

REFORMULATION OF NARCOTICS REGULATIONS TO ELIMINATE INCONSISTENT INTERPRETATION FOR NARCOTICS OFFENDERS

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Abstract

A considerable number of correctional facilities and detention centres in Indonesia are currently grappling with overcrowding issues, primarily driven by inmates involved in narcotics-related cases. This research aims to investigate the inconsistencies within narcotics regulations that lead to diverse interpretations of the law by law enforcement officials. The pressing aim of this study is to reduce the population of narcotics offenders serving prison sentences, thus alleviating the problem of overcrowding. This research adopts a qualitative methodology focusing on legislative and conceptual analysis. The research findings underscore the necessity for a revision of narcotics legislation. More specifically, this involves categorising narcotics offenders based on their intent, making a clear distinction between "narcotics users," encompassing individuals who use drugs, suffer from addiction, or have become

victims of narcotics abuse, and "narcotics profiteers," which includes those engaged in selling, facilitating transactions, manufacturing, or inducing others into narcotics abuse and victimisation. In summary, this research highlights that consistency is needed in the regulation of narcotics articles by creating clear categories of behavior that are included in narcotics crimes to eliminate the various interpretations of the law, ultimately ensuring a fair and legally certain criminal justice system.

Keywords: Inconsistent Interpretation, Narcotics Law, Reformulation

Introduction

Correctional facilities and state detention centers are often confused and seen as similar due to their common purpose of housing individuals involved in criminal activities. However, within the legal framework of Indonesia, as defined by the 2022 Law on Corrections, these two types of institutions have distinct definitions. According to Article 1, Paragraph 18 of the Law on Corrections, State Detention Centres, or Correctional Facilities, are institutions or places responsible for the rehabilitation of convicts. On the other hand, correctional facilities, or state detention centres, as defined in Article 1, Paragraph 16 of the same law, are institutions or places responsible for detention services for detainees. It's important to note that following the enactment of the Law on Juvenile Justice (Law No. 12 of 2011 concerning the Juvenile Criminal Justice System), juvenile offenders are no longer housed in correctional institutions but are instead accommodated in Special Juvenile Rehabilitation Centres. This differentiation plays a crucial role in the Indonesian corrections system, as it clarifies these institutions' distinct roles and functions, ensuring they operate according to principles of justice and legal compliance.

The challenge of overcrowding, characterised by an inmate or detainee population exceeding available capacity, continues to be a pervasive issue in the majority of correctional facilities and state detention centres throughout Indonesia. This long-standing concern is underscored by data from the Directorate General of Corrections within the Ministry of Law and Human Rights, which reveals that a significant portion of the incarcerated population in these facilities consists of individuals convicted of narcotics-related offences.

Traditionally, the primary approach to handling narcotics abuse cases in Indonesia has been centred around punitive measures, particularly imprisonment. Data from the Directorate General of Corrections, Ministry of Law and Human Rights, as of September 19, 2022, indicates a significant issue of overcapacity, with a rate of 109%. This means that the total number of inmates reached 276,172, while the available capacity was intended for only 132,107 individuals. Notably, a substantial portion of these inmates were linked to narcotics cases, totalling 139,839, among which 125,288 were individuals involved in narcotics abuse ¹. Additionally, Minister of Law and Human Rights, Mahfud MD, has reported that 50 per cent of the incarcerated population comprises individuals convicted in drug-related cases ².

Addressing the issue of overcapacity is of utmost significance due to the profound consequences it entails. These consequences encompass the failure to ensure the fundamental rights of incarcerated individuals, as well as the occurrence of disturbances such as riots, revolts, escape attempts, and even incidents of self-harm, all of which disrupt the tranquillity and order within detention facilities and correctional institutions. ³ Additionally, there is a substantial financial burden on the state, notably in terms of the budget allocated for the sustenance of inmates. Heni Yuwono, the Secretary of the Directorate General of Corrections, has emphasised that the state allocates a substantial two trillion in funds annually solely for the subsistence costs of inmates ⁴.

One of the strategies aimed at alleviating the issue of overcapacity in correctional facilities involves adopting a restorative approach. Specifically, cases related to narcotics abuse can be effectively addressed through the principles of restorative justice. This entails the application of medical and social rehabilitation, facilitated by an assessment process outlined in Article 54 and Article 127, paragraph (3) of the 2009

¹ Kusnandar, "Penghuni Lapas Dan Rutan Kelebihan Kapasitas 109% Pada September 2022."

² Flori Sidebang, "Lapas Overcapacity, Mahfud: 50 Persen Kasus Narkoba."

³ Sianturi, Politeknik, and Pemasyarakatan, "Implementasi Permenkumham Nomor 11 Tahun 2017 Tentang Grand Design Penanganan Overcrowded di Lapas Kelas IIB Siborongborong."

⁴ Singgih Wiryono, "Ditjen PAS: Negara Keluarkan Rp 2 Triliun Setahun Untuk Makanan Napi Artikel Ini Telah Tayang Di Kompas.Com Dengan Judul "Ditjen PAS: Negara Keluarkan Rp 2 Triliun Setahun Untuk Makanan Napi."

Narcotics Law. This approach not only tackles the problem of overcapacity but also seeks to provide a more rehabilitative and socially constructive response to **offences** related to narcotics.

The Indonesian Narcotics Law strongly emphasises punitive measures, particularly imprisonment, while the clauses related to alternative resolution methods face challenges in practical implementation. For example, Article 54 of Law No. 2009 stipulates that "narcotics users and victims of narcotics abuse are required to undergo medical and social rehabilitation." However, Articles 111, 112, 117, and 122 (related to narcotics possession, control, and storage), Articles 114, 119, and 124 (about buying, receiving, and delivering narcotics), and Article 115 (concerning carrying narcotics) carry penalties of incarceration and fines, with no provisions for rehabilitation. Paradoxically, individuals struggling with narcotics abuse or addiction may also fall into the category of those involved in buying, receiving, possessing, storing, and controlling narcotics. These conflicting regulations create uncertainty in applying the appropriate legal provisions, resulting in variations in judgments delivered by the judiciary.

Within the realm of penal objectives, a contemporary theory, as outlined by ⁵ represents an adaptation of three classical theories. These classical theories encompass the absolute theory, which centres on retribution as the primary purpose of punishment; the relative theory, which views punishment as a means of maintaining societal order; and the combined theory, which integrates elements of retribution and societal order preservation. Wayne R. Lafave further emphasises that the objectives of criminal punishment include rehabilitation, which involves redirecting offenders toward personal improvement, facilitating their reintegration into society, and preventing the recurrence of criminal conduct. Another critical objective of criminal punishment is restorative justice, which intends to reinstate societal equitable conditions.

In instances of narcotics abuse crimes, the individuals involved can also be seen as victims, given that the most substantial damage often occurs to the perpetrators themselves.

In 2022, the Indonesian Judicial Research Society (IJRS) conducted a comprehensive study examining Sentencing Disparities

⁵ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Cahaya Atma Pustaka, 2016).

and Policy Approaches in Handling Narcotics-Related Criminal Cases in Indonesia. The IJRS research focused specifically on narcotics cases falling under Group 1, spanning the years 2016-2020 and involving the application of Articles 111-115 and Article 127 of the Narcotics Law. The study shed light on discrepancies in sentencing narcotics cases that shared similar factual characteristics. The research outcomes revealed a significant disparity of 65.8% in applying Articles 111-116 of the Narcotics Law and a notable disparity of 63.6% in applying Article 127 of the Narcotics Law. Additionally, the research unveiled that judicial decisions varied, even when cases exhibited common characteristics such as the roles of the defendants, the type of narcotics involved, and the weight of the evidence. Some cases resulted in prison sentences, others in rehabilitation orders, and a third category involved a combination of both imprisonment and rehabilitation.

Several prior research studies that are relevant to the subject of this research have been conducted. One such study is documented in the journal article titled "Implementing the *Ultimum Remedium* Principle for the Protection of Drug-Addicted Minors" ⁶. This study concluded that, according to Law No. 11 of 2012 on Juvenile Criminal Justice, the *ultimum remedium* principle requires the obligatory use of diversion for all minors involved in legal matters before the judicial process is initiated. In another article titled "The Influence of Legal and Non-Legal Factors on the Severity of Sentences Handed Down by Judges in Cases of Narcotics Offenders" ⁷, it was determined that both legal and non-legal factors do, indeed, impact the decisions made by judges. Notably, recidivism has a substantial impact on sentencing, leading to longer prison terms. Nonetheless, various other factors also factor into judges' sentencing decisions. The research outcomes illuminate the approach of judges in Indonesia when dealing with repeat narcotics offenders, which involves the consideration of both legal and non-legal factors and culminates in the imposition of strict penalties on individuals with a history of drug-related offences in Indonesia.

The article titled "Implementation of Rehabilitation for Drug Abusers According to Law Number 35 of 2009 Concerning Narcotics"

⁶ Zahra and Sularto, "Penerapan Asas *Ultimum Remedium* Dalam Rangka Perlindungan Anak Pecandu Narkotika."

⁷ Wulandari, "The Impact Of Legal And Extra-Legal Factors on Severity of Judges Sentencing Regarding Narcotics Offenders."

⁸ determines that the execution of rehabilitation for drug addicts or victims of narcotics abuse is carried out through either court decisions or by the initiative of the drug addict or victim themselves. In the article titled "Level of Motivation to Stop Narcotics, Psychotropics, and Addictive Substances" ⁹, it is established that the motivation to discontinue the use of narcotics, psychotropics, and addictive substances is crucial in preventing relapses among people with an addiction. These conclusions underscore the significance of the rehabilitation process in inspiring people with an addiction to overcome their addiction.

The misuse of narcotics can be seen as both a criminal act and a victimisation of those involved in the offence. A restorative justice approach, particularly rehabilitation, is more appropriate in such situations. The presence of conflicting provisions within narcotics laws hampers the practical application of restorative justice in cases of narcotics abuse. Therefore, there is a need to revise the regulations to enhance the resolution of narcotics abuse cases through restorative justice. The research's urgency lies in the quest for an optimal framework for handling narcotics abuse cases, with the ultimate goal of reducing the number of narcotics offenders serving prison sentences.

Research Methodology

This study employs a mixed-methods approach combining a juridical and empirical perspective to assess how positive legal provisions are implemented in a real-world context. ¹⁰ This approach is designed to ascertain whether enforcing existing regulations effectively resolves societal issues. Empirical data is gathered through interviews with informants, providing the researcher with valuable insights from the field and a holistic understanding of the subject under investigation.

The research methodology employed is analytical-descriptive, describing the analysed research findings using a legislative and

⁸ Bawono, Wahyono, and Laksana, "Implementation of Rehabilitation for Drug Abuses According to Law Number 35 of 2009 Concerning Narcotics."

⁹ Wahyuni, Daulay, and Nasution, "Level of Motivation to Stop Narcotics, Psychotropics and Addictive Substance."

¹⁰ Muhaimin, *Metode Penelitian Hukum*, 2020
<<http://eprints.unram.ac.id/20305/1/Metode%20Penelitian%20Hukum.pdf>>
[accessed 30 October 2023].

conceptual approach. This approach involves scrutinising regulations and law enforcement practices in cases related to narcotics abuse.

Data for this research is drawn from two main sources: primary data, acquired directly from sources, and secondary data, obtained from various written sources. Primary data were gathered through in-depth interviews with the National Narcotics Agency of the Special Region of Yogyakarta and the Yogyakarta Narcotics Penitentiary. Secondary data includes primary legal materials, which comprise legislative regulations related to narcotics abuse cases. Furthermore, secondary legal materials encompass publications on legal topics, such as books on narcotics and narcotics rehabilitation, legal journals, and similar non-official sources¹¹. Tertiary legal materials were referenced to provide additional context and insights into both primary and secondary data. These tertiary materials include resources like the Indonesian language dictionary, legal dictionary, and encyclopedias¹².

Overcrowding in Correctional Facilities and Detention Centres

Correctional facilities and detention centres are frequently confused and treated as if they were the same due to their shared purpose of housing individuals involved in criminal activities. However, these two entities have distinct definitions in Law No. 22 of 2022 on Corrections. Correctional facilities, as articulated in Article 1, clause 18, are institutions or locations responsible for the rehabilitation of inmates. In contrast, detention centres are institutions or facilities established to offer services to detainees, as described in Article 1, clause 16 of the Corrections Law.

Within correctional facilities, a rehabilitation program exists that aims to enhance the character and self-sufficiency of inmates and juvenile offenders. This program serves a dual purpose: safeguarding the inmates' rights and protecting society from potential repeat offences by the inmates. It also strives to elevate correctional residents' personal development and self-reliance, fostering self-awareness, personal growth, and the prevention of recidivism, ultimately enabling their reintegration into the community. Rehabilitation efforts also aim to equip inmates with the skills to lead a lawful and responsible life and to

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana, 2019).

¹² Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Rajawali Press, 2015).

participate actively in societal development. These rehabilitation programs within correctional facilities empower residents to transform themselves and prepare for successful reintegration into the wider community, as Article 2 of the Corrections Law stipulates.

At its essence, sentencing individuals to prison involves subjecting those who have committed criminal acts to a form of suffering or adversity, thereby suspending their rights as regular members of society. Their liberties are constrained, and their societal status is made uniform¹³. However, it is paramount to ensure that the rights of detainees and inmates, as living entities, are still given due consideration. These rights are explicitly stated in Article 7 and Article 9 of the Corrections Law.

One of the rights currently facing potential neglect is the entitlement to receive humane treatment and be shielded from acts such as torture, exploitation, negligence, violence, and any behaviors that could endanger one's physical and mental well-being, as specified in point (i). This right is intricately linked with the issue of overcrowding within Indonesian correctional facilities. The prevailing overcapacity in these institutions substantially raises the risk of violations against the rights of detainees, particularly in terms of their right to protection against actions that may jeopardise their physical and mental health.

The issue of overcapacity, where the number of inmates or correctional residents exceeds the available capacity, has become an enduring problem in almost all correctional facilities and detention centres throughout Indonesia. Data from the Directorate General of Corrections, Ministry of Law and Human Rights, as of September 19, 2022, reveal an overcapacity rate of 109%. The total correctional inmate population stands at 276,172, surpassing the intended capacity of 132,107 individuals. The data further highlights that a significant majority of inmates are involved in narcotics-related cases, totalling 139,839 cases, with 125,288 of them being narcotics offenders¹⁴. Minister for Political, Legal, and Security Affairs, Mahfud MD, has reported that 50% of detainees are narcotics offenders¹⁵. This suggests

¹³ Zaini, *Tinjauan Konseptual Tentang Pidana Dan Pemidanaan Conceptual Review of Criminal and Criminal*, 2019.

¹⁴ Kusnandar.

¹⁵ Flori Sidebang.

that the current approach to addressing narcotics abuse cases has been predominantly centred on the imposition of prison sentences.

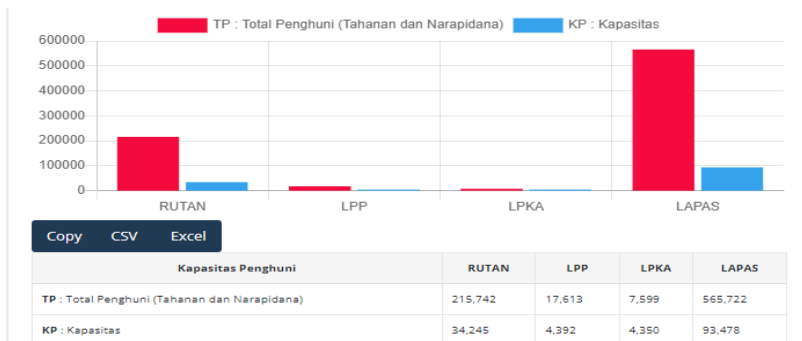
As of January 16, 2023, data from the Yogyakarta Correctional Information System reveals a near-balanced number of inmates involved in narcotics abuse and drug trafficking, standing at 361 and 343, respectively ¹⁶. Interviews conducted during field research at the Yogyakarta Class II Narcotics Correctional Facility indicate that even narcotics users with evidence in the form of drug remnants receive prison sentences. This situation undoubtedly contributes to the high inmate population of narcotics abusers.

Based on the Public Prison Database System, publicly available from the Directorate General of Corrections, the data as of August 5, 2023, highlights an exceptional overcapacity issue of 700% within correctional institutions. The figures reveal that while the combined capacity of these facilities is 136,465, the actual number of occupants, including detainees and inmates, has reached an astonishing 806,676 individuals ¹⁷. To delve into specifics, correctional facilities, initially designed for 93,478 individuals, currently accommodate 565,722, and detention centres, with an initial capacity of 34,245 individuals, are now housing 215,742 people. Figure 1. Number of Inmates in Correctional Facilities, Detention Centres, Special Juvenile Rehabilitation Facilities (LPKA), and Women's Correctional Facilities (LPP) as of August 5, 2023.

¹⁶ Admin, 'Sistem Informasi Masyarakat Yogyakarta (Sipasta)', 2023.

¹⁷ Ditjenpas, 'Jumlah Penghuni Lembaga Masyarakat (Lapas), Rumah Tahanan Negara (Rutan), Lembaga Pembinaan Khusus Anak (LPKA), Lembaga Masyarakat Perempuan (LPP), SDP Publik', 2023 <<https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>> [accessed 30 October 2023].

Table 1. Data on the Capacity and Occupants of Detention Centres and Correctional Institutions, 2023.



Source: Public Prison Database (SDP) from the Directorate General of Corrections (Ditjenpas)

Mitigating overcapacity is of paramount importance, as it gives rise to serious repercussions, including the inability to meet the basic rights of incarcerated individuals and the potential for disturbances such as riots, revolts, escape attempts, and even self-harm, all of which disrupt the order and serenity within detention centres and correctional facilities¹⁸. Additionally, it places a substantial financial strain on the national budget. Heni Yuwono, the Secretary of the Directorate General of Corrections, has disclosed that the government allocates a significant annual sum of two trillion rupiahs solely for the subsistence expenses of inmates¹⁹.

Currently, the prevailing approach within the Indonesian criminal justice system often results in imprisonment as the ultimate resolution for most criminal cases. Nevertheless, confinement is not always the most effective remedy for addressing various criminal issues, particularly where restoring the harm inflicted on victims or society is possible, thereby returning the affected conditions to their original state. The detrimental consequences of imprisonment can be avoided by pursuing restoration rather than incarceration. When confronting

¹⁸ Sianturi, Politeknik, and Pemasyarakatan, X.

¹⁹ Singgih Wiryono.

crimes that can be rectified, the concept of restorative justice²⁰ becomes relevant.

Given the current issue of overcrowding in prisons and detention facilities, and recognising that individuals involved in narcotics offences can also be seen as victims of the crimes they commit, it is crucial for law enforcement authorities to re-examine the fundamental purpose outlined by Wayne R. Lafave. This purpose revolves around rehabilitation, which involves transforming offenders into better individuals, enabling their reintegration into society without repeating their criminal actions. This approach also aligns with the concept of restorative justice, which focuses on restoring the affected conditions.

Restorative Justice in Criminal Law Policies Related to Narcotics Abuse

The exact definition of restorative justice is a subject of ongoing discussion among experts. Nevertheless, for this research, we can refer to the viewpoint presented by Miller and Blacker, as quoted by²¹. They argued that "most practices that are not defined as retributive are often included in the realm of restorative justice, and it has been argued that the scope of restorative justice has become so wide that it has been used to address virtually any harmful or morally reprehensible actions. Miller and Blacker's perspective implies that many approaches to handling criminal offenses, which do not adhere to the retributive or punitive model, are frequently categorised under the umbrella of restorative justice. This suggests that the scope of restorative justice has expanded considerably and can now be applied to address a wide range of actions that cause harm or are considered morally reprehensible. In summary, restorative justice has evolved to encompass diverse responses to wrongdoing, emphasising rehabilitation, reconciliation, and making amends, rather than relying solely on punitive measures. This inclusive approach aims to address the varied needs of both victims and offenders and has become a recognised and adaptable approach in the realm of criminal justice.

²⁰ Eko Syaputra, Penerapan Konsep Restorative Justice Dalam Sistem Peradilan Pidana di Masa yang Akan Datang, 2021.

²¹ Alauddin Syatar, Abdul Sofyan, Restorative Justice Dalam Upaya Penyelesaian Kejahatan Hak Asasi Manusia Perspektifhukum Islam, 2020.

Imprisonment for individuals involved in drug abuse, particularly those struggling with addiction, is an inadequate solution that doesn't address the underlying problems. Instead, these individuals require specialised medical and social treatment to help them break free from their narcotics dependency and reintegrate into society effectively. The adoption of a rehabilitation approach reflects a human-centered perspective in enforcing the law against drug abusers²². This viewpoint emphasises the importance of treating drug addiction as a health issue and focuses on recovery and reintegration rather than punitive measures. By providing the necessary medical and social assistance, the goal is to aid drug users in overcoming their addiction and leading healthy, productive lives within their communities.

Initially, in the regulation of narcotics-related offences, Indonesia enacted Law No. 8 of 1976, which marked the endorsement of the 1961 Single Convention on Narcotic Drugs and its amending protocol. Indonesia ratified Law No. 9 of 1976 regarding Narcotics on this legal basis. Over time, this law was revised with Law No. 22 of 1997 on Narcotics. This legislation included provisions addressing the prohibition of narcotics misuse for personal consumption, as articulated in Article 85 of Law No. 22 of 1997. The punitive framework in this law operated on a single sentencing model, where the potential penalties for narcotics misuse were limited to imprisonment²³. Subsequently, Law No. 22 of 1997 was replaced by Law No. 35 of 2009 on Narcotics (Narcotics Law), which remains in effect with several updates. This statute not only seeks to combat drug trafficking through punitive measures but also acknowledges the necessity of treatment for drug abusers and addicts.

The Narcotics Law does not explicitly delineate the precise actors involved in narcotics-related offences. Instead, it encompasses various roles and individuals engaged in narcotics crimes, such as abusers, addicts, owners, possessors, controllers, suppliers, sellers, buyers, receivers, senders, intermediaries, those involved in the delivery, and individuals responsible for transporting narcotics.

A narcotics offender might also be categorised as either a narcotics addict or a victim of narcotics abuse. According to Article 127,

²² Dafit Supriyanto Daris Warsito, 'Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika', *Jurnal Daulat Hukum*, 1.1 (2018), 31–42.

²³ Dafit Supriyanto Daris Warsito.

subsections (2) and (3), judges are mandated to take into account whether the offender falls under the definition of a person with an addiction or someone victimised by narcotics abuse. A victim of narcotics abuse refers to an individual who uses narcotics because they were encouraged, influenced, manipulated, deceived, compelled, or intimidated by someone else. Conversely, a narcotics addict is someone who engages in narcotics use or misuse while experiencing dependency, whether it's physical or psychological in nature.

The government has officially recommended the utilisation of restorative justice measures as a means to address the issue of overcapacity. It can be implemented right from the initial investigative stage conducted by the police, as suggested by.²⁴

In 2009, the Supreme Court of Indonesia issued Circular Letter No. 07 of 2009 regarding the Placement of Drug Users in Therapeutic and Rehabilitation Facilities. This circular, known as "Surat Edaran Mahkamah Agung" (SEMA), underscored that a substantial portion of individuals detained in narcotics-related cases, both those convicted and detainees, could be categorised as drug users or victims. These individuals were regarded as suffering from an illness, and incarcerating them was considered an inappropriate approach. Consequently, judges were encouraged to apply sentencing as per the provisions of the Narcotics Law, directing convicts to undergo treatment and/or rehabilitation to the best of their abilities. SEMA was subsequently revised with SEMA No. 4 of 2010, providing more detailed guidelines on the conditions and prerequisites for drug offenders to receive rehabilitation orders. In 2011, the Supreme Court issued SEMA Number. 3 of 2011 with the same title, reiterating that medical and social rehabilitation orders should be exclusively granted based on court decisions and court rulings. Court decisions were applicable to people with an addiction proven guilty of committing criminal offences, while court orders were applicable to those who were not found guilty and suspects still in the investigative, prosecutorial, or trial processes.

In 2014, a Joint Regulation was issued collaboratively by various authorities, including the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister

²⁴ Haposan Sahala Raja Sinaga, *Haposan Sahala Raja Sinaga Penerapan Restorative Justice Dalam Perkara Narkotika Di Indonesia* 529, 2021 <<https://bnn.go.id/press-release-akhir-tahun->>.

of Social Affairs, the Attorney General, the Chief of Police, and the Head of the National Narcotics Agency. This regulation, numbered 01/PB/MA/111/2014, 03 of 2014, 11 of 2014, 03 of 2014, Per005/A/JA/03/2014, 1 of 2014, and Perber/01/111/2014/BNN, was formulated to facilitate coordination and cooperation aimed at resolving issues related to narcotics. The primary goal was to reduce the number of drug addicts and victims of drug abuse through comprehensive programs involving treatment, care, and recovery. These programs applied to individuals, whether they were suspects, defendants, or convicts, and were implemented alongside ongoing efforts to combat the illicit drug trade. This regulation served as a practical guide for the medical and social rehabilitation of drug addicts and victims of drug abuse.

In 2018, the Head of the Indonesian National Police issued Circular Letter Number SE/8/VII/2018, addressing the Implementation of Restorative Justice in Criminal Case Resolution. This circular underscores that the investigative process acts as the entry point for the criminal justice system in Indonesia. It also underscores how the evolution of legal enforcement systems and techniques in Indonesia is leaning toward aligning with the principles of restorative justice. In this context, restorative justice is not limited to merely seeking amicable resolutions but aims to ensure a comprehensive sense of justice for all parties involved in criminal cases.

Under Regulation Number 15 of 2020 by the Republic of Indonesia's Attorney General's Office, which pertains to the discontinuation of prosecution based on restorative justice, there are established conditions and procedures for the potential termination of criminal prosecutions in the pursuit of restorative justice principles. However, it's essential to note that this regulation's Article 5, subsection (8), expressly excludes narcotics-related offences. Consequently, cases involving narcotics crimes do not qualify for the termination of prosecution based on restorative justice.

In 2020, the Indonesian Supreme Court issued Decision No. 1691/DJU/SK/PS.00/12/2020, which concerns the Adoption of Guidelines for Implementing Restorative Justice. This directive primarily instructs all judges in district and high courts to execute the guidelines for implementing restorative justice in an orderly and accountable manner. It also specifies that the scope of applying

restorative justice is limited to cases involving minor offences, juvenile cases, narcotics cases, and cases of women facing legal issues. Moreover, this decision establishes the criteria that determine whether a narcotics-related case can be considered suitable for implementing restorative justice.

The Narcotics Law No. 35 of 2009 does not conform to the evolving shift in the criminal justice paradigm from retributive to restorative approaches. This legislation is seen as still treating drug users, particularly addicts and victims of drug abuse, as criminals rather than individuals in need of treatment. The law predominantly focuses on punitive measures, especially imprisonment, while provisions related to alternative dispute resolution methods have not been effectively put into practice. For instance, Article 54 of the 2009 Law mandates that "drug addicts and victims of drug abuse must undergo medical rehabilitation and social rehabilitation." Conversely, Article 111, 112, 117, 122 (involving possession, holding, or control of narcotics), Article 114, 119, 124 (on the purchase or receipt of narcotics) are met with penalties involving imprisonment and fines, without the option for rehabilitation. Paradoxically, drug abusers or people with an addiction are also individuals who purchase, receive, possess, hold, and control narcotics. These conflicting provisions create ambiguity for law enforcement agencies in determining the appropriate article to apply, leading to divergent judgments issued by judges.

Another issue related to the same context of the Narcotics Law pertains to Article 54 of the legislation. This article stipulates that rehabilitation is deemed "mandatory" for drug addicts and victims of drug abuse. Nevertheless, Article 103 of the Narcotics Law introduces the provision that a judge presiding over a case involving a drug addict may choose to order the individual to undergo treatment and/or care through rehabilitation, irrespective of their proven guilt in a drug-related offence. The use of the term "may" signifies that not all individuals involved in drug abuse or addiction will be granted access to rehabilitation.

The regulations stipulated in Article 103, subsections 1(a) and 1(b) of the Narcotics Law are further elaborated in the Director-General's Decree of the General Court of the Supreme Court of the Republic of Indonesia, numbered 1691/DJU/SK/PS.00/12/2020. This decree pertains to the Adoption of Guidelines for Implementing

Restorative Justice. When these guidelines are applied to cases related to narcotics, several conditions must be met: when apprehended by investigators from the National Police and the National Narcotics Agency, tangible evidence of one day's drug use must be found, the accused should be charged under Article 103, subsection (1), and Article 127 of the Narcotics Law, and the Integrated Assessment Team must conduct an assessment.

The wording of Article 103, subsections 1(a) and 1(b) outlined above, empowers judges to override Article 54 potentially. The transition from the term "mandatory" as stipulated in Article 54 to "discretionary" signifies that judges possess the discretion to determine whether they will or will not deliver a rehabilitation verdict for individuals suffering from drug addiction and those victimised by drug abuse.

This situation reflects an inherent conflict within the Narcotics Law regarding the rehabilitation of drug offenders. Rehabilitation, which is essential for recovery, is both obligatory and should be prioritised when addressing narcotics-related offences. The consequences stemming from drug use cannot be effectively addressed through imprisonment alone. Thus, rehabilitation is imperative to prevent recidivism, whether it occurs deliberately or as a result of drug dependency induced by prior drug use²⁵. The conflicts within these regulations can give rise to challenges in the practical application of rehabilitation for drug users, further contributing to the persistent issue of overcapacity in Indonesia concerning drug-related cases.

Improving Narcotics Regulations by Clarifying the Categories of Narcotics Offenders

The Narcotics Law No. 35 of 2009 is not aligned with the ongoing shift in the approach to criminal punishment, transitioning from a retributive model to a restorative one. This issue is attributed to conflicts within the Narcotics Law itself, mainly due to overlapping definitions of the subjects involved in narcotics-related criminal offences.

The Narcotics Law provides distinct classifications for individuals engaged in narcotics-related offences. First and foremost, it categorises

²⁵ Andri Winjaya Laksana, *Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahgunaan Narkotika Dengan Sistem Rehabilitasi*, *Jurnal Pembaharuan Hukum*, 2015, II.

"Offenders" as those who engage in the unauthorised or illegal use of narcotics. This group encompasses "Addicts," referring to individuals who use or abuse narcotics while experiencing physical or psychological dependence, and "Victims of Abuse," denoting those who inadvertently use narcotics due to coercion, deception, persuasion, or threats.

For an individual who has used narcotics and is also struggling with addiction, there exists a lack of alignment among three pivotal clauses within the Narcotics Law. Firstly, Article 54 of this law mandates that rehabilitation is obligatory for such individuals. Secondly, Article 103 introduces the possibility of a rehabilitation ruling, and thirdly, Article 127 carries the consequence of imprisonment. This trifecta of articles fails to exhibit cohesion. Furthermore, there are various categories of narcotics offenders, encompassing those who possess, stock, control, purchase, or transport narcotics, all of whom are susceptible to incarceration. Importantly, it is understood that an individual engaging in narcotics use will inevitably possess, store, and control narcotics when apprehended during their use, and both before and after use, they may need to purchase and consequently store narcotics.

In light of the current overlap, it is imperative to streamline the classification of individuals engaged in drug-related offences based on their intentions.

The objectives of individuals engaging with narcotics can be delineated into two categories: the pursuit of "effects" resulting from narcotics consumption and the quest for "material gains" obtained from narcotics. Those who interact with narcotics with the intent of experiencing the "effects" of consumption are termed "narcotics users," a classification further subdivided into "casual users," "addicts," and "victims."

A "casual user" is an individual who consumes narcotics. In a court of law, this can be substantiated by evidence, such as being caught with a specific quantity of narcotics on their person and having a positive urine test result. The formal evidence is typically presented through a Forensic Laboratory Police Report detailing the weight of the seized evidence and a Urine Test Result Certificate provided as part of the case file. Subsequently, the testimonies of witnesses establish material evidence, statements from the defendant, or any other indicators that ascertain whether the individual had the right to

consume the narcotics, be it related to their profession or their medical treatment. In adjudicating cases involving "casual users" of narcotics, judges must take into account the assessment results and recommendations provided by the National Narcotics Agency's Integrated Team.

An "addict" is someone who uses narcotics while in a state of physical or psychological dependency. In a legal context, this can be proven through the circumstances in which they are apprehended with a specific quantity of narcotics, which is indicated by the Police Forensic Laboratory's report detailing the weight of the confiscated evidence.

For a narcotics addict, two possible conditions may arise when they are apprehended. The first is when a urine test yields a positive result, indicating recent narcotics use before the arrest. The second possibility is a negative urine test result, suggesting that they did not use narcotics shortly before being apprehended. Material evidence is presented to establish that the individual unlawfully used narcotics and experienced physical or psychological dependency on narcotics. This evidence is gathered from witness testimonies, expert opinions, documentation (such as records showing the individual's treatment or rehabilitation for narcotics addiction), clues, and statements made by the defendant. In adjudicating cases involving a narcotics addict, the judge should consider the results of assessments and recommendations provided by the National Narcotics Agency's Integrated Team.

Another situation that may arise in an individual's interaction with narcotics is when they use narcotics not of their own volition. This circumstance can occur due to the influence of others who provide, persuade, deceive, manipulate, force, or threaten the individual into using narcotics. In such cases, they become narcotics users as victims of others' actions. When deciding cases involving a narcotics victim, the results of assessments and recommendations from the National Narcotics Agency's Integrated Team should also be taken into account.

"Users" and "addicts," when apprehended, might be found with narcotics in their possession, owning them, controlling them, purchasing them, or receiving them. Likewise, when apprehended, "victims" may own narcotics, acquire them, control them, or accept them.

Individuals falling under the categories of "users," "addicts," and "victims" do not derive material benefits from narcotics and are

therefore classified as "narcotics offenders." Punitive measures are not necessary for this category of offenders; instead, restorative justice should be applied, encompassing both medical and social rehabilitation.

Individuals who engage with narcotics to obtain material benefits from them can be categorised as "benefit seekers." The term "benefit seeker" is introduced due to its distinction from the previous category. An individual who engages in narcotics without seeking material gain will primarily incur harm to themselves. As stated by ²⁶, narcotics are profoundly hazardous substances capable of impairing the nervous system and resulting in a degradation of an individual's character. They manifest adverse effects on the body, encompassing physical and psychological domains.

The negative consequences arising from this situation foster the viewpoint that individuals involved in narcotics abuse can also be considered victims of the crime. Consequently, they require comprehensive intervention, encompassing both medical and social rehabilitation, to prevent their conditions from worsening, ultimately curbing behaviours that may negatively affect others.

An individual who derives material benefits from narcotics-related crimes deliberately engages in these unlawful activities with the intent to acquire material gains. These material gains can take the form of a specific amount of money or tangible assets. Depending on the nature of their involvement, "profit takers" in narcotics-related offences can be categorised as a "seller," "middleman," or "producer."

A "seller" refers to an individual or a corporation engaged in the distribution of narcotics. In a court of law, this can be substantiated when narcotics are discovered in their possession, as confirmed by a certificate from the Police Forensic Laboratory detailing the weight of the evidence. A "seller" can be found in one of two possible conditions when apprehended. The first scenario involves a positive result from a urine test, indicating recent narcotic use, while the second scenario entails a negative result, suggesting the absence of recent narcotic consumption before their apprehension. Substantiating material evidence is essential to demonstrate that the narcotics in the accused's possession were intended for distribution to others and that they derived financial gain or material assets from the sale. If, during the trial,

²⁶ Oleh : Sumarlin and Adam Sumarlin, *Dampak Narkotika Pada Psikologi Dan Kesehatan Masyarakat*, 2012.

the accused is proven to be solely a seller, the imposed penalty is retributive in nature and typically involves imprisonment. However, if the accused is established as both a seller and a user or addict, the penalty encompasses both imprisonment and rehabilitation. In reaching a verdict, it is imperative to consider the assessments and recommendations provided by the Integrated Team of the National Narcotics Board (BNN).

The term "seller," when apprehended, may be involved in various activities related to narcotics, such as selling, offering, purchasing, receiving, carrying, possessing, providing, delivering, holding, shipping, transiting, importing, exporting, or transporting narcotics.

A "middleman" is an intermediary or broker involved in selling and purchasing narcotics. In a legal context, this status can be established when the individual is apprehended, and a certain quantity of narcotics is found on their person, as confirmed by a certification from the Police Forensic Laboratory regarding the weight of the confiscated evidence. A "middleman" can be apprehended under two potential conditions: first, if a urine test yields a positive result, indicating recent narcotic use prior to the arrest; and second, if a urine test yields a negative result, suggesting no recent narcotic use leading up to the arrest. To prove this in court, material evidence is presented to demonstrate that the narcotics in the individual's possession came from someone else and were intended for someone else, with the individual gaining some form of profit, either monetary or in kind. If, during the trial, the defendant is proven to be solely a middleman, the penalty imposed is retributive, involving imprisonment. However, if the defendant is proven to be both a middleman and a user/addict, the punishment consists of imprisonment and rehabilitation. When adjudicating cases, it is crucial to consider the assessments and recommendations provided by the Integrated Team of the National Narcotics Agency (BNN).

A "middleman," when apprehended, may be found in possession of, controlling, providing, receiving, delivering, carrying, sending, transporting, channelling, importing, exporting, or transiting narcotics.

A "producer" is a manufacturer of goods. In the context of narcotics, a "narcotics producer" engages in production activities, which involve preparing, processing, creating, and generating narcotics directly or indirectly (Narcotics Law Article 1). Individuals or corporations

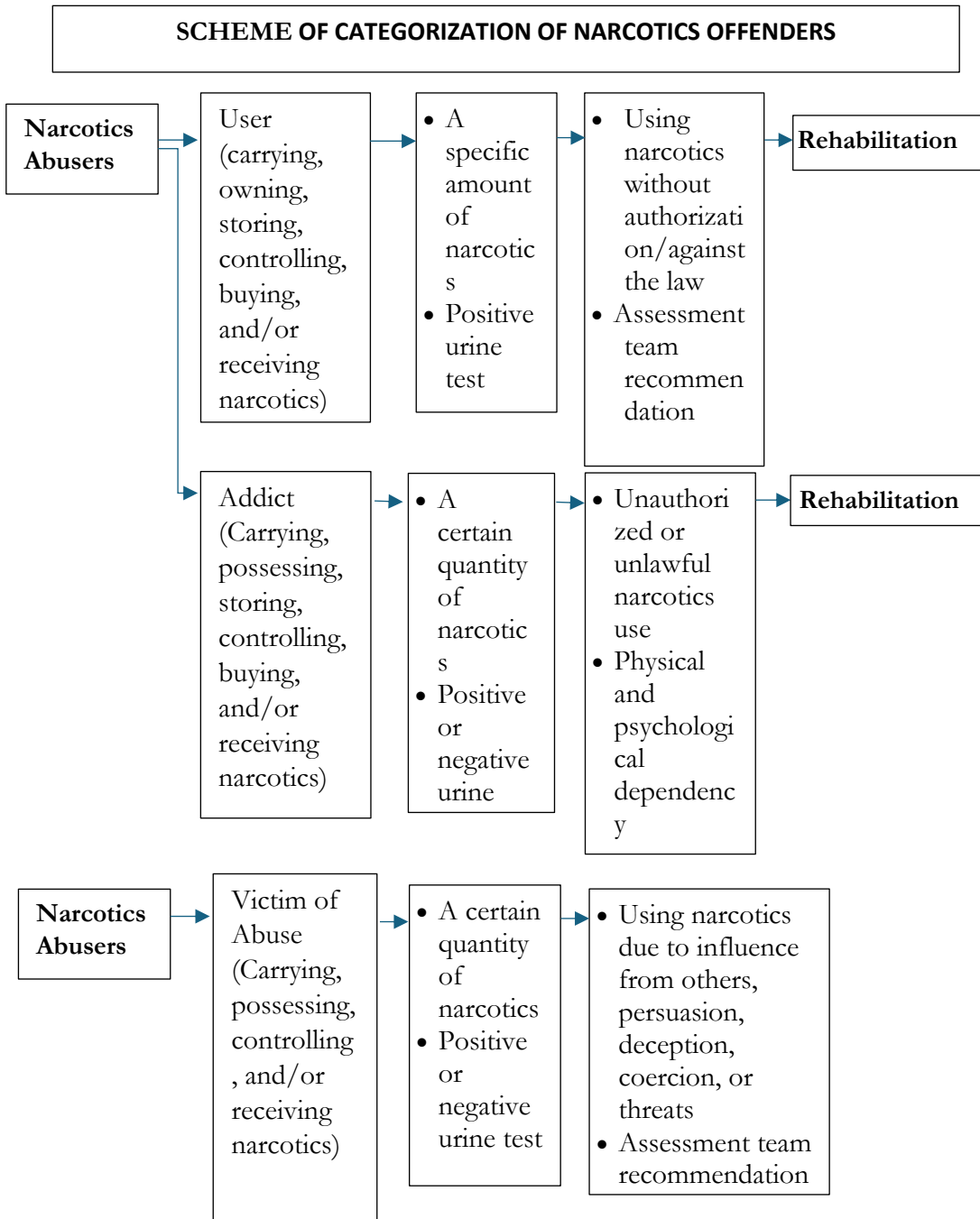
involved in narcotics production are subject to primary criminal penalties, including imprisonment and/or fines.

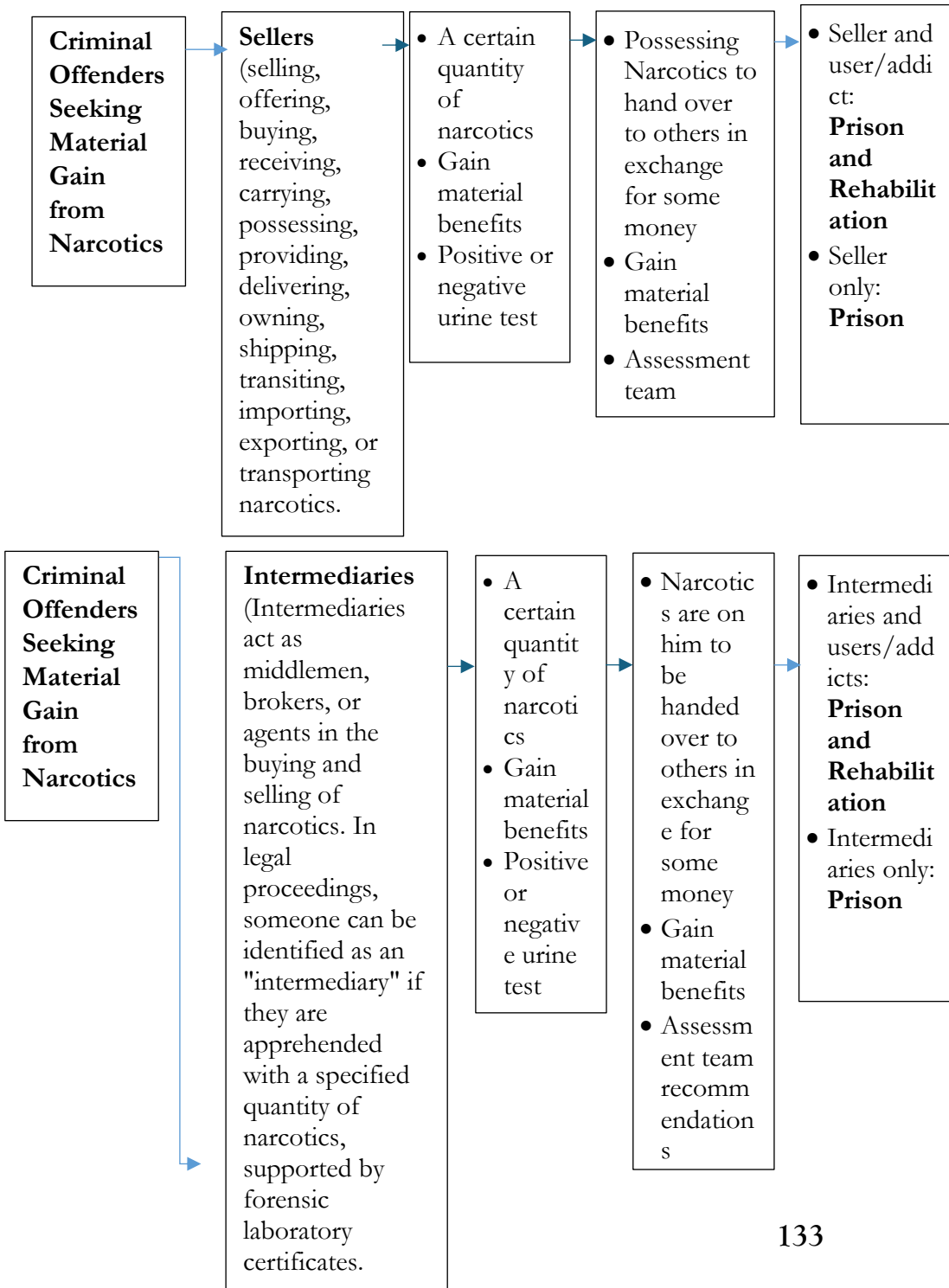
An individual who engages with narcotics to derive material gains from them is commonly referred to as a "benefit seeker." The reference to "material benefit" signifies that this gain can manifest in the form of financial rewards or tangible assets. For instance, an individual who serves as an intermediary in a narcotics transaction might receive remuneration in the form of a share of the narcotics involved.

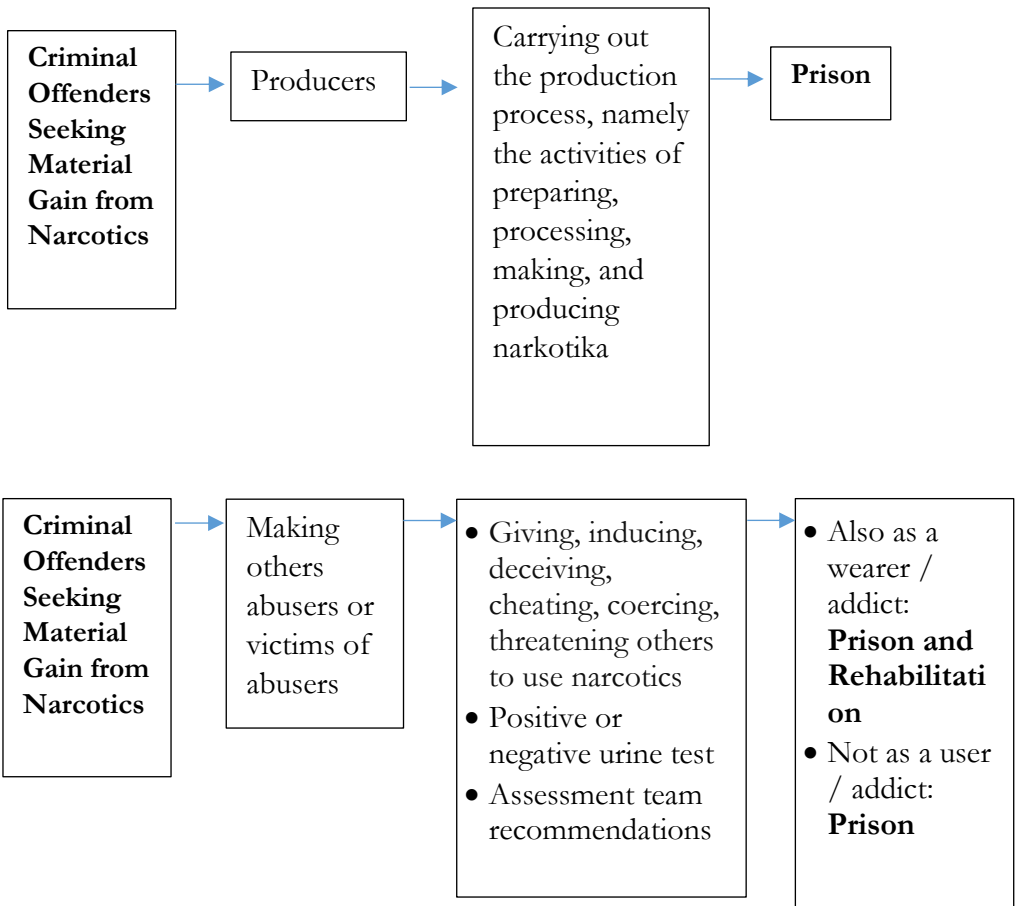
In cases where an individual induces, persuades, deceives, coerces, or threatens another person to use narcotics, they can be categorised as "causing others to become narcotics users or victims of narcotics misuse." If the defendant is not proven to be a user or addict during the trial, the imposed penalty is punitive in nature, typically involving imprisonment. However, if the defendant is proven to be a user or addict, they may receive both a prison sentence and rehabilitation. Someone who "causes others to become narcotics users or victims of narcotics misuse" inevitably benefits from this action, whether it be material gain, such as when the affected person purchases narcotics from them, or non-material gain, which includes the satisfaction of influencing others to engage in similar behaviors.

The categorisation of narcotics offenders can be observed in the following scheme:

Table 2. Scheme Of Categorisation Of Narcotics Offenders







The explanation and scheme presented above concern the potential incarceration penalties, while the fine penalties are adjusted by existing regulations.

According to ²⁷, legal certainty is one of the requirements that must be met in the enforcement of the law. The existence of the state and the law (constitution) fundamentally represents the realisation of the collective will of sovereign citizens. The value of legal certainty, in principle, provides legal protection for every citizen against arbitrary power ²⁸. The overlap in the Narcotics Law regarding narcotics

²⁷ Soerjono Soekanto dan Sri Mamudji.

²⁸ E. Fernando M. Manullang, *Menggapai Hukum Berkeadilan : Tinjauan Hukum Kodrat Dan Antinomi Nilai* (Kompas, 2007).

offenders complicates the achievement of legal certainty because the categories of narcotics offenders are unclear. As a result, in cases with similar circumstances, individuals may be prosecuted under different articles of the law, each carrying different penalties.

John Rawls' theory of justice states that justice encompasses not only the moral concept of the individual but also questions the mechanisms for achieving justice, including how the law contributes to these efforts. In general, the formal elements of justice consist of the idea that justice is a value that directs every party to protect the rights guaranteed by the law (the element of rights) and that this protection must ultimately benefit every individual (the element of benefits). For instance, a defendant may experience the value of justice if the punishment for their crime corresponds to the severity of their wrongdoing. Therefore, when a defendant feels that their punishment is commensurate with their actions, it reflects an ideal of justice²⁹

Mechanisms supporting the achievement of legal certainty and justice can be created through the reformulation of the Narcotics Law. In this reformulation, the categories of narcotics offenders eligible for restorative punishment in the form of rehabilitation become clear, specifically, narcotics users. Rehabilitation is a right granted by the law to narcotics users. More precisely, categorising narcotics offenders within the law will make it easier for law enforcement authorities to identify an offender and determine which article is suitable for their case, where the penalties specified in those articles correspond to the type of criminal offence committed. The reformulation of the Narcotics Law will have an impact on reducing the number of narcotics users who are serving prison sentences, thus becoming one of the solutions to the issue of overcapacity in correctional facilities.

Conclusion/Concluding Remarks

Drug offenders primarily drive overcapacity in correctional facilities and detention centres. One of the reasons for this is the overlap and ambiguity in the Narcotics Law concerning the categorisation of narcotics offenders.

Article 54 of the Narcotics Law mandates that an individual engaged in drug abuse, who also qualifies as a narcotics addict, must undergo rehabilitation. Meanwhile, Article 103 provides for the

²⁹ E. Fernando M. Manullang.

possibility of imposing rehabilitation sentences on people with an addiction, and Article 127 prescribes imprisonment for drug abusers. These three articles exhibit inconsistencies in the regulation of narcotics offenders. Furthermore, the inclusion of various categories of narcotics offenders, such as those who possess, store, control, purchase, and transport narcotics, all subjected to imprisonment, further compounds the issue. In essence, a drug abuser is highly likely to possess narcotics when apprehended for using them, as they would have acquired these substances for usage, possibly storing narcotics either prior to or following consumption.

In light of this overlap, there is a need to simplify the classification of narcotics offenders, categorising them based on their intentions. These categories should include "narcotics abusers" (users, addicts, and victimised abusers) and "narcotics profiteers" (sellers, intermediaries, producers, and those who induce others to become abusers or victimised abusers).

The overcapacity issues prevalent in many prisons and jails in Indonesia present a significant challenge that needs to be addressed. The shift in the punishment paradigm from retributive to restorative can help resolve this problem.

Reformulation of the Narcotics Law is necessary to establish a mechanism supporting legal certainty and justice. Consistency is needed in the regulation of narcotics articles by creating clear categories of behaviour that are included in narcotics crimes to eliminate the various interpretations of the law. In this reformulation, a narcotics user will be granted the rights provided by the law, which include restorative justice through rehabilitation. Consequently, the resolution of narcotics user cases through restorative justice in the legal system can be optimised.

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