

Sentencing Disparity and the Reformulation of Rehabilitation Policy for Narcotics Users under Law Number 35 of 2009 and the Indonesian National Criminal Code

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Abstract

Drug abuse in Indonesia continues to generate complex legal and public health problems due to the inconsistency between punitive narcotics law enforcement and recovery-oriented rehabilitation policies. Although Law Number 35 of 2009 concerning Narcotics recognizes rehabilitation through Articles 54, 103, and 127, the implementation of these provisions remains ineffective because the law simultaneously criminalizes narcotics users while providing facultative rehabilitation measures. The phrase “may” in Article 103 creates excessive judicial discretion, resulting in sentencing disparities, inconsistent rehabilitation practices, and the continued dominance of imprisonment for narcotics users. This condition reflects a normative conflict between punitive criminalization under the Narcotics Law and the rehabilitative measures paradigm introduced by Law Number 1 of 2023 concerning the Indonesian National Criminal Code. This study aims to analyze the doctrinal weaknesses of rehabilitation regulation for narcotics users and formulate an integrated rehabilitation model within the national criminal law system. This research employs normative legal research using statutory, conceptual, and case approaches through qualitative legal analysis of legislation, court decisions, and criminal law doctrines. The study finds that the primary weakness of the current rehabilitation policy lies in the ambiguity of legal subject classification, the absence of standardized assessment mechanisms, and the facultative nature of rehabilitation norms. This study proposes a reformulation model in the form of mandatory conditional rehabilitation for narcotics users and addicts proven to consume narcotics for personal use and not involved in trafficking networks. The reformulation should systematically integrate rehabilitation provisions in the Narcotics Law with rehabilitative measures under Articles 103 and 105 of the Indonesian National Criminal Code to establish a more proportional, health-based, and restorative criminal justice system. This model contributes to contemporary Indonesian criminal law reform by strengthening therapeutic jurisprudence and public health criminal policy approaches in narcotics law enforcement.

INTRODUCTION

Narcotics abuse remains a major legal and public health issue in Indonesia. The 2025 national survey conducted by BNN-BRIN-BPS reported that the annual prevalence of narcotics abuse reached 2.11% of the population aged 15–64 years, equivalent to approximately 4.15–4.9 million individuals, showing an increase compared to 2023.¹ This phenomenon has significant implications not only for public security and social order, but also for the effectiveness of Indonesia's criminal justice system. One of the central issues concerns the treatment of narcotics users and addicts within the legal framework, particularly the continuing dominance of imprisonment despite the availability of rehabilitation mechanisms under positive law.

Law Number 35 of 2009 concerning Narcotics establishes rehabilitation as part of the legal response toward narcotics addicts and victims of abuse. Articles 54, 103, and 127 recognize medical and social rehabilitation as mechanisms intended to restore offenders and reintegrate them into society. Normatively, this framework reflects the adoption of a double track system combining criminal sanctions and treatment measures. However, in practice, rehabilitation is not consistently implemented. Narcotics users for personal consumption are frequently sentenced to imprisonment rather than rehabilitation, resulting in disparities in judicial decisions and reinforcing the punitive orientation of narcotics law enforcement.²

The inconsistency largely stems from the facultative formulation contained in Article 103 of the Narcotics Law, particularly the use of the term “may,” which grants broad discretion to judges in determining whether rehabilitation should be imposed. The absence of clear distinctions between narcotics users, addicts, victims of abuse, and traffickers has further contributed to inconsistent law enforcement practices. Consequently, similar cases often produce different judicial outcomes, even when the offenders meet the criteria for rehabilitation. This condition raises concerns regarding legal certainty, proportionality of punishment, and the effectiveness of rehabilitation policy within Indonesia's criminal justice system.

Overcrowding or overcapacity in correctional institutions constitutes a chronic problem that has persisted for decades in Indonesia. More than 50% of inmates in correctional institutions are narcotics offenders. Data from the Directorate General of

¹ KumparanNEWS. (2026, Februari 18). *Kepala BNN: Penyalahgunaan Narkotika di Indonesia Mencapai 4,9 Juta Orang*. Diakses pada 7 Maret 2025. <https://www.bing.com/search?q=Kepala+BNN%3A+Penyalahgunaan+Narkotika+di+Indonesia+Mencapai+4%2C9+Juta+Orang&FORM=ANAB01&PC=LCTS>.

² Falah, Muhammad Fajrul. "Reformulasi Penetapan Sanksi Rehabilitasi Bagi Pecandu Narkotika." *Jurnal Legalitas* 12.1 (2019): 31-34. <https://doi.org/10.33756/jelta.v12i1.5380>.

Corrections in recent years consistently indicate that narcotics offenders – whether users, traffickers, or producers – dominate the prison population. The reality of narcotics control policy in Indonesia is that the majority of narcotics prisoners are not dealers or producers, but rather abusers or users. Based on data released by the National Narcotics Agency (BNN) and the Research and Development Division of the Ministry of Law and Human Rights, approximately 70% of narcotics prisoners are involved solely in possession and use for personal consumption. They are typically charged under Article 127 of the Narcotics Law, which actually provides an option for rehabilitation, yet in practice many ultimately end up in prison.³

The issue also has broader structural implications for correctional policy. Data from the Directorate General of Corrections consistently show that narcotics-related offenders dominate prison populations in Indonesia, including individuals convicted solely for personal use. The continued reliance on imprisonment for narcotics users contributes significantly to prison overcrowding and weakens the rehabilitative function of the correctional system. From a criminal policy perspective, this indicates that the existing punitive approach has not effectively addressed the root causes of narcotics dependency and recidivism.

The enactment of Law Number 1 of 2023 concerning the Indonesian National Criminal Code (KUHP Nasional Indonesia) introduces a new orientation within Indonesia's sentencing system. The Indonesian National Criminal Code recognizes the concept of measures (*maatregelen*) alongside criminal punishment and explicitly regulates rehabilitative measures in Articles 103 and 105. These provisions reflect a gradual shift from a purely retributive approach toward a more restorative and recovery-oriented paradigm. In the context of narcotics offenses, the Indonesian National Criminal Code provides a normative foundation for positioning rehabilitation as part of a broader system of treatment-oriented sentencing.⁴

Nevertheless, the relationship between the Narcotics Law and the Indonesian National Criminal Code remains legally complex. The enactment of the new Criminal Code does not automatically eliminate the applicability of the Narcotics Law as a special criminal statute (*lex specialis*). Instead, both legal instruments potentially coexist and

³ Yanti, Rika Afrida, Liza Agnesta Krisna, and Vivi Hayati. "Kritik atas penerapan UU Narkotika dan kaitannya dengan overcrowded di Lapas Indonesia: Evaluasi normatif-empiris terhadap penegakan UU Narkotika di Indonesia." *Locus Journal of Academic Literature Review* 4.7 (2025): 539-540. <https://doi.org/10.56128/ljoalr.v4i7.590>.

⁴ Afrizal, Riki, and Iwan Kurniawan. "Rehabilitasi sebagai tindakan dalam KUHP nasional dan implikasinya terhadap politik hukum pencegahan dan penanggulangan penyalahgunaan narkotika." *Unes Journal of Swara Justisia* 8.3 (2024): 667. <https://doi.org/10.31933/5jqbem91>.

require harmonization in their implementation, particularly concerning rehabilitation policy for narcotics users and addicts. The absence of clear harmonization creates the risk of normative inconsistency and differing interpretations among law enforcement institutions regarding the prioritization of imprisonment or rehabilitation.

Previous studies have generally focused on the effectiveness of rehabilitation programs, the implementation of restorative justice, or the problem of prison overcrowding in narcotics cases. However, limited scholarly attention has been directed toward examining the normative tension between the facultative rehabilitation model under Law Number 35 of 2009 and the rehabilitative measures framework introduced by the Indonesian National Criminal Code. Existing literature also tends to discuss rehabilitation from either a criminal law perspective or a public health perspective separately, without comprehensively analyzing the integration of both approaches within the framework of contemporary Indonesian criminal law reform.⁵ Therefore, this article seeks to fill that academic gap by analyzing the urgency of reformulating rehabilitation policy and examining how rehabilitation provisions in the Narcotics Law can be harmonized with the sentencing philosophy embodied in the Indonesian National Criminal Code.

This study employs normative legal research using statutory and conceptual approaches. The article aims to analyze the weaknesses of the current rehabilitation policy for narcotics users under Law Number 35 of 2009 and to formulate a more coherent rehabilitation framework integrated with Articles 103 and 105 of the Indonesian National Criminal Code. Through this analysis, the study seeks to contribute to the development of a more humane, proportionate, and health-based criminal policy in addressing narcotics abuse in Indonesia.

Based on the background of the issue outlined above, the following research questions have been formulated: (1) What is the urgency of reformulating the rehabilitation policy for drug abusers under Article 103 of Law No. 35 of 2009? (2) How can the reformulated rehabilitation policy in Law No. 35 of 2009 be integrated with the provisions on rehabilitation measures in Articles 103 and 105 of the National Criminal Code (Law No. 1 of 2023) to create a more humane approach to sentencing?.

⁵ Ariawan, Hernando. *Rekonstruksi Regulasi Tindakan Rehabilitasi Terhadap Penyalahgunaan Narkotika Berdasarkan Nilai Keadilan Pancasila*. *Disertasi*. Universitas Islam Sultan Agung (Indonesia), 2023, 197-199 https://repository.unissula.ac.id/32895/1/Program%20Doktor%20Ilmu%20Hukum_10302100098_fullpdf.pdf.

METHODS

This study employs normative legal research with descriptive-analytical and prescriptive characteristics to analyze the reformulation of rehabilitation policy for narcotics users under Law Number 35 of 2009 concerning Narcotics and its harmonization with the rehabilitative measures framework regulated in the Indonesian National Criminal Code (Law Number 1 of 2023). The research applies a statutory approach (*statute approach*), conceptual approach (*conceptual approach*), and case approach (*case approach*). The statutory approach is used to examine Articles 54, 103, and 127 of the Narcotics Law as well as Articles 103 and 105 of the Indonesian National Criminal Code in order to identify normative inconsistencies regarding the position of rehabilitation within the sentencing system. The conceptual approach is employed to analyze doctrines relating to restorative justice, double track system, rehabilitation measures, and health-based criminal policy. Meanwhile, the case approach is conducted through comparative analysis of several Indonesian court decisions concerning narcotics users for personal consumption who were either sentenced to imprisonment or granted rehabilitation. The selected cases were chosen purposively based on three criteria: involving narcotics users or addicts for personal use, containing judicial consideration of rehabilitation provisions, and demonstrating disparities in sentencing approaches.⁶

The legal materials used consist of primary legal materials, including the Narcotics Law, the Indonesian National Criminal Code, Supreme Court Circular Letter (SEMA) Number 4 of 2010, and relevant court decisions concerning narcotics rehabilitation; secondary legal materials, including books, scientific journals, and official reports from the National Narcotics Agency and the Directorate General of Corrections; as well as tertiary legal materials such as legal dictionaries and encyclopedias. Legal materials were collected through systematic library research and analyzed qualitatively through stages of inventorying, systematizing, interpreting, and evaluating legal norms and judicial reasoning. The analysis also employs comparative statutory interpretation to assess the harmonization between rehabilitation provisions in the Narcotics Law and the rehabilitative measures paradigm in the Indonesian National Criminal Code. Through these analytical stages, this study seeks to formulate a rehabilitation policy model that is more coherent, humane, and oriented toward restorative justice and social reintegration for narcotics users.

⁶ Marzuki, P. M. *Penelitian Hukum*. Jakarta: Kencana. (2005).

RESULTS AND DISCUSSION

1. The Urgency of Reformulating Rehabilitation Policy for Narcotics Abusers in Article 103 of Law Number 35 of 2009

The urgency of reformulating rehabilitation policy under Article 103 of Law Number 35 of 2009 concerning Narcotics does not merely arise from the increasing number of narcotics cases or prison overcrowding, but primarily from the doctrinal failure of the existing legal framework in determining the legal status of narcotics users within the criminal justice system. The main normative problem lies in the ambiguity of legal subject classification between “narcotics abusers,” “addicts,” and “victims of narcotics abuse.” Article 1 point 13 defines narcotics addicts as persons who misuse and are dependent on narcotics, while Article 1 point 15 defines narcotics abusers as persons who use narcotics unlawfully. These formulations create conceptual overlap because addicts are simultaneously categorized as abusers. As a consequence, narcotics users for personal consumption may be treated both as offenders subject to imprisonment under Article 127 and as individuals entitled to rehabilitation under Article 103. This ambiguity weakens legal certainty and creates inconsistent sentencing practices because the Narcotics Law does not provide clear doctrinal boundaries regarding when a person should be categorized as a criminal offender and when they should be positioned as a subject requiring medical treatment and social recovery.⁷

The doctrinal weakness becomes more apparent in the structure of Article 103 paragraph (1), which uses the phrase “may order” rehabilitation for narcotics addicts. The facultative nature of this provision places rehabilitation entirely within judicial discretion without establishing measurable legal parameters concerning dependency level, assessment procedures, or evidentiary standards. In practice, this broad discretion produces sentencing disparities in similar cases. The Decision of the Pulang Pisau District Court Number 09/Pid.Sus/2020/PN Pps imposed imprisonment on a narcotics user for personal consumption despite indications of dependency and the applicability of rehabilitation provisions under Supreme Court Circular Letter (SEMA) Number 4 of 2010. Similarly, Decision Number 70/Pid.Sus/2020/PN.Ptk sentenced the defendant to imprisonment, whereas another case with relatively similar factual circumstances, namely Decision Number 935/Pid.Sus/2019/PN.Ptk, resulted in rehabilitation. These differences indicate that the failure of rehabilitation policy does not primarily originate from the absence of rehabilitation norms, but from the absence of binding standards

⁷ Indah, C. M. *Perlindungan Korban (Suatu Perspektif Viktimologi dan Kriminologi)*. Jakarta: Kencana Prenadamedia Grup, (2014), 36.

governing how rehabilitation should be applied. Consequently, rehabilitation becomes dependent on the subjective interpretation of judges, prosecutors, and investigators rather than functioning as an integrated legal mechanism within the criminal justice system.⁸

The failure of Article 103 also relates to the weakness of the assessment mechanism in determining whether an individual qualifies as an addict, victim, or ordinary user. In practice, integrated assessment procedures involving medical experts, psychologists, and law enforcement institutions are not consistently implemented. As a result, the burden of proving dependency status often becomes unclear during judicial proceedings. Law enforcement officials frequently prioritize evidentiary aspects related to possession and use rather than examining the offender's psychological and medical condition. This situation reinforces the punitive orientation of narcotics law enforcement and marginalizes the rehabilitative approach intended by the Narcotics Law itself. The absence of uniform assessment standards ultimately creates legal uncertainty regarding who is substantively entitled to rehabilitation. Consequently, narcotics users who should be treated as self-victimizing victims are instead processed through conventional punitive mechanisms.⁹

From a doctrinal perspective, the coexistence of Article 127 and Article 103 within the Narcotics Law also creates internal normative tension within the double track system adopted by the legislation. Article 127 emphasizes criminal punishment for unlawful narcotics use, while Article 103 simultaneously recognizes rehabilitation as a treatment-oriented measure. However, the law fails to establish which mechanism should take priority in cases involving personal narcotics use and dependency. This normative imbalance causes imprisonment to remain the dominant response because the criminal sanction under Article 127 possesses stronger coercive characteristics than the optional rehabilitation mechanism under Article 103. As a result, the implementation of the double track system becomes structurally ineffective because rehabilitative measures remain subordinate to punitive sentencing practices. This condition demonstrates that the problem is not merely law enforcement inconsistency, but a doctrinal inconsistency embedded within the construction of the Narcotics Law itself.¹⁰

⁸ Lestari, Windy Dwi. "Penjatuhan Pidana Penjara Penyalahgunaan Narkotika (Studi Putusan Pengadilan Negeri Pulang Pisau Nomor 09/Pid. Sus/2020/PN Pps)." *Lex Positivis* 2.4 (2024): 595-612.

⁹ Sugiarto, R. Taufan. "Penyalahguna Narkotika Yang Tidak Diberikan Rehabilitasi Berdasarkan Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika (Studi Putusan Pengadilan Negeri Pontianak)." *Jurnal Nestor Magister Hukum* 18.2 (2022).

¹⁰ Yulia, R. *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*. Bandung: Graha Ilmu, (2009),130.

The urgency of reformulation becomes increasingly significant following the enactment of Law Number 1 of 2023 concerning the Indonesian National Criminal Code. The Indonesian National Criminal Code introduces rehabilitative measures as part of a broader sentencing framework through Articles 103 and 105, which emphasize treatment, recovery, and social reintegration. Unlike the Narcotics Law, the Indonesian National Criminal Code positions measures not merely as optional complements to punishment, but as part of the modern orientation of criminal law aimed at balancing legal protection, proportionality, and offender rehabilitation. The normative tension emerges because the Narcotics Law continues to maintain a facultative and punishment-oriented structure for narcotics users, while the Indonesian National Criminal Code moves toward a restorative and treatment-based paradigm. Technically, this conflict occurs in determining the legal orientation of sentencing for narcotics users: whether narcotics dependency should primarily be addressed through imprisonment under Article 127 of the Narcotics Law or through rehabilitative measures as contemplated in the Indonesian National Criminal Code.¹¹

This inconsistency ultimately affects not only legal certainty but also the broader effectiveness of criminal policy in Indonesia. The continued dominance of imprisonment for narcotics users contributes significantly to prison overcrowding without resolving the root problem of narcotics dependency. Narcotics users who undergo imprisonment without rehabilitation frequently return to narcotics use after release because correctional institutions are structurally designed for punishment rather than recovery.¹² From the perspective of criminal law objectives, such a system fails to fulfill the principles of utility, proportionality, and restorative justice. Therefore, the reformulation of Article 103 is urgently required not merely to expand rehabilitation policy, but to reconstruct the doctrinal foundation governing the legal status, assessment mechanism, evidentiary standards, and sentencing orientation for narcotics users within Indonesia's criminal justice system. Only through such reformulation can rehabilitation function as a consistent legal mechanism rather than as a discretionary exception dependent upon subjective judicial interpretation.¹³

¹¹ Sulistyanta, M. S. "Tinjauan Yuridis Terhadap Penyalahguna Narkotika Dengan Rehabilitasi Dan Putusan Pidana Penjara (Studi Kasus Putusan Pn Yogyakarta)." *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 11.3, (2022): 263-265. <https://doi.org/10.20961/recidive.v11i3.67458>.

¹² Edrisy, R. R. "Efektivitas rehabilitasi sebagai alternatif pemidanaan bagi penyalahguna narkoba di Indonesia." *Journal of Innovation Research and Knowledge* 4.9 (2025): 6877-6886. <https://doi.org/10.53625/jirk.v4i9.9718>.

¹³ Laksana, R. H. Tinjauan Yuridis Konstruksi Regulasi Terhadap Tindak Pidana Penyalahgunaan Narkotika Bagi Diri Sendiri Berdasarkan Asas Kemanfaatan. *Jurnal Ilmiah Sultan Agung*. 2(2), (2023): 137-138.

In addition to normative issues, the urgency of reformulating rehabilitation policy is also influenced by the condition of the correctional system in Indonesia. Many correctional institutions experience overcapacity, largely occupied by inmates involved in narcotics cases. Data from the Directorate General of Corrections indicate that approximately 50–60% of prison occupants are narcotics abusers or offenders related to narcotics crimes. Inaccurate implementation of legal policies has resulted in correctional institutions being filled with narcotics users who do not receive adequate treatment. This condition not only affects the effectiveness of inmate rehabilitation programs but also hinders the recovery process for narcotics abusers.¹⁴ Therefore, the reformulation of Article 103 is necessary to strengthen rehabilitation policy as an alternative to punishment. By prioritizing rehabilitation, the number of narcotics-related inmates in correctional institutions can be reduced. This can also enhance the effectiveness of the correctional system in carrying out its rehabilitative function.

Rehabilitation for narcotics addicts essentially constitutes a form of legal protection for individuals experiencing dependency. The state has an obligation to provide healthcare and recovery services for individuals who become victims of narcotics abuse; however, the approach employed still emphasizes law enforcement rather than recovery. This indicates that the paradigm of narcotics law enforcement remains dominated by a criminalization approach. The reformulation of rehabilitation policy is necessary to shift this paradigm toward a public health approach. Thus, narcotics abusers are no longer viewed solely as perpetrators of crime but also as individuals requiring medical and social assistance. This approach is expected to improve the overall effectiveness of narcotics control and assist abusers in regaining normal functioning within social life.¹⁵

The reformulation of Article 103 is important to strengthen inter-agency coordination in the implementation of rehabilitation. The handling of narcotics abuse involves various institutions, such as the police, the prosecution service, the courts, and the National Narcotics Agency. Without clear guidelines, each institution may have different interpretations of rehabilitation policy. Such differences in interpretation can hinder the handling process of narcotics abuse cases. Therefore, the reformulation of legal norms is necessary to create uniform standards in the implementation of rehabilitation. These standards may include criteria for determining addict status as well as procedures for

¹⁴ Hardinah, Hardinah, Nurul Qamar, and Baharuddin Badaru. "Urgensi Pelaksanaan Rehabilitasi Bagi Penyalahguna Narkotika Dalam Perspektif Undang-Undang No. 35 Tahun 2009 Tentang Narkotika." *Journal of Lex Theory (JLT)* 6.1 (2025): 58.

¹⁵ Jeanne Darc Noviayanti Manik, A. d. "Urgensi Penyelenggaraan Rehabilitasi Bagi Pecandu dan Korban Penyalahgunaan Narkotika oleh Badan Narkotika Nasional." *Progresif: Jurnal Hukum* 19.1 (2025): 90-92. <https://doi.org/10.33019/5gyzry58>.

placement in rehabilitation institutions. With proper coordination among institutions, rehabilitation policy can be implemented more effectively and can improve the success of rehabilitation programs for narcotics abusers.¹⁶

From a criminal policy perspective, the reformulation of Article 103 constitutes part of criminal law reform in addressing narcotics issues. Legal reform is necessary to align statutory regulations with social developments and societal needs. In the context of narcotics, a more humane and rehabilitative approach is considered more consistent with the principles of human rights protection. Narcotics abusers experiencing dependency should be given the opportunity to undergo recovery processes. The legal system functions not only as a means of enforcement but also as a mechanism for protection and recovery. The reformulation of Article 103 can serve as a strategic step to strengthen the rehabilitative approach in addressing narcotics issues. Such reformulation can also enhance the effectiveness of criminal policy in combating narcotics abuse. With appropriate policies, it is expected that the rate of narcotics abuse can be significantly reduced.

2. Reformulation of Rehabilitation Policy in Law Number 35 of 2009 Integrated with Provisions on Rehabilitative Measures in Article 103 and Article 105 of the National Criminal Code

The enactment of narcotics legislation is one of the outcomes of Indonesia's criminal law policy. This is intended to respond to the development of crimes with transnational dimensions that bring extraordinarily adverse impacts on humanity (Bakhri, 2012).¹⁷ Law Number 35 of 2009 concerning Narcotics (the Narcotics Law) adopts both penal and non-penal approaches to criminal acts and narcotics abuse. According to the author, the idea of optimizing the use of non-penal measures through a health-based approach toward narcotics abusers and addicts needs to be implemented.

Table 1. Data on Inmates Convicted of Narcotics Crimes (2021)

No Category				Total (Persons)	Percentage
1	Total Inmates of Special Crimes			151.303	100%
2	Inmates in Narcotics Cases			145.413	96% of total inmates of special crimes

¹⁶ Hardinah, Hardinah, Nurul Qamar, and Baharuddin Badaru. "Urgensi Pelaksanaan Rehabilitasi Bagi Penyalahguna Narkotika Dalam Perspektif Undang-Undang No. 35 Tahun 2009 Tentang Narkotika." *Journal of Lex Theory (JLT)* 6.1 (2025): 69-70.

¹⁷ Bakhri, S. *Kejahatan Narkotik Dan Psikitropika : Suatu Pendekatan Melalui Kebijakan Hukum Pidana* . Bekasi: Gramata Publishing, (2012).

No	Category	Total (Persons)	Percentage
3	Narcotics Dealers	116.930	±80% of inmates in narcotics cases
4	Narcotics Users	28.483	±20% of inmates in narcotics cases

Reported by the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights, as of August 2021 there were 151,303 inmates convicted of special crimes, of which 145,413 persons or approximately 96% were inmates in narcotics cases. Of this number, 116,930 were dealers, while 28,483 were narcotics users.¹⁸

Table 2. Data on Correctional Institution Occupants and Overcapacity (2025)

No	Category	Total (Persons)	Percentage
1	Correctional Institution Capacity	146.260	-
2	Total Occupants	278.376	100%
3	Overcapacity	132.116	±90%
4	Inmates in Narcotics Cases	150.202	54%
5	Narcotics Users (in Correctional Institutions	54.026	±19% of total occupants
6	Network Offenders (Dealers/Financiers/Producers)	96.176	±35% of total occupants

Based on data from the Correctional Database System (SDP) presented by the Head of the National Narcotics Agency (BNN) in a working meeting with Commission III of the House of Representatives of the Republic of Indonesia in 2025, the number of correctional institution occupants in Indonesia reached 278,376 persons, while the capacity was only 146,260 persons. This resulted in an overcapacity of 132,116 persons or approximately 90%. Of the total occupants, 150,202 persons or 54% were perpetrators of narcotics crimes. Among them, approximately 54,026 persons were narcotics users, who substantively are more appropriately placed within a rehabilitation scheme rather than imprisonment.¹⁹

These data indicate that sentencing policies toward narcotics abusers remain oriented toward imprisonment, which ultimately contributes significantly to the problem of

¹⁸ Databoks. "Narapidana Kasus Narkoba Mendominasi di Lapas Indonesia", 2021, <https://databoks.katadata.co.id/demografi/statistik/0c957434af734f1/narapidana-kasus-narkoba-mendominasi-di-lapas-indonesia>.

¹⁹ Detiknews. "Kepala BNN Bicara Overkapasitas Lapas: 278.376 Penghuni, 54% Terkait Narkotika", 2026, <https://news.detik.com/berita/d-8433128/kepala-bnn-bicara-overkapasitas-lapas-278-376-penghuni-54-terkait-narkotika>.

overcapacity in correctional institutions. This condition simultaneously affirms that a repressive approach has not been able to resolve the root causes of narcotics abuse, particularly for users who are essentially victims of dependency.

The reformulation of rehabilitation policy for narcotics users cannot merely be understood as an effort to expand rehabilitation programs, but rather as a necessity arising from normative inconsistencies within Indonesia's criminal law system. Law Number 35 of 2009 concerning Narcotics adopts a dual orientation by simultaneously criminalizing narcotics use under Article 127 and recognizing rehabilitation under Articles 54 and 103. However, the relationship between these provisions remains structurally unclear because the Narcotics Law does not determine whether rehabilitation should function as the primary response or merely as an optional complement to imprisonment. This ambiguity becomes increasingly significant following the enactment of Law Number 1 of 2023 concerning the Indonesian National Criminal Code, which introduces rehabilitative measures (*maatregelen*) as part of the national sentencing system through Articles 103 and 105. Consequently, the issue is no longer limited to ineffective implementation, but concerns normative harmonization between two legal regimes that possess different orientations regarding narcotics users.²⁰

Normatively, the conflict between the Narcotics Law and the Indonesian National Criminal Code is interpretative and horizontal in nature. The conflict is interpretative because both laws regulate rehabilitation using different penal philosophies. The Narcotics Law continues to position rehabilitation within a facultative framework through the phrase "may order" in Article 103, thereby preserving judicial discretion and maintaining imprisonment as the dominant sanction under Article 127. In contrast, the Indonesian National Criminal Code conceptualizes rehabilitative measures as part of a modern sentencing system aimed at treatment, restoration, and social reintegration. The conflict is also horizontal because both regulations possess equal hierarchical status as statutory laws enacted by the legislature. Therefore, the harmonization problem cannot simply be resolved through hierarchical superiority, but requires systematic interpretation regarding the relationship between special criminal law and the general criminal law system after the enactment of the Indonesian National Criminal Code.

From the perspective of legal interpretation, the application of the principle *lex specialis derogat legi generali* remains relevant because the Narcotics Law specifically regulates narcotics-related offenses, while the Indonesian National Criminal Code

²⁰ Falah, Muhammad Fajrul. "Reformulasi Penetapan Sanksi Rehabilitasi Bagi Pecandu Narkotika." *Jurnal Legalitas* 12.1 (2019): 31-34. <https://doi.org/10.33756/jelta.v12i1.5380>.

functions as the general codification of national criminal law. However, the application of this principle cannot be interpreted rigidly to exclude the relevance of rehabilitative measures regulated in the Indonesian National Criminal Code. The Indonesian National Criminal Code introduces general principles of sentencing reform applicable across the criminal justice system, including restorative justice, proportionality, and treatment-oriented sanctions.²¹ Therefore, the Narcotics Law as *lex specialis* should not be interpreted separately from the broader sentencing philosophy established in the Indonesian National Criminal Code. Instead, systematic interpretation requires that rehabilitation provisions in the Narcotics Law be harmonized with the rehabilitative measures framework under Articles 103 and 105 of the Indonesian National Criminal Code.

At the same time, the principle *lex posterior derogat legi priori* also becomes relevant because Law Number 1 of 2023 was enacted after Law Number 35 of 2009. Nevertheless, the enactment of the Indonesian National Criminal Code does not automatically invalidate the Narcotics Law. The Indonesian National Criminal Code does not expressly revoke rehabilitation provisions contained in the Narcotics Law, nor does it abolish the status of the Narcotics Law as a special criminal statute. Therefore, the relationship between both laws should not be understood as normative elimination, but rather as normative integration.²² The Indonesian National Criminal Code provides a renewed sentencing paradigm that influences the interpretation and application of rehabilitation provisions within the Narcotics Law. Through this approach, rehabilitation under Article 103 of the Narcotics Law should no longer be treated merely as a discretionary alternative, but as part of the integrated rehabilitative measures system recognized within national criminal law reform.

The technical point of conflict between the two laws primarily concerns sentencing orientation for narcotics users. Article 127 of the Narcotics Law still emphasizes imprisonment for unlawful narcotics use, whereas Articles 103 and 105 of the Indonesian National Criminal Code emphasize measures aimed at treatment and recovery. This creates uncertainty in judicial practice regarding whether narcotics users should primarily be categorized as offenders deserving punishment or as individuals requiring medical and social intervention. The absence of explicit harmonization standards results

²¹ Afrizal, Riki, and Iwan Kurniawan. "Rehabilitasi sebagai tindakan dalam KUHP nasional dan implikasinya terhadap politik hukum pencegahan dan penanggulangan penyalahgunaan narkotika." *Unes Journal of Swara Justisia* 8.3 (2024): 667. <https://doi.org/10.31933/5jqbem91>.

²² Parindo, Dhandy. "Tinjauan Yuridis Putusan Pengadilan Tentang Rehabilitasi Penyalahguna Narkotika dalam Perspektif Keadilan Restoratif." *Jurnal Hukum Indonesia* 4.4 (2025): 206-208. <https://doi.org/10.58344/jhi.v4i4.1773>.

in inconsistent judicial decisions. In practice, law enforcement officials frequently prioritize evidentiary proof of possession and unlawful use while neglecting medical assessment regarding dependency status. Consequently, imprisonment remains dominant despite the existence of rehabilitation provisions.

This inconsistency can be observed in correctional data showing that narcotics offenders continue to dominate prison populations in Indonesia. Data from the Directorate General of Corrections in 2021 indicated that 145,413 out of 151,303 inmates convicted of special crimes were narcotics offenders, including 28,483 narcotics users. Similarly, 2025 correctional data showed that narcotics-related inmates constituted approximately 54% of all correctional institution occupants, while prison overcapacity reached approximately 90%. These data demonstrate that imprisonment remains the primary penal response despite the formal existence of rehabilitation mechanisms. Such conditions indicate that the normative structure of rehabilitation policy has failed to operate effectively because the legal framework still prioritizes punitive interpretation over restorative treatment. Therefore, the issue is not merely implementation failure, but structural inconsistency within the criminal law system itself.²³

The reformulation of rehabilitation policy must therefore focus on reconstructing the normative relationship between punishment and rehabilitative measures. Rehabilitation for narcotics users should be reformulated as a mandatory primary measure for users and addicts proven to consume narcotics for personal use and not involved in trafficking networks. Such reformulation would reduce excessive judicial discretion and provide clearer legal standards regarding the application of rehabilitation. Integration with Articles 103 and 105 of the Indonesian National Criminal Code can strengthen this framework by positioning rehabilitation as part of the national sentencing system rather than merely as a sectoral policy under the Narcotics Law. In this context, imprisonment should function as *ultimum remedium*, while rehabilitation becomes the principal mechanism for handling narcotics dependency cases.²⁴

Systematic harmonization between the two laws also requires clearer differentiation between narcotics users, addicts, victims of abuse, dealers, and organized traffickers. The absence of precise legal subject classification constitutes one of the main doctrinal weaknesses of the current Narcotics Law because addicts and users are frequently

²³ Simbolon, Nanci Yosepin, Ramsi Meifati Barus, and Alusianto Hamonangan. "Pemidanaan Dan Rehabilitasi Terhadap Pongedar Dan Penyalahguna Narkotika." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3.2 (2025): 596-599. <https://doi.org/10.61104/alz.v3i2.1113>.

²⁴ Sulistyanta, M. S. "Tinjauan Yuridis Terhadap Penyalahguna Narkotika Dengan Rehabilitasi Dan Putusan Pidana Penjara (Studi Kasus Putusan Pn Yogyakarta)." *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 11.3, (2022): 263-265. <https://doi.org/10.20961/recidive.v11i3.67458>.

processed using the same punitive mechanisms applied to traffickers. Through integration with the rehabilitative measures framework in the Indonesian National Criminal Code, criminal policy can more proportionally distinguish between offenders requiring treatment and offenders deserving punitive sanctions. This differentiation is essential to ensure proportionality, legal certainty, and protection of human rights within narcotics law enforcement.

In addition, reformulation must include the strengthening of integrated assessment mechanisms involving medical experts, psychologists, prosecutors, investigators, and judges. The absence of standardized assessment procedures currently contributes to inconsistent sentencing outcomes because dependency status is often inadequately examined during criminal proceedings. Through clearer procedural standards, rehabilitation can be imposed based on objective medical and social criteria rather than solely upon subjective judicial interpretation. Such reformulation would also strengthen inter-agency coordination in implementing rehabilitation policies and improve the effectiveness of recovery programs for narcotics users.

Therapeutic jurisprudence theory further strengthens the argument that rehabilitation should become the primary response toward narcotics users and addicts within the criminal justice system. According to David B. Wexler and Bruce J. Winick, therapeutic jurisprudence views law not merely as an instrument of coercion and punishment, but also as a social mechanism capable of producing therapeutic or anti-therapeutic consequences for individuals subjected to legal processes.²⁵ The application of punitive imprisonment toward narcotics users without adequate treatment often generates anti-therapeutic effects, including stigmatization, relapse, social exclusion, and repeated dependency.²⁶ In contrast, rehabilitation-oriented legal policies emphasize recovery, behavioral restoration, and reintegration into society through multidisciplinary treatment approaches.²⁷ Modern criminal law theory increasingly recognizes that drug dependency constitutes not only a criminal issue but also a public health issue requiring therapeutic intervention rather than excessive penal repression.²⁸ Therefore, the integration between rehabilitation provisions in the Narcotics Law and rehabilitative

²⁵ Wexler, D. B., and B. J. Winick. "Therapeutic jurisprudence, in principles of addiction medicine." *Available at SSRN 1101507* (2008). <https://ssrn.com/abstract=1101507>.

²⁶ Wexler, David B. "Applying the law therapeutically." *Applied and Preventive Psychology* 5.3 (1996): 179-186. [https://doi.org/10.1016/S0962-1849\(96\)80010-2](https://doi.org/10.1016/S0962-1849(96)80010-2).

²⁷ King, Michael. "Applying therapeutic jurisprudence from the bench: challenges and opportunities." *Alternative Law Journal* 28.4 (2003): 172-176. <https://doi.org/10.1177/1037969X0302800406>.

²⁸ Barbara A. Babb & David B. Wexler, "Therapeutic Jurisprudence," *Encyclopedia of Criminology and Criminal Justice* (2014). <https://ssrn.com/abstract=2360252>.

measures under the Indonesian National Criminal Code reflects the development of therapeutic jurisprudence and public health criminal policy within contemporary criminal law reform.²⁹ Such an approach enables the criminal justice system to balance legal certainty, human rights protection, and the objective of offender recovery in a more proportional and humane manner.³⁰

Ultimately, the integration between rehabilitation policy in the Narcotics Law and rehabilitative measures in the Indonesian National Criminal Code represents an important phase of Indonesian criminal law reform. This reformulation is intended not merely to reduce prison overcrowding, but to reconstruct the orientation of narcotics law enforcement toward a more humane, restorative, and health-based approach. Through systematic harmonization based on the principles of *lex specialis*, *lex posterior*, and systematic interpretation, rehabilitation can be positioned as a central component of the national sentencing system. Such an approach is consistent with the development of modern criminal law, which no longer views punishment solely as retribution, but also as a mechanism for recovery, reintegration, and protection of human dignity.

CONCLUSION

The study demonstrates that the primary weakness of rehabilitation policy under Article 103 of Law Number 35 of 2009 concerning Narcotics lies not in the absence of rehabilitation norms, but in the inconsistent normative construction governing the legal status and sentencing orientation of narcotics users. The ambiguity between the categories of “abusers,” “addicts,” and “victims of narcotics abuse,” combined with the facultative phrase “may” in Article 103, has produced excessive judicial discretion and inconsistent law enforcement practices. As a result, rehabilitation frequently functions only as an optional exception rather than as the primary mechanism for handling narcotics users for personal consumption. This condition has reinforced punitive sentencing practices, contributed significantly to prison overcrowding, and weakened the effectiveness of recovery-oriented criminal policy. The enactment of Law Number 1 of 2023 concerning the Indonesian National Criminal Code further reveals a normative tension between the punitive orientation of Article 127 of the Narcotics Law and the rehabilitative measures paradigm under Articles 103 and 105 of the Indonesian National

²⁹ King M, Wexler D. Therapeutic jurisprudence. In: Brown JM, Campbell EA, eds. *The Cambridge Handbook of Forensic Psychology*. Cambridge Handbooks in Psychology. Cambridge University Press; (2010):126-132. <https://doi.org/10.1017/CBO9780511730290.016>.

³⁰ Kawalek, A. Strengthening the Theoretical Commitments Underpinning Therapeutic Jurisprudence Research: Ontology and Epistemology. *Liverpool Law Rev* 45, 73–103 (2024). <https://doi.org/10.1007/s10991-023-09329-7>.

Criminal Code. The conflict is interpretative and horizontal in nature, thereby requiring systematic harmonization rather than separate application of both laws.

Accordingly, the reformulation of rehabilitation policy must be directed toward reconstructing rehabilitation as a mandatory primary measure for narcotics users and addicts proven to consume narcotics for personal use and not involved in trafficking networks. Article 103 of the Narcotics Law should be reformulated by replacing the facultative formulation with mandatory normative standards that limit judicial discretion and prioritize rehabilitation over imprisonment. The reformulation must also establish clear legal distinctions between users, addicts, victims, and traffickers, supported by standardized integrated assessment mechanisms involving medical experts, psychologists, investigators, prosecutors, and judges. Harmonization with Articles 103 and 105 of the Indonesian National Criminal Code should position rehabilitation as part of the national sentencing system based on restorative justice, proportionality, and health-based criminal policy. Within this framework, imprisonment should function as *ultimum remedium*, while rehabilitation becomes the principal response to narcotics dependency cases. Such reformulation would not only strengthen legal certainty and consistency in judicial practice, but also create a more humane, effective, and recovery-oriented criminal justice system in Indonesia.

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