

Comparison of Criminal Law of Indonesia and Malaysia Regarding Narcotics Crimes

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ABSTRACT

In the development of the times, narcotics abuse is increasing and has become a serious threat to many countries. Countries such as Malaysia and Indonesia are trying to overcome these problems. Policies issued by Indonesia and Malaysia which then became the subject of comparison, especially criminal law policy policies on dealing with narcotics problems between Indonesia and Malaysia Research using a macro comparison method, where this study compares the common law system applied in Malaysia and civil law in Indonesia. It was found that there are 3 main differences between Law Number 35 of 2009 concerning Narcotics in Indonesia and Act 234 of the Dangerous Drugs Act 1952 (revised 1980 and the latest amendment 2014) in Malaysia which has the purpose of eradicating narcotics or drug crimes has three main differences, namely the mandatory imposition of the death penalty in Malaysia, jurisprudence being the main source of common law, and the promotion of the principle of premium remidium in Indonesia which is inversely proportional to the application of ultimum remidium in Malaysia.

Keywords: Narcotics, Crimes, Indonesia, Malaysia

INTRODUCTION

Narcotics trafficking is a serious problem in every country in the world. According to the United Nations Office on Drugs and Crime (UNODC), narcotics are ranked 20th leading cause of death in the world.¹ The development of narcotics in the world is increasing day by day, including the Southeast Asian region. Southeast Asia itself is dubbed as the Golden Triangle region because it is one of the three regions that produce the largest scale of medicines and produce about 60% of the opium circulating in the world.² Narcotics crime is not new in the Southeast Asian region, it happens because the Southeast Asian region itself has a strategic

¹ Yingyos Leechaianan and Dennis Longmire, "The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis," *Laws* 2, no. 2 (2013): 115–49, <https://doi.org/10.3390/laws2020115>.

² Leechaianan and Longmire.

regional area and the majority of countries in the Southeast Asian region are still developing countries which make Southeast Asian countries vulnerable to narcotics trafficking routes such as from Hong Kong, China, and Iran.³

Initially, people in the Asian region used opium as an ingredient for making medicines, but gradually in the 18th century the use of opium was abused by the United Kingdom people who came to Asia. The illicit trade in opium and heroin in Southeast Asia made Thailand the main route through the Laos border after the cold war (Cold War 1947–1991).⁴ The problem of narcotics circulation is a serious problem faced by countries in the Southeast Asian region, including Indonesia and Malaysia. In Indonesia, narcotics trafficking continues to increase even though law enforcement efforts continue to be carried out. Law Number 35 of 2009 concerning Narcotics cannot deter drug dealers in Indonesia. In addition to the weaknesses of the substance and the narcotics prevention law, there are many legal loopholes that make it possible to avoid the sanctions regulated in Law Number 35 of 2009. In addition, narcotics crime is an organized, organized, and highly secretive criminal act of having networks and systems.⁵

The problem with narcotics is also an international problem, including Malaysia. The problem of narcotics abuse in Malaysia has become the main problem and narcotics abuse has become increasingly serious so that the Government of Malaysia declares narcotics abuse as the number one enemy. Many countries have created and implemented laws to address the use of narcotics due to their negative effects on health, public safety, and social stability. The law plays an important role in determining how a country handles narcotics trafficking.⁶

In essence, the criminal law enforcement system discusses efforts to translate and realize legal desires into reality. In Van Hammel's opinion, the whole basis and rules adopted by the state in its obligation to enforce the law are to prohibit what is contrary to the law (*onrecht*) and impose *nestapa* (suffering) on those who violate it. Based on the above problem with the aim of finding out the legal policies used between Indonesia and Malaysia to overcome the problem of narcotics abuse, the formulation of this research problem is how the criminal law policy on narcotics crime in Indonesia and Malaysia.⁷

³ Ichsan Anwary, "Exploring the Interconnectedness Between Public Administration, Legislative Systems, and Criminal Justice: A Comparative Analysis of Malaysia and Indonesia," *International Journal of Criminal Justice Sciences* 18, no. 1 (2023): 172–82, <https://doi.org/10.5281/zenodo.4756211>.

⁴ Anwary.

⁵ Rr Dijan Widiowati and Rowela Cartin Pecson, "Comparison of Money Laundering Criminal Law Between Indonesia and Malaysia" 1, no. 3 (2024): 124–33.

⁶ Fuzi Nurani Anggraeni et al., "ANALYSIS OF INDONESIA ' S INTERNATIONAL COOPERATION WITH THE COUNTRIES OF MALAYSIA AND THAILAND IN ENFORCING" 6, no. 1 (2024): 6495–6513.

⁷ Anggraeni et al.

METHOD

In this study, the method used is a normative research method, namely research on laws, library materials, and secondary data. The following data are used in this study:

1. Primary legal materials are legal materials consisting of laws and regulations related to the judicial system in Indonesia and Malaysia.
2. Secondary legal materials are materials sourced from books from experts, legal journals.

RESULTS AND DISCUSSION

A. Law enforcement against narcotics abuse in Indonesia

In Indonesia, law enforcement against narcotics protection involves various parts of the criminal justice system, consisting of judges, prosecutors, police, and the National Narcotics Agency (BNN), which is tasked with dealing with narcotics crimes specifically. However, these tasks have become increasingly difficult with the increasing prevalence of drug trafficking, even by law enforcement itself. Law enforcers should ideally be free from the influence of drugs and must agree that drugs are the main enemy of the state. In Indonesia, narcotics abuse is regulated in Law Number 35 of 2009 concerning Narcotics. In article 127 paragraph (1) of the Narcotics Law, sanctions against narcotics users depend on the class of narcotics used, as follows:⁸

1. Group I for oneself can be sentenced to a maximum of 4 years in prison.
2. Group II for themselves can be sentenced to imprisonment for a maximum of 2 years.
3. Group III for self-reliance can be sentenced to imprisonment for a maximum of 1 year.

The types of addictive substances in the above group are as follows:⁹

1. Class I Narcotics: This substance should only be used for research purposes and should not be used as therapy due to its very high potential for dependence. For example, heroin, cocaine, marijuana, and so on.
2. Class II Narcotics: These substances have medical benefits but are only used as a last resort. In addition, it can be used for therapy, scientific development, or other purposes, and is very likely to lead to dependence. Examples are morphine, petidine, and fentanyl.

⁸ Ahilemah Joned Ahmad Mohamed Ibrahim, *The Legal System in Malaysia* (Dewan Bahasa dan Pustaka, 2015).

⁹ et al Antonius, Andrean, "Socialization of Comparative Punishment for Marijuana Narcotics Possession in Indonesia and Malaysia," *West Science Service Journal* 3, no. 4 (2024): 395–409.

3. Class III Narcotics: These substances are beneficial for treatment, are often used in therapy and science development, and have mild potential to cause dependence. Examples are codeine and buprenorphine.

However, if the abuser is not proven to be a perpetrator or proven to be a victim of drug abuse, then it is mandatory to undergo rehabilitation, this is in accordance with the content of Article 127 paragraph (3) "In the case of an abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation". Although there are rehabilitation options, the punishment for abusers shows that the penal policy is *premmum remidium* rather than *ultimum remidium*. This is due to the fact that many abusers are subject to Article 112 of the Narcotics Law because it is considered easier to prove.¹⁰

The handling of narcotics problems must also be supported by the community, in accordance with Law Number 35 of 2009 concerning Narcotics, law enforcement agencies such as the judiciary, police, BNN, and the Ministry of Health must receive active support from the community. According to Donald Black's book "The Behavior of Law", legal behavior has a social structure. Therefore, to create good legal behavior, we also need to create a good social structure. If the social structure is not good, then the legal behavior of the community will be difficult to be good, it is just an assumption. However, the existing social structure in the environment where the law is applied must be improved if it is to create good legal behavior.¹¹

In the current development of Indonesia's criminal law, especially in special criminal laws or criminal laws outside the criminal code (KUHP), there is a tendency to use a two-lane system, or a two-track system, in the sanctions system. This means that criminal sanctions and action sanctions are regulated simultaneously.¹² Criminal sanctions and action sanctions differ in a two-track penal system. Criminal sanctions have more elements of compensation or retaliation, while action sanctions come from the basic idea of community protection and the coaching or treatment of perpetrators. In addition, the sanction of the action can be determined on the criminal act that is applied to be committed, with a social purpose.¹³

¹⁰ and I. Made Minggu Widyantara Ardika, I. Gede Darmawan, I. Nyoman Sujana, "Law Enforcement Against the Abuse of Narcotics Crimes," *Journal of Legal Construction* 1, no. 2 (2020): 286–90.

¹¹ Beridiansyah Beridiansyah, "Criminal Law Enforcement System for the Prevention and Eradication of Narcotics Abuse (Comparative Study between Indonesia and Malaysia)," *Al-Risalah* 16, no. 2 (2018): 235–53.

¹² "https://Megapolitan.Kompas.Com/Read/2023/08/25/00150031/Pidana-Penjara-Dan-Rehabilitation-for-Drug-Users-Compliant-Law," n.d.

¹³ Moh. IMAM GUSTHOMI, "Creativity in the Comparative Test of Law Enforcement of Drug Crimes in Indonesia and Malaysia," *Journal of Creative Attitudes Culture* 4, no. 1 (2023): 30–36.

B. Law enforcement against narcotics abuse in Malaysia

Malaysia's law enforcement system for narcotics prevention and protection is very serious, and includes law enforcement, rehabilitation, and prevention. The Malaysian government has implemented a tough policy against drug trafficking and use, which includes strict laws and strict penalties for those who violate them. In Malaysia, the law enforcement system consists of the police, narcotics eradication agencies, and the judicial system that work together to combat narcotics trafficking and protection. Arrest, confiscation of narcotics, and actions against perpetrators of narcotics crimes are some of the enforcement actions taken. In addition to legal action, Malaysia also implements rehabilitation programs that help drug conservation victims recover from dependence and return to society.¹⁴

To aid in the healing process, the program provides counseling, medical care, and social reintegration. In Malaysia's narcotics law enforcement system, prevention is also a major focus. The government works closely with various organizations and agencies to raise public awareness about the dangers of drugs and inform them about its negative effects. Extension campaigns in schools, community centers, and mass media are part of this prevention program.¹⁵

Overall, narcotics prevention and control efforts in Malaysia use a variety of strategies, including strict law enforcement and community-based prevention and rehabilitation programs. This effort shows that Malaysia is committed to fighting corruption for the welfare of its people. In Malaysia, the policy on narcotics abuse is regulated in the Dangerous Drugs Act 1952, amended in 1980 and the latest amendment to Law A1457 of 2014, which consists of seven chapters and has been approved by parliament as a basis for ensnaring those who commit drug abuse.¹⁶ Meanwhile, sanctions or punishments for perpetrators of narcotics or drug abuse are regulated in the Dangerous Drugs Act 1952 Section 39, namely:¹⁷

¹⁴ Anggraeni et al., "ANALYSIS OF INDONESIA ' S INTERNATIONAL COOPERATION WITH THE COUNTRIES OF MALAYSIA AND THAILAND IN ENFORCING."

¹⁵ Muhammad Hatta et al., "Criminal Liability Towards Corporations Acting As Narcotics Traffickers In Indonesia," *International Journal of Law, Environment, and Natural Resources* 3, no. 1 (2023): 55–66, <https://doi.org/10.51749/injurlens.v3i1.61>.

¹⁶ Widijowati and Pecson, "Comparison of Money Laundering Criminal Law Between Indonesia and Malaysia."

¹⁷ Anwary, "Exploring the Interconnectedness Between Public Administration, Legislative Systems, and Criminal Justice: A Comparative Analysis of Malaysia and Indonesia."

SECTION	SANCTIONS OR PENALTIES
39 A (1)	The prison sentence is a minimum of 2 (two) years and a maximum of 5 (five) years, and will also be punished with a whip of not less than three (3) strokes but not more than 9 (nine) strokes.
39 A (2)	Life imprisonment or at least 5 (five) years, and will also be punished with a whipping penalty of not less than 10 (ten) Blow.
39 B (2)	Hukuman mitti mandatari.
39 C (1)	The penalty is five (5) years imprisonment but not more than seven (7) years, and shall also be punishable by whipping not more than three (3) strokes.
39 C (2)	The prison sentence is at least 7 (seven) and a maximum of 13 (thirteen) years, and will also be punished with a whipping sentence of at least 3 (three) strokes but not more than 6 (six) strokes.
39 C (3)	Rehabilitation on the condition that it must obtain the approval of an official authorized in writing by the Director General and is intended to be related to the admission of a person to the Rehabilitation center.
39 C (4)	Rehabilitation is based on the order of the Judge based on Section 6 paragraph (1) letter (a) of the Drug Addicts Act 1983.

In Malaysia's criminal law, the death penalty is the most severe sanction. Although the death penalty is the worst punishment, the emperor, the sultan, or the state ruler can grant a pardon with permission from the pardon institution. Life imprisonment is the second heaviest sentence after the death penalty. Under the auspices of the Jinayah Justice Act of 1953, the law was targeted for a period of 25 years. Like anything, the legislature can specify in detail and clearly if the death penalty is the life time of the perpetrator.¹⁸

¹⁸ Anggraeni et al., "ANALYSIS OF INDONESIA ' S INTERNATIONAL COOPERATION WITH THE COUNTRIES OF MALAYSIA AND THAILAND IN ENFORCING."

C. Comparison of legal rules on narcotics between Indonesia and Malaysia

NO.	PERBANDINGAN	INDONESIAN	MALAYSIA
1.	Mention	Drugs	Drugs
2.	Rule of law	<ul style="list-style-type: none"> • Law No. 8 of 1976 • ACT No. 92 in 1976 • Statute Book of the Republic of Indonesia number 37 of 1976 • Supplement to Statute Book of the Republic of Indonesia number 2086 	<ul style="list-style-type: none"> • Deed Dangerous Drugs Act 1952 (Act 234) • Deed Drug Addicts (Treatment) and Special recovery) 1983 (Act 283) • Deed Dangerous drugs (Specific preventive measures) 1985 (Act 316) • Deed Dangerous Drugs (Forfeiture of Property) Act 1988 340)
3.	Judicial institutions	Narcotics abuse cases in Indonesia are resolved through civil courts called Judicial common	Narcotics abuse cases in Malaysia resolved through civil justice
4.	Law enforcement	Abuse in Indonesia is handled by special institutions such as the National Police, BNN, Ministry of Health of the Republic of Indonesia	Abuse in Malaysia is handled by specialized boards such as the Ministry of Homeland Security, the Narcotics Department of the Royal Malaysia Police, the Pharmacy Division of

			the Ministry of Health Malaysia, and the Anti-Narcotics Agency National Drugs.
5.	Basic principles of penal	Adhering to the criminal element in the legal system	Adhering to the criminal element in the legal system
6.	Sanctions and penalties	The imposition of the death penalty is only for narcotics dealers and activities that support the distribution of narcotics groups I and II and are intended for perpetrators of coercion for children under age	The death penalty is intended for drug dealers regardless of the type of drug class, owner, and amount

The table compares drug-related policies and legal systems between Indonesia and Malaysia. In both countries, the term used for narcotics is "Drugs," but their legal approaches differ. Indonesia regulates narcotics through several laws, including Law No. 8 of 1976 and various other regulations compiled in the Statute Book, while Malaysia relies on specific legislation such as the Dangerous Drugs Act 1952 and other related statutes that cover drug handling, preventive measures, and treatment.

Regarding judicial institutions, both Indonesia and Malaysia resolve drug abuse cases through civil courts. However, law enforcement differs between the two. Indonesia relies on various institutions such as the National Police, the National Narcotics Agency (BNN), and the Ministry of Health. In contrast, Malaysia has specialized agencies including the Ministry of Home Affairs, the Narcotics Department of the Royal Malaysia Police, the Pharmacy Division of the Ministry of Health, and the National Anti-Drug Agency.

Both countries adhere to the basic principles of criminal law, focusing on relevant criminal elements. The main difference lies in the application of sanctions and penalties. In Indonesia, the death penalty is applied only to narcotics dealers involved in class I and II drugs and for cases involving coercion of minors. Meanwhile, Malaysia imposes the death penalty on drug dealers regardless of the type of drug, the owner, or the quantity, resulting in a broader application of capital punishment related to drug offenses.

CONCLUSION

Many countries, including Indonesia and Malaysia, view narcotics crime as a serious threat. Both countries have issued tough policies to combat this crime, which makes the competition interesting, namely about policy regulation between the two countries. The study finds three main differences between the criminal justice systems of Malaysia and Indonesia in dealing with narcotics crimes, such as the death penalty in Malaysia, the dominance of jurisprudence as a source of law, and the difference between the application of the principle of *premiu remedium* in Malaysia and *ultimum remedium* in Indonesia. Therefore, understanding these differences can add insight into narcotics policy and law enforcement in both countries.

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