

REHABILITATION OF VICTIMS OF NARCOTICS ABUSE FROM THE PERSPECTIVES OF DEPENALIZATION, DECRIMINALIZATION, AND HUMAN RIGHTS PROTECTION

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Abstract :

Conceptually, within the framework of depenalization, if a person who uses narcotics reports themselves to a designated Mandatory Reporting Receiving Institution (IPWL), whether at a community health center (Puskesmas) or a hospital appointed by the Ministry of Health, that person may avoid criminal prosecution. These two important principles need to be understood by all segments of society, especially those with authority and responsibility in law enforcement, namely that punishment or imprisonment is not the right solution because it only creates new problems, such as overcrowding in prisons and detention centers, along with other potential disturbances that may arise in the future.

Keywords: rehabilitation; narcotics abuse; drug users; depenalization; decriminalization; human rights.

INTRODUCTION

Indonesia is a state governed by the rule of law. Therefore, the government must ensure a safe and orderly environment within society. Law enforcement is a crucial issue in creating order, tranquility, and security in social life. Law essentially functions to protect human interests, and for that reason it must be upheld in order to create a peaceful and orderly society. The same applies to narcotics abuse: the law must be applied and enforced in accordance with the provisions in force in Indonesia. One form of criminal sanction that may be imposed on narcotics users is rehabilitation.

Efforts to address the problem of narcotics addiction require appropriate measures and policies so that the high rate of narcotics abuse in this country can be reduced. In many parts of

the world, handling narcotics solely through a law enforcement approach has not produced the expected results. In fact, the rate of narcotics abuse and illicit trafficking continues to increase. For this reason, the concepts of decriminalization and depenalization of narcotics users need to be reexamined. Law Number 35 of 2009 on Narcotics provides ample legal space for the implementation of these two concepts.

Policies on the decriminalization and depenalization of narcotics users are mandates of international conventions resulting from United Nations sessions on narcotics. Under these conventions, narcotics users are given alternative sanctions in the form of rehabilitation, and participating states are urged to prepare human resources and facilities to rehabilitate narcotics users. The results of these conventions were adopted into Law Number 35 of 2009 on Narcotics, particularly in Article 103, which grants judges the authority to impose rehabilitation. The period spent undergoing rehabilitation is calculated as equivalent to serving a sentence. Therefore, rehabilitation constitutes a form of punishment or sanction for narcotics users. Decriminalization of narcotics users is understood to mean that using narcotics for personal use remains an act punishable under criminal law (Article 127), but the sanction is not imprisonment; instead, it is rehabilitation.

The concept of decriminalization is regulated in Law Number 35 of 2009 on Narcotics, Article 54, which stipulates that drug addicts are required to receive rehabilitation services. Article 103 further states that judges may decide and order addicts and victims of narcotics abuse to undergo treatment or care. Meanwhile, Article 127 paragraph (3) provides that in deciding cases involving narcotics abusers, judges must take into account the provisions of Article 54, Article 55, and Article 103.

In general, decriminalization does remove criminal sanctions. However, with regard to drug users, the author cites the definition of decriminalization issued by the *European Monitoring Centre for Drugs and Drug Addiction* (EMCDDA) in Lisbon in 2005: “*Decriminalisation comprises removal of a conduct or activity from the sphere of law. Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of the criminal law.*” In short, decriminalization means that only non-criminal sanctions apply, or that there are no criminal sanctions. Under Indonesia’s Narcotics

Law, however, decriminalization grants judges the authority to choose between imposing imprisonment or ordering rehabilitation.¹

Because this is a matter of judicial discretion, judges have the option to impose rehabilitation as a sentence for narcotics users. Ordering rehabilitation is far better than imposing imprisonment. This approach should be actively promoted by judges, other law enforcement officials, and society at large, so that during investigation, prosecution, and court proceedings, the orientation is toward rehabilitation without detention. It is also important to build public understanding so that there is no difference in perception between society and law enforcement. The decriminalization of narcotics users is a relatively new concept, aimed at reducing the prevalence of narcotics use through compulsory rehabilitation.

The framework of decriminalization has also been implemented through Government Regulation Number 25 of 2011 on Mandatory Reporting for Narcotics Addicts, specifically Article 13 paragraph (4). According to this provision, from the stages of investigation, prosecution, and even trial, narcotics abusers have the right to be placed in rehabilitation centers to undergo recovery, based on recommendations from an assessment team confirming that the individual is an addict or a pure narcotics abuser. Within the decriminalization framework, law enforcement officials at the stages of investigation, prosecution, and trial may take steps so that the narcotics abuser is ultimately sentenced to rehabilitation in accordance with the level of dependency. Meanwhile, the concept of depenalization is reflected in Law Number 35 of 2009 on Narcotics, particularly Article 28 paragraphs (2) and (3), along with its implementing regulations, including Government Regulation Number 25 of 2011 on Mandatory Reporting for Narcotics Addicts.

The purpose of the Narcotics Law is to differentiate between the handling of abusers and traffickers. With regard to abusers, the objective is to prevent, protect, save, and ensure that they receive medical and social rehabilitation. With regard to traffickers, the objective is to eradicate trafficking, as stated in Article 4. Therefore, the mission of law enforcement also

¹ Sumber melalui <http://www.bnn.go.id/portal/index.php/konten/detail/humas/berita/11754/> dekriminalisasi-pengguna-narkoba-tidak-sama-dengan-legalisasi

differs: toward abusers it is rehabilitative in nature, while toward traffickers it is repressive. Rehabilitative law enforcement can be seen in the provisions of the Narcotics Law, for example Article 127 paragraph (1), which stipulates that abuse for personal use is punishable by a maximum of four years' imprisonment. As such, it does not meet the requirements for detention during investigation, prosecution, or trial as stipulated in Article 21 of the Criminal Procedure Code. Furthermore, under Articles 111, 112, 113, and 114, cases involving personal use cannot be investigated, prosecuted, or charged under provisions intended for traffickers, whether cumulatively or subsidiarily, because the objectives are different.

Users or addicts are essentially victims of narcotics abuse who violate government regulations. They are Indonesian citizens who are expected to contribute to rebuilding the nation from decline in almost all sectors. In relation to narcotics abuse, a criminal law policy is needed that positions narcotics addicts as victims rather than perpetrators of crime. The implementation of rehabilitation is the realization of legal norms, and this is very important because implementation shows whether a regulation has truly been carried out. Law Number 35 of 2009 on Narcotics provides different treatment for narcotics abusers. Before this law came into force, there was no distinction in treatment between users, dealers, distributors, or producers of narcotics.

Conceptually, within the framework of depenalization, if a person who consumes narcotics reports themselves to a Mandatory Reporting Receiving Institution, whether at a community health center or a hospital designated by the Ministry of Health, that person may be exempt from criminal prosecution. These two important concepts must be jointly understood by all segments of society, especially those with competence in law enforcement, namely that punishment or imprisonment is not the appropriate solution because it only creates new problems, such as overcrowding in prisons and detention centers, as well as other potential social disturbances in the future.

On March 11, 2014, the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Chief of the Indonesian National Police, and the Head of the National Narcotics Agency agreed on a joint regulation concerning the placement of narcotics addicts and victims of narcotics

abuse into rehabilitation institutions. This joint regulation was drafted in response to Article 54 of Law Number 35 of 2009 on Narcotics, which mandates that narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation. It also refers to Article 127 paragraphs (2) and (3), which require judges, in deciding cases of narcotics abuse, to consider Article 54 on the obligation to undergo medical and social rehabilitation, Article 55 on mandatory reporting by narcotics addicts to obtain rehabilitation, and Article 103, which authorizes judges to order narcotics addicts to undergo treatment and or care through rehabilitation. The number of narcotics addicts and victims of narcotics abuse who are suspects, defendants, or convicted persons in narcotics crimes continues to increase, while treatment and care efforts have not yet been carried out optimally and in an integrated manner. Furthermore, the explanation of Article 21 paragraph (4) letter b of Law Number 8 of 1981 on Criminal Procedure states that suspects or defendants who are narcotics addicts should, as far as possible, be detained in specific places that also function as treatment facilities. Based on this background, the author is interested in preparing a paper on rehabilitation as a criminal sanction in a legal article entitled: **The Principle of Justice in the Implementation of Rehabilitation Sanctions for Victims of Narcotics Abuse from the Perspective of Depenalization and Decriminalization as Human Rights Principles.**

Research Question

Based on the background outlined above, it is important to examine the following issue: **How is rehabilitative justice for victims of narcotics abuse viewed from the perspectives of decriminalization, depenalization, and the protection of human rights?**

Research Method

The type of research used in preparing this study is normative juridical (doctrinal) research, employing both a statutory approach and a conceptual approach. The legal materials used consist of primary and secondary legal materials. Primary legal materials include legislation and court decisions issued within the relevant jurisdiction. Secondary legal materials are those closely related to the primary legal materials and help in analyzing and

understanding them. These include scholarly writings and expert works in the form of literature that support, assist, and complement the discussion of issues arising in the preparation of this thesis. In addition, secondary legal materials are obtained from books, legal articles, law journals, scientific papers, and other relevant supporting data. The analysis of legal materials is conducted using a qualitative descriptive method.

Discussion

The Perspective of Rehabilitative Justice for Victims of Narcotics Abuse from the Viewpoint of Decriminalization, Depenalization, and Human Rights Protection

According to Gustav Radbruch², the purpose of law must contain three core values, as follows:

1. The principle of legal certainty (*rechtmatigheid*), which is viewed from a juridical perspective.
2. The principle of legal justice (*gerechtigheid*), which is viewed from a philosophical perspective, where justice means equal rights for all persons before the law.
3. The principle of legal utility or expediency (*zweckmatigheid* or *doelmatigheid* or utility).

Justice originates from the word “just,” meaning impartial, unbiased, siding with what is right, upholding truth, acting properly, and not arbitrarily. Essentially, justice is an attitude of treating a person in accordance with their rights. What constitutes the right of every person is to be recognized and treated in accordance with their human dignity and worth, with equal status, equal rights, and equal obligations, without discrimination based on ethnicity, descent, religion, or social group.

As stated by Dominikus Rato³, the issue of justice develops alongside evolution. The evolution of legal philosophy, as part of the broader evolution of philosophy, revolves around

² Dwika, *Keadilan dari Dimensi Sistem Hukum*, <http://hukum.kompasiana.com>. diakses pada tanggal 24 Juli 2017 pukul 21.08 WIB

³ Dominikus Rato, *Filsafat Hukum ; Mencari dan Memahami Hukum*, Laksbang Pressindo, Yogyakarta, 2010, hlm.58

recurring issues, namely justice, welfare, and truth. Among these, the most prominent issue in law is justice, because laws and regulations should be just, yet in practice they are often the opposite and even neglected. Law is always connected to justice, although empirically this is not always fully realized. Law without justice is like making gulai without meat: empty and meaningless. Conversely, justice without law is like crossing a river without a bridge: hesitant and unstable. Justice is a fundamental issue in law.

The relationship between justice and law is often equated with obedience to the law. However, this view is incorrect unless law is given a broad meaning. Otherwise, it fails to explain the fact that criticism of justice is not limited to the application of law in particular cases, but also frequently targets the law itself based on whether it is just or unjust. In both criminal and civil law, injustice is perceived when the distribution of burdens and benefits discriminates based on characteristics such as skin color or religious belief. For example, if murderers belonging to an established church were exempted from punishment, such law would be condemned in modern society as unjust.⁴

Judgments about the justice or injustice of law may encounter opposing views guided by different moralities. For instance, laws that exclude or deny children or persons of unsound mind the capacity to make contracts or wills are considered just, because they lack the capacity possessed by mentally sound adults. This form of discrimination is based on clearly relevant reasons. Laws are enacted for the common good, public security, peace, and justice. Therefore, legislators must formulate laws in line with morality and public happiness so that the people accept and obey them, encompassing the essence and force of justice.

The increasingly widespread problem of narcotics abuse necessitates more synergistic and effective efforts, referring to the 1988 United Nations Convention, which provides alternative sanctions to imprisonment for drug addicts, such as education, treatment, rehabilitation, post-rehabilitation care, and social reintegration. In line with this convention, the National Narcotics Agency (BNN) has formulated strategies through policies of

⁴ Lili Rasjidi, *Filsafat Hukum mazhab dan refleksinya*, 1994, Remaja Rosdakarya Offset, Bandung, hal 27

decriminalization and depenalization for narcotics abusers. These policies were introduced and launched starting in 2014 as the Year of Saving Narcotics Users.

The decriminalization and depenalization policies align with the direction of the President of the Republic of Indonesia, emphasizing that victims of narcotics abuse or addicts should be rehabilitated and guided toward a better life. This approach is more appropriate than placing addicts or victims in prison. The application of imprisonment for narcotics abuse victims has proven ineffective, as the number of such victims entering prison continues to increase each year.

Through this policy, it is hoped that victims of narcotics abuse who are currently “in hiding” will come forward without fear and voluntarily report themselves to the Compulsory Reporting Recipient Institutions (Institusi Penerima Wajib Lapori/IPWL) to receive treatment. This policy also aims to foster a shared understanding among the public and law enforcement that rehabilitative sentencing is the most appropriate and beneficial punishment for drug users, while supporting prison reform to reduce overcrowding and lower the prevalence of drug use.

Through these efforts, the media is expected to help change public paradigms. Changing a paradigm takes time, often between five and ten years, and in some countries even longer. The media can assist BNN in disseminating decriminalization and depenalization policies so the public understands their objectives and collectively helps address narcotics abuse.⁵

Media outreach is also expected to encourage victims who were previously afraid to report themselves due to the threat of imprisonment to understand that they are victims who deserve rehabilitation. The same applies to families who often conceal narcotics abuse within the household, encouraging them to report to IPWL so their family members can receive medical treatment.

Criminalization, decriminalization, and depenalization of narcotics users are processes. Criminalization is the process by which an act initially not considered a crime becomes criminal due to legal prohibition. Decriminalization is the process by which an act previously classified

⁵ <http://nrmnews.com/2014/04/30/dekriminalisasi-dan-depenalisasi-pengguna-narkoba-media-diharapkan-mampu-ubah-paradigma-masyarakat/> diakses tanggal 3 Mei 2024

as a crime is removed from criminal law, making it no longer a criminal offense. Depenalization removes criminal sanctions from a prohibited act while maintaining its unlawful character, with enforcement transferred to other legal systems such as civil or administrative law.

Depenalization reflects the awareness that criminal punishment is an *ultimum remedium*, a last resort. Non-criminal sanctions are applied first, with criminal sanctions reserved for emergency situations. Thus, criminal law functions as a form of emergency law (*noodrecht*) and should be applied only as a final measure.⁶

Efforts toward the decriminalization and depenalization of victims of narcotics abuse, particularly in terms of substantive aspects, constitute a highly important and strategic step. This means that the handling of victims of narcotics abuse must begin with policy formulation aimed at reforming criminal law. Such efforts are also essential to realize the ideals of the Indonesian nation, namely protecting the entire nation and all of Indonesia's territory, in order to achieve public welfare. According to M. Solly Lubis, protecting the entire nation and all of Indonesia's territory means providing protection through legal instruments and state authority, so that order or discipline exists within the country, ensuring moral and material, physical and mental welfare through the application of law.⁷

Regarding formulation policy in crime prevention, Barda Nawawi Arief states that, from a policy-oriented perspective, criminal law reform has the following meanings:

- a) As part of social policy, criminal law reform is essentially an effort to address social problems in order to achieve or support national goals, such as public welfare.
- b) As part of criminal policy, criminal law reform is fundamentally an effort to protect society, particularly through crime prevention.
- c) As part of law enforcement policy, criminal law reform is essentially an effort to renew *legal substance* in order to enhance the effectiveness of law enforcement.⁸

Criminal law enforcement aims to create peace in social life. Conceptually, according to Soerjono Soekanto, law enforcement is an activity that harmonizes relationships between

⁶ <http://kriminologi.blogspot.com/2013/10/proses-kriminalisasi-dekriminalisasi.html>

⁷ M. Solly Lubis, *Pembahasan UUD 45*, Bandung, Alumni, 1985, h.24

⁸ Barda Nawawi Arief, *op.cit.* 2008, h.26

values embodied in established legal norms and manifested in patterns of behavior, as the final stage of value realization, in order to create, maintain, and preserve social peace. According to him, law enforcement is influenced by the following factors:⁹

- a) The legal rules themselves
- b) Law enforcement officials, namely those who formulate and apply the law
- c) Facilities or infrastructure supporting law enforcement
- d) Society, namely the environment in which the law operates or is applied
- e) Culture, as the result of human creativity, intention, and emotion within social interaction

In relation to law enforcement, Barda Nawawi Arief argues that law enforcement means upholding the values of truth and justice.¹⁰ This implies that law enforcement officers are entrusted by society to uphold the values of truth and justice contained in the law. According to Barda Nawawi Arief, efforts to combat crime through criminal law are essentially part of law enforcement efforts, particularly criminal law enforcement. Therefore, criminal law policy is often regarded as part of law enforcement policy.¹¹

From a systemic perspective, criminal law policy at the formulation stage is strategic. As stated by Barda Nawawi Arief, the process of legislation or formulation of laws is essentially a process of law enforcement in abstracto. This legislative or formulation process constitutes a highly strategic initial stage of law enforcement “*in concreto*”. Consequently, errors or weaknesses at the legislative or formulation policy stage represent strategic errors that may hinder “*in concrete*” law enforcement efforts.¹²

In order to strengthen law enforcement and avoid such strategic weaknesses or errors, which are often triggered by the large number of weak legislative products, higher legal

⁹ Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, Jakarta, RadjaGrafindo Persada, 2004, h.3

¹⁰ *Ibid*, h.5

¹¹ Barda Nawawi Arief, *Masalah Penegakan Hukum Pidana dalam PenanggulanganKejahatan*, Jakarta, Kencana Prenada Media Group, 2008, h.23

¹² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*, Jakarta, Kencana, 2008, h.24

education institutions are expected to contribute ideas and solutions to improve the quality of lawmaking. All of these efforts are aimed at enhancing the quality of law enforcement, particularly in relation to narcotics crimes. The drafting of legislation or formulation is also part of upholding legal concepts that contain the values of justice, legal certainty, and utility. According to Satjipto Rahardjo, law essentially contains abstract ideas or concepts, including justice, certainty, and social utility. Therefore, when discussing law enforcement, one is fundamentally discussing the enforcement of these abstract ideas and concepts.¹³

Article 54 of Law Number 35 of 2009 on Narcotics divides rehabilitation into two forms:

- a) Medical rehabilitation, which is an integrated treatment process aimed at freeing addicts from narcotics dependence
- b) Social rehabilitation, which is an integrated recovery process, encompassing physical, mental, and social aspects, enabling former narcotics addicts to resume their social functions within society

Narcotics users are entitled to a rehabilitation verdict. Article 103 of Law Number 35 of 2009 on Narcotics states that a judge examining a case involving a narcotics addict may decide to order the individual to undergo treatment and or care. The period of treatment and or care shall be counted as serving a sentence.

The general explanation of Article 103 clarifies that the use of the term “decide” for narcotics addicts proven guilty of committing a narcotics offense means that the judge’s decision constitutes a sentence. Meanwhile, the use of the term “determine” for narcotics addicts who are not proven guilty indicates that the judge’s determination does not constitute a sentence.

Treatment and or care for narcotics addicts is carried out through rehabilitation facilities. The purpose of rehabilitation is to restore and or develop the physical, mental, and social capacities of narcotics users. Rehabilitation includes both medical and social rehabilitation.

¹³ Satjipto Rahardjo, *Penegakan Hukum, Suatu Tinjauan Sosiologis*, Yogyakarta, Genta Publishing, 2009, h.12

Accordingly, rehabilitation sentences may be prioritized as a means of addressing narcotics crimes, given the increasing number of victims of narcotics abuse. Imprisonment is not an effective solution, as narcotics can circulate within prisons. Rather than deterring offenders, drug distribution in prisons often deepens addiction. Rehabilitation sentences are expected to break the chain of dependence as a form of decriminalization or depenalization.

Law enforcement institutions and officials in Indonesia should begin to prioritize rehabilitation sentences for narcotics users. In narcotics cases, prosecutors often tend to pursue punitive charges. From a state perspective, imprisonment can be considered costly, given the financial burden of providing for inmates and the lack of adequate prison capacity. Almost all narcotics correctional facilities in Indonesia are overcrowded, leading to poor conditions, violence, and even the continued control of drug trafficking from within prisons.

In the author's view, Law Number 35 of 2009 on Narcotics primarily positions drug users as criminal offenders, along with their families and associates. Drug users differ from corruptors in that they commit offenses primarily against themselves. In principle, narcotics users should not be treated purely as criminals and therefore should not be sentenced to imprisonment, as many underlying factors contribute to their behavior. They are not only offenders but also victims. The law provides an alternative in the form of rehabilitation sentences in narcotics cases.

Amid the increasing trend of narcotics abuse in Indonesia, decriminalization and depenalization policies are believed to be viable solutions. Through these policies, victims of drug abuse are not only required to report to designated institutions but are also entitled to rehabilitation services. Experience in several countries shows that purely legal approaches have failed to produce the expected outcomes, as drug abuse and illicit trafficking continue to increase.

Addressing addiction to narcotics requires appropriate measures and policies to minimize its prevalence. Therefore, the implementation of decriminalization and depenalization policies must be maximized, especially since Law Number 35 of 2009 on Narcotics already provides the legal basis for both approaches.

Decriminalization and depenalization are believed to reduce the prevalence of drug abuse. To strengthen these policies, two key measures are needed: comprehensive assessment and strong synergy among all law enforcement agencies. In accordance with Article 13 paragraph (4) of Government Regulation Number 25 of 2011 on Mandatory Reporting for Narcotics Addicts, from the stages of investigation, prosecution, and trial, victims of drug abuse are entitled to rehabilitation based on assessment team recommendations. Both decriminalization and depenalization continue to regard drug abuse as unlawful, but law enforcement officers may exercise discretion so that victims receive rehabilitation sentences proportional to their level of dependence. Under depenalization, victims may be exempt from criminal prosecution if they voluntarily report to mandatory reporting institutions.

The number of narcotics users has nearly filled Indonesian prisons, creating high risks of conflict, particularly when inmates experience withdrawal symptoms. This issue cannot be addressed solely by the National Narcotics Agency, the police, the prosecutor's office, or the Ministry of Law and Human Rights. Therefore, decriminalization and depenalization policies are expected to provide an appropriate solution, particularly in strengthening law enforcement in Indonesia.

The National Narcotics Agency (BNN), as the leading institution in narcotics control, has adopted decriminalization and depenalization policies in line with Law Number 35 of 2009 on Narcotics, as stipulated in Article 127 paragraph (3), which mandates "*that proven victims of narcotics abuse must undergo medical and social rehabilitation.*" These policies reflect the recognition that narcotics users are victims and therefore have the right to rehabilitation.

Within the framework of positive law in Indonesia, these policies introduce a new perspective on law enforcement. Under the Criminal Code, narcotics users have traditionally been treated as criminal offenders. Narcotics crimes are unique, similar to gambling offenses, in that the perpetrator and victim may be the same person. Viewing narcotics users as victims did not arise suddenly but was influenced by the reality that imprisonment often fails to resolve the problem and may even worsen it.

Prisons are not suitable places for narcotics abuse victims, who primarily need therapy rather than incarceration. Correctional institutions are overwhelmed not only by overcapacity but also by the lack of appropriate rehabilitation facilities.

Based on a 2011 study conducted by the National Narcotics Agency (BNN) in collaboration with the University of Indonesia, the prevalence of narcotics abuse in Indonesia was approximately 2.2 percent, or about 3.8 million people. Of these, only around 0.47 percent had received therapy.¹⁴ Media reports frequently highlight arrests of narcotics users from various social backgrounds, including public figures. This situation is concerning, particularly as many of those involved are well-educated and professionally established. A dilemma arises when they face criminal sanctions: whether they should be rehabilitated or imprisoned.

The absence of criminal prosecution, both for drug abusers who voluntarily report themselves and for those who are undergoing rehabilitation in hospitals or other rehabilitation facilities, is guaranteed by Law Number 35 of 2009 concerning Narcotics, particularly Article 128 paragraph (3), which states: Narcotics addicts who are undergoing medical rehabilitation for a period of twice the duration of treatment in a hospital or a Government-designated Rehabilitation Institution shall not be subject to criminal prosecution. In addition, the obligation to report for drug abusers is also regulated as stipulated in Article 55 paragraphs (1), (2), and (3). Not only does the law impose an obligation to report oneself, but Law Number 35 of 2009 concerning Narcotics also requires those who have reported themselves, as well as those who are caught in the act and declared victims of drug abuse, to undergo medical rehabilitation and social rehabilitation, as clearly stipulated in Article 54.

Furthermore, for those who fall into the category of dealers and traffickers, Law Number 35 of 2009 concerning Narcotics clearly regulates this matter in its criminal provisions. Examples include Article 111 and Articles 112 through Article 126. In these articles, individuals who are proven to possess, distribute, or store narcotics are subject to the maximum criminal penalties. It can therefore be stated that the concepts of decriminalization and

¹⁴ <http://news.okezone.com/read/2014/09/13/54/1038582/dekriminalisasi-korban-penyalahgunaan-narkotika-antara-rehabilitasi-atau-penjara>, diakses tanggal 8 Juli 2023

depenalization already exist within Law Number 35 of 2009 concerning Narcotics, and are not concepts that emerged suddenly. There should be no controversy regarding their implementation. Likewise, law enforcement against traffickers and dealers has also been clearly regulated therein. Consequently, the concepts of rehabilitation and imprisonment for traffickers and dealers must operate in parallel and with equal strength.

Decriminalization of addicts should be implemented in accordance with Law Number 35 of 2009 on Narcotics, which regulates the handling of victims. The goal is to achieve shared objectives in narcotics prevention, establish cross-sectoral consensus, and build collective commitment to a model that addresses addiction through decriminalization and depenalization.

Efforts toward the decriminalization and depenalization of addicts should properly be implemented by referring to Law Number 35 of 2009 concerning Narcotics, which regulates the handling of victims of drug abuse. Therefore, in order to resolve issues related to the decriminalization and depenalization of victims of narcotics abuse, it is expected that a shared objective will be established in efforts toward P4GN, that the decriminalization of narcotics abusers will be implemented through a shared cross-sectoral understanding, and that a joint synergistic commitment will be realized to establish a model for addressing victims of drug abuse and addicts through the concepts of decriminalization and depenalization.

The decriminalization of addicts means that drug abusers remain subject to criminal sanctions, but the punishment imposed is not imprisonment, rather a rehabilitative measure. Under Article 103 of Law Number 35 of 2009 concerning Narcotics, a judge may render a decision ordering rehabilitation, with the duration of the criminal sentence corresponding to the length of the rehabilitation period. However, in practice, addicts are consistently charged under criminal provisions because the case files used are criminal in nature and constructed under criminal articles. In addition, there are no instruments capable of distinguishing between abusers and dealers, resulting in the application of the same law. As for depenalization, drug users who voluntarily report themselves to IPWL will not be subject to criminal prosecution, but will instead receive free medical and or social rehabilitation.

The policy of decriminalization and depenalization of drug users is a mandate of international conventions resulting from United Nations sessions on narcotics. Under these

conventions, drug users are given an alternative form of punishment in the form of rehabilitation, and participating states are requested to prepare human resources and facilities to rehabilitate drug users. The outcomes of these conventions were adopted into Law Number 35 of 2009 on Narcotics, particularly Article 103, which grants judges the authority to impose rehabilitation as a form of punishment. The period spent undergoing rehabilitation is counted as equivalent to serving a sentence. Therefore, rehabilitation constitutes a punishment or sanction for narcotics users.

The decriminalization of drug users is interpreted to mean that using narcotics for personal use remains an act punishable under criminal law (see Article 127 of Law Number 35 of 2009 on Narcotics). However, the sanction imposed is not imprisonment but rehabilitation.

The concept of decriminalization appears to challenge the established way of thinking, in which decriminalization is understood as the process of removing or eliminating criminal sanctions for an act that was previously classified as a criminal offense, thereby turning it into a non criminal act. In general, the concept of decriminalization does indeed remove criminal formulations and their sanctions. However, with regard to narcotics users, according to the definition of decriminalization of drug users issued by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), based in Lisbon, in 2005, “Decriminalisation” comprises removal of a conduct or activity from the sphere of law. Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of the criminal law. In short, decriminalization means that only non criminal sanctions are imposed, or that there are no criminal penalties.¹⁵

Meanwhile, decriminalization under our Narcotics Law grants judges the authority to choose between imposing imprisonment or ordering rehabilitation. Because it takes the form of an option, the National Narcotics Agency (BNN) encourages judges to choose rehabilitation as the sanction for drug users. Imposing rehabilitation is far better than sentencing users to prison. This approach must be actively upheld by judges, other law enforcement officers, and the

¹⁵ <http://www.bnn.go.id/portal/index.php/konten/detail/humas/berita/11754/dekriminalisasi-pengguna-narkoba-tidak-sama-dengan-legalisasi> diakses tanggal 13 Juli 2015

public, by ensuring that during investigation, prosecution, and court proceedings, the orientation is toward rehabilitation, without detention. It is also important to convince the public, so that there is no difference in perception between society and law enforcement. The decriminalization of drug users is a relatively new concept, aimed at reducing the prevalence of drug use through compulsory rehabilitation.

Voluntary rehabilitation is regulated through depenalization, which is understood to mean that the act of using narcotics remains an unlawful act. However, if a narcotics user fulfills the obligations stipulated by law, namely voluntarily reporting to a mandatory reporting institution, the user will not be subject to criminal prosecution. This is stipulated in Article 128 of Law Number 35 of 2009 on Narcotics. These two approaches, decriminalization and depenalization, are regulated by law with the aim of reducing the prevalence of drug use, but they have not yet been implemented optimally. For this reason, 2014 was declared the year of saving drug users. Drug users are better rehabilitated than imprisoned. They have already lost their present and their past, and their future should not be made even more bleak.

Which Should Be Prioritized, Decriminalization or Depenalization?,

In the author's view, depenalization should be prioritized because it is voluntary in nature. This means that drug users themselves want to recover, and what remains is to optimize the Mandatory Reporting Institutions, including hospitals and community health centers appointed by the Minister of Health, as well as those under the Ministry of Social Affairs, which currently number approximately 300 across Indonesia. This number can very likely increase, considering that Indonesia has more than 2,000 hospitals.

Indeed, we are in the process of changing our paradigm. This means we must work hard to prepare rehabilitation facilities that were previously not a top priority. We must also build integrated rehabilitation, meaning connecting medical rehabilitation under the Ministry of Health, social rehabilitation under the Ministry of Social Affairs, and post rehabilitation handled by the National Narcotics Agency. Preparing proper and adequate rehabilitation facilities for narcotics users or victims requires cooperation among all stakeholders, starting from planning by the National Development Planning Agency, budgetary support from the Ministry of Finance and the House of Representatives, implementation in the law enforcement

sector, rehabilitation by the Ministry of Health and the Ministry of Social Affairs, and prevention by the Ministry of Home Affairs, the Ministry of Education, the Ministry of Youth and Sports, the Ministry of Women's Empowerment and Child Protection, the Ministry of Trade, the Ministry of Communication and Information Technology, the Ministry of Defense, as well as other ministries and non ministerial institutions.

It must be emphasized once again that the policy of decriminalizing narcotics users means that the use of narcotics remains prohibited and may be subject to rehabilitation sanctions. Legalization, on the other hand, means that the use of narcotics is not a criminal offense and therefore cannot be punished.

Conclusion

Based on the results of the discussion, the conclusion obtained is as follows: victims of narcotics abuse, according to the elucidation to Article 54 of Law No. 35 of 2009, are people who unintentionally use Narcotics because they are persuaded, deceived/manipulated, tricked, forced, and/or threatened into using Narcotics. Thus, a victim of narcotics abuse must be proven to have no element of intent, due to coercive circumstances that compel them, whether they like it or not, to use Narcotics, or due to the person's lack of knowledge that what they used was narcotics. Viewed from their role in the occurrence of the crime, victims of narcotics abuse are included in the category of those who become victims because of themselves (*false victims*) and are included in the category of crimes without victims (*crime without victim*). In addition, other criteria that can be categorized as victims of Narcotics abuse according to the elucidation to Article 54 of Law No. 35 of 2009 are: (a) if the perpetrator, based on Law No. 35 of 2009, is not proven to be a dealer; and (2) if the perpetrator, based on Law No. 35 of 2009, is not proven to be a dealer as well as a user. The forms of protection for victims of narcotics abuse are: (1) medical rehabilitation, namely an integrated process of treatment activities to free an addict from narcotics dependence. (2) Medical rehabilitation is carried out in hospitals designated by the Minister; rehabilitation institutions may also conduct rehabilitation with consent/approval. Social rehabilitation is an integrated process of recovery activities, physically, mentally, and socially, so that former narcotics addicts can again carry out social functions in community life.

Social rehabilitation for former narcotics addicts is organized by the government as well as by the community. This social rehabilitation includes religious, traditional, and other alternative approaches, and emphasizes Humanistic Counseling.

References

- Adam Chazawi. 2001. Pelajaran Hukum Pidana Bagian 1: *Stelsel Pidana, Tindak Pidana, Teori- teori Pemidanaan dan Batas Berlakunya Hukum Pidana*. Jakarta: PT Raja Grafindo.
- Abidin, Andi Zainal. 2007. *Hukum Pidana I*. Jakarta: Sinar Grafika.
- Andi Hamzah, 2000. *Hukum Acara Pidana Indonesia*. Jakarta: PT Rineka Cipta.
- Andi Hamzah. 2004. *Asas-Asas Hukum Pidana*. Jakarta: PT Rineka Cipta.
- Bambang Waluyo. 2008. *Pidana dan Pemidanaan*, Jakarta: Sinar Grafika.
- Barda Nawawi Arief. 1982. *Kebijakan Legislasi Mengenai Penetapan Pidana Penjara Dalam Penanggulangan Kejahatan*. Bandung: Pioner Jaya.
- Fockema Andrea, 1983, *Kamus Istilah Hukum Belanda-Indonesia*, Jakarta: Binacipta.
- Harun M. Husein, 1994. *Surat Dakwaan/Teknik Penyusunan, Fungsi dan Permasalahannya*, Jakarta, Rineka Cipta.
- Hari Sasangka, 2003, *Narkotika dan Psicotropika*, Bandung, Mandar Maju.
- I Gede Widhiana Suarda, 2009. *Penghapus, Peringatan dan Pemberat Pidana*, Jember, UNEJ Press.
- J.E. Sahetapy. 1984, *Pisau Analisa Kriminologi*, Bandung, Armico.
- Kusno Adi. 2009, *Kebijakan Kriminal dalam Penanggulangan Tindak Pidana Narkotika*, Malang, UMM Press.
- Leden Marpaung, 1992, *Proses Penanganan Perkara Pidana Bagian Ke-2*, Jakarta, Sinar Grafika.
- Lilik Mulyadi, 2004. *Kapita Selekta Hukum Pidana Kriminologi dan Viktimologi*, Jakarta, Djambatan.
- Lilik Mulyadi, 2007, *Putusan Hakim dalam Hukum Acara Pidana (Teori, Praktik, Teknik Penyusunan dan Permasalahannya)*, Bandung, Citra Aditya Bakti.

M. Yahya Harahap, 2006, *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan*, Edisi Kedua, Cetakan Ke-8, Jakarta, Sinar Grafika.

Mahi M. Hikmat, 2002, *Narkoba Musuh Kita Bersama*, Bandung, PT Grafitri.

Muladi and Barda Nawawi Arief, 1984, *Teori-teori dan Kebijakan Dalam Pidana*, Bandung, Alumni.

Moeljatno, 1989, *Asas-Asas Hukum Pidana*, Jakarta, PT Rineka Cipta.

Ninik Suparni, 2007, *Eksistensi Pidana Denda Dalam Sistem Pidana Dan Pemidanaan*, Jakarta, Sinar Grafika.

Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group.

Ronny Hanitijo Soemitro, 1988, *Metode Penelitian Hukum dan Jurimetri*, Jakarta, Rineka Cipta.

Roeslan Saleh. 1987, *Stelsel Pidana Indonesia*, Jakarta, Bina Aksara.

Rusli Muhammad, 2006, *Potret Lembaga Peradilan Indonesia*, Jakarta, Raja Grafindo.

Siswanto S, 2012, *Politik Hukum dalam Undang-Undang Narkotika*, Jakarta, PT Rineka Cipta.

Sudarto, 1981, *Kapita Selekta Hukum Pidana*, Bandung, Alumni.

Wirjono Prodjodikoro, 2003, *Azas-Azas Hukum Pidana di Indonesia*, Bandung, Refika Aditama.

Journal Articles

Alfi Fahmi Adicahya, *Penanggulangan Tindak Pidana Narkotika dan Tantangannya*, Jurnal Hukum Universitas Muhammadiyah Malang, Malang, UMM Press, 2016

Anton Sudanto, *Penerapan Hukum Tindak Pidana Narkotika*, Jurnal Hukum Universitas 17 Agustus Jakarta, 2019

Dit Bimas Polri, *Penanggulangan Penyalahgunaan Bahaya Narkotika*, Jakarta, Dit Bimas Polri, 2000

Elrick Christovel Sanger, *Penegakan Hukum Terhadap Peredaran Narkoba Di Kalangan Generasi Muda*, Jurnal Lex Crimen, Vol. 2, No. 4, 2013

Ministry of Health of the Republic of Indonesia, "Gambaran Umum Penyalahgunaan Narkoba", *Jendela Data dan Informasi Kesehatan*, Semester I, 2014

Legislation and Regulations

Undang-Undang Republik Indonesia Nomor 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana.

Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

Peraturan Pemerintah Nomor 25 Tahun 2011 tentang Wajib Laport bagi Pecandu Narkotika.

Peraturan Bersama (11 March 2014) on the handling/placement of narcotics addicts and victims of narcotics abuse into rehabilitation institutions (joint regulation of the Supreme Court, relevant ministries, the Attorney General's Office, the National Police, and BNN).