

## **Law Enforcement Disparity in Giving Rehabilitation for Narcotics Users**



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**ABSTRACT:** The problem of drug abuse is currently a frightening specter. Prevention of drug abuse is aimed at fortifying the community so that they are not involved in drug abuse. The target is people who have never been involved with narcotics abuse so as not to become abusers, and not become dealers. Rehabilitation of narcotics abusers and addicts with the aim of curing the ill condition of narcotics dependence on abusers and addicts to recover from drug dependence. The rights of citizens are human rights that are protected and guaranteed by the state, but in reality, in the process of imposing criminal charges, especially in cases of drug abuse, there have been disparities.

**KEYWORDS:** Disparity, Law Enforcement, Narcotics Rehabilitation.

### **A. INTRODUCTION**

#### **1. Background**

The problem of narcotics in Indonesia is still something that is urgent and complex. In the last decade this problem has become widespread. It is proven by the significant increase in the number of narcotics abusers or addicts, along with the increasing disclosure of narcotic crime cases, which are increasingly diverse in pattern and the more massive the syndicate network is. The impact of narcotics abuse not only threatens the survival and future of the abuser, but also the future of the nation and state, regardless of social, economic, age or educational strata. Until now, the level of narcotics trafficking has penetrated at various levels, not only in urban areas but has touched rural communities.<sup>1</sup>

The problem of drug abuse is currently a frightening specter. Universally, narcotics abuse can threaten and damage the future of its users, it can even lead to other crimes as a result of the dependence syndrome on narcotic chemicals or illegal drugs. Because sociologically they can disrupt society by doing abnormal acts or crimes outside of their awareness. This misuse will result in triggering criminal acts, be it theft, extortion, fraud, embezzlement of illicit drug trafficking, persecution and so on. In other words, it will disrupt the continuity of the nation's life.<sup>2</sup>

Prevention of narcotics abuse is aimed at fortifying the public so that they are not involved in narcotics abuse, the target is people who have never been involved with narcotics abuse so that they do not become abusers, and do not become dealers. Rehabilitation of narcotics abusers and addicts, with the aim of curing the condition of drug dependence on narcotics abusers and addicts recovering from drug addiction/dependence.<sup>3</sup>

Basically the circulation of narcotics in Indonesia is very wide. Law No. 35 of 2009 concerning Narcotics has given different treatment for narcotics abusers. Narcotics users or addicts as perpetrators of narcotics crimes are sentenced to imprisonment for narcotics abusers. Besides that, it can be said that narcotics addicts are victims, it is shown by the provision that narcotics addicts can be sentenced to rehabilitation.<sup>4</sup>

Based on the Circular Letter of the Supreme Court of the Republic of Indonesia No. 04 of 2010 concerning the Determination of Narcotics Abuse and Addicts in the Social Rehabilitation and Rehabilitation Institution which should be the basis for the Panel of Judges in the District Court to make a decision so that narcotics users are placed in the Narcotics Rehabilitation Institute. But the fact is that narcotics users are sentenced to prison sentences. Some examples of law enforcement that contain disparities include the case of a narcotics user on behalf of Sam Radjasa, SE with case register number 140/Pid.Sus/2019/PN.Bks and the defendant on behalf of Cahyo Kurniawan with case register number 279/Pid.Sus/ 2020/PN.Bks. Furthermore, the two defendants were indicted and charged with Article 127 Paragraph (1) letter a of the Narcotics Law Number 35 of 2009 concerning Narcotics and subsequently both were found guilty based on Article 127 Paragraph (1) letter a of the Narcotics Law Number 35 of

<sup>1</sup> Maudy Pritha Amanda, "Drug Abuse Among Adolescents", Journal of Research & PPM (2017):340.

<sup>2</sup> Sumarlin Adam, "Impact of Narcotics on Psychology and Public Health" Journal of Health And Sport (2012): 1.

<sup>3</sup> Anang Iskandar, "Narcotics Law Enforcement" (Jakarta:PT.Elex media Komputindo, 2019), p. 7.

<sup>4</sup> Andri Winjaya Laksana, "Review Of Criminal Law Against Narcotics Abusers With Rehabilitation System" Journal Of Legal Update (2015): 75.

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2009 concerning Narcotics. by the Panel of Judges of the Bekasi District Court each with a prison sentence. However, the treatment of law enforcement will be different when a suspect is from a public figure, for example the case of Iwa Kusuma who was sentenced by the Tangerang District Court for 6 (six) months of imprisonment and placed in a Narcotics Rehabilitation Place..

### 2. Problem Formulation

- a. Why is there a disparity in law enforcement in providing rehabilitation for narcotics users?
- b. How to overcome the disparity in law enforcement in providing rehabilitation for narcotics users?

## B. DISCUSSION

### 1. There is a Disparity in Law Enforcement in Providing Rehabilitation for Narcotics Users

The increase in drug abuse is felt to increase every year. This can be seen from the reports in the country, both in print and electronic media, which almost every day report about the arrests of syndicates and perpetrators of narcotics abuse by law enforcement officers. The reported increase in narcotics abuse is certainly very worrying for all levels of society and certainly a serious threat to the younger generation in the future.<sup>5</sup>

The eradication of narcotics carried out by the government is currently increasingly being carried out, both through the method of socializing the dangers of narcotics and of course accompanied by perfecting legal arrangements through statutory instruments. The law on narcotics in Indonesia already exists and continues to undergo changes to continue to be perfected so that the eradication of narcotics crimes can run optimally.<sup>6</sup>

It should be noted that currently the applicable law on narcotics is Law Number 35 of 2009 concerning Narcotics. The narcotics law contains the necessary legal regulations, both from the perspective of the use of narcotics for medical and health purposes, and supported by law enforcement to medical and social rehabilitation issues..<sup>7</sup>

Based on the provisions of the Circular Letter of the Supreme Court (SEMA) Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions. There are several requirements for narcotics abusers that are taken into consideration to be able to undergo rehabilitation, namely the abuser is caught in the hands while using narcotics, when the abuser is caught in the hands of the abuser, has evidence of narcotics within 1 (one) day of use, includes a doctor's or psychiatrist's certificate, and includes a laboratory test letter. which states that the defendant is positive for consuming narcotics, the abuser is not part of a syndicate or dealer.<sup>8</sup>

Law Number 35 of 2009 concerning Narcotics has encouraged the government to treat narcotics addicts specifically in order to get both medical and social rehabilitation as stated in Article 54, that narcotics addicts are obliged to undergo medical rehabilitation and social rehabilitation. The problem is the attitude of law enforcement officers who consider current narcotics abusers or addicts as criminal subjects or criminals not from the perspective of victims, for example, narcotics abusers from artists such as Iwa Kusuma or more familiarly known as Iwa K who stumbled on the wrongdoer case. use marijuana. Iwa underwent a trial with the agenda of the Public Prosecutor's demands, and in the prosecutor's indictment it was stated that the defendant Iwa K was proven to have violated the provisions of Article 127 of the Law on Narcotics. In the demands until the verdict, the panel of judges decided that Iwa K was sentenced to undergo rehabilitation for 8 months.<sup>9</sup>

Another example of a narcotics case is a defendant who stumbled upon a narcotics abuse problem named Sam Radjasa. The inmate is an inmate of the Class 1A Bekasi Penitentiary because of a marijuana abuse case whose case was handled directly by the author himself. In the decision of the Panel of Judges, the defendant was decided and found guilty as a subsidiary indictment of Article 127 paragraph (1) letter a of Law RI No. 35 of 2009 concerning Narcotics and the defendant was sentenced to prison for 1 (one) year and the defendant was declared to remain in prison. prisoner. Another narcotics abuse case is a defendant who stumbled on a narcotics abuse problem named Cahyo Kurniawan. the verdict of the Panel of Judges, the defendant has been decided and found guilty as a subsidiary indictment of article 127 paragraph (1) letter a of RI Law No. 35 of 2009 concerning Narcotics and the defendant was sentenced to prison for 2 (two) years with an order that the defendant remains detained.

Based on the description of the three examples of narcotics cases above, what is interesting from the case is that the three defendants based on the judge's decision were proven to be narcotics abusers but the criminal sanctions imposed were different. - narcotics law. The next interesting thing is based on the facts on the ground, that it is often found during the investigation process, that there has been non-compliance and even manipulation of the law by law enforcers, especially investigators in carrying out their duties in handling narcotics user cases. Investigators and public prosecutors in examining suspected narcotics abusers sometimes do not fully follow the guidelines in the applicable Narcotics Law.

<sup>5</sup> Andri Winjaya Laksana. *Op. Cit.* Hlm. 79.

<sup>6</sup> Hotman Sitorus, "Rehabilitation of Narcotics Offenders at the Getsemani Anugerah Mental and Drug Rehabilitation Center" *Bina Mulia Hukum* (2019) : 136.

<sup>7</sup> Law No. 35 of 2009 concerning Narcotics.

<sup>8</sup> SEMA Number 4 Of 2010 concerning "Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions".

<sup>9</sup> Website/Internet: Kompas.com "Iwa K was sentenced this Wednesday, here's the journey of the marijuana case" <https://entertainment.kompas.com/read/2017/09/27/065542910/iwa-k-divonis-rabu-ini-berikut-travel-cannabis-case?page=all> (accessed May 20, 2022).

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In practice there have been several rehabilitation criminal decisions handed down to narcotics abusers, but these are not comparable because there are still many court decisions that do not take this into account and imprisonment is the dominant choice in making decisions for narcotics abusers. In fact, the abuser in this case meets the criteria for the abuser who can be sentenced to a rehabilitation sentence which has a position almost the same as the abuser who is sentenced to rehabilitation. Of course, the application of different penalties is contrary to one of the objectives of the law, namely legal certainty.<sup>10</sup>

A judge in giving justice, the judge must be careful and first examine the truth of the events that are submitted to him then give an assessment of the event and relate it to the applicable law. After that the new judge can make a decision on the incident and therefore the judge in giving a decision must be based on legal interpretation in accordance with the principle of legal objectives.<sup>11</sup>

Legal certainty as outlined in the judge's decision is a result that is based on judicially relevant court facts and considered with conscience. Judges are required to always be able to interpret the meaning of laws and other regulations that are used as the basis for application. The application of the law must be in accordance with the case that occurred, so that the judge can construct the case being tried as a whole, wisely and objectively. Judge's decisions that contain elements of legal certainty will contribute to the development of science in the field of law.<sup>12</sup>

Law enforcers who always consistently apply the principle of legal certainty will facilitate the law enforcement process, therefore decisions will be easy to carry out their duties. The consistency of law enforcement in applying the principle of legal certainty can also produce jurisprudence as a source of law and legal development, because the law is not always complete and fully regulates everything.<sup>13</sup>

The disparity in every law enforcement that occurs will be fatal and will set a bad precedent in the future. Convicts who are born from an unfair decision and then feel like a victim, consequently the convicts tend to no longer trust the law or law enforcement officials. Whereas a trust and respect for the law from the community is one of the results to be achieved in the goal of settlement through the judiciary.

The same perception in the application of the law will create a legal certainty. With the realization of legal certainty, it will prevent or avoid disparities and inconsistencies in decisions because judges have applied the same legal standards to cases or cases that become the same or similar to cases that have been decided or tried by previous judges, so that the decisions of a case predictable by justice seeker. With consistent decisions, a sense of justice and legal certainty can be realized.<sup>14</sup>

### **2. Efforts to Overcome Disparities in Law Enforcement in Providing Rehabilitation for Narcotics Users.**

Every human being wants to be treated equally according to his dignity and worth. Humans as one of God's most perfect creatures have the same degree and the same between rights and obligations. Based on this, the recognition of human rights is something absolute. The value of social justice for all Indonesian people contained in the 5th precept of Pancasila, Pancasila is not only one of the four pillars of nationality but also the ideology of the Indonesian nation which has noble goals and ideals, namely the achievement of a just and prosperous Indonesian society both physically and mentally. For this reason, the value of justice is a very basic value and is the hope of the entire nation.<sup>15</sup>

Law and justice are actually two interrelated elements and are "conditions sine qua non" with one another. When law enforcement is not accompanied by a sense of justice, people will be apathetic to the law itself. Therefore, law enforcement officers in carrying out their duties are required not only to rely on legal certainty but also to be sensitive to the sense of justice in the community and of course, apart from a sense of justice, the benefits of law enforcement itself can be felt directly by the community in all circles. Law enforcement that always pays attention to and carries out legal certainty, justice and benefit is the goal of law.<sup>16</sup>

The application of a just law is the hope of every human being, for that we need a systematic reform of the law so that one of the objectives of the law, namely justice, can be achieved. For this reason, based on the description above, the following authors will describe the efforts that can be made to overcome so that there is no disparity in law enforcement in providing rehabilitation for narcotics users, namely as follows:

#### **a. Equating the paradigm between law enforcement in terms of treating drug users as abusers as well as victims of narcotics abuse who require serious treatment both medically and socially.**

To optimize the implementation of rehabilitation for narcotics users as stated in Law Number 35 of 2009 concerning Narcotics as an effort to eradicate narcotics, it is necessary to have strong consistency and equality of perception among law enforcers in treating narcotics users as abusers as well as victims of narcotics abuse who require good medical treatment. as well as social.

<sup>10</sup> Berliandista Yustianjarnimas Irianto. "Criminal Disparities in Narcotics Abusers." *Jurist-Diction* 3.3 (2020): 827.

<sup>11</sup> A.A Ngr Rai Anjasmara Putra, Made Sepud dan I Nyoman Sujana, "Disparity in Judge's Decisions in Narcotics Crime", *Journal of Legal Analogy*, 2 (2) (2020): 130.

<sup>12</sup> Fence M. Wantu, "Realizing Legal Certainty, Justice and Benefit in Judge Decisions in Civil Courts" *Journal Of Legal Dynamics* 12.3 (2012) : 483.

<sup>13</sup> Heru Sugiyono & Robinsar Marbun, "Disparity Of Judge Decisions In Civil Dispute", *IJBEL*, Vol. 20, Issue 5 (Dec) ISSN 2289-1552 (2019) : 132.

<sup>14</sup> Heru Sugiyono, *Op.Cit.*

<sup>15</sup> Riky Sembiring, "Pancasila Justice in the Perspective of Aristotle's Theory of Justice", *Journal of Actual Justice* 3.2 (2018) : 139.

<sup>16</sup> Liani Sari. "The Essence of Justice in Law." *Legal Pluralism: Journal of Law Science* 2.2 (2012) : 248.

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As in this case specifically for narcotics users, law enforcement officers should not only apply the provisions of Articles which prioritize imprisonment for narcotics users but also apply articles that provide opportunities for narcotics users to be rehabilitated as stated in the provisions of Article 127 which oblige and provide guidelines for law enforcement officers, especially judges, to place narcotics users into medical and social rehabilitation institutions, even though the intended users are limited to addicts and victims of abuse..

### **b. Implement a rehabilitation policy for narcotics users without legal proceedings.**

Seeing developments in law enforcement in several developed countries, there is a new perception that narcotics users/addicts are no longer considered criminals but are seen as people who need medical treatment and recovery due to a serious illness that must be rehabilitated. These developed countries such as China, Hungary, Malaysia, Spain and several other countries including Australia, have treated narcotics users as victims even though they are still threatened with punishment. But for users who carry narcotics under the provisions, they are not immediately taken to a detention house, but are handed over to the rehabilitation agency for treatment.

Another purpose of this perception is directed at efforts to decriminalize narcotics users. The criminal legal process against narcotics users in the form of imprisonment so far has not been successful in suppressing the increasing number of narcotics users, the actual facts show that the number of narcotics users who are sentenced to prison is increasing every year. This is what needs to be reviewed regarding the purpose and function of implementing criminal law for victims of narcotics users. The most important factor in efforts to tackle narcotics abuse, which is often neglected, especially by law enforcement officers in Indonesia, is rehabilitation efforts. The model of punishment for victims of narcotics users until now still places them as criminals, so that rehabilitative efforts are often neglected.

Until now in Indonesia such a pattern has not been applied, victims of narcotics users and addicts who are still put in prison during the detention process are allowed to be rehabilitated and even then only given to certain people who are financially capable, but the results are not yet an effective solution. So that the legal system in Indonesia must start carrying out policies or legal breakthroughs by directly bringing victims of narcotics users to rehabilitation facilities without being processed by law. If victims of narcotics users are arrested by the police or BNN are reported to their parents and/or guardians, they must be placed in a rehabilitation facility.

The confirmation of narcotics addicts as victims and not criminals has a legal basis when the issuance of SEMA No. 4 of 2010, with the legal basis as well as legal legitimacy that addicts are not perpetrators of crimes but someone who suffers from addiction who needs care and treatment. both physically and psychologically and need support from the community to be able to return to normal life.

## **C. CONCLUSION**

Based on the results of the description of the research analysis that has been carried out, the authors will draw several conclusions, namely as follows:

1. Based on the legal descriptions on the subject of the discussion, it can be concluded that the disparity in law enforcement in providing rehabilitation for narcotics users and addicts occurs because investigators and public prosecutors in examining suspected narcotics abusers sometimes do not fully follow the guidelines in the applicable Narcotics Law. Furthermore, there are differences in interpretation by law enforcement officials in the application of the narcotics law, so that narcotics users and addicts are often considered as criminals who must be sentenced to prison to account for their actions.
2. In order to avoid disparities in law enforcement in providing rehabilitation for narcotics users, it is necessary to equate the paradigm between law enforcers in terms of treating narcotics perpetrators and users as abusers as well as victims, then the legal system in Indonesia must begin to carry out policies or legal breakthroughs directly bring victims of narcotics users to rehabilitation centers without being prosecuted.

## **D. SUGGESTIONS**

1. legal instrument is needed to bind law enforcers that can be used as guidelines and limits regarding the perspective on the assessment of a criminal act, especially narcotics users and addicts so that they are placed in rehabilitation places without being prosecuted until the court.
2. he government's program which is currently being intensively carried out to eradicate the illicit trafficking of narcotics has not been successful because the number of narcotics rehabilitation centers currently cannot accommodate the large number of addicts, so it is urgently needed in every area, both district and city, to immediately build a special narcotics rehabilitation center with all kinds of facilities. facilities in it to be able to accommodate narcotics users and addicts.

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