



REVIEW OF THE LAW AGAINST NARCOTICS ADDICTS BASED ON LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS

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Abstract

Narcotics can be used to treat certain diseases, but if they are misused they will cause addiction for the user which will have a broad impact on social life and the nation's cultural values. The definition of Narcotics according to Law Number 35 of 2009 concerning Narcotics in article 1 number 1 states that Narcotics are substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce or eliminate pain, and can cause dependency, which are differentiated into categories as attached in this Law. This writing aims to conduct a study of the application of the law to narcotics addicts. The method used is the library research method. Perpetrators of narcotics crimes, especially narcotics addicts, according to Article 54 of the Law on Narcotics, states that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. If the perpetrator is proven guilty of narcotics abuse, namely as a narcotics addict, the perpetrator is obliged to undergo treatment and/or care through rehabilitation. The period for undergoing rehabilitation or treatment can also be counted as the period for serving his sentence.

Keywords:

Narcotics, Addicts, Rehabilitation.



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1. INTRODUCTION

Narcotic use is not only done by adults but has also spread to children or teenagers, whether by men or women. Adolescents are the most vulnerable to narcotics users because at that age they are still unstable. The development of illicit trafficking and abuse of narcotics, psychotropic substances, and dangerous drugs (narcotics) has raised problems and concerns for the nation and the world community [1].

Efforts to tackle narcotics abuse must be carried out with firm law enforcement actions from various elements, both from government institutions and society. This series of decisive actions includes preventive, repressive, and rehabilitative efforts.

Perpetrators of narcotics and psychotropic crimes are threatened with imprisonment as stated in Law Number 35 of 2009 concerning Narcotics and Law Number 5 of 1997 concerning Psychotropic Substances. Apart from being threatened with imprisonment, perpetrators of narcotics and psychotropic crimes can be subject to sanctions, namely rehabilitation [2]. The approach to healing narcotics addicts, apart from medical rehabilitation and social rehabilitation designated by the government for treatment, can also be carried out through a religious/spiritual approach. On the one hand, narcotics can be used for treatment in health services and can develop knowledge, but on the other hand, it can also cause addiction so it can harm oneself and other parties if there is no strict control or supervision. Therefore, the community must also play an active role in preventing and eradicating narcotics abuse. With the hope that the abuse and illicit trafficking of Narcotics and Narcotics Precursors can be prevented and eradicated.

Perpetrators of narcotics abuse are victims of narcotics addiction who need proper treatment and care, so rehabilitation of narcotics addicts is an alternative measure imposed by the judge in his decision and can be counted as time spent serving the sentence. The laws and regulations regarding Narcotics provide different treatment between users and dealers, where narcotics addicts must undergo rehabilitation to provide treatment and care. However, in its implementation, there are several judge's decisions that have not been effective in providing sanctions against narcotics addicts, where narcotics addicts are not given the decision to undergo rehabilitation as stated in the Narcotics Law but are sentenced to imprisonment even though the provisions of the Law on Narcotics have regulated rehabilitation efforts for narcotics addicts. Rehabilitation is to provide treatment and care for narcotics addicts and has the aim of recovering and curing narcotics addicts so that they can return to social life well and will not do it again. Medical rehabilitation and social rehabilitation to restore mental and physical abilities so that narcotics addicts are free from their dependence on these illegal drugs. Based on the description above, research was carried out which aimed to study the application of the law in a normative manner for narcotics addicts.

2. BASIC THEORETICAL FRAMEWORK

2.1. Criminal Law Review

The existence of legal norms is to create an order that is safe and peaceful and avoids various criminal acts, where the existence of these legal norms can maintain various interests and order in community life.

Criminal law is part of the overall law in force in a country that determines which actions cannot be committed. Criminal law regulations are accompanied by threats or sanctions in the form of criminal penalties for anyone who violates these prohibitions. Thus, law has the function of living together in society in a calm, orderly, peaceful, and orderly manner, respecting each other, and respecting one another by the needs of society.

A criminal act or *strafbaar feit* is an act that contains elements of deeds or actions that can be criminalized and elements of criminal responsibility for the perpetrator. So the conditions for criminal punishment for a person can be said to be that there will be no criminal punishment or criminal sanctions against a person without something that can be considered to fulfill the requirements for the elements of a criminal act. The principle of criminal law is that a person will not be punished if there is no mistake. Criminal acts refer to being prohibited and punishable by a criminal act [3]. Criminal acts only refer to prohibited and punishable acts with a crime.

2.2. Legal Review of Liability

The principle of responsibility in criminal law is not to be punished if there is no mistake (geen straf zonder schuld; Actus non facit reum nisi mens sist rea). criticized for behavior. The formulation of criminal acts involving intentional elements (opzet) is a very important element [3]. If in the formulation of a criminal act there is an intentional act (opzettelijk), this intentional element dominates or includes all the elements. Intentional means that there is a conscious will that is intended to commit a certain crime, namely that the person wants and knows (willens en wetens), where a person who commits an act intentionally must fulfill the formula for wanting to commit a crime and fulfill the element of knowing the consequences. what he did. Apart from the element of intent, there is also the element of negligence or negligence (culpa). In criminal law doctrine, it is referred to as unconscious negligence (onbewuste schuld) and conscious negligence (bewuste schuld). In this factor, the most important element is that the perpetrator can 'foresee' the consequences of his actions or that the perpetrator was not careful. So that the actions carried out have consequences that are prohibited and are punishable by law. The perpetrator has awareness or knowledge that causes him to be able to imagine the consequences of his actions.

2.3. Narcotics Crime

Narcotics crime, which in English is called narcotic crime, while in Dutch it is called verdovende misdaad, is a criminal offense known in Law Number 35 of 2009 concerning Narcotics [5]. Criminal acts are conceptualized as criminal acts, while the definition of narcotics according to article 1 number 1 of Law Number 35 of 2009 Narcotics is a substance or drug derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reducing or eliminating the feeling of pain and can cause dependence which is divided into groups as attached in this law [5]. The object of crime in narcotics crimes is 'everyone', in which case every person can be classified as a user, dealer, producer, importer, or exporter. The consequences carried out by the perpetrator are a decrease or change in consciousness, loss of feeling, reduction or elimination of the feeling of pain, and dependence on both the perpetrator and other people. There are two types of criminal acts regulated in the Law on Narcotics, namely narcotics crimes and narcotics precursor crimes.

2.4. Rehabilitation of Narcotics Addicts

Rehabilitation is carrying out recovery or repair. By carrying out rehabilitation, they can recover and function as in their original condition so that they can become useful people in society. For example, rehabilitation for narcotics addicts, where this rehabilitation is needed both medically and socially so that narcotics addicts are no longer dependent on illegal drugs. For narcotics addicts, it would be better to have a program to undergo rehabilitation, namely to help recover people who are addicted to narcotics because narcotics addicts can be said to be sick people because their physical and psychological disorders are caused by excessive use, without permission, and against the law.

In Article 1 number 13 of Law Number 35 of 2009, what is meant by a narcotics addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically. Meanwhile, in Article 1 number 14 of Law Number 35 of 2009 concerning Narcotics, what is meant by narcotics dependence is a condition characterized by the urge to use narcotics continuously in increasing doses to produce the same effect, and if the use is reduced and/or stopped suddenly, causing typical physical and psychological symptoms [5].

3. RESEARCH METHODS

The method used is normative legal research which is carried out by examining existing library materials using a statutory approach and a case approach. Legal materials obtained from library research are primary legal materials taken from books, journals, legislation, and scientific writings that discuss narcotics; Secondary legal materials secondary legal materials are sources of legal materials that originate from doctrines and expert opinions that will later build a legal argument; and tertiary legal materials which provide explanations of primary legal materials and secondary legal materials, especially Law Number 35 of 2009 concerning Narcotics.

The collection of legal materials is carried out using recording techniques, which are done by quoting, summarizing, and providing reviews of the legal materials that have been collected and described.

Analysis of legal materials in a qualitative way, namely the primary, secondary, and tertiary legal materials that have been obtained are collected, processed, and analyzed using legal arguments, then continued with the presentation of descriptive analysis, namely describing or explaining the problem to be discussed.

4. RESULTS AND DISCUSSION

To guarantee the rights of narcotics abusers, namely narcotics addicts, they must receive rehabilitation, both medically and socially, to at least reduce or minimize the risks faced by the perpetrator. Article 7 of the Narcotics Law states that narcotics can only be used for health services and/or the development of science and technology [5].

The current criminal justice system tends to be punitive, reflected in the number of inmates in correctional institutions that exceed capacity (overcrowding) and most of them are convicts of narcotics crimes. Completion of the handling of criminal cases of narcotics abuse through rehabilitation is a mechanism that cannot be separated from the implementation of restorative justice with the spirit of restoring the original situation which is carried out by restoring perpetrators of criminal acts of narcotics abuse which are victimless crimes [6].

For narcotics addicts according to the law on narcotics in article 103:Paragraph (1) The judge who examines the case of a Narcotics Addict can: (a) decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime, or (b) determines to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime.

In paragraph (2) the period undergoing treatment and/or care for Narcotics addicts as referred to in paragraph (1) letter a is counted as the period serving a sentence.

Based on the description above, if a narcotics addict has been proven guilty of committing narcotics abuse, that is, as a narcotics addict, it would be best for the judge to give his decision for the narcotics addict to undergo rehabilitation, namely to undergo treatment and care, both medically and socially, with the aim that the perpetrator will no longer dependence on narcotics and can live a normal life again in society. And that rehabilitation based on the decision of the panel of judges can also be counted as punishment. Providing criminal sanctions is not the only punishment for narcotics addicts but must also have the aim of restoring justice for narcotics addicts who can also be said to be victims of narcotics abuse to provide treatment and care, namely rehabilitation.

Perpetrators who have been suspected of abusing narcotics as addicts and are proven to be addicts must also be assessed to determine whether the perpetrator can undergo rehabilitation or not. In principle, those who can undergo rehabilitation are narcotics addicts who are dependent on these drugs.

Institutions to carry out rehabilitation for narcotics addicts are organized by government agencies or by the community after obtaining approval from the Minister. As stated in Article 56 of the Narcotics Law:

Paragraph (1) Medical rehabilitation for Narcotics Addicts is carried out in hospitals appointed by the Minister. Paragraph (2) certain rehabilitation institutions organized by government agencies or the community can carry out medical rehabilitation for Narcotics Addicts after obtaining approval from the Minister.

So to protect narcotics addicts it is more effective if rehabilitation is carried out by providing the opportunity to recover from their addiction and be able to resume life in society.

Article 54 of the Narcotics Law clearly states that addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. Meanwhile, article 57 of the law on narcotics states that apart from medical treatment and/or rehabilitation, healing for narcotics addicts can be carried out by government agencies or the community through religious and traditional approaches. The legal principles in implementing the eradication of narcotics crimes are regulated in

Article 3 of the law on Narcotics which includes justice, protection, humanity, order, protection, security, scientific values, and legal certainty. What is meant by these principles is as follows [4]:

- a. The principle of justice is a principle where every narcotics offender is treated equally without differentiating between one another.
- b. The principle of protection is a principle in the implementation of law enforcement on narcotics laws that must create peace in society.
- c. The humanitarian principle is a principle where law enforcement must reflect the protection and respect for human rights as well as the honor and dignity of every Indonesian citizen and resident in a proportional manner.
- d. The principle of order is a principle in law enforcement that narcotics laws must be able to create order in society. Order is conceptualized as a situation where people live in an orderly manner.
- e. The principle of protection is a principle where implementing narcotics laws must be able to protect, care for, and save the public from the dangers of narcotics.
- f. The security principle is a principle in the implementation of narcotics laws that must provide a sense of security or peace for the perpetrators and the community.
- g. The principle of scientific values is a principle in implementing narcotics laws that must pay attention to developments in science, especially in health and other fields.
- h. The principle of legal certainty is a principle in the implementation of narcotics laws that must be able to guarantee the rights and obligations of every perpetrator and citizen.

These eight principles are used as the basis for law enforcers, including the police, prosecutors, courts, and the National Narcotics Agency, in eradicating narcotics crimes. Thus, perpetrators of narcotics abuse, namely addicts, have legal rights that they must obtain, namely the rights of the perpetrator while in court, the perpetrator has the right to receive legal assistance and undergo medical rehabilitation and social rehabilitation.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusion

Narcotics abuse, namely as a narcotics addict, is mandatory for rehabilitation. This is by Article 54 of Law Number 35 of 2009 concerning Narcotics which states that Narcotics Addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. Narcotics addicts who are required to receive rehabilitation have of course fulfilled the applicable requirements, namely having undergone an assessment which recommends that the person concerned can undergo rehabilitation.

5.2. Suggestion

The public in general must be aware that narcotics are very dangerous drugs and their use must be obtained with permission. As a young generation, you have to be careful in socializing and choosing people in a good environment. And for law enforcers to continuously conduct legal education, and seminars on the dangers of narcotics abuse so that the public understands and understands them better.

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