



Reconstruction of judge's decision regarding drug rehabilitation based on dignified justice value

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Abstract

Efforts to eradicate Narcotics Crimes by Rehabilitation are a form of sanction in addition to the existence of criminal sanctions that are adhered to by Law No. 35 of 2009 concerning Narcotics. The Double Track System principle adopted by Law No. 35 of 2009 is not practiced correctly in the field, because the judge's sentence gave more sanctions in the form of criminal sanctions, in the form of prisons in Penitentiary. This phenomenon is of course counterproductive to the spirit of Law No.35 Year 2009 which is more inclined to Criminal Acts which are more educative. Therefore, the authors conducted a study with the main issue of how the Implications of the decision on rehabilitation of narcotics addicts in Law No. 35 of 2009 which still have no value of dignified justice for the enforcement of narcotics law and How is the reconstruction of judges' decisions regarding rehabilitation for drug users based on values of justice with dignity The study was done using the constructivism paradigm and the type of research is a qualitative study with a socio-legal approach.

Research shows that the Implications of Judges' Decisions that do not provide rehabilitation to addicts and / or narcotics abusers are: (a) The duration of enforcement is longer, (b) Legal Uncertainty, (c) Expanding Collusion of Corruption and nepotism, (d) Expanding Narcotics Distribution in prison. Values Values that need to be reconstructed in the enforcement of narcotics addicts who are placed as perpetrators, law enforcers who cannot make peace, and sentences carried out with imprisonment. The values of dignified justice that can be used as alternatives in law enforcement, namely the value of humanization, harmonization, and restorative justice values that can be an alternative to law enforcement for narcotics addicts / narcotics abusers are addicts must be placed as victims, law enforcers must be able to work together with addicts And punishment must be carried out with rehabilitation.

Keywords: reconstruction, drug rehabilitation, dignified justice value

Introduction

Efforts to eradicate Narcotics Crimes by Rehabilitation are a form of sanction in addition to the existence of criminal sanctions that are adhered to by Law No. 35 of 2009 concerning Narcotics. The Double Track System principle adopted by Law No. 35 of 2009 is not practiced correctly in the field, because the judge's sentence gave more sanctions in the form of criminal sanctions, in the form of prisons in Penitentiary. This phenomenon is of course counterproductive to the spirit of Law No.35 Year 2009 which is more inclined to Criminal Acts which are more educative.

The Punishment Process in Corrections Institutions, of course, cannot be separated from various problems. The first problem, of course, is the capacity of Penitentiaries which have been over capacity for a long time. Based from the news Taken from Detik.com, Minister of Justice and Ham Yasonna Laoli said that the capacity of Penitentiaries (Lapas) and Detention Houses (Detention Centers) to date has experienced an excess of occupants reaching 600% ^[1]. This amount is certainly not conducive for the perpetrators of any crime to be worth living and correct their mistakes.

Drug convicts in this condition will be treated the same as other prisoners. Data reported by the Minister of Health in 2014 showed that 41.32% of all detainees were from narcotics crime, either as producers, dealers, dealers, collectors, or users ^[2]. This is of course very problematic, as how can a user (who is basically a victim and must be

rehabilitated) be placed in a cell with dealers and even the producers. Of course it is not surprising, if in the future there is an assumption that drug trafficking will be controlled from the Prison.

This assumption can occur because we do not have a strong system to manage the problem. Departing from this issue, the government and law enforcement agencies then realized through a Joint Regulation between the Chief Justice of the Supreme Court, Menkumham, the Minister of Health, the Minister of Social Affairs, the Attorney General, the National Police Chief, and the head of the National Narcotics Agency, later referred to as the Joint Regulation.

This Joint Regulation essentially arises an agreement to establish an Assessment Team that acts as a role as an analysis of a person's role in Narcotics crime, whether as a dealer, dealer, or as a user. In this case, the selection of roles will be used by the Assessment Team to determine who goes to prison and who needs rehabilitation. Selection of subjects to be rehabilitated, also for therapeutic needs and rehabilitation for drug users.

Research conducted in Sleman Regency, after the enactment of the Joint Rules, handling narcotics addicts is divided into two forms: First, addicts voluntarily report themselves to the IPWL (Obligatory Recipient Institution) and law enforcement operations. Second, voluntary surrender has never happened since the enactment of the joint rules, while in law enforcement operations, there are three suspected drug addicts who finally did the assessment and submitted

to the Grahasia Hospital in Pakem Sleman, as a place for medical and social rehabilitation ^[3].

Despite the emphasis on reducing prisoners in prison, there are a number of notes that need attention. First, the legal basis for this joint regulation is clearly not strong enough and is still under the Law. Second, Dani and Niken's research shows that the resource problem is limited to work optimally, this is because some employees have a double duty. Third, until now there has not been a special institution for drug users for all statuses, both addicts, users, and victims, such as the Penitentiary for Children, which is certainly based on the values of justice.

Indonesia is not alone in implementing rehabilitation for drug users. Rehabilitation has become a joint solution in tackling drugs. One of the success stories of drug management is Portugal. Through Portugal's Decriminalization of Drug Use Act (Decree Law 30/2000) which was passed in July 2001. Before, the regulation was passed, Portugal even became the country that had the most drug users among other EU countries, this was supported by the ease of obtaining drugs in Portugal. After enactment and decriminalization process, the number of users goes down and circulation can be controlled ^[4].

One country that has the same policy as Portugal is Mexico. Besides being well-known as a drug-producing country, Shirk & Wallman said since 2007 it had estimated 60,000 - 70,000 drug addicts who often commit violence, both in the household and other forms of violence ^[5]. Article 479 Ley General de Salud even mentions that consumption of drugs outside the medical requirement is permissible under certain levels and places.

Besides Portugal, data from the Library Congress states that countries which do not penalize users are the Netherlands, Mexico, the Czech Republic, and Costa Rica. In Costa Rica, the law has mandated a rehabilitation center for drug addicts, as well as users. Especially for underage drug users, will be handled by the National Child Welfare Agency (*Patronato Nacional de la Infancia/ PANI*) ^[6]. In addition to the countries mentioned above, rehabilitation is also carried out in developing countries, such as Ghana, which as the Adzrago study, Teye Doku and Adu-Gyamfi complain about because of poor service facilities, such as late handling ^[7].

In fact, Uruguay became the first country in the world to legalize cannabis drugs for non-medical use. This law regulates the production, marketing and consumption of cannabis. The aim of the Uruguayan government to legalize as written by Pittagmilo, is to prevent illegal consumption and protect the population from the effects of danger ^[8].

On the basis of this background, the authors felt the need to research it further with the main issues as follows :

1. What are the implications of the decision regarding the rehabilitation of narcotics addicts in Law No. 35 of 2009 which does not yet have a dignified justice value?
2. How to reconstruct judge's decision on rehabilitation for drug users based on the value of dignified justice?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge ^[9]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and

in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of *Socio-Legal* ^[10], which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation.

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data ^[11]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Implications of the decision regarding the rehabilitation of narcotics addicts in law no. 35 of 2009 which does not yet have a dignified justice value

One of the mission of the Supreme Court is to maintain the independence of the judiciary, in which there is the independence of judges. The independence of Judges is strictly regulated in Article 24 of the 1945 Constitution, Article 1 Paragraph 1 of Law No. 48 of 2009, the calm of Judicial Power, Article 32 of Law No. 3 of 2009 concerning the Supreme Court, and Article 20 A paragraph 1 letter d of Law No. 18 of 2011 concerning the Judicial Commission.

The process of independence of judicial power (MA) is quite long. Previously, judicial power (judicative) relating to administration and finance was under the government precisely in the ministry of justice, while technical judicial (judicial) matters were under the Supreme Court. In its journey the task was merged into the Supreme Court of Justice in accordance with the new constitution which required the separation of powers ^[12].

The task of the judge in the environment of the Supreme Court is to examine and decide on every case for which justice is requested to him, the judge also, establishes matters such as the legal relationship, the legal value of the behavior and legal position of the parties involved in a case presented to him. Due to always facing conflict continuously, Judges are required to have an independent attitude and are free to take sides, as long as the alignments are in truth and justice, including even with the government ^[13].

Judges as law enforcers should have the freedom to take sides or impartial judges. This is intended to ensure the fulfillment of treatment in accordance with human rights. The function of the judiciary which is the duty of the judge is to realize equality before the law for every citizen ^[14].

Quoting Gerhard Robbers, Bagir Manan writes that explicitly the freedom of judges has two meanings, but contextually there are three essences of freedom of judges. First, judges are only subject to law and justice. Second, no one, including the government, can determine or direct the decisions to be taken. Third, there must not be personal consequences (to judges) in carrying out its judicial function^[15].

Rusli Muhammad mentioned that the court's ruling was an out put from the judicial process, which included the examination of witnesses, defendants and evidence. As for when the process was completed and the Judge found his conviction to give a fair decision. Then the judge will make a decision^[16].

Satjipto added that the Judge's duty is basically not only to examine and try someone. More than that, a judge should position himself as a statesman first. The task of the judge is not only to examine and decide on cases, but also statesmen who think about the condition and fate of their people. Their hearts must be adrift "touched, concerned" to see poverty, unemployment, ignorance, economic powerlessness towards the owners of capital. Furthermore, Judges are people who have to think about the fate of their people before giving a Just and fair decision^[17].

An Ideal Judges by Satjipto are Judges who are able to go beyond the normative premise and are able to understand the reality outside the wider court. Satjipto's hopes are certainly in line with the wider community, who want the Judge as a symbol of justice to provide the widest possible amount of justice.

But as the Judge's Decision is expected to be as good and fair as fair. Judges are still human, and judges' decisions are human products that are fixed in time and space. Judges' decisions are basically not born from empty values, but the influence of judges' personalities also colors the nature of the decisions. Antonius writes that factors that influence judges in making decisions include subjective factors including judges' a priori, emotional attitudes, arrogance power attitudes, moral and objective factors including social, cultural and economic backgrounds and professional judges^[18].

Included in this case is the Judge's perspective on complex and multidimensional crimes. As in the case of addicts and narcotics abusers, who are actually victims of drug crimes themselves, but their own actions are threatened in offense as regulated by the law. Especially in the practice of criminal justice in Indonesia, the interests of victims (victims) have not received enough attention, except in corruption cases. According to Manan, the conviction for paying compensation money in corruption cases can be seen as restoring the state's loss as a victim of corruption.

Drug Users, even though they are normatively perpetrators, they are actually victims of narcotics and drug crimes. Victims are normatively people who are harmed because of the acts regulated in the Act. The person who does what is prohibited by the Law is the maker (*dader*). In Narcotics crime, addicts and abusers are basically makers (*dader*), this is because their actions are illegal.

However, in the teaching of dualism, an act can be threatened with crime, if it is against the law and carried out by people who are capable and have the ability to be responsible. Simons as quoted by Andi Hamzah wrote that criminal acts must contain 4 (four) elements, namely: threatened with Crimes, are against the law, an element of

error, and the act was committed by those responsible.

The ability to take responsibility is an important basis for criminal conduct. AZ Abidin writes that criminal conditions are only based on unlawful acts, as injustice, therefore criminal conditions must meet two elements, namely: *Actus Reus (delictum)*, criminal acts as a condition of objective criminal punishment, and *Mens Criminal Liability* as a condition of subjective punishment^[19].

However, according to Dhofir, this dualistic view cannot be applied in Narcotics Law, particularly in assessing the responsibility of the users. This is because the evidentiary element is difficult, so the principle applied is the Strict Liability Principle or absolute liability.

Although the Narcotics Law does not explicitly mention the existence of strict liability, there is not a single article that determines the existence of an error as an element that determines the conditions for imposing a crime. This is reinforced in the criminal provisions of Article 111 through Article 127 which emphasizes the element of "without the right to violate the law" as the main condition that a crime has occurred. Besides that, the element without the right to violate the law in several article provisions is the main element that must be fulfilled.

Thus, according to Mudhafir, the criminal responsibility of narcotics abusers is no longer based solely on narcotics abusers who are perpetrators of the criminal acts as stated in the Narcotics Law. A very important consideration in this case is the type of sanctions for narcotics abusers in the context of criminal liability who are victims of narcotics abusers themselves.

The essence of addicts and abusers who are actually victims is not understood properly by law enforcers. Of the 23 calm decisions of narcotics abusers used as samples in this study, only 3 decisions provided rehabilitation for abusers. This verdict is certainly very contradictory with the order of the law that requires rehabilitation of addicts and / or abusers^[20].

The implications of the various decisions are First, the stigma of addicts and / or abusers as perpetrators and not as victims will continue to strengthen, especially in the presence of law enforcement officials. So that their healing process becomes increasingly difficult. Second, with the lack of decisions that provide rehabilitation for addicts and / or abusers causing a lot of disparities with various decisions, and third, the lack of jurisprudence as a precedent for law enforcement with similar cases in the future because Judges in the civil law system adopted in Indonesia, are merely the mouth of the written law (*spreekbuis van de wet, bouche de la loi*), the Act is the main consideration in deciding, Jurisprudence is not a consideration of the Judge in giving a decision.

Penitentiary, which is the concept of Prison is basically more focused on the preparation and supervision of returning ex-convicts to the after care service community. The existence of correctional institutions, is to accommodate the perpetrators of crime to be prepared to return to the middle of the community in normal circumstances. Preparation for returning to the community is done by providing skills so that after correcting he has become a good person. According to I Rusyadi, the purpose of Corrections is: First, include former criminals in the community as good citizens, Second, protect the community from recurrence of crimes of ex-convicts in the community^[21].

One philosophy of correctional is as an institution to correct one's mistakes. The community adheres to the philosophy of abolition which is in favor of the values of forgiveness and improvement, so that a person after leaving the prison, in addition to not repeating mistakes, can also be assimilated and turned into good.

One of the serious problems in law enforcement is the over capacity of the Penitentiary, where people carry out prison sentences and other detention efforts. Also in prison, a place of learning and repentance so that mistakes made are not repeated in the future. However, the ideal description of the Penitentiary began to move away with many notes that the Penitentiary was overcapacity, so that the role and function of the Penitentiary did not function optimally.

One of the excessive concerns of overcapacity of prison residents is especially for drug users and abusers, mixing them with dealers and dealers who do not have provisions for rehabilitation. Meeting with dealers can make users and abusers have stronger networks and are difficult to detect by law enforcement. On the other hand, with the news that Narcotics can enter the prison can make dealers and abusers easily return to consuming drugs, instead of getting maximum healing and treatment.

Besides that, it is well understood that Narcotics Drugs are from Prisons. This is confirmed by the results of a survey and investigation of the National Narcotics Agency (BNN), about 60 percent of drug trafficking. Monica Suhayati said that every year there is always a disclosure of the circulation of narcotics from behind the prison. For example, in 2012, seven Nusakambangan prisoners proved to be the masterminds of the 3.9 kilogram narcotics distribution in Depok. In 2013, a convict with the initials FI alias JF who was incarcerated in Lapis Kembang Kuning, Nusakambangan, was also proven to have ordered a courier with the initials BL to distribute methamphetamine and heroin in DKI Jakarta. In 2014, it was revealed that two convicts from Pontianak prison named Jacky Chandra and Koei Yiong alias Memey were proven to have ordered a courier named Nuraini to smuggle 5 kg of methamphetamine from Malaysia to Indonesia^[22].

Some decisions that put users and abusers in jail instead of providing rehabilitation indicate that law enforcement is more about the spirit of retribution than abolition. The impact of this decision, Lapas becomes overcapacity, so that the residents of the Community become ineffective and difficult to regulate. It was proven in the Kedung Pane Prison in Semarang that in 2017 there were 1,700 people who were caught in 900 narcotics cases and 333 prisoners in Bulu Bulu Prison were convicted in a total of 333 who were caught in narcotics as many as 208. methamphetamine and various kinds of meth tool.

2. Reconstruction of judge's decision on rehabilitation for drug users based on the value of dignified justice

Basically it shows that the values derived from Dignified Justice sourced from Pancasila, basically can be applied in various law enforcement, one of which is Narcotics Crimes committed by narcotics users.

First, the value of Humanism, law enforcement can be applied to users to be treated properly. That is not as an object that is only subject to the law, but as humans who have the will and the opportunity for a better life. With the principle of guiding the law, law enforcers should be able to see the impact when narcotics addicts must be jailed to

account for their actions. Instead he was given rehabilitation to cure his dependence.

To place an addict as a victim who must be given treatment means to carry out a fair attitude, which is to put something in its place. That drug addicts / abusers should be given rehabilitation instead of finding mistakes to be put in jail.

Second, Harmonization. Crime is basically a crime that violates public order, thus the principle of disputes in the Criminal Law is between the subject of violators of the rules and the state represented by the Public Prosecutor. The Public Prosecutor in representing the duty of the state is tasked with giving charges and demands to those who violate the law.

Unlike the Civil Court where the principal (both the plaintiff and the defendant) can face each other, and can make peace with each other in a dating deed. So that it can directly apply the principle of harmony. However, in Criminal Law, the Victim is represented by the State in this case the Public Prosecutor who is in charge of giving charges and demands, as well as the Police in charge of conducting an investigation. Peace in failing can be done (except Diversion in Child Crimes), so Harmonization cannot be done.

There are no victims in the act of consuming narcotics directly and only the users themselves. But indirectly, victims of drug consumption are the wider community. Harmonization is also done indirectly (and not related to law enforcement), namely the community can receive back narcotics addicts. The harmonization carried out at the level of law enforcement is that the Police and Prosecutors are able to present the best middle ground for Narcotics Addicts.

The existence of a plea bargaining mechanism can be used as an alternative approach to making an agreement, having previously been preceded by a statement of guilt from the defendant and an oath not to repeat the act again. In addition, the plea bargaining approach must also be closely monitored by the judges and be given the same strict mechanism (and implemented to the drug abusers only). This is to avoid other narcotics criminals (such as dealers and dealers), to obtain a plea bargaining mechanism that enables them to escape punishment.

Third, the principle of restoration is basically repairing the losses that have been made. In drug use crimes, the loss is received by the user himself, and the perpetrator is the victim himself. So thus, he must be given the opportunity to carry out rehabilitation and recovery of losses he made himself. Because rehabilitation is the most appropriate solution for them. To be more concise can see in the following table:

Table 1: Reconstruction of Narcotics Decisions based on Dignified Justice

No	Values in Addict Decisions	Value of Justice with dignity	Reconstruction of Dignified Justice Value
1	Addicts are placed as Performers	Humanization	Addicts are placed as victims
2	Law Enforcement cannot make peace with an addict	Harmonization	Law Enforcement must be able to make peace with an addict
3	The sentence is carried out with imprisonment	Restorative Justice	Punishment is carried out by Rehabilitation

The application and accomodation of local values in law

enforcement in the Dignified Justice approach is a critique of values in western civilization that do not provide essential justice, especially to Narcotics Addicts. In addition, accommodating local values is a logical consequence with the adoption of Pancasila as the ideology of the nation and the source of law, which is the crystallization of the values of local wisdom.

Conclusion

1. Implications of Judges' decisions that does not provide rehabilitation to addicts and / or narcotics abusers are: (a) The duration of enforcement is longer, (b) Legal uncertainty, (c) Expanding Collusion of Corruption and nepotism, (d) Expanding Narcotics Distribution more Prison.
2. Values that need to be reconstructed in the enforcement of narcotics addicts who are placed as perpetrators, law enforcers who cannot reconcile, and sentences carried out with imprisonment. The value of dignified justice that can be used as an alternative in law enforcement, namely the value of humanization, harmonization, and restorative justice values that can be an alternative to law enforcement for narcotics addicts/ abusers must be placed as victims, law enforcers must be able to work together with addicts and punishment must be carried out with rehabilitation.

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