



UDC 34; DOI 10.18551/rjoas.2022-03.03

## **RATIO LEGIS VICTIMS OF NARCOTICS ABUSE EQUATED TO NARCOTICS ADDICTIVES WHO SHOULD BE PROCESSED BY THE LAW**

**Pratolo Saktiawan**, Doctoral Candidate  
**Abdul Rachmad Budiono**, Professor  
**Abdul Madjid, Herman Suryokumoro**, Lecturers  
Faculty of Law, University of Brawijaya, Malang, Indonesia  
\*E-mail: [pratolosaktiawan22@gmail.com](mailto:pratolosaktiawan22@gmail.com)

### **ABSTRACT**

Although narcotics are indispensable for treatment and health services, if they are misused or used not under treatment standards, it will create narcotics abuse. Narcotics addicts and Narcotics Abuse Victims are the ones who must be helped, the help here is the rehabilitation process itself, namely medical rehabilitation and social rehabilitation. It can be said, Narcotics Addicts and Narcotics Abuse Victims must be protected, Narcotics Abuse is better rehabilitated than imprisoned, as a treatment and recovery effort for Narcotics Addicts and Narcotics Abuse Victims. Regarding the problem of medical rehabilitation, medical rehabilitation here can be said to be an effort to treat Narcotics Addicts and Victims of Narcotics Abuse. Treatment here is an action carried out by a team of doctors based on an assessment that has been carried out by Narcotics Addicts and Victims of Narcotics Abuse, which is more medical in handling. This research is legal research using a normative juridical approach, the data used are primary data and secondary data which are analyzed using quantitative analysis. The results of the research are: First, Rehabilitation through a legal process is carried out based on the results of an integrated assessment. The integrated assessment is part of the process of law enforcement for the crime of narcotics abuse which provides recommendations to law enforcement whether narcotics abusers can be given rehabilitation measures or not. Second, the handling of narcotics addicts, narcotics abusers, and victims of narcotics abuse is focused on rehabilitation efforts. Separation of the definitions of abusers, addicts, and victims of narcotics abuse needs to be done because this will result in the handling of actions to be taken in the eradication of narcotics.

### **KEY WORDS**

Ratio Legis, narcotics abusers, narcotics addicts, rehabilitation.

Narcotics crime continues to increase every year throughout the world and based on the World Drugs Report 2020 by The United Nations Office on Drugs and Crime (UNODC) states "Around 269 million people used drugs in 2018, up 30 percent from 2009, with adolescents and young adults accounting for the largest share of users. More people are using drugs, and there are more drugs, and more types of drugs, than ever. At the national level, based on the Indonesia Drugs Report 2020 by the Center for Research, Data and Information of the National Narcotics Agency, the Indonesian population aged 15 (fifteen) years to 64 (sixty-four) years who have used Narcotics has reached 4,534,744 people; Narcotics users during the last 1 (one) year reached 3,419,188 people (Widdy et al, 2020); and the number of suspects in narcotics crime cases reached 52,709 people (Widdy et al, 2020). There are 3 (three) types of Narcotics that have been most frequently consumed in the last 1 (one) year, namely marijuana, shabu, and ecstasy (Widdy et al, 2020).

Narcotics crime is one of the most common crimes in Indonesia. The current rise of narcotics abuse has become one of the problems that are troubling the community because the crime modes are increasingly diverse and the syndicated network is massive (Amanda et al, 2017). The rise of drug abuse involves two aspects, namely regional aspects, and global aspects. This shows that the entry and development of narcotics in Indonesia are influenced by regional and global political situations from external aspects, internal factors that make Indonesia a region with diverse and plural backgrounds with the largest archipelagic country



in the world and has a unique and strategic geographical location with Thus, it is a potential market share for illicit drug trafficking (Badan Narkotika Nasional, 2016). One of the entry routes for drugs in Indonesia is through smuggling. The position of the Indonesian state is in a strategic geographical location. This is because Indonesia is located between two continents, namely the Australian continent and the Asian continent, and Indonesia is also located between two oceans, namely the Indian Ocean and the Pacific Ocean. This causes Indonesia to be in a world cross position. The position of the world cross position causes Indonesia to become the center of the world's traffic lanes (Herindrasti, 2018).

The problem of drug abuse is not only a problem that needs attention for the Indonesian state but also the international community. Entering the 20th century, international attention to narcotics problems is increasing, one of which can be seen through the Single Convention on Narcotic Drugs in 1961. Law Number 35 of 2009 concerning Narcotics Article 54 mandates that narcotics addicts and victims of narcotics abuse must undergo rehabilitation medical and social rehabilitation. Narcotics addicts in Article 1 paragraph 13 of Law Number 35 of 2009 are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically. The explanation in Article 54 of Law Number 35 of 2009 concerning Narcotics explains that what is meant by a victim of narcotics abuse is someone who accidentally uses narcotics because he is persuaded, tricked, cheated, forced, and or threatened to use narcotics (Sulistyo, 2012).

During approximately twelve years of the enactment of Law Number 35 of 2009 concerning Narcotics, of course, several problems arise in implementing the said Act. The Narcotics Law has not provided a clear conception of narcotics addicts, narcotics abusers, and victims of narcotics abusers so that it has an impact on the same handling of narcotics addicts, narcotics abusers, and victims of narcotics abusers with dealers or narcotics dealers. The handling of narcotics addicts, narcotics abusers, and victims of narcotics abuse should be focused on rehabilitation efforts through a comprehensive and accountable assessment mechanism. Meanwhile, the Narcotics Law does not regulate rehabilitation efforts obtained through assessment (Hafrida, 2016).

Regarding the regulations regulated in Law Number 35 of 2009 concerning Narcotics, the application aims to protect existing human resources, but not all abusers are sentenced to prison, but there is another option, namely rehabilitation. Rehabilitation, according to article 1 number 23 of the Criminal Procedure Code is "The right of a person to obtain restoration of his rights in his ability, position, and dignity as well as given at the level of investigation, prosecution or trial because he was arrested, detained, prosecuted or tried without any reason based on law or law. because of a mistake regarding the person or the law applied according to the method regulated in this law." Rehabilitation is a form of sentencing that aims as a recovery or treatment. Rehabilitation is a semi-closed facility, meaning that only certain people with special interests can enter this area (Dirdjosisworo, 2010). Rehabilitation for prisoners in correctional institutions is a place that provides skills and knowledge training to avoid narcotics.

Rehabilitation is divided into 2 (two) namely medical rehabilitation and social rehabilitation. Medical rehabilitation according to the General Provisions of Article 1 number 16 of Law Number 35 of 2009 concerning narcotics is a process of integrated treatment activities to free addicts from narcotics dependence. Meanwhile, social rehabilitation according to the General Provisions of Article 1 number 17 of Law Number 35 of 2009 concerning Narcotics is a process of integrated treatment activities, both physical, mental, and social, so that former narcotics addicts can return to carrying out social functions in people's lives. It could be said, rehabilitation here is a way to protect human resources who are entangled in narcotics cases which have very dangerous effects on health and can also have an impact on death (Sujono & Bony, 2011).

In the rehabilitation process here, not only addicts can be rehabilitated, but also victims and abuse of Narcotics themselves. It is said that addicts and victims of the extent to which the person knows Narcotics, depend on the assessment as a benchmark carried out by the Doctor Team and the Legal Team who examine the person so that they can be categorized as addicts and victims of Narcotics abuse. This legal policy related to the rehabilitation of



narcotics abusers is still not fully implemented properly. This is due to the tug of war between the health sector and law enforcement regarding how to handle narcotics abusers for themselves. This tug of war occurs because the position of narcotics abusers is formally in two dimensions, namely the health dimension and the legal dimension. Narcotics abuser is a criminal who is threatened with a criminal offense as well as a person who is potentially ill with narcotics dependence, but on the other hand, a narcotics abuser who is in a state of narcotic dependence both physically and psychologically (who is legally known as a narcotic addict) is a "sick person" who must be rehabilitated to recover.

Medical rehabilitation policies in practice often place victims of narcotics abuse in rehabilitation facilities that cannot run properly because they are still in conflict with the provisions of the Narcotics Law, in this case, victims of narcotics users are still positioned as perpetrators of criminal acts, as a result, they do not receive treatment and recovery. maximum because they have to languish in prison. Rehabilitation punishment is part of human rights to recover from drug dependence and obtain adequate health degrees as outlined by the government.

### **METHODS OF RESEARCH**

The research method used in this research is to use an empirical juridical approach to find out how the relationship between law and society and the factors that influence the implementation of law in society, as primary data. The second data is obtained indirectly through library research. This research specification describes an analysis to describe the applicable law related to legal concepts and positive law regarding the main research problem. Based on primary and secondary data, identification, classification, and validation; Qualitative data analysis was carried out, and the results were presented in the research report.

### **RESULTS AND DISCUSSION**

*The Urgency of Providing Rehabilitation for Drug Abusers.* Against drug abusers, the legal approach used is always a prison sentence approach, this also applies to narcotics abusers with the new category of single-use or trial users. Regarding the problem of medical rehabilitation, medical rehabilitation here can be said to be an effort to treat Narcotics Addicts and Victims of Narcotics Abuse. Treatment here is an action carried out by a team of doctors based on an assessment that has been carried out by Narcotics Addicts and Victims of Narcotics Abuse, which is more medical in handling.

Medical treatment here may use Narcotics as an effort to carry out treatment activities carried out against Narcotics Addicts and Victims of Narcotics Abuse, which due to medical or medical purposes and with a limited and legal dose, is said to be legal if it is used for medical purposes with written permission. from the authorities (Hidayatun & Widowaty, 2020).

In treatment which is regulated in Article 53 of Law Number 35 of 2009 concerning Narcotics, it is explained that for the sake of treatment and based on medical indications, doctors can give Narcotics Group II or Group III in limited quantities and certain preparations to patients under the provisions of the legislation. It could be said, the doctor here is the authorized party in the use of these narcotic substances, for medical reasons.

Regarding social rehabilitation, Narcotics Addicts and Narcotics Abuse Victims here follow an integrated process of recovery activities, both physically, mentally, and socially. This process is a process to return Narcotics Addicts and Narcotics Abuse Victims to their lives as before becoming Narcotics Addicts and Narcotics Abuse Victims from a social perspective.

Rehabilitation through a legal process is carried out based on the results of an integrated assessment. The integrated assessment is part of the process of law enforcement for the crime of narcotics abuse which provides recommendations to law enforcement whether narcotics abusers can be given rehabilitation measures or not. Its implementation is



regulated based on joint regulations between state institutions related to handling narcotics abuse crimes.

Integrated assessment is a form of breakthrough in law enforcement of narcotics abuse crimes. Integrated assessment is an effort to prove for narcotics abusers the origin of their narcotics abuse and their level of addiction to narcotics (Hariyadi & Anindito, 2021). In addition, the alleged abuser was also investigated to what extent his involvement in the narcotics distribution network was. Is he just an abuser or also included as a courier or dealer? In addition, an analysis related to the background of the alleged abuser was also carried out, whether the suspect had been involved in a narcotic crime before or was just a novice actor.

The process of implementing the assessment begins with an application submitted by the suspect to the investigator. The requirements for a person to be assessed refer to the provisions of the Circular Letter of the Supreme Court (SEMA) Number 04 of 2010 concerning the Placement of Abuse, Victims of Abuse, and Narcotics Addicts into medical and social rehabilitation institutions which are the guidelines for district court judges and high courts in deciding cases. In addition, in 2011 Government Regulation No. 25 of 2011 was issued regarding the Implementation of Compulsory Reporting Narcotics Addicts, providing guarantees for addicts and/or victims of narcotics abuse to get treatment and/or treatment through medical rehabilitation and social rehabilitation.

Medical rehabilitation is useful for eliminating dependence for addicts and victims of narcotics abuse who have experienced dependence. Social rehabilitation is useful for restoring physically, mentally and socially so that addicts and victims of narcotics abuse can recover, become productive humans, be able to work to meet the needs of life and their families and become a healthy and strong nation generation (Subantara, et al, 2020).

The Minister of Health of the Republic of Indonesia also issued a Minister of Health Regulation Number 46 of 2012 concerning Technical Guidelines for the Implementation of Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abuse who are in Process or Have Been Decided by the Court. The implementation of an integrated assessment of narcotics abusers is carried out by the Integrated Assessment Team formed by BNN. The recommendations of the integrated assessment team contain information regarding the role of suspects and/or defendants in narcotics crimes, the level of dependence on narcotics abusers, recommendations for the continuation of the legal process, and the place and length of rehabilitation. In the interest of the judiciary, the recommendations of the Integrated Assessment Team are attached to the suspect's case file and are confidential. This recommendation will be the basis for a judge's consideration to determine whether the suspect is proven and can be proven to be entitled to undergo medical and social rehabilitation under the objectives of the Law on Narcotics.

The implementation of integrated assessments in the field by law enforcement officers still shows minimal numbers. This is because the assessment setting is still regulated in a joint regulation at the level of the Minister/head of the agency so that law enforcement sees the integrated assessment process as an alternative process. In addition, the technical arrangement of the integrated assessment still creates differences in perceptions among law enforcers in implementing the results of the integrated assessment.

Currently, the results of the assessment are recommendations, so they are not binding on other law enforcement officers until the end of the judicial process. Assessment Team should be optimized as a party that can determine whether victims of narcotics abusers will enter the judicial process or simply undergo rehabilitation.

*Ratio legis equal treatment between abusers and narcotics addicts.* The ratio legis of Law Number 35 of 2009 concerning narcotics has not provided a clear conception of narcotics addicts, narcotics abusers, and victims of narcotics abusers so that it has an impact on the same handling of narcotics addicts, narcotics abusers, and victims of narcotics abusers with dealers or dealers. narcotics. The handling of narcotics addicts, narcotics abusers, and victims of narcotics abuse should be focused on rehabilitation efforts. It is necessary to sort out the definitions of abusers, addicts, and victims of narcotics abuse because this will result in the handling of actions to be taken in the eradication of narcotics.



The definition of abuser according to Article number 15 of the Narcotics Law is a person who uses narcotics without rights or against the law, then the conditions for the use of narcotics are also regulated in Article 7, that narcotics are only used for the benefit of health services and/or the development of science and technology. Further regulation of narcotics is also regulated in Article 8 which limits the use of class I narcotics only for the benefit of developing science and technology and for diagnostic reagents and laboratory reagents after obtaining approval from the Minister of Health on the recommendation of the Head of the Food and Drug Supervisory Agency (BPOM). So that if someone who uses narcotics violates the provisions as referred to in Article 7 and/or Article 8 of the Narcotics Law, then the perpetrator has no rights or his actions are against the law.

The Narcotics Law, also regulates the definition of addicts as referred to in Article 1 Number 13, that Narcotics Addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically. From this understanding, the category of narcotics addicts consists of two (Yuliana & Winanti, 2019):

- People who use narcotics in a state of physical or psychological dependence;
- People who abuse narcotics in a state of physical or psychological dependence.

The first category of addicts is those who have permission to use narcotics for the benefit of their health services. The addict in question is an addict who is undergoing medical rehabilitation, especially in the process of medical intervention. When an addict is using narcotics in the process of medical intervention on an outpatient basis, then he is caught red-handed using narcotics for himself and the case is continued until the stage of examination in court, then he should be declared not guilty. So when an addict does need treatment and/or intensive care based on an assessment program carried out by a team of doctors/experts, then based on Article 103 Paragraph (1) letter b of the Narcotics Law, the judge may determine that the addict is rehabilitated within a certain period after hearing expert testimony regarding the condition or level of addiction.

The second category of addicts is addicts who do not have a license to use narcotics for the sake of health services. This classification is based on the notion of the abuser as referred to in Article 1 point 15 of the Narcotics Law. The provision contains an element of "without rights or against the law" so that a person who uses narcotics by violating the provisions as referred to in Article 7 and/or Article 8 of the Narcotics Law, does not have the right to use or his act of using narcotics is against the law. Although abusers and narcotics addicts in the second category both abuse narcotics, narcotics addicts have their characteristics, namely, their dependence on narcotics, both physically and psychologically. This causes narcotics addicts who are included in the second category only to be subject to action in the form of an obligation to undergo medical rehabilitation and social rehabilitation (Yuliana & Winanti, 2019).

The definition and qualifications of the subject of narcotics abusers, narcotics addicts, and victims of narcotics abuse still have ambiguous interpretations, become obstacles and obstacles in the implementation of law enforcement, so that there are differences in the actions taken by law enforcers. Therefore, it is necessary to sort out the definitions of narcotics addicts, abusers, and victims of narcotics, so that the handling or action to be taken in the eradication of narcotics is more appropriate. The inappropriate legal action, for example, is the imposition of imprisonment for narcotics victims because it causes new problems, namely the overcapacity of the Correctional Institution. Although there are special prisons for narcotics convicts, the numbers are still very small.

The application of Article 127 in the application of criminal sanctions against abusers who consume narcotics should be distinguished between novice users, addicts, victims of abuse, and abusers who are involved in the network. In practice, from investigations to court decisions, this distinction is not made because the law has not yet regulated some of these categories of abusers. Article 127 only uses the word "abuse for oneself", so that the treatment of these users is equated both as novice users, addicts, victims of abuse, and abusers who are involved in the network. Equality of treatment in the law creates legal ineffectiveness and even encourages new legal problems. Novice users are users who are



still trying but have not yet reached the addiction category so the threats and treatment of novice users will certainly be different from users who have been addicted.

The application of Article 127 regarding narcotics abusers for oneself is always linked to Article 111 or Article 112, because law enforcement considers that if a person has been proven in Article 127, then automatically he must also take action in Article 111 or Article 112, especially the element of possessing, keeping, and dominate. The implication is that the criminal threat that is often imposed is 4 years in prison because Article 127 letter stipulates that the abuser of class I Narcotics for himself shall be sentenced to a maximum imprisonment of 4 (four) years while Article 111 and Article 112 provide maximum imprisonment of 4 (four) years. a short period of 4 (four) years and a maximum of 12 (twelve) years, so that the sentence imposed may not be less than four years because it refers to Article 111 or Article 112.

## CONCLUSION

Rehabilitation through a legal process is carried out based on the results of an integrated assessment. The integrated assessment is part of the process of law enforcement for the crime of narcotics abuse which provides recommendations to law enforcement whether narcotics abusers can be given rehabilitation measures or not. Its implementation is regulated based on joint regulations between state institutions related to handling criminal acts of narcotics abuse.

The handling of narcotics addicts, narcotics abusers, and victims of narcotics abuse is focused on rehabilitation efforts. Sorting out the definition of abusers, addicts, and victims of narcotics abuse needs to be done because this will result in the handling of actions to be taken in eradicating narcotics. The definition of an addict is regulated in Article 1 Number 13, but in its implementation, the definition and qualifications of the subject of narcotics abusers, narcotics addicts, and victims of narcotics abuse still have ambiguous interpretations, become obstacles and obstacles in the implementation of law enforcement, so that there are differences in the actions taken by law enforcers.

## REFERENCES

1. Amanda, M, et al. (2017). Penyalahgunaan Narkoba Di Kalangan Remaja. *Jurnal Penelitian and PPM*, 4 (2).
2. Badan Narkotika Nasional. (2016). Hasil Survei Penyalahgunaan and Peredaran Gelap Narkoba Pada Kelompok Pelajar and Mahasiswa Di 18 Provinsi Tahun 2016. *Jurnal Data Puslitdatin BNN*, 10 (2).
3. Dirdjosisworo, S. (2010). *Narkotika and Remaja*. Bandung: Alumni.
4. Hafrida. (2016). Kebijakan Hukum Pidana Terhadap Pengguna Narkotika Sebagai Korban Bukan Pelaku Tindak Pidana. *Jurnal Hukum Padjajaran*, 3 (1).
5. Hariyadi, W & Anindito, T. (2021). Pelaksanaan Asesmen Terhadap Pelaku Penyalahgunaan Narkotika Ditinjau dari Undang-Undang No. 35 Tahun 2009 Tentang Narkotika. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9 (2).
6. Herindrasti, V. (2018). Drug-free ASEAN 2025: Tantangan Indonesia dalam Penanggulangan Penyalahgunaan Narkoba. *Jurnal Hubungan Internasional*, 7 (1).
7. Hidayatun, S & Widowaty, Y. (2020). Konsep Rehabilitasi Bagi Pengguna Narkotika yang Berkeadilan. *Jurnal Penegakan Hukum and Keadilan*, 1 (2).
8. Subantara, I, et al. (2020). Rehabilitasi Terhadap Korban Penyalahgunaan Narkotika Di Badan Narkotika Nasional Provinsi Bali. *Jurnal Preferensi Hukum*, 1 (1).
9. Sulistyono, B. (2012). Kebijakan Bimbingan Klien Narkoba dalam Rangka Pencegahan Penggunaan Tindak Pidana Narkotika. Semarang: Universitas Diponegoro.
10. Widdy, A, et al. (2020). *Indonesia Drugs Report 2020*. Jakarta: Pusat Penelitian Data and Informasi Badan Narkotika Nasional.
11. Yuliana & Winanti, A. (2019). Upaya Rehabilitasi Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana. *Adil Jurnal Hukum*, 10 (1).