CONCEPT OF PROTECTION FOR VICTIMS OF NARCOTICS ABUSE IN INDONESIA FAIRLY BASED ON PANCASILA

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ABSTRACT

Background: Since the introduction of criminal policy on victims of drug abuse in Indonesia in Law No. 35 of 2009 on Narcotic Drugs, the current legislation does not give room to the use of criminal means (tax and action), which extends both its content and benefits as contained in Article 127 paragraphs (1), (2), and (3), Jo. Article 103 Jo. Art. 54 is the punishment of criminal imprisonment, and the sentence of medical rehabilitation or social rehabilitation only tends to be rigid, So in legal practice, it still tends to position victims of drug abuse as being treated equally as perpetrators of drug offenses in general, without regard to justice for the protection of the victim of narcotics abuse itself. Adopting good concepts for the formulation of the Narcotics Act in the future is necessary as a reflection of the values of justice for the victims of drug abuse who are distributed to Indonesians based on Pancasila with a more flexible system of punishment. (flexible on sentencing).

Objective: Analyzing to a great extent the innovative ideas of re-formulating criminal drug policy in Indonesia with a comparative study of criminal policy on victims of drug abuse in other countries. By using the method of doctrinal approach that analyzes the law as it is written in the books or the law as it is decided by the judge through the judicial process.

Theoretical framework: Prison sentences for narcotics abuse have proved to be unable to reduce the number of narcotics abuses. The Law on Narcotic Drugs, in its development, has been updated with the enactment of Law No. 35 of 2009 on Drugs. There has been a legal revision of the provisions of this law, with the decriminalization of drug abuse perpetrators. Narcotics addicts and victims of drug abuse must undergo medical and social rehabilitation. Van Boven, a United Nations special rapporteur, puts the rights of victims of human rights violations in a comprehensive way that is not only limited to the right to know and to continued justice but also the right to reparation (Theo Van Boven, 2002).

Method: This study uses the method of normative jurisprudence, or doctrinal law research, that analyzes both laws as they are written in the books and laws as they are decided by the judge through the judicial process. The use of skunder data as a source or material of information can be primary legal material, skunder legal material, or third-tier legal material.

Results: The results of the study suggest that there is a need to re-formulate the criminal policy of legal protection of victims as perpetrators of crimes in the future drug law enforcement...
system, including articles on the use of non-criminal means in drug law in the future as a measure of prevention of the adverse influence of the black traffic of narcotics in Indonesia. To this end, it is necessary to encourage the support of the government by using all its powers to provide the budget, resources, and human resources for both the security and defense of the country, such as the Indonesian National Army/Police of the Republic of Indonesia/National Narcotics Agency, other law enforcement agencies, and the apparatus of government within the scope of the state administration, so that the presence and existence of a state in protecting citizens in a safe, comfortable, and realization of a divine, just, and civilized society with a sense of unity, settlement with mutiny, and justice in society will be felt.

**Keywords:** protection, victim, narcotics abuser, concept.

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**CONCEITO DE PROTEÇÃO PARA VÍTIMAS DE ABUSO DE ESTUPEFACIENTES NA INDONÉSIA BASEADO RAZOAVELMENTE EM PANCASILA**

**RESUMO**

**Antecedentes:** Desde a introdução da política penal sobre as vítimas de abuso de drogas na Indonésia, através da Lei n.º 35 de 2009 sobre os estupefacientes, a legislação atual não dá lugar ao uso de meios criminosos (impostos e ação), que alarga tanto o seu conteúdo como os benefícios, tal como previstos no artigo 127.º, n.ºs 1, 2 e 3. O Artigo 103.º O Art. 54 é a punição da prisão criminal, e a sentença de reabilitação médica ou reabilitação social só tende a ser rígida. Então, na prática juridica, ainda tende a posicionar as vítimas de abuso de drogas como sendo tratados igualmente como autores de crimes de drogas em geral, sem considerar a justiça para a proteção da própria vítima de abuso de drogas. Adotar bons conceitos para a formulação da Lei de Entorpecentes no futuro é necessário como reflexo dos valores de justiça para as vítimas de abuso de drogas que são distribuídas aos indonésios com base em Pancasila com um sistema mais flexível de punição. (flexível em relação à sentença).

**Objetivo:** Analisar em grande medida as ideias inovadoras de reformulação da política de drogas criminosas na Indonésia com um estudo comparativo da política criminal sobre as vítimas de abuso de drogas em outros países. Usando o método de abordagem doutrinal que analisa a lei como está escrito nos livros ou a lei como é decidido pelo juiz através do processo judicial.

**Quadro teórico:** As sentenças de prisão por abuso de estupefacientes revelaram-se incapazes de reduzir o número de abusos de estupefacientes. A Lei de Entorpecentes, em seu desenvolvimento, foi atualizada com a promulgação da Lei nº 35 de 2009 sobre Drogas. Houve uma revisão jurídica das disposições desta lei, com a descriminalização dos autores do abuso de drogas. Os toxicodependentes e as vítimas de abuso de drogas devem ser submetidos a reabilitação médica e social. Van Boven, um relator especial das Nações Unidas, coloca os direitos das vítimas de violações dos direitos humanos de uma forma abrangente que não se limita apenas ao direito de saber e à justiça continua, mas também ao direito à reparação (Theo Van Boven, 2002).

**Método:** Este estudo utiliza o método da jurisprudência normativa, ou pesquisa de direito doutrinário, que analisa tanto as leis como estão escritas nos livros e leis como são decididas pelo juiz através do processo judicial. O uso dos dados da skunder como fonte ou material de informações pode ser material jurídico principal, material jurídico da skunder ou material jurídico de terceiro nível.

**Resultados:** Os resultados do estudo sugerem que há necessidade de reformular a política criminal de proteção jurídica das vítimas como autoras de crimes no futuro sistema de aplicação
1 INTRODUCTION

The problem of drug abuse is not only a national and regional ASEAN problem but also an international one. Efforts to combat domestic drug abuses must be synergized and integrated with the policy of drug problem abuse through regional and international cooperation, including the protection of victims of Narcotics abuse as a means to combat crime. The global anti-narcotic crime policy was originally outlined in the United Nations Single Convention on Narcotic Drugs in 1961. Indonesia was one of the countries that signed the Convention and subsequently ratified it through Act No. 8 of 1976 on the ratification of the Single Narcotic Drugs Convention of 1961 and the Protocol amending it. The legal instrument subsequently created by the Indonesian government to combat narcotics was Act No. 9 of 1976 on Narcotics to replace the law on narcotic drugs inherited by the Dutch colonial government, the Verdoovende Middelen Ordonantie 1927 (Stbl. 1927 No. 278 jo. No. 536), which regulates the circulation, trade, and use of narcotic drugs.5

The system of punishment for drug offenders in Indonesia, which adheres to the civil law system, requires a reorientation with more emphasis on actus reus and its consequences. The importance of the system of punishment within the framework of the perpetrator's accountability is to take effective action against perpetrators by considering the victims of drug abuse. Crime victims are those who suffer physically and spiritually from the actions of others seeking the fulfillment of their interests or others that are contrary to the interests and rights of the injured party. In the crime dictionary, it is also mentioned that the victim is a "person who has suffered mental or psychical suffering.

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loss of property, or death resulting from an actual or attempted criminal offense committed by another.”

The importance of understanding the perpetrator as a victim of drug abuse is based on changing the paradigm of thinking in the criminal justice system from punishment to restorative justice. So that the prevention, treatment, and financing of perpetrators must fulfill the victim's right to truth, justice, and recovery, the realization of a sense of justice, and guarantees of irreversibility.

In Indonesia, the criminal policy governing it, Law No. 35 of 2009 on Narcotic Drugs, currently does not give room to the use of criminal means (tax and action), which extends both its content and its benefits as contained in Article 127 paragraphs (1), (2), and (3). Jo. Article 103 Jo. Art. 54 is a penalty of imprisonment and punishment of medical rehabilitation or social rehabilitation-only that tends to be rigid. The victim, as a drug offender, is understood to be a victim of drug abuse for himself but not a drug addict or a drug victim for himself with drug status.

In the jurisprudence of the world of justice, it has not been seen how the judges in their judgments reflect the legal protection for victims as perpetrators of drug offenses and it turns out between the judgments and the other the behavior of each different even there is the disparity of sentences between the decisions, this is obtained from data collected on the decisions of judges at various state courts in Indonesia, and most judges give sentences with criminal imprisonment even milder sentences, and there are also judges who give its sentences by placing the victim for rehabilitation in a mental hospital, although this has been contrary to the goal of rehabilitation itself, that is to victims recover from their dependence and can return to physical and spiritual health. One reason is that not every district has an official rehabilitation facility from the government, and from those weaknesses, a just solution must be sought for future victims.

It can be seen from one of the narcotics cases considered to be a victim of narcotic abuse in the judge's judgment, as below:

Position of the case: Case No. 54/Pid.Sus/2022/PN Lbp on behalf of the accused Dimas Andika Pradana, the prosecution of the prosecutor general, the accused was found guilty of committing a criminal act “the narcotics abuser class I for himself” as regulated and threatened criminal in Article 127 paragraph (1) letter a RI Act No. 35 the Year 2009 on Narcotics, criminal punishment against the accused, DIMAS ANDIKA PRADANA alias DIMASS, with criminal imprisonment for 1 (one) year of imprisonment reduced while the defendant is in temporary detention with an order for the

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accuser to remain in detention, with proof of 1 (a) plastic clip containing Class I Narcotics, not plants or called Shabu (Metamfetamine) with a net weight of 0.04 (zero comma zero four) grams. The judge’s judgment declared that the accused had been legally found guilty of "Group I drug abuse for himself, as in the Second Prosecutor General’s indictment. The accused was sentenced to imprisonment for 8 (eight) months, thereby reducing the time spent in detention."

The above is an example of a drug case that treats victims still as purely drug offenders, and there are many more similar drug cases throughout Indonesia. In fact, the Supreme Court of the Republic of Indonesia has long been thinking about how legal protection is given to the accused in trial as a guideline for judges in the trial of a criminal case. For example, the legal protection of children faced with the law in court, such as the issue of differential application to children, is regulated in the Supreme Court Regulation No. 4 of 2014 on Guidelines for the Diversification of Implementation in the Child Criminal Justice System, which is the defense of the Law No. 11 of 2012 on the Child Penal Court System, including also in it the Act No. 35 of 2014 amending the Law No. 23 of 2002 on the Protection of Children.

The implementation and enforcement of restorative justice have been regulated by criminal law. Punishment is a means of achieving a goal, and how to formulate such a goal in the concept of laws to be enforced by listing a crime. In addition to being enforced, it also contains the purpose of punishment and the conditions of condemnation. The purpose of punishment is the protection of the public and the protection or rehabilitation of the perpetrator.

2 THEORETICAL FRAMEWORK

According to Barda Nawawi Arief (2002), crime is merely a means of achieving a goal that goes beyond the balance of two fundamental objectives, namely the protection of the public and the protection or edification of the individual perpetrators of crime. Apart from this balance, the condition of conceptual monetization also departs from the concept of a mono-dualistic balance between the interests of society and the interests of the individual, between objective and subjective factors.

The restorative justice approach can only be applied to drug addicts, abusers, victims of abuse, drug addiction, and narcotics in one-day use, as set out in Article 1 of

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7 Judgment of the Lubuk Pakam State Court, Article No. 54/Pid. Sus/2022/PN Lbp, on Wednesday, December 28, 2022.
the Joint Regulations of the President of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, and the Minister for Health of the Republic of Indonesia. The Minister of Social Affairs, the Prosecutor-General, the Chief of the State Police of the Republic of Indonesia; the Head of the National Narcotics Agency of the Republic of Indonesia on the Treatment of Narcotic Drugs Addicts and Victims of Drug Abuse in Rehabilitation Institutions with Number 01/PB/MA/III/2014, Number 03 Year 2014, Number 11 Year 2014, No. Per-005/A/JA/03/2014, No. 1 Year 2014, and Number Perber/01/III/2014/BNN.\footnote{Ibid.}

From such legal comparisons, things that are considered good can be applied as one of the concepts of re-formulation or re-orientation in the criminal policy of the Indonesian Drug Act in the future, alongside the innovations in this paper. Following the birth of Law No. 1 of 2023 on the National Penal Code that will be in force in 2026 in Indonesia, this is a legal breakthrough, replacing the Penal Code that was a product of Dutch colonialization by incorporating the thought and purpose of the colonial nation at the time.

This national penalty has the basis of a balance between legality (deed) and guilt (individual, human, people, society, or corporation). In addition, two fundamental legal bases emerged, namely the legal basis that is formal with the principle “No penalty without guilt (Keine Strafe Ohne Schuld/Geen Straf Zonder Schuld/Nulla Poena Sine Culpa)” as embedded in Article 1 paragraph (1) of Law No. 1 of 2023, and the second material legal basis with the “No guilt without utility (Geen Schuld Zonder Nut)” principle as embedded in Article 2 of the Criminal Code and so is the concept of a punishment system based on more flexible sentencing, which is the subject of this study. It's like it's in Chapter III, Articles 51-117 of the Criminal Code. Even in article 54, paragraph (2), which provides for “rechterlijke pardon” (judicial pardon), for minor matters, there is no need for a criminal conviction, but the judgment must mention that the defendant's deed has been proven. The purposes and guidelines of punishment within the Penal Code have been more flexible punishments (flexible on sentencing), not rigid in the use of criminal means that expanded the content and benefits. It is a good thing to adopt the values of the purposes and guidelines of punishment in the Narcotics Act in the future.
Based on the basic ideas of the author's innovation in criminal policy, taking the good things from other countries and adopting the legal foundations and funding system within the framework of the objectives and the funding guidelines contained in the National Penal Code for further incorporation in the concept of change for formulation or re-orientation of the criminal policy of the Indonesian Narcotics Act in the future by advancing the values of justice given to Indonesia based on Pancasila.

3 METHODOLOGY

This study uses the method of normative jurisprudence or doctrinal law research, i.e., legal research that uses data sources from Skunder, whose emphasis is on theoretical and qualitative analysis, to answer the three problems above.

4 RESULTS AND DISCUSSION

4.1 PROTECTION OF VICTIMS OF DRUG ABUSE IN INDONESIA

In Indonesia, the national criminal law policy still requires a policy of financing in the form of prison threats. Some of the threats that can be tackled are, for example, Article 127, Article 128, and Article 134; there may also be some other provisions of the Narcotic Drugs Act. An interesting phenomenon in this connection was when the Supreme Court of the Republic of Indonesia issued sentence No. 04 of 2010 concerning the placement of abusers, abuse victims, and drug addicts in institutions of medical rehabilitation and social rehabilitation. This sentence of the High Court of Indonesia was issued in response to Article 103, Paragraph (1), of Law No. 35 of 2009, stating:

The judge who examines the case of narcotics may: Decides to order the person concerned to undergo treatment and/or rehabilitation treatment if the narcotics addict is found guilty of a narcotic crime; or to order the person concerned to undergo treatment and/or rehabilitation if the narcotics addict is not found to be guilty of a narcotic crime. This letter of reference to the Supreme Court of the Republic of Indonesia does not answer the question of the possible occurrence of arrest and detention by the investigators, which at least can be expected to occur.

Provisions of Article 127
Each abuser: a. Category I narcotics for himself are punishable by imprisonment for a maximum of 4 (four) years; b. Category II narcotics for himself have a maximum sentence of 2 (two) years in prison; and c. Category III narcotics for himself are punished by a maximum prison term of 1 (one) year.
In settling a case as referred to in paragraph (1), the judge shall take into account the provisions referred to in Articles 54, 55, and 103.

In cases where the abuser, as referred to in paragraph (1), can be proven to be a victim of narcotic abuse, such an abuser is obliged to undergo medical rehabilitation and social rehabilitation.

After the Narcotic Drugs Act came into force in 2009, the Supreme Court issued Decree No. 7/2009 of the High Court of the Republic of Indonesia addressed to state courts and high courts throughout Indonesia to place narcotics addicts in rehabilitation rooms, and the latest was the issue of the Decree of High Court No. 04 of 2010 on the Placement of Abuses, Victims of Abuse, and Narcotics Addicts into the Medical Rehabilitation and Social Rehabilitation Institution, which is a revision of the Order of the Supreme Court of Indonesia No. 07 of 2009. The Law on Narcotic Drugs, in its development, has been updated with the enactment of Law No. 35 of 2009 on Drugs. There has been a legal revision of the provisions of this law, with the decriminalization of drug abuse perpetrators. Narcotics addicts and victims of narcotic abuse are required to undergo medical and social rehabilitation.

The development of victimology, in addition to encouraging people to pay more attention to the victim's position, has also divided the victims so that there are various types of victims, which are as follows:\(^{10}\) a. nonparticipating victims are those who do not care about the attempts to combat crime; b. latent victims are those who have certain characteristics so that they tend to be victims; c. provocative victims are those who cause the occurrence of crime; d. participating victims are the ones who, by their behavior, facilitate themselves to be victims; and e. false victims are the ones who become victims of their acts.

The typology of victims, as presented above, has similarities with the typology identified by the circumstances and status of the victim, namely as follows:\(^{11}\)

- **A victim** is someone who does not do anything but, by his attitude, encourages himself to become a victim.
- **Biologically**, victims are those who physically have a weakness that causes them to become victims.

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11 Ibid.
(3) Socially weak victims are those who have a weak social status that causes them to become victims.

(4) Self-victimizing victims are those who become victims of crimes committed by themselves, such as drug abuse, gambling, abortion, and prostitution.

Seeing from the role of the victim in the occurrence of a crime, Stephen Schafer says that in principle there are four types of victims, namely: [Wade Darma Weda, Criminology, PT. King Grafindo Persada, Jakarta, 1996, pp. 90.] a. People who have no fault but remain victims (for this type, the fault lies with the perpetrator); b. Victims consciously or unconsciously have done something that is inciting others to commit a crime (for these types, victims are stated to have a share in the crime so that the guilt lies on perpetrators and victims); c. Those who are biologically and socially potentially victims. Children, parents, people with physical or mental disabilities, poor people, minorities, and so on are the most likely victims (this type of victim in this case is not to blame, but it is society that has to bear responsibility); This is what is said to be a crime without a victim. Prostitution, gambling, and adultery are some of the crimes that belong to the crime without a victim; this type of guilty party is the victim because he is also the perpetrator.

According to Loebby Loqman about the legal protection of victims stated that the victim's complaint was taken over solely by the superintendent of the investigation and the public prosecutor. As for Barda Nawawi Arief, the concept of protection of the law can be seen from two meanings:

Can be understood as the legal protection to not be a victim of a crime, which means the protection of human rights or the legal interests of a person.
It can be understood as protection to obtain security or a legal guarantee for the suffering or loss of a person who has been the victim of a crime (thus identical to the incarceration of a victim); this form of guarantee can be the restoration of a good name (rehabilitation), the re-establishment of inner balance (including forgiveness), the granting of damages, and so on.

The international community has also discussed the issue of legal protection for victims. The victimology concept here is another concept of a pattern of thinking about people who are victims and become victims only, but are the victims of society due to social circumstances, or the victims of the rule of law requiring reorientation through the

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approach of decriminalization. According to Barda Nawawi Arief, victims include those who are victims of acts that, although they are not a violation of the applicable national criminal law, are violations of internationally recognized human rights standards.¹⁴

Most people in prisons engage in substance use disorders that are difficult to treat; however, in prison, substance use disorders are more easily accessible for some time as long as the victim is in jail. According to the latest European Monitoring Centre for Drugs and Drug Addiction health guidance and public response to drug problems, drug-related interventions in prisons can have a significant impact on morbidity, mortality, and public health.

Research has shown that the administration of opioid agonist treatment during imprisonment has been linked to several positive outcomes, including reduced drug injection in prison, resulting in a reduced risk of reprisal, and a decrease in the risk of death after being released from prison. The detection of mental health problems and substance use disorders among those in prison, accompanied by evidence-based treatment and adverse-impact mitigation measures, has the potential to improve the public health of those in detention and the health of the communities where they return.¹⁵ Narcotic addiction is a specific challenge to justice for the individuals involved. The common consequences that accompany addiction, including poverty, lack of access to health care, and distrust of the medical system, are often excessive in society. Access to effective drug abuse disorder treatment related to the criminal justice system varies greatly between different countries and is generally less available for drug addicts living in communities.¹⁶

In jurisprudence, since there is no official place to place victims in medical and social rehabilitation institutions in each district, sometimes the judges place them in ordinary public hospitals, and some even put them in a mental hospital and social shelter. This can be seen from the example of a drug case ruling below:

(1) Position on the matter: Case No. 45/Pid.Sus/2020/PN Dps on behalf of the accused Ruth Tan, EN Y. The Prosecutor General's Prosecution claimed that the accused was found guilty of committing a criminal offense "as a group I drug abuser for himself", as stipulated in Article 127 paragraph (1) letter A laws of the Republic Indonesia No. 35 of the Year 2009 on Narcotic Drugs with evidence 1

¹⁴ Ibid. pp. 2.
¹⁵ Anne Bukten, et. al. (2020), Factors associated with drug use in prison-results from the Norwegian offender mental health and addiction (NorMA) study, Health and Justice (2020) 8:10.
(one) plastic clips with a black-colored motif containing white powder allegedly containing a supply of Narcotics type cocaine with a net weight of 0.33 grams, and ordered the defendant to undergo medical and social rehabilitation at the Bhayangkara Denimar Hospital for 1 (one) year 6 (six) months, reducing the time of detention and rehabilitation that had been lived by the defendant.

The judge's judgment establishes that the accused has been legally proven and convicted of committing a criminal offense of abuse of class I narcotics on his behalf and orders him to undergo medical and social rehabilitation at the Bhayangkara Denpasar Hospital for 1 (one) year, reduced by the time of detention and rehabilitation that he has undergone. Closed on Monday, March 9, 2020.17

(2) Position of the matter: Case No. 612/Pid.Sus/2022/PN Bjm on behalf of the accused Mukhtar Ali’s claim from the Prosecutor General, "Complying with the offense of using group I drugs for self-sufficiency", as regulated and threatened with a criminal offense in violation of Article 127 paragraph (1) letter an of the RI Act No. 35 of 2009 on Narcotics with proof 1 (one) package of Narcotic drugs of the type Fuchs with a dirty weight of 0.22 (zero two commas) grams or net weight of 0.20 (zéro two comas) grams as well as punishment of medical rehabilitation of accused Mukhtar Ali for 6 (six) months at Sambang Lihum Hospital in Banjar district. The judge's judgment stated that the accused proved to have committed a crime of drug use of group I for himself" as the general prosecutor's single indictment and punishments of legal action to the accused in the form of medical rehabilitation for 4 (four) months in Sambang Lehum Hospital at Banjarur district of his entire medical rehabilitating period. Closed on Thursday, September 1, 2022.18

(3) Position on the matter: Case No. 112/Pid.Sus/2016/PN Smg on behalf of the accused, Fabianus Arif Prasetyo and Candra Kurniawan Hariadi Al. Candra Bin Agus Hari Haryono. Article 127 (1) letter A of the Law on Narcotic Drugs with evidence 1 (one) of the glass pipe cangklong that still contains the suspected Shabu type of narcotic powder and punishment to the accused to undergo rehabilitation for 6 (six) months respectively in PSPP Yogyakarta is reduced as long as they are rehabilitated and as long as they are in custody. The judge's
judgment stated that the accused had been legitimately proven and convicted of committing a criminal offense of abuse of class I narcotics for himself and sentenced the accused to criminal proceedings for medical rehabilitation and social rehabilitation for four (four) months in the Pamardi Social Panti Putra Yogyakarta. Discontinued on Tuesday, April 19, 2016.19

(4) In the proceedings of the Prosecutor General, the accused is guilty of committing a criminal offense of abuse of narcotic drugs type I for himself under Article 127 paragraph (1) letter a of the Narcotics Act with evidence 1 (one) small plastic clips of small size containing lymphatic crystals suspected to be narcotics type I Shabu and declared the defendant to undergo medical rehabilitation or social rehabilitation in the psychiatric hospital in the Lampung province for 6 (six) months. The judge's judgment stated that the defendant was found to have abused drugs in class I for his own sake and imposed an action against the defendant in the form of medical and social rehabilitation at the Psychiatric Hospital of the Lampung Province for five months with an order to the public prosecutor to immediately remove the defendants from the house of detention and undergo rehabilitation, counted as a time of imprisonment. Discontinued on Wednesday, May 4, 2016.20

According to Sudarto,21 Law enforcement is both care and practice, both the acts that are contrary to the true law and those that may be contrary. (onrecht in potentie). Law enforcement is also a series of processes of promulgation of ideas and ideals of law that incorporate moral values such as justice and truth in concrete forms. Their realization requires an organization such as the police, prosecutor's office, courts, and government institutions as a classic element of law enforcement formed by the state.22 In other words, law enforcement in fact contains the supremacy of the substantive value of justice.

The state has absolute authority in the establishment of regulation of legislation together with legislative institutions that will be enforced on all its citizens as a positive law, including in the criminal policy (policy of criminal law) of a state. Criminal law policy is a rational effort by society to combat crime. Sudarto affirmed that carrying out criminal law policy means an effort to establish criminal law rules that are appropriate to

19 Judgment of the Semarang State Court, No. 112/Pid.Sus/2016/PN Smg, on Tuesday, April 19, 2016.
20 Metro State Court Judgment, Item No. 54/Pid.Sus/2016/PN Met, on Wednesday, May 4, 2016
circumstances and situations at a given time and for times to come.\textsuperscript{23} Chainur Arrashyid explains that criminal law policy is any rational effort of society to combat crime. From the point of view of society, this criminal policy can be said to be the protection of society against crime or social defense.\textsuperscript{24}

According to Muladi and Barda Nawawi Arief,\textsuperscript{25} In fact, the issue of criminal law policy is not merely a legal-technical work that can be done normatively, systematically, and dogmatically. In addition to a normative juris-discipline approach, criminal law politics also requires a factual juris-discipline approach, which can be a sociological, historical, or comparative approach. It even requires a comprehensive approach to various social-cultural disciplines and an integral approach to social policy and national development in general. Law as a legal product, not a political product, should be placed as a norm that is excavated as a source for the prosperity of the Indonesian nation, rich in culture. Values and pluralism of law.\textsuperscript{26} The Indonesian framework, as a rule of law, requires public participation in controlling the legislative process of every court in the legislature.

4.2 FORMS OF PROTECTION FOR VICTIMS OF DRUG ABUSE THROUGH REHABILITATION IN DIFFERENT COUNTRIES

a. United States (Common Law System)

In the 1970s, when drug abuse rates rose, including among Vietnam War students and veterans, most families and traditional social services were not ready to deal with the problem. Although there is an urgent national need for treatment, existing healthcare systems are not trained to treat it, and they also do not want to accept patients with drug abuse disorders.\textsuperscript{27} The separation of treatment for drug abuse disorders from other health care services began to change with the entry into force of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and the Affordable Care Act of 2010. The Mental Health Parity and Addiction Equity Act requires that the

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financial requirements and treatment restrictions imposed by health plans and insurance companies for narcotic abuse are no more restrictive than the financial and treatment limitations they impose on medical and surgical abuse.²⁸

Considering the impact of drug abuse on public health and the increased risk of long-term medical consequences, including drug use disorders, the U.S. government considers it important to start preventing narcotics abuse, identify those who abuse drugs, and intervene early. Evidence-based preventive intervention, carried out before the need for treatment arises, is crucial because it can delay early use and stop the progression from normal use to problematic use or drug abuse disorder (including its most severe form of addiction), all of which are associated with costly health consequences for individuals, societies, and communities.²⁹

Models and innovations range from health homes and accountable care organizations to managed care and coordinated nursing organizations, and they test strategies to effectively and sustainably fund high-quality care that integrates behavioral health and general health care. [U.S. Department of Health & Human Services (2016), Op cit, pp. 6-4.] At the same time, many states are making changes to drug-related policies, ranging from drug use on prescription to prescription drug monitoring programs to eliminate the punishment system. These changes reveal new opportunities to create more evidence-based policies and practices to address health and social issues related to drug abuse.³⁰

Currently, in the United States, treatment with medications such as methadone, buprenorphin, and naltrexone, is available for people who are addicted to opioids, while nicotine treatments (koyo, rubber, throat relievers, and nasal spray) and varenicline and bupropion drugs are available for those who are smoking addicts. Data suggests that most people with severe addiction are polyethylene users and need treatment for all the narcotic drugs that are abused. Even the combined use of alcohol and tobacco has been proven to be a combined treatment for both substances. Psychoactive drugs, such as antidepressants, antianxiety agents, mood stabilizers, and antipsychotic drugs, are also important for the success of treatment when patients experience concomitant mental disorders, like

depression, anxiety disorder (including posttraumatic stress disorder), bipolar disorder, or schizophrenia.\(^{31}\)

Behavioral therapy can also help people become better at communicating, connecting, and developing skills. Some more established behavioral treatments, such as contingency management and cognitive behavioral therapy, are also adapted for group settings to improve efficiency and cost-effectiveness. For different aspects of addiction, a combination of behavioral therapy and treatment (when available) generally seems more effective than self-employed approaches.\(^{32}\)

The concept of decriminalization in America started in February 2021, when the state of Oregon in the United States officially decriminalized illicit drugs. People who have small amounts of heroin, methamphetamine, LSD, oxycodone, and other drugs can no longer be arrested. A vote that decriminalizes certain narcotics is already in effect. Instead, those found to possess the narcotics would be fined $100 or undergo a health assessment that could lead to addiction counseling. Supporters praised the move as a revolutionary move for the United States.\(^{33}\)

Proponents of decriminalization say that treatment should be a priority and that criminalizing drug possession does not work. Besides facing possible imprisonment, having a criminal record makes it difficult to find housing and work and can harass someone for life.

Some public prosecutors are opposed to the action; they say that the action is inappropriate and will increase the use of dangerous drugs. This is because those arrested by law enforcement for the amount of use of personal drugs are not subject to detention but only to civil proceedings, urging the prosecution to only issue a "like a warrant for traffic violations" and not a criminal charge.\(^{34}\)

Decriminalization is the abolition of criminal penalties for small quantities of possession of illicit drugs (narcotics) and possession for personal use. Under the concept of decriminalization, criminal punishment can be replaced by civil punishment. This


\(^{34}\) Andrew Selsky (2021). Op cit.
could include a reference to an educational or medical program, or a fine. Civil cases do not have to go through the court system but can be handled by the courts.\textsuperscript{35}

It may be concluded that in the United States of America, in the common law system, the protection of victims of drug abuse is carried out in such a way as, in addition to criminal imprisonment under the provisions of the Controlled Substances Act, which stipulate that a person who violates this paragraph, the narcotics user, will be fined with a reasonable fee for investigating and prosecuting the offense, including the costs of prosecution of a criminal offense as defined in sections 1918 and 1920 of Title 28 of this law. In addition to the fines, there are also orders for rehabilitation and specific treatment, as well as the discourse of using the concept of decriminalization even for the use of marijuana and similar derivatives, which has been legalized in the United States.

b. Norwegia (Common Law System)

Norway is a small, high-income country with a population of about 5.5 million. The Norwegian justice system is often described as a "Scandinavian privilege, "characterized by low rates of imprisonment and high levels of care and service. The prison rate in Norway was only 73 per 100,000 people in 2016. This figure shows a very low rate when compared to various other countries, for example, 655 in the United States, 468 in Russia, 163 in Mexico, and 114 in Canada. In Norway, prisons are spread across the country to allow most prisoners to maintain geographical proximity with friends and family during their time in prison. All prisons are publicly funded and categorized into high-security, low-security housing units, or transition houses. The largest prison in Norway has a capacity of 400, while the smallest has only fifteen.\textsuperscript{36}

Treatment systems in Norway, considering the high risk of relapse and overdose associated with withdrawal of use, suggest that the more preferred treatment for opioid addiction is the replacement of prohibited opioids with prescribed opiate drugs such as full-blown methadone agonists or partial buprenorphine opioid agons. These agonist replacement therapies are generally effective in reducing illegal opioid use and deaths from overdoses, drug-related activities such as criminal activity, and diseases related to injection use.\textsuperscript{37} Because agonist replacement therapy poses a risk of unauthorized

\begin{itemize}
\item \textsuperscript{36} Anne Bukten, et. al. (2020). Op cit
\end{itemize}
distribution and abuse of prescribed methadone or buprenorphine, providers try to minimize these risks by using control measures such as monitored drug intake, urination, dose restrictions taken home, and travel outside the detention area. The disadvantage of these control measures is their tendency to reduce the patient's sense of freedom, potentially undermining their motivation to continue using agonist replacement therapy. Because methadone, a full opioid agonist, is believed to have a high potential for abuse and overdose, partial opiate agonists like buprenorphine are sometimes preferred. The risk of abuse of buprenorphine can be further reduced when combined with the short-term opioid antagonist naloxone. 38

It can be concluded that in Norway, which has a common law system, the protection of victims of drug abuse is practically the same as that of the United States, except for criminal prison sentences, or the offender is fined, while for his actions, special treatment is given so that the offenders can recover from their dependency immediately.

c. Taiwan (Civil Law System)

Illegal heroin users who receive prison sentences have a much higher risk of unemployment than those who receive postponed prosecution after controlling potential addictions, especially those who have jobs before serving sentences. The implications are that the higher the penalties, the higher the risk of unemployment. The results of the research support the claim that illegal heroin users are legally better treated as patients than criminals, thus giving priority to cessation of use rather than imprisonment. 39 To obtain real-time information on drug abuse in Taiwan, the National Bureau of Controlled Drugs, mental hospitals, and specialists in the drug-related fields in Taiwan jointly produce a drug-abuse case report sheet for medical institutions to report cases diagnosed with drugs abuse issues. The report sheet contains items about the demographic characteristics, the age of the first drug user, the reasons for the doctor's visit, the motives


of drug use, drug use history, administrative routes, the location of drug abuse, and the type of drug used.\textsuperscript{40}

The Surveillance System of Drug Abuse and Addiction Treatment was established by the National Bureau of Controlled Drugs in the Department of Health in 1995. Under the Controlling Drugs Act, the Ministry of Health was responsible for establishing the Substance Abuse Monitoring and Reporting System to prevent and monitor the abuse of illicit drugs. Cases of drug abuse have been online since 2002.\textsuperscript{41}

Due to the urgent need for legislative reforms to fully comply with the UN Convention, the "Drug Prevention and Control Laws" were enacted in May 1998 to replace the old "Drug Abolition Act." For legitimate drug supervision, the Drug Control Act was also revised and passed into the Narcotics Control Act in June 1999. In this new law, the status of a drug addict has been changed from criminal to "sick criminal," a term created to describe the status of an addict who will receive comprehensive medical and psychosocial care at a correctional center. The Control Drugs Act also allows the National Bureau of Controlled Drugs, re-formed from the NNB on July 1, 1999, to be responsible for controlling the use and flow of controlled drugs and to establish the National Office for Drug Control and Development of Anti-Drug Infrastructure. Since its establishment in 1999, the National Bureau of Controlled Drugs, in collaboration with the Department of Justice and the Ministry of Education, has been working to build a comprehensive anti-drug infrastructure.\textsuperscript{42}

In Taiwan, to address the problem of illicit drug use, a harm reduction program is a holistic and integrated plan aimed at reducing the losses to individuals, families, and communities from the dangers of drug abuse. The main steps in the program are: (a) providing comprehensive health consultancy services; (b) providing drug addicts with effective health care for the prevention of blood-borne diseases such as HIV infection; (c) providing timely screening services with early detection of cases and timely treatment to prevent their transmission; (d) make good plans for cleaning needles by providing clean needles for drug addicts, (e) to increase the number of health education activities and reference services to prevent hepatitis B and HIV infection by joint use of needles, and (f) treat with alternative health care. People who for a while can't get out of narcotics may

\textsuperscript{41} Jui Hsu, Jii-Jun Lin, Wen-Ing Tsay (2014). Op cit.
take the risk of replacing high-risk drugs for injections. Besides, medical examinations, blood tests and referral treatments are also given promptly.43

Given the growing situation of immunodeficiency virus infections (HIV) among injecting drug users, the Department of Health launched a pilot national harm reduction program in four of the 25 cities and districts in 2005. In 2006, the Center for Disease Control, Department of Health, Taiwan, reported a 10% decrease in new HIV-positive cases, and then a negative impact reduction program was implemented nationally. In addition to the implementation of the pilot harm reduction program, the HIV test was introduced in 2004, as was the HIV education program, which is also important for effective HIV control.44

It can be concluded that in Taiwan, which adheres to the civil law system, the protection of victims of drug abuse is carried out in addition to the criminal prison or fine imposed on the victim, as well as the obligation to undertake treatment and special care for his recovery.

4.3 THE CONCEPT OF RE-FORMULATING A FAIR DRUG CRIMINAL POLICY BASED ON PANCASILA

a. Approach to the Penal Solution in the Form of Penal Punishment

Unfortunately, there is no concept of reimbursement or compensation for victims of drug abuse in Indonesian law, although it is still in the scope of the Supreme Court Regulations, whose purpose is to fill a legal vacuum because there are no rules of its laws.

The Supreme Court Regulation No. 1 of 2022 on the Procedure for Completion of Applications and Granting of Repayment of Compensation to Victims of Crime explains that reparation is compensation for damages granted to the victim or his family by the offender or a third party. Then the definition of victim here is a person, including a child under the age of 18 (eighteen) years or still in childbirth, who has suffered physical, mental, and/or economic suffering caused by a criminal act.

Unfortunately, this restitution is limited to serious human rights violations, terrorism, trafficking in persons, racial and ethnic discrimination, and child-related crimes, as well as other crimes established by the Decision of the Institute for the

Protection of Witnesses and Victims as referred to in the provisions of the legislation (Article 2(1) letter a). Similarly, compensation applies only to serious human rights violations and terrorism. Excludes drug offenses that are categorized as victims of drug offenses.

That is why it is necessary to legislate for the updating of the Narcotic Drugs Act in the future, in particular against the abuser, addicts, and victims as perpetrators of narcotic offenses, whether it is in addition to the contents of the article or made in its chapters, including when the perpetrator is categorized as a child, by expanding the content and meaning of the criminal fall.

Therefore, policies for dealing with criminal acts must be carried out through rational and comprehensive planning as a response to criminal acts (a total rationale of the responses to crime). These policies include how to describe human behavior that could be considered a crime (a criminal policy that defines human behavior as a crime).\footnote{Ibid, hlm. 99-100.}

Based on the above description, it is necessary to emerge new ideas of the criminal policy of drug law in the future in terms of the use of criminal means in the form of criminal punishment, not stagnant in the criminal prison only the need to add the existence of crime in the shape of fines given victims of abuse, and it is also necessary to think about the concept of restitution as well as compensation. One interesting thing is the idea of being able to adopt the system of mediation for both the purposes and guidelines of the criminal as well as the actions contained in Law No. 1 of 2023 on the National Penal Code, namely the concept of the existence of pardon by the judge (judicial pardon /dispense de Pena) as regulated in Article 54 (2) of the Criminal Code, which in its explanation mentions in essence that the perpetrator of a criminal offense in a particular case is not criminally convicted because there is the pardon of a judge, where in the judgment it still mentions that the criminal act committed by the pervert is proven.

\textbf{b. Approach with non-penal remedies}

\textit{Barda Nawawi Arief,\footnote{Barda Nawawi Arief, \textit{Bunga Rampai Kebijakan Kebijakan Hukum Pidana}, Op.Cit, hlm. 45-46.}} Criminal politics is an effort to combat crime, and criminal politics can be expressed in various forms, including criminal law application, prevention without punishment, and influencing public views of crime and mediation through the mass media. (influencing views of society on crime and punishment).
The attempt to combat the occurrence of criminal acts using non-penal means has a very strategic position. It is explained by Barda Nawawi Arief that this non-criminal effort should be aimed at making society a social environment and a healthy living environment (materially and immaterially) free of criminogenic factors. Society, with all its potential, should be used as an anti-crime factor or anti-criminogenic factor that is an integral part of the entire criminal policy.\(^{47}\)

Seeing from the non-criminal side, this means digging, developing, and exploiting the full potential of public support and participation to streamline and develop the extra-legal system or informal and traditional system that exists in society.\(^{48}\) In addition to the non-criminal efforts that can be carried out by healing the society through social policies by digging into the potential that exists within the society itself, it can also be dug from various other sources that also have potential preventive effects. Other sources include the press or mass media, the use of technological advances (known as techno-prevention), and the potential use of the preventive effects of law enforcement.\(^ {49}\)

Applying non-criminal measures in the fight against drug offenses is an attempt to prevent them without the use of criminal law (prevention without punishment), including the application of administrative sanctions as well as confidentiality sanctions.

### 5 CONCLUSION

The use of criminal remedies (whether using criminal law or punishment by action) for victims of drug abuse “not addicts” who use drugs for themselves with proof of one-time use and the victim of drug abuse “toxic” is generally similar to the application of laws in Indonesia as contained in drug laws. What makes it different in some countries, especially in the Anglo-Saxon countries, is that they are now planning to replace criminal punishment with civilian or other punishments (decriminalization), even in some of those countries that have already legalized the use of certain types of narcotic drugs such as marijuana or similar derivatives.

Two central issues in criminal policy with the use of criminal means (criminal law) are the question of determination: (1) what acts should be considered criminal, and (2) what sanctions should be used or imposed on the offender. The implementation of these two central issues cannot be separated from an integral conception of criminal

\(^{47}\) Ibid. hlm. 13.

\(^{48}\) Ibid.

\(^{49}\) Ibid. hlm. 14.
policy, social policy, or national development policy. This means that the resolution of these problems must also be directed towards achieving the specific objectives of established social and political policy using a policy-oriented approach. (policy-oriented approach). This integral policy approach is not only in the area of criminal law but also in the development of law in general. Law enforcement policy, in essence, is the use of legal force, including criminal law, as one of the efforts to address social problems.

Considering that efforts to combat crime through non-penal channels are more of a preventive measure for crime, the main target is to address the factors conducive to causing crime. These conducive factors include social conditions that can directly or indirectly give rise to or foster crime.

Barda Nawawi Arief offers an integral conception of a crime control policy that contains the consequences of any rational attempt to combat crime. Barda Navavi, Legislative Policy in Combating Crime with Prison Penalty, Alumni, Bandung, 1994, pp. 36. These non-criminal efforts can cover a very wide range of areas across the social policy or national development sectors. The primary purpose of these non-criminal efforts is to improve certain social conditions that directly prevent measures against crime. So from the point of view of criminal policy, the non-penal preventive measure has a very strategic position. Failure to establish this strategic position would be fatal to the fight against crime.

There needs to be a re-formulation of the narcotics law in the future, which is expected in particular against the use of criminal means in the form of acts that are more broadly defined both in terms of content and benefits, such as making differences in the treatment of victims of drug offenders for children, adults, and victims for persons with disabilities, and this does not apply to the repetition of criminal acts. Adult abuse victims can be social workers, follow religious education or skills, and use customary punishment within a certain time. Whereas for child abuse victims, other than the same sanctions as adult victims of drug abuse, the child can also be returned to their parents or guardians. The victim of narcotics abuse who is disabled can be given special care, like in a mental hospital, to treat his or her mental health until stable within a certain time.
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