

The Implementation of Rehabilitation Based on the Court's Decision against Narcotics Abuse

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Abstract.

The purpose of this study is to determine and explain the implementation of rehabilitation as a legal consequence of court decisions against narcotics abuse according to Act No. 35 of 2009 concerning Narcotics. The approach method used in this research is normative juridical. The specification of this research is descriptive analytical. The implementation of rehabilitation for narcotics abusers according to Act No. 35 of 2009 concerning Narcotics, namely in the case that the abuser can be proven or proven as a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation. Social Rehabilitation is a process of integrated recovery activities, both physically, mentally and socially, so that former narcotic addicts can return to carrying out their social functions in community life. While Medical Rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence.

Keywords: Court; Decisions; Narcotics; Rehabilitation.

1. Introduction

The State of Indonesia is a Unitary State in the form of a Republic, sovereignty is in the hands of the people and is carried out according to the 1945 Constitution of the Republic of Indonesia (UUD NRI). The Constitution of the Republic of Indonesia.¹

The 1945 Constitution of the Republic of Indonesia (UUD NRI) affirms that the Republic of Indonesia is a state based on law (rechtstaat). As a state of law, Indonesia always upholds human rights. Ideally, as a state of law, Indonesia adheres to a system of rule of law or the rule of law, namely the law has the highest power within the state. As a state of law, Indonesia adheres to one of the principles, namely the principle of the presumption of innocence.²

In the opening of the 1945 Constitution of the Republic of Indonesia, it was formulated that the aim of the State was to protect the entire Indonesian nation and the entire Indonesian bloodshed and to promote general welfare, to educate the nation's life, and to participate in implementing world order based on independence, eternal peace and social justice. It is guaranteed that in various aspects of life, the goals of the State to be achieved are realized. It's just that the path to the expected goals is not easy even though countries in other parts of the world

¹Sunarto et al. (2012). *Pendidikan Warganegaraan Di Perguruan Tinggi*, Semarang, UNNES Press, p. 43

²Ni Made Srinetri, Umar Ma'ruf and Munsyarif Abdul Chalim. (2020), *Progressivity Of Criminal Handling Fraud And Disease By The Directorate Of The General Criminal Reserse Of Central Java Regional Police (POLDA)*, Jurnal Daulat Hukum 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8777/4076>

and until now still continue to fight for and improve the level of welfare for the people by alleviating various kinds of problems they face.³

Crime in human life is a social phenomenon that will always be faced by every human being, society, and even the state. The reality has proven that crime can only be prevented and reduced, but it is difficult to eradicate completely.⁴ Currently, the Indonesian people and even the world community in general are faced with a very worrying situation due to the increasing number of illegal uses of various narcotics and psychotropic substances. This concern is exacerbated by the widespread circulation of illicit in society, including the younger generation. This will greatly affect the life of the nation and state in the future and the younger generation is the successor to the ideals of the nation and state in the future.

Narcotics if used irregularly according to the dose/dose can cause physical and mental harm to those who use them and can lead to dependence on the users themselves. This means that there is a very strong psychological desire to use the drug continuously for emotional reasons.⁵ Drug abuse has become a very serious problem not only locally, nationally, but also at the international level. Dependence on narcotics when analyzed medically is basically a brain disease, therefore the problem for narcotics addicts is not because of a lack of motivation to recover but because of changes in the mechanisms that exist in the brain which generally require a long time to adapt and recover with substance-free conditions. ⁶

Narcotics addicts are "self victimizing victims", because narcotics addicts suffer from dependence syndrome as a result of their own drug abuse. Article 54 of Act No. 35 of 2009 concerning Narcotics states that "narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation". Rehabilitation for narcotics addicts is a treatment process to free addicts from dependence, and the period of undergoing rehabilitation is calculated as a period of serving a sentence. Rehabilitation for narcotics addicts is also a form of social protection that integrates narcotics addicts into social order so that they no longer abuse narcotics.

Narcotics crime based on Act No. 35 of 2009 concerning Narcotics, provides quite severe criminal sanctions, in addition to being subject to corporal punishment and also subject to fines, but in fact the perpetrators are actually increasing. This is because the imposition of criminal sanctions does not have an impact or deterrent effect on the perpetrators. The interesting thing in the Law on Narcotics is the judge's authority to pass a sentence on someone who is proven to be a victim of narcotics abuse for rehabilitation. Implicitly, this authority recognizes that the abuser is a victim of narcotics abuse, Apart from being the perpetrators of criminal

³Asep Suherdin and Maryanto. (2019), *Analysis of Law Enforcement to Drugs Criminal Act in Military Environment (Case Study in Jurisdiction of Military Court II/09 Bandung)*, Jurnal Daulat Hukum, 2 (4), url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8357/3872>

⁴Bambang Waluyo. (2004), *Pidana dan Pemidanaan*, Jakarta: Sinar Grafika, p. 1

⁵Kusno Adi. *Kebijakan Kriminal Dan Penanggulangan Tindak Pidana Narkotika Oleh Anak*, (Malang: UMM Press), p.30

⁶Dudu Wawan Setiawan and Bambang Tri Bawono. (2019), *Disparity of Judge's Decision on Children Of Narcotics Crime Actors Study on Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 /PN.Dps.* Jurnal Daulat Hukum, 2 (4), url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8434/3906>

acts, they are also victims of the crime itself which in terms of victimology is often referred to as self-victimization or victimless crime. The description in the article focuses on the power of judges in deciding narcotics cases. However, the formula is not effective in reality.

Trials against abusers mostly end with imprisonment and not rehabilitation sentences as stipulated in the law. After the Narcotics Law has been running for almost 12 years, in 2009 the Supreme Court issued a circular, namely SEMA RI No. 7 of 2009, which is addressed to District Courts and High Courts throughout Indonesia to place narcotics abusers in rehabilitation centers and the latest is the issuance of Circular Letter of the Supreme Court Number 04 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Rehabilitation Institutions Medical and Social Rehabilitation which is a revision of the Circular Letter of the Supreme Court Number 07 of 2009.

The purpose of this study was to identify and explain the implementation of rehabilitation as a legal consequence of court decisions against narcotics abuse according to Act No. 35 of 2009 concerning Narcotics.

2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method, with an emphasis on literature study.⁷The specifications in this study are descriptive analysis. Secondary research material that comes from the legislation relating to the writing done. The data collection used in this paper is a document study which is a data collection tool that is carried out through written data using "content analysis".

3. Result and Discussion

The term narcotics comes from the Greek word "Narkom" which means to make paralyzed or numb.⁸ Narcotics are generally called "Drugs"⁹ is a kind of substance that can cause certain effects for those who use it in the human body. The influence is in the form of anesthesia, loss of pain, stimulation of enthusiasm and hallucinations or delusions. Meanwhile, the notion of narcotics in English is translated from the word "narcotics" or "drugs" are all medicinal ingredients, whether derived from natural or synthetic materials that have a working effect which generally anesthetizes (can lower consciousness), stimulates (causing activities or work performance), addiction (dependence, dependence, binding), and imagining (causing delusional power, hallucinations).¹⁰

Efforts to overcome the problem of narcotics addiction require appropriate steps and policies so that the high number of narcotics abuse in this country can be

⁷ Rony Hanitijo Soemitro. (1990), *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, p. 34

⁸ Departemen Penerangan RI. (1999), *Peran Serta Masyarakat Dalam Upaya Pencegahan dan Penanggulangan Napza serta Penularan HIV/AIDS*, Jakarta, p. 158

⁹ Wresniworo. (1999), *Masalah Narkotika Psikotropika dan Obat-Obat Berbahaya*. Jakarta: Yayasan Mitra Bimtibmas, p.26

¹⁰ Study Team Narkotika. (1973), *Masalah Narkotika Khusus Mengenai Usaha Rehabilitasi*, Jakarta: BKNUKKA, p. 13.

suppressed. In various parts of the world, the handling of narcotics with a law enforcement approach does not seem to have produced a solution that meets expectations.¹¹ In fact, the rate of abuse and illicit trafficking of narcotics continues to increase. Based on this, the concept of decriminalization and harm reduction of abusers/victims of narcotics abuse must be revitalized. Narcotics Act No. 35 of 2009 concerning Narcotics has provided an open enough space for the implementation of the two concepts above.¹²

The concept of decriminalization of narcotics abusers has been regulated by Act No. 35 of 2009 in Article 127 paragraph (3), which states "In the event that the 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 this article it is explained that narcotics abusers are required to receive rehabilitation services. Whereas in Article 103, it is stated that the judge can decide and determine the abuser/victim of narcotics abuse to undergo treatment or treatment. Article 127 paragraph (2) explains that in deciding cases against narcotics abusers, the Judge is obliged to pay attention to the provisions as referred to in Article 54, Article 55 and Article 103.¹³

Providing rehabilitation space for narcotics abusers/victims is a human effort, because such treatment is indeed more appropriate. Where, the spirit of Act No. 35 Year 2009 stipulates that, by classifying the abuser/victim of abuse as more of a patient who must be treated medically, rather than as a criminal. In addition, with rehabilitation efforts there is a guarantee that a drug abuser/victim will not be arrested for legal proceedings.

Mechanisms for implementing rehabilitation for suspects and/or defendants of narcotics abuse/victims include:

- Rehabilitation preparation consists of:
 - Implementation of Rehabilitation for suspects or defendants of abusers and/or victims of narcotics abuse is carried out in rehabilitation institutions in accordance with the results of the Integrated Assessment Team (TAT) assessment that has been determined based on the Decree of the Head of the National Narcotics Agency;
 - The implementation of rehabilitation can be carried out based on the recommendations of the TAT. The results of the recommendations will be attached to the case file to be submitted to the prosecutor's office through investigators and then brought to trial as material for consideration in the process of implementing the judge's decision.
 - Implementation of rehabilitation lasts a maximum of 3 (three) months with hospitalization.
 - The rehabilitation agency provides information to the court which determines 2 (two) weeks before the completion of the rehabilitation period.
 - If the suspect and/or defendant does not comply with applicable regulations or escapes, coordinate with the local police.

¹¹Theo Van Boven. (2002). *Mereka yang Menjadi Korban*, Elsam, Jakarta, p.76

¹²Siswanto. (2011). *Politik Hukum Dalam Undang-undang Narkotika*. Rineka Cipta, Jakarta, p.91

¹³Rifai Ahmad. (2010). *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, p.68

- Families or investigators may communicate after 2 (two) weeks of rehabilitation in accordance with the Standard Operating Procedures (SOP) of each rehabilitation institution.
- Rehabilitation stage for suspects or accused addicts and victims of narcotics abuse in the judicial process.¹⁴
- Stages of Rehabilitation for suspects or accused addicts and victims of narcotics abuse consist of:
 - Assessment; *Assessment* conducted to provide an assessment of the use of narcotics covering physical, psychological, and social aspects so that the degree of dependence and the magnitude of the problems that exist in individuals are known. The assessment is carried out in an integrated manner by a team of doctors consisting of psychiatrists, forensic specialists, doctors and psychologists who are certified in the narcotics field. The results of the assessment are the basis for determining the relevant diagnosis. In general, assessment can be described as a process of obtaining data and information regarding suspects and/or accused addicts and victims of narcotics abuse in the judicial process.
 - Implementation of Rehabilitation in the Judicial Process
 - The implementation of Rehabilitation for suspects and/or defendants can be placed in a rehabilitation institution appointed by the government or a detention center in accordance with the provisions of laws and regulations.
 - Implementation of Rehabilitation in Government-appointed Rehabilitation Institutions.
 - The process is carried out for 3 (three) months.
 - The implementation of rehabilitation for suspects and/or accused of abusers and victims of abuse is carried out through an inpatient rehabilitation program.
 - Security and supervision for suspects and/or defendants who are placed in inpatient rehabilitation facilities is carried out by rehabilitation institutions that meet certain safety standards and in their implementation can coordinate with the police.
 - Narcotics abusers/victims who have finished undergoing rehabilitation are handed back to investigators or public prosecutors by submitting a final resume of rehabilitation activities.
 - Implementation of Rehabilitation in Detention Center
 The rehabilitation process at consists of an assessment by a team of doctors (basic physical examination and basic laboratory), an assessment of risk and needs referring to criminogenic instruments, psychosocial interventions, and medical referrals for complications.¹⁵

There are no specific criteria set by the organizers of Rehabilitation for Narcotics Users in carrying out rehabilitation. The organizers of Rehabilitation for Narcotics Users accept all patients, whether submitted by a court that has a decision

¹⁴ Adriana Pakendek. (2017). *Cerminan Keadilan Bermartabat Dalam Putusan Pengadilan Berdasarkan Pancasila*, FH Univ.Madura, Jurnal YUSTITIA, 18 (1), p.107

¹⁵Badan Narkotika Nasional Indonesia. (2006). *Pusat Terapi & Rehabiltasi Badan Narkotika Nasional Indonesia*, Modul Pelatihan Petugas Rehabilitasi Sosial Dalam Pelaksanaan Program One Stop Centre (OSC)

or decision that requires the defendant to undergo rehabilitation or patients who are handed over by the family themselves.

4. Conclusion

The concept of the fulfillment of victim protection rights in the judicial process of child obscene crimes can be concluded progressively, namely first, Cross Examination which is the adoption of the Anglo Saxon system needs to be formulated in the Criminal Procedure Code. The purpose of this process is to obtain the fulfillment of the rights of the victim who pays more attention to the interests of the victim's child, namely through the prosecutor contained in the prosecutor's demands in the juvenile justice process to LPSK. Second, the principle of fast, simple and low-cost justice (systematic resocialization of the offender) is intended so that people who are involved in the judiciary are not treated and examined for a long time.

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