

Analysis of legal transformation on the ratification and harmonization of Indonesian national narcotics law based on the perspective of the 1961 UN Single Convention

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Abstract

This study aims to (1) legally analyze the transformation and harmonization of norms in the Indonesian National Narcotics Law (Law No. 35 of 2009) after the ratification process, with a focus on compliance and alignment with the obligations arising from the 1961 United Nations Single Convention on Narcotic Drugs. (2) to identify the extent to which national law has internalized the principles of control and substance scheduling systems according to international standards. The type of research used in this study is normative-legal research. By using a statute approach and a conceptual approach. The results of the study indicate that (1) formally and procedurally, Indonesia has carried out its ratification obligations which give rise to international legal ties (*pacta sunt servanda*). However, substantially, significant gaps in norms were found. First, the harmonization process in the classification and updating of the list of narcotic substances in the appendix to domestic laws tends to lag behind, creating a vacuum in the supervision of new psychoactive substances (NPS). Second, although the Convention mandates effective criminal action, the application of the death penalty in the Indonesian Narcotics Law creates normative tension with human rights principles promoted by other UN bodies. (2) There is a disparity between the mandate for strict control (as stipulated in the Convention) and the need to strengthen public health and rehabilitation approaches, where domestic emphasis is still dominated by a repressive approach. This study recommends a periodic review of the list of substances and strengthening of the rehabilitative aspects in the implementation of the Narcotics Law.

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Legal Transformation, Ratification, Narcotics Law, UN Single Convention 1961

Introduction

Regulation of narcotics has become a crucial focus in legal systems in various countries, including Indonesia, as it directly relates to efforts to maintain public order, public

health, and national morality. Within the context of national law, regulation of narcotics is intended not only to prosecute abusers but also to regulate the production, distribution, and supervision of substances with the potential to cause dependency.

A fundamental issue of serious concern in current global drug law is the gap between international commitments under the 1961 UN Single Convention on Narcotic Drugs and the dynamics of national legal needs and scientific developments. The 1961 Convention established a strict control regime for narcotic substances, including highly restrictive classifications, with the primary goal of preventing abuse. However, the Convention also recognized the use of narcotics for medical and scientific purposes.

The emergence of national legal resistance, such as in Indonesia, in response to recent changes related to the medical potential and reclassification of certain substances (e.g., cannabis), has brought about complex changes to the consistency and commitment of legal relations both nationally and internationally. It is known that, Indonesia, through the ratification of the 1961 Single Convention with Law No. 8 of 1976 and further implemented in Law No. 35 of 2009 concerning Narcotics, still maintains a very restrictive approach and focuses on severe criminal penalties, especially for Schedule I Narcotics, even for medical purposes [1]. Meanwhile, the dynamics of very significant global changes have occurred, where in 2020 the UN Commission on Narcotic Drugs (CND) has removed cannabis and cannabis resin from Schedule IV of the 1961 Single Convention, recognizing its medical value, although it remains in Schedule I under strict international control [2]. The existence of differences in responses and harmonization of domestic laws is a point of tension and a central issue.

Referring to a number of recent legal studies and policy evaluations, it is shown that Indonesia has long since ratified the Single Convention on Narcotic Drugs 1961 and transformed it into a national regulation Law No. 8 of 1976, and then further regulated the narcotics legal system through Law No. 35 of 2009, but in practice the harmonization between international obligations and domestic instruments still faces substantive and implementation obstacles. In general, normative-juridical research and regulatory evaluation reports show three consistent findings: (1) the existence of tension between repressive approaches and the need for health/rehabilitation services within the national framework; (2) disharmony between regulations (laws, implementing regulations, and enforcement policies) that hinders the technical synchronization of implementation; and (3) delays in legislative responses to changes in scheduling or international recommendations, so that the mechanism for internalizing international changes is often reactive and fragmentary. These findings emerge from comparative studies, content analysis of legislation, and regulatory evaluations conducted by research institutions and government agencies, such as the analysis and evaluation by the Center for Legal Analysis and Evaluation of the National Agency for Legal Affairs (BPHN), which used regulatory evaluation guidelines (6 dimensions) and identified harmonization gaps and recommended norm revisions to strengthen public health aspects and synchronize implementing regulations. Furthermore, the 2020 decision of

the United Nations Commission on Narcotic Drugs (CND) recommending changes to certain classification statuses (e.g., the creation of decrees related to cannabis) adds a new dimension to the need for national regulatory adaptation, as changes in international scheduling require legislative and administrative follow-up at the domestic level to ensure consistency with international commitments. Recent academic studies highlight that most research still focuses on normative-doctrinal analysis or partial comparative studies, while empirical studies examining the legal transformation process, namely the formal ratification mechanism, then the internalization of classification changes, and finally the structural harmonization between legal instruments, are still relatively limited. Thus, recent literature has mapped the problems and provided general recommendations (e.g., emphasis on rehabilitation, revision of problematic articles, increased inter-institutional coordination), but has not yet completed a methodological study that systematically tests models of legislative and institutional harmonization in response to the dynamics of changing international norms.

Despite international changes to the removal of cannabis from Schedule IV of the Convention, Indonesia's classification of cannabis remains within Schedule I Narcotics, which strictly prohibits its use for therapeutic purposes, allowing only for research [3]. Thus, in general, Indonesian law is not yet fully in line with international developments, especially because Indonesia uses Article 39 of the 1961 Convention to implement stricter domestic controls, based on considerations of national interests philosophically, sociologically, juridically and the characteristics of society [4].

In this regard, the analysis and research process on this matter tends to stop at the aspect of analyzing the gap and the lack of synchronization between the changes in the classification of marijuana in the 1961 Convention and the provisions of the Narcotics Law alone, but there is something that has been overlooked, namely an in-depth analysis of the mechanism of legal transformation and ratification itself, which should bridge international law into domestic law effectively. Previous approaches have not comprehensively explored the constitutional elements (especially the right to health) and the latest sociological elements that should be the basis for the formation and harmonization of law, not just general "national interests" [5]. Thus, in-depth analysis states that synchronization of norms alone is not enough, for that it is necessary to have a critical review of the transformative process and framework used by Indonesia, as well as the urgency to re-evaluate the basic philosophy of absolute restrictions on Narcotics Schedule I in the context of human rights and the progress of medical science.

Therefore, the concept offered for the analysis in this study, by shifting the focus from merely synchronizing norms to a holistic analysis of legal transformation by prioritizing the principle of "Responsive Dualism" in the ratification of international agreements. This principle proposes that the legal transformation process should not only adhere to the sovereign rights of states (Article 39 of the Convention) to implement stricter rules, but should also reflect the state's responsibility to respond to scientific evidence and

humanitarian needs (the right to health) that are recognized globally [6]. This concept of “Responsive Dualism” has convincing scientific value, because it is rooted in Article 39 of the 1961 Single Convention that recognizes domestic sovereignty, but is enriched with more progressive dimensions of constitutional law and human rights. This idea provides a framework guide for legislators to reformulate the absolute prohibition limits in the Narcotics Law into strict regulations that accommodate evidence-based medical use, in line with the spirit of the Convention which also aims to advance human health and prosperity.

Method

This research uses a normative legal research method (normative juridical), namely research that focuses on the study of applicable legal norms and legal principles relevant to the issues being studied. Normative legal research is used because this topic is closely related to the analysis of positive legal norms and their application in international and national contexts, especially regarding the process of ratification and harmonization of national laws to the 1961 UN Single Convention on Narcotics. According to Soerjono Soekanto, normative legal research aims to identify the principles, doctrines, and legal systems that regulate a particular legal problem [7].

The approaches used in this research are the statute approach and the conceptual approach. First, the statutory approach is carried out by examining the provisions of the 1961 UN Single Convention on Narcotic Drugs along with Indonesian national legal instruments, such as Law Number 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotic Drugs, Law Number 22 of 1997 concerning Narcotics, and Law Number 35 of 2009 concerning Narcotics. This approach aims to assess the extent to which these international norms have been accommodated and harmonized in the national legal system [8]. Second, the conceptual approach is used to examine the basic concepts underlying the formation of legal norms on narcotics, such as the concept of the transformation of international law into national law, national legal sovereignty, and the principle of *pacta sunt servanda* which regulates state obligations towards ratified international agreements. This approach is important for understanding the theoretical framework in harmonizing national law with international law, as explained by Peter Mahmud Marzuki that the conceptual approach helps to find the meaning and substance of the legal principles used in the interpretation of statutory regulations [9].

The types and sources of legal materials in this study include primary legal materials, secondary legal materials, and tertiary legal materials. The legal material collection technique was carried out through library research, while the data analysis technique was carried out using qualitative descriptive analysis, namely by describing the content of norms, interpreting the relationship between international and national regulations, and drawing conclusions based on systematic legal logic. In this way, this study is expected to be able to provide a comprehensive picture of the form of transformation

of Indonesian law towards the provisions of the 1961 Single Convention, while analyzing its suitability within the context of the national legal system.

Results and Discussion

Results

The process of transforming Indonesian law towards the 1961 UN Single Convention on Narcotics has been formally implemented through Law Number 8 of 1976 which ratified the 1961 Single Convention on Narcotic Drugs as part of the national legal system. Thus, Indonesia is legally bound by the provisions of the convention in accordance with the principle of *pacta sunt servanda* as stipulated in Article 26 of the 1969 Vienna Convention on the Law of Treaties [10]. However, the results of the analysis show that the legal transformation has only reached the formal level, while at the substantive and implementation levels there are still a number of gaps in norms and significant disharmony between regulations.

In the context of harmonization of substantive norms, it was found that the classification of narcotic substances in Indonesia as regulated in the Appendix to Law Number 35 of 2009 concerning Narcotics is not fully in line with the developments and scheduling updates set by the UN Commission on Narcotic Drugs (CND). For example, the CND's decision in 2020 removed cannabis and cannabis resin from Schedule IV of the 1961 Convention in recognition of its medical value [11]. Indonesia still places cannabis as a Schedule I Narcotics with a prohibition on its use for medical purposes as stated in Article 8 paragraph (1) of Law No. 35 of 2009. This condition indicates that the mechanism for internalizing international changes at the national level is reactive and fragmentary, not yet having an automatic and periodic regulatory update system as recommended by the International Narcotics Control Board (INCB) [12].

Referring to the aspect of criminal law transformation (criminalization and penal policy), the research results show that Indonesia has adopted a more repressive approach compared to the moderate mandate in the 1961 Single Convention. The Convention only regulates the state's obligation to establish effective sanctions for violations of narcotics laws, but does not mandate the imposition of the death penalty. Meanwhile, Articles 113 to 118 of the Indonesian Narcotics Law still contain the threat of the death penalty, especially for the crime of illicit trafficking of Schedule I narcotics in certain quantities. This creates normative tension with Indonesia's international commitment to the International Covenant on Civil and Political Rights (ICCPR), especially Article 6 which guarantees the right to life and limits the application of the death penalty to only "the most serious crimes." In line with this, a contradiction was found between the highly repressive national legal approach and international human rights standards that emphasize proportionality and the protection of the right to life.

The policy orientation disparity between the strict control mandate of the 1961 Convention and the need to strengthen public health and rehabilitation approaches in

national law. Although Article 54 of Law No. 35 of 2009 has opened up rehabilitation opportunities for drug addicts, its implementation remains very limited because criminal provisions remain dominant and are often used against users who should receive health services. A policy evaluation by the National Legal Development Agency (BPHN) also confirmed that the imbalance between law enforcement and rehabilitation services is one of the factors hampering the effectiveness of national narcotics policy.

The various implementing regulations (Government Regulations, Ministerial Regulations, and Circulars) often contain differing interpretations of rehabilitation criteria, the classification of new psychoactive substances (NPS), and law enforcement procedures. Consequently, vertical and horizontal harmonization between regulations is slow and tends to be case-specific, rather than based on systemic legal reform.

Overall, the research results indicate that Indonesia has implemented legal transformation procedurally, but not substantively and adaptively to developments in international law and scientific progress. The ratification process does create legal obligations, but its effectiveness depends on the extent to which the transformation of international norms is actually implemented in domestic policy. Therefore, this concept emphasizes that ratification and legal harmonization should not stop at the textual translation of international norms into national law, but must be based on the principle of responsiveness to science and humanitarian needs, especially in the context of the right to health. By applying the principle of “Responsive Dualism,” policymakers can formulate a revision of the Narcotics Law that accommodates evidence-based medical use, strengthens the rehabilitation function, and ensures alignment with international standards without neglecting national values and interests. The affirmation of the direction of reform of Indonesian narcotics law needs to be directed towards a holistic and dynamic transformation to bridge international commitments with national interests in a balanced manner.

Discussion

Legal transformation is a constitutional and juridical mechanism that bridges international legal norms into the national legal system. In the Indonesian context, the transformation of the 1961 Single Convention on Narcotic Drugs was carried out through Law Number 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotic Drugs and its 1972 Protocol. This ratification legally signifies the acceptance of the principle of *pacta sunt servanda*, meaning Indonesia is obliged to implement the contents of the convention in good faith. Since 1976, Indonesia has been legally bound to international narcotics control standards as regulated by the Convention.

The legal transformation process does not automatically guarantee substantive harmonization. Based on a comparative analysis of norms, the provisions stipulated in Law Number 35 of 2009 concerning Narcotics have not fully adopted the classification system and updated list of substances as regulated by the Commission on Narcotic Drugs (CND). This inconsistency was evident when the CND removed cannabis and

cannabis resin from Schedule IV of the Convention in 2020, yet in the Indonesian legal system, cannabis remains categorized as a Schedule I narcotic with absolute prohibition, even for medical purposes. This raises a normative problem because Indonesia has not substantially adjusted to the international amendments accepted by the majority of countries party to the Convention.

Ideal legal transformation should be dynamic, adapting to changes in the international legal regime. As Marzuki explained, legal transformation is not merely a formal translation but must also reflect the internalization of international legal values and principles within the national legal system. In this context, Indonesia tends to still implement a passive transformation model, where ratification is followed only by textual application, without a mechanism for periodic synchronization with changes in international law.

Furthermore, legal harmonization aims to ensure consistency between international norms and national legal norms, to prevent norm conflicts and regulatory disharmony. Based on a legislative analysis, it was found that Law Number 35 of 2009 generally contains the main principles of the Single Convention, including supervision of the production, distribution, and use of narcotics for medical and scientific purposes (Article 4 of the 1961 Convention), as well as the implementation of a licensing and registration system. However, this harmonization has not been fully achieved because Indonesia uses Article 39 of the Convention, which provides room for countries to establish stricter provisions.

This clause is often interpreted in a highly restrictive manner. For example, an absolute ban on cannabis for therapeutic purposes contradicts the spirit of controlled medical use recognized by the Convention [13]. As a result, national laws display an imbalance between their control function and their utilization function. This imbalance is also reflected in the criminal policy in the Narcotics Law, which still emphasizes repressive aspects, including the threat of the death penalty, while international institutions such as the United Nations Human Rights Committee and the World Health Organization actually promote a public health-based approach.

Effective legal harmonization requires a national-level update mechanism that periodically reviews and adopts CND decisions, including those regarding the scheduling of new psychoactive substances (NPS). Unfortunately, in the Indonesian context, this mechanism remains ad hoc, through the creation of ministerial regulations or BNN decrees, without a consistent legislative system. This aligns with the BPHN's findings in the 2023 Narcotics Law Evaluation Report, which noted a "legislative lag in responding to international changes and a slow adoption of the new substance list" [14].

By applying the principle of Responsive Dualism, national narcotics law will not only be subject to international pressure, but will also serve as a means of protecting human rights and promoting public health. This legal reform will strengthen Indonesia's position within the global narcotics legal regime while maintaining its constitutional

relevance in the national context. Indonesia has fulfilled the ratification compliance aspect, but is not yet optimal in substantive compliance. Key recommendations include: (1) the establishment of a National Scheduling Committee in collaboration with the National Narcotics Agency (BNN) and the Ministry of Health to conduct periodic revisions to the list of narcotic substances; (2) a review of the classification of Schedule I Narcotics by considering the latest medical findings and CND policies; (3) a revision of the death penalty articles by prioritizing the principle of rehabilitation; and (4) strengthening the scientific basis of narcotics policy through interdisciplinary research.

Conclusion

Based on the presentation and analysis of the research results, it can be concluded that the ratification has created international legal obligations binding on Indonesia based on the principle of *pacta sunt servanda* as stipulated in Article 26 of the Vienna Convention on the Law of Treaties. However, in its implementation, a significant gap has been found between international commitments and domestic policies, particularly regarding the classification of substances, the application of criminal penalties, and the orientation of law enforcement policies. The process of transforming Indonesian law towards the 1961 UN Single Convention remains formalistic and partial. Legal harmonization has not been optimal due to the lack of institutional mechanisms for reform, the dominance of a repressive paradigm, and delays in responding to international dynamics.

The concept of “Responsive Dualism” is needed as a new paradigm in the process of transforming international law into national law. This concept proposes that Indonesia maintain its legal sovereignty as recognized by Article 39 of the 1961 Convention, while simultaneously internalizing universally recognized principles of humanity, the right to health, and scientific reform. Therefore, legal harmonization is determined not only by normative conformity between regulations, but also by the ability of the national legal system to adapt to global changes and guarantee the protection of human rights and public health within the framework of equitable and progressive national legal development.

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