



Double Track System in Criminal Sanction against Narcotics Abuse

Mujito^{1*}, Prof. Dr. Arif Darmawan², Dr. Otto Yudianto³, Dr. Yovita Arie Mangesti⁴
¹mujito101966@gmail.com, ²arif@untag-sby.ac.id, ³ottoyudianto@untag-sby.ac.id,
⁴yovitaam@untag-sby.ac.id

Universitas 17 Agustus 1945 Surabaya

*Corresponding Author: Mujito
Email: mujito101966@gmail.com

ABSTRACT

The development of era shows a strong tendency to change the perception of narcotics addicts whom facing imprisonment and rehabilitation. The punitive approach may hide people who need a treatment, and the narcotic addicts may have fear arrest when they show up. Therefore, this situation prevents addicts from participating in treatment and rehabilitation programs. The output of the research is the essence of Double Track System m for narcotics abuse to create equality in the imposition of criminal sanctions and action sanctions against narcotics abuse. The narcotics abusers, addicts and it victims that violate the criminal law, they are required to get rehabilitation as a form of recovery effort (curative) and make the abuser aware that his actions are detrimental to himself and his future. The efforts to overcome narcotics abuse through the Double Track System sanction have the characteristics of exploring the benefits of law to prevent criminal acts, especially the narcotics abusers, then the main target is to utilize the model of action sanctions and criminal sanctions in proportional concept as a solution to provide the effectiveness in eradicating deviant narcotic use massively and comprehensively.

Keywords: Criminal Sanctions, Double Track System, Narcotics Abuse

INTRODUCTION

Pancasila is the fundamental basis of the Negara Kesatuan Republik Indonesia (NKRI). The concept of a legal state developed in the 19th century. Plato stated that a state governed by law aspires to uphold truth, decency, beauty, and justice. Indonesians interpret Pancasila as a guiding principle for environmental, societal, and national life, serving as a foundation for addressing social issues.

The challenges of a densely populated country and increasingly complex problems necessitate the state's involvement in addressing international crimes. Sajipto Rahardjo argued that the more people recognize the importance of law, the more secure society becomes. In Indonesia, legal awareness continues to grow, reinforcing the role of law as a tool for social control and integration.¹

Narcotics-related crimes are serious offenses against humanity, significantly impacting younger generations, particularly in civilized nations. Narcotics abuse is a harmful act with cross-border distribution. As a legal state, Indonesia upholds the rule of law based on truth and justice.

Many individuals suffer from addiction due to narcotics trafficking, with thousands losing their lives. If not addressed seriously, this issue could jeopardize future generations.² Economic hardships and job scarcity have led to an increasing number of individuals turning to narcotics dealing.³ Consequently, narcotics abuse and trafficking pose serious threats to the social system. Combatting this issue requires the active involvement of the government, society, and related agencies.

The impact of narcotics on crime rates is a growing concern, despite ongoing eradication efforts by law enforcement. However, narcotics abuse persists due to a lack of public awareness about its dangers and the need for stronger law enforcement measures. Additionally, the absence of an effective sanctioning system presents a challenge in addressing this issue. As society evolves, crime rates, including narcotics abuse, continue to rise, necessitating immediate attention from organizations responsible for youth development and education.

Law enforcement officers, investigators, prosecutors, and judges must share a common understanding based on legal regulations to achieve justice. However, inconsistencies exist in enforcing narcotics laws, as heavy sanctions such as corporal punishment, fines, and rehabilitation have not effectively deterred

¹ S Rahardjo, *Hukum Dan Masyarakat* (Angkasa, 1986).

² Siswanto, *Politik Hukum Dalam Undang-Undang Narkotika (UU Nomor 35 Tahun 2009 Tentang Narkotika)* (Rineka Cipta, 2012).

³ Mahara, *Implementasi Sistem Sanksi Pidana Dan Tindakan (Double Track System) Terhadap Pelaku Kejahatan Tindak Pidana Narkotika* (Tangerang: Publishing, 2018).

offenders. The implementation of a multiple-sanction system (Double Track System) is expected to curb the rampant circulation of narcotics.⁴

Current developments indicate a shift in perception regarding imprisonment and rehabilitation for narcotics addicts. A punitive approach discourages addicts from seeking treatment due to fear of arrest. This prevents them from participating in rehabilitation programs. Therefore, appropriate sanctions for narcotics abusers are essential to ensuring effective law enforcement solutions.

Narcotics abusers fall into two categories: addicts and victims. Both consume narcotics illegally, yet legal regulations for addicts remain inconsistent. Article 127, Paragraph (1) of Law No. 35/2009 on Narcotics outlines criminal sanctions for abuse, while Paragraphs (2) and (3) provide for rehabilitation measures.

Addressing narcotics crimes requires more than strict laws and severe penalties; it also demands authoritative and consistent law enforcement alongside public legal awareness. Establishing a strong legal system is challenging, as punitive measures alone are insufficient to eradicate crime. A comprehensive system of sanctions, supported by authoritative law enforcement, is necessary.

Implementing appropriate sanctions for narcotics abuse, even on a probationary basis, could serve as an effective solution. Strict sanctions create a deterrent effect, raising public awareness of legal consequences. Punishments should not only penalize offenders but also rehabilitate them, transforming them into productive members of society. This aligns with the corrective purpose of punishment.

Efforts to combat narcotics crimes must encompass various aspects that benefit society. This includes optimizing the role of law enforcement officers, such as police, prosecutors, and judges, to ensure consistent law enforcement. Sanctions should also include rehabilitative measures, as narcotics users often become addicts. These individuals require medical and social rehabilitation to overcome addiction. The Double Track System is one approach that can help reduce narcotics abuse, particularly among young people.

However, the imposition of sanctions under Law No. 35/2009 remains problematic. Law enforcement agencies, including the police, BNN, and prosecutors, have yet to fully implement the law regarding narcotics abuse sanctions. This has led to inconsistencies in applying the Double Track System, sometimes violating legal provisions and judicial processes.

This research aims to analyze and define the nature of the Double Track System for narcotics abuse, as well as to identify and refine the concept of its

⁴ B Sulistyawati, S., Setiawan, I., & Hermanto, "Mplementasi Model Double Track System: Sanksi Pidana Dan Tindakan Sebagai Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika Di Lembaga Pemasarakatan Kelas II A Kabupaten Langkat," *Mercatoria* 13, no. 1 (2020).

criminal sanctions. The goal is to provide systematic solutions to the challenges in enforcing narcotics laws and to create a deterrent effect for offenders.⁵

RESEARCH METHODOLOGY

This research employed a normative legal approach, where legal research focuses on the study of positive law and statutory norms. The problem approaches used in this study included the Philosophical Approach, Statute Approach, Conceptual Approach, and Case Approach.

The legal materials for this research were obtained from three sources: Primary legal materials, which consist of statutory regulations relevant to the research object; Secondary legal materials, which describe primary law through research findings, expert books, articles, scientific works, and legal expert opinions; and Tertiary legal materials, which serve as supporting references for the primary and secondary sources.

The collection and processing of legal materials began with a literature search and an inventory of all primary, secondary, and tertiary legal materials. This process involved identifying and classifying relevant statutory materials and systematically organizing them for easier reading and study. The collected legal materials were then grouped and selected based on their relevance to the research questions. Information was gathered through formal regulations, legal principles, research documents closely related to legislation, and existing theoretical texts.

To analyze the research problems, different layers of legal science were applied to examine legal issues and legal logic. The study incorporated three layers of legal knowledge: The legal dogmatic layer, analyzed using normative methods and juridical technical explanations; The legal theory layer, studied through normative methods; and The legal philosophy layer, explored through a speculative and reflective approach without a specific method.

RESULT AND DISCUSSION

Narcotics exist in the form of drugs and substances that are beneficial for medicine, healthcare, and scientific development. However, when misused, narcotics can lead to addiction, resulting in physical, mental, social, and safety issues, ultimately creating barriers within society. Indirectly, this misuse disrupts both national and international security. The abuse of narcotics poses a significant threat that can hinder Indonesia's development.

The primary consequence of a prison sentence is the restriction or exclusion of an individual's freedom of movement. Inmates are placed in penitentiaries where they cannot enter or leave freely and must comply with all applicable rules. The criminalization of narcotics abuse serves as a strategy to reduce and control

⁵ Soedarto, *Kapita Selektta Hukum Pidana* (Alumni, 1986).

narcotics-related cases in Indonesia. While punishment and confinement may appear similar, they are fundamentally different. The modern penitentiary system, a concept that has developed over the past 300 years, differs significantly from older forms of punishment.

The imprisonment of narcotics abusers aims to rehabilitate users and reform the criminal justice system toward a more rational approach. This stands in contrast to past ideologies that sought to remove addicts from society altogether. Although current criminalization efforts emphasize rehabilitation, the essence of punishment as a sanction for law violations remains. According to A.A.L. Minkenhof Sudarto, transitioning from a prison system to a work and supervision system outside prison should not be perceived as an easy way out for inmates, as it still imposes discomfort.

The modern penal system was developed by John Howard in the late 18th century. At that time, prison conditions prompted the design of a system in which inmates were quarantined and engaged in regular work. The debate over the ideal punishment system continues, with no universally accepted solution. In the 19th century, discussions on punishment philosophy evolved, leading to two opposing perspectives on the matter.

The analysis highlights that decisions regarding narcotics abusers represent a significant milestone in Indonesia's history to curb narcotics-related cases. From a medical standpoint, narcotics abusers are victims in need of treatment. However, a major obstacle is the requirement for victims to report themselves to the National Narcotics Agency (BNN). In reality, imprisonment often exacerbates their condition rather than aiding recovery. Addressing narcotics addiction requires appropriate measures to reduce the high rate of abuse in Indonesia. Despite these efforts, narcotics abuse and trafficking in Indonesia continue to rise.

To tackle this issue, the Double Track System has been proposed, which involves implementing both action sanctions and criminal sanctions against narcotics abusers. Law No. 35/2009 concerning narcotics provides a flexible framework for enforcing these sanctions. Moreover, in several countries, a new paradigm has emerged, viewing narcotics abusers not as criminals but as individuals suffering from chronic diseases requiring treatment and rehabilitation. This shift in perspective supports the application of alternative sanctions, focusing on recovery rather than mere legal punishment.

The fundamental concept of the Double Track System is based on the application of both criminal and action sanctions within the legal framework. The ideology behind this approach emphasizes the balance between punitive measures and rehabilitative actions. The evolution of criminal sanctions from classical to modern and neo-classical perspectives informs this approach. Classical criminal theory, originating in the 18th century, is retributive and repressive, focusing on punishing criminal acts rather than addressing the perpetrators.

In contrast, the modern school of thought, which emerged in the 19th century, applies scientific methods to study criminal behavior and directly influence offenders. This perspective recognizes the impact of personality and environment on human behavior, shifting the focus from punishment to rehabilitation. The idea of "Criminal Individualization" in modern law emphasizes the importance of understanding the offender's background and behavior. As a result, modern legal systems incorporate both criminal and action sanctions as part of the Double Track System.

The Double Track System does not exclusively rely on either criminal sanctions or action sanctions. Instead, it places both on equal footing. The emphasis is on balancing criminal sanctions, which focus on punitive measures, with action sanctions, which address the rehabilitation and correction of offenders. This approach ensures that the criminal justice system considers both the level of suffering imposed through punishment and the broader factors influencing criminal behavior. The distinction between action sanctions and criminal sanctions is further elaborated in Table 1.

Table 1. The Differences in Criminal Sanctions and Action Sanctions

Criminal Sanctions	Action Sanctions
Based on the basic principle of "why the sentence was imposed"	Based on the basic idea of "what is the punishment for"
Reactive in action	Anticipatory for the perpetrator of the act
The emphasis is on the element of retaliation, which is intentionally harming the perpetrator of a crime	The further emphasis is placed on the basic idea of protecting communities and nurturing and caring for perpetrators
The emphasis is placed on the punishments implemented for the crimes committed	Have goals with a social nature

Source: Processed Data by Researchers

The characteristic of the Dual Track System in sanctioning narcotics abusers requires that both punitive measures and rehabilitation efforts be integrated within the criminal sanction system. This approach ensures a balance between punishment and guidance, aiming to create a deterrent effect while facilitating the recovery process for narcotics abusers.

The fundamental idea behind implementing the Dual Track System for narcotics-related sanctions is to provide equal treatment in terms of both criminal sanctions and behavioral correction. This system not only serves as a deterrent but also enables the rehabilitation of narcotics abusers, reducing the likelihood of repeated offenses and fostering recovery from addiction.

The regulation of narcotics prevention and institutional oversight in Indonesia dates back to 1971 with Presidential Instruction R1 No. 6 of 1971, which tasked the Head of the National Intelligence Coordinating Agency

(BAKIN) with addressing national security issues, including narcotics abuse, smuggling, counterfeit currency, juvenile delinquency, and foreign monitoring.

Since 2003, the National Narcotics Agency (BNN) has been funded solely through the National Revenue and Expenditure Budget (APBN). With this budget, BNN works alongside Provincial (BNNP) and City/Regency (BNNK) National Narcotics Agencies to enhance its operational performance. However, due to the lack of a firm command structure and its primarily coordinating role, BNN has faced challenges in addressing the growing narcotics problem. To strengthen its authority, Presidential Regulation No. 83 of 2007 was issued, granting BNN, BNNP, and BNNK operational powers at national, provincial, and local levels. Despite this, each institution remains independently accountable to the President, Governor, and Mayor/Regent without a direct hierarchical structure connecting them to BNN.

BNNP functions as a vertical extension of BNN, responsible for implementing national policies related to the prevention, eradication, abuse, and illicit trafficking of narcotics (P4GN) and their precursors. It collaborates with the National Police to curb narcotics-related crimes. Additionally, BNN conducts national epidemiological surveys to assess the scale of narcotics abuse, recognizing the complex physical, psychological, and social implications of substance addiction.

According to Law No. 35/2009 on Narcotics, two ministries oversee rehabilitation as a sanction for narcotics abusers: the Ministry of Health manages medical rehabilitation, while the Ministry of Social Affairs handles social rehabilitation. These roles are influenced more by political considerations than clinical guidelines, as both ministries follow international health standards for rehabilitation.

BNN's mandate, as outlined in Article 70(d), includes strengthening rehabilitation institutions, while Article 70(a) assigns BNN the task of organizing and executing P4GN initiatives. This underscores the necessity of establishing an effective rehabilitation system for narcotics abusers.

The optimal implementation of rehabilitation sanctions involves widespread service accessibility for voluntary narcotics abusers without the fear of criminal prosecution. It includes medical and social rehabilitation programs for addicts and abusers, ensuring that rehabilitation is considered in legal proceedings. Furthermore, structured guidelines help prevent relapses by educating and guiding narcotics abusers away from continued substance use.

A key issue in Law No. 35/2009 is its lack of clarity in distinguishing between narcotics abusers and their victims. This ambiguity affects legal interpretations and enforcement, leading to inconsistencies in handling cases. Article 4 states that the legislation aims to regulate narcotics use and treatment, while Article 54 mandates medical and social rehabilitation for addicts and victims of abuse. These provisions imply that addicts should be rehabilitated

rather than imprisoned. Additionally, Article 127 categorizes abusers as victims, requiring judges to consider rehabilitation in sentencing decisions, as reinforced by Articles 54, 55, and 103.

Law No. 35/2009 classifies narcotics users into four categories: addicts, abusers, victims of abuse, and patients. Addicts are those who have developed physical and psychological dependence, while abusers use narcotics unlawfully. Victims of abuse are individuals affected by external factors, and patients legally possess and use narcotics for medical purposes as prescribed by doctors, as stated in Article 53.

In conjunction with Law No. 36/2009 on Health, additional administrative regulations support narcotics prevention efforts. These include Presidential Instruction No. 12/2011 on P4GN and Government Regulation No. 25/2011 on mandatory reporting for narcotics addicts. The strong legal framework reflects the government's commitment to combating narcotics abuse.

Local governments also play a crucial role in addressing narcotics issues, as outlined in Minister of Home Affairs Regulation No. 21/2013. This regulation mandates governors, regents, and mayors to provide facilities, funding, and community engagement initiatives to prevent narcotics abuse. Prevention strategies include public awareness campaigns, seminars, cultural events, and research programs aimed at strengthening anti-drug efforts.

The Double Track System, which combines criminal sanctions and rehabilitation, is a key solution to reducing narcotics abuse. It ensures that law enforcement provides both punitive and rehabilitative measures, preventing recidivism while fostering recovery. Article 103 of Law No. 35/2009 allows judges to consider rehabilitation as part of sentencing, aligning with the law's goal of ensuring medical and social rehabilitation for narcotics addicts.

Despite legal provisions, the judicial system primarily sentences narcotics offenders to prison. This has led to an overcrowded correctional system, with 23,779 narcotics addicts currently incarcerated. Incarceration without rehabilitation fails to address addiction as a medical condition and does not prevent relapse. Addressing narcotics abuse requires a paradigm shift from punitive measures to a balanced approach that includes rehabilitation and treatment.

The government must recognize that narcotics laws should prioritize both punishment and rehabilitation. A legal framework that considers the physical and psychological needs of addicts can lead to fairer and more effective resolutions. The Double Track System aims to balance justice and humanity, ensuring that sanctions are applied equitably.

A successful implementation of the Double Track System relies on achieving parity between criminal and rehabilitation sanctions. This system provides a fair and just resolution for narcotics-related cases by ensuring that offenders receive appropriate treatment while maintaining legal accountability.

The theory behind this approach focuses on balancing criminal sanctions with rehabilitative measures, emphasizing justice for both offenders and society.

The essence of the Double Track System is to recognize that narcotics abusers are often both offenders and victims. Their addiction requires not only legal consequences but also medical and psychological intervention. By ensuring that rehabilitation is an integral part of the criminal justice process, the system can effectively address narcotics abuse while upholding principles of fairness and justice.

CONCLUSION

The importance of the Double Track System in criminal sanctions for narcotics abuse lies in balancing the imposition of both criminal and rehabilitative measures, even though narcotics addicts, abusers, and victims of abuse violate criminal law. This system integrates rehabilitation for recovery while making offenders aware of the dangers their actions pose to themselves and their future.

Criminal law reform, in general, aims to align legal policies with Indonesia's socio-political, socio-philosophical, and socio-cultural values. Addressing narcotics abuse through the Double Track System emphasizes the legal system's role in preventing crime, particularly drug-related offenses. The primary objective is to implement criminal sanctions and rehabilitative measures in a balanced manner, ensuring an effective response to narcotics abuse.

Factors contributing to narcotics abuse, such as physical and social conditions, may directly or indirectly lead to recurrence. Therefore, it is essential to establish proportional criminal and rehabilitative sanctions based on the offender's circumstances.

Concrete legislative efforts are necessary to create a systematic, proportional, and consistent legal framework, preventing confusion or overlap between different types of sanctions. Additional criminal sanctions should be integrated with rehabilitative measures, as they are more adaptable and aligned with the core principles of action-based sanctions. In accordance with the Double Track System, every criminal law should provide clear guidelines on both punitive and rehabilitative measures, enabling judges to determine the most appropriate and proportional sanctions, particularly for narcotics-related offenses.

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