

Legal Analysis of Criminalization of Law Enforcement Officers Against Victims of Drug Abuse in the Perspective of Progressive Law in Indonesia

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Abstract. *Drug trafficking in Indonesia is legal for medical purposes but illegal for recreational use. Drug abuse is a serious problem, but drug abusers still have human rights, including the right to rehabilitation. This study examines the criminalization of drug abuse, especially by law enforcement officials, and the potential for a more balanced approach that combines legal and health perspectives. Using sociological juridical methods, the study analyzes the legal framework, law enforcement practices, and their impact on drug users. The findings highlight the need for a more in-depth approach that prioritizes rehabilitation and treatment alongside criminal sanctions. This approach would better address the root causes of drug abuse and promote effective prevention and eradication strategies.*

Keywords: *Abusers; Crime; Law; Narcotics.*

1. Introduction

The development of variations of illegal drugs in Indonesia encourages law enforcement officers to improve the quality of legal products. However, in reality, the problem of drug abuse is growing faster than the existing legal handling. Drug abuse not only causes material losses but also causes fatalities, especially among the younger generation. Based on Law Number 35 of 2009 concerning Narcotics, narcotics may only be used for medical and research purposes. However, in reality, many parties abuse narcotics for commercial purposes, which results in physical and psychological damage to its users.¹

From a legal perspective, Article 7 of Law Number 35 of 2009 states that narcotics can only be used for health services and scientific development. Abuse of narcotics class I, II, and III is subject to different criminal sanctions according to their level. For example, abuse of class I narcotics can be subject to imprisonment for up to four years.²

Drug abuse not only damages the mental and physical health of its users but also contributes to the emergence of various social crimes such as theft, gambling, and prostitution. Furthermore, drug abuse is also a factor in the spread of deadly diseases such as HIV/AIDS

¹Partodihardjo, S. (2004). Get to know drugs and the enemy of their abuse. Essence.

²Sunarso, S. (2005). Law Enforcement of Psychotropic Drugs in the Study of Legal Sociology. Raja Grafindo Persada.

Master of Law, UNISSULA

due to the use of unsterile injection needles. Rehabilitation is considered an effective step to restore the condition of addicts both physically, mentally, and socially, thereby reducing the impact of drug abuse.³Case examples such as those experienced by Ammar Zoni and his two colleagues show that drug users can be rehabilitated. Based on the examination, the three were not involved in a drug network but were pure users. Therefore, they are categorized as victims of drug abuse who are entitled to rehabilitation according to applicable laws. This case also shows the application of progressive law in dealing with victims of drug abuse.

Based on these problems, this study aims to analyze the criminalization of drug abusers from a progressive legal perspective in Indonesia. This study will discuss the qualifications of the criminalization of drug abuse and the application of criminal law to law enforcement officers in handling victims of drug abuse. This is expected to provide a deeper understanding of the progressive legal approach in solving drug problems in Indonesia.

Some of the concepts used, such as criminal acts,⁴criminalization, narcotics, effects of narcotics, and narcotics abuse.⁵ A crime refers to a violation of the law committed intentionally or unintentionally and is punishable by law under criminal law.⁶ Punishment is the process of determining and imposing sanctions for criminal acts, which aims to prevent further crimes and to reform the perpetrators.⁷Narcotics, as defined in Law Number 35 of 2009 concerning Narcotics, are substances or drugs that can cause various psychoactive effects, such as changes in target, loss of pain, and dependence. However, the Supreme Court through Circular Letter Number 4 of 2010 has provided guidance for judges to issue rehabilitation decisions for drug abusers. Efforts to overcome drug abuse in Indonesia involve various approaches, ranging from preventive, repressive, to rehabilitative.⁸However, the zero tolerance policy towards perpetrators of drug crimes that has been echoed by the government since 2014, as stated by President Joko Widodo, shows a strong focus on law enforcement.⁹ Drug abuse can damage a person's psychological condition and quality of life, and increase crime rates, from minor crimes to more serious ones, such as fraud and murder. The impact of drugs on the psyche includes impaired brain function, dependence, overdose, and damage to body organs (liver, kidneys, lungs, heart, etc.). In addition, it can change lifestyle, religious, social, and cultural values, and increase the risk of diseases such as HIV/AIDS and hepatitis. Drug abuse can also cause personality disorders, loss of self-confidence, and aggressive behavior. Users also experience difficulty concentrating, feelings of irritation, depression, and a tendency to harm themselves or commit suicide.¹⁰These illegal drugs, although they have certain medical functions, if abused can reduce body function and

³The Reason the Police Rehabilitated Ammar Zoni Even Though He Had Been Drugged Twice. (2024, January 19). Detik.com. Retrieved from <https://news.detik.com/berita/d-6617249/alasan-polisi-rehabilitasi-ammamaroni-padahal-lalu-2-kali-kena-narkoba>.

⁴Adami Chazawi, Criminal Law Lesson 1, PT. Raja Grafindo, Jakarta, 2007, p. 69

⁵ Dhian Artwitadibrata and Akhmad Khisni, "The Concept of Criminal Law for Personnel of Narcotics Abuse," Journal of Daulat Hukum 3, no. 4 (2021): 411.

⁶Sudikno Mertokusumo, Understanding the Law, Liberty, Yogyakarta, 1999, p. 10

⁷Leden Marpaung, 2005, Principles-Theory-Practice of Criminal Law, Sinar Grafika, Jakarta, p. 2

⁸Moh Taufik Makaro et al., 2005, Narcotics Crimes, Ghalia Indonesia, Bogor, p.

⁹<http://Hukum.ub.ac.id/wp-content/uploads/2014/01/JURNAL-FEBY.pdf>

¹⁰Norma Payung Mallisa, 2017, Thesis: The Dangers of Drugs on the Social and Religious Life of Adolescents (Case Study in Antang Raya (Antang Village, Manggala District, Makassar City), (Faculty of Ushuluddin, Philosophy and Politics, Alauddin State Islamic University, Makassar, p. 20

Master of Law, UNISSULA

disrupt mental health.

Drug abuse according to Article 1 number 15 of Law Number 35 of 2009 is the use of narcotics without rights or against the law. To determine whether an act is against the law, it is necessary to know the legal basis that permits the use of narcotics. In Law Number 22 of 1997 concerning Narcotics, drug abusers are people who use them without medical supervision. Drug abusers experience physical, mental, emotional, and/or spiritual problems, as well as mental disorders that inhibit their ability to function normally in social and work life. They also exhibit maladaptive behavior and experience withdrawal symptoms if they stop using narcotics.¹¹ Drug abuse is a pathological pattern of use that has negative impacts, affecting all ages, from teenagers to the elderly, with extraordinary impacts.

2. Research Methods

The approach method used is sociological juridical, aimed at analyzing facts in order to obtain a general picture of the problem and reviewing legal facts related to the qualification of narcotics abuse crimes by progressive law enforcement officers in Indonesia. The types of data used include primary data and secondary data. Primary data is obtained directly from the field through respondents related to the problems studied, while secondary data is obtained from legal materials including primary, secondary, and tertiary legal materials. The primary legal materials used include the 1945 Constitution, Law Number 5 of 1997 concerning Psychotropics, Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), Law Number 35 of 2009 concerning Narcotics, and Circular of the Supreme Court (SEMA) Number 4 of 2010. Meanwhile, secondary legal materials include expert opinions taken from literature, law books, and scientific articles, and tertiary legal materials in the form of legal dictionaries and the great dictionary of the Indonesian language. Data collection techniques are carried out through literature studies and field studies. Literature studies include the collection and analysis of materials from various sources such as books, laws and regulations, and other literature. Field studies are conducted through direct observation and guided free interviews with sources, such as the Chief Justice, the Chief Prosecutor, and the Head of the National Narcotics Agency (BNN), who have the competence and relevance to this study. Data obtained from document and field studies are then analyzed qualitatively. Analysis is carried out by systematically compiling data to provide clarity regarding research problems, then drawing conclusions deductively, from general to more specific things.

3. Results and Discussion

3.1. Criminal Qualification of Drug Abuse by Law Enforcement Officers Based on Progressive Law in Indonesia

The effects of drugs vary widely and depend on several factors, namely age, type of substance used, how to use and duration of use. The effects of drugs vary because the substances contained in each drug or narcotic are also different and each of these substances has its own effects and impacts on parts or organs of the body and our nervous system. Drug addiction affects not only the physical and mental aspects of a person, but also the emotional and spiritual state of the person concerned.¹²

¹¹Maswari M Adnan, 2015, *Understanding the Dangers of Drugs and Alternative Treatments*, Media Akademi, Pontianak, page 11.

¹²Subagyo Partodiharjo, *Recognize Drugs and Encourage Their Abuse*, (Jakarta: Erlangga, 2010), p. 73

Master of Law, UNISSULA

Law No. 35 of 2009 concerning Narcotics, in Article 6 paragraph (1), types of narcotics are classified into three groups, namely:

- a. Class I narcotics are narcotics that can only be used for the purpose of developing science and are not used in therapy, and have a very high potential for causing dependence.
- b. Class II narcotics are narcotics with medicinal properties, used as a last resort and can be used in therapy and/or for the purpose of developing science and have a high potential to cause dependency.
- c. Class III narcotics are narcotics with medicinal properties and are widely used in therapy and/or for the purpose of developing scientific knowledge and have a mild potential to cause dependency.

Narcotics are often used as an anesthetic before surgery, or to relieve pain. However, in certain circumstances they can be used to obtain an intoxicating effect from using narcotics. This causes narcotics to be frequently abused. Narcotics abuse refers to Article 1 number (15) of Law No. 35 of 2009 concerning Narcotics, which states "A person who uses narcotics without rights or against the law.

In the Circular Letter of the Supreme Court (SEMA) Number 04 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse and Addicts in Medical Rehabilitation and Social Rehabilitation Institutions, it gives the impression that the fulfillment of the right to rehabilitation depends entirely on law enforcement officers. So that there is a possibility of implementing rehabilitation for drug abusers with the consequence of there being a gap in access to rehabilitation being traded. Referring to SEMA Number 04, by looking at the problems of drug abusers, addicts and victims of drug abuse which are increasing, SEMA Number 03 of 2011 was issued again concerning the Placement of Drug Abuse Victims in Medical Rehabilitation and Social Rehabilitation Institutions to answer problems related to the implementation of rehabilitation which is considered less than optimal. Joint Regulation of the Chief Justice 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 the National Police of the Republic of Indonesia, and Head of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014-03 of 2014-11/Year 2014-PER005/A/JA/03/2014-1 of 2014 PER-BER/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions which aims to realize optimal coordination and cooperation in resolving narcotics problems in order to reduce the number of narcotics addicts and victims of narcotics abuse through treatment, care, and recovery programs in handling narcotics addicts and victims of narcotics abuse as suspects, defendants or prisoners, while continuing to eradicate the illicit trafficking of narcotics.¹³

Former Head of Drug Unit of South Lampung Police AKP Andri Gustami was involved in Fredy Pratama's drug network. AKP Andri Gustami launched the delivery of drugs from Fredy Pratama's network when passing through Lampung via Bakauheni Port to Merak Port, Banten. Doc. Special. five police officers from the Drug Investigation Directorate Metro Jaya Police and the East Jakarta Metro Police Narcotics Unit were arrested for methamphetamine abuse in Cimanggis District, Depok. The Sukmajaya Police Criminal Investigation Unit made the arrest

¹³ <http://icjr.or.id/hak-asasi-human-dan-politik-narkotika/> accessed August 18, 2024 at 13.45 WIB.

Master of Law, UNISSULA

after receiving reports from residents that police officers often gathered at a house in the Cimanggis area. The Sukmajaya Police Criminal Investigation Unit raided the house on April 19, 2024 at around 23.00 WIB. One of the police officers was Briptu FAR with evidence of 4 packages of methamphetamine found on his body. During the search, the Police also found 4 other police officers, namely Briptu IR, Brigadir DW, Briptu FR and Brigadir DP. These four people were in the room and were suspected of having consumed methamphetamine because there was a smoking device (Bong) at the location. In addition, there are cases of other police officers who have also been involved in drugs. The following are police officers who have been involved in drug cases, namely:¹⁴

1. Teddy Minahasa and Dody Prawiranegara

On October 14, 2022, National Police Chief Listyo Sigit Prabowo ordered the National Police's Professional and Security Division (Propam) to arrest East Java Police Chief Inspector General Teddy Minahasa. This is because Teddy was caught in a case of exchanging 5 kilograms of crystal methamphetamine for 5 kilograms of alum. Teddy is said to have ordered Dody Prawiranegara to exchange 10 kilograms of crystal methamphetamine for alum. However, Dody only agreed to 5 kilograms, which were then sold to another party. Previously, the narcotics came from evidence of 41.4 kilograms of crystal methamphetamine confiscated by the Bukittinggi Police in May 2022. As a result of this action, the panel of judges at the West Jakarta District Court sentenced Teddy to life imprisonment on May 9, 2023. Previously, Teddy was charged by the public prosecutor with the death penalty. Meanwhile, Dody as the former Bukittinggi Police Chief, Assistant Grand Commissioner, was given a PTDH dismissal sanction.

2. Kasranto

In addition to Dody Prawiranegara, the Teddy Minahasa case also dragged former Kalibaru Police Chief, Commissioner Kasranto. He was one of the individuals involved in the methamphetamine transaction and distribution. He sold the methamphetamine entrusted to him by Teddy and was asked by Linda Pujiastuti (Anita Cepu) to find a buyer in Jakarta via text message since June 23, 2022.¹⁵

3. The Story of Yuni Purwanti Kusuma Dewi

Astana Anyar Bandung Police Chief, Commissioner Yuni Purwanti Kusuma Dewi was arrested by Propam Polda Jabar at a hotel in Bandung on the evening of February 16, 2021, along with 11 of her subordinates. Although there was no evidence of drugs in the arrest, when undergoing a urine test, Yuni tested positive for crystal methamphetamine. Before being caught in this case, she had handled drug cases as Head of the Bogor Police Narcotics Unit.¹⁶

4. Andrew Gustami

Apart from Polda Metro Jaya, the former Head of the South Lampung Police Narcotics Unit, AKP Andrew Gustami also involved in Fredy Pratama's drug network. He launched a drug shipment when passing through Lampung via Bakauheni Port to Merak Port. He has made a

¹⁴ <https://metro.tempo.co/read/1859318/5-Member-polda-metro-jaya-diringkus-saat-nyabu-ini-register-polisi-terlibat-jaringan-narkoba> accessed on August 12, 2024 at 21.50 WIB.

¹⁵Ibid.

¹⁶Ibid.

Master of Law, UNISSULA

criminal conspiracy to offer, sell and sell, buy, exchange, hand over or receive, class I narcotics. He ended up getting a death sentence.¹⁷

The actions of law enforcement officers who abuse narcotics do not implement the dignity of law enforcement officers who are authoritative and maintain the good name of the POLRI institution, for this matter it is analyzed using the theory of Law Enforcement According to Soerjono Soekanto Conceptually, the core and meaning of law enforcement lies in the activity of harmonizing the law with the values outlined in solid and embodied rules and attitudes as a series of final stage value descriptions to create, maintain and defend peace in social interactions. According to Soerjono Soekanto, there are several factors that influence the law enforcement process, including:¹⁸

- a) The law itself is likely to be a mismatch in the laws and regulations regarding certain areas of life.
- b) Law enforcement, namely the party that forms and implements the law.
- c) Facilities or means that support law enforcement in society, namely where the law is enforced and applied.
- d) Culture is the result of works, creations and feelings that are based on human will in social interactions.

For this reason, it is implemented that a form of law enforcement action is carried out to oversee a regulation so that it runs properly and properly. Law enforcement that is carried out will be an assessment and barometer of how the wider community can assess or view an area in implementing law enforcement actions whether it is in accordance with applicable regulations or not in accordance with existing regulations. Narcotics crimes are regulated in Chapter XV Article 111 to Article 148 of Law Number 35 of 2009 which are special provisions, although it is not expressly stated in the Narcotics Law that the crimes regulated therein are crimes, but there is no need to doubt that all crimes in the law are crimes. The reason is, if narcotics are only for medical treatment and scientific interests, then if there are acts outside of these interests, it is already a crime considering the magnitude of the consequences caused by the illegal use of narcotics which are very dangerous for human life. In Indonesia, punishment for perpetrators of crimes has been regulated in applicable laws and has been ratified by the government, so in every unlawful act there must be a legal response that is commensurate and can provide a deterrent effect for the perpetrator. Positive law in Indonesia, the threat of punishment for perpetrators of criminal acts is contained in the Criminal Code. The Criminal Code stipulates the types of criminal acts or punishments included in Article 10 of the Criminal Code, which is divided into two parts, namely the main punishment and additional law.¹⁹

So that the threat of criminal sanctions for PPNS, Police Investigators, Investigators, BNN who do not implement the provisions on evidence (Article 140 paragraph 1), where for PPNS to implement the provisions of Article 88 and Article 89, which are threatened with imprisonment of at least 1 (one) year and a maximum of 10 (ten) years. The obligation of PNS according to Article 88 and Article 89 who confiscate narcotics and narcotic precursors is

¹⁷Ibid.

¹⁸Ibid., p. 3

¹⁹Laden Marpaung, Principles of Criminal Law Theory and Practice, Jakarta: Sinar Grafika, 2005, pp. 107-110

required to make a confiscation report and submit the confiscated goods along with the report to the BNN Investigator or Police Investigator, with a copy to the Head of the local District Attorney's Office, the Head of the local District Court, the Minister and the Head of the Food and Drug Supervisory Agency in Article 140 paragraph (2) Police Investigators or BNN Investigators who confiscate narcotics and precursors are required to do. The application of criminal sanctions for narcotics crimes aims to provide effectiveness from community participation. This participation has the widest possible opportunity where the community has the right and responsibility to help prevent and eradicate the abuse and illicit trafficking of narcotics and narcotic precursors.

According to Abu Hanifah and Nunung Unayah, the factors causing drug abuse are:²⁰

1. Family Factors Based on research results from Unika Atma Jaya and the Jakarta Police Science College in 1995, if families are often accused of the problem, it is not without reason. There are several types of families whose family members (children and adolescents) are at high risk of being involved in drug abuse. These types of families include:

a. Families who have a history (including parents) of drug dependence.

b. Families with chaotic family management, which can be seen from the inconsistent implementation of rules carried out by the father and mother (for example, father says yes, mother says no).

c. Families with high conflict and never any attempt to resolve the conflict satisfactorily for all parties involved. Conflict can occur between father and mother, father and child, mother and child or between siblings.

d. Family with authoritarian parents. Here the role of parents is very dominant, with children who only have to obey what their parents say for reasons of politeness, customs or for the sake of the child's own progress and future without being given the opportunity to dialogue and express disagreement.

e. A perfectionist family is a family that demands its members to achieve perfection with high standards that must be achieved in many things.

f. A neurotic family is a family that includes feelings of anxiety for reasons that are not strong enough, is easily anxious and suspicious and often overreacts to things.

2. Personality Factors, Teenagers who have negative self-concepts and low self-esteem usually fall into drug abuse.

3. Peer Group Factors, whether we realize it or not, a peer group can put pressure on someone in the group to behave like the group. Because of the pressure in the peer group, everyone wants to be liked by their group and no one wants to be ostracized. Likewise, in peer groups that have behaviors and norms that support drug abuse, new abuse can emerge.

4. Opportunity factors availability and ease of obtaining NAPZA can also be said to be triggers. Currently Indonesia is an easy target for international drug syndicates to distribute these goods, which in turn makes these substances easy to obtain.

²⁰Abu Hanifah and Nunung Unayah, Preventing and Overcoming Drug Abuse Through Community Participation, Vol. 16 No. 01 Year 2011, (Online) <http://www.neliti.com>. Accessed on August 25, 2024, pp. 35-36

Master of Law, UNISSULA

According to Yustinus Semiun, there are eight types of factors that cause substance dependence and abuse:

1. Exposure to drugs and the use of drugs that are initially in light doses will certainly lead to drug abuse and dependence.
2. Situational factors that cause some form of stress are often the triggers for people to use dangerous drugs in excessive doses.
3. Family characteristics Factors that are often cited as causes of children abusing drugs:
 1. Raised in families where their parents experienced more marital conflict.
 2. Experiencing inappropriate parental treatment.
 3. Having parents who are more likely to be alcoholics, sexually deviant and antisocial.
 4. Antisocial behavioral personality makes it difficult to control impulses, does not respect conventional (common) customs, is independent, aggressive and has a greater likelihood of abusing drugs.
5. Depression is the second personality factor that is always associated with substance abuse.
6. Anxiety reduction The stimulating effects of light doses of alcohol reduce anxiety because they produce greater feelings of power, well-being and self-confidence.
7. Expectations of the effects of alcohol create expectations in users. Users think they can control their drinking. Individuals who think they cannot control their drinking are more likely to get drunk. In other words, drinking is a self-fulfilling prophecy.
8. Physiological factors
 - a. Some alcoholism is an inherited disorder.
 - b. Alcoholic parents pass on physiological factors that lead to alcoholism to their children.
 - c. Boys are more likely to be affected by alcoholic parents.

Drug abuse is very inappropriate for a Polri soldier who should be an example and role model in law enforcement and support government programs in eradicating drug abuse. POLRI considers the drug issue to be a serious problem, POLRI does not discriminate in enforcing the law because we are a country of law, so the law will apply to all POLRI soldiers from the rank of Prada to General, especially against perpetrators of drug abuse. These physical and psychological symptoms are also related to social symptoms such as the urge to lie, steal, be angry, manipulative, and also the urge to get money to buy the types of drugs that have been consumed. As a result of the influence of addiction to drugs, an addict makes drugs the main priority in his life. Drugs are the center of his life and all other things/aspects in his life revolve around it. There is nothing more important than drugs and users will put the interest in using drugs above everything else. He will stop doing the activities he used to do before he was immersed in drug use. He no longer does his hobbies, does normal activities as usual, this causes addicts to often live isolated, he lives in his own world and isolates himself from the outside world, namely the world of his family and old friends and looks for new friends who are considered the same as him, who are considered to be able to understand him and will not lecture him about the prohibition of drug use.

3.2. Application of Criminal Law to Crimes of Narcotics Abuse by Law Enforcement Officers based on Indonesian Progressive Law

Islamic Law and Indonesian Positive Law have similarities and differences in the concept of drugs. These similarities include: first, Islamic Law and Indonesian Positive Law define drugs as a substance that when consumed can cloud the mind (drunk) and can result in dependence. Second, both prohibit and impose sanctions on drug abusers and dealers. Third, both have the concept of preventing and overcoming drugs, both of which are preventive, curative, recessive and educational.

The term narcotics that is usually used is "drug", namely a type of substance that when used will have certain effects and influences on the user's body, namely:²¹

1. Influencing consciousness
2. Providing encouragement that can influence human behavior
3. These effects can be sedative, stimulant (not sexual stimulant), causing hallucinations (the user is unable to distinguish between fantasy and reality, loses awareness of time and place).

In the Narcotics Law, the definition of a Narcotics Dealer is not explicitly explained, but implicitly and narrowly it can be said that a Narcotics Dealer is a person who carries out the activities of distributing and handing over narcotics. Broadly, the definition of a Dealer can also be carried out and oriented to the dimensions of the seller, buyer to distribute, transport, store, control, provide, carry out the act of exporting and importing narcotics.²²

In recent years, the war on narcotics has been greatly intensified. The circulation of narcotics is now not only carried out by adults, but children have also committed such acts, seeing such a phenomenon, the most important role is the Government, private sector, and society so that there are no more victims of narcotics abuse. In Chapter XV of Law Number 35 of 2009 concerning Narcotics. The impact of narcotics abuse cannot be considered trivial, because it is the same as corruption, where both equally threaten the progress of the nation and state security. Narcotics cases are still a trend or are still dominant among several other crime or violation cases, and even then only limited to cases that are revealed or recorded. It is no longer a secret that many narcotics cases are resolved "peacefully" so that the cases are not recorded (dark number).²³

According to Barda Nawawi Arif, what is qualified as acts and abuse and distribution of narcotics are arranged into 14 (fourteen) criminal acts as follows:²⁴

- a. Planting, maintaining, having in stock, possessing, storing, or controlling narcotics (in plant or non-plant form);
- b. Producing, processing, extracting, converting, assembling, providing narcotics;

²¹Soerjono. D. *Legal Aspects of Narcotics in Indonesia*. Bandung: PT. Karya Nusantara. 1976., p.1.

²²Lilik Mulyadi, "Criminalization of Drug Dealers and Users, Judge of North Jakarta District Court". 2012. Vol. 1, p. 315

²³Wendra Hartanto, "Law Enforcement Against Narcotics and Illegal Drug Crimes in the Era of International Free Trade That Impacts State Security and Sovereignty", Vol. 14. No. 1, (March 2017), p. 3

²⁴Barda Nawawi Arief. *Problems of Law Enforcement and Criminal Law Policy in Combating Crime*. (Jakarta: Kencana Prenada Media Group. 2007.) P. 186

Master of Law, UNISSULA

- c. Carrying, sending, transporting, transiting narcotics without permission and against the law;
- d. Importing, exporting, offering for sale, distributing, selling, buying, handing over, receiving, acting as an intermediary in the sale and purchase or exchanging narcotics without authority and against the law;
- e. Attempt or conspiracy to commit a crime;
- f. Without rights and against the law using narcotics against another person or providing narcotics for use by another person;
- g. Parents/guardians of underage addicts who deliberately do not report;
- h. Addicts who are old enough or their family (parents/guardians) who deliberately do not report it;
- i. Using minors to commit narcotics crimes;
- j. Pharmaceutical factory managers who do not carry out their obligations under Article 41 and Article 42, namely not including labels on narcotics packaging and publishing narcotics outside of scientific medical/pharmaceutical print media;
- k. Obstructing or complicating investigation, prosecution or trial in court;
- l. The captain and pilot without any rights and against the law did not implement the provisions of Article 24 and Article 25, including not making a report on the narcotics cargo, not reporting the presence of the narcotics cargo to the Head of the local Customs Office;
- m. Investigators (PPNS/Polri) who unlawfully do not implement the provisions of Article 69 and Article 71, including not carrying out sealing and making a confiscation report, not notifying or handing over confiscated goods, not destroying narcotics plants found;
- n. Sanctions for giving false information in court.

In applying criminal law, it is known as the principle of *ultimum remedium*. That the argument of *ultimum remedium* is needed to first consider the use of other sanctions before harsh and sharp criminal sanctions are imposed. Regarding the application of *ultimum remedium* in the imposition of criminal sanctions by judges, it can accommodate the interests of the perpetrators of criminal acts, every activity that refers to the application of the principle of imposing imprisonment as a last resort (*ultimum remedium*). That criminal sanctions are the "last resort" (*ultimum remedium*) of a series of stages of enforcing a rule. This "last resort" is the ultimate move if the enforcement mechanism in other areas of law does not work effectively.²⁵

Law Number 35 of 2009 concerning Narcotics divides narcotics crimes into 2 groups, namely crimes related to abuse and crimes related to illicit trafficking of narcotics where the government program is known as the Prevention and Eradication of Abuse and Illicit Trafficking of Narcotics and Narcotics Precursors (P4GN) program. There is a clear difference between abusers and dealers as stated in Article 4 of the Narcotics Law concerning the purpose of this law that abuse is prevented, protected and saved while dealers are eradicated because they have the intention to gain financial gain by poisoning abusers so that they become addictive. Based on the Narcotics Law, Article 1 Paragraph 15 states that abusers are

²⁵Siswanto Sunarso. *Philosophy of Criminal Law*. (Jakarta: Rajawali Press. 2015.) p.ix.

Master of Law, UNISSULA

people who use narcotics without rights or against the law. Article 1 Paragraph 13 states that drug addicts are people who use or abuse narcotics in a state of dependence on narcotics, both physically and psychologically. The explanatory section of this law, namely in the explanation of Article 54, states that what is meant by "victim of narcotics abuse" is someone who accidentally uses narcotics because they are persuaded, tricked, deceived, forced, and/or threatened to use narcotics.

The crime of abuse of suspects is an abuser consisting of:²⁶

- a. Abusers for personal use, namely abusers who carry narcotics in small quantities for personal consumption, not for sale, for daily use or are called users (Article 127)
- b. Drug addicts do not report, namely those who abuse and are already dependent on narcotics (Article 134)
- c. Victims of drug abuse (explanation of Article 54) are people who are unintentionally persuaded, enticed, deceived, tricked, and forced to use narcotics.

Drug crimes are extraordinary crimes because of their large and comprehensive impacts. This crime has received international attention, including Indonesia, with the increasing number of new modes and motives. The government has tried to eradicate it through criminalization and rehabilitation. Drug abusers are given rehabilitation and criminal sanctions, in the hope that they can recover. However, many drug abusers are neglected in their right to rehabilitation and instead serve prison sentences, which are ineffective due to prison conditions that are prone to drugs. The existing rehabilitation alternatives are also still not optimal, as evidenced by the many cases of relapse after rehabilitation.

In Law No. 35 of 2009 concerning Narcotics which adopts a double track system, it regulates drug abusers who must be rehabilitated on the other hand it also regulates criminal provisions for drug abusers. So it is certainly not easy for law enforcement officers to determine the right sanctions for these drug abusers. Although the provisions regarding the criteria for placing drug addicts in Rehabilitation Institutions have been regulated in SEMA No. 4 of 2010 and reinforced by SEMA No. 3 of 2011, there are still many drug abusers who have to lose their right to undergo rehabilitation.

To examine the problem of implementing the medical rehabilitation sanction system and criminal sanctions against drug abusers, it will be examined to what extent the imposition of medical rehabilitation sanctions and criminal sanctions are implemented in overcoming drug abuse. For this reason, the theory of law enforcement will be used regarding the factors that determine the effectiveness or ineffectiveness of the system of imposing sanctions on drug abusers. As analyzed using Aristotle's theory of Justice which emphasizes that in essence this view of justice is a granting of equal rights but not equality. Aristotle distinguishes his equal rights according to proportional rights. Equality of rights is viewed by humans as a unit or the same container. This is what can be understood that all people or every citizen is equal before the law. Proportional equality gives each person what is their right according to their abilities and achievements. Furthermore, justice according to Aristotle's view is divided into two types of justice, "distributive" justice and "commutative" justice. Distributive justice is justice that gives each person a portion according to their achievements. Commutative justice gives

²⁶Anang Iskandar. Enforcement of Narcotics Law, Rehabilitative Against Abusers and Addicts, Repressive Against Dealers. (Jakarta: Garamedia.2019.) Page 46

Master of Law, UNISSULA

everyone the same amount without distinguishing their achievements in this case related to the role of exchanging goods and services. Distributive justice according to Aristotle focuses on the distribution of honor, wealth, and other goods that can be obtained equally in society. Leaving aside mathematical "proofs", it is clear that what Aristotle had in mind was the distribution of wealth and other valuables based on the values prevailing among citizens. A just distribution may be a distribution that is in accordance with its good value, namely its value to society.

Handling of criminals needs to be differentiated based on the impact of their actions. Legislators must understand the causes of criminalization so that the sanctions given are appropriate, avoiding overcapacity in correctional institutions, as occurs in cases of drug abuse. Drug abusers are often labeled criminals, which can cause them to form exclusive groups, hindering rehabilitation efforts. The labeling theory in criminology states that crime is not the nature of the act, but rather the result of the application of sanctions by society or authorities to offenders.²⁷

Legal protection for drug users as victims of drug abuse carried out by the National Narcotics Agency by placing drug users in rehabilitation centers as an effort and commitment of the National Narcotics Agency for victims of drug abuse to immediately be free from the dangers of drugs to their mental and physical health and not be dependent on drugs, which starting in 2015 placed drug abusers "better to be rehabilitated than imprisoned". Joint Regulation of the Chief Justice of the Supreme Court Number 01/PB/MA/III/2014 Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions and Circular Letter of the Supreme Court Number 04 of 2010 Concerning the Placement of Narcotics Abusers, Victims of Narcotics Abuse and Addicts in Medical Rehabilitation and Social Rehabilitation Institutions, in accordance with Article 13 number 1 of Joint Regulation of the Chief Justice of the Supreme Court Number 01/PB/MA/III/2014 Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

In the normative view, namely the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, drug abusers or drug addicts are categorized as criminal acts. In fact, it is known that drug abusers for themselves or drug addicts are only victims of their own actions.²⁸ In essence, drug abusers for themselves and drug addicts are individuals who use and abuse drugs for themselves. So drug abusers should be positioned as victims, not as perpetrators of criminal acts who are ultimately subject to criminal sanctions. In other words, individuals who abuse drugs for themselves will automatically become victims of drug abuse. This condition in the typology of victims is also referred to as self-victimizing victims, namely those who become victims because of the crimes they themselves commit.²⁹

One of the problems caused by the many terms for drug users is the confusion of regulations where Article 4 letter d of the Narcotics Law states that the purpose of the Narcotics Law is "To guarantee the regulation of medical and social rehabilitation efforts for drug abusers and

²⁷C. Maya Indah S., Ibid,

²⁸ Supreme Court of the Republic of Indonesia, Placement of Abusers, Abuse Victims and Drug Addicts in Medical Rehabilitation and Social Rehabilitation Institutions, Circular Letter of the Supreme Court of the Republic of Indonesia, No: 04 of 2010, April 7, 2010, pp. 1-3.

²⁹C. Maya Indah S. Victim Protection (A Victimology and Criminology Perspective), Kencana Prenadamedia Group, Jakarta, 2014, p. 36.

Master of Law, UNISSULA

addicts", but in Article 54 of the Narcotics Law it states "Drug Addicts and Victims of Drug Abuse are required to undergo medical rehabilitation and social rehabilitation" so that the rights of drug abusers to receive rehabilitation as regulated in Article 54 are not recognized with the threat of criminal sanctions for drug users as regulated in Article 127. Drug abusers for themselves should be positioned as sick people who need treatment and recovery due to the negative impacts of drug abuse that they use (victims whose rights should be protected as victims).³⁰Therefore, the sanctions that should be applied specifically to drug abusers for themselves without being accompanied by other major criminal qualifications are a type of sanction that can restore their condition to its original state, namely in the form of an action sanction.

This indicates that drug addicts also include drug abusers, which also means that a drug addict will undergo two types of sanctions at once. The existence of action sanctions in the Narcotics Law will certainly be more beneficial for drug abusers compared to the application of criminal sanctions. However, if it is not based on existing legal norms, it will cause new problems, namely the simultaneous application of criminal sanctions and action sanctions. Although action sanctions and criminal sanctions have different purposes, the position of both sanctions is equal as a form of punishment in the criminal law system or the application of both in a legal regulation is usually known as a double track system. Because of its equality, according to the author, action sanctions should override the existence of criminal sanctions, not combine the two. Combining the form of criminal sanctions and action sanctions simultaneously seems to create a new hierarchy in criminal sanctions that make action sanctions below criminal sanctions. In article 10 of the Criminal Code (Criminal Code) we know the forms of criminal sanctions in the form of principal criminal sanctions and additional criminal sanctions and which have been arranged from the most severe sanctions to the lightest sanctions.

The provisions regarding rehabilitation for drug abusers in Law No. 35 of 2009 are regulated in Article 54 which reads: "Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation". This article is the basis that drug addicts must undergo rehabilitation and because of the word "mandatory" in the article, the state should be responsible for guaranteeing this. In addition, for users or abusers for themselves, it is regulated in Article 127 which reads:

1) Any Abuser:

- a. Class I narcotics for personal use are punishable by a maximum prison sentence of 4 (four) years;
- b. Class II narcotics for personal use are punishable by a maximum prison sentence of 2 (two) years;
- c. Class III narcotics for personal use are punishable by a maximum prison sentence of 1 (one) year.

2) In deciding a case as referred to in paragraph (1), the judge must pay attention to the provisions as referred to in Article 54, Article 55, and Article 103.

³⁰Arif Gosita, Child Protection Issues, Akademika Pressindo, Jakarta, 1989, p. 52.

Master of Law, UNISSULA

3) In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation.

The regulation of criminal sanctions and also the obligation to undergo rehabilitation in Article 127 shows that both can be applied to drug abusers. It is clear that the double track system is very clearly applied in Article 127. In addition, with the issuance of SEMA No. 7 of 2009 concerning Placing Drug Users in Therapy and Rehabilitation Institutions which confirms that drug abusers are victims and not criminals, it means that the world of justice in Indonesia has opened its eyes to the nature of drug abusers in the context of legal science, especially victimology. Which in SEMA No. 7 Article 1 reads ""Considering that the majority of prisoners and detainees in drug cases are included in the category of users or even victims who when viewed from the aspect of their health are actually people who are sick, therefore imprisoning the person concerned is not the right step because it has ignored the interests of care and treatment ".³¹

This article shows a paradigm shift regarding drug abusers who are not only seen as perpetrators but also as victims. In the SEMA, it is an important point that emphasizes that drug abusers are not only perpetrators of crimes but also people who suffer from addiction and need treatment both physically and psychologically as well as support from the community to be able to return to normal life. However, this is something that has been very difficult to legitimize so far, so that drug abusers have always been placed as criminals which results in the loss of their rights as victims including to receive recovery.³²

Law enforcement as a form of state protection of human rights must be implemented consistently and in line with legal developments and pay attention to the sense of justice and paradigm changes in society, namely that users, addicts and victims of drug abuse are not merely viewed as perpetrators of criminal acts but also as victims and the implementation of rehabilitation as part of the punishment must be implemented, this is in accordance with the background of the Regulation of the Attorney General of the Republic of Indonesia Number Per-029 / A / JA / 12/2015 concerning Technical Instructions for Handling Drug Addicts and Victims of Drug Abuse in Rehabilitation Institutions.

Coordination and commitment between law enforcers in placing drug addicts in rehabilitation institutions are expected to reduce cases of drug abuse. Law No. 35 of 2009 concerning Narcotics regulates the Double Track System, namely criminal sanctions and rehabilitation for drug users, who are considered both victims and perpetrators. Rehabilitation is regulated in Article 54, and the rehabilitation period is calculated as the sentence period according to Article 103 of the Law.

In general, criminal law recognizes three different schools of thought in viewing the purpose of punishment. The theory of punishment focuses on the basis of the state's right to impose punishment. Before deciding, judges and prosecutors consider the benefits of punishment for the defendant and society, which is often influenced by the theory of punishment they adhere

³¹Circular Letter No. 7 of 2009 Concerning Placing Drug Users in Therapy and Rehabilitation Institutions.

³²AR Sujono and Bony Daniel, 2013, Comments and Discussion of Law Number 35 of 2009 Concerning Narcotics, Sinar Grafika, Jakarta. Page 120

Master of Law, UNISSULA

to.³³To ensure that Drug Abusers are punished with rehabilitation, Law Number 35 of 2009 explicitly includes the Government's Legal Policy which is clearly stated in its objectives as in Article 4. This is so that the public and law enforcers know the direction to take in overcoming drug abuse and illicit trafficking. Article 4 of Law Number 35 of 2009 reads:

- a. Ensure the availability of narcotics for health, science and technology purposes. Legal circulation for health purposes is strictly regulated and supervised so as not to become a source of illegal narcotics circulation.
- b. Prevent, protect, and save the Indonesian nation from drug abuse. Prevention is carried out against those who have not used drugs and are prevented from using them, protecting, especially against victims of drug abuse, namely those who are forced, deceived to use drugs, saving drug abusers, especially those who are in a state of drug dependence, both physically and psychologically.
- c. Eradicating the illicit trafficking of narcotics. Eradicating in this case is against its circulation which includes dealers, producers, couriers, distributors, and those who trade narcotics.

The sanction system for drug abusers does not only focus on imprisonment, but also on medical rehabilitation as a mandatory sanction. Law enforcement must pay attention to health and legal aspects. Legal awareness, legal compliance, and the effectiveness of legislation are interrelated, where legal awareness does not always guarantee compliance with existing regulations, affecting the effectiveness of law enforcement in society.

4. Conclusion

Based on the analysis of the qualifications of the criminalization of drug abuse by law enforcement officers and the application of criminal law to it from a progressive legal perspective in Indonesia, it can be concluded that the criminalization of drug abusers by law enforcement officers is a contradiction to the principles of progressive law that prioritize rehabilitation and recovery. Law enforcement officers should be an example in law enforcement and actively participate in drug abuse prevention and eradication programs. The application of criminal law to officers involved in drug abuse needs to be carried out firmly, but it needs to be balanced with rehabilitation efforts to restore them. A more holistic approach, which combines health and legal aspects, is needed in handling drug abuse cases, both for the general public and law enforcement officers. For the government and law enforcement officers, it is hoped that in implementing the death penalty for drug dealers, it should not only be considered as shock therapy and an act of revenge for a crime, but also requires a psychological agreement on the law, as well as strict supervision of the law itself, the government should think about this carefully. Law enforcers within the Indonesian National Police must continue to pay attention to providing strict sanctions for Indonesian National Police soldiers who are proven guilty of committing narcotics abuse, namely by giving a principal prison sentence and an additional criminal sentence of dismissal from military service. This firm step is taken to protect the interests of the military. Dismissal of

³³HJ schravendijk. Textbook on Indonesian Criminal Law. (Jakarta. Groveningen. JB Wolters. 1955.) p. 21

Master of Law, UNISSULA

narcotics abusers is very reasonable because from a medical perspective, those who commit narcotics abuse crimes are not ready to use.

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