



## Legal reconstruction of rehabilitation measures against narcotics abusers based on Pancasila justice values

Gunarto\*, Hernando Ariawan, Andri Winjaya Laksana

Faculty of Law, Sultan Agung Islamic University Semarang, Indonesia

### Abstract

The aim of this research is to analyze and find the weaknesses in the current regulations for rehabilitation measures for narcotics abusers and to find and formulate a reconstruction of regulations for rehabilitation measures for narcotics abusers based on Pancasila values of justice using a socio-legal research approach where law is conceptualized as an empirical phenomenon that can be observed in real life.

Research Result shows that the Regulation on Sanctions for the Rehabilitation of Narcotics Abuse Is Not Fair yet because there is confusion regarding the regulations in Article 4 (d) of the Narcotics Law, as according to Article 54 of the Narcotics Law, it is stipulated that "undergoing Medical Rehabilitation and Social Rehabilitation is mandatory". Previously, drug abusers received rehabilitation guarantees, but under Article 127 of the Narcotics Law, it became clear that drug abusers could be punished and lose their right to rehabilitation. This is what makes victims of narcotics users liable to prison as Public Prosecutor often charges them with this law. Therefore the Legal reform proposed by the author is in the form of reconstruction of regulations in Article 127 paragraph (1) of Law no. 35 of 2009 concerning Narcotics where: "Every Class I, II, and III Narcotics abuser who is a victim of Narcotics abuse (a Narcotics Addict who has been proven through an assessment) is required to undergo Rehabilitation".

**Keywords:** Legal reconstruction, rehabilitation, narcotics abuse, justice value

### Introduction

The number of cases of narcotics abuse in the jurisdiction of the Central Java Regional Police is currently increasing greatly. This can be seen from the number of cases which increases every year. Based on data from the Directorate of Narcotics Research (Ditresnarkoba) of the Central Java Regional Police, in 2020 drug crimes in Central Java increased by 3% from 2019, which amounted to 1,709 cases to 2,132 cases with 2,173 suspects (Gatra.com, 2021).

The increasing number of consumers using narcotics certainly invites the operation of narcotics syndicate networks. The number of drug abusers in Central Java reaches more than 300,000 people who come from various levels of society. Based on data from the Central Java Provincial National Narcotics Agency (BNNP), currently 27.32% of drug abusers are still students and students, ranking second highest in Central Java. This data is certainly very worrying because the threat of the loss of quality young people is increasingly real.

Throughout 2020, the Central Java Province National Narcotics Agency has uncovered 11 cases with 25 narcotics case files, of which 19 case files have been P21. Based on all narcotics cases that have been disclosed, the Central Java Province National Narcotics Agency has confiscated evidence totaling 1,575.50 grams of crystal methamphetamine, 4.5 grams of marijuana, 511 ecstasy pills, 79 THC candies and 6 ampoules of liquid THC. Of the 25 narcotics case files, 2,243 people involved as suspects in narcotics cases received rehabilitation services. BNNP Central Java has collaborated with 29 Government Agency Rehabilitation Institutions and 31 Community Components so that it is able to provide rehabilitation services for these 2,243 people. Of this number, 238 people participated in post-rehabilitation services and 172 people carried out

Integrated Assessment services, and 104 people carried out medical assessment services (BNN Jateng, 2020).

Law enforcement against crime in Indonesia, especially in terms of punishment, should refer to a legal norms approach which is to develop criminals by providing medical and social guidance or rehabilitation. The aim of this coaching or rehabilitation is to improve the perpetrators and users of narcotics abuse. This should be able to provide discourse to judges in imposing rehabilitation sanctions on narcotics users. In reality, the field of punishment generally still adheres to the concept of only imposing prison sentences, without any medical and social rehabilitation. The picture is that the crime only stops for a moment and will reappear in the community's social life (Widodo, 2019).

The basis for the criminalization of narcotics abuse using the rehabilitation system is carried out by classifying the defendant as when he was arrested in the condition of being caught red-handed, evidence of 1 (one) day's use was found with the detailed table of Law Number 35 of 2009, declared positive for using narcotics based on a laboratory test letter based on the investigator's request requires a certificate from a government psychiatrist/psychiatrist appointed by the judge. There is no evidence that the person concerned is involved in illicit narcotics trafficking. Reform of criminal law must essentially be a manifestation of change and renewal of various aspects and policies behind it therefore, Welfare for all Indonesian people is an elaboration of the values of social justice (Widodo, 2018).

The existence of the narcotics law is a political and legal effort by the Indonesian government to overcome narcotics crimes. Therefore, it is hoped that the formulation of this law can tackle illicit trafficking and narcotics abuse, as well as become a reference and guideline for courts and administrators or implementers of court decisions that apply

the law, especially judges in imposing criminal sanctions for crimes that occur (Toebagus, 2018).

Based on this problem, the author then formulate several problem discussed in this article, namely:

1. What are the weaknesses of The Rehabilitation Measures Against Narcotics Abusers in Indonesia currently?
2. How Is The Legal Reconstruction Of The Rehabilitation Measures Against Narcotics Abusers Based On The Value Of Pancasila Justice?

### Method of Research

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

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

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

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

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

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

### Research Result and Discussion

#### 1. Weaknesses of The Rehabilitation Measures Against Narcotics Abusers In Indonesia Currently

A narcotics addict who wants to consume narcotics will almost certainly buy or be involved in narcotics buying and selling transactions. When he has bought narcotics or even if the narcotics were obtained by not buying them, he will definitely then possess or control the narcotics. Likewise with victims of narcotics abuse. When narcotics enter his body when he is tricked, deceived or coerced, the narcotics must be in the control of the victim of narcotics abuse. When an addict is caught purchasing or possessing narcotics, or a victim of narcotics abuse is caught possessing

narcotics, it is almost certain that they will be charged with purchasing or possessing narcotics. Purchasing, possession of narcotics and other narcotics crimes are all punishable by imprisonment (Efendi, 2022).

The Narcotics Law integrates law enforcement and health efforts by regulating actions against the abuse and illicit trafficking of narcotics. The contents of the provisions in the Narcotics Law are special in nature and deviate from formal criminal law and material criminal law. The justice system for narcotics abusers must prioritize rehabilitation efforts rather than law enforcement efforts. Article 54 of the Narcotics Law explains that addicts and victims of narcotics abuse who have problems with the law must receive a rehabilitation sentence from a judge. Narcotics abusers are given guarantees to be rehabilitated rather than detained so that the public and law enforcement know the direction they need to go in dealing with drug abuse and illicit trafficking.

One other problem that may arise due to the large number of terms is regulatory confusion, where in Article 4 letter d of Law no. 35 of 2009 states that "*the Narcotics Law aims to: Ensure arrangements for medical and social rehabilitation efforts for narcotics abusers and addicts*", but in Article 54 of the Law it is stated that "*Narcotics Addicts and Victims of Narcotics Abusers are required to undergo medical rehabilitation and social rehabilitation*". Based on Article 54, the abuser's right to receive rehabilitation is not recognized.

Furthermore, abusers who receive rehabilitation guarantees based on Article 4 of Law no. 35 of 2009, however, in Article 127, abusers are made subjects who can be punished and lose their right to rehabilitation, unless they can be proven or proven to be victims of narcotics. In fact, proving that a narcotics abuser is a narcotics victim is difficult, because it must be seen from the start of the narcotics user's use of narcotics. In addition, it needs to be proven that when using narcotics, narcotics users are persuaded, deceived, deceived, forced and/or threatened to use narcotics.

The large number of terms can confuse law enforcement officials in implementing the articles in Law no. 35 of 2009. The position of narcotics addicts has a slightly different position from perpetrators of other criminal acts, namely the problem is that narcotics addicts according to the provisions of the law, on the one hand are perpetrators of criminal acts of narcotics abuse, but on the other hand they are victims.

On the one hand, according to the law, narcotics addicts are perpetrators of criminal acts of narcotics abuse, this is due to the provisions of the narcotics law which regulates prison sentences given to perpetrators of narcotics abuse. Then, on the other hand, it can be said that narcotics addicts are victims, 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 as perpetrators of criminal acts, and on the other hand, they are victims of their narcotics abuse.

Victimology classifies narcotics addicts as "*self-victimizing victims*", namely victims of crimes they have committed themselves. Therefore, the most appropriate thing for a judge to pass a sentence in the case of a narcotics addict is to pass a sentence of rehabilitation. Because narcotics addicts are essentially victims of a crime who need to receive treatment and/or care, and because they are parties who also experience losses from a crime, namely the crime of narcotics abuse.

The law enforcement process for narcotics abusers often faces problems. Addicts and self-abusers of narcotics are

charged in court with single or alternative charges of possession of narcotics which are more serious such as Article 111 and Article 112 of the Narcotics Law. Based on empirical facts in the field, most perpetrators who use narcotics in trials are only proven to be users and violate Article 127 of the Narcotics Law. The tendency in the formulation of the articles of indictment used by the Public Prosecutor can be interpreted to mean that the approach to prison sentences for narcotics users is more dominant than rehabilitation sentences.

Article 127 paragraph (1) of the Narcotics Law states that every person who abuses Class I narcotics personally shall be punished with a maximum imprisonment of 4 years. Then, users of Class II narcotics themselves are punished with a maximum prison sentence of 2 years. Finally, users of Class III narcotics themselves are punished with a maximum prison sentence of 1 year.

That article means that victims of narcotics users can be jailed. The disproportionate criminal problem is not just about addicts who should be in rehabilitation but are instead placed in prison.

Article 127 of the Narcotics Law apart from causing multiple interpretations, also creates legal uncertainty in its application. In order for the objectives of the law to be achieved, a legal code is needed that is firm, clear, does not have double meaning, is applied consistently, and is maintained with certainty, the above is called legal certainty. Legal certainty is a characteristic that cannot be separated from the law itself, especially written law. The law will lose its meaning if it is not accompanied by legal certainty because the law cannot be used as a guide to behavior for everyone, in other words, there is no law if there is no legal certainty (Sitompul, 2022).

## **2. Legal Reconstruction of the Rehabilitation Measures against Narcotics Abusers Based on the Value of Pancasila Justice**

The uncertainty of punishment for drug addicts or abusers can be caused by the diversity of terms for drug users. One of the problems resulting from the many terms is the confusion of regulations where Article 4 letter d of the Narcotics Law states that the Narcotics Law aims to guarantee the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts, but Article 54 of the Narcotics Law states that narcotics addicts and Victims of narcotics abusers are required to undergo medical rehabilitation and social rehabilitation where, based on Article 54, the right of drug abusers to receive rehabilitation is not recognized. Drug abusers who initially receive guarantees of rehabilitation, under Article 127 of the Narcotics Law, narcotics abusers then also become subjects who can be punished and lose their right to rehabilitation.

Article 127 of the Narcotics Law is usually used as the basis by the Public Prosecutor in formulating charges for narcotics abusers. In Article 127 of the Narcotics Law, Paragraph (1), it is explained that those who use class I narcotics for themselves are subject to a maximum prison sentence of 4 (four) years, those who abuse class II narcotics for themselves are given a maximum prison sentence of 2 (two) years, and Those who abuse class III narcotics for themselves are subject to a maximum prison sentence of 1 (one) year.

As a narcotics addict or abuser yourself who is in fact a victim of narcotics abuse, you should receive legal protection by getting rehabilitation, in fact the provisions of Article 127 paragraph (1) of the Narcotics Law do not provide legal protection, but punish drug addicts or abusers with threat of imprisonment.

In principle, narcotics abusers are guaranteed medical rehabilitation and also social rehabilitation as regulated in Article 4 point (d), and also Article 54 which states that "*Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation*". However, the criminal provisions also regulate criminal sanctions for people who use narcotics as regulated in Article 127 paragraph (1). However, because the Indonesian Criminal Justice System adheres to the principle of legality, in general practice, all narcotics cases, including those using narcotics for themselves who are not dealers, are usually always processed legally in accordance with legal norms as stipulated in the Narcotics Law, namely with the threat of imprisonment. So that self-narcotics abusers who are not dealers, initially as victims who should be rehabilitated, end up having to undergo prison sentences as regulated in Article 127 paragraph (1). Therefore, a reconstruction is needed regarding Article 127 (1) of the Narcotics Law for the sake of justice for Narcotics addicts so that they can receive sanctions in the form of rehabilitation.

Prison, which has been a common punishment for drug abusers, including addicts, is an inappropriate action. Prison will only make drug addicts more fluent in crime because it cannot be denied that prison is a place where criminals "*share experiences*". As victims of addiction, it is appropriate for drug addicts to receive treatment so they can recover and return to society. Therapy and rehabilitation programs are a more reasonable and humane alternative to "*punishment*". Through this program, drug addicts receive both medical services to cure their addiction, as well as non-medical or social services to restore their social function in society. These two services must be carried out continuously and sustainably to obtain optimal results for the recovery of drug addicts (Ahsan, 2023).

Article 127 paragraph (1) contains imprisonment for narcotics abusers. Because of this, law enforcers often use this article to ensnare narcotics abusers who are narcotics addicts with prison sentences because the proof is easier. This can give rise to legal uncertainty. Therefore, legal reform is needed in the form of reconstruction of regulations in Article 127 paragraph (1) of Law no. 35 of 2009 concerning Narcotics: Every Class I, Class II and Class III Narcotics abuser who is a victim of Narcotics abuse (a Narcotics Addict who has been proven through an assessment) is required to undergo Rehabilitation. Rehabilitation is aimed at providing guaranteed treatment to victims of drug abuse through legal aspects, medical aspects, social aspects, spiritual aspects and the development of education and training in the field of Narcotics in an integrated manner to avoid mental damage and the future effects of drug use. Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation periodically and fairly.

## Conclusion

1. The Weakness of the Legal Substance is in Article 127 paragraph (1) of the Narcotics Law, this article makes victims of narcotics users liable to prison. The disproportionate criminal problem is not just about addicts who should be in rehabilitation but are instead placed in prison. The weakness in terms of law enforcement is that Indonesia still views narcotics use as a criminal act or legal issue, not as a health issue. The Public Prosecutor often indicts Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics against addicts who are categorized as Narcotics Abusers themselves as in Article 127 Paragraph (1) letter a with imprisonment. Then the weakness of the Legal Culture of 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. In reality, there are people who are addicted to narcotics, and the actions carried out by the perpetrator in Law No. 35 of 2009 concerning Narcotics, were sentenced to prison. Another problem that occurs is that former Narcotics Addicts are not always able to adapt to their environment when they return to society. The societal stigma against former Narcotics Addicts that has already been established has resulted in social attributes being built with the aim of discrediting an individual or group regarding narcotics abuse.
2. Article 127 paragraph (1) contains imprisonment for narcotics abusers. Because of this, law enforcers often use this article to ensnare narcotics abusers who are narcotics addicts with prison sentences because the proof is easier. This can give rise to legal uncertainty. Therefore, legal reform is needed in the form of reconstruction of regulations in Article 127 paragraph (1) of Law no. 35 of 2009 concerning Narcotics: Every Class I, Class II, and Class III Narcotics abuser who is a victim of Narcotics abuse (a Narcotics Addict who has been proven through an assessment) is required to undergo Rehabilitation. Rehabilitation is aimed at providing guaranteed treatment to victims of drug abuse through legal aspects, medical aspects, social aspects, spiritual aspects, and the development of education and training in the field of Narcotics in an integrated manner to avoid mental damage and the future effects of drug use. Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation periodically and fairly.

## References

1. Ahsan Abdillah. Mental Health, Environmental, and Socioeconomic Geographic Factors of Severe Drug Addiction: Analysis of Rehabilitation Center Data in Indonesia. Substance Abuse: Research and Treatment, 2023. 17. 10.1177/11782218231203687.
2. BNN Jateng. *Press Release Akhir Tahun 2020 Bnn Provinsi Jawa Tengah*, taken, 2020. from <https://jateng.bnn.go.id/press-release-akhir-tahun-2020-bnn-provinsi-jawa-tengah/>, on December 2022.
3. Efendi, Bahtiyar, Handoko Widhi. Implementation of Criminal Law in Handling Narcotics Cases in Indonesia. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 2022. 21. 10.31941/pj.v21i2.2678.

4. Faisal. *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, 2010, 56.
5. Gatra.com. *Polda Jateng: 48% Pengedar Narkoba Melibatkan Anak Usia Muda*, taken, 2021. from <https://www.gatra.com/detail/news/502681/hukum/polda-a-jateng-48-pengedar-narkoba-melibatkan-anak-usia-muda>, on December 2022.
6. Sitompul Muhammad, Sitompul Ariman. *Execution Of Death Penalty In Narcotics Crime In The Perspective Of National Law In Indonesia*. *International Asia Of Law and Money Laundering (IAML)*,2022:1:107-112. 10.59712/iaml.v1i2.19.
7. Toebagus Galang Windi Pratama. *The Urgency for Implementing Crytomnesia on Indonesian Copyright Law*, *Saudi Journal of Humanities and Social Sciences*,2020:5(10):508-514, DOI:10.36348/sjhss.2020.v05i10.001.
8. Toebagus Galang Windi Pratama. *Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan*, *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 2022, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>.
9. Wahyu Widodo, Sapto Budoyo and Toebagus Galang Windi Pratama. *The Role Of Law Politics On Creating Good Governance And Clean Governance For A Free-Corruption Indonesia In 2030*. *The Social Sciences*,2018:13:1307-1311.
10. Wahyu Widodo, Toebagus Galang. *Poverty, Evictions And Development: Efforts To Build Social Welfare Through The Concept Of Welfare State In Indonesia*, 3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019), 2019, Dx.Doi.Org/10.2991/Icglow-19.2019.65.