RECONSTRUCTION OF LAW ENFORCEMENT AGAINST NARCOTICS CRIMES THAT IS PROGRESSIVE AND INTEGRATIVE

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Abstract

This research is motivated by law enforcement against narcotics crimes which has been more focused on criminalization, on the other hand the purpose of public health in this case the rehabilitation of drug abusers is less considered. Therefore, the author examines "Law Enforcement Reconstruction of Drug Crimes That Are Progressive and Integrative". This study aims to study; How is the legal reconstruction in law enforcement against drug crimes progessive and integrative? The research method used is a normative juridical method with a legal approach and a concept approach.

The results showed that Legal reconstruction in law enforcement against drug crimes that is progressive and integrative can be done with the following; a) alternative drug criminalization policies: decriminalization, diversion, and decriminalization; b) rehabilitation to achieve public health goals and address prison overcrowding; c) affirmation of the terms abuser, user, addict and victim of drug abuse; d) affirmation of unlawful norms and intentional elements in drug abuse; e) strengthening the integrated assessment team in handling narcotics abuse

Keywords: Reconstruction, Enforcement, Law, Crimes, Narcotics, Progressive, Integrative

INTRODUCTION

Background

This study is focused on legal reconstruction in law enforcement against narcotics crimes that is progressive and integrative. This research is a criminal law study that examines from the policy side, namely Law Number 35 of 2009 concerning Narcotics, namely about how to formulate a progressive and integrative criminal policy for perpetrators of narcotics and psychotropic crimes in accordance with technological and information advances and follows the development, model, and types of narcotics and psychotropic crimes.

The criminalization of perpetrators of narcotics and psychotropic crimes is a broad study, therefore it is necessary to limit the focus of the study so that the research carried out is more in-depth. Through a criminal law study on the criminalization of perpetrators of narcotics and psychotropic crimes, it is hoped that it can provide answers to the problems of narcotics and psychotropic crimes.

The occurrence of narcotics smuggling carried out by international syndicates through the Riau Islands and West Kalimantan which borders Malaysian territory shows that there are still weaknesses of the apparatus that supervises cross-border checkpoints, one of the weaknesses is the limited use of technology such as narcotics detection devices if smuggling is carried out through official channels both airports and ports of detection devices such as GT 200 can be used to detect several types of narcotics namely heroin, opium, cannabis and ecstasy.

The main problem in uncovering narcotics networks is cooperation with international networks. This is because narcotics crime is an organized transnational crime which in practice often involves not only one country, but several countries. Cooperation with the international network can be seen from couriers who get illegal goods from dealers and dealers who get illegal goods from international syndicates[1].

[1] *Ibid*., p. 120

The illicit circulation of narcotics and illegal drugs is an extraordinary crime that can damage the order of family life, the community environment, and the school environment, and even directly or indirectly it is a threat to the continuity of development and the future of the nation and state. In recent years, Indonesia has become one of the countries that has become the main market for the international narcotics trafficking syndicate network for commercial purposes. For narcotics trafficking networks in Asian countries, Indonesia is considered the most commercially prospective *market-state* for international syndicates operating in developing countries. The problem of narcotics abuse is not only a problem that needs attention for the Indonesian state, but also for the international world[2].

Law number 35 of 2009 concerning narcotics is expected to suppress the crime of drug abuse in Indonesia, that is why in the provisions of the laws and regulations the criminal sanctions are very severe compared to the sanctions in other criminal laws, especially against those who are categorized as producing, planting, exporting, importing, possessing, storing, controlling, offering to sell, selling, buying, receiving, being an intermediary in selling buy class I narcotics, both plant and non-plant and, while those who are in the category of abusers, victims of abusers and addicts can be rehabilitated through a process of specified stages. [3]

In Indonesia, narcotics are already at an alarming level and can threaten the security and sovereignty of the country. Many criminal cases are committed by narcotics abusers. Areas that had never been touched by narcotics trafficking were gradually turning into narcotics trafficking centers. Similarly, children under the age of 21 who should still be taboo about these illegal goods, have recently turned into addicts who are difficult to let go of their dependency.

[2] Kusno Adi, *Criminal Policy in Countering Narcotics Crimes by UMM Children* , UMM Press, Malang, 2014, p. 30

[3] Dikdik M. Arief and Elisatris Gultom, *Urgency of Crime Victim Protection,* PT. Raja Grafindo Persada, Jakarta, 2013, p. 101.

Problem Statement

How is the reconstruction of the law in law enforcement against narcotics crimes that is progressive and integrative?

THEORETICAL FRAMEWORK

Grand Theory: The Mind of Law

The Grand Theory or the main theory that is the basis for the analytical knife in this study is the Legal Theory of Mind. The ideals of Indonesian National Law based on Pancasila have been distorted to the point of failure to manifest in the rules, culture, and legal structure. The strong current and paradigm of legal positivity in the Indonesian legal tradition after independence, and the uncontrolled implementation of the arrangement of values, morals and cultural norms of Indonesia's indigenous culture, has made the law run on its own and carry out its arbitrariness against the legal society itself. When many countries and academics declare the failure of the Cartesian-Newtonian building of reasoning which is a reference for the paradigm and theory of science in the 19th century, aka the building of the Indonesian National Law Ideal, it must be penetrated with a transcendental conception and paradigm that contains normative rules of religion, morals and social ethics so that the construction of legal regulations that are born is really able to humanize the law, not punish humans.[4]

One of the ideals of law is legal certainty, through certainty it is expected to be able to bring justice to the ideals of the law. Certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Laws without the value of certainty will lose their meaning because they can no longer be used as a guide of behavior for everyone. Certainty itself is referred to as one of the goals of the law. The order of society is closely related to certainty in the law, because order is the essence of certainty itself. According to Sudikno Mertokusumo[5], legal certainty is a

[4] Yunaldi, *op.cit*

[5] Sudikno Mertokusumo, *Getting to Know the Law of an Introduction* (Yogyakarta: Liberty Press, 2007), p. 150.

guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights and that the verdict can be implemented.

Legal certainty is the implementation of the law according to its sound, so that the public can ensure that the law is implemented. The creation of legal certainty in laws and regulations requires requirements related to the internal structure of the legal norms themselves.[6] Guarantee for citizens for the emergence of justice in matters related to the law. Make no difference in the eyes of the law so as to make law enforcers obey the rules that have been made.[7]

Middle Theory: Hierarchy of Legal Norms

Theory of Legislative Hierarchy. Hans Kelsen in his "General Theory of Law and State" translation of the general theory of law[8] and the state described by Jimly Assihiddiqie[9] under the title Hans Kelsen's theory of law includes that legal analysis, which reveals the dynamic character of the system of norms and the function of basic norms, also reveals a further peculiarity of law: law regulates its own formation because one legal norm determines the way to create another legal norm. and also, to a certain degree, determine the content of the other norms. Because, one legal norm is valid because it is made in a way determined by another legal norm, and this other legal norm is the basis for the validity of the first so-called legal norm.

According to Hans Kelsen, the norm is layered in a hierarchical order. In other words, the legal norms below apply and are sourced, and are based on higher norms, and higher norms are also sourced and based on higher norms and so on until they stop at a highest norm called the Basic Norm (*Grundnorm*) and still according to Hans Kelsen is included in a dynamic norm system. Therefore, the law is always formed and abolished by the

[6] Fernando M Manulang, *Law in Certainty* (Bandung: Prakarsa Media, 2007), p. 95.
[7] Moh. Mahfud MD., "Law Enforcement and Good Governance," *National Seminar "It's Time for Conscience to Speak", January 8, 2009*, 2009.
[8] Hans Kelsen, *General Theory of Law and State Translated by Rasul Muttakin* (Bandung: Nusamedia, 2010), p. 179.
[9] Jimly Asshiddiqie, *Hans Kelsen's Theory of Law* (Jakarta: Constitution Press, 2009).

institutions of its authorities that are authorized to form it, based on higher norms, so that lower norms (*Inferior*) can be formed based on higher norms (*superior*), in the end the law becomes tiered and layered to form a hierarchy.[10]

Hans Kelsen in his book *allegemeine Rechtslehre* states that according to Hans Kelsen's theory, a legal norm of any country is always multi-layered and multi-layered, where the norm a below applies, based on and sourced from a higher norm, the higher norm applies, based on and sourced from a higher norm, until a highest norm is called the Basic Norm.

Applied Theory: Progessive and Integrative Law

Progressive law is a concept of legal means. The way to rule progressively is not just to apply legalistic positive laws, then apply laws, then read and spell laws and apply them like machines, but an action or effort (*effort*). The construction of philosophical thinking is based on 3 (three) foundations of thinking which include the foundations of ontological, epstemological and teleological thinking.[11] The ontological foundation is related to the reality or reality that is the object of study. The epistemological foundation is related to methods that can and are appropriately applied in the context of developing thinking related to the object of study to the future. The axiological and teleological foundations are related to the problem of values contained in thoughts, concepts, theories and goals to be realized through the use of thoughts and concepts.[12] Progressive law is a concept of legal methods by paying attention to ontological, epstemological and teleological as well as legal sources that develop in society.

[10] Aziz Syamsuddin, *The Process And Techniques Of Drafting Laws, First Edition* (Jakarta: Sinar Grafika, 2011), p. 14.

[11] Satjipto Muhammadiyah Rahardjo and University Press, *Science, Search, Liberation and Enlightenment* (Surakarta: Muhammadiyah University Press, 2004), p. 42.

[12] Qur'ani Dewi Kusumawardani, "Progressive Law and the Development of Artificial Intelligence Technology," *Veritas and Justitia* 5, no. 1 (2019): 166–90, https://doi.org/10.25123/vej.3270.

The term Integration comes from the English language, namely *integration* which means blending into a complete and round unit. Integrating means perfecting by uniting elements that were originally separated into a complete unity so that harmony and harmony are created. Integration in this case is combining or uniting legal sources into the positive legal system and laws and regulations that apply in Indonesia.[13] The integration of legal sources that are developing in Indonesia includes western law, Islamic law, customary law and other developments such as information and technological advancements.

RESEARCH METHODOLOGY

Types of Research

This research is included in the type of collaborative research, where the approach method used is normative as well as empirical, namely normative juridical and empirical juridical collaboration. Normative legal research method, which is a study conducted by reviewing laws and regulations that apply or are applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials.

This research uses various approaches, with the aim of obtaining information from various aspects of the issue under study. Therefore, to solve the problems that are the subject of discussion in this study, the following approaches are used:

1. Statute *approach* is an approach taken by reviewing laws and regulations related to the legal issue being raised.[14]
2. The conceptual *approach* is an approach that departs from the views and doctrines that develop in the science of law.[15]

[13] Wafdah Vivid, "Integrating Social Work Crimes in the National Legal System," *Justitia Legal Journal* 1, no. 2 (2017), https://doi.org/10.30651/justitia.v1i2.1148.

[14] Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Banyumedia Publishing, 2006), p. 101.

[15] Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2008).

Philosophically, a concept is a mental integration of two or more units isolated according to characteristics

3. The case study approach is used with regard to legal cases that discuss about problems.

Research Data Sources

The data source of a study is primary data and secondary data. Because this research is empirical and normative legal research, the sources studied are primary data sources, secondary data, and tertiary data.[16]

Primary legal materials are data that are materials in binding legal research sorted based on the hierarchy of legislation.[17]

Secondary legal materials, namely legal materials that can provide explanations to legal materials that can provide explanations to primary legal materials, which can be in the form of draft legislation, research results, textbooks, scientific journals, newspapers (newspapers), *pamphlets*, *lefleats*, brochures, and internet news.[18]

Tertiary legal material, also is a legal material that can explain both primary legal material and secondary legal material, in the form of dictionaries, encyclopedias, lexicons and others related to the problem under study.[19]

Technical Data Collection

The studies conducted are field studies (*field research*) and literature studies (*library research*) which use primary data and secondary data. Perimer data through field studies, secondary data in this study were obtained through literature studies, by finding information as complete and as much as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to the research theme.

[16] Soekanto and Mamudji, *Normative Legal Research, A Brief Review*.

[17] Mahmud Marzuki and Peter Mahmud, "Legal Research," *Journal of Legal Research* (Jakarta: Kencana Prenada Media Group, 2011), p. 25.

[18] Satjipto Rahardjo, *The Science of Law: The Search, Liberation and Enlightenment.* (Semarang: Diponegoro University, 2003).

[19] Marzuki, *Legal Research*.

Data Analysis

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic* / *verstelen*).[20]

RESEARCH RESULTS

Legal problems in the construction of law enforcement in dealing with narcotics crimes in Indonesia are caused by the construction of laws in law enforcement against narcotics crimes that are currently not progressive and integrative due to several weaknesses in the Criminal Sanctions Policy in Law Enforcement for Drug Crime Prevention in Indonesia, including the following:

Alternative Narcotics Criminalization Policy: Depenalization, Diversion, and Decriminalization

The breath of the 2009 Narcotics Law, which relies too much on law enforcement, is also increasingly evident with the strengthening of several law enforcement authorities. For example, the authority to arrest can be made for a maximum of 3 x 24 hours and can be extended again for 3 x 24 hours (Article 76). This provision is much longer than the provisions in Article 19 of Law No. 8 of 1981 concerning the Criminal Procedure Law, namely the arrest is made no later than one day. In addition, the 2009 Narcotics Law provides the authority for investigators to conduct investigation techniques with covert purchase techniques (Article 75 letter j).

From the historical journey of the Narcotics Law, we can see several things as problems that continue to recur again.

First, *the dual approach system* , namely the dualism of the health approach along with the law enforcement approach, is not completely new in the 2009 Narcotics Law. The combination of the two approaches in the law has been contained since the first Narcotics Law was formed in 1976. In the latest law, the legal route seems to outperform health, as can be seen from the quantity and quality of criminal law provisions that are much more numerous and concentrated than those that promote a health approach. In practice, the law enforcement approach also tends to be dominant, so the health approach is increasingly neglected.

[20] Sugiyono, "Quantitative, Qualitative and R&D Research Methods," *26th* (Bandung: Cv. Alfabeta, 2018), p. 34.

Second, related to the terminology of user categories that are never complete and clear from every law. There are various terms that have their own meanings such as narcotics addicts, narcotics abusers, victims of narcotics abusers, and former narcotics addicts. This problem is not only semantic, but more fundamentally related to the understanding of the subject of narcotics users and the types of mechanisms available to narcotics users as well as the elimination of stigma to support impartiality in the examination of cases.

Third, related to rehabilitation. The construction of the law places rehabilitation as a medium of treatment or treatment for narcotics users. For this reason, the law regulates the existence of medical rehabilitation facilities. In addition, for former narcotics users, the law encourages placement in social rehabilitation institutions. The Narcotics Law places this rehabilitation as mandatory and can be one of the criminal sanctions, so even though it is not in the form of a prison sentence, a punitive approach is still visible. Thus, the government's commitment to divert narcotics users to the health realm still looks half-hearted.

Fourth, is a substantial problem that has started since the 1976 Narcotics Law, namely the breadth of criminal elements for narcotics users. The formulation of three elements, namely "keep, possess, control" is a substantial problem, a punitive approach in the form of a criminal approach to narcotics users will predominantly occur. This substantial problem occurs because of the unclear qualifications of narcotics users. With the existence of these three elements, narcotics users can also be immediately classified as dealers or even dealers.

The legal construction in Law No. 35 of 2009 related to narcotics abuse uses criminalization which has not yet been able to show a deterrent effect. Therefore, it is necessary to strive for the Narcotics Law in the future related to decriminalization efforts as the Portuguese state has succeeded in reducing narcotics abuse through decriminalization.[21]

Depenalization

The purpose of implementing the depenalization policy is to save time and budget for police institutions so that they can focus more on tackling more serious crimes, such as organized narcotics trafficking, and reducing criminalization of narcotics possession.[22]

In practice, the police who deal with someone who uses or controls narcotics (for personal consumption) will not take any action or at most only

[21] Bambang Gunawan, "The Principle of Strict Liability in Narcotics Criminal Law," *Dissertation, Doctoral Program in Law, Postgraduate University Airlangga Surabaya*, 2015.

[22] Sudanto, "The Application of Narcotics Criminal Law in Indonesia."

give a reprimand to the person. Implicitly, decriminalization is based on a belief in the ineffectiveness and cost of law enforcement approaches by the police, and that criminalization of the use and possession of narcotics is unnecessary.[23]

Examples of countries that use the depenalization model are the Netherlands, Denmark, and some states in the United States. As previously explained, the Netherlands implemented a categorization of 'hard' and 'soft' narcotics which was then followed by the establishment of guidelines for law enforcement institutions to place the act of distribution and possession of marijuana in the lowest priority in law enforcement. Through the guidelines, prosecutors are asked not to prosecute marijuana possession cases of no more than 5 grams, or 0.5 grams for 'hard' narcotics. Individuals who control such amounts of narcotics will not receive sanctions, both criminal and civil.[24]

The advantage of using this model is the ease of application since depenalization does not require any changes in the law or the establishment of a new system as an alternative. In addition, reflecting on the experiences in the Netherlands and Denmark, the implementation of decriminalization has reduced the workload for law enforcement officials, police, prosecutors, and judges because fewer users are in contact with the criminal justice system. Other evidence shows that the implementation of alternative policies has led to an increase in the number of individuals who voluntarily access treatment services for narcotics users or *harm reduction* services.[25]

On the other hand, depenalization also has a negative impact, for example is what happened in some states in the United States. Findings by DeAngelo, Gittings, et al. (2018) show that although there was a reduction in the number of arrests related to marijuana possession in one region, it turned out that there was a targeting of arrests in other areas. This shows that decriminalization also needs to be supported by reform of the police perspective and the preparation of appropriate performance achievement indicators for police or other government institutions. When associated with the reality of law enforcement in Indonesia against narcotics crimes, this depenalization policy is difficult to guarantee.

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[23] Laila Dyah Rachmawati, "Reconceptualization of Legal Protection for Children as Perpetrators of Narcotics Crimes in the Juvenile Criminal Justice System," *Shari'a: Journal of Qur'an and Law Studies* 7, no. 1 (July 12, 2021): 117–28, https://doi.org/10.32699/SYARIATI.V7I1.1849.

[24] Carto Nuryanto, "RECONSTRUCTION OF CRIMINAL SANCTIONS POLICY AND ACTIONS IN LAW ENFORCEMENT TO COUNTER NARCOTICS CRIMES IN REALIZING RELIGIOUS JUSTICE," *Dissertation of Sultan Agung University*, 2020.

[25] Bayu P. Hariyanto, "Prevention and Eradication of Drug Trafficking in Indonesia," *Journal of Sovereign Law, Vol.1, (No.1), pp.201-210.* 1, no. 1 (2018): 201–10.

Diversi

Diversion in practice can be described as giving the police the authority to refer people they find using or controlling narcotics to health or social services. The use of this alternative policy is motivated by the understanding that the problem of narcotics use is included as a health or social problem rather than a law enforcement problem. The main purpose of diversion is to reduce the criminalization rate of users and to utilize the role of the police (as a party directly dealing with narcotics users) to encourage users to access health or social services.[26]

Thus, it is hoped that narcotics users who have accessed these services can meet their needs (for example, related to health care or job search), experience increased knowledge and skill capacity, and no longer repeat their actions. Studies have shown that in addition to reducing the burden on the criminal justice system, the implementation of diversion has increased the number of users accessing health or social services.[27]

In addition, there was a decrease in the adverse effects of narcotics use as well as a decrease in recidivism rates from users who participated in referral programs. The challenge of implementing this diversion policy is that the state must first build a clear referral system where relevant institutions must implement it.

De jure diversion results in a higher number of referrals than de facto diversion because the police lose discretion in determining whether or not to refer a narcotics user to health and social services.

By removing discretionary space, de jure diversi also eliminates the opportunity for discrimination against certain groups of people to get referrals. In the Indonesian context, alternative policies resembling diversion actually exist but are not effective in achieving their implementation goals.

It has been explained at the beginning of this report that Indonesia has Joint Regulations that apply in various law enforcement agencies, including the police. The Joint Regulation aims to carry out the mandate of the Narcotics Law that addicts and victims of narcotics abuse are obliged to undergo rehabilitation. Unfortunately, the Joint Regulations provide complicated conditions and only provide a short time for arrested narcotics

[26] Promise and Promise, *The Politics of Criminal Law A Study of Criminalization and Decriminalization Policy*.

[27] Fery Suryono and Kawakib Kawakib, "Application of the Principles of Coordination between Polri Investigators and Prosecutors in Processing Criminal Cases in the Legal Territory of the Pontianak Police, West Kalimantan City," *JED (Journal of Ethics of Democracy)* 7, no. 1 (January 25, 2022): 83–97, https://doi.org/10.26618/jed.v7i1.6494.

users to fulfill them. Consequently, it makes it difficult for narcotics users to get rehabilitation facilities.[28]

In addition, the fulfillment of these administrative requirements also requires cooperation from the police, which in fact cannot necessarily happen, if the implementation of the Joint Regulation only increases the workload and does not provide a separate incentive for the police. In the end, there are still many narcotics users who undergo the criminal justice process to court.[29]

Decriminalization

The use of narcotics should be decriminalized, not all need rehabilitation. Countries that have succeeded in reforming their narcotics policies do not present mandatory rehabilitation. However, prioritizing a comprehensive assessment of severity in the health, social, and economic domains to determine the right intervention. *The World Drug Report* 2021 explains that only 13% of narcotics users have problematic use, so not all narcotics users need mandatory rehabilitation conceptualized by the Government.

Criminal provisions should be amended and the threat of a special minimum prison sentence and the death penalty should be abolished. The government stated that it would not send Narcotics users to prison, but instead failed to correct the contradiction in the articles of the Narcotics Law between Article 111 concerning the Control of Class I Narcotics of the plant type, Article 112, Article 117 and Article 122 concerning Narcotics Control, Article 114, Article 119, Article 124 concerning buying Narcotics, and Article 127 concerning Narcotics abuse. Every user will definitely be easily entangled with the article of possession and purchase of narcotics. This is the basis for many imprisonments for users, each of these articles also contains special minimum provisions. However, the government did not propose any revision of this criminal provision.

Decriminalization can be classified into three types, namely decriminalization accompanied by administrative or civil sanctions, decriminalization with selective diversion, and decriminalization without sanctions. The three abolish criminal sanctions in response to the use or possession of narcotics, so logically the implementation of this policy requires changes at the legal level. The difference between the three models lies in the response used by the state as a substitute for the loss of

[28] Arinda Ika Saputri, "PROBLEMS OF FORMER DRUG CONVICTS IN BUILDING SAKINAH FAMILIES FROM THE PERSPECTIVE OF ISLAMIC LAW (Case Study in Padang Jaya District, North Bengkulu Regency)," *Soekarno University Law*, February 18, 2022.
[29] Bayu Puji Hariyanto, "Prevention and Eradication of Drug Trafficking in Indonesia," *Journal of Sovereign Law* 1, no. 1 (2018): 202.

criminal sanctions. In some models, it requires the formation of a certain system as needed.[30]

Rehabilitation to Achieve Public Health Goals and Overcome *Prison* Overcrowding

Rehabilitation measures are aimed at victims of narcotics abuse to restore or develop the physical, mental, and social abilities of the sufferer concerned. In addition to recovery, rehabilitation is also a treatment or treatment for narcotics addicts, so that addicts can recover from their addiction to narcotics. For narcotics addicts who obtain a decision from the judge to serve a prison sentence or confinement, they will receive coaching and treatment in a correctional institution.[31]

With the increasing danger of narcotics that spreads to all corners of the world, various ways of coaching for healing victims of narcotics abuse have arisen. In this case, it is rehabilitation. In the General Provisions of Law No. 35 of 2009 concerning Narcotics, rehabilitation is divided into two types, which include:

a. Medical Rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence. Medical rehabilitation of narcotics addicts can be carried out in hospitals appointed by the minister of health. That is a hospital that is organized both by the government and by the community. In addition to treatment or treatment through medical rehabilitation, the healing process of narcotics addicts can be organized by the community through religious and traditional approaches.
b. Social Rehabitation is a process of integrated recovery activities both physically, mentally and socially so that former narcotics addicts can return to carry out social functions in people's lives. What is meant by a former narcotics addict here is a person who has recovered from dependence on narcotics physically and psychologically. Social rehabilitation of ex-narcotics addicts can be carried out at social rehabilitation institutions appointed by the Minister of Social Affairs. That is a social rehabilitation institution organized both by the government and by the community. This rehabilitation action is a repressive measure, namely a countermeasure carried out after the occurrence of a criminal act, in this case narcotics, in the form of coaching or treatment of narcotics users.[32]

[30] Yuliana W Yuli et al., "REHABILITATION EFFORTS FOR NARCOTICS ADDICTS IN THE PERSPECTIVE OF CRIMINAL LAW," *ADIL: Legal Journal* 10, no. 1 (November 26, 2019), https://doi.org/10.33476/AJL.V10I1.1069.
[31] Daryono, "Legal Reconstruction in Handling Rehabilitation Cases for Narcotics Abusers Based on Justice Values."
[32] Basri, *Implementation of Rehabilitation for Addicts and Victims of Narcotics Abuse in Yogyakarta*.

The implementation of Medical Rehabilitation and Social Rehabilitation for Victims of Narcotics Abuse Is Not Based on Human Values because often narcotics abusers who are not dealers receive criminal sanctions in the form of imprisonment and/or fines for their actions. If we look at the provisions of the norm, we can see that in principle, narcotics abusers for themselves are subject to criminal sanctions as stipulated in Article 127 and in the provisions of the norm Article 103 stipulate that a judge "may" decide to place the user to undergo rehabilitation where the rehabilitation period is also counted as a sentence period where such a system in criminal law is known as the Double Track System. Departing from the idea that crime is essentially only a tool to achieve the goal of criminalization, the concept of the new drug crime first formulates the purpose of punishment.[33]

The target of coaching convicted narcotics cases is actually more aimed at groups of users/addicts who are victims of crimes from these narcotics suppliers/dealers. Based on this, the convicts after knowing everything about the judicial process, the coaching pattern is handed over to the correctional institution where they serve their sentence. Overall, the prisoner development program can be divided into 2 (two), namely: a. Programs to restore health, both physical and psychological b. Programs for adding knowledge insights, both religious knowledge and other general knowledge.[34]

Programs to restore health, both physical and psychological, in general, correctional institutions arrange time to hold activities such as gardening, skill work, sports, and so on. Meanwhile, the elaboration of the program to add knowledge insight is usually carried out by listening to lectures organized by correctional institution officers or holding recitation activities and discussions, both in groups and individually.

Narcotics rehabilitation according to Law No. 35 of 2009 consists of medical rehabilitation, which is a process of treatment activities in the field of eradication of BNNP DIY to free addicts from narcotics dependence, and social rehabilitation, which is an integrated recovery activity, both physical, mental and social, so that former narcotics addicts can return to carry out social functions in people's lives. Investigators can submit an assessment application to the Integrated Assessment Team (TAT) to determine whether or not a suspect can be rehabilitated, this is regulated in BNN regulation No. 11 of 2014. The assessment carried out by the Integrated Assessment Team (TAT) consists of medical assessment and legal assessment. According to

[33] Singgih Aditya Utama, "RECONSTRUCTION OF REHABILITATION ARRANGEMENTS FOR SUSPECTED NARCOTICS USERS AT THE INVESTIGATION STAGE BASED ON THE VALUE OF JUSTICE," *Unissula Law Journal*, 2021.

[34] Merry Natalia Sinaga, "The Basic Idea of the Double Track System: Criminal Sanctions and Actions as a Criminal System for Narcotics Abuse Criminals," *Journal of Social Education Humanities Research.* 1, no. 3 (2018): 342.

Article 3 paragraph (1), a person can be rehabilitated if the person is a narcotics addict and a victim.

Narcotics abusers. According to Article 3 paragraph (2), in the event that a person as a suspect in a narcotics case can be rehabilitated after receiving a recommendation from the Integrated Assessment Team (TAT) of BNN regulation No. 11 of 2014. Based on Article 9 paragraph (2), the Integrated Assessment Team consists of: a. Doctor Team which includes Doctors and Psychologists who have assessor certification from the Ministry of Health; b. Legal Team consisting of elements of the National Police, BNN, Prosecutor's Office and the Ministry of Law and Human Rights.

The assessment aims to enable Narcotics Addicts and Victims of Narcotics Abuse who have no rights and against the law who have been designated as Suspects to be able to undergo rehabilitation and regulate the implementation of the placement of Suspects into rehabilitation institutions so that they can be carried out appropriately, transparently, and accountably, based on the recommendations of the Integrated Assessment Team.[35]

Based on Article 11 of BNN Regulation No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions, the integrated assessment team is formed by BNN in stages from the central level to the regional level (district/city) and under the coordination of BNN through the decree of the head of BNN/BNNP/BNNK.

Based on Article 14 of BNN Regulation No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions says that a perpetrator of a narcotics crime can be rehabilitated after receiving a recommendation from the integrated assessment team before being detained by investigators, because the investigator must submit an assessment application no later than 1x24 hours after making an arrest, then the results of the assessment are submitted to the Investigator for a maximum of 6 (six) days to be reported in writing to the local District Court.

Rehabilitation for narcotics users in Indonesia, especially in the Special Region of Yogyakarta, is in accordance with the positive laws that apply in Indonesia. Investigators can rehabilitate narcotics users based on Article 54 of Law Number 35 of 2009 concerning Narcotics. The suspect will undergo

[35] Yasmin Indahnesia Susilo and I Komang Suka'arsana, "The Crime of Using Class I Narcotics Without Rights and Against the Law and the Crime of Distributing Class I Narcotics (Case Study of Decision Number 150/PID. SUS/2017/PN UNR)," *Law and Judiciary* 2, no. 1 (2017): 100–115.

a rehabilitation process in narcotics cases, must first go through medical and legal assessment.[36]

The future concept regarding the implementation of rehabilitation for narcotics users should be for every narcotics user who has met the requirements in Article 54 of Law Number 35 of 2009 concerning Narcotics and Regulation of the Head of BNN No. 11 of 2014 all rehabilitation is carried out, there is no longer any detention for narcotics users to be detained in detention centers or correctional institutions because for narcotics users it is not a solution. This is with the aim of healing and recovery for narcotics users. Precisely with the rehabilitation of narcotics users supported by families and communities, narcotics users can gradually recover from narcotics use.[37]

Rehabilitation of drug abusers and addicts, with the aim of curing the sick condition of narcotic dependence for abusers and addicts so that abusers and addicts recover from drug addiction/dependence. Abusers are threatened with imprisonment, but most narcotics addicts who do not report for recovery are also threatened with criminal punishment, but coercive efforts and punishment are in the form of rehabilitation.[38]

Rehabilitation is an integrated approach in reducing prison overcapacity, by implementing alternative penalties from prison, such as fines, social work penalties, compensation and restitution, applying conditional penalties, supervision penalties, restorative justice, penal installments, Good Time Allowance and pardons, decriminalization and depenalization.

Affirmation of the Terms of Abuser, User, Addict and Victim of Narcotics Abuse

Unclear understanding and status between addicts, abusers, and victims of narcotics abuse. Because of the lack of clarity in the meaning and status, the other arrangements become biased and confused. At the practical level, this directly has a big impact, especially for narcotics users. Therefore, it is necessary to affirm the term narcotics abuser in future policy formulation, this is necessary so that there is no ambiguity in the formulation of the law that can be confusing.

According to Article 127 paragraph (1) of Law No. 35 of 2009, every Abuser of Class I Narcotics for himself is sentenced to a maximum of 4 (four) years in prison; Each Class II Narcotics Abuser for himself is sentenced to a

[36] Siti Hidayatun et al., "The Concept of Rehabilitation for Narcotics Users Who Are Just," *Journal of Law Enforcement and Justice* 1, no. 2 (August 24, 2020), https://doi.org/10.18196/JPHK.1209.

[37] Andri Winjaya Laksana, "A Review of Criminal Law on Narcotics Abusers with a Rehabilitation System," *Journal of Legal Reform* II, no. 1 (2015).

[38] Kusumasari, "PROBLEMATICS OF LAW NO. 35 OF 2009 CONCERNING NARCOTICS IN TERMS OF THE IMPLEMENTATION OF REHABILITATION FOR DRUG ABUSERS."

maximum prison sentence of 2 (two) years; and Each Misuser of Class III Narcotics for himself is sentenced to a maximum prison sentence of 1 (one) year. What is meant by an Abuser is a person who uses narcotics without rights or against the law.[39] From this understanding, it can be said that the Abuser is a user. However, the law does not contain what is meant by "narcotics user" as a subject (person), which is widely found as a verb.

When associated with the definition of Narcotics as mentioned in Article 1 number 1 of Law No. 35 of 2009, then Narcotics Users are people who use substances or drugs derived from plants, both synthetic and semi-synthesized which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are distinguished into the groups as attached to this Law.

The use of the term "Narcotics User" is used to facilitate the designation for people who use narcotics and to distinguish it from growers, producers, distributors, couriers and distributors of narcotics. Although growers, producers, distributors, couriers and distributors of narcotics sometimes also use narcotics, in this article the narcotics user is a person who uses narcotics for himself, not a grower, producer, distributor, courier and distributor of narcotics. If it is associated with people who use narcotics, in Law No. 35 of 2009 various terms can be found, namely:

a. Narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics,[40] both physically and psychologically.[41]
b. A misuser is a person who uses narcotics without rights or against the law.[42]
c. A victim of Narcotics abuse is someone who accidentally uses Narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use Narcotics.[43]
d. A former narcotics addict is a person who has recovered from dependence on narcotics physically and psychologically.[44]

The diversity of terms for narcotics users causes ambiguity in the formulation of the law. This can confuse law enforcement officials in its implementation. One of the problems that may arise due to the many terms is the confusion of regulations, where in Article 4 letter d of Law No. 35 of 2009 it is said "The Narcotics Law aims to: Ensure the regulation of medical and social rehabilitation efforts for drug abusers and addicts", but in Article

[39] Article 1 number 15 of Law No. 35 of 2009
[40] Narcotics Dependence is a condition characterized by the urge to use Narcotics continuously with increased doses to produce the same effect and if the use is reduced and/or stopped suddenly, causing typical physical and psychological symptoms (Article 1 number 14).
[41] Article 1 number 13 of Law No. 35 of 2009.
[42] Article 1 number 15 of Law No. 35 of 2009.
[43] Explanation of Article 54 of Law No. 35 of 2009.
[44] Explanation of Article 58 of Law No. 35 of 2009.

54 of the Law it is stated that "Narcotics Addicts and Victims of Narcotics Abusers are obliged to undergo medical rehabilitation and social rehabilitation". Based on Article 54, the abuser's right to rehabilitation is not recognized.

Therefore, the reconstruction of the criminal sanctions policy in the future requires the affirmation of the terms of definition and status between addicts, abusers, and victims of narcotics abuse to overcome the problem of confusion or unclear understanding and status between addicts, abusers, and victims of narcotics abuse.

The shortcomings of Law No. 35 of 2009 concerning Narcotics are that it does not regulate the *grammar*[45] of narcotics addicts, and does not clearly define who is meant to be a user who is not against the law. The General Provisions in the law only explain the definition of Addict and Abuser. Law No. 35 of 2009 has not expressly regulated the category of addicts who are not against the law. In addition to the lack of socialization of the regulation of mandatory reporting, psychologically a person will be afraid to report himself, because often a person uses narcotics for the first time because he only tries and ends up becoming an addict, never going through a doctor's license, and getting the goods from the black market, so that the person tends to be afraid to report himself.

In Indonesia, despite the existence of Law No. 35 of 2009 concerning Narcotics, in certain cases law enforcement officials still find it difficult to determine a user who is caught from the beginning of the investigation whether he is an addict, user or abuser, so that the user is subsequently processed or not. The definition of addict, user or abuser has confusion because there has been no firm distinction by lawmakers. There are addicts/users who are not against the law, but there are also addicts/users who are against the law. Lawmakers have not explicitly placed addicts as victims. To mediate this categorization problem, the regulation of grammar should be a solution. But unfortunately the new law on narcotics does not regulate it.

Regarding the determination of the category of an addict who is not against the law, it is Article 128 which abolishes criminal prosecution for an addict who is not old enough or who is of sufficient age as long as there is a report against him as an addict. The categorization for addicts who are of legal age is that they have undergone at least 2 (two) times the medical rehabilitation period at a hospital and/or medical rehabilitation institution appointed by the government. Meanwhile, for addicts who do not report themselves from the beginning, they can also not be sentenced to prison as long as they can be declared addicted by the judge in court based on Article 103, which is only required to undergo treatment and/or treatment through rehabilitation,

[45] Grammatical is the weight/amount of narcotics found in the user's hand as evidence.

whether proven guilty or not. However, for a person while undergoing the criminal process, it is certainly very tiring and causes a heavy psychological burden, both material and immaterial losses in dealing with the case. It is felt that it is ineffective for an addict to have to undergo a criminal procedure legal process since he is made a suspect or defendant that runs for months, but is finally declared an addict.

In relation to grammar, the lack of regulation on grammar that will confirm a person as an addict or not, is a shortcoming and weakness in this narcotics law. In fact, before the issuance of this Law, there was a Supreme Court Circular Letter (SEMA) No. 07 of 2009 concerning Placing Narcotics Users in Therapy and Rehabilitation Homes. However, SEMA's philosophy should be adopted and included in the narcotics law so as to eliminate criminal charges against addicts from the beginning.

In principle, drug abusers get guarantees of medical rehabilitation and also social rehabilitation as stipulated in article 4 point (d), and also article 54 but in the criminal provisions there have also been criminal sanctions for people who use narcotics in Article 127 which reads:

(1) Every Abuser:
   a. Class I narcotics for oneself are punished with a maximum prison sentence of 4 (four) years;
   b. Class II narcotics for oneself are sentenced to a maximum prison sentence of 2 (two) years; and
   c. Class III narcotics for oneself are punished with imprisonment for a maximum of 1 (one) year.

Drug abusers for themselves who are not dealers where initially as victims who should be rehabilitated must serve prison sentences as stipulated in Article 127. Not only that, narcotics users who are not dealers when confronted in front of the court will be charged with other articles that overlap. Logically, users who get narcotics illegally, of course there are also several acts done by the user at the same time

The Narcotics Law has expressly stipulated that addicts are rehabilitative while dealers are repressive. Narcotics addicts are obliged to get medical rehabilitation and social rehabilitation, this is very important so that narcotics addicts can live clean and healthy lives. The enforcement of rehabilitative laws against narcotics addicts based on our Narcotics Law is law enforcement without detaining and giving prison sentences but is given an alternative, namely by placing narcotics addicts in rehabilitation institutions. So that law enforcement against narcotics addicts is rehabilitative in accordance with the purpose of the Law.

Affirmation of Unlawful Norms and Intentional Elements in Narcotics Abuse

Affirmation of Unlawful Criminal Delic with the elements of "possessing", "possessing", "storing", and/or "buying" narcotics

The Law on Narcotics does not provide a clear line between criminal offenses in Article 127 of the Narcotics Law and other criminal offenses contained in the Narcotics Law, where narcotics users who obtain narcotics illegally must meet the elements of "possessing", "possessing", "storing", and or "buying" narcotics where this is also regulated as a separate criminal act in the Narcotics Law. In practice, law enforcement officials also associate the criminal offense of narcotics users with the criminal offense of possessing, possessing, storing or purchasing narcotics without rights and against the law where the criminal threat becomes much higher and uses a special minimum sanction of at least 4 years in prison and a minimum fine of Rp 800,000,000 (eight hundred thousand rupiah).

Based on the Academic Text of Law Number 35 of 2009, patients can possess, store, and/or carry narcotics used for themselves obtained from doctors and equipped with valid evidence. Then addicts and victims of narcotics abuse are no longer given freedom and of their own free will to recover. Medical rehabilitation and social rehabilitation are mandatory for addicts. Law Number 35 of 2009 also requires narcotics addicts to report themselves to public health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions. This obligation is also the responsibility of parents and families.

Although the principle in Law Number 35 of 2009 is to rehabilitate narcotics addicts, in this law the word "can" is still used to place both guilty and innocent narcotics users to undergo treatment and/or treatment through rehabilitation. Judges are also given authority to addicts who do not have problems with non-criminal narcotics to be determined to undergo treatment and rehabilitation. This provision gives rise to the understanding that judges absolutely decide or designate narcotics addicts to undergo the rehabilitation process and the implementation of treatment and rehabilitation is also applied at the investigation and prosecution levels.

The policy of Law No. 35 of 2009 concerning Narcotics shows the existence of Community Participation in Narcotics Control. In addition to the National Police, BNN and other Law Enforcers, Law No. 35/2009 also requires the public to play an active role in efforts to prevent and eradicate narcotics. This means that the community is given authority like investigators by seeking, obtaining, and providing information and getting services in these matters. The participation of the community under the umbrella of this law provides legitimacy for the community to carry out the prevention and eradication of narcotics without any rights specified by the law. This causes

fear that tends to lead to a fear of being abused by individuals because it is not regulated clearly and explicitly.[46]

Affirmation of the element of intentionality in narcotics crimes

Law Number 35 of 2009 has the potential to criminalize people, both producers, distributors, consumers and the public by including criminal provisions as many as 39 articles out of 150 articles regulated in the Law. Law Number 35 of 2009 uses a criminal approach to supervise and prevent narcotics abuse. Criminal use is still considered an attempt to scare away the use of narcotics.

The use of the word "Everyone without rights and against the law" in several articles of Law Number 35 of 2009 without regard to the element of intentionality, can ensnare people who actually have no intention of committing narcotics crimes, either due to coercion, pressure, or ignorance. This has the potential to ensnare people to be made suspects in accidental narcotics crimes, either because they are "trapped" by other people or other possible conditions such as: receiving goods from other people to be delivered somewhere and without his knowledge there are narcotics tucked in the goods, receiving packages from the post and other conditions.

Strengthening the Integrated Assessment Team in Handling Narcotics Abuse

The National Narcotics Agency (abbreviated as BNN) is an Indonesian Non-Ministerial Government Institution (LPNK) that has the task of carrying out government duties in the field of prevention, eradication of abuse and illicit circulation of narcotics, psychotropics, precursors and other addictive substances except addictive substances for tobacco and alcohol. BNN is led by a head who is directly responsible to the President.[47]

The legal basis of BNN is Law Number 35 of 2009 concerning Narcotics. Previously, BNN was a non-structural institution formed based on Presidential Decree Number 17 of 2002, which was later replaced by Presidential Regulation Number 83 of 2007.

The integrated assessment mechanism for narcotics abusers is a form of implementation of concern for the handling of narcotics abusers in Indonesia. Narcotics abusers based on Law Number 35 of 2009 concerning Narcotics are like people standing on two legs, one foot is on the health dimension, the other foot is on the legal dimension. In the health dimension, narcotics abusers are likened to chronically ill people with addictions, who must be cured through rehabilitation, while in the legal dimension, abusers

[46] Prabu Helau Dinata, "A Brief Discussion of Law Number 35 of 2009 concerning Narcotics" in http://prabuhelaudinata.blogspot.com/2012/11/uu-nomor-35-tahun-2009.html, accessed November 10, 2020.

[47] National *Norms, Standards, and Procedures (NSP) of Community Empowerment.*

are criminals who must be punished for violating the provisions of the applicable law, namely Law Number 35 of 2009 concerning Narcotics. Therefore, for cases of abusers, the Narcotics Law provides a solution by integrating these two approaches through rehabilitation punishment.[48]

The integration of the two approaches is carried out through an integrated assessment mechanism in which it will produce recommendations on whether or not suspects can be rehabilitated. The implementation of the integrated assessment mechanism is based on several regulations, including the Joint Regulation between BNN and the Ministry of Health, the Ministry of Health and the Ministry of Social Affairs concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions, Circular Letter of the Supreme Court Number 04 of 2010 concerning the Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions, Regulation of the Head of the National Narcotics Agency Number 11 Year 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions, Attorney General Regulation Number 29 of 2015 concerning Technical Guidelines for Handling Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions and Regulation of the Ministry of Health Number 50 of 2015 concerning Technical Guidelines for the Implementation of Mandatory Reporting and Medical Rehabilitation for Addicts, Abusers and Victims of Narcotics Abuse.

The integrated assessment mechanism is important to be analyzed through the perspective of Criminal Law Policy, guided by the *Ius Constitutum, Ius Operatum* and *Ius Constituendum*. Judging from the formulation stage, the application stage and the execution stage in terms of the involvement of law enforcement officials, both investigators, public prosecutors, and judges, in the integrated assessment mechanism is a challenge in itself to solve the problems that arise in it due to cross-agency, both in terms of technical regulations and their implementation.[49]

The integrated assessment mechanism that combines the results of analysis between the medical team and the legal team on the determination of suspects of narcotics crimes whether they belong to the category of narcotics abusers or narcotics dealers, has an important role, especially as a *screening* process for the categorization of the status of narcotics abusers and/or narcotics dealers, so that it can be analyzed as part of the criminal law policy process through in-depth analysis. Likewise, in looking at the position of the suspect/defendant of narcotics abuse as a sick person or as a perpetrator of a criminal act by including the rehabilitation process during

[48] Huda et al., "Integrated Assessment: Implementation of Restorative Justice to Countermeasure Drugs Crime in Indonesia."
[49] Huda et al.

the trial can be a consideration for the judge to decide the case with a prison sentence or rehabilitation penalty.

The imposition of judges' sentences in the form of rehabilitation sentences is still relatively rare. Most narcotics abusers are not sentenced to rehabilitation as mentioned in Law 35 of 2009 concerning Narcotics, but are sentenced to prison even though the provisions of the Narcotics Law have guaranteed rehabilitation efforts, both medical rehabilitation and social rehabilitation as stipulated in Article 54, Article 56, Article 103, and Article 127 of the Narcotics Law.

Criminal Law Policy has a wide scope. This aspect is oriented to the fact that criminal law policy in the form of crime prevention with "penal" means as a form of *penal policy* or *penal law enforcement policy* is implemented through stages consisting of the formulation stage, which is the stage of law enforcement *in abstracto* by the law-making body. This stage is also called the legislation stage. The application stage, which is the stage of the implementation of criminal law by law enforcement officials ranging from the police to the courts. The execution stage, namely the concrete implementation of criminal law by criminal enforcement officials. This stage can be called the executive policy or administrative stage.

There are 10 (ten) weaknesses in the integrated assessment arrangement for narcotics abusers, namely ***First***, Contradiction in the regulation of the Article on rehabilitation in Law Number 35 of 2009 concerning Narcotics, ***Second***, the coverage of narcotics in the Supreme Court Circular Letter (SEMA) Number 4 of 2010, not following the latest developments in narcotics types, ***Third***, Inconsistency of the Terms of Abusers, Victims of Abuse and Addicts between SEMA Number 4 of 2010 and Joint Regulations 7 (seven) state institutions, PERJA Number 29 of 2015 and PERKA BNN Number 11 of 2014, ***Fourth,*** The classification of the term "Caught in Hand" in SEMA Number 4 of 2010 is multi-interpreted, ***Fifth,*** The difference in the requirements for laboratory examination results and rehabilitation places in the arrangement between Joint Regulation 7 (seven) of state institutions of 2014 and Regulation of the Head of BNN Number 11 of 2014, ***Sixth***, The insynchronization of the initial arrangement starting from the calculation of the deadline for the issuance of assessment results from the Integrated Assessment Team between Joint Regulation 7 (seven) of state institutions of 2014 and Regulation of the Head of BNN Number 11 of 2014, ***Seventh,*** the use of the word "Can be placed" in Joint Regulation 7 (seven) of State institutions contradicts the Attorney General's Regulation Number 29 of 2015 which eliminates the use of the word "may" in terms of the placement of Narcotics Suspects and/or Defendants to Rehabilitation Institutions, ***Eighth,*** Sectoral regulation regarding narcotics recidivism in Attorney General Regulation Number 29 of 2015, is not a mandate of Joint Regulation 7 (seven) state institutions, ***Ninth***, the difference in the standard length of rehabilitation period in the Regulation of the Minister of Health Number 50 of 2015 and SEMA Number 4 of 2010, ***Tenth,*** the limitation of the period

of rehabilitation before the decision of the Judge is limited to a maximum of 3 (three) months in the Regulation of the Minister of Health Number 50 of 2015.

The Application Stage uses Legal *System Theory* for the analysis knife as a *grand theory*. Lawrence M. Friedman, in his book entitled "*The Legal System: A Social Scientific Perspective*", states that the legal system consists of a set of legal structures, legal substance (legislation) and legal culture or legal culture. The legal system must contain *Legal Substance, Legal Structure* and *Legal Culture*.[50]

Obstacles in Legal *Substance*, looking at an integrated assessment arrangement, which has 10 (ten) weaknesses as mentioned earlier so that it causes obstacles in the form of investigators' concerns in the application of a single article, rejection from the Integrated Assessment Team to an integrated assessment, differences of views related to multi-interpretation provisions, gaps arise for "investigators" to take advantage of different terms, Investigators' hesitation in acting, the disobedience of law enforcement in placing abusers into rehabilitation institutions, the absence of legal certainty, inconsistencies, insynergies in the implementation of regulations, the emergence of sectoral egos that make it difficult in *case conferences*, the difficulty of judges in deciding the appropriate period of time for narcotics abusers, causing difficulties in determining the responsibility of financing rehabilitation

Obstacles in the Legal *Structure factor*, based on the results of interviews in the field analyzed with related theories, the author formulates obstacles to the implementation of an integrated assessment for narcotics abusers, when viewed from the legal structure factor, namely the mental and moral of the relevant apparatus is inadequate, the welfare of law enforcement officers who handle narcotics problems is still low so that it is easy to be tempted to cooperate with the city, the number of law enforcement officers is inadequate compared to the area and population of Indonesia, the professionalism of law enforcement officials is inadequate, it still prioritizes sectoral egos so that coordination is not integrated, the orientation of law enforcement officials is still focused on criminalization rather than rehabilitation, the concern of investigators and prosecutors that suspects and/or defendants will flee from rehabilitation institutions and become DPOs.

Obstacles in the Legal Culture factor, can be seen from the legal culture in society that with criminalization, the suspect will be a deterrent. In fact, for abusers, prison sentences are not appropriate because abusers as "sick people" need rehabilitation more to cure their illness.

[50] M Friedman, *Legal System* (Bandung: Nusa Media, 2018).

The prospect of regulating integrated assessments of narcotics abusers in the future, criminal law policies will see how far the applicable criminal provisions need to be changed and updated. Penal reform is also part of the *penal policy*. The meaning of criminal law reform itself is essentially an effort to reorient and reform the criminal law in accordance with the central sociopolitical, sociophilosophical, and sociocultural values of Indonesian society that underlie social policy.[51]

Improving and improving the integrated assessment arrangements by synchronizing *overlapping* Articles, conducting discussions with all relevant agencies so that a common perception is produced to prioritize rehabilitation over prison punishment for narcotics abusers in realizing efforts to protect community welfare (*social welfare*)) and the ideals of an independent, united, sovereign, just and prosperous nation. Legal certainty is a legal tool of a country that is able to guarantee the rights and obligations of every citizen in accordance with the existing community culture. Related to this, of course, the formulation of the regulation of an integrated assessment mechanism for narcotics abusers must uphold and be in accordance with the principles of legal certainty such as not contradictory, not multi-interpreted and clearly formulated (*lex certa*).

CONCLUSION

The results showed that Legal reconstruction in law enforcement against drug crimes that is progressive and integrative can be done with the following; a) alternative drug criminalization policies: depenalization, diversion, and decriminalization; b) rehabilitation to achieve public health goals and address prison overcrowding; c) affirmation of the terms abuser, user, addict and victim of drug abuse; d) affirmation of unlawful norms and intentional elements in drug abuse; e) strengthening the integrated assessment team in handling narcotics abuse

[51] Barda Nawawi Arief, *Development of the National Legal System (Indonesia)* (Semarang: Pustaka Magister Universitas DIponegoro, 2012).

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