

Legal implications for the regulation of ownership, storage and control of narcotics in Indonesia

¹Hartato Pakpahan, ²I Nyoman Nurjaya, ³Setiawan Nurdayasakti & ⁴Nurini Aprilianda

Abstract

The purpose of this study is to examine the effects of the Narcotics Law Articles 111, 112, 117, and 122 on the use of drugs for recreational purposes, with focus on individuals who possess, store, and regulate narcotics. This study used a normative legal research strategy, which involves analysing legal texts, regulations, and court decisions. We collected and analysed data from statutory laws, legal commentaries, and case studies to assess the practical application of these provisions. The findings suggest that despite their noble intentions, these articles often lead to severe punishments for individual users without distinguishing them from large-scale traffickers. Drawing from the experiences of nations like the Netherlands and Portugal, this research proposes legislative reforms to create more equitable and efficient drug control policies in Indonesia, emphasising rehabilitation over punishment.

Keywords: *narcotics law, legal implications, rehabilitation, Indonesia*

Article History:

Received: August 11, 2024

Accepted: September 23, 2024

Revised: September 21, 2024

Published online: October 3, 2024

Suggested Citation:

Pakpahan, H., Nurjaya, I.N., Nurdayasakti, S. & Aprilianda, N. (2024). Legal implications for the regulation of ownership, storage and control of narcotics in Indonesia. *International Review of Social Sciences Research*, 4(4), 1-17. <https://doi.org/10.53378/irssr.353110>

About the authors:

¹Corresponding author. Faculty of Law, Brawijaya University, Indonesia. Email: hatartopakpahan@student.ub.ac.id

²Faculty of Law, Brawijaya University, Indonesia. Email: nurjayai@yahoo.com

³Faculty of Law, Brawijaya University, Indonesia. Email: setiawan.sakti@ub.ac.id

⁴Faculty of Law, Brawijaya University, Indonesia. Email: nurini.aprilianda@ub.ac.id



1. Introduction

Global narcotics control has come a long way from its inception at the turn of the twentieth century. During that period, many nations started to see the dark side of narcotics like opium, which was popular but often taken unchecked (Klebacher et al., 2017). This realization prompted the 1909 Shanghai International Opium Conference and the 1912 The Hague International Opium Convention (Foster, 2019). International control of opium and other drugs distribution and usage was initiated at these two summits. The United Nations (UN) Single Convention on Narcotic Drugs, enacted in 1961, and subsequent international accords served as the cornerstone of drug control measures worldwide. Various forms of narcotics are classified and a legal framework for their regulation, distribution, and use is established under this agreement (Mills, 2016). These control measures are evolving in tandem with society's growing awareness of the gravity of the drug problem and the need for a holistic strategy.

A more nuanced view of addiction as a health issue rather than just a criminal offense is shown by the move away from criminal prosecution and toward a public health strategy (Volkow et al., 2017; Clark, 2021). The obstacles to effective drug control are substantial, notwithstanding the existence of a somewhat robust international legal framework. There has to be more international collaboration to tackle the complicated issues of changing patterns of drug use, cross-border trading, and the trafficking of illicit drugs (Kabra & Gori, 2023). Several laws governing the distribution and use of opium were enacted during the Dutch colonial period in Indonesia, marking the beginning of the country's history of drugs control. The Opium Regulation, enacted in 1927, is a landmark law (Ramadani et al., 2021). In particular, in several regions that served as commercial hubs, opium use was rampant at that period. In an effort to maintain revenue from its trade monopoly, the Dutch colonial administration regulated the opium trade in an effort to limit its distribution (Ramadani et al., 2021).

The detrimental effects of drugs on public health and social stability were more understood after Indonesia gained its independence, which led to a heightened focus on drug control efforts. The first comprehensive legislation to regulate drugs control in Indonesia was established by the Indonesian government in 1976, known as legislation no. 9 of 1976 concerning drugs. The goal of this legislation is to reduce drug usage and to punish offenders severely when they break the law when it comes to drugs (Gondokesumo & Amir, 2021). The adoption of Law no. 22 of 1997, which was subsequently amended by Law no. 35 of 2009

concerning narcotics, brought about further improvements in narcotics control. In addition to criminal punishment, this law's new integrated strategy prioritizes drug addiction prevention and rehabilitation (Sitompul & Sitompul, 2022). On top of that, the categorization of different forms of drugs is regulated more thoroughly by this legislation, and it also establishes a legal framework for the surveillance, control, and enforcement of laws pertaining to the circulation of narcotics in Indonesia.

Regulatory concerns have been at the heart of Indonesia's drug legislation issues. For instance, in a legal setting, the interpretation and implementation of Articles 111, 112, 117, and 122 of the drugs law govern the actions of owning, storing, and managing drugs. With varying specifics for each kind of drugs and circumstance, these articles define what constitutes a prohibited conduct in relation to opioids. The planting, maintenance, possession, storage, control, or provision of Class I drugs is punishable, for instance, under Articles 111 and 112. Paragraph (1) of Article 111 states that *"every person who without right or against the law plants, maintains, possesses, storing, controlling or providing Class I narcotics in the form of plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah)." On the other hand, Article 112 paragraph (1) states, "every person who without right or against law owns, stores, controls, or supplies non-plant class I narcotics, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve)) years and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah)." Article 117 deals with comparable issues for Class II Narcotics, which stipulates: "every person who without right or against the law possesses, keeps, controls or provides Class II Narcotics, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 600,000,000.00 (six hundred million rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah)." The criminal penalties for possessing, storing, controlling, or providing narcotics precursors are outlined in Article 122. The maximum jail term is 10 years and the maximum fine is IDR 10,000,000,000.00.*

Particularly in instances of drug misuse by the individual, the consequences of this arrangement become apparent (Ghofur & Suryawati, 2021). For example, Nunung, a famous comedian in Indonesia, was arrested in 2019 for possession of methamphetamine. This case attracted public attention because Nunung is a very well-known public figure, and his arrest

shows that narcotics abuse can happen to anyone, including celebrities. Nunung admitted that he used methamphetamine to maintain stamina in carrying out his busy activities. Even though he stated that the methamphetamine was used for personal consumption, Nunung was still sentenced to prison for one year and six months and underwent rehabilitation as part of his sentence. The aim and purpose of such possession might be challenging to discern, even while the law explicitly imposes punishment for possession of drugs. The legal situation is complicated for those who use drugs for personal use since they are typically penalized the same as drug traffickers, despite the fact that their motivations are different. Because of this, people are talking about how different approaches are needed for those who use drugs for personal use vs those who distribute them. Furthermore, rehab for drug addicts is also governed by law, but in practice, criminal law enforcement is sometimes given more priority than rehabilitation. People with this disorder often believe that the justice system will never be able to help them overcome their addiction because of their illness. Accordingly, the purpose of this study is to investigate, with a focus on drugs used for personal use, the consequences of interpreting and applying Articles 111, 112, 117, and 122 of the drugs law.

The goal of this study is to assess the effects of the application of laws on the treatment of drug users and to provide light on the challenges of interpreting laws pertaining to the possession, storage, and control of narcotics. So that the justice system can strike a better balance between enforcing the law and restoring public health, this study also intends to investigate the prospect of policy change that places more emphasis on rehabilitation. It is believed that policymakers would consider the research's implications when crafting more equitable and effective measures for drug control and when advocating for a legal system that serves to both punish and prevent and rehabilitate offenders.

2. Literature Review

Expert ideas and conceptions on drug law regulation are covered in this literature review, with a focus on Indonesian drug ownership, storage, and control. The primary goal of enacting drugs legislation in many nations, including Indonesia, was to curb drug use and trafficking. Problems in differentiating between individual users and those engaged in drug trafficking networks are a common source of difficulty when attempting to enforce this legislation.

The restorative justice philosophy, which places more emphasis on repair and rehabilitation than on purely criminal activity, is one that might be applicable here. Zehr (2004) argues that the goal of the restorative justice model is to help victims of crime and their communities overcome the harm that has been done to them. By applying this approach to the field of drugs legislation, it may divert drug users away from jail and into rehabilitation clinics, which are often better equipped to help with addiction and reintegration into society. Greenwald (2009 as cited in Wolff et al., 2015) found that decriminalizing drugs for personal use in Portugal, together with rehabilitation programs, reduced usage and improved public health. In Indonesia, where drug users are often disproportionately punished because they are still considered criminals in the same category as those involved in large-scale drug trafficking, this approach is drastically different. In addition, Unger's (2015) critical legal theory is important because it shows how legal systems may both reflect and perpetuate social injustice. It is common for Indonesian drug laws to take an excessively punitive stance toward individual drug users, without taking into account the myriad of social and economic issues that may contribute to drug abuse. When crafting laws, Unger contends, society's norms and values should be considered alongside economic and political factors in order to achieve true justice.

A research conducted by Hughes and Stevens (2010) examined drug policies in different nations. The results showed that approaches that prioritize public health and humanism, like those in Portugal and the Netherlands, were more successful in mitigating the harmful effects of drug misuse. They argue that society and individuals may benefit more from policies that prioritize prevention and rehabilitation over jail terms. Restorative justice is a significant theme in drug law because it shifts the focus from punishment to rehabilitation. Zehr (2004) highlights how restorative justice can aid drug users in seeking recovery instead of imprisonment. Greenwald (2009 as cited in Wolff et al., 2015) demonstrated the success of this philosophy in directing drug users towards rehabilitation programs.

Unger's (2015) critical legal theory helps frame Indonesian drug laws, where excessive punishment often overlooks the social factors that contribute to drug use. A more balanced approach integrating economic and social considerations can promote justice. Hughes and Stevens (2010) also underscore that policies prioritising public health, such as those in the Netherlands, offer a more effective response to drug misuse. These comparative insights indicate the potential for reform in Indonesia's legal approach, especially regarding Articles 111, 112, 117, and 122 of the Narcotics Law, to better align with rehabilitation and harm

reduction strategies. The research shows that Indonesia's drug laws need to be revised to place more emphasis on restorative justice and rehabilitation. In addition to being more equitable, this method will be more successful in lowering drug abuse's harmful effects and raising society's overall welfare.

3. Methodology

This study used a normative legal research strategy based on a legislative framework (Qamar et al., 2017). The study primarily aims to analyze legal documents, particularly Articles 111, 112, 117, and 122 of the Narcotics Law, hence this technique was selected. Normative legal research aims to scrutinize specific cases that implement prescriptive legal principles. These laws' interpretation and application in narcotics possession and control cases and their effects on recreational drug users were examined (Amirudin & Zainal Asikin, 2004).

We collected research data from primary legal materials like legislation and jurisprudence, as well as secondary legal materials like relevant legal literature. This approach aims to assess the harmony and fairness of the law's application, particularly in relation to the treatment of narcotics users for personal consumption. Thus, the study allows for an in-depth analysis of the extent to which the application of existing laws is in line with the expected objectives of the law, as well as recommendations for improving legal policy (Mahmud, 2016).

The problem formulation in this research were answered using normative methods through a statutory approach. By analyzing the relevant articles and how these articles are applied in legal practice, this research evaluated whether the application of these articles is in accordance with the desired legal objectives, especially in terms of treatment of narcotics users for personal consumption. It is hoped that the results of this analysis will provide clearer insight into the effectiveness and fairness of the implementation of narcotics laws in Indonesia.

4. Findings and Discussion

The Essence of Regulation of the Acts of Possessing, Storing, and Controlling Narcotics in Article 111, Article 112, Article 117, and Article 122 in the Narcotics Law Articles 111–122 of the drugs law address the nature of regulating the acts of having, storing, and managing drugs, with an emphasis on how the law governs criminal behaviors involving narcotics. This arrangement is a direct result of the government's attempts to crack down on

drug trafficking and usage by making sure that those responsible face heavy penalties. All drugs possession, storage, and control, whether lawful or not, is to be closely monitored and punished in accordance with the provisions of these articles. In a legal sense, Class I drugs are regulated by Articles 111 and 112, which impose penalties on those found in possession, storage, or control of narcotics in either plant or non-plant forms. Category II drugs are governed by Article 117, which, in comparison to Category I, has rather lenient penalty requirements. Article 122 expands the scope of regulation to include substances that have the potential to be used in the production of drugs, or narcotics precursors. To curb drug manufacturing and distribution on several fronts, this legislation is crucial.

The regulation's stated goal is to establish stringent controls on the distribution of drugs in Indonesia. But there's some debate regarding how to put these articles into practice. Whether the law is applied in a fair manner is a matter of heated controversy, particularly when it concerns those who take drugs for personal purposes. There were conversations on the necessity for a more rehabilitative strategy, rather than just a repressive one, when these articles were used against private users (Asphianto, 2024).

Problems of interpretation and application in the sector might be the center of substantial disputes surrounding Articles 111, 112, 117, and 122 of the Narcotics Law. While each article does its best to control illegal behavior, questions of fairness and coherence in application often emerge. Each of these articles has its own set of issues, which are summarized in table 1.

Table 1

Problems in Implementing Articles 111, 112, 117, and 122 of the Narcotics Law

Chapter	Provision	Main Problem
Article 111	Class I drugs found in plants are governed by several regulations: ownership, storage, and control.	Though the primary goal of this article is to eliminate drug trafficking, its use is often enforced on those who use drugs for personal purposes. The need for rehabilitation and the imposition of criminal punishment are therefore entangled.
Article 112	Controls, stores, and records information on Class I drugs that are not plant-based.	The question of whether the drugs are for individual use or are part of a distribution network is often disregarded when applying Article 112, as was the case with Article 111. Discrepancies in the application of the law result from this.

Chapter	Provision	Main Problem
Article 117	Regulates ownership, storage and control of Class II narcotics.	Private users, who need to prioritize rehabilitation, nonetheless have difficulties when this item is applied, despite the fact that the possibility of penalty is less severe than Category I.
Article 122	Regulates ownership, storage and control of narcotics precursors.	When authorities apply this item without solid proof that the precursors will be used to make illicit drugs, problems occur. Suspects who have no interest in producing drugs may feel unfairly treated as a result of this.

The implementation of Articles 111, 112, 117, and 122 of the Narcotics Law in Indonesia presents significant challenges, particularly in cases involving individuals who use narcotics for personal purposes. While the primary objective of these articles is to combat drug trafficking and misuse by regulating the control, storage, and possession of narcotics, the rigid application of these provisions often results in unintended consequences. For instance, the primary aim of Article 111, which regulates the possession, storage, and control of Class I drugs in plant form, is to eradicate drug trafficking. However, it frequently applies to individuals who use drugs for personal purposes, thereby combining the need for rehabilitation with the imposition of criminal punishment. This overlap between punitive measures and the need for rehabilitation creates difficulties in distinguishing between users and traffickers. Similarly, Article 112, which deals with the control of non-plant-based Class I drugs, disregards whether the narcotics are intended for personal use or part of a distribution network. Like Article 111, this provision fails to differentiate between personal users and traffickers, resulting in inconsistencies in its enforcement. Punitive measures instead target individuals who could benefit from rehabilitation, thereby intensifying the burden on the criminal justice system.

Article 117, which pertains to Class II narcotics, also presents challenges despite imposing less severe penalties than those outlined for Class I drugs. While the emphasis should be on personal user rehabilitation, the rigid application of this article frequently results in prison sentences for individuals who require treatment rather than incarceration. This has led to an increase in the prison population, with many incarcerated individuals being drug users who would benefit more from rehabilitation programmes than from punitive sanctions, thereby undermining both the rehabilitation process and the efficiency of the prison system.

Furthermore, Article 122, which regulates the possession and control of narcotic precursors, has its own set of complications. Individuals may face unfair treatment when authorities apply this provision without sufficient proof of illicit drug production using the substances in question. Legal penalties may apply to individuals who do not intend to produce illicit drugs. The overly strict regulation of precursor substances can also disrupt legitimate business activities, especially if there is no clear evidence of misuse. The broad application of Article 122 can thus create legal barriers for industrial activities and individuals who lawfully possess these substances, leading to unjust outcomes.

Several other nations' legal systems have effectively incorporated the challenge of interpreting the use of rehabilitation and punishment into a system that is more definite. Portugal and the Netherlands are two nations that may be compared to Indonesia; they have taken different approaches, but they have both shown substantial success in minimizing the harmful effect of drug misuse. In terms of drug policy reform, Portugal serves as a model. Portugal decriminalized all drugs in 2001 with the passage of Lei n° 30/2000. The Portuguese government does not consider it a crime to possess or use opioids for personal use; rather, it is classified as an administrative infraction (Laqueur, 2015). Instead of throwing people in jail, anyone found with less than a certain quantity of drugs (which is determined to be consumed within ten days) will be brought before a preventive panel (dissuasion commission) that includes a social worker, a lawyer, and a psychiatrist (Neicun et al., 2019). Reducing rates of addiction, HIV infection, and drug-related criminality, this strategy aims to divert users to recovery programs instead of jail. In contrast, the Netherlands has a reputation for being more lenient when it comes to minor narcotic use, mostly due to its Opium Law (Opiumwet) legislation, which was revised in 1976 and first implemented in 1912. The Netherlands distinguishes between hard and mild drugs under this statute. Although there are stringent regulations regarding soft drugs like marijuana, possessing and using small quantities for personal use is not deemed illegal. It is still illegal to produce and distribute cannabis on a big scale, but coffee shop owners are able to sell little amounts under tight regulations. *Gedelijk beleid*, which translates to "policy of tolerance," was the name given to this approach (Pacula & Sevigny, 2014). Law enforcement in the Netherlands has been able to shift their focus from small-scale users to large-scale illegal drug trafficking because to this strategy.

Under Narcotics Law No. 35 of 2009, the Indonesian legal system takes a more repressive approach to the possession and use of narcotics, both for personal consumption and

drug trafficking. There is no clear distinction in Indonesian law between users of narcotics for personal consumption and drug dealers, leading to equally severe criminal penalties for both groups. For example, articles 111 and 112 of the Narcotics Act provide for a fairly severe prison sentence, even for those who possess only a small amount of narcotics for personal use. Although the law includes an element of rehabilitation for narcotics users, in practice, rehabilitation is often neglected, and more cases end in imprisonment. As a result, many narcotics users who would otherwise benefit more from rehabilitation treatment instead face punishment equivalent to that of large drug dealers. This is in contrast to more progressive approaches, such as in Portugal and the Netherlands, where rehabilitation and a clear separation between private users and large traffickers are top priorities in narcotics policy. Many have criticized Indonesia's repressive approach, particularly for its ineffectiveness in combating drug addiction and lowering the number of drug-related offenses.

The examples set by these two nations demonstrate how drug misuse may be mitigated by legislative frameworks that prioritize rehabilitation and preventive efforts, while also distinguishing between different kinds of drugs and their intended uses. Both Portugal and the Netherlands have developed more compassionate and efficient systems to address drug-related public health issues, and they have also managed to overcome drug-related legal conflicts (Pratiwi et al., 2023). This method differs from more stringent legislation, such as that in Indonesia, which often fails to distinguish between private users and offenders of drug offenses, making it more difficult to police the law fairly and effectively.

Implications of the Regulation of the Acts of Possessing, Storing, and Controlling Narcotics in Article 111, Article 112, Article 117, and Article 122 in the Narcotics Law for Those Who Use Narcotics for Themselves. One of the significant topics in Indonesian drugs criminal law is the potential consequences for those who use narcotics for personal use of the regulations governing possession, storage, and control of narcotics under Articles 111, 112, 117, and 122 of the drugs Law. Even though the initial intent of these stringent legal rules was to destroy the drug trade, they now have a direct effect on those who use drugs for recreational reasons. Individuals who engage in drug usage face the same grave criminal risks as those who deal in illegal substances since the line between the two is sometimes blurry.

Small quantities of drugs for personal use are nonetheless subject to the possibility of lengthy jail terms under this statute. As a result, the Indonesian legal system faces a significant problem: the concepts of rehabilitation are not always aligned with this excessively punitive

approach (Pratiwi et al., 2023). Because of this, a criminal justice system that prioritizes jail terms ensnares many drug addicts who really need treatment and recovery. Furthermore, the stigmatization of drug users and their diminished prospects of sobriety might be worsened by such a stringent legal approach. Many relapse after a conviction because of the stigma associated with having a criminal record makes it hard for them to rejoin society (Suhartini et al., 2019). Articles 111, 112, 117, and 122 of the drugs law regulate the act of owning, storing, and managing drugs. To comprehend the consequences of these regulations, one must examine their application to individual drug users.

Table 2 systematically describes the implications faced by narcotics users when entangled in these articles, as well as provide an analysis of the interpretation of each article. This aims to see to what extent these articles are appropriate or actually cause problems when applied to narcotics users for personal consumption.

Table 2

Implications and interpretation analysis of Articles 111, 112, 117, and 122 of the Narcotics Law on Narcotics Users for Themselves

Chapter	Implications for Narcotics Users	Article Interpretation Analysis
Article 111	A four-year jail term is the bare minimum for narcotics offenders found in possession or storage of Class I drugs in plant form. Small users who utilize it for themselves may face harsh sanctions because of this.	The initial intent of this article was to do away with the growing and selling of plant-based drugs. Small users often go untreated, without rehabilitation, since in reality, there is no distinction between private users and traffickers.
Article 112	Class I non-vegetable narcotics have the same severe penalty for users who possess or control them. Because of this, people who use drugs often feel imprisoned by a system that doesn't take their motivations into account.	This article presupposes that the context or intention behind the possession of Class I narcotics are irrelevant, and that each act of possession or control of these substances is a component of narcotics trafficking. This results in the ongoing severe punishment of users who are not engaged in circulation.
Article 117	Prison sentences are still administered to Class II narcotics users who are apprehended with minor quantities of drugs. Users are still regarded as perpetrators of significant offenses,	Additionally, this article fails to distinguish between private consumers and narcotics traffickers. The principle of rehabilitation, which should be prioritized for self-narcotics users, is frequently disregarded by a rigid interpretation of this article.

Chapter	Implications for Narcotics Users	Article Interpretation Analysis
	despite the fact that the prospect of punishment is less severe.	
Article 122	Users who possess specific compounds that are classified as narcotic precursors may be subject to penalties, regardless of whether the substances are used for personal consumption or legal purposes.	This article has the potential to result in inequity if there is no evidence that the substances owned will be used to produce illicit narcotics. Users who have no intention of violating the law may be taken off guard by an excessively broad interpretation of this article.

The implications of Articles 111, 112, 117, and 122 of the Narcotics Law in Indonesia demonstrate a significant issue in the legal treatment of narcotics users, particularly those who use drugs solely for personal consumption. Article 111 imposes a minimum sentence of four years in prison for individuals found to be in possession of or storing Class I narcotics in plant form. Even small-scale users, who use the drugs for personal purposes, face severe legal sanctions due to this stringent penalty. The original intent of this article was to combat the cultivation and sale of plant-based narcotics, yet its implementation has often failed to differentiate between private users and traffickers, leading to a lack of rehabilitation opportunities for those who might benefit from such treatment. Article 112 continues this pattern of harsh penalties, imposing the same severe sanctions for the possession or control of Class I non-vegetable narcotics. Regardless of context or intent, the law inherently links possession of these substances to drug trafficking. Consequently, a legal system that disregards their personal motives or circumstances ensnares users who are not involved in drug circulation, resulting in disproportionate punishment. Similarly, Article 117 targets users of Class II narcotics, treating them as serious offenders and subjecting them to prison sentences even when found with minor amounts. Despite the less severe penalties for Class II narcotics, the article disregards the principle of rehabilitation for individual narcotics users, failing to distinguish between users and traffickers. This rigid interpretation continues to undermine efforts to address drug use as a public health issue rather than solely a criminal one. Even when individuals possess substances classified as narcotic precursors for personal or legitimate use, Article 122 imposes penalties. Without clear evidence that these substances will be used to produce illegal narcotics, this article can lead to inequitable outcomes, penalising individuals who have no intention of violating the law. Users, unaware that their possession of certain

substances could be considered illegal, face uncertainty and potential injustice due to the broad interpretation.

In the Netherlands, a policy known as *gedoogbeleid*, or tolerance policy, distinguishes between drug offenders and moderate drug users. In certain locations, such as coffee stores, the Netherlands has implemented a system that permits the sale and ingestion of limited quantities of marijuana. However, the country continues to prohibit the large-scale distribution and production of marijuana (Mascini & Houtman, 2011). This policy alleviates the burden on the criminal justice system and enables law enforcement to concentrate on more severe drug offenses. Users who consume minor quantities are not subject to severe criminal penalties; rather, they are directed to health care services if necessary. In contrast, Portugal went a step further by decriminalizing all forms of individual possession of narcotics for personal consumption in 2001. Rather, individuals who are found in possession of minor quantities of narcotics are referred to dissuasion commissions, which conduct medical and social assessments to ascertain whether the individual requires medical treatment or rehabilitation (Félix & Portugal, 2017). This method has not only succeeded in reducing substance addiction rates but has also alleviated the burden on the justice system and enhanced the overall health of the public.

Based on the analysis of the approaches of the two countries, the flow of reconstruction of the articles in Indonesia can be proposed as follows:

Article reformulation. The articles that govern the ownership and control of narcotics, including Article 111, Article 112, Article 117, and Article 122, must be rewritten to clearly distinguish between narcotics users for personal consumption and perpetrators who are involved in the production or distribution of narcotics. This could involve establishing restrictions on the quantity of narcotics that are classified as personal consumption.

Rehabilitation program settings. Mandatory rehabilitation programs can be incorporated into the legal system for individuals who are discovered with quantities of narcotics that are below a specific threshold, as is the case in Portugal. Rather than being subjected to severe criminal penalties, individuals who self-administer narcotics will be directed to rehabilitation programs.

Implementation of the tolerance policy for light narcotics. Indonesia could consider adopting a tolerance policy for mild narcotics, such as marijuana, in accordance with the Netherlands' example. This policy would require strict supervision of the use and

dissemination of small quantities, while simultaneously prohibiting large-scale production and distribution.

Periodic monitoring and evaluation. Following its implementation, it is crucial to conduct routine monitoring and evaluations of this policy (Leechaianan & Longmire, 2013). The evaluation will ascertain whether the legal reforms implemented are consistent with the objectives, which include the reduction of narcotics misuse and the enhancement of rehabilitation opportunities for users.

The implementation of this pathway is anticipated to decrease the number of narcotics users incarcerated and increase the availability of rehabilitation opportunities, thereby bringing it closer to a humane approach and emphasizing public health. Also, this will contribute to the development of a more equitable and efficient legal system in Indonesia's efforts to address the narcotics issue.

5. Conclusion

The analysis underscores the urgent need to reform Articles 111, 112, 117, and 122 of the Indonesian Narcotics Law, as these provisions fail to clearly distinguish between narcotics users for personal consumption and those involved in trafficking or production. This lack of distinction results in disproportionate legal consequences for private users, often subjecting them to the same penalties as traffickers, which undermines the broader goals of rehabilitation and justice. The study advocates for a more balanced legal framework that prioritizes public health over punitive measures, drawing on successful models from countries like Portugal and the Netherlands that decriminalize personal use and treat it through health-based interventions. This proposed reform is not only relevant for Indonesia but also offers a potential model for other countries grappling with similar challenges in narcotics control. The study's original contribution lies in its recommendation for a nuanced, tiered legal approach that balances punitive action with rehabilitation, ultimately aligning legal policies with public health goals. Future research should focus on assessing the long-term impact of these reforms on public health and narcotics use in Indonesia..

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was not supported by any funding.

References

- Amirudin & Zainal Asikin (2004). *Pengantar metode penelitian hukum*. Radja Grafindo.
- Asphianto, A. (2024). Application of law number 35 of 2009 concerning narcotics: Case study of decisions in Serang District Court. *Journal of Law and Sustainable Development*, 12(3), e3455. <https://doi.org/10.55908/sdgs.v12i3.3455>
- Clark, T.W. (2021). Determinism and destigmatization: Mitigating blame for addiction. *Neuroethics*, 14, 219–230. <https://doi.org/10.1007/s12152-020-09440-w>
- Félix, S., & Portugal, P. (2017). Drug decriminalization and the price of illicit drugs. *International Journal of Drug Policy*, 39, 121–129. <https://doi.org/10.1016/j.drugpo.2016.10.014>
- Foster, A.L. (2019). The Philippines, the United States, and the origins of global narcotics prohibition. *The Social History of Alcohol and Drugs*, 33(1), 13–36. <https://doi.org/10.1086/702691>
- Ghofur, A., & Suryawati, I. (2021). Konstruksi berita penangkapan komedian nunung terjerat narkoba di media online. *Pantarei*, 5(02), 02. <https://jom.fikom.budiluhur.ac.id/index.php/Pantarei/article/view/684>
- Gondokesumo, M. E., & Amir, N. (2021). Legality of marijuana use in the need for medical treatment in Indonesia (Judging from law number 36 of 2009 concerning health and law number 35 of 2009 concerning narcotics). *Journal Equity of Law and Governance*, 1(2), 119-126. <https://doi.org/10.55637/elg.1.2.3938.119-126>
- Greenwald, G. (2009). *Drug Decriminalization in Portugal*. Cato Institute.
- Hughes, C. E., & Stevens, A. (2010). What can we learn from the Portuguese decriminalization of illicit drugs? *The British Journal of Criminology*, 50(6), 999–1022. <https://doi.org/10.1093/bjc/azq038>

- Kabra, S. & Gori, S. (2023). Drug trafficking on cryptomarkets and the role of organized crime groups. *Journal of Economic Criminology*, 2, 100026. <https://doi.org/10.1016/j.jeconc.2023.100026>
- Klebacher, R., Harris, M. I., Ariyaprakai, N., Tagore, A., Robbins, V., Dudley, L. S., Bauter, R., Koneru, S., Hill, R. D., Wasserman, E., Shanes, A., & Merlin, M. A. (2017). Incidence of naloxone redosing in the age of the new opioid epidemic. *Prehospital Emergency Care*, 21(6), 682–687. <https://doi.org/10.1080/10903127.2017.1335818>
- Laqueur, H. (2015). Uses and abuses of drug decriminalization in Portugal. *Law & Social Inquiry*, 40(3), 746–781. <https://doi.org/10.1111/lsi.12104>
- Leechaianan, Y., & Longmire, D. R. (2013). The use of the death penalty for drug trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A comparative legal analysis. *Laws*, 2(2). <https://doi.org/10.3390/laws2020115>
- Mahmud, P. M. (2016). *Pengantar ilmu hukum edisi revisi*. Kencana Prenada Media Group.
- Mascini, P., & Houtman, D. (2011). Resisting administrative tolerance in the Netherlands: A rightist backlash? *The British Journal of Criminology*, 51(4), 690–706. <https://doi.org/10.1093/bjc/azr024>
- Mills, J. H. (2016). The IHO as actor: The case of cannabis and the Single Convention on Narcotic Drugs 1961. *Hygiea internationalis*, 13(1), 95–115. <https://doi.org/10.3384/hygiea.1403-8668.1613195>
- Neicun, J., Steenhuizen, M., Kessel, R. van, Yang, J. C., Negri, A., Czabanowska, K., Corazza, O., & Roman-Urrestarazu, A. (2019). Mapping novel psychoactive substances policy in the EU: The case of Portugal, the Netherlands, Czech Republic, Poland, the United Kingdom and Sweden. *Plos One*, 14(6), e0218011. <https://doi.org/10.1371/journal.pone.0218011>
- Pacula, R. L., & Sevigny, E. L. (2014). Marijuana liberalizations policies: Why we can't learn much from policy still in motion. *Journal of policy analysis and management: the journal of the Association for Public Policy Analysis and Management*, 33(1), 212–221. <https://doi.org/10.1002/pam.21726>
- Pratiwi, Y. I., Cengiz, M. K., & Mouhin, A. (2023). Cannabis regulation: a comparative study in Indonesia, Turkey, and Morocco. *Kosmik Hukum*, 23(1), 103. <https://doi.org/10.30595/kosmikhukum.v23i1.18888>

- Qamar, N., Syarif, M., Busthami, D. S., Hidjaz, M. K., Aswari, A., Djanggih, H., & Rezah, F. S. (2017). *Metode penelitian hukum (Legal research methods)*. CV. *Social Politic Genius (SIGn)*.
- Ramadani, S., Danil, E., Sabri, F., & Zurnetti, A. (2021). Criminal law politics on regulation of criminal actions in Indonesia. *Linguistics and Culture Review*, 1373–1380. <https://doi.org/10.21744/lingcure.v5nS1.1651>
- Sitompul, M.N., & Sitompul, A. (2022). Execution of death penalty in narcotics crime in the perspective of national law in Indonesia. *International Asia of Law and Money Laundering (IAML)*, 1(2). <https://doi.org/10.59712/iaml.v1i2.19>
- Suhartini, E., Roestamy, M., & Yumarni, A. (2019). Prevention and eradication of drug trafficking in Indonesia. *UNTAG Law Review*, 3(1), 39–56. <http://dx.doi.org/10.56444/ulrev.v3i1.1063>
- Unger, R.M. (2015). *The critical legal studies movement: Another time, a greater task*. Verso Books.
- Volkow, N.D., Poznyak, V., Saxena, S. & Gerra, G (2017). UNODC-WHO informal international scientific network. Drug use disorders: impact of a public health rather than a criminal justice approach. *World Psychiatry*, 16(2), 213-214. <https://doi.org/10.1002/wps.20428>
- Wolff, N., von Hippel, C., Brener, L., & von Hippel, W. (2015). Implicit identification with drug and alcohol use predicts retention in residential rehabilitation programs. *Psychology of Addictive Behaviors*, 29(1), 136–141. <https://doi.org/10.1037/adb0000004>
- Zehr, H. (2004). Commentary: Restorative justice: Beyond victim-offender mediation. *Conflict Resolution Quarterly*, 22(1-2), 305-315. <https://doi.org/10.1002/crq.103>