

Juridical Analysis of Drug Use and Its Implications in Criminal Law

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Abstract

The purpose of this study is to evaluate the effectiveness of legal analysis in addressing drug abuse in law enforcement within Indonesia. Identifying the barriers to law enforcement and rehabilitation for drug offenders and narcotics abusers in the legal system is also a focus. The research employs sociological and juridical research methods, incorporating a social science approach alongside legal analysis. To identify issues in this study, the researcher employed descriptive analysis research methods by detailing the application of punishment and rehabilitation approaches for drug dealers and individuals involved in drug abuse.

Keywords: Juridical, Drug, Law

INTRODUCTION

Criminal offense is a term that contains basic meaning in legal science, having an abstract meaning from concrete events in the field of criminal law. According to Simons, the formulation of a criminal act is an unlawful act carried out intentionally by someone who can be held accountable for his actions and which is declared by law to be a punishable act (Lamintang, 1997). The definition of criminal acts in the Criminal Code by legislators is called strafbaarfet, strafbaarfeit is often used by criminal law experts to mean criminal acts, criminal acts, criminal incidents and delicts.

Criminology is the study of crime. The name criminology was discovered by P. Topinard (1830-1911), a French anthropologist, and literally comes from the words "crimen" which means crime or criminals and "logos" which means science, so that criminology can mean the science of crime or criminals. (Santoso & Zulfa, 2001). Criminology refers to the scientific study of the nature, extent, causes, and control of criminal behavior both in individuals and in social, cultural, political, and economic life. According to Paul Moedigdo Moeliono, Criminology is a science that is supported by various sciences that discuss crime as a humanitarian problem. WE Noach divides the meaning of criminology into two categories, namely:

1. Criminology in the narrow sense is a science that studies form of incarnation, the causes and consequences of crime (crimes and bad deeds).
2. Criminology in the sense of criminalism is a science that studies crime as a technical problem, as a tool for pursuing or investigating criminal cases technically using the natural sciences of chemistry and others such as judicial medicine.

In criminology there are approaches used to study crime, Herman Mannheim expressed 3 opinions. First, a descriptive approach where this approach is carried out by observing and collecting data relating to facts about crimes and criminals such as forms of criminal behavior, the way crimes are committed, the frequency of crimes at different times and places, the characteristics of criminals. perpetrators of crimes, such as age, gender and so on, as well as the career development of criminals.

Several conditions that must be met when using descriptive opinions:

1. Data collection cannot be done haphazardly. Therefore, the fact must be done selectively
2. Interpretation, evaluation and providing a general understanding of the facts must be carried out. Without interpretation, evaluation and providing general understanding, these facts will have no meaning

While the second is a cause-and-effect approach. Facts found in society can be interpreted to find out the causes of crimes, both in individual and general cases. In criminology, cause-and-effect relationships are sought in the context of the question of why someone commits a crime. To understand crime using a causal approach, this is considered the etiology of crime.

While the third is a normative approach. According to Utari (2012), criminology is said to be an idiographic discipline because it studies facts, causes and effects, and possibilities in individual cases. And nomothetic discipline is the goal of discovering and revealing scientific laws, whose uniformity and tendencies are recognized.

In essence, humans are not free from mistakes, these errors can be caused by negligence or intentional factors committed by humans themselves. One of the mistakes made by humans can occur in the form of crimes, such as murder, theft, assault, and so on. So that people can feel the losses caused by these crimes.

Of the several criminal acts mentioned above, one of them is drug abuse. In essence, medicine itself is very necessary for treatment and health services, but if it is misused in doses that do not comply with treatment standards and distributed illegally, it can have detrimental consequences for individuals and society, especially for society. the next generation. Doctor's instructions create obstacles in carrying out activities at home, school, campus and other public places.

In research conducted by Dr. SJ Jachuck in 1980 proved that drugs have several impacts and influences on human nature, becoming more frontal when speaking, crying easily and losing wisdom. Apart from that, there was a decrease in energy stamina after treatment, such as general activity, sexual activity and irritability. Apart from that, there are abnormalities in slow walking, drowsiness and impotence (Jachuck, Brierley, & Willcox).

Narcotics crime has long been an enemy of the Indonesian nation. In Indonesia, facts on the ground show that 50% of prison inmates are drug users (Eleanora, 2019). Various efforts have been made to prevent drugs from spreading and becoming rampant, quite a few world bodies are involved, but drug trafficking is still rampant. Drugs themselves in various countries have been designated as an extraordinary crime where this crime has a large and multidimensional impact on social, cultural, economic and political aspects as well as the negative impacts resulting from this crime (Silaban, Erwina, & Mulyadi, 2013).

Law enforcement against Narcotics Crime has been carried out by law enforcement officers, this is expected to be a counteracting factor to the increasing circulation and illicit trafficking of narcotics, but in reality the more intensive law enforcement is carried out, the more widespread the circulation and illicit trafficking of narcotics. also increased.

In its own response, the Indonesian government on various occasions has implemented several policies called criminal policies, namely by issuing special drug laws, one of which is Law no. 35 of 2009 concerning Narcotics. In its own implementation, drug users who receive rehabilitation are not included in the category of criminal offenders who must be subject to imprisonment (criminal justice system), but are included in the group of addicts who will receive rehabilitation and are categorized as victims themselves. action (self-sacrifice). So the government's criminal policy towards victims is placing drug addicts as sick victims who must receive recovery assistance (decriminalization) (Siagian, 2017).

The narcotics problem is a classic problem that is still a big obstacle in the law enforcement process in Indonesia. Criminal acts are no longer carried out in secret, but are carried out very openly by users and dealers in carrying out operations in the distribution of dangerous goods. According to Bakhri (2012) there is a fact that can be seen now that almost every day there is news related to drugs through print and electronic media. And it turns out that this illicit goods has spread quickly indiscriminately. Especially among the younger generation who are expected to become the nation's next generation in the future. Throughout history, narcotics and psychotropic substances have been known in civilization as initially beneficial for health.

According to Novian et al. (2018) that the use of narcotics and psychotropic substances can cause psychological paralysis which results in the loss of the human ability to perceive things. Loss of this ability has the potential to reduce the ability to concentrate and make decisions. In essence, criminal acts are actually acts that humans tend not to commit if the human's perceptive abilities are in good condition. The use of narcotics clearly has a close relationship in causing crime.

Perpetrators of Narcotics Crimes can be subject to criminal sanctions as stated in the criminal provisions of Law no. 35 of 2009 concerning Narcotics, namely with the following classification: 1) Dealers, criminal provisions for dealers in the Narcotics Law are regulated in Article 111, Article 112, Article 114, and Article 116 for Class I Narcotics. Article 117 and Article 119 and Article 121 for Narcotics in the Category II category. As well as Article 122, Article 124, and Article 126 for Category III Narcotics; 2) Producer, is a person who carries out production activities by preparing, processing, producing and producing Narcotics directly or indirectly through extraction or non-extraction from natural sources or chemical synthesis or a combination of both, including packaging and/or changing form. Narcotics.³ Criminal sanctions that can be given to Narcotics producers are Article 113, Article 118 and Article 123 of the Narcotics Law; 3) Abusers are people who use narcotics without authority or against the law. 4 The application of criminal sanctions for abusers is regulated in Article 127 paragraph (1) of the Narcotics Law. Based on Article 127 Paragraph (3) of the Narcotics Law, abusers can be subject to medical rehabilitation and social rehabilitation sanctions if they are proven or can be proven to be victims of Narcotics abuse.

In practice, there are several decisions that impose sentences in the form of rehabilitation for narcotics abusers, but there are still many court decisions that do not consider this and prefer to impose sentences in the form of imprisonment for narcotics abusers even though the abusers are already in prison. This case meets the qualifications of a perpetrator who can be sentenced to rehabilitation, whose position in the case is almost the same as that of a perpetrator who was sentenced to rehabilitation.

Does this difference in punishment conflict with one of the objectives of the law, namely justice? One of them is the principle of equality before the law which is a form of legal supremacy (*rechtstaat*) so that everyone must be treated equally before the law based on Mulyadi (2007).

So the purpose of this article is to determine the implementation of the role of the National Narcotics Agency in identifying criminalization and rehabilitation of drug dealers and perpetrators of drug abuse in law enforcement in Indonesia.

RESEARCH METHODS

This research uses a sociological juridical approach, approaching it from a legal perspective and also from a social science perspective. In order to find problems in this research, descriptive analysis research specifications were used, namely describing the implementation of Criminalization and Rehabilitation of Drug Dealers and Abusers in Law Enforcement in Indonesia.

RESULTS AND DISCUSSION

Article 127 paragraph 2 of the Narcotics Law states that it orders judges to pay attention to the provisions of Article 54, Article 55 and Article 103 relating to the implementation of criminal rehabilitation if narcotics abusers are proven to be addicts or victims of narcotics abuse. Thus, the judge has the authority to impose rehabilitation sentences on addicts and victims of narcotics abuse as long as it can be proven according to the facts provided to the court.

Article 112 of the Narcotics Law in its application is used to ensnare perpetrators of narcotics 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 objectives of the law itself are not achieved optimally. This is because many perpetrators of narcotics crimes are charged under Article 127 of the Narcotics Law, which should be an article for narcotics abusers. In the future, state political

and legal policies must emphasize that drug users/users must undergo rehabilitation, not prison sentences. Meanwhile, criminal sanctions can only be applied to kingpins, dealers, drug traffickers.

State consistency through law enforcement officials is very important in implementing different treatment between drug users and dealers. According to Promovendus, it would be best if our legal politics, eradicating drugs, should consistently carry out rehabilitation both medically and socially for drug abusers or users. State, just focus on criminalizing drug dealers or traffickers, this is more targeted. Efforts are needed to decriminalize or depenalize (shift from criminal to non-criminal) the regulations on drug abuse in the revision of the narcotics law. This is because drug users or users are actually victims who make mistakes, not perpetrators of crimes, even though Article 127 of Law Number 35 of 2009 concerning Narcotics has directed the implementation of rehabilitation for users.

Based on what Greenwald (2023) said, the appropriate sanction for users is not punishment, but rehabilitation. If it is someone who makes him sick, then he must be healthy through the rehabilitation process. The policy of placing abusers in rehabilitation institutions through an assessment process without a formal trial is a form of depenalization of narcotics crimes where abusers, victims and addicts who were originally given criminal sanctions are replaced with rehabilitation. The definition of depenalization is an act that is initially threatened with a crime and then the threat of the crime is removed, but it is still possible to be prosecuted by means other than criminal prosecution.

Meanwhile Supardi (2023) stated that the European Union Central Government Agency which coordinates drug policy data or the European Monitoring Center for Drugs and Drug Addiction (EMCDDA), defines depenalization as drug use remaining as a criminal offense, with the possibility of a prison sentence not being imposed. for possession or use even when other criminal sanctions are imposed.

Depenalization has the understanding that drug use is a criminal offense with prison sentences which are no longer given to defendants for possession or use even though there are other criminal sanctions such as fines, police records, and probation periods. In the concept of depenalization and also the implementation of rehabilitation for drug abusers, victims and narcotics addicts do not go through the mechanisms of the criminal justice system as usually regulated in the Criminal Procedure Code with prosecution and also the imposition of criminal decisions by a judge.

In this context, rehabilitation is obtained through an assessment mechanism carried out by an integrated and independent team to decide whether victims and drug addicts meet the requirements to be able to receive a rehabilitation policy without going through a criminal justice process related to the violation.

In Law Number 35 of 2009 concerning Narcotics there is no explicit mention of decriminalization/depenalization of narcotics abusers. It's just that the decriminalization/depenalization of narcotics abusers is constructed into legal policy and also state legal politics in Law Number 35 of 2009.

This rehabilitation period begins during the period of serving a sentence which gives the judge the authority to sentence narcotics addicts guilty by carrying out a criminal rehabilitation process for suspects who are found guilty or not based on Law Number 9 of 1976 Article 33. Rehabilitation policies for victims of narcotics abuse can give rise to legal polemics in the implementation process. Especially in the process of implementing the policy of penal rehabilitation for Narcotics addicts/users who must undergo medical rehabilitation and social rehabilitation.

Article 54 states that what is meant by 'victim of narcotics abuse' is someone who deliberately uses narcotics as a result of being persuaded, deceived or forced by threats. These victims must receive rehabilitation. both medically and socially.

The rules regarding rehabilitation for narcotics addicts then also fall into the realm of law enforcement in court as stated in Article 103 of the Narcotics Law which states that the Judge conducts an examination of the case of a narcotics addict who can provide: 1) Decide to order the victim to undergo treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime; or b) Determine and order the victim or defendant to undergo treatment

through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime." This means that the court can decide that someone who is proven to be a victim of a drug abuser and addict can be sentenced to rehabilitation if the person is proven guilty or not guilty of committing a narcotics crime. The phrase "can" in Article 103 of the Narcotics Law has multiple interpretations.

The Supreme Court of the Republic of Indonesia, which holds the highest judicial authority in Indonesia, pays special attention to the law enforcement process for narcotics abusers. With the enactment of the Narcotics Law, judges are the last bastion in law enforcement to gain extra authority to provide rehabilitation decisions for addicts and victims of narcotics abuse.

Regarding the placement of abusers, victims of abuse and narcotics addicts into medical and social rehabilitation institutions, this is a form of special attention to law enforcement, especially in rehabilitation programs for abusers, victims of abusers and also narcotics addicts. SEMA 4 of 2010 contains guidelines for law enforcers, especially for Judges, regarding the sentencing requirements in Article 103 of the Narcotics Law, letters a and b, which refer to extra authority for Judges in deciding on rehabilitation decisions. SEMA 4 of 2010 clearly states that the application of Article 103 can be applied if several conditions are met, namely:

1. When arrested by National Police investigators and also BNN, the defendant was caught red-handed.
2. When caught red-handed as referred to in letter a, several pieces of evidence of use were found with the following details:
 - a. Methamphetamine: 1 gram
 - b. Ecstasy: 2.4 grams
 - c. Heroin: 1.8 grams
 - d. Cocaine: 1.8 grams
 - e. Marijuana: 5 grams
 - f. Coca leaves: 5 grams
 - g. Mescaline: 5 grams
 - h. Psilosybin: 3 grams
 - i. LSD: 2 grams
 - j. PCP: 3 grams
 - k. Fentanyl: 1 gram
 - l. Methadone: 0.5 grams
 - m. Morphine: 1.8 grams
 - n. Pethidine: 0.96 grams
 - o. Codeine: 72 grams
 - p. Bufrenorphine groups: 32 mg
3. Letter of positive laboratory test results containing narcotics at the request of the investigator.
4. A certificate from a psychiatrist appointed by the judge is required.
5. There is no evidence that he was involved in the illegal distribution of illicit goods or narcotics.

Sanctions regulated in the Narcotics Law follow a dual track system, which means they can take the form of criminal sanctions and action sanctions. According to Firdaus (2019) that rehabilitation is a form of action sanction. In Article 103 of the Narcotics Law, it is emphasized that a judge can decide or appoint a drug addict to undergo treatment and/or treatment. The period undergoing treatment and/or treatment is counted as the period serving the sentence. This is in line with one of the objectives of the Narcotics Law, namely to ensure the regulation of medical and social rehabilitation efforts for narcotics addicts. However, existing data shows that judges tend to sentence addicts to prison. As a result, narcotics addicts who are in prison are not given the opportunity to undergo rehabilitation, so that rehabilitation does not run optimally. Until now, the narcotics rehabilitation program in prisons has not been running optimally

The basis for determining the assessment in carrying out rehabilitation of victims of narcotics abuse is Article 4 letter d, Articles 54-58, Article 103 of Law no. 35 of 2009 concerning Narcotics, Supreme Court Circular (SEMA) No. 4 of 2010 concerning Determination of Narcotics Abuse and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions as well as Joint Regulations of the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, Head of the National Police of the Republic of Indonesia and Head of the National Narcotics Agency of the Republic of Indonesia Number: 01/PB/MA/III/2014, Number: 03 of 2014, Number: 11/2014, Number: 03 of 2014, Number: PER-005/A /JA/03/2014, Number: 1 of 2014, Number: PERBER/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. The obligation to rehabilitate narcotics abusers must be carried out because of their position as victims.

Rehabilitation is mandatory for addicts and victims of narcotics abuse because as a narcotics victim, at that stage a negative stigma is already attached to them. Rehabilitation can avoid the application of criminal law to an addict or victim of narcotics abuse and has the possibility of preventing someone from becoming a criminal again.

According to Bugner (2017), the assessment of victims of narcotics abuse in the Republic of Indonesia Police is the same as that carried out by the National Narcotics Agency, that is, if victims of narcotics abuse or addiction report without an arrest process, the National Police will direct/recommend directly to the Compulsory Report Recipient Institution (IPWL). and if a victim of a narcotics abuser or addict is caught by the Police, the process is to receive a request for an assessment from the investigator no later than 1 x 24 (one twenty four) hours, then the integrated assessment team carries out an assessment after receiving the request and the integrated assessment team carries out its duties and provides recommendations the results of the assessment within a certain period are no later than 6 (six) days to be reported by the investigator in writing to the local district court.

The integrated assessment team consists of 2 (two) teams, namely a team of doctors consisting of: doctors and psychologists and a legal team consisting of: members of the Indonesian National Police (Polri), BNN (National Narcotics Agency), Prosecutor's Office and Kemenkumham (Ministry of Law and Human rights). The formation of an integrated assessment team is a step to carry out assessments of narcotics abusers or narcotics addicts at the investigation, prosecution, trial and punishment levels.

The Integrated Assessment work procedures according to BNN are:

1. The application as intended in Article 8 paragraph (3) is submitted by the investigator no later than 1 x 24 (one time twenty four) hours after the arrest.
2. The Integrated Assessment Team carries out an assessment after receiving the application as intended in paragraph (1).
3. The Integrated Assessment Team as intended in paragraph (2) carries out its duties and provides recommendations on the results of the assessment within a maximum period of 6 (six) days to the Investigator to be reported in writing to the local District Court.

The assessment in its implementation consists of:

1. Interviews regarding medical history, history of narcotics use, history of medication and treatment, psychiatric history, as well as family and social history of the suspect and/or accused;
2. Observing the suspect's behavior;
3. Physical and psychological examination. The assessment is carried out and signed by a minimum of 2 (two) members of the Medical Team.

Prospects for regulating integrated assessments of narcotics abusers in the future, criminal law policy will look at the extent to which applicable criminal provisions need to be changed and updated. Criminal law reform (penal reform) is also part of criminal law policy/politics (penal policy).

Law Number 35 of 2009 concerning Narcotics has 4 main objectives stated in Article 4, namely, ensuring the availability of narcotics for the purposes of health services and/or the development of science and technology, preventing and also protecting and saving the Indonesian people from narcotics abuse. Apart from that, eradicating the illicit trafficking of narcotics and narcotics precursors and ensuring the implementation of medical and social rehabilitation efforts for narcotics abusers and addicts.

Rehabilitation efforts are part of a treatment and rehabilitation strategy that uses two approaches, namely reducing narcotics dependence for narcotics addicts through medical rehabilitation (eliminating drug dependence) and coaching with supervision so that they can return to society and not be involved in narcotics use again. (prevent recidivism).

Rehabilitation as intended in the Narcotics Law has the aim of freeing addicts from narcotics dependence. In the World Health Organization (WHO) concept it is called abstinence based recovery, which is a situation where a person completely stops and no longer uses narcotics.

The aim of the Narcotics Law regarding medical and social rehabilitation efforts is closely related to the authority of judges as regulated in Article 103 of the Narcotics Law which gives additional authority to judges to be able to decide or determine rehabilitation orders if the Narcotics Addict is a drug addict. proven guilty or not guilty of committing a narcotics crime.

According to Michael (2018), the implementation of rehabilitation did not run smoothly, there was confusion in the definitions in the Narcotics Law. Article 4 of the Narcotics Law states that the Narcotics Law aims to ensure the regulation of medical and social rehabilitation efforts for drug abusers and addicts. Meanwhile, Article 54 of the Narcotics Law states that Narcotics Addicts and Victims of Narcotics Abuse are required to undergo medical rehabilitation and social rehabilitation. In Article 54, this means that the perpetrators' rights to receive rehabilitation are not recognized. Abusers who initially received guarantees of rehabilitation in Article 127 of the Narcotics Law, then become subjects who can be punished and lose their right to rehabilitation unless they obtain proof of being a narcotics victim. Abusers who initially received guarantees of rehabilitation in Article 127 of the Narcotics Law, then also become subjects who can be punished and lose their right to rehabilitation, unless they can be proven or proven to be victims of narcotics.

According to Laoly (2019), judges as the spearhead of the justice system are often seen as the party responsible for the large number of narcotics perpetrators who are sentenced to prison. Sentencing by judges in cases of narcotics abuse has not been effective, because most narcotics addicts are not sentenced to rehabilitation.

The judge was deemed to have interpreted and abused the judge's principles of belief which then deviated from the objectives of the Narcotics Law. In fact, judges as law enforcers and courts as institutions are part of the criminal justice system which includes other law enforcement officials such as police and prosecutors. In the criminal justice system, whatever the judge decides is always related to the investigation process by the police and the charges submitted by the prosecutor. Regarding rehabilitation, the narcotics criminal justice system is closely related to the National Narcotics Agency (BNN) which has the task of carrying out government duties in the field of preventing, eradicating drug abuse and illicit trafficking. The lack of rehabilitation sentences and the large number of narcotics abusers who go to prison do not necessarily make judges the most responsible parties in accordance with their independence.

The implementation of criminal rehabilitation must also be supported by supporting facilities and infrastructure. Based on BNN data, there are 176 rehabilitation facilities consisting of 113 government agency rehabilitation facilities and 63 community component rehabilitation facilities in 34 provinces that meet minimum service standards.

Of course, this number is still insufficient considering that the availability of rehabilitation facilities is very important because in SEMA Number 4 of 2010 it is stated that the judge who handed down the sentence took the form of an order to take legal action in the form of rehabilitation against the person concerned. The defendant must clearly and emphatically indicate the nearest place of rehabilitation in his decision. One of the objectives of the Narcotics Law is to ensure the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts. Implementing rehabilitation requires cooperation and understanding between law enforcement officials. In fact, in 2014 there was already a Joint Regulation between the Chief Justices of the Supreme Court.

Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, and Head of the National Narcotics Agency regarding handling narcotics addicts and victims of narcotics abuse in rehabilitation institutions. Judges specifically receive extra authority in the Narcotics Law, but its implementation must be supported by the results of TAT recommendations, expert witness testimony, the availability of rehabilitation facilities and a clear legal basis. The minimum amount of rehabilitation sentence is not only the responsibility of judges and judicial institutions, but also of related law enforcement officials starting from the investigation, assessment and public prosecutor levels.

CONCLUSION

The implementation of rehabilitation did not run smoothly, there was confusion in the definitions in the Narcotics Law. Article 4 of the Narcotics Law states that "The Narcotics Law aims to ensure the regulation of medical and social rehabilitation efforts for drug abusers and addicts. Meanwhile, Article 54 of the Narcotics Law states that Narcotics Addicts and Victims of Narcotics Abuse are required to undergo medical rehabilitation and social rehabilitation. In Article 54, this means that the perpetrators' rights to receive rehabilitation are not recognized. Abusers who initially received guarantees of rehabilitation in Article 127 of the Narcotics Law, then become subjects who can be punished and lose their right to rehabilitation unless they obtain proof of being a narcotics victim. Abusers who initially received guarantees of rehabilitation in Article 127 of the Narcotics Law, then also become subjects who can be punished and lose their right to rehabilitation, unless they can be proven or proven to be victims of narcotics.

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