

Policy on the Criminalization of Kratom Plants as Narcotics Category I

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ABSTRACT

The challenge in tackling narcotics is getting bigger when in its development a new type of synthetic product appears or known as New Psychoactive Substances (NPS). BNN RI has recorded as many as 76 (seventy six) types of NPS, one of which is Kratom or which has the scientific name *Mitragyna Speciosa* which is believed to be a traditional medicinal plant to cure coughs, diarrhea, diabetes, pain relief, anti-inflammatory. Kratom can be found in Southeast Asia, one of which grows on the soil of Kapuas Hulu, West Kalimantan, which contains the alkaloids mitragynine and 7-hydroxymitragynine. In addition, kratom is rated 13 (thirteen) times more dangerous than morphine, therefore the United Nations Office on Drugs and Crime (UNODC)) has included kratom into the NPS as well as the BNN RI. It is different with the Ministry of Health which has not regulated Kratom in the Attachment of the Narcotics Law. Thus there is uncertainty about the legality of kratom.

Keywords: *Kratom, BNN, Kemenkes*

1. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 1 paragraph (3) states that the State of Indonesia is a State of Law. As a state of law, all aspects of society, nationality, and statehood, including government, must always be based on law. Thus, the existence of the 1945 Constitution, the state must guarantee fair legal certainty for every citizen. [1]

In order to realize fair legal certainty, the Government with the approval of the House of Representatives of the Republic of Indonesia (DPR RI) has ratified Law Number 35 of 2009 concerning Narcotics (Narcotics Law) and also established a national non-ministerial government agency, the National Narcotics Agency (BNN) which is responsible for directly to the President. The existence of the Narcotics Law and the National Narcotics Agency is to prevent, protect and save the Indonesian nation from narcotics abuse and eradicate illicit narcotics trafficking. Considering that Indonesia is no longer just a transit point but also the largest market for narcotics sales and circulation in Asia. [2] The vast territory of Indonesia and some of which are directly adjacent to other countries have also become the entry point for international narcotics syndicates to smuggle narcotics in this country. One of them through the Riau Islands Province in the period 2011-2013 experienced a 300 percent increase in narcotics smuggling and circulation and was listed as the 2nd (two) largest narcotics user in Indonesia after Jakarta.) Narcotics can have a very dangerous effect for users from the effects of hallucinations, decreased consciousness, and cause addiction if excessive use.

Therefore, eradicating narcotics needs to be done optimally because of the dangers it causes. So this makes narcotics something that should be closely monitored as its circulation by the government has been regulated in Article 4 of the Narcotics Law [3].

The challenge in tackling narcotics is getting bigger when in its development a new type of synthetic narcotics emerges or known as New Psychoactive Substances (NPS). BNN recorded as many as 76 (seventy six) types of NPS, one of which is Kratom or a plant that has the scientific name *Mitragyna Speciosa* which is a tropical plant from the Rubiaceae plant family) originating from Southeast Asia (Muang Thai, Thailand, Malaysia, Myanmar), Philippines, Papua New Guinea and one of them is Indonesia). [4]

North Putussibau District, Kapuas Hulu Regency, West Kalimantan which is known by the local community as purik or ketum and has long been used as a herbal medicine that can be eaten raw, brewed like tea or turned into powder. , capsules, tablets, or liquids. Kratom is used to increase stamina, treat pain, rheumatism, gout, hypertension, stroke symptoms, diabetes, insomnia, wounds, diarrhea, cough, cholesterol, typhoid, and increase appetite.) The popularity of purik leaves or kratom leaves has soared, apart from their usefulness for alternative health, their high selling price has beaten the selling price of rubber plants, which since 2014 have fallen from Rp. 13,000 to Rp. 6,000 per kilogram. The community then began to harvest and sell kratom plants for Rp. 50,000 per kilogram and trees more than 4 (four) years old produce leaves at a higher selling price because they are believed to have better efficacy. [5]

This kratom plant grows a lot in Nanga Sambus Village, North Putussibau District, Kapuas Hulu Regency, West

Kalimantan which is known by the local community as purik or ketum and has long been used as a herbal medicine that can be eaten raw, brewed like tea or turned into powder, capsules, tablets, or liquids. Kratom is used to increase (stamina, treat pain, rheumatism, gout, hypertension, stroke symptoms, diabetes, insomnia, wounds, diarrhea, cough, cholesterol, typhoid, and increase appetite.) [6] The popularity of purik leaves or kratom leaves has soared, apart from their usefulness for alternative health, their high selling price has beaten the selling price of rubber plants, which since 2014 have fallen from Rp. 13,000 to Rp. 6,000 per kilogram. The community then began to harvest and sell kratom plants for Rp. 50,000 per kilogram and trees more than 4 (four) years old produce leaves at a higher selling price because they are believed to have better efficacy. On the other hand, the negative impact caused by Kratom is also very pronounced, namely the effect of Kratom 13 (thirteen) times stronger than morphine because kratom contains compounds that are harmful to health that can cause addiction/addiction, respiratory depression to the worst. is to cause death. Even in 2013 the United Nations Office on Drugs and Crime (UNODC) in the World Drug Report, has classified kratom as NPS in the same group as khat.

Several countries in Europe and Southeast Asia such as Thailand and Malaysia have included the kratom plant in the narcotics class where the Malaysian government has criminalized the kratom plant by enacting regulations prohibiting the sale and possession of kratom since 2003 under Article 305 (5) of the Poisons Act 1952 where if someone is found guilty of selling and/or possessing kratom, he will be fined up to RM 10,000 or imprisoned for 4 (four) years or both). In addition to Malaysia, several states in the United States have banned the use of kratom even though the FDA has not officially declared it illegal) Meanwhile, Indonesia has not specifically regulated the regulation of the kratom plant.

The Food and Drug Supervisory Agency (BPOM) has issued a Circular Letter internally to the Head of the POM No: HK.04.42.421.09.16.1740 Year 2016 concerning the Prohibition of the Use of *Mitragyna Speciosa* (Kratom) in Traditional Medicines and Health Supplements. So if herbal medicines containing kratom leaves cannot be registered with BPOM. So this is not in line with the Ministry of Health (Kemenkes) which states that kratom has high efficacy as a drug plus high foreign demand, one of which is the United States which is the main consumer of kratom as an herbal medicine, therefore kratom can raise the country's economic potential as a one of Indonesia's export commodities.

The need for regulation and sustainability regarding this kratom plant has become a polemic not only by the National Narcotics Agency, BPOM and the Ministry of Health but also the community where the need for regulation on the kratom plant is a logical consequence of being obeyed. the principle of legality as regulated in Article 1 paragraph (1) of the Criminal Code. criminal code). Regarding the

certainty of the kratom plant as a type of narcotics, it can be observed as in the case in Bangka Belitung, the local. [7]

1.1. Related Work

How is the analysis of the fulfillment of the criteria for the criminalization of kratom plants which are included in the class I narcotics?

1.2. Our Contribution

The purpose of this research is to address issues that have been outlined in the background is to know how is the certainty of the indictment against narcotics.

1.3. Paper Structure

The structure of this paper uses research method to collect data, manage data and conclude from the data according to the problem to be studied by the author. This legal research studies certain legal phenomena, either one or more symptoms. This legal research is carried out with a series of scientific activities based on certain methods, systematics, and thoughts. The research method used by the author in the study is as follows: Types of Research, the type of research in this paper is normative research and also known as doctrinal legal research, this research was conducted to examine the criminal policy that should be against corporate criminals who were not charged by the public prosecutor. The approach of this paper is descriptive research, descriptive research is when the research is carried out, and the results of the research are then processed and analysed to draw conclusions.

This research uses various material: primary legal material such as criminal code, Law Number 8 of 1981, Law of the Republic of Indonesia Number 24 of 2011, Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016, Regulation of the Attorney General of the Republic of Indonesia Number 28 of 2014, secondary legal material such as related literature, articles, etc.

2. BACKGROUND

Criminalization is the process of determining a person's act as an act that can be punished. This process ends with the establishment of a law where the act is threatened with a criminal sanction. In addition, the notion of criminalization can also be seen from a value perspective. In this case, what is meant by criminalization is a change in value that causes a number of actions that are not reprehensible and are not criminally prosecuted, turning into acts that are considered despicable and need to be punished. Based on this understanding, criminalization is related to determining an act as a prohibited act. Thus the scope of criminalization is limited to the determination of an act as a criminal act. However, the definition of criminalization is not limited to determining an act as a criminal act and can be punished, but also includes the addition (increase) of criminal

sanctions against existing criminal acts. [8] Although there are differences regarding the definition and scope of criminalization that have been described in this study, the definition of criminalization used in this thesis research is state policy in determining an act which was previously not a prohibited act/not against the law into a prohibited act or a criminal act (against the law) with the threat of certain criminal sanctions.

The basis of justification for an act as a crime (criminal act) according to Van Bammelen, in *Criminologie, Leerboek der Misdaadkunde*, argues that in general it must be viewed as a crime is anything that is destructive or immoral) in the sense that the act must be seen as bad and detrimental to the community. many people. Criminal law that functions in the social system of a country is directed at the realization of the state's goal to protect the entire nation and the entire homeland of Indonesia based on unity in order to realize social justice for all Indonesian people. Therefore, the function of criminal law is to protect the public from acts that endanger the safety or harm the community. In the renewal of criminal law in Indonesia, there are 4 (four) conditions that need to be considered. Thus, this study uses the criminalization criteria proposed by Sudarto, which in essence criminalization is the process of determining someone's actions as criminal acts. The process ends with the formation of a law, in which the act is punishable by criminal sanctions. Therefore, in criminal law policy, it is necessary to be very careful and pay attention to the various criteria and principles that exist in criminalizing kratom. [9] *Mitragyna Speciosa* or Kratom grows scattered in Southeast Asia such as Thailand, Malaysia, Philippines, Cambodia, Vietnam, Papua New Guinea and Indonesia. Kratom is a family of the Rubiacae tribe that likes coffee plants. Morphologically, kratom is shaped like a poon plant with straight stems and brownish gray bark with reddish-purple characteristics. The color of the bones and veins is one of the distinguishing parameters, because there are 2 (two) types of color, namely green and reddish brown. [10] Kratom can thrive in areas near rivers on alluvial soils rich in organic matter. Kratom is not an aquatic plant but has the ability to survive if the soil is flooded at any time. Kratom is a species originating from the tropics, especially Southeast Asia. Thus the researcher tries to explain the criminalization of kratom by using Sudarto's theory in which there are 4 (four) conditions described above in fulfilling an act that can be said to be criminalization. First, the purpose of criminalization is to create order. In this case, kratom has existed for a long time, even according to the testimony of interviewees, kratom has existed since our ancestors and is used by the community as traditional medicine and nothing bad happened so that it can be said to be orderly. Second, his actions caused widespread losses and caused victims. Until now in Indonesia there have been no reports or data stating that someone died/died due to kratom, either pure kratom or the use of kratom mixed with other people or reports of kratom abuse and this was confirmed by BNN RI that kratom did not cause any casualties, besides On the other hand, kratom provides many advantages in terms of economy, ecology, and health. Third, the cost and yield factors must be balanced.

If kratom is criminalized in the future, of course the government must be ready to prepare jobs, prepare new plants/plants on the land of Kalimantan. This is certainly a consideration given the very lack of rehabilitation in this country and also the overloaded Correctional Institutions (Lapas) filled with drug convicts. In addition, it is also necessary to pay attention to the principles of criminal law as a last resort (*ultimum remedium*) so that researchers who are the result of kratom are punished. not commensurate with the costs to be incurred by the government. Fourth, pay attention to the burden capacity of law enforcement officers. The four main actors of law enforcement agencies, namely the police, prosecutors, judges and lawyers, if kratom is criminalized, the four actors are ready to handle it because there are so many legal issues that have not been resolved and have not even been tried. because the number of law enforcement officers with existing cases is not comparable. Currently, for example 1:750, if we refer to personnel who have the capacity of investigators, the number will certainly decrease and the impact will certainly be felt by both the reporter/victim and the suspect/defendant due to less than optimal law enforcement. services. It will take longer as the workload of police officers increases. So that the right of the suspect/defendant to be tried is immediately threatened. [11]

3. CONCLUSION

Criminalizing kratom plants as narcotics group I, it can be concluded that in the criminalization process where state policy in determining an act that was originally not a prohibited act / not against the law becomes a prohibited act. or a crime (against the law). with the threat of certain criminal sanctions with a note paying attention to 4 (four) conditions in carrying out a sentence. In this case, the Kratom plant or a plant that has the scientific name *Mitragyna Speciosa* that grows in Southeast Asian countries (Muang Thai, Thailand, Malaysia, Mnyamar, the Philippines, Papua New Guinea, and Indonesia) became a polemic when the Head of the BNN Lab Agency stated that kratom is a in the NPS containing dangerous compounds whose effects are 13 (thirteen) times more dangerous than morphine which since 2017 the Head of the National Narcotics Agency has recommended to the Indonesian Ministry of Health that kratom be included in the annex to the Narcotics Law class I. On the other hand, the benefits of kratom are very pronounced , especially for farmers. in Kapuas Hulu, which since 2013 has changed professions as kratom farmers and also reforestation programs in Kalimantan land as well as several descriptions of the benefits that the researchers have explained above with a combination of the theories put forward.

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