

Implementation Of Criminal Sanction And Double Track System As Sentencing System On Drug Abusers In The Langkat Penitentiary Class IIA

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Implementation Of Criminal Sanction And Double Track System As Sentencing System On Drug Abusers In The Langkat Penitentiary Class IIA

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Abstract

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Drug traffic has gone rampant throughout the world, including in Indonesia. This research is very important to help the government program in saving young generation from drug abuse and to provide deterred effect for perpetrators of criminal act; besides that, it is also used to achieve Renstra target of UMN Al-Washliyah researches in order to cope with any problems by using legal approach formulated in the Principle of Scientific Pattern of UN Al-Washliyah, Medan with it Prioritized Research: "Study on Law ad HAM (Human Rights). The research used Research and Development (R & D) method. It was expected that the result of the research, with its title, "The Implementation of Double Track System: Imprisonment and Rehabilitation as the Punishing System for the Perpetrators of Narcotic Abuse in the Penitentiary Class II, Langkat," could be beneficial for providing input for Law Enforcement Agency, especially in Langkat Regency in implementing Double Track System in narcotics criminal act.

Keywords: double Track System, Narcotics Offense, Rehabilitation, Imprisonment.

1. Introduction

Drug abuse runs rampant throughout the world, especially in Indonesia, and it has reached to the alarming level. According to the Minister of Law and Human Rights, Amir Syamsuddin, 98 cases of narcotics smuggling in penitentiaries were thwarted in 2011, but only 12 cases were thwarted in 2012. The problem was that penitentiaries in Indonesia have become the potential market for drug dealers. There are many narcotics users are imprisoned in penitentiaries that have a lot of money; therefore, they are still addicted to narcotics. The problem faced by the Indonesian people today is that we still consider that drug abusers are criminals so that they are mixed with the other criminals in one prison. In reality, they are in the condition of dependency on narcotics; they are really sick physically and psychologically. They need medical rehabilitation to recover from their bad condition. When they are put to prison without any medical therapy, it will never solve their problem since they are in the condition of drug dependency^[1]

Imprisonment for drug abusers should be changed to double track system in punishing them; besides sentencing them in penitentiary, they can also punished by rehabilitating them. Imprisonment for drug abusers is the exploitation of their freedom and has its negative effect so that the objective of punishment cannot be realized maximally, and the fact is that many cases of drug traffic are controlled from penitentiaries. Law No. 35/2009 on Narcotics gives the authority to judges to sentence the victims of drug addicts with rehabilitation in the form of social and medical rehabilitation. These types of rehabilitation are the period of being treated medically and psychologically which is considered as the same period of being imprisoned. Unfortunately, we find it very rare for judges to hand down verdicts on punishment with medication and medical and psychological treatment by sending them to medical and social rehabilitation centers. It

can be seen from hundreds of cases which occur in Langkat where there is no prisoner who is imprisoned in the Lapas Narkotika Langkat (the Langkat Narcotics Penitentiary) because of judges' verdicts by using this two-way system, double track system. In 2015, based on the interviews with the wardens of the Langkat Narcotics Penitentiary, it was found that only 15 prisoners who served their sentence not in prison but in rehabilitation center because they had fulfilled the requirements proposed by the screening team of BNN (National Narcotics Agency) Deli Serdang. Judge's verdict with double track system, and rehabilitation has not been implemented so far.

Narkoba is the abbreviation of Narcotics, Psychotropic, and other active substances. The problem which has to be faced in North Sumatera concerning Narcotics is that North Sumatera ranks the second after DKI Jakarta in the level of using narcotics. This case is told by the Combating Deputy of BNN RI, Irjen Arman Depari during the discussion with the team of "Narcoba Perang Zaman Now" (Today's Fighting against Narcotics) in Medan, on Friday, May 11, 2018. He stated that in 2015 "East Kalimantan ranked the second, but today North Sumatera ranks the second in Indonesia for narcotics users," says Arman^[1]

Surprise inspection on drug users in a Penitentiary will only get temporary effect. The root of the problem is actually the great demand for narcotics and the great supply of narcotics which cannot be stopped, and it is even increasing.

Therefore, a rehabilitation centers should be provided, especially for the perpetrators of narcotics criminal act. This is one of the solutions for Narcotics Penitentiaries in Langkat and Pematang Siantar, North Sumatera Province. They are actually the victims of drug abuse who need the process of recovery from the dependency on this illegal drug. Imprisonment is not the correct solution for this case; the right one is to detain and to provide medical therapy for them. It is undeniable that many drug users who are being imprisoned in Penitentiaries still depend on narcotics. This is because they are only detained physically but not treated medically. What they actually need is medical therapy which is gotten inadequately. It is highly recommended that they get correct medical and social therapies. Establishing penitentiary based-rehabilitation center is highly needed in order that drug users can be handled accurately. Indonesian government has issued a special law on drug abuse in Law No. 35/2009. The cases of drug abuse do not only come from the Indonesian people in various parts of Indonesia but also come from foreigners from various countries who come to Indonesia.

Actually, the regulation on the implementation of double track system in sentencing has been found in Article 127 of Law No. 35/2009. This system is concerned with blaming/suffering element and developing element which have to be accommodated in double track system in criminal sanction. Double track system demands the harmony between criminal sanction and rehabilitation as the recovery and prevention for drug abusers^[1]

1.1 Double Track System of Sentencing

One of the forms of sentencing on drug or narcotics abusers is rehabilitation since it is one of the government's efforts to handle drug abuse. Regulation on rehabilitation for the victims of drug abuse is an alternative sentencing or punishment imposed by judges; it is taken into account as the period of serving one's sentence in prison. Rehabilitation as legal act is a process of recovering clients as the victims of drug abuse in a certain period of time the purpose of which is to change their behavior and individual function in society before they consume narcotics B. The procedure of legal sanction imposed on the victims of drug abuse is specified in the Circular Letter No.04/2010 in which the judges principally punish in the form of rehabilitation. In this case, the Panel of Judges is required to appoint clearly and firmly the nearest place for the rehabilitation in their judicial verdicts. The rehabilitation places are a) medical and social rehabilitation institution managed and/or couched, and monitored by BNN (National Narcotics

Agency), b) RSKO (Special Hospital for Drug Addicts) Cibubur⁴ Jakarta, c) Mental Hospitals in all over Indonesia (Depkes RI), d) Rehabilitation Center of the Department of Social Affairs of the Republic of Indonesia and UPTD (Regional Technical Implementation Unit), and e) Referential places of rehabilitation institution organized by the people who have obtained accreditation from the Department of Health or the Department of Social Affairs (at their own expense). Therefore, what it means by narcotics criminal act is all actions done by a person or a corporation against law or without any right doing illegal act. That person or corporation can be punished as it is specified in Law No. 35/2009 on Narcotics Sentence, starting from the lowest level, 6 (six) months of imprisonment until death sentence while fine punishment starts from IDR.1,000,000 (one million rupiahs) until IDR.20,000,000,000 (twenty billion rupiahs).

In imposing criminal sanction concerning narcotics criminal act, there is a system which is known as 'double track system' which means a basic idea about the system of sanction which becomes the basis for any policy and the use of sanction in criminal law. In this case, it is double track system in imposing a sanction in criminal law. Even though there is no term of basic idea of double track system explicitly, viewed from its background of its emergence, it can be concluded that the basic idea of this system¹ is as follows:

In Law No. 35/2009 on Narcotics sentences as the following actions:

- (1) the Judge who passes judgment on drug addicts can
 - a. decide to order the defendant to be under the treatment and/or medication through rehabilitation if the drug addict is proved guilty committing narcotics criminal act; or
 - b. determines to order the defendant to be under the medication and/or treatment through rehabilitation.¹

1. If the narcotics addict is found not guilty in committing narcotics criminal act:

- (2) The period of being under medication and/or treatment for narcotics addicts as it is specified in paragraph (1), letter (a) is considered as the period of imprisonment.

The clause above confirms that the use of the phrase, hand down a verdict on drug addicts who is proved guilty in committing narcotics criminal act, means that the judge's decision is a verdict (punishment) for the drug addicts. In the concept of the National Bill of the Criminal Code/2007, it is confirmed that rehabilitation is regulated as follows:

- (1) Rehabilitation is imposed on the perpetrator who commits criminal act and who
 - a. is addicted to alcohol, narcotics, psychotropic, and the other additive substance and/or
 - b. suffers from sexual disorder or mental disorder;
- (2) Rehabilitation is done at the medical and social rehabilitation center, either owned by the government or by private companies.

The two points above reflect the form of sentencing on the perpetrators as drug addicts. A drug addict is a person who uses or abuses narcotics, and he is highly dependent on it, either physically or psychologically.¹

Besides that, a drug addict who can be rehabilitated is the one who is not a drug dealer as it is stipulated in Law No. 35/2009 on Narcotics. It has been in accordance with the concept of sentencing specified in the Bill of the Criminal Code in 2007 which has its own basis: Pancasila (National Ideology) and the 1945 Indonesian Constitution of the Republic of Indonesia in which its principles are justice, protection, humanity, order, aegis, security, scientific values, and legal certainty.

The objective of Law on Narcotics is as follows:

- a. to guarantee the availability of narcotics for health care and/or scientific and technological development;
- b. to prevent, to protect, and to save Indonesian people from drug abuse;
- c. to eradicate⁷ to combat illegal drug traffic and narcotics precursors; and
- d. to guarantee the regulation on medical and social rehabilitation for the victims of drug abuse as drug abusers and drug addicts.

Rehabilitation is one of the Indonesian government's efforts to cope with narcotics abuse. The regulation on rehabilitation is for the victims of drug abuse. The regulation on it for drug abusers is an alternative punishment which is handed down by judges, and it is considered and calculated as the same period of imprisonment. Rehabilitation is a recovery of a client with the disorder in narcotics addiction in a certain period of time which is aimed to change his behavior and his individual function in society to be back to his original condition before he consumed narcotics. The procedure of rehabilitation is regulated in the Circular Letter of the Supreme Court No. 4/2010 on Placing Drug Abusers, Victims of Drug Abuse, and Drug Addicts to a Medical and Social Rehabilitation Center appointed by the Heads of the High Courts and the District Courts throughout Indonesia.

The implementation of sentencing as it is specified in Article 103, letter (a) and letter (b) of Law No.35/2009 on Narcotics can only be handed down in the classification of criminal act as follows:

- a. A defendant is caught red-handed by the Police and BNN;
- b. While he is caught red-handed, there is exhibit evidence of the use in 1 (one) day with the detail as follows:
 1. 1 gram of group of methamphetamine (shabu)
 2. 2.4 gram of group of MDMA (ecstasy)
 3. 1.8 gram of group of heroin
 4. 1.8 gram of group of cocaine
 5. 5 grams of group of hashish
 6. 5 grams of cocaine leaves
 7. 5 grams of mescaline
 8. 1 gram of group of fentanyl
 9. 0.5 gram of group of methadone
 10. 1.8 grams of morphine
 11. 0.96 gram of group of pethidine
 12. 72 grams of group of codeine
 13. 32 mg of group of bufrenofrine
- c. Laboratory test certificate proves that the defendant positively uses narcotics, based on the request of investigators.
- d. The case needs a certificate from a government psychiatrist appointed by judge;
- e. There is no evidence that the defendant has been involved in illegal drug traffic.

In the case of the judge hands down a verdict on ordering to do legal action on rehabilitation for a defendant, the Panel of Judges has to appoint firmly and clearly the nearest place for the rehabilitation in their verdict. The rehabilitation centers are as follows:

- a. A medical and social rehabilitation center which is managed and/or developed and supervised by the National Narcotics Agency (BNN);
- b. RSKO (Drug Dependency Hospital) Cibubur, Jakarta;
- c. Mental Hospitals throughout Indonesia (Depkes RI);
- d. Rehabilitation Institution of the Department of Social Affairs of the Republic of Indonesia and UPTD (Regional Technical Implementation Units);
- e. Other referential and rehabilitation institutions organized by the people accredited by the Department of Health or the Department of Social Affairs (their own expense). The judge has to be very careful in handing down the verdict on the period or the duration of the rehabilitation process^[1]

1.2 Problems

The research problems are as follows: How is the implementation of the Model of Double Track System – criminal sanction and rehabilitation as the system of sentencing for the perpetrators of narcotics abuse is implemented in the Langkat Penitentiary Class IIA? Is it

possible to implement the Model of Double Track System as a system of sentencing for the perpetrators of narcotics abuse in the Langkat Penitentiary Class IIA? Are there some obstacles in implementing the Model of Double Track System as a system of sentencing for the perpetrators of narcotics abuse in the Langkat Penitentiary Class IIA? What efforts which have to be made in handling the implementation of the Model of Double Track System as a system of sentencing for the perpetrators of narcotics abuse in the Langkat Penitentiary Class IIA, North Sumatera, Indonesia?

1.3 Objectives

The objective of the research is to find out the implementation of the Model of Double Track System - criminal sanction and rehabilitation as the system of sentencing for the perpetrators of narcotics abuse in the Langkat Penitentiary Class IIA, whether it is possible to implement the Model of Double Track System as a system of sentencing for the perpetrators of narcotics abuse in the Langkat Penitentiary Class IIA, some of the obstacles in implementing the Model of Double Track System as a system of sentencing for the perpetrators of narcotics abuse in the Langkat Penitentiary Class IIA, and the efforts which have to be made in handling the implementation of the Model of Double Track System as a system of sentencing for the perpetrators of narcotics abuse in the Langkat Penitentiary Class IIA, North Sumatera, Indonesia.

2. Research Method.

This research used research and development method.¹ It consisted of the source of data which would be divided into the source of primary data and the source of secondary data, and the method of gathering the data,

The source of data in this research was classified into two sources: primary data and secondary data, primary data were obtained directly from the respondents; they were law practitioners and educators in helping complete the research product and secondary data were gathered by conducting library research. They consisted of laws, research reports, seminars, and documents related to the research problems.

The methods used for gathering the data were as follows, first, observation was used to gather initial data, second interview were performed with some law practitioners and other practitioners in criminal law, third documentary study was used to find out clearly the existing data as the comparative materials in this research and finally focus group discussion was used to validate the design of the product done by the researchers to law practitioners and educators to get the validation.

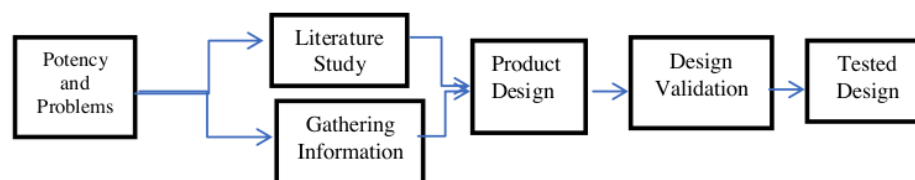


Fig 1. Research Linear Diagram

3. Result and Discussion

3.1 Implementation of Double Track System Model in the Langkat Narcotics Penitentiary Class IIA

The research used descriptive analytic method. This method was used to get clear and accurate description which was in accordance with the objective of the research: Implementation: Criminal Sanction and Action (Double Track System) as Sentencing System for Narcotics Abusers in the Langkat Narcotics Penitentiary Class IIA

From the result of field research in the Narcotics Penitentiary in Langkat Regency, based on the interviews with Mr. Raymond, the Sub-Section Head of Public Guidance and Treatment showed that of all prisoners in this Penitentiary, no one of them have ever been punished by rehabilitation. This indicates that double track system (action and punishment) has not been practiced for narcotics criminal act perpetrators. Nevertheless, there is a program of rehabilitation as it is specified in Article 127 of Law No. 35/2009: health rehabilitation and social rehabilitation program. The program which is performed today in the Langkat Narcotics Penitentiary is social rehabilitation program; it is not double track system program based on the Langkat District Court's Verdict. The result of the interview with Mr. Raymond showed that the Langkat District Court has never handed down a verdict on double track system for the perpetrators of drug abuse which means that double track system has never been implemented in Langkat Regency. It also indicates that all perpetrators who have committed narcotics criminal act are put to the penitentiary and they are imprisoned in the Langkat Narcotics Penitentiary, based on the District Court's Verdicts.

It is, of course, contrary to Law No. 35/2009 which regulates the implementation of sanction for any perpetrators committing narcotics criminal act with double track system as it is specified from Article 111 until Article 148, especially Article 126, Article 127, and Article 128 which mandates the obligation to provide medication or rehabilitation for drug addicts or for the victims of drug abuse.

Actually, double track system should be implemented in the Langkat Narcotics Penitentiary for Children as it is specified in Law No 11/2012 on the System of Child Criminal Administration of Justice. In reality, however, this double track system is rarely implemented. The judges tend to implement single track system in the form of imprisonment and not in the form of rehabilitation.

Rehabilitation which is implemented in Langkat Narcotics Penitentiary is social rehabilitation for prisoners as it is specified in Article 127, paragraph (3) of Law No. 35/2009 which reads:

"...in the case of drug abuse as it is specified in paragraph (1) can be proved as the victim of drug abuse, The abusers have to be rehabilitated and to undergo media rehabilitation and social rehabilitation."

Prisoners who participate in this rehabilitation program will be selected by the team from BNN Deli Serdang with feasible and infeasible criteria. This social rehabilitation is done is followed by prisoners who have passed and considered feasible within 6 (six) months. Based on the interview with Mr. Dayat, the Sub-Section Head of the Social Rehabilitation Manager in the Langkat Narcotics Penitentiary in 2015, it was found that this Penitentiary had 15 narcotics prisoners to be socially rehabilitated, and in 2019 the prisoners who passed the selection to participate in the social rehabilitation program increased to 400 prisoners. He further said that health rehabilitation program was carried out in that year in the Pematang Siantar Penitentiary.

3.2 Is it possible for Double Track System to be Implemented in the Langkat District Court for Narcotics Abusers

According to some experts interviewed by the researcher such as Dr. Nelvitia Purba who states that double track system can be implemented because its legal ground is clearly regulated in Law No. 35/2009 because narcotics abusers or the victims of narcotics abuse have to be imprisoned; they need to be rehabilitated to bring back their original condition. However, the result of the interview showed that up to the present time there has been no judge who hands down a verdict by using double track system. The judges tend to practice single track system in the form of imprisonment. The data in the field showed that this double track system (action and imprisonment) should be socialized

so that judges will dare to implement double track system in sentencing because not all perpetrators who commit narcotics criminal act are criminals. Many of them only want to be experimental or become the victims due to environmental factors which cause them to use narcotics. Article 10 of the Civil Code further regulates Double Track System – Principal Punishment and Supplementary Punishment.

3.3 Obstacles in Implementing Double Track System in the Langkat Narcotics Penitentiary Class IIA

From the result of interview with the wardens of the Langkat Narcotics Penitentiary Class IIA, it is found that there are some obstacles in implementing Double Track System are :

1. Adequate facility and infrastructure;
2. Rehabilitation Center for narcotics abusers and the victims of drug abuse is very rare;
3. In the process of court's trial, judges implement more on Single Track System by imposing criminal sanction in the form of imprisonment;
4. Budget should be regulated clearly when the system of action punishment and criminal sanction will be implemented;
5. Facility or rehabilitation center for the victims of narcotics abuse is being rehabilitated and for the big bosses of narcotics criminal act such as drug dealers. Therefore, they have to be separated from the other prisoners who are criminals.

3.4 Some Efforts to be Made in the Langkat Narcotics Penitentiary Class IIA when Double Track System will be Implemented in the Langkat District Court

From the data in the field, it was found that there has been no Verdict in the Langkat District Court which deals with Rehabilitation as the punishment for drug abusers so far since not all of drug abusers are imprisoned by corporal punishment. Rehabilitation as the type of punishment is also needed as a preventive action for the victims of narcotics abuse.

An effort made by the researcher in interviewing the wardens of the Langkat Narcotics Penitentiary is for the completion of facility and infrastructure as the impact of judge's verdict in sentencing by using double track system for drug abusers. They have to be prepared carefully since the location for rehabilitation should be separated from the other places for other criminal prisoners, and the budget should also be prepared for the implementation of rehabilitation punishment and criminal sentencing.

Nevertheless, based on the result of the interviews with the wardens, it was found that even though this double track system has not been implemented, at least social rehabilitation for 400 prisoners have participated in the social rehabilitation program at the Langkat Narcotics Penitentiary Class IIA in 2020 which is in accordance with the regulation on rehabilitation specified in Law on Narcotics.

4. CONCLUSION

From what has been explained in the analysis above, it can be concluded as follows:

From the result of the analysis in the field, it can be concluded that up to the present the system of sentencing system imposed by the Langkat District Court on all narcotics abusers still uses single track system of punishment. Consequently, all prisoners in the Langkat Narcotics Penitentiary Class IIA undergo corporal punishment in the form of imprisonment.

The system of action punishment such as rehabilitation and criminal sanction, based on the interview with the wardens of the Langkat Narcotics Penitentiary Class IIA,

it was found that this kind of punishment (i.e., rehabilitation) can possibly be implemented since it is in accordance with the law which regulates it even though preparation for facility and infrastructure and other supporting facilities should be made.

A lot of obstacles are found in implementing double track system for the perpetrators who have committed narcotics abuse: inadequate facility and infrastructure, budgeting, preparedness of human resources in understanding the meaning of the implementation of action punishment such as rehabilitation and corporal punishment, and inadequate number of Penitentiaries.

Some efforts have been made by the Langkat Narcotics Penitentiary Class IIA such as implementing social rehabilitation as it is specified in Law on Narcotics. It also has separated the location of prisoners who have undergone social rehabilitation from the other criminal prisoners even though their effort to separate the prisoners does not come from the Verdict of the Langkat District Court on double track system.

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