



The Urgency of Establishing a Special Narcotics Court in Indonesia: A Comparative Study with the United States, Australia and Scotland



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Abstract

The high number of narcotics crimes every year shows that narcotics crimes, especially narcotics abuse, are a serious threat to the lives of the Indonesian people. The practice of law enforcement against narcotics abusers in Indonesia that prioritizes the imposition of criminal sanctions in prison has proven that the penal approach has failed. The urgency of establishing a Special Narcotics Court to combat narcotics crimes is the primary focus of this article, which draws lessons from the United States, Australia, and Scotland, all of which already have special narcotics courts with various systems. This paper is the result of doctrinal law research using a statutory approach and a comparative approach. Research has found that in the United States and Australia, there are Drug Courts, which are special courts. These courts were established in each state. Meanwhile, Scotland incorporates narcotics handling into the public justice system by using a rehabilitation approach to handling narcotics. The establishment of narcotics courts in Indonesia is critical to be carried out, considering that narcotics abuse can weaken Indonesia's national resilience, and the increasing number of narcotics cases results in overcrowding in correctional institutions. Narcotics crimes also have special characteristics, both in terms of the nature of the crime and the characteristics of the subject of the law, thus further emphasizing the importance of the narcotics court.

Keywords: Enforcing Narcotics Laws; Human Rights; Narcotics Court; Overcrowding; Special Court.

I. Introduction

The level of education and health also determines the degree of humanity, so that it is part of the Human Rights (hereinafter referred to as human rights), along with all other rights to get education and health.¹ The importance of health as a human right has been recognized both

¹ Indra Perwira, "Kesehatan Sebagai Hak Asasi Manusia", <https://referensi.elsam.or.id/wp-content/uploads/2014/12/Kesehatan-Sebagai-Hak-Asasi-Manusia.pdf>, Accessed 27 December 2024.

internationally² and nationally. In the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), the Fourth Paragraph states that the purpose of the establishment of the Indonesian state is to "... protect the entire Indonesian nation and spill Indonesian blood and to advance the general welfare...".

Health is one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation;³ therefore, all activities and efforts aimed at improving public health are based on the principles of welfare, equity, non-discrimination, and sustainability. This approach is crucial for developing Indonesian human resources, enhancing the nation's resilience and competitiveness, and driving national development.

The legal ideal related to the guarantee of the right to health contained in the Fourth Paragraph of the Preamble to the 1945 Constitution is embodied in Article 28H paragraph (1) of the 1945 Constitution which states that: "*Everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living environment and to have the right to receive health services*".⁴ The inclusion of this provision in the 1945 Constitution illustrates the State's political commitment and extraordinary paradigm shift. Health is no longer viewed solely as a personal matter related to God's fate or gifts, unrelated to the state's responsibility, but rather as a legal right.⁵

The crime of narcotics abuse is one of the criminal acts related to the fulfilment of the right to health. In the world of health, humans need narcotics that are produced for medical purposes,⁶ the use of which is limited to specific patients and should only be done by medical personnel. If its use is not in accordance with treatment standards, it can have very detrimental consequences for individuals and the community.⁷ Narcotics abuse is the use of one or several types of narcotics regularly outside of medical indications, resulting in impairments of physical, psychological, and social health.⁸ The harmful effect is that it creates addiction and dependence for its users. Narcotics abuse can also cause state losses in the form of nominal money, decreased human resources, and various diseases such as HIV/AIDS, TUBERCULOSIS, hepatitis, which will destroy the nation's next generation.⁹ In addition, abusers who have experienced dependence will also increase their purchasing power and use narcotics that can stimulate users to use all means to get narcotics. This is one of the causes of the high crime rate. In this situation, narcotics become a problem that can threaten national security.¹⁰

The high number of narcotics crimes every year shows that narcotics crimes, especially narcotics abuse, are a serious threat to the lives of the Indonesian people. The government and

² Article 25 paragraph (1) Universal Declaration of Human Rights (UDHR)

³ Explanation of the Health Law.

⁴ In the Second Amendment to the 1945 Constitution established on August 18, 2000, health was affirmed as part of human rights.

⁵ Indra Perwira, *Op cit.*

⁶ Ibrahim Fikma Edrisy, Implementation of Rehabilitation for Children of Narcotics Abuse (Study in the Lampung Regional Police Area), *Fiat Justicia*, Vol. 10, 2, 2016, p.318, (pp. 317-340). DOI: <https://doi.org/10.25041/fiatjustisia.v10no2.747>

⁷ RR. Putri A. Priamsari, Kebijakan Integral Penanggulangan Tindak Pidana Penyalahgunaan Narkotika, *Jurnal Hukum Progresif*, vol.10, 2, 2022, p.99. (pp. 99-111). DOI: <https://doi.org/10.14710/jhp.10.2.99-111>

⁸ Siti Riza Azmiyati, et.al, "Gambaran Penggunaan NAPZA pada Anak Jalanan di Kota Semarang", *Jurnal Kesehatan Masyarakat (KEMAS)*, Vol. 9 No. 2, (2014): 137-143. DOI: <https://doi.org/10.15294/kemas.v9i2.2841>

⁹ Sulung Faturachman, "Sejarah dan Perkembangan Masuknya Narkotika di Indonesia", *Historis: Jurnal Kajian, Penelitian dan Pengembangan Pendidikan Sejarah* Vol. 5, No. 1, (Juni 2020): 13-14. DOI: <https://doi.org/10.31764/historis.v5i1.2051>

¹⁰ Fredy B.L, Tobing, "Aktifitas Drugs Trafficking sebagai Isu Keamanan yang Mengancam Stabilitas Negara", *Jurnal Global Politik Internasional*, Vol.5 No.1, (November 2002). DOI: <https://doi.org/10.7454/global.v5i1.320>

various criminal justice subsystem institutions have made efforts to make multiple policies to overcome narcotics crimes, including Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law) and its implementing regulations,¹¹ and also through Law Number 1 of 2023 concerning The Criminal Code (National Criminal Code).

In its development, the Police, the Prosecutor's Office and the Supreme Court as a subsystem of criminal justice issued regulations regarding the settlement of criminal cases of narcotics abuse based on Restorative Justice, namely the Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts based on Restorative Justice, the Attorney General's Guideline Number 18 of 2021 concerning the Settlement of Handling Cases of Narcotics Abuse Through Rehabilitation with the Restorative Justice Approach as the Implementation of the Principle of Dominus Litis for Prosecutors, and the Supreme Court of Indonesia Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This development is in accordance with the UNODC's call for rehabilitation efforts as an alternative to imprisonment for narcotics addicts, restorative justice has been initiated as a judicial concept for narcotics crimes, especially for narcotics abusers.¹²

In the Narcotics Law, the criminal approach is still maintained as the main approach in responding to the circulation and abuse of narcotics. The spirit to fight narcotics is manifested through the death penalty, which is considered to reduce the circulation rate despite the absence of supporting evidence in the form of a decrease in the number of narcotics trafficking. In contrast, many narcotics abusers who have the right to get health services to treat their illnesses due to narcotics abuse are still sentenced to prison.¹³ This is not in line with the outcome of the UN session on narcotics, which provides an alternative punishment for narcotics users in the form of rehabilitation, and calls on countries participating in the session to prepare human resources and facilities to rehabilitate narcotics users.¹⁴

In various court decisions, it appears that judges still tend to impose prison sentences on narcotics abusers rather than impose rehabilitation measures. This can be seen from the data on the Growth of the Number of Urban and User Inmates in 2019-2023 below:¹⁵

¹¹ The Circular Letter of the Supreme Court Number 4 of 2010 concerning the Placement of Drug Abusers, Victims of Abuse, and Narcotics Addicts into Rehabilitation Institutions (hereinafter referred to as SEMA 4/2010) and the Joint Regulation of the Chairman Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of Police of the Republic of Indonesia and Head of the National Narcotics Agency Number: 01/PB/MA/III/2014, Number: 03 of 2014, Number: 11 of 2014, Number: 03 of 2014. Number: PER005/A/JA/03/2014, Number: 1 of 2014, Number: PERBER/01/III/2014/ concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions (hereinafter referred to as the Rehabilitation Joint Regulation).

¹² Eva Fauziah, Slamet Fatrika, dan Utari Dwi Pratiwi, Keselarasan Lembaga Penegak Hukum dalam Implementasi Restorative Justice bagi Penyalahguna Narkotika di Inonesia, *Jurnal kajian Strategik Ketahanan Nasional*, Vol. 5, 1, 2022, p. 66. (pp. 64-78). DOI: <https://doi.org/10.7454/jkskn.v5i1.10061>

¹³ Death penalty arrangements have existed since the beginning of the establishment of the Narcotics Law. Currently, the Narcotics Law regulates the threat of the death penalty in Articles 113 paragraph (2), 114 paragraph (2), 116 paragraph (2), 118 paragraph (2), 119 paragraph (2), and 133 paragraph (1). See Dea Arinta, Astried Permata, Naila Rizqi Zakiyah, *Yang Terabaikan: Potret Situasi Perempuan yang Dihadapi Akibat Tindak Pidana Narkotika* (Lembaga Bantuan Hukum Masyarakat, Jakarta, 2019), 13.

¹⁴ Ahmat Fadholi, Dian Surtikanthi, dan Sri Annisya, Pentingnya Dekriminalisasi Penyalah Guna Narkotika melalui Asesmen Terpadu dalam RUU Narkotika, *Jurnal Kajian Strategik Ketahanan Nasional*, Vol.5, 1, 2022. p. 80. (pp. 79-91), DOI: <https://doi.org/10.7454/jkskn.v5i1.10062>

¹⁵ *Ibid.* 36.

Table 1. Data on the Growth of the Number of Urban and User Inmates in 2019-2023¹⁶

Year	Urban Drugs/Dealers	Drug Users	Total Drug Offenses	Total Inmates
2019	81.732	44.830	126.562	259.062
2020	67.152	36.004	103.156	200.607
2021	70.553	41.640	112.193	226.798
2022	83.660	46.882	130.542	274.435
2023	99.822	43.782	143.604	270.700

From the table, it can be seen that there has been an increase in the number of narcotics inmates, which was originally 130,542 in 2022, and increased to 143,604 in 2023. Furthermore, for narcotics users, although there has been a decrease in the number from 46,884 in 2022 to 43,782 in 2023, the figure of 43,782 still shows that the number of narcotics users sentenced to prison is still high. Prison does not necessarily cause a person to stop using narcotics, research shows that about one-third (20-45%) of inmates worldwide use narcotics during incarceration.¹⁷ The use of drugs can be carried out by inmates who abuse narcotics or other criminal inmates who start using narcotics while in prison.¹⁸

Increase in the number in the table above is not in line with the legal politics in the field of narcotics which is contained in the philosophical foundation of the Narcotics Law, which is to realize a prosperous, fair and prosperous Indonesian society that is equally material and spiritual based on Pancasila and the 1945 Constitution, so that the quality of Indonesian human resources as one of the national development capital needs to be maintained and improved continuously, including his health degree.¹⁹ In addition, it is also irrelevant to the purpose of the Narcotics Law in Article 4 of the Narcotics Law, among others, to prevent, protect, and save the Indonesian nation from narcotics abuse, as well as to ensure the regulation of medical and social rehabilitation efforts for drug abusers and people with an addiction.

The number of judges' decisions that prioritize the imposition of prison penalties and the imposition of prison penalties along with rehabilitation sanctions. The evidence for narcotics abusers proves that the penal approach has failed. Muhammad Arfhani's research found that judges, when making decisions regarding narcotics crimes, base their choices on juridical considerations, including the public prosecutor's indictment, witness statements, defendants' statements, evidence, facts at trial, judges' own beliefs, and articles in the Narcotics Law. At the same time, non-juridical factors are considered in relation to the consequences of the defendant's actions, including aggravating and mitigating factors.²⁰ In addition, research by Kinner and Rich shows that narcotics abusers who are in prison have the potential not to receive treatment/rehabilitation. Judges play a crucial role in determining the fate of law offenders, as their decision to rehabilitate significantly impacts the offender's future life.²¹

¹⁶ *Ibid.* 37.

¹⁷ Louis Favril, "Drug Use before and during imprisonment: Drivers of continuation", *International journal of drug policy*, Vol. 115 (2023): 1, DOI://doi.org/10.1016/j.drugpo.2023.104027

¹⁸ *Ibid.* 2.

¹⁹ Section Weighing letter a of the Narcotics Law.

²⁰ Andri Winjaya Laksana, et.al., "The Disparities in Punishment for Narcotic Addiction: Does it Reflect the Value of Justice?", *Jurnal Media Hukum*, Vol. 32, No. 1, (2025): 137. DOI: <https://doi.org/10.18196/jmh.v32i1.25678>

²¹ Andiani, A, I., & Puteri, N, M, M. "The effect of integrated complexity in judges' decision making on sentencing for drug abusers: between rehabilitation and punishment", *Lexovate: Jurnal Perkembangan Sistem Peradilan*, Vol. 1, No. 2, (2024): 63-72. Available at <https://journal-iasssf.com/index.php/Lexovate/article/view/1306>

The failure of the penal approach in countering narcotics can have several adverse impacts, namely:²²

1. Overcrowding conditions in prisons.
2. The emergence of narcotics trafficking in prisons.
3. The potential for "*pungli*" and corruption practices within law enforcement.
4. Negative impact on narcotics abusers themselves.

This paper is different from these studies, where the research conducted by Muhammad Arfhani focuses on the considerations used by judges in making criminal decisions against narcotics abusers. Likewise, Kinner and Rich's research focuses on the role of judges in determining the provision of rehabilitation to abusers that can be provided through rehabilitation programs in religious institutions. Meanwhile, this paper is based on research that looks at the existence of a special narcotics court system that has been practiced in several countries, and it has been proven that the system used has been able to reduce various problems related to narcotics abuse.

Furthermore, according to research results from the Institute for Criminal Justice Reform (ICJR) as of March 30, 2020, Indonesia's prison population stood at 270,721, exceeding its total capacity of 131,931. Eddy O.S. Hiariej said that as many as 160 thousand inmates came from narcotics cases, of which 80% were users. Of all users, 85% were users of narcotics who carried 0.7 grams.²³ According to other data, Indonesia has 531²⁴ operational prisons and correctional facilities with a capacity of 140,424 people. However, the current population of these facilities is 272,173 people, resulting in an overcrowding rate of 93.82%.²⁵ Overcrowding in prisons in Indonesia has an impact on the fulfilment of the budget for the cost of inmates and detention, and disturbances of security and order, which in turn leads to riots and destruction of state facilities.

The negative impact on narcotics abusers as a result of the imposition of prison sentences against them is the influence of stigma that arises and the emergence of estrangement in relationships with family, because families feel embarrassed by the imprisonment of the narcotics abuser, so that they do not want to visit the prison or even do not want to admit the abuser as a family member. The process of reintegration of drug offenders into society is often affected by stigmatization that can reduce their chances of establishing personal relationships and of finding work and housing.²⁶ This can lead to abusers re-committing other despicable acts and have an impact on the non-achievement of the goal of correctional care, namely the resocialization and reintegration of inmates, not being realized.²⁷ Suppose it is related to the description of various problems that occur in efforts to overcome the crime of narcotics abuse above. In that case, it is essential to conduct a study on the urgency of establishing a special narcotics court to overcome narcotics crimes.

²² Erika Magdalena Chandra, *Penanggulangan Tindak Pidana Penyalahgunaan Narkotika sebagai Kejahatan Tanpa korban: Suatu Upaya Pembaruan Hukum Pidana*, Dissertation, (Fakultas Hukum Universitas Padjajaran: Bandung, 2021).

²³ Feri Lubis, *Overcrowding Lapas/Rutan Sumber Pelanggaran HAM*, Overcrowding Rutan/Lapas, Sumber Pelanggaran HAM - Komnas HAM, accessed on 20 Juni 2022.

²⁴ The number of 531 consists of 336 prisons, 91 prisons, and 33 LPKAs as of December 2023.

²⁵ Direktorat Jenderal Pemasyarakatan Kementerian Hukum dan HAM RI, *Laporan Kinerja Pemasyarakatan Tahun 2023*, 2023: 36, <https://www.ditjenpas.go.id/laporan-akuntabilitas-kinerja-direktorat-jenderal-pemasyarakatan-2023>, accessed on 28 Oktober 2024.

²⁶ Els Plettinckx, et.al., "Alternatives to prison for drug offenders in belgium during the past decade", *International Journal of law adn Psychiatry*, Vol. 61 (2018):13, DOI. <https://doi.org/10.1016/j.ijlp.2018.09.003>

²⁷ Erika Magdalena Chandra, *Loc. Cit.*

II. Research Problems

This article will specifically discuss two main issues the first related to the construction of narcotics courts in the United States, Australia, and Scotland. The author will examine the workings of the narcotics court's arrangements and mechanisms, as well as the roles of the parties involved. Second, what is the urgency of establishing a special narcotics court in an effort to overcome narcotics crimes in Indonesia.

III. Research Methods

This paper is the result of doctrinal law research employing both a statutory and comparative approach. A legislative approach is needed to review all legal regulations related to narcotics in Indonesia. Furthermore, comparisons with other countries are required to see the extent to which narcotics courts in those countries can tackle narcotics abuse. The author draws comparisons from three countries, namely the United States, which already has special narcotics courts, Australia, which emphasizes diversion in the resolution of narcotics abuse, and Scotland through the Drug Treatment and Testing Orders (DTTOs) program, which provides rehabilitation as an alternative to prison sentences. The three different systems applied to counter narcotics crimes in the three countries are the primary basis for the author's selection of comparative countries. This aims to analyze and determine which system is most suitable for use in Indonesia. The research was conducted by analyzing primary legal materials, including various laws and regulations on narcotics in Indonesia and three comparative countries, which were then associated with relevant theories as the author's analytical framework.

IV. Result and Discussion

1. Narcotics Courts In The United States, Australia, And Scotland

a. United States

Narcotics crimes have become a problem not only in Indonesia, but in all nations in the world, and all countries make narcotics a criminal offense in special criminal laws that have material and formal juridical implications.²⁸ Likewise, the United States has provisions for special criminal law regarding drugs, encompassing both substantive crimes and procedural law, through the establishment of a specialized narcotics court.

The first narcotics treatment court (DTC) was formed in 1989 by Miami-Dade County.²⁹ In 2023, there will be more than 2,100 DTCs across the United States, and 1,800 maintenance courts will be built on DTC models.³⁰ A variety of alternative models have been created for traditional narcotics courts, including community-based approaches, swift sanction probation programs, and a combination of the two.³¹ DTC seeks individuals with narcotics use disorders to be diverted from the traditional criminal justice system to receive treatment, rehabilitation, and incentives. For those who successfully participate in the program, there is the possibility of exemption from prosecution or a reduction in their prison time.

²⁸ Roni Gunawan Raja Gukguk dan Nyoman Serikat Putra Jaya, Tindak Pidana Narkotika Sebagai *Transasional Organized Crime*, *Jurnal Pembangunan Hukum Indonesia*, Vol. 1, 3, 2019, p. 339 (pp.337-351). DOI: <https://doi.org/10.14710/jphi.v1i3.337-351>

²⁹ Patrick F.Hibbard and Jason E. Chapman, "Drug Treatment Court and Community-level crime", *Journal of criminal justice*, Vol. 94, (2024):1, DOI: <https://doi.org/10.1016/j.jcrimjus.2024.102267>.

³⁰ *Ibid.*

³¹ Molly K. Webster, "Alternative courts and drug treatment: finding a rehabilitative solution for addicts in a retributive system," *Fordham law review*, Vol. 84, No. 2, (2015): 857, Available at: <https://ir.lawnet.fordham.edu/flr/vol84/iss2/16>

Narcotics courts are generally based on a comprehensive model that involves the assessment of the perpetrator, judicial interaction, monitoring (e.g., narcotics testing), surveillance, sanctions, gradual incentives, and maintenance services. Eligibility to attend a narcotics court depends on the requirements and discretion of local and tribal jurisdictions, as well as the criteria of federal law if the court is funded by a DOJ grant. However, individuals who are eligible to participate are free to refuse entry.³² The individual in question is generally a perpetrator who abuses narcotics and/or alcohol for the first time, without any violent crime accompanying his actions.³³

Adult narcotics court is a specialized court program that aims to serve offenders who have substance use disorders. The court uses a program designed to reduce the recurrence of narcotics use and criminal recidivism for individuals who have been charged or convicted of a crime. Specifically, adult narcotics courts provide participants with intensive court supervision, mandatory narcotics testing, substance use disorder treatment, and other social services as an alternative to traditional detention or court judgments. According to estimates from the National Drug Court Resource Centre, as of December 2019, approximately 1,696 local and tribal adult narcotics courts are operating in the United States.³⁴

Drug courts vary in terms of structure, scope, and the target population they serve. Still, they all have three main objectives in common:³⁵ 1) reducing recidivism rates, 2) decreasing drug use among participants, and 3) Participant Rehabilitation. To achieve these goals, adherence to the core organizational structure and attributes of the drug court model is required.

The National Association of Drug Court Professionals introduced the 10 Key Components of Narcotics Court. These guidelines have been endorsed by the Substance Abuse and Mental Health Services Administration (SAMHSA). They are widely used in designing narcotics courts to ensure the same standards are applied across all narcotics courts. The 10 (ten) main components include:³⁶ 1) Substance abuse treatment is integrated into the judicial system's case processing, 2) Use of a non-adversarial approach between the claimant and the defender, 3) Early identification and placement of participants, 4) Participants' access to substance abuse treatment network, 5) Abstinence monitoring through routine testing, 6) Coordinated strategies govern the court's response to participant compliance, 7) Continuous judicial interaction, 8) Monitoring/evaluation is used to measure effectiveness, 9) ongoing interdisciplinary staff education, and 10) partnerships are established between the courts and the Society organizations.

³² United States Government Accountability Office, *Adult Drug Court Programs: Factors Related to Eligibility and Acceptance of Offers to Participate in DOJ Funded Adult Drug Courts*, February 2023, pg. 2, <https://www.gao.gov/assets/gao-23-105272.pdf>, accessed on 23 April 2025

³³ Lisa N. Sacco, *Federal Support for Drug Courts: In Brief*, *Congressional Research Service*, 2018. p.1. Retrieved from <https://www.congress.gov/crs-product/R44467>.

³⁴ United States Government Accountability Office, *Adult Drug Court Programs...Op. cit.*

³⁵ National Criminal Justice Reference Service, *In the Spotlight: Drug Courts*, U.S. Department of Justice, 2009, http://www.ncjrs.gov/spotlight/drug_courts/summary.html dikutip dari Office of National Drug Control Policy, *Drug Courts: A Smart Approach to Criminal Justice*, 2011, p. 3.

³⁶ National Criminal Justice Reference Service. *In the Spotlight: Drug Courts*. U.S. Department of Justice. [2009]. Available: http://www.ncjrs.gov/spotlight/drug_courts/summary.html, Office of Justice Programs. *Defining Drug Courts: The Key Components*. U.S. Department of Justice. [1997]. Available: <http://www.ndci.org/sites/default/files/ndci/KeyComponents.pdf> dan Shannon Carey, Michael Finigan, and Kimberly Pukstas. *Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs*. NPC Research. [2008]. Available: <http://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>.

Narcotics courts for adults can accept individuals at different stages in the judicial process. Narcotics courts for adults have implemented a pre-adjudication approach, also called delayed prosecution, or post-adjudication case processing, or have blended the two in their organizational structure.

In the pending/pre-adjudication model, individuals do not file a defence in court. Instead, the judge postpones the prosecution while the individual becomes an active participant in the adult narcotics court. Once completed, the charges can be dismissed or reduced. In adult narcotics courts that use delayed prosecution, individuals waive the right to be tried and participate in a treatment court program immediately after being charged; Those who then fail to complete the treatment court program will be charged, while those who complete the program will not be prosecuted further, or their charges will be dropped. This approach offers individuals the opportunity to get treatment and avoid possible punishment.

In the post-adjudication case processing model, individuals plead guilty or are convicted before entering adult narcotics court, and sentences are suspended for the duration of the adult narcotics court program. Individuals can plead guilty or be tried and sentenced, but the court delays sentencing until they complete or withdraw from the treatment court program. This approach provides a rehabilitation incentive by incorporating treatment progress into sentencing.

Adult narcotics courts have a multidisciplinary team that includes judges, prosecutors, defense attorneys, representatives from community correctional institutions, social workers, and professionals from treatment services. Once a person enters adult narcotics court, the program includes:³⁷

- a. Recovery support services based on treatment plans developed in response to an individual's needs assessment;
- b. Regular interaction with judges, narcotics tests, and supervision; and
- c. Life skills assistance includes employment and housing access.

Support from stakeholders, including those representing law enforcement, families, and the community, is encouraged through participation in hearings, program development, and community events. Adult narcotics court uses a multiphase treatment approach including stabilization, intensive treatment, and transitional phases.³⁸

Narcotics courts in the United States have been the subject of numerous studies that offer fascinating insights into the positive and negative aspects of this policy model.

The basic concept behind drug court involves intervention by the court in collaboration with the entire team, including defense attorneys, prosecutors, treatment providers, educational specialists, and law enforcement. In exchange for the promise of a reduced sentence, nonviolent addiction offenders are given the option of voluntarily attending court-supervised treatment. The rules and conditions of participation are clearly stated in the contracts entered into by the defendant, the defense attorney, the district attorney, and the court. The results were very positive, and drug courts have been operating across the country.³⁹

The mission of narcotics courts is to stop the abuse of alcohol and other narcotics and related criminal activities. Narcotics courts offer an attractive option for individuals whose involvement in criminal justice stems from the use of AOD: participation in treatment. In exchange for the successful completion of the treatment program, the court may dismiss the initial

³⁷ *Ibid.* 8.

³⁸ *Ibid.* 9.

³⁹ Drug Treatment Courts, https://ww2.nycourts.gov/courts/problem_solving/drugcourts/overview.shtml

indictment, reduce or set aside the sentence, offer a lighter sentence, or offer a combination of these.

Narcotics courts are changing the role of criminal justice practitioners and providers of AOD treatment services. Judges play a crucial role in the team's efforts, focusing on calmness and accountability as primary goals. Because the judge plays a role in keeping the participant engaged in the treatment, the service provider can effectively focus on developing a therapeutic relationship with the participant. In turn, the service provider keeps the court informed of each participant's progress, allowing rewards and sanctions to be awarded. However, research from Virtanen et.al. shows that judges are not always the leading figures of narcotics courts. This paper provides a comparative analysis of the United States and Sweden, highlighting the differences in the role of judges in narcotics courts. Notably, Sweden's implementation of narcotics courts does not involve judicial supervision, yet it achieves the same effective results as in America.⁴⁰ Moreover, the results of Hibbard and Chapman's research show that there is a link between the implementation of narcotics courts and a decrease in crime rates. This is possible because narcotics courts can achieve their goals of providing the services needed to participants to prevent future crimes, providing alternatives to detention by keeping individuals in their communities, and reducing the potential for social disorganization.⁴¹ Compared to traditional measures such as intensive probation, the narcotics court model in the United States can effectively reduce recidivism and narcotics use.⁴²

b. Australia

In Australia, diversion is known as one of the mechanisms to deal with drug users, abusers, and people with an addiction. In general, diversion of narcotics use in Australia consists of two main programs, namely diversion through the police (police diversion) and diversion through court institutions (court diversion). Diversion through the police (police diversion) is developed into three forms of programs, namely: (a) diversion programs that only target cannabis owners/users or (cannabis use/possession only target programs), (b) diversion programs that target users or owners of other types of drugs other than cannabis or (police diversion for other illicit drugs); and (c) programs that are open to all forms of drug and/or drug-related crimes by adults or (police diversion for drug/drug-related offenders).⁴³

In addition to police diversion, the diversion program for drug users is also equipped with several different levels of diversion through the judiciary.⁴⁴ Diversion through judicial institutions (court diversion) is carried out both through the general court (traditional court) and the narcotics court (drug court).⁴⁵ The drug diversion program is generally divided into two, namely: (a) court diversion for minor drug/drug-related offenders, which is theoretically called pre-arrest and pre-trial, and (b) court diversion for serious drug/drug-related offenders, which is theoretically categorized into and/or is a pre-sentence, post-sentence stage, pre-release.

In New South Wales (hereinafter referred to as NSW), drug courts carry out court diversion through three schemes, namely (a) Magistrate Early Referral Into Treatment (MERIT), (b) Adult

⁴⁰ Suvi Virtanen, et.al., "Effectiveness of substance use disorder treatment as an alternative to imprisonment", *BMC Psychiatry*, Vol. 24, (2024): 7, DOI. <https://doi.org/10.1186/s12888-024-05734-y>

⁴¹ Patrick F.Hibbard and Jason E. Chapman, "Drug Treatment Court and Community-level crime", *Journal of criminal justice*, Vol. 94, (2024): 9, DOI. <https://doi.org/10.1016/j.jcrimjus.2024.102267>.

⁴² Matthew W. Logan & Nathan W. Link, "Taking Stock of Drug Courts: Do They Work?", *Victim & Offenders*, Vol. 14, 3, 2019. p. 293. (pp.283-298). DOI. <https://doi.org/10.1080/15564886.2019.1595249>

⁴³ Simplexius Asa, *Op. Cit.* 322.

⁴⁴ *Ibid.* 323.

⁴⁵ *Ibid.*

Drug Court, and (c) Youth Drug Court. Australia has had a Narcotics Justice Act since 1998, specifically the Drug Court Act 1998 (No. 150).⁴⁶

Objectives of the Narcotics Justice Act by the Drug Court Act, especially part 1-preliminary, article 3: object:⁴⁷

"(1) *The object of this Act is: (a) to reduce the drug dependency of eligible persons and eligible convicted offenders, (b) to promote the reintegration of such drug-dependent persons into the community, and (c) to reduce the need for such drug-dependent persons to resort to criminal activity to support their drug dependencies. (2) This Act achieves its objective for eligible persons by establishing a scheme under which drug-dependent persons who are charged with criminal offences can be diverted into programs designed to eliminate, or at least reduce, their dependency on drugs. (2A) This Act achieves its objects in relation to eligible convicted offenders by establishing a scheme for compulsory drug treatment and rehabilitation for certain drug-dependent persons. (3) Reducing a person's dependency on drugs should reduce the person's need to resort to criminal activity to support that dependency. It should also increase the person's ability to function as a law-abiding citizen.*"

The third diversionary program scheme in NSW is the Magistrate Early Referral into Treatment (MERIT), which involves the initial referral by the Judge Commissioner for treatment. MERIT is a transfer of punishment through a pre-trial process by a magistrate to a drug court. The individuals who can make an initial referral for examination at the drug court include clients or voluntary program participants, judges, commissioners, police officers, solicitors, social workers, healthcare professionals, and the general public.⁴⁸

In NSW, the Drug Court is reserved for non-violent offenders who may face jail time. Each participant receives an individualized schedule based on an initial assessment by a team that includes medical specialists. Participants must also agree to follow a treatment program and undergo random urine testing. Various efforts are made to help participants get jobs, and if they remain drug-free, their supervision is gradually relaxed.⁴⁹

The NSW drug court oversees intensive community-based rehabilitation for addicted offenders (eligible persons) who would otherwise be sentenced to full-time prison. This is often referred to as the "Drug Court Program". The Drug Court Program is a combined justice and health intervention that aims to reduce drug dependence, reduce offenses, and encourage reintegration into society. These programs have proven to be more effective in reducing crime, and the intensive rehabilitation provided is less expensive than incarcerating people.⁵⁰

Drug courts adopt a multidisciplinary program delivery model. The narcotics court judge leads the inter-agency team⁵¹ in terms of development, delivery, and supervision of each participant who undergoes the program.⁵²

⁴⁶ *Ibid.* 330.

⁴⁷ Government of Australia, Drug Court Act No. 150 part 1-preliminary, article 3.

⁴⁸ Simplexius Asa, *Op.Cit.*, 330.

⁴⁹ Mark Dapin, Drug Courts: The Best Prescription for Drug Crime Offenders?, <https://lsj.com.au/articles/drug-courts-the-best-prescription-for-drug-crime-offenders/#>, accessed on June 14, 2025.

⁵⁰ NSW Drug Court: What is The Durg Court Program, The Drug Court Facts Sheet, https://drugcourt.nsw.gov.au/documents/Factsheet_-_What_is_the_Drug_Court_program.pdf, accessed on May 20, 2025.

⁵¹ The inter-agency team consists of representatives from the office of the director of public prosecutions, NSW Police, Legal Aid NSW, NSW Correctional Services, the Forensic Mental Health Network and Justice *Health* and the Local Health District that handles

⁵² NSW Drug Court, *Op Cit.*

To participate in the Drug Court Program, one must meet the following requirements:⁵³

- a. Charged with a qualifying violation.
- b. Have pleaded guilty, or indicated that they will plead guilty to the offense.
- c. He will most likely be sentenced to full-time prison if convicted.
- d. Have a dependence on illegal drugs.
- e. Be 18 years of age or older.
- f. Willing to participate and have the mental capacity to participate actively.
- g. Referred to a Drug Court by the local District Court.

The person must also reside in one of the specific Regional Government areas that fall within the jurisdiction of the Drug Court. A person is not eligible if they are charged with a criminal offense involving violence, sexual crimes, or a drug offense. People with a history of violence or danger may also not be eligible.⁵⁴

The NSW Local Court or the NSW District Court must refer anyone facing charges who is willing and qualified to participate in the Drug Court program. The Drug Court will assess a person's eligibility and determine the results of the referral. Program space is limited. If the number of referrals exceeds the available places, a random vote will be conducted. Only successful referrals will proceed to the next stage. Unsuccessful referrals will be returned to the local District Court that referred them.⁵⁵

After completing detoxification and assessment in custody, the eligible person appears at the Drug Court to confirm the guilty plea. The Drug Court then imposed an initial sentence of imprisonment and ordered that the sentence be suspended. The person is then released from custody to undergo a treatment plan under the conditions set by the court (i.e., maintaining good behavior, residing at a specified location, abstaining from the consumption of illegal substances, and attending court-ordered reporting, urine drug tests, and treatment).⁵⁶

The Drug Court program consists of three intensive phases that must be completed for a minimum period of 12 months: the initiation phase, the consolidation phase, and the reintegration phase. Each phase has different goals that participants must achieve to advance to the next stage.⁵⁷

Drug courts in Australia, as part of the criminal justice system, have the authority to conduct examinations at the pre-trial stage, a type of pre-trial institution also found in Indonesia. As a pre-trial institution, the drug court is led by a commissioner judge in conducting a preliminary examination of a criminal act of narcotics abuse. Still, it is not a judicial institution that adjudicates whether a criminal act of abuse is proven in the case, as is the authority of a traditional court.⁵⁸

c. Scotland

Narcotics courts in Scotland differ from the full format of drug courts in the United States and Australia. Scotland, through the Crime and Disorder Act 1998, created an alternative to resolving drug abuse cases through the Drug Treatment and Testing Orders (DTTOs) programme, as part of the problem-solving courts approach. DTTOs are a type of non-custodial

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Simplexius Asa, Loc. Cit.* 354.

punishment given by the Court to perpetrators of narcotics crimes as an alternative to prison sentences. The Sheriff Court has the authority to impose a DTTO.

In October 2001, Scotland's first Drug Court was established at Glasgow Sheriff Court, operating on a concise trial basis. Its establishment follows the conclusion of the Working Group for the Pilot Drug Court in Glasgow, which determined that the establishment and operation of the Drug Court in Glasgow can be carried out in accordance with applicable law. A second pilot Drug Court was established in Fife in August 2002 and issued its first ruling in September of that year. Fife Drug Court is based at Dunfermline and Kirkcaldy Sheriff Court.

These drug courts aim to reduce drug abuse and related offenses by offering treatment-based options outside of the traditional court environment. The specific objectives of the pilot drug courts are to reduce the level of drug-related offending behaviour, reduce or eliminate offenders' dependence or propensity to use drugs, and to examine the feasibility and usefulness of drug courts in Scotland using existing legislation, identifying where legislative and practical improvements may be necessary. Both Drug Courts are aimed at offenders aged 21 years or older of both sexes, who have a clear link between serious drug abuse patterns and other offenses.

All Orders made by the Drug Court are subject to drug testing (urinalysis) and regular reviews (at least monthly). Drug Court officers are responsible for reviewing the Order and responding to non-compliance. In both Drug Courts, Supervision and Treatment Teams have been established to support the Drug Courts in all aspects of assessment, supervision, treatment, testing, and reporting to the courts.

To be eligible to take part in drug court, individuals must be convicted of offenses related to their substance use, and those accepted include both minor and serious crimes. Defendants are usually referred by other Sheriffs in Glasgow (there are 35 in total) who repeatedly encounter the same individual in their courtroom and get caught up in a vicious and addictive cycle. The assessment process is carried out by the drug court team, which includes criminal justice social workers (CSJWs), drug support workers, and doctors/nurses. The goal is to assess the potential acceptance and suitability of individuals for drug court orders, which are by no means an easy alternative. Motivation is a significant factor in assessment due to the intensive nature of the program.⁵⁹

If accepted, the Sheriff imposes a Drug Treatment and Testing Order (DTTO) on the offender, with the requirement to agree to undergo drug treatment, periodic drug testing, court review, and a commitment to change. DTTO, which lasts for 18 (eighteen) months, allows individuals to receive intensive rehabilitation support in the community. Participants receive counseling and treatment for their addictions and undergo drug testing two or three times a week. Additional support is also available through local third sector agencies, tailored to individual support needs.⁶⁰

Regular court reviews (every four weeks) ensure that individuals are allowed to speak and be heard and fully engage with the Sheriff. The review was conducted in court in the presence of all program participants. Through this review, the Sheriff will highlight examples of good and bad progress. The sheriff gives praise and encouragement to those who do well. This may be something they have never experienced in court before.⁶¹

⁵⁹ Suzase Smith, *Glasgow Drug Court*, <https://justiceinnovation.org/project/glasgow-drug-court#:~:text=The%20process,and%20a%20commitment%20to%20change>, accessed on May 18, 2025.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

A key feature of the programme praised by those involved was a pre-trial meeting where the Sheriff and the drug court team had an in-depth discussion about each individual who would be present in the afternoon. This multi-agency meeting was considered a key strength of Glasgow's drug court.⁶² If they complete the DTTO, the individual participates in a graduation ceremony in court. The sheriff and the individual are allowed to reflect on the progress made, and families and other relevant professionals are invited to attend.⁶³

A 2006 evaluation noted that the Glasgow Drug Court's main strengths were the "rapid tracking" of offenders, a well-trained and dedicated team that had regular contact with participants, a system of pre-trial review meetings, and the consistency and involvement of the Panel of Judges. There is strong support for the courts among stakeholders, and as a result, the program has grown over time, with more than 200 offenders participating in it.

2. The Urgency Of Establishing A Special Narcotics Court To Overcome Narcotics Crimes

a. Narcotics Abuse Can Weaken National Resilience.

The Narcotics Law states that narcotics can be helpful and also necessary in the treatment of certain diseases. However, when its use is not in accordance with medical standards, individuals or communities, especially the younger generation, can be harmed. This will be more detrimental if it is accompanied by the abuse and illicit circulation of narcotics, which can result in greater danger to the life and cultural values of the nation, which will ultimately weakening national resilience.

The results of a national survey on the prevalence of narcotics abuse in 2023 show that the prevalence rate is 1.73% or equivalent to 3.3 million Indonesians aged 15-64 years. This data shows a significant increase in narcotics abuse among the age group of 15-24 years.⁶⁴

Narcotics victims are not only in the general public, but have also entered all national elements, including law enforcement officials,⁶⁵ and have penetrated the government. Narcotics are one of the three major threats to the nation's life, in addition to corruption and terrorism. If it is likened to a tree, then drugs are a threat that attacks the roots of the tree, namely the quality of Indonesian human resources, which is one of the national development capitals.

National resilience refers to a nation's ability to develop the strength to face and overcome threats, challenges, obstacles, and disturbances (ATHG) from both internal and external sources, both directly and indirectly, thereby ensuring the nation's identity, integrity, and survival to achieve its goals.⁶⁶ Narcotics are one of the ATHGs that must be addressed wisely and effectively, as they concern all Indonesian people. Laws related to narcotics and psychotropics have been explicitly made in an effort to fight against narcotics. Drugs are likened to weapons of mass destruction that can be used to fight and destroy society,⁶⁷ so that the provisions are made

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Humas BNN, *HANI 2024: Masyarakat Bergerak, Bersama Melawan Narkoba Mewujudkan Indonesia Bersinar*, <https://bnn.go.id/hani-2024-masyarakat-bergerak-bersama-melawan-narkoba-mewujudkan-indonesia-bersinar/>, accessed on April 3, 2025.

⁶⁵ Abd, Aziz, *Antara East Java*, <https://jatim.antaranews.com/berita/912949/bnn-sebut-narkoba-ancaman-bagi-ketahanan-nasional>, accessed on June 2, 2025.

⁶⁶ <http://lib.lemhannas.go.id/public/media/catalog/0010-01160000000134/swf/3767/files/basic-html/page8.html>, accessed on June 2, 2025.

⁶⁷ Bentonius Silitonga, Erna Karim dan Puspitasari, *Keterlibatan Organized Crime Pada pelaku Suap di Kalangan Penegak Hukum Dalam Peredaran Gelap Narkotika (Studi pada Kasus Suap Peredaran Gelap Narkotika di Indonesia)*, *Jurnal Kajian Stratejik Ketahanan Nasional*, Vol. 2, 1, 2019. p.6. (pp. 5-20). DOI. <https://doi.org/10.7454/jkskn.v2i1.10015>

differently from the provisions formulated in the Criminal Code, especially related to criminal sanctions. Narcotics crimes are threatened with a higher and heavier penalty than other general crimes. They can be punished cumulatively by imposing two types of principal crimes simultaneously, for example, the death penalty and a fine.⁶⁸ However, narcotics users and people with an addiction need a different approach from other criminal offenders, because it is related not only to the physical quality (health), but also to the mental quality of Indonesian people.

Individuals who abuse or are addicted to narcotics require treatment to obtain long-term recovery, not criminal sanctions. Individuals who abuse or are addicted to drugs require treatment to obtain long-term recovery. Addiction is a brain disorder that can be treated, as a medical condition, not a character defect or a form of social deviation, so the solution must use a public health approach,⁶⁹ not a criminal sanction of imprisonment. Research from Dewabrata et al. shows that addiction and abuse of narcotics are caused by poor psychiatric conditions, serious work-related problems, poor medical conditions, family problems, and poor environmental conditions,⁷⁰ so the solution must also be complex, not only through imprisonment. Suppose we are serious about reducing substance abuse, crime, and recidivism. In that case, we must accept that our criminal justice system is filled with narcotics abusers who need treatment to change their behaviour. The narcotics court must serve as the basis for reform. To deal with perpetrators of narcotics abuse crimes, it is necessary to make the right efforts and steps from law enforcement in the criminal justice system by making the criminal justice system a medical model for perpetrators of narcotics abuse so that the quality of Indonesian human resources is maintained and can be continuously improved, including their health status.

b. The number of narcotics cases continues to increase

The National Narcotics Agency (BNN), together with the National Research and Innovation Agency (BRIN) and the Central Statistics Agency (BPS), conducted a national survey on drug abuse in 2021, which revealed a nationwide increase in the prevalence rate. In the year-to-use category, the percentage increased from 1.80% (3,419,188 in 2019) to 1.95% (3,662,646 in 2021). In the used category, the rate rose from 2.40% (4,534,744 in 2019) to 2.57% (4,827,616 in 2021).⁷¹

In 2019, the National Police revealed 2.7 tons of methamphetamine evidence, while in 2020, the confiscated evidence amounted to 4.57 tons, indicating an increase of approximately two tons of evidence.⁷² During 2021, the National Police uncovered 19,229 cases of drug abuse by securing

⁶⁸ Risqi Perdana Putra dan Pujiyono, Kebijakan Formulasi Sanksi Pidana dalam Undang-undang Narkotika Yang Akan Datang (*Ius Constituendum*), *Jurnal Pembangunan Hukum Indonesia*, Vol.4, 3, 2022, p.369. (pp.364-381). DOI: <https://doi.org/10.14710/jphi.v4i3.364-381>

⁶⁹ Nora D. Volkow, "Addiction Should be treated, not penalized", *Neuropsychopharmacology*, Vol. 46, (2021): 2048. DOI: <https://doi.org/10.1038/s41386-021-01087-2>. The idea that addiction is a mental illness has been debated in legal circles since the mid-20th century, including among legal scholars in England. This debate arises considering the consequences of addiction that can cause addicts to commit other criminal acts, so the idea of addicts experiencing a mental illness is not enough to be able to reduce responsibility for misbehaviour. see Simon Flacks, "Who is the Addict-offender? A historical ontology", *Social & Legal Studies*, Vol. 33, No. 2, (2024): 150, DOI: <https://doi.org/10.1177/09646639231172612>

⁷⁰ Wijaya Dewabrata, et.al., "Mental health, environmental, and socioeconomic geographic factors of severe drug addiction: Analysis of rehabilitation centre data in Indonesia", *Substance abuse: research and treatment*, Vol. 17, (2023): 3, DOI: [10.1177/11782218231203687](https://doi.org/10.1177/11782218231203687)

⁷¹ Badan Narkotika Nasional, *Press Release Kinerja Tahun 2021*, Jakarta, 29 Desember 2021, p. 8, Downloaded from <https://bnn.go.id/press-release-akhir-tahun/> on May 19, 2022.

⁷² CNN Indonesia, *Data Polri: Kasus Narkoba Makin Marak Selama Pandemi Corona*, <https://www.cnnindonesia.com/nasional/20201118143942-12-571377/data-polri-kasus-narkoba-makin-marak-selama-pandemi-corona>, accessed on February 16, 2021.

24,878 suspects and obtaining proof of methamphetamine weighing 7,696 kilograms, 2,100 kilograms of marijuana, 7.3 kilograms of heroin, 34.3 kilograms of gorilla tobacco, and 239,277 grains of ecstasy. The evidence secured in the disclosure of the case, if converted, is worth Rp 11.66 trillion.⁷³

Following the issuance of Perpol Number 8 of 2021, data from the Directorate of Criminal Crimes of the National Police indicate that in 2024, there will be 4,163 cases of narcotics abuse involving 5,947 suspects who can be rehabilitated and resolved through restorative justice.⁷⁴ However, when compared to the data of narcotics users sentenced to prison sentences in Correctional Institutions in 2024, as many as 63,297 inmates,⁷⁵ this shows that the imposition of prison sentences on narcotics abusers still dominates the settlement of narcotics abuse criminal cases.

Data from the Prosecutor's Office regarding narcotics cases handled at the High Prosecutor's Office throughout Indonesia for the period from January 2020 to December 2021 shows a high volume of narcotics cases. Before January 2020, there were 31,171 remaining narcotics cases, while the number of narcotics cases entered in the reporting month was 52,473. The total number of cases handled in the reporting month was 83,644 cases. Of the 83,644 cases dealt with, a total of 49,709 cases has been resolved, and 33,935 cases remain. Of these, 37,113 are still in the process of hearing, while 12,652 cases have been dismissed, and 155 cases are still pending legal action.⁷⁶

Following the enactment of the Regulations of the Indonesian Attorney General's Office Number 15 of 2020 and the Prosecutor's Guidelines Number 8 of 2021, the Prosecutor's Office aims to resolve narcotics crime cases through rehabilitation based on restorative justice principles. In 2023, the Prosecutor's Office resolved 124 cases of narcotics abuse crimes through restorative justice rehabilitation⁷⁷, and in 2024, it resolved 64 additional cases⁷⁸. However, when compared to the data of narcotics users sentenced to prison sentences in Correctional Institutions in 2024, as many as 63,297 inmates, this shows that the imposition of prison sentences on narcotics abusers still dominates the settlement of narcotics abuse criminal cases.

The Supreme Court's 2020 Year-End Report also stated that narcotics cases in 2020 were the most cases in District Courts throughout Indonesia. Narcotics cases in 2019 totalled 9,798, and in 2020, the number increased to 51,107, resulting in a total of 60,905 cases. In 2020, the District Court decided 51,443 narcotics cases, leaving 9,462 cases undecided.⁷⁹ The imposition of prison sentences on narcotics users can be seen from the number of inmates who use narcotics in correctional institutions. In 2022, there were 46,882 narcotics users sentenced to prison; in 2023, there was a decrease to 43,782 narcotics users sentenced to prison; and in 2024, the number of

⁷³ Fifi Sartina Dewi, *Hingga Pertengahan Tahun 2021, Polri Telah Ungkap 19.299 Kasus Narkoba*, <http://kabar24.bisnis.com/read/20210616/16/1406350/hingga-pertengahan-2021-polri-ungkap-19299-kasus-narkoba>, accessed on May 30, 2022.

⁷⁴ The results of an interview with Brigadier General Pol. Dr. Jayadi, S.I.K., M.H. on September 12, 2024, at the Pati Apartment of the Precision Police in Jakarta.

⁷⁵ *Ibid.*

⁷⁶ Kejaksaan Agung Republik Indonesia, *Report on Narcotics Crimes for the Period January 2020 to December 2021* (LP-15), 2021.

⁷⁷ Kejaksaan Republik Indonesia, *Laporan Tahunan Kejaksaan Tahun 2023*, <https://kejaksaan.go.id/information/service/81/read>, accessed on March 9, 2024.

⁷⁸ Interview results with Noor Deny, S.H., M.H., Coordinator at the Directorate of Narcotics and Addictive Substances Crimes at the Deputy Attorney General for General Crimes of the Attorney General's Office of the Republic of Indonesia on September 10, 2024.

⁷⁹ Mahkamah Agung RI, *Laporan Tahunan 2020 dalam Suasana Covid: Optimalisasi Peradilan Modern Berkelanjutan*, Mahkamah Agung RI, Jakarta, 2020, p. 131.

narcotics users sentenced to prison increased again to 63,297 inmates. The increase in the number of narcotics abusers is vulnerable to causing other criminal acts.

c. Correctional institutions experience overcrowding

The imposition of prison sentences for narcotics abusers causes *overcrowding* conditions in prisons, which cause rampant illicit narcotics circulation in prisons and the "learning process" of convicted drug abusers to become narcotics dealers. As of December 2023, Indonesia has 531⁸⁰ operational prisons with a capacity of 140,424 people. The number of prisoners in 2023 is 272,173, resulting in an overcrowding rate of 93.82%.⁸¹ The high number of narcotics abusers who are imprisoned results in overcrowding in prisons and the emergence of various negative impacts of overcrowding, which demand a change in the treatment of narcotics abusers during the process through the criminal justice system.

Overcrowding in Indonesia is a downstream consequence of various upstream factors that need to be addressed. The first factor is the lack of restorative effect of the different criminal law policies currently implemented in Indonesia. Due to its downstream impact, the implications of overcrowding are certainly multifaceted. The most obvious implication is the difficulty of social institutions in ensuring that prisoners receive their human rights while in prison. From the low quality of the food, they receive to the limited opportunities for education, it is clear that not all correctional facility operations can produce the optimal impact as expected. The number of inmates is not directly proportional to the availability of facilitation, including physical facilities, debriefing, and empowerment programs, which reduces the opportunity for inmates to gain comprehensive knowledge and work skills before being returned to society. Overcrowding in correctional institutions raises new problems, such as sanitation and malnutrition, which can lead to various diseases, such as tuberculosis, pneumonia, and other diseases caused by parasites.⁸² In addition, there is also a decline in the physical and mental health of inmates, a high case of sexual violence in correctional institutions, a high suicide rate in correctional institutions, and a consistent increase in the government budget to finance correctional institutions without providing concrete solutions to improve the behaviour of inmates at the assimilation stage.⁸³ A study also found that prolonged incarceration in a correctional institution can have negative impacts. For example, when the perpetrator mingles with narcotics traffickers who are serious narcotics offenders,⁸⁴ it can cause the perpetrator to be "affected" so that he becomes a recidivist or even carries out other heavier criminal acts.

Furthermore, the Community Legal Aid Institute (LBHM) has conducted research related to narcotics trafficking cases and attempts to smuggle narcotics into prisons. Throughout 2018, 152 cases were found in 27 provinces in Indonesia, with 109 cases in prisons, 35 cases in detention

⁸⁰ The number of 531 consists of 336 prisons, 91 prisons, and 33 LPKAs as of December 2023

⁸¹ Directorate General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia, *Correctional Performance Report for 2023*, 2023, p. 36, <https://www.ditjenpas.go.id/laporan-akuntabilitas-kinerja-direktorat-jenderal-pemasyarakatan-2023>, accessed on October 28, 2024.

⁸² Riqi Samsurizal, Pangeran Baron, dan Tony Probo, Collaborative Governance dalam Pencegahan Peredaran Narkoba di Indonesia, *Jurnal Kajian Strategik Ketahanan Nasional*, Vol. 6, 1, 2023. p. 5 (pp. 1-14). DOI: <https://doi.org/10.7454/jkskn.v6i1.10076>

⁸³ Hamja, "Implikasi Overcrowding Terhadap Lembaga Pemasyarakatan di Indonesia", *Mimbar Hukum Universitas Gadjah Mada*, Vol. 34 No.1, (2022): 321. DOI: <https://doi.org/10.22146/mh.v34i1.2495>

⁸⁴ Cecep Mustafa, The Perceptions Of Indonesian Judges In Sentencing Minor Drug Offenders: Challenges And Opportunities, *Jurnal Hukum dan Peradilan*, Vol. 9, 1, 2020. p. 12. (pp. 1-26). DOI: <https://doi.org/10.25216/jhp.9.1.2020.1-26>

centres, and 8 cases in other facilities.⁸⁵ The large number of instances of illicit circulation of narcotics in prisons indicates that prisons and correctional facilities are not free from illegal circulation of drugs. Narcotics abuse in prison cannot occur because narcotics can still be obtained, and there is still a demand from prisons. In addition, the placement of inmates by mixing between dealers, users, and non-narcotics inmates in the same place makes it easier for them to conduct transactions and expand the network.⁸⁶

The Director General of Corrections of the Ministry of Law and Human Rights revealed data on recidivism cases in Indonesia. Throughout 2019, the number of recidivists from narcotics was the highest. Some users re-enter as dealers. There are even those who, having been former users, have become smugglers. From the existing figures in 2019, recidivism drug cases are close to nine thousand people.⁸⁷

d. Special Characteristics of Legal Subjects in Narcotics Crimes

The subject or perpetrator of narcotics crimes, as contained in the Narcotics Law, can be divided into two categories: individuals (*natuurlijke persoon*) and legal entities (*rechts persoon*). The subject of individual law (*natuurlijke persoon*) is divided into three categories or groups. The first category comprises individuals who are inherently qualified to be subjects of criminal law. The second category includes those who are trained by virtue of their position. The third category comprises individuals who are qualified based on a specific status or relationship, whether biological or social.⁸⁸ In addition, narcotics crimes can also be committed by children whose criminality is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The Supreme Court Circular Letter Number 4 of 2010 also provides a meaning for legal subjects in narcotics crimes, namely narcotics addicts, while legal subjects in narcotics abuse crimes in the Narcotics Law not only include narcotics addicts but also narcotics abusers. Because it has been stated that the policy is aimed at handling narcotics addicts, narcotics abusers are not ordered to be placed in a rehabilitation place to get treatment like sick people. So that abusers are still sentenced to prison without receiving treatment at a rehabilitation facility.

In the SEMA, it is recognized that a person with an addiction is a person who consumes or uses narcotics, either by inhaling narcotic smoke, injecting narcotics into their body, or swallowing narcotic pills, so that if a test is carried out either through urine, blood, or hair, it will show a positive result containing narcotics. Before consuming these narcotics, a person with an addiction must first possess, store, and control narcotics, but to overcome his dependence, not to seek profit like drug dealers.

This was then strengthened by the regulation of narcotics in the National Criminal Code. The legal subject of narcotics crimes in the National Criminal Code is everyone. In the General Explanation of the Law, the element of every person here is not only limited to humans by nature,

⁸⁵ Lembaga Bantuan Hukum Masyarakat, *Pasar Gelap Narkotika di Penjara, Imbas Kebijakan Punitive*, (Jakarta: Lembaga Bantuan Hukum Masyarakat, 2019).

⁸⁶ Taufik H Simatupang, dkk, *Karakteristik Narapidana dan Potensi Penyalahgunaan dan Peredaran Gelap Narkotika di Lembaga Pemasyarakatan*, Jakarta: BalitbangkumhamPress, 2019, sebagaimana dikutip Ela Bestia dan Arthur Josias Simon Runturambi, Sinergitas Badan Narkotika Nasional Dengan Kementerian Hukum dan HAM Dalam Upaya Rehabilitasi Narkotika di Lembaga Pemasyarakatan, *Syntax Literate: Jurnal Ilmiah Indonesia*, Vol. 6, No. 12, (Desember 2021). DOI: <https://doi.org/10.36418/syntax-literate.v7i6.2278>

⁸⁷ Kumparan News, Dirjen PAS: Selama 2019, Residivis Narkotika Mendekati 9 Ribu Orang, 19 Desember 2019, <https://kumparan.com/kumparannews/dirjen-pas-selama-2019-residivis-narkotika-dekati-angka-9-ribu-orang-1sTWHIt2Ily/full> accessed on March 5, 2025.

⁸⁸ Simplexius Asa, *Op. Cit.*, 136.

but also includes Corporations. This is due to the developments that have occurred in the fields of finance, economy, and trade, especially in the era of globalization and the development of organized crime, both domestic and transnational. In this case, the corporation can be used as a means to commit a criminal act and also profit from it.

Discussing the problem of narcotics crimes, it is essential to distinguish the legal subjects related to narcotics. This will lead to what categories of legal subjects can or cannot be rehabilitated according to the provisions of the applicable laws.

Perpetrators of narcotics crimes based on the Narcotics Law can generally be grouped into 3 (three) parts, namely:⁸⁹

1. User
2. Distributor/seller
3. Narcotics manufacturers/makers

In addition to the three groups of narcotics crime perpetrators above, there are still several narcotics crime perpetrators, namely those who control, possess, and receive. When viewed from the side of the defendant in the narcotics case, the defendant's condition can be classified into three groups, including:⁹⁰

- a. Users/addicts occupy the most significant number;
- b. Distributors/sellers rank second'
- c. Suppliers/manufacturers with relatively small quantities.

In the Indonesian dictionary, the term "user" is defined as a person who uses something. When associated with narcotics law, narcotics users are defined as people who use substances or drugs derived from plants, both synthetic and semi-synthetic, that can cause a decrease or change in consciousness, loss of taste, reduce or eliminate pain, and cause dependence, which are differentiated into groups as attached to the Narcotics Law.

In the Narcotics Law, there are several terms to refer to Narcotics users, namely:

1. Narcotics addicts are people who use or abuse narcotics and are in a state of dependence on drugs, both physically and psychologically.⁹¹
Narcotics dependence is a condition characterized by the urge to use narcotics continuously at increased rates to produce the same effect. If their use is reduced and/or stopped abruptly, it gives rise to typical physical and psychological symptoms.⁹²
2. An abuser is a person who uses narcotics without a prescription or against the law.⁹³ The unlawful element refers to Article 7 of the Narcotics Law, which mandates that drugs can only be used for the benefit of health services and/or the development of science and technology. If narcotics are used without the right or permission from related parties, it meets the category of a user.
3. A victim of narcotics abuse is someone who accidentally uses narcotics because he is persuaded, deceived, forced, and/or threatened to use narcotics.⁹⁴

This grouping reveals that the subject of criminal law, particularly the perpetrators of narcotics crimes, exhibits distinct characteristics compared to other criminal law subjects. Although the National Criminal Code regulates related legal subjects, the specifics differ when it

⁸⁹ M. Dofir, *Sistem Peradilan Pidana dalam rangka Menanggulangi Penyalah Guna Narkotika*, (Disertasi, Fakultas Hukum Universitas Airlangga, 2015), 10.

⁹⁰ Moh. Taufik Makarao, Suharsil, dan Moh. Zakky A.S., *Tindak Pidana Narkotika*, (Jakarta, Ghia Indonesia, 2003), 74.

⁹¹ Article 1, point 13 of Law No. 35 of 2009 on Narcotics

⁹² Article 1, point 14 of Law No. 35 of 2009 on Narcotics

⁹³ Article 1, point 15 of Law No. 35 of 2009 on Narcotics

⁹⁴ Article 54, point 13 of Law No. 35 of 2009 on Narcotics

comes to perpetrators of narcotics crime. If the legal subject of other criminal acts is only the perpetrator when the criminal act is committed by one person, and becomes a participant when more than one person commits it. Meanwhile, in narcotics, each type of criminal act has a different category of legal subject or perpetrator of criminal acts.

The determination of different legal subjects in narcotics law has juridical implications that should be distinct at all stages of the process. The treatment and sanctions given to each of the above subjects should also be different. For narcotics users, for example, it is better to get treatment in the form of rehabilitation than prison; on the contrary, it will be different if the subject is a drug dealer or manufacturer. Even one of the judges who was the source of the research, Rita Komalasari, et al, stated that from the judge's point of view, it is better to rehabilitate the use of narcotics and not give punishment in other forms.⁹⁵ This highlights the unique characteristics of narcotics crimes that distinguish them from different types of criminal acts under the subject of criminal law. Narcotics users who experience dependence on narcotics are referred to as people with an addiction. Narcotics addicts can be said to experience dependency syndrome, which in this case is a *self-victimizing victim*, so a criminal law policy is needed that positions addicts as victims rather than as perpetrators of crime.⁹⁶

A special court is necessary when a criminal act falls into a distinct category, with legal and criminal sanctions that are specifically regulated and differ from those of other criminal acts. Article 1, number 7 of the Judicial Power Law states that the Special Court is a court that has the authority to examine, adjudicate, and decide certain cases that can only be established in one of the judicial bodies under the Supreme Court, regulated by law. Furthermore, Article 27 governs the conditions for establishing a special court, namely that it can only be formed within one of the judicial environments under the Supreme Court, and the provisions for establishing a special court are regulated in the law. According to the Explanation of Article 27, paragraph (1) of the Judicial Power Law, the existence of several special courts has been regulated, including children's courts, commercial courts, human rights courts, corruption courts, industrial relations courts, and fisheries courts, within the general judicial framework. Upon examining these provisions and the urgency of their formation, it becomes clear that a special court on narcotics is needed.

The United States' experience in resolving narcotics abuse can also be used as an alternative. As previously explained, Narcotics Courts seek to divert individuals with substance use disorders from the criminal justice system by offering services for treatment and rehabilitation, and incentives to encourage participation, such as exemption from prosecution or reduced jail time for those who complete sentences. The success of the narcotics court relies on participants' compliance with established rules and regulations. This, in turn, necessitates that parties provide participants with necessary information, health services, and treatment.⁹⁷

⁹⁵ Rita Komalasari, Nurhayati, dan Cecep Mustafa, "Keadilan Bagi Penyalahguna Narkotika di Indonesia", *Arena Hukum*, vol.14, 3, 2021, p.g 488. (pp. 479-499). <https://doi.org/10.21776/ub.arenahukum.2021.01403.4>

⁹⁶ Daulika Sausan Zahra Nabila, Eko Sopyonyono, dan Rahmi Dwi Sutanti, Kebijakan Rehabilitasi Terhadap Pecandu Narkotika Dalam Pembaharuan Hukum Pidana, *Diponegoro Law Journal*, Vol. 12, 3, 2023. p.2 (pp. 1-19). DOI: <https://doi.org/10.14710/dlj.2023.37879>. This is in line with the opinion of Ratri, who stated that in terms of narcotics abuse, the perpetrator as well as the victim is himself. Ratri Novita Erdianti, Alternatif Pemidanaan Terhadap pelaku Penyalahguna Narkotika dalam Kebijakan Kriminal di Indonesia, *Legality*, Vol. 25, 2, 2017, p. 265. (pp.261-271). Retrieved from <https://ejournal.umm.ac.id/index.php/legality/article/view/6006>. See also in Aditya Narwanto, The Right to Rehabilitation for Drug Addicts: Between Legal Provisions and Practical Reality in Indonesia, in *The 8th Legal International Conference and Studies: Justice, Human Rights, and Law – Protecting Vulnerable Communities*, *KnE Social Sciences*, 2025, p. 585. (pp. 582-589). DOI 10.18502/kss.v10i28.20147

⁹⁷ Susan H. Witkin and Scott P. Hays, "Drug Court Through the Eyes of Participants", *Criminal Justice Policy Review*, Vol. 13, No. 7, (2017): 5, DOI. <https://doi.org/10.1177/0887403417731802>

Similarly, in Australia, the emphasis on the Diversion mechanism serves as an effort to counter narcotics. Furthermore, Scotland can also be an example of dealing with narcotics abuse using the DTTOs program as an alternative to prison sentences.

In general, the purpose of the existence of narcotics courts or rehabilitation approaches used in narcotics handling programs in several countries is to reduce addiction and recidivism of narcotics users. Still, of course, the approach used is specifically for abusers and addicts, not for narcotics dealers or producers. Each country's policy influences the differences in the form of courts and exceptions between these countries in their approach to legalizing narcotics. The United States has a primary focus on mild abuse. It excludes people who commit violent or sexual assault crimes after consuming narcotics, given that in some states of the United States, the use of drugs is legalized. For example, California and Colorado have legalized marijuana for recreational use, while other states have legalized marijuana for medical use. However, different types of narcotics are still prohibited.

Australia is similar, the use of cannabis for medical purposes has been legalized since 2016, but its use is strictly regulated. In addition, in the Australian capital region (ACT), recreational use of cannabis is allowed on a limited basis. So that the objectives, main objectives, and exceptions to the narcotics court are different from the Scottish state, which until now has not legalized the use of narcotics.

A coordinated and systematic approach to perpetrators of narcotics crimes is needed in the implementation of narcotics courts. Comprehensive and inclusive planning is necessary, and determining the vision and mission of the narcotics court is crucial in its initial formation process. Next, the process involves determining measurable goals and objectives, identifying the source of funds, and identifying policy stakeholders to ensure the program developed by the narcotics court is sustainable.

Planning should be detailed, thorough, and should include as many perspectives as possible. Various issues must be addressed, including the identification of the perpetrator and the establishment of eligibility criteria; treatment methods, expectations, and the availability of support services; organizational coordination; formal policies and procedures; contractual and budgetary agreements; continuous supervision; and the evaluation of processes and outcomes.

The handling of narcotics is currently not carried out in a special narcotics court. Still, it is explicitly regulated within the general criminal justice system, where narcotics cases are examined and decided by judges in the District Court. The narcotics law also does not expressly restrict the examining judge, although in practice, the appointed judge is often a judge with experience in handling narcotics. However, there is no obligation that the examining judge be a special narcotics judge. Judges who frequently handle narcotics cases are usually included or have attended various technical training sessions on narcotics law; however, this does not necessarily make them specialized narcotics judges. Likewise, the existence of rehabilitation provisions in the narcotics law does not necessarily give authority for judges to be free to provide mandatory rulings to carry out rehabilitation for narcotics abusers.

In the context of the current legal reform, it involves not only creating new laws and regulations but also revising existing regulations, improving laws and regulations in accordance with the principles of justice. Therefore, the implementation of these regulations, including the

narcotics law, is expected not only to address problems related to societal change but also to serve as a tool necessary in the era of globalization.⁹⁸

Referring to the narcotics court model that has been practiced in the United States, Australia, and Scotland, as described earlier, Indonesia can adopt the narcotics court into its criminal justice system by adapting it to local conditions through the construction of existing laws and regulations, specifically the Narcotics Law. The special court must have precise specifications of authority and aim to achieve benefits and justice. If it is associated with narcotics, it is emphasized to prioritize a health approach in handling cases of narcotics abuse, as an effort to fulfill the right to health for perpetrators of narcotics abuse.

V. Conclusion

It is essential to establish a special narcotics court, considering the change in approach in the criminal justice system, especially for narcotics. Comparisons with several countries show that there are different systems in efforts to enforce narcotics laws. The United States and Australia have Drug Courts, which are special courts. These courts were established in each state. Meanwhile, Scotland incorporates narcotics handling into the general justice system using rehabilitation approaches and other approaches that are suitable for handling narcotics. However, all of these countries choose to use their systems with the same goal, namely, reducing the use of drugs, reducing recidivism rates, and reducing the population in correctional institutions and detention centres.

The establishment of a narcotics court in Indonesia is critical because narcotics abuse can weaken Indonesia's national resilience; besides that, there are also various weaknesses in the settlement of criminal cases of narcotics abuse today. Similar to the objectives of the comparative countries above, the increasing number of narcotics cases and the overcrowding in correctional institutions are also the drivers for the establishment of narcotics courts. Narcotics crimes have special characteristics both in terms of the form of the criminal act and the characteristics of the legal subject, thus further strengthening the importance of the narcotics court.

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⁹⁸ Jufrina Rizal, "Sosiologi Perundang-Undangan dan Manfaatnya", *Jurnal Hukum dan Pembangunan*, Nomor 3 Tahun 2003, pg. 413.

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