

Applying Diversion and Restorative Justice in Juvenile Narcotics Cases at the Binjai District Court, North Sumatera, Indonesia

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ABSTRACT

The problem of drug abuse involving Narcotics, Psychotropics, and other Addictive Substances is a specialized criminal offense with widespread national and international implications, causing adverse effects on society, the nation, and the country as a whole. In this context, the role of the law is crucial in addressing and combating this criminal activity through the implementation of criminal law policies, as part of the broader efforts in law enforcement. The research objective is to examine the Juridical Review of the Implementation of Rehabilitation Institutions during the Prosecution Stage by the Prosecutor's Office in cases of drug abuse, with a specific focus on Narcotics. The study aims to gain insights into how Rehabilitation Institutions are applied by the Prosecutor's Office during the prosecution stage, following the guidelines outlined in the Attorney General's Directive No. 18 of 2021.

Imposing prison sentences on individuals, especially minors, who fall victim to drug abuse involves the deprivation of their freedom and carries negative implications, making it challenging to fully realize the goals of punishment. In the context of the Binjai District Court, measures are taken to provide a protective environment for children facing legal issues, enabling them to be diverted through the principles of Restorative Justice. Conversely, Rehabilitation is designed to help individuals categorized as drug addicts overcome their dependency on narcotics. The process of resolving drug abuse cases through

rehabilitation places emphasis on restorative justice and the potential benefits, taking into account principles of expeditious and uncomplicated justice with minimal costs, the principle of using criminal measures as a last resort, cost and benefit analysis, and the recovery of the offenders involved.

Keywords: Restorative Justice, Narcotics, Juvenile Offenders

INTRODUCTION

In Article 54 of Law Number 35 of 2009 concerning Narcotics, it explicitly mandates drug addicts and victims of drug abuse to undergo both medical and social rehabilitation. Additionally, Article 103 of the same law confers authority upon judges to issue orders for drug addicts and victims of drug abuse, who are standing trial as defendants and have been found guilty of drug misuse, to undergo rehabilitation as part of their sentencing.

With respect to the implementation of Article 103 of the Narcotics Law, the Supreme Court issued Circular Letter Number 4 of 2010 in conjunction with Circular Letter Number 3 of 2011, which provides comprehensive guidelines for the placement of drug abusers, victims of drug abuse, and drug addicts in medical and social rehabilitation institutions. As delineated in Circular Letter Number 4 of 2010, instances where rehabilitation measures may be imposed on defendants

include situations where they are apprehended in flagrante delicto by investigators from the Indonesian Police (Polri) and the National Narcotics Agency, when evidence of drug use for a one-day period is uncovered upon arrest, when positive laboratory test results for drug use are obtained based on the investigator's request, when they possess a certificate from a government-appointed psychiatrist as mandated by the judge, and when there is no proof of involvement in drug trafficking.

The concept of prosecution, in line with the Indonesian Code of Criminal Procedure, bears a remarkable similarity to the definition proposed by Wirjono Prodjodikoro, positing that it entails submitting a defendant's case along with relevant case files to the Criminal Judge, accompanied by a formal request for the judge to scrutinize the case and subsequently render a verdict on the criminal charges against the defendant. Moreover, the authority of public prosecutors, as delineated in the Code of Criminal Procedure, is stipulated in Article 19, which encompasses a range of powers, including receiving and examining investigation case files from investigators or assistant investigators, initiating pre-prosecution in cases where there are shortcomings in the investigation process, granting extensions of detention, ordering detention or extended detention, and altering the detainee's status following the case's transfer from the investigators. Other key responsibilities of public prosecutors include preparing the indictment, transferring the case to the court, providing notifications to the defendant and witnesses about the scheduled trial date and time, conducting the prosecution, closing the case for legal purposes, undertaking additional actions within the scope of their duties as public prosecutors, and ultimately, implementing the judge's decisions.

The role of the public prosecutor in the prosecution process commences upon receipt of the Letter of Notice of the Commencement of Investigation by the

prosecutor's office. Following this, the Head of the District Attorney's Office issues a P-16, which designates a specific public prosecutor to monitor the progress of the criminal case investigation conducted by the police investigator. The appointed prosecutor holds the authority to supervise the investigation process until the completion of the Investigation Report, which is then submitted to the District Attorney's Office.

The significance of a comprehensive investigative examination should not be underestimated. It aligns with the phased examination system as prescribed in the Indonesian Code of Criminal Procedure, which entails functional differentiation among various law enforcement entities. Should any deficiencies be identified during the investigative examination, the public prosecutor, who assumes the role of a subsequent investigator, can take corrective action and coordinate further investigative measures. Consequently, if the public prosecutor determines that the examination is insufficient and cannot be brought before the court for trial, the investigation file is returned to the initial investigator with instructions to supplement and refine the investigation in accordance with the guidance provided by the public prosecutor (Yahya, 2009).

RESEARCH METHODS

As posited by Soerjono Soekanto, research constitutes a pivotal means of advancing both science and technology. This stems from its fundamental purpose of systematically, methodologically, and consistently uncovering the truth. Throughout the research process, thorough analysis and data construction are conducted, based on the data gathered.

Research serves as a scientific instrument for the development of knowledge and technology, necessitating that the chosen research methodology be consistently aligned with the parent discipline. Research methods represent scholarly endeavors to address and resolve a particular problem,

employing specific methodological approaches.

In this paper, the research employs a Normative Juridical approach, complemented by a correlational approach. The latter seeks to examine the existence of a relationship or correlation between two or more variables. Derived from theories, insights of experts, or the researcher's own understanding, the research problems are formulated to attain verification through primary data collected in the field. The adoption of a quantitative research method is warranted to comprehend the implementation of criminal law policies in resolving non-criminal narcotics cases through Rehabilitation during the Prosecution stage.

Primary data is acquired through interviews with staff and prosecutors at the Tebingtinggi City District Attorney's Office. Secondary data encompasses official documents, books, and research findings presented in the form of reports.

Secondary data is readily available, facilitating immediate usage. It may be categorized as follows:

Personal secondary data, comprising:

- a. Personal documents, such as letters and diaries.
- b. Personal data preserved within institutions where the individual has worked or currently works.

Public secondary data, including:

- a. Archive data that holds scientific relevance for researchers.
- b. Official data sourced from government institutions, occasionally challenging to access due to confidentiality.
- c. Other published data, such as Supreme Court jurisprudence.

Additionally, tertiary legal sources, including general dictionaries, legal dictionaries, scientific journals, newspapers, magazines, and online resources, serve as valuable supplements to enrich the research endeavor.

DISCUSSION

The deleterious impact of narcotics misuse and illicit trafficking on society, the nation, and the state is a subject of paramount concern in academic discourse. While narcotics hold valuable medical and scientific applications, their unregulated and unscrupulous use can lead to detrimental dependencies.

In response to this pressing issue, Attorney General Sanitiar Burhanudin has issued Guidelines No. 18 of 2021, which pivot towards a rehabilitative approach to address criminal cases related to narcotics abuse, underpinned by the principles of restorative justice. These guidelines endow prosecutors with the authority to steer cases and prioritize rehabilitation as an alternative to conventional imprisonment, aiming to alleviate overcrowding in correctional facilities.

The phenomenon of overcrowding poses a serious challenge across correctional institutions in Indonesia, with a significant proportion of inmates being incarcerated for narcotics-related offenses. As part of its Medium-Term Development Plan for 2020-2024, the government has underscored the adoption of restorative justice as a means to enhance the criminal justice system.

The issuance of Guideline No. 18 of 2021 signifies a paradigm shift in law enforcement policies, with a renewed emphasis on optimizing rehabilitation institutions. This transformative shift is expected to result in a profound change in the working approach of public prosecutors when handling cases of narcotics abuse. As the cornerstone of their activities in relation to cases governed by the Narcotics Law, particularly those involving perpetrators of narcotics abuse, these guidelines play a pivotal role in shaping prosecutorial practices.

Historically, offenders involved in narcotics abuse have been subject to custodial sentences ranging from one to four years, in accordance with Article 127 paragraph (1) of the Narcotics Law. Nevertheless, the promulgation of Guideline No. 18 of 2021

steers the focus away from conventional imprisonment, advocating instead for rehabilitation efforts, guided by restorative justice principles and a cost-effective approach.

The issue of drug abuse and trafficking poses significant risks and dangers to society, the nation, and the state. While narcotics have legitimate applications in medicine and scientific research, their potential for abuse and lack of stringent control and supervision can lead to severe dependence, resulting in adverse consequences. To address this problem, the Attorney General, Sanitiar Burhanudin, has issued Guideline No. 18 of 2021 on the Resolution of Narcotics Abuse Cases through Rehabilitation with a Restorative Justice Approach, which reflects the principle of the prosecutor as the *dominus litis* (controller of the lawsuit). This guideline serves as a reference for prosecutors in handling narcotics abuse cases through rehabilitation, thereby mitigating prison overcrowding in correctional institutions.

The prevalence of overcrowding in correctional facilities is a pressing concern nationwide. According to the Correctional Database, there are 271,068 inmates in Indonesian correctional institutions, with 141,842 of them being convicted for narcotics-related offenses. More than 50% of the overcrowding in all correctional facilities is attributed to individuals convicted of narcotics-related crimes, and among them, 108,970 are either drug addicts or abusers. This overcrowding issue has garnered serious attention from both the public and the government, as evidenced in the Medium-Term Development Plan for 2020-2024, which aims to improve the criminal justice system through restorative justice principles.

The issuance of Guideline No. 18 of 2021 marks a reorientation in law enforcement policy, particularly in the prosecutorial domain, towards optimizing rehabilitation institutions. As the *dominus litis*, the prosecutor plays a pivotal role in resolving

narcotics abuse cases through rehabilitation during the prosecutorial phase. This approach underscores the significance of restorative justice, seeking to restore the offenders to their former state by rehabilitating those involved in victimless drug crimes.

The process of resolving narcotics abuse cases through rehabilitation is guided by principles such as restorative justice and cost-effectiveness (*doelmatigheid*), while considering the principles of expeditious, uncomplicated, and economical justice, the principle of criminal law as the last resort (*ultimum remedium*), cost and benefit analysis, and offender recovery.

Guideline No. 18 of 2021 consists of nine chapters, encompassing pre-prosecution, prosecution, oversight, training, and financing related to the resolution of narcotics abuse cases through rehabilitation using a restorative justice approach under the *dominus litis* principle. As of its implementation on November 1, 2021, suspects accused of violating Article 127 paragraph (1) of the Narcotics Law, whose cases have not been forwarded to the court, will be handled in accordance with this guideline.

The Attorney General of the Republic of Indonesia expects that Guideline No. 18 of 2021, pertaining to the Resolution of Narcotics Abuse Cases through Rehabilitation with a Restorative Justice Approach as the Implementation of the *Dominus Litis* Principle for Prosecutors, will be diligently executed by Public Prosecutors, with a strong sense of responsibility, and without engaging in any unethical conduct during its application. Any individuals within the Attorney General's Office attempting to subvert the purpose and objectives of this guideline will face severe consequences.

CONCLUSION & SUGGESTIONS

The application of the Restorative Justice concept at the Binjai District Court appears to be in accordance with the stipulations of Law No. 11 of 2012 concerning the Juvenile

Criminal Justice System. It is commendable to observe that the court has established comprehensive facilities for implementing Diversion and that the judges and prosecutors are adequately certified as Juvenile Judges and Juvenile Prosecutors, ensuring their competency in handling juvenile cases.

Furthermore, the issuance of Guideline No. 18 of 2021 by the Attorney General, which grants leniency in sentencing for drug addicts, is a noteworthy step towards addressing the issue of drug abuse. Nevertheless, it is essential to ensure that this guideline does not give rise to new challenges concerning justice during the Prosecution phase. This consideration is particularly crucial since the recommended Rehabilitation process, as endorsed by the Prosecutor, involves conducting swift hearings in the court.

In light of the expeditious Prosecution process, it is vital to subject it to public scrutiny to ascertain that justice is consistently upheld for defendants involved in Narcotics Offenses. Ensuring oversight and transparency in these proceedings will help maintain the integrity and fairness of the justice system.

Declaration by Authors

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