

Criminal Responsibility for Narcotics Abuse from the Ultimum Remedium Perspective

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Abstract. *This research discusses the concept and strategies for criminal law enforcement against drug abuse in the future to better align with the principle of ultimum remedy. The background of this research is based on the fact that drug law enforcement policies in Indonesia are still repressive, with imprisonment as the primary means of combating drug abuse. Such an approach leads to various negative impacts such as overcapacity in correctional institutions, low effectiveness of rehabilitation, and the criminalization of users who are actually victims of addiction. The main issues of this research include: (1) criminal liability for drug abuse in Indonesia according to Law Number 35 of 2009 concerning Narcotics; (2) obstacles and problems in applying the principle of ultimum remedy to drug users in Indonesia today; and (3) the concept and strategy of criminal law enforcement against drug abuse in the future to better align with the principle of ultimum remedy. The research method used is a normative legal approach, using primary data in the form of laws and national policies, as well as secondary data such as literature, journals, and the results of comparative studies. The research findings indicate that the effectiveness of drug law policies is not determined by the severity of the sanctions, but rather by the legal system's ability to integrate legal, health, and social approaches. Therefore, the future direction of criminal law reform for narcotics needs to focus on applying the principle of ultimum remedy, strengthening rehabilitation mechanisms, establishing cross-sectoral institutions, and changing the paradigm of law enforcement officers to be more oriented toward corrective justice and social recovery. Keywords: Narcotics, Criminal Law Enforcement, Ultimum Remedium, Rehabilitation, Legal Reform.*

Keywords: Enforcement; Legal; Rehabilitation; Ultimum.

1. Introduction

Indonesia, as a country based on Pancasila law and the 1945 Constitution, makes the protection of human rights a fundamental principle. Pancasila, as the foundation of the state, reflects the nation's noble values, which serve as the basis for all laws in Indonesia, including the protection of the rights of its citizens. The 1945 Constitution clearly stipulates human rights, particularly in Article 28H paragraph (1).¹ which affirms that every individual has the right to a decent standard of living and health protection. This provision affirms the state's commitment to protecting and fulfilling the fundamental rights of its citizens, including the right to health free from the threat of drug abuse.²

Pancasila, as the foundation of the state, contains fundamental principles that must be reflected in the legal system, particularly criminal law. The second principle, "Just and civilized humanity," and the fifth principle, "Social justice for all Indonesian people," emphasize the need for criminal law enforcement that upholds human dignity, the rule of law, and social justice. Therefore, every law enforcement measure, including in the area of drug crimes, must be in line with the principles of humanity and justice.

One of the actions that violates the law among the public is drug-related crime. Narcotics are essential for medical and healthcare services, as well as for scientific advancement, but they can lead to highly detrimental dependency if used improperly or without control and supervision. Despite this, drug abuse and illicit trafficking continue, perpetrated by both individuals and corporations, despite strict legal regulations.

Drug crime is a form of organized crime that is very difficult to uncover, both qualitatively and quantitatively, due to its hidden and closed structure and international organization with networks extending throughout the world. Indonesia has attempted to develop a series of regulatory instruments to prevent and address crimes related to drug abuse.³

Drug crime is a serious challenge facing Indonesia. This crime not only damages individual health but also puts the younger generation at risk, reduces national productivity, and can even disrupt national stability.⁴ It's no exaggeration to view

¹ Online Law, "Human Rights Protection in Articles 28A to 28J of the 1945 Constitution," Online Law, nd, https://www.hukumonline.com/berita/a/pasal-28a-sampai-28j-uud-1945-lt642a9cb7df172/?page=all&utm_source, accessed on October 1, 2025.

² Husnul Abdi, "Article 28H Paragraph 1 of the 1945 Constitution Concerning Human Rights, Understand the Explanation," *Liputan6*, 2023.

³ Irwan Jasa Tarigan, *Narcotics and Their Prevention* (Sleman: CV Budi Utama, 2017), p. 4

⁴ Mardjono Reksodiputro, *Criminology and the Criminal Justice System* (Jakarta: UI Press, 2010), p. 62

narcotics as a national threat, given their multifaceted impacts: medical, social, economic, and security. Therefore, a state governed by the rule of law must consistently uphold the rule of law regarding drug crimes.

Drug abuse is a serious threat that can damage an individual's physical and mental health. Beyond health impacts, drug abuse also has significant social and economic consequences, such as increased crime rates, decreased productivity, and a burden on the public health system.⁵ Thus, this behavior clearly contradicts the right to health and a decent life as guaranteed by the 1945 Constitution.

Drug abuse is a serious problem due to its detrimental effects on a person's physical and mental health. Physically, drugs can disrupt the central nervous system, damage vital organs like the liver and kidneys, cause respiratory problems, and increase the risk of infectious diseases due to risky behaviors, such as sharing needles.⁶ On the other hand, mental and psychological effects include depression, anxiety, psychosis, impaired concentration, and loss of the ability to function normally in social and work life.⁷

The impact of inappropriate drug use also extends to social aspects. People who become addicted to drugs tend to commit crimes to satisfy their addiction, such as theft, robbery, and violence, thus worsening the crime rate in society.⁸ Furthermore, decreased work productivity results from health problems and the inability to work consistently, which ultimately negatively impacts family finances and national productivity. Pressure on the health system also increases as drug users require intensive medical care, rehabilitation, and mental health services, which require significant government and community expenditures.⁹

Drug abuse clearly contradicts the right to health and a decent life guaranteed by the 1945 Constitution. Article 28H paragraph (1) clearly states that every individual has the right to receive appropriate health protection and life insurance. Therefore, drug abuse is not just an individual problem, but also a legal, social, and economic issue that requires state intervention through criminal law policies and rehabilitation efforts. Law enforcement related to drug abuse needs to combine

⁵ Mohammad Indra Bangsawan, "Drug Abuse as a Crime Against Human Rights That Impacts Human Survival," *Jurisprudence* 6, no. 2 (2016): 89–99.

⁶ National Institute on Drug Abuse, 2023, <https://nida.nih.gov>, accessed on October 1, 2025.

⁷ World Health Organization., "Mental Health and Substance Use," World Health Organization, 2022, [World Health Organization \(WHO\)](https://www.who.int), accessed on October 1, 2025

⁸ National Narcotics Agency, "Data on Narcotics Abuse in Indonesia," BNN, 2023, <https://bnn.go.id>, accessed on October 1, 2025.

⁹ Santoso D, Surya & R, "The Impact of Drug Abuse on Labor Productivity," *Journal of Law and Social Sciences* 12, no. 2 (2021).

preventive, rehabilitative, and repressive approaches so that citizens' rights to health and a decent life are effectively protected.¹⁰

Data from the National Narcotics Agency (BNN) shows that the prevalence of drug abuse in Indonesia reached 3,951 cases in 2025, rising to 4,170 cases the following month. 14,387 drug abuse patients received rehabilitation services from the National Narcotics Agency (BNN) and 5,087 from the Indonesian Ministry of Health.¹¹ These figures demonstrate that drug abuse is not merely an individual issue, but has become a national problem affecting many aspects of society. This significant number of users has serious consequences, not only for the physical and mental health of users, but also for families, the social environment, and workforce productivity. This high prevalence also indicates that prevention, education, and rehabilitation efforts still need to be strengthened to effectively suppress the rate of drug abuse.

Beyond the social impacts, drug trafficking also has significant economic implications. A report from the Financial Transaction Reports and Analysis Center (PPATK) noted that the turnover of funds related to money laundering (TPPU) from drug cases reached Rp99 trillion over the past two years.¹² These significant figures demonstrate that drug trafficking not only harms individuals and families but also jeopardizes national economic stability. This illegal economic activity can fuel other criminal practices, such as corruption, document forgery, and financial system manipulation, necessitating strict oversight and law enforcement.

In line with these actions, from an Islamic perspective, drug abuse is considered a prohibited act because it can harm both individuals and society. This principle is rooted in the teachings of the Quran and Hadith, which expressly prohibit any form of behavior that causes harm or harm to individuals or the social environment. For example, Surah Al-Ma'idah, verse 90, states:

"O you who believe, indeed wine, gambling, idols and lottery of fate are evil acts of the devil, so stay away from these acts so that you will gain good luck."

This verse emphasizes the prohibition of anything that can harm an individual's mind, morals, and health. Although this verse specifically addresses alcohol and gambling, the principle it embodies can be analogized to drug abuse. Both substances have detrimental effects on the body and mind, cause dependency, and have the potential to trigger criminal behavior that harms society. In Islamic jurisprudence, any substance that intoxicates or harms is considered haram

¹⁰ Rahmawati NA, "Indonesian Criminal Law: Ultimum Remidium," *Recidivie Journal*, Sebelas Maret University, 2020.

¹¹ <https://puslitdatin.bnn.go.id/konten/unggah/2025/06/IDR-2025.pdf>, accessed on October 1, 2025

¹² https://www.ppatk.go.id/news/read/1426/indonesia-darurat-narkoba-perputaran-uang-capai-rp99-triliun.html?utm_source, accessed on October 1, 2025.

because it violates the principle of *la darar wa la dirar* (no harm to oneself or others).¹³

The moral and ethical foundation from an Islamic perspective, the seriousness and concern of the Indonesian government in dealing with narcotics abuse has been realized through the birth of Law Number 35 of 2009 concerning Narcotics, which was passed on October 12, 2009. This law is a development of previous regulations and is designed to answer modern challenges related to the distribution and abuse of narcotics which are increasingly complex. Law No. 35 of 2009 has clear objectives, including ensuring the availability of narcotics for medical and research purposes, while preventing abuse and illegal distribution that are detrimental to society.

Unlike the Narcotics Law, Law Number 36 of 2009 concerning Health provides the legal basis for protecting citizens' rights to health. This law affirms that every individual has the right to protection from the dangers of dangerous substances, including narcotics. This emphasizes the state's role not only in enforcing criminal law but also in preventive and rehabilitative efforts, ensuring that the public is protected from the health risks posed by drug abuse.

The government also regulates rehabilitation mechanisms through Government Regulations and Minister of Health Regulations, which provide the legal basis for implementing medical and social rehabilitation for drug users. This rehabilitation includes medical treatment to overcome dependence, psychological counseling, social education, and community reintegration programs. This step aligns with the principle of *ultimum remedium*, where criminal enforcement is pursued only after rehabilitative and preventive efforts have failed, thus giving users who are still potentially salvageable the opportunity to recover without being directly subject to criminal penalties.

This law emphasizes the state's responsibility to protect society from the negative impacts of narcotics, including physical, mental, social, and economic harm, in line with Islamic principles that prohibit all forms of behavior that endanger oneself or others. With this regulation, the state not only enforces criminal law for abusers but also provides a basis for rehabilitation, prevention, and education for users, especially those who can still be saved through medical and social rehabilitation programs.¹⁴ Furthermore, Law No. 35 of 2009 classifies narcotics into several categories and stipulates proportional criminal sanctions according to the level of crime, from users to large-scale dealers. This reflects the principle of *ultimum remedium*, where criminal punishment is considered a last resort after non-criminal measures, such as rehabilitation, prevention, and education, have failed. Thus, this regulation demonstrates the state's integration of positive legal

¹³ Al- Sarakhsi, *Al-Mabsut Fi Al-Fiqh Al-Hanafi* (Beirut: Dar al-Kutub al-ilmiyah, 2000), p. 5

¹⁴ RahmawatiNA, *Op.Cit.*

principles, public health concerns, and social justice in its efforts to combat drug abuse.

Overall, the integration of religious, moral, and positive legal foundations strengthens the argument that combating drug abuse must be multidimensional, involving a balanced approach of preventive, rehabilitative, educational, and repressive measures. This approach ensures that citizens' rights to health and a decent life are protected, while also providing legal certainty for the public and law enforcement.

The principle of *ultimum remedium* defines criminal law as a last resort/remedial measure when other legal sanctions cannot be taken. The principle of *ultimum remedium* states that the imposition of criminal sanctions is the last resort that can be taken when other legal enforcement measures are ineffective. Law enforcement against a perpetrator that prioritizes the principle of restorative justice prioritizes case resolution through negotiation/deliberation, listening to the aspirations of both the perpetrator and the victim of the crime.¹⁵

To address this issue, Law Number 35 of 2009 concerning Narcotics serves as the primary legal basis. However, the implementation of the principle of *ultimum remedium*, the use of criminal sanctions as a last resort, still faces various challenges. Several articles in this law, such as Articles 111, 112, and 127, are often used to ensnare drug users. In fact, they should receive rehabilitation, not criminal punishment. This contradicts the stated objective of the Narcotics Law, which prioritizes rehabilitation for drug users.¹⁶

The unclear definition of drug addicts, abusers, and victims of drug abuse in this law makes it difficult to distinguish between those in need of rehabilitation and those involved in drug trafficking. As a result, many users who should receive rehabilitation are instead subject to criminal sanctions, contrary to the principle of *ultimum remedium*.¹⁷

The phenomenon of drug abuse raises complex issues in Indonesian criminal law, particularly regarding the application of the principle of *ultimum remedium*. This issue becomes even more compelling when linked to the differences in legal status between addicts, abusers, and victims of drug abuse. Each category carries distinct legal consequences, as stipulated in the Narcotics Law. Addicts are viewed as individuals experiencing dependence and requiring medical treatment, while

¹⁵ La Niasa, Ayu Lesatari Dewi, Sakticakra Salimin Afamery, "Restorative Justice Within the Framework of the *Ultimum Remedium* Principle Regarding the Termination of Prosecution Based on Prosecutor's Regulation No. 15 of 2020," *Gorontalo Law Review* 5, no. 2 (2022): 375–84.

¹⁶ Widia Ulfa, "Decriminalization of Article 127 of Law Number 35 of 2009 concerning Narcotics," *Rio Law Journal* 1, no. 1 (2020), <https://doi.org/10.36355/rlj.v1i1.330>.

¹⁷ https://bnn.go.id/bnn-dorong-revisi-uu-narkotika-fokus-pada-aturan-berkeadilan/?utm_source, accessed on October 1, 2025.

abusers are those who use narcotics without authorization and are subject to criminal sanctions. Victims of drug abuse, on the other hand, are individuals who have been subjected to manipulation or coercion, and therefore are more appropriately provided with protection and rehabilitation.

This distinction raises significant criminal law policy issues. On the one hand, the state is obligated to protect society by implementing strict criminal sanctions to create a deterrent effect. However, on the other hand, excessive use of criminal law contradicts the principle of *ultimum remedium*, which places punishment as a last resort after non-penal approaches are no longer effective. This tension between repressive and rehabilitative approaches is a crucial issue in law enforcement policy regarding drug abuse.

Furthermore, if every drug addict and abuser were automatically placed in a rehabilitation program without any criminal sanctions, concerns arise that this could actually reduce the deterrent effect and undermine the authority of criminal law. Conversely, if every perpetrator were always punished, this approach could ignore humanitarian aspects and the right to treatment. Therefore, a balance is needed between penal and non-penal approaches in enforcing narcotics law, so that the principle of *ultimum remedium* is not merely normative but is truly implemented proportionally in judicial practice.

2. Research Methods

The approach used is normative juridical, namely research that focuses on positive legal norms using statutory, conceptual and case approaches.¹⁸ The selection of this method is based on the focus of the study, which examines how Law Number 35 of 2009 concerning Narcotics regulates criminal liability for drug abusers and how the principle of *ultimum remedium* is positioned within criminal justice policy. Using a normative juridical approach, this research will analyze the text of the law, legal doctrine, and relevant jurisprudence, and then interpret them systematically. The goal is to assess the consistency between positive legal norms and the principle of *ultimum remedium* as a last resort in criminal law enforcement. The research specifications in this thesis are descriptive and analytical. Descriptive research aims to present a structured, factual, and accurate picture of the legal phenomenon being studied.¹⁹ In this context, the research will comprehensively describe the regulations related to criminal liability for drug abusers as regulated in Law Number 35 of 2009 concerning Narcotics.

¹⁸ Soekanto Soerjono, *Normative Legal Research: A Brief Objective*, Op.Cit, p. 13.

¹⁹ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 1986), p. 10

3. Results and Discussion

3.1. Criminal Responsibility for Narcotics Abuse in Indonesia According to Law Number 35 of 2009 concerning Narcotics

The Republic of Indonesia, based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholds human dignity and guarantees the protection of human rights for all citizens. In this context, the state has a responsibility to protect its citizens from all forms of threats that can damage morals, physical, and mental health, including the dangers of drug abuse. Drug crimes are an extraordinary crime that threatens national security, damages the younger generation, and has systemic impacts on social, economic, and legal life. Therefore, the regulation and enforcement of laws against drug abuse in Indonesia are an important part of the national criminal law system, which aims to protect the interests of society while upholding justice.²⁰

Normatively, the constitutional basis for regulating narcotics criminal law can be traced back to Article 28H paragraph (1) of the 1945 Constitution which states that "Everyone has the right to live in physical and spiritual prosperity, in a safe and comfortable place.

live, and have a good and healthy living environment and have the right to receive health services.

"This provision means that the state is obliged to prevent anything that could threaten the health and welfare of citizens, including drug abuse.²¹ Furthermore, within the framework of the national legal system, Law Number 35 of 2009 concerning Narcotics was born as the main legal instrument that regulates the control, prevention, and eradication of narcotics crimes.

Law Number 35 of 2009 explicitly defines narcotics in Article 1 number 1 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."²² Meanwhile, drug abusers are defined in Article 1 number 15 as "people who use narcotics without permission or against the law." Thus, drug abuse includes the act of using or consuming narcotics without permission or not in accordance with applicable legal provisions.

The criminal law provisions for drug abuse in Law No. 35 of 2009 are comprehensive, encompassing three main aspects: narcotics control and supervision, prevention and eradication of drug crimes, and rehabilitation for drug

²⁰RomliAtmasasmita, loc.it, p. 141

²¹1945 Constitution of the Republic of Indonesia, Article 28 H paragraph (1)

²²Law Number 35 of 2009 concerning Narcotics, Article 1 number 1

abusers. Within the criminal law framework, the primary focus is criminal responsibility, namely a person's ability to bear the legal consequences of their actions that violate criminal norms.²³ Criminal liability in the context of drug abuse refers to the principle of *geen straf zonder schuld* (no punishment without fault), which means that a person can only be punished if proven to have committed a prohibited act and is legally guilty.

Law Number 35 of 2009 clearly distinguishes between abusers (users), distributors, and producers. This distinction is important because it relates to the degree of culpability and the purpose of punishment. In this context, Articles 111 to 127 regulate various forms of narcotics crimes, including possession, production, distribution, and personal abuse. For example, Article 127 paragraph (1) states that: "Every abuser of class I narcotics for themselves shall be punished with a maximum imprisonment of 4 (four) years; any abuser of class II narcotics for themselves shall be punished with a maximum imprisonment of 2 (two) years; and any abuser of class III narcotics for themselves shall be punished with a maximum imprisonment of 1 (one) year."²⁴

This provision demonstrates that drug abusers remain classified as criminals, but the law also allows for a non-penal approach through rehabilitation. This is emphasized in Article 54, which states: "Drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation."²⁵ Thus, the Narcotics Law adopts two approaches at once, namely repressive (prison sentences) and rehabilitative (social and medical recovery).

Normatively, criminal responsibility for drug abusers includes the following elements: (a) an act that fulfills the elements of a criminal act as stipulated in the law; (b) an error in the form of intent or negligence; (c) the perpetrator is legally responsible; and (d) the absence of justification or forgiveness.⁷ The application of these elements must take into account the social and psychological context of the perpetrator. In practice, drug users are often victims of dependency with health and social dimensions, not simply criminals. Therefore, the Indonesian legal system strives to balance the principles of retributive justice and restorative justice.

Law No. 35 of 2009 also provides specific provisions regarding the treatment of addicts who self-report. Based on Article 55, "Drug addicts who are under age and have been reported by their parents or guardians to the Mandatory Reporting Receiving Institution (IPWL) shall not be prosecuted." This provision demonstrates a policy of differentiated criminal liability based on the principle of *ultimum*

²³ Moeljatno, loc.it, p. 72

²⁴ Law Number 35 of 2009 concerning Narcotics, Article 127 paragraph (1)

²⁵ Ibid, Article 54

remidium, where punishment is considered a last resort after a rehabilitative approach has been taken.

In the context of law enforcement, law enforcement officers, including the police, prosecutors, and courts, have the authority to assess whether a drug abuser deserves imprisonment or rehabilitation. These technical guidelines are regulated in Supreme Court Circular Letter (SEMA) No. 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse, and Drug Addicts in Rehabilitation Institutions. The SEMA provides guidelines for judges to place drug abusers in rehabilitation institutions if they meet certain requirements, such as the discovery of small amounts of evidence and evidence of dependency.²⁶

The form of criminal responsibility for narcotics distributors, dealers, or producers is regulated by much heavier sanctions. For example, Article 113 paragraph (2) of the Narcotics Law states that: "In the case of acts as referred to in paragraph (1) where the weight of class I narcotics exceeds a certain amount, the perpetrator can be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years."²⁷The provisions of the death penalty and life imprisonment show that the law views drug crimes as serious crimes that have a wide impact on society and the state.

The application of severe criminal sanctions is often controversial, particularly from the perspective of human rights and the principle of proportionality. According to modern criminal law principles, punishment should be proportionate to the severity of the crime and the consequences. In this context, Indonesia needs to strike a balance between a deterrent effect and protecting the human rights of perpetrators, who in many cases are also victims. Therefore, the legal approach to drug abuse is directed at balancing law enforcement and humanitarian concerns.

The provisions of Law No. 35 of 2009 also emphasize the state's responsibility to provide rehabilitation facilities. Article 59 states that the government is obliged to establish medical and social rehabilitation institutions, both government-run and community-run. This indicates that national legal policy aims not only to punish but also to rehabilitate. The ultimate goal of criminal accountability under the Narcotics Law is not merely to provide a deterrent effect, but also to restore the social function of perpetrators so they can become productive members of society.

Overall, it can be concluded that the criminal liability system for drug abuse in Indonesia, based on Law No. 35 of 2009, contains a dual policy: on the one hand, it strictly enforces criminal law against perpetrators of serious drug crimes (distributors, dealers, producers), but on the other hand, it provides protection and rehabilitation opportunities for users or victims of abuse. This policy

²⁶Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2010.

²⁷Op.Cit, Article 113 paragraph (2)

demonstrates a shift in the paradigm of criminal law from one that was initially oriented towards punishment to one that focuses on rehabilitation.²⁸ The principle of *ultimum remedium* is the basis that criminalizing drug abusers should be the last resort if health and social approaches are no longer effective.

Based on the perspective of criminal law theory, criminal liability in the Narcotics Law is in line with the principle of legality (*nullum crimen sine lege, nulla poena sine lege*), the principle of fault (*geen straf zonder schuld*), and the principle of legal utility. The application of these principles shows that law enforcement against drug abuse in Indonesia does not only rely on punishment, but also pays attention to the objectives of the law as stated by Gustav Radbruch: justice, certainty, and utility. Therefore, the policy of criminal liability for drug abusers must be implemented by paying attention to the balance between individual interests, the interests of society, and the interests of the state.

In practice, law enforcement against drug abusers often faces a dilemma between imposing criminal sanctions and implementing rehabilitation. Based on Supreme Court Circular Letter (SEMA) Number 04 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse, and Addicts in Rehabilitation Institutions, the Supreme Court emphasized that judges can decide on rehabilitation for drug abusers if they are proven to have used drugs for personal use and not for distribution purposes.²⁹

This policy reinforces the paradigm of "limited decriminalization" for drug abuse, maintaining the recognition of a crime, but orienting sanctions more toward rehabilitation than punishment. This approach aligns with the principle of *ultimum remedium* in criminal law, which places imprisonment as a last resort after non-penal measures have been ineffective.

The criminal accountability policy in Law No. 35 of 2009 represents a restorative justice approach, which seeks to restore individual and social conditions to their pre-crime state. Therefore, in many cases, drug abusers are directed to medical and social rehabilitation institutions to restore their social and psychological functioning.

The provisions in Article 103 of Law No. 35 of 2009 provide the legal basis for judges to order addicts or abusers to undergo rehabilitation, either as part of a criminal decision or as a substitute for imprisonment. This demonstrates that national law has shifted from a retributive justice paradigm to therapeutic jurisprudence, namely law that functions as a means of healing and social protection.

²⁸BiHandayani, loc.it

²⁹Supreme Court Circular Letter Number 04 of 2010 concerning the Placement of Narcotics Abusers and Addicts in Rehabilitation Institutions.

Contrary to this definition, several legal experts believe that the implementation of rehabilitation policies still faces serious obstacles in practice. Dwi Handayani, in her research, noted that many drug abusers are still treated as pure criminals, rather than as victims of addiction, due to a lack of understanding among law enforcement officials and limited rehabilitation facilities. Consequently, disparities in treatment and sentencing occur across jurisdictions in Indonesia. Therefore, it can be concluded that the criminal liability of drug abusers under Law No. 35 of 2009 is oriented towards a balance between law enforcement and human rights protection. Abusers are still viewed as responsible legal subjects, but within a more humanistic and rehabilitative legal framework.

Law Number 35 of 2009 concerning Narcotics regulates in detail the criminal liability of any party involved in the abuse or illicit trafficking of narcotics. These provisions are differentiated based on the role and type of offense, as outlined in various articles within the law.

a) Criminal Responsibility for Drug Abusers

Criminal liability for drug abuse in the context of Indonesian law reflects the application of general principles of criminal law, particularly the principle of no punishment without fault (*geen straf zonder schuld*). In the Indonesian criminal law system, a person can only be punished if they have committed an act prohibited by law and committed with error, either intentionally or negligently. This basic concept is the main foundation for the criminal liability system as regulated in Law Number 35 of 2009 concerning Narcotics. This law not only emphasizes the prohibition against various forms of illicit trafficking and abuse of narcotics, but also provides normative boundaries regarding who can be held criminally responsible, the extent to which their fault can be considered, and how criminal sanctions are imposed proportionally and fairly.

Theoretically, the concept of criminal responsibility is rooted in the theory of fault (*schuldleer*), which states that a person can only be punished if they have the ability to understand and will the consequences of their actions. In the classical view of criminal law, as proposed by Moeljatno, fault is an essential element in establishing criminal responsibility; without fault, a person cannot be punished. In the context of drug abuse, this theory has significant implications, because not all perpetrators can be considered to be at fault in the full sense. For example, a drug addict who has experienced severe medical dependence may have lost the ability to consciously control their actions. They are no longer purely criminals, but rather victims of an addiction that has ensnared their consciousness. Therefore, the application of the principle of fault in such cases must be understood proportionally, not absolutely, because not every act of drug abuse reflects the perpetrator's free will.

Law Number 35 of 2009, this principle is reflected in several articles that provide space for a rehabilitative approach, such as Article 54 which states that addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This provision marks a shift in the paradigm of criminal law from a retributive one to a more humanistic one, where punishment is not solely intended to punish, but also to save and rehabilitate the perpetrator. This demonstrates the application of the theory of the capacity to be responsible (*toerekeningsvatbaarheid*) in practice, namely that only those who are able to understand the consequences of their actions and act based on free will can be held fully criminally responsible.

The principle of *ultimum remedium* emphasizes that criminal law should be a last resort in law enforcement. Sudarto stated that the use of criminal sanctions must be carried out carefully because they carry serious social consequences. Similarly, Barda Nawawi Arief stated that criminal law is *subsidiar*, meaning it is only used when other legal means are no longer adequate to enforce norms.

In the context of narcotics, this principle presents a dilemma. On the one hand, drug abuse causes significant harm to society and the state, making it natural for the state to take repressive measures. However, on the other hand, perpetrators of abuse are often victims of dependency or environmental influences, so a purely repressive legal approach does not always address the root of the problem. Therefore, narcotics law enforcement policies need to incorporate the principle of *ultimum remedium* as the basis for balancing social and humanitarian interests.

The application of the *ultimum remedium* principle in drug cases should be realized through differentiating legal treatment between addicts, abusers, and victims of abuse. Addicts and victims of abuse are more appropriately directed towards medical and social rehabilitation, while abusers who knowingly commit crimes can be subject to imprisonment or fines according to the severity of their offense. This way, criminal law is not overused but still maintains a deterrent effect for those who truly deserve punishment.

One of the main issues in drug law policy is the conflict between rehabilitative and repressive approaches. Many argue that all drug abusers should be rehabilitated, not imprisoned, because drug addiction is more of a disease than a crime. However, if all abusers were provided with rehabilitation without criminal sanctions, there are concerns that the deterrent effect of criminal law will be lost.

Rehabilitation alone can be viewed as a disguised form of depenalization, where perpetrators no longer experience the legal consequences of their actions. Consequently, the effectiveness of criminal law as a means of social control is weakened. Furthermore, if every drug abuser were sentenced to prison, this policy would contradict the principle of *ultimum remedium* and humanitarian principles,

as criminalization does not cure addiction and instead creates a new burden in the form of overcrowding in correctional facilities.

3.2. Obstacles and Problems in the Current Implementation of the Ultimum Remedium Principle for Drug Users in Indonesia

The application of the ultimum remedium principle in law enforcement policies against drug users in Indonesia still faces various conceptual and practical obstacles. The ultimum remedium principle, which normatively positions criminal law as a last resort in crime prevention, has not been fully implemented in drug law enforcement practice.³⁰ The national legal system, particularly following the enactment of Law Number 35 of 2009 concerning Narcotics, has included provisions that allow for rehabilitative and non-penal approaches to drug addicts and victims of abuse. However, empirically, the use of criminal sanctions in the form of arrest, detention, and imprisonment remains the primary option for law enforcement officers, even against drug abusers who should receive rehabilitative treatment.

Conceptually, ultimum remedium is rooted in the view that criminal law has a highly repressive and coercive nature, so that its use should be limited only when other legal means are inadequate to uphold social order.³¹ In the context of drug abuse, this approach demands that the state prioritize preventive, educational, and rehabilitative measures over criminal punishment. This principle is already incorporated in Article 54 of Law Number 35 of 2009, which states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. Furthermore, Article 103 authorizes judges to decide on rehabilitation as a substitute for criminal punishment for drug abusers. However, the reality of judicial practice shows that this provision has not been consistently implemented due to various obstacles in terms of policy, legal structure, and legal culture.³²

1) The Law Enforcement Paradigm is Still Repressive and Retributive

The most fundamental obstacle to implementing the ultimum remedium principle is the paradigm of law enforcement officials, which is still punishment-oriented rather than treatment-oriented. In investigative and prosecution practices, drug abusers are still treated as pure criminals who must be sentenced to prison, rather than as victims of addiction who require rehabilitation.

³⁰ Afni Zahra and RB Sularto, "Implementation of the Ultimum Remedium Principle in the Context of Protecting Child Narcotics Addicts," *Law Reform* 13, no. 1 (2017): 18, <https://doi.org/10.14710/lr.v13i1.15948>.

³¹ <https://indonesiare.co.id/id/article/ultimum-remedium-dan-primum-remedium-dalam-sistem-hukum-pidana-indonesia>, accessed on October 7, 2025.

³² Law Number 35 of 2009 concerning Narcotics, Article 103.

In fact, Article 54 of Law Number 35 of 2009 concerning Narcotics explicitly states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This provision emphasizes a paradigm shift toward a therapeutic approach. However, in practice, this provision is often ignored.

Data from the National Narcotics Agency (BNN) in 2024 shows that the current global number of drug abusers has reached 296 million, an increase of 12 million compared to the previous year. This figure represents 5.8% of the global population aged 15-64. Meanwhile, the results of a 2023 national survey on the prevalence of drug abuse indicated a prevalence rate of 1.73%, equivalent to 3.3 million Indonesians aged 15-64. This data also indicates a significant increase in drug abuse among the 15-24 age group.³³In the context of criminal law theory, this pattern violates the principle of corrective justice and the principle of humanization of criminal law as stated by Barda Nawawi Arief, that criminal law should be directed at improving the perpetrator, not just punishing.³⁴

2) Lack of synchronization between legal norms and implementation policies between institutions

The second obstacle is the lack of harmony in legal norms and policies between law enforcement agencies. Normatively, Law No. 35 of 2009 regulates rehabilitation mechanisms through Article 103, which authorizes judges to decide on rehabilitation for addicts. However, its implementation requires a Joint Regulation between the National Narcotics Agency (BNN), the Prosecutor's Office, the Police, and the Supreme Court (2014), which is administrative in nature. There is no standardized, integrated assessment procedure for determining whether an offender is an addict or a dealer. As a result, differences in interpretation occur between agencies: the BNN might assess someone as worthy of rehabilitation, while investigators might assess them as a dealer and charge them under Article 111 or 112 of the Narcotics Law. This lack of synchronization between agencies is the "root cause of the failure to implement the ultimum remedium principle," as authorities prefer criminal prosecution, which is considered more administratively practical.³⁵This creates legal uncertainty, contrary to the principles of *lex certa* and due process of law which are the basic principles of the rule of law.

3) Limited Rehabilitation Facilities and Infrastructure

Another problem is the lack of medical and social rehabilitation facilities and resources. The government, through the National Narcotics Agency (BNN), only

³³ <https://bnn.go.id/hani-2024-masyarakat-bergerak-bersama-melawan-narkoba-mewujudkan-indonesia-bersinar/>, accessed on October 7, 2025.

³⁴ Barda Nawawi Arief, *Several Aspects of Criminal Law Policy and Development* (Bandung: Citra Aditya Bakti, 1998), p. 52

³⁵ Novita Sari, "Application of Ultimum Remedium Principles in Law Enforcement on Criminal Act of Narcotics Abuses."

has around 52 active rehabilitation institutions throughout Indonesia, while the number of drug users reaches over 4.5 million.³⁶ This significant gap between facility capacity and rehabilitation needs leads judges, prosecutors, and police to favor imprisonment, as it is more convenient and administratively available. However, the Indonesian correctional system is experiencing overcapacity, with the majority of inmates being light drug users. This contradicts the rehabilitative goal emphasized in Article 4(d) of the Narcotics Law: to restore, not punish. Consequently, users who should be rehabilitated are instead punished, perpetuating the cycle of abuse.

4) Sectoral Ego and Weak Coordination Between Law Enforcement Agencies

Besides infrastructure issues, inter-agency coordination is also a serious obstacle. Drug law enforcement involves the National Narcotics Agency (BNN), the National Police (Polri), the Attorney General's Office (AGO), the Ministry of Law and Human Rights (Kemenkumham), and the Supreme Court, but each has its own interests and standard operating procedures. The BNN has a rehabilitation unit, but the decision on rehabilitation rests with the judge. Prosecutors, on the other hand, are often reluctant to accept rehabilitation recommendations because they believe there is no strong legal basis.³⁷ As a result, drug users who have been medically diagnosed as addicts are still brought before the criminal courts. Without solid coordination, the *ultimum remedium* principle will not work, as its implementation requires cross-institutional synergy.

5) Weaknesses of the Integrated Assessment Mechanism

Law No. 35 of 2009 regulates the formation of an integrated assessment team consisting of medical personnel, psychologists, and law enforcement. The goal is to ensure that perpetrators are truly addicts worthy of rehabilitation. However, in practice, the assessment mechanism is often not implemented objectively and transparently. Many investigators treat the assessment merely as a formality. Assessment results are sometimes not used as a basis for judges' deliberations, resulting in users still being sentenced to prison. Assessment teams often suffer from a shortage of professionals and short examination times, resulting in inaccurate results.³⁸ When the assessment fails to function, the main gateway to the application of *ultimum remedium* is closed, and the legal process will end with criminal punishment.

6) Legislative Ambiguity and Article Formulation in the Narcotics Law

³⁶<https://ppid.bnn.go.id/konten/unggah/2020/10/SURVEI-NASIONAL-PENYALAHGUNAAN-NARKOBA-TAHUN-2021.pdf>, accessed on October 7, 2025.

³⁷NovitaSari, "Application of *Ultimum Remedium* Principles in Law Enforcement on Criminal Act of Narcotics Abuses."

³⁸ Nurul Qamar, "Legal Analysis of Criminal Policies on Drug Abuse," *Amanna Gappa Journal of Legal Studies* 28, no. 1 (2021).

Normatively, Law Number 35 of 2009 contains two opposing spirits: on the one hand, it encourages rehabilitation, but on the other hand, it still provides criminal sanctions for users. Article 127 paragraph (1) states that "every person who abuses class I narcotics for personal use shall be punished with a maximum of 4 years in prison." This formulation creates ambiguity: should abusers be rehabilitated or imprisoned?

The wording of Article 127 demonstrates the "dualism of narcotics criminal law policy" between a health orientation and a punishment orientation. This ambiguity leaves law enforcement officials with wide latitude for interpretation, and in practice, criminal action is often chosen over rehabilitation.

7) Social Stigma and Political Pressure on Law Enforcement

Indonesia's legal culture also poses a significant obstacle. Drug abusers are often stigmatized as moral criminals and considered a threat to the younger generation. This perception creates social pressure on law enforcement officials to adopt a harsh stance and impose harsh sentences. This phenomenon is a form of "penal populism," where criminal policy is influenced by public opinion and political pressure, rather than considerations of substantive justice.³⁹As a result, authorities prefer popular repressive policies to rehabilitative approaches considered indecisive. Stigmatizing drug users contradicts the humanitarian principles of criminal law and worsens the process of social reintegration after offenders complete their sentences.⁴⁰

8) Weak Supervision of Post-Rehabilitation and Social Reintegration

Rehabilitation doesn't stop at medical and social care. A post-rehabilitation monitoring system is needed to ensure users can return to functioning in society. However, in Indonesia, this system is not yet fully operational. This situation leads law enforcement officials to view rehabilitation as ineffective, thus opting for imprisonment. Yet, without a robust post-rehabilitation system, users will continue to fall victim to the cycle of addiction and criminalization.

9) Lack of Professional Human Resources and Technical Training

The limited number of experts, both in the legal and health fields, is also a major obstacle. Many law enforcement officers do not yet understand the substance of *ultimum remedium* and the distinction between users and dealers. A substantial understanding of legal concepts is necessary so that officers enforce the law not only textually but also contextually.⁴¹Without special training and provision,

³⁹NovitaSari, Op.Cit.

⁴⁰ Teguh Prasetyo, *Criminology and Victimology in the Context of Indonesian Criminal Law* (Yogyakarta: Genta Press, 2018), p. 142

⁴¹ Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: Raja Grafindo Persada, 2016), p. 121

authorities will continue to interpret drug abuse narrowly and choose the criminal route.

10) Weak Political Will in the Reorientation of Criminal Law Policy

The final obstacle is the weak political will of the government and the House of Representatives (DPR) to comprehensively reformulate the narcotics criminal law policy. Despite long-standing recommendations from legal academics, revisions to the Narcotics Law, which emphasize a restorative approach and ultimum remedium, have not been seriously pursued. Criminal law reform requires the support of a national legal policy that supports humanitarian values and substantive justice.⁴²As long as the political approach still emphasizes the symbol of the “war on drugs”, criminal law will continue to be used as the primary tool (primum remedium), not the last resort.

The author argues that these obstacles and problems indicate that the implementation of the ultimum remedium principle in Indonesian narcotics policy is still far from ideal. Philosophically, the use of criminal law as a last resort is a manifestation of human rights protection and the principle of substantive justice. Excessive punishment of drug users not only contradicts the objectives of modern criminal law but also violates the principle of proportionality in sentencing. The state should position drug users as individuals in need of protection, not merely as perpetrators who must be punished. Therefore, reformulation of drug law policy is necessary by clarifying the distinction between users, addicts, and dealers, and strengthening health- and social-based rehabilitation mechanisms.

4. Conclusion

Criminal liability for narcotics abuse in Indonesia according to Law Number 35 of 2009 concerning Narcotics, has essentially led to a rehabilitative and humanistic approach, although in practice it is still predominantly repressive. Regulations regarding this are generally stipulated in Law Number 35 of 2009 concerning Narcotics, specifically Article 4 letter d concerning rehabilitative objectives, Article 54 concerning the obligation to rehabilitate addicts and victims of abuse, Article 103 which gives judges the authority to determine rehabilitation, and Article 127 which regulates criminal penalties for abusers but still leaves room for rehabilitation. Thus, the Indonesian narcotics criminal law system actually embodies the spirit of the principle of ultimum remedium, namely making punishment the last resort after rehabilitative and social efforts have been taken. Future reforms need to strengthen the implementation of this principle so that criminal law functions not only to punish, but also to restore and protect human dignity.

⁴² Barda Nawawi Arief, *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention* (Jakarta: Kencana, 2001), p. 97

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