



## Law enforcement in eradication of narcotics crime

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### Abstract

This study aims to identify and analyze the legal reconstruction that is fair to Narcotics Abusers. The idea of legal construction in this writing is related to the affirmation of the subjective element in the formulation of Article 111 paragraph (1) and Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) as part of efforts to guarantee the basic rights of narcotics addicts. The writing of this article uses the juridical-normative research method. Normative legal research methods are also commonly called doctrinal legal research or library research. It is called doctrinal law research because this research is only aimed at written regulations. Based on the results of the research, it is known that the concept of the future regarding the implementation of rehabilitation for narcotics users should be for every narcotics user who has met the requirements in Article 54 of Law Number 35 of 2009 concerning Narcotics and Regulation of the Head of the National Narcotics Agency No. 11 of 2014 all rehabilitation is carried out, there is no longer carried out for narcotics users to carry out detention in detention centers or prisons because for narcotics users it is not a solution. This is with the aim of healing and recovering narcotics users. Precisely with the rehabilitation of narcotics users supported by their families and communities, narcotics users can gradually recover from narcotics use and can become ambassadors for narcotics users.

**Keywords:** narcotics, abusers, addicts, law

### Introduction

Narcotics crime regulates different legal treatment between abusers, dealers and dealers, but in the field there are still many investigators who have different perceptions in applying the articles in the Narcotics Law and even consider the same between abusers and dealers so that abusers who should be rehabilitated must in fact be rehabilitated. convicted so that the purpose of the law to provide justice and benefits to the community is not fulfilled. In Law no. 35 of 2009 concerning Narcotics (hereinafter abbreviated as the Narcotics Law), the juridical implications of the provisions of Article 4 letter d, Article 54, Article 55, Article 103, Article 127 and Article 128 of the Narcotics Law are used to determine narcotics users are categorized as victims or perpetrators, namely narcotics users as perpetrators of crimes and at the same time as victims. Basically, narcotics "dealer" in legal terminology is categorized as a father (dader), but "users" can be categorized as "perpetrators and/or victims". As victims, narcotics "users" are citizens whose rights must be protected and respected both in the legal process and in the health and social dimensions (Satrio Putra Kolopita, 2013) <sup>[16]</sup>.

In the Narcotics Law it is not specifically regulated regarding provisions for narcotics addicts who can be referred to Panti Rehab during the investigation process, but in this case addicts can only be referred to Panti Rehab if they have gone through the stages of the criminal justice system process which leads to a judge's decision. That in his decision the judge decides whether the perpetrator of the narcotics crime is an addict, perpetrator or as a dealer. The judicial process is indeed in accordance with the principle of certainty, but when talking about victims in narcotics crimes, medical and social rehabilitation efforts must immediately be carried out.

Giving imprisonment for addicts and narcotics victims can cause new problems in the future. The facts on the ground show that addicts and narcotics victims are undergoing legal processes and sentenced to prison terms. The number of prison residents who incidentally are drug abusers, why did this case occur, the author's analysis that the root of the problem is that the Narcotics Law does not provide clear boundaries between abusers and dealers. These conditions indicate that the crime of narcotics abuse must receive serious attention, especially in terms of criminal sanctions, so that later the application of criminal sanctions aimed at rehabilitation, coaching, and guidance to prisoners can actually run effectively, so that the narcotics problem can be resolved immediately.

The idea of legal construction in this writing is related to the affirmation of the subjective element in the formulation of Article 111 paragraph (1) and Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) as part of efforts to guarantee the basic rights of narcotics addicts. Based on the results of research conducted by the Institute for Criminal Justice Reform (ICJR) in collaboration with the Institute for the Study of Advocacy for Judicial Independence (LeIP), the implementation of the Supreme Court's decision (MA) against Narcotics users during 2020 in the Supreme Court's decision, from 31 sample decisions, Article 112 paragraph (1) occupies the position most widely used as the basis for prosecution, with a percentage of more than 21 decisions, followed by Article 111 paragraph (1). This is in contrast to Article 127 of the Narcotics Law, which incidentally is more appropriately applied to narcotics addicts.

Rehabilitation punishment is the most appropriate punishment for narcotics abusers who are in trouble with the law as an alternative or substitute for punishment, where narcotics abusers must undergo treatment, education, after

care, rehabilitation and social reintegration measures. The period of undergoing rehabilitation is also counted as a period of serving a sentence in the Narcotics Law. This is the mandate of Law No. 8 of 1976 concerning the Ratification of the Single Convention on Narcotics and the Protocol which amended it and Law no. 7 of 1997 concerning Ratification of the United Nation Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances 1988, and has been translated in Article 4 letter (d) of the Narcotics Law which animates a number of articles in it. In essence, narcotics abusers are threatened with crime, but if the person concerned has committed this crime, is investigated, prosecuted, and decided by a judge, access to rehabilitation is guaranteed by the law so that they can be recovered. The government is also obliged to prepare rehabilitation resources to restore and carry out social reintegration so that they can return to living a normal life.

An illustration that the orientation of the enforcement of the Narcotics Law is still on punishment can be seen in prison inmates. In 2018 it was noted that 45% of the total inmates of prisons (115,289 out of 255,407 people) were drug detainees. Drug dealer prison occupants 64%, and drug users 36%. The prevalence rate of drug abuse by students and college students in the period 2012 to 2019 reached 3.2% (2,297,492 people), while the prevalence rate of drug abuse among workers in the last year was 2.1% (1,514,037 people). At the national level, drug abuse has become a serious threat, this is described by data on the disclosure of drug cases in 2018-2020, at BNN there are 4,357 cases (BNN, 2020).

It is known that based on data from the Ministry of Law and Human Rights, in September 2018, the capacity of prisons in Indonesia reached 118,961 people. Of that number, narcotics convicts reached 66,626 people and prisoners identified as narcotics users reached 24,914 people. This also makes prison overload one of the most serious problems in Indonesia. One of the main problems in overcapacity is due to the high supply of prisoners and prisoners into prisons.

The prison population more than doubled from 71,500 to 144,000 in 2004 to 2011, while prison capacity has grown by less than 2%. In July 2015, according to the Correctional Database (SDP) system managed by the Directorate General of Corrections (Ditjen PAS), there were 178,063 residents spread over 477 prisons/detention centers. As many as 34% of that number are pre-trial detainees. This figure does not include the number of detainees in police custody. The population density of prisons/detention centers nationally is around 145%, but in many prisons/large the number of inmates can reach 662% of the available capacity. In Aceh province itself, the number of prison residents involved in narcotics cases is 4428.

Seeing the condition of Aceh towards the use of narcotics, contributing or contributing to the number of data on narcotics users in Aceh, in the beginning it was only trial and error and eventually became dependent so that in the future they would have to deal with law enforcement officials, while in prison without special guidance (rehabilitation). They interact with dealers and even dealers who in the end many of them when they get out of prison become/more "smarter" in narcotics abuse and not infrequently become new dealers, this is evidenced in the print media that often appears. This is a problem of the legal construction that has been implemented without looking at

the philosophical basis in the recovery of drug users themselves so that the values of justice for the victims are tarnished.

Giving prison sentences for addicts and victims of narcotics abuse can cause new problems in the future. The facts on the ground show that addicts and victims of narcotics abuse who undergo legal processes and are sentenced to prison, after serving their sentences the quality of their use of narcotics increases and is not as expected.

In principle, addicts and victims of narcotics abuse are "sick people" who are obliged to undergo treatment by placing them in medical rehabilitation and/or social rehabilitation institutions. These considerations are based on the fact that most of the prisoners and narcotics crime cases fall into the category of narcotics abusers without regard to "sickness" is not the right step because it ignores the interests of care and treatment. Addiction can be classified as a "disease" which has the following criteria:

1. It is a primary disease which often does not require a special initial condition to cause a person to become addicted;
2. Chronic and recurrent;
3. Progressive, namely the physical and psychological condition of the patient getting worse over time; and;
4. Potentially fatal which can result in death or experience worsening medical, psychological and social complications.

Article 54 of Law Number 35 of 2009 concerning Narcotics states, "Narcotics addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation". Article 127 Narcotics can also be used as a guideline by judges in making rehabilitation decisions for addicts and victims of narcotics abuse. Article 127 paragraph (3) of the Narcotics Law states that, the Law on Narcotics stipulates that, "In the event that an abuser can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation". According to the Narcotics Law, all addicts and victims of drug/drug abuse are required to undergo medical rehabilitation and social rehabilitation in hospitals or certain rehabilitation institutions organized by government agencies or the community. In addition to medical treatment and/or rehabilitation, the healing of narcotics addicts is carried out through religious and traditional approaches. Then, according to Article 2 of the Regulation of the Minister of Social Affairs No. 26 of 2012 concerning Standards for Social Rehabilitation of Drug Abuse Victims stipulates that Narcotics Abuse Victims are:

- a. Become a reference in the implementation of social rehabilitation for victims of drug abuse;
- b. Provide protection to victims from practice errors;
- c. Provide direction and performance guidelines for social rehabilitation providers for victims of drug abuse; and;
- d. Improve the quality and reach of social rehabilitation services for victims of drug abuse.

Meanwhile, the determination of the level of addiction and the role of the suspect and/or defendant in a narcotics crime is carried out by the Integrated Assessment Team (TAT). Based on the regulations regarding the procedures for submitting and implementing the assessment process, it is regulated in Article 8 of the Regulation of the Head of the

National Narcotics Agency No. 11 of 2014. The procedures for implementing the assessment are as follows:

1. "Investigators place Narcotics Addict Suspects and Narcotics Abuse Victims who are in the judicial process into rehabilitation institutions.
2. The placement as referred to in paragraph (1) is carried out after the suspect has received a recommendation based on an assessment from the Integrated Assessment Team.
3. The assessment as referred to in paragraph (2) is carried out based on the investigator's request to the Integrated Assessment Team.
4. The application as referred to in paragraph (3) shall be submitted in writing with a copy to the head of the local BNN in accordance with the place of occurrence of the case.
5. The investigator shall obtain the assessment register number based on the application as referred to in paragraph (3)".

In Article 12 of the Regulation of the Head of BNN Number 11 of 2014, which consists of a team of doctors and a legal team. The team of doctors consists of general practitioners or psychiatrists or forensic specialists and/or psychologists. The legal team consists of elements of the National Police, BNN, the Attorney General's Office.

So far, the dimension of law enforcement with indications of imposing prison sentences without access to rehabilitation for narcotics abusers who are caught consuming or using narcotics for themselves. Whereas the legal construction of Law Number 35 of 2009 concerning Narcotics mandates law enforcers who handle narcotics abuse to ensure efforts to regulate medical rehabilitation and social rehabilitation for narcotics abusers and addicts. The mandate is specifically given to judges who examine and adjudicate cases of narcotics abusers (suspects of abusers and in a state of dependence). For suspected narcotics abusers who are proven guilty, the judge may decide to order the person concerned to undergo rehabilitation. Likewise for suspected narcotics abusers who are not proven guilty, the judge can decide to order the person concerned to undergo rehabilitation (Anang Iskandar, 2015)<sup>[1]</sup>. It is known that in the Narcotics Law there are no rules that specifically state that the results of the assessment can be used as evidence in the judicial process.

The above actions can only prove that the victims of narcotics abuse have their rights explicitly. This must be emphasized in the applicable legal regulations, so that law enforcement officers can fulfill the rights of victims and how the law treats and defends their rights which are directly confirmed by the Narcotics Law.

Viewing further, the purpose of this Narcotics Law is one of which is to be able to prevent the continuation and minimize narcotics crimes, therefore this writing is aimed at regulatory makers to be able to see explicitly the law enforcement / what is happening now in the narcotics sector. Therefore, this paper is very important to study related to legal issues regarding: "The Concept of Reconstruction of a Just Law against Narcotics Abusers".

### Research & Method

The writing of this article uses the juridical-normative research method. Normative legal research methods are also commonly called doctrinal legal research or library

research. It is called doctrinal law research because this research is only aimed at written regulations so that this research is very closely related to the library because it will require secondary data in the library. This article also presents data on the number of inmates in Indonesia with details of prison capacity, and the overload of the total number of narcotic inmates.

### Discussion

#### A Just Reconstruction of Laws Against Narcotics Abusers

The formulation of sanctions against narcotics abuse is a criminal law policy in the formulation of provisions governing sanctions given to perpetrators of narcotics abuse, namely in the form of criminal sanctions and action sanctions considering that the perpetrators of narcotics abuse have a slightly different position from other criminals. On the one hand, he is a criminal who must be punished, but on the other hand he is a victim of the crime he committed himself, so it is necessary to take an action in the form of rehabilitation.

The imposition of rehabilitation sanctions as an alternative sanction can be viewed from 2 (two) main aspects of the purpose of punishment, namely from the aspect of community protection and the aspect of improving perpetrators. What is meant by the aspect of community protection includes the aim of preventing, reducing or controlling criminal acts and restoring the balance of society, among others, resolving conflicts, bringing a sense of security, repairing losses/damages, removing stains, reinforcing values that live in society). What is meant by the aspect of improving the perpetrator includes various objectives, including rehabilitation and re-socialization of the perpetrator and protecting him from arbitrary treatment outside the law, in this case for narcotics abusers medical and social rehabilitation is carried out.

In reviewing the purpose of sentencing, that punishment is identical to the applicable punishment for the violation of a rule of law, punishment is an unpleasant feeling (miserable) imposed by a judge with a verdict on people who have violated the Criminal Law Act. According to philosophy, the purpose of punishment is:

- a. Punishment is a revenge, as stated in the ancient saying that whoever kills must be killed or called the theory of vengeance (vergeldings theory).
- b. Punishment must be able to make people afraid so that they do not do evil or the theory is frightening (afchrikkings theory).
- c. The punishment is intended to correct people who have done evil, or the theory of correcting (verbeterings theory).
- d. Some opinions which state that the basis for imposing punishment is retaliation, but other purposes in the form of prevention, making people afraid to maintain the order of living together, correcting people who have done evil, cannot be ignored, in this case called the combined theory.

Based on the description above, it can be stated that one of the purposes of punishment is to provide sanctions so that the crime does not repeat itself in order to correct the person who has committed the crime. So it is very clear that in order to correct bad behavior it does not mean having to

give criminal sanctions in the form of imprisonment for victims of narcotics abuse, but if without criminal sanctions can improve it is permissible and can be applied because based on the view of generalized theory there must be objective reasons as stated Rumelin argues that in determining whether a behavior is the cause of a forbidden result, the question that must be answered is: whether that result, taking into account all the objective conditions that existed at the time after the effect occurred, can be determined that the result will arise from that behavior.

Based on the description above, it can be concluded that narcotics abuse committed must be given a forgiving reason, namely the reason that eliminates the misuse of narcotics. So a person who has committed a crime does not mean he must be convicted. In accordance with the principle of criminal responsibility, namely "There is no crime without guilt", this principle is highly upheld and will be felt to be contrary to the sense of justice if an innocent person is sentenced to a crime. Regarding the narcotics users, stigmatization often occurs from the community, such as a perpetrator (dealer) even though he is a victim of the narcotics. Addicts and victims of narcotics abuse must be guaranteed medical and social rehabilitation. With the mention of the term "rehabilitation" as part of the development of science and technology, it can be concluded that the term rehabilitation consists of 3 (three), namely:

1. Rehabilitation: activities to look for alternatives as a means of recovery for the benefit of humanity and in the context of research and development of science and technology. For example looking for a new formula for the benefit of the treatment of a disease.
2. Medical rehabilitation: an integrated process of treatment activities to free addicts from narcotics dependence (Article 1 point 16 of Law Number 35 of 2009 concerning Narcotics).
3. Social rehabilitation: an integrated process of recovery activities, both physical, mental, and social so that former narcotics addicts can return to carrying out their social functions in people's lives (Article 1 number 17 of Law Number 35 of 2009 concerning Narcotics).

Observing developments in several countries, a new paradigm has emerged in viewing narcotics users/addicts who are no longer viewed as evil behavior (criminals), but as people with chronic diseases who must receive treatment and recovery gradually. This paradigm then creates a new policy in dealing with victims of narcotics users who are no longer legally processed, but immediately take users/addicts to a rehabilitation center. In other words, this paradigm leads to efforts to decriminalize narcotics users. The application of criminal law in the form of imprisonment for victims of narcotics users has proven unsuccessful, in fact, every year the number of victims of narcotics users who are sentenced to imprisonment is increasing. This is what needs to be reviewed regarding the purpose and function of implementing criminal law for victims of narcotics users. The most important factor in efforts to tackle narcotics abuse, which is often neglected, especially by law enforcement officers in Indonesia, is rehabilitation efforts. The model of punishment for victims of narcotics users until now still places them as criminals, so that rehabilitative efforts are often neglected.

In Indonesia, such a pattern has not been applied, victims of narcotics users are still thrown into prison, although during

the detention process they are allowed to be rehabilitated, this has not been an effective solution. The legal system in Indonesia must begin to implement policies by directly bringing victims of narcotics users to rehabilitation facilities. If a victim of narcotics use is arrested by the police or reported by her parents and/or guardian, she must be placed in a rehabilitation facility.

Rehabilitation is the right action, so that it can help perpetrators and victims of narcotics abusers to be rehabilitated according to their rights. Rehabilitation can provide opportunities for perpetrators and victims to continue their ideals of living according to their rights, this is related to a person's right to life and at the same time the perpetrator or victim is the next generation of the nation that must be protected. and get proper treatment even though they are narcotics perpetrators or victims. In addition to getting healing during the rehabilitation period, they can also hone their skills in the form of coaching, rather than allowing the victims or perpetrators of narcotics to be inhumane. Rehabilitation and imprisonment are often seen as contradictory. Supporters of rehabilitation always put forward several reasons why rehabilitation is much better than imprisonment, and vice versa.

Action sanctions are sanctions contained in Law no. 35 of 2009 concerning Narcotics in the form of rehabilitation, action sanctions aimed at protecting the community and realizing effectiveness in efforts to prevent and abuse narcotics and forms of equitable distribution of action sanctions and criminal sanctions are the basis for the twofold concept. track system used in solving narcotics problems. Criminal sanctions are imposed on narcotics addicts as victims of self-harm in the form of serving imprisonment, while sanctions for actions given to narcotics addicts as victims are in the form of treatment and/or care provided in the form of rehabilitation facilities. The implementation system is that the period of treatment and/or treatment is counted as a period of serving a sentence. Provisions regarding the rehabilitation of narcotics addicts are regulated in Law Number 35 of 2009 and Circular Letter of the Supreme Court Number 02 of 2011 concerning Placement of Victims of Narcotics Abuse in Medical Rehabilitation and Social Rehabilitation Institutions.

The punishment for narcotics users is not sentenced to prison, does not mean legalization in the use of narcotics, use against the law is still criminalized as a crime. Public awareness of the dangers of drugs is very necessary. In addition, law enforcement officers also open the door for individual drug addicts who voluntarily report themselves to be rehabilitated instead of being arrested and have to deal with legal processes, public awareness is needed to actively report voluntarily.

Attorney General Sanitiar Burhanuddin issued Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Cases through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Principle of the Attorney General's Office. Through these guidelines, the settlement of criminal cases of narcotics abuse can be carried out through rehabilitation at the prosecution stage. In Chapter IV on Prosecution in the guideline, it is written the types and requirements of rehabilitation through the legal process, which consists of medical and social rehabilitation. Those who can be rehabilitated are suspects who violate Article 127 paragraph (1) of the Narcotics Law who are abusers.

Qualifications as abusers consist of narcotics abusers (see Article 1 point 15 of the Narcotics Law), victims of narcotics abuse (see explanation of Article 54 of the Narcotics Law), or narcotics addicts (see Article 1 number 13 of the Narcotics Law). Furthermore, the guidelines contain six rehabilitation requirements for abusers. These conditions, among others, are based on the results of the forensic laboratory examination, the suspect is positive for using narcotics.

Head of the Attorney General's Center for Legal Information, Leonard Eben Ezer Simanjuntak, said that the Attorney General's Guideline Number 18/2021 is a reference for public prosecutors in handling narcotics abuse cases through rehabilitation with a restorative justice approach. The guidelines come into effect on November 1, 2021. The background for the issuance of these guidelines is to pay attention to the current criminal justice system which tends to be punitive, which is reflected in the number of inmates in prisons who exceed capacity (overcrowding) and most of them are convicts of narcotics crimes.

Non-penal policies on efforts to overcome and eradicate narcotics abuse are very important to be carried out as early as possible because prevention is certainly better than cure, in the sense that prevention efforts are better, cheaper, and more cost-effective than other efforts. In addition, it is also a strategic effort to eliminate risk and be fair.

Philosophical reflections on justice in the Pancasila legal system provide ideological consequences that need to be considered in developing the legal system in Indonesia. Pancasila as the basis of the state and national ideology can provide basic provisions for the formation of the legal system in Indonesia, namely that the legal system is developed based on the values of Pancasila as its source, the legal system shows its meaning as far as realizing justice, the legal system has a function to maintain the dynamics of the nation's life, and the legal system guarantees the process of self-realization for the citizens of the nation in the development process. From the consideration of the function of the law, it means that the law must essentially be certain and fair. It must be a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and enforced with certainty can the law carry out its function. So certainty and justice are not just moral demands, but factually characterize the law.

The application of imprisonment for abusers, especially narcotics addicts, will not be able to solve the root of the problem if the perpetrators are not given treatment so that they are able to escape from dependence on narcotics. Narcotics addicts require special treatment both medically and socially so that they can return to normal society. The application of rehabilitation measures for narcotics addicts reflects a humanistic approach in law enforcement against narcotics abusers. This law requires judges to carefully consider the circumstances and interests of the perpetrators. Legal sanctions are not necessarily used as a means of retaliation but must also be able to return the perpetrators to society, in other words this law is also oriented towards protecting the interests of the perpetrators so that legal justice is achieved (Supriyanto Daris Waristo Dafit, 2018)<sup>[19]</sup>.

Speaking of justice, then everyone may have a different opinion about it. The point of view can be from various points of view, but the most important thing in

understanding the concept of justice is the balance between rights and obligations. Furthermore, the benefits of justice must be felt by the problematic parties who in this case are the perpetrators and/or victims.

About justice John Rawls said, "The main subject of justice is the basic structure of society. The basic structure is a large institution that manages the system of social cooperation, and this cooperation system then regulates the arrangement of rights and obligations as well as the distribution of the resulting benefits. One of the principles of justice is that everyone involved in this social cooperation must be free, rational and equal" (John Rawls, 1995)<sup>[14]</sup>. The meaning of justice as described by John Rawls approaches the concept of justice for narcotics abusers by placing them as victims and must be rehabilitated immediately so as to lead to recovery of abusers who are perpetrators as well as victims and the community.

### Conclusion

The future concept regarding the implementation of rehabilitation for narcotics users is that every narcotics user who has met the requirements in Article 54 of Law Number 35 of 2009 concerning Narcotics and Regulation of the Head of BNN No. 11 of 2014 all rehabilitation is carried out, there is no longer carried out for narcotics users to carry out detention in detention centers or prisons because for narcotics users it is not a solution. This is with the aim of healing and recovering narcotics users. Precisely with the rehabilitation of narcotics users supported by their families and communities, narcotics users can gradually recover from narcotics use and can become ambassadors for narcotics users.

In order to avoid the occurrence of the rubber articles (multi-interpretation), namely Article 111 paragraph and Article 112 paragraph (1) of Law 35/2009, the Government needs to propose amendments to Law 35/2009 through the legislative process. There needs to be a clear concept of the criminal system for addicts and the direction of law enforcement in the narcotics sector.

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