

ADVANCED SYSTEM OF MEDICAL REHABILITATION AND CRIMINAL SANCTIONS FOR NARCOTICS ABUSE

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ABSTRACT

Rehabilitation for abusers, addicts and victims of narcotics is a treatment process to free addicts from dependence, and the period of undergoing this rehabilitation is calculated as the period of a sentence. Abusers, addicts and victims of narcotics abuse, should not be ashamed of participating in a rehabilitation program. The research is a normative legal research using a statute, case, and conceptual approaches. The results show that the essence of the imposition of medical rehabilitation and criminal sanctions means health protection and social protection. The concept of cumulative sanctions for the imposition of sanctions on narcotics abusers is required. The classification of the imposition of sanctions based on the level of use can be used to determine and determine the appropriate sanctions. Cumulative sanctions are proposed as a concept with the aim of creating harmony between the treatment or treatment component with the aim of healing and the retaliation component with the aim of providing a deterrent effect on narcotics abusers.

Keywords: Drugs, Criminal Law, Law Reform, Narcotics, Rehabilitation, Victims

INTRODUCTION

Narcotic is a substance or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause decreased and altered consciousness, loss of pain and can lead to dependence (Juliana, 2019). On the one hand, the availability of narcotics is a drug that is useful in the field of medicine or health services and the development of science, but on the other hand it creates a very detrimental dependence if it is misused.

Expressly, Indonesia states its commitment to fighting the abuse and illicit trafficking of narcotics, various specific regulations regarding narcotics in the form of laws have been made with the aim of fighting and eradicating narcotics crimes. The Single Convention on Narcotic Drugs (1961) and its amendment protocol in 1972. Through coordination and commitment among law enforcers in placing addicts and victims of narcotics abuse into rehabilitation institutions, it is hoped that it can reduce the increase in the number of cases of narcotics abuse (Hussain, 2020).

Rehabilitation for abusers, addicts and victims of narcotics is a treatment process to free addicts from dependence, and the period of undergoing this rehabilitation is calculated as the period of a sentence. Abusers, addicts and victims of narcotics abuse, should not be ashamed of participating in a rehabilitation program, because addicts are sick people. In BNNP of South Sulawesi, Sudaryanto said addicts who report themselves will not be convicted or imprisoned, because it is guaranteed by Act No. 35 of 2009 that drug addicts must be rehabilitated

The role of rehabilitation in healing and treating narcotics abusers is very important, due to the increasing number of narcotics abusers. Based on the investigation, it was found that neighboring country such as Malaysia had previously placed its citizens who were categorized as drug users as victims and no longer as criminals (Prasetyo, 2019). In Malaysia, drug users or addicts get a verdict to be rehabilitated although with a maximum limit of 3 (three) times. Another example is Portugal, this country decided to declare that drug addicts who are defined

as drug addicts for their own use are still prohibited, but violations of these rules will be considered administrative violations, and are no longer considered crimes. From the scattered writings, it is known that in these two countries, there has been a decrease in the number of drug users, a decrease in the death rate due to drug use and a decrease in HIV-AIDS cases. This is in fact different from Indonesia where every year the number of drug use increases, prisons is overloaded with prisoners related to drug use (ICJR, 2019).

In addition, based on research conducted by the Institute for Criminal Justice Reform (ICJR) in collaboration with the Institute for Research and Advocacy for Judicial Independence (LEIP), the implementation of the Supreme Court Decision on Narcotics Abuse during 2012, from 37 samples of decisions, only 6% where Supreme Court Judges impose a decision on action (social and medical rehabilitation). In addition to matters of handling narcotics use during the investigation and prosecution stages, the Police and Prosecutors, with the same sample, did not even place suspects in rehabilitation institutions. As a result, detention centers and prisons experience overcapacity, almost half of Indonesian detention centers and prisons are filled with narcotics suspects or defendants which should be better for some of them to receive rehabilitation.

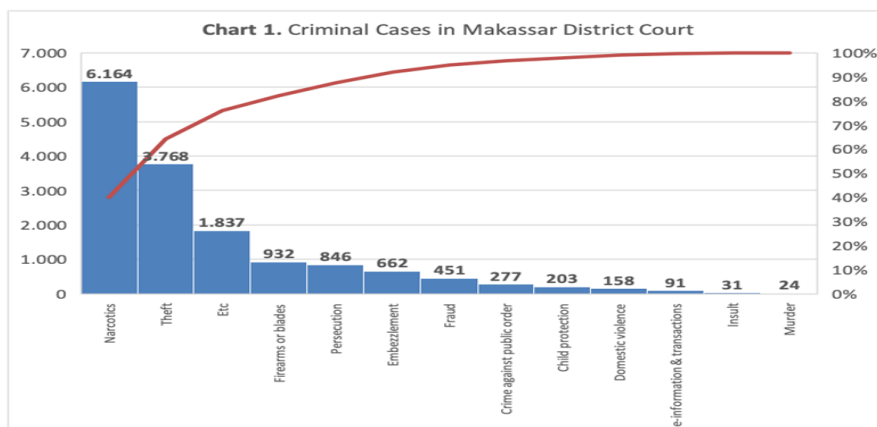
In fact, not a few of the abusers who are caught have to lose their right to undergo rehabilitation as they should, so that the right to obtain access to essential health is not obtained, especially for narcotics abusers, because the abuser will be sentenced to prison (Azkhosh, 2016). Meanwhile, it is common knowledge that prison is no longer a safe place for these illicit goods. Hence, the rehabilitation sanction should be a premium of remidium and imprisonment as the maximum remidium in the prevention and eradication of narcotics crime so that the narcotics circle can be cut off to its roots (Hussain, 2021).

Indeed, optimization of law enforcement is influenced by previous factors, but it must also consider to criminal law policies that discuss how the criminal law can tackle crimes, in this case narcotics abusers. For this reason, of course, a new concept is needed that can formulate medical rehabilitation as one of the sanctions that is the government's way of eradicating the narcotics chain in accordance with the fulfillment of the rights of abusers as humans (Mahrinasari, 2021).

The Reality of Imposing Medical Rehabilitation Sanctions and Criminal Sanctions for Narcotics Abuse

Referring to the objectives of Act No 35 of 2009 concerning Narcotics and with the classification of crimes of abuse and trafficking of narcotics, the narcotics law contains the construction of a double track system, namely the Criminal Justice System (CJS) for circulation crimes and the Rehabilitation Justice System (RJS) for crimes abuse. It means that there are 2 (two) narcotics crimes whose criminal responsibility process goes through different channels even though they are both crimes (Mahrinasari, 2021).

Seeing the fact that narcotics crime cases are very high, it is shown from the results of research at the Makassar District Court that the narcotics crime cases in Makassar are very dominant compared to other types of criminal acts. This can be seen in the following Chart 1 (Figure 1).



**FIGURE 1
CRIMINAL CASES IN MAKASSAR DISTRICT COURT**

An emergency condition regarding narcotics is indicated by the highest number of narcotics cases compared to other types of criminal acts. Narcotics offenses in the case tracking information system from 2013 are included in the category of ordinary crimes, amounting to 6164 (six thousand one hundred and sixty-four) cases which are far proportional to other criminal acts. So, according to the author, a serious handling of narcotics crime is really needed (Mahrinasari, 2021). The author argues that the handling of narcotics should be started through abuse because in narcotics crimes, abuse is the key to the cycle of crime, in which case the abuser is the consumer who is the reason the narcotics market exists. Considering that in the narcotics crime, there are two criminals, namely abusers and traffickers. Another thing that is quite impressive in the development of the world’s narcotics problem is the effort to improve the prevention of the narcotics problem, not only on the supply side, but also on the demand side (Sudanto, 2017).

In this case, it was also found that the crime of narcotics abuse was very high, almost comparable to the crime of narcotics trafficking. This is directly proportional to the data obtained from the field described in the table that classifies the types of narcotics crimes, namely users, dealers and dealers. The data was obtained from the Makassar Police. Data regarding the Recapitulation of Narcotics Crime from 2017 to 2019 are as follows (Table 1):

No	Types of Narcotics Crime	2017	2018	2019
1	Abusers	286	263	505
2	Distributor	237	182	169
3	Drug dealer	74	87	24
	Total	597	532	698

The interpretation of law enforcement in handling narcotics abuse is very diverse. According to the author, this interpretation seems to generalize all the subjects of the perpetrators. It is better if the formulation of articles in Act No. 35 of 2009 concerning narcotics also needs to formulate the name of a crime aimed at the role of the subject. A narcotics abuser in order to obtain narcotics is certainly done by buying, receiving or obtaining from other people and for that the narcotics in his hand is clearly his or under his control. Therefore, even though an abuser is caught possessing, keeping, controlling, buying, receiving and carrying in order to use narcotics for him, the criminal act imposed must be an abuser for him.

Structural problems that affect law enforcement in the issue of narcotics abuse, at each stage of the examination, each law enforcer has conducted its role in accordance with applicable norms. At the stage of investigation, prosecution, examination by the judge, up to the stage of implementing the decision, it has been running as regulated in law. However, based on data and facts found in the field related to the system for imposing sanctions on narcotics abusers, it shows that until now our law enforcement officers are still too normative, they only carry out what is stipulated in the law and enforce positive laws for legal certainty (Hussain, 2021). Most law enforcement officials have not conducted an in-depth analysis of the regulations themselves. Judging from the number of cases of narcotics abuse, they are categorized as trafficking cases that cause users, addicts and victims of abuse to be subject to imprisonment.

As if there is a mistake if the possession of a certain number of narcotics for oneself or abuse for oneself is charged with imprisonment only, which results in the judge finally imposing a prison sentence even though according to the law it is obligatory to punish rehabilitation, what happens is that the abuser does not receive health care and also the abuser is to dominate the spaces in the correctional institution.

Concept of Cumulative Sanctions for Imposing of Sanctions for Narcotics Abuse

Legal reform is defined as a process of examining various formulations of legal provision and applicable laws and regulations and implementing a number of changes in order to achieve efficiency, as well as the opportunity to obtain justice according to applicable law. It is generally understood that the real legal reform takes place, when the body is the power to form the law (Teguh, 2017).

Basically, penal reform includes the field of penal policy which is part and closely related to law enforcement policy, criminal policy and social policy. Thus, criminal law reform is part of a policy to overcome legal substance renewal in order to make law enforcement more effective, is part of a policy to overcome social problems and humanitarian problems in order to achieve or support national goals, namely social defense and social welfare. Practically, in essence, criminal law reform is an effort to review or reassess (reorientation) the main points of thought, basic ideas or socio-philosophical, socio-political and socio-cultural values that underlie law-forming policies (Barda, 2005).

The classification of narcotics abuse sanctions is the process, method, act of classifying narcotics abusers in law enforcement in the interest of imposing appropriate sanctions. The narcotics abuser classification system is a step that law enforcement officers must take before imposing sanctions on abusers. Imposition of a criminal cannot be separated from legal certainty and justice. Both are absolute conditions to determine whether a person is worthy or not worthy of being convicted (Abdul, 2011).

Imposing sanctions against narcotics abusers must provide an alternative method of imposing sanctions that each law enforcement officer can choose to equalize perceptions. Law enforcement officials in conducting investigations at their respective stages of narcotics abusers must have the same understanding that an abuser of narcotics is both a perpetrator and a victim. A narcotics abuser is a person whose health is disturbed so that it is necessary to obtain appropriate treatment and treatment and this is conducted through medical rehabilitation and on the other hand a narcotics abuser is a person who has committed an act which is prohibited by the narcotics law so that he must be accountable for his actions with criminal sanctions.

The results of the author' analysis show that in order for the imposition of sanctions to run in accordance with statutory objectives, the placement of narcotics abusers is done on the basis of the assessment conducted by the Integrated Assessment Team at the time the abusers of narcotics are first processed. As stated by Nurul Huda and his friends in his writing, an integrated assessment is a strategy for effective enforcement of narcotics crime by reducing the number of requests through rehabilitation for narcotics abusers. The results of the assessment are used as a complete case file and serve as information. With this assessment, the abuser will find

out his condition and measure the level of dependence in order to determine the necessary medical rehabilitation measures (Huda, 2020).

The research findings indicate that there is no categorization based on the level of use, so that according to the author, the results of an integrated assessment of abusers should be categorized into:

- a. Maximum medical rehabilitation, intended for abusers whose use has been for a long time and those who are classified as primary dependents.
- b. Medium medical rehabilitation, intended for those who use it systematically.
- c. Minimum medical rehabilitation, intended for abusers who are just experimenting in the category of reactive users.

On the basis of this categorization, each narcotics abuser is classified according to the need for treatment and the implementation of the crime. To streamline the imposition of sanctions against abusers, a criterion is needed that will separate them based on the level of abuse according to the needs of each abuser (Saefudin, 2020). Therefore, it is necessary to determine the classification of abusers based on their level of use.

Cumulative sanctions are proposed as a concept with the aim of creating harmonious between the component of retaliation with the aim of a deterrent effect and the component of treatment or care with the aim of correcting narcotics abusers. The retaliation component is aimed at abusers for mistakes committed, namely violating the rules and community order, while the aim of correcting the abuser of his right to receive treatment as an individual so that he can recover from the abuser. However, in the case of narcotics misuse, the sanction of action becomes a sanction that must be implemented first so that the abuser can carry out the criminal sanction in a healthy condition and his soul returns to normal. So that the imprisonment penalty is conducted in a healthy mental state and realizes the wrong has done.

If it is related to the integrative punishment theory which allows for articulation in punishment, namely by uniting all functions at once, in this case, the function of treatment through medical rehabilitation and the function of imprisonment through imprisonment. Thus, it is hoped that the abuser can be healthy and realize his actions and can return to society in a good condition.

Various treatments and therapeutic treatments will be given to abusers and behavior development is monitored by competent medical personnel. Evaluation of the implementation of the therapy program is carried out periodically with the aim of measuring changes in the condition of the abuser. For abusers who have shown changes, it will be the basis for recommendations to make decisions based on the needs of the abusers. For this reason, a measuring instrument is needed to determine these changes. In addition, the judge before imposing sanctions is obliged to review and consider the results of the Integrated Assessment Team.

The condition of abuser during the examination in court determines the imposition of sanctions that will be imposed on the abuser. When the abuser does not show a condition of dependence, the judge usually imposes a prison sentence only. For this reason, in making a decision, there should be a form of assessment for the judge in evaluating the condition of the abuser during his detention period, which in cases of narcotics abuse is called rehabilitation. With the aim of obtaining confidence in imposing sanctions on abusers by assessing the abusers physical and psychological conditions while undergoing rehabilitation during detention. This assessment is useful for determining the sanctions that will be imposed by the judge on the abuser of narcotics which includes the type, weight and duration of the witnesses to be sentenced (Idaiani, 2019). This assessment is important to ensure that the sanctions to be imposed can be adjusted according to the needs of the abuser, both for his medical rehabilitation needs and his imprisonment.

In essence, efforts to combat crimes with criminal law are part of law enforcement efforts (particularly criminal law enforcement). Politics or criminal law policy can be said to be part of law enforcement policy. In addition, efforts to combat crime through the making of

criminal laws are essentially an integral part of efforts to protect society (social welfare). Criminal law policy becomes very reasonable if it is an integral part of social policy or politics (social policy). Social policy can be interpreted as all rational efforts to achieve the welfare of the community and at the same time includes the protection of the community. This means that the notion of social policy includes social welfare policy and social defense policy (Barda, 2007).

An extra attention and approach is needed in terms of handling the abusers of narcotics so that what is aspired in the Narcotics Law and the expectations of the community can be realized. In this regard, in handling narcotics abuse which is an extra ordinary crime, the government in this case law enforcement officers is expected to have the concept of imposing appropriate sanctions for narcotics abusers, because narcotics abusers have a major influence on eradication. Therefore, narcotics crime so should be done as the objectives of the law namely justice and benefit.

Seeing the obstacles in the implementation of the rehabilitation sanction imposition system, it is important to formulate a concept regarding the imposition of sanctions against narcotics abusers so that the objectives of the narcotics legislation can be realized and meet the expectations of the community. The connection with the imposition of sanctions by judges against narcotics abusers, namely, it is hoped that the judge's decision should be able to benefit the community both physically and mentally. This also means that abusers must understand and appreciate the meaning and benefits of the decision to impose these sanctions. In this case, the judge should be obliged to provide an understanding through dialogue during the trial process that in addition to the imposition of such sanctions for the benefit of the abuser in particular, the decision on the sanction is also beneficial for the general public.

Criminal law policy with a policy-oriented approach that is more pragmatic and rational in nature as well as a value-oriented approach, so that criminal law must have the value of Pancasila in order to achieve national goals with a humanistic approach. The humanistic approach must not only be in accordance with civilized human values, but must be able to raise awareness of the perpetrators of crimes of the importance of good association in the community. The aim is that any social re-adaptation treatment should be directed at improving self-control. Thus, reactions to crime must be centered on the conception of personal responsibility as a moral accountability.

CONCLUSION

The essence of the imposition of medical rehabilitation and criminal sanctions means health protection and social protection. This is in line with the objectives of the law of justice and certainty, namely medical rehabilitation sanctions aimed at granting the right of abusers, so as not to repeat their abuse of narcotics. The concept of cumulative sanctions for the imposition of sanctions on narcotics abusers is required. The classification of the imposition of sanctions based on the level of use can be used to determine and determine the appropriate sanctions. Cumulative sanctions are proposed as a concept with the aim of creating harmony between the treatment or treatment component with the aim of healing and the retaliation component with the aim of providing a deterrent effect on narcotics abusers. In addition, there must be criteria or conditions for assessing or evaluating abusers that can be used by judges in imposing cumulative sanctions (rehabilitation and imprisonment sanctions).

REFERENCES

- Abdul, L., & Hasbih, A. (2011). *Politics of law*. Jakarta: PT. Sinar Grafika.
- Azkhosh, M., Farhoudianm, A., Saadati, H., Shoae, F., & Lashani, L. (2016). Comparing acceptance and commitment group therapy and 12-steps Narcotics Anonymous in Addict's rehabilitation process: A randomized controlled trial. *Iranian Journal of psychiatry*, 11(4), 244.

- Barda, N.A. (2005). *Criminal law reform in the perspective of comparative studies*. Bandung: PT Citra Aditya Bakti.
- Barda, N.A. (2007). *Interest in criminal law policy the development of the drafting of the new criminal code*. Jakarta: Kencana Prenada Media Group.
- Huda, N., Saefuddin, Y., Gumira, S.W., & Sumarji, S. (2020). Integrated assessment: Application of restorative justice in combating narcotics crime in Indonesia. *Legal Policy Scientific Journal*, 14(1), 111-124.
- Hussain, S., & Hassan, A.A.G. (2020). The reflection of exchange rate exposure and working capital management on manufacturing firms of Pakistan. *Journal of Talent Development and Excellence*, 12(2s), 684-698.
- Hussain, S., Ahmad, N., Quddus, A., Rafiq, M., Pham, T.P., & Popesko, B. (2021). Online education adopted by the students of business science. *Academy of Strategic Management Journal*, 20, 1-14.
- Mahrinasari, M.S., Hussain, S., Yapanto, L.M., Esquivel-Infantes, S.M., Untari, D.T., Yusriadi, Y., & Diah, A. (2021). The impact of decision-making models and knowledge management practices on performance. *Academy of Strategic Management Journal*, 20, 1-13.
- Hussain, S., Nguyen, Q.M., Nguyen, H.T., & Nguyen, T.T. (2021). Macroeconomic factors, working capital management, and firm performance - A static and dynamic panel analysis. *Humanities and Social Sciences Communications*, 8(1), 1-14.
- Idaiani, S. (2019). Relapse in drugs, psychotropic, addictive abuse post rehabilitation: "Policy and Prevention Programs. *4th International Symposium on Health Research*, 56-59.
- Institute for Criminal Justice Reform (2019). Retrieved from <http://icjr.or.id/peraturan-bersama-narkotika-diragukan-lebih-baik-merevisi-uu-narkotika/> accessed on 29 November 2019.
- Juliana, L. (2019). Nengah Sutrisna. *Drugs, psychotropic and mental disorders (Review of Health and Law)*. Yogyakarta: Nuha Medika.
- Prasetyo, I.J., Prawiradiredja, S., & Jusnita, R.A.E. (2019). Patterns of therapeutic communication in rehabilitation institution for the narcotics users in East Java, Indonesia. *Journal of Drug and Alcohol Research*, 8(2), 1-8.
- Saefudin, Y. (2020). Rehabilitation policy for drugs abuse in Indonesia. *Indian Journal of Forensic Medicine & Toxicology*, 14(4).
- Sudanto, A. (2017). Application of narcotics criminal law in Indonesia. *ADIL: Jurnal Hukum*, 8(1), 137-161.
- Teguh, P. (2017). Legal reform perspective of the theory of dignified justice.