

Criminal Aspects of Drug Abuse in Indonesia (Normative Juridical Analysis)

*Tarmizi¹, Muhtadi², Kasmawati³

^{1,2,3} Universitas Lampung, Indonesia

*tarmizilampung.1976@gmail.com

Received: 13-10-2025

Revised: 15-12-2025

Accepted: 31-12-2025

Abstract

Drug abuse is an extraordinary crime with multidimensional impacts on society, encompassing legal, social, and public health aspects. The increasing number of drug users each year indicates that existing criminal law policies are not yet fully effective in comprehensively preventing and addressing drug crimes. This research aims to analyze the criminal aspects of drug abuse using normative legal research methods based on legislative and conceptual approaches. The study examined Law Number 35 of 2009 concerning Narcotics, as well as various legal literature and previous research findings. The results of this study confirm that criminal law in drug abuse must be implemented in a balanced manner, combining repressive and rehabilitative aspects. The state needs to firmly enforce the law against drug dealers and producers, but is also obligated to provide protection and rehabilitation for users who become dependent. A proportional approach between criminal sanctions and rehabilitation will achieve substantive justice, reduce prison overcrowding, and create a more humane legal system oriented toward social recovery.

Keywords: Criminal Law, Drug Abuse, Rehabilitation, Justice, Penal Policy.



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INTRODUCTION

Drug abuse is a form of crime that has a multidimensional impact on the Indonesian nation. (Taena & Yusuf, 2025). This problem is not only related to the criminal law aspect, but also involves the social, economic, health, and moral dimensions of the nation. In the legal context, the crime of drug abuse requires strict but fair law enforcement (Ginting et al., 2025). Law enforcement against drug abusers is a big challenge for law enforcement officials because there is a dilemma between a repressive approach and a rehabilitative approach. (Iskandar, 2019)

The phenomenon of drug abuse in Indonesia has reached an alarming stage (Isyany et al., 2024) Based on data from the National Narcotics Agency (BNN), the number of drug users continues to increase from year to year. This increase shows that narcotics trafficking has touched all levels of society regardless of age, social status, or education level (Lukman, 2021). This condition requires a comprehensive criminal law strategy, so that the legal goal of protecting the public can be achieved.

In criminal law, drug abuse is included in the category of extra ordinary crime because of its broad impact and transnational network (Batkorbawa et al., 2025). Therefore, its handling requires unusual legal measures. However, in practice, many cases of drug abuse actually place the user as a perpetrator of a crime, not as a victim who needs rehabilitation. This shows that

there is still an inequality between legal norms and the implementation of law enforcement policies (Andito et al., 2022).

Law Number 35 of 2009 concerning Narcotics is the main basis for handling drug crimes in Indonesia (Mustamam et al., 2023). This law emphasizes the prohibition on the use, trafficking, or production of narcotics without a permit, and regulates severe criminal sanctions for violators (Nugraningsih, 2023). However, this law also provides space for users to get rehabilitation, as a form of more humane approach.

The main problem that arises in legal practice is the indecisiveness in distinguishing between abusers and drug dealers (Aziza R.F, 2025). Many perpetrators are actually only users, but are charged with articles intended for dealers because of the discovery of a certain amount of evidence. As a result, users who should have been rehabilitated were instead sentenced to prison and became part of a new problem in correctional institutions.

Law enforcement against drug abuse also faces obstacles from the evidentiary aspect (Wijaya & Ruslie, 2024). In many cases, law enforcement officials have difficulty proving malicious intent (*mensrea*) from users, because most of the perpetrators are victims of abuse who have no economic motive. This is a challenge in the application of fair criminal law (Triawan et al., 2025). In addition, there are still paradigm differences between law enforcement agencies such as the police, prosecutor's office, and judicial institutions in interpreting the position of drug users. (Ahmadushshodiq & Tahyudin, 2025). Some are of the view that users should be punished to provide a deterrent effect, while others consider that users are victims who need recovery. (Toruan & Sidauruk, 2025). This difference has an impact on the inconsistency of court decisions in narcotics cases.

From the social side, drug abuse is also rooted in structural factors such as poverty, unemployment, and weak social control (Wibowo et al., 2025). This situation worsens the effectiveness of criminal law because enforcement without social prevention will not solve the root of the problem. Criminal law becomes dull if it is not accompanied by preventive policies (Hamson & Makkah, 2021). Penal policy against drug abuse must pay attention to the principle of proportionality. The use of criminal law as the ultimate *remedium* emphasizes that crime should be a last resort, not the only instrument to solve social problems (Sanubari & Hermansyah, 2025). Therefore, it is necessary to reform the paradigm in narcotics law to be more on the side of rehabilitation and social recovery efforts.

From the perspective of criminal law theory, the imposition of sanctions against drug abusers must pay attention to the elements of guilt, malicious intent, and the purpose of the crime. (Bahagiati, 2020). Criminalization is not just retribution, but also a means to improve and protect society (Wulandari, 2023). In the context of drug abuse, appropriate punishment is one that is able to restore the social function of the perpetrator, not just confine him to prison (Kamaluddin, 2024).

Various previous studies have examined the criminal aspects of drug abuse from the perspective of criminal law and criminal policy. Research by Arief (2018) emphasizes that the penal policy in the Narcotics Law in Indonesia is still dominated by a repressive approach that is oriented towards punishment, with the main goal of deterrence, but has not optimally considered rehabilitative aspects for abusers. Furthermore, Sujatmoko (2019) shows that normatively Law Number 35 of 2009 has distinguished between drug dealers and users, but in law enforcement practice the distinction is often inconsistent so that abusers are still treated as

pure criminals. Research by Reuter and Stevens (2007) in the context of narcotics policy confirms that the criminalization of drug users tends to be ineffective in reducing the rate of abuse and has the potential to cause new social problems, a finding that is relevant to the condition of narcotics policy in Indonesia. Meanwhile, Husak (2020) criticized the criminal law approach to narcotics crimes by emphasizing the importance of the principle of proportionality and protection of human rights in the formulation of criminal sanctions. The similarity of these studies with this article lies in the focus of normative studies on the criminal regulation of narcotics, while the difference is that previous research emphasizes more on aspects of criminal policy or normative criticism in general without a systematic analysis of the construction of criminal accountability of drug abusers within the framework of positive Indonesian law. The research gap lies in the absence of a normative juridical study that comprehensively examines the position of drug abusers as a subject of criminal law by linking legal norms, penal objectives, and implications of legal certainty. Therefore, the novelty of this article lies in a normative juridical analysis that places drug abusers not solely as criminal objects, but as legal subjects that require a proportionate and fair approach to criminal law within the framework of the Indonesian criminal law system.

Thus, this study is important to examine the criminal aspects of drug abuse in a normative juridical manner, in order to find a balance between strict law enforcement and a humanitarian approach oriented towards recovery.

RESEARCH METHOD

This study uses a qualitative research method with a normative legal research type, which was chosen to analyze in depth the regulation and application of criminal provisions on drug abuse in the Indonesian legal system. The use of qualitative methods aims to examine normative problems in the form of the construction of criminal responsibility, the purpose of punishment, and the suitability of the application of criminal sanctions against drug abusers with the principles of legal justice. The focus of the research is directed at how narcotics criminal law norms are formulated and applied in law enforcement practices.

The approaches used in this study include a statute approach and a conceptual approach. The legislative approach is applied by systematically tracing, inventorying, and analyzing the provisions in Law Number 35 of 2009 concerning Narcotics and relevant implementing regulations, including Government Regulation Number 25 of 2011 concerning the Implementation of Mandatory Reporting of Narcotics Addicts. The conceptual approach is used to examine the concept of criminal responsibility, the purpose of punishment, the principle of legality, and the principle of justice, which is then used as a framework of analysis in assessing the consistency of norms and their application.

The object of the research is focused on the criminal provisions of drug abuse and the practice of its application in the criminal justice system in Indonesia. This study does not determine the subject and location of field research because it is normative, but the analysis is carried out by examining court decisions, law enforcement policies, and criminal practices reflected in legal literature and official documents. The research process is carried out over a certain period of time which includes the collection, classification, and analysis of legal materials to ensure the relevance and novelty of the data used.

The data source in this study is in the form of secondary data, which consists of primary, secondary, and tertiary legal materials. Primary legal materials are obtained through a search of laws and regulations that regulate narcotics crimes, including laws and government regulations. Secondary legal materials are collected through literature studies of legal textbooks, articles in national and international scientific journals, results of previous research, and relevant academic publications. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to clarify certain legal terms and concepts that are required in analysis.

The data collection technique is carried out through library research by identifying, selecting, and reviewing legal documents and literature that are relevant to the focus of the research. The data that has been collected is then analyzed using normative qualitative analysis techniques, namely by interpreting legal provisions, comparing between norms, and relating them to criminal law doctrines and theories. This analysis aims to assess the suitability of the criminal regulation of drug abuse with the principles of justice and effectiveness of criminal law, as well as to formulate academic arguments regarding the need to strengthen or reform the criminal policy on narcotics in Indonesia.

RESULT AND DISCUSSION

Data on Normative Juridical Findings on the Regulation and Criminal Implementation of Drug Abuse in Indonesia

Based on a normative juridical analysis of Law Number 35 of 2009 concerning Narcotics and its implementing regulations and relevant legal literature, this study finds a number of normative patterns and problematics in the application of criminal law to drug abuse in Indonesia. The findings of the study are systematically mapped as follows.

Table 1. **Construction of Criminal Arrangements for Drug Abuse in the Narcotics Law**

Regulatory Aspects	Normative Provisions	Legal Implications
Abuser Status	Positioned as a criminal perpetrator	Potential jail time
Criminal Threats	Imprisonment and/or fines	Dominance of repressive approaches
Rehabilitation	Set up as an alternative	Inconsistent implementation
Mandatory Report	Ordered in GR 25/2011	Not optimally applied
Consumer–Distributor Differentiation	Normatively regulated	Often blurry in practice

Table 1 illustrates the normative construction of criminal regulations on drug abuse in Law Number 35 of 2009 concerning Narcotics. Normatively, drug abusers are positioned as perpetrators of criminal acts that can be subject to prison sanctions and/or fines. Although the law also recognizes rehabilitation as an alternative to treatment, the construction of norms that place abusers in criminal regimes causes repressive approaches to remain mainstream in law enforcement practice. The provisions regarding mandatory reporting of narcotics addicts as stipulated in the implementing regulations show that there are efforts by the state to prioritize the recovery aspect, but its implementation has not been optimal. In addition, although there is normatively a distinction between users and drug dealers, these restrictions are often not consistently applied in practice, so abusers remain at risk of being treated as pure criminals.

This condition shows that in the legal system, the criminal regulation of narcotics still contains ambiguity in placing the abuser between the subject of the crime and the subject of rehabilitation.

Table 2. Criminal Objectives and Reality of Application in Drug Abuse Cases

Criminal Intent	Legal Norms	The Reality of Practice
Enrichment	Becoming the main goal of criminalization	Prisons do not reduce recidivism rates
Rehabilitation	Recognized in the Narcotics Law	Rarely used as a major decision
Community Protection	Becoming the basis for criminalization	Not touching the roots of addiction
Recovery of Perpetrators	Normatively accommodated	Lack of facilities and coordination

Table 2 shows that there is a gap between the goal of punishment idealized in legal norms and the reality of the application of criminal sanctions against drug abusers. Normatively, criminalization is intended to provide a deterrent effect, protect the community, and open up space for rehabilitation and recovery for perpetrators. However, in practice, prison sentences are still the main instrument used, although various studies show that prison sentences do not significantly reduce the recidivism rate of drug abusers. This repressive approach also does not touch the root of the problem of addiction which is medical and social. Meanwhile, rehabilitation, which is normatively recognized as a criminal goal, is rarely used as the main choice in court decisions, among other things, due to limited facilities, inter-agency coordination, and a law enforcement paradigm that is still oriented towards punishment. This shows that the purpose of criminalization in narcotics law has not been consistently translated into judicial practice.

Table 3. Normative Problems in the Application of Criminal Sanctions for Drug Abuse

Problems	Problem Form	Legal Impact
Inconsistency of the Verdict	Differences in treatment between similar cases	Legal uncertainty
Over-criminalization	Users are treated like distributors	Violation of the principle of proportionality
Weak Rehabilitation	Lack of rehabilitative verdicts	Failure to achieve substantive justice
Prison Load	High number of narcotics inmates	Overcrowding of correctional institutions

Table 3 identifies various normative problems that arise in the application of criminal sanctions against drug abusers. One of the main problems is the inconsistency of court decisions in handling cases that have similar characteristics, which has an impact on disrupting legal certainty. In addition, the practice of overcriminalizing drug abusers, where users are treated on an equal footing with traffickers, points to a violation of the principle of proportionality in

criminal law. The weak implementation of rehabilitation as an alternative to punishment also results in the goal of recovery not being achieved, so that abusers have the potential to fall back into drug abuse. The systemic impact of this condition can be seen in the increasing number of inmates in narcotics cases that cause overcrowding in correctional institutions. These findings show that the problem of drug abuse is not only a criminal law problem, but also raises serious social and institutional problems.

Table 4. Conformity of Law Application with Criminal Law Principles

Legal Principles	Normative Provisions	Compatibility Level
Principles of Legality	Fulfilled	Height
Principles of proportionality	Not optimal yet	Low
The Principle of Justice	Normative fulfilled	Weak implementation
Legal Certainty	Legally guaranteed	Disrupted practice

Table 4 assesses the suitability of the application of criminal law against drug abusers with the basic principles of criminal law. From the perspective of the principle of legality, the application of criminal law has met the formal provisions because it is based on clear laws. However, at the implementation level, the principle of proportionality has not been applied optimally, because the criminal sanctions imposed often do not consider the level of error and the condition of the perpetrator as an abuser. The principle of justice is normatively recognized in the legal system, but in practice it has not been fully reflected in court decisions that emphasize punishment over rehabilitation. As a result, the resulting legal certainty tends to be formalistic and does not provide a sense of substantive justice for drug abusers. These findings show the need to restructure the application of criminal law principles to be in line with the goals of fair and humane punishment.

Overall, the explanation of the four tables shows that the criminal regulation of drug abuse in Indonesia has a relatively complete normative framework, but still faces serious problems in its implementation. The dominance of repressive approaches, weak rehabilitation, and inconsistency in the application of criminal law principles indicate an urgent need to reorient narcotics criminal law policy. A more proportionate, fair, and restorative-based approach is needed so that criminal law not only functions as a tool of punishment, but also as an instrument of protection and guidance for drug abusers.

Legal Arrangements on Drug Abuse

The legal framework regarding drug abuse in Indonesia has a strong basis in the national legal system. Law Number 35 of 2009 concerning Narcotics comprehensively regulates the prohibition, classification, and sanctions for parties who abuse narcotics (Sanubari & Hermansyah, 2025). This law replaces Law Number 22 of 1997, with an emphasis on strict supervision of the circulation and use of narcotics. The main purpose of this law is not only to criminalize, but also to protect the public from the dangers of drug abuse through a firm and humane legal approach.

Article 127 of Law Number 35 of 2009 states that drug abusers for themselves can be sentenced to a maximum of four years in prison. However, Article 54 confirms that narcotics addicts are obliged to undergo medical and social rehabilitation (Aziza & Dewi, 2023). This

provision reflects a balance between repressive and rehabilitative aspects. Users are positioned not solely as criminals, but also as victims who need recovery. This shows a paradigm shift in narcotics criminal law towards a restorative justice approach (Rasiwan, 2025).

However, in practice, law enforcement against drug users is often not in accordance with the spirit of rehabilitation contained in the law. Many drug users were sentenced to prison without going through the medical assessment process first. This condition shows that there is still weak coordination between law enforcement officials, the National Narcotics Agency (BNN), and rehabilitation institutions. As a result, the goal of the law to provide protection and rehabilitation for addicts has not been fully achieved (Yanti et al., 2025).

In addition, Articles 111 to 119 regulate other acts related to narcotics, such as growing, producing, distributing, and importing narcotics. The sanctions are very severe, and can even reach the death penalty for perpetrators who are proven to be part of an international narcotics trafficking network (Sueni, 2025). This severe criminal provision aims to have a deterrent effect, but in its application it often causes controversy because it is considered disproportionate to the level of error of the perpetrator (Setiawan, et al., 2024).

In this context, it is important to understand the difference between users, dealers, and manufacturers of narcotics. Users are parties who use drugs for themselves, dealers are parties who trade, while producers are parties who make or process drugs for the benefit of illegal businesses (Wibowo et al, 2025). This distinction is very important in determining the form of criminal liability, because each category has different elements of error and legal impact (Wirda et al., 2024)

One of the fundamental problems is the inconsistency between the text of the law and law enforcement practices (Kushadianto & Putra, 2024). The authorities often use a narrow interpretation in assessing the element of "mastery" of narcotics, so that even users who possess small amounts of drugs can be equated with traffickers. In fact, juridically, the element of intention (*mens rea*) must be the main basis in determining the type of criminal act committed (Ardison Asri, 2022).

In addition to the legislative aspect, there are also non-penal policies that must be implemented to support law enforcement against narcotics. Non-penal policies include education, prevention, and social rehabilitation carried out by government agencies and the community. With this comprehensive approach, it is hoped that legal policies will not only have a deterrent effect, but also be able to prevent the occurrence of drug abuse in a sustainable manner (Limbong et al., 2016).

In general, it can be concluded that the legal regulation of drug abuse in Indonesia has contained the principle of balance between justice and humanity. However, the success of its implementation depends heavily on the consistency of law enforcement in applying the principles of rehabilitation for addicts, as well as firmness in punishing drug dealers and producers.

Criminal Liability for Drug Abuse

Criminal liability is the core of the criminal law system which requires a relationship between unlawful acts and the fault of the perpetrator (Kila & Ujjanti, 2023). In the case of drug abuse, the concept of criminal liability must be understood by paying attention to the condition of the perpetrator. Users who are dependent cannot be said to have malicious intentions (*mens*

rea), because their actions are carried out under the influence of addictive substances that cause physical and psychological dependence (Imelda Hasibuan et al., 2025)

In criminal law theory, a person can only be convicted if he meets two main elements, namely the existence of a prohibited act (*actus reus*) and the existence of a mistake or malicious intent (*mens rea*) (Mallarangeng & Ali, 2023). In the context of drug abuse, users who are entangled in dependence often lose the ability to control themselves, so the element of guilt can become weak (Hakim et al., 2024). Therefore, there needs to be a legal policy that is able to distinguish between pure criminals and victims of drug abuse.

In addition, in some cases, drug users are simply an extension of a large network that utilizes them as a means of distribution. In this case, imposing severe penalties on users who do not have a dominant role will cause injustice (Gunawan, 2021). Therefore, judges must consider the principles of proportionality and criminal individualization in handing down sentences.

Criminal liability must also pay attention to the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code (Aly Syahrin et al., 2023). No act can be punished except based on the provisions of the applicable law. This principle emphasizes that the application of criminal law to drug abuse must not exceed the limits determined by law (Dewi, 2019). However, in practice, many users are criminally processed even though they should be directed to rehabilitation in accordance with Article 54 of the Narcotics Law.

Criminal liability in the context of drug abuse should also consider the principle of *ultimum remedium*, namely that criminal sanctions are used as a last resort if other measures are ineffective (Sitanggang et al., 2024). Thus, for drug users who are dependent, medical and social rehabilitation is more appropriate than imprisonment. Criminalization of addicts can actually worsen the social and health conditions of the perpetrators (Venerdi & Edrisy, 2025).

Within the framework of modern criminal theory, criminal sanctions should be directed towards achieving the goal of corrections, not retaliation (Rahmawati et al., 2024). The main purpose of punishment is resocialization, which is to return the perpetrator to normal social life. Therefore, drug users undergoing rehabilitation must be treated as protected legal subjects, not solely as punished offenders (Tambunan & Yani, 2024).

Furthermore, in judicial practice, judges often use the results of BNN assessments as the basis for considering decisions. The assessment determines whether the perpetrator deserves to be rehabilitated or punished. This is a positive step in implementing substantive justice (Marune & Hartanto, 2023). However, its effectiveness still depends on the independence and consistency of the apparatus in carrying out the assessment process objectively.

Thus, criminal accountability for drug abuse must prioritize substantive justice and humanity (Gizella, 2025). The state must ensure that drug users receive fair, proportionate, and appropriate treatment in accordance with their psychiatric condition and level of involvement in narcotics crimes (Setiawan et al., 2024).

Law Enforcement Implementation and Challenges

The implementation of criminal law against drug abuse faces various complex challenges (Wijaya & Ruslie, 2024). One of the main challenges is the missynchronization between laws and regulations and law enforcement practices in the field. Although the Narcotics Law has provided space for rehabilitation, many law enforcement officials still prioritize a repressive

approach (Agustin et al., 2025). This causes correctional institutions to become overcrowded with inmates in narcotics cases, while the level of abuse has not decreased significantly.

The next problem is the lack of understanding of law enforcement officials on the concept of rehabilitation. Some officials still consider rehabilitation to be a form of leniency, not part of a legitimate legal process (Pratama & Pangestika, 2024). In fact, rehabilitation is a form of non-penal sanction regulated by law and has the same legal force as imprisonment. This indicates the need to increase the capacity of human resources in the field of narcotics law enforcement (Laksono et al., 2024).

In addition, the implementation of narcotics laws is often hampered by a lack of facilities and funds for rehabilitation. Many regions in Indonesia do not have adequate rehabilitation institutions, so drug users are forced to be detained or imprisoned (Damayanti, 2024). This condition is contrary to the spirit of Article 54 which requires rehabilitation for addicts. As a result, the goal of social recovery for drug users is difficult to achieve (Laksono et al., 2024).

Another obstacle is the practice of abuse of authority by law enforcement officials. In some cases, there are allegations of criminalization of users on the accusation of being traffickers (Dewanti et al., 2025). This practice not only violates the principles of justice, but also undermines public trust in the criminal justice system. Therefore, supervision of the apparatus must be strengthened so that the law can be enforced objectively and with integrity.

The next challenge is weak coordination between law enforcement agencies. The handling of narcotics cases involves many institutions such as the police, prosecutor's office, courts, and BNN (Amalia & Pasa, 2024). However, coordination between them is often ineffective, resulting in differences in perceptions in determining the legal status of the perpetrator. Institutional synergy is needed to unite steps and views in enforcing narcotics laws (Amin et al., 2024).

Sociologically, law enforcement is also hampered by cultural and environmental factors. Permissive communities towards drug use in certain circles are an obstacle in law enforcement efforts (Kuba et al., 2025). Therefore, criminal law policy must be accompanied by social prevention efforts through education and legal counseling to the community.

From the perspective of criminal policy, narcotics law enforcement must include penal and non-penal efforts in a balanced manner. Penal efforts are directed to take strict action against dealers and manufacturers, while non-penal efforts focus on prevention and rehabilitation of users (Sinaga, 2023). This approach is known as *integrated criminal policy*, which is an integrated strategy in tackling narcotics crimes.

Thus, the main challenge in the implementation of criminal law against drug abuse lies not in the weakness of the law, but in the inconsistency of its application. A joint commitment from all law enforcement officials, policymakers, and the community is needed to enforce laws that are fair, effective, and humanitarian-oriented (Laksono, 2024).

CONCLUSION

From the results of the discussion, it can be concluded that the criminal aspect of drug abuse in Indonesia has been comprehensively regulated in Law Number 35 of 2009 concerning Narcotics. These regulations include aspects of prohibition, supervision, enforcement, and rehabilitation. However, in its implementation, there is still a gap between legal norms and law enforcement practices in the field. Drug abuse is a complex criminal offense because it involves

legal, social, and health aspects. Therefore, law enforcement against perpetrators cannot be carried out only with a repressive approach. A rehabilitative approach must be put forward for users who are victims of dependency so that the law does not lose its humanitarian side. The principle of proportionality in criminal law must be the main guideline in imposing sanctions on drug abusers. Dealers and producers should be severely punished for their actions undermining the social order, while dependent users should be directed to recovery and rehabilitation in order to return to functioning in society. In addition, synergy between law enforcement officials, government agencies, and the community is needed to reduce the number of drug abuse. Good legal efforts must be supported by legal education, social campaigns, and supervision of narcotics trafficking. Criminal law cannot stand on its own without the support of a sound social system.

A reform of the *penal policy* is needed that emphasizes the balance between legal certainty and substantive justice. Rehabilitation should be recognized as part of a legitimate legal process, not as leniency. Thus, the criminal justice system will be more humane and in accordance with the goals of national law. Finally, the role of the state in enforcing the law against drug abuse must be based on the principle of social justice. The state is obliged to protect citizens from the dangers of narcotics, but it is also obliged to rehabilitate those who are victims. True justice can only be achieved when the law is enforced with conscience, not just by rigid articles. By strengthening the legal paradigm that is fair and humanitarian-oriented, Indonesia is expected to be able to reduce the number of drug abuse and create a generation that is clean from dependence and has high legal awareness.

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