


Criminal Law Formulation Policy for Self-abuse of Narcotics as an Effort to Prevent Prison Overcrowding

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Abstract

Introduction: This article will discuss the criminal law formulation policy related to self-abuse of narcotics in the present and future.

Purposes of the Research: This article aims to evaluate the application of the health approach to drug abuse treatment under positive law, identify obstacles to implementation, and provide recommendations for regulatory reform to optimize the handling of these cases and reduce overcrowding in correctional institutions.

Methods of the Research: The type of research used in this study is normative juridical research or normative legal research using a statutory approach (statue approach) and a comparative approach (comparative approach). The statutory approach is carried out by examining Law Number 35 of 2009 concerning Narcotics, SEMA Number 4 of 2010, and Regulation of the Attorney General Number PER-29/A/JA/12/2015. Meanwhile, the comparative approach is carried out by comparing regulations governing the abuse of narcotics for oneself in countries that have similar legal systems to Indonesia, namely Madagascar, Mexico, and Portugal. The data used is obtained from secondary data sourced from library materials such as official documents, books, research results in the form of reports, and documents relating to self-abuse of narcotics.

Findings of the Research: This study found that the policy on narcotics abuse for oneself based on positive law currently uses a health approach, but in its enforcement it is still not optimally implemented. There are still many law enforcement officials who have the understanding that the criminal act of narcotics abuse for oneself is a crime that must be subject to imprisonment. This is what makes prisons in Indonesia overcrowded because most of them are inhabited by prisoners of narcotics crimes. This study recommends the need to reform future regulations regarding the abuse of narcotics for oneself as an effort to prevent prison overcrowding.

Keywords: Legal Protection; Traditional Knowledge; Sui Generis.

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INTRODUCTION

The crime of narcotics abuse is a problem faced by every country, including Indonesia. Narcotics were originally a substance or drug that was only used in the medical world. However, in practice, many people abuse narcotics for their own interests. Many individuals who initially only dabbled in drugs end up trapped and find it difficult to get out of this dark world. The effects produced by narcotics itself make users become dependent which will make the body become damaged slowly so that it can interfere with daily activities. In certain cases, excessive drug use (overdose) can lead to death if not addressed with appropriate and comprehensive treatment. The development of narcotics in Indonesia began in the Dutch colonial era which gave permission to legalize the use of opium to the public for pleasure. Opium used to be very easy to find, because many public places sold it. The circulation of these illegal drugs continues and the types are even more

varied, which are not limited to opium, marijuana, and ecstasy but foreign names appear in the midst of society. The rapid development of technology has also indirectly influenced the development of this new type of narcotics. With the increasing variety of illegal drugs, law enforcement officials have to further strengthen legal products so that handling can be done quickly.

In the old order, the Indonesian government began to issue the first regulation, Law Number 9 of 1976 concerning Narcotics to eradicate the development of narcotics. However, along with the times, Indonesia is considered a good market for narcotics trafficking, making narcotics more widely circulated. At that time, Indonesia did not have a strong enough defense to prevent the entry of narcotics from various routes, be it land, water or air routes. Until finally the law was revised several times until the issuance of the most recent law and is still used today, namely Law Number 35 of 2009 to ensnare narcotics trafficking in Indonesia. According to Article 1 Number 1 of Law Number 35 of 2009, the definition of narcotics itself is: "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which is differentiated into groups." Basically, individuals who have tried drugs will continue to use the drug. A drug that, when used repeatedly, can cause psychoactive properties in the user and cause physical and mental health problems. The impact of drug abuse does not stop at the physical and mental damage of the user, but also extends to other domains, such as psychosocial and economic. At a higher level, these addicts will threaten the future of the nation and state¹, where a lot of the state budget will be used for medical treatment and correctional services.

Based on data from the National Narcotics Agency (BNN) in 2023, it shows that 1.73 percent of the population aged 15-64 years or equivalent to 3.33 million people are indicated to abuse drugs². Meanwhile, according to the Ministry of Law and Human Rights, 52.97 percent of the prison population are individuals caught in drug abuse cases, whether they are already convicted or still detained. Overall, as of April 2024 there were 271,385 people in prisons and detention centers throughout Indonesia. Of these, 135,823 are prisoners and detainees from narcotics cases. This makes prisons that should only have a capacity for 140,000 people overcrowded³. Meanwhile, according to data from the Directorate General of Corrections of the Ministry of Immigration and Corrections, the prison overcrowding rate in Indonesia reached 196 percent with 265,840 prisoners as of September 2021. In Indonesia, out of a total of 526 prisons and detention centers, 399 are overcrowded. In fact, 215 of these prisons have more than double their capacity (more than 100%). In addition, there are six prisons where the number of prisoners or detainees exceeds 500% of capacity. The highest density record occurred in Class IIA Bagansiapiapi Correctional Facility, Riau, with overcrowding reaching 813 percent⁴. In drug-related crimes, judges can impose a basic sentence that includes imprisonment, the death penalty, and fines. The main sentence that is often imposed is imprisonment, which applies to individuals who abuse drugs and drug dealers. Meanwhile, individuals who abuse drugs themselves are entitled to rehabilitation.

¹ Tri Wahyu Ningsih et al., "Tinjauan Yuridis Tentang Tindak Pidana Narkotika Dan Pengaturan Hukum Serta Perlindungannya Menurut KUHP," *Jurnal Pendidikan Tambusai* 8, no. 1 (2024): 16.500.

² BNN, "HANI 2024: Masyarakat Bergerak, Bersama Melawan Narkoba Mewujudkan Indonesia Bersinar," [bnn.go.id](https://bnn.go.id/hani-2024-masyarakat-bergerak-bersama-melawan-narkoba-mewujudkan-indonesia-bersinar/), 2024, <https://bnn.go.id/hani-2024-masyarakat-bergerak-bersama-melawan-narkoba-mewujudkan-indonesia-bersinar/>.

³ Bagus Ahmad Rizaldi, "Kemenkumham: 52,97 Persen Penghuni Penjara Dari Kasus Narkoba," *antaranews.com*, 2024, <https://www.antaranews.com/berita/4071018/kemenkumham-5297-persen-penghuni-penjara-dari-kasus-narkoba>.

⁴ Tim Redaksi Kompas, "Seberapa Sesak Lapas Di Indonesia?," *kompas.id*, 2025, <https://www.kompas.id/artikel/seberapa-sesak-lapas-di-indonesia>.

But in reality, there are some cases where judges only impose prison sentences and do not order rehabilitation for drug addicts. In certain cases, drug users are charged with articles that should be reserved for dealers. Judges often ignore this rehabilitation aspect and only impose prison sentences. Even more worryingly, it is not uncommon to find decisions where drug users are sentenced to heavy penalties that should be intended for drug dealers, such as Articles 111, 112, 117, and Article 122 of the Narcotics Law.

There is an example of a case of criminal abuse of class I narcotics for oneself with case verdict number 208/Pid.Sus/2021/PN.Gdt. The defendant Agus purchased methamphetamine for 100 thousand rupiahs weighing 0.09570 grams for personal use by the defendant. After further examination, the defendant was found to have positively consumed the narcotic substance methamphetamine and there were no legal facts that the defendant was a drug dealer. The reason why the defendant used drugs was so that he would feel less tired and more energized. Nevertheless, the prosecutor charged the defendant only under Article 112 paragraph (1) of Law Number 35 of 2009, and the judge then sentenced him to 2 years and 6 months imprisonment. However, based on the chronology of the incident, the defendant should have been charged with Article 127 paragraph (1) letter a, because the defendant's condition falls into the category of narcotics abusers for themselves. Therefore, the defendant is entitled to rehabilitation in accordance with the provisions of Article 54, Article 55, and Article 103 which regulate the obligation for addicts and victims of narcotics abuse to undergo treatment and/or care through rehabilitation programs.

Drug addicts and victims of drug abuse are individuals who use drugs for their own personal benefit, so undergoing rehabilitation is considered more appropriate than imposing a prison sentence. Rehabilitation acts as a solution to help drug abusers overcome their addiction, in line with the main goal of rehabilitation, which is to recover addicts and victims of drug abuse so that they can lead a normal life without dependence on drugs⁵. The provisions that regulate addicts and victims of drug abuse must be rehabilitated are already in the Narcotics Law itself, to be precise in Article 54, Article 56, Article 103 and Article 127. There are also additional provisions such as SEMA Number 4 Year 210 concerning the Placement of Narcotics Abuse, Abuse Victims and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions.

However, the existence of the article does not mean that addicts and victims of drug abuse will be sentenced to rehabilitation alone, because there is no common view among law enforcers to consider addicts and victims of drug abuse as victims. In this context, the victims are themselves, where their actions cannot be said to be a crime⁶. The rehabilitation of addicts and victims of drug abuse is not solely intended as a form of forgiveness or excuse for their abuse, but is a recovery-oriented treatment effort. This concept is also in line with the purpose of punishment itself to reintegrate former drug users into the social order⁷. In addition, this also seeks to prevent prison overcrowding.

Many studies have discussed the abuse of drugs for oneself. Burmawi (2024) in *Hangoluan Law Review* focuses on decriminalizing marijuana and legalizing its

⁵ Francisco Lundu Hesehel Pasaribu et al., "Keadilan Restoratif Pada Tingkat Penyidikan Bagi Pecandu Narkotika Dan Korban Penyalahgunaan Narkotika," *COURT REVIEW: Jurnal Penelitian Hukum* 4, no. 3 (2024): 15-16.

⁶ Salyo Kinasih Bumi, Supolo Supolo, and Bastianto Nugroho, "Perlindungan Hukum Terhadap Korban Penyalahgunaan Narkotika," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 355-57, <https://doi.org/10.37680/almanhaj.v4i2.1860>.

⁷ Haris Wirayuda et al., "Upaya Rehabilitasi Bagi Penyalahgunaan Narkotika Oleh" 3, no. 2 (2022): 255-56.

widespread use by including it in class III narcotics so that it can be accessed by every community in need, which is in accordance with the principle of welfare state⁸. Fajar (2022) in the Journal of Social and Technology discusses the application of medical and social rehabilitation for drug abusers for themselves using a case study approach⁹. Sinaga & Hasnda (2022) in *Rechten Journal: Legal Research and Human Rights* highlights the application of the Narcotics Law which does not differentiate punishment for children and adults as drug abusers. The article brings attention that law enforcement officials can reformulate the law to ensure that the punishment of children as perpetrators of drug abuse can be distinguished from adults¹⁰.

From some of the studies mentioned above, there are several things that can be distinguished from the author's research. First, the research conducted by the author uses a comparative study approach with other countries to see how the application of sanctions against self-abuse of narcotics in other countries that have the same legal system as Indonesia. This approach allows the author to analyze what practices can be adopted in Indonesia in order to resolve cases of self-abuse of drugs. Secondly, the author wants to decriminalize self-injury for people who use all types of drugs under certain conditions. Third, the author hopes that with the implementation of rehabilitation as a solution to cases of self-abuse of narcotics, it can reduce prison overcrowding, which has long been one of the problems in Indonesia. Based on the description of the problem formulation above, the objectives of this study are as follows: 1) To find out how the criminal law formulation policy on narcotics abuse for oneself based on positive law in Indonesia; 2) To identify how the criminal law formulation policy on narcotics abuse for oneself in the future.

METHODS OF THE RESEARCH

The type of research used in this study is normative juridical research or normative legal research using a statutory approach (statue approach) and a comparative approach (comparative approach). The statutory approach is carried out by examining all laws and regulations relating to the abuse of narcotics for oneself, namely Law Number 35 of 2009 concerning Narcotics, SEMA Number 4 of 2010, and Regulation of the Attorney General Number PER-29/A/JA/12/2015. Meanwhile, the comparative approach is carried out by comparing regulations governing the abuse of narcotics for oneself in countries that have similar legal systems to Indonesia, namely Madagascar, Mexico, and Portugal. The data used is obtained from secondary data sourced from library materials such as official documents, books, research results in the form of reports, and documents related to self-abuse of narcotics¹¹.

RESULTS AND DISCUSSION

A. Criminal Law Formulation Policy on the Misuse of Narcotics for Yourself Based on Positive Law in Indonesia

⁸ A Gamal Burmawi, "Reformulasi Kebijakan Hukum Pidana Terhadap Penyalah Guna Narkotika Golongan I" *Ganja*," *Hangoluan Law Review* 3, no. November (2024): 429–45, [https://repository.unja.ac.id/62266/%0Ahttps://repository.unja.ac.id/62266/1/TESIS-ADITYA GAMAL BURMAWI-P2B120093.pdf](https://repository.unja.ac.id/62266/%0Ahttps://repository.unja.ac.id/62266/1/TESIS-ADITYA%20GAMAL%20BURMAWI-P2B120093.pdf).

⁹ Mohamad Fajar, "Penerapan Rehabilitasi Medis Dan Rehabilitasi Sosial Atas Penyalahgunaan Narkotika Bagi Diri Sendiri Mohamad," *Jurnal Sosial Dan Teknologi (SOSTECH)* 2, no. 5 (2022).

¹⁰ Muhammad Ridho Sinaga and Nuchraha Alhuda Hasnda, "Kebijakan Formulasi Pemidanaan Terhadap Anak Sebagai Pelaku Tindak Pidana Penyalahgunaan Narkotika," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 4, no. 1 (2022): 13–20, <https://doi.org/10.52005/rechten.v4i1.97>.

¹¹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2015), 11–12.

Narcotics in Indonesia is currently regulated under Law No. 35/2009 on Narcotics. In the Law, illegal acts that can be classified as narcotics offenses are divided into 5 categories. This classification is organized based on the criminal regulations outlined in the Narcotics Law starting from Article 111, which includes: 1) All acts of possessing, storing, controlling, or providing narcotics and narcotics precursors; 2) Any act of producing, bringing in, sending out, or distributing narcotics and narcotic precursors; 3) Any act of offering for sale, selling, buying, acquiring, brokering, exchanging, or delivering narcotics and narcotic precursors; 4) All acts of storing, sending, delivering, or distributing drugs and drug precursors; 5) Every case of narcotics abuse classified as class I, II, and III.

Based on the regulation, the types of punishment imposed for narcotics offenders consist of imprisonment with a term of time or life imprisonment, then fines, and the last is the death penalty, which is the highest punishment and difficult to impose because it raises pros and cons. So far, the perpetrators of narcotics crimes are most often sentenced to imprisonment with time provisions, even though the perpetrators only use narcotics on a small scale. The transition from Narcotics Law Number 22 of 1997 to Law Number 35 of 2009 resulted in many changes. One of them is by implementing rehabilitation measures for drug users which serves to reduce the number of addicts and victims of drug abuse in Indonesia. The previous Narcotics Law focused on criminal aggravation for all types of narcotics crime cases and only slightly regulated the provisions of rehabilitation and did not further explain who could receive the rehabilitation, while the current Narcotics Law emphasizes the concept of rehabilitation as a form of recovery that is mandatory for addicts and victims of narcotics abuse, which is clearly regulated in the Article.

The abuse of narcotics for self-interest is regulated in detail in Article 127 of the Narcotics Law. Paragraph (1) distinguishes criminal sanctions based on the class of narcotics abused. For users of class 1 narcotics, the threat of imprisonment given is a maximum of 4 years. Meanwhile, for users of class 2 narcotics, the punishment is lighter, namely imprisonment for a maximum of 2 years. As for the abuse of class 3 narcotics, the criminal sanction is even lower, namely imprisonment for a maximum of 1 year. In addition, in paragraph (2) of the article it is explained that in applying this criminal sanction, the judge must consider the provisions contained in Article 54, Article 55, and Article 103 of the Narcotics Law. These provisions regulate rehabilitation for drug abusers, which emphasizes that the recovery aspect should be the main consideration in addition to legal sanctions. This shows that the law does not only aim to punish, but also to rehabilitate abusers so that they can return to a healthy social life. Furthermore, paragraph (3) of this article emphasizes that if drug abusers are proven to be victims or trapped in an environment of drug abuse, they are obliged to undergo medical rehabilitation and social rehabilitation, not merely criminal punishment. Medical rehabilitation aims to restore the user's physical and mental health conditions, while social rehabilitation aims to help them reintegrate into society and avoid drug abuse in the future.

Thus, Article 127 of the Narcotics Law reflects a balanced approach between law enforcement and the protection of abusers as individuals who need help. The implementation of this article is expected to reduce the rate of drug abuse while providing recovery solutions for those affected. The Narcotics Law does regulate action sanctions in the form of rehabilitation as an alternative to criminal sanctions, but in fact, many judges in Indonesia do not obey and comply with the provisions of the legislation to impose action sanctions only on perpetrators of narcotics crimes, especially on people who abuse drugs

for themselves¹². This is precisely regulated in Article 54 of the Narcotics Law which explains that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. The mandatory phrase here is a must that must be obeyed by all law enforcement officials. Related to the provisions of drug users who can get rehabilitation has also been explained again with the existence of the Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning Placement of Narcotics Abuse, Abuse Victims and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. Based on the provisions of the SEMA, drug users who use drugs below a predetermined threshold and have met the requirements stated in the SEMA can be sentenced to rehabilitation. This provision can also be found in Attorney General Regulation No. 29/2015 on Technical Guidelines for Handling Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions. Despite this regulation, data in the field still shows that half of the prisons in Indonesia are inhabited by prisoners from narcotics cases, because many law enforcement officials do not have a common understanding to consider that drug abusers are victims of their own actions who should not be sentenced to criminal sanctions.

Based on the provisions of SEMA Number 4 of 2010 and Regulation of the Attorney General Number 29 of 2015, there are several requirements that must be met so that drug abusers can be subject to rehabilitation measures. Some of the requirements are: 1) The defendant is found in a state of being caught red-handed while committing an offense; 2) When caught red-handed, evidence of narcotics use for one-day consumption is found with the following maximum limits:

Metamphetamine group	1 grams
MDMA (ecstasy) group	2,4 grams = 8 grains
Heroin group	1,8 grams
Marijuana group	5 grams
Coca leaf	5 grams
Meskalin	5 grams
Psilocybin group	3 grams
LSD group	2 grams
PCP group	3 grams
Fentanyl group	1 grams
Methadone group	0,5 grams
Morphine group	1,8 grams
Petidine group	0,96 grams
Codeine group	72 grams
Bufrenorphine group	32 g

3) There is a letter of laboratory test result showing that the defendant was positive for narcotics; 4) There is a letter of laboratory test result which shows that the defendant is positive for narcotics; 5) There is a laboratory test result letter showing that the defendant is positive for narcotics.

The position of SEMA as a legal basis in legislation is not binding on law enforcement officials as a whole. In essence, SEMA is only internal, which is intended for judicial bodies

¹² Fajar, "Penerapan Rehabilitasi Medis Dan Rehabilitasi Sosial Atas Penyalahgunaan Narkotika Bagi Diri Sendiri Mohamad," 409.

under the authority of the Supreme Court which is useful as a direction in carrying out their duties. In contrast to laws and regulations that are binding in general and formed or stipulated by authorized institutions in accordance with the procedures set forth in the laws and regulations, the rules contained in SEMA as discretion are classified as policy regulations that only guide in regulating the implementation of tasks that are more administrative in nature¹³. In the hierarchical order of laws and regulations in Indonesia, SEMA occupies a position below the Law and does not have an equal or higher position. SEMA is instructional and technical in nature, serving as a guide for judges and judicial officers in applying the law, but must not contradict the provisions of the Law or higher regulations. Therefore, in deciding sanctions against people who abuse drugs for themselves, judges have the freedom to impose sentences in the form of punishment or rehabilitation based on the limits set by the Narcotics Law¹⁴.

In addition to the Supreme Court Circular Letter (SEMA), the Attorney General's Office also has regulations that support the health approach in handling drug cases, especially in adjusting prosecution actions in accordance with Article 54 of the Narcotics Law. An example is the Attorney General's Circular Letter Number SE-002/A/JA/02/2013 which regulates the placement of victims of drug abuse into medical and social rehabilitation institutions. In addition, the AGO also issued Circular Letter No. B-601/E/EJP/02/2013 which provides similar guidelines for addicts and victims of drug abuse to undergo rehabilitation. In 2015, the Attorney General's Office strengthened this regulation by issuing Attorney General Regulation Number PER-29/A/JA/12/2015, which provides technical guidelines for the treatment of addicts and victims of drug abuse to rehabilitation institutions in the prosecution process. These regulations aim to change the paradigm of handling narcotics cases from a purely criminal approach to an approach of rehabilitation rehabilitation that prioritizes the health and recovery aspects of drug abusers¹⁵.

B. Criminal Law Formulation Policy on Narcotics Abuse for Self in the Future

Regarding the abuse of narcotics for oneself, the law is not explicitly regulated, but only regulates several terms whose meaning is almost the same as self-abuse, namely Addicts, Abusers, Victims of Abusers, Former Addicts, and Narcotics Patients¹⁶. As a result of this multiplicity of terms, there is confusion between Article 4 letter d regarding the purpose of the Narcotics Law, which reads "Ensure the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts," with Article 54 which reads "Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation." This difference in terms makes it difficult for law enforcers to allocate targeted articles according to the type of crime. Nevertheless, the term has the same meaning as narcotics abuse for oneself, where the person uses the narcotics for their personal benefit.

Narcotics abuse for one's own benefit is categorized as a crime without victim. According to Cibinong District Court Decision Number 633/Pid.Sus/2014/PN.Cbi, an act can be called

¹³ Nafiatul Munawaroh, "Apa Itu SEMA Dan Bagaimana Kedudukannya Dalam Hukum?," *hukumonline.com*, 2024, <https://www.hukumonline.com/klinik/a/apa-itu-sema-dan-bagaimana-kedudukannya-dalam-hukum-lt5da3d5db300a9/>.

¹⁴ Choirul Nur Akrom et al., "Analisis Hukum Penerapan Sanksi Pidana Penyalahgunaan Narkotika Oleh Hakim Ditinjau Dari Sema Nomor 4 Tahun 2010 Di Kota Palembang," *Lexstricta: Jurnal Ilmu Hukum* 2, no. 3 (2024): 158-59, <https://doi.org/10.46839/lexstricta.v2i3.33>.

¹⁵ Muh. Syawal, "Kebijakan Penjatuan Pidana Penjara Terhadap Penyalahgunaan Narkotika Perbandingan Negara Indonesia Dan Malaysia," *Proceedings of Airlangga Faculty of Law Colloquium* 1, no. 1 (2024): 311-12.

¹⁶ Hatarto Pakpahan, "Kebijakan Formulasi Sanksi Tindakan Bagi Pengguna Dalam Tindak Pidana Narkotika," *Arena Hukum* 7, no. 2 (2014): 230, <https://doi.org/10.21776/ub.arenahukum.2014.00702.5>.

a crime if it causes a victim, where the victim is another person. However, in the case of a victimless crime, no other party is harmed, but the perpetrator himself is the victim. If only the actor himself is affected, then the action cannot be classified as a crime (an act must take place that involves harm inflicted on someone by the actor). This is consistent with cases of drug abuse for oneself, where the perpetrator and victim are the same person. However, judges as law enforcers in Indonesia have not fully adopted this understanding in handling cases of drug abuse for oneself¹⁷. This is why many cases of self-abuse of narcotics in Indonesia are still often sentenced to criminal punishment.

Looking from the point of view of the typology of crime victims in victimology, drug abuse for oneself is included in false victims, where those who become victims because of their own actions. Meanwhile, according to the circumstances and status of the victim, drug abuse for oneself is included in self victimizing victims¹⁸. Steven Schafer suggests that those who fall into this category are victimized by their own actions. He also mentioned an example of a victim in this category, which is someone who is addicted to drugs. In this category, the responsibility is fully held by the perpetrator who doubles as the victim¹⁹. Romli Atmasasmita also said that in the case of drug users, the relationship between the victim and the perpetrator is one unit, where the perpetrator is the victim and the victim is a user or drug user²⁰.

Self-use drug abusers are individuals who use drugs for their own benefit, and in this situation, the person should be governed by Article 127 of the Narcotics Law which explicitly addresses self-use drug abusers. This article would then be linked to Article 54, which regulates rehabilitation services for addicts and victims of drug abuse. However, in reality, many defendants charged under Article 127 are denied their right to a rehabilitation sentence. In this case, it is clear that the judge ignored the regulations that have been established and is not in accordance with the purpose of punishment which is not solely retaliatory but also aims to rehabilitate the perpetrator so that he does not repeat his actions. The purpose of punishment is not merely to take revenge on the perpetrator for the crime committed, but also to restore or improve the individual to become a positive member of society in the future.

In imposing criminal sanctions on drug abusers for their own interests, a more proportional approach is to refer to the relative theory based on utilitarian views. The relative theory states that the purpose of punishment is as a means to maintain order and regularity in society, not as a form of retaliation against the perpetrator. Thus, the sanctions imposed are primarily aimed at preventing the perpetrators from repeating their actions in the future, in order to create social security and peace. Drug users in this case get a punishment that provides benefits, not physical suffering such as being placed in prison which actually makes drug users unable to get the treatment and care they should get. While the utilitarian view put forward by Jeremy Bentham quoted in his book Remmelink says that the law can be said to have successfully fulfilled its purpose if it has been able to provide happiness for most individuals in society (the greatest happiness is greatest number).

¹⁷ Budi Sastra Panjaitan, "Tindak Pidana Tanpa Korban," *Jurnal Mercatoria* 15, no. 1 (2022): 4, <https://doi.org/10.31289/mercatoria.v15i1.6197>.

¹⁸ Joice Soraya, *Viktimologi: Kajian Dalam Perspektif Korban Kejahatan* (Malang: Media Nusa Creative, 2022), 26–27.

¹⁹ Mohammad Nurul Huda, "Korban Dalam Perspektif Viktimologi," *VOICE JUSTISIA : Jurnal Hukum Dan Keadilan* 6, no. 1 (2022): 67–69, <https://journal.uim.ac.id/index.php/justisia/article/view/1526>.

²⁰ Romli Atmasasmita, *Masalah Santunan Terhadap Korban Tindak Pidana* (Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman RI, 1992), 22.

Bentham also argues that the severity of the punishment given to the perpetrator must be based on: The value of the punishment must not be less in any case than is sufficient to outweigh the profit of the offense, which means that the value of the punishment must not exceed the profit obtained by the perpetrator of the offense committed²¹.

Other countries that have the same legal system as Indonesia, namely civil law, apply various concepts to deal with cases of drug abuse. The author found several countries that have moved towards a decriminalization, rehabilitation, and public health approach, rather than just punishment, to deal with drug abusers: a) Madagascar: Madagascar is a country that follows the same civil law legal system as Indonesia. In Madagascar, any person who violates Articles 8, 9, 11 etc., 30 and 31 of Law Number 97-039 on the cultivation, production, manufacture, extraction, preparation, processing, importation, exportation, offering, offering for sale, distribution, brokering, sale, delivery, under any pretext, delivery, handover, transportation, purchase, possession, or use of dangerous drugs is subject to a prison sentence of 5 to 10 years and/or a fine of Ar 40,000 to Ar 6,000,000. Sentencing for drug offenses in Madagascar is differentiated according to how serious the offense is. The categories of offenders are also differentiated into abusers, small-scale dealers, or large-scale dealers. In addition to imprisonment and fines, Madagascar also applies forced labor sanctions and civil rights restrictions and prioritizes rehabilitation for drug abusers, although its application is still weak due to limitations²²; b) Portugal: In Portugal, the regulation on the abuse of narcotics for oneself is regulated in Decree-Law Number 430/83, precisely in Article 40, which more or less regulates that individuals caught consuming narcotics will be subject to imprisonment and fines. For the category of drug addicts, the authorized law enforcement officers will collect evidence to prove that he is indeed an addict. When he is declared an addict, he will have to undergo voluntary medical treatment and his prison sentence will be suspended until he has completed treatment. If he does not undergo treatment, he will be subject to additional punishment. However, during the reform era in 2001, Portugal passed a new law to decriminalize the use of drugs for oneself as long as one fulfills the conditions stated in the law. The law in question is Law Number 30/2000, specifically Article 2, which states that a person caught consuming, obtaining, and possessing drugs is an administrative offense as long as it does not exceed the amount required for individual consumption, which is 10 days. Prior to 2001, Portugal faced serious problems with drug abuse, particularly heroin, with high rates of HIV/AIDS and overdose among injecting drug users, and previous repressive policies were not effective in reducing drug use or addressing its social impacts. Therefore, in 2001, in line with a new European-wide movement towards harm reduction, Portugal introduced a new policy that decriminalized the personal use of any drug if the amount used did not exceed 10 days. Anyone caught in possession of more than the prescribed limit would be considered a dealer and subject to criminal charges. Countries in Europe at the time were taking a health approach that considered drug users to be different from dealers who were considered criminals. Drug users were regarded as sick people who needed treatment and care²³; c) Mexico: In Mexico, the provisions regarding narcotics are regulated in the Health Law called the Federal Penal Codigo starting from Articles 193-199. For drug traffickers, they will be

²¹ I Dewa Gede Atmadja and I Nyoman Putu Budiarta, *Teori-Teori Hukum* (Malang: Setara Press, 2018), 206-7.

²² Andrianantenaina Fanirintsoa Aime and Dwiki Oktobrian, "Policy Formulation on Criminal Legal Sanctions for Narcotics Crimes : Comparison Studi in Indonesia and Madagascar," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 6, no. 1 (2025): 40-43.

²³ Hannah Laqueur, "Uses and Abuses of Drug Decriminalization in Portugal," *Law and Social Inquiry* 40, no. 3 (2015): 1-4, <https://doi.org/10.1111/lsi.12104>.

subject to Article 194 which explains that anyone who produces, transports, trades, provides, even free of charge, or provides any type of narcotics without a license will be subject to imprisonment of between 10 and 25 years, as well as a fine determined by a court decision according to the weight and type of narcotics possessed. Meanwhile, drug users who are identified as addicts (pharmacodependent) are required to receive rehabilitation through the competent health authorities and rehabilitation services in detention centers. Similar to Indonesia, drug users in Mexico are required to obtain rehabilitation as long as they fulfill all the conditions that have been determined. Users who are caught with more than the prescribed amount of drugs or do not meet the rehabilitation requirements may still be subject to imprisonment. The only difference from Indonesia is that the amount of possession limit is regulated directly in the main law governing narcotics in Mexico. Whereas in Indonesia, it is only regulated in PERJA and SEMA.

Based on comparative studies from other countries, as a policy step in the formulation of criminal law against narcotics abusers for themselves that can be applied in Indonesia, namely by building a health and social paradigm in handling narcotics addicts. This paradigm demands a change in the attitude of law enforcement and society to be more humanist and oriented towards the recovery and social reintegration of drug addicts, where in this case addicts are seen as victims of dependence who must receive medical and social rehabilitation, not merely as perpetrators of criminal acts who must be imprisoned. Provisions regarding rehabilitation itself have actually been regulated in the Narcotics Law, but its application is still not optimal. As a form of optimization of rehabilitation, perpetrators of narcotics abuse for themselves can be resolved through: 1) Applying the concept of restorative justice to resolve cases of self-abuse of drugs within the police and prosecutor's office. This aims to prevent cases from going to court and offenders can be directed to rehabilitation. Attorney General Sanitiar Burhanuddin, in a press conference at the National Police Headquarters in South Jakarta on Thursday 5 December 2024, emphasized that it is legally inappropriate to refer cases of drug users to court because they should be seen as victims who need rehabilitation, not as criminals. Instead, the government will apply a restorative justice approach that focuses on recovery, education, and social reintegration, instead of imprisoning drug users; 2) Until now, the possession limit that can be the basis for rehabilitation has not been explicitly regulated in the Narcotics Law. Regulations regarding these limits have so far only been contained in the Supreme Court Circular Letter (SEMA) and the Attorney General Regulation (PERJA), so they are not legally binding and only serve as guidelines for law enforcement officials. As a result, implementation in the field is often inconsistent and creates legal uncertainty for drug users who should be entitled to rehabilitation; 3) The wording of Article 111, Article 112, Article 117, and Article 122 creates confusion regarding the designation of these articles. The interpretation of the phrase "possessing, storing, and controlling" has the potential to ensnare people who abuse drugs for themselves, because they will definitely possess, store, and control the drugs for themselves. The punishment that will be received will also be in accordance with the article, namely imprisonment and fines, which in this case makes it difficult for them to get rehabilitation. There needs to be further explanation regarding the designation of the article so that there are no multiple interpretations.

It is necessary to reformulate the Narcotics Law, because policies that have been repressive and prioritize the criminal sanctions approach have proven ineffective in dealing with the problem of drug abuse. The old paradigm that views drug users solely as criminals

who must be punished with imprisonment has actually created various new problems, ranging from the overcapacity of correctional institutions, high rates of recidivism, to the waste of state budget that could have been allocated to more productive programs²⁴. Therefore, fundamental changes in the Narcotics Law should be made to shift the approach from repressive to health-based, where drug abuse is seen as a health disorder that requires treatment and care, not punishment. This new approach should include comprehensive and accessible rehabilitation mechanisms. Thus, reformulation of the Narcotics Law will not only reduce the burden on the criminal justice system and prison overcrowding, but also provide a more humane and sustainable solution for people who use drugs to recover and return to contributing positively to society.

CONCLUSION

Self-use of narcotics is currently regulated in Law Nomor 35/2009, specifically in Article 127. In this law, the punishment of people who abuse drugs for themselves still uses the prison approach even though the law itself regulates the provision of rehabilitation for addicts and victims of drug abuse. This is also reinforced by the SEMA, SEJA, and PERJA which both regulate the rehabilitation mechanism itself. However, in practice there are still many people who abuse drugs for themselves who are sentenced to prison by judges even though they are eligible for rehabilitation. In this case, drug abusers should be seen as victims who need rehabilitation, not as criminals who should be imprisoned. Other countries such as Mexico and Portugal view drug abusers as sick people who need medical and social care, so they use the health approach and decriminalize. This is in contrast to Indonesia, which still prioritizes imprisonment. This has led to overcrowding and overcapacity in Indonesian prisons.

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