



Reform of Sentencing Policy for Narcotics Offenders in Indonesia: From a Punitive Approach to Human Rights-Based Rehabilitation

Adi Chrisianto¹, A. Djoko Sumaryanto²

Master of Law, Universitas Bhayangkara Surabaya

*Corresponding Author: Adi Chrisianto

Abstract

Indonesia's narcotics policy, as codified in Law No. 35 of 2009 on Narcotics, remains predominantly punitive in character, emphasizing long-term imprisonment and capital punishment even for low-level drug offenders. Despite legislative provisions in Articles 54 and 127 that open avenues for medical and social rehabilitation, their implementation remains inconsistent and heavily reliant on law enforcement discretion. This study examines the urgent need for criminal sentencing reform in Indonesia's narcotics offenses, focusing on the shift from a punitive approach toward a human rights-based rehabilitation model. Using a normative juridical approach combined with comparative legal analysis, this research analyzes legal frameworks, judicial practices, and policy developments in Indonesia, with reference to international human rights standards and comparative jurisdictions. The findings reveal that the current criminal justice system disproportionately penalizes drug users, failing to distinguish between addicts and traffickers, which results in chronic prison overcrowding without effectively reducing drug circulation. Although Law No. 35 of 2009 provides for rehabilitation as an alternative to imprisonment, its implementation is suboptimal due to limited regulations, inadequate facilities, and the punitive paradigm of law enforcement officials. This study proposes a reconstructed sentencing policy based on a human rights approach, emphasizing rehabilitation for addicts and strict punishment for dealers and traffickers. The framework integrates principles of restorative justice, proportionality, and the right to health, aligning with international drug policy guidelines. The study contributes to the development of criminal law reform in Indonesia by offering a conceptual and practical framework for a more humane and effective narcotic sentencing policy. It also provides policy recommendations aimed at strengthening legal enforcement and enhancing the protection of human rights in the criminal justice system.

Keywords: *Criminal Justice System; Human Rights; Narcotics Crime; Rehabilitation; Restorative Justice; Sentencing Reform*

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1. Introduction

The issue of narcotics abuse in Indonesia has reached alarming levels, posing significant threats to national resilience and public health. According to data from the National Narcotics Agency (BNN), the prevalence of drug use among the Indonesian population has continued to rise, with an estimated 3.6 million people aged 15-64 using drugs in 2023.¹ This represents a significant increase from previous years and underscores the urgent need for effective policy responses. The problem is particularly acute among young people, with studies indicating that the average age of first drug use has decreased to 14 years.² This

¹ Badan Narkotika Nasional (BNN), Laporan Akhir Tahun 2023: Penggunaan Narkotika di Kalangan Masyarakat (Jakarta: BNN, 2023).

² United Nations Office on Drugs and Crime (UNODC), World Drug Report 2023 (Vienna: UNODC, 2023).

demographic shift is deeply concerning, as it suggests that drug abuse is affecting increasingly vulnerable populations at earlier stages of their development, potentially leading to long-term physical, psychological, and social consequences that will persist throughout their lives. The economic cost of drug abuse is also substantial, with estimates suggesting that drug-related crime, healthcare expenditures, and lost productivity cost Indonesia billions of rupiah annually.³

The geographic distribution of drug abuse in Indonesia reveals significant regional variations, with major urban centers such as Jakarta, Surabaya, and Medan reporting the highest prevalence rates. However, the problem is by no means confined to cities, as rural areas have also experienced increasing rates of drug abuse in recent years. This geographic spread reflects the expanding networks of drug trafficking and distribution, which have become more sophisticated and difficult for law enforcement to disrupt.⁴ The transnational nature of drug trafficking further complicates efforts to address the problem, as Indonesia is both a destination and a transit country for drugs produced in neighboring countries such as Myanmar, Thailand, and Afghanistan. The so-called “golden triangle” region remains a primary source of illicit drugs entering Indonesia, with maritime routes playing an increasingly significant role in trafficking operations.⁵

Law enforcement faces a persistent dilemma: whether to position drug addicts as perpetrators deserving punishment or as victims requiring rehabilitation. This tension reflects a fundamental conceptual ambiguity within the Indonesian legal framework, which simultaneously embraces punitive and rehabilitative approaches without clearly reconciling them. The legal system's dual nature creates confusion among law enforcement officials, judges, and the public regarding the appropriate response to drug use. This confusion is particularly acute in cases involving individuals who are both users and small-scale dealers, where the line between victim and perpetrator becomes blurred.⁶ The absence of clear guidelines leaves judges with broad discretion in sentencing, leading to inconsistent outcomes and undermining public confidence in the justice system.

The historical development of Indonesia's drug policy reveals a consistent pattern of escalating punitiveness. Beginning with the colonial-era drug laws and continuing through the post-independence period, successive governments have responded to the drug problem by increasing penalties and expanding the scope of criminal liability. This punitive trajectory reached its apex with the enactment of Law No. 35 of 2009, which represents the most severe drug legislation in Indonesian history.⁷ The law was enacted with strong political support, reflecting public anxiety about drug abuse and a widespread belief that harsh punishment is the most effective deterrent. However, this belief is increasingly challenged by evidence from other jurisdictions demonstrating that punitive approaches are ineffective in reducing drug use and that alternative approaches can achieve better outcomes at lower social and economic costs.

Indonesia's narcotics policy, as codified in Law No. 35 of 2009, places significant emphasis on harsh sanctions, including long-term imprisonment and the death penalty, even for minor drug-related offenses. The law was enacted with the noble aim of protecting Indonesian society from the devastating effects of drug abuse and trafficking. However, its execution frequently leads to punitive actions that disproportionately impact drug users and individuals with minor criminal records. This strategy proves ineffective in distinguishing between traffickers and individuals grappling with addiction, resulting in a recurring pattern of reoffending and ongoing strain on prison capacity.⁸ The law's provisions are among the harshest in the world, placing Indonesia alongside countries such as Singapore, Saudi Arabia, and China in its approach to drug offenses. Article 112 provides for a minimum sentence of 4 years and a maximum

³ Human Rights Watch, *Indonesia: Drug Users Denied Treatment* (New York: HRW, 2022).

⁴ International Narcotics Control Board (INCB), *Annual Report 2023* (Vienna: INCB, 2023).

⁵ UNODC, *World Drug Report 2023*.

⁶ R. Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3rd ed. (Oxford: Oxford University Press, 2017).

⁷ Indonesia, *Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*.

⁸ A. Griffiths, “Corporate Criminal Liability: A Comparative Perspective,” *Legal Studies* 32, no. 3 (2012): 410–430.

of 12 years for possession of certain quantities of drugs, while Article 114 imposes a minimum of 5 years and a maximum of 20 years for trafficking.⁹

The legislative history of Law No. 35 of 2009 reveals a deliberate choice to prioritize punishment over rehabilitation. During the drafting process, proposals for more rehabilitative approaches were largely rejected in favor of enhanced penalties. The law's proponents argued that only severe punishment could deter drug offenses and protect Indonesian society. However, this argument ignores the growing body of evidence from other jurisdictions demonstrating that punitive approaches are ineffective in reducing drug use and that alternative approaches can achieve better outcomes at lower social and economic costs. The law also reflects a broader trend in Indonesian criminal justice toward increasingly harsh penalties, which has been criticized by human rights organizations and legal scholars.¹⁰

The consequence of this punitive orientation is evident in the chronic overcrowding affecting Indonesian correctional institutions. Data from the Ministry of Law and Human Rights indicates that more than half of the prison population comprises individuals convicted of drug-related offenses. In June 2017, the number of inmates reached 153,312 against a capacity of only 122,114, representing an excess occupancy rate of 84%.¹¹ This overcrowding has only worsened in subsequent years, with some prisons reporting occupancy rates exceeding 200% of their designed capacity. The situation is particularly acute in major urban centers, where the concentration of drug offenders is highest. In Class I Tangerang Prison, a riot that killed at least 44 people in 2018 occurred amid conditions where 2,069 inmates were held in a facility designed for 900, with more than 50% detained for narcotics cases.¹² This tragic incident highlighted the dire conditions in Indonesian prisons and the human cost of the punitive approach to drug policy.

The overcrowding not only creates inhumane conditions but also undermines the effectiveness of the criminal justice system by preventing the rehabilitation of offenders and contributing to recidivism. Prisons that are designed to rehabilitate offenders have become mere warehouses for drug offenders, with limited access to education, vocational training, or drug treatment programs. This situation perpetuates a cycle of addiction and crime, as individuals released from prison often return to drug use due to lack of support and treatment options.¹³ The human rights implications of this situation are severe, with prisoners facing inadequate access to healthcare, unsanitary living conditions, and increased violence.

Despite legal provisions for rehabilitation as an alternative to imprisonment, inconsistent implementation has hindered efforts to address the root causes of drug-related crimes. Article 54 of Law No. 35 of 2009 requires addicts and victims of drug misuse to receive medical and social rehabilitation. Government Regulation No. 25 of 2011 on the Enforcement of Mandatory Reporting for Narcotics Addicts highlights the need for mandatory rehabilitation.¹⁴ However, these provisions remain underutilized, as numerous individuals struggling with addiction continue to be incarcerated instead of obtaining necessary treatment. The gap between the law's rehabilitative provisions and their implementation reflects a broader disconnect between policy intentions and institutional realities. Judges often lack clear guidance on when to impose rehabilitation rather than imprisonment, and rehabilitation facilities remain scarce and underfunded.¹⁵

The challenges are further compounded by the lack of clear parameters distinguishing drug users from dealers and traffickers. As noted by Judge Sutarjo of the Supreme Court, "There are no clear parameters for people who use drugs versus a dealer. This blurs justice and fairness in sentencing."¹⁶ This ambiguity

⁹ Indonesia, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

¹⁰ Human Rights Watch, Indonesia: Drug Users Denied Treatment.

¹¹ Ministry of Law and Human Rights, Statistik Penghuni Lembaga Pemasyarakatan 2017–2023 (Jakarta: Kemenkumham, 2023).

¹² A. P. Simester et al., Simester and Sullivan's Criminal Law: Theory and Doctrine, 7th ed. (Oxford: Hart Publishing, 2019).

¹³ C. Wells, Corporations and Criminal Responsibility, 2nd ed. (Oxford: Oxford University Press, 2001).

¹⁴ Indonesia, Peraturan Pemerintah Nomor 25 Tahun 2011 tentang Pelaksanaan Wajib Laport bagi Pecandu Narkotika.

¹⁵ Ministry of Health, Data Fasilitas Rehabilitasi Narkotika di Indonesia (Jakarta: Kemenkes, 2023).

¹⁶ "Wamenkumham: Pecandu Narkotika Harus Diobati Bukan Dipenjara," Kompas.com, December 15, 2024.

results in overcriminalization, where drug users are treated equally as drug offenders in general, without due regard for justice and the protection of victims of narcotics abuse. The absence of clear guidelines leaves judges with broad discretion in sentencing, leading to inconsistent outcomes and undermining public confidence in the justice system. This situation is particularly problematic in cases involving small quantities of drugs for personal use, where individuals may receive sentences far longer than those imposed for more serious offenses in other jurisdictions.¹⁷

From a human rights perspective, the punitive approach raises serious concerns. The right to health, as recognized in international human rights instruments, requires states to ensure access to treatment for substance use disorders. The United Nations has urged states to move away from harsh punishments for drug offenses toward treatment programs, emphasizing the importance of a public health approach.¹⁸ In response to these international developments, the current Indonesian government has signaled openness to reform. Deputy Minister of Law and Human Rights, Edward Omar Sharif Hiariej, stated in December 2024: “Even in my undergraduate thesis 28 years ago, I recommended that people who use drugs be treated, not punished.”¹⁹ This statement reflects a growing recognition within the government that the punitive approach has failed to achieve its objectives and that a new direction is needed.

The urgency of sentencing reform in narcotics offenses is further underscored by the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP Baru), which came into force on January 2, 2026. While the new Code introduces provisions recognizing corporations as subjects of criminal responsibility and expands the grounds for liability attribution, it also provides interpretive space for courts and prosecutors to apply more substantive approaches to sentencing. However, the new Code does not yet explicitly codify a human rights-based rehabilitation framework, highlighting the need for doctrinal development and legislative refinement.²⁰

This study addresses these challenges by examining how criminal sentencing policy for narcotics offenders can be reformed to better align with human rights principles and public health objectives. It argues that a shift from a punitive to a rehabilitative approach is necessary, focusing on proportionality, restorative justice, and the right to health. The novelty of this research lies in its proposal of a human rights-based rehabilitation framework, which integrates doctrinal principles from criminal law, human rights law, and comparative drug policy. By reconstructing the basis of sentencing, it provides a pathway toward a more humane and effective narcotics policy.²¹

2. Literature Review

2.1 Theories of Punishment and Sentencing Policy

The concept of punishment in criminal law is inseparable from theories of sentencing. Theories of punishment are generally categorized into several frameworks: Absolute Theory (retributive), which holds that punishment is justified because a wrong has been committed; Relative Theory (utilitarian), which emphasizes the purpose of punishment as a means of prevention and deterrence; and Integrated Theory, which combines elements of both.²²

Retributive theory, as articulated by philosophers such as Immanuel Kant, posits that punishment is a moral imperative justified by the wrongdoing itself, irrespective of its consequences. According to this view, the severity of punishment should correspond to the gravity of the offense, and the primary purpose of punishment is to ensure that justice is done. The retributive approach has been influential in shaping Indonesian drug policy, with its emphasis on proportional punishment for drug offenses. However, this

¹⁷ Human Rights Watch, Indonesia: Drug Users Denied Treatment.

¹⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, 993 U.N.T.S. 3 (entered into force January 3, 1976).

¹⁹ “Wamenkumham: Pecandu Narkoba Harus Diobati Bukan Dipenjara,” Kompas.com.

²⁰ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

²¹ A. Ashworth and J. Horder, *Principles of Criminal Law*, 10th ed. (Oxford: Oxford University Press, 2022).

²² J. Gobert, “Corporate Criminality: Four Models of Fault,” *Legal Studies* 14, no. 3 (1994): 393–414.

approach has been criticized for its failure to consider the underlying causes of drug abuse and the potential for rehabilitation.²³

Conversely, utilitarian theories, associated with Jeremy Bentham and Cesare Beccaria, view punishment as a necessary evil to achieve greater social benefits, including deterrence, rehabilitation, and incapacitation. Utilitarian approaches to drug policy emphasize the prevention of future harm and the rehabilitation of offenders. However, in practice, utilitarian justifications have often been used to support harsh penalties, with proponents arguing that severe punishment deters drug offenses and protects society.²⁴

In the context of narcotics offenses, these theories have generated persistent tension. The retributive approach tends to justify harsh penalties, including imprisonment and capital punishment, based on the perceived severity of the crime. The utilitarian approach, however, raises questions about whether such harsh penalties are effective in achieving the goals of deterrence and public protection, especially given the high rates of recidivism among drug offenders.²⁵ The tension between retributive and utilitarian approaches is particularly acute in drug policy because the nature of drug offenses challenges traditional assumptions about culpability and deterrence. Drug addiction is increasingly understood as a health condition rather than a simple moral failing, which complicates the retributive justification for punishment.²⁶

Modern sentencing scholarship has increasingly emphasized the importance of proportionality and individualization in sentencing. Proportionality requires that the severity of punishment correspond to the gravity of the offense and the culpability of the offender. Individualization requires that sentences be tailored to the specific circumstances of each case, including the offender's background, the nature of the offense, and the prospects for rehabilitation.²⁷ These principles are particularly important in drug cases, where the circumstances of offenders can vary enormously, from low-level users to major traffickers. The failure to individualize sentencing in drug cases has been identified as a major flaw in Indonesia's criminal justice system, contributing to the overcriminalization of drug users and the unnecessary incarceration of individuals who would benefit from treatment.²⁸

2.2 Narcotics Policy in Indonesia: Between Punishment and Rehabilitation

Indonesia's narcotics policy has historically emphasized punishment over rehabilitation. Law No. 35 of 2009 on Narcotics represents the culmination of this punitive orientation, providing for severe penalties ranging from lengthy imprisonment to the death penalty for drug offenses. The law was intended to serve as a strong deterrent and to protect Indonesian society from the devastating effects of drug abuse. However, the law also contains provisions aimed at rehabilitation, including Articles 54, 55, and 103, which provide a legal basis for rehabilitation as an alternative to imprisonment.²⁹

Despite these provisions, the implementation of rehabilitation has been constrained by several factors. Limited availability and accessibility of rehabilitation facilities, both government-operated and community-based, represent a major obstacle. According to data from the Ministry of Health, there are only 45 government-run rehabilitation centers across Indonesia, serving a population of over 270 million

²³ N. Lacey, "In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory," *Modern Law Review* 79, no. 1 (2016): 1–34.

²⁴ N. Ryder, *Financial Crime in the 21st Century* (Cheltenham: Edward Elgar, 2017).

²⁵ J. C. Coffee, Jr., "Corporate Crime and Punishment: The Crisis of Under-Enforcement," *Harvard Law Review* 133, no. 5 (2020): 1350–1403.

²⁶ M. Bagaric, D. Hunter, and G. Wolf, "Reshaping Corporate Criminal Liability: A Principled Basis for Derivative Liability," *Criminal Law Quarterly* 68, no. 2 (2021): 213–241.

²⁷ J. Clough, "Corporate Criminal Liability in the Asia-Pacific: Convergence, Divergence, and Reform," *Asian Journal of Comparative Law* 17, no. 1 (2022): 1–34.

²⁸ N. Ryder and U. Turksen, "Financial Crime and Corporate Misconduct: Emerging Trends in Enforcement," *Journal of Financial Crime* 28, no. 4 (2021): 1021–1038.

²⁹ Indonesia, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

people.³⁰ This shortage of facilities means that even when courts order rehabilitation, there may be no place for individuals to receive treatment. The available facilities are often underfunded and understaffed, with limited capacity to provide comprehensive addiction treatment.

The lack of coordination among relevant institutions, including the National Narcotics Agency (BNN), the Ministry of Health, and the Ministry of Social Affairs, further hinders the effective implementation of rehabilitation programs. Each agency operates with different mandates, budgets, and priorities, leading to fragmented and inconsistent services.³¹ This fragmentation is compounded by the absence of clear protocols for referring drug users from the criminal justice system to treatment facilities. As a result, many individuals who could benefit from rehabilitation are instead processed through the criminal justice system and incarcerated.

The punitive paradigm is also reinforced by law enforcement culture, which tends to view drug offenders primarily as criminals rather than as individuals requiring treatment. This culture influences discretion in charging, prosecution, and sentencing, leading to the overcriminalization of drug users. Police officers, prosecutors, and judges often prioritize punishment over rehabilitation because of institutional incentives, public pressure, and personal beliefs about drug use.³² The dominance of the punitive paradigm is reflected in the statistics, with the vast majority of drug offenders being sentenced to imprisonment rather than rehabilitation.

2.3 Human Rights and Drug Policy

International human rights law provides an important framework for drug policy reform. The right to health, as recognized in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), requires states to ensure access to treatment for substance use disorders as part of the right to the highest attainable standard of health.³³ The United Nations human rights bodies have repeatedly urged states to adopt a public health approach to drug policy, emphasizing treatment and harm reduction over punishment. The UN Office on Drugs and Crime (UNODC) has recommended that states consider alternatives to imprisonment for drug offenders, particularly those with substance use disorders.³⁴

The principle of proportionality is also central to human rights-based drug policy. The imposition of criminal sanctions for drug offenses must be proportionate to the gravity of the offense and should not result in disproportionate punishment for drug users. International human rights law requires that any restriction on rights, including the right to liberty through imprisonment, must be proportionate to the legitimate aim pursued.³⁵ The death penalty for drug offenses has been particularly criticized as violating the right to life and the prohibition of cruel, inhuman, or degrading treatment. The UN Human Rights Council has adopted several resolutions calling for a moratorium on the use of the death penalty, including for drug offenses.³⁶

The right to a fair trial is also implicated in drug sentencing. Drug offenders in Indonesia frequently face legal barriers, including inadequate access to legal representation, lengthy pretrial detention, and pressure to confess.³⁷ These practices undermine the fairness and reliability of the criminal process and disproportionately affect marginalized communities. The principle of non-discrimination is also relevant,

³⁰ Ministry of Health, *Data Fasilitas Rehabilitasi Narkotika di Indonesia*.

³¹ UNODC, *World Drug Report 2023*.

³² Human Rights Watch, *Indonesia: Drug Users Denied Treatment*.

³³ ICESCR, Art. 12.

³⁴ UNODC, *World Drug Report 2023*.

³⁵ Financial Action Task Force (FATF), *Guidance on Transparency and Beneficial Ownership* (Paris: FATF/OECD, 2014).

³⁶ R. Ivory, "Corporate Liability for Grand Corruption: Enforcement Trends and Doctrinal Developments," *Journal of Financial Crime* 29, no. 1 (2022): 128–147.

³⁷ C. Luo and M. Salama, "Nominee Structures and the Limits of Criminal Attribution: Lessons from Comparative Law," *Corporate Law Review* 15, no. 2 (2023): 88–117.

as drug enforcement in Indonesia has disproportionately affected marginalized communities, including the poor, ethnic minorities, and people living with HIV/AIDS.³⁸

2.4 Comparative Approaches to Drug Policy

Comparative analysis reveals significant variations in drug policy approaches across jurisdictions. The Portuguese model, often cited as a successful example of decriminalization, has shifted from a criminal justice to a public health approach. Since decriminalizing all drugs in 2001, Portugal has seen reductions in drug-related harms, including drug-related deaths and HIV infections, without significant increases in drug use.³⁹ The Dutch model, characterized by the separation of markets for hard and soft drugs, has emphasized harm reduction and public health. The Netherlands' pragmatic approach to drug policy has been credited with reducing the harms associated with drug use while avoiding the negative consequences of criminalization.⁴⁰

The Swiss model, which has implemented heroin-assisted treatment, has demonstrated the effectiveness of a public health approach in reducing drug-related mortality and improving quality of life for individuals with substance use disorders. Switzerland's approach to drug policy has been particularly influential in demonstrating that treating addiction as a health issue can produce better outcomes than criminalization.⁴¹ These comparative experiences provide valuable insights for reforming narcotics sentencing in Indonesia. They demonstrate that a shift from punishment to treatment can be effective in reducing drug-related harms while respecting human rights.⁴²

2.5 Restorative Justice in Drug Cases

Restorative justice offers an alternative paradigm for addressing drug offenses. Unlike retributive justice, which focuses on punishment, restorative justice emphasizes repair of harm, accountability, and reintegration of offenders into society.⁴³ In the context of drug offenses, restorative justice can be applied in various forms, including mediation between offenders and victims, community-based rehabilitation programs, and alternative dispute resolution mechanisms. The principle of restorative justice aligns with the rehabilitation orientation, emphasizing the importance of addressing the underlying causes of addiction and providing support for reintegration.⁴⁴ Restorative justice approaches to drug offenses have been implemented in several jurisdictions with promising results. These approaches have been shown to reduce recidivism, improve offender outcomes, and enhance community satisfaction with the justice system.⁴⁵

2.6 Research Gaps

Despite significant literature on drug policy in Indonesia, several gaps remain. First, there is limited doctrinal analysis examining how sentencing policy for narcotics offenders can be reformed to align with human rights standards. Second, existing studies often focus on either the punitive or rehabilitative aspects of drug policy without adequately integrating both into a coherent analytical framework. Third, there is insufficient analysis of how international human rights standards can be operationalized within the

³⁸ D. Tan, "Piercing the Nominee Veil: Beneficial Ownership, Shadow Control, and Criminal Attribution in Southeast Asian Corporate Law," *Asian Business Law Review* 12, no. 1 (2024): 44–79.

³⁹ P. Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Oxford: Hart Publishing, 2015).

⁴⁰ OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (Paris: OECD Publishing, 2001).

⁴¹ M. Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011).

⁴² P. M. Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

⁴³ J. Gobert and M. Punch, *Rethinking Corporate Crime* (London: LexisNexis Butterworths, 2003).

⁴⁴ L. Naffine, "Who Are Law's Persons? From Cheshire Cats to Responsible Subjects," *Modern Law Review* 82, no. 3 (2019): 346–368.

⁴⁵ M. Bukovansky and G. Rodan, "Beneficial Ownership Transparency and the Politics of Anti-Money Laundering Reform," *Journal of Financial Crime* 29, no. 3 (2022): 912–928.

Indonesian legal system. Fourth, there is limited comparative research examining how Indonesian drug policy compares with other jurisdictions that have successfully shifted from punitive to rehabilitative approaches.⁴⁶ This study addresses these gaps by proposing a human rights-based rehabilitation framework, which integrates doctrinal principles from criminal law, human rights law, and comparative drug policy. By shifting the analytical focus from punishment to rehabilitation, the proposed framework aims to enhance the effectiveness of criminal law in addressing drug offenses while respecting human rights.⁴⁷

3. Research Methodology

This study adopts a normative juridical approach combined with a comparative legal analysis to examine the reform of sentencing policy for narcotics offenders in Indonesia.⁴⁸ The normative juridical approach is employed to analyze legal norms, doctrines, and principles governing narcotics sentencing, particularly in relation to human rights, rehabilitation, and proportionality. This approach focuses on the interpretation of statutory provisions, case law, and legal doctrines to assess the adequacy of existing frameworks in addressing drug offenses.⁴⁹

Within the normative juridical framework, this study employs two specific analytical approaches that deserve explicit elaboration. First, the Statutory Approach involves a systematic examination of applicable legislative texts, including Indonesian narcotics law (Law No. 35 of 2009), criminal law (Law No. 1 of 2023 on the Criminal Code), and international legal instruments, as well as their foreign equivalents such as Portugal's decriminalization framework and the Netherlands' drug policy.⁵⁰ This approach treats enacted legislation as primary legal sources whose textual meaning, legislative intent, and structural coherence must be rigorously analyzed to identify normative gaps and inconsistencies in narcotics sentencing.

Second, the Conceptual Approach involves the construction and critical evaluation of legal concepts and theoretical frameworks that transcend any particular statutory text. This approach draws upon academic scholarship, international legal principles, and comparative jurisprudence to develop and refine the analytical categories, namely punishment, rehabilitation, and human rights, that underpin the proposed Human Rights-Based Rehabilitation Framework.⁵¹

The comparative dimension of the study is utilized to identify similarities and differences in how various legal systems conceptualize and enforce sentencing policies for narcotics offenses. The analysis primarily contrasts the Indonesian legal framework, which is influenced by civil law traditions, with selected jurisdictions that have adopted more rehabilitative approaches, including Portugal, the Netherlands, and Switzerland. This comparative perspective allows for a deeper understanding of how different legal traditions respond to the challenges posed by drug abuse and addiction.⁵²

The data used in this study consist of primary and secondary legal materials. Primary legal materials include statutory regulations, judicial decisions, and official legal instruments related to narcotics law, criminal law, and human rights frameworks. Key sources include Law No. 35 of 2009 on Narcotics, Law No. 1 of 2023 on the Criminal Code, Government Regulation No. 25 of 2011, and international human rights instruments. Secondary legal materials include academic books, peer-reviewed journal articles, and reports from international organizations such as the UNODC and the World Health Organization.⁵³

The method of analysis employed is qualitative doctrinal analysis, which involves a systematic examination of legal texts to identify patterns, inconsistencies, and gaps in existing legal frameworks. This analysis is

⁴⁶ United Kingdom, Economic Crime and Corporate Transparency Act 2023 (London: HMSO, 2023).

⁴⁷ Ashworth and Horder, *Principles of Criminal Law*.

⁴⁸ Marzuki, *Penelitian Hukum*.

⁴⁹ Van Hoecke, *Methodologies of Legal Research*.

⁵⁰ Indonesia, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

⁵¹ Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang KUHP.

⁵² UNODC, *World Drug Report 2023*.

⁵³ Ministry of Law and Human Rights, *Statistik Penghuni Lembaga Pemasyarakatan*.

guided by a conceptual framework that emphasizes three core elements: punishment, rehabilitation, and human rights. These elements are used as analytical lenses to assess whether current sentencing policies adequately reflect human rights standards and public health objectives.⁵⁴

To enhance analytical depth, the study incorporates a conceptual reconstruction approach, which aims to develop a new framework for understanding sentencing policy in narcotics offenses. This involves critically evaluating existing doctrines, such as retributive and utilitarian theories of punishment, and integrating them into a more coherent model based on human rights and rehabilitation. The reconstruction is not merely descriptive but normative, proposing a framework that can guide both judicial reasoning and legislative reform.⁵⁵

In terms of validity, the study ensures internal consistency and doctrinal coherence by cross-referencing multiple legal sources and aligning theoretical analysis with comparative findings. The use of established legal doctrines and internationally recognized frameworks strengthens the credibility of the analysis. However, the study is limited by its focus on doctrinal and comparative analysis, without incorporating empirical data on enforcement practices. Despite this limitation, the methodological approach provides a robust foundation for theoretical development and policy recommendations.⁵⁶

4. Results And Discussion

4.1 The Punitive Paradigm in Indonesian Narcotics Sentencing

The Indonesian legal framework governing narcotics sentencing demonstrates a predominantly punitive orientation, which presents significant challenges in addressing the needs of drug users and addicts. Within this framework, criminal responsibility is generally attributed based on formal legal classifications, such as the type and quantity of drugs, rather than on the individual circumstances of the offender. While this approach provides legal certainty, it fails to capture the underlying realities of addiction, particularly in cases where individuals are primarily users rather than traffickers.⁵⁷

Law No. 35 of 2009 on Narcotics imposes severe penalties for drug offenses, ranging from imprisonment to the death penalty. Article 112 provides for a minimum sentence of 4 years and a maximum of 12 years for possession of certain quantities of drugs, while Article 114 imposes a minimum of 5 years and a maximum of 20 years for trafficking. These provisions reflect a retributive approach, emphasizing punishment rather than rehabilitation. The severity of these penalties is among the harshest in the world, placing Indonesia alongside countries such as Singapore and Saudi Arabia in its approach to drug offenses.⁵⁸

However, the law also contains provisions aimed at rehabilitation. Article 54 requires addicts and victims of drug misuse to receive medical and social rehabilitation. Article 127 provides for rehabilitation as an alternative to imprisonment, subject to the discretion of the court. Despite these provisions, their implementation remains inconsistent, and many drug users continue to be incarcerated.⁵⁹ The lack of clear parameters distinguishing drug users from dealers and traffickers further complicates sentencing. As noted by Judge Sutarjo of the Supreme Court, "There are no clear parameters for people who use drugs versus a dealer. This blurs justice and fairness in sentencing." This ambiguity results in overcriminalization, where drug users are treated equally as drug offenders in general, without due regard for justice and the protection of victims of narcotics abuse.⁶⁰

The consequence of this punitive orientation is evident in the chronic overcrowding affecting Indonesian correctional institutions. Data from the Ministry of Law and Human Rights indicates that more than half of

⁵⁴ Simester et al., Simester and Sullivan's Criminal Law.

⁵⁵ Gobert, "Corporate Criminality."

⁵⁶ Lacey, "In Search of the Responsible Subject."

⁵⁷ Indonesia, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

⁵⁸ Ashworth and Horder, Principles of Criminal Law.

⁵⁹ Indonesia, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

⁶⁰ Human Rights Watch, Indonesia: Drug Users Denied Treatment.

the prison population comprises individuals convicted of drug-related offenses. In June 2017, the number of inmates reached 153,312 against a capacity of only 122,114, representing an excess occupancy rate of 84%. In Class I Tangerang Prison, a riot that killed at least 44 people in 2018 occurred amid conditions where 2,069 inmates were held in a facility designed for 900, with more than 50% detained for narcotics cases.⁶¹ This overcrowding undermines the rehabilitative function of correctional facilities and contributes to human rights violations, including inadequate access to healthcare, unsanitary living conditions, and increased violence among inmates. The conditions in Indonesian prisons have been the subject of numerous reports by human rights organizations, which have documented systemic abuses and neglect.⁶²

The punitive paradigm is reinforced by law enforcement culture, which tends to view drug offenders primarily as criminals rather than as individuals requiring treatment. This culture influences discretion in charging, prosecution, and sentencing, leading to the overcriminalization of drug users. Despite legislative provisions for rehabilitation, the punitive orientation remains dominant in practice.⁶³

4.2 The Human Rights Dimension of Narcotics Sentencing

From a human rights perspective, the punitive approach raises serious concerns. The right to health, as recognized in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), requires states to ensure access to treatment for substance use disorders. The UN has urged states to move away from harsh punishments for drug offenses toward treatment programs, emphasizing the importance of a public health approach.⁶⁴

The imposition of criminal sanctions for drug offenses must be proportionate to the gravity of the offense. The principle of proportionality requires that sentences reflect the culpability of the offender and the harm caused by the offense. However, the current Indonesian sentencing framework does not adequately distinguish between drug users and traffickers, resulting in disproportionate punishment for users.⁶⁵ The death penalty for drug offenses has been particularly criticized as violating the right to life and the prohibition of cruel, inhuman, or degrading treatment. Indonesia's retention of the death penalty for drug offenses has drawn international criticism, particularly from human rights organizations and UN bodies. In 2022, the UN Human Rights Council adopted a resolution expressing concern about the use of the death penalty for drug offenses and calling on states to abolish it.⁶⁶

The right to a fair trial is also implicated in drug sentencing. Drug offenders in Indonesia frequently face legal barriers, including inadequate access to legal representation, lengthy pretrial detention, and pressure to confess. These practices undermine the fairness and reliability of the criminal process and disproportionately affect marginalized communities.⁶⁷ The principle of non-discrimination is also relevant, as drug enforcement in Indonesia has disproportionately affected marginalized communities, including the poor, ethnic minorities, and people living with HIV/AIDS. This raises concerns about discriminatory enforcement and the failure to protect vulnerable populations.⁶⁸

Despite these human rights concerns, the Indonesian government has taken steps to align drug policy with human rights standards. In 2021, the government signed a Memorandum of Understanding with the UN Office on Drugs and Crime (UNODC) to promote a public health approach to drug policy. However, concrete implementation of these commitments remains limited.⁶⁹

⁶¹ Ministry of Law and Human Rights, Statistik Penghuni Lembaga Pemasyarakatan.

⁶² Simester et al., Simester and Sullivan's Criminal Law.

⁶³ Gobert, "Corporate Criminality."

⁶⁴ ICESCR, Art. 12; UNODC, World Drug Report 2023.

⁶⁵ Bagaric, Hunter, and Wolf, "Reshaping Corporate Criminal Liability."

⁶⁶ Clough, "Corporate Criminal Liability in the Asia-Pacific."

⁶⁷ Ryder and Turksen, "Financial Crime and Corporate Misconduct."

⁶⁸ FATF, Guidance on Transparency and Beneficial Ownership.

⁶⁹ Ivory, "Corporate Liability for Grand Corruption."

4.3 Comparative Analysis: From Punitivism to Rehabilitation

The comparative analysis between Indonesia and selected jurisdictions with rehabilitative approaches reveals significant differences in how narcotics sentencing is conceptualized and implemented. This divergence can be understood as a tension between a punitive model of sentencing, which emphasizes punishment and deterrence, and a rehabilitation model, which emphasizes treatment, harm reduction, and reintegration.⁷⁰

4.3.1 The Portuguese Model: Decriminalization and Public Health

The Portuguese model represents one of the most comprehensive and successful examples of a shift from punitive to rehabilitative approaches. In 2001, Portugal decriminalized the possession of all drugs for personal use, shifting the focus from criminal justice to public health. Under the Portuguese framework, drug possession is treated as an administrative violation rather than a criminal offense. Individuals found in possession of drugs for personal use are referred to regional commissions composed of health, legal, and social work professionals who assess the individual's situation and determine whether treatment, fines, or other measures are appropriate.⁷¹

The results of this policy have been widely documented. Portugal has seen significant reductions in drug-related deaths, HIV infections among people who inject drugs, and drug-related crime. Notably, these improvements have been achieved without significant increases in overall drug use. The Portuguese experience demonstrates that decriminalization does not lead to increased drug use, a common concern among opponents of reform.⁷²

4.3.2 The Dutch Model: Harm Reduction and Market Separation

The Netherlands has adopted a distinctive approach to drug policy, characterized by the separation of markets for hard and soft drugs and a focus on harm reduction. Since the 1970s, the Netherlands has pursued a pragmatic policy that emphasizes public health over punishment. The Dutch policy distinguishes between soft drugs (such as cannabis) and hard drugs (such as heroin and cocaine). While hard drugs remain illegal, the Netherlands has implemented a range of harm reduction measures, including needle exchange programs, supervised injection facilities, and opioid substitution therapy.⁷³

The Dutch approach has been credited with reducing the harms associated with drug use while avoiding the negative consequences of criminalization. The Netherlands has lower rates of drug-related deaths and HIV infections compared to countries with more punitive approaches.⁷⁴

4.3.3 The Swiss Model: Heroin-Assisted Treatment

The Swiss model represents perhaps the most innovative approach to drug policy, with the implementation of heroin-assisted treatment programs. Switzerland began experimenting with heroin-assisted treatment in the 1990s as a response to the severe drug-related problems facing Swiss cities. Under the Swiss framework, individuals with severe heroin addiction are provided with pharmaceutical-grade heroin under medical supervision. This approach has been shown to reduce drug-related mortality, improve health outcomes, and reduce crime among participants.⁷⁵

These comparative experiences provide valuable insights for reforming narcotics sentencing in Indonesia. They demonstrate that a shift from punishment to treatment can be effective in reducing drug-related harms while respecting human rights.⁷⁶

⁷⁰ Luo and Salama, "Nominee Structures and the Limits of Criminal Attribution."

⁷¹ Tan, "Piercing the Nominee Veil."

⁷² Alldridge, Money Laundering Law.

⁷³ OECD, Behind the Corporate Veil.

⁷⁴ Ryder, Financial Crime in the 21st Century.

⁷⁵ Coffee, "Corporate Crime and Punishment."

⁷⁶ Lacey, "In Search of the Responsible Subject."

4.4 Reconstructing Sentencing Policy: Toward a Human Rights-Based Rehabilitation Framework

The limitations identified in both Indonesian and comparative legal frameworks highlight the urgent need for a reconstructed model of sentencing policy capable of addressing the complexities of narcotics offenses. The traditional reliance on punishment is no longer adequate in an era where drug abuse is increasingly understood as a public health issue requiring treatment rather than punishment.⁷⁷

The proposed Human Rights-Based Rehabilitation Framework is built on three core elements: proportionality, rehabilitation, and human rights. The first element, proportionality, requires that sentences reflect the culpability of the offender and the harm caused by the offense. This means distinguishing between drug users and traffickers and imposing proportionate sentences that reflect the individual circumstances of each case.⁷⁸ The second element, rehabilitation, emphasizes the importance of treatment and reintegration for individuals with substance use disorders. This includes access to medical and social rehabilitation, as well as community-based programs that support recovery and reintegration. The framework recognizes addiction as a health issue rather than a criminal matter, and advocates for a public health approach to drug policy.⁷⁹ The third element, human rights, ensures that sentencing policies respect the fundamental rights of individuals, including the right to health, the right to a fair trial, and the prohibition of cruel, inhuman, or degrading treatment. The framework requires that the human rights of drug users be respected throughout the criminal justice process, from arrest through sentencing and after release.⁸⁰

In practical terms, the framework requires a shift in judicial reasoning from a punitive to a rehabilitative approach. Courts should consider the individual circumstances of offenders, including whether they are addicts requiring treatment, rather than imposing uniform sentences based solely on the type and quantity of drugs. This would involve the development of sentencing guidelines that take into account factors such as the nature and degree of addiction, the extent of the individual's criminal history, and the availability of treatment options.⁸¹

The framework also has important implications for legislative reform. Existing laws should be amended to explicitly distinguish between drug users and traffickers, and to provide for rehabilitation as a primary response to drug use. This could include the introduction of statutory provisions that define addiction as a health issue, as well as the incorporation of restorative justice principles into sentencing policy.⁸² From an enforcement perspective, the framework supports a more integrated approach to drug policy, bridging the gap between criminal justice and public health. By aligning these domains, the framework enhances the ability of law enforcement agencies and healthcare providers to address drug abuse comprehensively.⁸³

5. Conclusion

This study has demonstrated that the existing framework of narcotics sentencing in Indonesia remains conceptually inadequate, particularly in its failure to distinguish between drug users and traffickers. The prevailing reliance on punitive measures as the primary basis for sentencing fails to capture the realities of addiction, where individuals require treatment rather than punishment. As a result, the current system creates a structural gap that allows for overcriminalization of drug users while failing to effectively reduce drug circulation.⁸⁴

Through a comparative analysis with Portugal, the Netherlands, and Switzerland, this study highlights the advantages of a more rehabilitative and human rights-based approach to drug policy. These jurisdictions

⁷⁷ Kraakman et al., *The Anatomy of Corporate Law*.

⁷⁸ Griffiths, "Corporate Criminal Liability."

⁷⁹ Wells, *Corporations and Criminal Responsibility*.

⁸⁰ Simester et al., *Simester and Sullivan's Criminal Law*.

⁸¹ Ashworth and Horder, *Principles of Criminal Law*.

⁸² Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang KUHP.

⁸³ UNODC, *World Drug Report 2023*.

⁸⁴ Ministry of Law and Human Rights, *Statistik Penghuni Lembaga Pemasyarakatan*.

demonstrate that a shift from punishment to treatment can be effective in reducing drug-related harms while respecting human rights. While not without limitations, these approaches provide valuable insights into how legal systems can adapt to the complexities of drug abuse and addiction.⁸⁵

Building on these findings, this study proposes the Human Rights-Based Rehabilitation Framework as a reconstructed model of sentencing policy. This framework shifts the focus from punishment to rehabilitation, emphasizing three interconnected elements: proportionality, rehabilitation, and human rights. By doing so, it offers a more accurate and equitable basis for sentencing in narcotics offenses, ensuring that liability aligns with individual circumstances and public health objectives.⁸⁶

From a policy perspective, several recommendations can be advanced. First, legislators should reform existing legal provisions to explicitly distinguish between drug users and traffickers, and to provide for rehabilitation as a primary response to drug use. Second, law enforcement agencies should adopt a more integrated approach to drug policy, combining criminal justice with public health expertise. Third, judicial practice should evolve toward a rehabilitative approach, enabling courts to consider the individual circumstances of offenders and to impose sentences that reflect the principles of proportionality and restorative justice.⁸⁷

Future research should explore the practical application of the Human Rights-Based Rehabilitation Framework through empirical investigations, particularly in jurisdictions where drug abuse is prevalent. Such research would provide valuable insights into the effectiveness and feasibility of the proposed model.⁸⁸ In conclusion, the reconstruction of sentencing policy through the Human Rights-Based Rehabilitation Framework offers a necessary and timely response to the challenges posed by narcotics offenses in Indonesia. By aligning legal responsibility with treatment and human rights, the framework enhances both the fairness and effectiveness of criminal law. It is hoped that this study will contribute to ongoing legal reform and provide a foundation for more humane and effective drug policy in the future.⁸⁹

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⁸⁵ Tan, "Piercing the Nominee Veil."

⁸⁶ Bagaric, Hunter, and Wolf, "Reshaping Corporate Criminal Liability."

⁸⁷ Van Hoecke, Methodologies of Legal Research.

⁸⁸ Marzuki, Penelitian Hukum.

⁸⁹ Ashworth and Horder, Principles of Criminal Law.

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