

Vagueness in Law 35 of 2009 Regarding Narcotics Abuse That Makes Overcapacity Prisons

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ABSTRACT

Regulations on narcotics crimes themselves have been regulated in the Narcotics Law number 35 of 2009 but still the number of narcotics abuse in Indonesia continues to increase. Although there are regulations that regulate the prohibition of drug abuse, the author is interested in researching the number of users who are sentenced to prison terms, why is rehabilitation not carried out, but more are sentenced to prison. There are several articles in the law, there is a vagueness that can be interpreted as a vagueness of different interpretations from law enforcers who have the power to impose punishment on law breakers, with the existence of this vagueness, the giving of the law is different even though in the case of which have the same resemblance. The research uses normative legal research methods. In the technique of collecting data in solving this problem, it is carried out using library research techniques, which are then analyzed qualitatively. With the form of the sound of the articles in the Narcotics Law, it can have an impact that can have a full or overcrowded impact, which is the current condition in prisons and detention centers, and results in the implementation of coaching not going well. With the updated legal form, it will provide a parser from the complexities of enforcement and enforcement of narcotics abusers.

Keywords: *Law, Narcotics, Correctional, Vagueness*

INTRODUCTION

The case of narcotics abuse in Indonesia is still a problem that cannot be resolved, which of course can affect the sovereignty of the Indonesian nation and the future of the nation's future generations. In addition, the form of narcotics crime is included in international crime, the

distribution of which is highly organized (Organize Crime). (Raja Gukguk and Jaya 2019). Having an extensive distribution network due to large financial support and is also supported by advanced technology (Hariyanto, 2018).

Of course a violation cannot be separated from the factors that influence it. In narcotics abuse there are two influencing factors, namely oneself, where the emergence of a very large sense of curiosity. Furthermore, social environmental factors, where this environment includes the family environment, school and social environment. Which supports the fulfillment of curiosity due to the availability of facilities and infrastructure (Amanda, Humaedi, And Santoso, 2017).

In preventing this problem, of course, the role of all parties, both from law enforcement and the community, is needed to suppress and narrow the scope of narcotics circulation which can gradually be anticipated for its misuse. Regulations on narcotics crimes themselves have been regulated in the Narcotics Law number 35 of 2009 but still the number of narcotics abuse in Indonesia continues to increase, supported by data on handling Narcotics Cases by the National Narcotics Agency (BNN) to date there are around 30,557 (Thirty thousand five hundred and fifty seven) people who abuse narcotics, and as many as 21,434 (Two one thousand four hundred and thirty four) people who are the total abusers who become suspects from 2009 to 2020 (Badan Narkotika Nasional Republik 2014). That number does not include the Indonesian people who are entering the phase of drug dependence.

The placement of narcotics abusers is in prisons that used to be known as prisons and are currently known as *Lapasa* or correctional institutions under the ministry of law and human rights. Which aims to provide guidance to prisoners who are included in narcotics cases (Atmadja and Budiarta, 2018). With a system that does not adhere to a revenge system like the prison system but is more humane or human (Pujiyono, 2012).

The Directorate General of Corrections at the Ministry of Law and Human Rights recorded that as of August 2021 as many as 145,413 (one hundred and forty five thousand four hundred thirteen) people or 96% (Ninety six percent) of the residents of prisons and remand centers in Indonesia filled with prisoners and convicted of narcotics cases, of the total number of cases around 151,303 (One hundred fifty one three hundred three) people (Kementerian Hukum dan Hak Asasi Manusia 2021). This figure is a very large number and indicates that Indonesia is a narcotics emergency, although there is already a death penalty process, but it does

not have an effect that is able to suppress the circulation of narcotics in Indonesia by dealers or narcotics smugglers, and rehabilitation for narcotics users.

It is undeniable that the negative impact of narcotics is very broad, the impact of which can affect all social sections in society. If narcotics abuse is not taken properly early on, then the nation's sovereignty will be disrupted. Therefore, the role of all law enforcement officers and the community will be able to help overcome narcotics abuse (Burlian, 2016).

Even though there are regulations that regulate the prohibition of drug abuse, the author is interested in researching the number of users who have been sentenced to imprisonment, why is rehabilitation not carried out but more are sentenced to prison. Here there is a confusion where in the narcotics law on the one hand the perpetrator of narcotics abuse is a crime which must be punished, namely by imprisonment for abusing narcotics which is clearly against the law. But from the other side, they also become victims of criminal acts of drug abuse because they become dependent and damage their health (Arifin, 2015).

In Law 35 of 2009 article 54 explains that an addict and victim of narcotics abuse must be rehabilitated, but there is confusion in article 127 where paragraph (1) states that a judge can convict a narcotics abuser but in the next paragraph, paragraph (2) and paragraph (3) states that judges are obliged to rehabilitate addicts and victims of narcotics abuse. With this discrepancy and legal vagueness, it becomes a gap that can be used by law enforcers in playing justice for narcotics abuse prisoners (Arifin, 2015).

Therefore Vagueness in law requires a specific interpretation of the law, an interpretation that changes the meaning of the law and makes it more precise. According to this view, vagueness causes gaps in law, and the role of legal interpretation in cases of obscurity is to fill those gaps. That this view is wrong and defends the thesis that vagueness in the law only requires the application of the law to the case at hand, leaving the meaning of the law intact. (Jónsson, 2009). Which, because of the unclear articles in the discussion of narcotics, will have an impact on the goals of the Indonesian state in eradicating narcotics abuse in Indonesia, it is difficult to achieve and even raises new problems with the fullness of Detention Centers and Correctional Institutions. With several cases of drug abuse carried out by several artists, most of whom received rehabilitation but differed from abusers or addicts who were sentenced to prison, therefore there is a need for updating legal regulations that are firm and clear in regulating sentencing and rehabilitation related to narcotics cases.

Previous similar research, which is relevant to this study. The research of (Yuliana ,Yuli W, 2019) concerning Rehabilitation Efforts Against Narcotics Addiction in the Perspective of Criminal Law. Other similar studies were also conducted by regarding Narcotics Crimes as Transnational Organized Crime (Roni Gunawan Raja Gukguk, 2019). Another research, regarding Criminal Sanctions for Perpetrators of Neglecting Narcotics Crimes Judging from Law no. 35 of 2009 concerning Narcotics (Yunus Karisma Ramadhan, 2019).

In the introduction above and in the previous research, the researcher is interested in taking the title “Vagueness In Law 35 Of 2009 Regarding Narcotics Abuse That Makes Prison Overcapacity”. This study will explain how the regulation of imprisonment and rehabilitation in the Narcotics Law is applied by law enforcement agencies in eradicating narcotics abuse, then will explain the ambiguity or vagueness in the interpretation of articles in the Narcotics Law that can occur by law enforcers, as well as the actions of prisons and detention centers in solving the problem of overcapacity, especially narcotics cases in prisons and detention centers in Indonesia.

RESEARCH METHOD

This research uses normative legal research method which is descriptive analysis. The normative legal research method or in other words is called doctrinal research where in a study whose purpose is to analyze the law both written in the book (law as it is in the book), as well as the law determined by the judge through the judicial process (law is decided by the law). In the technique of collecting data in solving this problem, it is carried out with library research techniques, which are then analyzed qualitatively (Soekanto and Mamudji, 2013). This analysis technique is one in which the source of the material or legal literature will be reviewed and studied so that it can explain of the research topic to help the author make a correct and directed conclusion.

RESULT AND DISCUSSION

A. Legal Regulations Related To Narcotics Abuse

In fact, narcotics addicts are people who are dependent on consuming drugs or substances derived from synthetic or semi-synthetic plants that have an impact on decreasing or changing the consciousness of the user, relieving pain that the body receives and using it

illegally. In the Narcotics Law number 35 of 2009 concerning Narcotics, the user groups are described in article 116, article 121, article 126, article 127, article 128, and article 134.

Apart from narcotics addicts in Law 35 of 2009 it is also regulated related to narcotics dealers who are categorized as perpetrators (*daders*) who are known in legal terminology, but in this law, narcotics abusers or addicts can be categorized as perpetrators or victims, because the perpetrators of narcotics abuse is divided into two categories, namely where the perpetrator is a dealer and or as a user. In this law, when examined explicitly, it does not explain in detail related to narcotics dealers. However, from an implicit and narrow perspective, it is explained that a narcotics dealer is a person who carries out an activity of distributing and delivering narcotics. However, narcotics dealers are broadly defined as actions that are carried out and are oriented to the dimensions of the buyer, seller with the aim of being distributed, tucked away, storing, controlling, providing, and carrying out exporting or importing narcotics activities. Regarding dealers, it is regulated in Narcotics Law number 35 of 2009 in articles 111 to 125 (Ramadhan and Sarna, 2019).

However, there is a void in the role of this law for victims of criminal acts which are closely related to criminal law in Indonesia whose source comes from neo-classical criminal law which is the reference of criminal law which has an orientation towards actions and perpetrators or is known as law that is (*daad-dader strafrecht*) which was used during the Dutch colonial period and was re-adopted in the KUHP (Book of Criminal Law) and KUHAP (Book of the Criminal Procedure Code) used in Indonesia. Where the regulation focuses more on imposing the perpetrator but forgets about the interests of the victim, which ultimately creates inequality in the context of justice provided by the legal process that takes place in Indonesia.

This narcotics law belongs to the concept that adheres to strict liability which has an element of absolute responsibility. Which explains that a person who fulfills the elements contained in accordance with the criminal provisions contained in the narcotics law can be accounted for absolutely in accordance with the objectives contained in Article 4 of the narcotics law which explains the purpose of the existence of the narcotics law as a savior for the Indonesian nation in facing adverse effects of drug abuse.

Narcotics addicts can be described as self-victimizing victims or those who are victims of the effects of the crimes they commit themselves, because narcotics addicts are someone who suffers from dependence syndrome resulting from the abuse of drugs and substances that are classified as addictive or narcotics committed by himself (Yuli W and Winanti 2019).

Therefore, a narcotics addict must get protection and attention so that in terms of being a victim it can be fulfilled properly which aims to eliminate dependence on narcotics.

In the modern criminal law system, there is a term regarding the double track system where sanctions are divided into two lines, namely the type of sanctions in the form of criminal sanctions and sanctions in the form of actions. Regarding the type of criminal sanction, it aims to provide a reward for suffering, namely freedom for wrongdoing committed so that the perpetrator in question becomes a deterrent. While the focus of action sanctions is more focused on the purpose of providing assistance with the aim of changing the person concerned. It can be seen that the source of focus is between criminal sanctions and action sanctions in the form of the realization of the need for community protection as well as coaching or treatment for the perpetrator. However, in the implementation of the double track system, it is seen that on the basis of victimology, narcotics addicts are placed as self-victimizing victims, namely where the victim is the perpetrator, but victimology still views narcotics abusers as victims, even for their own crimes (Dewi, 2012).

In proving narcotics abuse as a victim in the Narcotics Law number 35 of 2009 is something difficult, this is based on the need for proof that the use of narcotics is in a condition of being persuaded, tricked, deceived, forced, and/or under threat to use narcotics. So that the double track system is considered correct by dividing in half where narcotics addicts as victims can be rehabilitated as a form of serving punishment. Meanwhile, the criminal sentence for narcotics addicts as well as dealers or just narcotics dealers can be sentenced to prison and serve a sentence in the Correctional Institution or up to the death penalty.

B. Implementation of Rehabilitation in Prison And Vagueness Decisions In The Narcotic Law

Vagueness in relation to law here describes the ambiguity of the articles that can lead to different interpretations carried out by law enforcers in imposing sentences from these articles. In solving narcotics abuse cases, of course, there is a complex process here, the role of judges is very important considering that as law enforcers who make decisions for narcotics cases. In accordance with interesting discretion, where the judge in deciding the crime related to marijuana abuse contained in article 127 paragraph 2 jo. Article 103 paragraph 1 of the Narcotics Law Number 35 of 2009, that judges have the right to determine alternative punishments, where first the judge can give a final verdict in the form of rehabilitation for

narcotics abusers by giving orders to the person concerned to undergo treatment and or rehabilitation (Arifin 2015). Second, the judge can make a verdict that rehabilitation is not a final decision because the person concerned is not proven guilty. Which means that even though the person concerned is not proven guilty, they are still obliged to carry out rehabilitation. In these two articles it is proven that the role of emphasizing the importance of carrying out rehabilitation for narcotics abusers is proven in terms of being proven guilty or not being proven guilty.

Apart from the existence of the Narcotics Law number 35 of 2009 there is a circular letter of the Supreme Court (SEMA) number 4 of 2010 which contains related to the placement of Narcotics abuse emphasizing on providing rehabilitation for narcotics abusers (AMANDA et al. 2017). Which is used as a reference for judges in imposing rehabilitation sentences, but because the legal sources still use the Criminal Code and the Criminal Procedure Code which adopted the law during the colonial period. Where the orientation of punishment only aims to imprison which results in ambiguity between existing laws and inequality which results in gaps that are at risk of being exploited for negative things.

There is ambiguity in the provisions where the existence of this law specifically is to save the Indonesian people from narcotics abuse in a way that can prevent, protect and guarantee efforts to carry out medical rehabilitation and social rehabilitation for narcotics abusers. However, in practice currently drug abuse or addiction is more severe on the criminal subject or the perpetrator is not seen from the perspective of the victim as well. However, in the example of narcotics abuse among artists, many successful cases have been attempted in rehabilitation. This is different from one example of a prisoner in Class IIA Subang Prison with a registration number for the Subang court decision number 108/Pid.Sus/2021/PN Sng who was sentenced to prison for 5 years, because he was proven to have bought narcotics class 1 with marijuana type narcotics weighing 93,3200 Grams. And many more imbalances where there are narcotics cases that are punished with the same article but have different decisions between narcotics abuse cases committed by artists and those committed by ordinary citizens.

In other practice there is a problem in using the narcotics law, especially in article 112 paragraph 1 and article 127 paragraph 1 contained in letter a in the narcotics law number 35 of 2009. This is based on the increase in detainees related to narcotics cases in Detention Centers

and Correctional Institutions (Ramadhan and Sarna 2019). It is feared that the more and longer a narcotics prisoner gathers in the same place, it increases the risk of interaction which can create new circulation networks or influence one another, who initially are only addicts but eventually participate in distributing them or in other words can become dealers. In the government's efforts, in fact, many efforts have been given through the law.

In the course of the judicial process, sometimes we find that there are different interpretations from law enforcers to other law enforcers, both from public prosecutors, legal advisors, it is also inseparable from judges at the first level, there can be different perceptions with judges at the appeal level or further at the cassation level judge. It can be seen from the various cases that have the same position regarding the article but have different final decisions from one another. In the case of narcotics, there must be supporting signs that must be held by law enforcers as a reference in strengthening the achievement of the essence contained in the narcotics law.

Even though there are actually different interpretations in the law, they can still be tolerated in the judicial process. But on the other hand, the variety of interpretations in the law can illustrate the quality of the sound of the articles contained in a law or other regulation, it can be called less good because it cannot provide legal certainty which is the basis of the legal purpose as expressed by Gustav Radbruch (Hariyani 2020).

C. The Impact of Overcapacity Specially in Drug Cases in Prisons And Jails

Overcapacity is caused by many factors that can make this happen, one of which is caused by the growth rate of residents of prisons and remand centers which are not comparable to the housing facilities of prisons and remand centers owned by the state and most of them are prisons which are relics of the Dutch era that were renovated and rehabilitated in order to maintain the quality of the building. The percentage of new prisoners' inputs with free prisoners has an imbalance because there are many who enter prison compared to free prisoners, with the ratio of new inmates' input far exceeding those of prisoners who have finished serving their prison terms and are out of prison (Angkasa 2010). With an average of residents with narcotics cases inhabiting prisons and detention centers throughout Indonesia.

Table 1. Data from the Director General of Corrections Number of Convicts according to the Types of Criminals 2022

No	Types of Criminals	Total
1	General Crime	130,578
2	Corruption	4,690
3	Terrorist	504
4	Narcotics	139,932
5	Illegal Logging	148
6	Money laundering	150
7	Human Trafficking	269

From the table above and the data held by the Director General of Corrections, there are 100,000% of Narcotics crimes that are only abusers, not yet with prisoners and inmates who have the status of a dealer. In addition to the many increases that have occurred in criminal cases, one of which is narcotics cases, in another view there are other factors that encourage overcapacity. That is in terms of paradigms or factors that arise from the punishment itself. Related to the law referred to here, mainly material criminal law, then formal criminal law and the law of implementing imprisonment which is used as the main crime used as a form of punishment in Indonesia. In connection with this, Patra M Zein as the Chairperson of YLBHI gave a statement that the politics of the current punishment that does not have exact substance or incompatibility so that everyone can easily be entered into prison and has a fairly large effect, namely the occurrence of a prison and jails condition experiencing overcapacity. Patra and several legal and political practitioners also urged the government to revise the Criminal Code and the Criminal Procedure Code, which were deemed irrelevant to the values and developments of the current legal paradigm and understanding of the provision of human rights reported from the news portal *Rakyatmerdeka.co.id* (Angkasa 2010).

In addition to the large increase in the occurrence of criminal acts mentioned above, it seems that there are several other driving factors for the overcapacity of the paradigm or the legal factor itself. The law referred to is mainly material, formal criminal law and the law for

implementing imprisonment. In connection with this matter, Patra M Zein as the Chairperson of YLBHI, for example, stated that the current penal policy is not appropriate so that everyone can easily go to prison and this causes prison conditions to be overcapacity. Patra also urged the government to revise the Criminal Code and the Criminal Procedure Code, which were deemed irrelevant to current conditions (Angkasa 2010).

Various opinions were expressed in response to the problems that occurred. The government is trying to provide several options in its implementation to reduce overcapacity conditions in detention centers and prisons. Under the conditions in 2019, 2020 large-scale release activities were carried out with the aim of reducing the risk of the spread of covid-19 in prisons considering that the Correctional Center will implement a social integration system which will then be implemented when the new law will be enacted and implemented properly.

With all kinds of problems that become a source of overcapacity in prisons, it has an impact on the coaching process that is stalled and does not work well because of the large number of prisoners than the number of correctional officers. And because of the social process in prisons and detention centers, it can cause wider problems, namely where previously only narcotics abusers but instead build and shape the characteristics of prisoners who are more skilled and become distributors or dealers.

Overcapacity is a very difficult thing to get rid of considering the condition of the diverse community with cultures and regions that exist in Indonesia, which is an archipelagic country which makes it difficult for the equitable distribution of development and facilities to be fulfilled. In addition, the number and continued increase in the spread of illegal narcotics and those who continue to seek reproach to be able to spread it both to the community and directly to detention centers and correctional institutions. The efforts of correctional institutions in tackling narcotics abuse cases are by establishing special narcotics prisons and most importantly the island of Nusakambangan which is famous for fostering narcotics abusers in particular (Cendy, dkk 2020).

Officers have minimized it by increasing the search process and routine checks every time around the detention center and prison. The search process continues to ensure that the prison is free from smuggling. In addition, the government continues to review the regulations and appropriate methods so that smugglers and their dealers can be arrested at the same time through

the police and related institutions as well as the government's role in giving full attention to victims who are addicts, which on examination is true that just being a user without any indication of a dealer or a smuggler.

CONCLUSIONS AND RECOMMENDATIONS

1. Conclusion

Based on the discussion above, it can be concluded as follows where there is uncertainty where Law Number 35 of 2009 concerning Narcotics as a form of positive law is used as a form of eradicating narcotics criminal cases which in practice raises many problems and interpretations that are not in accordance with the following: contained in the application of Article 112 Paragraph (1) and Article 127 Paragraph (1) a. there is a lack of clarity or vagueness in the two articles which causes differences in interpretation between law enforcers so as to produce different decisions from justice activists from one perpetrator to another, even though it is in the same case. Furthermore, in resolving narcotics abuse cases, of course, there is a complex process here, the role of judges is very important considering that as law enforcers who make decisions for narcotics cases. In accordance with interesting discretion, where the judge in deciding the crime related to marijuana abuse contained in article 127 paragraph 2 jo. Article 103 paragraph 1 of the narcotics law number 35 of 2009, that judges have the right to determine alternative punishments.

The implication is that the treatment or punishment given to the perpetrators of narcotics crimes does not match between re-education crimes or imprisonment, which then creates a new criminal element in narcotics crimes. Writers who deserve to be rehabilitated but go to prison, or vice versa writers who should be in prison but are in the process of reintegration, this is one of the reasons why writers commit crimes over and over again. Furthermore, these different interpretations have also led to an increase in legal action in drug cases, which also has an impact on the dominance of the number of inmates who use drugs in re-education camps. Given the large number of prisoners who use drugs and the longer the interaction between prisoners, the prisoners can influence each other, causing an increase in the quality of perpetrators who were originally only prisoners, which can become a new crime in eradicating narcotics crimes.

2. Recommendations

In this case, the author provides suggestions that can be used to help overcome existing problems where the Law actually forms a new problem instead of solving the problem, the researcher suggests:

- a. First, by making immediate repairs and adjustments to laws that are considered obsolete, such as the Criminal Code and the Criminal Procedure Code, which are relics of the Dutch era that were adopted, the legal values in them are no longer appropriate;
- b. Second, make a joint regulation that regulates law enforcers to be able to prioritize restorative justice so that different perceptions do not occur from the application of restorative justice;
- c. Third, establish and build a special building to carry out the rehabilitation process under the auspices of the National Narcotics Agency;
- d. Fourth, provide training or recruit officers who are equipped or skilled in psychiatric matters or able to carry out rehabilitation in every prison and detention center.

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