

## Legal Reconstruction of Narcotics Abuser Based on the Value of Benefit

Yusup Hadiyanto<sup>1\*</sup>, Gunarto<sup>2</sup>, Jawade Hafidz<sup>2</sup>

<sup>1</sup>Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

<sup>2</sup>Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

DOI: [10.36348/sijlcrj.2022.v05i11.001](https://doi.org/10.36348/sijlcrj.2022.v05i11.001)

| Received: 11.10.2022 | Accepted: 17.11.2022 | Published: 22.11.2022

\*Corresponding author: Yusup Hadiyanto

Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

### Abstract

The purposes of this study are to analyze and find the weaknesses of the Law on Narcotics Abuser in Indonesia Currently and How is the Reconstruction of the Law on Narcotics Abuser based on Benefit Value in a research that uses an Normative-juridical approach where The data collection method used is sourced from secondary data and primary data which was carried out using qualitative analysis methods. The results of the study show that the Weaknesses of the law on narcotics abuser are in the list of the grade of the narcotics contained in the narcotics law that are not up to date as some of the narcotics in the list have been removed in various countries such as Cannabis. This problem not only causes Cannabis Abuser Prisoned although their position should be as “victim” but also one of the factors that causes Overcrowding in Prison in Indonesia. The reconstruction as intended by the author are not in the form of substantial law reconstruction but rather a structural law reconstruction where the Narcotics Law Article 8 (2) which states that In limited quantities, Narcotics Category I can be used for scientific development purposes knowledge and technology and for diagnostic reagents, as well as laboratory reagents after obtaining Minister's approval on the recommendation of the Head of the Agency Food and Drug Supervisor need to be upheld higher and if necessary to add an extra paragraph in the law to appoint the ministry of health together with National Narcotics Bodies to create a Joint Research Bodies that are obliged to conduct research related to the use of narcotics. By using this approach, not only the law's narcotics list of grade can be justified and are up to date, the overcrowding problem in the prison can be minimized.

**Keywords:** Legal Reconstruction, Narcotics Abuser, Benefit Value.

**Copyright © 2022 The Author(s):** This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

### INTRODUCTION

Narcotics and psychotropics are drugs or materials that are useful in the fields of treatment, service, health, and scientific development, and yet, on the other hand, they can cause very detrimental dependence if used without control, strict and thorough supervision (Scott, 1985).

Narcotic substances were originally shown for medicinal purposes, but with the development of science and technology, the types of narcotics can be processed in so many ways and their functions can also be misused. Narcotics are drugs or substances that are not derived from plants or from plants, either semi-synthetic or synthetic. The substance causes changes in a person's character, decreased consciousness, relieves pain, and is so dangerous that it can cause an addictive reaction. Narcotics abuse in Indonesia has reached a very worrying level, the facts on the ground show that

50% of prison residents are caused by cases of narcotics abuse (Eleanora, 2021).

Indonesia has placed the eradication of illicit narcotics trafficking as one of the main priorities for law enforcement because narcotics illicit trafficking is a series of activities carried out without rights and against the law which is designated as narcotics crimes. Legislation that supports efforts to eradicate narcotics crime is very necessary, especially since narcotics crime is one of the unconventional crimes that is carried out systematically, using a high modus operandi and sophisticated technology, and is carried out in an organized manner and has transnational crime characteristics.

In Article 4 of the Narcotics Law, it is explained that one of the objectives of the formation of the law is to ensure medical and social rehabilitation efforts for narcotics abusers and addicts. Meanwhile, Article 54 of the Narcotics Law states that narcotics

addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. If using the construction of Article 54 of the Narcotics Law, narcotics abusers are not included in the qualifications of someone who can be given medical and social rehabilitation measures as regulated in Article 4 of the Narcotics Law.

The terminology used in Article 4 and Article 54 of the Narcotics Law is also different from Article 103 of the Narcotics Law. Where Article 103 contains provisions regarding treatment and/or treatment that can be decided or determined by the judge for narcotics addicts who are guilty or not guilty of committing a narcotic crime and the term used is narcotics addict. In the context of the same discussion, namely the provision of medical and social rehabilitation, there are various terms (abusers, narcotics addicts, and victims of narcotics abuse).

In addition to the context of the discussion of the provision of rehabilitation, the problem of understanding this is also further increased by the confusion in the provisions of punishment. For example, Article 127 of the Narcotics Law uses the terms “*abusers*” and “*victims of narcotics abuse*”. In paragraph (2) of the article, it is stated that the judge in making decisions must pay attention to the provisions of Articles 54, 55, and 103 of the Narcotics Law, but unfortunately, the term “*abusers*” is not actually found, only for “*abusers as victims*”. The provisions of Article 127 paragraph (1) provide a maximum penalty of 4 years imprisonment for narcotics abusers for themselves or it can be said to criminalize narcotics abusers. So that if someone is found guilty of violating Article 127 paragraph (1) of the Narcotics Law, the abuser does not automatically get a rehabilitation decision. Further exploration of Article 127 paragraph (1) of the Narcotics Law and other criminal provisions in the Narcotics Law actually shows a lack of clarity.

Narcotics abusers are very likely to have experienced addiction so it is difficult to escape the snares of narcotics use without getting help from experts. The application of imprisonment for abusers, especially narcotics addicts, is seen as an inappropriate action because imprisonment only gives misery to the perpetrators without curing their dependence on narcotics. In addition, the imprisonment of narcotics addicts may open up opportunities for narcotics addicts to become dealers or even become perpetrators of other criminal acts because prison conditions in prisons in Indonesia have not been able to maximize their guidance to deter the inmates but also failed from using it as a means of crime prevention. Sociological, psychological, and humanistic approaches must also be considered in giving legal sanctions to narcotics abusers. This humanistic value-oriented approach calls for attention to the principle of criminal

individualization in the use of criminal sanctions as a means of crime prevention.

Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled “*Legal Reconstruction Of Illegal Use Of Narcotics As A Treatment Based On The Value Of Benefit*” where the main problem discussed in this article is as follows:

1. What are the weaknesses of the Law on Narcotics Abuser in Indonesia Currently?
2. How is the Reconstruction of the Law on Narcotics Abuser based on Benefit Value?

## METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses of the Law on Narcotics Abuser in Indonesia Currently

The Nation of Indonesia is a state of law and the most important thing in a state of law is the appreciation and commitment to upholding human rights and guarantees for all citizens together with their position in law (equality of law) (Wahyu, 2019). In Article 27 paragraph (1) of the 1945 Constitution affirms that "All citizens have the same position in law and government and are obliged to uphold the law and government without exception". Based on the article, it can be concluded that everyone has the right to recognition, a guarantee of protection, and fair legal certainty as well as equal recognition before the law.

In Law no. 35 of 2009 there are 2 (two) main qualifications called narcotics abuse crimes. The two main qualifications are abusers for themselves or what we are more familiar with calling addicts, and abusers for others consisting of owners, processors, carriers or introductions, and dealers. Sanctions for narcotics abuse are regulated in Article 111 to Article 148 of Law No. 35 of 2009, namely rehabilitation sanctions, imprisonment, and capital punishment according to the classification of narcotics abuse. However, in practice, law enforcers often use Articles 111 to 114 which focus on imprisonment, and ignored Article 127 which regulates rehabilitation (Miswanto, 2017).

Narcotics abusers based on Law Number 35 of 2009 concerning Narcotics are like people standing on two legs, one leg is in the health dimension, the other leg is in the legal dimension. In the health dimension, narcotics abusers are likened to chronically ill people who are addicted must be cured through rehabilitation, while in the legal dimension, abusers are criminals who must be punished for violating the provisions of the applicable legislation, namely Law Number 35 of 2009 concerning Narcotics. Therefore, for cases of abusers, the Narcotics Law provides a solution by integrating the two approaches through rehabilitation punishment.

The integration of the two approaches is carried out through an integrated assessment mechanism in which it will produce recommendations whether or not the suspect can be rehabilitated. Implementation of an integrated assessment mechanism based on several regulations, including the Joint Regulation between BNN and the Mahkumjakpol (The Supreme Court, the Ministry of Law and Human Rights, the Attorney General's Office, and the Police). The Ministry of Health and the Ministry of Social Affairs, in regard to the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, have released a Circular Letter of the Supreme Court Number 04 of 2010 concerning the Placement of Abuse, Victims of Abuse and Narcotics Addicts into the Institute for Medical Rehabilitation and Social Rehabilitation, Regulation of the Head of the

National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, Regulation of the Attorney General Number 29 of 2015 concerning Technical Instructions for Handling Addicts Narcotics and Narcotics Abuse Victims into Rehabilitation Institutions and Ministry of Health Regulation Number 50 of 2015 concerning Technical Guidelines for Compulsory Reporting and Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abuse.

An integrated assessment mechanism that combines the results of the analysis between the medical team and the legal team to determine whether a suspect in a narcotics crime belongs to the category of narcotics abuser or narcotics dealer, has an important role, especially as a screening process for categorizing the status of narcotics abusers and or narcotics dealers, so that they can be analyzed. as part of the criminal law policy process through in-depth analysis (Wahyu, 2018). Likewise, in seeing the position of the suspect/defendant of narcotics abuse as a sick person or as a criminal act by including the rehabilitation process during the trial, it can be a consideration for the judge to decide the case with imprisonment or rehabilitation.

Article 1 number 13 of Law Number 35 of 2009 concerning Narcotics states that "*A narcotic addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically*".

Article 1 number 15 states that "abusers are people who use narcotics without rights or against the law". The article above states that a narcotics user is a person who without rights or unlawfully uses narcotics outside of medical needs, without a doctor's instructions or prescription, and will cause dependence (become addicts) to its user.

The victim of narcotics abuse (defined as using the substance for oneself) is defined in the explanation of Article 54 of Law Number 35 of 2009 concerning narcotics which states that what is meant by a victim of narcotics abuse is "*a person who accidentally uses narcotics because he is persuaded, deceived, deceived, forced, and/or threatened to use narcotics.*" From this term, it can be concluded that the definition points only to a person who is a victim of narcotics abuse who is persuaded, deceived, cheated, forced, and threatened by others to use narcotics.

Victims of narcotics abuse not only refer to Article 54 of Law Number 35 of 2009 concerning narcotics, but from another point of view, the so-called victims of narcotics abuse are addicts and narcotics abusers for themselves, they are also victims of other people's crimes in the form of drug trafficking.

From a medical perspective, many experts are of the opinion that in fact, the abusers are victims of syndicates or narcotics trafficking links that are difficult to escape from dependence. However, it turns out that there are many lists of narcotics contained in the Appendix to Article 6 of the Narcotics Law which, according to scientific developments, actually have more benefits if used in the right way. Like marijuana for example. In Indonesia, the regulation of marijuana is very strict, even though by comparing the law with several countries around the world, it can be found that many countries actually legalize the use of this drug. Although this argument is often contradicted by the opinion that Indonesian society is still not mature enough in terms of correct use of narcotics, but at least this can be evidence that the list in the attachment to Article 6 of the Narcotics Law is no longer in accordance with the times and needs to be updated.

## 2. Reconstruction of the Law on Narcotics Abuser based on Benefit Value

In the context of narcotics policy for cannabis and other substances, Indonesia's narcotics policy has a very strong criminalization pattern. The domination of the punitive element gave rise to a number of serious problems in drugs and particularly in narcotics governance and the Indonesian criminal justice system. Therefore, it is important to encourage alternative Indonesian narcotics policies that are non-criminal (non-penal) and place narcotics back into the discourse on health issues that require health policy as the main approach. Combating narcotics that is echoed by imprisoning narcotics users has resulted in many violations of human rights. Various countries have tried to put the problem of narcotics in the realm of health which has now brought a number of benefits. These include controlling the level of narcotics use, easing the burden on the criminal justice system, which is already too heavy, minimizing stigma and discrimination against narcotics users, as well as improving the ability of health services (Godwin, 2016).

Indonesian Narcotics Law becomes problematic in translating the International Drug Controlled Convention. The criminalization of cannabis use for any purpose is punishable by either imprisonment or rehabilitation as a punishment, including people associated with cannabis. There are two main issues relating to cannabis consumption or use in Indonesian drug law. First, is the scheduling of cannabis in Category I has led to the prohibition in advance research on medical cannabis as well as the use of cannabis to be one of the options in medical treatment. The article on the drug law states that: "*Narcotics can only be used for the benefit of health services and/or the development of science and technology*". The law also prohibits Narcotics on Category I for health services. Second, the drug law precisely creates the inability to define people who use drugs and people who produce and sell drugs for

economic benefit in the illegal market. The drug threshold that has been used is unable to create the boundaries between people who use drugs and sell and produce drugs. The intention of the aim of carrying drugs is absent despite the new Attorney Guideline Number 11 and 18 of 2021. The Attorney guideline put the intention as one of the criteria to the convict people relates to drugs activities, however, the drug mules who carry drugs are still invisible to carried out regarding the protection towards them regardless the vulnerabilities such as the victims of trafficking in person.

This issue has an impact on the perpetuation of the punitive approach and consistently contributes to the rate of inflow of state detention centers and correctional institutions, which currently have overcrowded conditions (overcrowded). Every year the rate of addition of incarcerated people in the prisons in Indonesia increases, along with the high number of arrests for narcotics cases. In the data on the need for drugs issued by the International Narcotics Control Board (INCB) every year, Indonesia is a country with a large population (approx. 270 million population) but has a very low demand and availability of substances for health care purposes. The use of Category I Narcotics (morphine, fentanyl, cannabis) is very minimal compared to other countries which have less population and have the best health services. In 2017-2019, Indonesia ranked 134th out of a total of 179 countries as licensed and reported licit narcotics usage, with the largest population composition compared to other Asian and African groups. In Asia, the use of narcotics for health services or the development of Indonesian science and technology ranks 34 out of a total of 44 countries under Sri Lanka, Syria, and Bhutan. For Cannabis, Indonesia does not have a record of its usage. Whereas in many other countries, even Asia such as Iran and India, the need for cannabis for domestic medicine is quite high. This means that various countries continue to produce (manufacture), send (distribution), and use (consumption) Category I narcotics, especially cannabis for health services at home and abroad, and the development of science and technology. This becomes one of the bases for determining how important a substance is needed and how its governance is capable to meet the minimum substance needs in the country for the benefit of the state and the society in its territory (Toebagus, 2022).

The author, in light of this case proposes that if this condition continues, the prison may become more overcrowded resulting in the violation of the human rights therefore, there needs to be a new approach in dealing with the Narcotics Abuser case where, an approach in the field of using it in the terms of treatment is needed.

In Article 28H (1) of the Constitution of the Republic of Indonesia guarantees the right to health for

health services to all. One of the characteristics of the right to health is that the right is the progressive realization (progressive fulfillment), and cannot be decreased (regressive) and is given and fulfilled without discrimination (non-discrimination principles). Misinterpretation of the prohibition is very detrimental to Indonesia, especially regarding access to health services.

The Committee for Economic, Social and Cultural Rights provides a detailed explanation of the meaning of the right to health as regulated in Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR) through General Comment No. 14. This right to health, including enjoyment of the highest standards, also includes the right to health of people who use drugs. The state must not deny or limit the access of a narcotics user in accessing medical care (physical or psychological) or deny or limit access to the provision of essential medicines, especially to assist individuals in using narcotics either for themselves or for others in the best health interest for the individual.

The right to health using narcotics is stated in Article 38 of the 1961 Single Convention on Narcotics which requires the state to have 4 (four) basic principles that are important in health management. First, the Single Convention on Narcotics states: "*The state has an obligation to provide care and rehabilitation for narcotics users (if needed) and not to impose penalties on them*". The second principle is that the state must not discriminate in any form against narcotics users regarding their right to health. The principle of non-discrimination is an important principle that means that the State must not differentiate and is obliged to provide equal treatment to people who use drugs and non-people who narcotics users (Fransiska, 2021). The condition that a people who use drugs consumes drugs from the black market (illegal use) cannot be used as a reason to provide discrimination as stated in Article 2 paragraph (2) of the International Convention on Economic, Social, and Cultural Rights. Third, in order to fulfill the highest standards of the right to health, the state is justified in making justified distinctions against people who use drugs, especially their medical interests. The purpose of this distinction is solely to achieve the right to the highest standards of health care. For example, rehabilitation measures are carried out for people who use cannabis who requires medical intervention. Finally, the principle of freedoms contained in human rights must be respected by the state. The principle of individual rights and freedoms in fulfilling the right to health must be considered by the state with evidence of an objective assessment and free from bias and stigma, for example the state can understand the extent to which health interventions are given to those who experience dependence or those who fall into the category of problematic drug use. If people who use cannabis does not fall into these two

categories, forcing health interventions, such as going to a rehabilitation center, will violate the principle of freedom and a person's right to control his own body and health as well as the right to be free from intervention in the form of unapproved medical treatment (non-consensual medical treatment).

Based on this, then the reconstruction as intended by the author are not in the form of substantial law reconstruction but rather a structural law reconstruction where the Narcotics Law Article 8 (2) which states that In limited quantities, Narcotics Category I can be used for scientific development purposes knowledge and technology and for diagnostic reagents, as well as laboratory reagents after obtaining Minister's approval on the recommendation of the Head of the Agency Food and Drug Supervisor need to be upheld higher and if necessary to add an extra paragraph in the law to appoint the ministry of health together with National Narcotics Bodies to create a Joint Research Bodies that are obliged to conduct research related to the use of narcotics. By using this approach, not only the law's narcotics list of grade can be justified and are up to date, the overcrowding problem in the prison can be minimized.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses of the law on narcotics abuser are in the list of the grade of the narcotics contained in the narcotics law that are not up to date as some of the narcotics in the list have been removed in various countries such as Cannabis. This problem not only causes Cannabis Abuser Prisoned although their position should be as "victim" but also one of the factors that causes Overcrowding in Prison in Indonesia.
2. The reconstruction as intended by the author are not in the form of substantial law reconstruction but rather a structural law reconstruction where the Narcotics Law Article 8 (2) which states that In limited quantities, Narcotics Category I can be used for scientific development purposes knowledge and technology and for diagnostic reagents, as well as laboratory reagents after obtaining Minister's approval on the recommendation of the Head of the Agency Food and Drug Supervisor need to be upheld higher and if necessary to add an extra paragraph in the law to appoint the ministry of health together with National Narcotics Bodies to create a Joint Research Bodies that are obliged to conduct research related to the use of narcotics. By using this approach, not only the law's narcotics list of grade can be justified and are up to date, the overcrowding problem in the prison can be minimized.

## REFERENCES

- Eleanora, F. N. (2021). *Bahaya Penyalahgunaan Narkoba Serta Usaha Pencegahan Dan Penanggulangannya (Suatu Tinjauan Teoritis)*. Jurnal Hukum, 25(1).
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Fransiska, A. (2021). *The Right to Health Assessment on Indonesian Policy on Releasing Incarcerated People*. In 2nd International Conference on Law and Human Rights 2021 (ICLHR 2021) (pp. 553-559). Atlantis Press.
- Godwin, J. (2016). *A public health approach to drug use in Asia: Principles and practices for decriminalisation*. United Kingdom: IDPC Publication.
- Miswanto, M., & Tarya, T. (2017). *Implementasi Program Rehabilitasi Narkoba Berbasis Masyarakat di Pusat Rehabilitasi Narkoba ar-Rahman Tegal Binangun Palembang*. Intizar. 23. 113. 10.19109/intizar.v23i1.1272.
- Scott, J., & Ponganis, K., & Stanski, D. (1985). EEG Quantitation of Narcotic Effect. *Anesthesiology*, 62, 234-241. 10.1097/00000542-198503000-00005.
- Toebagus Galang Windi Pratama. (2020). The Urgency for Implementing Cryptomnesia on Indonesian Copyright Law, *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514. DOI:10.36348/sjhss.2020.v05i10.001
- Toebagus Galang Windi Pratama. (2022). *Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan*, Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
- Wahyu Widodo, Sapto Budoyo., & Toebagus Galang Windi Pratama. (2018). *The Role Of Law Politics On Creating Good Governance And Clean Governance For A Free-Corruption Indonesia In 2030*. The Social Sciences, 13: 1307-1311.
- Wahyu, W., & Toebagus, G. (2019). *Poverty, Evictions And Development: Efforts To Build Social Welfare Through The Concept Of Welfare State In Indonesia*, 3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019), Dx.Doi.Org/10.2991/Icglow-19.2019.65