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REGULATION REFORM AND IMPLEMENTATION OF SANCTIONS FOR DRUG ABUSERS IN INDONESIA BASED ON LEGAL CERTAINTY

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Abstract

This study examines the urgency of regulatory reform and reform of the sanction system for drug abusers in Indonesia based on the principle of legal certainty. The main issues cover three dimensions: first, normative problems in the implementation of Law Number 35 of 2009 concerning Narcotics; second, a comparison of the sanction application models between Indonesia, Portugal, and the Netherlands; and third, the ideal concept of narcotics regulatory reform that can guarantee legal certainty, benefit, and justice. This study uses a normative juridical method with four approaches: statute approach, historical, comparative, and case study. The results of the study indicate that Law No. 35 of 2009 contains several structural weaknesses, including the ambiguity of the definition of abuser, addict, and victim; the potential for multiple interpretations in the article on narcotics possession; the dominance of a criminalization approach that has the potential to criminalize users; and the absence of specific provisions for sanctions for children. Comparatively, Portugal and the Netherlands have implemented a health-based paradigm and harm reduction as alternatives that have proven to be more effective. The ideal concept of national narcotics law reform must reflect the three objectives of law according to Gustav Radbruch, namely certainty (Rechtssicherheit), benefit (Zweckmassigkeit), and justice (Gerechtigkeit).

Keywords: Narcotics; Legal Reform; Legal Certainty; Rehabilitation; Drug Court; Drug Abusers.

I. INTRODUCTION

The problem of drug abuse in Indonesia has developed into a multidimensional threat affecting public health, social resilience, and the integrity of the criminal justice system. Law No. 35 of 2009 concerning Narcotics (the Narcotics Law) was enacted to replace Law No. 22 of 1997, which was deemed inadequate to address the transnational, high-tech, and widely organized nature of drug crime. One fundamental paradigm shift desired by the law's creators is a transition from a purely criminal approach to a health-based approach, where drug users and addicts are treated as individuals in need of recovery, not simply as criminals.

However, more than a decade since its enactment, the Narcotics Law has faced serious criticism. Unclear article formulations, the dominance of a criminalization approach over a rehabilitation approach, and the lack of operational mechanisms that clearly differentiate between drug dealers, abusers, and addicts have created conditions that actually harm those they should protect. Empirical data shows that correctional institutions (prisons) throughout Indonesia are experiencing significant overcrowding, with drug convicts contributing the largest share. This situation demands comprehensive, evidence-based legal reform. This study aims to examine three main issues: (1) the problematic application of Law No. 35 of 2009 to drug abusers; (2) a comparison of Indonesia's approach with Portugal and the Netherlands; and (3) the ideal concept of narcotics regulatory reform that guarantees legal certainty. The analysis is based on Gustav Radbruch's theory of legal objectives as a normative framework and uses a normative juridical method.

II. RESEARCH METHOD

This research applies the normative juridical method, a legal approach that places norms, laws, and legal doctrine as the primary objects of study. Four approaches are used synergistically: a statute approach to examine the substance of the applicable regulations; a historical approach to trace the background to the formation of the Narcotics Law; a comparative approach to analyze narcotics policy models in Portugal and the Netherlands; and a case approach to examine court decision patterns in narcotics cases. Data collection was conducted through literature review

(primary, secondary, and tertiary legal materials), field observations, and interviews with law enforcement officials in the judicial environment.

III. RESULTS AND DISCUSSION

A. Problems in Implementing Law Number 35 of 2009 concerning Narcotics

1. Definitional Ambiguity: Abusers, Addicts, and Victims

One of the fundamental problems in the Narcotics Law is the unclear terminology between three different categories of legal subjects. Article 1, number 13, defines an addict as an individual who uses or abuses narcotics to the point of physical or psychological dependence. Article 1, number 15, defines an abuser as someone who uses narcotics without authorization or against the law. Meanwhile, the explanation to Article 54 defines victims of narcotics abuse more narrowly, namely those who use narcotics as a result of persuasion, deception, coercion, or threats from others. This overlapping definition creates serious implementation problems.[1] The provisions of Article 127 paragraph (1) contain criminal threats for abusers, while paragraph (2) requires judges to pay attention to Articles 54, 55, and 103 regarding rehabilitation. However, there is no normative guarantee that abusers will automatically be placed on the rehabilitation path. Reliance on individual judges' discretion results in significant disparities in decisions between jurisdictions. The Institute for Criminal Justice Reform (ICJR) noted that from an analysis of 30 drug case decisions, only 6 percent imposed rehabilitation sentences, and all of them were cases involving child defendants. This fact shows how far the gap between das Sollen (what should apply) and das Sein (what applies in reality) is.[23]

2. Multiple interpretations of the phrases Possessing, Controlling, Carrying Narcotics

Article 111, Article 609 of the National Criminal Code (replacing Article 112, which was revoked by Law No. 1 of 2023), and Article 114 of the Narcotics Law use the phrases "possessing, controlling, carrying, and providing narcotics." These phrases lack clear definitions regarding the context of possession, leaving investigators open to wide interpretation. In practice, even small amounts of possession are often framed as distribution offenses, not personal consumption.[4] Consequently, prosecutors' indictments almost always place possession articles as the primary charge, while Article 127, which addresses personal abuse, is only a subsidiary charge or is even omitted. This structurally closes the judge's ability to consider rehabilitation. ICJR research shows that 63 percent of primary charges use Article 111 or Article 609 of the Criminal Code, while Article 127 is not listed as the primary charge. This process contradicts the spirit of Article 4 of the Narcotics Law, which guarantees rehabilitation for users and addicts.[5]

3. Dominance of the Paradigm of Criminalization and Criminalization of Users

The Narcotics Law adopts a dual-track system, offering both criminal sanctions and rehabilitation. However, in practice, this dual system creates normative confusion. Drug addicts, who are essentially self-victimizing victims of their own actions, are often treated solely as criminals. With the enactment of Law No. 1 of 2023 concerning the Criminal Code, the specific minimum penalties for narcotics articles have been removed, granting judges greater discretion. However, this change is insufficient to address the root cause of the problem, which is the absence of operational mechanisms that force law enforcement officials to prioritize a rehabilitative approach.[6]

4. Rehabilitation Mechanisms through the Judiciary are Not Optimal

Supreme Court Circular Letter (SEMA) Number 4 of 2010 provides criteria for judges in placing drug defendants in rehabilitation institutions, including being caught red-handed, finding evidence of consumption within

[1]Ardya Rahma Kusumasari, "Problems with Law No. 35 of 2009 concerning Narcotics in Terms of Implementing Rehabilitation for Narcotics Abusers," Journal of Law and Economic Development, Vol. 9, No. 1, 2021, p. 160.

[2]Albert Duvry and Adi Mansar, Analysis of the Application of Single Article 127 to Narcotics Crime Perpetrators in Law No. 35 of 2009, Journal of Doktrin Review Magister Ilmu Hukum, Vol. 2, No. 1, 2023, p. 26.

[3]Insan Firdaus, "Harmonization of the Narcotics Law with the Correctional Law Regarding Narcotics Rehabilitation for Inmates," De Jure Legal Research Journal, Vol. 21, No. 1, March 2021, p. 143.

[4]Donny Michael, Implementation of the Narcotics Law from a Human Rights Perspective, DE JURE Legal Research Journal, Vol. 18, No. 3, September 2018, p. 428.

[5]Muhamad Fuady, Kristiawanto, and Mohamad Ismed, Problems of Applying Sub-Minimum Sentences Specifically in Narcotics Crime Cases, Salam: Jurnal Sosial dan Budaya Syar-i, Vol. 9, No. 3, 2022, p. 977.

[6]Hafrida, Criminal Law Policy towards Drug Users as Victims Not Perpetrators of Crime: A Field Study in the Jambi Region, Padjadjaran Journal of Legal Studies, Vol. 3, No. 1, 2016, p. 178.

a day, positive laboratory test results, and absence of involvement in a distribution network. However, the effectiveness of this SEMA is highly dependent on the consistent attitudes of investigators and prosecutors. Investigators still interpret drug possession as a distribution offense, rarely conduct medical and psychological examinations to determine a suspect's status, and do not conduct addiction assessments. As long as these two authorities do not have a consistent understanding of the philosophy of the Narcotics Law, rehabilitation will continue to be an exceptional option, not the primary option.[7]

5. Absence of Special Sanctions for Children

The Narcotics Law does not specifically regulate sanctions for children who abuse narcotics. Article 133 only regulates sanctions for those who exploit children for narcotics crimes. In such circumstances, law enforcement must refer to the Juvenile Criminal Justice System Law (SPPA) as lex specialis based on the principle of lex specialis derogat legi generali. This lack of regulation creates a legal vacuum that potentially harms children's rights as subjects requiring special protection and requiring different treatment from adults.

B. Comparison of Narcotics Policies: Indonesia, Portugal, and the Netherlands

Portugal, through Law 30/2000, decriminalized possession of limited amounts of narcotics for personal use in 2001. Individuals caught with small amounts of narcotics are not subject to criminal penalties but are instead referred to the Commission for the Prevention of Drug Addiction, which has the authority to impose administrative sanctions, therapy, or rehabilitation. This approach has proven successful in reducing abuse rates among productive age groups and increasing accessibility to treatment services.[89]

The Netherlands implements a controlled tolerance policy that separates the handling of soft drugs from hard drugs. Soft drugs are sold under strict regulations through licensed outlets, while the distribution of hard drugs remains legally enforced. The Dutch paradigm is oriented towards harm reduction, namely reducing the negative impacts on individuals and society. Unlike these two countries, Indonesia still maintains a strong prohibitive approach with the threat of severe penalties, including the death penalty for certain crimes. This comparison indicates that there is no positive correlation between the severity of the penalty and the effectiveness of drug abuse prevention efforts.[10]

C. Special Narcotics Court (Drug Court) as an Institutional Alternative

The Drug Court model developed in the United States offers a relevant alternative for Indonesia. This program provides an alternative pathway for drug abusers who meet certain criteria; instead of undergoing conventional criminal justice processes, participants are directed to intensive treatment and supervision programs. Studies of Drug Courts in Kansas City and Pensacola showed a reduction in re-arrest rates from 40 percent to 12 percent in one jurisdiction, and from 50 percent to 35 percent in another jurisdiction after implementation. Economically, Drug Court costs an average of US$1,392 per participant lower than the conventional justice system, with average public savings reaching US$6,744 per participant.[1112]

Thailand also offers relevant lessons. After facing prison overcrowding due to the predominance of drug-related inmates, Thailand amended its narcotics law in December 2021. This amendment removed minimum penalties for personal use offenses, strengthened the Ministry of Health's role in setting drug quantity limits, and required law enforcement to refer drug users to health facilities if there are indications of personal use below a certain threshold. Thailand's experience emphasizes that health-based reform is not only an ethical choice but also a pragmatic solution to the prison capacity crisis.

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[7]Supriyadi Widodo Edyyono, et al., Working Paper: Strengthening the Civil Society-Proposed Revision of the Indonesian Narcotics Law, Jakarta: Institute for Criminal Justice Reform, 2017, pp. 61-62.

[8]Glenn Greenwald, Drug Decriminalization in Portugal: Lessons for Developing Fair and Successful Drug Policies, Washington DC: Cato Institute, 2009.

[9]Transform Drug Policy Foundation, Drug Decriminalization in Portugal: Setting the Record Straight, London: Transform Drug Policy Foundation, 2011.

[10]Dirk J. Korf, Dutch Drug Policy: A Public Health Approach, London: Routledge, 2014.

[11]L. Truitt, et al., Evaluating Treatment Drug Courts in Kansas City, Missouri and Pensacola, Florida, US Department of Justice, 2003.

[12]MW Finigan, SM Carey, and A. Cox, The Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs, NPC Research, 2007.

D. The Ideal Concept of Narcotics Law Reform Based on Gustav Radbruch's Theory of Legal Objectives

The concept of the ideal reform of the Narcotics Law is built on three pillars, which constitute the goals of law according to Gustav Radbruch: certainty (Rechtssicherheit), utility (Zweckmassigkeit), and justice (Gerechtigkeit). Radbruch views these three as an inseparable whole. As he emphasized, good law must be simultaneously certain, beneficial, and just; any conflict between the three indicates a failure of the legal system itself.[13]

First: Legal Certainty (Rechtssicherheit)

Legal certainty demands the formulation of clear and predictable norms. In the context of narcotics, legal certainty is realized through: (a) the preparation of sharp and operational definitions between abusers, addicts, and victims based on standardized medical-psychological criteria; (b) the establishment of a quantitative threshold for narcotics possession that distinguishes personal consumption from distribution; and (c) the implementation of legal mechanisms that automatically direct abusers to the rehabilitation path if certain criteria are met, without relying entirely on the discretion of individual judges.

Second: Legal Benefit (Zweckmassigkeit)

A beneficial law is one that produces a real positive impact on society. Empirical research shows that combining a legal approach with medical-psychological treatment results in a more significant reduction in drug abuse rates than pure criminalization. Reform of the Narcotics Law must: (a) integrate primary, secondary, and tertiary prevention efforts within a single, integrated policy framework; (b) strengthen rehabilitation infrastructure that is geographically and financially accessible; and (c) encourage cross-sectoral collaboration through a Whole of Government approach between the National Narcotics Agency, the Ministry of Health, the Ministry of Social Affairs, and the judiciary within a formally institutionalized coordination mechanism.[14]

Third: Legal Justice (Gerechtigkeit)

Justice in drug punishment demands proportionality: sanctions must be commensurate with the level of violation and take into account the subjective condition of the perpetrator. Drug addicts who are self-victimizing victims are entitled to different legal protections from dealers. The implementation of justice includes: (a) the application of the principle of restorative justice as a basis for handling drug abusers; (b) the protection of human rights for drug users, including the right to health, privacy, and recovery; (c) the elimination of legal stigma that hinders access to rehabilitation; and (d) the application of the principle of ultimum remedium, where imprisonment for drug abusers is placed as a last resort.[15][16]

E. Criminal Policy and Direction of Criminal Law Reform

Drug law reform cannot be separated from the broader criminal policy framework. Criminal policy encompasses two main instruments: penal and non-penal means. In the context of drug abuse, an overemphasis on penal means has proven counterproductive; the continued rise in drug cases demonstrates that imprisonment alone does not provide an effective deterrent. Therefore, non-penal means of prevention, education, and rehabilitation must receive much greater attention in future criminal law policy.[17] The provisions of Article 128 paragraph (1) and Article 131 of the Narcotics Law, which threaten criminal penalties for those who know about narcotics cases but do not report them, need to be reviewed, because these provisions actually hinder the active role of the community in encouraging users to seek help voluntarily. Periodic evaluation of the Narcotics Law is also an important component to ensure that existing norms remain relevant, effective, and free from ambiguity. As stipulated in the Law on the

[13]Gustav Radbruch in Soerjono Soekanto, Several Legal Problems in the Framework of Development in Indonesia, Yogyakarta: UII Press, 1983, p. 35.
[14]Indah Maryani, "Decriminalization of Drug Users: Criminal Politics in Addressing the Problem of Correctional Institution Overcapacity in Indonesia," Jurnal Yustitia, Vol. 7, No. 2, 2021, p. 165.
[15]Khresna Wisantya, I Nyoman Gede Sugiartha, and Anak Agung Sagung Laksmi Dewi, Criminal Liability of Narcotics Addicts and Abusers Based on Classification, Journal of Legal Analogy, Vol. 3, No. 3, 2021, p. 341.
[16]Eko Prayogi, Danialsyah, and Adil Akhyar, Criminal Sanctions of Imprisonment and Rehabilitation for Narcotics Addicts, Jurnal Ilmiah Metadata, Vol. 5, No. 1, January 2023, p. 280.
[17]Mahmud Mulyadi, Combating Corruption from a Criminal Policy Perspective, Indonesian Legislation Journal, Vol. 8, No. 2, June 2011, p. 220.

Formation of Legislation, mechanisms for monitoring and reviewing legislation must be institutionalized by paying attention to the breadth of meaning, consistency of terms, and the achievement of regulatory objectives.[18][19]

IV. CONCLUSION AND RECOMMENDATIONS

Based on the research conducted, this article concludes three main points. First, Law No. 35 of 2009 concerning Narcotics contains serious structural weaknesses, including ambiguity in the definitions of abuser, addict, and victim; the potential for multiple interpretations of the possession articles, which could lead to the criminalization of users; rehabilitation mechanisms that have not been adequately operationalized; and the absence of specific sanctions for children. These issues collectively create a state of legal uncertainty that contradicts the spirit of reform initiated by the law's creators. Second, comparisons with Portugal and the Netherlands confirm that a health-based and harm reduction paradigm has proven more effective in reducing drug abuse than a repressive-punishment approach. The United States Drug Court model and Thailand's narcotics amendments offer institutional alternatives that are feasible for adaptation to the Indonesian justice system, provided they are tailored to the existing legal culture and institutional capacity.

Third, the ideal reform of the Narcotics Law must be built on the three pillars of Radbruch's legal objectives: legal certainty through clear definitions and standardized operational mechanisms; legal utility through strengthening rehabilitation infrastructure and cross-sectoral collaboration; and legal justice through proportional sanctions, human rights protection, and the principle of restorative justice. Drug abusers should be viewed as sick individuals in need of recovery, not merely as criminals who must be punished. This principle aligns with the values of human rights protection guaranteed by the 1945 Constitution of the Republic of Indonesia and various international legal instruments that Indonesia has ratified.[20]

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