

Reconstruction of Narcotics Rehabilitation Law in Indonesia: a Framework For Harmonization With Global Human Rights And Health Standards

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Abstract

The growing global consensus toward health- and rights-based approaches in drug policy has highlighted the limitations of punitive legal systems, especially in developing countries such as Indonesia. Despite legal provisions enabling rehabilitation for drug users, Indonesia's narcotics law remains fragmented, discretionary, and misaligned with international standards set by the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO). This research aims to analyze the disharmony of narcotics rehabilitation laws in Indonesia compared to international standards, as well as formulate a harmonized model that can be adopted to strengthen the protection of human rights, increase legal certainty, and ensure the effectiveness of rehabilitation as an integral part of the criminal justice system. This normative legal research critically examines the gap between Indonesia's legal framework on drug rehabilitation and international best practices, using comparative legal analysis and conceptual theory integration, including legal pluralism and therapeutic jurisprudence. Findings reveal that the Indonesian legal system lacks normative consistency, suffers from institutional overlap, and fails to uphold essential human rights protections in rehabilitation processes. Drawing from Portugal and Switzerland's legal models, the study proposes a harmonization framework that incorporates voluntary treatment, role clarity, rights-based indicators, and inter-agency coordination. This paper contributes to both academic discourse and policy reform by offering a grounded pathway for aligning Indonesia's rehabilitation law with evolving global standards.

Keywords: Drug policy reform; legal harmonization; narcotics law; rehabilitation; international human rights law; therapeutic jurisprudence; Indonesia

Introduction

Narcotics abuse and illicit circulation is a serious problem that has a multidimensional impact, not only on public health but also on social, economic, and legal stability (Hasbi, 2024; Ristanti & Nirmala, 2025; Suparja & Arthur Josias Simon Runturambi, 2024). In Indonesia, the prevalence of narcotics abuse continues to show an alarming trend (Nurul et al., 2025; Tamba, 2014). Based on updated data from the National Narcotics Agency (BNN) in 2023, there are around 3.3 million active narcotics users, with the majority at productive ages between 15 and 35 years old, showing a

significant increase from previous years, which reflects the urgency of effective policy intervention (BNN, 2023; Husin & Rahmadan, 2025; Hoyle & Harry, 2025). Moreover, more than 60% of the inmates in correctional institutions in Indonesia are incarcerated for narcotics-related cases, which indicates that the repressive approach remains the mainstream in the national narcotics criminal justice system (Budiarto, 2024).

This phenomenon demonstrates the ineffectiveness of the purely penal approach in reducing the number of narcotics abuse cases (Simangunsong et al., 2023). Furthermore, the repressive approach actually aggravates the burden on correctional institutions and creates a weak deterrent effect, especially for users who are medically dependent. Meanwhile, the rehabilitation system regulated under Law No. 35 of 2009 appears to be only a formal alternative, as in practice it is difficult to access because it depends on the discretion of law enforcement officials.

Along with the global paradigm shift, many countries are beginning to reorient their narcotics laws from punishment towards health- and human rights-based remedies. International organizations such as the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO) have published international guidelines emphasizing the importance of voluntary, integrative, and scientifically evidence-based rehabilitation as part of harm reduction strategies (Husin & Rahmadan, 2025). However, until now Indonesia has not fully adopted these principles into the national legal framework in a substantial and systematic manner.

The urgency of this research is strengthened by the dissonance between the legal policy of rehabilitation contained in laws and regulations and the practices in the field. These inconsistencies not only have implications for the violation of the rights of narcotics users but also weaken the effectiveness of the criminal justice system. On the other hand, Indonesia's commitment to various international conventions—such as the 1988 United Nations Convention—demands legal reform to align with global norms in handling narcotics abuse.

However, studies that specifically highlight the inequality between Indonesian rehabilitation law and international standards remain very limited. Some previous research has focused more on the discourse of decriminalization or the social impact of narcotics abuse without an in-depth review of how the differences in legal norms, principles, and practices between Indonesia and the international system have implications for justice and the effectiveness of rehabilitation. Therefore, there is a significant research gap that needs to be bridged through systematic and comparative legal studies.

Based on this background, this study aims to analyze the disharmony of narcotics rehabilitation laws in Indonesia compared to international standards, as well as to formulate a harmonized model that can be adopted to strengthen the protection of human rights, increase legal certainty, and ensure the effectiveness of rehabilitation as an integral part of the criminal justice system. The scientific contribution of this research is expected not only to enrich the study of narcotics law but also to provide policy recommendations

that can encourage more progressive national legal reform and responsiveness to global challenges.

Research Method

This research used a normative juridical approach, focusing on the study of applicable legal norms to understand, analyze, and provide solutions to the legal problems related to the harmonization of narcotics rehabilitation law in Indonesia with international legal standards (Fajar & Achmad, 2010; Huda, 2021). This method was chosen due to issues concerning inconsistencies in norms, overlapping authority, and incompatibility between national regulations and international law principles.

The approaches employed in this study included the statute approach, the comparative legal approach, and the conceptual approach (Rosidi et al., 2024; Suhaimi, 2018). The statute approach was used to review national regulations governing narcotics rehabilitation, such as Law No. 35 of 2009 on Narcotics, Supreme Court Regulation No. 4 of 2010, and other implementing regulations. The comparative legal approach involved examining the Indonesian legal system alongside those of countries like Portugal, Switzerland, and the Netherlands, which have integrated international principles into their narcotics rehabilitation systems. The conceptual approach helped to understand evolving legal ideas and doctrines, especially concerning human rights in rehabilitation and the role of law in shaping a just and effective rehabilitation system.

Data sources consisted of primary legal materials, secondary legal materials, and tertiary legal materials. Primary materials included relevant national and international laws and regulations, such as the 1988 UN Convention, the 2020 UNODC-WHO international standards, and Indonesian laws related to rehabilitation. Secondary materials comprised scientific journals, legal textbooks, reports from international institutions, and prior research. Tertiary materials, such as legal dictionaries and encyclopedias, supported the understanding of key terms.

The data analysis technique was content analysis of legal texts and related documents. This analysis systematically identified thematic categories: (1) clarity of rehabilitation legal norms, (2) fulfillment of human rights-based indicators, (3) clarity of the division of authority between institutions, and (4) conformity with international standards. The results were then compared qualitatively with the legal systems of selected countries to assess the potential for harmonization.

To ensure replicability and support further studies, all stages of the analysis—from data collection and classification of norms to drawing conclusions based on legal logic and comparative principles—were conducted transparently and documented. This methodology enabled a systematic identification of legal disharmony and provided a rational foundation for formulating a legal harmonization model applicable and contextual to Indonesia.

Results and Discussion

Normative Fragmentation in Narcotics Rehabilitation Law in Indonesia

An in-depth analysis of Law No. 35 of 2009 concerning Narcotics reveals the paradox of rehabilitation policies in Indonesia. Theoretically, Article 54 and Article 127 of the Narcotics Law place rehabilitation as the core instrument of recovery for abusers, by categorizing them as victims who need health intervention (Fitriana, 2014; Laksana, 2016; Parindo, 2025). In law enforcement practice, however, rehabilitation is secondary and optional—its existence is highly dependent on the subjective discretion of law enforcement officials (investigators, prosecutors, and judges). The implication is that a repressive approach through criminalization dominates the case handling landscape. Empirical data from the National Narcotics Agency (BNN, 2023) reinforces this finding: only 3.7% of the total cases of narcotics users are successfully directed to rehabilitation, while the other 96.3% are dragged into conventional criminal mechanisms.

Worse, the legal framework for rehabilitation is not only weak in implementation, but also normatively fragmented. Key norms are scattered fragmentatively in various overlapping legal instruments: ranging from Law No. 35/2009, Government Regulation No. 25/2011 concerning the Implementation of Mandatory Reporting of Addicts, Supreme Court Regulation (PERMA) No. 4/2010 concerning Guidelines for the Implementation of Diversion, to the ad hoc Circular Letter of the Attorney General's Office and the Police (Banola et al., 2025; Sri Mahliati et al., 2025). This fragmentation of multi-level regulation creates three crucial problems: (1) inconsistencies in interpretation between law enforcement agencies, (2) confusing procedural complexity, and (3) unbridled expansion of discretionary space. As a result, abusers who are philosophically entitled to rehabilitation often fail to access their rights due to bureaucratic constraints, legal uncertainty, and lack of transparency of the process.

Further impact, this fragmentation creates a legal vacuum that undermines the basic principles of law. First, the absence of a single authoritative norm that binds all apparatus causes rehabilitation to become a pseudo-policy without coercion (Safi'i et al., 2022). Second, overly broad discretion violates the principle of legal certainty and has the potential to trigger arbitrariness in handling cases (Adityo, 2022; Oct, 2025; Winjaya Laksana et al., 2025). In particular, field research shows a drastic difference in implementation between the Corruption Court (which tends to be pro-rehabilitative) and the ordinary District Court (which is more repressive)—clear evidence of the absence of a standard standard. Third, this system fails to fulfill the mandate of the constitution (Article 28H paragraph (1) of the 1945 Constitution) and international human rights obligations (such as the ICCPR) regarding access to justice and the right to health (Rahmawati, 2017).

At the philosophical level, normative fragmentation reflects the failure of the state to harmonize the legal paradigm. On the one hand, the Narcotics Law adopts a health-oriented approach through rehabilitation; on the other hand, law enforcement practices are based on the logic of moral punishment inherited from the previous law. This paradigm conflict exacerbates legal obscurity and buries the potential for restorative

justice. The fact that abusers are imprisoned alongside drug syndicates—a place that increases the risk of recidivism—shows how much this system has lost its normative coherence. In short, fragmentation is not just a technical problem, but a structural failure that comes at the expense of the substantive rights of citizens.

Between Legal Pluralism and Juridical Therapy

Fundamentally, the tension between Indonesian national law and international standards in handling narcotics rehabilitation reflects the dynamics of legal pluralism that has not been optimally managed (Natalis, 2025; Pakpahan et al., 2024; Putri Lidia Damayanti, 2024). As a ratifying country of the 1961 Single Convention on Narcotics, the International Covenant on Civil and Political Rights (ICCPR), as well as the UN Basic Principles on the Use of Restorative Justice, Indonesia is juridically bound to adopt a health and human rights-based approach (Venerdi & Edrisy, 2025). In practice, however, domestic law (especially the Narcotics Law) is still trapped in a punitive "war on drugs" paradigm—contrary to the recommendations of the UN human rights committee that emphasizes the decriminalization of narcotics users and universal access to rehabilitation (Hoyle & Harry, 2025).

More crucially, this legal pluralism is not just normative, but is rooted in sociological fragmentation. At the community level, local wisdom-based rehabilitation practices (such as the customary approach in Bali or Aceh) have proven to be effective in suppressing relapse, while at the state level, centralised bureaucracy ignores this potential. This epistemological inequality exacerbates the regulatory gap and dwarfs the space for policy innovation. A clear example can be seen from the lack of state recognition of community-based treatment programs within a formal legal framework—even though this model is in line with the United Nations Bangkok Principles (2012) on Alternative Development.

Moving to a therapeutic perspective, the failure of the Indonesian legal system in narcotics rehabilitation is the antithesis of the principles of therapeutic jurisprudence (TJ) (Wulandari, 2022). According to the TJ theory initiated by David Wexler and Bruce Winick, the law should function as a "healing agent" by minimizing the traumatic impact of the legal process (Hozeng et al., 2021). In fact, the current repressive approach actually produces anti-therapeutic effects: (1) mass criminalization of users creates a structural stigma that inhibits social reintegration, (2) lengthy judicial procedures trigger legal stress and worsen psychological disorders, and (3) placement of users in prison—breeding ground for drug networks—increases the risk of recidivism by up to 60% (Bappenas, 2022).

In this context, therapeutic jurisprudence offers a transformative framework for reform. First, it shifts the focus from "individual error" to "holistic recovery" by integrating psychological services, family support, and work reintegration. Second, TJ opens up space for problem-solving courts (such as drug courts in the US/Australia) where judges collaborate with psychologists and social workers to monitor rehabilitation progress—a model that empirically reduces the rate of reoffending by 35%. Third, this

approach is in line with the human values of Pancasila which rejects the reduction of human beings solely as "actors".

Therefore, the reconstruction of narcotics rehabilitation law must bridge legal pluralism and juridical therapy in a symbiotic manner. At the macro level, harmonization of national law with international human rights standards needs to be followed by recognition of community-based legal pluralism. At the micro level, the design of the legal system must adopt the principles of TJ: replacing adversarial mechanisms with collaborative justice, making rehabilitation the default option (not the exception), and establishing a continuum of care post-rehabilitation. Only with this paradigmatic integration can the law function as a therapeutic tool as well as a guardian of substantive justice.

Conclusion

This research successfully addresses its objectives by revealing fundamental disharmony between Indonesia's narcotics rehabilitation laws and international standards, particularly in normative fragmentation, institutional overlaps, and inadequate human rights protections. The findings demonstrate that Indonesia's current legal framework suffers from a paradigmatic tension between health-oriented rehabilitation provisions and punitive enforcement practices, resulting in only 3.7% of narcotics users accessing rehabilitation services. The study proposes a comprehensive harmonization model integrating legal pluralism and therapeutic jurisprudence principles, emphasizing voluntary treatment, institutional role clarity, rights-based indicators, and community-based approaches that align with international best practices from Portugal and Switzerland. This research contributes to academic discourse by bridging normative legal analysis with comparative international frameworks, while providing practical policy recommendations for legislative reform that prioritizes human rights and therapeutic effectiveness over purely punitive measures. Future research should focus on empirical evaluation of proposed harmonization models through pilot implementation studies, exploration of regional variations in customary rehabilitation practices for integration into formal legal frameworks, longitudinal assessment of therapeutic jurisprudence applications in Indonesian drug courts, and investigation of intersectional impacts of gender, socioeconomic status, and cultural factors on rehabilitation access and outcomes, thereby advancing evidence-based drug policy reform in Southeast Asian contexts.

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