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Construction of Legal Reform of The Transfer of Foreign Citizen Drug Crime Inmates to Their Home Countries Based on Aspects of Legal Certainty

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Abstract: This article develops a legal-certainty-oriented construction for Indonesia's forthcoming law on the transfer of sentenced persons (TSP), with specific attention to foreign nationals convicted of drug offences. Using a doctrinal legal method legislative, conceptual, and comparative approaches, the paper assesses Indonesia's current baseline (Article 45 of Law No. 22/2022 on Corrections), identifies implementation gaps in the absence of a specific statute, and draws comparative lessons from the Council of Europe Convention on the Transfer of Sentenced Persons (ETS No. 112), the EU Framework Decision 2008/909/JHA, and UN guidance (UNODC, International Guidelines on Human Rights and Drug Policy). Legal certainty is translated into eleven normative pillars: clear scope and definitions; material and formal requirements with explicit time limits; human-rights safeguards (non-refoulement, prohibition of torture, equality of treatment); designation of a central authority; calculation of remaining sentence and additional penalties; limited procedural review; drug-case-specific safeguards ensuring continuity of rehabilitation; diplomatic coordination and agreements; transparency and data protection; and transitional provisions. The proposed model enhances predictability, proportionality, and inter-jurisdictional consistency while aligning with contemporary human-rights-based drug policy. Policy implications are offered for Indonesia's ongoing legislative process (2023–2025).

Keyword: Transfer Of Sentenced Persons, Legal Certainty, Narcotic, Foreign Nationals, Human Rights, Indonesia.

INTRODUCTION

Background

The flow of cross-country human mobility and the increasingly integrated global markets and transportation increase the opportunity for transnational crimes, including illicit narcotics trafficking. In such an ecosystem, the number of foreigners dealing with other countries' criminal justice systems tends to increase, while national penitentiary capacity faces population pressures and complex service needs (including evidence-based health and rehabilitation).

Global data shows the world's penitentiary population exceeds 10.9 million people. Indonesia is in the group of countries with a large penitentiary population in Asia, so the dimensions of governance and cooperation between countries are increasingly relevant (Fair, H., et al. 2023). One of the instruments of criminal justice cooperation that has long been practiced internationally is the transfer of convicted persons (TSP). Since the 1983 Council of Europe Convention (ETS No.112), the main objective has been to facilitate the social rehabilitation of prisoners in order to serve the remainder of their sentences in a more supportive socio-cultural environment, with the consent of the prisoner and the cooperation of the offending state and the executing state; 1) The European model then developed through the Framework Decision 2008/909/JHA which upheld the principles of mutual recognition, standard certificates, and decision-making deadlines so as to strengthen predictability and legal certainty in cross-regional criminal executions, 2) At the UN level, the UNODC Handbook summarizes good practices and operational procedures (information on rights, consequences of transfers, calculation of criminal remains, and additional criminal arrangements) that are a reference for the United Nations national regulatory designers (United Nations Office on Drugs and Crime, 2012).

In the Indonesian context, Article 45 of Law Number 22 of 2022 concerning Corrections explicitly opens up the possibility of transferring prisoners to other countries "based on agreements" and delegates further arrangements to the law (Republic of Indonesia, 2022). As a follow-up, BPHN (2023) published an Academic Paper on the Bill on the Transfer of Interstate Prisoners which examines the philosophical, sociological, and juridical foundations, including harmonization with Law No. 1 of 2023 concerning the Criminal Code and other legal developments (National Legal Development Agency, 2023). However, at the executive level, the Directorate General of Corrections (2024) stated that the transfer of prisoners between countries "cannot be carried out" until there is a specific operational legal basis and an adequate set of agreements/guidelines (Directorate General of Corrections, 2024). This condition creates legal uncertainty for stakeholders (law enforcement officials, diplomatic representatives, and foreign prisoners), especially in narcotics cases that typically contain serious and additional crimes.

In line with these dynamics, in 2025 the government will consolidate and accelerate the drafting of the bill through cross-ministry/agency meetings, with the aim of strengthening Indonesia's legal certainty, usefulness, and harmony in international legal cooperation on the transfer of prisoners. The Antara News (2025) discourse on the transfer of foreign prisoners, especially narcotics cases, is also strengthening in the public and diplomatic realms in 2024-2025, in line with the outbreak of foreign cases in narcotics crimes and the discussion of repatriation in high-profile cases (Associated Press, 2025). This fact adds to the urgency of a comprehensive arrangement so that transfer decisions are not only legally valid, but also legitimate in policy and diplomacy.

On the other hand, the development of human rights-based narcotics policies requires that the transfer regime does not lower the standard of protection. The UN Human Rights Council report (A/HRC/54/53, 2023) and the International Guidelines on Human Rights and Drug Policy (HRDP/UNDP, 2024) emphasize proportionality, non-refoulement, the prohibition of torture and cruel treatment, and the continuity of health/rehabilitation services for users or those affected by narcotics (Human Rights & Drug Policy Consortium, 2024). In Southeast Asian practice, where some jurisdictions still apply the death penalty for narcotics offenses, adequate assurances are a prerequisite for ethical and juridical prerequisites to prevent the risk of post-transfer human rights violations.

Thus, Indonesia's core problem today is the gap between the umbrella norm (Article 45 of Law 22/2022) and the absence of a detailed implementing law along with SOPs that ensure clarity of conditions, deadlines, authority, mechanisms for taking over criminal executions, and

channels of objection—especially for foreign narcotics inmates. This design void has the potential to cause uncertainty *ex ante* (whether it is worth moving), *in itinere* (how to procedures and deadlines), and *ex post* (calculation of criminal remains, fine/restorative criminal management, and post-transfer monitoring). Therefore, this article offers a construction of the reform of the Transfer of Sentenced Persons law oriented to legal certainty (*lex certa*, due process, predictability) that is aligned with COE/EU/UN standards and the latest narcotics human rights guidelines, as a conceptual contribution to the formulation of the bill and the drafting of Indonesia's bilateral/multilateral agreements in the future (Human Rights & Drug Policy Consortium, 2024).

Problem Formulation

The problem formulation used in this study is compiled to guide policy analysis and norm construction:

1. How is the mapping of the adequacy and emptiness of the Indonesian legal framework for the transfer of drug convicts?
2. How to operationalize the principles of legal certainty (*lex certa*, predictability, due process) and adopt/adapt to COE/EU/UN standards?
3. What is the design of special provisions for foreign narcotics cases with verified assurances, governance, coordination, and data infrastructure, as well as the formulation of policy implications and performance indicators?

METHOD

This research is a normative (doctrinal) juridical research with three approaches: (i) legislation, analysis of ETS No. 112, FD 2008/909/JHA, Recommendation CM/Rec(2020)3, and Law No. 22 of 2022; (ii) conceptual, legal certainty (Peers, 2023), mutual recognition/mutual trust, due process, proportionality, rehabilitation (UNODC, 2012); (iii) comparative, learning from the COE/EU (Council of the European Union, 2008) and the UN/UNODC guidelines. Primary sources include conventions, framework decisions, recommendations, and legislation; secondary in the form of monographs and articles in reputable international journals (2020-2025) from major academic publishers (Hart/Bloomsbury, OUP, Brill, SAGE, Springer) and narcotics/human rights policy journals; and tertiary in the form of a procedural handbook.

Data collection was carried out through a search of scientific databases with inclusive criteria: 2020-2025, peer review, direct relevance to TSP/legal certainty/human rights-based narcotics policy; and exclusive: popular sources/news (except for context). The analysis was carried out through grammatical-systematic-teleological interpretation, mapping of gaps to indicators of legal certainty (*lex certa*, time limits, due process), comparison of COE/EU/UN, and the formulation of eleven normative pillars along with the outline of the article. The scope of the study was limited to post-verdict TSPs with permanent legal force (not extradition, deportation, prosecution transfer, or stand-alone prisoner swap).

Literature Review

1. Legal Certainty in a Transnational Context

The comparative literature emphasizes that legal certainty requires clarity of norms (*lex certa*), stability, and procedural predictability, so these concepts need to be translated prescriptively into positive rules and administrative SOPs. In the architecture of cross-country criminal cooperation, legal certainty is also closely related to mutual recognition/trust as well as the availability of time limits and document standards to suppress discretion (Human Rights & Drug Policy Consortium, 2024).

2. Mutual Recognition & Mutual Trust in EU Criminal Law

Since the Lisbon Treaty, the principle of mutual recognition has been the backbone of cross-country criminal executions in the EU. Willems (2021) elaborated the conceptual parameters of mutual trust as a functional prerequisite for the recognition of judgments, which are relevant to the design of the TSP (Willems, 2021). Peers (2023) places this mechanism within the framework of modern EU Justice and Home Affairs (Peers, 2023). In the operational realm, FD 2008/909/JHA provides a transfer scheme based on recognition of decisions, standard certificates, and deadlines; recent academic studies highlight the achievements and challenges of their implementation (e.g. conversion without aggravation and continued enforcement) (Ouwerkerk, 2024).

3. Transfer of Sentenced Persons (TSP) Instruments and Standards

Outside the EU, ETS No.112 (1983) remains the main reference of the TSP with the aim of social rehabilitation, convict consent, and coordination of implementing cut-off countries (Council of Europe, 1983). CM/Rec(2020)3 of the Council of Europe updated practical guidance on the implementation of the Convention and Additional Protocols to speed up and standardize transfer practices (Council of Europe, 2020). At the technical level, the EuroPris Resource Book (2020) and the EJM Handbook (2019) detail flows, documents, and deadlines that minimize administrative uncertainty; the ERA material (2022–2024) enriches practices and jurisprudence related to FD 909 (Council of Europe, 2019). At the UN level, the UNODC Handbook sets out the operational principles of TSP (notification of rights, legal consequences of transfers, calculation of criminal remains, management of additional crimes). Although longer, this document is still a methodological reference for national regulatory designers (UNODC, 2012).

4. Human Rights & Narcotics Policy (2023–2025)

The mainstream of global narcotics policy is shifting towards a human rights and public health-based approach. The Commentary on the International Guidelines on Human Rights and Drug Policy (HRDP-UNDP, 2024) is a normative reference regarding state obligations, including the right to health, proportionality, and the prohibition of cruel/inhumane practices, which need to be internalized in the TSP scheme in narcotics cases (Human Rights & Drug Policy Consortium, 2024). OHCHR A/HRC/54/53 (2023) maps human rights challenges in the "world drug problem," emphasizing non-refoulement, torture prevention, and access to services (Ritter and Barrett, 2024). The Harm Reduction Journal (2024) study affirms the right to health for narcotics users and the impact of discrimination on access to services. The latest policy discourse in *The Lancet* (2024) highlights the human rights in drug policy agenda at CND (Ahmad et al., 2024).

5. Southeast Asia & Indonesia: Punitivism, the Death Penalty, and Assurances

Recent regional literature confirms the persistence of punitive approaches in some ASEAN jurisdictions (including the death penalty for narcotics crimes), making assurances and post-transfer monitoring crucial for TSPs. Chan (2025) maps the "high application states" and trends of narcotics-related executions in Asia. For the Indonesian context, Hoyle & Harry (2024) review the policy of bifurcation (between severe punishment and diversion to treatment for minor offenses) and the ethical-juridical tensions that accompany it. (Hoyle and Harry, 2024). The immediate implications for the design of the TSP are the need for risk-based human rights testing and verifiable diplomatic assurances.

RESULTS AND DISCUSSION

Theoretical Framework & Normative Implications

Legal certainty in TSP must be understood as an operational design (lex certa, procedural predictability, and auditable due process) and not just a declarative principle (Fenwick et al., 2020). The principle of mutual recognition/mutual trust explains why the implementing

country accepts the decision of the deciding state with human rights safety valves, so that file standardization, time limits, and limited procedural tests are functional prerequisites (Willems, 2021). The EU framework through FD 2008/909/JHA embodies these principles through standard certificates, decision deadlines, and the option of continuous enforcement/conversion without burden (Council of the European Union, 2008). Recent academic studies show that material clarity in certificates and certainty of deadlines (about 90 days in practice) suppress disputes and force information discipline from sending countries (Montaldo, 2020). In the camp of the Council of Europe, ETS No. 112 places the goal of rehabilitation and demands the consent of convicts as well as the coordination of the deciding and implementing countries, which is the basis for the legitimacy of continuity of care in the context of narcotics (Council of Europe, 1983).

The CM/Rec Guideline(2020)3 updates the implementation of the Convention and its Additional Protocols through administrative guidance that standardizes practice and reporting (Council of Europe, 2020). For foreigners' narcotics cases, the HRDP-UNDP framework (2024) affirms the right to health and evidence-based policy indicators as a prerequisite for service sustainability (Human Rights & Drug Policy Consortium, 2024). The OHCHR REPORT A/HRC/54/53 (2023) emphasizes non-refoulement and the need for verified assurances when there is a risk of the death penalty or cruel/inhuman treatment (Office of the High Commissioner for Human Rights, 2023). Recent health-policy evidence shows that medication-assisted treatment and evidence-based interventions should not be interrupted by transfer as the theoretical basis for the continuity of care clause in the national draft (Ritter and Stoeber, 2024).

Mapping Indonesia's Legal Conditions (Baseline and Gap)

Article 45 of Law 22/2022 stipulates that the transfer of prisoners is carried out "based on an agreement", but a special law and detailed SOPs are not yet available. The impact is uncertainty *ex ante* (feasibility and conditions), *in itinere* (procedures, authority, time limits), and *ex post* (expropriation of execution, calculation of criminal remains, management of additional crimes, monitoring). In the case of foreign narcotics, the need for continuity of rehabilitation and human rights security is crucial, while the national normative foundation is still paying (National Legal Development Agency, 2023). The need for the establishment of the Bill on the Transfer of Interstate Prisoners has been identified in the BPHN Academic Paper (2023) as an adequate implementation tool to bridge the gap in cross-institutional regulation and governance (BPHN, 2023).

The essence of the proposed TSP reform, clear definition and scope, measurable material-formal requirements, time limits, central authority, and limited procedural tests, is based on the theory of legal certainty that views *lex certa*, predictability, and its test as an institutional design (not just an abstract value). Recent comparative literature shows that legal certainty works when it is enshrined in document standards, decision deadlines, and correction corridors testing decisions on what is auditable rather than leaving them to loose discretion. This framework legitimizes the normative pillars that we have proposed, especially the setting of time limits and single windows to cut the uncertainty of *ex ante*–*in itinere*–*ex post* (Enwick et al., 2020).

Operable Legal Certainty Parameters

In cross-country criminal execution cooperation, legal certainty must be reduced to operational indicators: *lex certa*, procedural predictability, and auditable due process. Comparative literature places legal certainty not only as abstract values, but also as norms and SOPs (definitions, formal-material requirements, time limits, organ competence, correction/limited objection mechanisms) (Fenwick et al., 2020). The principle of mutual recognition/mutual trust is relevant as a meta-principle design that supports the recognition of

judgments and the implementation of execution in other jurisdictions, so that technical provisions (certificates, deadlines, file standardization) become functional prerequisites for legal certainty (Willems, 2021).

The experience of the European Union shows how these indicators work. FD 2008/909/JHA places standard certificates and decision-making deadlines as the backbone of cross-country recognition of judgments, while the principle of continued enforcement with conversion options without burdensome maintenance of equivalence of execution (Council of the European Union, 2008). Academic studies confirm that material clarity in certificates and certainty of deadlines (reference practice ± 90 days) reduce disputes and speed up decisions, while requiring information discipline from the sending country (Montaldo, 2020). On top of the procedural framework, mutual recognition/mutual trust works as a meta-principle that locks predictability: the implementing state accepts the decision of the decision-making state as long as the human rights and due process parameters are met. This is what causes document standards, deadlines, and limited test corridors to be functional prerequisites, not accessories (Willems, 2021).

The proposed standard certificates, decision deadlines, and central authority derive theoretical footing from the principle of mutual recognition/mutual trust in EU criminal law. Conceptually, mutual trust explains why the implementing country accepts the decision of the dissolving state (with human rights safety valves), how document standards minimize informational asymmetry, and when limited testing is allowed so as not to undermine the finality of the decision. Thus, mutual trust is not jargon, but a normative rationale for the standardization, deadlines, and limitations of objection space that we design (Willems, 2021).

Adoption/Adaptation of Relevant International Standards and Practices

Within the Council of Europe, ETS No. 112 (1983) positions social rehabilitation as the main objective of the TSP, making the consent of convicts and the coordination of the decision-making state a procedural prerequisite (Council of Europe, 1983). Recommendation CM/Rec(2020)3 updates the practical implementation of the Convention and its Additional Protocols, including a more agile administrative cooperation framework (Council of the European Union, 2008). Combined with FD 2008/909/JHA, we obtained a comprehensive toolbox: clear objectives, standard certificates, time limits, and inter-agency coordination channels. For Indonesia, this combination provides a model of adoption/adaptation: maintaining the principle of sovereignty, but tying practices to predictable and verifiable standards (Council of Europe, 2020).

Positively, FD 2008/909/JHA embodied a theory in practice: standard certificates and deadlines (practiced as ± 90 days in many jurisdictions) limit uncertainty and minimize disputes; while the option of continued enforcement or conversion without aggravation maintains non-aggravation (Council of the European Union, 2008). Recent academic analysis confirms that the material clarity of certificates + definite deadlines lowers coordination transaction costs and forces information discipline from the sending country, two conditions that underpin predictability and rule-of-law in cross-country execution (Montaldo, 2020).

The adoption of COE/EU instruments to the Indonesian context ideally follows the principle of functional equivalence in comparative law: what is transferred is not just a normative text, but a function to be achieved (certainty, predictability, and accountability), by translating the concept to local institutions (central authorities, SOPs, and case-tracking) so that misfits do not occur. The cutting-edge comparative literature confirms that institutional "translation" is part of a good transplant methodology (Husa, 2023). Although CM/Rec(2020)3 is soft law, the recommendations of the Council of Europe are generally highly implementable because they are adopted through political consensus between countries and are often used by the courts as normative references, forming a European consensus that accelerates the

convergence of administrative practices (e.g., reporting standards or service governance). This provides a theoretical justification for why the COE recommendation is worthy of being used as a reference for operational policies in the national bill (Health and Human Rights Journal, 2024). Doctrinally, mutual recognition is positioned as the "cornerstone" of EU criminal justice cooperation; but cross-state recognition is not absolute, it works under a strict corridor of human rights and public policy. This theoretical framework is important when adapting FD 909 in Indonesia: strengthening limited procedural tests and human rights assurances actually maintains mutual trust rather than weakens it (Court of Justice of the EU, 2025).

Special Provisions for Foreign Narcotics Cases: Rehabilitation and Human Rights Security

The case of foreigner narcotics requires continuity of care and explicit human rights security. The HRDP-UNDP Guidelines (2024) detail the state's obligations for the right to health, proportionality, and service standards; while OHCHR A/HRC/54/53 (2023) emphasizes non-refoulement and the need for verified assurances when there is a risk of the death penalty or cruel/inhuman treatment. The Office of the High Commissioner for Human Rights latest health-policy literature reinforces the empirical foundation that evidence-based services, including medication-assisted treatment where relevant, must not be disconnected by displacement in order for rehabilitation benefits to not be lost (Ritter and Stoeber, 2024). The draft national norm therefore needs to require human rights risk testing, assurances request/validation protocols, and operational continuity of care clauses (service referral mechanisms, concise medical exchanges, and follow-up reporting).

ETS No. 112 positions social rehabilitation as the goal of the TSP and requires the consent of the convict and the coordination of the decision-making state, a substantive due process that links human dignity with the finality of the sentence. CM/Rec(2020)3 updates the implementation of the Convention and its Additional Protocols with operational guidance, encouraging consistent administrative workflows. Theoretically, the combination of rehabilitation goals + consent + implementation guidance becomes the legitimacy basis for continuity of care, file standardization, and follow-up reporting in our national draft (Council of Europe, 2020). In Indonesia, the pressure on the burden of services can be seen from the proportion of prisons/prisons related to narcotics which reached 51.8% of 268,610 people (as of 2024), plus the overcrowding situation of 191% (as of July 31, 2025) (BNN, 2024). At the same time, ≥ 530 death row inmates, including 96 foreigners, the majority of whom are related to narcotics, so that the non-refoulement and assurances test are a prerequisite for the ethical-juridical transfer (Stone et al., 2021). Clinically, continuity of care through MOUD during detention and its post-release continuity has been shown to reduce overdose/non-fatality and is estimated to prevent $\pm 27-51\%$ of preventable deaths, with the greatest impact in the first month post-release. Recent theoretical developments and discourses propose humanitarian considerations as a proportionate correction in transfer decisions, especially when automatic rejection actually prolongs the impact of human rights violations (e.g. access to health services). This idea enriches Indonesia's adoption model: strict due process remains in place, but a space of directed discretion is opened to guarantee the outcome that best protects the dignity of the convict (Ouwkerk, 2024).

Data Governance, Coordination, and Infrastructure

Effective governance design requires the designation of a central authority as a single window as well as a standard flow, a list of minimum documents, and published administrative deadlines; the EuroPris Resource Book (2020) and the EJM Handbook (2019) are both operational references, while nationally the arrangements should be linked to the protection of personal data and annual statistical reporting (applications, duration, results) for public

accountability (EuroPris, 2020). On the process side, the EuroPris Resource Book (2020) and EJM Handbook (2019) demonstrate the importance of standard flows, minimum document lists, and published administrative deadlines (European Judicial Network, 2019). These principles can be transplanted into the Indonesian context through implementing regulations that link inter-agency protocols. Given the intensity of cross-country data exchange, national drafts also need to link to the protection of personal data (including relevant national laws) and annual statistical reporting practices (applications, process durations, results) for public accountability (Republic of Indonesia, 2022).

Legal certainty requires a limited but effective due process: notice of rights, access to legal counsel, reasons for decision, and limited procedural testing of accept/decline decisions, sufficient to guarantee fairness, but not to the extent of reexamining the merits of the case (which risks violating the finality and trust between countries). In the perspective of proportionality, conversion without aggravation ensures that local adaptation does not add to the criminal burden; this design is aligned with the EU architecture as mapped out by the cutting-edge literature on JHA (EU criminal law) and FD 909 practices (Peers, 2024). In the EU, FD 2008/909/JHA sets a 90-day deadline for the executing country to decide to accept/reject execution (Article 12) and, if accepted, the transfer is completed within 30 days of the final decision (Article 15); in legal training materials, this combination is often used as a benchmark of maximum " ≈ 120 days" for the entire administrative cycle as a reference for the design of national SLAs (service level agreements) for our central authority (EuroPris, 2020). Dutch empirical data shows that since the implementation of FD 909 (2012) until 2017, 1,155 entry certificates were received and 586 transfers were realized ($\approx 51\%$ execution rate), while 118 exit certificates only resulted in 22 transfers ($\approx <20\%$), this inequality is attributed by the author to limited capacity and the need for process standardization and data-tracking in central authorities (Hofmann, 2020).

In the case of foreigners, the right to health and continuity of rehabilitation are theoretical elements that must be internalized into the design of the TSP. HRDP-UNDP (2024) provides a normative framework and policy indicators (access to services, non-discrimination, proportionality), while OHCHR A/HRC/54/53 (2023) emphasizes non-refoulement and the need for verified assurances when there is a risk of the death penalty or cruel/inhumane treatment. Current health-policy evidence suggests that medication-assisted treatment and evidence-based interventions should not be interrupted by transfer; This is the theoretical basis for the arrangement of continuity of care and diplomatic channels for verification of post-transfer assurances.

Policy Implications and Performance Indicators (KPIs)

The new construction based on *lex certa* + time limits + central authority + human rights protection & rehabilitation is projected to increase the predictability of decisions, accelerate cross-agency coordination, and strengthen legitimacy in the eyes of the public and foreign partners. To ensure accountability, KPIs at least include: (i) the average duration of file processing; (ii) the percentage of decisions within the time limit; (iii) the success ratio of executing takeover (continued enforcement/conversion without aggravation); (iv) compliance assurances (including post-transfer follow-up); and (v) continuity of care index (access to post-transfer rehabilitation services) (EuroPris, 2020).

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Commissioner for Human Rights, 2023). Current health-policy evidence suggests that medication-assisted treatment and evidence-based interventions should not be interrupted by transfers; this is the theoretical basis for the arrangement of continuity of care (Ritter and Barrett, 2024) and diplomatic channels for verification of post-transfer assurances. The European Council instrument exemplifies adaptable periodic reporting, while the FD 909 experience demonstrates the value of process certification to maintain consistency between agencies (Council of Europe, 2020).

CONCLUSION

The legal certainty of the transfer of sentenced persons (TSP) in Indonesia requires a shift from the umbrella norms of Article 45 of Law 22/2022 to a special law with a measurable operational architecture (definition/scope, material-formal requirements, time limits, central authority, execution and supervision mechanisms). This framework ensures cross-country predictability while maintaining the finality of decisions. The national normative design should be aligned with ETS No.112 (rehabilitation and informed consent objectives), CM/Rec (2020)3 (implementation guidelines), and FD 2008/909/JHA (standard certificates, time limits, continued enforcement/conversion). This synergy provides a toolbox that can be accounted for theoretically and administratively. Human rights safeguards (including non-refoulement and prohibition of cruel treatment) and continuity of care should be explicit clauses so that transfers do not interrupt evidence-based services; the need for verified assurances is a key requirement in high-risk jurisdictions.

Normative Recommendations (Draft Article Formulation)

Based on the above findings and analysis, the following section formulates normative recommendations that are operational and in line with international standards to ensure legal certainty, human rights protection, and the effectiveness of TSP governance in Indonesia.

- a. Article 1, General Provisions (Definitions and Principles). Contains core terminology (deciding/executing state, continued enforcement, conversion, additional penalties), principles of legal certainty, human rights protection, mutual recognition/mutual trust, non-discrimination, and reciprocity;
- b. Article 2, Scope. Transfer of Sentenced Persons after the inkracht verdict for all criminal acts, including narcotics; includes foreigner/Indonesian prisoners abroad; also regulates transit and fees;
- c. Article 3, Material Requirements. The decision has permanent legal force; the written consent of the inmate (with access to legal counsel and notice of rights); dual criminality or reciprocity; the absence of extraordinary legal remedies that suspend execution; human rights filter (prohibition of torture, non-refoulement);
- d. Article 4, Formal Terms and Time Limits. Certificates/standard files; list of minimum documents; cumulative deadlines for registration, verification, and administrative decisions; the obligation of written reasons in the accept/decline decision;
- e. Article 5, Central Authority. The determination of a single window under the Ministry of Law and Human Rights (coordination of the Supreme Court, the Prosecutor's Office, the Directorate General of PAS, the Ministry of Foreign Affairs, the National Police, the Indonesian Representative), including diplomatic channels, file tracking, and records management;
- f. Article 6, Expropriation of Execution. Continued enforcement as a rule; conversion without aggravation if necessary; formula for calculating the remaining penalty; governance of fines, restitution, confiscation;

- g. Article 7, Objections and Supervision. Limited procedural test (limit of objection space) to guarantee due process without repeating the merits of the case; policy reporting obligations and procedural compliance audits;
- h. Article 8, Special Provisions for Narcotics. Continuity of care clause (access to evidence-based services, including medication-assisted treatment where relevant); prohibition of double punishment through maladaptive conversion;
- i. Article 9, Human Rights & Assurances. Conditional refusal/transfer when there is a risk of the death penalty/ill-treatment; verified assurances along with a post-transfer follow-up mechanism through diplomatic channels. Article 10 – Transparency, Data and Privacy. Annual statistics (application, duration, results); limited access to information; compliance with the protection of personal data; cross-country data exchange arrangements;
- j. Article 11, Transitional Provisions. The arrangement of the case is in progress when the law is promulgated; transition period and adjustments to existing agreements.

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