

## **Legal Reform on Rehabilitation for Drug Users as an Ultimum Remedium Effort**

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### **Abstract**

This study explores Indonesia's legal approach to narcotics rehabilitation under Law Number 35 of 2009, focusing on a shift from punitive measures to a public health framework. Article 54 mandates both medical and narcotics rehabilitation for addicts, emphasizing a commitment to breaking the cycle of dependency. Through analyzing legal provisions, Supreme Court circulars, and joint regulations, this research highlights a three-stage rehabilitation process: medical, non-medical, and aftercare phases. Emphasizing rehabilitation over punishment, insights align with the ultimum remedium principle, advocating for alternative policies. Results reveal a progressive legal landscape recognizing narcotics users as individuals in need of treatment. Supreme Court circulars and joint regulations aim to address challenges, emphasizing the importance of collaboration between legal, health, and social entities for an effective narcotics rehabilitation system in Indonesia. This legal mandate signifies a pivotal shift towards a holistic, public health-oriented response to narcotics offenses, reflecting an acknowledgment of addiction's multifaceted nature. Ongoing collaboration is crucial for successfully integrating rehabilitation into the legal framework, ensuring a compassionate and effective response to narcotics-related issues.

**Keywords:** Legal Framework; Legal Reform; Narcotics Rehabilitation; Ultimum Remedium

### **1. INTRODUCTION**

Indonesia is currently grappling with a narcotics abuse emergency, signifying a state of high vulnerability that demands urgent and earnest attention. Virtually no region in the country remains untouched by the scourge of narcotics abuse, highlighting the pervasive nature of the issue.<sup>1</sup> A telling indicator of Indonesia's current narcotics emergency is the alarming increase in the number of narcotics-related cases leading to incarceration in correctional facilities nationwide.<sup>2</sup> An alarming reflection of this emergency is evident in the burgeoning population of narcotics-related cases within the country's correctional facilities. The surge in incarcerations is indicative of the growing challenge posed by narcotics abuse, prompting a critical examination of existing legal and rehabilitative frameworks. Addressing this emergency requires a multifaceted approach, encompassing legal reforms, effective rehabilitation strategies, and a concerted effort to raise public awareness about the far-reaching consequences of narcotics abuse.

The tragic incident resulting in the demise of 49 inmates due to a fire at Tangerang Class I Penitentiary (Lapas) marks a sad milestone in Indonesia's penal history, highlighting deep-seated issues within the country's correctional system. Overcrowding, a significant

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<sup>1</sup> Anton Sudanto, 'Penerapan Hukum Pidana Narkotika Di Indonesia', *Jurnal Hukum* 7, no. 1 (2023).

<sup>2</sup> Indra Widyastuti, 'Dampak Narkoba Terhadap Kriminalitas: Ini Lingkaran Setan', 2023, <https://www.rri.co.id/lain-lain/278494/dampak-narkoba-terhadap-kriminalitas-pengamat-ini-lingkaran-setan>.

catalyst for such tragic events, underscores the urgent need for systemic reforms and enhanced measures to address the root causes within Indonesia's prison system.<sup>3</sup>

Indonesia's correctional system has long grappled with overcrowding, a problem exacerbated by various factors, including the disproportionate ratio between the number of inmates/detainees and the capacity of correctional facilities like Lapas.<sup>4</sup> This incongruence has led to myriad problems, with dire consequences witnessed in the recent Tangerang prison fire incident. Overcrowding, commonly referred to as "overcrowding," is identified as a significant catalyst for such tragic events. The incident at Tangerang Prison sheds light on the urgent need for systemic reforms and enhanced measures to address the root causes of overcrowding within Indonesia's prison system.<sup>5</sup>

A noteworthy contributor to the overcrowding issue is the substantial number of inmates convicted of drug-related offenses. Warga Binaan Pemasyarakatan (WBP) involved in narcotics cases represents the largest demographic within Lapas, further exacerbating the challenges associated with overcrowded conditions. According to data from the Subdirektorat of Data and Information within the Directorate General of Corrections (Ditjenpas), as of July 26, 2021, 51.8% of the total inmate population across all prisons (Lapas) and detention centers (Rutan) nationwide are incarcerated for drug-related offenses. This revelation underscores the pervasive impact of narcotics cases within the Indonesian correctional system.<sup>6</sup>

The substantial number of 139,088 inmates convicted of drug-related crimes raises critical questions about the root causes and societal factors contributing to the prevalence of narcotics offenses. The combined capacity of Lapas in Indonesia stands at 132,107 for both convicts and detainees, indicating that the entirety of Indonesia's correctional facilities is predominantly occupied by individuals convicted of drug-related offenses. Even within the jurisdiction of Bangka Belitung, as reported by the Daily Report of the Division of Corrections of the Ministry of Law and Human Rights of Bangka Belitung dated November 3, 2023, a significant proportion of inmates are incarcerated for drug-related offenses.

The Narcotics Law in Indonesia distinguishes individuals involved in drug abuse into three categories: those who abuse drugs for personal use, victims of drug abuse, and drug addicts. Rehabilitation measures are only applicable to those proven to be drug addicts and victims of drug abuse. This inherent contradiction poses a challenge for law enforcement in implementing the appropriate legal provisions. In the enforcement process against drug abusers, legal authorities often encounter complications. Individuals accused of drug abuse may be charged with a single count or alternative charges related to drug possession, such as the more severe Article 111 Paragraph (1) and Article 112 Paragraph (1) in conjunction

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<sup>3</sup> Nurul Widhanita Badilla, 'Efektivitas Pidana Penjara Bagi Pecandu Narkotika Di Lingkungan Lembaga Pemasyarakatan Narkotika Kelas IIA Jayapura', *Jurnal Komunikasi Yustisia* 5, no. 2 (2022).

<sup>4</sup> Siswanto Sunarso, *Politik Hukum Dalam Undang-Undang Narkotika* (Jakarta: Rineka Cipta, 2012).

<sup>5</sup> Fatin Hamamah and Fatin Hamamah, 'Rehabilitation On Victims Of Drugs Abuse In Judicial Development', *International Journal of Law* 5, no. 2 (6 November 2021): 354–66, <https://doi.org/10.26532/ijlr.v5i2.17923>.

<sup>6</sup> Nurhaedah Nurhaedah et al., 'My Drugs Your Drugs, Indonesia', *International Journal of Membrane Science and Technology* 10, no. 2 (21 June 2023): 193–96, <https://doi.org/10.15379/ijmst.v10i2.1179>.

with Article 127 of the Narcotics Law. Those entangled in narcotics cases involving possession, purchase, ownership, and abuse should be evaluated based on the circumstances of their drug use, and the background of the case should be thoroughly examined. If there are indications of drug use or possession for personal purposes, rehabilitation should be the priority. Imprisonment, in contrast, may not lead to recovery and could even create opportunities for inmates to access narcotics, potentially mingling with drug traffickers and couriers. Moreover, those initially classified as mere users could, over time, transform into distributors or sellers.

Previous study by Delmiati investigates the implementation of medical and social rehabilitation for individuals grappling with drug addiction, specifically focusing on the initiatives of the National Narcotics Agency in Payakumbuh City.<sup>7</sup> Another study conducted by Syaifudin highlighted the divergence in perceptions regarding the rehabilitation process, especially for novice drug users, under the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The study proposes an ideal model for the concept of drug rehabilitation, emphasizing the comprehensive and multidimensional nature of legal reform to achieve optimal results.<sup>8</sup> Another research by Hamamah, argues for a repositioning of narcotics addicts as victims rather than mere perpetrators of crime. This perspective challenges traditional punitive approaches and advocates for a comprehensive rehabilitation framework to address the complexities of drug addiction.

The novelty of this research lies in its focused exploration of legal mechanisms as the ultimate remedy for addressing drug addiction within the Indonesian context. By proposing a comprehensive legal model, this study distinguishes itself through its nuanced examination of the intricate relationship between law, rehabilitation, and societal dynamics. What sets this research apart is its innovative approach of proactively integrating legal reforms to establish rehabilitation as a definitive solution, presenting a unique perspective in the ongoing discourse on effective strategies to combat drug abuse. This introduction chapter concludes by outlining the research objectives.

## **2. METHOD**

This study employs a normative legal research method with a dual focus on conceptual and statutory analysis to investigate the legal dimensions of drug rehabilitation in Indonesia. The research begins with an extensive literature review, delving into existing legal frameworks governing rehabilitation for drug users. Drawing on legal literature, the study synthesizes key concepts and principles related to drug rehabilitation, establishing a

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<sup>7</sup> Susi Delmiati and Irsal Irsal, 'Implementation of Medical Rehabilitation and Social Rehabilitation for Addicts and Victims of Narcotics Abuse', *Ekasakti Journal of Law and Justice* 1, no. 1 (19 May 2023): 19–26, <https://doi.org/10.60034/ejlg.v1i1.3>.

<sup>8</sup> Mohamad Ali Syaifudin, 'Implementation of The Rehabilitation Model on Victims of Drug Abuse in The Development of The Legal System in Indonesia', *Interdisciplinary Journal and Hummanity (INJURITY)* 2, no. 4 (17 April 2023): 285–95, <https://doi.org/10.58631/injury.v2i4.57>.

robust conceptual framework. This framework serves as the theoretical foundation for the subsequent statutory analysis.<sup>9</sup>

The statutory analysis forms the core of the research, centering on a comprehensive examination of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Specific provisions related to drug rehabilitation are scrutinized to assess their adequacy and coherence. The study also incorporates a comparative analysis by referencing international legal standards, allowing for the identification of best practices from other jurisdictions. To augment the legal analysis, case studies are included to illustrate the application of existing laws in real-world scenarios. This approach provides insights into judicial interpretations and highlights potential gaps or areas for improvement within the legal framework.

Building upon the conceptual and statutory findings, the research culminates in the formulation of recommendations for legal reform. These recommendations aim to enhance the effectiveness of drug rehabilitation efforts in Indonesia, considering multidimensional aspects such as social, health, and human rights perspectives. By adopting a normative legal research method with a conceptual and statutory approach, this study contributes to a deeper understanding of the legal intricacies surrounding drug rehabilitation and offers tangible suggestions for legal reforms to address the complexities of drug addiction within the Indonesian legal system.

### **3. RESULT AND DISCUSSION**

#### **3.1 Rehabilitation Arrangements for Drug Users**

In legal terms, "users" refer to individuals who wrongfully use narcotics, as defined in relevant legislation. This categorization broadly includes three distinct groups of narcotics offenders: those who misuse drugs for personal use, victims of drug abuse, and undeclared drug addicts. The delineation of these categories is crucial for legal precision and ensuring tailored approaches to rehabilitation.<sup>10</sup>

The first category, Self-Users, involves individuals who unlawfully employ narcotics for personal consumption, in violation of the law. Victims of Drug Abuse constitute the second category and include individuals who unintentionally find themselves using narcotics due to persuasion, deceit, manipulation, coercion, or threats. The third category, Undeclared Drug Addicts, encompasses individuals in a state of dependency on narcotics, both physically and psychologically, who have refrained from reporting their condition.<sup>11</sup> This nuanced understanding aligns with the overarching objectives of relevant laws, facilitating the implementation of appropriate measures for each distinct category of

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<sup>9</sup> Kornelius Benuf and Muhamad Azhar, 'Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer', *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

<sup>10</sup> Adrian Adrian et al., 'Law Enforcement against Narcotics Crime through Rehabilitation in a Restorative Justice Perspective', *Scholars International Journal of Law Crime and Justice* 4, no. 4 (15 April 2021): 205–11, <https://doi.org/10.36348/sijlcj.2021.v04i04.003>.

<sup>11</sup> Aoife Davey and Aoife Davey, 'National Drugs Rehabilitation Framework: Person-Centred Care in the Addiction Services', *International Journal of Integrated Care* 17, no. 5 (17 October 2017): 217, <https://doi.org/10.5334/ijic.3527>.

narcotics offender. However, the application of Article 111 Paragraph (1) and Article 112 Paragraph (1) in conjunction with Article 127 of the Narcotics Law to individuals misusing narcotics for personal use raises concerns about the independence and autonomy of judges/courts in granting rehabilitation. The requirement for early submission of rehabilitation requests and recommendations throughout legal proceedings may limit the flexibility of judges to consider rehabilitation independently. This raises questions about the balance between legal enforcement and providing avenues for health-focused interventions for individuals struggling with narcotics misuse.

From a health standpoint, the considerations outlined in the Narcotics Law Number 35 of 2009 emphasize the dual nature of narcotics.<sup>12</sup> While narcotics can serve as medicinal substances beneficial in the field of healthcare and scientific development, their potential for dependence and harmful consequences becomes evident when misused or used without strict control and supervision.<sup>13</sup> Continuous and dependent use of narcotics can have profound consequences on mental and behavioral health, disrupting the neurotransmitter system in the brain's nervous system. Disturbances in the neurotransmitter system can result in disruptions to cognitive, affective, psychomotor, and social aspects. Moreover, the usage of narcotics, if exceeding prescribed limits, can lead to overdoses, ultimately culminating in fatal outcomes.<sup>14</sup>

Understanding the comprehensive impact of narcotics on both physical and mental well-being is crucial in formulating effective strategies for prevention, intervention, and rehabilitation. The legal framework outlined in the Narcotics Law serves as a foundation for addressing these health-related challenges, emphasizing the need for a balanced approach that combines legal measures with public health initiatives. While the current legal framework provides a basis for addressing narcotics abuse, there are challenges in its implementation. Coordination challenges among law enforcement and other stakeholders often hinder the effective execution of rehabilitation programs. Specific obstacles in the application of laws and rehabilitation measures, such as resource constraints and lack of trained personnel, need to be addressed to enhance effectiveness.

The scourge of narcotics trafficking and abuse has permeated various strata of society, transcending educational levels, gender, and age. This issue is not confined to urban areas but extends to the remotest villages, especially impacting the productive younger generation. The repercussions of narcotics abuse are profound, leading to a loss of self-confidence and, tragically, even death. This poses a significant threat to the nation's future competitiveness, as the largest casualty in the problem of narcotics abuse is the erosion of

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<sup>12</sup> Aloysius Wisnubroto, 'The Development of Narcotics Legislation in Indonesia and Singapore', *International Journal of Social Science and Human Research* 06, no. 06 (28 June 2023), <https://doi.org/10.47191/ijsshr/v6-i6-66>.

<sup>13</sup> Utari Dwi Pratiwi, Margaretha Hanita, and Kurniawaty Iskandar, 'A Study of Drug Abuse Prevention and Law Enforcement in Indonesia From The Perspective of Social Control and Neurocriminology', *Technium Social Sciences Journal* 45 (9 July 2023): 460–68, <https://doi.org/10.47577/tssj.v45i1.9171>.

<sup>14</sup> Hulaimi Hulaimi, Lewiaro Laia, and Khairul Azwar Anas, 'Crimination Of Criminal Acts Of Khamar And Drugs In Islamic Criminal Law Compared To Indonesian Positive Criminal Law', *International Journal of Law* 1, no. 1 (21 May 2022): 11–20, <https://doi.org/10.56107/penalaw.v1i1.7>.



individual character, ultimately weakening societal resilience and serving as a precursor to the potential decline of a nation.

To combat the detrimental effects of narcotics abuse, it is imperative to institute comprehensive rehabilitation programs for those ensnared in the clutches of narcotics and psychotropic substances.<sup>15</sup> Through such programs, individuals can achieve abstinence or cease their consumption of narcotics. Additionally, they are trained to instill discipline and self-control, enabling them to overcome potential relapses and manage their social functions effectively. Recognizing that addicts and narcotics users are not inherently criminals but individuals grappling with an ailment that necessitates treatment for recovery and rehabilitation is crucial.<sup>16</sup>

As stipulated in Article 54 of Law Number 35 of 2009, narcotics addicts and victims of narcotics abuse are obligated to undergo both medical and social rehabilitation. This mandatory rehabilitation requirement plays a pivotal role in restoring the conditions of drug abusers and addicts, allowing them to break free from the clutches of narcotics. This, in turn, empowers them to reintegrate into society, lead productive lives, and regain their independence.<sup>17</sup>

Narcotics rehabilitation is a comprehensive process aimed at breaking free from narcotics dependency and restoring physical, mental, and social well-being.<sup>18</sup> The rehabilitation process for psychotropic narcotics users involves several stages. Firstly, there is the Medical Rehabilitation stage, where addicts undergo a thorough examination of their physical and mental health by trained doctors. These medical professionals determine whether specific medications are necessary to alleviate withdrawal symptoms that the addict may be experiencing.<sup>19</sup>

The second stage is Non-Medical Rehabilitation, where efforts are made to restore the addict to normalcy and free them from the dangers of narcotics. Finally, the third stage is the Aftercare stage, where individuals receive activities tailored to their interests and talents to fill their daily lives. Addicts may return to school or work during this stage but remain under supervision to ensure continued support and guidance. This holistic approach to

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<sup>15</sup> Fahri Fuad, Syamsul Haling, and Mulyadi Mulyadi, 'Proof of the Main Actors of Narcotics Abuse in the Investigation Process', *International Journal of Health, Economics, and Social Sciences (IJHESS)* 4, no. 3 (20 July 2022): 222–31, <https://doi.org/10.56338/ijhess.v4i3.2643>.

<sup>16</sup> Tarmizi Tarmizi and Sintong Marbun, 'Rehabilitation And Execution Of The Death Penalty In Narcotics Offenses', *International Asia Of Law and Money Laundering (IAML)* 1, no. 2 (6 June 2022): 123–27, <https://doi.org/10.59712/iaml.v1i2.22>.

<sup>17</sup> Muhammad Ngazis et al., 'Reconstruction of Rehabilitation Regulations for Underaged Drug Addicts in Indonesia Based on Justice Value', *Scholars International Journal of Law, Crime and Justice* 5, no. 6 (17 June 2022): 211–16, <https://doi.org/10.36348/sijlcj.2022.v05i06.005>.

<sup>18</sup> Oki Suwandi, Natangsa Surbakti, and Muchamad Iksan, 'Execution Of Court Decisions In The Form Of Confirmation Of Narcotics Evidence For The State (Case Study Of Execution Of Decision No 39/Pid.Sus/2020/PN, BYL)', *Jurnal Indonesia Sosial Teknologi* 4, no. 8 (15 August 2023): 1099–1109, <https://doi.org/10.59141/jist.v4i8.684>.

<sup>19</sup> Alan Peter Garfoot, 'On Drugs: Substance Rehabilitation, The "War On Drugs" Moral Panic & The Future of International Psychoactive Policy', *European Journal of Biology and Medical Science Research* 11, no. 3 (15 March 2023): 9–48, <https://doi.org/10.37745/ejbmsr.2013/vol11n3948>.

rehabilitation recognizes the importance of addressing various aspects of an individual's life, paving the way for a successful and sustained recovery from narcotics dependence.<sup>20</sup>

The government has undertaken a significant shift in the handling of narcotics users, transitioning from a criminal law approach to a public health approach. Under this paradigm, individuals using narcotics are considered addicts entitled to medical and social rehabilitation. However, this perspective coexists with the government's insistence on maintaining the classification of narcotics users as criminals, labeled as "penyalahguna narkotika" or narcotics abusers, as defined in Article 1, number 15 of the Narcotics Law.

The Supreme Court Circular (SEMA) Number 4 of 2010 regarding the Placement of Narcotics Abusers, Victims of Narcotics Abuse, and Narcotics Addicts into Medical and Social Rehabilitation Institutions indicates that a considerable portion of narcotics convicts and detainees fall into the category of users or even victims when viewed from a health perspective. Placing narcotics offenders in Correctional Institutions (LAPAS) or other detention facilities can have detrimental effects on narcotics convicts, exacerbating their mental and health conditions. Moreover, it may lead to negative behavioral influences, potentially worsening their overall well-being and contributing to further criminal activities.

One fundamental principle underpinning modern criminal law is *ultimum remedium*. This doctrine asserts that criminal law is the ultimate weapon or last resort employed to resolve a legal issue. According to Topo Santoso, if a case can be resolved through alternative avenues such as familial, negotiation, mediation, civil law, or administrative law, these paths should be explored first. The nature of criminal sanctions, as the ultimate weapon or *ultimum remedium*, is distinct, with penalties that are more severe when compared to civil or administrative sanctions.

A key differentiator between criminal law and other branches, whether public or private, lies in the matter of sanctions.<sup>21</sup> Criminal sanctions, such as imprisonment and confinement, lead to the isolation of the convict from their family and society. *Ultimum remedium* serves as the last option or tool in criminal law, rejecting the criminalization in law enforcement. The term "*Ultimum Remedium*" originates from Latin: *het uiterste middel*, which translates to "the ultimate remedy."<sup>22</sup> It refers to a remedy applied when no other remedy is found to be possible. In practice, this term is widely used in criminal law, signifying that criminal law should only be employed as the last resort when all other remedies have been exhausted.

In Indonesia, the principle of *Ultimum Remedium* is reflected in the policy of rehabilitating sanctions for narcotics offenders. Rehabilitation efforts serve as an appropriate alternative to traditional punitive measures for individuals involved in narcotics

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<sup>20</sup> Maulana Fuad Nugraha et al., 'Drug Abuse in the Young Generation: Law Enforcement Challenges (Comparative Study of Indonesia and Australia)', *Journal of Creativity Student* 7, no. 1 (30 January 2022): 19–34, <https://doi.org/10.15294/jcs.v7i1.36177>.

<sup>21</sup> Anis Widyawati et al., 'Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions', *Lex Scientia Law Review* 6, no. 2 (19 December 2022): 327–58, <https://doi.org/10.15294/lesrev.v6i2.58131>.

<sup>22</sup> Andri Yanto, *Hukum dan Ketertiban: Fragmen Pemikiran Tentang Paradigma Hukum dan Perkembangannya* (Yogyakarta: Megalitera, 2022).

abuse and addiction. Through rehabilitation programs, offenders can achieve abstinence, develop discipline, exercise self-control, and manage their social functions, addressing the potential for relapse.<sup>23</sup>

However, despite the increasing challenges posed by narcotics addiction and abuse victims and the need for more effective treatment efforts, particularly in the rehabilitation process, there remains a lack of optimal coordination among law enforcement agencies. Recognizing these shortcomings, the Supreme Court issued Supreme Court Circular (SEMA) Number 03 of 2011 regarding the placement of Narcotics Abuse Victims into Medical and Social Rehabilitation Institutions. Additionally, a Joint Regulation (PERMA) was established between the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the National Police of the Republic of Indonesia, and the Head of the National Narcotics Agency of the Republic of Indonesia, under Numbers 01/PB/MA/III/2014, 03/2014, 11/2014, 03/2014, Per-005/A/JA/03/2014, 1/2014, and Perber 01/III/2014/BNN concerning the handling of narcotics addicts and victims of narcotics abuse in Rehabilitation Institutions.

During the presentation of the National Survey Results on Narcotics Abuse in Jakarta, Deputy Minister of Law and Human Rights of Indonesia, Edward Omar Sharif Hiariej, expressed the view that individuals involved in drug crimes are victims of their ownions. According to him, the appropriate response is not punishment but rehabilitation. The implementation of rehabilitation sanctions for suspects in narcotics cases is considered a realization of the ultimum remedium principle. Ultimum remedium allows the government to adopt alternative policies beyond mere criminal sanctions. When applying sanctions to victims of narcotics abuse who are also perpetrators, a clear distinction must be made from purely criminal offenders. This issue requires serious attention from the government in formulating legislative regulations related to narcotics abuse.

The ultimum remedium principle in Indonesian criminal law emphasizes that criminal law should be the last resort in law enforcement.<sup>24</sup> This means that if a case can be resolved through other means (such as family, negotiation, mediation, civil law, or administrative law), those avenues should be explored first.<sup>25</sup> The perspective presented by the Deputy Minister underscores the importance of rehabilitation over punitive measures for individuals involved in narcotics offenses. Topo Santoso asserts that ultimum remedium is the guide for

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<sup>23</sup> Muhammad Zeen Mukarom et al., 'Law Enforcement Against Implementation of Narcotics User Rehabilitation Sanction in Decision Number. 322 / Pid.Sus / 2016 PN. Bale Bandung (West Java) Connected to Article 54 of Law Number. 35 Year 2009 about Narcotics', 31 July 2017, 591–95.

<sup>24</sup> Nathalina Naibaho, Nathalina Naibaho, and Nathalina Naibaho, 'Rethinking the Ultimum Remedium Principle to Support Justice and Strong Law Enforcement Institutions in Environmental Crimes' 716, no. 1 (2021): 012068, <https://doi.org/10.1088/1755-1315/716/1/012068>.

<sup>25</sup> Adi Mansar and Ikhsan Lubis, 'Harmonization of Indonesian Criminal Law Through the New Criminal Code Towards Humane Law', *Journal of Law and Sustainable Development*, 2023, <https://doi.org/10.55908/sdgs.v11i12.2381>.



rejecting criminalization or negotiating, not when law enforcement is already in motion with existing laws and articles.<sup>26</sup> While the police or prosecutors may not apply this principle once laws and articles are established, prioritizing a rehabilitative approach over prison sentences for narcotics offenders provides the government with the flexibility to implement alternative policies.<sup>27</sup> The emphasis on rehabilitation rather than incarceration for narcotics abuse allows the government to explore alternative solutions to criminal cases, emphasizing the restoration of victims to their original state and involving various stakeholders.<sup>28</sup> The application of the ultimum remedium principle in the enforcement of narcotics laws is crucial in seeking solutions to various issues arising from the consequences of imposing criminal sanctions in every criminal case in Indonesia. This perspective promotes a more nuanced and rehabilitative approach to addressing narcotics offenses, emphasizing recovery and involving multiple stakeholders in the process.

#### **4. CONCLUSION**

The legal mandate for narcotics rehabilitation, as outlined in Law Number 35 of 2009, reflects a significant shift in Indonesia's approach to narcotics offenses. The obligation for both medical and narcotics rehabilitation for addicts and victims underscores a commitment to viewing individuals involved in narcotics as individuals in need of treatment rather than mere criminals. This mandatory rehabilitation requirement serves as a crucial mechanism for breaking the cycle of narcotics dependency, facilitating the reintegration of individuals into society, and fostering their independence. The three-stage rehabilitation process, encompassing medical, non-medical, and aftercare phases, emphasizes a holistic approach that recognizes the multifaceted nature of recovery. The principle of ultimum remedium, deeply rooted in modern criminal law, further guides the nation's response to narcotics offenses. Ultimum remedium asserts that criminal law should be the last resort, encouraging the exploration of alternative avenues before resorting to punitive measures. This doctrine aligns with the paradigm shift in Indonesia, where rehabilitation takes precedence over strict criminalization. The application of ultimum remedium allows for flexibility in adopting alternative policies, particularly in distinguishing between victims of narcotics abuse and purely criminal offenders. This nuanced approach, as highlighted by Deputy Minister Edward Omar Sharif Hiariej, challenges the traditional punitive measures, advocating for rehabilitation as a more compassionate and effective means of addressing narcotics-related issues. Despite these positive strides, challenges remain in optimizing rehabilitation efforts, coordinating law enforcement agencies, and ensuring a seamless integration of rehabilitation into the legal framework. The Supreme Court's circulars and joint regulations aim to address some of these challenges, but continued efforts are needed to refine the

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<sup>26</sup> Topo Santoso, *Membumikan Hukum Pidana Islam: Penegakan Syariat Dalam Wacana Dan Agenda* (Jakarta: Gema Insani Press, 2003).

<sup>27</sup> S Butt and T Lindsey, 'The Criminal Code. In Crime and Punishment in Indonesia', *Routledge*, 2020, 21–43, <https://doi.org/10.4324/9780429455247-3>.

<sup>28</sup> Dini Ratna Sari et al., 'Rehabilitation Sanctions Against Addicts and Drug Abuse Victims: Overview of Islamic Criminal Law', *Al-Hurriyah: Jurnal Hukum Islam* 7, no. 1 (30 June 2022): 93–93, <https://doi.org/10.30983/alhurriyah.v7i1.4887>.

implementation of rehabilitation policies. The journey toward a more rehabilitative and health-oriented response to narcotics offenses requires ongoing collaboration between legal, health, and social entities to ensure a comprehensive and effective approach to narcotics rehabilitation in Indonesia.

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