

Application of Criminal Sanctions for Narcotics Users Judging from the Narcotics Law

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Abstract. Narcotics abuse is still a serious threat in Indonesia and is still a serious threat and is considered a dangerous crime, detrimental to the character and physique of the younger generation and society. This crime is also related to several other crimes, such as stealing, robbing, and money laundering. Narcotics crimes increase every year. Therefore, punishment for narcotics users is considered ineffective and requires other legal measures. This journal explains that prison sanctions do not have a deterrent effect, therefore the sanctions must include medical treatment and social rehabilitation. This means a double-track system of equality between criminal sanctions and treatment sanctions stipulated by the Indonesian Law on Narcotics, while the Judge has the right to decide.

Keywords: Narcotics, Sanctions, Crime

1 Introduction

Narcotics are something that is often heard about in the local community. Narcotics themselves create a paradox where narcotics can be very useful if used for medicine or medical needs with a diagnosis that requires narcotics but can also be very dangerous if their use is not licensed and used only as a means of recreation and causes addiction. Narcotics crime is a very dangerous crime because its target is to damage the young generation and the characteristics and physicality of the people who use it. Narcotics crimes can also be basic crimes that trigger other crimes such as robbery, money laundering, theft, and so on. So, it can be seen that the use of narcotics without permission will have a negative impact not only on the user but also on the family, community, and country.

In view of information from the Public Opiates Office (BNN) overview with respect to tranquilize use, it was recorded that 921,695 individuals, or around 4.7 percent of the absolute understudies and understudies in the nation were clients of these unlawful substances. Aside from that, drug cases happen in different circles, among conventional individuals, yet in addition among VIPs, authorities, and individuals' delegates. In 2010, pee tests on a few echelon I - III territorial authorities did by the South Sumatra Commonplace Government as a team with the Commonplace Opiates Organization found 15 individuals associated with being drug clients. In the mean time, the Focal Java Board for Examination and Destruction of Defilement, Plot, and Nepotism (KP2KKN) noticed that from 2010 to early February 2011, six DPRD individuals all through Focal Java were engaged with illicit drug use casess. [1]

In light of the numerous issues surrounding drugs, Law Number 35 of 2009 concerning Narcotics—henceforth referred to as the Narcotics Law as an amendment to Law Number 22 of 1997 concerning Narcotics with demands for legislative reform as a form of reform due to

globalization. In terms of substance, the Narcotics Law has not been completely reformed but has only emphasized obligations related to rehabilitation, excessive use of punishment, and the authority of the BNN.

In the Narcotics Law, perpetrators who abuse narcotics are divided into 2 (two), namely drug dealers and narcotics users. A dealer is someone whose orientation is in the dimensions of the seller, buyer for re-circulation, transporter, storer, provider, and someone who carries out narcotics export or import activities. Provisions relating to dealers are regulated in Articles 111 to 125 of the Narcotics Law. On the other hand, a user is a person who takes or ingests synthetic or semi-synthetic plant-based medications or chemicals that have the ability to alter consciousness, produce loss of taste, reduce or eliminate pain, or induce dependency that may be classified into numerous categories. The Narcotics Law's Articles 116, 121, 126, 127, 128, and 134 contain provisions pertaining to users. Dealers are categorized as perpetrators (daders), but users are categorized as perpetrators and/or victims. So users as victims need to be given rights as citizens who must be protected, and their rights respected both legally health and socially.[2] As a result, Article 54 of the Narcotics Law grants addicts the right to social and medical rehabilitation.

Apart from their right to rehabilitation, narcotics users can choose a rehabilitation place that meets the qualifications and if the narcotics user is under state supervision then the state gives the narcotics user the right to free rehabilitation where funding can be taken from property and assets confiscated by the state (Article 9 paragraph (1), Elucidation of Article 103 paragraph 1 letter b and Elucidation of Article 101 paragraph (3) of the Narcotics Law).

Regulations related to criminal sanctions in the Narcotics Law use the implementation of criminal objectives in a twin-track system by considering the retributive (punishment) and rehabilitative (social improvement) effects for narcotics users. Narcotics crimes themselves in Indonesia have been classified as extraordinarily serious crimes against humanity (extraordinary) so in enforcing the law regarding this case very heavy criminal sanctions are given, namely the death penalty.

However, in the end, it can be seen that the existing criminal sanctions in reality are not enough to have a deterrent effect in their aim to tackle narcotics crimes, as seen from the ever-increasing number of narcotics crime cases, recidivist perpetrators, and the various ways of smuggling narcotics both through internal channels. country or abroad.

So the author is interested in writing regarding how to apply appropriate criminal sanctions for narcotics users in terms of the Narcotics Law.

2 Research Methodology

Normative legal research is the kind of study that is employed. Legal research is a scientific endeavor that utilizes specific methodologies, systematics, and critical thinking to analyze and examine one or more specific legal occurrences.[3] Legal study that views the law as a set of standards is known as normative legal research. The system of norms under consideration include principles, norms, rules, laws and regulations, agreements, judicial rulings, and doctrines (teachings). [4] The legislative approach and the case approach are the research methodologies that are employed. Examining all laws and regulations pertaining to the legal matter under discussion (researched) is the statutory method. The case approach is a method that involves looking at cases that are relevant to the current topic and have resulted in court rulings with long-lasting legal effect. [5]

3 Discussion

It is impossible to separate criminal punishment from the criminal justice system that Indonesia has established. Determining penalties is a crucial component of the criminal justice system. Its existence will provide direction and consideration regarding what should be used as sanctions in a criminal act to enforce the enactment of norms. On the other hand, punishment itself is the most complex process in the criminal justice system because it involves many different people and institutions. Determining sanctions in criminal legislation is not just a technical matter of legislation, but is an inseparable part of the substance or material of the legislation itself, meaning that the issues of penalization, depenalization, criminalization, and decriminalization must be understood comprehensively with all aspects of the substance or material issues of legislation at the legislative policy stage. [6]

The twofold track framework is a two-track framework with respect to sanctions in criminal regulation, to be specific the sort of criminal approval from one party and the kind of activity endorse on the other party. Both start from various thoughts. Criminal assents depend on the essential thought: of "why discipline is done". In the interim, activity sanctions start from the essential thought: "What is the motivation behind the discipline". As such, criminal approvals are responsive to a demonstration, while activity sanctions are more expectant towards the culprit of the demonstration. The focal point of criminal assents is pointed toward bad behavior that an individual has carried out through the inconvenience of enduring so the individual concerned is dissuaded. The focal point of activity sanctions is more centered around endeavors to help the culprit so he changes. Criminal sanctions emphasize the element of retaliation. It is suffering that is deliberately imposed on an offender. Meanwhile, sanctions for actions originate from the basic idea of protecting society and coaching or caring for the perpetrator. As J.E. said. Jonkers, criminal sanctions are focused on the punishment applied for crimes committed, while action sanctions have a social purpose.[7]

The legal problems that occur regarding narcotics users are found in several articles in the Narcotics Law. One of the goals of the Narcotics Law, according to Article 4 Letter D, was to guarantee the regulation of medical and social rehabilitation programs for drug abusers and addicts. However, in Article 127 of the Narcotics Law, abusers are made subjects who can be punished and lose their right to rehabilitation, unless they can be proven or proven to be victims of narcotics. Proving that a narcotics abuser is a narcotics victim is difficult because it must be seen from the start of the narcotics user's use of narcotics. In addition, it needs to be proven that when using narcotics, narcotics users are persuaded, deceived, deceived, forced, and/or threatened to use narcotics. The large number of terms can confuse law enforcement officials in implementing the articles in the Narcotics Law. The position of narcotics addicts is slightly different from that of perpetrators of other criminal acts, namely that according to the provisions of the law, narcotics addicts are, on the one hand, criminals involved in drug misuse, yet they are also victims of the crime.

On the one hand, drug addicts are considered to be criminals who commit crimes related to drug usage, this is due to the provisions of the narcotics law which regulates prison sentences given to perpetrators of narcotics abuse. Then, on the other hand, it can be said that narcotics addicts are victims, this is shown by the provision that narcotics addicts can be sentenced to rehabilitation. This means that on the one hand, the law still considers narcotics addicts as perpetrators of criminal acts, and on the other hand as victims of their narcotics abuse.

The victimology review classifies narcotics addicts as "self-victimizing victims", namely victims of crimes they have committed themselves. Therefore, the most appropriate thing for

a judge to pass a sentence in the case of a narcotics addict is to pass a sentence of rehabilitation. Because narcotics addicts are essentially victims of a crime who need to receive treatment and/or care, and because they are parties who also experience losses from a crime, namely the crime of narcotics abuse.

If a narcotics addict has been found guilty by a judge for a narcotics crime he has committed, to give the person concerned the opportunity to be free from his addiction, The judge has the authority to mandate therapy or treatment in addition to treatment. Similarly, if a drug addict is found not guilty of any drug-related offense—that is, if they are just drug users who were seduced into using drugs—the court may choose to mandate that they get care and/or treatment. Article 47 of Law Number 22 of 1997 and Article 103 of the Narcotics Law both contain this clause.

As per Article 47, the judge hearing a case involving a drug addict has the authority to mandate treatment for the individual in question, either in the event that the addict is found guilty of a drug-related offense or in the event that the addict is found not guilty. All of these options are available to the judge. The time spent completing drug addiction treatment and/or care is included in the sentence-serving duration.

According to Article 103, a judge who examines a drug addict may decide to order the addict to receive treatment and/or care through rehabilitation if the addict is found to have committed a drug crime; if the addict is found not to have committed a drug crime, the judge may decide to order the addict to receive treatment and/or care through rehabilitation. Serving a sentence includes the time spent receiving treatment for drug addiction and/or undergoing therapy.

While drug addicts who self-victimize are subject to criminal penalties such as jail sentences, those who treat themselves as victims of drug addiction are subject to therapy and/or care in the form of rehabilitation centers. According to the implementation system, the time spent receiving care or treatment is considered part of the sentence-serving period.

The Narcotics Law has implemented a two-track system for punishing criminal crimes involving the usage of drugs, although the judge retains discretion in deciding how to proceed in cases involving drug users or addicts, based on his or her conviction that punishment is warranted. This may be demonstrated by looking at and comprehending the criminal penalties included in Article 127 of the Narcotics Law for those who abuse drugs for their own benefit.

According to Article 127 of the Narcotics Law, using class I drugs for oneself without authorization or permission is punishable by up to 4 (four) years in jail, and using class II drugs for oneself is punishable by up to 2 (two) years in prison. years and using class III drugs for personal use will result in a maximum sentence of one (1) year in jail.

The Narcotics Law's Articles 54 and 55 govern the requirements that drug addicts and those who have been abused by drugs undergo medical and social rehabilitation. They also govern the reporting requirements that drug addicts have to public health centers, hospitals, and/or medical and social rehabilitation facilities, as well as their parents or legal guardians if they are too young to receive treatment.[8]

Taking note of the way the Law defines sanctions, it can be said that the way it defines sanctions for criminal acts of drug abuse refers to a double track system. This is because, although victimology defines drug abusers as perpetrators, they are still defined as victims despite being the victims of crimes or criminal acts they have committed. This is because victimology views drug addicts as self-victimizing victims. Thus, drug addicts who are also victims have to be shielded. Nonetheless, drug users still need to face consequences as they are also the ones who commit crimes. For this reason, it is argued that the most suitable way

to penalize criminal crimes involving the consumption of drugs is to utilize a double-track system.

In addition, the Supreme Court of Massachusetts (MA) revised its circular to provide guidance to judges in Supreme Court Circular Letter Number 04 of 2010 regarding the Placement of Abuse, Abuse Victims, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. Supreme Court of 2009 Number 7. Naturally, this Supreme Court Circular is a positive step toward creating a paradigm that will stop criminalizing or decriminalizing drug users. It has been proven that prison sentences for narcotics abusers cannot reduce the number of narcotics abusers.

Rehab for drug abusers follows the principles of social defense and therapy. Because drug addiction rehabilitation involves a series of integrated therapy activities aimed at releasing addicts from dependence, it is consistent with treatment theory. This is by the punishment intended in the treatment theory school, namely to provide treatment and rehabilitation to criminals as a substitute for punishment. The perpetrator of the crime is a sick person who needs treatment and rehabilitation.

4 Closing

Narcotics crime is a dangerous crime and damages the character and physique of the people who use it. The number of narcotics users increases every year. These crimes have involved many people, from children, and young people to adults, poor and rich, ordinary people, celebrities, and officials. Therefore, these crimes must be treated seriously. Determination of criminal legal sanctions should be carried out with a rational approach so that the objectives of punishment can be achieved.

The Narcotics Law's provisions on drug users' penalties follow the two track system principle, which equalizes criminal and action punishments. However, in reality, judges more often impose prison sentences on narcotics users rather than undergo rehabilitation. For this reason, the Supreme Court issued the Republic of Indonesia Supreme Court Circular No. 7 of 2009 concerning Placing Drug Users in Therapy or Rehabilitation Homes.

The Narcotics Law contains prison sentences and action sanctions for narcotics users. Therefore, judges should decide more on sanctions in the form of rehabilitation for narcotics users, which is also considered to be able to sever ties with their network. For this reason, the Government needs to improve facilities and infrastructure and increase the number of assistants/counselors in the rehabilitation program. Sanctions in the form of undergoing rehabilitation are also one solution to the problem of the overloaded capacity of correctional institutions.

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