

# Rehabilitation For Addicts For Victims To Spike Narcotics In The Penal System

Priambodo Adi Wibowo<sup>1</sup>, Sinarianda Kurnia H<sup>2</sup>,

faculty of Law

Legal Studies Program

<sup>1,2</sup>Merdeka University Surabaya

Email: [adi\\_12ham@yahoo.co.id](mailto:adi_12ham@yahoo.co.id)

**Abstract:** Ratio decidendi in the decision for the rehabilitation of drug addicts is the judge considering the health condition of drug addicts in the decision making. The health condition of drug addicts known by requesting information from the doctors associated with the disease and how to handle. In addition to the health of drug addicts, the ratio decidendi in the decision on rehabilitation is to meet the criteria that addicts are victims, the abuse of drugs for themselves, not dealers, and personal possession of drugs. Ius constituendum as criminal law aspired are calls for legal protection to drug addicts. Legal protection is realized by way of clarifying the characteristics of drug addicts as victims that distinguishes between addicts with dealers, as well as clarify the ownership category. Legal protection is also realized by providing a sufficient rehabilitation in human resources, facilities and systems. Recommendations from the results of this study are setting penalties for abusers of drugs should be revised and lead to aspects of treatment for drug addicts, which is realized with the rehabilitation of drug addicts as an attempt depenalisation. This is consistent with the concept of self-victimizing victims. BNN, Ministry of Health, IPWL and communities should participate actively in the implementation of rehabilitation by building institutions of rehabilitation.

**Keywords:** Rehabilitation, Drugs, Drugs Abuse Victims

## 1. INTRODUCTION

Narcotics drugs abuse is caused by three (3) major factors including *illicit drug production, illicit trafficking*), and *drug abuse*<sup>1</sup>. Narcotics abuser is defined as those who use narcotics unlawfully. It is referred to in article 1, paragraph (15) of Law Number 35 Year 2009 on Narcotics (Official Gazette of the Republic of Indonesia Year 2009 No. 143. Additional Gazette of the Republic of Indonesia Year 2009 Number 5062, hereinafter referred to as the Law on **Narcotics**) which determine that "Abuser to is people who use narcotics without authority or unlawfully". Thus, legally the Offender for Narcotics is a criminal offender who can be convicted.

Law on Narcotics provides the classification of Narcotics abuse in 5 (five) forms, i.e growers, distributors, producers of narcotics precursors, users, and addicts. Each form has dimensions which include characteristics of the offender, the nature of the perpetrator, and the impact of factors that accompany or different triggers. For grower, distributor, and

<sup>1</sup> Siswanto S., *Politik Hukum dalam Undang-Undang Narkotika (UU No. 35 Tahun 2009)*, Rineka Cipta: Jakarta, 2012, p.1.

manufacturer, death penalty can be imposed to them. In contrast to Narcotics Addicts, a legal decision may be a prison or rehabilitation verdict.<sup>2</sup> Differences in the legal handling of each form of drug abuse is part of the arrangement in the criminal law of a specific nature<sup>3</sup> hence, *the man behind the gun*<sup>4</sup> is necessary to prevent and cope with holistic Narcotics Abuse<sup>5</sup>.

In accumulative recent report (annual) issued by the United Nations (UN) through Affairs Agency Narcotics and Drugs (UNODC), 5% of the total world population have ever tried drugs, and now there are about 27 million people become addicted accompanied by social problems use of narcotics. The Southeast Asian region is the largest producer of the increasing number of drug addicts, especially in Myanmar, Laos, Vietnam, Cambodia and Thailand. Now, the area is expanding (expanding) to other countries like Indonesia<sup>6</sup>.

Normatively, explanation of Narcotics Law Article 56 states that rehabilitation of Narcotics addicts is conducted in aiming to restoring and/or develops physical, mental, social ability of the respected patients. Rehabilitation for users are divided into two, namely medical rehabilitation and social rehabilitation. Medical rehabilitation is an integrated process of treatment activity to relieve addicts from narcotics dependence. While social rehabilitation is a process of recovery activity in an integrated, physical, mental and social, hence, ex-drug addicts can re-implement social functions in public life (Article 1 Numbers (16) and (17) Narcotics Law).

Sholehuddin in *sanctions in the Criminal Code Systems*<sup>7</sup> suggests that the use of a *double track system* in criminal law raises many ambiguities, especially forms of this type of sanction measures and additional types of criminal sanctions. Similarly, rehabilitation is the main purpose of this type of sanction/*treatment* measures for narcotics addicts. While it has a special feature in the process of resocialization of the perpetrators, it is expected to restore social and moral quality of the addict in order to integrate within the community. However, this is proved less effective at fixing a criminal as it is considered too spoiling. CS Lewis states the *double track system* or suffering reproach elements and elements of coaching to be

---

<sup>2</sup> Muntaha, Juridical Aspects of Narcotics Abuses Among *Teens*, *Pulpit Law Journal*, Vol. 23, No. 1 / Feb. 2011, p. 210-220.

<sup>3</sup> Romli Atmasasmita, *Theory & Capita Selecta Criminology*, Refika Aditama: Bandung, 2005, p. 2.

<sup>4</sup> The point is that the effectiveness of law enforcement in order to narcotics Abuse scope depends on the behavior of law enforcement officers who seriously carry out its duties and authorities, as mandated in the Act. Narcotics.

<sup>5</sup> Heru is Permana, *Political Crime*, Atma Jaya Press: Yogyakarta, 2007, p. 60.

<sup>6</sup> ABC Radio Australia, accessed via <http://www.radioaustralia.net.au/indonesian/2012-06-27/jumlah-pencandu-narkoba-di-dunia-mencapai-27-juta-orang/968332>, on 8 September 2014.

<sup>7</sup> Sholehuddin, *System Sanctions in Criminal Law: the basic idea of Double Track System & Implementation*, King Grafindo Persada: Jakarta, 2003, p. 29.

equally accommodated in criminal legal system . This is the basic explanation that *double track system* requires the existence of equality between criminal sanctions and action sanctions<sup>8</sup>.

Andi Wijaya Rivai in his work *Penitentiary in Law and Social Dynamics* offer correctional approach as the primary basis of rehabilitation reintegration. Correctional (in this case is Penitentiary or Prison) is an institution that performs the role to carry out guidance of inmates. Implementation of convict prisoners coaching based on correctional systems has the purpose of providing an opportunity for inmates to reintegrate themselves into their environment. Prisoners tend to have doubts whether they will be welcomed back into society. Therefore, program in prisons will increase their awareness, improve their morals and ethics while they become prisoners or perpetrators of crime, thus that they can synergize with the environment according to the prevailing values and norms<sup>9</sup>.

## **2. PHILOSOPHY OF REHABILITATION SETTINGS FOR NARCOTICS ADDICTS**

### **2.1. *Ratio legis* of Narcotic Addict Rehabilitation Setting**

According Didik Endro Purwoleksono, the existence of criminal law is a prohibited act with the perpetrators subject to criminal sanctions. The existence of criminal law has a function as a protection against the interests of law and regulates the life of the community. The granting of such criminal sanctions is aimed at<sup>10</sup> to:

- a. Creates fear to the public so as not committing a crime.
- b. Educate or repair person who committed the crime in order to have a good character that its presence can benefit the community.
- c. Establish order, peace, prosperity, and peace in society.

Ted Honderich suggested that punishment should contain 3 (three) elements, i.e :

1. Punishment should contain some kind of loss (*deprivation*) or tribulation (*distress*) which are usually reasonably defined as the target of acts of punishment.
2. Every punishment must come from a legally authorized institution as well.
3. The competent authority shall have the right to impose the punishment only on subjects who have been proven inadvertently violating any applicable law or regulation in their society.

---

<sup>8</sup> *Ibid.* h. 29.

<sup>9</sup> Andi Wijaya Rival, *in the Penal Law and SocialDynamics*, Institute for Penal: Jakarta, 2011, p. 23.

<sup>10</sup> Didik Endro Purwoleksono, *CriminalLaw*, Airlangga University: Surabaya, 2013, h.7

4. The purpose of punishment is to repair the damages committed by the crime of narcotics abuse, especially on narcotics addict through a middle way called rehabilitation as a dynamic punishment system. The conclusions are in accordance with the opinion of the LHC Hulsman in *The Sentencing system is the Statutory Rules Relating to penal sanctions and punishment* which states that the dynamic properties containing values in a society about what is good or bad, what is moral and what is immoral and what is allowed and what is forbidden. In short, Andi Hamzah<sup>11</sup> gives meaning and conviction of the criminal system such as the arrangement of (criminal) and means (criminalization).

The criminal philosophy contains the basic ideas (thought) of concept of punishment which clarifies the understanding of the nature of punishment as the responsibility of the legal subject to criminal acts and public authority to the state based on the law for committing a crime. The purpose of the appointment of the problem of punishment into philosophical thought is to seek a defensive account of punishment and find a more developed moral answer in overcoming difficulties with one or more objectives of punishment<sup>12</sup>. In addition, the concept of punishment through philosophical thought also has a function, namely:

- a. Fundamental function, namely as a foundation and normative principles or rules that provide guidelines, criteria, or paradigm on criminal matters and punishment.
- b. Theoretical function, that is, as the underlying meta-theory behind every theory or concept of punishment.

There are three (3) theories of goals established by the *utilitarian theory* as interpreted by Yong Ohoitumur, they are *first*, punishment and deterrent effect (*deterrence*) and *second*, criminal prosecution as rehabilitation. The goal considers that punishment is a way to achieve reform or rehabilitation of the convicted person, and third, criminalization as a vehicle for moral education. The occurrence of criminal acts of narcotics abuse on narcotics addicts is caused not only by external factors, but also influenced by factors originating from victims of the crime itself (internal). As discusses in the previous chapter, there are three (3) factors that 'trigger' a person to perform Abuse of Narcotics. The factors include environmental factors, and the availability of narcotics.<sup>13</sup>

---

<sup>11</sup> *Ibid*, p. 105-106

<sup>12</sup> LHC Hulsman, *The Dutch Criminal Justice System From A Comparative Legal Perspective* in DC Fokkema (ed), *Introduction to Dutch Law for Foreign Lawyers*, (Kluwer Deventer, The Netherlands, 1978), p. 320, Check in Barda Nawawi, *OpCit*, p. 129.

<sup>13</sup> <sup>13</sup> Andi Hamzah, *Crime and Punishment Indonesian system of levies to the Reformation*, Pradnya Paramita: Jakarta, 1986, p. 1.

Opinions that consider criminal offenders need not be penalized are underpinned by philosophy of determinism and indeterminism. Determinism states that people do not have free will to do in doing an act because driven by factors that exist in him, such as talent, abnormal soul and so forth, and factors that exist outside him, such as the state of society, economic conditions and so forth<sup>14</sup>. Related to addicts as victims of abuse, they cannot be blamed for his actions and cannot be subject to criminal. Therefore, it is not a criminal charge that should be imposed on him. Instead, what is needed is treatment measures aimed at improving.

On the contrary, the view of indeterminism holds that human beings basically have free will, albeit somewhat influenced by factors from within or from outside themselves so that the person is deemed to be able to determine his will.<sup>15</sup>

Parasian Simaungkalit translates them as actors who become victims of their own actions or also called as *mutual victimization*<sup>16</sup>. O'Donnell calls such concepts as *self-victimizing the victim* or *crime without victim* is a person who committed a crime without a victim to his own conscience<sup>17</sup>. Narcotics addicts are essentially unlawful acts and may be subject to criminal sanctions. Narcotics addicts are essentially unlawful acts and may be subject to criminal sanctions. As Catherine Elliot and Frances Quinn in their work of doctrine "*Criminal Law*" states that an unlawful act is considered as an element of any criminal offense, as a result of two (2) elements, namely the element of *the actus reus* (*physical element*) and the element of *mens rea* (*mental element*)<sup>18</sup>.

*Actus reus* is an element of delicacy, while *mens rea* including the manufacturer's accountability. Element *actus reus* is the essence of the evil itself or the deed done, while the *mens rea* is the inner attitude of the offender at the time of doing the deed. Packer<sup>19</sup> stated that *actus reus* and *mens rea* is a decisive principle that a person who commits a criminal offense cannot be directly punished despite having committed a crime and fulfill the elements that exist. Criminal offenses committed shall be reviewed from the aspect of *the actus reus* and *mens rea*.

---

<sup>14</sup> *Ibid*, p. 80

<sup>15</sup> Yong Ohoitumur, *Theory Ethics On Legal Punishment*, Gramedia Pustaka Utama: Jakarta, 1997, p. 17-23.

<sup>16</sup> Kusuma Buana Foundation (nd). *STDs HIV / AIDS Condom*, Buana Foundation Leaflet-UNFPA. *Op.cit*

<sup>17</sup> Bambang Poernomo, *Principles of Criminal Law*, Ghalia Indonesia: Jakarta, 1993, h.142.

<sup>18</sup> *Ibid*.

<sup>19</sup> Parasian Simanungkalit, *Globalization Circulation of Drugs and Abatement in Indonesia*, Yayasan Reasonable Life: Jakarta, 2011, p. 6.

From the above description, the narcotics addict is also an act against the law. This is because the narcotics addict fulfills two elements, offense and criminal liability. Additionally, narcotic addicts also fulfill essentially the evil itself or the deeds performed, and the inner attitude of the offender at the time of doing the deeds, also done consciously. Based on the *actus reus* element and *mens rea* narcotics addict is also a criminal offender. Narcotics Act in the explanation of Article 54 of the Narcotics Act stipulates that narcotics addicts are victims of abuse the narcotics 'unintentionally using narcotics for being persuaded, seduced, tricked, tricked, coerced, and/or threatened to use Narcotics.' The term victim translated by the positivistic paradigm provides a form of understanding of the crimes listed in the criminal code. The victim is the result of a prohibited act based on the concept of a positive law existing, beyond the existing formula, the construction of an understanding of the victim is not acceptable<sup>20</sup>.

Assessment of victim's protection can be performed legally and based on two legal issues: protection of potential victims (that people do not become victims) and protection of actual victims (concrete protection) . Stanciu, as quoted by M. Arief Amrullah, states that victim is one who suffers and experience injustice. Thus there are two fundamental properties, pain and injustice. It is apparent there is an element of victims creates perception that category of victims on abusers of narcotics is not only in the formulation of concrete standard rules of criminal law, but concept of victim (including addicts who are in fact victims of drug). Victim is not only drug addicts; there are other parties who also become victims including community and the state.

Retributive and relative theories have given a new clause that rehabilitation is an act of *treatment* for victims of abuse of narcotics, particularly on drug addicts who are considered dynamic. This enables socialization for perpetrators and expected to restore social and moral quality of a person to be able to integrate in society. On this basis, a *double track system* requires that the coaching elements are equally accommodated in the system of criminal law sanctions. This is the basic explanation of why rehabilitation of *double track system* demands equality between criminal and action sanctions.

Treatment theory states that rehabilitation is a process of integrated treatment activities to free addicts from dependence . The purpose of *treatment* as a form of decision is considered 'proper' directed at criminals, not on deeds. Jeffery in *Criminal Policy* pointed out a person's

---

<sup>20</sup> Tim O'Donnell, *American Holocaust: The Price of Victimless...*, *Op. Cit*, p. 9: ...Victims that the victims are no longer of sufficient personal worth as a citizen that a key be allowed the legal right of all citizen ... made hate crime victim without persecution is Often the confiscation of the victims life ...

action is not only be seen from the juridical aspect alone regardless of the person who did it, but influenced by the nature of his personal, biological, and environmental factors.

Accountability of the manufacturers is more on action (*treatment*) to protect public interest. Sian & Panggabean Studies in *Penitensia Law in Indonesia* suggests that theory of *social defense* rooted in the *indefinite sentence* system which satisfy one selves on modification of doctrine of freedom affair and doctrine of criminal responsibility. Conclusion of the 4th UN Congress in 1970 indicates that punishment system derived from social defense idea is going to be considered in connection with humanistic approach in the use of criminal sanctions for the purpose of *social defense* itself. This conception of *social defense* includes two (2) main conclusion, they are:

- a. Criminal law should be maintained as one of *social defense* means in the sense of protecting the public.
- b. In accordance with the politics of criminal law, the purpose of punishment based on the theory of *social defense* should be directed towards the protection of the welfare of society as well as the balance and harmony of life in society.

## **2.2. Essence and Purpose of Rehabilitation for Narcotics Addicts**

Rehabilitation for Narcotics addict is forth in Law on Narcotics as regulated in Articles 53 to Article 59 related to treatment and rehabilitation, Articles 109 to 110, related to respect and participation of the community. Rehabilitation arrangements for Narcotics addicts may include social rehabilitation as well as medical rehabilitation. Government and society possess possible role to help prevent and combat smuggling and illicit trafficking and precursors of narcotics.

For medicine and medical indications, doctor can give class II or III narcotics in a limited number of patients (Article 53). As for addicts and victims of abuse, they are required to undergo medical rehabilitation and social rehabilitation in accordance with Article 54. The formulation is required for setting rehabilitation is for addicts and patients or medication. Further elaboration of terminology of rehabilitation arrangement in Narcotics Law includes:

- a. Medical rehabilitation (Article 1 Number 16)

It is an integrated process of treatment activity to relieve addicts from Narcotics dependence. Medical rehabilitation is carried out in hospitals designated by ministers, rehabilitation agencies, able to rehabilitate with approval.

- b. Social rehabilitation (Article 1 Point 17)

Is a process of recovery activities in an integrated, both physical, mental, and social, that former of Narcotics addicts can re-implement social functions in community life.

c. Narcotics addict (Article 1 Number 13)

A person who uses or misuses narcotics and in a state of dependence on narcotics, both physically and psychologically

d. Victims of Narcotics abuse (explanation of Article 54)

Is someone who unintentionally uses Narcotics for being persuaded, tricked, cheated, coerced, and/or threatened to use Narcotics.

In Special Committee draft on Narcotics in “Discussion of Narcotics Act Overview by the House of Representatives by ABRI fraction, Djorali Purba proposed his idea. According to him, there are some main points of thought as main discussion of the Narcotics Bill, they are:

- a. Narcotics Law must be able to create a common perception of dangers of Narcotics abuse, and its causes and effects on individuals and society, as well as on the nation and state;
- b. Narcotics Law should be able to prevent, stop, and at the same time eradicate all forms of illicit trafficking of Narcotics, and together with the international community striving to tackle the problem;
- c. Narcotics Law should be able to provide guidance to the community without discriminating status and position, in order to ensure the creation of legal certainty with the essence of truth and justice in its participation in fostering the embodiment of national discipline;
- d. Narcotics Law must be able to sanction the violators of Narcotics crimes whether committed individually, in groups or syndicate networks, on a national or international scale, so that the weight of repressive actions attached to the Act is capable of producing more realistic psychological effects for preventive facilities;
- e. Narcotics Law should be able to ensure the continuity of procurement of Narcotics legally which is urgently needed for the benefit of health services and the development of science; and
- f. Narcotics Law should be able to guarantee the implementation of treatment and rehabilitation efforts for patients who become victims of Narcotics abuse.

Basic thoughts that became the main discussion of the bill of material of Narcotics in particular f, has been translated in article 4 letter d Narcotics Act. In essence, abusers and drug addicts are punished, but if the person committed a crime until the imposition of a ruling by a judge it is guaranteed by the Law on access to rehabilitation, hence they can be relieved. The government is also obliged to prepare rehabilitation resources to restore and social reintegration so that they can return to live a normal life

The provision of rehabilitation decisions for Narcotics addicts can be identified through those who have the authority to issue a rehabilitation verdict. The first authorized party can be seen from the role of Judge as the primary authority holder in the imposition of sanction punishment of Narcotics crime, on the other hand there is also the role of investigator and public prosecutor in making the indictment. For that we need to understand how the provisions of the Narcotics Act authorizes the finalization of criminal cases related to abuse of narcotics in three (3) institutions of law enforcement officials, the Judge, investigators and prosecutors and BNN investigators .

**First**, the role and functions of authority to impose sanctions sentencing verdict for defendant. The authority ownership is judge role associated with the imposition of criminal convictions based on justice, which is based on the law. **Second**, the big role of investigator and prosecutor in terms of making the indictment and arrest perpetrators of criminal acts Narcotics (Article 21 Paragraph (4) Subparagraph (b) Criminal Code). **Third**, the role of BNN investigator that while provide some authority, whether authority in the subject of prevention to the authority of the prosecution. Referring to the provisions of Article 13 Paragraph (3) and (4) of Government Regulation Number 25 Year 2011 concerning the Implementation of Reporting Obligation of Narcotics Addict that the placement in the rehabilitation institution as Paragraph (3) is the authority of the investigator, after obtaining the recommendation from the Doctor Team.

Related to the process of settlement of narcotic criminal cases, especially the authority of the placement of Narcotics Misuse, we can know that based on Article 103 Paragraph 1 letter (a) and (b) that for narcotic addicts who have not or have not been proven to commit misconduct then the relevant placement to undergo treatment through rehabilitation is by judge determination. As for Narcotics addict as a victim of narcotics abuse proven to conduct narcotics misuse, the placement concerned to undergo treatment and through rehabilitation is by judge's verdict.

This provision is in accordance with the explanation of Article 21 paragraph (4) letter b KUHAP in principle regulate the investigator and prosecutor for the purpose of investigation and prosecution authority to detain a suspect or an accused drug addict at the point of care in this case in rehab, but the authority to place the detention of the suspect or the defendant shall be through the determination or verdict of the judge as set out in Article 103 of the Narcotics Law.

### **2.3. Narcotic Addict Rehabilitation Based on Restorative Justice**

Topo Santoso stated that the concept of restorative justice is created because justice sector created many unfair decisions. Victims frequently do not receive attention and their rights are not met. Restorative justice is an alternative in punishment as well as an important part of the reform of criminal law. Black's Law Dictionary gives the sense that restorative justice is an act of recovery, returns to its original state for someone who commits an act which has a negative impact, the act of making good or giving equality for any loss, damage, injury to compensation.

Bagir Manan, as quoted by Dewi, elaborates the substance of restorative justice principles, they include:

1. Establish joint participation between perpetrators, victims, and community groups to complete an event or a crime.
2. Place perpetrator, victim, and community as "*stakeholders*" who work together and immediately tried to find a settlement that is perceived to be fair to all parties (*win-win solutions*)".

Legal experts have introduced the formula of justice, especially in the enforcement of human rights, that there are three (3) aspects of approach to build a legal system to modernize and update law, in terms of the structure, substance and legal culture, all of which run in integral, simultaneous and parallel. Restorative justice is on the whole *tahap* ncriminal justice system both at the level of investigation, prosecution, judiciary and correctional services. The concept approach restorative justice is an approach that is more focused on the conditions of creating justice and balance for the perpetrators of criminal acts and their own victims. Restorative justice can be performed by diversion, mediation and so forth. Diversion can also be described as a system in which the facilitator organizes the dispute process of the parties to achieve a satisfactory solution as restorative justice. Restorative justice can also be performed with mediation. Judicial process can be performed by completion according to the principles of restorative Justice. From the position of the defendant and victim, restorative justice is a form of mediation that aims to achieve a "*win-win solution*" as in a civil case.

Moreover, in the context of *restorative justice* to abusers of narcotics can be done in criminal system that adheres to *the double track system*. *Double track system* in Indonesia as criminal sanctions and criminal prosecution system is a system of sanctions in criminal law which is not only loaded with criminal sanctions but also action sanctions. Sholehuddin argues that the development of criminal law beyond the Penal Code has accepted the concept of expansion of sanction such action, thus legislation policy practices has spawned criminal law beyond the Criminal Code.

Characteristics of restorative justice is to make offenders accountable for repairing the harm caused by guilt; provide an opportunity for offenders to prove their capacity and quantity in addition to overcoming constructive guilt; involving victims, parents, extended families, schools and close friends; creating forums to cooperate in solving the problem; establishing a direct and tangible connection between error and social reactions.

*Restorative justice* is on the whole stages of criminal justice system at the level of investigation, prosecution, and judicial and correctional. In conventional criminal proceedings, for example if there has been a reconciliation between the offender and the victim, and the victim has forgiven the offender, it will not affect the authority of law enforcement to continue to carry forward the case to the criminal sphere which later led to the sentencing of criminal offenders. Formal criminal process time consuming and does not provide certainty for offenders and victims would not necessarily meet or restore the relationship between the victim and the perpetrator, the concept of *restorative justice* offers a recovery process that involves the direct perpetrators and victims in the settlement of the problem. Conventional criminal process only makes the victim later as a witness in the court level that does not significantly affect the decision of punishment, the prosecution task is still given to the Prosecutor who only receive the files of investigation to further processed into the basis of prosecution, without knowing and understanding the condition of the problem in real terms, and the offender is in the "chair prisoners" are ready to accept the punishment to be inflicted upon him.

Liebmann simply translate the concept of *restorative justice* in legal system framework that came collectively to address the offense and its implications for the future, the aim is none other than to restore the welfare of the victim, the offender and the community damaged by crime, and to prevent the violation or crime Furthermore. Liebmann put 4 (four) the principles of *restorative justice* as the reference fundamental in the recovery efforts for victims and perpetrators, they are:

1. Maintaining perpetrators directly responsible for the victims and the affected communities;
2. Requires the perpetrator to be responsible for correcting the damage that has been caused in the same degree as before the damage occurred;
3. Providing an opportunity for the victim to have access to court proceedings and corrections, also granting the victim permission in determining the obligations that the perpetrator must perform; and
4. Encourage the community to be involved in providing support to the victims, ensuring the implementation of obligations by the perpetrator, and providing opportunities for the perpetrator to integrate in the community.

In the case of narcotics addicts that focus on fairness efforts involving perpetrators, victims, families, and other related parties in a criminal act, collectively settlement of a criminal offense on narcotics and its implications is searched, emphasizing restoration to its original state rather than retaliation. By understanding the concept of *restorative justice* mentioned earlier, there are at least 3 (three) rationale on the importance of rehabilitation of narcotic addicts. They are:

- a. That Narcotics addicts and the public are those who are affected by the acts of the perpetrators of the criminal acts of narcotics abuse, therefore doing the improvement is a necessary thing to do;
- b. Develop responsibility answer or liability of the perpetrator of abuse narcotics against victims (Narcotics addicts) and communities; and
- c. The existence of healing or recovery process, either healing the victim or the perpetrators of narcotic crime. Healing of the perpetrator is intended to avoid the occurrence of recidivism.

Based on the study of exposure in advance, it can be argued that *restorative justice* allows existence legal decision ideal for Narcotics addicts. Because the real imprisonment is not decision best in treating Narcotics Addict. Imprisonment can lead to the internalization of the negative values of prison by Narcotics Addicts; even prisons are often identified with high school crime. Therefore, *restorative justice* can be a healing legal paradigm implemented on Narcotics Addicts so to help his life livelihood to play his role as a member of the family as well as a member of the community.

#### **2.4. Depenalization of Rehabilitation Arrangements**

The EU Center coordinating data on drug policy, *European Monitoring Center for Drugs and Drug Addiction* (EMCDDA), mention the difference between the definition "decriminalization "and" depenalization "as follows:

*"Decriminalisation comprises removal of a conduct or activity from the sphere of criminal law. Prohibition remains the rule, but sanctions toruse (and its preparatory acts) no longer fall within the framework of the criminal law. Depenalization means relation of the penal sanction provided for by law. In the case of drugs, and cannabis in particular, depenalization generally signifies the elimination of custodial penalties."*

Decriminalization and depenalization are opposed to criminal and penalization. The term criminal is a synonym of evil. The term criminal is a term in law, whereas a crime is a violation of the law. Salim as quoted by Anwar Riksono Dian Nugroho states that criminals are evil deeds that violate the provisions of legislation. Criminal only applies to criminal acts, and does not

apply to civil. Furthermore Schaefer also stated that " *a violation of criminal law for which some governmental authority applies formal penalties* ". Schaefer also explained that a criminal is a deviant act against a social rule drafted by a state committed by a person

Marc Ancel argues that penal policy as a science as well as an art that ultimately has a practical purpose to enable the rule of positive law to be better formulated and to provide guidance not only to the legislator but to the courts applying the law along with the organizer or executive of the court decision. In general, the penalization policy is done through both penal and non-penal systems. The difference is that penal facilities focus more on repressive nature after crime or crime occurs, while non-penal facilities have preventive efforts before a crime occurs.

Depenalization is against certain acts that are seen as unlawful acts originally threatened with criminal sanctions and then penal sanctions or penalties against the act were omitted, but it was still possible to impose other sanctions, such as through administrative sanctions, social work, fines, note police, probation or other forms such as rehabilitation. In the depenalization process there is a tendency to surrender the disgraceful or anti-social acts to social reactions alone or to the institutional medical action. Acts that include juvenile delinquency are addressed outside the criminal justice process. Likewise, the act of adultery with economic social considerations into actions that are not subject to penal sanctions with depenalization process.

In the concept of rehabilitation by the international world (the Convention of Interest or the so-called Single Convention Narcotics 1961), rehabilitation is included in the form of decriminalization. The Single Convention of Narcotics 1961 and the Protocols changing it becomes the basis of the Indonesian government in drafting Law 9/1976 on Narcotics. So the spirit is to treat drug abusers threatened with crime, but if it has been given alternative punishment in the form of rehabilitation and distributors who in a state of dependence is given access to rehabilitation by being sentenced to rehabilitation as an additional punishment.

Rehabilitation, which is based on principle *restorative justice* for narcotic addicts is not a decriminalization, but rather a depenalization effort. It is in accordance with the concept *self-victimizing victims*, namely the perpetrators of crime as well as being a victim Or it could be called a crime without a victim. In addition, Berbemin on Marc Ancel concept which has been described in the preceding paragraph, penal policies applied to narcotics abuse victims, especially for narcotics addicts are a penal system policy. Substance can be seen as an act of punishment as an attempt *punishment* of the Government through legislation related to the misuse of narcotics to perform *treatment* against the perpetrators of narcotic crime. Such

matters can be seen from the imposition of criminal sanctions, fines and rehabilitation provided to the perpetrators of criminal acts narcotics. Criminal justice process is the final solution if it is inevitable.

In the process of, criminal negative sanctions are removed from the consequences of a behavior which is prohibited. In that this is only qualification sanctions criminal offenses, while the nature of fighting or violating the law is still maintained. Depenalization puts forbidden behavior obtain proper qualifications in the territory of the criminal law system, thereby reducing stigmatization and can prevent deviations from happening.

Penal policy setting should be concentrated:

- a. Leads to applicative policies, i.e policies on how to apply current criminal law legislation to deal with issues narcotics and illegal drugs; and
- b. Leads to the renewal of the criminal law (*penal law reform*), namely the policy of how to formulate the rules of criminal law related to the new Criminal Code concept especially in order to overcome the narcotic criminal acts in future.

Based on the description, rehabilitation in Indonesia is a depenalization effort for addicts as victims abuser an narcotics. The main purpose of rehabilitation as a depenalization effort is so that victim addicts abuser an narcotics can recover from narcotic dependence. The findings in line with Yong Ohotimur's opinion that rehabilitation is performed because its the main purpose of action. Rehabilitation is done as a step to restore the social and moral quality of a person in order to interact with other communities.

Depenalization is evident from the arrangements in the Narcotics Law as well as in other laws governing narcotics, essentially stipulating that narcotics addicts are unlawful acts, but if they do report, then the unlawful nature is lost. It is increasingly strengthen that rehabilitation is part of depenalisasi. Here are the characteristics of depenalization in the rehabilitation of narcotic addicts in the criminal justice system:

2.5 Addicts are considered to be narcotics abusers who principally commit acts against the existing law. This is because the narcotics addict meets two elements in the criminal law of the element *actus reus* which means that the narcotic addict meets the essence of the evil itself or the deed done, as well as the element *mens rea* namely the inner attitude of the addict at the time of doing the deed.

Provision of rehabilitation ensure legal certainty for addicts as victims of narcotics abuse. Narcotic addicts will be processed through criminal procedure law, for addicts found guilty of committing a narcotic crime, Judge will decide whether he or she is undergoing treatment through rehabilitation while for unconverted addicts do narcotics crime. Judge will

determine that the person is undergoing treatment through rehabilitation. The unlawful nature of narcotics addicts is ignored if he/she has been reported to IPWL that narcotic addicts are not prosecuted criminally.

### **2.5. Comparison of Criminal Provisions for Narcotics Addicts in Indonesia and in Portugal**

On the basis of the provisions of the Portuguese KHUP sanctions for narcotics addicts as set forth in the provisions of Article 46C which states that the narcotics addict in the sanction of punishment is an administrative offense, so that sanctions are given the existence of a criminal a fine that can replace a short-term and stand-alone criminal penalty (*independent sanction*) or criminal law against an independent act of law in its claim and punishment. There is no provision concerning the length of general and general maximum that may be imposed in penal sanctions. Each offense for the level of narcotic use for narcotics addicts has its own particular limits. However, there are mitigating factors, such as having paid for damages incurred; allowing the imposition of a criminal under minimum (Articles 73 to 74 *Penal Code*).

Implicit provisions in the decriminalization regulations of Narcotics users are governed by the Portuguese Narcotics Law Article 2 Paragraph (1) which reads 'the purchase, possession and use of Narcotics for personal interest for 10 (ten) days is an administrative violation, if the ownership exceeds the 10) day then legally the owner of Narcotics is a dealer. In other words, illegal use of Narcotics is a strong ban. The impact of decriminalization in Portugal is obvious, including:

- a. Decreased use of Narcotics in productive age;
- b. Decrease in interest in Narcotics use;
- c. Decrease in figures in Narcotics; and
- d. A certain amount to go through rehabilitation program.

In Portugal, the decline of drug abuse presents after applying the decriminalization of narcotics was. The small-scale use of illegal drugs has not been considered a criminal offense in Portugal since 2001. The Portuguese government's move to decriminalize drugs has been accompanied by a decrease in mortality rates over dose (OD) in this country. Data from the European Center for Drug Control and Control showed that there were only three cases of adult deaths over dose per one million citizens of Portugal. This figure is very low when compared with death due over dose in another European country.

The Netherlands has a record of 10.2 death-related cases over dose per million of its citizens. While in the UK, there are 44.6 cases of deaths due to overdose per million of its citizens. Death due over dose in Estonia reached 126.8 cases per one million citizens. The

average number of deaths caused *over dose* in the EU country is 17.3 cases per one million citizens.

Although abuse is decriminalized, the process of handling drug abusers in Portugal remains through procedural law as usual. Portugal implements rehabilitation as punishment by a court decision. Therefore, addict is still being processed by the investigator, then by the Prosecutor reinforced in the indictment to be decided by the Judge with the punishment of rehabilitation.

## 2. DECIDED RATIO IN REHABILITATION DECISIONS

Based on analysis of cases against three decisions The Criminal Court already *inkracht* related to narcotics abuse namely PN Decision Number 13 / Pid.B / 2013 / PN.Sda. dated March 14, 2013 with defendant Musliq bin Iskan, PN Decision No. 80 / Pid.B / 2014 / PN.Sda dated February 19, 2014 with defendant H. Achmad Yahya bin H. Moch Said and PN Decision No. 339 / Pid.Sus / 2014 / PN.Sda dated July 23, 2014 with defendant Iswanto Bin Hery Wibowo, judge's rehabilitation decision is based on the following matters, including:

### 1. Pay attention to aspects of health .

The verdict of rehabilitation which judges decide on narcotics addict is based on health condition proven by doctor's statement, either in written form or imported as an expert witness in Court. The description of the expert doctor is really taken into consideration to determine the form of sanctions to be imposed.

The doctor's description is important because narcotics problems are closely related to health. This can be seen from the use of narcotics which initially is for the benefit of health. These conditions further reinforce that the narcotics addict is a sick person who better imprisoned.

This reality is conveyed by Anang Iskandar that a user of narcotics a experiencing the same conditions as a person with diabetes. According to him, the condition that causes the user must be supervised at the time of healing. Repeated user of narcotics usually will easy re-looking for narcotics because he is still in sick condition. If a diabetic sufferer needs intensive care in a hospital, for a narcotic addict needs rehabilitation. Judge, in his imposition of sanctions of rehabilitation for Narcotics addicts restricted that abuser has been shown to have narcotics for its own sake .

Abuse for narcotics intended is a victim of narcotics abuse, is not a narcotics dealer. The situation becomes basic judge for no sever a prison sentence, but only

me rehabilitation. This is in accordance with the provisions in Article 103, 127 paragraph (3) Narcotics Law, and number 2 letter e SEMA Number 4 of 2010.

Article 103 determines that rehabilitation is a system that can be used as an action against narcotics abuse addicts. The following is the chapter 103 of the Narcotics Law which states that:

- (1) "The judge who examines the narcotics addict case may:
  - a. terminate to order the concerned person to undergo treatment and / or treatment through rehabilitation if Narcotics addict is found guilty of a Narcotics crime; or
  - b. Determine to order the concerned person to undergo treatment and / or treatment through rehabilitation if Narcotics addict is not proven guilty of a Narcotics crime.
- (2) The period of treatment for Narcotics addict as referred to in paragraph (1) letter a shall be calculated as a period of serving sentence. "

Article 127 Paragraph (3) of Narcotics Law also regulates the same thing. Victims of narcotics abusers are expressly required to be rehabilitated. Here is the sound of article 127 paragraph (3) Narcotics Act stating that:

In the case of Abuse as referred to in paragraph (1) can be proven or proven as a victim of Narcotics abuse, such Abuse is obliged to undergo medical rehabilitation and social rehabilitation.

In addition, the necessity of rehabilitation of narcotics addicts is also regulated in article 2 letter e SEMA Number 4 Year 2010, which determines that drug addicts must undergo rehabilitation as long as not included as a narcotics dealer.

3. The weight of narcotics proven to be abused by the defendant is below the standard of imprisonment.

Because of not having the requirement to impose criminal sanction of imprisonment, the defendant is subject to rehabilitation. This is as regulated in item 2 letter b of SEMA Number 4 Year 2010, which stipulates that one of the conditions of the offender for narcotics may be subject to rehabilitation is proven to use 1 (one) day s with various types, with the smallest type is narcotics petidin group at least 0.96 grams. If it is an error for narcotics abuse narcotics below (according to its type) then it cannot be imposed sanction of imprisonment, but enough with rehabilitation.

4. Decision Rehabilitation which the judge handed down to the abuser who is an addict as a victim of abuse narcotics is considered a form of sanction .

This is based on Article 103 paragraph (2) of Narcotics Law mentioning:

The period of treatment and / or treatment for Narcotics addict as referred to in paragraph (1) letter shall be calculated as the period of serving sentence.

#### 4. IUS CONSTITUENDUM OF NARCOTICS ADDICTS REHABILITASI

##### 4.1. The Concept of Legal Protection for Narcotics Addicts

Indonesian criminal law system adheres to *double track system* in its stelsel sanctions which means criminal sanctions and action sanctions are arranged at once. Muladi in *Human Rights, Politics, and the Criminal Justice System* said that modern criminal law characterized by the orientation of deeds and perpetrators (*daad-dader strafrecht*), Stelsel encompasses not only criminal sanctions (*straf, punishment*) that is suffering, but also the order (*maatregel, treatment*) that are relatively more charged with education.

Reviewing the basic idea of a punishment sanction for narcotics addict, it can be seen that the basic nature of the sanction is whether it is a retaliatory response to a criminal actor, or an anticipative-preventive action. Through the philosophy of punishment, it can discover the philosophical conception of who the narcotics addict is, so that it is permitted or not permissible to impose a sanction (criminal or action). While the theory of punishment, can understand for what rehabilitation for narcotics addict as a sanction imposed, whether to retaliate, denounce, educate or protect victims or society.

With the sequence of understanding of the above exposure, then gave birth to 2 (two) legal protection of theoretical value. First, the existence of academic urgency to enlighten the fundamental differences in the classification of narcotics addicts as an exploit of narcotics abuse with other types of classifications categorized as narcotics crimes (such as distributors, importers, exporters, carriers, sellers, producers, and other types of acts) between penal philosophy (philosophical grounds) and the theory of punishment. A number of previous literature suggest that criminal law in the imposition of sanctions (criminal or acts) is often equated and used interchangeably for the same purpose. This subject is academically unfavorable because it will eliminate the essential difference of a philosophical idea and a theory. Second, theoretically this research produced the theory of a sanction in law criminal that can be placed in a framework of thinking that is comprehensive and scientifically accountable. Such is the key word to address the placement of sanctions in the Narcotics Law along with the laws and regulations that accompany it, as the findings of the results of this legal study.

This research provides more comprehensive keywords as an adoption to the peculiarities of narcotic addicts as a victim of narcotics abuse which is distinguished by the classification of narcotics crimes (such as distributors, importers, exporters, carriers, sellers, or

other types of deeds) is depenalization which means that a disgraceful act according to the criminal law is deemed necessary to provide a threat of sanctions to the offender. the process of depenalization of certain acts which are seen as unlawful acts (unlawful or illegal nature is still maintained) which was initially threatened with criminal sanctions and then penal sanctions or penalties against the act were omitted, but it was still possible to impose other sanctions, such as through administrative sanctions, social work, fines, police records, probation or other forms such as rehabilitation. Dionysios D. Spinellis, Professor of Criminal Law and Criminology from the University of Athens-Greece suggests that in relation to the problem of depenalization, at least the criminal law imposed for narcotics addicts should pay attention to some of the following guidelines:

1. The provisions of criminal sanctions for narcotics misconduct should be strictly limited to harmful crimes and have a serious impact on the life of the wider community as a primary consideration. Meanwhile, the criminal justice system in revealing the criminal acts of narcotics abuse should be regulated by the system of disclosure of criminal acts in detail, thoroughly and respect the rights possessed by the suspect of narcotics misuse.
2. For many offenses or abuse of narcotics that should not be sanctioned, it is like an addict as a victim of narcotics abuse is more appropriate sanctioned action in the form of rehabilitation. However, since such a punishment system will lead to arbitrary action against the narcotics addict and the criminal justice process proceeds effectively, it must be done in the following manner:
  - a. Violations perpetrated by the offender including the criteria for abuse of narcotics should be accurately described in law.
  - b. Sanctions for addicts as victims of narcotics abuse should be established appropriately.
  - c. The State Officials authorized in the settlement of criminal cases related to narcotics misuse must be adequately educated.
  - d. Appropriate and simple procedures should be established to ensure legal certainty.
  - e. Filing to a higher level of justice is necessary and possible.
  - f. The central position of the punishment decision for narcotics addicts permanent given to the Judge in determining that person must undergo treatment through rehabilitation both medically and socially , through the determination or decision of the judge, during the process of investigation, prosecution, until the court examination process.

Referring to the provisions of Article 4 of the Narcotics Law, it can be seen that the rehabilitation of Narcotics addict especially in the PN decision in Sidoarjo in advance is one of the main objectives of the Narcotics Law. Even the rehabilitation arrangements get a separate part in Chapter IX of the second section on Rehabilitation. Starting from Article 54 to Article 59 of the Narcotics Law regulates the rehabilitation of narcotics users, as well as scattered in various other articles.

Indonesian laws governing narcotics and their sanctions should be strictly regulated in relation to sanctions for drug abuse. The explicit arrangement in question is the setting of sanctions for addict as a victim of abuse narcotics no longer associated with such criminal sanctions the provisions of Articles 111 to 147 Narcotics Laws for criminal sanctions and just linked to Article 53 through Article 56 and Article 103 Narcotics Act for action sanctions (rehabilitation). Because with a and two kinds of sanctions precisely create uncertainty as contained in the arrangement of Article 4 Letter (d) of the Narcotics Law and Article 54 of the Narcotics Act governing rehabilitation, but the provisions of Article 127 Narcotics Law regulates the threat of sanctions criminal on users of narcotics for yourself.

#### **4.2. Readiness of Various Legal Institutions for Rehabilitation Handling.**

Rehabilitation for narcotics addicts has been conducted by BNN in cooperation with six agencies namely Polri, Ministry of Health, Ministry of Home Affairs, Public Prosecutor, Ministry of Social Affairs, and Ministry of Justice and Human Rights. In addition to rehabilitation efforts undertaken through the cooperation of several institutions, prisons has applied rehabilitation in various models. Some are carried out through forms of cooperation with social institutions and educational institutions such as Pesantren using physical and spiritual therapy.

According to research by the Ministry of Law and Human Rights of the Republic of Indonesia (2013), entitled 'Narcotics Prison Class IIA Pamekasan Based Rehabilitation' states that the rehabilitation program is conducted with the intention that victims of Narcotics who have implemented programs or systems of coaching will be completely free from danger Narcotics and can be accepted back in the community. Narcotics Prison as one of the institutions in charge of guidance on Narcotics prisoners seeks to combat the dangers of Narcotics as a complex and trans-national problem, namely by conducting a comprehensive integrated approach through medical and social based rehabilitation programs (programs). For the implementation of this approach method must be demanded seriousness of institutions have optimal function and have guidance in taking decision of law, especially for decision of rehabilitation for Narcotics addict which has been mentioned in advance.

The model to be offered as a manifestation of care and guidance of prisoners (victims) of Narcotics in its guidance programs refers to the rehabilitation program. Rehabilitation model is divided into 2 (two) major parts:

a. Model-based therapy and medical rehabilitation

Therapy is often carried out with Methadone Teraphy (TRM).

b. Model-based therapy and spiritual social rehabilitation

There are types of models (programs) rehabilitation as empowerment for victims of Narcotics, namely:

- 1) Social therapy of spirituality
- 2) *Therapeutic Community (TC)*
- 3) Criminon

BNN is technically conducting a comprehensive policy in order to empower Narcotics addicts through rehabilitation efforts *demand reduction* conducting a rehabilitation movement on 100 thousand drug abusers. It is important to do as the embodiment of BNN as a state institution with internal responsibility prevention and eradication narcotics crime.

Rehabilitation arrangements are also implemented by the Ministry of Health by appointing hospitals that have been arranged in Kepmenkes. Based on the Decree of the Minister of Health Number 293/MENKES/ SK / VIII / 2013, 274 Puskesmas, Hospitals and / or medical rehabilitation institutions as IPWL consisting of 15 UPT (Technical Implementation Unit) of Ministry of Health and 259 Puskesmas, Hospitals and / or medical rehabilitation institutions owned by Cross-Sector, Local Government and Private which spread in 33 Provinces including 46 Bhayangkara Hospital owned by Police of RI. With the proposed Bhayangkara Hospital as IPWL, IPWL achievement in 2013 far exceeded the target of 274 IPWL from the target which must be reached by 210 IPWL.

All IPWL can serve at least symptomatic therapy and basic drug addiction counseling. Some health care facilities in the form of health centers, clinics, prisons / detention centers or hospital can provide methadone maintenance services. The health service facility that can serve the Methadone Maintenance Therapy Program (PTRM) based on the Decree of the Minister of Health of the Republic of Indonesia Number 227 / MENKES / SK / VI / 2013 consists of 20 Hospital, 57 Hospital and Puskesmas Satellite, and 9 Prisons. In 2014 there are additional 7 Hospital and Puskesmas satellite and 1 satellite of prisons that has been activated and still in the process of obtaining the determination through the Minister of Health Decree.

Inpatient medical rehabilitation services for current drug users or narcotics can only be served at 21 Mental Hospital. Nevertheless, to treat narcotic users who are in the process or

have been decided by a new court can be done in 17 Mental Hospital. This is to remember to treat users, abusers or victims of drug abuse who are in process or have been disconnected by the court require certain requirements, especially regarding the security facility.

Related institutions in handling follow-up rehabilitation for narcotics addicts should adjust the needs of the addict himself with that process justice. This provision is then regulated in the Joint Regulation of the Chief Justice of the Supreme Court, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Chief of the Indonesian National Police, and the Head of BNN Number 01 / PB / MA, Number 03 Year 2014, Number 11 Year 2014, Number 03 Year 2014, PER-005 / A / JA / 03/2014, Number 1 Year 2014, & Number PERBER / 01 / III / 2014 / BNN on Narcotics Addicting and Narcotics Abuse Handling into Rehabilitation Institution. This provision assesses the importance of common perception among law enforcers, namely the police, prosecutors and judges to define the victims of narcotics abuse that must be rehabilitated. So this provision assesses that the importance to be immediately formed team *assessment* from the outset to determine that the defendant was a victim of an abuse, an owner, an addict, or a dealer.

As mentioned in the provisions of Chapter IV Article 8, Article 9, and Article 10 of the Joint Regulation of the Constitutional Court, Minister of Health, Social Minister, Corn, Chief of Police, and Head of BNN about the team *assessment* integrated that states that in doing *assessment* against Narcotics Addicts and victims of Narcotics Abuse as suspects and/or users, the team *assessment* have the right to identify and investigate to determine *treatment plan* against the defendant, whether the defendant needs to be sent to rehabilitation or not. Assessment team is integrated by BNN at National, Provincial and District or City level consisting of:

1. Doctors' team, which includes doctors and psychologists; and
2. The legal team, which consists of elements of the National Police, BNN, Attorney General, and Kemenkumham.

In addition, rehabilitation can also be done through cooperation with third parties, namely the community as an element of the complexity of the institution. Community involvement and support (social participation and social support) is one of the non-formal rehabilitation that has a strategic value in the implementation of Narcotics Narcotics rehabilitation, where the community can provide support by providing the necessary resources in rehabilitation activities. The role of pesantren as one of the manifestation of the part of the society is a real manifestation in seeking the healing of Narcotics abuse victims through social

rehabilitation with religious approach method, even at the same time giving the provision of good faith, morals, knowledge and skill. Evidently, the findings of Endang Heryana's thesis show that the enormous benefits of the role of Pondok Pesantren in healing and returning the victims of narcotics abuse, such as: public knowledge increased because of the basis of information from the mass media as well as from the community concerned; in addition to effectiveness (success in rehabilitation efforts) has been obtained holistically; the cost (the cost of rehabilitation of victims) is relatively cheaper; as well as other things that victims get for their recovery (improved morals, attitudes, and behaviors).

Narcotics addicts should obtain legal protection as a legal consequence of rehabilitation arrangements for narcotics addicts. Provision of legal protection is done by setting criteria of addicts as victims of abuse with distributors clearly and set the criteria of possession of narcotics. In addition, the provision of such legal protection must be supported by reconstructing prisons in Indonesia. The reconstruction in question is to maximize and adjust the prison function with all available resources as a rehabilitation institution. Maximizing the role of BNN in carrying out its function of preventing narcotics crime one of its efforts by building a rehabilitation place, as well as cooperation with other state institutions other social institutions within the framework of rehabilitation.

#### **4. CONCLUSION**

The philosophy of rehabilitation arrangements for Narcotics addicts is based on restorative justice as a recovery that leads to the formation of rehabilitation measures. Furthermore, efforts to integrate ideal criminal functions, restorative justice can be a fair effort involving perpetrators, victims, families and other parties related to joint criminal settlement in seeking resolution to narcotics crimes and their legal protection.

Ratio decidendi in the judge in determining sanctions for defendants narcotics abuse not only consider the legal aspect, but also consider the health condition of narcotics abusers and addicts are victims with proven criteria for drug abuse for themselves instead of distributors. If a person experiences pain, then a treatment is given, not a criminal.

Ius Constituendum rehabilitation for Narcotics Addict requires legal protection provided by clarifying the characteristics of addicts as addicts as victims who distinguish with distributors. In addition, the legal protection of the rehabilitation decisions is the provision of rehabilitation sites for narcotics addicts by focusing on human resources, planned facilities and systems related to rehabilitation implementation. Narcotics addicts should receive great attention from the government. The attention is given by providing rehabilitation sites

conducted by BNN providing rehabilitation sites, health office in collaboration with IPWL, community institutions such as pesantren. Rehabilitation is carried out thoroughly by covering medical rehabilitation and social rehabilitation.

## REFERENCES

- Adi, Kusno, *Diversi as Alternative efforts by the Narcotics Crime Combating Child*, UMM Press, Malang, 2009.
- Amrullah, M. Arief. *In the Criminal Law Politics Economic Crime Victim Protection in Banking*, Banyumedia Publishing: Malang 2010
- Andenaes, John., *Punishment and Deterrence*, The University of Michigan Press, Canada, 1974.
- Anwar, Yesil., And Adang., *Criminal Law Reform, reform of Criminal Law*, Grasindo, Jakarta, 2012.
- \_\_\_\_\_, *Some Problems Comparative Criminal Law*, King Grafindo Persada, Jakarta, 2003.
- \_\_\_\_\_, *Legislative Policy in Combating Crimes with Criminal Prison*, Ananta, Semarang, 1996.
- Arief, Barda Nawawi, *Criminal Law Policy, Kencana, Semarang*, 2011.
- Asmarawati, Tina. *Sociology of Law: Firecrackers Judging from the Perspective of Law and Culture*, Deepublish: Yogyakarta, 2014
- Atmasasmita, Romli., *Capita Selecta Criminal Law and Criminology*, Mandar Maju, Bandung, 1995.
- \_\_\_\_\_, *Theory & Capita Selecta Criminology*, Refika Aditama, Bandung 2005.
- Beusekom, Ineke Van., Loo, Mirjam Van Het., & Kahan, James P., *Guidelines for Implementing and Evaluating the Portuguese Drug Strategy*, RAND Europe, The Netherlands 2002.