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The Problematics of Crimination of Self Narcotics Abusers

Satriadi
Lecturer at State Institute of Islamic Studies of Bone
Email: Adhysatriadi@gmail.com

Abstract

The problematics of crimination of self narcotics abusers in Law no. 35 of 2009 Concerning Narcotics is now an actual issue that must get a legal conclusion. The response to narcotics abuse for oneself is urgent to be interpreted in a legal framework by revealing factual and representative answers. This research is classified as normative research, the data obtained through literature study, by collecting primary, secondary, and tertiary legal materials using a statutory approach and a conceptual approach. The analysis used in the form of qualitative normative then described in descriptive analytical. The findings in this study indicate that the type of crime (*strafsoort*) of narcotics abusers for oneself uses a single system formulation that is absolute and imperative, so that it does not provide space for judges to impose alternative punishments other than imprisonment. The duration of the sentence (*strafmaat*) uses a special maximum system. The punishment for group I is four years, for group II for two years and for group III for a maximum of one year, the threat of punishment is very heavy, because self narcotics abusers should prioritize coaching over imprisonment. The imposition of a criminal (*strafmodus*) is only imprisonment. The absence of action sanctions shows that the Narcotics Law prioritizes providing a deterrent effect rather than providing guidance to self narcotics abuser.

Problematika Pemidanaan terhadap penyalahguna narkotika bagi diri sendiri dalam Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika saat sekarang menjadi isu aktual yang harus mendapatkan konklusi hukum. Respon terhadap penyalahgunaan narkotika bagi diri sendiri urgen untuk di interpretasi dalam bingkai hukum dengan mengungkap jawaban yang faktual dan refresentatif. Penelitian ini tergolong penelitian normatif, data-data yang diperoleh melalui studi kepustakaan, dengan menggumpulkan bahan hukum primer, sekunder dan tersier dengan menggunakan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Analisis yang digunakan berupa normatif kualitatif kemudian diuraikan secara deskriptif analitis. Temuan dalam penelitian ini menunjukkan bahwa jenis pidana (*strafsoort*) penyalahguna narkotika bagi diri sendiri menggunakan rumusan sistem tunggal bersifat absolut dan imperatif, sehingga tidak memberi

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ruang kepada hakim untuk menjatuhkan pidana alternatif selain pidana penjara. Lamanya pidana (*strafmaat*) menggunakan sistem maksimal khusus. Untuk golongan I empat tahun, golongan II dua tahun dan golongan III satu tahun maksimum pidananya, ancaman lamanya pidana sangat berat, karena penyalahguna narkotika bagi diri sendiri harusnya diutamakan pembinaan daripada penjara. Pengenaan pidana (*strafmodus*) hanya pidana penjara saja. Tidak adanya sanksi tindakan menunjukan Undang-Undang Narkotika mengedepankan penjerahan daripada pembinaan terhadap penyalahguna narkotika bagi diri sendiri.

Key words: *Problematics; crimination; narcotics abuse; self.*

Introduction

The eradication of narcotics trafficking cannot be confused with the criminal provisions imposed on narcotics abusers, especially narcotics abusers for themselves. Self narcotics abusers are not explicitly stated by the Narcotics Law to be required to undergo rehabilitation.[1] Abusers who are victims of narcotics abuse are obliged to undergo rehabilitation, while abusers who are addicts are only mentioned that their placement in a rehabilitation institution depends on the discretion of the judge.[2] Abusers who are not victims of narcotics abuse and are also not addicts are not ordered to undergo rehabilitation.[3]

Reading Article 127 paragraph (1) letters a, b and c, it can be interpreted that the Narcotics Law excludes abusers who are not victims of narcotics abuse and are not addicts from the guarantee of providing rehabilitation, both medical and social. Based on Article 1 Numbers 13 and 15, and Article 127 Paragraph (1) of the Narcotics Law, narcotics abusers, addicts and victims of abuse are basically using narcotics without rights or against the law. As an abuser because the narcotics consumed by addicts are certainly more than abusers because it causes a person to experience dependence on these drugs.[4]

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[1]Sri Mulyati Chalil. "Penerapan Sanksi Rehabilitasi Bagi Penyalah Guna dan Pecandu Narkotika." *Wacana Paramarta: Jurnal Ilmu Hukum* 14.2 (2015).

[2]Anton Sudanto, "Penerapan Hukum Pidana Narkotika di Indonesia." *ADIL: Jurnal Hukum* 8.1 (2017), p. 137-161.

[3]Perhimpunan Bantuan Hukum dan Hak Asasi Manusia, "Pendekatan Sosial dan Kesehatan Bagi Penyalahguna Narkotik", diakses dari *http://www.pbhi.or.id/pers-release/pendekatan-sosial-dan-kesehatan-bagi-pengguna-narkotika*, accessed on January 8, 2017.

[4]Tentang Pecandu Penyalahguna korban Penyalahguna dalam Undang-Undang Narkotika, diakses dari *http://www.hukumpedia.com/mashendrii/tentang-pecandu-penyalah-guna-korban-penyalah-guna-dalam-uu-narkotika*, accessed on June 12, 2017. Compare with Ajeng Larasati, Muhammad Afif, and Ricky Gunawan. "Mengurai Undang-Undang Narkotika." (2013).

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It is difficult to observe the boundaries of abusers, addicts, and victims of abuse from the perspective of the perpetrator and the victim, when each of them abuses narcotics. From the perspective of the victim's own responsibility, the three of them are included in the typology of self victimizing victims. All three are victims of crimes committed by themselves (quasi-victims) or victimless crimes.[5] For this reason, the full responsibility lies with the victim as well as the perpetrator of the crime and the responsibility of the government. It is unclear about addicts, abusers and victims of abuse in Law Number 35 of 2009 but the criminal sanctions between the three subjects of narcotics criminal acts are different, of course creating gaps that can be exploited by several elements in its application.

Methodology

The research is normative using a statutory approach, the reason for this use is that basically the criminalization of narcotics abusers in the provisions of laws and regulations, namely Law Number 35 of 2009. Through a legal approach, it can explain the material content of the law and the conceptual approach. The purpose of using a conceptual approach is to provide understanding for researchers to find ideas, understandings, concepts and legal principles that are relevant to what is being studied.

Discussion

Regulation of the Criminalization of Narcotics Abusers in Law Number 35 of 2009 concerning Narcotics

The Narcotics Law has regulated efforts to overcome crimes related to narcotics or narcotics crimes, both through threats of fines and corporal punishment up to the death penalty, in addition to regulating narcotics for the benefit of treatment and health services as well as regulations on medical and social rehabilitation. Narcotics crime in society shows an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, adolescents, and the younger generation in general.[6]

The criminal provisions in Law Number 35 of 2009 which are regulated in Articles 111 to 148, as with most criminal acts outside the Criminal Code, the formulation of criminal provisions is in several respects different from the criminal

[5]Fanny Alvionita, Nashriana Nashriana, and Neisa Angrum Adisti. *Kajian Viktimologi Anak Sebagai Korban Tindak Pidana Eksploitasi Seksual Secara Komersial di Kota Palembang*. Diss. Sriwijaya University, 2021.

[6]Anton Sudanto, Penerapan Hukum Pidana Narkotika di Indonesia (*ADIL: Jurnal Hukum*, *8*(1), 2017), p. 137-161.

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provisions in the Criminal Code. Law Number 35 of 2009 basically classifies perpetrators of narcotics abuse into two, namely:[7]

a. Perpetrators of criminal acts who have the status as users (Article 116, 121, 126, 127, 128, 134); and
b. Perpetrators of criminal acts who have the status of dealers (Article 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 1222, 123, 124, and 125).

The review of the legislative policy regarding punishment in positive law in Indonesia regarding narcotics basically covers a very broad scope. This is because the problem of the criminal and sentencing system can be viewed from various aspects, namely aspects of the type of crime (*strafsoort*), aspects of the length or severity of the crime (*strafmaat*), and the implementation of the crime (*strafmodus*). Thus, the scope of the study of criminal policy against narcotics abusers covers aspects of the type of crime, the length or severity of the crime, and the implementation of the crime.

1. Criminalization in *Strafsoort* Perspective

Law Number 35 of 2009 stipulates that the punishment that can be imposed is the death penalty, imprisonment, and a fine. Additional penalties are revocation of certain rights, confiscation of certain goods, announcement of judge's decision. Criminals can also be imposed on corporations in the form of revocation of business licenses; and/or revocation of agency status.

Narcotics abusers in Article 127 paragraph (1) letters a, b, and c have a single type of imprisonment. One of the disadvantages of the single formulation system is that it is very rigid. This system does not give the judge the opportunity or leeway to determine what type of punishment he deems most appropriate for the accused. Therefore, it does not provide an opportunity for judges to individualize punishments that are person-oriented, especially in determining the type of crime. By only specifying one type of imprisonment as the only option, judges are faced with a system that inevitably must automatically impose imprisonment.[8]

Another weakness of the single formulation system is the difficulty of determining a rational measure of why a crime is only punishable by imprisonment while others are not. Why, for example, for narcotics abusers, Article 134 of the Narcotics Law is threatened alternatively with imprisonment

[7]Lilik Mulyadi, *Pemidanaan terhadap Pengedar dan Pengguna Narkoba (Penelitian Asas, Teori, Norma dan Praktik Penerapannya dalam Putusan Pengadilan)* (Jakarta: Puslitbang dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, 2012), p. 3.

[8]Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara* (Yogyakarta: Genta Publishing, 2010), p. 165.

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or a fine, while Article 127 which is also an abuser is only threatened with imprisonment.

This single formulation system is a relic or a very striking influence from the classical school. This school wants to objectify criminal law from the personal characteristics of the perpetrator. With such a nature, this flow at the beginning do not give the judge the freedom to determine the type of punishment and the size of the punishment. It was known at the time that the definite sentence system was very rigid, as seen in the French code of penalization of 1791. Thus, it can be said that the system for formulating a single criminal threat is clearly a definite sentence system, especially in terms of the type of crime. The system for determining a single type of punishment that is certain and rigid, as contained in the French Penal Code 1791, should not be imposed on narcotics abusers for themselves.[9]

2. Criminalization in *Strafmaat* Perspective

Law No. 35 of 2009 regarding the length of criminal sanctions (*strafmacht*) is the formulation of a special minimum punishment in addition to the general maximum punishment and the special maximum penalty. The use of a minimum criminal system in Law Number 35 of 2009 strengthens the assumption that the Narcotics Law is indeed enacted to criminalize narcotics abusers by prioritizing a deterrent effect.[10]

The criminal system for narcotics crimes stipulates special minimum and maximum threats, both in terms of imprisonment and fines. However, certain articles also stipulate the maximum penalty as regulated in the Criminal Code (such as Articles 127, 131, 134 and 138). The maximum maximum imprisonment for narcotics acts that are threatened is up to 20 years at most. In imposing a prison sentence that exceeds the maximum limit of 15 (fifteen) years, namely 20 (twenty years) it is allowed in the Criminal Code in the case of repetition or concurrent (because it can be added one third) or certain criminal acts as an alternative to the death penalty as in Article 104, 340, 365 paragraph 4 of the Criminal Code.[11]

The duration of criminal sanctions against self-abusers is regulated in Article 127

[9]Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatand... p.* 165.

[10]Romulus, "Penjatuhan Sanksi Pidana di Bawah Batas Minimum Khusus dalam Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika." *Jurnal Nestor Magister Hukum* 3.3: 209687.

[11]Ira Alia Maerani, "Implementasi Ide Keseimbangan Dalam Pembangunan Hukum Pidana Indonesia Berbasis Nilai-Nilai Pancasila." *Jurnal Pembaharuan Hukum* 3.3 (2016), p. 329-338.

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(1) Every abuser of:
   a. Narcotics Category I for oneself shall be sentenced to a maximum imprisonment of 4 (four) years;
   b. Narcotics Category II for oneself shall be sentenced to a maximum imprisonment of 2 (two) years;
   c. Narcotics Category III for oneself shall be sentenced to a maximum imprisonment of 1 (one) year.

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

(3) In the event that the abuser 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 social rehabilitation.

The system for formulating prison sentences against self narcotics abusers seems to adhere to the maximum system, thus meaning that a minimum general sentence of one day can be imposed and a specific maximum as stipulated in the article. The maximum system used in the formulation of Article 127 paragraph (1) letters a, b and c is correct, because it provides freedom and discretion to judges in deciding cases.[12]

Regarding the length of punishment for self narcotics abusers, namely for group I a maximum of 4 (four years), group II a maximum of 2 (two) years and group III a maximum of 1 (one) year is too heavy, because narcotics are actually allowed unless misused. So in principle it is allowed, so there should be no heavy sanctions. Because the Narcotics Law is an administrative law, the standard administrative crime and its offenses are ordinary offenses and *ultimum remedium*, that is the correct legal politics.[13]

3. Criminalization in *Strafmodus* Perspective

Straftmodus in the Narcotics Law when considered carefully, there are 3 (three) forms of criminal imposition (*straftmodus*), namely:

a. Alternative forms of punishment (option between imprisonment or fines)
The alternative form of punishment is usually marked with the word "or", for example being sentenced to 12 (twelve) years in prison or a fine of Rp.

[12]Mudzakkir, *Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana dan Sistem Pemidanaan (Politik Hukum dan Pemidanaan)*, (Departemen Hukum dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional Tahun 2008) See https://www.bphn.go.id/data/documents/pphn_bid_polhuk&pemidanaan.pdf

[13]Mudzakkir, *Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana dan Sistem Pemidanaan (Politik Hukum dan Pemidanaan)*, (Departemen Hukum dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional Tahun 2008). See https://www.bphn.go.id/data/documents/pphn_bid_polhuk&pemidanaan.pdf

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8,000,000,000.00 (eight billion rupiah). The criminal imposition is alternative in the Narcotics Law, namely Articles: 128, 131, 134.

b. Cumulative forms of criminal imposition (imprisonment and fines)
The form of imposition of cumulative threats is marked with the word "and", for example, a prison sentence of 12 (twelve) years and a fine of Rp. 8,000,000,000.00 (eight billion rupiahs) is imposed. Criminal imposition is cumulative in the Narcotics Law, namely Articles: 111, 112, 113, 114, 115,116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 129, 130 paragraph (1) , 132, 133, 135, 137, 138,139, 140, 141, 142, 143, 147.

c. Combination/mixed form of criminal imposition (cumulation-alternative)
The form of combination criminal imposition is usually marked with the word "and/or", for example, a prison sentence of 12 (twelve) years and/or a fine of Rp. 8,000,000,000.00 (eight billion rupiahs) is imposed. The imposition of a combination/mixed crime in the Narcotics Law, namely Article: 130 paragraph (2), 146.[14]

Most criminal sanctions in the Narcotics Law are formulated cumulatively, the most cumulative formulation is between imprisonment and large fines (hundreds of millions and some billions of rupiah). This is also feared to be ineffective and can cause problems, because there is a provision that if the fine is not paid, it is subject to imprisonment in lieu of a fine according to the applicable laws and regulations (Article 148 of Law Number 35 of 2009). This means that the general provisions in the Criminal Code are 6 (six) months or can be a maximum of 8 (eight) months if there is a recidive/concursus. Thus, it is very likely that the threat of a very large fine will not be effective, because if it is not paid, it will only result in a substitute imprisonment of 6 or 8 months. For the convict, the imprisonment in lieu of the fine may not have any effect because if the convict pays the fine, he will continue to serve the cumulative imprisonment imposed.[15]

Actually, narcotics abusers for themselves in Article 127 paragraph (1) letters a, b, and c of the Narcotics Law do not use criminal imposition (strafmodus) because the type of crime is single, namely imprisonment, if only guided by Article 127 paragraph (1) so that there is no other way for the judge in imposing a criminal action against the accused self narcotics abusers, except for imprisonment which is absolute and imperative. Whereas self narcotics abusers become victims because of themselves. However, before imposing a sentence on Article 127, the judge must pay attention to Article 54, Article 55 and Article 103 regarding medical and social

[14]Adrianus Meliala, "Badan Narkotika Nasional dan Jebakan Kelembagaan." *Evaluasi Kebijakan Hukum Narkotika di Indonesia* (2017). p. 1.

[15]Barda Nawawi Arief, *Masalah Penegakan dan Kebijakan Pidana dalam Penanggulangan Kejahatan* (Jakarta: Kencana Prenada Media Group, 2007), p. 190.

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rehabilitation for addicts and victims of narcotics abusers. Likewise, the Narcotics Law is an administrative criminal law, the position of criminal sanctions is an *ultimum remedium*. Thus, the use of alternative criminal sanctions for other actions can be imposed on him, such as the type of crime (*strafsoort*) instead of imprisonment or a fine, the length of the sentence (*strafmaat*) the maximum threat of which is reduced for each class of narcotics, and the imposition of a crime (*strafmodus*) using criminal supervision.[16]

The implementation of rehabilitation in the Narcotics Law is not followed with certainty who is actually being rehabilitated, although there is already a Supreme Court Circular No. 04 of 2010. However, this is also not correct, the weakness is that people misinterpret rehabilitation even though it is through an assessment that determines whether rehabilitated or not, sometimes because of influential people, even though this person is a dealer, but because he is close to officials, investigators then propose rehabilitation, this is an opportunity for a conspiracy.

Conclusion

The criminal arrangement in Law Number 35 of 2009 in terms of the type of crime (*straftsoort*), the weakness is against self narcotics abusers in Article 127 paragraph (1) letters a, b, and c using a single system formula that is absolute and imperative that is only in form of imprisonment. So that it does not provide an alternative choice to judges in imposing criminal sanctions in the form of actions against the defendant. Certainly not in accordance with the theory of integrative and contemporary punishment whose aim is to repair individual, social and perpetrator damage to be guided in a better direction. The length of the sentence (*straftmacht*), using a special maximum system. For group I is four years, group II is two years and group III is one year maximum, the threat of the length of punishment is very heavy, because self narcotics abusers should be endeavored to participate in a rehabilitation program rather than imprisonment. Imposition of punishment (*straftmodus*), self narcotics abusers in the Narcotics Law do not use alternative punishments other than imprisonment. Therefore, there is no *strafmodus* that can be imposed on the defendant.

[16]Interview with Mudzakkir, lecturer at Faculty of Law Islamic University of Indonesia, on August 28, 2017. Compare with Deny Haspada, "Penerapan Pidana di Bawah Ancaman (Straf Minimum Rules) dalam Perkara Tindak Pidana Kepemilikan Narkotika Golongan I." *Wacana Paramarta: Jurnal Ilmu Hukum* 17.2 (2018): 125-132.

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References

Arief, Barda Nawawi. *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. Yogyakarta: Genta Publishing, 2010.

_____*Masalah Penegakan dan Kebijakan Pidana dalam Penanggulangan Kejahatan*. Jakarta: Kencana Prenada Media Group, 2007.

ALVIONITA, FANNY, Nashriana Nashriana, and Neisa Angrum Adisti. *KAJIAN VIKTIMOLOGI ANAK SEBAGAI KORBAN TINDAK PIDANA EKSPLOITASI SEKSUAL SECARA KOMERSIAL DI KOTA PALEMBANG*. Diss. Sriwijaya University, 2021.

Chalil, Sri Mulyati. "Penerapan Sanksi Rehabilitasi Bagi Penyalah Guna dan Pecandu Narkotika." *Wacana Paramarta: Jurnal Ilmu Hukum* 14.2 (2015).

Dewi, Wijayanti Puspita. "Penjatuhan Pidana Penjara Atas Tindak Pidana Narkotika Oleh Hakim di Bawah Ketentuan Minimum Ditinjau dari Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika." *Jurnal Hukum Magnum Opus* 2.1 (2019): 276602.

Haspada, Deny. "Penerapan Pidana di Bawah Ancaman (Straf Minimum Rules) dalam Perkara Tindak Pidana Kepemilikan Narkotika Golongan I." *Wacana Paramarta: Jurnal Ilmu Hukum* 17.2 (2018): 125-132.

Larasati, Ajeng, Muhammad Afif, and Ricky Gunawan. "Mengurai Undang-Undang Narkotika." (2013).

Mudzakkir. *Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana dan Sistem Pemidanaan (Politik Hukum dan Pemidanaan)*, (Departemen Hukum dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional Tahun 2008), see https://www.bphn.go.id/data/documents/pphn_bid_polhuk&pemidanaan.pdf

Mulyadi, Lilik. *Pemidanaan terhadap Pengedar dan Pengguna Narkoba (Penelitian Asas, Teori, Norma dan Praktik Penerapannya dalam Putusan Pengadilan)*. Jakarta: Puslitbang dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, 2012.

Maerani, Ira Alia. "Implementasi Ide Keseimbangan Dalam Pembangunan Hukum Pidana Indonesia Berbasis Nilai-Nilai Pancasila." *Jurnal Pembaharuan Hukum* 3.3 (2016): 329-338.

Meliala, Adrianus. "Badan Narkotika Nasional dan Jebakan Kelembagaan." *EVALUASI KEBIJAKAN HUKUM NARKOTIKA DI INDONESIA* (2017): 1.

Massadi, M. (2019). Peluang Dan Tantangan Pelaksanaan Pidana Islam Di Indonesia. *Al-Bayyinah*, *3*(2), 252–268. https://doi.org/10.35673/al-bayyinah.v3i2.473

Perhimpunan Bantuan Hukum dan Hak Asasi Manusia, "Pendekatan Sosial dan Kesehatan Bagi Penyalahguna Narkotik", diakses dari *http://www.pbhi.or.id/pers-release/pendekatan-sosial-dan-kesehatan-bagi-pengguna-narkotika*, accessed on January 8, 2017.

ROMULUS, SH A. "Penjatuhan Sanksi Pidana di Bawah Batas Minimum Khusus dalam Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika." *Jurnal Nestor Magister Hukum* 3.3: 209687.

Sudanto, A. (2017). Penerapan Hukum Pidana Narkotika di Indonesia. *ADIL: Jurnal Hukum*, *8*(1), 137-161.

Tentang Pecandu Penyalahguna korban Penyalahguna dalam Undang-Undang Narkotika, diakses dari *http://www.hukumpedia.com/mashendrii/tentang-pecandu-penyalah-guna-korban-penyalah-guna-dalam-uu-narkotika*, accessed on June 12, 2017.