

THE CONCEPT OF DECRIMINALIZATION OF DRUG USERS IN LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS

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Abstract

Along with the development of progressive legal thinking and human rights, the discourse of decriminalization of drug users has emerged as an alternative to criminal law policies that are more humanistic, rehabilitative, and based on a public health approach. The problems faced are how is the legal position of drug users in positive Indonesian law and how to reconstruct the legal concept of decriminalization of drug users in Law Number 35 of 2009 concerning Narcotics. The type of research used is empirical legal research that combines legal aspects (legal) with empirical data (facts in the field). This research will use a descriptive analytical method. The types of data used are primary and secondary data. The data collection techniques are observation, interviews and documentation. The approaches used are the statutory, case and comparative approaches. The presentation of the results of the analysis of legal materials in this study uses a descriptive method. The results of the study show that in positive Indonesian law, especially Law No. 35 of 2009 concerning Narcotics, drug users who are dependent are positioned as victims who have the right to receive medical and social rehabilitation. The legal approach to users emphasizes the rehabilitative and restorative aspects, as long as they are not involved in the illicit drug trafficking network. This reflects legal efforts to balance law enforcement and addiction recovery, while maintaining legal certainty and public health protection. Law No. 35 of 2009 concerning Narcotics does not fully adopt decriminalization, but instead applies limited decriminalization through mandatory rehabilitation for addicts and victims of abuse as regulated in Article 54. Users are viewed as victims of addiction, but can still be subject to criminal sanctions if they do not undergo rehabilitation or are involved in drug trafficking. Thus, decriminalization only applies to a limited extent in the context of recovery for users who meet the requirements.

Keywords: Decriminalization Concept, Drug Users.

INTRODUCTION

The problem of drug abuse in Indonesia has become a complex national issue, touching on various dimensions of law, health, social, and security. So far, the criminal law policy taken by the state is still repressive, by placing drug users as perpetrators of criminal acts who must be punished with imprisonment. This approach is reflected in Law Number 35 of 2009 concerning Narcotics (later abbreviated as the Narcotics Law), although it contains provisions on rehabilitation, it still provides large space for the criminalization of users. This has an impact on overcriminalization, excess capacity of correctional institutions, and failure to overcome drug addiction as a health problem.

Policies that position drug users as criminals ignore the fact that most of them are victims of addiction who need medical and rehabilitative treatment, not criminalization. In various countries, there has been a shift in approach from criminalization to decriminalization, namely the transfer of handling of users from the criminal justice system to the health and social service system. This decriminalization is not identical to legalization, but rather a form of policy that aims to prevent the negative impacts of criminalization on individuals who have disorders due to drug abuse.

In the context of Indonesian law, there is an inconsistency between the spirit of protection for victims of drug abuse as stated in Article 54 of the Narcotics Law, and the practice of law enforcement which is still predominantly repressive and punitive. The article explicitly states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation, which shows a legal approach based on recovery and health. However, in its implementation, law enforcement officers still tend to apply criminal provisions to users, especially through Article 127 of the Law which allows users to be sentenced to imprisonment.

This inconsistency has an impact on legal uncertainty and weakens the spirit of more humanistic drug policy reform. Several studies show that drug users who should receive rehabilitation are often sentenced to prison, due to the lack of an effective integrated assessment system and limited understanding of the authorities regarding the differences between users and dealers. This reflects the existence of normative conflicts and disparities in the

application of the law at the investigation and trial levels. Based on the description in the background section above, the formulation of the problem is:

1. What is the legal position of drug users in Indonesian positive law?
2. How is the legal reconstruction of the concept of decriminalization of drug users in Law Number 35 of 2009 concerning Narcotics?

RESEARCH METHOD

The type of research used is empirical legal research that combines legal aspects (legal) with empirical data (facts in the field). This research will use analytical descriptive methods. The types of data used are primary and secondary data. The data collection techniques are observation, interviews and documentation. The approaches used are the statutory, case and comparative approaches. The presentation of the results of the analysis of legal materials in this study uses a descriptive method.

This study was conducted to analyze the concept of decriminalization of drug users in the Narcotics Law. The descriptive analysis method is to select data that describes the actual situation in the field. In the analysis using a deductive way of thinking, namely concluding specific research results. By using this method, it is expected to obtain a clear and comprehensive picture of the suitability of the conceptual basis used in answering the main problems in this writing.

RESULTS AND DISCUSSION

Legal position of drug users in Indonesian positive law

In Indonesia's positive legal system, drug users have a fairly complex legal position and are often the subject of debate between the penal approach (criminal punishment) and the non-penal approach (health and rehabilitation). Drug users are often portrayed as more than just bad people; they are often people with legitimate health problems or addictions who need help to get back on their feet. The ethical and practical challenges faced by Indonesian law enforcement in combating drug use are reflected in this. The Narcotics Law usually regulates drug users. "Users" are defined as those who use drugs without proper permission or in violation of legal regulations under Article 1, number 13 of the Narcotics Law. Substance addicts are immediately labeled as criminals based on this criterion.

However, the Narcotics Law also provides space for a rehabilitative approach. Article 54 states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation, not merely be sentenced to imprisonment. This provision provides a legal basis that drug users are not entirely viewed as criminals, but also as subjects who require holistic treatment. In other words, positive Indonesian law contains ambivalence in the position of drug users: as criminal offenders and victims of substance abuse. In addition, the Constitutional Court in Decision Number 2/PUU-V/2007 also emphasized the importance of rehabilitation for drug users as a form of human rights protection.

The Constitutional Court is of the opinion that drug users must have access to health services, including rehabilitation, as an effort to prevent recurrence of abuse and for social and medical recovery. This decision is an important foundation in strengthening the view that the legal approach to drug users should be more humane and based on restorative justice. However, in practice, law enforcement officers often place more emphasis on a repressive approach. Drug users are often immediately detained and processed criminally without considering rehabilitation options, even though there is a provision that judges can determine rehabilitation decisions based on recommendations from investigators, public prosecutors, or the judges themselves (Article 103 of the Narcotics Law). This shows a lack of synchronicity between existing legal norms and implementation in the field. The legal status of drug users must also be seen in the context of the modern criminal justice system which emphasizes the principle of differentiated legal treatment. According to this theory, perpetrators of criminal acts must be treated according to the degree of their guilt, background, and potential for resocialization. Equating drug users and dealers in the form of the same criminal sanctions is a form of error in applying the principle of proportionality in criminal law.

In Indonesian positive law, drug users have an ambiguous legal position: between as perpetrators of crime and as victims. Although normatively there is room for a rehabilitative approach, implementation in the field is still heavily influenced by the paradigm of punishment. Therefore, there needs to be a reformulation of legal policies that place drug users more proportionally in the national criminal law system, in order to realize substantive justice and protection of human rights. The legal position of drug users in Indonesian positive law can be understood from several perspectives, including the legal subject, where drug users, in the context of law, can be seen as legal subjects who have rights and obligations. This means that they can be prosecuted and protected by law, although their position in drug cases is often more vulnerable. The Narcotics Law regulates drug users within the framework of rehabilitation. Certain articles state that drug users who are willing to undergo rehabilitation can be treated differently than drug dealers or owners. This shows a recognition of the condition of users as individuals who need help.

A person who abuses drugs does not meet the criteria for receiving medical and social rehabilitation as stated in Article 4 of the Narcotics Law, according to the interpretation of Article 54 of the Narcotics Law. Article 103 of the Narcotics Law uses different language from Articles 4 and 54 of the same Law. The place where the judge can decide whether or not a person is punished for a drug crime is based on their treatment and care needs. Many labels (abuser, addict, and victim of drug abuse) are used interchangeably in the same context, namely the provision of medical and social rehabilitation.

This misunderstanding is not only confusing in the context of criminal punishment arrangements, but also in the context of discussions about rehabilitation services. For example, the phrases "abusers" and "victims of drug abuse" are used in Article 127 of the Narcotics Law. Unfortunately, the phrase "abusers" is only found for "abusers as victims" in paragraph (2) of the Article, which states that the court must respect the requirements of Articles 54, 55, and 103 of the Narcotics Law when making a decision.

Regulations regarding narcotics in Indonesia are regulated through the Narcotics Law. This law regulates various aspects related to the distribution, use, and abuse of narcotics, both for medical and non-medical purposes. Drug users in a non-medical context are considered to be lawbreakers. In Indonesian positive law, drug users can be categorized into several groups:

1. Drug users or abusers (occasional users): those who intentionally use narcotics for recreational or personal purposes without permission.

2. Drug addicts: Those who experience physical and psychological dependence on narcotics.

The Narcotics Law separates addicts from drug dealers, because addicts are considered to need rehabilitation, while dealers are seen as criminals who must be punished more severely. The articles in the Narcotics Law stipulate various sanctions for drug users. Article 127 of the Narcotics Law states that the use of class I, II, or III narcotics without a valid doctor's prescription is a criminal act that can be punished with imprisonment. The maximum sentence for perpetrators of class I narcotics is four years in prison, for perpetrators of class II narcotics is two years in prison, and for perpetrators of class III narcotics is one year in prison. In addition, the legislation provides alternatives to imprisonment, such as rehabilitation programs, for drug users who have been determined to be addicts or victims of drug addiction. The need for medical and social rehabilitation for drug users and victims of drug addiction is emphasized in Article 54 of the Narcotics Law. Either the perpetrator's own will or a court order can initiate this rehabilitation procedure. Users who have been proven to be victims of or struggling with drug addiction may be offered rehabilitation options by law enforcement agencies including the police, prosecutors and courts.

Based on the description, it is clear that the legal position of drug users in Indonesian positive law is clear: the use of drugs for non-medical purposes is considered a criminal offense. However, the law differentiates between users, addicts, and dealers, with a focus on rehabilitation for addicts as an alternative to imprisonment. This shows that the Indonesian government is not only focused on repressive law enforcement, but also offers a more humane approach through rehabilitation and resocialization for those addicted to drugs. In another aspect, this inconsistency has an impact on legal uncertainty and weakens the spirit of more humane drug policy reform. Several studies show that drug users who should receive rehabilitation are often sentenced to prison, due to the lack of an effective integrated assessment system and limited understanding of the authorities regarding the differences between users and dealers. This reflects the existence of conflicting norms and disparities in the application of the law at the investigation and trial levels.

This condition shows the need to reformulate the narcotics criminal law policy, especially through a limited decriminalization approach for drug users, as a form of correction to the approach that has so far focused too much on criminalization. The concept of decriminalization is not intended to legalize drug use, but rather to shift the focus of handling from a repressive approach to a public health and social recovery approach. Thus, decriminalization can be a normative and philosophical basis for realizing a narcotics legal system in Indonesia that is more proportional, just, and in line with the spirit of protecting human rights. Through this study, it is hoped that a responsive criminal law policy concept will be born that is able to answer the challenges of overcoming drug abuse more comprehensively.

Thus, decriminalization can be a normative and philosophical basis for realizing a narcotics legal system in Indonesia that is more proportional, just, and in line with the spirit of protecting human rights. Through this study, it is hoped that a responsive criminal law policy concept will be born that is able to answer the challenges of overcoming drug abuse more comprehensively. It is hoped that this policy will not only rely on a repressive approach that emphasizes criminalization, but also prioritizes a rehabilitative approach that positions drug users as subjects who need to be saved through medical, social, and psychological interventions.

Furthermore, strengthening the decriminalization policy needs to be accompanied by legislative updates, synchronization between law enforcement agencies, and strengthening the objective and transparent integrated assessment mechanism. With these efforts, the Indonesian narcotics legal system can transform into a model that is not only repressive towards organized narcotics criminals, but also restorative and solution-oriented towards users as victims of addiction. Within this framework, the urgency of decriminalizing drug users becomes a strategic step in building a criminal law system that is fairer, more adaptive, and oriented towards protecting humanity.

Legal reconstruction of the concept of decriminalization of drug users in Law Number 35 of 2009 concerning Narcotics

Decriminalization is a widely used policy. The idea of decriminalization in Indonesia has existed since the principle of harmony was implemented during the Dutch colonial period. For example, based on Law Number 1 of 1946 concerning Criminal Law Regulations, the *Wetboek van Strafrecht voor Nederlandsh-Indie* (WvSNI) was approved as the Criminal Code, although it was later amended by removing several articles. The Constitutional Court has annulled the crime of insulting the President and Vice President from the Criminal Code through Constitutional Court Decision Number 013-022/PUU-IV/2006, which is one example of the various decriminalizations carried out by the Constitutional Court through judicial review.

The international community is also very aware of decriminalization as one step in the law-making process. Recently there has been a shift towards a less punitive approach to drug crimes around the world. Several drug-related activities have recently been decriminalized in a number of countries. However, to begin with, one must understand the definition of the policy of “decriminalization” as it relates to drug laws. Decriminalization is defined in a study by the International Drug Policy Consortium (IDPC) as the removal or replacement of non-criminal laws for certain acts. The term “decriminalization of drug use” describes the process by which the use, possession, and cultivation of drugs for personal use are no longer considered criminal offenses.

Decriminalization of drug use not only allows for the removal of all penalties, but also usually removes criminal prohibitions for the act of consuming and other activities related to personal drug use. As an alternative to criminal penalties, administrative or civil sanctions can be imposed. In addition to criminal penalties, there are other measures that can be taken to address drug users and addicts. Better health and social services, supported by a commitment to reducing harm in accordance with scientific evidence and human rights, should support efforts to improve access to health for users and addicts so that they can do so voluntarily.

De facto decriminalization and de jure decriminalization are the two main ideas behind the decriminalization of drug users around the world. Legal decriminalization, or de jure decriminalization, occurs when the relevant law is removed from the statute books (or when other means such as administrative or civil law are considered). While the act is still illegal, it is no longer subject to criminal penalties in practice or operation, known as de facto decriminalization.

Countries such as the Czech Republic, Portugal, Germany, Estonia, Spain, and Switzerland view drug use or possession of small amounts of narcotics for personal use as administrative offenses, not criminal offenses. Uruguay and several US states have implemented decriminalization models that do not include sanctions for the use or possession of “reasonable” amounts of narcotics. Rather than being considered criminal offenses, the de jure decriminalization paradigm classifies drug use or possession as a civil or administrative offense. Fines, community service, warnings, therapy, counseling, education, suspension of professional or driver’s licenses, and drug tests are examples of non-criminal penalties that can be imposed in various jurisdictions. While criminal law remains in place, de jure decriminalization is accomplished through legislative choice and has the same effect as de facto decriminalization. By removing criminal penalties for cannabis use, the Netherlands has effectively adopted a de jure policy. However, growing, distributing, or using cannabis within the country remains a criminal offense. Crimes involving the use or possession of cannabis are not punished by authorities in the country.

One strategy to suppress drug trafficking is to decriminalize drug use and addiction as a whole. In the context of handling drug problems, this idea also has an impact on the economy. The National Narcotics Agency (BNN) and the Mahkumjakpol Secretariat have signed a Joint Regulation on Handling Drug Addicts and Victims in Rehabilitation Institutions at its peak. The Supreme Court, Health, Social Affairs, Attorney General, Chief of Police, and BNN were present at the Vice President's Palace to witness the signing, which was also attended by the Ministry of Law and Human Rights, Health, and the Attorney General. BNN and the Mahkumjakpol Secretariat stated that this Joint Regulation is a real step to reduce the number of drug addicts and victims of drug addiction in Indonesia.

Decriminalization regimes are divided into two:

1. There are two types of decriminalization: de jure and de facto.
2. Possession of opioids for personal use is still controlled as a criminal offense, even though de facto decriminalization has occurred. De jure decriminalization, on the other hand, involves rewriting the law so that possession or possession of drugs for personal gain is no longer illegal.

Each decriminalization model has its own set of advantages and disadvantages; therefore, countries must consider their own goals based on the strengths and limitations of the model they are using. It is important to consider the basic characteristics of the model and the internal variables of each country when analyzing the consequences of decriminalization. The drug problem in each country has unique goals and characteristics.

Decriminalization, in all its de jure and de facto forms, has been effective in easing the burden on the criminal justice system, as the overall conclusions show. However, the success of the model in helping addicts reintegrate into society and improve their health is briefly touched upon. One simple option that does not require changing the law is decriminalization, which is de facto decriminalization. However, depending on the justice system in a particular demographic or region, this approach can result in unequal justice, meaning that some people may not have access to justice. By shifting resources from the criminal justice system to health and social services, a

decriminalization approach can reduce some of the negative impacts of drug use on society and individual well-being. However, much work and money will need to be spent on policy reform, changing laws, and building the infrastructure to begin implementing this model.

The urgency to decriminalize drug abuse in Indonesia is quite important because there has been a shift in approach in dealing with drug abuse. The shift in question is from a criminal sanction approach (penal) to a treatment approach (rehabilitation). In addition to the shift in approach, there is also discrimination in law enforcement in Indonesia for drug abuse for oneself. For example, there are several cases where a public figure, a rich person, or an official tends to get a sentence for medical and social rehabilitation. However, if a person with an ordinary life status tends to get a prison sentence.

The concept of decriminalization of drug abuse can be implemented in the future (*ius constituendum*)

As a comparison, Portugal has implemented the concept of decriminalization of drug abuse for oneself. The results have proven successful, namely the prevalence of drug use has decreased, the efficiency of police duties, reduced caseloads in the criminal justice system, and reduced prison burdens. The concept of decriminalization in drug abuse regulations in the future has several conceptual changes, namely that the legal subjects of drug abuse are only divided into 2 categories: victims of drug abuse and drug addicts. Based on the description above, the positive legal basis for decriminalization in Indonesia already exists in the laws and regulations, but it cannot yet be operationalized because there is no legal system that distinguishes between various types of drug users as described. The problem of the construction of drug abusers with Articles outside the User Article (Article 127) which are not oriented towards rehabilitation efforts, as well as the legal culture and differences of opinion about the meaning of "without rights or against the law" have hampered efforts to decriminalize drug abuse in Indonesia. In order to realize the decriminalization of drug abuse in Indonesia and achieve the goal of a drug-free country, the following legal mechanisms are proposed: a small team is formed in each district/city and province; at the national level it consists of representatives from the Ministry of Health, the Ministry of Law and Human Rights, the Ministry of Social Affairs, and the Coordinator of Narcotics Control Policy. This team is tasked with investigating people arrested by the Police and BNN investigators; it must also determine the criteria for addicts based on the type of substance consumed, the circumstances surrounding their arrest, the location of consumption, and the economic status of the addict; finally, it must be authorized to establish rehabilitation programs and determine the length of time for drug addicts to complete treatment. The idea of decriminalizing drug addicts is clearly different from the broader concept of decriminalization, which is defined as the process of making a previously illegal activity no longer subject to criminal penalties. That is why it is important to distinguish between the criminal system's treatment of drug addicts and the legalization of drug users when discussing the topic of decriminalization.

CONCLUSION

Based on the description above, the following conclusions can be drawn:

1. In positive Indonesian law, especially Law No. 35 of 2009 concerning Narcotics, drug users who are dependent are positioned as victims who have the right to receive medical and social rehabilitation. The legal approach to users emphasizes the rehabilitative and restorative aspects, as long as they are not involved in the illicit drug trafficking network. This reflects legal efforts to balance law enforcement and addiction recovery, while maintaining legal certainty and public health protection.
2. Law No. 35 of 2009 concerning Narcotics does not fully adopt decriminalization, but instead applies limited decriminalization through mandatory rehabilitation for addicts and victims of abuse as regulated in Article 54. Users are viewed as victims of addiction, but can still be subject to criminal sanctions if they do not undergo rehabilitation or are involved in drug trafficking. Thus, decriminalization only applies in a limited way in the context of recovery for users who meet the requirements.

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