

Judge's Ruling in Providing Rehabilitation against Narcotics Abusers for Themselves

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Abstract

In principle, the Narcotics Law provides a legal loophole for law enforcers, especially judges, in imposing criminal sanctions, not only prison, but can also provide sanctions in the form of rehabilitation. This is in accordance with the provisions of Articles 126 and 127 of the Narcotics Law that those who abuse narcotics themselves can be given rehabilitation sanctions, both medical and social rehabilitation. The fact is that currently, when deciding narcotics cases against self-abusers, judges do not use Article 127, so many perpetrators are given prison sentences. In providing rehabilitation sanctions, it cannot be separated from the assessment carried out by the Integrated Assessment Team (TAT), however, to carry out this assessment requires quite large costs which must be paid by the state and some are also paid by the perpetrator. Thus, synergy must be built between the institutions involved in implementing rehabilitation, namely APH, the Health Service and the Social Service in ensuring the implementation of rehabilitation. So there must be a judge's decision which is used as jurisprudence against narcotics abusers who themselves must carry out social rehabilitation and medical rehabilitation.

Keywords: Rehabilitation, Narcotics, Abusers, Self.

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A. INTRODUCTION

In line with the ongoing eradication efforts, BNN also continues to make efforts to prevent and recover addicts and abusers from their dependence on narcotics. BNN provides a Rehabilitation Center as a medium in the healing and recovery process for drug addicts and abusers.

Based on data in 2015, BNN together with government agency rehabilitation institutions and community components have implemented rehabilitation programs for 38,427 addicts, drug abusers and victims of narcotics abuse throughout Indonesia, 1,593 people were rehabilitated through the Rehabilitation Center managed by BNN, both are in Lido-Bogor, Baddoka-Makassar, Tanah Merah-Samarinda, and Batam-Riau Islands. This figure has increased from the previous year when only 1,123 people were rehabilitated to 1,593 people [1].

This policy to prioritize rehabilitation efforts is in line with efforts to reduce overcapacity in correctional

institutions. This is based on the fact that the more prison sanctions given, the greater the number of narcotics perpetrators in community institutions. Therefore, it is necessary to emphasize the judge's decision which prioritizes providing rehabilitation sanctions for self-narcotics abusers.

Rehabilitation is restoration (improvement, recovery) to normality, or recovery to the most satisfactory status for individuals who have suffered from a mental illness. In the counseling dictionary, rehabilitation is a process or program of mental health assignment or lost abilities that is designed to correct the results of emotional problems and restore lost abilities [2]. From this definition of rehabilitation, rehabilitation efforts are a process of a series of activities carried out in stages, continuously and continuously according to needs. The final result of all rehabilitation activities is to restore the ability to carry out social functions properly and appropriately in social life.

¹ National Narcotics Agency, End of 2015 Press Release.

² Sudarsono, "Counseling Dictionary", Jakarta: PT Rineka Cipta, 1997, p. 203.

Rehabilitation provisions for self-narcotics abusers are based on treatment theory and social defense theory. Rehabilitation of narcotics addicts adheres to the treatment theory because rehabilitation of narcotics addicts is a process of integrated treatment activities to free narcotics abusers themselves from dependence. Treatment as the aim of punishment is appropriate to be directed at the perpetrator of the crime, not at his actions. The punishment intended in this school is to provide treatment and rehabilitation to criminals as a substitute for punishment. Criminals are sick people who need treatment and rehabilitation [3].

The implementation of rehabilitation sanctions must of course be based on a judge's decision which is *inkrah*, meaning that rehabilitation can be carried out when the judge has decided that rehabilitation will be carried out. Therefore, in making considerations to decide on rehabilitation, both medical and social, the judge must consider various things that will be taken into consideration, one of which is the assessment carried out by the medical team.

In deciding cases involving narcotics abusers, judges must of course pay attention to the provisions contained in Article 127 of the Narcotics Law, which in principle means that Article 127 means that in deciding a case a judge must not only impose a prison sanction but also use other sanctions, namely medical and social rehabilitation. Because in practice there are still many judge's decisions that are not in line with the provisions of Article 127 of the Narcotics Law, so that there are still many individual narcotics abusers who are given prison sanctions.

B. METHOD

The method in this research uses normative juridical and empirical juridical research. Normative juridical research based on documents, statutory regulations, judge's decisions, and so on related to the research problem. Empirical juridical research because the object studied is in the field and the function of empirical research is to analyze law which is seen as patterned community behavior in people's lives which always interact and relate in social aspects [4]. Therefore, this research is hereinafter referred to as sociological legal research (*socio legal research*) [5]. This research aims to describe the reality that corresponds to the phenomenon in detail and completely, as well as collecting data from natural settings by utilizing research as a key instrument to explore the problems to be studied.

³ Sudarsono, "Counseling Dictionary", Jakarta: PT Rineka Cipta, 1997, p. 203

⁴ Bambang Sunggono, *Legal Research*, Jakarta: PT Raja Grafindo Persada, 2003, p. 43.

⁵ Soerjono Soekanto stated that there are two types of legal research in terms of research objectives, namely normative legal research and sociological or empirical

C. DISCUSSIONS

In handling narcotics crime cases, it is carried out by all courts in Indonesia in accordance with the provisions of applicable laws and regulations [6]. In carrying out the mandate contained in the law, every court must be able to conduct trials in accordance with the provisions without having to differentiate between individuals or groups in conflict with the law. One of the courts in Indonesia which has the authority to decide cases is the Tanjungkarang Lampung High Court, whose jurisdiction includes several District Courts, namely Tanjungkarang District Court, Metro District Court, Kalianda District Court, Menggala District Court, Tanggamus District Court, Kotabumi District Court, Sukadana District Court, Blambangan Umpu District Court, Liwa District Court, Gunung Sugih District Court, and Gedong Tataan District Court.

The Tanjungkarang High Court was formed based on Law Number 9 of 1980 concerning the Establishment of the Tanjungkarang High Court and Changes in the Legal Area of the Palembang High Court. The jurisdiction of the Tanjungkarang High Court covers 11 (eleven) District Courts in Lampung Province. Cases of narcotics abuse in Lampung Province have increased, namely in 2019 there were 1089 cases, increasing to 2213 in 2020, but the implementation of rehabilitation has decreased.

Based on the results of research and the sum of 11 (eleven) District Courts in Lampung Province. Based on this data, it is clear that the government's aim regarding the substance of Article 127 paragraph (3) which requires every perpetrator or victim who abuses drugs to be rehabilitated medically and socially has not been implemented. This is due to several reasons, namely the inconsistency of criminal threats in Article 127 of the Narcotics Law, the formulation of Article 127 of the Narcotics Law which is problematic in its implementation, the detention of perpetrators who abuse narcotics themselves in prison/prison during the judicial process, and the absence of guidelines. and the aim of punishing those who abuse narcotics for themselves in the Narcotics Law.

Narcotics abusers who periodically use narcotics are called self-abusers who are potentially in a state of narcotics dependence. These abusers can be in the light category, moderate category or heavy category.

If a drug abuser who periodically uses narcotics is asked for a post mortem et repertum / assessment from

legal research. See Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press), p.51.

⁶ Yunalidi, *Implementation of Diversion for Children Perpetrating Traffic Crimes at the Investigation Level*, thesis, Masters (S2) in Legal Sciences, Sultan Agung Islamic University Semarang, 2016, p. 5.

the appointed doctor/team and is declared to be in a state of dependence then he is called an addict (abuser and in a state of dependence). Categorized as light, moderate or heavy addicts depending on the frequency and type of narcotics used. If these addicts are caught and brought to court they are legally obliged to undergo rehabilitation (Article 54).

Article 127 Paragraph (2) of the Narcotics Law means that judges are obliged to pay attention to the elements in Article 54, Article 55 and Article 103 of the Narcotics Law in deciding cases of narcotics abuse, where Article 54 itself explains that narcotics addicts and narcotics abusers are obliged to undergo medical rehabilitation and social rehabilitation. Article 55 contains an explanation that parents/guardians of narcotics abusers who are minors are required to report to health centers and rehabilitation institutions, whereas if the abuser is old enough then they are required to report themselves or be represented by their family to health centers and rehabilitation institutions [7].

Article 103 itself briefly explains that the judge can decide to order narcotics abusers who are proven guilty to undergo rehabilitation and can order narcotics abusers who are not proven guilty to undergo treatment through rehabilitation. From these provisions it can be concluded that the important points contained in these three articles are mandatory for judges to pay attention to when handling narcotics cases so that the implementation of the Narcotics Law can be applied appropriately and correctly [8].

In Article 127 Paragraph (3) of the Narcotics Law it is explained again firmly and clearly that in the event that a person who abuses narcotics for himself as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and rehabilitation. social, so that rehabilitation of narcotics abusers for themselves is mandatory. One of the factors is that there are different interpretations between law enforcers or implementation that is not in accordance with the Narcotics Law because the law on narcotics does not yet regulate the grammage, quantity or weight of narcotics found in the hands of users as evidence, so it often becomes a problem for the authorities. law enforcers to determine whether the person can be designated from the start as an abuser, addict or user who must be prosecuted or not, as well as in determining the severity of the punishment.

In current judicial practice, when judging cases involving narcotics abusers, their sentences are not only based on the provisions of the relevant article, namely Article 127 of the Narcotics Law, but are also guided by

the Circular of the Supreme Court of the Republic of Indonesia (SEMA RI), including SEMA RI No. 4 of 2010 concerning the placement of Victims of Narcotics Abuse and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions, SEMA RI No. 3 of 2011 concerning the Placement of Narcotics Abuse Victims in Medical Rehabilitation and Social Rehabilitation Institutions, and SEMA RI No. 3 of 2015 Concerning the Implementation of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court.

The formulation of the results of the 2015 Supreme Court plenary meeting in the criminal chamber regarding narcotics is as follows: The judge examines and decides the case must be based on the indictment of the Public Prosecutor (Article 182 paragraphs 3 and 4 of the Criminal Procedure Code), the Prosecutor charges under Article 111 or Article 112 Law Number 35 of 2009 concerning Narcotics, but based on the legal facts revealed at the trial it was proven that Article 127 of Law Number 35 of 2009 concerning Narcotics, in which this article was not charged, the defendant was proven to be a user and the amount was relatively small (SEMA No.4 of 2010), then the judge decides according to the indictment but can deviate from the special minimum criminal provisions by making sufficient considerations.

The purpose of the formulation of the results of the plenary meeting of the criminal chamber regarding narcotics above is that in the event that the defendant who abuses narcotics is not charged with the Article for abusing narcotics for himself, but based on the facts revealed at the trial, he is proven to be a narcotics abuser for himself, then to the defendant The defendant is still punished based on the articles of the indictment, but the sentence can deviate from or be below the minimum provisions of the articles in the indictment, for example being charged under Article 112 where the minimum penalty is imprisonment for 4 (four) years, then based on the results of the plenary meeting of the chamber the defendant can be sentenced imprisonment for less than 4 (four) years, but the verdict is still found guilty of violating Article 112.

There is no regulation regarding the objectives and guidelines for punishment, especially the punishment of those who abuse narcotics for themselves in the Narcotics Law, and are only guided by several SEMA of the Republic of Indonesia above, the judge who hears and decides cases of those who abuse narcotics for themselves, the punishment varies greatly according to subjective and objective considerations respectively, so that as a result there are often disparities

⁷Adi Sujatno, Enlightenment Behind Prison From Cage To Studio Towards Independent Man, Teraju, Jakarta, 2008, p. 85

⁸ Sri Endah Wahyuningsih, Principles of Criminal Individualization in Islamic Criminal Law and Reform of Indonesian Criminal Law, Diponegoro University Publishing Agency, Semarang, 2013, p.82

in decisions. The further impact of this disparity in decisions is that the decisions handed down do not fulfill a sense of justice and do not provide legal certainty.

The disparity in judges' decisions regarding those who abuse narcotics for themselves can be seen and known from the research results contained in the table below:

Table: Decisions of the High Court and District Courts throughout Lampung Province in Cases of Self-Using Narcotics, 2018 to 2022

No	No. Decision Year and Court Name	Article of Indictment	Actor's Role	Evidence	Urine Test Results	Assessment Results	Penalty
1	117/PID/2018 /PT Tjk	Article 127 paragraph (1) letter a	User/ Abuse	Suction device	Positive	There isn't any	Strengthens Pn T. Karang's decision. 2 years imprisonment
2	3/PID/2019/ PT Tjk	Article 127 paragraph (1) letter a	User/ Abuse	0,458g	Positive	There isn't any	Prison 4 Year
3	190/Pid/ 2020/PT Tjk	Article 127 paragraph (1) letter a	User/ Abuse	0,1004g	Positive	There isn't any	Prison 1 Year
4	338/Pid.Sus/ 2021/PN Kla (Kalianda 2021)	Article 127 paragraph (1) letter a	User/ Abuse	0,0495g	Positive	There is	Prison 2 Year 6 Months
5	176/Pid.Sus/ 2022/PN Kla (Kalianda 2022)	Article 127 paragraph (1) letter a	User/ Abuse	0,0431g	Positive	There is	Prison 1 Year 8 Months

Source: Judge's decision at the Lampung Province High Court, processed

Based on the table above, it can be seen that the judge's decision regarding Article 127 has very big consequences in that the rehabilitation sanctions are not implemented. Based on the five examples of decisions above, when the abuser is proven to have committed the abuse for himself, the judge must implement the provisions of Article 127 to apply sanctions for medical rehabilitation and social rehabilitation. Furthermore, it can be seen that in the judge's consideration there is evidence from the assessment issued by the TAT which is also not taken into consideration by the judge in deciding cases of narcotics abusers.

In principle, from various judges' decisions regarding self-abusers of narcotics, many do not use assessments, this is because the costs incurred by the abusers are very large, even though in the provisions the assessment costs are the responsibility of the state. The state's responsibility cannot be fully carried out because there are many cases of self-narcotics abusers who should be given medical and social rehabilitation without having to undergo an assessment.

This assessment aims to ensure that those who are classified as abusers can undergo rehabilitation rather than receive criminal sanctions, so that based on these joint regulations an Integrated Assessment Team is formed which is located at the central level, provincial level, district/city level consisting of a team of doctors and a legal team. who is tasked with carrying out role analysis of suspects arrested at the request of investigators related to the illicit trafficking of narcotics, especially addicts. The team then carries out legal

analysis, medical analysis and psychosocial analysis and creates a rehabilitation plan which includes how long rehabilitation is needed.

The integrated assessment mechanism is important to analyze, guided by *Ius Constitutum*, *Ius Operatum* and *Ius Constituendum*. Judging from the formulation stage, application stage and execution stage, in terms of the involvement of law enforcement officials, including investigators, public prosecutors, judges, in the integrated assessment mechanism, it is a challenge in itself to resolve problems that arise therein due to cross-agency matters, both in terms of technical regulations and their implementation. An integrated assessment mechanism that combines the results of analysis between the medical team and the legal team to determine whether suspects in narcotics crimes are categorized as narcotics abusers or narcotics dealers, has an important role, especially as a screening process for categorizing the status of narcotics abusers and/or narcotics dealers, so that they can be analyzed. as part of the criminal law policy process through in-depth analysis. Likewise, looking at the position of a suspect/defendant who abuses narcotics as a sick person or as a perpetrator of a criminal act by including a rehabilitation process during the trial can be a consideration for the judge to decide the case with imprisonment or rehabilitation.

It is hoped that the integrated assessment mechanism that was born from concerns regarding handling narcotics abusers can be the main gateway for development in the field of law that is more humane in the form of law enforcement against narcotics abusers in

the future. The assessment of narcotics abusers can begin at the investigation stage. Investigations into narcotics crime cases can be carried out by investigators from BNN or police agencies. Both BNN investigators and police investigators have the same authority in the legal process [9].

The Integrated Assessment Team carries out two analytical methods in implementing assessments for narcotics abusers. First, screening using certain instruments, such as medical tests using laboratory instruments related to narcotics. The aim is to obtain information about risk factors and further problems related to the suspect's use of narcotics. Meanwhile, to obtain a clinical picture and problems that have been in-depth, a clinical assessment is carried out, which aims to create communication and therapeutic interaction, develop a diagnosis regarding involvement with narcotics, and provide feedback from the suspect to the Integrated Assessment Team.

In order to reduce the disparity in decisions due to the absence of regulation regarding the objectives and guidelines for punishment of self-abusing narcotics in the Narcotics Law and to achieve a greater sense of justice and legal certainty, in the author's opinion it is necessary to reconstruct the Narcotics Law by adding an article that regulates aims and guidelines for criminalization of self-abusing narcotics.

Rehabilitation cannot be implemented if there is no unanimous judge's decision, which states that in narcotics cases, especially for self-narcotics abusers, rehabilitation is mandatory. This will be a step in making other law enforcers aware that especially for self-narcotics abusers, rehabilitation sanctions must be applied in accordance with the provisions of Article 127 of the Narcotics Law.

D. CONCLUSIONS

Based on the results of the research above, it can be concluded that judges in deciding cases against drug abusers themselves still use prison sanctions. This is because the judge, in deciding cases involving narcotics abusers, did not apply the provisions of Article 127 of the Narcotics Law, namely providing social rehabilitation and medical rehabilitation. Provision of rehabilitation must also be based on an assessment that is taken into consideration by the judge, however the results of these assessments are rarely available because of the expensive costs. Therefore, changes need to be made regarding the judge's obligation to apply rehabilitation sanctions and review assessment evidence, and cooperation must be built between institutions so that rehabilitation can be carried out.

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⁹Muslikan., Taufiq, M. *Implementation of Assessments Regarding Rehabilitation of Narcotics Abuse Victims in*

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