

ENFORCEMENT COMPARISON LAW TO MARIJUANA DRUG ABUSE IN INDONESIA AND CANADA

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Abstract

Enforcement law to abuse narcotics type marijuana show difference fundamental between Indonesia and Canada. In Indonesia, marijuana categorized as narcotics group I, with enforcement law of a nature repressive and focused on prevention as well as eradication use and distribution. Sanctions applied covers punishment harsh prison terms and high fines. In Canada, on the other hand, marijuana has legalized For use medical and recreational under *cannabis act* since 2018. Policy in Canada is more emphasize on regulation, reduction danger, and health society, with enforcement law directed at production and distribution illegal outside framework existing regulations. This study aims to analyze the comparative law enforcement against marijuana abuse in Indonesia and Canada. Using a qualitative descriptive method, this study presents the results related to the legal policies in force in both countries. In Indonesia, marijuana is classified as a class I narcotic based on Law No. 35 of 2009, with a strict legal approach without tolerance. Meanwhile, in Canada, marijuana is legalized through the 2018 Marijuana Act, with a policy that prioritizes legality and rehabilitation. Although the two countries have different approaches, both use positive law as the basis for imposing sanctions. Based on study This obtained conclusion namely Indonesia and Canada have different and similar views regarding law enforcement regarding the abuse of narcotics such as marijuana, apart from that it is different from Indonesia, Canada in enforcing the law on marijuana abuse actually issued the Cannabis Act as a form of legalization of marijuana narcotics, the Cannabis Legalization Act (The Cannabis Act). From this conclusion, the author can provide advice that Indonesia needs to continue to develop legal policies that not only emphasize severe punishment but also consider aspects of rehabilitation for drug abusers, in addition there is a program to adopt several approaches implemented in Canada, such as strengthening rehabilitation programs for marijuana abusers, can be an effective alternative in handling drug abuse cases.

Kata Kunci : Law Enforcement, Drug Abuse, Marijuana

A. INTRODUCTION

Law enforcement is a process of making efforts to uphold or function the applicable legal norms that have been regulated as guidelines for behavior in traffic or legal relations in human life in society and the state. Broadly speaking, the process of law enforcement involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does or does not

do something based on the applicable legal norms, then that means they have carried out or enforced the rule of law. Law enforcement can be interpreted as an effort by certain law enforcement officers to guarantee and ensure that the rule of law runs as it should be regulated by its rules. (Anggraeni & Damayanti, 2022).

In accordance with the opening of the 1945 Constitution of the Republic of Indonesia, paragraph 4 (fourth), the Indonesian government is obliged to protect all its citizens, including protecting its citizens from the dangers of narcotics. The government has made various efforts to eradicate the illicit trafficking of narcotics and narcotic precursors. One of them is by enacting Law Number 35 of 2009 concerning Narcotics, hereinafter referred to as the Narcotics Law. (Taniyo, K. Taniyo, KF, Ismail, DE, Rahim, EI, Law, M., University, P., & Gorontalo, N. (2023). Criminal Misuse of New Types of Narcotics. 09 et al., 2023)

Drug abuse, especially marijuana, is a complex and evolving issue in various parts of the world, including Indonesia and Canada. In Indonesia, marijuana is classified as a class I narcotic based on Law No. 35 of 2009 concerning Narcotics. This policy reflects a very strict approach to the use and distribution of marijuana, with severe criminal sanctions for violators, both users and dealers. Although the purpose of this law is to protect the public from the negative impacts of drug abuse, its implementation often faces serious challenges. (dr. Danang Ardiyanto, 2009)

One of the main challenges in law enforcement in Indonesia is the social stigma attached to marijuana users. For example, on June 26, 2022, in Bali, a mother brought a written demand to the Constitutional Court asking for medical marijuana to be legalized for the treatment of her child who suffers from *cerebral palsy*. In Indonesia, users are often viewed as lawbreakers who must be punished, without considering the broader health and social context. In addition, the Indonesian justice system has difficulty distinguishing between users who need rehabilitation and dealers who must be punished severely. This creates a situation where many individuals caught in drug cases do not receive fair treatment. (Calluso & Bilotta (2023)

On the other hand, Canada has taken progressive steps by legalizing the use of cannabis for medical and recreational purposes through the *Legalization and Regulation of Cannabis Act* passed in 2018. This policy aims to reduce the burden on the justice system and provide a better framework for regulating cannabis use. With this legalization, Canada has experienced a decrease in the number of cannabis-related arrests and an increase in state revenues through taxes on cannabis sales. This approach also opens up space for further research into the health benefits of cannabis use. (Cannabis Act (2018)

A comparison of law enforcement policies in Indonesia and Canada is important to understand how each country handles the issue of drug abuse differently. This study aims to explore existing policies, their impact on society, and potential reforms in the Indonesian legal system related to marijuana abuse.

By analyzing Canada's experience in legalizing marijuana, it is hoped that it can provide valuable insights for policy makers in Indonesia in formulating more effective and humane steps to deal with the problem of drug abuse. Based on the description above, the following problems are formulated, (1). How does law enforcement compare against marijuana drug abuse in Indonesia and Canada; (2). What are the obstacles faced in law enforcement against marijuana drug abuse in Indonesia and Canada; (Research by Khairawati (2021)

B. DISCUSSION

1. Comparison of Law Enforcement Against Marijuana Drug Abuse in Indonesian and Canada

a) Criminal Sanctions for Abuse of Marijuana in Indonesia for Indonesian Citizens (WNI)

In the New Order era, in the prevention and control of drug trafficking in Indonesia, the Government of the Republic of Indonesia issued Law Number 9 of 1967 concerning Narcotics. The Law on Narcotics regulates illegal smuggling. Then this law also mentions the special role of doctors and hospitals which are adjusted to the instructions of the Minister of Health.

The law has provided a very clear explanation. Law No. 35 of 2009 basically has 2 (two) sides, namely the humanist side towards drug addicts, and the hard and firm side towards drug dealers, syndicates, and distributors. The humanist side can be seen as stated in Article 54 of Law No. 35 of 2009 which states that drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation. While the hard and firm side can be seen from the articles contained in Chapter XV of Law No. 35 of 2009 (Criminal Provisions), which in essence in that chapter states that people who without rights and against the law plant, maintain, possess, store, control, or provide, the punishment is imprisonment. This means that the law guarantees punishment for addicts/victims of drug abuse in the form of rehabilitation, and drug dealers, syndicates, and distributors in the form of imprisonment or the heaviest punishment in the form of the death penalty (Waldo R, Oktarina S, 2024)

Narcotics through Law Number 35 of 2009 are defined as substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain and can cause dependency. which are differentiated into three groups, namely: group I, group II, and group III, as attached in this Law or as later determined by the Decree of the Minister of Health.

According to Article 6 of Law Number 35 of 2009, class I narcotics are narcotics that can only be used for scientific development purposes and are not used in therapy, and have a very high potential to cause dependency , then class II narcotics are narcotics with medicinal properties used as a last resort and can be used in therapy and/or for scientific development purposes and have a high potential to cause dependency, and class III narcotics are narcotics with medicinal properties and are widely used in therapy and/or for scientific development purposes and have a low potential to cause dependency. Marijuana, based on the division of types of narcotics, is included in Class I. (Article by Tempo (2024)

In Indonesia, narcotics crimes are included in special crimes, as can be seen from the basis for punishment which prioritizes using laws that specifically discuss narcotics abuse and not through the ordinary Criminal Code, as per the principle of *Lex Specialist Derogat Legi Generali*. The regulation of punishment for perpetrators of narcotics abuse of the marijuana plant type is based on many factors, such as who the perpetrator is, what their role is, and what and how big the object is.

The criminal sanctions for the abuse of narcotics in the form of marijuana are as follows:

- (1) Anyone proven to maintain, possess, store, control or provide narcotics of the marijuana type shall be punished with a minimum of 4 years and a maximum of 12 years and a fine of at least eight hundred million rupiah and a maximum of eight billion rupiah. However, if the weight exceeds 1 kilogram or exceeds 5 tree trunks, the punishment shall be a minimum of 5 years and a maximum of 20 years with a maximum fine of eight billion rupiah plus 1/3 in accordance with the provisions of Article 111 of Law Number 35 of 2009.
- (2) Anyone who produces, imports, or distributes marijuana narcotics shall be punished with a minimum of 5 years and a maximum of 15 years and a fine of at least one billion rupiah and a maximum of ten billion rupiah. However, if the weight exceeds 1 kilogram or exceeds 5 tree trunks, the punishment shall be a minimum of 5 years and a maximum of 20 years and a maximum fine of ten billion rupiah plus 1/3 in accordance with the provisions of Article 113 of Law Number 35 of 2009.
- (3) Anyone who offers for sale, sells, buys, receives, acts as an intermediary in the sale

and purchase, exchanges or delivers marijuana narcotics can be sentenced to life imprisonment or a minimum of 5 years and a maximum of 20 years and a fine of at least one billion rupiah and a maximum of ten billion rupiah. However, if the weight exceeds 1 kilogram or exceeds 5 tree trunks, the death penalty or a minimum of 6 years and a maximum of 20 years and a maximum fine of ten billion rupiah plus 1/3 according to the provisions of Article 114 of Law Number 35 of 2009.

- (4) Anyone who carries, sends, transports, or transits marijuana narcotics can be sentenced to a minimum of 4 years and a maximum of 12 years and a fine of at least eight hundred million rupiah and a maximum of eight billion rupiah. However, if the weight exceeds 1 kilogram or exceeds 5 tree trunks, the sentence is a minimum of 5 years and a maximum of 20 years and a maximum fine of eight billion plus 1/3 according to the provisions of Article 115 of Law Number 35 of 2009.
- (5) Any person who without rights or against the law uses narcotics in the form of marijuana against another person or gives it to be used by another person shall be punished with a minimum of 5 years and a maximum of 15 years and a fine of at least one billion rupiah and a maximum of ten billion rupiah. However, if his actions as referred to above result in the death or permanent disability of another person, he shall be punished with death or a minimum of 5 years and a maximum of 20 years and a maximum fine of ten billion rupiah plus 1/3 in accordance with the provisions of Article 116 of Law Number 35 of 2009.
- (6) Anyone who abuses/consumes marijuana-type narcotics is subject to a maximum sentence of 4 years in accordance with the provisions of Article 127 of Law Number 35 of 2009.

Law enforcement against perpetrators of marijuana drug abuse in Indonesia is not always in the form of criminalization and ending in a Correctional Institution, but can also be in the form of rehabilitation. Rehabilitation is an effort to restore and return the condition of former NAZA abusers or addicts to health in the sense of physical, psychological, social, and spiritual/religious (faith) health.

With this healthy condition, it is expected that they will be able to function normally in their daily lives and be accepted in their social environment. Law No. 35 of 2009 concerning Narcotics also contains regulations on rehabilitation, in article 54 it reads: **"Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation."**

b) Criminal Sanctions for Abuse of Marijuana in Indonesia for Foreign Nationals

The high number of drug cases shows that drug trafficking crimes have become a massive crime. More than 50% of these drug cases are spread across 6 provinces in Indonesia, namely East Java, West Java, Jakarta, East Kalimantan, South Sumatra and North Sumatra. In fact, according to data from the Directorate General of Corrections, in 2018 there was an overcapacity of drug case prisoners. The number of prisoners reached 19,993, while the total of 22 special narcotics UPTs only had a maximum capacity of 11,659 (Kemenkumham, 2019). This phenomenon shows the weakness of law enforcement in Indonesia in combating illegal drug trafficking and distribution (Oktaviani & Yumitro, 2022).

This shows that there is foreign interference in the distribution of international narcotics networks in Indonesia which has caused a spike in the number of narcotics abuse in Indonesia, so serious efforts are needed in law enforcement, especially for foreign citizens involved in narcotics abuse.

Regarding the abuse of marijuana by Foreign Nationals (WNA) as a type of narcotics, sanctions are still imposed in accordance with the applicable regulations in Indonesia,

reinforced by Article 146 of Law Number 35 of 2009 concerning Narcotics which regulates more specifically regarding the abuse of narcotics by Foreign Nationals. Its application still depends on how it is used and how much marijuana is abused.

Serious efforts by the government and law enforcement in eradicating drugs including those abused by Foreign Nationals can be taken as an example from one of the narcotics crime cases involving the imposition of sanctions on foreign nationals, namely the "Bali9 case". This case involved nine Australian citizens who were arrested at Ngurah Rai Airport and the Maslati Hotel in Bali in 2005 on charges of smuggling more than 8 kilograms of heroin in Indonesia. Two of the nine suspects were executed in Nusa Kambangan, Central Java.

Not only the death penalty, imprisonment, and fines, but foreign citizens who abuse narcotics including marijuana in the territory of the Republic of Indonesia can be deported, expelled, and prohibited from re-entering the territory of Indonesia based on a Decree issued by the government.

c) Criminal Penalties for Marijuana Abuse in Canada for Canadian Citizens

Canada is one of the most ethnically and multiculturally diverse countries in the world. Immigration in this country is relatively large compared to other countries. In addition, Canada's economy is the tenth largest in the world. Abundant natural resources and international trade networks are the mainstay of the country's economy. The long relationship with the United States has had a significant impact on the economies and cultures of both countries. Canada is a developed country and has the fifteenth highest nominal per capita income and the tenth highest ranking on the Human Development Index. It is among the highest in the human development index consisting of government transparency, civil liberties, quality of life, economic freedom, and education. ("Cultural and Ethnic Diversity in Canada - Post Journal")

Canada is one of the largest marijuana producing countries in the world. Marijuana has been legalized throughout Canada, this is based on RUUC- 45 . on Marijuana which was passed on October 17, 2018. The law creates a legal and regulatory framework to control the production, distribution, sale, and possession of marijuana in Canada. The law legitimizes its citizens who are 18 years of age or older to have 30 grams of marijuana in public. The law also creates regulations that allow adults to make food and drinks containing marijuana. Not only that, the law gives permission to each family to be able to plant a maximum of four marijuana plants from seeds.

Canada has implemented a progressive policy focused on decriminalization and legalization to address drug abuse, including marijuana. This policy reflects a different approach than many other countries in terms of criminal sanctions against foreign nationals who abuse drugs similar to marijuana. This policy aims not only to reduce the profits of an organized black market driven by crime, but also to protect children from unfettered access to marijuana.

Despite being legal, possession of large amounts of marijuana or breaking the law can result in criminal penalties including fines. British Columbia's Decriminalization Policy has also taken steps to decriminalize possession of small amounts of the drug as part of its efforts to address the overdose crisis. The policy aims to shift the focus from law enforcement to medical services in the hopes of making users more likely to seek help without fear of legal repercussions.

This shows that despite criminal sanctions, efforts are also being made to reduce stigma and encourage reintegration. In the context of decriminalization, the government supports a public health approach to addressing drug abuse, so that users who experience legal problems are referred to rehabilitation services rather than immediately prosecuted. Overall, Canada's policy of imposing criminal sanctions on marijuana drug abuse reflects a more humane and

Public Health-oriented approach than strict law enforcement. This creates space for policy reform to find alternative solutions to address drug abuse problems in other countries, including Indonesia.

d) Criminal Sanctions for Abuse of Marijuana Drugs in Canada for Foreign Nationals

Although marijuana has been legalized for recreational use since 2018 through *The Cannabis Act*, there are penalties for foreign nationals who abuse this drug. Sanctions against foreign nationals in accordance with general drug policies, Canada imposes sanctions on foreign nationals who are caught abusing marijuana-based drugs. Foreign nationals who violate the provisions on the use of marijuana, for example possession exceeding the legal limit (30 grams for recreational use) can be subject to prison sentences.

These penalties vary depending on the type of offense and can include up to 6 months in prison. For serious offenses such as illegal trafficking or distribution of marijuana, the penalties can be very severe. These crimes can result in several years in prison, depending on the amount of marijuana and the circumstances of the crime. Foreign nationals convicted of drug offenses in Canada are at risk of deportation. Canadian immigration policy allows the government to deport people who pose a threat to public safety or have been convicted of certain laws.

However, unlike Indonesia, Canada continues to focus on a rehabilitation and public health approach when dealing with drug abuse issues, allowing Foreign Nationals to receive rehabilitation. (Government of Canada (2018))

2) Obstacles Faced in Law Enforcement Against Marijuana Drug Abuse in Indonesia and Canada.

a) Internal constraints

In dealing with drug abuse, both Indonesia and Canada experience internal obstacles that affect the effectiveness of law enforcement. Lack of training and competence of law enforcement officers is a major problem. Many officers do not have sufficient understanding of narcotics and how to handle them. (Scientific Journal of Citizenship Education Students, Unsyiah)

(1) Internal Constraints In Indonesia

(a) Imbalance of Policy and Law Enforcement

Indonesian policy is still repressive with an orientation towards severe punishments, including the death penalty for drug crimes. However, implementation in the field is often not in line, especially regarding minor abuse cases that should be more directed towards rehabilitation.

(b) Corruption of Law Enforcement Officers

Bribery and corruption practices in the law enforcement system mean that the main perpetrators of drug crimes, such as big dealers, often escape punishment, while small-time users receive heavy sentences.

(c) Overcrowded Correctional Institutions

Many marijuana users are jailed instead of rehabilitated, leading to overcapacity in correctional facilities. This reduces the effectiveness of law enforcement and inmate development.

(d) Lack of Understanding Regarding Marijuana as a Medical Substance

Rigid regulations on marijuana ignore its medical potential. This is an obstacle to the development of more adaptive and science-based policies. (Emerson Yuntho (2016))

(2) Internal Constraints In Canada

(a) Differences in Regulations Between Provinces

Following the legalization of marijuana in 2018, each province has the authority to regulate the distribution and sale of marijuana. The inconsistency of policies between provinces has made it difficult to monitor and enforce violations at the local level.

(b) The Black Market Still Exists

A major obstacle facing Canada is the continued thriving black market for marijuana, despite its legalization. The black market continues to exist because it offers lower prices than legal marijuana products that are heavily taxed.

(c) Supervision of Illegal Production

Despite being legal, illegal cannabis production remains a major challenge. Many small producers without licenses continue to operate illegally, requiring extra oversight from authorities.

(d) Social and Health Issues

There are concerns about the social impacts, such as increased use of cannabis among teenagers. Law enforcement becomes difficult when consumption occurs in private spaces that are difficult for authorities to monitor. (by The Guardian (2018))

(b) **External constraints**

Enforcement law to abuse narcotics types of marijuana in Indonesia and Canada face various constraint external influences effectiveness effort its handling. In Indonesia, one of the constraint main is low role as well as public in support effort countermeasures narcotics. Lack of understanding public about the duties and functions of the National Narcotics Agency (BNN) cause lack of participation active in prevention and reporting case abuse. In addition, the negative stigma to user drugs make public reluctant involved in effort rehabilitation and eradication circulation narcotics.

Temporary it's in Canada, although marijuana has been legalized For use medical and recreational, there are constraint related regulation and supervision. Changes fast policy and complexity regulation can cause confusion among producers, distributors, and consumers. In addition, the challenges appear in arrange distribution and ensure that cannabis products no fall to wrong hand, so that need system strict supervision and resources adequate power. (Warmadewa University Journal)

(1) External Constraints in Indonesia

(a) International Pressure and Influence

Indonesia faces pressure from various international institutions and developed countries that have legalized marijuana for recreational or medical purposes. This pressure creates a dilemma between maintaining strict policies based on narcotics laws or opening up space for medical research related to marijuana.

(b) International Distribution Routes

Indonesia is one of the transit routes for international narcotics trafficking. Its strategic geographical location makes Indonesia vulnerable to marijuana smuggling from neighboring countries, such as Thailand, which has legalized marijuana.

(c) Lack of Effective Regional Cooperation

Although Indonesia is a member of various regional organizations, such as ASEAN, cross-country law enforcement cooperation is still not optimal. Differences in anti-narcotics policies between countries have weakened collective efforts to address cross-border marijuana trafficking.

(d) International Social Stigma

Indonesia's tough stance on marijuana has often been criticized by the international community, which considers the policy outdated and does not take into account medical and

human rights aspects. (M. Ali Zaidan and Yuliana Yuli W (2020)

(2) External Constraints In Canada

(a) The Impact of International Trade

After legalizing marijuana, Canada faced obstacles in exporting marijuana products to countries that still prohibit it. This limited the economic potential of the legal marijuana industry in Canada.

(b) Illegal Marijuana Inflow from Other Countries

Although marijuana is legal in Canada, the influx of illegal marijuana from other countries remains a problem. This illegal marijuana is often sold at a lower price without quality control.

(c) Impact of Neighboring Country (US) Policies

In the United States, marijuana policies vary from state to state. Several states bordering Canada still criminalize marijuana, creating obstacles to cross-border trafficking and creating political and legal tensions.

(d) Challenges from International Organizations

Although Canada has legalized marijuana nationally, this is contrary to several international treaties that prohibit the use and trade of marijuana. Canada has faced criticism from several UN member states regarding this legalization. (Radar Jogja (2024)

C. CLOSING

1) Conclusion

Based on the discussion above, the author concludes that:

- a. The difference is, Indonesia has a special regulation in the form of Law Number 35 of 2009 concerning narcotics which expressly rejects the use of marijuana in any form. It can be seen that marijuana is included in group I which according to the narcotics law is the most dangerous type of narcotics and has the heaviest sanctions. In Indonesia, marijuana abuse can be punished with death or a minimum of 4 years in prison and a maximum of 20 years and a maximum fine of ten billion rupiah. However, Indonesia strives to prioritize the principles of justice, certainty, and legal benefits in its enforcement, so that in imposing sanctions it still pays attention to the objective side by still looking at the method of abuse and the amount of abuse. Indonesia also opens a rehabilitation policy for victims of drug abuse, but its implementation is still limited.
- b. In contrast to Indonesia, Canada in enforcing the law on marijuana abuse actually issued the Marijuana Act as a form of legalizing marijuana. This policy tightens the rules on marijuana use such as the minimum age limit allowed to consume marijuana, the maximum dose limit for marijuana use, to the application of excise on marijuana products that can only be purchased at various official government stores. Canada has a strict policy if there is a violation of the provisions contained in the Marijuana Act. However, even so, Canada tends to rehabilitate victims of marijuana abuse, this is considered more effective in overcoming abuse beyond the provisions. In economic terms, the Canadian economy has actually increased and stabilized due to policies that regulate the legal marijuana industry. The similarity in law enforcement between Indonesia and Canada regarding marijuana abuse is in the application of sanctions based on positive laws in force in their respective countries. There is no law that specifically regulates the application of criminal sanctions for Foreign Citizens who abuse marijuana, the sanctions are the same

based on applicable regulations. However, according to international immigration policy, the government can deport Foreign Citizens from their respective countries.

2) Suggestions

Based on the discussion above, the author provides suggestions, namely:

- a. Indonesia needs to continue to develop legal policies that not only emphasize severe punishment but also consider the rehabilitation aspect for drug abusers. A more holistic approach will help reduce the burden on the prison system and provide opportunities for recovery for users.
- b. Adopting some of the approaches implemented in Canada, such as strengthening rehabilitation programs for marijuana abusers, can be an effective alternative in dealing with drug abuse cases. This can also reduce the reoffending rate and help victims reintegrate into society. Although legalizing marijuana in Canada has several advantages, it is important to ensure strict supervision and regulation. Indonesia can learn from the supervision mechanisms implemented in Canada to control the distribution of marijuana legally.

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