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# Criminal Law Politics on Regulation of Criminal Actions in Indonesia

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**Abstract**---This paper aimed to discuss the legal politics of regulating narcotics and illegal drugs in Indonesia. Using normative legal research methods, this normative legal research focuses on an inventory of positive law, legal principles and doctrines, legal findings in cases in concreto, legal systematics, comparative law, and legal history. The writing of this scientific paper uses primary legal materials and secondary legal materials. Primary legal materials are in the form of laws and regulations related to the issues raised, including Law No. 35 of 2009 concerning Narcotics. Secondary legal materials are materials that explain primary legal materials, such as law books. The results of the research are supported by the opinions of legal experts (doctrine), as well as legal journals related to this research, among others, that narcotics legal politics is the main point in forming a legal system in the form of laws and regulations that regulate criminal acts as described above, Articles 111, 112 has a reasonably heavy prison sentence, which is a minimum of 4 years, and a maximum sentence of 20 years, even the death penalty.

**Keywords**---crime, legal politics, narcotics, regulation.

### Introduction

The issue of narcotics crime which has long been an enemy of the nation is now increasingly worrying civilized nations. Various indications show that narcotics

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crime is an extraordinary crime. The meaning is as a crime that has a significant and multi-dimensional impact on social, cultural, economic, and political and the enormity of the negative impact caused by this crime. For this reason, unusual punishment would be relevant to accompany the crime model with extraordinary characteristics, which is currently increasingly spreading throughout the world as a transnational crime (Gossop et al., 2000; Gossop et al., 2005).

Circulation of narcotics in Indonesia, when viewed from the juridical aspect, is legal; the Narcotics Law only prohibits the use of narcotics without permission by the law in question. Narcotics crime has become a promising and rapidly growing business arena, where this activity impacts mental damage, both physically and psychologically, for narcotics users, especially the younger generation (Robinson et al., 1987; Hartford et al., 2019). Law enforcement against narcotics crimes has been widely carried out by law enforcement officers and has received many judges' decisions. Law enforcement is expected to be a deterrent factor against increasing illicit trafficking and narcotics trafficking, but in reality, it is increasingly being carried out by law enforcers from narcotics crimes themselves (Gorr & Harries, 2003; De Danieli, 2014).

Law enforcement against narcotics crimes in Indonesia, where the government acts as the organizer of state life, needs to provide protection and public welfare through various policies that are on the agenda of the national development program. This government policy is incorporated in social policy (social policy). One part of this social policy is law enforcement policy, including legislative policy. Meanwhile, the crime prevention policy (criminal policy) itself is part of the law enforcement policy (Mulyadi & Surbakti, 2010).

Law enforcement has a goal so that people obey the law. Three things, namely cause people's obedience to the law; 1) fear of sinning; 2) fear because the power of the authorities is related to the nature of the law, which is imperative; 3) afraid of being ashamed of doing evil.

Law enforcement with non-penal means has goals and objectives for internalization purposes (Mulyadi, 2008). The Narcotics Law, namely Law No. 35 of 2009 concerning Narcotics, is a legal, political effort by the Indonesian government to combat narcotics crimes. The establishment of the Narcotics Law is expected to tackle illicit trafficking and narcotics abuse by using criminal law or penal means.

With this research, this article examines further the concept of criminal law policy in crime prevention and criminal law policy on the regulation of narcotics crime in Indonesia (Bintu et al., 2005). The purpose of writing this article is to find out how the concept of criminal law policies in crime prevention and to find out what policies exist in criminal law for regulating narcotics crimes in Indonesia following the narcotics law in force in Indonesia (Suwija et al., 2019).

# Method

This paper used a normative legal research method. Normative legal research focuses on an inventory of positive law, legal principles and doctrines, legal

findings in cases in concreto, legal systematics, comparative law, and legal history (Bengtsson, 2016; de Casterlé et al., 2012; Linos & Carlson, 2017; Mayer, 2015). The writing of this scientific paper uses primary legal materials and secondary legal materials. Primary legal materials are in the form of laws and regulations related to the issues raised, including Law No. 35 of 2009 concerning Narcotics. Secondary legal materials are materials that explain primary legal materials, such as legal books, research results, expert opinions (doctrine), as well as legal journals related to this research (Asmadianto et al., 2020; Rumiartha et al., 2019).

### **Discussion**

Concept of Criminal Law Policy in Crime Prevention (Adinkrah & Adinkrah, 2021). According to Soedarto, legal politics is an effort to realize reasonable regulations with certain situations and conditions. In-depth, it was also stated that legal politics is a state policy through its equipment that is authorized to determine the desired regulations and is expected to express what is contained in society to achieve what is aspired (Mulyadi, 2008).

Based on the understanding of legal politics as stated above, it can be concluded that the politics of criminal law is an effort to determine which direction to apply Indonesian criminal law in the future by looking at its current enforcement (Laiet al., 2010; Haaland et al., 2020). This is also related to the best conceptualization of criminal law to be applied. A. Mulder also explained in detail about the scope of criminal law politics, according to him that criminal law politics is a policy line to determine; a) How far the applicable criminal provisions need to be changed or updated; b) what can be done to prevent crime; c) how the investigation, prosecution, trial and execution of the crime must be carried out.

Politics or criminal law policies can be said to be part of law enforcement policies. In addition, efforts to combat crime through the making of criminal laws (laws) are essentially also an integral part of social welfare efforts (Hadpagdee et al., 2021). Criminal law policy becomes very reasonable if it is an integral part of social policy or politics (social policy). Political policies have included social welfare policies and social defense policies.

Based on the description above, criminal law policy is essentially an effort to realize criminal laws and regulations following the circumstances at a particular time (ius constitutum) and in the future (ius constituendum) (Wiener, 2004). The logical consequence is that criminal law policy is identical with penal reform in a narrow sense, because as a system, law consists of culture (cultural), structure (structural), and substance (substantive) law. The law is part of the legal substance, the renewal of criminal law, updating the legislation, and includes the renewal of fundamental ideas and knowledge of criminal law (Mulyadi, 2008).

In essence, criminal law policy (penal policy, criminal policy, or strafrechtpolitiek) is a comprehensive or total criminal law enforcement process. Based on the political understanding of criminal law stated above, both by Soedarto and others, the scope of this criminal law policy covers a fairly broad problem, which includes an evaluation of the substance of the criminal law currently in effect for the

renewal of the substance of criminal law in the future (Goncharova et al., 2021). Future, and no less important, is the prevention of Narcotics crime. This prevention effort means that criminal law must also be one of the instruments to prevent the possibility of crime, and also the application of criminal law must have an effective influence to prevent before a crime occurs (Mulyadi, 2008).

# Criminal law policy against narcotics crime regulations in Indonesia types of acts prohibited in law No. 35 of 2009 concerning narcotics

The scope of criminal law includes three provisions, namely criminal acts, liability, and punishment. The criminal provisions in Law no. 35 of 2009 concerning Narcotics are formulated in Chapter XV of Criminal Provisions Articles 111 to 148. In Law no. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely: (Sunarso, 2012) a) The first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotic precursors (Article 35 of 2009 concerning Narcotics). 111 and 112 for narcotics class I, Article 117 for narcotics class II and Article 122 for narcotics class III and Article 129 letter (a); b) The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and precursors narcotics (Article 113 for narcotics class I, Article 118 for narcotics class II, and Article 123 for narcotics class III and Article 129 letter (b)); c) The third category, namely acts in the form of offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or delivering narcotics and narcotics precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for narcotics class II, Article 124 and Article 126 for narcotics class III and Article 129 letter (c)); d) The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotics precursors (Article 115 for narcotics class I, Article 120 for narcotics class I and Article 125 for narcotics class III and Article 129 letter (d)). Law No. 35 of 2009 concerning Narcotics has regulated the types of sanctions given to narcotics crimes, namely as follows;

- Criminal Acts of Parents / Guardians of Narcotics Addicts who are not yet of Age (Article 128);
- Crimes Committed by Corporations (Article 130);
- Criminal acts for people who do not report the existence of narcotics crimes (Article 131);
- Criminal Acts of Trial and Conspiracy to Commit Narcotics and Precursor Crimes (Article 132);
- The crime of ordering, giving, persuading, forcing with violence, deception, persuading children (Article 133);
- Criminal Acts for Narcotics Addicts Who Do Not Report Himself (Article 134);
- Criminal Acts for Pharmaceutical Industry Managers Who Do Not Carry Out Obligations (Article 135);
- Crime against Narcotics and Narcotics Precursor Proceeds (Article 137);
- Crime against Persons who hinder or complicate the investigation, prosecution, and examination of cases (Article 138);

- Criminal Acts for Captains or Pilots of Flight Not Implementing the Provisions of Articles 27 and 28 (Article 139);
- Criminal Acts for PPNS, Polri Investigators, BNN Investigators Who Do Not Implement Provisions on Evidence (Article 140);
- Crime for the Head of the District Attorney's Office who does not implement the provisions of Article 91 Paragraph (1) (Article 141);
- Crime for Laboratory Officers Falsifying Test Results (Article 142);
- Criminal Acts for Witnesses who Provide False Information (Article 143);
- Criminal Acts for Everyone Who Repeats Crimes (Article 144);
- Crimes committed by Hospital Leaders, Scientific Institution Leaders, Pharmaceutical Industry Leaders, and Pharmacy Traders Leaders (Article 147).
- Functions and Roles of BNN Investigators According to Law no. 35 of 2009 concerning Narcotics.

Prevention and eradication of narcotics abuse and illicit trafficking of narcotics and narcotic precursors are essential. So that in Law No. 35 of 2009, it is necessary to establish a National Narcotics Agency, from now on referred to as BNN. BNN is a non-ministerial government agency located under the President and responsible to the President. BNN is domiciled in the national capital with a working area covering the entire territory of the Republic of Indonesia and has representatives in the provinces and districts/cities. Provincial BNN is domiciled in the provincial capital, and regency/city BNN is domiciled in the regency/city capital, and regency/city BNN is a vertical agency. The duties and authorities of the National Narcotics Agency in Article 70 of Law No. 35 of 2009 concerning Narcotics are:

- Develop and implement national policies regarding the prevention and eradication of abuse and illicit trafficking of Narcotics and Narcotics Precursors;
- Prevent and eradicate abuse and illicit trafficking of Narcotics and Narcotics Precursors;
- Coordinate with the Head of the State Police of the Republic of Indonesia in the prevention and eradication of abuse and illicit trafficking of Narcotics and Narcotics Precursors;
- Improving the capacity of medical rehabilitation and social rehabilitation institutions for Narcotics addicts, whether organized by the government or the community;
- Empowering the community in preventing abuse and illicit trafficking of Narcotics and Narcotics Precursors;
- Monitor, direct, and improve community activities in preventing abuse and illicit trafficking of Narcotics and Narcotics Precursors;
- Carry out bilateral and multilateral cooperation, both regionally and internationally, to prevent and eradicate the illicit trafficking of Narcotics and Narcotics Precursors;
- Developing Narcotics and Narcotics Precursor laboratories;
- Carry out administrative investigations and investigations of cases of abuse and illicit trafficking of Narcotics and Narcotics Precursors; and

 Make an annual report regarding the implementation of duties and authorities.

#### Conclusion

Based on the description above, the authors can draw the following conclusions:

- The concept of criminal law policy includes criminal policy, criminal law policy, and non-criminal policy (penal). The criminal policy is a science of crime prevention that can be done by combining criminal and preventive means. Criminal law policy is an effort to overcome crime by using illegal means. At the same time, the non-criminal policy is a preventive measure before the occurrence of a crime. All of these policies have the ultimate goal of protecting the community to achieve public welfare.
- The criminal law policy on regulating narcotics crime in Indonesia includes criminal liability, actions that qualify as criminal acts, and criminal sanctions. Criminal liability consists of liability carried out by humans and corporations as the subject of criminal acts. Prohibited acts consist of distributing narcotics or narcotic precursors and abusing narcotics or narcotics precursors both for oneself and others. The sanctions contained in this law are criminal sanctions consisting of primary and additional criminal sanctions. The main punishments consist of capital punishment, imprisonment, imprisonment, and fines. At the same time, additional penalties consist of revocation of business licenses and revocation of legal entity status for corporations. The action sanction given is treatment and rehabilitation for addicts or victims of narcotics abuse. This Narcotics Law regulates the function and role of the National Narcotics Agency as an institution for the prevention and eradication of narcotics crimes and narcotics precursors. BNN has a role and function as an investigator in eradicating illicit trafficking and abuse of narcotics and narcotics precursors in Indonesia.

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