

Implementation of Rehabilitation Sanctions in Criminal Acts of Narcotics Abuse

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Abstract

The purpose of this study is to examine and analyze the application of rehabilitation sanctions for drug addicts today, to examine and analyze the weaknesses of the application of rehabilitation sanctions for drug addicts today, to examine and analyze the effectiveness of the application of rehabilitation sanctions for drug addicts based on justice. This study uses a normative legal approach, with a qualitative descriptive research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of legal effectiveness, the theory of justice. The results of the study concluded that: 1) The application of rehabilitation sanctions for drug addicts today that the regulation in Article 4 (d) of the Narcotics Law emphasizes "ensuring the existence of Medical and Social Rehabilitation efforts", but according to Article 54 of the Narcotics Law it states that "undergoing Medical Rehabilitation and Social Rehabilitation is mandatory". Previously, drug abusers received rehabilitation guarantees, but when in Article 127 of the Narcotics Law it turned out that drug abusers could be punished and lose their right to rehabilitation, unless it could be proven or proven that they were victims of narcotics, 2). The weakness of the application of rehabilitation sanctions against drug addicts at this time is in Article 127 paragraph (1) of the Narcotics Law, this article is what makes drug user victims can be imprisoned, 3). The effectiveness of the application of rehabilitation sanctions against drug addicts based on justice that the process of implementing the drug abuse rehabilitation program has been running well even though it is not optimal.

Keywords: *Criminal; Narcotics; Rehabilitation Sanctions.*

1. Introduction

Narcotics and illegal drug crimes have become transnational in nature and are carried out with high *modus operandi* and sophisticated technology. Law enforcement officers are expected to be able to prevent and overcome these crimes in order to improve the morality and quality of human resources in Indonesia, especially for the nation's next generation.¹Narcotics consist of substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain and can cause dependence. If these narcotics are used without restrictions and careful supervision, they can endanger the health and even the life of the user.²The application of sanctions in cases of drug abuse on perpetrators of drug abuse generally consists of 2 (two) criminal sanctions decided by the judge, namely imprisonment and rehabilitation sanctions for drug abusers, and the decisions imposed on drug abusers or addicts seem far from what is expected by the provisions of the law on narcotics, in fact, judges in making decisions must consider 3 (three) important elements, namely justice, legal certainty, and benefits. One of the court decisions in a drug abuse case that is considered not as expected is the South Jakarta Court Decision Number: 740/Pid.Sus/2018/PN.Jkt.Sel with the defendant Roro Fitria in a methamphetamine narcotics case in February 2018. The defendant Roro Fitria was proven to have violated Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The court decision stated that the defendant Roro Fitria was sentenced to 4 years in prison, even after the defendant filed an appeal trial. This court decision is considered not to be in accordance with what the legal counsel representing the defendant had hoped for, that the defendant had submitted or requested only a rehabilitation sentence.³

Law Number 35 of 2009 concerning Narcotics has provided different treatment for perpetrators of drug abuse or addicts. Drug abusers or addicts as perpetrators of drug crimes can be subject to sanctions in the form of imprisonment, in addition to being subject to sanctions in the form of rehabilitation. One of the narcotics cases that is subject to criminal sanctions in the form of imprisonment and rehabilitation sanctions is the narcotics case with the defendant Jefri Nichol with case number Number: 941 / Pid.Sus / 2019 / PN.Jkt.Sel. In the court decision in November 2019, the defendant artist Jefri Nichol was sentenced to 10 months in prison which was calculated from the time he was arrested and detained during the investigation and trial process, so that

¹Bambang Hariyono, 2009. Criminal Law Formulation Policy Against Drug Crime Offenders in Indonesia. Semarang: Diponegoro University Law Thesis, p. 23.

²Moh. Taufik Makarao, Suhasril, and Moh. Zakky, 2003, Narcotics Crimes, Jakarta: Ghalia Indonesia, p. 1.

³ Andi Saputra, 2019, Appeal Rejected, Roro Fitria Still Sentenced to 4 Years in Prison, <https://news.detik.com/berita/d-4379187/banding-ditolak-ro-ro-fitria-tetap-di-Hukum-4-tahun-penjara>, accessed on December 20, 2022.

when the court decision was read, the defendant artist Jefri Nichol continued the rest of his sentence by continuing the rehabilitation sentence at the Drug Addiction Hospital (RSKO) Cibubur, East Jakarta.⁴In Central Java Province itself, it was only on February 15, 2022 that the Head of the Central Java Kemenkumham Regional Office opened the Narcotics, Medical and Social Rehabilitation activities for Class IIA Magelang Prison Inmates. The narcotics rehabilitation inmates had previously gone through an assessment process and were deemed to meet the requirements, as many as 20, while those undergoing social rehabilitation were 120 people, he explained. In addition, the prison has been collaborating with the Magelang BNNK and Temanggung BNNK for counselors. The Head of the Central Java Kemenkumham Regional Office hopes that through this rehabilitation, all inmates will be free from drug dependence and be able to change their behavior to be better and healthier.⁵

Rehabilitation is an effort to restore and return the condition of former abusers/addicts to Narcotics, Alcohol, Psychotropics, and Addictive Substances (NAPZA) to health in the sense of being physically, psychologically, socially and spiritually/religiously (faith). The recovery of the condition of former abusers or addicts of narcotics to health is expected so that they are able to function normally in their daily lives both at home, at school/campus, at work and in their social environment.⁶Law Number 35 of 2009 concerning Narcotics contains Article 54 which regulates rehabilitation. Article 54 states that "Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation". Medical rehabilitation is a process of integrated treatment activities to free addicts from drug dependence. Medical rehabilitation of drug addicts can be carried out in hospitals designated by the Minister of Health, namely hospitals organized by both the government and the community.

Drug abuse encourages increasingly widespread and international illicit trafficking. Therefore, efforts to prevent and combat narcotics and efforts to eradicate illicit trafficking are needed considering the progress of communication, information and transportation in the current era of globalization.⁷Groups that include narcotics include opium, morphine, marijuana, heroin, cocaine, ecstasy, crystal methamphetamine and sedatives.⁸ Law

⁴M. Yusuf Manurung and Zacharias Wuragil, 2019, Judges Find Artist Jefri Nichol Guilty, This is the Sentence, <https://metro.tempo.co/read/1270929/hakim-vonis-artis-jefri-nichol-berLAH-ini-bayarannya>, accessed December 20, 2022.

⁵Rambe Purba, 2022, Head of the Central Java Ministry of Law and Human Rights Regional Office Opens Medical and Social Rehabilitation at Magelang Prison, Bandung Zone Article accessed via <https://www.zonabandung.com/region/pr-1202695770/kakanwil-kemenkumham-jateng-buka-rehabilitasi-medis-dan-social-di-lapas-magelang> on December 20, 2022.

⁶Dadang Hawari, Psychiatrist, 2006, Abuse & Addiction of NAZA (Narcotics, Alcohol, & Addictive Substances), Jakarta: Gaya Baru, p.132.

⁷Lydia Harlina Marton. 2006. Helping Drug Addicts and Families. Jakarta: Balai Pustaka, p. 1

⁸Julianan Lisa FR and Nengah Sutrisna W. 2003. Drugs, Psychotropics and Mental Disorders (Health and Legal Review). Yogyakarta: Nuha Medika, p. 1.

enforcement is a series of processes to describe ideas, values, ideals that are quite abstract into very concrete goals. The purpose of law or legal ideals contain moral values such as justice and truth. These values are realized in real reality.⁹Law enforcement is a state duty, one of the manifestations of which is the establishment of a judicial institution which is also expected to be able to make corrections and reviews of the positive laws in force in accordance with developments in the era which are expected to reflect the values of justice.¹⁰Law enforcement officers should truly understand the legal spirit that underlies the legal regulations that must be enforced, related to the various dynamics that occur in the law-making process.¹¹Law enforcement officers have a very strategic and significant function in enforcing the law. This is reflected in the law enforcement officers being one of the most influential elements in law enforcement. Even according to Daniel S. Lev, as quoted by Soerjono Soekanto, what becomes the law is the daily practice by law officials.¹²The separation of the functions of investigation and inquiry sometimes causes confusion in field practice. The legal status of the investigation and inquiry phases often confuses the public. In fact, it is not uncommon for there to be quite sharp differences of opinion among the police themselves regarding the status of a case, whether it is still in the investigation or inquiry stage.¹³In the Final Report of the Academic Manuscript Team for the Draft Law on Psychotropics (Amendment to Law Number 5 of 1997) it is stated that "The role of society as part of social control is not clearly covered in this law, because it is only stated as a role. This makes the position of society not pro-active but waiting to be invited. In addition, there needs to be legal certainty in guaranteeing protection for witnesses/reporters.¹⁴On the other hand, as a country that adheres to the due process model system, it is Indonesia's obligation to prioritize the rights of its suspects in the criminal process. Rights are something that is given to suspects, defendants and convicts or those sentenced to have been violated or not respected.¹⁵

Based on data from the Directorate of Drug Investigation (Ditresnarkoba) of the Central Java Regional Police, in 2020 drug crimes in Central Java increased by 3% from 2019, which amounted to 1,709 cases to 2,132 cases with 2,173

⁹Sajipto Rahardjo. 2009. *Law Enforcement: A Sociological Review*. Yogyakarta: Genta Publishing, p. 8.

¹⁰Dahlan.2017.

¹¹Deni Eka Priyantoro, loc.cit.

¹²Soerjono Soekanto. 2002. *Principles of Legal Sociology*. Jakarta: Raja Grafindo Persada, p. 101.

¹³Peter Mahmud Marzuki. 2002. *Legal Research*. Jakarta: Kencana, p. 93.

¹⁴Academic Manuscript of the Draft Law on Psychotropics (Amendment to Law No. 5 of 1997) prepared by the Team led by Dr. Danardi Sosrosomihardjo, Sp. KJ (K), Department of Law and Human Rights, National Legal Development Agency, 2008, p. 12.

¹⁵Andi Sofyan and Abd. Azis. 2014. *Criminal Procedure Law: An Introduction*. Jakarta: Kencana, p. 54.

suspects.¹⁶The increasing number of drug users certainly invites the operation of drug syndicate networks. The number of drug abusers in Central Java has reached more than 300,000 people from various levels of society. Based on data from the Central Java Provincial National Narcotics Agency (BNNP), currently drug abusers who are still students and college students have reached 27.32%, ranking second highest in Central Java.¹⁷The data is certainly very concerning because the threat of losing a quality young generation is increasingly real. Throughout 2020, the Central Java National Narcotics Agency has uncovered 11 cases with 25 narcotics case files, of which 19 case files have been P21. Based on all the narcotics cases that have been uncovered, the Central Java National Narcotics Agency has confiscated evidence of 1,575.50 grams of crystal methamphetamine, 4.5 grams of marijuana, 511 ecstasy pills, 79 THC candies, and 6 ampoules of liquid THC. Of the 25 narcotics case files, 2,243 people involved as suspects in narcotics cases received rehabilitation services. The Central Java BNNP has collaborated with 29 Government Agency Rehabilitation Institutions and 31 Community Components so that it is able to provide rehabilitation services for the 2,243 people. Of this number, 238 people participated in post-rehabilitation services and 172 people underwent Integrated Assessment services, and 104 people underwent medical assessment services.¹⁸ In the case of Semarang District Court Decision No.62/Pid.Sus/2011/PN.Smg Regarding Narcotics Dealers, in the case the party who stores, controls narcotics in the form of plants is sentenced to 4 years in prison and a fine of Rp.800,000,000. In analyzing the case above, the author uses qualitative methods and qiyas methods to get answers to the problems to be studied. And the author himself examines how the judge's considerations in the decision No.62/Pid.Sus/2011/PN.Smg Regarding Narcotics Dealers and the analysis of Sanctions in Decision No.62/Pid.Sus/2011/PN.Smg Regarding Narcotics Dealers According to Islamic Law.

From the description above in the case under the existing legal conditions the defendant is threatened with a sentence of 4 years in prison and a fine of Rp. 800,000,000, according to the author the sentence in the case is not in accordance with the sentence, the sentence should be heavier than 4 years in prison because the defendant stored Class 1 narcotics in the form of plants in the form of marijuana with evidence of 1.888 grams, in my opinion the appropriate sentence is Article 111 paragraph (2) of Law No. 35 of 2009 because the evidence

¹⁶ Gatra.com, 2021, Central Java Regional Police: 48% of Drug Dealers Involve Young Children, <https://www.gatra.com/detail/news/502681/Hukum/polda-jateng-48-pengedar-narkoba-melibikatan-anak-usia-muda>, accessed December 20, 2022.

¹⁷ Gatra.com, 2019, Hundreds of Thousands of Central Javanese People Use Drugs, <https://www.gatra.com/detail/news/399489-Ratusan-Ribu-Orang-Jawa-Tengah-Pengguna-Narkoba>, accessed December 20, 2022.

¹⁸ National Narcotics Agency of Central Java Province, 2020, End of Year Press Release 2020 BNN of Central Java Province, <https://jateng.bnn.go.id/press-release-akhir-tahun-2020-bnn-provinsi-jawa-tengah/>, accessed December 20, 2022.

found was more than 1 gram, the minimum sentence is 5 years and the longest is life. The basis for sentencing narcotics abuse with a rehabilitation system is carried out with the classification of the Defendant when arrested in a condition of being caught red-handed, evidence of use was found for 1 (one) day with details in the table of Law Number 35 of 2009, declared positive for using narcotics based on a Laboratory test letter based on the investigator's request, A certificate is needed from a government psychiatrist/psychiatrist appointed by the judge, There is no evidence that the person concerned is involved in the illicit trafficking of narcotics.¹⁹Criminal law reform must essentially be a manifestation of change and renewal of the various aspects and policies that underlie it.²⁰ Welfare for all Indonesian people is an embodiment of the values of social justice.²¹

Based on the background description above, the author is interested in writing a thesis entitled "Implementation of Rehabilitation Sanctions in Criminal Acts of Narcotics Abuse".

This study aims to analyze the Application of Rehabilitation Sanctions in Criminal Acts of Narcotics Abuse.

2. Research Methods

This study uses a normative legal approach. The type of research used in completing this thesis is a qualitative descriptive research method. The data used are primary and secondary data that will be analyzed qualitatively. Research problems are analyzed using the theory of legal effectiveness, the theory of justice.

3. Results And Discussion

3.1. Current Implementation of Rehabilitation Sanctions for Drug Abusers

Rehabilitation programs are usually carried out in narcotics correctional institutions, where the program is a series of coordinated and integrated efforts, consisting of medical efforts, mental guidance, psychosocial, religious and educational efforts to improve the ability to adapt, independence and help oneself and achieve functional abilities according to the potential that is owned both physically, mentally, socially and economically. This program is implemented to help inmates get rid of narcotics and psychotropic dependence, with this rehabilitation becoming an integrated treatment center under one roof or One Stop Center (OSC). To achieve the above aims and objectives, a rehabilitation program is needed which includes medical, psychiatric,

¹⁹Andri Winjaya Laksana, 2015, Review of Criminal Law Against Drug Abusers *Narcotics With Rehabilitation System*. Journal of Legal Reform, Volume II No. 1 January - April 2015

²⁰Sri Endah Wahyuningsih, 2014, The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of Belief in the Almighty God, *Journal of Legal Reform*, I(1). p. 17

²¹Anis Mashdurohatun, *Developing the Social Function of Indonesian Copyright*, UNS Press, Surakarta, 2016, p. 1.

psychosocial, and psychoreligious rehabilitation according to the definition of health from WHO (1984), and the American association/APA (1992).²²

Law Number 35 of 2009 concerning narcotics has guaranteed medical rehabilitation and social rehabilitation efforts for addicts and victims of drug abuse. This medical and social rehabilitation is intended for drug addicts and victims of drug abuse, not for dealers. The government's efforts are stated in Article 54 of Law Number 35 of 2009 concerning Narcotics, which states that drug addicts and victims of drug abuse must undergo medical and social rehabilitation. Article 55 of Law Number 35 of 2009 concerning Narcotics states that requests for rehabilitation are reported or requested by the addict or family to a medical and social rehabilitation institution. Meanwhile, for underage drug addicts, the request for rehabilitation is usually reported by their guardian. This means that the decision to rehabilitate is the initiative of the accused or the accused's family.

In addition, according to Guideline Number 18 of 2021, there are at least six requirements that must be met to undergo rehabilitation through the legal process for drug abusers, namely: First, the suspect is declared positive for using narcotics based on the results of a forensic laboratory examination. Second, the suspect is not involved in a drug trafficking network and is the last user. This is based on the results of an investigation using the know your suspect method. The third requirement is that the suspect is arrested or caught red-handed without evidence of narcotics or with evidence of narcotics that does not exceed the amount of use for one day. The next requirement is that the suspect is qualified as a drug addict, a victim of drug abuse, or a drug abuser based on the results of an integrated assessment. Fifth, the suspect has never undergone rehabilitation or has undergone rehabilitation no more than twice, which is supported by a certificate issued by an authorized official or institution. Finally, there is a letter of guarantee that the suspect will undergo rehabilitation through the legal process from his family or guardian.²³

Then after the convict/convict's family submits a request for rehabilitation, the one who decides whether the convict can undergo rehabilitation or be imprisoned is the court judge. The judge's decision can also place someone who has a legal case in rehabilitation as a form of serving a sentence. Based on the criminal provisions in Article 127 of Law Number 35 of 2009, it can be understood that the punishment that can be imposed on drug abusers is imprisonment. However, in applying criminal sanctions in the form of imprisonment, the Law requires judges to pay attention to the provisions as referred to in Article 54, Article 55, and Article 103. If the judge's decision in

²²Dadang Hawari, 2006, Abuse and Addiction to NAZA (Narcotics, Alcohol, & Addictive Substances), Gaya Baru, Jakarta, p. 134.

²³Tri Subarkah, 2021, These are the 6 Requirements for Rehabilitation of Drug Abusers, Media Indonesia Article, accessed via <https://mediaindonesia.com/politik-dan-Hukum/445412/ini-6-besar-rehabilitasi-penyalah-guna-narkotika> on December 17, 2023.

court grants the request of the suspect or the suspect's family to be rehabilitated, then the suspect will undergo rehabilitation monitored as a sanction for the crime of drug abuse that he committed.

This medical rehabilitation program for drug addicts/suspects is in line with the mandatory reporting program for drug addicts. The mandatory reporting program, which officially started at the end of 2011, is expected to raise awareness among drug addicts and/or their families to report themselves, so that more drug addicts will receive treatment for their addictive behavior. With the increasing number of drug addicts and victims of drug abuse reporting themselves to health centers, mental hospitals and general hospitals designated as Mandatory Reporting Receiving Institutions (IPWL), it is expected that fewer drug addicts and victims of drug abuse will be imprisoned.

As stated in the attachment to the Regulation of the Minister of Health Number 80 of 2014, health facilities that provide medical rehabilitation for Addicts, Abusers, and Victims of Drug Abuse who are in the process of investigation, prosecution, and trial or have received a court ruling/decision will be determined by the Minister of Health based on the proposal of the regional government through the Head of the Provincial or Regency/City Health Service, the head of the TNI/POLRI or the head of other government agencies that have health service facilities. Health facilities that have received a referral from the court can submit a claim to the Ministry of Health in accordance with the services that have been provided. Health facilities that can provide medical rehabilitation services for Addicts, Abusers, and Victims of Drug Abuse who are in the process of investigation, prosecution, and trial or have received a court ruling/decision consist of General Hospitals owned by the Government or Regional Government, General Hospitals owned by the TNI/POLRI, Special Hospitals for Drug Dependence, Mental Hospitals, or medical rehabilitation institutions owned by the government or regional government.²⁴

Rehabilitation programs can be undertaken by addicts who use the mandatory reporting program (IPWL), addicts who are undergoing the trial process and addicts who are ordered based on court decisions. Provisions regarding the implementation of mandatory reporting are further regulated through Government Regulation of the Republic of Indonesia No. 25 of 2011 concerning the Implementation of Mandatory Reporting for Narcotics Addicts. Narcotics addicts are required to report themselves voluntarily to the Mandatory Reporting Receiving Institution hereinafter referred to as IPWL in order to receive treatment. IPWL is a community health center, hospital, health center, medical rehabilitation institution and social rehabilitation institution appointed by the government. For narcotics addicts who are undergoing the trial process, they can be placed in a medical rehabilitation and/or social rehabilitation institution which is the authority of investigators, public prosecutors, or judges

²⁴Attachment to the Regulation of the Minister of Health Number 80 of 2014.

according to the level of examination after receiving recommendations from the team of doctors.

The obligation to undergo medical rehabilitation and/or social rehabilitation also applies to drug addicts who are ordered based on a court decision if the drug addict is proven guilty of committing a drug crime; or a court ruling if the drug addict is not proven guilty of committing a drug crime. For addicts, both those caught red-handed and those through the IPWL program, before rehabilitation is carried out, they will first undergo an assessment carried out by an integrated assessment team. The Integrated Assessment Team is a team consisting of a Team of Doctors and a Legal Team appointed by the head of the local work unit based on a decree from the Head of the National Narcotics Agency, the National Narcotics Agency for the Province, the National Narcotics Agency for the Regency/City. The duties of the Assessment Team as regulated in Article 9 paragraph (2) of the Joint Regulation of the Chief Justice, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of BNN concerning Handling of Drug Addicts and Victims of Drug Abuse in Rehabilitation Institutions are medical and psychosocial assessments and analysis, as well as recommending a person's therapy and rehabilitation plan.

Furthermore, the authority of the assessment team is to determine the criteria for the severity of narcotics users according to the type of content consumed, the situation and conditions when arrested at the scene of the crime and recommend a therapy and rehabilitation plan for narcotics addicts and victims of narcotics abuse as stated in Article 9 paragraph (2) of the Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. In Article 9 paragraph (3), the implementation of the assessment and analysis is carried out by a legal team tasked with conducting analysis in relation to the illicit trafficking of narcotics and narcotic precursors and narcotics abuse in coordination with investigators handling the case, and a team of doctors tasked with conducting medical, psychosocial assessments and analysis and recommending a therapy and rehabilitation plan for narcotics abusers. There are two stages of drug rehabilitation that must be undergone. First, the medical rehabilitation stage (detoxification) is the process of addicts stopping drug abuse under the supervision of a doctor to reduce withdrawal symptoms. The second stage is the non-medical rehabilitation stage with various programs in rehabilitation centers, such as therapeutic communities (TC) programs, 12-step programs and others.

Medical rehabilitation is a process of integrated treatment activities to free addicts from drug dependence. Medical rehabilitation is carried out on drug abusers who have experienced a very high level of drug dependence, which is characterized by the urge to use drugs continuously with increasing doses to

produce the same effect if the use is stopped, it will cause psychological symptoms for the addict. This medical rehabilitation is an effort to eliminate an addict's dependence on drugs. The stages that must be undergone by a drug addict who will undergo medical rehabilitation are:

- a. Detoxification is the process of removing narcotics from the body of a drug user. The detoxification process for drug addicts is carried out in stages, the length and number of times the detoxification process depends on the amount of narcotics in the body of an addict.
- b. Community therapy is a therapy that involves forming groups and addiction counselor groups, where the addiction counselors appointed are former drug users who have been trained to guide addicts undergoing rehabilitation.

Social rehabilitation is a process of integrated recovery activities, both physical, mental and social, so that former drug addicts can return to carrying out social functions in community life. Social rehabilitation is carried out by rehabilitation institutions formed by the provincial national narcotics agency (BNNP) and some are established based on community support that wants to establish a rehabilitation institution. This community support rehabilitation institution is under the supervision of the provincial national narcotics agency, social services, and also the health service. In this rehabilitation center, addicts undergo various programs including the therapeutic communities (TC) program, 12 steps, religious approaches, and others.

The Indonesian National Police has the authority to maintain public order and security, enforce the law, and provide protection, shelter and service to the community. In order for the investigation to run effectively and efficiently, the investigator must first make an investigation plan that describes the target of the investigation, the right techniques and tactics to use, the equipment used, and the completeness of the administration. For investigation control, in carrying out the task, the investigator must obtain an investigation warrant issued by the investigator's superior, but if in certain circumstances or urgently the investigator can conduct an investigation, by requesting verbal approval from the investigator's superior or by immediately reporting after conducting the investigation. After conducting the investigation, the investigator pours the results obtained in the Investigation Result Report which will later be submitted to the investigator's superior.

The global policy for combating narcotics crime was initially outlined in the United Nation's Single Convention on Narcotic Drugs 1961. This convention was basically intended to:

1. Creating an international convention that can be accepted by countries in the world and can replace the regulations regarding international supervision of drug abuse which are separate in 8 forms of international agreements.
2. Perfecting the methods of monitoring the circulation of narcotics and limiting their use specifically for medical purposes and the development of science;

and

3. Ensure international cooperation in monitoring the circulation of narcotics to achieve the above objectives.

Indonesia is one of the countries that signed the convention, and then ratified it through Law No. 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending It. The legal instrument that was then created by the government to combat narcotics crimes in the country was Law No. 9 of 1976 concerning Narcotics. Law No. 9 of 1976 replaced the law on narcotics inherited from the Dutch colonial government, namely the *Verdoovende Middelen Ordonantie 1927* (Stbl. 1927 No. 278 yo No. 536) which regulates the distribution, trade, and use of narcotics.

In the 17th special session in February 1990, the United Nations (UN) declared 1991-2000 as The United Nations Decade Against Drug Abuse by establishing The United Nations Drug Control Programme (UNDCP). This agency is specifically tasked with coordinating all international activities in the field of narcotics trafficking supervision in UN member countries. In order to combat transnational narcotics crimes, the UN held the VIII Congress on Prevention of Crime and the Treatment of Offenders on 27 August-7 September 1990 in Hawaii, Cuba. The thirteenth resolution of this congress stated that to combat narcotics crimes, among others, the following measures are taken:

- a. increasing family and community awareness of the dangers of narcotics through outreach activities involving schools and educational institutions in preventing the dangers of narcotics;
- b. a program for the development of perpetrators of narcotics crimes by distinguishing between perpetrators who use/abuse narcotics (drug users) and perpetrators who are not users (drug dealers) through medical, psychological, psychiatric, and legal approaches in the context of prevention.

Judging from the current condition of the Correctional Institution, it is not supportive, because the negative impact of being influenced by other criminal behavior can further worsen the mental condition and health of drug convicts will become more severe.²⁵ The Supreme Court Circular (SEMA) is a form of circular from the Supreme Court in the form of an appeal from the Supreme Court to all levels of the judiciary, the contents of which are technical instructions in the administration of justice that are more administrative in nature. In Law Number 35 of 2009 concerning Narcotics, several provisions are regulated, which discuss the etymology and terminology around the meaning and terms regulated in the narcotics law. Provisions on the Basis, Principles, and Objectives of narcotics regulation, which are based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This law is organized based on justice, protection, humanity, order, protection, security, scientific values and legal

²⁵See point 2 of SEMA No. 07 of 2009

certainty.

The policy of combating drug abuse at the regional level of Southeast Asia was agreed upon in the ASEAN Drugs Experts Meeting on the Prevention and Control of Drug Abuse held on 23-26 October 1972 in Manila. The follow-up to the meeting above was the ASEAN Declaration of Principles to Combat the Abuse of Narcotic Drugs, which was signed by the Foreign Ministers of ASEAN member countries in 1976. The contents of this ASEAN regional declaration include joint activities to improve:

1. Similarities in perspective, approach and strategies for combating drug crimes.
2. Uniformity of legislation in the field of narcotics
3. Establish a coordinating body at the national level; and
4. Cooperation between ASEAN countries bilaterally, regionally and internationally.

In this context, the ASEAN Senior Officials on Drugs and a Police Cooperation Forum between ASEAN countries (ASEANAPOL) were formed, which among other things are tasked with handling transnational narcotics crimes in the ASEAN region. In addition, at the ASEAN country level, a Narcotic Board was also formed by forming working groups for law enforcement, rehabilitation and guidance, preventive education and information, and working groups in the field of research. In 1992, the Singapore Declaration was initiated at the ASEAN Summit IV, which reaffirmed the increase in ASEAN cooperation in law enforcement against narcotics crimes and illegal narcotics trafficking at the national, regional, and international levels.

Provisions regarding rehabilitation for drug addicts are regulated in Law Number 22 of 1997, Circular Letter of the Supreme Court Number 07 of 2009 and Law Number 35 of 2009 and the most recent is the issuance of Circular Letter of the Supreme Court Number 04 of 2010 which is a revision of Circular Letter of the Supreme Court Number 07 of 2009. Before the issuance of Law Number 35 of 2009, provisions regarding rehabilitation for drug addicts were regulated in Articles 45 and 47 of Law Number 22 of 1997:

Article 45

“Drug addicts are required to undergo treatment and/or care”

Article 47

(1) Judges who examine cases of drug addicts can:

- a. Decide to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime; or
- b. Determine to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is not proven guilty of

committing a Narcotics crime.

In Law Number 35 of 2009 concerning Narcotics, several provisions are regulated, which discuss the etymology and terminology around the meaning and terms regulated in the narcotics law. Provisions on the Basis, Principles, and Objectives of narcotics regulation, which are based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This law is organized based on justice, protection, humanity, order, protection, security, scientific values and legal certainty. While the objectives of this narcotics law are:

- a. ensure the availability of narcotics for the benefit of health services, and/or the development of science and technology;
- b. prevent, protect and save the Indonesian nation from drug abuse;
- c. eradicate the illicit trafficking of narcotics and narcotic precursors, and ensure the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts.

In Law No. 35 of 2009 concerning Narcotics has explicitly regulated provisions regarding the imposition of rehabilitation. The imposition of rehabilitation is an obligation that must be given not only to those who are addicted to narcotics but also to those who are victims of narcotics abuse. The provisions regarding the imposition of rehabilitation are regulated in CHAPTER IX concerning treatment and rehabilitation, part two. With the specialization of this chapter regulating rehabilitation, we can see that the government has emphasized the imposition of rehabilitation on those who are addicted to and victims of narcotics abuse. The provisions that require the imposition of rehabilitation are contained in Article 54 which states "Drug addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation".

In addition to medical rehabilitation, there is also religious rehabilitation. The religious approach used in the coaching method in the rehabilitation of former drug users includes: spiritual and physical. The spiritual coaching is, bathing in repentance, prayer, dhikr, fasting, manaqiban and khataman. While the physical coaching method is sports, gymnastics and cupping. The results of the coaching method through the religious approach are repentance, migration, returning to the right path, and wanting to continue life in the right way according to the recommendations of Islam. Religious rehabilitation has a very influential psychological effect. A person who has been proven to have committed a crime of drug abuse must be rehabilitated in order to recover from drug addiction, but in practice, perpetrators of drug crimes are not rehabilitated but sentenced to prison.²⁶

²⁶Andri Winjaya Laksana, Journal: "Review of Criminal Law Against Narcotics Abusers with Rehabilitation System", Volume II No. 1 January - April 2015, p. 38

3.2. Weaknesses in the Implementation of Rehabilitation Sanctions for Current Drug Abusers

In the perspective of the narcotics law, rehabilitation is a treatment and/or care. The implementation of rehabilitation in the perspective of Article 103 of the Narcotics Law is given by the Judge who examines and decides the case of narcotics abuse where the Judge can:

- a. Decide to order the person concerned to undergo treatment and/or care through rehabilitation, if the Narcotics Addict is proven guilty of committing a Narcotics crime; or
- b. To determine to order the person concerned to undergo treatment and/or care through rehabilitation, if the Narcotics Addict is not proven guilty of committing a Narcotics crime.

Through Article 54, the Narcotics Law aims to ensure that drug addicts are required to undergo rehabilitation. However, this provision is seemingly invalidated by Article 103, which states that an addict's entry into rehabilitation through a court verdict depends on the judge's discretion (not necessarily mandatory). If the Narcotics Law were to consistently state that an addict is required to undergo rehabilitation, of course when an addict is convicted of a drug crime, the judge concerned is no longer merely "able" to place the addict in rehabilitation. Indeed, if the provision for placing an addict in rehabilitation by a judge is made immediately mandatory (not just "can" but mandatory or must), this provision can be considered a form of intervention against the judge's independence.

A drug addict who wants to consume drugs will almost certainly buy or be involved in a drug transaction. When he has bought drugs or even if the drugs are obtained without buying them, he will definitely then have or control the drugs. The same is true for victims of drug abuse. When drugs enter his body when he is tricked, deceived or forced, the drugs will definitely be in the control of the victim of drug abuse. When an addict is caught buying or controlling drugs, or a victim of drug abuse is caught controlling drugs, it is almost certain that they will be charged with the article on buying or controlling drugs. The article on buying, possessing drugs, or other drug crimes, all of which are threatened with imprisonment. The existence of these articles is also not related to Article 103 which actually opens up a gap for an addict to obtain rehabilitation (even through the judge's discretion). This means that a drug addict or victim of drug abuse who is charged with, for example, Article 111 (control or possession of narcotics) or Article 114 (buying and selling narcotics), does not receive a strong legal guarantee that he will receive rehabilitation. This is because both articles (and articles other than Article 127) are not connected to Article 103 of the Narcotics Law.

It is true that even if a drug addict is charged with an article other than Article

127, for example, Article 111 of the Narcotics Law, Article 103 still opens the door for the addict in question to receive rehabilitation through the judge's discretion. This is because, with Article 103, the judge is mandated by the Narcotics Law to be able to decide that the addict undergo rehabilitation (regardless of the narcotics crime charged to the addict). However, this provision depends on the judge's discretion and is not mandatory. This goes back to the issue mentioned above regarding the inconsistency of the position of the Narcotics Law where Article 103 which only opens the option of can/cannot (not an obligation) is not compatible with Article 54 which requires addicts to undergo rehabilitation.

Article 103 of the Narcotics Law gives judges the authority to place drug addicts or users who are proven guilty of committing a crime in a medical and social rehabilitation institution through a verdict. In addition, judges can also determine that drug addicts or users who are not proven guilty of committing a crime are placed in a medical and/or social rehabilitation institution through a ruling. If the judge issues a rehabilitation verdict, the cost of treatment is borne by the state. Unlike Article 127 paragraph (2) of the Narcotics Law which explicitly states that in deciding a narcotics case under Article 127, judges must pay attention to the provisions of Article 103 of the Narcotics Law. The problem of disproportionate criminal punishment is not only about addicts who should have entered rehabilitation but were instead placed in prison. More broadly, the disproportionate punishment in the Narcotics Law also includes issues of poverty, drug couriers, and the imposition of minimum sentences.

Then there is an inconsistency in the application of the rules by the judge using the phrase "determine", even though it is known that the phrase is in Article 103 paragraph (1) letter (b) which is used if the drug addict is not proven guilty of committing a crime. The absence of legal norms that regulate the position of sanctions in the Narcotics Law will force law enforcers to apply both sanctions at once, namely criminal sanctions and sanctions that are not in accordance with the needs of individuals who are categorized as abusers for themselves.

The imposition of rehabilitation sanctions as an alternative sanction can be viewed from 2 (two) main aspects of the purpose of punishment, namely from the aspect of community protection and the aspect of perpetrator improvement. What is meant by the aspect of community protection includes the purpose of preventing, reducing or controlling criminal acts and restoring the balance of society, including resolving conflicts, bringing a sense of security, repairing losses or damage, eliminating stains, reinforcing the values that live in society), while what is meant by the aspect of perpetrator improvement includes various purposes, including rehabilitating and re-socializing the perpetrator and protecting him from arbitrary treatment outside the law, in this case for drug abusers, medical and social rehabilitation is carried out.

In terms of law enforcement, Indonesia still views drug use as a criminal act or

legal issue, not as a health issue. Including children of addicts and/or victims of drug abuse who have to face legal issues while their health issues are neglected. The law as a positive norm in drug crimes is contained in Law Number 35 of 2009 concerning Narcotics. Other regulations related to the law are the Circular of the Supreme Court Number 04 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions, as a guideline for judges in the application of rehabilitation sentences that can only be imposed on the classification of criminal acts when caught red-handed, evidence of use of 1 (one) day is found, in this case a maximum of one gram. In addition, there is also the Supreme Court Circular Letter Number 1 of 2017 concerning the Implementation of the Formulation of the Results of the 2017 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Courts, which includes, in the event that the defendant is not caught red-handed using narcotics and narcotics evidence is found on the defendant in a relatively small amount/weight and the results of the defendant's urine test are positive for methamphetamine, the Public Prosecutor will charge Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, then the defendant's actions are categorized as a Narcotics Abuser for himself as in Article 127 Paragraph (1) letter a with a prison sentence.

In law enforcement practice, a person who fulfills the narcotics abuse as stated in Article 127 of Law No. 35 of 2009 is considered to have entered the element of possessing or controlling narcotics in Article 111 and Article 112. The formulation of the norm in Article 127 explicitly regulates that users who are proven to be victims of narcotics abuse must undergo medical and social rehabilitation. "The practice of implementing the two articles has a very different disparity, so that legal uncertainty ultimately leads to injustice.

The application of the wrong articles and the confusion in the articles that should be imposed on dealers, dealers or couriers, not imposed on addicts, so that the rights of addicts in Article 127 which states that addicts are rehabilitated are not obtained by the addicts. A similar thing was also expressed by²⁷, where drug addicts will receive rehabilitation as regulated in article 54 which states "drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation. This is also reinforced by law enforcement against narcotics crimes according to the Narcotics Law, which are subject to criminal sanctions in the form of imprisonment, fines, life imprisonment and other sanctions.

The implication is that the punishment imposed on victims of drug abuse is not quite right between rehabilitation and imprisonment. The perpetrators who

²⁷. Laksana, AW Review of Criminal Law Against Narcotics Abusers With Rehabilitation System. *Journal of Legal Reform*, 2(1), 2015, pp. 74–85. Retrieved from <http://dx.doi.org/10.26532/jph.v2i1.1417>

should be rehabilitated are imprisoned, this is one of the causes of a perpetrator committing repeated crimes. In addition, this also results in increased legal efforts in drug cases which also have an impact on the dominance of the number of drug prisoners in Correctional Institutions. With the large number of drug prisoners and the longer the drug prisoners interact, the prisoners can influence each other which results in an increase in the quality of the perpetrators, who were originally only users can move up to become dealers and this can become a new criminogen in the eradication of drug crimes.

Many narcotics cases are decided by judges with the imposition of criminal sanctions of imprisonment or confinement. While in the current law, namely Law No. 35 of 2009 concerning Narcotics, it is emphasized that rehabilitation for narcotics abusers (or addicts) is contained in Article 54. Based on this article, rehabilitation can be organized by government agencies or the community as regulated in ministerial regulations. In making decisions, the person giving the sanctions is also guided by Article 127 paragraph (2) which is also related to Article 54, namely "Drug addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation". The reason why rehabilitation is still needed is intended so that abusers who are categorized as addicts are free from their dependence. Not released or free from punishment like prison. Instead of being rehabilitated in correctional institutions, abusers get worse, the result is that the judge's decision does not bring benefits to the abuser and then the person returns to society will not be better.

In the previous law, the regulation regarding rehabilitation was not yet emphasized, so that there were still many abusers who were only addicts who were sentenced by the judge to prison. This means that it was wrong in its implementation. Recovery of an abuser from their addiction can take a very long time. It is possible to involve a series of various rehabilitations. In this long time, the possibility of addicts returning as drug addicts is very large. To overcome this, continuous monitoring needs to be provided. Including in terms of rehabilitating drug abusers (former addicts) so that they are able to provide assistance to themselves during the rehabilitation process.

4. Conclusion

The implementation of rehabilitation sanctions for drug addicts currently states that the provisions in Article 4 (d) of the Narcotics Law state that "ensuring the existence of Medical and Social Rehabilitation efforts", but according to Article 54 of the Narcotics Law it states that "undergoing Medical Rehabilitation and Social Rehabilitation is mandatory". Previously, drug abusers received a guarantee of Rehabilitation, but when in Article 127 of the Narcotics Law it turns out that drug abusers can be punished and lose their right to Rehabilitation, unless it can be proven or proven that they are victims of Narcotics. The weakness of the implementation of rehabilitation sanctions for drug abusers currently is in Article 127 paragraph (1) of the Narcotics Law, this Article is what

makes drug user victims can be imprisoned. The problem of disproportionate criminal penalties is not only about addicts who should have entered rehabilitation but were instead placed in prison. Indonesia still views drug use as a criminal act or legal problem, not as a health problem. Public prosecutors often charge addicts who are categorized as personal drug abusers under Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics as referred to in Article 127 Paragraph (1) letter a with a prison sentence.

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