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## **Legal ratio of regulations on the rehabilitation of inmates in correctional institutions as an instrument for reducing recidivism in drug-related crimes**

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**Abstract.** *The ratio legis* of rehabilitation for narcotics recidivists is based on the idea that narcotics abuse is a health and social problem that requires special handling, not merely criminal punishment. Rehabilitation is positioned as an instrument to correct behavior, treat addiction, and eliminate criminogenic factors that trigger recidivism. There is a gap between *the ratio legis* of rehabilitation regulations and their implementation in the field. Therefore, it is important to conduct a study on rehabilitation regulations for drug recidivists to assess the effectiveness of existing regulations, analyze implementation constraints, and formulate more appropriate policy recommendations to reduce drug recidivism rates. This study uses a normative legal research method. The results of the study show that the effectiveness of rehabilitation as an instrument for reducing recidivism is highly dependent on the synchronization between regulations, implementation in prisons, and post-release support.

**Keywords.** legal; regulation; crimes

### **Introduction**

*The ratio legis* of rehabilitation for narcotics recidivists is based on the idea that narcotics abuse is a health and social problem that requires special handling, not merely criminal punishment. Rehabilitation is positioned as an instrument to correct behavior, treat addiction, and eliminate criminogenic factors that trigger recidivism. There is a gap between *the ratio legis* of rehabilitation regulations and their implementation in the field.<sup>1</sup> Therefore, it is important to conduct a study on rehabilitation regulations for drug recidivists to assess the effectiveness of existing regulations, analyze implementation constraints, and formulate more appropriate policy recommendations to reduce drug recidivism rates.<sup>2</sup>

Drug crimes, particularly abuse, have become a serious problem in Indonesia with widespread impacts on health, social, economic, and security aspects. Data from the National Narcotics Agency (BNN) shows that the recidivism rate, which is the repetition of crimes by former prisoners in drug cases, is still relatively high. This phenomenon shows that punishment

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<sup>1</sup> Marwan Effendy, *Criminology and Social Problems of Criminal Law*, Jakarta: Prenada Media, 2013, p. 201.

<sup>2</sup> Harkristuti Harkrisnowo, "Penal Policy in Combating Drug Abuse," *Indonesian Journal of Criminology*, Vol. 6, No. 2, 2010, p. 67.

through imprisonment alone has not been fully effective in breaking the chain of perpetrators' involvement in drug abuse or trafficking.<sup>3</sup>

The implementation of rehabilitation for drug recidivists faces significant challenges. Normative obstacles arise from the limitations of regulations that specifically govern the handling of recidivists, including the lack of separation between rehabilitation programs for first-time offenders and recidivists.<sup>4</sup> From a practical standpoint, issues such as limited facilities, a shortage of professionals, social stigma, and a lack of post-release aftercare programs often cause social reintegration to fail and encourage repeat offenses.<sup>5</sup> The implementation of rehabilitation arrangements for drug offenders still faces a number of obstacles:

1. Normative obstacles: There are no specific regulations that differentiate between rehabilitation programs for first-time offenders and repeat offenders, even though the risk of *relapse* is higher among repeat offenders.
2. Structural obstacles: Limited rehabilitation facilities in prisons, a shortage of addiction experts, and a high ratio of prisoners to prison capacity.
3. Post-rehabilitation obstacles: Weak *aftercare* and social reintegration programs, resulting in repeat offenders often returning to the same environment and potentially reoffending.<sup>6</sup>

Guidance for prisoners so that they realize their mistakes, improve themselves, and do not repeat criminal acts after their release. This guidance covers various aspects, ranging from personality development, independence, education, skills training, to special rehabilitation programs for prisoners convicted of drug-related crimes.<sup>7</sup> Prisons are central to the correctional system because this is where court decisions are carried out, guidance is provided, and social reintegration is prepared in an integrated manner.<sup>8</sup>

Prisons play a dual role: as a place to serve sentences and as a rehabilitation center. This is in accordance with the mandate of Law No. 35 of 2009 concerning Narcotics and Permenkumham No. 12 of 2017, which requires medical and social rehabilitation programs in prisons. However, the implementation of rehabilitation often faces obstacles, especially for repeat offenders who have higher levels of addiction and risk of recidivism.<sup>9</sup>

## **Research Method**

This study uses a normative legal research method.

## **Results and Discussion**

### **Ratio Legis of Rehabilitation Regulations in the Correctional System**

The regulation of rehabilitation for inmates who are narcotics abusers is based on the ratio legis that narcotics abuse is not merely a crime, but also a health and social problem. Therefore, punishment should not only be carried out through imprisonment, but must also be integrated with a rehabilitative approach. Law No. 35 of 2009 concerning Narcotics, which

<sup>3</sup> National Narcotics Agency (BNN), Indonesia Drugs Report 2023, Jakarta: BNN RI, 2023.

<sup>4</sup> Barda Nawawi Arief, *Legislative Policy in Combating Crime with Imprisonment*, Yogyakarta: Genta Publishing, 2010, p. 56.

<sup>5</sup> Regulation of the Minister of Law and Human Rights Number 12 of 2017 concerning the Implementation of Narcotics Rehabilitation Services for Detainees and Prisoners.

<sup>6</sup> Law No. 12 of 1995 on Corrections, State Gazette of the Republic of Indonesia Year 1995 No. 77.

<sup>7</sup> Supreme Court Decision No. 103 K/Pid.Sus/2012, which confirms that narcotics abusers for personal use are more appropriately placed in rehabilitation.

<sup>8</sup> Lilik Mulyadi, *Principles of Criminal Law in the Perspective of Reform*, Bandung: Citra Aditya Bakti, 2015, p. 134.

<sup>9</sup> Law No. 35 of 2009 on Narcotics, State Gazette of the Republic of Indonesia of 2009 No. 143.

emphasizes the obligation of medical and social rehabilitation for addicts and abusers. Law No. 12 of 1995 concerning Corrections, which places rehabilitation as part of the guidance of prisoners. Ministry of Law and Human Rights Regulation No. 12 of 2017 regulates the technical implementation of rehabilitation services in prisons. The regulation of rehabilitation for inmates convicted of narcotics offenses is based on the view that narcotics abuse is a health and social problem, not merely a criminal offense. Imprisonment is not sufficient to break the chain of abuse, as it does not address the root causes of drug dependence, psychological factors, or the influence of the social environment. Through individual recovery, it is assumed that rehabilitation will reduce the risk of recidivism. Thus, the ratio legis of rehabilitation regulations is to protect society through individual recovery. Rehabilitation is positioned as a corrective, curative, and preventive instrument to reduce the risk of recidivism. Ratio Legis of Rehabilitation Regulations in the Correctional System

1. Law Number 35 of 2009 concerning Narcotics, which requires addicts and abusers to undergo medical and social rehabilitation.
2. Law Number 12 of 1995 concerning Corrections, which places rehabilitation as an integral part of the prisoner guidance system.
3. Ministry of Law and Human Rights Regulation No. 12 of 2017, which regulates the technical aspects of rehabilitation services in prisons.

### **Rehabilitation as an Instrument for Reducing Recidivism**

Rehabilitation serves as a corrective (improving behavior), curative (treating addiction), and preventive (preventing recidivism) instrument. In the context of recidivism, rehabilitation becomes an instrument that substitutes punishment. This means that the emphasis is not only on punishment, but also on improving individuals so that they do not return to the world of narcotics. Without rehabilitation, prisons only reinforce the effects of prisonization, which actually increases the risk of recidivism.<sup>10</sup>

- a. Corrective: rebuilding prisoners' legal awareness and social responsibility.
- b. Curative: medical rehabilitation programs reduce drug dependence, thereby eliminating the biological factors that cause relapse.
- c. Preventive: aftercare programs help prevent former inmates from returning to environments prone to abuse.

Thus, rehabilitation not only fulfills the human rights of inmates, but is also a rational penal policy in reducing drug recidivism. Normative Constraints Regulations do not yet differentiate between rehabilitation programs for first-time offenders and repeat offenders, even though the relapse rate for repeat offenders is higher. There are also no specific regulations regarding standards for aftercare for prisoners after release. Structural Constraints Prison overcrowding makes rehabilitation programs difficult to implement effectively. There is a shortage of experts such as psychologists, addiction counselors, and medical personnel. Rehabilitation facilities and infrastructure are minimal, so implementation is more of a formality. Post-Rehabilitation Obstacles Weak aftercare programs cause prisoners to return to their old environments. Social stigma hinders social reintegration and employment opportunities. There is no integrated post-release monitoring mechanism between prisons, the Correctional Agency (Bapas), and the National Narcotics Agency (BNN).

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<sup>10</sup> Barda Nawawi Arief, *Criminal Law Policy: Developments in the Drafting of the New Criminal Code*, Jakarta: Kencana, 2014, p. 215.

Based on the analysis, several policy points are needed to ensure that the ratio legis of rehabilitation regulations truly becomes an instrument for reducing recidivism by Strengthening Regulations: differentiation of rehabilitation for recidivists and non-recidivists, including special schemes based on the level of dependence; Improving Correctional Facility Capacity: expanding rehabilitation facilities, increasing the number of counselors, psychologists, and medical personnel; Strengthening Aftercare: post-rehabilitation programs through community guidance, cooperation with families, NGOs, and the business world for social reintegration; and Holistic Approach: combining legal, medical, psychological, social, and economic approaches so that rehabilitation becomes a multidimensional instrument. Thus, the ratio legis of rehabilitation regulations can be realized in a tangible and effective manner in reducing recidivism of narcotics crimes.

### **Normative and Practical Gaps**

The ratio legis of rehabilitation regulations in the correctional system is to shift punishment from mere sentencing to recovery. However, its implementation still faces normative, structural, and post-rehabilitation obstacles.<sup>11</sup> Therefore, a comprehensive and sustainable reorientation of rehabilitation policy is needed so that the goal of reducing drug recidivism can be achieved in practice.

Although regulations mandate rehabilitation, there are serious gaps in its implementation:

a. **Normative Obstacles:** There is no differentiation between programs for first-time offenders and repeat offenders, even though repeat offenders pose a higher risk. Regulations still emphasize rehabilitation in the early stages (diversion/judicial decisions), while special programs for repeat offenders in prisons are still minimal.

b. **Structural Constraints:** Overcrowding in prisons prevents rehabilitation programs from running optimally, there is a shortage of addiction experts, psychologists, and counselors, and rehabilitation facilities in prisons are still far from ideal standards.

c. **Post-Rehabilitation Challenges:** Weak aftercare and social reintegration programs. Social stigma makes it difficult for ex-prisoners to find employment, leading them back into the drug cycle.

This gap indicates that the ratio legis has not been fully realized because the implementation of regulations is still far from ideal.

### **Conclusion**

The results of the study show that the effectiveness of rehabilitation as an instrument for reducing recidivism is highly dependent on the synchronization between regulations, implementation in prisons, and post-release support. On the one hand, regulations are quite progressive because they place rehabilitation as a right and obligation for addicts. However, on the other hand, weak implementation makes rehabilitation more of a formality than a substantive measure. The fact that the rate of drug recidivism remains high according to BNN data indicates that imprisonment without rehabilitation only creates a *prisonization effect*. In other words, the ratio legis of rehabilitation is not yet effective without structural improvements and sustainable post-release programs.

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<sup>11</sup> Law No. 12 of 1995 on Corrections, State Gazette of the Republic of Indonesia of 1995 No. 77.

### References

- [1] Barda Nawawi Arief, *Legislative Policy in Combating Crime with Imprisonment*, Yogyakarta: Genta Publishing, 2010, p. 56.
- [2] Barda Nawawi Arief, *Criminal Law Policy: Developments in the Drafting of the New Criminal Code*, Jakarta: Kencana, 2014, p. 215.
- [3] Harkristuti Harkrisnowo, "Penal Policy in Combating Drug Abuse," *Indonesian Journal of Criminology*, Vol. 6, No. 2, 2010, p. 67.
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