



LEGAL ANALYSIS OF CRIMINAL LIABILITY FOR DRUG ADDICTS (Study of Kisaran District Court Decision Number 296/Pid.Sus/2021/PN. Kis)

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ARTICLE INFO

History of the article:

Received: 07/07/2024

Corrected: 12/07/2024

Accepted : 30/07/2024

Published: 30/07/2024

Keywords:

Law Enforcement,
Addicts, Narcotics

ABSTRACT

Law enforcement against narcotics crimes has been widely carried out by law enforcers, as well as many perpetrators who have been sentenced to court decisions and are serving sentences in correctional institutions. Law enforcement against addicts and narcotics users according to Law Number 35 of 2009 concerning Narcotics includes non-penal policy countermeasures, namely pre-emptive (counseling) and preventive (prevention) efforts. The judge's consideration in making a decision against the perpetrators of narcotics crimes in the decision of the Kisaran District Court Number 296/Pid.Sus/2021/PN.Kis is that the defendant must be held accountable for his actions in accordance with the decision handed down by the judge, namely imprisonment for 9 (nine) years and a fine 1,000,000,000.00 (one billion rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 4 (four months) is appropriate for coaching to be carried out.

1. Introduction

The law is the basis for one's actions. Within the law, everyone must act and behave appropriately, both civilian and military. One of the purposes of law is to maintain order, peace, tranquility, and harmony in human relations. Violations of legal principles, in order to restore order, peace, and legal certainty in society, require the law to be enforced. Violators who violate these legal provisions must be held legally accountable before a court (judge) that is open to the public.

Law enforcement against drug crimes has been extensively carried out by law enforcement, and many perpetrators have been sentenced to prison and are serving sentences in correctional institutions. Satjipto Rahardjo argues that law enforcement is not a definitive action; it is simply applying the law to an incident, which can be likened to drawing a straight line between two points.





Law enforcement against drug abusers should be able to prevent the increase in drug abuse in society. However, the reality is that the more intensive law enforcement against drug abuse, the more drug abuse increases.

In efforts to prevent and address drug abuse, from a legal perspective, the government has also drafted and enacted the Narcotics Law, namely Law Number 35 of 2009 concerning Narcotics, which replaces Law Number 22 of 1997 concerning Narcotics and Law Number 5 of 1997 concerning Psychotropics. Despite these regulations, drug crimes have been effectively addressed. This is evident in the increasing number of drug distribution and abuse cases in society. Every crime has a perpetrator, and every crime committed also has victims. Every crime results in significant losses for its victims, both material and immaterial. While the suffering experienced by victims of crime is highly relevant as an instrument or consideration in sentencing perpetrators, the suffering experienced by perpetrators due to being punished has little to do with the suffering of the victims.

The issue of law enforcement against drug abuse in Indonesia remains a public concern, particularly within the criminal justice system. One such issue is law enforcement against drug users and addicts.

The lack of consistency among law enforcement officials in enforcing the substance of the narcotics law has, in reality, given rise to polemics in law enforcement and chaos within society. Drug addicts, classified as Class I drug abusers, essentially qualify as perpetrators of drug crimes, but under certain circumstances, drug addicts may be more likely to be victims.

Efforts to combat drug abuse within the framework of drug crime law enforcement should be carried out using various approaches. However, in Indonesia, the dominant approach is the imposition of punishment on drug abusers.

The substance of the Narcotics Law does not yet provide a clear concept regarding the application of the law to drug users who use drugs for their own use, who are classified as drug addicts and victims. As a result, the application of the law to drug users has not yet fully achieved legal certainty.

The Narcotics Law stipulates that judges examining cases involving drug addicts may order the addict to undergo treatment and/or rehabilitation if the addict is found guilty of a drug crime, or to order the addict to undergo treatment and/or rehabilitation if the addict is found not guilty of a drug crime.

According to the definition of a drug abuser mentioned above, a drug abuser can be broadly defined, including producers, distributors, and users. This makes it difficult to classify drug users as perpetrators or victims of drug crimes. If they are classified as abusers, they will be subject to criminal penalties; if they are



classified as victims, they will be directed to rehabilitation. This lack of clarity in the provisions can lead to misinterpretation of criminal penalties.

A drug victim is someone who unintentionally uses drugs because they are persuaded, tricked, deceived, forced, and/or threatened into using drugs. This provision is truly difficult for the public and law enforcement to understand. These three qualifications can be considered a trinity: a drug victim is certainly a user, a user can be an addict, and an addict certainly uses drugs.

2. Research Method

The type of research conducted in this thesis uses a normative legal research method (normative juridical). Normative research is legal research that positions law as a system of norms. The normative system in question concerns the principles, norms, and rules of legislation, court decisions, agreements, and doctrines (teachings).

This research uses a library data collection method. The data in this study were obtained through secondary data, namely data collected through the study of literature. Secondary data is data obtained from official documents, books related to the research object, and laws and regulations.

The technique for obtaining data related to the research problem is library research. This library study seeks concepts, theories, opinions, or findings closely related to the subject matter. This literature includes laws and regulations, scholarly works, and other sources.

To find a theory from the data, a qualitative method is used, namely research that refers to legal norms contained in laws and court decisions as well as norms that live and develop in society.

3. Results and Discussion

Results

The recent emergence of various forms of crime in new dimensions demonstrates that crime is always evolving. Likewise, drug crimes are no exception to this development. Drug trafficking, the drug trafficking industry, is part of the activities of transnational criminal organizations, alongside other types of crime.

Drug crimes, which are part of organized crime, are essentially crimes against development and crimes against social welfare, attracting national and international attention and concern. Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semisynthetic, that can cause

decreased or altered consciousness, loss of sensation, reduction or elimination of pain, and can lead to dependence.

Indonesia considers drug crimes to be extraordinary crimes that have become rampant. Therefore, extraordinary law should be applied, stating that in emergency situations, rampant crimes that plunder and threaten the nation must be eradicated as quickly as possible through the fairest possible law enforcement, with clear procedures and the most just law enforcement.

Drug crimes are punishable by law. Therefore, several countries believe that a person's actions and mental state can be combined and constitute a requirement for a criminal act. Siswanto argues that this principle states that the actus reus element, namely the criminal act, must come first. This aligns with the requirements for punishment (*strafvoraus setzungen*), which prioritizes the existence of a criminal act. Once a criminal act is known as defined by law, the mental state or intention of the perpetrator (*mens rea*) is investigated.

Obstacles in drug prevention and eradication efforts arise from a lack of qualified or competent investigators. To uncover perpetrators involved in international networks, the police must deal with foreign nationals. Meanwhile, Indonesian National Police investigators' foreign language skills are still very limited. The lack of human resources in law enforcement is also evident in their limited knowledge of drug crime eradication and their inability to uncover perpetrators who use increasingly sophisticated methods.

Every person is a legal subject as the bearer/supporter of rights and obligations, including both natural persons (*natuurlijke persoon*) and legal entities (*recht persoon*) who can be held criminally accountable for their actions. Based on the facts of the trial, witness testimony and the defendants' statements, the defendants were identified as natural persons. After their identities were verified during the trial, the defendants confirmed their actions and their identities matched those in the Public Prosecutor's indictment.

Unlawful acts, as defined by Law Number 35 of 2009, are acts committed by a person without the permission and/or approval of the authorized party, namely the Minister upon the recommendation of the Food and Drug Monitoring Agency or other authorized officials under Law Number 35 of 2009. 35 of 2009 concerning Narcotics and other relevant laws and regulations.

An unlawful act is an act committed by a person with the permission of an authorized party, namely the Minister, upon the recommendation of the Food and Drug Monitoring Agency, or another authorized official under Law No. 35 of 2009 concerning Narcotics, but which results in misuse of the permit or use beyond the intended purpose.



Article 7 of Law No. 35 of 2009 concerning Narcotics stipulates that narcotics may only be used for health services and/or the development of science and technology. Permission to use and procure narcotics must be obtained from the Minister of Health of the Republic of Indonesia or another official. Therefore, whether or not the defendant had permission for their actions will be discussed in more depth in the main elements of the charges against the defendant.

4. Discussion

Judges have the freedom to independently consider the severity of prison sentences based on their decisions. This independence is absolute and unimpeded by other parties. This is to ensure that court decisions are truly objective. The judge's freedom to determine the severity of the prison sentence must also be guided by the maximum and minimum limits and the freedom held must be based on a sense of justice for both the defendant and the community and be responsible to God Almighty.

The evidence presented in court must be interconnected. This ensures the judge can prove that the defendant committed the crime. However, if the evidence presented in court differs from one another, it can lead to uncertainty among the judge.

Every court decision must be accompanied by considerations that serve as the legal basis and rationale for the decision. This is stipulated in Article 14 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power, which states: "In deliberations, each judge is required to submit written considerations or opinions regarding the case being examined, which shall constitute an integral part of the decision."

According to Article 1, point 11 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), a court decision is a judge's statement pronounced in open court, which may include a transfer or acquittal of all charges in the cases and manners stipulated in this law.

A defendant can be sentenced if legally and convincingly proven guilty of a crime during the trial. Therefore, during the trial, the judge must cite the defendant's actions, which align with the facts revealed during the trial and meet the formulation of specific articles of a statutory regulation.

The judge's legal considerations in handing down the verdict were in accordance with applicable provisions and were based on all the facts and evidence revealed during the trial. However, the author disagrees with the judge's decision to sentence drug addicts and users to nine years' imprisonment and a fine of Rp. 1,000,000,000.00 (one billion rupiah), with the provision that if the fine is not

paid, it will be replaced with four months' imprisonment. The author believes this sentence is too harsh; drug addicts and abusers should be given the opportunity to undergo rehabilitation.

Law Number 35 of 2009 concerning Narcotics is unique in that it is forgiving. This means that when drug abusers are pardoned, they must report to the Mandatory Reporting Receiving Institution (IPWL) for rehabilitation and treatment at an established rehabilitation center. It is crucial for victims of drug abuse to undergo a comprehensive and ongoing rehabilitation program, encompassing not only medical and social rehabilitation but also ongoing support from their families and the institutions they support. With a rehabilitation program, addicts can stop using drugs. Furthermore, they are trained in discipline and self-control, thereby preventing potential relapse.

According to the author, in every drug case, law enforcement and the decision-makers must proceed from the same regulation: Law Number 35 of 2009 concerning Narcotics, a special regulation that deviates from the criminal justice system currently in effect in Indonesia. This is special because Law Number 35 of 2009 concerning Narcotics adopts a dual-track criminal system for drug abusers, with all courts in Indonesia mandating rehabilitation, while dealers are sentenced to imprisonment or death.

In practice, in Indonesia, judges still sentence drug abusers to prison without rehabilitation. This clearly ignores the essence of existing regulations. Another impact of this situation is the burden on the state, which must finance the costs of drug convicts while they serve their sentences in correctional institutions.

The author believes that rehabilitation is far better than imprisonment. If drug users are rehabilitated, they will recover from their addiction and will refrain from using illicit substances again. This is because the legal framework in this country adheres to a double-track criminal justice system, which essentially requires that drug users who are sentenced to prison serve their sentence for rehabilitation. Rehabilitation is not carried out in correctional institutions but in special rehabilitation facilities. Rehabilitation is one way to save drug users from dependence.

Imprisonment for drug abuse victims is a deprivation of liberty and has negative aspects, thus preventing the goal of punishment from being fully realized. Rehabilitation is intended to free drug abusers, categorized as addicts, from their dependence. Rather than being released or freed from punishment as in prison, addicts are provided with rehabilitation. If, instead of rehabilitation, the abuser worsens in prison, the judge's decision will not benefit the abuser, and the person will not be a better person when they return to society. Therefore, the



author believes that rehabilitation is an effective punishment for reducing drug cases in Indonesia.

5. Conclusion

Legal provisions for drug addicts and abusers under Law Number 35 of 2009 concerning Narcotics prioritize rehabilitation for drug addicts and users, but impose very high criminal penalties for drug dealers and precursors. The spirit and purpose of Law Number 35 of 2009 concerning Narcotics is to prevent and eradicate the illicit trafficking of narcotics in Indonesia.

Law enforcement against drug addicts and users under Law Number 35 of 2009 concerning Narcotics includes non-penal policy efforts, namely pre-emptive (education) and preventive (prevention) efforts. Pre-emptive efforts include dialogue patrols, while preventive efforts include raids on nightclubs. Penal policy efforts emphasize repressive measures (direct action). Repressive (direct action) carried out by the Police is to provide a deterrent effect for perpetrators of narcotics crimes. Obstacles in law enforcement against drug addicts and users are non-penal policy obstacles and penal policy obstacles.

The judge's considerations in handing down the verdict against the perpetrator of narcotics crimes in the Kisaran District Court decision Number 296/Pid.Sus/2021/PN.Kis are in accordance with the first alternative indictment from the Public Prosecutor and have fulfilled the elements of Article 114 paragraph (2) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics and there is no justification or excuse for the actions committed by the defendant, so the defendant must be accountable for his actions in accordance with the verdict handed down by the Judge, namely imprisonment for 9 (nine) years and a fine of Rp1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 4 (four) months is appropriate to be able to receive guidance.

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