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Reconstruction of The Criminalization Policy for Drug Abusers Based on a Public Health Approach in Indonesia

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Abstract: This study analyzes the need for a reconstruction of drug abuse criminalization policies through a public health approach in response to the limitations of the penal paradigm that has dominated the Indonesian legal system. Imprisonment-oriented criminalization policies have proven ineffective in reducing dependency rates, do not suppress the prevalence of use, and actually worsen conditions in correctional institutions due to the surge in inmates from drug cases. Normative analysis shows that the Narcotics Law still contains overlapping criminal offense formulations, does not provide a clear differentiation between abusers and dealers, and lacks a binding rehabilitation mechanism, leaving its implementation dependent on the discretion of authorities. Theoretical studies show that addiction is a chronic relapsing disorder that requires long-term medical treatment, while public health principles such as harm reduction, treatment-first, and proportionality can form the basis for developing more humane and effective criminalization policies. Policy reconstruction is aimed at updating norms by redefining drug abusers, expanding mandatory rehabilitation programs, strengthening assessment obligations, and implementing institutional reforms, including coordination among the National Narcotics Agency (BNN), the Ministry of Health, and the Indonesian National Police (Polri) to establish integrated services. The ideal sentencing model emphasizes the integration of public health approaches, restorative justice, and modern sentencing theory to create a more recovery-oriented system for handling drug abusers. This research demonstrates that transforming sentencing policy is not merely a technical legislative requirement but a strategic step towards realizing the protection of rights, effective drug countermeasures, and balanced justice.

Keyword: Sentencing, Narcotics, Drug Abusers, Public Health, Policy Reconstruction.

INTRODUCTION

The problem of overcriminalization of drug abuse stems from a legal framework that positions users as criminals rather than individuals experiencing addiction (Hartono, 2023). Law enforcement tends to emphasize arrest and imprisonment without considering medical aspects that are more relevant to user recovery (Ginting, 2025). The inability of authorities to differentiate between users, addicts, and victims of abuse also reinforces an unproductive cycle

of criminalization (Taena, 2025). The strengthening of repressive logic makes drug abuse a security issue rather than a public health issue. This policy has far-reaching impacts on substantive justice and the effectiveness of addiction treatment.

The dominance of the penal approach causes the criminal justice system to struggle with the annual surge in drug cases. This paradigm creates the perception that prison is the only way to address substance abuse (Runturambi, 2024). Law enforcement officials face pressure to meet enforcement targets, making rehabilitation a priority. Imprisonment is widely applied, even in cases that truly require medical intervention (Sarjono, 2025). This reality shows the disparity between the goals of modern punishment and daily operational practices.

Correctional facility overcrowding is the most obvious symptom of excessive penal policies (Sitepu, 2025). The percentage of prison inmates convicted of drug offenses has reached a significant figure and continues to increase annually. Prisons are no longer capable of fulfilling their role as correctional facilities because the inmate load far exceeds capacity (Saputra, 2022). Users who need therapy are instead placed in environments prone to relapse and strengthen criminal networks (Samsudin, 2025). This situation is detrimental to the state and society because it does not result in behavioral or health improvements for abusers.

Strengthening the principle of recovery provides a legal basis for a paradigm shift from punishment to treatment. Constitutional judges have argued that addiction is medical in nature, requiring state policy to adapt to this characteristic (Cornelis, 2025). This argument reinforces the urgency of reconstructing norms to better align with public health needs.

The gap between the provisions of the Narcotics Law and law enforcement practices is evident in the low implementation of mandatory rehabilitation (Munandar, 2025). Legal norms actually provide space for integrated assessment and alternative sentencing for users (Tamher, 2023). Law enforcement practices lack consistency, particularly at the investigation stage, which still emphasizes possession of evidence (Sanubari, 2025). Many users are still directed toward criminal justice despite meeting the requirements for medical rehabilitation. Disharmony between regulation and implementation hinders systematic policy improvement.

Older theories of punishment emphasized retribution as the primary goal, emphasizing punishment commensurate with wrongdoing. Modern punishment emphasizes behavioral improvement and community protection through corrective programs (Rivanie, 2022). Integrative thinking combines various objectives of punishment with an emphasis on a multidisciplinary approach (Situmeang, 2025). These theories influence how policymakers assess the nature of drug abuse. The choice of a particular theory directly impacts the design of sanctions and legal intervention mechanisms.

The doctrine of rehabilitation positions drug users as individuals in need of psychological and medical recovery programs. This approach stems from the understanding that addiction is not simply a moral or criminal issue but a chronic condition requiring treatment (Husin & Rahmadan, 2025). Restorative justice adds a social recovery dimension by involving families, communities, and healthcare institutions (Ginting, 2024). These principles offer an alternative to conventional punishment models that are less effective for users. The integration of rehabilitation and restorative justice opens up opportunities for more humane policy reconstruction.

The principle of harm reduction offers strategies to mitigate health risks without requiring users to abstain completely. Substitution programs, counseling, and education are essential elements recognized by various international bodies as evidence-based policies (Sonda, 2024). The public health framework emphasizes prevention, early intervention, and integrated treatment for those experiencing dependence (Dharmaputra, 2025). This approach assumes that the success of drug policy is measured by reducing adverse impacts, not solely by increasing prosecution rates. This framework can correct the weaknesses of repressive approaches that often fail to address the root of the problem.

The provisions of the Narcotics Law stipulate the classification of users, addicts, and victims of abuse as regulated in Article 1, numbers 13, 15, and 16, each with distinct treatment mechanisms that are further clarified in Articles 54, 55, and 103 concerning rehabilitation obligations. This norm opens up the opportunity for the implementation of medical and social rehabilitation through official state institutions and community organizations, as stipulated in Articles 59 to 60. The relevant articles still give rise to varying interpretations, leading authorities to often choose a criminalization approach deemed more practical, particularly when adhering to Articles 112 and 127, which are frequently used as the basis for sentencing drug abusers. The complexity of this norm demands reform to achieve legal certainty and protect rights, while ensuring users receive interventions appropriate to the characteristics of their addiction.

The conflict between rehabilitation and punishment demonstrates the need to restructure the formulation of the norm to be more consistent with a public health approach. Imprisonment has proven ineffective in achieving optimal outcomes for drug abusers and is inconsistent with developments in modern criminal theory. Rehabilitation offers a more comprehensive solution because it can improve the medical, psychological, and social conditions of users. Policy changes should be directed at strengthening the legal basis, assessment mechanisms, and the role of healthcare institutions. Total reconstruction will encourage the achievement of a more effective, humane, and equitable drug treatment system.

METHOD

The research method employed is normative juridical, focusing on the review of laws and regulations and theoretical concepts related to the criminalization policy for drug abusers. This study examines positive legal norms contained in the Narcotics Law, implementing regulations, and relevant court decisions to assess the consistency, adequacy, and direction of the current policy. A statutory regulatory approach is employed to examine the normative structure, definitions of crime, rehabilitation mechanisms, and relevant criminal provisions to identify weaknesses and areas that require reform. Additionally, a conceptual approach is applied to connect legal norms with theories of criminalization, addiction, harm reduction, and public health frameworks, while also considering the principle of proportionality to ensure that the proposed policy changes are grounded in strong philosophical and scientific foundations. The analysis is conducted through systematic, historical, and teleological interpretations of norms and a synthesis of legal provisions with developing theories, enabling this research to produce recommendations for more rational, just, and in-line criminalization, in line with the characteristics of drug abusers as individuals requiring health intervention.

RESULTS AND DISCUSSION

Current Criminalization Policy for Drug Abusers in Indonesia

Narcotics regulations within the national legal system establish a criminal offense structure that strictly combines aspects of control, supervision, and punishment. Law Number 35 of 2009 contains criminal provisions for the possession, use, production, and distribution of narcotics, without clearly distinguishing between illicit traffickers and addicted users. Articles 112, 114, and 127 are the most frequently applied criminal penalties, resulting in users often being charged with possession, which should be reserved for traffickers. Imprisonment penalties are set at a very broad range, opening up the possibility of inconsistent judicial decisions. Norms that focus too much on prosecution create tension between public health and law enforcement objectives.

Supporting regulations, such as Government Regulations (PP), Presidential Regulations (Perpres), and technical regulations from the National Narcotics Agency (BNN), emphasize

precursor monitoring schemes, rehabilitation mechanisms, and the provision of addiction services. Supreme Court Regulation Number 4 of 2010 and the subsequent SEMA (Special Regulation) regarding rehabilitation clarify the implementation of the Constitutional Court's ruling on the right of addicts to treatment services. Strengthening technical regulations remains inadequate to ensure uniform implementation, as authorities still prioritize proving criminal elements over the assessment process. The existence of derivative regulations has also been unable to address the disharmony between legal norms and health service capacity. This situation demonstrates that supporting regulations still require more comprehensive alignment with public health principles.

Law enforcement policies for drug abuse prioritize the investigation process as the most decisive stage in case handling. Investigators tend to assess possession of evidence as an indicator of a crime without delving into addiction status or the background of use. Prosecutors then pursue this approach through charges that generally focus on imprisonment. Judges face limited information because assessments are not carried out optimally, resulting in decisions dominated by conventional sentencing. This policy chain creates a pattern of treatment that is less responsive to the need for rehabilitation.

Deviations in sentencing practices are evident in the tendency of authorities to use imprisonment as the primary option, despite the law providing for medical evaluation through integrated assessments. Prison is considered a quick solution to address drug cases, yet its effectiveness is very low for drug abusers. Rehabilitation programs are still viewed as an alternative option that requires additional effort and is therefore not a priority. Officials also face administrative pressures that push prosecution targets, narrowing the scope for a health-focused approach. The emphasis on repressiveness has resulted in prison remaining the dominant focus in law enforcement.

Prison overcrowding reflects the direct impact of disproportionate sentencing policies. The majority of prison inmates are convicted of drug offenses, including users who should be placed in rehabilitation facilities. Prison capacity is inadequate to accommodate the number of inmates, making correctional facilities ineffective. Overcrowded environments complicate the implementation of correctional programs and increase the risk of violence, relapse, and exposure to criminal networks. This data indicates that prisons are unable to accommodate the recovery needs of drug users and are not achieving correctional goals.

Drug abusers are still considered criminals, even though addiction has been recognized as a health disorder requiring medical treatment. The criminal status attached to users creates stigma and deepens barriers to accessing rehabilitation services. The mindset of law enforcement officials remains tied to the paradigm that every use of a drug is an unlawful act that must be punished by imprisonment. Scientific developments demonstrate that addiction is chronic and requires long-term therapy that cannot be achieved through criminalization. This outdated paradigm needs to be dismantled to make sentencing policies more humane and evidence-based.

Law enforcement officials' discretion often discourages the implementation of a rehabilitative approach, even though regulations provide for it. Investigators and prosecutors have the authority to determine which articles to apply, so drug abusers are often directed to the articles that are easiest to prove. The use of discretion that is inconsistent with the principle of rehabilitation results in an imbalance in legal policy. Drug users who meet the criteria for medical rehabilitation are denied access to the assessment process. This situation shifts the goal of the law from protection to oppression.

Addiction-based health services remain limited because the capacity of rehabilitation facilities is not commensurate with the number of users requiring treatment. The limited number of medical personnel and addiction counselors further weakens the effectiveness of the rehabilitation system. The quality of services also varies due to the lack of national standards

strictly regulating addiction treatment procedures. The disparity between the number of cases and service capacity means that users are more often directed to prison than to treatment. This situation emphasizes the weak integration of the health sector into drug policy.

Normative weaknesses in the Narcotics Law include poorly defined offenses that do not clearly distinguish between users and dealers, as seen in Articles 111, 112, 114, and 127. This ambiguity opens the door for excessive criminalization. The provisions regarding the quantity of evidence are also not always consistent with individual usage patterns because quantitative limits are only issued through Circular Letters and are not explicitly regulated by law. This results in charges that are more severe than the actual situation when investigators choose to apply Article 112 or Article 114 instead of Article 127. The rehabilitation norms contained in Articles 54, 55, and 103 lack a strong enforcement mechanism, so authorities are not bound to prioritize them and prefer a prison approach. The absence of a categorical differentiation between users and traffickers in the formulation of crimes creates legal uncertainty because both can be punished under articles with similar elements. This normative basis needs to be revised to align with developments in addiction science and ensure proportional protection for drug abusers.

Institutional and implementation weaknesses are evident in the asynchronous roles of the National Narcotics Agency (BNN), the National Police (Polri), the Prosecutor's Office, and prisons (Ppas) in handling drug abusers. Each institution has a different mandate, but coordination is often lacking. The National Narcotics Agency (BNN) places greater emphasis on rehabilitation, the National Police (Polri) focuses on enforcement, the Prosecutor's Office (AGO) adapts charges to the evidence, while prisons are overwhelmed with inmates. This lack of synchronization hinders the process of handling, which should be integrated and oriented toward user recovery. Improving the coordination structure between institutions is a strategic step towards building a more consistent and effective criminal justice system for drug abusers.

Public Health-Based Criminal Policy Reconstruction

Reconstructing criminal justice policy for drug abusers requires a strong scientific foundation, as repressive legal responses have been proven to fail to provide long-term improvements. The effectiveness of prison sentences is also continually questioned, as addiction is chronic and prone to relapse, making it impossible to reverse through isolation alone. A criminal justice system that ignores the medical nature of addiction actually increases the risk of recurrence and increases the burden on correctional institutions. Drug users are often in a vulnerable position that requires health intervention, not stigmatization or harsh punishment. The need for reconstruction has emerged as an academic imperative to develop a more rational, humane, and evidence-based legal design.

The paradigm of drug users as lone criminals is no longer relevant, as public health research demonstrates that addiction involves neurobiological disorders that affect self-control and decision-making. Legal certainty-based policies remain necessary, but they must view drug users as individuals experiencing health problems requiring structured treatment. A criminal justice system that focuses too much on deterrence only exacerbates the cycle of dependency and increases the social and economic costs to the state. When health institutions are given greater space to treat drug users, recovery success rates increase significantly, as evidenced by various epidemiological studies. Shifting policy direction toward health recovery provides an opportunity for the emergence of a justice system more oriented toward public safety.

The principles of public health-based criminal justice policy reconstruction require a reaffirmation of the concept of proportionality in imposing sanctions on drug users. The treatment-first approach emphasizes that medical treatment is the priority before considering other punitive measures. Harm reduction has emerged as a strategy aimed at reducing health risks and mortality without normalizing drug use. Decriminalization of use allows the state to

focus law enforcement on illicit drug trafficking, rather than on drug users who require professional help. The integration of these principles creates a normative framework more aligned with the goals of protecting human rights and improving national health.

Integrating mandatory rehabilitation services into the justice system requires significant changes in health sector governance. The ideal service model includes a comprehensive medical assessment, the provision of adequate rehabilitation facilities, and post-treatment supervision to minimize relapse. Providing comprehensive services requires increased health worker capacity, standardized treatment procedures, and coordination between relevant institutions. Utilizing drug epidemiology data is essential for mapping abuse patterns and prioritizing effective interventions. Reforming the recovery-based healthcare system ensures that abusers have equitable access to quality treatment programs.

Changes to the norms in the Narcotics Law are essential to the normative reconstruction model, which seeks to align the law with contemporary medical findings. Redefining the category of "abuser" is vital to prevent the over-criminalization of individuals who require treatment instead. Restructuring the forms of sanctions also needs to be implemented through strengthening non-prison options such as mandatory rehabilitation, intensive counseling, and community-based therapy programs. Increasing budget allocation for treatment facilities is an essential component to ensure that normative reconstruction does not remain merely conceptual. The mandatory integrated assessment provisions must be legally enforced so that all law enforcement agencies have uniform standards of care.

The normative reconstruction model requires the support of derivative regulations to ensure certainty of implementation at the operational level. The affirmation of the roles of the judiciary, prosecutors, police, and health workers must be outlined in clear, unambiguous technical regulations. Internal and external oversight is essential to prevent deviations that could hamper the effectiveness of the public health approach. Regular policy evaluation mechanisms are also necessary so that each program can be measured for its success and adapted to developments in health science. Solidifying norms governing the process of handling drug abuse provides a strong foundation for the sustainability of more humane policies.

The institutional reconstruction model places inter-agency coordination as key to success. The National Narcotics Agency (BNN), the Ministry of Health, and the National Police (Polri) require an integrated work system that encompasses data exchange, case handling, and rehabilitation program implementation. The establishment of integrated rehabilitation services at the regional level provides a concrete solution to the limited facilities that have been a major obstacle. Establishing service standards, referral mechanisms, and monitoring systems is needed to ensure program consistency across Indonesia. Strong synergy between the legal and health sectors accelerates the transition to more effective, recovery-based sentencing policies.

A model for reconstructing the justice process requires strengthening diversion mechanisms for drug abusers. Diversion provides users with the opportunity to participate in treatment programs without going through formal court procedures, which often carry stigma (Agus, 2023). Mandatory treatment programs, as a legal instrument, are necessary to ensure that drug abusers undergo structured and measurable treatment (Nurita, 2024). Reducing the use of imprisonment is a strategic step to address overcrowding and redirect law enforcement resources to crack down on illicit trafficking networks. This reformulation of the justice process provides a strong foundation for creating a more proportionate and recovery-oriented legal response.

Developing an ideal model for punishing drug abusers requires the integration of public health, restorative justice, and modern criminal justice theory. Public health provides a scientific framework for how addiction should be treated as a medical disorder, while

restorative justice emphasizes personal recovery and social relationships. Modern criminal justice theory directs punishment toward protecting society without neglecting the dignity of the offender. The collaboration of these three approaches creates a criminal justice system that emphasizes a balance between justice, effectiveness, and humanity. Alternative schemes such as therapeutic jurisprudence can serve as a reference in designing a system more adaptive to the realities of addiction.

The ideal model for criminalizing drug abuse requires governance that includes monitoring mechanisms, health-based evaluations, and the full involvement of medical professionals. Post-rehabilitation programs are a crucial component for maintaining stable recovery and preventing the risk of relapse. Providing social support, employment services, and ongoing counseling are part of a holistic policy design. Continuous academic research is essential to ensure policies are continually updated in line with the latest scientific evidence. Systematic integration of legal and health instruments creates a criminalization model that is more responsive, rational, and aligned with human development goals.

CONCLUSION

A recapitulation of the criminalization policy for drug abusers shows that the legal paradigm centered on deterrence and imprisonment has not resulted in significant improvements in dependence rates or recidivism rates. The weakness of the penal approach is evident in its inconsistency with the nature of addiction, which is a chronic health disorder and cannot be addressed through repressive sanctions alone. Drug users are vulnerable and require medical intervention, rehabilitation, and social support, making a public health approach a key urgency to replace traditional, stigmatizing sentencing patterns. A reconstruction analysis demonstrates that integrating the principles of proportionality, harm reduction, treatment-first, and expanded mandatory rehabilitation can produce a more humane, efficient, and recovery-based model. This study emphasizes that the ideal criminalization formulation must combine public health, restorative justice, and modern criminal theory to comprehensively and sustainably address the complexity of the drug problem.

Legislative recommendations should be directed toward revising the Narcotics Law to clearly differentiate between drug abusers who require therapy and those involved in illicit trafficking who must be subject to severe sanctions. Regulatory improvements must be accompanied by increased institutional capacity at the National Narcotics Agency (BNN), expansion of rehabilitation facilities in each region, and the provision of competent medical personnel and addiction counselors. Law enforcement reform demands an integrated public health-criminal justice design through diversion mechanisms, mandatory treatment programs, and a reduction in the use of prison sentences for users. The government and the House of Representatives (DPR) must prioritize funding for multidisciplinary addiction research to ensure that all resulting policies are grounded in the latest scientific evidence. By enhancing research efforts and fostering cross-sector collaboration, we can ensure that the transformation of criminal policy transcends mere normative changes and genuinely serves as a tool for community recovery and protection.

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