

Research Article

Claim of Rehabilitation and Treatment of Narcotic Patients in Article 53 and Article 54 of Law Number 35 of 2009 Concerning Narcotics

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Abstract

Article 54 of Law Number 35 of 2009 stipulates that Narcotics addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. This regulation is categorized as a “special” regulation that deviates from the general criminal system prevailing in Indonesia. It is called “special” because it applies a double track criminal system, namely a criminal system that produces two types of sanctions: Criminal and action. In this case, all court institutions in Indonesia are required to provide action sanctions, namely the rehabilitation of all Narcotics abusers and dealers sentenced to imprisonment or the death penalty. Rehabilitation is regulated in CHAPTER IX of Law Number 35 of 2009. Rehabilitation is divided into two, namely Medical Rehabilitation and Social Rehabilitation. Article 53 concerning Treatment is stated in paragraphs (1) to (3) regarding the ability of patients who are being rehabilitated to store, carry, and use Narcotics Category II or Category III at the request of a doctor and medical indications. Moving on from the regulation, the author will elaborate with the juridical-normative study method and descriptive-analysis from primary and secondary legal sources. The problem of the study that will be resolved is to what extent these regulations can be applied by doctors and what conditions must be met? Does the regulation not conflict with other laws and regulations? How effective is the method based on medical research? Through these questions, the author analyzes the main issues that arise in the material of Article 54 Number 35 of 2009 concerning Narcotics.

Keywords: Social abuse; Criminal; Rehabilitation; Regulation narcotics

Introduction

Narcotics regulation requires consideration and goals that are right on target so that its implementation is also effective and solve the normative problems of the Indonesian nation. The preparation of Law Number 35 of 2009 (Narcotics Law) was carried out on six considerations that became normative and preventive reasons for the negative impacts that would threaten elements of the Indonesian nation. Narcotics have positive and negative sides that need to be regulated so that the negative side does not damage the Indonesian people and the positive side can still be utilized (Section Considering Law Number 35 of 2009). Therefore, this law was drafted to ensure the availability of narcotics supply utilized by health services or the development of science and technology. This first goal shows the positive side of narcotics. Then it was mentioned other objectives, namely to prevent, protect, and save the Indonesian nation from narcotics abuse; for the eradication of illicit distribution of Narcotics or Narcotic Precursors; and to ensure regulations related to medical and social rehabilitation efforts for abusers and drug addicts (Article 4 of Law Number 35 of 2009). Narcotics crime has also reached a transnational scale, with a sophisticated, high modus operandi, and supported by a network of organizations. This condition causes many narcotics addicts, especially among the nation’s younger generation who are very dangerous to the lives of

the people and the Indonesian nation. Therefore, the Narcotics Law was drafted to revise Law Number 22 of 1997 concerning Narcotics because it was considered irrelevant to overcome and eradicate this criminal act (Figure 1) [1].

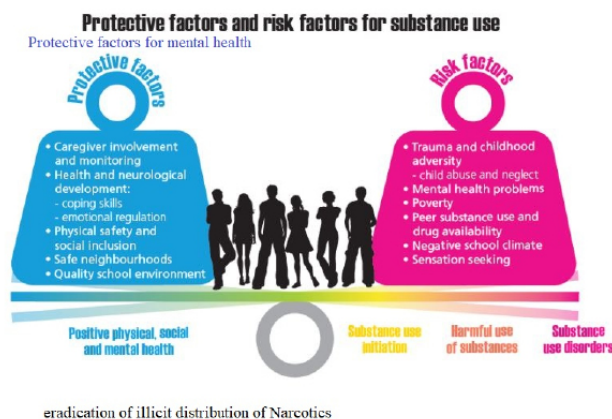


Figure 1: Eradication of illicit distribution of narcotics

Illicit spread and misuse of narcotics with potential targets for the younger generation has reached out to various parts of the region. Even the abusers are almost evenly distributed throughout Indonesia. The number of handling Narcotics cases per year released by the National Narcotics Agency in 2021 is 766 cases. This number has decreased since 2018 by 1039 cases (<https://puslitdatin.bnn.go.id/portfolio/data-statistik-drug-cases>). Although the successful handling of cases has decreased, it is not necessarily that the level of drug abusers also complies. Perhaps, their networks and strategies are more sophisticated. Therefore, the latest research and solutive techniques are needed so that abusers can be in real terms. Narcotics have reached quite alarming levels in Indonesia and can threaten the country's security and sovereignty. Case Narcotics that occur untouched before have been entered by narcotics and can

even become centers of circulation. Similarly, 21 year olds who should still be taboo about this dangerous item, have recently turned into addicts who are difficult to let go of their dependence [2]. Narcotics are substances or drugs that can cause subtraction or alteration of consciousness, loss of taste, stalling or relieving pain in the form of plants, synthetics, semi-synthetics, or otherwise. Nowadays narcotics can even be formulated by themselves so that it is difficult to detect their users. Drug factories are not uncommon in Indonesia. Some of its circulation in Indonesia is imported by Foreign Nationals or through Indonesian Citizen Couriers. One of the cases was a Malaysian citizen who was carrying methamphetamine and was successfully rounded up by the Bali Police (<http://daerah.sindonews.com/read/1080045/174/bandar-sabu-Malaysia-store-drugs-in-sachets-coffee-herbal-1453717157>) (Figure 2).



Figure 2: Best herbs Coffee LLC issues a voluntary national recall of New Kopi Jantan Traditional Natural Herbs due to the presence of undeclared active pharmaceutical ingredients and undeclared milk

These cases deserve to be taken into consideration of the importance of maintaining the implementation and application of narcotics properly. Good regulations, starting from prevention, treatment, to rehabilitation using clear and targeted mechanisms. That rule is specifically contained in the Narcotics Act. However, some of the mechanisms for implementing these rules are sometimes still not detailed, so many articles or studies specifically examine the normative application of the Narcotics Law through other regulations

such as the Minister of Health Regulation and the Supreme Court Circular. One of them is an article analyzing Article 148 of the Narcotics Act by Sapto Handoyo (2015) [3]. In the paper, it is stated that the increasing trend of narcotics in society and narcotics crimes that are already transnational, according to him, must be followed by adequate legal tools that serve as a legal umbrella for law enforcement in dealing with Narcotica crimes. Perpetrators of narcotics crimes can be sentenced to death, imprisonment, confinement and

finer [3]. The author revisits that Section 53 of the Narcotics Act on treatment is rarely highlighted. It mentions the ability for narcotic treatment patients to possess, store, and carry narcotics on the recommendation of a doctor and health indications that arising. Of course, this regulation is vulnerable to being used as a legality for patients who are not closely monitored or do not have legal status. The medical need for the substance to detoxify the abuser or victim of narcotics must have a real impact. Therefore, the author will elaborate on the issue systematically so that the application and mechanism of this article can be improved or clarified in other regulations. Through the problems described above, the author sets out the formulation of the problem, namely how Article 53 and Article 54 of the Narcotics Law regulate the treatment and rehabilitation process normatively? How is the factual application of Article 53 and Section 54 of the Narcotics Act to legal subjects or drug abusers, victims and drug addicts?

Research Methods

This research is normative juridical, namely the approach used refers to primary legal materials by examining theories, legal principles, and concepts and applicable positive laws and regulations [4]. The approach used is the statutory approach or the statute approach to the problem of implementing the use, storage, and provision of narcotics for drug abusers or victims in Indonesia. This is done by reviewing the laws and regulations concerned within the framework of the issues drafted. The sources of legal materials in this paper are primary and secondary legal materials. The primary legal material in question is the principles and rules of law and the sequential legal material is supporting material such as law journals, books, and other legal research. Through the analysis of legal materials that have been collected, the author uses descriptive techniques, namely the description of a condition or position of legal and non-punitive statements.

Results and Discussion

Normative analysis of section 54 of the narcotics act

In criminal narcotics cases, there are often penalties for imprisonment or confinement. Meanwhile, according to the Narcotics Act, it is affirmed that every abuser or victim of narcotics must undergo a rehabilitation period under Section 54 of the Narcotics Act. Although, it may be decided based on a double track system. The article states that rehabilitation can be carried out by government agencies or the community, by referring back to the Regulation of the Minister of Health of the Republic of Indonesia Number 2415/Menkes/Per/2011 which discusses the Medical Rehabilitation of Addicts, Abusers and Victims of Narcotics Abusers. Article 54 is also supported by a special rule of Supreme Court Circular No. 4 of 2010 concerning the Placement of Narcotics Abusers and Addicts into Rehabilitation Institutions which requires the application of rehabilitation for drug abusers. The circular is actually a revision of the Supreme Court Circular No. 7 of 2009 regarding the

Placement of Narcotics Users in Therapy and Rehabilitation Institutions previously.

The change was made in response to the Narcotics Act which was set at that time. Through the dispute, the Supreme Court acknowledged that most inmates and detainees of narcotics cases are categories of wearers or even just victims. When viewed from a health aspect, they are actually or people who only suffer from diseases or opium so imprisonment is not the right solution [5].

Application of criminal act article 54 of the narcotics law

Furthermore, it is necessary to mention the application of Section 54 of the Narcotics Act to public prosecutors. It mentioned several directives and instructions for the public prosecutor on the Placement of Victims of Narcotics Abusers to Medical Rehabilitation and Social Rehabilitation Institutions (Attorney General's Circular Number SE-002/A/JA/02/2013). First, the application of article 54 of the Narcotics Law can be implemented by diversion for addicts or victims of abuse, namely criminal prosecutions and punishments that granted to the defendant not imprisonment, but the placement of the defendant in a Rehabilitation Home for treatment [6]. Second, it is mandatory to report addicts based on Government Regulation Number 25 of 2011. Third, in the handling of narcotics, the public prosecutor can file charges criminal in the form of placing the defendant into a Rehabilitation facility or previously placing the defendant into a rehabilitation facility. Fourth, through this Government Regulation, it is necessary to anticipate the possibility of exploiting loopholes by traffickers or narcotics dealers. Therefore, the application of Article 54 requires selective action and strict courts and rigid conditions and classifications regarding the evidence. Fifth, it is stated that the conditions and classification of narcotics crimes charged with being able to be placed in rehabilitation facilities in the prosecution process are regulated in the Circular/Instructions Young Attorney General of General Crimes (Attorney General's Circular Number SE-002/A/JA/02/2013).

The five stages set by the Attorney General to the public prosecutor are slightly more detailed and safer, as they pay attention to the loopholes that dealers or abusers can enter. Narcotics in the course of prosecuting the accused in court. The application of rehabilitation of koban abusers of narkoba when viewed from the legal theory of punishment, that the issuance of the Narcotics Law and SEMA No. 4 of 2010 which ordered medical rehabilitation and social rehabilitation for drug abusers. The goal is that the perpetrator does not have dependence and does not abuse it again. Therefore, there is a separate assessment to measure the level of addiction of the perpetrator or defendant so that the judge's amar can be more useful [7]. For example, a case of misuse of Class I narcotics for oneself to HS, in PN Klatern Decision No. 8/Pid.Sus/2014/PN.Kln. It was decided in amar that HS was given legal action undergoing rehabilitation of the accused at Ghrasia Pakem hospital Sleman DIY District

for 6 months and The period is considered a criminal period. It is different from the judgment of the Bantul District Court No. 154/Pid.Sus/2015/PN.Btl with the initials of the accused RSA aged 21 years.

The RSA was filed by the public prosecutor with an alternative charge of Article 112 subsection (1)

Narcotics Act and Section 127 subsection (1) of the Narcotics Act. As a Class I narcotics abuser for yourself, but decided by the judge with a prison sentence of 1 year and 6 months. Once the process is safe and the accused is decided to be placed in a health facility or government agency in the context of rehabilitation, Section 53 of the Narcotics Act needs to be further examined regarding the loopholes that narcotics abusers can go through. The article states the ability to possess, store, and/or carry narcotics with a doctor's recommendation and indications of the patient's health.

Application of article 53 of treatment law number 35 of 2009 concerning narcotics

Medical Rehabilitation is a process of integrated treatment activities to free addicts from narcotic dependence so that in its enforcement a specialist in medical science related to it is needed comprehensive treatment of patients with disorders or injuries, mental disorders, nervous muscle structure, social personality problems and accompanying ability to work the disability [7]. This understanding shows that the process and stage of treatment by doctor is actually returned to the expertise of the doctor in understanding the patient's condition to be treated so that it is outside the realm of legislation to determine technically the medical and medical issues to be adhered to except as limitations that are not may be violated by doctors for the sake of fulfilling legal purposes and complying with other laws. As for medical rehabilitation facilities through the national health information system, convicts or patients are required to report information about addicts or victims of drug abusers who are currently undergo a medical rehabilitation program in his place. Under certain conditions the addict or patient of the narcotic abuser flees, disobeys the directives of the dokter, commits violence that endangers the lives of others or commits violence Violation of the law, the hospital receiving the medical rehabilitation of the convicted person is obliged to provide a report to the prosecutor's office who submits it for further processing and action [7].

To review the procedures for implementing medical rehabilitation and the implementation of mandatory reporting for abusers, it is necessary to review the Regulation of the Minister of Health Number 50 of 2015 which specifically regulates this matter. It is stated that the stages passed in the implementation of mandatory reporting and medical rehabilitation are as follows (Regulation of the Minister of Health Number 50 of 2015)

1. Stage of Establishing Medical Rehabilitation Facilities as Mandatory Reporting Institutions or IPWL. This process organizes a mandatory medical reporting and rehabilitation process for abusers, addicts and victims

of narcotics abuse starting with the proposal of the owner of a health care facility.

2. Stage of Determination of the Implementation Team for Mandatory Reporting and Medical Rehabilitation at IPWL. The Mandatory Reporting Implementation Team is a group of health workers consisting of doctors and health workers trained in the field of addiction medicine, especially those who have participated in the module assessment and preparation of a therapy plan.
3. Procedural Stage of Mandatory Medical Reporting and Rehabilitation Services. Divided into Procedures for drug abusers who come voluntarily; procedures that are in the status of suspects, defendants, or convicts (Regulation of the Minister of Health Number 50 of 2015).

These stages place more emphasis on the administrative and formal procedures that must be undergone by the victim or drug abuser before obtaining a health facility established based on the status of the legal subject who in possession, i.e. defendant, suspect, convicted, or coming voluntarily. Therefore, the process of medical treatment or rehabilitation handled can be handled in an outpatient or inpatient state based on the status of the legal subject. As is known, outpatient means medical services aimed at diagnosing and checking the condition of addicts periodically without the need to stay in health facilities. While hospitalization requires drug abuser patients to stay in health facilities with special measures from doctors. In the process, Section 53 of the Narcotics Act on treatment should be enacted, namely:

1. For medicinal purposes and based on medical indications, doctors may give Class II or Class III Narcotics in limited quantities and certain preparations to patients in accordance with Strictness of laws and regulations.
2. The patient as referred to in the first paragraph can possess, store, and/or carry narcotics for himself.
3. The patient as referred to in the second paragraph must have valid evidence that the Narcotics possessed, stored and/or taken for use are legally obtained in accordance with the provisions legislation.

In the second paragraph of Article 53 above, the fragment of the sentence "possessing, storing, and/or carrying Narcotics" needs to be elaborated further, given the possibility of loopholes that could re-inflicting acts of drug abuse. In addition, it is necessary to review the mechanisms applied to narcotics patients in case of obtaining such facilities with proper legal subject status. Of course, if possession, storage or carrying narcotics is allowed only on the condition that valid evidence is one of the definite conditions that must be met by the patient treatment and rehabilitation. However, it is not enough and will be very vulnerable for patients if narcotics are given on things that are not in accordance with the doctor's recommendations or directions or medi-

cal personnel and there is no oversight or regulation governing outpatients or inpatients, nor regulations governing the type of ownership rights and regulations where there are conditions for the removal of such property rights. Therefore, it is necessary to distinguish and affirm that the purpose of saving is the right of use or right of use as an effective treatment measure.

Meanwhile, the right must be eliminated if you use drugs other than Class II and Class III narcotics cannot be effectively useful to patients or may result in other violations of the Act. Therefore, it is also necessary to supervise doctors or medical personnel who give Class II and Class III Narcotics to patients, because this rule states terse but administration on a "limited and certain preparation" basis. If the action is carried out by a private health facility carried out by a non-government employee or not part of a police doctor, the risks and vulnerabilities are higher.

Conclusion

Through the study above, several points can be concluded, namely the administration of drugs or Narcotics Class II and Group III to patients, addicts, victims or abusers of narcotics must be implemented under the conditions set by Article 53 of the Narcotics Law and the Procedure of the Minister of Health Number 50 of 2015. The terms or conditions written include: A limited number of gifts and certain preparations by following laws and regulations; proof of ownership, right to retain, and the right to use it legally; granting with the permission of the doctor and medical indications owned by the patient. Meanwhile, in its implementation, the provision pays attention to the procedures issued by the Minister of Health Number 50 of 2015 by taking into account the legal status and services health given to the patient.

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None.

Conflict of Interests

Authors have no conflict of interest to declare.

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