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Criminal Justice and Pancasila Values in Decisions on Narcotics Abuse Cases as Part of The Development of The National Legal System

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Abstract. *This study aims to examine the application of Pancasila's justice values and the effectiveness of rehabilitation sanctions for victims of pure drug abuse to support the development of the national legal system. A normative juridical approach with analytical descriptive specifications was employed in conducting this research, utilizing secondary data from library research and primary data from interviews at the Brebes District Court. Based on the findings, it can be concluded that law enforcement practices in general are still trapped in the shackles of positivistic formal legality that prioritizes a punitive approach (imprisonment) for pure drug abusers. The tendency to impose prison sentences violates the values of humanity and social justice mandated by the Second and Fifth Principles of Pancasila. Furthermore, this condition triggers legal bias due to the application of double sanctions (a double-track system) that harms the recovery rights of addiction victims. Contributions to the development of integrative national law can be realized through the reconstruction of regulations in Article 54, Article 103 and Article 127 of the Narcotics Law by adding parameter regulations, namely guidelines for judges to become an absolute obligation for rehabilitation measures based on the results of the assessment, so that it is in line with the universal and restorative paradigm in the New Criminal Code (Law No. 1 of 2023).*

Keywords: Drug Abusers; National Legal Development; Pancasila Justice; Rehabilitation.

1. Introduction

Justice in the legal ideal is a form of human struggle that circulates according to the rhythm of space and time, from the past to the present without stopping and will continue until humans have no more activity. As is known, humans are



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bestowed with feelings and the power of thought that function to consider rational decisions so that they align with moral values such as good and evil, as well as right and wrong.¹

Narcotics law is a crucial component of the development of Indonesia's national legal system because it directly relates to community protection, public order, health, and the future of the nation's future generations. From a national legal perspective, narcotics regulation is not only interpreted as an instrument for prosecution against criminals, but also as a means of prevention, rehabilitation, and social recovery for drug abusers.² According to the author, this shows that narcotics law has a dual function, namely repressive and preventive, as well as being humanistic.

As a nation based on Pancasila, the development of Indonesia's national law must reflect the values of divinity, humanity, unity, democracy, and social justice. Pancasila is not only the foundation of the state but also serves as the legal ideal in the formation and implementation of legislation. Therefore, narcotics laws must be designed and implemented in harmony with just and civilized humanitarian values, as well as social justice for all Indonesian people.³

Law Number 35 of 2009 concerning Narcotics affirms that Indonesian narcotics law is based on Pancasila and the 1945 Constitution. This law also established the National Narcotics Agency (BNN) to implement policies to prevent and eradicate narcotics abuse and illicit trafficking. Furthermore, the same law regulates medical and social rehabilitation for drug addicts and victims of drug abuse as a form of protection and recovery. Thus, Indonesian narcotics law is not solely oriented toward punishment, but also toward the restoration and protection of human dignity. In this case, the author will focus on drug abuse.

Furthermore, in practice, drug abuse remains a serious problem, resulting in social, health, economic, and security impacts. Therefore, the existence of narcotics law must be placed within the framework of developing a national legal system that not only pursues legal certainty but also justice and benefits for society. Based on this background, a discussion of narcotics law as part of the development of a national legal system based on Pancasila is crucial to

¹Erwin, M. (2012), *Philosophy of Law: Critical Reflections on Law*. Jakarta: PT RajaGrafindo Persada. p. 219

²Law No. 35 of 2009

³ Barlian, AEA, & Herista, ADP (2021). Development of the Indonesian legal system based on the values of Pancasila as the nation's political ideology. *Journal of the Indonesian National Resilience Institute*, 9(1), 88-98. via < <https://jurnal.lemhannas.go.id/index.php/jkl/article/view/379>>



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demonstrate the direction of legal policies that are just, humane, and in favor of the nation's interests.⁴

Philosophically, drug abuse itself, according to Schur, for certain legal violations, occurs what is known in criminology literature as Victimless crime or crime without a victim. Even the victim and perpetrator are single or one (the perpetrator is the victim and the victim is the perpetrator). For example, prostitution, gambling, and narcotics crimes as users or Drug users who cannot clearly distinguish between who is the victim and who is the perpetrator. Romli Atmasasmita, mentions another term for victimless crime, namely the victim and perpetrator are dual, namely the victim and perpetrator are single or one. According to Chaerudin and Syarif Fadillah, in the study of crime, there is no crime without causing victims. Thus, the victim is the main participant, although on the other hand there is also a crime without a victim "Crime without victim". From the brief description of the victimless crime above, several terms are known related to victimless crime, namely Victimless, the victim and perpetrator are single or one (dual), and Crime without victim. In the broader criminal law literature, the types of victimless crimes include abortion, prostitution, gambling, and drug crimes involving drug users. Victimless crimes are important to understand, both from the perspective of crime patterns (not criminal acts).⁵

Drug victims are controlled by addicts who have already fallen into a trap; if they stop, they will experience the negative effects. Drug users themselves should be positioned as sick individuals who need treatment and recovery due to the negative impacts of their drug use (victims whose rights should be protected as victims).

So the sanctions that should be applied specifically to narcotics users for themselves without being accompanied by other main criminal qualifications are a type of sanction that can restore their condition to its original state, namely in the form of an action sanction. Based on the description of events in general, usually before the act of abusing narcotics for themselves, an act has actually occurred with the intention of educating people who have done bad things to become good again and sick people, in this case people who are dependent on narcotics, to be cured or free from dependence (addiction).

However, even if the actions of narcotics users for themselves fulfill the qualifying elements of a criminal act as regulated in other articles, as long as the

⁴ Barlian, AEA, & Herista, ADP (2021). Development of the Indonesian legal system based on the values of Pancasila as the nation's political ideology. Journal of the Indonesian National Resilience Institute, 9(1), 88-98. via < <https://jurnal.lemhannas.go.id/index.php/jkl/article/view/379>>

⁵ Dagani, G. 2024. Criminology. Pekalongan: NEM. Pg. 256.

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perpetrator's intention (*mens rea* / criminal intention) is for personal use as a result of a dependency on that type of narcotic, then the perpetrator may not be subject to a prison sentence but must be strictly regulated in the form of sanctions in the form of medical rehabilitation and social rehabilitation.⁶

The author's purpose in writing this paper is to uphold the values of justice, which are found in Pancasila and the values of justice in the 2023 Criminal Code. These two factors further strengthen the hope that law enforcement will not simply imprison victims of drug abuse (end users) by imposing multiple articles. A single article should suffice to prosecute perpetrators who have been assessed.

2. Research Methods

This research uses a normative juridical approach. The research specification is descriptive analytical, which aims to provide a systematic and comprehensive overview of the application of Pancasila justice values in narcotics law. Data collection methods were carried out through two methods: literature review to obtain secondary data (legislation, books, dissertations, and scientific journals) and direct interviews with Substitute Bailiffs at the Brebes District Court to obtain primary data related to field practices. The collected data were then analyzed using qualitative analysis methods.

3. Results and Discussion

3.1. Pancasila Values Are Reflected in the Narcotics Law Regulations in Indonesia

Pancasila as the basis of justice in narcotics law according to the Grand Theory (Pancasila Justice Theory) Pancasila has a flexible character or nature and is able to meet the demands of the times in keeping up with the changing globalization of the times. In discussing justice issues that arise in society, Pancasila is able to provide answers to these problems. Pancasila is able to provide values of justice as a legal reform in Indonesia. Legal reform in Indonesia is very necessary because there are still many new problems that cannot be reached by the law. These problems should be resolved with a single vision, mission, goals and perception of Pancasila in carrying out legal reform in Indonesia. In addition to new problems that have not been resolved, old problems are also problems that are also considered urgent to be resolved immediately, considering that the law is always present in society to provide certainty, justice and benefits.

⁶ Subagio, S. 2019. Formulation Policy on Criminal Acts of Narcotics Use Based on Law of the Republic of Indonesia Number 35 of 2009 Concerning Narcotics. *Legal Dynamics*, 10(2). Via <https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/view/4342>



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Justice can be viewed as both a demand and a norm. As a demand, justice demands that everyone's rights be respected and that all human beings be treated equally. Justice is the primary norm for fair conflict resolution, a norm that can support peace and stability in society.

Justice is a fundamental moral principle that upholds human dignity. Justice demands that all people be respected as beings of value in themselves, who may be used merely as tools to achieve further goals.

Franz Magnis Suseno, has discussed the principles one by one where the demands for justice for the understanding of Pancasila are, namely:

a. Belief in the one and only God.

The essence of this first principle is that as humans we acknowledge that we must be in accordance with the consciousness of our hearts, believe and

devotion to God Almighty. According to the beliefs of all religions, God's basic requirement of us in our relationships with others is that we be fair.

b. Just and civilized humanity.

Justice is explicitly mentioned here in relation to humanity. Building a humane attitude must be based on justice. Justice is a prerequisite for fair human relations, as it demands that we respect the dignity of all others as human beings. Justice applies to all of us equally, regardless of gender, ethnicity, religion, social class, race, or other differences.

c. The unity of Indonesia.

Indonesian unity can only be achieved through the foundation of justice. Groups or segments of society treated unfairly will not unite. Justice requires us to reject all forms of discrimination that threaten national unity.

d. Democracy led by the wisdom of deliberation/representation.

The fourth principle expresses the concept of popular sovereignty. Popular sovereignty itself is a demand for justice. Democracy, as the operationalization of democracy, is a demand for justice. Every citizen has the right to participate in deliberations among the nation regarding their collective desires.

e. Social justice for all Indonesian people.

By social justice is meant the state of all members of society enjoying justice, or not experiencing injustice. Social justice means that the structures of the social

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life processes in the political, economic, social, cultural and ideological fields are arranged in such a way that justice is achieved.⁷.

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 feeling, reduce or eliminate pain, and can cause dependence, which are divided into groups as attached to the Narcotics Law Law No. 35 of 2009. In principle, the eradication of narcotics in Indonesia requires a comprehensive and structured approach, in which the Four Pillars of Nationality (Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika) play an important role. The values contained in these pillars provide a strong foundation for fighting drug abuse and building collective awareness in society as well as in efforts to maintain national morality, law, state integrity, and a spirit of togetherness in facing the dangers of narcotics. The following is the role of law and the pillars of nationality in the context of eradicating narcotics as follows:

1. Pancasila. Role in eradicating narcotics: a. The moral and ethical values contained in Pancasila are the basis for rejecting all forms of narcotics abuse. The first principle, namely Belief in the One and Only God, emphasizes the importance of maintaining the morality of individuals who believe. The second principle, namely Just and Civilized Humanity, teaches that narcotics damage human dignity; b. Pancasila encourages the government and society to work together in combating narcotics, by upholding the values of humanity, justice, and togetherness as the basis for preventing and handling this problem; c. Narcotics violate the principle of Social Justice for All Indonesian People because of its impact on the younger generation, destroying welfare, and increasing social injustice. Where all of this has the aim of instilling moral values in society to reject narcotics abuse, and also creating a just and healthy social environment without narcotics.

2. The 1945 Constitution (UUD 1945). Role in eradicating narcotics: a. The 1945 Constitution serves as the constitutional basis for law enforcement efforts against narcotics abusers. Articles in the 1945 Constitution guarantee protection to every citizen, including the right to a healthy and safe life from the threat of narcotics; b. The 1945 Constitution directs the state to protect the younger generation from the threat of narcotics, as stipulated in Article 28H concerning the right to a healthy life and in Article 34 concerning the state's obligation to care for the poor and neglected children who are vulnerable groups to narcotics;

⁷ IRAWAN, A. (2025). Reconstruction of criminal regulations for drug addicts based on Pancasila justice values. Sultan Agung Islamic University, Semarang). P. Xi-Xii

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c. Ensure that drug eradication measures are carried out in a fair legal manner, while still respecting human rights. Where all of this has the aim of protecting the rights of every citizen to live a healthy life and be free from the threat of narcotics. Then also to regulate a strong legal basis for prosecuting perpetrators of narcotics abuse and distribution.

3. The Unitary State of the Republic of Indonesia (NKRI). Role in eradicating narcotics: a. NKRI ensures that narcotics eradication is carried out evenly throughout Indonesia, from city centers to remote areas. Narcotics abuse is a national threat that can damage the younger generation in various regions.⁸;

3.2. The role of narcotics law in realizing justice in court and rehabilitation for narcotics abusers

Narcotics are a multidimensional problem in Indonesia, encompassing legal, health, social, economic, and national security aspects. Data from the National Crime Information Center (Pusiknas) of the Indonesian National Police Criminal Investigation Agency (Bareskrim Polri) recorded 13,142 narcotics cases from January 1 to April 17, 2025, consisting of 5,386 cases of abuse (40.98%) and 5,325 cases of illicit trafficking (40.51%).

These figures indicate that drug abusers outnumber dealers, rendering the policy of incarcerating drug users ineffective. Correctional facilities often become breeding grounds for new criminal networks and fail to address the root of the problem, namely addiction, a chronic disease requiring medical treatment.

This fact demands a shift in the legal paradigm regarding drug users. They are not only perpetrators of criminal acts, but also victims who experience physical and psychological suffering. Imprisonment alone does not solve the problem; it actually increases the potential for reoffending. The state is obliged to provide protection and opportunities for recovery through a rehabilitative approach, which is more appropriate than imprisonment-based punishment because it allows for health recovery, breaking dependency, and social reintegration. The new Criminal Code (Law No. 1 of 2023) emphasizes a paradigm shift in punishment, from mere retribution to community protection, rehabilitation, and rehabilitation of offenders. This orientation aligns with Sahardjo's 1963 thinking, which emphasized that prisoners remain human beings capable of improvement.

In theory, the goal of punishment is not singular. Classical doctrine emphasizes retribution, while modern theory emphasizes prevention, protection, and

⁸ Nugraha, R. (2024). The Theory of Legal Benefit in the Implementation of Narcotics Eradication Crimes. *Mustika Justice*, 4(1). Through < <https://jurnal.uic.ac.id/mustikajustice/article/view/332>>



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rehabilitation of the perpetrator. In the context of drug abuse, the rehabilitation paradigm is more in line with the theory of proportionality, which demands a balance between the level of culpability, the harm caused, and the sanctions imposed. Because drug abusers are essentially victims of addiction, recovery through rehabilitation is more appropriate than imprisonment. Rehabilitation still contains elements of restriction of freedom, but the goal is recovery, not retribution. Although rehabilitation is normatively recognized, judicial practice demonstrates the dominance of imprisonment.⁹

One example in the decision letter Number 79 / PID.SUS / 2026 / PT TJK the perpetrator has never been convicted for the legal fact that based on the considerations above, the Decision of the Tanjungkarang District Court Number 1138 / Pid.Sus / 2025 / PN Tjk dated January 26, 2026 which was requested for an appeal can no longer be maintained and therefore must be canceled by trying it yourself as in the full ruling: Considering that in this case the Defendant has been subject to legal arrest and detention, the period of arrest and detention must be deducted entirely from the sentence imposed; Considering that because the Defendant was detained and the detention of the Defendant was based on sufficient reasons, it is necessary to determine that the Defendant remains in detention; Considering that because the Defendant was found guilty and sentenced to a criminal offense, he must be burdened with paying court costs at both levels of court, which at the appeal level will be stated in the verdict, Taking into account Article 127 Paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with Article 20 letter c of Law Number 1 of 2023 concerning the Criminal Code in conjunction with Law Number 1 of 2026 concerning Criminal Adjustments in conjunction with Law Number 20 of 2025 concerning Criminal Procedure Law (KUHP) and other relevant laws and regulations.

Legal facts: That the Defendant and witness DBYL Binti Budi Riyanto along with the evidence were taken to the Lampung Regional Police Narcotics Investigation Directorate Office, to be questioned and to have urine samples taken and tested, where the results of the urine test for the Defendant and DBYL Binti Budi Riyanto were declared positive for containing narcotics; That according to the Defendant, he did not sell ecstasy pills, but the Defendant had given free narcotics in the form of ecstasy pills to other people, namely 1 (one) green ecstasy pill in the shape of a skull which the Defendant gave intact to Arif (DPO) who at that time

⁹Abiandri Fikri Akbar Aji Malik and Rizkia Santi Wardhani. Rehabilitation of Drug Abusers: A Humanistic Approach to Criminal Justice. Via the Dandapala website: <<https://dandapala.com/opini/detail/rehabilitasi-penyalahgunaan-narkotika-dekatatan-humanis-dalam-peradilan-pidana>>

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Arif (DPO) gave money to the Defendant on the grounds of helping to pay for the room and buy drinks, and 1 (one) green ecstasy pill in the shape of a skull which the Defendant gave by the Defendant crushing it and putting it into a bottle of liquor then the Defendant handed it to Ompong (DPO);

Judged by himself: 1. Declare that the Defendant with the initials WTH Bin P has been legally and convincingly proven guilty of committing the crime of narcotics abuse Class I for himself, as the third alternative charge of the Public Prosecutor; 2. Impose a sentence on the Defendant therefore with a prison sentence of 1 (one) year 8 (eight) months; 3. Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed; 4. Determine that the Defendant remains detained; 5. Determine that the evidence is in the form of: - 2 (two) green ecstasy pills in the shape of a skull; - 1 (one) medium-sized clear plastic package containing green pill powder; - 1 (one) yellow Esse pop cigarette box; - 1 (one) black leather bag of the Miaoshe brand; Confiscated to be destroyed; - Money amounting to Rp. 300,000.00 (three hundred thousand rupiah);

Based on the description, in the practice of law enforcement, trials that impose multiple articles (double track) or regarding narcotics abuse are given sanctions and criminal action.¹⁰, other factors of Narcotics abuse for oneself in the form of imprisonment occur due to various factors that influence or become the judge's consideration so that they have to pass a sentence in the form of imprisonment instead of rehabilitation, other reasons include the existence of problematic formulations or constructions of articles in the Narcotics Law or the inconsistency of criminal threats in Article 127 concerning punishment for Narcotics Abusers for themselves, but it can also not only be because of the problematic construction of the articles of the law but more because of the problematic implementation of law enforcement, as well as the paradigm of law enforcement officers who tend to demand and punish with imprisonment. Likewise, to be able to impose a sentence in the form of rehabilitation, either in the form of medical rehabilitation or social rehabilitation for perpetrators of Narcotics Abuse, certain requirements and actions are required by investigators, public prosecutors and by the accused perpetrators of Narcotics Abuse for themselves. The imposition of imprisonment on Narcotics Abusers for Their Own can cause various negative consequences, including the occurrence of repeat criminal acts (recidivism) from perpetrators who were initially only Narcotics Abusers for Their Own then escalating to become dealers or even become Narcotics dealers as a result of the influence of the wrong environment in the Correctional Institution (Lapas), the

¹⁰Interview results with Fitro Faizin, SH as the Substitute Bailiff of the Brebes District Court. On March 6, 2026.

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occurrence of overcapacity (over capacity) of the Prison because the majority of Prison inmates are Narcotics abuse cases, as well as burdening the State Budget. Regarding law enforcement against crime in Indonesia, the Government as the organizer of state life needs to provide protection and welfare to the community through various policies that are agenda in the national development program. This government policy is included in social policy.¹¹

According to Arif Gosita in his book, narcotics users themselves should be positioned as sick people who need treatment and recovery due to the negative impacts of their use of narcotics (victims whose rights should be protected as victims). Therefore, the sanctions that should be applied specifically to narcotics users themselves who are not accompanied by other major criminal qualifications are a type of sanction that can restore their condition to its original state, namely in the form of a sanction of action.

If the narcotics user for himself fulfills these elements and it is proven that the mental attitude (*mens rea* / criminal intention) of the perpetrator is no more than for his own use, then in order to save the victim of narcotics abuse for himself, the judge is obliged to decide to apply sanctions in the form of medical rehabilitation and social rehabilitation for the perpetrator.

First,: Criminal Sanction Formulation Policy According to the Narcotics Law Against Narcotics Crime Perpetrators Currently and in the Future, namely: 1. Action sanctions can be used as an alternative sanction in narcotics crimes in Indonesia, namely specifically for narcotics abusers for themselves who are not accompanied by other narcotics crime qualifications such as Distributors, Importers, Providers or those who produce. This is based on the condition and position of the Abuser who is a sick person as well as a victim of the actions he committed, who should receive special treatment to be able to recover to his original condition / not to be imprisoned.

According to Rudolph J. Gerber and Patrick, the sanction of rehabilitation for drug users themselves is in accordance with the purpose of punishment, namely the treatment theory, which argues that punishment is most appropriately directed at the perpetrator of the crime, not the act. The punishment intended by this school of thought is to provide treatment and rehabilitation to the perpetrator of the crime as a substitute for punishment. This school of thought is based on the reason that the perpetrator of the crime is a sick person who requires treatment and rehabilitation.¹²

¹¹ Yanto, O. (2017). The role of judges in eradicating drug crimes through just decisions. *Journal of Law and Justice*, 6(2), 259-278. DOI:<http://dx.doi.org/10.25216/jhp.6.2.2017.259-278>.



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From the above description, if viewed from the perspective of the values of justice and fairness of Pancasila, the normative construction of Law No. 35 of 2009, there is an epistemological rift (a branch of philosophy that studies the nature, origins, methods, and limits of knowledge) between the legal ideals of Pancasila and the reality of existing legislation. Pancasila justice is not merely retributive justice (retribution), but rather humanistic, integrative, and restorative justice. Violations in Pancasila include: Violation of the Second Principle (Just and Civilized Humanity): Philosophically, drug abusers (end-users) are victims of dependence on addictive substances that control their consciousness. In the doctrine of criminology, and the Fifth Principle (Social Justice for All Indonesian People): Judges are obliged to provide justice that is equitable and impartial. Violations of the code of ethics or law by judges undermine the principle of justice that should be upheld in the eyes of the law.

This phenomenon is categorized as a victimless crime, where the perpetrator and victim are a dual entity. Prosecuting a medically ill victim with a punitive approach (imprisonment) is a disregard for human dignity. Civilized criminal justice demands that the state be present to heal the sick legal subject, not exile them to prison alongside perpetrators of systemic crimes. Imprisoning end-users who possess mens rea purely for personal consumption due to addiction is a failure of the state to humanize humans.

In the description of Narcotics Law in Realizing Justice in Courts and Rehabilitation for Narcotics Addicts (Analysis of the Perspective of Substantive Criminal Justice) In the criminal justice system, law enforcement is often trapped in the shackles of formal legality that ignores substantive justice. Law enforcement officers tend to use positivistic blinders by applying layered charges (cumulative charges) to pure drug abusers. This phenomenon reflects that the main orientation of our justice system is still very punitive, not corrective or curative. Failure of Formal Justice in Court: As a concrete example, the Decision of the Tanjungkarang High Court Number 79 / PID.SUS / 2026 / PT TJK is empirical evidence of how justice has failed to be realized for drug abusers. Even though the defendant was legally and convincingly proven to be only a Class I drug abuser for himself (Article 127 paragraph (1) letter a of the Narcotics Law) and had never been convicted before, the court still sentenced him to prison in conjunction with Article 20 of the 2023 Criminal Code so that the perpetrator received a criminal sanction of 1 year and 8 months. This decision substantially ignores the mandate of Article 54 of the Narcotics Law which states that addicts

¹² Subagio, S. 2019. Formulation Policy on Criminal Acts of Narcotics Use Based on Law of the Republic of Indonesia Number 35 of 2009 Concerning Narcotics. *Legal Dynamics*, 10(2). Via <https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/view/4342>



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and victims of drug abuse are required to undergo medical and social rehabilitation. When the judge chooses to impose a prison sentence rather than a sanction of action (treatment), the judge has reduced the role of criminal law to merely a tool for retaliation by state power.

3.3. Contribution to The Development of The National Legal System

In the development of law carried out by the government is to protect the community (social defense) and general welfare (social welfare) which is an effort to achieve national goals. Achievement of national goals (social welfare and social defense), is through the implementation of state sovereignty over the people and democracy based on Pancasila and the 1945 Constitution. The implementation of the state is carried out through national development in all aspects of national life. Ultimately, national development efforts are to realize a just and prosperous quality of life for the people. The achievement of a just and prosperous quality of life for the people carried out by the Indonesian government through sustainable national development including the development of national legislation by the Indonesian government programmed in the Long-Term Development Plan in Indonesia.

The development of national legislation in Indonesia is part of the national development system that aims to realize the national goal of protecting all the people and the nation, and the entire Indonesian homeland, advancing general welfare, educating the nation and participating in world order based on law, freedom, eternal peace, and social justice through the state legal system. The program for developing legislation must be a priority because the amendment to the 1945 Constitution of the Republic of Indonesia has broad implications for state administration and is fundamental in the system that needs to be followed by changes in legislation from the legal system.

Efforts to implement the values of life in society, is the obligation of every community awareness in order to realize state law in the fair and democratic development of the state legal system to form aspirational legislation, on justice and truth serving the interests of the people and nation within the framework of the Unitary State of the Republic of Indonesia. Systemic legal development is development that is carried out comprehensively and is reviewed continuously following the development of the times. In the development of legal reform, changes to legislation must be made on the grounds that colonial inherited law is not in accordance with the development of society, both not containing



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certainty, justice, truth, and not paying attention to customary values. live in public in accordance with Pancasila¹³.

From the description, it can be seen that the development of the national legal system has experienced a failure of formal justice in the courts. As a concrete example, the Tanjungkarang High Court Decision Number 79/PID.SUS/2026/PT TJK is evidence of how justice has failed to be realized for end-user abusers. Even though the defendant was legally and convincingly proven to be only a Class I abuser for himself (Article 127 paragraph (1) letter a of the Narcotics Law) in conjunction with Article 20 of the 2023 Criminal Code and had never been convicted before, the court still sentenced him. in this decision, it substantially ignores the mandate of Article 54 of the Narcotics Law which states that addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation. When the judge prefers to impose a prison sentence rather than a sanction (treatment).

From the description, the solution is biased. First, it has been proven in the legal fact that it has been consumed in the Narcotics Law: 54 Law No. 35 of 2009 concerning Narcotics explicitly and imperatively states: "Drug addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation." The use of the word "mandatory" here indicates that rehabilitation is not a facility or bonus, but rather a legal right for addicts as well as an obligation for the state to provide it. Second, the perpetrator is a victim of abuse because he was declared an abuser, not a recidivist, and consuming, the perpetrator should be given sanctions Action namely rehabilitation unless he is a recidivist and there are other unlawful acts. The Three New Paradigms of the National Criminal Code (Law No. 1 of 2023): Indonesian criminal law has officially abandoned the retributive paradigm (justice based on retaliation/corporal punishment) and shifted to a universal paradigm that prioritizes 3 things, namely Justice, benefit (Article 53 of the 2023 Criminal Code) and legal certainty (principle of legality). In terms of certainty, the perpetrator can be given rehabilitation according to the guidelines of Article 54 of the Narcotics Law, not a recidivist and not an addict; in terms of benefit, the perpetrator receives rehabilitation and is free from prison because he is a victim of drug abuse who needs recovery; and in terms of justice, the perpetrator receives rehabilitation, is free from prison and receives recovery. This is what victims of drug abuse should get.

¹³ Barlian, AEA, & Herista, ADP (2021). Development of the Indonesian legal system based on the values of Pancasila as the nation's political ideology. Journal of the Indonesian National Resilience Institute, 9(1), 88-98. via < <https://jurnal.lemhannas.go.id/index.php/jkl/article/view/379>>



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From the description of the contribution of the development of the national legal system, the Failure of Formal Justice in Court: Reflection of Real Cases In the development of the national legal system, law enforcement is often trapped in positivistic formal legality that ignores substantive justice. imposing imprisonment for perpetrators who are in a state of addiction (cannot stop consuming because it threatens their health) is contrary to the direction of the development of the new national law. Through Article 20 letter c of Law No. 1 of 2023 (New Criminal Code), Indonesia officially adopted the universal paradigm, so it should prioritize three pillars:

- a. Legal Certainty: Addicts are guaranteed rehabilitation under Article 54 of the Narcotics Law, but this can be achieved by imposing criminal sanctions under Article 20 of the 2023 Criminal Code, thereby precluding the right to receive full sanctions, namely rehabilitation.
- b. Legal Benefits: Rehabilitation frees perpetrators from prison because it positions them as victims who need to be healed, while also breaking the chain of dependency.
- c. Legal Justice: The justice achieved is not retributive (revenge), but rather restorative, humanistic and integrative justice that focuses on the recovery of the victim.

Negative Impacts of Remaining Imprisoned: The punitive approach has proven ineffective because it triggers a high rate of repeat criminal acts (recidivism) due to the negative influence of the prison environment (where users can move up to become dealers/dealers), worsens prison overcapacity, and burdens the State Budget.

4. Conclusion

When viewed through the grand theory of justice embodied in Pancasila, judicial actions that ignore substantive equity constitute a clear violation of the second and fifth principles, reflecting a broader systemic failure where law enforcement remains shackled to formalistic legal positivism. This rigid adherence to procedure exacerbated by ambiguous statutory parameters and the absence of detailed regulatory guidelines for drug abusers comparable to SEMA No. 04 of 2010 results in the flawed imposition of double-track sanctions upon victims of drug abuse who are subjected to both punitive criminal penalties and legal actions. Consequently, to prevent such miscarriages of justice and contribute constructively to the national legal system, non-recidivist addicts should be properly rehabilitated rather than criminalized, prompting the author to argue that narcotics charges for simple abusers must be strictly limited to Articles 54



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and 127 of the Narcotics Law so prosecutors can appropriately apply Article 20 of the 2023 Criminal Code.

5. References

Journals:

Barlian, A. E. A., & Herista, A. D. P. (2021). Pembangunan sistem hukum indonesia berdasarkan nilai-nilai Pancasila sebagai ideologi politik bangsa. *Jurnal Lemhannas RI*, 9(1), 88-98. melalui <<https://jurnal.lemhannas.go.id/index.php/jkl/article/view/379>>

Kristiono, N. 2017. Penguatan ideologi Pancasila di kalangan mahasiswa Universitas Negeri Semarang. *Harmony*, 2(2), 193-204.

Nugraha, R. 2024. Teori Hukum Kemanfaatan Dalam Pelaksanaan Tindak Pidana Pemberantasan Narkotika. *Mustika Justice*, 4(1). Melalui <<https://jurnal.uic.ac.id/mustikajustice/article/view/332>>

Subagio, S. 2019. Kebijakan Formulasi Terhadap Tindak Pidana Penggunaan Narkotika Berdasarkan Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 Tentang Narkotika. *Dinamika Hukum*, 10(2). Melalui https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/view/4342

Yanto, O. 2017. Peranan hakim dalam pemberantasan tindak pidana narkoba melalui putusan yang berkeadilan. *Jurnal Hukum dan Peradilan*, 6(2), 259-278. DOI: <http://dx.doi.org/10.25216/jhp.6.2.2017.259-278>.

Books:

Dagani, G. 2024. *Kriminologi*. Pekalongan: NEM.

Erwin, M. 2012, *Filsafat Hukum Refleksi Kritis terhadap Hukum*. Jakarta: PT RajaGrafindo Persada.

Internet:

Abiandri Fikri Akbar Aji Malik dan Rizkia Santi Wardhani. Rehabilitasi Penyalahguna Narkotika, Pendekatan Humanis dalam Peradilan Pidana. Melalui situs Dandapala : <<https://dandapala.com/opini/detail/rehabilitasi-penyalahguna-narkotika-pendekatan-humanis-dalam-peradilan-pidana>>



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Regulation:

Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code).

Law Number 35 of 2009 concerning Narcotics.

Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning the Placement of Narcotics Abuse Victims in Medical Rehabilitation and Social Rehabilitation Institutions.