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Criminal Law Reform Double Track System (Rehabilitation Versus Prison) On Against The Crime Of Narcotics Abuse In Indonesia

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ABSTRACT

Efforts to prevent and eradicate drug abuse are urgent because they can have a systemic effect. Therefore, it is necessary to renew article 127 of Law no. 35 of 2009 (Double Track System) for handling narcotics abuse which so far has emphasized criminal sanctions rather than action sanctions. This research uses normative legal research or can be referred to as doctrinal legal research. The analysis of legal material used is descriptive analysis. The results of the study concluded (1). The position of criminal sanctions and actions based on article 127 Law Number 35 of 2009 it is clear that there is a regulation, but its application to narcotics abuse has not been effective because it does not take into account the physical and psychological conditions of the perpetrator, which should focus more on rehabilitation than imprisonment (2). The reform of the Criminal Law article 127 Law Number 35 of 2009 (Rehabilitation versus Prison) against narcotics abusers must be carried out immediately because it concerns the future of the nation and also provides aspects of protection and aspects of the public interest.

ABSTRAK

Upaya pencegahan dan pemberantasan penyalahgunaan narkoba sangat mendesak karena dapat berdampak sistemik. Oleh karena itu, perlu dilakukan pembaharuan pasal 127 UU No. 35 Tahun 2009 (Double Track System) untuk penanganan penyalahgunaan narkotika yang selama ini lebih menekankan sanksi pidana daripada sanksi tindakan. Penelitian ini menggunakan penelitian hukum normatif atau dapat disebut dengan penelitian hukum doktrinal. Analisis bahan hukum yang digunakan adalah analisis deskriptif. Hasil penelitian menyimpulkan (1). Kedudukan sanksi dan tindakan pidana berdasarkan pasal 127 Undang-Undang Nomor 35 Tahun 2009 jelas ada pengaturannya, namun penerapannya terhadap penyalahgunaan narkotika belum efektif karena tidak memperhatikan kondisi fisik dan psikis pelaku. , yang seharusnya lebih fokus pada rehabilitasi daripada pemenjaraan (2). Pembaharuan UU Pidana pasal 127 Undang-Undang Nomor 35 Tahun 2009 (Rehabilitasi versus Penjara) terhadap penyalahguna narkotika harus segera dilakukan karena menyangkut masa depan bangsa dan juga memberikan aspek perlindungan dan aspek kepentingan umum.

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I. INTRODUCTION

In Law Number 35 of 2009 Article 1 paragraph 1 it is explicitly explained that drugs can cause dependence for users (Law No. 35 of 2009 on Narcotics) Its abuse is regulated in articles 111 to 148 of the above law.

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, whose effects can be in the form of changes in feelings, relieving pain, and causing dependence. derived from plants or non-plants, both synthetic and semi-synthetic which can reduce, eliminate, and reduce pain, and can cause dependence. While referring to Law Number 35 of 2009 concerning narcotics and PP Number 25 of 2011 concerning the implementation of mandatory reporting of narcotics addicts, addicts or users and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation (Badan Narkotika Nasional Republik Indonesia, 2008)

Narcotics on the one hand are drugs or materials that are useful for the benefit of health and the development of science in the fields of pharmacy and medicine. However, on the other hand, it can also cause harmful dependence if its use is misused. Narcotics are favored because they provide temporary pleasure and pleasant feelings. Narcotics will change the feelings and way of thinking of people who consume them to be calm, relaxed and free.

The crime of drug abuse has been a problem for the Indonesian people since the pre-independence era until now. Crimes of abuse are included in extraordinary crimes, meaning that their circulation and abuse in Indonesia is massive and damaging to the younger generation. Cases of abuse of narcotics, psychotropics and illegal drugs have spread to all corners of Indonesia, not knowing whether they are developed or remote areas. Users are not only high-class people, such as artists, businessmen and officials, ordinary people, to law enforcement officers too many who enjoy it. Almost all Correctional Institutions in the territory of Indonesia are filled with prisoners and convicts with narcotics abuse cases. The existing regulations are considered not effective enough to deal with this problem (Bahagiati, 2012). Data from the National Narcotics Agency (BNN) stated that until the end of 2020, narcotics crime cases in Indonesia reached 40.75 cases. The highest number was in North Sumatra (6,542 cases), followed by DKI Jakarta (5,885 cases) and East Java (4,674 cases) [4].

Until now , the legal sanctions given to the perpetrators are in the form of physical punishment , namely by placing the perpetrator in prison . Imprisoning is not the right solution to this problem, but carrying out medical rehabilitation is more successful in healing for drug users. It's no secret that many drug users are in prisons but are still addicted to drugs. This is because they are only physically detained but their illness has not been cured. They need treatment which so far has not been optimally obtained. When viewed from the psychological condition of the perpetrators of sanctions this does not provide a sense of justice because it will not cure them of dependence, this condition can actually exacerbate their dependence on drugs, even the tendency of their use quantitatively and qualitatively is increasing with increasing victims, especially among children, adolescents and the younger generation (Wp, R, 2017). The economic and social impact of drug abuse is so great that prevention and eradication efforts are very urgent because it can have a systemic impact (Sukoco, 2022). Therefore, a solution is needed in handling narcotics abusers, which so far emphasizes criminal sanctions and action sanctions in accordance with Article 127 of Law no. 35 of 2009 (Double Track System).

Criminal law reform can be carried out in terms of various aspects such as sociopolitical, sociophilosophical, and sociocultural aspects or it can also be from other aspects such as social policies, criminal policies and law enforcement policies. Criminal law reform is essentially a manifestation of changes to various aspects and policies (Putri, N. P. Y. D, 2020). Based on the things stated above, it is necessary to reform the criminal law of the double track system (Rehabilitation versus Prison) against narcotics abusers.

II. RESEARCH METHODS

This research uses normative legal research or can be referred to as doctrinal legal research (Waluyo, 1996). This normative research was chosen because of the occurrence of a problem in the legal norms for handling narcotics abuse, it is necessary to reform the criminal law to implement a double track system. The problem approach used is the Legislative Approach and the conceptual approach. The legal sources used are derived from library research, namely, primary legal material, namely legal material from legislation and secondary legal material obtained from literature review, namely from books and research results by legal experts (Soekanto, 2015). The technique of collecting legal materials is by reviewing the laws and regulations regarding the punishment of narcotics abusers and by using small notes from books and literature related to the issues discussed. The analysis of legal material used is descriptive analysis, namely conducting analysis by describing or explaining existing regulations, library books and other literature related to the material, so that a conclusion can be drawn (Amiruddin, 2006).

III. RESULTS AND DISCUSSION

Position of Criminal Sanctions and Actions (Double Track System) in the Criminal System Based on Articl127 of Law no. 35 Year 2009

Sentencing as an act against a criminal can be morally justified not primarily because the convict has been proven guilty, but because the punishment has positive consequences for the convict, the victim and also other people in society. Therefore, this theory is also known as the theory of consequentialism. Consequentialism is a school of moral philosophy. G.E.M Anscombe (1958) is an Irish-born twentieth century philosopher who first sparked the terminology of consequentialism through his article 'Modern Moral Philosophy'. Anscombe states:

I think it plausible to suggest that this move on the part of Sidgwick explains the difference between old-fashioned Utilitarianism and that consequentialism, as I name it, which marks him and every English academic moral philosopher since him. In its later development, consequentialism is better known as a school of moral philosophy with the view that normative goodness depends only on consequences. An action is morally right depending on the consequences (as opposed to the situation or nature of an action or everything that happened before the action (Anscombe, G. E. M. 1958).

The imposition of a crime against a criminal is a process in the settlement of a criminal case and as a legal consequence that must be accepted by someone who has committed a crime. The legal consequences are generally in the form of criminal penalties. On the one hand, the sentencing is intended to improve the character of the convict and on the other hand the sentencing is also intended to prevent people from doing the same thing (Kanter, 2002). The regulation regarding the implementation of the double track system of punishment is actually clear as regulated in Article 127 of Law no. 35 of 2009 (Law No. 35 of 2009 on Narcotics)

a. Any Abusers: 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; and c. Narcotics Category III for oneself shall be sentenced to a maximum imprisonment of 1 (one) year.
b. 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.
c. 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.

Criminal sanctions and action sanctions (double track system), greatly affect the form, severity and severity of sanctions that will be imposed on perpetrators of narcotics abuse. Criminal sanctions are actually reactive to an act, while action sanctions are more anticipatory towards the perpetrators of narcotics abuse. The focus of criminal sanctions is on the act of drug abuse through the provision of suffering so that it becomes a deterrent. While the sanctions are directed actions to

provide help so that narcotics abuse can turn into non-dependence on narcotics. Thus, it can be explained that criminal sanctions emphasize the element of retaliation in the form of suffering that is deliberately imposed on narcotics abuse. Meanwhile, action sanctions originate from the basic idea of protecting the community and fostering or treating narcotics abuse. However, in its application to narcotics abusers, in the trial process, the judge mostly applies punishment with a single track system by imposing a prison sentence.

From the results of research at the Langkat District Court, it shows that until now the criminal system imposed on narcotics criminals still uses a single track system, so that all convicts who are serving sentences at the Class II A Langkat Narcotics Correctional Institution are sentenced to imprisonment (Sulistyawati, 2020)

This double track system requires that the elements of reproach/suffering and elements are equally accommodated in the criminal penalty sanctions system (Law No. 35 of 2009). The double track system demands harmony between sanctions in the form of criminal sanctions and sanctions in the form of rehabilitation measures as an effort to recover and prevent narcotics abusers (Law No. 35 of 2009). The form of legal action imposed on victims of narcotics abuse in sentencing is subject to action in the form of rehabilitation because rehabilitation is one of the activities carried out by the government in preventing and eradicating narcotics abuse.

Reform of the Criminal Law Double Track System system (Rehabilitation versus Prison) for Narcotics Crime Perpetrators

The reform of Indonesian criminal law which is directed at accommodating the laws that live in society into the content of criminal law regulations is a form of criminal politics through efforts to criminalize acts. Such an effort is an effort to suppress crime that occurs in the community, as well as being linear with efforts to create welfare because conduciveness in the social life of the community is one of the supports for the creation of community welfare (Fajrin, 2005) Efforts to reform criminal law in Indonesia are essentially part of and closely related to law enforcement policies, criminal policies and social policies in the field of criminal law policies. Therefore, criminal law reform in principle is part of a policy to renew legal substance in order to make law enforcement more effective, tackle crime in the context of protecting society, and overcome social problems and humanitarian problems in order to achieve national goals, namely social protection and social welfare (Arief, 2005). The reform of criminal law is also part of an effort to review and reassess the main points of thought or basic ideas or socio-philosophical, socio-political and socio-cultural values that underlie criminal policies and criminal law enforcement policies. Criminal law reform if the value orientation of the aspired criminal law is the same as the value orientation of criminal law, it must be formulated with a policy-oriented approach, as well as a value-oriented approach (Pradityo, 2017)

Legal pluralism is an advantage but also a problem because legal pluralism if it is not accommodated in laws and regulations can be a trigger for the ineffectiveness of the law, because the law is not in line with the culture of the community or it can be interpreted that the community does not want laws that are not in accordance with the community. Accommodating the law that lives in society, in principle, is a step that is considered good considering the history of the Indonesian nation which was once colonized by the Dutch which caused the Indonesian legal system (when it was colonized it was called the Dutch East Indies) to follow the legal system of the Netherlands and it is even more sad when post-independence laws apply. In particular, criminal law remains the law of the Netherlands using the principle of correspondence. The accommodation of law living in the community has the issue of whether what is accommodated are values in the sense that their actions are considered contrary to the community or the whole including customary actions that apply to the actions they violate, because if they do not include customary actions, they will eliminate the essence of customary law. which aims to restore which is an eastern style that has an authentic philosophy, not the same as other nations, especially western nations (Alin, F, 2017)

Criminal law reform in the context of improving the criminal system is still being carried out. Of the many things that will be updated, one important thing in the criminal system which is also crucial in reforming Indonesian criminal law is the renewal of Article 127 of Law No. 35 of 2009 (double track system) against perpetrators of narcotics abuse crimes. This is an important matter to be included in the concept of criminal law reform (Prasetyo, 2019)

The use of the Double track system in criminal legislation still raises a lot of confusion, in the end the confusion in the determination of the two types of sanctions in criminal law raises the problem of inconsistency in Law No. 127. 35 of 2009 concerning narcotics. The inconsistency in determining the type and form of sanctions between criminal sanctions and sanctions is the basis used as the basis for the double track system in legislative policies so far. In addition to the determination of the two types of sanctions, there is also a tendency to prioritize criminal sanctions as prima donna, while action sanctions are sanctions that have been neglected in the criminal law so far (Sholehuddin, 2003)

The National Narcotics Agency (BNN) is currently proposing a revision of Article 127 of Law no. 35 of 2009 concerning Narcotics, so that drug users do not go through a court process and are immediately rehabilitated. That way, drug users can be directly handled appropriately, so they don't fall into dealers and dealers [4]. According to Anang Iskandarmuda, imprisoning narcotics abusers violates the provisions of Law no. 35 of 2008, one of which stipulates that drug abusers must be rehabilitated, but five years after the law has been in effect, the imprisonment of users is still happening. This condition is very unfortunate with the declaration to rehabilitate drug addicts. He further said that drug users are victims of crime who need to be saved (Belarminus, 2015) The above opinion is reinforced by Erasmus Napitulu who said that the handling of narcotics cases by strengthening rehabilitation, because narcotics problems cannot be solved if the users are not rehabilitated. On the other hand, the legal approach to imprisonment is ineffective (Napitupulu, 2020). The effectiveness of imprisonment can be seen from the aspect of protection and aspects of the public interest. A prison sentence is said to be effective if it can prevent or reduce crime. Thus the criterion of effectiveness is seen from how far the frequency of crime can be suppressed. In other words, the criteria lies in how far the general prevention of imprisonment can prevent citizens from committing crimes (Arief, 2011).

Based on the views above, the researcher is of the opinion that the application of the double track system based on Pasal 127 UU No. 35 Tahun 2009 on narcotics abuse should be immediately rehabilitated because the person concerned is in a physical or psychological condition so he must be cured. Therefore, the legal process against perpetrators of narcotics abuse without going through a trial/trial process. As a basis for considering why it is done if given a prison sentence it is not effectively implemented because it will not cure Narcotics dependence and can even have a greater chance of getting involved in the narcotics distribution business because it has interacted with prison inmates. Thus, the renewal of the double track system in Pasal 127 UU No. 35 Tahun 2009 regarding narcotics abuse must be carried out immediately because it is an extraordinary crime. The reform will be effective in terms of protection and public interest.

IV. CONCLUSIONS

The position of criminal sanctions and actions (Double Track System) based on article 127 Law Number 35 of 2009 it is clear that there is a regulation, but its application to narcotics abuse has not been effective because it does not take into account the physical and psychological conditions of the perpetrator, which should focus more on rehabilitation than imprisonment. The reform of the Criminal Law article 127 Law Number 35 of 2009 (Rehabilitation versus Prison) against narcotics abusers must be carried out immediately because it concerns the future of the nation and also provides aspects of protection and aspects of the public interest.

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