

Non Penal Policy to Reduce The Rate of Narcotics Crime Through a Double Track System

Januar Rahadian Mahendra

Faculty of Law, Universitas Sebelas Maret, Jalan Ir. Sutami 36 Ketingan, Kecamatan Jebres, Kota Surakarta, Jawa Tengah 57126
ryanmahendra02@student.uns.ac.id

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ABSTRACT

This research will analyze the problems contained in the implementation of the double track system for narcotics crimes using Lawrence M. Friedman's legal system theory. The author uses normative legal research with a conceptual approach and deductive method accompanied by supporting data to produce a comprehensive and critical analysis to answer the problem. The purpose of this research is to find problems in the use of the double track system in narcotics crimes using Friedman's legal system theory, this is done because in Friedman's legal system theory will divide through three aspects, namely legal substance, legal structure, and legal culture in narcotics crimes. Based on the results of the research, the legal substance problem in narcotics crime is the existence of strict liability which can cause overcriminalization so that depenalization, decriminalization, and diversion policies are needed in the Narcotics Law. In addition, there is a tendency for judges in deciding narcotics cases to only use imprisonment without accompanying it with rehabilitation. In the legal structure, there are problems in the form of a lack of drug rehabilitation facilities, the strong retributive influence so that imprisonment is the main answer in dealing with problems, abuse of power committed by law enforcers, and imprisonment

which is a criminogenic factor for narcotics crimes. While the problems in legal culture are stigmatization by the community, the need for confidentiality of identity, the influence of the surrounding environment, and the level of education and employment affect the incidence of drug crimes.

Keywords: Double Track System; Narcotics; Non-Penal Policy

I. INTRODUCTION

The Central Statistics Agency (BPS) documented that throughout 2019 there were 36,478 cases of narcotics crime, this number increased to 36,611 cases in 2020, then in 2021 it increased again to 36,954 cases.¹ Of course, this figure cannot be a benchmark for the number of drug crimes in Indonesia because there are still many drug crimes that are not revealed or not reported. Research conducted in 10 major cities in Indonesia (Jakarta, Bandung, Surabaya, Medan, Bandar-Lampung, Pontianak, Makassar, Manado, Mataram, and Denpasar) by taking 140 drug user respondents in each city, showed that 55% of respondents had used drugs for 10 years and 85% of respondents were drug addicts.²

Article 1 paragraph 13 of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) provides a definition related to narcotics addicts, namely people who use or abuse narcotics and are in a state of dependence on narcotics both physically and psychologically. Meanwhile, narcotics dependence is a condition characterized by the urge to use narcotics continuously with increasing doses to produce the same effect and if its use is reduced and/or stopped suddenly, it causes typical physical and psychological symptoms.

The Narcotics Law appears as an effort made by the government as a policy maker to reduce the level of narcotics crime, especially in reducing the number of drug addicts.

¹ Badan Pusat Statistik. "Statistik Kriminal 2022." Badan Pusat Statistik, Jakarta, 2022. p. 26, <https://www.bps.go.id/id/publication/2022/11/30/4022d3351bf3a05aa6198065/statistik-kriminal-2022.html>.

² Sabarinah. "Use of Drug Treatment and Rehabilitation Services in Indonesia: Findings of the 2014 National Narcotic Survey." *Asia Pasific Journal of Public Health*, Vol. 31, No. 6, 2019, pp. 548-558, <https://doi.org/10.1177/1010539519872343>.

The Narcotics Law uses a double track system, which means that sanctions are given in the form of criminal sanctions and action sanctions. Action sanctions in the Narcotics Law are given to narcotics addicts by providing sanctions in the form of rehabilitation.

The use of sanctions in the form of rehabilitation is listed in Article 54 to Article 59 of the Narcotics Law. Article 54 explains that drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation. With the inclusion of rehabilitation in the Narcotics Law, it has certainly shifted the paradigm of criminal law not only as "retribution" for acts committed but also treating a person.

The concept of a double track system is also in line with the purpose of the law which does not only focus on punishment but also rehabilitating criminals.³ The change in the criminal law paradigm, which only recognizes a single track system using only criminal sanctions, has proven to be ineffective because the number of correctional institutions is limited but the number of helpers who enter is greater than those who leave. The change in the paradigm of criminal law which only recognizes a single track system by only using criminal sanctions, has proven to be ineffective due to the limited number of correctional institutions but the number of prisoners entering is more than those leaving. So that policy makers switch to using a double track system which is expected to be a solution to the problems faced in the criminal justice system, especially as a non-penal policy. In addition, the use of a double track system is a policy that is friendly to human rights and eliminates the influence of colonial law that uses a single track system in formulating legislation.⁴ The application of the double track system is a criminal policy in the form of a non-penal policy. Criminal policy is a rational effort by society to control crime.⁵ These efforts can be done by 1) criminal law application; 2) prevention without punishment; and 3) influencing views of society on crime and punishment.⁶

³ Jamaludin, Ahmad. "Kebiri Kimia Sebagai Sanksi Tindakan dalam Double Track System." *ADLIYA: Jurnal Hukum dan Kemanusiaan*, Vol. 15, No. 2, 2021, pp. 179-196, <https://doi.org/10.15575/adliya.v15i2.13910>.

⁴ *Ibid.*

⁵ Ancel, Marc. *Social Defence: A Modern Approach to Criminal Problems*. London, Routledge & Kegan Paul, 1965, p. 209.

⁶ Hoefnagels, G. Peter. *The Other Side of Criminology: An Inversion of the Concept of Crime*. New York, Springer Science & Business Media, 1973, p. 57.

Criminal policy is supposed to be a tool of social engineering that aims to achieve the desired public order or make a desired change.⁷ Criminal policy as social engineering is based on the concept that every rule of law or legal substance that applies has implications for structure and culture.⁸ The structure and culture referred to refer to the theory of the legal system proposed by Lawrence M. Friedman in his book entitled "The Legal System: A Social Science Perspective." The problem faced next is that the use of the double track system as a non-penal policy in the Narcotics Law has not proven effective in suppressing narcotics crimes in Indonesia, as evidenced by the data presented by the author earlier.

Considering that in overcoming criminal acts, it cannot only be done only on legal substance or legal structure, but there is a continuity between legal substance, legal structure, and legal culture. Therefore, based on the background explanation above, the author is interested in studying more deeply and will be used as a legal writing with the title "Non Penal Policy as an Effort to Suppress Narcotics Crimes through the Double Track System". The author uses normative legal research as a research method with a conceptual approach so as to produce a comprehensive and critical analysis through the deductive method in analyzing the legal materials used.⁹ The legal materials used in this research consist of primary legal materials, namely the Narcotics Law and secondary legal materials, namely journals, articles, books, and reports related to narcotics crimes.

II. DISCUSSION

1. Implementation and Problems in Reducing Narcotics Crime Using Non Penal Policy as a Form of Double Track System

According to Friedman, the legal system consists of legal substance, legal structure, and legal culture. Legal substance refers to substantive rules (primary rules) consisting of norms and behaviors; and rules on how institutions should behave (secondary rules) which regulate how the norm applies, how it is enforced, etc.¹⁰ It can

⁷ Ravana, Dey and Kristian. *Kebijakan Kriminal (Criminal Policy)*. Bandung, Prenadamedia, 2017, p. 95-96.

⁸ *Ibid.*

⁹ Mahendra, J. Rahadian and N. Nurviani. "The Criminal Liability of Sea Freight Forwarding Services in Transito Narcotics Crimes." *Wacana Hukum*, Vol. 30, No. 1, 2024, pp. 17-34, <https://doi.org/10.33061/wh.v30i1.9877>.

¹⁰ Friedman, Lawrence M. *The Legal System: A Social Science Perspective*. New York, Russel Sage Foundation, 1987, p. 14.

be seen that primary and secondary rules are products of the legal system that describe the behavior of the legal system. It can be seen that primary and secondary rules are products of the legal system that describe the behavior of the legal system.

Legal structure is one of the basic elements of the legal system that refers to the institutions formed to carry out the substance while legal culture refers to elements of general culture, habits, views, ways of doing and thinking that influence social forces that approach or stay away from law in certain ways.¹¹ The operation of the legal system is a combination of structure, substance, culture that are interrelated with each other. With this journey, the legal system can be social engineering. The parameter of the success of criminal policy as social engineering is how the legal system whether towards repressive law, autonomous law or towards responsive law. Repressive law assumes that the existing legal order can cause forced injustice, meaning that the existence of law will only be procedural justice rather than substantive justice due to the repressive potential of the legal substance carried out by the legal structure.¹²

Autonomous law appears in the rule of law which is not just "legal existence" but refers to legal and political ideals that can be created if legal structures can gain independent authority to limit the exercise of government power.¹³ Meanwhile, responsive law is a law that does not just prioritize procedural justice but the law must be competent and fair that helps the public interest and is committed to achieving substantive justice.¹⁴

The legal system is known as the double track system. The idea of using a double track system in the legal system arises by equalizing criminal sanctions and criminal sanctions that can be traced through the classical school to the modern and neo-classical schools.¹⁵ The classical system of punishment that emerged in the 18th century emphasizes the actions committed by a person rather than the perpetrator.¹⁶ The punishment system is also determined with certainty, meaning that the determination of

¹¹ *Ibid*, p. 14-15.

¹² Nonet, Philippe, et al. *Law & Society in Transition: Toward Responsive Law*. Routledge, 2017, p. 29.

¹³ *Ibid*, p. 53.

¹⁴ *Ibid*, p. 72-73.

¹⁵ Deniardi, Muhammad. *Penerapan Double Track System dalam Pemidanaan Anak*. Thesis Faculty of Law Hasanudin University, Makassar, 2013, p. 22.

¹⁶ Muladi and Barda Nawawi Arief. *Teori-Teori dan Kebijakan Pidana*. Bandung, Alumni, 1992, p. 25-26.

sanctions does not use a system of mitigation or aggravation related to the intrinsic factors of the perpetrator of the crime.¹⁷

The modern school, which was born in the 19th century, in principle searches for the cause of crime with the aim of influencing the offender to improve his actions. Therefore, the modern school requires the individualization of punishment which aims to resocialize the offender.¹⁸ Meanwhile, the neo-classical school focuses more on the freedom of human will by considering the need for individualized guidance of criminals.¹⁹ The neo-classical school stems from the classical school and is added with the style of the modern school. The characteristic of the neo-classical school is to use the doctrine of freedom of will and the doctrine of criminal responsibility accompanied by several changes to the individualization of the punishment applied, such as justification or excuse.²⁰

The use of the double track system in the Narcotics Law can be seen through the use of criminal sanctions (imprisonment, fines, death penalty) and actions (rehabilitation and revocation of business licenses and/or revocation of legal entity status for corporations). The application of the double track system in the Narcotics Law should be able to answer the problems in narcotics crime. This is because the double track system not only focuses on various matters related to the causes of crime but also focuses on how methods can be used effectively in tackling crime.²¹ Therefore, the position of narcotics offenders is different from other criminal offenders, this is because narcotics offenders are not only placed as perpetrators of criminal acts so that they must be given punishment but narcotics offenders are also placed as victims of the criminal acts they commit so that rehabilitation efforts are needed.

As explained earlier, the use of the double track system has proven to be ineffective in suppressing narcotics crimes in Indonesia. Some of the problems that occur in the use of the double track system if examined according to Friedmann's legal system theory in the Narcotics Law are:

¹⁷ Deniardi, Muhammad, *Op.Cit.*, p. 23.

¹⁸ Muladi and Barda Nawawi Arief, *Op.Cit.*, p. 32.

¹⁹ *Ibid.*, p. 65-66.

²⁰ *Ibid.*

²¹ Syuhada, Qory Amalia, et al. "Application of Integrated Assesment in Handling Narcotics Abuse Cases Involving Child Offenders." *Jurnal Hukum DE'RECHTSSTAAT*, Vol. 10, No. 1, 2024, pp. 83-95, <https://doi.org/10.30997/jhd.v10i1.8914>.

1.1 Legal Substance

In the Indonesian legal system, there are three types of criminal liability, namely liability based on fault, strict liability, and vicarious liability. Liability based on fault is liability in civil law based on tort that requires a person to be able to prove the fault committed against the person being prosecuted/convicted along with the element of fault and the element of loss received.²² Strict liability is responsibility imposed in the absence of fault (*dolus* or *culpa*), the fault in question is an action that does not meet the objectively regulated standards of conduct.²³ Meanwhile, vicarious liability is the imposition of criminal liability on a person for acts committed by others on the condition that they have a "superior and subordinate relationship" or "employer and employee relationship" or "employment relationship."²⁴

The application of responsibility also depends on whether a person who commits a criminal act has the ability to be held responsible. The ability to be responsible has the meaning of a normal or healthy mental condition and has a person's mind in distinguishing good and bad things.²⁵ In foreign terms, criminal responsibility is referred to as the *kenbaardheid* theory or criminal responsibility which leads to the criminalization of a person with the aim of whether the person can be held accountable for the criminal acts he committed.²⁶

In the Narcotics Law there are two types of liability, namely strict liability and vicarious liability. The application of strict liability in the Narcotics Law is not clearly written but its application can be seen in the Articles of the Narcotics Law, for example in Article 112 which states:

²² Wibisana, Andri G. "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation." *Review of European, Comparative & International Environmental Law*, Vol. 28, No. 2, 2019, pp. 185-196, <https://doi.org/10.1111/reel.12284>.

²³ Gray, Anthony. *The Evolution from Strict Liability to Fault in the Law of Torts*. Bloomsbury Publishing, 2021, p. 127.

²⁴ Mahmud, Muhammad Isra. "Peran Vicarious Liability dalam Pertanggungjawaban Korporasi (Studi Terhadap Kejahatan Korupsi yang dilakukan oleh Kader Politik)." *Lex Renaissance*, Vol. 5, No. 4, 2020, pp. 767-779, <https://doi.org/10.20885/JLR.vol5.iss4.art1>.

²⁵ Kholiq, Abdul. *Buku Pedoman Kuliah Hukum Pidana*. Yogyakarta, Fakultas Hukum Universitas Indonesia, 2002, p. 129.

²⁶ Romli, Atmasasmita. *Asas-Asas Perbandingan Hukum Pidana*. Yogyakarta, Yayasan Lembaga Bantuan Hukum Indonesia, 1989, p. 79.

“Every person who without the right or unlawfully possesses, stores, controls, or provides Narcotics Group I not plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp800,000,000.00 (eight hundred million rupiah) and a maximum of Rp8,000,000,000.00 (eight billion rupiah).”

The elements contained in Article 112 of the Narcotics Law are (1) every person; (2) without rights or against the law; (3) storing, controlling, or providing class I narcotics not plants. Based on this article, it can be seen that if someone is caught possessing, storing, controlling, or providing class I narcotics, they can be subject to this article. This is very detrimental because it is not accompanied by proof of guilt. The problem arising from this is that law enforcers do not provide a clear ownership status of narcotics and only look at whether the person at the time of arrest has narcotics. In addition, in the Narcotics Law if someone is caught carrying narcotics but he is not a user, the act is classified as a narcotics crime and can be subject to imprisonment. Meanwhile, the problem with narcotics is not only to provide a deterrent effect on the perpetrator but also to break the addiction that arises.

Meanwhile, if we look at Article 127 of the Narcotics Law which regulates a person who is proven or can be proven as a narcotics abuser for himself, he is obliged to undergo medical rehabilitation and social rehabilitation, but the judge still pays attention to the provisions contained in Articles 54, 55, and Article 103 of the Narcotics Law.

Table 1. Verdicts from the Surakarta District Court in Cases of Misuse of Class 1 Narcotics for Self in 2023

No	Case Number	Verdict
1	23/Pid.Sus/2023/PN.Skt	1 year imprisonment Medical and Social Rehabilitation 3 months
2	80/Pid.Sus/2023/PN.Skt	2 year imprisonment -
3	84/Pid.Sus/2023/PN.Skt	3 year imprisonment -
4	92/Pid.Sus/2023/PN.Skt	Imprisonment 2 years 3 months -
5	111/Pid.Sus/2023/PN.Skt	Imprisonment 2 years 6 months -
6	118/Pid.Sus/2023/PN.Skt	3 years imprisonment -

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7	119/Pid.Sus/2023/PN.Skt	1 year imprisonment	-
8	132/Pid.Sus/2023/PN.Skt	1 year imprisonment	-
9	134/Pid.Sus/2023/PN.Skt	Imprisonment 2 years 6 months	-
10	136/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
11	137/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
12	138/Pid.Sus/2023/PN.Skt	Imprisonment 2 years 4 months	-
13	139/Pid.Sus/2023/PN.Skt	Imprisonment 2 years 4 months	-
14	151/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
15	192/Pid.Sus/2023/PN.Skt	Imprisonment 1 year 3 months	-
16	193/Pid.Sus/2023/PN.Skt	Imprisonment 1 year 6 months	-
17	226/Pid.Sus/2023/PN.Skt	Imprisonment 1 year 6 months	Medical and Social Rehabilitation 3 months
18	227/Pid.Sus/2023/PN.Skt	Imprisonment 1 year 6 months	Medical and Social Rehabilitation 6 months
19	228/Pid.Sus/2023/PN.Skt	Imprisonment 1 year 6 months	Medical and Social Rehabilitation 6 months
20	236/Pid.Sus/2023/PN.Skt	Imprisonment 2 years 6 months	-
21	251/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
22	262/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
23	263/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
24	264/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
25	266/Pid.Sus/2023/PN.Skt	2 year imprisonment	-
26	276/Pid.Sus/2023/PN.Skt	1 year imprisonment	Medical and Social Rehabilitation 6 months
27	302/Pid.Sus/2023/PN.Skt	Imprisonment 1 year 10 months	-

28	310/Pid.Sus/2023/PN.Skt	3 year imprisonment	-
29	318/Pid.Sus/2023/PN.Skt	1 year imprisonment	-

Source: SIPP PN Surakarta, 2023 (Edited).

Based on the table, it can be seen that the majority of Judges at the Surakarta District Court in deciding narcotics cases for themselves do not include rehabilitation punishment and only imprisonment. Substantially, the Narcotics Law shifts the criminal paradigm as "retaliation" towards rehabilitative, but in practice the criminal paradigm as "retaliation" is still inherent in law enforcement. Another problem in the table is the rehabilitation punishment that cuts the period of imprisonment. In addition, the rehabilitation punishment given only ranges from 3 months to 6 months. In fact, this raises the question whether the relatively short period of rehabilitation punishment can break the addictive nature of narcotics.

In addition, there is also a joint regulation between the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, and Head of BNN on Handling Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions which essentially regulates that there is ease in rehabilitation. However, if we look at Table 1, it can be seen that the Judges in deciding cases of narcotics abuse for themselves have not considered the existence of the joint regulation.

The application of strict liability in the Narcotics Law inevitably results in overcriminalization, causing overcrowding in correctional institutions. Overcriminalization is the use of criminal law that is not appropriate in achieving public policy goals.²⁷ Therefore, overcriminalization represents the labeling of a crime committed by someone who should not meet the criteria for such labeling.²⁸ Overcriminalization in the Narcotics Law can be seen through the number of prisoners of narcotics crimes in 2021 which reached 144.582.²⁹ While the total number of prisoners in

²⁷ Buchhandler-Raphael, Michael. "Overcriminalizing Speech." *Cardozo Law Review*, Vol. 36, No. 5, 2015, pp. 1669-1737, <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1540&context=wlufac>.

²⁸ Ali, Mahrus. "Overcriminalization dalam Perundang-Undangan di Indonesia." *Jurnal Hukum Ius Quia Iustum*, Vol. 25, No. 3, 2018, pp. 450-471, <https://doi.org/10.20885/iustum.vol25.iss3.art2>.

²⁹ Puslitdatin BNN. *Indonesia Drugs Report 2022*. Jakarta, Pusat Penelitian, Data, dan Informasi Badan Narkotika Nasional, 2022, p. 34, <https://ppid.bnn.go.id/konten/unggah/2022/08/IDR-2022.pdf>.

2021 is 274.495.³⁰ The Narcotics Law which includes a long period of imprisonment also causes overcrowding in prisons. This is also accompanied by the issuance of Government Regulation Number 32 Year 199 which regulates the tightening of release conditions for extra ordinary crime prisoners with a sentence of more than 5 years. The implementation of this regulation will certainly further exacerbate the overcrowding of prisons. In addition, the increase in prisoners will also increase the burden on the state budget used for prison operational costs.

Therefore, in the legal substance of the Narcotics Law, there should be reforms regarding depenalization, decriminalization or diversion policies as non-penal efforts to reduce the number of narcotics crimes. Non-penal efforts can suppress criminal acts because non-penal efforts are preventive in nature so that they can prevent criminal acts and can fill the causes of criminal acts themselves..³¹ It should be understood that depenalization is a reduction in the use of existing criminal sanctions; decriminalization is the elimination of criminal sanctions; while diversion is an effort made to move people away from criminal sanctions and towards educational, therapeutic, or social services.³² The use of depenalization can be applied to the use of drugs on oneself. The use of depenalization can be used so that drug users are not subject to imprisonment but are subject to rehabilitation. Through rehabilitation as a depenalization policy, social benefits will be formed, such as reduced infectious diseases caused by injection drug use or reduced drug overdoses.³³

Decriminalization can also be applied to self-drug use. This is because the criminalization of drug users for themselves causes fear of asking for rehabilitation because of the risk of being arrested.³⁴ Meanwhile, the use of diversion can also be applied to Narcotics Law as is done in the United States with the Law Enforcement Assisted

³⁰ Direktorat Jenderal Pemasyarakatan. *Laporan Kinerja Direktorat Jenderal Pemasyarakatan 2022*. Jakarta: Direktorat Jenderal Pemasyarakatan, 2022, p. 39, <http://www.ditjenpas.go.id/laporan-kinerja-direktorat-jenderal-pemasyarakatan-tahun-2022>.

³¹ Wulandari, Cahya. "Kebijakan Kriminal Non Penal dengan Techno Prevention (Analisis Pencegahan Konten Negatif Melalui Internet)." *Pandecta Research Law Journal*, Vol. 15, No. 2, 2020, pp. 228-241, <https://doi.org/10.15294/pandecta.v15i2.23650>.

³² Stevens, Alex, et al. "Depenalization, Diversion and Decriminalization: A Realist Review and Programme Theory of Alternatives to Criminalization for Simple Drug Possession." *European Journal of Criminology*, Vol. 19, No.1, 2022, pp. 29-54, <https://doi.org/10.1177/1477370819887514>.

³³ Russoniello, Kellen, et al. "Decriminalization of Drug Possession in Oregon: Analysis and Early Lessons." *Drug Science, Policy, and Law*, Vol. 9, 2023, <https://doi.org/10.1177/20503245231167407>.

³⁴ *Ibid.*

Diversion (LEAD) program. Diversion is carried out on drug offenders who will later be provided with social and health services and not arrested or detained.³⁵

1.2 Legal Structure

1.2.1 Rehabilitation

Rehabilitation is a form of action in the double track system. Rehabilitation as a place of treatment and services for drug abusers and addicts has the objectives of (1) improving personal health services and restoring social functions; (2) reducing threats to public health and safety; and (3) to free a person from the destructive potential of repeated drug use in order to create community safety.³⁶ Survey in 2014 noted that only around 5% of people who use drugs have ever used rehabilitation services.³⁷

Article 4 of the Narcotics Law guarantees rehabilitation for drug abusers and addicts. Rehabilitation in the Narcotics Law is divided into two, namely medical and social rehabilitation. Medical rehabilitation is an integrated treatment process to free addicts from narcotics dependence. Meanwhile, social rehabilitation is an integrated recovery process both physically, mentally and socially, so that former narcotics addicts can return to carrying out social functions in community life. Rehabilitation services referring to the Narcotics Law consist of outpatient, inpatient, and rehabilitation.

Table 2. Total Rehabilitation Inpatients and Outpatients in Indonesia

Province	Number of Inpatients	Number of Outpatients
Aceh	4	19
North Sumatra	6	34
Riau	-	16
Kepri	3	12
West Sumatra	2	18
Jambi	3	11

³⁵ Perrone, Dina, et al. "Harm Reducing Policing: An Evaluation of Law Enforcement Assisted Diversion (LEAD) in San Francisco." *Police Quarterly*, Vol. 25, No. 1, 2022, pp. 7-32, <https://doi.org/10.1177/10986111211037585>.

³⁶ Sabarinah, *Op.Cit.*

³⁷ *Ibid.*

South Sumatra	5	25
Bangka Belitung	1	6
Bengkulu	2	9
Lampung	4	13
Banten	6	10
DKI Jakarta	6	10
West Java	12	36
Central Java	5	46
DIY	2	6
East Java	9	46
North Kalimantan	-	2
West Kalimantan	3	15
East Kalimantan	4	14
Central Kalimantan	2	18
South Kalimantan	2	7
Gorontalo	1	9
Central Sulawesi	1	18
West Sulawesi	-	9
South Sulawesi	4	29
Southeast Sulawesi	1	15
North Sulawesi	2	13
Bali	5	-
Nusa Tenggara Barat	2	14
Nusa Tenggara Timur	1	15
Maluku	2	13
North Maluku	1	11
Papua	3	20
West Papua	2	9

Source: Badan Narkotika Nasional, 2019 (Edited).

From the data presented above, it can be seen that there is an imbalance in the number of inpatient rehabilitation and outpatient rehabilitation. In some provinces such as Riau, North Kalimantan, and West Sulawesi do not even have inpatient rehabilitation

and the province of Bali does not have outpatient rehabilitation. The inequality in the number of rehabilitation centers is a serious matter, because the Narcotics Law has explicitly regulated and obliged narcotics addicts and drug abusers to rehabilitate, but if it is not accompanied by the availability of rehabilitation centers, of course the objectives of the Narcotics Law cannot be achieved.

Rehabilitation facilities that meet standards are an important factor in rehabilitation efforts to eliminate drug addiction, but there are only 155 rehabilitation facilities that meet standards which can directly or indirectly affect the effectiveness of rehabilitation for drug abusers and addicts.³⁸ The addition of rehabilitation facilities also cannot be the main answer in dealing with drug crimes if it is not accompanied by the fulfillment of the standards of the services provided, resulting in rehabilitation that cannot be optimal.³⁹ Fulfillment of rehabilitation standards also includes human resources at rehabilitation institutions. Rehabilitation therapists generally do not have adequate competence because the majority of therapists only rely on their own experience or use knowledge whose sources cannot be confirmed in treating rehabilitation patients.⁴⁰

1.2.2 Prison

Prison are one of the places that serve as a place of rehabilitation for drug addicts and drug abusers. As explained above, prisons and detention centers are dominated by narcotics crimes. Prisons in Indonesia also experience overcrowding of 207% which should be the capacity of prisons and detention centers only 132,107 but occupied by 274,495 prisoners. Problems in prisons is not only overcrowding but there are other problems such as the imbalance in the number of warders and prisoners. Based on data published by the Directorate General of Corrections in 2019 there were only 24,850 correctional officers while the number of prisoners was 269,846.⁴¹

Of course, this will make coaching in detention centers and prisons ineffective. In addition, according to the Minister of Law and Human Rights in 2011 there were 98 cases of narcotics smuggling into rehabilitation institutions while in 2012, 12 cases of

³⁸ Puslitdatin BNN, *Op.Cit*, p. 61.

³⁹ Deputi Bidang Rehabiltasi Badan Narkotika Nasional. *Rencana Strategis 2020-2024: Indeks Layanan Rehabilitasi Berkelanjutan*. Jakarta, Deputi Bidang Rehabilitasi Badan Narkotika Nasional, 2020, p. 7, [Rencana-Strategis-Deputi-Bidang-Rehabilitasi-Tahun-2020-2024.pdf \(bnn.go.id\)](#).

⁴⁰ Deputi Bidang Rehabiltasi Badan Narkotika Nasional, *Op.Cit*, p. 8.

⁴¹ Direktorat Jenderal Pemasyarakatan. *Op.Cit*, p. 47.

smuggling were revealed.⁴² The average ratio of prison guards to prisoners in Indonesia is 1:34, when looking at other countries it is known that the ratio of correctional officers to prisoners in Australia is 1:2, Brunei Darussalam 1:1, China 1:3-4, Japan 1:3, and Malaysia 1:3-4.⁴³ As a result of this imbalance, there are often riots in prisons and detention centers. One example of this is the riot at Malabero Prison due to the discovery of prisoners who distribute drugs and will be arrested but instead the prisoners rioted resulting in the burning of Malabero Prison and resulting in five people died.⁴⁴

The Freddy Budiman case is another case where in prison a prisoner can control the delivery of narcotics. Freddy Budiman was known to control narcotics in prison in the period 2013-2016 where he controlled narcotics imported from China which were smuggled through steel pipes.⁴⁵ This shows that imprisonment cannot provide a deterrent effect on drug users and has even become a new means of controlling drugs behind bars. In addition to the problem of overcrowding in prisons, another problem that arises is that prisons and rehabilitation institutions have become one of the markets for drug dealers and also problems such as the assumption that drug users have the character of criminals in general so that they mix with other prisoners.⁴⁶

1.2.3 Law Enforcement Officers

Law enforcement officers are the spearhead of the criminal justice system. But in narcotics cases it is often found that law enforcement officials are involved in narcotics and cause a decrease in public trust. For example, in the case of Freddy Budiman who confessed that when he controlled narcotics in prison he was assisted by elements of the police, military, BNN and even prisons.⁴⁷ Seeing that there are individuals in law

⁴² Marpaung, Leden. *Tindak Pidana Terhadap Nyawa dan Tubuh*. Jakarta, Sinar Grafika, 2005, p. 64.

⁴³ Situmorang, Victorio H. R. Ham and J. H. R. S. Kav. "Lembaga Pemasyarakatan sebagai Bagian dari Penegakan Hukum." *Jurnal Ilmiah Kebijakan Hukum*, Vol. 13, No. 1, 2019, pp. 85-98, <http://dx.doi.org/10.30641/kebijakan.2019.V13.85-98>.

⁴⁴ Usmin. "17 Inmates Charged for Fatal Bengkulu Prison Riot." *jakartaglobe.id*, 2016, <https://jakartaglobe.id/news/17-inmates-charged-fatal-bengkulu-prison-riot>.

⁴⁵ Sumanto, Atet. "Efektivitas Pidana Mati dalam Proses Penegakan Hukum Tindak Pidana Narkotika." *Perspektif: Kajian Masalah Hukum Dan Pembangunan*, Vol. 22, No. 1, 2017, pp. 21-31, <https://doi.org/10.30742/perspektif.v22i1.548>.

⁴⁶ Nurmantyo, Carto. "Reconstruction of the Criminal Sanction Policy and Action (Double Track System) in Law Enforcement For Narcotic Crime Prevention Referred to Religious Justice." *Jurnal Pembaharuan Hukum*, Vol. 5, No. 3, 2018, pp. 339-351, <http://dx.doi.org/10.26532/jph.v5i3.3756>.

⁴⁷ Sumanto, Atet. *Op.Cit.*

enforcement who utilize their power to commit abuse of power in handling narcotics cases raises the question of whether imprisonment is a relevant solution in providing a deterrent effect to narcotics offenders considering that imprisonment can become a criminogenic factor in a person which is certainly not in line with the purpose of punishment.

Another case that dragged law enforcement officials was the case of Inspector General Teddy Minahasa who was proven to have embezzled evidence in the form of 5 kg of methamphetamine which dragged several of his subordinates ranging from the rank of Briпка to Kompol where he ordered his subordinates, namely AKBP Doddy Prawiranegara to exchange methamphetamine with alum to avoid suspicion.⁴⁸ Courts in deciding narcotics cases often use imprisonment to create a deterrent effect, but if viewed through criminology narcotics is a crime that does not harm victims.⁴⁹

In line with this, when viewed through the perspective of victimology, narcotics are self victimizing victims so that if drug addicts and drug abusers are given criminal sanctions it is inappropriate because drug addicts and drug abusers from a health aspect are people who experience addiction or can be said to be people who are sick.⁵⁰ The problem then that appears is that drug abusers or addicts today are often considered as criminal subjects or perpetrators of crimes rather than as victims.

Of course, the criminalization of drug addicts and abusers using imprisonment will fail due to the absence of consideration from a neurological point of view arising from drug addiction in the brain, besides that drug addiction is also the result of a complex interaction of various factors between repeated use of drugs and a person's biological and environmental factors.⁵¹ In addition, some other problems in the implementation of the double track system for narcotics crimes are the lack of coordination between law

⁴⁸ Hasibuan, Edi Saputra and Amalia Syauket. "Efforts to Eradicate Narcotics in The National Police: A Case Study of Teddy Minahasa." *International Journal of Social Service and Research*, Vol. 3, No. 4, 2023, pp. 900-905, <https://doi.org/10.46799/ijssr.v3i4.346>.

⁴⁹ Sarwirini, Ms, and Riza Alfianto K. "Rehabilitation of Narcotics Addicts as the Rights to Health." *International Conference on Law, Governance and Globalization 2017 (ICLGG 2017)*. Atlantis Press, Vol. 131, 2017, pp.250-263, 10.2991/iclgg-17.2018.34.

⁵⁰ Sugiarto. "Penjatuhan Pidana oleh Hakim Terhadap Prajurit Tentara Nasional Indonesia sebagai Pelaku Penyalahgunaan Narkotika." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 7, No. 2, 2018, pp. 165-176, <https://doi.org/10.24843/JMHU.2018.v07.i02.p03>.

⁵¹ World Health Organization. "Discussion paper: Principles of drug dependence treatment." 2008, p. 1, <https://www.unodc.org/documents/drug-treatment/UNODC-WHO-Principles-of-Drug-Dependence-Treatment-March08.pdf>.

enforcers so that the law enforcement process takes a long time, the lack of ability of investigators so that files are often returned or declared incomplete, and the use of sanctions from the police which will certainly incriminate the defendant.⁵²

1.3 Legal Culture

Rehabilitation is actually a place that helps a person to be free from drug addiction. But there are still many people who have negative perceptions of rehabilitation. Some things that make rehabilitation have a negative perception, for example (1) Someone who will register for rehabilitation (prospective rehabilitation recipients) must go through complicated and convoluted procedures, not infrequently this is also used by some individuals to make illegal levies to "make things easier." (2) Many administrative procedures, for example, prospective rehabilitation recipients must fulfill document requirements such as birth certificates, diplomas, etc. which are considered difficult.⁵³ (3) The stigma of Indonesian society, which is predominantly religious and considers drug use to be unacceptable behavior. (4) Public distrust of professional assistance and poor perceptions of the quality of services provided in rehabilitation.⁵⁴

Factors such as the number of entertainment venues, boarding houses/high privacy residences, high poverty rates, inadequate public facilities, and low community social interaction are also characteristic factors supporting the increasing number of drug users.⁵⁵ In addition, there are still people who do use drugs as a livelihood, for example (1) 7.090 Ha of cannabis land turned into productive land planted with corn; (2) In Gayo Lues District there are 4.098 cannabis farmers who later switched professions to become commodity crop farmers; (3) In Aceh Besar District there are 18 cannabis farmers who later switched professions to become commodity crop farmers; and (3) In Bireuen District

⁵² Bintang, Cantika Ramadhani, and Ermania Widjajanti. "Peran Jaksa terhadap Pelaku Penyalahgunaan Narkotika Golongan I dalam Pembaharuan Hukum Pidana (Studi Kasus pada Kejaksaan Negeri Kota Bogor)." *AL-MIKRAJ Jurnal Studi Islam dan Humaniora*, Vol. 4, No.2, 2024, pp. 939-956, <https://doi.org/10.37680/almikraj.v4i02.4995>

⁵³ Sembiring, Hary Jackson, et al. "Efektivitas Pusat Rehabilitasi Terhadap Pecandu Narkoba di Kota Medan Ditinjau dari Undang-Undang Nomor 35 Tahun 2009 (Studi Kasus di Panti Yuami Medan)." *Jurnal Ilmiah Metadata*, Vol. 4, No. 2, 2022, pp. 167-188, <https://doi.org/10.47652/metadata.v4i2.211>.

⁵⁴ *Ibid.*

⁵⁵ Puslitdatin BNN, *Op.Cit*, p. 13.

there are 2.594 cannabis farmers who later switched professions to become commodity crop farmers.⁵⁶

Narcotics users are dominated by young people aged 19-25 years, this is based on data released by the Deputy for Rehabilitation of BNN in 2022.⁵⁷ Based on this data, it can also be seen that rehabilitation patients are people with low education (high school graduates and below), namely 1,356 patients out of a total of 1,614 patients and people with no income, namely 944.⁵⁸ The influence of friends and the surrounding environment also provides increased opportunities for drug use. Data released by BNN shows that the source of first-time drug acquisition through friends is 88.4%.⁵⁹ BNN also conducted a survey which found that in neighborhoods with social problems prostitution has a percentage of 49.3%.⁶⁰ The use of drugs through needles (injecting drug use) used alternately can lead to transmission of HIV and Hepatitis B and C, globally the transmission of HIV infection through needles reaches 30%.⁶¹

The stigmatization attached to drug addicts and abusers also makes it difficult for someone to get out of drug addiction. The need for confidentiality of the identity of drug addicts and abusers when they want to do rehabilitation, confidentiality is needed to avoid stigma by the community which can cause feelings of shame, guilt and avoid the stigma of "junkie" received by the community.⁶² Someone who wants to undergo rehabilitation should get both moral and material support because they are someone who suffers physically, psychologically, and psychologically due to the effects of addiction by narcotics so that they need treatment and recover to their previous condition. The condition that causes someone to return to using drugs is called relapse. Relapse is a frequent and difficult problem for drug addicts and abusers. Relapse occurs due to the

⁵⁶ *Ibid*, p. 15.

⁵⁷ *Ibid*, p. 62.

⁵⁸ *Ibid*.

⁵⁹ *Ibid*, p. 45.

⁶⁰ *Ibid*, p. 47.

⁶¹ World Health Organization, *Op.Cit*, p. 2.

⁶² Hammarlund, Rebecca, et al. "Review of the Effects of Self-Stigma and Perceived Social Stigma on the Treatment-Seeking Decisions of Individuals with Drug and Alcohol use Disorders." *Substance Abuse and Rehabilitation*, Vol. 9, 2018, pp. 115-136, <https://doi.org/10.2147/SAR.S183256>.

influence of psychosocial factors, namely self-efficiency, friends support, family support, and community support.⁶³

III. CONCLUSION

In tackling the problem of narcotics crime, penal efforts (the use of imprisonment) cannot be done alone but need to be done with penal and non-penal efforts in synergy. However, this also needs to be supported by the readiness and skills of inter-agency police, prosecutors, and BNN. This is because in dealing with the problem of narcotics crime, it is not supported by the availability of rehabilitation facilities, the lack of ability of rehabilitation assessors/officers, or the strong retributive influence so that narcotics offenders are only given imprisonment but ignore rehabilitation. So that there needs to be an understanding also from law enforcement officials in handling narcotics crimes that these crimes are "special" crimes and different from other crimes because the perpetrators of criminal acts are on two sides at once, namely as perpetrators of the criminal acts committed so that punishment is needed and also as victims of the criminal acts committed so that rehabilitation is needed. In addition, in dealing with problems in narcotics crime, it can be done through non-penal efforts such as depenalization, decriminalization, and diversion for narcotics users themselves who will be subject to rehabilitation rather than imprisonment. This is because the use of imprisonment or penal policy on narcotics users for themselves is certainly not appropriate considering that imprisonment only provides a deterrent effect but cannot eliminate the addictive nature of narcotics.

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