

# Reformulation of Legal Criteria for Mandatory Rehabilitation for Drug Abusers in the Indonesian Criminal Justice System

Sunardi\*, Tina Amelia

Universitas Borobudur, Jakarta, Indonesia, sunardiptk2104@gmail.com

Universitas Borobudur, Jakarta, Indonesia, tinaamelia@borobudur.ac.id

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\*Correspondence: Sunardi

Email: sunardiptk2104@gmail.com

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**Abstract:** *This study aims to analyze and reformulate the legal criteria for mandatory rehabilitation for drug abusers in the Indonesian criminal justice system, which currently lacks clear and operational parameters. The method used is normative legal research, with a legislative and conceptual approach, based on a review of Law Number 35 of 2009 concerning Narcotics, its implementing regulations, and the principles of criminal law and human rights. The results indicate that although mandatory rehabilitation norms have been established, their implementation still faces various problems, including the dominance of official discretion, disparity in sentencing, the use of possession articles against users, and the weakness of integrated assessments as stipulated in the 2014 Joint Regulation of 7 Institutions concerning the Management of Narcotics Addicts. The absence of clear legal criteria creates legal uncertainty and substantive injustice, contradicting the principles of the 1945 Constitution of the Republic of Indonesia. Therefore, this study proposes reformulating the legal criteria for mandatory rehabilitation based on objective parameters, strengthening integrated assessments, and integrating institutions within a double-track system framework to create a fairer, more certain, and recovery-oriented criminal justice system.*

**Keywords:** *mandatory rehabilitation, drug abusers, legal criteria, criminal justice system*

## Introduction

The global dynamics of drug abuse management demonstrate a fundamental shift from the repressive paradigm of the "war on drugs" to a public health-based approach that positions users as subjects in need of treatment, not merely punishment. (Suyono, 2026) This shift is reflected in various decriminalization policies and the implementation of harm reduction in several countries, such as Portugal, which, since 2001, has removed criminal sanctions for possession of small amounts of narcotics for personal use and replaced them with administrative mechanisms and health-based rehabilitation. (Djatkiko, 2024) This approach is supported by various international instruments, such as the United Nations Office on Drugs and Crime and the World Health Organization, which encourage countries to integrate health aspects into drug policies. (Utami, 2023) Critics of the punitive approach assert that criminalizing users not only fails to reduce abuse rates but also exacerbates social

marginalization and hinders access to health services, thus normatively and empirically strengthening the argument that rehabilitation is a rational and evidence-based global direction.

In Indonesia, drug abusers occupy a conceptual space between criminal perpetrators and victims of addiction. This creates a normative tension in the criminal legal system. (Ariyanti, 2017) On one hand, abusers can be charged as perpetrators under Law Number 35 of 2009 concerning Narcotics, specifically Article 127 paragraph (1), which sets criminal penalties for drug abusers. However, Article 54 of the same law states that drug addicts and victims of drug abuse must undergo medical and social rehabilitation. This shows the state's recognition of its status as a victim. (Herindrasti, 2018) The ambiguity causes conflict between a retributive approach focused on punishment and a rehabilitative approach focused on recovery. Philosophically, this can be analyzed through modern criminal theory and victimology, which view addicts as individuals with pathological dependence needing therapy, not imprisonment. (Simbolon, 2025)

Normatively, the legal framework for rehabilitation in Indonesia is regulated by various instruments, including Articles 54, 55, and 103 of Law Number 35 of 2009 concerning Narcotics, and is reinforced by Supreme Court Circular Letter Number 4 of 2010 and the 2014 Joint Regulation of 7 Institutions concerning the Management of Narcotics Addicts, which regulates integrated assessment mechanisms. (Hidayatun, 2020) However, the phrase "mandatory rehabilitation" in Article 54 lacks operational legal criteria, thereby creating ambiguity about who is entitled or obliged to be rehabilitated, when rehabilitation should be granted, and on what grounds the decision is made. (Fitri, 2020) As a result, textually imperative norms lose their operational power in practice because they lack concrete, measurable legal indicators.

This problem is increasingly evident in law enforcement practices, where the discretion of law enforcement officials, including investigators, prosecutors, and judges, plays a dominant role in determining whether an abuser will be rehabilitated or sentenced to prison. In many cases, abusers are charged with possession of articles such as Article 111 or Article 112 of Law Number 35 of 2009 concerning Narcotics, even though the evidence found is relatively small and indicates personal use. (Salman, 2026) This creates a significant disparity in decisions between one case and another with similar characteristics, while also demonstrating the dominance of a punitive approach in the practice of narcotics criminal justice. Rehabilitation, in many cases, is merely a formality or even ignored, thereby contradicting the law's normative spirit. (Laksono, 2024)

The absence of clear legal criteria for mandatory rehabilitation is a major source of legal uncertainty, due to the lack of standard parameters regarding the amount of evidence, the results of medical and social assessments, or the level of dependency that can serve as an objective basis for legal decision-making. This situation has implications for the criminalization of users, violations of the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, and substantive injustice in law enforcement. (Parindo, 2025) The failure to implement mandatory rehabilitation has also resulted in an increase in the number of drug convicts, which significantly contributes to overcrowding in correctional institutions, the low effectiveness of rehabilitation as a recovery effort, and high rates of recidivism, ultimately demonstrating

the failure of the penal system to achieve its rehabilitative and preventive goals. (Pinem, 2023)

Furthermore, the lack of synchronization between law enforcement agencies and related institutions, such as the National Narcotics Agency, the Police, the Prosecutor's Office, and the Courts, in determining and implementing rehabilitation further exacerbates the unclear criteria. Differing institutional perspectives, weak coordination within the integrated assessment mechanism, and sectoral egos result in the absence of a single standard that can serve as a shared reference (Alfarisi, 2025). From a criminal law perspective, this situation also demonstrates conceptual weaknesses in the formulation of mandatory rehabilitation, particularly regarding its position within the penal system, whether as a criminal offense, an action (*maatregel*), or a hybrid form within the double-track system. Therefore, reformulating the legal criteria for mandatory rehabilitation is urgently needed to ensure legal certainty, justice, and the effectiveness of the criminal justice system. This is done through the formulation of objective, measurable, and integrated legal parameters across institutions, thereby restoring rehabilitation's function as a primary instrument in handling drug abuse in Indonesia.

## **Methodology**

This research employs a normative juridical research method that focuses on legal norms as a coherent system, with an emphasis on analyzing the legal rules governing rehabilitation for drug abusers in the Indonesian criminal justice system. The approach employed includes a statutory approach and a conceptual approach. The statutory approach is conducted by examining various relevant laws and regulations, such as Law Number 35 of 2009 concerning Narcotics, the 1945 Constitution of the Republic of Indonesia, and various implementing regulations, such as Supreme Court Circular Letter Number 4 of 2010 and the Joint Regulation of 7 Institutions of 2014 concerning the Management of Narcotics Addicts. This approach aims to identify unclear norms, regulatory inconsistencies, and legal gaps related to the legal criteria for mandatory rehabilitation. Meanwhile, the conceptual approach is used to analyze basic concepts in criminal law such as the theory of punishment, the double track system, the principle of legal certainty, and the concept of rehabilitation from a health and legal perspective, thus enabling researchers to build comprehensive legal arguments in formulating a clearer, more systematic, and more applicable legal criteria model for handling drug abusers in Indonesia.

## **Result and Discussion**

### **Normative Construction of Mandatory Rehabilitation for Drug Abusers in the Indonesian Legal System**

The normative construction of mandatory rehabilitation for drug abusers in the Indonesian legal system has essentially gained strong legitimacy in Law Number 35 of 2009 concerning Narcotics, particularly through Article 54, which explicitly states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This provision demonstrates a shift in the legal paradigm from a punitive approach to a rehabilitative one, where the state views drug abusers not solely as criminals but also as individuals in need of recovery. Furthermore, Article 55 stipulates the obligation for parents

or guardians of underage drug addicts to report to designated institutions for treatment and/or care, emphasizing the preventive and protective dimensions of rehabilitation arrangements. However, although the norm explicitly uses the phrase "mandatory," the law does not provide clear legal criteria regarding the parameters for categorizing someone as an addict or victim of abuse who is entitled to rehabilitation. (Simbolon, "Penalty and Rehabilitation for Drug Dealers and Abusers," 2025)

This normative construction is also reinforced by Article 103 paragraph (1) letters a and b of Law Number 35 of 2009 concerning Narcotics, which authorizes judges to decide or determine that drug addicts undergo treatment and/or care through rehabilitation, whether or not they are proven guilty of committing a drug crime. This provision conceptually positions rehabilitation as an instrument that can stand outside the framework of conventional punishment, while demonstrating flexibility within the narcotics criminal justice system. However, this flexibility creates problems when it is not accompanied by clear normative guidelines, leaving judges with wide room for interpretation in deciding whether to implement rehabilitation, ultimately leading to disparities in decisions. (Husin, 2025)

From a constitutional perspective, mandatory rehabilitation regulations are firmly grounded in the 1945 Constitution of the Republic of Indonesia, specifically Article 28H paragraph (1), which guarantees the right of every person to obtain health services, and Article 28D paragraph (1), which guarantees the right to fair legal certainty. In this context, rehabilitation for drug abusers can be understood as both a form of fulfilling the right to health and an instrument to ensure fair and proportional legal treatment. However, the lack of clarity in the legal criteria for implementing rehabilitation may violate the principle of legal certainty, as individuals with similar conditions may be treated differently in judicial practice, thereby giving rise to substantive injustice. (Anggara, 2026)

In addition to laws, the normative construction of rehabilitation is also regulated by judicial and administrative policy instruments, such as Supreme Court Circular Letter Number 4 of 2010, which provides guidelines for judges in placing drug abusers in rehabilitation institutions, and the 2014 Joint Regulation of 7 Institutions concerning the Handling of Narcotics Addicts, which regulates an integrated assessment mechanism by a team consisting of law enforcement and medical personnel. Although these two instruments are intended to clarify the implementation of rehabilitation, in practice, disharmony and inconsistencies persist, primarily due to their lack of legal equivalents and their non-absolute binding in the judicial process. This often leads to these guidelines being ignored or inconsistently applied by law enforcement officials. (Manik, 2025)

Conceptually, the position of rehabilitation within the Indonesian penal system has also generated debate, particularly over whether it is a form of punishment, an act (*maatregel*), or part of a dual system (double-track system). Referring to Article 103 of Law Number 35 of 2009 concerning Narcotics, rehabilitation is characterized as an action because it is oriented toward recovery rather than retribution. However, in practice, rehabilitation is often presented as an alternative to criminal punishment or even as part of the criminal sanction itself, thereby creating conceptual ambiguity. This uncertainty leads to

inconsistencies in the application of the law and difficulties in determining objective criteria for granting rehabilitation. (Siregar, 2026)

The normative construction of mandatory rehabilitation in the Indonesian legal system demonstrates a tension between progressive norms and their still-problematic implementation. On the one hand, the provisions of Law Number 35 of 2009 concerning Narcotics have provided a strong legal basis for the implementation of rehabilitation as the primary approach in handling drug abusers. However, the lack of clear legal criteria, disharmony between regulations, and conceptual weaknesses in the criminal justice system prevent this norm from being effectively implemented. Therefore, a comprehensive reformulation of the legal criteria for mandatory rehabilitation is necessary to ensure legal certainty, justice, and effectiveness in the Indonesian narcotics criminal justice system.

### **Problems in Determining Mandatory Rehabilitation in Narcotics Criminal Justice Practice**

The problem of determining mandatory rehabilitation in narcotics criminal justice practice in Indonesia cannot be separated from the dominant use of discretion by law enforcement officials at every stage of the judicial process, from investigation to court decision. In practice, although Law Number 35 of 2009 concerning Narcotics, through Article 54, explicitly states that drug addicts and victims of abuse are required to undergo rehabilitation, its implementation relies heavily on the subjective judgment of investigators, prosecutors, and judges. This discretion is often not grounded in clear legal parameters but rather in practical considerations and officials' individual perceptions, creating room for inconsistencies in the law's application. Empirically, many cases demonstrate that drug abusers who should be rehabilitated are instead prosecuted as ordinary criminals and ultimately face imprisonment.

One major problem in practice is the tendency of law enforcement officials to apply possession articles, such as Articles 111 and 112 of Law Number 35 of 2009 concerning Narcotics, to drug abusers, even though in many cases the evidence found is small in quantity and indicates personal use. These articles carry severe criminal penalties and do not explicitly provide for rehabilitation as Article 127 does, so users are often positioned as perpetrators of serious crimes. Empirically, this practice is driven by a law enforcement orientation that still emphasizes a repressive approach and institutional performance targets that emphasize prosecution over rehabilitation. As a result, there is over-criminalization of users who, in essence, should be placed within a rehabilitative framework.

Furthermore, inconsistencies in the application of rehabilitation are evident in disparities in court decisions in cases with similar characteristics. In some decisions, judges utilize the authority stipulated in Article 103 paragraph (1) letters a and b of Law Number 35 of 2009 concerning Narcotics to impose rehabilitation, but in other cases with nearly identical circumstances, the defendant is sentenced to prison. Empirically, this demonstrates the lack of a standard used by judges in determining rehabilitation, leaving decisions highly dependent on individual interpretation. This disparity not only violates the principle of legal certainty but also creates substantive injustice for drug abusers.

Another significant problem is the weakness of the integrated assessment mechanism as stipulated in the 2014 Joint Regulation of 7 Institutions concerning the Handling of Narcotics Addicts, which should serve as an objective basis for determining eligibility for rehabilitation. In practice, integrated assessments are often not carried out optimally or even ignored, especially during the investigation stage. Empirically, there are limited resources, a lack of coordination between institutions, and differing perceptions regarding the urgency of assessments, which means that assessment results are not always used as a reference in the law enforcement process. Furthermore, in some cases, assessments are conducted as a formality without an in-depth analysis of the perpetrator's dependency status, thus failing to provide a strong basis for rehabilitation decisions.

Lack of synchronization between law enforcement agencies is also a significant factor exacerbating this problem. The National Narcotics Agency, the Police, the Prosecutor's Office, and the Courts often have different approaches to handling drug abuse, stemming from differences in function, authority, and institutional orientation. Empirically, coordination between agencies in implementing integrated assessments and determining case management policies remains weak, resulting in inconsistent decisions. Sectoral egos and a lack of integrated information systems also exacerbate the situation, preventing the creation of a single standard that can serve as a common guideline for determining rehabilitation.

All of these problems ultimately stem from one main root problem: the lack of clear legal and operational criteria for determining mandatory rehabilitation for drug abusers. The absence of standard parameters for the amount of evidence, assessment results, and level of dependency leaves law enforcement officers with a very broad range of interpretation, which creates legal uncertainty and is contrary to Article 28D, paragraph (1), of the 1945 Constitution of the Republic of Indonesia. Empirically, this condition not only encourages the criminalization of users but also contributes to the increasing number of drug convicts in correctional institutions, which ultimately indicates the failure of the criminal justice system in achieving rehabilitative goals. Therefore, a comprehensive reformulation of legal criteria is needed to overcome these problems and create a fairer, more effective narcotics-handling system.

### **Reformulation of Legal Criteria for Mandatory Rehabilitation for Drug Abusers in the Indonesian Criminal Justice System**

Reformulation of the legal criteria for mandatory rehabilitation for drug abusers must begin with a reaffirmation of the normative mandate of Law Number 35 of 2009 concerning Narcotics, specifically Articles 54, 55, and 103, by providing operational legal parameters that are not open to multiple interpretations. Concretely, this requires changes, or at least authoritative interpretations, through implementing regulations at the level of government regulations, or even a revision of the law that establishes explicit criteria for who is required to be rehabilitated. These criteria should include a clearer definition of "addict" and "victim of abuse," as well as legal indicators that can be objectively tested in court. A concrete step is to develop new norms that bind all law enforcement officials to prioritize rehabilitation for users with certain characteristics, eliminating the need for discretion.

Furthermore, the reformulation should include establishing quantitative evidence-based parameters to distinguish between users and dealers. In current practice, the lack of clear boundaries often results in users being charged under Articles 111 or 112 of Law Number 35 of 2009 concerning Narcotics, even though the evidence indicates personal use. Therefore, concrete steps are needed to establish a binding national threshold, for example, through a Supreme Court regulation or a revision of Supreme Court Circular Letter Number 4 of 2010, clarifying the classification of narcotics quantities for personal consumption. This determination must be based on scientific studies and international practice, so that it can serve as an objective measuring tool for investigators, prosecutors, and judges in determining whether an individual is eligible for rehabilitation.

Reformulation must also strengthen the position and quality of integrated assessment as the primary instrument in determining rehabilitation. Although stipulated in the 2014 Joint Regulation of 7 Institutions concerning the Handling of Narcotics Addicts, in practice, assessment is often a formality and is not used as the primary basis for decision-making. Therefore, concrete steps are needed in the form of a legal obligation requiring an integrated assessment before determining a suspect's legal status, and making the assessment results binding evidence in the judicial process. In addition, it is necessary to establish uniform national assessment standards, increase the capacity of medical personnel and psychologists, and digitize the assessment system so that it can be accessed in an integrated manner by all law enforcement officials.

From an institutional perspective, reformulation must focus on strengthening integration among law enforcement agencies and related institutions, such as the National Narcotics Agency, the Police, the Prosecutor's Office, and the Courts. Concrete steps that can be taken include establishing an integrated coordination system based on binding regulations, including a mandatory case conference mechanism in every drug abuse case to determine whether a suspect is eligible for rehabilitation. Furthermore, information systems integration between institutions is needed so that assessment data, use history, and previous convictions can be accessed in real time, thereby reducing the potential for discrepancies in assessments. This strengthening must also be accompanied by regular monitoring and evaluation of officers' performance in implementing rehabilitation.

From a criminal justice system perspective, reformulation must emphasize rehabilitation's position within a dual-track system that equates actions (*maatregel*) with criminal penalties. This is crucial to avoid ambiguity in the application of Article 103 of Law Number 35 of 2009 concerning Narcotics, so that rehabilitation is no longer viewed as a secondary alternative but rather as the primary response to drug abuse. A concrete step that can be taken is to include explicit provisions in legislation that make rehabilitation mandatory for certain categories and replace imprisonment. Furthermore, sentencing guidelines for judges need to be updated to prioritize rehabilitation in drug use cases.

Reformulation of the legal criteria for mandatory rehabilitation must be based on the constitutional principles of the 1945 Constitution of the Republic of Indonesia, specifically Article 28D paragraph (1) concerning legal certainty and Article 28H paragraph (1) concerning the right to health. Concrete implementation of this principle involves ensuring

that every drug abuser receives consistent, fair, and recovery-oriented legal treatment. Furthermore, judicial and non-judicial oversight mechanisms are needed to ensure that law enforcement officers do not deviate from the established criteria. Thus, this reformulation will not only yield a more systematic and applicable legal framework but also address empirical issues and encourage the transformation of the narcotics criminal justice system toward a more humane and effective approach.

## Conclusion

Based on the overall discussion, it can be concluded that the normative construction of mandatory rehabilitation for drug abusers in Law Number 35 of 2009 concerning Narcotics essentially contains a progressive orientation that positions rehabilitation as the primary instrument in treating drug abusers, as reflected in Articles 54, 55, and 103. However, this norm is not yet supported by clear and operational legal criteria, resulting in various problems in practice, including the dominance of official discretion, the use of ownership articles such as Articles 111 and 112 against users, disparities in sentencing, and the weak implementation of integrated assessments as stipulated in the 2014 Joint Regulation of 7 Institutions concerning the Management of Drug Addicts. This situation creates legal uncertainty that contradicts the principles of the 1945 Constitution of the Republic of Indonesia, particularly Article 28D, paragraph (1), and results in the criminalization of users who should receive rehabilitation. It also demonstrates the criminal justice system's failure to achieve rehabilitative goals and substantive justice.

In this regard, it is recommended that a comprehensive reformulation of the legal criteria for mandatory rehabilitation be undertaken by creating or revising legislation that establishes objective and measurable parameters, including quantitative limits on evidence, binding medical and social assessment results, levels of dependency, and the individual circumstances of the perpetrator. Furthermore, it is necessary to strengthen the integrated assessment mechanism by making it mandatory prior to prosecution, and to improve coordination and integration among law enforcement agencies through a standardized, data-driven system. Reforms should also include affirming the position of rehabilitation within the double-track system as the primary treatment for drug abusers, not merely an alternative to criminal punishment. Thus, through these concrete steps, it is hoped that a narcotics management system will be created that provides greater legal certainty, upholds human rights, and is effective in addressing drug abuse sustainably.

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