



# Ideal Double-Track System Construction for Narcotics Abusers in Indonesia\*

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## Abstract

Not only provide benefits for humans, but narcotic substances can also threaten a nation's life if the meaning is misused. There are various forms of narcotics abuse (which by Indonesia is categorized as a crime according to Law Number 35 the Year 2009), one of which is the act of using/consuming narcotics for own self against the law (illegal). The existence of narcotics abusers for themselves opens up opportunities for perpetrators to experience dependence on these substances, commonly referred to as narcotics addicts. The Indonesia Narcotics Law regulates two forms of sanctions for narcotics abusers for themselves, namely criminal sanctions and treatment sanctions in the form of Rehabilitation, which are accommodated in the double-track system model. Through normative legal research methods, this paper will provide an ideal description of the double-track system model in efforts to enforce criminal law for narcotics abusers in Indonesia so that the sentencing model can effectively solve the dependency problem experienced by perpetrators (narcotics addicts) who are in the process of committing crimes—Indonesian criminal justice.

**Keywords:** Addiction; Narcotic; Abusers; Indonesia; Criminal Law; Double-track system

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## Konstruksi Ideal Double-Track System Bagi Penyalahguna Narkotika di Indonesia

### Abstrak

Tidak semata memberikan manfaat bagi manusia, zat narkotika juga dapat menjadi pengancam kehidupan suatu bangsa jika zat tersebut disalahgunakan. Ada berbagai bentuk penyalahgunaan narkotika (yang oleh Indonesia dikategorikan sebagai tindak pidana menurut Undang-undang Nomor 35 Tahun 2009), salah satunya adalah perbuatan menggunakan/mengonsumsi narkotika untuk diri sendiri secara melawan hukum (illegal). Keberadaan penyalahguna narkotika untuk diri sendiri, membuka peluang bagi pelaku mengalami ketergantungan terhadap zat tersebut, atau yang biasa disebut dengan pecandu narkotika. UU Narkotika mengatur mengenai dua bentuk sanksi bagi pelaku penyalahguna narkotika untuk diri sendiri, yaitu sanksi pidana dan sanksi tindakan berupa rehabilitasi, yang diakomodir dalam model double-track system. Melalui metode penelitian hukum normatif, tulisan ini akan memberikan gambaran ideal mengenai model double-track system dalam upaya penegakan hukum pidana bagi penyalahguna narkotika di Indonesia, agar model pemidanaan tersebut dapat secara efektif menyelesaikan persoalan ketergantungan yang dialami pelaku (pecandu narkotika) yang sedang berproses dalam peradilan pidana Indonesia.

**Kata Kunci:** Pecandu; Penyalahguna; Narkotika; Double-track system; Hukum pidana Indonesia

### Создание идеальной двухпутной системы для наркоманов в Индонезии

### Абстрактный

Наркотические вещества не только приносят пользу людям, но и могут угрожать жизни нации, если их значение используется не по назначению. Существуют различные формы злоупотребления наркотиками (которое в Индонезии квалифицируется как преступление в соответствии с Законом № 35 от 2009 г.), одной из которых является употребление / потребление наркотиков для себя вопреки закону (незаконное). Существование наркоманов для самих себя открывает возможности для преступников испытывать зависимость от этих веществ, обычно именуемых наркоманами. Закон Индонезии о наркотиках регулирует две формы санкций для самих наркоманов, а именно уголовные санкции и санкции за лечение в форме реабилитации, которые учитываются в модели двойной системы. С помощью нормативных правовых методов исследования в этой статье будет представлено идеальное описание модели двойной системы в усилиях по обеспечению соблюдения уголовного законодательства в отношении лиц, злоупотребляющих наркотиками, в Индонезии, чтобы модель вынесения приговоров могла эффективно решить проблему зависимости, с которой сталкиваются правонарушители (наркоманы), которые находятся в процессе совершения преступлений — уголовное правосудие Индонезии.

**Ключевые слова:** Наркомания; Наркотический; Обидчики; Индонезия; Уголовное Право; Двухпутная Система

## A. INTRODUCTION

Narcotic crime is one of the most dangerous crimes because it can have a broad negative impact on various aspects of the life of a nation. The types of narcotics and the modus operandi of crimes are also increasingly diverse, as the end of 2020 press release from the Indonesian National Narcotics Agency called Badan Narkotika Nasional (BNN) ([Humas BNN, 2020](#)). Circulation of illegal narcotics is challenging to detect because of the formation of a network between producers, dealers, and users that are hidden (underground). Even the circulation can reach small cities in Indonesia. ([Laksana, 2016](#)) Drug abuse no longer looks at age, profession, or position. Any field of work today cannot be separated from the threat of narcotics ([Breen & Matusitz, 2009](#)), ranging from academics, law enforcement, art workers, and government employees caught for drug abuse, even though they are role models for the community in their behaviour.

Like two sides of a coin, the benefits of narcotics cannot be separated from the losses they can cause. Narcotics are one of substances useful for human life, such as being used as analgesic drugs in the anaesthetic process in medicine. ([Bluth & Pincus, 2016](#)) The problem is when narcotics are misused, which more or less can hurt the survival of a nation, including the Indonesian country. The use of drugs intended/used by self that does not match the dose will result in three dangerous characteristics: habitual, addictive, and tolerant.

Habitual is a condition in which the user will make the use of narcotics a habit and will feel the pressure so that they are compelled to continue to look for drugs and use them. Addictive is when a user feels "addicted" or dependent and is forced to continue using narcotics. Tolerance is a condition in which the body of a drug user will increasingly tolerate and integrate with narcotics, thus encouraging the user to increase the dose of use. ([Loue, 2003](#)) The sensations of the three characteristics above result in psychological changes for narcotics users who will tend to commit criminal acts because when a person is "addicted" to narcotics, he will tend to focus on committing crime rather than focus on the pain caused. ([Loue, 2003](#))

Criminology views narcotics abuse for own self as a victimless crime so that a narcotics addict (who, on the one hand, has abused narcotics) is seen as someone who must be helped/cured of his dependence on drugs. Regarding the issue of criminal law and criminal sanctions, what is known as the double-track system, namely the provision of two-way sanctions in the form of imprisonment and treatment sanctions in the form of Rehabilitation for narcotics abusers? The double-track system in narcotics crimes has been

recognized in the Indonesian criminal law system, namely in Law Number 35 the Year 2009 concerning Narcotics (Narcotics Law) as a rule that explicitly regulates narcotics.

The existence of the double-track system itself is not without obstacles and problems, especially in practice. One of the problems that often arises is regarding the limits on whether a narcotics abuser gets criminal sanctions or whether he is punished for Rehabilitation. Not a few types of sanctions imposed on narcotics abusers are seen as inappropriate due to the many obstacles experienced. Whereas in reforming the national criminal law, criminal and sentencing must aim to improve a lawbreaker into a better individual than before.

Taking into account the background above, in this article, the author raises the issue of: how is the ideal construction of a double-track system in the criminal system in Indonesia, especially against acts of drug abuse for own self.

## Literature Reviews

There are not a few scientific articles and research that discuss the issue of narcotics abuse, especially regarding the issue of narcotics abusers, Rehabilitation of addicts, as well as regarding the 'double-track system'. The author describes some of the previous literature, the author's reference in this article. First is Berliandista Yustianjarnimas Irianto's article, "Disparitas Pidana Pada Penyalahguna Narkotika". ([Irianto, 2020](#)) Berliandista reviewed several judges' decisions on narcotics abuse cases for themselves, which were decided with different types of sanctions (between prison sanctions and rehabilitation sanctions). Second, Puteri Hikmawati's article, "Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika," explicitly discusses criminal sanctions for narcotics users' management. ([Hikmawati, 2011](#)) Puteri Hikmawati coherently explained the theories of punishment, the purpose of discipline in the Draft Indonesian Criminal Code (RKUHP), the development of types of punishment from a single-track system to a double-track system, as well as criticism of the diversity of terms used for a narcotics user in the Narcotics Law. Third, a scientific article from Sana Loue entitled "The Criminalization of The Addictions: Toward a Unified Approach" discusses the criminalization of addiction (including narcotics addiction). ([Loue, 2003](#)) Loue also explained various factors causing addiction problems, including drug abuse. Fourth, an article from Steven Belenko entitled "The Effects of Legal Sanctions on Recidivism in Special Drug Courts" more or less provides an overview for the

author about the effectiveness of criminal sanctions (including procedural criminal law enforcement) against drug abuser recidivism for own self. ([Belenko et al., 1994](#))

## B. METHODS

The legal research method used by the author is the normative method, through library research to examine secondary data in the form of legislation or other legal documents and the results of research, studies, and other references related to the problem of narcotics abuse, legal sanctions, and associated with the double-track system. The analysis technique uses interpretation analysis techniques grammatically and systematically.

## C. RESULT AND DISCUSSION

### 1. The Basic Idea of the Double-Track System in Indonesian Criminal Law

The basic idea is fundamental (similar to the term "ideal") ([Sholehuddin, 2004, p.23](#)), so in this section, the author will discuss the basic idea of the double-track system, which will be related to the issue of sanctions against acts of drug abuse. The idea of a double-track system in criminal law is based on an awareness of the importance of equality between two types of sanctions: unfairness and treatment ([Sholehuddin, 2004, p.24](#)). If using a historical perspective, the double track system aims to balance the goals of prevention and the purposes of punishment (deterrence). ([Zalewski, 2018](#))

Talking about the purpose and type of punishment will not be separated from discussing the philosophy of discipline according to the development of the sentence flow. The classical school in the eighteenth century, which was retributive, adhered to a single-track system in criminal sanctions because the indeterminism school emphasized actions as the basis for imposing criminal penalties (*daad-straafrecht*), not against the perpetrators. The characteristics of such classical schools resulted in the factors inherent in the perpetrators (such as age and psychology) not being considered when imposing criminal sanctions; in other words, this school did not adhere to criminal individualization.

Then in the nineteenth century, a modern school of determinism emerged, or the view that the freedom of human will in behaviour cannot be separated from the influence of character and environment. Therefore, this

modern school gives rise to criminal individualization to resocialize and improve criminals as long as the person concerned can be changed into a better person. Criminal individualization has the following characteristics: ([Arief, 2011, p.65-66](#)) *first*, criminal liability is personal/individual (unique principle); *second*, punishment is only for those who are guilty (principle of guilt); *third*, the penalty is adjusted to the condition of the perpetrator. Considering such character, this modern school is oriented to actions and the perpetrator (*daad-daader strafrecht*).

Considering the advantages and disadvantages between treatment and criminal sanctions, the idea of a double-track system is a solution to cover the shortcomings of each of these types of sanctions. According to von Feuerbach, criminal sanctions function as psychological coercion ([von Feuerbach, 2007](#)), but if they are not careful in applying them, they will become a primary threat, as Herbert L. Packer argues. ([Fajrin et al., 2020](#)) As for treatment sanctions, although these sanctions can provide opportunities for the resocialization of perpetrators to restore social and moral quality so that they can return to society if they are not applied according to their portions, they will spoil the perpetrators. Even C.S Lewis said Rehabilitation through a treatment approach is a form of rejection of human rights. ([Rhodes, 2006](#)) Lewis places human rights not only in terms of the rights of the perpetrators but also in the rights of the victim, the victim's family, and the community. Considering this explanation, the author sees the double-track system as a form of compromise from two views regarding the types of sanctions, namely criminal and treatment sanctions.

From a philosophical perspective, the idea of a double-track system is justified by the philosophical view of existentialism proposed by Albert Camus. According to Camus' philosophy of existentialism, humans are not only seen as parties who deserve to be punished because they have abused their freedom (human offenders) but also have a position as people who are free to actualize their freedom (human power). ([Gerber & McAnany, 1966](#)) Then what about Pancasila as the philosophical basis of the Indonesian nation in viewing the idea of a double-track system?

The framework of thinking about punishment from the perspective of Pancasila must reflect all existing precepts as a whole. J.E. Sahetapy introduced the criminal theory of "liberation" based on Pancasila, which views the perpetrator as a complete human being and has rights and obligations. Obligations in criminal sanctions and their rights are still treated as human beings when carrying out their illegal period.

J.E. Sahetapy detailed the punishment orientation according to the Pancasila perspective: ([Sholehuddin, 2004, p.109-110](#)). *First*, punishment must not conflict with any religious belief. Even punishment is a means of converting an offender into a better and faithful individual; *second*, punishment must not injure human values and fundamental human rights, including freeing the perpetrator from evil traits, behaviours and habits; *third*, fostering national solidarity, including efforts to promote tolerance of perpetrators towards other people; *fourth*, cultivate the spirit and attitude of obeying the law; and *fifth*, growing awareness of the position of humans as social beings who uphold the values of social justice among members of the community.

The Pancasila philosophy sees humans as creatures of God who have two positions that cannot be separated from one another in a balanced way, namely humans as individual beings (who are concerned with their interests) and humans as social beings (which cannot be separated from the role and support of other humans). It is human nature that is why he is called a *mono dual* being as well as a *mono pluralist* creature, which is closely related to balance values. Humans as *mono dual* creatures can also be interpreted as creatures of God endowed with human rights balanced with a mandate in the form of human obligations.

Associated with the problem of crime, crime is seen as an act that disturbs the balance, harmony, and harmony of life, which results in damage to individuals and society, so punishment is a reaction of the community to restore the damaged balance, peace, and harmony ([Fajrin et al., 2020](#)). Therefore, the relationship between crime and punishment is closely related to the principle of balance, so punishment must accommodate various interests, be it the interests of the perpetrator, the victim, the community, and the state.

The Pancasila philosophy, which views punishment as an effort to recover or restore damage caused by crime by accommodating various interests in a balanced way, also influences the purpose of punishment in national criminal law. Therefore, the purpose of punishment has been contained in the General Explanation of Law Number 12 of 1995 concerning Correctional (Correctional Law), which describes both politically and philosophically the direction of the purpose of the punishment which Pancasila guides as the ideal foundation of the Indonesian nation. The General Explanation of the Correctional Law states, "For the Indonesian state, which is based on Pancasila, new ideas regarding the function of punishment are no longer just a deterrent but also an effort of rehabilitation and social reintegration."

The provisions of the penitentiary law illustrate a shift in the purpose of punishment from the goal of deterrence, which is thick with retributive values (retaliation), to discipline, which aims to use (utilities) for the recovery and improvement of perpetrators (rehabilitative). The shift in the purpose of punishment, which no longer adheres to the retributive principle, is also evident from the 2019 Draft of the Indonesian National Criminal Code called RKUHP, which states that the objectives of punishment in Article 51 include: “preventing criminal acts by enforcing legal norms for the protection and protection of the community, socializing the convicts by provide guidance and guidance to become a good and useful person, resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace in society; and cultivate a sense of remorse and release the guilt of the convict”.

Considering the elaboration of the philosophy and purpose of the punishment, the double-track system is justified. The double-track system is seen as a criminal system that uses two forms of sanctions, namely sanctions and treatment, in a balanced manner. A minor has been accommodated based on the definition of the values of balance between the principals' interests with the interests of the victim, the community and the country.

## 2. Implementation of the Double-Track System in Indonesia Presently

In this section, the author will provide an overview of the implementation of the double-track system, particularly related to the settlement of narcotics abuse cases in Indonesia. The performance of the double-track system in Indonesia refers to several court decisions related to narcotics abuse cases in the 2017-2020 period, which is illustrated in Table 1 below:

**Table 1.**  
**Narcotics Abuse Case Verdict for Own Self**

No.	Verdict Number	Sanctions	Description
1.	204/Pid.Sus/2018/PN.Lgs	Violating Article 127 paragraph (1) letter an (Abuse of class narcotics). One year, two months imprisonment.	The perpetrator was caught red-handed with evidence of narcotics weighing 0.45 grams of marijuana mixed with one cigarette.
2.	366/Pid.Sus/2020/PN Gpr	Violating Article 127 paragraph (1) letter a (narcotics abuse Category I): three years and six months imprisonment.	The perpetrator was caught red-handed with evidence of 0.03 grams of methamphetamine.
3.	664/Pid.Sus/2020/PN Jkt.Pst	Violating Article 127 paragraph (1) letter a (narcotics abuse Category I). Sanctions are in the form of undergoing medical and social	The perpetrator was caught red-handed with evidence of 3 plastic narcotics of methamphetamine type weighing 0.50 each, 0.39, and



		Rehabilitation for one year.	0.35 grams. The perpetrator had previously undergone Rehabilitation.
4.	67/Pid.Sus/2020/PN Smn	Proven as a victim of narcotics abuse type methamphetamine because of an invitation from a friend. Sanctions are in the form of medical and social rehabilitation measures for six months.	Evidence of narcotics-type methamphetamine in one plastic package weighing 0.25126 grams belonged to other perpetrators.
5.	7/Pid.Sus/2021/PN. Tmt	Violating Article 127 paragraph (1) letter a (narcotics abuse Category I). 9 months ten days imprisonment, and undergoing treatment through Rehabilitation for four months.	Evidence of narcotics-type methamphetamine weighing 0.1074 grams, with the remaining evidence after being examined at 0.089 grams. The South Sulawesi Integrated Assessment Team has assessed the perpetrator at the request of the Class IIB Boalemo Penitentiary because the perpetrator experienced "Sakaw". The assessment results showed that the perpetrator experienced physical and psychological problems consequence of breaking off the substance (sakaw) on a "severe" scale and required treatment for social and medical Rehabilitation.

Source: *Direktori Putusan Mahkamah Agung Republik Indonesia*  
(<https://putusan3.mahkamahagung.go.id/search?q=>)

The table above illustrates that for the type of violation, "narcotics abuse for own self", there are different sanctions decisions (some are sentenced to imprisonment, some are rehabilitation sanctions). Other choices in each case can be influenced by various backgrounds/factors, such as: 1). Identification of the role (involvement) of the perpetrator, whether as an addict (user for own self) or as a dealer (or even in the mafia structure of illegal narcotics trade); 2). Availability of means of Rehabilitation; 3). The presence or absence of assessment or consideration/absence of an alleged perpetrator of assessment results trespasser.

In the research, Sana Loue explained that there is an opportunity for someone to be imprisoned due to possession (drug use) of narcotics for personal use (own self). (Loue, 2003) Loue's research more or less illustrates that the number/quantity of narcotics possession (as evidenced in the case of being caught red-handed) is not the primary indicator/evidence that the perpetrator is categorized as an addict or not.

Table 1 above illustrates that a double-track system for narcotics abuse cases has been implemented in the implementation phase. However, the difference in decisions, especially regarding the type of sanctions (between imprisonment and Rehabilitation), actually creates legal uncertainty for someone who abuses narcotics for own self. Therefore, the author believes that the double-track system needs to be returned to its basic idea, namely a balance between two types of sanctions (criminal and treatment). The balance of the two types of sanctions should be able to open up the possibility for judges to impose two forms of sanctions on a narcotics abuse case for themselves, not merely a type of sanction which generally is a prison sentence.

### **3. Ideal Double-Track System Construction for Narcotic Abusers**

The principle of the double-track system is a model for imposing sanctions that uses and places two types of sanctions (criminal and treatment sanctions) in a balanced way, even though both originate from different ideas. Criminal sanctions are based on the basic idea of "why a punishment is held", while treatment sanctions start from the basic idea of "what is the punishment for". Criminal sanctions are reactive to an act, while treatment sanctions are more anticipatory towards the perpetrator. Criminal sanctions focus on deterrence for wrongdoing that the perpetrator has done. In contrast, treatment sanctions focus more on efforts to help/change the perpetrator (for the better) and prevention efforts (regarding recidivism). The double-track system does not only focus on the deeds and consequences they cause but also on the deeds and perpetrators so that the sanctions they receive are more or less beneficial.

Regarding narcotics abusers, the Narcotics Law recognizes various forms of perpetrators, which refer to the conditions of violated acts. Prohibited acts and criminal threats are regulated in Chapter XV of the Narcotics Law, covering acts: planting, maintaining, possessing, storing, controlling, providing, producing, importing, exporting, distributing, offering, selling, buying, receiving, delivering, etc. The object of study in this paper, namely the double track system in the Narcotics Law, will relate to the act of using narcotics for self. Regarding the object of the crime, the Narcotics Law divides it into two forms, namely drugs (divided into three groups) and narcotic precursors (divided into two groups). The act of using narcotics for own self raises several categories of a person's position in the Narcotics Law, which will be described in the following table:

**Table 2.**

The Position of Narcotics Abusers (For Own Self) According to the Narcotics Law

Position as	Related Article	Description
Drug addict	Article 1, number 13	"People who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically".
Narcotic Abusers	Article 1, number 15	"People who use Narcotics without rights or against the law".
Victim Narcotic Abuser	Article 54	"Someone who does not intentionally use narcotics because lured, tricked, deceived, coerced, and/or threatened to use Narcotics".

*Source: Indonesia Law Number 35, the Year 2009, concerning Narcotic*

The author can refer to a person who consumes narcotics as a narcotic user, which, when referring to the Narcotics Law, can be classified into the term "abuser". Therefore, criminal sanctions for narcotics users are justified in Article 127 paragraph (1) of the Narcotics Law, namely when the user is a pure "abuser". But, pure as the author meant, this abuser is not in the stage of addiction, nor is he a victim of narcotics abuse. Or in other words, these two reasons are the reasons for excluding criminal sanctions against a narcotics user.

The reasons for not giving criminal sanctions to narcotics abusers, according to the provisions of the Narcotics Law, can be seen in the following table:

**Table 3.**  
**Reasons for Not Being Convicted of an Abuser According to**  
**The Narcotics Law**

No	Basic	Reason	Description
1	Positioned as a Narcotics Addict.	Article 54, in conjunction with Article 103	In a condition caught red-handed, so it is undergoing the judicial process
2.	Positioned as a victim of drug abuse.	Article 54 in conjunction with Article 103 in conjunction with Article 127 paragraph (3)	In a state of being caught red-handed.
3.	An addict who reports himself or is reported by his family to undergo Rehabilitation.	Article 55	Not in a state of being caught red-handed.

*Source: Indonesia Law Number 35, the Year 2009, concerning Narcotic*

The reason for not being convicted of a narcotics user, as described in Table 2, has legal consequences for him to undergo medical and Social Rehabilitation. Based on Table 2, it can be concluded that Rehabilitation can be seen as a sanction, or it can also be seen as a treatment. Rehabilitation is a treatment sanction if a narcotics user is declared/decided as an addict by a judge in a judicial mechanism (in the case of being caught red-handed). In

contrast, Rehabilitation is seen as a mechanism of care/treatment when a drug user/addict reports himself or his family to a rehabilitation centre or hospital. Associated with the various judges' decisions in Table 1, the majority of narcotics abusers (for themselves) are given imprisonment based on Article 127 paragraph (1) letter of the Narcotics Law. The author means that the perpetrators are designated as drug users for themselves who are not addicts, so there is no reason to impose sanctions in the form of Rehabilitation.

Rehabilitation efforts for narcotics addicts do not have a legal basis in the current Indonesian Criminal Code, but this has justification in the Narcotics Law. The basis for rehabilitation efforts in the Narcotics Law can be seen in the following table:

**Table 4.**

Legal Basis for Implementation of Rehabilitation Efforts According to the Narcotics Law

No	Legal Basis	Substance
1	Article 4	One of the objectives of the Narcotics Law is to guarantee the regulation regarding Rehabilitation.
2.	Article 54	The obligation of Rehabilitation for addicts and victims of narcotics abuse.
3.	Article 55	Obligation to report for addicts, parents, and their families.
4	Article 56-59	About Medical Rehabilitation and Social Rehabilitation.
5	Article 103	Judges who examine narcotics cases are given two legal options for defendants/parties involved in narcotics cases. They were, namely, deciding on rehabilitation sanctions for defendants who are found guilty because they are at the level of addiction or stipulating rehabilitation efforts for defendants who are not proven guilty but are addicted. If found guilty with a rehabilitation treatment sanction, then it is counted as a period of serving a sentence.
6	Article 127, paragraphs (2) and (3)	Judges who examine cases of narcotics users are obliged to pay attention to and consider the provisions of Articles 54, 55, and 103. Obligations for someone proven to be a victim of abuse to undergo rehabilitation efforts through a judge's decision/determination.

*Source: Indonesia Law Number 35, the Year 2009, concerning Narcotic*

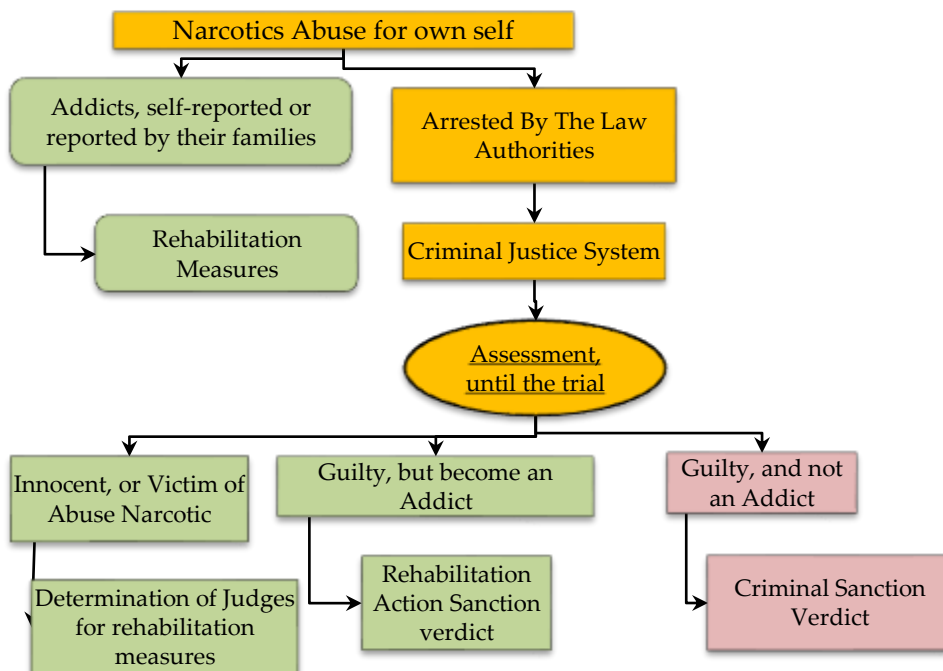
Based on the description in Table 2, Table 3, and Table 4, there is a synergy between treatment efforts with criminal sanctions and treatment sanctions that are strung together in a criminal system known as the double-track system in the Narcotics Law. The regulation regarding Rehabilitation (both as a sanction as well as a non-penal measure) is seen as a solution by Barbara Owen because drug abusers are more likely to become criminals and are more likely to return to crime after being released from prison (vulnerable groups become recidivists). (Owen, 1992) Associated with the results of Amy Farrell's research, it was concluded that in the last two decades, Rehabilitation

(in the therapeutic community model) effectively reduced crime and drug abuse and successfully created social integration behaviour. (Farrell, 2000)

The construction of a double-track system for narcotics abusers for themselves according to the Narcotics Law can be seen from the following chart:

**Chart 1.**

The Ideal Double-Track System in Indonesia's Criminal Justice System of Narcotic



The principle of the double-track system in Narcotics Law, as illustrated in the chart above, is increasingly emphasized by the Mutual Regulation (*Peraturan Bersama*) of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief National Police of the Republic of Indonesia, and the Head of the National Narcotics Agency of the Republic of Indonesia in 2014 regarding the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions (Mutual Regulation Year 2014). The 2014 Joint Regulation is a technical guideline for handling cases involving a person as an addict or a victim, as well as providing guarantees to undergo and carry out Rehabilitation

at the investigation, preparation and sentencing levels in an integrated and integrated manner.

In addition to the Mutual Regulations Year 2014, the Indonesia Supreme Court first issued Circular Letter Number 4 the year 2010 concerning the Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions, as well as Circular Number 3, the year 2011 concerning the Placement of Narcotics Abuse Victims in Medical Rehabilitation and Social Rehabilitation Institutions (both circulars are still valid). Based on the two handouts of the Indonesia Supreme Court, there are several conditions that Article 103 of the Narcotics Law can apply. First, the perpetrator was caught red-handed with narcotics; second, evidence of the use of various types of drugs was found within one day, as detailed in the style and weight in Circular Letter No. 4 of 2010; third, the existence of a laboratory test letter showing positive results using Narcotics; fourth, there is a certificate from a government psychiatrist appointed by the judge; and fifth, the perpetrator is not proven to be involved in the illicit traffic of Narcotics.

Concerning the formulation of the Draft Indonesian Criminal Code, the idea of a double-track system for narcotics cases is still embraced in the 2019 draft. Article 12, paragraph (1) of the RKUHP, which explains the definition of "criminal act", states that the threat of sanctions against a criminal act includes "criminal sanctions and/or action (treatment)". Further, the sanctions for narcotics abusers are regulated in Article 103, paragraph (1) and paragraph (3) of the RKUHP. Rehabilitation of narcotics addicts is one type of action sanction as stipulated in Article 103 paragraph (1) and Article 106 paragraph (1), with due regard to the objectives and guidelines for punishment in the RKUHP. The idea of a double-track system in the RKUHP requires the decision on treatment sanctions be given simultaneously with the form of primary criminal sanctions. However, the author can interpret that treatment sanctions can be offered independently (without following the immediate criminal sanctions, such as types of subsidiary/additional criminal sanctions).

Taking into account the current implementation of the double-track system in Indonesia, especially against narcotics abusers for themselves, as listed in Table 1, there are still many cases that are decided with only one type of sanction (both criminal sanctions and sanctions for Rehabilitation). There are still not many cases arranged with two types of sanctions (criminal and action sanctions) in a balanced and joint manner. Such a condition is recognized as an implication of the enactment of Article 103 of the Narcotics Law, which expressly stipulates that judges can choose between the two types of sanctions.

Therefore, there is no basis for judges to provide decisions in two forms of sanctions (criminal sanctions and sanctions for rehabilitation measures) simultaneously and equally for perpetrators in one case. The balance of criminal sanctions with sanctions for rehabilitation measures in one issue of drug abuse for own self, the author as a pure double track system idea.

Opportunity to apply the idea of a double-track system purely, ideally if it meets the following requirements: 1). Intended for narcotics abusers who are categorized as narcotics users for themselves; 2). being in a state of addiction; 3). Not actively involved or having an essential/crucial position in an illegal narcotics crime organization both nationally and internationally; 4). The period of serving the sentence of criminal sanctions is cut with the period of undergoing the treatment/rehabilitation process; 5). Obligation to undergo Rehabilitation, both medical Rehabilitation and Social Rehabilitation; and, 6). Not currently undergoing a sentencing process or actively involved in other serious crimes.

Opportunities for implementing the idea of a double-track system also need to be supported by changes regarding the critical role of the assessment stage. The Narcotics Law does not explicitly regulate assessment but has only been handled in the Mutual Regulation 2014. "Assessment" in the Indonesian dictionary is a term in the education clump, which is defined as "an assessment or activity of collecting, analyzing, and interpreting data or information about students and their environment to obtain an overview of the condition of the individual and their environment as material for understanding individuals and developing guidance and counselling service programs that are following their needs". ([Badan Pengembangan dan Pembinaan Bahasa Kementerian Pendidikan Kebudayaan Riset dan Teknologi, 2016](#))

The author agrees with Nurul Huda, who in his writing explains that the Mutual Regulation 2014 do not regulate who can be assessed or the requirements, thus opening the opportunity for someone to avoid imprisonment. ([Huda et al., 2020](#)) The Mutual Regulation 2014 also does not regulate the stages of assessment from beginning to end. Moreover, based on Riki Afrizal's research, the evaluation can be carried out after a request from the perpetrator ([Afrizal & Anggunsuri, 2019](#)) or in other words, whether or not an assessment can be carried out depends on whether or not the application is available. The author believes that the evaluation does not need to be preceded by request from the alleged perpetrator but by the absolute authority of the investigator (Indonesia Police or Indonesia National Narcotics Agency/BNN) based on the initial evidence obtained. Initial evidence referred to by the author

such as: urine/blood/hair test results, physical/psychological condition of the suspect when arrested, narcotics found during arrest.

The position of the results of the integrated assessment is also limited to only a recommendation for judges and other law enforcers in making decisions, or in other words, and there is a possibility for law enforcement not to use the assessment report as a basis for making decisions. This author's opinion can be seen in Table 1, where few judges in their findings do not use the assessment results as one of the bases for considering their decisions. Referring to Sana Loue's research results, narcotics abuse behaviour is closely related to drug (narcotics) or substance interactions with various factors, including genetic, environmental, psychosocial, and behavioural factors. ([Loue & Ioan, 2007](#)) Associated with the provisions in the Mutual Regulation 2014 that the integrated assessment team consists of a Team of Doctors (which includes doctors and psychologists) and a Legal Team (covers elements of the Police, BNN, Prosecutor's Office, and the Ministry of Law and Human Rights), then in the integrated assessment team it is necessary to add elements from sociologists (sociologists) to be able to provide an analysis of the behaviour and environment of the abuser which may be one of the factors causing drug abuse.

Taking into account the author's notes and analysis regarding the critical position of assessment (for narcotics abusers), to implement the ideal construction of a double-track system, it is necessary to change the current Narcotics Law. It is essential to include the construction of assessment actions as part of the criminal justice mechanism in the narcotics sector to achieve the goal of punishment for drug abusers who are addicted (addicts). Finally, the authors remind what was stated by Tom R. Tyler, that perceived procedural justice must have a positive effect on the abuser's efforts to stop drug use, and the impact of procedural justice on efforts to stop drug abusers must be supported by the abuser's perception of trust in law enforcement. ([Liu et al., 2020](#)) The non-optimal assessment stage to save processing time (aiming to accelerate the process of resolving narcotics cases) should not be a driving factor for increasing recidivism of narcotics abusers. ([Belenko et al., 1994](#))

## D. CONCLUSIONS

The double-track system model in the criminal system is relevant to the philosophical values contained in Pancasila as the ideal basis for the Indonesian state because it includes balance values in terms of the purpose of punishment, namely between the objectives of community protection (social defense) and the goal of restoration from consequences from crime. The disparity in judges'



decisions that often occurs in the implementation stage of the double-track system model in Indonesia is due to factors that are not yet ideal for the current regulations in the Narcotics Law. The author's identification found that the assessment stage had not been placed in the correct position, thus affecting the judicial process of a narcotics abuser and even affecting the type of sanctions that were decided. The assessment stage is not regulated in the Narcotics Law, and until now, it has only been handled in the Mutual Regulation 2014. So to implement the ideal construction of a double-track system, it is necessary to amend the existing Narcotics Law by adding clear and detailed arrangements regarding the assessment stages.

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