

State Liability in Protecting Citizens from the Crime of Narcotics in the Concept of State Law Theory

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Abstract

The crime of narcotics is an *extra ordinary crime* that requires special attention because of the impacts brought by narcotics, not only on health issues, but also been penetrated on the issue of social security and the economy, which in the end will affect the sustainability of the country. One indication of rampant circulation of narcotic drugs in Indonesia was due to the ignorance of the dangers of narcotics from the society. The concept of a State of law in Indonesia constitutionally enshrined in the Constitution of the 4th amendment article 1 paragraph (3) which reads the State of Indonesia is a country of law. The State has the obligation to guarantee the lives of its citizens well. Health is a basic human right and one of the elements of well-being which must be realized in accordance with the ideals of the nation of Indonesia as stipulated in Pancasila and the Constitution of the Republic of Indonesia in 1945, every activity in an effort to maintain and improve public health degrees implemented based on the principle of nondiscriminative, participative, and sustainable in the framework of the formation of human resources in Indonesia, as well as increasing the resilience and competitiveness of the nation for national development. Every single thing that causes the occurrence of health disorders in Indonesian society would cause great economic losses for the State, and every effort is increasing the degree of public health also means the investment for the construction of the country and every effort must be based on development with health insights in which the meaning of national development should pay attention to public health and is the responsibility of all parties for either government or society. To carry out these duties, then the country formed the National Narcotics Agency (BNN). The concept of the institutions set up by the State is in order to establish the legal protection for its citizens. The establishment of the National Narcotics Agency (BNN) is in order to tackle rampant narcotics circulation in Indonesia, the urge of the State to immediately tackle the narcotics problem is manifested by the establishment of the National Narcotics Agency (BNN). The implementation of State law embodied in the implementation of the norms to guarantee legal protection for the citizens of the community, including the protection of the law in granting human rights assurance for its citizens.

Keywords: Narcotic crime, the obligation of the State, the National Narcotics Agency (BNN)

1. Introduction

Drug abuse or illicit traffic of narcotics is a social symptom which creates unsettling impacts for society. These criminal acts have become an international discussion given the extraordinary impacts damaging the life of society. The international world is currently declaring war on narcotics. Indonesia is currently being narcotic emergency. In an interview with CNN correspondent Christine Amanpour on January 27 2015, President Jokowi stated that there were as many as 40-50 people in Indonesia who died every day because of narcotics, moreover, based on the statistics put forth by the President Jokowi that there are 4.5 million people affected by narcotics and there are 1.2 million people who already can not be rehabilitated because their conditions are too severe in value.

The rise of illicit traffic of narcotics in Indonesia is affected by some aspects that are wrong:

1. The geographical aspect.

Geographically, Indonesia is located between Asia and Australia continent and between the Indian Ocean and the Pacific Ocean. The geographical position of Indonesia as put Indonesia in the cross, and consists of thousands of Islands, it makes Indonesia as the region that has many entry gates for illegal goods including narcotics.

2. The demographic aspects

Indonesia with a relatively large population is directly proportional for the potential users of narcotics that makes this country as the main objective of marketing of International narcotics.

3. Economic aspects

In terms of circulation, the condition of the poor community has made the public increasingly easy to fall into a trap of narcotics circulation, an enticing advantage makes short-minded society for the sake of obtaining wealth in short by being narcotics sellers.

Most of the aspects of life in society influenced directly or indirectly from the dangers of drugs. Some of the harms of drug abuse include:

1. Criminal action

Drug use generally have lost self-esteem and feeling so there is no world other than drugs. All efforts will be made for the sake of getting drugs. At the level of the beginning of the user of narcotics will spend what is self-owned, then family-owned, and finally on what belongs to someone else or society by doing criminal offences such as stealing, extorting, killing, robbing, prostitution, etc.

2. Trigger fights

Drug abuse is a popular escape for juvenile delinquents who are frustrated, and not satisfied with the existing conditions that surround them. When they are already lapsed into it then the actions and deeds that they do tend to be shaped as a violation of the applicable norms. Deeds and actions can not be controlled again due to loss of feelings as controller, resulting irritability. A very aggressive nature will result in the occurrence of disputes with others which finally trigger fights.

3. Traffic Accidents

Drug abuse affects the physical and mental of the users so that the condition is getting weak. Weak physical state of a driver of a vehicle might cause traffic accidents. This can be caused by the lack and even the loss of concentration of the driver when he drives.

4. The rise in numbers of people with HIV/AIDS and hepatitis B and C which caused by he use of the syringe as well as free sex.

The high demand for drugs cause supplies (circulation) for drugs also are getting high, this leds to the eradication of drugs becoming increasingly difficult.

If the illegal use of narcotics is not immediately dealt with carefully, it can be assured that of many members of the public, especially the younger generation will be entangled with the issue of abuse and illicit traffic in narcotics, so it can possible be going *Lost Generation* that could undermine the process of advancement in the future.

Narcotics slowly creep into different walks of life, with no age exception, either old or young. Based on the data of the National Narcotics Agency (BNN) in 2013, illegals go into various age level. The circulation of narcotic drugs started getting into the age groups under 16 years amounted to 0.3%, age group 16-19 years of age amounted to 4.82%, age group 20-24 years of 14, 67%, age group 25-29 years of 28, 86%, and above age group 30 years reach of 53,35%.¹

The crime of narcotics is an *extraordinary crime* that requires extraordinary special attention because of the impact brought by narcotics, not only on health issues, but also been penetrated on the issue of social security and the economy, which in the end will affect the sustainability of the country.

One indication of rampant circulation of narcotic drugs in Indonesia was due to ignorance of the dangers of narcotics from the community, a sense of ignorance is the State lialibility to neutralize, the State is the custodian for its citizens, therefore, the State has a great responsibility to protect its citizens from the dangers of narcotics crimes.

Based on the background above, the problems can be formulated as follow: how to form the State's liability to protect its citizens from the dangers of narcotics crimes in Indonesia?

2. Research Method

This paper is a normative legal research, where this paper studies, examines the various regulations related that in turn will find the answer to the problems that examined juridicaly. Legal research such as this, is not acquainted with field research because the material is researchable law so that it can be said as: *library based, focusing on the reading and analysis of the primary based, focusing on the reading and analysis of the primary and secondary material.*² The approach used in this study is comprised of four (4) approaches: the first is Approach of Legislation (*statua approach*), done by studying all legislation and regulations with the relevant legal issues that are being examined. Statutory or legal approach is also associated with detailed answers in search of problems that will be examined. This approach is expected to know the form of existing legislation as well as the sync between one regulation and the other regulations in the field of crime investigation of narcotics. The second is the Conceptual Approach, the approach that departs from the views and doctrines in legal science, research will find ideas that will produce the senses of law, the concepts of law and principles of law that are relevant to the issue at hand. The third is the Comparative Approach, it is done by holding a comparative study. Comparative studies is an activity to compare a state's laws with other state's law or the law of particular time to the law of the other time. These activities are beneficial to the disclosure of the background of the occurrence of specific legal provisions for the same problem of two or more countries. This can be used as recommendations for the draft or the changes of a legislation. The fourth is the Historical Approach, it is done by studying the origin or history of the process of investigation against the crime of narcotics in Indonesia. This approach was

¹ The data took from data agent of Badan Narkotika Nasional (BNN),on 20 November 2014.

² Jhony Ibrahim, teori dan metodologi hukum normatif, Malang.2007, Bayu Media Publisng,p 46

conducted to know the development of policy and legislation arrangement of narcotics.

To get the necessary legal materials, then carried out the collection of legal materials using library study (library research) with the procedures or research steps as follow:

- a. To get the primary legal materials, done inventory of legislation that have relevances to the legal law in the issue being discussed.
- b. To get the secondary legal materials, also carried out inventory towards literature and then do the qualifications for which are related and which are not related to the issue of law (legal issue) in the issues discussed. Secondary legal material consists of literatures, books, and notes from the lecturers during the study, and from a collection of articles that the authors obtained from the internet.
- c. To get the material law of tertier, carried out by doing by inventory from the dictionary which gives instructions and explanations for the issue being discussed.

In this study the authors examine and analyze legal materials by systematic way of thinking, in which the primary legal materials are analyzed with normative measures and continued with the discussion in a descriptive analytic towards secondary law materials done by reviewing which refers to the subject matter of the problem. Legal materials tertier is done by reviewing which refers to the instructions which is able to explain the terms. Legal materials are then processed and discussed with the method of content analysis, that is examining the legislations meant.

3. Results And Discussion

State law (rule of law) in a sense according to the current concept has elements that are universal, such as the recognition and protection of human rights, the legality of the actions of the government, within the meaning of the act of state apparatus, that can be accounted for by law and provided a free judiciary.¹

The concept of State law (Rule Of Law), along with its elements such as above, brings the consequence to reflect the elements in a variety of areas of law, especially criminal law and criminal procedure.²

Reflections of the elementsts in the field of the law of criminal procedure, leading to the creation of the principles that are the basis of the law of criminal procedure as concerned, apart from the legal system practised, either civil law system as embraced by continental European countries or common law systems as embraced by anglo saxon countries as well as other legal system used by certain countries.³

These principles essentially are universal and are always associated with a major element that guarantee the protection of human rights.⁴

The State law is a modern idea that has a lot of perspectives and can be said to be actual always. The theory of the State based on the law in essence means that the law is "supreme" and it is an obligation for each elements of a country to abide the law (subject to the law). Immanuel Kant argued that the State law as a *nachtwakerstaat* (night watch state), its duty is to ensure public order and public security.⁵

The concept of a State of law in Indonesia constitutionally enshrined in the Constitution of the 4th amendment article 1 paragraph (3) which reads the State of indonesia is a country of law.

The State has the obligation to guarantee the lives of its citizens, in consideration of the Act No. 36 of health mentioned that health is a basic human right and one of the elements of well-being which must be realized in accordance with the ideals of the nation of Indonesia as stipulated in Pancasila and the Constitution of the Republic of Indonesia in 1945, every activity in an effort to maintain and improve public health degrees implemented based on the principle of nondiskriminative, participative, and sustainable in the framework of the formation of human resources in Indonesia, as well as increasing the resilience and competitiveness of the nation for national development. Every single thing that causes the occurrence of health disorders in Indonesian society would cause great economic losses for the State, and every effort is increasing the degree of public health also means the investment for the construction of the country and every effort must be based on development with health insights in which the meaning of national development should pay attention to public health and is the responsibility of all parties to either government or society.

Narcotics are part of the health field, in fact a narcotic used in the medical world. Narcotics is one means of treatment that is used in the medical world, one of the causes of the occurrence of narcotics abuse is the ignorance of the public about the dangers of narcotics. Therefore, it is the duty of the State to provide protection to its citizens to ensure a healthy life.

Indonesia as a State law that guarantees the protection of the rights of its citizens has been given in a Constitution that is in the Constitution of 1945. International human rights law establishes two rules relating to

¹ C.S.T Kansil dan Christine S.T, kitab undang-undang hukum acara pidana, jakarta, PT.Pradnya Paramita,2005 p 169.

² ibid

³ ibid

⁴ ibid

⁵ Muhammad taher azhari, negara hukum suatu studi tentang prinsip-prinsipnya dilihat dari segi hukum islam implementasinya pada periode negara madinah dan masa kini, Jakarta, bulan bintang,1987 p 66

health, they are:

- a. Protection of public health which legally restrict human rights.
- b. The rights of health of each individual as well as the obligation of the Government to give it.

According to F. Julius Stahl a State law should have the following elements:

- a. Protect human rights
- b. To be able to protect the well-being with the *trias politica* system or its variations.
- c. The reign began with the *wetmatig* (government based on laws), *rechtmatig* (rule of law) and *doelmatig bestuur* (the purpose of countries based on the purpose of the law).¹

Seen from the conception of the rule of law, therefore, a State must have elements that indicate the existence of the *supremacy of law*, *equality before the law* and *the constitution based on human right*.²

Indonesia as the country, has the following elements of law:

- a. The law that is predicated on the Pancasila.
- b. The government based upon a Constitution system, not based on absolutism.
- c. Judicial power is an independent power in the sense that it is free from the influence of other powers.
- d. Every citizen is equal in their position in law and in the government and they must respect the law and the government without exception.
- e. The laws function as a guard in the sense of enforcing a democratic life, social justice and humanity.³

To carry out these duties then the State formed the National Narcotics Badang Agency (BNN). The concept of the institution set up by the State is in order to establish the legal protection for its citizens. The establishment of the National Narcotics Agency (BNN) is in order to tackle rampant narcotics circulation in Indonesia, the urge the State to immediately tackle the narcotics problems is manifested by the establishment of the National Narcotics Agency (BNN). The implementation of State law embodied in the implementation of the norms to guarantee legal protection for the citizens of the community, including the protection of the law in granting human rights assurance for its citizens.

The presence of the State in public life is to ensure the order in public life in accordance with what was aspired by the State, the purpose of the presence of the State is to provide criminal law enforcement policy in the community.

Law enforcement actions are basically meant as two (2) parts, namely: the rule of law in the narrow sense and the rule of law in the broader sense. Enforcement in the narrow sense refers to a State law enforcement (state law), the enforcement of legislation or as called by Charles Barber more as government laws (government law) or a legal bureaucracy (bureaucratic law). Therefore, the rule of law in the narrow sense only serves as the enforcement of criminal law norms as mentioned in the book of Criminal Laws and Criminal Procedure outside the Criminal Code, and therefore, it is meant more as *legal enforcement*. While law enforcement in a broader sense meant as the enforcement of norms of criminal law that covers also the legal values and sense of justice that lives in the community, and therefore meant as *law enforcement*.⁴

The State realize that the handling of the problem of narcotic drugs is something that is considered important, this has relationships with national development and also the existence of the Republic of Indonesia. The problem of narcotic drugs in Indonesia began in the early 1970s. Narcotics abuse at that time was considered to interfere political stability and security in order to ensure the success of national development. And as the liability of the State at that time, on September 8, 1971, the President issued Instruction No. 6 of 1971 to the head of Bakin for eradicating the problems impeding the implementation of the national development.⁵

The national development aims to create the whole human and the entire society of Indonesia to be fair, prosperous, peaceful, based on Pancasila and the 1945 Constitution. To create a prosperous society, improvement needs to be done continuously in efforts in the field of medicine and health services including the availability of narcotic drugs as a remedy, in addition to the development of science.⁶

To ensure the resilience of the State's national security, the State has given a psychological effect to the community not to do crime of narcotics, the existence of a threat of criminal, in hope, can press the occurrence of the crime of narcotics in the environmental community.

The State has a great responsibility towards the sustainability of the life of society and the State, the

¹ Yurizal, reformasi kewenangan POLRI dan PPNS dalam penyidikan tindak pidana lingkungan hidup hal 43, copy of A. Mansyur efendi, dimensi dan dinamika hak asasi manusia, Jakarta, Galia Indonesia, 1994 p 94.

² Ibid p 44, copy of A. Mukthie Fadjar, peran the rule of law dalam penguatan civil society, in IDEA kumpulan makalah konstitusi dan demokrasi, Jakarta, IDEA, 2001 p 2.

³ Ibid p 45, copy of Padmo Wahyono, dkk, kerangka landasan pembangunan hukum, Jakarta, pustaka sinar harapan, 1998 p 17.

⁴ I Nyoman Nurjaya, kewenangan diskresi dan diversifikasi kepolisian dalam pelaksanaan tugas penegakan hukum pidana, p 2 and 3.

⁵ Anindita Hadi Permana, sejarah hukum UU narkotika di Indonesia dimulai dari tahun 1976 s/d 2011 on www.ilmu hukum bisnis.blog.spot.com, it was retrieved on 20 Oktober 2014.

⁶ ibid

crime of narcotics has provided a real threat against the life of the society and the State. The starting point of a country's success is provided the continuity of life for its people, the urge to sense of feeling safe of the citizens is the responsibility for the State to make it happen.

Narcotics is an object that can be likened to having two opposite sides. On one hand, narcotics can be used as a very useful means for the treatment of a specific disease, but on the other hand, narcotics can also cause a very adverse consequences for individuals or society especially the younger generations, if at salahgunakan they are used not in accordance with the standard treatment.¹

In the concept of the State law, it is an obligation of the State to protect the human rights of its citizens, the rights to live a healthy life is one example. The Constitution 45 article 28H subsection (1) states:

"Everyone has the right to live physical and spiritual prosperity, residence, and get a good as well as the right to healthy services."²

Narcotics are part of the medical world, one of the causes of the occurrence of narcotics abuse is the ignorance of the public about the dangers of narcotics. The State has a responsibility to protect its citizens from the ignorance of the dangers of narcotics and it is the obligation of the State to always guarantee the health of its citizens.

To prevent and eradicate the abuse of and illicit traffic in narcotic drugs that are very detrimental and dangerous to the life of the community, the nation and the State, the people in the People's Consultative Council (MPR) in 2002 through the Ordinance of MPR number: VI/MPR/2002 had recommended to the House of Representatives (DPR) and the President to make changes to the law No. 22 of 1997 concerning narcotics. Finally, on September 14, 2009 the Narcotics Act was passed successfully and it has been replaced by Act No. 35 of 2009 about narcotics. The novelty of this Act No. 35 of 2009 about Illegals is the establishment of the institution of the National Narcotics Agency (BNN). The establishment of the institution of the National Narcotics Agency (BNN) is one of the extant State responsibilities towards its people in giving protection from the crime of narcotics.

The country has a great responsibility towards the sustainability of the life of society and the State, the crime of narcotics has provided a real threat against the life of the society and the State. The starting point of a country's success guarantees the continuity of life of its people, the urge to sense of feeling safe of the citizens is the responsibility for the State to make it happen.. The embodiment of Act No. 35 of 2009 about Narcotics is the duty of the State to protect its citizens.

To fulfill the duties, the State's prevention efforts and countermeasures against illicit traffic in narcotics are expected as follow: the first step of prevention is by optimizing the prevention efforts by activating every sector of government in order to speed up the implementation of prevention through activities that are able to embrace the community to be aware of the dangers of narcotics for themselves, their family, the environment and the country by providing thorough Counseling that is not just done in school levels but also in all levels regardless of education and the status of the person, as well as providing adequate infrastructure and facilities (the use of IT) in every institution that deals with prevention efforts and countermeasures against illicit of narcotics. The second is rehabilitation efforts, by optimizing rehabilitation efforts towards narcotics abusers and addicts in order to suppress the high demand that could break the chain of the circulation of illicit of narcotics. The third is community empowerment. By optimizing the role of the community in prevention efforts, the eradication of abuse and illicit traffic in narcotics, and to improve the participation of people and families that are able to provide early protection for their family members in preventing the crime of narcotics in the family environment or surroundings. The fourth is law enforcement, by having regulations can provide a deterrent effect for the perpetrators of the crime of narcotics, by realizing an institution that manifests institutional duties and authorities focused on one area through the efforts of institutional coordination in order to control and suppress illicit traffic of narcotics.

As one of the national commitment to build public health degrees, as well as to meet one of human rights, then the abuse and illicit traffic of narcotics have to be eradicated. For that benefit of, the existence of the National Narcotics Agency (BNN) that specifically handles this affair is a must. In more simple words, it is understood that the existence of the National Narcotics Agency (BNN) has a relationship with the major national agenda to guarantee respect for human rights in the field of health of the nation.

The National Narcotics Agency (BNN) has the task of drawing up and implementing national policy in the field of prevention, community empowerment, eradication, rehabilitation, cooperation, preparation and study of legislation, the data and information of narcotics, psychotropic substances and precursors, evaluation and reporting as well as carry out coordination with the head of the State police of the Republic of Indonesia in the field of prevention, the eradication of illicit traffic in narcotic and abuse (P4GN). In this institutions, the liability

¹ [http://ilmukriminologi.blogspot.com/2012/09/eksistensi-penyidik-badan-narkotika-nasional-\(bnn\)-dalam-kuhap.html](http://ilmukriminologi.blogspot.com/2012/09/eksistensi-penyidik-badan-narkotika-nasional-(bnn)-dalam-kuhap.html), it was retrieved on 16 september 2014

² UUD 1945 modified 4

of the State to protect citizens from the crime on narcotics will be loaded.

4. Conclusion

From the discussion above, it can be concluded that the substance of the establishment of the institution of the National Narcotics Agency (BNN) in Act No. 35 of 2009 on Narcotics is to provide protection for its citizens for in the concept of State law, it is an obligation of the State to protect the human rights of its citizens, the right to live a healthy life is one example. As one of the national commitment to build public health degrees, as well as meet one of human rights, then the abuse and illicit traffic of narcotics have to be eradicated. For that benefit of, the existence of the National Narcotics Agency Agency (BNN) that specifically handles this affair is a must. In more simple words, it is understood that the existence of the National Narcotics Agency (BNN) has a relationship with the major national agenda to guarantee respect for human rights in the field of health of the nation.

5. Recommendation

1. Strengthening the efforts of the National Narcotics Agency Agency (BNN) by paying attention to the institutional factors of the National Narcotics Agency (BNN) to avoid overlapping with other agencies in terms of authority including the POLRI through mechanism of laws governing limitations on the authority of each agency to avoid the sectoral ego on the implementation in the field.
2. Soon the setup done for National Narcotics Agency Agency (BNN) to become the main coordinator institutions based on the law-level rule to speed up the action plan for the eradication of narcotics in Indonesia.

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