



# Problems Faced by Judges in Determining Rehabilitation for Narcotics Abusers

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## Abstract

Addicts and victims of narcotic abuse should be placed in medical and social rehabilitation institutions. However, in empirical practice in the field, judges rarely exercise their powers to dive into a drug abuser accused of being brought to court through an assessment instrument. An assessment is needed to determine whether the defendant has a network of dealers or is just an addict or victim of narcotics abuse. The focus of this research problem is the obstacle for judges in determining the implementation of rehabilitation for narcotics abusers. The purpose is to identify the judge, in his decision, can determine medical rehabilitation for drug abusers in accordance with the mandate of the law. This research uses normative legal method based on positive legal studies with secondary data. The judge can consider whether the assessment results from the Integrated Assessment Team (TAT) allow them to be attached to the case file. Even the results of the assessment can be equated with expert testimony, which is an expert opinion written in a letter.

**Keywords:** Assesment; Judges; Rehabilitation

## A. Introduction

As it is known, Law Number 35 of 2009 concerning Narcotics (Narcotics Law) regulates the activities and/or actions related to narcotics and narcotic precursors. Furthermore, one of the objectives of the Narcotics Law, namely ensuring the availability of narcotics solely for the benefits of health services and/or scientific development, outside the interests of health services and/or scientific development is an act against the law. People who use narcotics without rights or against the law are called "Abusers".<sup>1</sup> More specifically, the Narcotics Law positions narcotics abusers as an act against the law, and there is a threat of criminal punishment for those who violate it. However, the Narcotics Law also stipulates

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<sup>1</sup>Article 1 Number 15 of Law Number 35 Year 2009 concerning Narcotics.

that narcotics abusers who can be proven to be addicts or victims of narcotics abuse must undergo medical and social rehabilitation measures. Providing rehabilitation for Narcotics abuse is deemed necessary to suppress the use of Narcotics and illegal drugs.<sup>2</sup> Rehabilitation exists with the aim of providing protection for drug addicts and victims of narcotics drugs so that later they will be given the opportunity to recover and return to their normal activities as before in society.<sup>3</sup> Treatment and/or rehabilitation treatment carried out after decision or decision (verdict) judge based on information from family or hospital.<sup>4</sup>

The sanctions in the Narcotics Law adhere to a double track system, namely in the form of criminal sanctions and action sanctions. Rehabilitation is a form of sanction for action.<sup>5</sup> According to the Narcotics Law, rehabilitation measures concerning narcotics abuse can be a criminal policy. The criminal policy is part of the legislative policy by the House of Representatives, which is known as the lawmaker, which the government then passes. Regarding legal handling, the apparatus as executor is based on their respective authority, starting from the Police Investigators, Public Prosecutors, Judges, Advocates, and Correctional Institution officials. Meanwhile, those who carry out medical and social rehabilitation are known as the Integrated Assessment Team (TAT), which consists of the Legal Team and the Medical Team, the Institute for Medical Rehabilitation and Social Rehabilitation of the government agencies.

Although the Narcotics Law has been passed since 2009, rehabilitation of abusers is rarely implemented, and court verdicts often result in imprisonment. Narcotics cases, especially narcotics abusers, still dominate the number of cases that go to court and are sentenced. The 2019 Supreme Court's annual report data show that there are 49,880 narcotics cases out of a total of 136,521 ordinary criminal cases handled by all District Courts in Indonesia.<sup>6</sup> This impacts the occupancy rate of correctional institutions in various regions in

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<sup>2</sup> Siti Hidayatun, Yeni Widowaty, "Konsep Rehabilitasi Bagi Pengguna Narkotika yang Berkeadilan," *Jurnal Penegakan Hukum dan Keadilan* 1, no. 2 (2020): 166-167, <https://doi.org/10.18196/jphk.1209>.

<sup>3</sup> Risya Hadiansyah, Nur Rochaeti, "Penerapan Rehabilitasi Terhadap Anak Penyalahguna Narkotika," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 4, <https://doi.org/10.14710/jphi.v4i1.1-13>.

<sup>4</sup> Sri Wulandari, "Rehabilitasi sebagai Upaya Pemerintah dalam Penanggulangan Penyalahguna Narkotika," *Jurnal Spektrum Hukum* 14, no. 2 (2017): 295, <http://dx.doi.org/10.35973/sh.v14i2.1083>.

<sup>5</sup> Dahlan, *Problematika Keadilan Dalam Penerapan Pidana Terhadap Penyalahguna Narkotika* (Yogyakarta: Deepublish, 2017), 8.

<sup>6</sup> Tim Pokja Laporan Tahunan MARI, *Laporan Tahunan 2019 Mahkamah Agung Republik Indonesia: Keberlanjutan Modernisasi Peradilan* (Jakarta: Supreme Court of Republic of Indonesia, 2020), 111-112, [https://kepaniteraan.mahkamahagung.go.id/images/laporan\\_tahunan/LAPTAH%20030220.pdf](https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/LAPTAH%20030220.pdf).

Indonesia, which exceeds the level of occupancy threshold. Based on data from the Indonesia Ministry of Law and Human Rights obtained in November 2019, there are 121,677 prisoners/convicts in narcotics crime cases in Indonesia, or 45.5% of the total other criminal cases, consisting of 72,808 dealers/brokers, while the user category is 48,869. Even in Cipinang prison, the average prisoner is sentenced to around 5-6 years in prison with evidence below 1 gram, and they are narcotics users.<sup>7</sup>

Based on the data described above, there is a tendency that the Judge imposes imprisonment on narcotics users so that the narcotics user ends up imprisoning without rehabilitation to be recovered. Judges are very selective and strict in providing rehabilitation because not all judges have the view that the accused in drug cases, including users, are victims. There are still disparities in decisions in providing rehabilitation measures for narcotics users. Therefore, again, it is necessary to reflect that the proper punishment for narcotics users is to be rehabilitated rather than imprisoned, as is the spirit of the current Narcotics Law. Narcotics addicts who are sentenced to prison do not necessarily make them leave the drug abuse.<sup>8</sup>

However, we can see that true decriminalization leads to human rights protection by reducing disproportionate sentencing towards people who use drugs, increasing access to the right to health, and also reducing arbitrary arrest based on stigma and discrimination.<sup>9</sup>

In a comparative study, the country of Portugal carried out an assessment involving legal and health circles to determine whether a person is classified as a user and an addict and therefore requires treatment or is not classified as both, so that criminal action needs to be taken against him. In Thailand, the national policy towards narcotics addicts adheres to the principle that narcotics addicts are patients, not criminals, so they are referred to rehabilitation centers.<sup>10</sup>

If explored more deeply, the Narcotics Law has various enforcement policies, including policies on determining the type of punishment, minimum and maximum weight of

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<sup>7</sup> Eddy OS Hiariej, “*Quo Vadis Pemasyarakatan*,” Kompas, January 27, 2021, <https://www.kompas.id/baca/opini/2021/01/27/quo-vadis-pemasyarakatan/>.

<sup>8</sup> Tumbur Palti D. Hutapea, “Penerapan Rehabilitasi Medis dan Sosial Bagi Prajurit TNI dalam Putusan Pengadilan,” *Jurnal Hukum dan Peradilan* 7, no. 1 (2018): 67-68, <https://doi.org/10.25216/jhp.7.1.2018>.

<sup>9</sup> Asmin Fransiska, *Decriminalisation Approach to Drug Use From a Human Rights Perspective* (London: Lap Lambert Academic Publishing, 2018), 91.

<sup>10</sup> Tumbur Palti Hutapea dan Sri Gilang MSRP, *Implementasi Sistem Pemidanaan Perkara Penyalah Guna Narkotika di Lingkungan Pengadilan Militer* (Jakarta: Prenadamedia, 2019), 91.

imprisonment and criminal fines, plus rehabilitation which is a portion of the judge's authority in the judicial policy. Thus, the authority of the Judge in adjudicating and imposing punishment is the authority of the judiciary. In contrast, the authority to implement a judge's decision, which is called the execution policy, is carried out by officials from the prosecutor's office.

Regarding providing supervision to judges throughout the court in handling narcotics cases, the Supreme Court has issued circular letters several times. Supreme Court Circular (SEMA) No.4 of 2010 concerning Placement of Abuse, Abuse Victims and Narcotics addicts into the Medical Rehabilitation and Social Rehabilitation Institutions. It briefly explains the classification of the application of punishment according to the SEMA, namely:

- a. The defendant at the time of his/her arrest by Police investigators and BNN investigators is in a state of red-handed.
- b. At the time of being caught red-handed according to sub-paragraph a. above, evidence of use is found for 1 (one) day with a detailed list of narcotics.
- c. Tested positive for using narcotics based on a laboratory test letter based on the request of the investigator.
- d. Need a certificate from a government psychiatrist appointed by the judge.
- e. There is no evidence that the person concerned was involved in the trafficking of Narcotics.

Furthermore, the published SEMA No. 3 of 2011 concerning Placement of Narcotics Abuse Victims in Medical Rehabilitation and Social Rehabilitation Institutions. In the SEMA, it is stated, among other things, that the rehabilitation process efforts are not yet optimal, and the implementation has not yet been integrated among law enforcers. Therefore, the very central position of judges is reaffirmed in relation to placement in medical and social rehabilitation institutions from the investigation, prosecution to examination process in the trial to express in the form of a ruling. In addition, addressing the narcotics cases in court has been proven to be an abuser but is not indicted from the start, the Supreme Court issued SEMA No.3 of 2015 concerning the Enforcement of the Formulation of the Plenary Meeting Results of the Supreme Court Chamber of 2015 as Guidelines for the Implementation of Duties for Courts. The SEMA basically states that judges examining and deciding cases must

be based on the indictment of the public prosecutor (Article 182 paragraphs 3 and 4 of the Criminal Procedure Code).

The prosecutor charges with Article 111 or Article 112 of the Narcotics Law, but based on legal facts revealed in court, it is proven that Article 127 of the Narcotics Law is not indicted, the defendant is proven to be a user and the number was relatively small (SEMA No.4 of 2010), the judge decides according to the indictment but may deviate from the special minimum criminal provisions by making sufficient considerations. Regarding the consistency of judges as mandated in SEMA No. 3 of 2015, it is reaffirmed at SEMA 1 of 2017. The existence of this circular is an effort of the Supreme Court in charge of the judiciary to provide supervision, especially judge apparatus in handling narcotics cases. Furthermore, as a form of effort, how the judiciary balances and interprets the law is a major part of judicial practice.

The role of the National Narcotics Agency (BNN) is still not considered urgent in supporting the examination of narcotics cases at trial. BNN is given the authority by law to coordinate the Integrated Assessment Team, but it has not been fully effective in practice even though the assessment results are very decisive, especially for narcotics abusers to take further action against him.<sup>11</sup>

Based on the data described regarding the quantity of narcotics cases in the court, the overcapacity of the occupancy rate of narcotics convicts in the Penitentiary raises a problem. The obstacle for judges in prosecuting narcotics users especially seems that they prefer to impose imprisonment rather than rehabilitation. Thus, the urgency of the topic of this research is considered relevant, at least knowing how the judge's views are to support the judicial function so that it is more effective and right on target in handling cases of narcotics abusers so that they can be rehabilitated.

The focus in this research is the perpetrators that become obstacles for judges in determining rehabilitation for narcotics abusers in practice. The methods used in this research is normative-empirical legal research methods with statutory approach, case approach, and conceptual approach. Sources or research materials in the form of primary sources of legal research are sets of rules that are established and enforced by the state or agency with

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<sup>11</sup> Cecep Mustafa, Margareth Malloch and Niall Hamilton Smith, "Judicial Perspectives on The Sentencing of Minor Drugoffenders in Indonesia: Discretionary Practice and Compassionate Approaches," *Crime, Law and Social Change* 74, (2020): 298, <https://doi.org/10.1007/s10611-020-09896-0>.

authority, for example court decisions, laws, sets of rules issued by the executive branch, regulations, or decisions issued by an official authority body, while secondary materials are legal research materials that do not have the authority of power, such as agreements, legal journals or law reviews, legal encyclopedias, books, papers, periodic indexes, and other materials that can be accessed in the online database.<sup>12</sup> Thus this legal research is a series of efforts to search, classify, investigate, interpret legal norms by using scientific methods to find legal truth.<sup>13</sup>

## **B. Discussion**

### **B.1. Policies on Criminal Sanctions and Rehabilitation in the Narcotics Law**

The Narcotics Law policy currently also carries the threat of punishment, even more varied than the punishment known in the Criminal Code (KUHP). The criminal sanctions in the Narcotics Law are various, namely fines, imprisonment to life imprisonment, and the death penalty. There are other sanction options in the form of punishment to undergo medical and social rehabilitation. Furthermore, looking at the Narcotics Law, it can be seen that the classification of criminal provisions is, among other things, intended for dealers and abusers. The Narcotics Law integrates law enforcement and health efforts, including regulating actions against abuse and the illicit trafficking of narcotics. The criminal threat for misuse is relatively lighter than the dealers, which tends to be heavier up to the death penalty.

However, as a policy, the use of criminal law to tackle crime is not necessary because, in the matter of policy, the people are faced with various alternatives. There is often a debate that the existence of criminal law is not the only means of tackling crime. Herbert L. Packer believes that there are meanwhile opinions against criminals and lawbreakers, in general, do not need to be criminalized. According to this opinion, crime is an experience of past barbarity that should be avoided, such an opinion can be understood, because, indeed, the history of criminal law according to M. Cherif Bassiouni is full of images which according to current standards are considered cruel and transcendent.<sup>14</sup> In the Modern Stream, criminal law aims to protect society from crime. The Modern School is also called the Positive School

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<sup>12</sup> Artidjo Alkostar, *Metode Penelitian Hukum Profetik* (Yogyakarta: Fakultas Hukum Universitas Islam Indonesia Press, 2018), 147.

<sup>13</sup> *Ibid.*, 146.

<sup>14</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana, 2008), 17.

because it seeks the causes of crime using natural science methods with the intention of influencing the perpetrators of crimes positively as far as they can be corrected. This flow is more relevant to the current situation of criminal law, where imprisonment or giving punishment according to the act is no longer relevant because of the lack of a deterrent effect on the perpetrators.<sup>15</sup> Another opinion is the need for criminal abolition according to Barda Nawawi Arief<sup>16</sup> is the understanding of determinism which states that people do not have free will in doing an action because it is influenced by their personal character, biological perpetrators and social environment perpetrators.

Thus, evil is a manifestation of a person's abnormal mental state. Therefore, the perpetrator cannot be blamed for his actions and cannot be subject to punishment, because criminals are a special type of human being who has organic and mental disharmony, so it is not punishment imposed on him, but treatment actions aimed at correcting him.

Wesley Cragg, in *The Practice of Punishment: Towards a Theory of Restorative Justice*, states that there are 4 (four) things in the criminalization of modern society. First, criminalization is understandable and unavoidable in modern society. Second, the implementation of punishment is a reflection of the evolving criminal justice system and the types of crimes that can be imposed cannot be separated from the type and character of the criminal act committed. Third, the implementation of crimes must undergo significant reforms with reference to the implementation of crimes in Western Europe and North America. Fourth, the number of sentences used must provide criteria for evaluating whether the execution of the crime is in accordance with the purpose of the punishment itself.<sup>17</sup> From the description of Wesley's opinion, the punishment stipulated in the Narcotics Law is not solely applied to all narcotics users. However, it must be tried to explore what causes a person's involvement in narcotics abuses so that it can be seen that the appropriate action to apply a sentence can be in the form of rehabilitation other than imprisonment, which is of course not appropriate and effective.

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<sup>15</sup> Jamin Ginting, "Sanksi Kerja Sosial Sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum di Indonesia", *Law Review* 19, no. 3 (2020): 248, <http://dx.doi.org/10.19166/lr.v19i3.2098>.

<sup>16</sup> Barda Nawawi Arief, *Bunga Rampai*, 18-20.

<sup>17</sup> Eddy OS Hiarij, "*Quo Vadis Pemasyarakatan.*"



## **B. 2. Process of Determining Rehabilitation of Narcotics Abusers**

Lexically "abuse" comes from the root word "abuse", which means the process, method, act of abusing.<sup>18</sup> People who commit an abuse of positive law use the term "abusers". The Narcotics Law defines "Abusers" are people who use narcotics without rights or against the law. People who use narcotics for themselves without the right or against the law have a meaning if the act is done without the permission supervision of a doctor. The laws and regulations legalize the use of narcotics for oneself as long as it is for the benefit of health.

Normatively, the Narcotics Law guarantees abusers to be sentenced to carry out rehabilitation, however, a "guideline" is needed for judges to strengthen their views in deciding or determining an abusive accused. At least the articles which oblige judges to place narcotics abusers into medical and social rehabilitation institutions, namely article 54, article 55, article 103, and article 127, can be effectively implemented. Rehabilitation efforts can be realized with the conditions formulated in article 127 paragraph (3) of the Narcotics Law, that is, as long as the abuser can be proven to be a victim of narcotics abuse, he/she is obliged to undergo medical and social rehabilitation. The Narcotics Law defines a victim of abuse, namely someone who accidentally uses narcotics because he was seduced, tricked, cheated, coerced and/or threatened to use narcotics.

There are provisions directly related to the judge's authority. Article 103 of the Narcotics Law formulates:

- (1) A judge examining a Narcotics Addict case may:
  - a. Decide to order the person concerned to undergo treatment and/or therapy through rehabilitation if the Narcotics Addict is found guilty of committing a Narcotics crime;  
or
  - b. Determine to order the person concerned to undergo treatment and/or therapy through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime.
- (2) The period of undergoing treatment and/or therapy for Narcotics Addicts as referred to in paragraph (1) sub-paragraph a is counted as the period of serving a sentence.

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<sup>18</sup> "Penyalahgunaan," Kemdikbud, accessed January 6, 2023, <https://kbbi.kemdikbud.go.id/entri/penyalahgunaan>.



Referring to Article 103 of the Narcotics Law that a narcotics addict is ordered to undergo rehabilitation, namely through a ruling or a court decision, this is not mandatory but depends on the judge's discretion because to strengthen the judge's conviction in determining it, the results of the assessment must first be completed so that it can be categorized as victims of narcotics abusers and narcotics addicts from the results of the intended assessment. The definition of the assessment is process, method, act of judging; value giving.<sup>19</sup> According to Article 8 of Law No. 25 of 2011 concerning the Implementation of Mandatory Reporting for Narcotics Addicts, the assessment is carried out through interviews, observations, as well as physical and psychological examinations of the narcotics addicts. The interview referred to includes medical history, history of narcotic use, history of medication and treatment, history of involvement in crime, psychiatric history, and family and social history of narcotics addicts. Then related to the intended observation includes observations of the behavior of narcotics addicts.

In the framework of law enforcement on the Narcotics Law, there are relatively many derivative regulations in the form of implementing instructions and technical guidelines issued by the Government, the Supreme Court, as well as by other law enforcement agencies. This derivative rule is deemed obligatory for judges to adjudicate and impose crimes against narcotics offenders. One of them is an implementing regulation in the form of a Joint Regulation which regulates/the basis for conducting the assessment of narcotics cases, namely Number: 01/PB/MA/III/2014, Number: 11/2014, Number: 11 of 2014, Number: 3 of 2014, Number: Per-005/A/JA/03/2014, Number: 1 of 2014, Number: PerBer/01/III/2014/BNN. The purpose of the Joint Regulation on the Management of Narcotics Addicts and Victims of Narcotics Abuse and Narcotics Abuse Victims into the Rehabilitation Institution, which was drafted and signed by 7(seven) heads of ministerial agencies and institutions on 2014, namely the Chairman of the Supreme Court 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, the Attorney General of the Republic of Indonesia, Chief of Police, and Head of the National Narcotics Agency, are made, among others:

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<sup>19</sup> "Penilaian," Kemdikbud, accessed July 12, 2023, <https://kbbi.kemdikbud.go.id/entri/penilaian>.

- a) To serve as technical guidelines in the handling of narcotics addicts and victims of narcotics abuse as suspects, defendants, or prisoners to undergo medical rehabilitation and/or social rehabilitation;
- b) Implementation of medical and social rehabilitation processes at the level of investigation, prosecution, trial, and punishment in a synergistic and integrated manner.
- c) Implementers of this assessment consist of a legal team and a medical/health team.

The legal team will explore the possibility of a suspect/abuser involved in the narcotics network, while the medical team will determine the extent to which the suspect/abuser is addicted so that further it will be obtained whether there is an indication of addiction or not. The existence of this Joint Regulation is a bright spot to determine whether each narcotics abuser is classified as a narcotics addict or a victim of abuse. Due to the reasons above, law enforcers should first assess drug abusers during the investigation process. Given that assessment is very important and determining in providing guidelines for judges when deciding narcotics cases, especially against abusers. But on the other hand, if the abuser is not categorized as a narcotics addict and victim of abuse, then as an abuser, he will still be subject to imprisonment in which the gradation of the punishment is differentiated according to the prescribed narcotics classification.

Regarding technical assessment implementation, see Regulation of the Head of BNN No. 11/2014 (Perka BNN) concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions. In the preamble of the Perka BNN, it is formulated that to determine the role of the suspect as a narcotics addict and/or narcotic abuse victim who is subject to medical and/or social rehabilitation based on the recommendations of the results of the TAT. TAT is a team consisting of a team of doctors and a legal team. TAT recommends regulating the implementation of the placement of suspects in rehabilitation institutions so that they can be carried out appropriately, transparently, and accountably as formulated in the aims and objectives of the Perka BNN. Thus, the narcotics addicts and the victims of narcotics abuse who are without rights and against the law as suspects and/or defendants in narcotics abuse who are currently undergoing the process of investigation, prosecution and trial in court are given treatment, care and recovery in the rehabilitation institution as formulated in Article 3 of Perka BNN. Comprehensively it can be understood that the assessment of narcotics

abusers is an assessment activity from the medical side to determine the stage of addiction in the perpetrator. Then legally to investigate whether the perpetrator was involved with the narcotics distribution network. The BNN as an institution authorized by law to carry out the assessment. Likewise, law enforcement officers (police, prosecutors, judges), under the authority given by law, can order narcotics abusers for themselves to carry out an assessment of themselves. The existence of a rehabilitation recommendation letter from the Integrated Assessment Team must continue to be carried out in all legal processes in court.<sup>20</sup> BNN itself requires a compulsory assessment by preparing documents in advance, namely:

1. Mandatory Documents:

- a) A letter of request from the investigator/public prosecutor/judge for examination/assessment.
- b) A letter of request from the client/guardian/attorney in the form of the identity of the applicant, the relationship between the applicant and the suspect, chronology and subject matter.
- c) Photocopy of license to Represent the Client if the applicant is the suspect's attorney/lawyer and a power of attorney from the suspect's family.
- d) Photocopy of arrest warrant and warrant of detention.
- e) Police Investigation Report (BAP).
- f) Urine test results from the BNN Laboratory/Puslabfor Mabas Polri.
- g) The investigator/public prosecutor is willing to sign a statement that will attach the results of the assessment in the Police Investigation Report.
- h) Two photographs of the suspect, 4x6 cm sized.
- i) Photocopy of the suspect, applicant's or legal attorney's Identity Card.
- j) Photocopy of the applicant's and suspect's family card.

2. Support Documents:

- a) Photocopy of Social Health Insurance membership.
- b) A certificate from the place of rehabilitation if the suspect has been or is in the process of rehabilitation
- c) Photocopy of marriage certificate if the applicant is the husband/wife of the suspect.

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<sup>20</sup> Fauzi Rizky, "Pelaksanaan Rehabilitasi Terhadap Pecandu, Penyalahguna dan Korban Narkotika," *Riau Law Journal* 1, no. 1, (2017): 118, <http://dx.doi.org/10.30652/rlj.v1i1.4180>.

- d) A certificate from the school/college/educational institution if the suspect is a student
- e) A certificate from the workplace if the suspect is an employee/worker.

As a comparison, it can be seen that the TAT mechanism in BNN of West Java Province is based on research observations. Medical team in TAT consist of doctors and psychologists, and the legal team consist of elements from the police, BNN, prosecutors, carries out the assessment coordinated by the Head of the BNN of West Java Province. The medical team investigates whether the suspect/defendant has an addiction and measures the level of addiction whether it is an addict or not. Specifically, data is obtained that the guide for carrying out the assessment explores several indicators, namely:

- a. Demographic Information, knowing marital status and education history.
- b. Medical Status, to determine the history of medical illnesses experienced, including whether or not they have been treated, chronic illnesses, and whether they have HIV, Hepatitis B and Hepatitis C.
- c. Work status/life support including residence, skills or hobbies/interests.
- d. Narcotics Use Status, explore the types of narcotics used, including how to use them.
- e. Legal status, deepening the client's history of possible involvement of other crimes.
- f. Family/Social History, explores the situation of the client's relationship with his family and social environment.
- g. Psychiatric status, deepens the client's consequences/effects received from the client while using narcotics.
- h. Physical examination, performed a health examination of the digestive system, blood vessel system, respiratory system, central nervous system, ENT and skin, including urine tests.

After the above indicators are assessed, the medical team issues a job diagnosis, a resume of the problem, and a therapy plan. Then the assessment form is signed by the appointed medical team. Unlike the legal team, the legal team conducts in-depth interviews with the suspects/defendants who are assessed to investigate whether there is involvement with drug trafficking networks/dealers or just as users. After receiving the results, the legal team prepared an official report on the results of the legal assessment. Furthermore, based on the permission from the head of the BNNP, the assessment results are carried out, and the appropriate recommendations are concluded for the accused/suspected of abusing narcotics.

Recommendations issued by the TAT team are submitted to agencies requesting TAT applications, namely the police, prosecutors, and courts. Outside these institutions, the application cannot be granted.

### **B. 3. Problems of Judges Determining Rehabilitation for Narcotics Abusers**

Proving that Narcotics abuse is a victim of Narcotics as stipulated in the Narcotics Law, is a difficult matter, because you have to look at the beginning of Narcotics users using Narcotics and it is necessary to prove that the use of Narcotics when using Narcotics is in a condition of being persuaded, tricked, deceived, forced, and or threatened to using Narcotics.<sup>21</sup>

The results of the assessment are very strategic and are considered very helpful for judges to find bright spots when examining cases of narcotics abusers. From the results of the assessment, it will be known whether narcotics abusers are victims of abuse or addicts, so that there is no doubt for the judge to order rehabilitation. The results of the assessment can also be obtained information that the guides are related to illegal networks of circulation/dealers so that they can be further punished by imprisonment.

Judges are often faced with two difficult choices, namely, when justice and legal certainty cannot be united in a decision, these two principles should ideally be juxtaposed in a decision, however combining justice and legal certainty in reality is not easy. Sometimes justice and legal certainty are in a different place if we want to approach a place where justice is located then we will move away from legal certainty as well as in the imposition of rehabilitation for narcotics abuse addicts, existing regulations provide options for judges in imposing rehabilitation measures so that rehabilitation measures are considered highly subjective. Therefore, discretion is needed for judges in imposing rehabilitation measures for addicts who abuse narcotics so that the objectives of the narcotics law are to be realized.<sup>22</sup> Legal certainty as one of the objectives of law can be said to be part of efforts to achieve justice. The real form of legal certainty is the implementation or enforcement of an action regardless of who does it. With legal certainty, everyone can predict what they will

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<sup>21</sup> Tony Yuri Rahmanto, "Kepastian Hukum Bagi Pengguna Penyalahgunaan Narkotika: Studi Kasus di Provinsi Jawa Timur," *Jurnal Penelitian Hukum De Jure* 17, no. 2 (2017): 278, <http://dx.doi.org/10.30641/dejure.2017.V17.265-282>.

<sup>22</sup> Tumbur Palti D. Hutapea, et.al, *Rekonstruksi Ideal Implementasi Hukuman Rehabilitasi Terhadap Penyalah Guna Narkotika* (Jakarta: Kencana, 2021), 42.

experience if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.<sup>23</sup>

Anang Iskandar criticized how the judge in his decision sentenced himself to prison for narcotics abusers, which is briefly described as follows:<sup>24</sup>

- a. Judges in imposing sanctions was not based on the Narcotics Law which specifically integrates a legal approach and a health approach.
- b. The judge did not refer to the purpose of the Narcotics Law which was explicitly stated in article 4, namely that against abusers is to prevent, protect, save the abusers, even though they are prohibited and are threatened with a criminal sentence they are guaranteed to receive rehabilitation.
- c. Majority of judges do not understand the Narcotics Law which is based on a Health approach in dealing with narcotics abusers which is based on protection, scientific values, and has special excuses for abusers so that they are not jailed.
- d. Judges were negligent in his obligations. In examining cases of abusers based on the Narcotics Law, a judge is obliged to pay attention to whether the accused abuser being investigated is in a state of dependency or a victim of narcotics abuse.
- e. Many judges are asking “if you are sentenced to rehabilitation, where is the place?”.
- f. Judges do not have the competence to handle cases of narcotics abuse but are appointed to handle or try cases of abusers so that their decisions are not in accordance with the philosophy and purpose of punishment for abusers and addicts based on the Narcotics Law.
- g. Judges need expert information about cases of narcotics abuse, namely criminal cases in which the perpetrator is a person who is ill with narcotics addiction.

Regarding the criticism from Anang Iskandar, it is in line with a qualitative research result which concluded that the judges did not understand the integrated assessment process.<sup>25</sup>

There are various reasons that are considered by the judge to impose a sentence of imprisonment/fine and rehabilitation sentence. The survey was carried out by distributing questionnaires to judges related to the implementation of rehabilitation sentences

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<sup>23</sup> Dahlan, *Problematika Keadilan Dalam Penerapan Pidana Terhadap Penyalahguna Narkotika*, 221.

<sup>24</sup> Anang Iskandar, *Politik Hukum Narkotika* (Jakarta: PT. Elex Media Komputindo, 2020), 88-92.

<sup>25</sup> Marryo Borry WD, Hardisman, Rika Susanti, “Analisis Perumusan Rekomendasi Tim Assesmen Terpadu dan Penerimaan Hakim BNN Provinsi Sumatera Barat”, *Human Care Journal* 4, no.3 (2019): 212. <http://dx.doi.org/10.32883/hcj.v4i3.614>.

with a total of 66 respondents at the court of the first instance randomly in several provinces in Indonesia. The judge respondents are divided into court classes Special Class IA, Class IA, Class IB, and Class II, which are described in Table below.<sup>26</sup>

<b>Judge's Consideration of Handing Down Criminal Imprisonment/Fine</b>	<b>Judge's Consideration of Handing Down Rehabilitation Punishment</b>
No assessment results and/or doctor's statement: 20%	Results of the assessment and/or doctor's statement: 64%
Engaged in networks/dealers: 20%	Are addicts or victims of abuse: 21%
Recidivists: 15%	Based on the testimony of witnesses/experts: 18%
Based on legal/trial facts: 12%	Based on legal/trial facts: 17%
Does not meet the SEMA element No. 4 of 2010: 12%	First time use: 14%
The amount of evidence is more than the minimum limit: 11%	Meets element SEMA No. 4 of 2010: 14%
Non addicts/ abuse victims: 11%	Not involved in networks/dealers: 12%
For a deterrent effect: 9%	Small amount of evidence: 11%
Meet the criminal elements the criminal prosecutor charged: 6%	Future of the perpetrators: 3%
Caught red-handed: 4.5%	Others: 3%
No rehabilitation place: 3%	
Based on the testimony of witnesses/experts: 3%	

**Table 1. Judge's Considerations of Sentencing Criminal Imprisonment/Fines and Rehabilitation Punishment**

Based on the data in table 1, the majority of judges interviewed actually wanted protection for Narcotics abusers, it was better to undergo rehabilitation. However, it must comply with the recommendations from the Integrated Assessment Team attached to the case file. The judge can oblige addicts and drug abusers to undergo rehabilitation but this also needs to be strengthened by existing evidence such as a letter of recommendation from the Integrated Assessment Team.

### **C. Conclusion**

The Narcotics Law stipulates that judges can issue decisions or court decisions to rehabilitate the defendants as regulated in article 103 of the Narcotics Law. Still, it is not

<sup>26</sup> Hutapea, et.al, *Rekonstruksi Ideal Implementasi Hukuman Rehabilitasi Terhadap Penyalahguna Narkotika*, 97.



mandatory because it depends on the judge's discretion. However, the judge can consider if the assessment results from the Integrated Assessment Team (TAT) allow it to be attached to the case file, even the results of the assessment can be equated with an experts testimony which is an expert opinion written in a letter. Further research is needed regarding the effectiveness and synergy between the Supreme Court and the National Narcotics Agency to optimize the assessment results to serve as a guide for judges in formulating decisions.

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