



Inconsistency in Imposing Sanctions on Drug Abuser with Narcotics Legislation

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ABSTRACT The inconsistent imposition of sanctions on drug abuse offenders in Indonesia highlights significant challenges in the enforcement of narcotics legislation. Despite comprehensive regulations, discrepancies persist in the fairness and uniformity of punishments. This research examines these issues by employing a normative juridical method with a statutory and conceptual approach. The study identifies gaps between existing legal provisions and their application, revealing legal loopholes that undermine the objectives of narcotics legislation. Findings indicate that while efforts to enforce strict laws exist, inadequate coordination among law enforcement agencies exacerbates the inconsistency. This research aims to evaluate these discrepancies and propose solutions to strengthen legal frameworks and enforcement mechanisms. By enhancing inter-agency collaboration and revisiting the sanctions framework, the study advocates for a more just and effective legal system to combat drug abuse. These recommendations are expected to bridge gaps in narcotics legislation, ensuring justice for offenders while promoting the rule of law. Keywords: <i>Drug Abuse, Law Enforcement, Legal Loopholes, Narcotics Legislation, Sanctions Consistency</i>			

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INTRODUCTION

The abuse of narcotics has become an increasingly troubling issue in Indonesia, as the rising number of cases is frequently reported in both print and electronic media (Cong dkk., 2021). Every day, the public is shocked by reports of drug trafficking, illegal trade, and arrests and detentions related to these legal violations. Drug abuse refers to the act of using narcotics unlawfully or defiantly, which violates the law and is subjected to criminal penalties (J. Guo dkk., 2020). Therefore, this issue must be addressed with utmost seriousness by the state to protect its citizens from the detrimental impacts it incurs.

Indonesia, as a rule of law state, as mandated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, requires clear legal regulations to address various issues, including narcotics abuse (Zheng dkk., 2020). All aspects of life in Indonesia are governed by law, and to uphold the supremacy of law, the state must possess legal products that regulate and impose sanctions on actions that contravene legal norms (Roulet & Bothello, 2023). Thus, Law No. 35 of 2009 concerning Narcotics is expected to serve as an effective instrument for preventing the abuse and circulation of narcotics in Indonesia.

The Indonesian government enacted the Narcotics Law to tackle the increasingly alarming narcotics issues, particularly concerning the nation's younger generation (Saha dkk., 2021). This law aims to provide a clear legal basis for addressing narcotic offenses and to impose strict penalties on the perpetrators. Drug abuse has a significant impact on the nation's future, affecting social, health, and economic aspects (Saha dkk., 2021). Consequently, the implementation of this law is crucial to ensuring a better future for subsequent generations and for upholding justice throughout Indonesia.

The circulation of illegal drugs has become increasingly complex with the emergence of new types of narcotics in Indonesia (Bakolis dkk., 2021). No longer limited to ecstasy and methamphetamine, the illicit substances now have unfamiliar names to the public. These names often refer to the scientific names of the substances contained in the drugs, making them more difficult to identify (Liu dkk., 2021). The rapid development of technology and information also plays a major role in disseminating these new narcotics, making their circulation even harder to control.

The increased variety of illicit drugs necessitates law enforcement agencies to enhance the quality and effectiveness of existing laws (Simshauser & Gilmore, 2022). However, in reality, the development of drug circulation progresses much more swiftly than law enforcement's ability to tackle this issue. This causes narcotics abuse to escalate into a serious problem that brings substantial material hardship and loss of life (Deng dkk., 2020). Furthermore, this phenomenon creates unease within society, particularly among parents and the younger generation, who are vulnerable to the seductive lures of drug traffickers.

Despite various efforts such as arrests and educational campaigns that have been undertaken to tackle this problem, the rate of narcotics abuse continues unabated (Aiken dkk., 2021). Narcotics, commonly referred to as drugs, encompass a variety of harmful and addictive substances. Unfortunately, many individuals are only familiar with the term "drugs" without understanding in depth the types and impacts of these substances. Drug abuse now involves all layers of society, from the youth to the elderly, including children (Pagano dkk., 2020). This emphasizes the urgent need for more serious efforts in the prevention, mitigation, and eradication of narcotics circulation in Indonesia.

Law enforcement against narcotic offenses has been conducted intensively by law enforcement agencies, often culminating in judicial rulings (W. Wang dkk., 2022). The purpose of this law enforcement is to counteract illegal trade and drug circulation; however, despite the strengthening of legal measures, the circulation of narcotics has

continued to rise. Although legislative regulations governing narcotic offenses are in place and implemented, crimes related to narcotics remain challenging to address. Even with the capture and imposition of severe penalties on numerous drug lords, other perpetrators become increasingly indifferent and daring in expanding their operational networks (Duminil-Copin dkk., 2021). Criminal law serves as a set of regulations that governs actions deemed as norms violations and the common interest within a society, with penal consequences for transgressors. This system establishes the foundational guidelines regulating offenses or crimes that could potentially harm the wider community (Zeidan dkk., 2021). Every breach or crime, especially those concerning public interests, is subject to penalties as a form of suffering or sanction for the offender. It aims to provide a deterrent effect and maintain order in society.

The discontinuity in the application of criminal sanctions against drug abuse offenders emerges as a primary issue in the enforcement of law in Indonesia (B. Guo dkk., 2021). The penalties received by offenders are often inconsistent, both among different cases and across various regions, resulting in injustices within the penal system. Additionally, the improper targeting of rehabilitation and the lack of alignment in the double-track system (criminal sanctions and rehabilitation) exacerbate the situation (Powdthavee, 2021). Although rehabilitation is intended to restore drug abusers, in practice, this system has not proven fully effective due to the disparities between law enforcement and the poorly coordinated implementation of rehabilitation, ultimately failing to provide a comprehensive solution for drug users 10.7150/thno.58731.(Pugh dkk., 2021). Therefore, based on this brief exposition, the author will discuss the discontinuities in the imposition of sanctions on drug abuse offenders by narcotics legislation, as well as the weaknesses and potential enhancements regarding the regulatory framework surrounding the imposition of sanctions on narcotics abuse offenders.

RESEARCH METHODOLOGY

The normative legal research method is a methodology employed in legal studies that focuses on legal documents and norms examinations. This method analyzes the applicable legal rules and how these regulations are implemented or interpreted within a specific context (Tian dkk., 2020). In normative legal research, the primary sources utilized are statutory regulations and other legal literature. This approach is particularly relevant in investigating theoretical and conceptual legal issues, such as the discontinuity in the imposition of sanctions on drug abuse offenders about narcotics legislation, as well as the weaknesses and prospective enhancements regarding the regulatory framework for imposing sanctions on narcotic offenders (Hanna & Gross, 2021). One of the approaches utilized within this method is the statutory approach, akin to a conceptual approach. The statutory approach entails reviewing and analyzing various regulations that govern specific issues, including Law No. 35 of 2009 concerning Narcotics and related regulations (Cai dkk., 2020). Through this approach, researchers can engage in discourse regarding the discontinuity in the imposition of sanctions on drug abuse offenders by narcotics legislation.

RESULT AND DISCUSSION

Inconsistency in Imposing Sanctions on Drug Abuse Perpetrators with Narcotics Legislation

The effective enforcement of the law and community participation play a crucial role in the efforts to prevent drug abuse. Without clear and written regulations in the law, the enforcement of drug abuse-related laws encounters significant challenges. In a country that adheres to a written legal system, every law enforcement process must align with principles that are consistent with human rights. It underscores the importance of transparent regulations to ensure that law enforcement can be conducted consistently and fairly, without infringing individual rights.

Prevention of narcotics crimes involves two primary approaches: the penal (criminal law enforcement) and non-penal (legal resolution that does not involve criminal law). [10] The penal approach involves criminal sanctions against drug offenders, while the non-penal approach encompasses resolutions through preventive measures and rehabilitation focused on the reform of the offenders (Zhao dkk., 2021) . Both approaches must be executed synergistically to achieve more effective prevention and mitigation in reducing drug circulation.

Uncovering drug crime networks poses a significant challenge for law enforcement agencies due to the organized and highly structured nature of these crimes. The modus operandi of such crimes is constantly evolving, complicating investigation and inquiry processes. In practice, law enforcement often succeeds only in apprehending lower-level users or dealers, while larger networks and more powerful actors remain elusive. It creates the impression that law enforcement efforts have not been effective in eradicating drug-related crime comprehensively.

The criminal sanctions is generally an integral part of the principle of legality within the criminal law system, which mandates that an act can only be penalized if it has been previously regulated by law. This principle not only provides the legal foundation for enforcing sanctions but also protects individuals from arbitrary actions by the state or law enforcement officials (Neukirch dkk., 2020). Therefore, any act deemed a crime must be explicitly defined within the relevant legislation, ensuring that no actions can be penalized without a clear legal basis. Legislation as primary instrument guiding law enforcement in determining whether an act meets the elements of a crime and warrants criminal sanctions. The formation of such laws must undergo a transparent process, considering social justice and human rights, to ensure that the application of criminal sanctions can be justified.

Although the principle of legality underpins the imposition of criminal sanctions, its application heavily depends on adequate supporting systems. Sufficient infrastructure is vital to ensure that criminal sanctions can be executed effectively and efficiently. This includes physical facilities, such as correctional institutions or other punishment execution venues, trained and professional human resources (Knight dkk., 2021). Without adequate support, even with established laws governing criminal sanctions, field implementation may be impeded, thwarting the very purposes of law enforcement. Therefore, the government and relevant institutions must ensure that the supporting infrastructure for the

implementation of criminal sanctions is available and functioning well so that the penalties imposed can serve as a deterrent, educate, and rehabilitate offenders under the broader objectives of criminal law — the attainment of justice and legal certainty.

In the development of criminal law in Indonesia, particularly concerning specific criminal laws such as those regulated in the Narcotics Law, there is a trend toward utilizing a dual-track or double-track system. This system regulates the application of two types of sanctions, namely criminal and administrative, which are applied concurrently. Criminal sanctions emphasize retribution against offenders, while administrative actions aim to protect the community and rehabilitate or nurture offenders to reintegrate them socially (Tojaga dkk., 2021). Thus, the primary distinction between these two sanctions lies in their objectives: criminal sanctions focus on punishment and retribution, whereas administrative actions concentrate on recovery and education for the offenders.

Effective handling of narcotics crime necessitates a comprehensive and integrative approach, involving three vital components of the legal system: legal substance, legal structure, and legal culture. Legal substance refers to the regulations governing narcotics issues, such as Law No. 35 of 2009 concerning Narcotics (Habibian dkk., 2021). It serves as the legal basis directing all policies, strategies, and actions undertaken by the state in combating the circulation and abuse of narcotics. Without clear and robust legal substance, addressing narcotics crime would be hindered, as there would be no solid foundation for processing the offenses that occur. Therefore, legal substance must continually be updated and adjusted to the evolving situations and challenges faced in the war against narcotics.

In addition to legal substance, the legal structure plays a crucial role in addressing narcotics crime. The legal structure includes law enforcement institutions responsible for implementing the existing regulations, such as the police, prosecutors, and courts. Each institution has specific roles in enforcing narcotics laws, ranging from investigation and prosecution to adjudication. For the law enforcement process to function effectively, these three institutions must work synergistically, supported by trained human resources and efficient systems. Furthermore, the prevailing legal culture within society significantly affects the effectiveness of narcotics mitigation efforts (Ruebeling dkk., 2021). Legal culture relates to the social, political, and economic values that develop within the community, shaping attitudes and perceptions toward narcotics and government policies. A culture that fosters legal awareness and stigmatizes drug abuse will strengthen prevention and rehabilitation efforts, thereby creating a more conducive environment for effectively combating narcotics crime. These three components — substance, structure, and culture — must support one another to establish a holistic and efficient narcotics handling system.

In Law No. 35 of 2009 concerning Narcotics, investigators are regulated in Article 73, while the authority of the National Narcotics Agency (BNN) investigators is described in Article 75. In Law No. 5 of 1997 concerning Psychotropics, investigators are governed by Articles 55 to 58, with investigative powers outlined in Article 56, paragraph (2). Both laws provide a legal foundation for law enforcement agencies in performing investigative

duties, particularly concerning narcotics offenses (Calonico dkk., 2020). An initial step taken by authorities involves following up on community reports regarding locations suspected of narcotics transactions or circulation, or places frequently used for drug parties. If sufficient evidence in the form of narcotics is found at these locations, authorities will proceed with further investigations, including searches and seizures.

Searches and seizures, along with arrests, are actions that must be conducted following proper procedures and in compliance with legal provisions. In terms of arrest, Article 1, paragraph (20) of the Code of Criminal Procedure (KUHAP) defines an arrest as the action of investigators temporarily restricting an individual's freedom, provided there is adequate evidence and for investigation, prosecution, or adjudication (Salman dkk., 2022). Furthermore, in executing searches, seizures, and arrests, law enforcement officers must be equipped with task orders, search warrants, seizure orders, and arrest warrants to ensure that their actions are lawful and compliant with applicable law.

The examination process for narcotics offenses follows the procedures outlined in the Code of Criminal Procedure (KUHAP). Court examinations are governed by Articles 203 to 232, which address how evidence is evaluated and how defendants are tried. The primary objective of these examinations is to determine whether the criminal actions committed are prosecutable and to decide upon appropriate criminal sanctions for the offenders. In delivering judgments, judges consider not only witness testimonies but also the legal facts revealed during the trial (Han dkk., 2021). Therefore, judges take into account two crucial aspects in their decisions: first, the juridical consideration based on the evidence and legal elements stipulated in the law; and second, the non-juridical consideration encompassing the impact of the defendant's actions on both the defendant and society, as well as the physical and psychological state of the defendant at the time of the crime, including inherent social factors.

Additionally, in the judges' considerations, there are two categories of factors influencing the verdict: aggravating and mitigating circumstances. Aggravating circumstances include instances where the defendant's actions cause public unrest, contradict government efforts to combat narcotics, harm future generations, or if the defendant has a prior criminal record (J. Wang dkk., 2020). Conversely, mitigating factors may include the defendant having no previous convictions or expressing remorse for their actions. These considerations are vital components in delivering fair sentencing aligned with the principles of law, as outlined in Article 197, paragraph (1) of KUHAP.

Initially, narcotics regulation in Indonesia was governed by Law No. 9 of 1976 concerning Narcotics. However, due to perceived weaknesses and shortcomings in its implementation, especially among legal practitioners, this law was replaced by Law No. 5 of 1997 concerning Psychotropics and Law No. 22 of 1997 concerning Narcotics. The two new laws provide a broader scope like norms, substance, and more severe penalties, such as imprisonment, fines, life sentences, and even the death penalty (Seibold, 2021). Additionally, Law No. 22 of 1997 also addresses medical and social treatment and rehabilitation for narcotics users, which should be primary efforts in tackling drug abuse. However, despite these regulatory changes, the issue of narcotics abuse has only

intensified, both in terms of quality and quantity, with increasing numbers of victims from among children, adolescents, and the youth in general.

Although Indonesian law has updated its regulations concerning narcotics control, the discontinuity in the imposition of sanctions on drug abuse offenders remains a significant issue. The law enforcement process against narcotics offenses, whether at the investigation, inquiry, prosecution, trial, or execution stages, adheres to the Code of Criminal Procedure (KUHAP). While the imposition of further sanctions or punishments is regulated by Law No. 35 of 2009 concerning Narcotics. This creates potential inconsistencies between regulatory aims that emphasize rehabilitation and the realities on the ground that tend to prioritize severe criminal sanctions. Such discontinuity results in challenges in providing effective deterrent effects and in designing a sanction system that balances preventive and rehabilitative measures in a more humane manner for drug abuse offenders.

Weaknesses and Efforts to Improve Regarding the Regulation of Imposing Sanctions on Perpetrators of Narcotics Abuse Crimes

The abuse of narcotics has emerged as a complex and profound social issue in Indonesia. Despite various efforts in the form of policies and regulations aimed at addressing the circulation and misuse of narcotics, the challenges faced by the state in tackling this problem remain substantial (Bleemer & Mehta, 2022). Essentially, narcotics law in Indonesia places heavy emphasis on imposing severe criminal sanctions, with threats of the death penalty, life imprisonment, and various other penalties. However, this stringent approach is often not complemented by more humane, rehabilitation-based solutions for those who misuse narcotics—individuals who may not be true criminals but rather victims of dependency and other social issues.

In this context, there exists a significant imbalance between imposing harsh criminal penalties and the necessity for adequate rehabilitation programs. Harsh sanctions without effective rehabilitation risk exacerbating the conditions of narcotics users, leading to an increased burden on the justice system and overcrowding in correctional facilities. Therefore, it is essential to reform narcotics policies by prioritizing a recovery-oriented approach and expediting and streamlining the often slow and bureaucratic legal processes. This prologue will further discuss the weaknesses present in narcotics legal regulations in Indonesia, as well as various efforts that can be undertaken to enhance the effectiveness of sanctions and rehabilitation for narcotics abusers.

One of the primary weaknesses in the regulation of narcotics crimes in Indonesia is the imbalance between severe criminal penalties and insufficient rehabilitation approaches. Law No. 35 of 2009 concerning Narcotics imposes heavy sanctions on narcotics abusers, including threats of the death penalty, life imprisonment, or lengthy prison sentences (M. Sun dkk., 2020). These stringent punishments focus more on the repressive aspect than on prevention or recovery. Yet many narcotics users are, in fact, victims of dependency issues, trauma, or underlying social conditions. Narcotics use is often not solely linked to malicious intent but also to physical or psychological

dependence that necessitates medical and rehabilitative interventions rather than merely incarceration.

On the other hand, the rehabilitation programs available to assist in the recovery of narcotics abusers in Indonesia remain limited. Existing rehabilitation facilities fail to meet the needs of the increasing number of narcotics users. Social and medical rehabilitation programs centered on physical and psychological recovery are urgently needed to assist users in their healing and prevent recidivism. Relying solely on harsh criminal penalties risks increasing prison populations without yielding positive outcomes for individual and community recovery. The current legal approach to narcotics abuse in Indonesia tends to be overly repressive, focusing on criminal penalties without considering the underlying health issues associated with narcotics misuse. Many narcotics abusers are not conscious criminals but victims of physical dependency or socio-economic conditions that compel them into the narcotics world (L. Sun dkk., 2022). By excessively emphasizing prison sentences, the state appears to overlook the fact that the majority of narcotics users require treatment and rehabilitation. Such a repressive legal approach often views narcotics misuse purely as a criminal offense, disregarding underlying causative factors, such as poverty, domestic violence, or social pressure. This approach risks exacerbating the situation, as incarcerated narcotics abusers are often exposed to various other social issues within prison environments, thereby worsening their dependency conditions. In several cases, inmates who require medical treatment or rehabilitation find themselves placed in correctional facilities primarily focused on punitive measures.

One major weakness in the enforcement of narcotics laws in Indonesia is the slow and bureaucratic legal process. From investigation to execution, many narcotics cases take an exceedingly long time to process. This convoluted procedure is often attributable to inefficiencies in legal processes, a lack of trained human resources, and a judiciary overloaded with other cases. The slow pace of legal proceedings not only harms offenders but also hampers the realization of justice that should be afforded to victims and society. The prolonged time required to process a case further deteriorates the conditions of the involved inmates, who may be left waiting indefinitely without legal clarity regarding their status.

Additionally, the disparities in law enforcement effectiveness between regions exacerbate the situation. In some areas, law enforcement officers may be less empowered or lack access to the technology and training necessary for efficiently handling narcotics cases. It leads to inconsistent application of the law and ultimately creates inequality in the treatment of narcotics offenders across different regions. A more transparent, efficient, and equitable legal process throughout Indonesia is essential for optimizing narcotics law enforcement. One potential solution lies in strengthening the capacity of law enforcement officials, improving bureaucratic procedures, and integrating information technology into judicial processes to expedite legal proceedings.

A more balanced approach between criminal sanctions and rehabilitation is crucial for improving the narcotics legal system in Indonesia. While severe criminal penalties may often be necessary to deter narcotics offenders, for many users, imprisonment alone is

insufficient to resolve their primary issue—dependency on narcotics (Bangaru dkk., 2021). Therefore, strengthening rehabilitation and adequate medical care programs for narcotics abusers is essential. By providing better rehabilitation facilities, the government can offer narcotics users the opportunity to recover and diminish their likelihood of reverting to substance abuse. This approach will also facilitate the social reintegration of offenders following rehabilitation, affording them a chance to contribute positively to society without the burden of a troubled past.

The implementation of a diversion system is a critical solution to the problem of narcotics abuse, particularly for perpetrators who are not dealers or traffickers but rather mere users. Diversion allows for the resolution of cases through rehabilitation pathways, enabling offenders to receive care and recovery that better aligns with their conditions. This system aims to alleviate the overcrowding of prisons, which often house individuals who require rehabilitation more than punitive measures. By expanding the diversion system, we can provide more humane treatment for narcotics offenders and reduce the social stigma against them as criminals, ultimately facilitating their recovery and better reintegration into society.

Enhancing the quality and capacity of law enforcement officials is vital for addressing narcotics cases more efficiently and effectively. In this regard, it is important to provide more in-depth training for law enforcement on the mechanisms of narcotics case handling, including a better understanding of rehabilitation and medical care. Well-trained officials can process narcotics cases more swiftly and accurately, avoiding delays and bureaucratic hindrances that block law enforcement (Dieterle dkk., 2020). Additionally, improving the efficiency of bureaucratic processes in narcotics case handling is required so that legal proceedings are not impeded by protracted procedures, allowing offenders to receive timely care that meets their needs.

Effective socialization and prevention efforts are also integral to the efforts to combat narcotics abuse in Indonesia. Continuous and comprehensive education programs, starting from early childhood and continuing through adulthood, are essential for raising public awareness, particularly among the youth, regarding the dangers of narcotics and the importance of rehabilitation for those who fall into substance misuse. Through intensive socialization in schools, universities, and communities, society can better comprehend the significance of rehabilitative approaches in addressing narcotics users. This can foster a more positive perception of rehabilitation, as well as reduce narcotics abuse rates by providing accurate information on how to avoid and address narcotics dependency.

CONCLUSION

Effective law enforcement in preventing narcotics abuse in Indonesia necessitates a close integration between penal and non-penal approaches, supported by clear legal regulations that align with the principles of Human Rights. Despite efforts for enhancement through legislative changes such as Law No. 35 of 2009 concerning Narcotics, the primary issue remains the inconsistency in imposing sanctions that prioritize punitive measures over rehabilitation, which should be paramount in narcotics

mitigation. The intricate law enforcement processes and organized crime networks require sustained improvements in legal substance, legal structure, and legal culture, as well as adequately supportive systems to implement regulations fairly and effectively. With a more comprehensive approach—incorporating community involvement and fostering synergistic roles among law enforcement agencies—it is hoped that a more balanced system can be established to confront narcotics abuse, diminish narcotic circulation, and facilitate social recovery for offenders.

The abuse of narcotics in Indonesia demands a more comprehensive treatment based on a recovery-oriented approach rather than merely repressive law enforcement. While severe criminal sanctions remain essential to combat the narcotics trade, a more balanced approach between penalties and rehabilitation is crucial to assist those users who are predominantly victims of dependency. Expanding quality rehabilitation programs, implementing a diversion system, and enhancing the capacity of law enforcement officials to manage narcotics cases more efficiently are vital steps toward creating a more humane legal system. Furthermore, intensified socialization regarding the dangers of narcotics and the importance of rehabilitation can contribute to reducing abuse rates and cultivating a better understanding within society. Therefore, a comprehensive reform of narcotics policies in Indonesia that emphasizes recovery and social reintegration, as well as humane and appropriate treatment of narcotics offenders, is necessary to achieve more positive and sustainable outcomes for both individuals and the community.

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