 (seven) artists who are caught in narcotics, all of them can be rehabilitated, but instead it is inversely proportional to ordinary people.

## IV. CONCLUSION

Referring back to the formulation of the problem in this research, based on the conceptual disorder that gives rise to fallacy and creates discrepancies in their praxis, the legislators need to reformulate the primary legal norms relating to the concept of Abusers, the concept of Narcotics Addicts, and the concept of Victims of Narcotics Abuse. Therefore, the formulation of primary legal norms has an impact on the functioning of secondary legal norms. Or at least the formulation of legal norms on the concept of Abuser is someone who is a Narcotics addict and / or a Narcotics Abuse victim who abuses or uses narcotics without rights or against the law.

Therefore, when a Defendant is unable to prove his argument to enter Article 127 paragraph (3) of Law No. 35/2009, it is automatically a Narcotics addict. However, when Article 54 of Law No. 35/2009 ordered that addicts and victims of narcotics abuse must be rehabilitated, so Article 127 of Law No. 35/2009 it's not necessary to distinguishing the two concepts. Therefore, philosophically, providing rehabilitation is an imperative obligation for the interests of the state and nation. This means that as long as there is a legal fact in the process of proving that the abuse is for oneself, then a secondary legal norm in the form of criminal sanctions in Article 127 paragraph (1) of Law no. 35/2009 should be abolished.

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