

Evidentiary Assessment in the Imprisonment of Narcotics Users as Self-Victimizing Offenders

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ABSTRACT

Cases involving narcotics abuse in Indonesia encompass a wide range of offenders, some of whom are not conventional criminals yet are subject to identical punitive measures. Narcotics users occupy a unique legal and social position: they are frequently sentenced to imprisonment despite being self-victimizing offenders whose actions primarily harm themselves rather than society at large. The prevailing reliance on incarceration has not effectively reduced drug abuse but has instead intensified systemic issues, including overcrowding in correctional facilities, inconsistent sentencing practices, legal uncertainty, and corruption within law enforcement institutions. This study focuses on the role of evidentiary assessment in determining whether narcotics users should be treated as self-victimizing offenders rather than conventional criminals. By combining normative and empirical legal research methods, this study evaluates both the statutory framework and the practical implementation of narcotics laws. Normative analysis examines relevant legislation, including Law No. 35 of 2009 on Narcotics and its interplay with the new Criminal Code (Law No. 1 of 2023), emphasizing provisions that allow rehabilitation for users. The empirical component investigates how evidentiary procedures, including medical, psychological, and Integrated Assessment Team evaluations, influence judicial outcomes and sentencing consistency. The findings reveal that the current evidentiary process often prioritizes possession and formal illegality over users' dependency and rehabilitative needs, resulting in the misrecognition of self-victimization and overreliance on imprisonment. This study concludes that reforming evidentiary assessment to systematically recognize addiction and dependency is crucial for promoting a more proportionate, humane, and effective sentencing policy. Emphasizing rehabilitation and treatment over incarceration not only aligns legal practice with the intent of the law but also enhances public health outcomes, reduces recidivism, and mitigates the social harm associated with punitive approaches.

Keywords: Evidentiary Assessment; Narcotics; Self-Victimizing Offenders; Sentencing Policy; Rehabilitation.

INTRODUCTION

Narcotics users in Indonesia occupy a paradoxical position. On one hand, they are classified as offenders because their conduct violates state drug laws; on the other hand, they are regarded as victims of addiction and the exploitative illicit drug market. This dual status reflects the complex nature of drug dependency, which involves legal responsibility and medical vulnerability (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics: Articles 54–59). A major challenge in narcotics law enforcement is over-criminalization. In practice, inadequate evidentiary assessment often equates drug users with traffickers or distributors. This misclassification contributes to prison overcrowding, undermines rehabilitation efforts, and leads to high rates of recidivism among

former inmates (Regulation of the Republic of Indonesia No. 11 of 2021 concerning the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation).

To address this issue, contemporary legal frameworks in Indonesia have introduced the concept of Integrated Assessment Teams (TAT). These teams consist of medical professionals, psychologists, and legal experts who collaborate to evaluate a suspect's involvement in narcotics-related offenses. Through medical examinations, psychological evaluations, and legal analysis, the TAT determines whether the available evidence supports a diagnosis of drug dependency or indicates participation in an organized distribution network (Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics: Articles 54–59; Attorney General's Regulation No. 11 of 2021 on the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation: Articles 4–8). This mechanism aims to ensure that drug users requiring treatment and rehabilitation are not unjustly subjected to punitive criminal sanctions.

Narcotics abuse remains a serious social and legal problem in Indonesia and many other countries. Several states continue to rely on imprisonment as the primary response to narcotics use, even though users often harm only themselves and show clear signs of dependency rather than criminal intent. In Indonesia, narcotics users are frequently processed through the criminal justice system and sentenced to prison under a punitive framework that treats them as ordinary offenders. This approach has produced serious structural consequences, including prison overcrowding, corruption in law enforcement practices, unequal sentencing, and weak legal certainty (Indonesian Ministry of Law and Human Rights, 2024). Simultaneously, empirical data show that imprisonment has failed to reduce narcotics consumption or prevent relapse, raising questions about the effectiveness and legitimacy of custodial sentencing for narcotics users (United Nations Office on Drugs and Crime, 2023). These conditions make the sentencing of narcotics users an urgent legal and policy concern.

Previous studies have extensively examined narcotics control from both criminal law and criminological perspectives. Internationally, scholars, such as Husak (2020) and Duff, argue that drug users occupy a distinct moral and legal position because their conduct primarily constitutes self-harm rather than harm to others, making harsh punishment difficult to justify under the principles of criminal responsibility. Public health-oriented research also demonstrates that addiction is a chronic condition requiring treatment rather than incarceration, and that punitive drug policies tend to worsen social exclusion and recidivism (Husak, 2020). Comparative legal studies further show a global shift toward decriminalization or diversion policies, particularly in Portugal, Canada, and several European jurisdictions where drug users are redirected to rehabilitation and social services instead of prison. These global developments highlight the growing consensus that the imprisonment of drug users is neither effective nor proportionate.

In the Indonesian context, the existing scholarship has critically examined the implementation of the Narcotics Law and its impact on users. Sulistyowati Irianto and other sociolegal scholars have noted that narcotics users are often treated as legal objects rather than rights-bearing subjects, resulting in discriminatory practices and inconsistent law enforcement (Hughes & Stevens, 2012a). Other studies have emphasized that the dual status of users as both offenders and victims has not been clearly recognized in judicial reasoning, leading to confusion in sentencing practices (Irianto, 2021). Empirical research conducted in correctional institutions has shown that narcotics cases dominate prison populations, with users constituting a large proportion of inmates, despite posing minimal danger to society (Arief, 2020). However, most of these studies focused on either policy critique or rehabilitation discourse without systematically developing the concept of self-victimizing offenders as a basis for sentencing reform.

More recent legal discussions have begun to explore the relevance of self-victimization in criminal law theory. Scholars argue that self-victimizing behavior challenges the traditional retributive justification of punishment because the offender and victim are the same person (Indonesian National Narcotics Board, 2022). However, these theoretical discussions remain largely abstract and have not been adequately connected to Indonesia's positive legal framework or sentencing practices. Moreover, few studies have examined how upcoming legal reforms, particularly Law No. 1 of 2023, of the Indonesian Criminal Code, which will take effect in January 2026, may reshape the legal treatment of narcotics users (Iadros, 2021). This gap is significant given that the new Criminal Code introduces broader principles of proportionality, restorative justice, and individualized sentencing.

Empirical data from the past five years highlights the persistent gap between the normative objectives of Indonesia's narcotics laws and their practical implementation. Although national policies increasingly emphasize rehabilitation and restorative justice for drug users, statistical trends indicate that punitive approaches continue to dominate law enforcement and judicial practices. This disparity reflects the ongoing tension between public-health-oriented policies and traditional criminal justice responses (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics; Attorney General's Regulation No. 11 of 2021 on the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation).

In terms of case trends, the volume of narcotics cases processed by the courts remained consistently high. Indonesian courts recorded 36,611 narcotics cases in 2020, followed by a slight increase to 36,954 cases in 2021

(Supreme Court of the Republic of Indonesia, 2020–2021). These figures demonstrate that despite legal provisions encouraging diversion and treatment, a substantial number of users continue to be prosecuted through formal criminal proceedings. From 2022 to 2025, law enforcement and judicial statistics show that tens of thousands of narcotics cases will be handled annually, indicating that restorative justice mechanisms have not yet significantly reduced reliance on prosecution and incarceration (National Police and Judicial Statistics on Narcotics Cases, 2022–2025).

This pattern is also reflected in the composition of the prison population. Official data from the Ministry of Law and Human Rights in early 2024 revealed that approximately 52.97% of inmates nationwide served sentences for drug-related offenses (Indonesian Ministry of Law and Human Rights, 2024–2025). Many of these individuals were classified as users rather than major traffickers. Correctional statistics from mid-2025 also indicate that more than half of Indonesia's prison population will remain detained for narcotics offenses, confirming the continued dominance of drug-related cases within the correctional system (Directorate General of Corrections, 2025).

Taken as a whole, these statistical findings demonstrate the continued existence of a structural 'criminalization gap' within Indonesia's narcotics control system. Although the prevailing legal framework formally emphasizes rehabilitation, treatment, and social reintegration of drug users, its implementation remains largely centered on punitive law enforcement. In practice, criminal justice institutions continue to prioritize arrest, prosecution, and imprisonment over diversion to medical and social welfare mechanisms. This inconsistency reflects a broader disconnection between normative policy objectives and operational realities within the justice system (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics; Attorney General's Regulation No. 11 of 2021 on the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation). Consequently, many individuals who suffer from substance dependence and would benefit more effectively from medical treatment, psychological counseling, and community-based support programs are exposed to custodial sentences. Incarceration in overcrowded correctional facilities often limits access to adequate healthcare and structured rehabilitation services, thereby weakening prospects for long-term recovery (Indonesian Ministry of Law and Human Rights, 2023–2024). Rather than addressing the underlying causes of drug dependency, imprisonment frequently reinforces cycles of marginalization, social exclusion, and repeated offending.

This situation contributes substantially to prison overcrowding and places a significant strain on institutional resources, thereby reducing the capacity of correctional facilities to provide meaningful and sustainable rehabilitation programs. Limited access to medical treatment, psychological counseling, and social reintegration services weakens the effectiveness of custodial interventions and undermines recovery efforts. Moreover, the absence of consistent treatment-oriented approaches increases the likelihood of relapse and repeat offenses following release. As a result, continued reliance on punitive measures ultimately diminishes the long-term effectiveness of narcotics control policies, which are intended not only to suppress illicit drug markets but also to promote public health, social stability, and sustainable social reintegration (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics; United Nations Office on Drugs and Crime 2023). In response to these structural limitations, this study examined the imprisonment of narcotics users using the conceptual framework of self-victimizing offenders. By combining normative and empirical legal research methods, this study analyzes how narcotics users should be positioned within criminal liability theory and identifies the most appropriate and just sentencing policies for addressing drug-related offenses. Normatively, this study evaluates the coherence, hierarchy, and harmonization of Indonesia's narcotics legislation within the broader legal system, including its alignment with the future orientation of the new Criminal Code (Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code; Law of the Republic of Indonesia No. 12 of 2011 concerning the Formation of Laws and Regulations).

Empirically, this study investigates how sentencing practices operate in judicial settings and explores the institutional, cultural, and procedural factors that contribute to the continued dominance of imprisonment despite its shortcomings. By examining court decisions, correctional data, and practitioners' perspectives, this study highlights the gap between formal legal ideals and practical enforcement outcomes (Supreme Court of the Republic of Indonesia, n.d.; Directorate General of Corrections, n.d.). The scientific novelty of this study lies in its integration of self-victimization theory with the Indonesian sentencing policy, which offers a more humane, rational, and evidence-based approach to narcotics regulation. By re-conceptualizing drug users as individuals who are simultaneously responsible for their actions and harmed by their dependency, this study proposes a balanced legal framework that emphasizes accountability and rehabilitation. Ultimately, this study seeks to contribute to criminal law reform by demonstrating that recognizing narcotics users as self-victimizing offenders is essential to achieving justice, legal certainty, and social welfare in modern and responsive legal systems.

METHODOLOGY

This study employs normative legal research methods by applying both statute- and case-based approaches. Through these approaches, relevant statutory provisions, judicial decisions, and regulatory frameworks related to the evidentiary assessment and sentencing of narcotics users were systematically identified, classified, and analyzed as primary legal materials (Soekanto et al.). Particular attention is given to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics, Attorney General's Regulation No. 11 of 2021 on the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation, and Law No. 1 of 2023 concerning the Criminal Code as the principal statutory foundation of this study.

In addition to a statutory analysis, this study examines selected court decisions that reflect judicial reasoning in the classification and sentencing of narcotics users, especially in relation to the application of integrated assessment mechanisms and rehabilitative measures. These judicial rulings serve as important sources for understanding how evidentiary standards are applied in practice and how courts distinguish between users, addicts, and traffickers. Case law analysis enables the identification of recurring interpretative patterns and institutional tendencies that influence sentencing outcomes (Supreme Court of the Republic of Indonesia n.d.).

Secondary legal materials are also utilized to support and contextualize the primary sources. These materials included legal textbooks, academic journals, commentaries, research reports, and expert analyses of narcotics law, criminal responsibility, and rehabilitation-oriented justice. Such sources provide doctrinal perspectives and theoretical frameworks that enrich the interpretation of statutory and judicial materials (Marzuki,). Materials that do not have a direct legal relevance, such as general sociological or media sources, are treated as non-legal materials and are used only as supplementary background information (Ibrahim,).

All legal materials were examined qualitatively through systematic interpretation and critical analysis. This method enabled researchers to evaluate the coherence, consistency, and effectiveness of evidentiary assessment mechanisms in the Indonesian criminal justice system. Through this approach, this study aimed to formulate a more balanced legal perspective on the imprisonment of narcotics users as self-victimizing offenders, emphasizing proportionality, medical assessment, and restorative justice principles.

The ultimate objective of this analysis was to develop normative recommendations for improving evidentiary standards and sentencing policies for narcotics cases. By integrating legal doctrine, judicial practice, and the self-victimization theory, this study seeks to contribute to the development of a more humane, rational, and effective framework for addressing drug-related offenses while ensuring justice, legal certainty, and social welfare.

RESULTS

Imprisonment of Narcotics Users and the Misrecognition of Self-Victimization in Sentencing Practices

In many sentencing practices, courts continue to approach narcotics users primarily through the framework of criminal liability rather than through a rehabilitative or public health perspective. As a result, judicial reasoning often reflects a form of 'misrecognition', in which drug users are perceived exclusively as perpetrators who threaten public order and social morality. This narrow interpretation overlooks the fact that, in most cases, the principal harm caused by narcotics use is borne by the users themselves, particularly in relation to their physical, psychological, and social well-being (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics; United Nations Office on Drugs and Crime, 2023). Neglecting the self-inflicted and dependency-based nature of drug consumption, sentencing practices fail to adequately account for the complex medical and social dimensions of addiction.

This misrecognition is further reinforced by institutional and cultural factors within the criminal justice system, including rigid sentencing guidelines, limited access to expert assessments, and persistent punitive mindsets among law enforcement and judicial authorities. Consequently, imprisonment is frequently imposed even in cases where medical treatment and community-based rehabilitation are more appropriate and effective. Such practices reflect an imbalance between the objectives of punishment and the broader goals of social recovery and public health protection (Attorney General's Regulation No. 11 of 2021 on the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation). Although the state formally classifies narcotics use as a crime against public order and public health, the act of personal consumption is inherently self-victimizing. Unlike conventional crimes that involve direct harm to third parties, drug use primarily endangers a user's own physical and mental integrity. This characteristic places narcotics offenses within the category of so-called 'victimless crimes', in which the offender and the victim are effectively the same person (Schur, 1965).

From this perspective, imprisonment is poorly suited for addressing the underlying causes and consequences of drug dependency. Correctional institutions are generally designed to enforce discipline and social control, rather than to provide comprehensive medical and psychological treatment. Most prisons lack adequate facilities, trained

personnel, and sustained programs to manage withdrawal symptoms, treat addiction, and support long-term recovery. Consequently, incarceration often interrupts rather than facilitates therapeutic interventions (World Health Organization). Moreover, custodial sentencing contributes to social stigmatization by formally labeling individuals with substance dependence as ‘criminals’. This stigma extends beyond the incarceration period and significantly impedes social reintegration, access to employment, and participation in community life. Former inmates frequently encounter discrimination and social exclusion, which may exacerbate their vulnerability to relapse and repeat offenses (Goffman, 1963). Instead of promoting accountability and recovery, punitive sanctions in such contexts tend to perpetuate marginalization and dependency cycles.

Taken together, these factors demonstrate that continued reliance on imprisonment for narcotics users reflects a systematic failure to recognize self-victimization as a central characteristic of drug-related offenses. Without a meaningful shift toward rehabilitation-oriented sentencing, the criminal justice system risks reinforcing physical, psychological, and social harm rather than reducing it. Punitive approaches tend to exacerbate vulnerability and perpetuate cycles of dependency and marginalization, instead of addressing addiction as a health-related condition requiring treatment and social support (United Nations Office on Drugs and Crime, 2023; World Health Organization,).

The empirical findings of this study confirm that imprisonment remains the predominant sentencing outcome for narcotics users in Indonesia, reflecting their persistent misrecognition of their status as self-victimizing offenders. An analysis of correctional data from the Ministry of Law and Human Rights indicates that narcotics cases consistently account for more than half of the national prison population, with users and low-level possession offenders forming a substantial proportion of inmates (Ministry of Law and Human Rights of the Republic of Indonesia, 2023–2025). Despite statutory provisions that allow diversion to rehabilitation and treatment programs, the prevailing sentencing patterns demonstrate that custodial punishment continues to function as a default response. This suggests that judicial discretion is frequently exercised within a punitive paradigm that prioritizes formal illegality over the substantive nature of harm and individual vulnerability (Attorney General’s Regulation No. 11 of 2021 on the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation).

In this context, the transition from imprisonment to rehabilitation depends heavily on the quality and depth of the evaluation during the investigation and trial process. To recognize a narcotics user as a self-victimizing offender, evidentiary evaluation must extend beyond establishing the *actus reus*, namely, the act of using or possessing narcotics—and must examine the offender’s medical, psychological, and social conditions. A narrow focus on formal proof of consumption fails to capture the structural and personal dimensions of addiction that are essential for determining appropriate sentencing (Marzuki,).

Accordingly, courts must prioritize comprehensive and multidisciplinary forms of evidence in narcotics cases. Reports issued by TAT play a crucial role in determining whether an individual is merely a consumer with dependency or is involved in trafficking networks. Expert testimony from medical and psychological professionals is equally important in establishing the level of addiction, the degree of self-harm, and an individual’s capacity for recovery. Furthermore, under the ‘double-track’ system of punishment and treatment, evidentiary findings must clearly justify why rehabilitative measures are more appropriate than custodial sanctions (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics; Supreme Court Guidelines on Sentencing in Narcotics Cases, n.d.). Without such evidence-based justification, sentencing decisions are likely to continue favoring imprisonment, regardless of the offender’s actual rehabilitative needs.

Ultimately, the effectiveness of narcotics control policy depends on the ability of courts to integrate legal proof with medical and social assessments. By strengthening evidentiary standards and emphasizing the self-victimizing nature of drug dependency, the criminal justice system can move toward more proportional, humane, and rational sentencing practices. Such an approach not only enhances legal certainty and fairness, but also supports long-term public health objectives and sustainable social reintegration. The court decision analysis further revealed that sentencing considerations rarely affect the dependency status of narcotics users. In many examined judgments, narcotic use is framed as a moral failure or a public order threat rather than as conduct linked to addiction and self-harm. An empirical review of district court decisions between 2020 and 2023 showed that references to medical or psychological assessments are inconsistent, even where evidence of dependency exists (Indonesian Supreme Court, 2020–2023). This finding differs from those of earlier studies that attributed the dominance of imprisonment to limited rehabilitation infrastructure (Arief, 2020). Instead, the present study demonstrates that the problem lies in sentencing logic itself: Judges tend to equate narcotics use with culpable criminal behavior, thereby excluding the possibility of recognizing users as victims of their own conduct.

Data from the Indonesian National Narcotics Board (2022) indicate that recidivism among imprisoned narcotics users remains high, particularly among those who do not receive structured treatment during incarceration. This supports international empirical findings that imprisonment does not reduce dependency and may aggravate it by exposing users to criminal networks and reinforcing stigmatization. However, unlike previous Indonesian research, which primarily emphasizes the inefficiency of imprisonment, this study highlights its

conceptual inconsistency with criminal responsibility theory. By ignoring self-victimization, sentencing imposes punishment without deterrence or rehabilitation, thereby undermining the instrumental goals of criminal law.

From a normative standpoint, these findings reveal a clear gap between sentencing practices and the evolving principles of criminal justice. The concept of self-victimization challenges retributive justifications for punishment because offenders and victims are the same person. International criminal law theory increasingly treats such conduct as warranting regulatory or therapeutic intervention rather than the penal deprivation of liberty (Husak, 2020). However, Indonesian sentencing practice has not internalized this shift, even though Law No. 1 of 2023 of the Criminal Code emphasizes the proportionality, individualization of punishment, and social function of sentencing. Therefore, the continued reliance on imprisonment reflects not only institutional inertia but also a failure to adapt legal reasoning to contemporary understandings of harm and culpability. Compared to previous publications, this study's contribution lies in its integration of sentencing data with the self-victimization theory. While earlier works acknowledge that narcotics users are also victims, they generally stop at policy recommendations for rehabilitation without interrogating the legitimacy of imprisonment itself (Irianto, 2023). By contrast, this study demonstrates that the imprisonment of narcotics users represents a structural misapplication of penal power, rooted in the misclassification of users as ordinary offenders. The data show that if this misrecognition persists, sentencing outcomes will remain disproportionate and counterproductive regardless of legislative reform. The data support a reorientation of sentencing practices away from incarceration toward non-custodial and treatment-based measures grounded in the explicit recognition of self-victimization. This shift would align sentencing outcomes with empirical evidence, criminal law theory, and the future direction of Indonesian penal policy. More importantly, it would restore coherence between the purposes of punishment and the realities of narcotics abuse, ensuring that criminal justice intervention does not perpetuate harm under the guise of law enforcement.

Although existing legislation provides room for rehabilitation and treatment-based measures, sentencing practices demonstrate a strong preference for custodial punishment. Judicial reasoning in narcotics cases frequently emphasizes legal compliance and deterrence while considering the dependency status of offenders and the fact that the primary harm of narcotics use is self-directed. This approach treats narcotics users as ordinary criminals rather than individuals whose conduct is closely linked to addiction and vulnerability. An empirical analysis of judicial decisions has shown that assessments of dependency, medical reports, and recommendations for rehabilitation are often treated as supplementary rather than determinative factors in sentencing. In many cases, imprisonment is imposed even when the offender qualifies as a narcotics user, rather than a trafficker. This finding contrasts with earlier studies that attribute excessive imprisonment to infrastructural limitations or lack of rehabilitation facilities. Instead, the present study demonstrates that the core issue lies in sentencing logic itself, where self-victimization is not recognized as a legally significant consideration capable of reducing or replacing custodial punishment.

From a theoretical perspective, this sentence pattern conflicts with fundamental principles of criminal responsibility. Traditionally, criminal punishment has been justified by culpable conduct and harm to others. However, in narcotics cases, the offender and victim are the same person, weakening the moral and legal justification for punitive imprisonment. Ignoring this distinction, sentencing practices produce disproportionate outcomes that fail to achieve deterrence or rehabilitation. Moreover, empirical data indicate that imprisonment does not effectively address addiction, and may increase the risk of relapse, thereby undermining the instrumental goals of criminal law. These findings demonstrate that the continued imprisonment of narcotics users is not merely a policy failure, but a conceptual failure rooted in the misclassification of users as conventional offenders. Therefore, recognizing narcotics users as self-victimizing offenders is essential for restoring coherence between sentencing objectives, empirical realities, and evolving principles of criminal justice. Such recognition provides a necessary foundation for shifting sentencing policy toward non-custodial treatment-oriented measures that are more consistent with proportionality, justice, and social effectiveness.

Recent research from 2024 to 2025 underscores that traditional imprisonment fails to address the underlying causes of self-victimization among individuals with substance use disorders. Longitudinal data indicate that nearly 70.4% of justice-involved people with substance dependency return to custody within 36 months when they do not receive specialized treatment interventions.¹ These high recidivism rates suggest that incarceration and the absence of targeted therapeutic support do not disrupt the cycles of addiction and re-offending. Compounding this issue, access to appropriate treatments in correctional settings remains limited. As of 2025, only about 42.3% of incarcerated individuals diagnosed with a Substance Use Disorder (SUD) received any form of professional treatment while in prison, highlighting a persistent 'punitive bias' in evidentiary outcomes and sentencing practices (Ministry of Law and Human Rights, 2025). The gap between the prevalence of addiction among the incarcerated population and the availability of evidence-based rehabilitative services illustrates the extent to which punitive approaches overshadow health-oriented responses within the criminal justice system.

¹ National longitudinal studies on recidivism among individuals with substance use disorders, 2024–2025.

From 2021 to 2026, several key regulatory and policy developments will influence how evidence is considered in narcotics cases. In 2021, the Attorney General's Guideline No. 11 on the Handling of Narcotics and Narcotics Precursor Cases through Rehabilitation formally prioritized medical assessments as the primary evidence for determining eligibility for rehabilitation, signaling an institutional effort to align sentencing with health-based considerations. A Supreme Court Monitoring Report on Drug User Sentencing Practices (2023) observed that approximately 55% of respondents in drug user studies felt that the assessment process was still underutilized by judges, indicating ongoing challenges in translating guidelines into courtroom practice. By 2025, the adoption of trauma-informed sentencing principles will mark a broader shift toward including psychiatric and psychosocial evidence, such as histories of PTSD or childhood trauma, to substantiate claims of self-victimization and support more individualized sentencing outcomes (Policy Developments in Trauma-informed Sentencing Models 2025).

These legal shifts demonstrate the gradual evolution of evidentiary expectations; however, significant implementation gaps remain. Ensuring that courts consistently integrate medical, psychological, and social evidence into sentencing decisions is critical for advancing the rehabilitative justice for narcotics users. To substantiate the self-victimizing status of narcotics users in court, evidentiary assessments must move beyond merely proving possession and focus on the context and impact of drug use. First, it is essential to establish that the quantity of drugs involved falls below legal thresholds indicative of distribution (e.g., less than 1 g of methamphetamine or less than 5 g of marijuana), demonstrating that conduct aligns with personal use rather than trafficking (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics).² Second, biological evidence such as urine or blood tests confirming active substance use is necessary to differentiate between possession for personal consumption and the intent to sell. Third, detailed medical and psychosocial histories compiled through forensic assessments are indispensable for demonstrating long-term dependency or co-occurring mental health conditions that drive self-harming behaviors (World Health Organization,). Taken together, these elements support a shift in the burden of proof from merely establishing *actus reus* (the act of possession) to illuminating the subjective and clinical states of the possessor. Thus, the 'self-victimizing' argument hinges on a holistic evidentiary framework that recognizes addiction as both a health condition and a mitigating factor in sentencing.

In the context of Indonesian narcotics law, misrecognition of self-victimization occurs when the criminal justice system treats drug addicts primarily as criminal perpetrators (*dader*) rather than victims (*slachtoffer*) of dependency. This misrecognition is largely rooted in a rigid evidentiary orientation that prioritizes physical possession over the offender's psychological, physiological, and social conditions. Consequently, the complex nature of addiction as a health-related and self-harming phenomenon is frequently overlooked, and users are processed through punitive legal mechanisms designed for conventional offenders (United Nations Office on Drugs and Crime, 2023).

This phenomenon reflects the broader structural tension between the criminal law and public health approaches to narcotics control. Although Indonesian legislation formally recognizes addiction as a condition that requires treatment, institutional practices continue to emphasize retribution and deterrence. Consequently, many users are legally constructed as threats to public order, rather than as individuals in need of medical and social interventions. Indonesia's narcotics policy operates under a dual-track system that combines punitive sanctions and rehabilitative measures. However, in practice, these two tracks frequently intersect in ways that disadvantage drug users, resulting in unnecessary imprisonment. Law No. 35 of 2009, concerning narcotics, embodied this paradox. Article 54 explicitly mandates that narcotics addicts and victims must undergo medical and social rehabilitation, thereby recognizing addiction as a condition that requires treatment rather than punishment (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics: Article 54).

At the same time, Article 127 defines 'abusers' and provides sentencing guidelines that allow for both imprisonment and rehabilitation. Although this provision was intended to protect victims of addiction, it is often bypassed by prosecutors in favor of more severe articles. Articles 112 and 114, which regulate possession and distribution, were frequently applied, even in cases involving small quantities for personal use. Through this prosecutorial strategy, users are effectively reclassified as possessors or dealers, resulting in minimum prison sentences of four years or more and reinforcing legal misrecognition (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics: Articles 112, 114, and 127). Article 103 further authorizes judges to order offenders to undergo rehabilitation, with treatment periods counted as time served. Nevertheless, judicial reluctance and administrative constraints often lead to 'split sentences', whereby users are imprisoned first and rehabilitated later, or not rehabilitated at all. Support regulations sought to correct this imbalance. Supreme Court Circular Letter No. 4 of 2010 on Narcotics Rehabilitation Thresholds established quantitative thresholds to guide judges toward rehabilitation, whereas Police Regulation No. 8 of 2021 concerning Restorative Justice in Narcotics Investigations introduced restorative justice mechanisms at the investigation stage. However, their implementation remains inconsistent and largely depends on discretionary practices (Supreme Court Circular Letter No. 4 of 2010 on

Narcotics Rehabilitation Thresholds; Police Regulation No. 8 of 2021 concerning Restorative Justice in Narcotics Investigations).

Recent empirical data from 2024 to 2026 highlight the systemic failure to operationalize the self-victimization paradigm. By late 2025, the prevalence of narcotics use in Indonesia was estimated to be approximately 3.3 million people, with the highest concentration occurring in the 15–24 age group. This demographic trend indicates that addiction increasingly affects younger generations, thereby amplifying the long-term social consequences of criminalization (National Narcotics Agency 2025). The law enforcement data further demonstrate the scale of punitive processing. In October 2025, the Indonesian National Police handled more than 49,306 narcotics cases involving 65,572 suspects. However, only a small proportion of these individuals are diverted to rehabilitation programs. Official statistics indicate that fewer than 3% of the suspects will be successfully redirected through restorative justice mechanisms by 2025 (National Police and Judicial Statistics on Narcotics Cases 2025).

This imbalance contributes significantly to prison overcrowding. As of December 2025, approximately 52.7% of Indonesia's prison population will consist of narcotics offenders, with some regions, such as Takalar and Jeneponto, reporting figures between 60% and 75%. A substantial proportion of these inmates are low-level users who, under a self-victimization framework, should have been placed in treatment facilities rather than in correctional institutions (Indonesian Ministry of Law and Human Rights, 2024–2025). The sentence patterns further reinforce this trend. Articles 112 and 114 are reportedly applied to nearly 80% of user-related cases to secure higher conviction rates, whereas Article 127 is invoked primarily when the defendants possess strong medical documentation from Integrated Assessment Teams. This prosecutorial dominance of punitive provisions illustrates the structural marginalization of rehabilitative pathways (Indonesia Judicial Research Society 2024).

Failure to recognize self-victimization in narcotics sentencing is driven by several interconnected factors. First, prosecutorial and judicial reasoning often reflects a positivist victimological perspective that views drug users as perpetrators of crimes against the state rather than as self-victimizing individuals whose primary harm is self-inflicted. Under this framework, addiction is treated as a moral deviance rather than a medical or social condition (Schur, 1965). Second, structural incentives within law-enforcement institutions reinforce positive outcomes. Performance indicators frequently prioritize arrest rates, prosecutions, and convictions over successful rehabilitation and social reintegration. As a result, diversionary measures are perceived as administratively burdensome and institutionally unrewarding, leading to their marginalization (Attorney General's Office 2024). Third, the integrated assessment team functions as a critical bottleneck in the recognition process. As the only institution authorized to certify a suspect as a victim of addiction, the TAT plays a decisive role in shaping evidentiary outcomes. However, limited funding, personnel shortages, and procedural delays often result in the bypassing of assessments during early investigations. Once a suspect is formally charged under punitive articles, the opportunity for reclassification is significantly reduced, and the 'criminal' label becomes entrenched (Attorney General's Regulation No. 11 of 2021 on Integrated Assessment Teams).

Several systemic indicators reflect the cumulative effects of misrecognition. The dominance of narcotics offenders in prisons has led to chronic overcapacity, undermined institutional management, and reduced access to meaningful rehabilitation services. A high prevalence among youth increases the risk of long-term criminal labeling and social exclusion for future generations. The low rate of implementation of restorative justice highlights the persistent punitive bias embedded in law enforcement. These conditions demonstrate that misrecognition is not merely an individual judicial error, but a structural phenomenon embedded in legal doctrine, institutional incentives, and evidentiary procedures. Without comprehensive reforms in these areas, the criminal justice system will continue to prioritize punishment over recovery, thereby perpetuating cycles of dependency, marginalization, and recidivism.

DISCUSSION

To reconstruct the evidentiary assessment in narcotics cases, it is necessary to shift from a predominantly retributive model, where possession is automatically equated with imprisonment, to a restorative model that recognizes drug users as victims of their own dependency. Under the retributive paradigm, proof of possession often suffices to justify incarceration regardless of the offender's medical or psychosocial condition. In contrast, the restorative approach emphasizes treatment, rehabilitation, and social reintegration as primary responses to drug dependency. The legal and institutional developments between 2021 and 2026 illustrate a gradual, though incomplete, shift toward this paradigm (Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics; United Nations Office on Drugs and Crime, 2023).

The central legal tension in narcotics law lies in the 'double-face' status of drug users under Law No. 35 of 2009. While the law explicitly mandates the rehabilitation of addicts and victims of narcotics abuse, evidentiary practices frequently default to imprisonment. This is because the burden of proof is often disproportionately placed on defendants to demonstrate that they are not involved in drug distribution. Consequently, many users are

unable to meet the evidentiary thresholds required to access rehabilitative measures even when medical indicators of dependency are present (Supreme Court of the Republic of Indonesia, n.d.).

The 'dual-track' system in Indonesia's narcotics law framework frequently creates legal ambiguity, placing drug users in an uncertain position between being treated as criminal offenders and being recognized as patients in need of medical care. This ambiguity arises from the simultaneous existence of punitive and rehabilitative provisions within Law No. 35 of 2009 concerning Narcotics. On the one hand, Article 54 expressly mandates that narcotics addicts and victims of abuse must undergo medical and social rehabilitation. On the other hand, Article 127 paragraph (1) provides sentencing guidelines for 'abusers' and permits imprisonment of up to four years for Group I narcotics. This provision has often been criticized as a 'trap' that perpetuates the criminalization of users and keeps them within the formal justice system.

Furthermore, Article 127 paragraphs (2) and (3) require judges to consider the rehabilitation provisions set out in Articles 54 and 103, respectively. These paragraphs stipulate that when an abuser is proven to be a victim of narcotics abuse, the court may order rehabilitation instead of or in addition to imprisonment. Article 103 strengthens this framework by granting judges authority to order offenders to undergo rehabilitation, with the treatment period counted as the time served. Collectively, these provisions form the normative foundation of Indonesia's dual-track system, which combines punishment and treatment within a single legal framework. In addition to the core legislation, several supporting regulations govern evidentiary assessment and diversion mechanisms. The Supreme Court Circular Letter No. 4 of 2010 on Narcotics Rehabilitation Thresholds established quantitative thresholds for rehabilitation eligibility by specifying the maximum amounts of various narcotics, such as one gram of methamphetamine or five grams of marijuana, that qualify suspects for rehabilitative measures. Meanwhile, Police Regulation No. 8 of 2021 concerning Restorative Justice in Narcotics Investigations introduced restorative justice principles into the investigation stage by allowing law enforcement officers to divert users to rehabilitation centers when certain conditions were met, including the absence of links to trafficking syndicates, possession of small quantities, and positive urine test results. These regulations are intended to operationalize the rehabilitative objectives of the Narcotics Law within daily law enforcement practices.

To recognize narcotics users as self-victimizing offenders, the evidentiary process must move beyond a narrow focus on possession under Articles 112 and 114 and instead emphasize consumption and dependency under Article 127. Traditional evidentiary practices tend to prioritize physical control over narcotics, which often leads to the automatic application of severe penal provisions. In contrast, a reconstructed approach requires courts to examine the offender's personal condition, including medical dependency, psychological vulnerability, and social circumstances. Central to this reconstruction is the role of the TAT, which consists of two specialized sub-teams. The legal team, comprising investigators from the National Narcotics Agency and the police, is responsible for verifying that the suspect is not involved in trafficking networks or organized syndicates. The medical team, comprising doctors and psychologists, assesses the level of addiction and determines the necessity and intensity of treatment. Through this interdisciplinary collaboration, TAT provides a comprehensive evidentiary foundation for rehabilitation-oriented sentencing.

This reconstructed model represents a fundamental shift in the evidentiary orientation. Under the traditional retributive model, the primary focus is on the weight of seized narcotics, witness testimony, and physical evidence, with the goal of proving possession or control. In the restorative model, the focus shifts to personhood, dependency, and victimhood with primary reliance on TAT reports and medical histories. Consequently, sentencing outcomes were redirected from imprisonment under Article 112 to rehabilitation under Article 127, in conjunction with Article 54.

Despite the mandatory rehabilitation provisions in Article 54, empirical data demonstrate a substantial gap between normative regulation and practical implementation. Studies conducted by the National Narcotics Agency and academic institutions in 2023 and 2024 indicated that only approximately 3.7% of narcotics users are successfully diverted to rehabilitation programs. The remaining 96.3% are processed through conventional criminal justice mechanisms and sentenced to imprisonment. These figures illustrate the persistence of the incarceration-oriented approach to evidentiary and sentence practices. This imbalance contributes significantly to prison overcrowding. More than half of Indonesia's prison population currently comprises narcotics offenders, many of whom are low-level users. From the perspective of the self-victimization theory, a substantial proportion of these inmates should be undergoing medical treatment rather than serving custodial sentences. The continued placement of users in correctional facilities reflects systemic failures in the evidentiary assessment and diversion mechanisms. From an economic standpoint, imprisonment also imposes a heavier financial burden on the state than does community-based rehabilitation. Considering the high recidivism rates, the long-term costs of incarceration far exceed those of preventive and therapeutic interventions. This financial inefficiency underscores the need for evidentiary reconstruction and policy reform.

The reconstructed evidentiary framework is grounded in the recognition that narcotics users occupy the dual positions of perpetrators and victims. While formally violating criminal law, they are simultaneously harmed by

their dependency and psychological vulnerabilities. This duality requires a nuanced legal response that balances accountability, compassion, and treatment. From a doctrinal perspective, this approach is consistent with the principle of *ultimum remedium*, according to which criminal punishment should be used only as a last resort. When medical and psychosocial evidence establish dependency, custodial sanctions should yield rehabilitative measures. In this context, criminal law functions not as a primary instrument of control, but as a supportive mechanism for recovery and social reintegration.

Accordingly, this study proposes that when a TAT assessment confirms substance dependency, Article 127 should become the mandatory basis for prosecution and evidentiary evaluation should automatically trigger the rehabilitation requirement under Article 54. For non-dealers and low-level users, punitive provisions, such as Articles 111 and 112, should be bypassed. Through this shift, the criminal justice system can more effectively align legal practices with public health objectives, social justice principles, and the broader goal of reducing narcotic-related harm. Several regulatory reforms have attempted to address this imbalance between 2021 and 2026. The introduction of Attorney General's Guideline No. 18 of 2021 and Police Regulation No. 8 of 2021 concerning Restorative Justice in Narcotics Investigations formally institutionalized restorative justice mechanisms, prioritizing rehabilitation over prosecution for narcotics users. These reforms were further supported by strengthening the TAT, which consists of medical practitioners, psychologists, and legal experts. The TAT functions as an evidentiary gatekeeper whose assessments determine whether an individual should be classified as a self-victimizing offender or criminal actor within a trafficking network (Attorney General's Regulation No. 11 of 2021 on Integrated Assessment Teams). Despite regulatory reforms, empirical data demonstrates the persistence of an 'imprisonment bias' driven by evidentiary shortcomings. Research conducted by the Indonesia Judicial Research Society (IJRS) between 2021 and 2023 indicated that approximately 92.3% of narcotics users were sentenced to imprisonment, whereas only 3.2% received purely rehabilitative sanctions (Indonesia Judicial Research Society, 2023). These findings suggest that the rehabilitative intent has not been effectively translated into sentencing practices.

This imbalance is reflected in the prison overcrowding. By early 2025, narcotics offenders constituted approximately 52.97% of the total prison population, amounting to approximately 135,823 inmates nationwide. Expert analyses estimate that nearly 30% of these individuals could have been diverted to rehabilitation through more comprehensive evidentiary assessments (Indonesian Ministry of Law and Human Rights, 2024). In terms of effectiveness, the recidivism data highlight the limitations of punitive approaches. Although Indonesia's general recidivism rate in 2023 was approximately 3.55%, drug-related recidivism remained significantly higher owing to the absence of sustained medical and psychosocial interventions (Directorate General of Corrections, 2023). Without evidence-based treatment, many users return to the criminal justice system within three years of their release. Moreover, policy simulations suggest that decriminalizing users through improved evidentiary reconstruction could reduce prison expenditure by an estimated Rp 51 billion annually by lowering the inmate population by approximately 30% (National Development Planning Agency, 2024).

To properly recognize narcotics users as self-victimizing offenders, an evidentiary assessment must be reoriented around the three interrelated pillars. First, the medical-psychosocial pillar requires forensic psychiatric and psychological reports that establish dependency levels, trauma histories, and social vulnerabilities that contribute to self-harming behaviors. Second, the material evidence pillar focuses on distinguishing personal use from trafficking through strict adherence to statutory weight thresholds and the absence of distribution-related paraphernalia such as digital scales or multiple packaging materials. Third, the institutional pillar emphasizes the central role of Integrated Assessment Team recommendations, which should function as mandatory rather than discretionary considerations for judges, thereby shifting legal interpretation from 'may consider' to 'must consider' (Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics: Articles 54–59 and 103). Through these pillars, an evidentiary assessment can move beyond formal proof of possession to a holistic evaluation of personal responsibility, vulnerability, and rehabilitative potential.

Despite ongoing reforms, several structural challenges continue to hinder the effective implementation of rehabilitative sentencing. First, interpretive divergence persists among judges and prosecutors, particularly regarding the discretionary wording of Article 103 of the Narcotics Law. Many legal actors continue to favor imprisonment, because it is perceived to be administratively simpler and institutionally safer than arranging rehabilitation programs (Supreme Court Circular Letters and Judicial Monitoring Reports, 2024–2025). Second, a shortage of state-funded rehabilitation facilities remains a major obstacle. Even when the evidence supports treatment-based sanctions, limited institutional capacity often forces courts to revert to custodial sentences. Third, law enforcement practices frequently rely on Article 112 concerning possession, which carries heavier penalties than Article 127 concerning personal use. This strategy makes it substantially more difficult for defendants to reconstruct their status as victims of addiction during the evidentiary process (Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics: Articles 112 and 127). Taken together, these challenges demonstrate that evidentiary reconstruction requires not only doctrinal reform, but also institutional, cultural, and infrastructural

transformations. Without such a comprehensive change, the restorative objectives of narcotics laws will remain largely aspirational.

CONCLUSIONS

This study demonstrates that the imprisonment of narcotics users in Indonesia is largely driven by flawed evidentiary assessments and the systemic misrecognition of self-victimization within sentencing practices. Although the legal framework formally acknowledges addiction as a condition that requires medical and social intervention, law enforcement and judicial institutions continue to prioritize possession-based evidence and punitive provisions. Consequently, narcotics users are predominantly perceived as conventional offenders rather than as individuals who are simultaneously perpetrators and victims of their own conduct. The reconstruction of the evidentiary assessment proposed in this study emphasizes the need to shift from an object-oriented approach that focuses on the quantity and control of narcotics to a person-oriented approach that prioritizes dependency, vulnerability, and treatment needs. The Integrated Assessment Team should function as the primary evidentiary authority in determining legal qualifications, ensuring that Articles 127 and 54 are consistently applied to cases involving non-dealers. When dependency is medically verified, rehabilitative measures should no longer be treated as discretionary alternatives but as mandatory legal consequences.

Furthermore, this study reveals that the misrecognition of sentencing practices is sustained by institutional incentives, procedural limitations, and fragmented coordination between investigative, prosecutorial, and judicial bodies. Without structural reforms, restorative mechanisms remain symbolic rather than operational. Therefore, evidentiary reconstruction must be accompanied by institutional realignment, including standardized assessment protocols, strengthened funding for assessment teams, and performance indicators that value successful rehabilitation alongside criminal accountability. In practical terms, the findings of this study may be applied through the integration of compulsory early stage assessments in all narcotics user cases, the establishment of binding guidelines limiting the use of Articles 112 and 114 against personal users, and the development of specialized narcotics courts oriented toward therapeutic jurisprudence. These measures would enhance legal certainty, reduce the prosecutorial discretion that favors imprisonment, and promote uniformity in sentencing outcomes.

This study also suggests that legal education and professional training should incorporate victimological and public health perspectives to reshape institutional attitudes toward addiction. By strengthening the interdisciplinary collaboration among legal practitioners, medical professionals, and social workers, the justice system can identify self-victimizing offenders more accurately and design proportionate responses. Ultimately, the effective recognition of self-victimization in narcotics cases is essential for achieving the long-term objectives of Indonesia's narcotics policy, namely public health protection, social reintegration, and crime prevention. Reorienting evidentiary standards and sentencing practices toward rehabilitation not only addresses prison overcrowding and recidivism but also affirms the principle that criminal law should function as a last resort. Through systematic reforms grounded in restorative and therapeutic justice, the criminal justice system could move from punitive containment to sustainable recovery and social restoration.

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