LEGAL IMPLICATIONS IN THE IMPLEMENTATION OF REHABILITATION ASSESSMENT FOR NARCOTICS ABUSE ADDICTS

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ABSTRACT

Objective: The implementation of rehabilitation assessments for drug addicts has always been criticized for injustice in the service system. This can be seen from various legal policies that are considered discriminatory against the lower middle-class society. Drug addicts who are rehabilitated by wealthy groups will easily get luxury facilities from rehabilitation institutions. It's different from the poor who are always complicated by administrative problems during the rehabilitation process. Therefore, this research is considered important to find out the existing policy problems and what solutions should be applied to drug addicts.

Theoretical framework: To deal with the problem of drug users, practical rehabilitation assessment is very important. Based on Law Number 35 of 2009 concerning Narcotics, drug abusers are like people who have two legs: one in the legal dimension and the other in the health dimension. At the legal level, abuse is a legal violation that must be punished because it violates applicable regulations. On the other hand, drug abusers are considered chronic addicts who need to be cured through rehabilitation.

Method: Data collection is sourced from normative data related to the rehabilitation assessment of narcotics abuse in Indonesia.

Results and conclusion: The results of the study show that the legal implications in the implementation of rehabilitation assessments for addicts and victims of narcotics abuse can shape changes in patients for the better, although in practice there are still those who repeat their actions (recidivist).

Implications of the research: In addition, the Government is still constrained in terms of costs to build rehabilitation institutions in a comprehensive and equitable manner.

Originality/value: Thus causing differences, discrimination, and injustice between addicts and narcotics victims who become patients.

Keywords: Legal Implications, Rehabilitation Assessment, Narcotics Addicts, Indonesia.
contra a sociedade de classe média baixa. Os viciados em drogas que são reabilitados por grupos ricos obterão facilmente instalações de luxo de instituições de reabilitação. É diferente dos pobres que são sempre complicados por problemas administrativos durante o processo de reabilitação. Por conseguinte, esta investigação é considerada importante para descobrir os problemas políticos existentes e quais as soluções que devem ser aplicadas aos toxicodependentes.

Quadro teórico: Para lidar com o problema dos usuários de drogas, a avaliação prática da reabilitação é muito importante. Com base na Lei nº 35 de 2009 relativa aos entorpecentes, os toxicodependentes são como pessoas que têm duas pernas: uma na dimensão jurídica e outra na dimensão da saúde. No nível legal, o abuso é uma violação legal que deve ser punida porque viola as normas aplicáveis. Por outro lado, os toxicodependentes são considerados toxicodependentes crônicos que necessitam de cura através da reabilitação.

Método: A coleta de dados é originada de dados normativos relacionados à avaliação da reabilitação do abuso de entorpecentes na Indonésia.

Resultados e conclusão: Os resultados do estudo mostram que as implicações legais na implementação de avaliações de reabilitação para viciados e vítimas de abuso de entorpecentes podem moldar as mudanças em pacientes para melhor, embora na prática ainda haja quem repita suas ações (reincidência).

Implicações da pesquisa: Além disso, o governo ainda está limitado em termos de custos para construir instituições de reabilitação de forma abrangente e equitativa.

Originalidade/valor: causando, assim, diferenças, discriminação e injustiça entre viciados e vítimas de entorpecentes que se tornam pacientes.


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1 INTRODUCTION

Differences in economic status often have implications for different treatments in the implementation of rehabilitation assessments for narcotics abuse addicts. The implementation of rehabilitation assessments carried out by the Integrated Assessment Team (TAT) since the implementation of the Joint Regulations has resulted in unfair treatment, because the assessments are more economically advantageous for the economically well-to-do addicts than addicts who can't afford them. The state has sharply distinguished rehabilitation treatment between people who are economically capable and those who are economically unable (Bailey et al., 2017). For those who are economically able, the costs of undergoing rehabilitation are borne by themselves under exclusive conditions, while for those who cannot be borne by the government with several problems such as administrative problems and distribution of funds, as well as discriminatory treatment (McNeill, 2012). This is because the Joint Regulations provide an opportunity at the request of parents with the financial capacity of the family so that a person is impressed and has the potential to be forced to be rehabilitated, even equipped with exclusive facilities and infrastructure and services like VIP patients.

The National Narcotics Agency for North Sumatra Province (BNNP North Sumatra) noted that as many as 256,000 people in North Sumatra were exposed to narcotics to addiction (https://regional.kompas.com). According to North Sumatra National Narcotics Agency data for the period 2016 to 2019, the number of drug abuse addicts who were rehabilitated in rehabilitation institutions or social institutions was 318 people. 172 people in 2021, 11 people in 2019, 30 people in 2018, 71 people in 2017, and 34 people in 2016 (BNNP Sumut 2019).
Institutions for the rehabilitation of narcotics abuse addicts in Medan City include Medan Plus, Home Rehabilitation Foundation, Primary Clinic, Caritas PSE Foundation, Healthy Community Partners, Pamardi In Social Institution, and so on. These institutions are for people who can afford it economically, while those who can't afford it must apply for outpatient treatment to get rehabilitation costs from the government by attaching an SKTM (Certificate of Disadvantage) from the head of the local environment.

Article 54 of Law Number 35 of 2009 concerning Narcotics stipulates that drug addicts are required to undergo medical and social rehabilitation. However, according to Article 3 paragraphs (1) and (2) of the Joint Regulations, it is precisely the word "can" which means an alternative to being assessed, analyzed and decided by the TAT. This has an impact on rehabilitation services for narcotics addicts between those who can afford it and those who can't afford it. The amount of rehabilitation fees set varies according to the level of severity found and some of them are free of charge for social rehabilitation (nasional.kompas.com). It was found that out of a total of 256,000 people, 255,856 people were undergoing outpatient care, while the rest were undergoing rehabilitation in institutions or social institutions with discriminatory treatment. Regulatory weaknesses are contained in Law Number 35 of 2009 concerning Narcotics which mandates medical and social rehabilitation for addicts who abuse narcotics. Even though Article 54 of Law Number 35 of 2009 stipulates rehabilitation of narcotics abuse addicts as an obligation, it becomes inconsistent because of the word "can" in Article 3 paragraph (5), Article 4 paragraph (1) (2) (4), Article 5 paragraph (1), and Article 7 paragraph (1) (2) of the Joint Regulation so that it becomes an alternative effort.

Applications for rehabilitation must be submitted voluntarily by addicts or their families to TAT to be analyzed for eligibility (Dani & Niken, 2015). Handling outside the criminal law process or by voluntarily submitting requests by addicts themselves requires the role of TAT to analyze the feasibility of rehabilitation or not. If not, then he will continue to undergo legal proceedings (Junef, 2017). This school argues that the perpetrators of crimes are sick people, so they need treatment and improvement (Mulyadi, 2008). Rehabilitation as a goal of punishment has received a lot of criticism because only a few countries that have the facilities to implement rehabilitation and rehabilitation as a goal of punishment have lost their way. This principle certainly shifts from the concept of protecting human rights (HAM) (Asshiddique, 2010).

2 LITERATURE REVIEW

Drugs are defined as abuse that is carried out not as a treatment but as a desire to enjoy it in excessive amounts, regularly, and for a long time, resulting in mental, social, health, and physical disorders. (Artwitadibatra & Khisni, 2021; Pardo & Reuter, 2018). Addiction, or behavior dependent on drug use, can be caused by continued drug abuse over a long period (Waluyo, 2007; O'Brien, 2006). Drug abuse has a significant impact on the country. If drug abuse increases in society, Indonesia will become a fragile country from within due to declining national resilience (Supramono, 2004; Carroll & Onken, 2005).

The Narcotics Law also opens up rehabilitation opportunities for people with addiction and victims of drug abuse, thanks to the aim of Article 4 Letter D, which allows alternative punishment for drug abusers other than prison and fines. This is because the components of criminal sanctions, which consist of imprisonment and fines, do not have a deterrent or stopping effect on perpetrators (Sunarso, 2004; Shavell, 1985). Imprisonment given to people who commit narcotics crimes, regardless of whether it is given to dealers or addicts, can lead to the formation of new illicit drug trafficking networks (Larsson & Gard, 2003; Giacino et al., 2006).

Therefore, this theory is often called a utilitarian or objective theory. Therefore, according to this theory, the purpose determines the existence of a crime. It is not quite
Peccatum est (because people commit crimes) that is punished, but it is peaceful (so that people do not commit crimes) (Kamalludin & Arief, 2018; Hariyadi & Anindito, 2021). Emidanaan is not just a punishment for those who commit crimes; It also aims to restore justice for victims by providing rehabilitation and treatment instead of punishment. That is because addicts or narcotics abusers are perpetrators of criminal acts of narcotics abuse as well as victims of their actions.

The rehabilitation plan includes legal analysis, psychosocial analysis, medical analysis, and the required rehabilitation time (Afrizal & Anggunsuri, 2019; Shmonin et al., 2017). The results of this analysis will determine the suspect's role as abuser, misuser, and dealer. I will arrive at the rehabilitation center after completing the assessment process. The assessment process is critical to determine whether or not drug abusers can undergo medical and social rehabilitation. Medical and social rehabilitation is considered an effort to break the chain of illicit drug trafficking (NIH et al. Committee, 2017). Therefore, the assessment process must be optimized for arrested people, suspects, or defendants in drug cases.

It is also necessary to think theoretically about the meaning of imposing criminal sanctions and assessments to open up opportunities for rehabilitation from the perspective of legal effectiveness (Widiasyam et al., 2020; Ariyanti, 2017). This analysis is essential because some community groups want criminal sanctions, such as prison or the death penalty, to be given to those who commit serious crimes and are dangerous to the broader community. Nevertheless, contemporary narcotics laws have combined health and legal approaches to dealing with drug abuse. As a result, drug abuse is punished with rehabilitation instead of prison sentences and is required to go through an integrated assessment process (Iskandar, 2019; Jeglinsky et al., 2014).

3 RESEARCH METHOD

The process of collecting data through normative research. Normative research is research that refers to the doctrines (Fajar & Yulianto, 2012), using secondary data, positive legal norms, legal principles or principles (Johny Ibrahim, 2008) provisions of laws and regulations, court decisions, using relevant theories (Marzuki, 2005; Hartono, 2009) and legal rules (Soekanto & Mamudji, 2003). Normative research places law as a building system of norms (Abulof, 2015). The system of norms in question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements, and doctrines (teachings) (Bibri, 2020). Taking issues from law as a system of norms used to provide prescriptive justification of legal events, so that normative research makes the system of norms the center of its study. The reason for choosing this type of normative research is in connection with RI Law Number 35 of 2009 concerning Narcotics and Joint Regulations (Perber) containing provisions that differentiate treatment and/or rehabilitation services for narcotics abuse addicts based on the economic status between people who can afford it and those who can't. In addition, research also seeks to describe and describe facts in the field, evaluate them, and also analyze these facts normatively. So this research not only describes the inconsistencies of RI Law No.35 of 2009 but also provides an analysis and prescription (justification) of the legal provisions.

4 RESULTS AND DISCUSSION

Legal implications in the implementation of rehabilitation assessments for addicts of narcotics abuse are because of differences that occur between patients who can afford and who can't afford it from an economic standpoint (Putri et al., 2022). Based on the mandate of the law addicts who abuse narcotics must undergo medical rehabilitation and social rehabilitation. However, with the provisions of Article 3 paragraph (1) and (2) of the Joint Regulations which
determine the word "can" which means alternative, then the existence of an assessment from TAT in practice has implications for an injustice, namely not all drug addicts get the opportunity for rehabilitation. The process of integrated healing activities is carried out physically, mentally and socially to free addicts from narcotics dependence (Osborn & Stein, 2017; Nugroho et al., 2017). This healing process is guided in an integrated manner by a rehabilitation institution, either independently, a private institution, or as guidance from the Government (Elva et al., 2003). Before the healing process at the rehabilitation institution, TAT first assessed it through the request of the investigator.

TAT according to Article 8 of the Joint Regulation consists of seven state institutions namely the National Narcotics Agency (BNN), Indonesian Republic Police (Polri), Ministry of Law and Human Rights (Kemenkumham), Ministry of Social Affairs (Kemensos), Ministry of Health (Kemenkes), Supreme Court (MA), and the Attorney General's Office (AGO). TAT's task is to conduct an assessment and analysis of someone who has been arrested and/or caught red-handed in a case of narcotics abuse. It is from the results of the assessment and analysis by TAT that it will be decided whether or not it is feasible to carry out rehabilitation for him. The mandate of Article 54 of the National Law (UUN), Joint Regulations, TAT, limited budgets from the government, and the economic disability of patients, have mutual relevance, causing discriminatory treatment and injustice in the implementation of narcotics rehabilitation. Based on the results of the interviews, it was obtained an overview of the same problems related to financial limitations in the implementation of rehabilitation. The costs budgeted by the government are still far from expectations and are not proportional to the increase in the number of narcotics addicts who continue to increase every year.

The cost of implementing rehabilitation which comes from the state and is managed by BNN and the Ministry of Social Affairs is needed to rehabilitate residents (patients) or addicts for narcotics abuse. The problem is that the number of people being rehabilitated in one year is usually limited to 23 people. Then the special quota for medical assessments amounted to 40 people. There are restrictions or rationing of addicts who will be rehabilitated because the funds budgeted by the state at BNN are not sufficient to accommodate all addicts who meet the requirements for rehabilitation. However, after the TAT has conducted an assessment of the addicts, the decision to rehabilitate or not to rehabilitate still has to go through a court decision. Regarding the number of costs incurred by patients, it is different in government-owned rehabilitation institutions (BNN and the Ministry of Social Affairs) and private rehabilitation institutions. If it's owned by the government, the resident is not charged from the start until the rehabilitation is complete (Pasaribu et al., 2020). For example, government-owned rehabilitation sites managed by BNN, namely Loka in Lubuk Pakam Deli Serdang and in Lau Bakery Deli Serdang.

In connection with the constraints of limited capacity, rehabilitation places, and the problem of limited rehabilitation budget from the state, the presence of private rehabilitation institutions can help overcome the problem of limited space. However, the problem of cost remains an obstacle. In practice, there are also those who use Correctional Institutions (Lapas) such as in the Medan Class 1 Lapas where in 2022 there will be 240 patients who are drug addicts/users. This amount is divided in half and grouped into two semesters. Prisons are also involved in carrying out rehabilitation or what is known as prison-based rehabilitation. This situation also shows the constraints faced by the government in implementing the rehabilitation program.

The highest number of narcotics abuse addicts in Indonesia is in the Province of North Sumatra (North Sumatra). Several areas in the city of Medan and its surroundings face many problems with the increasing number of addicts and victims of narcotics abuse. It is estimated that for all regencies and cities in North Sumatra Province, there are around an average of 1,500,000 addicts every year (in the last five years). If this amount is implemented into a
government-owned rehabilitation institution, then the condition of its capacity is not possible with that amount. The number of addicts who can be rehabilitated in government-owned institutions is estimated at approximately 1000 or 2000 people, the rest is not known where they undergo rehabilitation or maybe if their finances support them they can undergo it in private rehabilitation institutions.

This fact is certainly a new problem in rehabilitation practice, especially related to the financial capacity of the state through BNN which is still very far from expectations. Meanwhile, financing in private rehabilitation institutions must refer to the Minister of Social Affairs (Permendagri Nomor 9 Tahun 2017), and Permenkes which regulates Obligatory Report Recipient Institutions (IPWL) where the costs used by residents who are being rehabilitated at private rehabilitation institutions can be claimed by the Ministry of Social Affairs. As is known based on the facts on the ground that in the implementation of rehabilitation, especially in private institutions, there are two categories of people being rehabilitated, namely (1) addicts with their funds and (2) addicts who receive funds from the government (BNN) or the Ministry of Social Affairs. Of course, rehabilitation costs in private institutions are higher than those in government-owned rehabilitation institutions. So those who are free of charge for rehabilitation generally do not take part in rehabilitation.

The implementation of a rehabilitation assessment has legal implications for the condition of addicts, namely as a substitute for punishment, it can shape changes in patients for the better, although in practice there are still those who repeat their actions (recidivist). However, the facts found have changed for the better where patients no longer want to be involved in consuming or using narcotics. Suffering or suffering is no longer the only way to deal with narcotics cases, but rehabilitation is an alternative to fixing perpetrators. Apart from the medical aspect, the social aspect is also the main thing that must be improved in the rehabilitation program. Based on the facts found changes in attitude in the social environment, they can return to the community as usual, mingle, socialize, be responsible, and so on. Except for addicts who have been around for a long time and can't stop because it has become their daily routine and it's acute, it's difficult to stop completely, but maybe what can be done is to reduce their dependence. The elements that interact are human orientation towards situations involving other people, actors who carry out activities in society, as well as orientation activities or results, and processing of actors' thoughts about achieving goals (Hadriana, 2007). At the same time, the rehabilitation assessment has implications for economic problems which ultimately lead to different and unfair service treatment.

Those who do not have their funds, will not get free services unless they are placed in a private rehabilitation institution that has IPWL status from the Ministry of Social Affairs. More addicts do not get free rehabilitation opportunities at government institutions than those who are rehabilitated. This can be compared with the number of addicts who continues to increase every year while the government's free rehabilitation capacity is limited. As a result, more addicts roam the community until they are involved in committing crimes again. This situation is certainly a new problem in rehabilitation programs that do not fulfil the same principles of justice for every addict.

Every narcotics addict should get the same rehabilitation opportunity, and not only some may receive rehabilitation. Even if, for example, the capacity in government-owned institutions is not sufficient, then they should be placed in private rehabilitation institutions with the provision of fixed funding from the state. Another solution that can be pursued, for example, involves the participation of local governments to establish rehabilitation institutions for each district and city government in each province. Because the problem of narcotics is not only a national problem but also a regional problem. The costs incurred as a result of tackling narcotics abuse are higher than financing rehabilitation, without support from various parties, especially the central government and regional governments, which will hamper the implementation of
rehabilitation and will ultimately hinder the process of achieving legal objectives and law enforcement against narcotics crimes themselves. Narcotics addicts will repeatedly commit criminal acts of narcotics abuse because they are addicted without undergoing treatment to get out of dependence. The lack of funds has resulted in ineffective rehabilitation so that some people don't get the opportunity to do the rehabilitation (Putra, 2008).

If it is not immediately taken seriously, it will potentially become a big problem and one day it will become a "time bomb". The increase in the number of drug users or addicts is directly proportional to the occurrence of other criminal acts such as theft, robbery, rape, sexual harassment, obscenity, and others. The higher the number of narcotics users/addicts, the greater the potential for an increase in the number of criminals because generally criminals are processed for such as theft, and robbery when they are arrested and then a urine test is carried out, on average they are positive for consuming narcotics. BNN is in its position as the "host" for the implementation of the rehabilitation assessment, while the party proposing the rehabilitation assessment is the investigator to TAT (BNN). After a person is arrested, further examination is carried out, and the investigator's examination limit is six days. When investigators conclude that someone is an addict/user, then on the basis of these considerations they submit a rehabilitation assessment to TAT. Furthermore, BNN will invite a team from the police, prosecutors, and BNN to assess the perpetrators.

The most important thing the team pays attention to is someone's involvement in narcotics, whether involved in networks, dealers, producers, or addicts/users (Cardiana, 2013). If you are involved in a network or syndicate for drug abuse, you cannot be assessed, because those who may be assessed for rehabilitation are those who are addicts/users. The legal team will first explore its connection with the abuse of narcotics. The team learns about the journey of his attachment to drugs. There are several questions that are usually asked by the team to see this attachment, namely: initial use, frequency of use, the dosage of use, type of narcotics, duration of use, and others. TAT will conclude from the examination and assessment, a conclusion is drawn whether it is appropriate to be rehabilitated or not. Based on the results of the assessment, a joint conclusion was made as a recommendation in a letter signed by the Head of BNN and then the results were submitted to the investigator to be attached to the Minutes of Examination (BAP) which had been declared complete (P21) (Hamamah, 2021). This file becomes a reference for carrying out rehabilitation but the decision still rests with the court judge. BNN and the team are only authorized to submit recommendations so that addicts can undergo rehabilitation with a rehabilitation decision.

Usually, the TAT recommends hospitalization for those who qualify. The judge's decision for rehabilitation is usually made within three months (Jaddou & Marouf, 2023). This three-month minimum limit is considered effective enough to recover an addict from narcotics dependence and the patient is required to undergo this three-month period. It can be more than three months, some are four months, five months, nine months, and even one year or more. However, for a minimum of three months, the resident (patient) must be in the rehabilitation program. In general, narcotics addicts who have been recommended by TAT to court are granted by the judge. In carrying out rehabilitation assessments, the TAT may not draw conclusions directly against a person being rehabilitated in a rehabilitation institution without a court decision, but only in the form of a recommendation to the court so that the judge makes the rehabilitation decision. On the other hand, court judges may not issue rehabilitation decisions if there is no recommendation from TAT. For example, if the public prosecutor demands five years in prison against someone whose status is an addict/user, then the judge may not suddenly issue a rehabilitation decision. This provision is regulated in a Joint Regulation which consists of seven state institutions, one of which is the Supreme Court.

Based on the TAT mechanism, it can be explained that all narcotics abuse addicts must first go through a court decision or court order, after which rehabilitation is carried out at a
rehabilitation institution appointed by the BNN. If someone is economically incapacitated, then an SKTM must be included. Meanwhile, free rehabilitation at government institutions is limited and of normal standards. Thus, many of them are addicts who do not get the opportunity for free rehabilitation, it is unclear where they will be rehabilitated. Meanwhile, those who are economically capable are rehabilitated in private rehabilitation institutions with exclusive treatment. The results of the analysis from TAT, which was then recommended to the court, are certain, according to the assessment of the team involved, that it is appropriate for rehabilitation. Whether it is appropriate or not is also a problem because there are addicts who are deemed unfit for rehabilitation, even though Article 54 of the UUN stipulates that they are required to undergo special medical and social rehabilitation for addicts and narcotics abusers. So it is clear that the existence of TAT creates injustice in the rehabilitation program because, from the results of their analysis, not all addicts will be recommended to be terminated in rehab by the court judge.

It should be noted that the court decision does not contain where the rehabilitation institution will be the place or location for rehabilitation. For addicts who have been sentenced to rehabilitation, to obtain a place of rehabilitation, they must go through an application to the National Narcotics Agency. If what is being applied for is a government-owned rehabilitation institution (free of charge), it may or may not exist or it may be full because it is according to the quota. If the quota is used up or there is none, the prospective patient is forced to be rehabilitated at a private institution, provided that he has to pay for it himself. If they don't have money, they generally don't get rehabilitated and their families even let them or neglect them. This is a form of negative impact from the formation of TAT which has implications for the unfair treatment of patients due to economic conditions.

There are two types of patients in private rehabilitation institutions with IPWL status, namely patients who are free of charge and patients who pay for themselves. For patients claim free funds from the Government (Ministry of Social Affairs), while others are patients who pay for themselves. If there are patients who are hospitalized in private rehabilitation institutions that have IPWL status, there is also a different treatment between those who pay and those who are free. Services for those who are free are according to standards and fees that have been determined by the government, while for those who pay for themselves, there is special treatment, for example, related to the choice of types of medical drugs, room facilities, facilities and infrastructure. In addition, the TAT mechanism also creates new problems in the rehabilitation assessment process, which is inefficient in providing rehabilitation to narcotics addicts because of the long and tortuous bureaucratic matters. This is because addicts can only be rehabilitated if there is a rehabilitation decision from a court judge. Even though the results of the TAT assessment which consisted of a legal team and a medical team had concluded that the addict deserved to be rehabilitated. However, you have to wait for the court judge's decision to carry out rehabilitation. In addition, for the poor, it takes a long time to submit the SKTM submission process until it is approved or not by BNN to get a free rehabilitation place from the government.

Based on the results of the interviews, TAT prioritizes a sense of fairness and professionalism to guarantee legal protection in carrying out rehabilitation assessments. In essence, the team in TAT does not look at the profession, economic and social status of the addict being assessed. Based on the implementation of the assessment, those assessed by TAT were generally narcotics addicts who were in the lower middle economic class, although there were also some people who were rich people and/or officials. All treatments during the assessment were not differentiated from one another by the TAT.

The new treatment and services felt different when the rehabilitation was carried out, not when the assessment was carried out by TAT. Free patients are generally from underprivileged or poor families, they only get standard services such as standard medicines
according to the funds that have been budgeted on an average of 2-3 million per month from the government/state. Whereas for patients who pay for themselves, the costs incurred are even more than that, it can be 5 or 6 million a month or even more. Thus the services for various complaints, requests, bureaucracy, and types of medicines are more extra than the free ones. The fact is that the number of cases of narcotics addicts based on data from the BNN Research and Development continues to increase every year, especially in North Sumatra Province. This increase includes all areas in North Sumatra Province which are spread across all districts and cities with the status of still addicts/users who have not been rehabilitated.

The implementation of the rehabilitation assessment has created an injustice. The rehabilitation assessment is only beneficial for a group of people, especially addicts who get free opportunities, the rest is unclear where they will undergo rehabilitation due to limited funds from the government and the economic inability of individuals. Furthermore, the rehabilitation assessment is more beneficial for the rich, because they can choose private rehabilitation institutions, while the poor (poor) can only expect free rehabilitation, but the number is very limited. Any abuse of narcotics whose status is as an addict (Taylor, 2016). The principle of commutative justice should apply, all addicts get equal rights, meaning the same quality and quantity of service. Including addicts from the rich and those who can not afford should get the same rights. The mandate of obligations in Article 54 of the UUN emphasizes this principle of commutative justice. Precisely with the existence of Joint Regulations and TAT, it is this that creates injustice in practice, where free rehabilitation cannot be enjoyed by all addicts, many of them do not get free rehabilitation, while those who are able (wealthy) choose rehabilitation in private institutions.

Rehabilitation as the goal of punishment in its journey has not turned out as smoothly as expected and has drawn criticism. The first criticism is directed at the fact that only a few countries have the facilities to implement rehabilitation programs to improve drug abuse addicts. This is a constraining factor that is influenced by limited rehabilitation costs that must be borne by the state. Second, accusing the notion of rehabilitation can lead to individual tyranny. For example, difficulty controlling the doctor's decision autonomy and even not being controlled (Mulyadi, 2008). Therefore, there must be other justifications that are more fundamental. Justification for sentencing must be accompanied by clear restrictions, which perpetrators can be forced and which must undergo rehabilitation for their good. This limitation is meant so that the rehabilitation program is not just a trial run and so that the perpetrators (addicts) are not over-treated, because that is not a consideration and goal of sentencing.

Rehabilitation as one of the objectives of sentencing turns out to be a dilemma. Retributive goals are considered too cruel and contrary to human values, the goals of deterrence theory are considered to have failed with the increasing number of perpetrators who become recidivists, while the goals of treatment theory for rehabilitation as a goal have lost their direction. This is because the implications of the rehabilitation assessment by the TAT formed by the government for narcotics addicts have resulted in discriminatory treatment (Moskalenko et al., 2023). Democracy in principle must expand to include the economic dimension with a system that controls economic forces and seeks to minimize social and economic differences, especially those arising from the unequal distribution of wealth (Hotma P. Sibuea, 2010). The concept of a welfare state, serving the community is the essence of democratic values (Asshiddiqie, 2006). Therefore, the cost of free rehabilitation for narcotics addicts should be evenly distributed, or the costs incurred by patients who can afford (wealthy) must be strictly limited by law. Because the constitution of the Republic of Indonesia has stipulated that all citizens have the same position in law and government, and are obliged to uphold that law and government without exception (UUD RI Tahun 1945). This principle is the protection of human rights (Asshiddiqie, 2010), and all discriminatory actions within a rule of law are prohibited actions, except for special and temporary actions (Fauzan Khairazi, 2015).
The irregularity of the majority of addicts getting free rehabilitation services shows that their human rights are not protected according to the mandate of the constitution. Constitutional protection of human rights in a rule-of-law state with legal guarantees for demands for enforcement through a fair process. The formation of the state and the exercise of state power must not diminish the meaning and significance of basic freedoms and human rights. If in a country, human rights are neglected or there are violations of human rights that cannot be dealt with fairly, then that country cannot be called a rule of law in the true sense.

Taking into account various forms of social change, the regulatory paradigm was changed from punishment in the form of punishment to rehabilitation and coaching with the concept of emphasizing the principle of benefit. However, if the implementation of rehabilitation is analyzed from the benefit theory, it is seen that it has not provided maximum benefits for the process of overcoming crime in Indonesia (Hanifah et al., 2023). The reason is because there are still more addicts who do not get rehabilitation services due to economic factors and limited funds from the government. Based on the theory of expediency or utilitarianism taught by the consequentialism school (Latipulhayat, 2015), looking at justice from the final consequences of a legal policy that is beneficial to the majority group (Borchard, 1957). To achieve fair and beneficial goals according to the benefit theory, the implementation of rehabilitation must be optimized in terms of rehabilitation costs from the state so that all addicts without exception get the opportunity for rehabilitation.

Based on the implementation of the assessment, it was found that more people from the middle to lower economic class had the status of narcotics addicts, some of them got free rehabilitation opportunities and the rest did not get free rehabilitation services. While those who are wealthy are not many, they receive extra and exclusive rehabilitation treatment because they pay with their own money. Therefore, the implementation of the rehabilitation assessment has not been optimal in its application according to the theory of benefit for the majority. The implementation of rehabilitation assessments for narcotics addicts is not by the values of a sense of justice and expediency. In general, sick people deserve different treatment according to their financial capabilities, but narcotics addicts should be treated differently from other sick people. However, the essence of the deterrent effect and the preventive effect must be felt by everyone, including addicts who are being rehabilitated, so that all must be treated equally according to the principle of commutative justice and may not follow the principle of distributive justice which distinguishes rehabilitation for the rich and the poor. If the implementation of rehabilitation assessments is analyzed based on the theory of legal protection, it also does not provide equal legal protection for all narcotics addicts as mandated by Article 54 of the UUN which requires rehabilitation.

Legal protection for addicts who can't afford it can be done by limiting interests on the other hand, that is, people who are economically capable should only be charged standard rehabilitation fees, not for tens of millions or even hundreds of millions. This limitation of interests is intended to fulfill the principle of equality in the perspective of commutative justice, namely to provide equal basic rights and reduce striking differences through assistance from the government/state. Narcotics abuse addicts whose rehabilitation has been decided by the court are placed in government-owned rehabilitation institutions, both those who are able and those who are not economically able can be accommodated in these institutions. So that a large number of addicts get rehabilitation opportunities for free or according to standardization.

5 CONCLUSION

Legal implications in the implementation of rehabilitation assessments for narcotics abuse can shape changes in patients for the better, although in practice there are still those who repeat their actions (recidivist). However, the facts show that there are still obstacles faced by
the government/state in implementing the rehabilitation program. The government is still constrained in terms of costs (funds) to build a comprehensive and evenly distributed rehabilitation institution in all provinces, as well as in districts and cities. The availability of funds from state finances for free rehabilitation services is also limited and not in proportion to the growing number of addicts and victims of narcotics abuse which continues to grow. The minimum cost has resulted in rehabilitation which is discriminatory and ineffective in carrying out healing until all drug addicts and victims have completely recovered, some even do not get the chance to rehabilitate. In addition, free government-owned rehabilitation centres are also very limited. Even if there is a free rehabilitation institution from the private sector, this rehabilitation institution will be one with IPWL status. If they do not have IPWL status from the government (Ministry of Social Affairs), then these patients must pay varying and very high prices. Thus causing differences, discrimination, and injustice between addicts and narcotics victims who become patients.

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