

The Policy Authority of Police in Implementing Rehabilitation Actions on Narcotics Users

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Abstract.

The purpose of this research is to analyze the police authority policy in the implementation of rehabilitation measures against narcotics users in the current positive law and to analyze the narcotics authority policy in the future positive law. This study used a sociological juridical approach, with a qualitative descriptive research method. The research problem was analyzed using the theory of justice and the theory of the operation of law. The results of the study conclude that 1) Law enforcement of rehabilitation sanctions against narcotics users currently begins when the police conduct investigations and investigations by looking at the criminal provisions of Article 127 paragraphs (2) and (3) so that there is consistency in paying attention to the Articles that regulate the provisions so that Later the addicts and victims of narcotics abusers can be rehabilitated both in rehabilitation and no longer sentenced to prison or imprisonment because the rehabilitation is counted as a period of serving the sentence. 2) In the future positive law formulation, is needed that is built on an integrated and harmonious investigation coordination and supervision system but does not have multiple interpretations so that there is no overlapping investigative authority caused by the arrangements and legislation formulations in positive legal provisions such as the current and current cases. Narcotics abuse can not be handled appropriately.

Keywords: Authority; Narcotics; Police; Policy; Rehabilitation.

1. Introduction

Crimes of narcotics and illegal drugs have been transnational in nature, carried out with a high modus operandi and sophisticated technology, for that law enforcement officers are expected to be able to prevent and overcome these crimes in order to improve the morality and quality of human resources in Indonesia, especially for the nation's next generation.¹

Narcotics consist of 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. If these narcotics are used without restrictions and careful supervision, it can endanger the health and even the soul of the wearer². Drugs, both natural and synthetic, are not narcotics, which have psychoactive properties through selective effects on the central nervous system that cause characteristic changes in mental activity and behavior. On the one hand, narcotics and psychotropic substances are drugs or substances that are useful in the fields of treatment, health services and

¹Bambang Hariyono, 2009, *Kebijakan Formulasi Hukum Pidana Terhadap Pelaku Tindak Pidana Narkotika di Indonesia*. Semarang: Tesis Hukum Universitas Diponegoro.

²Moh. Taufik Makarao, Suhasril, dan Moh. Zakky, 2003, *Tindak Pidana Narkotika*, Jakarta: Ghalia Indonesia.

scientific development, but on the other hand, they can cause very detrimental dependence if used without strict and careful control, supervision.³

In the legal system in Indonesia, narcotics abuse is qualified as a crime in the narcotics sector which is regulated in Act No. 35 of 2009 concerning Narcotics. Narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, destroying life and the future, especially the younger generation. According to Article 127 paragraph (1) of Act No. 35 of 2009, every Narcotics abuser of Category I shall be sentenced to a maximum imprisonment of 4 (four) years; Every abuser of Narcotics Category II for himself shall be sentenced to a maximum imprisonment of 2 (two) years; and Each Narcotics Abuse Group III for himself shall be sentenced to a maximum imprisonment of 1 (one) year.⁴

Narcotics crimes such as narcotics abuse in criminological studies can be classified as victimless crimes. This classification refers to the nature of the crime, namely the existence of two parties who carry out transactions or relationships (which are prohibited) but both feel that they have not suffered harm to the other party. Narcotics users are actually victims of narcotics crime, but the user does not feel like a victim, because he intentionally uses the narcotics of his own will, either because of a friend's recommendation, or a sense of wanting to try it.⁵

Act No. 35 of 2009 concerning Narcotics is designed to reduce the number of narcotics trafficking in Indonesia which has a transnational nature and to reduce the number of victims of narcotics abuse, especially among teenagers who endanger people's lives. This can be seen in the preamble to Act No. 35 of 2009 concerning Narcotics. In order to reduce the number of victims of narcotics abuse, Act No. 35 of 2009 concerning Narcotics has made a special chapter, namely in Chapter IX which includes rehabilitation punishments for addicts and victims of narcotics abuse. The inclusion of this chapter is intended so that victims of narcotics abuse can be subject to rehabilitation sentences instead of imprisonment or imprisonment.⁶

The realization of overcoming the eradication of criminal acts of narcotics abuse cannot be separated from the role of law enforcement officers, but requires cooperation from various parties, including community participation. The form of community participation here can be in the form of providing information about criminal acts of narcotics abuse to Polri investigators, as well as assisting the success of the social rehabilitation program that has been regulated by Act No. 35 of 2009 concerning Narcotics.⁷

The authority of the investigators of the State Police of the Republic of Indonesia in Act No. 35 of 2009 concerning Narcotics is contained in Article 81, namely Investigators of the State Police of the Republic of Indonesia are authorized to conduct investigations on the abuse and illicit trafficking of Narcotics and Narcotics Precursors.⁸

The purpose of this study is to analyze the police authority policy in the

³Supramono, 2001, *Hukum Narkotika Indonesia*, Jakarta: Djambatan, p. 67.

⁴D. Soedjono, 1987, *Hukum Narkotika*, Bandung: Alumni, p. 14.

⁵Ibid.

⁶Ibid.

⁷Ibid.

⁸Ibid.

implementation of rehabilitation measures against narcotics users in the current positive law, and to analyze the police authority policy in the implementation of rehabilitation actions against narcotics users in the future positive law.

2. Research Methods

The approach method used in this research was the sociological juridical method. The specifications in this study were descriptive. Sources of data used in this study were primary data sources, secondary data, and law enforcement data for police investigators. Primary legal materials consist of: the 1945 Constitution of the Republic of Indonesia, the Criminal Code, Act No. 35 of 2009 concerning Narcotics, and Act No. 2 of 2002 concerning the Indonesian National Police. Secondary legal materials consisted of books, research documents, especially the issue of police authority policies in the implementation of rehabilitation measures against narcotics users. Data collection methods used are interviews with resource persons and document review.

3. Results and Discussion

3.1. Police Authority Policy in Implementing Rehabilitation Measures Against Narcotics Users in the Current Positive Law

The police as law enforcers are investigators in criminal procedural law, as in the Criminal Procedure Code (KUHAP) Article 1 paragraph (1) which states that "investigators are state police officers of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct an investigation." When referring to this Code of Criminal Procedure, the police and civil servants who are given special authority to carry out investigations are those who can carry out investigations. The role of investigators who have the authority to uncover narcotics crime cases is very meaningful and has a good impact on the process of eradicating narcotics crimes, which are increasing day by day both qualitatively and quantitatively. The impact or victims of narcotics is increasingly widespread, especially children, youth and other young people. The increasing use of narcotics, especially among students, was followed by a shift in targeting narcotics dealers.⁹

Circulation of narcotics is getting higher due to various factors such as the ineffectiveness of prison sanctions, multiplied profits, lack of education, economic needs, and many other factors that also influence such as the regulation of criminal sanctions against narcotics crimes. The global policy of overcoming narcotics crime was initially outlined in The United Nation's Single Convention on Narcotic Drugs 1961. In this context, the ASEAN Senior Officials on Drugs and a Police Cooperation Forum among ASEAN countries (ASEANAPOL) were established, among others, in charge of dealing with transnational narcotics crimes in the ASEAN region. Apart

⁹Carto Nuryanto, 2019, *Reconstruction of Criminal Sanction and Rehabilitation Combating On Narcotic's Victims Based On Religious Justice*, Law Development Journal, Vol. 1, Issue 1, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/4944> accessed on 19 March 2022, at 18.52, p. 2.

from this, at the level of ASEAN countries, a Narcotic Board was also formed by establishing a working group for law enforcement, rehabilitation and development, preventive education and information, and a working group in the field of research.¹⁰

Provisions regarding the rehabilitation of narcotics addicts are regulated in Act No. 22 of 1997, Circular Letter of the Supreme Court Number 07 of 2009 and Act No. 35 of 2009 and the latest is the issuance of Circular Letter of the Supreme Court Number 04 of 2010 which is a revision of Circular Letter of the Supreme Court Number 07 of 2009. Prior to the issuance of Act No. 35 of 2009, provisions regarding the rehabilitation of narcotics addicts were regulated in Articles 45 and 47 of Act No. 22 of 1997. This was based on the consideration that the majority of prisoners and detainees Drug cases are included in the category of users or even victims which if viewed from the aspect of their health are actually people who are sick. Therefore, imprisoning the person concerned is not the right step because it has neglected the interests of care and treatment¹¹.

Then Act No. 35 of 2009 was issued which also regulates the provisions regarding the decision ordering to undergo rehabilitation. In Act No. 35 of 2009 concerning Narcotics, provisions regarding the imposition of rehabilitation have been strictly regulated. The imposition of this rehabilitation is an obligation that must be given to not only those who are narcotics addicts but also to those who are victims of narcotics abuse. The arrangement regarding the imposition of rehabilitation is regulated in Chapter IX on treatment and rehabilitation, the second part. With the specialization of the chapter that regulates rehabilitation, we can see that the government has emphasized the rehabilitation of those who are addicts and victims of narcotics abuse.¹²

Act No. 35 of 2009 concerning Narcotics has given different treatment for perpetrators of abuse or Narcotics users. Narcotics users or addicts as perpetrators of narcotics crimes can be subject to sanctions in the form of imprisonment, in addition to being subject to sanctions in the form of rehabilitation.¹³

Rehabilitation is an effort to restore and restore the condition of former NAZA abusers/dependents back to health in the sense of physical, psychological, social and spiritual/religious (faith) health. With these healthy conditions, it is hoped that they will be able to return to normal functioning in their daily lives both at home, at school/campus, at work and in their social environment.¹⁴

Act No. 35 of 2009 concerning Narcotics contains Article 54 which regulates rehabilitation. Article 54 which reads "Narcotics addicts and victims of Narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation".

¹⁰Ibid.

¹¹See item 1 SEMA No. 07 of 2009.

¹²Mei Ristikowati and Lathifah Hanim, 2021, *The Implementation of Criminal Sanctions on Criminal Acts of Narcotics*, Law Development Journal, Volume 3, Issue 4, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/19059> accessed on 19 March 2022, at 18:54, p. 793.

¹³Ibid.

¹⁴Dadang Hawari, Psikiater, 2006, *Penyalahgunaan & Ketergantungan NAZA (Narkotika, Alkohol, & Zat Adiktif)*, Gaya Baru, Jakarta, p.132.

Medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence. Medical rehabilitation for narcotics addicts can be carried out in hospitals appointed by the Minister of Health, namely hospitals organized by the government or by the community. While social rehabilitation is a process of integrated recovery activities both physically, mentally and socially so that former narcotics addicts can immediately return to carrying out social functions in carrying out community life.¹⁵

The realization of overcoming the eradication of criminal acts of narcotics abuse cannot be separated from the role of law enforcement officers, but requires cooperation from various parties, including community participation. The form of community participation here can be in the form of providing information about criminal acts of narcotics abuse to Polri investigators, as well as assisting the success of the social rehabilitation program that has been regulated by Act No. 35 of 2009 concerning Narcotics.¹⁶

3.2. Policy on Police Authority in Implementing Rehabilitation Measures Against Narcotics Users in the Future Positive Law

Act No. 35 of 2009 concerning Narcotics, functions to ensure the availability of drugs for the benefit of science, technology, and health, prevent narcotics abuse, and also functions to eradicate narcotics illicit traffic. Based on this legal objective, a strategy is needed for effective law enforcement.¹⁷

First, general prevention. Problems regulating the production, supply, distribution, distribution, and use of psychotropics require legal regulations that function as regulation, and prevention of illicit trafficking of narcotics and psychotropics requires attention as a form of general prevention. This prevention effort is very much needed so that it can be seen how far the maximum annual demand for narcotics and psychotropic substances is really needed. This is because if the procurement is not controlled, it will have an impact on the misuse of narcotics and psychotropic substances that exceed the need. Therefore, the demand reduction and supply reduction programs require careful analysis and a national and comprehensive policy is needed.¹⁸

The demand reduction and supply reduction program may not be able to completely resolve all problems related to the illicit trafficking of narcotics and psychotropic substances. To anticipate the illicit trafficking of narcotics and psychotropics, a policy is needed in the context of eradicating the illicit traffic of narcotics and psychotropics, through criminal policy making.¹⁹

¹⁵Bayu Puji Hariyanto, 2018, *Pencegahan dan Pemberantasan Peredaran Narkoba di Indonesia*, Jurnal Daulat Hukum, Volume 1, Nomor 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2634> accessed on 19 March 2022, at 18.55, p. 203.

¹⁶Ibid, p. 204.

¹⁷Ibid.

¹⁸Dafit Supriyanto Daris Warsito, 2018, *Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika*, Jurnal Daulat Hukum, Volume 1, Nomor 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2562> accessed on 19 March 2022, at 18.56, p. 34.

¹⁹Ibid.

Second, criminal policy. This criminal policy can be carried out in two ways, namely through penal facilities or criminal law enforcement, and non-penal means, including through legal counseling activities to the public.²⁰

It can be concluded that the strategy for law enforcement against the abuse and illicit trafficking of narcotics and psychotropics is by establishing a demand reduction and supply reduction strategy, as a general prevention policy. This is in accordance with the principles of Act No. 35 of 2009 that the function of this law is to ensure the availability of narcotics to meet the interests of health services (treatment) as well as for the benefit of science and technology.²¹

Therefore, in ensuring the availability of narcotics, it is necessary to determine the annual demand plan for narcotics and narcotic precursors. Furthermore, the second strategy is the establishment of a criminal policy strategy through law enforcement instruments (enforcement) both using penal instruments (criminal sanctions) and non-penal (guidance and supervision of the community). Narcotics law enforcement using criminal instruments is not the only policy that must be prioritized.²²

Third, treatment and rehabilitation. This strategy uses two approaches, namely the first approach, namely eliminating drug dependency, namely to reduce dependence on narcotics abuse for narcotics addicts, then a medical rehabilitation program is carried out. Then the second approach is preventive recidivism, namely a coaching program for former narcotics convicts or narcotics recidivists, to carry out continuous monitoring so as not to involve themselves again in previous criminal acts.²³

The criminalization of narcotics abuse must be accompanied by law enforcement for perpetrators through the criminal system adopted in Indonesia, one of which is the criminal system by implementing and imposing penalties for perpetrators through a Judge's Decision which aims to restorative justice based on treatment, not retaliation as is commonly held by the criminal system in Indonesia in the form of imprisonment. The treatment as an alternative punishment for drug users and addicts as victims of drug trafficking is very appropriate to use rather than a retributive and relative approach to the criminal justice system in Indonesia. This is based on the view that the application of punishment to perpetrators of drug crimes based on the purpose of treatment is more directed to the perpetrator as a victim not to his actions so that this alternative punishment is intended to provide treatment and rehabilitation rather than punishment.²⁴

Fourth, international cooperation. The problem in determining policies to ensure the availability of narcotics for the benefit of health services and science and technology is the problem of fulfilling the availability of narcotics and the dimensions of international narcotics traffic flow. The purpose of international coordination is to open cooperation with countries both regionally and

²⁰Ibid, p. 35.

²¹Ibid.

²²Ibid.

²³Bayu Puji Haryanto, Op.Cit, p. 205.

²⁴F. Asya, 2009, *Narkotika dan Psikotropika*, Jakarta: Asa Mandiri, p. 15.

internationally at the level of increasing supervision (control) and prevention of abuse of illicit narcotics trafficking, as well as strengthening and national strength in efforts to control the prevention of illicit narcotics trafficking at the international level.²⁵

The ideal law enforcement must be accompanied by an awareness that law enforcement as part of the legal subsystem is also a social subsystem, so that environmental influences are quite influential on the principles of law enforcement and legal principles that apply in the environment of civilized nations. Law is the social control of the government. Legal culture, as part of culture, is human attitude towards law and the legal system, which includes: beliefs, values, thoughts, and expectations. Thoughts and opinions of humans (law enforcement) is a determining factor in the course of the legal process.²⁶

In addition, the current obstacles faced by the police as law enforcers consist of several factors, namely the legal factor itself, the law enforcement factor that forms and enforces the law, the facilities/facilities factor, the community factor in which the law applies or is applied, and the cultural factor as the source of the law the result of work, creativity and taste based on human initiative in social life.²⁷

In other words, the moral relationship with law enforcement is to determine a success in law enforcement, as expected by the purpose of law. Moral law enforcement is one of the most decisive aspects in carrying out the role and function of the police as law enforcers, including law enforcement for narcotics crimes. Therefore, in the future formulation of positive law, legislation is needed that is built on an integral and harmonious system of coordination and supervision of investigations but does not have multiple interpretations so that there is no overlapping of investigative powers caused by the arrangements and formulations in positive legal provisions as currently and cases of drug abuse can be handled appropriately.²⁸

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²⁵Hera Saputra dan Munsyarif Abdul Chalim, 2018, *Penerapan Sistem Pemidahaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)*, Jurnal Daulat Hukum, Volume 1, Nomor 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2630> accessed on 19 March 2022, at 18.57, p. 165.

²⁶Ibid.

²⁷Ibid.

²⁸Ibid, p. 166.

²⁹Ibid.

4. Conclusion

The conclusion in this study is that law enforcement of rehabilitation sanctions against narcotics users begins when the police conduct investigations and investigations by looking at the criminal provisions of Article 127 paragraphs (2) and (3) so that there is consistency in paying attention to the articles that regulate rehabilitation provisions so that later the addicts and victims of narcotics abusers can be rehabilitated both medical rehabilitation and social rehabilitation and are no longer sentenced to imprisonment or confinement because the rehabilitation is counted as a period of serving the sentence.

5. References

Journals:

- [1] Bambang Hariyono, 2009, *Kebijakan Formulasi Hukum Pidana Terhadap Pelaku Tindak Pidana Narkoba di Indonesia*. Semarang: Tesis Hukum Universitas Diponegoro.
- [2] Bayu Puji Hariyanto, 2018, *Pencegahan dan Pemberantasan Peredaran Narkoba di Indonesia*, Jurnal Daulat Hukum, Volume 1, Nomor 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2634>
- [3] Carto Nuryanto, 2019, *Reconstruction of Criminal Sanction and Rehabilitation Combating On Narcotic's Victims Based On Religious Justice*, Law Development Journal, Vol. 1, Issue 1, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/4944>
- [4] Dafit Supriyanto Daris Warsito, 2018, *Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika*, Jurnal Daulat Hukum, Volume 1, Nomor 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2562>
- [5] Hera Saputra dan Munsyarif Abdul Chalim, 2018, *Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)*, Jurnal Daulat Hukum, Volume 1, Nomor 1, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2630> .
- [6] Mei Ristikowati and Lathifah Hanim, 2021, *The Implementation of Criminal Sanctions on Criminal Acts of Narcotics*, Law Development Journal, Volume 3, Issue 4, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/19059>

Books:

- [1] D. Soedjono, 1987, *Hukum Narkotika*, Bandung: Alumni.
- [2] F. Asya, 2009, *Narkotika dan Psicotropika*, Jakarta: Asa Mandiri.
- [3] Moh. Taufik Makarao, Suhasril, dan Moh. Zakky, 2003, *Tindak Pidana Narkotika*, Jakarta: Ghalia Indonesia.
- [4] Dadang Hawari, Psikiater, 2006, *Penyalahgunaan & Ketergantungan NAZA (Narkotika, Alkohol, & Zat Adiktif)*, Gaya Baru, Jakarta.
- [5] Supramono, 2001, *Hukum Narkotika Indonesia*, Jakarta: Djambatan.

Regulation:

- [1] SEMA No. 07 of 2009.