



## JURIDICAL ANALYSIS OF IMPLEMENTATION OF ASSESSMENT FOR VICTIMS OF NARCOTICS ABUSE TO REACH CERTAINTY AND LEGAL PROTECTION OF THE COMMUNITY (Research Study at the Batam City Narcotics Agency)

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### Abstract

*This form of assessment of addicts and victims of narcotics abuse is a form of positive breakthrough in law enforcement against narcotics abusers. However, in its application, the National Police experienced problems in the assessment process for handling addicts and victims because they were influenced by various factors that hindered the achievement of the ideals as envisioned by the law. The government must make stricter and wiser regulations regarding the Narcotics Abuse Evaluation Process, all law enforcement agencies prioritize an integrated assessment process for everyone who is proven to be affected by Narcotics abuse and law enforcement officials, such as the Indonesian National Police,*

**Keywords:** *Assessment, Victims, Narcotics*

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### 1. INTRODUCTION

Assessment is a stage carried out by investigators in order to conduct an assessment to prove whether a narcotics abuser is classified as an addict, or a victim of narcotics abuse in enforcing the law on criminal acts of narcotics abuse. An integrated assessment of drug abusers is like a visum et repertum. Visum et repertum is used by investigators to complete the Investigation Report (BAP) which contains information on the causes of the action. In the case of drugs, visum et repertum can be called an assessment. Memorandum of Understanding/Joint Regulation of 7 (seven) State Institutions, namely between the Chairman of the Supreme Court of the Republic of Indonesia Number 01/PB/MA/III/2014, Minister of Law and Human Rights of the Republic of Indonesia Number 03 TAHUN 2014, Minister of Health of the Republic of Indonesia Number 11 /YEAR 2014,

The purpose of the Joint Regulation of 7 (seven) State Institutions is to guarantee efforts to regulate medical and social rehabilitation for narcotics abusers and addicts and to realize optimal coordination and cooperation between law enforcement agencies in the context of solving narcotics problems and eradicating narcotics illicit traffic through handling suspects, defendants or convicts of narcotics abuse with treatment, care and recovery programs. To facilitate the implementation of the integrated assessment, an Integrated Assessment Team was formed consisting of a Team of Doctors and a Team of Lawyers. The Doctors Team consists of general practitioners or specialists in mental health medicine or forensic specialists and/or psychologists,

While the legal team consists of 1 (one) person each consisting of elements from the National Police (appointed by the Director IV of Narcotics, Director of Narcotics Polda, or Head of Narcotics Unit of the Police), elements of the National Narcotics Agency (other investigators appointed by the Deputy for Eradication/Head of BNNP /BNNK), elements of the Attorney General's Office (appointed prosecutor), and the Ministry of Law and Human Rights (BAPAS) if the suspect is a child. The Integrated Assessment Team works under the coordination of the National Narcotics Agency at the central level or the Central National Narcotics Agency at the regional/provincial level. The Integrated Assessment Team started working after a written request from the investigator was copied to the head of the National Narcotics Agency at the scene of the case. The team of doctors examines aspects related to the level of addiction of a narcotics abuser, while the Investigative Team, which consists of investigators from the National Narcotics Agency,

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the National Police and the Attorney General's Office examine legal aspects regarding the involvement of suspected abusers in narcotics networks. The results of the examination by the Integrated Assessment Team are in the form of recommendations which are then included in the Minutes of Examination (BAP) of suspected narcotics abusers. The results of this recommendation can be in the form of a rehabilitation determination if indeed the suspect can be proven to be a victim of narcotics abuse or in the form of a trial document which becomes part of the judge's considerations in deciding the punishment for narcotics abusers according to the directions of Article 103 of the Narcotics Law. Based on data from the Ministry of Law and Human Rights, until 2020 there are 20,000 narcotics abusers or addicts sentenced to prison.

## 2. IMPLEMENTATION METHOD

In particular, according to the type, nature and purpose of the specification of legal research by Related in writing this research, the author uses empirical or sociological legal research methods. This research is based on primary data/basic data, namely data obtained directly from the community as a source The first is through field research. Primary data obtained through field research, for example through observation, interviews by distributing questionnaires. Sociological legal research can be realized into research on the effectiveness of currently applicable laws or research on legal identification. Primary legal research cannot be carried out separately apart from normative legal research. Normative legal research is library research or document study, because more is done on data that is secondary in the library. In normative research, secondary data as a source/information material can be primary legal material, secondary legal material and tertiary legal material.

## 3. RESULTS AND DISCUSSION

Legal arrangements for implementing assessments for victims of narcotics abuse to create certainty and legal protection for the community (research studies at the Batam City Narcotics Agency) are regulated in Law Number 35 of 2009 governing medical and social rehabilitation in Articles 54 to 59. As for the authority of the judge to impose punishment in the form of rehabilitation is regulated through Article 103 paragraphs (1), (2) and (3). The provisions of these articles can be used as a reference that Law Number 35 of 2009 regulates different aspects of punishment for narcotics addicts. Whereas there are aspects of alternative punishment given to narcotics addicts, namely rehabilitation as a sentence and the period of time for undergoing rehabilitation is counted as a period for serving a sentence.

Furthermore, in Article 127 paragraph (3) it is also stated, in the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation. The definition can be proven or proven in the provisions of the article, meaning that a abuser must be proven or proven to be a victim of narcotics abuse or as a narcotics addict through a process known as an integrated assessment or convicts in narcotics abuse crimes Based on data from the Ministry of Justice and Human Rights, until 2015 there were 20,000 narcotics abusers or addicts sentenced to prison. Imprisonment is still the main law enforcement option compared to rehabilitation measures. This is considered to be an easy choice for law enforcers in dealing with criminal acts of narcotics abuse, rather than having to go through a long law enforcement process to place a suspected abuser into the rehabilitation system through an integrated assessment process.

Implementation of the Assessment Application for Victims of Narcotics Abuse to Realize Certainty and Legal Protection for the Community (Research Study at the Batam City Narcotics Agency) that Observing this kind of situation, of course it will lead to an incomplete solution to the problem of narcotics abuse, because this means only displacing abusers and addicts into the prison walls without any effort to be cured, it can even plunge them into the network of illicit drug trafficking. Basically, narcotics addicts have the nature of addiction with a high relapse rate so they



cannot recover by themselves, they need help to be cured. The Narcotics Law also opens up opportunities for rehabilitation for addicts and victims of narcotics abuse.

Factors of Constraints/Barriers and Solutions Regarding the Implementation of Assessments for Victims of Narcotics Abuse to Realize Certainty and Legal Protection for the Community (Research Study at the Batam City Narcotics Agency) that: The principle of legality as an actualization of the paradigm of the rule of law, in Law Number 2 of 2002 concerning the Police The State of the Republic of Indonesia is expressly stated in the details of the authority of the State Police of the Republic of Indonesia, namely to carry out investigations and investigations of all criminal acts in accordance with the criminal procedure law and other laws and regulations. In carrying out its operational activities, Polri has (four) principles, namely:

1. Prioritizing prevention, an attitude and view based on the idea that prevention is better than eradication.
2. Integration in carrying out tasks involving various related agencies in accordance with the scope of their respective tasks.
3. Effective and efficient, efforts to achieve task success must consider a reasonable balance between the results with the efforts and means used.
4. Proactive in carrying out their duties, the National Police must not wait for the appearance of targets to be faced.

Law enforcement is a continuous process of law enforcement from upstream to downstream, namely from the start of the investigative process until a sentence is determined/decided by the court. The process is carried out by a system commonly known as the justice system. The judicial process is essentially a process of upholding the law which is identical to the system of judicial power, because judicial power is the power/authority to enforce the law. Law enforcement for criminal acts of narcotics abuse begins with investigations and investigations carried out by the Police and BNN, prosecution by prosecutors, and judges' decisions.

As for the factors that hinder the implementation of assessments in law enforcement against narcotics abusers, it is influenced by several factors, including:

#### **Legal Substance Factors**

Legal substance relates to the implementation of law enforcement normatively or based on the provisions contained in the regulations. In carrying out law enforcement, all actions taken by law enforcement officials are regulated through applicable laws and regulations. This is what law enforcement officials often only rely on the principle of legal certainty in carrying out their law enforcement. What is the provision of the law is carried out without considering the existence of justice and benefits which must also be fulfilled in law enforcement. Commonly known as legal certainty, namely the implementation of the law in accordance with its sound so that the public can ensure that the law is implemented. Law enforcement officials often only rely on the principle of legal certainty in carrying out their law enforcement.

In enforcing the law against narcotics abusers, law enforcement officials are still often faced with uncertainty in implementing an integrated assessment. Even though the integrated assessment itself is an embodiment of efforts to continue to carry out the objectives of the narcotics law in Article 4 letter (d), namely guaranteeing arrangements for medical and social rehabilitation efforts for narcotics abusers and addicts. Implementation of integrated assessment as a form of response in applying the provisions of Article 27 of the Narcotics Law. In the provisions of the article in paragraph (1) every abuser is subject to imprisonment but in paragraph (2) in deciding the case the judge is obliged to pay attention to the provisions of Article 54, Article 55 and Article 103. Then,

Even though there have been joint regulations as technical guidelines in handling cases, the reality is that their implementation does not always run smoothly. One of the obstacles is the diversity of views in positioning narcotics abusers. This difference does not only develop in society, but also affects law enforcement agencies and courts.

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For abusers who are caught red-handed, the provisions of Article 111 or Article 112 often become a single indictment without including the provisions of Article 127. So that in the law enforcement process an integrated assessment process cannot be applied, because suspected abusers are identified as not only abusing narcotics for personal consumption but also distributing. Every abuser who has no connection with the illicit narcotics network, should receive the implementation of an integrated assessment in law enforcement as a means of placing them into the rehabilitation process while the law enforcement process is ongoing until there is a decision/decision that has permanent legal force.

#### **Law Enforcement Factors**

In the interview stated that the application of integrated assessment is part of the criminal justice system. Its application is regulated through joint regulations between state agencies authorized to enforce the law on criminal acts of narcotics abuse. The purpose of this joint regulation is to form a technical guideline for coordination and harmonization of understanding between authorized law enforcement officials. However, in practice, the understanding of law enforcement officials varies in its application. Enforcement of the law on the crime of narcotics abuse is a process that has a close relationship from the start of an investigation to a determination/decision by a judge. This relationship is established in the Criminal Justice System (Criminal Justice System). The Criminal Justice System (CJS) or the Criminal Justice System (SPP) consists of the Police as Investigators and Investigators, the Prosecutor's Office as the Public Prosecutor, the Court as the Terminator, and the Correctional Institution as a place for fostering prisoners. In the Narcotics Law, investigators and investigators do not only consist of the police but also from the BNN.

The Supreme Court issued Circular Letter (SEMA) Number 4 of 2010 concerning Placement of Abuse, Abuse Victims, and Narcotics Addicts into Medical and Social Rehabilitation Institutions. This SEMA has actually provided a guide for law enforcement officials to place narcotics addicts and abusers into medical and social rehabilitation institutions in accordance with the objectives of the Narcotics Law. But often this SEMA provision is not heeded, there are still many abusers who possess narcotics under the SEMA provisions when they are caught red-handed, identified not only as drug dealers but also as dealers or couriers. This happens because law enforcers are often guided by the handling of previous cases which interpret that owning, controlling,

Law enforcers who handle narcotics abuse cases tend to be reluctant to apply an integrated assessment to determine whether a person who is arrested is a drug abuser or dealer. So that there is no data obtained regarding the level of addiction and rehabilitation therapy plans that can be implemented, causing the Judge to find it difficult to be able to give a verdict in the form of rehabilitation measures for narcotics abusers.

#### **Community Factors**

Efforts to deal with narcotics which are carried out to overcome the number of narcotics abusers are a series of actions that are carried out continuously from various elements, both law enforcement officials and the community environment. The community can be one of the supporting factors for the success of tackling narcotics abuse, namely taking preventive action by providing information to law enforcement officials when there are indications of drug abuse that they know.

In connection with the implementation of an integrated assessment, the community also plays a role in being able to socialize the existence of an integrated assessment process for narcotics abusers who are caught red-handed. Through an integrated assessment, a narcotics abuser can gain legitimacy not only as a perpetrator of narcotics abuse but also as a victim of the abuse itself. So far, narcotics abusers are immediately imprisoned when they are caught red-handed without going through an assessment process first. This is because the alleged abuser does not



know that he has the right to go through an assessment process in law enforcement to be rehabilitated.

#### 4. CONCLUSION

Legal Arrangements for the Application of Assessments for Victims of Narcotics Abuse to Realize Certainty and Legal Protection for the Community Basically, it is in accordance with applicable laws in Indonesia, namely based on the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP) ; The Criminal Procedure Code (KUHP); Law Number 35 of 2009 concerning Narcotics which was revised to Law Number 22 of 1997 concerning Narcotics and also covering the classification of narcotics class I and II in Law Number 5 of 1997 concerning Psychotropics, was promulgated on October 12, 2009 and placed in (State Gazette of the Republic of Indonesia of 2009 Number 143 and an additional Sheet of the Republic of Indonesia numbered 5062); Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning Mandatory Reporting of Narcotics Addicts; Supreme Court Circular Letter Number 04 of 2010 jo. Supreme Court Circular Number 03 of 2011 concerning Placement of Abuse Victims in Medical and Social Rehabilitation Institutions; Circular of the Attorney General Number 02 of 2013 concerning Placement of Victims of Abuse in Social Rehabilitation Institutions; Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the Indonesian Police and Head of the Republic of Indonesia's National Narcotics Agency; Regulation of the Minister of Health of the Republic of Indonesia Number 80 of 2014 concerning Technical Instructions for the Implementation of Medical Rehabilitation for Addicts, Abusers and Victims of Narcotics Abuse Who are in the Process of Investigation, Prosecution and Trial or Have Received a Court Decision/Decision; Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Accused Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

Implementation of the Implementation of the Application of the Assessment Application of the Assessment for Victims of Narcotics Abuse to Realize Certainty and Legal Protection for the Community It has been going well, but in reality, in the field there are still many cases of criminal acts of narcotics abuse in Batam City

Factors that become constraints/obstacles and solutions in the application of the application of assessments of the application of assessments for victims of narcotics abuse to create legal certainty and protection for the community

The factors that become obstacles in the implementation of the Assessment Application of Assessment for Victims of Narcotics Abuse to Realize Legal Certainty and Protection for the Community are as follows:

##### 1. Family

A factor that can also become an obstacle to tackling narcotics abuse is the family, because many parents or other family members are reluctant to want to report their children or a family member who is known to consume or even become a narcotics dealer. This is to protect family members or to avoid being ridiculed or socially sanctioned by other people if one of their families is a drug user or dealer.

##### 2. Narcotics Supply

There are still many requests for narcotics by the public causing perpetrators to continue to strive for the availability of the narcotics themselves, because these narcotics can cause high dependence so that many users will continue to look for narcotics because in Indonesia itself narcotics can only be given to certain patients according to doctor's provisions and only for development science and technology.

##### 3. Narcotics Network

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The narcotics network is a specific and unique network, this crime is somewhat different from other crimes, so this narcotics network is a disconnected network. as Bos", they only communicate via SMS (Short Service Message) or telephone and the names circulating are not their real names. So that at the time of the arrest the small dealers did not know who the narcotics dealers were or the big dealers.

4. Advances in Science and Technology

Along with the development of science and technology in this day and age where it is very easy for people to be able to connect with each other, the modes of crime are increasingly of various types, including narcotics.

5. Facilities and infrastructure

The facilities and infrastructure at BNK are still very limited, starting from the places of detention which are still limited so that they are not sufficient to accommodate perpetrators of narcotics abuse who are still in the legal process, for example in one legal process it takes a long time while in that time new cases usually have entered so to be able to accommodate the growing number of actors is not sufficient. The equipment, weapons, and tools used in carrying out investigations and investigations are still very limited and not many are internet-based or sophisticated technology, while narcotics cases are currently using sophisticated tools and using a variety of methods so as to complicate the process. investigation or investigation.

6. Budget

The problem that is also a major obstacle in overcoming narcotics abuse, especially those carried out by BNK, is related to budget funds.

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