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**CRIMINAL POLICY ON THE PROBLEMS OF NARCOTICS
ABUSE**

Gatot Sugiharto (a)*
*Corresponding author

(a) Faculty of Law, Universitas Ahmad Dahlan, 42nd Pramuka St, Sidikan, Umbulharjo, Yogyakarta, Indonesia,
gatot.sugiharto@law.uad.ac.id

Abstract

The young generation shall be saved from the abuse of narcotics because they hold the future of Indonesia in their hands. The fate of this nation in the future will depend on the quality of present generation. Therefore, maintaining the generation becomes a necessity. The policy to amend the Law Number 22 Year 1997 to be the Law Number 35 Year 2009 on Narcotics requires in-depth assessment, whether the policy is appropriate and applicable to eradicate upcoming narcotics abuse in Indonesia. This research aims to find out how is the criminal policy of the problem of narcotics that includes the issue of the application of criminal law and non-penal policy towards drug abuse problems in Indonesia. This research is a normative research. As a normative research and using secondary data hence data collection method is done by studying, identifying, and reviewing legislation, books, and other documents related to government policy wither criminal law policy (penal) as well as non-legal (non-penal) policy. The analysis of this research uses qualitative descriptive method. The policy of criminal sanction formulation as stipulated in the Act 35 year 2009 concerning Narcotics has given a severe threat to the perpetrators of the crime of narcotics abuse, in the form of imprisonment and fine. Non-penal measures are undertaken in order to reduce and and mitigate the impact of narcotics abuse in the society and conducted either on the ground of intentionally government policy or societies awareness.

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1. Introduction

Nowadays, Indonesia faces an increasingly complex and serious problem, such as corruption, money laundering, pornography, law enforcement of human rights, as well as the threats of morality and mentality degradation among the youth. Without prejudice to other issues, the problem of future generation shall be in the top priority. The future of Indonesia depends on the recent generation of young people. The country needs to be more serious in maintaining and generating a strong, productive, creative, and capable young generation, preparing them to be the next leaders.

Along with the efforts of the state in preparing the strong and qualified future generations, the country faces serious challenges. One serious challenge is the rampant narcotic abuse. In fact, it does not only occur in Indonesia, but also in many countries. Irresponsible people have misused narcotics for their personal interest and benefit. They do not overlook the implication, such as plentiful of victims.

The globalization has brought rapid impact in life. In regards with the increasing abuse and illicit traffic of narcotics, preventive action involving all components of societies is deemed necessary. The handling of these crimes requires professional apparatuses who are capable of encouraging national and regional network. In addition, necessary strategic and innovative breakthrough have been taken to prevent and eradicate the abuse and illicit traffic of narcotics (P4GN) (Fabayo, 2012).

Narcotics have enormous benefits for the interest of health services, development of science, and technology. Narcotics are classified into three groups; each schedule has distinctive addictive substances and its effects are very influential on the body when people violate the medical rules. Therefore, abuse of narcotics is prohibited (Nasution, 2013).

The abuse of narcotics, indeed, is not a new problem. Current increasingly abuse of narcotics is worrying and may endanger the future of the state. As an effort to tackle and eradicate narcotics, the country shall take an effective strategy in the preventive and eradicated action towards this narcotics problem.

2. Problem Statement

As regulated in Article 1 section (2) of the 1945 Constitution, Indonesia is a state of law. Based on the concept, every component of the country, including the government and the citizen, shall abide and comply with the applicable law. Law becomes the supreme authority in Indonesia. Indonesia has legislated a regulation on narcotics, which is Law Number 35 year 2009. However, the enactment has not been able to combat narcotics crime, for the number of casualties is increasing every year. The increase requires the country to utterly elucidate the problem. The country shall determine strategic policies as an effort to eradicate or at least suppress the case of narcotic abuse. The punishment set in the policies are inadequate, thereby it requires non-penal methods.

To identify the policies of narcotic cases, it is necessary to conduct in-depth study to analyse the two questions of this research. First, what is the penal policies taken in the effort to tackle narcotic abuse in Indonesia? Second, how does the non-penal policy counter the narcotic abuse?

3. Research Questions

A policy of the crime prevention or known as "criminal politics" covers a wide range of scope. G.P. Houfnagels as cited by Barda Nawawi Arif said that crime prevention efforts can be pursued by Policies to prevent crime, or known as "criminal politics" covers a wide range of scopes. G.P. Houfnagels, as cited by Barda Nawawi Arif (2012b, p.12), states that crime prevention efforts can be pursued through:

- a. criminal law application;
- b. prevention without punishment;
- c. Influencing perspective of the society on crime and punishment through mass media.

There are two methods of criminal politics: penal measure (criminal law) and non-penal measure (exclusion of criminal law). According to G.P. The Houfnagels the prevention efforts as mentioned in point b and c are non-penal measures. From the correlation between criminal politics and the narcotics, it rises two questions:

- a. What is the penal policy taken in the effort to tackle narcotics abuse in Indonesia?

This question covers:

- i. The policy in the regulation of criminal offenses in the Narcotics Acts;
- ii. The policy in the regulation of criminal sanction against narcotics crime.

- b. How does the non-penal policy work to prevent narcotics abuse?

4. Purpose of the Study

The purpose of this research is to identify:

- a. The penal policy in the effort to tackle narcotics abuse in Indonesia which covers:
 - i. The policy in the regulation of criminal offenses in the Narcotics Acts; and
 - ii. The policy in the regulation of criminal sanction against narcotics crime.
- b. The non-penal policy of criminal sanction against narcotic crime

5. Research Methods

The research belongs to normative type of research, which, according to Hardijan Rusli (2003), aims to conduct legal inventory, review the legislative regulations, and to synchronize the legislation. This study employed secondary data obtained from reviewing legal materials, as well as literature and other related documents. The secondary data is divided into three categories:

- A. Primary legal material that is binding legal materials, consist of:
 1. Law Number 35 Year 2009 on Narcotics
 2. Government Regulation Number 25 Year 2011 on the Implementation of Compulsory Report of Narcotics Addicts;
 3. Presidential Regulation of Republic of Indonesia Number 23 Year 2011 concerning National Narcotics Body;

4. Presidential Decree of Republic of Indonesia Number 12 Year 2011 concerning the Implementation of the National Policy and Strategy of P4GN (Pencegahan Pemberantasan Penyalahgunaan dan Peredaran Gelap Narkoba, the Prevention and Eradication of Abuse and Illicit Traffic of Narcotics).
- B. Secondary legal materials which provides explanation of the primary legal materials, consist of:
1. Various public literature on the government policies in its effort to eradicate narcotics abuse;
 2. Books, scientific articles, any other law-related product in relation to this research;
- C. Tertiary legal materials upholding the primary material be it legal dictionary, language dictionary and so on.

Using the normative legal approach and the secondary data sources, the data collection methods are conducted by studying, identifying, and reviewing the legislation, books, and other documents related to government policies, both criminal law (penal) as well as non-legal (non-penal) policy. This study used qualitative descriptive method. The data are obtained from the literatures by describing the government policies in the efforts to eradicate narcotic abuse, by criminal law (penal) or non-criminal law (non-penal).

6. Findings

Crime prevention policies are divided into two categories: penal policy and non-penal policy. Penal Policy focuses on repressive action following the criminal conduct, while non penal policy emphasizes more on preventive action after the crime. In the macro criminal politic point of view, non-penal policy is the most strategic crime prevention policy because it concerns more on the prevention of the criminal conduct. The main goal of non-penal policy is to address and eliminate the conducive factors leading to the crime (Prasetyo, 2015).

Penal policy is also known as criminal policy. Marc Ancel (1965) believes that penal policy is a science and art that has a practical goal of enabling the better formulation of the positive law and providing guidance for the legislator as well as the courts that apply the law. This criminal law policy is one element of the Modern Criminal Science in addition to the Criminology and Criminal Law.

Penal Policy or criminal policy concerns on how the criminal law can be formulated properly and provide guidance for legislator (legislation policy), the application policy (judicial policy), and the implementation of criminal law (executive policy). Legislative policy is the decisive stage for its following stages. When the criminal legislation has been enacted, the purpose of the state has been determined such as in the form of determination of the criminal offence. This correlates with the criminalization process. According to Soedarto (1983), criminalization is a determination process of an individual's action as a criminal act. The criminal act would be charged a criminal sanction under legislation.

In relation to this, Arif (2012b) states that "the policy of making good criminal legislation is inseparable from the purpose of criminal prevention." While criminal prevention, according to Mardjono

Reksodiputro (1994), is an effort to control crime to be within the limits of societies tolerance. Furthermore, Arif (2012b) said that crime prevention policy in the criminal law means a part of criminal law enforcement policy. Therefore, the criminal law politic becomes a part of criminal prevention policy through the enactment criminal legislation as an integral part of social politics. Such social politics, according to Arif (2012a), can be interpreted as any rational effort to achieve the welfare of the societies and at the same time includes the protection of society.

6.1. Penal Policy on Narcotics Abuse Problems.

The stages of penal policy to enforce or apply criminal law consist of three stages. The first stage is legislation drafting (legislative policy). Second stage is the application (judicial policy), and the last is execution (executive or administrative policy) (Bahri, 2012).

The drafting stage is the law enforcement stage *in abstracto* by the legislative body. This stage is also referred to as the stage of legislative policy. A legislative policy is a planning or program of legislator about the measures to be undertaken in facing certain problem. The application stage is the stage of criminal law application by law enforcement from the police officers to the courts authorities. This second stage is also known as the stage of judicial policy. The execution stage is the concrete implementation of criminal law by the executor. This stage is an executive or administrative policy stage.

The imposition of a criminal sanction is seen as a process of accomplishing the policy through three stages. First, the stage of criminal determination by legislator. Second, the sentencing by the court. Third, the execution by authorities. Seen as a unified process, the first stage belongs to the legislative policy. The legislative policy is expected to results guideline for the next steps. Legislative policy is the most decisive stage for the subsequent stages at the time of criminal legislation drafted. It has determined the purpose of the law. In other words, criminal action prohibits particular action assumed to be criminal action.. In addition, there are some policy errors or weaknesses (Bahri, 2012).

A. Policy of the Drafting of Criminal Offence in Narcotics Act.

In the Law Number 35 Year 2009 on Narcotics, there are 4 (four) categories of unlawful acts prohibited by law and being charged certain criminal sanctions namely: (Siswanto, 2012).

- i. The First Category, the actions of owning, storing, possessing, or supplying narcotics and narcotics precursors
- ii. Second Category, acts in the form of producing, importing, exporting, or distributing narcotics and narcotics precursors;
- iii. The third category, acts of offering to sell, sell, buy, accept, facilitate the sale and purchase, exchange or lend narcotics and narcotics precursors;
- iv. The fourth category, the actions of carrying, sending, transporting, or transiting narcotics and narcotics precursors.

For medical purpose and based on medical indication, a doctor may inject narcotic type II or type III in limited amount and by particular preparation. It is in line with the provisions of the legislation. Patient can have, keep, and/or carry narcotic for himself. He must have valid evidence stating that the narcotics being possessed, stored, and/or brought are obtained legally (Siswanto, 2012).

Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation. Parent/guardians of narcotics addicts who are underage are obliged to report public health centers, hospitals, and/or medical rehabilitation institutions appointed by government for curing and/or treating through medical rehabilitation and social rehabilitation.

Adult narcotics addicts shall report themselves or by their families to public health centers, hospitals, and/or medical rehabilitation institutions and social rehabilitation appointed by government for curing treatment through medical rehabilitation and social rehabilitation. This compulsory report is regulated in Government Regulations Number 25 Year 2011 on the Implementation of Compulsory Report for Narcotics addict.

B. Policy of the Drafting of the Criminal Sanctions against Narcotics Crime.

To prevent and tackle the crime of narcotics abuse in Indonesia, there is a legal provision which regulates the sanction for narcotics user or dealer. The provision in question is the Law Number 35 Year 2009 on Narcotics. This law provides specific regulation compared to the Criminal Code. Thus, against narcotic abuse, the law is applied as a special regulation based on *lex pecialis derogat lex generalis*.

The regulation of criminal sanctions are set forth in article 111 to article 137 of the Law Number 35 Year 2009 on Narcotics. Those articles have sufficient threat of sanction to narcotics abuse case. Therefore, the regulation of criminal sanctions in the Narcotics Act has given a maximum threat to the perpetrators of narcotics abuse.

6.2.Non-Penal Policy on Narcotics Cases.

The policy of criminal prevention would be maximized if it does not concern on the application of penal policy only, but also on the maximum use of other facilities which are considered as playing strategic role in dealing with the crime. Criminal prevention policy is essentially an integral part of community protection. Therefore, the main or ultimate purpose of criminal politics is “the protection of the people to achieve their prosperity.”

It is one of the statements in the 34th course reports organized by UNAFEI in Tokyo in 1973, which reads as follows: “It is understood that one of the crime prevention efforts is to apply criminal law along with its penalty sanctions. However, this effort is still often doubted. The application of criminal law in combating crimes has been going on for hundreds of years. Meanwhile, the anti-social controlling, imposing criminal punishment for a guilty person who break the criminal regulation, is a social problem that has an important legal dimension” (Syaiful Bakhri, 2012).

The rational efforts of the society to combat crime include activities of legislators, police officers, prosecutors, judges, and executor of punishment. They are interrelated according to their respective functions in the process of enforcing criminal law in the crime prevention. Criminal law should be maintained as a means of protecting the public by repairing or restoring the criminals, regardless the balance of the interests of individual perpetrators of crime and society. Hence, social policy can be understood as any rational endeavour to achieve the welfare of society (Syaiful Bakhri, 2012).

Thus, criminal politics is essentially an integral part of social politics, the policies or efforts to achieve social welfare. Crime prevention efforts requires a policy approach, in the sense that there is

cohesion between criminal politics, the integration between crime prevention efforts by means of "penal" and "non-penal" (Syaiful Bakhri, 2012).

Affirmation of the needs of social and criminal measures shall be integrated with the overall social policy and national development plan. Departing from such an integral conception, crime prevention policy has little meaning if social policy or development policy creates criminogenic and victimogenic factors. In relation to this issue, the sixth UN Congressional Commission's report on "the correlation between the development and the increasing crimes could become such if it was not rationally planned, disregarded cultural and moral values and did not include integrated social defence strategies." Similarly, in discussing the issue of "New Perspectives and Criminal Justice and Development", it is also stated: "it was felt that development per se was not responsible for the increase in crime. Crime, with its attendant costs to society, was seen not only as a hindrance to development, but also, in some cases, as a consequence of the latter, particularly of unplanned or inadequately planned economic growth and social imbalances." (Syaiful Bakhri, 2012.)

Similar statements are also seen in one of the considerations of the "Milan Plan of Action" of the 7th UN Congress as follows, "The past years have witnessed rapid and far reaching social and economic transformations in many countries. Development is not criminogenic per se, especially where its fruits are equitably distributed among all the peoples, thus contributing to the improvement of overall social condition; however, unbalanced or inadequately planned development contributes to increases of criminality." From the statement of the UN congress, it clearly indicates an affirmation that the development is not inherently criminogenic, in particular, when the results are equitably distributed and equitable to all people, and supporting all social conditions. (Syaiful Bakhri, 2012).

However, the development can be criminogenic or can increase crimes if the development is not rationally planned; unequally or unbalance planned; ignoring cultural and moral values; and does not include an integral community protection strategy. In terms of the concept of community protection, through rational debate, it can be concluded that when people base the criminal law on the concept of community protection, the next task is to improve the maximum results at maximum cost for the sake of the society and minimum suffer for the individual. One must rely on the results of scientific research, on the effectiveness of various sanctions (Syaiful Bakhri, 2012).

From the point of criminal politics, the strategic issue that must be addressed is to deal with the problems or social conditions that directly or indirectly can cause or trigger the crime. It means that handling these issues is precisely the key strategic position seen from a criminal standpoint. It is therefore likely that the 6th UN Congress of 1980 takes serious concern to address this issue. In consideration of the resolution of "Crime Trends and Crime Prevention Strategies," which states: the problem of crime impedes progress for achieving the quality of life for all people; that crime prevention strategies must be based on the elimination of causes and conditions that trigger crime. The main causes of crime in many countries are social inequality, racial and national discrimination, low standards of living, unemployment, and illiteracy among the large population (Syaiful Bakhri, 2012).

Considering such matters, the resolution states, among other things, "to call upon" all members of the United Nations to take action in their power in to eradicate the conditions which degrade human

dignity and cause crime, including unemployment, poverty, illiteracy, racial and national discrimination, and various forms of social inequality. The integral policy emphasising on reduction or elimination, the conditions providing opportunities for the occurrence of crime, also attract the 7th UN Congress of 1985. Affirmed in the congress document on "Crime prevention in the context of development" (document A/CONF.121/L.9), the elimination of causes and conditions that constitute crime must be a "fundamental crime prevention strategy." Such an attitude and strategy also are continued in the 8th congress of 1990 in Havana, Cuba (Syaiful Bakhri, 2012).

The congress documents Number A/CONF.144/L/17 (on "Social aspects of crime prevention and criminal justice in the context of development"), stated that:

"the social aspects of development are important factors in achieving the objectives of crime prevention strategies and shall be given the highest priority. The objectives of development, economic growth and international economic cooperation should aim to guaranteeing human rights for a life free from hunger, poverty, illiteracy, ignorance, disease and fear of war and allowing humanity to live in a healthy environment" (Syaiful Bakhri, 2012).

The 8th Congress identifies conducive factors for wider and more detailed crimes. For example poverty, unemployment, illiteracy, absence/lack of adequate housing, and unsuitable educational and training system. Other examples are the increasing number of people with no prospects due to the process of social integration as well as exacerbating social imbalances and the loosening social and family ties. In addition, there appeared such conditions that make it difficult for people who migrate to cities or other countries; destruction of cultural identity along with racism and discrimination; causing disadvantages/weaknesses in the social field, welfare, and in the field of occupations. The last, in details, cause severe conditions, such as (Syaiful Bakhri, 2012):

- 1) the decrease or retreat (quality) of urban environments that encourage in increasing crime and the reduced of (insufficient) services for neighbourhood facilities;
- 2) difficulties for people in modern societies to integrate properly in their community, within their family, in the place of employment or in their school premises;
- 3) the abuse of alcohol, drugs and others whose users are also expanded due to the factors mentioned above;
- 4) the extends of an organized crime activities, in particular drug trafficking and the storage of stolen goods;
- 5) Impulses (especially by the mass media) on ideas and attitudes that lead to levels of violence, inequality or tolerance;

The question on how far the conducive factors identified by the 8th UN congress in accordance with the situation in Indonesia would still need to be supported by the results of research. This is important in terms of rational criminal politics. In relation to the need for rational research and planning, the "Guiding Principles" concluded in the 7th UN Congress of 1985, among others, states that "Projects and development programs planned and implemented in accordance with local, regional, and national realities should be based on reliable research and foreseeable future developments or trends of crime. Besides, it should also be based on studies of the social effects and consequences of decisions and policy

investigations. Feasibility studies should also include social factors, and supplemented by research on possible criminogenic outcomes and alternative strategies to avoid them.” (Syaiful Bakhri, 2012).

Based on the description of how some UN Congress recommend the policy outside the Criminal Code, in order to combat narcotic abuse, it is also necessary to apply non-penal policy tools. The country has taken various efforts through its special body responsible for the eradication of the abuse and illicit traffic of narcotic, namely National Narcotic Agency. Another effort is from independence party, particularly the community, concerning on the dangers of drug abuses and the sustainability of the nations’ generations.

These non-penal measures are undertaken in order to reduce and cope with the impact of narcotics abuse in the community, this is done by both government deliberate policy and community awareness. Policies deliberately carried out by the government in combating the rise of narcotics abuse are:

1. The establishment of the Law Number 35 the Year 2009 on Narcotics, especially on the placement of addicts as victims and not as perpetrators of crime. It belongs to a non-penal means, which is an attempt to decriminalize the addicts.
2. The establishment of Government Regulation No. 25 of 2011 on the Implementation of Compulsory Reports for Narcotics Addicts. This means the government deliberately intend to reduce the abuse of narcotics by treating/curing the addicts in order not to abuse the narcotics again. To achieve this goal, the State appoints the Obligatory Recipient Institution (IPWL, Institusi Penerima Wajib Lapor) which is assigned to assist the recovery of narcotic addicts, so as not to re-abuse the narcotics.

In addition to non-penal policies that prevent narcotics abuse in the community, some other efforts are as follows:

1. To provide education about healthy lifestyle without drugs to the community either done by National Narcotics Agency, Health Department or by society self-exploring counseling
2. Establishment of Task Force (Satuan Tugas, SAT GAS) of anti-Narcotics abuse in various circles including workers, schools, families, to protect them based on their respective environment.
3. Provide a conducive environment for the community to express in accordance with their potential so that they can work and develop themselves to achieve the future expectations.

7. Conclusion

The research results conclude as follows:

- a. Penal Policy on Narcotics issues as set forth in the Act Number 35 the Year 2009 on Narcotics is concerning the formulation of the criminal offences. First category is the actions of owning, storing, possessing, or supplying narcotics and narcotics precursor. Second category is in the form of producing, importing, exporting, or distributing narcotics and narcotics precursors. The third category is the acts of offering to sell, buy, accept, facilitate the sale, and purchase or exchange of narcotics and precursors of narcotics. The fourth category is the actions of bringing, transferring, transporting, or transiting narcotics and narcotics precursors.

- b. The formulation policy of criminal sanctions as regulated the Law Number 35 the Year 2009 on Narcotics has given a serious threat to the perpetrators narcotics abuse as being charged with imprisonment and fine.
- c. Non-penal measures are undertaken in order to reduce and combat the impact of narcotics abuse in the community, this measures are undertaken by the policies of government deliberatively and society's awareness.

In addition to non-penal policies that prevent narcotics abuse in the community, some other efforts are as follows:

- a. To provide education about healthy lifestyle without drugs to the community either done by National Narcotics Agency, Health Department or by society self-exploring counseling.
- b. Establishment of Task Force (Satuan Tugas, SAT GAS) of anti-Narcotics abuse in various circles including workers, schools, families, to protect them based on their respective environment.
- c. Provide a conducive environment for the community to express in accordance with their potential so that they can work and develop themselves to achieve the future expectations.

Based on the results of the research, there are some suggestions and recommendations as follows:

- a. Efforts to eradicate narcotics abuse should maximize the penal policy as an instrument for law enforcement and keep applying non-penal policies.
- b. Law Enforcement Policy is not enough to only applying the Act Number 35 the Year 2009 on Narcotics but also needs to apply the Act Number 8 Year 2010 on Eradication of Money Laundering,
- c. Considering the addicts as victims and not the perpetrators of criminal acts so that the optimization of the role of IPWL should be also improved through the socialization of the role of IPWL, therefore the public will understand the importance of rehabilitation for addicts and not only punish addicts.

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