

LEGAL PROTECTION FOR VICTIMS NARCOTIC ABUSE AND ITS RULE OF LAW

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P-ISSN: 1412-310X**E-ISSN:** 2656-3797**DOI** : 10.33061**Abstract**

The drug problem in Indonesia is still urgent and complex. In the past decade, this problem has become rampant. This is proven by the significant increase in the number of drug abusers or addicts, along with the increasing disclosure of cases of drug crimes with more diverse patterns and more massive syndicate networks. The Indonesian people, even the world community, in general are currently faced with a very worrying situation due to the rampant use of various types of illegal drugs. Narcotics crimes are no longer committed individually, but involve many well-organized people with a wide network and an increasingly sophisticated mode. The Narcotics Law Number 35 of 2009 was enacted to overcome this condition.

Abstrak

Permasalahan narkoba di Indonesia masih merupakan sesuatu yang bersifat urgent dan kompleks. Dalam kurun waktu satu dekade terakhir permasalahan ini menjadi marak. Terbukti dengan bertambahnya jumlah penyalahguna atau pecandu narkoba secara signifikan, seiring meningkatnya pengungkapan kasus tindak kejahatan narkoba yang semakin beragam polanya dan semakin masif pula jaringan sindikatnya. Masyarakat Indonesia, bahkan masyarakat dunia, pada umumnya saat ini sedang dihadapkan pada keadaan yang sangat mengkhawatirkan akibat maraknya pemakaian bermacam-macam jenis narkoba secara ilegal. Kejahatan narkotika tidak lagi dilakukan secara individual, tetapi melibatkan banyak orang terorganisir dengan baik dengan jaringan yang luas dan modus yang semakin canggih. UU Narkotika Nomor 35 Tahun 2009 diberlakukan untuk mengatasi kondisi tersebut.

INTRODUCTION

People in Indonesia have a changing dynamic of life. This is influenced by the incoming foreign cultures, thus fading the indigenous culture of the Indonesian people themselves. The changes are largely influenced by technological advances as well as globalization.

Not only foreign culture, sustainable industrialization also has a big influence on the changes and dynamics of people's lives in Indonesia, as a result of urbanization and democratic movements to reorganize society in accordance with the principles of democratic life.

An act that violates written norms of course has strict sanctions. In the legal norms written in a product the legislation has a clear assertiveness of a wrongful action. Wrongful actions can be either a crime or a violation. Depends on the consequences of the action when it has been done.

Unlawful action that grows very dangerous is a disease in society, meaning it can disrupt the stability of life in people's lives. Therefore, this action must be prevented through legal instruments in Indonesia.¹

Narcotic abuse, today increasingly occurring among the younger generation, becomes a target that has great potential for the circulation and abuse of narcotics. The distribution and abuse of narcotics has reached various regions and circles ranging from artists, pilots, board members to

¹ Sudarto, Hukum Pidana I, Yayasan Sudarto d/a Fakultas Hukum Undip, Semarang, 1990, hlm. 45

ordinary people. this extraordinary crime has claimed various levels of society in Indonesia. Children in kindergarten and elementary school are also already taking Narcotics.² This Proves that Narcotic Abuse Not only adults and adolescents have even reached children in kindergarten and elementary school education age. Not only from the community but also law enforcement officials, and officials who are supposed to be role models, even taking narcotics. Narcotics dealers are constantly moving and finding new ways to spread narcotics, in order to trick the law enforcement. They have begun to exploit unkwoned people, such as young children, women, etc. used to be drug couriers and the existence of a new mode of drug smuggling into children's toys and others.³

Several breakthroughs in the handling of the problem of drug crimes have now been done in several countries, namely the concept of diversion in the handling or criminalization of addicts and victims of drug abuse. Basically criminal law is harsh and miserable, therefore criminal law should be used as *Ultimum Remedium* (last resort) not as *Primum Remedium* (main road) let alone as *Maximum Remedium* (heaviest punishment).

Child crimes are crimes that have certain characteristics when compared to crimes committed by adults in general, considering the emotional properties of children are still unstable and still can not distinguish which actions are good and which are bad therefore need to be handled specifically in order to provide protection and welfare of children.

Cases involving children as perpetrators of criminal acts are a different phenomenon to adult criminal perpetrators. Children as perpetrators of crimes that are sentenced to be fostered in the Children's Correctional Institution, need to get special treatment in serving their criminal period. Criminal cases involving minors in recent times are very common, one of which is drug abuse.

The impact of narcotic abuse that often occurs in the midst of society can damage family relationships, drastically decrease learning ability and work productivity, difficulty distinguishing which good deeds and bad deeds, changes in behavior into anti-social behavior (maladaptive behavior), health disorders (physical and mental), increasing the number of traffic accidents, violent acts, and other criminality.⁴ That has been distinguished into narcotics groups as attached in Act No. 35 of 2009.

Initially, narcotics were items that could only be used in limited circles. The use of narcotics was originally intended for medicinal purposes and for the needs of the sick, in this case only the medical world used it. However, the use of narcotics changed, starting from the colonization of the western world that managed to find psychoactive substances in the nations of the African continent, Asia and America that conducive to smooth the spread in these regions. The more known psychoactive substances by the public, the more cases of narcotic abuse in this era. Similarly, with the development of juvenile kenankalan lately, along with the development of the movement regarding narcotics in indonesia teenagers are now in the realm of narcotics, examples of most cases of narcotics among adolescents, namely high school children (High School) and according to data from BNN for cases of narcotic abuse carried out by high school students is the highest order of all levels of education in the country.

The high rate of narcotic abuse among high school students raises a great sense of concern and concern for all parties including academic community, government, and parents. Cases of narcotic abuse among these students have entered a critical stage. The misuse of narcotics is very dangerous because it can damage all dimensions of life that are wide and complex such as social, cultural, political, and economic dimensions.

For children who are victims of narcotic abuse, it must be attempted diversion by paying attention to Article 127 of Act No. 35 of 2009 on Narcotics. Article 127 paragraph (1) letter a Act No. 35 of 2009 concerning Narcotics states that any drug abuser class I for himself is sentenced to a

² Yap Manaffe, *Advokasi Pencegahan Penyalahgunaan Narkoba*, (Yogyakarta : BNNP D.I.Yogyakarta, Edisi Cetakan ulang, 2012), hlm. 6-7.

³ Pidato lengkap Jokowi pada Hari Anti Narkoba Internasional 2016

⁴ Mardani. 2008. *Penyalahgunaan Narkoba dalam Perspektif Hukum Islam dan Hukum Pidana Nasional*. Jakarta : Raja Grafindo Persada. Hlm. 92.

maximum of 4 years imprisonment and required to perform medical rehab or social rehabilitation or can be returned to his parents to be fostered and educated. At the level of investigation, prosecution, and examination of child cases in the district court must be attempted diversion as mentioned in Article 7 of Act No. 11 of 2012 on the Criminal Justice System of Children.

The government has made various efforts in the prevention of narcotics in the form of counseling conducted in various circles not to escape also among students, advice, and warnings about the dangers that will arise from the act of narcotic abuse. Prevention is targeted for perpetrators and victims of narcotic abuse itself is mostly as a victim. Perpetrators accidentally use narcotics because they are persuaded, deceived, or deceived by the victim.

Narcotics are basically indispensable because they are beneficial in the field of health and science, but the use of narcotics becomes dangerous in case of abuse. Therefore, on the one hand to ensure the availability of narcotics for the benefit of health and science, but on the other hand to prevent the illicit circulation of narcotics that always lead to the occurrence of abuse, then the enactment of Act No. 5 of 1997 on Psychotropics and Act No. 22 of 1997 on Narcotics that has been replaced by Act No. 35 of 2009 on Narcotics, with the intention to reduce the abuse, but in reality the abuse of narcotics continues to occur and tends to increase every year.

In Article 7 of Act No. 35 Year 2009 required that narcotics only be used for the benefit of health services and / or the development of science and technology, furthermore in Article 8 Undang-UndangNo. 35 Year 2009 is more restrictive the use of class I narcotics that are only used for the development of science and technology, for diagnostic reagents, as well as laboratory reagents after obtaining ministerial approval on the recommendation of the head of the food and drug regulatory agency.

A person who only uses drugs is not a dealer or a dealer is often in the crossroads of roles, as a perpetrator or as a victim. In some countries such as the UK and Australia, it has placed users as victims rather than perpetrators, therefore users or drug abusers are entitled to rehabilitation and are handled by experts in their fields and equipped with sufficient competence in their fields as well. In contrast to the State of Indonesia, a defendant in narcotics abuse can only obtain legal action in the form of rehabilitation if he has fulfilled the requirements in the Supreme Court Circular Number: 04/Year 2010 which contains: The defendant is caught, at the time of arrest found evidence in the form of marijuana 5 grams, positive laboratory license using narcotics, a certificate from a psychiatrist or government psychiatrist, there is no evidence that the concerned involved narcotics trafficking and the presence of expert information explaining how much the condition or extent of addiction of the accused.

Perpetrators of narcotic abuse who undergo legal cases must obtain a clear legal status regarding their position as abusers, addicts or victims of narcotic abuse. Construction of articles relevant to the capacity of a person who commits narcotics abuse, as well as criminal prosecution or what actions should be imposed on the perpetrators of narcotics abuse in order to safeguard their rights. Everyone holds the right, man needs the right from birth as he needs to eat, drink, place, and live as a living being. Basically, the general properties of narcotic use there are three, namely depressants, stimulants and hallucinogens.

Basically Act No. 35 of 2009 on Narcotics which formulates "Every Drug Abuser Class 1 for himself is sentenced to a maximum prison sentence of four years. The interesting thing about the verdict of the case is the granting of a prison sentence to the accused child, while the defendant is a user for himself and not an addict according to the judge. There is a clash between the protection of the rights of children and the actions of children in special crimes of extra ordinary crime". Therefore, basically every drug abuser is entitled to get rehab even more for a minor if entangled in a drug abuse case, but in practice to get rehab is quite complicated and rarely given in the handling of a case of narcotic abuse.

With the increasing condition of narcotic abuse, the government with Act No. 35 of 2009 on Narcotics is expected to further seek rehabilitation facilities for abusers and narcotics addicts. When

categorized as a victim, it is clear that an abuser and addict should be kept away from criminal stigma, but are entitled and should receive treatment.

A narcotics addict and a narcotic abuse officer are required to undergo medical rehabilitation or social rehabilitation at a narcotics dependency rehabilitation center. With medical rehabilitation and social rehabilitation is intended to restore and / or develop the physical, mental, and social abilities of an addict, with the ultimate goal with the recovery of addicts from a sense of dependence nerkotika can become a better person and can socialize with society again without worry because of the stigma against a narcotic addict in society.

In Act No. 35 of 2009 concerning Narcotics the provisions of the law governing the rehability of narcotic addicts are stipulated in article 54,56,103 and are associated with article 127 of Act No. 35 of 2009 concerning Narcotics. The interesting thing in Act No. 35 of 2009 is the existence of article 103 which contains the authority of a judge to impose a verdict / sanction against a person who is proven to be an addict or narcotic abuser to be able to undergo treatment in the form of rehabilitation. In Act No. 35 of 2009 on Narcotics states that a judge who examines a drug trafficking case can do two things, namely first, the judge can decide to order the concerned to undergo treatment and /or treatment if the narcotics addict is found guilty of narcotics crimes. Second, the judge may decide to order the person undergoing treatment and/or treatment, if the narcotics addict is not found guilty of narcotics crimes. Implied this authority, recognizes that the narcotics, in addition to being the perpetrator of crimes as well as victims of the crime itself which in the viktimological angle is often referred to as Self Victimization or Victimless Crime.

This regulation of narcotics to prevent the misuse of narcotics is not widespread and becomes a troubling disease of society in all social strata. Prevention of narcotic abuse is targeted for all communities both young and mature, both perpetrators and victims of narcotic abuse. But the reality is, the abuser is often a victim because the abuser only uses narcotics for himself.

Narcotics crimes are no longer committed individually but involve many people together and even an organized syndicate with a wide network, which works neatly and highly confidentially, both at the national and international level. Narcotics crimes that are always increasing from each year, has been transnational because it can be done using high operandi modules, advanced technology, and supported by a wide network of organizations. Narcotics crime has certainly caused many victims, especially among the younger generation who are very dangerous to the lives of society, nation, and state.

Narcotics crimes are cross-border crimes, as the methods used for their spread and illicit trade are carried out across borders. Although law enforcement officials have worked to the maximum, and even the government specifically established an agency that handles the misuse of narcotics, namely the National Narcotics Agency (BNN). Knowing the dangers of the circulation and misuse of narcotics is required legislation that supports efforts to eradicate narcotics crimes. Act No. 22 of 1997 on Narcotics is considered no longer appropriate to the development of the situation and developing conditions to tackle and eradicate narcotics crimes.

In Act No. 35 of 2009 on Narcotics there are some regulatory differences in the law. This paper intends to examine what is stipulated in the Law in order to counter the circulation and abuse of narcotics.

Therefore, perpetrators who are victims of narcotic abuse should be given legal protection. So how the protection of the law is implemented through the criminal justice system.

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DISCUSSION

1. Victims of Narcotic Abuse in Act No. 35 of 2009 on Narcotics and Their Types.

The policy in the criminal law against narcotics written in the Law focuses on its misuse and circulation, because narcotics can basically be utilized in medical needs. General Explanation of Act No. 35 of 2009 on Narcotics states that narcotics are useful substances or drugs and are necessary in the treatment of certain diseases, if used excessively that is not in accordance with the rules of standard treatment can cause very detrimental consequences for individuals or people who consume such substances or drugs, especially for the younger generation.⁵ In the Written Rule of Act No. 35 of 2009 on Narcotics, it explains that narcotics are substances or drugs derived from plants or non-plants, be it synthesis or semi-synthesis, which can lead to loss of consciousness, loss of body flavoring, to relieve pain in the body that can cause dependence for its users. This narcotics law regulates all forms of activities and/or acts related to narcotics and narcotic precursors. Narcotic precursors are substances or formulas (chemicals) used for the manufacture of narcotics.

Based on the substances or formulas (chemicals) contained in it, narcotics are divided into several groups namely, First; Opioda is a group of natural substances, semi synthesis and synthesis that has pharmacological properties reduce or relieve pain (analgesics). These opioda include natural opioda namely opium, codeine and also morphine. Semi-synthesis opioda i.e. hydromorphine and heroin. Opioda synthesis includes meperidin, propoxyfen, leforfanol. The second group; Morphine is part of a natural opioda that has strong analgesic power, has a crystalline shape, and is white, can turn brownish and odorless. Most of this opium is processed to be used as morphine or codeine. Third; Codeine is part of natural opioda also widely used for medical purposes. Compared to morphine, codeine has weak analgesic power, and is often used as a strong cough reducer. Fourth; Heroin is part of a semi-synthesis opioda that is white powder-shaped and has a bitter taste. In the black market heroin is often marketed in various colors, because it is mixed with other ingredients such as chocolate, milk powder, sugar, etc. Putauw it self is the street name of heroin. Fifth; marijuana, marijuana, haskish. Ganja is a wild herbaceous plant whose origin is from the cannabis sativa plant. Marijuana is a dried leaf and flower on the cannabis sativa plant. Haskish is a cannabis sap produced by drying and compacting the structure that becomes a slab. Sixth; Metodon is a part of a synthesis opioda that has more effective working power than morphine by ingesting it. Metodon itself is often used as a substitution therapy in methodone maintenance programs, which aim to treat dependence on morphine or heroin. Seventh; cocaine is derived from the crushed leaves of erythroxyton coca, a type of plant grown on the slopes of the Andes mountains in South America. Postulating; crack is a new form of crystals such as gravel which is cocaine essence.⁶

Act No. 35 of 2009 focuses on efforts to protect the public from the dangers of illegal drug abuse and trafficking. Under the law, the main task of the government through its apparatus is to prevent, eradicate, and protect the public from the illicit circulation of narcotics.

Narcotics Crimes are generally impossible to do individually or independently, but are carried out jointly even involving syndicates that are significantly organized and packed with a mature strategy, neat and highly confidential, so that narcotics crimes are included in transnational crimes.

In the Narcotics Act, the misuse of narcotics for oneself is seen as criminal so it is threatened with criminal sanctions. Using narcotics for yourself means that using these narcotics is done without the supervision of a doctor. In the system of criminalization of narcotic abuse will get a criminal threat against yourself using a single formulation system that is a prison sentence, except for abusers who suffer from dependence (addicts) where the judge can decide for the addict to undergo treatment and / or treatment in the form of rehabilitation (Article 127, Article 54, Article 55 and Article 103).

Written rules in Indonesia in the form of legislation has clearly set severe penalties for producers and dealers in the misuse of narcotics. This is very different from narcotics addicts, for narcotics abusers for themselves, or victims of narcotic abuse must undergo medical rehabilitation and social

⁵ Penjelasan Umum Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

⁶ (Badan Narkotika RI, 2004:14).

rehabilitation. Article 54 of Act No. 35 of 2009 states that "Narcotics addicts and victims of narcotic abuse are obliged to undergo medical rehabilitation and social rehabilitation". The term victim of narcotic abuse is defined in Article 54 of Act No. 35 of 2009 which states that "the victim of narcotic abuse is a person who accidentally uses narcotics because he is persuaded, compelled, deceived, deceived, and/or threatened to use narcotics".

The term victims of narcotic abuse in Act No. 35 of 2009 only refers to a person who uses narcotics because he is persuaded, deceived, deceived, forced, and/or threatened to use narcotics, but basically both addicts and narcotic abusers for themselves are victims of narcotic abuse, namely victims of illicit narcotics trafficking. They are narcotic abusers although they can be categorized as victims in general. Therefore, people who abuse narcotics in the sense of using it for themselves consciously and without coercion can be said to be victims of narcotic abuse, in the sense of victims of others who commit illegal narcotics trafficking, meskipun in the Narcotics Act is distinguished by the term "victims of narcotic abuse" so that they can also be penalized, although the form of sanctions is also medical and social rehabilitation, as well as those who are termed by the Narcotics Act as "victims of narcotic abuse".

2. Narcotics Addicts and Abusers for Themselves as Victims of Illicit Narcotics Trafficking

In the development that exists in the world at this time shows that the tendency that occurs brings a strong change in the view of narcotic abusers who are no longer seen as criminals but as victims who must be given empathy. Giving punishment to people as perpetrators or victims of narcotic abuse can make people who need treatment, hide themselves.⁷ Because the addict is worried, if he admits to being a narcotics addict then it will be arrested so that this condition prevents the addict from attending a therapy or rehabilitation program.

In line with this condition, basically law enforcement efforts are most appropriate if directed to large traders and suppliers of narcotics illegally and not directed to petty criminals such as narcotics abusers.

According to Narcotics Act Article 1 point 15, "abusers are persons who use narcotics without rights or against the law". Users of narcotics without rights or against the law means the use of narcotics outside of medical indications, without instructions or prescriptions, and their use is pathological (causing abnormalities) and creates obstacles in social activities, as well as causing dependence (becoming an addict). The definition of addict according to Narcotics Law Article 1 point 13 is "a person who uses or abuses narcotics and in a state of dependence on narcotics, both physically and psychically". From a medical perspective, many experts argue that in fact narcotic abusers are victims of syndicates or illicit narcotics trafficking and trafficking that are difficult to escape from dependence. Although it may actually be that these users want to get out of the habit of consuming narcotics but because the addictive substance contained in narcotics has entered the neural cell tissue of the user found it difficult to let go of the habit. Therefore, the treatment of patients using narcotics is somewhat different from other common patients.

In the explanation of article 54 of Act No. 35 of 2009 concerning Narcotics mentioned that the explanation of victims of narcotic abuse that is, is a person who accidentally uses narcotics because persuaded, forced, tricked, deceived, and / or threatened to use narcotics. The definition of victims of narcotic abuse in Article 54 is also the same as the explanation in Article 1 of the Joint Regulation of 2014 on the Handling of Narcotic Addicts and Victims of Narcotic Abuse into Rehabilitation Institutions.⁸

⁷ (Departemen Kesehatan RI Dir. Jen. PPM dan PL, 2003:5).

⁸ (Nomor: 01/PB/MA/III/2014, 03 Tahun 2014, 11 Tahun 2014, 03 Tahun 2014, PER-005/A/JA/03/2014, 1 Tahun 2014, PERBER/01/III/2014/BNN).

Therefore, in the viktimological view itself, that narcotic abusers cannot be categorized as perpetrators of crimes, because the crime itself must cause casualties, and the victim in question is another person. This view then becomes a reference to provide understanding that narcotics users are one form of crime without victim.

In the case of narcotics, there are 2 (two) main components that cause or result in a person becoming a victim, namely narcotics manufacturers (especially illegal ones) and dealers, these two components are then by all means looking for consumers; although sometimes the opposite happens, consumers are trying to find them. The producer and dealer then become viktimisator and cause viktisasi by making the user as a target market so that it experiences at least 2 (two) things, namely: (1) narcotics users are victims of the actions of others, which in this case is the producer and dealer of narcotics illegally, (2) experienced viktisasi of himself (self-victimization) due to his actions.

In the process of self-funding, illegal producers and dealers certainly do not matter because it is clear that these two things can not be categorized as victims, the problem is the legal handling of people who are abusers and addicts who are basically victims of the actions of others. In Act No. 35 of 2009 concerning Narcotics Article 127 paragraph (1) mentioned that narcotics users for themselves can be sentenced to prison 1 (one) to 4 (four) years depending on the narcotics group. The provisions read as follows:

Article 127: Paragraph (1): Every Abuser: a. Class I narcotics for themselves shall be punished with a maximum imprisonment of 4 (four) years, b. Class II narcotics for oneself shall be punished with a maximum imprisonment of 2 (two) years, and c. Class III narcotics for oneself shall be punished with a maximum imprisonment of 1 (one) year.

However, in Act No. 35 of 2009 on Narcotics it provides legal protection for narcotic abusers for themselves. The legal protection efforts are contained in Articles 54, 103, and 127 Paragraph (2) and Paragraph (3), which are essentially narcotic abusers can undergo medical rehabilitation and social rehabilitation. The description is contained in the articles that focus on the power of the judge in deciding the narcotics case.

Article 54 of the Narcotics Law states that "Narcotics addicts and victims of narcotic abuse must undergo medical rehabilitation or social rehabilitation", and Article 127 Paragraph (2) and paragraph (3) mention as follows: Paragraph (2): In deciding the case as referred to in paragraph (1), the judge shall pay attention to the provisions as referred to in Article 54, Article 55, and Article 103. Paragraph (3): In the event that the Abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotic abuse, the Abuser must undergo medical rehabilitation and social rehabilitation.

Article 103 also mentions the following: Paragraph (1): The judge who examines the case of Narcotics Addicts may: a. decide to order the concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is found guilty of narcotics crimes; or b. stipulate to order the concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not found guilty of narcotics crimes. Paragraph (2): The period of treatment and/or treatment for Narcotic Addicts as referred to in paragraph (1) letter a shall be taken into account as the period of serving the sentence.

The provisions of the above articles clearly imply that abusers and narcotics addicts are victims of other people's criminal acts in the form of illegal narcotics trafficking. Therefore, the provisions in these articles stipulate the obligation to undergo medical rehabilitation and social rehabilitation for narcotics users for themselves, if the person concerned can be proven or proven as a victim of narcotic abuse.

3. The Legal Position of Victims of Narcotic Abuse

Many factors that influence a person to abuse narcotics, among other factors include; the first are individual factors, among others due to weak personalities, easily discouraged and disappointed;

the second is the substance factor of the narcotic itself, which can result in dependence; third is environmental factors, namely a family environment that is not harmonious.⁹

In Act No. 35 of 2009 on Narcotics has been determined about prohibited acts and threatened with criminal sanctions in relation to narcotics. This act is commonly known as narcotics crime which is the misuse of narcotics and the illicit circulation of narcotics. Narcotic abuse is the excessive use of narcotics committed by a person illegally and/or unlawfully, without supervision and permission from a doctor, while the illicit circulation of narcotics and narcotic precursors is any activity or series of activities carried out by individuals or groups that do not have the right or against the law that is designated as a narcotics crime and a precursor to narcotics.

In Act No. 35 of 2009 on Narcotics has set about very severe criminal sanctions that can ensnare perpetrators of narcotics crimes. It is stated in the Criminal Code Article 10, namely the existence of a type of death penalty, life imprisonment, a maximum prison sentence of 20 years, criminal confinement and criminal fines amounting to hundreds of millions to billions of rupiah. On August 5, 2004 and October 10, 2004, executions were carried out from the verdict of judge PN Medan against 3 (three) death row inmates. In total until June 2005 the number of death row narcotics cases awaiting execution as many as 35 (thirty-five) people who have been convicted by judges in various district courts in Indonesia.

Speaking of efforts to combat narcotics crimes appropriately, then it should be the way of view is not to focus only on matters related to the cause of the occurrence of a crime. However, more deeply there is another thing that is no less important to understand is the problem of the victim of the crime itself, which in certain circumstances can be the trigger for the emergence of crimes in narcotics crimes.

The way of view of victims of crime in narcotics crimes can not be separated from the name viktimologi. Through the understanding of this viktimology, we can know various aspects related to the victim, such as the factors that cause the emergence of a crime of narcotic abuse, how the person can be categorized as a victim of abuse, and efforts that can reduce the occurrence of victims of narcotic abuse crimes, as well as the rights and obligations of victims of abuse crimes in narcotics crimes.

The understanding of the victim itself in the perspective of viktimology has a broad meaning, because it is not only limited to individuals who are manifestly suffering losses but can also be groups, private or government, while what is meant is the consequences arising from the victim is an attitude or action against the victim who is directly or not involved in the occurrence of a crime. The importance of victims of crime in narcotics crimes is gaining major attention because victims are an inseparable part of crime.

In the current reality, the increasing misuse of narcotics, the government with Act No. 35 of 2009 on Narcotics, must do the optimal thing by intensively seeking rehabilitation for abusers and narcotics addicts, so that addicts can feel the guarantee of rehabilitation. Because if it is said to be a victim, then it is clear that a abuser and addict should be kept away from criminal stigma and should be given treatment.¹⁰

The judge as the holder of the highest power in the trial is certainly given the authority to decide the sentence to be a prison sentence or rehabilitation action to a person who is dependent on narcotics. In other words, to decide a narcotics addict case, the judge will use the provisions of Article 127 (rules on criminal sanctions) or use the provisions of Article 103 (rules on sanctions rehabilitation measures). And ultimately it all depends on the judge's belief whether the perpetrator of narcotics abuse who is said to be a narcotics addict should be given a prison sentence or indeed deserves rehabilitation. Of course, the decision of this judge must be based on the evidence or facts of the existing trial, namely based on the results of laboratory information that states that the perpetrator is dependent on

⁹ Marcus Priyo Gunarto, dkk, Bunga Rampai Hukum Pidana Khusus (Jakarta: Pena Pundi Aksara, 2006), hlm.91.

¹⁰ Pasal 127 ayat (3) UU Narkotika Nomor 35 Tahun 2009

narcotics so that rehabilitation and treatment is required to the perpetrator or the need for legal action in order to make the perpetrator deterred from doing his actions in accordance with the provisions of the law.¹¹

Based on the Joint Regulation of 2014. In Article 7 Paragraph (3) the Joint Regulation stated that the implementation of medical rehabilitation and/or social rehabilitation as referred to in Paragraph (1) and Paragraph (2) shall be conducted based on the assessment results of the Integrated Assessment Team and in accordance with the provisions of the prevailing laws and regulations.¹²

Means Act No. 35 of 2009 on Narcotics on the one hand considers the abuse is as a narcotics addict (Article 103) and as a perpetrator of narcotics crimes (article 127), on the other hand it is considered as a victim of narcotic abuse itself committed by others. However, there is a provision that stipulates that the misuse of narcotics is either for narcotics addicts themselves or as perpetrators of such crimes are not criminally prosecuted, namely the provisions listed in Article 128 Paragraph (2) and Paragraph (3) which reads as follows;

- Article 128 Paragraph (2) reads: Narcotics addicts who are not old enough and have been reported by their parents or guardians as referred to in Article 55 paragraph (1) are not criminally prosecuted, and

- Article 128 Paragraph (3) reads: Narcotic addicts who are old enough as referred to in Article 55 paragraph (2) who are undergoing medical rehabilitation 2 (two) times the period of treatment of doctors in hospitals and / or medical rehabilitation institutions appointed by the government are not criminally prosecuted.

So on the basis of this is not only for abusers and narcotics addicts who are subject to obligations, parents or guardians of the Case even those who are not old enough to have an obligation to report to puskesmas, medical rehabilitation institutions, or hospitals and to social rehabilitation institutions in accordance with the direction given by the government to obtain treatment roofing treatment through medical rehabilitation and social rehabilitation (Article 55 Paragraph 1).¹³ If not carrying out this obligation, because the parent or guardian of the addict who is not old enough¹⁴ who deliberately do not report, can be sentenced to a maximum of 6 (six) months imprisonment in accordance with the rules contained in Article 128. Narcotic addicts who are old enough must report or report by their families to medical rehabilitation institutions or social rehabilitation, health centers, and hospitals, in accordance with the provisions provided by the government to obtain treatment and/or treatment through medical rehabilitation and social rehabilitation (Article 55 Paragraph 2).

Medical rehabilitation is an integrated process of treatment activities to free addicts from narcotic dependence. Referring to the provisions of Article 56, medical rehabilitation of Narcotics addicts is carried out in hospitals designated by the Minister. Certain rehabilitation institutions organized by government agencies or the public can conduct medical rehabilitation of Narcotics addicts after obtaining the approval of the Minister. This provision confirms that rehabilitation for Narcotic Addicts is carried out with the intention of restoring and/or developing the physical, mental, social abilities of the sufferer concerned.

Social rehabilitation is a process of integrated recovery activities, both physical, mental, and social, so that former narcotics addicts can again perform social functions in people's lives. The social rehabilitation of former Narcotics addicts is organized both by government agencies and by the community. Social rehabilitation in this regard includes through religious, traditional, and other alternative approaches. In this provision referred to as "former Narcotics addict" is a person who has recovered from dependence on Narcotics physically and psychically.

¹¹ Ibid.

¹² Peraturan Bersama Tahun 2014 Pasal 7, Ayat (1), Ayat (2)

¹³ Wagiati Soetodjo, Hukum Pidana Anak, (Bandung : Refika Aditama, 2006), hlm. 33-34.

¹⁴ Paulus Hadisuprpto, Juvenile Delinquency Pemahaman dan Penanggulangannya, (Bandung : Citra Aditya Bakti, 1997), hlm. 8.

CONCLUDING

In order to eradicate narcotics crimes, adequate legislation is required. Act No. 35 of 2009 on Narcotics is a regulation that supports efforts to combat narcotics crimes, which today are no longer carried out by individuals, but involve the number of people organized with increasingly sophisticated operandi modules. The law regulates narcotics crimes with the threat of severe sanctions.

But in the regulation of the Law in addition to binding sanctions, Act No. 35 of 2009 on Narcotics also provides a glimmer of hope for victims of narcotic abuse by distinguishing the terms narcotics addicts, narcotic abusers for themselves, and victims of narcotic abuse. They can all be categorized as people who use narcotics without rights or against the law. Nevertheless, many experts argue that in fact they are victims of narcotics trafficking and trafficking syndicates. In addition, the spirit contained in the Narcotics Act also clearly implies that abusers and narcotics addicts are victims of other people's criminal acts in the form of illegal narcotics trafficking. Therefore, the provisions in the law stipulate the obligation to undergo medical rehabilitation and social rehabilitation for narcotics users for themselves, if the person is proven to be a victim of narcotic abuse.

In terms of punishment for perpetrators of narcotic abuse, be it addicts, self-abusers, or what is termed by Act No. 35 of 2009 as "victims of narcotic abuse", according to national criminal law is medical rehabilitation and social rehabilitation.

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