

Criminal Liability for Medical Personnel Who Commit Narcotics Abuse (Decision Study Number 958/Pid.Sus/2016/PN.SBY)

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Abstract

The general aim of this research is to determine the criminal responsibility of medical personnel who abuse narcotics. This research is included in normative research. The results of the research show that: a) Medical personnel can be suspected of committing Article 122 paragraph 2 of the Narcotics Law No. 35 of 2009 because they were proven guilty of intentionally selling the narcotic type saboxone, which is categorized as category three, freely. Saboxone should be given to a drug addict, where taking it is accompanied by a prescription and assistance from a doctor. However, the doctor sells it freely to drug addicts. Article 122 paragraph (1) Law Number 35 of 2009 concerning Narcotics whose elements are: Every Person; Without Rights or against the Law; Possessing, storing, controlling, or providing class III narcotics. And b) Criminal liability for medical personnel who violate Article 122 paragraph 2 of the Narcotics Law No. 35 of 2009 which states that: Every person who without rights or against the law owns, keeps, controls or supplies Class III narcotics, shall be punished with a maximum prison sentence. a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of at least IDR 400,000,000.00 (four hundred million rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah). In the event that the act of possessing, storing, controlling, providing Class III narcotics as intended in paragraph (1) weighs more than 5 (five) grams, the perpetrator shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and criminal the maximum fine as intended in paragraph (1) plus 1/3 (one third).

Keywords: Liability, Medical Personnel, Narcotics

1. INTRODUCTION

Throughout 2021, the National Narcotics Agency (BNN) has uncovered 176 drug cases. Of this number, 85 cases revealed were national and international network syndicates throughout 2021. The most frequently uncovered international drug syndicate networks came from the triangle and golden crescent. From the networks revealed, BNN uncovered 760 cases of drug crimes and arrested 1,109 suspects. The drug evidence confiscated throughout 2021 was 3,313 tons of crystal methamphetamine; 115.1 tons of marijuana; 50.5 hectares of marijuana land and 191,575 ecstasy pills (Putra 2022). Narcotics are actually drugs that are very necessary in the fields of medicine and science, so their availability needs to be guaranteed, through production and import activities. However, on the other hand, drugs can also cause serious harm if they are misused or used without careful restrictions and supervision. Drug abuse can cause death, addiction and exposure to various diseases, increased violence and crime as well as the destruction of a society or loss of generations so that if people are addicted and exposed to various diseases it can threaten national security. Moreover, with increasingly rapid technological advances, illicit drug trafficking has become increasingly widespread and has an international dimension (Sasangka 2013). Law enforcement against drug crimes has been widely carried out by law enforcement officers and has received a judge's decision at a court hearing. It is hoped that law enforcement will

be able to act as a deterrent against the spread of drug trafficking and abuse, but in reality, the more intensive law enforcement is, the more drug trafficking will increase. Criminal sanctions for perpetrators of drug crimes are quite severe, in addition to being subject to corporal punishment, they are also subject to fines, but in reality these penalties do not deter the perpetrators, they actually increase and repeat themselves because after they have finished serving their sentences or sentences, they do not breathe free air for long. I've done it again. This is caused by the factor that criminal sentences do not have an impact or a different effect on the perpetrators (Sunarso 2015).

Drug abuse, included in the narcotics category, can be carried out by several parties and professions, one of which is medical personnel. Medical personnel are more specific health personnel, those included in the category of medical personnel are doctors, physicians, specialist doctors, dentists and general practitioners (Soekidjo 2018). Paramedic is a profession that provides pre-hospital and emergency medical services. Paramedics use Ambulance to carry out their duties to visit crime scenes that require medical assistance for accidents, or other emergency medical/health assistance. In practice, medical personnel should provide excellent service in order to recover patients (drug users) from addiction problems that ensnare the patient concerned. However, Decision No. 958/Pid.Sus/2016/PN.SBY shows that the defendant Dr. Harryanto Budhy on Monday 11 January 2016 or at least some time in January 2016, or at least around 2016, at the house of the Defendant Dr. Harryanto Budhy whose address is Jalan Jemur Andayani XVII/17B Kel. Siwalankerto District. Wonocolo, Surabaya City, or at least in a place that is still within the jurisdiction of the Surabaya District Court, who without rights or against the law owns, stores, controls or supplies Class III narcotics. The defendant Dr. Harryanto Budhy is a doctor. The number of medical personnel who abuse drugs is small and is rarely published in various media. Medical personnel who abuse narcotics are identified as individuals who have behavioral and legal problems. Drug crime is a special crime. As with special crimes, judges are allowed to sentence two main crimes at once, generally corporal punishment and a fine. Corporal punishment in the form of death penalty, life imprisonment or imprisonment. The aim is for the punishment to be burdensome for the perpetrator so that crime can be curbed in society, because drug crimes are very dangerous to the interests of the nation and state. Criminal sanctions imposed by judges on criminals are still considered to have not created a sense of fear and are influenced by norms outside of legal norms, and appear to still be inherent and become an obstacle to consistent law enforcement. Apart from that, the judge's enormous authority in deciding cases results in many disparity in decisions in similar cases. This is characterized by sharp, substantial differences between the decisions of one District Court judge and another or High Court judges and Supreme Court judges regarding the same case, even though they all refer to the same regulations (Hamzah and Waluyo 2015).

Law No. 35 of 2009 concerning Narcotics gives the judge the authority to decide at a drug addiction rehabilitation center if the perpetrator of the crime is only an addict or suffers from an addiction syndrome. Rehabilitation is intended for restore and/or develop physical, mental and social abilities (Makaro 2015). But the reality is that judges rarely use this authority. It's not uncommon for judges decide cases of drug crimes involving addicts and those suffering from dependency syndrome with prison sentences/imprisonment plus fines which, if the fines are not paid, will be replaced by imprisonment in lieu of fines. Law enforcement against crime in Indonesia, especially in terms of punishment, should refer to a legal norm approach that punishes criminals so that it can provide a deterrent effect. In the correctional system, the function of punishment is no longer just to provide a deterrent effect, but is also an effort to rehabilitate and socially reintegrate correctional inmates. Punishment means the state's efforts to maintain the needs and interests of citizens jointly or individually, which cannot all be done by the citizens themselves. So if a citizen is harmed by another person and he himself cannot take revenge, then these needs and interests are represented or carried out by the state. This provides discourse to criminals so they can capture society's aspirations for justice. Empirical reality in the field of punishment in general still adheres to fixing convicts in correctional institutions, thus giving the picture that these crimes only stop for a moment and will reappear in the social environment of society (Saleh 2018). In this regard, this research will examine indications that medical personnel may be suspected of committing Article 122 paragraph 2 of the Narcotics Law No. 35 of 2009 and determine the criminal liability of medical personnel who violate Article 122 paragraph 2 of the Narcotics Law No. 35 of 2009.

2. METHODOLOGY

This research is included in normative research. This research was conducted or aimed at written regulations and other legal materials. For this normative legal research, the author will use a normative research type, namely research that is focused on studying positive legal research, in this case written legal materials, especially those relating to criminal settlements and the legal system that surrounds them in order to draw related conclusions. with criminal responsibility for medical personnel who abuse narcotics. The approach used is a

statutory approach. The legal materials used are primary legal materials, namely legal materials consisting of statutory regulations in order from the highest to the lowest level which include the 1945 Constitution of the Republic of Indonesia, the Civil Code (Burgerlijk Wetboek) and Narcotics Law No. 35 Tahun 2009. Secondary legal materials are legal materials that provide explanations about literature such as legal books and legal research, (law theses and legal journals) related to the legal issues in this research. The technique for collecting legal materials is carried out using library research, which is done by reviewing statutory regulations, documents or journals, books, scientific essays and other written legal materials related to the legal issue being studied. As for the analysis technique for collected legal materials, the next step is to carry out the analysis technique for legal materials which starts with collecting primary legal materials and secondary legal materials, then preparing them according to the classification of legal materials from the results of systematic research carried out correctly to get an overview of the research results. Then the legal material analysis techniques used in this research is prescriptive, where this research provides arguments as to whether it is right or wrong or what should be according to the law regarding legal facts or events from the research results.

3. RESULTS AND DISCUSSION

Decision Number 958/Pid.Sus/2016/PN.SBY shows that the defendant Dr. Harryanto Budhy on Monday 11 January 2016 or at least some time in January 2016, or at least around 2016, at the house of the Defendant Dr. Harryanto Budhy whose address is Jalan Jemur Andayani XVII/17B Kel. Siwalankerto District. Wonocolo, Surabaya City, or at least in a place that is still within the jurisdiction of the Surabaya District Court, who without rights or against the law owns, stores, controls or supplies Class III narcotics. This act was carried out by the defendant in the following manner. The act was carried out by the defendant in the following manner:

1. Starting from the Surabaya City BNN eradication team on Monday 11 January 2016 at around 10.00 WIB monitoring the house of the defendant Dr. Harryanto Budhy whose address is Jalan Jemur Andayani XVII / 17B Kel. Siwalankerto District. Wonocolo, Surabaya City. Then at around 15.20 WIB, the Surabaya City BNN Eradication Team arrested Andry Heriyanto. During a search of Andry Heriyanto they found: ½ (half) of a drug tablet with the brand name Suboxone, 2 alprazolam pills, 1 syringe. Furthermore, on the same day, the team against the Surabaya City BNN at around 22.00 WIB arrested MOCH. AINUR ROFIQ who was at the time the search was carried out on Moch. Ainur Rofiq found: ½ (half) tablet of the brand drug Suboxone and 1 (one) pill of alprazolam.
2. That Andre Heriyanto and Moch. Ainur Rofiq in front of the Surabaya City BNN Eradication Team admitted and explained that the drug Suboxone was obtained from the defendant Dr. Harryanto Budhy.
3. That is based on the information from Andre Heriyanto and Moch. Ainur Rofiq then at around 22.30 WIT the Surabaya City BNN Eradication Team came to the house of the Defendant, Dr. Harryanto Budhy. Upon arrival at the defendant's house, Dr. Harryanto Budhy, City BNN Eradication team Surabaya conducted a search inside the defendant's house, Dr. Harryanto Budhy and 6 empty boxes of 8 mg Suboxone were found from the trash and then the Surabaya City BNN Eradication Team asked the defendant Dr. Harryanto Budhy to show and hand over all stored Suboxone drugs with the following details:
 - a. 5 empleks (each emplek contains 7 items) or 35 (thirty five) 8mg Suboxone tablets taken from the wooden cupboard where narcotic drugs are stored.
 - b. ¼ tablet of 8mg Suboxone (patient deposit) in a white plastic clip taken from the safe where narcotic and psychotropic drugs are stored.
 - c. 5 (five) Suboxone tablets taken from a pile of folders in the pharmacy cupboard.
 - d. 40 (forty) alprazolam tablets taken from the special psychotropic storage cupboard.
 - e. 1 (one) blue medicine cutting tool taken from the cashier's desk drawer at the SINAR MENTARI pharmacy.
 - f. 1 (one) bundle of narcotics order letters.
 - g. 1 (one) bundle of Kimia Farma invoices.
 - h. 1 (one) copy of the narcotics prescription for January 2016.
 - i. 1 (one) box of patient medical records.
 - j. 8 camlet tablets and 70 xanax tablets were taken from a special psychotropic storage cupboard.
4. That in the Examination Minutes Criminalistic Laboratories Lab Number: 0348/NNF/2016 states the evidence received and then the evidence number is given as follows:
 - a. 0524/2016/NNF: in the form of 5 (five) strips containing 35 (thirty five) square tablets of the white Suboxone brand with the logo ?N8? with a net weight of 13.755 grams.

- b. 0525/2016/NNF: in the form of ¼ (quarter) white tablet with a net weight of 0.104 grams.
 - c. 0526/2016/NNF: in the form of 5 (five) white Suboxone brand hexagonal tablets with the "N8" logo with a net weight of 1.965 grams
5. Which is next in the Minutes of Investigation of Criminalistic Laboratories Number Lab: 0348/NNF/2016 concluded that the evidence with numbers: 0524/2016/NNF, 0525/2016/NNF and 0526/2016/NNF as mentioned in (I) is indeed a tablet containing the active ingredient:
- a. Buprenorphine is listed in group III (three) serial number 11 Appendix I (one) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.
 - b. Naloxone (not included as narcotics, psychotropics but included as hard drugs).

Regulation of the Minister of Health Number 55 of 2015 concerning Reducing Adverse Impacts on Injecting Drug Users as well as an attachment to Regulation of the Minister of Health Number 55 of 2015 concerning Guidelines for Reducing Adverse Impacts on Injecting Drug Users regarding the principles of implementing Buprenorphine maintenance therapy (TRB) which states: administering carry-out doses Going home must be approved by the doctor treating the patient based on an evaluation of the patient's physical and psychosocial condition. Not allowed give buprenorphine/naloxone by take home method during the first month of therapy. In the second month, physicians are permitted to administer buprenorphine/naloxone take home in special circumstances up to 2 times a week, allowing up to 72 hours of buprenorphine/naloxone use without monitoring. In the third month and beyond, a take home dose of buprenorphine/naloxone can be given for a maximum of 1 week. Buprenorphine dose reduction is carried out gradually based on the patient's condition determined by a trained doctor. Based on Decision Number 958/Pid.Sus/2016/PN.SBY, the actions of the defendant Dr. Harryanto Budhy as regulated and subject to criminal penalties in Article 122 of Law Number 35 of 2009 concerning Narcotics.

Criminal Liability for Medical Personnel Who Violate Article 122 Paragraph 2 of the Law Narcotics No. 35 of 2009

Law Number 35 of 2009 concerning Narcotics has regulated the criminal provisions that must be borne by narcotics abusers or can be referred to as perpetrators of narcotics crimes. Many people generally think that the punishment imposed on perpetrators of narcotics crimes is the same, even though the narcotics law itself differentiates between perpetrators of narcotics crimes with different sanctions. In narcotics abuse, it is not only the user who can be subject to criminal action, based on the Criminal Code regarding participation in committing a criminal act, both the perpetrator who orders it to be carried out, participates in it, and the organizer or assistant can be called the perpetrator of a criminal act. Accountability Criminal abuse of narcotics is not only carried out by means of proof by a judge and the applicable law. Judges don't just stick to it in a letter from the police regarding the results of urine tests and laboratory results whether the substances used contain class I narcotics or not, if proven then they must be punished in accordance with the applicable law. But the judge must also adhere to the terms of the sentence. The category of abuser is divided into 3 (three), namely: users, addicts and dealers. Users are people who use narcotics or are victims of narcotics abuse. A victim of narcotics abuse is someone who accidentally uses narcotics because they are persuaded, deceived, deceived, forced and/threatened to use narcotics. Narcotics addicts are people who use or abuse narcotics and are dependent on narcotics, both physically and psychologically. A dealer is a person who disseminates the existence of narcotics by buying and selling, storing and receiving.

In the case studied, namely the Decision Number 958/Pid.Sus/2016/PN.SBY shows that the defendant Dr. Harryanto Budhy on Monday 11 January 2016 or at least some time in January 2016, or at least around 2016, at the house of the Defendant Dr. Harryanto Budhy whose address is Jalan Jemur Andayani XVII/17B Kel. Siwalankerto District. Wonocolo, Surabaya City, or at least in a place that is still within the jurisdiction of the Surabaya District Court, who without rights or against the law owns, stores, controls, or supplies Class III narcotics. The actions of the defendant Dr. Harryanto Budhy as regulated and subject to criminal penalties in Article 122 of Law Number 35 of 2009 about Narcotics. Article 122 (1) Every person who without right or against the law possesses, keeps, controls or supplies Class III Narcotics, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of at least Rp. 400,000,000.00 (four hundred million rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah). Article (2) In the event that the act of possessing, storing, controlling, providing Class III Narcotics as intended in paragraph (1) weighs more than 5 (five) grams, the perpetrator shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and the maximum fine as intended in paragraph (1) plus 1/3 (one third). On the other hand, the verdict shows that the prison doctor, Harryanto Budhi, was proven guilty of intentionally selling the narcotic type saboxone in the third category, freely. Saboxone should be given to a drug

addict, where taking it is accompanied by a prescription and assistance from a doctor. However, the doctor sells it freely to drug addicts. The verdict also shows that the doctor was sentenced to three years in prison, where the judge ignored the demands of the prosecutor from the Surabaya District Prosecutor's Office who demanded five years in prison.

4. CONCLUSION

Medical personnel can be suspected of committing Article 122 paragraph 2 of the Narcotics Law No. 35 of 2009 because they were found guilty of intentionally selling the narcotic type saboxone, which is categorized as class three, freely. Saboxone should be given to a drug addict, where taking it is accompanied by a prescription and assistance from a doctor. However, the doctor sells it freely to drug addicts. Article 122 paragraph (1) Law Number 35 of 2009 concerning Narcotics whose elements are: Every Person; Without Rights or against the Law; Possessing, storing, controlling or providing non-plant class III narcotics. If you look at Decision Number 958/Pid.Sus/2016/PN.SBY, it is known that prison doctor Harryanto Budhi controlled and/or kept and/or possessed these narcotics. The defendant's actions fulfilled the formulation of Article 122 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Criminal liability for medical personnel who violate Article 122 paragraph 2 of the Narcotics Law No. 35 of 2009 states that: Every person who without rights or against the law owns, keeps, controls or supplies Class III narcotics, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of at least IDR 400,000,000.00 (four hundred million rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah). In the event that the act of possessing, storing, controlling, providing Class III narcotics as intended in paragraph (1) weighs more than 5 (five) grams, the perpetrator shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and criminal the maximum fine as intended in paragraph (1) plus 1/3 (one third).

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