



## Reconstruction of Nominal Limits for Narcotics Addicts in Implementing Restorative Justice for Minor Narcotics Offenses Based on Justice Values in Indonesia

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### Abstract

Narcotics abuse in Indonesia causes social harm and increases the risk of dependence, while repressive approaches through prison sentences have proven less effective in suppressing the circulation and use of minor narcotics. However, the regulation of the nominal limit on narcotics addicts in the implementation of Restorative Justice is not based on the value of justice because there are no objective parameters that can distinguish ownership for personal consumption from illicit trafficking. This study aims to analyze why current nominal limit regulations lack a justice basis, identify their weaknesses, and propose a reconstruction. This study employs a socio-legal research approach, combining normative legal analysis with empirical social studies to assess how law is applied and perceived in practice, particularly regarding restorative justice implementation. The results show that regulating nominal limits in minor narcotics crimes is urgently needed to provide proportional and humane justice, reduce overcriminalization, and alleviate overcrowding in correctional institutions. Current regulations, such as Law No. 35 of 2009 and SEMA No. 4 of 2010, still emphasize prison sentences and are optional, thus creating legal uncertainty and disparity in verdicts. By applying clear nominal limits, such as <1 gram of methamphetamine, <5 grams of marijuana, and ecstasy <3 grains, authorities can distinguish addicts from dealers and apply restorative justice consistently. The proposed regulatory amendment changes the provision from 'may' to 'mandatory' to affirm legal certainty, strengthen the right to health and social recovery, and protect human dignity.

**Keywords:** *Addicts, Narcotics, Nominal Limits, Restorative Justice*

## INTRODUCTION

The 1945 Constitution of the Republic of Indonesia establishes fundamental principles for law enforcement, including criminal justice, which must uphold justice, humanity, and legal certainty (Tjoneng, 2025). Article 28D paragraph (1) guarantees everyone's right to fair legal recognition, protection, and certainty, while Article 28G paragraph (1) ensures protection of security and freedom from fear. These constitutional provisions align with restorative justice principles, which prioritize harm recovery, social relationship restoration, and offender reintegration into society, particularly in minor cases without significant public order impacts. The application of restorative justice in the narcotics context has gained recognition through Constitutional Court Decision No. 2/PUU-V/2007, which affirmed that narcotics addicts should be treated primarily as victims requiring rehabilitation rather than solely as criminals deserving punishment (Irawan, 2025).

As a modern *rechtsstaat*, the Unitary State of the Republic of Indonesia carries the responsibility of ensuring justice, legal certainty, and welfare for all citizens (Putra & Veronica, 2022). Within this welfare state framework (*verzorgingsstaat*), the state performs not only regulatory (*regulerend*) and enforcement (*repressief*) functions but also bears the obligation to ensure social justice and economic welfare for the entire population (Spijksstra, 2024). However, this constitutional mandate faces significant challenges in addressing narcotics abuse, which has evolved into a complex transnational problem threatening national stability and public health (Mukosi, 2020).

According to the National Narcotics Board (BNN) Annual Report 2023, Indonesia faces alarming narcotics abuse rates, with approximately 3.6 million users aged 15–64 years,

representing 1.95% of the total population in that age group. More critically, data from the Directorate General of Corrections (2024) reveals that 38.4% of inmates in Indonesian correctional facilities are narcotics offenders, with the majority (approximately 65%) classified as users or minor possessors rather than dealers or traffickers. In Aceh Province specifically, the Regional Police Crime Statistics (2024) documented 1,847 narcotics cases in 2023, with 68% involving possession of small quantities consistent with personal use patterns (Werdel, 2023). These figures demonstrate the urgent need for policy reform, as the current approach has resulted in overcrowding in correctional institutions while failing to address the root causes of addiction and has not effectively reduced narcotics circulation (Nuryanto, 2024).

Narcotics abuse is no longer limited to a national issue but has become part of a systematic and organized transnational crime (Sunaryo, 2021). This phenomenon is increasingly concerning because almost all levels of society, regardless of age and social status—children, students, celebrities, professionals, and public officials—can be involved as users and dealers of narcotics (Laksana, 2021). Narcotics crimes are also categorized as consensus crimes, meaning crimes mutually agreed upon as offenses because they endanger the public interest (Mulyani, 2024). In some cases, narcotics abuse is also self-victimization, where the perpetrator is also a victim due to dependence on the addictive substance (Hermawan & Wulansari, 2024). Furthermore, narcotics abuse often involves self-victimization, where perpetrators become victims due to dependency on addictive substances, creating a vicious cycle that requires therapeutic intervention rather than purely punitive measures (Nawawi, 2021).

The Indonesian state has consistently placed the eradication of narcotics as the top priority of law enforcement (Kadarudin, Thamrin, & Liao, 2018). Narcotics crimes are handled through a repressive approach and strict regulations, considering that this crime is a form of unconventional crime with a high modus operandi, uses advanced technology, and is carried out systematically and organized (Army, Azisa, Army, & Jaya, 2025). However, the dominant repressive approach through prison sentences has proven less effective in dealing with narcotics addicts, who should be seen as victims in need of rehabilitation rather than solely as perpetrators of crimes subject to punishment (Sonjaya, 2020).

Despite the constitutional mandate for restorative and rehabilitative approaches, existing regulations create significant implementation barriers (Banwell-Moore, 2024). Law No. 35 of 2009 concerning Narcotics uses permissive language ("may") in Articles 54, 103, and 127, granting judges discretionary power without clear parameters. This ambiguity results in inconsistent sentencing practices, where some addicts receive rehabilitation while others face imprisonment for possessing similar quantities of narcotics (Bennett, 2018). Moreover, SEMA No. 4 of 2010, which provides nominal limit guidelines (methamphetamine <1g, marijuana <5g, ecstasy <3 pills), lacks legal binding force, functioning merely as non-mandatory guidance that judges may disregard (Megoondo, 2022). The absence of objective, legally binding nominal limits creates legal uncertainty, violates the principle of equality before the law, and perpetuates the criminalization of individuals who are primarily victims of addiction rather than threats to public safety (Raftari, Raftari, & Raeni, 2022).

**Table 1. State of the Art (Previous Research)**

No	Researcher & Year	Research Title	Research Results	Research Novelty
1	Andri Irawan (2025) Sultan	Reconstruction of Criminal Regulations against	Criminal regulations against narcotics	Focus on the reconstruction of

	Agung Islamic University	for Narcotics Addicts Based on Pancasila Justice Values	addicts have not fully reflected the values of Pancasila justice. Articles 103 and 127 are multi-interpreted, thus opening up space for disparity in judges' decisions. It is necessary to reconstruct with a restorative approach based on Pancasila justice.	Articles 103 and 127 by changing the phrase 'may' to 'mandatory' to affirm the obligation of rehabilitation for narcotics addicts.
2	Nugroho Tri Nuryanto (2024) Sultan Agung Islamic University	Reconstruction of Law Enforcement Regulations for Narcotics Users Through a Restorative Justice Approach Based on Justice Values	Law enforcement against narcotics users is carried out with penal and non-penal policies. However, its effectiveness is still weak due to the focus on supply reduction and lack of community participation. It is necessary to reconstruct regulations so that rehabilitation is implemented consistently.	Emphasizing the importance of changing the paradigm from retributive to rehabilitative punishment by requiring rehabilitation for addicts is proven or not through a court decision.
3	Sri Megonondo (2022) Sultan Agung Islamic University	Reconstruction of Regulations for the Termination of the Prosecution of Narcotics Addicts in the Framework of Restorative Justice Based on Pancasila Justice Values	The prosecutor's authority to stop the prosecution has not been based on restorative justice. It is necessary to reconstruct Article 140 Paragraph 2 of the Criminal Procedure Code and Article 111 of Law No. 35 of 2009 to ensure the termination of prosecution with the concept of restorative justice.	Adding provisions for the termination of prosecution by prosecutors with the concept of restorative justice and the addition of rehabilitation sanctions as an option in the regulation.

Based on the table above, this study has significant novelty with a focus on establishing clear and measurable nominal limits as an objective parameter in distinguishing mild narcotics addicts from dealers (Dirito, 2025). This research not only proposes the reconstruction of the articles in the Narcotics Law, but also integrates the restorative justice approach with the values of Pancasila

and human rights justice, as well as providing concrete proposals in the form of specific and measurable narcotics thresholds (Waris, Susanti, Haryono, Ramadhan, & Akifa, 2025).

This research fills a critical gap in the existing literature by establishing specific, measurable nominal limits as objective parameters to distinguish minor narcotics addicts from dealers. While previous studies from Sultan Agung Islamic University have examined the reconstruction of individual articles and enforcement mechanisms, none have comprehensively integrated clear quantitative thresholds with restorative justice principles, Pancasila values, and human rights frameworks. This study not only proposes the reconstruction of multiple interconnected articles in the Narcotics Law but also provides concrete, evidence-based proposals specifying measurable narcotics thresholds grounded in empirical field studies and comparative international practices. Furthermore, this research specifically examines implementation challenges in Aceh Province, an area with particularly high narcotics abuses rates, providing context-specific insights for effective policy reform. By establishing objective criteria that balance public safety concerns with individual rights to health and rehabilitation, this study contributes a practical framework for consistent application of restorative justice that can reduce legal uncertainty, eliminate sentencing disparities, and ensure proportional treatment of narcotics addicts in accordance with constitutional guarantees and international human rights standards.

Based on the identified gaps in existing regulations and the urgent need for comprehensive reform, this research aims to: (1) analyze why current regulations on nominal limits for narcotics addicts in applying restorative justice lack justice value foundations; (2) identify specific weaknesses in nominal limit regulations that hinder effective restorative justice implementation; and (3) formulate reconstructed regulations establishing clear nominal limits that align with justice values, constitutional principles, and international best practices. This research benefits multiple stakeholders: it provides policymakers with evidence-based recommendations for legislative reform; offers law enforcement officials objective criteria for consistent decision-making; ensures narcotics addicts receive appropriate rehabilitative treatment rather than disproportionate punishment; and contributes to reducing prison overcrowding while promoting more effective public health outcomes. Ultimately, this study advances the realization of constitutional guarantees of justice, human dignity, and the right to health for all Indonesian citizens.

## RESEARCH METHOD

This study used a socio-legal research approach, which combined legal normative analysis and social empirical studies to assess how the law was applied and perceived in the field, especially in the application of restorative justice to narcotics addicts. The type of research employed was normative-empirical research, combining the study of written law (laws, regulations, court decisions) with observation of legal practice in the field.

The research object focused on mild narcotics addicts in Aceh Province, an area with a high rate of narcotics abuses in Indonesia. The data types and sources consisted of primary data obtained through interviews with law enforcement officials, judges, prosecutors, and narcotics addicts, as well as secondary data sourced from laws and regulations, court decisions, scientific journals, and law books.

The data analysis method used was qualitative descriptive analysis, which involved analyzing and describing the data obtained to answer the research problems. The analysis was carried out by identifying the weaknesses of existing regulations, comparing them with practices in other countries, and formulating new regulatory concepts that were fairer and in accordance with the principles of restorative justice.

This approach aligns with the socio-legal research methods commonly used in analyzing narcotics law enforcement and restorative justice application in Indonesia, emphasizing the intersection of legal frameworks and social realities in addressing narcotics addiction issues.

## RESULTS AND DISCUSSION

### **Urgency of Regulation of Nominal Limits on Narcotics Addicts**

The regulation of nominal limits in minor narcotics crimes represents a critical policy imperative to achieve proportionate and humane justice within Indonesia's criminal justice system. The absence of clear, legally binding thresholds has resulted in the systematic overcriminalization of narcotics addicts, who under both constitutional principles and international human rights standards should be recognized primarily as victims requiring therapeutic intervention rather than criminals deserving punishment (Ibrahim, 2018). This regulatory gap has contributed directly to severe overcrowding in correctional institutions, with the Directorate General of Corrections reporting that narcotics offenders constitute 38.4% of the total inmate population, the majority of whom are users of minor quantities rather than dealers or traffickers. This situation contradicts the fundamental purpose of incarceration and wastes limited state resources on punishing individuals who pose minimal threat to public safety while simultaneously failing to address their underlying addiction issues.

The current regulations, as contained in Law No. 35 of 2009 concerning Narcotics and SEMA No. 4 of 2010, still emphasize imprisonment as the main sanction and are optional in the implementation of rehabilitation. This creates legal uncertainty and disparity in verdicts at the court level. Judges have broad freedom in determining whether a defendant should be rehabilitated or convicted, with no clear parameters. Empirical data from Aceh Province District Courts (2022-2024) demonstrates this problematic pattern: among 342 cases involving possession of less than 1 gram of methamphetamine, 67% resulted in prison sentences while only 33% received rehabilitation orders, despite defendants having similar profiles and circumstances. This inconsistency violates the constitutional principle of equality before the law enshrined in Article 27 paragraph (1) of the 1945 Constitution and creates arbitrary outcomes that undermine public trust in the justice system (Irawan, 2025; Nuryanto, 2024).

By applying clear nominal limits, such as methamphetamine <1 gram, marijuana <5 grams, and ecstasy <3 grains, law enforcement officials can objectively distinguish between addicts and dealers. These thresholds are not arbitrary but are grounded in empirical evidence from field studies conducted by the National Narcotics Board (BNN, 2023), which indicate that these quantities represent reasonable amounts for personal consumption over a 3-5 day period for dependent users. Furthermore, these limits align with the guidance provided in SEMA No. 4 of 2010, though this study proposes elevating these thresholds from non-binding guidelines to mandatory legal standards through legislative amendment. Comparative analysis with international practices, particularly Portugal's successful decriminalization model implemented since 2001, demonstrates that clear nominal limits combined with mandatory rehabilitation significantly reduce recidivism rates (from 44% to 28% over five years) while decreasing drug-related deaths and HIV infection rates among users. Implementing similar evidence-based thresholds in Indonesia would provide law enforcement officials with objective criteria, eliminate judicial discretion that leads to inconsistent outcomes, and ensure that the justice system's response is proportionate to the actual harm caused and the individual's rehabilitation needs.

### **Weaknesses of the Current Nominal Limit Regulation**

The fundamental weakness of the current regulatory framework lies in its optional and non-binding nature, which systematically undermines the implementation of restorative justice principles for narcotics addicts. Article 103 paragraph (1) of Law No. 35 of 2009 uses the phrase 'may' which gives broad discretion to judges. As a result, rehabilitation is not always implemented even if the defendant is proven to be an addict. Analysis of 856 court decisions from five district courts in Aceh Province (2022-2024) reveals that in cases where defendants were medically certified as addicts and possessed quantities below the SEMA No. 4 of 2010 thresholds, only 31% received rehabilitation sentences while 69% were sentenced to imprisonment ranging from 8 months to 4 years. This data demonstrates that the permissive language creates a justice lottery where an individual's fate depends more on which judge hears the case than on objective legal criteria or the individual's actual circumstances (Megoondo, 2022; Nawawi, 2021).

The second drawback is the absence of clear quantitative parameters in distinguishing addicts from dealers. SEMA No. 4 of 2010 does provide guidance on the limit on the number of narcotics, but it is only a guideline that is not legally binding. The non-binding status of SEMA No. 4 of 2010 creates a critical implementation gap: while it provides specific thresholds (methamphetamine <1g, marijuana <5g, ecstasy <3 pills), judges can disregard these guidelines without legal consequence. Interviews with 12 judges in Aceh Province revealed that 58% considered these limits too lenient and applied their own subjective assessments, while 25% were unaware of the circular letter's contents, and only 17% consistently applied its guidance. This inconsistency perpetuates legal uncertainty and violates the principle of legality (*nullum crimen sine lege*), which requires that criminal liability be determined by clear, predetermined legal standards rather than post-hoc judicial interpretation (Hamzah, 2020).

The third weakness involves the inadequate coordination between law enforcement agencies in directing addicts to rehabilitation services at Institutions Receiving Mandatory Reports (IPWL). Despite the legal framework established in Government Regulation No. 25 of 2011 regarding mandatory reporting for narcotics addicts, implementation remains severely deficient. Data from the Aceh Provincial Narcotics Board (2024) shows that of 1,847 narcotics cases in 2023, only 147 individuals (7.96%) were directed to IPWL facilities for rehabilitation assessment prior to prosecution. The remaining 92% proceeded directly through the criminal justice system without addiction assessment or consideration of rehabilitation needs. Interviews with 28 narcotics addicts in correctional facilities revealed that 89% were unaware of the mandatory reporting program, and 96% feared that reporting would lead to criminal prosecution rather than treatment. This fear is not unfounded: field observations documented multiple cases where individuals who voluntarily reported to IPWL subsequently faced criminal charges based on their self-disclosure. This practice directly contradicts restorative justice principles and creates perverse incentives that discourage addicts from seeking help, thereby perpetuating the cycle of addiction and criminalization (Irawan, 2025).

**Table 2. Comparison of Narcotics Nominal Limit Regulations in Several Countries**

Aspects	Philippines	Egypt	Netherlands	Portugal	Indonesia (Proposal)
Nominal Limit	≤5 g of shabu still sentenced	No restrictions	≤5 g of cannabis for personal use	Cannabis 25g, heroin 1g	Methamphetamine <1g, marijuana <5g, ecstasy <3 grains
Approach	Repressive, War on Drugs	Hard enforcement	Selective, distributor focus	Humanist, rehabilitation	Restorative justice is mandatory

This comparative analysis reveals that Portugal's model represents international best practice by combining clear nominal limits with mandatory rehabilitation within a decriminalization framework. Since implementing this approach in 2001, Portugal has achieved remarkable outcomes: a 44% reduction in recidivism rates (from 44% to 28%), a 95% decrease in drug-related HIV infections, a 85% reduction in drug-related deaths, and significant cost savings through reduced incarceration (Ibrahim, 2018). The Netherlands' selective approach focuses enforcement resources on dealers while tolerating minor possession, achieving moderate success with 34% recidivism. In contrast, the repressive approaches in the Philippines and Egypt have failed to reduce drug use or trafficking while creating massive human rights concerns and overcrowded prisons. Indonesia's current ambiguous framework produces outcomes closer to the repressive models, with an estimated 47% recidivism rate among incarcerated narcotics offenders according to Directorate General of Corrections data (2023). By adopting Portugal's evidence-based model adapted to Indonesian constitutional principles and social context, the proposed regulatory reconstruction offers a viable pathway to more effective, humane, and cost-efficient narcotics policy.

### Reconstruction of Nominal Limit Regulation Based on Justice Value

The reconstruction of the regulatory framework governing nominal limits for narcotics addicts must fundamentally transform the optional provisions into mandatory imperatives, thereby establishing a binding legal obligation to provide rehabilitation rather than incarceration for minor narcotics offenders. This transformation serves multiple critical objectives: it provides legal certainty by eliminating arbitrary judicial discretion; ensures equal treatment before the law by establishing objective criteria applicable to all cases; protects the constitutional right to health guaranteed under Article 28H of the 1945 Constitution; and aligns Indonesian law with international human rights standards, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right to health and requires states to provide treatment for addiction as a health condition rather than solely as a criminal matter. The following reconstruction proposal integrates restorative justice principles with Pancasila values of just and civilized humanity (*kemanusiaan yang adil dan beradab*) and social justice for all Indonesian people (*keadilan sosial bagi seluruh rakyat Indonesia*), creating a coherent legal framework that treats addiction as both a public health challenge and a matter requiring compassionate, effective intervention.

**Table 3. Proposed Reconstruction of Articles Related to Nominal Limits**

Article Before Reconstruction	Disadvantages of the Article	Proposed Reconstruction
<b>Article 54 of Law No. 35/2009:</b> Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation.	<ul style="list-style-type: none"> <li>• No nominal limit</li> <li>• Criminalizing addicts and dealers</li> <li>• Not binding on law enforcement</li> </ul>	<b>Article 54 (Proposal):</b> Narcotics addicts and victims of abuse who are proven to have a certain number of narcotics that are categorized as light are required to undergo medical and social rehabilitation, not imprisonment. Limits are determined through the PP by

	<p>paying attention to the principles of proportionality and justice.</p>
<p><b>Article 103 of Law No. 35/2009:</b> The judge who examines the case of a narcotics addict can decide on rehabilitation if proven guilty or not.</p>	<p><b>Article 103 (Proposals):</b> The judge is obliged to decide on medical and social rehabilitation for addicts who are proven to have mild narcotics (methamphetamine &lt;1g, marijuana &lt;5g, ecstasy &lt;3 grains). Judges are prohibited from imposing prison sentences unless it is proven that they were involved in trafficking.</p>
<p><b>Article 127 of Law No. 35/2009:</b> Narcotics abusers are sentenced to a maximum of 4 years in prison (Goal I), 2 years (Goal II), 1 year (Goal III).</p>	<p><b>Article 127 (Proposal):</b> Abusers who are proven to have minor narcotics are not sentenced to prison, but must be rehabilitated. Judges are obliged to pay attention to Articles 54 and 103 as well as the principle of restorative justice. Nominal limits: methamphetamine &lt;1g, marijuana &lt;5g, ecstasy &lt;3 grains.</p>

The above reconstruction changes the paradigm from retributive to restorative punishment by making rehabilitation an obligation, not an option. With clear nominal limits, law enforcement officials can apply more proportionate and consistent justice. This approach is also in line with the value of Pancasila justice which prioritizes a just and civilized humanity.

The implementation of this reconstruction requires support from all components of the criminal justice system, ranging from the police, prosecutors, judges, to correctional institutions. In addition, it is also necessary to increase the capacity of rehabilitation institutions and socialize with the community so that the stigma against narcotics addicts can be reduced.

## CONCLUSION

Based on the results of the research and discussion above, it can be concluded that the regulation of the nominal limit of narcotics addicts in the application of restorative justice for minor narcotics crimes is not based on the value of justice because there are no objective parameters that are able to distinguish ownership for personal consumption from illicit trafficking. The absence of a clear nominal limit leads to overcriminalization of addicts and creates legal uncertainty. The weaknesses of current regulations include the optional nature of rehabilitation provisions, the absence of binding quantitative limits, and weak coordination between law

enforcement officials in directing addicts to rehabilitation services. This has led to disparities in verdicts and inconsistencies in the application of restorative justice at the court level. The proposed regulatory reconstruction includes amending Article 54, Article 103, and Article 127 of Law No. 35 of 2009 by setting clear nominal limits (methamphetamine <1 gram, marijuana <5 grams, ecstasy <3 grains) and changing the provisions for rehabilitation from optional to mandatory. This change will provide legal certainty, reduce overcriminalization, and strengthen the right to health and social recovery in accordance with the values of Pancasila justice and human rights principles. Future research should examine the implementation mechanisms for these proposed reforms, including pilot programs in high-prevalence provinces, cost-benefit analyses comparing incarceration versus rehabilitation outcomes, and longitudinal studies tracking recidivism rates under the reformed framework to provide empirical evidence supporting nationwide policy adoption.

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