



## THE CONCEPT OF CRIMINAL JUSTICE FOR DRUG ABUSE: A LEGAL APPROACH

**Dahlan**

Mahkamah Agung Republik Indonesia, Email: [dahlan\\_ts@yahoo.com](mailto:dahlan_ts@yahoo.com)

**Zahoor Ahmed**

Islamabad International University, Islamabad, Pakistan, E-mail: [zahoor.jalali143@gmail.com](mailto:zahoor.jalali143@gmail.com)

**Sitta Saraya**

Universitas Selamat Sri, Kendal, Indonesia, E-mail: [sittalaw@gmail.com](mailto:sittalaw@gmail.com)

### ARTICLE INFO

**Keywords:**

Abuse; Drug; Justice;  
Narcotic;

**DOI :**

10.26532/jh.v41i1.43965

### ABSTRACT

*The narcotics law is implemented on the basis of justice. However, its enforcement does not reflect a sense of justice because there is no classification of drug abusers. This study aims to analyze the criminal law policy on drug crimes and analyze the reconstruction of the law in the application of criminal sanctions for drug abusers for themselves based on the value of justice. This study used a normative legal method. The application of criminal sanctions for drug users in judicial practice is often inconsistent and does not reflect justice, especially due to differences in judges' interpretations and the absence of recognition of attempted drug use in drug legislation which causes injustice for individuals who have not consumed but are subject to articles with heavier penalties. The implementation of the drug criminal law policy still faces ambiguity in distinguishing between addicts, abusers, and victims. This legal uncertainty often results in drug abusers being charged with articles that are heavier than dealers, thus causing injustice that worsens their condition and burdens correctional institutions. A fairer legal reconstruction is needed to clearly distinguish between users and dealers and prioritize rehabilitation rather than punishment for drug abusers themselves.*

## 1. Introduction

The Republic of Indonesia is a state based on law<sup>1</sup> (*Rechtsstaats*), not a state based on mere power (*Machtsstaat*) which is regulated expressly within the body, namely in article 1 paragraph (3) of the 1945 Constitution being the

1 Arsyad Aldyan and Abhishek Negi., The Model of Law Enforcement Based on Pancasila Justice, *Journal of Human Rights, Culture and Legal System*, Vol.2 No.3, November 17, 2022, page. 178–90

commander in chief<sup>2</sup> in all the dynamics of state life is the law. Protection of the entire Indonesian nation through legal instruments is an absolute must, there is no meaning in protecting the entire nation and bloodshed if it turns out that there is still suffering felt by the people in the form of inequality of rights which reflects the lack of prosperity for the entire Indonesian people. One of the reasons for this lack of prosperity is that law enforcement is not based on legal instruments that are not oriented towards the value of justice.

The scope of criminal law policy actually covers broad issues, namely including evaluation of the substance of the applicable criminal law (*ius constitutum*) for the renewal of the substance of criminal law in the future (*ius constituendum*), by applying this criminal law through the components of the criminal justice system, to find out whether the substance of the criminal law has met the public's sense of justice or vice versa.<sup>3</sup>

At the moment the government is aggressively fighting narcotics abuse.<sup>4</sup> Narcotics abuse is transnational in nature because it can cross national borders which is carried out using sophisticated modus operandi and technology, with neat management networks and also supported by a wide organizational network and then enters Indonesia as a transit state or even as a destination country for illegal narcotics trafficking and has caused many victims, especially among the nation's young generation. at an alarming level so that it really endangers the life of the community, nation and state. Perpetrators of narcotics abuse are basically divided into 2 (two) categories, namely perpetrators as dealers and perpetrators as users.<sup>5</sup>

Law No. 35 of 2009<sup>6</sup> will of course only be a silent law when there are no implementing officials to enforce it and in the legal system in Indonesia a good law will be able to operate if there is a substance that can be useful as a means of upholding justice and is supported by law enforcement officials who consistently follow that substance and consistently uphold human rights.

The application of criminal sanctions as outlined in the articles of Law No. 35 of 2009 is part of the law enforcement process carried out by law enforcers starting from the police/BNN as investigators, the prosecutor's office as public prosecutor until ending with a judge's decision at the judicial institution. The

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2 Indra Muchlis Adnan., The Conceptual And Historical Review Of Constitutional Law In Indonesia, *Jurnal Pembaharuan Hukum*, Vol.10 No.1, April 10, 2023, page.43–63

3 Yuni Kartika and Andi Najemi., Kebijakan Hukum Perbuatan Pelecehan Seksual (Catcalling) Dalam Perspektif Hukum Pidana, *PAMPAS: Journal of Criminal Law*, Vol.1 No.2, April 23, 2020, page. 1–21

4 Mariah Sonanggok Purba Elpina., The Narcotics Abuse Term Weaknesses In Criminal Law Enforcement Of Indonesia, *Jurnal Pembaharuan Hukum*, Vol.8 No.1, 2021, page. 34–47,

5 Rinaldo Rinaldo, Triono Eddy, and Alpi Sahari., Penerapan Rehabilitasi Terhadap Pelaku Penyalahgunaan Narkotika Oleh Penyidik Kepolisian (Studi Di Direktorat Narkoba Polda Sumut), *Legalitas: Jurnal Hukum*, Vol.14 No.1, July 7, 2022, page. 43–53,

6 Salma Widiayam, Oheo Haris, and Siti Aisah Abdullah., Criminal Law Study on Narcotics Abuse Rehabilitation, *IJCLS (Indonesian Journal of Criminal Law Studies)*, Vol.5 No.1, May 17, 2020, page. 55–62

form of decision that the court will hand down depends on the results of the judge's deliberations taking into account the legal facts in the trial examination.

The law enforcement structure in Indonesia has its own role in carrying out legal functions,<sup>7</sup> such as the police who are given the authority to provide protection, guidance and service to their citizens as well as law enforcement aimed at creating security and public order, prosecutors who are given the authority to carry out prosecutions against individuals or legal entities suspected of violating the law, with the aim of creating a formal law, and judges who are authorized by the state to try cases that are against the law and decide in accordance with human rights, and have the aim of the decision. These three apparatuses plus correctional officers and legal advisors (advocates) complete the criminal justice sub-system in 5 (five) institutions or called five law enforcement agencies.

In the context of law enforcement,<sup>8</sup> the court has a very important role, judges who are implementers of activities in the field of justice must pay attention to the values that develop and live in society and must also master written legal norms. It is hoped that the court's decision can be used as a correction and correction of Law No. 35 of 2009 whether it fulfills a sense of justice or vice versa based on existing legal facts so that it can be seen whether there is harmonization and synchronization between *das solen* and *das sein*, formulative policies with applicable policies as well as harmonization between law in the book and law in action, and then it can be used as a guideline for whether the current law needs to be improved based on the value of justice for the future. The assessment of the law enforcement<sup>9</sup> process has of course not been neglected since the process of reporting from investigators and public prosecutors regarding the application of the articles suspected or charged has begun.

In line with the above, Article 2 of Law No. 35 of 2009 is based on Pancasila and the 1945 NRI Constitution,<sup>10</sup> and Article 3 states: Law No. 35 of 2009 was implemented on the principles of justice, protection, humanity, order, protection and security. From this formulation, the formation of Law No. 35 of 2009 actually aims to realize the value of justice.

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7 Muhamad Romdoni et al., A Critique and Solution of Justice, Certainty, and Usefulness in Law Enforcement in Indonesia, *Journal of Law Science*, Vol.5 No.4, October 30, 2023, page.174–81.

8 Irabiah et al., The Role of Imposing Rehabilitation as a Measure for Child Drug Offenses, *Yustisia Merdeka : Jurnal Ilmiah Hukum*, Vol.10 No.2, December 3, 2024, page. 1–8,

9 Bradley Ray et al., Spatiotemporal Analysis Exploring the Effect of Law Enforcement Drug Market Disruptions on Overdose, Indianapolis, Indiana, 2020–2021, *American Journal of Public Health*, Vol.113 No.7, July 1, 2023, page. 750–58

10 Lukas Pardamean E. Marbun, Hedwig, and Mohamad Ismed., How To Enforce Criminal Law Against Narcotics Abuse Of New Types Of Variants That Have Not Been Included In Law Number 35 Of 2009 Concerning Narcotics, *Policy, Law, Notary And Regulatory Issues* , Vol.2 No.1, January 20, 2023, page. 67–80

In judicial practice, the reality is that the application of criminal penalties in Law No. 35 of 2009, especially Article 127, namely that narcotics abusers<sup>11</sup> themselves as users vary greatly. Some judges in their decisions impose prison sentences accompanied by medical/social rehabilitation measures, some judges only sentence medical/social rehabilitation measures without imprisonment, and some judges only impose prison sentences with varying degrees of severity, sometimes without paying attention to whether the user is an addict, or users who are not addicts or users who are victims.<sup>12</sup> So the judge's overall decision shows that the application of criminal penalties, especially to narcotics abusers, themselves does not reflect the value of justice.

Article 132 of Law No. 35 of 2009 in terms of experimentation apparently does not apply to Article 127, so that in Law No. 35 of 2009 the term experimentation of narcotics abuse is not recognized for oneself. This is different from the provisions in the Criminal Code which recognizes the term probation for all crimes as in Article 53. Because in Law No. 35 of 2009 the term probation is not recognized for narcotics abusers,<sup>13</sup> in filing cases by investigators and public prosecutors they always rely on the results of urine examinations through the laboratory and if they are negative then Article 111 or Article 112 of Law No. 35 of 2009 applies to the perpetrator. 2009 which is the rubber article or waste basket article.

The application of different penalties is very detrimental and does not reflect a sense of justice because before using narcotics it is certain that a narcotics user must own or purchase it first, and when narcotics have been purchased or owned, before they are used they are arrested by the police or BNN so that automatically the results of the laboratory examination of the urine in question are negative. Logically, those who use narcotics are subject to Article 127 with a maximum penalty of 4 years and can even be subject to punishment in the form of medical and social rehabilitation measures.<sup>14</sup> It would be very unfair if someone who has never used narcotics is subject to Article 111 or Article 112 which carries a minimum penalty of 4 (four) years, a maximum of 12 (twelve) years plus a minimum fine of Rp. 800,000,000,- (eight hundred million rupiah).

Research conducted by Mohammad Fajar<sup>15</sup> with the title Application of Medical Rehabilitation and Social Rehabilitation for Narcotics Abuse for Oneself states that the legal consideration is that drug abusers must undergo medical rehabilitation and social rehabilitation in addition to prison sentences. To

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11 Silvana Diani et al., Implications of Narcotics Crime Regulation in the National Criminal Code Against Narcotics Abusers, *Jurnal Legalitas*, Vol.17 No.1, May 6, 2024, page. 49–65,

12 Pascasarjana Uir., Implementation Of Rehabilitation For Addicts, Abusers And Victims Of Narcotics., *International Conference On Law And Social Sciences*, August 14, 2024,

13 Herlina Manullang, July Esther, and Jusnizar., Guidance Concept for Convicts in Penitentiary as Legal Means to Minimize Narcotics Abuse, *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol.11 No.2, August 31, 2023, page. 392–402

14 Kadek Widhiantari Ningsih, I Nyoman Gede Sugiarta, and I Made Arjaya., Rehabilitation Arrangements In The Narcotics Crime Law In The Perspective of Criminal Law Reform, *Jurnal Kajian Hukum Dan Kebijakan Publik*, Vol.1 No.2, March 30, 2024, page. 85–94.

15 Mohamad Fajar., Penerapan Rehabilitasi Medis Dan Rehabilitasi Sosial Atas Penyalahgunaan Narkotika Bagi Diri Sendiri, *Jurnal Sosial Teknologi*, Vol.2 No.5, May 15, 2022, page.406–17.

reintegrate into society, a person's character and morals must be examined. For drug addicts, social rehabilitation is the process of reintroducing them into society so they do not repeat their actions. Social rehabilitation also aims to reintegrate drug addicts and/or drug abusers into society by restoring thought processes, emotions and behavior that are indicators of change. have normal personality traits and are able to interact with other people in their social environment (in a rehabilitation environment).

Research conducted by Muhammad Akbar<sup>16</sup> with the title Judge's Considerations in Deciding Class 1 Narcotics Abuse Crime Cases for Yourself, states that the punishment for every narcotics abuser, especially for those who use narcotics themselves, is imprisonment, however, if someone is a victim of abuse, the sentence imposed will of course be very different. In terms of separating criminal sanctions decided by the judge in the trial process between imprisonment and rehabilitation, of course the judge must pay attention to the provisions of Articles 54 and 55 of Law No. 35 of 2009 concerning Narcotics where there are criteria that a person can be proven to be a victim of narcotics abuse or a perpetrator of narcotics abuse. After the judge finds out that the defendant is a victim of narcotics abuse, the judge must look at Article 103 of Law No. 35 of 2009 concerning narcotics which states that the judge decides and orders him to undergo treatment and care through rehabilitation.

This research aims to analyze the criminal law policy towards narcotics crimes and analyze legal reconstruction in the application of criminal penalties for narcotics abusers for themselves based on the value of justice.

## **2. Research Methods**

This research uses normative juridical methods,<sup>17</sup> namely a method that describes or explains a fact systematically and then the analysis is carried out juridically by linking the data and facts obtained with the legal doctrine and applicable laws and regulations. This research is descriptive analytical in nature, that is, it aims to provide data that is as accurate as possible about a situation or other symptom. It is said to be descriptive because this research is expected to be able to provide a detailed, systematic and comprehensive description of all matters related to developments regarding the application of crime to perpetrators who abuse narcotics themselves. Meanwhile, the term analysis contains the meaning of grouping, connecting, comparing and giving meaning to aspects of criminal sanctions against perpetrators of criminal acts who abuse narcotics for themselves from a theoretical perspective.<sup>18</sup>

## **3. Results and Discussion**

### **3.1. The Criminal Law Policy Against Narcotics Crimes**

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16 Muhammad Akbar and Syahrul bakti Harahap., *Pertimbangan Hakim Dalam Memutuskan Perkara Tindak Pidana Penyalahgunaan Narkotika Golongan 1 Bagi Diri Sendiri*, *Jurnal Smart Hukum (JSH)*, Vol.1 No.1, September 28, 2022, page. 229–37

17 Soerjono Soekanto & Sri Mamudji., *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* Jakarta: Raja Grafindo Persada, 2003.

18 Soerjono Soekanto., *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia Press, 2012.

Narcotics crimes<sup>19</sup> show an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, teenagers and the younger generation in general. Narcotics crimes are no longer carried out individually, but involve many people together, even forming an organized syndicate with a wide network that works neatly and very secretly at the national level.

The criminalization policy in Law No. 35 of 2009 is as follows: Just as in the previous law, narcotics are classified into 3 (three) groups based on use and potential for dependence. With this classification of criminal acts and the severity of sanctions are adjusted to each group. Grouping narcotics into three categories based on their use and potential for dependence should be the basis for determining the severity of criminal sanctions, so that the punishment imposed is more proportional and reflects justice.

The majority of narcotics crimes<sup>20</sup> are formulated using the concept of formal offenses. There were no constitutive consequences that were prohibited in Law No. 35 of 2009. Only Article 116, Article 121 and Article 126 were formulated as offenses with qualified consequences. This article regulates the prohibition of giving class I, class II or class III narcotics without authority and against the law to other people for use. In these articles there are prohibited consequences, namely death or permanent disability of another person. If prohibited consequences occur, weights will be imposed.

There is no qualification for criminal acts<sup>21</sup> in this law as to whether they are crimes or violations. The lack of clarity regarding the qualifications for criminal acts in the Narcotics Law, whether they are crimes or violations, creates legal uncertainty which has an impact on disparities in judges' decisions in imposing sanctions. As a result, narcotics users who should be prioritized for rehabilitation can be treated the same as dealers or dealers, so that the legal approach applied is more oriented towards punishment rather than social recovery.

The indication of the definition of drug use as a crime can at least be seen from the many regulations that have emerged regarding narcotics.<sup>22</sup> The application of Indonesian criminal law according to location is expanded by the existence of Article 145 of Law No. 35 of 2009. This article stipulates that the criminal

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19 Kurnia Dewi Anggraeny and Kurnia Dewi Anggraeny., Disparities In The Judge's Decision On Narcotic Crime, *European Proceedings of Social and Behavioural Sciences*, December 24, 2018, 742–49

20 Achmad Yuliandi et al., Law Enforcement in The Eradication of Narcotics Crimes Against Drug Addicts and Abusers, *Jurnal Dinamika Hukum*, Vol.22 No.1, July 25, 2022, page. 144–53,

21 Abdul Kholiq and Gunarto Gunarto., Concept of Criminal Law on Corruption of Corporate Criminal Liability System Based on Justice Value, *Jurnal Daulat Hukum*, Vol.4 No.1, March 6, 2021, page. 82–90

22 Choirul Nur Akrom (etc)., Analisis Hukum Penerapan Sanksi Pidana Penyalahgunaan Narkotika Oleh Hakim Ditinjau Dari Sema Nomor 4 Tahun 2010 Di Kota Palembang, *Lex Stricta: Jurnal Ilmu Hukum*, Vol.2 No.3, April 2024, page.149-162

provisions in this law apply to anyone who commits a narcotics crime and/or a narcotics precursor crime.<sup>23</sup>

Actions without rights and against the law of planting, maintaining, possessing, storing, controlling, providing class I narcotics in the form of plants, and non-plants, class II, class III narcotics (Articles 111, 112, 117, 122). Actions without rights and against the law of producing, importing, exporting or distributing class I narcotics, class II narcotics, class III narcotics (Articles 113, 118, 123). Unauthorized and unlawful acts of offering for sale, selling, purchasing, receiving, intermediary, buying and selling, exchanging, or handing over class I narcotics, class II narcotics, class III narcotics (Articles 114, 119, 124).

Unlawful acts of bringing, sending, transporting or transiting class I narcotics, class II narcotics, class III narcotics (Articles 115, 120, 125). Articles 115, 120, and 125 of the Narcotics Law regulate that every act of carrying, sending, transporting, or transiting class I, II, and III narcotics illegally constitutes a criminal offense with the threat of severe punishment, because this activity contributes directly to the illicit trafficking of narcotics. Actions without rights or against the law of using class I narcotics against other people or providing class I narcotics for other people to use class II narcotics, class III narcotics (Articles 116, 121, 126).

Every person who abuses class I narcotics for other people uses class II narcotics, class III narcotics for himself (Article 127). This provision should be the basis for providing more proportional sanctions, but in practice there is often a disparity in punishment due to a lack of clear qualifications regarding the level of error and the purpose of use. Actions of parents or guardians of addicts who are not old enough, as intended in Article 55 (1) who deliberately do not report (Article 128). Possess, store, control, or provide, produce, import, export, or distribute, offer for sale, sell, buy, receive, become an intermediary in buying and selling, exchange, or hand over narcotics precursors for the manufacture of narcotics, carry, send, transport, or transit narcotics precursors for the manufacture of narcotics (Article 129).

The act of intentionally not reporting a criminal act as regulated in Articles 111-129 (Article 131). Article 131 of the Narcotics Law regulates that every person who deliberately does not report a narcotics crime as regulated in Articles 111-129 may be subject to sanctions, which aim to prevent omission or indirect involvement in narcotics trafficking.

Acts involving children who are not old enough to commit narcotics<sup>24</sup> crimes as regulated in Articles 111-126, and Article 129 (Article 133). Article 133 of the Narcotics Law confirms that every action involving minors in a narcotics crime as regulated in Articles 111-126 and Article 129 is a serious offense that carries heavier sanctions for the perpetrator.

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23 Fahri Fuad, Syamsul Haling, and Muliyadi Muliyadi., Proof of the Main Actors of Narcotics Abuse in the Investigation Process, *International Journal of Health, Economics, and Social Sciences (IJHESS)*, Vol.4 No.3, July 20, 2022, page. 222–31

24 Andri Winjaya Laksana., Sociological Analysis Of Narcotics Circulation Treatment On Students, *Jurnal Pembaharuan Hukum*, Vol.8 No.1, April 15, 2021, page.105–17

Narcotics addicts who are old enough,<sup>25</sup> families of narcotics addicts<sup>26</sup> who are old enough deliberately do not report this matter (Article 134). Article 134 of the Narcotics Law requires narcotics addicts who are old enough and their families to report their condition of dependence, with the aim of ensuring that addicts receive medical and social rehabilitation.

Pharmaceutical industry administrators who do not carry out obligations according to Article 45 (Article 135). Money laundering related to narcotics crimes (Article 137). Article 137 of the Narcotics Law regulates the crime of money laundering related to narcotics crimes, which aims to crack down on the flow of funds resulting from narcotics trafficking in order to weaken the crime network. Acts of obstructing or complicating the investigation, prosecution and examination of cases of narcotics crimes and/or narcotics precursor crimes before a court hearing (Article 138). The captain or pilot captain who unlawfully does not implement the provisions as intended in Article 27 or Article 28 (Article 139). Article 139 of the Narcotics Law stipulates that ship captains or pilots who deliberately do not carry out the provisions in Article 27 or Article 28 unlawfully can be subject to sanctions, because they have the responsibility to prevent the smuggling of narcotics through transportation routes.

Actions of law enforcement officials<sup>27</sup> that are not in accordance with the provisions of Law No. 35 of 2009 (Articles 140-142). Articles 140-142 of the Narcotics Law regulate sanctions for law enforcement officers who abuse their authority or do not implement legal provisions properly, such as involvement in narcotics trafficking or abuse of legal procedures.

Witnesses who give false information in the examination of criminal cases<sup>28</sup> involving narcotics and narcotics precursors before a court hearing (Article 143). The actions of the heads of hospitals, community health centers, medical centers, government-owned pharmaceutical storage facilities, and pharmacies that distribute class II and III narcotics are not for the benefit of health services (Article 147 letter (a)). The actions of leaders of scientific institutions who plant, buy, store or control narcotic plants are not for the benefit of scientific development (Article 147 letter (b)). The actions of certain pharmaceutical industry leaders who produce class I narcotics are not for the benefit of scientific development (Article 147 letter (c)). Leaders of pharmaceutical wholesalers who distribute class I narcotics which are not for the purposes of developing science or distribute class II and III narcotics not for the purposes of health services and/or not for the purposes of developing science (Article 147

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25 Bagus Satrio Wibowo, Zainal Asikin, and Amirudin Amirudin., Application of Integrated Assessment in Law Enforcement against Narcotics Abusers, *International Journal of Multicultural and Multireligious Understanding*, Vol.8 No.4, April 5, 2021, page. 422–29,.

26 Agus Supriyanto et al., Addiction Counselor Profession: Perception of Family Support for Recovering from Drug Abuse Addiction, *Counsellia: Jurnal Bimbingan Dan Konseling* , Vol.11 No.1, May 21, 2021, page. 17–30

27 Suci Ramadani et al., Criminal Law Politics on Regulation of Criminal Actions in Indonesia, *Linguistics and Culture Review*, Vol.5 No.S1, November 1, 2021, page. 1373–80,

28 John Morgan., Wrongful Convictions and Claims of False or Misleading Forensic Evidence, *Journal of Forensic Sciences*, Vol.68 No.3, May 1, 2023, page. 908–61,



letter (d)). Perpetrators of narcotics crimes have different roles,<sup>29</sup> positions and sanctions, both based on the laws and regulations that regulate them and based on the roles and impacts resulting from their actions. The classification of perpetrators of narcotics crimes can be seen from several aspects as in Law No. 35 of 2009 as well as other statutory provisions relating to narcotics crimes. Criminal provisions for perpetrators of narcotics crimes in Law No. 35 of 2009 are regulated in Articles 111 to Article 147.

One of the problems in Law No. 35 of 2009 is the unclear understanding and status between addicts, abusers and victims of narcotics abuse. Because of the lack of clarity in the meaning and status, other regulations are biased and confusing. Of course, in practice, this has a direct impact on narcotics users.<sup>30</sup> One of them is in terms of providing medical and social rehabilitation for narcotics abusers and addicts.<sup>31</sup> In Article 4 of Law No. 35 of 2009, it is explained that one of the aims of establishing this law is to ensure medical and social rehabilitation efforts for narcotics abusers and addicts. Meanwhile, Article 54 of Law No. 35 of 2009 states that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. If you use the construction of Article 54 of Law No. 35 of 2009, narcotics abusers<sup>32</sup> are not included in the qualifications of someone who can be given medical and social rehabilitation measures as regulated in Article 4 of Law No. 35 of 2009.

### **3.2. The Legal Reconstruction In The Application Of Criminal Penalties For Narcotics Abusers For Themselves Is Based On The Value Of Justice**

In principle, law enforcement must provide benefits (utility) for society,<sup>33</sup> but apart from that, society also expects law enforcement to achieve justice. However, we cannot deny that what is considered useful (sociologically) is not necessarily fair, and vice versa, what is considered fair (philosophically), is not necessarily useful for society.<sup>34</sup> In such conditions, society only wants legal certainty, namely the existence of regulations that can fill legal gaps regardless

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29 Muhammad Nasir Sitompul and Ariman Sitompul., Execution Of Death Penalty In Narcotics Crime In The Perspective Of National Law In Indonesia, *International Asia Of Law and Money Laundering (IAML)*, Vol.1 No.2, June 4, 2022, page. 107–12,.

30 Heru Pranoto et al., Construction of Narcotics Law Against Narcotics Abusers in Perspective Justice | Pranoto | Khazanah Hukum, *Khazanah Hukum*, Vol.6 No.2, 2024, page. 145–58,

31 Deny Setiawan Wayoi et al., Implementing Management of the Physical Fitness Education Program for the Drug Rehabilitation Patients in Drug Addict Therapy Centre, *Retos: Nuevas Tendencias En Educación Física, Deporte y Recreación*, Vol.60 No.60, 2024, page.309–19,

32 Muhammad Shobirin et al., Concept of Protection for Victims of Narcotics Abuse in Indonesia Fairly Based on Pancasila, *Journal of Law and Sustainable Development*, Vol.12 No.1, January 15, 2024

33 M Ellectrananda, Anugerah Ash-Shidiqqi, and Aziz Zaelani., The Morality of The Prosecutor (Pancasila Moral Relations Guarantee Law Enforcement in Political Determination, *Indonesian Journal of Social Science Research*, Vol.5 No.1, March 28, 2024, page. 30–37,

34 Dika Pratama., Efektivitas Penegakan Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga Nomor 23 Tahun 2004 Di Yogyakarta, *Lex Renaissance*, Vol.4 No.2, July 1, 2019, page. 367–85

of whether the law is fair or not. Social realities like this force the government to immediately make regulations in a practical and pragmatic manner, prioritizing the most urgent areas in accordance with community demands without strategic estimates, thus giving birth to patchwork regulations whose effectiveness does not last long. As a result, there is less guarantee of legal certainty and a sense of justice in society.<sup>35</sup>

Law No. 35 of 2009 itself does not provide a clear distinction/line between criminal offenses in Article 127 of Law No. 35 of 2009 and other criminal offenses contained in Law No. 35 of 2009,<sup>36</sup> where narcotics users who obtain narcotics unlawfully must fulfill the elements of controlling, possessing, storing and/or purchasing narcotics where this is also regulated as a separate criminal offense in Law No. 35 2009.

In practice, law enforcement officers link (include/juncto) the criminal offense of using narcotics with the criminal offense of controlling, owning, storing or purchasing narcotics without authorization and against the law, where the criminal threat is much higher and uses special minimum sanctions, namely a minimum of 4 years in prison and a fine of at least Rp. 800,000,000,- (eight hundred thousand rupiah).

The qualifications of narcotics abusers for themselves are different from other types of qualifications which are categorized as narcotics crimes, such as dealers, importers, exporters, carriers, sellers, producers and other types of acts, where the qualifications for these acts constitute a very dangerous crime and have a major detrimental impact both on the victims and on the interests of the nation and state in the future and future generations. Those who become victims of narcotics abuse themselves are generally young people who should be the nation's generation. So apart from the qualifications of using narcotics for oneself, every qualification for a narcotics crime should indeed receive strict and severe criminal sanctions in order to save the future and generation of the Indonesian nation.<sup>37</sup>

Regulations in other countries conducted for comparative study of drug abuse regulations mentioned that the Government of Pakistan took the initiative and passed the Drugs Act of 1976 in this regard. After that, the Narcotics Control Ordinance of 1996 (XCLV of 1996) and the Narcotics Control Ordinance of 1997 (XL11 of 1997) were also issued to eradicate the Narcotics cases which were repealed with the commencement of the Narcotics Act of 1997 which is still applicable in the Narcotics cases in Pakistan. The Anti-Narcotics Act of 1997 was also enacted for the formation of a force to investigate the violations

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35 Arifin, Ridwan Yuniar, and Vania Shafira., Social Justice In Law, Society And Development: A Marxism Perspective Of Indonesian Case, *Jurnal Hukum & Pembangunan*, Vol.51 No.1, March 25, 2021, page.1–15.

36 Rinaldo Rinaldo, Triono Eddy, and Alpi Sahari., Penerapan Rehabilitasi Terhadap Pelaku Penyalahgunaan Narkotika Oleh Penyidik Kepolisian (Studi Di Direktorat Narkoba Polda Sumut), *Legalitas: Jurnal Hukum*, Vol.14 No.1, July 7, 2022, page. 43–53,

37 Salma Widiasyam, Oheo K. Haris, Sitti Aisah Abdullah , Criminal Law Study on Narcotics Abuse Rehabilitation. *Indonesian Journal of Criminal Law Studies, IJCLS*, Vol.5 No.1, 2020, page.55-62

related to Narcotics cases. The disposal of cars and other items related to narcotics cases and regulations for the control of narcotics were also enacted in 2001. Pakistan is considered to have many laws, but most of them are just ideas or rules that need to be implemented. This still leaves much room for improvement in terms of its impact on service delivery, human rights protection and crime control. There is no doubt that the recent changes to the CNSA have made the law better by strengthening the penalties. In order to live up to what the law says, a systems approach to rehabilitation, reform, drugs in prisons and schools and other issues needs to be strengthened through budget allocations.<sup>38</sup>

This is a result of the fact that the efficiency of Pakistan's criminal justice system has declined over time. Given the interconnected nature of the universe, disruption to any one component will have far-reaching consequences.<sup>39</sup> A comprehensive approach to combat narcotic substance abuse must focus more on prevention, which is an arduous and multi-pronged task. The National Anti-Narcotics Policy of 2019 together with The Control of Narcotic Substances Act (CNSA) of 1997 and subsequent Amendments to the Act provide foundations for an effective response to narcotics abuse in Pakistan.<sup>40</sup>

Law No. 35 of 2009 regulates criminal penalties imposed on perpetrators of narcotics crimes.<sup>41</sup> Article 111 regulates control of class I narcotics in plant form and Article 112 regulates control of narcotics in non-plant form. Specifically for perpetrators of narcotics abuse for themselves, Law No. 35 of 2009 has regulated this in Article 127 (1), (2) and (3). In making indictments, public prosecutors often use Article 111 and Article 112 of Law No. 35 of 2009 to charge perpetrators of criminal acts of narcotics abuse with the evidence found at the time of arrest being estimated to be sufficient for one day's use. By using Article 111 and Article 112 of Law No. 35 of 2009 against narcotics abusers, the narcotics abusers will be sentenced to a minimum of 4 (four) years in prison plus a fine which, if not paid, will be replaced by imprisonment in lieu of a fine.

The legal reconstruction of Articles 111 and 112 of Law No. 35 of 2009 which uses the words control, keep, possess which allows every narcotics abuser to be caught up in the provisions of these two articles as well as the unclear provisions of Article 127 of Law No. 35 of 2009 regarding under what circumstances and criteria a person can be said to be a narcotics abuser or user has resulted in many deviations in the application of Article 127 of Law No. 35 of 2009 so that people who should be punished as users are instead subject to

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38 Jibrán Jamshéd, Faiz Bakhsh, Balancing Act: Assessing the Severity of Drug Offense Penalties in Pakistan, *Journal of Law & Social Studies (JLSS)*, Vol.5 Issue.4, 2023, page.690-698

39 Muhammad Imran (etc)., A Critical Analysis of the Criminal Justice System in Pakistan, *Journal of Politics and International Studies*, Vol.10 No.1, January–June 2024, page.1-16

40 Fauzia Nasreen., Dimensions of Narcotic Substance Abuse and Control: A Perspective From Pakistan, *Criterion Quarterly*, Vol.18 No.3, 2023, page.149-162

41 Andri Winjaya Laksana et al., Criticism of Legal Protection for Victims of Drug Abuse: The Disharmony in Legal Substance Regulation, *Legality: Jurnal Ilmiah Hukum*, Vol.33 No.1, January 15, 2025, page. 93–109

articles in the category of possession or control which results in the imposition of sentences that are not on target where the person should be rehabilitated so that they are free from dependence on narcotics but are instead sentenced to prison for a minimum of 4 (four) years.

The application of Article 111 or Article 112 of Law No. 35 of 2009 to those who abuse narcotics for themselves, if seen from a legal perspective, fulfills the provisions in accordance with the elements of that article, however, if seen from the perspective of justice and policy, the application of this article is completely inappropriate because a person who abuses narcotics for themselves must be seen as a victim of the narcotics crime itself, so it would be very unfair if Article were applied to those who abuse narcotics for themselves. 111 or Article 112 of Law No. 35 of 2009.<sup>42</sup>

In general, people who abuse narcotics themselves are people who are still in their productive age, who are the next generation of the nation.<sup>43</sup> If these self-abusers of narcotics are only imprisoned for years without being cured, then you can imagine the future of these convicts because in prison or prison, narcotics can be obtained.<sup>44</sup> Sentencing those who abuse narcotics themselves to prison and placing them in prison is not an appropriate and wise action because these drug abusers themselves will not recover from their dependence on narcotics and this action also causes the prison occupancy rate to exceed its capacity because the majority of prison inmates are narcotics abusers.

In connection with legal reconstruction, Article 111, Article 112 and Article 114 are specifically for dealers and not for abusers (addicts). And in the event that a person who abuses narcotics for himself fulfills the qualifying elements for a narcotics crime as regulated in another article, it must be assessed from the mental attitude/*mens rea* of the perpetrator, as long as his mental attitude is for his own use for his dependent needs, the judge is obliged to decide whether to apply sanctions in the form of medical rehabilitation and social rehabilitation.

Law enforcers ranging from investigators, BNN, public prosecutors and judges<sup>45</sup> must understand and be able to adopt a policy that drug abusers are victims and sick people who need treatment so they are not worthy of being sentenced to prison.<sup>46</sup> The application of imprisonment is a futile action where the state

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42 Marbun, Hedwig, and Ismed., How To Enforce Criminal Law Against Narcotics Abuse Of New Types Of Variants That Have Not Been Included In Law Number 35 Of 2009 Concerning Narcotics, Policy, Law, Notary And Regulatory Issues, Vol.2 No.1, January 20, 2023

43 Puji Andrayani and Rakhmat Bowo Suharto., Law Enforcement In The Judge's Verdict Against Narcotics Abuse For Yourself, *Law Development Journal*, Vol.2 No.2, October 8, 2020, page. 232–40

44 Andri Winjaya Laksana., Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi, *Jurnal Pembaharuan Hukum*, Vol.2 No.1, 2016, page. 74–85.

45 Ramosta Setiawan Sirait et al., Role Of The National Narcotics Board Of The Republic Of Indonesia (BNN RI) In The Process Of Investigation In Narcotics Criminal Actions, *International Journal Of Social, Policy And Law*, Vol.4 No.2, May 23, 2023, page.56–62

46 Berton Lumban Tobing, Henry Aspan, and Mhd. Azhali Siregar., Relationship Of Investigation Authority In Drug Crimes After The Ruling Of Law Number 1 Of 2023

will also experience large losses and especially victims will experience more widespread losses.<sup>47</sup> In relation to narcotics abusers who are caught before committing narcotics abuse for themselves, provisions for probation for narcotics abuse for themselves can be applied.<sup>48</sup> Furthermore, in order for there to be a common perception in the implementation of crimes for those who abuse narcotics for themselves by law enforcement officers, it is necessary to reconstruct Law No. 35 of 2009 in Article 132 (1) to become: Attempt or criminal conspiracy to commit criminal acts of narcotics and narcotics precursors as intended in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, 127, and Article 129, the perpetrator shall be punished with the same prison sentence in accordance with the provisions referred to in these articles.

legal reconstruction that clearly distinguishes between addicts or drug<sup>49</sup> abusers for themselves and perpetrators of other narcotics crimes, such as dealers and dealers, so that the application of criminal sanctions is more proportional and fair. By emphasizing that addicts are victims who need rehabilitation,<sup>50</sup> not imprisonment, a more humane legal approach can be applied to reduce prison overcapacity and avoid mistargeted criminalization. In addition, the proposal to include probation or vooging provisions in Article 132 paragraph (1) provides a more adaptive legal solution in handling cases of narcotics abuse before use occurs, so that there is room for rehabilitative intervention before someone is further criminalized. This approach not only places narcotics policy in a more progressive perspective and is based on restorative justice, but also ensures that the legal system is able to clearly distinguish between victims and main perpetrators in narcotics crimes, which has so far been a major gap in the implementation of Law No. 35 of 2009.

#### **4. Conclusion**

Criminal law policy against narcotics crimes in Indonesia, as regulated in Law No. 35 of 2009, still faces various problems, especially in the unclear understanding and status between addicts, abusers and victims of narcotics abuse. As a result, there is a bias in the application of the law, where those who abuse narcotics for themselves are often charged with heavier articles such

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Concerning The Criminal Code, *International Journal of Synergy in Law, Criminal, and Justice*, Vol.1 No.2, October 1, 2024, page. 172–82

47 Fadhli Muhaimin Ishaq., Depenalisasi Penyalahgunaan Narkotika Studi Komparatif Indonesia Dan Portugal, *PAMPAS: Journal of Criminal Law*, Vol.5 No.3, October 27, 2024, page. 338–51

48 Rian Saputra et al., Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty, *Journal of Indonesian Legal Studies*, Vol.6. 2021.

49 Teguh Hartono, Vadira Hanami, and Fanniya Dyah Prameswari., Drug Abuse Rehabilitation Policies in Indonesia: A Comparison with Vietnam, Australia and Portugal, *Wacana Hukum*, Vol.29 No.2, October 31, 2023, page.163–80

50 Oleksandr, Victor Mikhailovich Shevchuk, Ihor Kompaniiets, S. Yu. Lukashevych, Olena Viktorivna Tkachova Shevchuk., Features of Ensuring the Rights of Drug Addicts for Rehabilitation in Ukraine and the European Union: Comparative Legal Aspect, *Tribuna Juridică*, No.2, 2022, page. 263–82.

as Article 111 or Article 112 which should be intended for dealers. This causes injustice because drug abusers who should be rehabilitated are instead sentenced to prison, which not only worsens their condition but also burdens the capacity of correctional institutions. Reconstructing laws that are fairer and based on justice values by clearly distinguishing between users and dealers, and ensuring that narcotics abusers themselves receive medical and social rehabilitation as a form of recovery, not just punishment. Legal reconstruction in the Narcotics Law is needed to clearly distinguish between addicts as victims who need rehabilitation and perpetrators of other narcotics crimes, in order to prevent criminalization that is not on target and ensure policies that are more humane and just.

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