

## SPECIALIZED REHABILITATION OF MILITARY PERSONNEL CONVICTED OF NARCOTICS CRIMES: A Normative Legal Study

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**Abstract:** This study focuses on the specialized rehabilitation of military personnel who have been convicted of narcotics crimes. Its aim was to comprehend the meaning, urgency, and concept of rehabilitating individuals within the military who have been found guilty of such crimes. To achieve this aim, the methodology used is normative legal study with statutory, contextual, case-based, and comparative approaches. Furthermore, the legal sources utilized consisted of both primary and secondary legislation. The results obtained from this study showed that rehabilitation for incarcerated military personnel involved in narcotic crimes corresponds to an endeavor aimed at providing exceptional rehabilitation specifically tailored to their circumstances. It is also important to note that the urgency of rehabilitation is closely related to the vested interest of the military in continuing the rehabilitation process, aligning with the initial recommendation. The state should, hence, give careful consideration to the implementation of specialized medical and social rehabilitation programs for military personnel who have been convicted of narcotic crimes. It is of utmost importance to establish a comprehensive framework within military agencies to facilitate the execution of medical and social rehabilitation measures for military members involved in narcotics offenses, including the necessary funding. In conclusion, the imposition of specialized rehabilitation measures, in conjunction with imprisonment, is essential for military personnel that are convicted of these crimes before their reintegration into society. This approach makes the state responsible for addressing the repercussions of their actions and providing tailored rehabilitation support to prevent any lingering resentment, minimize the risk of their recruitment by adversaries of the state, and enable their potential contributions if required in the future.

**Keywords:** Rehabilitation, Members of the Military, Offenders, Narcotics, Fired

**Abstrak:** Kajian ini berfokus pada rehabilitasi khusus anggota TNI yang pernah dihukum karena tindak pidana narkoba. Tujuannya adalah untuk memahami makna, urgensi, dan konsep rehabilitasi individu-individu di tubuh militer yang

terbukti bersalah melakukan kejahatan tersebut. Untuk mencapai tujuan tersebut, metodologi yang digunakan adalah kajian hukum normatif dengan pendekatan perundang-undangan, kontekstual, berbasis kasus, dan komparatif. Selain itu, sumber hukum yang digunakan terdiri dari peraturan perundang-undangan primer dan sekunder. Hasil yang diperoleh dari penelitian ini menunjukkan bahwa rehabilitasi bagi anggota TNI yang terlibat dalam kejahatan narkoba adalah upaya yang ditujukan untuk memberikan rehabilitasi luar biasa yang secara khusus disesuaikan dengan keadaan mereka. Penting juga untuk dicatat bahwa urgensi rehabilitasi terkait erat dengan kepentingan militer untuk melanjutkan proses rehabilitasi, sesuai dengan rekomendasi awal. Oleh karena itu, negara harus mempertimbangkan secara hati-hati pelaksanaan program rehabilitasi medis dan sosial khusus bagi anggota militer yang telah dihukum karena kejahatan narkoba. Sangatlah penting untuk menetapkan kerangka kerja yang komprehensif di dalam badan-badan militer untuk memfasilitasi pelaksanaan langkah-langkah rehabilitasi medis dan sosial bagi anggota militer yang terlibat dalam pelanggaran narkoba, termasuk pendanaan yang diperlukan. Kesimpulannya, pengenaan langkah-langkah rehabilitasi khusus, bersamaan dengan pemenjaraan, sangat penting bagi personel militer yang dihukum karena kejahatan ini sebelum mereka kembali ke masyarakat. Pendekatan ini membuat negara bertanggung jawab untuk mengatasi akibat dari tindakan mereka dan memberikan dukungan rehabilitasi yang disesuaikan untuk mencegah kebencian yang berkepanjangan, meminimalkan risiko perekrutan mereka oleh musuh negara, dan memungkinkan kontribusi potensial mereka jika diperlukan di masa depan.

**Kata Kunci:** Rehabilitasi, Anggota TNI, Pelaku, Narkoba, Dipecat

## Introduction

Rehabilitation is a form of action or an integrated treatment process to free drug addicts, especially from dependence on narcotics.<sup>123</sup> The first rehabilitation process is medical rehabilitation which includes

assessment, completion of a rehabilitation plan, outpatient or inpatient rehabilitation program, and post-rehabilitation program.<sup>4</sup> For example, rehabilitation institutions run by government agencies, such as the narcotics Prison and the Regional Government, can carry out medical rehabilitation for narcotics abusers after obtaining ministerial approval.

Thus, for medical rehabilitation for drug addicts who use needles, a series of therapies can be given to prevent transmission, including information on HIV/AIDS through hands, with strict supervision from the Ministry of Health.

<sup>1</sup> Virginie Prendki et al., "A Systematic Review Assessing the Under- Representation of Elderly Adults in COVID- 19 Trials," *BMC Geriatrics* 20, no. 1 (2020): 1-10, <https://bmgeriatr.biomedcentral.com/articles/10.1186/s12877-020-01954-5>.

<sup>2</sup> W M S Wan Sulaiman et al., "Dataset Relating Self-Control and Hope among Participants in Malaysian Rehabilitation," *Data in Brief* 35 (2021): 106890, <https://doi.org/10.1016/j.dib.2021.106890>.

<sup>3</sup> Robert B Hawkins and Elizabeth T Rogawski Mcquade, "Cost-Effectiveness of Postoperative Drug Rehabilitation for Injection Drug Users," *The Annals of Thoracic Surgery*, 2020, <https://doi.org/10.1016/j.athoracsur.2019.11.011>.

<sup>4</sup> Riki Afrizal and Upita Anggunsuri, "Optimizing Assessment Process to Drug User Within the Scope of Effective Medical and Social Rehabilitation for Drug Addicts," *Jurnal Penelitian Hukum De Jure* 19, no. 3 (2019): 259-68.

This also applies to people who wish to perform medical rehabilitation as narcotics addicts after obtaining approval from the minister.<sup>5</sup>

Furthermore, members of the military who are involved in criminal acts of narcotics are subject to military discipline law, as seen in Article 1 of the Military Discipline Law (KUHDM).<sup>6</sup> In the KUHDM, there are the first two types of disciplinary violations, as stipulated in Article 2, paragraph 1, known as pure disciplinary or actual disciplinary violations. Thus, perpetrators of narcotics crimes who are military members will be subject to the provisions of military discipline as stipulated in the KUHDM, not as members of ABRI. Both are stated in Articles 2 and 2-6, commonly called disciplinary violations that are not true.

In addition, the types of punishment for officers, non-commissioned officers, and privates are also distinguished.<sup>7</sup> Then there is the main punishment, and there are additional penalties. The kinds of punishment that matter in practice and are often described are salary deductions, food deductions, placement into a military class two discipline, doing pioneer work, and corvee.<sup>8</sup>

Enforcement of military members against the threat of narcotics is carried out strictly

by considering a significant military interest in upholding the law within the military environment. In the general elucidation of Law Number 31 of 1997 concerning Military Courts, it is stated that military conspiracies are always balanced with legal plots in the judicial process.<sup>9</sup> Law enforcement officials within the military environment in carrying out legal proceedings against narcotics abuse must not only look at the legal interests but military interests must also be genuinely approved. Military judges who decide on narcotics cases must not only look at the problem from the point of view of the law, but they must also always consider the interests of the military in their decisions.

Several previous studies discuss this matter, such as research related to illegal dismissal from military service against soldiers who abuse narcotics.<sup>10</sup> Then further research related to the criminal justice system in the context of overcoming narcotics abuse was examined.<sup>11</sup> These two studies are different from the research that will be discussed later, namely to carry out special rehabilitation in military agencies after the dismissal of military members who commit narcotics crimes; this is important as stated in Article 127 of Law Number 35 of 2009 governing provisions criminal action and rehabilitation measures for perpetrators of narcotics abuse.<sup>12</sup>

So that the novelty of this research is the need to regulate provisions regarding special rehabilitation for the military

<sup>5</sup> Ruslan Lenggong and Baso Madiung, "Effectiveness of Narcotics Addicts, Psychotropic, and Other Addictive Substances in Makassar State Class Detention Houses," *Indonesian Journal of Legality of Law* 1, no. 1 (2018): 46-54, <https://postgraduate.universitasbosowa.ac.id/>.

<sup>6</sup> Lenggong and Madiung.

<sup>7</sup> Central Government, Law Number 39 of 1947 concerning Adjusting the Military Criminal Law (Staatsblad 1934, Number 167) to the Current Situation (hereinafter referred to as the Military Criminal Code or Military Criminal Code or abbreviated KUH (Indonesia, issued 1947).

<sup>8</sup> Hendra Mulyadi, "Prajurit Yang Terlibat Tindak Pidana Narkotika," *Jurnal Cendekia Hukum* 4, no. 2 (2019): 264, <https://doi.org/10.3376/jch.v4i2.102>.

<sup>9</sup> Central Government, Law Number 31 of 1997 concerning Military Courts, State Gazette of the Republic of Indonesia of 1997 Number 84, Supplement to the State Gazette of the Republic of Indonesia Number 3713 hereinafter referred to as the Law on Military Courts (Indonesia, issued 1997).

<sup>10</sup> Hoeda (2020)

<sup>11</sup> Dofir (2015)

<sup>12</sup> Central Government, Law No. 35 of 2009 concerning Narcotics (Indonesia, issued 2009), <https://peraturan.bpk.go.id/Home/Details/38776/uu-no-35-tahun-2009>.

organization itself, the aim of which is to prevent acts that can harm themselves, the community, the nation, and the state. Even though those concerned legally have been returned to society and civilization, from a personal point of view, those involved or military members who are framed have been indoctrinated in the military and cannot be equated with ordinary civilians; this is the need for rehabilitation. So based on this background, this research is entitled rehabilitation of military members of narcotic offenders who were fired.

## Research Methods

This research uses a type of normative legal research with various approaches: statute approach, conceptual approach, case approach, and comparative approach. In this study, researchers used 2 (two) types of legal materials, namely primary legal materials and secondary legal materials. Secondary legal materials include official documents, books, legal dictionaries, legal journals, and comments on the law and the developing paradigm of punishment. As well as particular references relating to proposals and suggestions for military rehabilitation. Because it needs detailed discussion and consideration in applying rehabilitation regulations within the military institution.

The method of collecting legal materials used in this study is the Study of Legislation and the study of literature. In addition to the analysis of legal materials by using steps, among others, identifying legal facts and eliminating irrelevant matters to determine the issues to be resolved, conducting a study of the legal problems proposed based on materials that have been collected previously, then withdrawing conclusions in the form of arguments that answer legal issues, as well as providing prescriptions based on the arguments that have been built

in the conclusions. This step follows the character of legal science as a prescriptive and applied science.

## Results and Discussion

### *The Concept of Rehabilitation Arrangements for Military Members Perpetrators of Narcotics Crimes Who Are Dismissed*

The concept in this study refers to a general understanding of an event, object, situation, idea, or mind. Arrangements refer to policies established by an institution to be adhered to and implemented by members of the institution. In the context of criminal law in Indonesia, arrangements for criminal acts are regulated in the Criminal Code (KUHP).<sup>13</sup> The definition of criminal relates to punishment or sanctions given to someone proven to have committed a crime.<sup>14</sup> In this case, the arrangements for providing rehabilitation to discharged military members need to be understood based on laws and regulations that are part of the national legal system.

Harmonizing laws and regulations is an effort to achieve harmony of principles and regulations in the legal system. In terms of rehabilitating discharged military members, it is necessary to harmonize with other national laws and regulations, unwritten laws in society, and international conventions and agreements ratified by Indonesia.

<sup>13</sup> Mohammad Ekaputra and Abul Khair, *Sistem Pidana Di Dalam KUHP Dan Pengaturannya Menurut Konsep KUHP Baru* (Medan: USU Press, 2010).

<sup>14</sup> Harsh Mahaseth and Ayushi Bansal, "Asia And The Icc: The Development Of International Criminal Law," *ICLR: International and Comparative Law Review* 21, no. 2 (2021): 923–28, <https://doi.org/10.2478/iclr-2021-0017>.

In practice, discharged military members tend to be dishonorably discharged.<sup>15</sup> This is a deviation from the general principles of criminal law, including crime sentencing. There are differences in punishment between members of the military, non-commissioned officers, and officers, as well as the primary and additional types of punishment.

In the context of military discipline law, there are regulations governing disciplinary violations committed by military personnel. An understanding of military discipline law needs to be considered to understand the sanctions and penalties that can be given to members of the military who violate discipline.

### ***The Importance of the Concept of Rehabilitation Arrangements for Military Members Perpetrators of Narcotics Crimes Who are Dismissed***

This concept is crucial because military members have a disciplined, firm, and strict education. As part of a society specifically trained to comply with rules and regulations in maintaining the state, they need rehabilitation to fulfill their responsibilities.

One of the crucial aspects of this research is the need to establish an integrated justice system involving other law enforcement agencies, such as military prosecutors, to accommodate military members' rehabilitation effectively. Drafting the military justice bill and establishing an integrated justice system connected to the military justice system are important steps

in ensuring the rehabilitation of military members involved in narcotics abuse.<sup>16</sup>

Furthermore, this study emphasizes the importance of precise arrangements regarding procedures for carrying out medical and social rehabilitation for members of the military who are involved in narcotics abuse, both those who are in the process of being investigated and those who have been sentenced to a legal verdict. This includes financing rehabilitation and the involvement of internal military and other experts in the rehabilitation process. Military internal involvement is very important because members of the military need to strengthen their mentality and character through rehabilitation to restore the spirit of nationalism.

Furthermore, several factors contribute to drug abuse in the military, such as personal, family, social, and economic factors. In addition, it is also stated that community participation in eradicating narcotics abuse is also meaningful following Law Number 35 of 2009<sup>17</sup>.

In the results and discussion of this study, it is emphasized that rehabilitation is very important for members of the military who are involved in drug abuse. Medical and social rehabilitation is the key to restoring disturbed bodily functions and facilitating overall physical, mental, and social healing. Therapy involving spiritual aspects, music, work skills, recreation, and family support is also important in rehabilitation.

This research provides an understanding of the importance of integrated rehabilitation regulations in overcoming narcotics abuse among discharged military members. Through this understanding, it is hoped that more effective efforts can be made to overcome this problem and return military members to society with a strong spirit of nationalism.

<sup>15</sup> E Indra Yani and Aji Titin Roswitha Nurshanty, "Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Pihak Berwajib (Kepolisian Maupun Anggota Militer)," *Jurnal Ilmu Hukum The Juris* 5, no. 2 (2021): 183, <http://ejournal.stih-awanglong.ac.id/index.php/juris/article/view/287/220>.

<sup>16</sup> Yani and Nurshanty.

<sup>17</sup> Central Government, Law No. 35 of 2009 concerning Narcotics.

***Analysis of the Decision on the Concept of Rehabilitation Arrangements for Military Members Perpetrators of Narcotics Crimes Who are Dismissed***

Criminal acts by military members cannot be considered general crimes and military crimes simultaneously. Application of a lighter sentence according to the Draft Criminal Code was desired in this case.

The laws referred to in this study include Law Number 6 of 1950,<sup>18</sup> Law Number 3 Pnps of 1965,<sup>19</sup> and changes in Law Number 26 of 1997 which affected the military discipline law.<sup>20</sup> Article 62, paragraph 1 of Law 34 of 2004,<sup>21</sup> states that members of the military who use narcotics will be dishonorably discharged.<sup>22</sup>

The trial process for narcotics crimes in the military faces obstacles such as the defendant's denial of the indictment and debates regarding the ownership of evidence. The judicial process involved military courts, high military courts, and the Supreme Military Court. Court examination procedures include ordinary, fast, special, and connectivity examinations. In Indonesian criminal law, a person's guilt is regulated by the Basic Judicial Powers

Law,<sup>23</sup> the Criminal Code Law,<sup>24</sup> and the Criminal Procedure Code Law. The principle of presumption of innocence is also emphasized in the law.

Hence the importance of applying strict, severe, and unique laws in the military environment. Tough criminal sanctions are needed to supervise and control soldiers so that they carry out their duties properly. The purpose of applying criminal law is to prevent destructive offenses in society.

The decisions included in this study show the strict application of the law against the abuse of narcotics by military members. The punishment of dismissal as a severe consequence aims to maintain discipline and morality in the armed forces. The decision also shows the commitment of the government and military institutions to fight against narcotics and maintain the professionalism and integrity of military members. By upholding the law fairly, it is hoped that drug abuse among military members can be minimized and public trust in military institutions is maintained.<sup>25</sup>

<sup>18</sup> Central Government, Law Number 6 of 1950 concerning the Stipulation of an Emergency Law concerning Criminal Procedures in Military Courts as a Federal Law (State Gazette of the Republic of Indonesia Year 1950 Number 35) as amended and supplemented by Law Number 1 (Jakarta, issued 1950).

<sup>19</sup> Central Government, Law Number 3 Pnps of 1965 regarding the treatment of the Military Criminal Code, the Military Criminal Procedure Code and the Military Discipline Law for members of the Police Force (State Gazette of the Republic of Indonesia of 1965 Number 21, Supplement to State Gazette Number 2737) (Indonesia, issued 1965).

<sup>20</sup> Central Government, Law (UU) No. 26 of 1997 (Indonesia, issued 1997).

<sup>21</sup> Central Government.

<sup>22</sup> Central Government, Law Number 34 of 2004 concerning the Indonesian National Armed Forces (Indonesia, issued 2004).

<sup>23</sup> Central Government, Law Number 48 of 2009 Concerning Judicial Powers (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076 hereinafter referred to as the Judicial Powers Act) (Indonesia, issued 2009).

<sup>24</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Konsep KUHP Baru*, 1st ed. (Jakarta: Kencana Prenadamedia Grub, 2008).

<sup>25</sup> Erika Magdalena Chandra, "Victimless Crime in Indonesia: Should We Punished Them? Kejahatan Tanpa Korban Di Indonesia: Haruskah Kita Menghukumnya? A . Introduction According to Joseph F . Winterscheid in His Article Victimless Crimes: The Threshold Question and Beyond , the D," *PJIH* 6, no. 2 (2019): 216-32, <http://jurnal.unpad.ac.id/pjih/article/view/22214/11644>.



### ***Judge's Treatment of Military Court Decisions Concerning Military Members Perpetrators of Narcotics Crimes Who Are Dismissed***

This study discusses the judge's treatment of military court decisions regarding military members who commit narcotics crimes who are dismissed. This research highlights the concept of rehabilitation in handling military members involved in narcotics crimes. First, there is a difference between criminal sanctions and actions in the context of reproach. Criminal sanctions aim to cause suffering to dismissed military members so that they feel the consequences of their actions and receive humiliation from society. Meanwhile, action sanctions are more educational and focus on protecting the community.

Second, the Narcotics Law stipulates that members of the military who are addicted to narcotics are perpetrators of criminal acts of narcotics abuse and can be punished by dismissal or imprisonment.<sup>26</sup> However, on the other hand, they are also considered victims of narcotics abuse. Therefore, the criminal sanction imposed is a form of "self-victimizing victims," in which they serve their sentence in prison.<sup>27</sup> In contrast, the sanction in the form of rehabilitation is carried out to provide them with treatment or care. This system assumes that narcotics addicts who are victims need protection but must be held accountable for their actions.

Third, the Narcotics Law implements a double-track system in formulating sanctions against criminal acts of narcotics abuse. However, judges are still free to decide how to handle cases involving narcotics users or addicts based on their beliefs. The concept of rehabilitation arrangements for discharged military members is crucial in criminal law policy. This provides guidelines for the formulation of laws and future enforcement of court decisions regarding the rehabilitation of discharged military personnel.

Finally, handling narcotics crimes by military members can be carried out through penal (criminal law) and non-penal (prevention) aspects. The penal part involves an analysis of criminal laws and regulations related to narcotics and psychotropic substances, while the non-penal aspect involves preventing narcotics abuse. The findings from the penal aspect analysis can be input for improvement in future planning countermeasures against narcotics abuse among military members.

### ***The Concept of Rehabilitation Arrangements for Military Members Perpetrators of Narcotics Crimes Who are Dismissed in the Future***

Regarding the rehabilitation arrangements for military members who have been discharged due to narcotics crimes, several things need to be considered:

1. The government/state is responsible for providing medical and social rehabilitation for members of the military involved in narcotics abuse. This is regulated in Law No. 35 of 2009 on narcotics<sup>28</sup>, which guarantees their right to get rehabilitation free of charge.
2. The rehabilitation costs will be borne by the government/state, including

<sup>26</sup> Central Government, Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (State Gazette of the Republic of Indonesia of 2009 Number 143, Supplement to the State Gazette of the Republic of Indonesia Number 5062 hereinafter referred to as the Narcotics Law and abbreviated as the Narcotics Law (Indonesia, issued 2009).

<sup>27</sup> Erny Herlin Setyorini Otto Yudianto, Fasichatus Sakdiyah, "Model Double Track System Pidana Terhadap Pelaku Penyalahgunaan narkotika Menurut Undang-Undang Nomor 35 Tahun 2009," *Jurnal Yustitia* 22, no. 1 (2021), <https://doi.org/10.53712/yustitia.v22i1.1116>.

<sup>28</sup> Central Government, Law No. 35 of 2009 concerning Narcotics.

expenses for the National Narcotics Agency (BNN) regarding the integrated assessment team, rehabilitation costs for narcotics addicts and abusers who are undergoing legal proceedings, and medical and medical care costs.

3. The Ministry of Health funds medical rehabilitation for military members who have received court decisions and have permanent legal force. These costs cover various aspects, such as therapy assessment, medical care, doctor visits, psychological evaluations, and laboratory tests.
4. In the case of discharged military personnel, special rehabilitation should be considered, which takes into account their special characteristics, such as education, way of thinking, and discipline, which are different from those of civilians. Restoring their character and adjusting to civil society can be important to rehabilitation.
5. Imprisonment sanctions should not be applied immediately to dismissed military members who are given rehabilitation measures first. After their soul and character improve, the application of criminal sanctions becomes relevant.
6. The importance of special rehabilitation for discharged military members is that returning them to civil society without special rehabilitation can be risky and detrimental to the government, the state, the community, and their families.

In the context of regulating the rehabilitation of members of the military who have committed narcotics crimes and have been dismissed, it is necessary to pay attention to these aspects to ensure a practical approach and minimize the risks that may arise.

## Conclusion

The conclusions of this study can be described as follows:

1. The meaning of rehabilitation for members of the military who have committed narcotics crimes and have been discharged is important to provide exceptional rehabilitation to them. The dismissal of military members proven to have committed narcotics crimes is a necessary step to maintain discipline, legal authority, and unit preparedness. However, medical and social rehabilitation efforts must follow the act of dismissal.
2. The urgency of rehabilitation for members of the military who have committed narcotics crimes and been dismissed lies in the army's interest to restore their health and mental condition. It is also intended that they can continue their life well outside the military. It is necessary to build a special narcotics rehabilitation center for military members to support the national rehabilitation program and avoid a wrong impression in military institutions.
3. The concept of rehabilitation arrangements for members of the military who have committed narcotics crimes and been dismissed must involve various parties. Cooperation between the military, police, BNN, and other related institutions is very important in eradicating narcotics within the military environment. It is also important to have a concept regulating procedures for medical and social rehabilitation, including financing. The involvement of internal military units and experts in their fields must also be considered in the rehabilitation process.

The conclusion of this study emphasizes the importance of providing special rehabilitation to members of the military who are dismissed for committing narcotics



crimes. This is not only an individual recovery effort but also a form of military responsibility in maintaining discipline and restoring the spirit of nationalism through strengthening the mentality and fighting character of the military.

So it is suggested that in law enforcement against military members who commit narcotics crimes who are dismissed, medical and social rehabilitation sanctions are imposed as mandatory steps after dismissal. This is important to ensure their recovery from drug addiction and prepare them to return to society under normal circumstances.

Apart from that, it is necessary to supervise and control military members who have been discharged so that they do not return to engaging in illegal activities such as drug trafficking. In this case, special rehabilitation involving military authorities needs to be carried out before imposing prison sentences. Thus, the state can be responsible for providing guidance and rehabilitation to discharged military members and preventing them from misusing their special abilities and skills.

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(State Gazette of the Republic of Indonesia of 2009 Number 143, Supplement to State Gazette of the Republic of Indonesia Number 5062 hereinafter referred to as the Narcotics Law and abbreviated as the Narcotics Law. Indonesia, issued 2009.