

Juridical Review of Decriminalization on Efforts to Cut Drugs Users' Addiction In Indonesia

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ABSTRACT

As a developing country with a large population and strategic location, Indonesia has become market place for world's drug circulation. The number of victims is higher year by year. Drug victims are victims of abuse of narcotics that basically violate government regulations. So far, drug addicts in Indonesia are subject to criminal sanctions, yet from year to year the criminal sanctions applied to the victims of drug addicts have not decreased even on the contrary increasing sharply causing the emergence of drug emergency in Indonesia. The present research applies normative juridical review by providing descriptive analysis based on the data so as to provide arguments on realities that exist to provide an overview of solution. The government continues to reduce the number of victims of drug addicts, through the implementation of government decriminalization policy for victims of drug abuse and government policy on the implementation of the obligation to report for drug addicts to the receiving institutions for obtaining rehabilitation. Decriminalization policy has not been able to break the circulation of the drug chain in Indonesia as there are other factors that have not been able to be performed optimally in breaking the circulation of drugs in Indonesia.

Keywords : *Juridical Review of Decriminalization, cut off of addiction, drug abuse*

1. PRELIMINARY

Drug trafficking in Indonesia shows a significant number year by year; suggesting that drug trafficking is also becoming larger in Indonesia. Drug users are not only from adult segment but also teenagers and children. This is very worrying considering that children and adolescents are the pillars of the nation, the successors of the nation's generation, who are expected to be a superior generation to continue the noble ideals of the nation. The enactment of the Basic Agrarian Law in Indonesia creates dualism in land law that is sourced from customary law and on western law (Roesli, Heri, & Rahayu, 2017)¹.

¹Roesli, M., Heri, A., & Rahayu, S. (2017). Authority of Land Procurement Committee In The Implementation of Compensation For Land Acquisition. *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, 10(2), 46–59..

The high number of drug addicts is certainly severe problem to overcome, considering that users, except children are well aware of the dangers of drug use and its consequences. Ali Djohan, deputy of BNN argues that 80 percent public knows the type and the dangers of drugs.² Awareness of the consequences indicates that drug users do not care about the bad effects. This leads Indonesia becomes a potential market and is even said that Indonesia is the largest market in Asia. BNN data shows that that 22 percent of drug users in Indonesia are students.

In 2015 drug users in Indonesia was 5.9 million, the high number of users is followed by the higher number of drug smuggling in Indonesia³. The high number of drug victims in Indonesia is an indication that moral decadence is occurring in Indonesia as it has become the target market of international trading of drugs. This is a task shared between the government and all elements of society to overcome dangers of drugs; drugs emergency. Other impacts of the drugs usage are a variety of negative behaviors such as smoking, alcohol and free sex. These immoral behaviors of young generation will make the future of the nation damaged by drugs.

Indonesia spirit to cope with drugs users was apparent on 3-4 April 2012 ASEAN summit in Cambodia. In the meeting, the heads of the member states agreed to jointly fight drug trafficking between countries of member states. A declaration called "declaration on drug free Asean 2015 was a statement from delegation of Indonesia". The joint awareness of the members of the State in tackling drug trafficking was a form of major security concerns for all ASEAN Member States as drug may pose a threat to political situation and threaten the stability of the State.

The main points conveyed by Indonesian delegation in the meeting was "Indonesia emphasizes that the ASEAN Ministers Meeting on Drug Matters can provide a strong impetus for all member countries, especially the sectorial bodies in the field of narcotics to be more effective and successful in achieving Drug Free ASEAN 2015 on the importance of the protection of ASEAN youth against the dangers of narcotics through concrete cooperation between ASEAN members and speech partners, through sharing of

²MukhlisDinilah, Survei BNN 80 persentahubahayaNarkoba, KenapaKasusMasihtinggi, DetikNews, <https://news.detik.com/berita/d-3425965/survei-bnn-80-persen-tahu-bahaya-narkoba-kenapa-kasus-masih-tinggi>.

³kukuhAriwibowo, Upaya ASEAN DalamMencapai Drug Free ASEAN 2015, <http://dedihumas.bnn.go.id/read/section/artikel/2013/01/08/544/upaya-asean-dalam-mencapai-drug-free-asean-2015>



information, joint cooperation, controlled deliveries, transfer of knowledge development and implementation of comprehensive drug demand reduction.⁴

So far, management for victims of drugs has been considered not effective that the number of victims did not decrease every year, even worse it shows significant increase and becoming more harming. Criminal sanctions provided do not make them deterrent. Because the root of their problems do not receive the right subscription, the victims of drug users do not stop even if using drug while they were sentenced to criminal sanctions. For this reason, the government seeks to make a policy breakthrough in dealing with and overcoming the victims of drug abuse by creating punishment in the form of rehabilitation in accordance with the purpose of the law.

Under Law No.35 of Year.2009 article 4 (d) strengthen the use of medical rehabilitation and social rehabilitation efforts for drug abuse and addicts. However, the facts reveals that drug and narcotic abuse are punished by imprisonment. The United Nations Convention in New York 30 of the 1972 United Nations convention in Vietnam in 1972 was amended by the 1971 protocol, at which each State was required to prevent and rehabilitate drug abuse by education, care, rehabilitation and social reintegration.

Based on the above two rules, the victim of drug abuse must receive a serious handling from the government with the efforts of medical rehabilitation and social rehabilitation by placing them as victims who must receive serious subscribers, with criminal policy of decriminalization as an alternative to the procurement they receive in the form of rehabilitation. Based on reasons elaborated, the problem that the writer intends to analyze is to what extent of Decriminalization applied to the victims of drug abuse based on law No. 35 of 2009 can overcome addiction of drug victim in Indonesia. The purpose of the present research is to determine the extent of effectiveness of the implementation and of drug victims based on decriminalization policy in reducing the number of victims of drug abuse in breaking the circulation of drugs in Indonesia.

2. JURIDICAL REVIEW OF DECRIMINALIZATION

2.1 Decriminalization Policy

The term Decriminalization implies an act that is originally threatened with criminal sanction, then the criminal penalty is omitted, yet there is still the possibility of a penalty by another means. The concept of decriminalization for drug users was issued by

⁴Anang Iskandar, Dekriminalisasi Pengguna Narkotika Tidak Sama Dengan Legalisasi, posted on 2014/02/07, <https://anangiskandar.wordpress.com/2014/02/07/dekriminalisasi-pengguna-narkotika-tidak-sama-dengan-legalisasi/>

the Lisbon-based European Monitoring Center for Drugs and Drug Addiction (EMCDDA), 2005, stating that "Decriminalization" comprises removal of a conduct or activity from the sphere of law. Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of the criminal law.⁵ The term "Omitted" refers to the nature of the penalty, not by its unlawful nature. Judge is given the authority to impose criminal sanctions or rehabilitate the victim of drug addicts. Its nature of against the law persists, and giving criminal sanction is the last resort (*ultimum remedium*) if non-criminal sanction is no longer effective. Therefore BNN pushes decriminalization policy for drug addicts as giving criminal sanctions is perceived not effective and make them deterrent.

According to Anang, Decriminalization for abusers of drugs is a noncriminal punishment model as one of the modern legal paradigm that aims to press illegal narcotics supply and is expected to accelerate the completion of narcotics abuse in Indonesia.⁶ Decriminalization policy is a mandate of international conventions adopted in Law No.35 of 2009 on Narcotics. Article 54 states that Narcotics abuser is an accidental person using narcotics for being persuaded, deceived, cheated, forced, and/or threatened to use Narcotics. Thus drug addicts and users are victims of crimes committed by dealers or drug dealers in expanding their networks in national and international scale.

Indonesia has become a target site for drug traffickers. It has been proven by the increasing number of drug abusers while many have been arrested or secured. Punishment for drug abuse is not effective as prison is in fact become place for continuing drug abuse, the drug abusers still becomes drug abuser when leaving prison. Considering the fact, Decriminalization should be implemented in order to save the young generation have already become victims of drugs.

In Supreme Court Letter No. 7 of 2009 and amended with Supreme Court Letter No. 4 of 2010 concerning the placement of victims of abuse and drug addicts into the institutions of medical rehabilitation and social rehabilitation, judge is also authorized to impose sanctions to give imprisonment sanction based on evidence contained in the trial. If the perpetrator is proven as victims, judge is recommended to send him/her to rehabilitation treatment. In conclusion, the judge has the freedom to determine whether a drug-addict must be rehabilitated or there are other considerations for criminal sanctions.

⁵ Iskandar Anang, Dekriminalisasi Penyalahgunaan Narkotika, Kompas 24 Oktober, 2013. H.6

⁶ OC Kaligis, Sudjono Dirdjosisworo, *Narkotika & Peradilannya di Indonesia*, Cetakan III, Alumni Bandung 2011 H.28

The 1988 UN Assembly in Vietnam also agreed that the perpetrators receive alternative sanctions in addition to imprisonment; such alternative sanctions can be in the form of care, education, rehabilitation, and social reinterpretation. These international conventions have been ratified through the Narcotics Act No. 9 of 1976, then amended to Law No. 22 of 1997 and amended into Law No. 35 of 2009 which is currently in force, positioning abuses as victims who need to be treated.

In Law Number 35 on Narcotics, one of the objectives stated in article 4 is to guarantee the regulation of medical rehabilitation efforts and social rehabilitation for narcotics abuse. However, the facts reveal that narcotics abusers are punished by imprisonment.⁷ Kaligis and dirjosisworo stated that the criminal law reform in the Indonesian Narcotics Act appears to have processed in a dynamic of social and technological development affecting the development of criminality in Indonesia, which calls for anticipatory action and policy. Anticipatory against the threat of criminality which is also in the form of "abuse" of narcotics and psychotropic is performed through legal renewal which has enough long history with clear plot and step.⁸

1.2 Efforts to break the dependence of Drug Abusers

The handling of drug traffickers in Indonesia should immediately get serious management, as most drug abusers are generations to continue the development of the Indonesian aspiration in its entirety. for it to be the main agenda or joint attention to various efforts to break the drug abuse free from drug trafficking including policy issued through Supreme Court Letter No: 7 of 2009 which is updated with the Supreme Court Letter No: 4 of 2010 on rehabilitation of drugs abuse and Law Number 35 on Narcotics. Drugs abuse is the use of drugs outside medical indications without guidance or prescription and the use is pathologic (causing abnormalities) and cause obstacles in the activities both at home, school, campus and workplace and social environment.⁹

Impact that is often seen for drug users is difficulty to concentrate, hallucinations, decreased performance, decreased health impacts, and social impacts that they are often in the neighborhood and so on. There are three approaches used in tackling the problem of drugs, they are Supply Reduction, Demand Reduction, and Harm Reduction. Supply Reduction aims to break the supply chain of narcotics until the distributor network. Demand Reduction is an approach in drug dealer breaker, Harm Reduction approach in

⁸Hasnidar, Upaya Rehabilitasi Sosial bagi penyalagunaan Narkotika Dalam Perspektif Hukum Islam, skripsi <https://repository.ar-raniry.ac.id/1614/1/Hasnidar.pdf>

an effort to reduce the adverse effects of drug or drug abuse. In doing these three approaches, there must be strong synergy and commitment between the government, law enforcement officers, the community and the law itself, but for the approach of Supply Reduction and Demand Reduction more emphasizes the role of law enforcement and government officials and the role of small community.

In Indonesia there are several types of drugs circulating widely in the community such as heroin, marijuana, morphine, fentamil and so on. Actually some of the drug types are also used for health in accordance with doctors dose, but the deviations that occur in the community is used with other goals and often experience dependency and overdose so that bad impact on the health of drug abuse. In Indonesia there are several types of drugs and its regulation, they are: Narcotics Types regulated in Law No.35 Year 2009, type Psychotropic regulated in Law No.5 THN. 1997, other Related Adhesives.

The negative impact of drug abuse also concerns the interests of the nation and the state, such as the degree of moral decline in a generation, the high number of traffic accidents, the rising of criminality and the most risky is the growth and development of the stopping generation. There are two factors that cause the user of drugs are internal factors (e.g ego, desire be free, liability, high curiosity) and external factors (economic, environment, lack of supervision, social jealousy). Drug dealers have entered into various segments of society closed the segment of dorm environments, according to KPAI data such as teenage drug users amounting to 14 thousand (aged 12-21 years). In the management of drug abusers, the government has issued a decriminalization policy on drug addicts as one of the efforts to break the chain of drug abuse in Indonesia. Decriminalization policies by rehabilitating either medical or social rehabilitation aims to make drug users re-plunge in society as the original condition or as government efforts in the effort to save state assets that is the next generation of the nation.

1.2 Decriminalization policy to cut drug addiction chain

Decriminalization policy issued by the government is an attempt to reduce the number of drug users by rehabilitating drug users and efforts to minimize the impact of greater losses inflicted on drug traffickers. The impacts include health and other social impacts such as the decline in moral values in society and the impact the most important is the destruction of the State assets of the gold generation of the nation, so it is expected that the policy of decriminalization will bring the impact of good change as in accordance with the law No. 35 of 2009 on article 1 item 16 stating:

"Medical rehabilitation is an integrated process of treatment activity for freeing addicts from drug addiction".

Chapter 1 point 17 also mentions:

"Social rehabilitation is a process of unity recovery in an integrated, physical, mental, and social, thus, ex-drug addicts can re-implement social function in society."

Regarding criminal sanctions as stipulated in Law No. 35 of 2009 in Article 127 of Law. 35 Year 2009 the following applied:

(1) Every Abuser:

- a. Narcotics Group I for self-use shall be punished by imprisonment maximum of 4 (four) years
- b. Narcotics Group II for self-use is sentenced to imprisonment maximum 2 (two) years
- c. Narcotics Group III for self-use is punished by imprisonment maximum 1 (one) year.

(2) In deciding cases as referred to in paragraph (1), the judge shall be obliged taking into account the provisions referred to in article 54, article 55, and chapter 103.

(3). In case of abuses as intended in paragraph (1) can be proven to be a victim of narcotics abuse; such abuse must undergo medical rehabilitation and social rehabilitation.

In article 127 paragraph (2) of Law No. 35 of 2009, Article 54, Article 55 and Article 103 are so important as the guidance of the judges in giving or deciding the drug abuse so that the judge's verdict is really insured answer and in accordance with what is the main goal of Law No.35 Year 2009 and the desire of the entire nation of Indonesia for the State of Indonesia free from the dangers of drugs.

Article 54 UU.No.35 Year 2009 about narcotics states:

"Narcotics addicts and narcotics abuse victims are required to run medical rehabilitation and social rehabilitation".

Explanation of article 54:

Everyone who is dependent on narcotics is obliged to be able to rehabilitated medically and socially to cure the person (drug addicts) that is consciously and deliberately consume narcotics on the basis of personal use without the element of coercion even persuasion and/or threatened to use narcotics. "Drug abuse victim" is someone who accidentally uses narcotics for being persuaded, deceived, cheated, forced, and / or threatened to use narcotics

Article 55 of Law No. 34 Year 2009 on narcotics states:

(1) Parents or guardians of drug addicts who are not old enough to report to community health centers, hospitals, and/or rehabilitation agencies for treatment through medical rehabilitation and social rehabilitation.

(2) Narcotics addicts who is old enough shall report themselves or reported by their families to public health centers, hospitals and / or social rehabilitation and rehabilitation institutions designated by the government for treatment and / or treatment through medical rehabilitation and social rehabilitation.

(3) Provisions concerning the implementation of compulsory reporting as referred to in paragraph (1) and paragraph (2) shall be regulated by a Government Regulation.

Elucidation of article 55 paragraphs (1) is as follows:

This provision confirms that to assist the government in overcoming the problems and dangers of narcotics abuse, especially for narcotics addicts, the participation of parents / guardians, the community, in order to increase supervisory and guidance responsibilities for their children. What is meant by "not old enough" in this provision is a person who has not reached the age of 18 (eighteen) years.

Article 103 of Law No. 34 Year 2009 on narcotics states:

(1) The judge who examines the narcotics addict case may:

- a. Terminate to order the concerned person to undergo treatment through rehabilitation if the narcotics addict is found guilty of committing a narcotic crime, or
- b. Determine to order the concerned person to undergo treatment through rehabilitation if the narcotics addict is not proven guilty of committing a narcotic crime.

(2) The period of treatment for narcotics addict as referred to in paragraph (1) letter a shall be calculated as the period of undergoing a punishment.

Article 103 Paragraph (1) Letter (a) is as follows:

This provision confirms that the use of the word "deciding for narcotics addicts found guilty of committing a narcotic crime" implies that the judge's verdict is a sentence for the narcotics addict concerned.

Letter (b) is as follows:

1. This provision affirms that the use of word "Deciding for narcotics addicts who are not proven guilty of committing a narcotic crime" contains the notion that the determination of the judge is not a verdict (punishment) for the narcotics addict concerned. Such determination is intended to provide an emphasis that the narcotics addict is not guilty of committing a narcotic crime, but still subject to treatment and care. The cost of treatment and or care for narcotic addicts found

guilty of committing a narcotic crime is entirely the responsibility and burden of the state; as such treatment and or treatment are part of the sentence. As for narcotics addicts who are not proven guilty the cost of treatment and/or care while in detention status remains the state burden, except for house arrest and prisoners of the city.

In addition, the government also issued a policy stipulated in Government Regulation No. 25 of 2011 on the implementation of the obligatory report of narcotics addicts to the institutions of Beneficiary Report (IPWL) in order to get treatment or rehabilitation. This provides understanding to the public that victims of drug abuse will receive rehabilitation treatment instead of criminal sanctions. It also regulates the right of narcotics abusers to get treatment and rehabilitation as regulated in article 2 of Government Regulation No. 25 of 2011:

"The obligatory report of narcotics addicts aims to:

- a. meet the rights of drug addicts in obtaining medical treatment and or medical rehabilitation and social rehabilitation.
- b. involve parents, caregivers, families and communities in enhancing the responsibilities of narcotic addicts under their supervision and guidance;
- c. provide material information for the government in establishing policies in the field of prevention and limitation of misuse and illicit narcotics.

This is the important role of family, community and the government itself in an effort to help drug abusers and help government programs to break the narcotics in Indonesia. For that purpose, family as the nearest person of the drug victim is required or obliged to report to the authorized party as regulated in Article 128 paragraph (1), (2), (3) and (4) also Article 134 paragraph (1) and (2) -law No. 35 of 2009.

It is expected that this policy an help drug addicts become aware to be free from drug trafficking as a form of awareness of drug and drug users in the community to help the government program to overcome drug trafficking in Indonesia. It is expected that drug user can return in the condition prior to knowing and consuming narcotics and most importantly they can continue a healthy life and realize the ideals as a generation that is responsible for religion, parents and the state.

Data of the National Narcotics Agency (BNN) states until 2017 people who enter the phases of drug dependence almost reach 6 million people. This figure does not include the double user of both the dealers and the people who are still experimenting with the increasingly expanding age of drug users. Assumed by the total population of

Indonesia until the year 2017 by 260 million, approximately 2.5% of the total populations of Indonesia are drug users. Data of national narcotics agency also revealed that in 2017, they handled 46,537 drug cases throughout Indonesia with evidence of drugs reached 4.71 tons, 151, 22 tons of marijuana, 2,940,748 ecstasy and 627.84 kilograms of liquid ecstasy, and 68 new drug types in Indonesia.

However, this decriminalization effort has not been able to completely break the circulation of the circulation of drugs in Indonesia is indicated by the large number of drug trafficking. According to BNN, until 2017 there are 11 countries in the world that supply narcotics in Indonesia, 11 countries with a large supply. China contributed 250 tons of crystal meth and precursor (raw material for narcotics drugs). In 2016 the supply for Indonesia reached 1,097,6 tons. It was reported that 50 people died per day and 6 million children experiencing drug addiction.

Drug trafficking as well as drug abuse is still high indicating that decriminalization policy programs still cannot be performed effectively. In running the policy program a long process and the role of various parties are required. Indonesian government has implemented a strict and comprehensive drug law regulation. However, it is unfortunate that the number of drug addicts in Indonesia continues to increase due to Indonesian geographic location that becomes one of the main challenges for Indonesia in the fight against drugs crime. A very long coastline provides its own difficulties for BNN to conduct thorough surveillance, especially at small ports in Indonesia. This weakness makes it easier to market drugs in Indonesia, in addition to other factors such as the problem of low law enforcement.

Attempt to make Indonesia free of drugs as the agreement of ASEAN member countries still need struggle from various parties from the government, law enforcement officers and the community itself, by changing the way the public view to no longer steer away from even excommunicating drug addicts from their environment. The community can help the drug abuse people in their respective environments by providing motivation to rehabilitate and treat drug abusers with a camaraderie approach and provide spiritual input, creating a strong spirit for drug users to recover and undergo rehabilitation in support of government programs that is the policy of decriminalizing drug addicts in Indonesia.

3. CONCLUSIONS AND SUGGESTIONS

Government policies in implementing and providing solutions for drug victims with decriminalization policies on drug addicts are deemed appropriate and in accordance with the mandate of drug laws, as well as policies to report for drug addicts to receive treatment or rehabilitation for drug addicts, as well as giving understanding to the wider community about the obligation to report reporting to IPWL to further reduce the number of drug addicts in Indonesia so that their impact with the full recovery they no longer become drug consumers.

Decriminalization policy programs have not been effective in deciding the dependence of drug addicts in Indonesia, as evidenced by the high level of drug trafficking in Indonesia. Decriminalization policy for drug addicts also has not been able to effectively break the chain of drug circulation in Indonesia, because there are still more factors that have not been optimally touched in breaking the chain of drug circulation in Indonesia.

4. SUGGESTION

Synergy between the government, law enforcement officers and the public in law enforcement with the provision of very serious criminal sanctions or capital punishment for drug dealers and mafia in tackling the increasing number of drug victims in Indonesia is highly necessary. It is important to enhancing the role of society as well as giving understanding to the community in assisting decriminalization program by giving correct and good direction and appropriate for drug abuse so that they become motivated to undergo rehabilitation and struggle to recover. The government needs to provide more rehabilitation facilities and services for both hospitals and rehabilitation centers throughout the city or province throughout Indonesia.

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