



Juridical Analysis for Drug Users Sentenced to Rehabilitation and Prison
Case Study Verdict Number: No 157/Pid.Sus/2023/PN Bna

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ABSTRACT

In accordance with " Chapter 127 paragraph (3) Act No. 35/2009 " about Narcotics, abuser or victim abuse narcotics must get rehabilitation, both medical rehabilitation and social rehabilitation. However, based on Article 157/Pid.Sus/2023/PN Bna. Legal Protection Act, Via education, study This can help they Which involved in narcotics abuse or who are victims of narcotics abuse. The case approach and statutory approach are used in the approach methodological of this research. Collect legal sources related to analysis nature deductive in a way literature. Based on results study, there is a need for rehabilitation for those who have been found guilty of follow criminal narcotics, as arranged in Chapter 54 Constitution Narcotics in 2009. This is because they have been found guilty those involved in narcotics crimes often experience mental and physical pain, so that need rehabilitated. Decision Number: 157/Pid.Sus/2023/PN Bna Court Country Banda Aceh replace punishment seven year six monthprison and a fine of Rp. 800,000,000,- (eight hundred million rupiah) if not paid replaced with punishment prison during three month. Although has fulfill the requirements of Article 127 paragraph (1), he noted that the application of justice Restorative believes that punishing narcotics addicts is not appropriate because more focused on retribution than recovery.

Keywords : *Juridical Analysis, Narcotics, Court Decision*

Introduction

In Indonesia, nowadays, the fight against the eradication of narcotics abuse is increasingly aggressive, however, Indonesia is still ranked as one of the countries with the highest number of narcotics crimes (Zainab Ompu Jainah. 2021) Narcotics crimes are crimes



committed by perpetrators which result in harm to themselves and others, or it could also be said that narcotics crimes committed by dealers are a typology of extra ordinary crime because they take many victims and other consequences arise from the use of these drugs (Axel Hutasoht, 2022). The high number of criminal acts and the operations of law enforcement agencies are closely related to the problem prison overcrowding as a funnel for the criminal justice system. Police, prosecutors, advocates, judges, and prisons/detention centers are the first five institutions that form the criminal justice system. Prisons/detention centers function as places where crimes that have gone through the process of investigation, prosecution, examination in court and sentencing can be carried out. It is noteworthy that, of all prisoners, drug-related offenses account for the majority of prisoner cases. (Made Sugi Hartono, 2023)

As technology develops, needs are increasing, life's demands are getting higher, and to meet these needs, quite a few are using various means to obtain a standard of living that is appropriate to adapt to the times. Some people seem to be motivated by advanced technology. It is not surprising that in this era many people commit crimes to gain economic benefits in an easy and fast way and of course promise quite large incomes. One example is narcotics crime.

Narcotics crime in Indonesia is not a relatively new crime. It has become a habit and even a business transaction to gain economic benefits in order to obtain a standard of living that can be said to keep up with the times. In fact, narcotics have become one of the biggest legal problems in Indonesia at the moment. Through Law Number 35 of 2009 concerning Narcotics and Law Number 5 of 1997 concerning Psychotropics, the distribution and use of any type of narcotics has been regulated and regulated in law. -the law.

Indonesia itself, in terms of responding to forms of crime, has its own legal system, where Indonesia still adheres to positive law (*ius constitutum*). According to Lawrence M. Friedman, there are 4 functions of the legal system: First, as part of the control system that regulates human behavior. Second, as a means of resolving disputes. Third, as a social engineering function. Fourth, as social maintenance, namely a function that emphasizes the role of law as maintenance that does not want change. Furthermore, according to Friedman, there are three elements of the legal system, namely structure, substance and legal culture.



Meanwhile, law enforcement against crime in Indonesia, especially in terms of punishment, should refer to a legal norm approach that punishes criminals so that it can provide a deterrent effect (Sunarso, 2011). As a result of very dangerous drug abuse, the government enacted Law no. 35 of 2009 Narcotics Law, with the issuance of this law it is hoped that it can prevent and suppress the increasing distribution and abuse of narcotics in Indonesia.

In the legal system in Indonesia that monitors and controls the use of narcotics as well as tackling narcotics abuse and treating its victims is known as narcotics law. Laws regulating narcotics are very necessary considering their increasing distribution in various regions, both nationally and transnationally. This law regulates everything related to narcotics abuse. Narcotics abuse is a complex problem and has very broad dimensions, both from a medical, psychiatric, mental health and psychosocial perspective. In fact, the use of narcotics is very beneficial for treatment. In its use, narcotics and psychotropic substances are drugs or substances that are useful in the fields of medicine, health services, and also the development of science. On the other hand, they can cause dependence which is very detrimental if misused illegally, used without strict control and supervision by the authorities, apart from harming users can also harm society in general.

Control and supervision in Indonesia in its development is an effort to prevent and eradicate the abuse and illicit trafficking of narcotics which is very useful and necessary because narcotics in its development has progressed significantly in terms of processing using technology, also giving rise to crimes that are very dangerous for people's lives in general, where These crimes are carried out in an organized manner and have large dealers and groups that are very secretive and difficult to reveal. So, it is not surprising that the government is very serious about fighting the narcotics problem in this country. Drug abuse is very dangerous, so the government enacted Law no. 35 of 2009 of the Narcotics Law, with the issuance of this law it is hoped that it can prevent and suppress the increasing distribution and abuse of narcotics in Indonesia (Bakhri, 2011). This narcotics crime is also increasingly widespread, no longer covering adults, but has reached teenagers and even children. - children, of course with a modus operandi that is different from the modus operandi that is usually used to ensnare adults. Areas of illicit narcotics trafficking are no longer only in big cities, but have entered rural areas.



Abuse of narcotic substances which were originally used for medicinal purposes, along with the development of science and technology, various types of narcotics can be processed and can be misused for the benefit and benefit of certain individuals or groups. In this case, it can also damage the nation's future generations, many students and even college students will fall into drugs. Not only academics, even the general public are also quite a few involved in drug cases. In general, narcotics crimes are not only carried out alone, but are carried out by more than one person and are even carried out by syndicates that are organized in a structured, secret and secure manner. This crime has also developed into a transnational crime carried out using very sophisticated technological methods. Drug abuse is increasing in Indonesia, to deal with drug abuse investigators use special techniques, namely disguised purchasing techniques. This technique is carried out by the investigator pretending to be the buyer, apart from that it is also carried out by wiretapping (Sunarso, 2011).

The crime of narcotics and psychotropic substances is an extraordinary criminal case, so its handling needs to be carried out specifically and supported by human resources, funds, infrastructure, cross-sectoral cooperation between relevant government agencies and non-governmental institutions such as non-governmental organizations and also cooperation at regional and international levels with other countries. Its relation to Indonesia, as a legal state. The rule of law in question is a state that upholds the supremacy of law to uphold truth and justice. In general, in every country that adheres to the rule of law there are three basic principles, namely supremacy of law, equality before the law, and law enforcement in a way that does not conflict with the law (due process of law).) (Akhmad, 2008).

The narcotics problem has spread not only in Indonesia, but also throughout the world. According to a press release from the United Nations Office on Drugs and Crime (UNODC), more than 36.5 million people suffered from drug use disorders and approximately 275 million people used drugs in 2020. Between 2020 and mid-2020 and mid-2021 and 2022, total sales these drugs quadrupled. This increase can be attributed to the acceleration of technological progress and the adaptability of drug traffickers, who are able to adapt to the emergence of new technologies that make it easier for the global market to purchase illegal drugs (UNODC, 2022). Apart from being a violation of the law and organized crime, drug-related crimes can also be transnational, or "cross-border" crimes



involving other countries (Roni Gunawan, 2019: 337). Rehabilitation for drug and alcohol abusers is considered a successful way to reduce high levels of drug and alcohol abuse (Siti Hidayatun, Yeny Widowaty: 2020, 168).

When handling criminal cases involving narcotics abusers or victims of narcotics abuse, the final decision-making process centers on rehabilitation decisions. The Criminal Procedure Code (KUHP) has placed suspects in this situation so that the restorative elements of rehabilitation decisions are given priority when handling criminal cases of narcotics abuse involving drug abusers or victims of narcotics abuse. Rehabilitation decisions can be implemented if the investigator has met the legal requirements and standards at the time of arrest, and the evidence complies with the guidelines set out in the Supreme Court Circular (SEMA) Number 4 of 2010 concerning the placement of drug abusers, abuse victims and narcotics addicts. into medical rehabilitation and social rehabilitation institutions. There is a complete human being, who has dignity, self-respect and human rights that cannot be taken away from him. (H. Suyanto, SH., MH., MKn. 2018) Additional conditions in accordance with letters A and B in number 2, which state that when someone is arrested by the authorities, he must be caught red-handed and evidence found within one day after arrest. The case of narcotics abuse which was examined, tried and decided by the Banda Aceh Court in Decision Number: 157/Pid.Sus/2023/PN Bna dated 17 October 2023 on behalf of the defendant Fadillah Rizki Alias Kiki Bin M. Nuh, evidence was found in the form of Gol Narcotics. 1 type of methamphetamine (M-AMP) weighing \pm 4.02 grams. This legal issue will be studied in this legal writing.

This evidence exceeds the 1 (one) gram limit specified in Supreme Court Circular Letter Number 4 of 2010. It should be decided that the defendant needs to receive rehabilitation as a result. Considering, that based on the legal considerations above, the panel of judges should in handing down the a quo decision give a rehabilitation decision to the defendant. However, in its ruling, the Banda Aceh District Court Decision Number: 157/Pid.Sus/2023/PN Bna, actually imposed a prison sentence of 7 (seven) years and 6 (six) months as well as a fine of Rp. 800,000,000, -(eight hundred million rupiah) if not paid will be replaced by imprisonment for 3 (three) months. This is clearly related to the approach to resolving a history of narcotics use which must uphold the Guidelines for the Implementation



of Restorative Justice stating that this case must be decided using restorative justice techniques Number: 157/Pid.Sus/2023/PN Bna, in fact prioritizing the retributive principle, namely punishment for the perpetrator . This is in line with the Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020. According to the Guidelines for Implementing Restorative Justice, restorative justice strategies should be applied in the sentencing of this case. For the time being, various statutory regulations relating to this matter are mentioned in Decision Number: 157/Pid.Sus/2023/PN Bna but are not given much attention. Therefore, the purpose of this discussion is to review the laws and regulations related to the punishment process for addicts of addictive substances and psychotropic substances who have completed rehabilitation treatment.

Problem Formulation The main issue in this research, with the background information provided above, is why rehabilitation is needed for narcotics addicts and victims of narcotics abuse , as well as how the Banda Aceh District Court Number: 157/Pid.Sus/2023/PN Bna decides on the victims the.?

Research methods

This research uses normative or doctrinal legal research methods. Legal research that is based on research doctrine is called doctrinal research (Yati Nurhayati, Ifrani, M. Yasir Said, 2021: 11). Because this legal research is both prescriptive and applied, this research is relevant. To interpret laws that have been passed, this research uses a case and statutory approach, citing examples of legally relevant court decisions. The legal framework relevant to the research title is then used to examine these conclusions. Document study, also referred to as library research, is this research using deductive analysis methods to collect legal materials. Primary data is used to analyze the material.

Normative legal research is conceptual legal research as contained in statutory regulations and conceptually existing in other legal rules that exist in society regarding a particular legal problem. In this research, researchers used a type of normative research, namely research carried out by reviewing statutory regulations or other regulations applied in resolving a particular legal problem. Normative research is often called doctrinal research



where the object of study is are statutory regulatory documents and library materials which constitute basic data which in research science is classified as secondary data. Normative Legal Research, consisting of:

1. Research into legal principles
2. Research on legal systematics
3. Research on the level of legal synchronization
4. Legal history research
5. Comparative legal research

In accordance with the type of research, namely normative legal research (normative juridical), more than one approach can be used. In this research, a statutory approach and a concept approach are used . The legislative approach is carried out to examine the statutory regulations that regulate. In the perspective of legal theory, justice is the main goal of the natural law school.

Research Results and Discussion

Why is rehabilitation necessary for narcotics addicts and victims of narcotics abuse?

Rehabilitation is a term used in Indonesia to describe the approach taken by drug abusers or victims of drug abuse. Rehabilitation can be carried out as a result of a court decision, during the investigation process, or during the prosecution process. Despite this, Indonesia's efforts to help addicts and victims of narcotics abuse to recover are still lacking. Therefore, it is very important for law enforcement officials to understand, interpret and carry out their obligations to provide rehabilitation for narcotics addicts and their victims, so that there is still time to recover. Therefore, it is critical for law enforcement to understand, comprehend, and carry out their responsibilities to provide rehabilitation for addicts and victims.

Jurisdictional Review of Rehabilitation for Drug Abusers and Victims , Narcotics abusers such as drug addicts and victims need more protection and protection to be rehabilitated, because the main aim of rehabilitation is to help drug addicts and victims of drug abuse to recover from narcotics-related illnesses. Therefore, relevant parties need to give



greater priority to the law on rehabilitation for injured parties and the prohibition of narcotics use.

Rehabilitation is a way to get treatment and engage in recovery activities for those who abuse drugs or are victims of abuse. According to Law No. 35 of 2009 concerning Narcotics, rehabilitation is divided into two categories: (a) Social rehabilitation, which includes physical, mental and social recovery of addicts and victims of drug abuse with the aim of helping them return to their social roles; and (b) Medical rehabilitation, which includes medical therapy aimed at eliminating drug dependence.

To begin rehabilitation of victims, investigators can submit an assessment request to the Integrated Assessment Team (TAT). Furthermore, TAT can provide recommendations for rehabilitation or not in accordance with BNN regulation no. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. The TAT assessment is carried out in collaboration with the medical and legal assessment teams. Addicts and abuse victims Narcotics have the right to receive rehabilitation, as stated in Article 3 paragraph (1) of the BNN regulations. Suspects in narcotics cases can also qualify for rehabilitation if the TAT recommends it, as stated in Article 3 paragraph (2).

In general, drug addicts and users have three options for accessing rehabilitation and fulfilling rehabilitation-related obligations:

- 1) Willing. Drug abusers and addicts choose to enter rehabilitation of their own accord, either by visiting a rehabilitation facility themselves or by using a mandatory reporting system.
- 2) Through a mandatory reporting system. After self-reporting, addicts can use IPWL recovery services. Alternatively, drug addicts and users may be reported by their families or 'forced' to report themselves to avoid criminal prosecution.
- 3) By the judge's decision. Judges presiding over drug crime cases have the option of placing drug addicts, users, or victims of drug abuse in rehabilitation facilities. The judge's decision may be in line with the addict's desire to be admitted to a treatment facility or simply not to go to prison, as the reporting system requires.



Addicts and victims of drug abuse must undergo rehabilitation. According to Article 54 of Law Number 35 of 2009 concerning Narcotics, "victims of narcotics abuse and addicts are required to undergo medical rehabilitation and social rehabilitation." According to Article 54, rehabilitation is a mandatory effort aimed at helping addicts or victims of narcotics abuse to regain physical abilities, mental and social. In addition, according to Law Number 35 of 2009, the rehabilitation obligation aims to improve the health of Indonesian citizens who are addicts and victims of drug abuse. The purpose of the Narcotics Law is to require rehabilitation for those who abuse drugs or alcohol. This is because Law no. 35/2009 has differentiated the treatment of those who abuse narcotics; Before this law came into existence, narcotics users, dealers, creators and narcotics dealers had to be treated equally. With this alternative approach, narcotics addicts become criminals who need to be treated and victims who also need treatment (Hawkins: 2003, 49).

Based on Articles 103 and 127 of the Narcotics Law, rehabilitation can also be carried out through a court decision. These are legal options available to the judge, and can only be granted at his or her discretion. Furthermore, Supreme Court Circular Letter (SEMA) Number 04 of 2010 and Circular From the explanation above, it can be concluded that narcotics abusers and addicts need rehabilitation as an effort to improve the situation and enable victims to continue their social functions regularly (Ranu-Mahesti.2018.51). The obligation to carry out rehabilitation treatment is outlined in Law no. 35 of 2009 concerning Narcotics, Article 4, which mandates that narcotics addicts must undergo social and medical rehabilitation.

"Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law," reads Article 28 D paragraph (1) of the 1945 Constitution. Paragraph (1) Article 28 states that "Everyone has the right to protection of oneself, one's family, honor, dignity and property under one's control, as well as the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right." Everyone has an inalienable right to protection, which is the realization of their legal rights and the defense offered by the government. Every citizen is subject to the same level of protection. Drug users have the same right to receive medical treatment.



Legal Study of the Re-detention of Addicts and Victims of Narcotics Abuse who Have Successfully Completed the Rehabilitation Program at the Banda Aceh District Court Decision Number: 157/Pid.Sus/2023/PN Bna

Based on the legal basis of Article 127 paragraph (1) letter an of the Narcotics Law, the judge in the Banda Aceh Court Decision Number: 157/Pid.Sus/2023/PN Bna tried the defendant with a detention sentence of 7 (seven) years and 6 (six) months and a fine of Rp. 800,000,000,- (eight hundred million rupiah) with failure to pay, a prison sentence of three months will be imposed instead of the proper amount. for 3 (three) months. The following is the judge's decision and legal considerations:

- 1) Every abuser needs to know, therefore, based on the results of the Criminalistics Laboratory Examination Minutes Lab Number: 2351/NNF/2023, dated April 27 2023, with patient Fadillah Rizki Alias Kiki Bin M. Nuh, the results of the methamphetamine examination are positive, and possession and use The defendant did not have permission from the competent authorities from the Ministry of Health of the Republic of Indonesia. Articles 7 and 8 of Law no. 35 of 2009_on Narcotics states that illegal drugs are limited to use for the development of science and/or health; class I narcotics must not be used for purposes other than for health lab tests. Therefore, the defendant who used crystal methamphetamine has fulfilled these provisions.
- 2) Methamphetamine is number 61 in the UURI Appendix. Number 35 of 2009 concerning Narcotics, found in crystal powder and a glass pipette, as per the results of the examination that was carried out. Thus the element of "class 1 (one) narcotics" has been fulfilled.
- 3) Using a straw, the defendant took a quantity of crystal methamphetamine for himself after installing a suction device or bong. Based on the available evidence, the panel of judges concluded that the "for oneself" element had been fulfilled because the defendant experienced the effects of methamphetamine in the form of a feeling of freshness and not drowsiness.

Although judges can make rehabilitation decisions for addicts and victims of narcotics abuse based on Article 103 of Law no. 35 of 2009, but this is discretionary authority because it uses the word "can". This can be seen from the sound of Article 103 paragraph (1) of Law



no. 35 of 2009 which states: "In the event that the judge examining the case of a Narcotics Abuser finds evidence of a criminal act, the judge may: a. decide to order the person concerned to undergo treatment and/or treatment through rehabilitation; or b. decide to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Abuser is not proven to have committed a criminal act."

Decision number 157/Pid.Sus/2023/PN Bna, which sentenced drug addicts to prison, is in line with Article 127 paragraph (1) letter a of the Narcotics Law and does not conflict with Article 103 paragraph (1) of the Narcotics Law. Punishing addicts and victims of drug abuse with prison sentences is not appropriate. Narcotics users and victims do face challenges in terms of punishment for rehabilitation, but this must be prioritized along with the importance of recovery, which is very important when handling cases involving narcotics crimes. In this way, drug offenders will not repeat their crimes and will no longer use drugs to experience the addictive qualities of these dangerous substances. (Executed, Andri Winjaya: 2015, 83)

Conclusion

By answering the problems in this research, research conclusions are drawn based on the results of the discussion described previously. The conclusions are as follows Users and victims of misuse of dangerous substances must undergo rehabilitation after an evaluation by the Integrated Assessment Team (TAT). These requirements are outlined in Law no. 35/2009 concerning Narcotics, Art 54. However, based on Articles 103 and 127, the judge may decide not to impose a mandatory alternative sentence for addicts and victims of narcotics abuse.

Despite the fact that this violates the principles of restorative justice for narcotics addicts and victims of narcotics abuse as well as human rights, the imposition of imprisonment in the Banda Aceh District Court Decision Number: 157/Pid.Sus/2023/PN Bna is in accordance with the law. applies.

Suggestion



It is hoped that in the future, law enforcement in Indonesia will prioritize the concept of restorative justice and pay attention to regulations that require addicts and victims of narcotics abuse to receive punishment in the form of rehabilitation.

In order for the rehabilitation process to run well, there must be cooperation between the police, rehabilitation specialists, the National Narcotics Agency (BNN), and employees who have knowledge in their fields.

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Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

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