

The Optimization of Criminal Sanctions against Drug Users in Judicial Processes

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Abstract.

This research aims to study and analyze the optimization of criminal sanctions against narcotics users in the judicial process. In this paper, the author uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the discussion, it is concluded that the criminal provisions contained in Act No. 35 of 2009 concerning Narcotics is formulated in Chapter XV of Criminal Provisions Articles 111 to 148. Act No. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely the first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors, the second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors, the third category, namely acts in the form of offering for sale, selling.

Keywords: Criminal; Judicial; Narcotics; Processes; Sanctions.

1. Introduction

The State of Indonesia is a legal state that guarantees a sense of security and comfort for all Indonesian people and protects all Indonesian people from all forms of criminal acts. In the preamble of the 1945 Constitution of the Unitary State of the Republic of Indonesia (UUD NKRI) as the State constitution, it has been emphasized that the aim of the State is to protect the entire nation and all of Indonesia's bloodshed, thus the State, in this case law enforcers, has full duty to protect and protect the Indonesian people from all forms of criminal acts that threaten comfort and security

Indonesian society.¹

According to Article 28H of the 1945 Constitution of the Republic of Indonesia, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to health services". Indonesian people certainly have the right to have a place to live and get an environment that is free of narcotics. As we know, narcotics can be addictive and damage the body and ruin a human's life. Human life must be clean and free from things that interfere with health.²

Then translated into Act No. 35 of 2009 concerning Narcotics which regulates, supervises and takes action on the circulation and abuse of Narcotics.

¹Suhada and Aryani Witasari. (2020). *Legal Analysis Of Giving Remission To Fostered Citizens Of Criminal Acts In Narcotics In The Narcotics Special Class Ila Gintung Cirebon*, Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8428/3934>

² Fahmi Reza. (2018). *Verdict Prison For Drug Abuse*, Jurnal Daulat Hukum, 1 (2), url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3275/2410>

Narcotics not only make humans addicted, but can result in the death of a person quickly and unnaturally. Humans really need a clean place in their environment and a healthy body in order to carry on their life. Drug abuse has been called a crime against humanity. Narcotics are certainly the enemy of our nation in terms of printing the next generation of the nation that is healthy and free from narcotics.³

Narcotics crime is a dangerous crime, damaging the younger generation and the character and physical community of its users. These crimes can also be linked to a number of crimes, such as robbery, theft, money laundering, and terrorism.⁴ Therefore, the consequences of using narcotics will not only have a negative impact on the users themselves but will also directly or indirectly affect the family, community, and state environment.

As a narcotics crime that has long been an enemy of the nation, narcotics are now very worrying for our nation and all nations in the world today. The production and circulation of narcotics is so massive that it circulates in the midst of our society. The role of the narcotics mafia seems to be unstoppable. The narcotics mafia has poisoned law enforcers as users and as dealers in Indonesia and various parts of the world, even though all nations are fighting this crime. People often hear statements about building commitment or fighting together in eradicating narcotics in our country and around the world.⁵

With the enactment of Act No. 35 of 2009 concerning narcotics replacing Act No. 22 of 1997 and Act No. 9 of 1976, it indicates the seriousness of the government to tackle the dangers of narcotics abuse. Law enforcement against crimes in Indonesia, especially in terms of punishment, should refer to a legal norm approach that is punishing criminals so that it can have a deterrent effect. This provides a discourse for judges in formulating sentences for imposing sanctions on criminals in order to be able to capture the aspirations of society's justice. Empirical reality in the field of punishment in general still adheres to,

From the things described above, the author's intention arises to establish the purpose of writing, namely to study and analyze the optimization of criminal sanctions against narcotics users in the judicial process.

2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method. The specifications of the writing were carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this paper, secondary data collection methods were used which were obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

³Ali Murtadho. (2018). *The Investigation Process Prevention And Eradication Of Narcotics Investigator To The Criminal Abuses By Police*, Jurnal Daulat Hukum, 1 (2), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3286/2421>

⁴Ade Christian Manapa. (2019). *Policy Formulation of Criminal Law against Narcotics Traffickers Based On Justice Value*, Jurnal Daulat Hukum, 2 (4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8385/3895>

⁵Mustafa, Muhammad. (2007). *Krimonologi: Kajian Sosiologi terhadap Kriminalitas, Perilaku menyimpang, dan Pelanggar Hukum*, FISIP UI Press, p.17.

3. Result and Discussion

3.1. Optimization of criminal sanctions against narcotics users in the judicial process

Literally narcotics as expressed by Wilson Nadaek in his book "Victims of Marijuana and Narcotics Problems", formulates as follows: Narcotics comes from the Greek, from the word *Narke*, which means frozen, paralyzed, and stupid.⁶ According to medical pharmacology, namely "Narcotics are drugs that can eliminate (especially) pain originating from the visceral area and can cause stupor effects (still conscious but still need to be bullied) and addiction."⁷ Soedjono D. stated that what is meant by narcotics is a kind of substance, which when used (inserted in the body) will have an effect on the body of the user. The influence is in the form of: calming, stimulating, and causing delusions (hallucinations).⁸ The criminal provisions contained in Act No. 35 of 2009 concerning Narcotics is formulated in Chapter XV of Criminal Provisions Articles 111 to 148.

The following will explain the formulation of criminal sanctions and types of imprisonment and types of fines for criminal acts of abuse and illicit trafficking of narcotics, namely:

- Acts against the law related to the classification of narcotics (class I, II and III) include 4 (four) categories, namely:
 - In the form of possessing, storing, controlling or providing narcotics and narcotics precursors.
 - Producing, importing, exporting or distributing narcotics and narcotic precursors
 - Offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging or delivering narcotics and narcotics precursors
 - Carrying, sending, transporting, or transiting narcotics and narcotic precursors.

Sanctions imposed for a minimum of 2 years and a maximum of 20 years in prison, the imposition of a criminal fine is applied to all classes of narcotics, with a minimum fine of IDR 400,000,000 (four hundred million rupiah) and a maximum of IDR 8,000,000,000 (eight billion rupiah). for types of violations against narcotics with aggravating elements, the application of a maximum fine for each article that is violated is added by 1/3 (one third) The application of imprisonment and fines according to this law is cumulative, namely imprisonment and fines.

- The threat of criminal sanctions for people who do not report a narcotic crime (Article 131) is a sanction that is subject to a maximum imprisonment of 1 (one) year and a maximum fine of IDR 50,000,000,- (fifty million rupiah), which does not report the occurrence of unlawful acts, which include:
 - Possessing, storing, controlling, providing narcotics.

⁶Wislon Nadack. (1983). *Korban Ganja dan Masalah Narkotika*, Bandung: Indonesia Publishing House, p.122

⁷Wijaya A.W. (1985). *Masalah Kenakan Remaja dan Penyalahgunaan Narkotika*, Bandung, Armico, p.145

⁸Soedjono D. (1977). *Segi Hukum tentang Narkotika di Indonesia*, Bandung Karya Nusantara, p.5

- Offer to sell, buy, accept, intermediary in buying and selling, exchanging, or delivering.
- Using, giving for the use of others.
- The threat of criminal sanctions for ordering, giving, persuading, forcing with violence, trickery, persuading children is regulated in the provisions of Article 133 paragraphs (1) and (2). Paragraph (1) shall be punished with a death sentence or life imprisonment, or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and a minimum fine of IDR 2,000,000,000.00 (two billion rupiah) and a maximum of IDR 20,000,000,000.00 (twenty billion rupiah) paragraph (2), shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000,00 (ten billion rupiah).
- Threat of criminal sanctions for narcotics addicts who do not report themselves or their families to medical rehabilitation and social rehabilitation installations (Article 134 paragraph 1), sanctions are imposed with a maximum imprisonment of 6 (six) months and a maximum fine of IDR 2,000,000,000.- (two billion rupiah). Likewise, the family of a narcotics addict intentionally does not report a narcotics addict (Article 134 paragraph 2), the sanction is imposed with a maximum imprisonment of 3 (three) months and a maximum fine of IDR 1.000.000,- (one million rupiah).
- The threat of criminal sanctions for the proceeds of criminal acts of narcotics and/or Narcotics Precursors, in which there is an alleged crime of money laundering, sanctions imposed by imprisonment for 5-15 years or 3-10 years, and a fine of between IDR 1000,000,000,- (one billion rupiah) to 10,000,000,- (ten billion rupiah) or IDR 500,000,- (five hundred million rupiah or IDR 5,000,000,000 (five billion rupiah), which is contained in Article 137 paragraphs (1) and (2). In Article 2 of Act No. 25 of 2003 concerning the Crime of Money Laundering, has been arranged in a limited manner regarding criminal acts related to money laundering, including: corruption, narcotics crime, psychotropic crime, and so on.
- The threat of criminal sanctions for people who hinder or complicate the investigation, prosecution and examination of cases against narcotics crimes (Article 138) shall be subject to a maximum imprisonment of 7 (seven) years and a maximum fine of IDR 500,000,000 (five hundred million rupiah). In general, witnesses and victims are afraid to testify because of certain threats or intimidation, so that this act can be categorized as an act that hinders and incites, as well as complicates the investigation, prosecution, and examination before the trial.⁹

Taking into account the formulation of sanctions in the narcotics law, it can be said that the formulation of sanctions for criminal acts of narcotics abuse refers to a double track system, because based on a victimology review that narcotics addicts are self-victimizing victims, namely victims as perpetrators, victimology still defines narcotics abuse as victims, even though victim of a crime/crime he/she

⁹Siswanto Sunarso. (2012). *Politik Hukum Dalam Undang-Undang Narkotika*, Jakarta:Rineka Cipta, p. 256

has committed himself. Therefore, narcotics addicts who are also victims deserve protection. However, because narcotics addicts are also perpetrators of a crime/crime, they must also be punished, because of this, it is said that the double track system in formulating sanctions against narcotics abuse is the most appropriate.

In Act No. 22 of 1997, the minimum penalty is maintained, which if further examined, the specific minimum penalty is even higher than the previous law. The threat of punishment for narcotics crimes is very hard and firm where the threat of punishment is cumulative, namely corporal punishment or restraint of independence in the form of imprisonment, life imprisonment, up to the death penalty plus a fine as regulated in the provisions of Articles 111 to 148 of Act No. 35 Year 2009 on Narcotics.

Preventive action from public reports about alleged places that are used as places for transactions or illicit trafficking and places that are often used as narcotics parties in an area. If the fact is that illegal drugs are found in the place, the competent authorities will immediately conduct an investigation at the scene by conducting a search where there are two kinds of searches.

The process of examining narcotics crimes refers to the criminal procedure law regulated in the Criminal Procedure Code. In the book, examination in court is regulated in Articles 203 to 232.¹⁰The purpose of the accused being examined and tried in court is to prove whether the act or criminal act committed can be accounted for and for the imposition of appropriate criminal sanctions on the person who committed the crime.¹¹

In relation to the problem of drug abuse, a criminal law policy is needed that positions narcotics users as victims, not perpetrators of crime. "Based on the typology of the victims identified according to the circumstances and status of the victims, namely:

- *Unrelated victims*, namely the victim who has nothing to do with the perpetrator.
- *Provocative victims*, namely someone who actively pushes himself to become a victim.
- *Participating victims*, namely someone who does not act, but with his attitude actually pushes himself to become a victim.
- *Biologically weak victims*, namely those who physically have a weakness that causes him to become a victim.
- *Socially weak victims*, namely those who have a weak social position that causes them to become victims.
- *Self victimizing victims*, namely those who are victims of crimes they have committed themselves.¹²

Narcotics users are self victimizing victims, because narcotics users suffer from dependence syndrome as a result of their own drug abuse.¹³Narcotics users

¹⁰Lilik Mulyadi. (2008). *Bunga Rampai Hukum Pidana: Perspektif, Teoretis, dan Praktik*, Bandung, PT Alumni, p.356

¹¹I Gede Darmawan Ardika, I Nyoman Sujana, I Made Minggu Widyantara. (2020). *Penegakan Hukum Terhadap Penyalahgunaan Tindak Pidana Narkotika*, Jurnal Konstruksi Hukum, 1 (2), p.289

¹²Didik M.Arief Mansur and Elisatris Gultom. (2007). *Urgensi Perlindungan Korban Kejahatan*, PT. Raja Grafindo Persada, Jakarta, p. 49-50.

are classified as victims because the consequences of their actions that consume narcotics directly affect themselves and do not harm others who do not use the goods, so it should be said that a user is a person who is a victim of his own actions. This is a step forward in building the paradigm of stopping criminalization or decriminalization of narcotics users. Decriminalization is a process of change where the classification of an act that was previously considered a criminal act becomes ordinary behavior.¹⁴

There are several qualifications of understanding about drug addicts who abuse and victims of narcotics abuse. According to Soedjono Dirdjosisworo, what is meant by abuse is a form of serious crime which is also a cause that can lead to various forms of crime.¹⁵ This is what causes a Narcotics user to be treated seriously because if it is handled incorrectly, it can be fatal for the user.

In 2010 the Supreme Court issued a Supreme Court Circular (SEMA) No. 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Rehabilitation Institutions, hereinafter abbreviated as SEMA number 4 of 2010, which explains article 103 of Act No. 35 of 2009 and serves as a guide or benchmark for judges to make decisions rehabilitation. SEMA number 4 of 2010 mentions five conditions to obtain a rehabilitation decision, namely:

- The defendant was arrested under the condition of being caught red-handed;
- At the time of being caught red-handed, evidence of one day's use was found (attached to SEMA);
- Letter of positive laboratory test using narcotics;
- Certificate from a psychiatrist/psychiatrist; and
- Not proven to be involved in the illicit trafficking of narcotics.

The circular letter of the Supreme Court of the Republic of Indonesia can be used as a benchmark for narcotics abusers who are threatened with imprisonment as referred to in Act No. 35 of 2009 Article 127 paragraph (1). Because addicts and abusers are both abusing narcotics, it's just that to distinguish them it is necessary to first carry out an assessment or proof for the suspect or defendant so that it can be known by the judge whether the defendant is a narcotic addict who has a high dependence on narcotics or is it just an abuser who is not an addict or a victim of narcotics abuse, then the victim should be subject to social rehabilitation and medical rehabilitation as regulated in Article 127 paragraph (1) and paragraph (2) of Act No. 35 of 2009, strengthened based on the Regulation of the Minister of Health of the Republic of Indonesia No. 1305, 2171 of 2011, Regulation of the Head of the National Narcotics Agency No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abusers in the Rehabilitation Institute (SEMA) No. 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Rehabilitation Institutions, and joint regulations with the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, The Head of

¹³Hanafi Amrani. (2015). *Sistem Pertanggungjawaban Pidana Perkembangan dan Penerapan*, Jakarta: PT.Raja Grafindo Persada, p. 11

¹⁴Susanto. (2011). *Kriminologi*, Yogyakarta: Genta Publishing, p. 25.

¹⁵Soedjono. (1995). *Kriminologi*, Bandung, Citra Aditya, p.157

the National Police of the Republic of Indonesia and the Head of the National Narcotics Agency of the Republic of Indonesia number: 01/pb/ma/iii/2014 number: 03 of 2014.

4. Conclusion

The circular letter of the Supreme Court of the Republic of Indonesia can be used as a benchmark for narcotics abusers who are threatened with imprisonment as referred to in Act No. 35 of 2009 Article 127 paragraph (1). Because addicts and abusers are both abusing narcotics, it's just that to distinguish them it is necessary to first carry out an assessment or proof for the suspect or defendant so that it can be known by the judge whether the defendant is a narcotic addict who has a high dependence on narcotics or is it just an abuser who is not an addict or a victim of narcotics abuse, then the victim should be subject to social rehabilitation and medical rehabilitation as regulated in Article 127 paragraph (1) and paragraph (2) of Act No. 35 of 2009.

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