

LEGAL PROTECTION AGAINST NARCOTIC ABUSE ACTORS WHO ARE CONSENT IN PRISON

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ABSTRACT

Article 54 of Law no. 35 of 2009 concerning Narcotics states that narcotics users are required to undergo medical rehabilitation and social rehabilitation. However, in practice, the panel of judges still provides imprisonment without providing rehabilitation. This research is normative juridical research with a statutory and case approach. The analysis of legal materials used is grammatical and systematic interpretation. The results show that the form of legal protection for perpetrators of narcotics abuse who are sentenced to prison, namely narcotics abusers who have been given prison sanctions have the right to file an appeal to seek action sanctions, namely medical rehabilitation or social rehabilitation, because the provision of imprisonment without implementing rehabilitation is not in accordance with SEMA Number 4 of 2010 which states that narcotics abusers are required to carry out rehabilitation.

Keywords : Legal Protection, Narcotics Abuse, Imprisonment

INTRODUCTION

Article 54 of Law no. 35 of 2009 concerning Narcotics confirms that narcotics users are obliged to undergo medical rehabilitation and social rehabilitation, this confirms that in this case the victim of narcotics abuse is obliged to carry out recovery for himself both from a medical perspective on his health and restoration of good name for users to return to society, especially after undergoing the rehabilitation process in a rehabilitation center.

In addition, Article 103 of Law Number 35 of 2009 concerning Narcotics states "Judges who examine Narcotics Addict cases may decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime. In order to provide guidance, the Judge uses Article 103 of Law Number 35 of 2009 and to clarify the interpretation of who is a Narcotics Abuser in a contrario showing if a person owns, keeps, controls Narcotics. The Supreme Court of the Republic of Indonesia issued a 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.

For this reason, there is a need for a study related to legal protection for victims of narcotics abuse who are subject to imprisonment. This is because legal protection in criminal law is not only given to criminals but also to victims. Humans are essentially equal in value and dignity and equal in status under the law. This can be seen in the 1945 Constitution of the Republic of Indonesia Article 27 paragraph 1 which states that all citizens have the same position in law and government and are obliged to uphold the law and government without exception. Legal protection and guarantee of human rights is very important in a country based on law and is also a feature of a democracy.

According to Phillipus Hadjon (1987), legal protection for the people is a repressive and preventive government action. Repressive legal protection aims to resolve disputes, and Preventive legal protection aims to prevent disputes, including handlers in the judiciary who make government actions to be careful in making decisions.

It is necessary to underline that legal protection in accordance with human interests is order and order from the basic legal values, namely the existence of justice, legal certainty and legal usefulness, although in reality, the three basic values above are not synergistic, but efforts must still be made to achieve this. go hand in hand. Legal protection for narcotics abusers needs attention, because narcotics abusers are the young generation who will become the nation's successors. One way to save the younger generation from the dangers of narcotics is to provide legal protection for perpetrators of narcotics abuse, instead of giving a prison sentence like a dealer or narcotics dealer, (Alfons 2010).

However, in practice, even though the perpetrators of narcotics abuse are included in the category of victims of dependence or often referred to as addicts, the panel of judges still provides imprisonment for victims of dependence without providing rehabilitation, so that it does not reflect a sense of uncertainty and legal protection for victims of addiction to narcotics abuse.

This is like what happened to the narcotics abuser, Devrianto Panji Nugroho Alias Panji, where the Judge of the Sidenreng Rappang District Court sentenced the perpetrator to a prison sentence of 4 (four) years and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) with the provision that if the fine was If the payment is not paid, it is replaced with imprisonment for 2 (two) months. Whereas

in the trial it was obtained the fact that the perpetrator was a Narcotics Addict who committed a criminal act of Narcotics Abuse for himself. The same thing happened to Ahmad Jafar Bin Mohamad Ridwan Sadig; where the results of the diagnosis concluded that the perpetrator was a group of addicted marijuana users since 2017. However, the Tangerang District Court judge in his decision still gave imprisonment to the perpetrator. Likewise, what happened to Chandra bin (late) Danu Atmaja and Cahya Wulan Sari alias Caca Binti Lili Suhaeli, who were addicts to shabu-shabu narcotics. No. 10 JI. KH Mas Mansyur Karet Tengsin Tanah Abang, Central Jakarta, where the judges of the Central Jakarta District Court sentenced each defendant to 5 years with a subsidiary 3 months in prison.

Based on the description of the background of the problem above, the author formulates the problem in this study, namely what is the form of legal protection against narcotics abusers who are sentenced to prison?

RESEARCH METHODS

The type of research used in this research is normative juridical research. The research approach used in this research is the statutory approach, the case approach, the conceptual approach and the analytical approach, (Soemitro 1988). Data collection is something that is very closely related to data sources, because through this data collection, the data needed will be obtained for further analysis as expected. In this regard, in this study the authors used secondary data collection methods. Secondary data that supports information or supports the completeness of primary data, which consists of: primary legal materials, secondary legal materials and tertiary legal materials.

The technique of collecting legal materials used in this research is literature study. Literature studies are carried out by reading, studying, taking notes, making reviews of library materials, as well as searching through internet media. The technique of analyzing legal materials used in this research is grammatical interpretation, systematic interpretation and teleological interpretation.

RESEARCH RESULT

Law Number 35 of 2009 concerning Narcotics defines narcotics as substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate feelings that can cause dependence, which divided into groups as attached in Law Number 35 of 2009 aims to, (Soekanto 2006):

1. Ensure the availability of narcotics for the benefit of health services and/or the development of science and technology.
2. Prevent, protect, and save the Indonesian people from narcotics abuse.
3. Eradicating illicit trafficking of narcotics and narcotic precursors, and
4. Guarantee the arrangement of medical and social rehabilitation efforts for narcotics abusers and addicts.

Law Number 35 Year 2009 Article 64 paragraph (1) states that "In the context of preventing and eradicating abuse and illicit trafficking of Narcotics and Narcotics Precursors, with this Law the National Narcotics Agency is formed, hereinafter abbreviated as BNN". In the rehabilitation process, victims of narcotics abuse are not objects but subjects. He is a subject because the success or failure of the rehabilitation process is largely determined by himself. The presence of other roles is more to support and guide him through the stages of rehabilitation, (Syamsudin 2011).

The need for rehabilitation for narcotics users is because they are drug users who want to get well soon from the influence of addictive substances and they basically cannot help themselves, therefore, narcotics users need to be rehabilitated. Narcotics users who are found guilty of using narcotics without rights and against the law in a specified amount can access social and health approaches through medical and social rehabilitation centers as a form of sentencing.

Article 54 of Law no. 35 of 2009 concerning Narcotics confirms that narcotics users are required to undergo medical rehabilitation and social rehabilitation, this confirms that in this case the victim of narcotics abuse is obliged to carry out a recovery against himself both from a medical perspective on his health and restoration of the good name for users to return to society, especially after undergoing the rehabilitation process in a rehabilitation center.

There are 2 (two) ways that are usually done by the National Narcotics Agency in carrying out rehabilitation for victims of narcotics abuse, namely by volunteering or catching hands. Voluntary/volunteer, users consciously come to the National Narcotics Agency and have a desire to quickly recover from the dangers of the narcotics they consume, which will then be examined by the Integrated Assessment Team (TAT) regarding the amount of consumption consumed based on the Circular The Supreme Court Number 04 of 2010. In the case of being caught red-handed, he will first undergo a legal process and he is not involved in the illicit trafficking of narcotics which is then examined by the Integrated Assessment Team (TAT) in accordance with the provisions in the Supreme Court Circular Letter Number 04 of 2010.

Rehabilitation for narcotics users is required to undergo medical and social rehabilitation which in carrying out medical rehabilitation is carried out at a hospital appointed by the ministry of health, while for social rehabilitation it is held for approximately 6 (six) months undergoing recovery in a rehabilitation center, which then undergoes post-rehabilitation. through a mentoring program to monitor whether narcotics users have fully recovered or not, users after returning to the community are still monitored by the Integrated Assessment Team (TAT).

This is as regulated in Article 54 of Law no. 35 of 2009 concerning Narcotics confirms that Narcotics Addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. So that it can be said that it is the obligation of the state that carries out detention and imprisonment for perpetrators to undergo medical rehabilitation and social rehabilitation. As for the use of the word mandatory in Article 54 of the Narcotics Law, it is not only addressed to Narcotics Addicts and Victims of Narcotics Abusers, but to parties who are given the burden of revoking a person's freedom and independence either because of their authority or by legal decisions that have permanent legal force.

In addition, Article 103 of Law Number 35 of 2009 concerning Narcotics states "Judges who examine Narcotics Addict cases may decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime. In order to provide guidance, the Judge uses Article 103 of Law Number 35 of 2009 and to clarify the interpretation of who is a Narcotics Abuser in a contrario showing if a person owns, keeps, controls Narcotics. The Supreme Court of the Republic of Indonesia issued a 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.

For this reason, there is a need for a study related to legal protection against narcotics abuse which is subject to imprisonment. This is because legal protection in criminal law is not only given to criminals but also to victims. Humans are essentially equal in value and dignity and equal in status under the law. This can be seen in the 1945 Constitution of the Republic of Indonesia Article 27 paragraph 1 which states that all citizens have the same position in law and government and are obliged to uphold the law and government without exception. Legal protection and guarantee of human rights is very important in a country based on law and is also a feature of a democracy.

According to Phillipus Hadjon, legal protection for the people is a repressive and preventive government action. Repressive legal protection aims to resolve disputes, and Preventive legal protection aims to prevent disputes, including handlers in the judiciary who make government actions to be careful in making decisions.

It is necessary to underline that legal protection in accordance with human interests is order and order from the basic legal values, namely the existence of justice, legal certainty and legal usefulness, although in reality, the three basic values above are not synergistic, efforts must still be made to achieve this. go hand in hand.

Legal protection is protection given to legal subjects in the form of instruments, both repressive and preventive in nature, written or verbal. It can also be stated as an illustration of the function of law, which has the concept that the law provides order, justice, certainty, peace and benefit.

Legal protection for perpetrators of narcotics abuse needs attention, because the perpetrators of narcotics abuse are the younger generation who will become the nation's successors. One way to save the younger generation from the dangers of narcotics is to provide legal protection for perpetrators of narcotics abuse, instead of giving a prison sentence like a dealer or narcotics dealer.

However, in practice, even though the perpetrators of narcotics abuse are included in the category of victims of dependence or often referred to as addicts, the panel of judges still provides imprisonment for victims of dependence without providing rehabilitation, so that it does not reflect a sense of uncertainty and legal protection for victims of addiction to narcotics abuse.

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The description of the decision above means that the judge in giving a decision that provides imprisonment for narcotics abusers has not been able to provide legal protection for the perpetrators. Although basically narcotics abuse is an extraordinary crime that threatens the survival of a nation, so it is threatened with a fairly heavy crime. But on the other hand, the crime of narcotics abuse is included in a crime without a victim, which means that the perpetrators of narcotics abuse here are victims, so that the provision of imprisonment for narcotics abusers is deemed inappropriate because it can have a negative impact on society such as dehumanization. and stigmatization.

If the author relates it to the Theory of Legal Protection, according to Satjipto Raharjo, he argues that legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Because the nature and purpose of law, according to him, is to provide protection (protection) to the community, which must be realized in the form of legal certainty.

In addition, legal protection can also be explained as protection given to the law so that it is not interpreted differently and is not injured by law enforcement officials and can also mean protection provided by law against something.

For this reason, criminal sanctions imposed on perpetrators must be based on truth, justice and welfare. Criminal imposition or action is an action that must be accountable and beneficial to the perpetrator. The judge must consider the circumstances, the condition of the house, the state of the environment and the report of the community advisor.

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As for what is meant by legal protection according to Phillipus M. Hadjon is protecting the people from dangers and actions that can harm and suffer their lives from other people, the community and the authorities. In addition, it also functions to provide justice and is a means to realize prosperity for all people.

When the perpetrator of a criminal act of narcotics abuse has been tried before a court by a judge, and is found guilty and given criminal sanctions in the form of imprisonment, then the form of legal protection is repressive legal protection. According to Philipus M. Hadjon, repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests and originates from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts regarding the recognition and protection of human rights is directed at the limitations and laying down of community obligations. and government. The second principle that underlies legal protection against acts of government is the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights has the main place and can be linked to the objectives of the rule of law.

Furthermore, the perpetrators of the crime of narcotics abuse who have been given a prison sentence, based on article 67 of the Criminal Procedure Code, give them the right to file an appeal

against the decision of the first level court except for the verdict of pure acquittal/vrijpraak (free from all charges), impure free/onslag van alle rechtvervolging or escape from all lawsuits concerning the problem of inappropriate application of law and court decisions in quick proceedings (decision on minor crimes and cases of traffic violations).

In addition to criminal decisions given at the last level by courts other than the Supreme Court (such as the District Court and High Court), perpetrators of narcotics abuse crimes who have been sentenced to prison or public prosecutors may submit a request for a cassation examination to the Supreme Court except for the decision pure free/vrijpraak.

Furthermore, as regulated in Article 253 of the Criminal Procedure Code, the examination at the cassation level is carried out by the Supreme Court at the request of the parties as referred to in Article 244 and Article 248 of the Criminal Procedure Code in order to determine whether it is true that a legal regulation has not been applied or is not applied properly; is it true that the trial method is not carried out according to the provisions of the law; and whether it is true that the court has exceeded the limits of its authority. Based on this, at the level of cassation to the party applying for legal remedies, the Criminal Procedure Code requires a memorandum of cassation in its application, and for the reasons described in the memorandum, the Supreme Court accepts, examines and decides on the case submitted and automatically without a memorandum of cassation the application becomes invalid. .

According to Lilik Mulyadi's view, the sentencing guidelines determined in the formulaic policy for judges not to impose imprisonment are:

- a. Preventing criminal acts by enforcing legal norms for the protection of society
- b. Socializing convicts by conducting coaching so that they become good and useful people
- c. Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society, and
- d. Releasing guilt in convicts. Sentencing is not meant to suffer and demean human dignity.

Article 127 paragraph (3) of Law no. 35 of 2009 states that in the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation. Whereas what is meant by a victim of narcotics abuse is a person who accidentally uses narcotics because he is persuaded, deceived, deceived, forced, and/or threatened to use narcotics. The definition of "accidentally" is indeed confusing, in the Criminal Code the terminology "accidentally" is not found, what exists is "culpa" or "negligent". Culpa or negligent is certainly different from unintentional, because culpa is carelessness or unpredictability. Wirjono Prodjodikoro views culpa as an error in general, but in legal science it has a technical meaning, namely a kind of mistake by the perpetrator of a crime that is not as serious as intentional. If what is meant by accident is the opposite of intentional, this means that by accident must be interpreted:

- a. Unintentionally as an intent or purpose,
- b. Unintentionally as a conviction of certainty,
- c. Unintentionally as a realization of possibility.

Being persuaded of course refers to the understanding in Article 55 of the Criminal Code paragraph (1) 2, namely the existence of gifts, abilities, abuse of power or dignity, by coercion, threats, fraud, or by providing opportunities, facilities or information and intentionally encouraging others to commit crimes. deeds. Because persuading must use these methods in the Criminal Code, both persuading and being persuaded can be punished, but it turns out that in this provision if it can be proven or proven as a victim of narcotics abuse because of being persuaded, they are not punished, but nevertheless they are still obliged to undergo medical rehabilitation and social rehabilitation.

In determining whether a behavior is the cause of a forbidden effect, the question that must be answered is: whether that effect, taking into account all the objective circumstances that existed at the time after the effect occurred, can be determined as a result of that behavior. For example, A who had just joined his friend, he was given a cigarette and then smoked it, but before it was beyond his knowledge, his friend mixed marijuana in the cigarette, until at that time there was a raid and A was caught and after a urine test positive for using marijuana. In this case, because Person A did not know that his friend mixed marijuana into the cigarette, the use of narcotics should not be taken into consideration. Because Person A does not know about it, then he has no fault for the abuse of narcotics, so he cannot also be convicted or subject to Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics.

Forced and/or threatened, coercion can be in the form of physical or psychological coercion, as well as threats can be in the form of physical threats or psychological threats. Article 48 of the Criminal Code states "Whoever commits an act due to the influence of coercive power is not punished".

In reviewing the purpose of punishment, that punishment is identical to the punishment that applies to the violation of a rule of law, punishment is an unpleasant feeling (misery) imposed by a judge with a verdict on people who have violated the Criminal Law Act. According to philosophy, the purpose of punishment is:

- a. Punishment is a revenge, as stated in the ancient saying that whoever kills must be killed or called the theory of vengeance (vergeldings theory).
- b. Punishment must be able to make people afraid so that they do not do evil or the theory of fear (afchrikkings theory).
- c. The punishment is intended to correct people who have done evil, or the theory of correcting (verbeterings theory).
- d. There are some opinions which state that the basis of the sentencing is retaliation, but other purposes in the form of prevention, making people afraid, maintaining the order of living together, correcting people who have done evil, cannot be ignored, in this case called the combined theory.

Based on the description above, it is intended that one of the purposes of punishment is to provide sanctions so that they do not repeat the crime again in order to correct the person who has committed the crime. So it is very clear that in order to correct bad behavior, it does not mean having to give criminal sanctions in the form of imprisonment for victims of narcotics abuse, but if without criminal sanctions, it is permissible and can be applied because there must be objective reasons as stated by Rumelin that in determining whether a behavior is the cause of a forbidden effect, what must be answered is: whether that effect, taking into account all the objective conditions that existed at the time after the effect occurred, can be determined as a result of that behavior.

The description provides information that the narcotics abuse committed must be given a forgiving reason, namely the reason that eliminates the misuse of narcotics. So a person who has committed a crime does not mean that he should be punished. In accordance with the principle of criminal responsibility, namely "There is no crime without guilt", this principle is highly upheld and will be felt to be contrary to the sense of justice if an innocent person is sentenced to a crime. Regarding the narcotics users, there is often stigmatization from the community such as a perpetrator (dealer) even though he is a victim of the narcotics. Addicts and victims of narcotics abuse must be guaranteed medical and social rehabilitation. With the mention of the term "rehabilitation" as part of the development of science and technology, it can be concluded that the term rehabilitation consists of 3 (three), namely:

1. Rehabilitation: activities to find alternatives as a means of recovery for the benefit of humanity and in the context of research and development of science and technology. For example looking for a new formula for the benefit of the treatment of a disease.
2. Medical rehabilitation: an integrated process of treatment activities to free addicts from narcotics dependence (Article 1 point 16 of Law Number 35 of 2009 concerning Narcotics).
3. Social rehabilitation: an integrated process of recovery activities, both physical, mental, and social so that former narcotics addicts can return to carrying out their social functions in people's lives (Article 1 number 17 of Law Number 35 of 2009 concerning Narcotics).

Related to the understanding of crime, law, criminal law and criminal acts mentioned above, the narcotics crime which by law has been declared a criminal act that can be prosecuted, because the elements of a crime have been fulfilled and there has been a law. The governing law is Law Number 35 of 2009 concerning Narcotics. Where there is society there is law. In any kind of community environment, there must be laws with patterns and forms that are in accordance with the level of civilization of that society. The penal policy in tackling and eradicating narcotics crime is based on the legal function as a guide for everyone in behaving.

Comprehensive eradication and abuse of narcotics from the various scientific perspectives mentioned above, also supported by the eradication of narcotics abuse can be carried out in accordance with epidemiological and etiological studies. Epidemiological and etiological studies on narcotics abuse show that narcotics abuse occurs as a result of the interaction of several individual, personality and social factors.

Primary eradication is aimed at providing information and education to individuals, groups, communities or the wider community, who have yet to show signs of a narcotics crime case, including alternative activities to prevent individuals, groups or communities from narcotics crimes and strengthen their ability to refuse narcotics. Secondary eradication is aimed at individuals, groups, communities or the wider community who are vulnerable to or have shown symptoms of narcotics crime cases, through education and counseling to those who have tried using narcotics, so that they stop and follow healthier behavior. Tertiary eradication, prevention aimed at those who have become regular users (habitual) or who have suffered from dependence, through treatment or rehabilitation and recovery services as well as services to prevent relapses.

Eradication of narcotics crimes that violate the provisions of the narcotics law in this case are the efforts made by law enforcement in eradicating criminal acts of narcotics abuse, as well as the juridical consequences of violating Law Number 35 of 2009 concerning Narcotics. Understanding "Policy" in tackling criminal acts or crimes as mentioned above, namely by using penal policies (criminal law policies) or criminal law politics, in addition to using non-penal policies or social policies. This kind

of policy is also found in Law Number 35 of 2009 concerning Narcotics. Where in the two laws, in addition to the imposition of criminal sanctions or penal policies in the form of punishment of perpetrators of criminal acts of narcotics abuse, it is also known that there are non-penal policies or social policies in the form of providing "rehabilitation" especially for narcotics users.

This is in line with the provisions issued by the Supreme Court, namely the Circular Letter of the Supreme Court Number 4 of 2010 (SEMA Number 4 of 2010). In SEMA Number 4 of 2010 in more detail it discusses rehabilitation. Criteria for narcotics abusers have been regulated in SEMA Number 4 of 2010.

The provisions of "Rehabilitation" in Law Number 35 of 2009 concerning Narcotics states, "Narcotics addicts are required to undergo treatment and/or treatment". From these provisions, it can be understood that the Law regulates rehabilitation in addition to criminal law policies in the form of punishment of perpetrators of narcotics abuse crimes, also regulates "Non-penal Policies" or "Social Policies" namely: policies or rational efforts to achieve public welfare. From these provisions, it can be understood that Law Number 35 of 2009 uses a Humanistic Approach and the use of criminal sanctions, not only means that the punishment imposed on the violator of the law must be in accordance with applicable legal values. Starting from the "Humanistic Approach", Barda Nawawi Arief said that in relation to the humanistic approach, it is appropriate to put forward the conception of criminal policy from the social defense school (the penal policy of social defense) according to Marc Ancel, which departs from the conception of personal responsibility. This is considered necessary because the term community protection or social defense which is associated with rehabilitation and resocialization problems has often been used in Indonesia.

Based on this description, according to the author, the form of legal protection for perpetrators of narcotics abuse who are sentenced to prison is in the form of repressive legal protection, in this case the perpetrators of narcotics abuse who have been given prison sanctions have the right to file an appeal in order to seek action sanctions (treatment), namely medical rehabilitation. or social rehabilitation, because the imposition of imprisonment without implementing medical or social rehabilitation is not in accordance with the application of the law as stated in SEMA Number 4 of 2010 which states that narcotics abusers are required to carry out rehabilitation.

CONCLUSION

Based on the description and discussion in the previous chapter, the authors conclude that the form of legal protection for perpetrators of narcotics abuse who are sentenced to imprisonment is in the form of repressive legal protection, in this case the perpetrators of narcotics abuse who have been given prison sanctions have the right to file an appeal in order to seek sanctions action, namely medical rehabilitation or social rehabilitation, because the imposition of imprisonment without implementing rehabilitation is not in accordance with SEMA Number 4 of 2010 which states that narcotics abusers are required to carry out rehabilitation.

In terms of giving sanctions to perpetrators of narcotics abuse, judges in examining criminal cases of narcotics abuse are expected to not only provide imprisonment, but also provide action sanctions in the form of rehabilitation. Where rehabilitation aims to cure the mentality of the perpetrators of narcotics abuse, as well as imprisonment as a deterrent effect against the perpetrators of narcotics abuse. In order to create legal protection, the government as a policy maker related to the formation of laws and regulations made changes to the regulation of Law no. 35 of 2009 concerning Narcotics, specifically narcotics rehabilitation because the rules contained in the law have not explicitly mandated law enforcers, they still tend to be vague because there is the word "can" in Article 103 paragraph (1) of Law no. 35 of 2009 concerning Narcotics.

REFERENCES

1. A.L. Wisnubroto and G. Widiatana, *Renewal of Criminal Procedure Code*. Bandung: Citra Aditya Bakti, 2005.
2. AR. Sujono and Bony Daniel, *Comments and Discussion on Law Number 35. Year 2009 on Narcotics*, Sinar Graphic Offset, Jakarta, 2011.
3. Arief Gosita, *The Problem of Victims of Crime*. Jakarta : CV. Academic Pressindo, 1993.
4. Aziz Syamsudin, *Special Crimes*, Jakarta: Sinar Graphic, 2011.
5. Hadiman, *Supervision and Active Role of Parents and Apparatus in Combating and Abusing Drugs*. Jakarta: Raja Grafindo Persada, 2012.
6. <https://pn-karanganyar.go.id/main/index.php/about-court/kepaniteraan/kepaniteraan-pidana/715-Effort-Hukum-Pidana>, accessed on 22 July 2022
7. Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, Third Cet, Bayumedia Publishing, Malang, 2007.
8. Lidya Harlina Martono, *Enforcement and Overcoming of Drug Abuse*, Balai Pustaka, Jakarta, 2010.

9. Lilik Mulyadi, *Capita Selecta Criminal Law Criminology and Victimology*, Djambatan, Jakarta, 2004.
10. Maria Alfons, *Implementation of the protection of Geographical indications on local community products in the perspective of Intellectual Property Rights*, Doctoral dissertation summary, Malang, 2010.
11. Moeljanto, *Criminal Acts and Criminal Liability*, Adjah Mada University, Yogyakarta, 1989.
12. Moeljatno, *Principles of Criminal Law 7th printing*, Jakarta: PT. Rienika Cipta, 2002.
13. Phillipus M. Hadjon, *Legal protection for the people of Indonesia*, PT. Science Development, Surabaya, 1987.
14. Tangerang District Court Decision Number: 1025/Pid.Sus/2019/PN.Tng
15. Central Jakarta High Court Decision Number: 319/PID.SUS/2019/PT.DKI
16. Makassar High Court Decision Number: 645 /PID.SUS/2019/PT MKS.
17. Ronny Hanitijo Soemitro, *Legal and Jurimetric Research Methodology*, Enhanced Third Printing, Ghalia Indonesia, Jakarta, 1988.
18. Salim, *Application of Legal Theory in Thesis and Dissertation Research*, Raja Grafindo Persada, Jakarta, 2013.
19. Satijipto Raharjo, *Legal Studies*, Bandung: PT. Image of Aditya Bakti, 2000.
20. Sudikno Mertokusumo, *Legal Inventions*, Citra Aditya Bakti, Bandung, 2009.
21. Soerjono Soekanto & Sri Mamudji, *enelitian Normative Law A Brief Overview*, Raja Grafindo ersada, Jakarta, 2006.
22. Visimedia, *Rehabilitation for drug victims*, Tangerang: Pranita offset, 2006.
23. Wagiyati Soetodjo, *Child Criminal Law (Second Printing)*, PT. Refika Aditama, Bandung, 2008.
24. Widiartama. G., *Victimology Perspective of Victims and Crime Prevention*. Yogyakarta: Cahaya Atma Pustaka, 2014.