

Successful Decriminalization of Narcotics Abusers in Thailand

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ABSTRACT

The aim of this research is to compare the concept of decriminalization of narcotics abusers in Thailand and Indonesia, and determine the best concept that can be implemented in Indonesia because decriminalization in Indonesia has not been effective. The type of research used is pure normative legal research, with a comparative approach. The results of Thailand's research in changing policies for decriminalization followed by changes to law enforcement and the criminal justice system, this is very different from our country. The lack of clarity in the legal substance, in this case the Narcotics Law, is the main reason for the failure to implement decriminalization for narcotics abusers. No less important is the culture of law enforcement and society in viewing the decriminalization of narcotics abusers in Indonesia which hinders rehabilitation efforts for narcotics abusers. Different from Thailand, because overcoming narcotics abusers is Thailand's national development agenda, the War of Drugs is carried out with drug control and support from the local community, thereby changing the culture of viewing narcotics abusers as patients, not criminals, which is also accompanied by the construction of rehabilitation facilities and infrastructure in each region. where this has not been done by the government of our country.

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INTRODUCTIONS

Study This about comparison draft decriminalization abuser narcotics Whichembraced country Thailand with draft decriminalization Which embraced in Country Indonesia. Objective studyThis look for source success country Thailand in reduce number abuse narcotics and also the excess capacity of Correctional Institutions. As with Indonesia in the beginning, Thailand apply criminal prison as solution main in handling crime narcotics, Howeverthis leads to high



population density in the penitentiary system. In May 2002, data from *United Nations Office on Drugs and Crime (UNODC)* show that there is around 260,000 prisoners in Thailand, more than doubled owned capacity, with two thirds is case narcotics, specifically abuse narcotics, matter the Also happen in Indonesia. (Tabitha et al., 2022) Indonesia is on track international trading with amount resident largest in Southeast Asia. Apart from the Indonesian archipelago added with nature and humans There is source Power, Indonesia Also is area potential For transit. Problem important in Indonesia is policies in the State of Indonesia which are considered Still not enough in handling it drugs as well as condition circulation drugs in Indonesia is clear very affecting the Southeast Asian drug market. A total of 6,359 clients treated in care abuse drugs in Indonesia during in 2006. Thailand is also one of them from the triangle country gold or *gold triangle* Myanmar and Laos. Second this country become source world's largest of results narcotics and drugs forbidden like opium. Bordering mountainous areas with Laos, Myanmar, and Thailand being known as area planting And marketing poppy during centuries. Region gold triangles own land planting opium with breadth that is 190,520 hectare And can produce 2,790 kg pasta poppy per the year. Besides that 's derivative material main For produces heroin and morphine originate from derivative pasta opium. (Tabitha et al., 2022)

Conception decriminalization wrongdoer To use attempted narcotics more get closer wrongdoer To use narcotics to access rehabilitation expected can restore those who have already become wrongdoer To use narcotics, so they No will burdened with loss social noreconomy as well as the future they can saved become more Good. That will too impact on the decline request or need narcotics so that business narcotics tend become business Which No interesting And No in demand. Impact actually Which desired from implementation decriminalization wrongdoer To use narcotics is appearance desire society which Already already consume narcotics For cure self in a way volunteer or independent and fulfil his obligations as arranged in Invite Invite Number 35 of 2009 for report self in a way volunteer to Institution Recipient Must Report (IPWL) so get maintenance and no sued criminal (Art 128). (Amrizal Siagian, 2009).

Herbert L. Packer expressed 2 views in "*The Limits of Criminal Sanctions*" that is view retributive and utilitarian. View retributive tend see to behind, where offenses committed by criminals considered crucial and punishment customized based on violation the. Temporary the, more utilitarian view focus to front, evaluate punishment based on his abilities For modify future behavior, good perpetrator crime That Alone nor person other Which Possible tempted For do crime. View This base self on confidence that man is creature rational Which look for pleasure, And Can prevented from behavior anti-social with attend threat that aka tone what a shame Which Nobalanced from pleasure obtained. (Fransilius Nong Richi, 2023)

Theory system law used For discuss problem about obstacles in effort countermeasures follow criminal Narcotics. Theory system law stated by Lawrence M. Friedman. Lawrence M. Friedman as quoted Otje Salman and Anton F. Susanto system law covers: structure law, Substance Law, Culture Law. There is a number of factor Which influence Implementation enforcement law enactment law that is factor the law Alone, factor enforcer law, that is the forming parties nor apply law, factor means and supporting facilities enforcement law, factor society, that is environment Where law the applies or applied, factors culture, that is as results work, creativity and taste based on initiative man in in association life (



Soerjono Soekanto , 2004) .

Indonesia as a sovereign state and nation also has tradition or system law Which typical compared to with public world other . System law Indonesia the Of courseborn from A journey history long , tradition and culture which constitute the part that doesn't can separated with the existence of the Indonesian state and nation Alone . For That need studied about peculiarity system Indonesian law with try compare with system which others. (Hadi , 2016) No exception about decriminalization approach comparison draftdecriminalization abuser narcotics will give solution to effectiveness enforcement decriminalization user narcotics .

For answer problems and obstacles that arise in enforcement decriminalization abuser narcotics are needed something concept that can answer challenges and obstacles identified from study previously . Thailand's success in reduce prison population overcapacity should be made reference for formulator policy in the future . Study This try displays steps Which taken Government Thailand in do enforcement decriminalization to abuser narcotics . Process And mechanism from decriminalization in Thailandhere it is Which in expect can give draft new to enforcement decriminalization abuser narcotics in Indonesia.

Based on background behind mentioned above , then possible problems studied is : How? comparison draft decriminalization abuser narcotics between Indonesia and , Thailand ? Study This is study literature with approach comparison And aim Forformulate draft comparative of “ decriminalization abuser narcotics ” based Invite - Law No. 35 of 2009 concerning Narcotics and *Narcotic Addict Rehabilitation Act BE 2545* year 2002, *The Thai Penal CodeB.E.2550 (AD 2007)*, Narcotics Act (No. 7) BE 2562 (2019).

RESEARCH METHOD

Type research used is study law normative pure . Done For identify draft , theory , rule And principles law Which used For arrange decriminalization based on Constitution Narcotics No. 35 of 2009 which is compared with rules governing law Decriminalization in the regulated country of Thailand in *Narcotics Addict Rehabilitation Act BE 2545* of 2002 in Thailand and regulations other changes . Source data used in study This is secondary data , namely data obtained researcher from study literature and documents , which constitute results research and processing of others, which Already available in form books or usual documents provided in the library , or owned by personal . In study law , secondary data covers material primary law , materials law secondary , And material law tertiary. Approach problem the is approach comparison (comparative approach). According to Bernard Arief Sidharta , method comparison is Wrong One formmethod handle law or method do study And assessment scientific For obtainknowledge about law (Sidharta , 2009).

RESULT AND DISCUSSION

Research Results

1. Strategy control drug become agenda national government Thailand

Strategy control drug so- called national *The Kingdom unity Victory Over Drugs* which at a time become guidelines implementation campaign control drugs in Thailand Which



announced to public at Government Buildings . In Indonesia control drug Not yet become agenda Development national government like in Thailand.

2. Build culture that Addict drugs considered as patient ,

In Thailand addict must considered as patient No perpetrator , And must undergo rehabilitation (Law Rehabilitation for addict drugs BE 2545 (2002). Other case in Indonesia Lotsreluctant addict report self Because embarrassed to be known by society because of stigma and culture Which There is in in public Not yet formed like to society in Thailand.

3. Thailand develop places treatment And rehabilitation .

Thailand Also develop place treatment And rehabilitation For cure addict drugs to be free from dependency use drugs . During war to drugs launched , Thailand took a number step coercive For give treatment and rehabilitation for addict drugs . Effort This Not yet intense carried out in Indonesia. Limitations means And infrastructure as well as slow formation standby drugs make decriminalization No walk with effective .

4. Change policy in decriminalization abuser narcotics impact on system Justicecriminal.

Policy Which focused on legalization marijuana And marijuana medical reflect change major policies in narcotics law in Thailand. This change also has an impact on the system Justice criminal, with potency reduce density in prison. Narcotics Bill BE 2564 (2021):This law was recently passed and provides benefits to prisoners who sentenced on follow crime related drugs. The goal is punish dealer drugs inscale big more heavy, while more Good rehabilitate addict drugs.In Indonesia Lots constraint in punish addict with punishment rehabilitation among them, disobedience Which carried out by law enforcers and the lack of clarity in Articles 112, 114 and 127, and of course the lack of clarity Limitation When somebody in say abuser. So that mandate Act Narcotics about decriminalization very difficult For applied, especially on system criminal justice.

Discussion

1. Equality location geographical Indonesia And Thailand

Indonesia is on the international trade route with the largest population in Asia Southeast. Apart from the archipelago region, it also has natural and human resources, Indonesia Also is area potential For transit. Problem important in Indonesia is policy in Country Indonesia Which where considered Still not enough in handling it drugs as well as The condition of drug trafficking in Indonesia clearly greatly influences the Southeast Asian drug market. As much 6,359 client treated in maintenance abuse drugs in Indonesia during year 2006. Thailand is also one of the golden triangle countries of Myanmar and Laos. Second country This become source biggest world from results narcotics And drugs forbidden like opium. Bordering mountainous areas with Laos, Myanmar, and Thailand being known as area planting And marketing poppy during centuries . Region gold triangles own land planting opium with breadth that is 190,520 hectare And can produce 2,790 kg pasta poppy per year . Besides that 's derivative material main For produces heroin and morphine originate from derivative opium paste .(Tabitha et al., 2022)

2. Equality decriminalization in country Thailand And Indonesia

Policy decriminalization in Thailand show that approach rehabilitation And treatment to user narcotics has proven effective in reduce density in institution correctional . More policies



focuses on health and rehabilitation help change paradigm from punishment to user narcotics become more approach humane and impactful positive in a way social . Indonesia has too take step with apply system double tracks in handling case narcotics , give chance to perpetrator For get rehabilitation as alternative which are more Good than criminal prison .

Effort decriminalization user narcotics For ensure that they get maintenance Which appropriate is step important in handle problem narcotics . Step This can give positive effect No only on subtraction population prisoners , but also in effort prevention and treatment to abuse narcotics in a way whole . However different with Thailand apparently policy in Effort the Not yet produce the results maximum.

From description on Of course very appropriate If reviewed from theory punishment relative with view utilitarian because with criminal prison become penalty rehabilitation , as form punishment to abuser State narcotics also takes into account effect period long from criminal prison against future violators. With criminal prison will happen poverty for the family left behind and the future the children who were left behind also became No uncertain . With penalty rehabilitation will happen repair themselves to the abuser narcotics Good in a way physique And psychic , success rehabilitation Also avoid happen repetition use narcotics in period which will come .

3. Difference decriminalization in country Thailand And Indonesia

Substance law about decriminalization in country Thailand strengthened And systematic destroy sources problem enforcement decriminalization abuser narcotics . Government emit policy national For control circulation medicine to be material narcotics . Control circulation This in expect become Solution reduce amount abuse narcotics . Substance law Which other is policy project development area for previous area producing marijuana becomes place recreation , make income marijuana is declining followed its use . Action enforcer legal (structural law) do arrest and fear did it identification as user drugs result Lots abuser narcotics stop use narcotics . Thought and Action enforcer law others followed draft decriminalization abuser narcotics until to system the judiciary , matter here it is Which have role important reduce capacity PRISON. Use marijuana as drug Already No foreign for Thai society so Government accommodate culture law the with legalize marijuana.

4. Policy Breast milk decriminalization in Indonesia

Anang Iskandar in (Iskandar, 2019) say that , decriminalization wrongdoer To use Narcotics is model punishment non criminal as Wrong One paradigm law modern Which aim For push demand at a time supplies Narcotics illegal in Indonesia. Decriminalization wrongdoer To use Narcotics No means legalization to use Narcotics . According to (Iskandar, 2015), decriminalization wrongdoer To use Narcotics describe that wrongdoer guna that carries , owns , controls , consumes Narcotics in amount certain For usage a day is deed violate law , However if Which concerned do violation law the , so given punishment replacement form punishment rehabilitation . Although in (Law Republic of Indonesia Number 35 of 2009 Concerning Narcotics , 2009) No in a way explicit mention about decriminalization wrongdoer



To use Narcotics ,will but nuances decriminalization wrongdoer To use Narcotics very thick in construction policylaw and politics state law as stated in a number chapter Constitution the as as follows : Article 4 letters (b) and (d); Article 54; Article 55; Article 103; Article 127. Based on chapter 54 And 55 clear mentioned that addict Narcotics must get treatment and/ or maintenance through rehabilitation medical And social.

As for Which authorizedgive decision the is the judge who handles it case Narcotics , as also statedchapter 103 paragraph 1. For know role suspect as wrongdoer To use or dealer And Forknow rate dependency The narcotics , then must done assessment by TAT. If his role as user Narcotics and in circumstances dependency , then suspect in accountable process criminal , No fulfil condition For done detention as article 21 of the Criminal Procedure Code. In accordance with article 9 (Regulation Head of the National Narcotics Agency Number 11 Year 2014 about System Method Handling Suspect and/ or Defendant Addict Narcotics and Victims of Abuse Narcotics to in Rehabilitation Institute , 2014), assessment to suspect abuse Narcotics carried out by TAT.

This team consists from the Doctor Team (Doctors and psychologists who have certified assessor from the Ministry of Health) and the Legal Team (element National Police , BNN, attorney And Ministry Law And HAM (If suspect is childrenset by leader unit Work local based on SK Head BNN, BNNP And BNNKab /City. Based on article 12 paragraph 3 same regulations , duties from the Doctor Team is do assessment and analysis medical , psychosocial as well as recommend plan therapy and rehabilitation wrongdoer To use Narcotics . Meanwhile the Legal Team own task For analyze suspect in connection circulation dark Narcotics and Precursors Narcotics as well as abuse Narcotics through coordination with investigator in charge matter . Based on article 8 paragraph 3, assessment Which done TAT, started with exists application in a way written from investigator toTAT, with copy to Head BNN local in accordance with place incident matter . Application This in accordance with chapter 5 paragraph 2 Regulation Head BNN Number 11 Year 2014, submittedby investigators to TAT secretariat , no later than 3 x 24 hours after arrest . Then after get letter application from investigator , then TAT, accordingly article 14 paragraph 3 and article 16 paragraph 1 letter e Regulation Head BNN Number 11 Year 2014, carry out task And give recommendation results assessment in period time most long 6 day to investigator, For reported in a way written to Court Country local. In accordance chapter 5 paragraph 4 And 5 (Agreement Work Samebetween Deputy Field Rehabilitation Body Narcotics National And Police Republic Indonesia No:MCC / 24 / VII / DE / H.K . 02 / 2022 / BNN about Implementation Rehabilitation For Addict, Blame Use and/or Victims of Abuse, 2022), integrated assessment carried out at the TAT secretariat belonging to BNN, BNNP/BNNKab/City. However, if it is geographically difficult to reach, then implement it You can use the Indonesian Police office/facilities or you can also visit TAT officers suspect's location or done online. In carrying out tasks, TAT refers to articles of Law Number 35 of 2009 and SEMA Number 4 of 2010, as well as the Prosecutor's SE Agung Number SE-002/A/JA/02/2013 concerning Placement of Victims of Narcotics Abuse in



Institution Rehabilitation Medical and Rehabilitation Social.

Problems with the Implementation of Decriminalization in the Drug TAT in Indonesia According to (RI, 2009) in the Study and Evaluation of Monitoring the Implementation of Law no. 35 of 2009 about Narcotics by Center Monitoring Implementation Constitution, there is a number of problem in fill from Constitution No 35 Year 2009 about Narcotics Which related in decriminalization in TAT, namely: The ambiguity of the phrase "own, keep, control" in articles 111 and 112 as well unclear category of abusers who can be rehabilitated in article 127. The phrase "owns, save, master" in chapter 111 And chapter 112, has the potential to cause multiple interpretations. Not yet exists arrangement about Assessment Integrated in Constitution No 35 Year 2009 Concerning Narcotics The legal basis for implementing TAT so far has only been guided by regulations Together with 7 Ministries. Whereas in Law No. 35 of 2009 concerning Narcotics , No there is governing provisions assessment integrated . Therefore that is , implementation mechanism TAT moment This Not yet tie And Still give rise to subjectivity for APH.

- 1). Problem in implementation rehabilitation Determination rehabilitation by APH during This has done with guided on Regulation Head BNN Number 11 Year 2014 And SEMA Number 4 Year 2010. However in the practice Still found constraint ie No in full condition as specified SEMA 4/2010. Besides that , deep implementation rehabilitation can concluded that , not yet there is continuity between APH and TAT and internal judges effort rehabilitation for addict and/ or wrongdoer To use Narcotics .
- 2). Not enough optimally implementation Assessment Integrated Narcotics Not enough optimally implementation assessment integrated because TAT's role in analyze level addicted user Narcotics Not yet maximum . This matter happen Because No all area have TAT and implementation assessment integrated Narcotics only can done if requested by investigator . According to (Iskandar, 2015), Still Lots investigators and prosecutors generally not Once or reluctant request assessment or information expert from TAT, because considered as burden Work addition . Reluctance this is what cause para enforcer law narcotics treat wrongdoer To use Narcotics like case suspect dealer narcotics .
- 3). They worn detention and articles layered . During this , deep case wrongdoer To use narcotics For self Alone very seldom Which filed with chapter single (article 127). Although No submit assessment to TAT, results investigation during This still considered complete by prosecutor general . Prosecutor general even No requires factor
- 4). dependency narcotics on the suspect . Prosecutor general , continue detention the suspect who beginning Already detained investigator at a time demand with a number chapter as Which there is in file things that have been made investigator . With construction indictment based on file case (BAP) results investigation Which thereby This , so seldom very judge use his authority disconnect And set instruct to suspect For undergo rehabilitation . This is why judges still sentence drug abusers to prison For self Alone.
- 5). 5). Minimal availability means And infrastructure as well as HR in implementation



rehabilitation Implementation of rehabilitation has had obstacles due to the unavailability of space rehabilitation in each province and district/city and lacking human resource capacity optimal. Besides That, limitations place rehabilitation result many user And wrongdoer for narcotics, they do not receive rehabilitation facilities and this has implications for prisons and prisons prisons, so that prisons and detention centers experience overcapacity because most of them are alreadyfilled with narcotics criminals and narcotics abusers. Apart from that, there is no rehabilitation services in prisons. This is as stated by (D. Supratman et al., 2020), Where results study on implementation TAT in BNNK Jakarta South show thatinvestigators did not dare to include Article 127 alone because they were worried about security guarantees the suspect if he runs away as a result of being placed in a Rehabilitation Institution. Another reason is existence suspicion by various party Which consider investigator do extortion to suspectaddict Narcotics when only include chapter 127. Same case with investigator, if prosecutorapply chapter 127 single, prosecutor the will suspected play eyes. (Fadholi et al., 2022)

From description on can in say substance law Which faint result difficulty inenforcement decriminalization Where vagueness phrase abuse narcotics followed with NoThe legal substance is professional, namely APH, such as prosecutors and police, and judges don't even use it His authority is because the investigation is based on the BAP from the police and the demands of the Public Prosecutor added Again culture public Which suspect If fall decision rehabilitation on user narcotics in because transaction matter or play eye the APH

CONCLUSION

Indonesia And Thailand Already enforce draft decriminalization for abuser Narcotics are very appropriate if viewed from the theory of relative punishment with a utilitarian view because with imprisonment being a rehabilitation sanction, as a form of punishment for abusersnarcotics country Also take into account effect period long prevent happen poverty for familywho are left behind and the future of the children left behind becomes uncertain. With Rehabilitation sanctions will result in self-improvement for narcotics abusers both physically and psychologically, Successful rehabilitation also avoids repetition of narcotics use in the future will come. Decriminalization in country Thailand strengthened And systematic destroy sources problem enforcement decriminalization abuser narcotics . Government emit policy national For control circulation drug Which become material narcotics . Control circulation Thisexpected become solution reduce amount abuse narcotics . Substance other laws is policy project development area for area Which previously produce marijuana, become place recreation , make income marijuana decrease followed its use . Action enforcer law (structural law) do arrest And Afraid did it identification asuser drugs result Lots abuser narcotics stop use narcotics . Thought and Action enforcer law (Structure Law) others follow draft decriminalization abuser narcotics until to system justice, p this is what has role important reduce capacity PRISON. Use marijuana as drug Already No foreign for publicThailand so that Government accommodate culture law the with legalize marijuana.



Recommendations

Government country Indonesia must start declared draft decriminalization abuser narcotics as a national agenda in Development, providing rule which is binding related assessment by TAT, build culture public For embrace para addict do rehabilitation . Development means And infrastructure as well as task force drugs Also must in do in each areaAnd Which not lost important is reformulate Act Narcotics along with its derivatives For can carry out program rehabilitation to the abuser narcotics .

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