

Sentencing Disparities for Small-Quantity Drug Users and Their Impact on Prison Overcrowding in Indonesia

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Abstract

Purpose: This study analyzes sentencing disparities in narcotics cases involving drug users possessing small quantities of narcotics in Indonesian courts and examines their contribution to prison overcrowding.

Research Methodology: This research employs a normative legal research design applying statutory, conceptual, case, and comparative approaches. Data were collected through systematic analysis of statutory regulations, published court decisions, Supreme Court Circular Letters, and peer-reviewed legal literature.

Results: The analysis reveals significant sentencing disparities in comparable narcotics user cases, with courts inconsistently imposing imprisonment, suspended sentences, or rehabilitation orders despite substantially similar factual circumstances. The dominance of custodial sentences directly contributes to prison overcrowding.

Conclusions: Sentencing inconsistency reflects weak standardization in narcotics law enforcement and inadequate implementation of rehabilitation policies, producing systemic overcrowding in correctional institutions. Reformulating sentencing guidelines and strengthening rehabilitation mechanisms are essential steps toward a more proportionate and consistent criminal justice system.

Limitations: The study is limited by restricted access to comprehensive published court decisions and the absence of nationwide empirical correctional data.

Contributions: This research contributes to criminal law policy reform by proposing a normative framework for rehabilitation-oriented sentencing and reducing disparities in narcotics cases.

Keywords: *Criminal Policy, Narcotics Users, Prison Overcrowding, Rehabilitation, Sentencing Disparity*

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1. Introduction

Despite the significant growth of research on sentencing in narcotics cases over the past five years, existing studies continue to reveal substantial research gaps that warrant further investigation. Most previous studies have primarily focused on the effectiveness of rehabilitation for drug users, the

implementation of Law Number 35 of 2009 on Narcotics, or normative analyses of judicial reasoning in sentencing decisions. However, studies that specifically examine the relationship between sentencing disparities involving drug users possessing small quantities of narcotics and the problem of prison overcrowding remain limited, particularly those that comprehensively integrate perspectives from criminal law, sentencing policy, and correctional policy. Studies on Indonesian narcotics cases have found that differences in judges' interpretations of defendants' legal status, namely as drug users, addicts, victims of drug abuse, or traffickers, have resulted in considerable variations in sentencing despite similar factual circumstances ([Anggraeny, & Kristiaga, 2024](#); [Laksana, Musofiana, & Sulchan, 2025](#)). The absence of operational parameters defining threshold quantities of narcotics and indicators of involvement in illicit trafficking networks constitutes a major source of sentencing disparity. Nevertheless, these studies did not examine how such disparities contribute to the growing number of narcotics offenders incarcerated in correctional institutions.

Similar findings were reported by [Dewi et al. \(2023\)](#), who investigated the consistency of judicial application of Articles 112 and 127 of Law Number 35 of 2009 on Narcotics. Their research demonstrated that many judges continue to adopt a possession-based approach rather than a user-oriented approach, resulting in defendants who are essentially drug users being convicted as unlawful possessors of narcotics. According to the authors, this practice generates legal uncertainty while simultaneously undermining the effectiveness of the rehabilitation policy envisioned by the legislature. From an international perspective, [Stevens et al. \(2022\)](#) observed that many countries have gradually shifted away from punitive approaches toward drug users and increasingly adopted a public health approach. Through a comparative analysis of several European jurisdictions, their study demonstrated that rehabilitation and diversion programs significantly reduce recidivism while alleviating pressure on correctional institutions. However, the study did not address the legal characteristics of developing countries such as Indonesia, where possession of even small quantities of narcotics remains criminalized.

Similarly, [Scheim et al. \(2020\)](#)[Scheim et al. \(2020\)](#), in a systematic review published in *BMJ Open*, argued that the success of drug decriminalization policies largely depends on the consistency of law enforcement authorities in distinguishing between drug users and traffickers. In the absence of uniform sentencing guidelines, rehabilitation policies may themselves create legal uncertainty because judges apply different standards when assessing similar cases. These findings reinforce the importance of establishing clear sentencing guidelines to promote consistency in judicial decisions. [Tomaz et al. \(2023\)](#)[Tomaz et al. \(2023\)](#) demonstrated through a systematic review that imprisonment of drug users has not been proven to provide a greater deterrent effect than rehabilitation. [Beaudry et al. \(2021\)](#)[Beaudry et al. \(2021\)](#), in a systematic review and meta-analysis, similarly demonstrate that structured psychological treatment programs produce significantly better long-term outcomes than incarceration for substance-dependent offenders, including substantial reductions in recidivism and improved public health indicators. Instead, incarceration increases the likelihood of recidivism, imposes greater financial burdens on the state, and exacerbates overcrowding within correctional institutions. Their findings provide a strong empirical foundation for the growing international shift toward rehabilitation-based drug policies.

Within the Indonesian context, [Laksana et al. \(2025\)](#)[Laksana et al. \(2025\)](#)[Laksana et al. \(2025\)](#)[Laksana et al. \(2025\)](#) explained that the implementation of rehabilitation policies continues to encounter various challenges, including inconsistent perceptions among law enforcement officials, limited rehabilitation facilities, the suboptimal implementation of integrated assessments, and the absence of standardized thresholds defining quantities intended for personal use. Consequently, rehabilitation policies have not yet succeeded in significantly reducing the prison population. Furthermore, comparative research on sentencing disparities across multiple courts has consistently found that judicial decisions remain heavily influenced by individual judicial discretion ([Ulmer, & Kramer, 1996](#); [Spohn, 2014](#)). Although the same statutory provisions are applied, differences in

evaluating evidence, interpreting assessment reports, and understanding the objectives of punishment result in substantial variations in sentencing outcomes. Scholars therefore recommend the development of more comprehensive sentencing guidelines to ensure greater consistency in the application of criminal law.

Beyond sentencing issues, prison overcrowding has also attracted considerable scholarly attention. [Larasati et al. \(2022\)](#) reported that the continued dominance of custodial sentencing in Indonesia has driven persistent prison overcrowding and argued that alternative sentencing mechanisms, such as community service and probation, are essential complements to broader correctional reform. According to the authors, resolving prison overcrowding cannot rely solely on constructing additional correctional facilities but must begin with reforming sentencing policies aimed at reducing the excessive use of imprisonment for low-risk offenders, particularly drug users found in possession of small quantities of narcotics. [Baffour et al. \(2024\)](#) found that overcrowding has significantly undermined the effectiveness of correctional rehabilitation programs. Excessive inmate populations increase the workload of correctional officers, restrict access to rehabilitation services, heighten institutional security risks, and diminish the overall quality of correctional services. Consequently, sentencing policy should be regarded as an integral component of broader correctional system reform.

Based on these previous studies, several research gaps can be identified. First, most existing research examines sentencing disparities solely as an issue of legal application without considering their broader systemic implications for prison overcrowding. Second, studies on prison overcrowding predominantly focus on correctional management rather than on sentencing policies adopted at the judicial level. Third, only a limited number of studies integrate analyses of judicial decisions, sentencing policy, proportionality, human rights protection, and correctional effectiveness within a single analytical framework ([Dewi et al., 2023](#); [Anggraeny and Kristiaga, 2024](#)). Finally, no previous study has developed a sentencing policy model specifically designed for drug users possessing small quantities of narcotics based on the principles of individualized sentencing, proportionality, restorative justice, and rehabilitative justice within the context of Indonesia criminal law reform following the enactment of Law Number 1 of 2023 on the Criminal Code.

Addressing these research gaps, this study offers both conceptual and practical novelty. Conceptually, it develops an analytical model linking sentencing disparities to prison overcrowding through the perspectives of criminal policy, sentencing objectives, the principle of proportionality, and the theory of individualized punishment. Unlike previous studies that examined sentencing disparities and rehabilitation separately, this research treats both issues as interconnected components of the criminal justice system. Accordingly, sentencing disparity is analyzed not merely as judicial inconsistency but also as a significant factor contributing to the increasing number of incarcerated drug offenders, thereby reducing the effectiveness of Indonesia correctional system. From a practical perspective, this study proposes a sentencing guideline model for drug users possessing small quantities of narcotics by considering integrated assessment results, the quantity of narcotics involved, the offender's level of dependency, involvement in illicit trafficking networks, and rehabilitation objectives. The proposed model is expected to serve as a policy reference for the Supreme Court and lawmakers in promoting greater consistency in judicial decisions while reducing the disproportionate use of imprisonment.

Accordingly, this study aims to analyze the factors contributing to sentencing disparities involving drug users found in possession of small quantities of narcotics in Indonesian court decisions. Furthermore, it seeks to examine the impact of these disparities on the increasing number of incarcerated narcotics offenders that contributes to prison overcrowding, evaluate the consistency of current sentencing practices with the principles of justice, legal certainty, utility, and human rights protection, and formulate a sentencing policy model that is more proportional, consistent, and rehabilitation-oriented as part of the broader reform of Indonesia criminal justice and correctional systems.

2. Literature Review

2.1 Theory of Sentencing

Sentencing constitutes one of the principal instruments of the criminal justice system, evolving from a purely retributive mechanism toward a multifaceted legal instrument that balances societal protection, victim interests, offender rehabilitation, and social restoration. Modern sentencing theory has progressed from the classical retributive paradigm toward a framework integrating deterrence, rehabilitation, restoration, and public protection, with effectiveness measured not solely by severity but by capacity to reduce recidivism and maintain the balance between individual rights and societal interests.

The retributive tradition, rooted in the philosophy of Kant and Hegel, regards punishment as the morally necessary consequence of unlawful conduct. In contrast, the utilitarian tradition, as elaborated by [Duff and Garland \(2020\)](#), directs criminal sanctions toward social welfare through both special and general prevention. Contemporary sentencing scholarship advocates for a combined approach reconciling culpability-based retribution with broader rehabilitative and protective objectives, a framework that has been widely adopted in modern legal systems seeking harmony among justice, legal certainty, and social utility. The principle of individualized sentencing, examined by [Fagan and Meares \(2008\)](#), requires courts to consider the offender's personal characteristics, culpability, and rehabilitation prospects rather than applying uniform sanctions. This principle is particularly important in narcotics cases, where drug users, addicts, couriers, and traffickers present fundamentally different culpability profiles. Indonesia's Law Number 1 of 2023 concerning the Criminal Code formally embraces this approach by defining sentencing as a means of preventing crime, facilitating reintegration, resolving conflicts, and fostering offender remorse.

Proportionality constitutes a central sentencing principle, requiring that punishment severity correspond to both culpability and the seriousness of harm caused. Imposing custodial sentences on low-risk drug users may violate proportionality and hinder social reintegration. [Kessler and Levitt \(1999\)](#) demonstrate that the deterrent effect of sanctions is more closely associated with certainty of punishment than with severity, suggesting that consistent application of sentencing guidelines carries greater crime reduction potential than increasingly punitive sentences. [Tonry \(2014\)](#) adds that judicial consistency is a defining feature of an effective sentencing system, essential for legal certainty and public confidence. [Bowen, Brown, and Hipp \(2022\)](#), examining the implementation effects of sentencing guidelines across multiple U.S. state jurisdictions, demonstrate that formally structured sentencing frameworks reduce racially and socioeconomically disparate outcomes in drug sentencing, while jurisdictions without binding guidelines exhibit substantially greater unexplained variation in sentences imposed for comparable drug possession offenses. Within Indonesia, inconsistent application of the Narcotics Law and Supreme Court Circular Letters continues to produce divergent outcomes in substantially similar cases, directly generating sentencing disparities.

2.2 Sentencing Disparities

Sentencing disparity refers to differences in the type or severity of punishment imposed in cases with substantially similar legal and factual characteristics without objectively justifiable reasons. [Spohn \(2014\)](#) argues that while all cases contain unique features, disparities become problematic when they arise primarily from judicial discretion rather than meaningful differences in legal facts, and further demonstrates that structured sentencing guidelines significantly reduce such variations. From a legal theory perspective, sentencing disparity undermines equality before the law. [Acemoglu and Wolitzky \(2021\)](#) explain that equal treatment requires not merely the formal application of identical legal rules but also their consistent enforcement, making judicial consistency a fundamental indicator of public trust in the legal system. In Indonesia, this principle is constitutionally guaranteed under Articles 27(1) and 28D(1) of the 1945 Constitution, while Article 48 of Law Number 48 of 2009 on Judicial Power obliges judges to explore and apply living legal values in society.

[Laksana, Musofiana, and Sulchan \(2025\)](#) and [Anggraeny and Kristiaga \(2024\)](#) emphasize that unequal treatment in substantially similar cases creates perceptions of discrimination that erode public

confidence in the judiciary. [Steffensmeier, Ulmer, and Kramer \(1998\)](#) further demonstrate that excessively broad judicial discretion without clearly defined parameters generates substantial sentencing variation, even in nearly identical cases. [Corda and Goulette \(2020\)](#), examining drug sentencing practices across U.S. federal courts, similarly demonstrate that in the absence of binding sentencing standards, individual judicial discretion functions as a primary driver of inconsistent outcomes in drug possession cases, with defendants in structurally comparable situations receiving markedly different sentences depending on jurisdictional context. In Indonesian narcotics cases, this complexity is compounded by difficulties in classifying defendants as drug users, addicts, couriers, or traffickers, because this classification directly determines the applicable legal provisions and eligibility for rehabilitation.

[Ulmer and Kramer \(1996\)](#) found that sentencing guidelines significantly reduce variation attributable to non-legal factors, while the absence of operational threshold quantities and trafficking network indicators has been identified as a primary source of disparity in Indonesian narcotics cases ([Anggraeny & Kristiaga, 2024](#); [Laksana et al., 2025](#)). Despite Indonesia's relatively comprehensive regulatory framework, which comprises Articles 54, 55, and 103 of Law Number 35 of 2009, SEMA Number 4 of 2010, SEMA Number 3 of 2011, and the 2014 Joint Regulation, implementation remains inconsistent, with drug users in similar circumstances receiving either rehabilitation or imprisonment depending on the presiding judge. Legal certainty requires predictable legal consequences; therefore, when substantially similar cases produce markedly different outcomes, the predictive and legitimizing functions of the legal system are systematically weakened.

Comparative evidence from Asian jurisdictions further confirms this pattern. [Lin, Liu, Li, and Ma \(2022\)](#), examining sentencing disparity under China's sentencing guidelines, find that despite the existence of formal guidelines, substantial judicial discretion remains in custodial versus non-custodial decisions, with legally irrelevant factors continuing to influence sentencing outcomes. [Similarly, Cheng, Ri, and Pushkarna \(2022\)](#), in a comparative analysis of drug sentencing guidelines in Hong Kong and England and Wales, demonstrate that even structured tariff-based guidelines leave considerable room for judicial variation, particularly in cases involving small quantities of narcotics where the boundary between personal use and trafficking remains ambiguous.

2.3 Drug Abuse and Drug Users Possessing Small Quantities of Narcotics

Drug abuse is a multidimensional issue spanning criminal law, public health, human rights, and social development. Indonesia Law Number 35 of 2009 adopts a double-track system integrating criminal sanctions and rehabilitative measures. Articles 54 and 103 mandate medical and social rehabilitation for addicts and victims of drug abuse, while Articles 111, 112, and 114 prescribe substantial imprisonment for unlawful possession, manufacture, or distribution. The legislature's intention was to balance vigorous enforcement against trafficking networks with protection of addicted users, yet the absence of explicit quantitative thresholds for personal consumption has become a principal source of sentencing disparity. [Moeller and Houliand \(2020\)](#), examining the operationalization of personal use thresholds in Danish narcotics enforcement, demonstrate that the absence of clearly defined quantity thresholds creates systematic enforcement inconsistencies, with officers and courts applying divergent informal standards that undermine the predictability and fairness of drug prosecution outcomes, a pattern directly analogous to the Indonesian experience.

Drug users are commonly categorized in contemporary scholarship as self-victimizing offenders simultaneously occupying the roles of perpetrator and victim. This victimological framing supports prioritizing recovery over retribution. [Dewi, Pancaningrum, and Jumadi \(2023\)](#) found that many judges continue applying a possession-based rather than a user-oriented approach, classifying users as unlawful possessors under Article 112 rather than beneficiaries of rehabilitation under Article 127, generating legal uncertainty and undermining rehabilitation policy.

[Internationally, Stevens, Hughes, Hulme, and Cassidy \(2022\)](#) demonstrate that rehabilitation and diversion programs significantly reduce recidivism and alleviate pressure on correctional institutions across European jurisdictions. [Scheim et al. \(2020\)](#) and [Hughes and Stevens \(2010\)](#), drawing on the

Portuguese experience, argue that decriminalization success depends on consistent law enforcement distinctions between users and traffickers, while [Tomaz, Moreira, and Cruz \(2023\)](#) establish that imprisonment increases recidivism likelihood without providing greater deterrent effect than rehabilitation. [Stevens et al. \(2022\)](#), reviewing drug law reform trajectories across twelve countries, further demonstrate that jurisdictions combining decriminalization with expanded treatment infrastructure achieve significantly better public health and recidivism outcomes than those relying predominantly on criminal sanctions, underscoring the importance of aligning criminal justice and health policy frameworks.

[Testa and Lee \(2021\)](#), analyzing 16 years of federal drug sentencing data from U.S. district courts, further demonstrate that sentencing outcomes for drug offenders vary substantially across drug types, offense circumstances, and offender characteristics, reinforcing the argument that inconsistent application of legal standards rather than offense severity alone is a primary driver of sentencing variation in narcotics cases. From a Southeast Asian perspective, [Jeffries, Chuenurah, and Wallis \(2019\)](#) demonstrate that the criminalization of drug users in Thailand disproportionately affects individuals through pathways of addiction and social disadvantage rather than deliberate criminal intent, suggesting that punitive sentencing approaches in the region fail to account for the structural and health-related dimensions of drug use that distinguish users from traffickers.

Within [Indonesia, Laksana, Musofiana, and Sulchan \(2025\)](#) identify inconsistent official perceptions, limited rehabilitation capacity, suboptimal integrated assessments, and absent consumption thresholds as principal implementation challenges. [Laksana et al. \(2025\)](#) observe that Article 103's discretionary language renders rehabilitation optional rather than mandatory, proposing a more consistent application of rehabilitation for proven personal-use cases without trafficking involvement. Comparative sentencing research identifies divergent interpretations of assessment reports, legalistic possession-focused approaches, and inadequate inter-agency coordination as factors reinforcing inconsistencies in judicial outcomes ([Ulmer & Kramer, 1996](#); [Spohn, 2014](#)). [Steffensmeier, Ulmer, and Kramer \(1998\)](#) further demonstrate that non-legal factors including socioeconomic conditions, offense type, legal representation quality, and individual judge characteristics also influence sentencing outcomes, concluding that structural inequalities are embedded within the criminal justice system itself.

2.4 Prison Overcrowding

Prison overcrowding represents a systemic condition in which incarcerated populations exceed institutional capacity, impairing rehabilitation, security, public services, and human rights protection. Beyond its administrative dimensions, it reflects broader deficiencies in criminalization, prosecution, and sentencing policies. Indonesia's Law Number 22 of 2022 concerning Corrections reorients the correctional system toward social reintegration and restorative justice, establishing that the primary objective of imprisonment is not suffering infliction but preparation of incarcerated individuals for responsible social return.

Social reintegration theory, which holds that effective correctional outcomes require adequate access to education, vocational training, healthcare, psychological counseling, and social support ([Nagin, Cullen, & Jonson, 2009](#)), provides a critical framework for evaluating the impact of overcrowding on correctional effectiveness. When correctional institutions operate far beyond their intended capacity, these rehabilitative programs become increasingly ineffective. From a human rights perspective, the United Nations Standard Minimum Rules (Nelson Mandela Rules) establish minimum entitlements including adequate accommodation, sanitation, healthcare, education, and protection from cruel treatment, all of which are standards that become increasingly difficult to fulfill in overcrowded correctional institutions.

[Nagin et al. \(2009\)](#), in a comprehensive review, established that the rapid growth of incarceration in many jurisdictions has been driven not by rising crime rates but by policy choices, including mandatory minimum sentences and the criminalization of drug possession, and further demonstrated that incarceration produces null or mildly criminogenic effects on future criminal behavior compared

to non-custodial sanctions. [Beaudry, Yu, Perry, and Fazel \(2021\)](#), in a systematic review and meta-analysis, demonstrate that prison overcrowding substantially undermines rehabilitation effectiveness by restricting access to psychological interventions, reducing program quality, limiting healthcare access, and increasing correctional officer workload. [Franks and Schroeder \(2022\)](#) further document that correctional institutions operating substantially above designed capacity experience a measurable deterioration in program delivery quality, staff retention rates, and incarcerated persons' mental health outcomes, reinforcing the argument that overcrowding constitutes a structural barrier to effective rehabilitation.

[Tomaz, Moreira, and Cruz \(2023\)](#) further show that custodial sentencing increases security disturbances, weakens supervision, reduces rehabilitation effectiveness, and raises the likelihood of recidivism, concluding that meaningful solutions must begin with sentencing reform rather than mere infrastructure expansion. [Pulungan, Soponyono, and Purnomo \(2024\)](#) similarly argue that Indonesia's excessive reliance on imprisonment for minor drug offenses places disproportionate pressure on the correctional system, advocating broader implementation of restorative justice, rehabilitation, and alternative sentencing. [Baffour, Francis, Chong, and Harris \(2024\)](#) specifically note that overcrowding significantly undermines correctional rehabilitation effectiveness by increasing officer workload and restricting service access, while also generating health and human rights concerns for both incarcerated persons and correctional staff.

The narcotics-overcrowding nexus is particularly acute: drug users satisfying rehabilitation criteria who receive custodial sentences due to judicial inconsistency are incarcerated alongside traffickers and organized criminal offenders, fundamentally undermining individualized rehabilitation objectives. [Larasati, Munabari, and Sumarwan \(2022\)](#) report that the disproportionate reliance on custodial sentencing constitutes a major driver of Indonesia's correctional overcrowding, arguing that resolving overcrowding requires sentencing policy reform targeting the disproportionate imprisonment of low-risk drug users. Addressing overcrowding thus demands not only infrastructure expansion but also regulatory harmonization, strengthened assessment mechanisms, consistent sentencing guidelines, expanded rehabilitation access, alternative sanctions, and restorative justice implementation consistent with Law Number 22 of 2022.

2.5 Criminal Policy

Criminal policy, defined broadly as the state's rational and organized strategy for responding to crime through the integration of penal and non-penal measures [Loader, 2010](#), represents a comprehensive framework for achieving social defence and social welfare simultaneously. Crime is not merely a legal violation but a complex social phenomenon influenced by economic, cultural, psychological, public health, and environmental factors. Therefore, imprisonment constitutes only one available instrument among many and should be deployed selectively and proportionately.

Indonesia's criminal policy framework, developed by Barda Nawawi Arief, treats criminal policy as integral to both law enforcement and social policy, with the ultimate objective of protecting society while promoting welfare through the appropriate use of criminal law. Penal policy employs criminal law through criminalization, prosecution, sentencing, and sanction execution, whereas non-penal policy relies on education, rehabilitation, healthcare, community empowerment, and social development. Rather than functioning as alternatives, these approaches should operate in an integrated manner to achieve comprehensive and sustainable crime prevention.

Indonesia's response to narcotics has historically been dominated by punitive approaches, with consequences including a continuously expanding prison population without corresponding increases in correctional capacity or meaningful development of alternative mechanisms. Law Number 1 of 2023 marks a significant shift by redefining sentencing objectives to include crime prevention, conflict resolution, social harmony restoration, rehabilitation, and public protection, which is consistent with the double-track philosophy already embodied in Articles 54, 103, and 127 of Law Number 35 of 2009. [Anggraeny and Kristiaga \(2024\)](#) demonstrate that Indonesia's penal policy has not been harmonized effectively with non-penal policy and propose integrated restorative justice

approaches involving multiple institutional actors in prevention and rehabilitation programs. [Tonry \(2014\)](#) similarly concludes that effective criminal policy reform must establish rehabilitation as the primary response for low-risk users without trafficking involvement, while reserving severe sanctions for serious offenders who pose significant threats to public safety.

Internationally, therapeutic jurisprudence integrates legal processes with psychology, public health, and social work so that judicial interventions seek both to impose sanctions and to improve offender well-being. In addition, this approach is aligned with restorative justice principles through the implementation of medical and social rehabilitation, integrated assessment, and community involvement in recovery support. Contemporary empirical research consistently demonstrates that restorative approaches outperform imprisonment in reducing recidivism, improving rehabilitation outcomes, and alleviating overcrowding ([Hughes & Stevens, 2010](#); [Tomaz et al., 2023](#)). [Werb et al. \(2021\)](#), in a systematic review of drug policy interventions across 17 jurisdictions, confirm that health-oriented and diversion-based approaches consistently produce superior outcomes across public health, recidivism, and cost-effectiveness indicators when compared with predominantly punitive criminal justice responses, providing robust cross-national evidence for the effectiveness of non-penal drug policy models. These findings provide strong normative support for reformulating Indonesia's criminal policy toward a more balanced integration of penal and non-penal approaches, with rehabilitation serving as the primary response for small-quantity drug users, while imprisonment is reserved as an **ultimum remedium** for serious narcotics offenses.

3. Research Methodology

This study employs a normative legal research design, examining sentencing disparities involving drug users found in possession of small quantities of narcotics and their contribution to prison overcrowding in Indonesia through the analysis of legal norms, principles, and doctrines. Normative legal research focuses on examining the law as it is written and as it ought to be applied, making it appropriate for analyzing inconsistencies within the existing legal framework and formulating recommendations for legal reform.

The study applies four complementary legal research approaches. The statutory approach involves a systematic examination of the relevant legislative framework, including Law Number 35 of 2009 on Narcotics, Law Number 22 of 2022 on Corrections, Law Number 1 of 2023 concerning the Indonesian Criminal Code, Supreme Court Circular Letter (SEMA) Number 4 of 2010, SEMA Number 3 of 2011, and the 2014 Joint Regulation on the handling of narcotics addicts and victims of drug abuse. The conceptual approach draws upon established legal theories, including sentencing theory, the principle of proportionality, individualized punishment, criminal policy, and social reintegration theory, as the analytical framework for evaluating the consistency and adequacy of existing legal provisions.

The case approach examines published court decisions involving narcotics users found in possession of small quantities to identify patterns of judicial reasoning and sources of sentencing disparity. The comparative approach considers relevant international experiences in drug sentencing reform, particularly decriminalization and diversion models, in order to provide normative reference points for policy recommendations. This comparative orientation aligns with [Ariani, Yusuff, Yusof, and Salleh \(2025\)](#) analysis of Indonesia's drug sentencing framework alongside neighboring Southeast Asian jurisdictions, which demonstrates that countries such as Malaysia, Thailand, and Singapore have increasingly adopted rehabilitative and decriminalization-oriented reforms that Indonesia's predominantly retributive system has yet to embrace.

Data were collected from two categories of legal materials. Primary legal materials consist of binding legal instruments, including statutory legislation, government regulations, Supreme Court Circular Letters, joint regulations, and selected published court decisions. Secondary legal materials comprise peer-reviewed academic journals, legal textbooks, research reports, and policy documents directly relevant to narcotics sentencing, rehabilitation policy, and correctional overcrowding. Tertiary legal

materials, including legal dictionaries and encyclopedias, were consulted where necessary to clarify technical legal terminology.

Data were analyzed using the prescriptive legal analysis method, which aims not only to describe the existing legal framework but also to evaluate its adequacy and propose normative improvements. Interpretive techniques, including grammatical, systematic, teleological, and historical interpretation, were applied to examine the meaning and purpose of the relevant legal provisions. The trustworthiness of the analysis was maintained through source triangulation across primary, secondary, and tertiary legal materials, thereby ensuring consistency and coherence in the legal arguments advanced throughout the study. Data analysis further followed an interpretive legal method consistent with systematic qualitative approaches to legal text analysis outlined by [Braun and Clarke \(2006\)](#), ensuring that recurring normative patterns and doctrinal inconsistencies were identified and categorized in a rigorous and replicable manner.

4. Results and Discussions

4.1 Result

The normative analysis of selected published court decisions reveals that sentencing practices in Indonesia continue to exhibit significant disparities in cases involving drug users found in possession of small quantities of narcotics. An examination of court decisions with substantially similar characteristics, namely defendants identified as drug users, narcotic quantities below commonly recognized threshold amounts, and no evidence of involvement in illicit trafficking networks, demonstrates markedly different judicial outcomes across Indonesian courts. Depending on the presiding court and judge, defendants in comparable cases have received custodial sentences under Article 112, suspended sentences, or rehabilitation orders under Article 127 of Law Number 35 of 2009 on Narcotics.

Analysis of the judicial reasoning documented in published decisions indicates that one of the principal causes of sentencing disparity lies in divergent judicial interpretations of the evidentiary requirements for establishing the element of "possession" under Article 112 of the Narcotics Law. Some courts adopt a formalistic approach focusing primarily on the physical fact of possession, while others apply a more substantive approach by considering the defendant's level of dependency, the intended purpose of possession, the quantity involved relative to personal consumption norms, and the broader rehabilitative objectives of sentencing. These contrasting interpretive approaches have produced inconsistent sentencing outcomes across different courts adjudicating substantially similar cases.

The study further identifies that the implementation of Supreme Court Circular Letter (SEMA) Number 4 of 2010 and SEMA Number 3 of 2011 remains inconsistent in judicial practice. Although both instruments explicitly encourage judges to prioritize rehabilitation for eligible drug users, an analysis of published decisions reveals that rehabilitation continues to represent the exception rather than the norm. In numerous decisions examined, courts imposed custodial sentences under Article 112 despite factual circumstances that would appear to satisfy the criteria for rehabilitation under Article 127, indicating that these normative instruments have not been sufficiently effective in guiding or constraining judicial discretion.

From the perspective of the correctional system, data published by the Directorate General of Corrections, Ministry of Law and Human Rights, indicate that individuals convicted of narcotics-related offenses constitute the largest segment of Indonesia prison population, accounting for more than half of all incarcerated persons. A substantial proportion of these inmates were convicted for possession of relatively small quantities of narcotics who, under consistent application of the existing legal framework, could have been diverted to rehabilitation programs. The continued judicial preference for custodial sentences has significantly expanded the prison population, directly contributing to persistent and worsening overcrowding across Indonesian correctional institutions.

The normative analysis also identifies several structural factors reinforcing sentencing disparities. These include the absence of explicit quantitative thresholds in Law Number 35 of 2009 distinguishing personal consumption from trafficking-related possession, the discretionary rather than mandatory language of Article 103 regarding rehabilitation orders, limited coordination among criminal justice institutions in implementing integrated assessment recommendations, and divergent judicial cultures across different court jurisdictions. In several published decisions examined, recommendations issued by Integrated Assessment Teams were not reflected in final judicial outcomes, with courts ultimately imposing custodial sentences despite rehabilitation recommendations, highlighting the non-binding character of assessment results within the current legal framework. This finding reflects a broader pattern documented in comparative narcotics sentencing research: the effectiveness of rehabilitation as an alternative to imprisonment remains constrained by its optional rather than mandatory character within the existing legal framework, which continues to permit custodial sentences even where treatment-oriented outcomes would produce better long-term results for both the individual and society ([Tomaz et al., 2023](#); [Pulungan et al., 2024](#)).

Overall, the normative findings indicate that sentencing disparities involving drug users possessing small quantities of narcotics constitute a systemic phenomenon shaped by normative gaps, institutional inconsistencies, and interpretive divergence embedded within Indonesia criminal justice framework. These disparities not only undermine legal certainty and equality before the law but also contribute substantially to the increasing number of incarcerated drug offenders and the worsening problem of prison overcrowding throughout Indonesia.

4.2 Discussion

The normative analysis conducted in this study demonstrates that sentencing disparities in narcotics cases are structurally rooted in the broad and inadequately constrained scope of judicial discretion within Indonesia's existing legal framework. While judicial independence is constitutionally protected and essential to the rule of law, the analysis of published court decisions reveals that, in the absence of operationally specific and comprehensive sentencing guidelines, this discretion produces markedly inconsistent outcomes in cases sharing substantially similar factual and legal characteristics. These findings are consistent with the theoretical proposition advanced by [Spohn \(2014\)](#) and [Steffensmeier, Ulmer, and Kramer \(1998\)](#) that sentencing variation arises primarily from the absence of structured judicial guidance rather than from genuine differences in the underlying legal facts.

From the perspective of sentencing theory, the continued dominance of imprisonment for drug users possessing only small quantities of narcotics indicates that retributive thinking continues to exert considerable influence within Indonesian judicial practice. This tendency contrasts with the evolution of modern sentencing theory, which increasingly emphasizes rehabilitation, restorative justice, and individualized sentencing, particularly for offenders whose criminal conduct is closely associated with substance dependence. The persistence of custodial sentencing therefore suggests that Indonesia's transition toward a more rehabilitative criminal justice paradigm remains incomplete.

The practical consequences of these disparities are clearly reflected in the steadily increasing number of narcotics offenders incarcerated in Indonesian correctional institutions. [Durlauf and Nagin \(2011\)](#) demonstrate that increasing imprisonment rates does not necessarily reduce crime rates and that the marginal deterrent effect of incarceration diminishes substantially beyond certain threshold levels. [Labrecque and Mears \(2020\)](#), analyzing the effects of correctional overcrowding on inmate behavior and institutional outcomes across a large state correctional system, further demonstrate that overcrowded conditions are associated with increased disciplinary violations, reduced program participation, and diminished post-release employment prospects, documenting the multidimensional costs of custodial overcrowding beyond mere spatial constraints. Prison overcrowding is not solely the result of high rates of narcotics-related crime but is also a consequence of sentencing policies that impose imprisonment disproportionately on drug users. By placing drug users within the same correctional facilities as traffickers and organized drug dealers, the criminal justice system creates an inmate population that is inconsistent with the principle of individualized rehabilitation. These

findings indicate that the principle of individualized sentencing has not yet been effectively implemented in practice.

The study also demonstrates that rehabilitation policies continue to encounter both structural and cultural obstacles. Structurally, the limited availability of rehabilitation facilities and insufficient coordination among criminal justice agencies often prevent rehabilitation recommendations from being consistently implemented by the courts. Culturally, imprisonment continues to be widely perceived as a more effective deterrent than rehabilitation, despite extensive empirical evidence demonstrating that rehabilitation produces better long-term outcomes for drug users. These findings suggest that meaningful criminal justice reform requires not only legislative amendments but also a broader transformation in the attitudes and professional culture of law enforcement officials and members of the judiciary.

From the perspective of criminal policy, the findings underscore the importance of strengthening non-penal approaches to addressing drug use. Rehabilitation should become the primary legal response for drug users, while imprisonment should be reserved as an *ultimum remedium* for cases involving serious criminal conduct. The current imbalance between penal and non-penal policies has reduced the effectiveness of Indonesia's criminal justice system in addressing drug abuse while simultaneously worsening the problem of prison overcrowding.

Ultimately, this study demonstrates that addressing sentencing disparities and prison overcrowding requires a comprehensive and systemic reform strategy. Such reform should include the development of clearer and more consistent sentencing guidelines, the strengthening of integrated assessment mechanisms, greater institutional coordination among criminal justice agencies, and closer harmonization between the Narcotics Law and Indonesia's correctional policy framework. Through these measures, Indonesia's criminal justice system can move toward a sentencing model that is more proportionate, consistent, humane, and firmly oriented toward rehabilitation and successful social reintegration.

5. Conclusions

5.1 Conclusion

This study concludes that significant sentencing disparities continue to characterize judicial practice in Indonesia regarding drug users found in possession of small quantities of narcotics. The existence of substantially different judicial outcomes in cases with comparable factual and legal characteristics indicates the absence of consistent standards for distinguishing between drug users, victims of drug abuse, and individuals involved in illicit drug trafficking. Consequently, the application of Law Number 35 of 2009 on Narcotics remains largely dependent on individual judicial interpretation, resulting in inconsistent sentencing practices across courts.

The findings further demonstrate that the rehabilitation framework established under Articles 54 and 103 of the Narcotics Law, together with Supreme Court Circular Letter (SEMA) Number 4 of 2010 and SEMA Number 3 of 2011, has not been implemented consistently in judicial practice. Broad judicial discretion, divergent interpretations of integrated assessment reports, and limited coordination among criminal justice institutions have led many eligible drug users possessing only small quantities of narcotics to receive custodial sentences instead of rehabilitation. These inconsistencies indicate that the existing legal framework has not yet provided sufficient guidance to ensure uniform sentencing decisions.

The study also reveals that these sentencing disparities have made a substantial contribution to prison overcrowding in Indonesia. The continued predominance of imprisonment for drug users has resulted in a growing prison population consisting of individuals who could more appropriately be placed in medical and social rehabilitation programs. As a consequence, correctional institutions face increasing pressure on available resources, reduced effectiveness of rehabilitation and correctional programs, and diminished capacity to achieve the objective of successful social reintegration as envisioned under Law Number 22 of 2022 concerning Corrections.

From the perspective of criminal policy, the findings underscore the importance of establishing a more balanced relationship between penal and non-penal approaches. Rehabilitation should become the primary legal response for drug users possessing small quantities of narcotics who are not involved in illicit trafficking networks, while imprisonment should remain an *ultimum remedium*, reserved for more serious narcotics offenses. Such an approach would better reflect the principles of proportionality, justice, legal certainty, and public benefit that underpin Indonesia's contemporary criminal justice reform.

Finally, this study recommends the development of clearer and more operational sentencing guidelines, the strengthening of integrated assessment mechanisms, and greater policy harmonization among criminal justice institutions. This recommendation is consistent with call for a reformulation of narcotics regulations that clearly distinguishes narcotics users from traffickers, which the authors identify as essential to reducing inconsistent interpretation among law enforcement officials and alleviating correctional overcrowding. These measures are expected to reduce sentencing disparities, improve consistency in judicial decision-making, alleviate prison overcrowding, and promote a criminal justice system that is more effective, humane, rehabilitation-oriented, and supportive of long-term social reintegration.

5.2 Research Limitations

Several limitations should be considered when interpreting the findings of this study. First, the analysis relies on a selected number of published court decisions from several Indonesian jurisdictions, which may not fully represent sentencing practices nationwide. Second, as a normative legal study, this research does not generate primary empirical data; consequently, practical dimensions such as unrecorded judicial reasoning and informal inter-institutional dynamics could not be fully captured. Third, given the dynamic nature of Indonesia's ongoing criminal law reform, particularly the continued implementation of Law Number 1 of 2023, future judicial and regulatory developments may influence some of the conclusions presented. Despite these limitations, the study provides a meaningful normative foundation for future empirical research and evidence-based criminal justice policy reform in Indonesia.

5.3 Suggestions and Directions for Future Research

Future studies should expand the scope of judicial analysis by examining a broader range of court decisions from multiple jurisdictions throughout Indonesia, including cases adjudicated at the district court, appellate court, and Supreme Court levels. A more comprehensive dataset would provide a clearer understanding of national sentencing patterns and allow stronger conclusions regarding the consistency of narcotics sentencing practices across the Indonesian judiciary. Further research should also strengthen the empirical examination of correctional institutions through broader access to institutional data, including longitudinal information on recidivism, rehabilitation outcomes, prison population trends, and the long-term effects of overcrowding on correctional performance. Such evidence would provide a more robust basis for evaluating the implementation of Law Number 22 of 2022 concerning Corrections and for supporting evidence-based correctional policy.

Comparative studies involving jurisdictions that have adopted decriminalization or depenalization policies for drug users, such as Portugal, the Netherlands, and several Scandinavian countries, would also be valuable. Comparative analysis may provide alternative perspectives for developing a sentencing framework that effectively balances public health objectives, human rights protection, and criminal law enforcement while reducing prison overcrowding. Future research is also encouraged to integrate quantitative methods with qualitative approaches. A mixed-methods design would enable researchers to examine statistically the relationship between custodial sentencing for drug users and prison overcrowding while preserving the contextual understanding generated through qualitative inquiry. Such methodological integration would strengthen both the reliability and policy relevance of future findings.

In addition, subsequent studies should evaluate the effectiveness of Indonesia's rehabilitation policy by examining the performance of Integrated Assessment Teams, the quality and accessibility of

rehabilitation facilities, and long-term recovery outcomes among individuals who have completed rehabilitation programs. These investigations would help determine whether rehabilitation has achieved its intended objectives or whether further structural reforms are required. Ultimately, future research should focus on developing a more integrated criminal policy model that effectively combines penal measures, non-penal strategies, and restorative justice principles. Such a model has the potential to reduce sentencing disparities, strengthen legal certainty, alleviate prison overcrowding, and contribute both theoretically and practically to the ongoing reform of Indonesia's narcotics law and criminal justice system.

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Author Contributions

SVA contributed to the conceptualization, methodology, formal analysis, and preparation of the original draft. NS contributed to writing, review and editing, as well as supervision of the research process. RA was responsible for data curation and investigation. DDS contributed to validation and review of the manuscript. All authors have read and approved the final version of the manuscript.

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