

The Application of The Principle *Equality Before The Law* In Enforcement of Narcotics Crime In Indonesia

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Abstract : The theory of distributive justice deals with the determination of rights and a fair distribution of rights in the relationship between the community and the state, in the sense of what the state should provide to its citizens, including justice in the field of law which became known as the principle of *Equality Before the Law*. Good law is not only to carry out legal certainty, but to guarantee protection and equality of position. In Indonesia, the principle of *Equality Before the Law* is adopted in Article 28D of the 1945 Constitution. Furthermore, P origin 27 also emphasizes that all citizens have the same position under the law. Based on the 1945 Constitution above, there must be treatment, which should be the same for everyone and for every citizen, including narcotics abusers in the provision of criminal witnesses. as well as criminal rehabilitation must go through a series of examinations and legal evidence, including the determination of decisions through judges' considerations, to determine whether the person concerned is an addict or a victim of narcotics abuser. As a consequence of the division of power between the legislature, executive and legislature (judges) in the design of the constitution. However, based on several decisions the panel of judges in narcotics cases in Indonesia, there are still those that do not reflect the application of the principle of *Equality Before The Law* because the accused abuser should be sentenced to a *rehabilitation sentence* that applies to all. Meanwhile, imprisonment should be imposed on dealers to dealers. The problem raised in this study is related to *Equality Before the Law* in Law Enforcement of Narcotics Crimes in *Indonesia*. The results of the study show that the nature of *equality before the law* in the future for the enforcement of narcotics crime law must (*ius constituendum*), the existence of *ad hoc* judges to provide a final decision based on the recommendations of the Integrated Assessment Team as a manifestation of the principle of the rule of law in Indonesia, in order to achieve justice based on *equality before the law*.

Keywords: *Equality Before The Law*, *Law Enforcement*, Narcotics Crime

1. INTRODUCTION

Aristotle gave rise to his ideas about the principle of equality before the law. In its development, Aristotle's philosophy was formulated with the expression that justice is carried out when the same things are needed equally and unequal things are treated unequally. Aristotle distinguishes justice into distributive justice and commutative justice. Distributive justice is justice that demands that everyone gets what is due, so it is proportional. Distributive justice relates to the determination of rights and the fair distribution of rights in the relationship between the community and the state, in the sense of what the state should provide to its citizens, including justice in the field of law.

In Indonesia, this equality before the law was later adopted into Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UD 1945) which affirms that all citizens are equal before the law. The meaning of *equality before the law* is found in almost all state constitutions. This is the norm that protects the human rights of citizens. Equality before the law means that every citizen must be treated fairly by law enforcement officials and the government. So every law enforcement officer is constitutionally bound by the value of justice that must be realized in practice. However, upholding *equality before the law* is not without obstacles, it can be in the form of juridical and political obstacles, or sociological and psychological barriers (Haris Azhar, 2022). Every state or authority must base its power and regulation based on law, and the will of law that is imbued in the state constitution, not law as the ruling power, or political power (Bobby Rantung, 2016).

Good law is not only to implement legal certainty, but to guarantee protection and equality of position, as Article 28D states that 'Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law'. Meanwhile, Article 27 (1) affirms that all citizens have the same position under the law. From these two articles, it can be illustrated that there is treatment that should be the same for everyone and for every citizen, including narcotics abusers, having to go through a series of examinations and legal evidence, including determining the decision through the judge's consideration, to determine whether the person concerned is an addict. or victims of drug abuse (Vivi Ariyanti, 2019). Thus, the punishment applied will be in accordance with the needs of justice, so that the concept of *equality before the law* will be implemented properly (Teuku Aliyul Imam, 2018).

Equality in the law of the two articles above are very different, in article 27 (1) it is in the chapter on Citizens and Residents. While article 28D is in the chapter on Human Rights (HAM) (AM. Endah Sri Astuti Molalan Zebua, Nur

Rochaeti,2016). This means that equality in the eyes of the law is something that is fundamental to both the responsibility of the state towards everyone in Indonesia, or even in the global context, in the preamble of the 1945 Constitution, participating in maintaining world peace (Anton Sudanto, 2017). Treatment, equality, protection and guarantees before the law for everyone within the Territory of the Unitary State of the Republic of Indonesia, are generally better known as *equality before the law*, as described in the articles previously described above (Molalan Zebua, Nur Rochaeti, 2015).

Equality before the law has an impact in its implementation, on the grounds that Article 27 paragraph (1) of the 1945 Constitution affirms that all citizens are equal before the law, not only on actions but actions that lead to fair legal certainty, while in practice, equality position in the sentence "legal protection", there is no real evidence in its application. Justice legal protection is only for the orientation of the meaning of the interests of the community, but not for the interests of individuals who are charged with the death penalty for narcotics abusers (Nur Rochaeti Michael Thomson, Eko Soponyono, 2016).

Guaranteed legal protection that leads to the right to "right to life", is also in line with the mandate of the Declaration of *Human Rights* . One of the important elements in law is its substance which should honor human beings, in the language of the General Declaration of Human Rights (UDHR) it is called *Human Dignity* (Riza Alifianto Kurniawan, 2018). Various events that disrupt human values are caused by bad practices and the use of law just to serve the will of the authorities (Mustari Ali, 2017). The consolidation of recognition of human rights, for example, can be seen from the emergence of the Universal Declaration of Human Rights in 1948. The UDHR expressly rejects discriminatory practices (article 2). More broadly, the UDHR uses "everyone ..." meaning that there should be no exceptions to rights, especially the rights needed for human existence to live with dignity, including refusing legal discrimination in the name of the public interest (AM Endah Sri Astuti Bagas Alan Budi Prakoso, RB.Sularto,2019).

Life protection guarantees will be visible and real when in the law enforcement process, especially in the Territory of the Unitary State of the Republic of Indonesia, prioritizing justice not only in terms of rules against perpetrators of acts but especially when perpetrators will be subject to rules, perpetrators are obliged to get fair law enforcement as the foundation of our state in pancasila details (Michael Thomson, Eko Soponyono, 2011).

As social beings, the development of the economic level also influences the actions and actions of the state in the 4th millennium today. Life and lawlessness often occur and become two inseparable parts (Bambang Gunawan,2011). Economic needs, and social life give birth to a trend that every award is given to those with money, forcing anyone to make ends meet and adapt to the challenges of the current millennial century. Life is no longer about what is good to do, but what is best for survival (Christy Sumual, 2015). This is what often causes violations of the law and has the potential to commit criminal acts.

Narcotics crime is currently an *issue* that contributes to psychological assessments and reactions of the community in the process of applying punishment, especially in the application of criminal witnesses for narcotics criminals who are usually subject to punishment (criminal) familiar with *delic / Strafbbaarfeit* . According to Adam Chazawi stated:

“ *Strafbbaarfeit* is known in criminal law, defined as offense, criminal event, and criminal act. *Strafbbaarfeit* consists of 3 (three) words, namely *straf*, *baar*, and *feit* . *Straf* is defined as criminal and legal, but can be *interpreted* as can and may. While *feit* is defined as acts, events, violations, and deeds. English is *delict*. That is, an act for which the perpetrator can be punished (criminal) (Juan Belva Caesar Abram Korompis,2018).

The definition of a crime/delict can be described as stated by Adam Chazawi as follows:

1. According to the judge, an offense is an act or action that is prohibited and is threatened with punishment by law (criminal).
2. Moeljatno said that a *strafbaarfeit* is actually a human behavior that is threatened with criminality by laws and regulations.
3. The term *strafbaarfeit* was later translated into Indonesian by Rusli Effendy. Delik is an act which is prohibited by criminal law and is punishable by a criminal offense against anyone who violates the prohibition.

The application of Narcotics Crime for narcotics addicts and victims of narcotics abusers due to the existence of a crime/*Strafbbaarfeit*, is felt to be contrary to the implementation of *equality before the law*, especially when the death penalty is stipulated. *Delic / Strafbbaarfeit*, narcotics addicts and victims of legal abuse of narcotics addiction and become victims of narcotics abuse which is a narcotics crime, can result in bodily and or moral punishment and even confiscation of some wealth for the perpetrators (Piktor Aruro, 2016).

Corporal and/or moral punishment, which is identical with the “Right to Life” is part of the provisions on *Non-derogable rights* which are Human Rights that cannot be reduced under any circumstances (Atet Sumanto ,2017).The rights included in *these non-derogable rights* are regulated in Article 28I paragraph (1) The 1945 Constitution which includes: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on a retroactive basis. is a human right that cannot be reduced under any circumstances” Explanation o.f Article 4 of Law Number 39 of 1999 concerning Human Rights (Human Rights Law) further explains what is meant by "under any circumstances" including a state of war, armed conflict, and or an emergency. Meanwhile, there are also *derogable rights* , which are rights that the state can reduce or limit its fulfillment in certain circumstances (Piktor Aruro,2016). Elucidation of Article 9 of the Human Rights Law states that the right to life can be limited in two respects, namely in the case of abortion for the benefit of the mother's life and in the case of capital punishment based on a court decision.

The legal process at the examination level in the enforcement of narcotics crimes, against narcotics addicts and victims of narcotics abusers by imprisoning is an act of depriving people of the "Right to Life", *non-derogable rights* that cannot be reduced under any circumstances, but if proven to have committed a criminal act of one's right to freedom can be revoked because they have committed a crime and this is something that is absolute according to the law there must be a prison sentence to limit a person's rights because they have committed an offense.

Rehabilitation measures which are stated in accordance with Article 56 of Law Number 35 of 2009 concerning Drugs for narcotics addicts and victims of narcotics abuse, are part of law enforcement by judges, to carry out *equality before the law* in

narcotics crimes (FX Adji Samekto Ahmad Ulil Aedi, 2007). In this case, when the judge carried out rehabilitation, it turned out that some people who did not understand the law enforcement process assumed that the judge had been paid / bribed. *derogable rights* and *derogable rights*.

If in the end the judge must issue a decision in the form of a death penalty given in order to punish the perpetrators of crimes who are considered unable to return to society because the crimes they have committed are included in the qualifications of *Serious Crimes* as long as they have gone through a series of examinations to determine whether the person concerned is an addict, or a victim of narcotics abuse or abuse. even "dealers" who only want to enrich themselves, without thinking about the interests of others (Christy Sumual,2015).

The death penalty besides being the most severe punishment is also a punishment that is generally very scary, especially for convicts who are awaiting execution. The death penalty is listed in the Criminal Code (KUHP) which was inherited from the Dutch Colonial Government (Ratih Y Situngkir, 2016). In addition, the threat of the death penalty is also spread in various laws and regulations, including the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (Narcotics Law). This is confirmed in the Constitutional Court Decision No. 2-3/PUU-V/2007 which states that in the future the formulation, application, and implementation of the death penalty should pay attention to four important things. *First*, the death penalty is no longer a principal crime, but as a special and alternative punishment. *Second*, the death penalty can be imposed with a probationary period of ten years which if the convict behaves commendably can be changed to life imprisonment or 20 years. *Third*, the death penalty cannot be imposed on children who are not yet adults. *Fourth*, the execution of the death penalty against a pregnant woman and a mentally ill person is suspended until the pregnant woman gives birth and the mentally ill convict recovers. The death penalty is still one of the criminal sanctions that are maintained to punish criminals.

The regulation of the death penalty in the Draft Criminal Code is regulated in Articles 86 to 89. The controversy over the death penalty is also debated due to the Second Amendment to Article 28 A and Article 28 I paragraph (1) of the 1945 Constitution which expressly states that everyone has the right to live and has the right to defend his life and life, because it is a *non-derogable right* or a human right that cannot be reduced under any circumstances.

The implementation of the death penalty has been widely discussed by Indonesia and even internationally. This is influenced by the Indonesian government's plan to execute stage two death row convicts who are generally convicted of drug cases. The plan was then implemented on April 29, 2015 at dawn in Nusakambangan. Eight death row convicts for drug cases have been executed in Nusakambangan, Cilacap, Central Java, while the convict from the Philippines has been postponed. Australian, Nigerian, Brazilian and Indonesian convicts were executed by firing squad after notification of executions were issued over the weekend. The convicts filed various legal steps, including challenging President Joko Widodo's decision to refuse to grant pardons (Rantung, 2016). President Joko Widodo has on various occasions said that Indonesia has experienced a drug emergency, where 18,000 people die every year from drugs, while tens of thousands more suffer in rehabilitation centers. In general, people who reject the implementation of the death penalty argue that the death penalty is contrary to human rights as always voiced by KontraS (the Commission for Missing Persons and Victims of Violence) in opposing the implementation of the death penalty.

For a long time, justice seekers/community have longed for fair law enforcement. However, in the current practice of law enforcement, the value of legal certainty is more prominent than the community's sense of justice. Various court decisions illustrate that law enforcement tends to think that the law is law, and creates public disappointment with law enforcement in Indonesia (Novita Sari, 2017).

The court decision referred to in relation to the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (Narcotics Law) to protect the public from the dangers of Narcotics Abuse and prevent and eradicate illicit Narcotics, is known as the implementation of the death penalty.

The sanctions regulated and intended in Law Number 35 of 2009 contain minimum and maximum provisions. Narcotics crime is one of the *extraordinary crimes*, so it is necessary to carry out extraordinary eradication such as weighting the threat of criminal sanctions, but whether it is in accordance with the aims and objectives of *Equality Before The Law* within the framework of the Unitary State of the Republic of Indonesia. The special minimum criminal regulation in Law Number 35 of 2009 raises the assumption that the law aims to provide severe penalties for perpetrators of criminal acts in eradicating narcotics crimes. Meanwhile, the special maximum criminal arrangement aims to prevent arbitrary judges from issuing sentencing decisions so that they do not exceed the limits specified in the law. This means that the judge cannot impose a sentence that exceeds the special maximum criminal provisions that have been regulated in the law because the defendant must also receive legal protection. The connotation of legal protection is meant here, including the application of the death penalty through the judgment of judges in law enforcement, and the connection with *equality before the law* when someone is proven to have committed a narcotic crime.

Regarding the implementation of punishment, both rehabilitation and imprisonment to the death penalty, in reality it is still felt that it is not based on the principle of *equality before the law*. This can be seen in several court decisions including:

1. The decision of the Palangkaraya District Court Number 17/Pid.Sus/2022/PN Plk, stated that the Defendant Salihin Alias Saleh Bin Abdullah was not legally and convincingly proven guilty of committing a crime in the first alternative charge, namely Article 114 Paragraph (2) of the Law. RI No. 35 of 2009 concerning Narcotics in conjunction with Article 55 paragraph (1) 1 of the Criminal Code and the second alternative indictment, namely Article 112 Paragraph (2) of the Republic of Indonesia Law no. 35 of 2009 on Narcotics. The defendant was acquitted, even though evidence was found of 2 (two) large plastic packs containing class I narcotics of methamphetamine type with a gross weight of 200 (two hundred) grams and other witness statements.
2. The decision of the Bangko District Court Number 95/Pid.Sus/2016/PN Bko, stated that the Defendant Hendri Kurniawan Alias Hen Bin Bachtiar GA was legally and convincingly proven guilty of committing the crime of "Abuser of Narcotics Category I for himself and sentenced the Defendant to imprisonment for 1 (one) year and 10 (ten) months

with evidence of 1 (one) clear plastic wrap containing methamphetamine with a gross weight of 1.09 grams (one point zero nine) grams, (half) item containing *extacy* narcotics with a gross weight of 1.04 gr (one point zero four) grams, 1 (one) clear plastic package containing half an *extacy narcotic* with a gross weight of 0.42 grams (one point four two) grams. The judge prefers to impose a prison sentence, not a rehabilitation sentence.

3. Central Jakarta District Court Decision Number 770/Pid.Sus/2021/PN Jkt, stated Defendant I Zen Vivanto, Defendant II. Ramadhania Ardiansyah Bakrie, Defendant III. Anindra Ardiansyah Bakrie has been legally and convincingly proven guilty of committing the criminal act of Narcotics Abusing Group I for himself which was carried out jointly and sentenced Defendant I. Zen Vivanto, Defendant II. Ramadhania Ardiansyah Bakrie, Defendant III. Therefore, Anindra Ardiansyah Bakrie was sentenced to prison for 1 (one) year each with evidence of 1 (one) clear plastic clip containing methamphetamine with a net weight of 0.5653 grams. This decision was later amended by an Appeal Decision of the Jakarta High Court Number 34/PID.SUS/2022/PT DKI which stated that it ordered the Defendants to undergo treatment and/or treatment through medical and social rehabilitation at the Cisarua Fan Campus Rehabilitation Institute, Bogor Regency, for 8 years each (Eight) Months Calculated Whole With The Rehabilitation Period The Defendants Have Been Undergoing.

Based on the decision above, there are various problems from the judge's decision in the narcotics case. The problems in question are related to: *First*, philosophical problems. Where the judge's decision does not reflect the application of the principle of *equality before the law* against narcotics abusers (not as dealers or dealers). There should be a uniform decision, namely rehabilitation penalties for abusers and criminal penalties for dealers and dealers; *Second*, theoretically problematic. According to Hans Kelsen, humans in finding *absolute justice* must be based on positive law. Regarding Hans Kelsen's opinion, the panel of judges when making decisions were not based on the Narcotics Law which stipulates rehabilitation sentences for abusers and imprisonment or capital punishment for dealers and dealers. This is due to the fact that the law regarding criminal penalties for abusers, dealers and dealers is still multi-interpreted, even though according to Lon L. Fuller, a multi-interpreted rule is not a good rule of law.

Third, juridically problematic. Article 56 of the Law on Narcotics states that narcotics addicts and victims of narcotics abuse are part of law enforcement by judges, to carry out *equality before the law*. Furthermore, Article 127 paragraph (1) of the Narcotics Law states that the prison sentence for narcotics abusers of class I is for themselves but Article 127 paragraph (3) regulates that the abuser as referred to in paragraph (1) can be proven or proven as a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation. Due to the rule of law, the panel of judges in making decisions is not uniform for narcotics abusers.

Fourth, sociologically problematic. With the non-uniformity of judges' decisions for narcotics abusers, there is an assumption in the community that judges in making decisions are unfair and indicate that judges do not carry out applicable laws and regulations (positive law).

Starting from the background that has been stated, the formulation of the problem to be studied is: What is the nature of *equality before the law* in the future towards law enforcement for narcotics crimes?

Research purposes

1. Looking for, analyzing and finding the nature of *equality before the law* in the future towards law enforcement of narcotics crimes.

Benefits of research

1. Theoretically, the results of this study can enrich the repertoire of knowledge in the field of law, especially in criminal law related to narcotics crimes.
2. Practically the results of this study can be input for law enforcement, especially judges in making decisions related to narcotics crimes based on the principle of *equality before the law*.

2. RESEARCH METHOD

Types and Types of Research

The type of research that will be used is normative legal research, which is a research that mainly examines positive legal provisions, legal principles, legal principles and legal doctrines in order to answer the legal issues faced. This type of research is normative juridical, namely legal research methods carried out by examining library materials or secondary materials.

Problem Approach

In this study, the author examines the implementation of *Equality Before The Law in Law Enforcement of Narcotics Crimes in Indonesia*. The problem approach used in this research is the *statute approach* to obtain legal arguments in answering the problem; conceptual approach (*conceptual approach*) this approach departs from the views and doctrines that develop in the science of law; the *case approach* is carried out by examining cases related to the issues/problems encountered which have become court decisions that have permanent legal force. The main points in the case approach are the judges' considerations on the implementation of *Equality Before The Law in Law Enforcement of Narcotics Crimes in Indonesia*; (Peter Mahmud Marzuki, 2006) the *philosophical approach* in principle views law as part of the philosophical values and noble ideals of a society, a *comparative approach* is carried out by comparing legal regulations or court decisions in a country with the laws of another country, one or more countries with a record of being compared must be the same thing.

Types and Sources of Legal Materials

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Research materials in the form of primary legal materials and secondary legal materials (Soerjono Soekanto and Sri Mamudji, 2006). Primary legal materials referred to in the form of:

1. 1945 Constitution of the Republic of Indonesia
2. Law Number 35 of 2009 concerning Narcotics
3. Law of the Republic of Indonesia Number 29 of 1999 concerning Human Rights
4. Decision of the Constitutional Court Number 2-3/PUU-V/2007 concerning the implementation of the death penalty.

Secondary legal materials include materials that support primary legal materials such as text books, articles in various scientific magazines or research journals in the field of law, papers submitted in various forms of meetings such as discussions, seminars, workshops, and others. other.

Primary legal materials in the form of statutory regulations are collected by conducting an inventory and categorization code. Secondary legal materials are collected using a *card system*, either with an overview card (containing a summary of the writing according to the original, in outline and the main essay containing the author's original opinion); citation cards are used to contain notes on the subject matter), as well as review cards (contains analysis and special author notes) (Soerjono Soekanto, 2015).

Legal Material Collection Techniques

In normative legal research, several data collection techniques can be carried out, including: (1) Seeking information from both private and public libraries; (2) Then make visits to libraries, both regional libraries, faculty libraries and university libraries to get books, results of previous research related to research problems, for example research reports, bulletins, brochures, and so on for secondary data; (3) Furthermore, the materials that have been obtained are selected related to the object of research for later processing (Ronny Hanitijo Soemitro, 1982)

Legal Material Analysis Techniques

Materials that have been collected and sorted (*coding*) or have been selected and processed, are then analyzed *qualitatively* and *logically translated* using *deductive* and *inductive methods* . The juridical qualitative analysis was carried out descriptively and prescriptively, so it is hoped that it will provide a solution to the problems in this study.

Legal Material Processing and Analysis

The data is processed with the following steps: (1) Editing first, so that if there are errors it can be corrected (editing); (2) Each is given a code to make it easier to sort/separate according to their respective categories (*coding*); (3) After all the data has been grouped, then it is processed and researched, and its validity is evaluated.

Furthermore, primary legal materials and secondary legal materials that have been collected (inventory), are then grouped. This is then studied with a statutory approach to obtain an overview of the level of synchronization of all legal materials. The legal materials that have been classified and systematized are studied, studied and compared with legal theories and principles put forward by experts, to be analyzed normatively.

In the processing and analysis of legal materials, the use of normative legal research types is used to try to answer the problem. Analysis of legal materials using normative legal research is intended to obtain a more optimal picture relating to *Equality Before The Law* in Law Enforcement of Narcotics Crimes in Indonesia.

3. RESULTS AND DISCUSSION

Legal Rules Regarding Narcotics Crime

Criminal law reform in the Indonesian Drug Law appears to be proceeding in a dynamic social and technological development that affects the development of crime in Indonesia, which requires anticipatory actions and policies. Anticipation of the threat of criminal acts which are also in the form of narcotics and psychotropic abuse is carried out through legal reforms which have quite a long history and clear paths and steps (O.C. Kaligis and Soedjono Dirdjosisworo , 2002).

Below will be presented the points regarding the reform of criminal law in the Drug Act "Drug Act" (*Verdoovende Middelen Ordonnantie S.27-278 jo.536* dated 12 May 1927 Effective January 1, 1928) in addition to to show the state of the dangers of drugs at that time as well as a document that needs to be preserved for the study of legal history. New provisions regarding anesthetic drugs and plants from which they can be processed into anesthetic Stbl. 27-278 jo 538 dated May 12, 1927, came into force on January 1, 1928, enhanced by Supplementary Gazettes dated July 22, 1927 and February 3, 1928.

Then for all of Indonesia, including special regions, the provisions as contained in the State Gazettes: 1872 No.76, 1897 No. 17, 1905 No.187, 1906 No. 373 (*Biliton Regie Ord*): 1909 No.441 (*Java Regie Ord*), 1911 No.188, 1911 No.225 (*Riau Regie Ord*), 1911 No.373, 1911 No.255 (*Oostkus Regie Ord*): 1912 No. 536, 1913 No. 219 (Aceh Regie Ord), 1914 No. 351 (*Bornedo Regie Ord* .1914): 1914 No. 562, 1915. If we investigate further, these regulations at that time did not recognize the rehabilitation of narcotics users.

In relation to narcotics crimes, which are transnational in nature, they are carried out using a high modus operandi and sophisticated technology, while the existing laws and regulations are not in accordance with the development of the situation and conditions that develop to overcome these crimes. So, improvements were made to Law Number 9 of 1976 concerning Narcotics by presenting Law Number 22 of 1997 concerning Narcotics. Subsequently, in 1997, Law No. 5/1997 on Psychotropics was also issued . This law is based on sustainable development efforts in all fields, including the development of people's welfare,

including health, by paying attention to health services, in this case the availability and prevention of drug abuse and the eradication of illicit trafficking, especially psychotropic substances.

Entering the beginning of narcotics criminal law reform, it also underwent changes based on and using a usability approach, namely as a reflection of *political* will that can truly achieve the goals that are the aspirations of the community. Some countries have become famous as countries that uphold the rule of law and are able to realize justice, precisely because they have properly launched legal reforms such as the Netherlands which brilliantly carried out reforms in the field of business law and was also very monumental in carrying out legal reforms in the field of criminal law by presenting the Codification of Laws. Modern Criminal (WvS). Singapore is also known for its rule of law and *up-to-date pragmatic business law reforms*. In fact, Malaysia and the Philippines already have a newly reformed Criminal Code. Then Japan is famous for having an effective anti-corruption criminal law, including not only being substantively relatively accommodating and anticipatory but also in law enforcement through consistent and consistent criminal justice administration because it is supported by the right law enforcement. The Japanese reality is similarly found in Korea. Moreover, a careful review of legal reform is a barometer for evaluating a country on how the rule of law is implemented or not.

Constitutionally Indonesia (UUD 1945) as a state of law, specifically reforms criminal law in the Narcotics Law by placing drug abuse as the enemy of all citizens, so that there is great power from legal actors to enforce the law in an effort to deal with the dangers of drugs. Legal reform that occurs through a process of joint efforts in tackling the dangers of drug abuse. It can be said that the reform of the Narcotics Law since the renewal of the Drug Law product of the Dutch East Indies Government (1927) until the birth of Law Number 22 of 1997 concerning Narcotics and Law Number 5 concerning Psychotropics has a noble value and should be proud of, so that success in efforts to overcome the dangers of narcotics abuse returns to the implementers of law enforcement to bring justice to the community.

The reformative aspects in Law No. 22 of 1997 and Law No. 5 of 1997 are as follows:

- a. The reality of the gradation due to the variety of groups in narcotics and psychotropics with different threats of punishment from Group I which is the heaviest, followed by Groups II and III (not beaten evenly). This is a new thing in the rules of criminal law.
- b. The provisions on weighting are not only based on classification but also on the reality that drug abuse is mostly carried out by groups through evil conspiracies (conspiracies).
- c. Likewise, the weighting is done if the perpetrators of drug abuse are organized. This shows that drug abuse has syndicates that are well organized in their operations.
- d. Likewise, if the corporation is involved, the fine will be increased, but the criminal liability of the corporation is not yet clear. Can the director be sentenced to imprisonment? This may have to go through jurisprudence.

In addition to Law No. 22 of 1997 and Law No. 5 of 1997 being reformative, actually this Drug Law is also the result of a reform process that began with the replacement of the Drug Act of 1927 (Dutch East Indies) with Law No. 9 In 1976 and in 1997 it became Law No. 22/1997. In anticipating the threats and dangers of drug abuse on an international scale in addition to Law No. 22/1997 on Narcotics and Law No. 5/1997 on Psychotropics, Indonesia as a whole already have legal instruments, namely:

- a. Law No. 8/1996 concerning the Ratification of the Single Convention on Narcotics 1961 and its Protocol of Amendments;
- b. Law Number 8/1996 concerning Ratification of the 1971 Psychotropic Convention;
- c. Law Number 7/1997 concerning the ratification of the United Nations Convention on the Eradication of Illicit Traffic in Narcotics and Psychotropics 1988;
- d. Regulation of the Minister of Health of the Republic of Indonesia No. 688/Menkes/PER/VII/1997 Date. 14-7-1997 concerning the Circulation of Psychotropics;
- e. Regulation of the Minister of Health of the Republic of Indonesia No. 785/Menkes/PER/VII/1997 Date. January 31, 1997 concerning the Export and Import of Psychotropics.

However, all of these laws do not yet recognize rehabilitation crimes. It was only then that the concept of rehabilitation was included in Article 103 of Law Number 35 of 2009 concerning Narcotics, which stipulates that rehabilitation is part of the action sanctions imposed by judges on narcotics addicts, either in the form of a decision or determination. Imposition of rehabilitation is counted as serving time. However, the provisions of Article 127 of Law Number 35 of 2009 also allow every abuser to have the right to receive rehabilitation. In the event that the abuser can be proven or proven to be a victim of a narcotics abuser, the abuser is obliged to undergo medical rehabilitation and social rehabilitation. Nevertheless, Article 127 of Law Number 35 of 2009 concerning Narcotics still allows imprisonment for abusers.

All of the laws and regulations on Narcotics above are legal certainty to tackle drug abuse in Indonesia (*ius constitutum*). By observing the current legal regulations that allow every abuser to be entitled to rehabilitation and it is possible to remain sentenced to prison for narcotics abusers. So in theory, according to Jeremy Bentham, this kind of rule is a bad rule because: (a) it is confusing (*ambiguity*); (b) obscurity (*obscurity*); and (c) too broad (*overbalkinnes*).

To answer this problem, the researcher recommends that in the rule of law regarding narcotics crimes in the future (*ius constituendum*), in relation to the provision of rehabilitation, it is necessary to present the existence of *ad hoc* judges to give a decision as a manifestation of the principle of the rule of law in Indonesia, in order to achieve justice based on *equality before the law*.

Rehabilitation Policy in Various Legal Instruments, National and International Law

a. Rehabilitation Policy in International Legal Instruments

International legal instruments are the legitimacy of global commitments in dealing with problems faced by countries in the world. Convention is a moral commitment of states as a matter that is considered a higher law. Regarding this, Lan Loveland stated the following:

In one important sense, though not necessarily a supra-legislative legal sense, the Convention articulates a series of higher law' moral principles ostensibly embedded within the political cultures of its Signatory States. It might readily be thought that in some of those states, where democratic traditions enjoy only a precarious foothold in political culture, accession to the Convention was intended more as a sop to international opinion rather than a sincere attempt to restrain the potential abuse of government at power (Loveland, 2009).

According to Loveland, something very important, though not necessarily in the sense of *supra-legislative law*, is that conventions articulate a set of higher legal moral principles embedded in the political culture of a country with a democratic tradition. Countries in the world have paid great attention to the control of narcotics, one of which is by putting a rehabilitation policy for addicts and victims of narcotics abuse. This commitment can be traced from various conventions carried out by countries in the world. Initially, narcotics were used as a treatment tool, while the first type of narcotic used was Opium or commonly called opium or *opium* (Kusno Adi, 2009).

International activities to tackle narcotics crime began with the efforts of the League of Nations in 1909 in Shanghai, China to have a trial discussing ways to control the illicit drug trade. The first international conference on opium (*The International Opium Convention*) was held in The Hague or known as *The Hague Convention* on January 23, 1912. On February 19, 1925, the *International Opium Convention* was held in Geneva. Entering the 20th century, international attention to the problem of narcotics is increasing, one of which can be seen through the *Single Convention on Narcotic Drugs* in 1961.

Countries under the auspices of the United Nations have produced the *Single Convention on Narcotic Drugs*, 1961 (*Single Convention on Narcotics 1961*) in New York, United States of America on March 30, 1961, and was amended by *1972 Protocol Amending the Single Convention on Narcotic Drugs*, 1961 (*Protocol 1972 on Amendments to the Single Convention on Narcotics 1961*). *The Single Convention on Narcotic Drugs*, 1961 was ratified by Indonesia through the Law of the Republic of Indonesia Number 8 of 1975 concerning the Ratification of the 1961 *Single Convention on Narcotics* and the *Protocols Amending it*. The 1961 *Single Convention on Narcotic Drugs* (*Single Convention on Narcotic Drugs*, 1961) was the result of the *United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs* which was held in New York from 24 January to 25 March 1961 and which was opened for signature on March 30, 1961.

The explanation of the Law of the Republic of Indonesia Number 8 of 1976 concerning Ratification of the *Single Convention on Narcotics 1961* along with the Protocol that Amends it states as follows:

- 1) Creating an international convention that is generally accepted by countries in the world and can replace the international control regulations on narcotics that are scattered in 8 (eight) international treaties;
- 2) Improving methods of controlling narcotics and limiting their use specifically for medicinal purposes and/or scientific purposes;
- 3) Ensure the existence of international cooperation in supervision so that these aims and objectives can be achieved.

In connection with the *Single Convention on Narcotic Drugs*, 1961, the next provision was issued, namely *Resolutions Adopted by the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs*. In Resolution II concerning *Treatment of drug addicts*, the resolution stated, "Recalling the provisions of Article 38 of the Convention concerning the treatment and rehabilitation of drug addicts. (Free translation: Recalling the provisions of Article 38 of the Convention on the treatment and rehabilitation of drug addicts). Article 34 states the following:

- 1) *The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall coordinate their efforts to these ends.*
(The Parties shall pay particular attention to and take all practicable measures for the prevention of drug abuse and for the early identification, treatment, education, post-care, rehabilitation and social reintegration of the persons involved and shall coordinate their efforts to this end);
- 2) *The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of drugs.*
(The Parties shall as far as possible promote the training of personnel in the treatment, post-care, rehabilitation and social reintegration of drug users);
- 3) *The Parties shall take all practicable measures to assist persons whose work so requires to gain an understanding of the problems of abuse of drugs and Of its pievention, and shall also promote such understanding among the general public if there is a risk that abuse of drugs will become widespread.*
(Parties should take all practical steps to assist persons whose work requires an understanding of the problem of drug abuse and its prevention, and should also promote such understanding among the general public where there is a risk that drug abuse will become widespread).

Furthermore, there is the *Convention on Psychotropic Substances*, 1971 which also regulates rehabilitation policies. This rehabilitation policy is stated in *Article 20 Measures Against the Abuse of Psychotropic Substances* which states as follows:

- 1) *The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.*

(The parties shall take all practicable steps for the prevention of psychotropic substance abuse and for the early identification, treatment, education, post-care, rehabilitation and social reintegration of the persons involved, and shall coordinate their efforts to this end);

- 2) *The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of psychotropic substances.*

(The Parties shall as far as possible promote the training of personnel in treatment, post-treatment care, rehabilitation and social reintegration for psychotropic users);

- 3) *The Parties shall assist persons whose work so requires to gain an understanding of the problems of abuse of psychotropic substances and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of such substances will become widespread.*

(The parties will assist people whose work requires an understanding of the problem of psychotropic substance abuse and its prevention, and should also promote such understanding among the general public where there is a risk that substance abuse will become widespread).

Furthermore, the 1971 *Convention on Psychotropic Substances* was ratified by Indonesia through the Law of the Republic of Indonesia Number 8 of 1996 concerning the Ratification of the *Convention on Psychotropic Substances*, 1971 (the 1971 Psychotropic Substances Convention). In the general explanation of the law, it is stated that the convention is an international legal instrument that regulates international cooperation in the control and supervision of the production, distribution and use of psychotropic substances, as well as the prevention and eradication of their abuse by limiting their use only for the purposes of treatment and/or science. The content of the convention is essentially in line with the efforts of the government of the Republic of Indonesia in controlling and supervising psychotropic substances.

The Law of the Republic of Indonesia Number 8 of 1996 concerning Ratification of the *Convention on Psychotropic Substances*, 1971 (the Psychotropic Substances Convention, 1971) further explains that one of the tangible manifestations of international cooperation is the participation of Indonesia to ratify the *Convention on Psychotropic Substances*, 1971 (Convention on Psychotropic Substances, 1971). The main ideas that led to the birth of the convention are as follows:

- 1) Concern for the health and well-being of mankind.
- 2) Attention to public health and social problems caused by psychotropic abuse.
- 3) The determination to prevent and combat the abuse and illicit trafficking of psychotropic substances.
- 4) Consideration that strict measures are needed to limit the use of psychotropic drugs only for medicinal and/or scientific purposes.
- 5) Recognition that the use of psychotropic substances for medical and/or scientific purposes is necessary so that their availability must be guaranteed.
- 6) The belief that effective action to combat psychotropic abuse requires universal coordination and action.
- 7) Recognition of the authority of the United Nations in carrying out psychotropic monitoring and the desire that the international body conducting such supervision is within the framework of the United Nations organization.
- 8) Recognition that international conventions are needed to achieve this goal.

International legal instruments that also regulate rehabilitation policies in dealing with narcotics crimes are: *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988. Mengenai konvensi ini, *The International Narcotics Control Board* menuliskan sebagai berikut:

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 provides for measures to prevent the diversion of chemicals from licit channels for use in the illicit manufacture of drugs. The International Narcotics Control Board (INCB) monitors the Governments' control over those precursor chemicals and assists Governments in preventing the diversion of such chemicals into illicit trafficking.

The 1988 United Nations Convention against the Illicit Traffic in Narcotics and Psychotropics provides for measures to prevent the diversion of chemicals from official channels for use in the manufacture of illegal drugs. The International Narcotics Control Board (INCB) monitors government control over these precursor chemicals and assists governments in preventing the diversion of these chemicals into the illicit trade.

The rehabilitation policy is included in Article 4 of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988. In Article 4 it is stated as follows:

- 1) *Each Party shall make the commission of the offenses established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offenses, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.*

(Each party is obliged to make a commission from the criminal acts determined in accordance with paragraph 1 of this article subject to sanctions that take into account the seriousness of these violations, such as imprisonment or other forms of deprivation of liberty, sanctions in the form of money and confiscation);

- 2) *The Parties may provide, in addition to conviction or punishment, for an offense established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.*

(The parties may provide, in addition to conviction or punishment, for a criminal offense established in accordance with paragraph 1 of this article! This means that the offender must undergo measures such as treatment, post-recovery care education, rehabilitation, or social reintegration);

- 3) *Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.*

(Despite the previous sub-paragraph, in appropriate cases of a minor nature, the parties may provide, as an alternative to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, if the perpetrator is a drug abuser, treatment and post-treatment recovery);

- 4) *The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offense established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender .*

(The parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment for a crime established in accordance with paragraph 2 of this article, measures for treatment, education, post-remedial care, rehabilitation, or social reintegration of the offender) .

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances , 1988 was ratified by Indonesia through the Law of the Republic of Indonesia Number 7 of 1997 concerning Ratification of *the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988 (United Nations Convention on the Eradication of Circulation). Dark Narcotics and Psychotropics, 1988). On the main content of the convention, as stated in the Elucidation of the Law of the Republic of Indonesia Number 7 of 1997 concerning Ratification of *the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* , 1988 (United Nations Convention on the Eradication of Illicit Traffic in Narcotics and Psychotropics, 1988) stated, "Against the crimes mentioned above, sanctions can be imposed in the form of imprisonment or in the form of deprivation of liberty, fines and confiscation of assets as long as it can be proven as a result of the crime. In addition, the perpetrator may be subject to coaching, post-treatment, rehabilitation, or social reintegration."

b. Rehabilitation Policy in Various National Legal Instruments

Rehabilitation policies, according to Indonesian law, include rehabilitation in criminal law policies in Indonesia, rehabilitation policies for addicts and victims of narcotics abusers in the context of law enforcement, and coercive measures for addicts and victims of narcotics abusers and their implications. This section will also analyze several district court decisions against addicts and victims of narcotics abusers (Wawan Edi Prastiyo).

Provisions for rehabilitation of narcotics addicts are based on *treatment theory* and *social defense theory* . Rehabilitation of narcotics addicts adheres to the theory of *treatment* , because rehabilitation of narcotics addicts is an integrated process of treatment activities to free addicts from dependence. *Treatment* as the goal of punishment is very appropriate to be directed at the perpetrators of the crime, not at their actions. The punishment intended in this flow is to provide *treatment* and *rehabilitation* to the perpetrators of the crime as a substitute for punishment. Perpetrators of crimes are people who are sick so they need *treatment* and *rehabilitation* (C. Ray Jeffery in Mahmud Mulyadi, 2008) .

If it is reviewed in Law Number 35 of 2009 concerning Narcotics, the concept of rehabilitation tends to use *the medical model* . This model is based on the assumption that the perpetrator of a crime is not the main actor who causes the crime, including the one who causes the victim, instead he is the product of an event that is beyond his control, in fact sometimes he can also be considered a victim of that event. In this perspective, the criminal justice system should pay attention to how to "treat" the perpetrator so that he can control his behavior in the future. Thus, improving their behavior in order to become *law-abiding citizens* (law-abiding citizens).

Criminal law policies in Indonesia are formulated in Part Two of the Rehabilitation of Law Number 35 of 2009 concerning Narcotics. In the provisions of Article 54 of Law Number 35 of 2009 concerning Narcotics it is stated that narcotics addicts and victims of narcotics abusers are obliged to undergo medical rehabilitation and social rehabilitation. Judging from the formulation, rehabilitation becomes an obligation for addicts and victims of narcotics abusers. Medical and social rehabilitation provided to addicts is intended to restore and develop their physical, mental and social abilities (Dikdik M. Arief Mansur and Elisatris Gultom , 2008).

Regarding the above, Marcelo Bergman stated that prevention and treatment programs are qualitatively different. prevention program aims to reduce the number of users, Bergman's full statement as follows:

Prevention and treatment programs are qualitatively different. Prevention programs aim to reduce the number of users. Efforts in education, information, and awareness programs at different levels seek to prevent people (particularly adolescents) from experimenting with drugs or from developing a habit. Treatment programs on the other hand are focused especially on addicts or individuals who use drugs frequently with the goal of enlisting them in detoxification programs where they may stop using and stay clean. The scope of prevention is broad in its scope, while treatment programs are focused on limited populations.

Next, Article 55 of Law Number 35 of 2009 concerning Narcotics is an indicator that Narcotics is an administrative criminal law because it places rehabilitation as a sanction for addicts and victims of narcotics abusers. Lawmakers put a legal obligation for parents or guardians to report their children who are not old enough to get rehabilitation from drug addiction.

Article 103 of Law Number 35 of 2009 concerning Narcotics then stipulates that rehabilitation is an action sanction imposed by a judge on narcotics addicts, either in the form of a decision or determination. Imposition of rehabilitation is counted as serving time. The provisions of Article 127 of Law Number 35 of 2009 also allow every abuser to have the right to receive rehabilitation. In the event that the abuser can be proven or proven to be a victim of a narcotics abuser, the abuser is obliged to undergo medical rehabilitation and social rehabilitation. Nevertheless, Article 127 of Law Number 35 of 2009 concerning Narcotics still allows imprisonment for abusers.

In general, those who abuse psychoactive substances (including drugs and psychotropic substances) can be divided into three major groups, namely: *First* , primary dependence, characterized by anxiety and depression which are generally found in people with unstable personalities; *second*, symptomatic dependence, psychoactive abuse as a symptom of the underlying

personality type, generally occurs in people with psychopathic personality (anti-social), criminal, and the use of these drugs for pleasure alone, *third*, reactive dependence.

Juridical technical provisions governing rehabilitation are then further regulated in various laws and regulations, including the following:

- a) Government Regulation of the Republic of Indonesia Number 40 of 2013 concerning the Implementation of Law Number 35 of 2009 concerning Narcotics. Arrange a few things about rehab. Article 46 regulates the use of assets seized by the state for medical and social rehabilitation. Article 49 and Article 54 regulate efforts to increase the capacity of medical rehabilitation institutions for narcotics addicts, whether organized by the government or the community;
- b) Government Regulation of the Republic of Indonesia Number 25 of 2011. Concerning the implementation of Obligation to Report Narcotics Addicts. Implementation of Compulsory Reporting Narcotics Addicts. Mandatory reporting is mandatory: self-reporting activities carried out by narcotic addicts who are old enough or their families, and/or parents or guardians of narcotic addicts who are not old enough to the receiving institution are obliged to report to get treatment and/or treatment through medical rehabilitation and rehabilitation social.
- c) Minister of Health Regulation No. 2415/MENKES/PER/XII/2011 concerning Medical Rehabilitation of Addicts, Abusers, and Victims of Narcotics Abusers. Regarding Medical Rehabilitation for Narcotics Addicts, Abusers, and Victims of Narcotics Abuse is a juridical technical regulation established to implement the provisions of Article 59 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and Article 13 paragraph (6) of Government Regulation Number 25 of 2011 concerning Compulsory Implementation Reporting Narcotics Addicts, it is necessary to stipulate a Regulation of the Minister of Health concerning Medical Rehabilitation of Addicts, Abusers, and Victims of Narcotics Abusers. According to this Regulation of the Minister of Health, medical rehabilitation is carried out in medical rehabilitation facilities organized by the government, local government or the community.
- d) Regulation of the Minister of Health of the Republic of Indonesia Number 80 of 2014 concerning Technical Guidelines for the Implementation of Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abusers who are in the Process of Investigation, Prosecution, and Trial or have obtained a Court Decision/Decision. Regarding the Technical Guidelines for the Implementation of Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abusers who are in the Process of Investigation, Prosecution, and Trial or have obtained a Court Decision/Decision, is one of the policy regulations that requires rehabilitation services from the investigation level.
- e) Joint Regulation of the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the National Police of the Republic of Indonesia, the Head of the National Narcotics Agency of the Republic of Indonesia, Number: 01/PB/MA/II/2014, Number: 03 of 2014, Number: 11/2014, Number: 03 of 2014, Number: PER-005/A/JA/03/2014, Number: 1 of 2014, Number: PERBER/01/111/2014/BNN concerning Handling Narcotics Addicts and Victims of Narcotics Abusers in Rehabilitation Institutions (hereinafter referred to as Joint Regulations). concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.
- f) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2017 concerning the Implementation of Narcotics Rehabilitation Services for Prisoners and Prisoners. concerning the Implementation of Narcotics Rehabilitation Services for Prisoners and Correctional Inmates is a juridical technical provision in regulating rehabilitation services if addicts and victims of narcotics abuse are in the Correctional Institution.
- g) Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions (hereinafter referred to as SEMA Number 4 of 2010). Regarding the procedure for imposing rehabilitation sentences on narcotics cases.
- h) Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2011 concerning Placement of Victims of Narcotics Abusers in Medical Rehabilitation and Social Rehabilitation Institutions (hereinafter referred to as SEMA Number 3 of 2011).

Based on the technical rules regarding rehabilitation above, there are things that need to be the focus of further elaboration by researchers in this dissertation, among others, related to the existence of a rehabilitation assessment team as regulated in the regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2017. It is stated that the rehabilitation assessment is carried out by a rehabilitation assessment team consisting of a doctor or psychologist, correctional guardian, and community advisor who is determined based on the decision of the Head of the Regional Office of the Ministry of Law and Human Rights. The results of the rehabilitation assessment by the team are used as the basis for providing narcotics rehabilitation services. The provision of narcotics rehabilitation services consists of medical rehabilitation, social rehabilitation, and post-rehabilitation services.

To support the success of providing narcotics rehabilitation services, supporting activities and services are carried out, including general health care, health care due to narcotics abuse, mental and spiritual care, education, and training for independence. The integrated assessment team has the authority to:

- 1) At the request of the investigator to analyze the role of a person who is arrested or caught red-handed as a victim of narcotics abuser, narcotics addict, or narcotics dealer.
- 2) determine the criteria for the severity of narcotics users according to the type of content consumed, the situation and conditions when arrested at the scene of the crime.
- 3) Recommend therapy and rehabilitation plans for drug addicts and victims of drug abuse. However, in SEMA Number 3 of 2011 issued on July 29, 2011 with reference to the factual conditions in which the treatment and/or treatment through the rehabilitation process for the person concerned has not been optimal and there is no integration between law enforcement agencies

in its implementation. In this provision, it is stated that the authority of investigators and public prosecutors in its implementation is a recommendation and at the same time strengthens the recommendation of the team of doctors for the determination of judges regarding placement in medical and social rehabilitation center which is then attached and becomes part of the case file. SEMA No. 3 of 2011 asks judges that in giving orders for placement in medical and social rehabilitation institutions, both in the form of stipulations and decisions, they still pay attention to and refer to SEMA No. 4 of 2010 which applies to abusers, victims of abuse, and narcotics addicts. .

The question that arises then is what is the role and legal certainty of the recommendations issued by the assessment team in providing rehabilitation recommendations for those who abuse the use of narcotics against a fair judge's decision. This question is important because the new Bill on Narcotics (Year 2022) emphasizes that the assessment team can decide on granting rehabilitation without a court decision. In Article 55B paragraph (1) of the Bill on Narcotics it is explained that in the event that the abuser meets the criteria for rehabilitation, the investigator is obliged to submit the abuser and the completeness of the file to the integrated assessment team to obtain a recommendation with an official report of the handover.

Furthermore, Tyas Dian Anggraeni as Sub-Coordinator for Compiling Academic Papers in the Fields of Politics, Law, Security, Government, Natural Resources and Environment. Explaining of the 4 (four) major points of amendment to the Narcotics Law, the most important issue that has not been agreed with the legislators (DPR RI) is related to the recommendations of the assessment team. Whether the decision to provide rehabilitation must first go through a court decision or the results of the assessment team's recommendation can be directly legally enforceable to give a rehabilitation decision without a court decision. In this case, according to Tyas, from several meetings with the DPR, there were alternative options: *First*, the results of the integrated assessment team's recommendations were brought to the court to request a judge's determination; *Second*, the results of the integrated assessment team's recommendations become the legal basis for submitting to the court for a determination.

Observing the various legal rules and opinions above, the researcher offers another alternative, namely: an *ad hoc court must be made* consisting of judges, an integrated assessment team (medical elements and legal elements) and legal advisors to request the determination of the results of the integrated assessment team recommendations to the judges, in order to achieve legal certainty based on *equality before the law*. The opinion of this researcher is of course based on Aristotle's theory of collective justice which states that justice guarantees, monitors and maintains the distribution (recommendations of the assessment team) from *illegal attacks*. The corrective function of collective justice is principally regulated by judges to re - stabilize the *status quo*.

The opinion of the researcher above is also a consequence of the views in countries with a continental legal system, including Indonesia. In the continental system, the value of legal justice is a fair law, fair is a constitutive element of all legal meanings, only fair regulations are called laws. The law exceeds the state. The State (Government), may not form unfair laws, the moral principles that have been contained in the law must be realized in the form of the wisdom of judges' decisions.

c. Imposition of Rehabilitation Measures for Addicts and Victims of Narcotics Abuse Is a Restorative Justice Model

Restorative justice model was proposed by abolitionists who rejected coercive means in the form of *penal means* and replaced them with reparative means. *The restorative justice model* has several characteristics, namely:

- 1) Crime is defined as one person's offense against another and is recognized as a conflict;
- 2) Focus on solving future liability and liability problems;
- 3) The normative nature is built on the basis of dialogue and negotiation;
- 4) Restitution as a means of repairing the parties, reconciliation, and restoration as the main goal;
- 5) Justice is defined as child relationships, judged on the basis of outcomes;
- 6) Target attention to the amelioration of social disadvantage;
- 7) The community is a facilitator in the restorative process;
- 8) The roles of victims and perpetrators of criminal acts are recognized, both in problems and in resolving the rights and needs of victims. Perpetrators of criminal acts are encouraged to take responsibility;
- 9) The responsibility of the perpetrator is formulated as a result of understanding the actions and to help decide the best;
- 10) Crime is understood in a comprehensive, moral, social and economic context;
- 11) Stigma can be removed through restorative measures.

The restorative justice approach is used in narcotics crime cases, but is only limited to being applied to addicts, abusers, victims of narcotics abusers, and narcotics dependence with one day of use. *Restorative justice* is a model for the protection and empowerment of victims in the criminal justice system. The paradigm that places addicts and victims of abuse as victims requires rehabilitation as a problem solving. Some of the main points in *restorative justice*, namely:

- 1) Crime is injury to individuals and/or society.
- 2) Focus on problem solving.
- 3) Fix losses;
- 4) The rights and needs of victims are taken into account.
- 5) Perpetrators are encouraged to take responsibility.
- 6) The perpetrator's responsibility is to show empathy and help to repair the loss.
- 7) The response is fixated on the hurtful behavior resulting from the offender's behavior.
- 8) Stigma can be removed through appropriate action.
- 9) It is supported so that the perpetrator regrets and it is possible to give it to the victim.
- 10) The process depends on the involvement of the people affected by the incident.
- 11) It is possible that the process becomes emotional (Rena Yulia, 2010).

Restorative justice arrangements now exist at various levels of the criminal justice system, from investigation, prosecution, and trial. At the investigation level, the settlement of cases with *restorative justice* is based on the Circular Letter of the Chief of Police Number 8 of 2018 concerning the Application of *Restorative justice* in the Settlement of Criminal Cases. At the prosecution level, *restorative justice provisions* are regulated in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. At the trial level, provisions regarding *restorative justice* are regulated in the Attachment to the Decree of the Director General of the General Judiciary Agency Number: 1691/DJU/SK/PS.00/12/2020 dated: 22 December 2020 concerning Guidelines for the Implementation of *Restorative Justice* in the General Courts.

Another requirement for the settlement of narcotics crimes with *restorative justice* is that the clerk ensures that the prosecutor has attached the results of the assessment from the integrated assessment team to each delegation of case files charged with Article 103 paragraph (1) and Article 127 of Law Number 35 of 2009 concerning Narcotics, prosecutors attach the results of the assessment from the integrated assessment team. If the pan case file, when transferred, is not accompanied by the results of the assessment, the judge at the time of the trial may order the prosecutor to attach the results of the assessment from the integrated assessment team.

1) **General Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of the Handling of Criminal Acts of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's *Dominus Litis Principle***

In the Attorney General's Guidelines Number 18 of 2021, it is explained that the current criminal justice system tends to be punitive, as reflected in the number of inmates in prisons that exceed capacity (*overcrowding*) and most of them are narcotics criminals. The said *reorientation* of law enforcement policies, in carrying out the duties and authorities of the Prosecutor's Office in the field of prosecution, is carried out through optimizing rehabilitation institutions. The prosecutor as the controller of the case based on the *dominus litis principle* can resolve cases of criminal acts of narcotics abuse through rehabilitation at the prosecution stage.

Completion of the handling of criminal cases of narcotics abuse through rehabilitation is carried out by prioritizing restorative justice and expediency (*doelmatigheid*), as well as considering the principles of quick, simple, and low-cost justice, the principle of criminal justice as a last resort (*ultimum remedium*), *cost and benefit analysis* , and recovery of perpetrators. . The scope of the Attorney General's Guidelines Number 18 of 2021 includes pre-prosecution, prosecution, supervision, training, and financing for the completion of the handling of narcotics abuse cases through rehabilitation with a restorative justice approach as the implementation of the prosecutor's *dominus litis principle*.

The Attorney General's Guideline Number 18 of 2021 also explains, if based on the results of an integrated assessment, the suspect is qualified as a narcotics addict, victim of narcotics abuse, or narcotics abuser, he may or may not be transferred to court based on the *Dominus litis principle*.

2) **Guidelines Number 11 of 2021 concerning Handling of Narcotics Crime Cases and/or Narcotics Precursor Crimes**

The Attorney General's Guideline Number 11 of 2021 also explains and guarantees that in the event that the narcotic evidence found does not exceed the amount of use for 1 (one) day, the suspect must be subjected to a forensic laboratory examination to check whether the suspect uses narcotics. Furthermore, if based on the results of the forensic laboratory examination as the suspect is declared positive for using narcotics, an integrated assessment must be carried out to determine the qualifications of the suspect and the qualifications of the crime.

Based on the results of an integrated assessment, the suspect is then recommended to be rehabilitated, then the Public Prosecutor will consider it in a criminal charge by taking into account the legal facts at trial based on the examination of evidence and provisions regarding criminal charges for narcotics abuse cases. Such rehabilitation may take the form of medical and social rehabilitation, placement of addicts and victims of narcotics abuse to medical rehabilitation and social rehabilitation institutions.

Based on the Attorney General's Guidelines Number 18 and Number 11 of 2021 and using the *Dominus litis principle* , the researcher's confidence increases that the recommendations made by the integrated assessment team must obtain a decision from an *Ad Hoc judge*. The presence of *ad hoc judges* is very important, not only as an embodiment of the principle of the rule of law in Indonesia, but also as a form of achieving justice based on *equality before the law* , and as an anticipation if the integrated assessment team acts to abuse their power.

Court Decision Regarding Narcotics Crime

Basically all laws aim to create a situation in a social life of the community, both in a small environment and in a larger environment, so that in it there is a harmony, an order, a legal certainty, and so on (Ruslan Renggong.2016).

In addition, as mandated by the constitution, the law also aims to provide protection for the community as mandated in Article 28D paragraph (1) of the 1945 Constitution formulating "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law." For this reason, the State must also guarantee *equality before the law* to every citizen in relation to narcotics abuse, as a guarantee of human rights. This can be seen in the formulation of Article 4 of Law Number 35 of 2009 concerning Narcotics where one of the objectives is to prevent, protect, and save the Indonesian nation from narcotics abuse.

One of the substantive changes in the Narcotics Law is to guarantee the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts, which is one of the objectives of the establishment of the Narcotics Law. Therefore, success in the process and implementation of rehabilitation is a success in realizing the objectives of the Narcotics Law. This change was the result of an evaluation of the implementation of Law No. 22/1997 on Narcotics that had been applied before, which was finally stated in the TAP MPR No. VI/MPR/2002. The MPR TAP mandates amendments to Law No. 22 of 1997 concerning Narcotics, resulting in Law No. 35 of 2009. With regard to the enactment of the Narcotics Law on October 12, 2009, and has been included in the State Gazette of the Republic of Indonesia Year 2009 Number 143 and the Supplement to the State Gazette of the Republic of Indonesia. In 2009 Number 5062, according to legal principles, it is assumed that everyone knows it. This is because a law that has been ratified can only be legally binding if it is promulgated in a state gazette (Maria Farida Indrati Soeprapto, 1998).

One of the unresolved problems faced by the Indonesian government until now is the problem of narcotics crime, both in terms of distribution and abuse. In 2019, the number of prisoners/convicts in narcotics crime cases in Indonesia amounted to 121,677 people (45.5% of the total other crime cases), consisting of the dealer/dealer category: 72,808 people, while the user category: 48,869 people.

Based on the data above, it is known that the current government's *concern* is to prioritize narcotics abusers so that they can be rehabilitated by taking into account the high *prevalence* of narcotics users and the impact on prison *overcapacity*. The government's priorities can be seen in the 2020 Government Work Plan (RKP).

In line with the government's priorities, in the judiciary since the beginning of the enactment of the Narcotics Law, several research and seminar activities have been carried out related to the problem of narcotics crime. Previous research related to the topic of narcotics, namely in 2012 and 2019, then the implementation of a national seminar. The seminar raised the argumentative issue of the factors that influence judges in making rehabilitation decisions. For this reason, it is necessary to observe the statement of the Chief Justice of the Supreme Court of the Republic of Indonesia, as follows:

"...do the policies and various factors that influence judges in making rehabilitation decisions show that judges only see drug abuse as a legal problem, or have it led to the paradigm that the problem of drug abuse is a social problem that is resolved through judicial mechanisms?..."

Thus, the urgency of the study with the topic of the study of rehabilitation for narcotics users is considered relevant, at least knowing how the views and perceptions of law enforcers are primarily for judges to support the judicial function to be more effective and targeted in handling narcotics abuse cases so that they can be rehabilitated. The judge's perception can be seen through the following decisions:

Table 1.
Implementation of the Implementation of Rehabilitation by Judges Although in Criminal Prosecution (*Requisitoir*) Public Prosecutor Not Sued

Year/No. Decision	Number: 3340/Pid.Sus/2015/PN-Mdn 15 December 2015	Number: 1970/Pid.Sus/2016/PN.Lbp (Narcotics) dated February 7, 2017	Number 282/PIB.SUS/2020/PT.DKI dated June 22, 2020
indictment	First: Article 112 paragraph (1) of RI Law Number 35 of 2009 concerning Narcotics, Or Second: Article 127 paragraph (1) letter a of RI Law Number 3S of 2009 concerning Narcotics jo. Article 53 paragraph (1) of the Criminal Code.	Primary: Article 112 paragraph (1) of RI Law Number 35 of 2009 concerning Narcotics, Subsidiary: Article 127 paragraph (1) letter a of RI Law Number 35 of 2009 concerning Narcotics	Primary: Article 114 paragraph (1) of RI Law Number 35 of 2009 concerning Narcotics, Subsidiary: Article 112 paragraph (1) of RI Law Number 35 of 2009 concerning Narcotics: More Subsidiary: Article 127 paragraph (1) letter a Jndang -Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.
suen	To declare that the defendant Sry Rahmayani was legally and convincingly proven guilty of committing a crime without rights and against the law using Narcotics Category I for himself as regulated and threatened with violating Articles! 127 Paragraph (1) letter a RI Law no. 35 of 2009 concerning Narcotics (second indictment). B)	Stating the defendant Ayung alias RONI, guilty of committing the crime of "abusing Narcotics Group I for oneself" as regulated and threatened with crime in Article 127 paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, Imposing a crime against the defendant Ayung alias RONI with imprisonment for 4 (four) years reduced imprisonment for	To declare that the defendant Edy Wahyudin Alias Culun has not been proven legally and convincingly guilty of committing a criminal act "as a class I narcotics abuser for himself", regulated in Article 127 paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics as in subsidiary charges. Sentenced the defendant Edy Wahyudin Alias Culun with imprisonment for 3 (three) years and 6 (six) months

	Sentenced the defendant Sry Rahmayani to imprisonment for 1 (one) year in prison cut off the period of detention that had been served and with an order that the defendant remain in custody.	as long as the defendant is in temporary detention.	deductible while the defendant was in temporary detention with an order that the defendant remain in custody.
Decision	<p>Stating that the defendant Sry Rahmayani mentioned above, was legally and convincingly proven guilty of committing the crime of "Abusing for oneself Narcotics Category 1 Non-Plant in the form of crystal methamphetamine, Imposing a criminal sentence on the defendant above, therefore with imprisonment for 1 (one) year, Ordered the Defendant to undergo treatment and care through medical and social rehabilitation at the Prof. Mental Hospital. Dr. Muhammad Ildrem Jalan Let. Gen. Jamin Ginting S Km.10/Jalan Tali Air No. 21 Medan for 6 (six) months which is calculated with the sentence imposed, d) Determine the period of arrest and detention that has been made. Run the Defendant is deducted entirely from the sentence imposed.</p>	<p>Declaring that the Defendant Ayung Alias Roni has been legally and convincingly proven guilty of committing the crime of "Using Narcotics Category I instead of Plants for oneself" as stated in the Subsidiary indictment, Stating that he is a victim of abuse and narcotics addict, Ordering the defendant to undergo treatment and, or treatment through Medical rehabilitation and social rehabilitation. Al at the Mahoni Mental Hospital in Medan, North Sumatra Province for 1 (one) year, Ordered the defendant to be immediately released from the detention center after this decision was pronounced, Determined the period of time for the defendant to serve treatment and/or treatment through medical rehabilitation and social rehabilitation. Count as serving time.</p>	<p>To declare that the Defendant Edy Wahyudin alias Culun was proven legally and convincingly guilty of committing a criminal act as a narcotics use class I for himself", as in the More Subsidiary indictment, Sentencing the Defendant Edy Wahyudin alias CuJun with imprisonment for 1 (one) year: Ordered the Defendant undergo treatment and care through medical and social rehabilitation at the BNN Rehabilitation Center, Lido, West Java for 6 (six) months which is calculated with the sentence imposed, Determine the period of arrest and detention that has been served by the Defendant to be deducted entirely from the sentence imposed: Order the defendant He was released from the Salemba Detention Center/Rutan Polsek Senen to undergo treatment and/or Medical Rehabilitation and/or Social Rehabilitation at the Lido West Java BNN Rehabilitation Center mentioned above. The Media Litasi and/or Social Rehabilitation is counted as a period of serving the sentence. Determine the costs incurred for the rehabilitation are borne by the State: The Public Prosecutor declares an appeal against the court's decision. The Central Jakarta State Dilan.</p>
Legal Considerations	<p>That based on legal facts, the result of the Defendant's urine test was positive for methamphetamine because he used Narcotics Category I Number 61 Attachment to Law Number 35 of 2009 concerning Narcotics based on Criminalistic Laboratory Examination No. Lab: 6049/NNF/2015, when the defendant was arrested, evidence was found. on the Defendant is 1 (one) used dropper with 2 (two) grams and 1 (one) clear plastic containing white crystals</p>	<p>The judges' consideration was based on the fact that according to the facts revealed at the trial that the defendant had been caught red-handed, and evidence in the form of methamphetamine weighing 0.02 (zero point zero two) grams along with the tools to use it and was declared positive as a narcotics user based on the test results. urine carried out by the Forensic Laboratory Center of the Criminal Investigation Police of the Forensic Laboratory of the Medan Branch based on the request of</p>	<p>In the consideration of the panel of judges, that based on the Minutes of Examination of the Criminalistic Laboratory No. Lab.6190/NNF/2019 dated January 20, 2020 which was made and signed by Triwidiastuti, S, Si.Apt and Dwi Hernanto, ST. That the evidence consists of: 1 (one) plastic clip pack containing 1 (one) clip pack containing white crystal with a net weight. The drop was 0.1194 grams, given the evidence number 1730/2019/OF. After an examination was carried out that the evidence with the number 2126/2019/PF was</p>

	<p>with a net weight of 0.1 (zero point one) gram, not getting permission from the Ministry of Health to use narcotics the type of methamphetamine: the defendant has been assessed at Bhayangkara Hospital Medan It is stated in the drug assessment certificate dated August 14, 2015 which states that the defendant is a drug user/user (shabu-shabu), the defendant is not involved in illicit narcotics trafficking, expert statement Dr. Dr. Almeida Effendy, M.Ked.Kj Sp.KJ (K) and Dr. Friedrich Lupini Sp.KJ, and Visum et Repertum Psychiatricum Number: YM.01.06.10.2382 dated October 22, 2015 with conclusions/suggestions from doctors on inpatient therapy and rehabilitation plans.</p>	<p>the investigator. At the trial, a Letter of Rehabilitation Record Results for Narcotics Abusers was also submitted to the Narcotics Abusers Rehabilitation and Prevention Institute (LRPPN) on behalf of Ayung Alias Roni dated 28 May 2016 and based on the results of the examination that the pattern of narcotics use by the defendant was categorized as dependence, namely the use of narcotics Methamphetamine. / Uncontrolled shabu or active users and trying to always get narcotics by all means and as a consequence, withdrawal symptoms occur, while the severity of substance dependence on the defendant is in the mild category. In the consideration of the panel of judges, it is not visible in the fact that the Defendant is a victim of narcotics abuse as referred to in Article 127 paragraph 3 of the Narcotics Law.</p>	<p>positive for Methamphetamine and was registered in Group I Serial Number 61 Attachment to the Law of the Republic of Indonesia Number 35 Year 2009 concerning Narcotics. (The remaining evidence is 1 pack of plastic clips/0.10639 grams). Edi Wahyudin's Assessment Result Letter from the National Narcotics Agency R1 Number: B/248/III/DIT/IPWL/RH.00/2020 /DIT.PLRIP dated March 17, 2020 with recommendations for the results of assessments, observations, and other supporting examinations related to recommended results. assessment, observation, and other supporting examinations concerned are recommended to undergo Inpatient Rehabilitation for six months at the BNN Rehabilitation Center, Lido, West Java.</p>	<p>Table 1 above, it is clear that the judge's consideration in the decision to grant rehabilitation to the defendant of narcotics abuse was based on: (1) the result of the defendant's urine test being positive for methamphetamine because of using Narcotics; (2) evidence against the defendant</p>
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with a net weight of 0.1 (zero point one) gram to 0.2 (zero point two) gram, or less than 1 (one) gram; (3) The defendant is not involved in the illicit trafficking of narcotics based on the recommendation of the assessment team; (4) conclusions/suggestions from the doctor on the assessment team for inpatient therapy and rehabilitation plans; (5) the defendant is a victim of narcotics abuse. Furthermore, the perception of judges in giving prison sentences can be seen from the following table:

Table. 2.
Prison Sentence in Narcotics Crime

Year/No. Decision	Number: 1244/Pid.Sus/2020/PN SbyYear 2020	Number: 5/Pid.Sus/2020/PN.Pwk (PNPurwakarta) dated February 10, 2020	Number 541 K/Pid.Sus/2022
indictment	First: Article 112 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics: Or Second: Article 127 paragraph (1) letter a of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.	First: Article 112 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, or Second: Article 127 paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.	First, Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, OR Second, Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics
Claims	Stating that the Defendant FERMENTA NOURISTANA bin ZAINAL HASIM, Drs has been legally and legally proven guilty of committing a crime "without the right to use Narcotics Category I for himself, as	Stating that the Defendant Dian Mardiansyah alias Ambon Bin Hendra has been legally and convincingly proven to have abused Narcotics Category I for himself, as regulated in Article 127 paragraph (1) letter a of the	To declare that the Defendant SUBAIRI bin H. MATRANI has been legally and convincingly proven guilty of committing the crime of "Without

	<p>regulated and threatened with crime in the second indictment of Article 127 paragraph (1) letter a of Law Number 35 of 2009 . Sentencing the Defendant with imprisonment for 6 (six) months and 15 (fifteen) days. Ordered the implementation of the prison sentence to be carried out at Surabaya Orbit Foundation. Stipulated that the period of detention that had been served by the Defendant was deducted entirely from the sentence imposed. Ordered that The defendant was immediately released from the prisoner after reading the verdict of this case and ordered the defendant to immediately undergo rehabilitation treatment at the Surabaya Orbt Foundation.</p>	<p>Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. Sentencing the Defendant Dian Mardiansyah alias Ambon Bin Hendra with imprisonment for 6 (six) months. Ordered the Defendant Dian Mardiansyah alias Ambon Bin Hendra to undergo treatment and care through Medical and Social Rehabilitation at the Therapy and Rehabilitation Center of the Indonesian Natura Recovery Foundation in the city of Bandung, which was calculated with the sentence imposed.</p>	<p>the right to store Narcotics Category I, not Plants" in violation of Article 112 Paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics as the first indictment of the Public Prosecutor . Therefore, the Defendant shall be sentenced to imprisonment for 6 (six) years reduced as long as the Defendant is in custody with an order that the Defendant remains detained and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) subsidiary 4 (four) months in prison.</p>
Decision	<p>Stating that the Defendant FERMENTA NOURISTANA has been legally and convincingly proven guilty of committing the crime of "GROUP I DRUG ABUSE FOR YOURSELF, as in the second indictment. Sentencing the defendant with imprisonment for 7 (seven) months. Determine the period of detention that has been served, the Defendant is transferred to the whole and the sentence imposed, Orders the Defendant to be immediately released from detention after the reading of the verdict of this case and orders the Defendant to immediately undergo treatment/rehabilitation at the Surabaya Orbit Foundation, Orders the evidence in the form of: 1 (one)) kkp plastic methamphetamine was seized to be destroyed, charged the defendant to pay court fees of Rp. 5,000, (five thousand rupiah).</p>	<p>Stating that the Defendant Dian Mardiansyah alias Ambon Bin Hendra has been legally and convincingly proven to have abused Narcotics Category I for himself, as regulated in Article 127 paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. Sentencing the Defendant therefore with imprisonment for 6 (six) months. Ordered the Defendant to undergo treatment and care through Medical and Social Rehabilitation at the Therapy and Rehabilitation Center of the Indonesian Natura Recovery Foundation in the city of Bandung for 6 (six) months, which is calculated with the sentence imposed. Determining the period of arrest and detention that the defendant has served is deducted entirely from the sentence imposed.</p>	<p>To declare that the Defendant SUBAIRI bin H. MATRANI has been legally and convincingly proven guilty of committing the criminal act of "Abuse of Narcotics Category I is not a plant for oneself", as stated in the second alternative indictment of the public prosecutor, Sentencing the defendant, therefore, with imprisonment for 2 (two) years, stipulates the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed, stipulates that the Defendant remains in custody</p>
Legal Considerations	<p>The defendant is a victim of narcotics abuse for himself and there has been a recommendation from the East Java Province BNN Integrated Assessment Team No. REKOM/22/II/-TAT/RH.00.01/2020/BNNP-JATIM dated March 18, 2020, decided and gave a</p>	<p>The consideration of the panel of judges, based on the conclusion in the Minutes of Laboratory Examination Number: 394 BK/X1/2019/Narcotics Lab Center, dated November 28, 2019 that the defendant's urine contains Methamphetamine and is registered in Group I Serial</p>	<p>The reason for the Public Prosecutor's cassation cannot be justified because <i>Judex Facti's decision</i> did not misapply the law in trying the defendant, <i>Judex Facti</i> has considered the legal</p>

	<p>recommendation for Fermenta Nouristana bin Zaenal to carry out rehabilitation for three months at the Rehabilitation Institute for Government Agencies. Continuing and developing the legal process by taking into account the unlawful acts committed by the Defendant. That based on the Certificate from Wijaya Hospital signed by Dr. Erieko Harisusanto who explained that the Defendant Fermenta Nouristana due to his illness required medical treatment with a diagnosis of Methamphetamine dependence and mental disorders on 12 May 2018 to 11 October 2020. Based on these legal considerations, the Legal Advisor's Defense had legal grounds to be granted. that based on these legal considerations, the Panel of Judges ordered that the Defendant be immediately released from custody after the reading of the verdict of this case and ordered that the Defendant should immediately undergo treatment/rehabilitation at the Surabaya Orbit Foundation, that during the examination of this case the Defendant was detained, the detention that had been undertaken by the Defendant was reduced entirely from the length of time the Defendant has been detained, because the Defendant is found guilty and sentenced to a criminal sentence, he must also be burdened with paying court fees.</p>	<p>Number 61 Attachment to Law Number 35 Year 2009. The results of an assessment by the Singaperbangsa Foundation, Karawang Islamic Hospital, that the name is used with a frequency of 1-2 times a week. Expert statement Dr. Aviando Aditya Putra said that the defendant was categorized as dependent on the use of Narcotics. And the defendant in using the class I narcotics without being supported by valid or non-existent documents from the authorities, then the defendant's actions violate the law in abusing shabu-type narcotics for himself.</p>	<p>facts that were revealed before the trial in a correct and correct manner and did not exceed their authority. Moreover, the rest of the reasons for the cassation of the Public Prosecutor are only an evaluation of the results of evidence that are appreciative of a fact, such reasons cannot be considered in the examination at the cassation level, because the examination at the cassation level only relates to the non-applicability of a legal regulation, or the application of a legal regulation not as appropriate or whether the trial method is not carried out according to the provisions of the law, and whether the Court has exceeded the limits of its authority. Based on these considerations and it turns out that the <i>Judex Facti decision</i> in this case does not conflict with the law and/or the Act, the appeal is declared rejected.</p>
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Table 2 above, it can be concluded from the judge's considerations in the decision to grant imprisonment and rehabilitation to the defendant of narcotics abuse based on: (1) the defendant's urine contains Methamphetamine and is registered in group I; (2) there has been a recommendation from the integrated assessment team; (3) the defendant in using the narcotics class I is not supported by a valid document or does not exist from the competent authority, then the defendant's actions violate the law in abusing narcotics a type of methamphetamine for himself. In the decision above, the judge in addition to imposing a prison sentence also ordered the defendant to undergo treatment and treatment through Medical and Social Rehabilitation. Next, the perception of judges in giving death penalty decisions can be seen from the following table:

Table 3.
Decision on Death Penalty in Narcotics Crime

Year/No. Decision	Number: 144 PK/Pid.Sus/2016	Number: 144 PK/Pid.Sus/2016
indictment	First: Article 82 paragraph (3) letter a of Law Number 22 of 1997 concerning Narcotics in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code in conjunction with Article 84 paragraph (2) of the Criminal Procedure Code:	First: Article 114 paragraph (2) jo. Article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, Or Second: Article 112 paragraph (1) letter a of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

	<p>Or Second: Article 78 paragraph (1) letter b of Law Number 22 of 1997 concerning Narcotics in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code</p>	
Claims	<p>Stating the defendant Michael Titus Igweh guilty of committing a criminal act "unlawfully and unlawfully accepting Narcotics Category I in the form of Heroin together and continuously and carried out in an organized manner" as regulated and threatened with crime in Article 82 paragraph (3) letter a of the Law RI Number 22 of 1997 concerning Narcotics in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code in the First Primary indictment: Sentencing the Defendant MICHAEL TITUS IGWEH in the form of death penalty plus a fine of Rp. 500,000,000.00 (five hundred million rupiah) Subsidiary for 3 (three) months in confinement, and by order of the Defendant to remain in custody: To stipulate that the Defendant pay court fees in the amount of Rp. 1,000.00 (one thousand rupiah)</p>	<p>Declare the Defendant FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT legally and convincingly guilty of committing the crime of "a malicious conspiracy without rights and against the law offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering Narcotics Category I not a plant weighing 5 (ima) grams, as charged by the Prosecutor/Public Prosecutor, namely the primar indictment of Article 114 paragraph (2) jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Sentencing the Defendant with a death penalty.</p>
Decision	<p>Declared that the Defendant MICHAEL TITUS IGWEH was legally and convincingly proven guilty of committing a crime "Irlegally and unlawfully offering for sale, distributing, delivering, receiving, being an intermediary in the sale of Narcotics Bell Category I (one) in the form of Heroin which is carried out jointly. same, continuous and organized", Sentenced the Defendant MICHAEL TITUS IGWEH with a death penalty and a fine of Rp. 500,000,000.00 (five hundred million rupiah) Subsidiary 3 (three) months in prison, Determined evidence in the form of Heroin weighing 5,859 grams, with a note that the evidence of Heroin weighing 5,223 grams was destroyed on Thursday, December 19, 2002, at the Polda Metro Jaya, based on the Decision Letter on the Status of Narcotics Confiscated Goods by the Head of the Tangerang District Attorney Number B-05/0.6.11/Ep.2/11/ 2002 dated November 20, 2002, Ordered the Defendant to remain in custody, stated that court costs were borne by the State.</p>	<p>Stated that the Defendant FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT was legally and convincingly proven guilty of committing the crime of "evil conspiracy to commit a crime without rights and against the law buying, selling and being an intermediary in the sale and purchase of Narcotics Category 1, not plants weighing more than 5". five) grams" as stated in the Primair indictment. Sentencing the Defendant FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT with a sentence of "DEATH", and a fine of Rp 10,000,000,000.00 (ten billion rupiah). BUDI bin H. NANANG HIDAYAT in the form of revocation of his rights to use communication tools immediately after this decision is pronounced, even though the Defendant submits legal remedies in any form (immediately). what he was doing before he did it the enforcement of the decision in this case which has permanent legal force.</p>
Legal Considerations	<p>Whereas the Petitioner for Judicial Review/Convicted in the <i>a quo case</i> has submitted an application for judicial review and has been ruled by the Supreme Court with Decision Number 251 PK/Pid.Sus/2011 dated October 10, 2012 with the decision of, among others, "Rejecting the request for</p>	<p>That due to the reason for the judicial review of the Petitioner for Judicial Review/Convicted does not meet the provisions of Article 263 paragraph (2) and (3) of the Criminal Procedure Code, then based on the provisions of Article 266 paragraph (2) letter a of the Criminal</p>

	<p>judicial review from the Petitioner for Review. Back/Convicted Michael Titus Igweh. Whereas according to the Circular Letter of the Supreme Court Number 7 of 2014 that the application for judicial review in a criminal case is limited to only 1 (one) time and the petition for judicial review submitted by the Petitioner for Judicial Review/Convict <i>a quo</i> is more than once, which is only possible if it fulfills the stated reasons. regulated in the Circular Letter of the Supreme Court Number 10 of 2009, namely if there is an object of a case where there are two or more judicial review decisions that contradict one another.</p>	<p>Procedure Code the application for judicial review from the Petitioner for Judicial Review/Convicted must be rejected and stipulates that the decision for which a judicial review is requested remains in effect, that because the petition for judicial review from the applicant for judicial review/convict is rejected, and the convict is still sentenced to a death penalty, the costs of the case for judicial review shall be borne by the State.</p>
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Table 3 above shows the judge's considerations in the decision to give the death penalty to defendants involved in narcotics crimes based on: (1) Illegally and unlawfully offering to sell, distribute, hand over, receive, become intermediaries in the sale and purchase of Narcotics Category I (one) in the form of Heroin; (2) committing a crime Conspiracy to commit a crime without rights and against the law to buy, sell and become an intermediary in the sale and purchase of Narcotics Category 1 not plants weighing more than 5 (five) grams. Based on the judge's considerations, the researcher concluded that the judge's decision to give a death penalty against the defendant involved in narcotic crime is always based on the fact that the defendant is a dealer or seller of class I narcotics, not plants.

4.CONCLUSION

Essence of *equality before the law* in the future for law enforcement of narcotics crimes must be carried out as follows: *First* , in the rule of law regarding narcotics crimes in the future (*ius constituendum*), in relation to the provision of rehabilitation, it is necessary to present the presence of a judge. *Ad Hoc* to give a decision as a manifestation of the principle of the rule of law in Indonesia, in order to achieve justice based on *equality before the law* ; *Second* , rehabilitation is an action sanction imposed by a judge on narcotics addicts, either in the form of a decision or determination. Imposition of rehabilitation is counted as serving time; *Third* , to support the success of providing narcotics rehabilitation services, supporting activities and services are carried out, including general health care, health care due to narcotics abuse, mental and spiritual care, education, and training for independence;

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