

## The Legal Protection against Accountability for Criminal Acts of Narcotics Abuse in Indonesia

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**Abstract.** *Narcotics crimes are increasing from year to year in both quantity and quality in Indonesia. The narcotics law emphasized that the legal position of narcotics abusers was no longer seen as perpetrators but rather as victims, there was a change in the legal paradigm in legal protection for narcotics abusers. As a victim, the perpetrator must receive legal protection. Legal protection for narcotics abusers was implemented in the form of medical rehabilitation and social rehabilitation which were discretionary from the types of punishment as regulated in Article 10 of the Criminal Code. The problem was how to protect the law against criminal liability for narcotics abusers and how to optimize legal protection for narcotics abusers. Normative research was used as the method in this research, and the secondary data obtained from reviewing related laws and regulations and relevant literature. The result explained that legal protection for the criminal liability of narcotics abusers was determined through a judge's decision by placing narcotics abusers in rehabilitation institutions. Then, optimizing legal protection for narcotics abusers was carried out by equalizing the perceptions of all law enforcement officials regarding the need for legal protection for crime victims as well as unifying views and providing a deep understanding of the aims and objectives of providing rehabilitation.*

**Keywords:** *Criminal; Liability; Narcotics; Protection.*

## 1. Introduction

Narcotics can only be used for health purposes and/or the development of science and technology, however specifically class I narcotics were prohibited from being used for health services, they were only permitted for the purposes of developing science and technology in very limited quantities and must obtain approval from the Minister upon recommendation. Head of the Food and Drug Supervisory Agency (*BPOM*). Narcotics were originally intended for medicinal purposes, but with the development of science and technology, many types of narcotics can be processed.<sup>1</sup> the occurrence of narcotics abuse among the wider community signals us to care and pay more particular attention to dealing with it, because the dangers posed can threaten the existence of the young generation who we hoped, one day become the heirs and successors of the nation's struggle in the future. Because narcotics were dangerous substances that were often used for scientific purposes including research, development, education and teaching, so their availability was very necessary. On the other hand, narcotics, on the other hand, can have a negative impact in the form of a dependency syndrome which encouraged the illicit trade in narcotics and would also lead to an increase in abuse which was increasingly widespread and had an international dimension<sup>2</sup>.

The crime of narcotics abuse, which was a crime, had grown massively and had reached an alarming level. Narcotics were now starting to spread throughout the world. Almost all world governments were currently fighting narcotics because they were considered to be able to destroy human life. Especially in Indonesia itself, narcotics had reached all corners of the country from Sabang to Merauke. Narcotics crimes were considered by some people to be normal cases, even though narcotics crimes were crimes that can threaten the continuity of development and the future of the Indonesian nation and state<sup>3</sup>.

Narcotics abuse in Indonesia had reached a very worrying stage. Narcotics no longer recognize age limits, old people, young people, teenagers and even children are becoming illegal narcotics users and dealers<sup>4</sup>. Indonesia was currently one of the countries with the largest traffic route for the narcotics

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<sup>1</sup> Moh. Zakky Moh. Makaro Taufik, Suhasril, (2005), *Tindak Pidana Narkotika*, Bogor: Ghalia Indonesia, p.19.

<sup>2</sup> Andi Hamzah, (2004) *Kejahatan Narkotika Dan Psicotropika*, Jakarta: Sinar Grafika, p. 114.

<sup>3</sup> Bayu Yama Chandra, Abdul Bari Azed, and M Zen Abdullah, "Pertanggungjawaban Pidana Pelaku (Sipir) Yang Terlibat Peredaran Narkotika Di Lembaga Pemasarakatan Kelas II A Jambi," *Legalitas: Jurnal Hukum* 15, no. 1 (2023): 62, <https://doi.org/10.33087/legalitas.v15i1.435>.

<sup>4</sup> Gusti Ayu Novira Santi, Ni Putu Rai Yuliantini, and Dewa Gede Sudika Mangku, "Perlindungan Hukum Terhadap Korban Tindak Pidana Penyalahgunaan Narkotika Di Kabupaten Buleleng," *E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Jurusan Ilmu Hukum (Volume 2 No. 3 Tahun 2019)* 2, no. 3 (2019): 217, <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/28786>.

market. Geographically, Indonesia had a very large territory, consisting of thousands of islands, which made smuggling easier to access because it was spread across several sea routes. Indonesia was considered economically potential, which had led to rampant smuggling and the black market. So the number of narcotics abusers in Indonesia has been increasing every year<sup>5</sup>. To overcome these problems, legal instruments were needed. The existence of criminal law instruments was very necessary as a part of law in general. This showed that basically all laws aimed to create harmony, order, legal certainty and so on in social life in society<sup>6</sup>.

The circulation of narcotics in Indonesia continues to increase and has even reached a very worrying level. As is known, narcotics were currently not only distributed in big cities but had reached the rural level and narcotics abusers were not only those who were adults but have spread to all levels of society starting from pupils, students, entrepreneurs, officials, street children and so on<sup>7</sup>. The increase in the circulation of narcotics was closely related to the progress in the use of tools that had the potential for narcotics abusers or precursors as one of the substances or starting materials or chemicals used to produce narcotics illegally<sup>8</sup>.

In an effort to prevent abuse and illicit trade in narcotics, the international world had taken steps to control narcotics through the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention on the Eradication of Illicit Trafficking). Narcotics and Psychotropic Substances (1988), "opening up opportunities for countries that recognized and ratified it to collaborate in overcoming abusers and eradicating the illicit trafficking of narcotics, both bilaterally and multilaterally, namely those that had the potential to cause dependency syndrome"<sup>9</sup>.

Legislation that supported the efforts to eradicate narcotics crimes was very necessary, especially since narcotics crimes were a form of unconventional crime

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<sup>5</sup> Leni Dwi Nurmala, Yoslan K. Koni, and Dince Aisa Kodai, "Pertanggungjawaban Pidana Dan Perlindungan Hukum Terhadap Anak Dalam Tindak Pidana Narkotika," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 2, no. 2 (2022): 138, <https://doi.org/10.51825/sjp.v2i2.16546>.

<sup>6</sup> Gatot Supramono, (2011), *Hukum Narkotika Di Indonesia*, Jakarta: Djambatan, p.5.

<sup>7</sup> Renaldi Saputra Palureng, "Penegakan Hukum Pidana Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak: Studi Kasus Di Pengadilan Negeri Makassar," *Journal of Lex Theory (JLT)* 3, no. 1 (2022): 47.

<sup>8</sup> Dea Theresia, Siswantari Pratiwi, and Verawati Br. Tompul, "PERTANGGUNGJAWABAN HUKUM BAGI PELAKU TINDAK PIDANA Hukum Universitas Krisnadwipayana A . PENDAHULUAN Perbuatan Pidana Narkotika ialah Sebuah Perilaku Yang Khusus , Sehingga Peraturan Yang Mengaturinya Bersifat Khusus , Mengandung Arti Bahwa Kesalahan , Pemid" 5, no. 1 (2023): 70.

<sup>9</sup> Herie, (2006), *Kenakalan Remaja Dan Penyalahgunaan Narkotika Serta Penanggulangannya*, Pekalongan: Bahagia, p. 56.

that was carried out systematically, using high modus operandi and sophisticated technology and was carried out in an organized manner and is transnational in nature<sup>10</sup>. Even though the danger of narcotics abusers had a very big influence on the country, if there was massive narcotics use in society, then the Indonesian nation would become a sick nation, if this happened, the country would be fragile from within because national resilience would decline, so that criminal acts of narcotics abusers were social problems that could disrupt social functions in society<sup>11</sup>.

## 2. Research Methods

This type of research was normative research, and it was research that referred to analyze statutory regulations, court decisions, and doctrine regarding legal protection against accountability for criminal acts of narcotics abusers in Indonesia<sup>12</sup>. Normative research was also synonymous with research into laws (written norms) created and promulgated by authorized institutions or officials (legislative institutions)<sup>13</sup>.

## 3. Result and Discussion

### 3.1. The Legal Protection against Criminal Liability of Narcotics Abusers

The Legal protection was an effort to provide protection for human rights that were harmed by other people and this protection was given to the community so that they enjoyed all the rights granted by law<sup>14</sup>. In this case, legal protection against criminal liability ("toereken-baarheid," "criminal responsibility," "criminal liability,") to determine whether a person was held responsible for criminal acts or not for the actions he or she commits, or whether the responsibility committed did not only concern, this was only a legal issue, but it also concerned issues of moral values or decency that exist in a society<sup>15</sup>. It aimed to respect the human rights of perpetrators of crimes so that their fate was not left in limbo,

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<sup>10</sup> Palureng, "Penegakan Hukum Pidana Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak: Studi Kasus Di Pengadilan Negeri Makassar," 48.

<sup>11</sup> Muhammad Arif Rinaldi Basri, ZAINAB OMPU JAINAH, and INDAH SATRIA, "Pertanggungjawaban Pelaku Tindak Pidana Tanpa Hak Atau Melawan Hukum Melakukan Pemufakatan Jahat Untuk Menguasai Narkotika Golongan I Bukan Tanaman," *De Juncto Delicti: Journal of Law* 1, no. 1 (2021): 221, <https://doi.org/10.35706/djd.v1i1.4782>.

<sup>12</sup> Thifana Dewi Kalia, "Legal Protection for Women Victims of Revenge Porn Crimes Who Experience Victimblaming," *Law Development Journal* 5, no. 4 (2023): 613.

<sup>13</sup> Denny Suwondo, "The Legal Protection of Personal Data in Islamic Perspective," *International Journal of Law Reconstruction* 7, no. 2 (2023): 422, <https://doi.org/10.26532/ijlr.v7i2.33648>.

<sup>14</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2012), 54.

<sup>15</sup> Erwin Asmadi Ismail Koto, "Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis Di Rumah Sakit," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021): 189, <https://doi.org/10.24090/volkgeist.v4i2.5738>.

there was legal certainty for the perpetrators, and avoid arbitrary and unreasonable treatment<sup>16</sup>.

Simons explained that legal responsibility was interpreted as a psychological condition in such a way that the application of a criminal measure, both from a general perspective and from the perspective of the person, was justified. He further said that a perpetrator of a criminal act was capable of being responsible if: First, he was able to know/realize that his actions were contrary to the law. Second, being able to determine one's will according to consciousness<sup>17</sup>.

The concept of criminal responsibility was that a criminal act did not stand alone, it only became meaningful when there was criminal responsibility. This meant that every person who committed a criminal act did not necessarily have to be punished. To be punished, there must be criminal responsibility. Criminal liability arose from the passing of objective censure (*vewijbaarheid*) to acts declared as applicable criminal acts, and subjectively to the perpetrators of criminal acts who met the requirements to be subject to criminal penalties for their actions<sup>18</sup>.

The concept of criminal responsibility did not only refer to legal issues, but also to moral issues or appropriate values held by a people or social group. Thus, a person's responsibility for narcotics abused offenses as stated in Law Number 35 of 2009 concerning Narcotics starts from the words "every person". In the concept of criminal responsibility, the words "every person" were a central concept known as the doctrine of guilt. Another term in Latin was *mens rea* which was based on an act that did not make a person guilty, unless that person had evil thoughts. Therefore, based on this principle, there were two conditions that must be met in order to be able to convict a perpetrator of a narcotics crime, the existence of a prohibited act/criminal act (*actus reus*) and the presence of an evil/disgraceful inner attitude (*mensrea*)<sup>19</sup>.

This policy of determining criminal sanctions also needed to be carried out with the existence of new policies and breath in the field of conception and philosophy of training prisoners in Indonesia in the correctional system. This fundamental change in views should also had influence and consequences in the

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<sup>16</sup> Dikdik M. Arief Mansur dan Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan Antara Norma Dan Realita*. (Jakarta : PT Raja Grafindo Persada, 2007), 20.

<sup>17</sup> Teguh Prasetyo, *Hukum Pidana* (Jakarta : PT Raja Grafindo Persada, 2010), 85.

<sup>18</sup> I Gede Widhiana Suarda, *Hukum Pidana (Materi Penghapus, Peringan, Dan Pemberat Pidana)* (Malang: Bayu Media Publishing, 2011), 37.

<sup>19</sup> Chandra, Azed, and Abdullah, "Pertanggungjawaban Pidana Pelaku (Sipir) Yang Terlibat Peredaran Narkotika Di Lembaga Pemasarakatan Kelas II A Jambi," 63.

field of criminal policy, especially in the policy of selecting and determining criminal sanctions<sup>20</sup>.

Narcotics abuse in victimology was considered to be a victim because it incurred material losses and addiction, whereas by law this was a criminal act, it was said so because it was a form of preventing abusers from occurring. Individuals who used narcotics or the like without supervision and direction from a doctor were called narcotics abusers. The victim and perpetrator consist of one individual, and all of their actions resulted in harm to themselves. Greater losses would be immediately experienced in the long term compared to the pleasure that can only be enjoyed in an instant. In terms of victimology, it was called a self-victimizing victim, which was someone who becomes a victim because of a crime they committed themselves<sup>21</sup>.

The criminal sanctions imposed on narcotics addicts as self-victimizing victims were in the form of serving a sentence in prison, while the sanctions given to narcotics addicts as victims were in the form of treatment or care provided in the form of rehabilitation facilities. The application of criminal sanctions in the form of imprisonment and the implementation of rehabilitation were stages that were considered quite effective in minimizing the existence of narcotics abusers, therefore based on the provisions of Article 54 concerning rehabilitation and Article 127 of Law Number 35 of 2009 concerning Narcotics<sup>22</sup>.

Criminal accountability for narcotics abusers was not only carried out by matching the defendant's actions with the elements of the offense in the law, but the judge must also adhere to the terms of punishment which had also been rigidly determined in the law<sup>23</sup>. Regulations regarding rehabilitation had a separate section, in Chapter IX, the second part concerning Rehabilitation. Starting from Article 54 to Article 59 of the Narcotics Law, it regulated rehabilitation for narcotics users and victims of narcotics abuse, rehabilitation was mandatory. "This mandatory nature of rehabilitation should be the main benchmark for law enforcement officers and judges in taking action against narcotics users."

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<sup>20</sup> Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara* (Semarang: Undip Press, 2010), 74.

<sup>21</sup> Tasya Nafisatul Hasan and Marli Candra, "Tinjauan Viktimologi Terhadap Hak Perlindungan Penyalahgunaan Narkotika (Victimless Crime)," *PAMPAS: Journal of Criminal Law* 2, no. 2 (2021): 92, <https://doi.org/10.22437/pampas.v2i2.13026>.

<sup>22</sup> Khresna Wisantya et al., "Pertanggungjawaban Pidana Pecandu Dan Penyalah Guna Narkotika Berdasarkan Golongan," *Jurnal Analogi Hukum* 3, no. 3 (2021): 341–42.

<sup>23</sup> Farid Iskandar, "Pelaksanaan Pertanggungjawaban Pidana Pengekar Terhadap Korban Penyalahgunaan Narkotika," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 2 (2021): 98, <https://doi.org/10.18196/jphk.v2i2.9989>.



### 3.2. Optimizing The Legal Protection for Narcotics Abusers

Narcotics crime in Indonesia was the highest type of crime compared to other types of crime. Most of the Detention Centers (*Rutan*) and Correctional Institutions (*Lapas*) were occupied by prisoners and Correctional Inmates (WBP) for narcotics cases<sup>24</sup>. The rise of drug abuse in Indonesia was very worrying, with empirical data showing that half of all prison inmates were there due to drug or narcotics crimes<sup>25</sup>. Drug abuse was at a dangerous level, because it did not only harm individuals but also society as a whole. Drugs could hinder progress both materially and spiritually at the national level. The threat of drug abuse was very significant; Widespread drug abuse made Indonesia a sick country, reducing the country's internal resilience and making it more vulnerable to external shocks<sup>26</sup>.

In order to optimize narcotics abusers, Law Number 35 of 2009 concerning Narcotics. There was a paradigm shift that was deliberately regulated in this law regarding the handling of people involved in narcotics abuse. One of these paradigm shifts was related to the existence of medical and social rehabilitation for people involved in narcotics abuse. This confirmation regarding the existence of medical and social rehabilitation was regulated in Article 54 of Law Number 35 of 2009 concerning Narcotics which regulated that "narcotics addicts and victims of narcotics abuse were obliged to undergo medical and social rehabilitation." Furthermore, Article 127 paragraph (3) of the law stated that in the event that the abuser could be proven or proven to be a victim of narcotics abuse, the abuser was obliged to undergo medical rehabilitation and social rehabilitation<sup>27</sup>.

The obligation to undergo rehabilitation was emphasized in Article 3 paragraph (1) of the Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. Then, through a Joint Regulation of the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police of the Republic of Indonesia, the Head of the National Narcotics Agency of the Republic of Indonesia. No: 01/PB/MA/III/2014, No: 03 of 2014, No: 11 of 2014, No: 03 of 2014, No: PER-005/A/JA/03/2014, No:

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<sup>24</sup> Insan Firdaus, "Analisa Kebijakan Optimalisasi Pelaksanaan Rehabilitasi Narkotika Di Unit Pelayanan Teknis Masyarakat," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020): 470, <https://doi.org/10.30641/kebijakan.2020.v14.469-492>.

<sup>25</sup> Marlina Kristiyani and Vieta Imelda Cornelis, "Penegakan Hukum Terhadap Pelaku Tindak Pidana Narkotika Di Wilayah Hukum Kepolisian Resor Kota Besar Surabaya," *Binamulia Hukum* 12, no. 1 (2023): 202, <https://doi.org/10.37893/jbh.v12i1.331>.

<sup>26</sup> Kristiyani and Cornelis, 203.

<sup>27</sup> Upita Anggunsuri Riki Afrizal, "De Jure De Jure," *Jurnal Penelitian Hukum* 19, no. 3 (2019): 261.

1 of 2014, No: PERBER/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions regulates that drug addicts no longer led to prison sanctions but rather to rehabilitation places, because the sanction for addicts was agreed to be rehabilitation.

The Implementation of rehabilitation for narcotics abusers based on SEMA No.4 of 2010, in general was:

- a. The perpetrator/suspect was caught accompanied by evidence in accordance with SEMA No.4 of 2010, then the urine/blood laboratory was checked if the results were positive then it would be continued with the initial BAP and completed with the administration of the investigation;
- b. In less than 3 (three) days a case would be held. In the title of the case, it would be determined which articles would be applied in the case and whether or not the suspect/perpetrator could be rehabilitated;
- c. If the decision to determine the case of the perpetrator/suspect was that he could be rehabilitated, the investigator would contact the attorney/attorney or the suspect's family to write a letter requesting rehabilitation.
- d. The investigator would then forward the request to the BNNP (Provincial National Narcotics Agency) so that an assessment could be carried out;
- e. If the BNNP (provincial National Narcotics Agency) considered the perpetrator/suspect could be assessed then the BNNP (provincial National Narcotics Agency) would call the TAT (Integrated Assessment Team), namely doctors, psychologists and legal experts and presented the suspect/perpetrator to the BNNP (provincial National Narcotics Agency). );
- f. If the results of the assessment carried out by the TAT (Integrated Assessment Team) stated that the suspect/perpetrator could be rehabilitated, a Recommendation Letter would be issued for the implementation of rehabilitation containing how long and where the rehabilitation would be carried out with costs borne by the government;
- g. While the suspect was undergoing rehabilitation, the investigation process continued, if the investigation was declared complete by the JPU (Public Prosecutor) then the investigator would take the suspect to a rehabilitation institution (the rehabilitation process is counted as detention under Article 103 of Law Number 35 of 2009) then, the suspect and the evidence was sent to the Public Prosecutor. "Whether the rehabilitation process would be handed over to the Public Prosecutor, whether or not it would continue, and the authority of the Public Prosecutor."

In victimology, efforts to handle and control narcotics could be done in 2 (two) ways, including pre-emptive efforts and preventative efforts. Pre-emptive



efforts, in the form of social engineering, meant that law enforcement officers participate in organizing community life related to issues of security and public order<sup>28</sup>, carried out in the form of coaching and counselling activities in a drug-free community environment in society. This introductory activity through information and education aimed to direct and understand the dangers of narcotics abuse for each individual, family and community through outreach, consultation, distributing posters that said "Say No To Drugs", and holding discussions in each activity. Then, preventive efforts, efforts carried out in the form of control and supervision, went directly into the field against illicit trafficking routes by carrying out raids in vulnerable places such as nightlife. It was not only law enforcement officers who carried out surveillance but also the community who helped to carry out surveillance in their areas which might be places where narcotics were distributed<sup>29</sup>.

Then, the National Narcotics Coordinating Board (*BKKN*) of the Republic of Indonesia determined that the best efforts to deal with narcotics abusers in Indonesia were:

- a) Pre-emptive, especially as an instructive exercise by influencing the causative components known as Correlative Criminogenic Factors (FKK), to pay attention to caution, prevention and production of opiate-free behavioral conditions or living standards, including agency vigilance. related and all levels of society.
- b) Preventive, this effort was carried out to prevent crime from occurring through controlling and supervising illicit trafficking routes, with the following actions:
  - c) Preventing the number and types of opiates available only for the world of medicine and scientific progress;
  - d) Maintaining the terms of use so as not to cause dependency;
  - e) Preventing Indonesia's geological conditions from being used as an illegal route by guarding the coast and doors to Indonesia; And
  - f) Directly prevent the distribution of illegal opiates within the country and ensure that Indonesia is not used as a link in the chain of exchange of illegal opiates, both at the public, local and world levels.
- g) Repressive meant that efforts are made to take action and enforce the law against real dangers with firm authority and can stop opiate abusers and dealers.

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<sup>28</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2002), 39–40.

<sup>29</sup> Hasan and Candra, "Tinjauan Viktimologi Terhadap Hak Perlindungan Penyalahgunaan Narkotika (Victimless Crime)," 97.

- h) Treatment and recovery was an effort to help, care for, and recover victims of opiate abuse, so that it was believed that the victims could return to society or work properly<sup>30</sup>.

Efforts to optimize the implementation of rehabilitation, apart from the Indonesian government having duties and responsibilities in carrying out health efforts for the people through the extension of the Minister of Health and the Minister of Social Affairs, the private sector could also play an active role in implementing rehabilitation. However, private parties who provided rehabilitation must follow the standardization guidelines issued by the Minister of Health through Minister of Health Decree 996/MENKES/ SK/VIII/2002 concerning Guidelines for Implementing Rehabilitation Service Facilities for Drug Abuse and Dependence and Minister of Social Affairs Regulation Number 56/HUK/2009 concerning Social Services and Rehabilitation for Victims of Narcotics, Psychotropic and Other Addictive Substance Abuse. Other legal provisions for placing victims of drug users in medical and social rehabilitation places are also contained in Government Regulation Number 25 of 2011 concerning the Implementation of Mandatory Reporting of Narcotics Addicts. Based on these government regulations, drug abuse victims and/or victims received treatment and/or care through medical rehabilitation and social rehabilitation. Government Regulation Number 25 of 2011 was a derivative of Article 54 and Article 55 of Law Number 35 of 2009 concerning Narcotics<sup>31</sup>.

Placing perpetrators of criminal acts of narcotics abuse in rehabilitation centre was a wise and prudent action, through medical rehabilitation and social rehabilitation a narcotics addict could be freed from his dependence on narcotics and in the future could live a normal life in society. To achieve this noble goal, it was often hampered by several factors due to differences in views from law enforcement officials regarding the aims and objectives of providing rehabilitation where Narcotics Abusers were not placed as Drug Abusers. The regulations regarding rehabilitation to date only refer to SEMA Number 4 of 2010. SEMA was born out of a practical need and was intended for judges as technical guidance for resolving cases, and according to its nature SEMA had no binding force for either investigators or public prosecutors. Differences in perception from investigators and public prosecutors result in rehabilitation requirements not being met and Narcotics Abusers being positioned as

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<sup>30</sup> Theresia, Pratiwi, and Tompul, "Pertanggungjawaban Hukum Bagi Pelaku Tindak Pidana Hukum Universitas Krisnadwipayana A . Pendahuluan Perbuatan Pidana Narkoba ialah Sebuah Perilaku Yang Khusus , Sehingga Peraturan Yang Mengaturnya Bersifat Khusus , Mengandung Arti Bahwa Kesalahan , Pemicu," 74–75.

<sup>31</sup> Salyo Kinasih Bumi, Supolo Supolo, and Bastianto Nugroho, "Perlindungan Hukum Terhadap Korban Penyalahgunaan Narkotika," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 360, <https://doi.org/10.37680/almanhaj.v4i2.1860>.

perpetrators of other Narcotics crimes so that in the end a Narcotics addict did not get his or her right to legal protection.

The most appropriate step to optimize legal protection for Narcotics Abusers was to equalize the perception of all law enforcement officials regarding the need for legal protection for crime victims as well as unifying views and providing a deep understanding of the aims and objectives of providing rehabilitation so the noble goals as mandated by Law Number 35 of 2009 concerning Narcotics could be realized.

#### 4. Conclusion

The criminal liability of Narcotics Abusers from the perspective of legal protection was determined through a judge's decision by placing Narcotics Abusers in rehabilitation institutions. This decision was handed down if the Narcotics Abuser was proven to be an addict and the requirements as stated in SEMA No. 4 of 2010. It was proven that abusers were addicts were proven based on a certificate from a government psychiatrist/psychiatrist. This provision reduced the opportunity for abusers to receive rehabilitation sentences. Then, optimizing legal protection for narcotics abusers was carried out by equalizing the perceptions of all law enforcement officials regarding the need for legal protection for crime victims as well as unifying views and providing a deep understanding of the aims and objectives of providing rehabilitation.

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