

Research Article

Criminal Law Policy on Drug Abuse from a Health Perspective

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Abstract: Drug abuse in Indonesia has reached an alarming level and has become a complex legal and health problem. This study aims to examine the criminal law policy applied to drug abusers from a health perspective, with a focus on the rehabilitative approach as an alternative to punishment. The method used is normative legal research with a statute approach and a conceptual approach, through a literature study of laws and regulations, court decisions, and relevant scientific literature. The results of the study indicate that Law Number 35 of 2009 concerning Narcotics contains a dualistic approach, namely punishment (penal) and rehabilitation (non-penal), but its implementation still tends towards imprisonment. From a health perspective, drug abuse is an addictive disorder that requires a medical and psychosocial approach, not solely a criminal repressive approach. An ideal criminal law policy should combine proportional criminal sanctions with a comprehensive medical and social rehabilitation program. This study recommends policy reforms that are more oriented towards the health recovery of drug abusers without neglecting the aspect of law enforcement against drug dealers and traffickers.

Keywords: Criminal Law Policy; Drug Abuse; Health Perspective; Narcotics; Rehabilitation

1. Introduction

Drug abuse is a growing global problem with widespread negative impacts, including health, social, economic, and legal aspects. In Indonesia, this phenomenon has reached alarming levels, with millions of citizens involved as drug users, dealers, and traffickers. The National Narcotics Agency (BNN) notes that the prevalence of drug abuse in Indonesia continues to increase year after year, making Indonesia one of the countries with the highest rates of drug abuse in Southeast Asia.

The criminal law policy on narcotics abuse in Indonesia is basically regulated in Law Number 35 of 2009 concerning Narcotics as a replacement for Law Number 22 of 1997. This law contains a dual spirit, namely on the one hand providing strict criminal sanctions against perpetrators of narcotics abuse, and on the other hand encouraging rehabilitation efforts for abusers.

However, in law enforcement practice, the dominant approach still relies on imprisonment (incarceration), so that correctional institutions in Indonesia experience overcrowding, most of which is contributed by narcotics convicts.

From a health science perspective, drug abuse is viewed as a chronic disease in the form of an addiction disorder involving neurobiological changes in the brain. The World Health Organization (WHO) emphasizes that drug addiction is a medical condition requiring a therapeutic approach, not simply criminal behavior that must be punished. Therefore, there is significant tension between the repressive paradigm of criminal law and the curative and rehabilitative paradigm of health in responding to the phenomenon of drug abuse.

Based on this background, this study seeks to examine in depth how criminal law policy regarding drug abuse in Indonesia can be reformulated to be more health-oriented without abandoning criminal law's function as a means of community protection. This research is

Received: November 18, 2025

Revised: January 13, 2026

Accepted: March 10, 2026

Published: April 07, 2026

Curr. Ver.: April 07, 2026



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expected to provide academic contributions to the development of more humane and effective criminal law policies in addressing the drug problem in Indonesia.

2. Literature Review

Criminal Law Policy (Penal Policy)

Criminal law policy, also known as penal policy, is part of social policy that aims to achieve public welfare. According to Marc Ancel, criminal law policy is both a science and an art that ultimately has the practical goal of enabling positive legal regulations to be better formulated and to provide guidance not only to lawmakers, but also to courts that implement laws and also to administrators or implementers of court decisions. Sudarto stated that criminal law policy is related to how criminal law is formulated properly and provides guidance to lawmakers, judges, and implementing institutions.

In the context of drug abuse, criminal law policy must consider two important dimensions: prevention and recovery. The prevention dimension encompasses the threat of deterrent punishment for potential offenders, while the recovery dimension encompasses rehabilitation programs for offenders already involved in drug abuse. Harmonizing these two dimensions is a major challenge in formulating drug criminal law policy.

Narcotics and their Abuse in Indonesian Positive Law

Law Number 35 of 2009 concerning Narcotics defines narcotics as substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependence. This law classifies narcotics into three groups based on the level of risk of dependence and their medical benefits.

Drug abuse under Indonesian law encompasses the unauthorized and unlawful use of narcotics. Article 127 of Law Number 35 of 2009 stipulates that anyone who abuses Class I narcotics for personal gain is subject to a maximum prison sentence of four years. However, Article 54 of the same law stipulates that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This dual approach often creates uncertainty in law enforcement practices.

Health Perspectives in Handling Drug Addiction

From a medical perspective, drug addiction is categorized as a substance use disorder according to the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) published by the American Psychiatric Association. This condition is characterized by a pathological pattern of substance use that causes clinically significant impairment or distress. Evidence-based approaches to treating drug addiction include pharmacological therapy, cognitive behavioral therapy, and psychosocial interventions.

In its various recommendations, the WHO emphasizes the importance of decriminalizing personal drug use and shifting from criminalization to health rehabilitation. Countries such as Portugal, Switzerland, and the Netherlands have successfully implemented a health-centered approach to their drug policies, with significant results in reduced overdose rates, decreased HIV/AIDS cases related to needle use, and reduced burden on the criminal justice system.

3. Research Methods

This research uses a normative legal research method, which is legal research conducted by examining library materials or secondary data. The approaches used include: (1) a statute approach, namely by examining all laws and regulations related to the legal issues being studied; (2) a conceptual approach, by referring to views and doctrines that have developed in legal science; and (3) a comparative approach, by comparing narcotics legal policies in several countries that have successfully implemented a health-based approach.

The legal materials used include primary legal materials in the form of laws and regulations (Law Number 35 of 2009 concerning Narcotics, Government Regulations, Circular Letters of the Supreme Court), relevant court decisions, and international legal instruments. Secondary legal materials include textbooks, scientific journals on law and health, previous research results, and official reports from the National Narcotics Agency (BNN), the Ministry of Health, and international organizations such as the WHO and UNODC. The legal materials were collected through documentation studies, which were then analyzed qualitatively using grammatical, systematic, and teleological interpretation methods.

4. Results and Discussion

Formulation of Criminal Law Policy on Narcotics in Indonesia

Research results show that criminal law policy on drug abuse in Indonesia has undergone significant evolution over time. Law Number 35 of 2009 has adopted a dual approach that normatively recognizes drug abusers as both victims and perpetrators. Article 4 of the law emphasizes that the objectives of drug regulation include ensuring the availability of narcotics for health services and ensuring the provision of medical and social rehabilitation efforts for drug abusers and addicts.

However, in terms of implementation, Supreme Court Circular Letter (SEMA) Number 4 of 2010, which was later updated with SEMA Number 3 of 2011 and SEMA Number 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse, and Addicts in Medical and Social Rehabilitation Institutions, attempts to provide guidelines for judges to consider rehabilitation. However, this study found that the level of rehabilitation implementation is still very low compared to prison sentences. Data from the Directorate General of Corrections shows that approximately 53% of correctional inmates are drug convicts, indicating the dominance of a criminal approach.

Health Perspective Analysis of Narcotics Criminalization Policy

From a health perspective, imprisonment for drug abusers raises several serious clinical and epidemiological issues. First, the prison environment has been shown to be un conducive to addiction recovery due to the high prevalence of drug trafficking within the prisons themselves. Second, the stigma attached to inmate status actually hinders post-release recovery and social reintegration. Third, imprisonment fails to address the neurobiological and psychosocial root causes of addiction.

This research also identified that a health-based approach to treating drug abusers does not imply impunity. Instead, it redirects resources from costly and ineffective criminal justice systems to evidence-based rehabilitation programs. Comprehensive rehabilitation interventions include medical detoxification, maintenance therapy with medications such as methadone or buprenorphine (Methadone Maintenance Therapy/MTRM), psychological counseling, life skills training, and post-rehabilitation community support.

Health-Oriented Reformulation of Narcotics Criminal Law Policy

Based on a comparative analysis of the experiences of countries that have successfully integrated a health approach into drug policy, this study formulates several recommendations for policy reform. First, Law Number 35 of 2009 needs to be revised to emphasize the distinction between drug abusers/addicts and drug dealers. This ensures that the threat of severe criminal sanctions is only applied to dealers and dealers, while drug abusers are directed toward rehabilitation.

Second, there is a need to strengthen objective medical assessment mechanisms within the criminal justice system to identify whether a defendant is a drug abuser/addict requiring rehabilitation or a dealer who should be punished. Third, adequate rehabilitation infrastructure is needed, both in quality and quantity, considering that the capacity of rehabilitation institutions is currently very limited compared to the number of drug abusers requiring services. Fourth, there is a need to strengthen cross-sectoral coordination between legal institutions (the National Police, the Prosecutor's Office, the Courts, the National Narcotics Agency) and health institutions (the Ministry of Health, the Food and Drug Monitoring Agency, and mental hospitals) in handling drug cases.

5. Conclusion

Criminal law policy on drug abuse in Indonesia still faces fundamental challenges in the form of an imbalance between the repressive-punitive approach and the rehabilitative-curative approach. Law Number 35 of 2009 has normatively recognized the need for rehabilitation for drug abusers, but its implementation has not been optimal due to various systemic obstacles, ranging from the limited capacity of rehabilitation institutions, the lack of understanding among law enforcement officials about addiction as a medical condition, to the social stigma attached to drug abusers.

From a health perspective, drug abuse is a chronic addictive disorder that requires a comprehensive medical-psychosocial approach. Imprisonment alone has proven ineffective and even counterproductive to the goal of restoring the health of drug abusers. The necessary policy reforms include strengthening rehabilitation pathways as the primary response to drug abuse, along with the enforcement of firm and proportionate criminal sanctions for drug dealers and traffickers. Thus, a humanistic, evidence-based, and health-oriented drug criminal law policy can make a more tangible contribution to addressing the drug problem in Indonesia.

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