

Reconstruction of Rehabilitation Regulations for Underaged Drug Addicts in Indonesia Based on Justice Value

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Abstract

The problem raised in this study is why the regulation of rehabilitation for children who use narcotics has not been based on the value of justice. To find answers to these problems, the study uses a sociological juridical research type where the method of qualitative analysis is used on the data obtained, and presented in the form of written words supported by quantitative and qualitative data to then draw an inductive conclusion. The Result Shows that According to Law Number 35 of 2009, there are two types of rehabilitation, namely medical rehabilitation and social rehabilitation. The judge's consideration in conducting trial examinations in narcotics cases committed by children is to impose narcotics crimes by rehabilitating the accused. The judge stated that in the Juvenile Criminal Justice System Act, children who have problems with the law are called Juvenile. The judge stated that even though in the indictment of the public prosecutor, however, the judge considered that in giving criminal penalties to narcotics users and child perpetrators, by taking into account the main principle for the child, namely the best interest of the child in imposing sanctions, it is very necessary to reconstruct the rehabilitation law for children as drug addicts fairly.

Keywords: Rehabilitation Regulation, Juvenile, Narcotics, Justice Value.

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INTRODUCTION

Narcotics dependence is a condition characterized by an urge to use narcotics continuously with increasing doses to produce the same effect and if the user is reduced and/or stopped suddenly, it will cause specific physical and psychological symptoms.

In the last two decades, the use and distribution of illegal narcotics throughout the world has shown a sharp increase and has plagued all nations and people of all religions, and has claimed many victims. Now no nation is free from drug abuse, and no province, city, or district is free from drug abuse and illicit trafficking.

Narcotics abuse is currently one of the cases that are troubling the community and its distribution is also increasingly spreading to young people and students as if they are no longer able to be eradicated even though the efforts of law enforcers have been at large. Narcotics dealers who get the proceeds from the sale of these illicit goods do not feel afraid of the threat

of punishment that has been regulated in the Anti-Narcotics Law. The death penalty that has been imposed on them as drug dealers and dealers seems to be a thing of the past and this is proven by a large number of narcotics trafficking in the country.

While the addict does not realize that in fact he has been blackmailed by the drug dealer who damages his personal and economic health of his family, without caring that he has entered the abyss of a very deep and difficult to treat. The momentary pleasures enjoyed by narcotics addicts have damaged the normal joints of life and can lead to mental damage so that in order to obtain these illicit goods, they no longer care about right or wrong methods, the important thing is that they can possess and consume these illicit goods. The impact of this dependence causes public unrest because addicts will commit various crimes in an effort to get some money to buy the narcotics they want.

On the other hand, in particular, efforts to eradicate Narcotics Abuse and Illicit Trafficking have not been carried out completely as referred to in Law

No. 35 of 2009 concerning Narcotics which has clearly regulated in certain articles regarding the different punishments that must be carried out against drug offenders in accordance with the provisions of Law No. with the role he performs as an abuser, addict, dealer or dealer of narcotics. Specifically for Narcotics Addicts or Abusers who have been dependent on the use to carry out Rehabilitation decisions as stated in Articles 4, 54, 55, 56, 103 and 127 and Article 128 of Law No. 35 of 2009 concerning Narcotics.

In Accordance with Law no. 35 of 2009 concerning Narcotics, it further expands the scope of possibilities or opportunities for narcotics addicts to get the opportunity to undergo the treatment process and/or treatment through rehabilitation facilities whose implementation is determined by law. This can be seen from the provisions regarding the authority of judges.

Several facts that have been collected in support of field findings are stated that 70% of narcotics addicts whose settlement is carried out through imprisonment, can still relapse to being abusers, namely addicts and dealers (Sugiharto, 2019). Indirectly increasing the ability of the addict's level of criminal intelligence which has increased to become a mouthpiece for the narcotics black market. Indirectly increasing the ability of the addict's level of criminal intelligence which has increased to become a mouthpiece for the narcotics black market.

Law is not synonymous with justice. The rule of law does not always bring about justice. In essence, there is no perfect law, in fact, there is injustice in the law that is officially enacted (*Gesetzliches Unrecht*) but on the contrary, there is also justice outside the law (*Uebergesetzliches Recht*). Justice can only be understood if it is positioned as a condition to be realized by law. Efforts to realize justice in the law are a dynamic process that takes a lot of time. This effort is often also dominated by the forces fighting within the general framework of the political order to actualize it (Gultom, 2008).

The abuse of narcotics and illegal drugs among the young generation today is increasing. The prevalence of deviations in the behavior of the younger generation can endanger the survival of this nation in the future. Because youth as a generation that is expected to become the nation's successor, are increasingly vulnerable to being devoured by addictive substances that destroy nerves. So that the young man can not think clearly. Students should always think clearly to face the globalization of technology and globalization which has a direct impact on families and youth who are the nation's successors in particular. Therefore, the regulation of rehabilitation for underage drug addicts needs more attention.

Based on the background of the problem above, this research contains the following 2 (two) problem formulations, namely:

1. What are the weaknesses of the current regulation of rehabilitation for Underaged Drug Addicts in Indonesia?
2. How to reconstruct the rehabilitation regulations for Underaged Drug Addicts in Indonesia 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. Weaknesses of the Current Regulation of Rehabilitation for Underaged Drug Addicts In Indonesia

The form of protection for victims and perpetrators of narcotics crime in Indonesia is regulated

in Law Number 35 of 2009 which it is stated there that there are 2 (two) forms of protection, namely treatment, and rehabilitation of victims and perpetrators. In Article 53 paragraph (3) above, what is meant by "*valid evidence*" includes, among others, a doctor's certificate, a copy of a prescription, or a label/etiquette. Details regarding treatment are specified in Article 53 which is formulated as follows:

- 1) For the purpose of treatment and based on medical indications, doctors may give Narcotics Group II or Group III in limited quantities and certain preparations to patients in accordance with the provisions of the legislation.
- 2) The patient as referred to in paragraph (1) may possess, store, and/or bring Narcotics for himself.
- 3) The patient as referred to in paragraph (2) must have valid evidence that the Narcotics owned, stored, and/or brought for use were obtained legally in accordance with the provisions of the legislation.

Regarding the rehabilitation of victims and perpetrators of criminal acts, the crime of drug abuse is an obligation of the government and community agencies, as stipulated in Article 54, that "*narcotics addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation*". In Article 56 it is also formulated that:

1. Medical rehabilitation for Narcotics Addicts is carried out at a hospital appointed by the Minister.
2. Certain rehabilitation institutions organized by government agencies or the public may carry out medical rehabilitation for Narcotics Addicts after obtaining approval from the Minister.

This is reaffirmed in Article 57 that apart from medical treatment and/or rehabilitation, the healing of Narcotics Addicts can be carried out by government agencies or the community through religious and traditional approaches. One of the duties and authorities of the National Narcotics Agency is to increase the capacity of medical rehabilitation and social rehabilitation institutions for Narcotics addicts, both organized by the government and the community.

Treatment and care for narcotics addicts are carried out through rehabilitation facilities. Medical and social rehabilitation provided to addicts is intended to restore and develop their physical, mental, and social abilities. In addition to treatment and care through medical rehabilitation, the healing process for narcotics addicts can be carried out by the community through religious and traditional approaches.

The provision of protection to narcotics victims, of course, cannot be fully borne by the government, community participation is also expected, one of which is the acceptance of former users in their environment without taking discriminatory actions even by positioning them as second-class citizens who must be shunned.

The form of protection provided to perpetrators and victims of narcotics abuse is in the form of rehabilitation. Rehabilitation is an effort to restore mental and physical health aimed at narcotics users with the aim that the perpetrator does not use it again and is free from co-morbidities caused by former narcotics use.

Regarding small children who are still relatively young, according to Roeslan Saleh (1983), in certain circumstances to be considered incapable of being responsible must be based on Article 44 of the Criminal Code, so it is the same as adults. that's not allowed. Thus, the child who commits a criminal act, according to Roeslan Saleh, has no fault because he does not actually understand or has not realized the meaning of the act he did. Children have special psychological characteristics and characteristics, namely, they do not yet have a perfect inner function. So, he was not punished because he did not have intentional or negligence. Because, according to Roeslan Saleh, he did not have one element of guilt, therefore he was considered innocent, in accordance with the principle of not being punished, there was no guilt, so this child who is not old enough is not punished.

It is not enough for a person to be convicted of an act that is only against the law (Unlawful Act). So even though the act fulfills the formulation of the offense in the law and is not justified, it does not meet the requirements for imposing a crime. For this reason, punishment still needs conditions, namely that the person who commits the act has guilt or guilt (subjective guilt). Here applies what is called "*no crime without guilt*".

Philosophically, the formation of the Narcotics Law by including large and high sanctions in the criminal provisions of Law Number 35 of 2009 concerning Narcotics is to show that there is a meaning to protect victims from narcotics abuse crimes so that victims who have been convicted will be afraid to repeat the crime again (Widjaya, 1985). This automatically makes the perpetrators or victims to be protected because one of the objectives of criminal sanctions on victims of narcotics as self-victimizing victims is to protect themselves by creating fear and a deterrent effect on the individual.

The provisions regarding sanctions in Law Number 35 of 2009 concerning Narcotics are very high. The criminal sanction is at least 4 (four) years in prison up to 20 (twenty) years in prison and even the death penalty if the convict is proven to produce Narcotics Category I is more than 1 (one) or 5 (five) kilograms illegally, not to mention the fines stated in the Narcotics Law that can range from Rp. 1,000,000.00 (one million rupiahs) to Rp. 10,000,000.00 (ten billion rupiahs) as

stated in Chapter XV starting from Article 111 to Article 148.

With regard to the implementation of criminal law, the victim is always the most disadvantaged party. Whereas in addition to victims who have suffered losses due to the crime that befell them, both materially, physically, and psychologically, victims also have to suffer double suffering because without realizing it is often treated only as a means of law enforcement for the realization of legal certainty, for example, must re-state, remember, even repeat (reconstruct) the crimes that have happened to him while undergoing the examination process both at the investigation level and after the case has been transferred to the court (Widjaja, 2020). Although not infrequently, victim witnesses due to limited knowledge are shouted at or cursed by law enforcement officers in reporting their crimes. This means that when they lose their property due to a criminal act of theft, police officers are even asked for more money on the grounds of transportation costs, investigations, arrests, and so on. As a result, many people do not want to report the crime that happened to them. So do not be surprised if often when a crime arises in the community, it is judged by certain people themselves.

Other concrete evidence in legal protection is very unequal when compared to the treatment of criminals, for example, since the beginning of the inspection process their rights are protected, criminals have the right to obtain legal assistance for those suspected of committing certain crimes, for example, to crimes punishable by more than five years imprisonment, the State will provide legal counsel for him free of charge, receive good treatment, be kept away from torture, be notified of the crime he is suspected of, the right to receive a humane punishment, even the right to ask for compensation when there is an error in the criminal case process, in short, all the rights and attributes attached to the perpetrators of criminal acts as humans are packaged in the Criminal Procedure Code. Furthermore, the suspect who will be arrested must be accompanied by a warrant and if it does not meet these provisions, the suspect can ask for a pre-trial. Likewise with legal action in the form of detention. In addition, there are many legal theories that discuss how to protect the perpetrators, the rights of a suspect, defendant, and so on so as to make the perpetrators of crimes more honorable and conversely make the victims more humiliated. Jeremy Bentham, in Dikdik (2006) with the theory of utilitarianism (benefit), which in this theory suggests that the purpose of punishment is to provide benefits so that a person does not repeat his actions and the community does not commit a crime.

Meanwhile, victims of crime are often threatened with intervention from certain parties who do not want their case to be brought to trial. Even in

cases involving strong people, these victims are often threatened with death. There are those who are ostracized from the community when they report their alleged criminal acts because the perpetrators are people who have influence in society.

Police, Prosecutors, and Judges have been considered representatives of the victims of crimes who are dealing directly with the perpetrators of the crime. This is very ironic considering the importance of protecting the victims as well as the perpetrators of the crime. What has been done by the Public Prosecutor as a representative of the State in prosecuting criminals is considered sufficient in solving the problem of crime. There is a tendency of neglect from the State towards the care of victims of crime. For example, the victim of a crime of rape. How great was the trauma experienced by the victims of the crime that, let alone reconstruction, just hearing the story of the rape they screamed (Dewi, 2021). After the verdict was read in court, they were left alone to go home with heavy trauma and under the shadow of ridicule and gossip from the surrounding community.

The definition of protection according to article 1 point 6 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/ or victims that must be carried out by the Witness and Victim Protection Agency or other institutions in accordance with the provisions this law. While the victim is someone who has suffered physical, mental and/ or economic loss caused by a criminal act, The criminal justice system in Indonesia also gives the impression of the alienation of the victim as it can be seen that there is still a lack of discussion of the victim, the criminal law regulations also do not fully regulate the victim and their rights, as the aggrieved party and so on. At a glance, the regulation of crime victims in positive law according to SPP Indonesia includes the provisions of Article. 14 c paragraph (1) of the Criminal Code (KUHP), which reads in full as follows:

"In the order referred to in Article 14 a, except in the case of a fine being imposed, then together with the general condition that the person convicted of the crime, the judge may make special conditions that the person convicted will compensate for the losses incurred due to the crime, all of which or part of it, which will be determined on the order stipulated therein, which is less than the probationary period."

The provisions as mentioned above imply that there is abstract or indirect protection provided by the law as a formulaic policy for victims of crime. This protection includes the sentencing by judges by setting general conditions and special conditions in the form of being determined by the convict to compensate for the losses caused to the victim. However, it turns out that this aspect is abstract or indirect protection because the

nature of the special requirement in the form of compensation is facultative, depending on the judge's judgment. Therefore, based on the principle of balance between individuals and society (Monodualistic Principle), the protection of victims of crime in the Criminal Code (KUHP) should be imperative.

3. Reconstruction of the Rehabilitation Regulations for Underaged Drug Addicts in Indonesia Based On the Value of Justice

In the Indonesian criminal law system, especially the narcotics law, whether distributing, selling, carrying, storing, or consuming without permission from the authorities or illegally is included in the category of perpetrators of law violators. These categories have been regulated in Law No. 35 of 2009 concerning Narcotics. In Law No. 35 of 2009 concerning Narcotics, where the perpetrators are categorized into two groups, namely as "*distributors*" and "*users*". In Law No. 35 of 2009 concerning Narcotics, the definition of "*narcotics dealer*" is not explicitly explained. However, it is implicit and narrow that a dealer can be said to be a person who carries out the distribution and delivery of narcotics. However, broadly, the definition of a narcotics dealer includes the dimensions of selling, buying, and distributing narcotics, and includes storing, controlling, providing, exporting, and importing narcotics.

This is stated in the provisions of Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, and 125 of Law No. 35 of 2009 concerning Narcotics. While the designation in the category of narcotics users is people who use substances or drugs derived from plants, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of pain, and can cause dependence, which are distinguished into groups as attached in Article 116, 121, 126, 127, 128, and 134 in Law No. 35 of 2009 concerning Narcotics.

In practice, drug addicts are "*self victimizing victims*", namely those who become victims because of their own crimes. Because narcotics addicts suffer from dependence syndrome as a result of their own drug abuse. However, the addict is expected to get protection so that he can get better.

The implementation of rehabilitation for drug addicts as a substitute for punitive sanctions that are confinement in prison 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 wrongdoing someone has done through the imposition of suffering so that the person concerned becomes a deterrent. Meanwhile, the focus of action sanctions is more focused on efforts to provide assistance to the perpetrator so that he changes.

The guarantee of legal protection 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 addicts are obliged to undergo medical rehabilitation and social rehabilitation*".

With the government's policy of mandatory reporting, it is hoped that 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 Recipient institutions are that are required to report (IPWL) (Huansuriya, 2013). Thus, with the implementation of the government's criminal policy or program, it is hoped that there will be fewer addicts who are decided by the court. This indication can be seen from the handling of drug addicts in the field, including:

First, correctional institutions (Lapas) in Indonesia are inhabited by many drug offenders. Indeed, the condition of many prison residents due to drugs needs to be classified between addicts, couriers, dealers, or drug dealers. However, by taking a look at the regulations related to drugs, as according to Law No. 35 of 2009 concerning Narcotics, drug addicts should get rehabilitation instead of being held in prison for long.

Second, another visible indication of the government's inconsistency in the implementation of Law No. 35 of 2009 concerning Narcotics is the estimated unequal or comparable number of IPWL in various regions with the number of narcotic addicts. Whereas drug addicts are almost evenly distributed throughout the region.

Third, the implementation of decriminalization in the form of drug addicts getting rehabilitation, both medical and social rehabilitation, is still not fully understood by the public, especially people who are not aware, or literate of the law. This encourages fear and worries for those who report. Because in the opinion of the community dealing with the law is very time-consuming and complicated and requires its own expertise.

Fourth, drug addicts or being involved in drugs are still considered disgraceful or disgraceful by most people. Fifth, public access to law centers or offices has not been evenly distributed. This means that access to the police station or IPWL agency is not as easy as access in urban areas or big cities, which is 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.

CONCLUSION

Based on the discussion described above, several things can be concluded as follows:

1. The Weaknesses in the regulation of rehabilitation for underaged drug addicts based on the 3 elements of law theory by Friedman can be seen from the legal substance, namely related to existing regulations, norms and rules regarding human behavior, or what people usually know as "laws", weaknesses from aspects of the legal structure that including the structure of law enforcement institutions such as the police, prosecutors and courts that will provide legal protection can also raise questions which then doubt the existence of the law. law) to the law and the legal system. No matter how well the arrangement of the legal structure to carry out the stipulated legal rules and no matter how good the quality of the legal substance that is made without the support of a legal culture by the people involved in the system and society, law enforcement will not run effectively.
2. Reconstruction of rehabilitation regulations for underaged drug addicts based on the values of justice contained in Law Number 35 of 2009 concerning Narcotics and Law No. 5 of 1997 concerning Psychotropics, can be carried out for the implementation of punishment/ determination of rehabilitation for addicts and victims of Narcotics Abuse because it does not explicitly mention the decriminalization of Narcotics abusers, but the nuances of decriminalization Narcotics abusers are very thick in the construction of legal policies and state law politics as stated in a number of articles of Law Number 35 of 2009. Reconstruction of rehabilitation includes medical rehabilitation and or social rehabilitation that is adapted to the patient's psychological condition. In determining the status of a suspect/defendant as a victim or a narcotics abuser/addict, it is determined through the court, with a recommendation from the Integrated Assessment Team (TAT). Articles 37-39

and 41 where they must receive therapy and rehabilitation.

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