

Criminal Sanctions Against Narcotics Abuse for Himself Associated with Article 127 Law Number 35 of 2009 Concerning Narcotics

Anthoni Hutabarat¹, Rr. Dijan Widijowati²

^{1,2}Universitas Bhayangkara Jakarta Raya, Indonesia

Email: anthonihtb@gmail.com

Abstract

The purpose of this research is to analyze Criminal Sanctions Against Narcotics Abuse for Himself Associated with Article 127 Law Number 35 of 2009 Concerning Narcotics. The type of research used in this study is a type of normative legal research, namely viewing and analyzing from the point of view of laws and regulations that apply, especially those related to the problems in this study. The results of the research that the mistake of imposing prison sentences on narcotics abusers occurred since the enactment of Law Number 22 of 1997 concerning Narcotics until now has not changed, even though the Narcotics Law changed to Law Number 35 of 2009 concerning narcotics, explicitly stating the purpose of making the law is "guaranteeing drug abusers get rehabilitation efforts The guarantee of the Narcotics Law is contained in article 55 j.o article 128, namely abusers are required by law to carry out mandatory reporting of addicts to IPWL to obtain rehabilitation services and abusers related to the court are terminated or determined by a judge to receive a rehabilitation sentence. Rehabilitation services through compulsory reporting of addicts are in fact not implemented properly.

Keywords: Criminal Sanctions, Narcotics Abuse, For Yourself.

A. INTRODUCTION

Narcotics abuse in Indonesia has been classified as an extraordinary crime. The government has long prioritized eradicating drug abuse. Eradication efforts have been stepped up, such as tightening security in border areas, transportation transit points such as airports and seaports, and reforming the internal law enforcement apparatus (Zulyadi, 2020; Ramadhani et al., 2021). Nevertheless, the data shows that the number of convicts in narcotics cases is very large. At the end of 2018 the number of prisoners in narcotics cases reached 115,289 (95% of the total special prisoners in Indonesia). This figure is far higher than the number of convicts in corruption cases (5,110), illegal logging (890), terrorism (441), and money laundering (165) (Ministry of Law and Human Rights, 2019).

In the last four years, there has been a surge in the number of convicts in narcotics cases in Indonesia. The increase was 82%, from 63,355 people in 2015 to 115,289 people in 2018. The increase in the number of convicts for narcotics cases has led to overcapacity in the Special Prison for Narcotics and the General Prison.

According to data from the Directorate General of Corrections (Ditjen PAS) on 31 December 2018, out of a total of 22 UPTs specifically for narcotics, they have a capacity of 11,659 convicts. However, the number of convicts in narcotics cases who occupied it reached 19,993 inmates or experienced an over capacity of 71.4%. Not all

convicts in narcotics cases can be accommodated in the Narcotics Special Prison. Most of them are scattered in various public prisons and prisons (remand centers) in Indonesia. Based on data owned by the Directorate General of Corrections that 18% of narcotics convicts are in North Sumatra. This number is the largest compared to other prisons in Indonesia. More than 50% of convicts in narcotics cases are spread across 6 provinces in Indonesia, namely North Sumatra, East Java, West Java, East Kalimantan, South Sumatra and Jakarta.

According to research by the Indonesia Judicial Research Society (IJRS), during the 2016-2020 period there were 745 people accused of narcotics abuse in Indonesia. Of this amount, 92.3% of drug abuse defendants were sentenced to prison terms. Meanwhile, only 3.2% were rehabilitated, and 3.1% were both imprisoned and rehabilitated. Then the remaining 1.3% is terminated with other punishments, such as being returned to the parents. This only happens if the defendant is a child. This data illustrates how imprisonment is still the punishment most often applied to narcotics abusers. Criticism of this view is to interpret addicts and abuse victims as crimes that must be imprisoned. In fact, the concept of addicts and especially victims of abusers actually has no element of reproach (censure) that deserves to be punished (Farahmand et al., 2020; Kim et al., 2020).

In addition, IJRS also found that there were 38.6% of decisions that convict narcotics abusers with confinement periods of under 1 year. In fact, according to the IJRS, a prison term of less than 1 year should be subject to a conditional sentence. For example, someone who is sentenced to imprisonment for 9 months with a conditional sentence/probation sentence for 2 years, then the implementation/execution of the prison sentence will not be carried out immediately (suspended). Prison sentences will only be carried out if within 2 years the convict violates the conditions determined by the judge in the decision. According to the IJRS, this conditional sentence should be applied to reduce the number of narcotics convicts in Indonesian prisons, whose contents have exceeded their capacity (overcrowding), especially considering the characteristics of the crime of narcotics abuse as a victimless crime. The accused of Narcotics Abuse is a Recreational User.

Article 54 Law Number 35 of 2009 concerning Narcotics, which determines: "Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation".

Article 57 of Law Number 35 of 2009 states: "Apart from medical treatment and/or rehabilitation, healing of Narcotics Addicts can be carried out by government agencies or the community through religious and traditional approaches".

Implementation of rehabilitation is the realization of a rule, this is very important because with an implementation it can be seen whether a rule has actually been implemented or not. Law Number 35 of 2009 concerning narcotics has given different treatment to narcotics abusers, before this law came into force there was no different treatment between narcotics users, dealers, dealers and producers. Narcotics users or addicts on the one hand are perpetrators of crimes, but on the other hand they are victims (Siti Hidayatun, 2020; Earp et al., 2021; Simbulan et al., 2019).

The reality shows that the implementation of sentences by judges in narcotics cases is still not effective. Most narcotics addicts are not sentenced to rehabilitation as stipulated in the Narcotics Law, but instead are sentenced to prison even though the provisions of the law guarantee arrangements for rehabilitation efforts, both medical rehabilitation and social rehabilitation for narcotics abusers and addicts (Ekhtiari et al., 2020; Bacon, 2022; Porter, 2020). As an example of the case that happened to Ridho Rhoma, Nia Ramadhani, Polo, Tesi and others.

One example is the Nia Ramadhani drug case. In this case, the decision of the panel of judges at the Central Jakarta District Court Number 770/Pid.Sus/2021/PN Jkt.Pst to imprison Nia Rahmadani, cs who was legally and convincingly proven to have committed the crime of drug abuse in accordance with Article 127 paragraph 1 letter a, is a decision which feels inaccurate. The judge in imposing charges on drug abusers did not impose rehabilitation sentences, but instead imposed prison sentences.

In fact, the case that befell Nia Rahmadani was a case of narcotics abuse in a state of dependence, which was proven in her verdict, namely stating that it was legally and convincingly proven to have violated Article 127 paragraph 2 letter a where the legal punishment is in the form of rehabilitation as a substitute for criminal punishment. The problem is that the defendant in this case was given a prison sentence instead of a rehabilitation sentence. Even though Law Number 35 of 2009 concerning Narcotics states that judges have the authority (Article 103) and are obliged (Article 127 paragraph 2) to impose rehabilitation sentences as an alternative punishment for abusers (Article 36 of Law No 8 of 1976). Looking at the Nia Ramadhani case, it can be said that the judge did not comply with the principle of *lex specialis derogat lex generalis* because he did not use Article 103 of Law Number 35 of 2009 j.o Article 36 of Law Number 8 of 1976.

The mistake of punishing narcotics abusers in prison has occurred since the enactment of Law Number 22 of 1997 concerning Narcotics until now it has not changed, even though the Narcotics Law has changed to Law Number 35 of 2009 concerning narcotics which is in force now, explicitly stating the purpose of making the law is "guaranteeing abusers to get rehabilitation efforts" (Law No. 35 of 2009 concerning Narcotics, Article 127 paragraph (3)).

The guarantee of the Narcotics Law is contained in article 55 j.o article 128, namely that abusers are required by law to carry out mandatory reporting of addicts to IPWL to obtain rehabilitation services and abusers related to the court are terminated or determined by a judge to receive a rehabilitation sentence. The implementation of guarantees for rehabilitation services through mandatory reporting of addicts is in fact not carried out properly, and also does not get a decision or judge's decision to be rehabilitated. As a result, the state loses, the community also loses from the judge's decision to imprison narcotics abusers.

B. METHOD

The type of research used in this study is a type of normative legal research, namely viewing and analyzing from the point of view of laws and regulations that apply, especially those related to the problems in this study. This type of approach is more directed to descriptive research which is a research method that seeks to describe and interpret objects in accordance with the Laws. Descriptive research can also form new theories or can strengthen existing theories. In addition, descriptive research is also research, where data collection is used to compare research questions related to the current situation.

C. RESULT AND DISCUSSION

1. Criminal Sanctions for Narcotics Abuse in terms of Article 127 of Law Number 35 of 2009 concerning Narcotics

For now, narcotics cases in cyberspace are still being resolved using Law no. 35 of 2009 concerning Narcotics. Law No. 35 of 2009 concerning Narcotics contains four categories of unlawful acts which are prohibited by law and can be punishable by criminal sanctions, namely: a) The first category, namely acts in the form of possessing, storing, controlling, or providing Narcotics and Narcotics precursor; b) The second category, namely acts in the form of producing, importing, exporting, or distributing Narcotics and Narcotics precursors; c) The third category, namely acts in the form of offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics and Narcotics precursors; and d) The fourth category, namely acts in the form of bringing, sending, transporting, or transiting Narcotics and Narcotics precursors.

This law describes that the formulation of a crime or an act without rights and understanding is against the law and related to the classification of Narcotics (Group I, Group II, Group III), includes four categories namely: 1) possessing, storing, controlling, supplying narcotics; 2) own, store, control, provide; 3) offering for sale, buying, receiving, intermediary in buying and selling, exchanging or delivering; and 4) use, give to be used by others (Gallagher et al., 2022; Tumanggor et al., 2019).

The settlement of narcotics crimes contained in cybercrime cases finally follows the rules contained in Law No. 35 of 2009 concerning Narcotics. As seen in the cases in the previous chapter, the Panel of Judges will first know the perpetrators of the crime or the person who is held accountable for the narcotics crime committed. In order to analyze and determine if the perpetrators of narcotics abuse have met the requirements to be subject to criminal prosecution, the criminal responsibility system must first be discussed.

If an offender has met the requirements to be held criminally responsible, and in this case is related to narcotics abuse, then that person can be sentenced according to the provisions of the law on Narcotics namely the provisions of Articles 116, 121 and Article 127 namely:

- a. There is a conscious will aimed at committing the crime of narcotics abuse for an element of error

- b. Can be accounted for for his actions of abusing narcotics, meaning he is in a mental state of the maker.
- c. Criminal liability requires conditions that the maker is able to take responsibility, including: a) Being able to understand the value of the consequences of his actions of abusing narcotics; b) Able to know or realize that his act of abusing narcotics is against the law; and c) Being able to determine his will in accordance with that awareness;
- d. Does not meet the requirements for criminal write-offs, and in the case of narcotics abuse, if the offender accidentally uses narcotics because he is persuaded, tricked, tricked, coerced, and/or threatened to use narcotics, then in accordance with the provisions of Article 54 of the Narcotics Law he are victims of narcotics abuse who are obliged to undergo rehabilitation.

The settlement of narcotics cases and their regulation is of course inseparable from the study of criminal provisions for narcotics abuse, bearing in mind the position of narcotics addicts who have a slightly different position from other criminal offenders, namely narcotics addicts according to statutory provisions, on the one hand are perpetrators of criminal acts of abuse narcotics, but on the other hand is a victim (Kramer, 2019; Enghoff & Aldridger, 2019).

In the case of the settlement of a narcotics crime, it is certainly inseparable from the implementation of the criminal justice system (SPP), which is the concept of the Criminal Justice System approach, namely a system approach in the mechanism of administering criminal justice which was initiated by dissatisfaction with the criminal justice process in the United States. Romli Atmasasmita as quoted by Mujahid said that the work of the SPP focuses on the administration of justice (Mujahid, 2004; Tham, 2021; Logan et al., 2019)).

The stages of case examination in Indonesia stem from a process called "investigation", in which the investigation is to determine whether an event or action (feit) is a criminal event/action or not. If during the investigation it is known or there is a strong suspicion that the case, event or action is a crime (delict), then it can proceed to the next process, namely investigation (Emil, 2014; Swimburne & Hoke, 2019).

Because Indonesia is a country that adheres to a negative proof system or theory according to law, this also applies to narcotics crimes, where to be able to prove a narcotic crime has occurred it also requires evidence to prove that a narcotics crime has occurred. In the case of a narcotics crime, the evidence that the crime has been committed is the presence of narcotics. In Indonesia, provisions regarding narcotics are currently regulated by Law Number 35 of 2009 concerning Narcotics. It regulates narcotics both in terms of use, storage, manufacture and prohibition of narcotics abuse. Laws and regulations regarding narcotics specifically also regulate prohibitions as well as criminal sanctions as well as objects of evidence in the settlement process in court as a crime.

The evidence is obtained by the investigator as the first agency in the judicial process. Evidence can be obtained by investigators through the following matters

(Nurul, 1989): 1) Examination of the crime scene (TKP); 2) search; 3) Submitted directly by the reporting witness or suspect; 4) Taken from a third party; and 5) Found items.

According to Article 1 point 16 of the Criminal Procedure Code, confiscation is a series of actions by investigators to take over or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions and trials. For objects or evidence involved in a crime, for the purposes of investigation, prosecution and proof of court proceedings, investigators can temporarily confiscate.

Looking at the provisions of Article 1 point 16 of the Criminal Procedure Code, regarding the meaning of confiscation it appears that the investigator is authorized to carry out the confiscation. Confiscation is only regulated in the investigation stage. Before taking action to confiscate evidence, investigators must prepare everything needed, depending on the situation and conditions of the criminal incident, namely as follows:

- a. Submitting a letter requesting permission from the chairman of the local district court, this is done by special investigators in non-urgent matters or circumstances.
- b. Make a confiscation warrant, in the event that it is not urgent that a confiscation warrant be made after obtaining a confiscation permit from the Head of the District Court. In an urgent situation and action must be taken immediately, the investigator can issue a confiscation warrant without first seeking permission from the Head of the District Court.
- c. Personnel, tools and equipment. This is to expedite the implementation of the confiscation of evidence by investigators.
- d. Determining or estimating the name, type, nature, packaging, amount of goods to be confiscated. This of course depends on the criminal case faced by the investigator. Based on the description above, it is clear that as with other crimes, the way to obtain evidence in narcotics crime cases is also carried out by confiscation, both from examination of the crime scene, search of the perpetrator, handed over directly by the reporting witness or suspect, taken from a third party or in the form of Items found by accident.

Rehabilitation is a semi-closed facility, meaning that only certain people with special interests can enter this area. Drug rehabilitation is a place that provides skills and knowledge training to avoid drugs (Herman, 2000). Rehabilitation measures are aimed at victims of narcotics abuse to restore or develop the physical, mental and social abilities of the sufferer concerned. Apart from recovering, rehabilitation is also a treatment or treatment for narcotics addicts, so that addicts can recover from their addiction to narcotics. For narcotics addicts who obtain a decision from a judge to serve a prison sentence or confinement, they will receive guidance and treatment in a Correctional Institution. With the increasing danger of narcotics spreading to all corners of the world, various ways of coaching for healing victims of narcotics abuse arise. In this case it is rehabilitation.

According to RI Law no. 35 of 2009, there are two types of rehabilitation, namely: a) Medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence; and b) Social Rehabilitation is an integrated process of recovery activities, physically, mentally and socially, so that former narcotics addicts can return to carrying out social functions in community life.

According to Supreme Court Circular Letter No. 04 of 2010 concerning Placement of abuse, abuse victims and narcotics addicts into medical rehabilitation and social rehabilitation institutions, to reduce the length of the rehabilitation process, so that expert information is required and as a standard in the therapy and rehabilitation process is as follows following:

- a. Detoxification and Stabilization Program: duration of 1 (one) month
- b. Primary Program : duration of 6 (six) months
- c. Re-Entry Program : duration of 6 (six) months

Law No. 35 of 2009 concerning Narcotics expands opportunities for narcotics addicts to get the opportunity to undergo the process of treatment and/or care through rehabilitation facilities. As stated in the theory of expediency as a reference for analyzing the application of criminal law policies to the implementation of social rehabilitation "emphasizing laws or criminal law policies should provide the greatest happiness in life".

The reference to this theory, when linked to legal objectives, namely: justice, benefit and legal certainty, is appropriate. In formulating policies to be more effective and efficient, integration between institutions is needed from law enforcement officials (Police, Prosecutors, Judges and the BNN) with the executive, namely the Ministry Social RI as the person in charge of implementing the rehabilitation center.

In addition, the drafting of criminal law policy regulations and services through rehabilitation facilities for disabled people are quite synchronous in supporting the roles and functions of the government's responsibilities (Sugihartati & Susilo, 2019; Del Pozo & Beletsky, 2020). It's just that if it is related to the provisions of the authority of the judge who handles cases of narcotics addicts it is slightly different and even communication has not been built optimally for maximum achievement in achieving the policies that have been passed. It should be underlined that guaranteeing rehabilitation efforts is for victims and addicts, not for abusers such as dealers (Yuliana, 2019; Minhee & Calandrillo, 2019).

The motive for rehabilitation for narcotics addicts is for the benefit of recovering from narcotics for addicts and victims. The sentence that was handed down was like a punishment by undergoing rehabilitation at a predetermined place, and there was a sentence period. The most important thing in the verdict is still the punishment. The rehabilitation decision does not stand alone, and it is still reminded that what he did was wrong. Rehabilitation for narcotics addicts needs to get healing priority. Which is enough to help identify the sources or causes that can lead to deviant behavior of narcotics addicts (Colson & Bergeron, 2020; Klien, 2019).

Provisions regarding the rehabilitation of narcotics addicts and victims of narcotics abuse have been regulated in Law Number 35 of 2009 and the previous law,

namely law number 22 of 1997, while other policies that support the rehabilitation of narcotics addicts are by issuing a Letter Supreme Court Circular (SEMA) Number 04 of 2010 which is a revision of Supreme Court Circular Letter Number 07 of 2009, Government Regulation Number 25 of 2011 Concerning Compulsory Reporting Policy for Narcotics Addicts and Victims as well as the latest policy issued by 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, Head of the National Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia concerning "Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions " on the basis of that consideration:

- a. The number of Narcotics Addicts and victims of Narcotics Abuse as Suspects, Defendants, or Convicts in Narcotics Crimes is increasing and efforts to treat and/or treat them have not been carried out optimally and in an integrated manner;
- b. Elucidation of Article 21 paragraph (4) letter b of Law Number 8 of 1981 concerning Criminal Procedure Code, states that a suspect or a Narcotics Addict is detained as far as possible in a certain place which is also a place of treatment;
- c. In order to restore and/or develop the physical, mental and social aspects of suspects, defendants or convicts in narcotics crimes, it is necessary to carry out an integrated and coordinated treatment, care and recovery program.

The issuance of a joint regulation on the Handling of Narcotics Addicts and Narcotics Abuse Victims to Rehabilitation Institutions aims to: a) Realize optimal coordination and cooperation in resolving Narcotics problems in order to reduce the number of Narcotics Addicts and Narcotics Abuse Victims through treatment, care and recovery programs in the handling of Narcotics Addicts and Victims of Narcotics Abuse as suspects, defendants or convicts, while continuing to eradicate the illicit traffic of Narcotics; b) Become a technical guideline in handling Narcotics Addicts and Victims of Narcotics Abuse as suspects, defendants, or convicts to undergo medical rehabilitation and/or social rehabilitation; and c) Implementation of the process of medical rehabilitation and social rehabilitation at the levels of investigation, prosecution, trial and punishment in a synergistic and integrated manner (Friedman & Patillo, 2019).

Law number 35 of 2009 concerning Narcotics has guaranteed medical rehabilitation and social rehabilitation for addicts and victims of narcotics abuse. This medical and social rehabilitation is intended for narcotics addicts and victims of narcotics abuse, not for dealers. The government's efforts are contained in Article 54 of Law Number 35 84 of 2009 concerning Narcotics, which states that narcotics addicts and victims of narcotics abuse must be rehabilitated medically and socially.

The medical rehabilitation program for convicts/suspected drug addicts is in line with the mandatory reporting program for drug addicts. It is hoped that the

mandatory reporting program which officially began at the end of 2011 will attract more awareness of addicts and/or their families to self-report, so that more and more narcotics addicts receive treatment related to their addictive behavior. With the increasing number of addicts and victims of narcotics abuse who report themselves to health centers, mental hospitals and public hospitals which are designated as Compulsory Report Receiving Institutions (IPWL), it is hoped that fewer addicts and victims of narcotics abuse will undergo imprisonment.

As stated in the attachment to Regulation of the Minister of Health number 80 of 2014, health facilities serving medical rehabilitation for Addicts, Abusers and Victims of Narcotics Abuse who are in the process of investigation, prosecution and trial or have received court decisions/decisions will be determined by the Minister of Health based on proposal by the local government through the Head of the Provincial or District/City Health Service, the leadership of the TNI/POLRI or the heads of other government agencies that have health service facilities. Health facilities that have received referrals from the court, can submit claims to the Ministry of Health in accordance with the services that have been provided.

Health facilities that can provide medical rehabilitation services for Addicts, Abusers, and Victims of Narcotics Abuse who are currently in the process of investigation, prosecution, and trial or have received court decisions/decisions consist of General Hospitals belonging to the Government or Regional Government, General Hospitals belonging to the TNI/POLRI, Drug Addiction Special Hospital, Mental Hospital, or medical rehabilitation institution belonging to the government or local government (Attachment to Regulation of the Minister of Health number 80 of 2014).

The criteria for health facilities that can be proposed as medical rehabilitation facilities for Addicts, Abusers, and Victims of Narcotics Abuse who are in the process of investigation, prosecution, and trial or have received court decisions/decisions are: 1) Recording of incoming and outgoing visitors; 2) Physical and luggage checks upon entering the program so as not to bring various drugs and sharp objects into the rehabilitation center; 3) Duties of security guards; and 4) Securing infrastructure facilities so that patients avoid the possibility of injuring themselves, injuring others and running away (Collins, 2020; Kenny, 2020).

The rehabilitation program can be carried out by addicts who use the Compulsory Reporting Program (IPWL), addicts who are undergoing a judicial process and addicts ordered based on a court decision. Provisions regarding the implementation of mandatory reporting are further regulated through Government Regulation of the Republic of Indonesia No. 25 of 2011 concerning Implementation of Compulsory Reporting of Narcotics Addicts. Narcotics addicts are required to voluntarily report themselves to the Compulsory Reporting Recipient Institution hereinafter referred to as IPWL in order to receive treatment. IPWL are community health centers, hospitals, health centers, medical rehabilitation institutions and social rehabilitation institutions appointed by the government.

Narcotics addicts who are undergoing a judicial process can be placed in a medical rehabilitation institution and/or social rehabilitation which is under the

authority of investigators, public prosecutors or judges according to the level of examination after obtaining a recommendation from a team of doctors (Kozhimannil et al., 2019). The obligation to undergo medical rehabilitation and/or social rehabilitation also applies to narcotics addicts who are ordered based on a court decision if 87 narcotics addicts are proven guilty of committing a narcotic crime; or a court decision if a narcotics addict is not proven guilty of committing a narcotic crime.

For addicts, both those who are caught red-handed and those who go through the IPWL program, prior to rehabilitation they will first go through an assessment conducted by an integrated assessment team. The Integrated Assessment Team is a team consisting of a Team of Doctors and a Team of Laws appointed by the head of the local work unit based on a decree from the Head of the National Narcotics Agency, Provincial National Narcotics Agency, Regency/City National Narcotics Agency. The task of the Assessment Team as stipulated in Article 9 paragraph (2) Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, National Police Chief, Head of BNN regarding the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions is an assessment and medical analysis, psychosocial, and recommend a plan of therapy and rehabilitation of a person.

Furthermore, the authority of the assessment team is to determine the criteria for the severity of Narcotics users according to the type of content consumed, the situation and conditions when arrested at the scene of the case and recommend a plan of therapy and rehabilitation for Narcotics addicts and victims of Narcotics Abuse as stated in Article 9 paragraph (2) Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, National Police Chief, Head of BNN regarding the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

In Article 9 paragraph (3), the assessment and analysis is carried out by a legal team tasked with conducting an analysis in relation to the illicit traffic of narcotics and narcotics precursors and narcotics abuse in coordination with investigators handling cases, as well as a team of doctors tasked with carrying out medical, psychosocial and recommend therapy and rehabilitation plans for drug abusers.

The stages of rehabilitation for drug addicts: 1) The medical rehabilitation (detoxification) stage, at this stage the addict's entire health, both physical and mental, is examined by a trained doctor. It is the doctor who decides whether the addict needs to be given certain drugs to reduce the withdrawal symptoms he is suffering from. Drug administration depends on the type of drug and the severity of withdrawal symptoms. In this case the doctor needs sensitivity, experience, and expertise to detect the symptoms of drug addiction; 2) The non-medical rehabilitation stage, at this stage the addict participates in the rehabilitation program. In this rehabilitation center, addicts undergo various programs including the therapeutic communities (TC) program, 12 steps (twelve steps, religious approach, etc.; and 3) Aftercare stage, in this stage addicts are given activities according to interests and talents to fill daily

activities, addicts can return to school or work but remain under supervision.

For each stage of rehabilitation, continuous monitoring and evaluation of the addict's recovery process is required. In handling drug addicts, in Indonesia there are several methods of therapy and rehabilitation that are used, namely:

a. Cold Turkey

This means that an addict immediately stops using drugs/addictive substances. This method is the oldest method, by confining addicts in a period of withdrawal without giving drugs. After withdrawal symptoms disappear, addicts are excluded and included in counseling sessions (non-medical rehabilitation). This method is widely used by several rehabilitation centers with a religious approach in their detoxification phase.

b. Metode alternatif

c. Terapi Substitusi Opioda

Only used for heroin (opioid) dependent patients. For hard core addict users (opioid users who have been using injectable opioids for years), addicts usually experience chronic relapses that require repeated addiction therapy. The need for heroin (illegal narcotics) is replaced (substitution) with legal narcotics. Some of the drugs that are often used are codeine, buprenorphin, methadone, and nalrekson. These drugs are used as detoxification drugs, and are given in doses according to the needs of the addict, then the dose is gradually reduced. The four drugs above have been widely circulated in Indonesia and it is necessary to control their use to avoid irregularities/abuse of these drugs which will have fatal consequences.

d. Therapeutic Community (TC)

This method began to be used in the late 1950s in the United States. The main goal is to help addicts to be able to return to society and be able to return to a productive life. The TC program is a program called the Drug Free Self-Help Program. This program has nine elements, namely active participation, feedback from membership, role modeling, collective format for personal change, sharing of norms and values, structure & system, open communication, group relationships and use of unique terminology. Activities in TC will help participants learn to know themselves through five areas of personality development, namely behavior management, emotional/psychological, intellectual & spiritual, vocational and education, skills to stay clean from drugs.

e. Metode 12 Steps

In the United States, if someone is found to be drunk or abusing drugs, courts will sentence them to follow a 12-step program. Addicts who participate in this program are motivated to implement these 12 steps in their daily lives.

2. Legal Certainty for Narcotics Abusers for Himself

Observing the developments in several countries, a new paradigm has emerged in viewing narcotics users/addicts who are no longer seen as evil (criminal) behavior

but as people with chronic illnesses who must receive treatment and recovery in stages. This paradigm then creates a new policy in dealing with victims of narcotics users who are no longer legally prosecuted, but directly bring users/addicts to rehabilitation centers.

In other words, this paradigm leads to efforts to decriminalize drug users. The application of criminal law in the form of imprisonment for victims of narcotics use has proven to be unsuccessful, what actually happens is that every year victims of narcotics users who are sentenced to prison terms are increasing. This is what needs to be reviewed regarding the purpose and function of applying criminal law to victims who use narcotics. The most important factor in efforts to tackle narcotics abuse, which is often neglected, especially by law enforcement officials in Indonesia, is rehabilitation. The model of punishment for victims of narcotics users is still positioned as perpetrators of criminal acts (criminals), so that rehabilitative efforts are often neglected. This paradigm itself is also in accordance with the precepts of social justice for all Indonesian people as a very basic aspect in guiding the development of the national legal system.

In Indonesia such a pattern has not been implemented, victims of narcotics use are still put in jail, although during the process prisoners are allowed to be rehabilitated, this has not been an effective solution. The legal system in Indonesia must start implementing a policy by directly bringing victims who use narcotics to rehabilitation. If victims of narcotics use are caught by the police or reported by their parents and/or guardians, they must be placed in a rehabilitation center.

If you look at the theory of legal certainty, the issuance of SEMA Number 4 of 2010 and Government Regulation Number 25 of 2011 actually confirms that narcotics addicts are victims and not criminals, as well as legal legitimacy that addicts are not criminals but someone who suffers from addiction. requires treatment both physically and psychologically and requires support from the community to be able to return to normal life. Several state officials such as the National Police Chief General Timur Pradopo also have the same idea, according to him the paradigm for placing victims of narcotics users into rehabilitation has actually been voiced for a long time and has been stipulated in the Narcotics Law, and in SEMA Number 4 of 2010, but in practice there has not been much carried out, so that so far victims of narcotics users still have to undergo court proceedings. Victims of narcotics users, according to him, do not need to be arrested or punished, but rather narcotics users need to be given treatment at a rehabilitation center. If narcotics users are actually detained or punished, it will not create a deterrent effect, and will even become more recalcitrant (Parasian, 2011).

With these provisions the world of justice in Indonesia has actually opened their eyes about the nature of narcotics 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 narcotics" proclaimed by the Indonesian government, narcotics addicts were always placed as criminals, so the rights of victims to get health care and special treatment, in this case rehabilitation, were lost. The challenge ahead lies precisely with the shoulders of judges to dare to decide or determine rehabilitation

verdicts for addicts and to make legal breakthroughs and legal discoveries that do not only refer to laws, but rather to social and human values that live in society.

Thus, the punishment model for victims of narcotics abuse must be oriented toward healing and recovery, both through medical institutions (hospitals and health centers), as well as social institutions, so as to create a model in the form of treatment that can be applied to victims of narcotics use. Forms of treatment for victims of narcotics use can be carried out through medical channels (institutions where reports are made) and through law enforcement officials. The medical route in the sense that the government provides report points in each province, district/city and sub-districts throughout Indonesia to record and report victims of narcotics users or addicts and then take them to rehabilitation centers. Meanwhile for law enforcers, the police and/or BNN as institutions that have the authority have the right to arrest those who then take the victims or narcotics addicts who have not reported themselves for treatment at a rehabilitation center until they recover.

In Article 1 paragraph (3) of the 1945 Constitution it is stated explicitly that the Republic of Indonesia is a state of law, then in the Explanation of the 1945 Constitution it is stated that the Republic of Indonesia is based on law (*rechtsstaat*), not on mere power (*machtsstaat*). Likewise in other constitutions that have been in effect in Indonesia, namely the Constitution of the United Republic of Indonesia (KRIS) and the Provisional Basic Law (UUDS) 1950, it is expressly stated in the articles that Indonesia is a state of law. From the principles contained in the state law, it means: the highest authority in the Indonesian state is the law made by the people through their representatives. In constitutional practice, where the system of state administration or the way in which the state is administered requires power, however, this power is limited by law. So the notion of a rule of law is the opposite of the notion of a state of power, the rationale that supports it is the freedom of citizens, not the freedom of the state. The aim is to maintain public order, so the state is a servant of the community assigned and trusted to maintain that order (Bahder, 2017).

In this case, the government is the legal implementer who is a legal subject as the bearer of rights and obligations to implement, comply with laws and regulations, namely in the field of rehabilitation for narcotics users. If human rights are connected with criminal procedural law, the correlation will be very clear. Furthermore, the criminal procedural law as a guideline for law enforcement officials in the judicial process has existed since 37 years ago, precisely on December 31, 1981. In that era, all people welcomed it because the Criminal Procedure Code was considered a masterpiece that upheld and guaranteed the protection of human rights. human rights and the protection of human dignity and worth as it should be owned by a country based on law.

Human rights are awareness of self-esteem, dignity and human dignity which have become natural since humans were born on earth. The history of human rights coincides with the history of the birth of human beings who rise and fall according to the situations and conditions that accompany them. So, actually the law is not only limited to legal principles alone, but also should include legal principles to regulate

humans in realizing that law applies in society.

The 1945 Constitution regulates the rights of every citizen where regulated in Article 28 D paragraph (1) states: "Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law." . And in Law no. 14 of 1970 concerning the Principal Powers of the Judiciary and Law no. 8 of 1981, concerning the Criminal Procedure Code (Article 5 to Article 8) it is stated that human rights must be upheld and receive protection in a State based on Pancasila and implemented by law enforcement officials.

The State of Indonesia as a rule of law also converts human rights into its laws and regulations, where this can be seen in the preambles, general rules and explanations, especially regarding provisions for officials to carry out the law while upholding human rights. KUHAP as the realization of the main law of judicial power formulates its rules by relying on human rights in the criminal justice process such as the right of prosecution, defense, trial examination and treatment of suspects/defendants.

The existence of guarantees and protection of human rights in criminal procedural law regulations has a very important meaning because most of the series of criminal procedural processes lead to limitations on human rights such as arrest, search detention, confiscation and punishment, which in essence is a limitation of human rights.

Law enforcement as a form of state protection of human rights must be carried out consistently and in harmony with legal developments and pay attention to the sense of justice and paradigm shifts that exist in society. Whereas the dangers of narcotics abuse show a tendency for victims to increase, especially among children, adolescents and the younger generation, so that commitment and synergy are needed from all elements of law enforcement officials, relevant authorities and the community, in responding to this paradigm shift. Narcotics addicts and victims of narcotics abuse are not only seen as perpetrators of crimes, but also as victims, where the implementation of rehabilitation is part of an alternative punishment (2014 Joint Regulation Concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions).

In addition, regarding the handling of narcotics abuse, two methods are carried out, namely prevention without punishment through mandatory reporting of addicts and implementation of rehabilitation law enforcement with a restorative justice approach. Restorative Justice is a model of criminal case settlement approach in which all interested parties in the case meet together to settle things fairly by emphasizing returns to their original state and not retaliation. The implementation of restorative justice is to seek alternatives to punishment without prioritizing imprisonment. Article 54 of Law Number 35 of 2009 states that narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation (Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice).

By enforcing legal regulations related to narcotics rehabilitation, the courts also contributed to realizing the 2005-2009 national development vision, namely creating a just and democratic rule of law through the development of a national legal system by establishing aspirational laws and regulations, with the core of justice and truth. who serve the interests of the people and the nation within the framework of the Unitary State of the Republic of Indonesia to protect all the people and nation, as well as Indonesia's bloodshed, promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice based on Pancasila and the 1945 Constitution.

Cases of abuse of narcotics are cases of using narcotics for consumption with a limited amount of narcotics for daily use. The grammar is determined in SEMA number 4 of 2010. The obligation of investigators and prosecutors to carry out scientific investigations and prosecutions is whether the abuser has a predicate as an addict or an addict who is also a dealer.

Additional requirements for handling criminal acts based on restorative justice for narcotics crimes, include: 1) Drug addicts and victims of drug abuse who apply for rehabilitation; 2) At the time of being caught red-handed, evidence of narcotics use was found for 1 (one) day with the classification of narcotics and psychotropics in accordance with statutory provisions, and no evidence of narcotics crime was found but the urine test results showed positive drugs; 3) Not involved in a network of criminal acts of narcotics, dealers and/or dealers; 4) Assessment has been carried out by an integrated assessment team; dab 5) The perpetrator is willing to cooperate with police investigators to conduct an investigation.

The potential for implementing restorative justice in narcotics crimes includes: 1) Regulations to encourage the implementation of restorative justice are more complete (Kapolri Regulation Number 8 of 2021 concerning handling criminal acts of restorative justice. Prosecutor's Regulation Number 15 of 2020 concerning termination of prosecution based on restorative justice. Prosecutor's Guidelines Number 18 of 2021 concerning the settlement of handling cases of criminal acts of narcotics abuse through rehabilitation with a restorative justice approach as the implementation of the dominus litis principle of the 2014 Joint Regulation concerning the handling of narcotics addicts and victims of narcotics abuse into rehabilitation institutions; 2) Knowledge of information regarding the application of restorative justice through rehabilitation services for law enforcement officials are getting better, people are also increasingly understanding about the right to obtain rehabilitation services according to applicable regulations; and 3) Integrated Assessment Teams have been formed in 34 BNNP and 202 Regency/City BNNs and have been running since 2014.

Anticipatory steps that need to be taken in the application of restorative justice in narcotics crimes, include: 1) Preparing the BNN Rehabilitation Center/Loka to be able to optimize its capacity in providing rehabilitation services for law-related narcotics abusers; 2) Preparing the BNNP/BNNK IPWL Clinic to be able to provide rehabilitation services for law-related narcotics abusers; 3) Improving the capacity of rehabilitation institutions (HR and institutions), from hospitals and IPWL (Ministry of

Health, Ministry of Social Affairs, Pemda) to provide rehabilitation services for law-related narcotics abuse; 4) Arrangement of the Integrated Assessment Team, as a team that will conduct an assessment of a narcotics abuser, whether rehabilitation measures can be given or not; and 5) Integrated training for TAT members to improve the competence and performance of members, not only to understand technically juridically, but also to understand the sociological and philosophical foundations of the spirit of implementing rehabilitation for narcotics addicts/abusers.

Rehabilitation must really be counted as a period of serving a sentence, as stipulated in Article 54 of Law Number 35 of 2009 concerning Narcotics which states that Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation. Perpetrators or victims of narcotics addiction apart from being perpetrators of narcotics crimes who must be sentenced to punishment like other perpetrators of criminal acts must also undergo treatment or treatment through rehabilitation facilities which include medical and social rehabilitation so that the period of undergoing treatment and or treatment is counted as a period of serving a sentence .

The rehabilitation process is a process of correcting someone who has committed a wrong act, both morally and ethically, by improving the mindset and attitude pattern with the aim that in the future the person will no longer make the same mistake because it is an obligation for a democratic country to uphold high human rights values for every citizen, namely protecting, educating, and prospering the life of the nation in accordance with the mandate contained in the preamble of the 1945 Constitution. Rehabilitation for perpetrators needs to be realized by making a formulative policy and applicable policies so that the rehabilitation process can run in a very orderly manner and regularly so that it has high effectiveness and efficiency such as Law No. 35 of 2009 concerning Narcotics, Government Regulation No. 25 of 2011 and SEMA No. 4 of 2010 concerning the conditions for carrying out rehabilitation for someone suspected of committing a narcotic crime. The legal constellation is a manifestation of the state in trying to protect its citizens.

D. CONCLUSION

Criminal law enforcement against narcotics abuse in terms of Article 127 of Law Number 35 of 2009 concerning Narcotics must pay attention to the application of articles related to narcotics abusers and addicts which raise many questions, including what classification a person can be considered as a narcotics addict. In addition, the rules related to narcotics addicts also cause confusion and multiple interpretations, especially in determining the category between narcotics addicts and abusers. Therefore, it is necessary to clarify the regulations regarding the category of narcotics addicts and abusers to avoid multiple interpretations.

Law enforcement against narcotics abusers for themselves in order to provide legal capacity refers to the efforts of the government and law enforcement agencies to apply sanctions in the form of rehabilitation, actually sufficient to avoid criminal sanctions, only by establishing laws related to the implementation or technical

guidelines for the placement of abusers and drug addicts in rehabilitation institutions. The government and law enforcement officials must continue to increase their efforts to place drug abusers and addicts in rehabilitation facilities rather than sending them to prison. The worst negative effect of imprisonment is that a user can become a dealer, courier or even a dealer.

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