

The Ideal Criminal Model for Victims of Drug Users in Indonesia

I Putu Jaya Suryantha

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: jayasuryantha48@gmail.com

Abstract. *This study aims to determine the ideal punishment model for victims of drug use in Indonesia as a guideline for law enforcement officials in handling drug abuse crimes. This research is a doctrinal and non-doctrinal legal research. The data used are primary data and secondary data. Secondary data consists of primary, secondary and tertiary legal materials. Data collection techniques include observation, in-depth interviews, focus group discussions, distribution of questionnaires, and literature study. Data analysis techniques using qualitative normative analysis methods and interactive analysis models. The results of the study show that the application of imprisonment for victims of drug use according to the Narcotics Law who are classified as perpetrators of criminal acts is contrary to the legal theory of victimology. The ideal sentencing model for victims of drug use is a process outside the legal process, namely all victims of drug use report themselves for rehabilitation. Meanwhile, for those who do not report themselves, the police and/or the National Narcotics Agency (BNN) make arrests, immediately escort them and hand them over to the rehabilitation center not paid is replaced with imprisonment for 1 (one) month.*

Keywords: *Drug; Punishment; Rehabilitation; Victims.*

1. Introduction

The world is increasingly not conducive to social problems due to illegal drug use. Globally, the United Nation on Drugs and Crime (UNODC) estimates that between 155 and 250 million people or 3.5-5.7 percent of the world's population aged 15-64 years use prohibited substances.¹In this case, the author chooses the term narcotics and psychotropics as narcotics, even though the term narcotics is

¹Parasian Simanungkalit. 2011. Globalization of Narcotics Circulation and Handling in Indonesia. Jakarta: Fair Life Foundation. p. 86.

not contained in the law. This is because the term narcotics is used by police agencies in practice and is better known to the public in general.

Lately the problem of drug abuse in Indonesia has not decreased, but instead has become increasingly complex. This increase is proven by the increase in the number of users and dealers who have been caught, and the disclosure by the BNN of drug factory syndications that were apparently built in Indonesia. Several incidents caused by drug abuse have also made the public feel concerned, such as Afriyani's xenia car accident which resulted in nine deaths, the arrest of a pilot consuming methamphetamine, and police officers who were known to be drug users. These are some examples of cases that are troubling the community.

In line with the increase in drug abuse, the government has attempted to take firm action against syndicates and dealers by imposing severe penalties, even the death penalty. As for victims of users or addicts, the government has made efforts to reduce the adverse effects of drug use by providing rehabilitation facilities, both medically and socially. This is done so that victims of drug use can recover, become productive human beings, able to work to meet the needs of life and their families, and become a generation of a healthy and strong nation.

However, the policy to place victims of drug users in rehabilitation places cannot work properly because they are still in conflict with the provisions of the Narcotics Law, in which case victims of drug users are still positioned as perpetrators of criminal acts, as a result they do not receive optimal treatment and recovery because must languish in prison.

According to a juridical perspective, drug users cannot be categorized as criminals because the nature of the crime must be to cause victims and the victims are other people (an act must take place that involves harm inflicted on someone by the actor). This view then leads to the understanding that drug users are a form of crime without victims. This means that if only oneself becomes a victim, then this cannot be said to be a crime, so it cannot be punished.

In the context of criminalizing victims of drug abuse, problems arise when criminal threats are formulated by the government together with the House of Representatives (DPR-RI) and have been passed into Law Number 5 of 1997 concerning Psychotropics (hereinafter referred to as the Psychotropic Law) and Law Number 22 of 1997 concerning Narcotics which was later changed to Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law), there are still contradictions, confusion, incompatibility, and also diversity in applying these legal products, especially in determining sanctions. On the one hand, drug users are sentenced to prison, on the other hand they are rehabilitated. Even though the law has stated clearly that victims of drug use have the right to undergo treatment and/or treatment through rehabilitation,

but in reality judges rarely choose to impose rehabilitation sentences. Based on the facts, even though they are required to rehabilitate, the punishment applied to victims of drug use is still in the form of imprisonment.

In its development, the Supreme Court has issued Circular Number 04 of 2010 concerning Placement of Abuse, Victims of Abuse, and Narcotics Addicts in medical and social rehabilitation institutions which are the basis for judges at the district court and high court in deciding cases. In addition, in 2011 Government Regulation Number 25 of 2011 was issued concerning the Implementation of Compulsory Reporting of Narcotics Addicts, providing guarantees for addicts and/or victims of narcotics abuse to receive treatment and/or treatment through medical rehabilitation and social rehabilitation. These two regulations are a step forward in building a paradigm for ending the criminalization or decriminalization of drug addicts.

2. Research Methods

The approach method used in this study is a normative juridical approach. The normative juridical approach is legal research conducted by examining library materials or the data used is in the form of primary data and secondary data. Secondary data includes primary, secondary and tertiary legal materials. Data collection techniques included observation, in-depth interviews, focus group discussions, questionnaires, and literature study. The analysis was carried out using qualitative normative analysis methods, while in the non-doctrinal approach, the analysis was carried out using qualitative analysis which was carried out using interactive analysis models.

3. Results and Discussion

3.1. Position of Victims in the Criminal Justice System.

In the perspective of victimology, especially regarding the typology of victims, there are several opinions of legal experts regarding victims of drug abuse. Viewed from the perspective of the level of involvement of victims in the occurrence of crime, the definition of victims of drug abuse according to Ezzat Abdul Fateh, is included in the False Victims typology, namely the perpetrator who becomes a victim because of himself.²

Referring to the perspective of victim responsibility, there is self-victimizing victims, namely perpetrators who become victims because of crimes they have

²JE Sahetapy (editor). 1995. Anthology of Victimization. Bandung : Eresco, p.14

committed themselves. This is often stated as a victimless crime.³ However, this view forms the basis for the premise that there is no crime without a victim. All or every crime involves 2 (two) things, namely the criminal and the victim. As an example of self-victimizing victims are drug addicts, alcoholism, homosexuality, and gambling. This means that accountability lies fully with the perpetrator, who is also the victim.

Based on several opinions of legal experts regarding the typology of victims in the perspective of victimology, it can be stated that drug addicts are self-victimizing victims, namely someone who becomes a victim because of his own actions. However, there are also those who classify them as victimless crimes or crimes without victims because these crimes usually don't have a target victim, all parties are involved.⁴ In addition, drug addicts can also be categorized as a crime without a victim. The definition of victimless crime means that this crime does not cause any victims at all, but the perpetrator is the victim. Meanwhile, in the crime category, an evil act must cause a victim and the victim is another person (an act must take place that involves causing harm to someone by the actor). This means that if only oneself becomes a victim then this cannot be said to be a crime.

A criminal act or act against the law is committed by a person against another person, if no other party becomes a victim then as decided by the Constitutional Court through Decision Number 1/PUU-IX/2011, it cannot be said to be a crime or delict because of the general nature of criminal acts is an unlawful act, namely an act that violates norms in such a way as to injure the legal interests of other people or endanger the interests of other people. The decision of the Constitutional Court court was taken to strengthen the opinion of legal experts as well as to convince researchers that the victim because of his own actions is not a crime. Thus, someone who uses drugs for himself and this action does not harm and/or cause victims,

3.2. Model of Punishment for Victims of Drug Users

In cases of drug abuse in Indonesia, victims of drug use who are caught using drugs are immediately sent to the state detention center (remand center) or police cell. Then to develop the investigation, the victim is still in the detention center. When in the investigation process corroborating evidence has been collected, the investigator will send the Investigation Procedure File (BAP) to the prosecutor's office to then form a public prosecutor who will then make an indictment and submit it to the district court. During this process, victims of drug

³Dikdik M Arief Manshur and Elisatris Gultom. 2007. *The Urgency of Crime Victim Protection*. Jakarta: PT Raja Grafindo Persada, p. 125.

⁴Ibid., 49-51

use are transferred from the police detention center to the prosecutor's detention center, or the detention center in a correctional institution (LP). The head of the court who has received the indictment from the prosecutor's office, then forms a panel of judges whose task is to summon the defendant.

The sentencing model, as explained above, by placing drug-using victims in detention (although in terms of obtaining treatment/care rights) will actually make it difficult for drug-using victims to be able to recover from dependence. Moreover, the unsupportive condition of prisons will have a negative impact and further exacerbate the psychological and health conditions suffered by inmates who use drugs.

The imposition of prison sentences on victims of drug users before the Narcotics Law was amended because there had been legal breakthroughs, the imposition of criminal sanctions on victims of drug users were not sentenced to prison but in the ruling the judge could order them to be placed in a rehabilitation facility. The expected sentencing model is that someone who is caught using drugs for himself since being caught by the police or BNN is immediately put into rehabilitation. As long as the legal process continues until the verdict is passed by the judges, they remain in the rehabilitation center to undergo treatment and recover from drug addiction.

Before the Narcotics Law, related to the criminalization of drug users (Article 127 Paragraph 1 of the Narcotics Law), was amended by submitting a Judicial Review to the Constitutional Court, or by filing changes to the law by the government to the legislature (DPR-RI), judges decided on drug cases can make legal breakthroughs by including one of the dictums in the verdict to order the defendant to undergo treatment and rehabilitation. This is as mandated in Article 54 and Article 103 of the Narcotics Law and also based on SEMA Number 4 of 2010 and Government Regulation Number 25 of 2011.

The issuance of SEMA Number 4 of 2010 has provided a guideline for judges to place drug addicts into medical and social rehabilitation institutions. The main consideration is that the spirit of the Narcotics Law is to recognize drug addicts as patients and protect drug addicts and victims of drug abuse by placing them in medical and social institutions.⁵

Victims of drug use who have been arrested by the police or an authorized institution (BNN) should not be put in a detention center or police cell, but should be immediately placed in a rehabilitation center. As for the process of examining cases from the level of investigation to trial (criminal justice system),

⁵AR Sujono and Bony Daniel. 2011. Comments and Discussion of Law Number 35 of 2009 Concerning Narcotics. Jakarta: Sinar Graphics, p. 127.

victims of drug use are still placed in rehabilitation. If in court it is proven that he is only a drug user himself, then the judge should give an acquittal sentence with the condition that he is rehabilitated until he is completely cured. This applies as long as Article 127 of the Narcotics Law has not been changed or revoked.

To implement the sentencing model, as explained above, is actually not difficult. Because legal instruments are available through the Narcotics Law (Article 54, Article 103 and Article 127 paragraphs (2) and (3)) as well as the mandate of the Supreme Court through SEMA Number 4 of 2010 into the Medical and Social Rehabilitation Institute, which is a guideline for court judges state and high courts in deciding cases. In addition, there are still two government regulations that can be used as a basis for implementing the ideal model, namely Government Regulation Number 25 of 2011 and Head of BNN Regulation Number 2 of 2011.

4. Conclusion

Based on the results of the research and discussion, it can be concluded that in dealing with drug cases, especially victims and addicts, it can be said that judges in Indonesia rarely make legal breakthroughs that focus on social and human values that live in society. Judges in Indonesia only see the criminal side of the law without seeing the negative effects of the decision, as a result imprisonment is only seen as providing a deterrent effect for perpetrators of criminal acts. Victims of drug users according to the Narcotics Law are sentenced to imprisonment because drug users are classified as perpetrators of criminal acts. This contradicts the legal theory of victimology (victims). Several countries have proven that decriminalization policies have had an effect on reducing drug abuse. The ideal sentencing model for victims of drug use is a process outside the legal process, namely all victims of drug use report themselves for rehabilitation. Meanwhile, for those who do not report themselves, the police and/or BNN make arrests and are immediately escorted and handed over to a rehabilitation center.

5. References

1945 Constitution

AR Sujono and Bony Daniel. 2011. Comments and Discussion of Law Number 35 of 2009 Concerning Narcotics. Jakarta: Sinar Graphics.

Dikdik M Arief Manshur and Elisatris Gultom. 2007. The Urgency of Crime Victim Protection. Jakarta: PT Raja Grafindo Persada.

JE Sahetapy (editor). 1995. Anthology of Victimization. Bandung: Ersco

Law (UU) Number 35 of 2009 concerning Narcotics

Parasian Simanungkalit. 2011. Globalization of Narcotics Circulation and Handling
in Indonesia. Jakarta: Fair Life Foundation

The Criminal Code (KUHP)