

## Reconstruction of the Formulation of Rehabilitation Sanctions for Narcotics Abusers from the Perspective of Criminal Law Policy

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### ABSTRACT

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Indonesia's narcotics criminal law policy continues to reflect normative tensions between a repressive criminalization approach and a rehabilitative paradigm. Although the law recognizes narcotics abusers as individuals requiring recovery, law enforcement practices remain predominantly imprisonment-oriented because rehabilitation is positioned as an alternative rather than a primary sanction. This study aims to examine: (1) the weaknesses in the formulation of rehabilitation sanctions within Indonesian criminal law policy, and (2) the normative reconstruction model capable of positioning rehabilitation as the primary response to narcotics abusers. This research employs normative legal research using statutory, conceptual, case, and comparative approaches. The data sources consist of primary legal materials, including the Narcotics Law and the Criminal Code, supported by secondary and tertiary legal materials analyzed qualitatively through legal interpretation and juridical reasoning. The findings reveal that the principal weakness lies in the formulation of Articles 103 and 127 of the Narcotics Law, as well as the absence of explicit rehabilitation provisions in the new Criminal Code, resulting in legal ambiguity and disparities in judicial decisions. Consequently, correctional institutions experience severe overcrowding, with more than 40 percent of inmates being narcotics offenders, while prisons increasingly function as spaces for the reproduction of crime rather than rehabilitation. This study recommends reconstructing the sanction formulation through revision of Article 609 of the Criminal Code to clearly distinguish narcotics abuse from illicit trafficking, alongside transforming the integrated assessment mechanism from discretionary authority into an imperative normative obligation. The originality of this research lies in shifting the analytical focus from implementation issues to the formulation of criminal law policy and developing a normative reconstruction model integrating therapeutic jurisprudence and restorative justice within the national criminal justice system.



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### Introduction

The problem of narcotics abuse in Indonesia reflects a continuing normative tension between the repressive criminal justice approach and the rehabilitative paradigm within the national criminal justice system (Pakpahan et al., 2024). Although Indonesian narcotics law formally recognizes narcotics abusers as individuals requiring medical and social rehabilitation, law enforcement practices remain predominantly punitive through the extensive use of imprisonment. This condition creates a contradiction between the objectives of social protection promoted by narcotics policy and the operational reality of the criminal justice system, which still emphasizes criminalization. Consequently, the sentencing system for narcotics abusers has not fully reflected the balance between legal certainty, social utility, and substantive justice.

In the era of globalization, narcotics abuse has evolved into a multidimensional issue that cannot merely be understood as a conventional crime. Drug abuse is closely connected to public health concerns, social vulnerability, and the deterioration of human resources (Sánchez-Valdivia et al., 2023). Therefore, narcotics

control policies require an integrated approach that combines legal, medical, and social dimensions simultaneously (Johnson et al., 2025). Contemporary criminal justice systems increasingly regard drug abusers as dependent individuals who require recovery-oriented interventions rather than purely retributive punishment.

Indonesia, through Law Number 35 of 2009 concerning Narcotics and Law Number 1 of 2023 concerning the Criminal Code, has adopted a rehabilitative paradigm by providing legal space for medical and social rehabilitation. This policy indicates a shift from a crime control orientation toward a treatment-oriented criminal policy approach (Freiberg, 2025). However, the implementation of these provisions still encounters structural obstacles because rehabilitation is normatively positioned only as an alternative sanction rather than the primary response for narcotics abusers (Peleg-Koriat, 2024).

The persistence of imprisonment-oriented sentencing has led to disparities in judicial decisions involving narcotics abuse cases (Wardani, 2024). Empirical evidence indicates that many narcotics abusers continue to receive prison sentences despite fulfilling the criteria for rehabilitation as addicts or victims of narcotics abuse. This condition creates a paradox in criminal law policy: while legal norms encourage rehabilitation, judicial practice often reinforces criminalization. As a consequence, correctional institutions have become overcrowded with narcotics offenders, thereby weakening their rehabilitative function and potentially increasing recidivism rates (Evans, 2022).

**Table 1.** Number of Narcotics Convicts in Padangsidempuan Class IIB Prison in 2021-2025

No	Year	Amount		Total Amount
		Man	Women	
1	2021	672	8	680
2	2022	762	9	771
3	2023	524	2	526
4	2024	462	1	463
5	2025	529		529

Source: Class IIB Padangsidempuan Prison

From the perspective of criminal law theory, the effectiveness of punishment is closely related to its ability to produce social benefits. Jeremy Bentham's utilitarian theory positions law as an instrument to achieve the greatest benefit for society (Bentham, 2009). Punishment that fails to rehabilitate offenders or prevent recurring crimes loses its functional legitimacy (Wermink et al., 2024). In the context of narcotics abuse, the excessive reliance on imprisonment demonstrates the limitations of the criminal justice system in achieving rehabilitative and preventive objectives.

These issues indicate that the problem does not solely lie in the implementation of the law but also in the formulation of criminal law policy itself. According to Marc Ancel's concept of criminal policy, legal formulation constitutes a strategic phase that determines the direction of sentencing practices (Ancel, 1975). When rehabilitation is merely positioned as an optional sanction, the normative structure of the law implicitly encourages judges to prioritize imprisonment. Consequently, weaknesses in the normative design of sanctions directly contribute to inconsistencies in the implementation of rehabilitation.

The traditional retributive justice paradigm continues to influence narcotics law enforcement practices in Indonesia (Ariani et al., 2025). In contrast, contemporary developments in criminal law demonstrate a shift toward corrective and therapeutic approaches that view law as an instrument of social recovery. The concept of therapeutic jurisprudence introduced by David B. Wexler and Bruce J. Winick emphasizes that legal processes should generate therapeutic impacts for individuals involved in the justice system (Yamada, 2021). This approach is particularly relevant in narcotics abuse cases because substance dependency is closely associated with psychological and health conditions.

The urgency of reformulating rehabilitation sanctions is further reinforced by the chronic overcrowding crisis in Indonesian correctional institutions, most of which are occupied by narcotics offenders (Pulungan

et al., 2024). Imprisonment-oriented policies not only burden correctional institutions but also diminish the effectiveness of rehabilitation and social reintegration functions (Hamja et al., 2025). This condition demonstrates that repressive approaches are increasingly inadequate for addressing dependency-based narcotics crimes.

From a criminological perspective, narcotics abusers occupy a different position from narcotics traffickers and dealers (Novalina et al., 2024). Substance dependency places abusers in vulnerable physical and psychological conditions, making the application of sanctions identical to those imposed on organized crime offenders inconsistent with the principles of proportionality and humanity in modern criminal law (Pozen, 2024). The inability of the criminal justice system to distinguish clearly between abusers and traffickers reflects weaknesses in the normative structure of narcotics law policy.

Furthermore, the disharmony between criminal law and health policies weakens the effectiveness of rehabilitation mechanisms. Integrated assessment systems intended to facilitate rehabilitation often depend on the discretion of law enforcement officials rather than mandatory legal obligations (Wibowo & Asikin, 2021). This reliance on discretion creates disparities in court decisions and legal uncertainty for narcotics abusers, thereby hindering the consistent realization of rehabilitation objectives.

Previous studies on narcotics rehabilitation generally focus on the effectiveness of rehabilitation programs, obstacles to implementation, and normative evaluations of legal regulations. However, most prior research still emphasizes implementation issues rather than the design of sanction systems within criminal law policy. Thus, a significant research gap remains regarding the absence of a normative reconstruction model that systematically positions rehabilitation as the primary response within the criminal justice system.

This research addresses that gap by shifting the analytical focus from implementation problems to the formulation of criminal law policy. This study examines the normative weaknesses of rehabilitation regulations while proposing a reconstruction model that positions rehabilitation as the primary sanction for narcotics abusers. This approach seeks to reduce excessive criminalization while strengthening the effectiveness of narcotics control policies through the integration of legal, health, and restorative approaches.

Theoretically, this research contributes to the development of modern criminal law that is more adaptive to dependency-based crimes. Practically, the study provides a conceptual foundation for reforming narcotics legislation and developing interpretative guidelines for law enforcement officials in consistently implementing rehabilitation policies.

Based on these considerations, this study aims to analyze the weaknesses in the formulation of rehabilitation sanctions within Indonesian criminal law policy and to formulate a normative reconstruction model that positions rehabilitation as the primary response to narcotics abuse. Through a normative juridical approach grounded in criminal law policy, this research is expected to contribute to the development of a more humanistic, effective, and socially rehabilitative criminal justice system.

## Method

This study employs normative legal research with a descriptive-analytical and prescriptive character. The research is designed to systematically examine the formulation of rehabilitation sanctions for narcotics abusers within Indonesian criminal law policy and to formulate a normative reconstruction model oriented toward recovery and rehabilitation. The study focuses on identifying normative tensions between the punitive sentencing paradigm and the rehabilitative approach reflected in Indonesia's narcotics criminal justice system.

Normative legal research positions law as a system of norms, principles, and legal doctrines governing legal behavior and judicial practice (Dimiyati et al., 2025). The primary focus of this study is the analysis of criminal law policies regulating rehabilitation sanctions for narcotics abusers. This approach was selected because the research problem concerns not only the effectiveness of law enforcement but also the weaknesses in the normative formulation of rehabilitation sanctions in positive law. Accordingly, the research seeks to identify normative inconsistencies, legal ambiguities, and policy disharmony that hinder rehabilitation from functioning as the primary response to narcotics abuse.

This research is prescriptive in nature because it does not merely describe the existing legal condition (*ius constitutum*), but also formulates an ideal legal construction (*ius constituendum*) through the reconstruction of rehabilitation sanction policies within Indonesian criminal law (Widyawati et al., 2025).

The data sources for this normative legal research use secondary data consisting of the following legal materials:

1. Primary legal materials, including: Law Number 35 of 2009 concerning Narcotics, Law Number 1 of 2023 concerning the Criminal Code, laws and regulations related to medical and social rehabilitation, and court decisions related to narcotics abuse cases.
2. Secondary legal materials, including: Scientific literature in the field of criminal law and narcotics policy, national and international journal articles, previous research results, expert doctrines regarding criminal law policy and rehabilitation.
3. Tertiary legal materials, including: legal dictionaries, legal encyclopedias, other reference sources that support the explanation of legal concepts and terminology.

The legal material collection technique was carried out through a literature study by tracing regulations, legal doctrines, and court decisions relevant to the research problem. This technique aims to obtain a normative and conceptual basis in analyzing the weaknesses of the formulation of rehabilitation sanctions in criminal law policy. Analysis method; 1) analysis of legal materials was carried out qualitatively normatively using legal interpretation and juridical reasoning methods. The stages of analysis were carried out through: inventory of legal norms, vertical and horizontal synchronization, conceptual analysis, normative evaluation, and legal reconstruction. The analysis was carried out using a descriptive-evaluative-prescriptive pattern, so that the research does not stop at identifying problems, but produces recommendations for the reconstruction of legal norms that can be applied in updating criminal law policy (Marasabessy et al., 2025). The analysis mechanism in this study was directed at testing the suitability between the objectives of narcotics policy, the principle of the benefit of punishment, and protection for drug abusers as individuals experiencing dependence. The analysis was carried out by placing rehabilitation within an integrative criminal law policy framework between legal, health, and social aspects

## **Results and Discussion**

### **Inconsistency in Normative Formulation and Disparity in Implementation of Rehabilitation**

An analysis of the regulation of rehabilitation sanctions in Indonesian criminal law policy reveals structural normative tensions. Law Number 35 of 2009 concerning Narcotics and Law Number 1 of 2023 concerning the Criminal Code have indeed opened up space for the implementation of medical and social rehabilitation for drug abusers. Article 103 of the Narcotics Law explicitly authorizes judges to issue rehabilitation orders, while Article 127 categorizes abusers as addicts in need of recovery. However, although rehabilitation provisions are formally available, their implementation is highly dependent on the discretion of law enforcement officials and has not become a primary response in the criminal justice system (Ariani et al., 2025). Indonesian drug policy is still dominated by a punitive approach that prioritizes long-term imprisonment, even for low-level offenders.

The ambiguity of normative formulations has direct implications for judicial practice. In Decision Number 78/Pid.Sus/2025/PN Psp, the judge did not impose rehabilitation even though the defendant met the criteria for a final user based on Supreme Court Circular Letter Number 4 of 2010. This disparity in decisions reflects the weakness of normative design, which does not explicitly mandate rehabilitation for eligible abusers. A study of three appellate court decisions also identified that the main obstacles to the implementation of restorative justice in narcotics cases are legal gaps and unclear norms, which prevent the courts from optimally overseeing restorative case resolution (Parindo, 2025). This condition reinforces the understanding that the problem of rehabilitation lies not solely in implementation, but in the weaknesses in the formulation of criminal law policy itself.

### **Correctional Institution Overcapacity as an Indicator of Policy Failure**

The most obvious consequence of the dominance of the punitive approach is the overcrowding crisis in correctional institutions. Data from the Correctional Database System shows that more than 40 percent of prison inmates are drug convicts (Pratama & Hamzah, 2025). This situation not only creates security risks but also hinders the development and social reintegration function. The Institute for Criminal Justice Reform notes that overcrowding is a chronic problem caused by the high use of prisons as the primary tool in handling criminal cases, particularly drug cases.

**Table 2.** Number of Inmates at Padangsidempuan Class IIB Prison

No.	Year	Capacity	Home	Prisoners	Amount
1	2021	456	69	857	926
2	2022	456	67	957	1024
3	2023	456	105	957	1062
4	2024	456	311	624	935
5	2025	456	182	673	855

Source: Class IIB Padangsidempuan Prison

The policy paradox becomes even more apparent when correctional institutions become spaces for the reproduction of drug crimes, rather than places of rehabilitation. Rasyid (2025) identified that drug crimes still occur and are even controlled from within prisons (Sears, E., & Qayum, 2024), demonstrating that the imprisonment approach fails to break the chain of crime. This failure reinforces the argument that the formulation of sanctions that do not clearly distinguish between dealers and abusers, between organized crime perpetrators and individuals experiencing dependence has created institutional burdens and reduced the effectiveness of the correctional system. From Bentham's utilitarian perspective, punishment that is unable to reform perpetrators or prevent recurrence of crimes loses its functional legitimacy. Prison overcapacity is an empirical indicator that the repressive approach is no longer adequate to address the dependence-based characteristics of drug crimes.

### **Paradigm Shift Towards Therapeutic Approaches and Restorative Justice**

Contemporary criminal law developments demonstrate a significant shift from a retributive approach to an integrative and recovery-oriented model of punishment. Mapping studies identify that drug courts are based on six primary theoretical frameworks, with therapeutic jurisprudence and procedural justice as the most dominant foundations (Ahlin & Douds, 2023). This approach asserts that the legal process should produce a therapeutic impact for individuals in conflict with the law, particularly in cases of substance dependence. Comparative studies indicate that problem-solving courts, which Integrating therapy and individual responsibility has been shown to be effective in reducing recidivism and increasing social reintegration (Tešović, 2024).

At the national level, the spirit of restorative justice has begun to be adopted through various technical policies. In September 2025, the Yogyakarta High Prosecutor's Office approved the termination of prosecutions for drug abuse cases through rehabilitation based on Perja Number 18 of 2021 and Circular Letter of the Attorney General Number 1 of 2025 (Santosa, 2025). This policy requires that the suspect be a recent user, not involved in a illicit trafficking network, have not committed any previous crimes, and that the evidence falls under the provisions of SEMA Number 4 of 2010. This step aligns with a comparative study of Indonesia and Malaysia, which shows that Malaysia, through the Drug Collection Act, has mandated rehabilitation for addicts and only imposes imprisonment after the third repetition, a more consistent application of the *ultimum remedium* principle (Syawal, 2024).

### **Urgency of Reconstruction of Rehabilitation Sanction Formulation**

The fundamental weakness in Indonesia's narcotics criminal law policy lies in the status of rehabilitation, which remains alternative, not primary (Pakpahan et al., 2024). The punishment for drug abusers is clearly stipulated in Article 103 of the Narcotics Law, which requires rehabilitation. However, its implementation is hampered because the New Criminal Code does not explicitly regulate alternative punishment in the form of rehabilitation, thus creating ambiguity in the synchronization of the two laws. The recommendation is to revise Article 609 of the Criminal Code to clearly differentiate the offense of possessing narcotics for personal consumption (abuse) from possession for distribution (illicit distribution). This difference in the purpose of possession should imply different types of rehabilitation sanctions for drug abusers and imprisonment for dealers.

Reconstructing the formulation of rehabilitation sanctions also requires strengthening institutional and procedural aspects. This is also supported by previous research, which recommends improving the regulatory

hierarchy and developing technical guidelines to support the implementation of rehabilitation from the beginning of the criminal justice process (Angkasa, 2023). The integrated assessment mechanism, which currently relies on the discretion of law enforcement officials, needs to be transformed into an imperative normative obligation. Thus, rehabilitation is no longer positioned as a discretionary policy but rather as a legal right for drug abusers who meet the criteria. This approach aligns with the principle of therapeutic jurisprudence, which positions the law as an instrument of recovery, and with the spirit of the New Criminal Code, which opens up space for corrective, rehabilitative, and restorative justice.

Theoretically, the reconstruction of the formulation of rehabilitation sanctions contributes to the development of a modern criminal law that is more adaptive to dependency-based crimes. Practically, this reformulation is a prerequisite for the realization of a humanistic, effective, and socially rehabilitative penal system, as well as a structural solution to the crisis of correctional overcrowding. Without changes in the formulation of criminal law policy, rehabilitation efforts will continue to be hampered by a normative structure that implicitly directs law enforcement officials to imprisonment as the primary option.

## **Conclusion**

This research finds that the fundamental weakness of Indonesia's narcotics criminal law policy lies in its normative formulation, which positions rehabilitation as an alternative, rather than a primary, sanction. Articles 103 and 127 of Law Number 35 of 2009 concerning Narcotics create ambiguity in interpretation, while Law Number 1 of 2023 concerning the Criminal Code does not explicitly regulate rehabilitation as an alternative punishment, resulting in disparities in court decisions and a predominance of prison sentences. This accumulation of punitive policies directly contributes to the overcrowding crisis in correctional institutions, which has reached more than 40 percent due to the predominance of drug convicts, while transforming prisons into spaces for the reproduction of crime rather than places of rehabilitation.

The theoretical contribution of this research lies in shifting the analytical focus from implementation issues to the formulation of criminal law policies, as well as the development of a normative reconstruction model that integrates restorative approaches and justice into the national penal system. Practically, this research offers a formulation reconstruction through a revision of Article 609 of the Criminal Code to clearly differentiate between the offenses of abuse and illicit trafficking, as well as the transformation of the integrated assessment mechanism from officer discretion to an imperative normative obligation. This model can be adopted as a conceptual basis for reforming narcotics legislation and an interpretative guideline for law enforcement officials in implementing rehabilitative policies consistently from the pre-adjudication stage.

This study's limitations lie in its normative legal scope, which does not encompass an in-depth empirical analysis of the effectiveness of rehabilitation programs in correctional institutions and rehabilitation centers. Furthermore, this study does not conduct a comprehensive comparative evaluation of best practices in countries with established diversion and drug court systems, such as Portugal, the Netherlands, or Malaysia. Therefore, further research is recommended to empirically examine the implementation of rehabilitation policies at the institutional level, conduct cross-country comparative studies to identify elements that are adaptive to the Indonesian context, and test the effectiveness of the proposed reformulation model through a socio-legal approach and policy impact evaluation. Further development is also needed to formulate supporting technical and institutional instruments, including integrated assessment standards, integrated referral mechanisms between the justice system and health services, and strengthen human resource capacity to implement a restorative justice approach sustainably.

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## **Author Contributions Statement**

All authors contributed equally to the conception, design, analysis, and writing of this manuscript. All authors have read and approved the final version of the manuscript.

## **AI Usage Statement**

The authors declare that artificial intelligence (AI) tools were used solely for language enhancement and editorial assistance in the preparation of this manuscript. All substantive analysis, legal interpretations, arguments,

and conclusions were developed independently by the authors. The authors are solely responsible for the content of this article.

### Conflict of Interest

The authors declare that there is no conflict of interest regarding the publication of this article.

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