

Comparative Analysis of the Legal System in Indonesia and the Netherlands in the Sphere of Use of Psychotropic Substances

Sulham Fahrudin

Faculty of Law, Universitas Widya Gama Malang, didieninteristi29290@gmail.com

Purnawan D. Negara

Faculty of Law, Universitas Widya Gama Malang, purnawan_dn@widyagama.ac.id

ABSTRACT

In the medical world, several types of psychotropic drugs can be used to treat certain mental disorders, such as anxiety disorders, depression, bipolar disorder, and so on. Unfortunately, many users consume these drugs without permission from a doctor. Even though the effects of addiction are low, this can be dangerous to health. Most of these drugs are abused because they provide satisfaction such as feelings of happiness and calm after using them. If the use is increased, it can cause dependence and can be fatal, namely death. Misuse of psychotropic drugs can also result in prison sentences. For this reason, even though some of its benefits are very good for health if it is excessive and not according to doctor's recommendations it can cause dangerous effects. Therefore, enforcing regulations regarding the presence of psychotropic substances is important to protect individuals who are affected by the use of these substances. A comparison of Indonesian and Dutch law regarding Psychotropic Substances shows several differences in the applicable legal and regulatory approaches. The general conclusion is that the Netherlands has implemented regulations based on strategies to reduce the impact of psychotropic substances in the country, whereas in Indonesia there is still room for improvement in the regulation and enforcement of laws regarding psychotropic substances.

Keywords: Psychotropics, Drugs, Legal System

INTRODUCTION

The system is an order or structured whole consisting of parts or elements that are closely related to each other, namely rules or statements about what should be about what should be, so that the legal system is normative. In other words, the Legal System is a collection of elements that exist in interaction with each other which constitute an organized unit and work together towards a unitary goal. In a good system, there should not be a conflict between parts. In addition, there should also be no duplication or overlap between the parts. A system contains several principles that guide its formation. It can be said that a system is inseparable from the principles that support it. For this reason, the law is a system, meaning an orderly arrangement or order of the rules of life, the whole of which consists of parts related to one another. It can be concluded that the legal system is a whole unit of order consisting of parts or elements that

are closely interconnected and related to each other. To achieve a unitary goal, it is necessary to work together between these parts or elements according to certain plans and patterns.

The legal systems of Indonesia and the Netherlands have a close historical relationship, given the Dutch colonial period that lasted more than three centuries in Indonesia. After independence, Indonesia adopted much of the Dutch legal system in the formation of laws and regulations. However, over time, Indonesia has developed its legal system that is adapted to the social context, culture, and national needs. In this comparison, we will discuss the main differences and similarities between the two countries' legal systems, including judicial structures, sources of law, and judicial processes. The abuse of drugs and psychotropic substances has caused many victims and other problems in the world. The criminal penalties that have been established related to narcotics are regulated in Law No. 35 of 2009 concerning Narcotics and Psychotropic is regulated in Law No. 5 of 1997 concerning Psychotropic.

METHOD

In conducting this research, the author uses basic research, namely by developing theories or basic principles of science, in this case, the science of law. Then, the type of research conducted in this writing is descriptive analytical research which has the aim of providing a descriptive description of the results of the analysis of a problem under study. Then, to conduct an in-depth examination of legal facts, the author uses empirical legal research to solve the problem. Empirical legal research to solve the problem. The author in this case examines the substance of legal norms, therefore the analysis conducted by the author has a qualitative nature. This means that the formulation of this justification uses the opinions of legal experts, doctrines, theories, and the norms themselves.

RESULTS AND DISCUSSION

PSIKOTROPIKA is a natural or synthetic substance or drug that is not a narcotic and has psychoactive properties through selective influences that occur in the central nervous system so that it can cause typical changes in mental activity and behavior¹. Based on the risk of addiction produced, psychotropic classes are divided into 4, including¹:

¹ Pierre Lavender, "Mengenal Psikotropika, Bahaya, Dan Contohnya.," Media Indonesia, 2022, <https://mediaindonesia.com/humaniora/494556/mengenal-psikotropika-bahaya-dan-contohnya>.

1. Class 1 Psychotropic. Drugs included in this class have a high potential to cause addiction. Not only that, these substances are also included in prohibited drugs whose abuse can be subject to legal sanctions. This type of drug is not for treatment, but only as knowledge. Examples of class 1 psychotropic substances include LSD, DOM, Ecstasy, and others, of which there are 14 in total. The use of these substances gives hallucinatory effects to users and changes feelings drastically. The bad effects of abuse can cause addiction that leads to death if it has reached a severe level.
2. Class 2 Psychotropic. Group 2 also has a fairly high risk of dependence although not as severe as group 1. The use of these drugs is often used to cure various diseases. Its use must be by a doctor's prescription so as not to give the effect of addiction. Group 2 includes the types of drugs that are most often abused by users, for example, methamphetamine, amphetamine, phenethylamine, and other substances, of which there are a total of 14.
3. Psychotropic Group 3. Class 3 psychotropic drugs have a moderate addictive effect. However, its use must be by a doctor's prescription so as not to endanger health. If used in excessive doses, the work of the system will also decrease drastically. In the end, the body cannot stay awake and sleeps until it does not wake up. Abuse of this class of drugs can also cause death. Examples of group 3 substances include Mogadon, Brupronorphine, Amobarbital, and others, of which there are 9 types in total.
4. Psychotropic Group 4. Group 4 does have a small risk of addiction compared to the others. But still, if its use is not supervised by a doctor, it can cause dangerous side effects including death. The abuse of drugs in group 4 is quite high. Some of them can even be easily found and are often consumed carelessly. Examples of group 4 include Lexotan, Koplo Pills, Sedatives or tranquilizers, Hypnotics or sleeping pills, Diazepam, Nitrazepam, and many other substances which total 60 types.

Despite the addictive effect, the use of these substances is allowed as long as it is by the doctor's prescription. Unfortunately, nowadays, the use of psychotropic drugs is so excessive and beyond the normal dosage that the benefits provided are detrimental to health. The contributing factors to psychotropic abuse are diverse, including social pressure, stress, the desire to escape from problems, and the availability of these drugs on the black market. The consequences of psychotropic abuse not only affect the user's physical and mental health, but

can also lead to social problems such as crime, accidents, and damage to interpersonal relationships.²

The government and various related institutions have tried to address this problem through various means, such as educational campaigns, tightening regulations, and providing rehabilitation services. However, the successful handling of this problem requires cooperation from all elements of society, including families, schools, and communities. This is emphasized in the preamble of Law Number 5 Year 1997 on Psychotropic Substances. The welfare of the people, including health, can be realized, among others, by paying attention to health services, in this case, the availability and prevention of drug abuse, especially psychotropic drugs.³ Article 59 of Law Number 5 Year 1997 on Psychotropic confirmed that: “using, producing, distributing, importing, possessing, storing, and or carrying class I psychotropic drugs shall be punished with imprisonment for a minimum of 4 (four) years, a maximum of 15 years and a fine of at least Rp.150,000,000.00 and a maximum of Rp.750,000,000.00.”⁴ “The example in the article shows how the regulation in Indonesia is very strict and has severe legal consequences (sanctions).

In its application in the Netherlands, Dutch law tolerates drug use. While possession and trafficking are still restricted. This law is motivated by the fact that the Netherlands cannot be free of drugs, so the use of drugs must be controlled. This is also to prevent the rise of crime syndicates that can control certain areas.⁵ Soft drugs are low-risk drugs. Whereas dangerous drugs that are high-risk and cause high levels of addiction are called hard drugs. Soft drugs include marijuana, sleeping pills, tranquilizers, and others.⁶ While hard drugs include heroin, cocaine, amphetamines, LSD, and ecstasy. The drug policy in the Netherlands tolerates massive sales of soft drugs while clamping down on the distribution and use of hard drugs effectively

² Alissa azzahra, “Penyalahgunaan Narkotika Dan Psikotropika,” Quereta.Com, 2018, <https://www.quereta.com/post/penyalahgunaan-narkotika-dan-psikotropika>.

³ Oktaphiyani Agustina Nongka, *PENERAPAN SANKSI PIDANA TERHADAP PENYALAHGUNAAN PSIKOTROPIKA BERDASARKAN UNDANG-UNDANG NOMOR 5 TAHUN 1997*, n.d.

⁴ Republik Indonesia, “UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 5 TAHUN 1997 TENTANG PSIKOTROPIKA,” 1997.

⁵ et all Karen, “Narkoba / Napza,” RS. Universitas Udayana, 2020.

⁶ Q Sholihah, “Efektivitas Program P4Gn Terhadap Pencegahan Penyalahgunaan Napza,” *Jurnal Kesehatan Masyarakat* 10, no. 2 (2015): 153, <https://doi.org/10.15294/kemas.v10i2.3376>.

separating them into two markets. Places that are allowed to sell soft drugs under certain circumstances are called coffee shops.⁷

Unlike Indonesia, this special tolerance comes with special permits and requirements as outlined in local government policy. These special requirements make “coffeeshops” in the Netherlands that sell soft drugs not to sell alcohol, not to sell to those who are not of age, not to sell to tourists, not to advertise, not to sell hard drugs, not to cause public nuisance, not to sell in large quantities with a maximum of five grams per person per day, and not to keep more than five hundred grams in stock in the store. If any of these requirements are violated, then all sales proceeds since the establishment of the store will be considered illegal and will be prosecuted by the provisions of the criminal law and confiscated by law enforcement officials. He then also explained the problems that have arisen as a result of the special tolerance policy as the “backdoor problem” regarding the origin of the supply of soft drug supplies for stores.⁸

In addition, the Netherlands prioritizes rehabilitation over imprisonment. Usually, if someone is found to be carrying or possessing hard or soft drugs, the police will simply confiscate them and contact a rehabilitation center. In fact, in the Netherlands, importing drugs is allowed as long as you have a license or permit that has been approved and issued by the Ministry of Health, Welfare, and Sport.⁹ The Netherlands Opium Act stipulates sanctions for the misuse of soft drugs. Possession of hard or soft drugs for commercial purposes incurs more severe penalties than for personal use. Import and export of soft drugs carries a maximum penalty of 4 years and a fine of FL 100,000. The sale or production of up to 30g of cannabis carries a maximum penalty of 1 month's imprisonment or a fine of FL 5000. These sanctions may increase by $\frac{1}{3}$ (one-third) if the offense is repeated more than once.

CONCLUSION

A comparison of psychotropic laws in Indonesia and the Netherlands shows significant differences in the two countries' approaches and policies. Indonesia adopts a harsher and stricter

⁷ Nathan Kristian Wibowo et all. Ginting, Yuni Priskila., Stuart, Ezekiel Paruntu Stuart., *Perbandingan Hukum Indonesia Dan Belanda Mengenai Psikotropika*, n.d.

⁸ Dean Rizqullah Risdaryanto, “Pakar Criminal Law Bahas Kebijakan Toleransi Soft Drug Dan Coffeeshops Di Negeri Belanda,” UnairWebsite, 2022, <https://fh.unair.ac.id/pakar-criminal-law-bahas-kebijakan-toleransi-soft-drug-dan-coffeeshops-di-negeri>.

⁹ S Purba, T. M. R., & Hadiningrum, “Perbandingan Sistem Hukum Indonesia Dengan Sistem Hukum Barat,” *Doktrin: Jurnal Ilmu Hukum Dan Politik* 2, no. 1 (2024): 253–261.

approach to psychotropic drugs, with laws that stipulate severe penalties for drug-related offenses, including the death penalty for drug dealers and producers. These laws aim to eradicate the distribution and use of narcotics, given their devastating impact on society.

On the other hand, the Netherlands has a more tolerant approach, especially towards soft drugs such as cannabis. By implementing a limited decriminalization system, the Netherlands allows the sale and consumption of small amounts of cannabis through coffee shops that are strictly regulated by the government. This policy aims to separate the soft drug market from hard drugs and reduce the damage caused by drug dependence. Although the two countries' approaches differ, they share the goal of protecting the public from the dangers of drugs and providing support for those struggling with addiction. This comparison shows that psychotropic policies can vary depending on the social context, culture, and goals of each country.

REFERENCES

- Alissa azzahra. "Penyalahgunaan Narkotika Dan Psikotropika." Quereta.Com, 2018.
<https://www.quereta.com/post/penyalahgunaan-narkotika-dan-psikotropika>.
- Dean Rizqullah Risdaryanto. "Pakar Criminal Law Bahas Kebijakan Toleransi Soft Drug Dan Coffeeshops Di Negeri Belanda." UnairWebsite, 2022. <https://fh.unair.ac.id/pakar-criminal-law-bahas-kebijakan-toleransi-soft-drug-dan-coffeeshops-di-negeri>.
- Ginting, Yuni Priskila., Stuart, Ezekiel Paruntu Stuart., Nathan Kristian Wibowo et all. *Perbandingan Hukum Indonesia Dan Belanda Mengenai Psikotropika*, n.d.
- Karen, et all. "Narkoba / Napza." RS. Universitas Udayana, 2020.
- Nongka, Oktaphiyani Agustina. *PENERAPAN SANKSI PIDANA TERHADAP PENYALAHGUNAAN PSIKOTROPIKA BERDASARKAN UNDANG-UNDANG NOMOR 5 TAHUN 1997*, n.d.
- Pierre Lavender. "Mengenal Psikotropika, Bahaya, Dan Contohnya." Media Indonesia, 2022.
<https://mediaindonesia.com/humaniora/494556/mengenal-psikotropika-bahaya-dan-contohnya>.
- Purba, T. M. R., & Hadiningrum, S. "Perbandingan Sistem Hukum Indonesia Dengan Sistem Hukum Barat." *Doktrin: Jurnal Ilmu Hukum Dan Politik* 2, no. 1 (2024): 253–261.
- Republik Indonesia. "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 5 TAHUN 1997 TENTANG PSIKOTROPIKA," 1997.
- Sholihah, Q. "Efektivitas Program P4Gn Terhadap Pencegahan Penyalahgunaan Napza." *Jurnal Kesehatan Masyarakat* 10, no. 2 (2015): 153.
<https://doi.org/10.15294/kemas.v10i2.3376>.