

Application of the Principle of Due Process of Law regarding narcotics crimes

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Abstract

The principle of due process of law implies a great respect for Human Rights (HAM). Basically the ultimate goal of the criminal justice system is due process of law as a legal process that is fair and impartial, proper, and is a true judicial process, which has gone through existing mechanisms or procedures, so that substantive justice can be obtained. So that the formulation of the problem in this study is the application of the principles of due process of law related to narcotics crimes. The purpose of this research is to realize the application of due process of law related to narcotics crimes. The method used in this study is an empirical juridical method using a statutory approach and looking at phenomena that occur directly in the field.

Abstrak

Prinsip due process of law menyiratkan penghormatan yang besar terhadap Hak Asasi Manusia (HAM). Pada dasarnya tujuan akhir dari sistem peradilan pidana adalah due process of law sebagai proses hukum yang adil dan tidak memihak, patut, dan merupakan proses peradilan yang benar, yang telah melalui mekanisme atau prosedur yang ada, sehingga dapat diperoleh keadilan substantif. Sehingga rumusan masalah dalam penelitian ini adalah penerapan prinsip due process of law terkait dengan tindak pidana narkoba. Tujuan dari penelitian ini adalah untuk mewujudkan penerapan due process of law terkait dengan tindak pidana narkoba. Metode yang digunakan dalam penelitian ini adalah metode yuridis empiris dengan menggunakan pendekatan perundang-undangan dan melihat fenomena yang terjadi secara langsung di lapangan. Hasil penelitian ini menemukan bahwa di Indonesia penerapan asas due process of law terkait tindak pidana narkoba masih belum sesuai, dimana seharusnya hukuman yang diberikan kepada korban penyalahguna narkoba harus diberikan hukum rehabilitasi berdasarkan undang-undang nomor 35 tahun 2009 tentang narkoba yang terkait dengan ketentuan pidana rehabilitasi yang terdapat dalam pasal 54, 55, dan pasal 103 masih jarang diterapkan.

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1. INTRODUCTION

The principle of due process of law implies great respect for Human Rights (HAM). The results of the amendment to the 1945 Constitution provide a bright spot that Indonesia is increasingly paying attention to and upholding human rights values. The Second Amendment to the 1945 Constitution has even produced a Special Chapter on Human Rights, namely Chapter XA. Fair law enforcement can be achieved if the law to be enforced and the law that regulates the methods of law enforcement are correct and fair, that is, if the law is made in the right way and its content is in accordance with the legal feelings of society and provides the greatest benefit to the interests of the people. individuals and society in general.

Law enforcement as a form of state protection of human rights must be carried out consistently and in harmony with legal developments and pay attention to the sense of justice and paradigm shifts that exist in society.

But in its development, the imposition of sanctions is sometimes not only given by the court, but there are also out-of-court settlements. In fact, we have known about this for a long time in the Criminal Code, namely through the provisions on afdoening buiten proces regulated in Article 82 of the Criminal Code.

Article 82 of the Criminal Code is included in the rules regarding the abolition (fall) of the prosecution authority from the state, namely on the basis that if the perpetrator voluntarily pays the maximum fine and costs incurred if the prosecution has started on the authority of the official appointed for this by general regulations, and within the time determined by him.

This provision means that it is possible to impose criminal sanctions without going through a criminal trial process. The consideration of this arrangement is more about efficiency and the lightness of criminal acts that occur. After RI Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP) was promulgated on December 31 1981, then HIR as the only legal basis for the process of resolving criminal cases in Indonesia was revoked. The enactment of Law no. 8 of 1981 concerning Criminal Procedure Law has brought about fundamental changes to the applicable Criminal Procedure Law.

These changes include changes in criminal justice from the inquisition system adopted during the HIR era to the accusatory system adopted by the Criminal Procedure Code. An examination system based on the accusature principle places the suspect as the subject of examination. M. Yahya Harahap stated that, "The suspect must be placed in a human position that has dignity. He must be judged as a subject, not as an object.

At this time, the suspect's confession is no longer the most important thing. Apart from the suspect's confession, other evidence is also needed. With the existence of Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP), Indonesian legal life has entered a new era, namely the revival of national law which prioritizes the protection of Human Rights in a Criminal Justice System mechanism. According to Romli Atmasasmita, "The term "criminal justice system" or criminal justice system (SPP) has now become a term that indicates a working mechanism in overcoming crime using a basic systems approach."

This normative approach views law enforcement officials as implementing institutions of applicable laws and regulations so that these apparatus are an inseparable part of the law enforcement system.

Herbert L. Packer differentiates this normative approach into two models, namely, the crime control model and the due process model. If examined, these two models have values, characteristics, mechanisms, and typologies that differentiate between the crime control model and the due process model. In realizing a criminal justice system that protects and upholds human dignity, it is necessary to have a criminal justice system that is reflected in a criminal justice model that is based on the principles of protecting and upholding human rights. Therefore, further studies are needed regarding the values contained in the Criminal Procedure Code as a reflection of the implementation and adherence to the due process model, in the aspect of the criminal justice normative approach.

Basically the ultimate goal of the criminal justice system is due process of law as a legal process that is fair and impartial, proper, and is a true judicial process, which has gone through existing mechanisms or procedures, so that substantive justice can be obtained. Heri Tahir stated that, "...a fair legal process is essentially the spirit of the criminal justice system itself which is marked by the protection of the rights of suspects and defendants".

Due process of law is the embodiment of a criminal justice system that truly guarantees, protects and upholds human rights. Due process of law is substantively reflected in the due process model from Herbert L. Packer. The Due Process Model is a model that is full of human values in its mechanism.

In the procedures for settling narcotics criminal cases in Gorontalo Province from 2020 to 2021, there are 30 narcotics offenders, 3 of whom have been completed with the Restorative Justice process and 27 perpetrators have continued up to the trial stage.

In its implementation, based on facts, the law enforcement process or criminal justice in Indonesia has shown that there are deviations from the application of the due process of law or due process model. This of course gives rise to people's pessimism and apathy towards the process of law enforcement and criminal justice in Indonesia. In line with society's need for fair and impartial criminal justice as stated in the due process of law or due process model, these

irregularities are a serious problem faced by the Criminal Justice System. Based on this, it is necessary to study further regarding due process of law based on the Criminal Procedure Code in Indonesia.

2. RESEARCH METHODS

In this research, researchers used the Empirical Juridical type of research, according to Soejono Soekanto. In this research, the aimed was to describe the data based on variable conditions and phenomena that occurred during the research and to present data based on the facts found in the field and legal norms contained in statutory regulations and court decisions as well as norms. legal norms that exist in society.

The Additional section was placed after the conclusion and before the bibliography. This section contained Funding and/or Conflicts of Interest and/or Author Contributions and/or Acknowledgments and/or Acknowledgments.

3. RESEARCH RESULTS AND DISCUSSION

1. Application of the principle of due process of law regarding narcotics crimes

Mardjono Reksodiputro stated that the term due process of law in Indonesian can be translated as a fair legal process. The opposite of due process of law is arbitrary process. The meaning of a fair legal process (due process of law) according to Mardjono Reksodiputro is not only in the form of formal application of law or legislation (which is formulated fairly), but also contained a guarantee of the right to independence of a citizen. A. Hamzah also explained the meaning of honest and impartial justice, where judges in carrying out their profession did not discriminate between people. Mardjono Reksodiputro also stated that a suspect always experience various restrictions on his independence and often experience physical and moral degradation.

The implementation of a fair legal process was very important, especially in protecting suspects and defendants from arbitrariness, therefore every country must provide guarantees, protection and fulfillment of the rights of suspects and defendants as an effort to implement a fair legal process. Regarding the fair legal process (due process of law) in the KUHAP, Mardjono Reksodiputro stated that, in the KUHAP, the fair legal process was reflected in the principles of the KUHAP.

According to Mien Rukmini, a fair legal process (due process of law) was the goal of criminal procedural law. According to Tobias and Petersen, the minimal elements of a fair legal process (due process of law) were hearing, counsel, defense, evidence and a fair and arbitral court (hearing suspects and defendants, legal counsel, defense, evidence from a fair trial). and impartial).

2. History of Due Process Of Law

Historical records of the emergence of this principle were adopted from a private agreement between King John and the barons in 1215 to carry out a rebellion based on the Registrar's Office of the Constitutional Court of the Republic of Indonesia. This situation has an impact on the meaning of Magna Carta was a symbol of the struggle against arbitrary power which at that time was carried out by small kings, this history is the embodiment of successful resistance against absolute royal power. History is a lesson that the legal process is not absolute, which will result in the arbitrariness of the authorities. For this reason, the legal process must have a check and balance so that this control becomes prudent in the law enforcement process. Due Process of Law cannot be separated from the history of Human Rights.

In order for the protection of Human Rights to be implemented effectively and universally, the principles of protecting Human Rights must be formally regulated in applicable legal provisions so that everyone obeys and respects Human Rights. Law and Human Rights apply bindingly to every person by also paying attention to the balance between

individual rights and freedoms and the obligation to respect the Human Rights of other people in the social order.

The right to obtain or obtain a fair and appropriate legal process is a principle in criminal law which implies that every suspect has the right to be investigated and investigated based on applicable procedural law. The due process concept upholds the supremacy of the law, namely to handle criminal acts. Enforcement and implementation of the due process concept by law enforcement officials can become a reality if law enforcement officials recognize, respect and protect and guarantee the rights of suspects.

With the aim of this research, namely in this sub-chapter, the term "deed" is used to refer to several actions (feit) that are prohibited (threatened with criminal sanctions) in the provisions of the 2009 Narcotics Law.

The act of controlling class I is formulated in article 112, the act of controlling class II is formulated in article 117 while the act of controlling class III is formulated in article 122. The three a quo articles are conceptualized as offenses with a mechanism of absolute responsibility or strict liability. Meanwhile, strict liability does not absolutely have to have an element of fault. .

Actions regarding selling, offering for sale, becoming an intermediary in buying and selling. The severity of the threat of sanctions is also determined based on the class of narcotics on the grounds that each narcotic has different functions and dangerous impacts. Everyday terms such as dealer, dealer and courier should come from the elements of these three articles which were previously formulated in the previous law.

The act of transporting class I is formulated in article 115, class II is formulated in article 120 while class III is formulated in article 125.

Giving narcotics to other people for use, is formulated in articles 116, 121 and 126. These three articles determine the severity of the penalty based on the class of narcotics. The formulation in these articles ensnare criminals who provide narcotics for use, not those who use (consume) narcotics, while those who consume narcotics unlawfully can be charged under a different article. For the maker/perpetrator of this type of act, the criminal sanction can be aggravated if the person given the narcotics dies or is "permanently disabled" as a result of using the narcotics given to the perpetrator. The meaning of "permanent disability" in the elucidation of the 2009 Narcotics Law is physical disability and/or mental disability that is permanent or cannot be recovered/cured.

Regarding the type of act of consuming narcotics, it is formulated in article 127 using the terminology of drug abuse. Article 127 consists of 3 (three) paragraphs. Paragraph 1 consists of three classifications, namely classification a is formulated for perpetrators who consume class I narcotics, the threat of a maximum sentence of 4 (four) years in prison, b for those who consume class II with a maximum penalty of imprisonment of 2 (two) years, while third or c consuming class III narcotics is threatened with imprisonment for a maximum of 1 (one) year.

In paragraph 2 of article 127, mandating judges to pay attention to the provisions of Article 54, Article 55 and Article 103 before deciding on a case, the authors believe that the mandate given to judges is none other than so that the objectives of the 2009 Narcotics Law are always considered by judges when deciding cases of abusers " save the Indonesian nation from the abuse of narcotics.

In fact, in the science of criminal law, the act as outlined in these articles is referred to as an omission delict, meaning that an act is classified as a delict (criminal act) because the maker did not commit the act ordered or obligated to do so, even though he should have done it (actively).

Concerning this act, it is formulated in several articles, namely articles 111, 113, 118, 129 of the 2009 Narcotics Law. The act of production is not only interpreted as producing narcotics using certain/sophisticated machines, but planting narcotics (marijuana) is also interpreted as an act of production.

3. The values underlying the due process model

- 1) The possibility of the existence of "human negligence" factors, or "human error" causes this model to reject the "informal fact-finding process" as a way to definitively determine a person's "factual identity." This model only prioritizes, "formal-adjudicative and adversary fact-findings".
- 2) Model. This emphasizes prevention (preventive measures) and eliminating as far as possible errors in the justice administration mechanism.
- 3) Model. This opinion assumes that placing the individual as a whole and foremost in the judicial process and the concept of limiting formal authority is very concerned about the combination of stigma and loss of independence which is considered to be the revocation of a person's human rights which can only be carried out by the state.
- 4) Model. This starting point is from values that are anti-power so that this model upholds the doctrine: legal-guilt.

4. CONCLUSION

Due process of law in Indonesian can be translated as a fair legal process. The opposite of due process of law was arbitrary process.

In Indonesia, the application of the principle of due process of law regarding narcotics crimes was still not appropriate, where punishment for victims of narcotics abuse should be given rehabilitation law based on law number 35 of 2009 concerning narcotics where the provision of rehabilitation sentences was provided in article 54, 55, and article 103.

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