



## **Empowerment of Women with Narcotic Cases**

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### **Abstract**

This paper for the first time presents the results of research related to the aspects of empowerment of women involved in narcotic cases. The research methods presented in this paper are in the form of literature research and field research. Two countries, Scotland and Indonesia, were included to gain various perspectives through a literature review. The results of the field research show that a small number of the empowerment of women with narcotic cases is still based on a sense of social justice. This paper contributes to ensuring equality in empowerment for women.

**Keywords:** health, women's empowerment, equality.

### **Introduction**

Every woman in the world has the right to health insurance and empowerment (Daniati et al., 2021). Every country has laws that protect this right. Health Empowerment is not a program that guarantees 'health for all'. Every woman in the world has the right to health, regardless of ethnicity and skin color (Dadi, 2021). Every woman, taking into account her natural state or her nature, has an interest in realizing the best for women's health empowerment. For the first time, this research presents the results of research related to the aspects of empowerment of women involved in narcotic cases.

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Health and women's empowerment are some of the important factors implemented to achieve the 'best interests of women' (Siscawati et al., 2020). Women's health and empowerment are strategies used to protect women's rights to obtain proper health and empowerment without discrimination (Komalasari et al., 2021a). Conventions and international treaties relating to gender equality that have been ratified are evidence that equal legal protection has been recognized and implemented in several countries.

Some countries in the west are known to have the best health systems, and women's empowerment; for example, Scotland is known for having superior women's systems and empowerment among western countries (Komalasari et al., 2021b). In Scotland, offenders' need for treatment is also addressed through the use of community surveillance (Komalasari et al., 2021c). This supervision will require 6 to 36 months of therapy with alcohol and drug requirements. The diversion from prosecution and referral to the 218 programs in Glasgow, has prevented women from short and long-term imprisonment. In addition, the services provided by the 218 programs are more extensive compared to short-term prison sentences (Mustafa, 2021a).

In Indonesia, referring to the problem of women involved in drug cases, age, type of drug consumed and gender must be taken into account. Official statistics show that the majority of drug users are aged 29 years and over counted as adults (Mustafa, 2021b). The types of drugs consumed were dominated by marijuana (64%) and methamphetamine (34%) (BNN 2012). BNN also gave an example of the high rate of drug abuse among workers due to doping to increase stamina (BNN 2013). The proportion of recorded violations committed by women is lower than men. In 2011, for example, there were 3,674 female drug offenders and 32,915 male drug offenders (Mustafa, 2021b). This may indicate the difference in arrests in the recording of gender in official statistics. The number of drug addicts undergoing drug rehabilitation at the Lido-Bogor BNN Treatment Unit is 757 people, consisting of 697 men and 60 women (Mustafa, 2021c). This may indicate that a small proportion of women have been able to access drug rehabilitation.

In Indonesia, based on research results from the Working Group on Women and Children of the Supreme Court of the Republic of Indonesia (MARI) and the Indonesian Judicial Monitoring Society, the Faculty of Law, University of Indonesia (MaPPI FHUI) once studied women in conflict with the law and submitted recommendations for changes to regulations, and guidelines for sentencing. In general, there has been a study of the Gender Perspective Decisions from the Supreme Court, including Decision Number 179/SIP/1961. Decision Number 86 K/AG/1994. Decision Number 410/Pid.B/2014/PN.Bgl. Decision Number 1143/Pdt.G/2012/PA.JB. Decision Number 266 K/AG/2010. Decision

Number 137 K/AG/2007. Decision Number 583/Pdt.G/2011/PN.Jkt.Sel. Decision Number 1331 K/Pdt/2010. Decision Number 16 K/AG/2010. This study generally examines aspects of religious court decisions and civil decisions of district courts. This study is useful regarding decisions from a gender perspective, the substantive equality/equity approach is seen as the most appropriate approach. This approach gives a high appreciation of the special function of women's reproduction, along with their maximum contribution to society. Based on MARI and MaPPI research, there are gaps, in the sense that the judge's decision seems inconsistent in dealing with sexual violence, due to the various consideration that underpin their decision. However, there has not been a specific study related to the health system and what kind of legal protection is appropriate. On this basis, it is very urgent to conduct a special study that discusses the health system and legal protection for women to gain a better understanding of legal protection for women with narcotic cases.

This literature review was conducted to gather sufficient information about the development of the health system, and legal protection in countries, particularly Scotland and Indonesia. The method used in this research is a mixed method of literature study and field study. The literature study was carried out by collecting data from several previous studies to answer questions about how a gender-based approach to women involved in narcotic cases and legal protection in these two countries works. In addition to conducting an inventory of related legal materials, this study is also supported by interviews with judges who have been determined according to the needs and objectives of the research, based on experience in passing judgments on women with narcotic cases.

## **Literature Review**

### **Gender Concept**

As a philosophical approach, the concept of gender is holistic (Sinko et al., 2021). This concept tends to refer to the roles, functions, and responsibilities between women and men that occur as a result of and can change by social and cultural conditions of society (Supreme Court Regulation (Perma) Number 3 of 2017). Gender equality has been considered as the equality and balance of conditions between women and men to obtain opportunities and their rights as human beings to be able to play a role and participate in various fields (Napitupulu et al., 2021). Gender justice seems to be an example "Gender justice is seen as a process to be fair to men and women" (Mustafa, 2021c). In this way, in relation to adjudicating women's cases in conflict with the law, the term "gender justice" is seen as an attempt by judges to consider Gender Equality and Gender Stereotypes in statutory regulations and unwritten

laws; interpreting statutory regulations and/or unwritten laws that can guarantee Gender Equality; explore legal values, local wisdom, and a sense of justice in society to ensure gender equality, equal protection, and non-discrimination; and considering the application of ratified international conventions and treaties related to Gender Equality (Perma Number 3 of 2017).

In the context of violence in the scope of work (KDRP). Domestic violence can include physical, sexual, emotional, psychological, patrimonial, property, and economic violence. Domestic violence can occur in intimate relationships, including marital, non-marital, same-sex, and non-rehabilitative relationships, as well as between individuals with the same family relationship and members. There should be guidelines aimed at assisting women in recognizing and assessing the risks of domestic violence related to the workplace and finding signs of domestic violence. These assessments would enable violence prevention toward women. It also aims to assist companies in establishing clear guidelines to support female employees who are victims and survivors of domestic violence. Workers may include employees, independent contractors, and consultants who provide services to the company. Workplace means any place, building, or location where a worker works. This code relates to an employment relationship outside the workplace, such as during business trips, tours, and social events sponsored or authorized by the company and other functions. (Napitupulu et al., 2021).

The policy guideline for preventing violence against women chapter V stimulates that management must ensure, to the maximum extent possible, that no worker is the target of domestic violence (Komalasari et al., 2022). Management will investigate all issues of concern, and work with affected individuals to try to reduce risk. If a worker is subjected to actual or threatened domestic violence, both inside and outside the workplace, the worker is strongly encouraged to immediately report the same to a trusted manager or supervisor, or human resources department.

Management will ensure that any concerns about actual or threatened domestic violence can be reported in writing or verbally and raised in person, via email, telephone, to the company hotline, or other means (Komalasari et al., 2022). Each issue will be reviewed as quickly as possible, taking into account such things as the nature of the problem, and whether it involves someone inside or outside the workplace. If the behavior complained of is very serious, or if the behavior is suspected to be perpetrated by senior management, external and independent investigations will take precedence. In the event that there are witnesses to the behavior complained of, the witnesses will be questioned. Every effort will be made to prevent the disclosure of confidential and/or sensitive information, while at the same time ensuring that every incident is thoroughly investigated. In particular, each party interviewed

during the investigation will be reminded in writing prior to their interview of the need to keep their investigation and evidence confidential, as well as the fact that retaliation is strictly prohibited. Individuals who raise concerns and/or workers who may be at risk due to domestic violence in the workplace will be notified from time to time when the concerns are reviewed and the company endeavors to protect workers from domestic violence, and determine ways to deal with potential offenders. It is understood that the company will do all it can to support workers who are actual or threatened victims of domestic violence. If domestic violence occurs outside of the workplace, there may be limits to the actions the company can take (Komalasari et al., 2022). To deal with this condition, an incident report to the law officer could be considered as an option.

In the case of threats of workplace violence against workers that have the potential to affect other workers (i.e. threats of domestic violence that may be perpetrated in the workplace by non-workers), the company will work closely with workers to determine an action plan to protect workers and other workers who may be affected (Komalasari et al., 2022). In such situations, workers may need to be made aware of the risks of episodes of domestic violence in the workplace and the steps taken by the company to protect them from the same; however, the identity of the targeted worker will be kept confidential unless this is not possible, in which case the targeted worker will be notified in advance. In the event of domestic violence against workers, the company will notify workers of all available support during and after the complaint process, including trade unions or workers' representatives, if any, the Employee Assistance Program (PBK), internal or external resources (including community service). The company will provide training to all managerial workers and supervisors in relation to understanding how to deal with domestic violence issues in the workplace or involving workers. This policy does not affect the right of workers to file complaints under the relevant laws of the appropriate jurisdiction.

## **Settlement of Cases for Women Using Narcotics in Scotland**

In this section, we present the perspective of the settlement of cases for women who use narcotics in Scotland. We will look at the practical and practical challenges of approaching women involved in drugs in Scotland.

### **Drug treatment and testing order (DTTO I)**

A study evaluating Scottish DTTO showed that DTTO contributed to a 41% reduction in reassurance 12 months after DTTO (Mustafa, C. (2021a). This is partly a reflection of the DTTO targeting high tariff violators (Mustafa, C. (2021b). Although the lack of special

services for women may result in an increase in abuse by women, there is evidence to suggest that “involuntary treatment” via DTTO may have contributed to a reduction in drug use compared to “voluntary treatment” in the same service (Mustafa, C. (2021c). Involuntary refers to the coercive in individuals" access to treatment. Voluntary refers to the self-initiative access to treatment.

### **Drug treatment and testing orders (DTTO II)**

DTTO II was introduced in 2008, based on the “forced treatment” model, and is available on a local scale in limited numbers (Mustafa, C. (2021a). DTTO II targets lower-rate violators. DTTO II monitoring is carried out every 6-8 weeks for a period of fewer than 12 months (Mustafa, C. (2021b). Previous studies have shown that DTTO II is overused by women even though there are fewer women in the Criminal Justice System (49% of women receiving DTTO II) than men (51%) (Mustafa., 2021c). In addition, “forced medication” can lead to a reduction potential for drug prevention offered by community-based voluntary services. Previous studies have shown that DTTO II is overused with women even though there are fewer women in the Criminal Justice System. (49% of women received DTTO II) compared to men (51%) (Komalasari et al., 2021a). This is partly a reflection of DTTO II targeting low-rate violators (Malloch 2011). There is evidence to suggest that targeting low-fare offenders may limit the potential of drug prevention programs offered by voluntary-based services in the community (Komalasari et al., 2021b).

### **Sentencing Delay**

Studies evaluating Scottish suspended sentences show that female offenders receive the highest proportion of suspended sentences. It is given that the perpetrator is still sentenced at the end, it creates uncertainty regarding the final sentence (Komalasari et al., 2021c). The sentences given to female offenders are postponed until a certain period.

### **Practical Challenge**

Attention has been paid to how the criminal justice system can provide adequate, quality, and responsive treatment to the needs of women’s groups. The importance of an effective response for women prompted the establishment of a Drug Court for women. In Brooklyn, for example, resources (e.g. vocational counseling and health clinics) have been provided to help women rebuild relationships with their children (Komalasari et al., 2021c). Another example in Glasgow is the diversion from prosecution and referral to the 218 programs has prevented women from short and long-term imprisonment (Komalasari et al., 2022). In addition, the services provided by 218 are more extensive compared to short-term prison terms (Komalasari et al., 2021c). This study can be a useful basis for exploring how

judges handle the needs of users, especially women who use narcotics in Indonesia. These needs include their access to treatment facilities and childcare.

### **Results and Discussion**

In this section, we present the perspective of the judges when making decisions in cases of drug use against women and children in Indonesia. We will observe the judge's consideration in making a decision. A number of participating District Court judges explained that they felt the importance of understanding the human factor in their decision-making. For example, as stated by the Judge below:

People use drugs just for fun, or because their job status is unstable, or because of curiosity about drugs, and peer influence. Women use drugs during pregnancy even though they are about to give birth. These are all human factors. (Judge 20, District Court).

The circumstances of women convicted of drug offenses and who are perceived to have multiple responsibilities within the home are often seen as mitigating factors in sentencing decisions. Several judges expressed sympathy for the plight of women and, as a result, led them to sentence women lightly. As Judge said:

“...I do punish women more lightly than men because women not only have the responsibility to raise children but, also, to support the family income. These factors make women's sentences lighter than men's” (Judge 3, City Court). In line with that, Judge 2 stated:

The punishment for female violators will be lighter than the punishment for male violators. Usually, the gender of the perpetrator affects the judge's verdict... Other lightening speeches such as “because my child needs milk, and there is an opportunity to earn easy money” these speeches made me sympathize. (Judge 2, City Court).

Similar considerations are seen in making decisions regarding children brought to court. For children and youth, decisions are subject to ‘best interest’ considerations and in this case, judges show their interest in attending to the needs of the child. Judge 18, for example, stated: “I tend to rehabilitate or return children who use drugs to their parents because no parent wants their child to be a victim of their condition” (Judge 18, District Court). Correspondingly, Judge 17 stated, “For children who use drugs, if evidence of daily drug use shows multiple drugs, this would lead us to believe that, once children who use drugs receive rehabilitation and treatment and therapy, they will not use drugs anymore” (Judge 17, City Court). In a more detailed sense, Judge 8 believes that children should not be imprisoned, provided that:

The punishment for children who use drugs is not imprisonment because we are trying to get those children back into society and send them back to their parents. We will consider the opinion of the child correctional officer (BAPAS), parents and we will consult a psychologist to understand the underlying factors that put the child in trouble. (Judge 8, City Court)

The Supreme Court echoes the judicial interest in assessing the best interests of children, as stated by Judge 29: “Judges are free to impose sentences in the interest of saving children and it means that the minimum standard of punishment is not applied to children” (Judge 29, Supreme Court). Therefore, in the case of children, there is scope for the background circumstances and stigmatizing effects of punishment to be lovingly considered. Judge 14 noted:

...The meaning of the consideration of the decision must be clarified because it is unfair to apply the drug law without considering it from various angles. For example, we consider whether the case attracted public attention, the effect of the sentence, the background behind the drug trade, and whether it was for business or due to lack of income or excess income. (Judge 14, City Court)

It can be seen from the findings above that judges are aware of the impact of social conditions such as poverty, and how this often results in people being targeted by the criminal justice system and ending up in prison. Socio-economic problems were also felt by the study participants to limit the available options that might prevent women from using drugs. As such, women involved in drug use cases are often seen, by the judges in this study, as victims of their circumstances. Poverty and the use of drugs by some to increase their stamina to do menial work were noted by the study participants. Based on these points, it can be said that drug use in Indonesia reflects economic inequality in the wider social structure. This is in line with the argument that socioeconomic loss is one of the experiences that is often unfair (Mustafa 2021).

In conditions of structural inequality, the imposition of decisions against women who use drugs and who experience socio-economic losses can itself reflect a sense of justice. This finding supports the argument of Mustafa (2021) who advocates the importance of judges making decisions that reflect the condition of women who are already experiencing socio-economic problems. This involves displaying a sensitivity that involves exercising discretion and encouraging participants to redefine sentencing options outside prison (Komalasari et al, 2021a). These participants sought to reduce sentences with the aim of releasing women drug users from prison earlier than required by law and allowing them to receive treatment outside prison. The perceived moral responsibility of some of the participating judges shapes



the presentation of leniency that is evident in practices such as ignoring standard minimum sentence criteria. There are several limitations to the study that need to be noted. The relatively small sample of panel judges who participated in the study, although comparable to other similar qualitative studies and justified by the contextual data collected, limits the generalizability of the findings beyond Indonesian jurisdiction. Likewise, this study can only provide a partial picture of justice for women involved in drug abuse cases in the Indonesian context because it examines empirical evidence obtained from judges working in certain provinces in Indonesia. Therefore, it is impossible to obtain the views of all judges in the jurisdiction (currently there are 3,034 district court judges in Indonesia).

This paper can only provide a partial picture of structural inequality from the perspective of judges. It can be seen from the findings that most of the women involved in drug use cases brought to court are from poorer backgrounds. However, the evidence available across Indonesia does not suggest that this picture is different elsewhere in the country. In the Indonesian context, socio-economically disadvantaged women have been disproportionately targeted by the criminal justice system (Suhariyanto et al., 2021).

## **Conclusion**

In this paper, different perspectives and understandings are presented that underlie judicial responses to criminal practices in relation to minor narcotic crimes. In particular, judicial perceptions of the importance of social position and the disproportionate presence of more marginalized citizens in the criminal justice system have been highlighted. For many of the participating judges, the class structure had a direct bearing on the context of sentencing in two distinct ways. First, it is recognized that the war on drugs has targeted disadvantaged citizens and is therefore discriminatory. Most of the people charged with violating the 2009 Drug Law come from poorer socioeconomic backgrounds. On the other hand, middle-class drug users are not the target of sanctions. Second, people who were more likely to experience poverty failed to receive treatment, and it seemed to some of the participating judges this could be linked to inequalities in access to treatment. As a result, this affects how justice is conceptualized in the justice system, leading some participants to make judgments on moral grounds; namely exercising compassion and moral responsibility in punishment.

This compassionate approach to underage drug offenders in Indonesia leads to an individual approach to punishment, through the practice of discretion where this is. Interview findings suggest that the potential for discretionary practice can be lenient or punitive, depending on personal attitudes toward drug use. A variety of factors were considered by

the participating judges, including the judicial interest in the case, the ‘risk assessment’, and the impact of the sentence on society at large. This risk assessment refers to the perpetrator’s readiness of completing a treatment program. Participants expressed interest in paying attention to the needs of the perpetrator’s family and children. For example, children who use drugs can be returned to their parents rather than being sentenced to prison. Several participants gave examples of how they took on the background of individual drug offenses, and the stigmatizing effect of criminal justice interventions, in a way that demonstrated a level of compassion. Recognition of the drug prohibition regime and contributing factors to drug users who are the targets of criminal justice sanctions are also recognized by several participants. The recent enforcement of drug laws that could contribute to structural inequality of convicted offenders caused concern for some participants. These considerations illustrate that judges do not expect to only follow the discriminatory practice of drug law enforcement which they consider to be contrary to the enforcement of justice in the justice system. This is a notable example of judges in a seemingly rigid written legal system exercising a degree of discretion that may be more often associated with decision-making in common law systems. In the context of Indonesian courts, which are primarily retributive in nature and against the backdrop of increasingly violent drug prohibition policies, evidence of problem-solving and the application of a compassionate approach to justice in some of these courts is arguably a welcome improvement. The efforts of these judicial institutions, to focus on the moral basis of punishment – as perceived by Indonesian judges – in the context of punishing legislative practices, make this paper significant and very original in terms of the approach to empowerment, especially for female drug users.

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