Harmonization of Law Enforcement Regulations of Narcotic Addictives

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Abstract
The purpose of this research is to find out and analyze a policy of harmonization of law enforcement against narcotics addicts to formulate criminal sanctions for narcotics crimes in the future, which can fulfill legal objectives, namely legal certainty, benefit and justice. The approach method in this study uses normative juridical methods. the results of the study stated that the Harmonization of Law Enforcement Regulations for Narcotics Addicts Based on the provisions of Articles 54, 55, 103 and 127 of the Narcotics Law, a person who must be rehabilitated is only limited to someone who is included in the category of Addict, Narcotics Abuser and Narcotics Victim. Narcotics Abuse. the judge in deciding a case must pay attention to the provisions of Articles 54, 55 and 103, then in Article 127 Paragraph (3) In the event that an abuser can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation in harmony with the article in order to realize justice and benefits for law enforcement for narcotics addicts.

I. Introduction

Narcotics abuse is used not for the purpose of treating disease, but is used intentionally to achieve a "certain awareness" because of the effect of drugs on the soul. As the people of Indonesia, in general, are currently faced with a very difficult situation to worry about due to the widespread use, indiscriminately, of all kinds of narcotics and psychotropics.[1] One of the efforts made by the government to overcome the dangers of narcotics is through improvements in

[1] Andri Winjaya Laksana, Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi, *Jurnal Pembaharuan Hukum*, Volume II No. 1 Januari-April 2015, page.75

the regulation in the field of law. Improvement is very necessary because the influence of narcotics is very large on the survival of a nation.[2]

According to Hari Sasangka, in the 1990s, narcotics users had entered all levels of society, both the upper class, the middle class, and the lower class. Meanwhile, from an age point of view, narcotics and illegal drugs are enjoyed not only by teenagers but also by the middle-aged and elderly groups. The spread of narcotics is not only in big cities but has also penetrated into small towns, even now it has penetrated into districts and even villages.[3]

The circulation of narcotics in society, as if it never stops, and there is a criminal act of abuse of narcotics, then there are rules of law that are violated. In this case, the law that has been violated must be upheld. It is through law enforcement that law becomes a reality. Law enforcement is a pillar (main pillar) that strengthens the fundamentals that support the welfare of people's lives, in various aspects of life. According to Soerjono Soekanto, the core and process of (good) law enforcement is the harmonious application of laws and principles, which are then manifested in behavior. This pattern of behavior is not limited to members of the public, but also includes groups of "pattern setting groups" which can be interpreted as law enforcement groups in a narrow sense.[4]

Narcotics abuse as stipulated in Article 1 point 15 of Law Number 35 of 2009 is: "Persons who use narcotics without rights or against the law". Narcotics abuse is a type of crime that has (potentially) very broad and complex social impacts, especially when the perpetrators are children. The social impact of narcotics abuse by children is not only caused by the consequences that will give birth to suffering and destruction both physical and mental which are very long, but also because of the complexity in handling it, especially when the choice falls on the use of criminal law as a means.[5]

The development of narcotics crime has become a severe threat to the life of every nation and humanity in general. The increasing number of addicts will result in disturbances to public security and order, from increasing crime to other social diseases.[6] Law No. 35 of 2009 concerning Narcotics is designed to reduce the number of narcotics trafficking in Indonesia which has a transnational nature

[2] Andri Winjaya Laksana, Social Analysis of Narcotics Abuse Prevention Women, Jurnal Pembaharuan Hukum, Volume VI No.3 September-Desember 2019, page.308-318
[3] Hari Sasangka, *Narkotika dan Psikotopika Dalam Hukum Pidana*, Mandar Maju, Bandung, 2003, page. 2.
[4] Siti Malikhatun Badriyah, *Penemuan Hukum Dalam Konteks Pencarian Keadilan*, Cetakan Pertama, Badan Penerbit Universitas Diponegoro, Semarang, 2010, page. 38.
[5] Kusno Adi, *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak*, Cetakan Pertama, UMM Press, Malang, 2009, page. 17.
[6] Sami'an, Legal Understanding Regarding the Hazards of Drugs in The Framework of Community Development, *Pena Justisia*, Vol.20, No.2, December, 2021, page.136-146

and to reduce the number of victims of narcotics abuse, especially among teenagers who endanger people's lives.[7] Law Number 35 of 2009 includes guarantees for regulating medical and social rehabilitation efforts (Article 4 letter d) as one of the objectives of the Law. This objective was not found in previous Narcotics Laws such as Law Number 22 of 1997 and Law Number 9 of 1976.

A victimology review classifies narcotics addicts as Self Victimizing Victims, namely victims of crimes they commit themselves. Therefore, the most appropriate way for judges to pass a verdict in cases of narcotics addicts is to impose a rehabilitation sentence. Basically, addicts and victims of abusers are victims, based on Prof Hartiwiningsih's opinion. Legal protection for victims, one of which provides the right to compensation and restitution as a form of equal distribution of justice for victims. Hari purwadi added that legal protection for victims is not only for certain crimes, but as a form of distribution of justice for victims, in imposing crimes on narcotics addicts it is very contrary to the value of justice if they are still imposing prison sentences, because in principle narcotics addicts can be classified as people who are sick and need healing.

The mandatory nature of medical rehabilitation and social rehabilitation should be an important basis for judges to take action in deciding cases against victims of narcotics abuse. However, the mandatory nature of this rehabilitation, Article 54 and Article 127 of the Narcotics Law, are closely related. It can be seen in Article 127 paragraph (2) that the judge must pay attention to the provisions of Article 54, Article 55 and Article 103 in making a decision. However, even though it is mandatory, its implementation still depends on investigators and public prosecutors. If the public prosecutor in his charge does not use the provisions of Article 127, it is unlikely that drug users will be placed in a rehabilitation institution. the most fatal condition is when the judge decides to use article 127, but does not consider the rehabilitation provisions.[8]

Regarding the perpetrators of criminal acts, one of the things that becomes the point of problem in Law Number 35 of 2009 is regarding the unclear understanding and status between addicts, abusers, and victims of narcotics abuse. Because of the ambiguity in terms of meaning and status, other arrangements are biased and confusing. in practice, this has a direct impact on narcotics users. One of them is in terms of providing medical and social rehabilitation for drug abusers and addicts.

[7] Andri Winjaya Laksana, Hartiwiningsih, Hari Purwadi, Law Enforcement of Drug Addict During the Covid-19 Pandemic Based on Justice, *The 3rd Proceeding International Conference And Call Paper Sultan Agung Islamic University*, Vol 3, No 3 (2021), page.2

[8] *Ibid*

the purpose of the research begins with the existence of juridical problems in Law Number 35 of 2009 which will hinder the efforts of law enforcers in preventing and eradicating narcotics crimes, so that these juridical problems need to be formulated to find out and analyze a harmonization policy of law enforcement against narcotics addicts to formulate sanctions criminal acts of narcotics in the future, which can fulfill legal objectives, namely legal certainty, benefit and justice.

2. Research Method

The type of research used in this research is normative juridical. This concept views law as synonymous with written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from real social life.[9]

3. Results and Discussion

1. Construction of Law Enforcement against Narcotics Addicts based on Positive Law

Criminal law policy is inseparable from the stages of policy formulation. Policy formulation is a stage of in abstracto law enforcement carried out by legislators so that this policy can also be called legislative policy. Legislative policy is a plan from legislators regarding what will be done in dealing with certain problems and how to implement something that has been planned. The role of the legislature includes a basic policy that is not only about the punishment but also about the type or type of punishment provided for other criminal powers at a lower level and the level given to them in determining the appropriate punishment for a criminal offender.[10]

One of the provisions for criminal sanctions that are actionable is contained in Article 127 of the Narcotics Law which is specifically imposed on narcotics abusers. The three stages of the formulation policy have been implemented in narcotics crimes. First, the formulation of criminal acts, in this case narcotics crimes have been determined as criminal acts by regulating narcotics crimes in Indonesian positive law with its legal product in the form of narcotics law. Second, the formulation of criminal responsibility, by regulating narcotics crimes in positive law, criminal responsibility can be applied and carried out on narcotics perpetrators and abusers. Third, the formulation of criminal sanctions, in this case the narcotics law regulates criminal sanctions that can be applied to

[9] Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri,* Jakarta: Ghalia Indonesia, 1988, page. 13-14

[10] Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Universitas Diponegoro, Semarang, 1994, page. 56.

narcotics perpetrators and abusers. The criminal sanctions are in the form of imprisonment, fines, and rehabilitation for narcotics abusers. With these arrangements, narcotics crime becomes a crime called narcotics crime.

The theory of policy formulation is used to review and evaluate the application of Article 112 and Article 127 of the Narcotics Law. In the explanation above, it has been stated that the two articles are articles that have multiple interpretations, causing legal uncertainty in their application. The regulation of narcotics crimes has made narcotics crimes have a legal umbrella in their application. This is not against the principle of legality. In the formulation of the current narcotics law there are several articles that can be said to be articles of multiple interpretations and cause ambiguity in their application.

These articles are Article 112 and Article 127 of the Narcotics Law. Article 112 of the Narcotics Law in its application is used to ensnare perpetrators of narcotic crimes. Article 127 of the Narcotics Law only applies to narcotics abusers as explained above. That the use of these articles has created legal uncertainty so that the purpose of the law itself is not optimally achieved. This is because many perpetrators of narcotics crimes are charged with Article 127 of the Narcotics Law, which should be for narcotics abusers.

Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation. The elucidation of Article 54 states that "What is meant by 'victim of Narcotics abuse' is someone who accidentally uses Narcotics because they are persuaded, tricked, tricked, forced and/or threatened to use Narcotics", so they are required to receive rehabilitation both medically and socially. The rehabilitation policy for victims of Narcotics abuse has indeed created a legal polemic in its application, specifically in the implementation of a policy to rehabilitate these Narcotics addicts/users, often the implemented policies are not fully based on the principles of justice but on the other hand the rehabilitation policies are carried out aiming to carrying out the sentencing process.

The sanctions regulated in the Narcotics Law adhere to a double track system, namely in the form of criminal sanctions and action sanctions.[11] Rehabilitation is a form of action sanctions. In Article 103 of the Narcotics law it is emphasized that judges can decide or determine drug addicts to undergo treatment and or treatment. The period of undergoing treatment and or treatment is counted as the period of serving a sentence. This is in line with one

[11] Puteri Hikmawati, Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika, *NEGARA HUKUM,* Vol. 2, No. 2, November 2011, page 329–350.

of the objectives of the formation of the Narcotics Law, namely to ensure the regulation of medical and social rehabilitation efforts for narcotics addicts. However, based on existing data it shows that judges tend to impose prison sentences on addicts. As a result, narcotics addicts who are in prison are not given the opportunity to undergo rehabilitation, so that the implementation of rehabilitation has not run optimally. Until now, the narcotics rehabilitation program in prisons has not run optimally.[12]

The obligation to rehabilitate narcotics abuse must be carried out because of their position as a victim. Rehabilitation is mandatory for addicts and victims of narcotics abuse because as a victim of narcotics, at that stage alone a negative stigma has been attached to him then if he is sentenced to prison it will also add negative stigma points, namely as a criminal. Rehabilitation can avoid the application of criminal law to an addict or victim of narcotics abuse and there will be a possibility to prevent someone from becoming evil again. The assessment of victims of narcotics abuse at the Police of the Republic of Indonesia is the same as that carried out by the National Narcotics Agency, that is, if victims of narcotics abusers or addicts report without an arrest process, the Police will direct/recommend directly to the Compulsory Report Receiving Institution (IPWL) and if the victim a narcotics abuser or addict is caught by the Police, the process is to receive an assessment request from an investigator no later than 1 x 24 (one twenty four) hours, the integrated assessment team conducts an assessment after receiving the request and the integrated assessment team carries out their duties and provides recommendations on the results of the assessment within a certain period of time no later than 6 (six) days for the investigator to report in writing to the local district court.[13]

2. Harmonization of Law Enforcement Regulations for Narcotics Addicts

Narcotics abuse from after year has increased which ultimately harming the nation's future cadres. One of the efforts made by the government to overcome the dangers of narcotics is through improvements in the regulation in the field of law.[14] Punishment in the form of action against victims of Narcotics abuse regulated in Law no. 35 of 2009 concerning Narcotics is in accordance with the

[12] Insan Firdaus, "Peranan pembimbing kemasyarakatan dalam upaya penanganan overcrowded pada lembaga pemasyarakatan" *JIKH*, Vol. 13 No. 3 (2019): 339-358

[13] Wilson Bugner f. Pasaribu, Analisis Hukum Penerapan Asesmen Terhadap Korban Penyalahgunaan Narkotika Pada Kepolisian Republik Indonesia, *Jurnal FH Unsu*, 2017;

[14] Andri Winjaya Laksana, The Legal Position of Islamic Boarding School (Pesantren) as a Rehabilitation Effort For Narcotics Abuse, *IJLR: International Journal of Law Recontruction*, Volume 5, Number 2, September 2021, page.317-327

concept of sentencing in the 2018 National Criminal Code Bill which has a basis, namely Pancasila and the 1945 Constitution of the Republic of Indonesia, while the principles are: justice; protection, humanity, order, protection, security, scientific values, and legal certainty.

The misuse of narcotics, in fact, is a criminal act, so that the perpetrator should carry out a legal process like law enforcement in other criminal cases. The misuse of narcotics includes the qualification of a criminal act (delict) which is regulated in statutory regulations.[15] With the existence of the Narcotics Law, Article 54 regarding victims of narcotics abuse is obliged to provide medical treatment and social care, and Article 103 which regulates the power of judges in imposing treatment decisions on victims of narcotics abuse is related to the power of the Chairperson of the District Court as referred to in Article 55 paragraph (1) and paragraph (2) of Law Number 48 of 2009 concerning Judicial Powers delegated to judges called Supervisory and Observer Judges (KIMWASMAT) as stipulated in Article 277 of the Criminal Procedure Code to Article 283 of the Criminal Procedure Code.

Legally, narcotics rehabilitation is regulated in Article 54 of Law Number 35 of 2009 concerning Narcotics which states that narcotics addicts and victims of narcotics abusers are required to undergo medical rehabilitation and social rehabilitation. From the formulation of Article 54 it is determined that a limited number of people are required to be rehabilitated, namely those who are categorized as narcotics addicts and victims of narcotics abusers. Then in Articles 55 to 59 it is regulated regarding Institutions/institutions/places that carry out rehabilitation, the implementation of rehabilitation can be carried out by the government or the community, the agency authorized to make regulations implementing medical and social rehabilitation.

Based on the provisions of Articles 54, 55, 103 and 127 of the Narcotics Law, a person who must be rehabilitated is limited to only someone who belongs to the category of Addicts, Narcotics Abusers and Victims of Narcotics Abuse. Narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically. Abuser is a person who uses. Whereas a victim of Narcotics abuse is someone who accidentally uses Narcotics because they are persuaded, tricked, tricked, forced, and/or threatened to use Narcotics. Narcotics without rights or against the law.[16]

[15] Andri Winjaya Laksana, Sociological Analysis of Narcotics Circulation Treatment on Students, *Jurnal Pembaharuan Hukum*, Volume 8 No.1 January-April 2021, page.105-117

[16] Insan Firdaus, Harmonisasi Undang-Undang Narkotika Dengan Undangundang Pemasyarakatan Terkait Rehabilitasi Narkotika Bagi Warga Binaan Pemasyarakatan, Jurnal *Penelitian Hukum De Jure* Volume 21 Nomor 1, Maret 2021, page 141-161

The implementation of the provisions of Article 54 of the Narcotics Law regarding rehabilitation obligations for addicts and victims of abuse who are proven to have committed narcotics crimes in the judicial process is regulated in Article 127 Paragraph (2) of the narcotics law, which states that judges in deciding cases must pay attention to the provisions of Article 54, 55 and 103, then in Article 127 Paragraph (3) If the abuser can be proven or proven to be a victim of narcotics abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation.[17]

The legal basis for the issuance of a policy for rehabilitation of narcotics addicts is as a form of carrying out the orders of Law Number 35 of 2009 concerning Narcotics which are regulated in Article 54, Article 55, Article 103 and Article 127, Government Regulation Number 25 of 2011 concerning Mandatory Reporting of Narcotics Addicts. and Equivalent Regulations of 7 (seven) State Institutions of 2014 concerning Handling Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions. The policy for rehabilitation of narcotics addicts in handling them, the National Narcotics Agency and the Police of the Republic of Indonesia, apply more depenalization and decriminalization policy approaches.

4. Conclusion

Construction of Law Enforcement against Narcotics Addicts currently in the imposition of judges' sentences in the form of rehabilitation sentences is still relatively rare. Most narcotics abusers are not sentenced to rehabilitation as stated in Law 35 of 2009 concerning Narcotics, but are sentenced to imprisonment even though the provisions of the Narcotics Law have guaranteed rehabilitation efforts, both medical rehabilitation and social rehabilitation as stipulated in Article 54, Article 56, Article 103, and Article 127 of the Narcotics Law. Harmonization of Law Enforcement Regulations for Narcotics Addicts Based on the provisions of Articles 54, 55, 103 and 127 of the Narcotics Law, a person who must be rehabilitated is only limited to someone who is included in the category of Addicts, Narcotics Abusers and Narcotics Victims. Narcotics Abuse. the judge in deciding a case must pay attention to the provisions of Articles 54, 55 and 103, then in Article 127 Paragraph (3) In the event that an abuser can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation in harmony with the article in order to realize justice and benefits for law enforcement for narcotics addicts.

[17] *Ibid.*

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