

Legal Protection for Drug Abusers as Victimless Crime Based on Pancasila Justice

Yuli Dwi Hernawan

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: yulidwihernawan.std@unissula.ac.id

Abstract. *This study aims to determine and analyze the current legal protection for drug abusers as victimless crimes, the weaknesses of legal protection for drug abusers as victimless crimes and legal protection for drug abusers as victimless crimes based on Pancasila justice. The method used in this research is the Normative Law method, the specifications in this research are descriptive analytical, the data used are secondary data, TheoryLegal Protection According to Satijipto Raharjo, Legal System Theory According to Lawrence M. Friedman and Pancasila Justice Theory According to Yudhi Latief. The results of this study show that: The implementation of rehabilitation for Onadio Leonardo proves that narcotics law enforcement in Indonesia has begun to transform from a punitive-retributive approach to restorative justice by placing abusers as victims (victimless crime) in accordance with the mandate of Article 54 and Article 127 paragraph (3) of Law No. 35 of 2009. 2.The weakness of legal protection for drug abusers as victimless crime is seen from the enforcement of narcotics law in Indonesia facing serious obstacles due to the difficulty of tracking organized, closed, and adaptive criminal networks to advanced technology, which is exacerbated by limited apparatus resources and minimal public awareness. And 3. Legal protection for drug abusers as a form of victimless crime is a concrete manifestation of Pancasila Justice which shifts the paradigm of punishment from retributive revenge to restorative recovery, where the state legally recognizes drug abusers as victims and patients who have constitutional rights to medical and social rehabilitation as mandated by Article 54 and Article 103 of Law No. 35 of 2009. The successful implementation of this concept is highly dependent on the optimization of the Integrated Assessment Team (TAT) mechanism as stipulated in the Joint Regulation of 7 Agencies of 2014, which functions as a scientific filter instrument to ensure the accuracy of a person's legal status, as reflected in the case of Onadio Leonardo at the BNNP DKI Jakarta, where a humanist approach that prioritizes health recovery and social integrity has proven to be more in line with just and civilized humanitarian values*

compared to the imposition of counterproductive prison sanctions that hinder the recovery process."

Keywords: *Drug Abusers; : Legal Protection; Pancasila Justice; Victimless Crime.*

1. Introduction

The mandate of the Narcotics Law clearly states that rehabilitation is important for drug users. Article 103 states that a judge examining a drug addict's case may order the person to undergo treatment and/or rehabilitation if the addict is found guilty of a drug crime. Drug abuse by an individual constitutes a behavioral deviation or an unlawful act. It is unfortunate if someone has experienced a repeat of the crime of drug abuse and may even repeat it again. Repetition of crime occurs in everyday life. In principle, every person (Natuur Person) is a legal subject and, in principle, every legal subject has rights and obligations.¹ Drug abusers in determining their rehabilitation must consider the composition of use as regulated in the Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse, and Drug Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. The provisions of criminal sanctions for drug abusers themselves have been regulated in Article 127 of the Narcotics Law. With the enactment of Law No. 35 of 2009 concerning Narcotics, a person who uses illegal narcotic drugs is categorized as a victim so that every drug abuser can be subject to criminal sanctions in the form of imprisonment and fines or in the form of therapy and rehabilitation services provided by the state.

The case of the Jakarta Provincial National Narcotics Agency (BNNP) is an example that recommends artist Onadio Leonardo or Onad for drug rehabilitation. The rehabilitation process was carried out for 3 months, Head of Public Relations of the Jakarta Metro Police, Senior Commissioner Budi Hermanto, said that Onad was approved for rehabilitation after a series of assessments were carried out by the Integrated Assessment Team (TAT) of the Jakarta BNNP. "The recommendation letter from the Jakarta BNNP TAT, the person concerned was approved and can be rehabilitated," said Budi Hermanto, to reporters, Tuesday. Onad was rehabilitated at a rehabilitation center in the Lebak Bulus area, South Jakarta. He was rehabilitated for three months. "In accordance with the family's request to be rehabilitated at the Ultra rehabilitation center in the Lebak Bulus area, South Jakarta. For the next three months (his rehabilitation)," he said. Previously, the police revealed the motives of artist Onadio Leonardo or Onad for using drugs. Based on the results of the

¹Lanka Asmar. 2017. The Role of Parents in the Trial Process of Criminal Acts Committed by Children. Bandung: Cv. Mandar Maju, p. 4.

examination, Onad was known to use drugs because he had personal problems. "The motive for using narcotics for OL was personal problems," said Metro Jaya Police Public Relations Chief Senior Commissioner Budi Hermanto, explaining that Onad is currently a victim of drug abuse. Onad is currently undergoing an assessment by the Jakarta Provincial National Narcotics Agency (BNNP).²

Drug abuse has become a complex global problem, where in criminological discourse, the position of users is often categorized as a "victimless crime." This is based on the argument that the negative impact of such actions directly affects only the perpetrators themselves. However, in the Indonesian criminal justice system, the position of drug users is often trapped in ambiguity between their status as criminals or as victims in need of legal protection. Drug abusers, in addition to being perpetrators of criminal acts, are also victims of the crime itself, which from a victimological perspective is often referred to as Self-Victimization or Victimless Crime. Based on this description, the position of drug users under the Narcotics Law can be said to be both perpetrators of criminal acts (dader) and victims of criminal acts (victims).

Law Number 35 of 2009 concerning Narcotics has actually provided a philosophical foundation for the protection of users. This is stated in Article 4 letter d, which states that the purpose of this law is to guarantee the regulation of medical and social rehabilitation efforts for abusers and addicts. Furthermore, Article 54 explicitly requires drug addicts and victims of drug abuse to undergo medical and social rehabilitation. However, in practice, the punitive approach (punishment) still dominates over the restorative approach. Law enforcement often emphasizes Article 127 paragraph (1), which imposes a prison sentence for abusers, even though Article 127 paragraph (3) mandates that if the abuser can be proven to be a victim, the judge is obliged to decide on rehabilitation. This legal gap between legal certainty and criminological justice is emphasized by the emergence of Prosecutor's Regulation Number 18 of 2021 and Police Regulation Number 8 of 2021 concerning Restorative Justice. These regulations serve as the legal basis for shifting the paradigm of drug user treatment from prison to rehabilitation. Therefore, this research is crucial in reviewing the extent to which legal protection has been provided to drug users as "victims," in order to achieve justice that is not merely legalistic but also humanistic.

2. Research Methods

In the research, the author applies an empirical jurisprudence research method, research that is based on observations, experiences, or real data obtained from the real world, not just abstract theories or concepts.³ Thus, the empirical legal

² <https://pendidikan.malangkab.go.id/banda/x75bl/10.html> accessed on January 31, 2026 at 15.00 WIB.

³ Irwansyah, 2022, Legal Research, Mirra Buana Media, Yogyakarta, p. 43

approach in this study means that the analysis of the problem is carried out by combining legal materials (which are secondary data) with primary data obtained in the field regarding Legal Protection for Drug Abusers as Victimless Crimes Based on Pancasila Justice. The data types used are primary and secondary data. The data analysis method used is qualitative descriptive analysis.

3. Results and Discussion

3.1. Legal Protection Efforts for Drug Abusers as Victimless Crime Today

Victimless crimes, one of which is the perpetrator of drug abuse for themselves, should be expected to be a deterrent factor against the increase in drug abuse for themselves, but unfortunately in reality the more intensive law enforcement is carried out, the more drug abuse for themselves increases. Similarly, the provisions of legislation governing the problem of narcotics have been formulated and implemented, but crimes involving narcotics have not been able to be reduced. In recent cases, many drug dealers and distributors have been caught and received severe sanctions up to the death penalty, but other perpetrators seem to ignore it and are even more inclined to expand their areas of operation.⁴

Victims can arise as a result of a crime, a human rights violation, or a natural disaster. The consequences, particularly of a crime, produce victims, both directly and indirectly. Whether the perpetrator and victim are different individuals, or both are simultaneously perpetrators and victims, a phenomenon known as a Victimless Crime.⁵In this crime, a person plays two roles: perpetrator and victim. These crimes include drug abuse, prostitution, and gambling.⁶

Narcotics crimes or criminal acts are no longer committed individually, but involve many people together, even forming an organized syndicate with a wide network, which works very neatly and very secretly both at the national and international levels. Narcotics crimes have become transnational in nature, carried out using high *modus operandi*, sophisticated technology, supported by a wide organization, and have caused many victims, especially among the nation's young generation, so that it is very dangerous for the lives of the people, the nation, and the State of Indonesia.⁷According to the Narcotics Law, a narcotics abuser is essentially a producer, dealer, courier, distributor, planter, maintainer, possessor, carrier, storer, controller, provider, seller, purchaser, exchanger,

⁴Maudy Pritha Amanda, Sahadi Humaedi, and Meilanny Budiarti Santoso, "Drug Abuse Among Adolescents (Adolescent Substance Abuse)," *Proceedings of Research and Community Service* Vol. 4, No. 2 (July 31, 2017), <http://jurnal.unpad.ac.id/prosiding/article/view/14392>.

⁵Diana Saputra, "Abuse of Narcotics and Psychotropics According to Law Number 35 of 2009 from a Victimology Perspective" Muhammadiyah University of Palembang, 2015. P.87.

⁶Koesno Adi, *Diversion of Child Narcotics Crimes*, Malang: Setara Press, 2014. P. 23.

⁷Dian Hardian Silalahi, *Combating Narcotics Abuse Crimes* Medan: Enam Media, 2020, p.44.

intermediary, handover, or recipient of narcotics without a permit. Meanwhile, a narcotics abuser for personal use is a person who abuses narcotics for their own use or consumption.⁸Because narcotics are intended for personal use, narcotics abusers for themselves are essentially perpetrators of narcotics crimes but also victims of narcotics abuse themselves.

The current criminalization of drug abusers in Indonesia is regulated by Law Number 35 of 2009 concerning Narcotics. This law strictly stipulates criminal sanctions for anyone involved in drug abuse, whether for personal gain or related to illicit drug trafficking. This provision is implemented as a form of legal protection for the public and as an effort to create a deterrent effect for perpetrators. The approach used emphasizes repressive aspects, namely through severe punishments in the form of imprisonment and fines. However, this approach remains controversial because it is considered to not fully address the root cause of drug abuse.⁹The existing criminal justice system for drug abusers also demonstrates disparities in sentencing. In many cases, drug abusers from the general public tend to receive heavy prison sentences, while those from wealthy families or with social influence sometimes receive lighter treatment and even have easier access to rehabilitation. This creates the impression that legal justice in drug cases remains discriminatory and violates the principle of equality before the law. In the development of modern criminal law, sentencing policies for drug abusers should be more directed towards a restorative justice approach, namely a solution that emphasizes victim recovery and improving the behavior of the perpetrator. Drug abusers are essentially individuals experiencing physical and psychological dependence on addictive substances, so rehabilitation is more appropriate than imprisonment. Rehabilitation provides an opportunity for drug abusers to recover and return to their role in society, thereby reducing the rate of recidivism or repeat criminal offenses. Furthermore, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 4 of 2010, directing judges to prioritize rehabilitation for drug abusers caught with small amounts of evidence. This SEMA should serve as a key guideline in drug court practice, but in reality, many judges still impose prison sentences without considering rehabilitation options. This demonstrates the need to improve law enforcement officials' understanding and awareness of the importance of rehabilitation as part of the drug sentencing system in Indonesia. Furthermore, repressive sentencing of drug abusers actually worsens social conditions in the community. Imprisoned drug abusers often experience stigmatization and difficulty finding employment upon release, making them more likely to fall back into the world of drugs. However, if they were provided with proper rehabilitation, their chances of recovery and a normal life would be much

⁸S. Gatot, 2024, "Reconstruction of Legal Politics for Self-Criminalization of Narcotics Abusers Based on Pancasila", University of Lampung, <http://digilib.unila.ac.id/id/eprint/78136>.

⁹Interview with Head of Narcotics Research Unit AKP Shindi Al Afghani, SH, MH, on March 21, 2026 at 16.00 WIB.

greater. Therefore, the ideal punishment system for drug abusers should be humane, prioritizing rehabilitation as the main step, and only making imprisonment a last resort for those who are truly proven to be involved in a drug trafficking network.¹⁰

Chronologically and procedurally, the decision to rehabilitate Onadio Leonardo is a manifestation of the implementation of legal policies that view drug abusers as victims, not pure criminals who must be isolated in correctional institutions. According to the police statement, this decision was taken after going through a rigorous assessment process by the Integrated Assessment Team (TAT) of the Jakarta National Narcotics Agency (BNNP), which functions to verify that Onad is not involved in the illicit drug trafficking network and is purely using the substance due to psychological pressure or personal problems. With a rehabilitation duration of three months at the Ultra rehabilitation center, Lebak Bulus, the state seeks to provide targeted medical intervention so that the triggering factors of the abuse can be addressed clinically, while providing legal protection for individuals categorized as subjects in victimless crime. This is evident from several aspects, namely:¹¹

1. Legal Status of Drug Abusers as Victims and Synchronization of Article 54 and Article 127 paragraph (3) of Law No. 35 of 2009 concerning Narcotics, drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. Onad's placement in a rehabilitation center shows that investigators are implementing this article consistently, recognizing that dependence is a chronic disease that requires treatment, not just a violation of the law that requires corporal punishment. Because Onad was proven through the TAT assessment to be a "victim" who used narcotics due to personal problems (not a dealer), the legal obligation that arises is no longer imprisonment, but rehabilitation. This case proves that if the assessment function (TAT) is carried out honestly, then the philosophical basis of Article 4 letter d to "guarantee rehabilitation efforts" can be achieved without having to go through a protracted judicial process in prison.

2. Legality of Integrated Assessment Team (TAT) Recommendations The presence of the TAT in this process is mandated by the 2014 Joint Regulation (between the Supreme Court, the Minister of Law and Human Rights, the Attorney General, the National Police, and the National Narcotics Agency). TAT recommendations have very strong legal force for investigators in determining whether someone is worthy of rehabilitation or must be processed in court. The main problem in the practice of narcotics law in Indonesia is that abusers are often "trapped" in the articles on narcotics possession (Article 112 or 114) which

¹⁰Herman, et. all, 2025, Op. cit. pp. 393-395.

¹¹Interview with Head of Narcotics Research Unit AKP Shindi Al Afghani, SH, MH, op.cit.

carry very severe threats, even though they are only users (Article 127). The TAT analyzes cases from two sides:

- a. Legal Aspects: Ensure that the suspect is not a drug dealer, distributor, or repeat offender.
- b. Medical Aspects: Determining the degree of addiction to determine the appropriate duration and method of rehabilitation.

The author reviews that legal protection for drug abusers as victimless crime currently related to the implementation of rehabilitation for Onadio Leonardo is a real manifestation of law enforcement based on the philosophical foundation of Article 4 letter d and Article 54 of Law Number 35 of 2009 concerning Narcotics, where investigators consistently recognize the legal position of drug abusers as victims suffering from chronic addiction so that they prioritize medical recovery rather than merely imposing punitive corporal punishment. This legal process obtains strong legality through the role of the Integrated Assessment Team (TAT) as mandated by the 2014 Joint Regulation, which objectively conducts case analysis through two main dimensions, namely the legal aspect to ensure that the subject is not part of an illicit trafficking network or a recidivist, and the medical aspect to determine the degree of addiction and the proportional duration of rehabilitation.

This step also confirms the application of the principle of victimless crime in our criminal justice system, which marks a paradigm shift from retributive justice to restorative justice that aims to restore the social function of individuals without the burden of the stigma of convicts. By considering the motive of "personal problems" as medical mitigation, the decision for three months of rehabilitation is a very appropriate legal step because it views drug use as a symptomatic symptom that requires clinical intervention, so that ultimately the handling by the Jakarta National Narcotics Agency (BNNP) and the Jakarta Metro Police has succeeded in balancing legal supervision and fulfilling human rights for victims of abuse to obtain healing guaranteed by the constitution.

3.2. Weaknesses in Legal Protection for Drug Abuse as a Victimless Crime

Drug abuse has detrimental social impacts, including increased crime rates, disruption of public order, the breakdown of social relationships, and a reduced quality of life.¹²The provisions in Article 127 paragraph (3) emphasize that every abuser who uses the types of narcotics in accordance with paragraph (1) is obliged to undergo medical rehabilitation and social rehabilitation. Article 127 paragraph (1) emphasizes the punishment process for those who are proven not

¹²Fransniko Hendra Laksana and M Sifa, 2024, "Legal Protection for Street Children as Users of Narcotics and Dangerous Drugs," *Kultura Journal of Social Sciences and Humanities* Vol.2 No.2, p. 72. <https://jurnal.kolibi.org/index.php/kultura/article/view/962>

to be victims of narcotics abuse, but paragraph (3) emphasizes that if it can be proven or proven to be a victim, then he is obliged to undergo medical rehabilitation and social rehabilitation.

Article 128 paragraph (2) of Law 35 of 2009 concerning Narcotics states that "Narcotics addicts who are not of age and have been reported by their parents or guardians as referred to in Article 55 paragraph (1) shall not be prosecuted criminally", while paragraph (3) states that "Narcotics addicts who are of age as referred to in Article 55 paragraph (2) who are undergoing Medical Rehabilitation 2 (two) times the period of medical treatment at a Hospital and/or medical rehabilitation institution appointed by the government shall not be prosecuted criminally.

Article 128 can be interpreted as meaning that for victims of drug abuse who are undergoing medical rehabilitation, they are only allocated 2 (times) of time, meaning that if the victim continues to use drugs after 2 (two) times, they will be processed by law but will still be ordered to undergo rehabilitation.¹³Article 54 of Law Number 35 of 2009 states that "narcotics addicts and drug abusers are required to undergo medical and social rehabilitation. The above provisions explain that drug abusers are required to undergo medical rehabilitation using detoxification methods by removing toxins from the user's body in hospitals or community health centers designated by the Ministry of Health. Article 55 paragraph (1) of Law Number 35 of 2009 concerning Narcotics explains that "Parents or guardians of drug addicts who are not old enough are required to report to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions designated by the Government to receive treatment and/or care through medical rehabilitation and social rehabilitation." Article 55 paragraph (2) of Law Number 35 of 2009 states that "that drug abusers who are old enough are required to report to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions designated by the Government to receive treatment and/or care through medical rehabilitation and social rehabilitation." The provisions of Article 55 This indicates that drug abusers who are of legal age and those who are not of legal age, accompanied by their family/guardian, are required to report themselves to a community health center or hospital designated by the government to undergo rehabilitation, both medically and socially, together with the Mandatory Reporting Recipient Institution (IPWL) designated by the government, the institution to which the user is required to report.

The implementation of rehabilitation for drug users requires them to undergo medical rehabilitation first and then social rehabilitation. This is in accordance with Article 54 of Law No. 35 of 2009 concerning Narcotics "addicts and victims of drug abuse are required to undergo medical rehabilitation and social

¹³Interview with Head of Narcotics Research Unit AKP Shindi Al Afghani, SH, MH, Op.cit.

rehabilitation". The victim must undergo this process until they finally recover. In this process, the victims will first undergo an assessment carried out by examining urine or hair, after conducting the examination, an interview will be conducted, after the interview, the victim will undergo a physical examination to determine the victim's health level and provide symptomatic therapy and then a treatment plan.

The assessment process is also to find out whether the person concerned is involved in narcotics distribution or not and has a history of dealing with the law or not. If the assessment results show that the victim has no legal history and indicate that the referral results require outpatient or inpatient care, the assessment results are requested within a period of 6 days for a decision from the assessment which will then be concluded.¹⁴The assessment process is also to find out whether the person concerned is involved in narcotics distribution or not and has a history of dealing with the law or not. If the assessment results show that the victim has no legal history and indicate that the referral results require outpatient or inpatient care, the assessment results are requested within a period of 6 days for a decision from the assessment which will then be concluded.¹⁵

Some of the weaknesses of legal protection for drug abusers as victimless crimes are:

1. A crucial problem in law enforcement against drug crimes is the difficulty in tracking the whereabouts of drug offenders. This poses a significant obstacle to drug eradication efforts, hindering arrests, uncovering networks, and confiscating evidence. Tracking targets requires unpredictable time. Criminals often move quickly to avoid capture. Time constraints can hinder the precise location of targets.
2. Lack of public involvement and awareness is also a significant factor in the rise in drug-related crime in Indonesian cities. A lack of understanding of the dangers of drugs and a lack of knowledge about existing law enforcement efforts result in a lack of public support in combating drug crime. Drug crime not only negatively impacts society as a whole but also has detrimental effects on the individuals involved. Long-term drug use can damage a person's physical and mental health. Socially, drug crime also disrupts community stability. Conflicts between criminal groups involved in the drug trade can cause insecurity and anxiety in communities. Furthermore, drug abuse can lead to a neglect of social responsibilities, such as reduced productivity in the workplace and an increased rate of accidents.

¹⁴Ibid,

¹⁵Ibid,

3. Tracking difficulties, such as the generally organized and secretive nature of drug networks. Drug offenders often have highly mobile and well-organized networks. They can move quickly and employ various methods to evade detection, such as using false identities, well-defined travel routes, and secure communication technology. Encrypted communications and unpredictable movements further complicate infiltration and intelligence gathering. A lack of personnel can also hinder effective target tracking efforts. Furthermore, drug traffickers often utilize sophisticated technology to conceal their tracks.

4. The use of encryption devices, high-security instant messaging apps, and sophisticated money laundering technology makes it difficult for law enforcement to track and collect necessary evidence. Many law enforcement agencies in developing countries face limited resources, including technology, personnel, and funding. A lack of specialized training in cybercrime and digital forensics also hinders tracking down perpetrators who use sophisticated technology. Difficulty tracking targets is a serious problem in law enforcement against narcotics crimes. This difficulty hinders arrests, allowing perpetrators to continue their illicit business. Addressing this issue requires a comprehensive effort involving technological advancements, human resource capacity development, strengthened inter-agency cooperation, and a sustainable prevention approach. With these measures, it is hoped that law enforcement against narcotics crimes can become more effective and efficient in eradicating drug trafficking and protecting the public.

5. Furthermore, a criminalization approach that focuses on imprisonment for drug abusers contradicts the spirit of human rights protection. Drug abusers are essentially individuals experiencing health problems in the form of dependence on addictive substances. Treating them as criminals and sentencing them to imprisonment violates their rights to adequate medical care and rehabilitation. This approach contradicts the principle of humanization in modern criminal law, which emphasizes that punishment must consider human dignity and aspects of social recovery.

6. Another weakness lies in the unclear distinction between those who abuse drugs for personal use and those who are dealers or couriers. In criminal justice practice, many cases of drug abusers who should receive rehabilitation are instead equated with dealers who receive severe criminal sanctions. This occurs because the process of proving whether someone is merely a user or part of a drug trafficking network often relies solely on physical evidence. As a result, drug abusers caught with a certain amount of evidence are often categorized as dealers, even if the drugs were intended for personal consumption.

7. This uncertainty in the distinction has serious implications for the implementation of criminal justice, where drug abusers, who should be viewed as victimless crimes, are instead trapped within a repressive penal system. This

approach exacerbates the problem of overcrowding in correctional institutions, which are dominated by drug convicts. Data from the Ministry of Law and Human Rights shows that more than 50 percent of correctional inmates are drug convicts, the majority of whom are users or addicts. This situation reflects the inability of the criminal justice system to distinguish between victims and perpetrators of drug abuse, thus reinforcing the urgency of reconstructing victimless crime regulations for drug abusers.

8. Drug crimes often involve international networks, necessitating cross-border cooperation. Bureaucratic obstacles, differing legal systems, and a lack of effective cooperation between countries can hamper efforts to track and apprehend perpetrators.¹⁶ Drug offenders are constantly adapting and changing their patterns and modus operandi to evade capture. Every time law enforcement develops a new method, perpetrators also develop new ways to evade it, requiring law enforcement to constantly innovate and update their strategies.

Weaknesses in Legal Protection for Drug Abusers: Drug abuse is categorized as a victimless crime. However, legal protection for these individuals still leaves critical gaps that hinder the achievement of rehabilitation goals. Some of these weaknesses are evident in:

1. **Paradigm Inconsistency: Between Criminalization and Medicalization,** seen from the fundamental weakness lies in the dualism of Law No. 35 of 2009. On the one hand, the law recognizes drug abusers as "victims" who must be rehabilitated, but on the other hand, law enforcement procedures still place them in the corridor of pure criminalization. There is a contradiction between Article 54 (the obligation to rehabilitate) and the application of Article 111 or 112 which are often used by investigators to ensnare drug abusers with possession crimes. As a result, medical legal protection is often defeated by the interests of criminal prosecution.

2. **Optional Judicial Discretion (Article 103):** Scientifically, legal protection for drug users is highly dependent on the judge's verdict. However, the phrase "may decide" in Article 103 of the Narcotics Law provides judges with extensive discretion. Because of its optional (optional) rather than imperative (mandatory) nature, the drug user's right to rehabilitation is uncertain. This leads to disparities in verdicts, where in similar cases, one defendant may be rehabilitated while another is imprisoned.

3. **Weaknesses of the Integrated Assessment Mechanism (TAT):** Procedurally, the Integrated Assessment Team (TAT) is a protective instrument to separate

¹⁶Is, Muhamad Sadi, and Eddy Daulatta Sembiring. 2021, "Law Enforcement of Narcotics Crimes in Indonesia Using Philosophical, Sociological, and Religious Approaches." *Sol Justicia* 4, no. 1, p. 26. <https://doi.org/10.54816/sj.v4i1.332>.

pure drug abusers from the distribution network. However, legally, TAT recommendations lack enforcement power. Although regulated in the 2014 Joint Regulation, these recommendations are often considered merely administrative suggestions that can be overridden by prosecutors or judges during trial.

4. The concept of self-incrimination clashes with the obligation to report. There is a legal anomaly in Articles 55 and 128. Addicts are required to report to receive rehabilitation, but if they don't, they face criminal penalties. Critically, this creates a legal trap. Individuals are forced to admit to their own criminal acts in order to obtain their right to health. If they fail the rehabilitation process or don't report, they lose their "victim" status and become fully "criminal." This demonstrates that legal protection remains conditional, not a fundamental human right inherent in patients.

5. The misplaced stigma of "Extraordinary Crime," where the status of narcotics as an extraordinary crime is often used to justify repressive measures against all levels of involvement, including low-level users. This policy fails to distinguish between supply reduction (hitting dealers) and demand reduction (curing users). By applying the same legal treatment, the state actually perpetrates secondary victimization of drug users through a rigid criminal justice system.

Supreme Court Circular Letter (SEMA) Number 04 of 2010 outlines several qualifications that must be met to be categorized as a drug abuser, victim of drug abuse, or addict, allowing them to be placed in a medical or social rehabilitation facility. However, these qualifications are very limited. Given these limitations, the role of law enforcement officers and judges, particularly investigators and prosecutors, is crucial.

Social change and national development are interconnected, as is the case in many developing countries, including Indonesia. Good national development will lead to the strengthening of an active and consistent social system. Conversely, societal change will also impact the smoothness of the desired national development process. The connection between change and development can perhaps be understood as a form of relationship based on the state's ideals to lead society toward planned or desired goals. The role of the legal system is crucial to the success of a country's national development. If the legal system's functioning is hampered, efforts to improve all aspects of life and the process of developing a state administration system to achieve national goals will certainly be hampered. This is particularly true of the legal system's role in providing certainty.¹⁷In developing countries, the legal system plays a significant role in accommodating social change and enabling national development. This

¹⁷Syahrul Mubarak Subeitan, Wira Purwadi, and Muhammad Sauki Alhabsyi, "Human Authority in the Formation of Law as Legal Change," *Pleno Jure* 11, No. 1 (2022), pp. 30–48. <https://www.neliti.com/publications/522205/kewenangan-manusia-dalam-pembentukan-hukum-sebagai-ubah-hukum>

illustration aligns with Friedman's assertion that law is a critical phenomenon in human civilization, fundamentally altering the order of policy, philosophy, and political theory. The study of the legal system from a theoretical perspective by legal scholars explains how law can transform the order of society. Understanding how law works leads to the Levitical understanding, which states that law and society, stemming from a culture, are not inherently loyal to the rules or norms prevailing in their environment. Rather, culture can only stimulate a normative/compliant attitude that impacts the operation of law and the potential for social change within society.¹⁸ To understand the relationship between law and society, one must understand the influence of both aspects on the functioning of a legal system, including the existence of values, ideas, and societal customs as the foundation for implementing law, and the impact of the legal aspects in changing the direction of society. In bridging these two streams of thought, the concept of legal culture plays a crucial role. Legal culture, in question, encompasses the ideas, values, behaviors, and opinions of people within a societal order. In essence, legal norms are not formed directly by human thought, but rather are born, grow, and formed from patterns and customs within society.

A comparison of the rehabilitation policies for drug addicts in the criminal law reforms in Portugal and New Zealand is:¹⁹

1. In Portugal, the Rehabilitation Policy for Drug Addicts in Portugal is clearly regulated in Law 30/2000 of 29 November about the Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances. Based on Article 2 of Law 30/2000, the use, acquisition, and possession for personal consumption of narcotic and psychotropic plants, substances or preparations are administrative violations, with the provision that it must not exceed the average amount of use of 10 individual days. If the addict is willing to undergo treatment (rehabilitation), then administrative sanctions will not be imposed. According to Law 30/2000, Portugal established a commission for the dissuasion of drug addiction or a commission for the prevention of narcotic addiction. The commission was established in each regional district. The commission consists of three people, with one legal expert and two health experts (doctors, psychologists, sociologists, social service workers or others with appropriate professional expertise in the field of drug addiction). The commission's duties include conducting assessments, conducting trials, and imposing penalties on drug addicts. The commission also has the authority to postpone trials and suspend sentences for drug addicts if they are willing to

¹⁸Lawrance M. Friedman, "Is There A Modern Legal Culture?," *Ratio Juris* 7, no. 2 1994: p. 117–31.

¹⁹Daulika Sausan Zahra Nabila, 2023, Rehabilitation Policy for Narcotics Addicts in Criminal Law Reform, *Diponegoro Law Journal*, Volume 12, Number 3, Pp. 11-13. <https://ejournal3.undip.ac.id/index.php/dlr/article/download/37879/30611>

undergo rehabilitation. In conducting assessments, the commission will listen to statements from drug users and gather information necessary to determine whether they are addicts, what substances they are consuming, their condition when they are ordered to use drugs, where they are consuming them, and their economic situation. Furthermore, both the commission and the drug addict may propose or request appropriate medical examinations, including blood or urine tests or other tests deemed necessary to support the assessment.

2. New Zealand In Article 7 of the New Zealand Misuse of Drugs Act 2019, there is a discretion to prosecute offences against the purchase, possession, use, or other use of controlled narcotics, and prosecution may not be carried out unless necessary in the public interest. New Zealand has the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 which is a law that regulates mandatory assessment and treatment (rehabilitation) for people who are considered to have severe drug addiction. Based on Article 7 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, the criteria for an addict to receive compulsory treatment are, namely a) the person has a severe substance addiction (the person has a severe drug dependence); b) the person's capacity to make informed decisions about treatment for that addiction is severely impaired (the person's capacity to make informed decisions about treatment for that drug dependence is severely impaired (due to the effects of severe drug use); c) compulsory treatment of the person is necessary (compulsory treatment for the person is required); d) appropriate treatment for the person is available (appropriate treatment for the person is available). To determine whether these criteria are met, a mandatory assessment must be conducted on the addict. After conducting the assessment, if the criteria for compulsory treatment are met, then compulsory treatment will be carried out for the narcotics addict based on a compulsory treatment order for the addict to continue his/her compulsory status and detain the addict in the treatment center by the Judge based on the Judicial Review conducted. If the addict refuses to appear at the treatment center at the specified time, authorized officers can take the addict to the treatment center (forceful measures), including requesting assistance from the Police in coercive measures.

The concept of victimless crime in drug crimes is often the subject of heated debate. On the one hand, users are considered to be harming only themselves, but on the other, the law often emphasizes punitive measures rather than rehabilitation. Legal protection for drug abusers is weak due to "penal populism." The state tends to enact harsh laws to appear firm in the public eye, even though scientifically, such policies fail to reduce drug prevalence and actually lead to overcrowding in correctional institutions. Systemically, legal protection for drug abusers in Indonesia remains partial. Although structurally and substantively there is room for rehabilitation, its effectiveness is largely determined by the fluctuating legal culture of law enforcement. This weakness demonstrates that

without harmonization between the three elements of the legal system, protection for drug abusers as victims will continue to be trapped in legal uncertainty and disparities in treatment. Thus, the weaknesses in the regulation of drug abusers themselves, as outlined above, underscore the need to reconstruct the regulation of victimless crime in the context of drug abuse in Indonesia. This reconstruction is crucial so that drug abusers are viewed as individuals in need of medical assistance and rehabilitation, rather than simply as perpetrators of criminal acts. A criminalization approach that prioritizes restorative justice and public health must be the direction of drug law reform, thus creating a balance between firm law enforcement and protection of human rights.

3.3. Legal Protection for Drug Abusers as Victimless Crimes Based on Pancasila Justice

According to the Head of Narcotics Investigation Unit, Mr. AKP Shindi Al Afghani, SH, MH, that there are conditions for an addict, abuser and victim of narcotics abuse to be able to be rehabilitated, the judge must pay attention to the provisions of SEMA No. 4 of 2010 point 2 letter e which states that the classification of criminal acts that can be applied to punishment as referred to in Article 103 of the Narcotics Law is "there is no evidence that the person concerned is involved in the illicit trafficking of narcotics", where to prove this classification can be done one of them through an assessment by the Integrated Assessment Team. According to Article 1 number 6 of the Joint Regulation of 2014, the Integrated Assessment Team is a team consisting of a Team of Doctors and a Legal Team appointed by the head of the local work unit based on a decree from the Head of the National Narcotics Agency, the National Narcotics Agency of the Province, the National Narcotics Agency of the Regency/City. The TAT will issue a recommendation that the user is either concurrently a dealer or purely an addict and abuser only. The TAT will also recommend the flow of rehabilitation steps (Ratna, 2009). Article 10 of the 2014 Joint Regulation also explains that the results of the assessment and analysis as referred to in Article 9 are used as considerations for the TAT in making decisions. Based on Article 10 of the 2014 Joint Regulation, a drug addict and/or abuser can be categorized as someone who has the right to be rehabilitated. In deciding the case as referred to, the judge is obliged to pay attention to the provisions as referred to in Article 54, Article 55, and Article 103 of the 2024 Joint Regulation, where if the abuser can be proven or proven to be a victim of drug abuse and addict, then they are obliged to undergo medical rehabilitation and social rehabilitation.²⁰

The existence of legal protection for drug abusers in contemporary Indonesian criminal law discourse is based on the redefinition of drug abusers as perpetrators of victimless crimes, where the legal construction no longer

²⁰Interview with Head of Narcotics Research Unit AKP Shindi Al Afghani, SH, MH, Op.cit.

emphasizes worldly retribution but rather on the theocentric and humanist values of Pancasila Justice. Philosophically, this protection is rooted in the Second Principle of Pancasila, namely Just and Civilized Humanity, which requires the state to view drug abusers not as pure criminals who deserve to be exiled to correctional institutions, but rather as victims of substance dependence who experience degradation of human dignity and thus require recovery efforts (rehabilitative approach). At the normative-juridical level, this concept gains strong legitimacy through Article 54 of Law No. 35 of 2009 concerning Narcotics which stipulates the obligation of medical and social rehabilitation, and Article 103 which gives discretion to judges to impose rehabilitation sentences as a form of special treatment for addicts. The implementation of this protection is then emphasized through technical instruments such as SEMA No. 4 of 2010 which sets the threshold of evidence as a parameter for separating drug abusers from illegal drug networks, as well as the Joint Regulation of 7 Agencies of 2014 concerning the handling of addicts through the Integrated Assessment Team (TAT) mechanism. Therefore, criminal policy towards drug abusers from the perspective of Pancasila justice must be viewed as a restorative effort that balances legal certainty and benefit, where the state is present to heal the physical and psychological trauma of victims in order to realize social justice for all Indonesian people through dignified social reintegration."²¹

The implementation of the concept of legal protection for drug abusers as victimless crime according to the author is that the legal settlement case carried out by the DKI Jakarta BNNP and the Metro Jaya Police, as seen in the handling of the case of artist Onadio Leonardo (Onad). In this case, the application of Pancasila justice is manifested through the recognition of the status of legal subjects as victims of drug abuse, where the motive for use based on 'personal problems' is a strong indicator that the action is a form of psychological escape that does not harm others directly (self-victimization). Legally, the recommendation for three months of rehabilitation at a private rehabilitation institution in Lebak Bulus is a form of real execution of the mandate of Article 54 and Article 103 of Law No. 35 of 2009 which prioritizes health recovery rather than isolation behind bars. This process is not carried out unilaterally, but through the mechanism of the Integrated Assessment Team (TAT) which involves medical and legal aspects, in accordance with the spirit of the Joint Regulation of 7 Agencies of 2014. Legal protection for drug abusers as victimless crime finds its deepest philosophical foundation in Yudi Latif's thoughts on Pancasila Justice, which emphasizes that justice in Indonesia should not only be legalistic-formal (justice on paper), but must be substantial and restorative justice. Yudi Latif views Pancasila as a 'meeting point' where the principle of Just and Civilized Humanity must be a bridge to achieve Social Justice, so that in the context of narcotics, imprisoning a pure abuser as in the case of Onadio Leonardo is

²¹Interview with Head of Narcotics Research Unit AKP Shindi Al Afghani, SH, MH, Ibid,

considered an act that betrays 'Humanity' because it ignores the aspects of the pain and suffering of the individual.

4. Conclusion

1. The implementation of rehabilitation for Onadio Leonardo proves that narcotics law enforcement in Indonesia has begun to transform from a punitive-retributive approach to restorative justice by placing abusers as victims (victimless crime) in accordance with the mandate of Article 54 and Article 127 paragraph (3) of Law No. 35 of 2009. The success of this legal protection rests on the strategic role of the Integrated Assessment Team (TAT) which objectively carries out limited decriminalization through medical-juridical case analysis, so that case handling is no longer oriented towards isolation in correctional institutions, but rather towards proportional recovery. Philosophically, this step confirms that the recognition of personal motives as medical mitigation is a manifestation of human rights protection that successfully balances the state's supervisory function with the constitutional rights of abusers to receive healing.

2. The weakness of legal protection for drug abusers as victimless crimes is evident in the fact that narcotics law enforcement in Indonesia faces serious obstacles due to the difficulty of tracking organized, closed criminal networks that are adaptive to advanced technology, which is exacerbated by limited apparatus resources and minimal public awareness. On the other hand, the legal system still experiences a paradigm failure by implementing a repressive imprisonment approach and ignoring the right to rehabilitation for drug abusers as victimless crimes, thus triggering a crisis of overcapacity in correctional institutions and violating human rights principles. Rehabilitation policies for drug addicts in criminal law reform should consider several things, such as prioritizing rehabilitation through restorative justice, and accommodating all regulations regarding rehabilitation for drug addicts into the Narcotics Law. This study is also based on a comparative study comparing rehabilitation policies for drug addicts in Portugal and New Zealand.

3. Legal protection for drug abusers as a form of victimless crime in the Indonesian criminal justice system is a concrete manifestation of Pancasila Justice which shifts the paradigm of punishment from retributive retribution to restorative recovery, where the state legally recognizes drug abusers as victims and patients who have constitutional rights to medical and social rehabilitation as mandated by Article 54 and Article 103 of Law No. 35 of 2009. The successful implementation of this concept is highly dependent on the optimization of the Integrated Assessment Team (TAT) mechanism as regulated in the Joint Regulation of 7 Agencies of 2014, which functions as a scientific filter instrument to ensure the accuracy of a person's legal status, as reflected in the case of Onadio Leonardo at the DKI Jakarta BNNP, where a humanist approach that prioritizes health recovery and social integrity has proven to be more in line with just and civilized humanitarian values compared

to the imposition of counterproductive prison sanctions that hinder the recovery process.

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