

Implementation of Short Examination Events (APS) & Classification of Offenders in Handling Criminal Cases of Narcotics Abuse

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Abstract. *This research aims to determine the effectiveness of the Attorney General's Circular Letter Number: B-029/A/EJP/03/2019 concerning the Handling of Narcotics Crime and Narcotics Abuse Cases with Short Examination Procedures (APS) at the Kendal District Prosecutor's Office. The next objective is to find out the Public Prosecutor's legal thinking in classifying Narcotics abusers and to know the Public Prosecutor's considerations in considering the implementation of assessment activities in order to classify Narcotics abusers. This research uses a sociological juridical approach, with descriptive analysis research methods. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty. The results of the research show that the Public Prosecutor at the Kendal District Prosecutor's Office does not and/or has not implemented the Short Examination Procedure (APS) method in criminal cases of narcotics abuse in accordance with the mandate of the Attorney General as stated in the Attorney General's Circular Letter Number: B-029/A/EJP /03/2019. The reason why the Short Examination Procedure (APS) was not implemented is related to the quantity of criminal cases which can be said to be not too many being submitted to the Kendal District Prosecutor's Office, so that the Public Prosecutor has plenty of time to implement the Ordinary Examination Procedure (APB). Then the classification of narcotics abusers at the Kendal District Prosecutor's Office is only classified based on the Public Prosecutor's assessment without going through assessment activities. In efforts to eradicate Extraordinary Crime, the Public Prosecutor at the Kendal District Prosecutor's Office does not look at more humane provisions, so this is the reason why the Public Prosecutor is reluctant to carry out assessments.*

Keywords: Abuse; Classification; Examination; Narcotics.

1. Introduction

Examination of criminal cases in court or generally referred to as trial activities is a series of examination activities regarding a criminal case presented by the Public Prosecutor to a District Court Judge in the context of prosecution. It is one of the most important things in a law enforcement process, namely as an effort to establish, create order and peace in society as well as prevention and prosecution after a criminal act occurs.¹ The trial of a criminal case includes arraignment activities by the Public Prosecutor, then examination of witnesses, examination of evidence, prosecution, until decision and trial by a Court Judge. The method for examining criminal cases in court based on the Criminal Procedure Code (KUHAP) consists of the Ordinary Examination Procedure (Article 152 of the Criminal Procedure Code), the Short Examination Procedure (Article 203 of the Criminal Code) and the Rapid Examination Procedure (Article 205 of the Criminal Procedure Code), in general What differentiates each type of method is efficiency, effectiveness and differences in the length of the trial.

Criminal case trials in court generally apply the Ordinary Examination Procedure (APB) method as the examination method. One example of a criminal case that applies the Ordinary Examination Procedure (APB) method is the criminal case of Narcotics Abuse. The application of the Ordinary Examination Procedure (APB) method in trials of Narcotics abuse cases is always consistently applied by the Public Prosecutor. Basically, the authority to determine the examination method that will be applied in the trial is the authority of the Public Prosecutor, which is determined based on the Public Prosecutor's assessment based on the level of complexity of a case. The application of the Ordinary Examination Procedure (APB) method in criminal cases of narcotics abuse seems to be influenced by the substance of the case which is assessed by the Public Prosecutor as having a relatively difficult level of proof and application of the law, so that the Public Prosecutor estimates that it will take a relatively long time to carry out examination and evidence at trial. .

The Ordinary Examination Procedure Method (APB) is generally applied to the handling of criminal cases which are classified as criminal cases with serious crimes or is applied to cases which require more comprehensive examination and proof time. Evidence is one of the elements of prosecution activities at trial carried out by the Public Prosecutor before a District Court Judge. The level of difficulty of proving a case is determined by the Public Prosecutor, thus if the Public Prosecutor thinks that a case will experience difficulties and require a long time in the proof process, then it is certain that the Public Prosecutor will choose

¹Sulchan, A., & Ghani, M. (2017). Public Prosecutor's Prosecution Mechanism for Child Crimes. *Ulul Albab: Journal of Islamic Legal Studies and Research*, 1(1), 110-133. doi:<http://dx.doi.org/10.30659/jua.v1i1.2218>. Access date 09 December 2023.

the Ordinary Examination Procedure (APB) method as the examination method that will be used in court.

In 2019, the Attorney General issued the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 concerning the Handling of Narcotics Crime and Narcotics Abuse Cases with Short Examination Procedures. The Attorney General considers that criminal cases of narcotics abuse are generally supported by the perpetrator's confession of the act of narcotics abuse that he has committed, then supported by witnesses and supported by evidence, which in total can make it easier for the Public Prosecutor to carry out efforts to prove and efforts to apply the law in court.²Article 203 of the Criminal Procedure Code (KUHAP) states that "what is examined according to the short examination procedure are cases of crimes or violations which do not fall under the provisions of Article 205 and which according to the Public Prosecutor, the proof and application of the law is easy and simple in nature."³Thus, if a Narcotics abuse case is assessed by the Public Prosecutor as having a level of proof and easy application of the law, then the Public Prosecutor should determine the Short Examination Procedure (APS) method as the examination method in the trial process.

The Kendal District Prosecutor's Office, as the institution carrying out the prosecution function, in handling narcotics abuse cases applies the Ordinary Examination Procedure (APB) method in the trial process. For example, criminal case Case Register Number PDM-25/KNDAL/Enz.2/4/2021 in the name of Defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso, who was charged by the Public Prosecutor with the Primary Article 111 of Law Number 35 of 2009 Concerning Subsidiary Narcotics Article 127 of Law Number 35 of 2009 concerning Narcotics. That the Defendant Sandy was caught in possession of Class I Narcotics in the form of Marijuana plants amounting to 1.06390 grams and the Defendant admitted that he controlled Marijuana Narcotics only for his own use.⁴

The criminal case in the name of Sandy Setiawan as mentioned above was transferred by the Public Prosecutor using the Ordinary Examination Procedure (APB) method, even though the case should have been transferred by the Public Prosecutor using the Short Examination Procedure (APS) method. Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 contains provisions that the elements that must be fulfilled to be able to apply the Short Examination Procedure (APS) method in Narcotics abuse cases include "the

²Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 concerning the Handling of Narcotics Crime and Narcotics Abuse Cases with a Short Examination Procedure.

³See Article 203 Paragraph (1) of the Criminal Procedure Code (KUHAP).

⁴Criminal Case Indictment No. Reg. Perk. PDM - 25/KNDAL/Enz.2/4/2021 on behalf of the Defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso.

element of being caught red-handed." "The elements of the perpetrator's confession and the weight of the Narcotics evidence specifically for Marijuana do not weigh more than 5 grams."⁵Judging from the substance of the Public Prosecutor's Indictment as described in the previous paragraph, it shows that there are elements of the perpetrator's confession, elements of being caught red-handed and elements of marijuana-type Narcotics evidence which is limited to personal use and weighs no more than 5 (five) grams. Based on these elements, the Public Prosecutor should be able to assess that the proof and application of the law in this case is easy and simple. All elements in the substance of the case are in accordance with the elements contained in the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019, so the Public Prosecutor should submit the case to the Court using the Procedure method Abbreviated Examination (APS).

That trial examinations by implementing the Short Examination Procedure (APS) will be more effective and efficient if implemented. Law enforcement based on the principles of fast, simple and low-cost justice will be realized if the Short Examination Procedure (APS) method is implemented. In practice, simple principles are only interpreted as mere administrative matters without any understanding that simple principles must become the soul and motivational spirit of law enforcement which is implemented comprehensively at every level and institution.⁶ The application of the Short Examination Program (APS) method is not merely mandatory, but must be prioritized. The Ordinary Examination Procedure (APB) method can only be applied if the Public Prosecutor assesses that a case has a level of evidence and application of the law that is considered difficult. However, there is no harm in applying the Short Examination Procedure (APS) method as long as a case meets the requirements and is worthy of application. Apart from that, the judge's assessment also plays a role in determining the method for examining narcotics abuse cases. The judge can also initiate changes to the examination method if, in the judge's opinion, the case of narcotics abuse is not appropriate to apply the Short Examination Procedure (APS) method so that it is transferred to the Ordinary Examination Procedure (APB) method.

Apart from not implementing the Short Examination Procedure (APS) method, the criminal case file Case Register Number PDM-25/KNDAL/Enz.2/4/2021 is also not accompanied by assessment results. The application of Article 127 of Law Number 35 of 2009 concerning Narcotics should ensure that the Public Prosecutor is obliged to attach the results of the assessment, but in this case the Public Prosecutor did not attach the results of the assessment. Thus, the

⁵Attorney General Circular (SEJA). Loc. cit.

⁶M. Usrin. Juridical Analysis of the Principles of Simple, Fast Justice and Low Costs in the Criminal Justice System. Unpal Journal Vol 16 No 1 January 2018.

question arises as to why the Public Prosecutor is reluctant to carry out assessment activities in narcotics abuse cases.

The assessment procedure is an activity that must be carried out by the Public Prosecutor against Narcotics abusers without any reason. Carrying out the assessment aims to determine the accurate classification of the abuser so that the right to rehabilitation can be fulfilled and on target. Article 54 of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics confirms that Narcotics Addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation.⁷ Thus, if the perpetrator is only proven to be an addict and/or is proven to be a victim of narcotics abuse, then rehabilitation sanctions are the appropriate sanctions to be imposed on the perpetrator. Rehabilitation is an absolute right for suspects and/or accused of narcotics abuse who are proven to be addicts and/or victims of narcotics abuse. Imposing a rehabilitation sentence in the form of treatment for the perpetrator both physically and psychologically will provide greater benefits than punishment in the form of a prison sentence.

The Short Examination Procedure (APS) method must be prioritized by every Public Prosecutor handling criminal cases of Narcotics abuse. The Short Examination Program (APS) method has positive benefits for law enforcement, namely the realization of time efficiency and cost efficiency. Apart from that, the application of the Short Examination Procedure (APS) method will fulfill the perpetrator's rights to obtain facilities for handling cases that are handled and resolved as quickly as possible in accordance with the provisions of Article 50 of the Criminal Procedure Code (KUHAP). If a Narcotics abuse case meets the requirements to apply the Short Examination Procedure (APS) method, but the Public Prosecutor still applies the Ordinary Examination Procedure (APB) method, then the essence of the objective of the principle of fast, simple and low cost is deemed useless and results in wasteful actions, time and energy. Then the classification of perpetrators of narcotics abuse must be carried out through assessment activities which aim to sort out the classification of perpetrators, both medical classification and legal classification. With the results of the assessment, Narcotics abusers will be classified accurately. Thus, assessment activities are very essential activities as a determinant in determining whether or not narcotics abusers are eligible for rehabilitation sanctions. Based on the background that has been described, this is the reason for the author to conduct research and study in this journal with the title "Application of Short Examination Procedures (APS) and Classification of Offenders in Handling Criminal Cases of Narcotics Abuse".

⁷See Article 54 of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

The research objective to be achieved in this research is to determine the effectiveness of the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 concerning the Delegation of Narcotics Crime and Narcotics Abuse Cases with Short Examination Procedures (APS) at the Prosecutor's Office Kendal State. Then to find out the legal thinking and considerations of the Public Prosecutor at the Kendal District Prosecutor's Office in classifying perpetrators of narcotics abuse.

2. Research Methods

This research uses a sociological juridical approach, with descriptive analysis research methods. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty. This research uses primary data and secondary data. Primary data was obtained from field research using the interview method with the Public Prosecutor at the Kendal District Prosecutor's Office, while secondary data was obtained from reference books, scientific works, theses, and obtained from regulatory sources, all of which are related to the problems studied.

3. Results and Discussion

3.1. Effectiveness of the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 concerning the Delegation of Narcotics Crime and Narcotics Abuse Cases with a Short Examination Procedure (APS) to the Kendal District Prosecutor's Office

The realization of a simple, fast and low-cost criminal justice system for resolving criminal cases of narcotics abuse is a legal goal that is shared by all. Implementing the principles of simple, fast and low cost without destroying the principles of justice is an achievement to be achieved in the criminal justice system in Indonesia, so there is a need for a joint commitment to implement the justice system in accordance with the principles of simple, fast and low cost justice. The realization of the principle of simplicity, speed and low cost can be implemented through coordination efforts between law enforcement agencies, so that it will give birth to an integration between law enforcement officials which results in a mindset and perspective that has functional harmony regarding the examination and resolution of criminal cases of narcotics abuse.

Criminal case trials using the Short Examination Procedure (APS) are trials that have a high level of efficiency as long as the case meets the qualifications for the Short Examination Procedure (APS) to be applied. The higher the efficiency to be achieved, the less the backlog of cases will be, so that case handling can be completed in a shorter time and with fewer resources.

The definition of a brief examination procedure (APS) is stated in Article 203 Paragraph (1) which states that "what is examined according to a brief examination procedure are cases of crimes or violations which do not fall under the provisions of Article 205 and which according to the Public Prosecutor, the proof and application of the law is easy and simple in nature". Thus, after the Public Prosecutor studies a case that is being handled, the Public Prosecutor can estimate whether a case has easy evidentiary qualifications or has difficult evidentiary qualifications. If, according to the Public Prosecutor's estimation, the case has an easy level of proof and easy application of the law, then the Public Prosecutor should submit a request to the District Court to conduct an examination using the Short Examination Procedure (APS) as a method of examination and evidence at trial.

That the trial of criminal cases of narcotics abuse can be examined using the Short Examination Procedure (APS) method as long as the case according to the Public Prosecutor meets the criteria and is suitable to be examined using the Short Examination Procedure (APS). In its implementation, the Public Prosecutor has a legal basis in the form of the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 concerning the Handling of Narcotics Crime and Narcotics Abuse Cases with a Short Examination Procedure (APS). The guidelines contained in this circular serve as a reference for the Public Prosecutor in determining the criteria and feasibility for implementing the Short Examination Procedure (APS) in the trial examination of Narcotics abuse cases in Court.

The provisions contained in the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 regulate the criteria for criminal cases of Narcotics abuse that can be applied using the Short Examination Procedure (APS), namely as follows:⁸

1. Cases which, according to the Public Prosecutor, are simple, easy to prove, and easy to apply the law (vide Article 203 Paragraph (1) of the Criminal Procedure Code (KUHAP), include:
 - a. Caught;
 - b. The suspect admitted his actions;
 - c. Narcotics evidence is found and/or evidence related to the use of Narcotics which is controlled/owned/used by the suspect; And
 - d. There is an official report on laboratory test results which states that the evidence is positive for containing narcotics.

⁸Attorney General Circular Number: B-029/A/EJP/03/2019. Loc. cit.

2. Narcotics criminal cases that cannot be referred to a Short Examination Procedure (APS) are:

- a. What attracts people's attention;
- b. The perpetrator is a public figure, community leader, and/or public official;
- c. The perpetrator is a foreign citizen;
- d. The perpetrators are part of a national/international network of illegal narcotics distribution syndicates and/or the amount of evidence is large.

3. In cases of Narcotics abuse which are suspected under Article 127 of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, it can also be carried out with a Short Examination Procedure in the event that the evidence found from the perpetrator when caught red-handed is limited to a maximum of 1 (one) day's use. details as follows:

- a. Methamphetamine (shabu) group: 1 gram;
- b. MDMA group (ecstasy) : 2.4grams = 8 grains;
- c. Heroin Group : 1.8grams;
- d. Cocaine Group : 1.8grams;
- e. Marijuana Group : 5grams;
- f. Coca Leaves : 5grams;
- g. Mescaline : 5grams;
- h. Psilosybin Group : 3 grams;
- i. LSD (d-lysergic acid diethylamide) : 2grams;
- j. PCP group (phencyclidine) : 3 grams.

The author took the example of a criminal case of narcotics abuse at the Kendal District Prosecutor's Office as a case study in this research, namely criminal case No. Reg. Perk. PDM - 25/KNDAL/Enz.2/4/2021 on behalf of the Defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso. In this case the Defendant was charged by the Public Prosecutor with Primary Article 111 of Law Number 35 of 2009 concerning Narcotics Subsidiary Article 127 of Law Number 35 of 2009

concerning Narcotics. That the Defendant was caught in possession of Class I Narcotics in the form of 1.3 grams of Marijuana plants. Apart from that, the Defendant admitted that he controlled Marijuana Narcotics only for his own use.⁹Regarding this matter, the Public Prosecutor should assume that the case in question is a case that has an easy and simple level of proof, so that a Short Examination Procedure (APS) should be applied, however, the case was transferred by the Public Prosecutor at the Kendal District Prosecutor's Office to the Court using an Examination Procedure Ordinary (APB).

Based on this case study, the author will analyze one by one the elements that fulfill the provisions of the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 so that the Short Examination Procedure (APS) can be implemented. The analysis is based on the chronology and substance of the case which has been described by the Public Prosecutor in the Indictment Letter, as follows:

1. Elements Caught Red-handed;

The first paragraph of the Indictment Letter in the formulation of the Subsidiary Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, contains a description of the chronology of the Defendant's arrest which was carried out by the Kendal Police Narcotics Investigation Unit Police team. The arrest activity was carried out on Saturday 13 February 2021 at approximately 09.00 WIB, at the house of the Defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso whose address is at Dukuh Tempel RT 02 RW 01, Bumiayu Village, Weleri District, Kendal Regency. The arrest was made based on the criminal act of marijuana abuse committed by the Defendant. The abuse was carried out by mixing marijuana in Gudang Garam Signature cigarettes and then burning them and smoking them like normal cigarettes. Then at the same time the Kendal Police Narcotics Investigation Unit team arrived to carry out an investigation until the Defendant was arrested.¹⁰

Based on the chronology of the arrests, the type of arrest carried out by the Police Officer was a "caught red-handed" type arrest. In the provisions of Article 1 Number 19 of the Criminal Procedure Code (KUHP) it is stated that "Caught red-handed is the arrest of a person while committing a criminal act, or immediately after some time the criminal act has been committed, or shortly afterwards called out by the general public as the person who committed it, or if a moment later an object is found on him which is strongly suspected to have been used to commit the criminal act, which shows that he is the perpetrator or

⁹Indictment Letter. Loc. cit.

¹⁰Ibid.

participated in or assisted in committing the criminal act."¹¹

The definition of "caught red-handed" as intended by the Criminal Procedure Code (KUHAP) is an arrest carried out not too long ago, namely after the crime was committed. Apart from that, the condition of being "caught red-handed" as stipulated in the Criminal Procedure Code (KUHAP) includes arrests made based on reports from the public. When connected to the case sample, the element "caught red-handed" is in accordance with the chronology of the defendant's arrest. That the arrest of the Defendant was carried out after the Defendant consumed Marijuana narcotics. Thus, the element of being "caught red-handed" as regulated in the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 has been proven, so that the case is worthy of being transferred using the Short Examination Procedure (APS).

2. Elements of admitting one's actions;

The second paragraph of the Indictment Letter in the formulation of the Subsidiary Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics contains a description of the Defendant's confession of the abuse of Marijuana Narcotics. The indictment prepared and formulated by the Public Prosecutor clearly shows that the Defendant admitted that he had consumed Marijuana by mixing Marijuana in a Gudang Garam Signature cigarette, then burning it and smoking it in the same way that cigarettes are used in general. The next confession was the Defendant's confession of the remaining marijuana that the Defendant still owned, kept and controlled, in which the Defendant was willing to show the remaining marijuana that had been consumed which was stored in the back of the bedroom cupboard. The remainder of the marijuana owned by the Defendant was in the form of marijuana which was put in a plastic clip and stored in a former Gudang Garam Signature cigarette pack.¹²

3. Number of Evidence of Marijuana Narcotics;

In the Indictment it is clear that the Defendant possessed and controlled the remaining Narcotics in the form of Marijuana amounting to 1.06390 grams. The marijuana was leftovers that were admitted to be owned by the Defendant which had not yet been consumed by the Defendant.¹³ Thus, the remainder of the use of marijuana which is still kept by the Defendant is evidence that shows that a criminal act of narcotics abuse has occurred.

¹¹See Article 1 Number 19 of the Criminal Code.

¹²Indictment Letter. Op. cit.

¹³Ibid.

Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 contains the provision that the requirement to be able to implement the Short Examination Procedure (APS) in cases of Narcotics abuse is that the evidence found is limited to a maximum of 1 use (one) day and for Marijuana narcotics weighing no more than 5 grams. It can be seen that the evidence in the form of Marijuana owned by the Defendant was only 1.06390 grams and not more than 5 grams, therefore, based on the amount of evidence, this can be used as a basis for implementing a Short Examination Procedure (APS).

4. Forensic Laboratory Results;

The last paragraph of the Indictment Letter states that there is a Minutes of Criminalistic Laboratory Examination which is outlined in the Minutes of Criminalistic Laboratory Examination Lab Number: 483/NNF/2021 dated 19 February 2021. The Criminalistic Laboratory Examination was carried out by Dr. Drs. Teguh Prihmono, MH., DKK along with the Head of the Semarang Branch Forensic Laboratory. The results of the examination showed that BB-1081/2021/NNF was in the form of 1 (one) used pack of Gudang Garam Signature cigarettes containing 1 (one) plastic clip pack containing twigs, leaves and seeds suspected to be marijuana with the total net weight of the twigs, leaves and 1.07011 grams of seeds, after examination the remaining 1.06390 grams were positive for marijuana.¹⁴ With the results of the Criminalistics Laboratory, it is valid that the evidence held by the Defendant is Marijuana Narcotics.

Based on the elements described above, it is absolute that criminal case no. Reg. Perk. PDM - 25/KNDAL/Enz.2/4/2021 on behalf of the Defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso can be delegated and examined at trial using the Short Examination Procedure (APS). All elements contained in the case have fulfilled the elements contained in the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019. This raises the question of why the Public Prosecutor did not orientate the principles of fast, simple and low-cost justice in this case.

In essence, criminal cases should be handled as quickly as possible, so that the case will be resolved within a short time. "Immediate" case handling is a right that the defendant has so that the case can be resolved quickly. This is in accordance with the mandate of the Criminal Code as contained in Article 50 Paragraph (1), Paragraph (2), and Paragraph (3), which states that:¹⁵

¹⁴*ibid.*

¹⁵See Article 50 Paragraph (1), Paragraph (2), and Paragraph (3) of the Criminal Procedure Code.

Article 50

(1)The suspect has the right to be immediately examined by investigators and can then be referred to the Public Prosecutor.

(2)The suspect has the right to have his case immediately brought to court by the Public Prosecutor.

(3)The defendant has the right to be immediately tried by the Court.

Based on the provisions of this article, each verse has continuity. Starting from the Investigator to immediately submit the case to the Public Prosecutor, then the Public Prosecutor to immediately hand it over to the Court and the Court to immediately try the case. The word "immediately" contained in Article 50 of the Criminal Procedure Code (KUHAP) means that law enforcement officials must act as quickly as possible in examining and resolving the case being handled. The provisions of Article 50 of the Criminal Procedure Code (KUHAP) have been strengthened by Article 2 Paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which states that "Justice is carried out simply, quickly and at low cost".¹⁶In this provision the word "simple" is defined as a trial that is not excessive or in other words does not waste time. Then the word "fast" means a short time, and "low cost" is a lower cost in administering justice. Thus the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 is a form of representation of the articles that instruct the principles of simple, fast and low-cost justice, which is mandated to the Public Prosecutor to delegate cases Narcotics abuse by applying a Short Examination Procedure (APS) to the Court.

Zuliyah Zuhdy, as Head of the Prosecution, Execution and Examination Sub-Section at the Kendal District Prosecutor's Office said that at the Kendal District Prosecutor's Office there is no memorandum of understanding between law enforcers regarding the Short Examination Procedure (APS) to be applied in cases of narcotics abuse.¹⁷A memorandum of understanding can be achieved through coordination activities between law enforcement institutions to create synergistic cross-agency relationships carried out through efforts:¹⁸

¹⁶Article 2 Paragraph (4) Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

¹⁷Information from resource person Zuliyah Zuhdy as Head of the Prosecution, Execution and Examination Sub-Section at the Kendal District Prosecutor's Office.

¹⁸Sri Endah Wahyuningsih and Rismanto. "Criminal Law Enforcement Policy for Combating Money Laundering in the Context of Criminal Law Reform in Indonesia". Journal of Legal Reform. Volume II No. January 1. April 2015. https://www.researchgate.net/publication/318566646_KEBIJAKAN_PENEGAKAN_HUKUM

1. Carry out mapping of problems that arise related to cross-agency coordination;
2. Increasing the formation of cooperation institutions between related agencies;
3. Establishing a supervisory institution tasked with supervising the implementation of the duties of each institution;
4. Integrating and synchronizing community services so that service mechanisms can run simply, quickly and without overlapping;
5. Each agency meets periodically, both formally and informally, to discuss various problems that arise related to coordination problems and find solutions;
6. Increasing discussion forums and meetings between law enforcement officers with the aim of obtaining a common view in carrying out investigative tasks;
7. Prepare a MoU containing cooperation and coordination between agencies related to law enforcement.

Mardjono Reksodiputro stated that in the effort to realize an independent judiciary which is a cornerstone of the rule of law, the administration of justice does not solely rely on the institution of the Court in the narrow sense, considering that the criminal justice system is a unit and influences each other, the working process of which is illustrated in the example as wheels that must work together.¹⁹The realization of justice requires a joint commitment to implementing the justice system, including a commitment to creating justice in accordance with the principles of simple, fast and low-cost justice. The realization of the principle of simple, fast and low cost can be implemented through coordination efforts between law enforcement agencies, so that it will give birth to integration and cooperation between law enforcement officials which results in a mindset and perspective that has functional harmony regarding the examination and resolution of criminal cases of narcotics abuse. The pattern formed is known as the Integrated Justice System, namely the integration between sub-sub systems, starting from an investigation sub system, prosecution sub system, trial examination sub system and court decision implementation sub system.

[PIDANA TERHADAP PENANGGULANGAN MONEY LAUNDERING DALAM RANGKA PEMBAHARAN HUKUM PIDANA DI INDONESIA](#). Access December 11, 2023.

¹⁹Mardjono Reksodiputro. Human Rights in the Criminal Justice System (Collection of Essays). First Edition. Third Book. Seventh Printing. Center for Justice Services and Legal Services, University of Indonesia. Jakarta. 2007. Pp. 94.

Zuliyah Zuhdy, as a source, said that in the context of transferring criminal cases of narcotics abuse to court, the Head of the Kendal District Prosecutor's Office has never given instructions or direction to the Public Prosecutor to implement the Short Examination Procedure (APS) in cases of narcotics abuse.²⁰ Thus, the author concludes that the determination of the examination procedures to be applied at the trial is left entirely to the Public Prosecutor.

The definition of a prosecutor according to Article 1 Number 6 of the Criminal Procedure Code (KUHAP) is "an official who is authorized by this law to act as a Public Prosecutor and carry out court decisions that have obtained permanent legal force".²¹ Then the definition of a Public Prosecutor according to Law of the Republic of Indonesia Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia is "a prosecutor who is authorized by this Law to carry out prosecutions and carry out the determination of judges and other authorities based on the Law".²² The Public Prosecutor in carrying out his authority is based on the principle of *Dominus Litis* which is inherent to him. The *Dominus Litis* Principle is a principle which confirms that the Public Prosecutor has absolute authority in determining whether or not a criminal case can be prosecuted, including transferring the case to court. The Public Prosecutor has authority that cannot be interfered with in carrying out prosecutions, including carrying out prosecution sub-activities, namely determining the examination procedures that will be applied at trial.

The authority possessed by the Public Prosecutor in handling a criminal case is regulated in Article 14 of the Criminal Procedure Code (KUHAP), which states that the Public Prosecutor has the authority to:²³

- 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 order to perfect the investigation from the Investigator;*
- c. Providing an extension of detention, carrying out further detention or detention and/or changing the status of the detainee after the case has been delegated by the Investigator;*

²⁰Information from resource person Zuliyah Zuhdy.

²¹See Article 1 Number 6 of the Criminal Procedure Code (KUHAP).

²²See Article 1 Number 3. Law of the Republic of Indonesia Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia.

²³See Article 14 of the Criminal Procedure Code (KUHAP).

- d. *Making an Indictment Letter;*
- e. *Submitting cases to court;*
- f. *Provide notification to the defendant regarding the day and time the case will be heard, accompanied by a summons, both to the defendant and witnesses, to appear at the specified hearing;*
- g. *Carrying out prosecution;*
- h. *Closing the case for legal purposes;*
- 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.*

Departing from the regulations in Article 14 of the Criminal Procedure Code (KUHAP) as mentioned above, the Public Prosecutor has the authority to delegate cases to the Court after the Public Prosecutor has studied and examined the case files. What the Public Prosecutor will gain after studying the case files is an understanding of the substance of the case which is known in detail and cannot be separated from his assessment. Article 34A of Law of the Republic of Indonesia Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia states that "For the purposes of law enforcement, the Prosecutor and/or Public Prosecutor in carrying out their duties and authority can act according to their judgment by taking into account the provisions of statutory regulations and the code of ethics." Thus, the Public Prosecutor should know that criminal case no. Reg. Perk. PDM - 25/KNDAL/Enz.2/4/2021 PN.Kdl on behalf of the Defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso did not show any indication of involvement in Narcotics trafficking or precursors, so the Public Prosecutor should assess that the proof and application of the law in this case it feels very easy and doesn't take a long time.

Talking about the budget, the trial by implementing the Short Examination Program (APS) has an effect on budget absorption. According to sources, trials using Short Examination Procedures (APS) require relatively fast time compared to trials using Ordinary Examination Procedures (APB), so there are differences in operational costs that must be incurred.²⁴ Ordinary Examination Procedure (APB) trials generally last for approximately 1 (one) to 2 two (two) months, so that their implementation will require more expenditure compared to trials using Short

²⁴Information from resource person Zuliyah Zuhdy.

Examination Procedures (APS). The following are the expenses that must be incurred at the Ordinary Examination Procedure (APB) hearing:²⁵

1. Defendant's consumption;
2. Consumption of Witnesses and Experts;
3. Public Prosecutor's consumption (if the trial exceeds the working hours);
4. Consumption of Prisoner Guards (if the trial exceeds the working hours requirement);
5. Transport costs for escort by the Police;
6. Costs for summoning witnesses and experts;
7. Cost of fuel oil (BBM) for prisoners' cars;

The author examines that the costs incurred in the Ordinary Examination Procedure (APB) trial are the same as the costs that would be incurred in the Short Examination Procedure (APS) trial, the difference only lies in the time period for which the trial is held. In an Ordinary Examination Procedure (APB) trial, the costs are multiplied according to the number of trials until the case is decided by the Court, whereas in the Short Examination Procedure (APS) the costs are only incurred in a few trials, even allowing for costs to be incurred only at one trial if the Court decides the case on the same day.

The Attorney General's Office of the Republic of Indonesia annually sets a budget ceiling to be allocated to all the Prosecutor's Offices under it, including the High Prosecutor's Office, District Attorney's Office and State Branch Prosecutor's Office. Budget to support law enforcement duties. The aim of budget allocation to work units is by utilizing the available budget efficiently, effectively, optimally, transparently and accountably. Referring to the 2022 Kendal District Prosecutor's Office Performance Accountability Report (LAKIP), the budget ceiling and realization of absorption in the field of General Crimes in 2022 at the Kendal District Prosecutor's Office are as follows:²⁶

Realization Ceiling Program/Activities

²⁵Ibid.

²⁶ <https://kejari-kendal.kejaksaan.go.id/>. Public Information. Kendal District Prosecutor's Office Performance Accountability Report (LAKIP) 2022. Access 11 December 2023. 14.55 WIB.

Pre-Prosecution of Criminal Cases 20,600,000,- 17,270,000,-

Prosecution Criminal Cases 214,506,000,- 182,000,000,-

Restorative Justice Criminal Cases 3,000,000,- 0

Execution of Criminal Cases 16,000,000,- 0

Source: Kendal District Attorney General Crimes Performance Accountability Report (LAKIP) for 2022.

Based on the data contained in the table, it can be concluded that each sub-activity for handling General Criminal cases has a budget to be used as operational financing. In 2022, prosecution activities in the General Crimes sector will receive a budget ceiling of IDR. 214,506,000,- (Two Hundred and Fourteen Million Five Hundred and Six Thousand Rupiah) with a realized budget of Rp. 182,965,000,- (One Hundred Eighty Two Million Nine Hundred and Sixty Five Thousand Rupiah). Considering that the Kendal District Prosecutor's Office in the last 3 years (2021-2023) has not/never implemented the Short Examination Procedure (APS) in the prosecution process at trial, therefore the nominal figure that has been realized is the financing of prosecution activities by implementing the Ordinary Examination Procedure (APB). If the prosecution budget for 2022 is linked to the Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019, then Narcotics abuse cases throughout 2022 should be able to apply a Short Examination Procedure (APS) in the trial process. Likewise, in cases of narcotics abuse in 2023 and beyond, the Short Examination Procedure (APS) should be implemented in order to save the budget.

The prosecution operational budget is the budget to finance sub-sub implementation of prosecution activities at trial which includes consumption costs, transport costs and so on as mentioned by the resource person above. Prosecution activities cannot be separated from the examination procedures applied at the trial. Choosing the right inspection event will create proportional handling, so that apart from making the budget that has been provided effective, budget efficiency can also be achieved.

Law enforcement can be said to have been carried out effectively if the legal pillars run well and systematically. These pillars consist of law enforcement

officers, legal instruments, cultural factors (Legal Culture) and facilities and infrastructure factors that support the implementation of law enforcement. Facilities and infrastructure are the main facilities in making regulations effective. Law enforcers cannot carry out law enforcement if they are not equipped with tools and equipment. It cannot be denied that without certain facilities or facilities, it is impossible for law enforcement to take place smoothly. These facilities or facilities include, among other things, educated and skilled human power, good organization, adequate equipment, sufficient finances and so on.²⁷Therefore, facilities and infrastructure are needed to avoid obstacles that could cause disruption during the process of carrying out law enforcement.

Trial using a Short Examination Procedure (APS) in cases of Narcotics abuse is an appropriate examination procedure as long as the case meets the terms and conditions for a Short Examination Procedure (APS) to be implemented. Basically, the faster a case is resolved, the fewer costs will be incurred. Timeliness in handling criminal cases is the main factor, the longer it takes to handle and resolve the case being handled by the Public Prosecutor, the more other tasks must be carried out, and thus effective performance will not be achieved. Therefore, if the Public Prosecutor seeks efficiency in handling by determining measures that can speed up the trial process, then indirectly the Public Prosecutor has sought effectiveness in handling cases that will be faced next.

Based on information from resource person Zuliyah Zuhdy, in one month the average number of cases assigned to one Public Prosecutor is 3 (three) to 5 (five) criminal cases. According to him, the number of criminal cases at the Kendal District Prosecutor's Office is not too abundant, so the Public Prosecutor prioritizes accuracy in handling Narcotics abuse cases by implementing the Ordinary Examination Procedure (APB).²⁸

It should be appreciated that the Public Prosecutor at the Kendal District Prosecutor's Office has high dedication in realizing successful law enforcement with the value of justice. According to the author's observations, the handling of narcotics abuse cases at the Kendal District Prosecutor's Office places more emphasis on effectiveness and success. The author draws the conclusion that the Public Prosecutor's reason for not implementing the Short Examination Procedure (APS) in handling criminal cases of narcotics abuse is none other than anticipating the defendant's uncooperative attitude during the examination at trial. Even though the defendant had previously been cooperative with investigators and the Public Prosecutor, it is possible that the defendant will act

²⁷Soerjono Soekanto. *Factors Affecting Law Enforcement*. Raja Grafindo Persada. Jakarta. 2007. Pp. 37.

²⁸Information from resource person Zuliyah Zuhdy.

reactive in the form of evasion during the trial. The next reason is to anticipate that there will be new facts that might emerge at trial, such as it turns out that the defendant was involved as a narcotics dealer and/or the defendant's involvement in a narcotics precursor crime or other involvement that is included in a narcotics crime.

The author concludes that the main factor influencing the non-implementation of the Short Examination Procedure (APS) at the Kendal District Prosecutor's Office is related to the absence of a backlog of cases. The quantity of criminal cases submitted to the Kendal District Prosecutor's Office is considered not to be too large, so that the Public Prosecutor can manage his time well and then use this time to implement the Ordinary Examination (APB) procedure in Narcotics abuse cases in order to carry out comprehensive evidence.

3.2. Legal Thoughts and Considerations of Public Prosecutors at the Kendal District Prosecutor's Office in Classifying Narcotics Abuse Perpetrators.

In order to classify Narcotics abusers, law enforcement officials are required to conduct assessment activities. Assessment activities are essential activities as a research activity on Narcotics abusers which is useful for determine the level of addiction experienced by narcotics abusers. Apart from that, the results of the assessment activities will show results regarding whether or not the abuser is involved in criminal acts as a dealer, courier, abuser and distributor, or as an addict or victim of narcotics abuse. There are several methods used by drug criminals to carry out transactions, including face to face, transactions via courier, direct purchases at narcotics distribution locations, the patch system (mine planting system), and the javelin throwing system.²⁹The ultimate goal of a Narcotics assessment activity is to produce information based on research on Narcotics abusers which is useful as reference material and recommendations for whether or not Narcotics abusers can be rehabilitated.

The definition of a Narcotics abuser is contained in Article 1 Number 15 of Law Number 35 of 2009 concerning Narcotics which states that "A abuser is a person who uses Narcotics without rights or against the law".³⁰Then the definition of a Narcotics addict is stated in the provisions of Article 1 Number 13 of Law Number 35 of 2009 concerning Narcotics which states that "A Narcotics Addict is a person who uses or abuses Narcotics and is in a state of dependence on Narcotics, both physically and psychologically".³¹Meanwhile, the definition of "victim" of

²⁹Bayu Praise Hariyanto. "Prevention and Eradication of Drug Trafficking in Indonesia". Journal of Legal Sovereignty. Vol 1 No 1. March 2018. <https://jurnal.unissula.ac.id/index.php/RH/article/view/2634/1983>. Access December 11, 2023.

³⁰Article 1 Number 15. Law Number 35 of 2009 concerning Narcotics.

³¹Article 1 Number 13. Law Number 35 of 2009 concerning Narcotics.

narcotics abuse is not explained in Law Number 35 of 2009 concerning Narcotics, but the meaning is explained in the provisions of Article 1 of Joint Regulation 7 (Seven) of the State Institutions of the Republic of Indonesia concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions namely "A victim of narcotics abuse is someone who accidentally uses narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use narcotics."³²

Assessment activities which function as a means of indicating perpetrators of narcotics abuse are a form of implementation of Law Number 35 of 2009 concerning Narcotics which represents Article 54, Article 55, Article 103 and Article 127 Paragraph (3). Then the assessment is also a form of implementation of the Supreme Court Circular Letter Number 04 of 2010 and Joint Regulations of the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number PER-005/A/JA/03/2014, Number 1 of 2014, Number PERBER/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

Technically, the integrated assessment mechanism is carried out based on several regulations, including:

1. Joint Regulations of the Chairman of the Supreme Court 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, Chief of Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia. No. 01/PB/MA/III/2014, No. 03 of 2014, no. 11 of 2014, no. 03 of 2014, no. PER-005/A/JA/03/2014, No. 1 of 2014, No. PERBER/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

³²Article 1. CHAPTER I. Joint Regulations of the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the National Police of the Republic of Indonesia, the Head of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number PER-005/A/JA/03/2014, Number 1 of 2014, Number PERBER/01/III /2014/BNN Concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions

2. Supreme Court Circular Number 04 of 2010 concerning Placement of Abuse, Abuse Victims and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions;
3. Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions;
4. Attorney General Regulation Number 29 of 2015 concerning Technical Guidelines for Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions; And
5. Ministry of Health Regulation Number 50 of 2015 concerning Technical Guidelines for Implementing Mandatory Reporting and Medical Rehabilitation for Addicts, Abusers and Victims of Narcotics Abuse.
6. Guideline Number 18 of 2021 concerning Settlement of Criminal Cases of Narcotics Abuse Through Rehabilitation Using a Restorative Justice Approach.

Brief chronology of the substance of the case No. Reg. Perk. PDM - 25/KNDAL/Enz.2/4/2021 PN.Kdl is that the perpetrator in the case in question, namely the Defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso, has committed the crime of abusing Marijuana Narcotics. The abuse was carried out by the Defendant Sandy by mixing marijuana into Gudang Garam Signature cigarettes, then burning them and smoking them like normal cigarettes. The remaining use of Narcotics in the form of Marijuana owned by Defendant Sandy was 1.06390 grams, confirmed by the results of the Criminalistics Laboratory examination with the result that the evidence showed positive for Marijuana Narcotics.³³

Articles charged against the perpetrator/defendants Primair Article 111 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, Subsidiary of Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics,³⁴ with the following article:

Article 111

(1) Any person who, without right or against the law, plants, maintains, owns, stores, controls or provides Category I Narcotics in the form of plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of

³³Indictment Letter. Loc. cit.

³⁴Ibid.

12 (twelve) years and a fine. a minimum of IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah).³⁵

Article 127

(1) Any Abuse:

a. Class I narcotics for oneself is punishable by a maximum imprisonment of 4 (four) years.³⁶

The article proven at trial was a subsidiary article, namely Article 127 Paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Through Kendal District Court Decision Letter Number 54/Pid.sus/2021/PN. Kdl. The defendant Sandy Setiawan Alias Cebong Bin Suran Dwi Santoso was proven guilty of committing the crime of abuse of Class 1 narcotics for himself and was sentenced by the Kendal District Court Judge to 10 (ten) months in prison.³⁷

In the Indictment, the Public Prosecutor did not describe the symptoms that would arise if the Defendant Sandy stopped consuming marijuana, but the Public Prosecutor only describes the effects experienced by the defendant after the defendant consumed marijuana. In the Indictment there is a phrase that after the perpetrator/defendant consumed marijuana, the effects that emerged were the body becoming light, the throat dry, the stomach feeling hungry and feeling happy.³⁸ Thus, there is no specific information provided by the Public Prosecutor in the Indictment regarding the characteristics or indications that indicate that the perpetrator is addicted to narcotics. The Indictment Letter in this case should contain information on the results of the assessment as outlined in the Indictment Letter, so that the results of the assessment information enable the Judge to be able to rehabilitate the perpetrator/defendant into a medical rehabilitation or social rehabilitation institution.

In fact, the statement which states that "the effect that arises is that the body becomes light, the throat is dry, the stomach feels hungry and the feeling is happy" is a definition sentence or declarative sentence obtained by the Public Prosecutor from the perpetrator's statement which has the meaning of a sentence that shows an explanation that the perpetrator is indicated experiencing addiction to narcotics. This information shows that there is an effect of narcotics use that the perpetrator hopes will be better than the usual situation, thus the desire to achieve the expected effect indicates that there is an

³⁵See Article 111 Paragraph (1) Law Number 35 of 2009 concerning Narcotics.

³⁶See Article 127 Paragraph (1) letter a Law Number 35 of 2009 concerning Narcotics.

³⁷Decision Number 54/Pid.sus/2021/PN. Kdl.

³⁸Indictment Letter. Loc. cit.

addictive condition that is being experienced by the perpetrator. The Public Prosecutor should be able to carry out an assessment to ensure the validity of the indications of addiction in the perpetrator. A person who is addicted to narcotics will basically continue to abuse narcotics in order to feel better, including "the body becomes light and feels happy", sometimes the abuser himself does not realize that he has experienced an addiction. Therefore, assessment activities must be carried out by the Public Prosecutor together with investigators and related legal teams as well as medical teams in order to uncover indications that emerge from perpetrators of narcotics abuse.

Still with the same source, Zuliyah Zuhdy as Public Prosecutor at the Kendal District Prosecutor's Office said that Narcotics crimes including criminal acts of Narcotics abuse are Extraordinary Crimes which receive special attention by the president, DPR, Central Government and Regional Government. Thus, for perpetrators who have been named as suspects in Narcotics crimes, the Public Prosecutor at the Kendal District Prosecutor's Office places more emphasis on the deterrent effect so that they can prevent and reduce the increase in the number of Narcotics crimes.³⁹

It cannot be denied that the Narcotics problem is a problem that is difficult to eliminate, so it is classified as an extraordinary crime (Extraordinary Crime). Narcotics crimes increase every year as if their existence has never reached an end point. It is even more disturbing that in carrying out their actions the perpetrators of narcotics crimes no longer carry out their actions in secret, but rather do so openly. Situations like this illustrate that Narcotics crime is a disease that has spread to all levels of society, including even elements in the judiciary who carry out the function of law enforcers who are not spared from being part of Narcotics crimes. This shows that Narcotics crimes not only cause financial losses to the state, but furthermore that Narcotics crimes will also threaten the fundamentals of national and state life. Due to these conditions, it has become the duty and function of law enforcement officials to focus on providing a deterrent effect on perpetrators of narcotics crimes with the aim of ensuring that narcotics crimes disappear from the face of the earth.

Law enforcement in criminal cases of narcotics abuse is not only carried out based on legal certainty alone, but law enforcers should be competent considering the principle of benefit by synergizing between enforcement of legal regulations and enforcement of rehabilitation. Handling of narcotics abuse should be implemented comprehensively, both in terms of law enforcement and rehabilitation, so that apart from the deterrent effect, legal benefits will also be achieved. It is hoped that criminal prosecution of narcotics abusers will not only provide a deterrent effect for the perpetrators but also serve as a means of

³⁹Information from source Zuliyah Zuhdy.

overcoming crime. A humanistic approach must be taken into account in providing legal sanctions to narcotics abusers. This humanistic value-oriented approach requires attention to the principle of criminal individualization in the use of criminal sanctions as a means of combating crime.⁴⁰

During interviews with sources, the author asked questions to sources regarding more humane provisions in imposing sanctions on perpetrators of narcotics abuse. According to sources, in terms of eradicating Extraordinary Crime, the Public Prosecutor at the Kendal District Prosecutor's Office does not look at provisions that are more humane, but in terms of prevention, it is carried out as closely as possible through outreach activities to the community and joint coordination with the government and village officials to discuss early prevention. on narcotics problems.⁴¹

It can be analyzed that based on the information of this source, the Public Prosecutor at the Kendal District Prosecutor's Office setting aside more humanist provisions in demanding criminal sanctions against perpetrators of narcotics abuse. Regulations in law enforcement for Narcotics crimes are regulated in a complex manner by Law Number 35 of 2009 concerning Narcotics. The Narcotics Law itself aims to *"guarantee the arrangement of medical and social rehabilitation efforts for drug abusers and addicts"*,⁴² This means that there are regulations that require a humanistic side in them to encourage law enforcement in a restorative manner. Thus, it can be seen that the theory of punishment initiated by The Public Prosecutor at the Kendal District Prosecutor's Office uses an absolute or retributive theory which is generally still used in imposing prison sanctions on criminals by prioritizing the aspect of retribution. This is the reason why the Public Prosecutor is reluctant to carry out an assessment of the perpetrator/defendant.

Absolute/retributive theory is considered less effective to apply at the prosecution stage to perpetrators of narcotics abuse who are proven to be victims and/or narcotics addicts. In terms of legality, narcotics abuse has indeed been recognized by law, but the application of absolute theory in the implementation of law enforcement will actually have the impact of ignoring human values by ignoring efforts to guide perpetrators of narcotics abuse. The absolute theory is more appropriate to apply to certain types of criminal acts that meet the requirements as long as the choice of punishment is oriented towards creating and providing a sense of justice to the victim and society as well

⁴⁰Sri Endah Wahyuningsih. Principles of Criminal Individualization in Islamic Criminal Law and Reform of Indonesian Criminal Law. Diponegoro University Semarang Publishing Agency. 2013. P.82.

⁴¹Information from source Zuliyah Zuhdy.

⁴²See Article 4 Letter d of Law Number 35 of 2009 concerning Narcotics.

as providing a deterrent or preventive effect on the perpetrator (special prevention) and the wider community (general prevention).

Treatment theory is seen as an appropriate theory of punishment to be applied to narcotics abusers while still paying attention to the results of the assessment. This theory emphasizes that punishment is appropriate to be directed at the perpetrator of the crime, not at his actions. Treatment theory has advantages in terms of the re-socialization process of abusers, so that it is hoped that it will be able to restore the social and moral quality of society so that they can reintegrate into society. This theory assumes that humans do not have free will, their behavior is influenced by the values and social conditions of their environment, therefore, the sanctions given must be educational, in this case a criminal requires treatment sanctions.⁴³Based on this, it is also urgent to reform the criminal law in cases of narcotics abuse. Criminal law reform is essentially part of a policy (rational effort) to update the legal substance in order to make law enforcement more effective and is part of a policy (rational effort) to eradicate/cope with crime in the context of protecting society.⁴⁴

Victimologically, narcotics abusers are classified as self-victimizing victims, namely those who are victims of their own actions, such as narcotics and gambling addicts. Self-victimizing victims are referred to as pseudo-victims or victimless crimes where responsibility lies with the perpetrator.⁴⁵The victim of the criminal act of narcotics abuse is none other than the perpetrator himself. The crime of narcotics abuse is the use of narcotics by someone against the law which is carried out personally by oneself. Abusers do not involve other people in consuming narcotics, but consume it themselves, so that it does not cause impacts and losses that will befall other people. Thus, imposing prison sanctions on abusers who are proven to be victims and/or addicts of narcotics is seen as an ineffective punishment because it excludes efforts to cure the perpetrator of his narcotics addiction.

According to Zuliyah Zuhdy, in classifying perpetrators of narcotics abuse as victims or simply as abusers, the Public Prosecutor first observes the perpetrator regarding the perpetrator's initial introduction to narcotics. In the interview session, Zuliyah Zuhdy said that the characteristics of someone who is classified as a victim of narcotics abuse is someone who consumes narcotics

⁴³Teguh Prasetyo. Abdul Halim Barkatullah. Politics of Criminal Law. Criminalization and Decriminalization Policy Review. Student Library. Jakarta. 2005. Pp. 96-97.

⁴⁴Sri Endah Wahyuningsih. The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of the Almighty God. Journal of Legal Reform. Volume 1 No.1. January. April 2014. <https://jurnal.unissula.ac.id/index.php/PH/article/view/1457/1128>. Access December 11, 2023.

⁴⁵Rena Yulia. Victimology Legal Protection for Crime Victims. Science House. Yogyakarta. 2013. Pp. 54.

at the persuasion of their environment. Then the next characteristic is to use narcotics the next time, the person does not take the initiative to buy narcotics and does not even have an interest in narcotics. Thus, this person deserves to be categorized as a victim of narcotics abuse. Furthermore, regarding the characteristics of a person who is classified as a pure narcotics abuser, that is, if a person has the initiative to buy narcotics, then that person knows how to use them, then he can be categorized as a pure narcotics abuser.⁴⁶

The understanding of Public Prosecutors at the Kendal District Prosecutor's Office regarding the mechanism for classifying narcotics abuse perpetrators is actually adequate, but in fact many of the Narcotics abuse cases that have been handled at the Kendal District Prosecutor's Office are not equipped with assessment results including the case studies in this research. This means that so far the Public Prosecutor at the Kendal District Prosecutor's Office in classifying Narcotics abusers has not done so through assessment activities, but the classification is only based on the Public Prosecutor's own assessment. In the absence of these assessment results, the handling of criminal cases of narcotics abuse, which should prioritize restorative justice, will actually be criminalized.

Assessment is nothing more than diagnosing the level of medical disorders experienced by the abuser. The Public Prosecutor in diagnosing abusers does not have competence in the medical field, so the results are only estimates and judgments whose accuracy is questionable. Only health professionals can diagnose someone with narcotics use disorder, thus assessment is the right step in making a diagnosis because in the assessment activity there are medical experts who take part in carrying out the examination.

Assessment activities are carried out by law enforcement officers together with doctors as health/medical professionals and psychologists as social science professionals who form the Integrated Assessment Team (TAT). The provisions of Article 8 Paragraph (3) of Joint Regulation 7 (seven) State Institutions Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, state that:⁴⁷

Article 8

(3) The Integrated Assessment Team (TAT) consists of:

- a. Doctor Team which includes Doctors and Psychologists;

⁴⁶Information from source Zuliyah Zuhdy.

⁴⁷Article 8 Paragraph (3) Joint Regulation of 7 (seven) State Institutions. Loc. cit.

b. The Legal Team consists of elements from the POLRI, BNN, Prosecutor's Office and the Ministry of Law and Human Rights.

The duties and authority of the Integrated Assessment Team (TAT) are determined in Article 12 Paragraph (1) and Paragraph (2) and Paragraph (3) of Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Abuse Narcotics into Rehabilitation Institutions, namely as follows.⁴⁸

Article 12

(1) The Integrated Assessment Team has the task of carrying out:

- a. Medical, psychosocial assessment and analysis, as well as recommending therapy and rehabilitation plans for someone who has been arrested and/or caught red-handed;
- b. Analysis of someone who has been arrested and/or caught red-handed in connection with illicit narcotics trafficking and narcotics abuse.

(2) The Integrated Assessment Team has the authority to carry out:

- a. At the request of an investigator to conduct an analysis of the role of someone who has been arrested or caught red-handed as a victim of narcotics abuse, narcotics addict or narcotics dealer;
- b. Determine the criteria for the severity of Narcotics use according to the type of content consumed, the situation and conditions when arrested at the scene of the crime; And
- c. Recommend therapy and rehabilitation plans for Narcotics Addicts and Narcotics Abuse Victims as intended in letter b.

(3) Implementation of the assessment and analysis as intended in paragraph (1) is carried out by:

- a. The team of doctors is tasked with carrying out medical, psychosocial assessments and analyzes as well as recommending therapy and rehabilitation plans for Narcotics Abusers;

⁴⁸Article 12 Paragraph (1) and Paragraph (2) and (3) Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

b. The Legal Team is tasked with carrying out analysis regarding the illicit circulation of Narcotics and Narcotics Precursors and Narcotics abuse in coordination with the Investigator handling the case.

Ideally, planning for assessment activities begins when Police Investigators present Narcotics abusers who are caught red-handed to the local National Narcotics Agency (BNN) so that an assessment can be carried out. However, the majority of investigators ignore and skip the stage of assessment activities that should be carried out in handling narcotics abuse cases. Based on situations like this, many abuse cases submitted to the Prosecutor's Office are not accompanied by the results of assessment recommendations.

Through letter Number 18 of 2021, the Attorney General provided guidelines to the Public Prosecutor as a reference in examining the formal and material completeness of Narcotics abuse cases as follows:⁴⁹

1. In studying and examining the results of the investigation by the Investigator, the Public Prosecutor ensures formal and material completeness;
2. Research on formal completeness and material completeness as referred to in number 1 is carried out specifically regarding:
 - a. Evidence of criminal acts of narcotics abuse;
 - b. Suspect qualifications;
 - c. Qualification of the criminal act and compliance with the alleged article;
 - d. The element of guilt (mens rea) in the suspect;
 - e. Examination of suspects; And
 - f. Recommendations from the integrated assessment results.

Recommendations from the results of the integrated assessment are formal and material completeness of the results of the investigation by the Investigator. The formal completeness in this case is the assessment statement letter, then the material completeness is the substance of the assessment result letter. The Public Prosecutor should recommend to the Investigator to conduct an assessment if at the pre-prosecution stage the results of the

⁴⁹Chapter III Pre-prosecution. Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as Implementation of the Prosecutor's Dominus Litis Principle.

assessment have not been or are not completed. It is more efficient if before the Investigator submits the results of the investigation to the Public Prosecutor, the Investigator first coordinates with the Public Prosecutor to plan the assessment so that there is no back and forth process of case files. In essence, after the Investigator submits the results of his investigation to Public Prosecutor, responsibility for the case is completely taken over by the Public Prosecutor. Thus, the Public Prosecutor must ensure whether the stages of investigation and inquiry carried out by the Investigator have been carried out based on the law or contrary to the law.

Narcotics abusers who are proven to be addicts or victims of narcotics abuse require medical and social treatment. Medical rehabilitation is a specialized field of medical science that deals with comprehensive treatment (*management*) from patients who experience functional disorders/injuries (impairments), (musculoskeletal), nervous muscle system (system), as well as mental, social and work disorders that accompany these disabilities.⁵⁰ Imprisonment sanctions are not effective for addicts/victims of narcotics abuse, while sanctions rehabilitation is the right step to cure narcotics abusers from dependence on treatment. Through rehabilitation, therapy will be provided through medical aspects, legal aspects, and social aspects as well as spiritual aspects, so that addicts and victims of narcotics abuse can return to their usual health and can rediscover their identity to manifest their ideology in social and social life. This can be used as food for thought by law enforcement officials to look more closely at the perpetrator's condition when dealing with him, with the hope that law enforcement officials can be more aware that narcotics abusers are actually sick people who need treatment and improvement (rehabilitation).

4. Conclusion

The Kendal District Prosecutor's Office, in transferring narcotics abuse cases to the Kendal District Court, does not and/or has never applied the Short Examination Procedure (APS) method. Even though the Attorney General has circulated guidelines in the form of Attorney General's Circular Letter (SEJA) Number: B-029/A/EJP/03/2019 to implement the Short Examination Procedure (APS) in handling criminal cases of narcotics abuse, the Public Prosecutor at the Kendal District Prosecutor's Office still implement the Ordinary Inspection Procedure (APB) in the handling process. The reason why the Public Prosecutor does not and/or has not implemented the Short Examination Procedure (APS) is related to the absence of a backlog of cases, so that the Public Prosecutor has

⁵⁰Dina Novitasari "Rehabilitation of Child Victims of Narcotics Abuse". Khaira Ummah Law Journal. Vol 14 No 4 December 2019.
<http://jurnal.unissula.ac.id/index.php/jhku/article/view/2567/1924>. Access date December 11, 2023.

plenty of time to apply the Ordinary Examination Procedure (APB) in trials of Narcotics abuse cases. The efforts to classify the Public Prosecutor at the Kendal District Prosecutor's Office for perpetrators of narcotics abuse are only classified based on the Public Prosecutor's own assessment without going through assessment activities. The assessment is basically a research activity on the Narcotics abuser, which aims to determine the level of addiction experienced by the Narcotics abuser. Apart from that, the results of the assessment activities will show results regarding whether or not the abuser is involved in criminal acts of dealers, couriers, precursors or other criminal acts that are still within the scope of Narcotics crimes. Assessment is nothing more than diagnosing the level of medical disorders experienced by the abuser. The Public Prosecutor at the Kendal District Prosecutor's Office in diagnosing and then classifying abusers is only based on competence in the legal field and does not have competence in the medical field, so that the results from the medical aspect are only estimates and assessments whose accuracy is questionable. Only health professionals can diagnose from a medical perspective someone with narcotics use disorder, thus assessment is the right step in making a diagnosis because in the assessment activity there are medical experts who take part in carrying out the examination.

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