



Critical Juridical Analysis of Criminal and Medical Boundaries in the Handling of Narcotics Addicts in Indonesia

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Abstract: *The drug problem in Indonesia constitutes a complex and multidimensional phenomenon, intersecting issues of criminal justice and public health. The handling of drug addicts remains characterized by a persistent dichotomy between punitive legal approaches and therapeutic interventions, which often results in legal uncertainty, inconsistent law enforcement practices, and enduring social stigmatization. This study aims to analyze the regulatory framework governing the treatment of drug addicts in Indonesia and to formulate an integrated model that reconciles legal accountability with health-oriented recovery. This research employs a normative juridical (doctrinal) method, relying on a comprehensive literature review and qualitative analysis of primary and secondary legal materials. These include statutory regulations, Supreme Court Circular Letters (SEMA), prosecutorial guidelines, as well as institutional policies issued by the National Narcotics Agency (BNN) and the Indonesian National Police (Polri). The analytical approach focuses on identifying normative inconsistencies and evaluating the extent to which existing regulations support a rehabilitative paradigm. The findings indicate that the current legal framework*

formally adopts a dual-track system, recognizing both criminal sanctions and medical-social rehabilitation as legitimate responses to drug abuse. However, its implementation remains fragmented and lacks effective inter-institutional coordination. In response, this study proposes an integrated treatment model that incorporates diversified sentencing mechanisms, restorative justice principles, and synergistic coordination across legal, medical, and social sectors. In conclusion, the proposed model offers a more balanced and holistic approach to drug policy by reducing over-criminalization, enhancing rehabilitation outcomes, and strengthening legal certainty. This integrative framework is expected to contribute to a more humane and effective system for addressing drug addiction in Indonesia.

Keywords: *Airspace sovereignty; Drone licensing; Drone operation regulations; Flight safety; Legal effectiveness; Normative juridical research; Security governance.*

Introduction

The issue of narcotics in Indonesia has become a complex and multidimensional problem, not only affecting the aspect of criminality but also public health. The handling of narcotics addicts has long been situated at the intersection between a criminal approach (punishment) and a medical approach (rehabilitation), thereby creating normative and implementation dilemmas in efforts to achieve justice and effective recovery. Normatively, Indonesian law has provided space for rehabilitation through Law Number 35 of 2009 concerning Narcotics (Narcotics Law), the new Criminal Code (KUHP), and regulations

issued by the Supreme Court as forms of legal policy accommodating a health-oriented approach. Rehabilitation is considered more proportional because it restores users from the disease of dependency while simultaneously reintegrating them into their social functions (Malik & Wardhani-Dandapala, 2025). However, in practice, the dominance of imprisonment compared to rehabilitation for narcotics addicts still frequently occurs, indicating legal uncertainty and inconsistency in the application of regulations (Sari, Sinaga, & Lumban Gaol, 2020).

The Narcotics Law explicitly differentiates the regulation between the eradication of illicit narcotics trafficking and the handling of narcotics abusers and addicts (Muqorobin, 2025). Article 1 point 13 of the Narcotics Law defines a “Narcotics Addict as a person who uses or abuses narcotics and is in a condition of dependence on narcotics, either physically or psychologically” (Edyyono et al., 2017). This definition indicates that addicts are entitled to receive social and medical treatment as regulated in Article 54, Article 103, and other provisions in the Narcotics Law that prioritize a health-oriented approach (Edyyono et al., 2017). However, on the other hand, several provisions in the Narcotics Law such as Article 111 paragraph (1) and Article 112 paragraph (1) are often referred to as “rubber articles” because they can ensnare narcotics abusers in imprisonment even when the use is for personal consumption (Sari, Sinaga, & Lumban Gaol, 2020). Phrases such as “possessing, storing, controlling, and providing” do not clearly distinguish between traffickers and abusers, thereby allowing abusers to be easily subjected to imprisonment, even though they should be positioned as victims (Sari, Sinaga, & Lumban Gaol, 2020).

The legal dynamics in Indonesia have become increasingly complex with the enactment of the new Criminal Code (Law Number 1 of 2023), which will come into force on 2 January 2026 as part of the national criminal law reform. This new Criminal Code introduces a shift in the paradigm of punishment from mere retribution toward community protection, recovery, and offender rehabilitation by emphasizing the objective of correctional justice. Provisions regarding narcotics crimes in the new Criminal Code are contained in Article 609, which shares similar elements with Article 112 of the Narcotics Law, namely “Any person who without authority possesses, stores, controls, or provides” narcotics, as well as Article 105, which regulates rehabilitation measures for narcotics defendants (LBH Masyarakat, 2023). However, these provisions do not automatically reduce the authority of law enforcement officials to arrest and detain narcotics users, raising concerns that the practice of imprisonment will persist as it does today. Furthermore, Article 622 of the new Criminal Code stipulates the revocation and invalidation of Articles 111 through 126 of the Narcotics Law, prompting the government to propose a Draft Law on Criminal Adjustment to prevent a legal vacuum and to adjust the minimum sentencing limits for users as well as fine categories (Thea, 2025).

The concept of restorative justice becomes relevant in the context of handling narcotics addicts because it is oriented toward recovery and the social reintegration of offenders. The new Criminal Code adopts a corrective justice paradigm that shifts toward recovery and rehabilitation, thereby aligning with a health-oriented approach. Nevertheless, the implementation of restorative justice in narcotics cases still requires

further elaboration through the synchronization of legal norms and judicial practices. In imposing criminal sanctions, judges consider aggravating and mitigating circumstances, the Supreme Court Circular Letter Number 4 of 2010, the assessment results of the National Narcotics Agency, and trial facts in accordance with Article 184 of the Criminal Procedure Code (KUHAP) (Chairunissa, Hendrawati, & Faturohman, 2025). Expert testimony becomes a crucial element in determining whether the defendant qualifies as a narcotics addict or not, which directly affects the choice between punishment and rehabilitation.

Although the expectation that drug users will no longer be punished but instead rehabilitated under the new Criminal Code has been voiced by the Coordinating Minister for Law, Human Rights, Immigration, and Corrections, Yusril Ihza Mahendra, in 2024 (Rastika, 2024), the reality in practice still demonstrates significant challenges in its implementation. In April 2023, the Surabaya District Prosecutor's Office rehabilitated six suspects in narcotics cases through a restorative justice approach based on the Guidelines of the Attorney General of the Republic of Indonesia Number 18 of 2021, which emphasize rehabilitation for victimless crimes (Kejaksaan Tinggi Jawa Timur, 2025). The suspects were rehabilitated at the NAPZA Rehabilitation Center "Mitra Adhyaksa" of Menur Mental Hospital, Surabaya, as a form of integrated recovery between legal and medical aspects. However, there remain many cases in which narcotics abusers end up in prison due to the absence of expert testimony confirming the defendant's dependency status or because of administrative obstacles such as Rehabilitation Application Letters and Rehabilitation Recommendation Letters. Recent reports also indicate that some imprisoned users experience recidivism or even escalate into becoming traffickers, suggesting that the existing system has not fully produced either a deterrent effect or sustainable recovery (Prayitno, 2025).

This situation further emphasizes the urgent need for harmonization between the Narcotics Law and the new Criminal Code, as pursued by the National Narcotics Agency (BNN RI) through the acceleration of the alignment of the Draft Narcotics Law in order to prioritize a health-oriented approach. Therefore, a critical study of the boundaries between criminal and medical approaches in the handling of narcotics addicts becomes essential to ensure legal certainty and the protection of human rights. Based on the background described above, it becomes important to formulate several research questions, namely how the regulatory boundaries between the criminal approach (punishment) and the medical approach (rehabilitation) are currently implemented in the handling of narcotics addicts in Indonesia. Furthermore, it is necessary to formulate how an integrated handling model that optimizes both criminal and medical aspects can be realized in order to achieve more effective justice and recovery for narcotics addicts in Indonesia.

Method

This study employs a normative legal research method, often referred to as doctrinal legal research. Normative legal research examines law as a set of norms or rules applicable within society, thereby focusing on systematic analysis of the principles, structure, and synchronization of statutory regulations. Its objective is to discover the law as it ought to be

(*das sollen*), or to identify the correspondence truth and coherence truth of a legal product (Soekanto & Mamudji, 2015). This approach positions law as a normative framework that must be analyzed prescriptively in order to provide constructive arguments and recommendations regarding the issues under investigation.

This research employs several approaches within the framework of normative legal research, namely the statute approach and the conceptual approach. The statute approach is conducted by examining all regulations relevant to the issue under study, including Law Number 35 of 2009 concerning Narcotics, Law Number 1 of 2023 concerning the National Criminal Code, as well as other implementing regulations (Marzuki, 2021). The conceptual approach refers to views and doctrines within legal science concerning punishment, rehabilitation, restorative justice, legal protection, and human rights as the theoretical foundation for the analysis (Marzuki, 2021). By combining these two approaches, this research seeks to examine both the normative boundaries and the conceptual construction of the handling of narcotics addicts within the Indonesian legal system.

The type of data used in this research is secondary data obtained from literature sources and official documents. Primary legal materials consist of binding statutory regulations, such as the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2009 concerning Narcotics, Law Number 1 of 2023 concerning the Criminal Code, Government Regulation Number 25 of 2011, and Regulation of the National Narcotics Agency Number 6 of 2022 (Soekanto & Mamudji, 2015; Marzuki, 2021). Secondary legal materials include legal textbooks, national scientific journals, research findings, and reports from research institutions that provide explanations of primary legal materials (Marzuki, 2021). Tertiary legal materials, in the form of legal dictionaries and encyclopedias, provide guidance and additional explanations regarding primary and secondary legal materials in order to strengthen conceptual understanding (Marzuki, 2021).

The data collection technique used in this research is library research, conducted systematically and in a structured manner. Data collection is carried out by searching, reading, identifying, inventorying, and reviewing primary, secondary, and tertiary legal materials relevant to the research problem (Soekanto & Mamudji, 2015). The collected data are then classified based on the focus of the problem to facilitate the analysis process. The data processing technique employed is qualitative analysis, by examining the alignment, consistency, and effectiveness of legal norms as well as their implementation in the practice of handling narcotics addicts. Based on the results of this analysis, conclusions are drawn to answer the research questions, and constructive and applicable policy recommendations are proposed.

Results and Discussion

Regulation of the Boundaries Between the Criminal Approach (Punishment) and the Medical Approach (Rehabilitation) in the Current Practice of Handling Narcotics Addicts in Indonesia

The problem of narcotics constitutes a complex and multidimensional issue in Indonesia. Normatively, the state does not merely apply a repressive approach in the form

of criminal punishment, but also a humanistic approach through health rehabilitation for narcotics addicts. Law Number 35 of 2009 concerning Narcotics (Narcotics Law) recognizes medical and social rehabilitation as forms of legal protection for narcotics addicts, which are positioned simultaneously within criminal law norms and public health norms. However, its implementation in practice frequently encounters challenges, particularly concerning the boundaries between when the criminal approach should be applied and when rehabilitation should be prioritized (Ahmad Jundy Venerdi & Ibrahim Fikma Edrisy, 2025).

In the practice of handling narcotics cases in Indonesia, it is essential to understand the fundamental distinction between narcotics addicts and narcotics abusers. An addict is an individual who has experienced physical and/or psychological dependence on narcotic substances and therefore requires medical treatment and rehabilitation for recovery, whereas an abuser is an individual who uses narcotics without dependency, which may pose legal risks but has not yet resulted in chronic health disorders. This distinction forms the basis for determining the boundaries between the application of the criminal approach (punishment) and the medical approach (rehabilitation). Legally, the Narcotics Law places addicts on a rehabilitation pathway that may replace or accompany criminal punishment, while abusers are generally still subject to criminal sanctions if proven to have used narcotics for personal use, although they may still have the option of rehabilitation if they meet certain criteria (Articles 54, 55, and 127 of the Narcotics Law). These provisions reflect the principle of the dual track system, in which criminal and medical approaches operate in parallel, with the objective of minimizing unnecessary criminalization while emphasizing the health recovery of addicts.

Regulation in Law Number 35 of 2009 concerning Narcotics

Law Number 35 of 2009 concerning Narcotics constitutes the primary legal instrument that establishes the foundation of a dual approach in the handling of narcotics addicts, namely the criminal approach and the medical approach through rehabilitation. Normatively, this law does not merely position addicts as perpetrators of criminal offenses, but also as individuals experiencing health disorders resulting from dependence on addictive substances (Romli Atmasasmita, 2018).

This is explicitly reflected in Article 54 of the Narcotics Law, which stipulates that narcotics addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation. This provision demonstrates that the state recognizes narcotics addiction as a public health issue rather than merely a criminal matter (Indonesia, 2009). Furthermore, Article 55 of the Narcotics Law obliges addicts or their families to report themselves to institutions appointed by the government. This mandatory reporting mechanism is intended to prevent the criminalization of addicts who voluntarily seek medical assistance. Within this framework, rehabilitation is positioned as a preventive and curative instrument rather than a repressive one (Indonesia, 2009).

However, Article 127 of the Narcotics Law still regulates criminal sanctions for narcotics abusers who use narcotics for personal purposes. This provision frequently gives rise to interpretative problems because, although the rehabilitation norm is recognized, law

enforcement practices still tend to prioritize imprisonment. Therefore, Article 103 of the Narcotics Law becomes a key provision granting judges the discretion to order rehabilitation either as part of a criminal sentence or as a substitute for imprisonment (Nelvitia Purba, Mukidi, & Muhlizar, 2022).

Thus, the Narcotics Law adopts a double track system, in which criminal sanctions and treatment sanctions (rehabilitation) operate side by side. Nevertheless, the lack of clear boundaries between the two in practice continues to be a source of debate and legal uncertainty. The regulation of criminal and medical boundaries is governed through a combination of the Narcotics Law, the Criminal Code, Supreme Court Circular Letters (SEMA), and other implementing regulations. These boundaries stipulate that addicts with chronic health conditions or certain levels of dependency must be directed toward medical rehabilitation, whereas criminal sanctions are applied only when there are elements of trafficking, distribution, or other serious violations. This emphasizes that rehabilitation is not merely a lenient alternative but constitutes a legal obligation for law enforcement officials and investigators, particularly for individuals who are factually addicts rather than dealers.

Regulation in the New Criminal Code (Law Number 1 of 2023)

The enactment of the New Criminal Code through Law Number 1 of 2023 introduces a new paradigm within the national penal system. One of the main characteristics of the new Criminal Code is the strengthening of the *ultimum remedium* principle, whereby imprisonment is positioned as a last resort after non-penal measures have proven ineffective. Although narcotics offenses continue to be regulated specifically under the Narcotics Law (*lex specialis*), the new Criminal Code provides a strong philosophical foundation for the application of rehabilitation as a more humane form of punishment. The new Criminal Code expands the concept of treatment sanctions, which may include care, rehabilitation, or guidance, particularly for offenders who suffer from mental disorders or dependency (Barda Nawawi Arief, 2020).

In the context of narcotics addicts, this provision reinforces the argument that imprisonment is not always relevant because it does not resolve the underlying issue of dependency. The new Criminal Code is also aligned with the principle of restorative justice, which emphasizes the recovery of offenders and society rather than mere retribution (Muladi, 2015). Thus, although it does not explicitly regulate narcotics, the new Criminal Code functions as a normative framework that reinforces rehabilitation as a legitimate and rational alternative within the modern criminal justice system.

Regulation through Supreme Court Circular Letters (SEMA)

The Supreme Court of the Republic of Indonesia has attempted to bridge the normative gap between formal legislation and courtroom realities in narcotics cases through a series of Supreme Court Circular Letters (SEMA). These circulars have developed over time as internal guidelines for judges to uphold substantive justice in cases involving narcotics addicts or abusers (MariNews, 2026).

1. SEMA Number 4 of 2010

This SEMA represents the Supreme Court's initial step in addressing disparities in sentencing against narcotics addicts. SEMA No. 4/2010 regulates technical requirements enabling judges to place addicts or abusers in medical or social rehabilitation institutions rather than imposing imprisonment. This mechanism was designed to implement Article 103 of the Narcotics Law proportionally and based on the legal facts revealed during trial proceedings.

Examples of technical provisions include: the defendant being caught in flagrante delicto while using narcotics; the amount of evidence within certain gram limits; laboratory test results or medical certificates indicating addiction status; and the absence of evidence of involvement in illicit trafficking. This SEMA affirms that rehabilitation may serve as an alternative even when the initial indictment concerns provisions carrying criminal sanctions, provided that trial facts demonstrate that the defendant is in fact an abuser or addict (MariNews, 2026).

2. SEMA Number 3 of 2015

SEMA No. 3/2015 further expands the interpretative space for judges in adjudicating narcotics cases. This circular recommends that judges examine and decide cases based on the facts revealed during trial proceedings as stated in the Public Prosecutor's indictment. In the context of narcotics, if trial evidence demonstrates that the defendant is merely an abuser even if the indictment includes provisions carrying special minimum penalties such as Article 111 or Article 112 of the Narcotics Law judges are granted the discretion to deviate from these minimum sentencing provisions in order to uphold contextual justice. This SEMA not only strengthens the capacity of judges to fill legal gaps but also demonstrates the Supreme Court's consistency in responding to the disproportionality of criminal sanctions in cases more appropriately addressed through rehabilitation (MariNews, 2026).

3. SEMA Number 1 of 2017

SEMA No. 1/2017 continues the function of the previous circulars while expanding its applicability even when the defendant is not caught in the act of using narcotics. The discovery of relatively small quantities of narcotics along with positive urine test results is considered sufficient for judges to categorize the defendant as an abuser and to consider rehabilitation or lighter criminal sanctions that prioritize justice over formalism (MariNews, 2026). Thus, SEMA No. 1/2017 broadens the range of evidence that may serve as the basis for judges to determine the status of defendants, not solely based on the initial indictment but also on the factual and contextual circumstances revealed during trial proceedings.

4. SEMA Number 3 of 2023

SEMA No. 3/2023 represents the most recent and comprehensive development, strategically consolidating all formulations resulting from the Supreme Court Chamber Plenary Meetings from 2012 to 2023 into a unified guideline applicable across all levels of the judiciary. In the context of narcotics cases, SEMA No. 3/2023 stipulates that if a

defendant is indicted under provisions such as Article 114 paragraph (1) of the Narcotics Law (for example, small-scale buying and selling), judges may still deviate from the special minimum imprisonment penalties provided that the technical requirements stipulated in previous SEMAs (4/2010, 3/2015, and 1/2017) are fulfilled. This reflects the consolidation of a more flexible and justice-oriented legal approach, allowing judges to choose between imprisonment, modified sentencing, or rehabilitation based on substantive justice and the circumstances of the case. SEMA No. 3/2023 establishes the principle that previous Supreme Court regulations no longer stand independently but form an integrated body of judicial guidance in handling narcotics cases. This provides a stronger foundation for judges to reconcile the principle of legality with the principle of substantive justice in court proceedings (MariNews, 2026).

Conclusion

Based on the findings of this study, the regulation of the boundaries between criminal and medical approaches in handling narcotics addicts in Indonesia reflects a formally recognized dual track system that, however, continues to encounter significant implementation challenges. Law Number 35 of 2009 concerning Narcotics provides a juridical foundation for medical and social rehabilitation as forms of legal protection, while punitive provisions such as Article 127 still permit the criminalization of abusers. This normative dualism is further reinforced by the new Criminal Code, which emphasizes the principle of *ultimum remedium* and introduces treatment-oriented sanctions, including rehabilitation, as viable alternatives to imprisonment. Complementary regulations such as Supreme Court Circular Letters (SEMA), the Attorney General's Regulation, National Police Regulation Number 8 of 2021, Government Regulation Number 25 of 2011, and BNN Regulation Number 6 of 2022 have progressively established an operational framework that integrates restorative justice and mandatory reporting mechanisms. Nonetheless, empirical conditions reveal persistent ambiguity in determining the appropriate application of punitive versus rehabilitative measures, thereby hindering the full harmonization of law enforcement objectives and health recovery outcomes. The study further demonstrates that an integrated handling model grounded in sentencing diversification, restorative justice, cross-sectoral collaboration, and systematic monitoring offers a more balanced and humane approach by aligning legal accountability with physical, psychological, and social recovery. This model, operationalized through stages of initial assessment, classification of addiction levels, tailored intervention schemes, and coordinated recovery processes, substantiates rehabilitation as a rational, legitimate, and effective alternative to punishment, while reinforcing the protection of human rights and reducing the risk of over-criminalization. The implications of these findings underscore the necessity for strengthening institutional coordination, enhancing regulatory consistency, and ensuring the effective dissemination and implementation of rehabilitation-oriented policies. For future research, it is recommended to empirically examine the effectiveness of integrated models across different regional contexts, assess the role of institutional capacity and inter-agency coordination in determining outcomes, and explore the long-term impacts of rehabilitation-based

approaches on recidivism and social reintegration, thereby contributing to a more evidence-based and adaptive policy framework.

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