

# Legal Reconstruction of the Formula of Criminal Offense to Determine the Classification of Narcotics User and Victim Based on Justice Value

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## Abstract

The purpose of this research is to analyze the weaknesses of criminal offenses against narcotics users and victims of narcotics abuse and how to reconstruct the regulation based on the value of justice. The method used in this study uses a juridical approach with a constructivist paradigm. The results of the research show that the current weaknesses in criminal offenses against narcotics users and victims of narcotics abuse, due to the provisions regarding ownership and control as regulated in Article 112, can also be applied to those who are classified as abusers as regulated in Article 127 of Law no. 35/2009 concerning Narcotics. Therefore, the Reconstruction of criminal offense regulations against narcotics users and victims of narcotics abuse based on the value of justice can be done namely by changing the substance of Articles 103, 112, and Article 127 of the Narcotics Law, where in Article 103, the phrase "can" is replaced with the word "obliged". Then, Changing Article 127 paragraph (1), by adding the sentence "Every abuser with the intention of using it himself". Meanwhile, there must be an additional clause regarding the criteria for the large number of narcotics in Article 112 must in paragraph (3) as an addition to Article 112 of Law no. 35/2009 concerning Narcotics to further differentiates the differences of both.

**Keywords:** Legal Reconstruction, Narcotics Abuse, Victim, Justice Value.

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## INTRODUCTION

Narcotics crime is a type of crime that is unique and different from other types of crime. Because narcotics crime is basically a form of victimless crime. In the science of criminal law, it is explained that in crimes without victims, the consequences are usually invisible between the perpetrator and the victim. Therefore, narcotics crimes are more accurately referred to as consensual crimes, where the victims are the perpetrators themselves. Perpetrators become victims of their own mistakes; therefore it is necessary to find solutions to imposing sanctions on those who are qualified as addicts and victims of narcotics abuse (Yunus, 2022).

Taking into account the provisions of Article 4 letters c and d, it is understood that Law no. 25/2009 concerning Narcotics shows that there is a difference in the treatment of dealers as perpetrators of narcotics crimes and victims/addicts as narcotics abusers. This provision implies that efforts to prevent and combat drug abuse are carried out with an integrated policy, namely using penal means and non-penal means.

Penal means, namely repressive actions carried out against illicit traffickers and narcotics precursors, while non-penal means are carried out by healing victims or narcotics addicts (treatment of offenders) and society (treatment of society) (Widodo, 2019). So that rehabilitation within the framework of narcotics law enforcement must be seen as a forward-looking sanction, namely improving the person concerned while protecting the community.

When examined carefully, the formation of Law no. 25/2009 concerning Narcotics basically there is a desire to make changes to the approach used in enforcing narcotics law. If the previous law was more directed at the approach of imposing punishment on perpetrators, then the new Narcotics Law has the opportunity to implement medical and social rehabilitation measures for perpetrators of narcotics abuse.

Criminal law enforcement Law no. 25/2009 concerning Narcotics, particularly in the application of Article 54 in conjunction with Article 103 and Article

127, legal certainty has not been seen in judicial practice. In several cases charged with Article 127, most of them were sentenced to prison terms, and only a few cases of narcotics abusers were sentenced to undergo medical and social rehabilitation. Where the majority of narcotics abuse cases that are sanctioned by medical and social rehabilitation measures tend to be those from the upper economic class (Widodo, 2018).

The application of the law to the same type of crime in the process of enforcing narcotics law carried out by the judiciary is one of the indicators that the principles of justice and legal certainty have not been implemented in law enforcement against narcotics abusers.

UU no. 25/2009 concerning Narcotics stipulates that narcotics abusers who qualify as narcotics users for themselves are subject to Article 127 paragraph (1) which threatens abusers with a maximum imprisonment of 4 (four) years. In paragraph (2) it is explained that in deciding the case as referred to in paragraph (1), the judge is obliged to pay attention to the provisions referred to in Article 54, Article 55, and Article 103. If the abuser can be proven or proven to be a victim of narcotics abuse, then the abuser, for this purpose, is obligated to undergo medical rehabilitation and social rehabilitation.

UU no. 25/2009 on Narcotics also provides opportunities for medical rehabilitation and social rehabilitation for addicts and victims of narcotics abuse, as explained in Article 54, Article 55, Article 103, and Article 127 paragraphs (1), (2), and (3). Provisions for the implementation of medical and social rehabilitation for addicts and victims of narcotics abusers are also regulated in Article 13 and Article 14 of Government Regulation Number 25 of 2011 concerning the Mandatory Reporting of Narcotics Addicts.

Regarding the obligation to carry out medical and social rehabilitation, it is also regulated in the Supreme Court Circular Letter Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse, and Narcotics Addicts in Medical and Social Rehabilitation Institutions (hereinafter referred to as SEMA No. 4 of 2010).

Law enforcement problems Law no. 25/2009 concerning Narcotics, especially towards addicts and victims of narcotics abuse lies in the application of the law Article 127 in conjunction with Article 103 of the Narcotics Law which does not provide clear boundaries regarding the application of Article 54 law, namely regarding the implementation of medical and social rehabilitation for addicts and victims of abuse narcotic use.

The provisions of Article 127 which qualify a criminal act in the form of self-use also experience

problems with the provisions of Article 111 and Article 112 of Law no. 25/2009 on Narcotics, which can also be applied to those who are qualified to abuse narcotics for their own use. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of the Formula of Criminal Offense to Determine the Classification of Narcotics User and Victim Based on Justice Value*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses in the regulation of criminal offenses against narcotics users and victims of narcotics abuse?
2. How is the Legal Reconstruction of regulation of criminal offenses against narcotics users and victims of narcotics abuse Based on Justice Value?

## METHOD OF RESEARCH

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

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

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

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

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

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

by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses in the Regulation of Criminal Offenses against Narcotics Users and Victims of Narcotics Abuse

Law enforcers, especially investigators, are the main pillars in policy reform in almost all fields and there are various interesting cases to see an overview of the role of investigators in criminal cases that make developments and encourage reforms to the work of law enforcers. The issue of law enforcement is an endless spotlight, especially in the issue of the criminal justice system. One of the issues in the spotlight is the relationship between the criminal justice system and drug problems (Narcotics, Psychotropics, and other Addictive Substances) which should be handled using various approaches, but in practice, a punitive approach is the main pillar.

Regarding current law enforcement, all this time law enforcement officers still view Law no. 35/2009 concerning Narcotics as oriented towards imprisonment for drug users/addicts, so that they are considered criminals. In fact, the government proclaimed 2014 as the year of rescuing victims of drug abuse through rehabilitation.

The lack of clarity regarding the qualifications of the act has resulted in uncertainty in the application of Article 127 in conjunction with Article 103 of Law no. 35/2009 concerning Narcotics. The substance of Law no. 35/2009 concerning Narcotics has not yet accommodated the qualifications of abusers. The formulation of abusers formulated in Article 1 point 15 of Law no. 35/2009 concerning Narcotics has a very broad meaning, including producers, dealers, and users. All of them are considered people who abuse narcotics. This causes the position of narcotics users to be difficult to position whether they are addicts or victims of narcotics crimes.

The ambiguity of the regulation causes misinterpretation in giving criminal punishment. In addition, the provisions of Article 1 point 15 of Law no. 35/2009 concerning Narcotics, have also created confusion in the substance of the articles of Law no. 35/2009 concerning Narcotics, particularly in the application of Articles 127 and 103 of Law no. 35/2009 concerning Narcotics.

Provisions in the Narcotics Law stipulate that every addict is obliged to undergo rehabilitation, but further provisions state that in the procedures that must be passed during the rehabilitation stage, the consent of the victim concerned must be obtained. These are two contradictory things because in general addicts will not give their consent to undergo rehabilitation.

In addition, the rules related to addicts also contain confusion and multiple interpretations, especially in determining the category between addicts and narcotics abusers. For this reason, it is necessary to clarify the provisions related to the category of addicts and abusers, so that they become clear and do not have multiple interpretations. In determining whether someone is an addict or a user, it is necessary to study that person. The studies in question are medical studies, network studies, and legal studies.

These three studies serve as a consideration for law enforcers to determine whether those caught red-handed include users, couriers, or narcotics dealers. A Medical examination is seen from whether the person concerned has a medical history which is stated by a doctor's letter that the person concerned is an addict. Tissue studies can be seen from laboratory tests on the urine in question. According to legal studies, the person concerned violated the articles in the Narcotics Law.

Addicts in applying the law in the field are always charged with Article 127 of Law no. 35/2009 concerning Narcotics. To be able to apply Article 103, the suspect/defendant must be accompanied by the results of a urine test from the Food and Drug Supervisory Agency (BPOM) and a statement from the treating doctor, only then can one be sure that the suspect/defendant is an addict.

Seen from the perspective of a restorative justice approach, in fact, drug abusers are victims, so actually they do not deserve criminal sanctions, but rehabilitation must be sought, be it medical rehabilitation or social rehabilitation (Chandra, 2019).

From the perspective of the Narcotics Law, to distinguish between addicts and user, addicts have evidence of a referral letter from a doctor that has been addicted and has been taking medication. While the user is examined based on urine examination. The problem is the judge's assessment is based on humanity, is the judge's decision handed down the same as the defendant who has 0.001 grams of evidence with 5 grams, by applying Article 112 of Law no. 35/2009 concerning Narcotics?

The Problem that rises in the enforcement of narcotics law, especially in the application of Article 127 and Article 103 of Law no. 35/2009 concerning Narcotics is due to the definition of abusers, which consists of users/users, addicts and victims not being classified clearly and firmly in the Narcotics Law.

In the Narcotics Law, there are 3 (three) classifications of narcotics abusers, namely: Abusers, addicts, and victims. Because the Narcotics Law does not classify clearly and unequivocally the three classifications, abusers, addicts and victims are still generalized. For example, if a suspect is in possession

of narcotics, if during the investigation process the results of a urine test cannot be proven and there is no certificate from the treating doctor, it means that the suspect in terms of possession and control of narcotics is included in the category of abusers (Bumi, 2022).

There is ambivalence in the formal juridical strata of the Narcotics Law, namely that there is no regulation regarding the definition and classification of victims, so that victims are subject to criminal sanctions. Based on the development of the science of victimology, narcotics users are included in the category of false victims, namely those who become victims because of their own actions. Acts committed by narcotics users themselves to buy and abuse narcotics are caused by the very high illicit traffic of narcotics (Saragih, 2021).

Legal uncertainty in the Narcotics Law has become a legal problem in enforcing narcotics law and efforts to eradicate narcotics in Indonesia. It is ironic when the suspect is actually a victim when he is subject to criminal sanctions and is gathered in a detention center of various characteristics, so that it is feared that this person will fall even deeper into the circle of illicit narcotics trafficking. Thus, if in court it can be proven that the suspect is a victim, rehabilitation should be carried out, not subject to criminal sanctions, unless he is a courier, dealer, and possesses narcotics, but as long as the prosecutor can prove that the suspect is a victim, the judge who examines and tries the case directs that the case be carried out a restorative justice approach by placing the accused in a rehabilitation center (Toebagus, 2022).

The problems of enforcing the narcotics law itself are basically always experiencing different views between investigators, public prosecutors, judges and legal advisers themselves in the trial process. In stage I of the narcotics criminal process, investigators and public prosecutors themselves in their indictments always contain elements of Article 112 of Law no. 35/2009 concerning Narcotics to people suspected by investigators of having two valid pieces of evidence, even being legal and convincing as drug dealers. Whereas according to the Narcotics Law, to find out whether someone is a dealer or an addict even though the master and ownership of the illicit goods is in the hands of the perpetrator, it does not mean that the person is the real perpetrator, but must also be proven first through a series of positivity tests for using the narcotics (Manabulu, 2020).

The elements of "owning, storing, controlling and providing" are specifically "possessing and controlling" that the provisions concerning elements of Article 112 cannot be equated with the provisions of "bezit" or control as contained in Book II, CHAPTER II of the Civil Code concerning Bezit Article 529 jo Article 1977 Civil Code. Article 529 of the Civil Code

itself states that "the so-called position of power is the position of a person who controls an object, either by himself or through another person, and who maintains or enjoys it as the person who owns the object. This means that someone who is said to be in control of an object according to Article 529 of the Civil Code is a person who owns it either personally or through other people, by defending the object or enjoying the object in his possession. In other words, if someone holds the object, then that person uses the object either to be consumed, enjoyed, used according to its use, then the object is under his control. Likewise, what is contained in Article 1977 of the Civil Code, states that: "*for movable objects that are not in the form of interest, or receivables that do not have to be paid to the bearer, whoever controls them is considered to have owned them*".

Meanwhile, for criminal elements contained in Article 112 paragraph (1) of Law no. 35/2009 concerning Narcotics, the Supreme Court of the Republic of Indonesia in its decision Number 1386/K/Pid.sus/2011 provides legal considerations (*rechts onvoldoende gemotiveerd*) whose contents are: "*that the ownership or control over a Narcotics and the like must be seen for its intent and purpose or contextual and not just textual by connecting the sentences in the law.*"

Based on the decision of the supreme court above, it means that in order to determine the criminal elements of Article 112 of Law no. 35/2009 concerning Narcotics, it must be proven in advance either by the investigator or the public prosecutor in the trial to prove the criminal case against the "intent" or "oogmerk" of the holder of the narcotic goods or the like.

The Supreme Court of the Republic of Indonesia in this case provides the understanding that a person may not be punished because he has brought these illicit goods, thus meaning he is a dealer. However, the investigator or public prosecutor is in proving whether the perpetrator is a perpetrator who is a dealer, or is the perpetrator a real victim or even a perpetrator who is not real. This is the reason why the Supreme Court in its decision Number 1071/K/Pid.sus/2012, stated that Article 112 of Law No. 35/2009 concerning Narcotics is a waste or "flexible" article which means that the interpretation of the article are up to the reader.

## **2. Legal Reconstruction of Regulation of Criminal Offenses against Narcotics Users and Victims of Narcotics Abuse Based on Justice Value**

Narcotics users who cannot be proven that they are addicts or victims of narcotics, then according to the provisions of Law no. 35/2009 concerning Narcotics, then he or she is still sentenced and medical and social rehabilitation measures cannot be applied, instead to the

provisions of Article 127 Paragraph (1) of Law no. 35/2009 concerning Narcotics.

The provisions mentioned above are based on the consideration that at the time of arrest the evidence obtained was only for 1 (one) day use. In addition, the user is based on an assessment in the evidence that it is not proven to be addicted to narcotics (addiction), which in this case is proven by a doctor's statement or expert statement which based on a medical examination confirms the situation that the user is addicted to narcotics and the defendant has been undergoing treatment. In other words, to determine whether a person's position is included in the category of an addict or victim, or as a user, it is necessary to prove the "*addiction*" experienced by the defendant, both physically and psychologically.

However, it must be understood that in implementing Article 127 of Law no. 35/2009 concerning Narcotics cannot be separated from the articles of possession or control of narcotics. Rationally, for someone who will use narcotics, it is certain that he or she will control and possess narcotics, but the ownership and control of narcotics is solely for his own use. This is where the confusion of the substance of the articles in Law no. 35/2009 concerning Narcotics, so that the provisions of the articles in this law must be reconstructed, especially articles 103, 112 and Article 127 of Law no. 35/2009 concerning Narcotics, so that there is legal certainty related to the qualifications of criminal offenses and the criminal elements of each qualification of narcotic criminal offenses regulated in Law no. 35/2009 concerning Narcotics.

Judging from the theory of the legal system, it can be said that substantially the legal rules governing the qualifications of criminal acts in the Narcotics Law do not yet have legal certainty and are still ambiguous, especially in the application of Article 127 of Law no. 35/2009 concerning Narcotics, because of the provisions of Article 112, which basically can be applied to all qualifications of criminal acts of narcotics abuse.

As a consequence, the application of Article 127 of Law no. 35/2009 concerning Narcotics which is intended for those who abuse narcotics for their own use (users) do not work as they should. Therefore, to make Article 127 of Law no. 35/2009 concerning Narcotics, the alternative policy formulation that can be done is to change Article 112 and Article 127 paragraph (1) of Law no. 35/2009 concerning Narcotics.

These changes can be made by adding paragraphs between Article 112, namely by adding paragraph (3), which is formulated as follows: Mastery and possession of Narcotics Group I as referred to in Paragraph (1) and paragraph (2) which "weigh not less

than 1.01 (one point zero one) gram, the provisions of this article cannot be applied.

With the amendment to the article, a clear distinction can be made between narcotics abusers who are actually domiciled as dealers, intermediaries or couriers and abusers who are qualified as users or users for their own use. Thus, dealers can no longer take refuge behind the provisions of Article 127 of the Narcotics Law, conversely users/users cannot be charged with the provisions of Article 112 of the Narcotics Law. In essence, the amendment to the article will provide legal certainty in law enforcement against narcotics abusers, especially legal certainty regarding the application of Article 127 of the Narcotics Law which is intended for abusers who use narcotics for their own use.

Amendments to Article 112 of the Narcotics Law need to be made to provide legal certainty for the application of the law from each qualification for criminal acts of narcotics abuse, for perpetrators who are categorized as Abusers, addicts and victims of narcotics abuse with qualifications of criminal acts categorized as dealers, narcotics intermediaries/couriers.

Furthermore, to provide legal certainty for addicts and victims of narcotics abuse, related to the application of Article 103 of Law no. 35/2009 concerning Narcotics, namely regarding the determination and decision of the judge in ordering the person concerned to undergo medical rehabilitation and social rehabilitation.

According to the provisions of Article 103 paragraph (1) of Law no. 35/2009 concerning Narcotics, the judge in examining the case of Narcotics Addicts "*can*" 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 determines 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. The period of undergoing treatment and/or treatment for Narcotics Addicts is counted as a period of serving a sentence. The phrase "*can*" listed in Article 103 of Law no. 35/2009 concerning Narcotics can be understood that narcotics addicts do not necessarily receive a decision by the court in the form of an order to carry out medical rehabilitation measures. The phrase "*can*" is in complete contradiction with the provisions of Article 54 of the Narcotics Law which emphasizes that narcotics addicts are "*obliged*" to undergo medical rehabilitation and social rehabilitation.

The formulation of Article 103 should not use the phrase "*can*", but use the word "*obliged*", so that Article 103 of the Narcotics Law reads as follows:

"Judges who examine cases of Narcotics Addicts are obliged". Thus, between the provisions of Article 54 and Article 103 paragraph (1) of Law no. 35/2009 concerning Narcotics are not contradictory to each other.

If in court it is clear that the person being examined is a narcotics addict, in accordance with the provisions of Article 54 of Law no. 35/2009 concerning Narcotics, then the person concerned (who is being investigated) in his position as an addict must be determined and sentenced and ordered to undergo medical rehabilitation and social rehabilitation as stated in Article 54 of Law no. 35/2009 on Narcotics, not vice versa.

Based on the description above, several alternative policy formulations against Article 112 and Article 127 of Law no. 35/2009 concerning Narcotics, namely: by amending Article 112 and Article 127 of the Narcotics Law. The amendment simply adds to the elements of the article contained in Article 112 with the element "with the intention of selling or distributing". With this change, every perpetrator of narcotics crimes cannot hide as a narcotics abuser. And vice versa, those who are qualified as abusers, be they addicts, victims or users, cannot be charged with the provisions of the article which are actually aimed at narcotics offenders who are qualified as dealers.

Therefore, a legal reconstruction is needed for addict users and drug abusers based on the value of justice, namely by changing the substance of Articles 103, 112 and Article 127 of the Narcotics Law, where in Article 103, the phrase "can" is replaced with the word "Obliged". Changes to Article 127 paragraph (1), namely by adding the sentence "Every abuser with the intention of using it himself". Meanwhile, the criteria for the large number of narcotics in Article 112 are contained in paragraph (3) as an addition to Article 112 of Law no. 35/2009 concerning Narcotics.

## CONCLUSION

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

1. The current weaknesses in criminal offenses against narcotics users and victims of narcotics abuse is that they are often categorized the same due to the provisions regarding ownership and control as regulated in Article 112 can also be applied to those who are classified as abusers as regulated in Article 127 of Law no. 35/2009 concerning Narcotics.
2. The Legal Reconstruction of criminal offense regulations against narcotics users and victims of narcotics abuse based on the value of justice can be done namely by changing the substance of Articles 103, 112, and Article 127 of the Narcotics Law, where in Article 103, the

phrase "can" is replaced with the word "obliged". Then, Changing Article 127 paragraph (1), by adding the sentence "Every abuser with the intention of using it himself". Meanwhile, there must be an additional clause regarding the criteria for the large number of narcotics in Article 112 must in paragraph (3) as an addition to Article 112 of Law no. 35/2009 concerning Narcotics to further differentiates the differences of both.

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