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SUBSTANTIVE JUSTICE AND HUMAN RIGHTS PROTECTION FOR PEOPLE USING NARCOTICS UNDER CONTEMPORARY INDONESIAN CRIMINAL LAW

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ABSTRACT

Substantive justice requires courts to evaluate narcotics offenses through lawful distinctions, individual circumstances, and enforceable rights. This article examines whether Indonesia's rehabilitation framework can protect people prosecuted for personal narcotics use under legislation effective in 2026. Using normative legal research, it analyzes constitutional guarantees, narcotics legislation, recent criminal law reforms, judicial guidance, and a Constitutional Court decision, supported by twenty recently published journal articles. The analysis identifies persistent tensions between punishment and treatment, particularly when offense classifications, clinical assessments, and judicial discretion are inadequately explained. Comparative evidence also cautions against assuming that compulsory rehabilitation necessarily improves outcomes. The article develops a carefully structured judicial framework covering applicable law, proven conduct, health assessment, proportionality, and implementation. It argues that legally accountable enforcement requires individualized reasoning, accessible and effective healthcare, and consistent procedural safeguards. Rehabilitation should respond to demonstrated needs without replacing lawful adjudication or undermining personal dignity throughout the criminal process.

INTRODUCTION

The legitimacy of a criminal justice system cannot be measured solely by its ability to identify prohibited conduct and impose sanctions. A lawful outcome must also be explainable in terms of fairness, individual rights, and the reasons for choosing one response over another. This challenge is especially visible in the enforcement of narcotics legislation. Illegal distribution may demand a different legal response from possession or use for personal consumption, yet both can enter the criminal process under the broad umbrella of drug-related offenses. Treating these situations as interchangeable creates a risk that the legal classification will overshadow material differences between defendants. Indonesia's constitutional framework provides the starting point for evaluating these issues. Article 1(3) of the 1945 Constitution establishes Indonesia as a state governed by law, while Article 28D (1) protects fair legal certainty and equality before the law. In criminal adjudication, these commitments require courts to apply valid legislation

accurately and to explain how the applicable law relates to the facts proved. The demand for substantive justice does not displace legal certainty, it asks whether a formally lawful determination sufficiently recognizes relevant differences and avoids disproportionate consequences. The issue has particular significance for individuals prosecuted for narcotics use for themselves. A person who uses an illicit substance does not necessarily have a substance use disorder, and clinical dependence cannot be inferred simply from an arrest. Conversely, a defendant may have substantial treatment needs even when the criminal process focuses principally on possession. Differentiating conduct from health status is therefore an essential condition of an appropriate response. The distinction is also consistent with evidence showing that the effects of criminal justice intervention vary according to the setting, the individual's circumstances, and the services actually available (Austin et al. 2023; Putra and Hamamah 2026).

Indonesian legislation has long included a route toward medical and social rehabilitation. Articles 54 and 103 of Law No. 35 of 2009 on Narcotics recognize treatment-related considerations for legally defined groups, and Article 127 addresses personal misuse. The presence of these provisions, however, does not mean that rehabilitation automatically follows whenever a person claims personal consumption. The applicable charge, supporting evidence, statutory categories, judicial powers, and the availability of reliable assessment remain important. A qualitative study involving Indonesian criminal justice professionals identifies how views about culpability and deservingness can influence the boundary between therapeutic diversion and punitive action (Hoyle and Harry 2025; Rosyad et al. 2025).

This question must also be considered against Indonesia's changed legal landscape. The national Criminal Code established by Law No. 1 of 2023 and the Criminal Procedure Code established by Law No. 20 of 2025 took effect on 2 January 2026. Law No. 1 of 2026 adjusted criminal penalties in legislation outside the new Code, including specified narcotics provisions. An analysis written for present conditions must consequently identify the currently applicable norms instead of assuming that the structure of drug offenses and penalties has remained unchanged since 2009. Legal transition may sharpen the need to justify charging decisions, eligibility for rehabilitation, and the final sentence. Comparative scholarship provides an additional reason for closer scrutiny. Evaluations of decriminalization or health-oriented drug policies have found that legislative change and practical implementation do not always move together. Police conduct, stigma, access to services, and definitions of personal possession affect what reform means in everyday life (Maftuhah Dewi 2024a; Good et al. 2025; Hamamah 2020; Kammersgaard 2023). Policy experience elsewhere cannot determine the correct outcome of an Indonesian case, but it can identify assumptions that Indonesian institutions should test rather than accept without evidence. The central problem examined here is therefore not whether criminal law and rehabilitation are inherently incompatible. It is how they should be related when conduct involves personal narcotics use and human rights must be protected throughout the proceedings. The article addresses three questions: how substantive justice should be understood within Indonesian law; what duties and choices the existing normative framework creates for personal-use cases; and how judicial reasoning could more consistently connect proof, clinical assessment, legal standards, and implementable outcomes. Its contribution is a structured, rights-oriented assessment model grounded in Indonesian law and informed by recent peer-reviewed evidence.

METHOD

This study uses normative juridical research, combining statutory interpretation, conceptual analysis, and a narrowly defined case approach (Benuf, Mahmudah, and Priyono 2019). The principal domestic authorities are the amended 1945 Constitution; Law No. 35 of 2009 on Narcotics; Law No. 39 of 1999 on Human Rights; Law No. 48 of 2009 on Judicial Power; Supreme Court Circular Letter No. 4 of 2010; and the legal changes enacted through

Laws No. 1 of 2023, No. 20 of 2025, and No. 1 of 2026. Their provisions are considered in relation to legality, proportionality, equal protection, access to healthcare, and judicial discretion. The conceptual analysis distinguishes substantive fairness from the mere mechanical application of legal language. It also separates criminal responsibility, problematic drug use, clinical dependence, and the availability of treatment, because those concepts do not refer to the same condition. The case component concerns Constitutional Court Decision No. 147/PUU-XXIV/2026, delivered on 17 June 2026, which addressed a petition involving judicial authority under Article 103(1) of the Narcotics Law. Only the Court's verified procedural disposition is used; the case is not presented as evidence of the frequency of particular sentences in trial courts (Tambunan, Sudirman, and Mustafa 2025).

The secondary material consists of twenty journal publications dated 2023-2026, covering Indonesian criminal justice, drug-policy implementation, incarceration, clinical treatment, and post-release continuity of care. The articles are used selectively according to their research questions and settings (Benuf et al. 2019). The analytical procedure proceeds by identifying the legal question, interpreting the governing norms, comparing those norms with relevant empirical findings, and deriving criteria for defensible judicial decisions. Findings from other countries are treated as comparative illustrations, not as empirical descriptions of Indonesia. This design imposes clear limits. It does not include a systematic sample of sentencing decisions, interviews with defendants, or patient-level medical records. It therefore cannot calculate the nationwide extent of sentencing disparity or prove a causal effect of imprisonment or rehabilitation in Indonesia. The claims are doctrinal and evaluative: they concern what the rules permit or require, how reasons should be given, and what institutional questions deserve further empirical testing.

RESULTS AND DISCUSSION

Substantive Justice as a Standard of Legal Reasoning

Substantive justice is best understood as a standard for evaluating the quality of legal decisions rather than as an invitation to depart from law. A judgment is procedurally valid when proper authorities follow the relevant rules and evidentiary safeguards. A substantively defensible judgment additionally explains why its consequences fit the particular offense and the legally relevant position of the person concerned. In this sense, procedural regularity and substantive fairness are mutually supportive. Neither can compensate completely for the absence of the other. Equal treatment before the law does not require identical dispositions for every offense bearing the same broad label. Instead, equality requires like cases to be handled alike while differences that matter legally are acknowledged. A case involving established participation in distribution may differ materially from one supported only by evidence of personal consumption. Legal classification must nonetheless follow admissible evidence rather than an impression formed by the defendant's social status, appearance, or perceived morality. The scholarship on possession thresholds demonstrates that small differences in regulatory definitions can determine whether conduct is viewed as personal use or as more serious criminal involvement (Maftuhah; Dewi 2024; Hamamah and Soekarno 2021; McAdam et al. 2023).

A human-centered understanding of law, associated in Indonesia with Satjipto Rahardjo's progressive legal thought, helps explain why reasoned differentiation is essential. The aim is not to place sympathy above legislation. Rather, the judge should consider the purposes of valid legal rules alongside the constitutionally protected interests affected by their application. In narcotics proceedings, a responsible decision asks what conduct has been proven, whether the defendant satisfies a particular legal status, and whether the available sanction or measure can reasonably achieve its stated purpose. The theory of justice as fairness associated with John Rawls adds a further analytical perspective. Institutions should be capable of publicly justifying the ways in which they distribute benefits, burdens, and protection. For

a defendant unable to afford legal assistance or obtain an independent medical evaluation, formal access to the same legal pathway may not translate into a genuinely equivalent opportunity. The relevance of this approach is therefore institutional: substantive fairness requires attention to barriers that can affect the practical exercise of formally recognized rights.

Constitutional guarantees give these concerns legal weight. Articles 28D (1), 28G (1), 28H (1), and 28I (4) of the 1945 Constitution collectively provide a foundation for evaluating fair treatment, personal protection, healthcare, and the state's human rights responsibilities. The humanitarian and social justice principles of Pancasila reinforce this orientation. They are not free-standing authority for ignoring criminal provisions, but they inform the interpretation of discretion and the justification of measures affecting liberty and well-being. The limits of purely punitive assumptions are illuminated by international studies. Stenström, Estrada, and Tham (2024) critically assessed Sweden's policy of criminalizing drug use and questioned whether the stated objectives had been achieved. Similarly, research on Norwegian reform debates shows that the vocabulary of assistance can coexist with continuing punitive or supervisory logics (Maftuhah Dewi 2024b; Kammersgaard 2023; Putra and Hamamah 2026). Such findings do not establish that every custodial sentence is inappropriate. They show that deterrence, protection, and treatment claims should be supported by legal and empirical reasoning rather than treated as self-evident.Substantive justice also requires accountability when discretionary space exists. Interviews conducted with Indonesian criminal justice professionals suggest that the perceived moral deservingness of defendants can influence attitudes toward diversion and harsher punishment (Fatin Hamamah 2024; Hoyle and Harry 2025). The important implication is not that discretion should disappear; individualized justice often depends on it. Instead, discretion should be structured by publicly identifiable criteria, documented assessments, and reasons capable of review. Otherwise, ostensibly similar defendants may experience different outcomes without a transparent explanation.

The working definition adopted in this article is consequently narrow and operational. A substantively just narcotics judgment is one that applies the correct law, classifies proven conduct accurately, considers legally relevant personal and health circumstances, protects procedural rights, and gives proportionate reasons for its disposition. It must also acknowledge whether the ordered measure is realistically available. A treatment order that cannot be carried out may be no more responsive to the defendant's needs than a sentence imposed without adequate inquiry (Fatin Hamamah 2024).

Human Rights and Rehabilitation within Indonesia's Criminal Law Framework

The Narcotics Law combines criminal prohibitions with an explicit rehabilitation dimension. Article 54 provides for medical and social rehabilitation of addicts and victims of narcotics abuse, while Article 103 concerns judicial authority to direct treatment or care through rehabilitation in circumstances defined by law. Article 127 has historically supplied an important reference point for misuse for personal consumption (Hilmi 2023). These provisions operate within a system that also penalizes a range of cultivation, possession, distribution, and trafficking-related activities. The availability of rehabilitation thus depends on the legally established category and cannot be determined from a generic label such as drug user. The differentiation is particularly important because legal and clinical concepts should not be collapsed into one another. Evidence of possession alone does not establish a diagnosis, and a positive biological test does not by itself answer every question about the charged conduct. Where treatment eligibility turns on dependence or a defined victim status, professional assessment and appropriate evidence are essential . This is not merely a technical concern: a judgment that assumes every defendant is dependent risks imposing medical interventions without adequate justification, while a judgment that overlooks genuine treatment needs risks producing an unnecessarily harmful outcome.

Rehabilitation should likewise not be equated automatically with voluntary healthcare. A treatment requirement imposed through criminal proceedings may carry coercive consequences even when it is formally described as therapeutic. A recent systematic review of legally mandated non-custodial drug and alcohol treatment orders provides reasons to examine the evidence for patient outcomes rather than presume that compulsory placement is always beneficial (Campbell et al. 2026). A rights-based approach must therefore evaluate the suitability, quality, and conditions of the proposed intervention, including the person's procedural opportunities to challenge relevant assessments. Indonesia's updated criminal legislation adds a temporal dimension to this analysis. Since 2 January 2026, decision-makers must account for the new Criminal Code, the new Criminal Procedure Code, and the Criminal Penalty Adjustment Law. The latter modifies specified criminal provisions, including parts of the Narcotics Law. The continuing force of rehabilitation-related provisions should be considered alongside changes to offense and penalty provisions and any applicable transitional rules. A judgment should identify precisely which version of the law governs the conduct and explain its interaction with the special narcotics regime. Failing to establish this foundation could undermine both legal certainty and fairness.

The human rights dimension is broader than choosing between imprisonment and rehabilitation at sentencing. It extends to the investigation, access to counsel, contestation of evidence, protection from arbitrary detention, and access to medical services where clinically indicated. Fair procedure gives defendants a meaningful opportunity to address disputed claims about the quantity or purpose of possession, participation in distribution, and the reliability of medical findings. A substantively fair process also considers whether a person can genuinely access the support services assumed in the proposed disposition. International literature identifies several reasons to treat service continuity as a distinct legal and policy concern. A Southeast Asian scoping review examined difficulties in maintaining opioid substitution treatment across prison and community settings (Maftuhah Dewi 2024a; Loh, Plugge, and Van Hout 2023). Research on people leaving compulsory treatment centers in Vietnam highlights gaps in the support available after release (Giang et al. 2024). Those studies involve different legal systems and service arrangements, but both demonstrate that a rehabilitation policy cannot be evaluated solely at the point of initial referral. An effective pathway must extend to follow-up care and reintegration.

Evidence concerning imprisonment leads to a similar conclusion. A systematic review of drug use in prison identifies intersecting institutional, personal, and social factors relevant to ongoing use (Austin et al. 2023). Research on drug consumption during incarceration further indicates that criminal confinement does not necessarily bring substance use to an end (Favril 2023). A broader review of harm-reduction interventions for people who have been incarcerated emphasizes the importance of selecting responses according to demonstrated outcomes (Maftuhah; Dewi 2024; Macdonald et al. 2024). None of these results proves that a specific Indonesian defendant should receive rehabilitation; they support the more modest proposition that imprisonment should not be mistaken for a clinical intervention.

Treatment evidence must itself be handled carefully. Research on the delivery of medication for opioid use disorder in custodial institutions identifies practical challenges relating to implementation and access (Berk et al. 2025). A systematic review of extended-release pharmacotherapies found that the comparative evidence remained mixed and dependent on treatment modality and outcome (Woods et al. 2025). A defensible rehabilitation order should therefore be tailored to a documented condition and a workable care plan. The expression “rehabilitation” is not sufficient proof of clinical benefit without attention to the treatment being offered. Stigma can undermine formal legal safeguards even when a health-oriented pathway exists. Qualitative research in British Columbia found that people who use drugs experienced

continuing stigmatization during the initial year of a decriminalization policy (Ali et al. 2025). Another study in that jurisdiction described how affected individuals understood the policy and the risks that remained in practice (Al-Ali 2024). The implication for Indonesia is not that foreign policy models should be copied wholesale, but that procedural rules must be understandable and implemented in ways that do not exclude people because of stereotypes, poverty, or limited legal knowledge. A substantive-rights analysis ultimately asks two distinct questions. First, does the legal framework provide a justified and reviewable basis for the state's response to the proven conduct? Second, if the response involves healthcare, is that care appropriate, accessible, and consistent with the person's lawful rights? Answering both questions prevents rehabilitation from becoming a symbolic gesture and prevents criminal sanctions from being justified by unexamined assumptions about the people subject to them.

Judicial Discretion, Constitutional Review, and a Proposed Assessment Model

Judicial decisions are the point at which abstract commitments to legality and humanity must be translated into concrete consequences. For personal-use prosecutions, this requires more than repeating the elements of an offense or describing rehabilitation in favorable terms. Courts must explain whether the evidence proves personal use, another form of possession, or a supply-related act; whether the defendant falls within a statutory category relevant to rehabilitation; and what reasons support the final decision. Where the law allows more than one response, clarity of reasoning is indispensable. Decision No. 147/PUU-XXIV/2026 of the Constitutional Court, delivered on 17 June 2026, illustrates the interpretive sensitivity of these questions. The petition challenged aspects of Article 103 (1) of Law No. 35 of 2009, seeking a more compulsory understanding of judicial rehabilitation powers.

The Court found the petition inadmissible because the requested relief was insufficiently clear, including inconsistency in its formulation concerning users and addicts. As a consequence, the decision did not adjudicate the substantive constitutionality of a general mandatory-rehabilitation interpretation. Describing it as a merits ruling requiring rehabilitation for all users would therefore overstate what the Court decided.This procedural result still provides a useful doctrinal lesson. The wording of a legal category and the distinction between a judicial power and a judicial duty are consequential. If a statute grants authority to order treatment subject to conditions, a judicial response must identify those conditions and the limits of that power. If another provision creates a mandatory obligation for a defined group, the court must likewise explain the applicable criteria. The need to distinguish these situations is heightened when statutory amendments alter the surrounding criminal-law framework.

The classification of conduct is an early source of possible disparity. A defendant may claim personal use while the prosecution alleges possession in circumstances suggesting supply. Neither claim should prevail solely because of the label attached to it. The quantity of a substance may be relevant, but it is not necessarily conclusive when considered apart from other legally admissible evidence. A policy analysis of possession thresholds demonstrates how the criteria used to separate personal use from more serious conduct can affect penal exposure (McAdam et al. 2023). Indonesian decision-makers must rely on national law and the facts proved, not on foreign numerical thresholds; the comparative point is the importance of explicit criteria. The implementation of drug policy also complicates the exercise of discretion. Research from Oregon documents policing experiences during a period of decriminalization, showing that a legislative reform does not by itself determine institutional behavior (Good et al. 2025). Danish research likewise identifies a gap between the announcement of warning-based policy and its application to marginalized people (Houborg et al. 2026). These studies suggest the value of recording not only how many defendants were referred to rehabilitation but also why some eligible persons were not referred, what alternatives were available, and

whether comparable evidence was treated consistently.

This article proposes a five-stage framework for the judicial evaluation of personal narcotics use. The first stage is legal identification: determine the applicable law at the time of the conduct and adjudication, the elements of each charged offense, and any transitional rules or special provisions. The second is evidentiary classification: distinguish personal consumption, possession, and trafficking-related conduct from admissible facts and explain why one category is legally established. The third is individual assessment: determine whether a professional evaluation supports a relevant clinical or statutory status and whether treatment is medically indicated. The fourth is proportionality review: evaluate the contemplated response against fair trial rights, dignity, personal liberty, public protection, and feasible lawful alternatives. The fifth is reasoned implementation: issue a disposition whose legal basis, conditions, responsible institutions, and review or follow-up arrangements are sufficiently clear (Rezvorovych 2023).

The model is an analytical proposal, not an existing statutory checklist. It is designed to make the steps already implicit in lawful adjudication more visible and testable. It does not require rehabilitation in every case, and it does not excuse conduct for which criminal liability has been proved. Its primary function is to reduce the space in which assumptions about moral character, poverty, or presumed addiction can substitute for evidence and legal analysis. Where imprisonment is imposed despite a plausible treatment pathway, the judgment should explain the decisive reasons within the governing law. Where rehabilitation is ordered, the record should identify why the defendant qualifies and how the order can be implemented. Judicial responsibility must be supported by institutions outside the courtroom. Research on legal referrals to substance use treatment suggests that justice-based referral patterns can change over time and require specific attention to access and service capacity (Fry, Harris, and Burns 2024). Linkage facilitation studies emphasize the coordination necessary to connect persons in the criminal legal system with effective care (Satcher et al. 2024). A judgment cannot ensure a beneficial outcome if no qualified service is available, referral mechanisms are unclear, or follow-up terminates immediately after release.

Evaluation should consequently separate legal indicators from health indicators. Legal measures might include the reasons for offense classification, the availability of counsel, the consistency of assessment procedures, and the proportion of dispositions providing meaningful explanations. Health and reintegration measures might include timely treatment initiation, continuity of care, voluntary engagement where appropriate, and the ability to return to family or work. An analysis of drug crime during the first year of British Columbia's decriminalization policy demonstrates why police-recorded offenses should not be treated as a complete proxy for public-health outcomes (Maftuhah Dewi 2024b; Gaudreault et al. 2025). Studies of policing and service access among young people likewise illustrate the value of examining barriers and consequences beyond criminal case counts (McAdam et al. 2025).

The practical reform agenda follows from these findings. Investigators, prosecutors, courts, health professionals, and rehabilitation institutions need consistent criteria for personal-use classification and referral, together with procedures for documenting and challenging assessments. Geographic differences in treatment capacity should be acknowledged rather than hidden by a nominal entitlement. Guidance for judges should promote the careful articulation of legal and clinical grounds, while oversight mechanisms should identify cases in which similar facts produce divergent outcomes without adequate reasons. These steps would make substantive justice more observable and reduce reliance on abstract declarations of humanitarian intent. The core result of the analysis is therefore a model of disciplined individualization. Human dignity is not protected merely by calling an intervention rehabilitative, just as public safety is not necessarily advanced merely by choosing incarceration. Each response must be tied to the

law, to reliable findings about conduct and need, and to an explanation of why it is proportionate. A court that makes those connections explicit is better positioned to protect individual rights while maintaining the legitimacy of criminal enforcement.

CONCLUSION

Substantive justice in the adjudication of personal narcotics use requires a disciplined relationship between legal certainty, constitutional rights, and individualized evaluation. Indonesian law recognizes rehabilitation possibilities, but their relevance depends on the statutory category, the proven conduct, and reliable evidence concerning the person's condition. Since the legislative transition effective on 2 January 2026, judges and other practitioners must also account for the new Criminal Code, Criminal Procedure Code, and adjustments to criminal penalties. Interpreting personal-use cases as if no legislative change had occurred would place the quality of legal reasoning at risk. The analysis further shows that rehabilitation and imprisonment cannot be assessed solely by their labels. Both may have significant consequences for rights and health, and neither should be presumed effective without attention to its design and implementation. The Constitutional Court's decision in Case No. 147/PUU-XXIV/2026 illustrates the need for precision: an inadmissibility ruling based on unclear relief is not a substantive command to impose rehabilitation universally. These findings support a five-stage assessment encompassing legal identification, evidentiary classification, individual clinical evaluation, proportionality, and a reasoned, feasible disposition.

Stronger interagency standards, meaningful access to legal representation and assessment, transparent judicial reasons, and reliable continuity of care would make these principles more effective in practice. Future empirical work should examine authenticated post-2026 judgments and assess how defendants experience both sentencing procedures and subsequent services. The distinctive contribution of substantive justice is not preferential treatment for all narcotics users; it is a requirement that the state explain and justify its response to different people on the basis of law, evidence, dignity, and proportionality.

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