

Criminal Acts of Narcotics Abuse for Oneself Based on Law Number 35 of 2009 Concerning Narcotics

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Abstract

The existence and use of narcotics are legal in terms of legal aspects. Law Number 35 of 2009 concerning Narcotics only prohibits the use of narcotics not in accordance with the provisions of the law or referred to as drug abuse. Drug abuse for oneself is seen as a perpetrator of a crime as well as a victim, based on this, the sanctions that will be applied to drug abuse for oneself must be taken through rational policies.

Keywords: Criminal Acts, Self-Use of Narcotics, Law Number 35 of 2009.

INTRODUCTION

Until now, the Indonesian government has been aggressively fighting drug abuse. Drug abuse has caused many victims, especially among the younger generation who are already at an alarming level, so it is very dangerous for the life of society, nation and state. Drug abusers are basically divided into 2 (two) categories, namely perpetrators as dealers and perpetrators as users.

Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause decreased or altered consciousness, loss of feeling, reduce or eliminate pain and can cause dependency.¹ Drug abuse is a major threat to society and the younger generation where drug abuse increases every year. Drug abuse requires serious attention and a shared commitment to prevent and eliminate it. One of the efforts to overcome drug abuse is by using criminal sanctions in the form of imprisonment, but in reality, criminal sanctions for drug users are not effective enough, as evidenced by the increasing number of drug abusers.²

Drug abuse is often associated with a crime, both drug abuse is considered to have a negative influence and cause its users to commit crimes. Crime is basically a relative formulation, that what is called a crime as a social symptom is not merely an act that is prohibited by law, an act that is a biological disorder or a psychological disorder, but these acts are detrimental and violate public sentiment.³ If we refer to the formulation of criminal acts as explained above, the emphasis in determining whether a behavior is considered a criminal act or not is not on using formal rules as a reference.

The use of narcotics becomes so important considering that narcotics have physical and mental effects when used in the right dosage and under the supervision of a doctor or psychiatrist used for medical or research purposes, but if used incorrectly or misused can be

¹Subagyo Partodiharjo, *Recognize Drugs and Encourage Their Abuse*, Erlangga, Jakarta, 2008, page 27.

²Puteri Hikmawati, "Analysis of Criminal Sanctions for Narcotics Users", *Jurnal Negara Hukum*: Vol. 2, No. 2, November 2011, page 331.

³Muhammad Mustafa, *Criminology: Sociological Studies on Criminality, Deviant Behavior, and Law Offenders*, FISIP UI Press, 2012, page 17

dangerous for users. The impact of narcotics abuse in addition to damaging morals and physical also causes criminal acts such as theft, rape, prostitution and others. Based on this, the effects of narcotics abuse not only have a bad impact on the user himself but also directly or indirectly will affect the family environment, society and the country.

Basically, drug abusers are perpetrators of criminal acts and forget that they are also victims who are attached to all rights that must be fought for. This means that even though someone is a drug user who abuses drugs, they still have human rights because these rights are inherent in their nature and dignity as human beings. This means that the state has an obligation to provide legal protection for drug abusers, the right to guidance and rehabilitation. In this study, based on what has been described previously, researchers are interested in discussing the factors causing the occurrence of criminal acts of drug abuse for themselves and the legal regulation of criminal acts of drug abuse for themselves based on Law Number 35 of 2009 concerning Narcotics.

In practice, the actual application of criminal law in Law Number 35 of 2009, especially Article 127, is for narcotics abusers for their own benefit.

METHOD

This research is descriptive in nature, namely research that is intended to provide the most accurate data possible about humans, conditions or other symptoms.⁴This study aims to provide a systematic description that analyzes the criminal act of drug abuse for oneself based on Law Number 35 of 2009 concerning Narcotics.

The type of research used is normative legal research. Normative legal research is conducted for research on legal norms in the sense of legal science as a science of rules or if law is viewed as a rule whose formulation is autonomous without being linked to society.⁵According to Soerjono Soekanto and Sri Mamudji, normative legal research is defined as "Legal research conducted by examining library materials or secondary data alone".⁶Normative legal research is legal research that positions law as a system of norms regarding principles, norms and rules.⁷

In order to obtain secondary data in this study is to conduct library research. The tool used in this method is a document study where further analysis is carried out by collecting facts obtained from the library study as a general reference and then arranged systematically and then analyzed to achieve clarity of the problem in question based on reading sources, such as books, scientific journals, electronic media, and other materials related to this research.

⁴Soerjana Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2007, page 10.

⁵Edy Ikhsan and Mahmul Siregar, Research Methods and Legal Writing as Teaching Materials, Faculty of Law, University of North Sumatra, Medan, 2009, page 54.

⁶Soerjono Soekanto & Sri Mamudji, Normative Legal Research: A Brief Review, Rajawali Press, Jakarta, 2011, page 13.

⁷Mukti Fajar ND and Yulianto Achmad, Dualism of Normative & Empirical Legal Research, Pustaka Pelajar, Yogyakarta, 2010, page 34.

RESULTS AND DISCUSSION

Factors Causing the Crime of Drug Abuse for Oneself

Law Number 35 of 2009 concerning Narcotics states that narcotics on one hand are drugs or materials that are beneficial for health and the development of science. Substances in narcotics that were originally intended for medical purposes, but with the development of science and technology, especially the development of drug technology, types of narcotics can be processed so much that their functions can also be misused which are no longer for medical purposes, even threatening the continued existence of the younger generation.⁸

Drug abuse can cause side effects to users. Common properties experienced from drug abuse are depressants, stimulants and hallucinogens. Depressants are depressing the nervous system until users of this type of drug can become unconscious, even the heartbeat becomes weaker. The second property is stimulants, which are stimulating the nervous system so that it causes excessive fitness and has a tendency to always be fresh and when using drugs, for example the use of methamphetamine. The third property is hallucinogens, the nature of this drug causes forced fantasies as if in accordance with reality even though it is impossible. for example the use of ecstasy. Based on these three properties, the main target is the nervous system which will certainly change a person's level of thinking and awareness. However, what is even more fatal if misused is that it causes damage to organs of the body, starting from the heart, lungs, liver and kidneys.⁹

Based on Law Number 35 of 2009 concerning Narcotics, drug abusers are defined as people who use narcotics without rights or against the law, while drug dependence is a condition characterized by the urge to use narcotics continuously with increasing doses to produce the same effect and if its use is reduced and/or stopped suddenly causes typical physical and psychological symptoms. Forms of drug abuse such as consuming excessive doses, trading without permission and violating the rules stipulated in Law Number 35 of 2009 concerning Narcotics.¹⁰

Psychiatrist Graham Blaine mentions several factors of drug abuse, namely:¹¹

1. To prove courage in carrying out dangerous and risky actions;
2. To challenge an authority against a parent, teacher, law or authority;
3. To facilitate the distribution and sexual acts;
4. To escape from loneliness and want to gain emotional experiences;
5. To try to find the meaning of life;
6. To fill the void and fill the feeling of boredom, due to lack of activity;
7. To eliminate frustration and anxiety caused by intractable problems and dead ends in thought, especially for those with disharmonious personalities;
8. To follow the wishes of friends and to foster solidarity with friends; And

⁸Ni Putu Noni Suharyanti, "Progressiveness in Law Enforcement for Drug Abusers", Kertha Patrika Journal, Volume 39, Number 2, August 2017, page 136.

⁹Achmad Rifai, *Drugs Behind Prison Walls*, Aswaja Pressindo, Yogyakarta, 2014, page 33.

¹⁰Jimmy Simangunsong, "Drug Abuse Among Adolescents (Case Study at the National Narcotics Agency of Tanjung Pinang City)", *Jurnal Hukum*, Vol 1, No 1, 2012, page 24.

¹¹*Ibid.*, page 25.

9. Because it is driven by curiosity and just for kicks.

The factors causing drug abuse by teenagers themselves can be grouped into three parts, namely:¹²

1. Those who want to experience (the experience seekers), namely those who want to gain new experiences and sensations from the effects of using narcotics;
2. Those who intend to stay away from or avoid the reality of life (the oblivion seekers), namely those who consider the state of anesthesia as the most beautiful and comfortable escape; And
3. Those who want to change their personality (personality change), namely those who think that using narcotics can change their personality, such as becoming less rigid in social interactions.

The factors that cause adults and the elderly to use narcotics for themselves are:¹³

1. Relieves pain from chronic diseases;
2. Becomes a habit (as a result of healing and relieving pain);
3. Escape from frustration; or
4. Increase the ability to perform (usually as a stimulant).

Narcotics are only useful if used for scientific, medical and medical purposes. The requirement is that it must be under the supervision of a competent expert strictly and in a targeted manner. Its use is also very limited and according to the doctor's instructions. The problem of drug abuse in Indonesia has become a crucial issue. Not only the handling of its users, but also the development of the drug business.¹⁴

Legal Regulations for the Criminal Act of Drug Abuse for Oneself Based on Law Number 35 of 2009 Concerning Narcotics

Judging from the legal aspect, the existence of narcotics is legal. Law Number 35 of 2009 concerning Narcotics only prohibits the use of narcotics not in accordance with the provisions of the law. This situation in its empirical level results in narcotics often being misused not for medical and scientific purposes, but rather as a promising and rapidly growing business opportunity, which activity has an impact on the physical and mental damage of all levels of society. In terms of age, narcotics are not only enjoyed by teenagers, but also adults and the elderly. The spread of narcotics is no longer limited to big cities, but has entered small cities and penetrated sub-districts and even villages.¹⁵

Regarding the definition of drug abusers, Article 1 number 15 of Law Number 35 of 2009 concerning Narcotics states that drug abusers are people who use narcotics without rights or against the law. Then it is emphasized in Article 7 of Law Number 35 of 2009 concerning Narcotics that it is required that narcotics are only used for the benefit of health services and/or the development of science and technology.

¹²Soedjono Dirdjosisworo, *Social Pathology*, Alumni, Bandung, 2013, pages 70-71.

¹³Hari Sasangka, *Narcotics and Psychotropics in Criminal Law*, Mandar Maju, Bandung, 2003, page 42.

¹⁴M. Arief Hakim, *The Dangers of Drugs and Alcohol, How Islam Prevents, Overcomes, and Fights*, Comp. Cijambe, Bandung, 2004, page 71.

¹⁵Sasangka Day, *Op. Cit.*, page 43.

Article 8 of Law Number 35 of 2009 concerning Narcotics limits the use of Class I Narcotics to only be used for the purposes of developing science and technology, not for health, so that if a person who uses narcotics violates the legal regulations as referred to in Article 7 and/or Article 8 of Law Number 35 of 2009 concerning Narcotics, then the user does not have any rights or his actions can be said to be unlawful.

Violation of the legal rules as referred to in Article 7 and/or Article 8 of Law Number 35 of 2009 concerning Narcotics as a parameter of the unlawful nature of narcotics abuse, which can be said to be formally unlawful in line with Simons' opinion on the meaning of formal unlawful nature, namely an act that is contrary to the law only, because the legal phrase here is seen as the same as the law.¹⁶

Responding to drug abuse, both dealers and users, of course, cannot be left alone. For this reason, efforts need to be made to prevent and eradicate drug abuse. Drug abuse is legally against the law in using narcotics, so it can be categorized as a criminal act. A drug crime is an act, action or behavior that is against the law, contrary to the provisions of narcotics laws and regulations and is threatened with criminal sanctions.

Law and sanctions can be likened to two sides of a coin that complement each other. Law without sanctions is very difficult to enforce, it can even be said that social norms without sanctions are only morals, not laws, on the contrary sanctions without law in the sense of rules will result in arbitrary rulers. Sanctions are always related to legal norms or legal rules with other norms, with sanctions it is possible to distinguish between legal norms and other norms. The meaning of sanctions itself is a punishment step imposed by a country or a certain group because of a violation committed by a person or group.¹⁷

The perpetrators of drug abuse, in essence, are more appropriately categorized as victims. Psychiatrists consider it inappropriate if drug addicts are given criminal sanctions in the form of imprisonment, because if that is indeed what is applied, then what happens is that drug addicts can experience severe depression which has a high potential to disturb mental health because they do not get help in the form of treatment by experts in the psychological field (rehabilitation).¹⁸

Sanctions in criminal law consist of criminal and action. It is often said that in contrast to criminal, action aims to protect society while criminal focuses on the understanding of sanctions for the perpetrator of an act. However, in theory it is difficult to distinguish in this way because criminal is often said to aim to secure and improve the convict. The recognition of the equality between criminal sanctions and action sanctions is the basic essence or basic idea of the double track system concept. The double track system is a two-track system regarding sanctions in criminal law, namely the type of criminal sanctions on the one hand and the type of action sanctions on the other. Although in practice, the difference between criminal sanctions and action sanctions is often vague, at the basic

¹⁶Simons D, *Criminal Law Textbook (Leerboek Van Het Nederlanches Strafrecht)*, translated by PAFLamintang, Pionir Jaya, Bandung, 2001, page 282.

¹⁷Suisno, "Legal Review of Intermediaries in Narcotics Crimes According to Law Number 35 of 2009", *Jurnal Independent* Vol 5 No. 2, 2017, page 75.

¹⁸Siswo Wiratmo, *Introduction to Legal Studies*, FH. UII, Yogyakarta, 2013, page 9.

idea level, the two have fundamental differences.¹⁹ Both are based on different basic ideas. Criminal sanctions are based on the basic idea of why punishment is carried out while action sanctions are based on the basic idea of why punishment is carried out, in other words, criminal sanctions are actually reactive to an act, while action sanctions are more anticipatory towards the perpetrator of the act.²⁰

Criminal sanctions are actually reactive to an act, while action sanctions are more anticipatory towards the perpetrator of the act. If the focus of criminal sanctions is on a person's wrongdoing through the imposition of suffering so that the person becomes deterred, then the focus of action sanctions is directed at efforts to provide assistance to him, it is clear that criminal sanctions emphasize the element of retaliation, while action sanctions are based on the basic idea of protecting society and fostering or caring for the perpetrator.²¹ Article 127 of Law Number 35 of 2009 concerning Narcotics states that:

(1) Any misuse

- a. Class I narcotics for personal use are punishable by a maximum prison sentence of 4 (four) years.
- b. Class II narcotics for personal use are punishable by a maximum prison sentence of 2 (two) years.
- c. Class III narcotics for personal use are punishable by a maximum prison sentence of 1 (one) year.

(2) In deciding a case as referred to in paragraph 1, the judge must pay attention to the provisions as referred to in paragraph (1); the judge must pay attention to the provisions of Article 54, Article 55 and Article 103.

(3) In the case of abuse as referred to in paragraph 1 which can be proven or proven to be a victim of narcotics abuse, the abuser must undergo medical rehabilitation and social rehabilitation.

Barda Nawawi stated that it is still important to use penal means in order to combat crime, namely:²²

1. Criminal sanctions are absolutely necessary, we cannot live now or in the future without criminal sanctions;
2. Criminal sanctions are the best available tool or means that we have to deal with serious crimes or dangers and to deal with threats of danger;
3. Criminal sanctions are at times the main/best guarantor and at times the main threat to human freedom. They are a guarantor when used sparingly, carefully and humanely, they are a threat when used carelessly and by force.

The policy of combating crime by using penal means by some criminology experts is also called repressive. Repressive actions focus on efforts to eradicate/suppress/suppress

¹⁹M. Sholehuddin, *Sanction System in Criminal Law (Basic Idea of Double Track System and Its Implementation)*, PT. Raja Grafindo Persada, Jakarta, 2007, page 38.

²⁰*Ibid.*, page 39.

²¹Sudarto, *Law and Crime*, Alumni, Bandung, 2007, page 7.

²²Barda Nawawi Arief, *Legislative Policy in Handling Criminal Acts with Imprisonment*, UNDIP Publishing Agency, Semarang, 2013, page 31.

after a crime has occurred, namely by imposing criminal sanctions.²³ It can be concluded from the description that the position of drug users as perpetrators and as victims is very difficult to distinguish. However, this cannot be equated and efforts to overcome it must also be differentiated. Drug users who were initially guaranteed rehabilitation, based on Article 127 of Law Number 35 of 2009 concerning Narcotics above, can be threatened with criminal penalties. In criminal law, it is known that there is no crime without a victim, so it can be said that they become victims because of the crimes they themselves committed.

Judges must pay attention to the provisions in 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. Furthermore, Article 55 of Law Number 35 of 2009 concerning Narcotics stipulates:

- (1) Parents or guardians of underage drug addicts are required to report to community health centers, hospitals and/or medical rehabilitation and social rehabilitation institutions appointed by the government to receive treatment and/or care through medical rehabilitation and social rehabilitation.
- (2) Drug addicts who are old enough are required to report themselves or be reported by their families to community health centers, hospitals and/or social rehabilitation institutions appointed by the government to receive treatment and/or care through medical rehabilitation and social rehabilitation.
- (3) Provisions regarding the implementation of mandatory reporting as referred to in paragraph (1) and paragraph (2) are regulated by government regulations.

Article 103 of Law Number 35 of 2009 concerning Narcotics stipulates:

- (1) Judges who examine cases involving drug addicts can:
 - a. Deciding to order the person concerned to undergo treatment and/or rehabilitation care if the drug addict is proven guilty of committing a drug crime.
 - b. Determine to order the person concerned to undergo treatment and/or care through rehabilitation if the drug addict is not proven guilty of committing a drug crime.
- (2) The period of treatment and/or care for drug addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence.

The application of severe criminal sanctions to perpetrators of crimes will provide a deterrent effect and will also have an impact on the law of effect and its social impact is as a means of public learning, so that society will be fully aware of the importance of staying away from drug abuse. Public learning based on observations of the consistency of law enforcement and the application of severe criminal sanctions, will create social norms that are upheld, so that these social norms as a means of social control are institutionalized back into legal norms to be obeyed and obeyed.²⁴

The determination of the sanctions aims to provide effectiveness from community participation. This participation has the widest possible opportunity where the community has the right and responsibility to help prevent and eradicate the abuse and illicit trafficking

²³Soedjono Dirdjosisworo, *Scope of Criminology*, Pemuda Karya, Bandung, 2013, page 28.

²⁴Siswanto Sunarso, *Legal Politics in the Narcotics Law*, Rineka Cipta, Jakarta, 2012, page 30.

of narcotics. Community participation is very dependent on the level of public trust in law enforcement, for this reason, transparency of law enforcement is needed, increasing community participation in supervision and community reporting obligations and increasing the weight of accountability of the performance of law enforcement officers who can be accounted for in front of the public.

CONCLUSION

The factors causing drug abuse for oneself include to prove courage in carrying out dangerous and risky actions, to challenge an authority, to facilitate sexual distribution and acts, to escape from loneliness and want to gain emotional experiences, to try to find the meaning of life, to fill the void and fill feelings of boredom, because of lack of activity, to eliminate frustration and anxiety caused by insurmountable problems and dead ends of thought, especially for those who have disharmonious personalities, to follow the wishes of friends and to foster solidarity with friends and because they are driven by curiosity. The legal regulation of the crime of drug abuse for oneself based on Law Number 35 of 2009 concerning Narcotics is contained in Article 127 which states that every drug abuser is punished with imprisonment in the case that the abuser can be proven or proven to be a victim of drug abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation.

Law Number 35 of 2009 concerning Narcotics is expected to be in line and in accordance with the development of society which is increasingly developing in accordance with the times. Society and government must synergize in terms of renewing this narcotics law so that in terms of eradicating narcotics it can run well and it is hoped that narcotics cases in Indonesia will decrease. Considering that narcotics are also an extra ordinary crime, an extra ordinary action is needed, meaning that actions to handle narcotics crimes must be carried out in an extraordinary manner.

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