

Ideal Construction Of Integrated Assessment For Narcotics Addicts And Abusers Based On Legal Certainty Within The Framework Of The Criminal Justice System

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Abstract

The government conducted programs on narcotics abuse and illicit trafficking through Law Number 35 of 2009 concerning Narcotics, comprising criminal and action sanctions that adhere to a double-track system. Following globalization, narcotics abuse and addiction no longer lead to imprisonment, but rehabilitation, which is preceded by an assessment of the addicts and victims by the Integrated Assessment Team (IAT). Therefore, this normative legal research was conducted using a prescriptive technique to solve problems surrounding the law, particularly concerning the strategy used in its implementation. Considering legal science is an applied science, academic legal research is expected to produce prescriptions. This research used statute, case, historical, comparative, and conceptual approaches. Subsequently, the findings showed that the construction of an integrated assessment for narcotics addicts and abusers has not been based on legal certainty. This can be observed from the judges' verdicts, as the majority of the abusers were sentenced to prison rather than rehabilitation centers, as mandated in Law concerning Narcotics. The ideal construction of an integrated assessment arrangement to reflect legal certainty within the framework of the criminal justice system is to make arrangements for clear and firm execution by law. This includes the requirements and procedures for submitting an assessment as well as the integrated assessment teamwork system. The reason is the lack of suspected narcotics addicts and abusers who have undergone an integrated assessment, thereby reducing the opportunity for rehabilitation efforts.

Keywords: Integrated Assessment, Narcotics Crime, Sentencing, Enforcement of Narcotics Law.

Introduction

Background

Drug abuse and illicit trafficking are serious national and global problems that have resulted in material and non-material losses. In an effort to tackle these problems, the government issued Law Number 7 of 1997 concerning the Ratification of the 1988 United Nations Convention on the Eradication of Illicit Traffic in Narcotics and Psychotropics and Law Number 8 of 1996 concerning the Ratification of the 1971 Psychotropic Convention. In 1997, the Government issued Law No. 5/1997 on Psychotropics and Law No. 22/1997 on Narcotics as a replacement for Law No. 9/1976. These two new laws regulate that psychotropic drugs and narcotics are only used for the benefit of health services and science. However, the provisions regarding narcotics crimes have been replaced by Law Number 35 of 2009 concerning Narcotics.

The sanctions regulated in Law Number 35 of 2009 adhere to a double-track system and are divided into criminal and action categories. Rehabilitation is one form of action sanctions. According to Article 103 of Law Number 35 of 2009, judges can decide or determine the need for narcotics addicts to undergo treatment.

In 2009, Supreme Court Circular Number 07 of 2009 was issued to inform regional and high courts throughout Indonesia to place narcotics addicts in rehabilitation centers. The most recent was the issuance of the Supreme Court Circular Number 04 of 2010 concerning the Placement of Abuse, Victims of Abuse, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions as a revision of the Supreme Court Circular Letter Number 07 of 2009. This Circular is a step forward in building the paradigm of eradicating the criminalization of addicts.

However, judges' sentences in narcotics cases have failed to implement this law. Most addicts are sentenced to prison even though Articles 54, 55, 56, 103, and 127 of the Narcotics Law guarantee medical and social rehabilitation.

This leads to unfinished business because imprisoning abusers or addicts without any curative effort can even plunge them into the illicit traffic of narcotics. Generally, narcotics addicts have a high addiction relapse rate, meaning they cannot recover alone and need help to heal. This necessitates a new paradigm in handling these individuals.

Therefore, law enforcement officers should be oriented towards action sanctions, particularly rehabilitation, in order to save the future of abusers and addicts. The role of judges in deciding or determining rehabilitation also requires support from other law enforcement officers. This should be based on a mutual understanding and agreement that narcotics abuse is a serious problem and an enemy of the nation. Hence, the government and law enforcement officers need to unite and unify the vision and mission to tackle abuse and addiction to realize the noble ideals of the nation and create a healthy generation.

The understanding and agreement in dealing with narcotics crimes are realized through a Joint Regulation of the Chairman of the Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Head of the Police, Head of the National Narcotics Agency via Number 01/PB/MA/III/2014, Number 03 of 2014, Number 11/2014, Number 03 of 2014, Number PER-005/A/JA/03/2014, Number 1 of 2014, and Number PERBER/01/III/2014/BNN

concerning Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. These regulations recommend that narcotics abuse and addiction should no longer lead to imprisonment but rehabilitation.

However, law enforcement has failed to comply with the proposed assessment in most cases. An example is the case of artist TioPakusadewo, where the assessment team recommended rehabilitation, but the final verdict was a 9-month prison sentence. According to DindinSupratman, the implementation of the Integrated Assessment Team (IAT) program at the National Narcotics Agency of South Jakarta exceeded the predetermined target but is still considered ineffective. This can be seen from the number of narcotics addicts who receive prison sentences.

The legal basis for decision-making through the provision of recommendations from the Integrated Assessment Team still lacks a binding force. Hence, this research suggested government action through the creation of an assessment team under the Ministry of Health and the National Narcotics Agency should be appreciated and equipped with a strong and binding legal construction and certainty. Law Number 35 of 2009 concerning Narcotics is also considered necessary to comprehensively explain the differences between narcotics users and dealers. This will enable the follow-up of the integrated assessment team's analysis against suspects with the imposition of criminal and action sanctions based on the values of justice.

Problem Formulation

Based on the background above, the problems are identified as follows:

1. Has the construction of an integrated assessment of law enforcement against narcotics addicts and abusers been based on legal certainty?
2. How does the ideal integrated assessment construction reflect legal certainty within the framework of the criminal justice system?

Research Method

This is doctrinal or normative legal research, as a process to find the rule of law, alongside legal principles and doctrines to answer the issues faced. The data used were obtained from primary and secondary legal materials attained from the library. Therefore, this research was conducted to produce new theoretical arguments or concepts as prescriptions to solve the problems at hand.

This research was prescriptive, which describes writing intended to provide arguments for solving problems and creating strategies. Considering legal science is an applied science, academic legal research should produce applicable prescriptions.

Meanwhile, the data were collected using the library research technique to obtain written legal materials by reviewing and studying literature, books, laws, regulations, judicial decision documents, report documents, archives, and other materials with a correlation to the research topic.

Discussion

Construction of an Integrated Assessment for Addicts and Abusers in the Enforcement of Narcotics Crimes in the Perspective of Legal Certainty

The criminalization of narcotics abuse is inseparable from the views or thoughts that previously dominated the formation and application of criminal law rules. The idea of criminalizing narcotics abuse began with the assumption that narcotics are only for treatment and scientific interests. Hence, actions outside of these interests are considered criminal, particularly due to the magnitude of the consequences and dangers arising from the use of illegal narcotics.¹

Narcotics abuse is a criminal act, and this supports the implementation of legal proceedings like other criminal cases. According to Law Number 35 of 2009 concerning Narcotics, narcotics abuse is a "criminal act" with implications for the provision of criminal sanctions against the perpetrators.

The problem of narcotics abuse requires a criminal law policy that positions narcotics abusers as victims, not perpetrators of crime. In the law on narcotics, the judge's authority is required to sentence proven addicts to ensure rehabilitation. This authority acknowledges that narcotics addicts, apart from being perpetrators of criminal acts, are also victims, which victimology refers to as self-victimization or victimless crime.

The criminal (penal) policy should be rational. One measure of its rationality is the success of the policy in achieving its goals, namely the purpose of punishment.² This is in line with the statement of G. Peter Hoefnagels that "criminal politics is the rational organization of the social reaction to crime."³

Based on the theory proposed by G. Peter Hoefnagels, the criminal policy can be pursued in 3 ways, namely:⁴

1. criminal law application;
2. prevention without punishment;
3. influencing views of society on crime and punishment.

A new criminal policy is considered effective, providing the criminal system used can meet the determined goals and targets or penalties. In this context, action sanctions in the form of rehabilitation for addicts and victims of narcotics abuse will be seen specifically as the punishment stipulated in the legislation.

¹Supramono G, Hukum Narkotika Indonesia, Djambatan, Jakarta, 2001. p.87.

²Barda Nawawidan Muladi, Op.Cit, p.3.

³G. Peter Hoefnagels, The Other Side of Criminology An Inversion of The Concept of Crime, Kluwer Deventer, Holland, 1963, p. 57.

⁴Ibid.

Theoretically, punishment has several objectives that can be classified based on theories about punishment. Rehabilitation of narcotics abusers adheres to the theory of treatment because this process of integrated treatment activities is expected to free abusers from addiction. This is congruent with the flow of treatment theory, namely to provide treatment and rehabilitation to the perpetrators of criminal acts as a substitute for punishment.

In this research, treatment as a sentencing goal is appropriate for the perpetrators of narcotics abuse. It is intended to provide rehabilitation to the perpetrators of crimes as a substitute for punishment because the criminals are considered sick people.⁵

Regardless of the actors, actions should be viewed from the juridical aspect, as well as the influence of personal character, biological, and environmental factors. In the context of narcotics addiction, the form of responsibility is more of an action or treatment to protect the interests of the community.

According to Herbert L. Packer, the rehabilitation of criminals is necessary because the imposition of sanctions should be oriented towards the individual perpetrators, not their actions. This is necessary to ensure the individual perpetrators of these crimes become better.⁶

Regarding the humanistic approach in policy or criminal law reform, Sudarto stated that as a consequence of the idea of criminal individualization, the modern criminal law system is oriented towards perpetrators and actions. It comprises criminal and action sanctions and their equality is the basic idea of the double-track system concept.⁷

Although the double-track system covers criminal and action sanctions, one of the two types of sanctions is not fully used. This system places the two types of sanctions equally and this emphasis is because the elements of reproach/suffering and coaching through criminal and action sanctions, respectively, are equally necessary. This equality is very useful to maximize the use of both sanctions appropriately and proportionally.

The double-track system is a two-track system regarding criminal law sanctions, comprising criminal sanctions from one party and the type of action sanctioned by the other. Both stem from different ideas, where criminal sanctions are based on "why the punishment is held?" while action sanctions concern "what the punishment is for?" This simply implies criminal sanctions are reactive to an act, while action sanctions are more anticipatory towards the perpetrator of the act. Criminal sanctions are focused on wrongdoing through the imposition of suffering, indicating the individual concerned becomes a deterrent. They emphasize the element of retaliation and refer to suffering deliberately imposed on a transgressor. Conversely, action sanctions are more focused on efforts to help the perpetrator change and stem from the idea of protecting the community and fostering or caring for the perpetrator. As explained by J.E. Jonkers, criminal sanctions are focused on the penalties applied for the crimes committed, while action sanctions have a social purpose.⁸

Based on the explanation above, the double-track system is the most appropriate for formulating sanctions against narcotics abuse. From a victimological review, narcotics addicts

⁵ C. Ray Jeffery dalam Mahmud Mulyadi, *Criminal Policy, Pendekatan Integral Penal Policy dan Non-Penal Policy dalam Penanganan Kejahatan Kekerasan*, Pustaka Bangsa Press, Medan, 2008, p. 79.

⁶ Herbert L. Packer, *The Limits of The Criminal Sanction*, Stanford University Press, California, 1968, p. 54.

⁷ Barda Nawawi Arief, op. cit., p. 46.

⁸ Teguh Prasetyo dan Abdul Halim Barakatullah, *Politik Hukum Pidana, Kajian Kebijakan Kriminalisasi dan Dekriminalisasi*, Pustaka Pelajar, Yogyakarta 2005, p. 88.

are self-victimizing, denoting the victims are also perpetrators. Victimology defines narcotics abusers as victims, though they committed the crime themselves. Therefore, addicts deserve protection as victims but should also be punished as perpetrators of crime. This implies that the double-track system in the formulation of sanctions against narcotics abuse is the most appropriate. Additionally, the criminal sanctions imposed on narcotics addicts as self-victimizing victims involves serving prison sentences, while the action sanctions are treatments organized by rehabilitation facilities.

According to the Narcotics Law, rehabilitation is treatment and/or care. As stated in Article 103 of the Narcotics Law, the rehabilitation sentence is given by the Judge who examines the narcotics abuse case with the following consideration:

1. Deciding to order the individual concerned to undergo treatment and/or care through rehabilitation, supposing the addict is proven guilty of committing a Narcotics crime; or
2. Determining to order the individual concerned to undergo treatment and/or care through rehabilitation, supposing the addict is not proven guilty of committing a Narcotics crime.

The period of treatment and/or treatment for narcotics addicts as referred to above is calculated as the period of serving the sentence. Therefore, the implementation of rehabilitation can be prioritized as an effort to overcome the increasing prevalence of narcotics abuse and related crimes.

The formulation of sanctions involves a criminal law policy governing perpetrators of narcotics abuse. It comprises criminal and action sanctions because narcotics abuse has a slightly different position from other criminal acts. They should be punished as criminals but also undergo rehabilitation as victims of their crimes.

The imposition of rehabilitation as an alternative sanction can be viewed from 2 (two) main aspects, namely community protection and the improvement of the perpetrator. Community protection encompasses preventing, reducing, or controlling criminal acts and restoring the balance of society by resolving conflicts, bringing a sense of security, repairing losses or damage, removing stains, and reinforcing societal values. Meanwhile, the aspect of improving the perpetrators entails various objectives, such as rehabilitation, re-socialization, and protection from arbitrary treatment outside the law. In this case, medical and social rehabilitation is implemented.

Based on the theories of punishment, the determination of action sanctions (*maatregel*) is more educational and is not aimed at retaliation. It is solely aimed at special prevention, namely protecting the community and society from threats that can harm its interests. Hence, action sanctions (*maatregel*) in the form of rehabilitation for addicts and abuse victims should be a substitute sanction for imprisonment for perpetrators.

Overcoming the crime of narcotics abuse involves a positive legal policy that entails the implementation of laws in a normative, systematic, dogmatic, and juridical manner. In addition, criminal law policy requires a factual juridical approach in the form of a sociological, historical, and even comprehensive technique from various other disciplines, alongside an integral approach to social policy and national development.

Rehabilitation for narcotics abusers involves treatment to reduce the excess capacity of correctional institutions. Besides reducing the illicit trafficking of drugs, it supports the implementation of medical and social rehabilitation for addicts and victims while paying attention to the quantity of narcotics used by abusers.

According to the regulation governing the criminal law of narcotics abuse, Narcotics Law, rehabilitation is an action sanction (maatregel) given to narcotics abusers but does not eliminate the elements of the criminal act.

The use of criminal law to overcome the problem of narcotics abuse is included in the field of law enforcement policies. Since the goal is to achieve the welfare of society, this law enforcement policy is also contained in the field of social policy, namely all rational efforts to achieve public welfare. As a matter of policy, the use of criminal law is not compulsory. There are no absolutes in the field of policy because people are faced with the problem of assessing and selecting policies from various alternatives.⁹ Therefore, controlling or overcoming crime through criminal law is a social and policy problem.

The conception of an integral crime prevention policy implies that all rational efforts to tackle crime should form an integrated unit. This implies that criminal sanctions should be combined with other non-penal efforts, which can cover a very wide range of sectors across social policy or national development. The main purpose of these non-penal efforts is to improve certain social conditions, which indirectly have a preventive effect on crime. An example is the rehabilitation of victims of narcotics abuse, which has a very strategic position.

Essentially, addicts and victims are "sick people" who are obliged to undergo treatment through placement in medical and social rehabilitation institutions. These considerations are because most of the perpetrators are included in the category of addicts and victims, who are indirectly sick people.

Placement into rehabilitation institutions adheres to the objectives of Article 4 letter d of the Narcotics Law, which is meant to ensure the regulation of medical and social rehabilitation efforts for abusers and addicts. Also, Article 127, with consideration to Articles 54, 55, 56, and 103, can be used as a guide for making rehabilitation decisions.

The rehabilitation of narcotics addicts and abuse victims who are undergoing legal processes is also regulated in:

1. Government Regulation Number 25 of 2011 concerning the Implementation of Compulsory Reporting of Narcotics Addicts;
2. Supreme Court Circular Number 07 of 2009 concerning Placing Drug Users Into Therapy and Rehabilitation; and
3. Joint Regulation of the Head of Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Head of the Indonesian Police, the Head of the National Narcotics Agency through Number 01/PB/MA /III/2014, Number 03/2014, Number 11/2014, Number 03/2014, Number PER-005/A/JA/03/2014, Number 1/2014, and Number PERBER/01/III/2014/BNN concerning Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

⁹Sudarto, *Hukum dan Hukum Pidana*, Alumni, Bandung, 1977. p. 161.

Besides the above regulations, many laws and regulations govern the rehabilitation of suspects and/or defendants in the judicial process. These include the Regulation of the Minister of Health Number 80 of 2014 concerning Technical Guidelines for the Implementation of Medical Rehabilitation for Narcotics Addicts, Abusers, and Victims, which is in the process of investigation, prosecution, and trial or has received a court decision. Furthermore, a Telegram Letter was issued from the Head of Indonesian Police Number STR/701/VIII/2014, dated August 22, 2014, regarding Guidelines for the Implementation of Rehabilitation at the Investigation Level. The National Narcotics Agency issued Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Abuse Victims into Rehabilitation Institutions. Although the provisions of the legislation mandate the humane treatment of addicts and victims of narcotics abuse, the handling by the realm of law requires a more careful integrated assessment process involving representatives from related elements. This will enable an awareness of the extent of addiction and its role in narcotics crime and facilitate determining the assignment of an addict or abuse victim as a suspect and/or defendant to be placed in a medical and/or social rehabilitation institution.

Generally, narcotics addiction is a condition characterized by an urge to use narcotics continuously with the need for increasing doses to produce the same effect, where an abrupt reduction or discontinuation of use results in characteristic physical and psychological symptoms and subsequent relapse. The addiction to narcotics can be tested through an assessment process.

Technically, the integrated assessment system for narcotics abusers and addicts based on the Indonesian positive law is governed by the Joint Regulation on Handling Narcotics Addicts and Abuse Victims in Rehabilitation Institutions, as mentioned above. The objectives of the joint regulation are:

1. Achieving optimal coordination and cooperation in solving narcotics problems to reduce the number of addicts and victims through treatment, care, and recovery programs in handling perpetrators as suspects, defendants, or prisoners, while continuing to eradicate narcotics trafficking.
2. Serving as a technical guideline in handling narcotics addicts and abuse victims as suspects, defendants, or prisoners and ensuring they undergo medical and/or social rehabilitation.
3. Implementing medical and social rehabilitation at the level of investigation, prosecution, trial, and sentencing in a synergistic and integrated manner.

Narcotics addicts and abuse victims as suspects and/or defendants who are undergoing investigation, prosecution, and trial in court may be given treatment, care, and recovery at medical and/or social rehabilitation institutions. However, suspects and/or defendants who are arrested without evidence of abuse but test positive for narcotics use according to the results of urine, blood, or hair examinations may be placed in medical and/or social rehabilitation institutions. These government-managed institutions become involved after the Minutes of Examination of Laboratory Results and Investigators of the National Narcotics Agency have been made and completed with a letter from the Integrated Assessment Team (IAT).

Addicts and victims who are arrested or caught red-handed with a certain amount of evidence with or without using narcotics according to the results of urine, blood, hair, or DNA tests during the judicial process for a certain period can be placed in medical rehabilitation

institutions or hospitals managed by the government. This is conducted after the Minutes of Examination of Laboratory Results and Minutes of Examination by Investigators of the National Narcotics Agency have been made and completed with a letter of the results from the Integrated Assessment Team (IAT).

The assessment is an early stage process where the addicts and victims report to the National Narcotics Agency and request rehabilitation. This process can be used as a benchmark to determine the length of the rehabilitation period and the results can serve as material for consideration by the Integrated Assessment Team (IAT) in making decisions on the application.

The assessment process is performed by 2 (two) divisions, collectively called the Integrated Assessment Team. It consists of a Medical and Legal Team appointed by the head of the local work unit based on a decree from the Head of the National Narcotics Agency, the Provincial National Narcotics Agency, and the Regency/Municipal National Narcotics Agency.

The medical team includes doctors and psychologists as health workers, who are authorized to provide health services to the community. Meanwhile, the legal team consists of members of the Indonesian police, the National Narcotics Agency, the Prosecutor's Office, and the Ministry of Law and Human Rights. These two teams work together in assessing applicants.

The Integrated Assessment Team handles the assessment process as a benchmark for narcotics addicts and abuse victims, as well as the length of the rehabilitation period for the applicant. The task is to analyze the arrested offending individual. Supposing the addict is caught red-handed in relation to narcotics trafficking and abuse, a therapy and rehabilitation plan will be recommended by the medical and psychosocial assessment and analysis.

At the request of investigators, the Integrated Assessment Team analyzes the role of the suspect as a victim, addict, or dealer. Subsequently, it determines the criteria for the severity of narcotics use according to the type of content consumed, the situation, and conditions of arrest at the crime scene, and finally recommends a plan for therapy and rehabilitation.

Based on the tasks and authorities, the assessment process is important as a consideration in making decisions on applications. This is because the assessment is the first step of rehabilitation, aiming to measure the extent of the addiction severity, or even examine drug dealers.

Ideal Construction of an Integrated Assessment to Reflect Legal Certainty in the Framework of the Criminal Justice System

The regulation legally protects narcotics criminals in their application and does not conflict with the principle of legality. In the current formulation of the narcotics law, Articles 112 and 127 are multi-interpreted and cause ambiguity in their application. Article 112 is used to ensnare narcotics criminals while Article 127 is only applied to narcotics abusers as described above. However, the use of these articles has created legal uncertainty, thereby preventing the purpose of the law from being maximally achieved. This is because many perpetrators are charged with Article 127, which was designed for abusers. This indicates the presence of numerous errors in the application of Articles 112 and 127 of the Narcotics Law.

An instance is the case with decision Number: 161/Pid.Sus/2016/PN.Plg, where the defendant was accused of being a narcotics perpetrator or dealer but was described as a user by the Panel of Judges. It involved the defendants named Dedi Sanjaya and M. Kiki Pratama, who

were charged by the Public Prosecutor with the first indictment of Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) and/or the second indictment of Article 112 paragraph (1), and/or the third indictment of Article 127 paragraph (1) letter a in conjunction with Article 55 paragraph (1) of the 1st Criminal Code. In this case, the defendants were proven to be in possession of 1 package of non-plant class I narcotics, weighing 0.73 grams. From the discovery of the evidence, the defendants should have been charged with Article 112. However, the Panel of Judges decided that the defendants were users, addicts, or abusers, and sentenced them to 2 (two) years each in prison. The sentence was not followed, as urine tests were conducted to clarify the two defendants as true addicts.

The above is an example of a narcotics case decided using Articles 112 paragraph (1) and 127 paragraph (1) of the Narcotics Law, which has multiple interpretations, and the inconsistency of law enforcers in applying the articles. The defendants were initially charged as narcotics dealers or perpetrators, which was changed to users, addicts, or abusers during the sentencing. Therefore, a new formulation policy on Article 112 of the Narcotics Law is necessary to prevent narcotics criminals from hiding as abusers, addicts, or users and ensure they are subjected to appropriate criminal sanctions.

Based on the explanation above, there are several alternative formulation policies against the provisions of Articles 112 and 127, including revision. The amendment is sufficient to add the elements of selling and circulating to Article 112, which will prevent narcotics criminals from hiding as abusers, thereby preventing perpetrators from escaping the law. Hence, the legal certainty in Articles 112 and 127 can be fulfilled as described in the previous sub-chapter.

In addition, the state's legal policy should emphasize that drug users require rehabilitation, not imprisonment, while criminal sanctions will be applied to kingpins and dealers. The consistency of the state through law enforcement officers is very important in implementing different treatments for drug users and dealers.

According to this research, legal politics should be consistent with drug eradication, as well as medical and social rehabilitation for drug abusers or users. The state solely focuses on criminalizing drug dealers, as this process is more targeted. Consequently, efforts are needed to decriminalize or depenalize by shifting criminal acts to non-criminal through the revision of the narcotics law and drug abuse rules. This is because drug users are victims of wrongdoing, not criminals. Despite the allowance for rehabilitation by Article 127 of Law Number 35 of 2009 concerning Narcotics, narcotics users are still being criminalized. For these individuals who were made sick by the wrong party, healing should be provided through the rehabilitation process.

The policy to place abusers in rehabilitation institutions through an assessment process without a formal trial is a form of depenalization of narcotics crimes for victims and addicts who were initially sentenced through criminal sanctions. The definition of depenalization is the removal of the criminal threat from an act that was originally threatened with a criminal offense by implementing punishment in other ways than criminal prosecution.¹⁰

The European Union Central Government Agency, which coordinates drug policy data through the European Monitoring Center for Drugs and Drug Addiction (EMCDDA), defined

¹⁰Supardi, "Pro dan Kontra Pidana Mati Terhadap Tindak Pidana Narkoba", <http://www.bnn.go.id/konten>, downloaded on March, 25 2021 at 09.32.

the premise surrounding depenalization as follows:¹¹

"Depenalization denotes that although the use of drugs remains a criminal offense, a prison sentence will not be imposed on ownership or use even when other criminal sanctions, such as mulct, police records, and probation, is possible."

In the concept of depenalization, the rehabilitation of drug abusers, victims, and addicts do not follow the mechanism of the criminal justice system as regulated in the Criminal Procedure Code, which leads to prosecution and the imposition of criminal decisions by judges. Instead, the verdict is obtained through an assessment mechanism conducted by an integrated and independent team to decide the eligibility of drug abusers, victims, and addicts are eligible to be subject to a rehabilitation policy without undergoing a criminal justice process. In cases where these requirements are not completed, the handling of the case is continued through the criminal justice process in accordance with the Criminal Procedure Code provisions and prosecution based on the articles in the narcotics law.

Although Law Number 35 of 2009 concerning Narcotics does not explicitly mention the decriminalization or depenalization of narcotics abusers, it is constructed in the legal and political policies of state law and enshrined in several articles. The application of an integrated assessment towards the determination of rehabilitation is an alternative law enforcement practice with a restorative justice pattern against narcotics abusers. This process allows suspected abusers, victims, and addicts to have a greater chance of receiving treatment.

To date, the Integrated Assessment Team has only recommended therapy and rehabilitation plans for narcotics addicts and abuse victims. Following the improvement of the regulation, the role of the team can be reinforced and strengthened to issue recommendations as well as decisions that determine the actions to be taken against abuse victims, either prosecution through the judicial process or rehabilitation.

The strengthening of the Integrated Assessment Team's role will affect the enforcement of procedural law against narcotics crimes and precursors. The arrests via raid activities conducted by the National Narcotics Agency are considered sufficient only by conducting tests without any examination by the Integrated Assessment Team. Subsequently, future arrangements for all arrest results should go through the Integrated Assessment Team process. Considering the important role of this team, its human resources should have high integrity, to guarantee the veracity of the determination results. Therefore, a monitoring mechanism is necessary to ensure no legal loopholes are misused by narcotics dealers.

Also, a new regulation regarding the Integrated Assessment Team should be formulated and included in the revision of the Narcotics Law by adding the definition of this team. The Integrated Assessment Team, hereinafter referred to as IAT, consists of a legal and medical team tasked with conducting an assessment of individuals arrested by law enforcement officers related to narcotics cases. The revision of the narcotics law also includes the IAT process performed after the arrest. This team identifies or classifies narcotics cases that require follow-up with rehabilitation or should remain on the path of law enforcement. The assessment of

¹¹ Glenn Greenwald, "Dewan Pimpinan Nasional Gerakan Nasional Peduli Anti Narkoba dan Tawuran, Membangun Paradigma Dekriminalisasi Korban Pengguna Narkotika," <http://www.gepenta.com>, downloaded on April, 28 2021 at 11.07.

abusers is performed within a maximum period of 10 (ten) days from the time the file completeness is received from the investigator.

It concludes that a recommendation to forward a case to law enforcement agencies is submitted when narcotics abusers or consumers caught by law are also couriers and/or dealers, while addicts can be given rehabilitation measures in correctional institutions. The implementation of the IAT process is supervised by the National Narcotics Agency, involving the Police, the Prosecutor's Office, the Ministry of Health, the Ministry of Social Affairs, and the community. The integrated assessment mechanism generated from concerns about the handling of narcotics abusers is expected to be the main precursor for more humane legal development and law enforcement against narcotics abusers in the future.

Closing

Conclusion

The construction of an integrated assessment arrangement for addicts and abusers in the enforcement of narcotics crimes has not been based on legal certainty. This can be seen from the rarity of rehabilitation sentences as judge verdicts. In these previous cases, most of the abusers were sentenced to prison instead of rehabilitation, as mandated in Law Number 35 of 2009 concerning Narcotics. This criminal punishment is executed despite the medical and social rehabilitation efforts provided by law, as regulated in Articles 54, 55, 56, 103, and 127. The lack of application of an integrated assessment is because of the joint regulation at the ministerial level/head of the agency, causing law enforcers to view this process as an alternative without considering the legal certainty. Furthermore, the technical arrangements for the integrated assessment still lead to different perceptions among law enforcers. The results of the assessment are recommendations, which are non-binding on Law Enforcement Officials. Hence, the decisions issued by judges almost involve imprisonment for addicts and abusers.

The ideal construction of an integrated assessment arrangement to reflect legal certainty within the framework of the criminal justice system involves clear and firm implementation by law, including the requirements and procedures for submitting an assessment as well as a functional system. This is caused by the lack of suspected addicts and abusers who have undergone an integrated assessment, thereby reducing the opportunity for rehabilitation efforts. Since the narcotics law has guaranteed efforts to regulate medical and social rehabilitation for addicts and abusers, an integrated assessment should be immediately included in the latest draft narcotics law and followed by changes to the provisions of Articles 111 paragraph (1), 112 paragraph (1), and 103 paragraph (1). The results of the integrated assessment should also be considered for modification and become a final and binding decision for all Law Enforcement Officials. In cases where the integrated assessment decision states rehabilitation, the decision should be submitted to the court to obtain a determination. The request for stipulation aims to strengthen the legal status of the decision of the Integrated Assessment Team (IAT). This implies addicts and abusers who have received a determination to be given rehabilitation measures will not be prosecuted through a court mechanism. Conversely, the refusal to rehabilitate will also be conveyed by the assessment decision to the investigator for further processing of the criminal justice process, including investigation, prosecution, and examination in court.

Recommendation

The position of joint regulations in the hierarchy of laws and regulations should be affirmed to avoid doubts about legal certainty. Supposing the joint regulation is maintained in force, it should receive a direct confirmation through attribution or delegation from a higher level statutory regulation, such as a law, government regulation, or presidential regulation.

For legislators, the rules regarding assessment and the application of recommendations for placing suspects or defendants into medical or social rehabilitation institutions should be regulated in the amendments to the Narcotics Law. Then, the word "can" in Article 103 of the Narcotics Law should be changed to "mandatory" in accordance with Article 54. This will explicitly mandate law enforcement officials that addicts and victims of narcotics abuse are obliged to undergo medical and social rehabilitation.

The need for additional articles in the latest narcotics law mainly concerns the strengthening of recommendations from the Integrated Assessment Team (IAT) in the Joint Regulation of 7 (seven) Ministries/State Agencies. The recommendations given are a reference or guideline for Law Enforcement Officials (APH) in providing decisions for addicts and narcotics abusers as regulations with legal certainty. Strengthening the role of the Integrated Assessment Team (IAT) will ensure the provision of recommendations as well as decisions that determine the verdict of narcotics addicts and abusers, either through the judicial process or rehabilitation. Meanwhile, supervision rather than the assessment process should still be implemented by the National Narcotics Agency by involving the Police, the Attorney General, the Ministry of Law and Human Rights, the Ministry of Health, the Ministry of Social Affairs, and the community. This will ensure the results are congruent with or achieve their objectives and are not misused by drug dealers/distributors/brokers as a legal loophole.

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