



Disciplinary sanctions for civil servants involved in drug abuse at PUPR office, North Sumatra Province

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Abstract

This article aims to find out and analyze the legal rules that form the basis and application of legal sanctions for state civil servants involved in narcotics abuse in the PUPR Office of North Sumatra Province. Writing in this thesis using normative legal research methods is carried out by means of a *Statute Approach*. Data analysis is carried out by qualitative descriptive analysis. This study concludes that legal arrangements for civil servants involved in narcotics abuse within the PUPR Office of North Sumatra Province are regulated in Law No. 35 of 2009, Law No. 5 of 2014, PP No. 53 of 2010 concerning Civil Servant Discipline, PP Number 11 of 2017 concerning Management of Civil Servants and Perka BKN Number 3 of 2020 concerning Technical Guidelines for Dismissal of Civil Servants. The application of disciplinary legal sanctions for civil servants involved in narcotics abuse is carried out by the North Sumatra Regional Civil Service Agency through the Civil Service Guidance Officer (PPK) and the Head of the BKD Disciplinary Bureau based on Article 87 of Law Number 5 of 2014 concerning the State Civil Apparatus (ASN).

Keywords: Disciplinary law sanctions, state civil apparatus, narcotics abuse

Introduction

As servants of the state and society, Civil Servants (PNS) have a great responsibility to maintain professionalism, national insight, and comply with applicable laws and regulations. They are also expected to support and succeed government programs, avoid reprehensible behavior, and maintain dignity and self-esteem as civil servants.

The discipline of civil servants is regulated in the Government Regulation of the Republic of Indonesia Number 53 of 2010 concerning (Anastacia *et al.*, 2021; Haeba *et al.*, 2021) ^[2, 4]. Disciplinary violations can occur through the words, writings, or actions of civil servants that are not in accordance with obligations or violate prohibitions stipulated in civil servant discipline provisions, whether they are carried out inside or outside working hours.

When a civil servant commits a disciplinary violation, they may be subject to disciplinary punishment by an official authorized to administer punishment. This is important in maintaining order and discipline in the work environment and enforcing the norms that have been set for civil servants for the realization of quality public services. (Putra *et al.*, 2013) ^[14].

The increasing number of cases of government officials consuming narcotics is very concerning. There are several laws and regulations in Indonesia that regulate Civil Servants, one of which is Government Regulation No. 94 of 2021 concerning Civil Servant discipline. The imposition of Disciplinary Punishment and Administrative Sanctions for civil servants depends heavily on the commitment of the leadership. Even if ASN is proven to violate the provisions of laws and regulations, most of them are not followed up by the Personnel Development Officer (PPK) at the relevant agency.

The theory carried out in this study is based on the Theory of Disciplinary Sanctions which outlines disciplinary sanctions against Civil Servants within the Public Works and Spatial Planning Office (Dinas PUPR) of North

Sumatra Province. The theory of the legal system as proposed by Lawrence Meir Friedman explains that the legal system refers to 3 important elements in law. The three main elements of the legal system are *Legal Structure*, *Legal Substance*, and *Legal Culture* (16). Punishment is the provision of undesirable (painful) results to minimize unwanted behavior (Triandani *et al.*, 2023) ^[22]. Disciplinary sanctions for any violation of discipline with the aim of correcting and educating civil servants who commit violations.

Previous research on drug abuse by civil servants has been conducted by (Sidabutar, 2019) ^[17] which concluded that the law enforcement process against police members who are entangled in drug abuse cases is in accordance with applicable laws and regulations. Research by (NATSIR, n.d.) about State Civil Apparatus Involved in Narcotics Abuse, concluded that disciplinary sanctions for state civil servants in Polewali Mandar Regency involved in narcotics abuse are severely sanctioned in the form of exemption from office and dismissal for cetera. Likewise, research by (Saifuddin, 2020) ^[6], concluded that the basis for judges' consideration in sentencing against drug abuse crimes is not only limited to Article 127 of Law No. 35 of 2009 concerning Narcotics but also based on the facts revealed at trial.

This study aims to determine and analyze the legal rules that are the basis for the application of legal sanctions and the application of legal sanctions for state civil servants involved in narcotics abuse in the PUPR Office of North Sumatra Province.

Research Methods

The normative legal research method used in this writing is to conduct literature research, where secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials are the main focus of analysis (Jonaedi Efendi *et al.*, 2018) ^[8]. The approach used is the Statute Approach, which allows to review various

legal regulations related to the enforcement of Civil Servant (PNS) discipline.

Data collection techniques were carried out through document studies and interviews with 2 resource persons from the North Sumatra Regional Civil Service Agency, namely the Civil Service Guidance Officer (PPK) and the Head of the BKD Disciplinary Bureau. Data analysis is carried out with a qualitative descriptive analysis approach, which allows to dig deeply into existing problems and relate them to relevant theories to conduct legal analysis (Nasution, 2011) ^[12].

Through this approach, it is hoped that a better understanding of the factors that influence the enforcement of discipline against civil servants involved in drug abuse in the local government environment can be obtained. In addition, it is also expected to contribute to improving the effectiveness of discipline enforcement and handling cases of law violations among civil servants.

Results and Discussion

Legal Arrangements for State Civil Apparatus (ASN) Involved in Narcotics Abuse within the PUPR Office of North Sumatra Province

Law refers to rules as *rules of the game*. In this case, the rules are interpreted as the substance of the law. The main function of this sub-system is to monitor all deviations to conform to the rules. According to Parson, law as the main element in system integration. This is also supported by Steeman who justifies that what formally constitutes a society is a general acceptance of normative rules of the game. It is this normative pattern that must be seen as the most core element of an integrated structure. In Bredemeier's framework, law is used to resolve conflicts that arise in society (Tanya *et al.*, 2010) ^[20]. Efforts made in overcoming narcotics crimes depend on normative provisions that become the legal umbrella in enforcing the law.

Law Number 35 of 2009 concerning Narcotics regulates the misuse of narcotics. This law is used to provide charges to defendants who commit drug abuse crimes. Law Number 35 of 2009 concerning Narcotics is a legal umbrella in efforts to overcome and eradicate narcotics crimes. These provisions have fulfilled the rules of juridical, sociological and philosophical enforceability. Regulation regarding drug abuse is also in accordance with higher provisions, namely provisions in the Law that provide human rights for everyone to get a healthy environment and optimal health services as stipulated in Article 28H paragraph (1) of the Constitution which states:

"Everyone has the right to live a prosperous life physically and mentally, to reside, and to get a good and healthy living environment and the right to health services".

Criminal sanctions for Civil Servants (PNS) related to the circulation or use of narcotics still refer to Law Number 35 of 2009 concerning Narcotics. The application of criminal punishment against civil servants is not distinguished from the general public. In addition, Law Number 5 of 2014 concerning the State Civil Apparatus provides provisions regarding termination of employment for civil servants. Civil servants can be honorably dismissed for several reasons such as death, self-request, reaching the retirement age limit, or physical or spiritual incompetence. They can also be honorably discharged or not discharged if sentenced to imprisonment with a maximum sentence of 2 years. In

addition, termination of employment can occur without one's own request if the civil servant commits a serious disciplinary violation. On the other hand, civil servants can be dishonorably dismissed if proven to have committed violations of Pancasila and the 1945 Constitution of the Republic of Indonesia or committed office crimes or crimes related to office with a maximum sentence of 2 years.

If there are civil servants who are victims of drug abuse and get a court decision in the form of medical rehabilitation or social rehabilitation, the authorized official can use Article 87 paragraph (2) of Law Number 5 of 2014 concerning the State Civil Apparatus to carry out treatment. The article says that:

"Civil servants can be honorably dismissed or not dismissed because they are sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime with a maximum prison sentence of 2 (two) years and a crime committed without planning."

Civil servants involved in drug use violate their oath of office and applicable laws. Law Number 35 of 2009 regulates sanctions for agents, users, and civil servants related to drugs. Although there is no special protection for civil servants, drug consumption is a serious offense for them. Civil servants found guilty will be tried through internal mechanisms that apply within the civil service. The punishment given is based on Drug Law No. 35 of 2009. In addition, Government Regulations on civil servant discipline also regulate obligations, prohibitions, and disciplinary punishments that can be imposed on civil servants who violate. The purpose of imposing disciplinary punishment is to foster civil servants who violate so that they can regret their actions and commit not to repeat violations in the future. In addition, Government Regulation Number 17 of 2020 concerning Amendments to Government Regulation Number 11 of 2017 concerning Civil Servant Management also regulates various aspects related to civil servant staffing, including discipline, dismissal, and protection.

Civil Servant (PNS) discipline is the ability to comply with obligations and avoid prohibitions stipulated in laws and regulations and/or official regulations. Disciplinary violations occur when a civil servant does not comply with obligations or violates established prohibitions, whether they are committed in or outside working hours. Disciplinary punishment is a sanction given to civil servants who violate disciplinary rules (Sudrajat, 2008) ^[19].

Some cases of drug abuse are carried out by the State Civil Apparatus (ASN), which should be an example for the community. However, there have been cases where civil servants have been involved in drug abuse. In dealing with these cases, suspects will be reviewed for their status as dealers or users before being sanctioned regarding the fate of their status as civil servants (Anugrah, 2018) ^[3].

According to Article 247 of Government Regulation Number 11 of 2017, civil servants can be honorably dismissed or not dismissed if sentenced to prison based on a court decision that has permanent legal force for committing a crime with a maximum prison sentence of two years and not planning.

If the suspect is a narcotics user, he will be subject to disciplinary punishment in accordance with Government Regulation Number 53 of 2010. Civil servants are required to comply with all provisions of laws and regulations and uphold the honor of the state, government, and the dignity

of civil servants. The threat of disciplinary punishment will be adjusted to the impact caused by the act, and the punishment will be determined by the Personnel Development Officer (PPK).

In accordance with the provisions of Article 87 paragraph (4) point b of Law Number 5 of 2014 concerning the State Civil Apparatus concerning the Management of Civil Servants, it expressly states that civil servants are dishonorably dismissed because they are sentenced to imprisonment or confinement based on a court decision that has permanent legal force for committing office crimes or crimes related to office and/or general crimes. Where one of them applies to civil servants who are proven to have committed criminal acts. The ASN Law is a strategic-oriented legal product to build the state apparatus to be more efficient and successful in carrying out the general duties of government and national development based on the spirit of reform (Hartini, 2014) ^[5].

Article 250 PP 11/2017 stipulates that civil servants can be dishonorably dismissed for several reasons, including committing violations of Pancasila and the 1945 Constitution of the Republic of Indonesia, being sentenced to imprisonment for office crimes or crimes related to office, being a member or administrator of a political party, or being sentenced to imprisonment with a maximum sentence of 2 years and crimes committed with planning. Penalties for crimes committed by civil servants can be increased by one-third according to Article 52 of the Criminal Code.

Narcotics crimes, as serious crimes against humanity, are regulated by Law Number 35 of 2009. Drug abuse cases are considered serious violations by the Ministry of State Apparatus Empowerment and Bureaucratic Reform (KEMENPAN RB), and any civil servant involved can be dismissed. If a civil servant is involved in a drug case with a sentence of more than 2 years, in accordance with Law Number 5 of 2015 concerning civil servants, they will be dismissed from office.

Application of Disciplinary Legal Sanctions for State Civil Apparatus (ASN) Involved in Narcotics Abuse within the PUPR Office of North Sumatra Province

The Civil State Officer (PNS) as the main element of human resources of the country has a role that determines the success of government maintenance and development. The PNS figure who is able to play this role is PNS who has competencies that are indicated from high discipline, good performance as well as his attitude and behavior that are full of loyalty and obedience to the country, moral and mentally sound, professional, aware of his responsibilities as a public servant and able to be a gluer of unity and unity (Abd Karim, 2015) ^[1].

To overcome disciplinary violations, efforts are needed to enforce civil servant discipline in order to improve the discipline of civil servants themselves. Therefore, the government has provided a regulatory policy with the issuance of Government Regulation Number 53 of 2010 concerning Civil Servant Discipline. Civil Servants as government officials and public servants are expected to always be ready to carry out their mandated duties. With the existence of Government Regulation Number 53 of 2010 concerning Civil Servant Discipline, it is used to enforce the work discipline of the State Civil Apparatus that lacks discipline in its work. Thus, it is expected to create an

effective and efficient government. Enforcement of discipline is an important thing in an agency. Without good discipline from the State Civil Apparatus, it is difficult for the government to realize its goals (Wijaya, 2019) ^[23].

The results of interviews with Civil Service Development Officials (PPK) at the North Sumatra Regional Civil Service Agency show that civil servant discipline is governed by various regulations that include obligations and prohibitions. Any new rules are immediately communicated to all civil servants, and violations will be sanctioned according to the provisions. Some civil servants received light sanctions in the form of verbal reprimands for learning. Evaluation continues to be carried out to monitor awareness of discipline (Ilyasin, 2019) ^[7].

The results of an interview with the Head of the BKD Disciplinary Bureau at the North Sumatra Regional Civil Service Agency emphasized the importance of complying with Government Regulation Number 53 of 2010 concerning Civil Servant Discipline. Violation of the rules must be sanctioned according to the provisions, and superiors who do not implement the rules will also be sanctioned.

The abuse of narcotics by members of the State Civil Apparatus is understood sociologically as a result of bad environmental influences or the invitation of friends. However, criminologically, this action is a violation of the law in accordance with Law Number 35 of 2009 concerning Narcotics Abuse, especially for drug users themselves (Lubis, 2020a, 2020b; Tika & Ritonga, 2019) ^[9-10, 21].

The results of an interview with the Head of the BKD Disciplinary Bureau at the North Sumatra Regional Civil Service Agency stated that the living environment is a factor that encourages civil servants to abuse narcotics, because outside influences and social environment can trigger negative behavior. Living environments that are prone to negativity can lead to deviant behavior and drug abuse.

The Civil Service Development Officer (PPK) at the North Sumatra Regional Civil Service Agency also emphasized that the social environment is a factor causing drug abuse by Civil Servants (PNS). Uncontrolled promiscuity can cause a person to fall into drug use, especially when there are group friends who use drugs.

Observations at the North Sumatra Regional Civil Service Agency show that from 2021 to 2023, there are 6 State Civil Apparatus individuals caught abusing narcotics by the Narcotics Investigation Unit (Restik) of the Medan City Resort Police. From the court results, 2 people were sentenced to less than 2 years in prison, 3 people were sentenced to under 5 years in prison, and 1 person was sentenced to more than 5 years in prison. A civil servant sentenced to more than 5 years in prison is dismissed from his position as a disciplinary sanction.

Civil servants who are involved in drug crimes and sentenced to imprisonment of less than 2 years can be temporarily dismissed without salary and only receive 50% of the temporary dismissal money from the income of the previous position. In addition, they must also receive disciplinary sanctions in accordance with Article 6 of PP No. 53 of 2010 concerning Civil Servant Discipline. This rule states that civil servants who commit disciplinary violations will be sentenced to discipline, without prejudice to the provisions in the applicable criminal regulations. Therefore, any civil servant who violates discipline, including those involved in narcotics crimes, will be subject

to disciplinary punishment (Lubis, 2020c; Rafiqi *et al.*, 2023; Silalahi, 2018) ^[11, 15, 18].

Government Regulation No. 53 of 2010 regulates the types of disciplinary punishments. Light penalties include verbal reprimands, written reprimands, and written statements of dissatisfaction. Moderate penalties include a 1-year deferment of salary and rank, and a lower-level demotion of 1 year. Severe penalties include demotion for 3 years, transfer to a lower level, exemption from office, honorable dismissal not at one's own request as a civil servant, and dishonorable dismissal as a civil servant. In relation to disciplinary sanctions for drug abusers, civil servants who are proven to have done so will receive disciplinary punishment in accordance with those in PP No. 53 of 2010.

Civil servants who have been dismissed have the right to file a lawsuit through administrative efforts at the Head of the State Civil Apparatus Advisory Board for civil servants who have been dismissed not honorably, and at the State Administrative Court for others (Helan & Asnawi, 2019) ^[6]. As legal protection for civil servants who are caught in a crime with a prison sentence of less than 2 years but are still dismissed, there are facilities that based on applicable laws and regulations are intended for civil servants who feel they are treated unfairly, so they can seek justice through existing legal protection means. The dismissal of civil servants who commit general and unplanned crimes can be dismissed not honorably or not dismissed so that full authority is handed over to the regional Civil Service Guidance Officer. This kind of authority, categorized as discretionary authority, so that the test is based on general principles of good governance, such as the principles of legal certainty, non-discrimination, justice, giving reasons and so on.

The dismissal of Civil Servants (PNS) within the North Sumatra Provincial Government as convicted of drug abuse or corruption is not always carried out immediately. This is because there are several reasons explained by the Personnel Development Officer (PPK) in the interview results. First, there is a conflict of interest due to personal relationships between the convict and the KDP or other officials, so the KDP is reluctant to carry out the dismissal as mandated by law. Second, fear of claims for compensation due to not having made a dismissal of the convict. Third, the KDP has not received a court decision that strengthens the determination of the convict as the basis for PTDH. Fourth, reluctance to deal with the State Administrative Court (PTUN) because some convicts filed administrative appeals. Finally, pity for convicts who have already served prison sentences, so the KDP feels unable to impose administrative punishments that can add to the suffering of convicts and their families.

The North Sumatra Provincial Government has implemented Government Regulation No. 53 of 2010 concerning Employee Discipline, by imposing disciplinary sanctions such as dismissal of civil servants sentenced to imprisonment of more than 5 years, in accordance with applicable regulations. Based on Article 7 of Government Regulation Number 94 of 2021 concerning the Discipline of Civil Servants (PNS), civil servants who violate responsibilities and prohibitions will be subject to disciplinary punishments, which vary in type between light, moderate, and severe punishments, as stipulated in Government Regulation Number 53 of 2010.

According to Article 251 of Government Regulation Number 17 of 2020 and Article 87 paragraph (4) letter d of

the ASN Law, officials involved in narcotics crimes, especially those planned and included in the category of serious crimes, can be dismissed without the official's request. The dismissal of the civil servant was carried out after a court decision ruled that the defendant was proven to have committed narcotics violations, so that the authorized official had the right to fire the civil servant to comply with applicable laws and regulations.

The North Sumatra Regional Civil Service Agency through the Head of the Disciplinary Bureau of the North Sumatra BKD gave disciplinary sanctions to 2 civil servants involved in narcotics abuse within the Public Works and Spatial Planning Office (Dinas PUPR) of North Sumatra Province. Although they had already been sentenced to less than 2 years in prison, they were not fired in consideration of providing an opportunity for treatment. This refers to Article 87 paragraph (2) of Law Number 5 of 2014 concerning the State Civil Apparatus which states that civil servants can be honorably dismissed or not dismissed if sentenced to imprisonment with a maximum sentence of 2 years and the crime is not planned.

However, articles 250 and 251 of Government Regulation Number 17 of 2020 regarding the dismissal of civil servants have been amended from Government Regulation Number 11 of 2017 to harmonize with the Civil Service Law. It stipulates that civil servants can be honorably or dishonorably discharged for imprisonment with a maximum sentence of 2 years, not distinguishing whether the crime is premeditated or not.

In the context of general criminal law, the rule may be appropriate, but in the perspective of state administrative law, any violation of law committed by civil servants must be sanctioned in accordance with applicable laws and regulations. However, decision-making in this case seems less assertive and does not provide an adequate deterrent effect for perpetrators and other civil servants.

The North Sumatra Regional Civil Service Agency, through the Head of the North Sumatra BKD Disciplinary Bureau, has not given disciplinary sanctions to 3 civil servants involved in narcotics abuse within the Public Works and Spatial Planning Office (Dinas PUPR) of North Sumatra Province. They have been sentenced to imprisonment of more than 3 years and less than 5 years, but were not fired because of the long time of the reporting process from the prosecutor's office to the Regional Civil Service Agency of the North Sumatra Provincial Government in criminal cases. The reporting process from the prosecutor's office to the Regional Civil Service Agency of the North Sumatra Provincial Government takes months because every criminal case requires a long process. After the court verdict came out and proved the perpetrator guilty, BKD issued a summons to the civil servant who violated the sanction. The next process follows Government Regulation Number 11 of 2017 concerning Civil Servant Management.

In addition, the Regulation of the Head of the State Civil Service Agency (BKN) Number 3 of 2020 concerning Technical Guidelines for the Dismissal of Civil Servants is a guideline in dismissing civil servants. Civil servants detained for being suspects of criminal acts can be temporarily dismissed according to Article 88 paragraph (1) of the Civil Service Law, with income deducted by 50% to meet the needs during the detention period. Dishonorable dismissal as a civil servant results in loss of status and security of the pension, but to ensure fairness, it is important

to grant pension rights to fired civil servants, although the amount of pension may vary depending on length of service. In enforcing civil servant discipline, the role of the Civil Service Development Officer (PPK) is very important to create a culture of good legal obedience in government organizations. The observance of civil servants, especially State Officials, to the law affects the smooth administration of the state. Law enforcement needs to be done to realize the established legal rules. The authority of the KDP in imposing disciplinary sanctions is an expression of legal norms that are part of the social contract between the government and its apparatus. However, limitations in formal legal arrangements allow for moral and ethical discretion in the enforcement of discipline, which is sometimes inconsistent with existing rules. This discretion reflects differences in the internalization of moral and ethical values between officials and lawmakers and society. When moral and ethical values conflict with aspects of law enforcement, this can interfere with the enforcement of state administrative laws. Therefore, principles are needed that can be a guide for state officials in carrying out their duties, in addition to morals and ethics.

Conclusion

Legal arrangements for state civil servants involved in narcotics abuse within the Public Works and Spatial Planning Office (Dinas PUPR) of North Sumatra Province are basically regulated in Law Number 35 of 2009 concerning Narcotics, Law Number 5 of 2014 concerning State Civil Apparatus, Government Regulation Number 53 of 2010 concerning Civil Servant Discipline, Government Regulation Number 11 of 2017 concerning Management of Civil Servants, and Regulation of the Head of the State Civil Service Agency Number 3 of 2020 concerning Technical Guidelines for the Dismissal of Civil Servants. The application of civil service sanctions for state civil servants involved in narcotics abuse within the Public Works and Spatial Planning Office (Dinas PUPR) of North Sumatra Province is carried out by the North Sumatra Regional Civil Service Agency through the Civil Service Guidance Officer (PPK) and the Head of the Disciplinary Bureau of the BKD of North Sumatra Province based on legal certainty, prudence and accuracy of authorized officials in determining legal sanctions and in terms of aspects Enforcement of disciplinary penalties is carried out. The application of this sanction is based on Article 87 of Law Number 5 of 2014 concerning the State Civil Apparatus (ASN) which confirms some that civil servants are discharged not honorably because they are sentenced to imprisonment or confinement based on court decisions that have permanent legal force; and for committing criminal acts or criminal acts related to public office and/or crime, including criminal acts of corruption.

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