

## Legal Review of Drug Addicts from the Perspective of Rehabilitation Based on Justice Values

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**Abstract.** *Prison sentences for drug addicts cause prisons to be over capacity because drug addicts are easily caught, because the suspects are in a state of dependency. After leaving prison they will definitely become recidivists if they do not receive rehabilitation. The purpose of this study is to determine and analyze the construction of regulations for drug addicts based on positive law and to determine and analyze the enforcement of drug addict law from a rehabilitation perspective based on justice values in the future. This legal research uses an empirical legal research approach. The construction of regulations for drug addicts based on Law Number 35 of 2009 concerning Narcotics has regulated rehabilitation. Which is stated in Article 54 which reads "Drug Addicts and Victims of Drug Abuse are Required to Undergo Medical Rehabilitation and Social Rehabilitation". The imposition of sanctions in the form of rehabilitation by the Indonesian government does not mean that drug abusers and addicts are free from criminal responsibility. Because in any case in Article 103 paragraph (2) of Law 35 of 2009 concerning Narcotics states that the period of undergoing rehabilitation for drug abusers or addicts is calculated as the period of serving their sentence. Law enforcement for drug addicts from a rehabilitation perspective based on justice values in the future. Observing developments in several countries, a new paradigm has emerged in viewing drug users/addicts who are no longer viewed as evil (criminal) behavior but as people with chronic diseases who must receive treatment and recovery gradually. This paradigm then creates a new policy in handling victims of drug users who are no longer processed legally, but directly take the users/addicts to rehabilitation centers.*

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

### 1. Introduction

The Republic of Indonesia is a country based on law, this is clearly stated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of

Indonesia which upholds Human Rights and guarantees every citizen in the fields of Law and Government.<sup>1</sup>The implementation of this article must reflect legal certainty for the state.<sup>2</sup>Law in general is the entire collection of rules or rules in a common life, the entire rules regarding behavior that apply in a sanction.<sup>3</sup>Criminal law is part of the overall law that applies in a country.<sup>4</sup>As a developing country, Indonesia is a very potential target as a place to produce and distribute narcotics illegally.

Drug abuse and its illegal dealers targeting the young generation have reached various corners of the region and are evenly distributed throughout all social strata of society, from the low social strata to the elite social strata of state officials. Drug abuse is no longer a victimless crime, but rather a crime that has claimed many victims and is a prolonged disaster for all humanity in the world.<sup>5</sup>

Rehabilitation for drug abusers and addicts aims to cure the condition of drug dependency in drug abusers and addicts so that drug abusers and addicts recover from the disease of drug addiction/dependence.<sup>6</sup>To find out the role of the perpetrator as a pure abuser or not, and to find out the level of drug dependence, the suspect is asked for a medical examination or assessment so that the rehabilitation process can be carried out or not. Basically, Law Number 35 of 2009 concerning Narcotics, differentiates the handling of abusers and dealers, Dealers are threatened with severe penalties not only sentenced to imprisonment but also charged with money laundering and their distribution network is cut off. While abusers are punished in the form of rehabilitation. However, there are still many abusers who should be rehabilitated but are sentenced to prison, this is a special concern for law enforcers.

Handling of narcotics must be implemented comprehensively, both in terms of law enforcement and rehabilitation.<sup>7</sup>Ironically, not all investigators have fully understood the ideal mechanism for handling drug abusers. In fact, many drug abusers are criminalized, not rehabilitated. BNN sees the need for a meeting point between the concept of handling drug abusers from the side of law enforcement and rehabilitation.<sup>8</sup>

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<sup>1</sup>M. Hamdan, *Criminal Law Politics*, Rineke Grafindo Persada, Jakarta 1997, p. 1

<sup>2</sup>Prodjodikoro and Wirjono, *Principles of Indonesian Criminal Law*, PT. Ertesko, Jakarta, 1969, p. 72

<sup>3</sup>Sudikno Mertokusumo, *Understanding the Law, Liberty*, Yogyakarta, 1991, p. 38

<sup>4</sup>Moeljatno, *Principles of Criminal Law*, Rineka Cipta, 2002, p. 1.

<sup>5</sup>Hari Sasangka, *Narcotics and Psychotropics in Criminal Law*, Mandar Maju, Bandung, 2003, p. 4.

<sup>6</sup>Rangga, R., & Ratnawati, E. Sanctions for Rehabilitation of Criminal Acts of Narcotics Abuse Based on Law 35 of 2009 Concerning Narcotics. *UNES Law Review*, 5(3), 2023, p. 1400-1409.

<sup>7</sup>Dwi Nur Handayani, Efforts to Handle Drug Abuse by the National Narcotics Agency (BNN) of Gorontalo City, *Muqadimah Scientific Journal*, Vol 6, No 1 2022, p. 223-228

<sup>8</sup>BNN Public Relations, Rehabilitation and Law Enforcement Must Be Synergistic, <https://bnn.go.id/rehabilitasi-dan-penegakan-Hukum-besar-sinergis/> accessed June 1, 2024

One example of a drug abuse case is the case of Mohammad Rifki Ananda, with decision Number: 761/Pid.Sus/2021/PN Jmr. The evidence found was 2 (two) rolled dried marijuana weighing 1.40 (one point forty) grams and 1 (one) pack of papir paper or cigarette paper on Monday, August 30, 2021 at 01.00 WIB at a rented house. PTP Kaliurang District. Sumbersari Regency. Jember, which is included in the jurisdiction of the Jember District Court. The marijuana was purchased by the defendant from Okta Afero, on Sunday, August 29, 2021 at 16.00 WIB, at a boarding house owned by Rio Okta Afero on Jalan Mastrip, Sumbersari District, Jember Regency. After getting the marijuana, the defendant immediately returned to his rented house. After obtaining the marijuana, on Monday, August 30, 2021 at 01.00 WIB, the defendant consumed the marijuana at his rented house with friends by mixing it with cigarette tobacco, then rolling it using cigarette paper which was then burned. The marijuana was consumed by smoking it like someone who was smoking. The reason the defendant consumed the marijuana by burning it and then smoking it was so that the body felt fresh, not easily tired, strong enough to stay up late and strong enough to do work compared to not using it, the body felt more easily weak. The defendant had been using marijuana since 2020 and always ordered marijuana from Rio Okta Afero.<sup>9</sup>

The judge stated that the evidence found had been proven to be valid. The actions committed by the defendant were proven to have violated Law No. 35 of 2009 Article 127 Paragraph (1) concerning Narcotics, because the defendant misused class I narcotics for his own consumption. The punishment received by the defendant was imprisonment for 1 (one) year. The decision given by the Panel of Judges against the defendant caused a conflict of norms, because it was deemed not to have considered the provisions contained in Law No. 35 of 2009 Article 54 and Article 103, as well as the Circular of the Supreme Court No. 04 of 2010.

Handling of drug abusers or addicts in the legal context, is basically regulated in Government Regulation Number 25 of 2011 concerning the implementation of mandatory reporting of drug addicts. In PP 25/2011 article 13 paragraph 4, it is explained that placement in a medical rehabilitation institution and/or social rehabilitation as in paragraph (3) is the authority of investigators, public prosecutors, or judges according to the level of examination after receiving recommendations from the team of doctors. With this regulation, investigators can send the suspect to an existing rehabilitation center. However, in fact, this legal regulation has not been responded to with one voice by investigators.

The imposition of rehabilitation sanctions by the Indonesian government does not mean that drug abusers and addicts are free from criminal responsibility. Because in any case, Article 103 paragraph (2) of Law 35 of 2009 concerning Narcotics states

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<sup>9</sup>Nesya Warapsari, Criminal Sentences by Judges for Self-Use of Narcotics, *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, Vol. 2 No. 2 May - August 2022, p. 883-900

that the period of undergoing rehabilitation for drug abusers or addicts is calculated as the period of serving their sentence. Efforts to provide rehabilitation sanctions for drug abusers and addicts are increasingly supported by the existence of provisions other than the articles in Law Number 35 of 2009 concerning Narcotics. Examples of these other provisions are the formation of Government Regulation Number 25 of 2011 concerning the Implementation of Mandatory Reporting of Drug Addicts, then Circular Letter of the Supreme Court Number 7 of 2009 and Circular Letter of the Supreme Court Number 4 of 2010 which regulate the criteria and placement of drug abusers and addicts into medical rehabilitation and social rehabilitation institutions.

## **2. Research methods**

This legal research uses an empirical legal research approach method. Empirical legal research is legal research using legal principles and principles in reviewing, viewing, and analyzing problems in research, in addition to reviewing the implementation of law in practice.<sup>10</sup> The empirical research method is a combination of doctrinal legal research methods and empirical legal research methods, so what is done by the researcher is a document study accompanied by a field study. The document study in this study is a literature study using laws and regulations.

## **3. Results and Discussion**

### **3.1. Construction of Regulations for Drug Addicts Based on Positive Law.**

Prevalence of drug abuse in BNN research and Based on the results of research measuring the prevalence of drug abuse conducted by BNN RI together with the National Research and Innovation Agency (BRIN) and the Central Statistics Agency (BPS) in 2023, the prevalence rate of drug abuse was 1.73%.<sup>11</sup>

In the midst of the BNN RI's efforts to combat drug abuse and illicit trafficking, the mode of drug crime continues to develop. One of them is the circulation of new psychoactive substances (NPS) carried out by drug syndicate networks to avoid legal entanglement. Currently, 1,200 types of NPS have been identified circulating in the world (UNODC, 2023), 93 of which have entered Indonesia. Of the 93 types of NPS, 90 types have been regulated in the Minister of Health Regulation Number 30 and 31 of 2023.<sup>12</sup>

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<sup>10</sup>Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, 1990, p. 33.

<sup>11</sup><http://nasional.kompas.com/read/2012/10/31/14280327/Pengguna.Narkoba.5.8.Juta.Tahun.2012> accessed on June 20, 2024

<sup>12</sup> <https://bnn.go.id/tindak-dengan-pandang-bulu-terus-melaju-untuk-indonesia-bersinar/> accessed on June 20, 2024

The Narcotics Law itself does not provide a clear distinction/line between the criminal offenses in Article 127 of the Narcotics Law and other criminal offenses contained in the Narcotics Law, in Article 112 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, where narcotics users who obtain narcotics unlawfully must fulfill the elements of "controlling", "possessing", "storing", narcotics where this is also regulated as a separate criminal act in the Narcotics Law. In practice, law enforcement officers also link (including / include / juncto) between the criminal offense of narcotics users with the criminal offense of control, possession, storage without rights and unlawfully where the criminal threat is much higher and uses a special minimum sanction, namely a minimum of 4 years in prison and a fine of at least IDR 800,000,000 (eight hundred thousand rupiah).

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 dealers are in principle threatened with criminal sanctions. Retributive punishment is increasingly visible from the type of application of these sanctions, on average using cumulative sanctions, namely imprisonment and a fine, the type of punishment is a special minimum and there are also those that regulate the type of sanction in the form of a special minimum and a special maximum and in certain categories of actions can also be subject to the death penalty.

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

(1) Any Abuser:

- a. Class I narcotics for personal use are punishable by a maximum prison sentence of 4 (four) years;
- b. Class II narcotics for oneself are punishable by a maximum imprisonment of 2 (two) years; and
- c. Class III narcotics for personal use are punishable by a maximum prison sentence of 1 (one) year.

In addition to the threat of criminal sanctions as regulated in Article 127, a drug 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 in nature, namely "possessing, storing, controlling" where these elements do not have to be fulfilled in their entirety, but if 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 see 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.

Law Number 35 of 2009 concerning Narcotics has regulated rehabilitation. Which is stated in Article 54 which reads "Drug Addicts and Victims of Narcotics Abuse Must Undergo Medical Rehabilitation and Social Rehabilitation". Medical rehabilitation is a process of integrated treatment activities to free abusers from drug dependence. Medical rehabilitation of drug abuse can be carried out in hospitals designated by the Minister of Health, namely hospitals organized by both the government and the community, as well as social rehabilitation which is a process for someone who not only experiences physical and mental disorders but also for someone who experiences disorders in social functions.

Rehabilitation is an effort to restore and return the condition of former abusers/addicts of Narcotics, 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 drug abusers 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.<sup>13</sup>

### **3.2. Law Enforcement for Drug Addicts: Perspective of Rehabilitation Based on Justice Values in the Future**

The International Opium Convention is the forerunner of the policy of legalizing drugs, especially marijuana in the Netherlands. Drugs such as marijuana, amphetamines, ecstasy, and cocaine are very helpful in curing several diseases and reducing pain which brings many benefits to each country. However, the legalization of drug use in the Netherlands not only brings positive impacts but also negative impacts. Therefore, in this chapter the author would like to describe the internal efforts of the Dutch government through the concept of national security in the scope of social security and environmental security to limit the use of drugs consisting of changes to drug laws, restrictions on the sale of marijuana in coffee shops by reducing the number of coffee shop buildings, and prohibitions on marijuana tourism for non-residents or tourists.

The Netherlands is not the only country that legalizes marijuana or drugs that Indonesia considers illegal drugs. Other countries in the world that legalize drugs, especially marijuana, include Uruguay, Sweden, Mexico, Colombia, Spain, Peru, the United States, Canada, Israel, and Italy. However, even so, the Netherlands still wants to create an image that its country does not legalize illegal drugs such as

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<sup>13</sup>Dadang Hawari, *Psychiatrist, Abuse & Addiction of NAZA (Narcotics, Alcohol, & Addictive Substances)*, Jakarta: Gaya Baru, 2006, p.132.

marijuana. This is done to avoid foreign tourists visiting the Netherlands just to buy or sell marijuana.

The legalization of marijuana in the Netherlands has positive effects, including security benefits where everyone can enjoy marijuana in several coffee shops that have a license. This is an advantage where the crime rate due to the legalization of marijuana has decreased because marijuana can be enjoyed in several coffee shops and its users do not hide in consuming it. In addition, the country also benefits from tax and customs revenues, especially taxes from each coffee shop that applies for a marijuana sales license. However, from these advantages, of course the Dutch government remains concerned about the health of its people even though in essence the use of marijuana has been limited, namely not exceeding 5 grams and 5 plants.

In Portugal, the regulation of drug addicts is regulated by a legal framework that treats the drug problem as a public health issue, not a criminal one. In 2001, Portugal took the historic step of decriminalizing the use of drugs for personal consumption. This means that while possession and use of drugs remain illegal, these offences are no longer prosecuted in criminal courts, but are instead treated as administrative offences. Decriminalization only applies to quantities of drugs considered for personal use, namely up to a ten-day supply. For example, for heroin, cocaine or cannabis, certain quantities have been set as limits for personal consumption.

Portugal's drug decriminalization policy has been considered a success in many ways. Some positive outcomes include a decrease in overdose rates, a decrease in the rate of HIV infections associated with injecting drug use, and an increase in the number of people seeking addiction treatment. This shows that a public health-based approach has a better effect than criminalizing drug addicts.

As seen in some countries such as Portugal, the policy of decriminalization for drug addicts may be expanded in the future. Other countries may adopt a similar approach that views drug use as a public health issue rather than a legal one.

In other words, this paradigm leads to efforts to decriminalize drug users. The application of criminal law in the form of imprisonment for drug users has proven to be unsuccessful, what actually happens is that every year the number of drug users sentenced to imprisonment increases. This is what needs to be reviewed regarding the purpose and function of implementing criminal law for drug users. The most important factor in efforts to overcome drug abuse that is often ignored, especially by law enforcement officers in Indonesia, is the existence of rehabilitation efforts. The model of punishment for drug users until now still places them as perpetrators of criminal acts, so that rehabilitation efforts are often ignored.

With these provisions, the world of justice in Indonesia has actually opened its eyes to the nature of drug addicts in the context of legal science, especially victimology. Something that has been very difficult to legitimize so far, so that during the "war on drugs" declared by the Indonesian government, drug addicts have always been placed as criminals, so the rights of victims to receive health services and special treatment, in this case rehabilitation, have been lost. The challenge ahead lies on the shoulders of judges to dare to decide or determine a rehabilitation verdict for addicts and make legal breakthroughs and legal discoveries that do not only refer to laws, but more to social and humanitarian values that live in society.<sup>14</sup>

#### 4. Conclusion

The construction of regulations for drug addicts based on Law Number 35 of 2009 concerning Narcotics has regulated rehabilitation. Which is stated in Article 54 which reads "Drug Addicts and Victims of Drug Abuse Must Undergo Medical Rehabilitation and Social Rehabilitation". The form of joint agreement from the government and law enforcement officers in overcoming drug crimes is clearly seen when the Joint Regulation of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Chief of the Indonesian National Police, the Head of the National Narcotics Agency of the Republic of Indonesia. Issued a letter with No. 01 / PB / MA / III / 2014, No. 03 of 2014, No. 11 of 2014, No. 03 of 2014, PER-005 / A / JA / 03/2014, No. 1 of 2014, No. PERBER/01/III/2014/BNN on Handling of Narcotics Abuse Victims into Rehabilitation Institutions, hereinafter referred to as the Joint Regulation. Future narcotics regulations should increasingly move towards a more healing and rehabilitation-based approach, with a focus on recovery and social reintegration rather than imprisonment. This policy will likely expand access to rehabilitation, improve technology-based monitoring, and protect the rights of individuals undergoing rehabilitation.

#### 5. References

- Dadang Hawari, Psikiater, *Penyalahgunaan & Ketergantungan NAZA (Narkotika, Alkohol, & Zat Adiktif)*, Jakarta: Gaya Baru, 2006, p.132.
- Dwi Nur Handayani, Upaya Penanganan Penyalahgunaan Narkoba Oleh Badan Narkotika Nasional (BNN) Kota Gorontalo, *Jurnal Ilmiah Muqadimah*, Vol 6, No 1 2022, p. 223-228
- Hari Sasangka, *Narkotika dan Psikotropika dalam Hukum Pidana*, Mandar Maju, Bandung, 2003, p. 4.

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<sup>14</sup>Parasian Simanungkalit. (2011). Globalization of Drug Distribution and Its Prevention in Indonesia. Jakarta: Yayasan Wajar Hidup, p. iv



<http://nasional.kompas.com/read/2012/10/31/14280327/Pengguna.Narkoba.5.8.JutaTahun.2012> accessed on 20 Juni 2024

<https://bnn.go.id/tindak-tanpa-pandang-bulu-terus-melaju-untuk-indonesia-bersinar/>

Humas BNN, *Rehabilitasi dan Penegakan Hukum Harus Sinergis*, <https://bnn.go.id/rehabilitasi-dan-penegakan-hukum-harus-sinergis/>

M. Hamdan, *Politik Hukum Pidana*, Rineke Grafindo Persada, Jakarta 1997, p. 1

Moeljatno, *Asas-asas Hukum Pidana*, Rineka Cipta, 2002, p. 1.

Nesya Warapsari, Penjatuhan Putusan Pidana Oleh Hakim Terhadap Penyalahgunaan Narkotika Bagi Diri Sendiri, *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, Vol. 2 No. 2 Mei - Agustus 2022, p. 883-900

Parasian Simanungkalit. (2011). *Globalisasi Peredaran Narkotika dan Penanggulangannya di Indonesia*. Jakarta: Yayasan Wajar Hidup, hlm. iv

Prodjodikoro dan Wirjono, *Asas-asas Hukum Pidana Indonesia*, PT. Ertesko, Jakarta, 1969, p. 72

Rangga, R., & Ratnawati, E. Sanksi Rehabilitasi Tindak Pidana Penyalahgunaan Narkotika Berdasarkan UU 35 Tahun 2009 Tentang Narkotika. *UNES Law Review*, 5(3), 2023, p. 1400-1409.

Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1990, p. 33.

Sudikno Mertokusumo, *Mengenal Hukum*, Liberty, Yogyakarta, 1991, p. 38