

## Research Article

# Indonesian Criminal Code about Drugs and Narcotics: Justice and Media Portrayal

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### Abstract

Indonesia, being a developing country on its way to become a developed country, faces major challenges in the field of narcotics. Indonesia is a target country for illicit narcotics trafficking due to its high prevalence of narcotics abuse. The illegal trafficking of narcotics is strictly forbidden in Indonesia under the Narcotics Law Number 35 of 2009. This is being done in response to Indonesia's large population of drug addicts. Preventing illicit drug trafficking requires coordination between government agencies and all Indonesians, which means that everyone in the country must be aware of the situation. This context sets the stage for the study's objective, which is to examine how the Criminal Code portrays drugs and narcotics in terms of justice and media portrayal. By employing secondary data from the mainstream online media, this research approach is normative. The conclusion of this study shows that the recommended restorative justice for drug abusers is based on the reason that prison capacity that exceeds capacity must be examined and regulations applied fairly to all drug abusers. Because, if the policy applies to perpetrators who have just received a verdict, perpetrators who have just received a decision must of course be given the same rights in the implementation of Restorative Justice.

**Keywords:** Indonesian criminal code; Drugs and narcotics; Justice; Media portrayal

### Introduction

Indonesia uses law as an ideological foundation to establish order, security, welfare, and justice for all Indonesian residents. As a lawful state, Indonesia's government is obligated to monitor every citizen's action [1]. The rule of law is essentially the supremacy of the law in a country, and power must be subservient to the law, correct? Law is a tool of power. Because there is the principle of equality before the law (equality in the eyes of the law), which specifies the citizen's status with the ruler in the eyes of the law, law should be the objective to safeguard the interests of its citizens [2]. The country of Indonesia as a developing country

towards a developed country has serious problems, one of which is in the field of Narcotics.

Narcotics are chemicals or substances that can soothe nerves, produce unconsciousness or anaesthesia, relieve pain and pain, cause drowsiness or stimulate, cause stupor, and cause addiction or addiction, and are defined as Narcotics by the Minister of Health [3]. Although pharmaceuticals are necessary for treatment and health services, their misuse or non-compliance with regular therapy, especially when coupled by illicit drug trafficking, has grave effects for individuals and society, particularly the youth. Which is really concerning, because the facts on the ground demonstrate that drug cases account for 50% of prison inmates. The criminal news in the print and electronic media is replete with stories concerning drug usage [4]. Narcotics crime is a unique crime that is a source of concern for all governments around the world, as narcotics have the potential to harm an entire generation of people. The COVID-19 pandemic is currently sweeping the globe, affecting all systems and joints of human existence and killing millions of individuals [5].

In Indonesia, drug usage has reached a dangerously high level. Narcotics have no age limit, and consumers and dealers of narcotics include parents, children, teenagers, and even children. Circulation that is illegal Narcotics in Indonesia are no less concerning; narcotics are not only circulating in Indonesia's major cities, but they have also spread to rural areas. Indonesia, which was historically a transit country for narcotics illicit activity due to its advantageous geographic location, has evolved into a drug producing country. Case in an era of globalization marked by

technological advancements, this may be observed in the exposure of multiple laboratories in Indonesia that make narcotics. Indonesia has become a potential drugs producer due to advances in communication, trade, and the tourism industry's rapid growth [6]. Drug usage is still a chronic problem in Indonesia, and recent arrests of foreign drug dealers and incidences of shabu trafficking demonstrate that the country is in a state of emergency [7]. Drug misuse can harm the nervous system and even result in death. Many drug users, on the other hand, are oblivious to the danger. Drug cases in Indonesia are on the rise year after year, particularly among teenagers and students.

The hazards of narcotics can jeopardize people's health and perhaps their life. When narcotics are used improperly, especially if someone is addicted to them, they have a detrimental impact. If this crime is not dealt with harshly, the number of people involved in narcotics trafficking will continue to rise. As a result, if this occurs, it may have a negative impact on society. Economic motives drive narcotics trafficking and abuse, and a network of narcotics dealers has infiltrated the community, mixing and turning narcotics into goods that are widely consumed by young people as a result of lax parental supervision, a lack of socialization from the National Narcotics Agency, and police oversight due to personnel constraints [8].

In Indonesia, the threat of drug usage is growing, with the younger population being particularly vulnerable [9]. Drunkenness has infiltrated all sectors of society. Many children and teenagers have been targeted by medicines. The typical age at which people begin misusing opioids is 12 years-15 years old. Abuse among students and students who have ever used is 7.5% and 4.5% for a year, respectively. The rate of drug usage also varies by gender, age, and educational level. The male group has a higher rate of abuse than the female group. The more educated a person is, the more likely they are to take drugs [10]. Deviations in the behavior of the younger generation may jeopardize the nation's long term viability. Because young, as the generation tasked with succeeding the nation, are becoming increasingly vulnerable to nerve damaging addictive substances. As a result, the young man was unable to think clearly. produce, the dream of a strong and intelligent country will be a distant memory. Drug addiction is defined as a situation in which a person is compelled to use illegal drugs on a regular basis. If he does not, he will get addicted, resulting in unpleasant feelings and maybe severe bodily suffering.

Indonesia is a target country for illicit narcotics trafficking due to its high proportion of narcotics addicts. Demand and Supply are the two factors that contribute to Indonesia's narcotics problems. In terms of demand, drug addicts now account for 2.18% of the population, or about 4 million people, and new users are added every year. The supply of medicines circulating in Indonesia comes from both inside and outside the country. Despite the fact that the culprits were harshly punished, they continued to run their company from within the prison walls (75%). Furthermore, rather

than taking preventative action against drug abusers, law enforcement prefers to arrest them. Drug trafficking networks' constantly shifting patterns and techniques of operation are also a big challenge for the Indonesian government in terms of narcotics abuse [11]. The biggest percentage of drug users is found among private and government workers (59%) followed by students and college students (24%), and finally the general population (those who do not belong to the preceding two groups) (17%). Since 2009, data shows that those aged 30 and under are more likely to be drug addicts. In 2017, drug abusers aged 30 and under accounted for 3% of all drug abusers, while those aged 30 and older accounted for 2.8% of all drug abusers. As a result, drug users in Indonesia are overwhelmingly young [11]. The prevalence of drug abusers in the 30 year old age group has decreased. In 2012, the prevalence was 5.2%, but by 2017 it had plummeted to 3.0%. Meanwhile, construction workers have the greatest proportion of drug addicts among all occupations [12].

The role of the Indonesian police and the National Narcotics Agency (BNN) in preventing and combating drug trafficking is a top priority for the Indonesian government. Drug prevention and eradication operations are carried out in three stages, the first of which is preemptive, i.e. early prevention actions. Second, while prevention is a strategic effort with a medium and long term action plan, it must be viewed as an urgent activity that must be undertaken immediately. The third countermeasure, repressive, is a law enforcement effort that begins with intelligence [7]. Adolescents' knowledge and understanding of narcotics crimes is still limited, but with the introduction of legal counseling, their knowledge and understanding of narcotics crimes has improved [13]. On the other hand, early prevention is the best option, which includes paying attention to the younger generation from a young age to prevent them from being addicted to drugs [14], fostering public understanding of the risks of drugs is one type of early prevention strategy.

Drug trafficking is a global crime (International Crime), an organized crime (Organized Crime), with a vast network, significant financial backing, and advanced technology. Drugs have a wide range of negative consequences, including physical, psychological, economic, social, cultural, defense, and security. This nation and country will suffer if drug usage is not appropriately anticipated. As a result, excellent cooperation from all parts of the country is required to combat drug usage [15]. One of the steps in regulating drug abuse in Indonesia is regulated in the Criminal Code.

In Indonesia, the Criminal Code, or the abbreviation of the Criminal Code, is the primary

source of criminal law legislation. The existing Criminal Code in this society has a long history dating back to the Dutch colonial period [16]. The Criminal Code of Indonesia is a collection of legal statutes that serve as the country's legal framework. The Criminal Code is a part of Indonesian political law that is separated into two sections: material criminal law and formal criminal law. Criminal acts, criminal perpetrators, and criminal activities are the

focus of all matters relevant to material criminal law (sanctions). Meanwhile, formal criminal law is the legislation that governs how material criminal law is implemented [17]. The current Indonesian Criminal Code is a remnant of the Dutch Colonial Government and has been in effect since Indonesia's independence [18].

This study brought up a number of earlier studies. One is a significant minority of the judges who interpret the type of punishment within the existing parameters. These findings will help sociologists better understand the environment in which judicial culture impacts the formation of the judiciary as a whole, as well as the impact of Islamic culture on participating judges' positive inclinations for rehabilitative problem solutions in the Indonesian context [19]. Ratio legis regulation of specific minimum criminal provisions in the three studied laws, namely: The Narcotics Law and Supreme Court Circular No. 03/2015, is intended to prevent disparities in sentencing crimes by judges. The regulation of the types of criminal sanctions in laws and regulations is one of the functions of the state to protect legal interests, both in the form of life, property, and dignity. The regulation of criminal sanctions is one of the criminal policy systems seen from several aspects, namely the criminal system, namely: the type of sanctions, the form of alternative and cumulative sanctions and their duration, namely the maximum minimum punishment that is threatened [20]. Contribution of knowledge by recognizing that judicial awareness of concerns relating to justice and public acceptance leads to situations in which they attempt to strike a unique balance between the pursuit of justice and public service [21]. This background ultimately underlies this research, which aims to examine how the depiction of the Criminal Code describes drugs and narcotics in terms of justice and media depictions.

## Method

Normative law study (normative law research) employs normative case studies in the form of legal behavior products, such as constitutional review. The study's topic is law, which is defined as societal standards or rules that serve as a guideline for everyone's actions. As a result, normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in concrete situations, legal systems, synchronization levels, comparative law, and legal history [22]. Based on the foregoing, the author decides to investigate and write the discussion of this thesis using normative legal research methods as research method legislation.

There are different techniques to legal research; with this approach, researchers will gather information from various elements of the issue to which we are seeking to find a solution. The statutory approach is the method used in this study [23]. A statutory approach is required for normative research because the emphasis and key issue of the study will be numerous legal norms.

This research uses primary data and secondary data. Data sources that directly offer data to data collectors are re-

ferred to as primary data. Secondary data is a type of data that comes from a different source and is used by data collectors [24]. Secondary data, or the study of documents or literature by means of collecting and examining or browsing documents and literature that can supply information or information requested by the researcher, is processed in normative legal research [25]. This study uses secondary data obtained from the news media and primary data in the form of primary law 35 of 2009 about Narcotics and related with the problem of criminal law policy on regulation narcotics crime in Indonesia.

The data in this study were analyzed using qualitative methods [22], which is a method of data analysis that involves classifying and selecting data obtained from research in the field according to its quality and correctness, which is then organized systematically, which is then studied using a deductive method of thinking associated with theories from literature study (secondary data), and finally conclusions are drawn that are useful for answering the formulation problem. The analysis' findings are provided in full descriptive [22], i.e., how to describe the actual situation in the field so that a descriptive qualitative description of the study findings can be formed, from which meaning and conclusions to solve the problem can be derived.

## Results and Discussion

### Media portrayal of drug and narcotics cases relating to the criminal code

Six rehabilitation requirements for abusers. These conditions, among others, are based on the results of the forensic laboratory examination, the suspect is positive for using narcotics. Then, based on the results of the investigation using the know your suspect method, the suspect was not involved in a narcotics illicit trafficking network and was the last user or end user. The suspect is arrested or caught red handed without evidence of narcotics or with evidence of narcotics that does not exceed the amount of use for one day [26]. The media portray the rehabilitation process for drug abusers by taking into account several conditions of "drug users" before finally implementing medical and social rehabilitation or not. In addition, three notes that need to be applied before paying attention to note such as [27].

First, the avoidance of imprisonment for narcotics users should not only be rehabilitation. Narcotics abusers can be rehabilitated at the prosecution stage. In accordance with the Narcotics Law, rehabilitation is an activity of treatment and recovery from narcotics dependence. However, not all drug users are addicts or experience addiction. "Those who need rehabilitation are only those who really need rehabilitation, so the solution for non-dependent narcotics users is to set aside cases (seponering) or optimize the use of conditional criminal charges with a probationary period.

Second, there is uncertainty regarding the legal product of the prosecutor's determination for rehabilitation. That the suspect can be rehabilitated through the legal process. Therefore, the Head of the District Attorney's Office or the Head of the District Attorney's Office will issue a reha-

bilitation determination through a legal process. “This arrangement creates problems considering that the Criminal Procedure Code does not regulate the form of termination of cases through a ‘determination’ product. This raises the question of whether the rehabilitation determination can be equated with the termination of prosecution.

In addition, this lack of clarity will cause problems at the implementation level, especially if there are parties who will test in pretrial institutions. In addition, it will also raise the question of whether with the issuance of the determination, the status of the suspect will no longer be able to be prosecuted for the same case (double jeopardy). The determination of rehabilitation should be a form of action or treatment that is judged to be health based and obtain a clear position in its implementation.

Third, there is unclear regulation regarding the conditions for carrying out rehabilitation. The guidelines state that in the event that the suspect does not undergo rehabilitation through a legal process without a valid reason or undergoes rehabilitation through a legal process but does not comply with the stipulation, the public prosecutor can issue a written warning to coercive measures. This arrangement also raises questions, namely what is meant by not undergoing legal process rehabilitation without a valid reason, as well as what is meant by “legitimate reasons” that can override the rehabilitation process. “This ambiguity creates problems later in practice in the absence of definite indicators, because it will be possible to be ‘picky’ about cases whose rehabilitation is legal and what is illegal”.

There are six rehabilitation requirements for abusers. These conditions, among others, are based on the results of the forensic laboratory examination, the suspect is positive for using narcotics. Then, based on the results of the investigation using the know your suspect method, the suspect was not involved in a narcotics illicit trafficking network and was the last user or end user. The suspect is arrested or caught red handed without evidence of narcotics or with evidence of narcotics that does not exceed the amount of use for one day. In addition, the suspect has never undergone rehabilitation or has undergone rehabilitation no more than twice, supported by a certificate issued by an authorized official or institution [28]. Images relating to the positive impact on controlling control and reducing the problem of numbers exceeding the capacity of correctional institutions and appearing in the media are expected to help reduce overcrowding, change the punitive culture or the application of criminal law in Indonesia so that the modern criminal system has turned into a corrective, rehabilitative system and restorative.

Based on experience, most of the correctional institutions in various provinces are already overcrowded. Drug users can make up 50% of prison residents. First, according to the Narcotics Law, rehabilitation is a treatment and recovery activity from narcotics dependence. Meanwhile, not all drug users are addicts or experience dependence. Those who need rehabilitation are only those who really need rehabilitation, so the solution for non-dependent narcotics

users is to set aside cases (seponceering) or to optimize the use of conditional criminal charges with a probationary period, in accordance with Prosecutor’s Guide 11 of 2021. Second, there is uncertainty regarding the legal product of the prosecutor’s determination for rehabilitation. This arrangement creates problems considering that the Criminal Procedure Code does not regulate the form of termination of cases through stipulations. Third, the unclear regulation regarding the conditions for carrying out rehabilitation causes problems in implementation because there are no definite indicators, thus allowing for “picky” cases [29]. The settlement of criminal cases carried out through rehabilitation is media portray in the media which is expected to facilitate the rehabilitation process for drug users, facilitate rehabilitation for drug users.

### **Justice against drug and narcotics abuse**

Completion of the Handling of Criminal Acts of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Principle of the Prosecutor. The prosecution stated in the guidelines the types and requirements of rehabilitation through a legal process, which consisted of medical and social rehabilitation. Those who can be rehabilitated are suspects who violate Article 127 paragraph (1) of the Narcotics Law who are abusers. In addition, the suspect has never undergone rehabilitation or has undergone rehabilitation no more than twice, supported by a certificate issued by an authorized official or institution [26]. The emergence of guidelines for narcotics abusers to obtain rehabilitation is based on the Restorative Justice approach which is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery such as in cases of defamation, slander, or humiliation. The background of the issuance of these guidelines is to pay attention to the current criminal justice system which tends to be punitive, which is reflected in the number of prisoners in prisons that exceed capacity (overcrowding) and most of them are narcotics convicts.

The Institute for Criminal Justice Reform (ICJR) together with the Institute for the Study and Advocacy of Judicial Independence (LeIP) appreciate the publication of the Attorney General’s Guidelines Number 18 of 2021 concerning the Settlement of the Handling of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor’s Dominus Litis Principle. The guideline is one of the prosecutor’s efforts to reorient narcotics policies that should not impose imprisonment for narcotics users [27]. It is still based on the same reason that the rehabilitation of drug users is proposed so that a prison sentence is not given to narcotics users because it prioritizes a Restorative justice approach.

Settlement of criminal cases of narcotics abuse through rehabilitation at the prosecution stage. The guidelines regulate the types and requirements of rehabilitation through a legal process, consisting of medical and social rehabilitation with a restorative justice approach. The guidelines are

expected to be one of the solutions in reducing the problem of the number of inmates in prisons exceeding their capacity. At the prosecution stage, prosecutors have the option of rehabilitating drug users rather than demanding imprisonment. Handling of criminal cases of narcotics abuse through rehabilitation is a mechanism that cannot be separated from the implementation of restorative justice [28]. Restorative justice is carried out through a legal process but by looking at the types and requirements of rehabilitation first, so that both medical and social rehabilitation can be carried out in accordance with the restorative justice approach. Of course, this effort was taken by considering the prison's capacity that had exceeded its capacity.

The prison population will be significantly reduced and no longer overcapacity, with medical and social rehabilitation. These guidelines serve as a reference for public prosecutors to optimize case settlement through rehabilitation of users, with a restorative justice approach with three notes on the guidelines. The Attorney General's Office was asked to revise Guidelines 18/2021 to provide legal certainty and justice for justice seekers. However, if revision is not possible, the prosecutor's office is asked to make further rules regarding the arrangements contained in Guidelines No 18/2021 so that these guidelines can be implemented properly [29]. Rehabilitation for drug users is carried out, of course, with a prior study so that the implementation of rehabilitation can truly carry out restorative justice as expected in law enforcement against narcotics abusers.

Those who actively use narcotics without their consent or in violation of the law are referred to as 'abusers' (Article 1 to 15 of Law No. 35 of 2009 concerning Narcotics). Article 127 of Law Number 35 of 2009 applies to the "abusers." If they utilize Category I narcotics for personal gain, they might face a 4 year prison sentence. It is conceivable for 'abusers' to be subjected to criminal articles other than Article 127 if evidence is gathered and other evidence that supports the application of Articles 112 or 114 or other articles. The execution of Article 127 shall also take into account the provisions of Articles 54, 55, and 103 of Law Number 35 of 2009. So if narcotics abusers are only given rehabilitation on the basis of Restorative justice with the reason to reduce the number of prison inmates who currently have exceeded their capacity, of course, it needs to be reviewed. In addition to looking at some of the requirements before rehabilitation is given to newly appointed narcotics abusers, of course to abusers who are already in prison also need to be given the same policy in carrying out law enforcement.

## Conclusion

Based on the analysis of the data that has been carried out, justice for narcotics abusers proposed through rehabilitation is based on restorative justice because prison capacities that have exceeded capacity need to be reviewed and apply policies equally to all drug abusers. Because if the policy is applied to abusers who have just received a verdict, of course, abusers who have undergone a decision need to get the same rights in the realization of Restorative Justice.

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