

REHABILITATION NARCOTICS ABUSERS IN PERSPECTIVE CRIMINAL POLICY

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Abstract

Placing users and abusers of narcotics and psychotropics into rehabilitation institutions through judges' decision is an alternative of proper criminal sanction in the law enforcement toward narcotics abusers and preventing narcotics illegal circulations. Compared with sending criminals into the jail, criminal sanctions through rehabilitation are done by giving medical and social rehabilitation. Based on the results of the discussion it can be said: *First*, An addict and or narcotics abusers and or victim of narcotic abuse cannot abort the criminal act of narcotics abuse that has been done although the one is attending are has attended rehabilitation program (the article one hundred three) to Act Number 35 of 2009 about Narcotics. *Second*, Rehabilitation as a non penal mediation in criminal law policy doesn't have to be a physical punishment. A rehabilitation program that is attended by an addict and or victim of narcotics abuse doesn't stop that one from the criminal act that he has done. *Third*, A punishment given to an addict or victim of narcotics abuse is rehabilitation not physical punishment.

Keyword: rehabilitation, narcotic abusers, criminal policy.

INTRODUCTION

Narcotics in Article 1 paragraph 1 of Act No. 35 of 2009 on Narcotics are defined as substances or drugs derived from plants or not a plant, either synthetic or semi-synthetic that can cause a decrease or change of consciousness, loss of taste, can reduce up to eliminate pain, and can lead to dependence. Narcotics, on the other hand, are drugs or useful materials in the fields of medicine, health care, and the development of science. However, they can lead to harmful dependence both to the users and others

around them when used in the absence of strict and careful control and supervision.¹

It is undeniable that Indonesia is now an easy target of narcotics market by international syndicates. This is proven from the increase of drug smuggling case disclosures by law enforcement officials. From the data carried out by the Directorate General of Customs and Excise (DJBC) in 2016, there were 169 cases of drug smuggling by sea. By 2018, this figure increased again to

¹ A.W. Widjaya. 2000. *Masalah Kenakalan Remaja Dan Penyalahgunaan Narkotika*, Bandung: Armico. pg 15.

196 cases.² Meanwhile, smuggling via other modes of transport such as air transport has decreased. Sea lanes became a favorite route for smuggling drugs not only because the amount of smuggled things were larger but also because smugglers hoped officers will be more difficult to detect the entry of prohibited goods than other lines. Drugs continued to flow into Indonesia continuously.

Drugs are the most powerful killing machine in damaging the future of the nation. Drug smuggling is a modern warfare that does not use force and weapons. Even international drug syndicates employ Indonesians as couriers to destroy the young generation of the nation. Here are some facts that make Indonesia a target of international drug market. They are: High amount of drug abusers where the prevalence of drug abusers in Indonesia based on survey results BNN in 2018 was 3.21 percent, equivalent to 2.3 million.³ This figure refers to 40,553 drug cases revealed by BNN and the National Police during 2018. These cases involved 53,251 suspects. Evidence secured during the disclosure over the past year included 41.3 tons of marijuana, 8.2 tons of methamphetamine, and 1.55 million items of ecstasy. BNN has also succeeded in

² <http://www.kemenkeu.go.id/en/node/48839>. *Penyelundupan Narkoba Via Laut Meningkat, Bea Cukai Siaga* accessed on date 15 Oktober 2019

³ Laporan Akhir Tahun 2018 BNN

uncovering 47 hectares of marijuana fields in Indonesia.⁴

Another fact which shows that Indonesia is an easy target for international drug smuggling is that people are not concerned about their environment. One important element in the Prevention and Eradication of Illicit Drug Abuse (P4GN) is the community. Society must have a sense of concern for the environment in order to protect themselves, especially young people from drug abuse and drug smuggling. The higher the awareness and public awareness of drug abuse and drug smuggling, the easier the preventive efforts will be.

Legislations that support narcotics crime eradication is highly necessary. Moreover narcotics crime is a form of unconventional crimes that are committed systematically, using high modus operandi, and conducted in a good organization (organized crime) and it is considered transnational crime.⁵ Narcotic crime based on Law Number 35 Year 2009 on Narcotics provides high enough criminal sanctions. Beside receiving physical sanctions, criminals also get fines. However, in fact, the doers

⁴<https://megapolitan.kompas.com/read/2019/03/25/10215681/bnn-sepanjang-2018-2-juta-mahasiswa-dan-15-juta-pekerja-terlibat-narkoba> accessed on date 5 October 2019

⁵ Peredaran Gelap Narkotika, (*United Nation Convention Againsts Illicit Traffic on Narcotic Drugs and Psychotropic Substances*, 1988). Accessed on 16 October 2019

continuously increased. Drug abuse already close to a terribly dangerous act. Users use not only drugs but also injection. In some countries, including Indonesia, there are attempts to improve drug prevention program starting from the level of legal counseling to drugs supply reduction programs.

To overcome the problem of addicts according to Narcotics Act Chapter IX Article 53 and 54 that are still minimum in treatment and rehabilitation, Government Regulation No. 25 of 2011 on Reporting Obligation for drug abusers is a form of the countries' commitment to accommodate the rights of addicts to get therapy treatment and rehabilitation. In essence, abusers do not have to worry to report themselves to the Independent Rehab Center (IPWL) which has been appointed by the government because with the legal standing such as Article 54 of Law No. 35 on Narcotics and Government Regulation No. 25 of 2011 and the Health Minister Regulation No. 1305 and 2171 of 2011, abusers will not be thrown into prison if convicted only consuming narcotics, but will receive rehabilitation services instead.⁶

Efforts to face drug abuse is considered important because there are many obstacles in the implementation of

rehabilitation process especially for drug addicts who are undergoing legal process. Chapters 54 and 56 of the Narcotics Act regulates the obligation to rehabilitate addicts both medical and social rehabilitation so drug addicts is expected to be able to get them back healthy, productive, free from crimes, and avoid dependence on narcotics. Rehabilitation period should be treated as a period of serving a sentence. Rehabilitation of drug addicts is also a form of social protection that integrates drug addicts into the social order so that they will not consume drugs anymore.⁷

Independent Rehab Center (IPWL) is regulated in Government Regulation No. 25 of 2011 on Implementation of Compulsory Reporting of Narcotics Addicts. One of the things that gets attention is related to the implementation of compulsory reporting of drug addicts who need to be regulated in a government regulation in an effort to fulfill the rights of narcotics addicts in receiving medication and/or treatment through medical rehabilitation and social rehabilitation.

Related to this matter, the government regulation is made up to provide clarity and describe clearly the Institution Independent Rehab Center of addicts and how the implementation procedure of compulsory

⁶ Peraturan Pemerintah Nomor 25 Tahun 2011 tentang Wajib Laport Pecandu Narkotika

⁷ *Op. Cit.*, Pasal 54 dan 56. PP No 25 Tahun 2011 tentang Instansi Penerimaan Wajib Laport (IPWL)

reporting is, so that the desired objectives can be achieved optimally to support the success of efforts to prevent and eradicate abuse and narcotics illegal circulation.

PROBLEM STATEMENT

1. How is the implementation of the implementation of medical rehabilitation and social rehabilitation for addicts, abusers, and victims of drug abuse?
2. Can the participation of a drug user in a rehabilitation program abort his/her criminal acts?

RESEARCH METODOLOGY

This study is a legal specification as an empirical legal research. legal research Empirical or with other terms commonly used sociological and legal research can / usually also referred to as field research. Empirical legal research or non-doctrinal research is research in the form of empirical studies to find theories about the process and about the workings of law in society. Specifications research emphasis on the science of law and focuses on secondary data collection which is the primary legal materials, secondary, and tertiary. Research is conducted in two locations. They are Rumah Damai Rehab Center, and the Central Java National Narcotics Agency.

DISCUSSION

Implementation Of Medical Rehabilitation And Social Rehabilitation For Addicts, Abusers, And Victims Of Drug Abuse

Nowadays, drug circulation in Indonesia is very worrying. The high number of drug users in Indonesia have made this country a target for drugs illegal circulation. Results of research conducted by the National Narcotics Agency in 2018, revealed that drug users until today have reached two percent of the Indonesian population, or four million (2.18 percent) of the total population in Indonesia is narcotics abusers with population ages between 10- 59 years. Among the aforementioned four million, 1.6 million people are recorded in the stage of trying to use, 1.4 million people are regular users, and 943 thousand people are drug addicts. In conclusion, narcotics abusers come from the various groups ranging from students, workers, up to the unemployed. Students were recorded at 27.32 percent, while the number of workers who use narcotics are as much as 50.34 percent, and 22.34 percent are drug users from among those who are not working or unemployed.⁸

It is necessary to be aware that until now the country cannot successfully provide a

⁸Survey Nasional Penyalahgunaan Narkoba di 34 Provinsi Tahun 2017. Pusat Penelitian Data dan Informasi Badan Narkotika Nasional Republik Indonesia

deterrent effect and the effort to break the link between supply and demand of narcotics. The theory is never proven to be disconnected by the investigators, if we just work alone and think alone. Similarities in the movement of the National Narcotics Agency and Narcotics Department of Criminal Investigation Department of National Police and also the Ministry of Health for the prevention and mutual synergies in harmony is a must. If every related agency keeps on working individually, illegal drug dealers will go on.

1. Rehabilitation conducted by Rumah Damai Rahabilitation Center

Rumah Damai Rehabilitation Center is located in Cepogo Village Gunungpati Semarang. Rumah Damai Rahabilitation Center is an institution established by the community rehabilitation. Rehabilitation in this institution does not use medical rehabilitation but rather focuses on the physical and psychological recovery of addicts and/or victims of drug abuse. Stages of rehabilitation by Rumah Damai Rahabilitation Center are:

a. Physical Rehabilitation (0-3 months)

This stage focuses on the first three months of addiction of addicts and/or victims of drug abuse. This phase focuses on lifestyle and diet of addicts and/or victims of drug abuse that are

disorganized due to the previous drug use.

b. Character Stage (3-9 months)

This stage focuses on character building of the addicts and/or victims of drug abuse. In this phase, it is expected that an addict and/or victims of drug abuse can be an example of a leader in a small environment that is among room mates and attitudes of addicts and/or victims of drug abuse begin to look better and they move to a positive direction.

c. Socialization Stage (9-12 months)

At this stage, it is expected that the addicts and/or victims of drug abuse can be a better person and ready to return to a normal life as human beings in general. They are aware of not using drugs again and choose a healthy life. Addicts and/or victims of drug abuse begin to be given the opportunity to give testimony as a cadre of anti-drug activists through seminars, spiritual activities, etc.

The rehabilitation program implemented by Rumah Damai Rahabilitation Center is inpatient rehabilitation for 1 (one) year. With inpatient rehabilitation for 1 (one) year, it is expected that there is a maximum change of addicts and/or victims of drug

abuse from being selfish, indifferent, angry, etc. to be examples in this institution for their friends in this institution. Rumah Damai Rehabilitation Center has not yet opened outpatient rehabilitation because it focuses on the rehabilitation programs traditionally and religiously for addicts and/or victims of drug abuse.

The procedure for obtaining rehabilitation at this institution is addicts and/or victims of drug abusers and their families go to this rehabilitation institution to ask for rehabilitation. When coming to the institution, counselors conduct interview stage to addicts and/or drug abuse victims to find out how long the addict and/or victims of drug abuse use drugs, drugs used the past year, etc. After the counseling process, addicts and/or victims of drug abuse can immediately follow a rehabilitation program at the institution. The families who take addicts and/or victims of the narcotics abusers must leave a phone number that can be contacted by a counselor. It is done because addicts and/or victims of drug abuse are not allowed to bring cell phones during rehabilitation program and the

families can only call them once a week via counselor's phone.⁹

2. Rehabilitation conducted by the Central Java National Narcotics Agency

The rehabilitation proses conducted by the Central Java National Narcotics Agency are:¹⁰

- a. An addict and/or victims of drug abuse come voluntarily to the Province National Narcotics Agency or Independent Rehab Center (IPWL) to request for rehabilitation;
- b. Assessment process conducted by Integrated Assessment Team (TAT) which includes:
 - 1) Medical test;
 - 2) Drug abuse history
 - 3) Psychological Test; and
 - 4) Urine Test/Lab Test
- c. After assessment stage, therapy plan is made (including methods and time). Detoxification is conducted if necessary.
- d. The team decide whether client will undergo inpatient or outpatient rehabilitation.

⁹ The results of the Interview A (pseudonym) in Rumah Damai Rehabilitation Center on 21 September 2019

¹⁰ The results of the Interview Drs. Teguh B. Santoso, MM, The Head of the field of rehabilitation Central Java National Narcotics Agency on 6 September 2019

- e. If the client undergoes outpatient rehab, counseling along with KIE and CVT are conducted. If outpatient, the client will attend individual and group counseling, KIE and CVT, psychotherapy, and routine medical check-up.
- f. The length of rehabilitation depends on abusers condition (3-12 months).
- g. After rehabilitation, abusers enter post rehabilitation stage which intends to maintain recovery and achieve healthy, independent, and productive life in the society.

When abusers are caught by the police, the followings are conducted:

- a. Abusers/addicts are brought to BNN/BNNP/BNNK/Kota to be taken care by Integrated Assessment Team who will make assessment (Doctor and Legal Team) by investigators' request.
- b. Doctor/Medical Team assessment: making medical analysis related to usage history, the severity of usage and rehabilitation plan and the general health/ psychological status.
- c. Legal Team Assessment: investigating to determine whether there is a criminal association, ownership history and the amount of evidence

and analysis of communication tools (whether as a courier/dealer/pool).

- d. TAT result: make recommendation of a suspect's status whether as an abuser, addict, victim of abuse and/or a courier, dealer.
- e. If the abuser suffers from addiction (addicted), the one must/has the right to get rehabilitation during the legal process, in other words, law enforcement agencies have the option of rehabilitation process counted as time serving sentences (decriminalization).
- f. If the abuser is a courier, dealer, or pool, he/she will undergo legal process.

Actually, the culture of Indonesian society make people reluctant to report when their families and close associates are addicts or victims of drug abuse. Several factors are: fears of families that members of the family/closest associates will be punished when reporting to the Independent Rehab Centers (IPWL); the negative stigma given by the surrounding environment that regards them as a "disgrace" in the family.

Based on the real facts, most people assume that addicts and/or drug abusers and/or victims of drug abuse will be punished. On the other hand, in Law No.

35 of 2009 addicts and/or drug abusers and/or victims of drug abuse is considered "victims".

Rehabilitation as a Ground of Impunity

The rules on the rehabilitation of drug addicts is based on the consideration that most of the prisoners and detainees in drug cases are categorized as users or even as victims. When viewed from health aspect, they are actually people who are sick. Therefore imprisonment is not the right thing for it ignores the aspect of care and treatment.

Viewed from their condition, Penitentiary in Indonesia at the moment is not supportive as the negative impact of influence by other criminals' behavior can further worsen mental and health conditions of the narcotics convict. Supreme Court Circular letter (SEMA) that is a circular shape of the Supreme Court in the form of an appeal to all ranks of Supreme Court justice whose content is a technical guidance in the administration of justice is more of administrative.

Act Number 35 of 2009 on Narcotics which sets rules regarding the verdict ordered to undergo rehabilitation for drug users contained in Article 54 and Article 103 of Act Number 35 of 2009 on Narcotics is a renewal of criminal law because the Act gives more attention to the condition of narcotics abusers that better sentenced to rehabilitation instead of serving a prison sentence. Then the

Supreme Court issued Circular Letter No. 04 of 2010 on the Misuse, Abuse and Narcotics Addicts Placement in Medical and Social Rehabilitation Institution.

If an offender is eligible to be requested criminal sanctions, and in this case, is related to drug abuse, then the one can be punished in accordance with the provisions in Act No. 35 of 2009 on Narcotics in Article 116, 121, and Article 127 as follows:

1. There is a realized intention of committing the crime of drug abuse. It means it has met the elements of intention that is a part of a deliberate element of a mistake.
2. Accountable actions of abusing narcotic means the one is in a state of soul-makers, who has enough reason and will, therefore the one is able to understand the meaning of the act to have been abusing drugs and in accordance with that view to specify his/her willingness to undertake such actions. Thinking abilities found in normal people and therefore the ability to think can be expected at the maker. In the other words, the criminal act is accountable to the doer of narcotics abuse if the one has the ability to think and realize the meaning of his/her actions.
3. Criminal liability requires the condition that the manufacturer is able to be responsible, because it is not possible one can be accounted for if he is not able to

be responsible. Simons said that ability is a state responsibility psychis, justifying the application of an effort punishment, both from the standpoint of the general or his. and in this case, the offender may be sentenced to drug abuse if he is healthy spirit.

4. Criminal liability requires the condition that the doer is able to be responsible, because it is not possible that one can be accounted if he is not able to be responsible. Simons said that responsibility ability is a psychological state, that justifies the implementation of a punishment effort, both from the general standpoint or the person and in this case, the offender may be sentenced to drug abuse if he is mentally healthy, meaning if the one is:
 - a. Able to understand the values of the consequences of his/her consuming narcotics;
 - b. Able to understand or realize that his/her actions in abusing narcotics is against the law;
 - c. Able to decide his/her willingness according to his/her awareness.

CLOSING

Conclusions

Based on the above explanations, the writer can conclude that:

1. The condition of an addict and/or drugs abuser and/or victim of drug abuse that is being/has been following a rehabilitation program can not abort the criminal act of drug abuse that has been done. This is consistent with what contained in Article 103 (2) of Act Number 35 of 2009 on Narcotics which states that "The period of treatment and/or care for Narcotics addicts as referred to in paragraph (1) letter a is calculated as the time serving his sentence." Based on Article 103 above it is clear that drug addicts are stated as a criminal, but the treatment is different in the process.
2. Rehabilitation as a non penal means in Criminal Law Policy does not always have to be a physical punishment. An addict and/or victims of drug abuse who attends rehabilitation program does not get the criminal act he has done aborted. Sanctions imposed on addicts and/or victims of drug abusers is not sentenced to the body but in rehabilitation.

Suggestions

Considering the data that acquired both in theory and practice that the writer found in the field. The writer delivers suggestions that hopefully can benefit and contribute to the executor of the rehabilitation and related parties. The writer's suggestions are as follows:

1. Law officers need to have the similar perception in eradicating narcotics abuse in order that all parties can cooperate to eradicate narcotics circulation and push rehabilitation conducted by Province/Regency/City National Narcotics Agency.
2. Socialization is necessary so that where there is a close person or a member of the family who consumes narcotics both as an addict and/or victim of narcotics abuse they will immediately come voluntarily/report to Independent Rehab Centers to be rehabilitated. An addict and/or victim of narcotics abuse will not be punished because they are considered a victim and has the right to be rehabilitated.

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