



Optimization of Criminal Sanctions Against Narcotics Users in the Jurisdiction Process (Case Study at the Jepara District Court)

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Abstract. The eradication of narcotics crimes involves all nations in the world, but it turns out that the level of illicit narcotics trafficking is increasingly high and rampant. Several indications show that narcotics crime is an extraordinary crime. For this reason, extraordinary punishment is very much needed for this type of extraordinary crime that has occurred in all nations in this world as a transnational crime. The large number of people involved in drug cases and the increasing number of crimes require serious attention and a shared commitment to prevent and eliminate them. One of the efforts to overcome narcotics abuse, among others, is to use criminal sanctions in the form of imprisonment. Crime against narcotics users in the judicial process. The approach method used in this research is sociological juridical. The specification of this research is descriptive analytical. Sources of data used are primary data and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. While secondary data was obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. Based on the results of the study, it can be concluded: (1) The criminal provisions contained in Law no. 35 of 2009 concerning Narcotics is formulated in Chapter XV of Criminal Provisions Articles 111 to 148. Law no. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions. (2) Judges who do not want the accused in the decision Number: 13/Pid.Sus/2022/PN.Jpa are considered as users or addicts of narcotics only, but also as dealers which, judging by the legal facts that occurred, this makes the judge fulfill the charges The Public Prosecutor with the indictment of Article 114 paragraph 1 of the Law of the Republic of Indonesia. Number 35 of 2009 concerning Narcotics, (3) The obstacle experienced by judges when deciding on narcotics abuse defendants is that without an assessment or information from experts, it is unlikely that the accused will be rehabilitated and the judge will not make decisions beyond those charged by the public prosecutor and other obstacles are about the negative view of society towards judges.

Keywords: Criminal Consequences · Defendant · Narcotics

1 Background

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce and eliminate pain, and cause dependence.¹ Likewise with psychotropics, are substances or drugs, both natural and non-narcotic synthesis, which have psychoactive properties through a selective influence on the central nervous system which causes specific changes in mental activity and behavior. Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached in the this law.²

As a narcotics crime that has long been an enemy of the nation, now narcotics are very worrying for our nation and all nations in the world today. The production and circulation of narcotics is massive in our society. The role of the narcotics mafia seems unstoppable. The narcotics mafia have poisoned law enforcers as users and as dealers in the Indonesian nation and in various parts of the world, even though the entire nation is fighting this crime. People often hear statements about building commitment or fighting together in eradicating narcotics in our country and throughout the world.³

Methamphetamine is a class 2 psychotropic which is a stimulant drug that can strongly affect the central nervous system causing addictive effects when consumed. According to the latest data from the National Narcotics Agency (BNN) in 2012, the most widely used type of drug by addicts who receive therapy and rehabilitation services is crystal methamphetamine (4,697 people), then in sequence are cannabis (4,175 people), heroin (3,455 people), ecstasy (1,536 people) and opiates (736 people). Based on data from the National Narcotics Agency (BNN) in 2015, it was found that up to January 2015 there were 5,800,000 narcotics users with 2,320,000 methamphetamine users. In North Sumatra, there were 288,226 users with 115,290 methamphetamine users. Among the students themselves, 104,269 people were recorded, of which 87,800 were methamphetamine users. Methamphetamine (C₁₀H₁₅N), has a molecular weight of 149.23, is a central nervous stimulant. Methamphetamine is generally available in the form of HCl salt and is called speed, meth, ice. Also known as “crank and crystal”.⁴

From the birth of the Narcotics Law and the Psychotropic Law, there has been criminalization of drug abusers. Criminal provisions in the Psychotropics Law are regulated in Article 59 to Article 64, while in the Narcotics Law it is regulated in Articles 78 to Article 99. The classification of crimes in the Narcotics Law and the Psychotropics Law is basically no different, namely crimes involving production, distribution, possession,

¹ Sepha Dwi Hananto, Anis Mashdurohatun, Penegakan Hukum Pidana Terhadap Terdakwa Pengguna Narkoba Yang Menjalani Rehabilitasi Di Polda Jateng, *Jurnal Khaira Ummah*, Vol 13, No 1 (2018), page 161–170.

² Aliffia Ananta, Rifki Syafichul Haqi, Ririn Ariani, Penyuluhan Remaja Anti Narkotika dan Psicotropika, *Jurnal Abdi karya: Jurnal Karya Pengabdian Dosen dan Mahasiswa*, Vol 03 No 04, 2019, page 300–302.

³ Mustafa, Muhammad, *Krimonologi: Kajian Sosiologi terhadap Kriminalitas, Perilaku menyimpang, dan Pelanggar Hukum*, FISIP UI Press, 2007, p.17.

⁴ R.Mehling, *Methamphetamine, The Straight Facts*, Chelsea House, New York, NY 10001, 2007, p. 62.

use, and other crimes involving treatment and rehabilitation, labeling and advertising, transit, crime reporting, and destruction.⁵

The eradication of narcotics crime involves all nations in the world, but in fact the level of illicit drug trafficking is getting higher and more rampant.⁶ Several indications show that narcotics crime is an extraordinary crime. The meaning is as a crime that has a very large and multi-dimensional impact on social, cultural, economic and political as well as the enormity of the negative impact caused by this crime. For this reason, extraordinary punishment is really needed for this type of crime which is very extraordinary today which has occurred in all nations in this world as a transnational crime. The large number of people involved in drug cases and the increasing number of these crimes require serious attention and joint commitment to prevent and eliminate them. One of the efforts to overcome narcotics abuse, among others, is carried out by using criminal sanctions in the form of imprisonment.

It can be seen in Article 7 of Law 35 of 2009 it states that “Narcotics can only be used for the benefit of health services and/or the development of science and technology”, and in Article 8 of Law 35 of 2009 paragraph (1) narcotics class I are prohibited used for the benefit of health services, paragraph (2) in limited quantities, narcotics class I can be used for the benefit of developing science and technology and for diagnostic reagents, as well as laboratory reagents after obtaining the minister’s approval on the recommendation of the Head of the Drug and Food Control Agency. If someone who uses Narcotics violates the rule of law as referred to in Article 7 and/or Article 8 of Law No. 35 of 2009, narcotics users do not have the right to use narcotics or their actions are against the law.

With the enactment of Law No. 35 of 2009 concerning narcotics replacing Law No. 22 of 1997 and Law No. 9 of 1976 indicates the seriousness of the government to tackle the dangers of narcotics abuse.⁷ Law enforcement against crimes in Indonesia, especially in terms of sentencing, should refer to a legal norm approach that punishes criminals so that it can create a deterrent effect. This provides a discourse for the judges in formulating sentences imposing sanctions on the perpetrators of crimes in order to be able to capture the aspirations of justice in society. The empirical reality in the field of punishment in general still adheres to, improving convicts in correctional institutions so that it gives an illustration that these crimes only stop for a moment and will reappear in the social environment of society.

⁵ Andri Winjaya Laksana, Sociological Analysis of Narcotics Circulation Treatment On Students, *Jurnal Pembaharuan Hukum*, Vol 8, No 1 (2021), page 105–117.

⁶ Andri Winjaya Laksana, The Legal Position Of Islamic Boarding School (Pesantren) As A Rehabilitation Effort For Narcotics Abuse, *International Journal of Law Reconstruction*, Vol 5, issue 2 (2021), page 1–10.

⁷ Andri Winjaya Laksana, Hartiwiningsih Hartiwiningsih, Hari Purwadi, Law Enforcement Of Drug Addict During The Covid-19 Pandemic Based On Justice, *The 3rd Legal Internasional Conference and Studies*, Vol. 3, issue 3 (2021) page 1–10.

2 Research Methods

To conduct an assessment in this study the authors used sociological juridical methods.⁸ Sociological juridical research is research that uses an approach to the problem by looking at the norms or laws that apply as positive provisions, along with theories that are relevant to this paper by linking its implementation to the facts found in the field.

3 Discussion

3.1 The Current Criminal Law System Related to Regulation of Narcotics Crime in Indonesia

Criminal law policy is essentially an attempt to realize criminal laws and regulations in accordance with conditions at a certain time (*ius constitutum*) and in the future (*ius constituendum*). The logical consequence is that criminal law policy is synonymous with penal reform in a narrow sense, because as a system, law consists of a cultural structure and legal substance. The law is part of the substance of the law, the reform of criminal law, in addition to updating the legislation, also includes updating the basic ideas and science of criminal law.⁹

The sanctions for perpetrators of narcotics crimes have been regulated in Law Number 35 of 2009, so that in every act that violates the law there must be an appropriate legal response and can provide a deterrent effect for the perpetrators. In positive law in Indonesia, the threat of punishment for perpetrators of criminal acts is contained in the Criminal Code (KUHP). The Criminal Code stipulates the types of criminal acts or punishments that are included in Article 10 of the Criminal Code, which is divided into two parts, namely the main punishment and additional laws.¹⁰

In narcotics addicts, in essence they are more appropriately categorized as victims of free association, Psychiatrists (psychiatric experts) consider that it is not appropriate if narcotics addicts are given criminal sanctions in the form of imprisonment, because if that is indeed what is applied, then what happens is narcotics addicts can experiencing severe depression which has a high potential for mental disturbance because they do not get help in the form of treatment by experts in the field of psychology (Rehabilitation).¹¹

Article 136 Law no. 35 of 2009 provides for sanctions in the form of narcotics and narcotic precursors as well as the proceeds obtained from narcotics crimes, whether movable or immovable assets or tangible or intangible as well as goods or equipment used for narcotics crimes are confiscated for the state. Article 146 also provides sanctions against foreign nationals who have committed narcotics crimes or are undergoing

⁸ Anis Mashdurohatun, M. Ali Mansyur, Identifikasi Fair Use/Fair Dealing Hak Cipta Atas Buku Dalam Pengembangan Iptek Pada Pendidikan Tinggi Di Jawa Tengah, *Yustisia Jurrnal Hukum*, Vol 4, No 3 (2015), page 522–540.

⁹ Lilik Mulyadi, *Bunga Rampai Hukum Pidana: Perspektif, Teoretis, dan Praktik*, Bandung, PT Alumni, 2008, p. 356.

¹⁰ Laden Marpaung, *Asas Teori-Praktik Hukum Pidana*, Jakarta: Sinar Grafika, Cet ke 2, 2005, p. 107–110.

¹¹ Siswo Wiratmo, *Pengantar Ilmu Hukum*, Yogyakarta: FH. UII, 1990, p. 9.

narcotics crimes, namely expulsion from the territory of the Republic of Indonesia and being prohibited from re-entering the territory of the Republic of Indonesia. Whereas in Article 148 if the fines stipulated in this law are not paid by the perpetrators of narcotics crimes, the perpetrators are sentenced to a maximum of two years in prison as a substitute for criminal fines that cannot be paid.

The application of these criminal sanctions aims to provide effectiveness of community participation. This participation has the widest opportunity in which the community has the right and responsibility to help prevent and eradicate the abuse and illicit traffic of narcotics and narcotics precursors.

Based on the results of the interview with RM, the Judge at the Jepara District Court, that paying attention to the formulation of sanctions in the Narcotics Law, it can be said that the formulation of sanctions for criminal acts of narcotics abuse refers to a double track system, because based on a victimological review that narcotics addicts are self-victimizing victims, namely victims as perpetrators, victimology still defines narcotics abuse as victims, even though they are victims of crimes/crimes that they commit themselves. Therefore, narcotics addicts who are also victims deserve protection. However, because narcotics addicts are also perpetrators of a crime/crime, they must also be punished, because of this it is said that the double track system in formulating sanctions against criminal acts of narcotics abuse is the most appropriate.¹²

3.2 Forms of Optimizing Criminal Sanctions Against Narcotics Users in the Judicial Process

In the case that occurred in Jepara in Decision Number: 13/Pid.Sus/2022/PN.Jpa where the judge decided that the defendant was a narcotics abuser, the defendant's actions fall into the third category, namely actions in the form of offering for sale, selling, buying, receiving, become an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors (Article 114 and Article 116 for narcotics class I where this is a burden for the defendant. In fact, imprisonment as well as medical and social rehabilitation sanctions in the Law on Narcotics have provide clear legal certainty for each perpetrator so that the Law on Narcotics can be said to have 2 (two) sides, namely a humanist side for narcotics addicts and abusers, and a hard and firm side for dealers, syndicates and narcotics dealers.

Sahetapy stated that the purpose of sentencing is very important, because the judge must reflect on the criminal/punishment aspects within the framework of the sentencing objective by paying attention not only to the sense of justice in the heart of society, but must be able to analyze the reciprocal relationship between the offender and the victim.¹³

Muladi proposed a combination of sentencing goals that were considered suitable with sociological, ideological, and juridical philosophical approaches based on the basic assumption that a crime is a disturbance to the balance, harmony and harmony in people's lives, which results in individual or societal damage. Thus, the purpose of punishment is to repair the individual and social damage caused by a crime. The aims of the punishment

¹² Hasil Wawancara dengan RM, Hakim Pengadilan Negeri Jepara, Dilaksanakan Wawancara Pada Tanggal 27 Mei 2022.

¹³ J. E. Sahetapy, *Op.Cit*, Juli 1989, h. 22.

are: prevention (general and specific), community protection, maintaining community solidarity, compensation/compensation.

3.3 Obstacles and Solutions for Judges in Optimizing Criminal Sanctions Against Narcotics Users in the Judicial Process

Based on the results of an interview with RM, the Judge from the Jepara District Court stated that one of the obstacles experienced by the judge when deciding on a drug abuse accused was an assessment and/or statement from the doctor, police, prosecutor stating that the defendant needed rehabilitation. Without an assessment or information from experts, it is unlikely that the accused will be rehabilitated and the judge will not make a decision other than that charged by the public prosecutor. If the public prosecutor does not charge the defendant with rehabilitation measures, the judge will not decide on the rehabilitation measures even though the defendant has repeatedly used or consumed narcotics. Therefore, one of the judge's considerations in deciding on rehabilitation measures is the existence of an assessment which states that the defendant is a victim of narcotics abuse who needs rehabilitation.¹⁴

Another obstacle is the public's negative view of judges. Sometimes people don't believe what the judge has decided is really fair. Responding to the public's view of judges, the interviewees thought that this sometimes creates a sense of pressure on judges, but judges will still make decisions in accordance with the applicable laws and regulations and the belief in the judges. In response to this, in order to create an independent judicial power, the application of the principles of a democratic judiciary must be developed. This is done to prevent public interference that can suppress the freedom of judges.¹⁵

4 Conclusion

1. The criminal provisions contained in Law no. 35 of 2009 concerning Narcotics is formulated in Chapter XV of Criminal Provisions Article 111 to Article 148. Law no. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be punishable by criminal sanctions, namely the first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotic precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics and Article 122 for class III narcotics as well as Article 129 letter (a)), the second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for class II narcotics, and Article 123 for class III narcotics and Article 129 letter (b)), the third category, namely acts in the form of offering for sale, selling, buying, receiving, intermediary in selling buy, exchange, or hand over narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics,

¹⁴ Hasil Wawancara dengan RM, Hakim Pengadilan Negeri Jepara, Dilaksanakan Wawancara Pada Tanggal 27 Mei 2022.

¹⁵ Hasil Wawancara dengan RM, Hakim Pengadilan Negeri Jepara, Dilaksanakan Wawancara Pada Tanggal 27 Mei 2022.

Article 119 d and Article 121 for narcotics class II, Article 124 and Article 126 for narcotics group III and Article 129 letter (c)), the fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotic precursors (Article 115 for narcotics class I, Article 120 for class II narcotics and Article 125 for class III narcotics and Article 129 letter (d)).

2. One of the obstacles experienced by judges when deciding on drug abuse defendants was the existence of assessments and/or statements from doctors, police, prosecutors stating that the defendant needed rehabilitation. Without an assessment or information from experts, it is unlikely that the accused will be rehabilitated and the judge will not make a decision other than that charged by the public prosecutor. If the public prosecutor does not charge the defendant with rehabilitation measures, the judge will not decide on the rehabilitation measures even though the defendant has repeatedly used or consumed narcotics. Therefore, one of the judge's considerations in deciding on rehabilitation measures is the existence of an assessment which states that the defendant is a victim of narcotics abuse who needs rehabilitation. Another obstacle is the public's negative view of judges. Sometimes people don't believe what the judge has decided is really fair.

Bibliography

- Aliffia Ananta, Rifki Syafichul Haqi, Ririn Ariani, Penyuluhan Remaja Anti Narkotika dan Psikotropika, *Jurnal Abdi karya: Jurnal Karya Pengabdian Dosen dan Mahasiswa*, Vol 03 No 04, 2019
- Andri Winjaya Laksana, Hartiwiningsih Hartiwiningsih, Hari Purwadi, Law Enforcement Of Drug Addict During The Covid-19 Pandemic Based On Justice, *The 3rd Legal Internasional Conference and Studies*, Vol. 3, issue 3 (2021)
- Andri Winjaya Laksana, Sociological Analysis of Narcotics Circulation Treatment On Students, *Jurnal Pembaharuan Hukum*, Vol 8, No 1 (2021a)
- Andri Winjaya Laksana, The Legal Position Of Islamic Boarding School (Pesantren) As A Rehabilitation Effort For Narcotics Abuse, *International Journal of Law Reconstruction*, Vol 5, issue 2 (2021b)
- Anis Mashdurohaturun, M. Ali Mansyur, Identifikasi Fair Use/Fair Dealing Hak Cipta Atas Buku Dalam Pengembangan Iptek Pada Pendidikan Tinggi Di Jawa Tengah, *Yustisia Jurnnal Hukum*, Vol 4, No 3, 2015
- Laden Marpaung, *Asas Teori-Praktik Hukum Pidana*, Jakarta: Sinar Grafika, Cet ke 2, 2005
- Lilik Mulyadi, 2008, *Bunga Rampai Hukum Pidana: Perspektif, Teoretis, dan Praktik*, Bandung, PT Alumni
- Mustafa, Muhammad, 2007, *Krimonologi: Kajian Sosiologi terhadap Kriminalitas, Perilaku menyimpang, dan Pelanggar Hukum*, FISIP UI Press
- Nur Asyiah Dalimunthe, 2016, Zul Alfian, Basuki Wijosentono, Eddyanto, *Analisa Kualitatif Kandungan Senyawa Metamfetamin Dalam Rambut Pengguna Sabu-Sabu Dengan Metode Ekstraksi Fase Padat (SPE) Menggunakan Adsorben Zeolit Serulla*, Teknik Kimia, Akademi Teknik Indonesia CutMeutia, Medan
- R. Mehling, *Methamphetamine, The Straight Facts*, Chelsea House, New York, NY 10001, 2007, h. 62
- Sepha Dwi Hananto, Anis Mashdurohaturun, Penegakan Hukum Pidana Terhadap Terdakwa Pengguna Narkotika Yang Menjalani Rehabilitasi Di Polda Jateng, *Jurnal Khaira Ummah*, Vol 13, No 1 (2018)

Siswo Wiratmo, 1990, *Pengantar Ilmu Hukum*, Yogyakarta: FH. UII

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