

THE LAW ENFORCEMENT AGAINST NARCOTICS CRIMINAL ACTIONS WHO SHOULD BE ON REHABILITATION

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Abstract

The purpose of this study was to determine and analyze the process of law enforcement for narcotics crimes and the legal basis used as a reference for rehabilitation. The approach method used in this research is a sociological juridical approach. Criminal sanctions related to the five criminal acts above also have different consequences, depending on the type of narcotic class used. Criminal provisions regarding narcotics criminals possessing, storing, controlling or providing narcotics are regulated in Article 112, Article 117, and Article 122 of Act No. 35 of 2009 concerning Narcotics. In addition to the law prohibiting possessing, storing, controlling or providing narcotics, the Narcotics Law also explicitly regulates the prohibition of producing, importing, exporting, or distributing narcotics. The prohibition is regulated in Article 113, Article 118, and Article 123 of Act No. 35 of 2009 concerning Narcotics. The results of this study indicate that the process of law enforcement against narcotics crimes is carried out through investigation, prosecution, and examination in court. While the legal basis used by judges to rehabilitate narcotics criminals is: Supreme Court Circular No. 4 of 2010 concerning Placement of Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions.

Keywords: *Crime; Enforcement; Narcotics; Rehabilitation.*

A. INTRODUCTION

Today, narcotics abuse in Indonesia is increasing day by day. According to the Head of the National Narcotics Agency (BNN) of Central Java, Brigadier General Benny Gunawan, the number of drug addicts in the national scope has reached a prevalence of 1.77%. Meanwhile, the number of drug addicts in Central Java has reached 1.16 percent, which is 384 people.¹ At the international level, narcotics users who have died worldwide since 2016, according to the 2018 World Drug Report, have reached 450,000 people.² The high drug abuse according to Oktir Nebi is caused by

1 <https://radarsemarang.jawapos.com/berita/jateng/kendal/2019/11/13/waspada-pengguna-narkoba-di-jateng-masuk-lima-besar/#>: accessed on November 5, 2020, at 12.40 WIB.

2 Roni Gunawan Raja Gukguk dan Nyoman Serikat Putra Jaya, Tindak Pidana Narkotika Sebagai Transnasional Organized Crime, *Jurnal Pembangunan Hukum Indonesia*, Vol.1 No.3, 2019, page.342

several factors, namely personality factors, family factors, environmental factors, educational factors, and vulnerable population factors.

The careless use of narcotics is seen as a form of crime, because it has the potential to cause health problems and even death. Based on this, in the international and national scope, in the end view narcotics as a crime that needs to be carried out prevention and control efforts against it. Efforts to prevent and control narcotics crimes in Indonesia are carried out through statutory policies that contain criminal provisions for narcotics abusers. Criminal provisions related to narcotics abuse are regulated in Act No. 35 of 2009 concerning Narcotics. Meanwhile, in relation to the criminal law, it is contained in Chapter XV starting from Article 111 to Article 148³.

In connection with such provisions, in general, narcotics criminals do not only commit one form of crime, but instead commit a combination of criminal acts. Combined crime is defined as several criminal acts committed at different times and committed by one person.⁴The combination of crimes against narcotics abuse arises because in general the perpetrators of narcotics crimes do not only store, possess or control, but also use or are even included in the perpetrators of illicit narcotics trafficking. Based on this, in principle, the government also has several efforts that can be made to prevent and overcome narcotics crimes. The government's efforts to prevent and combat narcotics crimes are as follows:⁵

1. Promotive. Promotive efforts are a series of activities aimed at increasing the willingness and ability of the community to maintain and improve themselves in various aspects, including those related to the misuse and distribution of narcotics.
2. Preventive. Preventive efforts are a series of activities to prevent the problem of drug abuse and illicit trafficking.
3. Curative. Curative efforts are a series of treatment activities aimed at curing disease, reducing suffering due to disease, controlling disease, or controlling patient quality defects so that they can be maintained as optimally as possible.
4. Repressive. Repressive efforts mean efforts to suppress, restrain, restrain or suppress or are healing.
5. Rehabilitative. Rehabilitation efforts are a series of activities that aim to return former sufferers to the community so that they can function again as community members to the maximum extent possible according to their abilities. This effort is an action to restore body and soul aimed at victims of drug abuse, both currently and already undergoing curative programs.

Based on these five actions, one of the efforts that must be made to recover the perpetrators of narcotics abuse is rehabilitation. Article 54 of Act

3 Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019

4 <https://www.hukumonline.com/klinik/detail/ulasan/lt52dc749cdefb3/tentang-kumulasi-pidana-dalam-pasal-65> accessed on April 29, 2021 at 09.29 WIB.

5 Awet Sandi, *Narkoba dari Tapal Batas Negara*, Mujahidin Press, Bandung, 2016, page.56-59

No. 39 of 2009 concerning Narcotics explicitly explains that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. In connection with this obligation, referring to the Press Release of the National Narcotics Agency at the end of 2019 it was stated that BNN had carried out rehabilitation of 13,320 people with details as many as 11,370 people were rehabilitated through outpatient services and 1950 inpatients. Of these, 2,404 people participated in post-rehabilitation services.⁶

The implementation of rehabilitation for narcotics abusers is based on Article 54 of Act No. 39 of 2009 concerning Narcotics. In the article, it is clearly stated that the implementation of rehabilitation is only aimed at narcotics addicts and narcotics abusers. However, the perpetrators of narcotics addicts generally also keep, own, or control, even being included in the illicit traffic of narcotic precursors. Based on this fact, it is necessary to conduct a study on law enforcement and the legal basis used by judges to determine whether narcotics criminals must be rehabilitated.

B. RESEARCH METHODS

The method approach used in this study was a sociological juridical approach. The research specifications used in this study were descriptive analytical because they seek to describe and analyze problems based on certain specifications while the data needed in this study are primary data and secondary data.

C. RESULTS AND DISCUSSION

1. Narcotics Crime Law Enforcement

Article 1 point 1 of Act No. of 2009 concerning Narcotics states that narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce pain, and can lead to addiction.⁷ The term of narcotics comes from the word "*narkoties*", which means to anesthetize. Some people think that narcotics comes from the word "*narcissus*". This word has the meaning of a type of plant that has flowers and can cause people to become unconscious.⁸

Criminal provisions in Act No. 35 of 2009 concerning Narcotics is in Chapter XV starting from Article 111 to Article 148. The criminal provisions in these articles are generally divided into five parts, namely:

- a. Possessing, keeping, controlling, or providing.
- b. Manufacture, import, export or distribute.
- c. Offer to sell, sell, buy, accept, intermediary in buying and selling, exchanging, or delivering.
- d. Using or giving narcotics to others.
- e. Carry, ship, transport or transit.

6 Badan Narkotika Nasional, *Press Release Akhir Tahun*, Jakarta, 2019, page.3

7 Siswanto & Sunarso, *Penegakan Hukum Psikitropika Dalam Kajian Sosiologi Hukum*, Pt.Raja Grafindo Persada, Jakarta, 2004, page.111

8 Hari Sasangka, Op.cit, page.35

Currently, narcotics abuse has spread among some people in big cities and has begun to spread to small towns, making it difficult to stop. The use of narcotics in the community is not used for the purpose of treating disease as stipulated in Article 7 of Act No. 35 of 2009 concerning Narcotics, but they are used intentionally for consumption, even for sale or circulation.⁹ Therefore, narcotics crime has become a transnational crime and is classified as an international crime. The definition of international crime comes from one of the resolutions adopted by "The United Nations Congress on the Prevention of Crime the Treatment of Offenders" in Cairo on April 29–May 8, 1955, namely: the resolution on "International Instruments, such as the Convention Against Organized Transnational Crime" which was held in Naples on November 2–23, 1994. In the international convention it was explained that an international crime is an act that is considered a crime in multilateral conventions, which is recognized by countries in a significant number as long as the instruments include: data from 10 (ten) criminal characteristics.

- a. Planting, buying, trading, transporting, and distributing narcotics and psychotropic substances.
- b. Develop an organization, management, and finance, the actions referred to in letter (a).
- c. Transferring the assets obtained from the action referred to in letter (a).
- d. Prepare, experiment, persuade and agree to carry out the actions referred to in letter (a).

Against such narcotics crimes, various measures have been regulated in Indonesia for the prevention and control of narcotics. One of the processes carried out in efforts to prevent and eradicate narcotics crimes is repressive efforts in the form of taking action against narcotics abusers. The process of prosecuting narcotics crimes is a law enforcement action that aims to realize the wishes of the law. According to Satjipto Rahardjo, law enforcement is the process of realizing the wishes of the law, namely the thoughts of the legislatures that are formulated and stipulated in legal regulations so that they become reality.¹⁰ Based on this, the law enforcement process is an attempt to realize the ideas and legal concepts that are expected by the people to become a reality.¹¹ The process of law enforcement against narcotics criminals begins with a series of processes of investigation, investigation, prosecution, and examination of cases in court.¹²

9 Andri Winjaya Laksana, Pelaksanaan Pemeriksaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi Di Badan Nasional Narkotika Provinsi Jawa Tengah, *Jurnal Pembaharuan Hukum*, Volume III, 2016, page.254

10 Satjipto Rahadjo, *Masalah Penegakan Hukum; Suatu Tinjauan Sosiologis*, Sinar Baru, Bandung, 1983, page.24

11 Shant Dellyana, *Konsep Penegakan Hukum*, Liberty, Yogyakarta, 1988, page.32

12 Interview with Mr. Agusti Hadi Widarto, Judge of the Lamongan District Court on 26 April 2021 at 08.32.

The process of investigating narcotics crimes begins with being caught red-handed or reporting narcotics crimes. Meanwhile, after receiving a report or being caught red-handed, investigators then conduct a series of investigations against narcotics criminals. Article 1 number 5 of the Criminal Procedure Code states that an investigation is a series of actions by an investigator to seek and find something events that are suspected of being criminal acts in order to determine whether or not an investigation can be carried out according to method regulated by law. Investigation is the initial stage in the investigation process. The investigation process basically aims to determine whether an event is considered a crime or not. To determine an event as a criminal act, a minimum of sufficient initial evidence is required. According to Lamintang, sufficient preliminary evidence is defined as minimal evidence as referred to in Article 184 paragraph (1) of the Criminal Procedure Code.¹³

After finding sufficient preliminary evidence, then an investigation is carried out. In this process, investigators may conduct wiretapping. Article 1 number 19 of Act No. 35 of 2009 concerning Narcotics states that wiretapping is an activity or series of investigation or investigation activities by tapping conversations, messages, information, and/or communication networks made by telephone and/or other communication tools. The authority to conduct wiretapping on the abuse and illicit traffic of narcotics may only be exercised after there is sufficient initial evidence. After finding sufficient evidence, investigators then arrest the perpetrators of narcotics crimes. Article 1 number 20 of the Criminal Procedure Code states that an arrest is an investigator's act in the form of temporary restraint on the freedom of a suspect or defendant if there is sufficient evidence for the purpose of investigation or prosecution and/or trial in the case and according to the regulated method. Arrests made by investigators are not allowed to be carried out arbitrarily, so the investigator must first issue an arrest warrant accompanied by the reasons for the arrest. Other coercive measures that can be carried out are search and confiscation.

After the confiscation is carried out, then the suspect and witnesses are examined. Before the examination is carried out, the examiner of the suspect and the witness needs to prepare the following things, namely:¹⁴

- a. Appointment of examining investigator.
- b. Preparation of ingredients.
- c. Preparation of the examination site.
- d. Preparation of inspection facilities.

13 Chandra M. Hamzah, *Penjelasan Hukum tentang Bukti Permulaan yang Cukup*, Pusat Studi Hukum dan Kebijakan Indonesia, Jakarta, 2014, page.17

14 Rika Romaddzoni, Amir Junaidi, dan Hafid Zakariya, *Prosesi Penyidikan Perkara Tindak Pidana Narkotika (Studi Kasus Sat Res Narkoba Polresta Surakarta)*, Vol. 1, No. 1, 2017, page.46

The process of examining a suspect at the investigation stage aims to obtain information or clarity regarding a criminal act that may involve a suspect.¹⁵ After the examination is carried out, the investigator makes a Minutes of Examination. The Minutes of Investigation is written evidence of an investigative action against a case. The contents of the BAP consist of several question and answer sheets between the investigator and the parties being examined along with the elements that constitute the construction of the criminal act article.¹⁶ After completing all the required minutes, the investigator then submits the minutes to the prosecutor's office for prosecution.¹⁷

The role of the public prosecutor in the pre-prosecution process has basically started when the prosecutor's office received a Notice of Investigation Commencement (SPDP). After receiving the notification letter, the Head of the District Attorney made a warrant for the appointment of the public prosecutor to follow the progress of the investigation of the case made by the police investigator. This series of actions is called a pre-prosecution. Pre-prosecution is the action of the prosecutor to monitor the progress of the investigation after receiving notification of the commencement of the investigation from the investigator, studying or examining the completeness of the case file resulting from the investigation received from the investigator and providing instructions to be completed by the investigator in order to determine whether or not the case file can be transferred to the prosecution stage.¹⁸

The prosecutor appointed by the head of the district attorney's office has the authority to supervise the BAP submitted to the district attorney's office. After the BAP is received by the prosecutor, then the Head of the District Prosecutor's Office makes a warrant for the appointment of a public prosecutor for the settlement of criminal cases. It is at this time that the prosecutor actually becomes the public prosecutor with the authority to conduct pre-prosecution and prosecution.¹⁹

The investigator then corrected the case file and sent it back to the Prosecutor's Office. If the case file is complete, the Research Prosecutor will then state that the file is complete and issue a letter in the P-21 format regarding follow-up notices results the investigation is complete. In the P-21 format, it is also stated that investigators must

15 Lilis Munira, *Pelaksanaan Penyidikan dalam Proses Pemeriksaan Tersangka Berdasarkan Asas Praduga Tak Bersalah atau Presumption of Innocent*, Universitas Syiah Kuala, Banda Aceh, 2018, page.i

16 Rika Pangesti, Asrumi, dan Andang Subaharianto, *Diksi Gaya Bahasa dalam Berita Acara Pemeriksaan di Polres Jember*, *Publikasi Budaya*, Vol. 1, No. 1, 2015, page.1

17 Rika Romaddzoni, Amir Junaidi, and Hafid Zakariya, *Op.cit*, page.47

18 Interview with Anton Rudiyantoro, Prosecutor of the Prosecutor of Central Java on April 20, 2021 at 13.40

19 Pradewa Ari Akbar Kharisma, *Peran jaksa Penuntut Umum dalam Proses Penanganan Tindak Pidana Narkotika (Studi Kasus Penuntutan Perkara Pidana Narkotika di Kejaksaan Negeri Sukoharjo)*, *Jurnal Universitas Muhammadiyah Surakarta*, Surakarta, page.7

immediately submit the suspect and evidence to be later assessed by the Prosecutor whether the case is appropriate or not to be delegated in court. If within 30 days it turns out that the suspect and evidence have not been submitted to the Prosecutor's Office, the Prosecutor will again remind the investigators to submit the suspect and evidence. If within 30 days the investigator still has not submitted the suspect and evidence, the case file is returned to the investigator. Furthermore, if the investigator submits the suspect and evidence, the Prosecutor (phase II) re-examines and determines whether or not the case is appropriate to be transferred to the Court. In addition, the public prosecutor also makes indictments on cases handled.²⁰

In principle, the authority possessed by the public prosecutor in handling narcotics crime cases does not differ from the handling of general criminal offenses. The authority of the public prosecutor is regulated in Article 14 of the Criminal Procedure Code. In the article it is explained that the authority of the public prosecutor is:

- a. Receive and examine investigation case files from investigators or assistant investigators;
- b. Conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in the context of completing the investigation from the investigator;
- c. Provide an extension of detention, carry out further detention or detention and or change the status of the detainee after the case has been delegated by the investigator;
- d. Make an indictment;
- e. Delegating the case to court;
- f. Delivering notification to the defendant regarding the stipulation of the day and time the case will be heard accompanied by a summons, both to the defendant and to witnesses, to come at the hearing that has been determined;
- g. Carry out prosecutions;
- h. Closing the case for the sake of law;
- i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;
- j. Carry out the judge's determination.

Authority public prosecutors in narcotics crimes have additional provisions as regulated in Article 91 paragraph (1) and paragraph (2) of Act No. 35 of 2009 concerning Narcotics which states:

- a. The head of the local state prosecutor's office after receiving notification of the confiscation of narcotics goods and narcotics precursors from the investigators of the Indonesian National Police or BNN investigators, within a maximum of 7 (seven) days must determine the status of the seized narcotics and narcotics precursors

20 Interview with Anton Rudiyanoro, Central Java Attorney General on 20 November 2021 at 13:40.

for the purpose of proving the case, in the interests of science and technology development, the interests of education and training, and/or destroyed.

- b. Confiscated narcotics and narcotics precursors that are in the custody and security of investigators who have been determined to be destroyed must be destroyed no later than 7 (seven) days after receiving the determination of destruction from the head of the local state prosecutor's office.

Related with this case, the effort to delegate the examination of cases from the prosecutor's office to the court is carried out through two events, namely the delegation of ordinary cases as referred to in Article 153 of the Criminal Procedure Code and so on and the delegation of brief examinations as referred to in Article 203 of the Criminal Procedure Code. The basis for legal considerations used by the public prosecutor in compiling the indictment is the article of legislation that forms the basis for sentencing, accompanied by aggravating and mitigating circumstances for the defendant.²¹

The trial began with the judge asking for his identity and health. The trial process continued with the reading of the indictment. Upon the reading of the indictment made by the public prosecutor, the defendant or his legal advisor is given the opportunity to make exceptions. The exceptions submitted by the defendant or his legal advisors are responded to by the public prosecutor. After the exception and response were made, the judge then read out the interim decision. If the exception submitted by the defendant or his legal advisor is rejected, then the next stage of the trial enters the examination of the main case (proof). In the process of examining narcotics crimes, the judge is also authorized to ask the defendant to prove that all the assets and property of his wife, husband, children, and any person or corporation not originating from the proceeds of narcotics crime and narcotics precursor committed by the defendant as referred to in Article 98 of Act No. 35 of 2009 concerning Narcotics.

The case examination process continued with the examination of witnesses. In the process of examining witnesses, witnesses are prohibited from mentioning the name and address of the reporter or other things that may cause the identity of the reporter to be known. This refers to Article 99 paragraph (1) of Act No. 35 of 2009 concerning Narcotics. After the examination of witnesses, further examination of expert witnesses is carried out, if necessary. The trial examination process after the examination of witnesses and expert witnesses continued with the examination of the accused. If there is evidence, the evidence must be submitted to the court and asked for an opinion from the judge. After the process of examining the defendant, the public prosecutor then read out the defendant's criminal charge. Based on the

21 Interview with Anton Rudiyanoro, Central Java Attorney General on 20 November 2021 at 13:40.

demands made by the public prosecutor, the defendant or his legal advisor submits a plea (defense). After that, the public prosecutor submits a replica and the defendant/legal advisor submits a duplicate. Against the decision that has been decided by the judge, the public prosecutor and/or the defendant may file legal remedies.²²

Based on this discussion, the process of law enforcement against narcotics criminals begins with a series of processes of investigation, investigation, prosecution, and examination of cases in court. The process of carrying out the investigation aims to find sufficient preliminary evidence. Furthermore, the process of law enforcement against narcotics crimes is carried out through investigations. At the end of the investigation process, the investigator makes a Minutes of Examination to be delegated to the Prosecutor's Office for prosecution. The prosecution of narcotics crimes is carried out after the investigator submits the BAP and notification letter to the prosecutor. After the research Prosecutor stated that the case file was complete, then the Prosecutor transferred the case file to the Court. The delegation of case files to the court can be submitted for an ordinary examination or a brief examination. A brief examination can be carried out when the proof and application of the law is easy and simple.

2. The Legal Basis Used by Judges to Determine Perpetrators of Narcotics Crimes Must Be Rehabilitated

Criminal provisions in Act No. 35 of 2009 concerning Narcotics is in Chapter XV starting from Article 111 to Article 148. The criminal provisions in these articles are generally divided into five parts, namely:

- a. Possessing, keeping, controlling, or providing.
- b. Manufacture, import, export or distribute.
- c. Offer to sell, sell, buy, accept, intermediary in buying and selling, exchanging, or delivering.
- d. Using or giving narcotics to others.
- e. Carry, ship, transport or transit.

In relation to the five crimes, in general, narcotics criminals do not only store, control, or provide, but also use or even distribute them. Based on this fact, one of the efforts made by the government in addition to taking preemptive, preventive, curative and repressive measures, is also carried out in a rehabilitative manner. However, the provisions regarding the implementation of rehabilitation for narcotics criminals are regulated in Article 54 of Act No. 35 of 2009 concerning Narcotics. In the article, it is explained that narcotics addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation. Rehabilitation is one of the efforts made by the government to overcome the effects of narcotics abuse. Act No. 35 of 2009 concerning narcotics divides rehabilitation into medical

22 Interview with Agusti Hadi Widarto, Judge of the Lamongan District Court on 26 November 2021 at 08.35.

rehabilitation and social rehabilitation. Article 1 number 16 of Act No. 35 of 2009 concerning Narcotics states that medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence. Meanwhile, social rehabilitation is regulated in Article 1 number 17 of Act No. 35 of 2009 concerning Narcotics is a process of integrated recovery activities, both physically, mentally, and socially so that former narcotics addicts can return to carrying out social functions in people's lives. 35 of 2009 concerning Narcotics states that medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence. Meanwhile, social rehabilitation is regulated in Article 1 number 17 of Act No. 35 of 2009 concerning Narcotics is a process of integrated recovery activities, both physically, mentally, and socially so that former narcotics addicts can return to carrying out social functions in people's lives. 35 of 2009 concerning Narcotics states that medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence. Meanwhile, social rehabilitation is regulated in Article 1 number 17 of Act No. 35 of 2009 concerning Narcotics is a process of integrated recovery activities, both physically, mentally, and socially so that former narcotics addicts can return to carrying out social functions in people's lives.²³

In line with the provisions of Article 54 of Act No. 35 of 2009 concerning Narcotics above, Article 127 also states that:

- a. Every abuser:
 - 1) Narcotics class I for oneself shall be sentenced to a maximum imprisonment of 4 (four) years.
 - 2) Narcotics class II for oneself shall be sentenced to a maximum imprisonment of 2 (two) years; and
 - 3) Narcotics class III for oneself shall be punished with imprisonment for a maximum of 1 (one) year.
- b. In deciding the case as referred to in paragraph (1), the judge is obliged to pay attention to the provisions referred to in Article 54, Article 55, and Article 103.
- c. In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation.

Based on such provisions, the implementation of rehabilitation is expressly aimed at narcotic addicts/victims of narcotics abusers. Article 1 number (13) of Act No. 35 of 2009 concerning Narcotics states that narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically.

In this regard, judges are actors of judicial power who are authorized to examine, hear, and decide cases. The judge's authority to decide that addicts of narcotics crimes must carry out rehabilitation are

23 Yohanes Christ, Pemenuhan Hak Rehabilitasi bagi Penyalahguna Narkotika di Yogyakarta, *Jurnal Universitas Atma Jaya*, Yogyakarta, 2015, page.1-2

regulated in Article 103 of Act No. 35 of 2009 concerning Narcotics. In the article it is explained that:

- a. Judges who examine narcotics addict cases may:
 - 1) Decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the narcotic addict is proven guilty of committing a narcotic crime; or
 - 2) To stipulate to order the person concerned to undergo treatment and/or treatment through rehabilitation if the narcotic addict is not proven guilty of committing a crime.
- b. The period of undergoing treatment and/or treatment for narcotics addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence.

Referring to these provisions, the judge in examining, trying, and deciding narcotics crime addicts can decide narcotics addicts are obliged to carry out rehabilitation. However, the existence of such a decision also needs to be based on the maturity of legal considerations and the facts on the ground that narcotics addicts are not involved in the illicit trafficking of narcotics. Furthermore, the legal basis used by the judge to determine the perpetrators of narcotic crimes as narcotics addicts who are obliged to carry out rehabilitation is regulated in the Circular Letter of the Supreme Court No. 4 of 2010 concerning Placement of Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions.²⁴In the circular, it is explained that the application of punishment as referred to in Article 103 letters a and b of Act No. 35 of 2009 concerning Narcotics can only be imposed on the classification of criminal acts as follows:

- a. The defendant was caught red-handed when arrested by the police investigators or BNN investigators;
- b. At the time of being caught red-handed according to point a above, evidence of 1 (one) day use was found with the following details:
 - 1) Methamphetamine (meth) group : 1 gram
 - 2) MDMA (ecstasy) group : 2.4 grams (8 grains)
 - 3) Heroin group : 1,8 grams
 - 4) Cocaine group : 1.8 grams
 - 5) Cannabis group : 5grams
 - 6) Coca leaves : 5grams
 - 7) Mescaline : 5grams
 - 8) Psilosybin group : 3 grams
 - 9) LSD (d-lysergic acid diethylamide) group : 2grams
 - 10)PCP (phencyclidine) group : 3grams
 - 11)Fentanyl group : 1 gram
 - 12)Methadone group : 0.5 gram
 - 13)Morphine group : 1.8grams

²⁴ Interview with Agusti Hadi Widarto, Judge of the Lamongan District Court on November 26, 2020 at 08.32.

- 14)Pethidine group : 0.96 gram
- 15)Codeine group : 72grams
- 16)Bufrenorn group : 32 grams
- c. A positive laboratory test letter using narcotics based on the investigator's request.
- d. A certificate from a government psychiatrist/psychiatrist is required which is appointed by the judge.
- e. There is no evidence that the person concerned is involved in the illicit trafficking of narcotics.

The legal basis used by the judge in deciding the case of narcotics addicts must also explicitly designate the place of rehabilitation in the verdict. The places that are allowed to be rehabilitated refer to the Circular Letter of the Supreme Court No. 4 of 2010 concerning Placement of Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions are:

- a. Medical and social rehabilitation institutions that are managed and/or fostered and supervised by the National Narcotics Agency.
- b. Drug dependence hospital (RSKO) Cibubur, Jakarta.
- c. Mental hospitals throughout Indonesia (Depkes RI).
- d. Rehabilitation center for the Ministry of Social Affairs of the Republic of Indonesia and the Regional Technical Implementation Unit (UPTD).
- e. Referral places Rehabilitation institutions run by the community that are accredited by the Ministry of Health or the Ministry of Health or the Ministry of Social Affairs.

D. CONCLUSION

The process of law enforcement against narcotics crimes is carried out through investigation, investigation, prosecution, and examination in court. While the legal basis used by judges to rehabilitate narcotics criminals is: Supreme Court Circular No. 4 of 2010 concerning Placement of Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions.

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