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The concept of criminal policy in corruption effort criminal acts of narcotics abuse based restorative justice

Bastianto Nugroho, Arif Darmawan, Otto Yudianto, Erny Herlin Setyorini

Faculty of Law, Universitas 17 Agustus 1945 Surabaya, Indonesia

bastiantonugroho@gmail.com

Abstract. This research is a normative research, which examines the study of documents using legal materials such as laws and legal theory. In the history of narcotics during human civilization, at first it's purpose was for treatment in the world of health. In the times, it's not only for medicine but has been misused for the purpose of getting pleasure which ultimately makes human productivity decline. Therefore, the illegal distribution and use of narcotics is finally prohibited. The State of Indonesia to achieve legal goals in accordance with Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "All citizens have the same position in law and government, must uphold the law and government without exception". In this way, every attitude, policy, and behavior of state apparatus and residents (citizens and foreigners) must be based on and in accordance with the law.

Keywords. criminal policy, restorative justice

Introduction

In the history of narcotics during human civilization, at first it's purpose was for treatment in the world of health. In the times, it's not only for medicine but has been misused for the purpose of getting pleasure which ultimately makes human productivity decline. Therefore, the illegal distribution and use of narcotics is finally prohibited.

The State of Indonesia to achieve legal goals in accordance with Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "All citizens have the same position in law and government, must uphold the law and government without exception". In this way, every attitude, policy, and behavior of state apparatus and residents (citizens and foreigners) must be based on and in accordance with the law.

The rise of crimes or criminal acts related to Narcotics and materials that are often paired in the dark to make narcotics, as people have heard or read about from the mass media, need serious attention. The rate of development of the crime case concerned from year to year is growing rapidly even though there are regulations governing their circulation. It can be concluded that narcotics crime isn't a crime that is local (certain areas only), but has spread to all corners of Indonesia. Evidently, it's certain that almost every district /city jurisdiction in Indonesia has found abuse of Narcotics and Narcotics Prosecutors. It's abuse is carried out by individuals to involve certain groups in a community, to the upper middle class and even to the involvement of law enforcement officers.

Uphold and promote *the rule of law* and respect for the law, by ensuring a *due process* and fair treatment for suspects, defendants, convicts, conducting prosecutions and acquitting innocent people. Law enforcement in Indonesia must be based on established rules, all provisions governing the process of handling criminal cases must be implemented, deviations from handling criminal cases aren't justified.

In the field of civil law, the role of community members is greater, because the emergence of legal cases is completely left to the community. For this type of law enforcement, Cotterrell uses the term "*the invocation of law*" the state only provides facilities for law enforcement, while the rest is left to the people to act (or not act) by using the facilities provided. (Marxsen, 2018) Although there is no discrimination in the use of these facilities or the law, in reality on the ground, not everyone is in the same position to enjoy the facilities provided by law. The actors who have more power will dominate law enforcement. The power is in the form of knowledge, status, social relations and economic capabilities. With this power, they are better able to control and utilize law enforcement. This has been described in the discussion on dealing before the court. (Latumaerissa, 2019)

In 1963 Steward Macaulay conducted a very interesting sociological study of the enforcement of the law of contracts by the parties who have made the contracts themselves. The results of the study found a dimension that isn't merely logical-rational in law enforcement. When discussing the issue of legal mobilization above, it was mentioned that whether an incident will become a legal case or not, is determined by legal mobilization, ie whether community members or the police act or not. At the concept level, it can be said that unless "enforced" the law is also "used". (Pranomo, 2020) The use of law is not exactly the same as law enforcement, indicating that there is a strong element of choice. Even if a rule of law is in the positive law, it still depends on the person, whether the law will be used or not. Since modern law increasingly relies on the dimensions of form that make it formal and procedural, since then there has also been a difference between formal justice or justice according to law on the one hand and true justice or substantial justice on the other. In the context of such legal developments, it becomes relevant to talk about the use of law. Law enforcement cannot be judged as the same as providing justice/because people can enforce the law but by using it for the purpose of distorting and distancing from justice. Such use of the law doesn't mean violating the law, but merely shows that the law can be used for purposes other than achieving justice.

The 1994 O.J Simpson case, which is the context of our discussion today, deserves to be raised as such a world case, simply because it illustrates well the tension between legal justice and true justice. In Simpson's case, the criminal court is a good study material for how decisions are made. In the criminal justice process/truth is not the only goal. If this is placed in the context of the discussion, it can also be formulated that "true justice isn't the main goal in criminal courts". (Putra et al., 2020) In other words "formal justice is also a legitimate product of criminal trials" and the latter is what happened in the Simpson trial. The jury in Simpson's trial were not asked to vote on "whether they believe that Simpson committed the murder" but rather "whether the evidence from the prosecution proves beyond a reasonable doubt that Simpson was the culprit", hence the verdict "*not guilty*" (as given to Simpson) became a symbol of formal justice. (Aarssen, L. W., & Crimi, L. (2016). Legacy, leisure and the 'work hard—Play hard' hypothesis. The Open Psychology Journal et al., 2019)

Restorative justice is defined as a form of settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just settlement by emphasizing restoration to it's original state, and not retaliation. ("Legal Protection of Narcotic Abusers: A Restorative Justice Perspective," 2019) Linking Indonesia's current condition actually has a legal settlement mechanism based on local wisdom. The Fourth

Precept of Pancasila is a value that is very possible to practice restorative justice because deliberation emphasizes the best way and the good to be together, not the way of winning and losing as a reflection of strong and weak groups. On this basis, there are legal issues regarding the concept of criminal policy in an effort to overcome the crime of narcotics abuse based on restorative justice.

Methodology

This research is a normative research, which examines the study of documents using legal materials such as laws and legal theory. (Refina Mirza Devianti, 2021)

Research Results and Discussion

Acts of Narcotics Abusers

According to the narcotics law, narcotics abuse is divided into 2 (two) namely the crime of abuse and the crime of drug trafficking. It has the opposite nature but is declared a crime. Narcotics abusers are known as abusers as victims, while dealers are perpetrators. (Wetzell, 2020)

An abuser is a person who uses narcotics without rights or against the law, with the intention of possessing, controlling narcotics with the intention of being used for himself. A dealer is anyone who is involved in the distribution of narcotics without rights and violates the law by classifying him as possessing, controlling narcotics with the intent and purpose of being traded for profit. The purpose of the narcotics law is to distinguish between abusers and dealers.

Combating the Crime of Narcotics Abuse

Crime prevention can be done through penal or non-penal. Peter Hoefnagels said that the prevention of criminal acts can be done through criminal and non-criminal channels. Countermeasures according to Indonesian means efforts to prevent and overcome problems. The meaning of a crime comes from the word *het strafbaar feit* which means an act that can or may be punished, against the law, a criminal act, an offense. (Blom, 2006)

An act is a legal offense if the act is contrary to positive law. A statutory offense is an act that is contrary to the criminal law. Van Hamel said that offenses are divided into crimes and offenses, the division of offenses is based on the weight and magnitude of the act threatened, the nature of which is against the law, the severity of the offense against the law, and the magnitude of the error. (Vervaele, 2020)

The imposition of criminal sanctions is also a form of crime prevention efforts. Crime prevention and control efforts are criminal policies. Criminal policy cannot be separated from broader policies, namely social policies and community protection policies. (Campesi & Fabini, 2020) The use of criminal sanctions is an effort to prevent and overcome crime must be directed at efforts to realize social policies. (Cosar & Ozcan, 2021)

Overcoming drug abuse in Indonesia is already strict. The narcotics law and health law regulate the handling of narcotics abuse. Presidential Instruction of the Republic of Indonesia Number 12 of 2011 concerning Implementation of National Policies and Strategies for the Prevention and Eradication of Drug Abuse and Illicit Trafficking in 2011 - 2015 and Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning Implementation of Obligatory Reporting Narcotics Addicts is a way of handling narcotics abuse. Lack of information provided for narcotics abusers can lead to stigma from the community. The community also doesn't understand about narcotics crime so that education and socialization are needed among abusers and the community.

Closing

The concept of criminal policy as an effort to overcome criminal acts of narcotics abuse emphasizes crimes that violate individual rights. So, every violation of criminal law actually has 4 (four) related interests, namely people who violate their rights, society, the state, and the violators themselves. People whose rights are violated are those who have an interest in placing victims of crime as the main interest because the purpose of criminal justice is to resolve conflicts that occur due to violations of criminal law.

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