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Juridical Disparity in the Qualification of Abusers, Addicts, and Victims of Narcotics Abuse: From Articles 111/112 and Article 127 of the Narcotics Law toward Article 609 of the Criminal Code

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ABSTRACT
This study examines the juridical disparity arising from the qualification of narcotics addicts and victims of narcotics abuse in relation to Article 127 and Articles 111 and 112 of Law Number 35 of 2009 on Narcotics. The central issue concerns the factual overlap between possession or control of narcotics and possession inherently associated with personal consumption. This normative legal research employs statutory, conceptual, and limited case approaches by examining legislation, judicial guidelines, legal doctrines, and relevant academic literature. The study finds that physical possession alone cannot provide an adequate basis for distinguishing narcotics offenders from personal users. Legal qualification should consider the purpose of possession, quantity and form of evidence, indications of distribution, evidence of personal consumption, dependency assessment, and circumstances establishing victim status. Disparity may arise from differences in charging practices, evidentiary assessment, and access to rehabilitation mechanisms. The legal changes effective on 2 January 2026 repeal Article 112 of the Narcotics Law and reconfigure the regulation of narcotics possession through Article 609 of the national Criminal Code. Nevertheless, the underlying differentiation between personal users and actors involved in narcotics circulation remains a significant issue requiring clearer statutory parameters and consistent judicial interpretation.

INTRODUCTION

Law Number 35 of 2009 on Narcotics establishes a legal policy with a dual orientation simultaneously. The first orientation is directed at eradicating illicit trafficking through strict criminalization of the acts of planting, possessing, storing, controlling, providing, producing, or trading narcotics. The second orientation is directed at saving abusers and addicts through medical rehabilitation and social rehabilitation. This duality is already evident in the objectives of the law, which encompass the eradication of illicit trafficking as well as the guarantee of rehabilitation arrangements for abusers and addicts (Utami, 2025). Juridical problems arise when a single series of factual acts can fall into these two regulatory patterns. A user almost always has to possess or control narcotics before consuming them, whereas possession and control are elements that have been placed from the outset as distinct criminal acts. Resnawardhani (2019) views the intersection between Article 112 and Article 127 as a source of uncertainty because the formulations of both open up room for differing interpretations.

The issue became sharper with regard to Group I Narcotics. Article 111 constructs criminal offenses against narcotics in plant form through the acts of planting, maintaining, possessing, storing, controlling, or providing. Article 112 uses a similar structure for non-plant Group I Narcotics, while Article 127 paragraph (1) letter a regulates the abuse of Group I Narcotics for oneself with a maximum penalty of four years. Factually, the act of using narcotics for oneself is difficult to detach from a prior form of control. This intersection causes the difference in qualification to no longer be a terminological matter, but rather to determine a vastly different

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sentencing system. Articles 111 and 112 in the initial formulation of the Narcotics Law contain a special minimum threat of four years along with heavy fines, whereas Article 127 opens a direct relationship with Article 54, Article 55, and Article 103 as well as the possibility of rehabilitation. Such differences make the selection of offense qualification a decisive stage for the legal treatment of offenders (Hariyawan & Purwani, 2025).

The terminology used by the Narcotics Law also generates the need for careful differentiation. "Abuser," "Narcotics Addict," and "Victim of Narcotics Abuse" cannot be treated as identical terms. An addict contains the element of use or abuse accompanied by a state of dependency, whereas an abuser refers to a person who uses narcotics without right or against the law. A victim of abuse acquires a special position because the use of narcotics relates to circumstances where the person is persuaded, deceived, tricked, forced, or threatened to use them. Article 127 paragraph (2) obliges judges to pay attention to Article 54, Article 55, and Article 103, while paragraph (3) connects the status of the victim with the obligation of medical and social rehabilitation. The formulation of Article 127 shows that the law itself desires an individual assessment of the user's position, rather than an automatic equalization between every person who physically controls narcotics and perpetrators of illicit trafficking (Susanto et al., 2023).

The disparity arising from this structure has a broader dimension than the difference in the length of imprisonment. The first difference occurs at the stage of offense qualification, namely whether narcotics control is positioned as a possession offense or as an inherent part of personal use. The next difference occurs in the indictment letter, proof of evidence, assessment of trial facts, down to the choice between imprisonment and rehabilitation (Taufik et al., 2025). Romdoni and Fitriasih (2022), through an examination of narcotics cases at the Tangerang District Court, found the existence of disparity in cases involving Article 112, Article 114, and Article 127, and showed that overlapping formulations provide considerable room for differences in legal application. In the perspective of criminal law, such a situation is directly related to the principle of material legality, certainty of offense qualification, sentencing proportionality, and equal treatment of offenders with comparable characteristics of acts.

Legal developments since January 2, 2026, provide a new dimension to this issue. Law Number 1 of 2023 concerning the Criminal Code came into effect on that date, while Law Number 1 of 2026 concerning the Adjustment of Penalties makes adjustments to a number of criminal provisions, including the relationship between the Criminal Code and the Narcotics Law. In the legal configuration applicable since January 2, 2026, Article 112 of Law Number 35 of 2009 is among the provisions repealed, while Article 111 remains in force. The acts of possessing, storing, controlling, or providing narcotics, which were previously one of the regulatory centers of Article 112, are also regulated in Article 609 of the national Criminal Code as adjusted. The study on the intersection of Article 112 with Article 127 remains relevant to explain the historical and dogmatic sources of qualification disparity, but the analysis of positive law after January 2, 2026 must be placed within a new configuration involving Article 609 of the Criminal Code, Article 111, and Article 127 of the Narcotics Law.

Existing literature generally moves along several paths: uncertainty between Article 112 and Article 127, the problem of abuser rehabilitation, and sentence disparity in narcotics cases. These three paths have explained a number of normative weaknesses, but the relationship between the status of abusers, addicts, and victims of abuse and the construction of narcotics control in Article 111 and Article 112 still requires sharpening. This issue becomes increasingly relevant following the criminal law reform in 2026 because the lack of uniformity in qualifications that previously arose between Article 112 and Article 127 does not automatically disappear

merely due to a change in the number and position of the norm. The fundamental question remains the same, namely whether possession or control should be read formally through the presence of goods in a person's power or must be linked to the purpose, sequence of acts, quantity, circumstances of use, evidence of dependency, and the presence or absence of distribution indications.

This study aims to establish a dogmatic boundary between narcotics control as a standalone offense and control as an inherent part of abuse for oneself, as well as to formulate its juridical consequences on the determination of the status of addicts and victims of abuse. Two problem formulations are proposed. First, how is the juridical construction and differentiation boundary between the qualifications of abusers, addicts, or victims of abuse according to Article 127 and the acts of possessing, storing, or controlling narcotics according to Article 111 and Article 112 of Law Number 35 of 2009? Second, what are the implications of the disparity in the application of Article 127 and Article 111/112 on legal certainty, sentencing justice, and the fulfillment of the right to rehabilitation, and what is the proper construction of legal interpretation that should be used to reduce such disparity?

METHOD

This research is normative legal research that positions law as a system of norms constructed through laws and regulations, legal principles, doctrines, court decisions, and judicial guidelines. Soekanto and Mamudji (2011) place normative legal research on the examination of library materials and legal materials as the basis for forming juridical arguments. Marzuki (2017) explains that legal research is directed at finding rules, principles, and doctrines that can answer the legal issues raised. Based on the character of the problem, the approaches used include the statutory approach and the conceptual approach. Primary legal materials include Law Number 35 of 2009, Law Number 1 of 2023, Law Number 1 of 2026, and relevant Supreme Court Circular Letters (SEMA). Secondary legal materials consist of journal articles and books discussing narcotics, abusers, rehabilitation, sentencing disparity, criminal law interpretation, and legal research.

The search for materials was conducted by selecting sources that have a direct relationship with the elements of Article 111, Article 112, Article 127, the status of addicts and victims of abuse, and the principles of rehabilitation. Ibrahim (2006) places logical consistency and inter-norm connectivity as a fundamental part of normative legal research. The analysis was carried out by inventorying norm formulations, comparing offense elements, examining the relationship between general norms and more specific norms, and reading the legislator's intent through the overall structure of the Narcotics Law. Literature that merely repeats the text of regulations without legal argumentation was not placed as the primary basis. The selected materials were then synthesized through grammatical, systematic, teleological, and conceptual interpretations. The legal changes in 2026 are positioned as a development of positive law that affects the status of Article 112, without eliminating the doctrinal utility of the application practice of these articles to assess the source of disparity which constitutes the object of research.

RESULTS AND DISCUSSION

Mapping of Previous Literature: Normative Ambiguity, Sentencing Disparity, and the Trajectory of Narcotics Law Reform

Studies on the law enforcement of narcotics crimes in Indonesia consistently highlight the root cause originating from overlapping norms and weaknesses in the formulation of articles within Law Number 35 of 2009 on Narcotics. Parulian (2021) asserts that the multi-

interpretation in the formulation of Article 111, Article 112, and Article 127 paragraph (1) letter a creates legal vulnerabilities that are often exploited by dealers to camouflage as victims, or conversely, to ensnare pure abusers with possession qualifications. Similar ambiguity is underlined by Aneta et al. (2024), who found constructive overlapping between Article 112 and Article 127 that triggers a variety of interpretations among practitioners and academics in fulfilling the proof of evidence and the judge's conviction. The practical impact of this normative flexibility is confirmed by Romdoni and Fitriasih (2022) through a study of 20 decisions at the Tangerang District Court, which proves that mutually overlapping legal substance provides broad discretion for judges to choose articles subjectively, exacerbated by the orientation of law enforcement officers which remains dominated by a retributive paradigm and the deterrent effect of imprisonment.

This normative incoherence is further complicated by internal contradictions regarding medical and social rehabilitation mechanisms for abusers. Utami (2025) reveals a normative conflict between the rehabilitation obligation in Article 54 of the Narcotics Law and the discretionary authority of judges based on Article 103, which is worsened by the use of the clause "judges must pay attention to" in Article 127 paragraph (3). Due to the vagueness of such phrase, judicial practice tends to sideline rehabilitation and continues to impose criminal imprisonment sanctions on abusers. The vulnerability of judicial discretion in the application of these criminal articles even has the potential to trigger fatal errors in the imposition of sanctions, as analyzed by Silitonga et al. (2021) in Decision No. 241/Pid.Sus/2019/PN.Tjb, where the panel of judges imposed a death sentence under the subsidiary indictment of Article 112 paragraph (2) which explicitly does not contain the threat of the death penalty as a form of legal application error resulting in a decision being null and void by law based on Article 197 of the Criminal Procedure Code.

Aside from article ambiguity, the lack of clarity regarding the threshold of narcotics possession evidence becomes a crucial factor perpetuating sentencing disparity. Budiawan et al. (2025) emphasize that the absence of strict possession guidelines in the Supreme Court Circular Letter (SEMA) No. 4 of 2010 causes judges to struggle in determining the boundary between personal consumption and distribution, so that legal considerations are often distorted by subjective interpretations when evidence exceeds average usage. This inequality is also reflected in vertical sentencing disparity across judicial levels, as studied by Putra (2026). In the sequence of Decision No. 217/Pid.Sus/2024/PN KTB up to Supreme Court Decision No. 5281 K/Pid.Sus/2025, there is a shift in offense qualification from dealer (Article 114) to abuser (Article 127) considering that the defendant has never been convicted; nevertheless, this correction of legal qualification at the cassation level is still not accompanied by the imposition of rehabilitation sanctions which constitute the mandate of remedial law.

The procedural dimension in determining the defendant's status through the Integrated Assessment Team (TAT) is also a crucial point influencing judicial decision disparity. Risman et al. (2026) found that the difference in imposing sanctions between imprisonment and rehabilitation for violations of Article 127 paragraph (1) letter a heavily depends on the availability of TAT assessment files, wherein the authors advocate for the implementation of a double track system based on the defendant's right to medical recovery. In line with this, Mayangsari et al. (2026) identified five main factors influencing judge considerations ranging from juridical, medical-psychological, social, behavioral patterns, to procedural factors, while simultaneously uncovering significant obstacles in the form of operational standard variations, assessment time limitations, and inconsistencies in judicial considerations that acknowledge the abuser's status yet still impose imprisonment sentences.

The juridical challenges regarding the qualification of narcotics crimes are predicted to continue in the era of criminal law reform through the Penalty Adjustment Law and the New Criminal Code. Alfarisi et al. (2026) criticize the formulation of Article 609, which still maintains the offense of "controlling" without clear interpretative limits, thereby potentially re-equalizing abusers with dealers. The study records the empirical fact that 92.3% of abusers end up in prison, triggering an overcrowding crisis, while the absence of minimum criminal limits potentially triggers sentencing disparities of up to 63.6%. Therefore, a procedural reconstruction is required in the form of a three-phase screening based on an integrated assessment and the institutionalization of sentencing guidelines (sentencing grid) to guarantee proportional justice for abusers.

On the other hand, the shift in the national sentencing paradigm toward restorative justice provides enlightenment for future narcotics law reform. Yaqin et al. (2026) analyze that Law Number 1 of 2023 concerning the National Criminal Code shifts the paradigm from retributive to corrective, rehabilitative, and restorative as regulated in Article 51 letter c, Article 52, and Article 54 paragraph (1) letter j. Within this framework of the National Criminal Code, the recommendations of the Integrated Assessment Team (TAT) serve as a scientific and juridical basis for law enforcement officers to execute diversion or discontinue prosecution toward rehabilitation measures. This comprehensive mapping of previous literature serves as the argumentative foundation that strengthens the position of this study in analyzing the juridical qualifications of abusers, addicts, and victims of abuse from the Narcotics Law regime towards Article 609 of the Criminal Code.

Juridical Construction and Boundaries of Differentiation between Narcotics Control and Personal Abuse

Articles 111 and 112 are constructed upon physical or juridical control over the object of narcotics, whereas Article 127 is built upon the purpose of use, namely the use of narcotics "for oneself." This structural difference is a decisive starting point. The offense of control makes the relationship between the perpetrator and the goods the center of the formulation, while the offense of abuse requires a relationship between narcotics and personal use. Difficulties arise because personal use almost always requires a stage when narcotics are owned, stored, or controlled by the user (Dudy et al., 2025). Aneta et al. (2024) assess that Article 112 and Article 127 have overlapping areas of application, thereby triggering issues of legal certainty. This intersection asserts that the interpretation of the elements of "possessing, storing, controlling, or providing" should not be detached from the overall facts explaining the purpose of the existence of narcotics in a person's power.

Articles 111 and 112 are essentially differentiated by the form of the object. Article 111 is directed at Group I Narcotics in plant form, while Article 112 in the construction of Law 35/2009 prior to the 2026 amendment is directed at non-plant Group I Narcotics. Both use the phrase "without right or against the law" as well as a series of verbs describing the relationship of control. The legislators did not include the purpose of distribution as an explicit element in both articles. Grammatically, this condition allows law enforcement officers to include users into the control offense once narcotics are found in their power. Such a purely grammatical reading becomes problematic when dealing with Article 127 because the use of narcotics for oneself logically includes the stage of control. If every control always absorbs the act of use, Article 127 loses most of its operational space. The law must be read as a system, not as a collection of standalone articles (Yanto et al., 2023).

Article 127 precisely provides a differentiating element not found in the control offense, namely the orientation "for oneself." This element directs examination toward the purpose of

using the goods and the position of the perpetrator within the narcotics distribution chain. The absence of evidence of selling, offering, acting as an intermediary, handing over, or distributing is significant for testing this orientation, although the absence of distribution evidence is not automatically sufficient to designate someone as an abuser (Manuputty & Taufik, 2024). Hariyawan and Purwani (2025) position the reformulation of the relationship between Article 112 and Article 127 as a necessity to strengthen legal certainty. Dogmatically, the relevant question is not whether narcotics were ever in the perpetrator's control, as such a condition is commonly found in users, but rather for what purpose the control was carried out and whether supporting facts indicate personal use or involvement in the distribution chain.

This relationship is not appropriately resolved solely by declaring Article 127 as a lex specialis of all forms of Article 111 or Article 112. The principle of lex specialis derogat legi generali assumes a sufficiently clear relationship between a general norm and a specific norm, while the elements of each article are not entirely identical. Articles 111 and 112 do not require use, whereas Article 127 is not formulated with the elements of possessing or storing. A more accurate relation is the existence of factual entanglement and the possibility of qualification concurrence that must be resolved through the purpose of control, the character of the evidence, the circumstances of arrest, the results of use examination, and the sequence of acts. A systematic interpretation of Article 4, Article 54, Article 103, and Article 127 shows that the Narcotics Law distinguishes policies toward distribution networks from policies toward abusers and addicts.

The qualification of "abuser" serves as the initial gateway, whereas "addict" contains an additional characteristic in the form of dependency. This distinction carries legal consequences. An abuser is not always in a state of dependency, while an addict conceptually possesses a relationship between narcotics use and a state of physical or psychological dependency. Therefore, the status of an addict requires richer proof than the finding of narcotics. Medical examinations, history of use, patterns of dependency, and assessment are relevant to determine such a condition. The determination of an addict's status cannot be replaced solely by the amount of evidence, because the weight describes the quantity of the goods and not a person's clinical condition. From the perspective of the law of evidence, quantity can function as an indicative fact that must be assessed together with other evidence. The separation between legal status and the condition of dependency also prevents the use of the term "addict" as an automatic label for all defendants who admit to having used narcotics (Jones, 2020).

The qualification of a victim of abuse possesses an even more specific character. The standing as a victim requires circumstances explaining that the use occurred due to persuasion, deception, coercion, threats, or similar conditions as recognized in the elucidation of the Narcotics Law. Acknowledgment as a user is not yet sufficient to yield the qualification of a victim. There must be a basis of proof capable of explaining the mechanism of someone entering into narcotics use without adequate free will. Article 127 paragraph (3) provides a very strong consequence because when an abuser can be proven as a victim of abuse, they are obliged to undergo medical and social rehabilitation. Such a norm demonstrates that the use of the term victim functions normatively and cannot be interchanged with the term ordinary user (Marsono et al., 2023). Thoroughness at the qualification stage is highly decisive because such status alters the orientation of the legal response from imprisonment toward recovery.

Supreme Court Circular Letter (SEMA) Number 4 of 2010 introduces judicial parameters for placing abusers, victims of abuse, and addicts into rehabilitation institutions. The Supreme Court to date records that this circular letter remains in effect. One widely known parameter is the quantity of evidence for one day of consumption, for example, methamphetamine or crystal meth up to 1 gram and marijuana up to 5 grams. Such parameters must be read as judicial

indicators, not as new elements replacing the law. Evidence below the threshold does not automatically make someone an abuser, and evidence above the threshold does not automatically eliminate the possibility of personal use. Quantity must be linked to evidence of use, the method of acquiring the goods, instruments of consumption, communication, parcel division, money flow, and signs of involvement in distribution (Hasanah & Sutrisno, 2025).

Assessment acquires a significant position to differentiate between users, addicts, victims, and distribution perpetrators. The function of assessment should not be understood as an administrative mechanism standing outside the evidentiary process. Medical assessment explains the condition of use and dependency, whereas legal evaluation can help identify the perpetrator's relationship with the distribution network. The primary value of assessment lies in its ability to provide a more objective basis than mere defendant admissions or intuitive evaluations by law enforcement. Nonetheless, assessment results do not take over the judge's authority to evaluate the entirety of evidence. Judges must still connect such results with trial facts (Harisa et al., 2025). Such a model maintains a balance between the needs of medical expertise and the principle of judicial independence, as well as prevents the status of an addict or victim from depending mechanically on a single type of document.

The most rational boundary between Article 127 and Article 111/112 can be built through testing the dominant purpose of control. When control factually is a stage directly related to personal use, there are no distribution indicators, the goods are in an amount consistent with consumption, and evidence of use supports a personal relationship with narcotics, the application of the paradigm of Article 127 acquires a stronger basis. Conversely, when goods are packaged in multiple parcels, distribution tools, transaction notes, commercial communications, payment flows, or facts of handover to other parties are found, control acquires a character that transcends personal use. Such testing does not alter the elements of the article, but rather provides an argumentative structure to determine the norm most appropriate to the concrete act. This approach avoids the logical fallacy of concluding the status of a dealer solely from the fact that a user possesses narcotics.

Legal changes in 2026 show that the dogmatic problem regarding narcotics control and personal use has not lost its relevance. Since the entry into force of the National Criminal Code and Law Number 1 of 2026 concerning the Adjustment of Penalties on January 2, 2026, the positive legal configuration regarding narcotics control crimes has undergone changes. Article 112 of Law Number 35 of 2009 is among the provisions repealed, while Article 111 remains in force. At the same time, Article 609 of the Criminal Code regulates acts without right or against the law in the form of possessing, storing, controlling, or providing narcotics as stipulated in the formulation of the article. Thus, the issues that previously arose in the intersection of Article 112 and Article 127 do not automatically end, but must be reread through the relationship between Article 609 of the Criminal Code and the provisions of the Narcotics Law that are still in force, including Article 111 and Article 127. The experience of applying Article 112 prior to 2026 still holds analytical value to identify the potential recurrence of qualification issues between narcotics control and personal use in the new legal configuration (Arofa & Ramadan, 2025).

The interpretation of the element of "controlling" must be carried out carefully while adhering to the offense formulation and the overall facts of the case. Articles 111 and 112 in the configuration of the Narcotics Law prior to the 2026 amendment did not require the purpose of distribution as an element of the offense. Therefore, both articles are inappropriately identified solely as dealer offenses. The juridical issue arises precisely because a user for oneself can factually first possess or control narcotics before consuming them. In such circumstances, the purpose of control, the quantity and form of evidence, evidence of use, consumption tools, storage

patterns, communication, transactions, and other facts showing or negating involvement in distribution become relevant to determine the most appropriate legal qualification. Systematic interpretation is necessary so that the application of the control element does not eliminate the normative space of Article 127 while simultaneously preventing claims of personal use from serving as an automatic excuse to negate liability based on control offenses whose elements are proven.

The boundary between Article 127 and Article 111/112 cannot be determined solely through the presence of narcotics in someone's control. Differentiation must be built upon the purpose of control, connectivity with personal use, the presence or absence of distribution indicators, the quantity of goods, the results of use examination, the condition of dependency, and facts showing the status as a victim. Addicts and victims of abuse are qualifications that require their own evidentiary basis and are not identical to ordinary abusers. Supreme Court Circular Letter (SEMA) Number 4 of 2010 can function as an indicator guideline, but must not replace statutory elements. This differentiation framework serves as the foundation to assess the next issue, namely how misqualifications from investigation to judgment trigger sentencing disparities and limit the realization of rehabilitation.

Implications of Qualification Disparity for Legal Certainty, Sentencing Justice, and Rehabilitation

Disparity in narcotics cases can be distinguished between acceptable disparity and disparity originating from the non-uniformity of norm application. Differences in penalties arising from the personal character of the offender, the severity of the act, recidivism, the amount of narcotics, and individual circumstances are consequences of the individualization of sentencing. The issue arises when cases with comparable factual structures receive different article qualifications without adequate legal reasons. In such circumstances, disparity moves from the realm of legitimate discretion to the issue of certainty and equality before the law. When one user is ensnared under Article 127 and obtains rehabilitation, while another user with similar circumstances is placed under Article 111 or Article 112 and faces severe imprisonment, such a difference must be explained through relevant legal facts (Laksana et al., 2025). Without transparent parameters, the choice of articles risks replacing substantive assessments of the act.

The indictment letter holds a strategic role because it determines the juridical boundaries of examination and sentencing by the court. The issue arises when the public prosecutor charges Article 111 or Article 112 without including Article 127, whereas facts revealed at trial show that the narcotics were used for the defendant's own self and the amount of evidence was relatively small. The formulation of the Criminal Chamber in Supreme Court Circular Letter (SEMA) Number 3 of 2015 provides guidelines for such situations by still placing the decision within the limits of the charged article, but opening the possibility of imposing penalties below the special minimum based on adequate legal considerations. Guidelines regarding narcotics cases with such characteristics subsequently obtained further affirmation through SEMA Number 1 of 2017. The existence of such guidelines demonstrates the Supreme Court's effort to overcome the tension between the principle that judges decide based on the indictment letter and the need to impose penalties proportional to the facts of narcotics use proven at trial (Zulkarnain et al., 2025).

The special minimum deviation mechanism is a pragmatic correction, but it does not fully resolve the qualification problem. If the defendant is substantively an abuser, while the decision formally still states a control offense, there is a gap between the juridical qualification and the character of the act. The outlet through sentencing below the minimum can reduce the severity of the sanction, but the offender's legal status remains under an article originally designed for specific control patterns. Dahlan (2017) has demonstrated the need for shared perception in

applying the law toward narcotics abusers for personal use and highlighted the consequences of misalignment between normative formulations and law enforcement practices. This condition implies that improvement should begin from case classification, rather than waiting for correction at the final stage through sentencing discretion (Johari, 2025).

The aspect of sentencing justice demands a comparison between the level of culpability, the harm of the act, and the type of state response. Perpetrators who distribute narcotics generate different social risks from individuals who use narcotics for themselves and experience dependency (Mujito et al., 2023). Equating the two solely based on the fact of control can result in an imbalance between culpability and sanctions (Dahlan et al., 2025). Hafrida (2016) develops criminal law policy arguments that view narcotics users as parties requiring a recovery approach and finds the dominance of imprisonment in the practice she studied. Such findings are empirical to a specific region and period, and thus cannot be generalized as the current national situation. Their theoretical value remains relevant because it demonstrates the conflict between the punitive paradigm and the rehabilitative paradigm normatively already available within the Narcotics Law.

Rehabilitation must be positioned as a legal consequence related to qualifications and requirements determined by the Narcotics Law, rather than as a form of leniency granted solely based on discretion. Article 54 obliges Narcotics Addicts and Victims of Narcotics Abuse to undergo medical and social rehabilitation. In cases of abuse for oneself, Article 127 paragraph (2) obliges judges to pay attention to the provisions of Article 54, Article 55, and Article 103, while Article 127 paragraph (3) determines that abusers who can be proven or are proven as victims of abuse are obliged to undergo medical and social rehabilitation. Such construction shows that the status of abusers, addicts, and victims of abuse does not have entirely identical legal consequences. The determination of status must be based on adequate facts and proof (Febriana et al., 2025). The absence of a relevant assessment, the failure to trace the history of use and dependency, or the construction of cases oriented solely toward the control of goods can cause facts relevant to rehabilitation not to obtain adequate assessment.

Legal certainty in narcotics cases is not identical to the literal application of articles with the heaviest threats. Certainty actually requires consistency of methods when authorities choose norms. Testable parameters must be applied from the investigation stage: the quantity and form of goods, storage methods, consumption tools, biological examination results, dependency history, transaction evidence, communication, parcel division, money flow, relationships with suppliers, and the purpose of control. Such parameters must then be reassessed by public prosecutors when formulating the indictment. If personal consumption indicators are dominant and distribution indicators are inadequate, Article 127 needs to acquire a real position in the formulation of the indictment. The use of alternative or subsidiary indictments can reduce the risk of judges getting trapped in a qualification that is too narrow (Triadi et al., 2026). This mechanism maintains prosecution rights while giving judicial space for courts to adjust decisions to trial facts.

Supreme Court Circular Letter (SEMA) Number 1 of 2017 strengthens guidelines for applying law in narcotics cases when the indictment construction is not fully aligned with the facts of use revealed at trial. Such guidelines must be understood in their relationship with SEMA Number 3 of 2015 and the principle that judges fundamentally render decisions based on the criminal offenses charged (Laia & Laia, 2025). The possibility of imposing sentences below the special minimum threat functions as a corrective instrument against sentencing imbalances in certain circumstances, yet it does not alter the offense elements nor grant authority to judges to render decisions based on uncharged articles. The drafting of the indictment letter from the

outset must still carefully consider the facts of personal use if investigative evidence indicates the possibility of applying Article 127.

The development of the Criminal Chamber's Formulations shows the Supreme Court's effort to maintain sentencing consistency in narcotics cases. SEMA Number 3 of 2023 again refers to parameters built through SEMA Number 4 of 2010, SEMA Number 3 of 2015, and SEMA Number 1 of 2017 under certain circumstances, including when defendants are charged under Article 114 paragraph (1) of the Narcotics Law and the character of the evidence fulfills the parameters determined in those guidelines. Under circumstances fulfilling such requirements, judges acquire space to deviate from the special minimum criminal threat according to the Supreme Court guidelines (Herman et al., 2025). The existence of such chamber formulations is important for the consistency of judicial practice, but its position as judicial guidelines does not replace statutory norms. Long-term resolution to the intersection between narcotics control and personal use still requires clearer differentiation at the primary norm level (Prabowo et al, 2024).

The legal system since January 2, 2026, provides a new configuration for the sentencing of narcotics crimes. Law Number 1 of 2026 concerning the Penalty Adjustment makes adjustments to narcotics criminal provisions in the Criminal Code while rearranging the relationship between these provisions and a number of articles in the Narcotics Law. Such changes have implications for the structure of criminal threats and the scope of sentence individualization in narcotics cases. Nonetheless, changes to the sanction structure do not automatically resolve the fundamental issue regarding the qualification between narcotics control and the use of narcotics for oneself (Ikawati et al., 2025). Such issues still depend on the accuracy of assessing the purpose of control, the character of the evidence, evidence of use, the condition of dependency, and the presence or absence of indicators of involvement in narcotics distribution.

The interpretation construction that should be used can be formulated in three layers. The first layer is grammatical interpretation to determine the basic elements of each offense. The second layer is systematic interpretation that connects the norm of control with Article 4, Article 54, Article 103, and Article 127 so that the goal of rehabilitation is not eliminated by the literal use of possession offenses. The third layer is teleological layer to assess the type of harm intended to be prevented by each norm. Control for personal consumption has a character distinct from control within the distribution chain. These three layers must be carried out through evidence, rather than assumptions about the defendant's profile. The weight of evidence, use test results, dependency assessment, transaction evidence, and control structure must be positioned as mutually reinforcing or contradicting facts (O'Reilly et al., 2022).

The principle of in dubio pro reo can have meaning at the final stage when, after a thorough examination, there is still rational doubt regarding a heavier qualification. Such a principle does not mean that every person with a small amount of evidence must be placed as a user, nor can it be used to eliminate offense elements that have been legally proven (Matis, 2025). Its function is to prevent unresolved doubts from being used to choose a more burdensome criminal construction without an adequate evidentiary basis. Along with the principles of proportionality and sentence individualization, this principle can ensure that control qualifications are not used as a shortcut when the purpose of control has not been explained. At the same time, protection for abusers must not turn into a loophole for dealers to disguise distribution activities as personal use. Assessments must remain based on objective evidence and logical relationships between pieces of evidence.

Future legal reformulation should clarify the relationship between control offenses and abuse. The control norm needs to have boundaries capable of avoiding automatic absorption of users for oneself. One possibility is to provide an exception clause or explicit explanation that

control which is a direct part of use for oneself is assessed according to the abuse system as long as there are no distribution indicators (Pakpahan et al., 2024). Regulations also need to clarify the status of assessments, user parameters, legal consequences of addict status, and evidentiary measures for victims of abuse. Such changes will provide uniform guidelines to investigators, public prosecutors, and judges without diminishing the state's ability to crack down on narcotics distribution networks. The new framework also needs to be harmonized with Article 609 of the Criminal Code and the Penalty Adjustment Law so that old issues between Article 112 and Article 127 do not reemerge in different nomenclature. Disparities in the application of Article 127 and Article 111/112 have a direct impact on legal certainty, sentencing proportionality, and access to rehabilitation. The source of disparity lies in the factual overlap between control elements and use, charging choices, variations in evidence assessment, and inequalities in utilizing assessments and judicial guidelines. The most consistent construction is to test the purpose of control through overall evidence, strictly separate personal users from parties playing a role in distribution, and treat the status of addicts and victims as qualifications that must be built through separate proof. The 2026 legal change alters the position of Article 112 and introduces Article 609 of the Criminal Code, but substantive issues regarding the differentiation of narcotics users and controllers still require more precise normative arrangement.

CONCLUSION

The relationship between Article 127 and Article 111 and Article 112 of Law Number 35 of 2009 demonstrates a factual intersection between narcotics control and the use of narcotics for oneself. In the legal configuration prior to January 2, 2026, this intersection triggered qualification issues because personal use can factually be preceded by the act of possessing, storing, or controlling narcotics. Juridical differentiation must therefore consider the purpose of control, the character and quantity of evidence, evidence of use, the condition of dependency, as well as facts indicating the presence or absence of involvement in distribution and circumstances supporting the qualification as a victim of abuse. Since January 2, 2026, this configuration has changed with the repeal of Article 112 of the Narcotics Law and the entry into force of the regulation on narcotics control in Article 609 of the Criminal Code as adjusted. Such a normative change does not eliminate the substantive issue regarding the boundary between narcotics control and use for oneself, so that differentiation parameters remain necessary in the application of the new law.

The relationship among narcotics offenses must be read through the unity of the sentencing system, not based on isolated element matching. Physical control does not always depict the same quality of culpability, so that the purpose of control must acquire a stronger position in legal argument. Investigators and public prosecutors require shared parameters to assess abusers, addicts, victims, and distribution perpetrators before determining the articles. Courts also require transparent considerations regarding the reasons for accepting or rejecting the qualification of personal use, so that decision differences can be traced through actual differences in facts rather than through inexplicable differences in approaches.

REFERENSI

Afrizal, R., Kurniawan, I., & Frimer, T. (2023). Rehabilitasi medis terhadap terdakwa penyalahgunaan narkotika dalam perspektif dakwaan dan tuntutan penuntut umum. *Unes Journal of Swara Justisia, 7*(2), 806. https://doi.org/10.31933/ujsj.v7i2.382

Alfarisi, S., Khaliq, A., Nubli, A., Hasbas, M., & Ahmadi, A. (2026). Problematika Pasal 609 Undang-Undang Penyesuaian Pidana terhadap penyalahguna narkotika di Indonesia. *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum, 5*(3), 1153–1166.

Aneta, F., Zulfiko, R., & Adriaman, M. (2024). Tinjauan yuridis dan kepastian hukum antara Pasal 112 dan Pasal 127 UU Nomor 35 Tahun 2009 tentang Narkotika. *Sumbang12 Law Journal, 3*(1), 30–41.

Arofa, E., & Ramadan, T. A. (2025). Implications of the new Criminal Code on the Narcotics Law: An analysis of reformulation needs. https://doi.org/10.64317/jlr.v1i2.26

Budiawan, S. V., Mulyadi, M., & Yunara, E. (2025). Analisis yuridis disparitas pidana terhadap putusan pengadilan penyalah guna narkotika kaitannya dengan barang bukti melebihi penyalah guna. *Jurnal Rectum, 7*(1), 45–63.

Dahlan. (2017). Penerapan pidana terhadap penyalah guna narkotika untuk dirinya sendiri. *Jurnal Pembaharuan Hukum, 4*(1), 15–23.

Dahlan, D., Ahmed, Z., & Saraya, S. (2025). The concept of criminal justice for drug abuse: A legal approach. *Jurnal Hukum, 41*(1). https://doi.org/10.26532/jh.v41i1.43965

Dudy, A. A., Ashady, S., & Ahwan, A. (2025). Perlindungan hukum terhadap penguasaan narkotika tanpa sadar dalam perspektif hukum pidana Indonesia. *Ijtihad, 19*(2). https://doi.org/10.21111/ijtihad.v19i2.15348

Febriana, M., Mamangkey, J. Y. S., & Albar, M. H. Y. (2025). Legal efforts for rehabilitation of narcotics crimes against narcotics addicts in Indonesia. *Journal of Law, Politics and Humanities, 5*(6), 4282–4293. https://doi.org/10.38035/jlph.v5i6.2113

Hafrida. (2016). Kebijakan hukum pidana terhadap pengguna narkotika sebagai korban bukan pelaku tindak pidana: Studi lapangan daerah Jambi. *Padjadjaran Jurnal Ilmu Hukum, 3*(1), 173–191.

Harisa, Y., Ismansyah, I., & Mulyati, N. (2025). Penerapan rehabilitasi terhadap korban penyalahguna narkotika ditinjau dari teori kemanfaatan: Studi putusan di Pengadilan Negeri Padang. *Ranah Research, 7*(5), 3991–4007. https://doi.org/10.38035/rrj.v7i5.1737

Hasanah, R. N., & Sutrisno, S. (2025). Analisis putusan nomor 1008/Pid.Sus/2023/PN Sby tentang pemidanaan terhadap pelaku penyalahguna narkotika golongan I untuk dikonsumsi sendiri. *Reformasi Hukum Trisakti, 7*(2), 571–581. https://doi.org/10.25105/refor.v7i2.22767

Herman, H., Handrawan, Haris, O. K., Alwi, I., Abdullah, S. A., & Taufiq, T. (2025). Implications of deviations in the application of judicial decisions below the minimum in narcotics crime cases. *Halu Oleo Legal Research, 7*(1), 50–65. https://doi.org/10.33772/holresch.v7i1.1648

Ibrahim, J. (2006). *Teori dan metodologi penelitian hukum normatif*. Bayumedia Publishing.

Ikawati, L., Putra, R. K., Nugraha, S., Saraya, S., & Mardani, R. E. (2025). Paradigmatic conflict of law on narcotics and legislative synchronization with the new Indonesia Criminal Code. *Kertha Patrika*. https://doi.org/10.24843/kp.2025.v47.i03.p03

Johari, J. (2025). Specific minimum criminal penalty regulations for narcotics and the purpose of their implementation in the criminal system. *Inspirasi Futura: Media Kajian Keislaman*. https://doi.org/10.31941/pj.v24i1.6944

Jones, J. (2020). What do we mean when we call someone a drug addict? *Health Care Analysis, 28*(4), 391–403. https://doi.org/10.1007/s10728-020-00410-0

Laia, B., & Laia, B. (2025). Dasar pertimbangan hakim dalam penjatuhan putusan pemidanaan di bawah ancaman minimum pada tindak pidana narkotika. *Jurnal Panah Hukum, 4*(2), 110–126. https://doi.org/10.57094/jph.v4i2.1631

Laksana, A. W., Susilo, A. B., Listyawati, P. R., Widiyoko, S., & Triyanto, T. (2025). Legal uncertainty in law enforcement for drug addicts resulting in criminal disparity. *Yuridika, 40*(2). https://doi.org/10.20473/ydk.v40i2.68153

Mahkamah Agung Republik Indonesia. (2010). *Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 tentang penempatan penyalahgunaan, korban penyalahgunaan dan pecandu narkotika ke dalam lembaga rehabilitasi medis dan rehabilitasi sosial*.

Mahkamah Agung Republik Indonesia. (2015). *Surat Edaran Mahkamah Agung Nomor 3 Tahun 2015 tentang pemberlakuan rumusan hasil rapat pleno kamar Mahkamah Agung tahun 2015 sebagai pedoman pelaksanaan tugas bagi pengadilan*.

Mahkamah Agung Republik Indonesia. (2017). *Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017 tentang pemberlakuan rumusan hasil rapat pleno kamar Mahkamah Agung tahun 2017 sebagai pedoman pelaksanaan tugas bagi pengadilan*.

Mahkamah Agung Republik Indonesia. (2023). *Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023 tentang pemberlakuan rumusan hasil rapat pleno kamar Mahkamah Agung tahun 2023 sebagai pedoman pelaksanaan tugas bagi pengadilan*.

Manuputty, G. I., & Taufik, I. (2024). Penerapan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 terhadap penyalahgunaan narkotika pada proses pemeriksaan perkara pidana (Studi pada Polresta Pulau Ambon dan Pulau-Pulau Lease). *Sanisa: Jurnal Kreativitas Mahasiswa Hukum, 4*(2), 73. https://doi.org/10.47268/sanisa.v4i2.3018

Marsono, Santoso, I., & Atmojo, K. (2023). Penerapan rehabilitasi terhadap korban penyalahgunaan narkotika berdasarkan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika dalam perspektif teori rehabilitasi. *Syntax Literate: Jurnal Ilmiah Indonesia, 8*(9). https://doi.org/10.36418/syntax-literate.v8i9.13552

Marzuki, P. M. (2017). *Penelitian hukum*. Kencana.

Matis, J. (2025). The principle of the free evaluation of evidence. *Visegrad Journal on Human Rights, 1*, 77–82. https://doi.org/10.61345/1339-7915.2025.1.11

Mayangsari, I. Y. B., Andini, O. G., & Ramadhoni, S. R. (2026). Disparitas putusan hakim dalam penerapan rehabilitasi bagi penyalahguna narkotika. *Journal of Citizenship*.

Mujito, M., Saktiawan, P., Darmawan, D., Saputra, R., & Vitrianingsih, Y. (2023). Problems of law enforcement in the crime of abuse of dangerous drugs (narcotics). *Legalis et Socialis Studiis, 1*(3), 10–17.

O'Reilly, K., Kowalski, M., Barratt, M. J., & Ritter, A. (2022). Distinguishing personal use of drugs from drug supply: Approaches and challenges. *International Journal of Drug Policy, 103*, 103653. https://doi.org/10.1016/j.drugpo.2022.103653

Pakpahan, H., Nurjaya, I. N., Nurdayasakti, S., & Aprilianda, N. (2024). Legal implications for the regulation of ownership, storage and control of narcotics in Indonesia. *International Review of Social Sciences Research, 4*(4), 1–17. https://doi.org/10.53378/irssr.353110

Parulian, Y. (2021). *Reformulasi Pasal 111, Pasal 112 dan Pasal 127 ayat (1) huruf a Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika dalam memberikan kepastian hukum di Indonesia* [Disertasi doktoral, Universitas Islam Riau].

Prabowo, D. S., Mujito, M., & Darmawan, D. (2024). Regulation of criminal acts of narcotics abuse in the Narcotics Law. *Bulletin of Science, Technology and Society, 3*(1), 46–51.

Putra, Y. P. (2026). Tinjauan yuridis terhadap disparitas pemidanaan dalam perkara pidana dengan alasan terdakwa belum pernah dipidana (Studi Putusan Nomor 217/Pid.Sus/2024/PN Ktb, Putusan Nomor 30/Pid.Sus/2025/PT Bjm, dan Putusan Mahkamah Agung Nomor 5281 K/Pid.Sus/2025). *JHLP: Jurnal Hukum Lex Publica, 1*(1), 60–71.

Republik Indonesia. (2009). *Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 143, Tambahan Lembaran Negara Republik Indonesia Nomor 5062.

Republik Indonesia. (2023). *Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana*. Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 6842.

Republik Indonesia. (2026). *Undang-Undang Nomor 1 Tahun 2026 tentang Penyesuaian Pidana*. Lembaran Negara Republik Indonesia Tahun 2026 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 7153.

Resnawardhani, F. (2019). Kepastian hukum dalam Pasal 112 dan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika. *Lentera Hukum, 6*(1), 117–132.

Risman, R., Pabbu, A., Putra, A. D., & Arlyanda, A. (2026). Analisis hukum terkait disparitas pertimbangan hakim dalam penjatuhan sanksi pidana dan rehabilitasi pada penyalahguna narkotika (Putusan Nomor: 89/Pid.Sus/2023/PN.Sgm dan 1377/Pid.Sus/2024/PN Mks). *PETITUM, 14*(1), 56–65.

Romdoni, M., & Fitriasih, S. (2022). Disparitas pemidanaan dalam kasus tindak pidana khusus narkotika di Pengadilan Negeri Tangerang. *Masalah-Masalah Hukum, 51*(3), 287–298.

Silitonga, A. B., Syahrin, A., Mulyadi, M., & Putra, M. E. (2021). Analisis ratio decidendi penjatuhan pidana mati terhadap pelaku tindak pidana narkotika yang rumusan pasalnya tidak ada ancaman pidana mati (Studi Putusan No. 241/Pid.Sus/2019/PN.Tjb). *Iuris Studia: Jurnal Kajian Hukum, 2*(3), 410–422.

Soekanto, S., & Mamudji, S. (2011). *Penelitian hukum normatif: Suatu tinjauan singkat*. Rajagrafindo Persada.

Susanto, G., Rifai, E., Maroni, M., Siswanto, H., & Tisnanta, H. S. (2023). Judge's ruling in providing rehabilitation against narcotics abusers for themselves. *Scholars International Journal of Law, Crime and Justice, 6*(11). https://doi.org/10.36348/sijlcj.2023.v06i11.001

Utami, J. (2025a). Kebijakan hukum pidana terhadap penyalahgunaan narkotika Pasal 127 Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika. *Wajah Hukum, 9*(2), 667. https://doi.org/10.33087/wjh.v9i2.1853

Utami, J. (2025b). *Penegakan hukum pidana terhadap tindak pidana narkotika Pasal 127 dalam perspektif Undang-Undang Narkotika* [Disertasi doktoral, Program Studi Hukum Kepidanaan].

Yanto, M., Winarno, J., Royani, A., & Maftukhah, F. Z. (2023). Elements of possessing and controlling narcotics class I not plants Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics (Study of Lamongan District Court Decision Number: 221/Pid.Sus/2021/PN.Lmg). *Independen: Jurnal Ilmiah Fakultas Hukum Universitas Islam Lamongan, 11*(2), 537–552. https://doi.org/10.30736/ji.v11i2.239

Yaqin, A., Winarno, R., & Ariesta, W. (2026). Tinjauan yuridis restorative justice bagi penyalahguna narkotika dalam perspektif Undang-Undang Nomor 1 Tahun 2023 melalui Tim Asesmen Terpadu. *Causa: Jurnal Hukum dan Kewarganegaraan, 16*(10).

Zulkarnain, I., Awanadi, I. G. A. V., & Pradnyana, I. M. A. (2025). Penjatuhan sanksi pidana penjara di bawah minimal khusus pada tindak pidana narkotika. *Jurnal YUSTITIA, 21*(2). https://doi.org/10.62279/yustitia.v21i2.1647