

Weaknesses of the Termination of Prosecution Regulation against Narcotics Abuse

Adi Fakhruddin^{*}, Anis Mashdurohatun¹, Sri Endah Wahyuningsih¹

¹Sultan Agung Islamic University, Jl. Kaligawe Raya No.Km.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

DOI: [10.36348/sijlcrj.2023.v06i12.009](https://doi.org/10.36348/sijlcrj.2023.v06i12.009)

| Received: 14.08.2023 | Accepted: 24.09.2023 | Published: 30.12.2023

*Corresponding author: Adi Fakhruddin

Sultan Agung Islamic University, Jl. Kaligawe Raya No.Km.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

Abstract

The illicit trafficking and abuse of narcotics targeting the younger generation has reached various corners of the region and the abuse is evenly distributed across all social strata of society. Basically, narcotics are very necessary and have benefits in the fields of health and science, however the use of narcotics becomes dangerous if misuse occurs. This research aims to analyze the weaknesses in the current Regulation on Cessation of Prosecution of Narcotics Abusers, to reconstruct the Regulation on Cessation of Prosecution of Narcotics Abusers Based on Restorative Justice Values. The approach method used in this legal research is a sociological juridical approach. The data obtained in this research was then selected and arranged systematically to be further analyzed and presented using qualitative analysis methods. The results of this research are that the weaknesses in the current regulations for stopping prosecution of narcotics abusers are weaknesses in terms of legal substance, weaknesses in terms of legal structure and weaknesses in terms of legal culture.

Keywords: Attorney, Narcotics Abuse, Termination of Prosecution.

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A. INTRODUCTION

Indonesia is a rule of law country, therefore the protection of the human rights of Indonesian citizens is guaranteed in the constitution of the Republic of Indonesia^[1], including those related to the distribution of narcotics in Indonesia.

The illicit trafficking and abuse of narcotics targeting the younger generation has reached various corners of the region and the abuse is evenly distributed across all social strata of society. Basically, narcotics are very necessary and have benefits in the fields of health and science, however the use of narcotics becomes dangerous if misuse occurs. In Chapter IV article 9 paragraph (1) of the Narcotics Law guarantees the availability of narcotics for health and scientific purposes on the one hand, and on the other hand in Chapter XI article 64 paragraph (1) and Articles 70-72 of Law Number 35 of the Year 2009 concerning Narcotics regulates the prevention of illicit distribution of narcotics

which always leads to abuse, so regulations are needed in the field of narcotics

Victims of narcotics abuse are 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 someone who accidentally uses narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use narcotics. From this term it can be concluded that a person becomes a victim of narcotics abuse because he is persuaded, deceived, deceived, forced and threatened by other people 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 what is called a victim of narcotics abuse is for addicts and drug abusers themselves, they are also victims of other people's criminal acts in the form of illicit trafficking of narcotics^[2].

¹ Anis Mashdurohatun, Erman Suparman, I Gusti Ayu Ketut Rachmi Handayani, Authority of the Constitutional Court in the Dispute Resolution of Regional Head Elections, *Lex Publica*, Volume.6. Issue. 1.2019.pp.52-60

² Carto Nuryanto, Gunarto, Anis Mashdurohatun, Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice, Legal Reconstruction in Indonesia Based on Human Right, The 5th International Conference and Call for Paper Faculty of Law

From a medical perspective, many experts are of the opinion that the abusers are actually victims of a syndicate or chain of illicit narcotics trafficking who find it difficult to break free from dependence. Although it is possible that these users actually want to free themselves from the narcotics trap, they are experiencing, because their nerves are already addicted to addictive substances, it is difficult to do so. Therefore, narcotics addicts and abusers require different treatment from other patients in general. It can be concluded that drug abusers are victims of other people's criminal acts and it is possible that narcotics users also want to get away from narcotics, but because they have experienced dependence (addiction), it is difficult for them to get rid of their dependence (addiction) to narcotics [³].

Narcotics addicts and abusers are "self-victimizing victims", namely victims of crimes committed by themselves. Because narcotics addicts and abusers experience dependence (addiction) as a result of themselves abusing narcotics. However, addicts and abusers should get protection so that they recover from this dependence (addiction). That drug addicts and abusers are self-victimizing victims, namely victims as perpetrators, in this case victimology positions drug addicts and abusers as victims, even though they are victims of their own actions. And if they are said to be victims, these addicts and drug abusers should be given protection, guidance and care so that these drug addicts and abusers change for the better.

In Law Number 35 of 2009 concerning narcotics, it is stated that drug addicts and drug abusers are required to undergo rehabilitation in the form of medical rehabilitation and social rehabilitation and drug dealers, syndicates and traffickers are punished with imprisonment. In the criminal process, for illegal producers and narcotics dealers it is not a problem because it is explained in Law Number 35 of 2009 concerning narcotics, what is a problem is the handling of narcotics addicts and abusers who are basically victims of other people's criminal acts.

Discussion of law is closely related to talking about the basic idea of the double track system, meaning talking about the basic idea of the sanctions system which is the basis for policy and the use of sanctions in criminal law. In this case, we know the punishment system as a two-track system in criminal law, namely criminal sanctions and action sanctions or what we know better as a double track system, not just a single-track system [⁴]

Debates by criminal law experts clearly reveal that even though the type of criminal sanctions originating from retributive theory has weaknesses in terms of proportionality or the responsibility of the perpetrator of the crime for his actions, it is impossible to eliminate retributivism completely, especially regarding children who are in trouble with the law. In fact, retributivism has contributed to thinking about punishment from a philosophical perspective that respects humans as mature individuals who are responsible for all their behavior and actions. The level of maturity and responsibility determines the severity of the sentence. Likewise, the existence of rehabilitation and prevention centers is the main objective of this type of sanction, action or rehabilitation idea. Although this method has advantages in terms of the perpetrator's resocialization process, it is hoped that it will be able to restore a person's social and moral qualities so that they can reintegrate into society.

The problem in handling victims of narcotics abuse is the difference in thinking between different narcotics law enforcement officers. Investigators usually use articles that should not be given to addicts and victims of narcotics abuse, this results in prison sentences in court. Legal officers should look more carefully at Law Number 35 of 2009 concerning narcotics and other legal regulations that regulate the handling of narcotics abuse. Law Number 35 of 2009 concerning narcotics states that addicts and victims of narcotics abuse are required to undergo rehabilitation in the form of medical rehabilitation and social rehabilitation.

The Prosecutor's Office has the authority to determine whether a case can be submitted to court or not based on valid evidence according to the Criminal Procedure Law. For this reason, as a government institution carrying out prosecutorial duties, the prosecution process carried out by the Prosecutor's Office needs to be directed in order to follow the re-orientation of criminal law reform, taking into account the level of culpability, the inner attitude of the perpetrator, the legal interests being protected, the losses or consequences caused, and paying attention to community's sense of justice including local wisdom. Arrangements for discontinuing prosecutions based on restorative justice have urgency, namely, firstly, arrangements through Prosecutor's Regulations (PERJA) only have internal binding force. Second, Regulation through the Attorney General's Regulation (PERJA) does not have a high level in the hierarchy of Laws and Regulations in Indonesia. Third, Termination of Prosecution Based on Restorative Justice can reduce the problem of overcapacity in Detention Centers or

2019, Sultan Agung Islamic University. UNISSULA Press, 2019, pp.91-95.

³ Parasian Simanungkalit, 2013, *Ideal Sentencing Model for Victims of Drug Users in Indonesia*, Surakarta: Yustisia, page. 80.

⁴ Sholahuddin, 2004, *Sanctions System in Criminal Law (Basic Idea of the Double Track System and Its Implementation)*, Jakarta: Rajawali Pers, page. 24

Correctional Institutions in Indonesia. Fourth, Termination of Prosecution Based on Restorative Justice can reduce the number of cases and also reduce the burden on the state budget for handling cases.

Termination of prosecution based on restorative justice is carried out with the principles of justice, public interest, proportionality, punishment as a last resort, fast, simple and low cost. Restorative justice policy through PERJA No. 15 of 2020 which was promulgated on 2021 is expected to be able to resolve cases of narcotics addicts without a green shirt [5].

For example, in the case of termination of prosecution carried out by the Sumenep District Prosecutor's Office (an. Suspect Andriyanto Bin Suharto) with the consideration: The suspect is only a drug abuser for himself; The suspect is addicted to drug use; The suspect does not act as a producer, dealer, dealer and courier related to the dark narcotics network; The suspect is not a narcotics recidivist; The suspect has never been included in the wanted list (DPO); The suspect's parents are able and ready to guide the suspect back into a good person; There are already assessment results from the District BNNK assessment team. Sumenep and the team of doctors who stated and concluded that the suspect was worthy of rehabilitation;

In the case of the suspect Andriyanto Bin Suharto, based on the results of the Integrated Assessment from the District BNNK. Sumenep Number: REKOM/10/VIII/TAT/Pb.00.00/2022/BNNK dated 03 August 2022, states that the suspect can undergo medical rehabilitation at a government agency Rehabilitation Institution or community component rehabilitation institution; There has been a statement letter from the

Suspect who is willing to undergo narcotics rehabilitation through the legal process and a letter of guarantee from the Suspect's parents, and the Suspect's parents are able and ready to develop the Suspect into a good person again.

B. RESEARCH METHOD

This research uses a sociological juridical approach[6]. The types of data used are primary data and secondary data. [7]Data collection techniques through field studies and literature studies[8]. Next, the data that has been collected is analyzed using the descriptive analysis method.

C. RESEARCH RESULTS AND DISCUSSION

1. Regulation of Criminal Sanctions for Narcotics Abusers is Still Retributive/Conventional in Character

The term "criminal" comes from Sanskrit (in Dutch it is called "straf" and in English it is called "penalty") which means "punishment [9]". According to Subekti and Tjitrosoedibio in their legal dictionary, "criminal" is "punishment". In essence, the history of criminal law is the history of crime and punishment which always has a close relationship with the problem of criminal acts [10]. The problem of criminal acts is a humanitarian problem and a social problem that is always faced by every form of society. Where there is society, there is crime. Criminal acts are always closely related to values, structure and society itself. So whatever human efforts to eliminate it, criminal acts cannot possibly be resolved because criminal acts cannot be erased but can only be reduced or minimized in intensity.

⁵ Herman, et al, Termination of Prosecution of Narcotics Abusers Based on Restorative Justice, *Halu Oleo Legal Research* Vol.4 No. 2 Agustus 2022, page 322-341

⁶ Bambang S and Eman Suparman Anis Mashdurohatur, *Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values*, *J.Eng. Applied Sci*, Volume 14. Issue. 12. 2019. pp. 4176-4182. See too Anis Mashdurohatur, & Gunarto, *Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila*, 2nd International Conference on Indonesian Legal Studies (ICILS 2019), *Advances in Social Science, Education and Humanities Research*, Atlantis Press. volume 363,2019. pp 93-99. See too Yeltriana, Anis Mashdurohatur, Jelly Leviza, *Ideal Reconstruction of Protection for Layoff Victim At the Industrial Relations Court Based on Justice*, *International Journal of Law, Government and Communication*, Volume 4. Issue. 14. 2019. pp.32-49. See too Anis Mashdurohatur, *Consumer Protection Law (Review of Theory and Practice)*, UNISSULA Press, 2019. 1-137. See too Anis Mashdurohatur, *Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce)*, *International Conference on Law Reform (INCLAR 2019)*, Atlantis Press 2019,pp.70-75. Hartanto, Gunarto, Anis Mashdurohatur, *Reconstruction Of Transport*

Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice, Legal Reconstruction in Indonesia Based on Human Right, The 5th International Conference and Call for Paper Faculty of Law 2019, Sultan Agung Islamic University. UNISSULA Press, 2019,pp.114-119.

⁷ Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2010, Page. 183. Anis Mashdurohatur, Gunarto & Oktavianto Setyo Nugroho *Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy*, *JPH: Jurnal Pembaharuan Hukum*, Volume 8, Number 3, December 2021.

⁸ Maniah; Bin Bon, Abdul Talib; Hariadi, Andi Kahar; Gunarto; Mashdurohatur, Anis; et al. *Mapping the Competencies and Training Needs of Human Resources to Improve Employee Performance in Indonesia After the Covid-19 Pandemic*, *Quality - Access to Success*, 2023, 24(195), pp. 219-225.

⁹ Subekti dan Tjitrosoedibio.1980, *Law Dictionary*, (Jakarta : Pradnya Paramita), page 83.

¹⁰ Sudarto, *Law and Criminal Law*,1986, (Bandung: Alumni), page. 23.

According to Mardjono Reksodiputro, to explain that criminal acts cannot be eliminated in society at all, but the term "to eliminate criminal acts to the limits of tolerance" can only be used. This is because not all human needs can be fulfilled perfectly. Apart from that, humans also tend to have different interests from one another, so it is not impossible that based on these differences in interests, various principled conflicts arise. However, criminal acts cannot be allowed to grow and develop in society because they can cause damage and disruption to social order.

Herbert L Packer revealed the use of criminal sanctions to overcome criminal acts as follows:

- a. That criminal sanctions are very necessary because we cannot live now or in the future without crime (The criminal sanction is indispensable, we cannot, now or in the foreseeable future get along, without it);
- b. That criminal sanctions are the best available tool or means that we have to deal with criminal acts or major dangers and to deal with threats from these dangers (The criminal sanction is the best available device we have for dealing with gross and immediate harms and treats of harm).

Apart from the use of criminal sanctions as a means of overcoming criminal acts and maintaining public order, the purpose of punishment is also no less important in seeking a justification for the use of punishment so that punishment becomes more functional. Initially, punishment was only intended to impose punishment on law violators. However, in its development, punishment is always related to the goals to be achieved with the punishment.

Nowadays, narcotics abuse is increasing day by day, we can know this through reports in both print and electronic media which almost every day report about the arrests of narcotics abusers by state officials, both through the National Narcotics Agency (BNN) and the police. Republic of Indonesia (POLRI). The widespread abuse and victims of narcotics crimes has spread to all levels of society without exception, starting from children, teenagers, young people, the elderly, both educated and uneducated people as well as from various types of professions.

Narcotics crime is also a crime that is transnational (transnational criminality) because the modus operandi of this crime is carried out using a high modus operandi, sophisticated technology, supported by a wide organizational network, and has caused many victims, especially among the nation's young generation which is very dangerous for the lives of society, nation

and state. Organized transnational crime is a form of crime that threatens social, economic, political, security and world peace [11].

The prevalence of drug abuse in research by BNN and the Research Center of the University of Indonesia (UI) as well as various leading state universities, in 2005 there were 1.75 percent of drug users of the total population in Indonesia. The prevalence rose to 1.99 percent of the population in 2008. Three years later, the figure had reached 2.2 percent. In 2012, it is projected that the figure will reach 2.8 percent or the equivalent of 5.8 million people [12].

If traced to its initial use, narcotics are drugs or substances that are useful in the field of medicine or health services and the development of science. Even without these narcotic substances, the world of health, especially medicine, in carrying out its duties would be paralyzed, but on the other hand, the positive benefits of these narcotics also have a negative impact if these substances are consumed/entered the human body without following health regulations, control and supervision will affect the brain in the central structure which will cause addiction for the user. The use of narcotics without regulations, without rights or against the law is actually the essence of narcotics crimes/crimes.

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

The large number of cases of narcotics abuse, especially narcotics abusers for themselves as well as criminal policies (Criminal Policy) which address this matter in a repressive manner as stipulated in article 127 juncto article 111 and or article 112 of Law no. 35 of 2009 which prioritizes retributive justice, of course this will have logical consequences for the number of inmates in Correctional Institutions in addition to users who are not dealers who become double victimization as well.

¹¹ Siswanto, 2012, Legal Politics in the Narcotics Law, PT Rineka Cipta, Jakarta. Page. 90

¹² http://nasional.kompas.com/read/2012/10/31/14280327/Pemguna_Drugs_5.8.Million_.Year_2012 accessed on 20 June 2023

The large number of narcotics convicts (NAPI) who are punished based on the positive law in force in Indonesia causes the number of prisoners in Correctional Institutions (LAPAS) to dominate besides the inadequate LAPAS specifically for narcotics, causing prisons in Indonesia to be full or over capacity (overloaded). This is also in line with what was conveyed by Deputy Chairperson of Commission IX DPR RI, Nova Riyanti Yusuf, who stated that 70% of LAPAS residents are currently inhabited by those involved in narcotics cases [13]. Of the 32 Regional Offices of LAPAS in Indonesia, 23 prisons have excess capacity and only 9 (nine) do not exceed capacity, namely: Yogyakarta, Central Java, Maluku, North Maluku, Papua, West Papua, West Sulawesi, South Sulawesi, Southeast Sulawesi [14].

Other facts also show that there are often drugs in prisons and there are even inmates who control the distribution of narcotics from within prisons themselves, even on the other hand, when narcotics users are dealt with repressively and put in prison, the prison actually becomes a place for drug transactions and use. safest. For example, we can see this as reported in various newspapers which reveal that based on prison raids carried out by the Police and BNN in East Java, various types of drugs were found which were consumed and even distributed by the prisoners themselves, such as the Madiun Drug Prison, Mandaeng Sidoarjo Prison, Malang Lowokwaru Prison, Sidoarjo Delta Prison, Pamekasan Narcotics Prison, and also Pasuruan Prison. Not to mention when this is made worse by the involvement of correctional officers with prisoners and making profits from drug transactions, adding to the burden in eradicating drugs in Indonesia.

If we look at the formulation of criminal sanctions applied for each qualification of narcotics crime in Law No. 35 of 2009, we can see that the purpose of punishment in this law is as adhered to by the Absolute or Retributive Theory, which has the principle of punishment. is as retaliation against anyone who commits a crime that must be punished, regardless of the consequences arising from the punishment or in a simple understanding the purpose of punishment is to make the criminal suffer.

We can see the application of the theory of the retributive purpose of punishment from the formulation of the norms of the criminal article in the law where all qualifications for narcotics crimes include the category of narcotics users who are not included in the group or part of the overall dealer, in principle being threatened with criminal sanctions. The retributive nature of punishment is increasingly visible from the type of

sanctions applied, on average using cumulative types of sanctions, namely imprisonment and a fine, the type of punishment is in the form of a special minimum and there are also those who regulate the type of sanctions in the form of a special minimum as well as a special maximum and in categories. Certain acts can also be subject to the death penalty.

The losses experienced by narcotics users who are in fact perpetrators and also victims of criminal acts they commit do not only feel material losses, but also social, psychological, physical and health losses. The social losses experienced by a narcotics user are in the form of stigma or bad labels imposed by society, such as being called narcotics users the trash of society and other bad names. The psychological harm experienced by narcotics users is clearly an unstable mental condition due to dependence on narcotic substances, especially if narcotics users, especially injecting narcotics users, are infected with the HIV virus which causes the user to eventually suffer from AIDS. These are physical and health losses as a result of the multiple impacts of injecting narcotics use, not only getting a bad reputation due to narcotics dependence but also the stigma of being infected with HIV [15].

According to estimates from the Ministry of Health, in 2009 the estimated number of injecting drug users was around 105,784 people and of them 52,262 were infected with HIV, or the HIV prevalence rate reached 49.69%. In addition, it is estimated that there are 28,085 partners who inject drugs and 25% of them are also infected with HIV. Even though in 2000 only 15% of injecting drug users were infected with HIV, this then continued to increase rapidly to more than 50% in 2006. What is not an injecting drug, this will transmit HIV to the community through sexual transmission. This is a very serious public health threat to Indonesian society [16].

Criminal provisions for users of narcotics, both class I, class II narcotics and class III narcotics whose use for themselves is punishable by imprisonment as regulated in article 127, namely:

- (1) Every Abuser:
 - a. Class I narcotics for oneself is punishable by a maximum imprisonment of 4 (four) years;
 - b. Class II Narcotics for oneself is punishable by a maximum imprisonment of 2 (two) years; And
 - c. Class III narcotics for oneself is punishable by a maximum imprisonment of 1 (one) year.

Apart from the threat of criminal sanctions as regulated in Article 127, a person who abuses narcotics

¹³ <http://www.warnapembaruan.com/home/70-penghunilapas-kas-narkotika/44305>

¹⁴Mulyadi, Lilik., 2010, Punishment of Drug Dealers and Users,

¹⁵ Expert Statement by Inang Winarso in the decision of the Constitutional Court of the Republic of Indonesia Number 48/PUU- IX/2011, page. 67

¹⁶ Ibid

for himself in judicial practice is also charged with the formulation of Article 111 and/or Article 112 because when a person fulfills the elements of Article 127, of course he also fulfills the elements in Article 111 and or Article 112, namely subjective elements and objective elements which are alternative, namely "owning, keeping, controlling" where these elements do not have to be fulfilled in their entirety, but if one of these elements is fulfilled, it is included in this norm category because the elements in this article are alternative in nature. Logically, we can simply know that when someone abuses narcotics for themselves, of course an action has previously occurred that is related to the source of the goods they obtained.

2. Regulation of the Crime of Narcotics Abuse Is Not in Accordance with the Development of the New Criminal Code

The very rapid development of the times can cause problems in national life, so attention to the nation's next generation, especially the youth, must be given optimally. In the penal policy, the government is expected to be able to create legal products that aim to provide the community with guidance and protection as victims and as perpetrators of criminal acts. One form of crime that currently threatens social life is narcotics crime. The forms of narcotics crimes themselves are regulated in "Republic of Indonesia Law Number 35 of 2009" concerning Narcotics, which later in this scientific work, the author calls the Narcotics Law. "Illicit Circulation of Narcotics and Narcotics Precursors is any activity or series of activities carried out without rights or against the law which is designated as a criminal offense for Narcotics and Narcotics Precursors [17]". "Criminal law is a system of norms that determines which actions (doing something or not doing something where there is an obligation to do something) under what circumstances punishment can be imposed and what punishment is imposed for those actions [18]". Philosophically, the Narcotics Law orders the Minister of Health to guarantee the availability of narcotics for "the benefit of health services and/or for the development of science and technology [19]." Narcotics, which were originally useful for supporting health activities and the development of scientific and technological progress, also have negative impacts if misused. Considering the complexity and negative effects, narcotics crimes are categorized as extraordinary crimes and require eradication efforts using extraordinary methods or classifications (extra ordinary measures). This is quite

basic, because drugs endanger society and the interests of the state, in that context, the proposition which reads *salus populi supreme lex* which means the safety of the people is the highest law, if the safety of the people, nation and state is threatened due to extraordinary circumstances then whatever action is taken emergency or special nature can be done to save it [20].

As is known, Article 127 of the Narcotics Law contains provisions for sanctions for self-abusers in the form of criminal sanctions, while Article 103 of the Narcotics Law contains provisions for sanctions for narcotics addicts in the form of sanctions. In the narcotics law, there are two forms of action sanctions, namely social rehabilitation and medical rehabilitation. In proving that a person is said to be a narcotics addict, there is a possibility that the person will also be proven to be a drug abuser themselves. This is because of the similarity of elements for a person who is said to be a self-abuser and a narcotics addict. In practice, in court, people who are narcotics addicts are often also given sanctions as narcotics abusers themselves. This creates injustice and legal uncertainty for a narcotics addict considering that he is given two different forms of sanctions at once, namely criminal sanctions and action sanctions. In the narcotics law there are also no provisions regarding the position of criminal sanctions and action sanctions, whether the action sanctions are overridden or can be cumulative with criminal sanctions. The lack of regulation regarding the position of criminal sanctions and action sanctions in the narcotics law can be interpreted as a legal vacuum.

The law on Narcotics does not explain the meaning of article 103 letter b, precisely in the sentence "The Narcotics Addict is not proven guilty of committing a Narcotics crime" which means that this provision is contrary to the principle of *lex certa*, namely that legislative policy when formulating a law must be complete and clear. so as not to become blurred (*Nullum Crimen Sine Lege Stricta*). If a legal product is created and later it is unable to tackle crime effectively and creates new legal problems, then the legal product needs to be reformulated so that it can better tackle this form of crime. "Crime cannot be separated from five interrelated factors, namely the perpetrator of the crime and the mode of crime and the victim of crime and social reactions to crime and the law [21]." The similarity in the types of actions between self-abusers of narcotics and narcotics addicts makes public prosecutors and judges apply two

¹⁷ Article 1 number (6), Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

¹⁸ Jan Rimmelink, 2003, Criminal Law (Comments on the Most Important Articles of the Criminal Code and Their Equivalents in the Indonesian Criminal Code), Gramedia Pustaka Jakarta, page.

¹⁹ Siswanto S. 2012, Legal Politics in Narcotics Law, Rineka Cipta, Jakarta, page. 138.

²⁰ Mohamad Hidayat Muhtar, Political and Legal Model for Eradicating Corruption in Indonesia in the Context of Harmonizing Law Enforcement Institutions, Jambura Law Review, Vol. 1 No (1), page. 84

²¹ Budi Suhariyanto, 2013, Information Technology Crime (Cybercrime) The Urgency of Regulations and Legal Gaps, Jakarta, PT RajaGrafindo Persada, page.4.

forms of sanctions, namely, legal consequences for narcotics abusers as regulated in article 127 and sanctions for actions regulated in article 103 in the form of rehabilitation. Even though it is also known that the principles of criminal law recognize the principle of *ultimum remedium*. Criminal sanctions should be the last resort in law enforcement.

The existence of sanctions in the Narcotics Law will certainly be more beneficial for narcotics abusers compared to the implementation of criminal sanctions. However, if it is not based on existing legal norms, it will give rise to new problems, namely the simultaneous application of criminal sanctions and action sanctions. Even though action sanctions and criminal sanctions have different objectives, the position of both sanctions is equivalent as a form of punishment in the criminal law system or the application of both in a legal regulation is usually known as the double track system.

Combining the forms of criminal sanctions and action sanctions together seems to create a new hierarchy in criminal sanctions which places action sanctions under criminal sanctions. In article 10 of the Criminal Code (Criminal Code) we recognize the forms of criminal sanctions in the form of basic criminal sanctions and additional criminal sanctions and which have been arranged from the most severe sanctions to the lightest sanctions. The main criminal sanctions are in the form of (1) death penalty, (2) imprisonment, (3) imprisonment, (4) fine, (5) imprisonment. It is necessary to recall the principles of criminal law that criminal sanctions are sanctions that are *ultimum remedium* as long as no solution is found for the crimes that exist in society. *Ultimum remedium* itself is a sanction that should be a tool/last resort in law enforcement [22]. So if another solution is found if a criminal act has occurred, then the position of criminal sanctions should be set aside. Such as the crime of self-abuse of narcotics, which according to the author requires immediate rehabilitation. Punishment of perpetrators of self-abuse, which was said previously to be dual (the perpetrator and the victim are the same), is also not in accordance with the theory of restorative justice, the orientation of which is the criminal justice system and criminal punishment as a form of conflict resolution, not retribution [23]. Even though the casual relationship between the perpetrator and the victim is himself. Conflict in restorative justice can be interpreted as a personal situation of drug abusers who are having problems both physically and psychologically. Restorative justice is certainly different from its predecessor, namely retributive justice, which only focuses on retribution.

Currently, in most of the Indonesian criminal law system, the concept of justice is still oriented towards retributive justice. As the characteristics of the theory of retributive justice expressed by Karl O. Christianse [24]:

- a. The aim of the crime is only revenge
- b. Retaliation is the main goal and does not contain any means for other goals such as the welfare of society
- c. Moral guilt as the only condition for punishment
- d. The crime must be resolved with the perpetrator's fault
- e. Criminal law looks back, it is a pure criticism and the aim is not to improve, educate and isolate the perpetrator.

3. Formulation of Criminal Sanctions for Narcotics Abusers Does Not Allow for Termination of Prosecution of Cases Using Restorative Justice

The provisions of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) have also mentioned several terms that have the same essence as narcotics users themselves, including narcotics abusers, abusers, victims of abusers, former narcotics abusers and patients. Based on the various terms related to narcotics abusers, this gives rise to different impacts and implications so that there are inconsistencies in treating people who use narcotics as victims of narcotics abusers themselves [25]. The Narcotics Law, which regulates that the distribution of drugs and other addictive substances is punishable by crime. Previously, the Law on Narcotics was regulated through Law No. 22 of 1997 which was amended by the Narcotics Law. Bearing in mind that there are several things that need to be perfected in article 2 concerning narcotics regulation in order to adapt to existing developments. In Article 127 paragraph 1, every person who abuses Class I, II, III narcotics is punished with imprisonment.

Imprisoning people who use narcotics and dangerous drugs has proven to be ineffective. This is a common thread in law enforcement against narcotics users. Drug abuse and illicit trafficking in Indonesia cannot be separated from the influence of global developments. Various attitudes or views from the government and society in responding to the increasing number of drug users and/or abusers have resulted in the emergence of different points of view. "By declaring 2014 as the year to save drug users, drug abusers must be

²² Sudikno Mertokusumo, 2006, Legal Discovery An Introduction, Liberty, Yogyakarta, page. 128..

²³ Rena Yulia, 2009, Victimology of Legal Protection for Crime Victims, Graha Ilmu, Bandung, page. 193.

²⁴ M. Sholehuddin, 2003, Sanction System in Criminal Law (Basic Idea of the Double Track System & Its

Implementation), PT RajaGrafindo Persada, Jakarta, page. 35

²⁵ Yansen Dau, "Rehabilitation Decisions", Thesis, Airlangga University, 2020, page. 2.

handled properly, not only subject to imprisonment but also other measures permitted by law [26].

Related to the above offenses is the criminalization policy for unlawful acts of narcotics users. The policy of using criminal sanctions is one way to tackle criminal acts. This is related to the purpose of giving punishment which aims to:

1. Prevent the commission of criminal acts by enforcing legal norms of community protection.
2. Provide corrections to the convict and thereby society. make people good and useful and able to live
3. Resolve conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society.
4. Frees the convict from feeling guilty.

That narcotics abusers are victims is shown by the provision that narcotics abusers can be sentenced to rehabilitation. This means that the Narcotics Law, on the one hand, still considers narcotics abusers as perpetrators of criminal acts, and on the other hand, they are victims of narcotics abuse, namely [27];

1. Limits of human rights protection in the Narcotics Law. Within the limits possible, protection of the human rights of Indonesian citizens, according to several principles contained in the Narcotics Law.
2. Inhibiting factors in implementing rehabilitation for perpetrators of narcotics crimes. The punishment system for narcotics abuse cannot be separated from the punishment system adopted in Indonesian law.

The principle of restorative justice is one of the principles of law enforcement in resolving cases which can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of enacting policies (Supreme Court Regulations and Supreme Court Circular Letters), but its implementation in the Indonesian criminal justice system is still ongoing not optimal. Restorative justice is an alternative resolution of criminal cases which in the criminal justice procedure mechanism focuses on punishment which is transformed into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly create agreement on a fair and balanced resolution of criminal cases for both the victim and the perpetrator by prioritizing restoration to its original state, and restoring patterns of good relations in society.

The basic principle of restorative justice is that there is restoration to the original condition of drug

abusers who suffer as a result of their actions, the perpetrators carry out social work or other agreements. Fair laws in restorative justice are certainly not one-sided, impartial, not arbitrary, and only side with the truth in accordance with applicable laws and regulations and take into account equal rights to compensation and balance in every aspect of life. The perpetrator has the opportunity to be involved in restoring the situation (restoration), the community plays a role in preserving peace, and the court plays a role in maintaining public order.

The publication of guideline 18 of 2021 concerning the resolution of criminal cases of narcotics abuse through rehabilitation with a restorative justice approach as an implementation of the *duminuslitis* principle is motivated by and takes into account that the current criminal justice system tends to be primitive. This is reflected in the number of inmates in correctional institutions that exceed capacity (overcrowding) and most of them are convicts for narcotics crimes. The issue of overcrowding has become a serious concern for society and the government as stated in the 2020-2024 National Medium Term Development Plan in the context of improving the criminal justice system through a restorative justice approach. On this basis, strategic criminal policies are needed, especially in handling criminal cases of narcotics abuse, one of which is through reorienting law enforcement policies in the implementation of the Narcotics Law.

In Perja no. 15 of 2020 states the conditions for cases and perpetrators so that prosecution can be stopped based on restorative justice. The requirements regarding the person or perpetrator are: the suspect is the first time a criminal has committed a crime. Then, there are two conditions regarding criminal acts. First, the criminal offense committed is only punishable by a fine or punishable by imprisonment for no more than five years. Second, criminal acts are committed with the value of evidence or the value of losses incurred as a result of the criminal act not exceeding 2.5 million rupiah.

Based on Article 140 Paragraph (2) letter a of the Criminal Procedure Code, the public prosecutor can stop the prosecution, for the reasons: stopping the prosecution for technical reasons and stopping the prosecution for policy reasons. Termination of prosecution for technical reasons, due to circumstances that cause the public prosecutor to make a decision not to prosecute, namely:

- a) If the evidence is insufficient;
- b) If the incident does not constitute a criminal act;
- c) If the case is closed by law.

²⁶ Rizal, "Judicial Review of Punishment for Narcotics Users", Legal Opinion, Vol. 5, no. 1, 2021, page. 2.

²⁷ Mardjono Reksodiputra, 1995, Criminal Law Reform, Jakarta: Center for Legal Services and Control UI, page. 23.

This article explains that the Public Prosecutor can terminate the prosecution if there is a lack of evidence or the case does not constitute a criminal act, but there is no basis in the Criminal Procedure Code regarding terminating the prosecution using the concept of restorative justice. In reality and the implementation of cessation of prosecutions carried out by public prosecutors in cases of victims of narcotics abuse, most of them have not been implemented in the Indonesian criminal justice system.

4. The legal culture of society is still positivist in narcotics crimes

In the past decade, Indonesia has become more aggressive in fighting/eradicating narcotics, however, our country is still ranked as one of the countries with the highest number of narcotics cases, plus international class smuggling is increasingly widespread so it is very difficult to control it. This is a very hard blow for the Indonesian nation and state, which of course does not want to get this title. The term narcotics comes from the English word "narcotics" which means "anesthetic". In English it is also known as drug. Another definition of narcotics is a substance or drug derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of pain and can cause dependence.

Efforts to eradicate narcotics crimes in Indonesia have penetrated too far into the lives of society and the state, various proposals including legislation to eradicate narcotics crimes which are getting tougher and even beyond measure, but still make the perpetrators of narcotics crimes unafraid and deterred, just look at it. There are more and more smuggling attempts, such as the arrest of an African narcotics syndicate carried out by foreigners, as many as 4 suspects, including evidence of crystal methamphetamine weighing 2 kg worth Rp. 4 billion which is ultimately threatened with life imprisonment or even the death penalty.

The big obstacle in eradicating narcotics crime in Indonesia is that too many people will be subject to criminal threats if the law is implemented seriously. Therefore, if there are cases of certain narcotics abuse that are not handled seriously, it can be concluded that it is because of the reasons mentioned above. Hence, it is often found that several narcotics cases can simply disappear with reasons sought by the authorities and by the perpetrators themselves by stating a negative urine test, still under rehabilitation treatment and so on so that in the end the case will disappear by itself. The habit of every perpetrator to abuse narcotics is at first to try so that they feel addicted and in the end to fulfill their needs/dependence in various ways, so this is the

beginning of crimes such as acts of violence, rape to white collar crime in the form of organized crime.

The settlement of narcotics cases by repressive means is not the only effective solution, this is evidenced by the increasing prevalence of narcotics cases which increased in 2007 there were 102 cases, in 2008 there were 152 cases and in 2009 there were 228 cases, for this it is necessary to do preventive efforts, such as dismantling syndicates of illicit narcotics circulation coupled with an education system and efforts such as opening rehabilitation centers, government recruitment in skills development so that job opportunities are opened for victims of narcotics offenders. Thus, indirectly the government provides opportunities for the people to improve their standard of living so that there is political will to be able to eradicate narcotics and other criminal acts.

The eradication of narcotics crimes must be carried out through law enforcement which is related to three factors of the legal system, namely the law [28] enforcement side (substance) then law enforcement agencies (structure) and legal culture (legal culture). In this case, the legal culture of law enforcers must be competent, honest, dedicated and whose integrity is guaranteed, in this way the eradication of narcotics crimes will be effective.

In line with that, according to Barda Nawawi Arief, from a criminal policy point of view, not only reform of laws or legal substance reform, but also reform of legal structure (legal structure reform) and renewal of legal culture (legal culture reform), which includes It also includes renewal of legal ethics and legal ethics and legal science/education reform [29]. The eradication of narcotics crimes at the time of the establishment of an agency/institution for the eradication of narcotics crimes did not apply these regulations retroactively, meaning that some past narcotics cases were a collective mistake that must be accounted for by everyone, as for big cases such as narcotics smuggling, illicit trafficking Narcotics and narcotics abuse will be identified by existing investigators.

In terms of improving the laws governing narcotics crimes, it is said that they are sufficient with the provisions regarding narcotics crimes being renewed from time to time, coupled with the provisions with the establishment of the National Narcotics Agency as an independent institution that also plays an active role in combating narcotics crimes. Can all of these steps realize the ideals of this country to be free from narcotics if the aforementioned efforts are not also supported by an improvement in the legal culture of law enforcement

²⁸ Lawrence M Friedman, "What is a Legal System" in American Law, W.WNorton and Company, New York, 1984

²⁹ Barda Nawawi Arief, 1996, Anthology of Criminal Law Policy. PT Citra Aditya Bakti, Bandung.

human resources (legal actors), because it is from them that success in eradicating narcotics crimes is found. Whether or not they are a determining element for whether or not they should be emulated for their performance, whether the rules are properly implemented or not. If they have implemented it correctly, of course there will be compliance from all levels of society. This is in accordance with the opinion of Satjipto Raharjo, who said that in an effort to improve law in Indonesia, serious and careful attention is needed to the problem of national behavior, legal life does not only concern technical legal matters, such as legal education, but also concerns education for fostering individual and social behavior that is wider [30].

The cultural component plays a very important role in criminal law enforcement. There are times when the level of law enforcement in a society is very high, because it is supported by a culture of society through very high community participation in efforts to prevent crime, report and make complaints about the occurrence of crimes in the environment and cooperate with law enforcement officials in crime prevention efforts, even though the structural components and the substance is not very good, and the public does not even want the formal procedures to be implemented properly. But there are times when a structure and substance is very good and modern, in fact it does not produce a high law enforcement output, because the culture of society does not support the formal procedures that have been established even though law enforcement will always interact and interrelate with its social environment.

Its implementation will be able to achieve the goals as determined through the functioning of the processes and forces in society, namely social, political, economic and cultural. Thus, the law will become a vessel for the distribution of processes in society which theoretically can carry out such a function either by providing a way for processes to run in an orderly and orderly manner, as well as for channeling them in accordance with the desired specific goals. In penal efforts, there is a new paradigm in enforcing narcotics criminal law, namely the establishment of the National Narcotics Agency as a law enforcement agency for narcotics crimes which progressively complements existing law enforcement agencies in the paradigm justice system and can also be termed a "progressive criminal justice system".

Based on the opinion above, it is clear that what should be of great concern is how the behavior (legal culture) of law enforcement is actually the most determining factor besides the substance of the laws that regulate it and the structure of law enforcement itself. Based on Lawrence M. Friedman's theory, legal culture

can be in the form of a "work culture" of law enforcement officials and the public in a law enforcement agency.

Narcotics addicts according to the law on the one hand are perpetrators of criminal acts of narcotics abuse is the existence of provisions in the narcotics law which regulate prison sentences given to perpetrators of narcotics abuse. Then, on the other hand, it can be said that a narcotics addict is a victim. This is shown by the provision that narcotics addicts can be sentenced to rehabilitation. This means that the law, on the one hand, still considers narcotics addicts to be perpetrators of criminal acts, and on the other hand, they are victims of the abuse of narcotics they commit.

Law No. 35 of 2009 concerning Narcotics basically has 2 (two) sides, namely a humanist side for narcotics addicts, and a hard and firm side for narcotics dealers, meaning that Law No. 35 of 2009 concerning Narcotics guarantees punishment for addicts/victims of narcotics abuse in the form of rehabilitation sentences, because basically they are victims, who must be cured, while for narcotics dealers in the form of prison sentences and some even carry the death penalty, because they are considered very evil and can damage the nation's generation.

In reality, there are people who are addicted to narcotics, where the actions carried out by the perpetrator in Law no. 35 of 2009 concerning Narcotics, they were sentenced to prison. When the prosecutor indicted and, in his charge, used Article 127 the dominant judge gave a prison sentence, as if he did not care that the defendant was also a victim of the crime he had committed, someone who had to be assisted to recover so that he would be free from the narcotics that had addicted him, especially when the defendant These people act not only as abusers (addicts) but also as dealers (related to the illicit trafficking of narcotics).

Former narcotics addicts are not always able to adapt to their environment when they return to society. One of the causes that affect the difficulty of adjusting former Narcotics Addicts to the environment is the inability of stakeholders and the wider community to protect and supervise Narcotics Addicts. The community stigma towards former Narcotics Addicts that has already been built up causes social attributes that are built with the aim of discrediting an individual or group regarding narcotics abuse. It turns out that this has been built in society through the process of internalizing social norms that already exist in society regarding the determination of good and bad values of a social behavior. The community is allegedly already convinced that drugs and alcohol are the roots of crime, so that individuals who are involved in drug or alcohol abuse are deviant behaviors

³⁰ Esmi Warassih, 2005, *Legal Institutions A Sociological Study*, Surya Alam Utama, Semarang.

that will refer to stigma. The visible impact is that former Narcotics Addicts are alienated in the process of social integration in society.

D. CONCLUSION

Weaknesses in the current Regulation on Termination of Prosecution of Narcotics Abusers are weaknesses in terms of legal substance, weaknesses in terms of legal structure and weaknesses in terms of legal culture. Weaknesses in terms of legal substance include regulation of criminal sanctions for narcotics abusers which are still retributive/conventional in nature,

regulations for criminal acts of narcotics abuse are not in accordance with the development of the new Criminal Code, there is still disharmony between Law 35 of 2009 and the new Criminal Code and the formulation of criminal sanctions for narcotics abusers is not possible there is a resolution of cases using restorative justice. Weaknesses in terms of legal structure include law enforcement which tends to impose prison sentences and the lack of a Narcotics Abuse Rehabilitation institution in Indonesia. While the weaknesses in terms of legal culture include Narcotics Abuse in Society is still high and the Legal Culture of society is still positivism in Narcotics crimes.