

Fulfilment of the Right to a Fair Justice for Victims and Narcotics Abusers in Indonesia

I Made Widia Wirya Putra^{1✉}, Dewi Sulistianingsih²,
Dani Muhtada³

^{1,2,3} Faculty of Law, Universitas Negeri Semarang, Indonesia

✉ Corresponding email: igedealaska@gmail.com

Abstract

The purpose of this paper is to analyze the fulfillment of the right to rehabilitation for addicts and victims of narcotics abuse in Indonesia in the perspective of the right to a fair trial. The research method used in normative legal research is because the focus is to study written law from various aspects, such as theory, history, philosophy, structure and composition, scope and material, article by article and general explanation, formality and binding force of a law and the legal language used. The approach used in this study is the approach Statute Approach which is an approach to review legislation related to research themes, Analytical & Conceptual Approach which is an approach by studying views and doctrines that develop in legal science. The mechanism for applying rehabilitation sanctions itself is based on an assessment, assessment is known to be an assessment action to find out the condition of residents due to drug abuse which includes medical aspects and social aspects, this is what must be done by law enforcement officials to guarantee their rights as suspects such as the Justice Fair Trial Principle. The

central-level Integrated Assessment Team (TAT) is determined by the National Narcotics Agency (BNN), after coordinating with the Ministry of Health, the National Police, the Indonesian Prosecutor's Office, and the Ministry of Law and Human Rights (BAPAS), related to the application of rehabilitation sanctions against addicts and victims of narcotics abuse, after obtaining approval from each of these agencies.

Keywords

Fair Justice, Fulfilment of Rights, Addicts, Abusers

A. Introduction

From the nineties until now, crimes do not only occur within the territory of a country but further the crimes have crossed the borders of other countries, the phenomenon is called transnational crime or transnational crime. Referring to the data, Kemenlu.go.id stated that the groups included in the transitional crime are smuggling of persons and/or humans, crimes of corruption, crimes of narcotics and illegal drugs (drugs), transnational crimes of new and developing countries, including: (a) *Cybercrime*; (b) *Identity-related crime*; (c) Illicit trade in cultural heritage objects; (d) environmental crimes; (e) piracy at sea, and (f) illicit trafficking of human bodies.

One of them is a crime that is almost exceedingly difficult to eradicate, namely the crime of Narcotics, considering that it is not impossible that this crime is a transactional crime from the lower class to the upper class. As contained in Article 1 of Law Number 35 of 2009 is a substance or drug derived from plants or non-plants or semi-synthetic that can cause a decrease in consciousness, loss of pain and can cause dependence. The use of narcotics in human life is for medicinal purposes, in this case narcotics are used as drugs for pain relief for people with serious injuries.¹

Narcotics abuse among the younger generation is increasing in Indonesia, the deviation of the behaviour of young people can endanger the future generations of this nation

¹ Law of the Republic of Indonesia, "Law Number 35 of 2009 concerning Narcotics" (Jakarta, 2009).

because a person who is addicted to drugs will feel addicted (*sakau*) which results in a feeling of discomfort and even a feeling of great pain in the body. Based on data from Kominfo 2021, it is explained that drug use is among young people aged 15-35 years with a percentage of 82.4% as a user, while 47.1% play the role of a dealer, and 31.4% as a courier.²

This then makes narcotics crime a transnational crime, as conveyed by Roni Gunawan Rajaguguk and Nyoman Serikat Putra Jaya, that narcotics crime as a transnational crime that becomes a terrifying scourge for a country³ departing from the global awareness of narcotics so as to form an arrangement outlined in *The United Nations Single Convention on Narcotic Drugs* 1961⁴

Narcotics crimes were initially regulated in Law Number 22 of 1997. However, along with the development of the times and the development of human minds and culture, there has been a shift in orientation that originally only prioritized the purpose of criminalization and eradication of illicit narcotics trafficking. The orientation of the shift in purpose can be seen from the history of changes in laws and regulations related to narcotics.

² "Avoid Narcotics to Educate the Nation's Young Generation," n.d. See also Ni Nyoman Juwita Arsawati, and Komang Febriana. "Legal Education Regarding the Dangers of Narcotics Abuse Among Adolescents in Senganan Village." *Jurnal Pengabdian Hukum Indonesia* 6, no. 1 (2023): 157-164; Anisa Yulianti, and Muhammad Rokhi Al Magfur. "Legal Protection Against Children as Intermediary of Purchase of Narcotics at Polewali Mandar Police Resort Area (Case Study Year 2013-2015)." *Jurnal Scientia Indonesia* 5, no. 2 (2019): 90-104.

³ Roni Gunawan Rajaguguk and Nyoman Kesatuan Putra Jaya, "Narcotics Crime as Transnational Organized Crime," *Journal of Indonesia Legal Development* 1, no. 3 (2019). See also Maulana Fuad Nugraha, and Robert Antonio. "Drug Abuse in the Young Generation: Law Enforcement Challenges (Comparative Study of Indonesia and Australia)." *Journal of Creativity Student* 7, no. 1 (2022): 19-34; Nur Rohim Yunus, et al. "Drug Abuse as an Extra-Ordinary Crime: Some Legal and Political Debates." *Jurnal Scientia Indonesia* 8, no. 1 (2022): 71-88; Syigit Dony Kurniawan, "The Capital Punishment for Narcotic Crime: Pros and Cons in Indonesian Legal System." *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 393-406.

⁴ A. Indra Rukmana, "Narcotics Trafficking in the Perspective of International Criminal Law," *Journal of Legal Opinion* 2, no. 1 (2014).

After the *United Nation's Single Convention on Narcotic Drugs* 1961 ran for 11 (eleven) years, it was deemed necessary to update the convention. From March 6 to March 24, 1972, in Geneva, a conference was held (*United Nations Conference to consider Amendments to the Single Convention on Narcotic Drugs, 1961*) which resulted in the *Protocol Amending the Single Convention on Narcotic Drugs, 1961*, which was opened for signature on March 25, 1972.⁵

Indonesia then made concrete efforts by ratifying the adopted law of the Republic of Indonesia Number 5 of 1997 concerning Psychotropics. Furthermore, armed with the results of the 1988 United Nations Convention on the Eradication of Illicit Narcotics and Psychotropics, Indonesia updated the Law of the Republic of Indonesia Number 5 of 1997 concerning Psychotropics to Law of the Republic of Indonesia Number 22 of 1997 concerning Narcotics. However, the principles of the regulated norms are still concerned with the eradication of illicit narcotics trafficking with criminal sanctions.⁶

Referring to the provisions in Article 1 number 13 of Law Number 35 of 2009 which reads: "*Narcotics Addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically*"; and Article 1 number 15 of Law Number 35 of 2009 concerning Narcotics which reads: "*An abuser is a person who uses narcotics without rights or against the law.*"⁷

This means that based on the law mentioned above, a person who misuses narcotics as an addict is classified as a criminal offender, because the two articles above are contradictory to each other. In principle, a Narcotics Abuser / Addict is a party who directly experiences the adverse impacts/risks of narcotics abuse, such as experiencing dehydration, hallucinations, decreased consciousness, decreased quality of life and even death due to overdose.

⁵ Syukur Kurniawan Gulo, "Juridical Analysis of Verdicts Separated from All Lawsuits in Narcotics Crimes" (HKBP Noummensen Medan, 2012).

⁶ Moh. Zakky Moh. Taufik Makarao, Suhasril, "Narcotics Crimes" (Jakarta: Ghalia Indonesia, 2004), 53.

⁷ Law of the Republic of Indonesia, "Law Number 35 of 2009 concerning Narcotics."

If it is associated with the reading of Article 1 number 2 in Law Number 13 of 2006, concerning the Protection of Witnesses and Victims, which states that "*A victim is a person who experiences physical, mental, and/or economic suffering resulting from a criminal act*" then a narcotics abuser in this case is actually a victim of a narcotics crime if looking at the development of perpetrators of narcotics crimes which in general are victims both as addicts and as abusers, so the government in order to save the young generation of the nation's hopes who have fallen into the victim of narcotics abuse needs to make fundamental changes to protect addicts and victims of narcotics abuse.

Then in 2009 the Government together with the Legislature issued Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics which repealed the enactment of Law of the Republic of Indonesia Number 22 of 1997 concerning Narcotics. The birth of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics requires law enforcement officials to prioritize the protection of the rights of addicts and victims of narcotics abuse to be saved by not committing crimes but replaced with concrete actions in the form of Rehabilitation.⁸

The mandate contained in Article 35 of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics expressly gives orders to law enforcement officials in the criminal justice system in Indonesia to be obliged to provide rehabilitation measures for addicts and victims of narcotics abuse. With rehabilitation, it is hoped that it will suppress the circulation of narcotics trafficking in illicit trade, both local trade and trade involving transactions between countries carried out by international *organized crime organizations*, but in reality until now narcotics abuse still exists and is increasing, even the problem of narcotics has become a serious problem for the community Indonesia.⁹

As in the research of Ade Yazrul and Iyah, the government in this case has an obligation that cannot be underestimated to protect the young generation from the bad influence of narcotics,

⁸ Gatot Supramono, "Indonesia's Drug Law" (Jakarta: Djambatan, 2001), 439.

⁹ Siti Hidayatun and Yeni Widowaty, "The Concept of Rehabilitation for Fair Narcotics Users," *Journal of Law Enforcement and Justice* 1, no. 2 (2020).

considering that the number of narcotics addicts is the young generation with a productive age.¹⁰ Referring to data from the Indonesia Child Protection Commission (KPAI), the number of drug users is 82.4% of children who use narcotics¹¹. Efforts to solve this narcotics problem have been recognized cross-sectoral by looking at preventive and repressive aspects, this is then as the regulation on narcotics has been issued by the government.¹²

If referring to Law Number 35 of 2009 concerning Narcotics in the application of sanctions, it has also adhered to the *double track system* which is by providing criminal sanctions and action sanctions, one of which is action sanctions in the form of rehabilitation which is expected to be able to be an alternative in breaking the chain of narcotics trafficking.¹³ The authority given by law to law enforcement officials, the provision of rehabilitation sanctions for addicts who are victims of narcotics abuse who are obliged to provide treatment and treatment through medical rehabilitation and social rehabilitation.¹⁴

Efforts that can be made to fulfil, implement and realize the rights of addicts and victims of narcotics abuse to get rehabilitation must be accompanied by supporting facilities and infrastructure to achieve the goal of overcoming addicts and victims of narcotics abuse, which will ultimately have an impact on breaking the chain of narcotics circulation in society, especially the younger generation. So that the provision of rehabilitation for addicts and victims of narcotics abuse is

¹⁰ Ade Yazrul and Iyah Faniyah, "The Effectiveness of Guidance for Narcotics Clients by the Padang Class I Correctional Center to Prevent Narcotics Abuse Crimes," *UNES Law Review* 1, no. 3 (2019).

¹¹ "Narcotics use among adolescents is increasing," n.d.

¹² Dani Krisnawati and Niken Subekti Budi Utami, "Implementation of Rehabilitation for Narcotics Addicts After the Enactment of Joint Regulation 7 (Seven) State Institutions of the Republic of Indonesia," *Legal Pulpit* 27, no. 2 (2015); Salma Widiayam, Oheo Haris, and Siti Aisah Abdullah. "Criminal Law Study on Narcotics Abuse Rehabilitation." *Indonesian Journal of Criminal Law Studies* 5, no. 1 (2020): 55-62.

¹³ Riki Afrizal and Upita Anggunsuri, "Optimizing the Assessment Process for Narcotics Abusers in the Context of the Effectiveness of Medical and Social Rehabilitation for Narcotics Addicts," *De Jure Legal Research Journal* 19, no. 3 (2019).

¹⁴ Siti Hidayatun and Yeni Widowaty, "The Concept of Rehabilitation for Narcotics Users with Justice."

considered necessary to suppress the use of narcotics and illegal drugs.¹⁵ However, in practice, the application of sanctions for addicts and victims of narcotics abuse to obtain the right to rehabilitation has not been carried out as it should, there are still criminal arguments that ultimately cause jealousy for perpetrators of narcotics crimes who meet the criteria as addicts and victims of narcotics abuse. This is because there are still many law enforcement officials in the criminal justice system who ignore the obligation to provide sanctions for actions, on the contrary, they prioritize prison sanctions for narcotics addicts, so that this also causes overcapacity in public institutions.¹⁶

This was then reaffirmed in relation to the Supreme Court Circular Letter (SEMA) Number 4 of 2010 2010 concerning the Placement of Abusers, Victims of Narcotics Abusers into Medical and Social Institutions, but until now the optimization of sanctions in the form of rehabilitation is still very minimal, this is then inseparable from the factors of the means and pre-objectives of the government in providing facilities in fulfilling the rights of victims in narcotics abuse.

Then in its development, the rules regarding the funding system have changed, one of which is through the criminal provisions for narcotics crimes as stipulated in Law Number 1 of 2023 concerning the Criminal Code or known as the National Criminal Code. Of course, the inclusion of narcotics crimes in the National Criminal Code gives a novelty and even the basic assumption that drug abuse and addicts in its principle is a criminal act that is considered quite severe. If you look at the explanation of the second book of the National Criminal Code, the serious crimes that are classified are Human Rights, Terrorism, Corruption, Money Laundering, and Narcotics, which are then grouped into one special chapter, namely the Special Crimes Chapter.

The specific formulation in the regulation related to narcotics itself is contained in Article 609 of the National Criminal Code, but if you look at the material in article aquo, it is still similar to Articles 111 and 112 of Law Number 35 of 2009

¹⁵ Sujono AR and Daniel Bony, *Comments and Discussion of Law Number 35 of 2009 concerning Narcotics* (Jakarta: Sinar Grafika, 2011).

¹⁶ "Researchers Find Prisons in RI Over Capacity – DW – 21.09.2022," n.d.

concerning Narcotics which regulates the possession, control, provision, and storage of narcotics. This means that with the repetition that occurs in the content of the article, it has the potential to repeat the failures in Law Number 35 of 2009 which will lead to the scanning of prisons which is likely to return to *prison overcrowding*.

The National Criminal Code only regulates the application of rehabilitation for narcotics defendants contained in Article 105, but this article does not regulate the authority of law enforcement officials to arrest and detain narcotics users, as is currently practiced in the application of Law Number 35 of 2009 concerning Narcotics which still uses forced arrest and detention for narcotics abuse or addicts. This type of regulation of narcotics articles in the National Criminal Code is the same as justifying narcotics addicts and abusers as criminalization.

The problem of punitive regulation of narcotics crimes denies the spirit of the *Sustainable Development Goals* (SDGs) which guarantee the fulfilment of the right to health and access to justice with the principle of "*No One Left Behind*" which means that no one is left behind, including for narcotics users who are still stigmatized and discriminated against and far from health and social services based on human rights. even though in the pre-trial system we know the name of fair justice.

Juridically, normative justice that is fair must still be prioritized because the purpose, especially criminal law, is that no one should be unfairly enforced in the judicial process, especially in criminal justice for narcotics crimes. Suparman Marzuki gave the definition of Fair Justice as "*A fair court or fair court is a universal principle that must be implemented by the court to protect human rights and the constitutional rights of citizens from possible violations by law enforcement officials, especially when a person deals with the law in court*"¹⁷ This was later reiterated in the Declaration of Human Rights which is hereinafter referred to as the UN Human Rights Declaration explicitly stated in Article 10 which states that "*every person, in full equality, has the right to a fair and open trial by a free and*

¹⁷ Suparman Marzuki, "Fair Courts: Trends in Violations of the Code of Ethics and Code of Conduct by Judges," *Jurnal Hukum Ius Quia Iustum* 22, no. 03 (2015).

*impartial court, in establishing his rights and obligations and in every criminal charge brought against him"*¹⁸

One of the forms of the state after ratifying the UN Human Rights Decree which was then explicitly regulated in the laws and regulations of Law Number 35 of 2009 concerning Narcotics which covers addicts and victims of narcotics abuse which is still to this day addicts and victims of narcotics abuse are still discriminated against. Decriminalization is a concrete act of the state in protecting addicts and abusers as victims of narcotics, so this article then stems from the anxiety that should be in the court to be treated with a fair justice in imposing rehabilitation sanctions for addicts and victims of narcotics abuse to be able to protect the rights and consequences of narcotics abuse. Departing from the above background, a concrete question arises, namely how to fulfil the rights of addicts and victims of narcotics abuse in a fair trial based on Indonesia law.

This legal research is normative legal research because the focus is to study written law from various aspects, such as theory, history, philosophy, structure and composition, scope and material, article by article and general explanation, formality and binding force of a law and the legal language used¹⁹ The approach used in this study is the statute approach which is an approach to review legislation related to the research theme, the analytical & conceptual approach which is an approach by studying the views and doctrines that develop in legal ²⁰science The object of the research is the fulfilment of the right to rehabilitation for addicts and victims of narcotics abuse in Indonesia and the consistency of the application of rehabilitation sanctions as a right for addicts and victims of narcotics abuse in the perspective of the right to a fair trial. The data analysis used is qualitative descriptive, namely describing the presentation of the results of the analysis, drawing conclusions that can explain the fulfilment of the right to rehabilitation based on fair justice in the application of rehabilitation sanctions for addicts and drug abusers.

¹⁸ Suparman Marzuki.

¹⁹ Abdulkadir Muhammad, *Law and Legal Research* (bandung: PT. Citra Aditya Bakti, 2004).

²⁰ Johnny Ibrahim, *Normative Law Research Theory and Methods* (Bandung: Citra Aditya Bakti, 2007).

B. Stages and Mechanisms for Resolving Narcotics Cases with the Application of Fair Justice Principles

Discussing the issue of mechanisms, of course, this is inseparable from how the criminal procedural law is carried out by law enforcement, but in the criminal system it will continue to develop so that it will provide a sense of justice for all justice seekers, especially in narcotics crimes committed by victims/addicts and narcotics abusers. The development of the national criminal justice system in several countries adhering to the common law and civil law systems has not changed much from the traditional characteristics that are often mentioned in the "*due process of law*" and "*crime model*" models.²¹ If you pay attention, the slow development of the judicial system does not only occur in Indonesia, but this is not an obstacle to making new legal breakthroughs to achieve the goal of the criminal law.

The development of material criminal law accompanied by the development of formal criminal law will certainly affect the law enforcement process. This can be proven by the fact that new legal problems often arise in law enforcement because there is a void in formal law and/or there is a conflict of norms between the provisions in the material criminal law and the formal law, one of which occurs is the process of transferring narcotics abusers in the Narcotics Law which is inconsistent

All forms of mechanisms will be hampered because there is an inconsistency in a person's criminalization, this requires the application of the principles contained in fair justice in accordance with the concepts of fair justice. Narcotics abuse is not always given the right to health even though the addict is someone who needs the help of others, and of course in this case the one who can help is a person who is an expert in rehabilitation.

The impact of the non-fulfilment of the rights of narcotics abuse provides over the capacity of narcotics prisons, and even if sanctions are given, the state must provide all facilities and infrastructure for the benefit of addicts' health, this is very

²¹ Romli Atmasasmita, *Contemporary Criminal Justice System*, Pe Print (Jakarta: Kencana Prenada Media Group, 2011).

difficult to realize because the state has not been able to provide facilities and infrastructure, so judges will prefer to give prison sentences rather than rehabilitation. Although in the criminal justice system there is a *fair justice trial system*, which adheres to an honest and fair judicial system.

Discussing *Fair Justice Trial* in the English-Indonesian dictionary, it gives a remarkably diverse meaning, namely: justice that is honest, reasonable, impartial, fair and without giving a response to an innocent person in every law enforcement system. According to Ranu Handoko, it provides an understanding of "*Fair Trial*" as an honest judicial process from the beginning to the end.²²

In the judicial process, especially in criminal law, a person who is a suspect or defendant, no longer sees it in the context of a mere object but must be considered as a subject who has rights and obligations that can have the right to demand compensation or rehabilitation if law enforcement officials wrongly arrest, wrongly detain, wrongly demanded, and wrongly lawed, because this will have an impact on a person who concerns human rights. Because in the judicial system it must be integrated so that it will provide a systematic understanding.²³

Based on Pancasila and the 1945 Constitution which upholds human rights and which guarantees all citizens their position in the law and government and is obliged to uphold the law and government without exception the Criminal Procedure Code (Criminal Procedure Code) which is a guideline for every citizen along with law enforcement instruments in criminal proceedings, must be based on the nation's philosophy/outlook on life and the basis of the state. Therefore, it should be reflected in the material provisions of articles or paragraphs that protect human rights and citizens' obligations.

The main basis for the regulation of *fair trial*, universally contained in articles 10 and 11 of the 1948 UDHR, articles 14 and 15 of the ICCPR affirms the existence of a person's right to "*a fair and public hearing by a competent, independent and impartial*

²² Ranuhandoko, *Legal Terminology* (Jakarta: Sinar Grafika, n.d.).

²³ Muhammad of Russia, *Independence of Indonesia's Courts* (Yogyakarta: FH UII Press, 2010).

body established by law"²⁴ As for the implementation of rehabilitation sanctions for addicts and victims of narcotics abuse, several principles of *Fair Trial must be applied*, namely, the Principle of Legality, the Principle of Equality before the Law, and the Principle of Presumption of Innocence.

In providing rehabilitation sanctions for addicts and victims of narcotics abuse in the Fair Trial system, starting from the initial stage of the investigation process, a special assessment team must be given which in this case will continue to receive supervision²⁵ because at each stage of the examination of addicts or victims of narcotics abuse must get their rights as suspects.

The mechanism for applying rehabilitation sanctions itself is based on an assessment, assessment is known to be an assessment action to find out the condition of residents due to drug abuse which includes medical aspects and social aspects, this is what must be done by law enforcement officials to ensure their rights as suspects such as the Justice *Fair Trial principle*.

The central-level Integrated Assessment Team (TAT) is determined by the National Narcotics Agency (BNN), after coordinating with the Ministry of Health, the National Police, the Indonesian Prosecutor's Office, and the Ministry of Law and Human Rights (BAPAS), related to the application of rehabilitation sanctions against addicts and victims of narcotics abuse, after obtaining approval from each of these agencies, the recommendation of the assessment team that provides information about the role of the suspect and/or defendant in the criminal act, the level of dependence on narcotics abuse, the next recommendation is the legal process.

The judicial interest of the results of the integrated assessment attached to the suspect's case file must be original, so that this recommendation is the basis for the judge's reference in sanctioning a defendant as an addict or victim of narcotics abuse, but this is not always a reference because certain factors that give a suspect and an addict and victim rights are always considered criminals and are always distinguished from acts Other.

²⁴ Russian Muhammad.

²⁵ Andi Hamzah, *Supervision of Criminal Cases Through Technical Means and Legal Means* (Jakarta: Ghalia Indonesia, 1986).

Looking at the definition of narcotics abuse for narcotics abusers, they are threatened with criminal sanctions as stipulated in Article 127 paragraph (1) letters a, b, and c, paragraphs (2) and paragraph (3) of Law Number 35 of 2009 concerning Narcotics.

- (1) Every Abuser: (a) Class I Narcotics for themselves shall be sentenced to imprisonment for a maximum of 4 (four) years; (b) Class II narcotics for themselves shall be sentenced to imprisonment for a maximum of 2 (two) years; and (c) Class III Narcotics for oneself shall be sentenced to imprisonment for a maximum of 1 (one) year."
- (2) In deciding the case as referred to in paragraph (1), the judge is obliged to pay attention to the provisions as intended in Article 54, Article 55, and Article 103.
- (3) In the event that the Abuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics abuse, the Abuser is obliged to undergo medical rehabilitation and social rehabilitation.

In Article 54 of Law Number 35 of 2009 concerning Narcotics, it reads: "Narcotics addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation."

In Article 55 paragraph (1) and paragraph (2) of Law Number 35 of 2009 concerning Narcotics, it reads:

- (1) Parents or guardians of Narcotics Addicts who are not of legal age are required to report to public health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to obtain treatment and/or treatment through medical rehabilitation and social rehabilitation.
- (2) Narcotics addicts who are of legal age are required to report themselves or be reported by their families to public health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or treatment through medical rehabilitation and social rehabilitation.

Furthermore, in Article 103 paragraph (1) and paragraph (2) of Law Number 35 of 2009 concerning Narcotics, it

reads: "The judge who examines the case of a Narcotics Addict may: (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 Narcotics crime; or (b) stipulate to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime."

It can be seen from the various explanations of the above Articles that it is clear and clear that an addict or victim of abuse will be given absolute rehabilitation sanctions. However, there are still many decisions to newspapers that do not get rehabilitation sanctions, even though the conditions for rehabilitation have also been met, this is not in line with the application of Fair Trial judicial principles, so that with the development of judges who adjudicate, especially drug crimes, have applied the principles adopted by the Fair Trial judicial system.

C. Factors Hindering the Fulfilment of the Rights of Narcotics Addicts and Abusers in a Fair Justice System

An obstacle to the fulfilment of the rights of narcotics addicts and abusers in the criminal justice process is that considering an addict and abuser as a form of criminal act, so that the right of addicts and abusers to be rehabilitated is not fulfilled and the paradigm of law enforcement officials is too young to make and provide new legal innovations.

The criminal justice system is a crime prevention process. According to Remington and Ohlin, the *criminal justice system* can be interpreted as an approach to criminal justice administration and criminal justice as a system is the result of the interaction between laws and regulations, administrative practices and social attitudes or behaviours²⁶

The obstacles in fulfilling the rights of victims of narcotics abuse based on a fair justice system are as follows:

²⁶ Romli Atmasasmita, *Contemporary Criminal Justice System*.

1. *The Criminal Justice System still adheres to the old Justice System (Crime Control Model)*

The criminal justice system does not specifically regulate special crimes where the perpetrators of criminal acts are as well as victims, as with narcotics, this does not reflect justice by not providing opportunities for drug abusers and victims to be processed without going through judicial mechanisms or providing sanctions that are not the same as other criminal acts. In the eradication and prevention of narcotics crimes, especially against narcotics abusers and victims, the conventional criminal justice system approach is still used. There is a need for special treatment and treatment for certain convicts, such as child convicts, convicted criminals with deviant behaviour, convicted users, abusers, and narcotics addicts, convicts suffering from HIV/AIDS and other dangerous diseases.

The criminal justice system in Indonesia which incidentally applies a judicial system that cannot keep up with the times, as equated by Romli Atmasasmita the judicial system as a law enforcement that will aim for social defence related to the purpose of realizing the evil of society, which in the criminal justice system focuses on the social aspect to reduce the occurrence of crime and recidivism and if these goals are not achieved, it can be It is certain that the system does not run properly.²⁷

In the judicial system in Indonesia, there is still a Crime Control Model (CCM) Judicial system which is all levels of criminal behaviour that should be acted upon, and the judicial process is a positive guarantee for public order. The Crime Control Model in the judicial system in Indonesia is also very visible that all forms of crime must be dealt with firmly, including victims and drug abuse, because the legal system in Indonesia adheres to the Civil Law system which emphasizes the use of written regulations. Likewise, the Crime Control Model system adopted by the judicial system in Indonesia instils the doctrine mentioned by Parcker, namely the Presumption of Quilt

²⁷ Ali Zaidan, *Towards Criminal Law Reform* (Jakarta: Sinar Grafika, 2015). See also Tri Nurmega Oktarina, "Alternative Model of settlement of Narcotics abuse by Children through the mechanism of Diversion (Case study in Sambas District)." *Unnes Law Journal* 4, no. 2 (2015).

(presumption of guilt). This means that the system emphasizes the importance of affirming the existence of power and the use of power against every crime of the perpetrators of crimes and therefore the implementation of the use of power in the hands of the government/police apparatus, prosecutors and judges must be as maximum as possible even though they have to sacrifice human rights.²⁸

In contrast to the judicial system, the Due Process Model (DPM) has the values of the possibility of negligence factors that are humane. Emphasizing the prevention and elimination of the judicial administration mechanism as far as possible, this model assumes that placing the individual in the whole and foremost in the judicial process and the concept of restricting formal authority, pays close attention to the combination of stigma and loss of independence which is considered to be a revocation of a person's human rights that can only be done by the State. The Due Process Model (DPM) system is a restorative justice characteristic of the modern criminal justice system related to how to rebuild relationships after crimes. The philosophy that underlies the purpose of the restorative approach, which is to "restore the state as it was before the conflict", is identical to the philosophy of "repairing the disturbed balance" contained in Indonesia's Customary Law.²⁹

As argued by Burt Gallaway and Joe Hudson, there is no element of a restorative approach, which recognizes that the victim, as a party who has suffered loss or damage because of a crime, has the full right to participate in the settlement process. and restoring evil. This has logical implications for the meaning and understanding of crime, because it is no longer a violation of the law that violates an act that must be justified with compensation or other sanctions that result in imprisonment.

The applicable principles that are inherent in Restorative justice as in the Due Process Model system are:

a) Principle of Fair Settlement (Due Process)

When faced with an application or conviction, suspects in every criminal justice system across the country are

²⁸ Maya Shafira, Deni Achmad, *Criminal Justice System* (Bandar Lampung: Pusaka Media, 2022).

²⁹ Maya Shafira, S.H., M.H. Deni Achmad, S.H., M.H.

always given the right to know in advance about certain protection procedures. The due process must be seen as a protection for members of society who are subject to the State's ability to detain, persecute, and conduct the criminalization of a decision. A restorative approach entails a desire to continue to protect members of the protection for suspects associated with the process to be implemented. However, because the recovery procedure requires a guilty plea, it is unclear to what extent informed consent and lack of voluntary rights (waiver of rights) can be used as a fair starting point. The core principle of the restorative method is that assigning fault to the perpetrator is to qualify for the initial outcome of the healing process, and at the same time, confession of guilt is another type of guilt.

b) Reducing Legal Justice with Moral Justice

In law enforcement and law enforcement, Judges must be able to realize justice. If there are provisions of the law that are used as a basis for applying the law or the law to be enforced is no longer in accordance with the development of the times and the demands of a sense of justice, or if the law does not regulate, the Judge is obliged to explore, follow and understand the legal values and sense of justice that live in society. As according to prof. Sudikno Mertokusumo, legal certainty aims to provide legal protection to the judiciary against arbitrary actions. Meanwhile, the community expects legal certainty, because with legal certainty, the community will be more orderly. The law is tasked with creating legal certainty because it aims at legal order.

c) Proportionality

The concept of proportionality is related to the suffering of punishment that must be inflicted on offenders who commit in a consensus-based restorative system that allows for a variety of options in problem solving. Proportionality has been fulfilled in criminal justice if a sense of retributive justice (a reciprocal balance between punishment and reward) has been met, although disproportionate sanctions for offenders may be provided with a restorative approach.

Thus, with a fair judicial system while still prioritizing human rights even in narcotics criminal acts, especially narcotics abusers and victims, so that in the future the need for the Criminal Procedure Code to be updated to be able to guarantee the rights of victims of narcotics abuse by implementing a fair justice system to the maximum.

2. *The paradigm of law enforcement officials still views narcotics abusers as a form of crime*

The assumption that a person who commits a narcotics crime is a despicable act or a criminal act so that the criminal act of narcotics is generalized with other criminal acts, this has an impact on the punishment of a person. The lack of effectiveness in the development of the quality of the supervision and control system from related agencies and the lack of professionalism from law enforcers is accompanied by a high degree of dedication and devotion to uphold justice. The existence of selective felling conducted by the authorities tends to cause the credibility of law enforcement officials to be low in the eyes of the public, this also causes a lack of trust in law enforcement officials.

This is then influenced by the legal system used in Indonesia, namely the application of the Crime Control Model (CCM) system, considering that the Crime Control Model is categorized as an avirmative positive model that always emphasizes the existence and use of formal power from every point of view of the criminal justice process, in this model more emphasis is placed on the legislative and judiciary, very dominant. The dominant power in the Judiciary refers to the Law enforcement officials who hold the power.³⁰

In line with what was conveyed by Muladi that the CCM model is the original form of the Adversary model with the characteristics of criminals seen as enemies of society that must be eradicated or eliminated, efficiency and public order are above all else, the goal is criminalization, coupled with the model is less attractive because it is too original to violations while on

³⁰ Muladi, *Kapita Selektta Criminal Justice Legal System* (Semarang: Diponegoro University Press, 1995).

the other hand to victims who need daily care, as well as for victims of narcotics abuse.³¹

In investigations, law enforcement officials often intimidate by giving responses to victims and narcotics abusers are always guilty, even though the right to give a verdict against a guilty person is the judge, this is also in accordance with the principle of fair trial that the presumption of innocence should be given for all criminal acts, moreover the victim and abuser is not a criminal crime but a form of disease that must be cured.

The handling of addicts and victims of narcotics abuse which has been regulated in Article 54 of the Narcotics Law Number 35 of 2009 concerning Narcotics absolutely requires a common perception so that its handling can be conducted optimally and not wrong in its management. Putting addicts and victims of drug abuse in prison will not solve the problem but will add recent problems. Therefore, the focus on handling drug abusers has reversed. Addicts and victims of narcotics abuse are no longer put in prison but are rehabilitated through medical and social rehabilitation. However, in its implementation until now there are still differences in perception between law enforcers. Law enforcement officials still consider a person who is caught carrying drugs with a disposable size or proven to be positive for consuming drugs is a criminal act and imprisoning him in a correctional institution is the best punishment for them.³²

According to Ir. Mega Boena, SH., High Judge of the West Nusa Tenggara High Court, until now friends from the District Court in West Nusa Tenggara Province still do not know about rehabilitation recommendations for addicts and victims of narcotics abuse who have been caught by the police. He hopes that BNN can socialize this more deeply to all lines of law enforcement officials in West Nusa Tenggara Province. Through this activity, law enforcers coordinate to find the best solutions to various problems that have arisen in the legal handling of Narcotics Crimes, especially for addicts and victims of narcotics abuse in West Nusa Tenggara Province, so that it can succeed in

³¹ Muladi.

³² "ONE VOICE LAW ENFORCEMENT OFFICIALS TO HANDLE ADDICTS AND VICTIMS OF NARCOTICS ABUSE," n.d.

the rehabilitation movement of 100,000 addicts and victims Narcotics abuse in Indonesia.³³

3. Inconsistency in the provision of sanctions against victims and drug abusers

Narcotics abuse is not always given the right to health even though as explained earlier, the addict is someone who needs the help of others, and of course in this case what can help is a person who is an expert in rehabilitation. The impact of the non-fulfilment of the rights of narcotics abuse provides over the capacity of narcotics prisons, and even if sanctions are given, the state must provide all facilities and infrastructure for the benefit of addicts' health, this is very difficult to realize because the state has not been able to provide facilities and infrastructure, so judges will prefer to give prison sentences rather than rehabilitation. Although in the criminal justice system there is a fair justice trial system, which adheres to an honest and fair judicial system. From some rulings that do not always give victims and drug abusers the right to rehabilitation, the criminal justice system in Indonesia currently still focuses on the perpetrators of criminal acts, so it tends to harm the interests of the victim as the most disadvantaged party.

It can be seen from the various explanations above that it is clear and clear that an addict or victim of abuse will be given absolute rehabilitation sanctions, if you look at the various judges' decisions that as exemplified in the first paragraph do not always give rehabilitation decisions even though the conditions for rehabilitation have also been met, this is not in line with the application of fair trial judicial principles, So that with the development, judges who adjudicate, especially drug crimes, should have applied the principles adopted by the Fair Trial justice system.

In this case, it refers to the inconsistency of the verdict against the victim of narcotics abuse in accordance with the data of the case decision, namely:

- a) Case Decision Number 569/Pid.Sus/2019/PN JKT. CELL

³³ "ONE VOICE FOR LAW ENFORCEMENT OFFICIALS TO DEAL WITH ADDICTS AND VICTIMS OF NARCOTICS ABUSE."

Case Decision Number 569/Pid.Sus/2019/PN JKT. SEL is a case with the convict in the name of Reza Indra Yun'Afzan alias Reza with a violation of Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, in the form of the crime of possessing, storing, controlling or providing narcotics without rights and/or against the law and prosecuted by the public prosecutor with a prison sentence of 5 (five) years reduced while the defendant is in temporary custody and a fine of Rp.800,000,000,- (eight hundred million rupiah) subsidy of 3 (three) months in prison with evidence 1 (one) package of plastic clips containing 1 (one) pack of used cigarettes Gudang Garam Filter containing 1 (one) plastic package containing methamphetamine narcotics with a net weight of 0.6422 grams. Based on the results of the investigation contained in the decision, the South Jakarta BNNK through an integrated assessment team based on the letter of the National Narcotics Agency of South Jakarta City Number R/094/III/Ka/rh.00.04/2019/BNNK-JAKARTA dated March 4, 2019 stated that the perpetrators used the narcotics for themselves with a pattern of recreational use and were not involved in the illicit network of narcotics trafficking, recommending the convict to follow the rehabilitation in order to obtain However, in his decision, the judge rejected the defence from the legal counsel who stated that the defendant was entitled to rehabilitation because according to the judge there was no evidence that could support that the defendant was a narcotics abuser because the narcotic suction device was not found, and decided the defendant with Article 112 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 with a prison sentence of 4 (four) years and a fine of Rp. 800. 000,000 (eight hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month.³⁴

b) Case Decision Number 738/Pid.Sus/2019/PN JKT. CELL

³⁴ "Directory of Judgments," n.d.

Case Decision Number 738/Pid.Sus/2019/PN JKT. SEL is a case for possession of narcotics committed by Agung Saudaga alias Saga bin Fahrudi and Harry Nugraha bin Sukanto with evidence secured in the form of methamphetamine-type narcotics weighing 0.4830 grams, 1 (one) red bag of the Supreme brand, 1 (one) can of used hair oil packaging, 1 (one) methamphetamine spoon made of straws, 1 (one) cangklong (methamphetamine smoking device), 1 (one) gas match, 2 (two) I Phone 6 brand mobile phones plus silver, following Sim card no 0822 9882 1992, and mobile phone brand I Phone 6 plus silver, following Sim card no 0877 7636 6055, 1 (one) piece of ATM card BCA Passport in gold color, because of their actions they were charged by the Public Prosecutor with the primary indictment of Article 114 paragraph (1) and the subsidy indictment of Article 112 paragraph (1) jo Article 132 paragraph (1) (subsidiary indictment) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics in the form of a criminal act offering to sell, sell, buy, receive, become an intermediary in the sale and purchase, exchange or delivery of class 1 narcotics without rights and/or against the law. Based on the results of the examination as contained in the verdict of the case, it was found that the narcotics were for personal use. Therefore, the judge decided to reject the primary charge because it did not meet the elements as contained in Article 114 paragraph (1) and granted Article 112 paragraph (1) jo Article 132 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, as well as the plea/defence of the defendant's legal counsel that the defendant should be subject to Article 127 paragraph (1) letter a of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics and to be rehabilitated in accordance with SEMA Number 4 of 2010 because It is considered that the defendants were not caught using methamphetamine and there was no doctor's statement and laboratory test certificate positive for using narcotics and were sentenced to imprisonment for 4 (four) years each and a fine of Rp.800,000,000,-

(Eight hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months.³⁵

In contrast to the Decision handed down to Jefri Nichol in 2019, the Decision given to the artist gave the assumption that the provision of rehabilitation sanctions is selective logging, even in terms of terms and rules as SEMA 4 of 2010 Placement of Abuse Victims, Victims of Abuse and Drug Addicts into Medical Rehabilitation and Social Rehabilitation Institutions has been fulfilled for the defendant.³⁶ That then not only that, but there is also a risk of providing rehabilitation assistance that will be given to recidivist artists, namely Amar Zoni, there is still no decision related to this.³⁷

Based on the inconsistency of the verdict given by the law enforcement apparatus, there are still inconsistencies in the legal process that prove that the three convicts are proven to have used narcotics for themselves and the amount of evidence obtained does not exceed as stipulated in the Supreme Court Circular Letter Number 4 of 2010. If you look at the decision above in more detail, there is a difference of belief in applying the formulation of the article to the perpetrators of the crime of narcotics abuse by law enforcement officials. There are still differences in interpretation in classifying perpetrators of narcotics abuse crimes, which has an impact on the difficulty of the National Narcotics Agency to implement rehabilitation criminal sanctions against abusers, addicts, and victims of narcotics abuse.

D. Aspects of Scanning in Narcotics Crimes

Criminalization in narcotics crimes provides elements for a person as an addict or abuser of narcotics which has been regulated in Narcotics Law Number 35 of 2009 which allows the transfer of a prison sentence for a narcotics abuser, one of which

³⁵ "Verdict Directory."

³⁶ "Sentenced to 7 months of rehabilitation, Jefri Nichol accepts the judge's decision," n.d.

³⁷ "Police: Ammar Zoni's Rehabilitation Decision Fully By Court - ANTARA News," n.d.

is Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, this certainly provides a confusion because logically a narcotics addict is also a person who is an abuser but can also be said to be a victim of narcotics abuse or committed by himself.³⁸

Not only in these Articles, but Articles such as 111 to 115 of Law Number 35 of 2009 concerning narcotics are also contained several elements that can ensnare narcotics addicts to be sentenced in the form of imprisonment. This is certainly a problem for law enforcement which is certainly the starting point for criminalization, because on the one hand the addict is seen as a victim, if referring to Law number 35 of 2009 concerning narcotics, then a narcotics addict is obliged to sanction in the form of rehabilitation, both in terms of medical and social rehabilitation, but with the construction of articles contained in Law number 35 of 2009, addicts and abusers are threatened with losing their rights as a citizen to get cured, even for a narcotics addict is often sentenced to imprisonment.

Referring to the general explanation of Article 67 of the National Criminal Code, it states that the criminal acts that can be subject to special crimes are extraordinary criminal acts, including narcotics crimes, but it does not mean that the perpetrators of narcotics crimes immediately get heavy sanctions, because the National Criminal Code also regulates the sanctions that are important for the perpetrators of narcotics crimes regulated in article 105 of the National Criminal Code which expressly states that there are rehabilitation actions for defendants of narcotics, psychotropics, and other addictive substances, as well as for those who have mental instability and/or intellectual instability.

From a theoretical point of view, the most ideal criminal system for victims and drug abuse in this case is addicts is very suitable if the rehabilitation criminal theory is used. As the theory of rehabilitative financing focuses more on rehabilitating

³⁸ A.A. Wife, "Legal Protection for Victims of Narcotics Abuse with the Enactment of Law Number 35 of 2009 concerning Narcotics," *Journal of the Faculty of Law, Udayana University* 3, no. 2 (2012).

or correcting the perpetrator, it is in Anderw Ashworth's view³⁹ giving the opinion that rehabilitation is a reason for imposing a criminal sentence with different views *deterrence*. If the main purpose of the theory *deterrence* is to take preventive measures against the occurrence of crimes, the concept of rehabilitation aims to reform or improve the perpetrators.

Abusers and victims of narcotics abuse have a very heavy dependency condition experienced by a narcotics addict, and it is not wrong if abusers and victims of narcotics abuse are often referred to as sick or sick people who must be treated in the form of medical and social rehabilitation. Apart from that, the position of the addict or abuser of narcotics is indeed seen as a victim of the illicit circulation of narcotics, so it is natural for the abuser to be said to be a victim, especially in the concept of transfer now still grappling with someone's suffering to be able to say that the law is running well even though the law is a state protection for citizens regardless of whether a person is a criminal offender or not who has their own portion of each right⁴⁰

The concept of criminalization in the realm of sanctioning a narcotics addict or a narcotics abuser still focuses on sanctioning the perpetrator, but with the shift of the times and the formulation of the offense in Law number 35 of 2009 still cannot follow the social paradigm, so that there will be the potential to lose rights to a person, especially a narcotics addict or narcotics abuser.

E. Conclusion

The mechanism for applying rehabilitation sanctions itself is based on an assessment, assessment is known to be an assessment action to find out the condition of residents due to drug abuse which includes medical aspects and social aspects, this is what must be done by law enforcement officials to ensure their rights as suspects such as the Justice Fair Trial Principle. The central-level Integrated Assessment Team (TAT) is

³⁹ Nur Azisa et al., "The Criminal System of Narcotics Crimes in the Perspective of National Criminal Law," *UNES Law Review* 6, no. 3 (2024): 9018–25.

⁴⁰ Siti Hidayatun and Yeni Widowaty, "The Concept of Rehabilitation for Narcotics Users with Justice."

determined by the National Narcotics Agency (BNN), after coordinating with the Ministry of Health, the National Police, the Indonesian Prosecutor's Office, and the Ministry of Law and Human Rights (BAPAS), related to the application of rehabilitation sanctions against addicts and victims of narcotics abuse, after obtaining approval from each of these agencies, the recommendation of the assessment team that provides information about the role of the suspect and/or defendant in the criminal act, the level of dependence on narcotics abuse, the next recommendation is the legal process. The judicial interest of the results of the integrated assessment attached to the suspect's case file must be genuine, so this recommendation is the basis for the judge's reference in sanctioning a defendant as an addict or victim of narcotics abuse, but this is not always a reference due to certain factors, namely: first, the Criminal Justice System still adheres to the old Justice System (Crime Control Model), second, the paradigm of law enforcement officials still views narcotics abusers as a form of crime, and third, inconsistency in the provision of sanctions to victims and narcotics abusers. This is the basis for eliminating the granting of rights to a suspected addict and this victim is always considered a criminal and is always distinguished from other acts. The most ideal scanning system for victims and narcotics abuse in this case is that the addiction is very suitable if it uses the rehabilitation scanning theory. As with the rehabilitation criminal theory, the application of *deterrence theory* is to take preventive measures against the occurrence of crimes, the concept of rehabilitation aims to reform or improve the perpetrators Abusers and victims of narcotics abuse have a very heavy dependency condition experienced by a narcotics addict, and it is not wrong if the abusers and victims of narcotics abuse are often referred to as sick or sick people who are addicted to narcotics. It must be treated in the form of medical and social rehabilitation.

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