

Legal Review on Objective Application of Assessment Related to Rehabilitation of Narcotics Abuse (Case Number: 2430 K/PID.SUS/2017)

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ABSTRACT

Handling narcotics problems not only faces legal problems, but also health problems. Prison sentencing is often the first choice for the government in handling narcotics cases. The fact is that what happened in prison has been judged to be overcapacity, in fact there are still many narcotics recidivities that occur. This can be interpreted that the prison penal system is considered less able to overcome the problem of narcotics. Healing for addicts or victims of narcotics abusers is given less attention, this is certainly one of the causes of narcotics cases that continue to increase. Therefore, there needs to be a common perception to change the punitive system to become rehabilitative. Rehabilitation can be done in the form of social rehabilitation or medical rehabilitation. This rehabilitation action needs the results of the assessment recommendations made by the Integrated Assessment Team, where this team has an important role in handling narcotics cases, its task is to determine the role of narcotics offenders, whether categorized as addicts, dealers, or addicts as well as dealers. In addition, the Assessment Team also played a role in determining the level of dependence on narcotics used by the perpetrators. The Integrated Assessment Team consists of the Legal Team and the Medical Team. Basically, the Indonesian government has prepared an Integrated Assessment Team as part of a team that is professional in dealing with narcotics problems, but what often happens is that many people do not pass the assessment stage, even though in various regulations such as Government Regulation No. 25 of 2011, as well as the Joint Rules governing the obligation to carry out the assessment. It is appropriate that the assessment be carried out objectively for anyone suspected of consuming narcotics. On that basis, the authors are interested in discussing the author's perspective on the objective application of assessment related to rehabilitation based on case study number. 2430K / Pid.Sus / 2017.

Keywords: *Narcotics, Assessment, Rehabilitation*

1. INTRODUCTION

1.1. Background

At present the criminal justice system in Indonesia seems to no longer create a deterrent effect for the perpetrators of criminal acts, detention centers and prisons have been judged to be over capacity but instead have an impact on the number of criminal acts that occur within the prison and prison environment. Weak supervision is not

balanced by the still large number of prisoners inmates. Correctional prison as if no longer to be the right place in re-popularizing these prisoners, even though Lapas has shifted its function as an academy of crime, a place where prisoners are more "honed" by their ability to commit criminal acts. The concept of a restorative justice approach is an approach that emphasizes the conditions for the creation of justice and balance for the perpetrators of crime and their own victims.

Criminal procedural and procedural mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on the settlement of criminal justice that is more equitable and balanced for the victims and perpetrators.[1] Whereas if it is related to narcotics abuse cases, imprisonment is no longer appropriate because it does not provide benefits, but only gives misery. However, to get this sanction there are certain criteria for Narcotics Abuse and Narcotics addicts, so that it can be selected between the drugs user and the user as well as the dealer. Selection of a those category can be said to be an addict or narcotics abuse as well as a dealer can be done with the assessment process submitted from the investigator to the assessment team. The assessment process for narcotics crime occupies an important thing to find out whether a person is eligible for medical and social rehabilitation.

In reality, the written rules that have been made cannot guarantee that the rules that have been made can goes smoothly with the practice. When it should, the rule of law can be used as a guide in social life. For example in the case , namely the case study of decision No. 2430 K / Pid.Sus / 2017, that Sujiadi and Dwi Harsono were narcotics abuse who for the first time used narcotic types of methamphetamine caught at 0.04 grams. That if it is seen based on SEMA Number 4 of 2010, the methamphetamine narcotics of 0.04 grams should not be get sanctions such as imprisonment imposed by the judge in the case. In the regulation, it is clearly said that the provision of imprisonment is imposed on someone caught using methamphetamine with a minimum of 1 gram. Moreover, neither Sujiadi nor Dwi Harsono passed the assessment stage that should have been done from the start. So there are important procedures missed in handling this case. In the court of cassation, the Defendants got to imprisonment for 1 (one) year and 6 (six) months respectively from the judge. Based on the description of the thoughts in the background that have been stated above, the implementation of handling procedures in narcotics cases that often occur is not fully carried out in accordance with applicable regulations, so this has a big impact on the rehabilitation sanctions for abusers and addicts. narcotics in reality between practice and existing theories, can not always be in accordance with what is expected by the government and the people of Indonesia. So as we know, prison in Indonesia are filled with narcotics cases which are judged to have not been resolved properly regarding their handling in Indonesia.

1.2 Problematics

Based on the background case before, the formulation of the problems is:

How is the application of the assessment related to the provision of rehabilitation for narcotics addict or narcotics abuse (Case Study: Decision No. 2430 K / Pid.Sus / 2017)?

2. DISCUSSIONS

In decision No. 2430 K / Pid.Sus / 2017, the writer found the legal issues of Defendant I (Sujiadi) and Defendant II (Dwi

Harsono) did not get an assessment that obtained as a victim of narcotics abuse related to their rights. The fact is they do not get rehabilitation as a form of healing for victims of narcotics abuse. In discussing this legal problem, of course it is necessary to know in advance about the actual legal discussion. Indonesia is a rule of law, everyone must act according to the law, both citizens and law enforcement officials. The law was made by humans and for humans, supporting it for human welfare. The Indonesian state is currently discussing a state of crisis, a legal purpose made by the government that has not yet shown effectiveness. This can be obtained from the law which must be resolved blunted up and become sharp downward. There are still often different legal handling strategies for each person. In handling legal cases in Indonesia, there is often a public opinion regarding the court in a decision or legal process. The approved legal process has not yet finished upholding a sense of justice. Justice seems to be something the shadow does to happen. Laws that should be upheld based on justice, expediency, and the interests of legal certainty are still in doubt, the public has not fully understood that in the process of law enforcement in Indonesia.

The sociology of law focuses on actual social relations, which are directly related to the law to the community or in other meaning related to the judge's decision or the process that has been carried out in law enforcement for the community. Seeing from the point of view of punishment, Sahetapy said that the objectives were very important, because judges had to reflect on the aspects of court / punishment in the objectives of this punishment by considering not only a sense of well-being in the hearts of the community, it should be able to help link victims' lead. [2]. Article 10 of the Criminal Code, there are other alternative legal options provided for in Law No. 35 of 2009 concerning Narcotics, including Article 54 which discuss about rehabilitation. Article 54 of the Narcotics Law on rehabilitation is a form of *lex specialis derogat lex generali* of the types of courts that have been regulated in Article 10 of the Criminal Code. In full, Article 54 of the Narcotics Act says "Narcotics addicts and victims of Narcotics are required medical improvement and social rehabilitation." This clearly can be interpreted as medical and social rehabilitation can only be given to narcotics addicts or misuse and victims of narcotis.

In the case of verdict No. 2430 K / Pid.Sus / 2017 can be reported that Defendant I (Sujiadi) and Defendant II (Dwi Harsono) are victims of narcotics abuse, according to the human needs offered by narcotics with a joint of Rp. 100,000, - (one hundred thousand rupiah) of each person. Where in this decision also determines that the defendants are the first users to make relief for the judge in deciding the case. The definition of narcotics abuse victim is also found in the discussion in Law No. 35 of 2009 concerning Narcotics in Article 54, which discusses narcotics victims is someone who unintentionally uses narcotics because he was persuaded, deceived, cheated, sought out, and / or threatened to use narcotics.[3] So, according to the opinion of the writer, someone who is a victim of narcotics abuse gets

rehabilitation, this is more appropriate than giving a prison sanctions.

However, in relation to rehabilitation sanctions given to victims of narcotics abuses, it is not merely seen from the evidence and facts that the defendants have just consumed narcotics for the first time, but this certainly needs to be proven first through a stage called an assessment. The judge is tasked with giving the verdict to be executed for the defendant. However, in the case of handling cases of narcotics abusers this means that there is a connection to the medical condition for the victim, where there needs to be a special medical team that must participate in taking part or role. Therefore, there is a need for cooperation between the legal team and the medical team, which is then called the Integrated Assessment Team. The Integrated Assessment Team is a team consisting of a Doctor Team and a Legal Team determined by the Head of the local work unit based on the Decree of the Head of the National Narcotics Agency, Provincial National Narcotics Agency and Regency / City National Narcotics Agency. The duties and authorities of the Integrated Assessment Team are explained in Article 12, as follows [4]:

- (1) The Integrated Assessment Team has the duty to:
 - a. medical, psychosocial assessment and analysis, and recommending treatment and rehabilitation plans for someone who has been arrested and / or caught illegal drugs.
 - b. analysis of someone who was arrested and / or caught illegal drugs in connection with illicit trafficking of Narcotics and Narcotics abuse.
- (2) The Integrated Assessment Team has the authority to carry out:
 - a. at the request of the Investigator to analyze the role of a person who is captured or caught illegally as a Victim of Narcotics Abuse, Narcotics Addicts or Narcotics dealers;
 - b. determines the criteria for the severity of Narcotics use according to the type of content consumed, the situation and conditions when captured at the scene of the case; and
 - c. recommend treatment and rehabilitation plans for Narcotics addicts and Narcotics Abuse Victims as referred to in letter b.

In my opinion, the existence of the Integrated Assessment Team is very helpful for the government in sorting out the roles of narcotics users concerned, whether it can be categorized as addicts, victims of narcotics abuse or addicts as well as dealers. So that in the future also can be considered more about the feasibility of someone to get rehabilitation. Therefore, this assessment is a very vital stage to be carried out objectively, in the sense that this assessment must be carried out for anyone suspected of consuming narcotics. With the right recommendations based on a special team that has been formed (Integrated Assessment Team) consisting of a medical team and a legal team, it is certain that someone who is a victim of abuse or a drug addict will get rehabilitation. Victims of narcotics abuse or addicts get the right place for their healing, bearing in mind that

basically someone who is an addict or victim of narcotics abuse is a sick person, so it must be cured immediately, not given a prison sanctions without any attempt to heal through rehabilitation. With someone declared to be truly cured, this opens up the possibility of narcotics recidivities decreasing. If related to the case number. 2430 K / Pid.Sus / 2017 Defendant I (Sujiadi) and Defendant II (Dwi Harsono) did not go through assessment process, where this certainly violated a rule set out in Government Regulation No. 25 of 2011 concerning the Implementation of the Obligatory Report on Narcotics Addicts, in Article 7 it says [5]:

- (1) Reporting Recipient Institutions as referred to in Article 6 must conduct an assessment of Narcotics Addicts to find out the condition of Narcotics Addicts.
- (2) The assessment referred to in paragraph (1) covers medical aspects and social aspects.

Regarding the obligations of this assessment, it is clearly stipulated in Government Regulation No. 25 of 2011, so according to the writer regarding the case that was reviewed that by not being given an assessment for Defendant I (Sujiadi) and Defendant II (Dwi Harsono), it can be said that they lost their right to get a fair process. Equality Before The Law is a concept that is very universal and textual for law. Universally, Equality Before The Law has become a principle of law and state that requires the existence of a law and applies to everyone. While textual, this concept is written in legal documents in writing which confirms that the rule of law applies to all people where the law applies. On the contrary, from a legal standpoint, it can be seen that the law does not allow itself only to benefit a number of parties without a valid reason before the law. So it can be made clear that if there are exceptions then it betrays the concept of law. [6] In the case of narcotics, besides referring to the application of the assessment given to narcotics abuse or addicts, it is also important to consider the quantity of evidence obtained. The author can convey, that in the case study of case number 2430 K / Pid.Sus / 2017, the evidence found was a set of methamphetamine suction tools, lighters, and a small plastic bag containing 0.04 grams of methamphetamine which was caught by members of the Police from the Suko Manunggal Police Station in Surabaya. So, it can be said from the elements contained in SEMA No. 4 of 2010 has been fulfilled, namely narcotics cases caught illegally by police investigators or BNN investigators. And the relation that the evidence obtained is not enough, which is only 0.04 grams of methamphetamine. Therefore, according to the opinion of the author of the prison sanctions imposed on the case of this ruling is considered inappropriate.

A good and appropriate policy for narcotics abuse cases is a policy that is able to reduce the adverse effects of narcotics use, eliminate narcotics consumption, and illicit trafficking. One way is to approach public health. Several alternatives have been attempted, but the most often prioritized and implemented is imprisonment. Punishment in the form of prison for narcotics users often fails to reduce narcotics use and distribution. With full expectations for success, Indonesia's narcotics policy must change the dominance of the punitive approach to rehabilitative by prioritizing aspects of public health. [7] Seeing cases of abuse and

victims of narcotics abuse that are increasing continuously, it is certainly necessary to improve in order to reduce the case. It is time, law enforcers must equalize and unite their perceptions, views and frameworks in responding to the phenomenon of narcotics abuse cases. The similarity in point of view of the perceptions of law enforcers, both the Police, BNN, Prosecutors, and District Courts of drug addicts and abuse who must be viewed as victims and not criminals or criminals, although it is true that they have fulfilled element in the case of storing or possessing goods which are prohibited by the State. But the point is as a party of the victims who are sick so they must be cured immediately, so that in the future there will be no more narcotics cases or at least minimize the occurrence of narcotics cases. In fact, there are still many legal officials who treat users, addicts, and victims of narcotics abuse as criminals and not as victims. [8] That with the rehabilitation of both medical and social, also related to the theory of progressive law, where the law looks at the social goals to be achieved, as well as the impact of the applied law. So, it can be said that the law is enforced not only based on written black and white regulations, but rather emphasized on the side of society itself. Looking back to what should be given to the community or in other words the applied law must provide the purpose on the welfare and happiness of the community, because basically written law may not be able to move along with the relatively rapid development of society in its development. Thus, it can be said that the granting of punishment for someone must be more carefully considered, regarding the impact that will occur on the law given to someone. This also relates to a person's status, so there is no status of the prisoner or ex-convict, so that it does not cause discrimination in the community life, work, or education. Progressive law needs to be seen as a law that looks more modern and can keep pace with the development of society. This leads to other goals that lead to statistics on crime, especially in narcotics cases, with the hope that it will decrease.

3. CONCLUSION

In dealing with narcotics cases, basically the government is confronted with two sides that are seen as essential, namely the problem of law enforcement that must achieve justice, and the problem of health conditions for the drugs addiction or abuse. Of course both of them are very important to consider, recalling the goal of the Indonesian state to enter a country that is free of narcotics. Free narcotics in the sense of being free from the perpetrators who store or possess and control narcotics, even distributing narcotics without the permission of the government or in other words without rights or against the law. In the effort to deal with narcotics problems, it is first necessary to know in advance the role of the perpetrator, whether he is categorized as a user/abuse, addict, victim of abuse, or dealer.

Basically a team, specifically called the Integrated Assessment Team, has been created, which is tasked with determining the role of the perpetrator, as well as making the results of the assessment recommendations regarding the feasibility of a person to be rehabilitated. This team can be

said to be the right and professional team in handling narcotics problems, especially since this team consists of a legal team and a medical team that works together to handle narcotics cases. In conclusion, the narcotics case in the case study that I reviewed, actually there is no justice for the Defendants, bearing in mind that the assessment phase not given to the Defendant results in the application of sanctions given, sanctions given are imprisonment rather than rehabilitation sanctions.

The fact that this happens also has an impact on statistical data that point to the narcotics numbers continue to increase every year, this means that the prison penal system that has been applied so far has not shown maximum results, prison is even considered over capacity and has an impact on the number of criminal acts that occur in prisons, even the worst is also the sale and purchase of narcotics in prisons. Therefore, it is necessary to reform the criminal system by drawing closer to the concept of Restorative Justice, in which narcotics abusers or addicts should change the pattern of imposing sanctions, from prison punishment to rehabilitation. It can also be said that restorative justice is an alternative that turns punitive into rehabilitative.

In terms of building efforts to reduce the number of narcotics case status, in fact the main thing that needs to be resolved is the granting of prisoners to dealers, so that the smaller the existing dealers, the smaller the narcotics users will be, besides that what needs to be applied is to provide appropriate sanctions for victims of abuse or narcotics addicts, which need to think about is related to their recovery, so that out of rehabilitation institutions they can live again in society with a pattern of living on the right path. This also refers to the level of narcotic recidivists that will decrease, if the victims of abuse or narcotics addicts are really aware of the dangers of narcotics and ensure they will not use narcotics anymore in the future.

REFERENCES

- [1] Tenges, Jecky. "Pendekatan Restorative Justice dalam Sistem Pidana Indonesia". <https://www.hukumonline.com/berita/baca/lt4e25360a422c2/pendekatan-irestorative-justice-i-dalam-sistem-pidana-indonesia-broleh--jecky-tengens-sh-/>, diakses 27 September 2019.
- [2] Sahetapy, JE. *Ancaman Pidana Mati Terhadap Pembunuhan Berencana*. (Bandung: Alumni, 1979).
- [3] Indonesia. *Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*
- [4] _____. *Peraturan Kepala BNN Nomor 11 Tahun 2014 tentang Tata Cara Penanganan Tersangka dan/atau Terdakwa Pecandu Narkotika dan Korban Penyalahgunaan Narkotika ke dalam Lembaga Rehabilitasi*
- [5] _____. *Peraturan Pemerintah Nomor 25 Tahun 2011 tentang Pelaksanaan Wajib Laporan Pecandu Narkotika*

[6] Azhar, Haris. “*Equality Before The Law Dalam Sistem Peradilan di Indonesia*”. <https://lokataru.id/equality-before-the-law-dalam-sistem-peradilan-di-indonesia/>, diakses 11 Mei 2020.

[7] Ramadhan, Asmin Fransiska dkk. “*Hari Anti Narkotika Internasional: Para ahli sarankan jangan penjarakan pengguna narkotika*”. <https://theconversation.com/hari-anti-narkotika-internasional-para-ahli-sarankan-jangan-penjarakan-pengguna-narkotika-119452>, diakses pada tanggal 10 Mei 2020.

[8] Muliawan. “*Penyalahguna Narkotika, Kriminal atau Korban?*”. <http://www.pn-palopo.go.id/index.php/publikasi/lelang/241-pengumuman-pelelangan-rehab-gedung-keseekretariatan>, diakses pada tanggal 10 Mei 2020.