



Criminal Law Study on Narcotics Abuse Rehabilitation

Salma Widiasyam, Oheo K. Haris, Sitti Aisah Abdullah¹

*Faculty of Law,
Universitas Halu Oleo, Kendari, Indonesia*

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Abstract

The purpose of this research is to determine whether the rehabilitation of the victims of narcotics abuse in the decree of the District Court of Kendari No. 236/Pid. Sus/2019/PN K has fulfilled the element of Article 54 Act number 35 year 2009. The type of research used in this study is normative research, using the Statute Approach, Case Approach, Conceptual Approach.

Based on the results the authors conclude that narcotic addicts and narcotics abuse victims are obliged to undergo medical rehabilitation and social rehabilitation. The judge in the its verdict prosecute convicted because it has been proven legally and committed guilty of committing a criminal offence "narcotic abuse for himself", dropping a criminal against the defendant with imprisonment for 1 (one) year and 2 (two) months have in accordance with article 127 paragraph (1) of Law No. 35 Year 2009. However, in the ruling judge ignores article 127 paragraph (2) and paragraph (3) of Law No. 35 Year 2009 that the obligation of the judge in providing rehabilitation efforts against the defendant cases of drug abuse in line with the issuance of Circular Letter of Supreme Court No. 4 Year 2010.

Keyword: Narcotic; Rehabilitation, Victims of Abuse

INTRODUCTION

Indonesia is one of the main objectives of the illegal circulation of narcotics. The misuse and illegal circulation of narcotics is already up to a degree of concern and threatens all aspects of national and state life. The problem of narcotic abuse in Indonesia has entered most of the society, starting the upper layer of society until the lower community. The spread of narcotics is no longer only in large cities, but it has been in small towns to sub-districts and even villages (Sasangka, 2003).

Narcotic abuse is not intended as a means of treatment but because it wants to enjoy, in excessive amounts, orderly and long enough that it causes health disorders, mental physical and social life. Abusers narcotics over a long period of time continuously can lead to addiction, which is the behavior of dependence on narcotic users (Waluyo, 2017).

*Email: salmawidia@gmail.com

Address: Gedung K, Kampus Sekaran, Gunungpati, Semarang Jawa Tengah 50229, Indonesia

Phone/Fax: (024) 8507891

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The National Narcotics Agency declared abuse and circulation of narcotics in the community showed an increase by the widespread casualties caused by drugs. Its victims are expanding among the younger generations, the state civil apparatus, members of the Republic of Indonesia National Police and Indonesian army, head of regional, legislative members to the household environment. Based on data on the National Narcotics Agency of southeast Sulawesi around 1.58% or 29,012 people are affected by drug abuse in southeast Sulawesi.

To regulate and prevent the widespread impact of the narcotic abuse, the existence of criminal law is necessary. Its purpose is to create harmony, order, regularity and legal certainty in the life of nations and States. Narcotics and illegal drugs abuse are categorized as crimes and perpetrators of criminal acts should be punished with prison sentence. But on the other hand, he was also the victim of a criminal offence committed by himself. The determination of narcotic abusers as crimes stipulated in Law No. 35 year 2009 about narcotics. Along with the advancement of Science and technology, narcotic crime is seen to have been transnational by using high operandi mode, advanced technology, supported by a wide network of organizations. Narcotics misuse has caused many victims, especially among the younger generation, so it is very dangerous to the lives of people, nations and countries.

Various policies are born from the government to prevent, mitigate, treat and eradicate narcotics, including to ensure the efforts of medical rehabilitation and social rehabilitation for narcotics abusers with the purpose contained in Article 4 Letter d Act No. 35 Year 2009. Alternative penalties can be dropped on to the perpetrators of narcotics abusers, other than the allotment penalty of imprisonment and fines. Act No. 35 Year 2009 also opens the opportunity of rehabilitation efforts for the addicts and victims of narcotics abuse. This is due to the allotment factor of the prison sentence and fines do not impact the effects of deterrent the perpetrators (Sunarso, 2004).

A number of narcotics abuse perpetrators sentenced to jail by the judge, after his sentence, he was re-caught using narcotics. One reason is he is not detached from dependence on narcotics. Until prison sentence is ineffective to ensnare narcotics addicts. Therefore, rehabilitation is considered an alternative that can cope with narcotic abusers (Hanafi, 2013).

Interesting to be investigated the verdict of judges No. 236/Pid. Sus/2019/PN Kdi with the case of defendants caught hands by the police officers because it has 3 (three) packs of narcotic Shacet Shabu weighing 0.4450 grams.

RESEARCH METHOD

This research uses normative legal research. Conformity between concrete law regulations as a necessity with a living reality in society is an important object that is examined in normative legal research (Marzuki, 2011). The approach to the problem used is the of approach, conceptual approach. Sources of legal materials used are primary materials and secondary materials. The technique of collecting legal materials used to obtain the maximum research result is by the literature method. Conducting a legal material analysis is a method of finding the answer to the problem raised. Overall, the legal materials are described as a systematic form of the legal materials to the sentence based on the fact obtained from the research so as to make it easier to draw conclusions in answering legal issues raised in the problems in this writing.

FINDING AND DISCUSSION

The Efforts of Rehabilitation of Narcotic Abuse Perpetrators in Verdict Number 236/Pid. Sus/2019/PN Kdi

Narcotics abuse actors must be built specifically to avoid excessive addiction. In Article 54 of Act Number 35 Year 2009 it is written that narcotics addicts and narcotics abuse victims are obliged to undergo medical rehabilitation and social rehabilitation. Rehabilitation is the recovery of drug victims so that it can implement its social functionalities that can carry out its life duties normally and naturally. The rehabilitation Program is a series of coordinated and integrated efforts, comprising of medical efforts, mental counseling, psychosocial, academic and educational skills to improve self-adjusting, self-reliance and self-help and achieve functional capabilities in accordance with the potential of both physical, mental, social and economic. In the end they are expected to address the issue of narcotic abuse and re-interact with the community reasonably (Apriyansah, 2010). Law No. 35 year 2009 divides rehabilitation into 2 (two) types:

1. Medical rehabilitation

Medical rehabilitation is the process of integrated treatment activities to relieve addicts from narcotic dependence.

2. Social rehabilitation

Is a process of integrated recovery activities, both physical, mental and social, so that former narcotics addicts can re-implement social functions in public life.

Act Number 35 Year 2009 categorize the victims of narcotic abuse as "sick people" who are entitled to get treatment in this case through rehabilitation. In Article 127 Paragraph (3) of Act No. 35 Year 2009 is governed that "in the event of misuse as in Article 127 Paragraph (1), which can be proved or proved as a victim of narcotic abuse, the misuse is mandatory for medical rehabilitation and social rehabilitation". So that in its application abusers narcotics can be threatened with criminal but if proved as a victim of drug abuse, then the right to get treatment in the form of medical rehabilitation and social rehabilitation. The granting of rehabilitation against narcotic abuse can be proposed by the public prosecutor. However, the judge has the authority in providing rehabilitation. It is based on Article 103 of Act No. 35 Year 2009 that reads:

- (1) The judge examining the cause of narcotics addicts may:
 - a. Discontinue to order the relevant treatment and/or treatment through rehabilitation if the narcotic addict is convicted to commit a narcotics criminal offence or
 - b. Apply to order the concerned undergoing treatment and/or treatment through rehabilitation if the narcotic addict is not guilty of a narcotic criminal offence.
- (2) The period of treatment and/or treatment for narcotics addicts as referred to in paragraph (1) A is accounted as the period of serving the sentence.

The judge in adjudication of a narcotic abuse should be in line with the release of the Supreme Court Circular Letter No. 4 of 2010 on the Placement of Abusers, Victims of Abusers Narcotics into the Medical Rehabilitation and Social Rehabilitation Institute.

The defendant, in the ruling No. 236/Pid. Sus/2019/PN Kdi, was sentenced to imprisonment for 1 (one) year and 2 (two) months because, according to the law, he proved legally and conclusive guilty of narcotics abuse as it was taught in the second indictment by the Prosecutor. The second indictment is Article 127 Paragraph (1) of Act No. 35 Year 2009.

The penalty allotment given by the judge to the defendant is correct and based on the rule of law. However, the judge in dropping Article 127 Paragraph (1) of Act No. 35 Year 2009 does not respect the provisions of Paragraph (2) in the article. In paragraph (2) of Article 127 paragraph (1) of Law No. 35 year 2009 stipulated that in deciding the case as paragraph (1), the judge shall pay attention to the provisions referred to in articles 54, 55, and Article 103. The three chapters determine that there is an obligation for addicts and drug abuse victims to undergo medical rehabilitation and social rehabilitation. The granting of the deterrent effect on the defendant abusers narcotics by dropping the prison will not be effective because, to make him recover from the use of narcotics will not be able if the judge only give sanctions in the form Therefore, the judge must also give a rehabilitation effort to make the defendant recover so that after the period of his sentence can return to society well.

Basic Consideration of Judges in Dropping the Verdict on Narcotic Abuse Cases

The judge's judgment is the culmination of a matter being examined and judged by the judges. So in order to drop the verdict of course should pay attention to all aspects in it. Judges are also obliged to dig, follow and understand the legal values that live in society. This means the judge must find the law (Hamzah, 1994).

The judges are given the freedom to impose the ruling on each criminal lawsuit, it corresponds to the sound of Article 1 of Act Number 48 Year 2009 on the Judicial Power that judicial power is the authority of the independent State to administer the judiciary in order to enforce the law and justice based on Pancasila, for the implementation of the State law of the Republic of Indonesia.

Basic consideration of judges in dropping the verdict can be used as an analysis material about the orientation that the judge has in dropping the verdict. In addition, it is also very important to see how the verdict that was dropped is relevant to the purpose of the sentence that has been determined. In general it can be said that, the ruling of a judge that is not based on the correct orientation, in a sense not in accordance with the purpose of the sentence that has been determined, will precisely negatively affect the criminal countermeasures itself and will not bring benefit to the convicted.

Judges in the decision to impose guidelines on juridical and non-juridical considerations can be described as follows:

a. Juridical Considerations

A juridical consideration is the consideration of a judge based on the factors revealed in the proceedings and by the law has been established as a matter that must be contained in the verdict. Juridical considerations include:

1. Prosecution
2. Criminal prosecution
3. Witness information
4. Accused remarks
5. Evidence

When reviewed from the juridical aspect, the defendant has violated Article 127 Paragraph (1) of Act No. 35 Year 2009. Here, the judge decides on a matter of belief that the defendant commits narcotic abuse as it was to be accused by the alleged subsidation. The judge did not consider the fact of the trial that based on witness information from the public that the defendant was drug trafficking. The defendant proved to be a narcotic abusers as was in a subsidair indictment, should the judge in prosecute seek rehabilitation to the defendant. Because, on the one hand, defendants

used narcotics without rights and against the law, but on the other hand, these defendants were victims of narcotic circulation.

b. Non-Juridical Considerations

Consideration of non-juridical judges is also called sociological. A sociological judge's consideration is governed by Article 5 Paragraph (1) of Act Number 48 Year 2009 stating that the judge must judge, follow, and understand the legal values and sense of justice that live in society. Non-juridical considerations in this regard to the perpetrators, such as the reasons for the weigher and the reasons for alleviating, education and the background of the defendant's social status. From the fact that the verdict is the thing that is incriminating and alleviating the defendant, among others:

1. The incriminated

Defendants do not support government programs in the event of drug eradication

2. The lightening

a. The defendant regretted his actions and promised to not repeat it again

b. The defendant politely at the trial

That in the ruling, the Council of judges both do not find any reason for the correct and forgiving reasons in the defendant in committing the criminal act that has been proven, thus the defendant must be declared as a person who can be accountable for his actions and must be sentenced to a fair according to the fault rate of the defendant.

Based on the fact of the trial, the defendant has been shown to violate Article 127 Paragraph (1) of Act No. 35 Year 2009. The elements of the article are:

1. Everyone

That the formulation of the element of "everyone" who in the science of criminal Law refers to the subject of the law as the perpetrator of a criminal act, that is, everyone who is seen able to answer his deeds according to the law. During the proceedings faced by the defendant and the defendant showed common sense and his ability in answering all questions that had been asked to him, so the defendant was seen to be accountable for all the crimes he had committed.

Thus this element has been fulfilled and proven legally.

2. Abusers Narcotics for himself

Based on the facts revealed in the trial based on the legitimate proof of evidence in the form of witnesses, information experts, letters, instructions and information defendants have acquired the fact that the defendant was arrested by the police officers because caught hands allegedly carrying narcotic type of Shabu when going to use it.

The ruling on Kendari District Court No. 236/Pid. Sus/2019/PN Kdi does not provide a rehabilitation effort to the defendant. While pursuant to Article 127 Paragraph (2) of Act No. 35 Year 2009 mentioned that:

1. In the case of severing as referred to in Paragraph (1), the judges shall observe the provisions referred to in Article 54, Article 55 and Article 103

2. In the case of abusers as referred to in Paragraph (1) can be proved or proved as a victim abusers narcotics, the abusers is obliged to undergo medical rehabilitation and social rehabilitation.

The judges in the ruling do not consider Article 127 Paragraph (2) of Act No. 35 Year 2009 that in deciding the matter of Paragraph (1) the obligation of the judge to pay attention to the provisions contained in Article 54, Article 55, and Article 103 Act No. 35 Year 2009 which reads:

Article 54

"narcotic addicts and narcotics abuse victims are obliged to undergo medical rehabilitation and social rehabilitation".

Article 55

- (1) The parent or guardian of a narcotic addict who is not yet an age is obliged to report to a public health care center, hospital, and/or medical rehabilitation and social rehabilitation institution appointed by the Government to obtain treatment and/or treatment through medical rehabilitation and social rehabilitation.
- (2) Narcotic addicts who have insufficient age must report themselves or reported to their families to public health centers, hospitals and/or medical rehabilitation institutes and social rehabilitation by Governments to obtain treatment and/or treatment through medical rehabilitation and social rehabilitation.
- (3) Provisions concerning implementation of mandatory report as intended in Paragraph (1) and Paragraph (2) shall be stipulated by government regulation.

Article 103

- (1) Judge who examines the cause of narcotics addicts can:
 - a. Decide to order the relevant treatment and/or treatment through rehabilitation if the narcotic addict is guilty of a narcotic criminal offence or
 - b. Assign to order the concerned undergoing treatment and/or treatment through rehabilitation if the narcotics addict is convicted to commit a narcotic criminal offence
- (2) The period of treatment and/or treatment for narcotics addicts as referred to in paragraph (1) A is accounted as the period of serving the sentence.

Article 103 Paragraph (1) and Paragraph (2) of Act No. 35 Year 2009 implies that narcotic addicts, other than as perpetrators of criminal acts, as well as victims of the crime itself, require medical rehabilitation and social rehabilitation. They are seen from the victimology corner often referred to as self victimization or victimless crime.

In this ruling the defendant is found to be guilty of committing criminal acts as narcotic abusers. The judge should have given a rehabilitation effort against the defendant because the defendant, on the one hand, was a sick person due to narcotic abuse. This is because narcotics have a content (addiction) that can make the wearer addicted to use it again. Therefore, the defendant needed rehabilitation as a time to undergo punishment in order to make him recover and return to society well. To prove that the defendant as a victim of narcotic abuse there must be a laboratory letter attachment from the integrated team of the astisement, stating that the defendant is proven and worthy to obtain medical rehabilitation and social rehabilitation.

However, in the process of investigation conducted by the investigation team of the regional police drugs southeast Sulawesi, the defendant was not given a assessment. This may be one of the factors of prosecution not to provide rehabilitation demands against defendants due to lack of assessment or information from the experts. The absence of assessment will make a small possibility of defendant will be given rehabilitation.

Narcotics abusers perpetrators are obliged to undergo rehabilitation in accordance with the provisions of Article 54 Act No. 35 Year 2009 that "narcotic addicts and narcotics abuse victims must undergo medical rehabilitation and social rehabilitation". In Article 1 Number 16 and Number 17 of Act No. 35 Year 2009 explained that medical rehabilitation is "a process of integrated treatment activities to relieve addicts from narcotic dependence" and social rehabilitation "a process of recovery activities in an

integrated both physical, mental and social, so that former narcotic addicts can re-implement social functions in community life". The giving of rehabilitation efforts is crucial for the accused narcotics abuse so that the defendant gets the target to get positive and can continue his life well without drugs. The granting of rehabilitation to narcotics addicts is indispensable to realize the purpose of criminal law, namely to reform the perpetrators and turn him into a law-abiding member and a productive society. The difference in rehabilitation with the ideal idea is that individuals can essentially either change their lives when encouraged and given support (Lippman, 2019).

The authority of the judges contained in Article 103 Act No. 35 year 2009 shall be further governed by the Supreme Court by circular letter of the Supreme Court number 04 year 2010 on the placement of abusers and narcotics addicts to the medical rehabilitation and social Rehabilitation Institute. The circular of the Supreme Court letter can be used as a basis for consideration or reference of judges in dropping rehabilitation. Circular letter of Supreme Court No. 4 Year 2010 Set the criteria of the perpetrator abusers as follows:

- a. Defendant at the time of arrest by police investigators and BNN investigators in the condition of caught hands.
- b. At the time of being caught according to item a above, the evidence is found 1 (one) day with the details as follows:
 1. Methamphetamine Group (Sabu-Sabu) weighing 1 gram
 2. Group Heroin MDMA (ectasy) weighing 2.4 grams/as much as 8 grains
 3. Group of Heroin weighing 1.8 grams
 4. Cocaine group weighing 1.8 grams
 5. Cannabis group weighing 5 grams
 6. Cocaine leaves weighing 5 grams
 7. Meskalin weighs 5 grams
 8. Group Psilosybin weighing 3 grams
 9. LSD Group (D-Lysegic acid diethylamide) weighing 2 grams
 10. Group PCP (Phencylidine) weighing 3 grams
 11. Fetanil Group weighing 1 gram
 12. Methadone group weighing 0.5 grams
 13. Morphine group weighing 1.8 grams
 14. Petidine Group weighing 0.96 grams
 15. The codeine group weighs 72 grams
 16. Bufrenorfin Weighing Group 32 grams
- c. The positive laboratory test letter contains narcotics based on the investigation request.
- d. Need to Certificate of Government psychiatric/psychiatrist appointed by the judge.
- e. Not proven that concerned are involved in the dark circulation of narcotics.

The Circular Letter of the Supreme Court No. 04 Year 2010 is also used as a benchmark to determine whether a person is a narcotic abusers. Since the logic between addicts with narcotic abusers is the same as using narcotics, only addicts should prove to have a high dependence on narcotics.

Pursuant to article 54 of law number 35 year 2009 and circular letter of the Supreme Court No. 04 year 2010, the defendant is included as a victim of narcotic abuse so that it should be in its verdict judges are obliged to give medical rehabilitation and social rehabilitation efforts. Judges in examining, prosecute, and severing matters shall be with the provisions of the legislation and must dig, follow and understand the values of the law and the sense of justice. The judges in the case of the Decree No. 236/Pid. Sus/2019/PN Kdi do not give a sense of justice by not providing rehabilitation efforts

against the defendant as mandated by Act Number 35 Year 2009 of the circular of the Supreme Court Letter Number 04 Year 2010.

CONCLUSION

Based on the results of the study can be concluded that the decision of the District Court of Kendari Nomor 236/Pid. Sus/2019/PN Kdi is not in accordance with the application of the law as in Article 127 paragraph (2) and paragraph (3) of law number 35 year 2009. The article states the obligation of a judge to provide medical rehabilitation and social rehabilitation if the defendant proved to be a victim of narcotic abuse. The abusers is obliged to undergo medical rehabilitation and rehabilitation of Cheframonantonio as follow up the circular letter of the Supreme Court number 04 year 2010.

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