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Criminal Accountability in Narcotics Cases with A Progressive Legal Approach In Indonesia

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ABSTRACT: Narcotics crime is a criminal act of narcotics abuse without rights or against the law other than what is specified in the law. The implementation of narcotics law in Indonesia is not in accordance with the regulations in the Narcotics Law which was made by ratifying the international law conventions on narcotics. The purpose of this research is to analyze and discover the policy of criminal liability for narcotics cases in the legal system in Indonesia that has not used a progressive legal approach and to find obstacles in realizing a policy of criminal liability for narcotics with a progressive legal approach. The author uses the constructivism paradigm with an empirical juridical approach that is descriptive analytical. The data collection method used comes from primary and secondary data. Data analysis was carried out using qualitative analysis methods. The results of the study state that the policy of criminal responsibility for narcotics cases in the legal system in Indonesia has used a progressive legal approach which has the aim of restoring society and creating balance in society where the emphasis is on the elements of criminal prosecution of users or abusers. Obstacles in realizing the narcotics criminal liability policy with a progressive legal approach are the unpreparedness of legal apparatus capable of carrying out their duties and authorities in a professional, accountable, and moral manner. Human resources and infrastructure must be developed and improved where the police and prosecutors should have mastered the regulation of narcotics criminal liability policies with a progressive approach. Criminal responsibility for narcotics crimes with a progressive legal approach judges become central figures in efforts to make the law more responsive. Regulations and Laws The existing criminal responsibility for narcotics crimes already regulates criminal acts related to narcotics so that only maximum efforts are needed to realize the goals of progressive law.

KEYWORDS: Reconstruction, Narcotics, Progressive Law, Indonesia.

I. INTRODUCTION

Narcotics crime itself is a transnational crime committed by organized crime groups crime. Before the 2000s, Indonesia was only a transit area for these prohibited goods. But over time, Indonesia has become a consumer or marketing place for Narcotics. Even today is one of the countries that produce Narcotics and other illegal drugs. Circulation of Narcotics in Indonesia continues to increase. As a maritime country, Indonesia is a haven for the trafficking of narcotics and other illegal drugs because most of the smuggling of narcotics is carried out by sea. Apart from that, because Indonesia has a good market, the demand for Narcotics continues to rise [1].

World Drugs The 2020 UNODC report noted that around 269 million people in the world abuse drugs (2018 research). This number is 30% more than in 2009 with the number of drug addicts recorded at more than 35 million people (the third booklet of the World Drugs Report, 2020). The results of a survey conducted by the National Narcotics Agency (BNN) and the Indonesian Institute of Sciences (LIPI), the number of drug abuse in Indonesia reached 3,419,188 people.

Law No. 35 of 2009 concerning Narcotics which regulates, supervises, and acts against the distribution and abuse of Narcotics. Narcotics not only make people addicted but can cause someone to die quickly and unnaturally. Drug use is often associated with crime, both drugs are considered to have a negative influence and cause users to commit crimes. Crime is basically a relative formula.

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Narcotics crime is a criminal act of narcotics abuse without rights or against the law other than what is specified in the law.

Drug convicts contribute greatly to the overcrowding of prisons in Indonesia so that the rehabilitation mechanism needs to be improved for those who are arrested. A person who abuses narcotics is not only considered to have committed a crime, but he is also a victim of his own actions. So far, law enforcement officials have tended to impose criminal sanctions on the perpetrators of these crimes, without carrying out rehabilitation [2].

In narcotics cases, the articles that are often used to ensnare perpetrators are Article 112, Article 114, and Article 127 of the Narcotics Law. Of the three articles, there are two articles that have multiple interpretations and unclear formulation, namely Articles 112 and 127 which are listed in Law Number 35 of 2009 concerning Narcotics for law enforcers in determining sentences. Because, in these two articles, people who carry and use narcotics are in both articles. A person can be subject to both articles. In fact, the sanctions for the two articles are different, Article 112 is a minimum of 4 years in prison (severe), while Article 127 is a maximum of 4 years (light).

Inadequate implementation of narcotics law in Indonesia has made researchers interested in conducting research on the importance of improving the Narcotics Law and the Indonesian legal system because there is no clarity regarding the point of view of narcotics users. Improper implementation of narcotics law in Indonesia will exacerbate the condition of narcotics offenders where some convicts who were not previously involved in drug networks may become dealers [3].

II. RESEARCH OBJECTIVES

1. To analyze and find policies on criminal responsibility for narcotics cases in the legal system in Indonesia, a progressive legal approach has not been used.
2. To analyze and find obstacles in realizing the narcotics criminal liability policy with a progressive legal approach.
3. To find the reconstruction of criminal responsibility for narcotics crimes with a progressive legal approach.

III. RESEARCH METHOD

This research is normative juridical research, that in this study used data sourced from library studies in the form of secondary data. The data source is in the form of the 1945 Constitution, laws and regulations relating to juvenile justice. as well as other regulations as primary legal materials.

Literature books, research results, opinions of scholars, papers which are secondary sources of law. As well as legal dictionaries and legal encyclopedias which are tertiary legal materials. The data obtained from the literature study were then analyzed using a qualitative descriptive method.

IV. OBESERVATIONS FROM THE TESTS CONDUCTED SOLENOID FORCE

IV.1. The Urgency of Narcotics Criminal Policy Has Not Used a Progressive Legal Approach

A person cannot be held accountable for his actions, and it is impossible to be punished if he does not have a fault. It would be unfair if someone suddenly for no apparent reason takes responsibility for a mistake that was not committed by them. In essence, criminal responsibility is an accountability for criminal acts that have been committed by someone. It can be said that criminal liability arises after a criminal act has been committed by the person concerned.

It is not enough if someone is punished because that person has committed an unlawful act. This means that even though the formulation of a criminal act is stated in the law, the act is an act that is not justified, but the conditions for imposing a crime have not been fulfilled. The condition for imposing a criminal in question is that the person who committed the crime must have a fault. In this case it can be said that in terms of convicting someone the element of guilt is a very important element that must exist before convicting someone. It is the same as the sound of one of the principles in criminal law, namely: "no crime without fault" [4].

The ability to be responsible is a condition of a person in a normal state and can distinguish between good and bad things. In terms of the ability to be responsible, there are two factors that determine whether a person is capable of being responsible or not capable of being responsible, namely reason and will. The reason factor is the ability in which a person can distinguish between what is allowed and what is forbidden. Meanwhile, the will factor is the ability

in which a person can align his behavior with awareness of which things are permitted and which are prohibited.

In the Criminal Code, criminal responsibility is based on two aspects, namely: physical ability and moral ability which are contained in Article 44 paragraph 1 and paragraph 2 of the Criminal Code. Physical ability here means that a person is not disabled in growth or disabled due to diseases such as blindness, deafness, idiots, minors, and the like. While moral ability here means that a person is not mentally disturbed such as mental illness, epilepsy, and other mental illnesses. In this case it can be said that, if a person's physical abilities and moral abilities are good, then the person concerned can already be held accountable for his actions.

In enforcing the law on narcotics crimes, it is still common for suspects to escape, so that when the trial begins, the impact on the legal facts that occur cannot be unraveled clearly so that it affects the panel of judges in imposing penalties on suspects and defendants. For example, what often happens in court is when the accused is a drug abuser or user of methamphetamine, along with other people. However, during an arrest, only 1 or 2 people were caught and the other party managed to escape. This in fact made the defendant liable to be punished as a party distributing or controlling because there were parties who managed to escape, so the evidence for consuming narcotics was not proven [5].

Apart from that, the sentence is contained in the law No. 35 of 2009 concerning Narcotics there are multiple interpretations such as Article 112 which reads Every person who without rights, or against the law owns, stores, controls, or provides class 1 non-plant narcotics, shall be punished with imprisonment for a minimum of 4 years and a maximum fine a minimum of Rp. 800,000,000.00 and a maximum of Rp. 8,000,000,000.00. In fact, even people who are going to consume narcotics must all start with owning, storing, controlling, and can be punished as a dealer. In fact, regarding being an abuser or user, there is a provision that stipulates that Article 127 paragraph 1 reads that any abuse of narcotics class 1 for oneself shall be punished with a maximum imprisonment of 4 years.

This phenomenon can certainly create legal uncertainty as stipulated in the 1945 Constitution Article 28 paragraph 1 letter D namely Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law. To overcome this, it is better if in enforcing the law on narcotics crimes carried out by law enforcers, especially the Panel of Judges, there needs to be a breakthrough when applying punishment, to minimize narcotics crimes [6].

According to Bernard L Tanya, in a book with the theme of Progressive Law from a moral and critical perspective, namely progressive law is a way of judging based on unremitting concern to encourage law to provide better and better for the nation. In this case law enforcers, in upholding the law are not always focused on existing laws, but also must dig deeper from existing legal facts, by using the social aspects of society that are always developing.

Progressive law bases itself on a crisis of function and legitimacy of the status quo way of law (which puts rules and texts first). Progressive law bases itself on a number of postulates of progressivism , including: (i) law is for humans, not the other way around, (ii) pro-people and justice, the law must side with the people, and justice must be placed above regulations, (iii) progressive law delivers human welfare and happiness, (iv) progressive law emphasizing good life as the legal basis for law, (v) progressive law, responsive in character, that is, law is always associated with objectives outside the textual narrative of the law itself, (vi) conscientious law , (viii) progressive laws are carried out with spiritual intelligence, namely efforts to seek the truth of deeper meaning or value. If this is done, of course, it can have a positive effect when the Panel of Judges applies a sentence to the defendant according to the category of a abuser or dealer. By applying the right punishment, at least it can also help defendants who are categorized as abusers to recover from drug addiction through rehabilitation, while as dealers can feel the deterrent effect that is felt through imprisonment [7].

So far, we can imagine the form of law enforcement that is being carried out is still oriented towards formal law. In law enforcement that occurs at the court stage, they still do not dare to leave the text- book approach, so understanding the law is limited to rules as stated in black ink on white paper alone. Satjipto Rahardjo, Professor of Law at the University of Diponegoro, is a figure who actively provides thoughts on the importance of progressive law being applied to law enforcers. He often said that law is for man, not man for law. So that the law that is enacted and applied to society can provide the values of justice. Understanding of law according to progressive law emphasizes "Law is an institution that aims to

deliver humans to a just, prosperous and happy life".

Departing from two main points of emphasis on progressive law, namely: law is an institution or tool, and law has the goal of being fair, prosperous, and happy. The human position in this definition is more like a master who is served by law so that he can enjoy justice, prosperity, and happiness. In the concept of Progressive Law, human position becomes the main center in assessing whether law is right and good or vice versa.

The implication is that when humans in every process of development always change according to their life needs, it is the law that must follow these developments. So, with this at least law enforcers, especially judges in deciding cases, should start updating themselves regarding the science of law that is starting to develop, and spiritual intelligence must be developed so that it can produce decisions that have progressive legal nuances. The meaning of spiritual intelligence is that spiritual intelligence does not want to be limited by a rule of bound), but not only contextual, but wanting to get out of the existing situation to seek the truth of deeper meaning or value.

Looking for law in regulations is finding the meaning and value contained in regulations and not just reading them "flatly". Law is not a telephone book that only contains a list of rules and articles, but something that is conditional with meaning and value. Reading the rules flatly is solving problems using purely rational intelligence. Several characteristics in carrying out law enforcement that are based on progressive law so that it can be realized, namely:

1. Use spiritual intelligence without being confined to old ways based on laws and regulations that are rigid, hard, and cold if it turns out that its use is contrary to substantive justice.
2. Make a deeper meaning of the sound of laws and regulations so that judges are not trapped in black letters law and only acts as a mouthpiece for the law. Meanings that only consider grammatical aspects tend to mislead and bring about injustice in society.
3. Have a caring and involved attitude and take sides with the marginalized, the weak, the less able by encouraging them to gain access to justice.

Indonesia has implemented a progressive legal approach that has the goal of restoring society and creating balance in society. The implementation of progressive law in Indonesia is currently good but not perfect and requires renewal or improvement in several aspects, but rehabilitation has made Indonesia closer to progressive law. The narcotics crime policy in Indonesia has used a progressive legal approach but progressive law is emphasized on the elements of punishment for users or abusers. The progressive law is in a restorative form justice because abusers are victims who do not need to use a positive law approach but rather the principles of justice, welfare, benefit, and rehabilitation for addicts is carried out.

The progressive legal approach places a human paradigm that considers behavioral factors. The progressive legal approach, law for humans, is on practical law (procedure) for humans to law and legal logic, so to apply this approach judges must be more inclined to creativity and reject the routine logic of regulations. Understanding the law that needs to be carried out by the panel of judges should not be enough just to use a positivistic mechanical analysis approach. This causes the reduced law to produce very simple normative decisions. The truth of coherence shown in this legal theory, anthropology, sociology, economics, psychology, managerial and others is not a law so that the relationship between order and disorder is seen in black and white [6].

Satjipto Rahardjo's legal theory which said law must go hand in hand with the development of society. Progressive law invites this nation to review the way of law in the past, which is a combination of various factors as elements, including the legal mission, the paradigm used, legal knowledge, legislation, the use of certain theories, to behavioral and psychological matters, such as determination and caring, courage, determination, empathy, and feelings.

The progressive legal approach aims to protect the interests of the public, especially for drug offenders, because of the nature of this progressive legal approach, namely that the law is for humans. Thus, the law is expected to be able in addition to realizing the mistakes that have been made for defendants of narcotics crimes, it can also restore psychological conditions that have become addicted to narcotics, thereby not repeating these actions so that this can suppress narcotics crimes in the future. Justice for victims and perpetrators can be realized by the progressive action and way of thinking of law enforcers in implementing regulations.

Basically, law enforcement of narcotics crimes still uses a practical legal order. Especially during trials, the role of the Public Prosecutor in

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applying charges against narcotics cases which have a "command" doctrine, is carried out by the Head of the State Prosecutor's Office as the leader. Of course, such a thing could potentially lead to intervention, resulting in a public prosecutor being unable to prosecute with his own conscience. Subordinates must not oppose the wisdom of their superiors, they must obey their leaders without reserve, without seeing right or wrong. This reflects the legal school of positivism which is still used today in Indonesia. The flow of positivism departs from the way of teaching that law is regulatory, applies as a whole and is determined by the authorities of the state. In it there is a separation of the gap between norms/policies and moral ethics between justice and legality of law [8].

This is what causes everything to be regulated in laws and regulations as a form of real constitutional law positivism also known as legism which juxtaposes law with the constitution. There are no laws outside the constitution. The only source of law is the constitution.

The role of the Panel of Judges as God's representative must play a major role in determining a fair decision, of course fairness does not only focus on the sound of the article, which is juxtaposed with legal facts, but there is also a need for deeper exploration of meaning. In his article "Indonesia Needs Progressive Justice", Satjipto Rahardjo said the damage and decline in reform through modern law was caused by procedural games which led to the question "Is the court a place to seek justice or victory?". At least the role of the Panel of Judges by having a progressive nature, is expected to be able to accommodate forms of law enforcement, such as the stages in the police and prosecutor's offices to boost the image of law enforcement better [9].

The initial step to create a progressive typology of law enforcers is First, regarding the human resources of law enforcement officials in the institution of Judges, the Judicial institution of the Supreme Court, in this case, actually has important authority, because to elevate the image of the judiciary, which has the authority to give birth typical progressive judge The coaching model through the recruitment of judges, for example, should be even more stringent, taking into account aspects of personality, strong religious level, education level should be a minimum of S2, and intellectual intelligence (IQ) with predetermined standards, as well as spiritual intelligence (SQ) that exists. To support the understanding of judges using progressive law, this concept is the basis for forming the character of judges with a progressive typology.

Spiritual intelligence according to Danah Zohar and Ian Marshall is intelligence to deal with issues of meaning (Value), namely intelligence to place human behavior and life in the context of a broader and richer meaning. Intelligence to judge that one's actions or way of life is more meaningful than others, so that SQ (spiritual intelligence) is the foundation needed to function IQ (intelligence intelligence), and EQ (emotional intelligence) effectively, even SQ is the highest intelligence. After the existing spiritual intelligence has been formed, each individual judge needs to be directed to moral development, such as honesty, integrity, personality worthy of trust and having the view that being a judge is a noble task [1].

Having the view that being a judge is a noble task, is expected to be formed in the mindset of everyone. This trait has a very important role, because in doing so every time he carries out his duties as a judge, he always remembers that he is God's representative. This is in accordance with the mandate of the judge's duties that in making decisions based on "For the sake of Justice Based on God Almighty". Regarding the level of education required to become a judge, it is best to have a minimum education of Masters, because in fact in the field, postscript, most graduates from bachelor's are only able to understand law in a normative context in the form of textbook.

Law enforcement is the implementation of non-negotiable criminal regulations whose implementation must be with values that reflect humanity, not conflict with humanity and the applicable laws and regulations. When looking at this phenomenon, many do not understand progressive law in law enforcement on narcotics crimes. The paradigm of judges in making progressive decisions should be improved through the education period for prospective judges. The principle of expediency needs to be emphasized even more by using a progressive legal concept, the aim of which is that the law must be able to provide benefits to all mankind with substantive justice, not just procedural justice. Meanwhile regarding the form of the concept of law enforcement at the prosecutor's level [10].

The purpose of law is not only seen in terms of formal legality to guarantee order and consistency in the implementation of a legal rule, but also to give birth substantially to the recognition of the supremacy of one's personality values, and as an institution that provides a framework for expressing justice in full. The

system of making indictments and charges with a "command" leadership style from the Head of the State Prosecutor's Office, the High Court and the Attorney General's Office against the public prosecutor, is indeed unavoidable, to create a good, harmonious, or understanding form of order to enforce the law as stipulated in the form of attorney general circulars and attorney general regulations. In the future it will be even better if the "command" system is only aimed at making demands and accusations emphasized by using the concept of a progressive approach. Particularly in applying the articles in indictments and charges, which at present still tend to tinker with the articles that are already available, without paying attention to other social aspects in a growing society [11].

Maybe in making charges or demands the public prosecutor can combine other than the punishments imposed in the law, it can also include punishments such as social rehabilitation or compensation in the form of accountability to the victim, so that it is not merely a form of imprisonment. The concept that has been ingrained in the prosecutor's office, with a leadership structure in charge of making indictments and charges, to the public prosecutor, should only oversee procedural matters of pre- investigation by the police and oversight in the code of ethics. With such a leadership style, it is hoped that it will be able to align views on progressive law enforcement between leaders and subordinates so that substantive law enforcement can be created for the benefit of humanity together in the development of society. If this has been implemented properly, it is possible that a prosecutor with a progressive outlook will materialize from the leadership level to the public prosecutor who will conduct the trial.

In the concept of law enforcement carried out by the police, preferably in making arrests, do not let any suspects manage to escape. Because at this stage the police are at the forefront of eradicating narcotics crimes. The police have full authority in acting, this can work with the community or recruit the community as police assistance, so that in this case the police can monitor each jurisdiction with the help of the community as partners in enforcing the law on narcotics crimes [12].

An investigator in carrying out his duties has a legal corridor that must be obeyed, and what is formally regulated and how the procedure for carrying out the duties of an investigation. At the investigation stage, in addition to checking the existing legal facts, of course, it is also necessary to provide enlightenment, so that the suspect does not feel cornered by the actions he has committed. Thus, the goal of a progressive legal approach can be realized through substantive justice for the interests of suspects, in addition to being accountable for their actions, but also to raise awareness through the law, as is the nature of progressive law, that is, the law is for humans, not humans for law.

The last concept, in producing law enforcers who are reliable and have progressive character on an educational basis such as prospective judges, prospective prosecutors, cadets for the Police Academy and special education for the advocate profession, should each institution introduce progressive law courses that so far have not existed in the eyes of Bachelor of Laws course. The introduction model through theoretical learning in class must be held, after which these prospective law enforcers should be given the opportunity to get involved directly in society or in social reality so that they can observe and understand existing problems. Then in the last learning period, there needs to be a final assignment as after observing the existing social reality, to analyze and put it in written form, so that it can solve existing problems using social development based on substantive justice.

IV.2. Policy on Narcotics Criminal Liability in Indonesia's Legal System Does Not Use a Progressive Legal Approach

The problem of narcotics crime in Indonesia has become a problem that has caused many victims among the Indonesian people. The government has made efforts to prevent and eradicate the circulation of narcotics, one form of which is to establish narcotics legislation such as Law Number 35 of 2009 concerning Narcotics, Presidential Regulation Number 25 of 2011 concerning implementation of rehabilitation, Supreme Court Circular Letter Number 10 of 2010 concerning the placement of abusers, addicts, and victims of narcotics abusers into medical and social rehabilitation institutions.

Law Number 35 of 2009 concerning Narcotics is one of the efforts to eradicate and deal with illegal narcotics in Indonesia. This legislation is the legal basis used in enforcing the law on narcotics crimes, in accordance with the provisions of article 1 number 1 of the Criminal Code, that an act can be punished if there are criminal rules. The implementation of the policy of criminal liability for narcotics cases in Indonesia has been going well and is appropriate where there are opportunities for rehabilitation of addicts, abusers,

and victims as well as criminal penalties for drug dealers and dealers. However, this does not limit the existence of things that can be corrected for restorative purposes justice can be realized. The criminal policy of narcotics cases is seen from the side of the user/ abuser, the rehabilitation process is very helpful for users of illegal drugs to feel deterrent so that they have the desire to recover from their addiction to these illegal drugs [13].

In the reality of law enforcement Law Number 35 of 2009 concerning Narcotics, it often creates polemics because it is felt that it does not provide a solution to tackle the increasing crime of narcotics. The narcotics criminal law policy in Indonesia in tackling the circulation and precursors of illegal narcotics is carried out through penal and non- penal approaches. The criminal law policy focuses on planting, production, distribution, traffic, and distribution, to the use of narcotics. Narcotics crime has long been an enemy of the nation and state, which is very worrying and threatening. Narcotics dealers and kingpins never stop, one arrest grows by a thousand, because of one dealer, thousands of victims of narcotics abuse arise in Indonesia [14].

Narcotics crime is an extraordinary crime (extra ordinary crime) seen from the impact caused. However, to be officially declared as an extraordinary crime is not only seen from the impact of the crime. Recognized as an extraordinary crime is when the government also recognizes it in its criminal legislation. This can be seen from the legislation that regulates specific legal actions, starting from the investigation, prosecution, and trial. Based on this, current narcotics legislation in Indonesia does not yet recognize narcotics crimes as extraordinary crimes.

Narcotics legislation in Indonesia, especially in Law Number 35 of 2009 concerning Narcotics, apart from not being able to be called an extraordinary crime,) ordinary crime, also not clearly categorize or classify which is referred to as a crime and which is a criminal offense. Even though the two are clearly different forms of criminal acts, the criminal arrangements. The mix-up between criminal acts and violations in Law Number 35 of 2009 concerning Narcotics results in complex problems.

These problems include the qualifications for the type of offense, which leads to unclear punishments for narcotics users, where they receive inappropriate and incomplete legal action. According to a juridical perspective, narcotics users cannot be categorized as criminals because the nature of crime must cause victims and victims are other people (an act must take place that involves harm inflicted on some one by the actor), with this understanding that leads to the use of narcotics as a form of victimless crime (crime without victims). The application of light crimes against narcotics dealers has resulted in an increasing number of victims of narcotics use in Indonesia. The narcotics criminal law conflicts with the legal doctrine of good criminal law policy, namely the criminal law policy is an effort to deal with crime through the formation of criminal law legislation. The effort is an integral part of the community protection effort (social defense) and efforts to achieve social welfare (social walfare).

Thus, the existence of the Narcotics Law in Indonesia can be said to be not integrated with efforts to protect society (social defense) and efforts to achieve social welfare (social walfare). Seeing the main problems caused by the inability of Law Number 35 of 2009 concerning Narcotics to deal with the circulation and use of illegal narcotics in Indonesia which is increasing and endangering the next generation of the nation. In discussing the research in this chapter, the author will place more emphasis on understanding the types of offenses used by narcotics users in the narcotics law. This is because narcotics users do not have clear qualifications for the type of offense in the narcotics law [12].

The value to be obtained from the achievement of social welfare (social walfare) and community protection (social defense) is the value of trust and the value of justice. If Law Number 35 of 2009 concerning Narcotics is not properly integrated with these two points, it is felt that the Law does not provide a sense of trust and justice. A good narcotics criminal law policy is a policy that integrates penal and non- penal actions. Penal and non- penal policies It can be said that the Narcotics Law is not well integrated. This can be seen from the tendency of law enforcers to apply penal alone, and the not decreasing number of narcotics users in Indonesia [15].

The value to be obtained from the achievement of social welfare (social walfare) and community protection (social defense) is the value of trust and the value of justice is not achieved in the law. So, if you look at the theory of criminalization of legislation, it will become a good law when the formulation process or the legislative stage is carried out correctly. The formulation process or the legislative stage is the most strategic stage in efforts to prevent crime, so mistakes in the formulation will have an impact on law

enforcement and the implementation of court decisions.

The problems in Law Number 35 of 2009 concerning Narcotics, one of which is that there is no juridical qualification between the types of crime and violations. Even though both are different substances in law enforcement. The absence of juridical qualifications is feared to cause problems or juridical consequences in law enforcement practices, both material and formal juridical consequences. If law enforcers view that all narcotics users are related to crime, then they will be threatened with severe punishment.

In addition to qualification, there are also problems in the position of narcotics users as victims or perpetrators of criminal acts. The narcotics law has indeed recognized drug users as victims but also as perpetrators of criminal acts. However, law enforcers prefer to call him a criminal and ignore his status as a victim of narcotics trafficking. This is supported by the provisions of the law which state that drug users are perpetrators of criminal acts. Like the arrangement in article 127 which states that it is a crime for narcotics users. Article 127 paragraph (1) Every abuser:

a. Narcotics Category I for oneself shall be punished with imprisonment for a maximum of 4 (four) years;
b. Narcotics Category II for oneself shall be punished with imprisonment for a maximum of 2 (two) years;
c. Narcotics Category III for oneself shall be punished with imprisonment for a maximum of 1 (one) year.

Law enforcers are often indoctrinated that narcotics users are criminals because of the high criminal threat against narcotics users mentioned in Article 127 paragraph (1). However, to apply paragraph (1), the judge as the examiner of the case must pay attention to paragraph (2) which states that "in deciding a case as referred to in paragraph (1), the judge is obliged to pay attention to the provisions referred to in Article 54, Article 55 and Article 103". Article 54 divides narcotics users into two forms, which are mentioned in the provisions of the article which states that "Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation."

Furthermore, article 55 orders narcotics addicts to carry out medical rehabilitation, with the provisions of article 55 paragraph (1) that "Parents or guardians of narcotics addicts who are not old enough are required to report to community health centers, hospitals and/or rehabilitation institutions. medical and social rehabilitation appointed by the Government to receive treatment and/or care through medical rehabilitation and social rehabilitation." Then, article 55 paragraph (2)

"Narcotics addicts who are old enough must report themselves or be reported by their families to public health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or treatment through medical rehabilitation and social rehabilitation."

The provisions of Article 55 instruct parents of narcotics addicts and addicts who have entered adulthood to report themselves to the authorities and carry out medical rehabilitation and social rehabilitation. If these provisions are not implemented, there is a criminal penalty provided for in Article 128 paragraph (1) of Law Number 35 of 2009 which states that: "The parents or guardians of addicts who are not old enough, as referred to in Article 55 paragraph (1) who intentionally not reporting, shall be punished with imprisonment for a maximum of 6 (six) months or a fine of up to Rp. 1,000,000.00 (one million rupiah)." If the judge has considered this matter, the judge will be guided by Article 103 of Law Number 35 of 2009 concerning Narcotics in making his sentencing considerations.

Article 103 states that "Judges examining cases of narcotics addicts can decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the narcotic addict is proven guilty of committing a narcotic crime; b. Determine to order the person concerned to undergo treatment and/or treatment through rehabilitation if the narcotic addict is not proven guilty of committing a narcotic crime" [10].

The problem in Article 103 is that there is a description of the word Can which, if interpreted by the provisions of Article 54, Article 55 can be implemented, and it is also possible not to be implemented by the judge. This can result in narcotics addicts being threatened with not getting medical rehabilitation if the examining judge tends to use the doctrine of absolute punishment. The simple explanation is, if the abuser is not proven to be a narcotics addict from the judge's assessment, then it is proven to be a narcotics abuser as stipulated in Article 127 paragraph (1) then the Judge imposes a sentence with the provision of criminal sanctions for each class of narcotics mentioned in Article 127 of the Law Number 35 of 2009 concerning Narcotics.

The provisions of article 127 paragraph (3) state that "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". Victims of narcotics abuse in the narcotics law are people who use narcotics because of coercion, or persuasion, or orders, or solicitations. The provisions of Article 127 paragraph (3) make the problem of Law Number 35 of 2009 even more complex. This creates confusion regarding the definition of narcotics users in the law because the definitions of victims of narcotics abusers and narcotics users who are not addicts have the same characteristics. Indirectly also affect the views of law enforcement. So, to find out and solve these problems, the author will analyze the position of narcotics users in criminal law [16].

V. CONCLUSION

The policy of criminal liability in narcotics cases in the legal system in Indonesia has not used a progressive legal approach. Based on several court decisions in Indonesia, it was stated that the defendant did not receive a rehabilitation decision even though based on evidence the defendant was positive for consuming narcotics. Implementation of law enforcement for addicts and victims of narcotics abuse stipulated in the Narcotics Law which adheres to a system of rehabilitation justice and criminal justice is often ignored by law enforcement officials in Indonesia. Narcotics addicts based on the theory of justice are victims who suffer from illness, so they need treatment both physically and psychologically as well as support from the community to be able to live a normal life. Based on the view of justice which is based on the spirit of Pancasila, especially the second precept of Just and Civilized Humanity and the fifth precept of Social Justice for All Indonesian People, the law becomes a central point for studying and examining law enforcement practices in solving narcotics abuse cases down to the essence of belief. Conceptions of belief can align truth, justice, and legal certainty in one unit to realize the objectives of the Narcotics Law which guarantee arrangements for medical and social rehabilitation for addicts and victims of narcotics abuse.

2. The narcotics law policy cannot separate users and perpetrators of illicit narcotics trade. all of them combined with the concept of illicit trafficking of narcotics which is defined as a person who commits a crime specified in the Narcotics Law. many provide criminal rules that are elastic, unclear and are always used by unscrupulous law enforcement officials to manipulate and extort narcotics users and the Narcotics Law deliberately obscures those narcotics users are victims of problems in the illicit trade of narcotics and the approach to war on drugs. The concept of victims of narcotics abuses in the Narcotics Law as people who are forced to use narcotics is an unclear and fair concept.

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