

The Development of Narcotics Legislation in Indonesia and Singapore



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ABSTRACT: Since the Dutch colonial era, Indonesia has had drug-related regulations. Drug use was controlled with special licenses for people of Chinese descent who contributed financially through the opium trade. After Indonesia's independence, regulations on the production, use, and distribution of dangerous drugs were issued. In the 1970s, drug abuse increased, and the government responded with laws regulating illicit drug trafficking and imposing severe criminal sanctions, including the death penalty. During the Reformasi era, the crackdown on drugs became more assertive. BNN was established in 2002, and regulations continue to be revised to tackle the complex drug problem. Law No. 35/2009 became the legal foundation that imposed the death penalty to curb the spread of drugs in Indonesia. Singapore has faced a growing drug problem since the early 19th century. To control drugs, Singapore implemented various regulations, such as the New Dangerous Drugs Ordinance and Regulations in 1951 and the Misuse of Drugs Acts (MDA) in 1973. Severe penalties are imposed on drug dealers and users. Public education and criminalization are used to prevent drug abuse. Singapore applies harsh measures, including the death penalty for drug traffickers. The Misuse of Drugs Act sets drug quantity thresholds for trafficking and possession, with varying penalties, including fines, imprisonment, and even the death penalty. The Act authorizes officers to conduct searches and urine tests on suspected drug offenders. Singaporeans support tough drug laws as drug use is considered a moral and social evil.

KEYWORDS: Development Narcotics Regulation, Indonesia-Singapore, Legal History Approach, CNB, BNN.

I. INTRODUCTION

Narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases. However, if misused or used not in accordance with treatment standards, it can have a very detrimental effect on individuals or society, especially the younger generation. This will be more detrimental if accompanied by the abuse and illicit trafficking of Narcotics which can cause greater harm to the life and cultural values of the nation which will ultimately weaken national resilience.¹ Importing, exporting, producing, cultivating, storing, distributing, and/or using narcotics without strict supervision and control and in accordance with legal regulations is a narcotics crime. This action has a very detrimental impact and brings serious danger to the lives of individuals, communities, nations and states, and threatens Indonesia's national resilience.

The illegal distribution and abuse of drugs in Indonesia is an increasing concern, with various negative consequences that can threaten the younger generation and the future of the Indonesian nation. In 2015, the estimated number of drug users reached 5.1 million people, with a significant death rate due to drug abuse. Every day, around 49-50 young people in Indonesia lose their lives to drugs abuse. The estimated financial loss of around Rp63 trillion includes spending on drugs, losses due to theft, rehabilitation costs, and various other costs.²

The rise of drug abuse in Indonesia today has become a source of concern for society. Both adults and young people are involved in drug abuse. The development of drug use in Indonesia is also influenced by technological developments, as well as its unique and strategic geographical location, making Indonesia a potential market for illegal drug trafficking.³

The level of drug trafficking and abuse in Indonesia has increased significantly. In this article, we will explore the history of narcotics in Indonesia. Based on the 2020 Indonesian Narcotics Report issued by BNN, it was found that in 2019 the number of drug users reached 4.5 million people. While Indonesia was previously only considered a transit country in the 90s, it has now become the largest market for illicit drug trafficking in the Southeast Asian region. The impact of drug abuse is evident, with more

¹ Explanation of Law Number 35 Year 2009

² National Narcotics Agency (BNN), 2017, Drugs and their Problems, Jakarta: BNN Deputy for Prevention, p 1.

³ <https://puslitdatin.bnn.go.id/> accessed on 17 June 2023, at 01:15 WIB.

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than half of all prisoners in correctional institutions being drug abusers. The assumption that drug abuse is limited to the upper middle class has been disproved, as there are a variety of backgrounds of drug abusers, including workers, community leaders, students, and even street children.⁴ Based on data from the Directorate General of Corrections database system in May 2020, out of a total of 229,679 detainees and prisoners, 43,366 people were detained for drug use cases (NKP), while 84,025 people were involved in drug trafficking cases (NKB), and 176 children were involved in drug cases. These numbers are considered very high when compared to the number of drug users undergoing rehabilitation through the court process. Overcrowding occurred in detention centres and correctional centres, with an overcapacity rate of 74%. With a capacity of 132,494 detention centres and prisons, they currently have to accommodate 229,679 detainees and prisoners.⁵

Singapore again carries out the death penalty for drug offences but UN experts condemned the execution of Nazeri Bin Lajim, a 64-year-old Singaporean citizen accused of involvement in a drug case. They urged the Singapore Government to halt the planned execution. There has been a significant increase in announced executions in Singapore this year. Nazeri Bin Lajim was arrested in April 2012 for allegedly distributing 33.39 grams of diamorphine under the Misuse of Drugs Act 1973. A mandatory death sentence was then imposed on 22 July 2022.

The experts explained that according to international law, countries that still apply the death penalty should only use it for the "most serious crimes" involving intentional killing. They argued that drug cases do not fulfil these criteria. The experts also cited the report of the Working Group on Arbitrary Detention on arbitrary detention related to drug policy and related jurisprudence, which states that imposing the death penalty for drug offences is incompatible with international standards. Bin Lajim is the fifth person to be executed in Singapore in 2022. Experts are concerned that most of those sentenced to death for drug offences are minorities and come from economically disadvantaged backgrounds, like Mr Nazeri Bin Lajim. They argue that this practice is a form of discrimination against minorities such as Malays and vulnerable individuals. Despite claims that Bin Lajim suffered from long-term drug addiction and that most of the diamorphine he possessed was for personal use, the execution was carried out. The residual amount of narcotics he had in his possession for trafficking did not exceed the 15-gram threshold that carries the death penalty in Singapore.⁶

Based on the explanation above, the problem formulation is:

What is the development of drug regulation in Indonesia and Singapore?

II. RESEARCH METHODS

In this research, a normative juridical research method is used with a legal history study approach. According to Soerjono Soekanto, the normative juridical research method is library law research conducted by examining library materials or secondary data.⁷ The legal history study approach is carried out by following the development of legal institutions from time to time. This approach makes a significant contribution to researchers in understanding the philosophy underlying legal rules from time to time. In addition, this approach also allows researchers to understand changes and developments in the philosophy underlying the rule of law.⁸

III. RESEARCH RESULTS AND DISCUSSION

1. The Development of Narcotics Regulation in Indonesia

Since the Dutch colonial era 100 years ago, Indonesia has had drug-related regulations. At that time, the Dutch Government issued a law (*Verdovende Middelen Ordonantie*) which came into force in 1927 (State Gazette No. 278 Juncto 536). The purpose of this law was to prevent the use and negative impacts caused by drugs. This is due to the abundance of Ganja (*Cannabis Sativa*) plants growing in Aceh and other areas of Sumatra, which have long been used by the population as an ingredient in their daily diet. In addition, the *Erythroxylon Coca (Cocaine)* plant is also widely grown in East Java and at that time was only used for export. Therefore, restrictions were needed so that the population did not abuse these drugs. Despite the law (*Verdovende Middelen Ordonantie*), during the colonial period of the Dutch East Indies or Indonesia, drug abuse was still under control. People of Chinese descent, who at the time were considered middle class and contributed financially to the government through the opium trade, were given permission to consume opium in certain places. Legal supply of opium was also permitted under the law. People of Chinese descent at that time used opium traditionally by smoking it through a long pipe. The use of opium has long been known in Indonesia before the outbreak of World War II during the Dutch colonial period. The opium culture was brought from mainland China to

⁴ <https://ashefagriyapusaka.co.id/berita-rehabilitasi-narkoba/sejarah-narkotika-di-Indonesia-chapter1/> accessed on 17 June 2023, at 02:28 WIB.

⁵ www.ditjenpas.go.id accessed on 17 June 2023, at 02:31 WIB.

⁶ <https://www.ohchr.org/en/press-releases/2022/07/singapore-un-experts-call-immediate-moratorium-executions-drug-offences> accessed on 18 June 2023, at 20:44 WIB.

⁷ Soerjono Soekanto and Sri Mahmudji, 2003, Normative Legal Research, A Brief Overview, Jakarta: Raja Grafindo Persada, p. 13.

⁸ Peter Mahmud Marzuki, 2005, Legal Research Revised Edition, Jakarta: Kencana, p. 166.

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Indonesia after Hong Kong fell to the British in 1841 due to the opium wars. At that time, opium use became a popular culture among some Chinese immigrants.⁹

After the change of power around 1942-1945, the Japanese occupation government abolished the law and banned the use of opium (Brisbane Ordinance). However, synthetic drugs and some other drugs that have similar effects (causing addiction) were not included in the ordinance. It can be predicted that addicts at the time probably turned to synthetic drugs such as psychotropic drugs, which are usually used as anesthetics for patients before surgery or medicines for certain diseases.

After Indonesia's independence, the Government of the Republic of Indonesia issued regulations regarding the production, use and distribution of dangerous drugs (*Dangerous Drugs Ordinance*), which authorized the Minister of Health to regulate them (*State Gazette* No. 419, 1949). During this period, as the country was in the process of being formed and faced with two Dutch military aggressions and rebellions that occurred in various places, the Law on Drugs underwent little change until 1970.

In 1970, there was a global drug problem, where drug abuse increased significantly and caused many victims, especially among young people. This problem first emerged in the United States and spread throughout the world, including Indonesia.¹⁰

In 1971, the President of Indonesia issued Instruction No. 6 of 1971 which established a coordinating body called BAKOLAK INPRES 6/71. This agency was tasked with handling various threats to state security, including narcotics, smuggling, counterfeiting, juvenile delinquency, and surveillance of foreigners. In light of rapid technological development and social change, the narcotics law inherited from the Dutch colonial period (1927) had become inadequate. In response, the government passed Law No. 9 of 1976 on Narcotics which regulates various aspects, especially related to *illicit traffic*. In addition, the law also includes provisions regarding the therapy and rehabilitation of drug victims (article 32), which involves an important role for doctors and hospitals as directed by the minister of health. Along with the increasing cases of drug abuse in Indonesia, the Anti-Narcotics Law began to be revised. This led to the establishment of Anti-Narcotics Law 22/1997, followed by Psychotropic Law 5/1997. The law stipulates various articles that stipulate criminal sanctions for drug offenders, including the death penalty as the heaviest sanction.¹¹ Along with the development of drug problems that are increasingly serious and increasing, MPR-RI Decree Number VI/MPR/2002 produced through the General Assembly of the People's Consultative Assembly of the Republic of Indonesia (MPR-RI) in 2002 recommended to the DPR-RI and the President of the Republic of Indonesia to amend Law Number 22/1997 on Narcotics.

The year 1998 was a difficult year for the whole world as there was a severe economic crisis. This crisis also triggered an increase in the drug business and its abuse. After President Suharto stepped down, the New Order era ended and was replaced by the reform era. It was during this reformation period that the crackdown on drugs began to be emphasized. In 1999, the Government of the Republic of Indonesia under the leadership of President Abdurrahman Wahid established the National Narcotics Coordinating Agency (BKNN) through Presidential Decree Number 116 of 1999. BKNN is a coordinating body consisting of 25 government agencies involved in drug countermeasures. It is based on two regulations, Law No. 5/1997 on Psychotropic Substances and Law No. 22/1997 on Narcotics. The Chief of the Indonesian National Police (Kapolri) serves as chairman of the BKNN *ex-officio*.

The definition of *ex-officio* is that the initiative to file a rights claim is left entirely to the interested party/the judge is waiting for a rights claim to be filed with him/her.¹² However, until 2002, the BKNN did not have its own personnel and budget allocation. The BKNN budget was obtained from the National Police Headquarters (Mabes Polri), which prevented the BKNN from performing optimally. BKNN as a coordinating body was deemed insufficient to deal with the serious threat of drugs. Therefore, through Presidential Decree No. 17 of 2002, BKNN was replaced by the National Narcotics Agency (BNN). BNN, as a forum institution with operational authority, is tasked with coordinating 25 relevant government agencies in the formulation and implementation of national drug policy. In 2003, BNN began to receive budget allocations from the state budget. With this budget, BNN tried to improve its performance together with the Provincial Narcotics Board (BNP) and District/City Narcotics Board (BNK). However, due to its coordinative structure and lack of clear lines of command, BNN was considered unable to work optimally in dealing with the increasing and serious drug problem. In response to the increasingly serious and escalating drug problem, the competent authority immediately issued Presidential Regulation No. 83/2007 which regulates the National Narcotics Agency, Provincial Narcotics Agency (BNP), and Regency/City Narcotics Agency (BNK). The three agencies have operational authority exercised through BNN members involved in task forces. BNN, BNP, and BNKab/Kota work together as partners at the national, provincial, and district/city levels, and are accountable to the President, Governor, and Regent/Mayor respectively. It is important to note that BNP and BNKab/Kota do not have a structural-vertical relationship with BNN. In response to the growing seriousness of the drug problem, Presidential Regulation 83/2007 was issued on the National Narcotics Agency, Provincial Narcotics Agency (BNP), and Regency/City Narcotics Agency (BNK). The three agencies have operational authority through BNN members involved in task

⁹ <https://kuningankab.bnn.go.id/sejarah-indonesia-dalam-memerangi-narkoba/> accessed on 18 June 2023, at 23:13 WIB.

¹⁰ www.idntimes.com accessed on 17 June 2023, at 01:24 WIB.

¹¹ <https://blitarkab.bnn.go.id/perjalanan-narkoba-di-dunia-dan-indonesia/> accessed on 16 June 2023, at 23:28 WIB.

¹² <https://kamushukum.web.id/>

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forces. BNN, BNP, and BNK work together as partners at the national, provincial, and district/city levels. Each agency is accountable to the President.

Narcotics crimes have been transnational in nature carried out using a high modus operandi, and sophisticated technology, supported by a wide network of organizations, and have caused many victims, especially among the nation's young generation which is very dangerous for the life of the community, nation, and state so that Law Number 22 of 1997 concerning Narcotics is no longer in accordance with the development of situations and conditions that have developed to overcome and eradicate these criminal acts¹³, then Law Number 35 of 2009 concerning Narcotics was formed. In the consideration of letter d, there is one of the objectives of the formation of Law Number 35 of 2009, namely:

d. "that importing, exporting, producing, cultivating, storing, distributing, and/or using Narcotics without strict and careful control and supervision and contrary to the laws and regulations is a criminal offence of Narcotics because it is very detrimental and constitutes a great danger to human life, society, nation, and state as well as Indonesia's national resilience."

Law Number 35/2009 on Narcotics regulates criminal provisions and law enforcement related to drug abuse from Article 111 to Article 148. Law enforcement is the core of all aspects of legal activities that include legal planning, formation, implementation, and evaluation.¹⁴ The definition of law enforcement is also stated by Dellyana that law enforcement involves efforts to implement the concepts of justice, legal certainty, and social benefits into real reality.¹⁵

In these articles, there are provisions regarding the punishment that can be given, including imprisonment, fines, and even the death penalty. These criminal provisions are enacted in Indonesia with the aim of inhibiting the spread of drugs in the country, specifically the provisions regarding the death penalty are contained in Article 113 paragraph (2), 114 paragraph (2), 116 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), Article 121 paragraph (2), Article 132 (3), Article 133 paragraph (1), Article 144 paragraph (2).

2. The Development of Narcotics Regulation in Singapore

In the early 19th century, drug use in Singapore was accepted and recorded in the first written document in 1819, where opium was mentioned as one of the gifts from Stamford Raffles to the ruler Temenggong Abdul Rahman. British rule over Malaysia and Singapore ended in 1963. In the same year, a number of countries that had previously been British colonies or protectorates formed the Federation of Malaysia. Singapore was initially part of the federation, but in 1965 Singapore gained its independence after a series of unsuccessful agreements. Although drug use seemed to have decreased after the post-war period, newly independent Singapore and Malaysia were soon faced with new challenges in the form of a wave of drug problems.¹⁶

In 1951 Singapore enacted the *New Dangerous Drugs Ordinance and Regulations*, as national legislation on narcotics in relation to the evolution of narcotics with UN member states. This legislation is related to the control of illegal drugs or narcotics, with the background and purpose of controlling or limiting the circulation of narcotics which at that time was used for medical purposes and scientific development.

In 1971, the Central Narcotics Bureau (CNB) was established, and a year later, the *Singapore Anti-Narcotics Association* (SANA) was formed to complement the work of CNB/SANA. The purpose of CNB/SANA is to educate the public on the dangers of drug use and provide counselling and aftercare services for drug addicts. three categories: Class A, B, and C. Article 44 states that "the Minister may, by order published in the Government Gazette," add, delete, or move drugs between the categories. The criminal sanctions in this law are severe by the standards of most countries, including long prison sentences, flogging, and even the death penalty.

In 1973, Singapore passed the *Misuse of Drugs Acts (MDA)*, which imposed severe penalties on drug dealers and mandated treatment for individuals found to be using illegal drugs to tackle drug use, possession and trafficking; this law replaced the earlier Narcotics Act and Narcotics (Prevention of Abuse) Regulations.

Public education on the dangers of drugs and criminalisation efforts were seen as effective methods to prevent abuse and as a sign of immorality of drug use. Singapore intensified its "war on drugs" over the following decades. In 1975, the Misuse of Drugs Act was revised to include the mandatory death penalty for drug traffickers. In 1977, the government launched "Operation Ferret" which aimed to cut off the supply of heroin by arresting abusers and dealers en masse. As the drug problem persisted, the threshold for the amount of drugs defined as trafficking was lowered in 1989, to include possession of as much as 10 grams of cannabis or 3 grams of cocaine. The tough measures taken by Singapore succeeded in minimizing drug use as a moral and social evil, and to this day, public support for tough drug laws remains high.

¹³ Preamble letter e of Law Number 35 Year 2009

¹⁴ Sudiman Kartohadiprojo, Introduction to Indonesian Legal System, (Jakarta: Pembangunan, 1967), p. 14. 14.

¹⁵ Dellyana, Shanti, The Concept of Law Enforcement, Liberty, Yogyakarta, 2018.

¹⁶ <https://pointshistory.com/2023/03/23/a-historical-overview-of-drug-use-in-the-malay-peninsula/> accessed on 19 June 2023.

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The Misuse of Drugs Acts (MDA) also stipulates the assumption of trade for certain threshold amounts, such as 30 grams of cannabis. Under the Misuse of Drugs Act, the prescribed penalties for possession of small amounts ranging from a fine of up to \$20,000 to a maximum of ten years in prison. In the case of illegal trafficking, import, or export:

"If the amount of marijuana exceeds 500 grams > Death penalty;
If the amount of cannabis resin exceeds 200 grams > May face the death penalty;
If the amount of cannabis mixture exceeds 1,000 grams > May face the death penalty"¹⁷

According to the Misuse of Drugs Act, the onus of proving guilt is on the defendant, not on the government. Furthermore, if illegal drugs are found inside your home or car, you will be presumed to be in possession of drugs, unless you can prove otherwise.¹⁸

In addition, this law creates a presumption that a person possesses drugs if they have a key to a place where drugs are stored, and also states that:

"any person found in or fleeing from premises or buildings which are proved or suspected to be used for smoking or administering drugs shall, unless the contrary is proved, be deemed to have smoked or administered drugs in such premises or buildings".

Therefore, a person risks being arrested for drug use simply for being in the company of drug users. The law also authorizes officers to conduct searches of premises and individuals without a search warrant if they "reasonably suspect that drugs or seizable articles will be found." In addition, Article 31 authorizes officers to request urine tests of suspected drug offenders. Section 8A prohibits Singapore citizens or permanent residents from using illegal drugs overseas, and if found guilty, they will be punished as if they committed the act domestically.

IV. CONCLUSIONS AND SUGGESTIONS

Since the Dutch colonial era, Indonesia has had drug-related regulations to prevent their use and negative impacts. During the colonial period, drug use was still under control with special permission given to people of Chinese descent who contributed financially through the opium trade. The use of opium has been known in Indonesia since long before World War II. After Indonesia's independence, the government issued regulations regarding the production, use, and distribution of dangerous drugs. In the 1970s, the problem of drug abuse increased significantly in Indonesia and around the world. The government responded by passing laws regulating illicit drug trafficking and imposing severe criminal sanctions, including the death penalty. During the reformation era after 1998, the crackdown on drugs became more assertive. The National Narcotics Coordinating Agency (BKNN) was established in 1999 and replaced by the National Narcotics Agency (BNN) in 2002. However, the BNN's coordinative structure was not considered effective enough in dealing with the increasingly serious drug problem. In 2007, Presidential Regulation 83 was issued to strengthen the BNN and establish the Provincial Narcotics Board (BNP) and District/City Narcotics Board (BNK) as partners. Narcotics laws continue to undergo changes and revisions in line with the development of increasingly complex drug problems. Law No. 35/2009 on Narcotics is the legal basis that regulates crimes related to drug abuse. This law imposes criminal penalties, including the death penalty, with the aim of inhibiting the spread of drugs in Indonesia. Thus, drug-related regulations and laws in Indonesia have undergone changes and improvements in tackling the serious problem of drug abuse.

Drug Regulation in Singapore Drug use in Singapore dates back to the early 19th century, and despite a decline in the post-war period, newly independent Singapore and Malaysia face a growing drug problem. Singapore passed various pieces of legislation to control drugs, such as the New Dangerous Drugs Ordinance and Regulations in 1951 and the Misuse of Drugs Acts (MDA) in 1973. These laws impose severe penalties on drug dealers and users. Public education on the dangers of drugs and criminalization are methods used by Singapore to prevent drug abuse. Singapore also carries out harsh measures such as the death penalty for drug traffickers. The Misuse of Drugs Acts (MDA) sets drug quantity thresholds for trafficking and possession. The prescribed penalties range from fines to imprisonment, even the death penalty for certain drug quantities. The Misuse of Drugs Act provides a presumption that a person possesses drugs based on evidence such as a key to a place where drugs are stored. The Act also authorizes officers to conduct searches and request urine tests of suspected drug offenders. Singapore considers drug use a moral and social evil, and the public supports tough drug laws.

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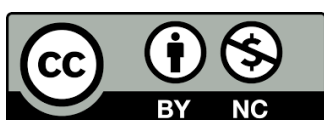
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