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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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**IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR
NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW
OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009(CASE STUDY IN
SUMATERA UTARA PROVINCE)**

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ABSTRACT

The Law of The Republic of Indonesia No. 35 year 2009 article 54 states that every drug addicts and abusers' victims shall undergo medical rehabilitation and social rehabilitation, affirmed on article 103 that explains the Judge who examines the case of narcotics addicts, may decide to order the concerned to undergo treatment and/or treatment through rehabilitation, if the narcotics addict are proven guilty of a crime of narcotics, or set out to order the concerned to undergo treatment and/or treatment through rehabilitation, if the Narcotics Addict is not found guilty of a crime of Narcotics.

For the Law of The Republic of Indonesia No. 35 year 2009 above to be done, a Joint Regulation between 7 (seven) Ministries/Institutions about The Handling of Narcotics Addicts and Abuser's Victims into Rehabilitation Institutions was made in order to create an equation of perception about the punishment that should be dropped for narcotics addicts and abuser's victims defendants is for them to be punished or set in to rehabilitation. However, in Sumatera Utara Province the narcotics addicts and abusers victims defendants are obviously set to be imprisoned for 2 – 4 years long, or even more. In other words, the rehabilitation penalty is still so far from expectation compared to imprisonment.

The purpose of this script is to acknowledge the obstacles and interferences that cause the Judge to set the narcotics addicts and abuser's victims defendants into imprisonment more than to order and/or set them out to undergo rehabilitation treatment. It is also to look further to the investigation process by the investigator, continued by the prosecution by the Prosecutor, up until the Judge's judgement and its implementation in correctional facilities or rehabilitation institutions.

Furthermore, the ideal reconstruction that should be done in order to the Law of The Republic of Indonesia No. 35 year 2009 about the narcotics addicts and abuser's victims to be effectively functionate, where the punishment of the narcotics addicts and abuser's victims is to be judged or set out to undergo treatment through rehabilitation.

The theories used in this research are 1) Grand theory, which is The Theory of Justice, 2) Middle theory, which consists of Theory of Protection and Theory of the Work of Law, 3) Applied Theory, which includes The Theory of The Purpose of Law and The Theory of Progressive Law.

The Law of The Republic of Indonesia No. 35 year 2009 is based on justice, therefore it needs some reconstruction on the article 127 so that it would not create any doubt in the action because it is considered to develop ambiguous interpretation due to its indecisiveness

that leads it to be the last article of the law in judging the narcotics addicts and abuser's victims defendants position. The reconstruction of The Law of The Republic of Indonesia No. 35 year 2009 article 127 is expected to deprive the interpretation dualism of the narcotics addicts and abuser's victims defendants.

Keywords : Rekonstruction, Rehabilitation Punishment, Narcotics Addicts and Abuser's Victims.

A. BACKGROUND

The development of abuse and illicit traffic of Narcotics until now has been in the emergency, in which no country in the world is apart from it. Including in Indonesia, it has come to young teenagers and even students and its circulation is up to the most remote villages.

The projected number of abusers and drug addicts in Indonesia is estimated between 4 and 5 millions people, and without a synergic effort between law enforcement authorities, agencies, governments and society the damage future generations who have no future is unimaginable. It will also lead the Republic to lose the qualified generation of future leaders who have the ability to replenish and build the country and this great nation.

On the other hand, the effort to combat Drug Abuse and Illicit traffic of Narcotics has not adequately fulfilled although in Law No. 35 of 2009 on Narcotics has stipulated clearly in some specific provisions about penalties distinction to be made to the drug offenders due to their role of accomplishments; as abusers, addicts, dealers or supplier of Narcotics. Specifically, to the Narcotics addicts or abusers are set to undergo Rehabilitation as stated in Article 4, 54, 55, 56, 103 and 127 and Article 128 of Law No. 35 of 2009 on Narcotics.

Rehabilitation is the soul of the Law No. 35 of 2009 on Narcotics, yet its implementation have not been done optimally and nearly all cases referring to Narcotics that are submitted by the investigators to be examined and judged end with imprisonment. However, to determine a verdict against an accused Narcotics abuser to dropped / set penalties for Rehabilitation, a judge should really consider based on recommendations from the Integrated Assessment Team stating that the condition of the abuser really in a state of dependency that become mandatory to be rehabilitated as explained in the article 54 of Law No. 35 of 2009. This means that those who receive rehabilitation services are drug abusers based on the severity of usage.

In connection with the above background, the authors are interested in researching and compiling a dissertation on penalties **Ideal Reconstruction Rehabilitation for**

Narcotics Addicts and Abusers based justice according to Law no. 35 of 2009 (Study of cases in North Sumatera province).

B. PROBLEM FORMULATION

Based on the description above several problems can be formulated as follows:

1. How does the current investigation process and the implementation of Rehabilitation decision of the addicts and victims of narcotics abuse in the province of North Sumatera?
2. What are the weaknesses and barriers to the implementation of the rehabilitation of addicts and victims of narcotics abuse under the Law No. 35 of 2009?
3. How is the ideal reconstruction of the implementation of equitable rehabilitation for addicts and victims of narcotics abuse in the perspective of Law No. 35 of 2009?

C. RESULTS

Based on the research discovered some facts that:

1. In the process of investigation, investigators interpret that own, control and bring evidence although little can be constructed article as a drug, so it is rarely a stand-alone article abusers. Besides, the law enforcement agencies that deal with narcotics not understand the "*Spirit*" Narcotics Act number 35 of 2009, which in article 4 to arrange ensure the setting of medical rehabilitation and social rehabilitation for addicts and victims of abuse of narcotics.
2. In the process of prosecution and trial occurred when the difference prosecution by the testimony of the defendant which the prosecutors demanded that the element carrying, master and having Narcotics in limited quantities (under SEMA 04/2010) to a penalty clause in conjunction with Article dealers users, being defendant said that are concerned only use, does not circulate.
3. From the construction of such demands, the judge in prosecuting the accused narcotics addicts always will drop vonnis imprisonment, let alone a strong foundation for the judge in deciding to sentence rehabilitation is not supported by the expert physician statement stating the defendant is narcotics addicts.
4. Empirical facts on the ground show the result of the verdict jailing many abusers and addicts Narcotics, State Prison (Rutan) and the Correctional (prisons) have excess capacity (Over Crowded) so that development is expected towards the prisoners in detention and prisons do not go well, even those of the addict and the city freely able to

abuse of narcotics and even controlling the circulation of narcotics from the prison / detention.

5. Dictum stated in article 127 of Act 35 of 2009 is not decisive because of the abuse of narcotics addicts and victims still do a long legal process resulted the cost and the length of time until a judicial decision does not even reflect the justice and legal certainty.
6. Regulation together with seven (7) Ministries and Agencies of 2014 on the Handling of addicts and victims of abuse of narcotics into the Institute of rehabilitation is not carried out consistently, because they do not have binding legal force or a strong basis for the implementation of the Rehabilitation question.
7. The Rehabilitation Institute of Government Agencies that can accommodate the Narcotic Addict to be rehabilitated, both Social Rehabilitation and Medical Rehabilitation. Especially in implementing the execution verdict should be financed by the State.
8. Weaknesses and Obstacles in the Process of Rehabilitation Punishment start from the process of investigation, prosecution until the trial by the judge is a unity that is related to each other. Therefore, if law enforcement officials in the Criminal Justice system is not in the same perception in looking at the case of the Narcotics addicts sentenced to prison or rehabilitation, then there is the difficulty which then will become a weakness in implementing what is actually ordered by some Articles in Law No. 35 of 2009 that require an action of Rehabilitation to the suspect / defendant of Addicts and Victims of narcotics abuse. The weakness can be explained as follows:
 - a. Investigators do not specify an addict article as a single article. It is only used as an alternative article.
 - b. The Article 127 of Law no. 35 of 2009 sentences only 4 (four) years long punishment, so the defendants cannot be arrested, but yet a place of rehabilitation and the rehabilitation costs in the investigation process has not been clearly defined.
 - c. The authorized institutions that determine a suspect as abusers, addicts or victims of abuse of narcotics has not been.
 - d. The law that is not strict enough because a long legal process is still done against the suspected addicts and victims of narcotics abuse that leads to a prejudice that there is such a game at the level of investigation, prosecution and judiciary.

- e. The judge in deciding the case of narcotics addicts or victims of narcotics abuse is still not certain enough to decide or define rehabilitation penalty, with a lot of consideration about the uncertainty of the indictment of the defendant's status, addict or not, because there is not a description from doctor or psychologist.
- f. The lack of Government's Rehabilitation Institute that can accommodate the rehabilitation convict, as the rehabilitation period in rehabilitation institutions should be fully financed by the State, not the family.
- g. The Joint Rule of 7 (seven) Ministries / Agencies in 2014 about The Treatment of Narcotic Addicts and Victims of Narcotics Abuse in rehabilitation Institution are not consistently enforced because it is not considered as a strong legal basis for determining the verdict of a suspect or defendant.

D. Ideal Reconstruction of Rehabilitation Punishment of the Narcotics Addicts and Victims of Narcotics Abuse.

Before the author determines the ideal reconstruction that should be applied in Indonesia, a comparison with some other countries has been done, including the system of sentencing drug addicts in Australia, which apparently, in this country the addicts are not prosecuted until the hearing, but they immediately undergo Rehabilitation voluntarily, also judging from the other countries in Asia, the author prefer a policy in the State of Cambodia that implements rehabilitation programs against abusers for 6 (six) months to two (2) years, and if they got relaps, they will be sentenced to 1 -6 month or 6-12 months. Likewise, in the State of Vietnam abusers are not arrested and imprisoned. Instead they are sent to the temporary care center. Philippine, with current government policy to crackdown against Drug Dealers, however, against first-time abusers of abusing narcotics are given rehabilitation, while the ones who get relaps will be subject to imprisonment.

In this study, the ideal reconstruction that can be done for the implementation of penalties / determination of rehabilitation of addicts and victims of abuse of narcotics can be described as the following table:

Before Reconstruction	Weakness	After Reconstruction	Remarks
Article 127 of Law no. 35 of	1. That the entire	Article 127 stated: (1). Each abusers	Once reconstructed,

<p>2009 stated: (1) Every abusers: a. Category I Narcotics for himself shall be punished with imprisonment of 4 (four) years; b. Category II Narcotics for himself sentenced to a maximum of two (2) years; and c. Category III narcotics for himself shall be punished with imprisonment for a period of 1 (one) year</p> <p>(2). In deciding the case referred to paragraph (1), the judge is obliged to consider the provisions referred to Article 54, Article 55 and Article 103</p> <p>(3) In the case of abusers referred to the paragraph (1) can be proved or are proven to be the victim of narcotics abuse, such abusers shall undergo medical rehabilitation and social rehabilitation.</p>	<p>categories of narcotics are dangerous, so that the penalties do not need to be distinguished.</p> <p>2. abusers are convicted as criminals, while addicts and victims of drug abuse are set to rehabilitation. As a result, abusers are set to become addicts to avoid imprisonment.</p> <p>3. abusers and addicts remain through the legal process that cause the cost bigger, raise the chance of games/fraud, non-fulfillment of a sense of fairness and legal certainty.</p> <p>4. it is still not determined exactly who or which agency is given the authority to determine the condition of the suspect as abusers, addicts or victims involved in the abuse of narcotics and narcotics networks.</p> <p>5. penalties for addicts or</p>	<p>and addicts who is proven to misuse Category I, II, and III Narcotics for his own use shall undergo medical or social rehabilitation</p> <p>(2). To determine the status of the suspect / defendant as abusers or addicts of Narcotics, it needs a recommendation from the Integrated Assessment Team (TAT) formed by BNN</p> <p>(3). For abusers, addicts and abusers of Narcotics who repeat his actions (relapse) after carrying out the rehabilitation, against them is punishment of 1 year minimum and a maximum of 5 years, and after serving continued by implementation of medical rehabilitation or social rehabilitation.</p> <p>(4) Implementation of a Rehabilitation arranged by BNN in Government Rehabilitation agencies or private accredited Rehabilitation Institute</p> <p>(5) In the case of abusers referred to paragraph (1) can be proven or are proven to be the victims of</p>	<p>there are several progress in the handling of drug addicts and abusers, such as:</p> <p>1. The absence of differences of action in handling abusers and addicts</p> <p>2. BNN agencies has stated that the Integrated Assessment Team is the one that authorized to claim that one suspect is an addict, abuser or victim of narcotics abuse</p> <p>3. For those addicts and abusers who repeat his actions will be punished and also rehabilitated</p> <p>4. About the rehabilitation center has also been determined, coordinated by the BNN.</p>
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	<p>abusers who repeat his actions (relapse) after being convicted of Rehabilitation are not included.</p> <p>6. Omitting a rehabilitation as the implementation of a judgment or decree by Judge</p>	<p>narcotics abuse, such abusers shall undergo medical rehabilitation and social rehabilitation.</p>	
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Reconstruction of Article 127 of Law no.35 of 2009, as described in the table above, it is expected that game by the law apparatus will not occur again because the addicts and abusers will longer through a long legal process, from the investigation, prosecution period and the trial in the court which takes up a lot of time and cost. Nevertheless, the categorization set by the Integrated Assessment Team conducted by BNN should be noticed in determining the condition of the suspectwhether they are self-abusers, addicts or victims of narcotics victims. The things that become problems or weaknesses of article 127 of Law no. 35 of 2009 before it is reconstructed has been included and provide certainty to the suspects of addicts or abusers of which agency is given the authority to determine the condition of the suspect, the rehabilitation whereabouts as well as criminal sanctions for those who repeat his actions or relapse.

E. CONCLUSION

Based on the discussion of the above problems, the authors can provide the following conclusions:

1. That the investigation process and the implementation of rehabilitation punishment decided by the Judges in North Sumatra on Narcotic Addictsis still very little compared with the decided prison sentence. The evidence can be seen from the judge's decision in Attorney or in prison / detention center as a place of execution.
2. Weaknesses and obstacles of rehabilitation punishment to the victims of narcotics abuse and narcotics addicts according to Law no. 35 of 2009 arecausing injustice, the law is feltunprotecting and legal objectives are not achieved due to:

- a. Generate a sense of injustice in society, because abusers, addicts and victims of narcotics abuse should be rehabilitated instead of being punished in prison.
 - b. Imprisonment for addicts makes them able to even control the illicit drug trafficking through the prisons.
 - c. A long legal process requires substantial funds and legal decisions impartially lead to the view that the law does not protect the drug addicts.
 - d. Investigators, Public Prosecutor and Judge in examining the case against Narcotic Addicts do not have the courage to make an important breakthrough as the spirit in the Narcotics Law that Addicts and Abuse of Narcotics are Mandatory to be Rehabilitated.
 - e. Rehabilitation institutions, both medical rehabilitation and social rehabilitation which have the ability to carry out the rehabilitation program are still limited, both for their quantity and quality, so that when the judge decides the rehabilitation penalty, a question emerges about where the rehabilitation should be held and whether it meets the safety standards to implement the rehabilitation.
3. To carry out the repair effort that leads to justice against abusers, addicts and victims of narcotics abuse, the implementation of the reconstruction of the article 127 of Law no. 35 of 2009 must absolutely be implemented, and the weaknesses should be strengthened and removed, so there is no longer a bargain between law enforcement officers with the suspects whether to include the article of Rehabilitation or imprisonment.

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D. Attachment

Surat Edaran Mahkamah Agung nomor 04 tahun 2010 tentang penempatan penyalahgunaan dan pecandu narkotika ke dalam lembaga rehabilitasi medis dan rehabilitasi sosial.

Peraturan Bersama nomor nomor 01 tahun 2014 tentang penanganan pecandu narkotika dan korban penyalahgunaan narkotika ke dalam lembaga rehabilitasi.

Putusan Pengadilan Negeri Stabat nomor 395 tahun 2016 (nomor 395/Pid.Sus 2016/PN.Stb.)