

## **Police Efforts in Taking Steps Decriminalization of Drug Users**

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**Abstract.** *The purpose of this research is to knowing and analyzing form of police policy in decriminalizing drug users. In this paper, the author uses a normative juridical method with research specifications in the form of descriptive analysis. The police must address the use of discretionary authority, control and limit it, and be accountable, bringing up efforts to control it through internal regulations in the form of standard operating procedures. However, all of this does not reduce the urgency and need for police investigators to adopt a policy of decriminalizing drug users which has relevance to the problems of Indonesian correctional institutions which are very comprehensive and urgent. The condition of inmates who exceed the capacity, the duties and functions of guidance in Correctional Institutions are not optimal. This is evidenced by the tendency of many inmates in Correctional Institutions in narcotics and illegal drug crimes, where their qualifications as users should receive rehabilitation or medical treatment rather than as prisoners in Correctional Institutions.*

**Keywords:** *Correctional; Qualifications; Research; Treatment.*

### **1. Introduction**

A state of law is a state that optimally enforces the law, upholds human rights and guarantees that citizens, along with their position in law and government, are obliged to uphold the law and government without exception, so that law enforcement is one of the parameters for the success of a state of law.<sup>1</sup>

Crime constantly evolves with the times. This development can even be seen in actions that were previously not crimes becoming crimes, or actions that previously carried a low penalty then become criminal. Both of these events are referred to as criminalization. Likewise, actions that were previously criminal may then become non-criminal, a process known as decriminalization. Changes in

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<sup>1</sup>Sri Endah Wahyuningsih and Rismanto, (2015), Criminal Law Policy on Combating Money Laundering in the Context of Criminal Law Reform in Indonesia, *Journal of Legal Reform*, II (1), p 47.

criminalization and decriminalization of an offense are considered developments in criminal law.<sup>2</sup>

The issue of criminalization and decriminalization is a crucial legislative policy in responding to the development of a nation's values, which can also identify patterns and forms of crime development occurring in society. Interesting to examine is the *ius constitutum* or *ius operandum* policy regarding the implementation of decriminalization for a crime. Decriminalization is part of criminal law reform, in this case drug crimes, specifically related to drug users and addicts.

Despite ongoing eradication efforts, drug manufacturing and distribution networks continue to proliferate. Due to their highly dangerous effects, experts believe that drug abusers should be considered victims of crime (drug users).<sup>3</sup> To address this issue, one of the police's roles is to effectively implement legal regulations to further enforce the law, specifically through the application of criminal sanctions. While law enforcement should be effective, the Indonesian criminal justice system adheres to the principle of legality, all drug cases (including those involving non-distributors) are typically prosecuted in accordance with legal norms. These legal norms are based on legal regulations, including narcotics laws, which carry the threat of imprisonment. Therefore, drug abusers, who are initially victims and should be rehabilitated, must also serve prison sentences.

The number of prisons and detention centers in Indonesia is 499, which are operational with a capacity of 140,424 people, while the current inmates of prisons and detention centers number 274,176 people. Of these, 135,823 are drug convicts and detainees, resulting in a 95% overcrowding condition. Overcrowding itself is caused by two things: regulations and policies of other law enforcement agencies (APH), where placing people in detention centers is a work achievement, and the existence of regulations regarding the requirements for parole authority placed on other agencies. Overcrowding in prisons and detention centers in Indonesia has an impact on fulfilling the budget for the treatment of prisoners and detainees and disrupting security and order, which in turn causes riots and destruction of state facilities. For example, the legal process for narcotics and illegal drug crimes is increasingly showing a significant increase in the number of people sentenced to prison.<sup>4</sup>

Researchers determine a theme and form a title to be continued in conducting a scientific study in the form of systematic and basic research. the research

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<sup>2</sup>Andi Intan Purnamasari, (2019). Decriminalization of Crime: Analyzing Justice for Convicts and Former Convicts, Gorontalo Law Review, 2 (1) April, p. 15

<sup>3</sup>Vivi Ariyanti, (2022). Victims of Narcotics Abuse Crimes: A Victimology Perspective Analysis, Lex Prudentium Law Journal, 1 (1) November, p. 38

<sup>4</sup>Director General of Corrections, (2024), 2024 Corrections Performance Report, Ministry of Law and Human Rights of the Republic of Indonesia, p. 37

objectives are knowing and analyzing the form of police policy in decriminalizing drug users.

## 2. Research Methods

The normative legal research method uses an approach that involves studying legislation, theories, and concepts related to the problem being researched. Sampling is the process of selecting a representative portion of the entire population. This study does not use samples as research material but rather utilizes literature as a data source. Secondary data is used as raw data, while expert opinions are added as additional data, thus processing the research results.

## 3. Results and Discussion

### 1) General Overview of Decriminalization

Before explaining the terminology of decriminalization, it's important to first define the general meaning of criminalization. Criminalization is typically understood as the question of what should be criminal and why, or, more broadly, the question of the proper scope of criminal law. Thus, it is a question of how the use of criminal power can be justified within the state.<sup>5</sup>

Criminalization itself is a process in which behavior that was not previously considered a crime is then classified as a crime by society. Criminalization is a central issue in criminal law policy, namely regarding criminalization policy (defining what actions should be considered criminal acts) and penalization policy (what criminal sanctions should be imposed on perpetrators).<sup>6</sup>

Meanwhile, decriminalization is a process in which an act that is a crime because it is prohibited in criminal law, then the article concerning the act is revoked from the law and thus the act is no longer a crime.<sup>7</sup> Criminalization has another side called "decriminalization." Decriminalization is a determination of an act that is threatened with punishment to be an act that is not threatened with punishment. The final result can be in the form of legislation or a court decision that can revoke the articles in question. According to Duwi Handoko, decriminalization is divided into:

- a. Decriminalization is not pure,
- b. Pure decriminalization;

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<sup>5</sup>Lindsay Farmer, (2024), Criminalization and Decriminalization, Elgar Encyclopedia of Crime and Criminal Justice, November. p 36

<sup>6</sup>Zulkifli Ritonga, Siti Arifah Syam and Fauziah Lubis, (2024), Criminalization and Decriminalization Policy of the New Criminal Code, INNOVATIVE: Journal Of Social Science Research, 4 (4), p 4

<sup>7</sup>Ibid

- c. Pure partial decriminalization
- d. Conditional decriminalization.<sup>8</sup>

Non-pure decriminalization is an offense that has been regulated in legislation and then re-regulated by new legislation or more specific legislation regarding the offense, so that in reality the offense still exists and is valid, only the regulation has shifted to the latest legal product. Pure decriminalization is as such, namely an act/offense that has been regulated in legislation and then revoked and declared no longer valid either by new legislation or through a court decision, so that the offense no longer has legal force to be implemented. Then pure partial decriminalization, namely eliminating the nature of an offense that can be held accountable by someone due to overmacht (force majeure) circumstances. Finally, conditional decriminalization, namely the existence of conditions imposed on the offense in order to obtain legal force.<sup>9</sup>

## 2) Forms of Police Policy in Decriminalizing Drug Users

Implicitly, the strong relevance between the urgency of decriminalizing drug users and the effectiveness of criminalization of drug users, as well as the impact of overcrowding in correctional institutions, illustrates the reality of the criminal justice system in Indonesia. The world is increasingly unsafe, with social problems resulting from illegal drug use. Globally, the United Nations Office on Drugs and Crime (UNODC) estimates that between 155 and 250 million people, or 3.5-5.7 percent of the world's population aged 15-64, have used illicit substances at least once.<sup>10</sup> In this case, the author chose to use the term "narcotics" and "psychotropics" as "drugs," even though the term "drugs" is not included in the law. This is because the term "drugs" is used by police agencies in practice and is more familiar to the general public.

As drug abuse continues to rise, the government has taken firm action against syndicates and dealers by imposing harsh penalties, even up to the death penalty. For victims of drug use or addiction, the government has sought to mitigate the negative impacts of drug use by providing rehabilitation facilities, both medical and social. This is intended to enable drug users to recover, become productive individuals, work to support themselves and their families, and become a healthy and strong generation.

But the policy to place victimsDrug users in rehabilitation centers cannot function properly because they are still hampered by the provisions of the Narcotics Law, in which case drug users are still positioned as perpetrators of criminal acts, as a

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<sup>8</sup>Faiq Tobroni, (2010). Comparison of National and Islamic Legal Policy. Unisia, XXXIII (73)

<sup>9</sup>Zulkifli Ritonga, Siti Arifah Syam and Fauziah Lubis, (2024). Op.Cit, 4 (4), p 9

<sup>10</sup>Parasian Simanungkalit. (2011). Globalization of Narcotics Distribution and Its Management in Indonesia. Jakarta: Wajar Hidup Foundation, p. 86

result they do not receive optimal treatment and recovery because they have to languish in prison.

After more than 15 years of criminal penalties for drug users, the 2009 Narcotics Law No. 35 has failed to significantly improve drug control in Indonesia overall. The criminalization of drug abuse under Articles 111 and 112 of the Narcotics Law has created a new problem: overcrowding in nearly all Indonesian prisons.

According to data from the Ministry of Law, 52.97 percent of prison inmates, both convicts and detainees, are involved in drug abuse cases. Overall, there are currently 271,385 people languishing in correctional institutions (prisons) and state detention centers (rutan) across Indonesia. Of these, 135,823 are convicts and detainees for drug offenses.<sup>11</sup> with details of the percentage of more than 50% of prisoners sentenced as drug dealers while almost 50% of prisoners are only drug users.<sup>12</sup>

Currently, the number of prisoners and detainees in prisons has exceeded their capacity. Indonesia's prisons and detention centers currently hold only 140,424 people, but they are actually holding 271,385 prisoners and detainees. This represents a 97 percent overcrowding rate. Imagine nearly 100 percent overcrowding in prisons across Indonesia, with the largest number in North Sumatra.<sup>13</sup>

Decriminalizing drug use could be one solution to the problem of prison overcrowding in Indonesia. Based on these figures, it can be seen that nearly 30% of prison inmates are convicted drug users. If decriminalization of drug use can be implemented, efforts to reduce prison capacity will be easier. Examining the cost of implementation, it can be said that criminalizing drug abusers is very expensive, but it is not enough to address the problem of drug abuse in Indonesia. The Ministry of Law stated that it must spend Rp 1.7 trillion on food for all inmates in prisons. If nearly 30% of drug users were no longer serving sentences, the government could save Rp 510 billion in inmate food costs.<sup>14</sup>

The decriminalization of drug users in the criminal justice system manifests itself in the police acting as gatekeepers in the criminal justice system, serving as the primary entry point for law enforcement in Indonesia. As the "spearhead" of the criminal justice system, the police must read, interpret, select, and sort through the laws to be enforced, determine to what extent, and determine against whom, and determine the circumstances and conditions under which law enforcement

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<sup>11</sup>Director General of Corrections, (2024). Op.Cit

<sup>12</sup>Marfuatul Latifah, (2019). Decriminalization of Drug Abuse in Indonesia, INFO Brief: A Brief Study of Current and Strategic Issues: DPR RI Research Center, XI (2) January. p 3

<sup>13</sup><https://www.antaranews.com/berita/4071018/kemenkumham-5297-persen-penghuni-penjara-dari-kasus-narkoba>, Accessed on October 1, 2025

<sup>14</sup>Marfuatul Latifah, (2019). Op. Cit, XI (2) January, p. 3

can be implemented.<sup>15</sup> which means that the policy of decriminalizing drug users can be pursued earlier by the police when the case enters the police's jurisdiction.

The Indonesian National Police responded to the development of the community's legal needs and in this case the stability of correctional institutions which still face the problem of prison capacity, the National Police Chief Listyo Sigit Prabowo, ratified Perpol (Republic of Indonesia National Police Regulation) Number 08 of 2021 concerning Handling of Criminal Acts based on Restorative Justice, listed in the State Gazette of the Republic of Indonesia 2021 Number 947.<sup>16</sup>

Handling drug users through restorative justice in accordance with Police Regulation Number 8 of 2021 is carried out during the investigation process against perpetrators of drug crimes, with specific requirements, namely:

- 1) Drug addicts and victims of drug abuse who apply for rehabilitation;
- 2) When caught red-handed:
  - a. evidence of narcotics found for 1 (one) day's use with the classification of narcotics and psychotropics in accordance with the provisions of statutory regulations;
  - b. No evidence of drug crimes was found, but the urine test results showed positive for drugs.
- 3) Not involved in drug crime networks, distributors and/or dealers;
- 4) An assessment has been carried out by an integrated assessment team; and
- 5) The perpetrator is willing to cooperate with the National Police investigators to conduct further investigations.<sup>17</sup>

Investigators' considerations in resolving drug crime cases using a restorative justice approach at the investigation stage are that the suspect is a victim of drug abuse, the urine test is positive, the suspect is not involved in a network, an assessment has been carried out, the suspect has never been convicted and the suspect is willing to cooperate with investigators in eradicating narcotics distribution.

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<sup>15</sup>Aulia, (2014). Use of Discretion by Police in Law Enforcement, Rechtidee Jurnal Hukum, 9 (1) June, p 109

<sup>16</sup>Lawalata, Jesylia Hillary, Juanrico Alfaromona Sumarezs Titahelu, and Julianus Edwin Latupeirissa, (2022). Restorative Justice Approach in Resolving Narcotics Crimes at the Investigation Stage, TATOHI: Journal of Legal Studies, 2 (1). p. 93

<sup>17</sup>Article 9 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

The implementation of Police Regulation 8 of 2021 by the Police also includes parameters for the provisions in decriminalizing drug users. This can be applied if the conditions are met when caught red-handed by Police investigators, evidence of one day's use is found in the form of:

- 1) Maximum 1 gram of crystal methamphetamine.
- 2) Maximum 8 Ecstasy Pills.
- 3) Maximum heroin 1.8 grams.
- 4) Maximum cocaine 1.8 grams.
- 5) Maximum 5 grams of marijuana.
- 6) Coca leaves maximum 5 grams.
- 7) Mescaline maximum 5 grams.
- 8) The maximum psilocybin group is 3 grams.
- 9) LSD group maximum 2 grams.
- 10) PCP group maximum 3 grams.
- 11) The maximum fentanyl group is 1 gram.
- 12) The maximum methadone group is 0.5 grams.
- 13) The maximum morphine group is 1.8 grams.
- 14) The pethidine group is a maximum of 0.96 grams.
- 15) The maximum codeine group is 72 grams.
- 16) The maximum bufrenorphine group is 32 grams.<sup>18</sup>

The police force has specialized units, including the Narcotics Investigation Unit, whose primary task is to conduct investigations, inquiries, and supervision of criminal investigations, including identification, field forensic laboratory, and guidance. The Narcotics Investigation Unit's work is limited to narcotics and illicit drug crimes. Investigators conduct investigations to gather evidence to identify suspects and forward the case to the Public Prosecutor for prosecution.

However, currently, the investigator's duties are no longer limited to just conducting investigations, but alsoThe authorities are also granted under Regulation of the Chief of the Indonesian National Police Number 8 of 2021

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<sup>18</sup>Hapusan Sahala Raja Sinaga, (2021), Implementation of Restorative Justice in Indonesian Narcotics Cases, Rewang Rencang: Jurnal Hukum Lex Generalis. 2 (7) July. p. 537

concerning the Handling of Criminal Offenses Based on Restorative Justice. This regulation was enacted based on the premise that the Police need to strive to resolve criminal offenses with a focus on restorative justice. The manifestation of restorative justice for drug users aims to restore the condition of users, achieve legal effectiveness, and maintain a balanced sentencing system, addressing the emerging problems of case backlogs, prison overcrowding, and the urgency of handling more serious cases.

This regulation aims to improve effective coordination and cooperation in resolving criminal offenses, including drug cases, with the goal of reducing the number of drug addicts and victims of drug abuse through treatment, care, and recovery programs, while continuing efforts to eradicate illicit drug trafficking. Furthermore, this regulation also serves as a technical guideline for handling drug addicts and victims of drug abuse so they can undergo medical and/or social rehabilitation.

#### **4. Conclusion**

The Indonesian National Police responded to the development of the legal needs of the community and in this case the stability of correctional institutions which still face the problem of prison capacity, the National Police Chief Listyo Sigit Prabowo, ratified Perpol (Republic of Indonesia National Police Regulation) Number 08 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. Handling of drug users through restorative justice in accordance with National Police Regulation Number 8 of 2021 is carried out during the investigation process against perpetrators of drug crimes, with special requirements, namely drug addicts and victims of drug abuse who apply for rehabilitation; when caught red-handed, evidence of drug use was found for 1 (one) day with the classification of narcotics and psychotropics in accordance with the provisions of laws and regulations and no evidence of drug crimes was found, but the urine test results showed positive for drugs; not involved in drug crime networks, dealers and/or dealers; an assessment has been carried out by an integrated assessment team; and the perpetrator is willing to cooperate with National Police investigators to conduct further investigations.

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