

## Comparison of Narcotic Criminalization Rules in Malaysia and Indonesia

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### Abstract

This study aims to determine the comparison of narcotics criminalization rules between Malaysia and Indonesia. The method used in this research is normative legal research. This method is carried out by collecting secondary data through literature studies by reading laws, library books, and documents related to this research topic. Data obtained from library data processing were analyzed qualitatively. In Malaysia, drugs are the single most complicated social problem. Since 1970 until now there is still no visible positive change, in fact it has become more flexible and has not been able to be stopped. Malaysia has made various efforts to eradicate narcotics offenders in their country, including by conducting various studies on the dangerous contents of these narcotics by involving universities and institutions, establishing a special agency for eradicating narcotics crimes, spending large amounts of money in efforts to rehabilitate drug convicts. Meanwhile, in Indonesia the pattern is still applied to eradicating narcotics abuse, victims of drug users are still put in jail, even though during the process prisoners are allowed to be rehabilitated, this has not been an effective solution. Even though the Indonesian government's efforts to decriminalize or change the paradigm from imprisonment to recovery already exist in Supreme Court Circular (SEMA) Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts in Institutions for Medical Rehabilitation and Social Rehabilitation and Government Regulation Number 25 of 2011 concerning Compulsory Implementation Reports for Narcotics Addicts whose content confirms that drug addicts are victims and not perpetrators of crime, as well as legal legitimacy that addicts are not perpetrators of crimes but someone who suffers from addiction requires treatment both physically and psychologically and requires support from the community to be able to return to normal life, but in its implementation it is very difficult to implement so that it is still dominantly using criminalization efforts or still using the imprisonment paradigm instead of the recovery process for drug convicts.

**Keywords:** Rules for Criminalization, Narcotics, Rehabilitation.

#### History:

Received: November 7<sup>th</sup> 2022

Accepted: May 19<sup>th</sup> 2023

Published: May 19<sup>th</sup> 2023

**Publisher:** Universitas PGRI Madiun

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### Introduction

Drugs are drugs (medicine) or substances derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached in the this law. These drugs can be addictive if used excessively. Utilization of these substances is as a painkiller and provide peace. Misuse can be subject to legal sanctions.

Malaysia, which is one of the countries included in the Southeast Asian region, has serious, complicated problems and is one of the main enemies of the same country in other Southeast Asian countries, namely narcotics or drugs. Malaysia is one of the transit centers for drug distribution which is also distributed throughout the world. In recent decades, Malaysia's drug addiction relapse rate has consistently reached 50 per cent. That is, users

return to old habits after being sentenced to prison. Additionally, more than half of Malaysia's prison population consists of drug users. Drug users in Malaysia continue to grow. During 2002, as many as 31,893 drug addicts were detected by the National Narcotics Agency or *ADK* (a kind of National Narcotics Agency). Data released in 2003 were 26,190, in 2004 there were 26,775, and in 2005 as of February there were 7,968. Meanwhile, according to *ADK* data until March 2006 there were 292,696 drug addicts. Non-governmental organizations (NGOs) also estimate that there are around 350,000 people involved in drugs. This figure is said to increase by 1,300 drug addicts every month. There are also quite a lot of young people, namely as much as 70.74% according to the 2005 National Anti-Damage Agency (*AADK*) statistics.

Narcotics are the single most complicated social problem. Since 1970 until now there is still no visible positive change, in fact it has become more flexible and has not been able to be stopped. Malaysia has made various efforts to eradicate narcotics offenders in their country, including by conducting various studies on the dangerous contents of these narcotics by involving universities and institutions, establishing a special agency for eradicating narcotics crimes, spending large amounts of money in efforts to rehabilitate drug convicts.

Meanwhile in Indonesia, narcotics are also seen as serious crimes that are very detrimental and constitute a very big danger to human life, society, nation and state as well as Indonesia's national security, especially among the younger generation, there is even a jargon "war on drugs" that makes drug addicts Narcotics offenders are always criminalized.

According to the 2014 national survey on the development of narcotics abuse, it was stated that the social and economic impacts of narcotics trade and abuse are very worrying for the world, including in Indonesia. Social and economic losses due to drug abuse tend to increase from year to year, from IDR 23.6 trillion in 2004 to IDR 48 trillion (2008). Although the number of narcotics abusers tends to be stable, the number of narcotics cases uncovered increased from 2012 to 2013. The reported figures are only a small illustration of the problem of illicit narcotics trafficking which actually has a bigger impact. It is estimated that the number of narcotics abusers is as many as 3.8 million to 4.1 million people or around 2.10% to 2.25% of the total population of Indonesia who were at risk of exposure to narcotics in 2014. When compared to the 2011 study, the prevalence rate was relatively stable (2.2%) but there was an increase if compared to the results of the 2008 study (1.9%). Based on the explanation above, the author wants to examine the Comparison of Narcotics Criminalization Regulations in Malaysia and Indonesia.

## **Materials and Methods**

This research is a normative legal research, which is an approach based on applicable laws and regulations. The specifications of this research are included in the category of legal research which is analytical descriptive in nature, namely a research that seeks to describe legal issues, the legal system and examine or analyze them according to research needs. The data collection method uses secondary data through literature studies by reading from applicable laws and regulations, books and literature documents related to the problems discussed in this study. Data processing based on the literature data obtained is then analyzed qualitatively so that conclusions will be obtained from the existing problems that have been determined.

## **Results and Discussion**

In Indonesia, the sanctions imposed by judges vary, such as imprisonment, fines and rehabilitation. Criminal threats against narcotics abuse are based on the status or role of the convict, the type of narcotics and the amount of narcotics regulated in Articles 111-148 of Law Number 35 of 2009 concerning Narcotics.

Narcotics are divided into three groups according to article 6 paragraph 1 letter a-c states that:

1. Narcotics Category I are narcotics which can only be used for scientific development purposes and are not used in therapy, and have a very high potential to cause dependence. Examples: Heroin, Cocaine, Cocaine Leaves, Opium, Marijuana, Jicing, Katinon, *MDMDA*/Ecstasy, and more than 65 other types.
2. Narcotics Category II are narcotics which have medicinal properties which are used as a last resort and can be used in therapy and/or for scientific development purposes and have a high potential to cause dependence. Example: Morphine, Pethidine, Fentanyl, Methadone, etc.
3. Narcotics Category III are narcotics which have medicinal properties and are widely used in therapy and/or scientific development purposes and have a mild potential to cause dependence. Examples: Codeine, Buprenorphine, Ethylmorphine, Codeine, Nicocodina, Polkodina, Proiram and 13 maca notes, including several other mixtures.

For perpetrators of Narcotics abuse, for example as follows:

1. As a storage for narcotics in the form of plants or non-plant forms. Subject to criminal provisions in the form of plants under article 111 with a penalty of 4 - 18 years in prison and a fine of 800 million - 18 billion. Not in the form of plants with a penalty of 4-12 years in prison and a fine of 800 million - 800 billion.
2. As a manufacturer or distributor. Subject to criminal provisions based on article 113 of Law No. 35 of 2009, with the threat of a maximum sentence of 15 years or life and death and a fine of 100 million - 10 billion.
3. As a user. Subject to criminal provisions based on article 116 of Law Number 35 of 2009 concerning Narcotics, with a maximum penalty of 15 years.
4. As an abuser (victim of narcotics abuse). Subject to medical rehabilitation and social rehabilitation (Article 127)

As an addict who is not old enough. Article 128 paragraph (1) is subject to imprisonment for a maximum of 6 months or a maximum fine of one million *rupiah*.

The paradigm in Indonesia in the Narcotics Law still applies a pattern towards eradicating narcotics abuse, victims of drug users are still put in jail, even though during the process prisoners are allowed to be rehabilitated, this has not been an effective solution. Although the Indonesian government's efforts to decriminalize or change the paradigm from imprisonment to recovery already exist in *SEMA* Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts in Institutions for Medical Rehabilitation and Social Rehabilitation and Government Regulation Number 25 of 2011 concerning Compulsory Implementation Reports for Narcotics Addicts whose content confirms that drug addicts are victims and not perpetrators of crime, as well as legal legitimacy that addicts are not perpetrators of crimes but someone who suffers from addiction requires treatment both physically and psychologically and requires support from the community to be able to return to normal life, but in practice it is very difficult to implement so that it is still dominantly using criminalization efforts or still using the paradigm of imprisonment instead of the recovery process for drug convicts.

Meanwhile in Malaysia, efforts to countermeasures through eradication were carried out by the National *Anti-Dadah* Agency, regarding the imposition of fines, imprisonment, and rehabilitation based on the 1952 Law on Drug Hazards and then applied nationally in 1985. The Drug Danger Year 1952 is the leading law in Malaysia to control drugs which includes criminal, procedural and evolutionary matters, as well as regulates the import-export, manufacture, sale and use of Opium and some other drugs and dangerous substances. The act even provided the seller with a mandatory death penalty, while violations of cultivation and production were punishable by life imprisonment.

Related to the paradigm of punishment for perpetrators of narcotic crimes. In Malaysia, drug users (*dadah*) who are proven to have committed drug crimes before the court, the judge is obliged to decide on drug users or addicts to undergo rehabilitation. This provision also applies if the addict is convicted a second time for the same case and if he commits a drug crime for the third time, then the judge is allowed to decide the addict to be imprisoned to create a deterrent effect.

There has been talk lately that the government wants to reform its drug control policy by no longer criminalizing addicts and drug use for personal consumption. Malaysia's Health Minister Dzulkefly Ahmad stated that criminalization was not effective and the strategy had to be changed. Even so, this decision does not mean that Malaysia wants to legalize drug use. Dzulkefly said decriminalization was a "wise step forward," especially after 30 other countries have taken similar steps. According to the Malaysian Ministry of Health, changes to the Drug Law in the country can encourage the neighboring country to achieve "a rational drug control policy that prioritizes science and public health, not punishment and detention. Dzulkefly called addiction a "chronic and complicated medical condition." When the law changes to be more humane, drug addicts will be treated like patients with a disease, not criminals. According to him, decriminalization is the abolition of penalties for personal possession and use of drugs in small quantities, not for drug trafficking activities. Drug dealers are of course still considered as lawbreakers. So it means that the paradigm of the Malaysian state in tackling narcotics crime is rehabilitation both medically and socially.

The following is a comparison of law enforcement against narcotics crimes in Malaysia and Indonesia:

State	Law Enforcement Agencies	Legal Product	Maximum Sanction	The Quantity Of Narcotics That Influences The Sentencing Decision In Court
Indonesia	<i>Badan Nasional Narkotika (BNN)</i>	Law number 35 year 2009 concerning narcotics	Death penalty	The degree of penalty depends on the opinion of the judge
Malaysia	<i>Agensi Antidadah Kebangsaan</i>	Law year 1952 concerning the dangers of drugs	Death penalty	Quantity of illegal drugs triggers mandatory death penalty

While the similarity is that they have the same death penalty, both criminal threats are in the form of imprisonment, fines and rehabilitation and are equally divided into categories of narcotics convicts for criminal threats, namely there are depositors or growers, dealers/manufacturers, users, addicts, victims of abuse, etc.

## Conclusion

The comparative differences in criminalization rules between Indonesia and Malaysia are quite similar. In Indonesia, they still apply the pattern of eradicating narcotics crimes with imprisonment even though there are already rules that lead to decriminalization or change the paradigm from imprisonment to recovery, namely in *SEMA* Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Rehabilitation Institutions Medical and Social Rehabilitation and Government Regulation Number 25 of 2011 concerning Implementation of Compulsory Reporting for Narcotics Addicts, but its implementation is still very difficult to do. Whereas in Malaysia efforts to eradicate narcotics crime have implemented a pattern with the concept of recovery, namely by means of medical and social rehabilitation. Meanwhile, the similarity is that they both carry the maximum threat of death penalty, both have criminal threats in the form of imprisonment, fines and rehabilitation and are equally divided into categories of narcotics convicts for criminal threats, namely there are depositors or growers, dealers/manufacturers, users, addicts, victims of abuse, etc.

## Acknowledgments

This short section is a thank you to the supervising lecturer Bagya Agung Prabowo., S.H, M.Hum, Ph.D., along with his family and colleagues from the 45th batch of students in the master of business law class who have helped a lot in working on and completing the paper This.

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