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Double Track System on Drug Abuse Case Study in City of Semarang, Central Java, Indonesia

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Abstract: Background: Drug abuse in Indonesia tends to increase and the complex. Since 2015, it has reached alarming levels, cases of drug abusers in court proceedings often get varied sentence. In addition to a sentence of imprisonment, as well as therapy and rehabilitation for health recovery and meet their welfare. The aim of this research is to analyze the problem of punishment for current drug abusers, to reconstruct a drug abuse punishment policy based on fairness and welfare values. Research method was socio-legal research, explorative and descriptive research with approach of law and case approach. Source of data were obtained from field practice and literature study. The data was collected by observation and in-depth interview. Technical data analysis was done qualitatively and inductively. Result: the execution of punishment for drug abusers in Semarang city with the same indictment that Article 121 of Law 35 Year 2009 varies, some get punishment of imprisonment and have to pay compensation, some get punishment of rehabilitation, and there is get double punishment that besides criminal penalties and fines also receive therapy and rehabilitation or double track system. The double punishment has been practiced by some judge in the State Court of Semarang and has also been implemented in prisons Semarang basic implementation refers to the circular Menkumham (Ministry of Law and Human Right) number: M.HH-01.PK.01.06.10 2015. Conclusions and Recommendations: double track system against drug abusers has been practiced by some judges in Semarang City, the implementation of the decision has been done in Semarang City prison. There are still problems that resulted in not all drug users get justice and welfare. To solve these problems, a consistent and comprehensive improvement effort must be made for their justice and prosperity.

Keywords: Double track system - Drug Abuse.

BACKGROUND

Problems related to drug increase from year to year and complex, not only in big cities like Jakarta, Surabaya, Medan, and other sorts, but also have penetrated in small towns all over Indonesia. Type of Drug used also more diverse not just one type of Drugs, but includes several types of Drugs (multiple drugs). Drug abuse

at this time has become a global problem, which can cause adverse effects on people's lives, nation and state. They are health, education, employment, religious social life, and security problems. The illicit distribution of drugs in the world shows a significant increase. The world population in the 15-64 year age group in 2008 is estimated at 4.396 billion. From the total number of drug users once per year in the past 155-250 million, regular perpetrators of 16-38 million and drug addicts with needles (IDUs) of 11-21 million¹. The number of drug abusers is mapped as many as 1,355,050 people from among students and university students, as many as 2,007,469 people from non-student. The number of drug abusers reached 1.99% of the population aged 10 to 59 years old or about 3.2 to 3.6 million people, consisting of 26% trial group, 27% regular use, 40% non-injection group and 7% injecting group.²

The number of drug abuse use category is mostly from student and university student 90%, regular group use drug users mostly come from non-students and non-university students which is 60%, and drug addicts abuse mostly come from the non-students and non-university students are 88%. Both groups of drug users try to use, regular group use, and the group of addicts mostly comes from among men that is equal to 88% and from among women of 12%. The number of users is mostly distributed across regions or provinces throughout Indonesia. The prevalence increased in 2010 to 2.21% of the total population or equivalent to 3.8 million. It was estimated that the number of drug abusers is 3.8 million to 4.1 million people or about 2.10% of the total population of Indonesia at risk of exposure to drugs in 2014. Compared to the 2011 study, the prevalence rate was relatively stable (2.2%), the high prevalence rate is caused by the involvement of the community in the Program of Prevention and Eradication of Illicit Drugs Abuse (P4GN). This program is not optimal yet, so there is a need for more intensive efforts to invite the community component in the program³. While the number of drug abusers who followed the therapy and rehabilitation is still very low. In accordance with the results of data collection conducted by the Center for Therapy and Rehabilitation BNN, the number of abusers who access therapy and rehabilitation services, both outpatient and inpatient in 2009 amounted to 17,734 people or only about 0.5% of drug addicts who get therapy and rehabilitation services. On the other hand, about 99.5% of other addicts are still in the community (family, school, workplace and other community).⁴

In relation to the above, the increase in the number of drug addicts in Indonesia should be balanced with the expansion of access to drug addiction rehabilitation facilities, both managed by the government, the community, as well as the implementation of punishment in penitentiaries should also be applied rehabilitation therapy services. This condition is a challenge for drug addiction rehabilitation efforts in Indonesia in the midst of the limited facilities/rehabilitation facilities for drug addicts, especially in prisons. One of the efforts to improve access of addiction rehabilitation services for drug addicts is to increase the participation of the community to participate in the rehabilitation of addiction with various modalities of therapy used, it needs to be encouraged and developed, also need guidance on the implementation of rehabilitation services. Development and dominance is expected to be a reference or standard for rehabilitation institutions addiction in the rehabilitation of drug addicts in an effective, directed, sustainable to achieve results according to expected goals.⁵

The drug abuse in Indonesia since 2015 has entered the emergency phase. The government through the National Narcotics Agency (BNN) also held a rehabilitation program for 100 thousand drug users in Indonesia. In 2015, it was a big step for both government and community to undertake a rehabilitation program, which is part of the recovery of health and wellbeing for patients⁶. The government has responded to the problem of drug abuse by building a Drug Addiction Hospital (RSKO) in Jakarta in 1972 with an

initial capacity of 40 beds. There are 10% of beds from 34 Mental Hospital throughout Indonesia have been allocated for people with drug abuse. The Health Minister's Decree dated March 31, 2010 on guidelines for comprehensive therapeutic and rehabilitation services on drug-based drug use disorder is used as a reference for health professionals and health workers in providing drug therapy and drug-related drug rehabilitation and rehabilitation services at health-care facilities.

Health and Welfare

Health is a human right and it is one of the elements of welfare that must be realized in accordance with the ideals of the noble nation of Indonesia as referred to in Pancasila and the Constitution of the Republic of Indonesia Year 1945. The definition of health according to Health Act Number 36 Year 2009 is a healthy state, physically, mentally, spiritually and socially that enables everyone to live socially and economically productive⁷. Healthy in the full sense is to include healthy body, healthy soul, healthy social-spiritual and productive. So a person is said to be fully healthy is that person free from physical illness, and psychiatric disorder, behavioral deviation in social life and religious and must be productive for himself and also for others. While the intended health effort is any activity to maintain and improve the sustainable and comprehensive health conducted by the government and or the community for example are the rehabilitation therapy efforts for drug users. Presidential Regulation No. 23 of 2013 on narcotics is a form of government responsibility in providing health and welfare services in the form of rehabilitation services for drug addicts. In law No. 35 of 2009 on narcotics chapter IX of the second section on rehabilitation of articles 54 and 55, it is explained that those who are required to undergo rehabilitation are addicts and drug abuse victims get treatment and / or treatment through medical rehabilitation and social rehabilitation. Likewise, in Law No. 5 of 1997 on psychotropic chapters VIII chapters 37, 38 and 39 states that psychotropic users suffering from dependency syndrome are obliged to participate in treatment and/or treatment performed at rehabilitation facilities run by the government and/or communities to recover and/or develop their physical, mental, and social capacities.

Research Objectives: 1) to analyze the problem of punishment for current drug abusers, 2) to reconstruct the drug abuse punishment policy based on fairness and welfare value.

RESEARCH METHODS

The type of research is socio legal research is explorative, descriptive. With the approach of the law (State Approach) and the case approach (Case Approach), Source data: derived from the primary data, that is data obtained from field practice or empirical taken in prisons 1 Semarang and prisons class 2 women Semarang, secondary data obtained through literature studies and documentary studies. The data collection technique is done by observation, direct observation from various cases and in-depth interview. Technical Data Analysis: conducted qualitatively-inductive, also conducted a quantitative analysis.⁸

RESULT AND DISCUSSION

Prosecution and Drug Court Cases

In the judicial practice at the Semarang City District Court, when the researcher conducted an interview with a senior functional judge Dr. Eddy Parulian Siregar, SH., MH in July 2017. He explained that the

criminal application in Law Number 35 Year 2009, particularly Article 127 on narcotics abusers as users who get punishment varies greatly depending on the judge. Some judges impose penalties imprisonment and fines, some judges only impose rehabilitation penalties without imprisonment, whereas some other judges in their verdicts impose criminal penalties are also accompanied by rehabilitation measures with varying length of sentences. Therefore, there are some judges in the Semarang City District Court in carrying out the mandate of narcotics law number 35 of 2009 and psychotropic law number 5 of 1997 which sometimes regardless of whether the user is an addict, or non-addict user or victim user. Hence, from the entire verdict the judges illustrate the application of rehabilitation to drug abusers has not reflected the value of real justice and overall welfare. Frequently, the independence and authority to judge becomes a dilemma for judges when there is a clash between legal certainty and a sense of community justice. As happens in the enforcement of narcotics and psychotropic cases, the case has shifted meaning. The users who were previously declared as criminals then transformed into sufferers, addicts or victims. Law Number 35 Year 2009 and Law Number 5 Year 1997 have rightly placed drug addicts and psychotropic agents not as perpetrators, but as addicts or victims. This is in line with international law enforcement trends against perpetrators who are proven to be drug addicts or victims not subject to imprisonment but rehabilitation approaches are incorporated into government designated rehabilitation centers.

In accordance with Government Regulation No. 25 of 2011 on NPC Narcotics Report, the government also bears the cost of treatment of addicts to recover. The problem for junkies who have been prosecuted and decided by the courts must undergo criminal penalties in prisons, the implementation of rehabilitation is still problematic, in contrast to those who do mandatory reporting. Another issue in the process of law enforcement on Law Number 35 Year 2009 which impact on criminal application is about the determination of an offender to be qualified as a narcotics abuser. Among law enforcers ie investigators, prosecutors and judges are still different because of different ways of thinking and there is no clear guideline for the offenders to be said to be abusers, particularly with regard to the amount of evidence and concerning the urine test.

Based on the facts in the hearing, the investigator and the public prosecutor shall remain guilty of the perpetrator's urine regardless of the amount of evidence that is once used. If the perpetrator's negligence is against the offender charged with Article 111 for the narcotics of plant species or Article 112 for non-plant narcotics. Against this fact, the judge also handed down varied judgments. Some judges handed down decisions that remained guilty on the indictment by imposing criminal sanctions as provided in Articles 111 and 112. These judges are known by judges as mouthpieces of the law. However, there are some progressive judges who still guided by the indictment. However, he still imposes a verdict with a criminal under a minimum penalty that has been determined because based on the fact of the trial the offender is qualified as a narcotics user. In fact, some other judges dare to distort the indictment by applying Article 127, and there is also a Supreme Court (MA) decision that frees the accused (*vrijspraak*) because the prosecutor does not prosecute Article 127 while based on the fact of the trial the offender must be qualified as a narcotics abuser.

This is clarified in Article 3 paragraph (1) of Regulation of the Head of National Narcotics Agency Number 11 Year 2014 concerning Procedures for Handling Suspect and/or Accused Narcotics Addict and Narcotics Abuse Victim into Rehabilitation Institution (BNN Regulation 11/2014) stipulating that Narcotics Addict and Victims of unlawful and unlawful Narcotics abusers as Suspects and/or defendants in Narcotics

abuse undergoing inquiries, prosecutions and trial proceedings are provided with treatment, care and recovery within the rehabilitation institution. At the time it is decided the rehabilitation of the judge determines whether the concerned (in this case Narcotics Addict) is undergoing rehabilitation or not based on the proven or not the crime committed. This is regulated in Article 103 of Law no. 35 Year 2009 about Narcotics.⁹

The research on the rehabilitation policy for drug use in the prison of Class 1 of Kedung Pane Semarang¹⁰ and Penitentiary of Class 2 of Bulu Semarang¹¹ Central Java obtained data as follows: Since it was launched by Preside Joko Widodo. He stated that the level of drug abuse in Indonesia reached at an alarming rate and the Government through the National Narcotics Agency (BNN) in 2015 also held a rehabilitation program for 100 thousand drug abusers. Penitentiary is also used as one place for drug rehabilitation implementation. Implementation of rehabilitation for drug abusers in penitentiary already have legal basis and its guidance, that is Circular Letter of RIHK RI number: M.HH-01.PK.01.06.10 year 2015 about mechanism of rehabilitation implementation for prisoners of prisoner of correctional (WBP) of drug abuse in prison and prisons whose implementation was inaugurated on 27 April 2015 and reinforced by Ministerial Decree No. PAS.121.PK.01.07.01 Year 2017 issued in Jakarta on July 7, 2017 stipulates that penitentiary as providers of rehabilitation services of prisoners and the assisted citizens the misuse of narcotics.

Implementation of Drug Rehabilitation Policy in Prisons

Implementation of drug rehabilitation in prison class 1 Kedung Pane Semarang since the government determined that the year 2015 as drug rehabilitation year, only done two (2) times with fund support from Central BNN (National Narcotics Agency) and its implementation assisted with team of rehabilitation and counseling from BNNP Central Java with officer rehabilitation of prisons, as well as in prisons of class II of Bulu Semarang women have executed punishment by drug rehabilitation one (1) time only. In 2016 to 2017 in both prisons there are no more rehabilitation programs. In Central Java, penitentiary which is still implementing drug rehabilitation program is in prison class 2 Magelang and Nusakambangan Prison. The Abuse Criteria Obtaining the BNN Rehabilitation Program are 1) Exposed to Article 127 as a purely non-distributing user, 2) the age must be over 18 years prior to the rehabilitation program, 3) in the near future shall be free (expiration) or free of charge or have undergone a term of punishment 2/3 part time. The requirement for prisoners that can carry out punishment and simultaneously rehabilitation is to provide a special block of drugs, not to be mixed with other prisoners such as criminals, corruption, terrorism, etc.

Prior to the rehabilitation program of drug abusers, the assessment was done first. The assessment was also done after the rehabilitation program. Drug rehabilitation conducted in prisons puts more emphasis on social rehabilitation, no medical rehabilitation, no drug delivery or substitution therapy. For funding support in the rehabilitation process obtained from BNN (National Narcotics Agency) Center is package, funding with "Reimbursement" system is activity done first, made report every month, after completion of rehabilitation program, then apply fund for disbursement. Exemption of prisoners there are two models, namely 1) pure free model, after exit can directly return to the house or community where they are as before. 2) the parole model. A parole there is a CB (conditional leave), CMP (Leave before free), PB (parole). Prisoners are free of pure no supervision from prisons, while prisoners with parole (CB, CMB, PB) are still supervised by BAPAS (Correctional Institution).

CONCLUSIONS AND SUGGESTIONS

1. Conclusion: Implementation of double track system to drug abuser based on narcotics law number 35 year 2009 and Psychotropic law number 5 year 1997 has been implemented in Semarang city. The rehabilitation implementation mechanism has been arranged in the Minister of Law and Ham number: M .HH-01.PK.01.06.10 in 2015. In the implementation there are still problems, infrastructures, rehabilitation process, human resources, funding support and evaluation process. This resulted in not all drug abusers or victims getting substantial justice-based rehabilitation services and also lacking the basic right of life in the form of equitable welfare, as mandated in the preamble of the 1945 Constitution.
2. Suggestion: In the future, there should be more consistent and comprehensive improvement efforts related to the implementation of rehabilitation in prisons for drug abusers and drug victims as mandated in Law No. 35 of 2009 on narcotics and Law No. 5 of 1997 on psychotropic substances. The reconstruction of this law is useful to solve the fundamental problems concerning the acceptance of fairness and equitable welfare for drug abusers and victims in Indonesia. Justice and equitable welfare as well as the points contained in Pancasila especially in “just and civilized humanity and social justice for all Indonesian people” point.\

NOTES

1. World Report, tahun 2010.
2. Jurnal Data BNN tahun 2010.
3. Pedoman Rehabilitasi Adiksi Berbasis Masyarakat. BNN., 2012 hal: 1-2.
4. Jurnal BNN P4GN, 2010.
5. Ibit, BNN., 2012 hal: 2-3.
6. Suara Merdeka, Minggu 1 Februari 2015 h: 2.
7. Undang-Undang RI Nomor 36 Tahun 2009 Tentang Kesehatan.
8. Zainudin Ali, 2016. Metode Penelitian Hukum. Sinar Grafika, Jakarta, Cet ke 7.
9. Dahlan, 2016. Disertasi Rekonstruksi Hukum Dalam Penerapan Pidana Penyalahgunaan Narkotika Untuk Dirinya Sendiri Berbasis Nilai Keadilan. PDIH Unissula Semarang.
10. Wawancara dengan Ibu Ari Trisoctia Sari, S Psi. Kasi BinKemas (Bina Kemasyarakatan) dan Bpk Fajar Shodiq (Anggota BinKemas) di Ruang Binkemas Lapas Kelas 1 Kedung Pane Semarang. Hari Rabu tgl 9 Agustus 2017 jam 12.30- jam 15.45 wib dan hari Jumat 18 Agustus jam 10.00-11.30 wib
11. Wawancara dengan Ibu Nur Mustafidah, kepala Bimbingan dan Pembinaan Anak Didik (Bindik), Ibu Dwi Hastuti (staf Bindik), ibu drg. Femi Irianti, MM. (dokter Lapas) dan Ibu Siwi Asmoro Pamungkas (manager Rehabilitasi) Lapas kelas 2 Wanita Bulu Semarang hari Selasa 8 Agustus jam 10.30-11.30 wib. dan hari Kamis 10 Agustus 2017 jam 13.30n- 15.00 Wib.

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