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ANALYSIS OF DECISION NUMBER 541K/PID.SUS/2011 IN THE IMPLEMENTATION OF REHABILITATION AGAINST DRUG ABUSE

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Abstract

This study aims (1) to analyze how the comparison of rehabilitation arrangements for narcotics abusers in Indonesia with those in other countries; and (2) to analyze how the judge's consideration in deciding narcotics abuse cases in Decision Number 541 K/Pid.Sus/2011. The type of research used is normative legal research with a statute approach, case approach, and comparative approach. The sources of legal materials used in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. The technique of collecting legal materials is library research. The legal material analysis technique used is a qualitative description technique. The results showed that: (1) Arrangements for rehabilitation of narcotics abusers in Indonesia and in other countries there are differences in the provision of rehabilitation in Indonesia refers to the rules of Law No. 35 of 2009 and Supreme Court Circular Letter No. 4 of 2010. In Indonesia through SEMA No. 4 of 2010, it is regulated that rehabilitation is carried out for drug users under 1 gram. Meanwhile, Singapore refers to the Misuse of Drugs Act 1973. Drug users under 20 grams are recommended to do rehabilitation but if more will be sentenced to death. (2) Basic considerations of Judges in deciding criminal cases about drug use.

Introduction

With the rapid development of Indonesian society in line with the progress of the times, the mindset and behavior of the community has also developed. Therefore, legislation is needed as a guide to regulate the positive direction of community development, and in this context, the role of law is very important. The purpose of the enactment of law in Indonesia can be seen in terms of its

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general characteristics, such as justice, legal certainty, compliance, public benefit, independence, separation of powers, openness and transparency.

Drugs stands for "narcotics" and "drugs". The term refers to substances that can cause dependence, affect brain function, and can damage a person's health and life. Drugs include a wide range of substances, from legal ones such as prescription drugs to illegal ones such as heroin, cocaine, and methamphetamine. This term is very popular in our society, including in mass media coverage and the term is often used by law enforcement officials.

According to Indonesian Law No. 35 of 2009 concerning Narcotics, 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. These drugs have a general working effect that is (Alifia, 2020: 5);

1. Sedating (lowering a person's level of consciousness);
2. Stimulating (making enthusiasm like dopping);
3. Addiction (dependence);
4. Causing imagination (hallucinations).

The problem of drug abuse is a serious threat to communities around the world, including Indonesia. Drug abuse not only damages the individuals involved, but also has the potential to damage the social, economic and political welfare of a country. Indonesia is prone to drug abuse because it is influenced by geographical conditions, geopolitics, social economy, information flows and globalization and lifestyle changes. Geographically, Indonesia has a coastline of around 85,000 km, this open sea border makes Indonesia prone to drug smuggling.

Indonesia has Law No. 35/2009 on Narcotics, which regulates various aspects related to narcotics, including rehabilitation for drug users. Article 54 and Article 55 of the Law emphasize the importance of rehabilitation for drug users as an effort to reduce and prevent drug abuse. These articles provide a strong legal basis for implementing rehabilitation programs for those involved in drug abuse.

Article 54 regulates the state's obligation to provide protection, recovery, and rehabilitation for people who use drugs. This reflects the government's commitment to give special attention to individuals involved in drug abuse, with the aim of restoring them to become productive and healthy citizens. Article 55 regulates the types of rehabilitation that can be provided to people who use drugs, including medical rehabilitation, social rehabilitation, and occupational rehabilitation. This indicates a comprehensive approach in addressing the problem of drug abuse, taking into account health, social, and economic aspects. The implementation of rehabilitation for drug users based on Article 54 and Article 55 of Law Number 35 of 2009 is a very important step in efforts to eradicate drug abuse in Indonesia.

In the case that the author discusses, there are things that must be considered by readers. In this case there is a mismatch between the judge's decision and the applicable law, where in several cases that occurred in Indonesia, the author chose the case of narcotics abuse by Yonrim Langi alias Jhon Lim which is Case Decision Number 541K/Pid.Sus/2011. On Thursday July 08, 2010 at around 22.00 WIB. Located at the Crown Hotel in Taman Sari, West Jakarta, the defendant Yonrim Langi was caught red-handed in his room carrying and possessing 1 plastic containing white crystals suspected of being methamphetamine with a net weight of 0.1850 grams on a table in the room which was planned to be used by the defendant Yonrim Langi and his friends. Then the investigation continued and obtained 1 cangklong and bong which were tools for using the methamphetamine narcotics

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In the case of Decision Number 541 K/Pid.Sus/2011 there is a discrepancy between the judge's decision and the applicable law. The author here finds discrepancies in the judge's decision. The judge here gave a prison sentence to a narcotics abuser named Yonrim Langi alias Jhon Lim with a sentence of imprisonment for 6 (six years) minus the period of detention that had been served by the defendant with the order that the defendant remain detained and a fine of RP.800,000,000, - (eight hundred million rupiah) subsidized by 3 (three) months imprisonment.

From what the author knows, there are laws and regulations governing the rehabilitation of narcotics abusers who are caught red-handed and found with evidence of use below 1 (one) gram, they should be rehabilitated in accordance with the Supreme Court Circular Letter No.4 of 2010 instead of being imprisoned as in the case of the defendant.

Based on the description of the background above, to further examine the problem, the title "Analysis of Decision Number 541k/Pid .Sus/2011 in the Implementation of Rehabilitation for Narcotics Abuse" is raised.

PROBLEM STATEMENT1

How is the comparison of rehabilitation arrangements for narcotics abuse according to the provisions in force in Indonesia with those in other countries ?

Research Methods

The type of research used in writing this thesis is normative legal research. Where normative legal research is carried out by examining a system of laws and regulations that apply in a legal problem. In this research, it will examine more deeply the implementation of rehabilitation for narcotics abuse, especially in the case of Decision number 541 k/Pid.Sus/2011.

In general, the approach in normative legal research consists of a statutory approach (statue approach), conceptual approach (conceptual approach), legal history approach (historical approach), case approach (case approach), and comparative approach (comparative approach). However, this research only uses a case approach, a statutory approach and a comparative approach (Marzuki, 2008:93).

Sources of legal material specifically in primary data used in this research are in the regulations of Law Number 35 of 2009 articles 54 and 55 and also in Sema Number 4 of 2010. In secondary legal materials this research includes Decision number 541 K/Pid.Sus/2011, books, skirpsi/thesis, journals/articles, literature sources from the internet which in this case are related to narcotics abuse, especially in the case of Decision number 541 K/Pid.Sus/2011. Tertiary legal materials include legal commentary or analysis by experts, law books, legal research, legal practitioner guides, and also the Big Indonesian Dictionary (KBBI).

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The data collection technique used in this research is a literature study technique that examines based on primary legal material in the form of legislation, especially from Law Number 35 of 2009 concerning narcotics. This research uses a qualitative descriptive analysis method, this research method mainly focuses on explaining the object of research and answering what events or phenomena have occurred and will occur. The case that the author examines comes from the internet and the author studies through sources that can help to complete the data that the author needs in conducting research. The author also analyzes by selecting, summarizing and uniting the sources that the author gets and then analyzes and concludes so that the questions that arise can be answered and later can be accounted for properly and correctly.

The legal material collection technique used is document study technique. The document study technique is the collection of legal materials through literature sources that are relevant to the issues discussed and then systematically grouped related to the problem of writing this scientific work.

Results and Discussion

Comparison of Rehabilitation Arrangements for Drug Abusers between Indonesia and Singapore

Drug abuse is a crime because drugs are used without rights or against the law and are used in a negative way that causes the user to want to use them repeatedly. So, for a long time people become addicted (addiction), do not want to be separated from the feeling of pleasure, even though their souls are threatened. In the case of narcotics abuse, whether to apply criminal sanctions or action sanctions, the determination is entirely in the hands of the judge.

Rehabilitation is one of the main objectives in the criminal law system in Indonesia and Singapore. These two countries have different legal rules in regulating rehabilitation, but have the same goal, which is to return the guilty person to society in a more effective way. As we know, there are already regulations against drug abusers in Indonesia. This regulation on drug abusers is clearly stated in "Law Number 35 of 2009".

The narcotics law authorizes judges to impose imprisonment or rehabilitation measures for drug addicts (Sutarmo, 2006:2).

Regulations on Rehabilitation in Indonesia

According to Law (UU) Number 35 of 2009 concerning Narcotics Narcotics rehabilitation is the process of recovering narcotics abuse which includes addicts, abusers, and victims of abuse both medically and socially. This rehabilitation aims to return them to become useful citizens of society and live a normal life in physical and spiritual health. Rehabilitation consists of a series of coordinated and integrated efforts, including medical treatment, mental guidance, psychosocial, religious, educational, and vocational training to improve self-adjustment, independence, and self-help abilities and achieve functional abilities in accordance with their potential, both physical, mental, social, and economic.

According to Indonesian Law No. 35 of 2009, there are two types of rehabilitation, namely:

- a) Medical Rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence (Article 16).

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b) Social Rehabilitation is a process of integrated recovery activities, both physical, mental and social, so that former drug addicts can return to carrying out social functions in community life (Article 17).

To review the procedures for the implementation of medical rehabilitation and mandatory reporting for abusers, it is necessary to review Regulation of the Minister of Health No. 50/2015 which specifically regulates this matter. The stages involved in the implementation of mandatory reporting and medical rehabilitation are as follows (Regulation of the Minister of Health No. 50/2015):

1. Designation of Medical Rehabilitation Facilities as Mandatory Reporting Institutions or IPWL. This process organizes the mandatory reporting and medical rehabilitation process for drug abusers, addicts and victims of drug abuse starting with the proposal of the owner of the health service facility.
2. Establishment of Mandatory Reporting and Medical Rehabilitation Implementation Team 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 attended the assessment module and preparation of therapy plans.
3. Procedural Stage of Mandatory Reporting and Medical Rehabilitation Services. Divided into procedures for drug abusers who come voluntarily; procedures for those who are suspects, defendants, or convicts (Minister of Health Regulation No. 50/2015).

Rehabilitation Regulations in Other Countries (Singapore)

In law enforcement in Singapore is a transformation of the English legal system, given that England used to be a colonial so that it applies its legal system in Singapore, not only the country where the legal system is applied but Malaysia, Myanmar, and Brunei Darussalam. Singapore is the busiest and most crowded country considering that the service sector dominates more than other sectors, and it should be noted that Singapore is one of the routes of entry of narcotics to other countries such as Indonesia or Australia, regarding law enforcement in the realm of drug cases such as narcotics abuse is The Central Narcotics Bureau (CNB) and the Singapore Police Force, the two institutions in preventing and eradicating narcotics crimes by working together. The Singapore government regarding drug trafficking is considered an offense as one of the most serious crimes that threaten state security. Thus, for Singapore, the mandatory death penalty for drug trafficking crimes is an appropriate method to prevent drug crimes.

In Singapore, if a person is found in possession of drugs under 20 grams and the person can be proven innocent of drug trafficking then they cannot be sentenced to death. Singapore has regulations that state the death penalty must be carried out using the hanging method, this is stated in Section 316 of the Criminal Procedure Code; "When a person is sentenced to death, the sentence shall direct that he shall be hanged by the neck until he is dead but shall not state the place where nor the time when the sentence shall be carried out" (PSSAT, 2016). The application of penalties depends on the class and quantity of drugs trafficked and penalties include imprisonment, flogging, and the mandatory death penalty. If the offender is already a convicted offender then the death penalty can be avoided if they can prove that they are a courier whose only duty is to transport, deliver or deliver drugs. In Singapore, if a drug abuser is examined, they can be ordered to be admitted to a rehabilitation center to undergo treatment and rehabilitation for 6 months (extendable up to 3 years) at Drug Rehabilitation

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Centers (DRCs). Singapore's drug rehabilitation regulations consist of several components that focus on cessation and reduction of drug use.

Basic Considerations of Judges in Deciding Narcotics Abuse Cases Decision Number 541K/PID.SUS/2011

In deciding a case, the judge must be based on the regulations governing the criminal acts committed by the defendant. In deciding a case or making a decision, a very important aspect for the Panel of Judges is the actual facts and events. Through these facts and events the Panel of Judges can find the right law. The Panel of Judges must be able to analyze an event through evidence conducted at trial. The Panel of Judges must conduct legal discovery (rechsvinding) related to these facts and events. Regarding a drug abuse case and the verdict to be handed down to the defendant, the judge must know that the verdict given provides benefits to the defendant. Therefore, the judge's decision cannot be separated from a series of policies that will affect the next stage. "Judges have the freedom to determine the severity of the punishment that the judge will impose. This is true, but on the other hand it is also clear that the freedom enjoyed by judges must not lead to willekeur or detournement de pouvoir. In the end, the judge must determine the punishment in the sense that it provides an adequate reaction to the criminal offense committed by the defendant. The criminal offense must not be an excuse for example imposing a disproportionately high punishment.

At the stage that is a condition or provision in imposing rehabilitation measures, the judge is of the opinion that it must fulfill several provisions including the following:

1. If the defendant is sentenced to imprisonment then the defendant cannot undergo treatment or rehabilitation, which makes the defendant even more addicted to narcotics;
2. Have undergone treatment or rehabilitation to cure addiction to Narcotics;
3. A statement or assessment letter from the expert doctor who treated the defendant; and.
4. The existence of expert testimony from expert doctors that can be used as guidance by judges to decide on rehabilitation measures.

According to the author, Article 54, Article 55, Article 103 and Article 127 of Law Number 35 of 2009 and the Supreme Court Circular Letter on the Placement of Narcotics Abuse, Abuse Victims and Addicts in Medical Rehabilitation and Social Rehabilitation Institutions Number 04 of 2010 are the basis for judges in making decisions on rehabilitation measures for defendants. Decisions on rehabilitation measures can be given if there is information from an expert doctor who examines or treats the defendant and with the information from the expert doctor the judge can get instructions which will later become one of the bases for deciding on rehabilitation measures for the defendant and the sentence imposed on the defendant does not have to be in the form of imposing a criminal sentence or detention alone.

CONCLUSION

1. The regulation of rehabilitation of drug abusers in Indonesia and in other countries is different in the way the rehabilitation is provided. Rehabilitation in Indonesia is regulated in Law Number 35 of 2009 concerning Narcotics in Article 54, Supreme Court Circular Letter No.4 of 2010. In Indonesia, SEMA No.04 of 2024 states that if someone uses amphetamine-type narcotics under 1 gram then he is recommended to do rehabilitation, but if it is more than 1 gram then he will be

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imprisoned.

2. The most important basis for the judge's consideration in deciding drug abuse is that the judge must be based on the regulations governing the criminal acts committed by the defendant. In this case I analyze that the granting of a prison sentence in this case is the right decision. Where as we know that the defendant was only caught red-handed carrying methamphetamine with a net weight of 0.1850 grams. Here he should have been rehabilitated but instead was imprisoned. From the analysis carried out, I found that in the evidence which is a drug use tool, namely cangklong and bong. In the narcotics use tool, it was found by investigators that there was 1.7 ml of liquid which was amphetamine type narcotics. If compared ml into grams, this liquid weighs 1.7 grams. This is what made the judge's decision to give imprisonment to the defendant Yonrim Langi.

Conclusion

1. Clarifying the Narcotics Law No.35 of 2009, especially regarding drug rehabilitation in Indonesia, so as to reduce the potential for drug abuse committed by people who do not understand the importance of knowledge about narcotics.
2. Increase knowledge and awareness of rehabilitation regulations for drug abusers in other countries such as Singapore.
3. Adjusting the legal rules regarding rehabilitation with the facts in the trial in providing criminal penalties for drug abusers.

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