

# The Non-Penal Policy in Prevention and Protection of Narcotics Criminal Action (A Case Study of National Narcotics Agency in North Sumatera, Indonesia)

Alvin Hamzah Nasution<sup>1</sup>, Beby Suryani Fithri<sup>2</sup>, Arie Kartika<sup>3</sup>

<sup>1,2,3</sup>*Faculty of Law, Universitas Medan Area, Indonesia*

**Abstract**—The National Narcotics Agency (BNN) of Indonesia stated that North Sumatera was in the second ranked of the high narcotics distribution based on the official government data. Hence, drugs trafficking is at the alarming stage. Tackling crime through the Non-Penal policies were acted before the occurrence of crime when the main target is the handling of the factors causing the crime, centered on social problems or conditions which directly and indirectly can lead to narcotics crime. The problem in this study is how the Non-Penal policy in the prevention and protection of narcotics crime victims established by the BNN of North Sumatera, Indonesia and how the constraints in the implementation of Non-Penal policies as efforts to prevent and protect narcotics crime victims in BNN of North Sumatera and the efforts made BNN to overcome these obstacles.

**Keywords**— Non-Penal Policy, Narcotics Crime, National Narcotics Agency, North Sumatera, Indonesia

## I. INTRODUCTION

The existence of narcotics has existed since prehistoric times, initially only known as a painkiller or anesthetic, but these substances continue to grow in use by the world community so that it switches the function of its existence. In the early 1970s, narcotics abuse was increasingly occurring in the community and the types of narcotics in circulation were also increasing in variety (Makara, Suhasril, & Zakky, 2005). A proportional use of narcotics or utilize both for health and science and technology purposes, then it cannot be said to be a narcotics crime. However, the use of narcotics on the contrary if for certain purposes outside of science, then the act can be categorized as a criminal act and or abuse of narcotics based on Law Number 35 Year 2009 that concerning Narcotics. According to Sudarto (1983), the policy or politics of criminal law is the policy comes from the state through authorized council to determines the desired regulations that are expected to be used to express what is contained in society and to achieve what is aspired. In connection with the problem of narcotics abuse, the criminal law policy plays a role in positioning narcotics addicts as victims, not criminals. Addicts are basically victims of misuse of narcotics crimes that violate government regulations, and they are all Indonesian citizens who are expected to develop this country from adversity in all

fields (Sudarto, 1983).

Prevention of crime with a Non-Penal policy focuses more on the nature of prevention before the crime occurs. These Non-Penal efforts are sponsorship and social education in the context of developing the social responsibility of community. The Non-Penal effort also includes a directed macro social policies at efforts to improve welfare and protection for one party.

The crime prevention policy through non-legal channels is more of a preventative measure for the occurrence of a crime. Therefore, the main goal is to deal with the factors that are conducive to the occurrence of crime which are centered on social problems or conditions which can directly or indirectly cause or fertilize crime. Thus, it can be seen from the crime prevention policy, so these non-criminal businesses have a strategic position and play a key role that must be intensified and made effective (Arief, 1996). A good criminal policy, which is how the policy is able to harmony and public order. Based on the description and facts, it is very important and interesting to be analyzed and studied regarding the prevention and protection of narcotics criminal action in North Sumatera, Indonesia. Hence, the problem statement of the study are:

- 1) How is the Non-Penal Policy act in the prevention and protection of victims of narcotic crimes set by the BNN of North Sumatera, Indonesia?
- 2) What are the obstacles in implementing non-penal policies as an effort to prevent and protect victims of narcotics crime in BNN of North Sumatera, Indonesia?

## II. RESEARCH METHODOLOGY

The study divided the research methodology into four parts, namely: Research type, Sources of Legal Materials, Methods of Collection of Legal Materials, Analysis of Legal Materials.

### A. Type of Research

The research is a Normative Juridical Research, which is a research focused on studying the application or rules or norms

in positive law (Ibrahim, 2008). The study will be resulting a descriptively explanation. A descriptive study, intended to provide a picture that is as thorough as possible human beings, circumstances or other symptoms (Soekanto, 2006), which in this case is limited regarding the crime of money laundering in economic law in Indonesia.

Descriptive analytical research is a research that aims to describe carefully the characteristics of the facts (individual, group or situation) and to determine the frequency of things happening (Adi, 2000). The analysis is intended based on a description, the facts obtained will be analyzed carefully to answer the research (Hartono, 1994). The research used in this study is a deductive to inductive thinking method that describes the protection of narcotics criminal action law in Indonesia

#### B. Sources of Legal Materials

In this study, the source of legal material was obtained through secondary data, namely data collected through document studies of library materials. In legal research, secondary data consists of:

1) Primary legal materials, which comes from legal materials obtained directly and will be used in this study which are legal materials that have juridical binding power, namely:

- The 1945 Constitution of the Republic of Indonesia.
- Law Number 35 Year 2009.

2) Secondary legal materials, which are legal materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, which consist of:

- Literature books
- Research papers / reports
- Articles, mass media and the internet.
- Tertiary legal material

#### C. Methods of Collection of Legal Materials

The collection of legal materials is very closely related to the data source, because through the collection of legal materials the data needed will be obtained to further be analyzed as expected. There are 2 (two) methods of collecting legal materials, namely the literature study method and the field study method. The technique of gathering legal material in this study, obtained from a literature study of laws and regulations, legal records, was collected and reviewed to determine its relevance to the needs and formulation of the problem.

#### D. Analysis of Legal Materials

Analysis of the legal material used in this study is qualitative data analysis, where the data collected is not in the form of figures that can be measured. Qualitative analysis produces descriptive data, by drawing data from inductive to deductive

in the sense of what is stated by the relevant research objectives in writing, oral and real behavior.

### III. RESULT AND DISCUSSION

#### A. The Non Penal Policy in the Prevention and Protection of Narcotics Victims by Indonesian National Narcotics Agency (BNN)

In fact, narcotics can only be used for the benefit of health studies and / or scientific development. Therefore, the use of narcotics other than for health services and / or science is a violation of the Law. The complexity of the problem of narcotics abuse is influenced by social, economic and poverty factors, especially in the case of drug abuse among the younger generation (Hatta, 2010). Government efforts in laying the juridical foundation for tackling narcotics abuse cannot be denied as a result of increasing violations or cases related to the problem. The government made a policy on narcotics prevention legislation by issuing Law Number 35 Year 2009 concerning Narcotics. Some considerations of this legislation policy are including:

- 1) To realize a prosperous, just and prosperous Indonesian society that is materially and spiritually evenly based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, the quality of Indonesia's human resources as one of the national development capital needs to be maintained and continually improved, including degrees his health;
- 2) To improve the health status of Indonesian human resources to realize the welfare of the people it is necessary to improve efforts in the field of treatment and health services, among others by seeking the availability of certain types of Narcotics that are urgently needed as medicines and to prevent and eradicate the dangers of narcotics abuse and illicit trafficking and Narcotics Precursors;
- 3) Narcotics, on the one hand, is a drug or material that is useful in the field of medicine or health services and the development of science and on the other hand, can also cause a very detrimental dependency if misused or used without strict and careful control and supervision;
- 4) Importing, exporting, producing, planting, storing, distributing, and/or using Narcotics without strict and careful control and supervision and in contravention of legislation is a Narcotics crime because it is very detrimental and is a very big danger to human life, society, nation and state, and Indonesia's national security;
- 5) Narcotics crime has been transnational which is carried out using high modus operandi, sophisticated technology, supported by a wide network of organizations, and has caused many victims, especially among the young generation of the nation which is very dangerous to the lives of the people, nation, and country so Law Number 22 Year 1997

concerning Narcotics is no longer appropriate with the development of situations and conditions that are developing to tackle and eradicate the crime;

- 6) Based on the considerations referred to above, it is necessary to establish a Law on Narcotics.

The government issued a legislation policy to tackle narcotics abuse through Law Number 35 Year 2009 which basically this Law aims to: (Article 4 of Law Number 35 Year 2009)

- 1) Guarantee the availability of Narcotics for the benefit of health services and/or the development of science and technology;
- 2) Prevent, protect and save the Indonesian people from abuse of Narcotics;
- 3) Eradicate the illicit trafficking of Narcotics and Narcotics Precursors; and
- 4) Ensure arrangements for medical and social rehabilitation efforts for Abusers and Narcotics addicts.

Tackling crime is a way for people to react to the phenomenon of a crime. Since the crime began, the response to it has been known. Each community will react to crime according to the level of culture that has been achieved by the community concerned. When society is so modern by being characterized by a structured and complex division of labor, the reaction to crime is increasingly modern by being characterized by the rational use of sanctions. Rationality in determining the types of sanctions is a reflection of the level of science and culture of a nation (Ali, 2016). Initially, prevention and control or response to crime is the autonomy of the community to determine it. Every attack against the legal interest is essentially an attack on a person or a certain group. The group is also then given the authority to react to the perpetrators to restore balance due to violation of legal interests. It does not matter whether the offender is from his own circle or another group (Farid, 2007).

A Non-Penal effort is crime prevention, which is carried out before the crime occurs so that this effort is better known as preventive measures.

Likewise, Bonger (2015) stated that judging from the efficiency and effectiveness of prevention efforts is better than repressive measures. From the perspective of criminal medicine, it has been agreed that a thought that preventing crime is better than trying to educate criminals to be good again, better here also means easier, cheaper and more attainable. Tackling crime through Non-Penal policy will be better able to handle the causes of crime that are centered on social problems or conditions that can directly or indirectly cause or foster the crime of trafficking in persons. From this policy prevention and handling efforts by involving the community and focused cooperation both central, regional and international clearly illustrated is an important part and key to minimizing crime rates, if effective and synergistic, then the handling and number of victims will be reduced and handled. This Non-Penal policy has advantages for overcoming the

problem of crime because it directly touches on the root problem of crime. The Non-Penal policy covers a very broad field because it covers almost all fields of community life. The non-penal policy has the power to prevent the occurrence of crime so that it has a strategic value to tackle the problem of crime.

In addition to Non-Penal efforts that can be pursued by making the community healthy through social policy and by exploring various potentials within the community itself, it can also be explored from various other sources that also have the potential for preventive effects. Other sources include mass media, the use of technological advances and the use of potential preventive effects from law enforcement officials. Sudarto (1983) stated that patrol activities from the police carried out continuously included non-penal efforts that had a preventive effect on potential criminals/law violators. In this regard, police raids/operations carried out in certain places and activities that are oriented towards community service or educational communicative activities with the community, can also be seen as Non-Penal efforts that need to be effective.

The need for Non-Penal means is intensified and made effective, in addition to some of the reasons stated above, also because of the doubt or disputes about the effectiveness of criminal means in achieving criminal political objectives. Even to achieve the goal of punishment in the form of general and special prevention, the effectiveness of the means of punishment is still in doubt or at least it is not known how far the effect.

Based on Law Number 35 Year 2009, BNN is given the authority to investigate narcotic crimes and narcotics precursors. What is currently being fought for by BNN is a way to impoverish drug dealers, because it has been pointed out and proven that in some cases drug sales have been used to fund terrorist (*Narco-Terrorism*) and also to avoid drug sales activities for political costs (*Narco for Politics*). Deputy for Prevention is an element of implementing some of the tasks and functions of BNN, which is under and is responsible to the Head of BNN. Deputy for Prevention carries out efforts to reduce illicit drug demand and needs. Some forms of narcotics abuse prevention by BNN Deputy for Prevention consist of:

#### 1) *Primary Prevention*

- Primary prevention is aimed at children and young people who have never abused narcotics.
- Primary prevention activities are mainly carried out in the form of counseling, information, and education.

#### 2) *Secondary Prevention*

- Secondary prevention is aimed at children or generations who have begun to try to abuse narcotics. Sectors of society that can help children, young people stop abusing narcotics.

- Secondary prevention activities focus on early detection of children who abuse narcotics, counseling individuals and family users, social guidance through home visits.
- 3) *Tertiary Prevention*
- Tertiary prevention is aimed at narcotics victims or former narcotics victims. Community sectors that can help former narcotics victims not use narcotics anymore.
  - Tertiary prevention activities are carried out in the form of social guidance and counseling for those concerned and their families and peer groups, the creation of a social environment and social supervision that benefits former victims for steady healing, development of interests, talents and work skills, coaching parents, family, friends where the victim lives to be ready to accept the former victim well so that the former victim which no longer abused narcotics.

The Non-Penal policy for dealing with narcotics crime is implemented in the Program for the Prevention, Eradication of Drug Abuse and Circulation of Drugs (P4GN) in accordance with Presidential Decree No. 12 of 2011. Non-Penal efforts related to crime prevention in the school/campus environment include information dissemination, cadre formation, and legal advocacy. P4GN is the result of a legal policy in the handling of narcotics which has the main objective of empowering all potentials that exist in all levels of society to make a conscious movement to oppose/reject drug abuse and illicit trafficking. The following are Non-Penal policies implemented by BNN North Sumatra:

a) *Disseminating the information*

This activity is an effort to disseminate information into the community that can be done through training or workshops, seminars, and communication. Besides, information dissemination can be held in press conferences, press interviews, article writing, and publications. Dissemination through press conferences is done by inviting journalists from several media, TV, radio and online media to a designated place and presenting one or several speakers to provide information or statements regarding the issue to be submitted. Then, dissemination through a press interview is an activity by inviting reporters from one of the print or electronic media, or online media to a place where a resource person is present to be interviewed. The results of the interview are then published as news in the media. Dissemination through the writing of articles, which is to make writing on a topic to be published in a scientific journal or bulletin which is self-published or an agency, institution, other organization, or sent to the editor of a print media publication. Dissemination through publication is to make printed materials such as posters, flyers, brochures, leaflets, and others. Then distributed to the public or placed on information boards

available at an agency.

Dissemination through dialogue or talk show, namely the activity of broadcasting talk shows and questions and answers on a topic through television or radio by presenting several experts as speakers. With dissemination, information can spread quickly and widely among the public, both internally and externally.

The Province National Narcotics Agency (BNNP) of North Sumatra carrying out the P4GN information dissemination activities through several talk shows on anti-drug activists. The Head of BNNP stated that there should be synergy between narcotics activists and related agencies to carry out activities related to P4GN so that the scope of narcotics abuse can be minimized especially in the surrounding environment and the community. According to the Head of the North Sumatra BNNP, narcotics is an extraordinary form of crime because it is very dangerous and very worrying because it can damage the nation's generation so there is a need for cooperation between narcotics activists and related agencies, especially with BNN.

b) *Formation of Cadres*

One of the Non-Penal efforts carried out by North Sumatra's BNNP is the formation of an anti-narcotics cadre. The cadre was formed from various elements of society ranging from private workers, government agencies, to the students and students in schools and colleges. They have the knowledge, skills, critical thinking patterns in terms of narcotics prevention and management. Cadres are men or women chosen by the community, willing and able to work together in voluntary community activities. Anti-narcotics cadres not only have enough knowledge about the dangers of narcotics but also need the support of other knowledge such as religion, communication techniques supported by good public speaking. Those who are referred to as anti-narcotics cadres must have awareness and responsibility and play an active role and cooperate with all police and BNN officials.

Furthermore, BNN also activates community participation in overcoming narcotics problems by implementing Community Based Rehabilitation (RBM) through a public health approach. RBM services will be carried out by residents who have been trained by BNN and supervised by the North Sumatra BNNP Rehabilitation Division. Narcotics abuse victims in the level of mild use can be directly handled by RBM cadres who have been trained by the National Narcotics Agency, while moderate and severe levels of use can be referred to government and private rehabilitation institutions.

North Sumatra BNNP has also trained residents to become Recovery Agents to monitor, record and assist victims of abusers who have completed rehabilitation in order to maintain their recovery and guide clients to carry out positive activities in the community. The positive activities such as peer support activities, religious activities, and other activities that are included by the general public so that clients can

recover and be productive.

North Sumatra BNNP stated that this is an attempt by the state to fulfill the rights of citizens to live healthy and free from narcotics abuse problems. The rehabilitation sector will specifically nurture all abusers in North Sumatra from the initial capture of the raids to realize a society that is recovering and productive after being trapped in the Narcotics problem. The North Sumatra BNNP Rehabilitation Division will continue to conduct socialization, education, and regeneration to the public so that they are aware that victims of narcotics abuses are not a family disgrace, problems that cannot be overcome or other stereotypes that contain negative connotations to narcotics problems. Efforts to build public awareness in seeing the adverse effects of drug abuse will continue to be carried out by the North Sumatra BNNP and its staff until the Vision of a Drug-Free Indonesia will be realized.

### c) *Legal advocacy*

Legal advocacy is a series of actions taken by legal institutions or experts for consultation, mediation, negotiation, and assistance. This action was carried out both inside and outside the court to resolve problems with legal dimensions. Advocacy is not only for educated people, but it is also important for laypeople to know. So that public awareness about advocacy and a series of laws can help overcome serious problems that exist in the community. Knowing the community law can also avoid discriminatory nature which can lead to new problems.

North Sumatra BNNP has collaborated with Penitentiary in Medan to assist children who are victims of narcotics abuse. Began the process of safekeeping, inspection until when undergoing parole. Implementation of advocacy to Bapas is how to foster children involved in narcotics cases, after undergoing the rehabilitation process so that they can return to their environment properly, without being affected again to use narcotics.

### B. *Several Obstacles in Implementing Non-Penal Policies as Prevention and Protection of Narcotics Victims in BNN of North Sumatra.*

Each of the above implementation processes has not been carried out optimally, there are still many obstacles encountered. Budget mechanism, human resources and community participation are factors that should play an active role in providing support and cooperation in the implementation.

#### 1) *Budget Mechanism*

The first obstacle faced is seen in the budget for the implementation of non-penal policies as prevention and protection. BNNP complained about the lack of available budget to eradicate the distribution and prevention of narcotics in the North Sumatra region, both in the form of socialization, facilities, to infrastructure that supports

narcotics eradication. Insufficient funds cannot cover the maximum handling and prevention of narcotics. Even though prevention activities are very important and require more action. The available funds are also insufficient for the procurement of narcotics test kits, so BNNP uses the existing funding budget by cross-subsidizing the available budget. This becomes a difficulty or obstacle when conducting raids at nightclubs and other places.

#### 2) *Human Resources*

In this case, human resources are related to the expertise and abilities and mentality of North Sumatra BNNP employees. Before making an effort to disseminate narcotics prevention, internally all North Sumatra BNNP personnel must first be able to act as anti-narcotics activists. They must have basic knowledge and basic socialization skills about the dangers of narcotics abuse and must be certified. The goal is that the implementation of the socialization does not depend only on the extension workers but each employee can act as extension agents. The North Sumatra BNNP prevention unit consists of 6 employees and 2 people acting as extension workers. This, of course, is very minimal and requires the addition of staff members, especially as extension workers.

#### 3) *Community Participation*

It is necessary to increase the role of local government and the community to support the prevention and eradication program of narcotics abuse and illicit trafficking. Lack of participation and community participation as intelligence to provide information and information to expose and uncover cases of illicit trafficking and drug abuse also contributed to the success of the prevention and eradication of narcotics abuse in North Sumatra.

Drug handling efforts need the support of all parties including the participation of people from various walks of life. The involvement of the community is expected to form a strong deterrent against the threat of narcotics. Community involvement in anti-drug-oriented development can be done through, first, the promotion of a healthy life, without drugs, as the foremost education of information on the dangers of drugs. Secondly, the community is an anti-drug activist, as an anti-drug HR capacity developer. Third, fostering a clean environment from drugs. Finally, the facilitator, as a builder of the synergy of P4GN programs and activities, internally and externally in the community.

Several efforts undertaken by BNN in overcoming obstacles in the implementation of policies on prevention and eradication of narcotics abuse are including:

- *Desa Bersinar* Program (The Narcotics Clean Village)
- BNN of North Sumatra regularly follows Presidential Instruction (Inpres) No. 6 of 2018, concerning the National Action Plan for the Prevention and Eradication of Narcotics Dark Abuse and Circulation in Narcotics 2018-2019. BNN performed the preventive measures through the *Desa*

BersinarProgram (The Narcotics Clean Village). BNN cooperates with stakeholders such as village officials to jointly monitor the dangers of drug trafficking through the task force in implementing this program. Furthermore, BNN wants to take advantage of the annual village funds which concentrate on strengthening human resources. North Sumatra BNNP wants each village to set aside a budget for prevention programs. Prevention is a strategic and very basic step. The population must be made into an information net and strengthened with a variety of knowledge that is qualified about narcotics.

- Anti-Narcotics Activist Community

Tackling narcotics problems and narcotics precursors is not only the responsibility of the government, but community participation is also needed. Therefore, BNN needs to create the Anti-Narcotics volunteers to support activities to prevent the abuse and illicit trafficking of narcotics and narcotics precursors. This is supported by the issuance of the Republic of Indonesia National Narcotics Regulation Number 8 Year 2018 concerning Standards of Anti Narcotics Volunteer Competency.

The competency standards for anti-narcotics volunteers are intended to be a guideline for the BNN, BNNP, and The City National Narcotics Agency (BNNK) to compose of anti-narcotics volunteers in the Government, private sector, education, and the community. The presence of Anti-Narcotics Volunteers is expected to be an agent of change and drive active participation of all components of society, nation, and state in the implementation of P4GN.

Anti-Narcotics Volunteers in the operational definition are people, both groups and individuals who are willing to voluntarily make a change in their environment that is free from drug abuse and illicit trafficking. As an Anti-Narcotics Volunteer, there are several duties and functions, namely The Extension Workers, who disseminate information about P4GN; The Initiator that is initiating about programs and activities of P4GN; The Motivators namely motivating families, workers, students/community and community about P4GN programs; and The Facilitator, namely providing assistance in streamlining the P4GN program or as a liaison between the general public and BNN.

BNNP of North Sumatra established the Anti-Narcotics Activists among students, which are 20 students selected through strict selections. The establishment of anti-drug activists was carried out in collaboration with a number of SOEs, Pertamina for example. Moreover, North Sumatra get the second ranked after Jakarta in terms of narcotics abuse.

#### IV. CONCLUSIONS

The Non-Penal policy in the prevention and protection of victims of narcotics crime set by the BNN of North Sumatra including: information dissemination policies, cadre formation, and legal advocacy. There are several obstacles in the implementation of Non-Penal namely, the minimal budget, lack of human resources, and lack of community participation. North Sumatra BNN should create a village-free narcotics program and issue a policy of establishing anti-narcotics volunteersto prevent and protect victims of narcotics crime. Non-Penal policy efforts carried out by BNN of North Sumatra should involve more government agencies, the private sector and also educational institutions in order to obtain maximum results. Non-Penal policy efforts carried out by BNN of North Sumatra should target millennial with a friendly technological approach so as to capture more anti-narcotics volunteers than millennial so that the entire non-penal policy can be realized.

#### REFERENCES

- [1] M. T. Makarao, Suhasril, and M. Zakky, *Tindak Pidana Narkotika*. Bogor: Ghalia Indonesia, 2005.
- [2] Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*. Bandung: Sinar Baru, 1983.
- [3] B. N. Arief, *Kebijakan legislatif dalam penanggulangan kejahatan dengan pidana penjara*. Badan Penerbit, Universitas Diponegoro, 1996.
- [4] J. Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, Malang. Bayumedia Publishing, 2008.
- [5] S. Soekanto, *Pengantar penelitian hukum*. Penerbit Universitas Indonesia (UI-Press), 2006.
- [6] R. Adi, *Metode Penelitian Sosial dan Hukum Granit*. Jakarta, 2000.
- [7] S. Hartono, *Penelitian hukum di Indonesia pada akhir abad ke-20*. Alumni, 1994.
- [8] M. Hatta, *Kebijakan politik kriminal: Penegakan hukum dalam rangka penanggulangan kejahatan*. Pustaka Pelajar, 2010.
- [9] M. Z. Ali, "Kebijakan Kriminal." Sinar Grafika, Jakarta, 2016.
- [10] A. Z. A. Farid, *Hukum Pidana 1*. Jakarta: Sinar Grafika, 2007.
- [11] W. A. Bongger, *An introduction to criminology*. Routledge, 2015.