



## Reconceptualization of Rehabilitation for Recidivists in the Perspective of Dignified Justice

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### Abstract

A relapse condition is when the former addicts and victims of narcotics abusers who have undergone treatment at a rehabilitation center may return to taking narcotics. This relapse patient in legal terms is called a recidivist. Law Number 35 of 2009 concerning Narcotics regulates sanctions for actions in the form of rehabilitation for addicts and victims of narcotics abusers, but does not regulate whether or not a recidivist can receive rehabilitation sanctions. In this study, there are three issues that will be discussed, namely rehabilitation measures in overcoming drug abuse, rehabilitation sanctions for recidivist addicts and victims of narcotics abusers and reconceptualization of rehabilitation in the perspective of dignified justice. This research is a normative juridical research that examines the void of norms regarding the imposition of rehabilitation crimes for recidivists. The research analysis was carried out qualitatively. The rehabilitation action is motivated by the view that addicts and victims of narcotics abusers are victims. By itself, drug abuse is a victimless crime. The Law on Narcotics does not regulate rehabilitation sanctions for recidivist addicts and victims of narcotics abusers, so that in law enforcement practice there are several people who have been sentenced to rehabilitation sanctions before and in subsequent cases are still subject to rehabilitation sanctions. Reconceptualization of rehabilitation in the perspective of dignified justice places recidivists as victims; therefore, as long as the person is only an addict and a victim of narcotics abuse, he is still entitled to receive rehabilitation sanctions.

### I. Introduction

The term narcotics appeared around 1998. According to the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Law on Narcotics) are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic that can cause decreased or altered consciousness, loss of pain, and may lead to dependence. Drugs and illegal drugs are extraordinary crimes that can damage the order of family life, the community, and the school environment, and even directly or indirectly pose a threat to the continuity of development and the future of the nation and state. In recent years, Indonesia has become one of the main markets for a network of narcotics trafficking syndicates with an international dimension for commercial purposes. For narcotics trafficking networks in Asian countries, Indonesia

is considered the most commercially prospective market-state for international syndicates operating in developing countries. The problem of drug abuse is not only a problem that needs attention for the Indonesian state, but also for the international world.<sup>1</sup>

Narcotic crimes continue to show an alarming development both in practice and by the perpetrators. The current development of narcotics crimes involves not only the jurisdiction of the country where the crime takes place, but it also involves jurisdictions of various countries. The development of narcotics crime evolves not only into crimes of transnational, but perpetrators of such crimes implicate networks of international crime and criminal organization as the impact of these transnational criminal acts.<sup>2</sup> The development and progress of the flow of globalization such as information and communication technology are utilized to the maximum by this narcotics mafia syndicate or network. There is no mistaking the label given to the type of extraordinary crime, as organized crime, hidden crime, and transnational crime. Narcotics sales are carried out by cartels that are not touched by the rule of law. Hughes, et.al., stated "Drug trafficking is frequently argued to be the leading driver of other serious and organized crime, but the interrelationships between such activities remain poorly understood."<sup>3</sup>

The problem of drug abuse in Indonesia is still something that is urgent and complex. In the last decade this problem has become widespread. It is proven by the significant increase in the number of drug abusers or addicts, along with the increasing disclosure of drug crime cases, which are increasingly diverse in pattern and the more massive the syndicate network is. The impact of drug abuse does not only threaten the survival and future of the abuser.<sup>4</sup> As a hidden crime, it is necessary to tackle crimes that are oriented towards humanity and justice.<sup>5</sup> Rehabilitation is an action sanction that is expected to reduce drug abuse.

The rehabilitation policy is expressly stated in the Law on Narcotics, even before this law existed, the Law of the Republic of Indonesia Number 22 of 1997 concerning Narcotics. Article 4 of the Law on Narcotics states that the Law on Narcotics aims to ensure the regulation of medical and social rehabilitation efforts for Narcotics Abusers and Addicts. Medical Rehabilitation is a process of integrated treatment activities to free

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<sup>1</sup> Wenda Hartanto, "Penegakan Hukum Terhadap Kejahatan Narkotika Dan Obat-Obat Terlarang Dalam Era Perdagangan Bebas Internasional Yang Berdampak Pada Keamanan Dan Kedaulatan Negara," *Jurnal Legislasi Indonesia* 14, no. 1 (2017): 1-16, <https://doi.org/https://doi.org/10.54629/jli.v14i1>.

<sup>2</sup> Ms Sarwirini and Riza Kurniawan, "Rehabilitation Of Narcotics Addicts as the Rights to Health," in *International Conference on Law, Governance and Globalization 2017 (ICLGG 2017)* (Atlantis Press, 2017), 250-63, <https://doi.org/10.2991/iclgg-17.2018.34>.

<sup>3</sup> Caitlin Elizabeth Hughes, Jenny Chalmers, and David Anthony Bright, "Exploring Interrelationships between High-Level Drug Trafficking and Other Serious and Organised Crime: An Australian Study," *Global Crime* 21, no. 1 (2020): 28-50, <https://doi.org/https://doi.org/10.1080/17440572.2019.1615895>.

<sup>4</sup> Maudy Pritha Amanda, Sahadi Humaedi, and Meilanny Budiarti Santoso, "Penyalahgunaan Narkoba Di Kalangan Remaja (Adolescent Substance Abuse)," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 4, no. 2 (2017), <https://doi.org/https://doi.org/10.24198/jppm.v4i2.14392>.

<sup>5</sup> I Gede Artha and I Wayan Wiryawan, "Pengendalian Peredaran Gelap Narkotika Oleh Narapidana Dari Dalam Lembaga Pemasyarakatan (LAPAS)," *Magister Hukum Udayana*, 2015, 588-90, <https://doi.org/https://doi.org/10.24843/JMHU.2015.v04.i03.p14>.

addicts from narcotics dependence. Social Rehabilitation is a process of integrated recovery activities physically, mentally and socially; therefore, the former Narcotics addicts can return to carrying out their social functions in the social life.

Rehabilitation aims to cure the victims of the effects of dependence and prevent addicts and victims of narcotics abusers from the side effects of consuming narcotics. According to Martono, Lydia Harina and Satya Joewana, the way that is considered appropriate to cure addiction is to rehabilitate victims of narcotics abusers. Rehabilitation can release narcotics dependence until you can enjoy a free life without narcotics.<sup>6</sup> However, not all people who have undergone rehabilitation and stopped taking narcotics will no longer consume narcotics. Relapse is possible for former addicts and victims of narcotics abusers.

Relapse is a phase where individuals return to taking drugs again within a certain period of time after treatment or rehabilitation. Relapse is a process where addicts reuse drugs after going through a period of abstinence during the rehabilitation process. The relapse period can occur several weeks or months before the individual decides to return to taking drugs. Factors that influence the tendency of relapse according to Marlat and Gordon are high risk situations such as negative emotional conditions, social pressure, positive emotional conditions; coping, namely the ability to deal with high-risk situations that can lead individuals back to using drugs; outcome expectancies, namely positive thinking about the effects of drugs; and abstinence violation effect.<sup>7</sup> A situation where a person returns to taking narcotics places himself as an addict and/or victim of narcotics abuser. This means that legal proceedings against them can be carried out.

Penelitian ini akan membahas tentang upaya rehabilitasi dalam mengatasi penyalahgunaan narkoba, sanksi rehabilitasi bagi residivis pecandu dan korban penyalahgunaan narkotika serta rekonseptualisasi rehabilitasi dalam perspektif keadilan yang bermartabat. Pada bagian terakhir, akan menganalisis bagaimana Pengenaan sanksi rehabilitasi terhadap pecandu dan korban penyalahgunaan narkotika diatur dalam Pasal 103 dan 127 UU Narkotika. Dilihat dari UU Narkotika, ketentuan ini tidak mengatur apakah pasien kambuh yang dalam bahasa hukum disebut residivis berhak mendapatkan rehabilitasi atau tidak; Oleh karena itu, saat ini pengenaan rehabilitasi terhadap residivis tidak dilarang, yang mana Pecandu narkotika dan korban penyalahgunaan narkoba meskipun merupakan residivis merupakan korban yang sakit. Oleh karena itu, dalam pengaturan kebijakan rehabilitasi ke depan, residivis (khususnya pecandu dan korban penyalahgunaan narkotika) tetap berhak mendapatkan rehabilitasi.

## 2. Research Method

Research on reconceptualization of rehabilitation for recidivists in the perspective of dignified justice is a normative juridical research that examines the void of norms regarding the provisions of rehabilitation for recidivists. Primary legal materials consist

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<sup>6</sup> Lydia Harlina Martono and Satya Joewana, *Peran Orang Tua Dalam Mencegah Dan Menanggulangi Penyalahgunaan Narkoba*, (Jakarta: Balai Pustaka, 2016), 87.

<sup>7</sup> Putu Diana Wulandari, Ilham Nur Alfian, and Putu Nugrahaeni Widiyasavitri, "Pelatihan Kontrol Diri Untuk Mencegah Relapse Pada Narapidana Kelompok Rehab Mantan Pecandu Narkoba Di Lapas," *Jurnal Diversita* 6, no. 2 (2020): 175-82, <https://doi.org/10.31289/diversita.v6i2.4083>.

of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics and other juridical technical regulations. Secondary legal materials consist of published research results and articles on the official website. The legal materials were collected through literature study. The research analysis was carried out qualitatively to provide answers to the problems discussed in this study.

### **3. Result and Discussion**

#### **3.1 Rehabilitation Measures in Combating Narcotics Abuse**

Indonesian society is currently faced with a very worrying situation due to the rampant illicit trafficking of narcotics. This has implications for illegal drug use in people's lives. Narcotics are divided into several groups, including morphine, cocaine, heroin, marijuana, methamphetamine, koplo and the others. The danger of abuse is not only limited to addicts, but also has further consequences, namely disturbances to the order of people's lives that can have an impact on the catastrophic collapse of a nation, state and the world. The Law on Narcotics, issued by the Government of Indonesia is a policy to control, supervise the use and distribution of narcotics as well as to impose sanctions on their abuse.<sup>8</sup> Basically, narcotics are not prohibited because they are very useful for research and treatment. However, narcotics abuse is qualified as a crime.

In general, what is meant by narcotics is a type of substance that can cause certain effects for people who use it, namely by inserting it into the body. With a view to the purpose of treatment, its availability needs to be guaranteed. However, what is happening at this time is that narcotics abuse is a big problem because it can also cause prolonged dependence if it is used not in accordance with the dosage and strict supervision. The development of drug distribution and use occurs in almost all circles whose conditions are really worrying, especially nowadays drugs are also entering the youth circle and the consequences of using narcotics clearly threaten the future of the nation.

Drug abuse certainly endangers the health of addicts and victims of narcotics abusers. The dangers of consuming narcotics were also explained by I Gusti Ayu Putri Kartika, I Ketut Rai Setiabudhi, and Sri Winarsi in "The impact of narcotics abuse causes disease and infection, susceptibility to HIV and weakened memory."<sup>9</sup> Addiction disease is a brain disease, in which the active substance affects the area of behavior regulation. As a result, the main symptom and sign of addiction is behavior. In contrast to most other diseases, in addiction, the aspects affected by addiction have a wide range, ranging from self-image, interpersonal relationships, financial conditions, legal aspects, school/work, to physical health.<sup>10</sup> Narcotics abuse is not only harmful to health, but also triggers various other social problems such as dropping out of school, family conflicts, and even

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<sup>8</sup> Rayani Saragih and Maria Ferba Editya Simanjuntak, "Penegakan Hukum Terhadap Penyalahgunaan Narkotika Di Indonesia," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 4, no. 1 (2021): 98-105, <https://doi.org/https://doi.org/10.34007/jehss.v4i1.590>.

<sup>9</sup> I Gusti Ayu Putri Kartika, I Ketut Rai Setiabudhi, and Sri Winarsi, "Foreigners and Narcotics Crimes: How Indonesian Laws Determine the Supervision Mechanism?," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 3 (2019): 290-301, <https://doi.org/https://doi.org/10.24843/JMHU.2019.v08.i03.p01>.

<sup>10</sup> Rianda Prima Putri, "Asesmen Sebagai Salah Satu Bentuk Rehabilitasi Bagi Pencandu Narkotika," *Ensiklopedia Social Review* 1, no. 1 (2019), <https://doi.org/https://doi.org/10.33559/esr.v1i1.223>.

triggers other crimes such as theft, violence and so on. Given the great danger of abuse, the prevention of narcotics abuse must be carried out by touching to the root of the problem.

Healing is the goal of overcoming drug abuse. In the law, there is a principle that reads *salus populi supreme lex esto* which means that the safety of the people is the highest law.<sup>11</sup> Based on this principle, the laws and regulations and government policies in tackling narcotics abuse must be carried out with a health approach. Rehabilitation in general is the restoration to the former (original) position and improvement of individuals, hospital patients or disaster victims so that they become useful human beings and have a place in society.<sup>12</sup> Suzanne Fraser & David Moore stated that "Rehabilitation was understood as a technique for instilling self-governance and 'normal functioning' in addicted persons, who were constructed as lacking the precise modes of 'conscience', 'responsibility' and 'self-perception' deemed necessary for civilisation. Treatment providers doubted that a mere 'pill' could achieve this."<sup>13</sup>

Rehabilitation policies have been regulated in Indonesian laws and regulations. The Law on Narcotics has mandated rehabilitation for drug addicts and abusers. The formulation of Government Regulation Number 25 of 2011 concerning Mandatory Reporting for Narcotics Abusers is a form of the state's commitment to accommodate the rights of addicts to obtain therapy and rehabilitation services. Abusers do not need to worry about reporting themselves to a Reporting Recipient Institution that has been appointed by the government. Based on Article 11 of the National Narcotics Agency Regulation No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, an integrated assessment team is formed by the National Narcotics Agency in stages from the central level to the regional (district/city) level and under the coordination of the Narcotics Agency National through a decree of the head of BNN/BNNP/BNNK. Based on Article 14 of the National Narcotics Agency Regulation No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions states that a narcotics criminal can be rehabilitated after receiving a recommendation from the integrated assessment team before being detained by investigators.

The implementation of the rehabilitation program carried out in Correctional Institutions and Detention Centers, its implementation is adjusted to the guidance that refers to the Decree of the Minister of Justice of the Republic of Indonesia Number: M.02-PK.04.10 dated April 10, 1990 concerning the Pattern of Guidance for Convicts and Detainees. In 2017, the Minister of Law and Human Rights issued Regulation of the Minister of Law and Human Rights Number 12 of 2017 concerning Narcotic

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<sup>11</sup> Muhammad Fajrul Falah, "Reformulasi Penetapan Sanksi Rehabilitasi Bagi Pecandu Narkotika," *Jurnal Legalitas* 12, no. 1 (2019): 25-47, <https://doi.org/https://doi.org/10.33756/jelta.v12i1.5380>.

<sup>12</sup> Muhammad Samidi, "Analisis Yuridis Rehabilitasi Bagi Pecandu Narkotika Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika" Diss. (Universitas Islam Kalimantan MAB, 2020).

<sup>13</sup> Suzanne Fraser and David Moore, *The Drug Effect: Health, Crime and Society* (Cambridge University Press Melbourne, 2011), 220.

Rehabilitation for Prisoners and Correctional Inmates as the basis for implementing rehabilitation in the Integrated Correctional Service Unit.

Criminal law reform, especially related to the provisions for the rehabilitation of narcotics users, is a form of national criminal law reform step that shows the existence of a criminal law policy that aims to prevent narcotics users from abusing narcotics. Renewal of law by enacting the Law on Narcotics, namely by decriminalizing the perpetrators of narcotics abuse. Narcotics addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation.<sup>14</sup> Rehabilitation is one of the depenalization efforts in narcotics abuse cases, where this action reduces the aspect of punishment in criminal law.<sup>15</sup> Rehabilitation is one of the best ways to deal with drug abuse. The entry of narcotics users into rehabilitation centers has consequences for the importance of making adjustments. This in turn is not good for narcotics users who are in rehabilitation centers because of the discomfort felt by the narcotics users themselves.<sup>16</sup>

The situation caused by narcotics above continues to be handled by the government in various ways, both by socializing the dangers of narcotics and bringing up legal products that can provide space for law enforcement in eradicating narcotics. Indonesian main legal product is in combating narcotics abuse and distribution. Narcotics crimes are no longer committed by individuals, but have involved more than one organized syndicate with a wide network that works neatly and very secretly at both the national and international levels. Based on this condition, in order to increase efforts to prevent and eradicate Narcotics, the old Narcotics Law has been updated with Law Number 35 of 2009 concerning Narcotics. This can prevent a tendency to increase both quantitatively and qualitatively with widespread victims, especially among children, adolescents, and the younger generation in general. Thus, in order to protect the public from the dangers of narcotics abuse and prevent and eradicate illicit narcotics trafficking, the law also regulates narcotics precursors because narcotic precursors are substances or starting materials or chemicals that can be used in the manufacture of narcotics.<sup>17</sup>

### **3.2 Rehabilitation Sanctions for Addicts and Victims of Narcotics Abusers**

This rehabilitation policy for addicts and victims of narcotics abuse aims to avoid addicts and victims of narcotics abusers from imprisonment which is felt less effective in tackling narcotics crimes. Rehabilitation of addicts is also a form of reducing the over capacity of prisons or detention centers which tends to trigger new problems that are no less

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<sup>14</sup> Atik Winanti, "Upaya Rehabilitasi Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana," *ADIL: Jurnal Hukum* 10, no. 1 (2019), <https://doi.org/https://doi.org/10.33476/ajl.v10i1.1069>.

<sup>15</sup> Riki Afrizal and Upita Anggunsuri, "Optimalisasi Proses Asesmen Terhadap Penyalah Guna Narkotika Dalam Rangka Efektivitas Rehabilitasi Medis Dan Sosial Bagi Pecandu Narkotika," *Jurnal Penelitian Hukum De Jure* 19, no. 3 (2019): 259-68, <https://doi.org/http://dx.doi.org/10.30641/dejure.2019.V19.259-268>.

<sup>16</sup> Putri Rismala Sari Nawangsih and Putri Rismala Sari, "Stres Pada Mantan Pengguna Narkotika Yang Menjalani Rehabilitasi," *Jurnal Psikologi Undip* 15, no. 2 (2016): 99-107, <https://doi.org/10.14710/jpu.15.2.99-107>.

<sup>17</sup> Muslikan Muslikan and Muhammad Taufiq, "Pelaksanaan Assesmen Tentang Rehabilitasi Terhadap Korban Penyalahgunaan Narkotika Ditinjau Dari Peraturan Perundang-Undangan," *Jurnal Ilmiah Living Law* 11, no. 1 (2019): 61-80, <https://doi.org/https://doi.org/10.30997/jill.v11i1.1639>.

significant. Many cases have occurred in prisons, including riots, crimes in prisons, and other serious problems. So far, drug cases are the biggest contributor to prisons or detention centers in Indonesia. Seeing this situation, it takes extra hard work from various parties so that this problem of overcapacity can be overcome or at least overcome.<sup>18</sup>

Action sanctions through this rehabilitation policy are a double track system. The double track system is a two-track system regarding sanctions in criminal law, namely the types of criminal sanctions and action sanctions. The focus of criminal sanctions is aimed at wrongdoing that has been committed by a person through the imposition of suffering so that the person concerned becomes a deterrent. The focus of action sanctions is more focused on efforts to provide assistance to the perpetrator so that he changes. It is clear that criminal sanctions emphasize retaliation, while action sanctions originate from the basic idea of protecting the community and fostering or caring for the perpetrator. The Double Track system demands harmony between criminal sanctions and rehabilitation measures as an effort to recover and prevent narcotics abusers.<sup>19</sup> Based on this, the double track system in the formulation of sanctions against narcotics abuse is the most appropriate, because based on victimology that narcotics addicts are self-victimizing victims, namely victims as perpetrators, victimology still places narcotics abusers as victims, even though from criminal acts/crimes committed did it himself.

Provisions regarding rehabilitation in the Law on Narcotics itself can be seen in Articles 103 and 127 of the Law on Narcotics which provide discretion for judges to impose criminal sanctions other than rehabilitation. Article 103 states Judges who examine cases of Narcotics Addicts may decide and stipulates 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. The period of undergoing treatment and/or treatment for Narcotics Addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence. Article 127 paragraph (3) states in the event that the abuser as referred to in paragraph (1) can be proven as a victim of narcotics abuser, the abuser is obliged to undergo medical and social rehabilitation.

Judging from the provisions in Articles 103 and 127 of the Law on Narcotics, the rehabilitation order is at the discretion of the judge, meaning that the judge can also impose other criminal sanctions such as imprisonment and fines in addition to rehabilitation measures. Viewed factually, imprisonment is the most frequently imposed punishment by judges with practical considerations that imprisonment is the easiest sanction to execute. The importance of the new construction of the judge's mindset starting from the existing conditions (study results) on the handling of cases (narcotics abusers for themselves) by judges in court currently experiencing many declines or failures to present laws that are fair, beneficial and protect the interests of the community (social justice). The positivistic mindset of judges needs to be rebuilt (reorganized) based

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<sup>18</sup> Agah Sonjaya, "Construction of the Rehabilitation Model for Drug Abuse in Non-Penal Criminal Policy Perspective," *Open J. Legal Stud.* 3 (2020): 111, <https://doi.org/https://doi.org/10.32591/coas.ojls.0302.03111s>.

<sup>19</sup> Sri Sulistyawati, Iwan Setiawan, and Bambang Hermanto, "Implementasi Model Double Track System: Sanksi Pidana Dan Tindakan Sebagai Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika Di Lembaga Pemasarakatan Kelas II A Kabupaten Langkat," *Jurnal Mercatoria* 13, no. 1 (2020): 95-105, <https://doi.org/10.31289/mercatoria.v13i1.3530>.

on a new progressive mindset in solving legal problems that have emerged recently which are increasingly complex and complicated, especially in solving the problem of drug abusers for themselves.<sup>20</sup> The rehabilitation order will be closely related to the availability of rehabilitation institutions that are willing to treat addicts and victims of narcotics abusers. This will also be related to those who will bear the rehabilitation costs for addicts and victims of narcotics abusers.

The model of punishment for victims of narcotics abuse must be oriented towards healing and recovery, both through medical institutions (hospitals and health centers), as well as social institutions, thus giving birth to a model in the form of handling that can be applied to victims of narcotics users. The form of handling for victims of narcotics users can be done through medical channels (reporting agencies) and through law enforcement officers (law enforcement). The medical line, in the sense that the government provides a place to report in each province, district/city and sub-district throughout Indonesia to record and report any victims of narcotics users or addicts and then take them to rehabilitation centers. Meanwhile, law enforcers, the police and/or the National Narcotics Agency as institutions that have the authority have the right to arrest those who then immediately bring in victims or narcotics addicts who have not reported for treatment at a rehabilitation center until recovered.<sup>21</sup>

The high number of addicts and victims of narcotics abuse will have implications for the need to increase the quantity of rehabilitation institutions. Uyat Suyatna in his research wrote that the National Narcotics Agency needs an additional 30 units of rehabilitation centers for drug addicts, as an effort to eradicate drugs which is quite high in Indonesia. Currently, the National Narcotics Agency only has 4 units of rehabilitation centers for narcotics addicts in 4 provinces, while 30 provinces do not yet exist. These facilities are limited to accommodate 4 million drug addicts inmates. Ideally, this rehabilitation place for addicts is that each province in Indonesia has 1 unit of rehabilitation center and in the future each district/city will have this drug addict rehabilitation place.<sup>22</sup>

The availability of rehabilitation places is an indicator in healing addicts and victims of narcotics abusers. Khammarnia and M. Peyvand in their research stated, based on the results, there were 5 major implications including "familial and social factors", "rehabilitation centers", "sexual and personal factors", "economic factors", and "therapeutic issues", and 26 minor implications pertaining to the reasons of returning to drug use. The majority of participants considered family issues, bad conditions of the rehab centers, unemployment, and temptation as the main reasons of the return to using drugs again. Choosing appropriate rehabilitation center, more family supervision and support, not to be punished by family, and emotional, nutritional, and job related

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<sup>20</sup> Dahlan Dahlan, "Penerapan Pidana Terhadap Penyalah Guna Narkotika Untuk Dirinya Sendiri," *Jurnal Pembaharuan Hukum* 4, no. 1 (2017): 15-23, <https://doi.org/http://dx.doi.org/10.26532/jph.v4i1.1641>.

<sup>21</sup> Siti Hidayatun and Yeni Widowaty, "Konsep Rehabilitasi Bagi Pengguna Narkotika Yang Berkeadilan," *Jurnal Penegakan Hukum Dan Keadilan* 1, no. 2 (2020), <https://doi.org/https://doi.org/10.18196/jphk.1209>.

<sup>22</sup> Uyat Suyatna, "Evaluasi Kebijakan Narkotika Pada 34 Provinsi Di Indonesia," *Sosiohumaniora* 20, no. 2 (2018): 168-76, <https://doi.org/https://doi.org/10.24198/sosiohumaniora.v20i2.16054>.



supports after the drug rehabilitation were the participant's proposal strategies.<sup>23</sup> Rehabilitation institutions are one of the factors that determine the success of addicts and victims of narcotics abusers to escape from narcotics, so the quantity and quality of care in rehabilitation centers is very important to note.

A person who is trying to stop using drugs may experience an inability to adjust to stress stimuli from within and from outside himself (unable to cope with life), so that person returns to abusing drugs. Returning to drug use as before is called a relapse. According to the National Institute on Drug Abuse (NIDA), about 40 to 60% of people who have had rehabilitation or therapy for drug addiction will experience a relapse. Relapse does not mean that previous rehabilitation or therapy has failed. As with any chronic illness, many people experience one or more relapses before achieving long-term recovery. Relapse is common and normal for people who have recovered from their addiction. Many people think relapse is part of the recovery process, but actually relapse is part of addiction.

The process of recovering narcotics addicts and expecting them to return to their normal activities in their environment is not an easy thing. This requires a long process and time. Drug addicts are prone to relapse, which is to return to using drugs. Relapse is very likely to occur in the first week to the first month after completing the program at the rehabilitation center. The cause of the high relapse rate can be influenced by the lack of assistance and strengthening the skills of addicts during rehabilitation and post-rehabilitation programs, making it difficult to deal with high-risk situations in society.<sup>24</sup>

Based on the results of interviews conducted by Salsabilla, et.al with all informants according to their confessions and statements, former narcotics addicts said that the trigger factors that made them relapse after rehabilitation were environmental or social factors. This factor is so strong because in general former drug addicts have low filtration power in communication and are vulnerable and easily influenced by other people's invitations. Another informant stated that the triggering factors for post-rehabilitation relapse were a broken home, economic factors, psychological pressure, frustration, feeling alone, still likes to get together or meet friends, as well as being offered by friends to take drugs. Those who accidentally meet fellow users who are still actively using drugs will be vulnerable and easily influenced to use drugs again. When meeting with fellow users, former drug addicts are not impossible to be seduced and forced by their friends so that the desire to use drugs reappears.<sup>25</sup> In fact, these conditions have been included in the social rehabilitation program.

A relapse condition is a factual condition that may be experienced by former addicts and victims of narcotics abusers. From a legal perspective, relapse patients are recidivist. Recidivism is the repetition of a crime by the same perpetrator, where the previous crime

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<sup>23</sup> M Khammarnia and M Peyvand, "The Reasons of Return to Drug Addiction and Suggested Solutions among the People Referring to Rehabilitation Centers: A Qualitative Study," *Journal of Rafsanjan University of Medical Sciences* 17, no. 6 (2018): 523-38, <https://journal.rums.ac.ir/article-1-4050-en.html>.

<sup>24</sup> Frans Judea Samosir, "Pelatihan Relapse Prevention Pada Pecandu Narkoba Dalam Program Paska Rehabilitasi," *Jurnal Mitra Prima* 2, no. 2 (2020): 1-5, <https://doi.org/https://doi.org/10.34012/mitraprima.v2i1.954>.

<sup>25</sup> Nisrina Shafira Salsabilla, Bagoes Widjanarko, and Budi Laksono, "Pengalaman Mantan Pecandu Narkoba, Motivasi Dan Relapse Pasca Rehabilitasi," *Jurnal Kesmas (Kesehatan Masyarakat) Khatulistiwa* 9, no. 2 (2022): 69-80, <https://doi.org/10.29406/jkkm.v9i2.3268>.

has been sentenced to a permanent legal force (*inkracht*) and the repetition occurs within a certain period of time.<sup>26</sup> Theoretically and practically, recidivism is an aggravating factor considered by judges to impose criminal sanctions. The legal question that has been the norm for so long is whether recidivist addicts and victims of narcotics abuse have the right to get rehabilitation. The Law on Narcotics does not regulate how many times rehabilitation sanctions may be imposed on addicts and victims of the same narcotics abuser. In principle, when there is no regulation, then the provision of rehabilitation sanctions for addicts and victims of narcotics abuse should not be prohibited.

Criminal sanctions imposed on narcotics addicts as self-victimizing victims are in the form of serving a sentence in prison, while the sanctions for actions given to narcotics addicts as victims are in the form of treatment and/or treatment organized in the form of rehabilitation facilities. The implementation system is that the period of treatment and/or treatment is counted as a period of serving a sentence.<sup>27</sup> Taking into account the condition of dependence experienced by a narcotic addict, it is not wrong if they are often referred to as sick people who should be given treatment in the form of rehabilitation to escape the bad effects of narcotics abuse. In addition, the position of narcotics addicts can indeed be seen as a victim of the illicit trafficking of narcotics.<sup>28</sup> Narcotics crime is a type of crime that is different from other types of crime where narcotics crime is a form of victimless crime.<sup>29</sup> This relapse condition for recidivists can be interpreted as a victim of the failure of the programs carried out by the rehabilitation center.

According to research conducted by Sri Aryanti Kristenningsih and Yusti Probawati Rahayu, for recidivist drug users, they are victims, not harming others, in contrast to criminal convicts who have negative characteristics. This shows that there are errors in thinking which according to Beck and Weishaar are referred to as cognitive biases/distortions. According to Beck and Weishaar, the bias/cognitive distortion of the subjects in this study is included in the type of arbitrary inference bias/distortion, namely drawing conclusions which are inferences from irrelevant evidence. In addition, drug recidivists also experience self-serving bias, which is one of errors in attribution (judging behavior). This self-serving bias is an attribution error caused by people tending to justify themselves, put themselves first to maintain and increase self-esteem. The selfish bias is most evident when individuals formulate attributions about the causes of personal actions, events, and outcomes. When describing positive actions and experiences, their attribution emphasizes the effects of internal causes, the causes of

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<sup>26</sup> Teguh Prasetyo, 2017. *Hukum Pidana*, (Jakarta: Rajawali Pers), 191.

<sup>27</sup> Jarot Yusviq Andito, Alpi Sahari, and T Erwinsyahbana, "Perlindungan Hukum Korban Penyalahgunaan Narkotika Melalui Double Track System," *Legalitas: Jurnal Hukum* 14, no. 1 (2022): 1-10, <https://doi.org/http://dx.doi.org/10.33087/legalitas.v14i1.276>.

<sup>28</sup> Akwila Arif Athallah and Kayus Kayowuan Lewoleba, "Pemidanaan Terhadap Pecandu Narkotika Di Indonesia Ditinjau Dari Aspek Tujuan Penegakan Hukum," *Lex Librum: Jurnal Ilmu Hukum*, 2020, 17-32, <https://doi.org/http://dx.doi.org/10.46839/ljih.v0i0.195>.

<sup>29</sup> Insan Firdaus, "Harmonisasi Undang-Undang Narkotika Dengan Undang-Undang Pemasarakatan Terkait Rehabilitasi Narkotika Bagi Warga Binaan Pemasarakatan," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 141-60, <https://doi.org/http://dx.doi.org/10.30641/dejure.2021.V21.141-160>.

dispositions, but when identifying the causes of negative events, they emphasize external factors, namely situations or other parties outside themselves.<sup>30</sup>

By law, there is no provision that stipulates that recidivists are prohibited from receiving rehabilitation. Benny Irawan and Hizkia Raymond in their research view that rehabilitation policies can only be given to those who are first legally processed as addicts or victims of narcotics abusers. According to them, in terms of the doctrine of criminal law, it is known as the theory of punishment. One of the modern theories of punishment is the theory of rehabilitation. This theory is a process that seeks to improve the character of the perpetrator and his future so that he can function again in society without committing other crimes.<sup>31</sup> The weighting of the sentence given to a repeater becomes an excuse for someone to repeat the crime again, this is to prove that the prisoner has a bad character because it is considered very dangerous for security and public order.<sup>32</sup> Viewed from the perspective of criminal law, of course, recidivists or people who experience relapse should receive a heavier sentence, in the sense that they are no longer entitled to rehabilitation but are sentenced to imprisonment. Back again in the previous discussion, that the prevention of narcotics crime for addicts and victims of narcotics abusers, of course, should be carried out with a health approach. Imprisonment is not a solution to break the chain of illicit drug trafficking.

### 3.3 Reconceptualization of Rehabilitation in the Perspective of Dignified Justice

Reconstruction of thinking in which addicts and victims of narcotics abuse are seen as victims has implications for the urgency of rehabilitation policies. Observing developments in several countries, a new paradigm has emerged in viewing narcotics users/addicts who are no longer viewed as evil behavior (criminals) but as people with chronic diseases who must receive treatment and recovery gradually. This paradigm then creates a new policy in dealing with victims of narcotics users who are no longer legally processed, but immediately take users/addicts to a rehabilitation center. In other words, this paradigm leads to efforts to decriminalize narcotics users. The application of criminal law in the form of imprisonment for victims of narcotics users has proven unsuccessful, in fact, the number of victims of narcotics users who are sentenced to prison is increasing every year. This is what needs to be reviewed regarding the purpose and function of implementing criminal law for victims of narcotics users.<sup>33</sup> Indonesia has not yet reached the direction of decriminalization. Judging from the legislation on narcotics, depenalization efforts can be seen in the inclusion of rehabilitation sanctions as action sanctions.

Practically speaking, the most important factor in efforts to combat narcotics abuse, which is often neglected, especially by law enforcement officers in Indonesia, is the

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<sup>30</sup> Sri Aryanti Kristianingsih and Yusti Probowati Rahayu, "Peran Lapas Dan Lapasustik Pada Residivis Narkoba Pengguna," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 10, no. 1 (2020): 114-38, <https://doi.org/https://doi.org/10.15642/ad.2020.10.1.114-138>.

<sup>31</sup> Benny Irawan and Hizkia Raymond, "Analisis Penerapan Sanksi Pidana Analisis Penerapan Sanksi Pidana Pelaku Residivis Tindak Pidana Narkotika," *Pelita: Jurnal Penelitian Dan Karya Ilmiah* 22, no. 1 (2022): 53-64.

<sup>32</sup> Hanin Furqan and Muhammad Sidiq, "Efektifitas Pembebasan Bersyarat Terhadap Narapidana Residivis Narkotika (Studi Kasus Di Rutan Kelas II B Kota Sigli)," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 3, no. 1 (2019): 71-89, <https://doi.org/http://dx.doi.org/10.22373/justisia.v3i1.5087>.

<sup>33</sup> Hidayatun and Widowaty, "Konsep Rehabilitasi Bagi Pengguna Narkotika Yang Berkeadilan."

existence of rehabilitation efforts. The model of punishment for victims of narcotics users until now still places them as criminals (criminals), so that rehabilitative efforts are often neglected. In Indonesia, such a pattern has not been applied, victims of narcotics users are still put in prison, although during the detention process, they are allowed to be rehabilitated, but it has not become an effective solution. The legal system in Indonesia must begin to implement policies by directly bringing victims of narcotics users to rehabilitation facilities. If victims of narcotics users are arrested by the police or reported by their parents and/or guardians, they must be placed in a rehabilitation facility.<sup>34</sup>

Rehabilitation is one of the government's efforts in tackling drug abuse. This effort is an alternative effort or action, because the perpetrators of narcotics abuse are also victims of narcotics addiction who require treatment or care. This treatment is carried out through a rehabilitation facility. Determination of rehabilitation for narcotics addicts is an alternative crime imposed by a judge and calculated as a period of serving a sentence. A drug addict, can undergo treatment and or treatment through a rehabilitation facility after a decision or decision is made by a judge. Judges in law enforcement decide that a narcotic addict undergoing rehabilitation must be in accordance with the principles of justice. This decision is based on the information from the family or the hospital (doctor). During the rehabilitation period, supervision and monitoring are carried out until the addict is completely cured and free from narcotic addiction. In this rehabilitation, what is more important is how the victim can survive recovery, not relapse after returning home from the treatment and rehabilitation center. An addict can undergo both medical and social rehabilitation.<sup>35</sup>

Relapse conditions are very likely to occur in someone who has been declared cured while undergoing treatment at a rehabilitation center. This condition places the person in the qualification of recidivism. The relapse condition requires continued rehabilitation. The rehabilitation for relapse clients is carried out for 2 months or 8 meetings which are held once a week. After the client is determined that he is undergoing outpatient treatment, the client is referred to a Counseling/Counselor officer. The procedures for the Behavior Change Stage program are: The first stage is pre-contemplation. This stage is the stage when the client feels that a change in himself is not needed. The client has not realized that what he is doing he should not do, meaning that the client has not realized that using drugs will have a negative impact on his social life and his own health. Clients can still enjoy their old habits and feel it is not time to change; The second stage, namely contemplation. This stage is the stage where the client begins to think about change. The client begins to realize that what he has done so far is a negative act and is detrimental to himself. Usually, many clients stop at this stage, because they are comforting themselves and denying their need to change. The critical factor at this stage is to find a belief that can motivate him to change; The third stage, namely preparation. This stage is the stage where the client is asked to prepare himself to schedule activities carried out every day. Clients begin to prepare physically and mentally to act to initiate changes in themselves. The fourth stage, namely action. This stage is the stage where the client begins to schedule activities that are carried out every day from when he wakes up until he goes back to sleep. At this stage it is usually done

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<sup>34</sup> Parasian Simanungkalit, "Model Pemidanaan Yang Ideal Bagi Korban Pengguna Narkoba Di Indonesia," *Yustisia Jurnal Hukum* 1, no. 3 (2012), <https://doi.org/https://doi.org/10.20961/yustisia.v1i3.10090>.

<sup>35</sup> Hidayatun and Widowaty, "*Loc.cit.*"

on clients undergoing inpatient care. The fifth stage, namely maintenance. This stage is the client's stage to maintain the changes that have been made during rehabilitation. The sixth stage, namely recycling and relapse. At this stage, the client begins to see whether he returns to his old habits or not.<sup>36</sup>

The rehabilitation policy for recidivists is certainly a matter of debate. As long as there are no laws and regulations prohibiting it, the judge can determine or decide on a person to undergo a rehabilitation program. The legal vacuum regarding rehabilitation for recidivists will be seen from the theory of dignified justice. The theory of dignified justice rests on an important postulate, namely that if people want to seek the law, in this case, among others, they want to seek the meaning or nature (ontology) of something. Narcotics addicts based on the theory of dignified justice are victims who suffer from pain so they need treatment both physically and psychologically and support from the community to be able to live a normal life. Based on the view of justice based on the spirit of Pancasila, especially the second principle of Just and Civilized Humanity and the fifth principle of Social Justice for All Indonesian People, the law becomes the central point for reviewing and examining law enforcement practices in solving narcotics abuse cases to the essence of belief. The concept of belief can align truth, justice and legal certainty in one unit to realize the purpose of the Law on Narcotics which guarantees the regulation of medical and social rehabilitation for addicts and victims of narcotics abuse.<sup>37</sup> Rehabilitation is basically a method of treatment, thus, if treatment cannot be done once, then treatment can be done several times.

The problem of using a legal and health approach that occurs in law enforcement for addicts and victims of narcotics abuse can be solved by the theory of dignified justice. The theory of dignified justice is a rule and legal principles that work in a system. Dignified justice does not require conflicts or contradictions between elements in the system. The theory of dignified justice as a system also holds the view that if a conflict is unavoidable due to discrepancies, contradictions, and overlaps between elements in the system, the system itself can resolve it. The theory of dignified justice is very relevant as a criminal law reform in narcotics abuse cases.<sup>38</sup> Narcotics addicts based on the theory of dignified justice are victims who suffer from pain so that they need physical and psychological care and support from the community to be able to live a normal life.

#### 4. Conclusion

Rehabilitation action in overcoming narcotics abuse is a crime prevention method using a health approach. Addicts and victims of narcotics abuse are seen as sick people. The imposition of rehabilitation sanctions for addicts and victims of narcotics abuse is regulated in Articles 103 and 127 of the Law on Narcotics. Judging from the Law on Narcotics, this provision does not regulate whether relapse patients who in legal language are called recidivists are entitled to rehabilitation or not; therefore, at this time

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<sup>36</sup> Hannat Waladat Maryam and Ashabul Kahpi, "Analisis Relapse Terhadap Penyalahgunaan Narkotika Di Badan Narkotika Nasional Provinsi Sulawesi Selatan," *Alauddin Law Development Journal* 2, no. 3 (2020): 293-301, <https://doi.org/https://doi.org/10.24252/aldev.v2i3.14654>.

<sup>37</sup> Destalia Kristiani, "Konsep Pidana Rehabilitasi Berbasis Teori Keadilan Bermartabat Bagi Pecandu Dan Korban Penyalahgunaan Narkotika," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 2 (2022): 395-404, <https://doi.org/http://dx.doi.org/10.17977/um019v7i2p395-404>.

<sup>38</sup> Kristiani. 2022. *ibid*.

the imposition of rehabilitation for recidivists is not prohibited. The theory of dignified justice observes that if people want to seek the law, they must look for their meaning or essence. Narcotics addicts and victims of drug abuse even though they are recidivists are victims who are sick. Therefore, in the regulation of future rehabilitation policies, recidivists (especially addicts and victims of narcotics abusers) are still entitled to get rehabilitation.

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