

# Reformulation of Criminal Law Policies Against Narcotics Abusers Through Medical and Social Rehabilitation

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**ABSTRACT--***The goal wants to be achieved in criminal law policy through the Law of Indonesian Republic number 35 year 2009 about narcotics is to place the narcotic users as the victims who must be rehabilitated both medical and social , not placed as the criminal and give the punishment and entered in jail or prison, so the narcotic law judge that is given absolute authority to punish the rehabilitation to narcotics abuse case. With the provision of Article 54 of the Law of the Indonesian Republic Number 35 Year 2009 concerning narcotics, apparently in its implementation there is no guarantee of rehabilitation of abusers, addicts and victims of Narcotics abuse, in other words there are still many abusers, addicts, and victims of narcotics abuse who still get criminal sentences in the form of prison. Based on this fact, Article 127 paragraph (1) of the law of Indonesian Republic No. 35/2009 concerning narcotics needs to be reformulated through depenalization in order to create legal certainty and social justice as mandated in the narcotics law.*

**Keywords:** *criminal law policy, narcotics abuse, rehabilitation*

## I. INTRODUCTION

Criminal law policies of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics, basically is that the State wants to regulate the handling of narcotics crime, which at this time is already in the emergency situation of Drugs. Through regulation into regulations it is hoped that it can provide protection for all citizens from the threat of narcotics hazards, through preventive measures, law enforcement, medical and social rehabilitation. Integral policy in handling non-criminal narcotics is expected to be able to break the supply chain and reduce demand for narcotics, even though at the level of implementation there is no policy balance being implemented, which tends to be the dominant law enforcement.

Criminal law policies on narcotics abuse (addicts and narcotics victims) through medical and social rehabilitation. Normatively the narcotics law regulates the rehabilitation provisions for narcotics abusers, as regulated in article 54 of Law Number 35 of 2009 concerning Narcotics, namely: "*Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation*".

This provision implies that medical and social rehabilitation is punishment for narcotics abusers, but in

reality from the time of the investigation to prosecution, the direction of criminal policy does not only lead to rehabilitation but is also directed at the provision of punishment in the form of imprisonment.

One of the main problems in the criminal law policy against narcotics abusers is that the criminal code guidelines have not yet been regulated in a law, where at present these provisions are only regulated in the Supreme Court Circular Letter Number 4 of 2010 concerning the placement of abuse, victims of abuse and Narcotics addicts into medical rehabilitation and social rehabilitation institutions, and the Polri Kabareskrim Circular Letter Number: SE/01/II/2018/Bareskrim regarding Rehabilitation Guidelines for Narcotics addicts and Victims of Narcotics Abuse.

The problem is whether the Supreme Court circular and the Police Criminal Kabareskaran Circular which serve as a guideline in the prosecution of narcotics abusers are in line with the objectives of Rehabilitation, which in essence must meet the values of certainty, usefulness and justice.[1]

Normatively, the goals of rehabilitation consist of medical rehabilitation and social rehabilitation. Medical rehabilitation is essentially a process of integrated treatment activities to free addicts from narcotics addiction. While social rehabilitation is a process of integrated recovery activities, both physical, mental and social, so that former Narcotics addicts can return to carrying out social functions in people's lives.[2]

This can be interpreted that rehabilitation is an effort so that narcotics abusers (addicts and victims of narcotics abuse) do not re-abuse narcotics, so they do not need/use narcotics in their lives.

It is hoped that this research will be able to find the root of the problem regarding the criminal model for narcotics abusers who use the cumulative system (imprisonment and rehabilitation), so that we will be able to see the extent to which the model's effectiveness in realizing the goals of rehabilitation.

Besides that, through this research, it is expected to be able to contribute in formulating criminal law policies against narcotics abusers through medical rehabilitation and social rehabilitation, so that narcotics prevention can be carried out effectively.

Based on the research problem as mentioned above, the formulation of the research problem is as follows:

- 1) What is the criminal law policy in dealing with narcotics abuse?
- 2) How is the implementation/application of criminal law policies against narcotics abusers through medical and social rehabilitation?
- 3) How is the reformulation of effective criminal law policies against narcotics abusers through medical and social rehabilitation so as to fulfill a sense of justice?

## II. RESEARCH METHODS

The point of view (stand point) shows the position of researchers at the time of conducting research, which shows the depth and complexity of researchers about the traditions and viewpoints used when entering the research site. The author's stand point relative to the problem in this study at the epistemic level is not as a participant but rather an observer. As an observer, the writer will seek answers to every problem formulation that has been proposed by studying the reality of Narcotics law.

The paradigm presents a basic belief system of its use to a particular worldview.[3] In this study using the Constructivism Paradigm. Constructivism paradigm is a paradigm in which the truth of a social reality is seen as the result of social construction, and the truth of a social reality is relative. This constructivism paradigm is in the perspective of interpretivism (interpretation) which is divided into three types, namely symbolic, phenomenological and hermeneutic interactions.

The research tradition in this dissertation uses the tradition of qualitative research especially case studies.[4] This case study is an approach that focuses on a case intensively and in detail. Data can be obtained from various sources, documents, archives, interviews, and observations. Then the data analysis is done by making a detailed description of the case and its context, establishing patterns and looking for relationships between several categories, then interpreting and developing the natural generalization of the case to be applied to other cases.

## III. FINDINGS AND DISCUSSION

### 1. Criminal Law Policy in Tackling Narcotics Misuse

#### a. Formulation of Criminal Law Policy Against Narcotics Abuse in Indonesia

There are four categories of actions against the law that are prohibited by law and can be threatened with criminal sanctions, namely:

- 1) The first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics, and Article 122 for class III narcotics, and Article 129 letter (a ));

- 2) The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotics precursors (Article 113 for class I narcotics, Article 118 for class II narcotics, and Article 123 for class III narcotics, and Article 129 letter (b) );
- 3) The third category, namely acts in the form of offering to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or handing over narcotics and narcotics precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for narcotics class II, Article 124 and Article 126 for narcotics group III and Article 129 letter (c));
- 4) The fourth category, namely acts in the form of carrying, sending, transporting or transmitting narcotics and narcotics precursors (Article 115 for group I narcotics, Article 120 for group II narcotics, and Article 125 for group III narcotics, and Article 128 letter (d)).

Based on the forms of narcotics crime as referred to in Law Number 35 Year 2009 above, it can also be classified as narcotics offenders as follows:

- 1) As a user  
A user as a user may be subject to criminal provisions as referred to in Article 116, with a penalty of at least 5 years and a maximum of 15 years;
- 2) As a dealer  
A person who is a dealer may be subject to criminal provisions based on Articles 81 and 82, with a maximum penalty of 15 years plus a fine;
- 3) As a producer  
Those who produce can be subject to criminal provisions as regulated in Article 113, with a maximum penalty of 15 years or life imprisonment or a death sentence plus a fine.

The criminal law policy in dealing with narcotics abuses related to criminal sanctions, convictions, actions and burdens in Law Number 35 Year 2009 are:

- 1) Sanctions used in the form of criminal sanctions and sanctions acts (maatregel);
- 2) For criminal sanctions, they cover the main penalties in the form of: capital punishment, life imprisonment, imprisonment with a certain time limit, imprisonment, fines and additional penalties in the form of: revocation of certain rights to corporations in the form

- of revocation of business licenses and/or revocation of legal entity status;
- 3) For sanctions actions (maatregel) in the form of: medical and social rehabilitation as well as expulsion and prohibition from entering Indonesian territory for foreign nationals who commit criminal acts in Indonesia after undergoing criminal sanctions;
  - 4) The amount/duration of criminal sanctions varies: for criminal fines ranging from Rp. 1,000,000 (one million rupiah) to Rp. 10,000,000,000 (ten billion rupiah). If a crime is committed by a corporation, it can be subject to a weighting of 3 (three) times that of the fines that are threatened. And for imprisonment ranges from 1 (one) year to 20 (twenty) years.
  - 5) Criminal sanctions are formulated in 4 (four) forms, namely:
    - a) In the singular (prison or fine only);
    - b) In an alternative form (the choice between prison or a fine);
    - c) In cumulative form (imprisonment and fines);
    - d) In the form of a combination/mixture (prison and/or fines);
  - 6) There are minimal special criminal threats (imprisonment or fines);
  - 7) The weighting of criminal acts is based on the amount or narcotics, the resulting consequences, carried out in an organized manner, carried out by corporations, carried out by using children who are not old enough, and if there is a repeat (recidive) within a period of 3 (three) years. This weighting is exempted from capital punishment, life imprisonment, or imprisonment of 20 (twenty) years;
  - 8) Criminal trials and conspiracy are convicted the same as committing a crime.
  - 9) If criminal fines cannot be paid by narcotics and narcotics precursor offenders, the offender can be sentenced to a maximum of 2 (two) years imprisonment as a substitute for fines that cannot be paid.

*b. Comparison of Narcotics Legal Arrangements between Indonesia and Singapore and Malaysia*

Countries	Law Enforcement	Law Products	Maximum law sanction
Indonesia	- Indonesian National Police - National	Law Number 35 year 2009	Death Penaty

	Narcotics Agency		
Singapore	The Central Narcotics Bureau (CNB)	Act 5 of 1973 The Misuse of Drug Act Revised Edition 2008	Death Penalty
Malaysia	Anti Dadah National Agency	The 1952 Law on Malaysian Drug Dangers	Death Penalty

*2. Implementation Of Criminal Law Policies On Narcotic Users Through Medical And Social Rehabilitation*

*a. Law Enforcement of Narcotics Abusers*

Talking about the application/implementation of criminal law policies is basically the same as the enforcement of criminal law against an act that violates the provisions of criminal law, thus its orientation cannot be separated from the process of resolving a criminal case through legal procedures.

While the legal procedure referred to is settlement through criminal justice, or in other words if there is a violation of the criminal law, then the law must be implemented and become a reality. In implementing the rule of law and the enforcement of the law, there are three elements that must be considered, namely legal certainty (rechtssicherheit), legal benefit (weck massegkeit), and justice (gerechtigkei).[5]

The application of criminal sanctions that are spread in the articles of Law Number 35 Year 2009 concerning Narcotics is a part of the law enforcement process carried out by law enforcers starting from the Police of the Republic of Indonesia as Investigators, Attorney General's Office as Public Prosecutors until ending with the judge's decision in court.

In the context of enforcing criminal law against narcotics abuse, it is not only the duty of law enforcers (police, prosecutors, and judges), but law enforcement efforts also involve related agencies in this case the National Narcotic.

In Law Number 35 of 2009 concerning Narcotics, there are at least 4 (four) meanings for narcotics users, namely addicts, abusers, victims of abuse, and narcotics patients. Narcotics addicts are defined as people who use or abuse narcotics and are in a state of dependency on narcotics, both physically and psychologically.

While the abuser is a person who uses narcotics without rights or against the law. Then, a victim of narcotics abuse is interpreted as someone who accidentally used narcotics because he was persuaded, tricked, tricked, forced, and/or threatened to use narcotics.

To find out how the application of legal sanctions against narcotics abusers, it would be better to know the narcotics abuse cases that occurred in Central Java in the last three years (from 2017 to 2019). It is known that in 2017 there were 1102 narcotics cases with 1384 suspects, in 2018 there were 1305 narcotics cases with 1649 suspects, and in 2019 until October there were 1189 drug cases with 1508 suspects.

When viewed in terms of the quantity of narcotics abuse that occurs in the jurisdiction of the Central Java Regional Police, it can be said to be very high, and narcotics abuse as in the figures above is not a definite amount, because actually there are still many narcotics abuses that have not been revealed.

In handling narcotics abuse that occurs, it is truly processed in accordance with applicable legal provisions, including narcotics users/abusers in the process of medical rehabilitation and social rehabilitation.

It's just that the abusers or victims of narcotics abuse who get rehabilitation recommendations both medical and social rehabilitation are still relatively very low, in 2017 there are 21 people who get recommendations for rehabilitation from the Semarang District Court, while in 2018 those who received rehabilitation from the Court Semarang has 19 people/suspects, and those who received rehabilitation from BNNP Central Java are 67 people, while in 2019 there are 24 people/suspects from Semarang District Court, and 54 people/suspects from Central Java BNNP.

Most of the abusers of Narcotics abuse are suspected of violating Article 112, Article 114, and Article 127 paragraph (1) of Law Number 35 Year 2009 concerning Narcotics.

In the sound of Article 127 it is explained that:

- (1) Every Abuse:
  - a. Group I narcotics shall be subject to a maximum prison sentence of 4 (four) years;
  - b. Group II narcotics shall be subject to a maximum imprisonment of 2 (two) years imprisonment; and
  - c. Group III narcotics is for himself sentenced to a maximum imprisonment of 1 (one) year.

Seeing from the number of narcotics abuse suspects from 2017 to October 2019, there are many, but narcotics abusers suspected of violating Article 127 paragraph (1) by law enforcement officials are always sanctioned in the form of prison sentences, while those who get recommendations to undergo erelative medical and social rehabilitation are very few, because most narcotics abusers are always subjected to articles with sanctions in the form of prison penalties, this reflects that law enforcers have not carried out the mandate contained in Article 54 of the Republic of Indonesia Number 35 Year 2019 concerning Narcotics which read: "Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation".

Law enforcement on narcotics problems, especially those of addicts and victims of abusers who are not in accordance with their mandate, causes more complex narcotics problems so that the number of victims of abusers, addicts and dealers increases from year to year.

#### *b. Medical and Social Rehabilitation Policy for Narcotics Abusers*

To equate perceptions related to the problem of applying the law to Narcotics abusers through medical and social rehabilitation, several state institutions such as the Supreme Court and the Attorney General's Office have issued Circular Letters on the implementation of social and medical rehabilitation including the placement of Narcotics abusers.

- 1) Policy for Narcotics Users in SEMA Number 03 of 2011 and SEMA Number 4 of 2010 concerning the Placement of Abusers, Abuse Victims, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions is a change from SEMA Number 07 of 2009 concerning Placing Narcotics Users in Institutions Therapy and Rehabilitation.
- 2) Policy for Narcotics Users in SEJA Number: SE-002/A/JA/02/2013, the Attorney General's circular was issued in the context of adjusting the paradigm promoted by Law No. 35 of 2009 concerning Narcotics which places narcotics addicts who were originally based as criminals become victims in narcotics crime. Furthermore, referring to the provisions of Article 54 of Law No. 35 of 2009 concerning Narcotics, against narcotics addicts and victims of narcotics treatment must undergo medical rehabilitation and social rehabilitation.

- 3) SEJA Number: B-601/E/EJP/02/2013 concerning Placement of Addicts and Victims of Narcotics Abuse to Medical Rehabilitation and Social Rehabilitation Institutions. This Attorney General's circular was issued to equalize perceptions in the application of SEJA Number SE-002/A/JA/02/2013 concerning Placement of Victims of Narcotics Abuse to Medical Rehabilitation and Social Rehabilitation institutions.
- 4) Rehabilitation Policy According to the Joint Regulation on the Handling of Narcotics Addicts and Victims of Narcotics Abuse into the Rehabilitation Institution

In the context of carrying out medical and social rehabilitation for Narcotics abusers, Joint Regulations of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Social Minister, Attorney General, Chief of Police, Head of National Narcotics Agency have been made. Number 01/PB/MA/III/2014, Number 03 Year 2014, Number 11 Year 2014, Number 03 Year 2014, Number PER-005/A/JA/03/2014, Number 1 Year 2014, Number PERBER/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions. Thus drug addicts no longer lead to sanctions imprisonment but rather lead to rehabilitation, because sanctions for addicts agreed in the form of rehabilitation.

Based on the Joint Regulation, an integrated assessment team formed at the central, provincial, district/city level consists of a team of doctors and a legal team that is tasked with carrying out an analysis of the roles of suspects arrested at the request of investigators relating to illicit drug trafficking, especially for addicts. The team then carried out legal analysis, medical analysis and psychosocial analysis and made a rehabilitation plan that included how long rehabilitation was needed.

The results of the assessment as a complete case file function as information such as *visum et repertum*. The results of the analysis will sort out the role of the suspect as the abuser, the abuser as a dealer or dealer. The Assessment Team's analysis of the abusers will result in levels of addicts ranging from heavy, middle and light class addicts where each level of addict needs different rehabilitation.[6]

### 3. *Reformulation Of Criminal Law Policy For Narcotics Users Through Medical And Social Rehabilitation*

Formation of Law Number 35 Year 2009 concerning Narcotics actually wishes to realize the value of justice. The government together with the House of Representatives formed Law No. 35 of 2009 aimed at finding a balance between public health approaches and the implementation of criminal instruments in dealing with narcotics crime, which was followed up with Government Regulation Number 25 of 2011 concerning the Obligation to Report Narcotics Addicts.

The approach to the solution to reduce the number of drug abusers so far can be seen from 2 (two) different points of view, the first is to prioritize law enforcement efforts by imposing criminal sanctions on narcotics abusers to get a deterrent effect, while on the other hand using rehabilitation efforts to reduce the black market which is assumed to have an effect on falling demand for narcotics.

The birth of Law Number 35 Year 2009 concerning Narcotics brings a new nuance, a new paradigm, and a new hope for many people, because this law has differences or specifications in handling narcotics cases. Law Number 35 Year 2009 is no longer based solely on the imposing of punishment on each narcotics abuser who turns out to be less effective in eradicating or reducing narcotics crime.

Article 2 of Law Number 35 of 2009 based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and Article 3 states: Law Number 35 of 2009 concerning Narcotics is based on justice, protection, humanity, order, protection and security, scientific values and legal certainty.

But in reality many addicts, abusers, and victims of narcotics abuse who are suspected of violating Article 127 paragraph (1) do not yet get a sense of justice and protection, because by Law Enforcement Officials are still subject to sanctions in the form of imprisonment.

Based on the description above, and to accommodate Article 54, Article 55 and Article 103 of Law Number 35 Year 2009 concerning Narcotics, addicts, abusers and victims of narcotics abusers in criminal application need to be reformulated through depenalization, especially in Article 127 paragraph (1) Law Number 35 Year 2009 regarding Narcotics as follows:

Originally :

(1) Every Abuse:

- a. Group I Narcotics shall be subject to a maximum jail sentence of 4 (four) years;
- b. Narcotics of Group II shall be personally sentenced to a maximum imprisonment of 2 (two) years; and
- c. Narcotics of Group III for themselves shall be sentenced to a maximum imprisonment of 1 (one) year.

Be:

(1) Every Abuse:

- a. Group I Narcotics must be rehabilitated for a maximum of 4 (four) years;



- b. Group II Narcotics must be rehabilitated by oneself for a maximum of 2 (two) years; and
- c. Group III narcotics must be rehabilitated for one year at the latest.

#### IV. CONCLUSION

The formulation policy in dealing with narcotics abuse which is regulated in accordance with Law Number 35 Year 2009 concerning Narcotics is:

- a) Perpetrators of narcotics crime in general can be classified as:
  - 1) Acts without rights or against the law of planting, maintaining, possessing, storing, controlling, or providing Narcotics or Narcotics Precursors, as stipulated in Article 111, Article 112, Article 117, and Article 122, and Article 129;
  - 2) Acts without rights or against the law of producing, importing, exporting, or distributing Narcotics, as regulated in Article 113, Article 118 and Article 123, and Article 129;
  - 3) Acts without rights or against the law offer to sell, sell, buy, accept, be an intermediary in buying and selling, exchanging, or delivering or receiving narcotics as regulated in Article 114, Article 119, Article 124, and Article 129.
  - 4) Acts without rights or against the law of carrying, sending, transporting, or striking Narcotics, as provided for in Article 115, Article 120, Article 125, and Article 129;
  - 5) Acts without rights or against the law using narcotics against others or giving Narcotics for other people's use, as provided for in Article 116, Article 121, and Article 126
  - 6) Acts of misuse of Narcotics for oneself, as regulated in Article 127, namely people who use narcotics without rights or against the law (Article 1 number (15)). Whereas Narcotics addicts, as regulated in Article 128 and Article 134, are people who use or abuse Narcotics and in a state of dependency on Narcotics, both physically and psychologically (Article 1 number (13)).
  - 7) Trial or conspiracy to commit Narcotics and Narcotics Precursor in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 122 , Article 123, Article 124, Article 125, Article 126, and Article 129, and Article 132.
  - 8) The classification of the narcotics offenders mentioned above shows that each act and position of the narcotics offenders have different sanctions. This is inseparable from the impact that can result from the actions of the narcotics criminal offender.
- b) Criminal provisions are regulated from Article 111 to Article 148, with the formulation of criminal sanctions which can be grouped as follows:
  - 1) In the singular (prison or fine only);
  - 2) In the alternative form (choice between imprisonment or fines);
  - 3) In combination/mixed form (imprisonment and/or penalty)
- c) Perpetrators of narcotics crime can be classified as follows”
  - 1) As a user  
A user as a user may be subject to criminal provisions as referred to in Article 116, with a penalty of at least 5 years and a maximum of 15 years;
  - 2) As a dealer  
A person who is a dealer may be subject to criminal provisions based on Articles 81 and 82, with a maximum penalty of 15 years plus a fine;
  - 3) As a producer  
Those who produce can be subject to criminal provisions as regulated in Article 113, with a maximum penalty of 15 years or life imprisonment or a death sentence plus a fine
- d) Criminal law policy through Narcotics legislation is to position Narcotics users as victims who need rehabilitation both medical rehabilitation and social rehabilitation, not as criminals who are sentenced to prison and entered into the Correctional Institution (LP). Narcotics Users according to the Law of the Republic of Indonesia Number 35 Year 2009 concerning Narcotics put narcotics offenders as criminals as formulated in Article 127 paragraph (1) letter a which states that narcotics users are threatened with imprisonment for a maximum of 4 (four) years, and Based on the results of the study, data in the field shows that narcotics users are still in prison.
- e) With regard to the Law of the Republic of Indonesia Number 35 Year 2009 concerning Narcotics, it is suggested that re-orientation and reformulation be carried out through efforts to depersonalize narcotics abuse provisions in the Narcotics Act, especially to be applied to Article 127 by eliminating criminal sanctions for addicts, abusers, and victims who accidentally used Narcotics.

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