

A Policy Design On Narcotics For The Prevention Of The Use Of Narcotics And Its Bad Impacts Reduction Due To Narcotics Abuse

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Abstract: *This research showed that Law of the Republic of Indonesia on Narcotics has not been able to actualize its legal objectives, particularly for narcotics users, considering that they are only ideally given rehabilitation sanctions, both medically and socially. On the other hand, they are not subject to criminal sanctions, in which it becomes the main legal sanctions. Besides, they get sentenced by the judges who use articles for narcotics traffickers in handling the crimes. Therefore, it is necessary to reformulate the right policies to manage the crimes in narcotics by providing legal certainty between the users and the traffickers, so they have a positive correlation with the way the judges decide cases based on legal certainty.*

Keyword: *Narcotics Policy; Prevention; Impacts.*

1. INTRODUCTION

The policies on drugs in Indonesia often becomes a political issue, including the presidential candidates in campaigns to win constituent votes, although it indicates that a preventive approach dealing with narcotics problems has been promoted in its main priority. Some policies were recorded during 2014-2019, such as shooting dead the perpetrators of drug cases, lifting the moratorium on the death penalty, and criminalizing the drug users.(Ummul, Ghenasyarifa, & Tanjung, 2020) A number of policies on drug eradication have been made without following the scientific developments. Some experts say that if the policies are formulated without following the development of science, it can lead to worse impacts for both the government and society, such as overcrowding and failure in public health programs initiated by the government.(Firdaus, Laxamanahady, & Widyasasmito, 2019)

Correctional institutions currently contain 50 percent of drug users, and the number of convicted narcotics reaches 70 percent of the total prisoners in big cities. Health experts say that a drug user who has come to the addiction phase is not different from that of having an illness who should be given treatment, which in this case, is rehabilitation. Accordingly, the policy on narcotics should be provided with the greatest pressure, that is the drug dealers and traffickers, not the users.(Sudarwanto & Handayani, 2019a) The Act of the Republic of Indonesia Number 35 of 2009 on Narcotics has been implemented for ten years in Indonesia. If we look at this policy, however, the focus is on supply and demand, while in other cases there are many factors that cause people to fall into narcotics. Therefore, it is not possible to formulate the policies with a perspective on one single approach to solve these problems, but it must be performed through a comprehensive

approach sociologically, psychologically, and legally.(Akhmaddhian, Hartiwiningsih, & Handayani, 2017)

Based on the above description, it is highly necessary for the authors to describe and analyze the juridical problems related to the policies on Narcotics and to design the ideal policies on Narcotics, thus it will not bring the people down.(Sudarwanto & Pujiyono, 2020) The Act of the Republic of Indonesia 2009 on Narcotics is a renewal of the old one since it has been outdated and not following the current development. Therefore, the substance regulated in the new Act of the Republic of Indonesia 2009 on Narcotics also underwent significant changes. However, the latest one also shows its weaknesses that it still has a gap that can be used by parties with an interest to make them not convicted if they are caught abusing narcotics.(Ahmadi, Handayani, & Karjoko, 2019)

Even so, it should be enough for the users to be given medical and social rehabilitation sanctions since their rights have been guaranteed in the law. The gap in question is that users and distributors are often subject to the same article.(Jatmiko, Hartiwiningsih, & Handayani, 2019) Even though it should be sufficient for users to be given medical and social rehabilitation sanctions because their rights have been guaranteed in the Narcotics Law. It certainly does not provide justice in society if the users and the dealers, in the law enforcement process, are subject to the same article, considering the purpose of law, among others, is justice.(Fatimah, Iswanto, Basuki, Saputra, & Jaelani, 2020)

This is supported by empirical facts exist in society that law enforcement officials often take advantage on crimes of drug abuse to increase their coffers of income. Still, this method is not allowed by the law because law enforcement officials have a code of ethics not to make it as a business in a judicial process. Therefore, it is necessary to design ideal policies on narcotics so that the narcotics abusers can get judged fairly and the law enforcement officials have no more opportunities to exploit business in the world of justice in cases of law enforcement on narcotics by providing legal certainty between the drug users and the drug dealers.(Tahir et al., 2020)

2. LITERATURES REVIEW

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, and loss of taste. Also, it can reduce or eliminate pain and addiction which are categorized into groups as stated in this law. Dalam UU In the Law on Narcotics, not all types of narcotics can be used for medical purposes, only group two and three that can be used, while group one cannot be used under any circumstances.(Karjoko, Winarno, Rosidah, & Handayani, 2020) The permissibility of the use of narcotics on condition that they have permission from the related party is often misused for non-medical purposes. As it is common knowledge that narcotics abuse has spread to some parts of the community in big cities and small cities, even its circulation is hard to stop. Therefore, we need the concept of humanist policy formulation to prevent the narcotics abuse practiced in Indonesia.(Sudarwanto & Handayani, 2019b)

A policy is basically aimed to achieve short, medium, and long-term goals. As the state goals listed in the 4th paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, there is a need for elaboration in a more specific policy to achieve these goals. One of the goals of the state is to protect the entire nation and all Indonesians.(Ummul et al., 2020) It needs a derivative regulation, that is a specific act to make it happen. One of the specific laws to protect the entire nation and all Indonesians is the Law on Narcotics which aims to prevent, protect, and save the Indonesian people from the narcotics misuse. By the existence of a humanist policy, it can humanize the whole human being without reducing their rights and obligations. In addition to humanist policies, the policy of demand reduction is also an important thing in narcotics eradication in Indonesia.(Firdaus et al., 2019)

The policy of demand reduction aims to break the chain of the drug users. The concept of this policy is very relevant to eradicate the circulation of narcotics in Indonesia since Indonesia is one of the good potentials to be used as a marketing object for narcotics circulation. Given the big population possessed by Indonesia, especially the productive forces, narcotics is something that is often sought after.(Eviningrum, Hartiwiningsih, & Jamin, 2019) Applying the concept of demand reduction in the narcotics crime eradication can be the main solution in addition to breaking the chain of narcotics supply and campaigning to the public about the dangers caused by the effects of illegal use of narcotics. Also, it is necessary to make comparison with other countries in dealing with the same thing to eradicate the narcotics abuse, thus it can run effectively. This aims to find out the effectiveness of a policy before it is formulated.(Suriani, Hartiwiningsih, Jamin, & Waluyo, 2020)

Many countries in the world implement policies in their own ways to eradicate the narcotics crimes, as what had been done by the Netherlands and Portugal by implementing decriminalization policies (shifting crimes to non-crimes), especially for the narcotics users. The implementation of this decriminalization proved to be effective. In Portugal, for example, the annual overdose rate has increased from 400 to 290 after five years of cases since the policy had been implemented in 2001. Meanwhile, in the Netherlands, it had achieved extraordinary results by listing it as the European country with the lowest drug users. Having seen from the experiences of these two countries, it can be a valuable lesson for Indonesia, considering that the massive number of narcotics crimes currently is still going on.(Prasetyo, Handayani, Sulistyono, & Karjoko, 2019)

The former Deputy Minister of Law and Human Rights, Prof. Denny Indrayana, said that the country's political policies in the future should emphasize that drug users by providing them a rehabilitation, not an imprisonment. Based on his argument, we can see that the Law on Narcotics currently puts forward the criminal sanctions and is also supported by law enforcement officials in deciding narcotics crimes that prioritize criminal sanctions. This has implications for the number of prison inmates who are overcapacity mostly lived by narcotics abusers.(Putri, Handayani, & Novianto, 2019)

3. FINDINGS

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia shall be a state based on the rule of law. The logical consequence of a constitutional state is the existence of a regulation ruling the life of the nation and state to achieve the goal as mandated in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia. The regulation is under the hierarchy of laws and regulations stipulated in The Act of the Republic of Indonesia Number 12 of 2011 on the Formation of Legislative Regulations. The laws and regulations in this case have a significant role in manipulating society, especially laws, because some sanctions provisions can force the public to obey them.(Jaelani, Rachmi Handayani, & Karjoko, 2019)

In the context of Indonesian constitutional law, law is a product made by the legislative institution with the executive institution. This indicates that a constitution is a human-created law resulted from a political agreement between its constituents, which of course, is not free from mistakes, both from a formal and material perspective. Therefore, the substance stipulated in several laws is considered not to provide legal certainty for the community because the laws have multiple interpretations.(Jaelani, Handayani, & Karjoko, 2020) Given that legal certainty is one of the objectives of the law, it cannot be interpreted according to the intention of the parties with an interest. Besides, the phrase used in determining norms in law must be implemented in real life. A legal product that has been validated and aimed at tackling certain crimes is expected not to fail functioning due to the difficulty in applying the existing norms to perpetrators of criminal acts.(Jaelani, Handayani, et al., 2020)

The substance is regulated in The Act of the Republic of Indonesia Number 35 of 2009 on Narcotics, particularly in criminal provisions. The articles that regulate it provide opportunities for the emergence of new crimes in the judicial process because there is not a clear distinction between drug users and dealers mostly found in a criminal case decision related to narcotics abuse. In the law on Narcotics, the abusers can be divided into the following actors; dealers, traffickers, and users. The logical impact of this legal status affects the sanctions that will be imposed to them.(Jaelani, Ayu, Rachmi, & Karjoko, 2020)

A narcotic addict, according to The Act of the Republic of Indonesia Number 35 of 2009 Article 1 point 13, is a person who uses or misuses narcotics and is in a state of dependence on narcotics, physically and psychologically. Meanwhile, a narcotic abuser, as regulated in Article 1 point 15, is a person who uses narcotics without the rights or against the law. Meanwhile, the term or definition of a dealer, according to The Act of the Republic of Indonesia Number 35 of 2009, is not stated in detail, however, the term *dealer* is defined as the circulation of narcotics gel and narcotics precursor as stated in Article 1 point 6, that is any activity carried out without rights or against the law determined as a criminal offense of Narcotics and Narcotics Precursor.

A dealer or trafficker can be categorized into types of high ties with instrumental behavior, in which the perpetrator has very strong ties to the group or network where he is, committing crimes is not just a pleasure, yet because of professionals in narcotics trafficking. Therefore, the negative effects of criminal threats are a deterrent effect and a scare effect that affect the perpetrator.(Kuncoro, Handayani, Muryanto, & Karjoko, 2019) There are different sanctions among dealers, traffickers, and users. The hardest sanction is given to the drug dealers who can be punished with the death penalty because they are the drivers of the narcotics business which destroy the life of the Indonesian nation. Therefore, the death penalty is the right sanction for a narcotics dealer like what has been got by Wong Chi Ping and Ahmad Salim Wijaya, as inmates of death penalty, for abusing narcotics of plants weighing more than 5 grams.(Wibowo, Sulistiyono, & Karjoko, 2019)

Meanwhile, the dealers will also be subject to criminal sanctions, considering that they deliberately distribute the narcotics against the law to other people. Whereas for the narcotics users, they should only be subject to rehabilitation sanctions since they do not distribute the narcotics (only for their consumption). The problem is that there is no explicit definition of narcotics users in the Law on Narcotics, so the articles imposed between the users and the dealers can often be the same. Thus, of course, the justice that should be received by the users becomes difficult to realize because the article is the same as that of the dealer.(Jatmiko et al., 2019)

The narcotics abusers can get addicted, thus it is difficult to escape from the trap of using narcotics without getting help from the experts. The implementation of imprisonment for abusers, especially the narcotics addicts, is seen as an inappropriate act because it only brings the sorrow without curing his dependence on narcotics. Also, it opens up the opportunities for narcotics addicts to become dealers or even perpetrators of other crimes with the imprisonment of narcotics addicts because the conditions of the correctional institutions in Indonesia have not been able to optimally guide their assisted citizens.(Prasetyo et al., 2019)

The conviction of narcotics abusers is, of course, expected not only to provide a deterrent effect on the perpetrators but also as a means of tackling crime. A humanistic approach must also be considered in giving legal sanctions to the narcotics abusers. This humanistic value-oriented approach requires attention to the principle of criminal individualization in the use of criminal sanctions as a means of overcoming crime. Although the definition of drug users is not explicitly stated in the law on Narcotics, the term “user” is mentioned in various terms as follows:(Ummul et al., 2020)

1. Narcotics addict is someone who uses or abuses narcotics and is in a state of dependence on narcotics, physically and psychologically (Article 1 point 12 of the Law on Narcotics);
2. Drug abuser is someone who uses narcotics without rights or against the law (Article 1 number 15 of the Law on Narcotics);
3. Victim of drug abuse is someone who accidentally uses narcotics because he has been persuaded, tricked, cheated, coerced, and/or threatened to use narcotics (Elucidation of Article 54 of the Act on Narcotics);
4. Patient is someone who, based on medical indications, can use, obtain, possess, keep, and carry narcotics class II and III in limited quantities and certain preparations;
5. Former Narcotics Addict is someone who has recovered from narcotics addiction, physically and psychologically (Elucidation of Article 58 of the Act on Narcotics)

Based on this terminology, especially for the narcotics addicts and victims abuse, their rights are guaranteed in Article 54 of the Law on Narcotics to get medical and social rehabilitation under the condition that it can be proven in court that the person is an addict or a victim of narcotic abuse. In addition to the definition of narcotics users which is not explicitly stated in the Law on Narcotics, the narcotics traffickers are also not explicitly stated in the Law. Ideally, there is a clear definition between the drug users and drug dealers in order not to have multiple interpretations in imposing sanctions. Because if not, the judges' interpretations will surely differ from one another and become an opening for the emergence of new crimes in the judicial process, even the drug users, dealers and even traffickers, who do not want to be subject to criminal sanctions, will take advantages of the loopholes in the law.(Evingrum et al., 2019)

The fact shows that several articles are often used to ensnare the perpetrators in narcotics cases, such as Article 112, Article 114, and Article 127 of the Law on Narcotics. The problem that often occurs is that the narcotics abusers are often given criminal sanctions even though they use it for their consumption. Such criminal sanctions are not appropriate because as explained above, the Law on Narcotics has loopholes that can be used by certain individuals to gain benefits in the justice process for narcotics crime. Having been supported by the paradigm that is developing in today's society, the narcotics offenders are people who have good economic capacity so that they can be used as objects of extortion from certain individuals, thus they are not subject to criminal sanctions but are subject to rehabilitation sanctions, even though both medical and social rehabilitation sanctions have been guaranteed by Article 54 of the Law on Narcotics.(Evingrum et al., 2019)

The application of imprisonment for drug abusers, especially narcotics addicts, will not be able to solve the root of the problem if the perpetrators are not given treatment, thus they will be able to escape from their addiction on narcotics. Narcotics addicts need special treatment, medically and socially, so they can normally engage with society. The implementation of rehabilitation for narcotics addicts reflects a humanistic approach in law enforcement against drug abusers. This law requires Judges to carefully assess the circumstances and interests of the perpetrators. Legal sanctions are not automatically used as a means of retaliation, but must also be able to return the perpetrators to society. In other words, this law is also oriented to protecting the interests of the perpetrators. The provision on rehabilitation also reflects the principle of criminal individualization. According to Sudarto, the principle of criminal individualization is that it always takes into account the characteristics and circumstances of the maker in imposing criminal sanctions.(Evingrum et al., 2019)

This principle stems from the interests of individual perpetrators of criminal acts in a criminal law system. This principle is also one of the characteristics of modern legal schools that are oriented not only to actions but also to humans/actors. This approach is also referred to as a

mono-dualistic approach, in the sense of paying attention to the balance and interests between society and individuals. Narcotics addicts, both physically and psychologically, need medical and social help. The therapy used to alleviate the addicts from addiction cannot be done by themselves. The application of imprisonment for addicts is not able to cure their addiction on narcotics. It means nothing if a narcotic addict is imprisoned without any treatment. When he gets out of prison, he will still be an addict. Narcotics addicts need medical treatment to cure their addiction. The Act of the Republic of Indonesia Number 35 of 2009 has accommodated the protection of narcotics abusers, including the addicts and the victims of narcotics abusers in the form of opening the application of medical and social rehabilitation and this, of course, changes the paradigm of the purpose of criminalizing the narcotics abusers.(Leonard, Pakpahan, Heriyati, Karjoko, & Handayani, 2020)

Criminalization does not only start with the thought of retaliation against the perpetrators of crime or prevention to protect the community, but it has expanded to an integrated criminal system that unites aspects of law enforcement in implementing the system based on what is expected. The responsibility of the criminal system must begin with prevention from committing a crime, the crime by the perpetrators, and other stages until the perpetrators are reintegrated as a human being in society and the strength of law enforcers it has. The conviction of narcotics abusers as in The Act of the Republic of Indonesia Number 35 of 2009 is not merely to provide a deterrent effect to the perpetrators or prevent others from committing the same act, but also to seek treatment so that the offenders can return to society in a good condition.(Subekti, Sulistiyono, & Handayani, 2017)

Therefore, there are three approaches used in dealing with drug problems; Supply Reduction, Demand Reduction, and Harm Reduction. The Supply Reduction aims to break the narcotics supply chain starting from the producer to the distribution network. The Demand Reduction aims to break the chain of the drug users, while the Harm Reduction aims to reduce the harm related to drugs. The first two approaches are more familiar to law enforcers in dealing with drug problems. If these two approaches are viewed from a human rights perspective, they create conflicts because the choice of approach by law enforcement is conservative towards reality, an obsession with total annihilation, emphasizes certainty, and puts forward the process.(Jainah & Handayani, 2019)

Based on the above explanation, the harm reduction approach tends to be a public health approach aimed to reduce the negative effects of narcotics. According to Meliala (2013), there are at least three reasons why the law does not accept the harm reduction approach; law is reductionist and dichotomous, law is imposed for ultimatum-remedium deviations, and law demand codification and procedural. Meanwhile, law enforcers do not accept the harm reduction approach due to several reasons, such as the following: 1) Most of the law enforcement agencies have a legal-formal view, 2) It disturbs the principle of legal certainty, and 3) Law enforcers in the pre-adjudication phase develop classic assumptions on drug users. The demand and supply reduction approaches in several countries, including Indonesia, are still an option in overcoming the drug problems.(Jaelani et al., 2019)

The death penalty case against drug traffickers on Sunday, January 18, 2015 is one example of the supply reduction approach applied in this country. This decision has drawn a lot of controversy, especially among human rights activists. In fact, this approach is not successful since there was an increase in the number of prisoners related to narcotics cases, for example, until March 2010 the total number of WBP was 129,120 people and the number of prisoners in narcotics cases was 34,849 people. The percentage of the number of Narcotics Prisoners compared to other public prisoners is around 27%. The Director of Rehabilitation Institution Strengthening of National Anti-Narcotics Agency (2014) cited the results of the research conducted by National Anti-Narcotics Agency and Health Research Center University of Indonesia which stated that the prevalence of drug abuse is projected to increase every year,

such as 2008 (1.99%), 2011 (2.32%), 2013 (2.56%), and 2015 (2.80%). Data from Directorate of National Police's Criminal Investigation Agency and National Anti-Narcotics Agency show the number of drug perpetrators based on the type of drugs throughout the years.(Ummul et al., 2020)

Drugs Perpetrators By Types Of Drugs (2008 – 2012)

YEAR	MARIJUANA	HEROIN	HASHISH	COCAINE	EXSTATIN	CRYSTAL METH	OTHERS
2008	11,580	1,821	6	10	2,947	8,685	19,662
2009	11,998	925	3	2	1,919	10,185	13,373
2010	9,637	773	9	5	1,087	12,463	9,523
2011	7,829	703	3	6	965	15,766	11,460
2012	8,478	565	7	9	1,138	15,109	10,334
TOTAL	49,522	4,787	28	32	8,056	62,208	64,352

Moreover, regarding the drug users, many countries has no longer imposed imprisonment for drug users and they have focused on rehabilitation and preventing their citizens from becoming drug addicts. Indonesia has started to lead to rehabilitation for drug addicts, legal instruments, and policies are in place and are starting to be implemented. The results of a document review conducted by Student Creativity Program of Faculty of Medicine (known as PKMK) Universitas Gadjah Mada in 2014 showed that in its implementation, the HIV and AIDS prevention program through reducing the adverse effects of drugs underwent quite high dynamics, starting from the alignment of policies and the implementation of the HR program.(Suriani et al., 2020)

However, based on the experience undergone by two fishermen in Batam, who are educated and have low income, tries to use crystal meth after getting persuaded by someone. The effect is that they will feel stronger to catch the fish in the sea and should not be subject to criminal sanctions since they are users.(Jaelani, Ayu, et al., 2020) The defendant was finally sentenced to prison for four years during the judgment process. Even though they have made a legal appeal, the Supreme Court upheld the decision of the first instance court, until finally they made an appeal that they were sentenced to one year and six months in prison. Although receiving a low verdict in cassation, the case of these two fishermen as the drug users, based on the authors, should be rehabilitated based on the provisions of Article 54 to provide a sense of justice for the community. Therefore, it is crucial to reformulate the right policies in Law on Narcotics to realize justice, legal certainty, and benefit to the community.(Jaelani et al., 2019)

4. CONCLUSION

Based on the description that has been discussed before, it can be concluded that According to Gustav Radbruch, the objectives of the law are to get justice, benefit, and legal certainty. Accordingly, Law of the Republic of Indonesia on Narcotics has not been able to actualize its legal objectives, particularly for narcotics users, considering that they are only ideally given rehabilitation sanctions, both medically and socially. On the other hand, they are not subject to criminal sanctions, in which it becomes the main legal sanctions. Besides, they get sentenced by the judges who use articles for narcotics traffickers in handling the crimes. Therefore, it is necessary to reformulate the right policies to manage the crimes in narcotics

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