

**PROCESS**  
**HANDLING CASES OF DRUG ABUSERS FROM CRIMINALIZATION**  
**TO DECRIMINALIZATION**



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## **ABSTRACT**

The rise of narcotics among the community which makes victims of drug abuse users is increasing and the prevention of a user who is currently still not leveled. The Directorate General of Corrections of the Ministry of Law and Human Rights noted that prisons in Indonesia as of July 2, 2023 were inhabited by 187,183 prisoners and prisoners who continued to increase. Whereas the capacity of prisons in Indonesia is only 93,236 people. This means that prisons in Indonesia have experienced overload. For the article Handling Narcotics Abuse Cases From Criminalization to Decriminalization. Which aims to find out the decriminalization of drug abusers in the construction of positive law in Indonesia and the decriminalization arrangements in the Integrated Assessment Team (IAT) of narcotics in Indonesia. The result of his writing is that victims of narcotics abusers and addicts are placed into medical and social rehabilitation institutions, and based on articles 54 and 55 it is clearly stated that narcotics addicts must receive treatment and/or care through medical and social rehabilitation.

## **A. Background**

Indonesia is a state of law. This is emphasized in Article 1 paragraph (3) of the 1945 Constitution. As a state of law, these principles must be upheld in practice for the sustainability of the life of society, nation and state. One of the destroyers of the sustainability of the nation and the nation's generation is the presence of Narcotics that haunts the younger generation. Narcotics are substances or drugs both natural, synthetic, and semi-synthetic that cause a decrease in consciousness, hallucinations, and stimulation. The rise of narcotics among the community has made victims of narcotics abuse users increase and the prevention of a user who is currently still not leveled. The Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham) noted that the number of residents of correctional institutions (lapas) with special criminal offenses was 151,303 people as of August 2021. Of that number, 145,413 people or 96% were convicted of drug cases. A total of 116,930 prisoners in drug cases are categorized as dealers. Meanwhile, 28,483 other prisoners are drug users. And prisons in Indonesia as of July 2, 2023 are inhabited by 187,183 prisoners and prisoners who continue to increase. Whereas the capacity of prisons in Indonesia is only 93,236 people. This means that prisons in Indonesia have experienced overload. The number of prison residents has now reached 2 times the capacity of the prison.

The problem of narcotics has become a global problem, so that various international conventions have been born, one of which is the Single Convention on Narcotic Drugs, 1961 which was later amended by the Protocol Amending the Single Convention on Narcotic Drugs, 1961 (1971 Protocol on the amendment of the Single Convention on Narcotics 1961), next was the Convention on Psychotropic Substance, 1971, and finally the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. In line with global policy, the legal policy of the Government of Indonesia, which is the state's legal policy in handling narcotics crimes, is to position drug users as perpetrators of serious crimes, in this case users should be seen as victims, but in practice, the human rights of drug users have been abused, they should get rehabilitation, or at least get a lighter

sentence, but the implementation in the field of users is actually imposed which should be imposed on drug dealers or dealers who are seen as parties who commit serious crimes while drug users lose their right to be rehabilitated.

Criminalization of Narcotics Addicts is one of the problems that has always been an interesting topic to discuss, because there are always pros and cons that accompany the discussion of the problem. Criminalization can be interpreted as a punishment given to someone who violates the applicable laws, in this case drug addicts are said to be lawbreakers because they have abused narcotics. Along with the times that are characterized by advances in technology, information and communication, more and more thoughts are developing about punishment, especially against narcotics addicts, some experts give the opinion that with the development of the times, the existing criminal law must also be able to adapt or adjust to developments in society, so that renewal of criminal law can be the answer to the problems that occur in society today. Narcotics addicts are those who are experiencing physical, mental and psychological pain caused by excessive use of narcotics or not according to the dose of use, this is what causes a narcotics addict should get serious treatment because if it is wrong in handling it can be fatal for the addict. Crimes should be more focused on narcotics dealers because it is the dealers who cause the emergence of narcotics abusers who then give birth to a narcotics addict, because however the eradication of narcotics must be seen at its central point, the difficulty of law enforcement officials tracking the distribution of narcotics is because the crime is committed not individually but involves many people who together even constitute an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels.. The importance of narcotics distribution is closely monitored because currently its use is mostly for negative things, besides that through the development of information and communication technology and the spread of narcotics has also reached almost all regions of Indonesia, areas that were previously untouched by narcotics trafficking have gradually turned into a center for narcotics trafficking, as well as children who were previously

unfamiliar with this forbidden item have turned into addicts who are difficult to release from their dependence.<sup>1</sup>

The practice of drug law enforcement prioritizes punishment over healing, so that drug users end up in prison, while the health dimension through rehabilitation is less considered and even tends to be sidelined. Even though drug users have had their punishment sanction emphasized by being given a sentence of rehabilitation for drug users if no evidence is found as drug dealers. The sanctioning of punishment for users should be rehabilitated and legal sanctions should be clarified between drug dealers and distributors. Drug users and addicts are sufficient to undergo a process of medical and social rehabilitation, but some of them even end up in prison and in fact the majority of rehabilitation participants are still convicted..

But in line with the opinion of Anang Iskandar in his research entitled: Decriminalization of Narcotics Abusers in the Construction of Positive Law in Indonesia. Dissertation 2013, Doctoral Program in Legal Studies, Postgraduate Program in Legal Sciences, Trisakti University Jakarta. In his research, he concluded that rehabilitation is a form of decriminalization of narcotics abusers and rehabilitation is an action to prevent abusers from using narcotics again. As with the current criminalization of narcotics cases, especially victims of abusers are increasing and it is very ineffective if narcotics users are made prisoners, so this is what makes prisons in Indonesia overloaded. Victims of drug abuse should be given or rehabilitated both medically and socially and this is in line with Article 54 of Law Number 35 of 2009 concerning Narcotics, narcotics addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation..

## **B. Problem Formulation**

1. How is the decriminalization of drug abusers in the construction of positive law in Indonesia?

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<sup>1</sup> Moh. Taufik Makarao, Suhasril, dan Moh. Zakky A.S., 2005, Tindak Pidana Narkotika, Ghalia Indonesia, Jakarta, hlm.8

2. How is decriminalization regulated in the Integrated Assessment Team (IAT) for drugs in Indonesia?

### **C. Discussion**

#### **1. Decriminalization of Drug Abusers in the Construction of Positive Law in Indonesia**

Decriminalization is the process of making an act that was originally a criminal act (bad act, criminal offense) into an act that is not threatened with punishment (not a bad act, not a criminal offense). According to Law No. 35/2009 on Narcotics, narcotics addicts must be rehabilitated, while addicts are people who use or abuse narcotics in a state of dependence both physically and psychologically, based on the Supreme Court Circular Letter (MA) No. 4/2010, regarding the placement of drug abusers, victims of abusers and addicts placed into medical and social rehabilitation institutions. This means placing drug abusers as victims of drug crimes. Victims of addictive crimes require special treatment, so that they receive care and protection so that they can return to being citizens who are able to play a role in the life of the nation and state.

To overcome the drug disaster, an integral strategy is needed from upstream to downstream, where decriminalization of drug abusers and addicts is a model of suppressing demand reduction so as to reduce the supply of illegal narcotics. This concept also has an economic impact on the handling of drug problems. In the UN Session in New York, March 30, 1961, produced the Single Convention Narcotic Drugs 1961 and then in the UN session in Vienna in 1972, this convention was amended by the 1971 Protocol. In this convention, every country is required to prevent and rehabilitate drug abuse by providing education, treatment, rehabilitation and social integration. Meanwhile, in the 1988 UN session in Vienna, it was agreed that abusers be given alternative sanctions other than imprisonment. The alternative sanctions can be in the form of treatment, education, rehabilitation, and social integration. As for the 1998 UNGASS session, in Vienna, as an evaluation of the Vienna convention in 1988,

which resulted in a political declaration on drug disaster management with a balanced approach between the legal approach and the health approach. All of these international conventions have been ratified through the Narcotics Law No. 9 of 1976, then refined into Law No. 22 of 1997 and then amended into Law No. 35 of 2009 which is currently in effect, which positions people who abuse drugs as victims who need treatment.

In Law No. 35/2009 on Narcotics, one of the objectives listed in article (4) is to ensure the arrangement of medical rehabilitation and social rehabilitation efforts for drug abusers and addicts. However, the facts on the ground are that drug abusers and addicts are sentenced to imprisonment and languishing in prison institutions. Based on research on the decriminalization of drug abuse conducted by three researchers in Portugal; Fatima Trigueros, Paula Victoria and Lucia Diaz, concluded that victims of drug abuse are better treated than punished. Then Glenn Greenwald, an American citizen who conducted research on decriminalization in Portugal, in 2009 concluded, that those who were caught in cases of possessing and using drugs were not associated with criminal justice, since decriminalization the number of abusers has decreased, with decriminalization the government encourages addicts / abusers to empower themselves through treatment or rehabilitation. Justin B. Shapiro, who also conducted research in 2010 in Mexico, concluded that prosecuting drug abusers and addicts will waste law enforcement resources, and encourage corruption for law enforcement.

Decriminalization of drug abuse has been implemented by several countries with various variations of decriminalization. In the Netherlands, possession of all types of drugs is an offense, but possession of small amounts for personal use is only a misdemeanor. Personal use of drugs is tolerated by law enforcement. Decriminalization of the Dutch model has resulted in a decrease in novice drug users, and a decrease in hard drug use. In Portugal, the decriminalization of drug abuse is regulated in the Portuguese Narcotics Act article 2 (1), the purchase, possession and use of narcotics for personal use for 10 days is an administrative offense, if the

possession exceeds the limit of use for 10 days then legally the owner of narcotics is a dealer. However, drug abuse is still prohibited. The impact of decriminalization in Portugal is a decrease in the number of productive-age drug users, a decrease in interest in drug use, a decrease in drug trafficking and a drastic decrease in HIV, hepatitis, and deaths caused by drug use. Meanwhile, in the state of New South Wales, decriminalization is a police program. Through diversion where the police can offer those arrested for drug offenses to undergo a rehabilitation program. Those who are known to possess or use drugs for personal use can undergo drug diversion. The impact is a decrease in the level of cannabis use and a decrease in law enforcement costs. Currently, around 23,779 prisoners are drug abusers serving criminal sentences in correctional facilities. This is due to the fact that drug abusers are sentenced to criminal punishment when rehabilitation should be the appropriate punishment for drug abusers. This happened because of the construction of the Public Prosecutor's demands, demanding that drug abusers be convicted. The facts that emerged in the trial often differed between the demands of the Public Prosecutor and the testimony of the defendant, where the Public Prosecutor charged that the element of carrying, controlling and possessing narcotics with a very limited amount, (under the provisions of Supreme Court Circular Letter No. 4/2010, namely the condition of being caught red-handed with evidence under 1 gram for methamphetamine, 8 grains for ecstasy and 5 grams for marijuana, which is the need for one day) with the criminal threat of the trafficker article.

Meanwhile, the defendant's statement stated that he was only using. The public prosecutor's reason for guiding the case file that has been constructed in the article of carrying, controlling, possessing which is intended for dealers. This happens because law enforcers interpret that owning, controlling, carrying narcotics under the provisions of the Supreme Court circular letter, can be constructed in the article as a dealer, so it is very rare for the misuser article to stand alone. On the other hand, law enforcers who handle cases of drug abuse rarely conduct medical and psychological examination steps to determine whether an arrested person is

a drug abuser or a dealer, and never conduct an examination of the level of addiction and rehabilitation therapy plan, so that judges find it difficult to decide on rehabilitation measures. Another contextual factor that influences the lack of decriminalization is that law enforcers who specifically deal with the problem of narcotics abusers are less able to understand the spirit of Law No. 35 of 2009 concerning Narcotics, which in article 4 states: guaranteeing arrangements for medical rehabilitation and social rehabilitation for narcotics abusers and addicts.

The guarantee of medical and social rehabilitation for drug abusers and addicts is the spirit of the law, and it is the law enforcers themselves who can bring the spirit of the law to life. Because Indonesia has ratified the UN convention resulting from the 1998 session, where abusers are given an alternative in the form of rehabilitation, our Narcotics Law regulates a double track system of punishment, namely the Judge can decide on a prison sentence and can decide on rehabilitation measures for drug abusers. That is why judges have a very important role given by the law to decriminalize. The legal framework for decriminalization in positive law in Indonesia is contained limitingly in the law but cannot be operationalized, because there is no legal mechanism that distinguishes operationally the classification of drug addicts. The implementation of decriminalization of drug abusers in Indonesia is still constrained by differences in legal interpretation, about the elements of without rights or against the law, legal culture, understanding of the objectives of Narcotics Law No. 35 of 2009 against drug abusers, so that abusers are constructed with articles outside the user article (article 127) which is oriented towards non-rehabilitation measures. In order to functionalize the implementation of decriminalization of drug abusers in Indonesia, in order to realize a Drug-Free Indonesia, it is recommended that a legal mechanism be established in the form of a small team located in each district/city, and province as well as the central level consisting of the Ministry of Law and Human Rights, the Ministry of Health, the Ministry of Social Affairs and the Drug Control Policy Coordinator, with the task and authority to

determine the role of suspects caught red-handed at the request of Police and BNN investigators, determine the criteria for addicts according to the type of content consumed, the conditions when arrested and the place of consumption and the conditions of the economic situation, determine the therapy plan and the period of time the abuser is in rehabilitation, which can be used as expert testimony in the case file.

## **2. Decriminalization Arrangements in the Integrated Assessment Team (IAT) for Narcotics in Indonesia**

Anang Iskandar in (Iskandar, 2019) said that, decriminalization of drug abusers is a non-criminal punishment model as one of the modern legal paradigms that aims to reduce demand as well as supply of illegal narcotics in Indonesia. Decriminalization of drug abuse does not mean legalization of drug use. According to (Iskandar, 2015), the decriminalization of narcotics abusers describes that abusers who carry, possess, control, consume narcotics in certain amounts for daily use are unlawful acts, but if the person concerned violates the law, a substitute sentence is given in the form of a rehabilitation sentence.

Although Law of the Republic of Indonesia No. 35/2009 on Narcotics does not explicitly mention the decriminalization of drug abusers, the nuances of decriminalization of drug abusers are very strong in the construction of legal policy and state legal politics as referred to in a number of articles of the Law as follows: Article 4 letters (b) and (d); Article 54; Article 55; Article 103; Article 127. Articles 54 and 55 clearly state that drug addicts must receive treatment and/or care through medical and social rehabilitation. To determine the role of the suspect as a drug abuser or dealer and to determine the level of drug dependence, an assessment must be carried out by the IAT. If the role is as a user of Narcotics and in a state of dependence, then the suspect in taking responsibility for the criminal process, does not meet the requirements for detention as stated in Article 21 of the Criminal Procedure Code.

In accordance with article 9 (Regulation of the Head of the National Narcotics Board Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions, 2014), the assessment of suspects of drug abuse is carried out by the IAT. This team consists of a Medical Team (Doctors and Psychologists who have certified assessors from the Ministry of Health) and a Legal Team (elements of the Police, BNN, Prosecutors' Office and the Ministry of Law and Human Rights (if the suspect is a child) which are determined by the head of the local work unit based on the Decree of the Head of BNN, BNNP and BNN Kab / City. Based on article 12 paragraph 3 of the same regulation, the task of the Medical Team is to conduct medical and psychosocial assessments and analysis as well as recommend a plan for therapy and rehabilitation of people who abuse drugs. Meanwhile, the Legal Team has the task of analyzing suspects in relation to illicit trafficking of Narcotics and Narcotics Precursors and Narcotics abuse through coordination with investigators handling the case.

Based on article 8 paragraph 3, the assessment conducted by TAT begins with a written request from the investigator to TAT, with a copy to the Head of the local BNN in accordance with the scene of the crime. This request is in accordance with article 5 paragraph 2 of the Head of BNN Regulation Number 11 of 2014, submitted by the investigator to the TAT secretariat, no later than 3 x 24 hours after the arrest. Then after receiving a request letter from the investigator, the IAT, in accordance with Article 14 paragraph 3 and Article 16 paragraph 1 letter e of the Regulation of the Head of BNN Number 11 of 2014, carries out its duties and provides recommendations on the results of the assessment within a maximum period of 6 days to the investigator, to be reported in writing to the local District Court. In accordance with article 5 paragraph 4 and 5 (Cooperation Agreement between the Deputy for Rehabilitation of the National Narcotics Agency and the Indonesian National Police No. Pks / 24 / vii / de / hk : PKS / 24 / VII / DE / HK . 02 / 2022 / BNN on the Implementation of Rehabilitation for Addicts, Abusers and/or Victims of Abuse, 2022),

integrated assessments are carried out at the IAT secretariat owned by BNN, BNNP /BNN Kab / City. However, if it is geographically difficult to reach, the implementation can use the office/facility owned by the Indonesian Police or IAT officers can also visit the suspect's location or be carried out online/online. In performing its duties, the TAT refers to articles of Law No. 35 of 2009 and SEMA No. 4 of 2010, as well as SE Attorney General's Regulation No. SE-002/A/JA/02/2013 on the Placement of Victims of Narcotics Abuse into Medical Rehabilitation and Social Rehabilitation Institutions. In accordance with Article 18 paragraph 4, the recommendation letter resulting from this assessment contains:

- a) The suspect's role as:
  - 1) Addicts with a level of dependence on narcotics;
  - 2) Addicts who concurrently act as dealers or are involved in illicit drug trafficking networks; and
  - 3) Victims of drug abuse.
- b) Rehabilitation plan in accordance with the level of drug dependence

The placement of suspects in accordance with article 19 in rehabilitation institutions that have been appointed by the government, is the authority of the investigator as stated in the Minutes of Placement in rehabilitation institutions. In addition to investigators, in accordance with article 22, public prosecutors and judges can also request assistance from TAT in the context of prosecution and examination in court. Based on the results of the assessment, in accordance with article 23, if the suspect is a trafficker or is proven to have narcotics in excess of the SEMA amount and is proven positive for narcotics, he will be detained in prisons, detention centers or detention center branches while still receiving medical and social treatment and care.

Based on the Head of BNN Regulation Number 11 of 2014 article 6, rehabilitation for addicts, abusers and / or victims of narcotics abuse is carried out after the issuance of a recommendation from the IAT, with the following provisions:

- a) Investigators hand over addicts, abusers and/or victims of drug abuse to the designated rehabilitation institution;
- b) Addicts, abusers and/or victims of narcotics abuse carry out outpatient or inpatient rehabilitation which is part of ongoing rehabilitation at BNN-owned rehabilitation institutions according to the results of IAT recommendations;
- c) In the event that rehabilitation cannot be carried out at BNN's Rehabilitation Institution, it can be carried out at rehabilitation institutions owned by BNN's partners, both government and community that meet rehabilitation standards.

If the addict, abuser and/or victim of drug abuse will be placed in a rehabilitation institution and is in the process of investigation, then the investigator must attach the IAT recommendation document, police report or incident report, investigation administration and brief case resume.

#### **D. Conclusions and Suggestions**

##### **Conclusions:**

- 1) Decriminalization of narcotics abusers in the construction of positive law in Indonesia is a person who uses or abuses narcotics in a state of dependence both physically and psychologically, based on the Supreme Court Circular Letter (MA) No. 4 of 2010, concerning the placement of abusers, victims of abusers and narcotics addicts placed into medical and social rehabilitation institutions. This means placing drug abusers as victims of drug crimes. Victims of addictive crimes require special treatment, so that they receive care and protection so that they can return to being citizens who are able to play a role in the life of the nation and state.
- 2) The decriminalization arrangement in the Integrated Assessment Team (IAT) for narcotics in Indonesia is based on articles 54 and 55, which clearly state that narcotics addicts must receive treatment and/or care through medical and social rehabilitation. To determine the role of the suspect as a drug abuser or dealer and to determine the level of drug dependence, an assessment must be carried out by the IAT. If the role is as

a user of Narcotics and in a state of dependence, then the suspect in taking responsibility for the criminal process, does not meet the requirements for detention as stated in Article 21 of the Criminal Procedure Code. This is in accordance with article 9 (Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions, 2014), the assessment of suspects of narcotics abuse is carried out by TAT. This team consists of a Medical Team (Doctors and Psychologists who have certified assessors from the Ministry of Health) and a Legal Team (elements of the Police, BNN, Prosecutors' Office and the Ministry of Law and Human Rights (if the suspect is a child) which are determined by the head of the local work unit based on the Decree of the Head of BNN, BNNP and BNN Kab/ City.

**Suggestions:**

- 1) That in this case the government provides services and access to rehabilitation services for addicts, abusers, and victims of drug abuse who require rehabilitation. These services and access to rehabilitation include rehabilitation centers, rehabilitation workshops, rehabilitation houses, and institutions receiving mandatory reporters (IPWL). In addition to services provided by the government, there are also rehabilitation services provided by the community through community-based interventions (IBM). So, it is very affective if drug abusers are rehabilitated both medically and socially which is a form of decriminalization.
- 2) That the decriminalization arrangement in the Integrated Assessment Team (IAT) should be more easily obtained by victims of drug abuse, in order to obtain treatment and/or care through medical and social rehabilitation, the purpose of which is to eliminate the bad habits of victims of drug abuse.

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