

Rehabilitation of Victims of Drug Abuse by Law Enforcement Officers: A Progressive Legal Analysis From The Perspective of National Criminal Law

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Abstract. *This study aims to examine and analyze the qualifications of the Regulation of Medical and Social Rehabilitation Measures in the Narcotics Law and the National Criminal Code and to examine and analyze the Effectiveness of Rehabilitation of Narcotics Abuse Victims by Law Enforcement Officers progressive legal analysis in the perspective of national criminal law. The method used in this research is the Empirical Law method, the problem is analyzed using the Law Enforcement Theory According to Soerjono Soekanto and Progressive Law According to Sajipto Rahardjo. The results of this study indicate that: This study analyzes the qualifications of regulations and the effectiveness of the implementation of medical and social rehabilitation measures for drug addicts from the perspective of Law No. 35 of 2009 concerning Narcotics and the National Criminal Code (Law No. 1 of 2023). The results of the study indicate a significant shift in the legal paradigm from a retributive justice approach to restorative and rehabilitative justice. Normatively, the Narcotics Law as *lex specialis* places rehabilitation as an action sanction (Article 103) based on the Integrated Assessment Team (TAT) instrument, while the National Criminal Code (*lex generalis*) strengthens the position of rehabilitation as *Maatregel* in the Double-Track System to prioritize the principles of criminal individualization and efficacy (*doelmatigheid*). Empirically, the determination of rehabilitation status since the investigation stage is oriented towards demand reduction, separation of pure abusers from the distribution network, and handling the overcrowding crisis of correctional institutions. While rehabilitation has proven effective in reducing recidivism rates and restoring addicts' social functioning, its implementation in the field remains hampered by limited infrastructure, the availability of rehabilitation centers, and negative public stigma. Therefore, optimizing rehabilitation as a humane alternative to punishment requires strengthening adequate facilities, comprehensive*

understanding among law enforcement officials, and ongoing social support.

Keywords: *Drug Abusers; Double-Track System; Narcotics Law; National Criminal Code; Rehabilitation.*

1. Introduction

The Republic of Indonesia is a state based on law as stated in Article 1 Paragraph (3) of the 1945 Constitution. The realization of a state based on law means the implementation of state administration that prioritizes law as "Commander" and not "power" (*Machtsstaat*), so that in this way laws and regulations are made as "rules of the game" of a state of law, namely implementing them with the spirit of upholding justice and guaranteeing legal certainty.¹ According to Tutty Alawiyah, narcotics crimes are a form of victimless crime, where crimes without victims other than narcotics include gambling, drinking alcohol, prostitution and pornography.²

The proliferation of illicit drug variants demands that law enforcement agencies continually improve the quality of their legal products. However, in reality, the illicit drug problem is growing faster than law enforcement can handle. This is why drug abuse has become a serious problem in Indonesia. The increasing prevalence of drug abuse contributes significantly to material losses and loss of life.

Currently, drug abuse not only targets the upper class, but also the lower classes and even children. While drugs may have once been a crime or abuse committed only by the wealthy, the reality is that they have now spread everywhere.³ The enactment of narcotics legislation is one of the outcomes of Indonesian criminal law policy. This was intended to respond to the development of transnational crime and its extraordinary negative impact on humanity.⁴

From a legal perspective, the circulation of narcotics in Indonesia is legitimate for medical purposes. The Narcotics Law only prohibits unauthorized use. Narcotics are often misused, not for medical or scientific purposes. Instead, they are used as a promising and rapidly growing business venture, which has resulted in

¹Erwin Asmadi. 2013. *Proving Criminal Acts of Terrorism: Analysis of Court Decisions in the CIMB Niaga Bank Robbery Case in Medan*. Jakarta: Sofmedia, p. 23.

²Moh Taufik Makarao, Suhasril, H.Moh. Zakky AS, 2003, *Narcotics Crimes*, Jakarta: Ghalia Indonesia, p.8.

³ <https://news.detik.com/berita/d-7550045/bnn-pengguna-narkoba-tak-lagi-high-class-kini-menjalar-ke-anakanak> accessed on July 25, 2026.

⁴Syaiful Bakhri, 2012, *Narcotics and Psychotropic Crimes: An Approach Through Criminal Law Policy*, Bekasi, Gramata Publishing, p. 13

physical and psychological damage to drug users, especially the younger generation.⁵

Regarding drug abuse, the government issued Law Number 35 of 2009 concerning Narcotics, which is one form of realization of the government's concern for the problem of drug abuse. According to this law, narcotics are substances or drugs used for medical purposes, but will actually cause major problems if misused because narcotics have an addictive effect on users so they can only be used with a doctor's prescription. Article 7 of Law Number 35 of 2009 states that: "Narcotics can only be used for the benefit of health services and/or the development of science and technology."

Legally, narcotics are only used for scientific development and health services, but in reality, they are often abused. Narcotics use has become a business venture and has had a detrimental impact on the mental, physical, and psychological well-being of the younger generation.⁶ Law Number 35 of 2009 concerning Narcotics has regulated the types of very severe criminal sanctions against perpetrators of narcotics crimes. This can be seen from the existence of the death penalty, life imprisonment, imprisonment, detention and fines amounting to hundreds of millions to billions of rupiah. In Law Number 35 of 2009 concerning Narcotics in Article 127 regulates regarding narcotics abusers in Article 127 paragraph (1) which states that: every abuse of class I narcotics for oneself is punished with a maximum imprisonment of four years. Meanwhile, abuse of class II narcotics for oneself is punished with a maximum imprisonment of two years, and abuse of class III narcotics for oneself is punished with a maximum imprisonment of one year. From this article we can see that drug abusers can be subject to criminal penalties as a violation, however, Article 127 paragraph (2) states that in deciding cases as referred to in paragraph (1), the judge must pay attention to the provisions as referred to in Article 54, Article 55 and Article 103.

The problem of drug abuse is very important considering that narcotic drugs have physical and mental effects, and when used in the right dosage and under the supervision of a doctor or psychiatrist can be used for medical purposes or research, but if misused or used not in accordance with treatment standards can be dangerous for the user. The direct effects of narcotics, in addition to moral and physical damage, also cause deadly diseases, namely HIV or AIDS as a side effect of narcotic use. As a result of the above problems, a pattern of development of social diseases such as crime, gambling, theft or mugging, rape, prostitution and others have emerged. Narcotic addicts and victims of narcotic

⁵Partodihardjo Subagyo, *Get to Know Drugs and the Enemies of Their Abuse*, Esensi, Jakarta, 2004, p. 4.

⁶Siswanto Sunarso, *Law Enforcement of Psychotropic Drugs in the Study of Legal Sociology*, Raja Grafindo Persada, Jakarta, 2005, p. 6.

abuse are required to undergo medical rehabilitation or social rehabilitation at a drug addiction rehabilitation center. Medical rehabilitation and social rehabilitation are intended to restore and/or develop the physical, mental, and social abilities of addicts, with the ultimate goal of curing addicts from drug addiction. With the increasing prevalence of drug abuse, the government, through Law No. 35 of 2009 concerning Narcotics, is expected to intensify efforts to rehabilitate drug abusers and addicts. If considered victims, it is clear that abusers and addicts must be removed from the stigma of criminality and provided with treatment.

Amidst the legal policy of eradicating narcotics crimes through the Narcotics Law and all efforts to improve it, it turns out that lawmakers also included matters related to narcotics crimes in the discussion of national criminal law provisions. The enactment of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) has implications for several specific criminal laws, one of which is the Narcotics Law. The National Criminal Code regulates and withdraws several articles in the law to become part of the substance of general criminal law. Articles 609 to 611 of the National Criminal Code regulate the acts and criminal threats for narcotics crimes. This means that these articles replace several articles contained in the Narcotics Law as its *lex specialis*.

Not only regarding criminal acts and threats, the National Criminal Code also regulates sanctions in the form of rehabilitation measures. Its relation to drug abuse is that based on Article 105 Paragraph (1) of the National Criminal Code, rehabilitation measures are imposed on defendants who are addicted to alcohol, narcotics, psychotropics, and other addictive substances. This article clearly states that rehabilitation is aimed at addicts.

As is known, medical rehabilitation and social rehabilitation were previously regulated as measures in Articles 54, 55, and 103 of the Narcotics Law. These regulations represent a legal policy for preventing and addressing drug abuse through a recovery or health-focused approach. The goal of this rehabilitation is treatment and rehabilitation, which focuses on the punishment of the perpetrator, not the crime itself. This ensures that legal benefits for drug addicts in drug crimes can be achieved. The regulation of drug rehabilitation demonstrates a criminal law policy aimed at preventing drug abusers and addicts from re-abusing drugs.⁷ Rehabilitation is a sanction for drug addicts and victims of drug abuse to help them recover from their dependence on narcotics. The

⁷Yuliana Yuli W & Atik Winanti, Rehabilitation Efforts for Narcotics Addicts from a Criminal Law Perspective, ADIL: Journal of Law, Volume 10, Number 1, 2019, Page 139, <https://academicjournal.yarsi.ac.id/index.php/Jurnal-ADIL/article/view/1069>

obligation to impose a criminal sanction in the form of rehabilitation is a health-based approach.⁸

The legal gap here occurs in the case of actor Revaldo Fifaldi, known for his role as Rangga in the soap opera "What's Up With Love?", who was caught in a drug case for the third time. Police secured evidence in the form of marijuana, ecstasy pills, and remnants of crystal methamphetamine at the Green Pramuka Apartment in East Jakarta, which he used as a place to consume drugs, on Wednesday (January 11, 2023). Revaldo had previously been caught with drugs, namely in 2006 and 2010. According to Kompas.com records, in 2006 he was found in possession of 1 gram of crystal methamphetamine, one joint of marijuana, and five ecstasy pills. Based on the evidence presented at trial, on August 30, 2006, the judge sentenced Revaldo to two years in prison and a fine of Rp 1 million. However, his experience behind bars apparently didn't deter him. He was arrested again on July 21, 2010, for a drug case. He then began his rehabilitation in 2024.⁹

Rehabilitation measures by the Judge are regulated in Article 54 of the Narcotics Law, which states, "Drug addicts are required to undergo medical rehabilitation and social rehabilitation at a drug addiction rehabilitation center." Basically, drug abusers are criminals and forget that they are also victims who are attached to all rights that must be fought for. This means that even though someone is a drug user who abuses drugs, they still have human rights because these rights are inherent in their nature and dignity as human beings. This means that the state has an obligation to provide legal protection for drug abusers, the right to guidance and rehabilitation. If there are no preventive efforts, sooner or later the young generations who own the future will begin to be destroyed. To ensure the availability of narcotics for the benefit of health and science on the one hand, and on the other hand to prevent the illicit trafficking of narcotics which always leads to abuse, regulations are needed in the field of narcotics.

The criminalization of drug abuse victims by law enforcement officials (APH) demonstrates a blockage in the application of substantive justice. The law enforcement approach, still heavily dominated by textual legal positivism, results in the mechanical application of criminal provisions without considering the victims' true nature as substance abusers.

Legal procedures often take precedence over the pursuit of justice and humanity. The discretion of law enforcement officials, from the police to the prosecutor's office to the judiciary, has not been fully utilized to promote

⁸Wawan Edi Prasetyo, 2022, *Reconstruction of Rehabilitation Law for Drug Addicts and Victims of Drug Abuse*, Bandung, Bandung, PT.Refika Aditama, p.214

⁹ <https://megapolitan.kompas.com/read/2023/01/14/05501321/rekam-jejak-kasus-narkoba-revaldo-tiga-kali-ditangkap-kali-ini-mengaku> accessed on July 25, 2026 at 22.00 WIB.

rehabilitative action, but rather often results in prosecution and criminal penalties.

This practice confirms that narcotics law enforcement in Indonesia remains trapped within the lens of retributive justice, where imprisonment is considered the sole instrument for problem-solving. To examine the imbalance between *Das Sollen* (what should be) and *Das Sein* (what actually happens) in the treatment of narcotics victims, the Progressive Law theory proposed by Satjipto Rahardjo offers a highly relevant analytical tool. Progressive Law upholds the basic premise that "law is for humans, not humans for law." In this view, law must not be allowed to become a rigid and miserable institution, but rather must exist as a means to serve humanity and substantive justice. When textual law enforcement actually gives rise to injustice for victims of drug abuse, law enforcers are required to have the courage to make legal breakthroughs, prioritize empathy, and free themselves from the constraints of rigid positivism in order to restore the spirit of humanity in the judicial process.

The momentum for reforming national criminal law through the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) provides a fresh normative foundation for reorienting narcotics law enforcement. The New Criminal Code fundamentally shifts the paradigm of classical criminal law toward a modern criminal law oriented towards restorative justice, rehabilitative justice, and corrective justice. By including the objectives of criminal punishment that emphasize conflict resolution, restoring balance, and rehabilitating prisoners, the New Criminal Code framework aligns philosophically with the principles of Progressive Law. The presence of this new legal framework should be a turning point for law enforcement officers to end patterns of criminalization against victims of drug abuse and redirect them to a path of just recovery.

Although the New Criminal Code offers a more humane sentencing paradigm, the greatest challenge remains the legal culture and commitment of law enforcement officers to implementing the spirit of reform. Without a shift in the mindset of law enforcement from punitive to progressive, the progressive norms in the New Criminal Code are feared to remain mere normative notes without any real impact on the field. Therefore, an in-depth scientific study on how to integrate a Progressive Law perspective into the national criminal law reform framework to prevent the criminalization of drug abuse victims is crucial. Based on this background, this research was conducted under the title "R"Rehabilitation of drug abuse victims by law enforcement officers: a progressive legal analysis from a national criminal law perspective".

2. Research Methods

A method is a basic process regarding the procedure for finding a way out of a problem, while research is a careful examination of signs in order to obtain human knowledge, so a research method can be interpreted as the basic procedure for finding a way out of existing problems in carrying out research related to Rehabilitation of drug abuse victims by law enforcement officers: a progressive legal analysis from a national criminal law perspective.¹⁰ The sociological legal approach, also known as field research, examines the applicable legal provisions and what actually happens in society.

3. Results and Discussion

3.1. Qualifications for the Regulation of Medical and Social Rehabilitation Measures in the Narcotics Law and the National Criminal Code

Article 28 D paragraph (1) of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, and certainty of fair law, as well as equal treatment before the law. Article 28 G paragraph (1) states that "Everyone has the right to protection of themselves, their families, their honor, their dignity, and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right." Everyone has the right to automatic protection, namely the fulfillment of rights and protection provided by the state. The standard of this protection is the same for all citizens. This right applies equally to drug users in receiving medical and rehabilitation assistance.¹¹

In the normative perspective, namely Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, drug abusers or drug addicts are categorized as criminal acts. However, it is known that drug abusers for themselves and drug addicts are merely victims of their own actions. In essence, drug abusers for themselves and drug addicts are individuals who use and abuse drugs for their own sake. Therefore, drug abusers should be positioned as victims, not as perpetrators of criminal acts who are ultimately subject to criminal sanctions. In other words, individuals who abuse drugs for themselves will automatically become victims of that drug abuse. This condition is also referred to in the victim typology as self-victimizing victims, namely those who become victims because of crimes they commit themselves.¹²

¹⁰Soejono Soekamto, 1986, Introduction to Legal Research, Jakarta, UI Press, p. 6

¹¹Bambang Waluyo, 2011, Victimology of Victim and Witness Protection, Jakarta: Sinar Grafika, pp. 41-42.

¹²C. Maya Indah S. Victim Protection (A Victimology and Criminology Perspective), Kencana Prenadamedia Group, Jakarta, 2014, p. 36.

The handling of criminals who will eventually become victims because of their own actions must certainly be distinguished from criminals who will cause crime on the other side. To determine the ideal sanctions for the creation of crimes, legislators should understand the reasons why an act is criminalized, so that there are no mistakes in solving social problems in society such as overcapacity in correctional institutions caused by the many cases of drug abuse or the increasing number of drug abuse in society. Drug abusers themselves have been criminalized by legal norms as a criminal act so that what automatically happens then within legal norms and the general public is labeling drug abusers as criminals. Then there is the possibility that drug abusers form exclusive groups or individuals, making it increasingly difficult for society and the government to treat and reduce the negative impacts of drug abuse. As the labeling theory in criminology examines, crime is not a quality of a person's actions, but rather a result of the application of sanctions and regulations by others to an offender.¹³

Legal protection for drug users as victims of drug abuse carried out by the National Narcotics Agency by placing drug users in rehabilitation centers as an effort and commitment of the National Narcotics Agency to victims of drug abuse to immediately be free from the dangers of narcotics to their mental and physical health and not dependent on narcotics, which starting in 2015 placed drug abusers "better to be rehabilitated than imprisoned".

Joint Regulation of the Chief Justice of the Supreme Court Number 01/PB/MA/III/2014 Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions and Circular Letter of the Supreme Court Number 04 of 2010 Concerning the Placement of Narcotics Abusers, Victims of Narcotics Abuse and Addicts in Medical Rehabilitation and Social Rehabilitation Institutions, in accordance with Article 13 number 1 of Joint Regulation of the Chief Justice of the Supreme Court Number 01/PB/MA/III/2014 Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions carried out by:

- a. Head of the Criminal Investigation Agency of the Indonesian National Police;
- b. Deputy for Eradication of the National Narcotics Agency of the Republic of Indonesia;
- c. Deputy for Rehabilitation of the National Narcotics Agency of the Republic of Indonesia;
- d. Deputy Attorney General for General Crimes of the Republic of Indonesia Prosecutor's Office;

¹³C. Maya Indah S., Ibid,

- e. Director General of Corrections, Ministry of Law and Human Rights of the Republic of Indonesia;
- f. Director General of Health Efforts Development, Ministry of Health of the Republic of Indonesia;
- g. Director General of Social Rehabilitation, Ministry of Social Affairs of the Republic of Indonesia.

Drug abusers and addicts require rehabilitation services. From a health perspective, drug abuse and addiction are a chronic brain disease that can relapse. Drug abuse is considered a disease because it meets the following criteria: it has an etiological agent, namely a psychoactive substance (narcotics, psychotropics, and other addictive substances), it has signs and symptoms, and it causes changes in the body's function structure that result in functional disorders, especially brain function. Therefore, every victim of drug abuse and addiction has the right to receive rehabilitation treatment.¹⁴The obligation to report oneself to a community health center (Puskesmas), hospital or medical/social rehabilitation institution appointed by the government to receive treatment through medical rehabilitation and social rehabilitation is a mandate of Law Number 35 of 2009 concerning Narcotics as stated in Article 55 paragraph (2).

The reason why drug users need to be rehabilitated, then the reasons can be categorized into 3 factors, namely philosophical reasons, legal reasons and sociological reasons. The philosophical reason is that if drug users are not rehabilitated but imprisoned, there will be a transformation of knowledge in prison cells, which places users together with dealers who do not tend to know how to distribute drugs when they are released from prison cells. The legal reason is article 54 of Law Number 35 of 2009 which requires drug addicts and victims of drug abuse to undergo medical rehabilitation and social rehabilitation. The sociological reason is that basically they (addicts and victims of drug abuse) cannot help themselves, but need help from others, in the sense that they are obliged to report themselves in accordance with the provisions of article 55 paragraph (1) and (2) of Law Number 35 of 2009. Many factors can be categorized as someone using narcotics, which usually occur are environmental factors and individual factors. The environment in which he lives, along with his community and drug dealers, will indirectly influence the victim, however, this individual factor must be a self-defense to reject all forms of narcotics for his use which can damage his soul and body.

Drug users, as victims of drug abuse, must and are required to undergo rehabilitation because they are essentially unable to help themselves and must

¹⁴Ida Oetari. "Year of Saving Drug Users." *Narcotics Bulletin*. Semester 1. June 26, 2014, p. 16.

seek help from others to immediately undergo the recovery process in a rehabilitation institution. This type of policy, which places users in need of rehabilitation, is the launch of a rehabilitation program for 100,000 victims of drug abuse as a program of the National Narcotics Agency of the Republic of Indonesia, with all costs covered by the APBN (State Budget).

3.2. The Effectiveness of Rehabilitation of Drug Abuse Victims by Law Enforcement Officers: Progressive legal analysis from a national criminal law perspective.

The scope of criminal law includes three provisions, namely criminal acts, responsibility, and punishment. The criminal provisions contained in Law Number 35 of 2009 concerning Narcotics are formulated in Chapter XV Criminal Provisions Articles 111 to 148. Law No. 35 of 2009 concerning Narcotics, there are four categories of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely:

1. The first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotic precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics and Article 122 for class III narcotics and Article 129 letter (a));
2. The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for class II narcotics, and Article 123 for class III narcotics and Article 129 letter (b));
3. The third category, namely acts in the form of offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for class II narcotics, Article 124 and Article 126 for class III narcotics and Article 129 letter (c));
4. The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotic precursors (Article 115 for class I narcotics, Article 120 for class II narcotics and Article 125 for class III narcotics and Article 129 letter (d)).

Law Number 35 of 2009 concerning Narcotics regulates the types of sanctions given for narcotics crimes, including:

1. Criminal acts for drug abusers or victims of drug abuse, these abusers are required to undergo medical rehabilitation and social rehabilitation.
2. Criminal Acts by Parents/Guardians of Narcotics Addicts Who Are Underage (Article 128) shall be punished with imprisonment for a maximum of 6 (six) months or a maximum fine of IDR 1,000,000.00 (one million rupiah).

3. Criminal Acts Committed by Corporations (Article 130) Shall be punished with imprisonment and a fine increased by 3 (three) times. Corporations may be subject to additional penalties in the form of: a. revocation of business permits and/or b. revocation of legal entity status.

4. Criminal offenses for those who do not report narcotics crimes (Article 131). Punishable by imprisonment for a maximum of 1 (one) year or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

5. Criminal Acts of Attempt and Conspiracy to Commit Narcotics and Precursor Crimes (Article 132) Paragraph (1), shall be punished with the same prison sentence in accordance with the provisions as referred to in the Articles. Paragraph (2), shall be punished with prison sentence and a maximum fine plus 1/3 (one third).

6. Criminal Acts for Ordering, Giving, Persuading, Forcing with Violence, Deception, Persuading Children (Article 133) paragraph (1) of Law No. 35 of 2009, shall be punished with the death penalty or life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp. 2,000,000,000.00 (two billion rupiah) and a maximum of Rp. 20,000,000,000.00 (twenty billion rupiah). paragraph (2), shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

7. Criminal Acts for Narcotics Addicts Who Do Not Report Themselves (Article 134) paragraph (1), shall be punished with imprisonment for a maximum of 6 (six) months or a fine of a maximum of Rp. 2,000,000.00 (two million rupiah). paragraph (2), shall be punished with imprisonment for a maximum of 3 (three) months or a fine of a maximum of Rp. 1,000,000.00 (one million rupiah).

From a normative perspective, namely Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, drug abusers and drug addicts are categorized as committing a criminal act. However, it is known that drug abusers and drug addicts are merely victims of their own actions.¹⁵ In essence, drug abusers and drug addicts are individuals who use and abuse drugs for their own benefit. Therefore, drug abusers should be positioned as victims, not as perpetrators of criminal acts who are ultimately subject to criminal sanctions. In other words, individuals who abuse drugs for their own benefit will naturally become victims of that drug abuse. This condition is also referred to in victim typology as self-

¹⁵Supreme Court of the Republic of Indonesia, Placement of Abusers, Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions, Circular Letter of the Supreme Court of the Republic of Indonesia, No: 04 of 2010, April 7, 2010, pp. 1-3.

victimizing victims, namely those who become victims because of crimes they themselves commit.¹⁶

In reality, law enforcement practices against drug abusers are still dominated by a repressive approach through imprisonment. In many cases, drug abusers are still processed using formal criminal justice mechanisms and sentenced to prison without considering their dependency status. This situation leads to overcrowding in correctional institutions, the majority of which are occupied by drug convicts. Imprisoning drug abusers also has the potential to have negative impacts, such as an increase in drug trafficking networks within correctional institutions and high recidivism rates after inmates return to society.

Efforts to combat narcotics in Indonesia are normatively outlined in Law Number 35 of 2009 concerning Narcotics. This law comprehensively regulates the prevention, eradication, and rehabilitation of drug addicts. One key provision is Article 54, which requires drug addicts to undergo medical and social rehabilitation. This demonstrates the state's recognition that addicts are not merely criminals but individuals in need of treatment.¹⁷ The introduction of this regulation also marks a shift in the legal paradigm from a retributive to a rehabilitative orientation. Thus, Indonesian criminal law seeks to strike a balance between prosecution of drug traffickers and protection for addicts.¹⁸

One of the problems resulting from the many terms for narcotics users is the confusion of regulations where Article 4 letter d of the Narcotics Law states that the purpose of the Narcotics Law is "To guarantee the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts", however in Article 54 of the Narcotics Law it states "Narcotics Addicts and Victims of Narcotics Abuse are required to undergo medical rehabilitation and social rehabilitation" so that the rights of abusers to receive rehabilitation as regulated in Article 54 are not recognized with the threat of criminal sanctions for narcotics users as regulated in Article 127. Narcotics abusers for themselves should be positioned as sick people who need treatment and recovery due to the negative impacts of the abuse of narcotics they use (victims whose rights should be protected as victims).¹⁹ So the sanctions that should be applied specifically to drug abusers themselves who are not accompanied by other main criminal qualifications are a type of sanction that can restore their condition to its original state, namely in the form of an action sanction.

¹⁶C. Maya Indah S. *Victim Protection (A Victimology and Criminology Perspective)*, Kencana Prenadamedia Group, Jakarta, 2014, p. 36.

¹⁷Laksono, SD, Sambas, N., & Purnomo, H. Implementation of Article 54 of Law Number 35 of 2009 concerning Narcotics in Carrying Out Medical Rehabilitation and Social Rehabilitation Measures. *Iustitia Omnibus: Journal of Legal Studies*, Vol 5 No (2), 2024, pp. 165-185.

¹⁸Andi Hamzah, *Indonesian Criminal Law*, Jakarta: Sinar Grafika, 2019, p. 215

¹⁹Arif Gosita, *Child Protection Issues*, Akademika Pressindo, Jakarta, 1989, p. 52.

Based on the purpose of punishment, especially the relative one (deterrence), it is seen that the punishment is aimed at the days to come, namely with the intention of educating people who have done evil to be good again and sick people, in this case people who are dependent on narcotics, to be cured or free from dependence (addiction). On the other hand, if a drug abuser uses narcotics for himself, is a sick person (dependent on drugs), then it is not appropriate to hold him responsible with imprisonment but must be in the form of an action that can cure him so that he is free from dependence on the substance and can recover to his original condition. The problem of criminalization of drug abusers for themselves above is further compounded by the absence of clear norms determining when law enforcement can impose criminal sanctions or action sanctions for drug abusers for themselves. As is known, drug abusers for themselves are threatened with criminal penalties in Article 127 paragraph 1 of the Narcotics Law and then in Article 127 paragraph 2 there is a provision that judges are required to pay attention to Article 54, Article 55, and Article 103, then in Article 103 paragraph 1 there is a provision for judges to decide and order drug addicts who are proven guilty of committing a crime to undergo (action sanctions) treatment and / or care through rehabilitation. Even though it is understood in the general provisions of Article 1 number 13 concerning drug addicts there is a phrase "abusing narcotics" and in Article 1 number 15 there is a definition of drug abusers.

Law Number 35 of 2009 concerning Narcotics is the primary regulation in Indonesia governing the prevention, eradication, and handling of drug abuse and illicit trafficking. This law not only prioritizes repressive aspects or criminal penalties, but also includes a humanistic approach, particularly towards drug addicts and victims of drug abuse. One important provision in this law is Article 54, which states: "Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation." This article marks a paradigm shift in drug handling from a penal approach (criminal punishment) to a medical and social one. Drug addicts are viewed not merely as criminals, but also as individuals in need of help and recovery.²⁰The meaning and purpose of Article 54 are:

1. Mandatory rehabilitation shows that the state is obliged to provide rehabilitation services, not just prison, for addicts.
2. The goal is to restore the physical, mental and social condition of addicts so they can return to functioning normally in society.
3. This approach is also in line with the principle of protecting human rights, as well as efforts to reduce the rate of recidivism (repetition of criminal acts).

²⁰Page 9 <https://ojs.stihpada.ac.id/index.php/diisiplin/article/view/1839>

This indicates that drug addicts also include drug abusers, meaning that a drug addict will undergo two types of sanctions simultaneously. The existence of sanctions under the Narcotics Law will certainly be more beneficial for drug abusers than the application of criminal sanctions. However, if not based on existing legal norms, it will create new problems, namely the simultaneous application of criminal sanctions and sanctions. Although sanctions and criminal sanctions have different objectives, both sanctions have equal status as a form of punishment in the criminal law system, or the application of both in a legal regulation is usually known as a double-track system. Because of their equality, according to the author, sanctions should override criminal sanctions, not combine them. Combining criminal sanctions and sanctions simultaneously seems to create a new hierarchy in criminal sanctions, placing sanctions under criminal sanctions. In Article 10 of the Criminal Code (KUHP), we recognize the forms of criminal sanctions: principal sanctions and additional sanctions, which have been arranged from the most severe to the least severe. The principal criminal sanctions include:

1. Death Penalty
2. Prison sentence
3. Imprisonment
4. Criminal Fines
5. Cover-up Crime

It's important to remember that criminal sanctions are *ultimum remedium* sanctions, as long as no other solutions to existing crimes are found in society. *Ultimum remedium* itself is a sanction that should be a last resort in law enforcement.²¹ Therefore, if another solution is found for a criminal act, then criminal sanctions should be set aside. For example, in the case of the crime of drug abuse for personal gain, which, according to the author, requires immediate rehabilitation. Punishing perpetrators of drug abuse, as previously described as a dual nature (both perpetrator and victim are the same), also contradicts the theory of restorative justice, which focuses on the criminal justice system and the imposition of punishment as a form of conflict resolution, not retaliation.²² Although the causal relationship between the perpetrator and the victim is the perpetrator's own, the conflict in restorative justice can be interpreted as the personal circumstances of the drug abuser, who is experiencing physical or psychological problems. Restorative justice certainly differs from its predecessor,

²¹Sudikno Mertokusumo, *The Discovery of Law: An Introduction*, Liberty, Yogyakarta, 2006, p. 128.

²²Rena Yulia, *Victimology of Legal Protection for Crime Victims*, Graha Ilmu, Bandung, 2009, p. 193.

retributive justice, which focuses solely on retribution. Restorative justice focuses on:²³

1. Crime is an injury to individuals and/or society:
2. Focus on problem solving
3. Repairing the loss
4. The rights and needs of victims are taken into account
5. The perpetrator is encouraged to take responsibility

However, in practice, the effectiveness of rehabilitation as a suspect's right still presents various challenges. Not all law enforcement officials share the same understanding of the importance of rehabilitation. In the field, differing perceptions persist among investigators, prosecutors, and judges in determining whether a suspect deserves rehabilitation or remains prosecuted as a criminal. Several cases have shown that drug user suspects receive prison sentences without participating in the proper integrated assessment. This occurs due to limited rehabilitation facilities, a lack of coordination between institutions, and the public stigma that still views drug users as criminals. This stigma causes the investigation and adjudication process to focus more on the enforcement aspect than on rehabilitation, thereby reducing the suspect's opportunity to obtain their rehabilitation rights.²⁴

The effectiveness of rehabilitation is also influenced by the readiness of the rehabilitation institution itself. Some existing facilities face challenges such as limited professional staff, substandard treatment facilities, and inadequately structured recovery programs. The sustainability of post-rehabilitation programs remains weak, leading many former users to relapse into drug abuse due to a lack of social support and supervision after returning to the community. The unpreparedness of the social environment to accept former drug users also hinders the success of rehabilitation. Therefore, the effectiveness of rehabilitation, as a right of the accused, must be understood as a systemic effort that relies not only on legal aspects but also involves health, social psychology, and community readiness.

4. Conclusion

1. The qualifications for regulating medical and social rehabilitation measures in Law No. 35 of 2009 concerning Narcotics and the National Criminal Code (Law

²³Rena Yulia, *ibid*, p. 165.

²⁴Fajar, F., Dan, I., & Leksono, H. (2018). Analysis of President Duterte's Policy of Carrying Out Extrajudicial Killings in Eradicating Drugs in the Philippines Based on the 1998 Rome Statute. *Belli Ac Pacis*, 4(1). <https://www.ddb>.

No. 1 of 2023) have experienced a significant paradigm strengthening from a retributive justice approach to a restorative and rehabilitative justice approach. From a legal normative perspective, the Narcotics Law positions rehabilitation as both a right and a legal obligation that is followed up through a mechanism for imposing sanctions by judges (Article 103), while the National Criminal Code formally strengthens the position of rehabilitation as an Action Sanction (Maatregel) that stands parallel to Criminal Sanctions (Straf) under the Double-Track System principle. These two regulations complement each other harmoniously, where the Narcotics Law acts as a *lex specialis* that regulates operational techniques and qualifications based on Assessment Instruments (TAT), while the National Criminal Code becomes a *lex generalis* that provides philosophical legitimacy for prioritizing the principles of individualization of punishment and efficacy (*doelmatigheid*). Practically, the police qualify rehabilitation as a vital instrument in separating the role of drug abusers/victims (victimless crime) from the distribution network (supply reduction). Establishing rehabilitation status from the investigation stage provides legal certainty to reduce recidivism rates, supports demand reduction-based drug crime management, and makes a significant contribution to addressing correctional overcrowding. 2. The effectiveness of rehabilitation in assisting drug addicts' recovery has shown positive results, particularly in reducing recidivism rates and restoring addicts' social functioning and health. However, this effectiveness is greatly influenced by the availability of adequate rehabilitation facilities and social support from family and community. Various factors support rehabilitation implementation, such as progressive government policies and law enforcement officials' awareness of the importance of rehabilitation. On the other hand, obstacles such as limited facilities, a lack of understanding among law enforcement officials, and negative public stigma toward addicts pose significant barriers. Perceptions of law enforcement officials and the public toward rehabilitation as an alternative to punishment tend to be positive, although broader outreach and education are still needed to ensure maximum acceptance. Therefore, rehabilitation as an alternative punishment for drug addicts has great potential to provide a more humane and effective solution than imprisonment, provided its implementation is supported by adequate facilities, good understanding, and strong social support.

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