

# The Parameters of Narcotics Users in Juridical Formulative Policies at the Justice Stage

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## Abstract.

*This research aims to examine and analyze the parameters of narcotics users in juridical formulaic policies at the judicial stage with implications for legal sanctions. In this paper, the author uses a normative juridical method with a writing specification in the form of descriptive analysis. Based on the discussion, there are 3 (three) classifications, namely: abusers, addicts, and victims. Because the Narcotics Law does not clearly classify, then the abusers, addicts and victims are still generalized. The Narcotics Law does not clearly regulate the difference between narcotics dealers and users of narcotics for their own consumption. The provisions in the Narcotics Law only regulate the threat of criminal sanctions that are aggravating, not as a different crime. In Act No. 35 of 2009, the provisions regarding narcotics abuse for oneself are regulated in Article 127. Article 54 and Article 55 regulate the obligations of narcotics addicts and victims of narcotics abuse to undergo medical rehabilitation and social rehabilitation as well as the obligation to report to public health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions for narcotics addicts and/or parents/guardians for underage drug addicts. Acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors (Articles 111 and 112 for narcotics class I, Article 117 for narcotics class II and Article 122 for narcotics class III and Article 129 letter a).*

*Keywords: Juridical; Narcotics; Parameters; Users.*

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## 1. Introduction

The Third Amendment to the 1945 Constitution of the Republic of Indonesia has added norms regarding the rule of law in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia which reads: "The State of Indonesia is a state of law".<sup>1</sup>This provision is a form of normalization that comes from the content in the Elucidation of the 1945 Constitution of the Republic of Indonesia which states "The Indonesian state is based on law (Rechtsstaat) not based on mere power (Machtsstaat)". With the inclusion in the norms of the 1945 Constitution of the Republic of Indonesia, the concept of the rule of law in the Elucidation of the 1945 Constitution of the Republic of Indonesia has binding legal force as the highest norm in the national legal system of the Indonesian state.<sup>2</sup>

Terminologically, the term "state of law" in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of

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<sup>1</sup>Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto. (2018). *The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia*, Jurnal Daulat Hukum, 1 (4), [url:http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793](http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793)

<sup>2</sup>Nur Dwi Edie W, and Gunarto. (2020). *Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum, 3 (1), [url:http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063](http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063)

Indonesia does not refer specifically to one of the main concepts in the Western legal tradition, both Rechtsstaat and the Rule of Law. This means that the term "state of law" in the 1945 Constitution of the Republic of Indonesia is a relatively 'neutral' concept that opens up space for interpretation for new understandings in accordance with the paradigm and reality of the Republic of Indonesia.<sup>3</sup>

Indonesia is one among other developing countries, and is vulnerable to potential targets for the illegal or illegal production and distribution of illicit drugs such as narcotics. A country like Indonesia has become a means to become a narcotics crossing point, therefore narcotics crime is no longer a small-scale crime, but has become a problem for all national and national elements, which are also often used as a transit point for perpetrators before they reach their destination. in another country. Therefore, the data on the development of narcotics criminal cases is increasing from year to year.<sup>4</sup>

Crimes related to narcotics are special crimes that spread nationally and internationally, because narcotics abuse can have a negative impact on people's lives, the nation and the state. The forms of narcotics crime which are commonly known are: 1. Abuse of exceeding the dose; 2. Distribution; and 3. buying and selling narcotics.<sup>5</sup>

According to Gatot Supramono, stated that narcotics can be an obstacle to national development with material and spiritual aspects. The danger of narcotics use is very influential on the state if the massive use of narcotics in society can cause the Indonesian nation to become a sick nation, if this happens the country will be fragile from within because national resilience will decline.<sup>6</sup>

An abuser is someone who has a problem that is directly related to drugs. These problems can arise in the physical, mental, emotional and spiritual realms. Abusers always refuse to quit completely and forever. The use of illegal drugs has been very worrying lately.<sup>7</sup>The influence of narcotics does not only have an impact on the physical and psychic of users, but also affects social, economic, community life, and even the state. Problems that can be caused by narcotics abuse, such as failure in education, work or in a family, can lead to a high crime rate, can increase free sex which can also result in the spread of HIV/AIDS which can lead to death.

The application of articles related to narcotics addicts causes many problems, namely being included in the classification which can be said to be a person as a narcotics addict. In addition, the rules related to addicts also cause confusion and multiple interpretations, especially in determining the category between addicts and narcotics abusers. For this reason, it is necessary to clarify the provisions

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<sup>3</sup>Beno, Gunarto and Sri Kusriyah. (2020). *Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court)*, Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8404/4058>

<sup>4</sup>Nabain Yakin, *Tujuan Pemidanaan dan Pertimbangan Hakim dalam Menjatuhkan Pidana Terhadap Pengguna Sekaligus Pengedar Narkotika*, Indonesian Journal Criminal Law and Criminology, 1 (1), p.20

<sup>5</sup>Mohammad Taufik Makarao, Suhasril, Risman F Sikumbank. (2003). *Tindak Pidana Narkotika*, Ghalia Indonesia, Jakarta, p. 45

<sup>6</sup>Gatot Supramono. (2004). *Hukum Narkotika Indonesia*, Djambatan, Jakarta, p.5

<sup>7</sup>Tina Afiatin. (2008). *Pencegahan Penyalahgunaan Narkotika Dengan Program Aji*, Yogyakarta: Gajah Mada University Press, p. 13.

related to the category of addicts and abusers so that they are clear and do not have multiple interpretations.

From the things described above, the author's intention arises to establish the purpose of writing, namely to examine and analyze the parameters of narcotics users in juridical formulaic policies at the judicial stage with implications for legal sanctions.

## 2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method. The specifications of the writing were carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this paper, secondary data collection methods were used which were obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

## 3. Result and Discussion

### 3.1. Parameters of Narcotics Users in Juridical Formulative Policies at the Judicial Stage Implications for Legal Sanctions

Narcotics can be likened to a sharp double-edged machete, on the one hand it can be used in the medical world or the world of science, but on the one hand the abuse of narcotics is certainly very dangerous for the future of the younger generation, and will also threaten the existence of national knowledge of a nation and state until the need for a rule of law that regulates the misuse of narcotics so that it is hoped that it can reduce the amount of abuse or circulation of these narcotics. The role of foreign nationals in the illicit narcotics trade in Indonesia is an indication that this crime has been carried out in a well-organized manner involving international networks and has created Indonesia as one of the major markets for narcotics trafficking.<sup>8</sup>

Another thing that is quite impressive in the development of the world narcotics problem is the effort to improve the handling of the narcotics problem not only on the supply side, but also on the demand side. Viewed from the aspect of national interest, this convention can guarantee legal certainty and justice in efforts to enforce the law on the illicit trafficking of narcotics and psychotropic substances involving perpetrators of crimes across Indonesia's territorial borders. In addition, for the national interest, especially the domestic interest, certainty and benefits will be obtained in the context of regulating the circulation of narcotics and psychotropic substances for the benefit of medicine and science.<sup>9</sup>

The current problem is the arrest of narcotics users as narcotics abusers who are sentenced to imprisonment after obtaining a permanent decision from the judge. This indeed includes the stages of eradicating narcotics illicit trafficking, but

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<sup>8</sup> Aktualita. (2018). *Menanggulangi tindak pidana narkotika dihubungkan dengan tujuan pemidanaan*, *Aktualita*, 1 (1)

<sup>9</sup>Siswanto Sunarso. (2004). *Penegakan Hukum dalam kajian Sosiologis*, Jakarta: Raja Grafindo Persada, p.1.

does not reduce the percentage of narcotics trafficking in Indonesia. Law enforcement against narcotics crimes has been widely carried out by law enforcement officers and has received many judges' decisions. Law enforcement should be expected to be a deterrent factor to the increase in illicit trafficking and narcotics trafficking, but in reality the more intensive law enforcement is carried out, the more the circulation and illicit trade of narcotics will also increase.

Law enforcement against crimes in Indonesia where the government as the organizer of state life needs to provide protection and public welfare through various policies that are on the agenda of the national development program. This government policy is incorporated in social policy. One part of this social policy is law enforcement policy, including legislative policy. Meanwhile, the crime prevention policy (criminal policy) itself is part of the law enforcement policy.<sup>10</sup>

According to Soedarto, legal politics is an effort to realize good regulations with certain situations and conditions. In depth, it is also stated that legal politics is a state policy through its equipment which is authorized to establish the desired regulations and is expected to be used to express what is contained in society in order to achieve what is aspired.<sup>11</sup>

The scope of criminal law includes three provisions, namely criminal acts, liability, and punishment. The criminal provisions contained in Act No. 35 of 2009 concerning Narcotics is formulated in Chapter XV of Criminal Provisions Articles 111 to 148. Act No. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely:<sup>12</sup>

- The first category is acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors (Articles 111 and 112 for narcotics class I, Article 117 for narcotics class II and Article 122 for narcotics class III and Article 129 letter (a)) ;
- The second category is acts in the form of producing, importing, exporting, or distributing narcotics and narcotics precursors (Article 113 for narcotics class I, Article 118 for narcotics class II, and Article 123 for narcotics class III and Article 129 letter (b)) ;
- The third category, namely acts in the form of offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering narcotics and narcotics precursors (Article 114 and Article 116 for narcotics class I, Article 119 and Article 121 for narcotics class II, Article 124 and Article 126 for narcotics class III and Article 129 letter (c));
- The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotics precursors (Article 115 for narcotics class I, Article 120 for narcotics class II and Article 125 for narcotics class III and Article 129 letter (d)).

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<sup>10</sup>Mahmud Mulyadi. (2011). *Politik Hukum Pidana*, Fakultas Hukum Universitas Sumatera Utara, p. 6.

<sup>11</sup>Mahmud Mulyadi. (2008). *Criminal Policy: Pendekatan Integral Penal Policy dan Non Penal Policy dalam Penanggulangan Kejahatan Kekerasan*, Medan: Pustaka Bangsa Press, p. 65-66.

<sup>12</sup>Siswanto Sunarso. (2012). *Politik Hukum Dalam Undang-Undang Narkotika*, Jakarta:Rineka Cipta, p. 256.

In general, narcotics abuse involves 3 (three) main groups of actors, namely First, producers, both national and international networks; Second, dealers consisting of 2 (two) categories of dealers originating from a network of producers and freelancers, commonly referred to as couriers; Third, users, namely people from all elements.<sup>13</sup> The 3 (three) main groups can become a link that is difficult to separate.

Some terms related to the concept of the level of narcotics abuse, namely the classification of the category of narcotics users as follows:

- *Abstinence*, namely the period during which a person does not use drugs at all for recreational purposes;
- *Social use*, namely the period when a person has started to try drugs for recreational purposes but has no impact on the social, financial, and medical life of the user. This means that the user is still able to control the level of drug use;
- *Early problem use*, namely the period when the individual has abused addictive substances and the abusive behavior has had an effect on the social life of the abuser, such as being lazy at school, hanging out with only certain people, and others;
- *Early addiction*, namely the condition of the addict who has shown dependent behavior both physically and psychologically, and this behavior interferes with the social life in question. The addict is very difficult to adjust to the normal pattern of life, and tends to do things that violate the prevailing values and norms;
- *Severe addiction*, namely the period of a person who only lives to maintain his addiction and has neglected his social life and self. At this point, the addict has the courage to commit criminal acts to meet the needs of drug consumption.<sup>14</sup>

Narcotics users based on the Narcotics Law are divided into 3 (three), namely:

- **Narcotics Addict**  
People who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically.<sup>15</sup>
- **Abusers**  
People who use Narcotics without rights or against the law.<sup>16</sup>
- **Narcotics Abuse Victim**  
A person who unintentionally uses Narcotics because he is persuaded, tricked, cheated, forced, and/or threatened to use Narcotics.<sup>17</sup>

One of the problems that have not been clearly accommodated is related to the regulation of narcotics users in the Narcotics Law. It's just that Article 1 number 15 states that an abuser is a person who uses Narcotics without rights or against the law. Narcotics abusers can be interpreted broadly including producers,

<sup>13</sup> Lidya Suryani Widayati. (2012). *Rehabilitasi Narapidana dalam Overcrowded Lembaga Pemasarakatan*, Jurnal Negara Hukum, FH UII, .3 (2)

<sup>14</sup>Budi Kurniapraja. (2011). *Tingkat Penyalahgunaan Narkoba*, Media Informasi & Komunikasi: Sinar, Badan Narkotika Nasional, Ed. IX, ISSN 2086-454X, Depok: PT Trubus Swadaya, p. 45.

<sup>15</sup>Article 1 number 13 of Act No. 35 of 2009 concerning Narcotics

<sup>16</sup>Article 1 number 15 of Law Number 35 of 2009 concerning Narcotics.

<sup>17</sup>Elucidation of Article 54 of Law Number 35 of 2009 concerning Narcotics jo. Article 1 point 4 PP No. 25 of 2011 concerning the Implementation of Compulsory Reporting Narcotics Addicts.

dealers and users. They all abuse drugs. This causes the position of narcotics users to be difficult to position whether as perpetrators or victims of narcotics crime crimes. If positioned as a perpetrator, a criminal sentence will be imposed and if positioned as a victim, it will be directed to rehabilitation. The unclear regulation will lead to misinterpretation in giving criminal penalties.

Provisions in the Narcotics Law can lead to confusion, especially in terms of rehabilitation for users. In the provisions of the Narcotics Law, it is stated that every addict is obliged to undergo rehabilitation, but in the subsequent provisions it is stated that the procedures that must be passed in the rehabilitation stage must obtain the consent of the victim concerned. These are 2 (two) contradictory things because in general addicts will not give their consent to undergo rehabilitation. The Narcotics Law still needs clearer regulations regarding the position of the user as a victim and it is also necessary to revise the substances contained in the appendix.

Meanwhile, the application of articles related to narcotics addicts raises many problems, namely being included in the classification which can be said to be a person as a narcotics addict. In addition, the rules related to addicts also cause confusion and multiple interpretations, especially in determining the category between addicts and narcotics abusers. For this reason, it is necessary to clarify the provisions related to the category of addicts and abusers so that they are clear and do not have multiple interpretations.

Therefore, to determine whether someone is an addict or a user, it is necessary to study the person. The studies in question are medical studies, network studies and legal studies. The 3 (three) studies serve as considerations for law enforcement to determine whether the person caught red-handed is a narcotics user, courier, or dealer. The medical study is seen from whether the person concerned has a medical history stated by a doctor's letter that the person concerned is an addict. Tissue studies are seen from laboratory tests of the urine in question. Legal studies, the person concerned violates the articles in the Narcotics Law.

An addict in the field is subject to Article 127, and must be completed with the results of a urine test from the Food and Drug Supervisory Agency (BPOM) and a statement from the treating doctor, then it can be believed that the suspect is an addict and from the projection of a restorative justice perspective, it is actually he is a victim and does not deserve to be penalized. However, because the pro-justice process has been running from the investigators, it is impossible for the prosecutor's office to apply a restorative justice approach.<sup>18</sup>Therefore, in the trial process what the prosecutor can do against an addict is to present an expert witness who can explain that a defendant who is presented in court is a patient who needs treatment for drug dependence.

Meanwhile, Article 4 letters c and d of the Narcotics Law show that there are differences in the treatment of illicit traffickers and abusers. This shows that the criminal policy uses an integral policy, by using penal and non-penal means, by healing the convicts (treatment of offenders) and the community (treatment of

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<sup>18</sup>M. Syamsudin. (2012). *Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progresif*, Jakarta, Kencana

society). Thus, rehabilitation includes forward-looking sanctions, namely improving the person concerned while protecting the community.

#### 4. Conclusion

There are 3 (three) classifications, namely: abusers, addicts, and victims. Because the Narcotics Law does not clearly classify, then the abusers, addicts and victims are still generalized. The Narcotics Law does not clearly regulate the difference between narcotics dealers and users of narcotics for their own consumption. The provisions in the Narcotics Law only regulate the threat of criminal sanctions that are aggravating, not as a different crime. In the new Law on Narcotics, namely Act No. 35 of 2009, the provisions regarding narcotics abuse for oneself are regulated in Article 127. Article 54 and Article 55 regulate the obligations of narcotics addicts and victims of narcotics abuse to undergo medical rehabilitation and social rehabilitation as well as the obligation to report to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions for narcotics addicts and/or parents/guardians for narcotic addicts who are not old enough. Then, provisions regarding the imposition of rehabilitation sentences on narcotics addicts are regulated in Article 103. Acts in the form of possessing, storing, controlling or providing narcotics and narcotic precursors (Articles 111 and 112 for narcotics class I, Article 117 for narcotics class II and Article 122 for narcotics class III and Article 129 letter a).

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