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## Rehabilitation arrangements for narcotics adults based on justice in significance

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**Abstract.** The Narcotics Law has guaranteed arrangements for medical and social rehabilitation efforts for Narcotics Abusers and Addicts where judges do not sentence prison sentences but sentence them to undergo rehabilitation. The application of such a law will of course make this country not like it is now where prisons are *over capacity*, prisons become a center for the distribution of narcotics and other criminal offenses due to abusers being imprisoned. Arrangements regarding medical and social rehabilitation cannot be separated from the philosophical basis existence of state as stated in 1945 Constitution Republic of Indonesia. The constitution, which contains the Pancasila philosophy, clearly emphasizes that state must provide protection for all Indonesians, including providing health protection. Thus, the nature rehabilitation arrangements as one of goals in Narcotics Law is protection of citizens and nation building.

**Keywords.** rehabilitation; justice; adult

### Introduction

The Narcotics Law has guaranteed arrangements for medical and social rehabilitation efforts for Narcotics Abusers and Addicts where judges do not sentence prison sentences but sentence them to undergo rehabilitation. The application of such a law will of course make this country not like it is now where prisons are *over capacity*, prisons become a center for the distribution of narcotics and other criminal offenses due to abusers being imprisoned.

Rehabilitation of narcotics abusers is based on Article 54 of Narcotics Law, and various other internal regulations governing rehabilitation. The existence of these provisions doesn't make rehabilitation for narcotics abusers and addicts carried out optimally. Practically there are still many narcotics abusers who are not rehabilitated. This is caused by the distortion of interpretation contained in several articles in Law No. 35 of 2009 concerning Narcotics.

The tug of war between health sector and law enforcement related to handling of Narcotics Abuse has resulted in legal policies related to implementation of medical rehabilitation and social rehabilitation that have not been properly implemented. As a result, an abuser who is threatened with a crime is a person who potentially suffers from drug addiction and according to provisions of law they have the right to be recovered.

Based on results of an analysis of the historical trajectory of narcotics regulation in Indonesia, starting from Staatsblad 1929 Number 278 and Number 536, State Gazette 1949

Number 149, Narcotics Law No. 9/1976, the Narcotics Law No 22/1997 for Narcotics Law 35/2009, provides a big picture that initial goal of regulating narcotics is a matter of governance, ensuring that state controls the circulation of narcotics, and not blind prohibition, or focusing on punishment, because narcotics is a problem administration. This means that use and possession of narcotics for personal gain should be administered by the state, and must be avoided from being prosecuted.

The concept of restorative justice states that perpetrators and victims are components that must exist, so in narcotics crimes, victims and perpetrators are one unit so that it is time for construction to be built based on a conception of restorative justice that is built from soul of nation itself, namely Pancasila. Because, philosophy adopted in Indonesia is Pancasila, efforts to reconstruct the norms contained in Narcotics Law No. 35 of 2009 must be in line with the values of dignified justice, namely placing abusers and victims of narcotics addicts as victims of narcotics abuse who have basic rights as a human being to be cured of dependence on narcotics.

### **Research methods**

The type of legal research in writing this dissertation is normative legal research.(Michael, 2022)

### **Research Results and Discussion**

#### **The Nature of Rehabilitation Arrangements for Narcotics Abusers**

National development aims to realize complete Indonesian people and the entire Indonesian society that is just, prosperous, prosperous, orderly and peaceful based on Pancasila and 1945 Constitution medicine, in addition to development of science.(Yudianto, 2016)

The concept of a rule of law obliges the state to protect the human rights of its citizens, the right to live healthy is one example. Article 28H paragraph (1) of the 45 Constitution states that every person has right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy environment and has right to obtain health services.

It is known that narcotics problem historically is a problem of illicit business where if demand is not cured, the supply will thrive and result in the narcotics business becoming more and more widespread. Conversely, if demand is cured, it will be difficult for suppliers to act and over time, the narcotics business will surely become extinct.

The abuser of a criminal who is threatened with imprisonment is a person who is potentially ill with narcotics addiction, but on the other hand narcotics abusers who are in a state of physical and psychological dependence on narcotics who are known juridically as narcotics addicts are sick people who must be rehabilitated until they recover.

Many cases show that law enforcement dimension tends to win tug-of-war with indications of detention during the investigation and prosecution process and\imposition of prison sentences ignoring placement in rehabilitation institutions. The practice until now is that abusers who are caught consuming or abusing narcotics for themselves are punished with prison sentences.

The handling of abusers whose goal is guaranteed rehabilitation, both the investigation, prosecution and trial process, who should not have met the conditions for detention, in fact, is still being detained because it was charged with distribution article. In addition, abusers who are also guaranteed by narcotics law should receive a rehabilitation sentence, in fact they are still sentenced to prison.(Prasetyo & Kameo, 2020)

Ridho Rhoma had to be brought to court 2 (two) times for self-abuse of narcotics. In 2018 Supreme Court Republic of Indonesia sentenced Artist Ridho Rhoma to 18 (eighteen) months in prison even though it was revealed in trial facts that he was an addict and also / evidence of methamphetamine-type narcotics that was found when Ridho Rhoma was arrested was still under SEMA provisions No.4 Year 2010 concerning Placement of Abuse, Abuse Victims and Narcotics Addicts Into Medical and Social Rehabilitation Institutions.

The 18 (eight) months prison sentence that artist Ridho Rhoma has served, apparently did not deter him because in 2021 Ridho Rhoma must be brought to court again after police officers arrested him by being found to be carrying 3 (three) MDMA (ecstasy) class narcotics) grain. The results of assessment carried out by Integrated Assessment Team (TAT) recommended that Ridho Rhoma was addicted to drugs and had to undergo recovery through a rehabilitation institution. However, the recommendation from the TAT was not fully taken into consideration by the judge examining the case because in his verdict Ridho Rhoma was sentenced to two sanctions at once, namely imprisonment and rehabilitation.

In connection with this case, it is interesting and needs to be further studied regarding the nature of rehabilitation arrangements for narcotics abusers. Many narcotics cases show that there is legal uncertainty over application of norms of Article 111, Article 112 Paragraph (1) and Article 114 Paragraph (1) of Law 35/2009 for Narcotics Abusers for themselves in obtaining rehabilitation as referred to in Article 127 of Law 35/2009 concerning Narcotics. Apart from occurrence of legal uncertainty over the application of norms in several articles as mentioned above, there are also inconsistencies related to implementation of rehabilitation.

Article 54 confirms that "Narcotics Addicts and Narcotics Abusers are obliged to undergo Medical Rehabilitation and Social Rehabilitation". With the provisions of this article, it shows that sanctions that must be imposed on Narcotics abuse are in the form of action sanctions, namely Medical Rehabilitation and Social Rehabilitation, in fact there are no criminal sanctions imposed as referred to in Article 127.

Based on explanation outlined above, the nature of rehabilitation arrangements for narcotics abusers is a guarantee for narcotics abusers to undergo medical and social rehabilitation as goal existence of Narcotics Law as follows.

### **Philosophical aspect**

Arrangements regarding medical and social rehabilitation cannot be separated from the philosophical basis of state's existence as contained in 1945 Constitution. The constitution, which contains Pancasila philosophy, clearly emphasizes that state must provide protection for all Indonesians, including providing health protection. Therefore, philosophically, the nature of rehabilitation arrangements as one objectives of Narcotics Law is protection of citizens and nation building.(Eliandi et al., 2021)

### **Sociological aspects**

Rehabilitation is regulated in Narcotics Law as a means restoring the balance of society which has been damaged due to actions that disrupt harmony of social life. Rehabilitation is a form of state intervention included in laws and regulations on narcotics. By looking at the reality of penitentiaries (lapas) it is far from ideals to humanize narcotics users and addicts.

### **Juridical aspect**

The rehabilitation regulation for addicts is a projection of previous law which regulated eradication of narcotics through the threat of imprisonment, fines, up to death penalty. However,

the reality has created an increasing trend both quantitatively and qualitatively and is widespread among public. Thus, action is needed form of rehabilitation measures that can provide healing to addicts and narcotics abusers so they can return to society.

### **Rehabilitation Arrangements for Narcotics Abusers Based on Dignified Justice**

Dignified Justice contains a theoretical view with a postulate that all activities in a country must be based on applicable laws and regulations. Pancasila, in perspective of dignified justice, highest statutory regulation, source of all sources of law. One of efforts that should be developed to overcome dangers of narcotics in Indonesian society, requires grounding awareness and actualizing the values of Pancasila in social life. The movement to return to Pancasila needs to be raised considering that narcotics problem arose because the Indonesian people experienced anomie.

The situation in Indonesia which has been designated as a narcotics emergency area is proof that this nation has gone too far from noble values of Pancasila. The impact of losing value Pancasila, Indonesian human personality is vulnerable to facing the negative effects of transnational crimes such as narcotics. As the source all sources of law, in perspective of dignified justice, all laws and decisions of judges in Indonesia are derivations (soulmates) Pancasila. In other words, all statutory regulations and court decisions with permanent legal force are also Pancasila, because they are same spirit as Pancasila, not contradictory to Pancasila, not against Pancasila.

The discussion above has described that there are several problems in applying law, including the application of Article 112 paragraph (1) and Article 127 paragraph (1) letter of Law Number 35 of 2009 concerning Narcotics. This problem can be seen from increase in narcotics cases that are filing for legal action so that it has an impact on dominance the number of narcotics case prisoners in correctional institutions.

The difference application of article indicates a difference interpretation of law. Differences in legal interpretations are actually a normal thing in judicial process, but the problem is that various legal interpretations assume that quality of these laws and regulations is not good or at least cannot provide legal certainty which are orientation purpose of law as expressed by Gustav Radbruch.

There are differences in interpretation by law enforcers caused by unclear (blurring) positive law in the form of Law Number 35 of 2009 concerning Narcotics, resulting in the law becoming weak and creating uncertainty that can result in injustice. According to Diah Imaningrum Susanti, one of most interesting developments in legal theory today are increasing importance concept of interpretation.

It becomes interesting when seen from the description narcotics case in previous discussion, namely narcotics abuse case that ensnared artist Ridho Rhoma. Even though evidence of methamphetamine was found net only 0.5 grams, (under SEMA No. 4 of 2010) it is known that West Jakarta District Court Judge has sentenced the defendant Ridho Rhoma to imprisonment for: 10 (ten) months and also stipulated so that defendant undergoes treatment and/or treatment through Medical Rehabilitation and/or Social Rehabilitation at Drug Addiction Hospital (RSKO), Cibubur, for 6 (six) months and 10 (ten) days. This means that as an addict Ridho Rhoma must undergo two sanctions at once, namely prison and rehabilitation

Another example came from narcotics abuse case of 2 (two) suspects from the City of Kediri, East Java, namely the suspects Agung Kurniawan and Prans Tomi Sanjaya. The suspect Agung Kurniawan was arrested because he was found to be carrying narcotics Class 1 Type of Shabu weighing 0.85 grams. Meanwhile, suspect Prans Tomi Sanjaya was arrested for carrying

0.50 grams of narcotics Class 1, type of methamphetamine. The two suspects also occupy Kediri Police detention room as safekeeping prisoners.

Another problem besides law on narcotics has not yet regulated *grammage*, there is also the provision of Article 54 in Narcotics Law which apparently doesn't make rehabilitation for narcotics addicts carried out optimally. Practically there are still many drug abusers who are not rehabilitated which results in an *overload* of Narcotics Addicts in Correctional Institutions (Lapas). This means that this country needs legal regulations related to efforts to regulate rehabilitation as an effort to provide protection in form of rehabilitation for narcotics abusers.

The focus of reform in tackling narcotics problems should be directed not only on effectiveness implementation of criminal instruments alone, but also on how to provide legal protection for narcotics addicts. This improvement can be done by revising (changing) the Narcotics Law to its internal regulations, such as the Supreme Court Circular Letter (SEMA)

One of significant changes Narcotics Law is to revoke the provisions of Article 111, Article 112, Article 114 of Law, Article 117, Article 119, Article 122, Article 124, Article 127 and Article 103 of Narcotics Law. The formulation of this article does not distinguish between Narcotics users and Narcotics dealers. Thus, Narcotics users including Narcotics Addicts as victims of narcotics abuse are vulnerable to getting a prison sentence by the Judge. For this reason, these provisions must be revised explicitly and clearly that narcotics abusers who are actually victims can only be subject to rehabilitation.

### **Conclusion**

Arrangements regarding medical and social rehabilitation cannot be separated from the philosophical basis existence of state as stated in 1945 Constitution Republic of Indonesia. The constitution, which contains the Pancasila philosophy, clearly emphasizes that state must provide protection for all Indonesians, including providing health protection. Thus, the nature rehabilitation arrangements as one of goals in Narcotics Law is protection of citizens and nation building.

The concept of a just and dignified rehabilitation arrangement for narcotics abusers is an attempt to provide legal protection by reconstructing articles contained in Law no. 35 of 2009 concerning Narcotics and includes provisions in its internal regulations such as SEMA No. 4 of 2010, SEMA No. 03 of 2011, as well as SEMA No. 3 2015 and Guideline No. 18 of 2021 The Attorney General Republic of Indonesia regarding the settlement of handling cases of criminal acts of narcotics abuse through rehabilitation with a restorative justice approach, into regulation of narcotics law so that it has binding legal force for Investigators, Public Prosecutors and Judges in imposing sanctions the form of rehabilitation for narcotics abusers.

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