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## Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity

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### Abstract

The application of Articles in law enforcement against drug addicts that should be imposed on dealers, dealers or couriers, but instead imposed on addicts, causes legal uncertainty for addicts because the rights of addicts to be rehabilitated are not obtained. This paper uses normative legal research methods. The research approach used is a statutory approach and a case study approach. The results of this study are legal uncertainty in law enforcement against drug addicts in Indonesia, which is caused by multiple interpretations between Article 127 and Article 112 of Law Number 35 of 2009 concerning Narcotics, which has created disparities in sentencing that ignore the principle of justice. The use of Article 112 which should be intended for drug dealers is often misused to ensnare addicts, who should receive rehabilitation according to Article 127. The need for legal reconstruction that focuses on harmonizing Article 127 and Article 112 of the Narcotics Law to align the two articles, by providing quantitative limitations and clear criteria to distinguish abusers from dealers.

**Keywords:** Addicts; Disparity; Criminalization.

### Introduction

Drug abuse in Indonesia remains a serious and alarming issue due to its widespread and complex impacts.<sup>1</sup> According to data from the National Narcotics Agency, although the prevalence of drug abuse in Indonesia decreased from 1.95 percent in 2022 to 1.75 percent in 2023 (a reduction of 0.22 percent), the total number of users remains significant. Approximately 3.3 million individuals were

<sup>1</sup> Titik Sri Astutuk, 'Peranan Asesmen Oleh Badan Narkotika Nasional Sebagai Pertimbangan Hukum Hakim Dalam Perkara Tindak Pidana Narkotika' (2022) 9 IUS : Jurnal Ilmiah Fakultas Hukum.[66-82] <<https://doi.org/10.51747/ius.v0i01.964>>.

indicated as drug users in 2023, compared to 3.6 million in the previous two years. Similarly, the “ever used” category also declined, from 2.47 percent in 2022 to 2.20 percent in 2023.<sup>2</sup> Despite these reductions, the number of drug-related cases addressed by law enforcement has risen sharply. In 2022, the police handled 33,627 drug cases, which increased to 39,019 cases in 2023. As of October 31, 2024, the police had already acted on 37,526 cases.<sup>3</sup>

Law enforcement is expected to play a significant role in curbing the widespread trafficking of illegal drugs,<sup>4</sup> however, in practice, the more rigorous the enforcement efforts, the more pervasive illegal drug trafficking becomes. Drug-related crimes have become a core activity of transnational criminal organizations.<sup>5</sup> Efforts to combat narcotics trafficking within the scope of law enforcement are strongly tied to the process of criminalization. The broad scope of law enforcement aims not only to prevent criminal acts but also to eliminate narcotics-related crimes entirely.<sup>6</sup>

The criminal penalties for drug addicts, as outlined in Article 127 of Law Number 35 of 2009 on Narcotics, include the threat of imprisonment.<sup>7</sup> In enforcing Article 127, other related provisions must also be considered, specifically Articles 54 and 103 of the Narcotics Law. Article 54 mandate that drug addicts and victims of drug abuse “must” undergo medical and social rehabilitation. Meanwhile, Article 103 allows judges to “decide” whether drug addicts proven guilty of a crime should undergo treatment and/or care. This means judges have the discretion to impose

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<sup>2</sup> Badan Narkotika Nasional, “Angka Prevalensi Penyalahguna Narkotika,” *Badan Narkotika Nasional*, n.d.

<sup>3</sup> Antaranews, “Penindakan Kasus Narkoba Sepanjang 2024,” *Antaranews.Com*, 2024.

<sup>4</sup> Luca Giommoni Giulia Berlusconi and Alberto Aziani, ‘Interdicting International Drug Trafficking: A Network Approach for Coordinated and Targeted Interventions’ (2022) 25 *Eur J Crim Policy Res.*[545-572] <<https://doi.org/10.1007/s10610-020-09473-0>>.

<sup>5</sup> Intan Permata Sari, Gusti Bagus Suryawan and I Nyoman Sujana ‘Penegakan Hukum Terhadap Pecandu Narkotika’ (2019) 1 *Jurnal Analogi Hukum*. [104] <<https://doi.org/10.22225/ah.1.1.2019.104-109>>.

<sup>6</sup> Andy Sahat Manogar Silalahi, ‘Penyuntikan Asas Strict Liability Pada Pasal 127 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Menimbulkan Ketidakpastian Hukum’ (2021) 2 *Jurnal Indonesia Sosial Teknologi*. [1277-1286]. <<https://doi.org/10.59141/jist.v2i08.209>>.

<sup>7</sup> Dollar Dollar and Khairul Riza, ‘Penerapan Kualifikasi Penyalahguna, Pecandu Dan Korban Penyalahgunaan Tindak Pidana Narkotika Demi Mewujudkan Nilai Keadilan’ (2022) 1 *Kajian Ilmiah Hukum Dan Kenegaraan*. [13-21] <<https://doi.org/10.35912/kihan.v1i1.1340>>.

either imprisonment or rehabilitation for drug addicts. Furthermore, the Narcotics Law presents overlapping definitions, as drug addicts can also fall under the category of drug abusers.<sup>8</sup> This inconsistency creates legal uncertainty and leads to disparities in judicial decisions. It remains unclear whether drug addicts, who are also considered abusers, should exclusively undergo rehabilitation or face imprisonment as well.

Criminal disparity can lead to dissatisfaction among convicts and society as a whole. This may give rise to social envy and negative perceptions of judicial institutions. If left unaddressed, such issues can foster apathy, cynicism, and widespread dissatisfaction, potentially resulting in vigilante actions or direct retaliation against criminal offenders. Additionally, it can create a sense of indifference toward courts and other law enforcement agencies within the community. Over time, public trust in the judiciary diminishes, leading to a condition where judicial institutions are no longer regarded as credible or trustworthy by the people.<sup>9</sup>

Previous research by Romdoni and Fitriasih revealed seven cases involving decisions under Article 127 Paragraph (1) letter a of the Narcotics Law, where prison sentences were imposed. This was due to the absence of a rehabilitation request in the prosecutor's indictment. The wording in Article 103 Paragraph (1) letters a and b of the Narcotics Law, which uses the term "can," grants judges the discretion to choose imprisonment as a penalty, reflecting their independence in decision-making, which cannot be influenced by external parties. Furthermore, the lack of expert witnesses and recommendations from medical professionals during the trial often reinforces the judge's decision not to opt for rehabilitation measures.<sup>10</sup>

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<sup>8</sup> Amiotul Azizah and Putu Eka Trisna Dewi, 'Reformulasi Ketentuan Rehabilitasi Bagi Pecandu Narkotika Dalam Dimensi Ius Constituendum' (2023) 3 Yusthima : Jurnal Prodi Magister Hukum FH Unmas Denpasar.[101-129].

<sup>9</sup> Zainudin Hasan and Devi Firmansyah, 'Disparitas Penerapan Pidana Terhadap Pelaku Penyalahgunaan Narkotika' (2020) 15 Pranata Hukum.[221-237] <<https://doi.org/10.36448/pranatahukum.v15i2.232>>.

<sup>10</sup> Muhamad Romdoni and Surastini Fitriasih, 'Disparitas Pemidanaan Dalam Kasus Tindak Pidana Khusus Narkotika Di Pengadilan Negeri Tangerang' (2022) 51 Jurnal Masalah-Masalah Hukum 287 <<https://doi.org/10.14710/mmh.51.3.2022.287-298>>.

Another study by Athalla and Lewoleba found that the regulation of drug addicts in the Narcotics Law appears to be split between two perspectives. From a health science standpoint, drug addicts are seen as patients who require and must receive rehabilitation. Meanwhile, from a criminal law perspective, they are viewed as offenders who can be subjected to imprisonment. This contradiction within the Narcotics Law creates legal uncertainty regarding the treatment and regulation of drug addicts.<sup>11</sup> This study aims to examine the legal uncertainty in the enforcement of laws against drug addicts, which leads to disparities in sentencing.

This research uses normative legal research<sup>12</sup> methods with a statutory and case study approach. Data collection was carried out through a literature study that relied on secondary data, including primary legal materials such as statutory regulations, namely Law Number 35 of 2009 concerning Narcotics, binding court decisions, as well as secondary legal materials in the form of legal literature, scientific journals and opinions of legal experts. The use of primary and secondary legal materials provides an argumentative basis for the author in analyzing legal uncertainty in law enforcement against narcotics addicts. The analysis is carried out by examining written legal norms and juridical interpretations of their application in existing cases, in order to reveal the existence of criminal disparities as a result of legal uncertainty.

### **Legal Uncertainty in Law Enforcement Against Drug Addicts**

Criminal law enforcement is a comprehensive process that starts with investigation, followed by arrest, detention, the trial of the accused, and concludes with the convict's reintegration into society. In conclusion, law enforcement involves the application of criminal laws that are non-negotiable, and their execution must

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<sup>11</sup> Akwila Arif Athallah and Kayus Kayowuan Lewoleba, 'Pemidanaan Terhadap Pecandu Narkotika Di Indonesia Ditinjau Dari Aspek Tujuan Penegakan Hukum' (2020) 7 Lex Librum : Jurnal Ilmu Hukum.[17-32] <<http://doi.org/10.5281/zenodo.4271215>>.

<sup>12</sup> Yonatan, Tata Wijayanta, Bambang Sugiri, Sukarmi and Faizin Sulistio 'Criminalizing Civil Law Actions of Default into Criminal Acts of Fraud: A Human Rights Perspective' (2024) 39 Yuridika <<https://doi.org/10.20473/ydk.v39i3.51329>>.

uphold values that reflect human dignity, rather than being contrary to humanity or the prevailing laws and regulations.<sup>13</sup> Eradication of narcotics crimes is part of criminal law enforcement activities, namely the activity of implementing criminal laws and regulations by law enforcement officers using penal facilities.<sup>14</sup> Regarding Narcotics Crimes, in general they can be qualified into several forms of criminal acts.<sup>15</sup> However, what often happens in society is the relationship between drug users and dealers.<sup>16</sup> When discussing drug dealers, it is clear that there is an interaction between the dealers and buyers. There remains a debate regarding the classification of drug users. According to positive law, drug users are considered perpetrators of criminal acts because they meet the criteria outlined in Law Number 35 of 2009 concerning Narcotics.

From a criminological perspective, drug-related crimes, such as drug abuse, can be classified as victimless crimes. This classification refers to the nature of the offense, where both parties involved in the transaction or prohibited relationship do not perceive any harm to one another. Law Number 35 of 2009 was designed to curb the circulation of narcotics in Indonesia, which has become a transnational issue, and to reduce the number of victims, particularly among adolescents, who are at risk of endangering public health.

This objective is reflected in the considerations of Law No. 35 of 2009, which aims to reduce the harm caused by drug abuse. In pursuit of this goal, the law includes a special chapter Chapter IX that introduces rehabilitation penalties for drug addicts and victims of narcotics abuse. This provision is intended to ensure that those who suffer from narcotics addiction are subject to rehabilitation rather

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<sup>13</sup> Sepha Dwi Hananto, Anis Mashdurohatun and Jawade Hafidz 'Penegakan Hukum Pidana Terhadap Terdakwa Pengguna Narkoba Yang Menjalani Rehabilitasi Di Polda Jateng' (2022) 17 Jurnal Hukum Khaira Ummah.[68-77] <<http://dx.doi.org/10.30659/jku.v17i2.2594>>.

<sup>14</sup> Marlina Kristiyani and Vieta Imelda Cornelis, 'Penegakan Hukum Terhadap Pelaku Tindak Pidana Narkotika Di Wilayah Hukum Kepolisian Resor Kota Besar Surabaya' (2017) 12 Binamulia Hukum.[201-211] <<https://doi.org/10.37893/jbh.v12i1.331>>.

<sup>15</sup> Olena Volobuieva,[*et.,al.*] 'Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine' (2023) 12 Yustisia Jurnal Hukum.[262-277].

<sup>16</sup> Glen R. Hanson, *Drugs and Society*, Jones & Bartlett Learning (Burlington, 2024).[69].

than imprisonment or confinement.<sup>17</sup>

The rehabilitation approach seeks to offer drug abusers or addicts the chance to undergo treatment and recovery,<sup>18</sup> rather than simply serving a punitive prison sentence. The requirement for drug abusers and addicts to undergo rehabilitation is justified, as they are not only offenders but also victims of their own actions. Therefore, Article 54 of Law Number 35 of 2000 mandates that drug abusers and addicts must be subjected to rehabilitation.<sup>19</sup>

Article 127 of the Narcotics Law regulates the threat of imprisonment for misusing narcotics for personal use,<sup>20</sup> while Article 54 requires addicts to undergo medical and social rehabilitation.<sup>21</sup> The inconsistency between these two approaches causes law enforcement officers to be faced with the question of whether an addict should be processed criminally or directed to undergo rehabilitation. This creates the potential for inconsistency in the application of the law, where an addict can be imprisoned in one case but rehabilitated in another similar case. This situation not only confuses law enforcement officers but also creates legal uncertainty for the community.<sup>22</sup>

Apart from Article 127 and Article 54 of the Narcotics Law, there are also problems with the use of Article 112 of the Narcotics Law,<sup>23</sup> where the article

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<sup>17</sup> Rayani Saragih and Maria Ferba Editya Simanjuntak, 'Penegakan Hukum Terhadap Penyalahgunaan Narkotika Di Indonesia' (2021) 4 Journal of Education, Humaniora and Social Sciences (JEHSS).[98-105]. <<http://dx.doi.org/10.34007/jehss.v4i1.590>>.

<sup>18</sup> Siti Hidayatun and Yeni Widowaty, 'Konsep Rehabilitasi Bagi Pengguna Narkotika Yang Berkeadilan' (2020) 1 Jurnal Penegak Hukum dan Keadilan.[166-181] <<https://doi.org/10.18196/jphk.1209>>.

<sup>19</sup> Andy Sahat Manogar Silalahi (n.6).

<sup>20</sup> Riki Afrizal, Iwan Kurniawan and Nelwitis 'Rehabilitasi Sebagai Tindakan Dalam KUHP Nasional Dan Implikasinya Terhadap Politik Hukum Pencegahan Dan Penanggulangan Penyalahgunaan Narkotika' (2024) 8 Unes Journal of Swara Justisia.[666-675] <<https://doi.org/10.31933/5jqbem91>>.

<sup>21</sup> Muhamad Chaidar and Budiarsih Budiarsih, 'Analisis Makna Kewajiban Rehabilitasi Medis Terhadap Pecandu Narkotika' (2022) 5 Jurnal Hukum Bisnis Bonum Commune.[194-203] <<https://doi.org/10.30996/jhbbc.v5i2.6453>>.

<sup>22</sup> Hantanto Budisarwono, 'Upaya Pembaharuan Hukum Pidana Melalui Penerapan Sanksi Tindakan Bagi Penyalahguna Narkotika' (2022) 1 Jurnal Hukum, Politik Dan Ilmu Sosial.[125-142] <<https://doi.org/10.55606/jhps.v1i2.1713>>.

<sup>23</sup> Fitria Aneta, Riki Zulfiko, and Mahlil Adriaman 'Tinjauan Yuridis Dan Kepastian Hukum Antara Pasal 112 Dan Pasal 127 UU Nomor 35 Tahun 2009 Tentang Narkotika' (2024) 3 Jurnal Universitas Muhammadiyah Semetera Barat.[30-44].

regulates “Any person who without rights or against the law has, stores, controls, or provides Class I Narcotics other than plants, shall be punished with imprisonment of at least four years and a maximum of twelve years and a fine of at least Rp800 million (eight hundred million rupiah) and a maximum of Rp8 billion (eight billion rupiah)”. In practice, Public Prosecutors often use this article to ensnare defendants who are found to have narcotics. In fact, Public Prosecutors still use this article to charge defendants even though the evidence of narcotics owned by the defendant is classified as light.<sup>24</sup>

A drug abuser, before using narcotics, typically controls, possesses, and stores the substances. As a result, Article 112 of the Narcotics Law is frequently used by law enforcement to charge drug users.<sup>25</sup> This, however, contradicts the intended purpose of the article, which was meant to target drug dealers. Currently, law enforcement tends to prioritize using Article 112 over Article 127, which specifically addresses drug abuse. As a result, addicts who should be receiving rehabilitation are instead imprisoned as drug abusers. In reality, criminal sanctions will be ineffective unless they are paired with efforts to address addiction and the negative consequences of drug use on the individual.<sup>26</sup>

Legal certainty in Articles 112 and 127 of the Narcotics Law must be based on a clear and firm legal principle, one that is free from ambiguity and multiple interpretations.<sup>27</sup> According to the author, Article 112 of the Narcotics Law has led to conflicting interpretations and uncertainty. A clear, firm, and unambiguous legal principle will better serve the law’s ultimate goal justice. The ambiguity

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<sup>24</sup> Yunizar Falevi and Handar Subhandi Bakhtiar, ‘Problematika Penegakan Hukum Terhadap Penyalah Guna Narkotika’, *5TH NATIONAL CONFERENCE on Law Studies 2023* (2023).[738-750].

<sup>25</sup> Siti Elviana Rohmawati and Pudji Astuti, ‘Tinjauan Yuridis Mengenai Penerapan Unsur Memiliki Pada Pasal 112 Ayat (2) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika (Studi Putusan Nomor 168/Pid.Sus/2020/PN. Pdg)’ (2021) 9 *Novum: Jurnal Hukum*. [1-10] <<https://doi.org/10.2674/novum.v0i0.42183>>.

<sup>26</sup> Riki Afrizal and Upita Anggunsari, ‘Optimalisasi Proses Asesmen Terhadap Penyalah Guna Narkotika Dalam Rangka Rehabilitasi Medis Dan Sosial Bagi Pecandu Narkotika’ (2019) 19 *Jurnal Penelitian Hukum De Jure*. [259-268] <<http://dx.doi.org/10.30641/dejure>>.

<sup>27</sup> Andri Zulfikar, ‘Formulation of Judges’ Rulings Below the Special Minimum on Narcotics Cases to Bring About Justice’ (2023) 2 *Journal of Social Research*. [1066-1073] <<https://doi.org/10.55324/josr.v2i4.775>>.



stems from the fact that law enforcement officers often focus solely on the element of “controlling” in Article 112, which results in drug users, as outlined in Article 127, being charged under Article 112. Additionally, drug dealers may disguise themselves as users, further complicating the issue. Thus, law enforcement must consider the broader context, as legal certainty is not only about the content of the law but also how it is applied. In judicial practice, the provisions of Article 127, particularly those addressing “drug addicts”, are rarely enforced by judges. Narcotics users, in addition to facing the criminal sanctions prescribed in Article 127, may also be subjected to other criminal provisions within the Narcotics Law if the elements of “controlling”, “possessing”, “storing”, or “buying” narcotics without legal authorization are met. These provisions carry more severe penalties, and judges are often left with no option but to impose criminal sentences, without considering rehabilitation as an alternative.

The overlap and conflicting interpretations between Article 112 and Article 127 of the Narcotics Law lead to legal uncertainty in the enforcement of laws against drug addicts. Article 112, which is intended to target drug dealers, is frequently applied to drug users or addicts. This creates a discrepancy between the rehabilitation objectives outlined in Article 127 and the repressive approach of law enforcement, which tends to prioritize imprisonment. This not only undermines the principle of justice but also contradicts the goal of supporting the recovery of drug users.<sup>28</sup>

### **Disparity in Sentencing of Drug Addicts Due to Legal Uncertainty in Law Enforcement Against Drug Addicts**

Law is an essential and fundamental element of a country, regardless of the system it adopts, as stated in Article 1, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that Indonesia is a state based on law,

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<sup>28</sup> Andri Winjaya Laksana, ‘Sociological Analysis of Narcotics Circulation Treatment on Students’ (2021) 8 Jurnal Pembaharuan Hukum.[105–117] <<https://doi.org/10.26532/JPH.V8I1.15377>>.



not merely on power.<sup>29</sup> One of the branches of legal study in Indonesia is Criminal Law, which governs the circumstances under which an individual can be punished for their actions. In the application of law in narcotics criminal cases, judges serve as the final authority in enforcing criminal law for cases at the court level. When considering narcotics cases, judges must take into account the value of social justice, not just legal certainty. Judges are tasked with receiving, examining, trying, and deciding cases, meaning they are responsible for resolving criminal disputes. Although judges are ordinary individuals with their own weaknesses and limitations, they hold a central position in the administration of law and justice.<sup>30</sup>

Inequality of punishment<sup>31</sup> for similar cases or crimes of comparable severity is a common occurrence in Indonesia, often without clear justification, highlighting disparities in criminal decisions. This phenomenon demonstrates the significant discretion judges have in examining and deciding criminal cases, which raises concerns about the consistency and fairness of judicial outcomes. Disparities in criminal decisions can be understood as differences in the sentences imposed on convicts, whether in the same case or in cases with nearly identical levels of crime, regardless of whether the offenses were committed together, and without reasonable or justifiable grounds.<sup>32</sup>

Disparity in sentencing has long been a focal point for academics, observers, and legal practitioners. It is considered a significant issue within the integrated criminal justice system, and the practice of sentencing disparity is not exclusive to Indonesia; it is a universal phenomenon found in many countries.<sup>33</sup> Therefore,

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<sup>29</sup> Ogiandhafiz Juanda and Juanda, 'The Ideal Law State Concept in Indonesia; The Reality and The Solution' (2023) 3 Journal of Law, Politic and Humanities [251-262] <<https://doi.org/10.38035/jlph.v3i2.172>>.

<sup>30</sup> Choirul Nur Akrom [*et., al.*] 'Analisis Hukum Penerapan Sanksipidana Penyalahgunaan Narkotika Oleh Hakim Ditinjau Dari Sema Nomor 4 Tahun 2010 Di Kota Palembang' (2024) 2 Lex Stricta: Jurnal Ilmu Hukum [149-162] <<https://doi.org/10.46839/lexstricta.v2i3.33>>.

<sup>31</sup> Susanne Karstedt, 'Inequality And Punishment: A Global Paradox?' (2021) 54 Journal of Criminology. [5-20] <<https://doi.org/10.1177/26338076211014590>>.

<sup>32</sup> Jeswin Ariyanto Duha, 'Disparitas Putusan Pemidanaan Terhadap Tindak Pidana Pencurian Dengan Pemberatan' (2023) 2 Jurnal Panah Hukum. [1-10] <<https://doi.org/10.57094/jph.v2i2.968>>.

<sup>33</sup> Heidy Mandaku, John Dirk Pasalbessy, and Jacob Hattu 'Disparitas Putusan Pengadilan Negeri Ambon Nomor 32/Pid.Sus-TPK/2021/PN Amb Dengan Putusan Nomor 34/Pid.Sus-TPK/2021/PN Amb' (2023) 1 PATTIMURA Law Study Review. [180-197] <<https://doi.org/10.47268/palasrev.v1i1.10898>>.

the same legal case should be subject to consistent regulations to ensure fairness. Avoiding discrimination, which must be experienced by offenders, and addressing public injustice are crucial for providing legal certainty to society. When different regulations are applied inconsistently, the public struggles to understand and comprehend the criminal acts that occur. The occurrence of sentencing disparities is inevitably linked to the criminal law provisions themselves, which grant judges significant discretion in determining the type of punishment to be imposed.<sup>34</sup>

The disparity in criminal decisions is evident in two drug abuse cases: Decision Number 340/Pid.Sus/2020/PN.Sda and Decision Number 14/Pid.S/2020/PN.Sby. Both cases involved defendants found guilty of drug abuse under Article 127, Paragraph (1), Letter a of Law Number 35 of 2009, specifically for personal use of Class I narcotics. In Decision Number 340/Pid.Sus/2020/PN.Sda, the defendant M.Z. was sentenced to 1 year in prison for possessing 0.33 grams of crystal methamphetamine, while in Decision Number 14/Pid.S/2020/PN.Sby, the defendant H.K. was also sentenced to 1 year in prison but was ordered to undergo rehabilitation at the Orbit Surabaya Foundation for possessing 0.22 grams of crystal methamphetamine. Despite similar facts and legal provisions, the two decisions show different applications of the law.

In Decision Number 340/Pid.Sus/2020/PN.Sda, the judge found that the defendant used crystal methamphetamine (0.33 grams) for personal use, without a prescription or medical reason, and emphasized the community's interest in narcotics eradication. The judge noted that the defendant's actions were self-destructive and did not support narcotics eradication efforts, even though the defendant expressed regret, which was considered a mitigating factor. Based on Article 54 of the Narcotics Law and Article 2 of SEMA Number 4 of 2010, the judge noted that defendants who meet the requirements for rehabilitation such as users with less than 1 gram of narcotics and no involvement in drug trafficking

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<sup>34</sup> Christine Heartly Stefany Hatirindah, 'Disparitas Pemidanaan Dalam Penyalahgunaan Narkotika Menurut Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 Tentang Narkotika' (2020) 6 To-ra Jurnal Hukum: Hukum Untuk Mengatur Dan Melindungi Masyarakat.[226-237].

should undergo medical and social rehabilitation, which can be treated as a form of punishment instead of imprisonment.

In contrast, Decision Number 14/Pid.S/2020/PN.Sby involved a judge who applied Article 127 Paragraph (1) of the Narcotics Law to a defendant who consumed 0.22 grams of crystal methamphetamine for personal use, without medical prescription. The judge considered the defendant's two mitigating circumstances: being polite in court and admitting the offense, as well as the lack of prior convictions. The aggravating factor was the use of narcotics itself. Based on these considerations, the judge opted for a rehabilitation sentence instead of imprisonment, reflecting the belief that rehabilitation is a more suitable approach for drug addicts, as supported by Article 103, Paragraphs (1) and (2) of the Narcotics Law.

These two cases highlight the inconsistency in sentencing despite the similar facts, raising concerns about legal certainty and fairness in sentencing for drug-related offenses. While the law provides the possibility of rehabilitation for drug users, the actual application of rehabilitation versus imprisonment remains variable and subject to judicial discretion.<sup>35</sup> Criminal disparities often occur in various countries when giving decisions to people who commit crimes and this is a common occurrence.<sup>36</sup> However, the problem in giving the verdict is if the difference in punishment is too striking and creates a sense of injustice for the defendant and the community, so that it can reduce public trust in the judicial institution.

Judges are granted the freedom to examine and adjudicate cases independently, ensuring they are not subject to external interference.<sup>37</sup> This principle of judicial independence leads to varying decisions, particularly in criminal cases involving narcotics offenses, where judges must determine the appropriate punishment. The

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<sup>35</sup> Andri Winjaya Laksana, [et., al.], 'Criticism of Legal Protection for Victims of Drug Abuse: The Disharmony in Legal Substance Regulation,' (2025) 33 *Legality : Jurnal Ilmiah Hukum*. [93–109]. <<https://doi.org/10.22219/LJIH.V33I1.36680>>.

<sup>36</sup> Erwin Asmadi, 'Rumusan Delik Dan Pemidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial' (2021) 6 *De Legata Jurnal Hukum* [16-32] <<https://doi.org/10.30596/dll.v6i1.4910>>.

<sup>37</sup> Deni Setya Bagus Yuherawan and Baiq Salimatul Rosdiana, 'Ketidaktepatan Penjatuhan Pidana Penjara Terhadap Penyalahguna Narkotika' (2020) 5 *Jurnal Ius Constituendum*. [177-195] <<http://dx.doi.org/10.26623/jic.v5i2.2207>>.

inconsistency in the application of the law to drug abusers arises from the unclear provisions in Law Number 35 of 2009 concerning Narcotics, especially concerning whether drug abusers should be rehabilitated or punished. This ambiguity is evident in Article 127 of the Narcotics Law, which prescribes punishment for drug abusers, while other provisions suggest rehabilitation for the same individuals.<sup>38</sup>

Given these conflicting provisions, judges apply different interpretations of the law. To address this disparity, a normative approach must be adopted, guided by additional legal instruments such as Government Regulation Number 25 of 2011 concerning the Implementation of Mandatory Reporting of Narcotics Addicts and Perma Number 3 of 2014 concerning the Handling of Narcotics Addicts and Narcotics Abuse Agencies, which outline the requirements and procedures for rehabilitation. These regulations provide clearer guidelines for determining when rehabilitation is appropriate and how it should be implemented, helping to resolve the uncertainty surrounding the treatment of drug abusers in the judicial process.

Before making a decision, the judge must thoroughly assess whether the perpetrator is involved in drug trafficking,<sup>39</sup> is solely a drug abuser, or is a victim of drug-related crimes or a drug addict. By carefully and properly identifying these factors in court using a normative approach, the judge can ensure that any differences or disparities in sentencing are not significant in terms of punishment or the application of the law. This thoughtful examination allows for more consistent and just decisions, minimizing undue variation in sentencing based on the same underlying legal issues.<sup>40</sup>

Judges are granted discretion in making decisions, as stated in Law Number 48 of 2009 on Judicial Power, which grants them full authority to enforce the law

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<sup>38</sup> Andri Winjaya Laksana, [*et.al.*], 'The Legal Position of Islamic Boarding School (Pesantren) as a Rehabilitation Effort For Narcotics Abuse,' (2021) 5 International Journal of Law Reconstruction. [317–327], <<https://doi.org/10.26532/IJLR.V5I2.17756>>.

<sup>39</sup> Cecep Mustafa, 'The Perceptions Of Indonesian Judges In Sentencing Minor Drug Offenders: Challenges And Opportunities' (2020) 9 Jurnal Hukum dan Peradilan.[1-26] <<https://doi.org/10.25216/JHP.9.1.2020.1-26>>.

<sup>40</sup> Oheo Kaimuddin Haris, [*et.al.*], 'Disparitas Penerapan Pidana Dalam Kasus Tindak Pidana Narkotika' (2023) 5 Halu Oleo Legal Research.[785-796] <<https://doi.org/10.33772/holresch.v5i3.294>>.

and justice based on the principle of *res judicata pro veritate habetur*, meaning that a judge's decision must be regarded as correct. However, as human beings, judges are susceptible to mistakes in applying the law or evaluating facts. This variability leads to discrepancies that violate the principle of proportional equality, which mandates equal treatment for similar cases. The differing rulings in drug abuse cases, despite being fundamentally the same, highlight the need for regulations that can minimize such disparities and ensure fairness in sentencing.

The originality of this study lies in its focus on the legal reconstruction aimed at harmonizing Articles 127 and 112 of Law Number 35 of 2009 on Narcotics. This research presents a novel approach by stressing the importance of establishing clear quantitative distinctions between drug abusers and dealers, while prioritizing rehabilitation for addicts as a means of recovery. By removing ambiguities in both articles, the study aims to create greater legal certainty, particularly in the enforcement of laws against drug addicts. This approach not only affirms the legal elements but also provides a normative framework that positions rehabilitation as the primary strategy for addressing drug abuse.

## **Conclusion**

Legal uncertainty in law enforcement against drug addicts in Indonesia, caused by multiple interpretations between Article 127 and Article 112 of Law Number 35 of 2009 concerning Narcotics, which has created disparities in sentencing that ignore the principle of justice. The use of Article 112 which should be intended for drug dealers is often misused to ensnare addicts, who should receive rehabilitation according to Article 127. This condition shows the need for legal reconstruction that focuses on harmonizing Article 127 and Article 112 of the Narcotics Law to align the two articles, by providing quantitative limitations and clear criteria to distinguish abusers from dealers. By eliminating multiple interpretations in the two articles, it will create fairer legal certainty, especially in law enforcement against drug addicts. So that legal certainty will be created, and disparities in sentencing will be reduced, so that substantive justice and public trust in the criminal justice system are achieved.

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