

CRIMINAL LEGAL POLICY ON NARCOTICS WITH PRIORITY TO DIGNIFIED JUSTICE

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Abstract

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence. Likewise with psychotropics, psychotropics are substances or drugs, both natural and synthetic, not narcotics, which have psychoactive properties through selective effects on the central nervous system that cause characteristic changes in mental activity and behavior. On the one hand, narcotics and psychotropic substances are drugs or substances that are useful in the fields of treatment, health services and scientific development, but on the other hand, they can cause very detrimental dependence if used without strict and careful control, supervision.

INTRODUCTION

Current drug policies are evolving in various countries in response to changes in global drug policy. Initially, the Indonesian government formulated its drug policy following the United Nations (UN) Convention on Narcotic Drugs, Psychotropic Substances, and Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, where the drug policy approach prioritized the principles of criminal law. This approach is considered to assume that drug abusers are dangerous and should be eliminated from society.

Law enforcement, as a form of state protection of human rights, must be implemented consistently and in harmony with legal developments, while taking into account the sense of justice and the changing paradigm within society.

The dangers of drug abuse show a trend of increasing victimization, particularly among children, adolescents, and the younger generation. Therefore, commitment and synergy are needed from all elements of law enforcement, relevant authorities, and the community to address this paradigm shift. Drug addicts and victims of drug abuse are not merely viewed as perpetrators of crime Not only as a criminal, but also as a victim, where rehabilitation is an alternative to punishment.

Even the rehabilitation provisions in the Narcotics Law are considered to be more punitive than a health approach. This view refers to the provisions in Article 54 of the Narcotics Law, which require drug addicts and victims of drug abuse to undergo medical and social rehabilitation. Therefore, the word "mandatory" implies the imposition of certain sanctions if they fail to do so.

Furthermore, the implementation of rehabilitation under the Narcotics Law also raises several other issues. This occurs due to the unclear definitions of drug abusers, addicts, and victims of drug abuse in

the Narcotics Law. Law No. 35 of 2009 does differentiate between these three definitions. For example, an abuser is someone who uses narcotics without authorization or against the law. A victim of drug abuse is someone who unintentionally uses narcotics due to being persuaded, tricked, deceived, forced, and/or threatened into using narcotics.

Meanwhile, a drug addict is someone who uses or abuses narcotics and is dependent on them, either physically or psychologically. Narcotics abuse cases involve using narcotics for consumption, with possession of narcotics limited to a single day's use. Grammar limits are stipulated in SEMA Number 4 of 2010. Investigators and prosecutors are obligated to conduct investigations and Scientific prosecution determines whether a user is classified as an addict or an addict and also a dealer.

From a national interest perspective, this convention can guarantee legal certainty and justice in law enforcement efforts against the illicit trafficking of narcotics and psychotropic substances involving criminals across Indonesia's territorial borders. Furthermore, for the national interest, particularly domestic interests, certainty and benefits will be achieved in regulating the circulation of narcotics and psychotropic substances for medical and scientific purposes.

Law enforcement against narcotics and psychotropics crimes has been extensively carried out by law enforcement officials and has resulted in numerous judicial decisions. Thus, this law enforcement is expected to be a deterrent to the spread of illicit trafficking and distribution of narcotics and psychotropics. However, in reality, the more intensive law enforcement is, the more the circulation and illicit trade of narcotics and psychotropics increases.

While legal provisions governing narcotics and psychotropics have been formulated and enforced, crimes involving narcotics and psychotropics have not been effectively mitigated. In recent cases, many drug dealers and distributors have been caught and severely punished, but others seem to ignore the situation and are even more inclined to expand their operations.

Law enforcement against crime in Indonesia, particularly regarding criminal punishment, should adhere to a legal norm approach that fosters criminals by providing rehabilitation in correctional institutions, thereby improving the lives of those convicted in these institutions Correctional facilities. This should provide a framework for judges in formulating sentences for criminals, enabling them to reflect the public's aspirations for justice. Meanwhile, empirical reality in the criminal justice system generally adheres to the concept of simply sentencing convicts to correctional facilities. This creates the impression that these crimes are only temporarily halted and will re-emerge in society.

Narcotic and psychotropic drug crimes, as defined in Law No. 5 of 1997 concerning Psychotropics and Law No. 22 of 1997 concerning Narcotics, provide quite severe criminal sanctions. However, in reality, the number of perpetrators is increasing, and convicts are not deterred and tend to repeat their crimes. This may be due to factors such as sentencing that do not have a deterrent effect on perpetrators.

We can observe the performance of the courts in processing criminals in court. Although many judges have handed down very harsh sentences, there is still abundant evidence of injustice in sentencing. The legal system has established the maximum possible penalty, while some judges never apply the maximum possible penalty. The court's duty in criminal cases is to adjudicate all offenses listed in Indonesian criminal law that are brought (prosecuted) before it for trial. In terms of judicial power, there are two types, commonly referred to as competence, as follows:

1. Power based on legal regulations concerning the distribution of judicial power (*attributie van rechtsmacht*) to one type of court (district court), not to other courts.
2. Power based on legal regulations concerning the distribution of judicial power (*distributie van rechtsmacht*) among one type (district courts).

The first is called absolute competence (absolute competence), and the second is called relative competence (relative competence).

An independent and impartial judge has become a universal requirement. It also characterizes a state based on the rule of law. Article 10 of the Declaration of Human Rights states:

"Everyone has the right in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and in any criminal charge against him."

Regarding criminal law enforcement, it can be seen from the method of criminal law enforcement, known as the law enforcement system, as part of criminal policy or crime prevention policy. Crime prevention requires two means: the use of penalties or criminal sanctions, and the use of non-penal means, namely law enforcement without the use of criminal sanctions.

Law enforcement aims to ensure people obey the law. Public obedience to the law is driven by three factors: (1) fear of sinning; (2) fear due to the power of those in power related to the imperative nature of law; (3) fear of being ashamed of committing crimes. Law enforcement using non-penal means has the goal and purpose of internalization.

The existence of the Narcotics Law and the Psychotropic Law is a legal policy effort by the Indonesian government to address narcotics and psychotropic drug crimes. Therefore, it is hoped that the formulation of these laws will be able to address The illicit trafficking and abuse of narcotics and psychotropic substances also serves as a reference and guideline for courts and those administering or implementing court decisions, particularly judges, in imposing criminal sanctions for crimes. In this study, the author will examine the criminal law policies stipulated in the Psychotropic Substances Law and the Narcotics Law, as well as their implementation in combating narcotics and psychotropic substance crimes, particularly those occurring within the jurisdiction of the Surakarta District Court.

Justice is one of the most widely studied aspects and topics in philosophy. Natural law theory, which prioritizes the search for justice from Socrates to François Geny, consistently upholds justice as the crown jewel of law. The issue of justice is a fascinating issue to explore in depth due to its numerous interconnections, including morality, state systems, and social life. Justice has been a topic of serious discussion since the beginning of Greek philosophy. Even in Islam, justice receives a significant portion of study among other subjects. Islam, as a religion, is expected to play a role in upholding justice and developing an ethic of justice. Therefore, the discussion of justice has a broad scope for every human being, from birth to the end of his life. Many people think that acting justly depends on the power possessed, to be just seems easy enough, but of course that is not the case in its application in human life. Anyone who considers justice as an idea or absolute reality and assumes that knowledge and understanding can certainly only be obtained partially and through very difficult philosophical efforts. People can also consider justice as the result of the general views of religion or philosophy of the world in general. To this day, the discourse on justice has been a long-standing one in the history of philosophy. Regarding the view that Pancasila is the philosophy of the Indonesian nation, in the sense of a worldview, Pancasila is a systematic and objective philosophy. The principles of Pancasila are interconnected, unified, and whole. This unity demonstrates its essence and meaning, such that the philosophical structure of Pancasila is found only if the substance of the law aligns with the spirit of the Indonesian people, passed down through generations. This spirit serves as a measure of whether a legal rule or principle truly aligns with the philosophy of Pancasila.

Meanwhile, Pancasila is philosophical, both materially and intrinsically. For example, the essence of the principle of just and civilized humanity, not to mention the values contained in the principle of Belief in the One and Only God, and the values contained in the other principles. All of these are metaphysical/philosophical in nature. In the pre-independence Indonesian culture, and still ongoing today, and should be recognized in the future, the values of Pancasila are recognized as a philosophy of life or a practiced outlook on life. Meanwhile, formally and constitutionally, Indonesia recognizes Pancasila as the foundation of the state (state philosophy). There is not a single law in the Indonesian

positive legal system that does not include the recognition that all structures, contents, methods of operation, objectives, functions, basic principles, and various other legal principles in every law do not include Pancasila.

Meanwhile, psychologically and culturally, the Indonesian nation and culture are equal to any other nation and culture. Therefore, it is natural that the Indonesian nation, like other nations (Chinese, Arab, Indian, European), has inherited a philosophical system within its culture. Pancasila is a philosophy inherited in Indonesian culture that, upon closer examination, can also be found in the systems of nations around the world. Potentially, the philosophy of Pancasila will develop along with cultural dynamics; Pancasila philosophy will develop conceptually, rich conceptually and literature in quantity and quality.

METHOD

Essentially, the method in a research study is inseparable from the basic questions, problem formulation, and objectives of the study. This provides a signal of the direction in which the research will be pursued and the approach to be applied. Therefore, based on the conceptual framework and problem formulation in this study, the following will be discussed: (1) Research Paradigm; (2) Approach Method; (3) Research Type; (4) Research Type; (5) Data Sources; (6) Population and Sample; (7) Research Location; (8) Information Sources; (9) Research Instruments; (10) Data Collection Techniques; (11) Data Processing and Analysis Methods.

1. Research Paradigm

The paradigm used in this research is the constructivist paradigm in the legal field, namely legal constructivism, because this research is intended to produce a reconstruction of thoughts, ideas, and concepts in the provision of public services, namely legal aid services to the underprivileged by the District Court's Legal Aid Post (Posbakum) guarantee access to justice and fair trials based on dignified justice.

2. Approach Method

An approach is necessary in a scientific paper to better explain and achieve the objectives and intent of the research. This approach is intended to ensure that the discussion is within the scope and focused on the intended problem. According to The Liang Gie, an approach is "all elements understood to approach a field of science and comprehend organized, holistic knowledge that seeks the objectives studied by that science."

3. Type of Research

The type of research used in this study is empirical legal research, which analyzes and studies the operation of law in society, complemented by normative legal research. The influence on social sciences for the legal discipline is a keyword that fits the opening discussion regarding the type of research, which is empirical legal research. The meaning of the word "empirical" does not mean having to use data collection tools and theories that are usually used in social science research methods, but in this context it is more intended in the sense that "the truth can be proven in the realm of reality or can be felt by the five senses" or is not a fiction or metaphysics or supernatural, in the form of a thought process that is usually just a fairy tale or spiritual experiences that are given by God not to humans every human being and does not have to go through a scientific reasoning process, a certain thing can be accepted as true, although scientists are sometimes said to be unscientific or an-illogical phenomena, so that empirical legal research is a type of research that analyzes and studies the workings of law in society. Empirical legal research here aims to invite researchers to not only think about normative legal issues (law as written in books) and technical in nature in operating legal regulations like a machine that produces and produces certain results from a mechanical process, so of course it is only and must be prescriptive, although this is natural because considering the nature of legal norms that "ought to be".

Against the perspective as mentioned earlier shifting towards legal awareness, in fact from a social science perspective it turns out to be more than just legal norms and their operational techniques, but also a symptom and related to human behavior in the midst of social life that is unique and interesting to be studied not from its prescriptive nature, but rather descriptive. On the other hand, considering that legal scholars are generally not trained to conduct research as intended, and in fact are not prepared for it, the role of social scientists, along with their research methods and theories, is needed by some legal scholars who wish to conduct research in the legal field using a social science approach (socio-legal research). The purpose of this research is to Law is basically a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced. Where one type of legal research is normative legal research, namely research on law as a norm. Research on the law is carried out to produce arguments, theories and concepts as prescriptions to solve problems in the research. 4. Type of Research In general, research types are classified into 2 (two) types, namely: (1) Quantitative research methods, which can then be classified into 7 (seven) categories, including: descriptive research, development research, action research, causal comparative research, correlational research, experimental research, and quasi-experimental research. (2) Qualitative research methods include 7 (seven) types, including: phenomenological research, grounded research, ethnographic research, historical research, case research, philosophical research, and social critical theory research. Descriptive research, on development and action can be carried out using a qualitative approach. Based on the types of research, the research in this dissertation uses a qualitative research type. Kirk and Miller define qualitative research as a particular tradition in social science that fundamentally relies on observations of humans both in their context and in their terminology Meanwhile, Danim explained that qualitative research methods are descriptive in nature, meaning that the collected data is in the form of words and images, not numbers. Even if numbers are present, they are only for supporting purposes. The data obtained includes interview transcripts, field notes, personal documents, and other sources.

RESULTS

1. Reconstruction

According to the Big Indonesian Dictionary, the meaning of the word reconstruction is, among others: 1) return to its original state; 2) re-arrangement (re-depiction). The word reconstruction is derived from the English word "re" which means to re-consider or re-construct, and the word "construction" which means to make or build, interpret, arrange, or form something. According to Black's Law Dictionary, reconstruction is defined as the act or process of rebuilding, re-creating, or re-organizing something. From this definition, reconstruction is defined as the activity or process of rebuilding, re-creating, or re-organizing something. In the legal context, legal reconstruction means the process of rebuilding the law. If reconstruction is associated with the concept or idea or idea about law, legal reconstruction is defined as a process of rebuilding or re-organizing the idea, idea, or concept about law in relation to the regulation of the implementation of Court Legal Aid Post services as a place and forum for fulfilling the rights of the right to legal aid for the underprivileged as an effort to guarantee access to justice and to realize a fair trial process.

2. Dignified Justice

Justice is one of the most widely studied aspects and topics in philosophy. Natural law theory, which prioritizes the search for justice from Socrates to François Geny, consistently upholds justice as the crown jewel of law.⁴³ The issue of justice is an interesting one to explore in depth because of its many interconnected aspects, including morality, state systems, and social life. Justice has been a serious topic of discussion since the beginning of Greek philosophy.

Even in Islam, justice receives the most important portion of study among other subjects. Islam, as a religion, is expected to play a role in upholding justice and developing an ethic of justice. Therefore,

discussions of justice have a broad scope for every human being, from birth to death. Many people think that acting justly depends on one's strength. Being just seems easy, but of course, this is not the case in human life. Anyone who views justice as an idea or absolute reality and assumes that knowledge and understanding can only be obtained partially and through very difficult philosophical endeavors. One can also consider justice as the result of a general religious or philosophical perspective on the world in general. To this day, the discourse on justice has a long history in the history of philosophy. Regarding the view that Pancasila is the philosophy of the Indonesian nation, in the sense of a worldview, Pancasila is a systematic and objective philosophy. The principles of Pancasila are bound together in a unified whole. This unity demonstrates its essence and meaning, such that the philosophical structure of Pancasila is found only if the substance of the law is in accordance with the spirit of the Indonesian people, passed down through generations. This spirit serves as a measuring tool for determining whether a legal rule or principle truly aligns with the philosophy of Pancasila.

3. Narcotics Crimes

Narcotics crimes are regulated in Articles 111 through 148 of the Narcotics Law, which are special provisions. Although the Narcotics Law does not explicitly state that the crimes regulated therein are crimes, there is no doubt that all crimes under this law are crimes. The reason is that if narcotics are only for medical and scientific purposes, then any act outside of these purposes is already a crime, given the serious consequences of illicit drug use, which are extremely dangerous to human life.

Criminal law policy is one area that should be the focus of criminology, as criminology, as a study, aims to identify and determine the factors that lead to crimes and criminals. Criminal law policy, a component of criminal law, is closely related to discussions of national criminal law. Criminal law policy encompasses what actions should be considered criminal offenses and what sanctions should be imposed on violators. Broadly speaking, legislative (formulative) policies for crime prevention include:

1. Planning or policies regarding which prohibited acts will be addressed because they are deemed dangerous or detrimental.
2. Planning or policies regarding what sanctions can be imposed on perpetrators of prohibited acts (whether criminal or criminal) and the system for implementing them.
3. Planning or policies regarding the procedures or mechanisms of the criminal justice system for enforcing criminal law.

CONCLUSION

Based on the above analysis, the following conclusions are drawn:

1. Drug abuse involves many elements. Drug cartels play a significant role in the high drug distribution in Indonesia. Officials, pilots, law enforcement officers, students, and even children have become victims of drug abuse. Law enforcement officers even collaborate with drug cartels to sell and protect these cartels. Bribery and weak law enforcement further contribute to the persistent high rate of drug abuse in Indonesia. The concept of criminal law for narcotics encompasses criminal, penal, and non-criminal (penal) actions. Criminal action is the science of crime prevention that can be carried out by combining the application of criminal means and prevention without using criminal means. Criminal law action is an effort to prevent crime using criminal means. Non-criminal action, on the other hand, is a preventative measure before a crime occurs. Criminal law action and non-criminal action are part of criminal action, and criminal action itself is part of law enforcement, which has the ultimate goal of protecting society, namely achieving public welfare.
2. Criminal actions regarding the regulation of narcotics crimes in Indonesia include criminal liability, actions that qualify as criminal acts, and criminal sanctions. Criminal liability itself consists of responsibility carried out by humans and corporations as subjects of criminal acts. Prohibited acts include distributing narcotics or narcotic precursors and abusing narcotics or narcotic precursors, either for oneself or others. There are sanctions

in this law, namely criminal sanctions consisting of principal and additional criminal sanctions. Principal penalties include the death penalty, imprisonment, detention, and fines. Meanwhile, additional penalties include revocation of business licenses and revocation of legal entity status for corporations. Sanctions imposed include treatment and rehabilitation for addicts or victims of narcotics abuse. This Narcotics Law also regulates the function and role of the National Narcotics Agency as an institution for the prevention and eradication of narcotics and narcotic precursor crimes. The BNN has a role and function as an investigator in the context of eradicating the misuse of illicit trafficking and abuse of narcotics and narcotic precursors.

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