

## Formulation of Criminal Sanctions for Drug Abuse Perpetrators Based on Justice Values

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**Abstract.** *The application of criminal sanctions has so far focused on imprisonment, not reflecting substantive justice. This study uses a normative juridical method to analyze the application of sanctions to drug abusers, the obstacles encountered, and the formulation of just sanctions. The results show that drug abusers are often treated as criminals, rather than victims of addiction. The main obstacles include the unclear distinction between users and dealers, limited rehabilitation facilities, and the weak understanding of Article 127 of Law Number 35 of 2009 concerning Narcotics by officials. Sanction formulations that emphasize rehabilitation, perpetrator differentiation, and the application of Pancasila values are needed so that criminalization not only provides a deterrent effect but also restores perpetrators to become productive members of society.*

**Keywords:** *Criminal; Formulation; Law; Sanctions.*

### 1. Introduction

The Republic of Indonesia is a state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that.<sup>1</sup>Indonesia is a state based on the rule of law. This principle affirms that all actions of citizens, government officials, and all elements of society must be based on applicable legal norms. Within this framework, the law functions not only as a tool of social control but also as a means to create justice, order, and social welfare. Violations of legal norms not only harm the individual victims but also threaten public order and the values of justice that exist within society.

One form of legal violation that continues to receive serious attention is the crime of drug abuse. This crime not only impacts the physical and psychological health of individuals, but also the social and economic stability of the nation. Drug abuse has had far-reaching social consequences, including increased crime rates, moral degradation, and decreased social productivity. Therefore, Law Number 35 of

<sup>1</sup>The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3).

2009 concerning Narcotics explicitly stipulates prohibitions and criminal sanctions for perpetrators of drug abuse, both as distributors and unauthorized users.<sup>2</sup>

However, law enforcement against drug abuse in Indonesia often presents both normative and practical dilemmas. On the one hand, drug abusers are viewed as criminals who must be punished according to the law. On the other hand, they can also be viewed as victims of addiction who require rehabilitative, not repressive, treatment.<sup>3</sup>This dilemma has given rise to debate about the extent to which the national criminal justice system is capable of providing substantive justice that is not only oriented towards punishment, but also towards restoration and humanity.

Internationally, many countries have shifted the paradigm of drug abuse punishment from a penal to a non-penal approach. Eastwood, Fox, and Rosmarin (2016) show that drug abuse decriminalization policies have been implemented in several countries, such as Portugal, Switzerland, and Uruguay, with the aim of reducing the burden on the criminal justice system and expanding access to rehabilitation and public health services.<sup>4</sup>This approach has been proven to reduce incarceration rates and increase recovery rates for drug users.

Meanwhile, the Indonesian criminal justice system still tends to be oriented toward a penal approach, which positions drug users as perpetrators. Suharsil (2020) emphasized that this approach fails to address the root causes of drug abuse and even has the potential to worsen social conditions, such as increasing prison overcrowding. Therefore, a more humane and equitable reformulation of penal policies is needed, taking into account the dimensions of legal benefit and human rights protection.

Wibowo (2021) argues that rehabilitation should be seen as an effective punishment instrument because it can save drug abusers from dependence and reduce the possibility of recidivism.<sup>5</sup>This approach not only fulfills a public health function but also reflects the spirit of corrective justice, which is oriented toward social improvement and recovery. Furthermore, Putra (2022) emphasized that any formulation of criminal sanctions for drug abusers must align with the values of Pancasila justice, namely a balance between legal certainty, expediency, and social justice.<sup>6</sup>Thus, the justice expected is not merely formal legal, but also moral and

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<sup>2</sup>Law Number 35 of 2009 concerning Narcotics.

<sup>3</sup>See also: Suharsil, A Restorative Approach to the Punishment of Drug Abusers, *Journal of Law and Development*, Vol. 50 No. 3, 2020.

<sup>4</sup>Eastwood, N., Fox, E., & Rosmarin, A., *A Quiet Revolution: Drug Decriminalization Policies in Practice Across the Globe*, Release, 2016.

<sup>5</sup>Wibowo, A., "Rehabilitation as an Alternative to Punishment in the Criminal Justice System," *Journal of Reformed Law Studies*, Vol. 8 No. 1, 2021.

<sup>6</sup>Putra, IGN, "Punishment Based on Pancasila Justice Values," *Indonesian Journal of Legal Philosophy*, Vol. 4 No. 2, 2022.

substantial.

In the context of criminal law theory, Barda Nawawi Arief's view emphasizes that narcotics crimes are a form of extraordinary crime or extraordinary crime that is transnational and organized, so that it requires a comprehensive countermeasure strategy through penal and non-penal policies.<sup>7</sup> This means that overcoming drug abuse cannot rely solely on criminalization, but must involve social, economic and health approaches.

Meanwhile, according to Muladi, criminal law is essentially the ultimum remedium, namely a last resort that must be used proportionally and not excessively.<sup>8</sup> Thus, the use of criminal sanctions against drug abusers must consider the benefits for both the perpetrator and society, while avoiding the negative impacts of excessive criminalization. This principle also aligns with John Rawls's theory of justice, which emphasizes the concept of justice as fairness, where the law must be applied in a balanced and non-discriminatory manner to achieve substantive justice for all citizens.<sup>9</sup>

Furthermore, Jeremy Bentham, through his utilitarian theory, emphasized that the aim of punishment is to achieve the greatest happiness for the greatest number, namely the greatest possible welfare for society.<sup>10</sup> In the context of drug abuse, punishment must be directed not only at punishing the perpetrator, but also at preventing the emergence of wider social harm, while providing an opportunity for the perpetrator to be rehabilitated so that they can return to their role in society.

Satjipto Rahardjo's progressive legal perspective provides a crucial foundation for criminal law reform in Indonesia. He argues that law should not focus solely on the text of the law (law on the books) but should also address substantive justice within society (law in action).<sup>11</sup> Therefore, judges in deciding cases of drug abuse are expected to use discretion to interpret legal regulations in a more humane manner, so that sentencing can be directed towards rehabilitation, not just imprisonment.

In reality, judicial practice in Indonesia still demonstrates inconsistency in the application of criminal sanctions to drug abusers. In some cases, defendants are sentenced to prison, while in others, they receive rehabilitation.<sup>12</sup> This condition creates inequality in law enforcement and indicates the need for the formulation

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<sup>7</sup>Barda Nawawi Arief, *Legislative Policy in Crime Prevention*, Jakarta: Kencana, 2013.

<sup>8</sup>Muladi, *Selected Chapters on the Criminal Justice System*, Bandung: Alumni, 1995.

<sup>9</sup>John Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, 1971.

<sup>10</sup>Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Oxford: Clarendon Press, 1789.

<sup>11</sup>Satjipto Rahardjo, *Progressive Law: Law that Liberates*, Jakarta: Kompas, 2009.

<sup>12</sup>Supreme Court Decision Analysis Data 2021–2023, Directorate General of General Courts.

of a more uniform criminal policy, based on the values of justice, and oriented towards protecting the interests of society.

Taking into account these various theoretical perspectives and empirical conditions, research on the formulation of criminal sanctions for drug abusers based on the values of justice is highly relevant. This research is expected to contribute to the development of a national criminal justice system that not only upholds the supremacy of law but also prioritizes the values of humanity, utility, and social justice, as mandated in the Preamble to the 1945 Constitution.

## **2. Research Methods**

A research method is a systematic way to achieve research objectives by utilizing various scientific analysis tools. In the context of legal research, methods play a crucial role in determining the accuracy of the research direction and the validity of the study results. This research employs a normative or doctrinal juridical approach, an approach that emphasizes the study of positive legal norms, legal principles, and doctrines developing within legal science. According to Zainuddin Ali, the normative juridical approach examines law as a prescriptive, ideal and conceptual value system, thus providing an explanation of how law should (*das sollen*) apply in society. Through this approach, the research focuses on analyzing laws and regulations governing drug abuse and reconstructing criminal law policies related to law enforcement against drug abusers based on legal certainty in the future.

The type of research used is descriptive, that is, explanatory research that aims to provide a comprehensive overview of the prevailing legal situation, legal phenomena, and specific legal practices. Using the descriptive method, this research seeks to systematically describe and explain the legal provisions relating to the crime of drug abuse, both from a normative perspective and their application in judicial practice.

The data sources used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and official documents that have direct binding force, such as the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 35 of 2009 concerning Narcotics, and Karawang District Court Decision Number 288/Pid.Sus/2024/PN Kwg. Secondary legal materials include various legal literature such as books, scientific journals, and research results that provide explanations or interpretations of primary legal materials. Tertiary legal materials include legal dictionaries, legal encyclopedias, and legislative directories that function as support in finding and understanding primary and secondary legal materials in more depth.

Data collection in this study was conducted through two main methods: literature review and document review. Literature review was conducted by reviewing

various scientific sources, such as books, legal journals, and laws and regulations relevant to the research topic. Meanwhile, document review was conducted by collecting and analyzing case documents, including indictments, prosecutors' demands, and judges' decisions related to drug abuse. Both methods were used to obtain accurate and relevant data as a basis for legal analysis.

The collected data was then analyzed using a qualitative legal analysis method. This analysis was conducted by describing, interpreting, and connecting data from various legal materials to then compile argumentative conclusions. The results of the analysis were not presented numerically, but rather in a logical and systematic descriptive description. This study also used a case approach, namely by examining court decisions related to narcotics crimes to see the application of the law in judicial practice. Furthermore, a statute approach was used to examine the alignment between the judge's decision and the provisions contained in Law Number 35 of 2009 concerning Narcotics, the Criminal Code (KUHP), and other related legal regulations.

As a complement, this research also applies a conceptual approach based on legal theories, including the theory of legal certainty, the theory of justice, and the theory of legal effectiveness. This approach is intended so that the analysis is not only descriptive of the applicable regulations, but also able to provide a new legal thinking construction in the form of ideas for reconstructing criminal law policies for drug abusers in the future. Thus, this research method is oriented not only to discovering the applicable regulations (law on the books), but also examines their application in judicial practice (law in action) and their relevance to national legal objectives.

Overall, this research method is aimed at identifying the relationship between written legal norms, judicial decisions as concrete practices, and relevant legal doctrines and theories. The results of the analysis are expected to yield conclusions that not only answer the research questions but also provide recommendations for reforming criminal law policies in handling drug abuse in a just and humanitarian manner.

### **3. Results and Discussion**

#### **3.1. Analysis of the Implementation of Criminal Sanctions Against Narcotics Abusers**

The application of criminal sanctions for the crime of aggravated theft in Decision Number 288/Pid.Sus/2024/PN Kwg shows that the judge considered both the formal and material aspects of criminal law. The judge assessed that the defendant's actions had fulfilled the elements in Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and therefore could be held criminally accountable. This is in line with the principle that every unlawful act that fulfills

the elements of a criminal act must be given a proportional sanction.<sup>13</sup>

In handing down the verdict, the panel of judges also considered mitigating and aggravating factors. The aggravating factor was that the defendant's actions contradicted government efforts to eradicate narcotics, while the mitigating factors were that the defendant was polite, regretful, and had no prior convictions. These considerations demonstrate the judge's attempt to balance legal certainty, expediency, and justice in the sentencing process.<sup>14</sup>

Overall, the application of criminal sanctions in this case reflects the goal of criminal law, namely to provide a deterrent effect and protect society from similar crimes in the future. This decision can serve as an academic reference in observing the consistency of the application of Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, while also strengthening the understanding that criminal punishment is not only repressive but also has educational and preventive value.<sup>15</sup>

Based on the results of the analysis of Decision Number 288/Pid.Sus/2024/PN Kwg, it can be seen that the defendant X alias Botak bin Y was legally and convincingly proven to have committed the crime of possessing and controlling class I narcotics in the form of plants (marijuana) as regulated in Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. In this case, the panel of judges considered that the primary charge of the Public Prosecutor based on Article 114 paragraph (1) was not proven, because the element of "offering for sale, selling, or acting as an intermediary in the sale and purchase of narcotics" was not fulfilled. Based on the trial facts, the defendant was proven to have bought and stored marijuana only for his own consumption, not for distribution or sale.<sup>16</sup>

The evidence in the form of marijuana weighing 8.28 grams net, the results of the BNN laboratory test which showed the content of Tetrahydrocannabinol (THC), and the defendant's confession were the main basis of evidence in this case.<sup>17</sup> By fulfilling the elements of "possessing, storing or controlling narcotics without the right", the judge declared the defendant guilty of committing a crime as regulated in Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

In handing down the verdict, the judge considered both aggravating and mitigating circumstances. Aggravating circumstances included that the defendant's actions did not support government efforts to eradicate drug abuse, which has the potential to harm the younger generation and public order. Mitigating

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<sup>13</sup>Muladi & Arief, BN "Criminal Theories and Policies."

<sup>14</sup>Rahardjo, S. "Progressive Law: A Synthesis of Indonesian Law."

<sup>15</sup>Marpaung, L. "Principles and Foundations of Criminal Law."

<sup>16</sup>Karawang District Court Decision Number 288/Pid.Sus/2024/PN Kwg.

<sup>17</sup>National Narcotics Agency (BNN) Laboratory Test Results, 2024.

circumstances included that the defendant was polite, regretted his actions, had no previous convictions, and possessed a relatively small amount of narcotics for personal use.<sup>18</sup>

Thus, the application of criminal sanctions in this case reflects the alignment of legal norms with the facts of the trial. The judge used a normative legal approach, systematically and proportionally assessing the fulfillment of each element of the crime. When the elements in the primary charge were not proven, the judge turned to subsidiary charges that were more appropriate to the actual circumstances.<sup>19</sup> This approach shows that the court seeks to uphold the principles of legal certainty and substantive justice, where sanctions are imposed not only as a form of retribution, but also to provide a deterrent effect and an opportunity for rehabilitation for the perpetrator.<sup>20</sup>

Therefore, it can be concluded that the application of criminal sanctions to drug abusers in this case took into account the principles of proportionality, legal certainty, and legal expediency. The panel of judges rendered the verdict objectively based on the evidence, the defendant's testimony, and relevant legal theory, resulting in a balance of justice between repressive and rehabilitative aspects.<sup>21</sup>

### **3.2. Obstacles in the Implementation of Criminal Sanctions Against Drug Abusers**

The application of criminal sanctions to drug abusers in Indonesia, as reflected in Decision Number 288/Pid.Sus/2024/PN Kwg, still faces various obstacles, both normative and evidentiary, institutional, and social. These obstacles mean that the implementation of criminal law policies in Law Number 35 of 2009 concerning Narcotics does not fully reflect the law's primary objective, namely rehabilitation and recovery for drug abusers, rather than mere punishment.

Normatively, the main obstacle lies in the dualism of norms in Law Number 35 of 2009 concerning Narcotics. On the one hand, this law emphasizes a repressive approach by positioning drug abusers as perpetrators of criminal acts who must be punished under the provisions of Articles 111 to 127. However, on the other hand, Article 54 of the same law stipulates that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation.<sup>22</sup> This disharmony creates legal uncertainty, as there are no clear provisions distinguishing between drug users who deserve rehabilitation and those who should be sentenced to prison. Consequently, in judicial practice, such as in Decision Number 288/Pid.Sus/2024/PN Kwg, judges tend to impose prison sentences even though

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<sup>18</sup>Considerations of the Panel of Judges in Decision Number 288/Pid.Sus/2024/PN Kwg.

<sup>19</sup>Zainuddin Ali, *Legal Research Methods*, Jakarta: Sinar Grafika, 2014, p. 105.

<sup>20</sup>Sudarto, *Law and Criminal Law*, Bandung: Alumni, 1986, p. 45.

<sup>21</sup>Satjipto Rahardjo, *Legal Studies*, Bandung: Citra Aditya Bakti, 2000, p. 119.

<sup>22</sup>Law Number 35 of 2009 concerning Narcotics, Article 54.



the trial evidence indicates that the defendant possessed only a small amount of narcotics for personal consumption.

This normative barrier is further exacerbated by the weak evidentiary mechanism in Article 103 of Law Number 35 of 2009 concerning Narcotics, which requires a recommendation from an Integrated Assessment Team (TAT) before imposing rehabilitation. In many cases, including this one, neither investigators nor prosecutors provided assessment documents, leaving judges without a legal basis for deciding on rehabilitation.<sup>23</sup> Thus, unsynchronized legal norms and weak technical implementation are factors that cause the dominance of repressive approaches compared to rehabilitative ones.

In addition to normative obstacles, another problem arose in the aspect of proving the purpose of narcotics possession. In this case, the defendant was proven to have only purchased and stored a small amount of marijuana for his own use, not for distribution. However, because Law Number 35 of 2009 concerning Narcotics does not clearly differentiate between possession for personal consumption and possession for illicit distribution, the judge still used Article 111 paragraph (1), which carries the same criminal penalties as for distributors.<sup>24</sup> This lack of boundaries often results in drug abusers being treated the same as dealers, leading to substantive injustice. In fact, legally, Article 127 of Law Number 35 of 2009 concerning Narcotics is more appropriate for individual drug abusers who are entitled to rehabilitation.<sup>25</sup>

Obstacles are also evident in the institutional and implementation aspects of rehabilitation. Although the law recognizes rehabilitation as an alternative sanction, in practice, public prosecutors and judges rarely impose such a sentence. In case No. 288/Pid.Sus/2024/PN Kwg, the prosecutor even demanded a nine-year prison sentence and a two billion rupiah fine, without considering the rehabilitation aspect, even though the defendant was a private user.<sup>26</sup> This is caused by the limited and inadequate distribution of rehabilitation facilities across all regions, as well as weak coordination between agencies such as the National Narcotics Agency (BNN), the Prosecutor's Office, the Courts, and the Social Services Agency.<sup>27</sup> As a result, the Integrated Assessment Team (TAT) mechanism is rarely activated, and rehabilitation becomes difficult to implement. This situation demonstrates that institutional barriers contribute to the tendency of the Indonesian criminal justice system to place a greater emphasis on punishment.

In addition to legal and institutional factors, social stigma is also a significant

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<sup>23</sup>Zainuddin Ali, *Legal Research Methods*, (Jakarta: Sinar Grafika, 2014), p. 105.

<sup>24</sup>Karawang District Court Decision Number 288/Pid.Sus/2024/PN Kwg.

<sup>25</sup>Barda Nawawi Arief, *Criminal Law Policy*, (Jakarta: Kencana, 2010), p. 87.

<sup>26</sup>Public Prosecutor's Charge File in Case Number 288/Pid.Sus/2024/PN Kwg.

<sup>27</sup>National Narcotics Agency (BNN), 2023 Annual Report on Narcotics Rehabilitation Management, p. 56.



obstacle. Society tends to view drug abusers as criminals deserving of harsh punishment, rather than as victims of addiction in need of help. This stigma also influences how law enforcement officials approach cases. In this case, despite the defendant's remorse and cooperative attitude, the panel of judges still sentenced him to prison without considering rehabilitation as a more humane option.<sup>28</sup> The restorative justice approach, which should be an alternative for resolving cases, has not been implemented optimally, either by the public prosecutor or the defendant's legal counsel, who are more focused on requests for reduced sentences rather than on requests for rehabilitation.<sup>29</sup>

Thus, it can be concluded that the obstacles in implementing criminal sanctions against drug abusers are multidimensional. Normative obstacles in the form of dual regulations and weak legal mechanisms, evidentiary obstacles that cannot distinguish between users and dealers, institutional obstacles due to limited rehabilitation facilities, and social obstacles in the form of public stigma, all contribute to the failure to implement the principles of justice, certainty, and legal benefits in the narcotics justice system in Indonesia. As long as these four factors are not comprehensively addressed, law enforcement against drug abusers will continue to be oriented towards punishment, rather than rehabilitation, which is the main spirit of Article 54 of Law Number 35 of 2009 concerning Narcotics.

### **3.3. Formulation of the Implementation of Criminal Sanctions Against Narcotics Abusers Based on Justice Values**

Decision Number 288/Pid.Sus/2024/PN Kwg is a concrete example of the problematic application of criminal sanctions to drug abusers in Indonesia. In this case, the defendant was found guilty of purchasing and storing small amounts of marijuana for personal consumption, not for distribution. This fact indicates that the defendant is a drug abuser, not a dealer, and therefore the legal approach should be one of rehabilitation through medical and social rehabilitation, not simply imprisonment. This perspective aligns with the view that drug abusers are victims of substance dependence, not pure criminals.<sup>30</sup>

Normatively, Article 54 of Law Number 35 of 2009 concerning Narcotics firmly states that addicts and victims of drug abuse are required to undergo medical and social rehabilitation, while Article 103 authorizes judges to place addicts in rehabilitation institutions, both during the trial stage and after sentencing. Thus, in positive law, abusers have the right to obtain recovery, and the state has an obligation to facilitate this. However, in practice, as in Decision No. 288/Pid.Sus/2024/PN Kwg, judges still impose prison sentences based on Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, on the grounds

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<sup>28</sup>Satjipto Rahardjo, *Progressive Law*, (Bandung: Kompas, 2005), p. 122.

<sup>29</sup>Romli Atmasasmita, *Criminal Justice System: Existentialism and Abolitionism Perspectives*, (Jakarta: Prenadamedia Group, 2011), p. 98.

<sup>30</sup>Barda Nawawi Arief, *Criminal Law Policy*, (Jakarta: Kencana, 2010), p. 87.

of formal legal certainty. This decision shows the continued dominance of the retributive justice paradigm, which emphasizes retribution for unlawful acts, and has not yet fully shifted to the corrective and restorative justice paradigm, which prioritizes individual and social recovery.

The duality of norms in Law Number 35 of 2009 concerning Narcotics creates a formulaic imbalance. On the one hand, Article 111 prohibits the possession or control of Class I narcotics and threatens perpetrators with a minimum sentence of four years in prison. However, on the other hand, Articles 54 and 103 actually open up opportunities for rehabilitation for users. This dualism often creates legal uncertainty, as investigators, prosecutors, and judges tend to choose repressive paths, considered legally safer, rather than implementing rehabilitation that requires medical proof of addiction status.<sup>31</sup>

In the context of normative formulation, ideally, the application of criminal sanctions to abusers should be directed at synchronizing repressive and rehabilitative provisions. Judges should not only be guided by the principle of legal certainty but also consider the principles of utility and social justice, in accordance with the values of corrective and restorative justice, which are oriented toward human recovery.<sup>32</sup>In case No. 288/Pid.Sus/2024/PN Kwg, the judge should have used the authority based on Article 103 to impose rehabilitation, because the defendant was proven to have used narcotics for personal gain, not for illicit trafficking.

Furthermore, from a practical formulation perspective, the application of criminal sanctions must prioritize rehabilitation as the primary instrument. Rehabilitation is more beneficial than imprisonment because it can reduce recidivism rates, restore the physical and mental health of drug users, and reintegrate them into productive communities. This approach also helps reduce overcrowding in correctional facilities, which is largely caused by drug inmates who use drugs.<sup>33</sup>

A practical, justice-based formulation can be implemented through several steps. First, optimize the Integrated Assessment Team (TAT) mechanism from the investigation stage, so that judges have a formal basis for imposing rehabilitation. Second, a clear distinction between drug abusers and dealers needs to be established in regulations and judicial practice, so that users are no longer treated the same as illicit traffickers. Third, the application of criminal sanctions must integrate the social justice values of Pancasila, namely the balance between legal certainty, utility, and justice.<sup>34</sup>Fourth, it is necessary to strengthen rehabilitation institutions, both in terms of facilities, human resources, and coordination

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<sup>31</sup>Zainuddin Ali, *Legal Research Methods*, (Jakarta: Sinar Grafika, 2014), p. 105.

<sup>32</sup>Satjipto Rahardjo, *Progressive Law: Law that Liberates*, (Jakarta: Kompas, 2005), p. 122.

<sup>33</sup>National Narcotics Agency (BNN), *2023 Annual Report on Narcotics Rehabilitation Management*, p. 56.

<sup>34</sup>Muladi, *Criminal Institutions and Punishment*, (Bandung: Alumni, 1995), p. 134.

between agencies such as the BNN, the Prosecutor's Office, the Courts, and the Social Services.

Meanwhile, in an ideal formulation, the application of criminal sanctions to drug abusers should be directed toward recovery and social reintegration. The government needs to revise Law No. 35 of 2009 concerning Narcotics, particularly by clarifying the boundaries between users and dealers, as well as clarifying the procedural mechanisms for rehabilitation, including the criteria for the quantity of narcotics for personal consumption and the authority of the Drug Trafficking Agency (TAT).<sup>35</sup> Furthermore, the role of the TAT must be strengthened as an objective and interdisciplinary assessment body. With an official recommendation from the TAT, judges have a strong legal basis for imposing rehabilitation, thereby achieving the principle of substantive justice.<sup>36</sup>

The ideal formulation also requires increasing the capacity of adequate and equitable rehabilitation institutions across Indonesia, so that judges have no difficulty implementing rehabilitation decisions. A multidimensional approach involving medical and social rehabilitation, as well as education through counseling and post-rehabilitation skills training, needs to be implemented. This way, drug abusers will not only recover from addiction but also be able to function again in society.<sup>37</sup>

Overall, the formulation of criminal sanctions for drug abusers based on the value of justice must balance three main aspects: retributive justice (legal certainty), corrective justice (individual recovery), and restorative justice (social recovery). An overly repressive approach to punishment only produces a false deterrent effect without addressing the root causes of addiction. Therefore, a paradigm shift in law enforcement is needed from a "punishment" orientation to a "recovery" orientation, so that the objectives of Law Number 35 of 2009 concerning Narcotics, particularly Article 54, can be realized and the values of substantive justice are truly reflected in the Indonesian criminal justice system.<sup>38</sup>

#### **4. Conclusion**

Based on the results of research and analysis on the application of criminal sanctions for perpetrators of narcotics abuse, especially in Decision Number 288/Pid.Sus/2024/PN Kwg, it can be concluded that the application of criminal law in this case has considered the aspects of legal certainty and justice. The judge

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<sup>35</sup>Romli Atmasasmita, *Criminal Justice System: Existentialism and Abolitionism Perspectives*, (Jakarta: Prenadamedia Group, 2011), p. 98.

<sup>36</sup>BNN and the Indonesian Ministry of Health, *Guidelines for Implementing the Integrated Assessment Team (TAT)*, 2022, p. 12.

<sup>37</sup>Dwi Handayani, "A Restorative Approach in Handling Drug Abusers," *Journal of Law and Development*, Vol. 51 No. 2 (2021), p. 243.

<sup>38</sup>Andi Hamzah, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2019), p. 214.

imposed a sentence based on Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, because it was proven that the defendant had narcotics for his own consumption and was not proven to be a dealer as referred to in Article 114 paragraph (1). These legal considerations show that the judge has objectively assessed the elements of the crime, evidence, and aggravating and mitigating conditions, so that the decision is considered proportional and in accordance with the principle of legal certainty. However, the implementation of criminal sanctions against drug abusers in practice still faces various normative, technical, and social obstacles. Normative obstacles arise from the dualism of norms in the Narcotics Law, which on the one hand emphasizes imprisonment, but on the other hand also mandates rehabilitation for both addicts and victims of drug abuse. Technical obstacles are evident in the difficulty of proving the difference between abusers and dealers, and the limited availability of rehabilitation facilities, which leads law enforcement officials to prefer imprisonment. Meanwhile, social obstacles arise from the stigma that still views drug abusers as criminals, rather than victims of addiction in need of recovery. Therefore, a reformulation of the application of criminal sanctions based on values of justice is needed, emphasizing rehabilitation as a form of legal protection for drug abusers, without neglecting the aspect of law enforcement against dealers. Future implementation of criminal sanctions must prioritize restorative, proportional, and humane principles, by strengthening the role of the Integrated Assessment Team (TAT), synchronizing laws and regulations, and improving rehabilitation facilities and infrastructure. With this approach, the criminal justice system in Indonesia is expected to realize substantive justice, protect human rights, and contribute to the effectiveness of efforts to eradicate drug abuse in a just and humane manner.

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- Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.
- Law Number 35 of 2009 concerning Narcotics.

**Etc:**

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Data Analisis Putusan Mahkamah Agung Tahun 2021–2023. Direktorat Jenderal Badan Peradilan Umum.

Pertimbangan Majelis Hakim dalam Putusan Nomor 288/Pid.Sus/2024/PN Kwg.

Putusan Pengadilan Negeri Karawang Nomor 288/Pid.Sus/2024/PN Kwg.