



Legal reconstruction of law enforcement against victims of narcotics abuse in Indonesia based on justice values

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Abstract

The purpose of this study was to find out Why Is Law Enforcement Against Victims of Narcotics Abusers in Indonesia Not Yet Based on The Value of Justice and how to reconstruct the law based on justice value The research method used by the author is a empirical research method conducted in Palembang. The data collection method used is observation, interviews, literature research and data analysis methods are using qualitative descriptive analysis.

The results of this study shows that Law enforcement against victims (addicts/users) of narcotics crimes has not been based on the value of justice, because the judge's considerations in imposing the severity of the sentence for perpetrators of cannabis narcotics abuse in court are only based on reasons that are actually not strong enough to be punished by imprisonment therefore There fore, the author proposes the need for legal reconstruction of the law enforcement norms against victims of drug abuse based on the value of justice, especially those related to Article 111 Paragraph (1), Article 112 Paragraph (1) of Law No. 35 of 2009 concerning Narcotics.

Keywords: legal reconstruction, narcotics abuse, justice value

Introduction

As regulated in Article 1 Number 15 of Law Number 35 of 2009 concerning Narcotics, the definition of an abuser is a person who uses Narcotics without rights and against the law, whose criminal sanctions are regulated in Article 127 of Law Number 35 of 2009 concerning Narcotics. In order to be blamed according to this provision, the perpetrator must be caught red-handed when using the narcotics or at least not how long after he used or used the narcotics.

Even though the provisions of the laws and regulations above have observed addicts and victims of narcotics abuse in a humanist manner, handling those that have entered the realm of law needs to be carried out more carefully and carefully through an integrated assessment process involving representatives from elements related elements to find out the level of addiction and their role in narcotics crime so that it can be determined whether or not an addict and victim of narcotics abuse who has been named as a suspect or defendant to be placed in a medical or social rehabilitation institution.

In fact, many cases of narcotics cases are tried with evidence in the form of class I narcotics, both types of plants and non-plants such as cannabis or methamphetamine, the amount of which is very small, for example only 0.021 grams is prosecuted, and punished with imprisonment of 4 (four) years or even more because was charged and charged with criminal provisions violating Article 112 Paragraph (1) of Law Number 35 of 2009 Concerning Narcotics and was found guilty by a judge because he was proven guilty of committing a crime with qualifications without rights or against the law of possessing, storing, controlling, or providing a non-plant based narcotics class I with the weight mentioned above even though the person in question is a narcotics user who has not had the chance to use narcotics because he was caught by officers first.

Whereas the application of Articles 111 or 112 is carried out when the perpetrator is proven to be without rights and against the law to own, store, control, or provide narcotics class I, then what if someone with the intention of using narcotics for himself has not had time to use them and has been caught red-handed by officers, even though his method to use narcotics has been proven in court (Toebagus, 2022) but he was later charged and found guilty of committing the crime of possessing, storing, controlling or providing narcotics which carries a minimum sentence of 4 (four) years and a maximum of 12 (twelve) years and a fine a minimum of IDR 800,000,000 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000 (eight billion rupiahs). this is what disturbs all of us both for the accused himself, legal advisers, prosecutors, judges, and the public.

When referring to Law Number 35 of 2009 concerning Narcotics, the defendant who is actually a Narcotics user must be sentenced to imprisonment under 4 (four) years or in the form of a sentence to undergo medical rehabilitation or social rehabilitation but because the defendant has not had time to use Narcotics, he has been caught hand by the officer, the defendant is subject to a minimum prison sentence of 4 (four) years.

The incident of being caught red-handed for being in control of Narcotics may be subject to punishment under Article 111 and/or Article 112 of Law Number 35 of 2009 concerning Narcotics even though the perpetrator is a victim of narcotics abuse as experienced by Julius Sarmono Bin Sabar, for example, who was only 24 years old when he was charged with a criminal penalty of three years and three months in prison for being proven guilty of violating Article 111 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics and M. Farhat Bin Abdul Aziz, 17 years old, who was charged with a criminal penalty of four years and three months in prison for violating the provisions stipulated in

Article 112 Paragraph (1) of Law Number 35 of 2009 Concerning Narcotics that they were only beginner narcotics abusers who were in control of narcotics when they were caught by the police, not as drug dealers or providers as they were accused of.

Based on this problem, the author then formulates several problems discussed in this article, namely:

1. Why Is Law Enforcement Against Victims of Narcotics Abusers in Indonesia Not Yet Based on The Value of Justice?
2. How Is the Legal Reconstruction of Law Enforcement Against Victims of Narcotics Abusers Based on the Value of Justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (socio-legal approach). The sociological juridical approach (socio-legal approach) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research result and discussion

1. Reason why law enforcement against victims of narcotics abusers in Indonesia not yet based on the value of justice

In the process of enforcing the law against victims (addicts/users) of narcotics, according to the data that the author obtained from both the Palembang Polrestabes, the National Narcotics Agency, the Palembang District Attorney, and the Palembang District Court, the investigation process carried out by the police against

narcotics abusers who were caught red-handed whether carrying a small amount of narcotics evidence or only based on a positive urine test for narcotics (Simanjuntak, 2021), the narcotics abuser is handed over to the BNN for rehabilitation by them because only the BNN has its own rehabilitation sector, but if caught in possession of narcotics evidence, the case will continue to a court hearing. by taking a look at SEMA No. 4 of 2010 concerning the placement of abusers, victims of abuse, and narcotics addicts into medical rehabilitation and social rehabilitation institutions. If the abuser is caught with evidence of narcotics under the provisions of SEMA No. 4 of 2010 and the only evidence are narcotics and crystal methamphetamine (bongs) and no evidence of acting as a dealer, dealer, courier, or producer; is not a recidivist in narcotics cases, so it should be suspected that these abusers can be said to be victims of narcotics abusers who should be subject to medical rehabilitation and social rehabilitation, not imprisonment.

However, in practice, rehabilitation of narcotics abusers is rarely carried out in the jurisdiction where the author conducts research, both data at the Palembang Polrestabes and data at the National Narcotics Agency (BNN), which, even with evidence under SEMA provisions, is still subject to legal proceedings up to court. and for rehabilitation, it only applies to narcotics abusers without narcotic evidence.

Whereas at the prosecutor's office, according to the data that the author obtained from the Palembang district attorney's office (Apriansyah, 2022), there are a lot of narcotics abusers using methamphetamine-type narcotics, this methamphetamine is included in the category of class I narcotics. under 1 gram. Furthermore, according to the author of the indictment, the public prosecutor often uses Article 112 (1) of Law No. 35 of 2009 concerning narcotics even though it is included in Article 127 (1) of Law No. 35 of 2009 but still the target of prosecution leads to Article 112 (1) of Law No. 35 of 2009 2009 concerning narcotics and if you look at Article 112 (1) and Article 127 (1) in terms of the penalties it is clear that they are very much different from Article 112 (1) with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years while in article 127 (1) with a maximum imprisonment of 4 (four) years. And according to data from the Palembang district attorney, the longest prosecution from 2018-2020 was 8 (eight) years in prison, namely in article 112 (1) technically using article 112 (1) is easier to prove than article 127 of Law No. 35 of 2009. Article 127 mandates proving a person as a narcotics user and considering other matters other than mere possession of the narcotics. Whereas Article 112 (1) stipulates that every person without rights and against the law owns, stores, controls, or supplies narcotics class I non-plants. The existence of elements of "possessing, storing, controlling" abusers will be easily charged with imprisonment. Because automatically abusers must own, store and control narcotics. And as for the data, there are a number of prosecutors' demands that are subject to Article 127 (1) but still, the target is imprisonment for a minimum of 2 (two) years. Within the jurisdiction of the Palembang district attorney's office for 2018-2020, the public prosecutor has never even prosecuted the rehabilitation of narcotics abusers. Then, from the data at the Palembang District Court, according to one of the judges at the Palembang District Court, the author interviewed because, at the time of trial, there was no Recommendation Letter from the Integrated Assessment

Team (TAT) against this narcotics abuser. To find out the level of addiction to narcotics, if in the Assessment the narcotics abusers are narcotics addicts, the National Narcotics Agency (BNN) can recommend these narcotics abusers for rehabilitation even though the legal process is ongoing and the recommendations from the Integrated Assessment Team can be included in the public prosecutor's indictment. as a basis for making demands by the prosecutor and for the judge's consideration in making decisions as the author has explained above. Likewise, the Palembang district attorney at the Palembang district court, as of 2018-2020, has never had a decision on narcotics abusers being rehabilitated. As a comparison material, the data that the author obtained through the SIPP of the South Jakarta District Court shows that there were several decisions by the panel of judges against narcotics abusers that were sentenced to be rehabilitated and indeed the suspects that were based on the data that the author obtained were names of the riches in the capital city of Jakarta so much that theory speculates whether the rehabilitation only applies to the riches or not. By looking at the amount of evidence, if you compare it with the evidence in all the data, both from the Palembang district attorney and the Palembang district court. The evidence in the data at the South Jakarta district court is very much different but still below the SEMA provisions. And what looks very different from the data at the South Jakarta district court is that during the investigation the narcotics abusers had gone through the investigator process from the Integrated Assessment Team first, therefore the recommendation from the Integrated Assessment Team was for the suspects to be rehabilitated even though the legal process was ongoing. Therefore, when the prosecutor made the indictment, the recommendations from the Integrated Assessment Team were also included as one of the judge's considerations in making a decision against this narcotics abuser. Because according to the author, the recommendation from the Integrated Assessment Team is very large in determining whether these abusers are sentenced to prison or in Medical Rehabilitation and Social Rehabilitation (Anam, 2021) ^[1].

Even though law enforcement officials have made maximum efforts to eradicate narcotics trafficking, there are still obstacles to be faced. The obstacles faced by the South Sumatra Provincial Police include:

- a. Community participation is still lacking, this can be seen from the fact that the community is still not transparent in providing information about narcotic transactions.
- b. The application of criminal sanctions to traffickers is still not able to create a deterrent effect, in other words, the law on narcotics is still weak in eradicating narcotics dealers. The penalty threats in the law are sometimes not in accordance with the sanctions imposed by judges on narcotics offenders.
- c. The budget for funds is very minimal so law enforcement officers sometimes carry out investigations only with reckless capital (brave) because of duties and responsibilities.
- d. Existing facilities and infrastructure are also still very minimal, operational vehicles are still lacking and laboratories for testing evidence does not exist.

In addition to, based on the author's research from the people of Palembang City, there are some external factors outside the Law Enforcer jurisdiction, such as:

- a. economic situation, Basically, it can be divided into 2 (two), namely good economic conditions and poor or poor economic conditions. In good economic conditions, people can achieve or meet their needs easily. And vice versa, if the economic situation is not good, it is very difficult to fulfil needs, and because of that people will try to get out of the economic crash. In relation to narcotics, people who belong to a good economic group condition can accelerate the desire to know, enjoy, and so on about narcotics. Whereas those whose economic conditions are difficult can also do this, but the possibility is smaller than for those whose economy is sufficient. Since these narcotics consist of various kinds and prices also vary, under any economic circumstance's narcotics can circulate and by themselves, narcotic crimes can occur.
- b. Association/ Environment. This association basically consists of social/residential environment, a school or work environment, and other social environments. These three environments can have a negative influence on a person, meaning that those generated by the interaction of the environment can make a person do good deeds and vice versa. If in that environment narcotics can be obtained easily, then automatically the tendency for narcotics crimes is getting bigger.
- c. Convenience. Convenience here is meant by the more types of narcotics circulating on the black market, the greater the chance for narcotic crimes to occur.
- d. Lack of supervision. Supervision here is meant to control the supply of narcotics, their use and circulation. So, it does not only cover supervision by the community. The government plays an important role in limiting the chain of distribution, production and use of narcotics. In the event of this lack of oversight, the black market, illicit production, and drug addict population will increase. In turn, such a state is difficult to control. On the other hand, the family is the core of society and should be able to carry out intensive supervision of family members so that they are not involved in acts that are classified as narcotics crimes. In the case of a lack of supervision as referred to above, narcotics crime is not a difficult act to carry out.
- e. Dissatisfaction with social conditions. For someone who is squeezed by social circumstances, narcotics can be a means of escaping from the crush, even if it is only temporary. But for certain people who have insight, money, and so on, they can not only use narcotics as a tool to escape from the crush of social conditions, but furthermore can be used as a tool for achieving certain goals.

Legal reconstruction of law enforcement against victims of narcotics abusers based on the value of justice

In practice, drug abusers and addicts are "self-victimizing victims", that is, those who become victims of crimes they have committed themselves. Because narcotics addicts suffer from dependency syndrome as a result of drug abuse that they do themselves (Widodo, 2019). However, the addict is expected to receive protection so that he can become even better.

The implementation of rehabilitation for drug addicts as a substitute for punishment in the form of imprisonment is adopted from the double track system model, which is a two-track system regarding sanctions in criminal penalties, namely types of criminal sanctions and types of action sanctions. That is, the focus of criminal sanctions is aimed at wrong actions that have been committed by someone through the imposition of suffering so that the person concerned becomes a deterrent. While the focus of action sanctions is more directed at efforts to provide assistance to the perpetrator so that he or she changes (Ilyas, 2019)^[4].

The legal protection guarantee given to narcotics addicts is regulated through Law No. 35 of 2009 concerning Narcotics by providing both medical and social rehabilitation as stated in Article 54 of the narcotics law. Namely that "narcotics addicts and drug abuse addicts are obliged to undergo medical rehabilitation and social rehabilitation".

With the government's policy of mandatory reporting, it is hoped that it will attract more awareness of addicts and their families to report themselves or their family members who are addicts so that more and more addicts receive treatment at government-appointed rehabilitation centers such as health centers, hospitals that fall into the category of IPWL. Thus, with the implementation of the government's criminal policy or program, it is hoped that the number of addicts who are sentenced by the courts will decrease. This indication can be seen from the handling of drug addicts in the field, including:

- a. Penitentiary institutions (Lapas) in Indonesia are mostly inhabited by cases of drug offenders. Indeed, the condition of many prison inmates because of drugs needs to be classified between addicts, couriers, dealers, or drug dealers. However, if you look at the drug-related regulations according to Law No. 35 of 2009 on Narcotics, drug addicts should receive rehabilitation, and not be held in prison for long.
- b. Another visible indication of the government's inconsistency in the implementation of Law No. 35 of 2009 on Narcotics is that it is estimated that the number of IPWL in various regions is uneven or proportional to the number of narcotics addicts. Even though drug addicts are almost evenly distributed throughout the region.
- c. The implementation of decriminalization in the form of drug addicts receiving rehabilitation, both medical and social rehabilitation, is still not fully understood by the community, especially people who are not aware or legally literate (Widodo, 2018)^[9]. So it encourages fear and worries for those who are malnourished. Because, in the community's opinion, dealing with the law is very time-consuming and complicated and requires separate expertise.
- d. Drug addicts or those involved in drugs are still seen as disgraceful or disgraceful by most people.
- e. Community access to law centers or offices is not evenly distributed. This means that access to police stations or IPWL agencies is not as easy as access to cities or big cities, namely relatively very easy to reach, easy to reach transportation, and relatively better infrastructure compared to other areas in the territory of the Unitary State of the Republic of Indonesia.

The reason for the research to reconstruct Article 111 Paragraph (1) and 112 Paragraph (1) of Law Number 35 of 2009 is that there is no legal certainty for narcotics abusers.

Based on the discussion above, the researcher proposes a reconstruction of law enforcement norms against victims of narcotics crime based on the value of justice, especially those related to Article 111 Paragraph (1), Article 112 Paragraph (1) Law No. 35 of 2009 concerning Narcotics which according to the author is an attempt to realize abstract law into concrete law. However, In reality, there are still many law enforcers carrying out their roles still using conventional methods (procedural and formal). Judges as law enforcers in deciding cases are still in accordance with standard procedures and based on applicable laws and regulations with the jargon of legal certainty (Ricadonna, 2019). In addition, law enforcement is sometimes greatly influenced by the profile of judges, such as background, social background, education, and character. Such enforcement of justice is formal and legal in nature, namely justice based on articles of the law, which does not describe justice that is as fair as possible (substantial justice). To realize substantial justice, there needs to be a breakthrough, namely law enforcement using progressive law. Progressive law enforcement which assumes that law is not something final that can be revitalized when it is in trouble has a spirit of liberation from the characteristics, ways of thinking, principles, and standard theoretical methods that have been used so far. Furthermore, progressive law has the character of prospering and rejecting the status quo.

Conclusion

1. Law enforcement against victims (addicts/users) of narcotics crimes has not been based on the value of justice, because the judge's considerations in imposing the severity of the sentence for perpetrators of cannabis narcotics abuse in court are only based on: a. Evidence of the perpetrator's actions included in the elements of the article being charged; There is an unlawful element of the perpetrator's actions: c. There is no justification or forgiving reason for the act; d. Aggravating and mitigating circumstances arising from the perpetrator, the actions he committed, and the attitude of the perpetrator during the trial; e. Evidence that can be submitted to the trial; f. Consideration of the interests of the victim, both the perpetrator as a victim and the community who have the potential to become victims of the perpetrator's actions.
2. The Legal Reconstruction of law enforcement against victims (addicts/users) of narcotics crimes based on the Value of Justice Law enforcement is the process of turning abstract law into concrete law. In reality, there are still many law enforcers in carrying out their roles still using conventional methods (procedural and formal). Judges as law enforcers in deciding cases are still in accordance with standard procedures and based on applicable laws and regulations with the jargon of legal certainty. In addition, law enforcement is sometimes greatly influenced by the profile of judges, such as background, social background, education, and character. Such enforcement of justice is formal and legal in nature, namely justice based on articles of the law, which does not describe justice that is as fair as possible (substantial justice). To realize substantial justice, there needs to be a breakthrough, namely law enforcement using progressive law. Progressive law enforcement which assumes that law is not something final and can be revitalized when it is problematic has a

spirit of liberation from the characteristics, ways of thinking, principles, and standard theoretical methods that have been used so far. Furthermore, progressive law has the character of prospering and rejecting the status quo.

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