



CRIMINAL LAW POLICY IN COMBATING NARCOTICS ABUSE FOR USERS WITH EVIDENCE UNDER 1 GRAM

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Abstract

Purpose: Drug abuse is a serious problem that threatens social, economic, and public health stability in Indonesia. In law enforcement practices, drug users with less than 1 g of evidence are often treated the same as dealers or illegal traffickers. This situation creates an imbalance between the objectives of punishment and the rehabilitation approach mandated by Law Number 35 of 2009 concerning Narcotics. This study uses a normative juridical approach. The results of the study show that there is still inconsistency in the application of legal policies towards users with little evidence, with the majority still being sentenced to prison rather than being directed to rehabilitation. This indicates that the Indonesian criminal justice system tends to be repressive rather than rehabilitative. This study concludes that criminal law policies for dealing with drug abuse need to be directed towards the application of restorative justice principles and a humanistic approach. Drug users with less than 1 g of evidence should be focused on medical and social rehabilitation, rather than imprisonment, to create a balance between legal, humanitarian, and health aspects.

Keywords: *Criminal law policy, drug abuse, users, rehabilitation, restorative justice.*

1. Introduction

Indonesia is a country governed by law. This means that Indonesia is a state of law (*Machtsstaat*). All individual behaviors in society must be based on applicable laws. Law is a human creation in the form of norms containing guidelines for behavior. Law reflects human will regarding how society should develop and where it is headed. Drug abuse is a serious problem faced by almost all countries, including Indonesia (Limbong, WF, Soponyono, E., & Rozah, 2016). In Indonesia, the high rate of drug abuse indicates that the illicit trafficking and consumption of these substances has reached all levels of society, from schoolchildren and students to workers and public officials. This phenomenon poses significant challenges for the government, especially in terms of law enforcement and the implementation of effective policies to address the problem of illegal mining. In the context of criminal law, drug abuse presents its own complexities, involving two distinct aspects: legality and health. This creates a dilemma in the application of criminal law, especially in determining fair and proportional policies for drug users with relatively small amounts of evidence, for example, less than 1 g. However, in practice, its application to users with less than 1 g of evidence remains controversial. Some law enforcement officials tend to take a repressive approach by imposing prison sentences, while others push for a greater focus on rehabilitation for drug users. This demonstrates a lack of synchronization between the objectives of criminal law, law enforcement policies, and humanitarian aspects in handling drug-abuse cases.

Opium, commonly known as opiates, is a double-edged sword. Its prevalence is a double-edged sword. It can provide significant benefits to human life, including saving lives. However, if abused, it not only negatively impacts a person's health but can also cause death and even destroy the nation's future, especially for the younger generation. Implementing appropriate criminal law policies is crucial to prevent the over-criminalization of users who genuinely need medical treatment, rather than simply imprisonment (Dewi, R., Remaja, ING, & Surata, 2022).

This policy must differentiate between drug users, dealers, and producers based on factual and legal evidence. Drug users with evidence of less than 1 g should receive different legal treatment from those involved in illicit drug trafficking. The principles of restorative justice and a humanistic approach must be implemented so that drug prevention policies not only reduce crime rates but also provide a recovery space for individuals caught up in drug abuse. Furthermore, criminal law policies addressing drug abuse must consider their effectiveness in preventing recidivism and providing a proportional deterrent effect.



The legal system should not only focus on punishment but also emphasize rehabilitation and social reintegration for drug users.

2. Literature review and hypothesis/es development

Assessing the application of the minimum principle, particularly in the context of the Narcotics Law, while identifying various court decisions that impose sentences below the established floor or that are inconsistent with recognized practices in dealing with users (Syahputra, R., Ekaputra, M., & Marlina, 2024). Examining criminal law and the limits of evidence in the digital era, highlighting that law enforcement methods have not adapted to digital realities, which often results in sentences that are inconsistent with the goal of rehabilitation for users (Panggabean, F., Ediwarman, E., Sunarmi, S., & Marlina, 2024). A practical review of court decisions analyzing judges' legal reasoning reveals a lack of consistency in sentencing, despite insufficient evidence (Bakara, 2024).

A targeted analysis at the National Narcotics Agency (BNN) shows that rehabilitation can be successfully implemented for users (under certain conditions, such as limited evidence), although its successful implementation depends on comprehensive assessment and regional policies (Saragih, S., Simanjuntak, A., & Manurung, 2024). Evaluates judges' reasoning regarding Article 127 of the Narcotics Law; the results show that judges often consider the defendant's personal circumstances (addiction, connection to human trafficking), but this methodology is inconsistent (Chairunissa & Hendrawati, 2022). Highlights how many decisions violate the specific minimum threshold outlined in Article 112 paragraph (1) of the Narcotics Law and discusses the implications for justice and legal integrity (Herman, H., Handrawan, H., Haris, OK, Alwi, I., Abdullah, SA, Sulihin, LOM, & Taufiq, 2025). A descriptive analytical exploration of criminal justice practices related to narcotics emphasizes the gap between formal regulations and actual practices encountered in court (Locus Media, 2024).

Focusing on synthetic drugs, while not solely focused on cases involving "less than 1 gram," this report demonstrates the trend of harsher sentences arising from judges' assessments of various types of narcotics. This is important in discussions about the nature of evidence and its importance (Wibowo and Widiyasmoko, 2021). A policy-focused study advocating for the decriminalization of drug users, emphasizing the need for integrated evaluation (to distinguish between rehabilitation and punishment). This forms the basis for an argument for shifting from a criminal justice perspective to a health-oriented perspective (Fadholi, A., Surtikanthi, D., & Annisya, 2022). Although it focuses on minors, this publication remains relevant as it discusses rehabilitation strategies, minimum standards of evidence, and the application of lighter criminal laws for at-risk populations (Prayudha, 2025).

3. Methodology

This study uses an empirical legal approach. This aims to obtain accurate and objective results.

1. Normative Legal Approach

The normative legal approach is based on primary legal materials, examining several theoretical aspects regarding legal principles, legal concepts, legal perspectives and doctrines, as well as legal systems relevant to the thesis being discussed, or using secondary data, including legal principles, rules, norms, and statutory regulations contained in other statutory regulations. This approach is known as a literature study, which involves books, statutory regulations, and other documents closely related to this research (Soekanto, 2003).

2. Empirical Legal Approach

The empirical legal approach involves research and collection of primary data obtained directly based on objective facts obtained during field research, either in the form of interviews with respondents, questionnaires, or other evidence obtained from sources (Bambang Sunggono, 1997).

4. Results and discussion

Judicial power is the power of an independent state to administer justice to uphold law and justice freely and impartially based on Pancasila and the Constitution of the Republic of Indonesia, as regulated in Article 1, Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. A judge is a state



judicial official who is authorized by law to adjudicate a case submitted to him and to issue a court decision, as regulated in Article 1 number (8) of the Criminal Procedure Code (KUHP).

Judges must consider various aspects. Furthermore, judges must be careful and avoid negligence in analyzing a case, both formally and materially, and must possess technical expertise in making decisions. If a judge can avoid these things, it is hoped that it will foster, cultivate, and develop moral attitudes and habits among judges. The judge's decision in this case can serve as a reference for similar cases. In other words, it can serve as a reference for legal theorists and practitioners and provide personal satisfaction if the decision is upheld and not overturned by a higher court. The judge's reasoning is one of the most important aspects in determining the value of a decision, which contains legal certainty and justice (Asyraf, 2021). Furthermore, the judge is obliged to consider the benefits for the parties; therefore, he must respond carefully, thoughtfully, and appropriately. From this statement, it can be concluded that several aspects must be considered by the judge regarding the judge's reasoning, which are the judge's thoughts or ideas in issuing a decision, taking into account factors that can mitigate or aggravate the perpetrator's sentence.

Examining and deciding a case is not an easy task, so the judge's decision is no longer viewed solely from a legal and legislative perspective. The judges' decisions are discussed by the public. This means that judges must be careful in deciding a case because their decisions will be evaluated by the public, especially if the public feels dissatisfied or unfair. The judge's decision-making process must be based on reasoning that can be followed by others so that the judge's thought process or considerations in making a decision can be accepted by others, especially the defendant who is in the process of investigation. In the Statement of Article 53 paragraph 2 "the determination and decision as referred to in paragraph (1) must be based on the judge's legal considerations, which are based on appropriate and correct legal reasons and grounds."

Article 183 of the Criminal Procedure Code states that a judge is not permitted to sentence a person unless they find at least two valid pieces of evidence that convincingly prove the defendant's guilt. Juridical considerations are the judge's considerations based on factors or facts revealed in court and stipulated by law as mandatory in the judge's decision. In making legal considerations, judges must base their decisions on formal statutory provisions. Matters discussed in these legal considerations include theoretical aspects, jurisprudence, and the circumstances of the criminal case being charged (Hapsari, I., Sopyono, E., & Sularto, 2016).

The purpose of punishment is not merely to retaliate for the defendant's actions but to educate and guide the defendant to realize and admit his mistakes so that he can become a good member of society in the future. This purpose is also based on a utilitarian perspective, which views punishment based on its benefits or usefulness by focusing on the desired situation or condition through the imposition of punishment. The purpose of punishment is to resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace to society. The basis for the judge's decision is Article 182, Paragraph (4), which explains that the judge's decision is based on the indictment and everything proven in court. Furthermore, the judge's decision is based on Article 183 of the Criminal Procedure Code, which requires at least two valid pieces of evidence to prove that a crime actually occurred and that the defendant is guilty of committing it (Pahlefi, 2023).

Criminal law policy for eradicating drug abuse in Indonesia represents a systematic state effort to control and suppress the distribution and use of illegal narcotics. In the context of users with less than 1 g of evidence, this discussion is crucial because it reflects the balance between a repressive legal approach and a more humane and rehabilitative approach. Determining the direction of criminal law policy for this group must consider the principles of justice, the effectiveness of law enforcement, and the goal of protecting society from the dangers of narcotics (Enanic et al. 2015).

This policy consists of two main dimensions: penal policy (criminal law policy that emphasizes punishment). In combating drug abuse, these two policies must work together. At the penal policy level, law enforcement officials have a strategic role in enforcing the provisions of this law, which explicitly



stipulates that drug abuse is a criminal offense while also providing rehabilitation for users proven to be addicted.

In practice, drug users with less than 1 g of evidence often face the same legal process as drug dealers. This has sparked debate among academics and legal practitioners, as users who should receive treatment are often imprisoned. This policy is considered ineffective because it increases the burden on correctional facilities and fails to address the root cause of drug addiction. Users serving criminal sentences tend to experience social stigmatization and are at a high risk of returning to drug use after release (Mukti Arto, 2004).

Many factors underscore the state's view of drug users as individuals who need to be healed, not simply punished. Therefore, in the context of users with evidence of less than 1 g of substance, a rehabilitation approach should be prioritized over criminalization. The rehabilitation process can be carried out through programs organized by the National Narcotics Agency (BNN) and hospitals. The ideal legal policy for tackling drug abuse should be oriented toward restorative justice, an approach that emphasizes the social and personal recovery of perpetrators of drug abuse. This approach views drug users not as enemies of society but as individuals in need of help recovering from addiction. Within a restorative justice framework, users with limited evidence, for example, less than 1 g, can be directed to mandatory rehabilitation rather than undergoing a lengthy criminal process.

The implementation of fair criminal law policies for users with limited evidence also requires consistency and a shared understanding among law enforcement officials, including the police, prosecutors, judges, and the National Narcotics Agency (BNN). Differences in perceptions and policies in the field often lead to inconsistencies in law enforcement. For example, there are cases where users with less than 1 g of evidence are still prosecuted and sentenced to prison, while in other regions, similar cases are resolved through rehabilitation. This inconsistency creates legal uncertainty and hinders the primary goal of drug prevention. Furthermore, national criminal policy plays a crucial role in determining the direction of drug abuse prevention. The government needs to strengthen regulations and provide clearer technical guidelines regarding the limits of evidence that can be used by a user or dealer. This is crucial for law enforcement officials to have a strong basis for distinguishing between those who abuse drugs for personal use and those who distribute them illegally. With clear guidelines, it is hoped that law enforcement policies will be more effective in preventing human rights violations (Mulyadi, 2007).

5. Conclusion

5.1. Conclusion

Criminal law policies addressing drug abuse for users with less than 1 g of evidence are essentially a state effort to balance law enforcement and human rights protection. In practice, law enforcement in Indonesia still exhibits repressive tendencies, with drug users with minimal evidence still subject to criminal sanctions, such as imprisonment. This approach is considered ineffective because it fails to address the root cause of the problem, namely, drug addiction, which requires medical and social treatment.

Drug users with evidence of less than 1 g should be treated as victims, not as criminals. Rehabilitation not only benefits the individual but also helps reduce the burden on correctional institutions and recidivism rates. An ideal criminal law policy should prioritize restorative justice, emphasizing drug users' social and psychological recovery. The government needs to clarify the legal boundaries regarding the categories of users and dealers based on the evidence found to prevent excessive criminalization. Therefore, the direction of criminal law policy in eradicating drug abuse for users with evidence of less than 1 g must be based on a balance between legal, humanitarian, and health aspects.

5.2. Limitation

The author's limitation is that he did not obtain detailed data, so he could not analyze it more specifically; therefore, the author could only present some of the major theories that discuss the material discussed.



5.3. Suggestion

The government should pay more attention to legal policies to impose more robust penalties on perpetrators. This will ensure that criminal law is implemented in accordance with national legal guidelines, regardless of who is punished or not.

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