

The Effectiveness of Assessment for the Victims of Drug Abuse at the Majalengka Resort Police Force

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Abstract

This study aims to identify and analyze the implementation of the Assessment on Addicts and Victims of Narcotics Abuse at the Majalengka Resort Police and to know and analyze the effectiveness of the assessment implementation on victims of narcotics abusers at the Majalengka Resort Police. The theory used in this research is the theory of legal certainty and the theory of legal effectiveness. The research approach method used in this thesis is using a sociological juridical approach and the nature of this research is descriptive and analytical. Data collection is done through a literature study to obtain secondary data, both in the form of primary legal materials, secondary legal materials, and tertiary legal materials. To support the research that has been done, field research is also carried out to obtain primary data that supports secondary data. The technical analysis used in this study is a qualitative analysis technique. The results showed that the implementation of assessment on addicts and victims of narcotics abuse at the Majalengka Police Resort is a form of implementation of concern for the handling of addicts and Victims of Narcotics Abuse in Indonesia. An addict and victim of narcotics abuse is a victim of narcotics so he deserves to be called a sick person. As a result, an addict and victim of narcotics abuse are obliged to undergo treatment by placing him in medical rehabilitation and/or social rehabilitation institution. An integrated assessment mechanism that combines the results of the analysis between the medical team and the legal team on the determination of narcotics criminal suspects whether they are categorized as narcotics abusers or narcotics dealers and the rehabilitation efforts carried out by investigators against narcotics abusers so far have not been maximally effective.

Keywords: Assessment; Effectiveness; Victims.

1. Introduction

The development of handling narcotics crimes, especially for addicts or narcotics victims, is an assessment. Assessment is a process to obtain data/information from the learning process which aims to monitor the progress of the learning process and provide feedback. Furthermore, in the legislation, the term is an integrated assessment team, consisting of a team of doctors and a legal team appointed by the head of the local work unit based on a decree from the head of the National Narcotics Agency, Provincial National Narcotics Agency, Regency/Municipal National Narcotics Agency. Specifically, the term assessment is not found in the legislation.¹

¹ Liana Panjaitan (2020) *Proses Asesmen Dalam Penanganan Pecandu Dan Korban Penyalahgunaan Narkotika (Studi Kasus Satuan Narkotika Polrestabes Kota Medan)*, Skripsi, Fakultas Hukum Universitas Muhammadiyah Sumatra Utara, Medan, p. 22
<http://repository.umsu.ac.id/bitstream/123456789/14479/1/Skripsi%20Liana%20Panjaitan.pdf>
accessed on 15/04/2022

The participation of the police in the assessment team is an important part of dealing with narcotics addicts because Act No. Year on Narcotics includes investigators other than BNN. Although in Act No. 35 of 2009 concerning Narcotics, the BNN's authority for narcotics crimes is greater than that of the police. However, the presence of the police in every investigation and investigation of criminal acts plays a major role because basically the functioning of the law in the field is largely determined by the police in social engineering. ²In investigating narcotics cases, the police are not the sole investigators, but together with the National Narcotics Agency.

The investigative authority that can be carried out by the police in an investigation is regulated in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Likewise, the prosecutor's office has the authority to resolve cases of criminal acts of drug abuse through rehabilitation with a restorative justice approach as the implementation of the Dominus Litis principle district court judges and high court chiefs through the Decree of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.³

- Order all district court judges to implement guidelines for the application of restorative justice in an orderly and responsible manner; and
- The Head of the High Court is obliged to supervise, monitor and evaluate, as well as report the implementation of restorative justice in the jurisdiction of the High Court concerned

This decision defines Restorative Justice as the settlement of a criminal act by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties, to jointly seek a fair solution by emphasizing restoration to its original state, not retaliation (imprisonment). In the attachment to this decision, it is stated that restorative justice in case settlement can be used as an instrument of restoring justice and has been implemented by the Supreme Court in the form of policy enforcement (PERMA and SEMA). However, so far its implementation in the criminal justice system has not been optimal.

Based on this, it turns out that the state is starting to think about how to take steps that can restore and/or develop the physical, mental and social development of suspects, defendants, or convicts of narcotics cases carried out with treatment, care and recovery programs by issuing a Joint Regulation of the Chief Justice of the Supreme Court. , Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of the National Narcotics Agency Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number Per005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims

² Titik Sri Astutuk (2022) *Peranan Asesmen Oleh Badan Narkotika Nasional Sebagai Pertimbangan Hukum Hakim dalam Perkara Tindak Pidana Narkotika*, Jurnal IUS Vol.X No.01 Maret p. 71, accessed on 09/05/2022. Pukul 16.30 WIB

³ Jesylia Hillary Lawalata, Juanrico Alfaromona Sumarez Titahelu, Julianus Edwin Latupeirissa (2022) *Pendekatan Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Narkotika Pada Tahapan Penyidikan*, TATOHI Jurnal Ilmu Hukum Vol 2, No 1 2022, p. 96 <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/view/899>. accessed on 15/04/2022 Pukul 16.30 WIB

of Narcotics Abuse in Rehabilitation Institutions (abbreviated as “Joint Regulations” shall come into force on 11 March 2014).

This Joint Regulation aims to realize optimal coordination and cooperation in solving narcotics problems to reduce the number of narcotics addicts and victims of narcotics abuse through treatment, care, and recovery programs in the handling of narcotics addicts and victims of narcotics abuse as suspects, defendants or prisoners while remaining implement the eradication of illicit drug trafficking. In addition, it is also intended as a technical guideline for handling narcotics addicts and victims of narcotics abuse as suspects, defendants, or prisoners to undergo medical rehabilitation and/or social rehabilitation. It is also hoped that the implementation of social rehabilitation processes at the level of investigation, prosecution, trial and sentencing in a synergistic and integrated manner.⁴

Based on Article 103 of Act No. 35 of 2009 concerning Narcotics, it is stated that judges can decide or determine drug addicts to undergo treatment and or treatment. The period of undergoing treatment and or treatment is calculated as the period of serving a sentence. This is in line with one of the objectives of the establishment of Act No. 35 of 2009 concerning Narcotics, namely to ensure the regulation of medical and social rehabilitation efforts for narcotics addicts. However, in the case of perpetrators who are caught using drugs, many of them do not get an assessment process, where the assessment process is an important thing to determine the level of addiction of narcotics abusers, and whether they need rehabilitation or imprisonment.

Under the mandate of Act No. 35 of 2009 those who are classified as abusers are obliged to get rehabilitation. The following are examples of 2 (two) cases of narcotics abusers who did not receive an assessment process and were sentenced to prison.

- On Sunday, April 24, 2022, at around 10.30 WIB, there was a criminal act suspected of abusing class I Narcotics, the type of methamphetamine, which was allegedly committed by the reported person, Mr YONI NOPANI alias OPAN Bin AA SUDARMAN, by the way, the reported party was found to have received, possessed, stored and controlled Narcotics Category I Type I methamphetamine in the Pamengkang Block RT 001 / RW 001 Biyawak Village, Jati Tujuh District, Majalengka Regency, 2 (two) white plastic straws which were inserted into the former "Vics Formula 44" package which was stored in the drawer of the bedroom closet on the 2nd floor of the reported house. The reported incident and the existing evidence were secured to the Majalengka Police Narcotics Investigation Unit for further investigation.
- On Thursday, May 12, 2022, at approximately 19.30 WIB, a criminal act in the field of psychotropics was allegedly committed by the reported person, Mr FAUZAN DAMAR REXSA Bin IDA MAULANA, Majalengka, October 03, 1999, Age 22, Male, Sundanese, Indonesian Citizen, Islamic Religion, Work as a factory worker, Last education high school, NIK: 3210200310990001, Address Blok Andir Rt. 001 Rw. 001 Kawunghilir Village, Cigasong District, Majalengka Regency intentionally without rights, own.

⁴ *Ibid*, p. 96

The Narcotics Law was made to protect the public from prohibited acts and provide criminal witnesses for the perpetrators. Criminal sanctions are given to provide a deterrent effect on perpetrators of abuse and illicit trafficking of narcotics and narcotic substances or materials. Based on the Narcotics Law, criminal witnesses are regulated in the form of capital punishment, imprisonment, fines and rehabilitation. This Narcotics Law also regulates the weighting of criminal sanctions carried out based on the class, type, size, and amount of Narcotics. The circulation of narcotics in Indonesia is very wide. The Narcotics Law has provided different treatments for narcotics abusers so law enforcers must be careful and thorough in determining the narcotics crime that will be given to someone involved. Sanctions regulated in the Narcotics Law adhere to a double-track system, namely regulating criminal sanctions and action sanctions. Rehabilitation is one form of action sanctions⁵.

Narcotics abuse is not only a crime but also harmful to their health. Narcotic users make their lives filled with dependence on illegal drugs, even though they are expensive and not easy to find. The treatment is not simple, it takes a lot of time and requires special attention. Based on the impact of the wrong use of narcotics, the participation of the government and the community to combat narcotics abuse is very useful for reducing, eradicating, and narrowing the space for illicit narcotics trafficking and implementation as an effort to overcome narcotics crime.

Narcotics abuse is the use of narcotics which is not intended as a means of treatment but because they want to enjoy in excessive amounts, regularly and for a long time, resulting in health, physical, mental and social problems. Narcotics abuse for a long period continuously can lead to addiction, namely behavioural dependence on narcotics use.⁶ Users or addicts of narcotics on the one hand are perpetrators of criminal acts, but on the other hand, are victims. Narcotics users or addicts according to the narcotics law are perpetrators of narcotics crimes that can be threatened with imprisonment. Then on the other hand it can be said that according to the narcotics law, the narcotic addict is a victim who must be rehabilitated⁷

Regulations in the narcotics law and joint regulations that determine rehabilitation for addicts and victims of narcotics abuse who are suspects, and defendants are rarely carried out by law enforcers, especially if they are also dealers. Neither investigators, public prosecutors nor judges, rarely allow assessment let alone rehabilitation. Imprisonment is still the main law enforcement option compared to rehabilitation. This is considered an easy option in dealing with criminal acts of narcotics abuse, rather than having to go through a long process to place a defendant of narcotics abuse into the rehabilitation system through an assessment process. However, the impact of punishment for a victim of drug abuse,

⁵ Titik Sri Astutuk, Peranan Asesmen ..Op.Cit, p. 67.

⁶ Waluyo, Mudji (2007) *Pedoman Pelaksanaan P4GN. Badan Narkoika Nasional*. Jakarta, p 19

⁷ Defrizal , Otong Rosadi (2018) Wirna Rosmely, *Upaya Penyidik Melakukan Rehabilitasi Terhadap Penyalahguna Narkotika Bagi Diri Sendiri Menurut Undang-Undang Narkotika (Studi Pada Satres Narkoba Polres Kepulauan Mentawai)*, Volume 1, Issue 1, September p. 28,<https://media.neliti.com/media/publications/270545-usaha-penyidik-melaksana-rehabilitasi-7fa96bf5.pdf>, accessed on 09/05/2022. 16.30 WIB

one them increasingly fell into the circulation of narcotics while in prison. This will certainly be a veil in handling the enforcement of narcotics law.⁸

2. Research Methods

The research uses sociological juridical research method. Sociological juridical research is research that seeks to relate the applicable legal norms to the reality that exists in society. This approach seeks to find a theory about the process of occurrence and the working process of the law. The specifications of this study use descriptive analysis, namely research that describes the applicable laws and regulations associated with positive legal theories concerning the problems being studied.⁹ Sources of data come from primary data and secondary data. Data collection methods include interviews, document studies or library materials. The data analysis method used in analyzing the data is a qualitative analysis technique.

3. Results and Discussion

3.1. The Effectiveness of the Assessment of Victims of Narcotics Abuse at the Majalengka Resort Police

The effectiveness of the law is the achievement of the rules made whether the rules are obeyed by the target of the rules. When you want to know the extent of the effectiveness of the law, you must first be able to measure, 'the extent to which the rule of law is obeyed or not obeyed'¹⁰. If the rules are obeyed, it can be said that the rules are effective. Whether a person obeys the rules or not a rule depends on his interests, there are several kinds of interests which include compliance, identification, and internalization. The three kinds of interests are the types of obedience that have been put forward by HC Kelman in the book *Revealing Legal Theory (legal theory) and judicial prudence* which have been facilitated by Achmad Ali as follows:¹¹

- Compliance that is Compliance, ie if someone obeys a rule, just because he is afraid of being punished. The weakness of this type of obedience is that it requires constant supervision.
- Obedience is identification, that is, if someone obeys certain rules, only because he is afraid that his good relationship with other parties will be damaged.
- Obedience is Internalization, ie if someone obeys a rule, really because he feels that the rule is under the intrinsic values he holds.

Based on HC Kelman's concept and seeing the reality, it can be said that someone obeys a rule only because of one type, for example obeying due to complications, but there is also someone who obeys the rules with only two or even three types of obedience because the rules match the values. intrinsic value, he can

⁸ Liana Panjaitan, *Proses Asesmen Dalam Penanganan ..Op.Cit*, p. 13

⁹ Rony Hanitijo Soemitro (2013) *Metodologi Penelitian Hukum dan Jurimetri*. Ghalia Indonesia Jakarta. p. 11.

¹⁰ Achmad Ali (2009) *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Kencana Prenada Media Group, Jakarta p. 375

¹¹ *Ibid*, p, 348

also avoid regulatory sanctions and maintain good relations with other parties. In general, according to Achmad Ali, the factors that greatly affect the effectiveness of legislation are professional and optimal implementation of the roles, authorities and functions of law enforcers, both in explaining the tasks assigned to them and in enforcing the legislation.

The operation of legislation can be viewed from two perspectives:¹²

- The organizational perspective, which views the legislation as an institution in terms of its characteristics.
- Individual perspective, or obedience, which focuses more on the individual or personal aspect, where the association of life is regulated under the legislation.

The ineffective implementation of a policy or rule can be caused by several things, such as:¹³

- The mental and moral of the related apparatus is not sufficient.
- The welfare of officers dealing with narcotics issues is low, so they are often tempted to cooperate with syndicates to earn money.
- The number of officers is inadequate compared to the number of people and the area.
- Inadequate professionalism of the apparatus.
- Facilities/equipment are still lacking.
- Poor coordination between agencies.
- The level of public knowledge about narcotics is still very low.

From several existing factors, it can be seen that integration as a rule enforcer needs to be maintained so that the effectiveness of the implementation runs optimally.

The problem of law enforcement is very important to create order, peace, and security in the life of a society. Law functions to protect human interests, so the law must be upheld to create an orderly and peaceful society. Likewise, for narcotics abuse, the law is also obliged to be given and enforced under the provisions in force in Indonesia so that it can uphold justice the upholding the rule of law.

Narcotics abuse, apart from being a crime, is also bad for the health of narcotics abusers, where narcotics abusers make their lives filled with dependence on illegal drugs, even though they are expensive and not easy to find. The treatment is not simple, it takes a lot of time, and special attention is also needed. Based on the impact of wrong narcotics abuse, the participation of the government and the community to combat narcotics abuse is very useful for reducing, eradicating, and narrowing the space for illicit narcotics trafficking and implementation as an effort to overcome narcotics crime. In general, it can be understood that policies in preventing drug abuse and illicit trafficking, in addition to using repressive and preventive theories, are no less important, than using treatment and rehabilitation strategies. This implies that the victims of narcotics abuse are not only considered perpetrators of criminal acts but are also considered victims of crimes that require healing and rehabilitation.¹⁴

¹² Ibid. p. 379

¹³ Subagyo Partodiharjo (2010) *Kenali Narkoba dan Musuhi Penyalahgunaannya*. Esensi, Jakarta, p 118

¹⁴ Siswanto Sunarno (2012) *Politik Hukum Dalam UndangUndang Narkotika (UU RI Nomor 35 Tahun 2009)*, Rineka Cipta, Jakarta, 2012, p 29.

Various policies were born by the government to prevent, overcome, treat and eradicate narcotics itself, as well as various laws and regulations, have been born, including the treatment of addicts and narcotics abusers. Narcotics addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation, which is a process of integrated recovery activities, both physical, mental and social, so that former Narcotics addicts can return to carrying out their social functions in people lives. In Article 54 of Act No. 35 of 2009 concerning Narcotics, it is clearly stated that addicts and victims of narcotics abuse must be rehabilitated. By understanding this article, the Central Government/BNN needs to facilitate it by providing rehabilitation facilities and infrastructure according to the needs of addicts and victims of narcotics abuse, both in terms of the level of use and types of substances used.

Article 54 is an elaboration of Article 4 letters b and d of Act No. 35 of 2009 which relates to the objectives, namely: (letter b) preventing, protecting and saving the Indonesian nation from narcotics abuse and (letter d), ensuring the regulation of medical rehabilitation efforts and social media for drug abusers and addicts.¹⁵ In its development, cases of Narcotics year to year are increasing in this country. Even the current narcotics problem is no longer hidden but has been openly carried out by users and dealers in carrying out their actions. Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduction to eliminate pain, and can cause dependence, which is divided into groups as attached in the Act No. 35 of 2009 Article 1 paragraph (1)¹⁶

The problem of narcotics is a very complex problem and very difficult to overcome. Although many efforts have been made, ranging from preventive to repressive efforts, the narcotics problem has not disappeared from our country, especially the city itself. Community participation CHAPTER XIII Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics explains that parents or guardians of addicts can report their families under the provisions of Article 55 of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics which states that:

- Parents or guardians of Narcotics Addicts who are not old enough are required to report to public health centres, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or treatment through medical rehabilitation and social rehabilitation.
- Narcotics addicts who are old enough are required to report themselves or be reported by their families to public health centres, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government

¹⁵ Lysa Angrayni dan Yusliati (2018) *Efektivitas Rehabilitasi Pecandu Narkotika (Studi di Loka Rehabilitasi Badan Narkotika Nasional Batam)*, Jurnal Hukum Respublica, Vol. 18, No. 1 year 2018 p, 84, <https://journal.unilak.ac.id/index.php/Respublica/article/download/3954/2107>. accessed on 08/07/2022. 7:20 p.m

¹⁶ Ahmad M Ridwan Saiful Hikmat (2020) *efektivitas pelaksanaan rehabilitasi Terhadap pelaku tindak pidana Penyalahgunaan narkotika*, Jurnal Pemuliaan Hukum, Vol. 3, No. 2 (October 2020), p 46, <http://ojs.uninus.ac.id/index.php/Pemuliaan/article/download/1439/922>., accessed on 08/07/2022. 7:20 p.m

to receive treatment and/or treatment through medical rehabilitation and social rehabilitation.

- Provisions regarding the implementation of mandatory reporting as referred to in paragraphs (1) and paragraph (2) shall be regulated by a Government Regulation.

Even for parents or guardians who know that their families use Narcotics but do not report them, the parents or guardians are subject to criminal sanctions by the provisions of Article 128 paragraph (1) which states that: *"Parents or guardians of addicts who are not old enough, as referred to in Article 55 paragraph (1) who intentionally do not report, shall be punished with imprisonment for a maximum of 6 (six) months or a fine of a maximum of IDR 1,000,000.00 (one million rupiah)"*.

Even though the supervision carried out by the government and officials is increasing every year, this has not dampened the intention of the dealers to circulate these illicit goods. This happens because of the large number of people who need it and the profits that can be obtained by dealers from selling narcotics themselves. Judging from the situation, narcotics develop along with the times, this is shown by the number of people who use narcotics ranging from adults to children, starting from the intention of trial and error to get inner peace from the problems they face.

According to Scholars, the effectiveness of a law is recognized that in general, what can be grouped in the theory of legal behaviour is the actualization of legal activity. This means that the effectiveness of the law can be seen from the actualization carried out. Whether a policy or rule can be implemented under the desired goal. According to Narcotics Act No. 35 of 2009, two ministries have a mandate in the rehabilitation policy for narcotics users, namely the Ministry of Health which is authorized to regulate medical rehabilitation and the Ministry of Social Affairs which is authorized to regulate social rehabilitation. This distinction is more than for clinical reasons, because the various guidebooks currently available, both from the world health organization and from other organizations engaged in the implementation of rehabilitation, do not mention any differences in the provision of medical or social rehabilitation.

The definition of medical rehabilitation itself is explained in Article 1 point 16 of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics which states: *"Medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence. Meanwhile, social rehabilitation is also regulated in the same Law in Article 1 point which states that: "Social rehabilitation is a process of integrated recovery activities, both physical, mental and social so that former narcotic addicts can return to carrying out social functions in community life".* Indeed, rehabilitation therapy is an integrative and continuous effort. This is based on the fact that addiction or addiction is chronic and recurring, so a therapy process is long-term and must be monitored for a certain period.

Act No. 35 of 2009 concerning Narcotics has regulated the balance between settlements in legal and health aspects. In the health aspect, the need for a narcotics abuser is to get rehabilitation. However, rehabilitation services in Indonesia are currently not optimally available because the number of human resources and rehabilitation facilities has not been balanced with the number of narcotics abusers themselves. The integrated assessment mechanism for narcotics abusers is a form of implementation of concerns about the handling of narcotics abusers in Indonesia.

Narcotics abusers based on Act No. 35 of 2009 concerning Narcotics are like people standing on two legs, one leg is in the health dimension, and the other leg is in the legal dimension.

In the health dimension, narcotics abusers are likened to chronically ill people who are addicted and must be cured through rehabilitation, while in the legal dimension, abusers are criminals who must be punished for violating the applicable laws and regulations, namely Act No. 35 of 2009 concerning Narcotics. Therefore, for cases of abusers, the Narcotics Law provides a solution by integrating the two approaches through rehabilitation punishment. The integration of the two approaches is carried out through an integrated assessment mechanism which will produce recommendations on whether or not the suspect can be rehabilitated. Implementation of an integrated assessment mechanism based on several regulations, including the Circular Letter of the Supreme Court Number 04 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions, Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in a Rehabilitation Institution,¹⁷

An integrated assessment mechanism becomes important to analyze through the perspective of Criminal Law Policy, concerning the *Ius Constitutum*, *Ius Operatum* and *Ius Constituendum*¹⁸. Judging from the formulation stage, application stage and execution stage in terms of the involvement of law enforcement officers, both investigators, public prosecutors, and judges, in an integrated assessment mechanism it is a challenge to resolve the problems that arise in it because it is cross-agency, both in terms of technical regulations and their application. An integrated assessment mechanism that combines the results of the analysis between the medical team and the legal team on the determination of narcotics criminal suspects, whether they are included in the category of narcotics abusers or narcotics dealers, has an important role, especially as a screening process for categorizing the status of narcotics abusers and or narcotics dealers, so that they can be analyzed as part of the evaluation process.

Criminal law policy process through in-depth analysis. Likewise, in looking at the position of the suspect/defendant of narcotics abuse as a sick person or as a criminal act by including the rehabilitation process during the trial, it can be a consideration for the judge to decide the case with imprisonment or criminal rehabilitation. However, on the other hand, related to the effectiveness of the assessment in the community, it will raise concerns about its application which is vulnerable to creating loopholes for unscrupulous investigators to take advantage of differences in terms, investigators' doubts in acting, disobedience to law enforcement in placing abusers into rehabilitation institutions, lack of legal

¹⁷ Wahyu Hariyadi (2021) Teguh Anindito, *Pelaksanaan Asesmen Terhadap Pelaku Penyalahgunaan Narkotika Ditinjau Dari Undang-Undang No. 35 Tahun 2009 Tentang Narkotika*, Jurnal Pendidikan Kewarganegaraan Undiksha Vol. 9 No. May 2, 2021, p 380, <https://ejournal.undiksha.ac.id/index.php/IJPP>, accessed on 08/07/2022. 7:20 p.m

¹⁸ Karsono, Edy (2004) *Mengenal Kecanduan Narkoba & Minuman Keras*. CV. Yrama Widya. Bandung, p 13

certainty, inconsistency, lack of synergies in the application of regulations, sectoral egos arise which make it difficult in case conferences.

Related to this, of course, the formulation of an integrated assessment mechanism for narcotics abusers must uphold and comply with the principles of legal certainty such as not contradicting each other, not having multiple interpretations and being formulated (*lex certa*). Criminal Law Policy through a humanist approach in the form of rehabilitation measures through an integrated assessment mechanism must be prioritized both in terms of regulatory formulation, application and execution of the assessment against narcotics abusers¹⁹. Moreover, Indonesia, which is based on Pancasila and its national policy line aims to form a complete Indonesian person. If the criminal will be used as a means of this goal, the humanistic approach must also be considered. This is important not only because the crime is essentially a humanitarian problem, but also because in essence, the crime itself contains elements of suffering that can attack the most valuable interests or values of human life.

Based on the information given by the Head of the Narcotics Investigation Unit of the Majalengka Police, it was obtained information that in the rehabilitation efforts for narcotics abusers there were still several obstacles so the rehabilitation efforts carried out by investigators against narcotics abusers could not be carried out optimally. The obstacle for investigators in efforts to rehabilitate narcotics abusers at the Majalengka Police Narcotics Investigation Unit is that an integrated assessment team has not been formed at the Majalengka Regency level.²⁰

Based on the provisions of Article 13 Paragraph (3) of Government Regulation Number 25 of 2011 concerning the Implementation of Compulsory Reporting for Narcotics Addicts, it is stated that addicts who are undergoing a judicial process can be placed in medical rehabilitation institutions and/or social rehabilitation. Furthermore, in Paragraph (4) it is determined that the determination of the rehabilitation of addicts becomes the authority of investigators, public prosecutors and judges after receiving recommendations from a team of doctors. Based on the provisions in the government regulation above, it can be concluded that those who can be rehabilitated medically and socially are not only limited to addicts who report themselves but addicts, victims of abusers whose cases are examined by law enforcement, namely those who are arrested, caught red-handed, can be rehabilitated by officers who are working on the case.

Law enforcement on narcotics issues, especially against addicts and victims of abusers who are not by their mandate, causes narcotics problems to become more complex so that the number of victims of abusers, addicts and dealers from year to year is increasing. Seeing this fact, BNN took the initiative to pay more attention, especially to addicts, and victims of narcotics abuse by intensifying the provision of rehabilitation. For this reason, BNN cooperates with several government agencies that can be involved in rehabilitation. This form of cooperation is realized in the form of a Joint Regulation. With the stipulation of a Joint Regulation between 7 (seven) State Institutions of the Republic of Indonesia on March 11, 2014, regarding

¹⁹ O.C Kaligis. 2002. *Narkoba dan Peradilan di Indonesia Reformasi Hukum Pidana Melalui Perundangan dan Peradilan*. Alumni. Bandung, p 37

²⁰ Interview with AKP Udiyanto, as the Head of the Narcotics Unit at the Majalengka Police. 13/06/22. 13.30 WIB

the Handling of Narcotics Addicts and Victims of Narcotics Abuse in the Rehabilitation Institute, the process of investigating addicts and narcotics abusers has changed. For addicts and narcotics abusers who are arrested or caught red-handed, an assessment will be carried out by an integrated assessment team consisting of the following elements: a. A team of doctors consisting of doctors and psychologists; b. The legal team consists of elements of the National Police, BNN, the Attorney General's Office and the Ministry of Law and Human Rights.

The implementation of rehabilitation for addicts and drug abuse at the Majalengka Resort Police has not been running effectively. maximally. One of the obstacles for investigators in the rehabilitation of narcotics abusers at the Majalengka Police Narcotics Investigation Unit is that an integrated assessment team has not yet been formed at the Majalengka Regency level. If it is associated with the theory of legal effectiveness, if in the application of the law one of the factors is not fulfilled, then the law in its application is not effective and can cause the purpose of the formation of the Act Not to be achieved as it should.

3.2. Implementation of assessment for addicts and victims of drug abuse in Majalengka Police Department

The Narcotics Law defines narcotics addicts and victims of narcotics abuse differently. This difference will result in the pattern of handling, especially in the criminal justice process. Article 1 number 13 of the Narcotics Law states that narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically.

Narcotics abuse victims are not specifically defined in general provisions. The definition of a victim of narcotics abuse is contained in the explanation section of Article 54, that what is meant by a victim of narcotics abuse is a person who accidentally uses narcotics because he is persuaded, tricked, deceived, forced, and/or threatened to use narcotics. It should be emphasized in this article that the condition for being a victim of narcotics abuse is that someone accidentally uses narcotics.

Law enforcement is not like drawing a straight line which is completed by making laws and being implemented like a machine, so that looks simple and easy (automatic machine model).²¹ Since Indonesia's independence until now, law enforcement is still the main problem that people complain about. The number of legal cases that are not resolved or finished with an unsatisfactory ending makes the law increasingly distrusted by the public as a tool for seeking justice²².

Phase and punishment or imposition of a criminal is essentially a tool to achieve the goal. In identifying the purpose of sentencing, the concept starts from a balance of two main means, namely the protection of the community and the

²¹ Agus Raharjo and Angkasa Angkasa (2011) "Profesionalisme Polisi Dalam Penegakan Hukum," Jurnal Dinamika Hukum volume 11, Nomor. 3 p. 395, <https://docs.google.com/viewerng/viewer?url=http://dinamika.hukum.fh.unsoed.ac.id/index.php/JDH/article/viewFile/167/115>, accessed on 07/07/2022 at 19.18 WIB

²² Hwian Christianto (2011) "Penafsiran Hukum Progresif Dalam Perkara Pidana," Mimbar Hukum volume 23 Nomor 3 p 431-645. <https://jurnal.ugm.ac.id/jmh/article/view/16170/10716> accessed on 07/07/2022 at 19.18 WIB

protection/development of individual perpetrators of criminal acts.²³ Concerning the concept of punishment, Agus Raharjo said that giving punishment to criminals is not just the suffering or misery of the perpetrators as introduced by retributive with all its variations, for theory or is an effort to protect the interests of the community as expressed by relative theory, but more than that, that punishment must be carried out and giving the impact that will lead to a great contribution for criminals to realize their mistakes, change their behaviour and if necessary become agents of change, or can also develop awareness to realize as creatures of God who have dignity, a sense of solidarity and the ability to control themselves.²⁴

The handling of narcotics crime cases requires caution and it is necessary to look at all legal aspects. Don't just view narcotics crimes (including drug abuse) as a serious threat to society, so perpetrators must be severely punished. In particular, victims of narcotics abuse should as far as possible be avoided imprisonment. One of the efforts made in preventing the circulation and abuse of narcotics through legal mechanisms, especially criminal law, is through the formulation of prohibitions accompanied by the threat of strict criminal sanctions against narcotics abuse. Criminal sanctions against these crimes must be such that they can suppress this crime from the side of the perpetrator.

The threat of imprisonment for narcotics crimes is a minimum of 2 (two) years in prison and a maximum of 20 (twenty) years in prison. Life imprisonment or the death penalty may be imposed on the condition that narcotics in the form of plants weigh more than 1 (one) kg or not exceed 5 (five) trees and for non-plant narcotics, the weight exceeds 5 (five) grams. Furthermore, life imprisonment can also be imposed in the case of giving narcotics to be used by another person which results in the death of the other person or permanent disability. In terms of criminal law reform and as a form of alternative use in overcoming the narcotics problem, medical rehabilitation and social rehabilitation are known.

Article 54 of the Narcotics Law regulates the obligation to undergo rehabilitation for addicts and victims of narcotics abuse. Meanwhile, Article 55 regulates the obligation of parents or guardians of narcotic addicts who are not old enough to report receiving treatment and care through rehabilitation. Furthermore, addicts who are old enough are required to report themselves or be reported by their families to get rehabilitation. Article 103 of Act No. 35 of 2009 concerning Narcotics stipulates that judges can decide or determine narcotics addicts to undergo medical rehabilitation and social rehabilitation. The article above shows that medical rehabilitation and social rehabilitation are one of the decisions that can be taken by judges in narcotics abuse cases.

The dominance of narcotics cases which lead to the use of criminal sanctions can be understood as one of the efforts to eradicate narcotics awareness and abuse. However, this does not mean that it is the only way to break dependence on narcotics. Criminal sanctions will be seen as useless if we relate them to recovering from dependence and the effects of narcotics on people who use them. Medical

²³ Barda Nawawi Arief (2016) *Bunga Rampai Kebijakan Hukum Pidana*, ed. 5 Pranadamedia Jakarta, p. 94

²⁴ Agus Raharjo, 2014 *Berbagai Jenis Pemidanaan Bagi Pelaku Tindak Pidana Narkotika*. Makalah, Disampaikan Mewujudkan dalam Seminar Nasional Indonesia Bebas Narkotika Melalui Pendidikan Kepramukaan, Purwokerto, p 5.

rehabilitation and social rehabilitation is an appropriate effort to overcome the problems described above. However, the effects of a person's dependence must be immediately reduced, prevented, and stopped so as not to get addicted to the status of addiction and even to a fatal condition, namely death.²⁵

An addict and victim of narcotics abuse is a victim of narcotics so he deserves to be called a sick person. As a result, an addict and victim of narcotics abuse are obliged to undergo treatment by placing him in medical rehabilitation and/or social rehabilitation institution. The placement of addicts and victims of narcotics abuse into the rehabilitation institution is under the objectives of the law as mandated in Article 4 letter d of Act No. 35 of 2009 concerning Narcotics. In addition, Article 127 of Act No. 35 of 2009 concerning Narcotics is also used as a guideline by judges in passing rehabilitation decisions for addicts and victims of narcotics abuse (although not mandatory) by taking into account the provisions of Article 54, Article 55 and Article 103 of Act No. 35 of 2009 concerning Narcotics.

Act No. 35 of 2009 concerning Narcotics specifically the placement of rehabilitation for addicts and narcotics abusers who are in the legal process is also regulated in Article 13 paragraph (4) to paragraph (6) of Government Regulation no.

- Placement in medical rehabilitation and/or social rehabilitation institutions as referred to in paragraph (3) is the authority of the investigator, public prosecutor, or judge under the level of examination after receiving recommendations from the Doctor Team.
- The provisions for placement in medical rehabilitation and/or social rehabilitation institutions as referred to in paragraphs (3) and (4) also apply to Narcotics Abuse Victims.
- Further provisions regarding the implementation of placement in medical rehabilitation and/or social rehabilitation institutions as referred to in paragraphs (3), paragraph (4), and paragraph (5) shall be regulated by the Minister after coordinating with the relevant agencies”.

Joint Regulation of the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, concerning the Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of the Handling of Criminal Acts of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Prosecutor's Principle. Perbareskrim National Police of the Republic of Indonesia Number. 01 of 2016 concerning SOPs for Handling Addicts and Victims of Narcotics Abusers to Rehabilitation Institutions, and the Head of the National Narcotics Agency of the Republic of Indonesia Number: 01/PB/MA/III/2014, Number: 03 of 2014, Number: 11/2014, Number: 03 the Year 2014, Number: PER-005/A/JA/03/2014, Number: 1 the Year 2014, Number: PERBER/01/III/2014/BNN Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

²⁵ Riki Afrizal, Upita Anggunsur (2019) “Optimalisasi Proses Asesmen Terhadap Penyalahgunaan Narkotika Dalam Rangka Efektivitas Rehabilitasi Medis Dan Sosial Bagi pecandu Narkotika”, Jurnal Penelitian Hukum De Jure, Vol 19, No 3 , p 267

The emergence of assessment as a means to obtain information related to narcotics from addicts and victims of narcotics abusers by forming an integrated assessment team based on a Joint Regulation of the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, regarding the Guidelines for the Attorney General Number 18 of 2021 concerning the Completion of the Handling of Criminal Acts of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Prosecutor principle. Perbareskrim National Police of the Republic of Indonesia Number.

Narcotics addicts and abusers who have entered the legal area need careful and careful action through a prior assessment process in determining whether or not narcotics addicts and abusers have been designated as suspects and/or defendants to be placed in medical rehabilitation and/or rehabilitation institutions social. Briefly, the purpose of the assessment is to determine the extent of addiction and the role of addicts and narcotics abusers in narcotics crimes.²⁶

Assessment actions that lead to rehabilitation can already be started at the investigation stage. The authority to conduct investigations into narcotics crimes is the National Narcotics Agency (BNN) and the Indonesian National Police.²⁷ The assessment process that occurs at the investigation stage both carried out by BNN and the police is the same. This similarity is because the police and BNN (the Attorney General's Office and the Ministry of Law and Human Rights) are members of the legal team in the integrated assessment team.

Since the enactment of the Joint Regulations above, the police investigation of narcotics against addicts who report themselves will be recommended to visit the Compulsory Reporting Recipient Institution (IPWL) for an assessment, to determine the level of addiction as a determinant of the time of rehabilitation.²⁸ This is not done by the police when arresting a suspect in a narcotics case. In this case, the police will first hand over the suspect to an integrated assessment team to determine the level of addiction and determine if the person is eligible for rehabilitation. This is under Article 8 paragraph (3) of the Regulation of the Head of the National Narcotics Agency No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in

²⁶ Article 18 paragraph (4) Regulation of the Head of the National Narcotics Agency no. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

²⁷ Article 81 of Act No. 35 of 2009 concerning Narcotics.

²⁸ Dani Krinawati & Niken Subekti Budi Utami, 2014 *Pelaksanaan Rehabilitasi Bagi Pecandu Narkotika Pada Tahap Penyidikan Pasca Berlakunya Peraturan Bersama 7 (Tujuh) Lembaga Negara Republik Indonesia*, (Yogyakarta: Research Results of the Faculty of Law, Gadjah Mada University, p. 28 and the Institutions Recipient of Reporting Obligations are public health centres, hospitals, and/or medical rehabilitation institutions and social rehabilitation institutions appointed by the Government Article 1 number 2 Government Regulation No. 25 of 2011 concerning the Implementation of Compulsory Reporting Narcotics Addicts

Rehabilitation Institutions, which states that.²⁹ "The assessment as referred to in paragraph (2) is carried out based on the investigator's request to the integrated assessment team".

Investigations carried out by investigators are focused on matters relating to legal issues. The starting point for examination before investigators is the suspect. It was from him that information was obtained regarding the criminal incident that was being investigated. However, even if the suspect is the starting point for the examination, the principle of accusation must be applied to him. The suspect must be placed in a position of human dignity. He must be judged as a subject, not as an object. Those examined are not human suspects. It is the criminal act that he commits which becomes the object of examination. The examination is aimed at the criminal offence committed by the suspect. The suspect must be presumed innocent.³⁰

Whatever the case Narcotics abusers who do not receive an assessment process and receive prison sanctions. is the case that occurs:

- On Sunday, April 24, 2022, at around 10.30 WIB, there was a criminal act suspected of abusing class I Narcotics, the type of methamphetamine, which was allegedly committed by the reported person, Mr. YONI NOPANI alias OPAN Bin AA SUDARMAN, by the way, the reported party was found to have received, possessed, stored and controlled Narcotics Category I Type I methamphetamine in the Pamengkang Block RT 001 / RW 001 Biyawak Village, Jati Tujuh District, Majalengka Regency, 2 (two) white plastic straws which were inserted into the former "Vics Formula 44" package which was stored in the drawer of the bedroom closet on the 2nd floor of the reported house. The reported incident and the existing evidence were secured to the Majalengka Police Narcotics Investigation Unit for further investigation.
- On Thursday, May 12, 2022, at approximately 19.30 WIB, a criminal act in the field of psychotropics was allegedly committed by the reported person, Mr FAUZAN DAMAR REXSA Bin IDA MAULANA, Majalengka, October 03, 1999, Age 22, Male, Sundanese, Indonesian Citizen, Islamic Religion, Work as a factory worker, Last education high school, NIK : 3210200310990001, Address Blok Andir Rt. 001 Rw. 001 Kawunghilir Village, Cigasong District, Majalengka Regency intentionally without rights, own.

Neither investigators, public prosecutors nor judges, rarely allow assessment let alone rehabilitation. Imprisonment is still the main law enforcement option compared to rehabilitation. This is considered an easy option in dealing with criminal acts of narcotics abuse, rather than having to go through a long process to place a defendant of narcotics abuse into the rehabilitation system through an assessment process. However, the impact of punishment for a victim of narcotics abuse, one of whom is increasingly falling into the circulation of narcotics while in prison. This will certainly be a veil in handling narcotics law enforcement.

²⁹ Article 8 Regulation of the Head of the National Narcotics Agency No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions

³⁰ M. Yahya Harahap, 2006, *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan*, Sinar Grafika, Jakarta, p. 134

Arrangements in the narcotics law and joint regulations that determine rehabilitation for addicts and victims of narcotics abusers who are suspects, and defendants are rarely carried out by law enforcers, especially if they are also dealers. Neither investigators, public prosecutors nor judges, rarely allow assessment let alone rehabilitation. Whereas providing legal certainty to narcotics users, namely the imposition of punishment in the form of rehabilitation, is considered useful and to the needs of the perpetrators. The legislation stipulates that narcotics users are given punishment in the form of rehabilitation and no sentence is imposed in the form of imprisonment.

Legal certainty can be carried out properly, it is very necessary to implement it in line with existing rules. In practice, law enforcers are still very lacking in carrying out every rule that is active in society. The discrepancy between law enforcers and the applicable rules creates a paradigm in the community that the law in Indonesia is very blunt. The legal consequences applied are very much different from what they should be. The effectiveness of law enforcement on narcotics issues, especially against addicts and victims of abusers who have not been under their mandate, has led to increasingly complex narcotics problems so that the number of victims of abusers, addicts and dealers from year to year is increasing and varied for new types of drugs. However, in this case, the joint regulation is not without obstacles.

Based on the results of the research that the author conducted at the Narcotics study of the Majalengka Police, obtained data and information that the rehabilitation efforts carried out by investigators against suspected narcotics abusers were to send a request to conduct an assessment to the BNN of West Java Province. Perbareskrim POLRI No. 1 of 2016 concerning SOPs for Handling Addicts and Victims of Narcotics Abusers to Rehabilitation Institutions, and the Attorney General's Guidelines No. 18 of 2021 concerning the Completion of the Handling of the Crime of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Prosecutor principle.

The provision in principle states that addicts and victims of narcotics abuse can be rehabilitated, namely, those who are addicts and victims who in the Joint Regulation Article 4 Paragraph (1) affirmed as addicts and victims who were arrested but without evidence, but from the results of the urine test, blood, hair tested positive for narcotics. Article 4 Paragraph (2) it is stated as addicts and victims who are arrested with a certain amount of evidence with or without using narcotics according to the results of urine, hair, blood or DNA tests, as long as the case is in the judicial process, within a certain period can be placed in an institution. rehabilitation, after the Minutes of Examination of Laboratory Results and Minutes of Examination by BNN Investigators, are made and completed with an integrated assessment result letter.

The limit on the number of narcotics as evidence is also regulated in Article 112 Paragraph (2) of Act No. 35 of 2009 concerning Narcotics, which states that the act of possessing, storing, controlling or providing narcotics Category I is not a plant if the weight exceeds 5 grams. , the criminal threat for the perpetrator is life imprisonment or minimum imprisonment of 5 years and a maximum fine of 8 billion plus 1/3 (one-third). However, the legal certainty of the regulation is intended for people who keep, own and control, not addicts or victims of abusers. From these

rules, it can be seen how severe the criminal threat is for people who commit narcotics crimes by bringing evidence of more than 5 grams.

Actions taken by the investigators of the Majalengka Police Satres drugs against narcotics abusers with evidence of use of more than 1 gram a day, by not sending an application for an assessment to the West Java Province BNN, so that rehabilitation efforts cannot be carried out, as specified in Article 4 paragraph (4) Joint Regulations, according to the author, can be said to be a careful action. In the Telegram Letter of the National Police Chief Number 701 of 2014, it is determined that a request for rehabilitation for addicts and victims of narcotics abuse with the status of a suspect must be submitted in writing by the suspect or the suspect's family or legal adviser to the investigator. According to the Head of the Narcotics Unit of the Majalengka Police.³¹

The act of using and abusing narcotics is, in principle, a criminal act, so the perpetrators should be subject to legal proceedings as befits the legal process for other criminal cases. However, for now, law enforcement against addicts and narcotics abusers does not always use penal facilities but uses non-penal means, such as sponsorship and social education to develop the social responsibility of citizens.³² In general, it can be distinguished that efforts to overcome criminal acts, as a means of penalizing, are more focused on the repressive nature (repression/eradication/ suppression) after the crime has occurred. Meanwhile, non-penal means are more focused on preventive nature (prevention/deterrence/control) before the crime is committed.³³ Due to the existence of legal certainty regarding the necessity of rehabilitation for narcotics addicts and abusers who report themselves to the receiving agency, they are required to report, as stipulated in Article 54 of Act No. 35 of 2009 concerning Narcotics.

Crimes and actions include sanctions in criminal law. The Criminal Code itself does not mention the term action but mentions things that abolish, reduce and burden criminals. In terms of abolishing the criminal, the sanctions for this action are intended to secure the community and improve the maker, such as forced education, forced treatment, admission to a mental hospital, and handing over to parents.³⁴ According to Muladi and Barda Nawawi Arief, criminal sanctions are more retaliatory against perpetrators of criminal acts, while action sanctions are more anticipatory and also corrective for the perpetrators of the act. The focus of criminal sanctions is on the actions of one person through the imposition of suffering (so that the person concerned becomes a deterrent), while the focus of action sanctions is focused on efforts to assist so that the perpetrator of the crime changes. In other words, the sanction of this action is related to the relative purpose of punishment.³⁵

Criminal sanctions emphasize the element of retaliation, which is suffering that is intentionally imposed on a violator. Meanwhile, action sanctions come from the basic idea of protecting the community and fostering or caring for the maker.

³¹ Interview with AKP Udiyanto, as the Head of the Narcotics Unit at the Majalengka Police. 13/06/22. 13.00 WIB

³² Abintoro Prakoso (2017) *Kriminologi dan Hukum Pidana*, Laksbang Pressindo, Yogyakarta, p. 178.

³³ Barda Nawawi Arief, *Bunga Rampai ...Op.Cit* p. 118

³⁴ Andi Hamzah (2008) *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta p. 218.

³⁵ Muladi dan Barda Nawawi Arief (2002) *Teori-teori Dan Kebijakan Pidana*, Bandung: Alumni, 2002 p. 10

³⁶Action sanctions are more educational in nature, from the point of view of criminal theories, action sanctions are sanctions that do not reciprocate. It is aimed at special prevention, namely protecting the community from threats that can harm the interests of the community itself.³⁷ In short, Andi Hamzah said that criminal sanctions are oriented to the idea of imposing sanctions on the perpetrators of an act, while action sanctions are oriented to the idea of protecting the community. The *maatregel* aspect (action) against narcotics abusers is by securing the community and improving the makers (narcotics abusers), through forced treatment. ³⁸In the provisions of the Narcotics Law and its various implementing regulations, such treatment and/or treatment is in the form of medical rehabilitation and social rehabilitation.

Medical rehabilitation for addicts and narcotics abusers is carried out so that an addict can be free from dependence on narcotic substances, while social rehabilitation is to restore the physical and mental abilities of an addict so that they can return to their social life. Treatment and care for narcotics abusers are carried out through rehabilitation facilities. Rehabilitation for narcotics abusers is carried out to restore and develop the physical, mental and social abilities of the sufferer concerned.

Victims of crime who are addicted in this case are narcotics addicts who need special treatment, so that get treatment and protection so that they can return to being citizens who can play a role in the life of the nation and state. The shift in the form of punishment from corporal punishment to action punishment is a depenalization process. This depenalization occurs because of the development or shift in legal values in people's lives that affect the development of legal values in criminal Act Norms. The act is still disgraceful but does not deserve to be subject to heavy criminal sanctions, more appropriately subject to light criminal sanctions or actions.³⁹

The reason for determining the depenalization of narcotics users and victims is because they are considered sick people, so they need to get treatment by providing therapy and drugs to recover. Victims of narcotics abusers are not aware of what they have done, because they commit these acts because of the persuasion of others so they need to be saved by rehabilitation, so as not to fall into the severity of the effects of narcotics. ⁴⁰Although narcotics abusers have qualifications as perpetrators of narcotics crimes, in certain circumstances narcotics addicts can be positioned more towards the victim. Iswanto stated that the victim was the result of intentional or negligent acts, voluntary volition, forced or deception, and natural disasters, and all of them truly contained the nature of the mental, physical, property and moral suffering as well as the nature of injustice. ⁴¹Narcotics abusers can be said

³⁶ Ibid,

³⁷ Andi Hamzah, *Asas-AsasOp, Cit*, p. 217

³⁸ Ibid

³⁹ Mudzakir (2014) *Dekriminalisasi Pecandu Narkotika*, Paper Presented at a Focus Group Discussion organized by the National Narcotics Agency in collaboration with the Faculty of Law, Universitas Gadjah Mada on 10 October 2014

⁴⁰ Ibid

⁴¹ Iswanto, 2009, *Viktimologi*, Faculty of Law Universitas Jenderal Soedirman, Purwokerto, p 8.

to be victims of criminal acts of drug abuse that they do themselves, thus abusers have their rights as victims of crime.

Stephen Schafer as quoted by Rena Yulia said that there are 7 seven typologies of victims when viewed from the perspective of the victim's responsibility, which is as follows:

- *Unrelated victims*(unrelated victims), namely victims who have nothing to do with the perpetrator and become victims because they are potential.
- *Provocative victims*(provocative victims), namely a person or victim caused by the role of the victim to trigger a crime.
- *Participating victims*(victim participates), namely, someone who does not act, but with his attitude encourages himself to become a victim.
- *Biologically weak victims*(biologically weak victims), namely those who physically have weaknesses that cause them to become victims.
- *Socially weak victims*(socially weak victims), namely those who have a weak social position causing them to become victims.
- *Self-victimizing victims* (victims who are also victims), namely those who are victims of crimes they have committed themselves.
- *Political victims*(political victims), namely victims because of their political opponents, sociologically the victims cannot be accounted for unless there is a change in the political constellation.⁴²

Parties who experience suffering and loss or are referred to as victims of course have rights that can be obtained as a victim. The rights of victims according to Van Hoven as quoted by Rena Yulia, are the right to know, the right to justice and the right to reparation (recovery), namely rights that refer to all types of remedies, both material and non-material. Application of Assessment on addicts and victims of Narcotics abuse at the Majalengka Police Resort is an assessment action that leads to rehabilitation. The assessment process that occurs at the investigation stage both carried out by BNN and the police is the same. Since the Joint Regulations were enacted, the police narcotics investigation process against addicts who reported themselves would be recommended to visit the Reporting Recipient Institution (IPWL) for an assessment to determine the level of addiction as a determinant of the rehabilitation time.

This similarity is because the police and BNN (the Attorney General's Office and the Ministry of Law and Human Rights) are members of the legal team in the integrated assessment team. Police ObstacleMajalengka Resort PoliceIn the implementation of the assessment of the handling of addicts and narcotics abuse in its implementation, various factors hinder the achievement of ideals as aspired by the law. No exception the application of assessment in law enforcement against narcotics abusers is influenced by several factors, including Legal Substance Factors, Law Enforcement Factors, and Community Factors. If we relate it to the theory of legal certaintysoThe Law on Narcotics has provided clear legal certainty for each perpetrator so that the Law on Narcotics can be said to have 2 (two) sides, namely the humanist side to narcotics addicts and abusers, and a hard and firm side to the dealers.

⁴² Rena Yulia (2010) *Victimology*, Graha Ilmu, Yogyakarta, p. 53-54.

4. Conclusion

The implementation of assessments on addicts and victims of drug abuse in the Majalengka Resort Police is a form of implementation of concerns about the handling of addicts and victims of drug abuse in Indonesia. Addicts and victims of drug abuse who have entered the jurisdiction need careful and careful action through the assessment process first in determining whether or not addicts and victims of drug abuse who have been determined as suspects and/or defendants are to be placed into medical rehabilitation institutions and/or social rehabilitation. In brief, the purpose of the assessment is to determine the extent of addiction and the role of addicts and victims of drug abuse in drug offences. An addict and victim of drug abuse is a victim of narcotics so he deserves to be called a sick person. As a result, addicts and victims of drug abuse must undergo treatment by placing them in medical rehabilitation and/or social rehabilitation institutions.

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Regulations:

- [1] Article 18 paragraph (4) Regulation of the Head of the National Narcotics Agency no. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.
- [2] Article 8 Regulation of the Head of the National Narcotics Agency No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions
- [3] Article 81 of Act No. 35 of 2009 concerning Narcotics.
- [4] Dani Krinawati & Niken Subekti Budi Utami, 2014 *Pelaksanaan Rehabilitasi Bagi Pecandu Narkotika Pada Tahap Penyidikan Pasca Berlakunya Peraturan Bersama 7 (Tujuh) Lembaga Negara Republik Indonesia*, (Yogyakarta: Research Results of the Faculty of Law, Gadjah Mada University, p. 28 and the Institution's Recipient of Reporting Obligations are public health centres, hospitals, and/or medical rehabilitation institutions and social rehabilitation institutions appointed by the Government Article 1 number 2 Government Regulation No. 25 of 2011 concerning the Implementation of Compulsory Reporting Narcotics Addicts