

## Legal Policy for Drug Users in Indonesia and the Netherlands

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### Abstract

Indonesia does not allow the use of narcotics except for medical purposes. Drug use for medical purposes must be under supervision of doctor, regardless of the level of content in it. In contrast to Netherlands, which allows the use of Soft Drugs as regulated in Dutch Opium Act. In Netherlands itself, the use of marijuana and the purchase of marijuana can be done at a coffee shop that already has a permit. The legalization of certain types of drugs and for certain purposes exists because Netherlands wants to provide legal certainty for their people. Netherlands want drug trafficking not to be carried out by crime syndicates that will harm their people. In addition, Netherlands also provides adequate health facilities for drug addicts. Evidently, number of addicts, number of HIV infections due to injection needles, and deaths from drugs has decreased. This is what distinguishes drug policy in Indonesia and

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Netherlands. Indonesia prioritizes the Penal Policy, and it can be seen from the punishment of drug users. While Netherlands prioritizes Non-penal Policy, it can be seen from the incessant drug control. What can Indonesia follow from the drug policy in Netherlands is the prevention of drugs with state control over drug trafficking accompanied by adequate health facilities. Indonesia should reduce the punishment of drug addicts. Criminalizing drug addicts will not solve the problems. In the case of drug abuse, addicts are also victims. They need help. In addition, the imprisonment of addicts will only increase the capacity in prisons.

## KEYWORDS

Indonesia ▪ Narcotics ▪ Netherlands

## Abstrak

Indonesia tidak mengizinkan penggunaan narkoba kecuali untuk keperluan medis. Penggunaan obat untuk tujuan medis harus di bawah pengawasan dokter, terlepas dari tingkat kandungan di dalamnya. Berbeda dengan Belanda yang membolehkan penggunaan Narkoba seperti yang diatur dalam Undang-Undang Candu Belanda. Di Belanda sendiri, penggunaan ganja dan pembelian ganja bisa dilakukan di kedai kopi yang sudah memiliki izin. Legalisasi narkoba jenis tertentu dan untuk tujuan tertentu ada karena Belanda ingin memberikan kepastian hukum bagi rakyatnya. Belanda ingin peredaran narkoba tidak dilakukan oleh sindikat kejahatan yang merugikan rakyatnya. Selain itu, Belanda juga menyediakan fasilitas kesehatan yang memadai bagi para pecandu narkoba. Terbukti, jumlah pecandu, jumlah infeksi HIV akibat jarum suntik, dan kematian akibat narkoba mengalami penurunan. Inilah yang membedakan kebijakan narkoba di Indonesia dan Belanda. Indonesia mengutamakan Penal Policy, hal ini terlihat dari sanksi yang diberikan kepada pengguna narkoba. Sementara Belanda mengutamakan Non-penal Policy, hal itu terlihat dari gencarnya pengawasan narkoba. Apa yang dapat Indonesia ikuti dari kebijakan narkoba di Belanda adalah pencegahan narkoba dengan

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pengawasan negara atas peredaran narkoba disertai dengan fasilitas kesehatan yang memadai. Indonesia harus mengurangi hukuman bagi pecandu narkoba. Mengkriminalisasi pecandu narkoba tidak akan menyelesaikan masalah. Dalam kasus penyalahgunaan narkoba, pecandu juga menjadi korban. Mereka membutuhkan bantuan. Selain itu, pemenjaraan pecandu hanya akan menambah kapasitas di Lapas.

## **KATA KUNCI**

Indonesia ▪ Narkotika ▪ Belanda

## **A. Introduction**

The term Narcotic in Indonesia refers to the abbreviation of Narcotics and Dangerous Drugs. In addition, other terms are also known which in the medical world is defined as an abbreviation of Narcotics, Psychotropics, and Addictive Substances. The regulation of narcotics crime is regulated in Law Number 35 of 2009 concerning Narcotics, which divides several types of narcotics into three groups. The description of narcotic classes is regulated in Minister of Health Regulation Number 4 of 2021 as the latest regulation on narcotics classification. In this Ministry Regulation, marijuana is classified as Narcotics Group 1 which is defined as the most dangerous narcotics. Its utilization is only allowed for the development of science and is under the supervision of the Ministry of Health of the Republic of Indonesia. Marijuana is one type of narcotics that is often misused. The Indonesian government is serious about eradicating the circulation and smuggling or illicit trade of narcotics. This is done with the establishment of the National Narcotics Agency (BNN) which will investigate, supervise, and prevent narcotics abuse.

In contrast to Indonesia which prohibits the use of marijuana. In the Netherlands the use of marijuana is allowed for personal consumption and traded through Coffee Shops. The Netherlands is one of the countries that allows the sale of marijuana in small quantities in accordance with its laws,

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namely the Opium Act. This is done because it considers several aspects, including, based on research from the Dutch Ministry of Health. Marijuana is a narcotic that has the smallest effect or impact than other drugs. So that in the Netherlands marijuana is classified as a "soft drug".

Based on the problems stated above, this paper aims to: (i) identify and analyze criminal arrangements against perpetrators of narcotics abuse carried out by Indonesia and the Netherlands; and (ii) See a comparison of the handling of case studies that occurred in Indonesia and the Netherlands.

## **B. Literature Review**

### **1. Narcotics**

Narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases. However, if it is misused or used not in accordance with treatment standards, it can have very detrimental consequences for individuals or society, especially the younger generation. This will be more detrimental if accompanied by abuse and illicit trafficking of narcotics which can result in greater danger.<sup>1</sup> According to Law No. 35 of 2009 Article 1 Number 1, "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence. , which are divided into groups as attached to this Law". Meanwhile, according to Law No. 35 of 2009 Article 1 Number 2, "Narcotics Precursors are substances or starting materials or chemicals that can be used in manufacturing. Narcotics are distinguished in the table as attached to this Law".<sup>2</sup>

In the Law of the Republic of Indonesia No. 35 of 2009 concerning narcotics, it is explained that there are three classes of narcotics, which are:

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<sup>1</sup> Andri Winjaya Laksana, "Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi," *Jurnal Pembaharuan Hukum* 2, No. 1 (2015): 74–85.

<sup>2</sup> *Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*, 2009.

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- a) Category I are narcotics that can only be used for scientific development purposes and are not used in therapy and have a very high potential to cause dependence.
  - b) Group II is narcotics that are efficacious for treatment which are used as a last resort and can be used in therapy and/or scientific development purposes and have a high potential to cause dependence.
  - c) Group III is narcotics that have medicinal properties and are widely used in therapy and/or scientific development purposes and have mild potential to cause dependence

## **2. Narcotics Abuse**

According to the Narcotics Law Article 1 Numbers 13-15, Narcotics Addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically. Narcotics addiction is a condition characterized by an urge to use Narcotics continuously with increasing doses to produce the same effect and when its use is reduced and/or stopped suddenly, it causes characteristic physical and psychological symptoms. Meanwhile, abusers are people who use Narcotics without rights or against the law.

## **C. Result and Discussion**

### **1. Regulations on Drug Abuse in Indonesia and Netherlands**

#### ***a. History of the Entry of Drugs and Regulation of Narcotics in Indonesia***

Regulations related to Narcotics in Indonesia currently refer to Law Number 35 of 2009 concerning Narcotics. In Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics it is explained that Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of

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taste, reduce to eliminate feeling pain, and can cause dependence, which is divided into groups as regulated in the Act.

Basically, narcotics and anesthetics are painkillers and also change feelings and thoughts. In 2000 BC, known a plant called *papavor somniveritum* (opium), and this plant also grows in various regions such as China, India and several other countries. Then in 330 BC (BC) someone named Alexander the great began to introduce opium in India and Persia, and it was at this time that India and Persia used opium for banquets.<sup>3</sup>

### 1) In 2000 BC

In 2000 BC, opium juice was discovered or known as Opium (*Opium = papavor somniferitum*) in the Samaria area. Then this pium spread to India, China, and other parts of Asia. During the American Civil War of 1806, morphine, a modified mixture of opium and nicotine invented by Friedrich Wilhelm, was used as a painkiller for soldiers wounded in war. Furthermore, the Bayer drug factory produced morphine which was modified in 1898 under the name Heroin. Heroin is used as an official painkiller. However, currently heroin is no longer used. Only morphine and cocaine are derived from the coc plant that grows in Peru and Bolivia.<sup>4</sup>

### 2) During the Dutch Colonial Period

At that time the Dutch government made a law (*Verdovende Middelen Ordonantie*) which came into force in 1927 (State Gazette No. 278 Juncto 536). This law is enacted to prevent the use and unwanted effects of drugs. This is based on the fact that Cannabis (*Cannabis Sativa*) is widely grown in Aceh and other areas of Sumatra and has long been used by residents as an ingredient in daily food ingredients. Erythroxyton Coca (Cocaine) is widely grown in East

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<sup>3</sup> Sulung Faturachman Progam Studi Teknik Permasayarakatan dan Politeknik Ilmu Pemasayarakatan, "SEJARAH DAN PERKEMBANGAN MASUKNYA NARKOBA DI INDONESIA," *Historis : Jurnal Kajian, Penelitian dan Pengembangan Pendidikan Sejarah* 5, No. 1 (Juni 2020): 1–12.

<sup>4</sup> *Ibid.*

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Java and at that time it was only for export. Therefore, there is a need for restrictions so that drug abuse does not occur.

Even though there is a law (*Verdovende Middelen Ordonantie*) that regulates the restrictions on drug use, there is still drug abuse that occurs in Indonesia. The large number of residents from China as the middle class and considered consumers who provide foreign exchange to the government through opium, the Dutch government gives permission to certain places to smoke opium and the supply is legally justified by law. The Chinese at that time used opium in the traditional way, namely by smoking it through a long pipe. The use of opium or opium drugs has long been known in Indonesia, long before the outbreak of World War II during the Dutch colonial era. Opium culture was brought from mainland China to Indonesia since Hong Kong fell to the British in 1841 due to the opium war. '*Teler*' became a popular culture for some Chinese immigrants at that time.<sup>5</sup>

### 3) During the Japanese Colonial Period

Entering the Japanese colonial period, the *Verdovende Middelen Ordonantie Act* was abolished. During the Japanese government, Japan banned the use of opium and closed '*Gang Madat*' which was once a localization place which was legalized by the Dutch government.

### 4) During the Old Order Era

After the end of the colonial period, Indonesia became independent, precisely during the Old Order, the Indonesian State began to make laws and regulations governing the prohibition of the use of illegal substances/drugs. The law regulates the production, use, and distribution of dangerous drugs (*Dangerous Drugs Ordinance*). The authority was then given to the Minister of Health in implementing the Act for its regulation (*State Gaette No. 419, 1949*). Due to the ongoing Dutch military aggression, the Undnag did not make any significant changes until 1970.

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<sup>5</sup> "Sejarah Indonesia Dalam Memerangi Narkoba."

### **5) During the New Order Era**

Entering the New Order era, the President issued Instruction No. 6 of 1971 by establishing a coordinating body, known as BAKOLAK INPRES 6/71, which is an agency that coordinates (between departments) all countermeasures against various forms that can threaten state security, namely counterfeiting, money, smuggling, the dangers of narcotics, juvenile delinquency, subversive activities and surveillance of foreigners.

Due to the development of the times, the Dutch Remaining Act cannot be reused because it is not relevant. Therefore, the government then issued Law No. 9 of 1976, concerning Narcotics. The law, among others, regulates various matters, especially regarding illicit traffic. Besides that, it also regulates the therapy and rehabilitation of narcotics victims (article 32), by specifically mentioning the role of doctors and the nearest hospital in accordance with the instructions of the minister of health. The enactment of Law Number 9 of 1976 did not reduce the number of cases of drug abuse in Indonesia. With the specific increase in drug abuse, it led to a revision of the Anti-Narcotics Law. In this way, the Anti-Narcotics Law No. 22/1997 was drafted, following the Psychotropic Law No. 5/1997. In this law, articles on criminal provisions against narcotics crime perpetrators began to be regulated, with the heaviest sanction in the form of the death penalty.

### **6) Reformation Era**

After the end of the New Order era, which was marked by the fall of President Suharto in 1998, a new period began. In 1999, the Government (President Abdurahman Wahid) formed the National Narcotics Coordinating Board (BKNN), with the issuance of Presidential Decree No. 116/1999. BKNN is a Drug Coordination Agency consisting of 25 relevant government agencies. Based on two regulations, namely Law Number 5 of 1997 concerning Psychotropics and Law Number 22 of 1997 concerning Narcotics. BKNN is chaired by the Chief of the Indonesian National Police (Kapolri) ex-officio. Until 2002 BKNN did not have its own personnel and budget allocation. The BKNN budget is obtained and allocated from the Indonesian National Police



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Headquarters (Mabes Polri), thus BKKN cannot carry out its duties and functions to the fullest.

BKNN as a coordinating body is no longer adequate to deal with the increasingly serious threat of drug danger. Therefore, based on Presidential Decree Number 17 of 2002 concerning the National Narcotics Agency, BKNN was replaced with the National Narcotics Agency (BNN). BNN, as a forum institution with the task of coordinating 25 relevant government agencies and coupled with operational authority, has the following duties and functions: 1. coordinating relevant government agencies in the formulation and implementation of national drug control policies; and 2. coordinate the implementation of the national policy on drug control.

Starting in 2003, BNN only received a budget allocation from the APBN. With the APBN budget allocation, BNN continues to improve its performance together with BNP and BNK. However, because without an institutional structure that has a firm and only coordinating line of command (mere functional similarities), then the National Narcotics Agency is considered unable to work optimally and will not be able to deal with drug problems that continue to increase and become more serious. Therefore, the authorities in this case immediately issue Presidential Regulation Number 83 of 2007 concerning the National Narcotics Agency, the Provincial Narcotics Agency (BNP) and the Regency/City Narcotics Agency (BNK), which have operational authority through the authority of the relevant BNN Members in the task force, where BNN-BNP-BNKab/City are working partners at the national, provincial and district/city levels, each of which is responsible to the President, Governor and Regent/Mayor, and respectively (BNP and BN District/City) does not have a vertical-structural relationship with BNN.

Responding to the development of drug problems that continue to increase and become more serious, the MPR-RI Decree Number VI/MPR/2002 through the General Session of the People's Consultative Assembly of the Republic of Indonesia (MPR-RI) in 2002 has recommended to the DPR-RI and the President of the Republic of Indonesia to make changes to the Law No. 22 of 1997 concerning Narcotics. Thus, Law Number 35 of 2009 concerning

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Narcotics was issued as a result of the follow-up recommended by the MPR-RI to the DPR-RI. Undnag-Undnag Number 35 of 2009 is the latest and last law in the war on drugs. This law also stipulates the authority of BNN as an institution that conducts investigations and investigations of narcotics crimes and narcotics precursors. The current focus of BNN is on ways to discourage drug dealers or dealers, because it is alleged and proven that in several cases drug sales have been used for terrorist financing (Narco Terrorism) and also to avoid drug sales activities for political costs (Narco for Politic).<sup>6</sup>

## 2. Criminal Arrangements for Drug Users in Indonesia

Currently, the regulation related to Narcotics in Indonesia refers to Law Number 35 of 2009 concerning Narcotics as the latest regulation. This Law regulates all forms of activities and/or actions related to Narcotics and Narcotics Precursors. In Indonesia alone narcotics are divided into groups. In this Law narcotics are divided into several groups, in accordance with Article 6 Paragraph (1), among others:

- a. Narcotics Group I
- b. Narcotics Group II
- c. Narcotics Category III

Classes of narcotics mentioned in Law Number 35 of 2009 concerning Narcotics are further elaborated in the Regulation of the Minister of Health Number 4 of 2021 as Changes to the Classification of Narcotics. The following is a description of the Narcotics Groups in accordance with the Regulation of the Minister of Health Number 4 of 2021.

### a) Classification of Narcotics

#### 1) Narcotics Group I

- Papaver Somniferum L plant and all its parts including the fruit and straw, except the seeds.
- Raw opium, which is self-frozen sap, is obtained from the fruit of the Papaver Somniferum L. plant with or without undergoing moderate

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<sup>6</sup> *Ibid.*

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processing for packaging and transportation regardless of the morphine content.

- Cooked opium consists of:
  - a. opium, the product of which is obtained from crude opium by a series of processes, particularly by dissolution, heating and fermentation with or without the addition of other substances, with a view to converting it into an extract suitable for solidification.
  - b. jicing, the remnants of opium after being smoked, regardless of whether the opium was mixed with leaves or other ingredients.
  - c. jicingko, the results obtained from processing jicing.
- Coca plants, plants of all genus *Erythroxyton* of the family *Erythroxyllaceae* including fruit and seeds.
- Coca leaves, undried or dried leaves or in powder form of all plants of the genus *Erythroxyton* of the family *Erythroxyllaceae* that produce cocaine directly or through chemical changes.
- Raw cocaine, all the products obtained from coca leaves that can be processed directly to get cocaine.
- Cocaine, methyl ester-1-benzyl ecgonine.
- Cannabis plants, all plants of the cannabis genus and all parts of plants including seeds, fruit, straw, processed products of the cannabis plant or parts of the cannabis plant including cannabis resin and hashish.
- Tetrahydrocannabinol, and all isomers and all their chemical stereo forms.
- Delta 9 tetrahydrocannabinol, and all its stereochemical forms
- ASETORFINA: 3-O-Asetiltetrahidro-7 $\alpha$ -(1-hidroksi-1-metilbutil)-6,14-endo-etenooripavina
- ASETIL-ALFA-METILFENTANIL: N-[1-( $\alpha$ -Metilfenetil)-4-piperidil]asetanilida
- ALFA-METILFENTANIL: N-[1( $\alpha$ -Metilfenetil)-4-piperidil]propionanilida

- ALFA-METILTIOFENTANIL: N-[1-] 1-Metil-2-(2-tienil) etil]-4-piperidil] priopionanilida
- BETA-HIDROKSIFENTANIL: N-[1-(beta-Hidroksifenetil)-4 piperidil] propionanilida
- BETA-HIDROKSI-3-METILFENTANIL: N-[1-(beta Hidroksifenetil)-3-metil4-piperidil]propionanilida
- DESOMORFINA: Dihydrodesoksimorfina
- ETORFINA: Tetrahidro-7 $\alpha$ -(1-hidroksi-1-metilbutil)-6,14-endo etenooripavina
- HEROINA: Diasetilmorfina
- KETOBEMIDONA: 4-Meta-hidroksifenil-1-metil-4-propionilpiperidina
- 3-METILFENTANIL: N-(3-Metil-1-fenetil-4-piperidil) propionanilida
- 3-METILTIOFENTANIL: N-[3-Metil-1-[2-(2-tienil) etil]-4-piperidil]propionanilida
- MPPP: 1-Metil-4-fenil-4-piperidinol propianat (ester)
- PARA-FLUOROFENTANIL: 4'-Fluoro-N-(1-fenetil-4-piperidil) propionanilida
- PEPAP: 1-Fenetil-4-fenil-4-piperidinol asetat (ester); act

## 2) Narcotics Group II

- ALFASETILMETADOL: Alfa-3-asetoksi-6-dimetil amino-4,4difenilheptana
- ALFAMEPRODINA: Alfa-3-etil-1-metil-4-fenil-4-propionoksipiperidina
- ALFAMETADOL: Alfa-6-dimetilamino-4,4-difenil-3-heptanol
- ALFAPRODINA: Alfa-1, 3-dimetil-4-fenil-4 propionoksipiperidina
- ALFENTANIL: N-[1-[2-(4-etil-4,5-dihidro-5-okso-1 H-tetrazol-1-il)etil]-4-(metoksimetil)-4-piperidinil]-N-fenilpropanamida
- ALLILPRODINA: 3-Allil-1-metil-4-fenil-4 propionoksipiperidina
- ANILERIDINA: Asam 1-para-aminofenetil-4-fenilpiperidina-4-karboksilat etil ester

- ASETILMETADOL: 3-Asetoksi-6-dimetilamino-4, 4-difenilheptana
- BENZETIDIN: Asam 1-(2-benziloksietil)-4-fenilpiperidina-4-karboksilat etil ester
- BENZILMORFINA: 3-benzilmorfina
- BETAMEPRODINA: Beta-3-etil-1-metil-4-fenil-4-propionoksisipiperidina
- BETAMETADOL: Beta-6-dimetilamino-4,4-difenil-3-heptanol
- BETAPRODINA: Beta-1,3-dimetil-4-fenil-4-propionoksisipiperidina
- BETASETILMETADOL: Beta-3-asetoksi-6-dimetilamino-4, 4-difenilheptana
- BEZITRAMIDA: 1-(3-siano-3,3-difenilpropil)-4-(2okso-3 propionil1-benzimidazolil) piperidina; act.

### 3) Narcotics Group III

- ASETILDIHIDROKODEINA
- DEKSTROPROPOKSIFENA: Alfa-(+)-4-dimetilamino-1,2 difenil3-metil-2-butanol propionate
- DIHIDROKODEINA
- ETILMORFINA: 3- etilmorfina
- KODEINA: 3-metilmorfina
- NIKODIKODINA: 6-nikotinildihidrokodeina
- NIKOKODINA: 6-nikotinilkodeina
- NORKODEINA: N-demetilkodeina
- POLKODINA: Morfoliniletilmorfina
- PROPIRAM: N-(1-metil-2-piperidinoetil)-N-2 piridilpropionamida; act.

Of the three groups of Narcotics above, Narcotics Group I may only be used for the benefit of scientific development and not used in therapy, and has a very high potential to cause dependence. Narcotics Group II is narcotics with medicinal properties used as a last resort and can be used in therapy and/or for the purpose of developing science and has a high potential to cause dependence. Meanwhile, Narcotics Group III is narcotics with medicinal properties and is widely used in therapy and/or for the purpose of developing

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science and has mild potential to cause dependence. What is meant by "health services" is including medical rehabilitation services.

Whereas what is meant by the use of narcotics for "development of science and technology" is the use of Narcotics especially for the benefit of treatment and rehabilitation, including for the benefit of education, training, research and development as well as skills carried out by government agencies whose duties and functions are to supervise, investigate, investigate, and eradicating the illicit traffic of Narcotics.

Narcotics crime is one of the most dangerous crimes. This is because Narcotics Abuse can damage the character, physically and emotionally for its users. The punishment of drug users cannot be separated from the existing criminal system in Indonesia. The purpose of the existence of this criminal system is part of the realization in the law enforcement process that is carried out by the judicial system based on the law that regulates the crime of drug abuse and trafficking in Law No. 35 of 2009 concerning Narcotics as a regulation that replaces Law No. 22 of 2009 1997 on Narcotics.<sup>7</sup>

With the developments that occur in the world, of course, it also affects the mindset and views of the community in seeing narcotics users who are no longer considered criminals, but are seen as victims or patients who must be given empathy. If a narcotics addict has been convicted by a judge of a narcotic crime he has committed, the judge may decide to order the person concerned to undergo treatment and/or treatment to give him a second chance. This also applies if the narcotics addict is not proven guilty on charges of narcotics crime directed at him. This provision is regulated in Article 47 of Law Number 22 of 1997 and Article 103 of Law Number 35 of 2009, which reads as follows:

Article 47 of Law Number 22 of 1997:

- a) Judges who examine narcotics addict cases may:
- Decide to order the person concerned to undergo treatment and/or treatment, if the narcotic addict is proven guilty of committing a narcotic crime; or

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<sup>7</sup> Puteri Hikmawati, "Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika," *Negara Hukum* 2, No. 2 (2011): 329–350.

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- Determine to order the person concerned to undergo treatment and/or treatment, if the narcotic addict is not proven guilty of committing a narcotic crime.
  - b) The period of undergoing treatment and/or treatment for narcotics addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence.

Article 103 of Law Number 35 of 2009 reads:

- a) Judges who examine Narcotics Addict cases may:
  - Decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime; or determines to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime.
- b) The period of undergoing treatment and/or treatment for Narcotics Addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence.

Criminal sanctions imposed on narcotics addicts as self-victimizing victims are in the form of serving a sentence in prison. Meanwhile, the sanctions for action given to narcotics addicts as victims are in the form of treatment and/or treatment which is carried out in the form of rehabilitation facilities. The implementation system is that the period of treatment and/or treatment is counted as a period of serving a sentence. Law No. 22 of 1997 and Law No. 35 of 2009 concerning Narcotics has adhered to a double track system where in the formulation of sanctions for criminal acts of narcotics abuse, although it is still freedom for judges to pass verdicts/decisions in handling cases of narcotics users/addicts, based on the judge's belief in giving action sanctions. This can be proven by looking at and also understanding the criminal provisions against perpetrators of narcotics abuse for themselves which are contained in the provisions of Article 85 of Law Number 22 of 1997:

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Whoever without rights and against the law:

- 1) Using narcotics class I for oneself, shall be punished with a maximum imprisonment of 4 (four) years.
- 2) Using narcotics class II for oneself, shall be punished with a maximum imprisonment of 2 (two) years.
- 3) Using narcotics class III for oneself, shall be punished with a maximum imprisonment of 1 (one) year

Furthermore, the provisions for action sanctions in the form of rehabilitation for narcotics addicts are regulated in Article 45 and Article 47 of Law Number 22 of 1997. Furthermore, in the new Law on Narcotics, namely Law Number 35 of 2009, provisions regarding narcotics abuse for oneself itself is regulated in Article 127:

Any Abusers:

- 1) Narcotics class I for oneself shall be sentenced to a maximum imprisonment of 4 (four) years;
- 2) Narcotics class II for oneself shall be sentenced to a maximum imprisonment of 2 (two) years; and
- 3) Narcotics class III for oneself shall be punished with imprisonment for a maximum of 1 (one) year.

In deciding the case as referred to in paragraph (1), the judge must pay attention to the provisions as referred to in Article 54, Article 55, and Article 103. In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation.

Referring to the formulation of sanctions in the Law mentioned above, it can be drawn the line that the formulation of sanctions for criminal acts of narcotics abuse refers to a double track system, because based on a victimology review those narcotics addicts are self-victimizing victims, namely victims as perpetrators, victimology remains determine the abuse of narcotics as a victim, even though the victim of a crime/crime he/she has committed himself. Therefore, narcotics addicts who are also victims deserve protection. However, because a narcotics addict is also a perpetrator of a crime/crime, he must also



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be punished, because of this, it is said that the double track system in the formulation of sanctions against narcotics abuse is the most appropriate.

The double track system in the formulation of sanctions against narcotics abuse is a criminal law policy in the formulation of the provisions governing the sanctions given to perpetrators of narcotics abuse, namely in the form of criminal sanctions and action sanctions considering that the perpetrators of narcotics abuse have a slightly different position from other criminals. On the one hand, he is a criminal who must be punished, but on the other hand he is a victim of the crime he committed himself, so it is necessary to take an action in the form of rehabilitation. The determination of sanctions against narcotics addicts, whether to apply criminal sanctions or action sanctions, is in the hands of the judge.<sup>8</sup>

In reality, judges often do not give narcotics users the right to carry out rehabilitation, even though Law no. 35 of 2009 there is a guarantee of rehabilitation for narcotics addicts. In addition, due to the limited number of assistants or counselors, the number of narcotic addicts reached by the rehabilitation program is limited. Therefore, the Ministry of Social Affairs is currently developing a rehabilitation agency for narcotics users. Currently, the Ministry of Social Affairs already has 5 Drug Abuse Rehabilitation Centers.<sup>9</sup>

Rehabilitation of drug addicts adheres to the theory of treatment and social defense. Rehabilitation of narcotics addicts adheres to the theory of treatment because rehabilitation of narcotics addicts is a process of integrated treatment activities to free addicts from dependence. This is in accordance with the punishment intended for the flow of treatment theory, namely to provide treatment and rehabilitation to criminals as a substitute for punishment. Criminals are people who are sick, so they need treatment and rehabilitation. From this we know that judges can give criminal sanctions to users in the form

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<sup>8</sup> *Ibid.*

<sup>9</sup> "Kemensos Teken MOU dengan BNN, UNODC dan Colombo Plan | Kementerian Sosial Republik Indonesia."

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of rehabilitation to provide opportunities to improve physical, mental and emotional conditions as a result of narcotics abuse.<sup>10</sup>

### 3. Current Narcotics Arrangements in the Netherlands

In Indonesia, marijuana is an illegal plant and is classified as a type I narcotic (very dangerous). As a group of substances with the most stringent controls, along with other substances such as heroin, cocaine, crystal meth or methamphetamine. This is in accordance with the provisions of Law Number 35 of 2009 and Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021. Punishments for marijuana abuse are also balanced with violations of laws related to methamphetamine or heroin, regardless of the perception that marijuana is not more dangerous. Most marijuana users consume by smoking marijuana flowers that have been dried or mixed in tobacco for smoking. Traditional uses of marijuana can still be found in Aceh, one of which is used for processed food, mixed in coffee or tea. In addition, marijuana is also used as cannabis seed oil, lunkhead, curry, fried noodles, meatball soup, and peanut sauce.<sup>11</sup> Cannabis is a substance that contains addictive, which if used incorrectly will have a bad effect. The regulation of the law in Indonesia itself focuses on strict regulation of the prohibition of the use of narcotics.

It is different with the regulations in the Netherlands that legalize the use of marijuana. For the Netherlands, marijuana users are not a threat but a source of state income. Therefore, the entire world population can buy and use marijuana there. Not only young people, but grandparents are also a sight that we often encounter in coffee shops. The Ministry of Health, Ministry of Justice, and the Dutch Ministry of Home Affairs provide interesting reports on the phenomenon of coffee shops. They agree that the most effective way to get rid of dependence on criminal organizations is to regulate the cannabis farming

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<sup>10</sup> Anton Sudanto, "Penerapan Hukum Pidana Narkotika di Indonesia," *ADIL: Jurnal Hukum* 8, No. 1 (2017): 137–161.

<sup>11</sup> Arie Indra Pranata, "Strategi Edukasi Lingkar Ganja Nusantara (LGN) Dalam Pemanfaatan Ganja Sebagai Obat," *eJournal Sosiatri-Sosiologi* 2021, No. 2 (2021): 1–14.

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system. In addition, this report also underscores the success of the coffee shops system in preventing people from using "hard drugs".<sup>12</sup>

The Netherlands has decriminalized the use of Cannabis (marijuana) which aims to protect Cannabis users from accessing unsafe Cannabis and other dangerous drugs. The program is implemented by providing localization of special consumption and needle replacement programs. The result of reducing the impact of narcotics hunting is a decrease in the number of narcotics users in Europe, the Netherlands is listed as the country with the lowest number of narcotics users in Europe. The Netherlands is also listed as the country with the lowest number of HIV-infected drug users in Europe.<sup>13</sup>

Since 1970, marijuana has become a soft drug that can be consumed by customers in coffeeshops. Dutch Drug Policy has focused on controlling and reducing drug-related problems. Keywords are pragmatic, humane, realistic and based on scientifically substantiated facts. Officially, possession and production for personal use are both *misdemeanours*, but these laws are not enforced in Dutch society; a situation known as *gedogen* - to tolerate or *gedoogbeleid* - tolerance policy. As a consequence, neither possession of up to five grams of cannabis nor growing up to five plants is prosecuted. Four pillars of the Dutch soft drugs policy

- a. Prevent usage and provide treatment
- b. Reduce harm to users
- c. Minimize public nuisance
- d. Combat production and trafficking.<sup>14</sup>

The Dutch approach to cannabis policy has always been fundamentally pragmatic, rather than politically or ideologically driven. When the 'new' approach was formally adopted in 1976, it was motivated primarily by a desire to separate the market for cannabis, deemed to be relatively low risk, from the market for other, more risky illegal drugs. The policy effectively decriminalized the personal possession and use of cannabis for adults, but unlike other

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<sup>12</sup> Martijn Adriaan Boermans, "An Economic Perspective On The Legalisation Debate: The Dutch Case" (n.d.).

<sup>13</sup> "Cannabis policy in the Netherlands: moving forwards not backwards" (n.d.).

<sup>14</sup> Boermans, "An Economic Perspective On The Legalisation Debate: The Dutch Case."

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decriminalization approaches that have been implemented elsewhere, it additionally tolerated the existence of outlets for low-volume cannabis sales, outlets that eventually became the well-known Dutch 'coffee shop'. The coffee shops are allowed to operate under strict licensing conditions, which include age-access restrictions, a ban on sales of other drugs (including alcohol), and controls on the shops' external appearance, signage and marketing. The approach has been broadly successful.<sup>15</sup>

**a. Toleration policy regarding soft drugs and coffee shops.**

Soft drugs are less damaging to health than hard drugs. In the Netherlands, coffee shops are permitted to sell cannabis under certain strict conditions. A coffee shop is an establishment where cannabis may be sold but no alcoholic drinks may be sold or consumed. This is part of the Dutch policy of toleration.

**b. Toleration policy regarding soft drugs**

The Netherlands has a policy of toleration regarding soft drugs. This means that the sale of soft drugs in coffee shops is a criminal offence, but the Public Prosecution Service does not prosecute coffee shops for this offence. Neither does the Public Prosecution Service prosecute members of the public for possession of small quantities of soft drugs. These quantities are defined as follows: no more than 5 grams of cannabis (marijuana or hash) and no more than 5 cannabis plants.

**c. Toleration criteria for coffee shops**

The sale of cannabis (hash and marijuana) in coffee shops is tolerated, provided that coffee shops keep to the prescribed rules or 'toleration criteria'. Coffee shops:

- must not cause any nuisance;
- are not permitted to sell hard drugs;
- are not permitted to sell cannabis to minors;
- are not permitted to advertise drugs;
- are not permitted to sell large quantities (over 5 grams of cannabis) in a single transaction.

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<sup>15</sup> "Cannabis policy in the Netherlands: moving forwards not backwards."

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Municipalities determine whether to allow coffee shops to operate within their boundaries, and if so, how many. They may also impose additional rules. The government is terminating the 'open door' policy that has been pursued by coffee shops. The objective is to combat the nuisance and crime associated with coffee shops and the sale of drugs. Coffee shops must become smaller and focus on the local market. This policy is also aimed at making Dutch coffee shops less attractive to drug users from abroad. To combat drug-related crime and nuisance, a new toleration rule was introduced on 1 January 2013: only 'residents of the Netherlands' are permitted to visit coffee shops and purchase cannabis there. A resident of the Netherlands is someone who lives in a Dutch municipality and is registered there. Coffee shop owners are required to check that all those admitted to the shop, and allowed to purchase cannabis there, are residents of the Netherlands aged 18 years or older. They should check these facts, for instance, by asking the person to produce a valid identity document or residence permit, in combination with an extract from the municipal population register. It is against the law to grow marijuana and cannabis plants. In cases where no more than 5 plants are grown for personal consumption, the police will generally only seize the plants. If more than 5 plants are found, the police may prosecute. In combating cannabis growing, the police collaborate with organizations including housing associations, the Tax and Customs Administration, and energy companies. Tenants found to be growing cannabis may be evicted. The energy company will impose an additional retrospective assessment on those who illegally tap electricity.<sup>16</sup>

## **4. Types of Narcotics Allowed and Prohibited**

### **a. Types of Narcotics permitted and prohibited in Indonesia**

From the three groups of Narcotics as referred to in Law Number 35 of 2009 concerning Narcotics and Regulation of the Minister of Health Number 4 of 2021 concerning Classification of Narcotics, it can be concluded that no type of Narcotics may be consumed individually. unsupervised.

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<sup>16</sup> "Toleration policy regarding soft drugs and coffee shops | Drugs | Government.nl."

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Narcotics Group I may only be used for the benefit of scientific development and not used in therapy, and has a very high potential to cause dependence. Narcotics Group II is narcotics with medicinal properties used as a last resort and can be used in therapy and/or for the purpose of developing science and has a high potential to cause dependence. Meanwhile, Narcotics Group III is narcotics with medicinal properties and is widely used in therapy and/or for the purpose of developing science and has mild potential to cause dependence. What is meant by "health services" is including medical rehabilitation services.

Whereas what is meant by the use of narcotics for "development of science and technology" is the use of Narcotics especially for the benefit of treatment and rehabilitation, including for the benefit of education, training, research and development as well as skills carried out by government agencies whose duties and functions are to supervise, investigate, investigate. and eradicating the illicit traffic of Narcotics.<sup>17</sup>

## **b. Types of Narcotics allowed and prohibited in the Netherlands**

In the Netherlands, the type of narcotic that is allowed for personal consumption is marijuana. This was allowed after the Dutch Ministry of Health found that marijuana had no more adverse effects on health, compared to other types of drugs. Therefore, the Dutch government legalized the use of marijuana for various reasons and conditions.

Provisions for government tolerance in legalizing marijuana have been regulated in the Opium Act which is owned by the Netherlands. Soft drugs are less damaging to health than hard drugs. In the Netherlands, coffee shops are permitted to sell cannabis under certain strict conditions. A coffee shop is an establishment where cannabis may be sold but no alcoholic drinks may be sold or consumed. This is part of the Dutch policy of toleration. The Netherlands has a policy of toleration regarding soft drugs. This means that the sale of soft drugs

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<sup>17</sup> Rosalie Liccardo Pacula dan Rosanna Smart, "Medical Marijuana and Marijuana Legalization," *Annual review of clinical psychology* 13 (May 2017): 397.

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in coffee shops is a criminal offence but the Public Prosecution Service does not prosecute coffee shops for this offence. Neither does the Public Prosecution Service prosecute members of the public for possession of small quantities of soft drugs. These quantities are defined as follows: no more than 5 grams of cannabis (marijuana or hash); and no more than 5 cannabis plants.

Toleration criteria for coffee shops: The sale of cannabis (hash and marijuana) in coffee shops is tolerated, provided that coffee shops keep to the prescribed rules or 'toleration criteria'. Coffee shops:

- a) must not cause any nuisance;
- b) are not permitted to sell hard drugs;
- c) are not permitted to sell cannabis to minors;
- d) are not permitted to advertise drugs;
- e) are not permitted to sell large quantities (over 5 grams of cannabis) in a single transaction.

Municipalities determine whether to allow coffee shops to operate within their boundaries, and if so, how many. They may also impose additional rules. Combating the nuisance and crime associated with coffee shops. The government is terminating the 'open door' policy that has been pursued by coffee shops. The objective is to combat the nuisance and crime associated with coffee shops and the sale of drugs. Coffee shops must become smaller and focus on the local market. This policy is also aimed at making Dutch coffee shops less attractive to drug users from abroad. In 2013 The new rule on cannabis and coffee shops was made which contains To combat drug-related crime and nuisance, a new toleration rule was introduced on 1 January 2013: only 'residents of the Netherlands' are permitted to visit coffee shops and purchase cannabis there. A resident of the Netherlands is someone who lives in a Dutch municipality and is registered there. Coffee shop owner responsible for checks, Coffee shop owners are required to check that all those admitted to the shop, and allowed to purchase cannabis there, are residents of the Netherlands aged 18 years or older. They should check these facts, for instance, by asking the person to produce a valid identity document or residence permit, in combination with an extract from the municipal population register. Growing

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cannabis plants for personal consumption, It is against the law to grow marijuana and cannabis plants. In cases where no more than 5 plants are grown for personal consumption, the police will generally only seize the plants. If more than 5 plants are found, the police may prosecute. In combating cannabis growing, the police collaborate with organizations including housing associations, the Tax and Customs Administration, and energy companies. Tenants found to be growing cannabis may be evicted. The energy company will impose an additional retrospective assessment on those who illegally tap electricity.<sup>18</sup>

## **5. The criminal system for drug abuse**

### **a. The criminal system for drug abuse in Indonesia**

Narcotics abuse is qualified as a crime in Law Number 35 of 2009 concerning Narcotics. Narcotics abuse is the use of narcotics which is not for medicinal purposes, but in order to enjoy its effects, in excessive amounts, more or less regularly, lasting long enough to cause physical health problems, mental health problems and social life. Even the use of narcotics in excessive amounts (overdose) can cause death. According to the Narcotics Law Article 1 Number 13, "Narcotics Addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically"<sup>19</sup>.

Actually, drug users should not put in prison, but are rehabilitated as mandated by Law Number 35 of 2009 concerning Narcotics Article 54. The article states, "Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation."<sup>20</sup> In the Narcotics Law, there is still a clause states that drug abuse for personal interest is prohibited. Article 127 of the Narcotics Law states that the use of class 1 narcotics for themselves is punishable by a maximum of 4 years in prison, the use of class 2 narcotics for themselves is punishable by a maximum of 2 years in prison, and the use of class 3 narcotics for themselves is punishable by a maximum of 1 year

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<sup>18</sup> "Laws.nl - Peraturan - Undang-Undang Opium - BWBR0001941."

<sup>19</sup> *Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.*

<sup>20</sup> *Ibid.*



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in prison. In deciding cases, judges are required to pay attention to Article 54 which states that drug users must be rehabilitated. However, in practice, investigators often include Article 112 of the Narcotics Law as the basis for the indictment. Article 112 is imposed as an indictment because the user is arrested not only as a user. But also store drugs in excess quantities. Before using drugs, usually the users do have drugs first. The Narcotics Law will be ambiguous when applied if it does not see the purpose and only looks at the number of drugs owned by the user.

Apart from ambiguous articles. Imprisonment of drug users is also due to limited space. Not all cities/districts have rehabilitation centers. Even if there is rehabilitation center, they are usually privately owned. However, not all users have the cost to pay for the treatment in privately owned facility.<sup>21</sup>

Drug addicts are victims who need medical treatment. Narcotics abusers should not be sentenced to prison but rehabilitated. Prisoning the drug abusers actually create new problems for drug abusers themselves as well as for prisons. Drug abusers and addicts basically need rehabilitation so that they can get away from drugs. However, when they were in prison, it is so difficult for them to get rehabilitation facilities and finally when they got out of prison they used drugs again. In addition, drug abusers in prison will only fulfill the prison's capacity that is already over capacity.<sup>22</sup>

## **b. The criminal system for drug abuse in the Netherlands**

Since 1976, drug policy in the Netherlands has been divided into two focuses, which are "soft" and "hard". Dutch law tolerates recreational drug use. Meanwhile, ownership and trading are still limited. This law is motivated by the fact that it is impossible for the Netherlands to be free of drugs, so that the use of drugs must be controlled. This is also to prevent the rise of crime syndicates that can control certain areas.<sup>23</sup>

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<sup>21</sup> Hikmawati, "Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika."

<sup>22</sup> Dafit Supriyanto Daris Warsito, "Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika," *Jurnal Daulat Hukum* 1, No. 1 (2018): 31–42.

<sup>23</sup> European Monitoring Centre for Drugs and Drug Addiction, *Netherlands Country Drug Report 2019*, 2019.

Soft drugs are drugs with low risk. Meanwhile, drugs with dangerous risks and causing high levels of addiction are called hard drugs. Soft drugs include hash, marijuana, sleeping pills, tranquilizers, and other cannabis products. While hard drugs include heroin, cocaine, amphetamines, LSD, and ecstasy. The drug policy in the Netherlands is tolerate the massive sale of soft drugs while severely suppressing the distribution and use of hard drugs, effectively separating it into two markets. Places that are allowed to sell soft drugs under certain circumstances are called coffee shops. Owning of permissible amounts of soft drugs for personal use (5 grams of cannabis or 5 cannabis plants) is allowed, but owning of larger amounts of soft drugs or possession of hard drugs can lead to prosecution. Prosecutions for possession, trade, and use are usually handled by municipal governments unless the crime involves large-scale criminal activity.<sup>24</sup>

In the Netherlands, the production of drugs is not permitted, in particular the cultivation of cannabis. This has led to an ambiguous system, in which coffee shops are allowed to buy and sell soft drugs but production is almost always punished. In late 2017, the newly formed council coalition announced that they would seek a way to implement the new experimental system in select cities where coffee shops could legally source marijuana from state-designated producers. Importing and exporting drugs is also a serious offense. The penalties can range from 12 to 16 years for trafficking in hard drugs, and a maximum of 4 years for the import or export of large quantities of marijuana.<sup>25</sup>

Drug legalization is often seen as a public health issue, responsibility for drug policy is shared by the Ministry of Justice and the Ministry of Health, Welfare, and Sports. However, the Netherlands also provides rehabilitation facilities in each city. The implementation of rehabilitation programs is

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<sup>24</sup> Ministry of Security and Justice of Government of the Netherlands, "Am I committing a criminal offence if I possess, produce or deal in drugs?," *Government of the Netherlands*, <https://www.government.nl/topics/drugs/am-i-committing-a-criminal-offence-if-i-possess-produce-or-deal-in-drugs>.

<sup>25</sup> Vendula Belackova et al., "'Should I Buy or Should I Grow?' How drug policy institutions and drug market transaction costs shape the decision to self-supply with cannabis in the Netherlands and the Czech Republic," *International Journal of Drug Policy* 26, No. 3 (2015): 296–310.

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prioritized to reduce the number of addicts. The number of drug addicts has stabilized in recent years and their average age has increased, which can be seen as a positive trend. The country's drug-related death rate remains among the lowest in any European country.<sup>26</sup>

## 6. Case Study

### a. Case in Indonesia

Article 54 of the Narcotics Law has stated that drug addicts must be rehabilitated. However, in reality, law enforcement often ignores this. In 2011, a young MS (31) in Bulukumba, South Sulawesi was arrested for drug possession with evidence in the form of one sachet of methamphetamine weighing 0.0484 grams and a suction device (bong). Because of this, the prosecutor charged MS with article 112 paragraph 1 of the Narcotics Law and article 127 paragraph 1 of the Narcotics Law. Prosecutors demanded MS for 4 years in prison for violating Article 112 paragraph 1 of the Narcotics Law. On January 17, 2012, the Bulukumba District Court sentenced MS to 1 year and 10 months for violating Article 127 Paragraph 1 of the Narcotics Law by committing a criminal act of abusing narcotics class I for himself. The verdict was upheld by the Makassar High Court on March 12, 2012. Based on the verdict, the prosecutor then filed an appeal to the Supreme Court and still asked MS to be subject to Article 112 of the Narcotics Law. But the legal effort failed. Three judges of the Supreme Court stated that MS could not be suspected of having violated Article 112 paragraph 1 of the Narcotics Law, even though it was found to be in possession of narcotics and it would be appropriate if he was accused of violating Article 127 paragraph 1 of the Narcotics Law.<sup>27</sup>

Another case that is no less concerning is the case of an Indonesian singer. AP or LL was arrested at his apartment in the Tanah Abang area in February

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<sup>26</sup> European Monitoring Centre for Drugs and Drug Addiction, *Netherlands Country Drug Report 2019*.

<sup>27</sup> "MA: Pasal 112 UU Narkotika Pasal Keranjang Sampah," *detikNews*, last modified 2014, <https://news.detik.com/berita/d-2658245/ma-pasal-112-uu-narkotika-pasal-keranjang-sampah>.

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2020 for possession of 2 ecstasy pills and 7 riklona pills. Ecstasy is included in Narcotics Group 1, while Riclona is included in the Psychotropic type of Clonazepam and is listed in Group IV. For this reason, AP or known as LL was charged with Article 112 Paragraph (1) of the Narcotics Law for possession of the drug. The West Jakarta District Court imposed a criminal sanction on AP or LL of 1 year 6 months and a fine of 10 million rupiah in Putusan Nomor 690/Pid.Sus/2020/PN.Jkt.Brt dated 30 September 2020. AP or LL then appealed, but the panel of judges of the DKI Jakarta High Court upheld the decision issued by the West Jakarta District Court with Putusan Nomor 472/PID.Sus/2020/PT.DKI.<sup>28</sup> What is concerning about this case is that AP or LL admits to taking drugs because of the mental stress she is suffering from. However, instead of getting help, she was instead imprisoned. In fact, drug addicts are also victims who deserve medical help.

## **b. Case in the Netherlands**

Meanwhile in the Netherlands, the imprisonment of drug users is not done haphazardly. The Netherlands has strict rules to regulate the possession of narcotics which deserves to be imprisoned. Possession of soft drugs within a state-approved threshold will not be imprisoned. Ownership of soft drugs is above the threshold and ownership of hard drugs is still loose. Plus, if the owner of the drug is an addict, it will be prioritized for rehabilitation.

Although possession of certain drugs is legal, the Netherlands has experienced a decline in cases of hard drug sent to Public Prosecution from 2007 to 2017. The number of addicts has also decreased due to adequate rehabilitation facilities.<sup>29</sup> Drug legalization is considered a public health concern. However, if you look at the facts in the Netherlands, this is the opposite. Easing with strict supervision will ensure legal certainty and the

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<sup>28</sup> Pengadilan Tinggi DKI Jakarta, *Putusan Nomor 472/PID.Sus/2020/PT.DKI*, 2020.

<sup>29</sup> Statista Research Department, "Total number of cases of hard drug-related crimes sent to Public Prosecution in the Netherlands from 2007 to 2017," *Statista*, last modified 2021, <https://www.statista.com/statistics/654250/cases-of-hard-drug-related-crimes-sent-to-public-prosecution-in-the-netherlands/>.

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health of citizens. Legal certainty exists because it is the state that controls drug trafficking, not crime syndicates.

According to available data, in 2007-2017 there was a downward trend in the number of addicts. The rate of transmission of HIV through needles has decreased. The death rate for addicts has also decreased. This is not possible without adequate health facilities. Public awareness is also very important in improving the health of citizens.<sup>30</sup>

## 7. Comparison of Penalties for Drug Users in the Two Countries

If we compare the policies of the two countries, the prohibition of drugs does not necessarily eliminate the presence of drugs in the country. Based on data from the Indonesian National Narcotics Agency Survey related to drug use, it was recorded that 921,695 people or about 4.7 percent of the total students and students in the country are users of these goods. In addition, drug cases occur in various circles, not only ordinary people, but also among celebrities, officials, and representatives of the people.<sup>31</sup> In the Netherlands, the legalization of several types of drugs which are seen as an effort to endanger public health, actually reap positive results. One of them is the existence of state control over drug trafficking. In addition, the existence of state control coupled with good health facilities will also get good results. As can be seen, the number of drug addicts in the Netherlands has decreased, the rate of transmission of HIV from injecting needles has fallen, and the number of drug-related deaths has also fallen.

The basic difference between the policies of the two countries is that Indonesia prioritizes the Penal Policy, while the Netherlands prioritizes the Non-Penal Policy. Efforts to overcome crime through the penal route are handling through criminal law. Roughly speaking, it can be said that efforts to tackle crime through the penal route are more focused on the "repressive"

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<sup>30</sup> European Monitoring Centre for Drugs and Drug Addiction, *Netherlands Country Drug Report 2019*.

<sup>31</sup> Hikmawati, "Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika."

nature (oppression, eradication, suppression) after a crime has occurred.<sup>32</sup> Indeed, the Indonesian Narcotics Law also contains a Non-Penal Policy. However, in practice law enforcement still prioritizes the enforcement of the Penal Policy such as imprisoning drug users. This is different from the Netherlands which prioritizes the Non-Penal Policy in dealing with drug trafficking and abuse there. Law enforcement with non-penal efforts focuses more on the prevention or control of crime. Considering that crime prevention efforts through non-penal channels are more of a preventive measure for the occurrence of crime, the main target is the conducive factors that cause crime.

#### **D. Conclusion**

The illegality of drugs in Indonesia does not necessarily erase the existence of drugs from this land. If you look at the comparison with the Netherlands, which legalizes certain types of drugs under certain conditions, health conditions and legal certainty are still better in the Netherlands. In Indonesia, not all drug addicts receive adequate rehabilitation facilities. The drug policy in the Netherlands that Indonesia must emulate is tackling drugs from a health perspective. The fact shows that the victims of drug abuse in Indonesia continue to exist, even the cases continue to increase. The assessment of whether or not what was done by addicts does not then eliminate their rights to get rehabilitation services for the restoration of their lives. As humans, those who fall into drug abuse are actually victims too. Drug addicts need to be helped so that they can return to normal life as productive human beings. This task is a shared responsibility between the government, family and society.

#### **E. Acknowledgment**

None

#### **F. Declaration of Conflicting Interests**

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<sup>32</sup> Indah Lestari and Sri Endah Wahyuningsih, "Penegakan Hukum Pidana Terhadap Pengguna Narkoba di Polda Jateng," *Jurnal Hukum Khaira Ummah* 12, No. 3 (2017): 601–610.

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