Cannabis control: consequences for consumption and cultivation

Wouters, M.

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Chapter 1: Introduction
For many years the Netherlands has been the eye-catcher when it concerned cannabis policy. While prohibitionists have used it as a bad example and legalisers as a good example (de Kort & Cramer, 1999), both did this for the same reason: the condoning of the sale of cannabis at consumer level. However, this policy that has eventually taken shape in so-called coffee shops, has changed considerably over the years. Since the mid-1990s, stricter legislation has been introduced, for instance the raising of the age limit for coffee shops from 16 to 18 years. From a criminological perspective, these changes offer challenging opportunities to contribute to the on-going international scientific debate and political discourse on the effects of drug policy. As will be argued later in more detail, many studies have shown that national prevalence rates of cannabis use are only weakly linked to national cannabis laws, if at all. However, drug laws (i.e. law of the books) can be rather loosely coupled to the way in which, and the extent to which, drug laws are enforced (i.e. law in action) (see for example Rüter, 1986). Therefore, it is important to not only look at formal (de jure) changes in Dutch cannabis policy, but also at changes at the practical level (de facto). In other words: have changes in the formal Dutch cannabis legislation been translated into changes in regulation, and to which extent and how are these changes implemented in practice?

In this study, several aspects of changes in Dutch cannabis policy will be assessed, evaluated and discussed, predominantly with regards to their effects both on the supply side and the demand side of the cannabis market. The central question therefore is:

“What consequences have formal changes in the Dutch cannabis policy since the middle of the 1990s had for the legal regulation of the cannabis market in practice, and how and to what extent do these developments relate to (developments at) the supply side of the cannabis market, the sale of cannabis at consumer level, and the consumption of cannabis and other drugs?”

1.1 Recent developments in cannabis policy

In 1995 Korf wrote: “Today, more than thirty years after the adoption of the Single Convention, emphasis in most countries is on criminalisation of drug use.” When re-examining this conclusion today, the opposite seems to be true. Although globally there is no uniform direction in the development of cannabis policies, a general observation may be made that over the last decade (2001-2011), European cannabis policies have focussed their law enforcement efforts on trafficking, thus the supply side rather than the demand of the drug (EMCDDA, 2011). Regarding penalties for personal possession of cannabis, as an overall European trend it can be said that between 2001 and 2006 penalties were reduced, but afterwards increased (EMCDDA, 2011). Yet no European country has introduced criminal penalties or increased prison sentences in the past 10 years for personal possession. In this respect, there are signs of convergence in Europe towards lower penalties for personal possession of cannabis (EMCDDA, 2011). In the past two decades, Europe has seen the growth and consolidation of harm-reduction policies, and its integration with a range of other healthcare and social services (EMCDDA, 2011; Hedrich, Pirona & Wiessing, 2008).

The position of the Netherlands has been altered. Traditionally, the Netherlands could be characterised by a consultation culture, in which consensus is required for policy decisions. The need to reach consensus leads to a certain degree of depolarisation, and has resulted in three-dimensional drug policy: an active care and prevention policy to counter drug demand, combatting organised crime to fight supply, and protecting and maintaining public order (de Kort & Cramer, 1999). More recently,
Dutch drug policy has changed its emphasis from public health issues to nuisance. In addition, the Netherlands have developed a stricter regime when it comes to cannabis. Around the same time, the general public discourse changed; while before cannabis was seen as a relatively harmless drug, increasingly the emphasis was put on the negative effects: schizophrenia resurfaced in the discourse, THC percentages seemed to be rising, and an increasing number of studies indicated that cannabis use causes brain damage. The stricter regime that followed focussed on cannabis cultivation and wholesale trade but also included stricter rules for coffee shops. These changes have partially come about due to the Netherlands choosing to harmonise with European guidelines (Blom, 2006). Dutch politics set sail for more rules, and stricter implementation of existing laws and regulations.

A centralising trend can be seen in Dutch cannabis policy. Increasingly, rules regarding coffee shops and the use of cannabis are created at a national level, while before some important decisions regarding coffee shops were at the discretion of municipalities. For instance, since 1978, while the decision to allow a coffee shop or not remained with the municipalities, the regulations to which these coffee shops should adhere were determined nationally. The current stricter regulation and implementation – on both local and national level – is leading to a diminished availability of coffee shops: a smaller number of coffee shops, that are also no longer accessible for youth aged 16-17 years (while before this was youth younger than 16). The Dutch cannabis policy appeared to be tolerant, while there always were strict criteria which the coffee shops should adhere to. From 2002 onwards, policymakers in the Netherlands have taken an increasingly robust stance against domestic cannabis production and the rules applied to coffee shop sales. In 2011, a minimum distance of coffee shops to secondary schools was introduced. According to this criterion, coffee shops within 250 metres of secondary schools should be closed down, and no new coffee shops are allowed within this distance. While sales on retail level are tolerated through coffee shops, large scale sales and – more relevant to this study – the cultivation of cannabis are not.

1.2 Towards a century of Dutch drug control

Traditionally, Dutch drug policy is a combination of judicial control and socio-medical control, especially since 1976. The basis for the Dutch legislation concerning drugs has been laid by means of the “Opiumwet” (Opium Act) in 1919, in which it was made illegal to prepare, process, transport, sell, supply and possess in order to deliver opium, opium derivatives and cocaine within the Dutch kingdom within Europe. As a result of the Geneva Opium Treaty of 1925, a revised Opium Act was passed in 1928 to include Indian hemp, the resin taken from Indian hemp and the “usual preparations where this resin is at the basis of”. At the time there had been no problems with the use of hemp products in the Netherlands (Blom, 2008). In 1953 the Opium Act was changed to further include the use of cannabis (Blom, 2008). The central objective of the Dutch drug policy as formulated in 1974 was to limit the risks of drug use for the individual, for his or her immediate environment, and for society as a whole (de Kort, 1995). In 1976, the law was revised to make a distinction between drugs with “unacceptable risks” (placed on List I) and “hemp products” (placed on List II). Today, these two categories are known as “hard drugs” (e.g. heroin, cocaine, ecstasy) and “soft drugs” (i.e. marijuana and hashish). In addition, a distinction was made between the sale of drugs and the use of drugs; while possession still remained illegal, the use of a drug was stricken from the law. However, since possession – and not use – was often the crime for which users were accused, not much changed in practice. The maximum punishment for drug use and possession of up to 30 grams of cannabis was low-
ered, while that for possession of hard drugs and drug trade increased. This change in policy had as a goal to avoid forcing young people who experiment with cannabis to be stigmatised, criminalised and marginalised, responses which – indirectly – could increase the risk that they would start using more dangerous drugs, and subsequently be drawn into a criminal subculture (de Kort & Cramer, 1999). In this manner drug users would be able to be functional, ‘normal’ citizens, who participate in society, regardless of their drug use.

In the Guidelines for Prosecution published in 1978 by the Public Prosecution Office (Openbaar Ministerie) a special position was created for cannabis dealers in youth centres, who were allowed by the staff of the youth centre to sell cannabis there (Blom, 2008). In these guidelines it was stated that the dealers would not be prosecuted unless the ‘triple-party deliberation’ (consisting of the mayor, head of police and Public Prosecution Office) decide to prosecute. These guidelines were followed by the formulation of criteria to regulate the sale appropriately (AHOJ criteria) in 1979 (Korf, 1995), that were adapted and made more concrete over the years.

An important, unintended development that accompanied the change in cannabis policy was the rise of coffee shops and the subsequent strong growth of their numbers. Some municipalities already allowed house dealers in subsidised youth centres, which resulted in the revision of 1976 and the Guidelines of 1978. In 1980 a further formalisation of the detection and prosecution policy by the publishing of new national guidelines followed: if retail sales would take place discretely, the establishment of commercial coffee shops would be allowed (Van Laar & Van Ooyen-Houben, 2009).

In 1985, a distinction was made between primary and secondary drug problems (Interdepartmental Steering Group on Alcohol and Drug Policy, 1985). Primary problems refer to the direct negative consequences of the use of drugs, which consist mainly of physical problems. Secondary problems are those problems caused by implementation of the policy pursued, on both an individual (e.g. social isolation and prostitution) and social level (e.g. acquisitive crime, nuisance and large criminal organisations). A memorandum on drug policy appeared in 1995, in which the toleration of coffee shops and drug use was discussed in a positive light. However, three problems had been identified: a relatively small group of hard drug users was the source of substantial nuisance; criminal organisations were involved in the production, supply and sales of drugs; and internationally the Netherlands were subject to criticism. A more repressive policy was proposed. In 1996 the AHOJ criteria were made more strict and a criterion was added, resulting in the AHOJ-G criteria. The minimum legal age for coffee shops was nationally determined to be 18 years, while before, at a local level, this often was 16 years (for example in Amsterdam). The changes in the criteria for coffee shops made the regulations more uniform across municipalities. In addition to being able to allow coffee shops, local councils of municipalities could determine not to allow coffee shops within their boundaries; as a consequence municipalities could close down coffee shops, even when they adhered to the national AHOJ-G criteria. This induced a substantial reduction in the number of coffee shops. Also, the per-transaction weight limit was lowered from 30 gram to 5 gram, with the primary aim to reduce drug tourism. The maximum weight of stock condoned in coffee shops was established. According to Blom (2006) this clarified the role of coffee shops, but at the same time the maximum stock allowed (500 gram) was not sufficient to supply a moderate coffee shop, which facilitated the closing down of coffee shops by the police or municipality. At the same time, municipalities started giving licenses to

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coffee shops, which gave the coffee shops more security. The memorandum on drug policy gave rise to a major public debate (Boekhout van Solinge, 1999), which focused more and more on the problematic sides of the coffee shop policy.

In 2004 the ministers of Public Health, Justice and Internal Affairs presented the “Cannabisbrief” (Cannabis Letter) in which the developments that were already in progress became more pronounced (Blom, 2006). Again, the drug policy of toleration with regards to the coffee shops was discussed positively, but this time concerns about the health risks of cannabis use, the high THC-percentages and the (increasing) involvement of organised crime in cannabis cultivation were expressed. In 2007 even more emphasis was put on combating organised crime, followed by the start-up of a taskforce to combat organised cannabis cultivation. In September 2009, a new ministerial Drugs Letter was published. Motive for this Letter was the imminent evaluation of the Dutch drug policy in the previous fifteen years and an advice on the future of drug policy that had been requested. Both documents were taken into consideration. Before publication of the Drugs Letter, two issues were considered to be of importance: public health and public order. Now, a third issue was put forward: the social impact of alcohol and drug use (i.e. damage to health, to personal development and drug use as part of a wider range of problematic behaviour). Also, alcohol became to play a more prominent role in Dutch drug policy than before. The 2009 Letter announced a new drug policy memorandum, which would appear December 2011. In July 2011 a bill was submitted to make the support and facilitation of large-scale cannabis cultivation punishable (which at the writing of this study has not yet passed).

1.3 Separation of markets policy

The Netherlands has a tradition of emphasizing health in its drug policy when it comes to the users (Korf, Bulington & Riper, 1999; Leuw & Marshall, 1994). A central idea behind allowing coffee shops was that the lawful availability of cannabis to consumers would reduce the likelihood that cannabis users would be drawn into illicit markets where other, riskier illicit drugs are sold; this is referred to as the “separation of markets”. This separation of markets was assumed to lead to a decrease in the risk of marginalisation and criminalisation of users. By allowing the sale of cannabis in coffee shops, the Dutch government also intended to reduce the risk that cannabis users are confronted with hard drugs. In regard to coffee shops this approach appears to be effective: hard drugs are very rarely found in coffee shops (Broekhuizen, Raven & Driessen, 2006; Reinarman, 2009). However, with cannabis retail suppliers other than coffee shops – the unlicensed market – the risk of being exposed to hard drugs could be higher. Retail cannabis sales still take place in non-legal settings outside the system of licensed shops, for example among users under 18 years of age, who are not allowed to enter coffee shops. The potential risk is that not allowing minors in coffee shops will undermine the separation of markets philosophy.

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2 In the Netherlands, policy intentions are formulated by Ministers through letters that are sent to Parliament.
3 The peak in THC-percentages was temporary and has decreased since (Van der Gouwe & Niesink, 2012).
5 Hoofdlijnenbrief drugsbeleid d.d. 11 September 2009. VGP/ADT 2955486.
1.4 Cannabis use in the Netherlands

1.4.1 General population

According to the latest general population survey held in 2009 (Van Rooij, Schoenmakers & Van de Mheen, 2011), 25.7% of the Dutch population aged 15-64 has used cannabis at least once in their life. The last month prevalence of use is 4.2%. From 1997 until 2001 the percentage of the population aged 15 to 64 years that had used cannabis at least once in their life remained stable. Between 2001 and 2005 this percentage rose, although the percentage last year and last month users remained stable. In 2009 the prevalence of use was higher on all measures (life time, last year and last month), however, this increase most likely is an artefact of a change in the method of data collection. Of the last month users, around one third uses cannabis (almost) daily, little over one per cent of the general population aged 15-64 years (Van Rooij et al., 2011). Among the age group 15-24 years, in 2009 the last year and last month prevalence rates for cannabis use were twice as high as in the group aged 25-44 years. Prevalence of use is twice as high among men as among women. The use of cannabis is more prevalent in urban areas, with twice as many users in very urban areas compared with average to non-urban areas (Van Rooij et al., 2011).

The mean age of first cannabis use in the general population aged 15-64 years was 19.6 years in 2011 (Van Laar et al., 2012). The mean age of cannabis users was 30.5 years according to the 2005 general population survey (Rodenburg et al., 2007). This mean age of users has been increasing over the years.

1.4.2 Youth

The most recent national Dutch survey among students (aged 12-18 years) of secondary schools took place in 2011 (Verdurmen et al., 2012). This survey showed that 17.4% had used cannabis at least once in their life, and 7.7% in the month prior to the survey. From the late 1980s onward life time and last year prevalence of cannabis use have increased steeply, between 1996 and 1999 there was a declining trend, and since 1999 cannabis prevalence rates have remained rather stable until the most recent survey in 2011 (Monshouwer, Van Laar & Vollebergh, 2011). Cannabis use among students increases steeply with age. In the 2011 study, the differences in cannabis use between different levels of education are small, and none of them are statistically significant. When looking at ethnicity, Moroccan students use significantly less cannabis than other students.

When considering other youth populations, one can generally state that when the degree of marginalisation increases (from truants and school dropouts, through incarcerated youth, to homeless youth) the prevalence of cannabis use rises (Van Laar & Van Ooyen-Houben, 2009).

In 2008 and 2009 substance use was studied among visitors of national and regionally organised parties, and among clubbers and disco-goers throughout the Netherlands (aged 13-51). A majority in both groups had used cannabis at least once in their life; 69.9% of party-goers and 62.0% of clubbers had done so. Last year cannabis use among party-goers was 45.6%, while amongst clubbers this was 39.0%. Last month use was 30.3% among party-goers, and 23.7% among clubbers (Van der Poel et al., 2010).
1.5 International perspective

International comparisons show that prevalence rates of cannabis use in the Netherlands are average to low for the adult population compared to other European countries (Van Laar & Van Ooyen-Houben, 2009). On the other hand, prevalence rates among adolescents are higher than the European average, (Monshouwer et al., 2011). The frequency of cannabis use does not seem to be higher in the Netherlands, and the amounts used seem to be the same as in San Francisco – the only available international comparison considering amounts (Reinarman, Cohen & Kaal, 2004).

The extent to which (changes in) drug policy influences cannabis use is a much-debated question. In many studies, no direct association has been found between changes made to cannabis policies and the measures for cannabis use (Cohen & Kaal, 2001; Decorte, Muys & Slock, 2003; Kilmer, 2002; Korf, 2002; MacCoun & Reuter, 1997; MacCoun & Reuter, 2001; Reinarman & Cohen, 2007; Reuband, 1995). A causal relation between (changes in) cannabis policies and cannabis use so far has proved to be hard to establish. As will be discussed in later chapters as well, evidence so far points in different directions. When we view cannabis as a substance that individuals use as a means of relaxation and recreation, and can get addicted to, a parallel can be drawn with alcohol and tobacco, as well as gambling. It might be helpful to look at these other fields of study, which will be done in several of the chapters to follow.

So far, many of the studies on the effects of cannabis policy have looked at how these policies are formulated on paper, not how they are put into practice. As Lipsky (1980) has shown, there can be substantial discrepancies between how a policy theoretically should be implemented and how it is implemented in everyday practice. In this study, not the paper policy but the ‘law in action’ will be studied. This will be done with regard to different aspects of the cannabis market, but always looking at policy in practice.

1.6 Cannabis policy and criminology

Because the sale of cannabis is tolerated through coffee shops, it may seem as if cannabis has been fully legalised in the Netherlands; however, this is not the case. The study of illegal behaviour typically falls within the realm of criminology. Historically the use, selling and growing of cannabis is a typical example of behaviour that has not always been illegal; the legal status changed over time. Why and how these changes took place are of interest to the criminological field. The changes in legislation have been discussed above, as were in part the reasons for (de)criminalisation.

Dynamics in growing, buying and using cannabis are the main theme of this study, and in particular the question to what extent legislation and policy influence these behaviours will be analysed. For this analysis, “law in action” is an important concept. As Rovers (2007) puts it, when evaluating the influence of interventions, the social reality of the implementation is often insufficiently addressed. Therefore, it is important to look at the manner in which cannabis laws and regulations are implemented in the Netherlands, and what influence they have on actual behaviour of cannabis users.

In this study, the work of Garland (2001) plays an important role in interpreting the changes in legislation, and the implementation of new and existing rules. Generally speaking, Garland discusses a shift towards more (formal and informal) control, caused by the fall of the ideal of rehabilitation. There has been a development towards more repression and punishment. Within this new ‘culture of
control’ the boundaries between public and private are blurring, because governments tend to engage in ‘preventive partnerships’. Within these preventive partnerships, companies and neighbourhoods are increasingly encouraged to police themselves, thus leading to a decrease in risk and resources. His theory will be further discussed in Chapters 2 and 6.

Several other criminological theories are of interest. Firstly, Routine Activity Theory (Cohen & Vila, 1996) may explain the choice of buying in a coffee shop or elsewhere. According to this theory, individuals encounter opportunities for crime in their daily life and this leads to criminal behaviour. Secondly, one might consider Rational Choice Theory (Cornish & Clarke, 1986); this theory states that criminals weight pros and cons of criminal behaviour and make rational decisions on where and when to commit crimes. This would mean that for cannabis users to resort to non-tolerated cannabis sales points, coffee shops would need to be limited in their availability. Both Routine Activity theory and Rational Choice theory will be discussed in chapter 4.

1.7 Aim, research themes and outline

In the Netherlands, the sale of cannabis to consumers is tolerated through so-called coffee shops. The form this takes has changed considerably over the years. Since the mid-1990s, stricter legislation and guidelines have been introduced. More recently, combating the cannabis cultivation has been intensified as well. These developments in Dutch cannabis policy raise questions that are at the core of criminology. The aim of this study, by answering these questions, is to contribute to the international debate on the effects of drug policy as well as to contribute to further developing criminological theories. In the chapters 2 to 6, the central question set out at the first page of this chapter, will be translated into more specific and detailed research questions, that can be summarised under the following themes.

1.7.1 Availability and local politics

Not all municipalities in the Netherlands have coffee shops. In fact, around 80 per cent of Dutch municipalities do not have any. While the guidelines to which coffee shops should adhere are determined nationally, the decision to allow coffee shops rests with the local council. Therefore, the issues that will be at the core of Chapter 2, is how the interlocal variations in the availability of cannabis through coffee shops have arisen in the Netherlands, how large such variations are and how they can be explained. The influence of the political constellation of local councils on the presence of coffee shops in municipalities will be explored. Other factors, such as population size, will be taken into account.

1.7.2 Availability, cannabis use and cannabis purchasing behaviour

The availability of coffee shops is, at least partially, a consequence of the legislation and its implementation. While in Chapter 2, this availability can be understood as an ‘outcome measure’, in other chapters it is used as a predictor of consumer behaviour.

When municipalities do have coffee shops, the next question is in which way this influences cannabis use and cannabis purchasing behaviour. Some would argue that supply stimulates demand, and thus that coffee shops will lead to an increase in cannabis use (MacCoun & Reuter, 2001). Whether the presence of coffee shops influences cannabis buying behaviour will be looked at in Chapter 3. The extent to which the presence of coffee shops is related to where cannabis consumers in the Nether-
lands buy their cannabis will be explored. In addition, it will be investigated whether cannabis users buy from illegal sellers when coffee shops are not present near to their place of residence.

The issue of availability of coffee shops will be further investigated in Chapter 4. Studies in a variety of disciplines show that not just the presence of certain facilities plays a role in for instance the use of drugs, gambling behaviour or criminal behaviour. Availability moderates the role a facility plays in people’s behaviour. Availability takes different forms, including whether something is present or not, and another important aspect of it is proximity: the distance between an anchor point, for instance respondents’ homes, and the facility in question. Chapter 4 will also discuss the proximity to coffee shops, and the influence this has on different aspects of cannabis use.

1.7.3 Separation of markets
A stated before, a central idea behind allowing coffee shops was that the lawful availability of cannabis to consumers would reduce the risk that cannabis users are confronted with hard drugs. In Chapter 3 the illegal cannabis market will be further explored with regard to the mixed sale of soft and hard drugs. In addition, Chapter 4 will discuss the influence of the proximity to coffee shops on the use of hard drugs, and on the separation of markets.

1.7.4 Coffee shops and minors
Even when coffee shops are present, they are not available to everyone: minors are not allowed. In Chapter 3, the influence of age on the way in which cannabis is acquired will be analysed, including specifically among under-age cannabis users. In 1996 the minimum legal age for coffee shops was officially raised from 16 to 18 years. This provides us with a unique opportunity to study the influence of coffee shop availability on cannabis use. Therefore, in Chapter 5 the role of raising the minimum age will be explored by looking at prevalence rates and buying behaviour of Amsterdam school youth, before and after the change in policy. The trends in prevalence rates for 16 and 17 year olds will be analysed, and the extent to which these can be attributed to raising the minimum age for coffee shops, and/or to other factors.

1.7.5 Dismantling cannabis cultivation sites
In Chapter 6, the focus will shift from the demand side of the cannabis market to the supply side. Dutch cannabis policy is not exclusively aimed at coffee shops and the retail market. Another facet of the policy, and another branch of cannabis policy that has been in transition, is the dismantling of cannabis cultivation sites. Since the aim is to understand the influence of policy in practice on cannabis use and the cannabis market, the first question in this chapter is how the dismantling of cannabis cultivation sites has been put into practice. Next, the repercussions of these policies in practice and the developments and trends in these dismantling activities will be identified. Also, the results in terms of numbers of cultivation sites dismantled and marijuana plants seized will be analysed. In addition, the impact of the dismantling operations on the structure of the cannabis market or on the price or quality of marijuana will be explored. To conclude, the dismantling policy will be viewed in a critical light, to identify possible downsides to this relatively new approach to cannabis cultivation.

Finally, in Chapter 7 the following chapters will come together in the conclusions and discussion. Chapter 8 will provide a summary of the study, and Chapter 9 will contain the Dutch summary.