

## Application of Double Track System Model Against Applicants of Narcotics Abuse

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### Abstract.

*The purpose of this study is to find out and analyze the implementation of the implementation of the double track system model against narcotics abusers. To find out and analyze the obstacles and solutions to implementing the double track system model for narcotics abusers. This study uses a sociological juridical approach, with descriptive analytical research specifications. The data used in this study was secondary data obtained through literature study which was then analyzed qualitatively. The results of this study were the application of the double track system model of law against perpetrators of narcotics abuse in the form of applying the law to serve a sentence in prison, while the sanctions for actions given to narcotics addicts as victims are in the form of treatment and/or treatment organized in the form of rehabilitation facilities. The implementation system is that the period of treatment and/or treatment is counted as a period of serving a sentence. Barriers to the Implementation of the Double Track System Model on Narcotics Abuse Perpetrators are the existence of different rules that can be applied to the same act, namely narcotics abuse; inadequate infrastructure; rehabilitation institutions for narcotics abuse and narcotics victims are still very limited.*

*Keywords: Application; Double Track System; Narcotic; Perpetrators.*

### 1. Introduction

Indonesia is a state of law, this is as regulated in the state constitution, namely Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the state of Indonesia is a state of law so that everything that regulates the relationship between people and the relationship between citizens with his country must be regulated by law. Article 28 letter i paragraph (5) of the 1945 Constitution of the Republic of Indonesia, explains that: To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations.

The development of criminal law today in Indonesia, especially the Special Criminal Law or legislation outside the Criminal Code. The development of the Criminal Code, the influence of the "modern" flow in criminal law enriches criminal law with sanctions called the double track system (measure, maatregel). Dogmatically, crime is seen as a reward or retaliation for the mistakes of the maker, while the action is intended to protect the public against crimes committed by the maker.<sup>1</sup>

Narcotics on the one hand are drugs and materials that are useful in the field of treatment or health services and scientific development, but on the other hand, narcotics can cause dependence if misused, so that it can cause physical, mental,

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<sup>1</sup>Sudarto, (2006), *Kapita Selekta Hukum Pidana*, Alumni, Bandung, p. 110

social, security and public order disorders which ultimately disrupt national and international resilience. Narcotics abuse is a danger that can hinder the progress of the Indonesian nation in carrying out development in every sector of life. Where we know that Indonesia in the decade of the 70s has not yet become a lucrative area for narcotics marketing. At that time, this country was only a transit area for illicit goods to be sent to Australia or to other Asia Pacific countries. But two decades later, Indonesia has become a lucrative market for narcotics traffickers. It is even said to be a producer of goods that can make that feeling fly.

The progress achieved in the reform era is enough to give better hope, but on the other hand, the current swift currents of globalization have caused many problems in almost all aspects of human life. All social, cultural, religious, political, economic, educational, scientific and technological aspects are vulnerable areas due to fundamental changes and require a legal umbrella for housing.<sup>2</sup>

Narcotics abuse is a crime that can damage health and disrupt security and order in society. Therefore, it is necessary to organize and control the narcotics distribution which is already very worrying. Today's narcotics crimes are no longer carried out individually, but involve many people who together, even constitute an organized syndicate with a wide network, who work together neatly and secretly, both nationally and internationally.<sup>3</sup> This social phenomenon greatly disturbs the security and public order. Narcotics itself is regulated in Act No. 35 of 2009 concerning Narcotics in Article 1 number 1 providing the definition of narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or decrease in changes in consciousness, relieves pain and can cause dependence, which are divided into groups as attached to this Law.

*Double track system* is a two-way system of sanctions in criminal law, namely the type of criminal sanction from one party and the type of action sanction on the other. Both stem from different ideas. Criminal sanctions are based on the basic idea: "why the punishment is held". Meanwhile, action sanctions start from the basic idea: "what is the punishment for?" In other words, criminal sanctions are actually reactive to an act, while action sanctions are more anticipatory towards the perpetrator of the act. The focus of criminal sanctions is aimed at wrongdoing someone has done through the imposition of suffering so that the person concerned becomes a deterrent. The focus of action sanctions is more focused on efforts to help the perpetrators to change. It is clear that criminal sanctions emphasize the element of retaliation. Suffering is intentionally inflicted on an offender. Meanwhile, action sanctions originate from the basic idea of protecting the community and fostering or caring for the perpetrator.<sup>4</sup>

In response to this, the National Narcotics Agency (BNN) in collaboration with the Secretariat of the Supreme Court, the Ministry of Law and Human Rights, the Ministry of Health, the Ministry of Social Affairs, the Attorney General, the Chief

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<sup>2</sup>Heni Agustningsih and Sri Endah Wahyuningsih, 2018, *Decision of Linked with Narcotics Convicted in Act No. 35 Of 2009 in The District of Sumber Court*, dalam Jurnal Daulat Hukum Volume 1 (3), Published Master Of Law, Faculty of Law Unissula, p. 597, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3343/2471>

<sup>3</sup>Moh. Taufik Makaro, dkk, (2005), *Tindak Pidana Narkotika*, Ghalia Indonesia, Bogor, p 21

<sup>4</sup>J.E Jonkers, (1987), *Buku Pedoman Pidana Hindia Belanda*, Bina Aksara, Jakarta, p. 350.

of the Indonesian National Police held a joint regulation signing regarding the handling of narcotics addicts and victims of narcotics abuse into rehabilitation institutions, it is a new paradigm.<sup>5</sup>

The purpose of this study is to find out and analyze the implementation of the implementation of the double track system model against narcotics abusers. To find out and analyze the obstacles and solutions to the implementation of the double track system model for narcotics abusers.

## 2. Research Methods

The approach method in this research was sociological juridical which in other words was a type of sociological legal research and can also be referred to as field research, namely examining applicable legal provisions and what happens in reality in society.<sup>6</sup> The specification used in this research was descriptive analytical. The data used in this study was secondary data obtained through literature study which is then analyzed qualitatively.

## 3. Results and Discussion

### 3.1. Application of the Double Track System Model Law Against Narcotics Abuse Perpetrators

Several legal regulations regulate relations with the Indonesian criminal justice system, both regulating further the duties and authorities of law enforcement components in the criminal justice system.<sup>7</sup> The law enforcement component is closely related to the criminal justice system, especially the criminal justice system in Indonesia.

Narcotics and psychotropic crimes as referred to in Act No. 5 of 1997 concerning Psychotropics, and Act No. 22 of 1997 concerning Narcotics provides fairly heavy criminal sanctions, however in reality the perpetrators of crimes are actually increasing, and for the convicts in reality it is not a deterrent and there is a tendency to repeat it again. This can be caused by the existence of a criminal imposition factor that does not have an impact or deterrent effect on the perpetrators.<sup>8</sup>

Rehabilitation and prevention as a main goal of this type of action/treatment sanction although this method has special features in terms of the perpetrator's resocialization process, so that it is expected to be able to restore a person's social

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<sup>5</sup>Paryudi, Munsyarif Abdul Chalim, 2017, *Analisis Yuridis Penerapan Double Track System Bagi Pelaku Penyalahgunaan Narkotika Menurut Undang-Undang No. 35 Tahun 2009*. Jurnal Hukum Khaira Ummah Vol. 12. No. 2

<sup>6</sup>Su Suharsimi Arikunto, (2002), *Prosedur Penelitian Suatu Pendekatan Praktek*, Rineka Cipta, Jakarta, p. 126.

<sup>7</sup>Tolib Effendi, (2013), *Sistem Peradilan Pidana*, Pustaka Yustisia, Yogyakarta, p. 146.

<sup>8</sup>Indah Lestari, Sri Endah Wahyuningsih, 2017, *Penegakan Hukum Pidana Terhadap Pengguna Narkoba Di Polda Jateng*, Jurnal Hukum Khaira Ummah Vol. 12. No. 3, <http://jurnal.unissula.ac.id/index.php/jhku/article/view/1889/1433>, p. 601-602

and moral qualities so that they can integrate again in society,<sup>9</sup> but proved to be less effective in repairing a criminal because it was considered too indulgent. Based on this awareness, the double contract system requires that the element of reproach/suffering and the element of development are equally accommodated in the criminal law system. This is the basic idea of a double tract system that demands equality between criminal sanctions and action sanctions. The equal position of criminal sanctions and action sanctions is very useful for maximizing the use of both types of sanctions appropriately and proportionally.

Talking about the basic idea of "Double Track System" means talking about the basic idea of the Sanction System which is the basis for policy and the use of Sanctions in criminal law. In this case, there is a two-track system regarding sanctions in criminal law. The basic idea of this system is "Equality Between Criminal Sanctions and Action Sanctions.

One of the main problems of criminal law is that the concept of the purpose of punishment must be related to the currents in criminal law. These streams are classical, modern (positive) and neo-classical. The differences between classical, modern and neo-classical schools on their respective characteristics are closely related to the situation at the time of the growth of these schools.

In Act No. 35 of 2009 there is a distinction between criminal sanctions for drug dealers and users.<sup>10</sup> Basically narcotics dealers in legal terminology are categorized as perpetrators (daders) but users can be categorized as either perpetrators and/or victims. In Act No. 35 of 2009 concerning Narcotics, narcotics abusers are divided into two categories, namely perpetrators as "dealers" and/or "users", the Narcotics Law does not explicitly explain the meaning of "narcotics dealers", implicitly and narrowly it can be said that narcotics dealers are people who carry out distribution and delivery of narcotics, but broadly the definition of "narcotics dealer" can also be carried out and is oriented to the dimensions of the seller, the buyer to be circulated, transporting, storing, controlling, providing, exporting and import narcotics.

Along with the emergence of rehabilitative theory, the term double track system in sentencing is known. The Double Track System is a two-track system regarding sanctions in criminal law, namely the types of criminal sanctions on the one hand and types of action sanctions on the other. Both stem from different basic ideas. Criminal sanctions are based on the basic idea: "why is a punishment held", while action sanctions are based on the basic idea: "what is the punishment for".<sup>11</sup>

*Double track system* means that there is a separation between criminal sanctions and action sanctions. The development of the legal system is what introduces action as another alternative to the main punishment, especially imprisonment. This happens because of distrust of the success of imprisonment as a form of punishment/sanction.<sup>12</sup>

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<sup>9</sup>Yong Ohoitmur, (1997), *Teori Etika Tentang Hukuman Legal*, Gramedia Pustaka Utama, Jakarta, p. 41

<sup>10</sup>Tim Redaksi Pustaka Yustisia, (2012). *Perundangan Narkotika*, Penerbit Pustaka Yustisia, Jakarta, p 134.

<sup>11</sup>M. Sholehuddin, (2003), *Sistem Sanksi dalam Hukum Pidana*, RajaGrafindo Persada, Jakarta, p. 17.

<sup>12</sup>G.S.R. Barda Nawawi Arief, Purwoto, 2012, "Sistem Pidana Dan Tindakan "Double Track System" Dalam Hukum Pidana Di Indonesia", *Diponegoro Law Review*, Volume 1, No. 4, (October, 2012),

Regarding the implementation of a two-track system in its sanctions system, Indonesia adheres to a two-track system of punishment (double track system), which means that in addition to the perpetrators of criminal acts, they can also be subject to various actions. In the concept of the Criminal Code, the imposition of action sanctions is not only for people who are unable to take responsibility because of mental disorders, but people who are able to take responsibility can also be subject to action sanctions. The application of the "two-track system" in the laws and regulations in Indonesia is due to the fact that the application of criminal sanctions alone has so far been considered ineffective in tackling criminal acts that occurred in Indonesia.<sup>13</sup>

The formulation of sanctions against narcotics abuse refers to a double track system, because based on a victimology review that narcotics addicts are self-victimizing victims, namely victims as perpetrators, victimology still determines narcotics abuse as a victim, even though the victim is a victim of a crime/crime they commit themselves. Therefore, narcotics addicts who are also victims deserve protection. However, because a narcotics addict is also a perpetrator of a crime/crime, he must also be punished, because of this, it is said that the double track system in the formulation of sanctions against narcotics abuse is the most appropriate.<sup>14</sup>

The application of the Double track system model of law against perpetrators of narcotics abuse is in the form of applying the law to serve a sentence in prison, while the sanctions for actions given to narcotics addicts as victims are in the form of treatment and/or treatment organized in the form of rehabilitation facilities. The implementation system is that the period of treatment and/or treatment is counted as a period of serving a sentence.

### **3.2. Barriers and Solutions in Implementing the Double Track System Model Against Narcotics Abusers**

Crime prevention policies through the making of criminal laws are an integral part of social politics as all rational efforts to achieve public welfare and at the same time include community protection. In connection with the criminalization of criminal law (penal policy), there are two central issues that must be considered, especially in the formulation stage, namely:<sup>15</sup>

- The problem of determining what actions should be made into criminal acts.
- The problem of determining what sanctions should be used or imposed on violators

The criminalization of narcotics abuse must be accompanied by law enforcement for perpetrators through the criminal system adopted in Indonesia, one of which is the criminal system by implementing and imposing penalties for perpetrators through a Judge's Decision which aims to restorative justice based on treatment,

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<sup>13</sup>Dwi Wiharyangti, 2020, "Implementasi Sanksi Pidana dan Sanksi Tindakan dalam Kebijakan Hukum Pidana di Indonesia", Pandecta, Volume 6, No. 1, (January, 2011): 7,

<sup>14</sup>Puteri Hikmawati, 2011, "Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika", Negara Hukum, Volume 2, No. 2, (November, 2011), p. 339,

<sup>15</sup>Ruslan Renggong, (2016), *Hukum Pidana Khusus Memahami Delik-Delik Di Luar KUHP*, Prenadamedia Gorup, Jakarta, p. 8

not retaliation as is commonly held. by the criminal system in Indonesia in the form of imprisonment.<sup>16</sup>

Estimation and the projected number of narcotics abusers tends to be stable from 2017 to 2022. This is because efforts to reduce the number of narcotics abusers have entered a stage that is increasingly difficult to reduce. Extra innovative and sustainable program strategies and activities are needed in order to significantly reduce both in terms of prevention and law enforcement, by setting targets for achievement that are much higher than currently.<sup>17</sup>

What is really needed for lawbreakers is "treatment" (treatment) rather than severe punishment. This means that the punishment given to the criminal should not be torture but only treat the "sickness" he suffers. On the other hand, experts with different views view that severe punishment is needed to prevent the increase in crime rates which tend to be high. So, it is more of a functional goal according to this second group.<sup>18</sup>

The provisions of sanctions regulated in Article 54 of Act No. 35 of 2009 concerning Narcotics adheres to a double track system, namely in the form of criminal sanctions and action sanctions. In the development of modern law, the term double track system is known, which means there is a separation between criminal sanctions and action sanctions. The development of the legal system is what introduces action (*maatregel*) as another alternative to the main punishment, especially imprisonment. This happens because of distrust of the success of "jail" as a form of punishment/sanction.<sup>19</sup>

One form of action sanctions against perpetrators of drug abuse is rehabilitation. However, based on the facts on the ground, it shows that judges tend to impose imprisonment on addicts. As a result, narcotics addicts are languishing in Correctional Institutions (*Lapas*) without being given the opportunity to be rehabilitated, so that the implementation of rehabilitation has not been much realized. This condition results in the emergence of other problems such as the burden of correctional institutions being over capacity.

The problem of drug abuse is a complex problem that requires a comprehensive prevention effort involving working with a multidisciplinary, multisectoral, and actively participating community. The rise of narcotics abuse is not only in big cities, but has penetrated into small-scale cities including Magelang. One of the components of law enforcement in Indonesia is the Attorney General's

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<sup>16</sup>Hera Saputra, Munsyarif Abdul Chalim, 2018, *Penerapan Sistem Pidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)*, dalam Jurnal Daulat Hukum Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 164, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2630/1979>

<sup>17</sup> Pusat Penelitian Data dan Informasi Badan Narkotika Nasional Republik Indonesia, "Survey Nasional Penyalahgunaan Narkoba di 34 Provinsi Tahun 2017", <https://docplayer.info/78146687-Survei-nasional-penyalahgunaan-narkoba-di-34-provinsi-tahun-2017-pusat-penelitian-data-dan-informasi-badan-narkotika-nasional-republik-indonesia.html>, accessed on 24 April 2020

<sup>18</sup> Siti Jahroh, 2011, "Reaktualisasi Teori Hukuman Dalam Hukum Pidana Islam," Jurnal Hukum Islam, Volume 9, No. 2, (December, 2011), p. 197,

<sup>19</sup>Gita Santika Ramadhani. 2012. "Sistem Pidana dan Tindakan "Double Track System" Dalam Hukum Pidana di Indonesia". *Diponegoro Law Review*. Volume 1. No. 4, 2012. p. 5

Office (hereinafter referred to as the Attorney General), where one of the roles of the Attorney General is in prosecuting criminal acts.<sup>20</sup>

Narcotics abuse has a negative impact on mental health, generally psychotic disorders, sleep disorders, severe depression, anxiety (excessive suspicion), behavior disorders, sexual function disorders, irritability, depression or hyperactivity or often moody, paranoid to mental disorders occur which is difficult to cure. In addition, the social impact is more prominent, making abusers become anti-social (rarely gather with family or neighbors), reduced motivation to study and work and even tend to commit criminal acts.<sup>21</sup>

Imprisonment by its nature means eliminating and or limiting freedom of movement, in the sense of placing the convict in a place (Penitentiary) where the convict is not free to go in and out and in it is obliged to obey and carry out all applicable rules and regulations. Between imprisonment and confinement, it seems the same, but these two types of crime are actually very different. Prison or today's term in Indonesia penitentiary is a new invention that began to develop widely in the last 300 years. It is part of the development of the criminal system from time to time. Nowadays imprisonment is seen as a form of crime that aims to improve criminals and is called the reform of the criminal system which goes towards a more rational direction.

Narcotics abuse is still a chronic problem that afflicts Indonesia, cases of shabu trafficking and the many arrests of international narcotics traffickers in recent years are evidence that Indonesia is in a state of narcotics emergency. The Indonesian government puts forward the role of the Police and the National Narcotics Agency (BNN) in preventing and eradicating narcotics trafficking in Indonesia. The efforts to prevent and eradicate narcotics are carried out in three stages, namely first, preemptive, namely prevention efforts that are carried out early. Second, Prevention is an effort that is strategic in nature and is a medium-term and long-term action plan, but must be seen as an urgent action to be implemented immediately. Third, repressive,<sup>22</sup> barriers to the Implementation of the Double Track System Model on Narcotics Abuse Perpetrators are the existence of different rules that can be applied to the same act, namely narcotics abuse; inadequate infrastructure; rehabilitation institutions for narcotics abuse and narcotics victims are still very limited.

The solution in the application of the double track system model against perpetrators of narcotics abuse is the provision of severe criminal sanctions coupled with the provision of integrated and supervised action sanctions until the perpetrator is fully recovered, completeness of infrastructure as a result of the judge's decision imposed with a system of action and punishment for perpetrators Narcotics abuse must be prepared in advance considering that the place to

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<sup>20</sup>Arif Hidayat and Sri Endah Wahyuningsih, 2018, *Role Of Prosecutor General Prosecution Of Actors In The Implementation Of Abuse Of Narcotics Crime (Case Study in Magelang District Attorney)*, dalam Jurnal Daulat Hukum Volume 1 (3), Published Master Of Law, Faculty of Law Unissula, p. 446, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3290/2423>

<sup>21</sup>Heriadi Willy. (2015). *Berantas Narkoba Tak Cukup Hanya Bicara*. UII Press. Yogyakarta, p. 59

<sup>22</sup>Bayu Puji Hariyanto, 2018, *Pencegahan Dan Pemberantasan Peredaran Narkoba Di Indonesia*, dalam Jurnal Daulat Hukum Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 201, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2634/1983>

undergo criminal punishment and rehabilitation must be separate. Besides that, it is necessary to prepare a budget for the implementation of the rehabilitation and criminal penalties.

#### 4. Conclusion

The application of the Double track system model of law against perpetrators of narcotics abuse is in the form of applying the law to serve a sentence in prison, while the sanctions for actions given to narcotics addicts as victims are in the form of treatment and/or treatment organized in the form of rehabilitation facilities. The implementation system is that the period of treatment and/or treatment is counted as a period of serving a sentence. Barriers to the Implementation of the Double Track System Model Against Narcotics Abuse Perpetrators are the existence of different rules that can be applied to the same act, namely narcotics abuse; inadequate infrastructure; rehabilitation institutions for narcotics abuse and narcotics victims are still very limited.

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