



## The Politics of Narcotics Law In The Reconstruction of The Authority of Institutions Providing Rehabilitation For Narcotics Addicts

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### Keywords

politics of narcotics law; reconstruction; institutions providing rehabilitation for drug addicts

### Abstract

Narcotics Law and its derivative regulations do not yet clearly indicate the leading sector for implementing rehabilitation. The construction of the regulations contained in the Law delegates the implementation of rehabilitation to sectoral ministers which causes the rehabilitation program to become a sectoral ministry program and has not demonstrated good inter-sector linkages and cooperation in its implementation. The construction of this kind of arrangement has the potential to reduce rehabilitation to just a ministerial program and lose the big picture that the Narcotics Law aims to achieve. This type of research is normative research used a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively qualitatively. This research produces findings that the Government has attempted to make regulations that guarantee Health for its citizens with the mandate of the 1945 Constitution. Various efforts have been made to create a special law on narcotics and revise the law. Law Number 35 of 2009 concerning Narcotics (Narcotics Law) distinguishes between dealers, sellers and dealers and narcotics addicts, because addicts may be considered victims of dealers or sellers who abuse these narcotics. Rehabilitation, both medical and social, is an institution that has an important role in carrying out the mandate and objectives to be achieved by Law 35/2009, namely ensuring the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts



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### 1. Introduction

Regulations on narcotics and psychotropics are regulated by two different laws, namely Law Number 35 of 2009 concerning Narcotics (Narcotics Law) and Law Number 5 of 1997 concerning Psychotropics (Psychotropics Law). In general, these two laws aim to guarantee the availability of narcotics and psychotropics for health and scientific purposes, prevent the abuse of narcotics and psychotropics, and eradicate the illicit trafficking of narcotics and psychotropics. The Narcotics Law further aims to ensure the regulation of medical and social rehabilitation efforts for Narcotics Abusers and Addicts (Megoondo, 2022). This Law also has implemented regulations in the form of Government Regulations, Presidential Regulations, and several Ministerial Regulations. In its development, there is also a Circular Letter from the Supreme Court, a Joint Regulation of several Ministries and Institutions, as well as a Presidential Instruction which aims to strengthen regulations on Narcotics and Psychotropic Substances. From an

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institutional perspective, the Narcotics Law also mandates the establishment of a National Narcotics Agency which has special duties and functions in the field of preventing and eradicating the abuse and illicit trafficking of Narcotics and Narcotics Precursors (P4GN) which has been established by Presidential Regulation Number 23 of 2010 concerning the National Narcotics Agency (Zulfatmi & Nurlaila, 2018).

When evaluated, the implementation of rehabilitation, which is one of the objectives of the Narcotics Law, shows that there are many obstacles. One of the Working Group's findings found institutional arrangements as one of the main obstacles. The Narcotics Law and its derivative regulations do not yet clearly indicate the leading sector for implementing rehabilitation. The construction of the regulations contained in the Law delegates the implementation of rehabilitation to sectoral ministers which causes the rehabilitation program to become a sectoral ministry program and has not demonstrated good inter-sector linkages and cooperation in its implementation. This appears increasingly clear in implementing regulations such as the Minister of Health Regulation Number 4 of 2020 concerning the Implementation of Institutions Recipient of Mandatory Reporting, the Minister of Law and Human Rights Regulation Number 12 of 2017 concerning the Implementation of Narcotics Rehabilitation Services for Prisoners and Correctional Inmates, and the Minister of Social Affairs Regulation Republic of Indonesia Number 9 of 2017 concerning National Standards for Social Rehabilitation for Addicts and Victims of Narcotics, Psychotropic and Other Addictive Substance Abuse. These regulations do not yet show that there is a holistic and systemic regulation of the implementation of rehabilitation and instead seem to be separated from one sector to another (DARYONO, 2020). This kind of regulatory construction has the potential to reduce rehabilitation to just a ministerial program and loses sight of the big picture that the Narcotics Law aims to achieve (Sumarwono, 2021).

Implementation of the provisions of Article 55 paragraph (3) of Law Number 35 of 2009 concerning Narcotics which regulates the implementation of mandatory reporting for narcotics addicts. The provisions of Article 55 of the Narcotics Law are regulated in the second part regarding rehabilitation. Article 54 of the Narcotics Law, it states that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation, where medical rehabilitation is carried out in hospitals appointed by the Minister or carried out by certain rehabilitation institutions after obtaining approval from the Minister (Article 56) and regulated in the Regulations. Minister of Health (Article 59 paragraph (1)). Meanwhile, social rehabilitation for former narcotics addicts is carried out both by government agencies and the community (Article 58) which is regulated by Minister of Social Affairs regulations (Article 59 paragraph (2)). This PP consists of 25 articles which were formed with the objectives stated in Article 2, namely: 1. as an effort to fulfill the rights of narcotics addicts to receive treatment and/or care through medical rehabilitation and social rehabilitation; 2. involve parents, guardians, families and the community in increasing responsibility for Narcotics Addicts under their supervision and guidance; 3. as information material for the Government in establishing policies in the field of preventing and eradicating the abuse and illicit trafficking of narcotics.

Rehabilitation, both medical and social, is an institution that has an important role in carrying out the mandate and objectives to be achieved by Law 35/2009, namely ensuring the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts. The Ministry of Health as the leading sector in the implementation of laws and regulations related to narcotics has the authority to regulate related provisions including regarding rehabilitation in a law. Several Minister of Health Regulations were formed to regulate medical rehabilitation, as well as the Ministry of Social Affairs which also has the authority to regulate social rehabilitation institutions also formed Minister of Social Affairs Regulations. The broad and multi-stakeholder scope of rehabilitation is more appropriately regulated in a higher statutory regulation, such as in a Government Regulation (Widarto, 2021). Therefore, it is necessary to consider regulations regarding rehabilitation, both medical and social, in the form of government regulations that are more comprehensive in providing regulation of these two types of rehabilitation. Changes also need to be made to the provisions of Law 35/2009 which mandates that medical rehabilitation and social rehabilitation arrangements be regulated in a Minister of Health Regulation and a Minister of Social Affairs Regulation.

The government has attempted to create regulations that guarantee health for its citizens by the mandate of the 1945 Constitution. Various efforts have been made, including creating a special law on narcotics and revising the law. Law Number 35 of 2009 about Narcotics distinguishes between dealers, sellers and dealers and narcotics addicts, because addicts may be considered victims of dealers or sellers who abuse these narcotics. Therefore, in the latest narcotics law, sanctions against addicts are different from dealers, sellers, and dealers. The government tackles narcotics addicts by taking action in the form of rehabilitation by the mandate of Law number 35 of 2009 concerning Narcotics in Article 54 of the Narcotics Law which clearly states that: "Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation." Article 1 number 13 of the Narcotics Law

explains that a Narcotics Addict is a person who uses or abuses Narcotics and is in a state of dependence on Narcotics, both physically and psychologically. (Heningsih, 2015).

In the provisions of the Narcotics Law, narcotics users can be categorized as addicts, namely people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically, and have the right to obtain or access medical rehabilitation and social rehabilitation. The right to health recovery for narcotics users from their addiction is in line with the provisions of the World Health Organization (WHO) which categorizes addiction as a chronic, relapsing disease that can be recovered. Article 54 of the Narcotics Law clearly states that: "Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation." The author's analysis is that the government has made maximum efforts to implement the 1945 Constitution regarding the health rights of its citizens by providing rehabilitation to narcotics addicts by the Narcotics Law which was created jointly with the People's Representative Council of the Republic of Indonesia. The addicts can be said to be victims due to ignorance of the dangers of narcotics.

Not only Law Number 35 of 2009 concerning Narcotics, but there are also several other regulations that regulate this rehabilitation such as Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning the Placement of Narcotics Abusers and Victims in Medical and Social Institutions, then The government also issued Government Regulation Number 25 of 2011 concerning the Implementation of Mandatory Reporting of Narcotics Addicts to obtain therapy and rehabilitation services, then the Minister of Health also issued Minister of Health Decree Number HK.02.02/MENKES/502/2015 which appointed the recipient agency for mandatory reporting (IPWL) in 33 provinces and along with regulations that strengthen these rules, such as Joint Regulations of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of Police of the Republic of Indonesia, Head of the Agency National Narcotics of the Republic of Indonesia (Ariyanti, 2017).

## 2. Materials and Methods

This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively qualitatively (Sumarwono, 2021). Utilizing a deductive approach, the conclusion is reached by moving from the general to the specific, particularly those that are pertinent to the analysis issue, which is the Politics of Narcotics Law in Reconstructing the Authority of Institutions Providing Rehabilitation for Drug Addicts. Qualitative data analysis is carried out if the empirical data obtained is in the form of a collection of words. words and not in the form of a series of numbers and cannot be arranged into categories. Data can be collected in various ways (interview observations, document instances, and recording tapes). To use information in qualitative research, material is typically processed first. This includes triangulation, data reduction, analysis, and interpretation of the outcomes of interview transcripts. (Amirudin, 2010).

## 3. Results and Discussions

### Political Forms of Narcotics Law in Reconstructing the Authority of Institutions Providing Rehabilitation for Drug Addicts

The fixed procedures for implementing rehabilitation for narcotics addicts and abusers, it is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 80 of 2014 concerning Technical Guidelines for Implementing Medical Rehabilitation for Drug Addicts, Abusers and Victims of Narcotics Abuse who are currently in the process of investigation, prosecution, and trial or have received a perseverance/court ruling. The government's seriousness in rehabilitating addicts and victims of narcotics abuse cannot be said to be a joke, so many regulations have been issued from all elements making this rehabilitation present to be a solution to the current problems.

In the legal system in Indonesia, narcotics abuse is qualified as a crime in the narcotics sector as regulated in Law No. 35 of 2009 concerning Narcotics. Narcotics crimes are seen as a form of crime that has serious consequences for the future of this nation, destroying the lives and future, especially of the younger generation. According to Article 127 paragraph (1) Law no. 35 of 2009, every person who abuses Class I narcotics is punished with a maximum imprisonment of 4 (four) years; Every person who abuses Class II narcotics is personally liable to a maximum imprisonment of 2 (two) years; and Every person who abuses Class III narcotics is personally liable to imprisonment for a maximum of 1 (one) year. What is meant by a drug abuser is a person who uses narcotics without rights or against the law. From this definition, it can be said that a drug abuser is a user. However, the law does not contain what is meant by "narcotics user" as a subject (person), what is often found is its use as a verb (Wijayanti, 2019).

The essence of narcotics law is in principle that addicts and victims of narcotics abuse can be rehabilitated, namely those who are addicts and victims who in the Joint Regulation Article 4 Paragraph (1) are confirmed as addicts and victims who are arrested but without evidence, but from the results of urine tests, blood, hair tested positive for using narcotics and those who in Article 4 Paragraph (2) are mentioned as addicts and victims who were arrested with a certain amount of evidence with or without using narcotics according to the results of urine, hair, blood or DNA tests, while the case is in progress justice, within a particular time can be placed in a rehabilitation institution, after making a Minutes of Examination of Laboratory Results and Minutes of examination by BNN Investigators and accompanied by a letter of integrated assessment results.

Treatment and care for self-narcotics abusers is carried out through rehabilitation facilities. Rehabilitation for self-narcotics abusers is carried out to restore and develop the physical, mental, and social abilities of the sufferer concerned. Victims of addictive crime, in this case, are narcotics addicts (including self-abusers of narcotics) who need special treatment, so that they receive care and protection so that they can become citizens again who can play a role in the life of the nation and state. Furthermore, abusers who receive rehabilitation guarantees are based on Article 4 of Law No. 35 of 2009, however, in Article 127, abusers are made subjects who can be punished and lose their right to rehabilitation, unless they can be proven or proven to be victims of narcotics. In fact, proving that a narcotics abuser is a narcotics victim is difficult because it must be seen from the start of the narcotics user's use of narcotics. In addition, it needs to be proven that when using narcotics, narcotics users are persuaded, deceived, deceived, forced, and/or threatened to use narcotics (Fihim, 2022).

### **The Political Urgency of Narcotics Law in Reconstructing the Authority of Institutions Providing Rehabilitation for Drug Addicts**

On the one hand, according to the law, narcotics addicts are perpetrators of criminal acts of narcotics abuse, this is due to the provisions of the narcotics law which regulates prison sentences given to perpetrators of narcotics abuse. Then, on the other hand, it can be said that narcotics addicts are victims, this is shown by the provision that narcotics addicts can be sentenced to rehabilitation. This means that on the one hand, the law still considers narcotics addicts as perpetrators of criminal acts, and on the other hand as victims of their narcotics abuse. The victimology review classifies narcotics addicts as "self-victimizing victims", namely victims of crimes they have committed themselves. Therefore, the most appropriate thing for a judge to pass a sentence in the case of a narcotics addict is to pass a sentence of rehabilitation. Because narcotics addicts are essentially victims of a crime who need to receive treatment and/or care, and because they are parties who also experience losses from a crime, namely the crime of narcotics abuse (MULYADI, 2023).

In contrast to the previous Narcotics Law, Law No. 35 of 2009 in its general provisions provides several new meanings that the previous Narcotics Law did not have. This can be seen in the definition of narcotics precursors, the definition of Organized Crime is also contained in Law No. 35 of 2009. Apart from that, there are also additional elements of understanding narcotics dependence as a condition, the use of increased doses, and typical physical and psychological symptoms. Law No. 35 of 2009 also provides a new understanding of victims of narcotics abuse as someone who accidentally uses narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use narcotics, then there is also an editorial expansion regarding evil conspiracy which is no longer just limited to an agreement between 2 or more people to carry out a narcotics crime, but rather a collusion or agreement between two or more people to commit, carry out, assist, participate in committing, order, recommend, facilitate, provide consultation, become members of a narcotics crime organization, or organize a Narcotics crime (Santoso, 2023). Apart from that, this law also specifically states that the minister referred to in the Narcotics Law is the minister who handles government affairs in the health sector.

Regarding treatment and rehabilitation, it is different from the previous Narcotics Law which allowed narcotics users for treatment and care purposes carrying narcotics, whereas in Law No. 35 of 2009, narcotics users must be a doctor's patient to be able to own, store, and/or carry narcotics which is limited to groups II and III. Regarding the reporting obligation for narcotics addicts or parents of narcotics addicts, Law No. 35 of 2009 specifically and in detail designates reporting institutions as Community Health Centers, hospitals, and/or medical and social institutions. In the field of narcotics prevention and eradication, Law No. 35 of 2009 specifically established the National Narcotics Agency (BNN) to dissuade and annihilate the abuse and illicit trafficking of narcotics and narcotics precursors with tasks specified in Law No. 29. Inside Law No. 35 of 2009 also precisely grants authority to the BNN to carry out inquiries and investigations carried out by BNN investigators with authority that is specifically only possessed by other investigators which is limited to the provisions of the criminal procedural law. Law No. 35 of 2009 also gives authority to civil servant investigators to carry out investigations into narcotics cases, so with Law No. 35 of 2009, there are 3 narcotics case investigators. (Hamzah & Surachman, 2015).

The existence of PP 25/2011 concerning the Implementation of Mandatory Reporting of Narcotics Addicts, which is an implementing regulation that implements the provisions of Article 55 paragraph (3) of the Narcotics Law, also does not provide clarity on who is called an addict and a drug abuser. This PP does not regulate the rights of abusers but Article 13 states "Narcotics addicts who are undergoing a judicial process can be placed in medical rehabilitation and/or social rehabilitation institutions". Here the PP explicitly only mentions narcotics addicts. This is different in Minister of Health Regulation 4/2020 Article 2 which provides a wider scope of mandatory reporting, including those in the process of investigation, prosecution, or trial, or those who have received a court ruling/decision. Even in Minister of Health Regulation 4/2020 Article 3 paragraph (2) it is regulated that rehabilitation institutions which are IPWL can carry out medical rehabilitation for addicts, abusers, and victims of narcotics abuse. The provisions in these laws and regulations need to be harmonized to guarantee legal certainty and facilitate implementation.

The reason for determining the depenalization of narcotics users and victims is because they are considered sick people and need to receive treatment by providing therapy or medication to recover. Victims of narcotics abuse, actually do not realize what they have done because they commit these acts because of the persuasion of other people, so they need to be saved by being rehabilitated so that they do not fall into the serious effects of narcotics. Even though narcotics abusers themselves have the qualifications to be perpetrators of narcotics crimes, under certain circumstances narcotics addicts can be positioned more towards victims. Iswanto states that victims are the result of intentional or negligent actions, voluntary actions, coercion or deception, and natural tragedies, and all of them comprise the nature of suffering in the soul, body, property, and moral as well as disposition of injustice. One of the problems in the Narcotics Law is the unclear understanding and status between addicts, abusers, and victims of narcotics abuse. Because of the lack of clarity in the meaning and status, other regulations are biased and confusing. At a practical level, this directly has a big impact, especially for narcotics users. One of the impacts of biased and confusing practices is providing medical and social rehabilitation for narcotics abusers and addicts. In Article 4 of the Narcotics Law, it is explained that one of the aims of establishing this law is to ensure medical and social rehabilitation efforts for narcotics abusers and addicts. Meanwhile, Article 54 of the Narcotics Law states that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. If you use the construction of Article 54 of the Narcotics Law, narcotics abusers are not included in the qualifications of someone who can be given medical and social rehabilitation measures as regulated in Article 4 of the Narcotics Law. (Anwar, 2019).

#### **4. Conclusion**

The government has attempted to create regulations that guarantee health for its citizens by the mandate of the 1945 Constitution. Various efforts have been made, including creating a special law on narcotics and revising the law. Law Number 35 of 2009 concerning Narcotics (Narcotics Law) distinguishes between dealers, sellers and dealers and narcotics addicts, because addicts may be considered victims of dealers or sellers who abuse these narcotics.

Rehabilitation, both medical and social, is an institution that has an important role in carrying out the mandate and objectives to be achieved by Law 35/2009, namely ensuring the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts. The Ministry of Health as the leading sector in the implementation of laws and regulations related to narcotics has the authority to regulate related provisions including regarding rehabilitation in a law.

In the provisions of the Narcotics Law, narcotics users can be categorized as addicts, namely people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically, and have the right to obtain or access medical rehabilitation and social rehabilitation



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