



Effective Criminal Law Structure for Addressing Drug Abuse Cases

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Abstract

Whether using non-criminal law (non-penal policy) or criminal law, both approaches must be combined to combat the pervasive crime of drug abuse. This allows criminal policies to be as effective as possible in preventing and combating crime. The integrative principle, which emphasizes the balance between retributive, deterrence, and rehabilitation roles, is important to consider when creating criminal laws that, in theory, are beneficial to drug addicts. This idea aligns with the objective of modern punishment theory. This study uses a juridical normative method. This research is carried out using a legislative, case, and conceptual approach. The purpose of this study is to analyze the legal ideal in the form of benefits in handling drug abuse. When all other options have been exhausted, criminal law is the last resort. Criminal law is insufficient to offer targeted or all-encompassing prevention. Benefits arise from the ability to apply the double-track system of criminal law and actions proportionately and with a strong judgment.

Keywords: *Abuse; Crime; Narcotics*

Introduction

The eradication of narcotics crimes is a shared responsibility of both government and society. Improvement, control, and supervision carried out by the community as an effort to prevent and eradicate narcotics abuse and distribution is very necessary because narcotics crimes are generally not committed by individuals individually but are carried out together and even carried out by syndicates that are organized in a structured, neat, and very secretive manner (Hanifah & Unayah, 2011). Theoretically and practically, criminal law enforcement, known as the law enforcement system or criminal law enforcement, is part of criminal policy or crime prevention policy. Soerdarto defines criminal policy as a rational effort by society to overcome crime. This opinion is agreed by Barda Nawawi Arief in his book *Problems of Law Enforcement and Crime Prevention Policy*, which states that criminal policy is the rational arrangement or arrangement of crime control efforts by society and is inseparable from broader policies, namely social policy (Barda Nawawi Arief, 2001).

Handling of drug abuse crimes through a criminal law approach has so far been dominated by the imposition of criminal sanctions. The judge's decision predominantly imposes imprisonment ranging from 7 to 30 months. Imprisonment is carried out in prisons using a coaching pattern based on the concept of corrections by the provisions of Law Number 12 of 1995 concerning Corrections. Prisons uphold the principle of equality so that the coaching method is carried out uniformly for all prisoners. In principle, coaching includes personality and independence. Personality coaching targets the rise of prisoners' awareness of the mistakes they have made so that they no longer do them back to the right path. Meanwhile, coaching independence is more about building competencies related to independent efforts so that prisoners have the provisions to live life in society. (Ridwan, 2017)

Correctional, as the implementation of punishment has the spirit of preparing prisoners to be better and be accepted back into society. The process of becoming better for prisoners begins at different points between prisoners and is determined by personal character and the type of crime committed. For drug abusers, the main problem faced by prisoners is dependence or addiction and physical or psychological disorders. Making themselves better means taking action/rehabilitation against the nature of dependence and physical and psychological symptoms. Synchronization between punishment and its implementation methods with the needs of prisoners who are prioritized is attempted so that punishment has benefits. The success of correctional as the implementation of punishment related to the crime of drug abuse needs to be studied further. The trend shows an increasing number of drug abusers. The increase occurs due to the emergence of new perpetrators or the repetition of criminal acts by perpetrators who have been convicted or rehabilitated in prison. On the one hand, punishment of perpetrators in the form of imprisonment continues to dominate the judge's decision. It appears that judges have a Stalinist perspective in issuing criminal decisions as a way of responding to the occurrence of criminal acts. This is what raises the core question about the extent to which the criminal law structure provides benefits in handling criminal acts of drug abuse (Sartika et al., 2023).

This study aims to analyze the criminalization of narcotics abuse crimes and to emphasize the concept of criminal law construction that can provide benefits for handling narcotics abuse. Thus, it is expected to be able to provide an overview of the benefits of imposing sanctions on narcotics abuse.

Research Method

This study was conducted within a juridical normative framework, which Soerjono Soekanto stated was based on primary, secondary, and tertiary legal materials (Soerjono Soekanto, 2007). Primary legal materials are binding legal materials that are authoritative; secondary legal materials are explanations of primary legal materials containing basic principles of legal science and the views of legal experts; and tertiary legal materials are instructions for primary and secondary legal materials. The search and collection of legal materials is carried out using document studies or library studies. The collected materials are examined and reviewed to then be selected, eliminated, and systematized according to their relevance to the topic being discussed. As an affirmation of the discussion area, this study requires various approaches. Following the concept formulated by Peter Mahmud Marzuki, the approaches used include (1) the Statute approach or statutory regulation approach. Its relevance in the context of exploring primary legal materials as a basic element of legal research. The exploration of this field reaches the ontological, philosophical, and ratio legis basis of the related regulations; (2) conceptual approach or conceptual approach. Its relevance is related to the basic construction in legal thought that forms the nodal points of doctrine, principles, and principles that develop in criminal law; (3) case approach or case approach. This approach is a vector that leads to the exploration of the ratio decidendi, namely the legal argument used by judges in making decisions (Marzuki, 2017).

Result and Discussion

The handling of drug abuse from a criminal law perspective is closely related to criminal law enforcement or is often identified with the criminal justice system. There are five law enforcement institutions involved in the criminal justice system, namely the police as investigators, the prosecutor's office as prosecutors, advocates as defenders, judges as decision-makers, and prisons as places for implementing criminal acts. In law enforcement against drug abuse, a phenomenon is obtained called criminal inflation. Criminal inflation is understood as a situation where the orientation of the judge's decision emphasizes more on sentencing as a way to achieve legal ideals. Criminal sanctions as sanctions do not only stand-alone, and in the double-track system, sanctions in the form of actions are also known (Muladi, 2002).

The phenomenon of prison overcapacity is a reminder that something needs to be fixed. Especially to the paradigm of judges who emphasize more on sentencing as a sanction for drug abusers. In the study of the philosophy of punishment, especially related to the theory of modern punishment, there is an integrative theory. The integrative theory raises the purpose of punishment in multi-functions consisting of retributive or retribution, deterrent or deterrent effect, and rehabilitation or recovery. If punishment is only intended for retribution and deterrent effect, it seems that the realization of modern thinking in punishment based on integrative theory has not fully occurred. All three need to be given a balanced proportion so that the concept of rehabilitation gets more attention (Tornado, 2018).

The imposition of sanctions for drug abusers that only prioritize imprisonment has various weaknesses. On the scale of criminal policy, Barda once outlined the limitations and weaknesses of the criminal mechanism. First, dogmatically/ideally, criminal sanctions are the sharpest/harshest type of sanctions (therefore, they are also often referred to as *ultimum remedium*). Second, functionally/pragmatically, their operationalization and application require more varied supporting facilities (including various organic laws, implementing institutions, and apparatuses) and require higher costs. Third, criminal law sanctions are a remedium that contains contradictory or paradoxical properties and contains negative elements or side effects. Fourth, the use of criminal law in dealing with crime is only a symptom (overcoming/curing symptoms). So, criminal law/sanctions are only symptomatic treatment and not causative treatment because the causes of crime are so complex beyond the scope of criminal law. Fifth, criminal law/sanctions are only a small part (subsystem) of the means of social control that cannot possibly overcome the problem of crime as a very complex humanitarian and social problem (as a socio-psychological, socio-political, socio-economic, socio-cultural, and so on). Sixth, the criminal system is fragmentary and individual/personal, not structural or functional. Seventh, the effectiveness of punishment still depends on many factors; therefore, it is still often questioned (Prof. Dr. Barda Nawawi Arief, 2018).

The concretization of the formulation stage or criminalization stage is part of the criminal policy with penal means. The criminalization of non-criminal drug abuse has existed long before the enactment of Law Number 35 of 2009 concerning Narcotics. Because 1976, Law Number 9 of 1976 concerning Narcotics was enacted first. Where Article 23 of the 1976 Narcotics Law has clearly outlined which acts are prohibited or defined as drug abuse (criminalization), especially Article 23 paragraph (7), which states "It is prohibited to use narcotics for oneself without the right." In this crime, it is clear that one of the acts that is criminalized is the act of using narcotics for oneself. Where in Law Number 35 of 2009 concerning Narcotics, the regulation related to the same crime is stated in Article 127 paragraph (1), which is referred to as the term "abuser." This means that the latest Narcotics Law of 2009 still maintains the criminalization of narcotics abuse for oneself (Arief, 2018).

Sanctions in Criminal Law, according to Sudarto, are negative sanctions; therefore, it is said that Criminal Law is a negative sanction system. In addition, considering the nature of criminal law, which

should be applied when other means (efforts) are inadequate, it is also said that criminal law has a subsidiary function. Meanwhile, sharp sanctions, according to Jan Rammelin in principle, will only be imposed if other lighter law enforcement mechanisms have been ineffective or have previously been deemed unsuitable. Next, the reaction of criminal law must be appropriate or proportional to what the perpetrator of the crime did. A fair reaction must be given to the crime (Pujilestari et al., 2014).

The implementation of criminal justice is one of the community's efforts in overcoming crime using criminal law (penal) means; in addition to that, there are still other efforts in overcoming crime through non-penal means. Efforts to overcome criminal acts through the penal route focus more on the repressive nature, namely oppression/eradication/suppression after the crime has occurred, while efforts to overcome criminal acts through the non-penal route focus more on the preventive nature, namely before the crime has occurred. According to Barda Nawawi Arief, the main problem in overcoming crime is integrating and harmonizing non-penal (non-criminal law) and penal (criminal law) activities or policies, namely towards suppressing or reducing potential factors for the growth of crime. With this integral policy approach, it is hoped that social defense planning can truly succeed (Wahyuningsih Yulianti, 2022).

In the context of Indonesia, there are several weaknesses in the process of law development and enforcement, as stated by Romli. Three of them are understanding that criminal law only applies to every act, not to a person's status and position in his position, an inadequate understanding of the principles of proportionality and subsidiarity, and an understanding of the function and role of criminal law, which is "*ultimum remedium*." Furthermore, according to Romli, there has been an erroneous mindset regarding the function and role of law among criminal law experts, which is described as follows: First, the application of criminal law must always end with punishment and imprisonment. Second, in serious crimes, the retributive function and purpose must be multiplied compared to minor crimes, and even the principle of "*ultimum remedium*" must be set aside. This mindset has been proven in practice to not provide maximum contribution to improving the climate of state administration to date. According to Romli, the philosophy of Pancasila law has grown and taken root in the life of the Indonesian nation for a long time, so it is hoped that it can prevent and overcome all problems of legal development. The legal philosophy of Pancasila is based on five principles that lead to a culture of cooperation and togetherness based on the principles of deliberation and consensus. The principle of deliberation and consensus is the spirit and soul of the formation and enforcement of law in Indonesia. Justice based on the Legal Philosophy of Pancasila is not determined by the judicial process per se but is determined by the conscience of each individual in dispute or between the perpetrator and victim of a crime. The function and role of law based on the Legal Philosophy of Pancasila is to place deliberation and consensus as the *primum remedium* and litigation as the *ultimum remedium* (Atmasasmita, 1995).

Constructing criminal law that has benefits related to handling drug abuse crimes means realizing the imposition of sanctions as the final result of criminal justice that has a retributive, deterrent, and rehabilitative spirit. Retributive in the sense of a form of effort to create public justice as a consequence of the actions committed by the perpetrator (Nugroho & Ekanugraha, 2023). However, this aspect must also pay attention to the substance of the crime of drug abuse as an offense whose victim is the perpetrator himself or a crime without a victim. Justice from the victim's perspective in this case is justice from the perspective of the perpetrator himself. Therefore, the imposition of criminal penalties must be truly based on the perspective of the perpetrator. Furthermore, the spirit of deterrence can be viewed specifically towards the perpetrator or in general towards society. Drug abuse has an addictive or dependent impact. Deterrence can be realized when the treatment of the perpetrator in correctional guidance is related to the elimination of this addiction or dependency. As long as the addictive and dependent nature still exists in the perpetrator, of course, similar actions will be repeated. Therefore, the deterrent mechanism must refer to the elimination of the addictive nature of the perpetrator. Finally, the spirit of rehabilitation is related to the recovery of the perpetrator from negative impacts physically, psychologically, and socially. Physically,

various disorders need to be treated medically. Likewise, psychologically, traumatic recovery steps are needed so that they can return to their humanity. An important factor that must also be restored is social so that the perpetrator regains self-confidence and social interactions can accept them again.

Freeing drug abusers is impossible without being accompanied by supporting facilities in the form of building social ties. From the perspective of the perpetrators, the development of a legal culture is important, which is carried out in parallel with the main efforts of a medical nature. The system provides a wide space for abusers with full wisdom, and officers become the main guides for those who have the determination to be free from drugs to create a complete person. Rehabilitation should be carried out perfectly or continuously, both in the form of medical and social rehabilitation. Other supporting actions that need to be implemented are mentoring from both the family and the institutions that support them. Through rehabilitation, drug abusers can stop consuming drugs. Next, they are trained to be disciplined and develop self-control to reduce the potential for them to consume drugs again. At the same time, perpetrators are guided to be able to resume carrying out their social functions. Providing a sufficient portion for actions in the form of rehabilitation for drug abusers can contribute to efforts to unravel the complexity of problems that occur due to overcapacity in prisons. Next, the prison that has the task of correcting the perpetrators and preparing the prisoners for the process of social reintegration is fully realized through the balance of the imposition of criminal sanctions and actions. The dominance of the imposition of prison sentences has not been able to contribute enough to creating benefits for drug abusers. There are derivative problems in the form of stigmatization and repetition of criminal acts that become the shadow that accompanies the punishment of drug abusers.

The integrated approach is a combination of the penal and non-penal approaches. The integrated approach is a rational approach, where, in addition to respecting the principle of legality, it also prioritizes the principle of benefit or utility. The implementation of criminal justice is one of the community's efforts to combat crime using criminal law (penal) means; in addition to that, other efforts are still known to combat crime through non-penal means. Efforts to combat criminal acts through the penal route focus more on the repressive nature, namely suppression/eradication/suppression after the crime has occurred, while efforts to combat criminal acts through the non-penal route focus more on the preventive nature, namely before the crime has occurred. According to Barda Nawawi Arief, the main problem in combating crime is integrating and harmonizing non-penal (non-criminal law) and penal (criminal law) activities or policies, namely towards suppressing or reducing potential factors for the growth of crime. With this integral policy approach, it is hoped that social defense planning can truly succeed (Arief, 2011)

Conclusion

Efforts to construct criminal law that is beneficial for drug abusers in principle need to pay attention to the integrative principle of the theory of the purpose of modern punishment, which emphasizes the balance between retributive, deterrent, and rehabilitation functions. Punishment that only emphasizes the retributive and deterrent aspects alone has various weaknesses that do not fully contribute to the handling of the problem of drug abuse crimes. The most important thing is that the criminal law mechanism has a function and character of subsidiarity as *ultimum remedium* manifested in the judge's decision that does not only prioritize criminal sanctions. Thus, the imposition of imprisonment must be balanced with rehabilitation measures by the double-track system mechanism, which is of course very casuistic in nature, so that it requires the judge's sharpness in constructing the truth that exists in the criminal justice system. Integral (integrated) policy is a harmonization of penal and non-penal policies that not only prioritize the principle of legality but also optimize the principle of benefit (utility).

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