

Legal Analysis of Criminalization of Narcotics Abuse Perpetrators for Themselves Based on Justice (Study of Decision Number 116/Pid.Sus/2024/PN.Smg)

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Abstract. *Drug and illicit drug crimes are now transnational and carried out using sophisticated procedures and sophisticated technology. Law enforcement officers are expected to be able to prevent and overcome drug crimes in order to improve the morals and quality of Indonesian human resources as the next generation of this country. The use of narcotics if used without restrictions and medical supervision can endanger the health and even the lives of its users. As a country of law, Indonesia certainly has many regulations that govern social life. Narcotics Law Number 35 of 2009 has not regulated drug abuse. This was done as one of the important steps of the government to fulfill the contents of Article 4 of the 1945 Constitution, namely the protection of all Indonesian people, increasing public welfare, and protecting the people. Participation in the realization of a healthy national life, world order, eternal peace, and social justice. A case of drug abuse also occurred in the Semarang District Court area Number 116/Pid.Sus/2024/PN.Smg. Starting from the defendant together with witness ANGGA DWI PUTRA Bin ASOR HARIYANTO (who was submitted in a separate case file) on Thursday, January 4, 2024 at around 13.15 WIB or at least at another time in 2024, located on the side of Jalan Anggrek, Pekunden Village, Semarang Tengah District, Semarang City, or at least in another place that is still included in the jurisdiction of the Semarang District Court, attempted or conspiracy to commit a crime without rights or against the law offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over Class I Narcotics, in the form of: 9 (nine) plastic clip packages, each of which was inserted into a yellow straw containing crystal powder of methamphetamine with a net weight of 2.23954 grams (two point two three nine five four grams) and 1 (one) plastic clip package containing crystal powder of methamphetamine with a net weight of 0.63632 grams (zero point six three six three two grams), wrapped in black plastic. On Thursday, January 4, 2024 at around 12.15 WIB when the defendant was at home, the defendant was contacted by Witness ANGGA DWI PUTRA via WA Chat, which in essence invited the defendant to accompany him to Simpang Lima in order to pick up crystal methamphetamine on the orders of MAULANA (DPO) with an unknown address and the defendant agreed.*

Keywords: *Criminalization; Justice; Narcotics; Perpetrators.*

1. Introduction

The Republic of Indonesia is a country that adheres to legal principles that are expressly regulated in Article 1 Paragraph 3 of the Fourth Amendment to the 1945 Constitution. Based on the supremacy of law, it states that "Indonesia is a country that upholds human dignity in relation to laws and regulations, and the government must enforce the law without exception."¹ Law is a framework consisting of norms regarding human behavior. Thus, law does not only refer to one rule, but rather a collection of norms that can be understood as a system. The system is important because to regulate various interests in each society, therefore criminal law is needed to regulate society.² Criminal law is part of the overall law that applies in a country.³ Criminal acts can happen to anyone and can be committed by anyone.

Drug and illicit drug crimes are now transnational and carried out using sophisticated procedures and sophisticated technology. Law enforcement officers are expected to be able to prevent and overcome drug crimes in order to improve the morals and quality of Indonesian human resources as the next generation of this country. The use of narcotics if used without restrictions and medical supervision can endanger the health and even the lives of its users.⁴ Common forms of drug abuse include use in excess of the dose and without supervision from a doctor (without a doctor's prescription), distribution and sale of narcotics. Article 5 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, is classified into 3 (three) groups as follows:

a. Class I Narcotics

This narcotic is only used for scientific purposes and is not used in therapy/treatment and has a very high potential to cause dependency syndrome.

b. Class II Narcotics

This narcotic is for treatment which is used as a last resort and can be used in therapy/treatment or for scientific purposes and has a strong potential to cause dependency syndrome.

c. Narcotics Class III

This narcotic is for treatment and is widely used in therapy/treatment or for scientific purposes and has a mild potential to cause dependency syndrome.

As a country of law, Indonesia certainly has many regulations that govern social life. Narcotics Law Number 35 of 2009 has not regulated drug abuse. This was done as one of the important steps of the government to fulfill the contents of Article 4 of the 1945 Constitution, namely the protection of all Indonesian people, increasing public welfare, and protecting the people. Participation in the realization of a healthy national life, world order, eternal peace, and social justice.⁵ Drug crime prosecution is carried out extensively by police officers and is the subject

¹Lailatul Nur Hasanah and Sri Endah Wahyuningisih, The Application Of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State court of Pati), Jurnal Daulat Hukum Volume 2 Issue 4, December 2019 ISSN: 2614-560X

²Jimly Asshiddiqie and Ali Safaat, 2006, Hans Kelsen's Theory of Law, Sekretariat General and Clerk's Office of the Constitutional Court of the Republic of Indonesia, Jakarta, p. 1

³Moeljatno, 2008, Principles of Criminal Law, Rineka Cipta, Jakarta, p. 1.

⁴Moh. Taufik Makarao, Suhasril, and Moh. Zakky, 2003, Narcotics Crimes, Ghalia Indonesia Jakarta, p.1.

⁵The 1945 Constitution, Fourth Paragraph.

of many court decisions. Therefore, it is expected that law enforcement officers will be able to stop the rampant trade and illicit drug trafficking. In fact, the more law enforcement is enforced, the more widespread the illegal drug trade will be. Although legal regulations regarding drug issues have been developed and enforced, the number of drug-related crimes has not decreased. In recent incidents, many drug dealers and traffickers have been arrested and given heavy sanctions, but other perpetrators seem to be ignored, increasing the possibility that they will expand their activities.⁶

A case of drug abuse also occurred in the Semarang District Court area Number 116/Pid.Sus/2024/PN.Smg. Starting from the defendant together with witness ANGGA DWI PUTRA Bin ASOR HARIYANTO (who was submitted in a separate case file) on Thursday, January 4, 2024 at around 13.15 WIB or at least at another time in 2024, located on the side of Jalan Anggrek, Pekunden Village, Semarang Tengah District, Semarang City, or at least in another place that is still included in the jurisdiction of the Semarang District Court, attempted or conspiracy to commit a crime without rights or against the law offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over Class I Narcotics, in the form of: 9 (nine) plastic clip packages, each of which was inserted into a yellow straw containing crystal powder of methamphetamine with a net weight of 2.23954 grams (two point two three nine five four grams) and 1 (one) plastic clip package containing crystal powder of methamphetamine with a net weight of 0.63632 grams (zero point six three six three two grams), wrapped in black plastic. On Thursday, January 4, 2024 at around 12.15 WIB when the defendant was at home, the defendant was contacted by Witness ANGGA DWI PUTRA via WA Chat, which in essence invited the defendant to accompany him to Simpang Lima in order to pick up crystal methamphetamine on the orders of MAULANA (DPO) with an unknown address and the defendant agreed. At 12.30 WIB, Witness ANGGA DWI PUTRA came to the defendant's house and after meeting, the defendant and witness ANGGA DWI PUTRA immediately went to the Simpang Lima area, Semarang City, riding a gray Vario motorcycle with the police number: H 5543 KY and at that time the defendant was riding the motorcycle while Witness ANGGA DWI PUTRA was riding pillion, then in the middle of the journey to Simpang Lima, Witness ANGGA DWI PUTRA told the defendant that after picking up the crystal methamphetamine in the Simpang Lima area of Semarang City, he would be given a reward in the form of 0.5 grams of crystal methamphetamine and the plan was for it to be used by both of them and the defendant agreed.

2. Research Methods

The research specification used is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations and relevant theories which are then collected through data that is collected,

⁶Mirza Dwi Bagustiantara and Ira Alia Maerani, Law Enforcement Against Perpetrators of Narcotics Abuse Crimes at the Kudus District Court, UNISSULA STUDENTS SCIENTIFIC CONFERENCE (KIMU) 4 Sultan Agung Islamic University Semarang, October 28, 2020, p. 684

processed, and arranged according to existing theories to obtain problem solving in accordance with applicable provisions.⁷

3. Results and Discussion

3.1. Current Criminalization of Drug Abusers for Themselves

Criminalization of perpetrators of drug abuse for themselves in Indonesia is strictly regulated in Law Number 35 of 2009 concerning Narcotics. Where in this provision, normatively, drug users can be subject to criminal sanctions of imprisonment as regulated in Article 127 paragraph (1), depending on the class of narcotics that are abused. Although explicitly recognizing the existence of abuse for oneself, this article still contains criminal consequences in the form of a maximum of four years' imprisonment for class I abusers, two years for class II abusers, and one year for class III abusers.⁸

However, the legal approach to drug abuse is not merely repressive. The Narcotics Law also recognizes a rehabilitative approach as stated in Article 54 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, which states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This reflects a paradigm shift in drug policy from a punitive orientation to a health and recovery approach.⁹ This approach is also reinforced by the Circular of the Supreme Court (SEMA) No. 4 of 2010 which provides guidance for judges to prioritize rehabilitation for drug abuse for themselves.

However, in judicial practice, the enforcement of the rehabilitative approach still faces various challenges. The large number of drug crime cases currently shows that perpetrators of abuse for themselves are actually processed criminally using articles on narcotics possession, such as Articles 111 and 112 of the Narcotics Law. This often causes injustice because it does not consider the motives for using narcotics and the perpetrator's dependence on the addictive substance.¹⁰ As a result, perpetrators who should be rehabilitated are trapped in a correctional system that is not fully capable of providing recovery.

In response to these conditions, the Attorney General's Office issued Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Cases Through Rehabilitation. This regulation emphasizes how important it is for the resolution of narcotics abuse for oneself to be carried out through a restorative justice approach with an integrated assessment mechanism between the medical team and the legal team to assess the feasibility of rehabilitation for perpetrators who use it. This policy opens up space for the diversion

⁷Sri Sumawarni, 2012, *A Series of Legal Research Methods*, UPT UNDIP Press, Semarang, p. 6.

⁸Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, State Gazette of the Republic of Indonesia 2009 Number 143.

⁹Article 54 of Law No. 35 of 2009 concerning Narcotics.

¹⁰Suryani, LK, & Hartini, NM (2022). Drug Abuser Rehabilitation Policy from the Perspective of the Criminal Justice System. *Journal of Law and Development*, 52(3), 543–562.

process or settlement outside of formal justice, especially for users who are not connected to the illicit trafficking network.¹¹.

However, the implementation of this regulation is still not evenly applied throughout the jurisdiction of the Republic of Indonesia, as one concrete example can be seen in Decision Number 116/Pid.Sus/2024/PN.Smg, where the Defendant Wawan Widhi Parwanto BMS Bin Tugiran Kusumo (deceased) was sentenced to 5 years and 6 months in prison and a fine of Rp. 1,000,000,000.00 subsidiary to 4 months in prison. The defendant was found guilty of attempting or conspiring to control class I non-plant narcotics without rights and against the law, as regulated in Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law.¹² This verdict shows the focus of criminalization on the punishment aspect even though there is no strong evidence of the defendant's involvement in a criminal network. This case shows that implementation reform of rehabilitative policies is still needed.

Thus, although the legal framework has accommodated a rehabilitative approach to drug abusers for themselves, its implementation is still inconsistent and tends to be repressive. Therefore, there needs to be a consolidation of policies between law enforcement, judicial institutions, and rehabilitation institutions so that a recovery approach based on human rights can be optimally realized. This effort is important to ensure that drug abusers for themselves receive proportional treatment in accordance with the principles of justice and the objectives of corrective and restorative punishment.¹³.

1. Applicable Legal Provisions

Legal provisions regarding drug abuse in Indonesia are comprehensively regulated in Law Number 35 of 2009 concerning Narcotics. In Article 127 paragraph (1), it is stated that "any person who abuses narcotics for himself/herself can be subject to imprisonment, with different criminal penalties based on the narcotics class". Drug abusers of class I can be sentenced to a maximum of four years, for class II a maximum of two years, and for class III can be sentenced to a maximum of one year in prison.¹⁴ This provision is the normative basis for law enforcers in prosecuting perpetrators of drug abuse.

However, the Narcotics Law also accommodates a more humanistic approach through the provisions of Article 54. Article 54 emphasizes that drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation.¹⁵ This shows that the

¹¹Attorney General's Office of the Republic of Indonesia. (2021). Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Narcotics Abuse Cases Through Rehabilitation.

¹²Semarang District Court Decision Number 116/Pid.Sus/2024/PN.Smg.

¹³Putri, SD (2023). Restorative Justice in Handling Narcotics Crimes for Users. *Journal of Legal Studies*, 12(1), 88–102.

¹⁴National Narcotics Agency. (2019). Guidelines for the implementation of medical and social rehabilitation for drug addicts and victims of drug abuse. Jakarta: BNN Press.

¹⁵Barda Nawawi Arief. (2010). Problems of law enforcement and criminal law policy in combating crime. Jakarta: Kencana.

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law does not merely prioritize a repressive approach, but also pays attention to the recovery and health aspects of perpetrators who use narcotics.

This rehabilitative approach is reinforced by the Supreme Court Circular (SEMA) Number 4 of 2010. In the circular, it is emphasized that judges can issue a verdict in the form of a rehabilitation order for defendants of drug abuse who are proven to have used it for themselves. Judges are also given the authority to appoint appropriate rehabilitation institutions to implement the verdict.¹⁶ This policy can provide space for the judicial institution to consider the medical and psychological conditions of the accused as part of the legal process.

Furthermore, SEMA No. 4 of 2010 contains several specific criteria that must be met in order for the defendant to be directed to a rehabilitation program, including the results of an integrated assessment from the National Narcotics Agency (BNN) and no involvement in a drug distribution network. Thus, this circular letter becomes an important judicial instrument in translating legal norms into more progressive and just judicial practices.

Unfortunately, the implementation of legal provisions for drug users has not been fully effective. In many cases, law enforcement officers still tend to use articles on drug possession, such as Articles 111 and 112 of the Narcotics Law, which carry much heavier criminal penalties. This raises concerns about the discrepancy between written legal policies and law enforcement practices in the field.¹⁷ As a result, those who abuse narcotics for themselves who should receive treatment are actually punished and placed in correctional institutions.

The policy as stated in Article 54 of the 2009 Narcotics Law which prioritizes criminalization not only contradicts the spirit of Article 54 of the Narcotics Law, but can also hinder the recovery process for drug addicts. Rehabilitation as a form of health intervention aims to reduce dependence and prevent recidivism. If this rehabilitation approach is not prioritized, then the criminalization system can actually worsen the psychological and social conditions of perpetrators who use narcotics, which ultimately reduces the effectiveness of the criminal justice system.

Therefore, it is important for all law enforcement actors to always prioritize an approach that is in line with the principles of restorative justice. The law and SEMA have provided a strong normative basis for the implementation of rehabilitation, and consistent implementation is essential. Training, inter-agency coordination, and ongoing supervision are needed so that perpetrators who use narcotics are truly treated as victims of behavioral deviations who require recovery, not merely as perpetrators of criminal acts who deserve to be severely punished.

In addition to the provisions contained in the 2009 Narcotics Law and SEMA No. 4 of 2010, the rehabilitative approach is also strengthened by the provisions in the Attorney General's Guidelines Number 18 of 2021. These guidelines provide instructions for prosecutors in

¹⁶Muladi. (2002). Human rights, politics, and the criminal justice system. Semarang: UNDIP Publishing Agency.

¹⁷Soesilo, R. (2011). The Criminal Code (KUHP) and its complete comments, article by article. Jakarta: Politeia.

handling drug abuse cases for themselves to consider rehabilitation as a legal solution. These guidelines emphasize that if the perpetrator is not proven to be part of a illicit trafficking network and the assessment results indicate drug dependence, then the case can be resolved without going through a formal court process.¹⁸ This approach reflects the integration of restorative justice values into a more humane and proportional legal process.

Furthermore, the application of the rehabilitative approach in judicial practice still shows inconsistency. For example, in Decision Number 116/Pid.Sus/2024/PN.Smg, where the defendant Wawan Widhi Parwanto BMS Bin Tugiran Kusumo (deceased) was sentenced to five years and six months in prison and a fine of one billion rupiah, subsidiary to four months in prison. That the Defendant was charged under Article 112 paragraph (1) Jo. Article 132 paragraph (1) of the Narcotics Law because it was legally and convincingly proven that he had committed a criminal conspiracy to control class I narcotics that are not plants¹⁹. In this decision, a repressive approach is more emphasized, without considering the possibility of rehabilitation, even though there is no evidence of the defendant's involvement in the illegal drug trafficking network.

The above case illustrates the reality where differences in interpretation and application of articles in the Narcotics Law by law enforcement officers can have a significant impact on the legal fate of a perpetrator. The use of Article 112 or Article 132 of the 2009 Narcotics Law, which are in fact more severe, often overrides the rehabilitative approach that should be given to perpetrators who use narcotics for themselves. This raises the problem of justice because users who should be the subject of recovery are actually positioned as serious criminals.

Therefore, there is an urgent need to strengthen coordination between related institutions, such as the police, prosecutors, courts, and rehabilitation institutions. In addition, there needs to be supervision from external supervisory institutions to ensure that the rehabilitative approach is truly implemented consistently. On the other hand, law enforcement officers need to be given adequate training on the implementation of restorative justice and the importance of separating addicts and perpetrators of drug crimes in the distribution network.

Within the framework of a legal system that upholds human rights, the punishment of drug users themselves must be proportional and take into account the sociological and psychological context of the perpetrator. This is in line with the purpose of punishment which is not only repressive, but also preventive and rehabilitative. By prioritizing this approach, the criminal justice system will be able to present substantive justice and reduce the overcapacity that occurs in correctional institutions where the majority of residents are filled by drug users⁽¹²⁾.

¹⁸Law Number 35 of 2009 concerning Narcotics.

¹⁹Supreme Court of the Republic of Indonesia. (2010). Circular of the Supreme Court (SEMA) No. 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse, and Drug Addicts in Medical Rehabilitation and Social Rehabilitation Institutions.

2. Challenges in Implementation

Although normatively there are various legal provisions that support a rehabilitative approach for perpetrators who use narcotics for themselves, in the implementation in the field it still faces various serious challenges. One of the main problems lies in the tendency of law enforcement officers, both the police, the prosecutor's office, and the courts to ensnare perpetrators who use narcotics for themselves with repressive articles, such as Articles 111 and 112 of Law Number 35 of 2009 concerning Narcotics, which regulates the possession of narcotics. In fact, in many cases, the narcotics are used for personal consumption, not for distribution or sale.

Inaccuracy in applying these articles is often caused by a lack of understanding of the differences between users and dealers, as well as the less than optimal implementation of the integrated assessment mandated in the Supreme Court Circular (SEMA) No. 4 of 2010. In practice, the assessment from the National Narcotics Agency (BNN) is often ignored or not taken into account by judges in the legal process, so that drug abuse for oneself is still treated as a criminal act and sentenced to imprisonment.²⁰ In fact, rehabilitation should be the main approach as stated in Article 54 of Law Number 35 of 2009 concerning Narcotics.

Furthermore, currently the orientation of law enforcement is still focused on punishment (punitive approach) which has a negative impact on the effectiveness of drug abuse prevention. This kind of approach not only ignores the rights of perpetrators who use drugs as individuals who need recovery, but also contributes to the overcapacity of correctional institutions where most of the residents are drug users.²¹ As a result, the objectives of the criminal justice system to provide a deterrent effect and social rehabilitation are not optimally achieved.

The tendency of law enforcement officers to use a repressive approach can be seen in Decision Number 116/Pid.Sus/2024/PN.Smg. In this case, the Defendant Wawan Widhi Parwanto BMS Bin Tugiran Kusumo (deceased) was charged based on subsidiary charges of Article 112 paragraph (1) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics for his actions in carrying out a criminal conspiracy to control class I non-plant narcotics. The Panel of Judges sentenced him to five years and six months in prison and a fine of one billion rupiah, subsidiary to four months in prison.

This decision shows that, even though no involvement of the defendant in a large-scale drug trafficking network was found, the rehabilitative approach was still not applied. This emphasizes that there is inconsistency in the interpretation and application of legal provisions by law enforcement officers, especially in distinguishing between addicts who need treatment and perpetrators of commercially oriented drug crimes. In fact, in the context of restorative

²⁰Supreme Court of the Republic of Indonesia. (2010). Circular of the Supreme Court (SEMA) No. 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse, and Drug Addicts in Rehabilitation Institutions.

²¹Muladi. (2002). Human Rights, Politics, and the Criminal Justice System. Semarang: UNDIP Publishing Agency

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justice, drug abusers who use drugs for themselves should be placed as subjects of rehabilitation, not as serious criminals.

Another jurisprudence that shows a similar pattern can be seen in Supreme Court Decision Number 1794 K/Pid.Sus/2016, where the defendant was also sentenced to prison for possession of narcotics even though no element of distribution was found. In the decision, the Supreme Court did not consider the alternative of rehabilitation, even though the defendant was a user who showed drug dependence based on the results of the drug test.²². This non-uniformity reflects the need for a paradigm shift in handling drug cases, so that the justice system is more responsive to health and human rights approaches.

Furthermore, the challenges in implementing the rehabilitative approach also reflect the tug-of-war of interests between the orientation of punishment and the health-based approach. On the one hand, law enforcement often prioritizes the success rate of performance measured by the number of cases processed and sentenced. On the other hand, the rehabilitative approach demands a change in the way of viewing perpetrators who use narcotics as individuals who need health recovery, not just as criminals. This imbalance causes law enforcement to tend to avoid alternative solutions such as rehabilitation because it is considered not to "show results" quantitatively.

The unclear boundaries between addicts, victims of abuse, and dealers are often a problem in themselves. Although Article 54 of the Narcotics Law explicitly states that addicts and victims of drug abuse are required to undergo medical and social rehabilitation, the absence of standard indicators to differentiate these types of perpetrators often leads to subjective interpretations from law enforcement officers. This is exacerbated by the less than optimal role of the integrated assessment team, both due to limited resources and minimal coordination between institutions.

In Decision Number 116/Pid.Sus/2024/PN.Smg, the judge tends to stick to formal elements such as ownership and conspiracy, without delving into the social, psychological, or medical aspects of the defendant. In fact, in the spirit of restorative justice, the judge should have room to consider the results of an integrated assessment as a basis for legitimate legal considerations. The absence of this consideration actually causes the loss of the humanitarian aspect in the criminal justice process.

More critically, the Indonesian criminal justice system currently does not have a strong control mechanism to correct deviations that occur in the implementation of the rehabilitative approach. Internal and external supervision of legal processes that ignore rehabilitation recommendations is still very limited. In addition, the community also does not have sufficient legal awareness regarding the rights of drug addicts in the legal process. As a result, violations of the right to rehabilitation often do not receive adequate resistance or correction in the legal system.

²²Supreme Court of the Republic of Indonesia. (2016). Decision Number 1794 K/Pid.Sus/2016.

By considering these various aspects, it is clear that the challenges in implementing a rehabilitative approach lie not only in the normative aspects but also in the structural and cultural aspects, so that synergy is needed between regulatory changes, training of officers, increasing the capacity of rehabilitation institutions, and legal education for the community in order to realize a more just and recovery-oriented legal system.

3. Improvement Efforts Through Policies Through Criminalization

The punishment of perpetrators of drug abuse for themselves is still an issue that has caused much debate in the practice of law enforcement in Indonesia. This reflects the need for a legal approach that not only emphasizes the repressive aspect, but also pays attention to the values of justice, restoration, and human rights. In order to reform the current narcotics criminal justice system, the Attorney General's Office of the Republic of Indonesia has issued Regulation of the Attorney General's Office of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for the Settlement of Narcotics Abuse Criminal Cases through Rehabilitation with a Restorative Justice Approach, as one form of response to this urgency.

Regulation of the Attorney General of the Republic of Indonesia Number 18 of 2021 concerning Guidelines for Settlement of Narcotics Abuse Criminal Cases through Rehabilitation with a Restorative Justice Approach regulates the mechanism for resolving cases that provide space for drug addicts and abusers to obtain medical and social rehabilitation, with the main goal of restoring the perpetrator, not just criminalization. As an implementation of this policy, an Integrated Assessment Team (TAT) was formed consisting of legal and medical elements to assess the condition of the suspect and determine the feasibility of implementing rehabilitation. This policy is in line with the restorative justice paradigm which aims to integrate the perpetrator into society through a healing and recovery process.

However, the reality on the ground shows that there is still a gap between normative policies and judicial implementation. This can be seen in the Semarang District Court Decision Number 116/Pid.Sus/2024/PN.Smg, where the defendant Wawan Widhi Parwanto BMS bin Tugiran Kusumo (deceased) was found guilty of committing a criminal act of attempted or conspiracy to possess class I narcotics other than plants as regulated in Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

The panel of judges sentenced him to 5 (five) years and 6 (six) months in prison and a fine of Rp. 1,000,000,000.00 subsidiary to 4 (four) months in prison.²³ The decision shows that the judge prioritizes a repressive approach, without considering the possibility of implementing rehabilitation as mandated in the Prosecutor's Regulation. The absence of integrated assessment results in the judge's considerations shows that the restorative justice paradigm has not been integrated into the narcotics criminal justice process as a whole.

²³Decision Number 116/Pid.Sus/2024/PN.Smg.

When viewed from the perspective of criminal theory, an approach based on rehabilitation is more in line with the principles of proportionality and legal benefits. Punishment of drug addicts without any rehabilitative efforts has the potential to worsen the condition of the perpetrators and increase the recidivism rate. Recovery of perpetrators through rehabilitation has the potential to restore the social function of individuals while reducing the burden on correctional institutions that are experiencing excess capacity.

In addition, Law Number 35 of 2009 explicitly stipulates that addicts and victims of drug abuse are required to undergo medical and social rehabilitation as regulated in Article 54 of Law of the Republic of Indonesia Number 35 of 2009. This provision confirms the existence of normative recognition of the recovery approach as part of the national narcotics legal system.

The inconsistency between norms and practices creates legal problems as well as social problems, where the application of prison sentences to drug abusers who are not proven to be part of a drug trafficking network shows a tendency towards overcriminalization, which is in fact contrary to the spirit of protecting human rights. In this context, it is important to reiterate that states have an obligation to guarantee the right to health, including access to rehabilitation for drug users. This is in line with General Comment No. 14 by the United Nations Committee on Economic, Social and Cultural Rights which states that states must provide health services without discrimination.

Furthermore, the repressive approach given also increases the potential for social stigma against former drug convicts, which in turn complicates the process of social reintegration. Because without social support and psychosocial recovery, former users are vulnerable to returning to drug abuse. Therefore, a restorative justice model that emphasizes dialogue, community participation, and perpetrator recovery needs to be the main approach in handling drug abuse cases.

Thus, although legal policy has shown a progressive direction towards a rehabilitative approach, implementation at the judicial level still needs to be strengthened by increasing the understanding of law enforcement officers regarding the principles of restorative justice. Harmonization between law enforcement agencies is also an important factor in ensuring that a justice-based approach can be applied consistently and effectively at every stage of the legal process.

4. Case study

Semarang District Court Decision Number 116/Pid.Sus/2024/PN.Smg provides a concrete picture of the still limited implementation of the rehabilitative approach to drug users for personal consumption in judicial practice in Indonesia. In this case, the defendant Wawan Widhi Parwanto BMS bin Tugiran Kusumo (deceased) was sentenced to five years and six months in prison and a fine of one billion rupiah with a subsidiary of four months in prison, based on the facts in the trial, the defendant Wawan Widhi Parwanto BMS bin Tugiran Kusumo (deceased) was only proven to be a drug user for personal consumption and was not involved in the drug trafficking network.

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The panel of judges in their considerations did not refer to the possibility of implementing rehabilitation, as regulated in Article 54 and Article 103 of Law Number 35 of 2009 concerning Narcotics, which provides a normative basis for drug addicts to obtain medical and social rehabilitation. The absence of reference to the results of the medical team's assessment or recommendations from the Integrated Assessment Team in this decision reflects the lack of a restorative perspective in the criminalization framework for the defendant Wawan Widhi Parwanto BMS bin Tugiran Kusumo (deceased).

In fact, in a more progressive regulation, namely the Republic of Indonesia Attorney General's Regulation Number 18 of 2021 concerning Guidelines for Settlement of Narcotics Abuse Criminal Cases through Rehabilitation with a Restorative Justice Approach, it has been emphasized that drug users or addicts who are not involved in the illicit drug trafficking network, and have supportive assessment recommendations, should be prioritized to follow the rehabilitation path. However, in this case, this approach was not considered, raising questions about the judiciary's commitment to the principles of restorative justice.

Legally, this decision indicates an inconsistency in the application of the law that has the potential to worsen overcriminalization and overcrowding in correctional institutions. According to data from the Directorate General of Corrections of the Ministry of Law and Human Rights, the majority of prisoners in prisons are perpetrators of narcotics crimes, with a significant proportion coming from groups of drug abusers. The ineffectiveness of criminalization policies against drug users can lead to unproductive waste of state resources and not provide a significant contribution to the goal of social rehabilitation.

From a human rights perspective, imprisonment of drug users without rehabilitation efforts also has the potential to violate the principle of respect for the right to health and humane treatment. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has emphasized that states are obliged to provide health and rehabilitation services for drug users, as part of fulfilling the right to health recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by Indonesia through Law Number 11 of 2005.

Overall, the conventional criminalization approach to drug users not only exacerbates social stigma but also increases the likelihood of social exclusion. To achieve social reintegration for perpetrators who have served their prison sentences, a paradigm shift is needed in viewing and dealing with the problem of drug use. A rehabilitation-based approach and community support must be a top priority so that individuals can return to contributing positively to society without being trapped in the negative label of being a prisoner. This has the potential to increase the risk of recidivism and undermine opportunities for effective social recovery.

Therefore, the criminal justice system in Indonesia needs to reform its policies by placing rehabilitation as the main approach in providing drug abuse treatment, especially for individuals who use drugs for personal consumption. This reform does not only include regulatory revisions, but also increasing the capacity of law enforcement officers to implement a health and social-based approach in the drug justice process. Thus, substantive

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justice that focuses on recovery and respect for humanity can be realized in the practice of justice in Indonesia.

Semarang District Court Decision Number 116/Pid.Sus/2024/PN.Smg highlights the importance of restructuring policies in handling drug abuse cases for personal use in Indonesia, especially those related to users for personal consumption. The inability of the justice system to accommodate a rehabilitative approach shows the inconsistency between current legal norms that are progressive and judicial practices that are dominated by the punitive paradigm.²⁴ This creates an urgency to formulate more integrated public policies that focus on recovery, as well as reducing the social impact of drug use.

First, it is necessary to harmonize regulations between law enforcement agencies, such as the police, prosecutors, and the judiciary, in order to have a common perception regarding drug users as subjects who need recovery, not merely as objects of punishment. This harmonization can be achieved through the formulation of joint technical instructions and integrated training on the implementation of Article 54 and Article 103 of the Narcotics Law within the framework of restorative justice.

Second, it is very important for the government to strengthen the institution of the Integrated Assessment Team and ensure that the results of the assessments carried out have binding force in the investigation, prosecution, and sentencing processes. Current assessment recommendations are often not considered in the legal process, even though the assessment results are the main basis for determining the eligibility of rehabilitation for a defendant.²⁵

Third, in terms of strengthening the capacity and perspective of judges, it is very necessary to make judges more responsive to health and social-based approaches in handling narcotics cases. Continuous education and training on rehabilitative principles and the application of progressive criminal law will ensure that judges have sensitivity in implementing contextual justice and respecting human rights.

Fourth, rehabilitation policies must be supported by adequate state budget allocations for the development of drug rehabilitation facilities and services, both at the central and regional levels. The government can integrate this policy into the National Medium-Term Development Plan (RPJMN) and make it an indicator of the performance of health and social welfare sector development.

By integrating these policies, it is hoped that the criminal justice system in Indonesia can move towards a more just, humane, and effective paradigm in handling drug abuse cases. This step will also strengthen Indonesia's position in fulfilling global commitments related to harm reduction and the fulfillment of the right to health.

Although the legal framework in Indonesia has regulated rehabilitation as the main approach for drug users, its implementation still faces challenges. Further efforts are needed to ensure

²⁴See: Semarang District Court Decision No. 116/Pid.Sus/2024/PN.Smg, op. cit.

²⁵Regulation of the Attorney General of the Republic of Indonesia No. 18 of 2021, loc. cit.

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that perpetrators who use narcotics receive appropriate treatment, namely through rehabilitation, not punishment.

3.2. The Weaknesses of Criminalizing Drug Abusers Themselves Today

The weaknesses of criminalizing drug abusers for themselves in the Indonesian legal system can be analyzed from various legal, sociological, criminological, and human rights dimensions. Normatively, Law Number 35 of 2009 concerning Narcotics has actually regulated alternatives in the form of rehabilitation for drug addicts and perpetrators who use narcotics who are not involved in the illicit trafficking network. However, in judicial practice, this approach is still very limited in use. The more dominant approach is the punitive approach in the form of imprisonment, which does not touch the root of the problem of the abuse itself, namely dependence or mental and social health disorders.²⁶

From a legal perspective, there is inconsistency in the application of the provisions contained in Article 54 and Article 103 of the Narcotics Law. Many judges in their decisions do not consider the rehabilitation option, even though the defendant is proven to be a perpetrator who uses it for himself and has no involvement in the narcotics distribution network. This shows that the progressive norms available in the legislation have not been fully implemented evenly in criminal justice practices². One real example can be seen in Decision Number 116/Pid.Sus/2024/PN.Smg, where the Defendant Wawan Widhi Parwanto BMS Bin Tugiran Kusumo (deceased) was declared legally and convincingly guilty of attempting or conspiring to commit an act without rights and unlawfully controlling class I narcotics that are not plants, and was sentenced to imprisonment for 5 (five) years and 6 (six) months, and a fine of Rp1,000,000,000.00 subsidiary to 4 months in prison. This verdict shows a tendency towards a repressive approach towards drug users, even though no direct involvement in organised illicit trafficking was found.

From a criminological perspective, criminalizing drug users has the potential to worsen the social conditions of the perpetrators. Prison sentences do not provide a solution to drug addiction, but instead increase the possibility of recidivism because they do not address the root of the problem. The correctional environment is often a fertile ground for more severe drug abuse, even risking expanding the perpetrators' networks in the illicit drug trade.

Meanwhile, sociologically, imprisonment reinforces the social stigma against perpetrators who use narcotics. Society tends to view users as criminals, not as individuals who need help. So this stigma hinders the process of social reintegration after conviction and exacerbates social exclusion of former users. And when individuals who have served prison sentences return to society, they often do not have access to jobs, education, and social services because of their status as former convicts.

From a human rights perspective, the criminalization approach to drug users who do not receive rehabilitation can be said to be contrary to the principle of respect for the right to

²⁶Muladi. (2002). Selected Chapters on the Criminal Justice System. Semarang: UNDIP Publishing Agency.

health. The Committee on Economic, Social and Cultural Rights (CESCR) in General Comment No. 14 emphasized that the state is obliged to provide access to health services, including for drug abusers. Indonesia, as a country that has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), has an international obligation to ensure that drug abusers receive humane treatment and receive rehabilitation services.

In addition, criminal sanctions for drug users also contribute to overcrowding in correctional institutions. Data from the Directorate General of Corrections shows that the majority of prison inmates are drug convicts, most of whom are users or addicts. This shows the inefficiency of the criminalization policy which actually burdens the state budget and is not productive in reducing the number of drug dependencies.

Therefore, the criminalization approach to perpetrators of drug abuse for themselves needs to be reviewed. Criminal law policy reform is needed that prioritizes rehabilitation as a form of social and health recovery. A restorative justice-based approach that prioritizes recovery, not retaliation, must be the basis for formulating a more humane and effective criminalization system.

3.3. Legal Analysis of Criminalization of Narcotics Abuse Perpetrators for Themselves Based on Justice (study of decision Number 116/Pid.Sus/2024/PN.Smg.

In the framework of Indonesian criminal law, the imposition of criminal sanctions on perpetrators of drug abuse for themselves should consider the principle of justice as a whole, both in the dimensions of retributive, corrective, and restorative justice. However, in practice, the orientation of criminal punishment still tends to be dominated by the retributive paradigm which emphasizes the aspect of retribution, as reflected in Decision Number 116/Pid.Sus/2024/PN.Smg. Where in this case, the Defendant Wawan Widhi Parwanto BMS Bin Tugiran Kusumo (deceased) was sentenced to 5 years and 6 months in prison and a fine of Rp. 1,000,000,000, - subsidiary to 4 months in prison on charges of attempted or conspiracy to control class I narcotics not plants based on Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics²⁷.

The legal analysis of the judge's decision shows that the panel of judges applied a formalistic legal approach where the panel of judges assessed and decided the case based on the legal provisions clearly written in the legislation without considering much social aspects, substantive justice, or broader cultural contexts and penalistic, namely emphasizing the application of criminal law or sanctions as a form of law enforcement. In the context of the judge's decision, penalistic means that the judge focuses more on giving punishment or sanctions that are repressive in nature against violations of the law, rather than on restorative efforts or solving problems more broadly and humanely. This approach tends to see the law as a tool to punish violators without paying much attention to humanitarian factors or the social context behind the case. This is reflected in the non-use of the rehabilitative approach that has been regulated in Article 54 and Article 103 of Law Number 35 of 2009 concerning

²⁷Decision Number 116/Pid.Sus/2024/PN.Smg.

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Narcotics. In fact, both provisions explicitly provide a legal basis for drug users who are not involved in the distribution network to obtain treatment through medical and social rehabilitation.

The rehabilitative approach is in line with the principle of *ultimum remedium* that the application of criminal sanctions is the last resort after other lighter or non-criminal methods have been attempted and are considered ineffective. This principle emphasizes that criminal law should not be immediately imposed as the first choice, but rather as the last step to enforce the law, thereby minimizing the negative impact of criminal punishment and therapeutic jurisprudence, namely a legal approach that views law and the judicial process as a tool for healing and improving the psychological well-being of the parties involved, including perpetrators and victims. This approach seeks to minimize the negative (anti-therapeutic) impact of the law and maximize the positive (therapeutic) effects in the legal process, without sacrificing other values of justice. In practice, therapeutic jurisprudence integrates behavioral science and psychology to create a legal process that supports the recovery and social reintegration that develops in the modern criminal law system. In this perspective, the criminal justice system does not only function as a repressive tool, but also as a means of healing and recovery for individuals who suffer from addiction disorders. Therefore, judges should be able to assess contextually whether the defendant is an addict who needs rehabilitation compared to imprisonment which has the potential to worsen his condition.

Supreme Court Circular (SEMA) Number 4 of 2010 provides a normative basis for the transfer of legal processes against drug abusers to rehabilitation programs if the perpetrator is not proven to be part of a drug trafficking network. However, the implementation of this provision has not been running optimally. Many judges are still trapped in a textual and dogmatic approach, thus closing the space for progressive interpretations that should be able to create substantive justice.

A penalistic approach that does not consider the background of abuse as a whole is contrary to the principle of proportionality in sentencing. In the case of drug users who do not cause harm to other parties (non-victims), the application of long-term prison sentences is not only disproportionate, but also ineffective in overcoming the basic problem of dependence.

The punishment of perpetrators who use narcotics for themselves shows that the implementation of corrective justice, which emphasizes individual recovery through medical, psychological, and social interventions, is not optimal. This approach should be prioritized compared to imprisonment, which actually risks worsening the psychosocial condition of the accused, as well as creating a social stigma that can hinder the process of reintegration with their social environment.

In this context, the progressive legal approach developed by Satjipto Rahardjo becomes very relevant. Progressive law views that law should not be interpreted as a rigid normative text that stops at the black and white of the law, but rather as a tool of liberation and substantive justice that must always side with humanity and social reality. For Satjipto, law does not only

belong to the state, but also to society, and therefore law must be able to respond to the needs of the times and the social dynamics that continue to develop in society.

Progressive law demands that judges and law enforcement officers act actively and creatively in exploring the values of justice that live in society (living law).²⁸ Therefore, in resolving cases of drug abuse for oneself, the law enforcement used should not only be oriented towards punishment, but also consider the personal conditions of the accused, such as the level of dependency, social background, and potential for rehabilitation. The application of rehabilitation-based punishment in this context is in line with the spirit of progressive law which prioritizes a humanistic and contextual approach.

Satjipto also emphasized that law is not merely a regulatory institution, but also an institution for protecting humans. In non-commercial narcotics cases, a humanistic and transformative legal approach is needed so that the law does not become a tool of repression that marginalizes vulnerable groups, but rather becomes a medium to raise their dignity and restore their lives.

Furthermore, Decision Number 116/Pid.Sus/2024/PN.Smg shows that the rehabilitative and restorative approach is currently not the main choice in sentencing perpetrators of drug abuse for themselves. This reflects the still dominant retributive paradigm in criminal justice practices, which emphasizes the imposition of sanctions as a form of retaliation for unlawful acts. In fact, the rehabilitative and restorative approach is actually able to provide space for the recovery of perpetrators, protection of human rights, and strengthening the preventive function of law more effectively. This approach is in line with the spirit of corrective justice and social justice, because this approach is not only oriented towards punishment, but also towards improving behavior, reducing the risk of recidivism, and empowering perpetrators in the process of dignified social reintegration.

The criminalization approach in this case also does not fully reflect the principle of ultimum remedium. The use of criminal law instruments should be carried out as a last resort, after non-penal approaches such as rehabilitation are deemed ineffective. This principle is also in line with the doctrine of diversion, namely the diversion of case resolution from imprisonment to other forms of resolution that are more humane and contextual.

In addition, the punishment in the form of imprisonment in this case does not show the integration of the principle of restorative justice, which emphasizes the restoration of relations between the perpetrator, the community, and their social environment. Although in the case of drug abuse for oneself there are no direct victims, the perpetrator still needs an approach that supports recovery and social reintegration.

From a human rights perspective, the imprisonment of individuals who are addicted to narcotics and do not endanger others can be considered contrary to the principle of proportionality and the right to health. The UN Committee on Economic, Social and Cultural

²⁸Rahardjo, S. (2009). *Progressive Law Enforcement*. Jakarta: Kompas.

Rights through General Comment No. 14 emphasizes that the state is obliged to provide access to health services, including rehabilitation, without discrimination.

Thus, the reformulation of the narcotics criminal law system in Indonesia needs to be directed to strengthen the implementation of rehabilitative and restorative approaches, especially in the punishment of perpetrators who use narcotics for themselves. This approach aims to shift the focus from punishment alone to the recovery of individuals who are dependent, as well as preventing the occurrence of further effects in the form of excessive criminalization and social marginalization.

Concrete steps that can be taken include the preparation of clearer, more targeted and measurable sentencing guidelines that explicitly accommodate the principles of rehabilitation and restorative justice in handling non-commercial drug abuse cases. In addition, it is also important to strengthen the role of judges in exploring and considering the conditions of the accused as a whole, including medical, psychological, social and economic aspects, so that the decisions rendered are not only legal-formal but also substantively fair.

Furthermore, in the implementation of the provisions contained in Article 54 and Article 103 of Law Number 35 of 2009 concerning Narcotics, efforts must be made to ensure that they do not stop at the normative level, but are truly operationalized consistently in judicial practice.²⁹ This includes the provision of adequate rehabilitation facilities, synergy between law enforcement and health agencies, and strengthening monitoring and evaluation mechanisms for the implementation of rehabilitation programs. With these steps, it is hoped that the criminal law system in Indonesia will not only uphold justice, but also become an effective means for recovery and social reintegration for perpetrators who use narcotics.

4. Conclusion

The punishment for perpetrators of drug abuse for themselves in Decision Number 116/Pid.Sus/2024/PN.Smg still tends to apply a penalistic and retributive approach, by imposing a prison sentence of 5 years and 6 months and a fine of Rp1,000,000,000 subsidiary to 4 months in prison. This approach does not reflect substantive justice and does not pay attention to the need for rehabilitation for drug abusers who are not involved in illicit trafficking networks. The judge in the case has not optimally considered the provisions of Article 54 and Article 103 of the Narcotics Law which open up space for handling drug abusers through medical and social rehabilitation. As a result, the principle of ultimum remedium and the corrective and restorative justice approaches have not been implemented optimally in the sentencing process. A legal approach that solely focuses on imprisonment is considered ineffective in resolving the problem of drug addiction and can have a negative impact on the social reintegration of drug abusers. Therefore, a more progressive and just legal interpretation is needed in handling similar cases in the future.

²⁹Indonesia, Law Number 35 of 2009 concerning Narcotics, Article 54 and Article 103.

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