

MORAL LAW AND JUSTICE IN DRUG ABUSE REHABILITATION

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Abstract

Law as a social phenomenon is a reality of social life, or in other words, all forms of human relationships within society, whether they conform to human norms or rules of life or are prohibited, are described in law. Therefore, it can be said that what is established in law serves as a standard for governance and prohibitions in human life within society, aimed at creating a just, orderly, and prosperous life, thereby fostering a safe and happy existence. This situation can be seen specifically in the description of the national legal system, where the government of the Republic of Indonesia, since its independence, has sought to establish a national legal system to create a clean and authoritative state, so that the objectives of the Republic of Indonesia as stated in the 1945 Constitution to create a just and prosperous society, both materially and spiritually, will be achieved. The method used to analyze the problem will employ a descriptive research approach through library research and field research, utilizing data collection techniques such as interviews and document studies. Once the data is collected, it will be tested using deductive and inductive testing techniques. From the data generated in the research, it is evident that the factors causing criminal acts are to assist in committing criminal acts to obtain rewards in the form of goods or objects and/or destruction due to the intimate relationship with the perpetrator and/or revenge against the victim.

Keywords: Legal Review, Criminal Offenses.

I. INTRODUCTION

Rehabilitation is a way to restore a person's condition, which can be done through physical, mental, or social rehabilitation. The goal of rehabilitation is to restore a person's self-esteem, confidence, awareness, and responsibility towards their future, family, and social environment. It also aims to restore security so that they can carry out their social functions properly.¹ The provision of rehabilitation for drug addicts, drug abusers, and victims of drug abuse is one of the steps to provide recovery from the effects of addiction by providing comprehensive care and treatment. This is reinforced by the legal framework governing drug abuse rehabilitation, as stipulated in Article 2(1), which states that drug addicts, drug abusers, and victims of drug abuse

¹ Kasmanto Rinaldi, *Dinamika Kejahatan Dan Pencegahannya* (Malang: Ahlimedia Press, 2022), p. 269

are required to undergo rehabilitation services, which may be carried out voluntarily or through legal proceedings as outlined in Article 2(3) of the National Narcotics Agency Regulation No. 6 of 2022 on the Implementation of Continuous Rehabilitation.²

Rehabilitation is also regulated in Article 54 of Law Number 35 of 2009, which stipulates that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation.³ In practice, medical rehabilitation must be carried out first, followed by social rehabilitation, considering that drug addiction is a chronic brain disease that requires professional treatment. Meanwhile, social rehabilitation is a continuation of the completion of the medical rehabilitation program, which aims to rehabilitate drug users, victims, and addicts so that they are ready to return to society.

Basically, everyone wants to live well and wants to quickly escape the problems they face in the heart of an addict, even victims have the intention to stop using drugs. This occurs because of feelings of guilt toward parents, siblings, and the surrounding community. They also desire normal change within themselves, but due to drug abuse, both addicts and victims have their nervous systems bound by addictive substances, making it difficult to stop. Therefore, it can be concluded that drug abuse has multi-dimensional impacts, particularly on physical, mental, and social conditions.⁴

Thus, rehabilitation serves as a form of hope for recovery from the effects of drug abuse, both physical, mental, and social, in the sense of comprehensive recovery carried out by professionals. In addition to recovery, rehabilitation also addresses the underlying issues that drive drug users, who are victims of drug abuse, to consume drugs, ensuring that the desire to use them again is eliminated in a serious and thorough manner. Rehabilitation programs for drug abuse, both for victims and addicts, should be supported as an appropriate alternative to punishment because rehabilitation is able to accommodate the rights of drug abusers and addicts. This can be reinforced by looking at the legal, moral, and fairness aspects to increase the effectiveness of rehabilitation for drug abusers and addicts.

Humans cannot escape the values and norms that apply in society. Law emerges as an implication of an essence that offers a resolution to collective conflicts within society. Therefore, an ideal law is necessary to resolve such conflicts and disputes. While an ideal law is extremely difficult to achieve, the existence of positive law or the concept

² National Narcotics Agency Regulation Number 6 of 2022 concerning the Implementation of Continuous Rehabilitation.

³ Law No. 35 of 2009 on Narcotics.

⁴ Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Adytia Bakti, 1993), p. 1.

of justice established by the state can be seen as a means to resolve conflicts of interest involving individuals or groups.

Laws that function properly require authority, but the authority that exists must not violate the rights and interests of individuals, because laws also serve to protect human interests. In order for human interests to be protected, laws must be implemented and enforced; it is through law enforcement that laws become a reality. In enforcing the law, there are three elements that must always be considered: legal certainty (*rechssicherheit*), utility (*zweckmassigkeit*), and justice (*gerechtigheit*).⁵

Justice is the ultimate goal of law. To ensure that justice is achieved in accordance with the justice that exists in society, the law that is created must be based on morality, because law is inherently moral. This means that legal statutes, whether in the form of laws or those enforced by judicial institutions, will have no meaning and will not achieve a sense of justice if they abandon moral principles, whether by the lawmakers themselves or by law enforcement officials. The presence of injustice and arbitrary actions in the creation of laws or the enforcement of laws indicates that moral values have been abandoned. Morality pertains to the inner nature of humanity; it is the foundational norm (*grundnorm*) as the ultimate basis and foundation for all laws and their implementation. In the context of laws, morality is interpreted as the foundational norm.

Laws are made in order to run the government, while the purpose of forming a government is to protect all Indonesian citizens and the entire Indonesian nation, promote general welfare, educate the nation, and participate in maintaining world order based on independence, eternal peace, and social justice.⁶ Thus, fair law enforcement is based on ethical and moral foundations because, fundamentally, law is imbued with morality and justice.

II. RESEARCH METHOD

The type of research used in this study is library research, which uses literature relevant to the issue being studied as its data source, such as examining moral law and justice in drug abuse rehabilitation.⁷ To this end, this study will describe research related to moral law and justice in drug abuse rehabilitation. The research approach used is a normative juridical approach, which involves the examination and analysis of laws and theoretical issues related to moral law and justice in drug abuse. This study analyzes literature or secondary data as a basis for research by conducting a literature search related to the issues studied. Data analysis in this study uses a qualitative research analysis method that collects

⁵ Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Adytia Bakti, 1993), p.1.

⁶ Agus Santoso, *Hukum Moral Dan Keadilan* (Jakarta: Kencana, 2014), p. 6.

⁷ Sarifuddin Azwar, *Metode Penelitian* (Yogyakarta: Pustaka Pelajar, 1998), p. 7.

general data, which is then organized and processed into specific conclusions aimed at analyzing and structuring the issues to be studied. Basic references are found in the theory used as an initial basis, which will then be proven by collecting data from legal theory, legal doctrine, justice theory, moral theory, and so on.

III. ANALYSIS AND DISCUSSION

Law and Morality in Drug Abuse Rehabilitation

In a civilization, the state of society has the potential to cause conflict, and the conflicts that arise will result in laws as a form of resolution. Law is an implication of an essence that offers a resolution to collective disputes in society, so it is clear that ideal laws are needed to resolve conflicts that arise. In essence, ideal law is very difficult to achieve due to numerous factors and considerations. However, the existence of positive law or the concept of justice established by the state serves as a means to resolve conflicts, whether involving individuals or groups.⁸

In the codification of the history of legal philosophy, the Ten Commandments mention the background to codification as being the absence of true justice, so that in order to find justice, everyone wanted laws to regulate sanctions or punishments for criminals. On that basis, natural law was born. According to natural law, everything arises because of natural necessity, and so it is with humans, whose necessities in life are called laws or *nomos*.⁹

The rules and regulations established to govern and resolve conflicts within a society in a particular country are indeed essential. Even today, such rules remain indispensable and are codified into laws, which are then enacted as statutes. These statutes constitute positive law. Law ultimately seeks justice, and the justice in question resides within society. Fundamentally, the purpose of law is to regulate society fairly; however, the implementation of law and justice must be carried out by the government and the state, which possess the authority to enforce compliance with existing regulations.

The law can function properly with the existence of power that prioritizes and does not violate individual rights and interests. This is because the law serves as a protection of human interests through its implementation and enforcement. Therefore, law enforcement is a reality that must be considered in terms of legal certainty, benefits, and justice. In law enforcement, justice is a concern as the goal of the law. In order for justice to be achieved in accordance with the justice that exists in society, the law must be based on morality. This is because the law encompasses morality,

⁸ Herman Bakir, *Filsafat Hukum Desain Dan Arsitektur Kesejarahan* (Jakarta: Refika Aditama, 2009), p.20-28.

⁹ Santoso, *Hukum Moral Dan Keadilan*, Op.Cit. p.4.

meaning that all laws and legal norms must be in accordance with moral norms. Law, whether in the form of legislation or enforced by judicial institutions, will become meaningless and will not achieve a sense of justice if it abandons moral principles, whether by the lawmakers themselves or by law enforcement officials.¹⁰

Morality is related to human spirituality. Morality is also a basic norm or *grundnorm* as the ultimate foundation for all laws and their implementation. The existence of injustice and arbitrary actions in the creation of laws and the process of law enforcement certainly means that moral values have been abandoned. Understanding law in the sense of moral law is interpreted as a basic norm. According to Hans Kelsen, a fundamental norm functions as a necessity in the field of law, which then gave rise to his theory known as the *stufenbau* theory or ladder theory.

Basically, in the legal system, there is a functional relationship between one norm and another. The basis for the validity and legality of a norm lies in the norm above it, so the basis for the validity and legality of a provision lies in the regulation. The basis for the validity and legality of regulations lies in laws, and the basis for the validity and legality of laws lies in the constitution, which in turn is based on fundamental norms, also known as moral principles. Thus, moral principles form the foundation and legal basis of law in the context of the legal system.¹¹

Article 54 of the Narcotics Law states that drug addicts who use drugs or who have been victims of drug abuse must undergo medical and social rehabilitation. The concept of punitive measures (*maatregel*) as a type of sanction included in the Narcotics Law, which involves rehabilitation, is aimed at protecting society and achieving effectiveness in efforts to prevent and combat drug abuse. This concept also serves as a basis for ensuring equality between punitive measures and criminal sanctions, forming the foundation of the *doubletrack* system used to address narcotics-related issues.¹²

Drug abuse is a criminal offense, and a drug abuser is a criminal offender as stated in the general provisions of Law No. 35 of 2009 on narcotics, which defines a drug abuser as a person who uses narcotics without authorization or in violation of the law. In narcotics, there are two sides, namely the perpetrator and the victim, as in other criminal offenses. Regarding the victim of drug abuse, they are the criminal perpetrator themselves, or in other words, a drug abuser commits a crime against themselves. Therefore, this has become a concern for the government in drafting

¹⁰ Theo Hujibers, *Filsafat Hukum Dalam Lintas Sejarah* (Yogyakarta: Kanisius, 1986), p.190.

¹¹ Bachsan Mustofa, *Sistem Hukum Administrasi Negara Indonesia* (Bandung: Citra Adytia Bakti, 2001), p.36-37.

¹² Mohamad Fajar, "Penerapan Rehabilitasi Medis Dan Rehabilitasi Sosial Atas Penyalahgunaan Narkotika Bagi Diri Sendiri," *Jurnal Sosial dan Teknologi* Vol. 2, no. 5 (2022), p.1.

regulations related to narcotics abuse. The imposition of sanctions on victims of narcotics abuse, who are also perpetrators, must be distinguished from pure criminal acts in narcotics cases, such as producers, dealers, distributors, or couriers of narcotics.

Imposing the same penalties as for pure narcotics crimes and those involved in the illegal distribution of narcotics is the wrong decision. Therefore, prison sentences for victims of narcotics abuse are considered inappropriate in terms of the penalties imposed. Therefore, an alternative policy for victims of narcotics abuse is to provide medical or social rehabilitation for victims of narcotics abuse. The criminalization that occurs is a consequence of all the problems in human life. The application of criminal sanctions/punishments is not the only solution to reduce the incidence of criminalization. In the legal system, there is the principle of *ultimum remedium*, which is one of the principles in Indonesian criminal law stating that criminal law should be the last resort in enforcing the law. Mertokusomo defines *ultimum remedium* as the last resort, meaning that criminal sanctions can be used if other sanctions have failed to deter the perpetrator. This effort is aimed at ensuring that, in the lengthy criminal justice process, both victims and perpetrators of crimes can obtain justice and legal certainty.

This principle also contains the element of purpose so that criminal sanctions can be imposed on the right person because perpetrators of criminal acts also have human rights, including the right to justice, the right to life, and the right to reform. The existence of these human rights ultimately gives rise to the principle of *ultimum remedium* in law enforcement, which is interpreted as a middle ground that benefits all parties, including victims, perpetrators, and the broader community. Thus, in drug-related cases, this approach serves as a form of punishment or rehabilitative sanctions aimed at self-improvement while also seeking to deter future offenses through rehabilitation for victims of drug abuse.¹³

Drug-related crimes are considered special crimes because they are regulated by separate legislation. The application of special criminal provisions is possible based on the principle of *lex specialis derogat lex generalis*, which means that provisions that are specific in nature take precedence over general provisions.¹⁴ In addition to narcotics crimes being special crimes, the application of human rights in Law No. 35 of 2009 on narcotics in Article 54 regarding the application of rehabilitation for victims and addicts of narcotics abuse is another factor to consider. Rehabilitation sanctions

¹³ Novita Sari, "Penerapan *Ultimum Remedium* Dalam Penegakan Hukum Tindak Pidana *Penyalahgunaan Narkotika*," *Jurnal Penelitian Hukum De Jure*, Vol. 17, No. 3 (2017), p. 353.

¹⁴ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Bandung: PT Citra Aditya Bakti, 2003), p.119.

are alternative sanctions that can be applied to suspects and convicts in narcotics cases. In essence, criminal law is the harshest form of law among other legal instruments that control public behavior.

The consideration of these factors in narcotics criminal law regarding narcotics rehabilitation sanctions illustrates that the law is constantly evolving in line with the changing social order in society, thereby always dealing with concrete matters and human beings who live in accordance with the views of Hugo Sainzheimer. Thus, in this regard, the law is not separated from moral values. Law is not merely about the text of the law aimed at providing general certainty, but rather, the law – in this case, the narcotics law – can be interpreted with the aim of providing justice for those seeking justice. Thus, the application of law in rehabilitation sanctions for narcotics-related criminal offenses is not detached from moral principles, as the formation of an orderly society stems from good moral behavior.

The position of moral values in legal science and their implications for enforcement must first consider the relationship between law and morality, which is essentially closely linked in five ways: law requires morality; law is codified and more objective than unwritten morality; law relates to outward actions, while morality relates to a person's inner thoughts; morality is the essence of law.¹⁵ The connection between law and morality according to K. Bertens, as quoted in the article on legal morality in practical law as a virtue, states that law requires morality. There is a close connection between moral law and religion. Law that is not accompanied by morality will have no meaning and will be considered of poor quality because the quality of law is measured by morality. Moral values should not be separated from the law itself. Law without moral values is merely words that provide rules or regulations as norms but eliminate the values contained in Pancasila that are to be realized in law.

In its application of criminal sanctions for narcotics offenses against addicts and victims, consideration is given to alternative sanctions in the form of rehabilitation sanctions for addicts and victims, which are tailored to the judge's considerations in the court's decision. Thus, the intersection of law and morality in rehabilitation sanctions is applied due to the consideration of human rights in imposing rehabilitation sanctions as not the primary sanction in sentencing drug addicts or victims of drug abuse. This is also consistent with what is outlined in the Pancasila, which prioritizes the rights and obligations that every individual should possess. Thus, drug rehabilitation is one of the efforts to save addicts from drugs and the dangers associated with them, with the aim of helping users regain awareness of the

¹⁵ Dimiyati Khudzaifah, *Hukum Dan Moral* (Yogyakarta: Genta Publishing, 2018).

problem, assisting addicts and victims in self-control, empowering addicts and victims to live healthy physically and mentally, and preventing repeated dependence on drugs.

Law and Justice in Drug Abuse Rehabilitation

Justice as part of social values has a broad meaning and can even conflict with the law as one of the social norms. The measure of justice, as mentioned, actually extends into the realm of the ideal or the realm of aspiration because it lies within the philosophical realm of meaning that requires deep reflection to reach its deepest essence. Aristotle distinguishes justice into distributive justice and commutative justice. Distributive justice is justice that demands that everyone gets what they are entitled to, so it is proportional in nature. Here, what is considered fair is when everyone gets what they are entitled to proportionally.

The theory of natural law from Socrates to Francois Geny continues to uphold justice as the crown of law. John Rawls also emphasizes that a program of justice enforcement with a democratic dimension must pay attention to two principles of justice, namely, first, providing equal rights and opportunities for the broadest possible basic freedoms for everyone. Second, it must be able to rebalance socio-economic disparities so that they can provide mutual benefits for society, both for those who come from disadvantaged groups and those who are not. Adherents of the natural law paradigm believe that the universe was created with the principle of justice. The positivist paradigm of justice is seen as the goal of law. However, the relativity of justice is also fully recognized. In the utilitarian legal paradigm, justice is viewed broadly, and the sole measure of whether something is just or not is how much impact it has on human welfare, while what is considered beneficial and not beneficial is measured from an economic perspective.¹⁶

A just society is one in which the law is the highest authority in daily life, where interactions between people are widespread and the possibility of injustice may occur. In order to uphold the law, it is necessary to eliminate elements that have a negative impact, such as authoritarian power, abuse of authority, and other such things. Fundamentally, justice reflects a person's view of human nature and how they treat other people.

¹⁶ Subhan Amin, "Keadilan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat," *Jurnal Pemikiran Dan Tafsir Hadis* Vol. 8, no. No. 1 (2018), p. 7-10.

Justice is the cornerstone of the purpose of law. In enforcing the law, justice must be taken into account because the law must be fair, whereas fairness is subjective and not applied equally to everyone. The objectives of the law are diverse and vary according to legal experts, who distinguish three main objectives: the ethical school of thought, which holds that the primary purpose of the law is solely to achieve justice; the utilitarian school, which views the principle of the law as creating utility; and the normative school, which asserts that the principle of the law is to establish legal certainty. Law is for humans, so society expects benefits from the implementation or enforcement of law. Society has an interest in ensuring that the implementation or enforcement of law takes into account the values of justice, but it must be remembered that law is not identical to justice because it is general, binding on everyone, and does not discriminate based on circumstances, status, or actions performed by humans. Under the law, every crime committed by the parties involved is punished with a penalty/sentence in accordance with what is stated in the provisions of the law, so that justice according to the law is not necessarily the same as moral justice or social justice.¹⁷ When deciding on a case, judges are always faced with these three principles: legal certainty, justice, and the principle of benefit. These three principles must be implemented in a compromise, namely by establishing all three in a balanced or proportional manner so that there is no need to follow the principle of priority.

Justice serves to uphold and protect every human right and obligation, creating social order and welfare. The fifth principle of Pancasila, which states “social justice for all Indonesian people,” emphasizes that justice is very important in the life of the Indonesian nation. Society must be able to experience justice in their lives because justice is a right of every citizen. A person's justice must be guaranteed by the state. The application of justice in the implementation of social order in the principles outlined in Pancasila, in terms of improving the welfare of society and the sustainability of the law itself, can be accounted for in existing regulations. Legal justice is an unchangeable principle that applies anywhere and anytime. According to the natural law of justice, justice must be able to provide benefits and resolve various issues.¹⁸

Article 54 of Law No. 35 of 2009 on narcotics stipulates that drug addicts and victims of drug abuse must undergo medical and social rehabilitation, while Article 57 states that medical treatment and/or rehabilitation, as well as the recovery of drug addicts, can be carried out by government agencies or the community through religious and

¹⁷ Iasiana margaretha Tijow Sutrisno, Fenty Fuluhulawa, “Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi,” *Gorontalo Law Review* Vol. 3, no. No. 2 (2020), p.173.

¹⁸ Ibnu Artadi, “Hukum: Antara Nilai - Nilai Kepas Tian, Kemanfaatan Dan Keadilan,” *Hukum Dan Dinamika Masyarakat* Vol. 1, no. No. 1 (2006), p.68.

traditional approaches. The emergence of a new paradigm in viewing addicts and victims, who are no longer seen as criminals but as people suffering from a chronic illness, requires new policies in dealing with drug users who are no longer prosecuted but are instead sent directly to rehabilitation centers.

The emergence of a new paradigm in viewing addicts and victims, who are no longer seen as criminals but as people suffering from a chronic illness, requires new policies in dealing with drug users who are no longer prosecuted but are instead sent directly to rehabilitation centers. This paradigm shift involves a change in the imposition of penalties on victims and drug addicts, which is no longer the primary focus of criminal penalties for drug abuse. This aspect is a consideration for judges, so the imposition of alternative sanctions is based on proper consideration.¹⁹

IV. CONCLUSION

Rehabilitation as part of criminal sanctions for drug addicts and victims of drug abuse is a government effort to combat drug abuse. This is because victims and addicts of drug abuse require treatment and care, which necessitates judicial consideration as part of the judge's decision. Drug abuse is extremely dangerous because it has a detrimental impact on both the individual and their surroundings. This is due to the effects of drug dependency, which, if left untreated, will exacerbate the situation for both the user and those around them. Society has an interest in ensuring that the implementation or enforcement of law takes into account the values of justice, but it must be remembered that law is not identical to justice because it is general, binding on everyone, and does not discriminate based on circumstances, status, or actions performed by humans. Under the law, every crime committed by the parties involved is punished with a penalty/sentence in accordance with what is stated in the provisions of the law, so that justice according to the law is not necessarily the same as moral justice or social justice.

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¹⁹ Fithriat dan Oksep Adhayanto Shal, "Hukum Moral Dan Kekuasaan Dalam Telaah (Hukum Adalah Alat Teknis Sosial)," *Fiat Justisia Jurnal Ilmu Hukum* Vol. 10, no. No. 4 (2016), p. 679.

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