

## **Juridical Analysis of Criminalization & Rehabilitation of Narcotics Distributors & Abuser in Law Enforcement Indonesia**

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**Abstract.** *The purpose of this research is to find out the implementation of juridical analysis on sentencing and rehabilitation of drug traffickers and perpetrators of abuse in law enforcement in Indonesia (research study at BNNP KEPRI); To find out the factors that become obstacles or obstacles in sentencing and rehabilitation of dealers and perpetrators of narcotics abuse in law enforcement in Indonesia (Research Study at BNNP KEPRI). This study uses a sociological juridical approach, namely an approach that is not only legal but also uses social science. To find the problems in this study, the authors used research specifications in a descriptive analysis, namely to describe the implementation of punishment and rehabilitation for dealers and perpetrators of narcotics abuse.*

**Keywords:** *Abuser; Criminalization; Rehabilitation.*

### **1. Introduction**

The problem of narcotics is a classic problem but is still a big obstacle in law enforcement and the nation's development. Criminal acts are no longer carried out in secret but have been very openly committed by users and dealers in carrying out operations of these dangerous goods. The fact that can be witnessed, almost every day through both print and electronic media, turns out that these illicit goods have spread everywhere indiscriminately, especially among the younger generation who are expected to be the next generation of the nation in the future. Narcotics and psychotropics, throughout their history,

have been known in civilization, which were originally useful for health.<sup>1</sup>

The use of narcotics and psychotropics can cause some psychological paralysis which results in the loss of the human ability to perceive things. The loss of such ability has the potential to diminish the ability to concentrate and make decisions. In essence, criminal acts are actually actions that tend not to be carried out by humans if the ability to perceive humans is in good condition. The use of narcotics clearly has a close relationship in causing a crime.

The following is data on the increase in the number of detainees and convicts at national detention centers and prisons from 2013 to 2017 from the Corrections Database System (SDP) of the Directorate General of Corrections, Ministry of Law and Human Rights in 2017:<sup>2</sup>

REKAPITULASI KASUS DIT RES NARKOBA POLDA KEPRI DAN SATRESNARKOBA JAJARAN POLDA KEPRI TA. 2022

NO	SATUAN KERJA	JML KSS						JML TSK	WNI	WNA	BARANG BUKTI																			
		NARKOTIKA	PSIKOTROPIKA	BAYA	TOTAL		%				NARKOTIKA			PSIKOTROPIKA	OBAT & BARANG BERBAHAYA (JU KESEHATAN)			MINUMAN BERALKOHOL												
					CT	CC					NARKOTIKA	PSIKOTROPIKA	BAYA		L	P	L	P	HAPPY FIVE	KETAMIN / KEY	OBAT / JAMU	KOSMETIKA	KALENG	BOTOL	BOX / DISK					
																										gram	batang / polong	biji	gram	butir
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
1	POLDA	36	0	1	37	0	24.32	42	0	1	40	0	3	0	1554.99	0	0	395.18	2326	0	0	668.62	0	0	0	0	0	0	0	0
2	BARELANG	20	0	0	20	0	0.00	35	0	0	32	3	0	0	3992.6	0	0	26.08	1489	0	0	0	0	0	0	0	0	0	0	0
3	TG. PINANG	17	0	0	17	0	0.00	25	0	0	24	1	0	0	0.33	0	0	34.7	3	0	0	0	0	0	0	0	0	0	0	0
4	KARIMUN	19	0	0	19	1	5.26	32	0	0	28	4	0	0	9.52	0	0	1756.77	0	0	0	0	0	0	0	0	0	0	0	0
5	BINTAN	12	0	0	12	3	25.00	14	0	0	12	2	0	0	1.09	0	0	65.37	0	0	0	0	0	0	0	0	0	0	0	0
6	NATUNA	2	0	0	2	1	50.00	2	0	0	2	0	0	0	0	0	0	0.58	0	0	0	0	0	0	0	0	0	0	0	0
7	LINGGA	1	0	0	1	1	100.00	1	0	0	1	0	0	0	0	0	0	0.2	0	0	0	0	0	0	0	0	0	0	0	0
8	ANAMBAS	2	0	0	2	0	0.00	6	0	0	4	2	0	0	0	0	0	8.32	0	0	0	0	0	0	0	0	0	0	0	0
	JUMLAH	109	0	1	110	15	13.63636	157	0	1	143	12	3	0	5658.53	0	0	6277.80	3820	0	0	668.62	0	0	0	0	0	0	0	0

Perpetrators of Narcotics Crimes can be subject to criminal sanctions contained in the criminal provisions of Law no. 35 of 2009 concerning Narcotics, namely with the following classification:

a. Dealer

Criminal provisions for dealers in the Narcotics Law are regulated in Article 111, Article 112, Article 114, and Article 116 for Narcotics Group I. Article 117, Article 119, and Article 121 for Narcotics Group II. As well as Article 122, Article 124 and

<sup>1</sup>Bakhri, Drug Trafficking on a National Scale, Andi Offset, Yogyakarta, 2012, p. 1  
<sup>2</sup>Rully Novian et al, 'Strategy for Handling Overcrowding in Indonesia: Causes, Impacts and Solutions', First published, Institute for Criminal Justice Reform (ICJR), Jakarta, 2018, p. 4.

## Article 126 for Narcotics Group III.

### b. Producer

Producer is a person who carries out production activities by preparing, processing, manufacturing and producing Narcotics directly or indirectly through extraction or non-extraction from natural sources or chemical synthesis or a combination thereof, including packing and/or changing the form of Narcotics.<sup>3</sup>Criminal Sanctions that can be given to Narcotics producers are Article 113, Article 118, and Article 123 of the Narcotics Law.

### c. abuser

Abusers are people who use Narcotics without rights or against the law.<sup>4</sup>The application of criminal sanctions for abusers is regulated in Article 127 paragraph (1) of the Narcotics Law.

Based on Article 127 Paragraph (3) of the Narcotics Law, the abuser can be subject to medical rehabilitation and social rehabilitation sanctions if he is proven or can be proven to be a victim of Narcotics abuse.

a. The team of doctors which includes doctors and psychologists,

b. The legal team consists of elements from the National Police, BNN, the Attorney General's Office and the Ministry of Law and Human Rights.<sup>5</sup>

In practice, there have been several decisions imposing punishment in the form of rehabilitation for narcotics abusers, but there are still many court decisions that do not consider this matter and prefer to impose sentences in the form of imprisonment for narcotics abusers even though the abusers in the case meet the qualifications of abusers who can be sentenced to punishment in the form of rehabilitation which has a case position that is almost the same as the abuser who is sentenced to rehabilitation.

Do these different sentences conflict with one of the goals of law, namely justice? One of them is the principle of equality before the law which is a

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<sup>3</sup>Article 1 point 3 Law No. 39 of 2009 concerning Narcotics.

<sup>4</sup>Article 1 point 15 Law No. 39 of 2009 concerning Narcotics.

<sup>5</sup>Article 8 Point 3 Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Head of the National Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia Regarding Handling Narcotics Addicts And Narcotics Abuse Victims Into Rehabilitation Institutions

manifestation of the rule of law (*rechtstaat*) so that everyone must be treated equally before the law (*gelijkheid van ieder voor de wet*).<sup>6</sup>

So the purpose of this article is to find out the implementation of the role of the Riau Archipelago Province National Narcotics Agency in identifying Criminalization and Rehabilitation of Dealers and Actors of Narcotics Abuse in Law Enforcement in Indonesia.

## 2. Research Methods

This study uses a sociological juridical approach, namely an approach that is not only legal but also uses social science. To find the problems in this study the authors used research specifications in a descriptive analysis, namely describing the implementation of Criminalization and Rehabilitation of Drug Dealers and Perpetrators of Abuse in Law Enforcement in Indonesia

## 3. Results and Discussion

### **Implementation of juridical analysis of punishment and rehabilitation of dealers and perpetrators of narcotics abuse in law enforcement in Indonesia (Research Study at BNNP KEPRI)**

Article 127 paragraph 2 of the Narcotics Law instructs judges to pay attention to the provisions in Article 54, Article 55 and Article 103 in connection with the implementation of criminal rehabilitation if a narcotics abuser is proven to be an addict or a victim of narcotics abuse. Thus, the judge has the authority to pass a rehabilitation sentence for addicts and victims of narcotics abuse as long as it can be proven and in accordance with the facts at trial.

Article 112 of the Narcotics Law in its application is used to ensnare perpetrators of narcotic crimes. Article 127 of the Narcotics Law only applies to narcotics abusers as explained above. That the use of these articles has created legal uncertainty so that the purpose of the law itself is not optimally achieved. This is because many perpetrators of narcotics crimes are charged with Article 127 of the Narcotics Law, which should be the article for narcotics abusers. In the future, the country's legal political policy must emphasize that drug users/users are subject to rehabilitation, not imprisonment. Meanwhile, criminal sanctions can only be applied to kingpins, dealers, drug dealers.

State consistency through law enforcement officials is very important in implementing different treatment between drug users and dealers. According to Promovendus, it is better for our legal politics, eradicating drugs to consistently

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<sup>6</sup>Lilik Mulyadi, Criminal Procedure Code, Citra Aditya Bakti, Jakarta, 2007, p.20.

rehabilitate both medically and socially for drug abusers or users. The state, just focus on criminalizing drug dealers or dealers, this is more on target. Decriminalization or depenalization efforts are needed (a shift from a criminal act to a non-criminal one) against the drug abuse rules in the revision of the narcotics law. This is because drug users or users are actually victims who make mistakes, not perpetrators of crime, even though Article 127 of Law Number 35 of 2009 concerning Narcotics has directed the implementation of rehabilitation for users.

So, the right sanction for users is not punishment, but rehabilitation. If the wrong person makes him sick, then he must be healthy through the rehabilitation process. The policy of placing abusers in rehabilitation institutions through an assessment process without a formal trial is a form of depenalization of narcotics crimes where abusers, victims, and addicts who are initially given criminal sanctions are replaced by rehabilitation. The definition of depenalization is an act that was originally subject to a criminal penalty and then this criminal threat is removed, but it is still possible to have charges in other ways than criminal prosecution.<sup>7</sup>

The European Union Central Government Agency which coordinates drug policy data or the European Monitoring Center for Drugs and Drug Addiction (EMCDDA), defines depenalization as follows:<sup>8</sup>“Depenalization means the use of drugs remains a criminal offense, but a prison sentence will not be imposed on the ownership or use even when other criminal sanctions (example, muct, police records, probation) are possible.”

Depenalization means drug use remains a criminal offence, but imprisonment is no longer imposed for possession or use even when other criminal sanctions (eg fines, police records, probation remain possible). In the concept of depenalization, the implementation of rehabilitation for narcotics abusers, victims and addicts does not go through the mechanism of the criminal justice system as stipulated in the Criminal Procedure Code which leads to the prosecution and imposition of criminal decisions by judges. In this context, rehabilitation is obtained through an assessment mechanism carried out by an integrated and independent team to decide whether drug abusers, victims and addicts meet the requirements to be subject to a rehabilitation policy without going through the criminal justice process.

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<sup>7</sup>Glenn Greenwald, "National Leadership Council of the National Movement of Concern Against Drugs and Brawl, Building a Paradigm of Decriminalization of Victims of Narcotics Users, <http://www.gepenta.com>, accessed on 19 June 2023

<sup>8</sup>Supardi, Pros and Cons of Death Penalty Against Drug Crimes”, <http://www.bnn.go.id/konten>, accessed on 19 June 2023

Law Number 35 of 2009 concerning Narcotics does not explicitly mention the decriminalization/depenalization of narcotics abusers, but the decriminalization/depenalization of narcotics abusers is constructed in legal policies and state legal politics as set out in a number of Articles of Law Number 35 of 2009 concerning Narcotics.

The period of undergoing rehabilitation is counted as a period of serving a sentence and gives authority to judges to convict cases of narcotics addicts with criminal rehabilitation to suspects who are proven guilty or not proven guilty (Article 33 of Law Number 9 of 1976).

The rehabilitation policy for victims of Narcotics abuse has indeed created a legal polemic in its application, specifically in the implementation of a policy to rehabilitate these Narcotics addicts/users punishment. Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation.

The elucidation of Article 54 states that "What is meant by 'victim of Narcotics abuse' is someone who accidentally uses Narcotics because they are persuaded, tricked, tricked, forced and/or threatened to use Narcotics", so they are required to receive rehabilitation both medically and socially.

Rules regarding rehabilitation for narcotics addicts then also enter the realm of law enforcement in court as stated in Article 103 of the Narcotics Law that "Judges who examine cases of narcotics addicts can:

a) Decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a crime of Narcotics; or

b) Determine to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty of committing a crime of Narcotics." This means that the court can decide someone who is proven to be a victim of abusers and addicts to be punished with rehabilitation if the person is proven guilty or not guilty of narcotics crimes. Even though the phrase "can" in Article 103 of the Narcotics Law is still multi-interpreted, as was alluded to in the previous chapter.

The Supreme Court of the Republic of Indonesia as the highest judicial power holder in Indonesia has paid special attention to law enforcement for narcotics abusers. Especially since the enactment of the Narcotics Law, judges as the last bastion of law enforcement have received extra authority to be able to give rehabilitation verdicts for addicts and victims of narcotics abuse. The issuance of the Republic of Indonesia Supreme Court Circular Letter Number 4 of 2010

Concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Institutions for Medical Rehabilitation and Social Rehabilitation (SEMA 4 of 2010) is a form of special attention to law enforcement, especially the rehabilitation of abusers, victims of abusers and narcotics addict. SEMA 4 of 2010 contains guidelines for law enforcers, especially judges regarding the conditions for sentencing as referred to in Article 103 of the Narcotics Law letters a and b referring to the extra authority for judges to decide on rehabilitation verdicts. SEMA 4 of 2010 clearly states that the application of Article 103 of the Narcotics Law can be applied if several conditions have been met, namely:<sup>9</sup>

1. At the time of his arrest by Polri investigators and BNN investigators, the accused was caught red-handed;
2. At the time of being caught red-handed according to point a above, evidence of 1 (one) day usage was found with details as follows:
  - a. Methamphetamine group (meth): 1 gram
  - b. MDMA group (ecstasy): 2.4 grams = 8 items
  - c. Heroin group: 1.8 grams
  - d. Cocaine group: 1.8 grams
  - e. Marijuana Group: 5 grams
  - f. Coca leaves: 5 grams
  - g. Mescaline: 5 grams
  - h. Psilosybin group: 3 grams
  - i. LSD group (d-lysergic acid diethylamide): 2 grams
  - j. PCP group (phencyclidine): 3 grams
  - k. Fentanyl group: 1 gram
  - l. Methadone group: 0.5 grams
  - m. Morphine group: 1.8 grams

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<sup>9</sup>Muhamad Zaky Albana, Survey of Judge Perceptions in the Implementation of Criminal Rehabilitation, Kencana, Jakarta, 2021, page 86

n. Pethidine group: 0.96 gram

o. Codeine group: 72 grams

p.s. Bufrenorphine group: 32 mg

3. Positive laboratory test letter using narcotics at the request of the investigator.

4. Need a certificate from a government psychiatrist/psychiatrist appointed by the judge.

5. There is no evidence that the person concerned is involved in the illicit trafficking of narcotics.

The sanctions regulated in the Narcotics Law adhere to a double track system, namely in the form of criminal sanctions and action sanctions.<sup>10</sup> Rehabilitation is a form of action sanctions. In Article 103 of the Narcotics Law it is emphasized that judges can decide or determine drug addicts to undergo treatment and or treatment. The period of undergoing treatment and or treatment is counted as the period of serving a sentence. This is in line with one of the objectives of the formation of the Narcotics Law, namely to ensure the regulation of medical and social rehabilitation efforts for narcotics addicts. However, based on existing data it shows that judges tend to impose prison sentences on addicts. As a result, narcotics addicts who are in prison are not given the opportunity to undergo rehabilitation, so that the implementation of rehabilitation has not run optimally. Until now, the narcotics rehabilitation program in prisons has not run optimally.<sup>11</sup>

The basis for setting assessments in carrying out the rehabilitation of victims of narcotics abuse is Article 4 letter d, Articles 54-58, Article 103 of Law no. 35 of 2009 concerning Narcotics, Supreme Court Circular Letter (SEMA) No. 4 of 2010 concerning the Determination of Narcotics Abuse and Addicts Into Medical Rehabilitation and Social Rehabilitation Institutions as well as a Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Head of the National Police of the Republic of Indonesia and Head of the National Narcotics Agency of the Republic of Indonesia Number: 01/PB/MA/III/2014, Number: 03 of 2014, Number:

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<sup>10</sup>Puteri Hikmawati, Analysis of Sanctions ... Op Cit pp 329–350.

<sup>11</sup>Insan Firdaus, The role of community counselors in efforts to deal with overcrowding in JIKH correctional institutions, Vol. 13 No. 3 (2019): 339-358

11/2014, Number: 03 of 2014, Number: PER-005/A /JA/03/2014, Number: 1 of 2014, Number: PERBER/01/III/2014/BNN Concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. The obligation to rehabilitate narcotics abuse must be carried out because of their position as a victim.

Rehabilitation is mandatory for addicts and victims of narcotics abuse because as a victim of narcotics, at that stage alone a negative stigma is attached to them. Rehabilitation can avoid the application of criminal law to an addict or victim of narcotics abuse and there will be a possibility to prevent someone from becoming evil again.

The assessment of victims of narcotics abuse at the Police of the Republic of Indonesia is the same as that carried out by the National Narcotics Agency, that is, if victims of narcotics abusers or addicts report without an arrest process, the Police will direct/recommend directly to the Compulsory Report Receiving Institution (IPWL) and if the victim a narcotics abuser or addict is caught by the Police, the process is to receive an assessment request from an investigator no later than 1 x 24 (one twenty four) hours, the integrated assessment team conducts an assessment after receiving the request and the integrated assessment team carries out their duties and provides recommendations on the results of the assessment within a certain period of time no later than 6 (six) days for the investigator to report in writing to the local district court.<sup>12</sup>

Implementation of an integrated assessment mechanism based on several regulations, including Joint Regulations between BNN and Mahkumjakpol, Ministry of Health and Ministry of Social Affairs regarding the handling of Narcotics addicts and victims of Narcotics abuse into Rehabilitation Institutions, Supreme Court Circular Letter Number 04 of 2010 regarding the placement of abusers, victims of abuse and Narcotics Addicts into the Institute for Medical Rehabilitation and Social Rehabilitation, Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning procedures for Handling suspects and/or accused Narcotics addicts and victims of Narcotics abuse into Rehabilitation Institutions, Attorney General's regulation Number 29 of 2015 concerning technical instructions for handling Narcotics addicts and victims of Narcotics abuse in Rehabilitation Institutions and Ministry of Health regulation number 50 of 2015 concerning technical instructions for the implementation of mandatory reporting and medical rehabilitation for addicts, abusers and victims of Narcotics abuse.

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<sup>12</sup>Wilson Bugner f. Pasaribu, Legal Analysis of the Implementation of Assessments for Victims of Narcotics Abuse in the Republic of Indonesia Police, Journal of FH Unsu, 2017

The integrated assessment team consists of 2 (two) teams, namely a team of doctors, consisting of: doctors and psychologists as well as a legal team consisting of: members of the National Police (Indonesian National Police), BNN (National Narcotics Agency), Attorney and Kemenkumham (Ministry of Law and Human Rights). HAM). The formation of an integrated assessment team is a step to carry out an assessment of narcotics abusers or narcotics addicts at the levels of investigation, prosecution, trial and punishment.

Integrated Assessment work procedures:<sup>13</sup>

- 1) The application as referred to in Article 8 paragraph (3) shall be submitted by the Investigator no later than 1 x 24 (one time twenty four) hours after the arrest.
- 2) The Integrated Assessment Team conducts an assessment after receiving the application as referred to in paragraph (1).
- 3) The Integrated Assessment Team as referred to in paragraph (2) carries out their duties and provides recommendations on the results of the assessment within a maximum period of 6 (six) days to Investigators to be reported in writing to the local District Court.

Assessment in its implementation, includes:

- a. Interview regarding medical history, history of use of Narcotics, history of medication and treatment, psychiatric history, and family and social history of the suspect and/or defendant;
- b. Observation of the suspect's behavior; And
- c. Physical and psychological examination. The assessment is carried out and signed by at least 2 (two) members of the Medical Team.

The prospect of setting an integrated assessment of narcotics abusers in the future, the criminal law policy will see how far the applicable criminal provisions need to be changed and updated. Criminal law reform (penal reform) is also part of criminal law policy/politics (penal policy).<sup>14</sup>

Law Number 35 of 2009 concerning Narcotics has 4 main objectives listed in Article 4, namely, guaranteeing the availability of narcotics for the benefit of health services and/or the development of science and technology, preventing,

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<sup>13</sup>BNN Regulation Number 11 of 2014 Article 14 Paragraph 1-3

<sup>14</sup>Ibid

protecting and saving the Indonesian nation from narcotics abuse, eradicating drug trafficking illicit narcotics and narcotics precursors and ensure the arrangement of medical and social rehabilitation efforts for narcotics abusers and addicts.

Rehabilitation efforts are part of a treatment and rehabilitation strategy that uses two approaches, namely, reducing narcotics dependence for narcotics addicts through medical rehabilitation (eliminate drug dependency) and coaching with monitoring so that they can return to society and not be involved in narcotics use again (prevent recidivism).<sup>15</sup>The rehabilitation referred to in the Narcotics Law has the goal of freeing addicts from narcotics dependence, in the concept of the World Health Organization (WHO) it is called abstinence-based recovery, namely a condition in which a person actually stops and no longer uses narcotics.<sup>16</sup>The purpose of the Narcotics Law towards medical and social rehabilitation efforts is closely related to the authority of judges as stipulated in Article 103 of the Narcotics Law which provides additional authority for judges to be able to decide or determine to order rehabilitation if the Narcotics Addict is proven guilty or not guilty of committing a narcotics crime.

The implementation of rehabilitation did not run smoothly, there was confusion from the definition in the Narcotics Law. Article 4 of the Narcotics Law states that "The Narcotics Law aims to guarantee arrangements for medical and social rehabilitation efforts for drug abusers and addicts." However, Article 54 of the Narcotics Law states that "Narcotics Addicts and Victims of Narcotics Abuse are required to undergo medical rehabilitation and social rehabilitation." Looking at Article 54, it means that the right of abusers to receive rehabilitation is not recognized. Abusers who initially receive rehabilitation guarantees in Article 127 of the Narcotics Law, then also become subjects who can be convicted and lose their rehabilitation rights, unless they can be proven or proven to be victims of narcotics.<sup>17</sup>

Judges as the spearhead of the justice system are often seen as the party responsible for the large number of narcotics abusers who are sentenced to imprisonment. Sentences by judges in narcotics abuse cases have not been effective, because most narcotics addicts are not sentenced to rehabilitation.<sup>18</sup>

The judge is considered to have interpreted and misused the principle of the judge's belief which then deviated from the objectives of the Narcotics

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<sup>15</sup>Siswanto, Legal Politics in Laws ...Op Cit p. 87

<sup>16</sup>Community Legal Aid Institute, Unraveling the Narcotics Law, Jakarta: 2013, p. 9

<sup>17</sup>Donny Michael, Implementation of the Narcotics Law From a Human Rights Perspective, De Jure, Volume 18, Number 3: September 2018, p. 420

<sup>18</sup>Yasonna p. Laoly, Deadly Snare: The Perspective of Economic Welfare in Drug Abuse, Alvabet Library, Tangerang: 2019, p. 121.

Law.<sup>19</sup>Even though judges as law enforcers and courts as institutions are a part of the criminal justice system which includes other law enforcement officials such as the police and prosecutors. In the criminal justice system, whatever becomes a judge's decision is always related to the investigation process by the police and the charges filed by the prosecutor. In relation to rehabilitation, the narcotics criminal justice system is closely related to the National Narcotics Agency (BNN) which has the task of carrying out government duties in the field of prevention, eradication of drug abuse and illicit traffic. The minimum number of rehabilitation sentences and the large number of narcotics abusers who are sent to prison do not necessarily make judges the party most responsible. In accordance with its independence,

Implementation of criminal rehabilitation must also get support from the supporting facilities and infrastructure. Based on data from the National Narcotics Agency, there are 176 rehabilitation facilities consisting of 113 government agency rehabilitation facilities and 63 community component rehabilitation facilities in 34 provinces that meet minimum service standards.<sup>20</sup>Of course, this number is still inadequate considering the availability of rehabilitation facilities is very important because in SEMA No. 4 of 2010 states that a judge who imposes a sentence in the form of an order to take legal action in the form of rehabilitation for the accused must clearly and explicitly designate the nearest place of rehabilitation in his decision. One of the objectives of the Narcotics Law is to guarantee arrangements for medical and social rehabilitation efforts for narcotics abusers and addicts. In implementing the rehabilitation, cooperation and understanding between law enforcement officials is required. Even though in 2014 there was a Joint Regulation between the Chief Justice of the Supreme Court of the Republic of Indonesia.

Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, National Police Chief and Head of the National Narcotics Agency regarding the handling of narcotics addicts and victims of narcotics abuse in rehabilitation institutions. Judges specifically get extra authority in the Narcotics Law, but its implementation must be supported by the results of TAT recommendations, expert witness statements, availability of rehabilitation facilities and a clear legal basis. The minimum number of rehabilitation sentences is not only the responsibility of judges and judicial institutions but also related law enforcers starting from the level of investigation, assessment, and public prosecutors.

#### **4. Conclusion**

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<sup>19</sup>Ibid p. 48

<sup>20</sup>National Narcotics Agency Performance Report 2019, Jakarta: 2020, p. 35.

The implementation of rehabilitation did not run smoothly, there was confusion from the definition in the Narcotics Law. Article 4 of the Narcotics Law states that "The Narcotics Law aims to guarantee arrangements for medical and social rehabilitation efforts for drug abusers and addicts." However, Article 54 of the Narcotics Law states that "Narcotics Addicts and Victims of Narcotics Abuse are required to undergo medical rehabilitation and social rehabilitation." Looking at Article 54, it means that the right of abusers to receive rehabilitation is not recognized. Abusers who initially receive rehabilitation guarantees in Article 127 of the Narcotics Law, then also become subjects who can be convicted and lose their rehabilitation rights, unless they can be proven or proven to be victims of narcotics.

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