

## **Analysis of Sanctions for Rehabilitation Measures Against Narcotics Addicts Based on Justice Values**

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***Abstract.*** The mandatory nature of medical and social rehabilitation should serve as an essential basis for judges when deciding cases involving victims and narcotics abusers. The purpose of this research is to identify and analyze the regulatory framework governing rehabilitation measures for narcotics addicts in Indonesia, as well as to examine the ideal concept of law enforcement toward narcotics addicts based on the value of justice. This study employs an empirical legal research method, namely a juridical-empirical approach that uses legal principles to review, observe, and analyze legal issues while also examining the implementation of the law in practice. Rehabilitation regulations for addicts are actually provided under Law No. 35 of 2009 through Articles 54, 55, and 103, supported by assessment mechanisms and mandatory reporting; however, their implementation has been ineffective because judicial practice still prioritizes imprisonment. The double-track system, which allows rehabilitation as an alternative measure, is often overlooked due to the ambiguous interpretation of Articles 112 and 127 and the prevailing repressive approach of law enforcement officials. Addicts who should be treated as patients remain vulnerable to criminalization due to weak initial medical screening, poor inter-agency coordination, and inadequate rehabilitation facilities, especially within correctional institutions. Comparisons with the Netherlands and Portugal show that a public-health-based approach is more effective, where users are not criminalized but immediately directed to recovery services, while enforcement focuses strictly on traffickers. Indonesia's lag in adopting this paradigm is driven by a strong punitive culture and public misconceptions that imprisonment is the solution, preventing the realization of substantive justice for addicts.

***Keywords:*** Addicts; Narcotics; Rehabilitation.

## 1. Introduction

The Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia is also a democratic state that upholds the philosophy of the people, by the people, and for the people. Therefore, this country must guarantee that all its citizens receive equal treatment under the law and guarantee all the rights of Indonesian citizens to be given justice in the application of the law. The law has an important role in social life, not only in Indonesia but in all countries in the world have laws that they apply each, both written and those that arise based on the culture of everyday life. Not all violations of the law or criminal acts are reprehensible acts, for example, drug abuse.<sup>1</sup>

Drug abuse is extremely dangerous to human life and can even destroy the nation's future generations. Drug use by adolescents is considered a lifestyle that is a negative influence of globalization. Facts on the ground show that from year to year, the number of criminal cases handled in various regions of the Unitary State of the Republic of Indonesia, especially in large cities, has increased by 30% to 50%. This automatically has an impact on the increase in the number of prisoners in prisons who are drug convicts.<sup>2</sup>

Drugs (Narcotics, Psychotropics and other Addictive substances) are one of the special crimes whose problems are spreading nationally and internationally, because their abuse has a negative impact on the lives of society, the nation and the state. The forms of narcotics crimes that are commonly known include the following: First, Abuse exceeding the dose. Second, Distribution of Narcotics and Narcotics Buying and Selling. These three forms of narcotics crimes are one of the causes of various forms of criminal acts and violations, which directly cause demoralization towards society, the younger generation, and especially for the users of the substances themselves, such as: murder, theft, mugging, snatching, fraud and rape.

Narcotics abuse as stipulated in Article 1 number 15 of Law Number 35 of 2009 is: "A person who uses narcotics without rights or against the law." Narcotics abuse is a type of crime that has (potential) very broad and complex social impacts, especially when the perpetrators are children. The social impact of narcotics abuse by children is not only caused by the consequences that will give rise to suffering and destruction both physically and mentally that is very long,

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<sup>1</sup>Sri Endah Wahyuningsih, The Urgency of Reforming Indonesia's Material Criminal Law Based on the Values of Belief in the One Almighty God, Journal of Legal Reform, Volume I No.1 January-April 2014, pp. 19-23

<sup>2</sup>Raden Rara Rahayu Nur Raharsi, Supanto, Muhammad Rustamaji, The Existence of Criminal Sanctions in the Enforcement of Narcotics Crimes in Indonesia, Wawasan Juridika, Vol. 3 No. 2 September 2019, pp. 115-134

but also because of the complexity in overcoming it, especially when the choice falls on the use of criminal law as a means.<sup>3</sup>

Drug abuse is a pathological pattern of drug use that results in impairments in social functioning. Impaired social functioning can include failure to fulfill duties to family or friends due to inappropriate behavior and inappropriate expressions of aggressive feelings. It can also lead to legal consequences such as traffic accidents due to drunkenness or criminal acts to obtain money to buy drugs.<sup>4</sup>

In the imposition of criminal sanctions, perpetrators of narcotics crimes have different roles, positions, and sanctions, both based on the laws and regulations that regulate them, as well as based on the roles and impacts arising from their actions. It is also necessary to know that there is a classification of perpetrators of narcotics crimes that must be observed by law enforcers in the application of Law Number 35 of 2009. The classification of perpetrators of narcotics crimes can be seen from several aspects as in Law Number 35 of 2009 and other statutory provisions related to narcotics crimes. Criminal provisions for perpetrators of narcotics crimes in Law Number 35 of 2009 are regulated in Articles 111 to 147.

It is important to know the classification of perpetrators of narcotics crimes,<sup>5</sup> This demonstrates that each act and status of a drug offender carries different sanctions. This is inseparable from the potential impacts of the offender's actions. The state must not arbitrarily determine which acts constitute crimes and what sanctions should be imposed on offenders, and must adhere to the principle of equality before the law as a reflection of justice.

Regarding perpetrators of crimes, one of the problematic points in Law Number 35 of 2009 is the unclear definition and status of drug addicts, abusers, and victims of drug abuse. Due to this unclear definition and status, other regulations are biased and confusing. In practice, this has a direct impact on drug users, one of which is the provision of medical and social rehabilitation for drug abusers and addicts. The legal issues in Law Number 35 of 2009 will hamper law enforcement efforts in preventing and eradicating drug crimes. Therefore, these legal issues need to be formulated in future policies on criminal sanctions for drug crimes, which can fulfill the legal objectives of legal certainty, benefit, and justice.

In his case, drug abuse is seen as an extraordinary crime because of the many problems in implementing the rehabilitation process, especially for drug addicts

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<sup>3</sup>Kusno Adi, Criminal Policy in Handling Narcotics Crimes by Children, First Edition, UMM Press, Malang, 2009, p. 17.

<sup>4</sup>Ibid, p. 17

<sup>5</sup>Tryamanda, A., Asmarawati, T., & Pratama, R. Legal Analysis of Students Who Consumed Class I Narcotics in Tangerang. Lex Veritatis, 1(02), 2023, pp. 28–38.

undergoing the legal process.<sup>6</sup> In Law Number 35 of 2009 concerning Narcotics, there is no explicit mention of decriminalization of narcotics abusers, but the nuance of decriminalization of narcotics abusers is very strong in the construction of legal policies and state legal politics as stipulated in a number of articles of Law Number 35 of 2009. For example, Article 4, especially letters (b) and (d), namely: (b). prevent, protect, and save the Indonesian nation from narcotics abuse; (d). guarantee the arrangement of medical and social rehabilitation efforts for narcotics abusers and addicts.

Articles 54 and 56 of the Narcotics Law mandate that drug addicts undergo rehabilitation. Both medical and social rehabilitation are mandatory for drug addicts, which are expected to restore them to health, productivity, freedom from crime, and the eradication of drug dependence. The rehabilitation period is calculated as a substitute for prison sentences. Rehabilitation for drug addicts can be considered a form of social protection, enabling drug addicts to cease drug use and avoid drug abuse.

The problem of drug abuse has become a national and international issue that is constantly discussed. News reports about drug abuse appear almost daily. Drug abuse can cause physical, mental, emotional, and behavioral damage in society. Even more concerning, drugs threaten the future of children. Drug abuse by children constitutes a behavioral deviation or an unlawful act.<sup>7</sup>

As in several drug abuse cases in Indonesia, where suspects committed the same crime, namely using narcotics without a permit, but received different criminal penalties, or both committed the crime of drug abuse, simply because they were arrested under different circumstances, the criminal penalties also differed. Some were sentenced to prison, while others received rehabilitation.

Drug users or addicts according to the law<sup>8</sup> As a perpetrator of a narcotics crime, the Narcotics Law regulates the prison sentences imposed on perpetrators of narcotics abuse. Furthermore, according to the Narcotics Law, drug addicts are considered victims, as evidenced by the provision that drug addicts can be sentenced to rehabilitation.

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<sup>6</sup>Sarah Widyaristanty, Criminological Perspectives on Drug Crimes Committed by Children, Journal Inicio Legis Volume 2 Number 1 June 2021 October 2020, pp. 23-46

<sup>7</sup>Wahyu, Yohanna Florensia Dian. "Strategies in Preventing Drug Abuse Among Adolescents by the National Narcotics Agency (BNNK) Temanggung Regency." Journal of Politic and Government Studies 11, no. 2 (2022): pp. 475-486.

<sup>8</sup>Adhar, Syamsul, Marlina Marlina, and Ibnu Affan. "Law enforcement against drug addicts and abusers according to Law Number 35 of 2009 concerning Narcotics (Study of District Court Decision Number 296/Pid. Sus/2021/PN. Kis)." METADATA Scientific Journal 3, no. 3 (2021): pp. 793-817.

Based on the typology of victims identified according to the victim's condition and status, namely:<sup>9</sup>

1. *Unrelated victims*, namely victims who have no relationship whatsoever with the perpetrator and become victims because they are potential victims.
2. *Provocative victims*, namely a person or victim who is caused by the victim's role in triggering the crime.
3. *Participating victims*, namely someone who does not act, but with his attitude actually encourages himself to become a victim.

Drug addicts are "self-victimizing victims," because they suffer from dependency syndrome due to their own drug abuse. Article 54 of Law Number 35 of 2009 concerning Narcotics states that: Drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. Rehabilitation for drug addicts is a treatment process to free addicts from dependence, and the period of rehabilitation is counted as part of their sentence.

The mandatory nature of medical rehabilitation and social rehabilitation should be an important basis for judges to take action in deciding cases against victims and drug abusers. However, the mandatory nature of this rehabilitation, Article 54 and Article 127 of the Narcotics Law, are closely related. It can be seen in Article 127 paragraph (2) which states that judges are obliged to pay attention to the provisions of Article 54, Article 55, and Article 103 in making decisions. However, even though it is mandatory, its implementation still depends on investigators and public prosecutors. If the public prosecutor in his/her charges does not use the provisions of Article 127, then it is unlikely that the drug user will be placed in a rehabilitation institution. The most fatal condition is if the judge decides using Article 127, but does not consider the provisions of rehabilitation.<sup>10</sup>

The purpose of criminalization in the implementation of rehabilitation<sup>11</sup> This is treatment and rehabilitation, which focuses more on punishing the perpetrator rather than on their actions. This ensures that the legal benefits for drug addicts can be achieved. The rehabilitation of drug addicts demonstrates a criminal law policy aimed at preventing drug abusers and addicts from abusing drugs. Rehabilitation efforts are an appropriate alternative to punishment for drug addicts, and should be supported by implementing regulations that accommodate the rights of drug abusers and addicts.

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<sup>9</sup>Huda, Mohammad Nurul. "Victims in a Victimology Perspective." VOICE JUSTISIA: Journal of Law and Justice 6, no. 1 (2022): pp. 63-69.

<sup>10</sup>Ibid

<sup>11</sup>Pratama, Rikwan Yuda. "The Purpose of Rehabilitation for Medical Marijuana Offenders." UNES Law Review 6, no. 4 (2024): pp. 11449-11459.

Based on the background description, the author is interested in writing research in the form of a thesis with the title "Analysis of Sanctions for Rehabilitation Actions for Narcotics Addicts Based on Justice Values".

## 2. Research Methods

This legal research uses an empirical legal research method. Empirical legal research is legal research that uses legal principles and principles to review, observe, and analyze problems in the research, as well as reviewing the implementation of the law in practice.<sup>12</sup> The empirical research method combines doctrinal and empirical legal research methods. Therefore, the researcher conducted document studies accompanied by field studies. The document study in this research involved literature review using statutory regulations.

## 3. Results and Discussion

### 3.1. Regulations on Sanctions and Rehabilitation Measures for Drug Addicts in Indonesia

Drug abuse in Indonesia has become a complex problem that impacts not only individuals but also society and the legal system as a whole. Data from the National Narcotics Agency (BNN) shows that the number of drug users continues to increase annually, with the productive age group being the most vulnerable. This situation further exacerbates crime rates, disrupts social stability, and burdens the criminal justice system and correctional institutions.<sup>13</sup>

To date, legal policies still rely on a repressive approach, namely imposing prison sentences on drug abusers. Unfortunately, this approach has not proven effective in curbing abuse or reducing recidivism rates. In fact, the overcrowding of prisoners due to the high rate of convictions for drug users has further exacerbated the already overcrowded prison system in Indonesia.

Drug crime, long a national enemy, is now increasingly worrying civilized nations. The mafia's surge seems unstoppable even with the aggressive efforts of law enforcement agencies around the world to combat this crime. The public often hears statements about a global commitment to eradicating narcotics. Numerous international organizations are involved, yet illicit drug trafficking continues to thrive. Numerous indications point to drug crime as an extraordinary crime.

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<sup>12</sup>Ronny Hanitijo Soemitro, Legal Research Methodology and Jurimetry, Ghalia Indonesia, Jakarta, 1990, p. 33.

<sup>13</sup> Romli, Romli, and Ibrahim Fikma Edrisy. "The Effectiveness of Rehabilitation as an Alternative to Criminalization for Drug Abusers in Indonesia." Journal of Innovation Research and Knowledge 4, no. 9 (2025): pp. 6877-6886.

The impact of drug abuse cannot be underestimated, as it, like corruption, both threaten national progress and security. Drug cases remain a trend and dominate among other crimes and violations, and even then, only a small portion of those cases are uncovered or recorded. It's no secret that many drug cases are resolved amicably, leaving them unrecorded (dark numbers).<sup>14</sup>

Narcotics are substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, that can cause decreased or altered consciousness, loss of sensation, reduction or even elimination of pain, and can lead to dependence. It can be said that, on the one hand, narcotics are drugs or materials that are useful in the fields of medicine, health services, and scientific development, but on the other hand, they can cause very detrimental dependence if used without strict and careful control and supervision. In this case, when viewed from a legal aspect, the existence of narcotics is legitimate. The Narcotics Law only prohibits the use of narcotics not in accordance with the provisions of the law. This situation, empirically, results in narcotics being frequently misused not for medical and scientific purposes, but rather as a promising and rapidly growing business opportunity, which has an impact on the physical and mental damage of all levels of society. In terms of age, narcotics are not only enjoyed by teenagers, but also middle-aged and elderly people. The spread of narcotics is no longer limited to big cities, but has entered small towns and even sub-districts and villages.<sup>15</sup>

Indonesia has actually incorporated the concept of rehabilitation into its legal system, as stipulated in Law Number 35 of 2009 concerning Narcotics. Article 54 of the law states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. Furthermore, Article 103 authorizes judges to determine rehabilitation as an alternative to sentencing for drug abusers. However, in practice, the implementation of rehabilitation policies still faces various obstacles, ranging from limited facilities, differing interpretations of the law by law enforcement officials, to social stigma that discourages many drug abusers from undergoing rehabilitation.

Drug eradication efforts cannot be achieved if law enforcement only focuses on users. Users and addicts should be treated as victims or patients who must be rehabilitated, with dealers/dealers being the targets of police operations. Logically, arresting users can help apprehend dealers, who can then be sentenced to rehabilitation, as mandated by Supreme Court Circular Letter (SEMA) Number 7 of 2009 concerning Placing Drug Users in Therapy and Rehabilitation Centers. Meanwhile, dealers are subject to strict criminal

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<sup>14</sup>Wenda Hartanto, Law Enforcement Against Narcotics and Illegal Drug Crimes in the Era of International Free Trade, Impacting State Security and Sovereignty, Indonesian Legislation Journal, Vol. 14 No. 01 - March 2017: pp. 1 - 16

<sup>15</sup>Suspect Day, Narcotics and Psychotropics in Criminal Law, Mandar Maju, Bandung, 2011, p. 21

sanctions, and if they meet the requirements, they can be sentenced to death. It can be said that, on the one hand, there is extraordinary enthusiasm for eradicating narcotics and drug precursors under the Narcotics Law, but on the other hand, it also reflects a spirit of protecting drug abusers, both as addicts and as victims of drug abuse.

The criminal sanctions for every narcotics abuser can be found in Article 127 paragraph (1) of the Narcotics Law, namely:

- a. Class I narcotics for personal use are punishable by a maximum prison sentence of 4 years;
- b. Class II narcotics for personal use are punishable by a maximum prison sentence of 2 years; and
- c. Class III narcotics for personal use are punishable by a maximum prison sentence of 1 year.

If a drug abuser, as referred to in the above article, can be proven or proven to be a victim of drug abuse, the drug abuser is required to undergo medical and social rehabilitation. The term "victim of drug abuse" refers to someone who unintentionally uses drugs because they were persuaded, tricked, deceived, forced, and/or threatened to use them.<sup>16</sup>

In addition, in deciding cases of drug abuse, judges are required to pay attention to the provisions as referred to in Article 54, Article 55, and Article 103 of the Narcotics Law as follows:

#### Article 54

*Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation.*

#### Article 55 and its explanation

*Parents or guardians of Narcotics Addicts who are not yet of age (under 18 years of age) are required to report to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or care through medical rehabilitation and social rehabilitation.*

*Narcotics addicts who are old enough are required to report themselves or be reported by their families to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government*

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<sup>16</sup> Iskandar, Farid. "Implementation of Criminal Accountability of Drug Dealers towards Victims of Narcotics Abuse." Journal of Law Enforcement and Justice 2, no. 2 (2021): pp. 96-116.

*to receive treatment and/or care through medical rehabilitation and social rehabilitation.*

*Provisions regarding the implementation of mandatory reporting as referred to in paragraph (1) and paragraph (2) are regulated by Government Regulation.*

#### Article 103

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.*

2. *The period of treatment and/or care for narcotics addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence.*

The determination of rehabilitation for drug addicts is an alternative punishment imposed by a judge and is calculated as part of the sentence served. This is as stated in Article 103 paragraph (2) of the Narcotics Law, which states that the period of rehabilitation for drug addicts is calculated as part of the sentence served.

Rehabilitation for drug addicts is divided into two categories: medical rehabilitation and social rehabilitation. Medical rehabilitation is an integrated treatment process to free addicts from drug dependence, as stipulated in Article 1, number 16 of the Narcotics Law. This medical rehabilitation can be carried out in hospitals designated by the Minister of Health and in certain rehabilitation institutions run by government agencies or the community after obtaining ministerial approval.

In addition to medical treatment and/or rehabilitation, recovery for drug addicts can also be provided by government agencies or the community through religious and traditional approaches. Meanwhile, the definition of social rehabilitation can be found in Article 1, number 17 of the Narcotics Law, which defines it as an integrated process of recovery activities, encompassing physical, mental, and social aspects, so that former drug addicts can return to their social roles in society.

For your information, social rehabilitation for former drug addicts is provided by both government agencies and the community. Social rehabilitation includes religious, traditional, and other alternative approaches. The term "former drug addict" refers to someone who has recovered from their physical and

psychological dependence on narcotics. Social rehabilitation institutions are those run by both the government and the community.

Article 10 of the Criminal Code (KUHP) determines the types of punishment, namely: 1) principal punishment consisting of the death penalty, imprisonment, confinement, and fines; and 2) additional punishment consisting of revocation of certain rights, confiscation of certain items, and announcement of the judge's decision. In line with the provisions of Article 10 of the Criminal Code, there are 4 (four) types of punishment in the Narcotics Law, namely the death penalty, imprisonment, fines, and confinement. Therefore, unless otherwise specified in the Narcotics Law, the criminal provisions follow the criminal provisions in accordance with the Criminal Code. Conversely, if it is determined separately in the Narcotics Law, the criminal provisions in accordance with the Narcotics Law apply. For example, the provisions of Article 148 which reads:<sup>17</sup>

*"If the criminal fine as stipulated in this law cannot be paid and the perpetrator commits a narcotics crime or a narcotics precursor crime, the perpetrator will be sentenced to a maximum of 2 (two) years in prison as a substitute for the fine that cannot be paid."*

The criminal penalties in Article 148 differ from those in the Criminal Code, where the substitute penalty for unpaid fines in the Criminal Code is imprisonment, not prison. As long as it is regulated separately by the Narcotics Law, the criminal penalties provisions, such as confiscation of certain items (Article 101), certainly apply. This is because provisions regarding the revocation of certain rights or the announcement of a judge's decision are part of the criminal penalties in the Narcotics Law. Even without additional criminal penalties, especially the revocation of certain rights for perpetrators of narcotics crimes and certain narcotic precursors, the verdict can be overturned.<sup>18</sup>

According to Barda Nawawi Arief, the policies enacted by criminal law are not merely technical legal procedures carried out in a normative and systematic-dogmatic manner. In addition to the normative legal approach, a factual legal approach, including sociological, historical, and comparative approaches, is also required.<sup>19</sup> In this case, both the BNN and the Police have carried out their duties by carrying out a series of penal approaches, namely conducting investigations and inquiries to overcome drug abuse by children, as well as non-penal, namely

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<sup>17</sup> AR Sujono and Bony Daniel, "Comments and discussion of Law No. 35 of 2009", Alumni, Bandung, 2012, p. 214.

<sup>18</sup> Ibid

<sup>19</sup> Barda Nawawi Arief, Criminal Law Policy, First Edition, Prenada Media Group, Jakarta, 2008, p. 20.

conducting socialization, guidance, empowerment and rehabilitation for those who have committed drug abuse.<sup>20</sup>

A. Murder states that criminal law policy is to determine: first, to determine how far the applicable criminal provisions need to be changed and updated, second to determine what can be done to prevent a crime from occurring, third to determine how investigations, prosecutions, trials and the implementation of criminal penalties should be carried out.<sup>21</sup>

The formulation policy consists of 3 important stages,<sup>22</sup>First, the definition of a criminal act. A criminal act is an act for which the perpetrator is subject to criminal sanctions or punishment. The perpetrator can be considered a subject of criminal law, therefore, the definition of a criminal act must include the element of a person's actions. The element of a person's actions is essentially a person or natural person who can commit a crime.

In its development, a new legal entity, corporations, has emerged, deemed capable of committing a crime and being held accountable for its actions. The element of a crime, other than the legal entity itself, is the act. An act that is punishable by law must fulfill the elements of a crime as defined in the law. Therefore, to determine whether the act is prohibited or not, the formulation of the law, which refers to the principle of legality, must be examined.<sup>23</sup>

Second, the formulation of criminal responsibility. A person who has committed a crime cannot necessarily be punished. Before determining whether the defendant is to be punished, the first thing to do is determine whether the act constitutes a crime and whether the perpetrator can be held criminally responsible. To determine a crime, legality must be used, while responsibility must be used to determine fault.<sup>24</sup>

The sanctions regulated in the Narcotics Law adopt a double track system, namely in the form of criminal sanctions and action sanctions.<sup>25</sup>Rehabilitation is a form of sanction. Article 103 of the Narcotics Law stipulates that judges can order or order drug addicts to undergo treatment and/or care. The period of treatment and/or care is counted towards the sentence. This aligns with one of the objectives of the Narcotics Law, namely to ensure the regulation of medical and social rehabilitation efforts for drug addicts. However, existing data indicates that judges tend to impose prison sentences on drug addicts. As a result, drug

<sup>20</sup>Sainrama Pikasani Archimad, Law Enforcement Against Drug Abuse by Children in Sleman Regency, LEX Renaissan No. 3 Vol. 6 July 2021: pp. 493-504

<sup>21</sup>Barda Nawawi Arief, Several Aspects of Criminal Law Enforcement and Development Policy, Citra Aditya Bhakti, Bandung, 1993, p. 3.

<sup>22</sup>Ibid, pp. 148-156.

<sup>23</sup>Ibid

<sup>24</sup>Ibid

<sup>25</sup>Puteri Hikmawati, "Analysis of Sanctions ... Op Cit pp. 329-350.

addicts in prison are denied the opportunity to undergo rehabilitation, resulting in suboptimal implementation. To date, drug rehabilitation programs in prisons have not been running optimally.<sup>26</sup>

The basis for regulating assessments in carrying out rehabilitation of victims of narcotics abuse is Article 4 letter d, Articles 54-58, Article 103 of Law No. 35 of 2009 concerning Narcotics, Circular Letter of the Supreme Court (SEMA) No. 4 of 2010 concerning the Determination of Narcotics Abuse and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions and Joint Regulations of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia and Head of the National Narcotics Agency of the Republic of Indonesia Number: 01/PB/MA/III/2014, Number: 03 of 2014, Number: 11/Year 2014, Number: 03 of 2014, Number: PER-005/A/JA/03/2014, Number: 1 of 2014, Number: PERBER/01/III/2014/BNN Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions. The obligation to rehabilitate narcotics abuse must be carried out because of their position as victims. Rehabilitation is mandatory for drug addicts and victims of abuse because, at this stage, a negative stigma is already attached to them. Imprisonment adds to the negative stigma, namely, that of a criminal. Rehabilitation can prevent criminal law from being applied to an addict or victim of drug abuse and potentially prevent someone from relapse into crime.<sup>27</sup> The implementation of assessments for victims of drug abuse by the Republic of Indonesia Police is the same as that carried out by the National Narcotics Agency, namely if a victim of drug abuse or addiction makes a report without an arrest process, the Police will direct/recommend directly to the Mandatory Reporting Receiving Institution (IPWL).<sup>28</sup> and if the victim of drug abuse or addiction is caught by the police, the process is to receive an assessment request from the investigator within a maximum of 1x24 (one time twenty four) hours, the integrated assessment team will carry out an assessment after receiving the request and the integrated assessment team will carry out its duties and provide

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<sup>26</sup>Insan Firdaus, "The Role of Community Guidance in Addressing Overcrowding in Correctional Institutions" JIKH, Vol. 13, No. 3 (2019): 339-358

<sup>27</sup> Abas, Imam, Fence M. Wantu, and Dian Ekawaty Ismail. "Problems with implementing integrated assessments in the process of enforcing narcotics abuse laws." *Philosophia Law Review* 2, no. 1 (2022): pp. 30-49.

<sup>28</sup> Daniel, Benny, and Hendry Hendry. "Design of a Web-Based Rehabilitation Patient Data Information System at the Bukit Doa Mandatory Reporting Recipient Institution (IPWL). *Journal of Minfo Polgan* 14, no. 1 (2025): pp. 275-283.

recommendations on the assessment results within a maximum of 6 (six) days to the investigator to be reported in writing to the local district court.<sup>29</sup>

### **3.2. The Ideal Concept of Law Enforcement Against Drug Addicts Based on the Value of Justice**

Indonesia is no stranger to drug problems. In the context of drug abuse, as it relates to Indonesia, it can be said that our country is in a critical condition. This certainly proves that Indonesia is in an ideal window and must address all existing regulations. Therefore, handling and preventing illicit drug use should not begin to develop. One factor in this is the ease of influence of drugs on the Indonesian population, which is supplied at that time. Cultural exchange can also occur with the rapid development of technology and information, along with public transportation. This in turn, another aspect arises, such as the need for strict regulations to effectively regulate the continuation of this practice, or even prohibit it, because Indonesia can also become a fertile ground for illicit substances and products.<sup>30</sup>

The Indonesian government has implemented various policies and rehabilitation programs to address this problem, including implementing a rehabilitation program for drug users. Drug abuse in Indonesia has widespread and multidimensional impacts. Drug users not only suffer physical and mental damage but also tend to fall into social problems such as crime, unemployment, and poverty. According to a report by the National Narcotics Agency (BNN), more than 5 million Indonesians are involved in drug abuse, with the majority of them in their productive age range. This indicates that drugs pose a threat not only to individual users but also to society as a whole. Therefore, one approach taken to address this problem is rehabilitation. Drug rehabilitation in Indonesia aims to provide opportunities for drug users to recover from dependence and return to functioning in society.<sup>31</sup>

Drug rehabilitation programs in Indonesia consist of various types, including medical, social, and psychological rehabilitation. The rehabilitation process aims not only to stop drug use but also to improve an individual's quality of life by providing mental and emotional support and the life skills needed to live independently without drugs. These programs involve various agencies, such as the National Narcotics Agency (BNN), hospitals, private rehabilitation institutions, and local governments, all working together to implement the rehabilitation program. Although rehabilitation programs have been

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<sup>29</sup>Wilson Bugner f. Pasaribu, Legal Analysis of the Implementation of Assessments for Victims of Narcotics Abuse in the Republic of Indonesia Police, Jurnal FH Unsu, 2017

<sup>30</sup>Gilza Azzahra Lukman, et al., Drug Cases in Indonesia and Prevention Efforts Among Adolescents, Journal of Research and Community Service (JPPM), Vol.2, No.3 (2021), p.407

<sup>31</sup>BNN, Avoid Narcotics, Make the Young Generation of the Nation Smart, accessed from <https://bnn.go.id/hindari-narkotika-cerdaskan-generasi-muda-bangsa/>,

implemented for several years, their impact on improving the quality of life of drug users remains a matter of debate. Several studies have shown that while many drug users successfully undergo rehabilitation and reduce their dependence, many also relapse into their old habits after completing rehabilitation. This highlights the significant challenges in ensuring the sustainability of drug users' recovery.

If we look at the formulation of criminal sanctions applied to each qualification of narcotics crime in Law No. 35 of 2009, we can see that the purpose of punishment in this law as adopted by the Absolute or Retributive Theory, namely the principle of punishment is as revenge for anyone who commits a crime must be punished, without looking at the consequences arising from the punishment or in a simple understanding the purpose of punishment is to make the criminal suffer.<sup>32</sup>

The application of the theory of the purpose of retributive punishment can be seen from the formulation of the norms of the criminal articles in the law where all qualifications of narcotics crimes, including the category of narcotics users who are not included in the group or part of the overall dealer, are in principle threatened with criminal sanctions. The retributive punishment is increasingly visible from the type of application of these sanctions, on average using cumulative sanctions, namely imprisonment along with a fine, the type of punishment is a special minimum and there are also those that regulate the type of sanctions in the form of a special minimum along with a special maximum and in certain categories of actions can also be subject to the death penalty.<sup>33</sup>

The losses experienced by drug users, who are both perpetrators and victims of their criminal acts, are not only material losses, but also social, psychological, physical, and health losses. The social losses experienced by drug users are in the form of stigma or bad labels imposed by society, such as being called drug users the scum of society and other bad names. The psychological losses experienced by drug users are clearly an unstable mental condition due to dependence on narcotics, especially if drug users, especially injecting drug users, are infected with the HIV virus which causes the user to eventually suffer from AIDS. These are the physical and health losses resulting from the impact of injecting drug use that are multiple, not only getting a bad label due to drug dependence but also stigma due to being infected with HIV.<sup>34</sup>

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<sup>32</sup> Subawa, Ida Bagus Gede, Ni Komang Sutrisni, and Reytman Aruan. "Requirements for Imposing Drug Abuse Rehabilitation Sanctions on Foreign Citizens in Indonesia." *Yusthima Journal* 3, no. 2 (2023): pp. 129-146.

<sup>33</sup>Ibid

<sup>34</sup>Expert statement by Inang Winarso in the decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU-IX/2011, p. 67

Criminal provisions for users of narcotics, whether class I, class II or class III narcotics, whose use is for personal use are subject to imprisonment as regulated in Article 127, namely:

(1) Every Abuser:

- a. Class I narcotics for personal use are punishable by a maximum prison sentence of 4 (four) years;
- b. Class II narcotics for personal use are punishable by a maximum prison sentence of 2 (two) years; and

In addition to the threat of criminal sanctions as regulated in Article 127, a narcotics abuser for himself in judicial practice is also charged with the formulation of Article 111 and or Article 112 because when someone fulfills the elements of Article 127, of course, he also fulfills the elements in Article 111 and or Article 112, namely the subjective element and the objective element which are alternative, namely "possessing, storing, controlling" where this element does not have to be fulfilled in its entirety, but any one of these elements is fulfilled, it is included in the category of this norm because the elements in this article are alternative. Logically, we can simply know that when someone abuses narcotics for himself, of course, an act has previously occurred that is related to the source of the goods he obtained.

Furthermore, the unclear definitions of addicts, abusers, and victims of abuse often lead to inconsistent treatment practices. Without a proper understanding of user typologies, law enforcement struggles to distinguish who should be referred for treatment and who is simply part of a drug trafficking network.

The situation is exacerbated by the public perception that criminal punishment is the most effective way to stop addictive behavior. However, nearly all health research shows that criminalizing addicts does not improve dependency and even increases the likelihood of relapse. This view demonstrates that the normative construction of the Narcotics Law is not fully supported by adequate public understanding.

Portugal and the Netherlands both view users as individuals in need of help, not threats. Their focus is not on punishment, but on recovery. This approach aligns with the modern view that addiction is a mental and physical health issue, one that cannot be resolved through imprisonment. Both countries remain firm in cracking down on illicit drug trafficking networks. They strictly differentiate between users and distributors. Quantity limits are clearly enforced to prevent

authorities from mistakenly categorizing users as dealers. Indonesia does not yet have similar restrictions, making the criminalization of addicts easier.<sup>35</sup>

The gap between rehabilitative norms and repressive practices further exposes the weaknesses of the Narcotics Law. In theory, the lawmakers recognize that addicts are victims and have the right to recovery. However, in practice, harsh criminal norms dominate the decisions of authorities. Technically, the assessment mechanisms that should be key to diverting users to rehabilitation services are not implemented consistently. Many assessments are merely formalities or are conducted after the law enforcement process has progressed too far. This creates a bias that addicts are already being treated as criminals before their condition is medically assessed.

#### **4. Conclusion**

1. Regulation of sanctions for rehabilitation measures against drug addicts in Indonesia has basically been accommodated in Law No. 35 of 2009 which places drug addicts and victims of drug abuse as subjects who are required to undergo medical and social rehabilitation (Articles 54, 55, and 103), in addition to the threat of imprisonment in Article 127 which distinguishes narcotics groups I, II, and III for users for themselves. The narcotics criminalization system adheres to a double track system in the form of criminal penalties (imprisonment, fines, even death) and actions (rehabilitation), which are strengthened by mandatory reporting policies, the authority of judges to impose rehabilitation which is calculated as a sentence, as well as technical arrangements for assessment and placement to rehabilitation institutions through SEMA No. 4 of 2010 and Joint Regulations of 2014 concerning the handling of drug addicts and victims of drug abuse. Normatively, the state encourages addicts and abusers to be positioned as patients or victims entitled to recovery, while dealers and dealers become the primary targets of criminalization, including through the differentiation of the roles of the National Narcotics Agency (BNN), the Police, and rehabilitation institutions, both government-owned and community-owned, with medical, social, religious, and traditional rehabilitation pathways. However, in practice, law enforcement is still dominated by a repressive approach with a tendency for judges to impose prison sentences, the use of Articles 112 and 127 which are often open to multiple interpretations, and suboptimal rehabilitation programs in prisons, so that correctional institutions remain full and addicts do not receive adequate recovery services even though the legal framework has opened up space for depenalization through integrated assessments, mandatory reporting schemes, and direct placement into IPWL for reporters and arrested abusers. 2. The ideal concept of justice-based law enforcement for drug addicts demands a paradigm shift from a retributive approach to a public health and recovery approach. In current practice, the Narcotics Law still positions users as criminals

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<sup>35</sup>Ibid

through the threat of Article 127 in conjunction with Articles 111 and 112. Therefore, addicts who actually suffer from addiction disorders and experience physical, psychological, and social harm and stigma are more often sentenced to prison rather than directed to rehabilitation. Meanwhile, medical assessment mechanisms and the provisions of Articles 54, 55, and 103 are often inconsistently implemented. A criminal justice system dominated by an orientation toward retribution and crime reduction through imprisonment ignores the character of addiction as a "chronic disease" requiring ongoing therapy. However, developments in the Netherlands and Portugal demonstrate a more equitable model: users are positioned as patients or victims, decriminalized, and directly connected to rehabilitation services, counseling, and a special commission that assesses the need for intervention. While decisive action is focused on dealers and illicit trafficking networks with clear quantity limits. Indonesia has actually recognized addicts as victims who have the right to be rehabilitated, but the unclear definition of user/victim, the strong culture of punishment, weak coordination between institutions, and the public perception that prison is the solution, means that rehabilitative norms do not run optimally and make addicts remain vulnerable to being criminalized instead of being rehabilitated.

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