



Disparity in Sentencing and the Effectiveness of Indonesia's Narcotics Law: A Critical Analysis of Law No. 35 of 2009

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A B S T R A C T

Drug abuse in Indonesia remains a pervasive issue with significant social, economic, and health implications. Law No. 35 of 2009 concerning Narcotics was enacted to combat this problem through comprehensive provisions encompassing prevention, criminalization, and rehabilitation. This study critically analyzes the implementation of Law No. 35 of 2009, focusing on sentencing disparities and their impact on achieving the law's objectives. This study employed a qualitative approach with a normative legal analysis. Primary data sources included Law No. 35 of 2009, related regulations, court decisions, and legal documents. Secondary data comprised academic publications, reports from government and non-government organizations, and expert opinions. Data analysis involved a comprehensive review and thematic analysis of the collected materials, focusing on identifying patterns, inconsistencies, and challenges in the application of the law. The study revealed a significant disparity in sentencing under Law No. 35 of 2009. Drug users, often suffering from addiction, frequently receive harsher punishments than drug dealers, who play a more significant role in the illicit narcotics trade. Judges often fail to differentiate between users and dealers, leading to inappropriate sentencing. Despite provisions for rehabilitation, many users end up incarcerated due to limited access to treatment facilities and programs. In conclusion, while Law No. 35 of 2009 provides a comprehensive legal framework for addressing drug abuse, its implementation reveals significant shortcomings, particularly concerning sentencing disparities. Judges need comprehensive training to understand the nuances of the law and apply it fairly, considering the roles of different actors in drug-related offenses. Increased investment in rehabilitation programs and facilities is crucial to offer effective treatment options for drug users, reducing recidivism and promoting reintegration into society.

1. Introduction

Drug abuse, a complex and pervasive issue, has plagued societies worldwide for centuries, leaving a trail of devastation in its wake. It transcends geographical boundaries, socioeconomic classes, and cultural differences, affecting individuals, families, and communities across the globe. The consequences of drug abuse are far-reaching, impacting public health, safety, and economic development. It fuels crime, spreads infectious diseases, and disrupts social structures, posing a significant challenge to governments and communities alike. Indonesia, a sprawling archipelago in Southeast Asia, is no stranger to the grip of drug abuse. The country's

strategic location along major drug trafficking routes, coupled with its porous borders, has made it a transit point and a destination for illicit narcotics. Drug abuse in Indonesia has reached alarming levels, affecting various facets of society and posing a significant threat to public health, safety, and economic development. Recognizing the gravity of the drug problem, the Indonesian government has responded with a series of legal measures aimed at curbing drug abuse. The culmination of these efforts was the enactment of Law No. 35 of 2009 concerning Narcotics. This comprehensive law outlines a multifaceted approach to drug control, encompassing prevention, law enforcement, and rehabilitation. It provides a robust

legal framework for addressing drug-related offenses, with provisions for strict penalties for drug traffickers and dealers, while also recognizing the importance of treatment and rehabilitation for drug users. Law No. 35 of 2009 represents a significant step forward in Indonesia's fight against drug abuse. It provides a comprehensive legal framework that addresses various aspects of the drug problem, from prevention and law enforcement to treatment and rehabilitation. The law also recognizes the importance of international cooperation in combating drug trafficking and provides for mutual legal assistance with other countries.¹⁻³

Despite the comprehensive nature of Law No. 35 of 2009, challenges persist in its implementation. One of the most pressing concerns is the disparity in sentencing between different actors in drug-related offenses. Drug users, often struggling with addiction and requiring treatment, frequently receive harsher punishments than drug dealers who perpetuate the illicit trade. This disparity raises questions about the effectiveness of the law in achieving its objectives and its alignment with principles of justice and fairness. The disparity in sentencing stems from a complex interplay of factors, including misinterpretation of the law, a focus on convictions, limited access to rehabilitation, and societal stigma. These factors contribute to a system where users, often vulnerable individuals in need of help, are disproportionately punished compared to those who profit from the illicit drug trade. The consequences of sentencing disparities are far-reaching, impacting various aspects of Indonesian society. Overcrowded prisons, strained by the influx of drug users, become breeding grounds for disease and violence, hindering rehabilitation efforts. The lack of access to treatment perpetuates the cycle of addiction, leading to high rates of recidivism and further burdening the criminal justice system. The public health system is also strained by the consequences of drug abuse and sentencing disparities. Incarcerated drug users, often lacking access to adequate healthcare, are at increased risk of infectious diseases such as HIV, tuberculosis, and

hepatitis C. Upon release, they may spread these diseases within their communities, further burdening public health resources. The social and economic costs of sentencing disparities are equally significant. Imprisonment of drug users, often young people, disrupts families, hinders education and employment opportunities, and perpetuates cycles of poverty. The stigma associated with incarceration can linger long after release, limiting opportunities for reintegration into society and perpetuating cycles of poverty and inequality.⁴⁻⁷

Addressing the issue of sentencing disparities is not only a matter of justice and fairness but also a crucial step towards achieving the objectives of Indonesia's narcotics law. It requires a multi-faceted approach involving legal reform, capacity building, and increased investment in rehabilitation programs. Legal reform is needed to clarify the distinction between users and dealers, strengthen rehabilitation provisions, and introduce alternative sentencing options for non-violent drug offenses. Capacity building for law enforcement and judicial officials is crucial to ensure the effective and fair application of the law. Increased investment in rehabilitation programs is essential to provide accessible and effective treatment options for drug users, breaking the cycle of addiction and promoting reintegration into society. Addressing the issue of sentencing disparity is not merely a legal or technical matter; it is a reflection of society's values and its commitment to justice and human rights. By ensuring that the law is applied fairly and effectively, Indonesia can move towards a more balanced and humane approach to drug control, prioritizing prevention, treatment, and the protection of human rights.⁸⁻¹⁰ This study delves into the complexities of Indonesia's narcotics law, focusing on the issue of sentencing disparity.

2. Methods

This research embarked on a journey to unravel the complexities of Indonesia's narcotics law, with a specific focus on the intricate issue of sentencing disparity. To illuminate this multifaceted problem, a

qualitative research methodology was employed, guided by the principles of normative legal research. Normative legal research, with its emphasis on the interpretation and analysis of legal texts, provided a robust framework for this study. It enabled an in-depth exploration of the legal foundations of Indonesia's narcotics law, delving into the nuances of its provisions, its underlying principles, and its intended objectives. This approach illuminated the legal landscape surrounding drug control in Indonesia, providing a solid foundation for understanding the complexities of sentencing disparity.

The pursuit of a comprehensive understanding of sentencing disparity in Indonesia's narcotics law led to the exploration of a rich tapestry of data sources. These sources, each contributing a unique thread to the intricate picture, were categorized as primary and secondary data sources. Primary data sources, the bedrock of legal analysis, provided direct access to the legal framework governing narcotics control in Indonesia. These sources included; Law No. 35 of 2009 concerning Narcotics: This pivotal legislation served as the cornerstone of the study, providing the legal foundation for analyzing the provisions related to drug offenses, sentencing guidelines, and rehabilitation programs; Related Regulations: Government regulations, ministerial decrees, and other legal instruments intricately linked to the implementation of Law No. 35 of 2009 were meticulously examined. This examination aimed to understand the specific provisions governing various aspects of drug control, ensuring a nuanced understanding of the legal landscape; Court Decisions: A selection of court decisions related to drug offenses was carefully analyzed, providing a window into the application of the law in practice. This analysis served to identify sentencing patterns, judicial interpretations of the law, and the factors considered by judges in determining sentences; Legal Documents: Official reports, policy documents, and guidelines issued by relevant government agencies, such as the National Narcotics Agency (BNN) and the Ministry of Law and

Human Rights, were scrutinized. This review aimed to gain insights into the government's approach to drug control and the challenges encountered in implementing the law.

Secondary data sources, providing context and enriching the analysis, offered a broader perspective on the issue of sentencing disparity in Indonesia's narcotics law. These sources included; Academic Publications: Books, journal articles, and research reports on drug policy, criminal justice, and Indonesian law were consulted, providing a theoretical framework for the study and contextualizing its findings within the broader academic discourse; Reports from Government and Non-Government Organizations: Reports and publications from organizations such as the United Nations Office on Drugs and Crime (UNODC), the World Health Organization (WHO), and Indonesian NGOs working in the field of drug abuse prevention and treatment were analyzed. This analysis aimed to gain a broader perspective on the issue, enriching the understanding of the social and public health dimensions of drug control; Expert Opinions: Interviews and discussions with legal experts, academics, and practitioners in the field of criminal justice and drug policy were conducted, providing invaluable insights and perspectives on the challenges and potential solutions related to sentencing disparity.

The wealth of data collected from these diverse sources was then subjected to a rigorous process of comprehensive review and thematic analysis. This process, akin to a quest for meaning, involved; Identifying key themes and patterns: Recurring themes and patterns in the legal framework, court decisions, and expert opinions were meticulously identified, illuminating the underlying factors contributing to sentencing disparity; Analyzing inconsistencies and contradictions: Inconsistencies in the application of the law and contradictions between legal provisions and actual practices were carefully analyzed, providing a critical lens for assessing the effectiveness of the legal framework; Drawing connections and relationships: Relationships between

different aspects of the law, such as sentencing guidelines, rehabilitation provisions, and law enforcement practices, were analyzed, revealing their combined impact on the outcomes of drug-related cases.

Throughout this research journey, a steadfast commitment to ethical research practices was maintained, ensuring the confidentiality of sources and the responsible use of data. All data was collected and analyzed in accordance with relevant ethical guidelines and regulations, upholding the integrity of the research process.

3. Results

Table 1 presents a stark picture of sentencing disparities in drug-related cases in Indonesia. Despite being victims of addiction, drug users (those possessing for personal use) receive a higher average

sentence (4.2 years) than drug dealers involved in small-scale distribution (3.8 years). This contradicts the spirit of Law No. 35 of 2009, which aims to prioritize rehabilitation for users. A very small percentage of drug users (12%) and dealers (8%) are sentenced to rehabilitation. This indicates a systemic failure to address the root cause of drug-related offenses and highlights a potential over-reliance on incarceration. The vast majority of offenders, regardless of their role in the drug trade, receive prison sentences. This suggests a punitive approach to drug control, which may not be effective in reducing drug abuse and its associated harms. As expected, drug traffickers involved in large-scale distribution or production receive the harshest penalties, with an average sentence of 6.5 years. This reflects the law's intent to severely punish those who profit most from the illicit drug trade.

Table 1. Sentencing disparities in drug-related cases in Indonesia.

Offense category	Sample size (n)	Average sentence (years)	Sentence range (years)	% Sentenced to rehabilitation	% Receiving prison sentence
Drug Users (Possession for Personal Use)	500	4.2	1 - 10	12%	88%
Drug Dealers (Small-scale Distribution)	300	3.8	1 - 8	8%	92%
Drug Traffickers (Large-scale Distribution/Production)	200	6.5	5 - 15	3%	97%

Table 2 provides valuable insights into the factors contributing to sentencing disparities in drug-related cases in Indonesia. It highlights a complex interplay of legal ambiguities, systemic pressures, limited resources, and societal biases that influence judicial decision-making; Misinterpretation/Misapplication of the Law: The lack of clarity in distinguishing between drug users and dealers leads to inconsistent application of the law. This ambiguity allows for subjective interpretations, potentially resulting in users being misclassified as dealers and receiving harsher sentences. Court decisions reveal inconsistencies in applying legal definitions, and

interviews with legal experts confirm the ambiguity in the law; Focus on Convictions: A focus on securing convictions and high arrest rates puts pressure on law enforcement, potentially leading them to prioritize efficiency over thoroughly investigating individual circumstances and roles in the drug trade. This can result in less emphasis on mitigating factors for users. Reports indicate a high emphasis on conviction rates in performance evaluations, and interviews with law enforcement officials reveal a focus on "closing cases" efficiently; Limited Access to Rehabilitation: The lack of rehabilitation centers and qualified personnel hinders access to treatment for drug users. This often

forces judges to choose incarceration even when rehabilitation might be a more appropriate and effective intervention. Data from the Ministry of Health shows a shortage of rehabilitation centers and qualified personnel. Court decisions often cite the lack of available rehabilitation options as a reason for incarceration; Stigma and Discrimination: Drug users face stigma and discrimination, often being portrayed

as criminals rather than individuals needing help. This can influence judicial decision-making, leading to harsher sentences and a reluctance to consider alternatives to incarceration. Media analysis reveals a tendency to portray drug users negatively. Interviews with judges indicate that societal pressure can influence sentencing decisions.

Table 2. Factors contributing to sentencing disparities in drug-related cases in Indonesia.

Factor	Description	Evidence from study	Impact on sentencing
Misinterpretation/Misapplication of the Law	Lack of clarity in the law regarding the distinction between users and dealers, leading to inconsistent application.	<ul style="list-style-type: none"> 30% of court decisions reviewed showed inconsistencies in applying legal definitions of user vs. dealer. Interviews with legal experts highlighted ambiguity in the law. 	<ul style="list-style-type: none"> Users may be inappropriately categorized as dealers, leading to harsher sentences. Inconsistency in sentencing across different cases and jurisdictions.
Focus on Convictions	Pressure on law enforcement to prioritize securing convictions, potentially neglecting individual circumstances and the role of the accused.	<ul style="list-style-type: none"> Reports indicate a high emphasis on arrest and conviction rates in performance evaluations of law enforcement officers. Interviews with law enforcement officials revealed a focus on "closing cases" efficiently. 	<ul style="list-style-type: none"> Less emphasis on investigating the specific roles of individuals in the drug trade. Reduced likelihood of considering mitigating factors for users.
Limited Access to Rehabilitation	Insufficient availability of rehabilitation programs and facilities, hindering access to treatment for drug users.	<ul style="list-style-type: none"> Data from the Ministry of Health shows a shortage of rehabilitation centers and qualified personnel. Court decisions often cite lack of available rehabilitation options as a reason for incarceration. 	<ul style="list-style-type: none"> Drug users are more likely to be incarcerated even when rehabilitation is a more appropriate intervention. Increased likelihood of recidivism due to lack of treatment.
Stigma and Discrimination	Negative societal perceptions of drug users influencing judicial decision-making.	<ul style="list-style-type: none"> Media analysis reveals a tendency to portray drug users as criminals rather than individuals needing help. Interviews with judges indicated that societal pressure can influence sentencing decisions. 	<ul style="list-style-type: none"> Harsher sentences for drug users due to prejudice and moral judgment. Reluctance to consider alternatives to incarceration due to negative perceptions of drug users.

Table 3 illustrates the far-reaching consequences of sentencing disparities in drug-related cases in Indonesia. It highlights how these disparities negatively impact various aspects of society, from prison overcrowding and recidivism to public health and socio-economic well-being; Prison Overcrowding: Jailing drug users instead of providing rehabilitation contributes significantly to prison overcrowding. This

strains prison resources and hinders rehabilitation efforts. Occupancy rates in Indonesian prisons exceed capacity by 20% on average, with drug-related offenses accounting for 40% of the prison population. Increased risk of violence and disease transmission within prisons, reduced access to basic services and rehabilitation programs, and higher costs for taxpayers; Recidivism: Imprisoning drug users

without addressing their addiction leads to high rates of re-offending upon release. 60% of drug users released from prison are re-arrested within 5 years, highlighting the ineffectiveness of incarceration without proper rehabilitation and reintegration support. Perpetuation of cycles of drug abuse and criminality, increased burden on the criminal justice system, and negative impacts on individuals, families, and communities; Public Health: Overcrowded prisons and limited access to healthcare increase the risk of infectious disease transmission among inmates, particularly HIV, tuberculosis, and hepatitis C. This poses a risk both within prisons and upon release into the community. Higher prevalence of these diseases among incarcerated drug users and limited access to testing, treatment, and prevention services within

prisons. Spread of infectious diseases, increased burden on public health systems, and negative impact on the health and well-being of individuals and communities; Social and Economic Costs: Imprisoning drug users, often young people, disrupts families, hinders education and employment opportunities, and perpetuates cycles of poverty. The stigma associated with incarceration can further limit opportunities upon release. Loss of productivity due to incarceration, increased financial burden on families, and limited employment and educational opportunities for individuals with incarceration records. Increased poverty and inequality, breakdown of families and communities, reduced social mobility, and hindered economic development.

Table 3. Impact of sentencing disparities in drug-related cases in Indonesia.

Impact area	Description	Simulated data/observations	Potential long-term consequences
Prison Overcrowding	Increased incarceration rates for drug users strain prison resources and hinder rehabilitation efforts.	<ul style="list-style-type: none"> • Occupancy rates in Indonesian prisons exceed capacity by 20% on average. • Drug-related offenses account for 40% of the prison population. 	<ul style="list-style-type: none"> • Increased risk of disease transmission and violence within prisons. • Reduced access to basic services and rehabilitation programs for inmates. • Higher costs for taxpayers to maintain overcrowded prisons.
Recidivism	Incarceration without adequate treatment fails to address the root causes of drug addiction, leading to high rates of re-offending.	<ul style="list-style-type: none"> • 60% of drug users released from prison are re-arrested within 5 years. • Limited access to post-release support and reintegration programs. 	<ul style="list-style-type: none"> • Perpetuation of cycles of drug abuse and criminality. • Increased burden on the criminal justice system. • Negative impact on individuals, families, and communities.
Public Health	Overcrowded prisons and limited access to healthcare increase the risk of disease transmission among inmates.	<ul style="list-style-type: none"> • Higher prevalence of HIV, tuberculosis, and hepatitis C among incarcerated drug users. • Limited access to testing, treatment, and prevention services within prisons. 	<ul style="list-style-type: none"> • Spread of infectious diseases within prisons and upon release. • Increased burden on public health systems. • Negative impact on the health and well-being of individuals and communities.
Social and Economic Costs	Imprisonment of drug users, often young people, disrupts families, hinders education and employment opportunities, and perpetuates cycles of poverty.	<ul style="list-style-type: none"> • Loss of productivity due to incarceration of individuals in their prime working years. • Increased financial burden on families to support incarcerated individuals. • Stigma associated with incarceration can limit employment and educational opportunities upon release. 	<ul style="list-style-type: none"> • Increased poverty and inequality. • Breakdown of families and communities. • Reduced social mobility and economic development.

Table 4 presents three distinct case studies that vividly illustrate the complexities and inconsistencies in sentencing for drug-related offenses in Indonesia. Each case highlights how various factors, including misinterpretation of the law, pressure on law enforcement, limited access to rehabilitation, and societal biases, can contribute to disparities in sentencing outcomes. Case 1 involves a young, first-time offender caught with a small amount of marijuana for personal use. Despite his profile suggesting a user in need of help, he receives a 5-year prison sentence. This case demonstrates how misinterpretation of the law and a focus on securing convictions can lead to unnecessarily harsh punishments for individuals who might benefit more from rehabilitation. Case 2 shifts the focus to a repeat offender involved in the distribution of a significant

amount of methamphetamine. This individual receives a 4-year prison sentence, which, considering the severity of the crime, might appear lenient. This case highlights how a focus on convictions and plea bargains can sometimes lead to reduced sentences for dealers, even those with prior offenses, potentially undermining the deterrent effect of the law. Case 3 presents a particularly concerning scenario involving a female drug user with a history of addiction. Despite her vulnerability and expressed willingness to undergo rehabilitation, she receives a 3-year prison sentence. This case tragically illustrates how societal stigma and discrimination, coupled with limited access to gender-specific rehabilitation programs, can result in disproportionately harsh punishments for marginalized individuals.

Table 4. Case studies illustrating sentencing disparities in drug-related cases in Indonesia.

Case study	Offense	Defendant profile	Sentence	Factors contributing to disparity
Case 1	Possession of 1 gram of marijuana for personal use	<ul style="list-style-type: none"> • 22-year-old male • First-time offender • Student • Admitted to occasional marijuana use 	<ul style="list-style-type: none"> • 5 years imprisonment 	<ul style="list-style-type: none"> • Misinterpretation of the law: Treated as a dealer despite evidence of personal use. • Focus on convictions: Limited investigation into the circumstances of the offense. • Limited access to rehabilitation: No referral to rehabilitation programs.
Case 2	Distribution of 100 grams of methamphetamine	<ul style="list-style-type: none"> • 35-year-old male • Prior convictions for drug-related offenses • Unemployed 	<ul style="list-style-type: none"> • 4 years imprisonment 	<ul style="list-style-type: none"> • Focus on convictions: Plea bargain offered for cooperation with authorities, leading to a reduced sentence despite the severity of the offense. • Limited access to rehabilitation: No consideration of rehabilitation despite prior offenses.
Case 3	Possession of 0.5 grams of heroin for personal use	<ul style="list-style-type: none"> • 28-year-old female • Single mother • History of drug addiction • Expressed willingness to undergo rehabilitation 	<ul style="list-style-type: none"> • 3 years imprisonment 	<ul style="list-style-type: none"> • Stigma and discrimination: Harsher sentence due to societal stigma associated with female drug users and single mothers. • Limited access to rehabilitation: Limited availability of gender-specific rehabilitation programs.

4. Discussion

This study has delved into the intricate workings of Indonesia's Law No. 35 of 2009 concerning Narcotics, shedding light on the troubling reality of sentencing disparities. The findings paint a stark picture drug users, often grappling with addiction and in dire need of treatment, are frequently subjected to harsher punishments than those who fuel the illicit drug trade. This disparity, a significant departure from the law's intended objectives, raises serious concerns about the effectiveness and fairness of Indonesia's current approach to drug control. The roots of this disparity are multifaceted, stemming from a complex interplay of factors. Ambiguities within the law itself, particularly in the differentiation between users and dealers, create fertile ground for misinterpretation and inconsistent application. The Indonesian legal system, while comprehensive, appears to lack clear and consistent guidelines for differentiating between drug users, who are often victims of addiction themselves, and those engaged in the illicit drug trade at higher levels. This ambiguity in legal interpretation allows for subjective judgments and inconsistencies in sentencing, often to the detriment of those suffering from addiction. The pressure on law enforcement agencies to prioritize convictions, often measured by arrest and conviction rates, can lead to a focus on efficiency rather than nuanced investigations into individual roles and circumstances. This emphasis on securing convictions, while seemingly straightforward, can lead to a problematic approach where the focus shifts from addressing the complexities of drug-related offenses to merely securing a conviction. This can result in drug users, who are often the most vulnerable actors in the drug chain, being swept up in the pursuit of convictions and subjected to disproportionately harsh punishments. This situation is further complicated by the apparent lack of adequate training and resources within law enforcement and judicial systems. The study suggests that many officials lack the necessary training to conduct thorough investigations that would accurately differentiate between users, dealers, and traffickers within the drug

trade. This lack of capacity further contributes to the problem of sentencing disparity, as it hinders the ability to make fully informed decisions regarding prosecution and sentencing. Further exacerbating the problem is the limited access to rehabilitation programs and facilities. Despite the law's recognition of the importance of rehabilitation, the availability of treatment options remains woefully inadequate. While the law acknowledges the importance of rehabilitation for drug users, the study reveals a stark reality where access to such treatment remains limited. This is particularly concerning given that those from marginalized communities often face even greater barriers to accessing the already limited treatment options. This forces judges to choose incarceration even when rehabilitation might be the more appropriate and effective intervention. The lack of access to treatment not only perpetuates the cycle of addiction but also contributes to prison overcrowding, hindering rehabilitation efforts and creating a breeding ground for disease and violence. Societal stigma and discrimination cast a long shadow over the entire system. Drug users, often viewed as criminals rather than individuals in need of help, face prejudice and moral judgment. This deeply ingrained societal stigma against drug users creates a hostile environment where they are often denied the opportunity to be seen as individuals in need of help and support. Instead, they are labeled as criminals, which perpetuates a cycle of marginalization and hinders their chances of recovery and reintegration into society. This can influence judicial decision-making, leading to harsher sentences and a reluctance to consider alternatives to incarceration. The stigma associated with drug use can also hinder reintegration into society upon release, perpetuating cycles of poverty and social exclusion.^{11,12}

The consequences of sentencing disparities extend far beyond the individuals directly affected, creating a ripple effect that impacts various aspects of Indonesian society. Prison overcrowding, fueled by the influx of drug users, strains resources and hinders rehabilitation efforts. The lack of access to treatment

perpetuates the cycle of addiction, leading to high rates of recidivism and further burdening the criminal justice system. Public health is also compromised by the consequences of drug abuse and sentencing disparities. Incarcerated drug users, often lacking access to adequate healthcare, are at increased risk of infectious diseases such as HIV, tuberculosis, and hepatitis C. Upon release, they may spread these diseases within their communities, further burdening public health resources. The social and economic costs of sentencing disparities are equally significant. Imprisonment of drug users, often young people, disrupts families, hinders education and employment opportunities, and perpetuates cycles of poverty. The stigma associated with incarceration can linger long after release, limiting opportunities for reintegration into society and perpetuating cycles of poverty and inequality. The study reveals a strong correlation between the sentencing disparities and the growing problem of prison overcrowding in Indonesia. The data indicates that Indonesian prisons are operating significantly beyond their intended capacity, with drug-related offenses accounting for a substantial portion of the incarcerated population. The cramped and unsanitary conditions in overcrowded prisons create a fertile ground for the spread of infectious diseases, including HIV, tuberculosis, and hepatitis C. Overcrowding exacerbates tensions and leads to increased incidents of violence within prisons, compromising the safety and security of both inmates and prison staff. The limited resources and strained staff in overcrowded prisons make it incredibly challenging to provide adequate rehabilitation programs, further diminishing the chances of successful reintegration for inmates upon release. The costs associated with maintaining overcrowded prisons are substantial, placing a significant financial burden on taxpayers and diverting resources away from potentially more effective interventions. The study highlights the alarmingly high rates of recidivism among drug users in Indonesia, indicating that the current punitive approach fails to address the root causes of addiction. The lack of access to effective

rehabilitation programs both within and outside prisons means that many individuals released from prison are ill-equipped to cope with their addiction, making them more likely to relapse and re-offend. The continuous cycle of arrests, prosecutions, and incarcerations places an immense strain on the entire criminal justice system, diverting resources away from prevention and other critical areas. Recidivism perpetuates the negative social and economic impacts of drug abuse, including family breakdown, unemployment, and poverty. The continuous release of individuals without adequate treatment and support poses a potential threat to public safety, as they may resort to criminal activities to sustain their addiction. The study emphasizes the close link between drug abuse, sentencing disparities, and public health, particularly the spread of infectious diseases. The high prevalence of HIV, tuberculosis, and hepatitis C among incarcerated drug users is a major public health concern, exacerbated by the limited access to testing, treatment, and prevention services within prisons. Individuals released from prison without adequate treatment can spread infectious diseases within their communities, potentially leading to outbreaks and further burdening public health systems. The lack of access to healthcare for drug users, both within and outside the criminal justice system, hinders efforts to control the spread of infectious diseases and address the underlying health issues associated with addiction. The stigma associated with drug use can prevent individuals from seeking help and accessing healthcare services, further exacerbating public health risks. The study underscores the significant social and economic costs associated with sentencing disparities and the over-reliance on incarceration for drug users. Imprisoning individuals, particularly young people, disrupts families, hinders education and employment opportunities, and perpetuates cycles of poverty. The stigma associated with incarceration can linger long after release, creating barriers to re-entry into society and limiting opportunities for individuals to rebuild their lives. The loss of productivity, limited

employment opportunities, and financial burdens associated with incarceration contribute to increased poverty and inequality, particularly among marginalized communities. The disruption of families caused by incarceration can lead to family breakdown, loss of social support, and increased vulnerability for children and other family members. The long-term consequences of incarceration, including limited education and employment opportunities, can hinder social mobility and economic development, perpetuating cycles of disadvantage.¹³⁻¹⁵

Addressing the issue of sentencing disparities is not merely a legal or technical matter, it is a reflection of society's values and its commitment to justice and human rights. It requires a multifaceted approach that tackles the root causes of the problem and promotes a more balanced and humane approach to drug control. Legal reform is essential to clarify the distinction between users and dealers, strengthen rehabilitation provisions, and introduce alternative sentencing options for non-violent drug offenses. The law should be amended to provide clearer criteria for differentiating between users and dealers, ensuring that sentencing is proportionate to the role played in the drug trade. Defining specific quantities of drugs possessed that distinguish personal use from intent to distribute. Mandating judges to consider factors such as the defendant's role in the drug trade, criminal history, and personal circumstances (e.g., addiction, vulnerability) during sentencing. Creating a legal presumption that drug users should be primarily considered for rehabilitation programs unless there are compelling reasons to the contrary. Rehabilitation provisions should be strengthened to prioritize treatment for drug users, ensuring that it is readily available and accessible to all who need it. Allocating more resources to expand the availability of treatment centers and facilities, including community-based programs. Implementing pre-trial and post-conviction diversion programs that offer treatment as an alternative to incarceration for eligible drug users. Establishing standards for rehabilitation programs and ensuring that they are culturally appropriate and

accessible to all, including marginalized groups. Expanding the range of sentencing options, such as community service and fines, for non-violent drug offenses can help reduce prison overcrowding and provide more effective interventions for users. Providing judges with greater discretion to impose alternative sentences for non-violent drug offenses, particularly for first-time offenders and those with a history of addiction. Creating and expanding community service programs, drug treatment courts, and other alternatives to incarceration that focus on rehabilitation and reintegration. Capacity building for law enforcement and judicial officials is crucial to ensure the effective and fair application of the law. Comprehensive training programs are needed to enhance their understanding of the law, its nuances, and its intended objectives. Equipping officials with the skills and knowledge to conduct thorough investigations, gather evidence, and accurately assess the roles of individuals involved in drug-related offenses. Providing education on the nature of addiction, its impact on behavior, and the importance of treatment and rehabilitation. Ensuring that officials understand the legal framework, sentencing guidelines, and available alternatives to incarceration, and that they apply the law consistently and without bias. Emphasizing the importance of upholding human rights and respecting the dignity of all individuals, including those accused of drug-related offenses. Improving data collection and analysis on drug-related offenses can help identify patterns of disparity and inform policy interventions. Track sentencing patterns across different regions and demographics to identify potential disparities and biases. Assess the impact of rehabilitation programs, alternative sentencing options, and other interventions on recidivism rates and other outcomes. Provide evidence-based insights to guide the development of effective and equitable drug policies. Increased investment in rehabilitation programs is essential to provide accessible and effective treatment options for drug users. Increasing the number of rehabilitation centers and facilities, ensuring adequate

staffing and resources. Offering a range of treatment options, including residential and outpatient programs, medication-assisted treatment, and therapy, to address the diverse needs of individuals with substance use disorders. Developing and implementing culturally appropriate treatment programs that consider the specific needs and beliefs of different communities. Linking rehabilitation programs with other essential services, such as housing, employment, and mental health care, to support holistic recovery and reintegration. Supporting reintegration efforts for individuals released from treatment can help reduce recidivism and promote successful reintegration into society. Offering safe and supportive housing options for individuals transitioning back into the community after treatment. Providing job training, vocational rehabilitation, and educational opportunities to help individuals secure employment and rebuild their lives. Working to reduce stigma and discrimination against individuals with a history of drug use, creating opportunities for them to participate fully in society. Addressing the stigma and discrimination associated with drug use is crucial for creating a more just and effective approach to drug control. Launching campaigns to educate the public about the nature of addiction, challenge negative stereotypes about drug users, and promote understanding and compassion. Encouraging the media to adopt a more responsible and balanced approach to reporting on drug-related issues, avoiding sensationalism and focusing on the human impact of addiction. Engaging with communities to promote dialogue and understanding about drug use and addiction, and to support initiatives that reduce stigma and discrimination. Providing education and training to professionals in various sectors, including healthcare, education, and social services, to increase their understanding of addiction and reduce stigma in their respective fields. By implementing these comprehensive strategies, Indonesia can move towards a more just and effective approach to drug control, one that prioritizes rehabilitation, reintegration, and the protection of

human rights. This will not only benefit the individuals directly affected by drug abuse but also contribute to a healthier, safer, and more prosperous society for all.¹⁶⁻¹⁸

International cooperation is essential for combating drug trafficking and addressing the global drug problem. Indonesia should continue to actively participate in international efforts to dismantle drug trafficking networks and disrupt the flow of illicit narcotics. This includes collaborating with other countries on law enforcement operations, intelligence sharing, and mutual legal assistance. Indonesia can also benefit from sharing best practices and learning from the experiences of other countries in addressing drug abuse and sentencing disparities. This includes exploring alternative approaches to drug control, such as decriminalization and harm reduction strategies, which have been adopted by some countries with positive results. Drug trafficking is a transnational crime that requires a coordinated international response. Sharing intelligence and information with regional and international law enforcement agencies to identify and disrupt drug trafficking networks. Participating in joint law enforcement operations with neighboring countries and other key partners to intercept drug shipments and apprehend traffickers. Collaborating with neighboring countries to enhance border security and prevent the flow of illicit drugs into and through Indonesia. Cooperating with other countries in criminal investigations and prosecutions related to drug trafficking, including extradition arrangements. Indonesia can benefit from learning from the experiences of other countries in addressing drug abuse and sentencing disparities. Examining the evidence and outcomes of alternative drug policies, such as decriminalization and harm reduction strategies, which have been adopted in some countries with varying degrees of success. Participating in international forums and conferences to share best practices and learn from the experiences of other countries in implementing effective drug control policies. Collaborating with international organizations, such as the United Nations Office on

Drugs and Crime (UNODC) and the World Health Organization (WHO), to access technical assistance and guidance on drug policy development and implementation. International cooperation is also essential to address the root causes of the global drug problem, including poverty, inequality, and lack of access to education and economic opportunities. Promoting sustainable development initiatives in drug-producing regions to provide alternative livelihoods and reduce reliance on illicit drug cultivation. Implementing policies and programs to reduce poverty and inequality, both domestically and internationally, to decrease vulnerability to drug abuse and trafficking. Supporting international initiatives to raise awareness about the dangers of drug abuse and promote education and prevention programs. Indonesia can play an active role in strengthening international legal frameworks to combat drug trafficking and promote more just and effective drug control policies. Ratifying and fully implementing the United Nations conventions on drug control, incorporating their provisions into domestic legislation. Participating actively in international forums to advocate for reforms to the international drug control system, promoting a more balanced and humane approach that prioritizes human rights and public health. Supporting international initiatives to strengthen cooperation, share information, and develop evidence-based strategies to address the global drug problem. By actively engaging in international cooperation, Indonesia can strengthen its efforts to combat drug trafficking, address the root causes of drug abuse, and promote a more just and effective global approach to drug control. This will not only benefit Indonesia but also contribute to a safer and healthier world for all.^{19,20}

5. Conclusion

This study reveals significant disparities in the sentencing of drug offenders under Indonesia's Law No. 35 of 2009, particularly between drug users and dealers. Despite the law's emphasis on rehabilitation, drug users often receive harsher punishments than

dealers, highlighting a misapplication of the law and a potential over-reliance on incarceration. This disparity stems from a complex interplay of factors, including misinterpretation of legal definitions, a focus on securing convictions, limited access to rehabilitation, and societal stigma against drug users. The consequences of these sentencing disparities are far-reaching, impacting prison overcrowding, recidivism rates, public health, and socio-economic well-being. Overcrowded prisons strain resources and hinder rehabilitation efforts, while the lack of access to treatment perpetuates the cycle of addiction and increases the risk of infectious disease transmission. The social and economic costs of imprisonment, particularly for drug users, disrupt families, hinder education and employment opportunities, and perpetuate cycles of poverty and inequality. Addressing these disparities requires a multifaceted approach. Legal reforms are needed to clarify the distinction between users and dealers, strengthen rehabilitation provisions, and introduce alternative sentencing options for non-violent drug offenses. Capacity building for law enforcement and judicial officials is crucial to ensure the effective and fair application of the law. Increased investment in rehabilitation programs is essential to provide accessible and effective treatment options for drug users, breaking the cycle of addiction and promoting reintegration into society. By implementing these strategies, Indonesia can move towards a more balanced and humane approach to drug control, prioritizing prevention, treatment, and the protection of human rights. This will not only benefit the individuals directly affected by drug abuse but also contribute to a healthier, safer, and more prosperous society for all.

6. References

1. Aliverdinia A, Pridemore WA. A first glimpse at narcotics offenders in an Islamic republic. *Int Crim Justice Rev.* 2007; 17(1): 27–44.

2. Hartley RD. Sentencing reforms and the war on drugs. *J Contemp Crim Justice*. 2008; 24(4): 437–61.
3. Lu H, Liang B. Legal responses to trafficking in narcotics and other narcotic offenses in China. *Int Crim Justice Rev*. 2008; 18(2): 212–28.
4. Liang B, Lu H, Taylor M. Female drug abusers, narcotics offenders, and legal punishment in China. *J Crim Justice*. 2009; 37(2): 133–41.
5. Sudiyanto S, Nurdin B. Ruling of the restorative justice trial in narcotics crime cases law no. 35 of 2009 which has an impact on the increasing of narcotics users receiving restorative justice. In: *Proceedings of the 4th International Conference on Law, Social Sciences, Economics, and Education, ICLSSEE 2024, 25 May 2024, Jakarta, Indonesia*. EAI. 2024.
6. Pridemore WA, Aliverdina A. An overview of the illicit narcotics problem in the Islamic republic of Iran. *Eur J Crime Crim Law Crim Justice*. 2008; 16(2): 155–70.
7. Hadiyanto Y, Gunarto G, Hafidz J. Legal reconstruction of Narcotics Abuser based on the value of benefit. *Sch Int J Law Crime Justice*. 2022; 5(11): 477–82.
8. Susanto G, Rifai E, Maroni M, Siswanto H, Tisnanta HS. Judge's ruling in providing rehabilitation against narcotics abusers for themselves. *Sch Int J Law Crime Justice*. 2023; 6(11): 566–70.
9. Muljan M, Nawawi J. The concept of restorative justice in criminal procedure law through the rehabilitation process: integrated assessment at the National Narcotics Agency of Bone Regency. *Al-Bayyinah*. 2023; 7(2): 190–203.
10. Romdoni M, Abubakar AP, Nurtresna R. Splitsing: As a method for resolving teddy minahasa's narcotics case in criminal justice investigations. *Int J Law Soc Serv*. 2023; 3(2): 67.
11. Ahzan A, Gunarto G, Mashdurohatun A. Legal Reconstruction of the formula of criminal offense to determine the classification of narcotics user and victim based on justice value. *Sch Int J Law Crime Justice*. 2023; 6(03): 165–70.
12. McCabe JE. The narcotics initiative. *Crim Justice Policy Rev*. 2009; 20(2): 170–87.
13. Hartley RD, Armendariz LF. Border justice? Sentencing federal narcotics offenders in southwest border districts: a focus on citizenship status. *J Contemp Crim Justice*. 2011; 27(1): 43–62.
14. Windle J. Afghanistan, narcotics and the international criminal court: From port of Spain to Kabul, via Rome. *Eur J Crime Crim Law Crim Justice*. 2012; 20(3): 297–314.
15. Tillyer R, Hartley RD, Ward JT. Differential treatment of female defendants. *Crim Justice Behav*. 2015; 42(7): 703–21.
16. Wu J, D'Angelo JM. Unwarranted disparity in federal sentencing. *Crim Justice Rev*. 2014; 39(1): 58–80.
17. Nowacki JS. An intersectional approach to race/ethnicity, sex, and age disparity in federal sentencing outcomes: An examination of policy across time periods. *Criminol Crim Justice*. 2017; 17(1): 97–116.
18. Nowacki JS. Federal Sentencing Guidelines and United States v. Booker: Social context and sentencing disparity. *Crim Justice Policy Rev*. 2018; 29(1): 45–66.
19. Crow MS, Goulette N. Judicial diversity and sentencing disparity across U.S. District Courts. *J Crim Justice*. 2022; 82(101973): 101973.
20. Holmes B, Ruhland E. The non-constant effect of defendant sex across criminal history: How and when does criminal history condition sex disparity at sentencing? *Women Crim Justice*. 2023; 1–2.