

Legal Reconstruction of Medical and Social Rehabilitation of Narcotic Abuse Victims Based on Humane Values

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DOI: [10.36348/sijlcj.2023.v06i01.001](https://doi.org/10.36348/sijlcj.2023.v06i01.001)

| Received: 23.11.2022 | Accepted: 31.12.2022 | Published: 04.01.2023

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Abstract

Narcotics abusers for themselves are guaranteed rehabilitation, but in Article 127 of Law No. 35 of 2009 concerning Narcotics, narcotics abusers also become subjects who can be punished and can lose their rehabilitation rights, unless they can be proven to be victims of narcotics. The purpose of this study was to find out the Weaknesses of the Implementation of Medical and social rehabilitation and to reconstruct the Humane-Based Medical and Social Rehabilitation of Victims of Narcotics Abuse. This research uses *socio-legal research* as an effort to understand the law in context with the constructivist paradigm. The results of the study show that the weaknesses in the implementation of medical and social rehabilitation for victims of narcotics abuse can be seen in that narcotics abusers and non-dealers receive criminal sanctions in the form of imprisonment and fines for their actions. Article 127 and Article 103 of Law no. 35 of 2009 concerning Narcotics stipulate that a judge "can" decide to place the user to undergo rehabilitation where the rehabilitation period is also counted as a sentence period where such a system in criminal law is known as the *Double Track System*. Starting from the notion that punishment is essentially only a tool to achieve the goal of punishment, then in the new narcotics criminal concept, first of all, the purpose of punishment is formulated. Efforts to reconstruct the implementation of medical and social rehabilitation for victims of narcotics abuse based on human values can be carried out by reformulating the norms of Law Number 35 of 2009, specifically regarding the position of narcotics abusers through setting suitable types of sanctions and providing benefits according to their work and affirming the purpose of the article on the qualifications of an offense other narcotics crimes whose elements can be fulfilled automatically when a person abuses narcotics for himself.

Keywords: Legal Reconstruction, Rehabilitation, Narcotics, Humane.

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INTRODUCTION

Drug abuse (narcotics, alcohol, psychotropics, and addictive substances [NAPZA]) is not a new problem in Indonesia. NAPZA are drugs or materials useful in treatment and health services as well as in science development; however, they can also cause a very detrimental dependence if misused or used without control and strict and thorough supervision (Raharni *et al.*, 2022).

Generally, Indonesian drug users are most likely to use marijuana, then methamphetamine (meth) and ecstasy, respectively (National Narcotics Board, 2017). According to the survey conducted by the National Narcotics Board (2017), almost half of the respondents (47%) began using drugs with marijuana. Other drugs are benzodiazepines and meth. The NNB reports that most drug users use more than one

substance. Sixty-eight of 950 New Psychoactive Substances (NPS) have been identified and widely distributed throughout Indonesia by 106 countries and territories circulating the drugs worldwide (Saloko & Manzilati, 2021).

Narcotics are addictive substances because they cause dependence and are classified as psychoactive substances, meaning they affect the brain and change the behavior of the wearer. Narcotics include *opiates, morphine, cannabis, heroin, cocaine, ecstasy, methamphetamine*, and tranquilizers. Abuse of Narcotics can cause dependency syndrome if their use is not under the supervision and instructions of health workers who have the expertise and authority for this purpose. This is not only detrimental to abuse, but also has social, economic, and security impacts, so this is a

threat to the life of the nation and state (Taufik, Suhasril, & Zakky, 2003).

In Indonesia, drug is one of the criminal acts that was specifically addressed by a separate law. The drug is a large case that attracts special attention from all over the world because of the enormous impact of this use and action; from drug addiction to death. Drug use has affected every element of human life, as demonstrated by a variety of groups, including those with low to high socioeconomic positions, children and adults, regular individuals, and special groups of people (Sari & Ridha, 2022).

Drug abuse (narcotics and dangerous drugs/substances) is getting out of control and even very worrying, targeting all groups, not only adults but also minors. This fact cannot be denied along with the development of information that is always presented by various media.

Drug cases in Indonesia are at a very concerning level. The use of narcotics here is detrimental to the country's economy and the younger generation. In addition, it is very feared that the handling of narcotics cases will never be completed. In some of the cases that were revealed, only 10% reached the court (Dewi, Guntara, & Wahyudin, 2011).

The dangers of drugs stalk all lines of life, teenagers and children are no exception. In November 2017, data obtained as many as 5.1 million drug users, and 40 percent of them were students and students. In fact, according to data submitted by the Indonesian Child Protection Commission (KPAI) 5.9 million children in Indonesia become drug addicts. The KPAI stated that of the 2,218 cases of children related to health and drugs they handled, 15.69 percent were drug addicts and 8.1 percent were drug dealers. This data shows a fact of how massive drug trafficking and abuse are in Indonesia (Afrizal & Anggunsuri, 2019).

The existence of the law has also regulated arrangements regarding medical and social rehabilitation and the use of narcotics for medical and health purposes. Therefore, Law Number 35 of 2009 concerning narcotics is the basis for law enforcement to guarantee the availability of drugs for the benefit of science, technology, and health and to prevent the abuse and illicit traffic of narcotics (Siswanto, 2012). Law enforcement against narcotics crimes has been widely carried out by law enforcement officials and there have been many judges' decisions on narcotics cases, the more intensive the efforts made by law enforcement against narcotics crimes the more traffic and abuse of these narcotics have increased (Kaligis & Associates, 2002).

Rehabilitation of narcotics addicts is a process of treatment to free addicts from dependence, and the

period of undergoing rehabilitation is counted as a period of serving a sentence. Rehabilitation of narcotics addicts is also a form of social protection that integrates narcotics addicts into social order so that they will no longer abuse narcotics. Based on Law Number 35 of 2009 concerning Narcotics there are at least 2 (two) types of rehabilitation, namely medical and social rehabilitation.

However, the facts that emerged in court often differed in the demands of the public prosecutor and the statement of the defendant, where the public prosecutor demanded that the elements carry, control, and possess narcotics in a very limited amount. According to the provisions of the Supreme Court circular letter No. evidence that 1 gram for crystal methamphetamine, 8 pills for ecstasy, and 5 grams for marijuana, which is one day's need with a criminal penalty under the distribution article, while the defendant's statement stated that the person concerned only used it for himself. The reason for the public prosecutor was to guide the case file already constructed chapter carry, control, and have those intended for distributors. The following are examples of cases of narcotics abuse that have permanent legal force.

By taking into account that most of the prisoners or detainees in narcotics cases are in the category of users or even victims who, when viewed from the aspect of their health, are people who suffer from illness, therefore imprisoning those concerned is not the right step, the Supreme Court with a benchmark the provisions of Article 103 of Law Number 35 of 2009 concerning Narcotics takes a step forward in building a paradigm for stopping the criminalization of narcotics addicts by issuing a Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning the determination of abusers and Narcotics addicts into the Institute for Medical and Rehabilitation Social. Where SEMA Number 4 of 2010 can be used as a basis for consideration or reference for judges in imposing rehabilitation sanctions.

From the description above, it can be understood that even if our legal substance is good, it may not necessarily be able to function properly because a reliable law enforcement structure is needed to carry out this substance. Based on the background above, this legal research is entitled: "Reconstruction of the Implementation of Medical and social rehabilitation of Narcotics Abuse Victims based on Humane Values".

This problem is what the author urges to study further in research with the following issues:

1. What are the weaknesses in implementing medical and social rehabilitation for victims of drug abuse?
2. How is the reconstruction of medical rehabilitation arrangements and social

rehabilitation of victims of narcotics abuse based a humane values?

METHOD OF RESEARCH

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge (Faisal, 2010). Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

The method used by researchers is a sociological juridical approach, namely research conducted on the real condition of society or the community environment including legal culture/legal effectiveness, law and development to find facts (fact-finding) and then identify (problem identification) which in the end leads to on problem solving (Soekanto, 1982).

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

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.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions (Moleong, 2002).

RESEARCH RESULT AND DISCUSSION

1. Weaknesses in the Implementation of Medical and social rehabilitation

The Weaknesses in the Implementation of Medical and social rehabilitation are closely related to The terminology of Narcotics Abuse for oneself as it is normatively not explicitly stated in Law No. 35 of 2009, but only explains several terms which have almost the same essence as self-abusing, including Narcotics Addict, Abuser, Victim of abuse, Former Narcotics Addict, and Patient. One of the problems caused by the many terms for narcotics users is regulatory confusion where Article 4 letter d of the Narcotics Law states that the purpose of the Narcotics Law is "*Guarantee regulation medical and social rehabilitation efforts for drug abusers and addicts*", However, Article 54 of the Narcotics Law states "*Narcotics addicts and Victims of Narcotics Abuse are required to undergo medical and social rehabilitation*" so that the right of the abuser to receive rehabilitation as stipulated in Article 54 is not recognized by the threat of criminal sanctions for narcotics users as stipulated in Article 127.

Narcotics abuse oneself is a type of crime without a victim "*crime without victim*" in which narcotics abusers themselves are without being accompanied by actions of qualifications, not other crimes such as dealers, manufactures, imports, exports, and various other qualifications in Law Number 35 of 2009, apart from being a perpetrator of a crime but also at the same time as a victim of a crime he committed himself.

In principle, narcotics abusers for themselves are guaranteed rehabilitation, but in Article 127 of Law No. 35 of 2009 concerning Narcotics, narcotics abusers also become subjects who can be punished and can lose their rehabilitation rights, unless they can be proven to be victims of narcotics. In practice, the application of the law in the field application of the norms of this article becomes increasingly ambiguous where even if a narcotics user is for himself as well as a victim of his actions, he is still subject to criminal sanctions as formulated in Article 127 which is usually included in the *indictment*. Article 111 or Article 112 because it also fulfills the elements in the norms of the article.

If we look at the provisions of these norms, we can see that in principle narcotics abusers themselves are subject to criminal sanctions as stipulated in Article 127, and the provisions of Article 103 norms stipulate that a judge "can" decide to place the user to undergo rehabilitation where the rehabilitation period This is also counted as a sentence period where such a system in criminal law is known as the *Double Track System*.

Apart from the threat of criminal sanctions as stipulated in Article 127, a narcotics abuser for himself 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 alternative elements, namely "*having, save, control*" where this element does not have to be fulfilled in its entirety, however, one of these elements is fulfilled and is included in the category of the norm because the elements in this article are alternative.

If traced further before a person abuses narcotics for himself and also fulfills the elements of "possessing, storing, controlling" there is also an original act that he does to be able to abuse narcotics, namely in the form of an act of "*buying*" which fulfills the qualifications of a narcotic crime, for example, Article 114 (1) with the threat of life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and also accompanied by a fine of at least Rp. 1,000,000,000.00 (one billion rupiahs) and a maximum of Rp. 10 000,000,000.00 (ten billion rupiahs).

So when a person misuses narcotics for himself and is not given clear boundaries with other articles, the act can also fulfill other narcotics crime articles as long as it fulfills the elements of "*possessing, keeping, possessing and or buying*" narcotics with a method without rights or against the law where the punishment is much more severe, namely imprisonment and fines with a cumulative "minimum special" so that there is no other choice for the judge to decide on rehabilitation without imprisonment and high fines because there is also a high penalty limit in the article. This is by the theory of criminal responsibility, especially the dualistic school which states that all criminal acts must be criminal as long as they fulfill the elements of the norms of the criminal article.

Based on the description of events in general, usually, before an act of narcotics abuse occurs for oneself, an act has occurred which preceded it, namely, one that fulfills the elements of "*possessing, storing, controlling, and or buying*" as stipulated referred to in Article 111 and/or Article 112 and Article 114 of Law no. 35 of 2009 concerning Narcotics.

We can find such a situation in cases of self-abuse of narcotics in general. Where in general, initially a person commits narcotics abuse for himself because of the norms of articles that annul/contradict each other (*norms*) and even the existence of certain unclear article norms (*obscure*) so that narcotics abusers for themselves always end up imprisoned and also accompanied by other criminal offense qualifications.

The rehabilitation policy for victims of Narcotics abuse has indeed created a legal polemic in its application, specifically in the implementation of a policy to rehabilitate these Narcotics addicts/users. punishment. Narcotics addicts and victims of Narcotics abuse must undergo medical and social rehabilitation.

The elucidation of Article 54 states that "What is meant by 'victim of Narcotics abuse' is someone who accidentally uses Narcotics because they are persuaded, tricked, tricked, forced and/or threatened to use Narcotics", so they are required to receive both medical and social rehabilitation (Krinawati, Dani, & Utami).

Rules regarding rehabilitation for narcotics addicts then also enter the realm of law enforcement in court as stated in Article 103 of the Narcotics Law that "Judges who examine cases of narcotics addicts can:

- a) Decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a crime of Narcotics; or
- b) Stipulates to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty of committing a crime of Narcotics."

This means that the court can decide someone who is proven to be a victim of abusers and addicts to be punished with rehabilitation if the person is proven guilty or not guilty of narcotics crimes. Even if the phrase "can" contained in Article 103 of the Narcotics Law is still multi-interpreted as mentioned in the previous chapter.

Taking into account that the majority of convicts and detainees in narcotics cases fall into the category of users or even victims who, when viewed from the aspect of their health, are people who suffer from illness, therefore imprisoning those concerned is not the right step because they neglect to care and treatment, the Supreme Court with the benchmark provisions of Article 103 of Law Number 35 of 2009 concerning Narcotics takes a step forward in building a paradigm of stopping the criminalization or decriminalization of narcotics addicts by issuing a Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning the determination of Narcotics abusers and addicts into Medical Rehabilitation Institutions and Social Rehabilitation. Where SEMA Number 4 of 2010 can be used as a basis for consideration or a judge's reference in imposing rehabilitation sanctions.

The sanctions regulated in the Narcotics Law adhere to a double-track system, namely in the form of criminal sanctions and action sanctions. Rehabilitation is a form of action sanctions. Article 103 of the Narcotics Law it is emphasized that judges can decide or determine drug addicts to undergo treatment and or treatment. The period of undergoing treatment and or treatment is counted as the period of serving a sentence. This is in line with one of the objectives of the formation of the Narcotics Law, namely to ensure the regulation of medical and social rehabilitation efforts for narcotics addicts. However, based on existing data shows that judges tend to impose prison sentences on

addicts. As a result, narcotics addicts who are in prison are not allowed to undergo rehabilitation, so the implementation of rehabilitation has not run optimally. Until now, the narcotics rehabilitation program in prisons has not run optimally (Firdaus, 2019).

The imposition of a judge's sentence in the form of a rehabilitation sentence is still relatively rare. Most narcotics abusers are not sentenced to rehabilitation as stated in Law 35 of 2009 concerning Narcotics but are sentenced to imprisonment even though the provisions of the Narcotics Law have guaranteed rehabilitation efforts, both medical and social rehabilitation as stipulated in Article 54, Article 56, Article 103, and Article 127 of the Narcotics Law.

For example, in Decision No: 130/Pid. Sus/2011/PN. Malang, which imposed a criminal sanction on a student with the initials SRR who abused narcotics for himself because he was influenced by his friend without being accompanied by other qualifications such as distributing / selling etc., but in the indictment the public prosecutor also charged him with the article on narcotics crimes with other qualifications which according to his judgment judges are also considered to fulfill the elements of Article 111 of Law no. 35 of 2009 so that it is punished with imprisonment of 4 (four) years and a fine of Rp. 800,000,000.- (eight hundred million rupiah) and stipulates that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.

Narcotics abusers are victims of their own body/health for the actions they have committed and at the same time suffer in the form of deprivation of rights in terms of serving a prison sentence. This is also exacerbated by the current condition of LAPAS which has not carried out its functions optimally, such as there is still a combination of narcotics users with other criminal offenders, there are people who use narcotics even as controllers of narcotics trafficking within LAPAS so that it is very possible when a convict uses narcotics who has finished serving his prison term also commits the same act (*recidivist*) and even in a far more shrewd way as a result of the merging of all criminals in LAPAS.

Narcotics abusers themselves should be positioned as sick people who need treatment and recovery as a result of the negative effects of the abuse of the narcotic substances they use (victims whose rights should be protected as victims). So that the sanctions that should be applied specifically to narcotics abusers for themselves without being accompanied by other main criminal offense qualifications are a type of sanction that can restore their condition to its original state, namely in the form of an action sanction.

Based on the objectives of punishment, especially those that are relative (*deterrence*), it is seen

that the punishment is aimed at the days to come, namely to educate people who have committed crimes to become good again and people who are sick, in this case, people who are addicted to narcotics, to be cured or free from dependence (addiction). On the other hand, if a narcotics abuser himself uses these narcotic substances, where he is a person who is sick (addicted to drugs), then it is not appropriate to be held accountable by imprisonment but must be in the form of an action that can cure him so that he is free from dependence on these substances and can recover back into state.

2. Reconstruction of Medical and social rehabilitation of Narcotics Abuse Victims based on Human Values

Rehabilitation is a form of punishment that aims at recovery or treatment. Rehabilitation is a form of sanctioned action that is spread outside the Criminal Code (Chiba & Menski, 2012). As an example of drug crime. Rehabilitation in narcotics crimes is carried out by an Integrated Assessment Team which consists of a team of doctors, namely doctors and psychologists, a legal team, namely elements from the Police, the National Narcotics Agency, the Prosecutor's Office, and the Ministry of Law and Human Rights, which is determined based on a decision letter from the head of the National Narcotics Agency, Narcotics Agency Province and Regency/City National Narcotics Agency. Rehabilitation can be proposed if the Integrated Assessment Team has issued a recommendation that a user is also a dealer or purely an addict. The Integrated Assessment Team will also recommend a rehabilitation plan. Based on Article 54 of Law Number 35 of 2009 concerning Narcotics, it is stated that narcotics and narcotics abuse addicts are required to undergo medical and social rehabilitation.

The Narcotics Law does not explicitly regulate the rehabilitation period needed for perpetrators of narcotics abuse so the administrators only rely on a Supreme Court Circular in carrying out rehabilitation. Point 3 of the Supreme Court Circular Letter Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse, and Narcotics Addicts in the Medical and social rehabilitation Institution states that if a judge imposes a sanction in the form of an order for the defendant to carry out rehabilitation, the designated rehabilitation place must be the closest place related to the verdict. . The places referred to in the SEMA are as follows:

- a. Medical and social rehabilitation institutions managed and/or fostered and supervised by the National Narcotics Agency.
- b. Drug Addiction Hospital (RSKO) Cibubur, Jakarta.
- c. Mental Hospitals throughout Indonesia (Ministry of Health of the Republic of Indonesia).
- d. Rehabilitation homes managed by the Indonesian Ministry of Social Affairs and the

Regional Technical Implementation Unit (UPDT).

- e. Referral places for rehabilitation institutions run by the community that has received accreditation from the Ministry of Health or the Ministry of Social Affairs.

The judge in imposing the length of the rehabilitation process for perpetrators of narcotics abuse must consider the level of addiction of the perpetrators so that information from experts is needed as a standard in the rehabilitation process as follows:

- a. Detoxification and Stabilization Program conducted for 1 (one) month
- b. Primary Program conducted for 6 (six) months
- c. The re-Entry program was conducted for 6 (six) months.

For victims of narcotics abuse who are not dealers or dealers, medical rehabilitation and/or social rehabilitation can be carried out in correctional institutions or detention centers and/or medical rehabilitation institutions and/or rehabilitation institutions that have been appointed by the government.

Sanctions are interpreted as a responsibility, action, or punishment to force someone to comply with the provisions of the law. Sanctions are also interpreted as part of the rule of law specifically designed to provide security for law enforcement by imposing a reward or punishment for someone who violates the rule of law or providing a reward for complying with it. Action is defined as a punishment given to someone whose nature does not suffer but rather educates and protects. Giving this action is intended to create security in society and improve the factors such as forced education, forced treatment, hospitalization, and others.

Starting from the idea that punishment is essentially only a tool to achieve the goal of punishment, the concept of the new Criminal Code first formulates the purpose of punishment (Arief, 2005). In identifying the purpose of a sentence, the concept of the Criminal Code departs from the balance of two main goals, namely the protection of society and the protection or guidance of individuals as perpetrators of criminal acts. Based on these two main objectives, the balance requirement is between the interests of society and individual interests, between objective and subjective factors. Terms of sentencing also depart from the two most fundamental pillar elements in criminal law, namely the principle of legality and the principle of guilt.

The formulation of goals and guidelines for sentencing is also intended as a controlling/controlling/directing function and at the same time provides a philosophical basis/foundation, rationality, motivation, and justification for sentencing.

The penal system outlined in the Draft Criminal Code is motivated by various basic ideas or principles, one of which is the idea of using a *double-track system* (between punishment and action). Starting from this basic idea, in concept, some provisions are not in the current Criminal Code, one of which is the possibility of combining types of sanctions (criminal and action).

In the context of reconstructing the sanction policy, especially for narcotics users in the future, namely by applying action sanctions, it is necessary to consider the type or form of appropriate and beneficial action sanctions to save narcotics abusers for themselves (addicts). To determine the type of sanction for this action, it is necessary to pay attention to several things, such as the conventions of countries in the world that reflect a new paradigm to avoid criminal justice. *Restorative justice* (hereinafter translated into restorative justice) is a popular alternative in various parts of the world for handling criminal offenders who have problems with the law because it offers a comprehensive and effective solution.

To fully understand the types of sanctions that are relevant and ideal that should be applied to narcotics abusers for themselves, we can see from the purpose of making which is also the spirit of Law No. 35 of 2009 as stipulated in Article 4 (d) "guaranteeing arrangement of medical and social rehabilitation efforts for Narcotics Abusers and addicts". This is then reaffirmed in Article 54 which reads "Narcotics addicts and victims of Narcotics abuse must undergo medical and social rehabilitation". This shows that the sanctions that should be applied to narcotics abusers themselves are in the form of action sanctions in the form of "medical and social rehabilitation" and not criminal sanctions as stipulated in Article 127.

Other narcotics crimes as stipulated in Articles 111, 112, 114, and other articles that fulfill the elements of "*possessing*", "*saving*", "*controlling*" and/or "*buying*" sanctions that must be applied are action sanctions in the form of medical rehabilitation and rehabilitation social. Medical rehabilitation in question is a process of integrated treatment activities to free addicts from narcotic dependence

While Social Rehabilitation in question is an integrated process of recovery activities, physically, mentally, and socially, so that former Narcotics addicts can socialize again in community life. So the criteria guidelines that should be used to implement rehabilitation for perpetrators of narcotics crimes are seen from the mental attitude (*mens rea / criminal intention*) of the perpetrators of these crimes.

If the perpetrator Of a narcotics crime commits an act and it is proven that his inner attitude is by the act he has committed, it is appropriate if the most severe criminal penalties are applied to the perpetrators of the

narcotics crime in the context of eradicating the illicit traffic of narcotics which is a transnational crime. For example, if Mr. X sells, distributes, imports, and/or produces substances in the form of narcotics where he intends to benefit from the actions he has committed or even if this is a job or even a livelihood for him then it is appropriate and reasonable if Mr. X is subject to severe criminal sanctions either in the form of imprisonment, fines and or even death penalty.

However, even if the act of narcotics abuse for oneself fulfills the elements of a qualification for a criminal act regulated in another article, as long as the intention (*mens rea/criminal intention*) of the offender is for self-use as a result of a dependency on this type of narcotics, the offender may not be subject to criminal sanctions. imprisonment but must strictly regulate sanctions in the form of medical and social rehabilitation. Or in a simple sense, every narcotics abuser for himself without being accompanied by other types of criminal offense qualifications such as distribution, selling, import, and production is not subject to imprisonment but is obliged to be rehabilitated.

For example, if person A is dependent on narcotic substances, where in To calm himself down from the dependency he is suffering from, he buys the narcotics so that he, as the owner, also controls and even keeps it to stock up for further use for himself, so in this case Person A must be rehabilitated and not imprisoned even though his elements have met the qualifications of a crime. other crimes as stipulated in Article 111, Article 112, Article 114, and other articles whose elements are fulfilled for the said act. Because the main purpose in terms of owning, keeping, controlling, or even buying is for personal use which happens to meet the qualification elements of other narcotic crimes.

Or in the framework of the reconstruction of the narcotics law in the future, an affirmation must be made that Articles 111, 112, 114 and other articles that fulfill the elements of "owning", "keeping", "controlling" and/or "buying" are articles aimed at dealers, importers, people who producing and qualifying other narcotic crimes and not directed at narcotics abusers for themselves. If the narcotics abuser for himself fulfills these elements and it is proven that the inner attitude (*mens rea / criminal intention*) of the perpetrator is not more than for his use, then to save the victim of the narcotics abuser for himself the judge is obliged to decide to apply sanctions to action in the form of medical and social rehabilitation for the offender.

Abolishing criminal provisions and obliging them to rehabilitate narcotics abusers for themselves, at least this can save the present and the future from these abusers, and on the other hand, can reduce the burden of

conflict and losses experienced by the state. Because with the criminal policy so far that has always decided to be imprisoned narcotics abusers for themselves adds to the burden of suffering for him because the user has lost his past due to the use of narcotics he uses, his present and also loses his future and also the future generation of the Indonesian nation as a result of the negative impact of a prison sentence imposed on him.

Action sanctions in the form of rehabilitation for narcotics abusers for themselves are by the purpose of punishment, namely the *treatment which* argues that punishment is very appropriately directed at the perpetrators of crimes, not at their actions. The punishment referred to by this school is to provide *treatment and rehabilitation* to the perpetrators of crimes as a substitute for punishment. This school is based on the premise that the perpetrators of crimes are sick people who need *treatment and rehabilitation* (Gerber & McNany, 1970).

So that in this case, the perpetrators of narcotics abuse themselves are sick people who need treatment in the form of an act of care (*treatment*) and repair (*rehabilitation*) in the form of medical rehabilitation and also social rehabilitation without being accompanied by imprisonment. So rehabilitation for narcotics abusers for themselves is an effective alternative sanction that is by the conditions of criminals not with the nature of the crime to restore them to their original state so that they can reintegrate into society.

CONCLUSION

Based on the discussion above, this research can be concluded as follows:

1. Weaknesses in the Implementation of Medical and social rehabilitation, in principle, narcotics abusers for themselves are guaranteed rehabilitation, but in Article 127 of Law No. 35 of 2009 concerning Narcotics, narcotics abusers also become subjects who can be convicted and can lose their rehabilitation rights, unless it can be proven or proven to be a victim of narcotics. In practice, the application of the law in the field application of the norms of this article becomes increasingly ambiguous where even if a narcotics user is for himself as well as a victim of his actions, he is still subject to criminal sanctions as formulated in Article 127 which is usually included in the *indictment*. Article 111 or Article 112 because it also fulfills the elements in the norms of the article. If we look at the provisions of these norms, we can see that in principle narcotics abusers themselves are subject to criminal sanctions as stipulated in Article 127, and the provisions of Article 103 norms stipulate that a judge "can" decide to place the user to undergo rehabilitation where the rehabilitation period

This is also counted as a sentence period where such a system in criminal law is known as the *Double Track System*. Apart from the threat of criminal sanctions as stipulated in Article 127, a narcotics abuser for himself 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 alternative elements, namely "*having, save, control*" where this element does not have to be fulfilled in its entirety, however, one of these elements is fulfilled and is included in the category of the norm because the elements in this article are alternative.

2. Human-based Reconstruction of Medical and social rehabilitation of Victims of Narcotics Abuse Starting from the idea that punishment is essentially only a tool to achieve the goal of sentencing, the concept of narcotics crime first formulates the purpose of punishment. In identifying the definition of punishment, the concept of narcotics crime departs from the balance of two main objectives, namely the protection of society and the protection or development of individuals as perpetrators of criminal acts. Based on these two main objectives, the balance requirement is between the interests of society and individual interests, between objective and subjective factors. Terms of sentencing also depart from the two most fundamental pillar elements in criminal law, namely the principle of legality and the principle of guilt. To save narcotics abusers for themselves from the threat of imprisonment, what needs to be done is to reformulate the norms of Law Number 35 of 2009, especially regarding the position of narcotics abusers by setting the correct type of sanctions and providing benefits according to their position and affirming goals. Article qualifications for other narcotics crimes whose elements can be fulfilled automatically when a person abuses narcotics for himself. The central issue in the penal policy is determining what actions should be made criminal acts (ie through criminalization policies), and what sanctions should be

REFERENCES

- Rasyid Ariman, M. (2013). *Hukum Pidana Fundamental*. (Palembang: Unsri Press), P. 58.
- Raharni, S. I., Telly, P., Andi, S., & Mujiati. (2022). *Determinant factors of narcotics, psychotropic, and addictive substances abuse relapse in a drug rehabilitation centre in Indonesia*. *Pharmacy Education*, 22, 207-212. 10.46542/pe.2022.222.207212.
- Aryo, S., & Asfi, M. (2021). *Examining The Gateway Hypothesis Of Drug Use In Indonesia*. *Jurnal Administrasi Kesehatan Indonesia*, 9, 95. 10.20473/jaki.v9i1.2021.95-106.
- Moh. Taufik, Suhasril, dan Moh. Zakky A. S. (2003). *Tindak Pidana Narkotika*. (Jakarta : Ghalia Indonesia), P. 20.
- Dini, S., & Ridha, M. (2022). Rehabilitation Sanctions Against Addicts and Drug Abuse Victims: Overview of Islamic Criminal Law. *Al Hurriyah: Jurnal Hukum Islam*, 7, 93. 10.30983/alhurriyah.v7i1.4887.
- Sartika, D., Deny, G., & Gilang, W. (2021). *Efektivitas Rehabilitasi Oleh Badan Narkotika Nasional Kabupaten Karawang (Bnnk) Dalam Penanganan Korban Penyalahgunaan Narkotika Dihubungkan Dengan Peraturan Presiden Republik Indonesia Nomor 23 Tahun 2010 Tentang Badan Narkotika Nasional*. *Justisi*, 6, 69-86. 10.36805/jjih.v6i1.1424.
- Riki, A., & Upita, A. (2019). Optimalisasi Proses Asesmen terhadap Penyalah Guna Narkotika dalam Rangka Efektivitas Rehabilitasi Medis dan Sosial Bagi Pecandu Narkotika. *Jurnal Penelitian Hukum De Jure*, 19, 259. 10.30641/dejure.2019.V19.259-268.
- Siswanto, S. (2012). *Politik Hukum Dalam Undang-Undang Narkotik*. (Jakarta: Rineka Cipta), P. 83.
- Kaligis, O. C., & Associates. (2002). *Narkoba dan peradilannya di Indonesia, Reformasi Hukum Pidana Melalui Perundang dan peradilan*. (Bandung : Alumni), p. 260.
- Faisal. (2010). *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.
- Soejono, S. Introduction to Legal Research, Jakarta: UI Press, p.10.
- Johnny, I. (2005). *Teori dan Metodologi Penelitian Hukum Normatif*, Surabaya : Bayumedia.
- Moleong, L. (2002). *Metode Penelitian Kualitatif*, Bandung: PT Remaja Rosdakarya.
- Mohamad, F. (2022). *Penerapan Rehabilitasi Medis dan Rehabilitasi Sosial Atas Penyalahgunaan Narkotika Bagi Diri Sendiri*. *Jurnal Sosial Teknologi*, 2, 406-417. 10.36418/journalsostech.v2i5.333.
- Haerana. (2019). *Implementasi Kebijakan Rehabilitasi Pengguna Narkoba Di Kota Makassar*. 1. 21-35.
- Krinawati, D., & Niken Subekti, B. U. (2014). *Pelaksanaan Rehabilitasi Bagi Pecandu Narkotika Pada Tahap Penyidikan Pasca Berlakunya Peraturan Bersama 7 (Tujuh) Lembaga Negara Republik Indonesia*, Yogyakarta: Hasil Penelitian Fakultas Hukum Universitas Gadjah Mada.
- Insan, F. (2019). *Peranan pembimbing kemasyarakatan dalam upaya penanganan overcrowded pada lembaga pemasyarakatan JIKH*, 13(3), 339-358.

- Chiba dalam, W. M. (2012) *Perbandingan Hukum Dalam Konteks Global: Sistem Eropa, Asia, dan Afrika*. (Penerjemah M. Khozim, Bandung: Nusa Media), P. 164.
- Barda, N. A. (2005). *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan*. (Bandung: PT. Citra Aditya Bakti, Bandung) P. 276.
- Rudolp, J. G., & Patrick, D. M. (1970). *"Philosophy of Punishment"* dalam *The Sociology of Punishment & Correction*, 1970.