

## RESTORATIVE JUSTICE AND INDONESIAN LEGAL PARADIGM

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### ABSTRACT

*For themselves, narcotics addicts have rehabilitation promises, but the present strategy for combating narcotics misuse is harsh and includes the possibility of incarceration. On the other hand, there is a gap between the provision of mandatory rehabilitation for narcotics abusers (das sollen) and its implementation (das sein), necessitating additional research to analyze the ideal construction of criminal law policies in the future for overcoming criminal acts of drug abuse. This research intends to investigate the present state of overcoming the crime of drugs misuse for oneself, as well as the future design of more effective criminal law policies for overcoming this crime for oneself. This study is normative and sociological in nature, with the statutory method, the case approach, the conceptual approach, and the comparative approach used. The analytical models of qualitative research techniques are employed for data analysis in this study, which employs the qualitative research method. As a consequence, the majority of drugs abusers, both offenders and victims, are sentenced to incarceration rather than rehabilitation, contrary to the intent of Law No. 35 of 2009 on Narcotics, which mandates medical and social repair. Because drugs abusers are also victims, future criminal law strategies must prioritize medical rehabilitation and social rehabilitation for narcotics abusers.*

*Keywords:* Criminal law policy, Narcotics abuse, Reconstruction.

### INTRODUCTION

The Narcotics Law seeks to secure the availability of health and scientific interests, the prevention of narcotics misuse, and the elimination of illegal narcotics trafficking. (Iskandar, 2019). In addition to drugs addicts, the Narcotics Law also mentions narcotics abusers, victims of abusers, ex narcotics addicts, and patients. There is inconsistency in the treatment of those who use drugs for their objectives due to the fact that various words pertaining to drug addicts have varying connotations and consequences. Article 4 point d and Article 54 of the Narcotics Law mandate that "narcotics addicts and victims of narcotics misuse must undertake medical rehabilitation and social rehabilitation."

Substance abusers are victims who sell drugs just to satisfy their addiction (Maysarah, 2020). Because the Indonesian Criminal Justice System (SPPI) conforms to the notion of legality, all drugs cases, even those involving narcotics users who are not sellers, are treated lawfully, i.e. with the prospect of jail, in reality (Saputro, 2021). Therefore, drug abusers who are not also drug sellers were first victims who must be rehabilitated and imprisoned in accordance with Article 127 of the Narcotics Law. In addition, when taken before the court, non-dealer narcotics users will be prosecuted with additional articles that overlap. Those that get drugs are obviously breaking the law. Article 111, Article 112, and even Article 114 of the Narcotics Law outline a number of behaviours that these users engage in, including purchasing, managing, storing, and possessing substances that they ultimately consume.

Article 127 of the Drugs Law does not establish a clear difference or common thread between narcotics abuser-related criminal charges and other Narcotics Law violations. Meanwhile, narcotics users who illegally get drugs must satisfy the criteria of "controlling," "possessing," "storing," and/or "purchasing" narcotics, each of which is a distinct offence under the Narcotics Law. In practice, law enforcement officers also link (juncto) the criminal offence of narcotics users with the criminal offence of controlling, possessing, storing, or buying narcotics without rights and against the law, where the criminal threat becomes significantly greater and a special minimum sanction of at least four years in prison and a minimum fine of Rp. 800,000,000, - is imposed (eight hundred thousand rupiah).

Article 127 jo. Article 111 and or Article 112 or even Article 114 of the Narcotics Law, which prioritizes retributive justice, has logical consequences for the number of residents in Correctional Institutions (LAPAS) as well as users who are not dealers who become double victims. The enormous number of drugs inmates convicted under positive legislation in Indonesia leads the prison population to be dominated by narcotics prisoners, resulting in Indonesian prisons being full or overcrowded (Pakpahan, 2015). As of August 2021, the Directorate General of Corrections of the Ministry of Law and Human Rights stated that 96 percent (145,413) of the 151,303 inmates convicted of specific crimes were drugs detainees. Approximately 116,930 are dealers, while the remainder are consumers. The region in North Sumatra with the largest number of convicted drug traffickers is 18,005. In East Java, there are 4,821 convicts who use narcotics, the largest number in the country. This figure is still more than 4,671 convicted of corruption (Nurhadi, 2021). On the other side, the drugs market in prisons occurs when users, dealers, dealers, importers, and other qualifying narcotics offenders congregate in one institution. This is shown by the prevalence of drugs in prisons, and there are even convicts who manage the transmission of narcotics from inside the jail, making prisons the safest site for narcotics transactions in practice (Rinaldi, 2017).

On the basis of these issues, law enforcement that tends to impose criminal penalties in jail for drugs abusers without rehabilitation is improper, since prison punishments are not necessarily able to discourage narcotics abusers and may even lead to other, more complicated issues. This research will thus examine two issues: first, the existing state of overcoming the crime of drugs addiction by oneself, and second, the ideal formulation of criminal law policies in overcoming the crime of narcotics abuse by oneself.

## RESEARCH METHODS

This study is a legal normative and sociological investigation to discover the truth based on the logic of legal scholarship from the normative perspective and social circumstances (Ibrahim, 2012). Medical and social rehabilitation assurances for narcotics addicts, as outlined in Law No. 35 of 2009 on drugs, are examined. In addition, the study employs a statutory approach, a case approach, a conceptual approach, and a comparative approach to investigate alternative punishments for drugs abusers and the better development of criminal law policies in law enforcement for narcotics abusers (Marzuki, 2011). The major data sources for this research are instances of drug misuse, while secondary data sources include books, journals, papers, and dissertations.

## RESULTS AND DISCUSSION

### 1. The Current Condition of Combating the Crime of Narcotics Abuse for Yourself

In the sense in which the term is often used for narcotics abuse, for oneself is a "victim of narcotics abuse" when an individual or person suffers physically or spiritually as a consequence of his efforts to pursue the interests and human rights of others who suffer. A person who is a victim of narcotics abuse must be shown not to have an element of intentional use of narcotics against the law due to circumstances that make him want to or not want to use narcotics due to the person's ignorance that what he used was a narcotic (such as being persuaded, tricked, deceived, forced, etc.) /or threatened (Mansur, D.M.A.M., Dan Gultom, 2007). According to the National Drugs Agency (BNN), the number of narcotics cases in Indonesia has continued to rise since 2003. In 2019, the total number of rehabilitated residents reached 17,700 (Agency, 2019). This case does not include convicted drug addicts serving jail time. As of August 2021, the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham) reports that 145,413 drug offenders make up the bulk of prison inmates in Indonesia. 116,930 of these inmates were classified as dealers, while the remaining 28,483 were classified as users (Rizaty, 2022). In accordance with the revelations of the head of the National Drugs Agency, Komjen Pol. Petrus Reinhard Golose, the prevalence of narcotics users in Indonesia increased by 0.15 percent in 2021, from 1.80 percent or 3.41 million individuals to 1.95 percent or 3.66 million people (Savitri, 2021).

In its present use in Indonesia, a drug user or addict is already considered a criminal. The Narcotics Law defines drugs abusers as "those who use narcotics without legal permission and in violation of the law." People who illegally use and distribute drugs in this country are classed as addicts and dealers, respectively. According to the prevalent situations, many narcotics users who are convicted of narcotics abuse would be sent to jail without undergoing medical and social rehabilitation, as stipulated by the relevant positive legislation. The application of punishments on drug traffickers and users cannot be separated in this instance. There are several opportunities for addicts or drug abuse sufferers to be sentenced to jail (Erdianti, 2018).

The implementation of the same punishments on drugs abusers who merely use them for personal use and those participating in the illegal trafficking of narcotics would result in a multitude of new issues. Overcapacity in jail housing is now one of the most obvious challenges (over a capacity block) (Sari, 2017). According to the World Prison Brief (WPB) report, the number of inmates in Indonesia has increased steadily over the previous decade. WPB said that the number of convicts in Indonesia reached 249 thousand in 2020, despite the fact that the national jail capacity was only around 132,000. Even as late as May 3, 2022, WPB estimated that Indonesia's jail occupancy rate had reached 208%, ranking it 21st out of 207 nations globally (Rizaty, 2022).

In addition, when offenders are incarcerated, further issues relating the supply of incarceration to victims of drugs abusers arise. In Indonesia, there is no differentiation between offenders residing in prisons based on the gravity of their crimes; only their gender is taken into account. They are still youngsters or adults, thus both minor and serious offenders congregate. Assemble all convicts in one location to unite them. Interactions may have a detrimental effect on each other, particularly when it comes to reintegrating inmates into society (Muladi, 2004). Even in the worst-case scenario, housing a large number of convicts in a single cell or block will make it easier to facilitate transactions and build the LAPAS drug distribution network (Suhayati, 2015).

On the other hand, criminal penalties cannot improve the behaviour of drug addicts. How can someone who is still under the effects of a drug addiction serve a jail term without first undergoing a detoxification process? In order for victims of drugs misuse to recover from addiction and rejoin society without repeating their acts, rehabilitation must be addressed. (Andrayani, 2021). The different issues that occur demonstrate that incarceration for narcotics abusers does not result in a drop in drug cases in Indonesia, but rather an increase in prevalence and incidence (Bahagiati, 2020).

### 2. Ideal Construction of Criminal Law Policy in Combating the Crime of Narcotics Abuse for Yourself

The fundamental difference in conquering drug dependence after the passage of the Narcotics Law is the substitution of rehabilitation for incarceration for narcotics abusers' victims. This renewal may also be viewed as the legalization of drugs abusers, allowing law enforcement to accept addicts and victims of narcotics misuse for medical and social rehabilitation (Al, 2017). Social rehabilitation seeks to restore victims of narcotics abusers physically, mentally, and socially so that they can return to performing social functions in life. Medical rehabilitation seeks integrated treatment to free addicts from dependence with the assistance of medical science specialists who can deal with victims of narcotics abusers holistically (Christ, 2015).

The Drugs Law has two primary categories of narcotics misuse offences. Abuse for oneself, often known as addicts, is distinguished from abuse of drugs for others, which includes proprietors, processors, transporters or introducers, and dealers. The Narcotics Law imposes two distinct kinds of punishment for narcotics addiction. The punishment consists of punishments for drugs abusers as outlined in Articles 111 to 148 of the Narcotics Law, notably rehabilitation sanctions, imprisonment, and the death penalty based on the categorization of abuse (Bahagiati, 2020).

Article 54 of the Narcotics Law reads, "Narcotics addicts and victims of narcotics misuse are required to undertake medical and social rehabilitation." In contrast, those who violate the law by planting, maintaining, possessing, controlling, or providing are punished by jail. This is stated in Article 127 regarding the status of narcotics abusers, which states: "Every Narcotics Abuser Group I for himself shall be sentenced to a maximum of four years in prison; Narcotics Category II for oneself shall be sentenced to a maximum of two years in prison; and Narcotics Category III for oneself shall be sentenced to a maximum of one year in prison." However, while making a criminal judgment, the court must consider whether the drugs abuser is required to get medical and social rehabilitation if he is a victim (Erdianti, 2018).

In reality, this results in varying interpretations among law enforcement personnel, who prefer to rely on Articles 111 to 114 of the Narcotics Law, which emphasize jail, while ignoring Article 127, which governs rehabilitation. Because the Drugs Law has not addressed the grammage, quantity, or weight of narcotics discovered in the hands of users as evidence, it is sometimes difficult for law enforcement personnel to identify whether a person is an abuser, addict, or user who must be processed (Erdianti, 2018).

Article 112 of the Narcotics Law is often used as the basis for judicial judgements against narcotics addicts. Insofar as Article 112 of the Narcotics Law has a broad interpretation of the phrase "Every person who without rights or against the law possesses, holds, controls, or supplies...", it is substantively prejudiced. The word "owns, retains, controls, or furnishes" might suggest that the things belong to the offender and are utilized only for the perpetrator; hence, the perpetrator can be considered a victim of himself. In addition, the definition of "mastering and so on" may also be regarded as control that is not intended for oneself or others, so that it can be argued that there are more victims. Therefore, "owning, managing, and giving" remains ambiguous.

In reality, judges often discover District Court (PN) rulings that conclude drugs cases with jail terms but do not offer rehabilitation. The penalty that results in incarceration as opposed to rehabilitation may also be caused by prosecutors who employ articles that are not related to drugs usage but are intended at sellers or dealers. Consequently, drug addicts will be treated differently based on the varying perspectives of law enforcement personnel. Observations indicate that it is fairly unusual for investigators to employ items that should not be supplied to addicts and drugs misuse patients. In addition, the prosecutor eventually pursued the requests that investigators had previously suspected. This resulted in a jail term for addicts and sufferers of drugs addiction rather than rehabilitation for narcotics misuse. This is nevertheless inappropriate since, in this instance, the court should also consider the intended aim of the sentence in order to accomplish the objective of criminal policy, namely the suppression of drugs crime (Al, 2017).

According to Barda Nawawi Arief, instituting jail is subject to several objections. These critiques include both mild and severe criticism. In essence, the reasonable critique retains incarceration, but limits its use, while the severe criticism asks for its eradication (Arief, 2010). This demonstrates that incarceration is not the best option for victims of opioid addicts. According to Article 103 of the Narcotics Law, courts that consider cases involving drug addicts may do two things. First, the court may opt to order the defendant to undertake treatment and therapy (rehabilitation) if the narcotics addict is found guilty of a narcotics-related offence for which the rehabilitation duration is equivalent to his punishment. Second, if the narcotics abuser is not proved guilty of committing a narcotics offence, the court may opt to order the individual to undertake therapy and treatment (rehabilitation).

Referring to Circular Letter of the Supreme Court No. 4 of 2010 Concerning Placement of Abuse, Victims of Abuse, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions (henceforth referred to as SEMA No. 4 of 2010), the issue is also how to implement supervision over rehabilitation decisions for abuse victims. Considering that the Narcotics Legislation and government regulations as implementing regulations for the law do not control or supervise rehabilitation judgments, there is a lack of legal norms/rules (*leemten van normen*) regarding the process for monitoring the rehabilitation of judges' decisions. In SEMA No. 4 of 2010, section 3 (a) states: "If the court imposes a penalty in the form of an order to carry out legal action in the form of rehabilitation of the offender, the panel of judges must specify firmly and the closest site of rehabilitation in its decision. This indicates that SEMA No. 4 of 2010 encourages the establishment of rehabilitation programs for drug addicts (Laksana, 2016)

Consider again the strong relationship between criminal law policy and law enforcement. In this context, law enforcement refers to the process of making the law's desires a reality. What is referred to as legal aspirations in this context are the legislative inclinations expressed in the legal code. Therefore, legal standards are required to facilitate effective law enforcement. Reconstruction of criminal law policies pertaining to drugs usage for oneself is conducted to equalize the legal perspectives of law enforcement personnel, which will afterwards result in competent law enforcement and accomplish the objective of punishing narcotics abusers.

By reformulating the concept of narcotics abusers' victims via decriminalization, the better building of criminal law policies for overcoming one's own substance misuse is achieved. This approach would put drug abusers in the group of victims who are required to undertake medical and social rehabilitation so that incarceration is not the penalty. Article 54, Article 103, and Article 127 of the Drugs Law may be decriminalized by removing criminal penalties for addicts and sufferers of narcotics misuse who mistakenly consume narcotics. The amount of drugs abuse may be determined by an evaluation or testing of narcotics users, which demonstrates whether or not there is a strong reliance on opioids. Reconstruction of criminal law policies to combat drugs usage for oneself is required to guarantee that narcotics abusers get medical and social rehabilitation to satisfy their addiction.

## CONCLUSION

The prevalence of drug misuse in Indonesia continues to effect the overcrowding of jails. This is because the penalty for drug addicts varies, ranging from incarceration to rehabilitation. Based on the existing number of drugs cases perpetrated by narcotics abusers against themselves (victims of narcotics abusers), it will result in jail without medical and social rehabilitation. In the meantime, jail provision is insufficient since it might result in extremely complicated issues. In addition, imprisonment has not been able to help sufferers of drug addiction or decrease drug usage. The criminal law rules for drugs usage must be modern and progressive. The Drugs Law regulates medical rehabilitation and social rehabilitation as one of the criminal law policies connected to narcotics misuse. In actuality, however, there are still numerous instances of drug addicts being sentenced to jail without first undergoing rehabilitation. Thus, the ideal design of overcoming narcotics addiction for oneself involves reformulating the category of victims of narcotics abusers with the notion of depenalization, which differentiates criminal consequences for self-abuse from those involving illegal drugs trafficking.

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