

Drug abuse rehabilitation policies in Indonesia: a comparison with Vietnam, Australia and Portugal



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Abstract

This article wants to analyze the judge's verdict orientation of the rehabilitation case for addicts or drug abusers. Far from the construction of rehabilitation laws in Indonesia, there is a diffusion of norms between the health and the criminal approach. Legal research with a constitutional and case approach at the state court in Bali and Yogyakarta. A comparative approach of law with other countries. The study suggests that judges are more likely to drop sentences in prison sentences than in rehabilitation, even though the accused meets the criteria of narcotics law and a writ of avoidance of the Supreme Court. The complaint was merely a recommendation that judges were not required to comply with, as was the case in Portugal and Australia. The judge's paradigm of self-initiated drug abuse, like narcotics crimes, is similar in Vietnam. Whereas the philosophical orientation of the judges in deciding the issue of rehabilitation should be based on principles of humanity and justice as governed by the just and civilized precepts of humanity and the precepts of social justice for all peoples of Indonesia. The judge is required to consider the report on the results of the conviction of both criminal and criminal action to the perpetrator of criminal narcotics. Also, future prescriptions for self-initiated drug abuse recovery should be changed with a health approach, drawing a firm line of distinguishing from narcotics crimes. Process in court with a fast trial, including an arrangement for arrest, was held in a designated rehabilitation facility or hospital.

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1. Introduction

The court plays a crucial role within the criminal justice system as it possesses the jurisdiction to render decisions.¹ The primary criterion for the judge's ruling is that it must be substantiated in order to be accountable not only to the parties directly involved, notably the public prosecutor and the defendant but also to the broader society. The judge's judgment

¹ Rian Saputra, Muhammad Khalif Ardi, and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (Journal of Indonesian Legal Studies)*, 6.2 (2021), 437–82 <<https://doi.org/10.15294/jils.v6i2.51371>>.

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must demonstrate a commitment to avoiding arbitrariness and upholding the principles of the judiciary. As a member of the judicial authority, the judge must uphold and maintain the integrity of the judiciary consistently. This ensures that public trust in the fair administration of justice remains intact and is not undermined. The given text needs to be revised academically as it needs more context and substance.²

The majority of countries worldwide have embraced modern legal systems with the objective of promoting social welfare. The welfare state encompasses the provision of governance in the realm of health services.³ The condition above carries significant consequences for a potential shift in the political framework around criminal law pertaining to narcotics, a prevalent issue within legal systems worldwide. Within the realm of jurisprudence, there exists a fundamental idea known as "salus populi supreme lex esto," which can be interpreted as the notion that the safety and well-being of the populace should be regarded as the paramount law.⁴ The prioritization of interventions aimed at rehabilitating those suffering from substance misuse and supporting others affected by the actions of drug users is elevated to a position of utmost legal significance. When considering the issue of crime, it might be argued that the true criminal activity is in the unlawful trade of narcotics rather than the mere misuse or abuse of these substances. This condition promotes a paradigm shift in the criminal justice approach to drug provisions, emphasizing a health-oriented perspective.⁵

The law pertaining to the utilization of narcotics in Indonesia is governed by Law Number 35 of 2009, which specifically addresses the subject matter of narcotics. *Narcotics* are chemicals that possess therapeutic value in the field of medicine. Law Number 35 of 2009, which pertains to Narcotics, encompasses both elements of pure criminal law, specifically addressing the unlawful trafficking of narcotics, as well as administrative criminal law. The health-oriented approach to addressing criminal crimes in Indonesia, specifically in relation to rehabilitation, can be observed by examining the objectives outlined in Law Number 35 of 2009 pertaining to Narcotics. According to Article 4 of Law Number 35 of 2009 pertaining to Narcotics, it is stipulated that The primary objectives of the Narcotics Law are as follows: a) to facilitate the accessibility of Narcotics for the advancement of health services and scientific and technological development; b) to safeguard, shield, and preserve the Indonesian population from the misuse of Narcotics; c) to eliminate the unlawful trafficking of Narcotics and Narcotics Precursors; and d) to guarantee the organization of medical and social rehabilitation endeavors for individuals who abuse drugs and are addicted. The primary objective of Law Number 35 of 2009 about Narcotics in Indonesia is to address the issue of substance misuse and safeguard the nation. This legislation focuses on implementing measures aimed at the prevention, protection, and rehabilitation of individuals affected by

² Anthony C. Diala, 'The Concept of Living Customary Law: A Critique', *Journal of Legal Pluralism and Unofficial Law*, 49.2 (2017), 143–65 <<https://doi.org/10.1080/07329113.2017.1331301>>.

³ E. ELVIANDRI, 'Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 31.2 (2019), 252 <<https://doi.org/10.22146/jmh.32986>>.

⁴ Jennifer Hasselgård-Rowe, 'Detaining People Who Use Drugs in Cambodia: A Dual-Track System', *International Journal of Drug Policy*, 93 (2021), 102911 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2020.102911>>.

⁵ John Strang and others, 'Drug Policy and the Public Good: Evidence for Effective Interventions', *The Lancet*, 379.9810 (2012), 71–83 <[https://doi.org/https://doi.org/10.1016/S0140-6736\(11\)61674-7](https://doi.org/https://doi.org/10.1016/S0140-6736(11)61674-7)>.

narcotics abuse. The implementation of rehabilitation programs has the potential to mitigate the risk of disease among individuals struggling with addiction and those who have experienced abuse.

Law Number 35 of 2009 pertaining to Narcotics serves the objective of ensuring the provision of regulations for the implementation of medical and social rehabilitation endeavors for those who are afflicted with substance abuse and addiction. The subject of discussion in this response is Article 54 of Law Number 35 of 2009, which specifically addresses the topic of narcotics. Individuals who are dependent on narcotics and those who have been adversely affected by the actions of narcotics abusers are mandated to participate in both medical and social rehabilitation programs. In relation to the topic of rehabilitation provisions for individuals suffering from substance addiction and victims of substance abuse, the Supreme Court has published a legal document known as the Supreme Court Circular Number 4 of 2010. This circular pertains specifically to the placement of individuals who have experienced abuse or addiction to narcotics in medical and social rehabilitation institutions. The Circular Letter offers a categorization of the delivery of rehabilitation services in cases involving narcotics offenses.

Law Number 35 of 2009, which pertains to Narcotics, primarily establishes a legal framework for rehabilitation strategies within the Indonesian context. The creation of rules in Law Number 35 of 2009 regarding Narcotics entails a conflict between the criminal approach and the health approach. This phenomenon is seen in the persistence of a significant number of individuals who remain addicted to opioids and continue to suffer the consequences of substance misuse without undergoing rehabilitation programs but rather being subjected to incarceration.⁶ The usage of narcotics is a form of criminal activity that can have multifaceted and significant social consequences. The challenge of addressing narcotics criminality is compounded when criminal law is predominantly relied upon as the primary approach.⁷

The judge in Case Number 122/Pid.Sus/2021/PN. Tab., Tabanan-Bali District Court examining Defendant I PUTU KRSNA MUKTI Alias RERE accompanied by the Writer as Legal Counsel, with the First Charge: Allegedly violating Article 114 Paragraph (1) Jo Article 132 Paragraph (1) Law Number 35 of 2009 About Narcotics; Or Second Charge: Allegedly violating Article 111 Paragraph (1) Jo Article 132 Paragraph (1) of Law Number 35 of 2009 Concerning Narcotics has tried this case and decided: “Declare the Defendant I Putu Krsna Mukti Als. Rere was proven legally and convincingly guilty of committing the crime of Narcotics: “Attempt or conspiracy without rights or against the law to accept, become an intermediary in buying and selling, exchanging, or handing over Narcotics Gol. I in the form of cannabis type plants” as stipulated and subject to criminal penalties in Article 114 Paragraph (1) Jo. Article 132 Paragraph (1) Law. RI. No. 35 of 2009 concerning Narcotics, as stated in our First indictment as the Public Prosecutor, Sentenced criminal against Defendant I Putu Krsna Mukti Als. Rere for 3 (three) years in prison and a fine of Rp. 800,000,000.00 (eight hundred million rupiahs),

⁶ Gideon Lasco, ‘Kalaban: Young Drug Users’ Engagements with Law Enforcement in the Philippines’, *International Journal of Drug Policy*, 52 (2018), 39–44 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2017.11.006>>.

⁷ Donny Michael Situmorang, ‘Implementasi Undang-Undang Narkotika Ditinjau Dari Perspektif Hak Asasi Manusia’, *Jurnal Penelitian Hukum De Jure*, 18.3 (2018), 415 <<https://doi.org/10.30641/dejure.2018.V18.415-432>>.

a subsidiary of 6 (six) months in prison minus the detention period already served by the Defendant by order for the Defendant to remain detained and State the evidence in the form of 1 (one) piece of plastic containing leaves and seeds suspected of being marijuana weighing 1.20 (one point twenty) gross grams or 0.99 (zero point ninety-nine) grams net in a clear colored plastic bag in an iron box; 1 (one) leaf ball and seeds suspected of being marijuana weighing 0.56 (zero point fifty-six) gross grams or 0.39 (zero point thirty-nine) grams net in an iron box; 3 (three) sheets of Cigarette Papers. The items that were forfeited for destruction include one unit of a black iPhone with the SIM card number 082147618124, as well as one unit of a black silver iPhone with the SIM card number 081999078260. The topic of discussion pertains to individuals who have been deprived of their possessions in relation to their country.

Likewise, the Panel of Judges in Case Number 64/Pid.Sus/2022/PN. Yyk, at the Yogyakarta District Court who examined the Defendant RIDWAN FATKHURODIN accompanied by the Author as Legal Counsel for the First Charge: Allegedly violating Article 111 paragraph (1) of Republic of Indonesia Law No. 35 of 2009 concerning Narcotics; Or Second Charge: Allegedly violating Article 127 paragraph (1) letter an of RI Law No. 35 of 2009 concerning Narcotics; adjudicating this case, decided: “Declare the defendant Ridwan Fatkhurodin Bin Suparno proven legally and convincingly according to law guilty of committing the crime “without rights or against the law of abusing Narcotics Group I for himself”, as in the second alternative indictment namely violating Article 127 paragraph (1) letter an of the Law RI No. 35 of 2009 concerning Narcotics, Sentenced the defendant Ridwan Fatkhurodin Bin Suparno to prison for 1 (one) year and 2 (two) months reduced while the defendant is in temporary detention and by order the defendant remains detained and State the evidence in the form of: 1 (one) red box containing: 1 (one) large clear plastic pack filled with marijuana weighing approximately 156 grams; 1 (one) pack of medium-sized clear plastic filled with marijuana weighing approximately 22 grams; 1 (one) pack of small clear colored plastic filled with marijuana weighing approximately 8 grams; 1 (one) plastic cup filled with cannabis seeds weighing approximately 15 grams; 1 (one) black box containing 6 (six) pieces of paper; 2 (two) perforated yellow bottle caps; 1 (one) can of used hair oil filled with cannabis weighing approximately 7 grams; 1 (one) sheet of tissue filled with cannabis seeds weighing approximately 8 grams; 1 (one) small plastic cup filled with cannabis seeds weighing approximately 3 grams; 1 (one) black box containing 2 (two) cannabis rolls weighing approximately 1.18 grams; 1 (one) cannabis butt weighing approximately 0.13 gram; 1 (one) piece of silver Solopipe smoking pipe; and 1 (one) Samsung Silver cellphone. The item was relinquished with the intention of being destroyed.

Erin M. Kerrison did more studies on drug use and substance abuse in Vietnam, focusing on the development of alternative strategies to address the challenges faced by those struggling with drug addiction. An endeavor is undertaken to establish a prison-based drug rehabilitation program aimed at addressing racial disparities in the recovery of individuals with drug misuse disorders. The study revealed a notable disparity between white and black communities regarding their efforts to address these issues, resulting in disparities in access to treatment and healthcare services, as well as differences in the societal priorities related to

the recovery from drug usage.⁸ Furthermore, a separate study conducted in Portugal by D. Werb et al. explores the diverse approaches to drug rehabilitation for individuals with substance use disorders. These approaches include short-term interventions lasting 21 days, as well as long-term interventions spanning up to 6 months. Additionally, the study examines community-based interventions, outpatient treatments using medication, and interventions provided within correctional facilities.⁹ The prioritization of implementing such initiatives in medications should not be advocated by policymakers who aim to mitigate the adverse consequences linked to drug usage. Furthermore, a further study conducted in Australia by Allan Ardill revealed that an approach to drug therapy that considers it necessary for the user might be employed in order to address drug addiction. The efficacy of interventions aimed at addressing drug usage is greater when efforts are focused on alternative approaches rather than resorting to direct criminalization of drug users. In light of the fact that criminal justice endeavors may not inherently possess the capacity to effectively address individuals until drug treatment interventions have yielded favorable outcomes for substance users.¹⁰ Hence, I am intrigued to delve into the discourse surrounding the rehabilitation endeavors implemented for individuals grappling with substance abuse in Indonesia. This observation pertains to the rising prevalence of drug consumption among individuals, which has progressively expanded to encompass a diverse range of users within society.

2. Research Method

The research methodology employed in this study is doctrinal law research,¹¹ specifically normative research, complemented by qualitative data analysis techniques. The study utilizes various approaches, including statutory, conceptual, philosophical, and case approaches,¹² to guide judges in making decisions related to rehabilitation cases involving individuals struggling with addiction or substance abuse. The primary legal materials used in this research include Pancasila, the Body of the 1945 Constitution, Law No. 35 of 2009 concerning Narcotics, as well as specific case decisions, such as Decision Number 122/ Pid. Sus/2021/PN. Tab. from the Tabanan-Bali District Court on March 22, 2022, and Decision on Case Number 64/Pid.Sus/2022/PN. Yyk from the Yogyakarta District Court on July 14, 2022. Additionally, secondary legal materials in the form of Scopus-indexed journals are also consulted.¹³

⁸ Erin M. Kerrison, 'Exploring How Prison-Based Drug Rehabilitation Programming Shapes Racial Disparities in Substance Use Disorder Recovery', *Social Science & Medicine*, 199 (2018), 140–47 <<https://doi.org/10.1016/j.socscimed.2017.08.002>>.

⁹ D. Werb and others, 'The Effectiveness of Compulsory Drug Treatment: A Systematic Review', *International Journal of Drug Policy*, 28 (2016), 1–9 <<https://doi.org/10.1016/j.drugpo.2015.12.005>>.

¹⁰ Allan Ardill, 'Mandatory Welfare Drug Treatment in Australia', *Journal of Law and Medicine*, 26.4 (2019), 800–814.

¹¹ Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <<https://doi.org/10.53955/jhcls.v2i3.54>>.

¹² Rian Saputra, M Zaid, and others, 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review*, 7.1 (2023), 61–118 <<https://doi.org/10.15294/lesrev.v7i1.64143>>.

¹³ Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, 'Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)', *JOURNAL of INDONESIA LEGAL STUDIES*, 8.1 (2023), 243–88 <<https://doi.org/10.15294/jils.v8i1.67632>>.

3. Results and Discussion

Policy on drug rehabilitation efforts in Indonesia

The present analysis pertains to the judicial ruling rendered by the Tabanan-Bali District Court in Case Number 122/Pid.Sus/2021/PN, concerning the defendant identified as I PUTU KRSNA MUKTI, also known as RERE. Case Number: 64/Pid.Sus/2022/PN. Yyk pertains to the proceedings conducted by the Yogyakarta District Court in relation to the defendant. The individuals mentioned, namely Ridwan Fatkhurodin, were accompanied by the author in their capacity as legal counsel. The prevailing orientation of these individuals remained predominantly positivistic. Notably, the judges' paradigm primarily revolved around perceiving narcotics users as criminals, particularly at a rudimentary Anthropocene level. Consequently, judges seldom invoked the rehabilitation article, particularly when dealing with narcotics users from socioeconomically disadvantaged backgrounds. While it is widely acknowledged that rehabilitation should be afforded to all those struggling with addiction and those who have fallen victim to abusers, it is crucial to recognize this as a fundamental entitlement. The research undertaken by Lindsey and Pip Nicholson focused on examining the current status of rehabilitation policies in Singapore, Vietnam, and Indonesia. In their study, Tim Lindsey and Pip Nicholson identified vulnerabilities in the decision-making process that facilitate fraudulent practices. According to Lindsey and Nicholson (year), Singapore's substantial allocation of resources towards detoxification and rehabilitation programs is indicative of its heightened involvement in this area.

Furthermore, this example serves to demonstrate the PAP's ability to formulate and execute a targeted strategy against drug-related issues. This phenomenon can be attributed to the relatively small population, unitary form of government, and a historical background characterized by assertive and intrusive law enforcement measures. In Indonesia and Vietnam, the country studies reveal shared obstacles in achieving consistent implementation of reforms. These challenges are further complicated by larger populations, influential provincial and local governments, significant discretionary decision-making, and deeply ingrained patterns of institutionalized corruption. Singapore's substantial commitment to detoxification and rehabilitation initiatives is indicative of its increased allocation of resources.

Furthermore, this example serves to demonstrate the PAP's ability to formulate and execute a targeted strategy against drug-related issues. This phenomenon can be attributed to the relatively low population size of the country, the cohesive nature of its administration, and a historical precedent of proactive and impactful law enforcement strategies. In contrast, studies conducted in Indonesia and Vietnam reveal shared obstacles in achieving consistent implementation of reforms. These challenges are further complicated by the substantial size of their populations, influential provincial and local governments, a notable degree of policy-making freedom, and persistent patterns of institutional corruption that have remained stagnant for a considerable period.

Law Number 35 of 2009, which pertains to Narcotics, governs the implementation of two distinct forms of rehabilitation, specifically medical rehabilitation and social rehabilitation. In relation to the topic of rehabilitation. According to Pasaribu et al. (year), the objective of rehabilitation programs for those affected by drug abuse is to facilitate their recovery, enhance their productivity, and foster their potential as future contributors to the nation.

Rehabilitation endeavors to facilitate the recovery and reintegration of individuals who have engaged in narcotic substance abuse, with the ultimate goal of fostering their productivity and positioning them as future contributors to the nation. According to Safyanu Shuaibu Sara, Muazu Abba Jabir, and Halima Inuwa Mora, numerous rehabilitation programs have been developed to address the needs of offender populations. The primary objective of these programs is to enhance the psychological well-being of the offender and facilitate their successful reintegration into the community.¹⁴

Francis Bacon thinks that science possesses an ontological purpose. According to Francis Bacon, science can be defined as the ability of humans to exert control over the forces of nature. The practical application of science is important in order to enhance human dominance over the universe. The acquisition of information empowers humanity to exert control over the forces of nature. This notion is shown by the transformation of Plato's aphorism "knowledge is power" into a guiding principle by Francis Bacon.¹⁵ The regulations pertaining to rehabilitation serve a pragmatic purpose by safeguarding the fundamental right to human life. Popper's emphasis lies in highlighting that scientific progress is achieved by means of a systematic procedure, including the formulation of conjectures and subsequent rebuttals.¹⁶ Initially, there were accusations pertaining to the suppression of narcotics offenses, specifically by the imposition of incarceration. Rehabilitation is commonly perceived as a challenging endeavor to deter individuals struggling with addiction and victims of substance abuse. In conjunction with the advancement of human rights, the prioritization of rehabilitation has emerged as a crucial aspect in addressing narcotics offenses.

The existence of rehabilitation is essentially the protection of human life and basic rights to health. Article 25 of the Universal Declaration of Human Rights states as follows: Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. From an epistemological standpoint, narcotics can be classified as either criminal acts or consensual crimes.¹⁷ The determination of the sorts of narcotic offenses and the approaches employed to address them is contingent upon international agreements implemented by nations. The implementation of prison sentences on individuals who are addicted to narcotics and those who have fallen victim to narcotics addiction is unlikely to address the issue of narcotics misuse and its perpetuation effectively. The rehabilitation policy aligns with the fundamental principles outlined in Law Number 35 of 2009 regarding Narcotics, which include justice, protection, humanism, order, security, scientific values, and legal certainty.

¹⁴ Jabir Sara, Safyanu Shuaibu, Muazu Abba and Mora Halima Inuwa, 'Understanding Drug Abuse among Adolescents Youth: Prevention and Counselling Rehabilitation Strategies', *Journal of Educational Policy and Entrepreneurial Research*, 4.6 (2017), 110–32.

¹⁵ Yeni Setianingsih, 'Induktivisme-Empirisisme Francis Bacon Dan Relevansinya Bagi Ilmu-Ilmu Keagamaan', *Indonesian Journal of Islamic Theology and Philosophy*, 1.2 (2020), 63–84 <<https://doi.org/10.24042/ijitp.v1i2.4930>>.

¹⁶ Slamet Subekti, 'FILSAFAT ILMU KARL R. POPPER DAN THOMAS S. KUHN SERTA IMPLIKASINYA DALAM PENGAJARAN ILMU', *HUMANIKA*, 22.2 (2015), 39 <<https://doi.org/10.14710/humanika.22.2.39-46>>.

¹⁷ Situmorang.

Axiology encompasses three fundamental domains of values: aesthetics, ethics, and theology, which respectively pertain to aesthetic values, moral values, and spiritual values.¹⁸ From an axiological standpoint, rehabilitation aligns with both human values and legal aims, specifically aiming to deliver justice, advantages, and legal assurance. In order to attain the objectives of the Indonesian state, all endeavors must be grounded in and evaluated against the principles of Pancasila.¹⁹ The concept of rehabilitation aligns with the concepts of humanity and justice as outlined in the teachings of Pancasila. According to Wijaya (year), Pancasila, which serves as the guiding principle for the Indonesian nation and state, encompasses a range of values. These values can be categorized into three groups: 1) Divine values, human values, unity values, social values, and justice values; 2) Ideal values, material values, spiritual values, pragmatic values, and positive values; and 3) Ethical values, aesthetic values, logical values, social values, and religious values. The values included within are widely recognized and have specific implications for the lives of individuals, as well as for society, the nation, and the state of the Indonesian people.²⁰ In connection with this matter, the second Precept encompasses the promotion of human values, specifically emphasizing the prioritization of the well-being of those struggling with addiction and those affected by drug usage. This objective is achieved by the implementation of a rehabilitation program that adheres to principles of fairness, as outlined in the fifth Precept of Pancasila.

The principles above serve as the fundamental grounds for asserting that compulsory rehabilitation should be implemented for individuals struggling with addiction and those who have fallen victim to substance misuse. These ideals are present within the framework of Indonesian national legislation. Indonesia, as a constitutional state, is obligated to manage the order of its citizens' lives in accordance with legislative standards. The idea of equity sequitur legem, also recognized in the field of law, pertains to the notion that justice is derived from the application and adherence to legal statutes.²¹ The concept that appears to me is that legislation cannot be considered legitimate if it is unjust.²² The pursuit of justice is a widely shared objective that necessitates the utilization of law as a means to attain this desired outcome. In order to establish a legal framework that fosters a perception of fairness, it is imperative to engage in the process of legislating the law itself. The primary purpose of the law is to establish and maintain a system of governance that ensures equitable public order for all individuals.

In accordance with the principles of Pancasila, which emphasize human values and justice, it is imperative to provide rehabilitation to individuals struggling with addiction and victims of narcotics abuse. This approach is crucial for realizing the aspirations and objectives of the Indonesian State, as outlined in the preamble to the fourth paragraph of the 1945 Constitution of the Republic of Indonesia. These objectives include establishing a government that safeguards the entirety of the Indonesian nation and its diverse population, promoting public

¹⁸ Ismail Thoib, *Wacana Baru Pendidikan Meretas Filsafat Pendidikan*, Pertama (Yogyakarta: Genta Press, 2008).

¹⁹ Maleha Soemarsono, 'NEGARA HUKUM INDONESIA DITINJAU DARI SUDUT TEORI TUJUAN NEGARA', *Jurnal Hukum & Pembangunan*, 37.2 (2017), 300 <<https://doi.org/10.21143/jhp.vol37.no2.1480>>.

²⁰ Widjaja Widjaja, *Penerapan Nilai-Nilai Pancasila Dan HAM Di Indonesia*, Revisi (Jakarta: Rineka Cipta, 2000).

²¹ Cruesteen Bellew, 'Aequitas Sequitur Legem', *Oxford Site*, 2010, pp. 1–3.

²² Carl Joachim Friedrich, *The Philosophy of Law in Historical Perspective*, Rev (Chicago: University of Chicago, 1963).

welfare, fostering national education, and actively contributing to the establishment of a global order founded on principles of freedom, enduring peace, and social justice.

The process of rehabilitation construction Law Number 35 of 2009 pertaining to Narcotics exhibits a lack of distinction between the criminal perspective and the health perspective. According to Article 54 of Law Number 35 of 2009 pertaining to Narcotics, individuals who are addicted to narcotics or have fallen victim to narcotics misuse are mandated to undertake both medical rehabilitation and social rehabilitation. The implementation of Article 54 currently employs a health-oriented approach in addressing individuals suffering from addiction and those whom abusers have victimized. According to the stipulations outlined in Article 1, section 15, those who engage in the unauthorized or unlawful consumption of narcotics are classified as abusers. The conventional characterization of individuals with addiction continues to adopt a punitive perspective, characterizing their behavior as an infringement upon legal norms or devoid of legal entitlements.

The phenomenon of norm blurring can be observed in the stipulations outlined in Article 54 of Law Number 35 of 2009 regarding Narcotics. This provision mandates that individuals who are addicted to narcotics or have fallen victim to narcotics abuse must undergo rehabilitation. However, this requirement appears to conflict with the provisions stated in Articles 103 and 127 of the same law, which grant judges the authority to exercise discretion in determining alternative criminal sanctions instead of rehabilitation. The provisions above are stated as follows: Article 103 is a provision of a legal document or constitution that outlines certain regulations or guidelines. In cases involving individuals with substance use disorders, judges have the authority to make two possible decisions. Firstly, if a narcotics addict is found guilty of a narcotics-related offense, the judge may opt to mandate the individual to undergo treatment and/or rehabilitation. Secondly, even if the narcotics addict is not proven guilty of a narcotics-related offense, the judge may still choose to order the individual to undergo treatment and/or rehabilitation. The duration of receiving medical intervention and/or therapy for individuals with substance addiction, as mentioned in paragraph (1) section a, is considered as part of the incarceration period.

According to Article 127 (1), individuals who engage in the misuse of narcotics are subject to specific penalties based on the category of narcotics involved. The possession and abuse of Narcotics Category I for personal use can result in a maximum prison sentence of four years. Similarly, the possession and abuse of Narcotics Category II for personal use can lead to a maximum prison sentence of two years. Lastly, the possession and abuse of Narcotics Category III for personal use can result in a maximum prison sentence of one year. In determining the matter, as mentioned in paragraph (1), the court is required to consider the provisions mentioned in Article 54, Article 55, and Article 103. In the circumstance where the individual identified as the abuser, as mentioned in paragraph (1), may be substantiated or demonstrated to be a victim of substance abuse, the abuser must undergo both medical rehabilitation and social rehabilitation.

The judicial authority is granted by Law Number 35 of 2009 on Narcotics through the provisions outlined in Articles 103 and 127. These laws empower judges to exercise their discretion in imposing punishments, which may include the option of rehabilitation or alternative measures. The principle above is also underscored in the Appendix to the Decree issued by the Director General of the General Judiciary Agency, numbered 1691/DJU/SK/PS.00/12/2020, dated 22 December 2020. This document pertains to the

Guidelines for the Implementation of Restorative Justice in the General Court Environment, wherein it is stated that cases involving narcotics, specifically those involving users and victims who are abusers, can be effectively addressed through the application of restorative justice. The potential for "judicial corruption" may arise in rehabilitation decisions for individuals suffering from addiction and victims of narcotics abuse due to the judge's authority to impose sanctions as outlined in Article 127 of Law Number 35 of 2009 pertaining to Narcotics. Rehabilitation measures are exclusively provided to individuals who fall within the categories of minors, artists, and non-native residents who have been addicted or have been subjected to abuse.²³ Ideally, the provision of rehabilitation is extended to all individuals who have satisfied the necessary criteria, including addicts and victims of abuse.

Legislators maintain the perspective that the offense of narcotics is highly deleterious and poses significant threats to human life, society, the nation, and the state, hence impacting Indonesia's national security. This viewpoint serves as the underlying rationale for the enactment of Law Number 35 of 2009 pertaining to narcotics. The implementation of policies aimed at preventing narcotics offenses is of paramount importance and holds significant societal benefits. Rehabilitation programs are implemented as a preventive measure aimed at mitigating the desire for opioids. The significance of legislative rules pertaining to the rehabilitation of individuals struggling with addiction and victims of drug misuse in Indonesia aligns with international policies as prescribed by the World Health Organization (WHO). In its capacity as a constituent of the United Nations system, the World Health Organization (WHO) assumes the responsibility, as stipulated by the conventions, of safeguarding persons and communities against the adverse consequences associated with drug utilization. Additionally, WHO endeavors to advance public health measures aimed at mitigating harm stemming from drug use. The World Health Organization (WHO) prioritizes efforts in the areas of drug use prevention, treatment of drug use disorders (including hazardous use and dependence), and the prevention and management of health and social circumstances associated with drug use. These endeavors aim to mitigate the health and social consequences attributed to drug use, thereby alleviating the burden on public health.²⁴

The implementation of rehabilitation programs is a suitable approach for individuals who are addicted to narcotics and those who have fallen victim to substance misuse. According to Florentin, Neumark, Raskin, Bdolah-Abram, and Rosca (year), the rehabilitation program aims to cater to the individual needs of patients, with an emphasis on various aspects of daily functioning. These include tasks related to maintaining a clean living environment, personal hygiene, managing finances, securing and retaining employment, adhering to medication regimens, and participating in suitable recreational activities.²⁵ The utilization of imprisonment as a means of punishment is deemed unsuitable, particularly in light of correctional facilities operating above their intended capacity. However, it is worth noting

²³ Ambarawa Nadie, 'KALEIDOSKOP 2019: Deretan Artis Yang Terjerat Narkoba', *Kompas.Com*, 2019, pp. 1-3.

²⁴ World Health Organization, "'WHO's Role, Mandate and Activities to Counter the World Drug Problem: A Public Health Perspective'", *World Health Organization*, 2010, pp. 1-3.

²⁵ S. Florentin and others, 'Differential Effect of Community Rehabilitation Reform on Hospitalizations of Patients with Chronic Psychotic Disorders With and Without Substance Use Disorder, Israel, 1991-2016', *Administration and Policy in Mental Health and Mental Health Services Research*, 48.2 (2021), 354-62 <<https://doi.org/10.1007/s10488-020-01077-4>>.

that law enforcement agencies prioritize the imposition of jail sentences as a crucial tool in establishing a deterrent impact on individuals involved in narcotics consumption. According to Marcus Priyo Gunarto, from the perspective of law enforcement.²⁶ The incorporation of measures (maatregel) inside the criminal framework (strafstelsel) is a relatively recent development that aligns with the values of humanity and justice.

The examination of drug rehabilitation strategies in various nations

The accessibility of rehabilitation strategies for individuals suffering from substance misuse and victims of drug abuse inside the criminal justice system in Indonesia is limited. The accessibility of rehabilitation services tends to be higher among those belonging to the upper middle class, as they often receive support from legal advisors and are able to offer expert testimony.²⁷ This phenomenon gives rise to instances of discrimination within the realm of law enforcement in Indonesia. The convergence of standards in the legal framework pertaining to the rehabilitation of individuals struggling with addiction and victims of narcotics misuse often provides an opportunity for law enforcement officials to manipulate rehabilitation policies across several tiers of the criminal justice system.

In contrast, Portugal's rehabilitation policy for individuals who abuse narcotics provided that the evidence does not surpass the threshold outlined in the Narcotics Law, involves a diversion from the criminal justice system. Instead, these cases are referred to the Disadvantage Commission, a governmental body composed of professionals in the fields of social and community welfare. The commission administers social work sanctions, treatment, and counseling, as well as fines, as a means of addressing the issue.²⁸ The Drug Policy Alliance provides the following information regarding the decriminalization of individuals suffering from addiction and victims of drug misuse in Portugal. In the year 2001, legislators in Portugal implemented a thorough form of decriminalization. This involved the removal of criminal sanctions for the possession and consumption of illicit drugs at a low level. Consequently, these actions were reclassified as administrative offenses. In Portugal, individuals discovered with small quantities of drugs for personal use are no longer subjected to arrest. Instead, they are required to present themselves before a local "dissuasion commission." This commission comprises one representative from the legal sector and two from the health or social service sectors.²⁹ The commission's primary objective is to assess the individual's level of drug addiction and determine appropriate measures accordingly. The commission has the authority to recommend the individual's participation in a voluntary treatment program, levy a monetary penalty, or enforce alternative administrative penalties.³⁰

²⁶ Marcus Priyo Gunarto, 'Restrukturisasi Peradilan Pidana Sebagai Upaya Mencegah Kelebihan Kapasitas Narapidana Di Lembaga Pemasyarakatan', in *Pidato Pengukuhan Jabatan Guru Besar Pada Fakultas Hukum Universitas Gadjah Mada* (Yogyakarta: UGM Press, 2013), pp. 1–25.

²⁷ Priambodo Adi Wibowo and Sinarianda Kurnia H, 'Rehabilitation For Addicts For Victims To Spike Narcotics In The Penal System', *Jurnal Wacana Hukum Dan Sains*, 3.35 (2012), 18–42.

²⁸ Diah Setia Utami, 'Perspektif BNN Atas Aturan Dan Implementasi Rehabilitasi Dan Perbandingan Negara Lain', in *Seminar Nasional "Efektivitas Rehabilitasi Sebagai Pemidanaan Terhadap Penyalah Guna Narkotika", Kerjasama Kamar Pidana MA RI –Balitbangdiklat Kumdil MA RI*, 2019, pp. 30–41.

²⁹ Muhammad Atif and others, 'Drug Utilization Patterns in the Global Context: A Systematic Review', *Health Policy and Technology*, 6.4 (2017), 457–70 <<https://doi.org/https://doi.org/10.1016/j.hlpt.2017.11.001>>.

³⁰ Australian Institute of Health and Welfare, 'Drug and Alcohol Rehabilitation', *Australian Institute of Health and Welfare*, 2022, pp. 1–6.

Since 1999, Australia has implemented drug courts as part of its rehabilitation policy for those who abuse narcotics.³¹ The primary objective of these drug courts is to redirect narcotics addicts away from the criminal justice system and toward recovery programs. The drug court utilizes the services of social welfare specialists and health professionals and actively engages with the community. Additionally, individuals struggling with addiction are provided with a comprehensive recovery program spanning 12 months.³² Rehabilitation programs are typically conducted within community-based treatment centers or residential rehabilitation services. Residential rehabilitation services allow individuals the opportunity to reside within dedicated clinics for extended periods, typically spanning several days or weeks.³³ The rehabilitation policy in France for individuals with substance misuse issues places a strong emphasis on the Individual Treatment Approach. Under this approach, the government offers a range of rehabilitation therapy options for clients to select from based on their requirements and preferences.³⁴

This allows individuals to participate in the decision-making process regarding their rehabilitation journey actively. Judicial authorities can offer alternative punishments, specifically in the form of fines (referred to as fine sanctions), as a means to avoid prioritizing jail as the primary method of punishment.³⁵ The circumstance above exhibits notable distinctions from the approach adopted by the Indonesian judicial system in addressing narcotics-related matters. The imposition of rehabilitation as a sentencing option for those involved in criminal activities and affected by substance misuse is not a mandatory requirement for courts.³⁶ The lack of clarity in the legislative framework pertaining to the rehabilitation of individuals struggling with addiction and victims of narcotics usage in Indonesian legislation has hindered the lawmakers' objectives of enhancing public health outcomes through rehabilitation initiatives, hence impeding their successful implementation. A significant number of individuals suffering from substance abuse disorders are incarcerated rather than being provided with rehabilitative interventions, resulting in limited opportunities for their recovery from addiction.

Moreover, in juxtaposition to the recent assertions put forth by scholars who do not prioritize humanitarian concerns and non-governmental organizations, which categorize Vietnam as a non-humanitarian nation due to its utilization of the most severe form of punishment, namely the death penalty, Vietnam has undertaken numerous measures to curtail the use of capital punishment since the inception of the Comprehensive Criminal Law

³¹ Debbie Ann Loh, Emma Plugge, and Marie-Claire Van Hout, 'Continuity of Opioid Substitution Treatment between Prison and Community in Southeast Asia: A Scoping Review', *International Journal of Drug Policy*, 112 (2023), 103957 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2023.103957>>.

³² Utami.

³³ Hai Thanh Luong, 'Why Vietnam Continues to Impose the Death Penalty for Drug Offences: A Narrative Commentary', *International Journal of Drug Policy*, 88 (2021), 103043 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2020.103043>>.

³⁴ Hai Thanh Luong, 'Reprint of: Why Vietnam Continues to Impose the Death Penalty for Drug Offences: A Narrative Commentary', *International Journal of Drug Policy*, 92 (2021), 103132 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2021.103132>>.

³⁵ Gede Marhaendra Wija Atmaja, *Ilmu Perundang-Undangan*, Pertama (Klungkung: Sekretariat Daerah Kabupaten Klungkung, 2016).

³⁶ Daniel Wolfe and Roxanne Saucier, 'In Rehabilitation's Name? Ending Institutionalised Cruelty and Degrading Treatment of People Who Use Drugs', *International Journal of Drug Policy*, 21.3 (2010), 145–48 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2010.01.008>>.

of Vietnam (CCV) in 1985.³⁷ These efforts have resulted in reductions that surpass those observed in other countries that still retain the death penalty. Analysts advocating this viewpoint may be deficient in their knowledge of legislative action, actual implementation, and international initiatives.³⁸ Vietnam has consistently enforced stringent sentences for drug-related offenses throughout the late 1990s. However, a trend towards sentence reduction has been observed within the Vietnamese Communist Party (CPV) subsequent to the implementation of its 1999 CCV policy. In the 21st century, the Communist Party of Vietnam (CPV) has released two significant policy statements in order to align with both domestic and international legal requirements. These publications include commitments to future reductions and eliminations.³⁹

According to the Theory of Legal Validity, validity is a characteristic within the realm of law that denotes the binding nature of legal norms, necessitating individuals to conform their actions to the requirements set out by these legal standards. The validity of a norm is contingent upon its inclusion within a broader system of norms.⁴⁰ Gustav Radbruch further asserted that the process of concretizing the character of a legal era offers a direct approach to reconstructing the nature of a certain legal system. This may be achieved by evaluating the factors upon which the perception of an individual exposed to a legal era is contingent.⁴¹ Individuals who have previously struggled with addiction to drugs can be considered to have achieved recovery when they have successfully abstained from the use of narcotics, thereby attaining a state of being drug-free. This implies that individuals who were once addicted to opioids and had been victimized by their abuse have effectively eliminated narcotics from their lives and no longer engage in their consumption. Individuals who have struggled with addiction and have been affected by narcotics abuse are considered to have achieved recovery when they refrain from engaging in criminal behavior, hence indicating a cessation of involvement in illicit activities associated with narcotics offenses.

Moreover, it is posited that individuals can achieve recovery by embracing a wholesome lifestyle, hence enabling addicts and victims of substance misuse to resume their daily routines in a typical manner.⁴² The ultimate indicator of success for individuals struggling with addiction and those affected by narcotics abuse lies in their enhanced productivity. Narcotics crime is distinct from other forms of criminal activity due to its classification as a

³⁷ Gideon Lasco, 'Drugs and Drug Wars as Populist Tropes in Asia: Illustrative Examples and Implications for Drug Policy', *International Journal of Drug Policy*, 77 (2020), 102668 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2020.102668>>.

³⁸ Dang Minh Hieu and others, 'Facing Drug Addiction: Vietnam's Struggle with Opioids', *Drug Science, Policy and Law*, 7 (2021), 205032452110349 <<https://doi.org/10.1177/20503245211034934>>.

³⁹ Mai Thi Ngoc Tran and others, 'Understanding Vietnam's Drug Policy for Amphetamine-Type Stimulants Misuse', *Harm Reduction Journal*, 19.1 (2022), 45 <<https://doi.org/10.1186/s12954-022-00621-9>>.

⁴⁰ E. Fernando M. Manullang, 'Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang', *Undang: Jurnal Hukum*, 5.2 (2022), 453–80 <<https://doi.org/10.22437/ujh.5.2.453-480>>.

⁴¹ Mahrus Ali, 'Pemetaan Tesis Dalam Aliran-Aliran Filsafat Hukum Dan Konsekuensi Metodologisnya', *Jurnal Hukum IUS QUIA IUSTUM*, 24.2 (2017), 213–31 <<https://doi.org/10.20885/iustum.vol24.iss2.art3>>.

⁴² D Wolfe and others, 'Human Rights and Access to Hepatitis C Treatment for People Who Inject Drugs', *International Journal of Drug Policy*, 26.11 (2015), 1072–80 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2015.05.007>>.

victimless crime.⁴³ The approach of rehabilitating individuals who are addicted to narcotics and those who have been victimized by narcotics abuse might be viewed as an abolitionist method of addressing narcotics-related offenses. The proposed approach is abolitionistic, as it aims to eliminate the underlying factors that contribute to criminal behavior.⁴⁴ In connection with this matter, it is imperative to implement rehabilitative measures in order to eliminate the unlawful trafficking of narcotics.⁴⁵ The convergence of methodologies and standards within Law Number 35 of 2009 pertaining to Narcotics, which simultaneously mandates rehabilitation while granting law enforcement officials the authority to refrain from imposing rehabilitation measures on addicts and victims of narcotics misuse, warrants more examination. This analysis involves a systematic examination of different legal statutes and regulations, as well as a teleological interpretation that delves into the underlying intentions and aims behind the enactment of Law Number 35 of 2009 pertaining to Narcotics. The resolution of the long-term issue of clouded norms necessitates more than just the interpretation of laws by law enforcement. It calls for the reconstruction of rehabilitation laws to protect those suffering from addiction and victims of narcotics misuse.

4. Conclusion

The policies regarding the documentation produced by individuals who take drugs vary in their principles and approaches across different countries. In Indonesia, the counter-measure initiatives targeting drug users have been observed to mostly adopt a positivist approach, with a tendency towards a simplistic anthropocentric conception of justice. This circumstance has resulted in a scarcity of instances where judges opt to enforce rehabilitation provisions, particularly in cases involving individuals who use narcotics within economically disadvantaged populations. In cases involving individuals who satisfy the criteria for narcotics-related offenses, judges tend to favor imposing jail sentences over rehabilitation programs, resulting in a higher likelihood of incarceration. Contrary to the prevalent practice in Vietnam, the utilization of capital punishment for drug users is less frequent in this particular country, as it is primarily employed in the context of drug enforcement. The approach in Portugal diverges from that of other countries, as it opts for a system where drug misuse is not immediately addressed through the criminal justice system. Instead, a dedicated commission established by local governments takes charge, employing social sanctions, counseling, or fines as a means of intervention. In terms of policy initiatives, drug users exhibit divergent approaches, as exemplified by Australia's model, which closely resembles Indonesia's preference for redirecting drug abusers away from the criminal justice system and towards rehabilitation. The process of entering rehabilitation in Indonesia is characterized by limitations and distinct variations in its application compared to other populations. The

⁴³ Insan Firdaus, 'Harmonisasi Undang-Undang Narkotika Dengan Undang-Undang Pemasarakatan Terkait Rehabilitasi Narkotika Bagi Warga Binaan Pemasarakatan', *Jurnal Penelitian Hukum De Jure*, 21.1 (2021), 141 <<https://doi.org/10.30641/dejure.2021.V21.141-160>>.

⁴⁴ Wulan E. Igir, Olga A. Pangkerego, and Anna S. Wahongan, 'Pembinaan Terhadap Anak Pelaku Tindak Pidana Narkotika Dalam Rangka Perlindungan Anak', *Lex Crimen*, 9.3 (2020), 104–14.

⁴⁵ Camille Therese C Yusay and Nico A Canoy, 'Healing the Hurt amid the Drug War: Narratives of Young Urban Poor Filipinos in Recovering Families with Parental Drug Use', *International Journal of Drug Policy*, 68 (2019), 124–31 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2018.10.009>>.

legitimacy of rehabilitating individuals affected by drug addiction and victims of substance abuse is grounded in humanitarian principles and justice, as exemplified by the Pancasila values. These values encompass a fair and civilized code of conduct that upholds the well-being of individuals and promotes social justice for all members of Indonesian society.

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