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THE DUALISM OF CRIMINAL LAW POLICY FROM THE DOUBLE TRACK SYSTEM PERSPECTIVE IN COMBATING NARCOTICS ABUSE CRIMES IN INDONESIA

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ABSTRACT

Background. Narcotics abuse in Indonesia calls for a legal response that holds abusers accountable and also supports their recovery. Law Number 35 of 2009 on Narcotics combines punishment and rehabilitation, which can be read through the double track system. However, the relationship between the two is unclear.
Research Purpose. This study analyzes the Narcotics Law regulates this dualism and recommends should be regulated.
Research Method. This is normative juridical research with a qualitative approach. The data were laws and regulations on narcotics, books, journal articles, and legal dictionaries, collected by document and literature study. The concepts examined were punishment, rehabilitation, and their relationship. The researchers were the research instrument. The data were analyzed with qualitative content analysis, using Barda Nawawi Arief's criminal law policy theory.
Findings. The Narcotics Law regulates punishment as a penal means and rehabilitation as a measure, which reflects the double track system. However, the two approaches remain separate and are not positioned as one policy unit. Punishment addresses accountability for the act, while rehabilitation addresses recovery. The two have different functions but can complement each other.
Conclusion. The Narcotics Law should clarify how punishment and rehabilitation relate, so that they can be imposed alternatively or cumulatively in proportion to the abuser's condition. This gives room for recovery, not only punishment.

Keywords: Combating, Criminal Law Policy, Criminal Offense, Double Track System, Dualism, Narcotics Abuse.

BACKGROUND

Narcotics are a complex problem in community life because they relate to health, social, and legal aspects. Combating them requires a policy that is oriented not only toward controlling the circulation and use of narcotics but also toward giving an appropriate response to the characteristics of the parties involved. From a criminal law perspective, this condition creates a need to determine a proportionate form of legal response, particularly when the act concerns the use of narcotics for oneself. This problem is therefore important to examine in determining the direction of criminal law policy for combating narcotics abuse in Indonesia.

In this context, narcotics abuse requires a combating policy through appropriate criminal law instruments. Narcotics abuse relates not only to acts that violate legal provisions but also to the condition of individuals who use narcotics for themselves and may experience dependence and health impacts. These characteristics mean that narcotics abuse is a problem not oriented solely toward the imposition of punishment but also requiring a rehabilitative approach [1]. This condition shows a need to accommodate two approaches in criminal law policy: the punitive approach as a response to a violation of the law, and the rehabilitative approach as a response to the condition of the narcotics abuser.

The problem of narcotics abuse also shows that the need for a combating policy remains one of the issues facing Indonesia. According to the 2025 national survey on narcotics abuse conducted by the National Narcotics Agency together with the National Research and Innovation Agency, the prevalence of narcotics abuse among the population aged 16–64 years was recorded at 2.11%, or approximately 4.15 million people. This figure is an increase from the 2023 prevalence of 1.73% [2]. The data in the report show that narcotics abuse remains a problem requiring attention in combating policy, taking into account an approach suited to the characteristics of narcotics abusers.

From a criminal law policy perspective, combating narcotics abuse is carried out not only through the imposition of punishment but also through rehabilitative measures oriented toward recovery [3]. Law Number 35 of 2009 on Narcotics prescribes criminal penalties for narcotics abusers for personal use in Article 127 paragraph (1), and rehabilitation in Article 54 and Article 103. These provisions reflect the characteristics of the double track system, namely the use of a criminal track and a measures track in combating criminal offenses. However, the relationship between the two tracks still needs to be examined to assess the coherence of their regulation in combating narcotics abuse.

In the development of Indonesian criminal law thought, the distinction between punishment and measures has provided a basis for the development of the sanction system in criminal law. This thinking can be traced to Van Bemmelen's views on the existence of *straf* and *maatregel* in the criminal law sanction system [4]. The idea of these two forms of sanction subsequently developed in modern criminal law scholarship and became part of the discussion on the “double track system”. In the context of Indonesian criminal law thought, Barda Nawawi Arief has also examined the existence of criminal sanctions and measures as part of the development of a modern criminal law sanction system that does not rely on a single form of response to criminal offenses [5]. This thinking serves as one

of the conceptual foundations for discussing the double track system in the criminal law sanction system.

The existence of criminal sanctions and measures within a single sentencing system is known as the double track system. This system places punishment (*straf*) and measures (*maatregel*) as two forms of sanction with different underlying rationales and orientations. Criminal sanctions are oriented toward imposing consequences for a criminal act, whereas measures are oriented more toward specific objectives regarding the offender, such as care or improvement [6]. In other words, criminal sanctions are essentially reactive to an act that has been committed, whereas measures are oriented more toward the condition of the offender and the handling of the offender. Criminal sanctions focus on the unlawful act by inflicting suffering as a consequence of that act, including to produce a deterrent effect. Measures, by contrast, are directed at providing assistance, guidance, or care to the offender so that change occurs in the offender. The double track system concept is thus one form of development of the sanction system in criminal law that allows punishment and measures to be used side by side [6].

The "double track system" concept developed in modern criminal law thought, which holds that the response to criminal offenses is carried out not solely through repressive criminal sanctions but also through measures oriented toward improving and treating the offender. In the development of continental criminal law, the separation between punishment and treatment became part of the development of the criminal sanction system. One discussion that explicitly uses the term dual track system appears in H. C. Fragoso's article The "Dual-Track" System of Sanctions in Continental Criminal Law, published in 1968. Fragoso discusses the development of the sanction system in continental criminal law and the existence of two sanction tracks in criminal law [7].

The existence of two forms of sanction through the *"*double track system" indicates a dualism in criminal law policy toward narcotics abuse. This dualism shows not merely two types of sanction but also two orientations of combating that are used in dealing with narcotics abuse. Punishment places the criminal act as the basis for imposing sanctions, whereas rehabilitation places care and recovery as part of the legal response [8]. In research on narcotics criminal law policy, the two tracks are regarded as part of the *"*double track system*"* known in the resolution of narcotics cases in Indonesia. This dualism is interesting to examine because punishment and rehabilitation have different characters and orientations, yet both are placed within the policy for combating narcotics abuse. The existence of these two tracks creates a need to see how the relationship between

criminal sanctions and measures is constructed in legislation [9]. From the *"*double track system*"* perspective, the existence of punishment and rehabilitation can be understood as part of a sanction system that offers a choice of legal responses to narcotics abuse.

Although they have different orientations, each sanction track has limitations in combating narcotics abuse. Criminal sanctions oriented toward punishment do not yet fully address the character of narcotics abuse, which also relates to the need for recovery, while rehabilitation as a form of measure has a scope of application that remains tied to certain conditions and evidentiary requirements as regulated in Law Number 35 of 2009 on Narcotics. This construction shows that the problem lies not only in the existence of criminal sanctions and measures, but also in how the two tracks are positioned and constructed in responding proportionately to narcotics abuse.

Based on this construction, a study of the dualism of criminal law policy from the *"*double track system*"* perspective is needed to understand the position of punishment and rehabilitation in combating narcotics abuse in Indonesia. The discussion is directed at the regulation of the dualism of criminal law policy reflected in Law Number 35 of 2009 on Narcotics and at the relationship between criminal sanctions and measures as part of the "double track system". With this focus, the study aims to analyze the regulation of the dualism of criminal law policy in combating narcotics abuse and to recommend a regulation of the dualism of criminal law policy in combating narcotics abuse from the *"*double track system*"* perspective. This study is expected to provide an understanding of the construction of criminal law policy in combating narcotics abuse through punishment and rehabilitation.

The novelty of this study lies in its approach. Previous studies have examined the *"*double track system*"* for narcotics abusers, including its model and implementation [6, 8, 10], the rehabilitation of abusers in sentencing [9], and the reformulation of rehabilitation sanctions for addicts [11]. This study differs in three ways. First, it uses Barda Nawawi Arief's formulation policy as a yardstick to test the Narcotics Law against three criteria: rationality of objectives, clarity and coherence of norm wording, and integration with the sentencing system [5]. Second, it goes beyond describing the two tracks and proposes when they should be imposed alternatively or cumulatively, depending on whether the person is a victim of abuse, an addict, or an abuser without dependence. Third, it links the recommendations to the new Criminal Code (Law No. 1 of 2023) and Law No. 1 of 2026 on the Adjustment of Criminal Penalties [12, 13].

RESEARCH METHOD

This study uses a normative juridical method with a qualitative approach. The data used are secondary data obtained from primary, secondary, and tertiary legal materials. The primary legal materials include legislation related to narcotics abuse crimes, in particular Law No. 1 of 2023 on the Criminal Code (KUHP) [12], Law No. 1 of 2026 on the Adjustment of Criminal Penalties [13], Law Number 35 of 2009 on Narcotics [14], Supreme Court Circular Letter (SEMA) Number 4 of 2010 on the Placement of Abusers, Victims of Abuse, and Addicts of Narcotics in Medical and Social Rehabilitation Institutions [15], and the 2014 Joint Regulation on the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions [16]. These legal materials are used to examine the regulation of punishment and rehabilitation of abusers as a form of dualism of criminal law policy from the *"double track system"*perspective. Secondary legal materials were obtained by searching books, scientific articles, journals, research results, doctrines, and the opinions of relevant legal scholars [1–11, 17–21]. This study uses the theory of criminal law policy put forward by Prof. Barda Nawawi Arief [5] as the basis for analyzing the problems examined. The secondary legal materials are used to strengthen the analysis of criminal law policy, the sanction system, the *double track system*, punishment, and rehabilitation. Tertiary legal materials serve as supporting materials sourced from legal dictionaries, encyclopedias, and other relevant sources to provide an understanding of the terms or concepts used in the study [22]. All of these legal materials were analyzed using qualitative content analysis to identify the forms of dualism in criminal law policy and the problems that arise in combating narcotics abuse through punishment and rehabilitation.

Sample. This is normative juridical research, so it uses no human respondents. The sample is a set of legal materials chosen purposively because they directly regulate or explain the punishment and rehabilitation of narcotics abusers. They are the primary legal materials listed above and secondary legal materials on criminal law policy, the sanction system, the "double track system", punishment, and rehabilitation.

Variables. Normative research does not measure statistical variables. The concepts examined were (1) the penal track, namely punishment, (2) the measures track, namely rehabilitation, and (3) the relationship between the two tracks. The relationship was assessed with three criteria from Barda Nawawi Arief's formulation policy: the rationality of objectives, the clarity and coherence of norm wording, and the integration of the norms with the sentencing system [5].

Instruments. The researchers were the main instrument. Data were collected by document and literature study. The legal materials were the data source, and the three criteria above guided the analysis.

Analysis. The legal materials were analyzed with qualitative content analysis rather than thematic analysis, because the data are legal texts and the aim was to interpret what the provisions say and how they relate. The analysis followed four steps: (1) reading the provisions on punishment and rehabilitation, (2) grouping them into the penal track and the measures track, (3) assessing their relationship and the norm problems with the three criteria, and (4) formulating recommendations. The statute approach and the conceptual approach were used, together with grammatical and systematic interpretation of the provisions.

FINDINGS

Regulation of the Dualism of Criminal Law Policy in Combating Narcotics Abuse in Indonesia under Law Number 35 of 2009

Combating narcotics abuse is part of criminal law policy, which requires determining the form of legal response to the act and to the condition of the offender. Within the framework of criminal law, this response can take the form of criminal sanctions or of measures oriented toward treatment and recovery. The regulation of narcotics abuse in Law Number 35 of 2009 on Narcotics shows both forms of response. On the one hand, a narcotics abuser may be subject to criminal sanctions as accountability for his or her act; on the other hand, rehabilitation is available as a measure oriented toward recovery. The existence of both forms of response shows the characteristics of the "double track system", which places criminal sanctions and measures as two tracks in criminal law policy toward narcotics abuse.

Conceptually, dualism denotes the existence of two different elements, approaches, or orientations within a given framework. In the context of criminal law policy, the concept can be directed at the existence of two approaches in combating crime, namely the penal and the non-penal approach. The penal approach uses criminal law as a means of responding to crime through the formulation of criminal offenses, law enforcement, and the imposition of sanctions, whereas the non-penal approach places more emphasis on prevention by addressing the factors that cause, or the conditions that encourage, the occurrence of crime. The two approaches have different characters but are both placed as part of the policy for combating crime [17].

The existence of the penal and non-penal approaches does not mean that the two must be positioned as mutually exclusive options. They can be used in an integrated manner in accordance with the objectives and characteristics of the crime to be combated. The penal approach serves to provide a legal response to acts that have been qualified as criminal offenses, whereas the non-penal approach is directed more at prevention and at addressing the factors underlying the occurrence of crime. The integration of the two approaches shows that crime-combating policy is directed not merely at imposing sanctions after a crime has occurred but also encompasses efforts to prevent and reduce the conditions that can encourage crime [18].

In understanding the dualism of criminal law policy, Prof. Barda Nawawi Arief's thinking on criminal law policy can be used to clarify the position of penal policy in combating crime. Barda Nawawi places criminal law policy (*penal policy*) as part of the overall policy for combating crime. Criminal law policy is essentially concerned with efforts to determine the direction and form of the use of criminal law in achieving the objectives of crime combating. Its formation therefore concerns not only the formulation of criminal prohibitions but also the determination of the sanction system and the various aspects related to punishment [5].

Prof. Barda explains that criminal law policy is part of criminal policy, while criminal policy is part of a broader policy for the protection of society (*social defence*). Within this framework, criminal law is positioned as one of the means of achieving the objectives of crime combating. Criminal law policy is oriented not merely toward imposing punishment on offenders but also concerns considerations of which acts need to be criminalized, the form of liability, and the types and patterns of sanctions best suited to the objectives of crime combating [5].

This thinking shows that criminal law policy has a close connection with the formulation stage. At this stage, the legislator determines how an act is formulated as a criminal offense and, at the same time, the legal response that can be imposed on the offender. From this perspective, criminal law policy does not stop at the question of whether an act should be punished but also covers questions about what sanctions are appropriate to use, what objectives are to be achieved, and how those sanctions are formulated to suit the characteristics of the offense and the offender.

Within the scope of penal policy, attention does not stop at determining an act as a criminal offense but also covers the formulation of the types and forms of sanctions that can be imposed on offenders. The development of criminal law shows a shift from thinking

that places punishment as the only response to a criminal offense toward a system that also makes room for certain forms of measures toward offenders [19]. This relates to the consideration that a response to a criminal offense is not always sufficiently delivered through punishment but, under certain conditions, may also require guidance, care, or recovery. From this development, the criminal sanction system came to have two tracks that allow a legal response through either punishment or measures [6].

These two sanction tracks are known as the "double track system", namely a system that places criminal sanctions (*straf*) and measures (*maatregel*) as two types of sanction in criminal law. Criminal sanctions are essentially related to accountability for the criminal act committed, whereas measures are directed more at specific objectives regarding the offender, such as guidance, care, and rehabilitation. With these characteristics, the *"*double track system*"* allows criminal law to be oriented not only toward inflicting suffering as a consequence of a criminal offense but also toward considering measures with corrective and rehabilitative purposes toward the offender.

In the context of narcotics abuse, the two tracks can be seen in imprisonment as a form of criminal sanction and rehabilitation as a form of measure. Law Number 35 of 2009 on Narcotics contains criminal provisions on various narcotics offenses while also providing for the rehabilitation of narcotics abusers and addicts. The difference in orientation between the two forms of response lies in the objectives to be achieved: imprisonment relates to criminal liability for the act committed, whereas rehabilitation is directed at the recovery and treatment of the condition of the abuser or addict. In studies of criminal law policy toward narcotics abusers, both forms of response are placed within the framework of the "double track system".

The existence of imprisonment and rehabilitation within a single criminal law framework shows that the response to narcotics abuse has not only a punitive orientation but also makes room for measures oriented toward recovery. Imprisonment brings the consequence of restricted liberty as a form of accountability for the criminal offense, whereas rehabilitation has a therapeutic and corrective orientation toward the condition of the abuser or addict. Accordingly, the *"*double track system*"* in combating narcotics abuse can be understood as a system that provides two sanction tracks with different characters and objectives, namely punishment and measures, each with its own basis of consideration in determining the legal response to the offender [9].

Based on this construction, the *"*double track system*"* can be positioned as part of the development of penal policy in determining the sanction system, because penal policy

determines not only the acts that can be punished but also the form of response that can be given to the offender. In combating narcotics abuse, this construction shows two tracks, namely imprisonment and measures in the form of rehabilitation. The next question is no longer the existence of the two tracks but how they are regulated, differentiated, and applied to narcotics abusers in Law Number 35 of 2009 on Narcotics [18].

To examine the relationship between punishment and rehabilitation within the *"*double track system*"* framework, it is necessary to look at the construction of the norms that regulate both forms of sanction in legislation. This regulation is important because the existence of a criminal track and a measures track does not in itself explain how the two are positioned in combating narcotics abuse. An examination of the applicable provisions is needed to understand the relationship among criminal threats, criminal liability, and rehabilitation, particularly in determining the form of handling for narcotics abusers.

It should be noted that Law Number 35 of 2009 on Narcotics does not explicitly mention the term *"*double track system*"* and does not regulate it in a single specific article. However, Law Number 35 of 2009 on Narcotics regulates the combating of narcotics abuse through provisions that contain both criminal threats and rehabilitation arrangements, which shows a connection between the *"*double track system*"* and the model of criminal law policy for combating narcotics offenses in the Narcotics Law. This two-track system can be read from a series of articles that place criminal sanctions and measures in the form of rehabilitation side by side for narcotics abusers and addicts. These articles can be traced from the general provisions and the objectives of the law, through the provisions on rehabilitation, to the criminal provisions.

The regulation of this dualism of criminal law policy can be found in Law Number 35 of 2009 on Narcotics. The law regulates not only criminal threats against narcotics abusers but also provisions on medical and social rehabilitation. Article 1 point 15 defines an abuser as a person who uses narcotics without right or against the law, while Article 1 point 13 defines a narcotics addict as a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physical and psychological; according to the Elucidation of Article 54, a victim of narcotics abuse is a person who unintentionally uses narcotics because he or she was persuaded, deceived, tricked, forced, and/or threatened. This distinction is important because each status has a different position in the eyes of the law, so the appropriate sanction track may also differ.

The criminal track for narcotics abusers is set out in Article 127 paragraph (1). This article provides that an abuser who uses narcotics for himself or herself is punishable by

imprisonment of up to four years for Group I, two years for Group II, and one year for Group III. Under this provision, the abuser is still regarded as a party who can be punished for using narcotics without right or against the law. On the other hand, the same law provides a measures track through rehabilitation. Article 4 letter d states that one of the objectives of the law is to guarantee the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts, so that rehabilitation was designed from the outset as part of the policy. Article 54 then affirms that narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation. So that this obligation can be carried out, Article 55 paragraph (2) requires addicts to report themselves, or be reported by their families, to community health centers, hospitals, and/or medical and social rehabilitation institutions designated by the Government. Under Article 56, medical rehabilitation is carried out in hospitals designated by the Minister, and certain government or community rehabilitation institutions may carry it out after obtaining the Minister's approval [14].

Once a case reaches court, Article 103 paragraph (1) gives the judge the authority to order an addict to undergo treatment and/or care through rehabilitation. This order may be imposed in a verdict if the addict is found guilty, or in a ruling if the addict is not found guilty. Article 103 paragraph (2) adds that the period spent undergoing rehabilitation under such a verdict is counted as time served. Article 127 paragraph (2) then requires the judge to take Article 54, Article 55, and Article 103 into account when deciding the case of an abuser, and Article 127 paragraph (3) provides that an abuser who can be proven or is proven to be a victim of abuse must undergo medical rehabilitation and social rehabilitation. Furthermore, Article 128 paragraph (3) provides that an addict referred to in Article 55 paragraph (2) who is undergoing medical rehabilitation for twice the period of doctor's care at a hospital and/or medical rehabilitation institution designated by the government is not prosecuted. This series of articles shows that, for the same subject, namely the abuser, the law provides both a criminal track and a rehabilitation track.

The existence of these two tracks shows a dualism of criminal law policy, namely the use of two different approaches in combating narcotics abuse. The first approach is the penal means, which emphasizes imposing punishment as the sanction on the perpetrator of a criminal offense. The second approach is measures oriented toward recovery, one of which is rehabilitation for narcotics abusers and addicts. Both approaches are already reflected in the objectives behind the enactment of Law Number 35 of 2009 on Narcotics. Article 4 letter b sets the objective of preventing, protecting, and saving the Indonesian

nation from narcotics abuse, while Article 4 letter d sets the objective of guaranteeing the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts. This shows that criminal law policy in the narcotics field is oriented not only toward punishment but also seeks the recovery of narcotics abusers and addicts.

This dualism is rooted in the dual status of the abuser. The abuser is regarded as a perpetrator for using narcotics without right, but also as a sick person because of dependence, or as a victim because of having been persuaded, deceived, forced, or threatened. Within Herbert L. Packer's framework, this situation reflects the tension between the crime control model, which emphasizes efficient enforcement, and the due process model, which emphasizes the protection of individual rights, together with a public health approach that views addicts as people who need treatment [20]. The dualism is also visible in the wording of the articles. Article 127 paragraph (1) threatens an abuser who uses narcotics for himself or herself with imprisonment, yet paragraphs (2) and (3) of the same article direct the judge toward rehabilitation. Article 54 also requires addicts and victims of narcotics abuse to undergo rehabilitation, even though an addict may fall within the category of abusers who are threatened with punishment under Article 127 paragraph (1), and Article 103 paragraph (1) gives the judge the authority to order treatment and/or care through rehabilitation for narcotics addicts, whether they are found guilty or not found guilty of a criminal offense. The difference in wording is seen in the use of the word "must" (*wajib*) in Article 54 and Article 127 paragraph (3), and the word "may" (*dapat*) in Article 103 paragraph (1). This difference shows the need to harmonize the norms in order to provide certainty regarding the relationship between the imposition of punishment and rehabilitative measures in combating narcotics abuse.

Although they have different characteristics and objectives, the criminal track and the rehabilitation track are not entirely separate. Article 103 paragraph (2) provides that the period of rehabilitation is counted as time served, while Article 127 paragraph (2) requires the judge to consider the rehabilitation provisions in deciding the case. These two provisions show that rehabilitation remains part of the legal process and does not mean that a person is relieved of legal accountability. From a criminal policy standpoint, this dualism is beneficial because it allows different treatment according to circumstances, so that abusers who use narcotics for themselves, addicts, and victims are not automatically treated the same. This dualism is also consistent with the modern purposes of punishment, which are not only to retaliate but also to restore and reintegrate the offender into society,

and with Barda Nawawi Arief's view that criminal law policy should not rest on punishment alone but also needs means of guidance that do not involve suffering [5].

To clarify rules that remain general, there are two instruments outside the law that can serve as guidance. First, SEMA No. 4 of 2010 is a guideline for judges in determining rehabilitation under Article 103. Because Article 103 states that the judge "may" order rehabilitation, the SEMA provides criteria that judges can use so that a rehabilitation decision has a clear basis. According to this SEMA, a judge may place a defendant in rehabilitation if the defendant was caught red-handed by investigators of the Indonesian National Police or the National Narcotics Agency (BNN) with evidence of one day's use not exceeding a certain amount for each type of narcotic, there is a positive laboratory test result for narcotics use, there is a statement from a government psychiatrist or doctor, and there is no evidence that the defendant was involved in illicit narcotics trafficking [15].

Second is the 2014 Joint Regulation on the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, signed by the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Chief of the National Police, and the Head of BNN. This regulation unites law enforcers in a single mechanism from the investigation stage through the Integrated Assessment Team (TAT), which consists of a medical team to assess the level of dependence and a legal team to assess the suspect's involvement in narcotics trafficking. The assessment results form the basis for investigators, public prosecutors, and judges to place a suspect or defendant in rehabilitation, so that rehabilitation can be pursued at the investigation, prosecution, and trial stages [16].

Although implementing regulations exist, the regulation of the "double track system" in Law No. 35 of 2009 still leaves several problems in terms of legal norms. The first problem is the inconsistency of norm wording. Article 54 and Article 127 paragraph (3) use the word "must" (*wajib*), whereas Article 103 paragraph (1) uses the word "may" (*dapat*). Yet addicts and victims of abuse are both named in Article 54 as parties who must be rehabilitated. This difference in wording makes the nature of rehabilitation inconsistent, being mandatory under one article but only an option for the judge under another, which creates legal uncertainty. The second problem is the wording of the requirements for applying rehabilitation to victims of abuse. Article 127 paragraph (3) requires an abuser who "can be proven or is proven" to be a victim to undergo medical and social rehabilitation, but the law does not explain who must provide the proof, with what

evidence, and at what stage the proof is to be made. The Elucidation of Article 127 states only "sufficiently clear," so it gives no official interpretation of that wording. The status of victim of abuse is likewise explained only in the Elucidation of Article 54, namely a person who unintentionally uses narcotics because of being persuaded, deceived, tricked, forced, and/or threatened, without any regulation on how this is to be proven. As a result, the obligation to rehabilitate victims of narcotics abuse, which forms part of the measures track, depends on proof that is not clearly regulated in the law.

The third problem is that the regulation of the relationship between criminal sanctions and rehabilitative measures is not yet harmonized. Article 103 paragraph (2) provides that the period of rehabilitation may be counted as time served, while Article 127 paragraph (2) requires the judge to heed the rehabilitation provisions in deciding the case. These two provisions show a relationship between punishment and rehabilitation, but their regulation has different scopes. It therefore needs further examination whether the two provisions provide coherent guidance in regulating the relationship between the imposition of punishment and rehabilitative measures.

The fourth problem is the status of the implementing regulations. The criteria that bridge the above vagueness are found in the SEMA and the Joint Regulation, not in the law. According to the hierarchy of legislation, both rank below the law. The SEMA is essentially addressed to the judiciary, while the Joint Regulation is an inter-agency agreement, so their binding force is not equal to that of a law. In addition, no provision in the law obliges judges to follow the recommendations of the Integrated Assessment Team (TAT). Consequently, the rehabilitation criteria do not have the same binding force as statutory norms. The evidence quantity limit in the SEMA is also rigid, because an abuser carrying an amount exceeding the limit may no longer meet the rehabilitation criteria under the SEMA.

The fifth problem is that the implementation of rehabilitation depends on government designation. Article 56 and Article 128 paragraph (3) make the implementation of rehabilitation dependent on hospitals or institutions designated by the government or approved by the Minister. This means the measures track can run only if such designation exists. The law does not regulate the legal consequences for the abuser when a designated institution is not yet available, so the fulfillment of the right to rehabilitation under Article 54 and Article 127 paragraph (3) has no certain guarantee. The final problem concerns the harmonization of narcotics criminal regulation with developments in national criminal law. The entry into force of Law Number 1 of 2023 on

the Criminal Code and Law Number 1 of 2026 on the Adjustment of Criminal Penalties creates a need to examine the consistency of the regulation of criminal sanctions and rehabilitative measures in Law Number 35 of 2009 on Narcotics with the national criminal law framework. This examination is needed so that recommendations for reforming the regulation of the "double track system" remain consistent with developments in legislation.

Based on the foregoing, Law No. 35 of 2009 on Narcotics has regulated the "double track system" through a criminal track and a measures track for abusers, addicts, and victims of narcotics abuse. The criminal track is regulated in Article 127 paragraph (1), while the measures track in the form of rehabilitation is regulated in Article 4 letter d, Article 54, Article 56, Article 103, Article 127 paragraphs (2) and (3), and Article 128 paragraph (3). The two tracks show that combating narcotics abuse is carried out not only through punishment but also through recovery efforts. However, the regulation still faces a number of problems, such as differences in norm wording, the lack of clear boundaries distinguishing abusers from perpetrators of other narcotics offenses, and the limited standing of implementing regulations in providing further guidance. In addition, the regulation of rehabilitation still depends on certain provisions and requirements. Improvement of the norm wording in the law is therefore needed so that the relationship between the criminal track and the measures track becomes clearer, more coherent, and provides legal certainty.

These problems can be analyzed using the theory of criminal law policy of Barda Nawawi Arief, which serves as the theoretical foundation for analyzing the regulation of the "double track system" in Law Number 35 of 2009 on Narcotics, particularly from the standpoint of criminal law formulation policy. Formulation policy is part of criminal law policy concerned with the creation and formulation of legal provisions as the basis for combating criminal offenses. The formulation stage holds a strategic position because it provides the basis and guidance for the implementation of criminal law at subsequent stages (5). Through this perspective, the regulation of the "double track system" should be assessed not only by the existence of provisions regulating criminal sanctions and rehabilitative measures but also by the clarity of the norm wording, the coherence of the relationships among provisions, and the capacity of the regulation to provide an adequate legal basis for its implementation. In the context of combating narcotics abuse, this matters because the law regulates two forms of handling with different objectives, namely punishment of acts that violate the law and rehabilitation directed at restoring the condition of the abuser or addict. The legislator therefore needs to formulate provisions that explain

the relationship between the two tracks so that each can function according to its purpose and does not create ambiguity in implementation.

Barda Nawawi Arief's thinking on criminal law policy, particularly formulation policy, is used to assess the adequacy of the regulation of the "double track system" in Law Number 35 of 2009 on Narcotics. This assessment is based not only on the existence of criminal and rehabilitation provisions but also on the clarity of norm wording, the coherence among provisions, and their conformity with the objectives of combating narcotics abuse. Within this framework, criminal law reform needs to be directed at improving legislative policy so that the regulation produced can provide a clear legal basis for law enforcement while also supporting recovery efforts.

Based on this framework, Law Number 35 of 2009 has provided a legal basis for both the criminal track and rehabilitation. However, from the perspective of formulation policy, the regulation still needs further assessment in terms of the clarity of the relationship between the two tracks, the requirements for determining rehabilitation, and the guidance for judges in making decisions. That is, the existence of punishment and rehabilitation in a single law does not by itself show that the regulation of the "double track system" has been adequately structured. The adequacy of the regulation also depends on the capacity of its norms to provide clear and coherent guidance in implementation. Barda Nawawi Arief's thinking on criminal law policy is thus used to assess the adequacy of the regulation of the "double track system" in Law Number 35 of 2009 on Narcotics, particularly in terms of the clarity and coherence of the norms governing punishment and rehabilitation. This framework helps explain that the existence of the two tracks of handling must be supported by adequate regulation so that the objectives of combating narcotics abuse can be achieved proportionately.

DISCUSSIONS

Recommendations for Regulating the Dualism of Criminal Law Policy in Combating Narcotics Abuse from the *"*Double Track System*"* Perspective

The regulation of the *"*double track system*"* in Law Number 35 of 2009 on Narcotics is essentially reflected in the regulation of criminal sanctions and rehabilitative measures for narcotics abusers. The criminal track is regulated in Article 127 paragraph (1), which sets criminal penalties for narcotics abusers for personal use according to the group of narcotics used, while the measures track is reflected in the provisions on rehabilitation, including Article 54 and Article 103. Although supplemented by

implementing regulations, the regulation of the two tracks still leaves a number of normative problems. The wording of norms across articles is not yet harmonized, particularly because Article 54 and Article 127 paragraph (3) use the word “must” (*wajib*), whereas Article 103 paragraph (1) uses the word “may” (*dapat*), which creates uncertainty about the nature and limits of the obligation to rehabilitate. In addition, the requirements for rehabilitating victims of narcotics abuse are not accompanied by adequate regulation of the evidentiary mechanism, the party responsible for providing proof, the evidence used, and the stage of proof. Meanwhile, the relationship between the criminal sanctions regulated in Article 127 paragraph (1) and rehabilitative measures has not been comprehensively formulated. The differing scopes of Article 103 paragraph (2) and Article 127 paragraph (2) also do not clearly explain the relationship between the two tracks in the judge's decision-making.

These normative problems are also visible in the regulation of rehabilitation criteria, which are partly formulated in the Supreme Court Circular Letter (SEMA) and the Joint Regulation, which rank below the law, do not oblige judges to follow TAT recommendations, and contain rigid evidence limits, so that their binding force is weak. The implementation of rehabilitation is also highly dependent on the designation of institutions by the government as regulated in Article 55 paragraph (2), Article 56, and Article 128 paragraph (3), without any regulation of the legal consequences if the designated institutions are not yet available, so that the fulfillment of the right to rehabilitation has no certain guarantee. Furthermore, the entry into force of Law Number 1 of 2023 on the Criminal Code and Law Number 1 of 2026 on the Adjustment of Criminal Penalties demands an examination of the consistency of the regulation of criminal sanctions and rehabilitative measures in the Narcotics Law with the national criminal law framework. In light of these problems, recommendations are needed for regulating the dualism of criminal law policy in combating narcotics abuse from the “double track system” perspective, so that the proposed reform is coherent, certain, and consistent with developments in legislation.

Based on these problems, it can be understood that Law Number 35 of 2009 on Narcotics has essentially provided a policy that reflects the “double track system” in combating narcotics abuse, namely by providing a criminal track and a measures track in the form of rehabilitation within a single regulatory framework. This policy makes room for two forms of legal response: criminal sanctions as accountability for the act committed, and measures in the form of rehabilitation oriented toward the treatment and recovery of

the narcotics abuser. The existence of both forms of response shows that combating narcotics abuse is directed not merely at punishment but also takes into account the recovery needs of individuals experiencing problems with narcotics use.

The existence of the two tracks reflects that criminal law policy in combating narcotics abuse has opened room for sanctions that consider both the act and the condition of the offender. From the "double track system" perspective, the two forms of response, imprisonment and rehabilitative measures, are instruments that can be used in the policy for combating narcotics abuse in accordance with the characteristics and condition of the subject concerned [10]. Accordingly, the regulatory problem lies not in the absence of a legal basis for punishment and rehabilitation but in how the two tracks are formulated and connected so as to provide a proportionate response.

Conceptually, the "double track system" places criminal sanctions and measures as two sanction tracks with different characteristics and objectives. Criminal sanctions are oriented toward accountability for the criminal offense committed, whereas measures are directed at handling certain conditions and needs of the offender, including treatment and care through rehabilitation. The existence of both tracks within a single sentencing system does not necessarily require both to be imposed at the same time in every case, because the relationship between types of sanction needs to be formulated in accordance with the objectives of criminal law policy. In Barda Nawawi's thinking, criminal law policy includes efforts to formulate criminal law regulation as part of the policy for combating crime [5].

The "double track system" is essentially a sentencing system that provides two sanction tracks in criminal law, namely punishment (*straf*) and measures (*maatregel*). This idea developed as a middle way between the classical school, which emphasizes retribution for the offender's guilt, and the modern school, which emphasizes the protection of society and the guidance of the offender. With this system, the legislator no longer relies on punishment as the only reaction to crime but also provides measures as another means of addressing different needs. The two tracks have different characteristics and objectives. Punishment is imposed as a response to a criminal offense that has been committed and is based on the offender's guilt, whether through deprivation of liberty or restriction of certain rights. Measures, by contrast, are not oriented toward punishing the offender's guilt but toward the offender's need to receive care or guidance and toward the protection of society, so that they are more educative, rehabilitative, and protective in nature. This difference in character has implications for objectives. Punishment aims to provide proportionate

retribution, produce a deterrent effect, and uphold legal norms, whereas measures aim to restore the condition of the offender and, at the same time, to prevent the offender from repeating the act because of underlying problems such as dependence.

Because their character and objectives differ, the "double track system" does not require judges to impose punishment and measures at the same time. The two types of sanction can be imposed either cumulatively or alternatively, depending on the wording of the governing norm and on the needs and condition of the abuser that are considered in determining the type of sanction [11]. The "two tracks" here means the availability of two types of sanction in the criminal law system, not an obligation to use both in every case. The imposition of sanctions still depends on the condition of the offender, the nature of the act, and the objectives to be achieved in the concrete case. In formulation, the relationship between the two tracks may be alternative or cumulative. In the alternative model, the judge chooses one track according to the needs of the case: punishment for an offender who deserves to be punished, or measures for an offender who needs recovery more than retribution. In the cumulative model, punishment and measures are imposed together when the offender deserves punishment and at the same time requires treatment, usually accompanied by arrangements so that the two sanctions do not pile up burdens, such as counting the period of the measure as part of the period of punishment.

Both models are reflected in Law Number 35 of 2009 on Narcotics. The criminal track is shown, among others, by Article 127 paragraph (1), while the measures track is shown by Article 54 and Article 127 paragraph (3), which require rehabilitation. The alternative nature is evident in Article 103 paragraph (1), which gives the judge the authority to order treatment and care, both for offenders found guilty and for those not found guilty. The cumulative nature is evident in Article 103 paragraph (2), which provides that the period spent undergoing rehabilitation may be counted as time served. In addition, Article 127 paragraph (2) requires the judge to heed the rehabilitation provisions in deciding the case of an abuser, so that the judge may not decide solely through the lens of punishment. However, because the law does not clearly formulate when the alternative track and when the cumulative track is used, the choice between them depends heavily on each judge's interpretation. As a result, the essence of the "double track system" as two tracks with different characters and objectives has not been realized consistently in court decisions.

Based on this understanding, the regulation of the "double track system" in combating narcotics abuse needs to take into account that abusers do not always have the

same condition and handling needs. A narcotics abuser may commit an act prohibited by law and at the same time experience the effects of narcotics use that require health care, including where dependence exists. In terms of legal accountability, an act proven to fulfill the elements of a criminal offense may form the basis for imposing criminal sanctions. In terms of recovery, a condition of dependence and medical needs may form the basis for the need for rehabilitation. These two dimensions allow criminal liability and recovery needs to be considered in a single case, while still distinguishing the legal basis and purpose of each response [8]. This position needs to be understood carefully so as not to equate all abusers with addicts, or to assume that every abuser is automatically a victim of narcotics abuse as referred to in Article 127 paragraph (3) of Law Number 35 of 2009 on Narcotics.

Article 1 point 15 defines an abuser as a person who uses narcotics without right or against the law, while Article 1 point 13 defines a narcotics addict as a person who uses or abuses narcotics and is in a state of dependence, both physical and psychological [14]. This difference shows that the use of narcotics without right or against the law does not in itself prove dependence or the fulfillment of the category of victim of narcotics abuse. Recommendations for regulating punishment and rehabilitation must therefore be drafted by considering the condition and characteristics of each narcotics abuser. Determining the form of handling should be based not only on whether a criminal offense has been proven but also on whether dependence exists and on the need for rehabilitation based on an assessment that can be accounted for.

This consideration rests on the characteristics of narcotics, which carry the potential to cause dependence, so that handling abusers cannot consider only the aspect of punishment but must also attend to recovery needs. Punishment serves as accountability for a criminal offense proven to have been committed, whereas rehabilitation aims to address dependence, restore health, and support the recovery of social functioning. The two forms of handling have different objectives, so their determination needs to be adapted to the abuser's condition. For an abuser who is proven to have committed a criminal offense and also needs rehabilitation, punishment and rehabilitation may be considered together. Meanwhile, for an abuser who does not experience dependence, the form of handling needs to be determined based on the characteristics of the act and the needs of the person concerned. This view is in line with the guidance of the World Health Organization (WHO) and the United Nations Office on Drugs and Crime (UNODC), which emphasizes the importance of treatment for individuals with drug use disorders who come into contact with the criminal justice system [21]. Accordingly, the recommended regulation needs to

provide a legal basis for determining criminal sanctions and rehabilitative measures proportionately, based on the abuser's condition, level of dependence, and recovery needs.

The various problems in the regulation of the *"*double track system*"* in Law Number 35 of 2009 on Narcotics essentially relate to the not-yet-optimal regulation of the relationship between the criminal track and the measures track, so that improvement of the regulation of their relationship is needed. The recommended regulation is therefore not intended to eliminate either track but to arrange both so that they can function according to their respective characters and objectives, whether alternatively or cumulatively. The discussion is organized sequentially, starting with the affirmation of principles and the harmonization of norms as the foundation, continuing with certainty of proof and the model for imposing sanctions as the content of the regulation, then strengthening of rehabilitation criteria and guaranteed availability of institutions as conditions for implementation, and ending with harmonization with national criminal law so that the reform remains consistent with developments in legislation.

The first recommendation concerns the foundation of the regulation, namely the affirmation of principles and the harmonization of norm wording. The law needs to contain a general provision stating that punishment and measures are two types of sanction with different characters and objectives, which may be imposed alternatively or cumulatively according to the needs of the case. This provision is important so that the *"*double track system*"* is not understood as an obligation to impose both sanctions simultaneously, and so that judges have a basis for choosing the most appropriate form of sanction. At the article level, the difference between the word "must" in Article 54 and Article 127 paragraph (3) and the word "may" in Article 103 paragraph (1) can be resolved by distinguishing two kinds of obligation that have so far been mixed together: the judge's obligation to consider rehabilitation and the obligation to impose rehabilitation. Judges must consider the possibility of rehabilitation in every narcotics abuse case. Rehabilitation must be imposed when the conditions set by the law are met, while the discretion reflected in the word "may" applies only to cases outside those conditions. With this division, the words "must" and "may" no longer conflict because each has a clear area of application. The wording of these norms therefore needs to be harmonized.

After the principles and norm wording are harmonized, the next recommendation is to provide certainty on the mechanisms of proof and assessment. The requirement "can be proven or is proven" to be a victim of abuse in Article 127 paragraph (3) has so far not been explained further because its Elucidation states only "sufficiently clear." This

requirement needs to be elaborated in the body of the law through four provisions. First, the law should determine the responsible parties: investigators and public prosecutors must propose an assessment, while suspects or defendants have the right to request one. Second, the law should recognize the results of the Integrated Assessment Team (TAT) assessment as evidence, so that proof of victim status does not depend on unmeasured judgments. Third, the law should provide that the assessment is carried out from the investigation stage and may be re-examined at trial, so that the assessment is not late and remains open to testing. Fourth, the definition of a victim of abuse in the Elucidation of Article 54, namely a person who has been persuaded, deceived, tricked, forced, and/or threatened, should be elevated into the body of the law so that it has full normative force. So that this regulation does not remain an obligation on paper, the law also needs to regulate the legal consequences if an assessment is not proposed or not considered, for example by making it a ground for objection or a consideration that must be included in the examination of the case.

Next, the regulation needs to establish a model for imposing sanctions and the relationship between punishment and rehabilitation. Abusers should be grouped according to their conditions and needs, so that judges have clear guidance for determining the appropriate track. An abuser proven to be a victim of abuse is directed to the measures track alone, as an alternative, because the primary need is recovery, not retribution. An abuser who is proven to have committed a criminal offense and, based on an accountable assessment, experiences dependence is directed to punishment and rehabilitation cumulatively, because the act still demands accountability while the condition of dependence requires recovery. As for a narcotics abuser for personal use who does not experience dependence, he or she remains directed to criminal liability, with rehabilitation or other recovery measures, for example counseling and education, provided based on assessment results showing that such a need exists.

This grouping is in line with the distinction among abusers, addicts, and victims of abuse, because using narcotics without right does not in itself prove dependence. For cumulative imposition, Article 103 paragraph (2) and Article 127 paragraph (2) need to be combined into complementary wording. Judges must heed the rehabilitation provisions in deciding the case, and the period of rehabilitation must be counted as time served by a clear measure. For example, inpatient rehabilitation is counted in full, while outpatient rehabilitation is counted proportionately. With this regulation, offenders do not bear an

excessive double burden, and the two tracks can run side by side without negating each other.

In addition, the standing of the rehabilitation criteria needs to be strengthened. The criteria currently regulated in the SEMA and the Joint Regulation should be elevated to the level of law, or at least to a government regulation expressly delegated by the law. This step is needed because the SEMA and the Joint Regulation rank below the law, so their binding force is limited. The SEMA is essentially addressed to the judiciary, while the Joint Regulation is an inter-agency agreement. The law also needs to provide that judges must consider the TAT recommendations and, if they depart from them, must state their reasons in the decision. This formulation preserves judicial independence while ensuring that the recommendations are not simply ignored. In addition, the evidence quantity limit should be changed from a rigid threshold into an initial indicator combined with the purpose of use, the offender's role, and the results of the medical assessment. In this way, an abuser who carries an amount slightly above the limit does not automatically lose access to rehabilitation, and the assessment remains grounded in the offender's actual condition.

In terms of regulation, the availability of rehabilitation institutions needs a clear legal guarantee. Article 56 and Article 128 paragraph (3) link rehabilitation to the designation of institutions by the government but do not expressly regulate the legal consequences if the designated institutions are not yet available. The law therefore needs to affirm the government's obligation to provide and designate rehabilitation institutions in adequate numbers and distribution, accompanied by provisions on budgetary support. In addition, provisions are needed on alternative ways of fulfilling rehabilitation when designated institutions are not yet available, for example through the designation of substitute institutions or the provision of rehabilitation services in correctional institutions that meet the requirements. This regulation is needed to ensure legal certainty regarding the right to rehabilitation, including when designated facilities are not yet available, and to clarify the government's responsibility for guaranteeing the fulfillment of that right.

The last recommendation is harmonization of the regulation with national criminal law. The entry into force of Law Number 1 of 2023 on the Criminal Code and Law Number 1 of 2026 on the Adjustment of Criminal Penalties requires that the sanction system in the Narcotics Law be harmonized in four respects. First, the types of punishment used need to be adjusted to the types of punishment in the National Criminal Code, in particular by considering the principal penalties regulated in Article 65 of Law No. 1 of 2023. This review is needed so that the regulation of sanctions for narcotics abusers is

oriented not only toward imprisonment but also opens room for other types of punishment suited to the characteristics of the act and the condition of the offender. Second, the sentencing guidelines applicable to judges need to be made consistent with the guidelines in the National Criminal Code, in particular Article 53 and Article 54 of Law No. 1 of 2023 [12].

This adjustment is needed so that, in imposing punishment on narcotics abusers, judges also consider the form of fault, the motive and purpose of the act, personal circumstances, and the effect of punishment on the offender's future. Third, the position of measures as a separate type of sanction alongside punishment needs to be formulated so as not to conflict with the regulation of measures in the Criminal Code. Fourth, transitional provisions need to be drafted to determine the treatment of cases that are already in progress. On this basis, the criminal penalties in Article 127 paragraph (1) need to be re-examined so as to be consistent with the categories and patterns of punishment in the National Criminal Code as regulated in Law No. 1 of 2023 and the penalty adjustment policy in Law No. 1 of 2026. With this harmonization, the Narcotics Law does not stand as a regime separate from the national sentencing system, and the proposed reform remains consistent with developments in legislation.

Taken together, these recommendations change the regulation of the *"*double track system*"* from a pattern that depends on judicial interpretation and sub-statutory rules into a pattern that is certain, tiered, and guaranteed in its implementation. A firm principle gives direction, clear proof gives certainty, a measured sanctioning model gives guidance, binding criteria give compulsory force, available institutions give a guarantee of implementation, and consistency with the new Criminal Code maintains the coherence of the system. In this way, punishment and measures can function according to their respective characters and objectives, whether alternatively or cumulatively.

Within the framework of Barda Nawawi's criminal law policy, these problems can be examined further through the quality of the formulation of norms governing the relationship among the various instruments for combating crime. According to Barda Nawawi Arief, criminal law policy is part of criminal policy, which aims to achieve the protection of society (*social defence*) and the welfare of society (*social welfare*) [5]. This policy is carried out through the stages of formulation, application, and execution, with the formulation stage being the most strategic because it forms the basis for the two subsequent stages. Because this study is normative and its analytical material derives from the formulation of norms in the Narcotics Law, the discussion focuses on the formulation

stage. At this stage, criminal law policy is assessed through three evaluations that can be used to read the recommendations, namely the rationality of the objectives of sanction regulation, the clarity and coherence of the norm wording, and the integration of the norms with the broader sentencing system.

The first evaluation, the rationality of objectives, is evident in the affirmation of the principle that punishment and measures are two types of sanction with different characters and objectives. According to Barda, the choice of penal means must start from the objectives to be achieved. The Narcotics Law has in fact provided the criminal track in Article 127 paragraph (1) and the measures track in Article 54 and Article 103, but it has not clearly formulated how the two are related. The recommendation that the general provisions state that both sanctions may be imposed alternatively or cumulatively gives the legislator a clear direction of objectives, while preventing the *"*double track system*"* from being understood as an obligation to impose both at the same time. The same applies to the model for imposing sanctions. Grouping abusers according to their conditions and needs shows that formulation policy no longer treats all abusers uniformly. This accords with the value-oriented approach, namely the balance between the protection of society and the protection of the individual offender.

The second evaluation, the clarity and coherence of norm wording, is seen in the problem of the word "must" in Article 54 and Article 127 paragraph (3) set against the word "may" in Article 103 paragraph (1). From the standpoint of formulation policy, this difference indicates that the legislator has not set a consistent direction on the nature of the obligation to rehabilitate. Distinguishing between the judge's obligation to consider rehabilitation and the obligation to impose it gives each word a clear area of application, so the norms no longer conflict. Clarity of wording also underlies the recommendation on proof. The Elucidation of Article 127 paragraph (3), which states only "sufficiently clear," leaves the requirement "can be proven or is proven" without any determination of the party, the evidence, and the stage. Elaborating that requirement in the body of the law, including elevating the definition of a victim of abuse from the Elucidation of Article 54, is a formulation improvement so that the norm has full force. The same principle underlies the recommendation to combine Article 103 paragraph (2) and Article 127 paragraph (2), because two provisions with different scopes need to be formulated so as to complement each other, including the measure for counting the period of rehabilitation as time served.

With regard to the standing of norms, Barda emphasizes that the essential matters concerning the selection and imposition of sanctions should be regulated in the law. The

rehabilitation criteria, which partly reside in the SEMA and the Joint Regulation, have limited binding force because they rank below the law and do not oblige judges to follow TAT recommendations. The recommendation to elevate those criteria to the level of law, or to a government regulation with express delegation, strengthens the legitimacy of the sentencing guidelines. The judge's obligation to state reasons when departing from TAT recommendations maintains the balance between certainty and judicial independence. Changing the evidence limit from a rigid figure to an initial indicator combined with the purpose of use, the offender's role, and the medical assessment is also a formulation improvement consistent with the value-oriented approach.

The third evaluation is integration with the sentencing system. In formulation, sanction norms must be not only clear but also implementable. Article 56 and Article 128 paragraph (3) link rehabilitation to the designation of institutions by the government without regulating the legal consequences if institutions are not yet available. This is a normative gap, not merely a practical problem, so the recommendations, namely the government's obligation to provide institutions, budgetary support, and alternative ways of fulfilling rehabilitation, are essentially additions to the norm wording that guarantee the enforceability of measures. Integration also concerns the relationship with the new Criminal Code. The concept of an integral sentencing system demands that the special provisions in the Narcotics Law not be detached from the general rules. The harmonization of types of punishment, sentencing guidelines, the position of measures, and transitional provisions with Law Number 1 of 2023 on the Criminal Code (KUHP) and Law Number 1 of 2026 on the Adjustment of Criminal Penalties, followed by a re-examination of the criminal penalties in Article 127 paragraph (1), is part of a comprehensive criminal law reform (*penal reform*).

Barda Nawawi Arief's thinking on criminal law formulation policy can essentially serve as a foundation for developing a sanction regulation capable of accommodating the objectives of punishment more comprehensively [5]. In combating narcotics abuse, imprisonment and rehabilitation have different objectives. Imprisonment is oriented toward criminal liability for the act committed, whereas rehabilitation is intended to restore the abuser's physical and psychological condition and to support the process of recovery from narcotics abuse [9]. The two forms of sanction need not be viewed as mutually exclusive options but can be formulated as complementary forms of handling. This idea locates policy reform not merely in providing two sanction tracks but also in regulating the

relationship between them, so that the objectives of law enforcement and recovery can be achieved simultaneously.

Based on this discussion, the recommendations here can be understood as an effort to perfect the formulation policy of the Narcotics Law. A formulation that is rational in its objectives, clear and coherent among norms, strong in legal standing, and integrated with the national sentencing system is the measure Barda uses to assess formulation policy. By that measure, the dualism of policy between punishment and rehabilitation need not be abolished but should be formulated in an orderly manner so that both tracks function according to their purposes, namely the protection of society and the recovery of narcotics abusers.

The findings are similar to earlier studies in one respect and differ in others. Earlier studies on narcotics abusers also start from the coexistence of imprisonment and rehabilitation under the *"*double track system*"* [6, 8–10], and some of them call for a better construction or reformulation of the rehabilitation sanction [8,11]. This agrees with the finding of this study that the two tracks exist in Law Number 35 of 2009 but are not yet well connected. The finding that people with drug use disorders who meet the criminal justice system need treatment is also in line with the guidance of UNODC and WHO [21,22].

This study differs from those studies in three ways. First, it examines the wording of specific articles (Articles 54, 103, 127, and 128) and shows that "must" (wajib) and "may" (dapat) create inconsistent obligations. Second, it separates the judge's duty to consider rehabilitation from the duty to impose it, and it ties alternative and cumulative sanctions to the status of the person: a victim of abuse, a dependent offender, or an abuser without dependence. Third, it tests the Narcotics Law against Barda Nawawi Arief's formulation policy and against the new Criminal Code (Law No. 1 of 2023) and Law No. 1 of 2026. Based on the studies cited here, these points have not been the main focus of earlier work.

This study has three limitations. First, it is normative research based on legal texts and literature, so it does not show how judges, prosecutors, the National Narcotics Agency, and rehabilitation institutions apply the provisions in practice. Second, the analysis focuses on the formulation stage of criminal law policy, so the application and execution stages are not examined. Third, the recommendations have not been tested, and they may need to be adjusted as Law No. 1 of 2026 and the implementing rules of the new Criminal Code

develop. Future research should combine this normative analysis with empirical data on court decisions and on the work of the Integrated Assessment Team.

CONCLUSION

The regulation of the dualism of criminal law policy in combating narcotics abuse in Indonesia has provided a basis for punishment and rehabilitation through Law Number 35 of 2009 on Narcotics. However, the existence of the two tracks is not yet fully accompanied by firm regulation of their relationship in accommodating criminal liability and recovery needs simultaneously. Based on Barda Nawawi Arief's perspective on criminal law formulation policy and the framework of the "double track system", this study recommends improving the regulation by arranging the relationship between the criminal track and the rehabilitative measures track, so that the two may be imposed alternatively or cumulatively according to the condition of the narcotics abuser, namely rehabilitation alone for an abuser proven to be a victim of abuse, and punishment together with rehabilitation cumulatively for an abuser proven to have committed a criminal offense and who, based on an accountable assessment, requires rehabilitation. This reformulation needs to clarify the legal basis for combining the two sanctions and the relationship in their implementation, so that imprisonment continues to perform the function of criminal liability while rehabilitation meets the needs of treatment and recovery. The direction of reform thus does not stop at providing two sanction tracks but focuses on regulating their relationship proportionately. Based on the findings of the study, legislators are advised to improve Law Number 35 of 2009 on Narcotics by clarifying the legal basis for imposing imprisonment and rehabilitation, whether alternatively or cumulatively, accompanied by harmonization of norms, certainty of the mechanisms of proof and assessment, strengthening of rehabilitation criteria, guaranteed availability of institutions, and harmonization with national criminal law. This regulation needs to be accompanied by clear guidelines for judges and law enforcement officers so that the imposition of sanctions takes criminal liability and rehabilitation needs into account proportionately, in accordance with the condition of the narcotics abuser.

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