The reconstruction of rehabilitation for addictives and drug abuses in human rights perspective

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ARTICLE INFO

Article history:

Received 16 December 2021

Received in rev. form 08 Feb. 2022

Accepted 12 February 2022

Keywords:

Rehabilitation, narcotics, human rights.

JEL Classification:

O15.P36

ABSTRACT

Efforts to prevent, protect and save the Indonesian people from the abuse of Narcotics as intended by The Law Number 35 of 2009 concerning Narcotics are carried out through rehabilitation. The rehabilitation can release users from dependence and reduce the danger of disease for addicts and victims of abuse. The existence of rehabilitation is essentially the protection of human life and basic rights to health. It is in accordance with human values and legal objectives, namely to provide justice, benefit and legal certainty. These values are the basis for consideration that rehabilitation needs to be mandatory for addicts and victims of narcotics abusers. The overcoming narcotics crime by imposing imprisonment on addicts and victims of narcotics abuse certainly cannot break the chain of narcotics abuse. However, in practice, not all addicts and victims of narcotics abusers receive rehabilitation sanctions. The majority of the demands of the public prosecutor against the defendant are imprisonment, and only a few are demanding the imposition of rehabilitation, as well as the judge's decision. This is the evidence that the public prosecutor rarely demands rehabilitation for narcotics defendants. The existence of legal counsel and expert testimony is seen significant in influencing the judge to give a rehabilitation decision. This study will discuss on: 1) Analysis of judge's decisions for addicts and victims of narcotics abusers and 2) Reconstruction of rehabilitation arrangements in the narcotics law in the future. This research is normative juridical research examining various regulations regarding rehabilitation for addicts and victims of narcotics abusers as well as court decisions related to this problem. The legal materials used are analyzed qualitatively and presented in an analytical descriptive manner.

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Introduction

The Law Number 35 of 2009 concerning Narcotics basically provides legal construction in rehabilitation policies in Indonesia. In the elaboration of the construction of norms in Law Number 35 of 2009 concerning Narcotics, there is a clash between the criminal and health approach. This condition can be seen from the fact that there are still many addicts and victims of narcotics abuse who are not rehabilitated but are sentenced to imprisonment. Drug abuse is a type of crime that has (potential) social and complex impacts. Complexity in dealing with narcotics crimes occurs when criminal law is the main choice (Faisal, 2019; Malik et al., 2020).

Fauzia & Hamdani (2022) found the data in which the majority of public prosecutors' demands for defendants were imprisonment (90%), only a few demanded the imposition of rehabilitation (10%). This is the evidence that the public prosecutor rarely demands rehabilitation for narcotics defendants. It is further stated that 94% of the judges' decisions-imposed imprisonment, this decision includes convicts sentenced to Article 127 as abusers (Arimuladi et al., 2021; Lasmadi, 2020). Only 6% of all decisions were imposed rehabilitation measures. All the rehabilitation measures were only given to children. This rehabilitation policy can also be studied as follows:

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<https://doi.org/10.20525/ijrbs.v11i1.1683>

Citation: Prastiyo, W. E. (2022). The reconstruction of rehabilitation for addictives and drug abuses in human rights perspective, International Journal of Research in Business & Social Science 11(1) (2022), 379-389.

- i. The more a case meets the criteria contained in SEMA No. 4 of 2010, the more likely the case will get a rehabilitation decision, which is 71.4%. However, there are still 28.6% of cases that meet the criteria of SEMA No. 4 of 2010 but did not get a rehabilitation decision.
- ii. The possibility of getting a rehabilitation verdict, regardless of the presence or absence of a lawyer, is still quite large, namely 69.57%. However, when the defendant is accompanied by a lawyer, the chances of getting a rehabilitation decision increase to 80%.
- iii. The presence of experts is seen significant in influencing judges to give rehabilitation decisions. However, of course, the presence of experts does not directly guarantee a rehabilitation decision because their amount is not considered representative and there are many other factors that play the role.

Judging from the construction of rehabilitation in Law Number 35 of 2009 concerning Narcotics, there is a clash between the criminal and health approach. Article 54 of Law Number 35 of 2009 concerning Narcotics requires narcotics addicts and victims of narcotics abuse to undergo medical and social rehabilitation. The construction of Article 54 already uses a health approach for addicts and victims of abuse. The provisions of Article 1 point 15 states that an abuser is a person using narcotics without rights or against the law (Arimuladi et al., 2021; Elpina & Purba, 2021; Sonjaya 2020). The authentic definition of addicts still uses a criminal approach by stating that the act is an act without rights or against the law.

One of the things that becomes a problem point in the Narcotics Law is the unclear understanding and status between addicts, abusers, and victims of narcotics abuse. Due to the lack of clarity on the meaning and status, other arrangements have become biased and confusing and in practice this directly has a major impact, especially for narcotics users.

Norm conflicts also occur in the provisions of Article 54 of Law Number 35 of 2009 concerning Narcotics requiring the narcotics addicts and victims of narcotics abuse to undergo rehabilitation with the provisions in Articles 103 and 127 of Law Number 35 of 2009 concerning Narcotics providing the discretion for judges to impose criminal sanctions other than rehabilitation. The same thing is also confirmed in the Attachment to the Decree of the Director General of the General Judiciary Agency Number: 1691/DJU/SK/PS.00/12/2020 dated: 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts Environment stating that the narcotics cases for users and victims' abusers can be resolved by the restorative justice (Rusito & Suwardi, 2019; Setyowati, 2018). The judge's authority to require rehabilitation as regulated in Article 127 of Law Number 35 of 2009 concerning Narcotics and the Attachment to the Decree is *lex imperfecta* (a provision that does not contain sanctions). This condition will lead to several juridical consequences in which the judges tend to "trade" the rehabilitation decisions to addicts and victims of narcotics abuse. Addicts and victims of abuse who receive rehabilitation measures are children, artists, and foreigners only. In fact, ideally, rehabilitation is given to all addicts and abuse victims who have met the requirements (Hartoko & Ma'ruf, 2018; Apriliyanto & Sulchan, 2021; Wibowo et al., 2021).

The inaccuracy of the legal construction regarding rehabilitation for addicts and victims of narcotics abuse in the laws and regulations in Indonesia has resulted in the legislator's goal of improving public health status through rehabilitation programs. Addicts and victims of narcotics abuse are even more likely to be placed in prison than rehabilitated; therefore, their addiction does not recover (Olivia et al., 2021; Ikawati, 2021). They can be said to have recovered if they are no longer using narcotics (drug free), meaning that they are free from narcotic substances and do not consume them anymore. Narcotics addicts and victims of narcotics abuse are said to have recovered if they have not committed crimes (criminalize free), meaning that they are no longer committing crimes related to narcotics crimes. Furthermore, it is said to be recovered if it has implemented a healthy life style, meaning that the addicts and victims of narcotics abusers have returned to their normal life as usual. The final measure of success for addicts and victims of narcotics abuse is when they are more productive, meaning that they are said recovered if they can stand alone and carry out their functions again in society and a normal life and can be more beneficial for themselves, their families, and the surrounding community (Pertiwi, & Ainsworth, 2021; Ariyanti 2017; Massi et al, 2011).

The normative legal research is used in writing this research to examine the ambiguity of norms formulated with a criminal and health approach in the rehabilitation provisions for addicts and victims of narcotics abuse in Law Number 35 of 2009 concerning Narcotics. This can be seen from the authentic definition of narcotics abuse, and the normative provisions in Articles 54, 103 and 127 of Law Number 35 of 2009 concerning Narcotics.

This type of normative legal research is used in reviewing the construction of rehabilitation policies and rebuilding the construction of rehabilitation policies in the future. Interpretation is carried out with a systematic interpretation, namely reviewing the relevant laws and regulations and with a teleological interpretation, namely by looking at the purpose of regulating provisions on narcotics in Indonesia. Legal materials come from primary, secondary and tertiary legal materials. Analysis of the problems in this study is carried out qualitatively.

In this study, two problems will be discussed, namely: 1) Analysis of judge's decisions for addicts and victims of narcotics abusers and 2) Reconstruction of rehabilitation arrangements in the narcotics law in the future.

Literature Review

Legal reconstruction comes from the words “reconstruction” and “legal/law”. According to Marbun (1996), reconstruction is the return of something to its original place, the compilation or re-drawing of existing materials and rearranged as they were or the original incident. In Black's Law Dictionary, it is stated “Reconstruction. Act of constructing again. It presupposes the non-existence of the thing to be reconstructed, as an entity; that the thing before existing has lost its entity.” (Black, 1968). According to Rahardjo (2000), in carrying out legal reconstruction, there are at least three conditions that need to be considered, namely 1) reconstruction must be able to cover all fields of positive law concerned; 2) there should be no logical contradiction in it and 3) the reconstruction should meet the requirements of accuracy. That is, it is not something that is made up, it should provide a clear and simple picture.

According to Article 1 point 1 of Law Number 35 of 2009 concerning Narcotics, narcotics are substances or drugs derived from plants or 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 cause dependence, which is divided into groups as attached in this Law. The provisions of Article 1 number 13 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically. Furthermore, Article 1 point 15 Abusers are people who use narcotics without rights or against the law. In Law Number 35 of 2009 concerning Narcotics, it is determined that addicts and victims of narcotics abusers are required to get rehabilitation.

The concept of rehabilitation comes from the purpose of punishment. The philosophy of rehabilitation (recovery) is often translated as helping the convicts to recover as before. The consequence is to eliminate suffering as much as possible. In practice, there is an ambivalence between rehabilitation as part of criminal sanctions or rehabilitation in the context of treatment, because the goals of the two are contradictory (Zulfa, 2011). According to Andrew Ashworth, rehabilitation is motivated by a positivist view in criminology. The cause of crime is more due to mental illness or social deviation, both in terms of psychiatry and psychology. On the other hand, crime is seen as a disintegrative social disease in society (Zulfa, 2011). Rehabilitation is a recovery effort for a person. Doyle & Ivanovic (2010) describe the definition of rehabilitation as follows “The broad definition of rehabilitation includes a structured development process focused on individuals, involving a continuum of care and at maximizing their quality of life and enabling their re-integration into communities”. According to the WHO Lexicon of Alcohol and Drug Terms, “rehabilitation” is defined as follows: in the field of substance use, the process by which an individual with a drug-related problem achieves an optimal state of health, psychological functioning and social well -being. Rehabilitation typically follows an initial phase of treatment in which detoxification and, if required, other medical and psychiatric treatments occur. It includes a variety of approaches including group therapy, specific behavior therapies to prevent relapse, involvement with a mutual-help group, residence in a therapeutic community or half-way house, vocational training, and work experience. There is an expectation of social reintegration into the wider community (The Office for Drug Control and Crime Prevention became the United Nations Office on Drugs and Crime, 2003). Rehabilitation in these provisions includes medical and social rehabilitation.

Analysis of judge's decisions for addicts and victims of narcotics abusers

Lawmakers still view that narcotics crime is very harmful and is a very big danger to human life, society, nation and state as well as Indonesia's national security. It is as the basis for weighing in Law Number 35 of 2009 concerning Narcotics. Statistical data on the narcotics crime cases is also still high, followed by the involvement of international networks. The Figure 1 is case statistics reported by the National Narcotics Agency:

Figure 1: Statistics of Drug Cases

The condition of the excess capacity in correctional institutions is also accompanied by limited places for rehabilitation. Uyat Suyatna in his research states that BNN needed an additional 30 units of rehabilitation centers for drug addicts, as an effort to eradicate drugs which is quite high in the country. Currently, BNN only has 4 units of rehabilitation center for narcotics addicts in 4 provinces, while 30 provinces have not existed yet. These facilities are limited to accommodate 4 million drug addicts' inmates. Ideally, each province in Indonesia has 1 unit of rehabilitation center and in the future, each district or city will have a place for rehabilitation for drug addicts. According to the data from BNN, there are only about 18,000 addicts released from drug dependence each year by community-owned institutions and BNN itself. This figure is very small when compared to the prevalence of narcotics addicts in Indonesia which reaches 4.2 million people. The contributing factor is the inadequate availability of rehabilitation institutions and the fear of addicts and victims of narcotics abusers going to prison if they report that they have consumed narcotics.

Recommendations for imposing action sanctions in the form of rehabilitation are based on the results of the BNN assessment. According to Article 1 point 6 of the Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions "The Integrated Assessment Team is a team consisting of a Team of Doctors and a Legal Team established by the leadership of the local work unit based on the Decree of the Head of the National Narcotics Agency, the Provincial National Narcotics Agency and the Regency/City National Narcotics Agency." The nature of the recommendations issued by the Integrated Assessment Team is only a recommendation. As a result, these recommendations are not always adhered by the law enforcement. The law enforcers can make detentions in accordance with their authority. Judges are also not bound by recommendations from the National Narcotics Agency; therefore, they may not impose rehabilitation measures, but imprisonment for addicts and victims of narcotics abusers.

The research was conducted on the decision of the Denpasar District Court for addicts and victims of narcotics abusers. Judges in making criminal decisions are free to determine the severity of the punishment to be imposed. However, this freedom in determining the criminal must be properly based on the meaning of crime, criminal (the crime maker), and criminal. Based on the decisions of the Denpasar District Court, the following can be analyzed:

Dominance of imprisonment compared to rehabilitation

The judge sentenced imprisonment for addicts and victims of narcotics abuse even though the article charged is Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics with evidence that it was possible to be rehabilitated based on the Circular Letter of the Supreme Court (SEMA) of the Republic of Indonesia Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. Circular Letter of the Supreme Court (SEMA) of the Republic of Indonesia Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions states that an addict can be placed in a rehabilitation institution with the following criteria:

- i. The defendant is caught red-handed when he is arrested by Polri and BNN investigators.
- ii. At the time of being caught red-handed according to point a above, the evidence of 1 (one) day use is found with the following details:
 - a. Methamphetamine (shabu-shabu) group weighing 1 gram.
 - b. MDMA (ecstasy) group weighing 2.4 grams / as many as 8 grains;
 - c. Heroin group weighing 1.8 grams
 - d. Cocaine group weighing 1.8 grams.
 - e. Cannabis group weighing 5 grams.
 - f. Coca leaves weighing 5 grams.
 - g. Mescaline weighs 5 grams.
 - h. Psilocybin group weighing 3 grams.
 - i. The LSD (d-lysergic acid diethylamide) group weighs 2 grams.
 - j. Group PCP (Phencyclidine) weighing 3 grams.
 - k. Fentanyl group weighing 1 gram.
 - l. Methadone group weighing 0.5 grams.
 - m. Morphine group weighing 1.8 grams.
 - n. Petidine group weighing 0.96 grams.
 - o. Codeine group weighing 72 grams.
 - p. Buprenorphine group weighing 32 grams.
- iii. Laboratory Test Letter containing positive use of drugs issued at the request of the investigator.
- iv. A certificate from a government psychiatrist appointed by the judge is required.
- v. There is no evidence that he is involved in the illicit trafficking of narcotics.

The judge instead sentenced him to imprisonment without rehabilitation even though the defendant met the criteria in SEMA No. 4 of 2010. The judge's policy can be seen in Decision Number 1520/Pid.Sus/2019/PN Dps with evidence of 0.51 grams of methamphetamine, Decision Number 17/Pid.Sus/2020/PN Dps, Decision Number 481/Pid.Sus/ 2020/PN Dps with evidence of 0.17

grams of methamphetamine, Decision Number 1520/Pid.Sus/2019/PN Dps with evidence of 0.51 gram of methamphetamine, Decision Number 481/Pid.Sus/2020/PN Dps with evidence of 0.17 grams of methamphetamine, and Decision Number 1520/Pid.Sus/2019/PN Dps with evidence of 0.51 grams of methamphetamine.

The conditions in which judges prefer to impose imprisonment rather than rehabilitation for addicts and victims of narcotics abusers are in line with the paradigm of thinking regarding the debate on criminal sanctions and these actions. Rehabilitation and criminal prosecution are often seen as two opposite things. Advocates of rehabilitation always put forward a number of reasons why rehabilitation is much better than the imposition of imprisonment, and vice versa. The article entitled *Punishment Fails, Rehabilitation Works*, written by James Gilligan, professor from New York University, provides an illustration of how prison sentences are no longer effective in the United States. Even rehabilitation, which has not been accepted for decades as a theory of punishment, has been brought up by the Supreme Court in the United States in the case of *Graham v Florida* in 2010. Normatively, the imposition of a pure criminal is the independence of the judge. The General Elucidation of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power states that the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state of law. In line with these provisions, one of the important principles of the rule of law is the guarantee of an independent judiciary, free from the influence of other powers to administer justice to uphold law and justice. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that the judicial power is an independent power to administer justice in order to uphold law and justice. Based on the implementation of independent judicial power, free from the influence of other powers, the judge can choose the sentence imposed on the defendant in accordance with his belief.

SEMA Number 4 of 2010 basically lists the criteria for a person to be rehabilitated but judging from the legal character of SEMA, it is a juridical technical provision that is not binding. SEMA is not included in the statutory hierarchy because it is not directly delegated by law. It is unlike other laws and regulations which are subordinate legislation because they have a delegation from the law (primary legislation). SEMA is not a statutory regulation but a policy regulation (*beleidsregel*). The policy regulations can be stated in the form of ordinary letters, not in the form of official regulations with regulatory content and provide instructions in carrying out tasks. Thus, the judge's discretion in applying the rule of law and deciding cases is not required to be guided by SEMA.

The assessment result report is not required to be obeyed by the judge

The Assessment Report is only a recommendation that the judge does not have to comply with in imposing sanctions for addicts and victims of narcotics abusers. In Criminal Decision Number 978 Pid Sus/2019/PN Dps, based on the report on the results of the Bali Province BNN assessment Number: R/20/VII/2019/HK/IPWL/BNNP Bali dated 30 July 2019 which was made and signed by the Examining Team dr. I Gusti Rai Putra Wiguna, Sp. KJ, I Nyoman Suardika, AMKL who in the conclusion explained that the examinee was indicated as a narcotics abuser of the type of shabu in the dependency category with a long history of use since 2000, although he had not used it for years, he returned to routine use once a week since 2013 until he was caught. The evidence found was 0.18 grams of methamphetamine, in which the proven article was Article 127 paragraph (1) letter a, but the judge sentenced him to imprisonment for 2 (two) years and 6 (six) months. Similar conditions can also be seen in Decision Number 1520/Pid.Sus/2019/PN Dps. Medical assessment at Bhayangkara Hospital Denpasar on December 9, 2019 with the results that the examinee was a user of shabu-type narcotics used to make the body fresh, tested using methamphetamine of his own free will. The examinee has not experienced substance dependence with the type of situational use and is advised to undergo social rehabilitation for 3 (three) months. The evidence found was 0.51 gram of methamphetamine and the article that was proven was Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics. However, the judge decided with a fairly high penalty, namely imprisonment for 3 (three) years.

Rehabilitation is also provided for recidivists

Based on a search on the Case Investigation Information System (SIPP) of the Denpasar District Court, there are recidivist cases in the case with Decision Number 747/Pid.Sus/2018/PN Dps and Decision Number 749/Pid.Sus/2019/PN Dps. Decision Number 747/Pid.Sus/2018/PN Dps Sentencing the Defendant with imprisonment for 10 (ten) months, stipulating the Defendant to undergo Medical and Social Rehabilitation and stipulating the period of undergoing Medical and Social Rehabilitation which is calculated as a period of undergoing criminal. Imprisonment sentences have been carried out from June 17, 2018 to October 23, 2018, so that the rest from October 24, 2018 to April 17, 2019 the convicts underwent medical and social rehabilitation. The defendant was re-examined in the same case in the case with Decision Number 749/Pid.Sus/2019/PN Dps over the consumption of shabu-shabu with his friend. The decision does not state in aggravating circumstances that the defendant has been previously convicted. The judge sentenced the Defendants to imprisonment for 1 (one) year each and ordered the defendants to undergo treatment and care through medical and social rehabilitation at the Bhayangkara POLDA Hospital Bali for 6 (six) months during which the rehabilitation period. These medical and social services are counted as serving a sentence.

In the analysis of Decision Number 749/Pid.Sus/2019/PN Dps, there are several things that need to be observed, including:

- i. The prison sentence imposed is 1 year, with a rehabilitation period of 6 months. The defendant has been detained since April 8, 2019 until September 23, 2019. If calculated, the detention period has not yet reached 6 months (5 months and 15 days), while the rehabilitation period is 6 months. Thus, the remaining 15 days of punishment that must be served by the convict is not clear.

- ii. In Decision Number 749/Pid.Sus/2019/PN Dps, it is not stated that the defendant is a recidivist. It is possible that this fact has not been included since the investigation. The absence of obligations and sanctions for law enforcers who do not include excerpts of court decisions on a suspect and defendant who has committed a crime in the file creates a tendency that this condition is deliberately created and traded.
- iii. The action sanction in the form of rehabilitation for the defendant is twice given to the same defendant (also given to those with recidivist status). This condition is normatively not prohibited because so far there have been no restrictions on rehabilitation measures for the repetition of criminal acts.

The Correctional Institution becomes a place for narcotics circulation

The place of the crime or locus delicti narcotic crime is in the Correctional Institution which in the table above is in the case with Decision Number 2/Pid.Sus/2018/PN Dps, namely in the Class II A Kerobokan Correctional Institution (Lapas). In this case, the defendant admitted that 1 (one) package of clear plastic clips inside which contained clear crystals of the methamphetamine type belonged to the defendant, which was previously stored in the right pocket of the pants the defendant was wearing. According to the defendant's confession, 1 (one) package of clear plastic clips contained clear crystals containing the narcotic type Methamphetamine or known as shabu-shabu and 1 (one) glass pipette was obtained by the defendant on Sunday, October 1, 2017 at around 15.55 WITA under a rock in Block J and the defendant kept 1 (one) package of clear plastic clips inside containing clear crystals containing the narcotic type Methamphetamine and 1 (one) glass pipette in the right pants pocket that the defendant was wearing and 1 (one) package of clips the clear plastic inside containing clear crystals containing the narcotic type Methamphetamine that the defendant wants to sell to other inmates. In the case with Decision Number 908/Pid.Sus/2019/PN Dps, the defendant admitted in ordering narcotics from someone who claimed to be in the Kerobokan Penitentiary (LP) and offered the defendant to buy 1 (one) package of methamphetamine. This condition shows that prisons do not solve dependence for addicts and victims of narcotics abusers but instead become an easier place for addicts and victims of narcotics abusers to get narcotics.

5. Addicts and victims of narcotics abusers who have served prison terms have become more serious offenders

Imprisonment is not successful in overcoming the problem of drug dependence faced by addicts and victims of abuse. The penitentiary has become a crime school. Based on Decision Number 908/Pid.Sus/2019/PN Dps, it can be seen that the defendant in this case has been sentenced to imprisonment for 1 (one) year and 4 (four) months for possession of 1.24-gram net methamphetamine for violating Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics. After his release, he was again accused of possessing 75.66 grams of crystal methamphetamine. These conditions indicate that prisons are not a place to change the behavior of addicts and victims of abuse, but rather a place to learn to commit bigger crimes. The principle of rehabilitation and the assumption can be achieved through incarceration premised on an expectation that the individual will "turn their life around" after prison or face further punishment before the courts. Observation of potential social hazards and social protection becomes a standard in justifying an act rather than moral responsibility and justice. Rehabilitation is carried out on criminals because in imposing sanctions, they must be oriented to the individual perpetrators themselves, not to their actions, and how to make the individual perpetrators of the crime better. The rehabilitation of narcotics addicts also adheres to the theory of social defense as a form of social protection that integrates narcotics addicts into social order so that they do not abuse narcotics again. In the context of moral responsibility and justice, rehabilitation should ideally be the only sanction for perpetrators and victims of narcotics abusers. The law enforcement paradigm tends to view narcotics users as criminals; therefore, law enforcers rarely apply the rehabilitation article, especially for narcotics users from vulnerable economic groups. Whereas, the rehabilitation is the right of every addict and victim of abuse.

Reconstruction of rehabilitation arrangements in the narcotics law in the future

The policy of preventing narcotics crime is important and more beneficial for the community. Rehabilitation is a prevention program to reduce the demand for narcotics. The importance of legal policies regarding rehabilitation for addicts and victims of narcotics abuse in Indonesia is in accordance with global policies as mandated by WHO. As part of the United Nations system, who's role under the conventions is to protect individuals and societies from harm due to drug use and to promote public health interventions to reduce harm. WHO focuses on the prevention of drug use, treatment of drug use disorders (including both harmful use and dependence), and prevention and management of associated health and social condition?

The rehabilitation program is designed to address each patient's personal needs with a focus on daily functioning, such as housekeeping and personal hygiene, living within a budget, finding and sustaining employment, adherence to medication, and engaging in appropriate leisure activities (Susanti et al., 2022). The existence of rehabilitation is essentially the protection of human life and basic rights to health. In Article 25 paragraph of the Universal Declaration of Human Rights it is stated as follows "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

The instrument of imprisonment is not the right instrument, especially with the conditions of prisons that are over capacity, but on the other hand, the law enforcers actually make imprisonment the most important instrument to build a deterrent effect from narcotics users. From the side of law enforcement, excess capacity also occurs because of the perception of law enforcers that criminal sanctions

for deprivation of liberty are more effective than action sanctions (maatregel) or other types of crimes that are not deprivation of liberty. Based on data from the Directorate General of Corrections of the Ministry of Law and Human Rights in 2015, the condition of overcapacity of correctional institutions can be seen in Table 1.

Table 1: Condition of Correctional Institution Capacity in Indonesia

No.	Narcotics Correctional Institution	Number of Inmates	Capacity	Excess Inmates
1.	Narcotics Correctional Institution Class IIA Bandung, West Java	1104	448	656
2.	Narcotics Correctional Institution Class IIA Jayapura, Papua	225	308	-83
3.	Narcotics Correctional Institution Class IIA Madiun, East Java	107	200	-93
4.	Narcotics Correctional Institution Class IIA Nusakambangan, Central Java	206	245	-39
5.	Narcotics Correctional Institution Class IIA Sungguminasa, South Sulawesi	743	300	443
6.	Narcotics Correctional Institution Class IIA Tanjung Pinang, Kepri	249	200	49
7.	Narcotics Correctional Institution Class IIA Bandar Lampung	935	168	767
8.	Narcotics Correctional Institution Class IIA Bangli, Bali	90	408	-318
9.	Narcotics Correctional Institution Class IIA Cipinang, DKI Jakarta	3090	1084	2006
10.	Narcotics Correctional Institution Class IIA Cirebon, West Java	868	455	413
11.	Narcotics Correctional Institution Class IIA Karang Intan, South Kalimantan	961	500	461
12.	Narcotics Correctional Institution Class IIA Lubuk Linggau, South Sumatera	393	198	195
13.	Narcotics Correctional Institution Class IIA Pamekasan, East Java	692	1234	-542
14.	Narcotics Correctional Institution Class IIA Pematang Siantar, North Sumatera	412	420	-8
15.	Narcotics Correctional Institution Class IIA Yogyakarta	206	474	-268
16.	Narcotics Correctional Institution Class III Kasongan, Central Kalimantan	272	200	72
17.	Narcotics Correctional Institution Class III Langkat, North Sumatera	354	126	228
18.	Narcotics Correctional Institution Class III Langsa, Aceh	253	800	-547
19.	Narcotics Correctional Institution Class III Muara Sabak, Jambi	241	160	81
20.	Narcotics Correctional Institution Class III Palembang, South Sumatera	359	417	-58
21.	Narcotics Correctional Institution Class III Pangkal Pinang, Babel	481	450	31
22.	Narcotics Correctional Institution Class III Samarinda, East Kalimantan	729	352	377
23.	Narcotics Correctional Institution Class III Sawahlunto, West Sumatera	34	210	-176

Health recovery is basically the goal of rehabilitation for addicts and victims of narcotics abusers. The ratio decidendi in the decision to rehabilitate drug addicts is a judge who considers the health condition of the drug addicts in making decisions. The health condition of drug addicts is known from requests for information from doctors related to the disease and how to handle it. In addition to the

health of drug addicts, the determination of the ratio in the rehabilitation decision is to meet the criteria for addicts as victims, drug abuse for oneself, not a dealer, and drug possession for oneself.

Narcotics crime is a type of crime that is different from other types of crime in which narcotics crime is a form of victimless crime (Susilowati & Harefa, 2022; Nugroho, 2022). Rehabilitation for addicts and victims of narcotics abuse is an abolitionistic way of dealing with narcotics crimes. The abolitionistic way is by eradicating the causes of the crime. Related to this, rehabilitation needs to be done to eradicate the illicit trafficking of narcotics.

The reformulation of articles and paragraphs in the law on narcotics in the future is related to the terminology of addicts and victims of narcotics abuse, rehabilitation arrangements in a health approach, detention for addicts and victims of narcotics abusers as well as a case examination model in the criminal justice process for addicts and victims of narcotics abuse (See Table 2).

Table 2: Reformulation of Provisions

No	Substance	Reformulation
1	Redefining addicts and abusers	An addict is a victim who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically. Abusers are victims who use narcotics without rights.
2	Rehabilitation	Rehabilitation with a health approach must be contained in the Academic Paper. The formulation of the article is as follows: <ul style="list-style-type: none"> i. Rehabilitation must be provided to addicts and narcotics abusers. ii. The provisions as referred to in paragraph (1) do not apply to the repetition of a crime. iii. The rehabilitation as referred to in paragraph (1) shall be provided free of charge. iv. The financing as referred to in paragraph (3) shall be further regulated in a Government Regulation.
3	Detention	Detention of addicts and narcotics abusers is carried out in a rehabilitation center. Regulations on the capacity of rehabilitation homes are further regulated in a Government Regulation.
4	Case examination process	The process of examining cases for addicts and narcotics abusers is carried out with a brief examination.

Law is at the forefront to push for reform from traditional to modern. It is time for law and punishment for addicts and victims of narcotics abusers to leave the tradition that criminal convictions must be carried out with vengeance, namely placing violators in prison. A narcotics criminal who is included in the category of addicts or users can be observed on the condition of the individual, it will be more perfect if the handling is also carried out in the sphere of the family and the immediate environment of the individual.

The concept of abuse stems from the existence of a person's rights or authority guaranteed by law. Narcotics abuse is a form of deviation, action or deed from people who are not entitled, not authorized to use or distribute narcotics. This redefinition will have implications for the fulfillment of the rights as victims, and the state's legal obligations in fulfilling the rights of addicts and narcotics abusers as victims. Reconstruction regarding rehabilitation in the future is carried out with a health approach and must also be limited to not being given to recidivists. Reconstruction of detention of addicts and victims of narcotics abuse is placed in rehabilitation centers not at the state police office, at the state prosecutor's office, in correctional institutions. This policy reconstruction includes the capacity of 1 rehabilitation center with a minimum capacity of 100. The model for examining cases in the criminal justice process for addicts and victims of narcotics abuse is a brief examination.

Based on Article 103 of Law Number 35 of 2009 concerning Narcotics, it is stated that judges who examine narcotics addict cases can do two things, namely first, the judge can decide to order the person concerned to undergo treatment and/or care if the narcotics addict is proven guilty of committing a narcotic crime. Second, the judge may decide to order the person concerned to undergo treatment and/or treatment/rehabilitation, if the narcotic addict is not proven guilty of committing a narcotic crime. Implicitly, this authority recognizes that victims of narcotics abuse, apart from being perpetrators of criminal acts, are also victims of the crime itself, which in terms of victimology is often referred to as self-victimization or victimless crime.

Narcotics crimes such as narcotics abuse in the study of criminology can be classified as victimless crimes. This classification refers to the nature of the crime, namely the existence of two parties who carry out a transaction or relationship (which is prohibited) but both feel that they have not suffered harm to the other party. In this regard, Carto Nuryanto states that the idea of a Double Track System demands equality between criminal and action sanctions that can be applied to drug abusers so that the deterrent effect and healing process for narcotics perpetrators can run, so that narcotics perpetrators and with this process will be able to recover themselves from narcotics users and dependence for their deterrent criminal sanctions. Narcotics users can be included as victims of narcotics abuse. This is because they will experience dependence on these drugs. Narcotics abuse is not only dangerous to the user

himself, but also to the community, in which in order to fulfill his desire to get narcotics, the narcotics user of course justifies all means to get it. For people who do not earn enough, they will try to steal, rob and commit various other criminal acts.

Rehabilitation is a form of treatment. Based on the consideration of the protection of human rights in which addicts and narcotics abusers are seen as victims and based on the welfare state approach and the health approach in dealing with narcotics, future rehabilitation must be fully funded by the government. Drug addicts and victims of drug abuse must receive free rehabilitation costs even though the rehabilitation is carried out in private institutions. Private institutions are expected to be only the implementers, but the rehabilitation budget is borne by the state through the BPJS program. At least in the short-term policy, the government can set a standard tariff policy for rehabilitation services for addicts and victims of narcotics abusers.

According to Yasonna Laoly, Minister of Law and Human Rights of the Republic of Indonesia, the government should use a health approach rather than law enforcement on narcotics users. This is a fundamental question, whether the drug user wants to be punished or given treatment. Narcotics users who have entered the dependency phase are not different from someone who is so sick that he must be given treatment, which in this case is rehabilitation. This approach is also used by various developed countries, so the biggest pressure is on the dealers, not the users. The act of including addicts and victims of narcotics abusers has implications for increasing the number of inmates in prisons.

The negative impact of overcapacity in prisons was seen in the riots at the Class III Narcotics Penitentiary Langkat, North Sumatra in mid-May 2019. Hundreds of prison inmates reacted when a colleague who was caught carrying methamphetamine was dealt with by the officers. The resistance of the inmates led to burn and destroy the correctional facilities and even escaped from it. The capacity there was only for 915 people, but the government placed 1,635 inmates and detainees.

Current developments indicate a strong tendency to change in viewing narcotics addicts who are no longer seen as criminals, but as victims who must be given empathy. The punitive approach can make people who need treatment hide themselves. The addicts worry that if they appear they will be arrested, so this situation prevents addicts from participating in therapy or rehabilitation programs. In line with this condition, basically, law enforcement efforts are the most appropriate, if it is aimed at big dealers and illegal narcotics suppliers and not directed at the petty criminals such as narcotics addicts.

Reconstruction regarding rehabilitation in the future should also be limited, in the sense that it is not given to recidivists. Recidivists are when someone commits a criminal act and the criminal act has been sentenced by a judge. The weighting of the sentence given to a repeater becomes an excuse for someone to repeat a crime again, this is to prove that the prisoner has a bad character because it is considered very dangerous for security and public order. The repetition of this crime shows the failure of rehabilitation and the lack of intention of addicts and victims of narcotics abusers to improve their quality of life.

In comparison, the rehabilitation policy in Portugal against narcotics abusers with the amount of evidence that does not exceed what has been determined in the Narcotics Law is not forwarded to the criminal justice system. However, it is transferred to a Dissuasion Commission formed by the government, consisting of social welfare professionals/community to be transferred in the form of social work sanctions, treatment/counseling and fines. Regarding the decriminalization of addicts and victims of narcotics abuse in Portugal, the Drug Policy Alliance states the following:

In 2001, Portuguese legislators enacted a comprehensive form of decriminalization - eliminating criminal penalties for low-level possession and consumption of all illicit drugs and reclassifying these activities as administrative violations. A person found in possession of personal-use amounts of any drug in Portugal is no longer arrested, but rather ordered to appear before a local "dissuasion commission" - comprised of one official from the legal arena and two from the health or social service arenas - who determines whether and to what extent the person is addicted to drugs. The commission can refer that person to a voluntary treatment program, pay a fine or impose other administrative sanctions.

The rehabilitation policy in Australia against narcotics abusers with the implementation of a drug court since 1999 aims to divert narcotics addicts from the punishment system into rehabilitation. In the drug court, social welfare, health and community participation professionals are employed, and addicts receive a rehabilitation program for 12 (twelve) months. Rehabilitation programs usually take place in a community-based care center or residential rehabilitation service. These places allow people to stay in specialized clinics for a few days or weeks.

Rehabilitation policy in France against narcotics abusers with an emphasis on the Individual Treatment Approach is by means of the government providing various rehabilitation therapy modalities that clients can choose according to their needs and in addition to decide on rehabilitation. Judges can provide other alternative sanctions, namely in the form of fines so that imprisonment is not a priority. This condition is certainly different from what has happened in the legal system for dealing with narcotics in Indonesia. Rehabilitation is not an obligation for judges in imposing criminal penalties for addicts and victims of narcotics abusers.

Rehabilitation is a policy that is implemented from the principles of humanity and justice. The principle of humanity essentially places humans in accordance with their dignity as creatures of God, mutual respect between fellow human beings, to create harmonious interactions, and realize a just and civilized humanity. The principle of humanity leads to the life that is as high as possible and can be achieved by humans, requires the happiness of the people who are abundant physically and mentally. Based on

this humanitarian principle, it is believed that rehabilitation can save the right to life and the right to health for addicts and victims of narcotics abusers.

Efforts to overcome the problem of narcotics crime are not enough just to use criminal sanctions but also need to use other approaches. For narcotics addicts, for example, aspects of addiction to narcotics need to use another approach, namely medical and social rehabilitation. Rehabilitation is one of the depenalization efforts in narcotics abuse cases, in which this action reduces the aspect of punishment in criminal law. The presence of rehabilitation measures in legal provisions and strategies for overcoming narcotics crime cannot be separated from the abolitionist understanding. The abolitionist view considers the criminal justice system to contain structural problems or defects, so that realistically, the structural foundations of the system must be changed. In the context of the criminal sanction system, the values that underlie the abolitionist notion still make sense to seek alternative sanctions that are more appropriate and effective than institutions such as prisons.

Conclusion

The values of Pancasila are thought about the importance of rehabilitation, especially in relation to human values and values of justice. Rehabilitation is a policy that is implemented from the principles of humanity and justice. Reconstruction of rehabilitation arrangements for addicts and victims of narcotics abuse in the future needs to be done to save them from health hazards. Reconstruction of the rehabilitation setting is carried out in several aspects. Reconstruction of rehabilitation begins with the redefinition of the terminology of addicts and victims of narcotics abuse, in which it is necessary to have a common terminology that the actions of addicts and victims of narcotics abuse are no longer categorized as acts against the law, but are viewed as victims. Reconstruction of rehabilitation settings is carried out in a health approach. Reconstruction of rehabilitation as an action against addicts and victims of narcotics abuse is carried out in accordance with the principles of humanity and justice as contained in the values of Pancasila. The reconstruction regarding rehabilitation in the future must also be limited, namely not given to recidivists. The reconstruction of policy regulations regarding detention also needs to be carried out in which direct detention is carried out in rehabilitation centers. The model for examining cases in the criminal justice process for addicts and victims of narcotics abuse in the future is a brief examination as long as they have received an Assessment Report that the person concerned is an addict and victim of narcotics abuse. This reconstruction is in accordance with the principle of the trilogy of justice and the adage, justice delayed is justice denied.

Author Contributions: Conceptualization, WEP.; Methodology, WEP.; Data Collection, WEP.; Formal Analysis, WEP.; Writing—Original Draft Preparation, WEP.; Writing—Review And Editing, WEP. Author has read and agreed to the published final version of the manuscript.

Institutional Review Board Statement: Ethical review and approval were waived for this study, due to that the research does not deal with vulnerable groups or sensitive issues.

Data Availability Statement: The data presented in this study are available on request from the corresponding author. The data are not publicly available due to privacy.

Conflicts of Interest: The author declares no conflict of interest.

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