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Paradigm Of Rehabilitation Of Narcotics According To The Perspective Of Human Rights In The Criminal Justice System

**Richard Marolop Nainggolan^{1*},
Mompang Lycurgus Panggabean²,**

^{1*,2}Students and Lecturers of the Doctor of Law Program at the Christian University of Indonesia

***Corresponding author:-** Richard Marolop Nainggolan

^{*}Students and Lecturers of the Doctor of Law Program at the Christian University of Indonesia Email: richardmn88@gmail.com

Abstract:

Human Rights (HAM) is a supreme gift from God, which is formulated as a natural right that is inherent and owned by humans as a gift from God Almighty to humans. The purpose of writing this article is to understand how to provide rehabilitation within the framework of protecting human rights for narcotics addicts who are victims of narcotics abuse who suffer from a lack of government control and oversight. in import, export, produce, grow, store, distribute, and or use narcotics. The lack of control and supervision by the government on the distribution of narcotics as stipulated in Article 4 of Law no. 35 of 2009 concerning Narcotics can lead to drug abuse. The Narcotics Law itself has not yet explained concretely the position of victims of narcotics abuse and the responsibility of the state towards the people who are victims of the use and distribution of narcotics. This article discusses (1) How is the implementation of rehabilitation for narcotics addicts who are victims of narcotics abuse in Indonesia; (2) Why is the state obliged to fulfill all basic human rights for its citizens; (3) What is the form of state responsibility for victims of narcotics abuse within the framework of human rights so that their constitutional rights are fulfilled. The method used is normative juridical research and empirical research which is qualitative in the form of evaluative research and analyzing applicable positive law. The results of the discussion conclude that: (1) Narcotics addicts are sick and deserve protection by placing them in medical and social rehabilitation institutions, (2) Narcotics addicts deserve protection, especially in fulfilling their basic rights in health services in the form of treatment and/or care organized in form of a rehabilitation facility.

Keywords: Rehabilitation, Narcotics, Human Rights.

1. Introduction

Human Rights (HAM) are a set of rights that are inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld and protected by law, by the state and government, and every person for the honor and protection of dignity. humans [1]. Judging from this understanding, the essence of human rights is freedom based on respect for oneself and for others so that each individual can have the best rights.

One of the goals and directions of Indonesia's development as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) states that to educate the life of the nation and to advance public welfare, the state is also present in implementing what is desired. One of the efforts made is to eradicate things that impede or have the potential to damage the development of the nation, social culture, economy and education of the community at large such as narcotics crimes which have a large and multi-dimensional impact on all factors living in society, and in the long term can interfere with the competitiveness and progress of a nation.

Article 28 I paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the

state, especially the government. Even though in principle human rights can be violated by any person or group, based on international human rights law, a state may not deliberately ignore human rights and freedoms, including in enforcing a statutory regulation. This is regulated in a balance of rights and obligations based on Article 28 J of the 1945 Constitution of the Republic of Indonesia where there are restrictions for everyone in nature exercises its rights and freedoms for the sake of recognition and respect for the rights and freedoms of others in accordance with moral considerations, religious values, security and public order in a democratic society. Here there is a development of the approach by the Constitutional Court from the grammatical to the systematic approach than the original intent approach [2].

The Indonesian criminal justice system adheres to the principle of legality so that in practice, all narcotics cases including narcotics users for themselves who are not dealers are often legally processed in accordance with legal norms as stipulated in the Narcotics Law, primarily by imposing prison sentences. That is why there are narcotics abusers for themselves who are not dealers where initially as victims who should be rehabilitated instead are serving prison sentences. Application law is not clear because it does not differentiate users, dealers and drug abusers, making access to rehabilitation not reach all drug abusers and/or addicts. This relates to criminal law policy which is not merely a normative and systematic-dogmatic legal technical work, but also a comprehensive sociological, historical and comparative approach and an integral approach to social policy and national development [3].

Table 1. Laws Regulating Criminal Sanctions for Narcotics Abuse [4]

No.	Law Number 35 of 2009 concerning Narcotics	Criminal Sanctions and Fines
1	Article 111 paragraph (1) of the Narcotics Law reads: "Anyone who without rights or against the law plants, maintains, owns, stores, controls, or provides Narcotics Category I in the form of plants	Shall be punished with imprisonment for a maximum of 4 (four) years and a maximum of 12 (twelve). a minimum fine of Rp. 800,000,000.00 (eight hundred million rupiahs) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiahs).
2	Article 112 paragraph (1) of the Narcotics Law reads: "Anyone who without rights or against the law owns, stores, controls, or supplies Narcotics Category I which are not plants.	shall be subject to imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of a minimum of Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah). . ."
3	Article 127 of the Narcotics Law reads: (1) Every abuser: a. Narcotics Category I for oneself shall be punished with imprisonment for a maximum of 4 (four) years; b. Narcotics Category II for oneself shall be punished with imprisonment for a maximum of 2 (two) years; and c. Narcotics Category III for personal use shall be punished with 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 referred to in Article 54, Article 55 and Article 103. (3) In the event that the perpetrator as referred to in paragraph (1) can be proven or proved as a victim Narcotics abuse.	The perpetrator must undergo medical rehabilitation and social rehabilitation.

From the table above, it can be seen that legal policies that do not clearly differentiate between Narcotics users, dealers and abusers because of the prohibition of "controlling" have hindered access to rehabilitation for Narcotics addicts and/or victims of Narcotics abuse. The policy of imposing sanctions on narcotics abusers clearly provides access to essential health, namely rehabilitation for narcotics addicts and/or narcotics abuse victims, because narcotics addicts and/or narcotics abuse victims will be subject to imprisonment.

2. Research methods

This paper wants to discuss the following three things: (1) How is the implementation of rehabilitation for narcotics addicts who are victims of narcotics abuse in Indonesia? (2) Why is the state obliged to fulfill all basic human rights for its citizens? (3) What is the form of state responsibility for victims of narcotics abuse within the framework of human rights so that their constitutional rights are fulfilled? The research method used is normative juridical research and empirical research which is qualitative in nature with an evaluative research style [5]. The

research was conducted from June 2022 to April 2023 where the source of the data used in this research was primary legal material consisting of primary legal sources, namely binding legal rules or positive legal rules in Indonesia, mainly written, supported by secondary legal sources which provide explanations for primary legal materials, such as interview results and tertiary legal sources which explain primary legal materials and secondary legal materials, for example dictionaries. In addition to analyzing written legal rules, this research also examines field data obtained and collected using communication techniques [6], through contact or personal relationships between data collectors and data sources (informants). The paradigm used for analysis has its starting point from critical legal studies to understand or believe in law virtually or historically, so that law must be open to criticism, revision and transformation in a dialogue to break inequality [7]. such as the results of interviews and tertiary legal sources that explain primary legal material and secondary legal material, for example dictionaries. In addition to analyzing written legal rules, this research also examines field data obtained and collected using communication techniques [6], through contact or personal relationships between data collectors and data sources (informants). The paradigm used for analysis has its starting point from critical legal studies to understand or believe in law virtually or historically, so that law must be open to criticism, revision and transformation in a dialogue to break inequality [7]. This study also examines field data obtained and collected using communication techniques [6], through contact or personal relationships between data collectors and data sources (informants). The paradigm used for analysis has its starting point from critical legal studies to understand or believe in law virtually or historically, so that law must be open to criticism, revision and transformation in a dialogue to break inequality [7]. This study also examines field data obtained and collected using communication techniques [6], through contact or personal relationships between data collectors and data sources (informants). The paradigm used for analysis has its starting point from critical legal studies to understand or believe in law virtually or historically, so that law must be open to criticism, revision and transformation in a dialogue to break inequality [7].

3. Results and Discussion

Narcotics are substances or drugs derived from plants and non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can lead to dependence [8]. On the one hand, narcotics are drugs or materials that are useful in the fields of medicine, health services, and scientific development; however, on the other hand, it can cause dependence which is very detrimental if it is used without strict and thorough control and supervision. Basically, the distribution of narcotics in Indonesia from a juridical perspective, according to the Narcotics Law, is legal for medical use, but the use of narcotics without a permit is prohibited. At the empirical level, It turns out that narcotics are not only used for medical and scientific purposes, but are often misused, and even become a promising and rapidly developing business arena, which in turn has an impact on the physical and psychological damage of narcotics users. The implications of using narcotics are able to reduce the user's level of awareness, hallucinations and dependence on narcotics.

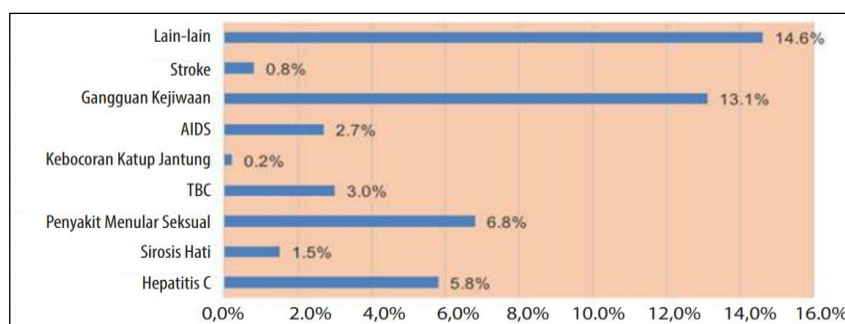


Figure 1. Long Term Impact Due to Narcotics Use [9]

Based on the picture above, the long-term physical impact that is often experienced by narcotics users is 13.1% of mental disorders. Followed in second place are sexually transmitted diseases as much as 6.8%. The third order is hepatitis C as much as 5.8%. The fourth order is TB disease as much as 3.0%. Other diseases consist of cirrhosis of the liver (1.5%), stroke (0.8%), leaky heart valves (0.2%), and other diseases 14.6% (depression, hallucinations, bipolar, various forms of anxiety and difficulty sleeping).

In the legal system in Indonesia, narcotics abuse is included in the category of crimes in the narcotics sector which are regulated in Law no. 35 of 2009 concerning Narcotics. Narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, destroying life and the future, especially the younger generation. According to Article 127 paragraph (1) Law no. 35 of 2009, every class I narcotics abuser for himself shall be punished with imprisonment for a maximum of 4 (four) years; every class II narcotics abuser for himself shall be punished with imprisonment for a maximum of 2 (two) years; and every class III narcotics abuser for himself shall be punished with imprisonment for a maximum of 1 (one) year. The interesting thing in Law no. 35 of 2009 concerning narcotics is that the judge has the authority to pass a sentence on someone who is proven to be a narcotics addict who needs to be rehabilitated. Implicitly, this authority has the meaning that narcotics addicts apart from being perpetrators of criminal acts are also recognized as victims of the crime itself which in a victimological point of view is often referred to as self-victimization or victimless crime, or self-victimizing victims according to Stephen Schafer [10], the reason is between Victims and perpetrators develop partnerships, so that victims are fully responsible for their victimization, where narcotics addicts suffer from a dependency syndrome as a result of their own narcotics abuse. If a victim of narcotics abuse is subject to criminal sanctions, then a question mark arises as to how to fulfill the objective of punishment integrally, especially in relation to the third of the four objectives of integral punishment in the reform of Indonesian criminal law which is explicitly regulated in Law no. 1 of 2023 (New Criminal Code). Even though the new Criminal Code will still be enforced in 2026, in fact in today's criminal practice, the idea of imposing humane sanctions has increasingly surfaced, including in terms of the use of restorative justice. From Article 51 of the New Criminal Code, it can be understood that one of the goals is resolving conflicts resulting from criminal acts, restoring balance, and bringing a sense of security and peace in society [11]. Although Article 54 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts and abusers especially in relation to the third of the four objectives of integral punishment in the reform of Indonesian criminal law which is explicitly regulated in Law no. 1 of 2023 (New Criminal Code). Even though the new Criminal Code will still be enforced in 2026, in fact in today's criminal practice, the idea of imposing humane sanctions has increasingly surfaced, including in terms of the use of restorative justice. From Article 51 of the New Criminal Code, it can be understood that one of the goals is resolving conflicts resulting from criminal acts, restoring balance, and bringing a sense of security and peace in society [11]. Although Article 54 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts and abusers especially in relation to the third of the four objectives of integral punishment in the reform of Indonesian criminal law which is explicitly regulated in Law no. 1 of 2023 (New Criminal Code). Even though the new Criminal Code will still be enforced in 2026, in fact in today's criminal practice, the idea of imposing humane sanctions has increasingly surfaced, including in terms of the use of restorative justice. From Article 51 of the New Criminal Code it can be understood that one of the goals is resolving conflicts resulting from criminal acts, restoring balance, and bringing a sense of security and peace in society [11]. Although Article 54 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts and abusers but in fact in today's criminal practice, the idea of imposing humane sanctions has increasingly surfaced, including in terms of the use of restorative justice. From Article 51 of the New Criminal Code, it can be understood that one of the goals is resolving conflicts resulting from criminal acts, restoring balance, and bringing a sense of security and peace in society [11]. Although Article 54 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts and abusers but in fact in today's criminal practice, the idea of imposing humane sanctions has increasingly surfaced, including in terms of the use of restorative justice. From Article 51 of the New Criminal Code, it can be understood that one of the goals is resolving conflicts resulting from criminal acts, restoring balance, and bringing a sense of security and peace in society [11]. Although Article 54 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts and abusers and bring a sense of security and peace in society [11]. Although Article 54 of Law Number 35 of 2009 concerning Narcotics

states that narcotics addicts and abusers and bring a sense of security and peace in society [11]. Although Article 54 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts and abusers must undergo medical rehabilitation and social rehabilitation and the elucidation of the article emphasizes: "Victims of Narcotics abuse are someone who accidentally uses Narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use Narcotics," but punishment still occurs against them, instead of applying the rehabilitation paradigm where they should be positioned as a victim who must be helped immediately.

Table 2. Demand Reduction and Supply Reduction Data for 2021 [12][13].

Number of Narcotics Cases and Suspects		Number of Prisoners and Prisoners in Narcotics Cases	Number of Rehabilitation Addicts	
Case	Suspect	144,578	BNN	18,234
28,938	53,405		Ministry of Health	947
			Ministry of Social Affairs	10016
			Lapas Kemenkumham	14.122
				43,320

Based on the table above, more Narcotics addicts and/or victims of Narcotics abuse are serving prison terms than undergoing treatment and/or treatment through rehabilitation.

The new paradigm of narcotics addicts as people with chronic illnesses that must receive treatment and recovery gradually leads to a strong change in viewing narcotics abusers or addicts no longer seen as criminals but as victims or patients who must be empathetic [14]. The spirit of the Narcotics Law is to recognize drug addicts as sick people and protect them by placing them in medical and social rehabilitation institutions. Rehabilitation is one way to save narcotics addicts and/or narcotics abuse victims from dependency. If narcotics addicts and/or narcotics abuse victims they are rehabilitated, they will be able to recover from their dependence and be reluctant to consume narcotics again. Rehabilitation as an effort to recover addicts from narcotics dependence so that they can live normally physically and mentally healthy again so that they can adjust and improve their skills, knowledge, intelligence, and association in the living environment or with family, is the essence of resocialization. Rehabilitation is intended so that narcotics abusers who are categorized as addicts are free from their dependence against narcotics and can develop physical, mental and social functioning again.

Rehabilitation measures against narcotics addicts and/or victims of narcotics abuse reflects the value of justice and guarantee the basic rights or human rights of narcotics addicts and/or victims of narcotics abuse. Guaranteeing the basic rights of citizens is part of the responsibilities and obligations of the state. Thomas Hobbes, John Locke, and JJ Rousseau in the theory of community agreements state the obligation of the state to protect, to respect, to promote, and to fulfill basic human rights [15]. Today, the concept of state obligations as such has become a fundamental principle in the dynamics of international law which originates from the doctrines of sovereignty and state equality [16]. The obligation to protect is an obligation to protect the basic rights of citizens which requires immediate steps to ensure that violations of basic human rights are prevented by the state. The obligation to respect is related to the state's obligation to respect basic human rights by providing equal treatment and free from discrimination. The obligation to promote is basically the state's obligation to raise the dignity and worth of basic human rights through the regulations that are formed. Meanwhile, what is meant by the obligation to fulfill is the obligation of the state to fulfill all kinds of basic human rights both those belonging to civil and political rights as well as economic, social and cultural rights [17]. The obligation to respect is related to the state's obligation to respect basic human rights by providing equal treatment and free from discrimination. The obligation to promote is basically the state's obligation to raise the dignity and worth of basic human rights through the regulations that are formed. Meanwhile, what is meant by the obligation to fulfill is the obligation of the state to fulfill all kinds of basic human rights both those belonging to civil and political rights as well as economic, social and cultural rights [17].

Measures in the form of medical rehabilitation and social rehabilitation for narcotics addicts and/or victims of narcotics abuse are actions oriented towards healing and recovering victims from trafficking and abuse so that the government must be present and take responsibility to save the public from the dangers of drug abuse and illicit trafficking. Rehabilitation of narcotics addicts and/or victims of narcotics abuse is the responsibility of the state in providing protection and fulfillment of basic rights or human rights for narcotics addicts and/or victims of narcotics abuse in Indonesia.

The handling of narcotics addicts and/or victims of narcotics abuse as a form of state responsibility should no longer be legally processed but should be taken directly to a narcotics addiction rehabilitation center to undergo medical rehabilitation or social rehabilitation by first carrying out both a medical assessment and a legal assessment. The model of handling narcotics abusers and/or addicts who are caught by law enforcement officials is through an Integrated Assessment Team consisting of a Medical Team (Doctors and Psychologists) and a Legal Team (Investigators, Prosecutors, Bapas) to find out the level of addiction and the role of abusers and/or addicts the drug addict. If there is no involvement of the narcotics abuser and/or addict in the illicit traffic of narcotics and it is proven that he is a victim of narcotics abuse, then he must immediately take him to a narcotics rehabilitation center to undergo medical rehabilitation and/or social rehabilitation. But if narcotics abusers and/or addicts are indicated to be involved in illicit narcotics trafficking, then those narcotics abusers and/or addicts are given rehabilitation therapy first and will then face legal proceedings according to the offense. For addicts who voluntarily report themselves (of their own volition/parents/guardians) to the Compulsory Report Receiving Institution (IPWL)[18], an assessment, urine test is carried out to detect the presence or absence of narcotics, in the body of the addict, abuser,

Narcotics addicts who are sick people as well as victims of their own and other people's actions, must receive special treatment to be able to recover back to their original state. Implementing rehabilitation for narcotics addicts and/or victims of narcotics abuse is a type of action sanction that can restore them to their original condition physically and psychologically or a type of sanction that reflects human rights values. The implementation of this rehabilitation can use health facilities in the form of hospitals and also puskesmas in Indonesia. The purpose of the investigation from the side of critical legal studies requires the transformation of social, political, cultural, economic and gender structures, in confrontation or even conflict. This requires dialogue between the legislature, law enforcement, victims and society dialectically to transform ignorance and misunderstanding into awareness to break inequality or oppression [19]. Pseudo stability of social life, politics, law, and so on or what Berger and Luckman term social construction [20]. Thus, the punishment of narcotics abusers should be criticized as a fact social as a result (externalization) of human internalization and objectivation of knowledge in everyday life and social reserves of knowledge from the accumulation of common sense knowledge. In a deeper understanding, the rehabilitation of narcotics addicts is nothing but the embodiment of the highest fundamental values of the Indonesian legal system which places Pancasila as the margin of appreciation [21], so that there is a limit of legitimacy for state authorities in making policies according to socio-cultural conditions and the Indonesian nation's philosophy in order to always guarantee respect individual rights in the national interest.

4. Conclusion

Narcotics addicts are sick people who deserve protection, especially in fulfilling their basic rights in health services in the form of treatment and/or care held in the form of rehabilitation facilities. In achieving national goals, it is undeniable that the government's responsibility is to provide treatment and/or care in the form of rehabilitation facilities. Even though the basic rights for human narcotics addicts in the form of rehabilitation measures have been expressly formulated in Law Number 35 of 2009 concerning Narcotics, there are still obstacles in terms of equalizing perceptions and providing facilities and infrastructure as well as rehabilitation service facilities for narcotics addicts in the rehabilitation program.

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