



Analysis of Judges' Considerations in Imposing Criminal Sentences for Class 1 Narcotics Abuse for Oneself (Case Study of Labuan Bajo District Court Decision Number 28/Pid.Sus/2023/Pn Lbj)

Fillemon Hendrik Pagula Mamuyab^{1*}, Gelar Ali Ahmad²

¹Faculty of Law, State University of Surabaya, Indonesia

² Faculty of Law, State University of Surabaya, Indonesia

* fillemon.18071 @mhs.unesa.ac.id

Article	Abstract
<p>Keywords: Abuse; Narcotic; Judge; Supreme Court</p>	<p><i>Main objective of this research is to understand the basis of judges' considerations in deciding cases, including the application of Law Number 35 of 2009 on Narcotics, as well as the aspects considered from both juridical and psychological perspectives. The research findings indicate that judges overlooked the facts revealed during the trial when deciding cases of self-use of Class 1 narcotics, failing to consider the provisions in Supreme Court Circular Letter Number 1 of 2017, particularly in the criminal chamber formulation letter (b). This research emphasizes the importance for judges to explore other legal sources, such as the Supreme Court Circular Letter Number 1 of 2017, previous rulings, and expert doctrines, in delivering verdicts against perpetrators of self-use narcotics offenses. If the judge does not consider these legal sources, the resulting verdict may lead to defects in the imposition of punishment. The conclusion of this study is that the judge's considerations in sentencing Defendant I Sarjan alias Jek and Defendant II Abdul Jalani alias Buce did not comply with the provisions of the Supreme Court Circular Letter Number 1 of 2017. Based on research and discussion, the author concludes that if the judge does not use the Supreme Court Circular Letter Number 1 of 2017 as a consideration, it may result in defects in the imposition of narcotics abuse penalties, and the decision.</i></p>

INTRODUCTION

The narcotics problem has long been a very serious problem for the world, this is because narcotics is a transnational crime or what is usually called a transnational crime. and also organized crime . This crime is massive because this crime has a wide network and is spread across all parts of the world, including Indonesia. This crime is very dangerous for the sustainability of a nation or state because the targets of this crime often target the younger generation who are currently still searching for their identity and this crime is very well organized, so this crime is very difficult to eradicate. The definition of narcotics itself according to Law No. 35 of 2009 is "substances or drugs

derived from plants or non-plants that can reduce consciousness or eliminate pain and can also cause dependency effects for the user itself" (Harum & Syarifah 2023) . The narcotics problem in Indonesia itself has long been known and has become a serious problem that has received special attention, this can be seen from the issuance of "Presidential Instruction of the Republic of Indonesia (INPRES) Number 6 of 1971 to the Head of the National Intelligence Coordinating Agency (BAKIN) to address significant problems and also through Law Number 35 of 2009 concerning narcotics, which basically regulates the handling of narcotics abuse in Indonesia" (Daniella Constantine Tongkeles Atie Olii 2022) .

The crime of narcotics abuse itself in Indonesia is categorized as an extraordinary crime, which requires special handling in eradicating the crime, so it is regulated through "Law No. 35 of 2009 concerning Narcotics", the purpose of making this law is to regulate the availability of narcotics use for health purposes only, so that if it is not done for health purposes then it is classified as an act of narcotics abuse (Wijayanti Puspita Dewi 2019) .

Narcotics and Psychotropics themselves, when used for health purposes, of course with the prescribed dosage, actually have benefits, but on the other hand, if used in excessive doses, they can cause health problems for the user and are even dangerous for the wider community with various backgrounds and also especially for the younger generation who are very vulnerable to becoming victims or perpetrators of drug abuse (S et al. 2021) .

Drug abuse itself can be interpreted as someone who uses drugs not for health purposes, in other words, the use of drugs outside of a doctor's supervision and exceeding the prescribed dose and has the potential to cause peace in people's lives, such as increasing crime rates caused by the influence of these drugs. The spread of drug abuse itself is very worrying, it has spread not only in big cities but has also reached rural areas. (Amalia Yunia Rahmawati 2020) .

METHOD

The research method used in this study is normative research. The nature of this research is prescriptive. The research approach uses a descriptive approach. legislation (*statute approach*), *case approach* , *case approach conceptual* (*conceptual Approx. oa cb*). The technique for collecting book materials uses library research (Mahmud 2005) .

RESULTS AND DISCUSSION

Narcotics

The etymological meaning of narcotics comes from the Greek words *narke*, *narcoticos*, *nacosis*, which mean something that can relieve pain and can also have other effects such as dazedness, numbness, making you fall asleep or not feel anything. In the medical world, it is used to give anesthesia or anesthetic . In English, narcotics are said to be *narcose* or *narcosis*, which means to put to sleep or anesthetize. (Darus 2017) .

Narcotics are drugs or substances that have the effect of calming the nerves, reducing the feeling of pain or aches, giving a drowsy effect and can also stimulate the user. In the Indonesian Dictionary, it is stated that narcotics have the meaning of drugs that can calm the nerves, eliminate or reduce pain or aches and give a feeling of drowsiness. In the medical world itself, narcotics are drugs that can be pain relievers in the chest cavity or in the abdominal cavity, which cause a dazed effect for a long period of time, and also cause an addictive effect in its users. Edi Warsidi himself stated that narcotics are a substance that can be a pain reliever that starts from *the visceral* which can cause a dazed effect and unfocused but still conscious or not fainting (Muhammad 2022).

Narcotics legally, namely according to "Law Number 35 of 2009 concerning Narcotics in article 1 states that narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic which can cause decreased consciousness or changes in consciousness, loss of feeling, reduce to eliminate pain and can cause dependence for its users". Furthermore, in Article 5 it is emphasized that narcotics as in article 1 can be grouped into 3 groups, namely:

- 1 Class I narcotics are narcotics that can only be used for scientific research purposes, are not used for therapeutic purposes, and have the potential risk of causing dependency.
- 2 Class II narcotics are narcotics that have medical benefits and are often used as a last resort in treatment, and can be used for therapy and scientific research, but have the potential risk of causing dependency.
- 3 Class III narcotics are narcotics that have medical value and are often used in therapy and for scientific research, with a low risk of dependence.

Types of Narcotics

There are various types of narcotics that are widely distributed and traded illegally by the public. Narcotics can be grouped into three types based on their ingredients, namely natural, semi-synthetic and synthetic narcotics. The following are the types of narcotics, including:

- a. Marijuana
- b. Opium
- c. Morphine
- d. Cocaine
- e. Heroin
- f. Crystal meth
- g. Ecstasy
- h. Synthetic and artificial narcotics.

Drug Abuse

In Article 1 paragraph (15) of Law Number 35 of 2009 concerning Narcotics, there is no specific definition of narcotics abuse. This is because there is only the term "abuser" which refers to individuals who use narcotics without permission or in violation of the law. Narcotics abuse refers to the use of illegal drugs or other dangerous substances illegally or inappropriately, without medical supervision, with doses exceeding medical needs, and for reasons unrelated to medical treatment or scientific research. In fact, the actual function of narcotic drugs is to assist in the recovery process and as a carefully monitored therapeutic drug.

Factors of Drug Abuse

Factors that influence narcotics abuse include:

a Individual Factors

Most drug abuse begins in adolescence, this is because during adolescence, people experience biological, psychological and social growth. Factors originating from the individual include:

- 1) A strong sense of curiosity to try something without thinking about the consequences
- 2) The tendency to follow fashion because it is considered a symbol of modern life
- 3) The desire to have fun
- 4) The desire to be accepted into a particular social group
- 5) The religious basis is not strong
- 6) Run away from life's problems
- 7) Unable to cope with pressure from the environment or social groups to use narcotics
- 8) The misconception that trying once will not cause any problems

b Environmental Factors

1) Family environment

A less harmonious relationship between parents, especially between father and mother, as well as a lack of good communication between parents and children, coupled with a lack of support in religious life, as well as a lack of role models, are all factors that can influence someone to use narcotics and other addictive substances.

2) School environment

The location of the school which is close to entertainment venues, lack of discipline, and lack of opportunities for students to develop themselves creatively and positively are factors that cause... drug abuse.

3) Peer Environment

The need for someone to be accepted or recognized by their peers, as well as an inadequate economic situation, can encourage someone to abuse narcotics.

Supreme Court Circular Letter

The Supreme Court Circular, hereinafter referred to as SEMA, is a regulation issued by the Supreme Court in the form of a circular letter to all levels of the judiciary, which serves as a policy regulation. The Supreme Court Circular Letter's position in the legal hierarchy is below the 1945 Constitution of the Republic of Indonesia and above other laws and regulations, such as government regulations and regional regulations. (Nafiatul 2023) .

The SEMA has binding legal force on judges to carry out their duties and authorities, this is because the SEMA was issued by the Supreme Court as the country's highest judicial institution . The SEMA has stronger legal force if the SEMA is issued to fill a legal vacuum or provide an explanation of unclear laws and regulations. The nature of the SEMA itself is basically only as a guideline or policy regulation so that the SEMA cannot change or deviate from laws and regulations.

In practice itself, The SEMA is often used by judges as a reference or consideration in making decisions. However, judges have the authority to disregard the SEMA if they are deemed irrelevant to the circumstances or facts of the case at hand. Decisions made by judges based on the SEMA can serve as jurisprudence for the court when deciding similar cases (Nafiatul Munawaroh, 2023) .

1. SEMA No. 1 of 2017

The provisions of SEMA No. 1 of 2017, regarding the formulation of criminal chambers in part 2 which regulates narcotics crime cases letter (a) which in essence explains that if the defendant is caught red-handed not using narcotics and the evidence found is no more than 1 gram (SEMA Number 4 of 2010), then the defendant's actions can be classified as class 1 narcotics abuse for oneself but the classification of the defendant's criminal act still refers to the indictment.

Judge's Consideration

1. Legal Considerations

Juridical considerations are legal considerations that form the basis for a judge before deciding a case. The judge will examine the facts revealed during the trial, which include conclusions and statements from witnesses, the defendant's statement, and evidence . The facts presented in the trial include the location, time of the incident, the method of committing the crime, and the consequences of the act. In making a decision, the judge needs to understand the theoretical aspects, doctrine, legal precedent, and the context of the case. After all factors are considered, the judge will consider factors that can reduce or increase the penalty.

2. Sociological Considerations

Sociological considerations in criminal sentencing refer to social values that emphasize the benefit to society as a whole. Judges consider whether an individual deserves punishment based on their personal beliefs, not just the available evidence.

Judges' decisions are tailored to prevailing societal norms and beliefs, therefore, knowledge of sociology and psychology is essential for a judge.

The factors that a judge must consider sociologically when imposing a sentence are:

1. Paying attention to the unwritten legal basis and norms that exist in society
2. Pay attention to the good and bad traits of the accused
3. Motivation and purpose of committing a crime
4. Internal or inner attitude in committing a crime
5. Public perception of crimes involving victims or families

Are the judge's considerations in deciding the class 1 narcotics case in decision Number 28/Pid.Sus/2023/ PN.Lbj in accordance with SEMA Number 1 of 2017?

A Judges , in carrying out their judicial duties, are expected to serve as mechanical implementers of the law; that is, regulating not only articles as the main source of law, but also having the ability to create new laws through their decisions and considerations. This is in accordance with Law No. 48 of 2009 on Judicial Power. Judges must consider legal, philosophical, and sociological truth when deciding a case, which means they must ensure that the legal basis used is in accordance with applicable regulations.

In the decision of the Labuan Bajo District Court Panel with number 28/Pid.sus/2023/PN Labuan Bajo, it is incomplete. This is because the judge ignored the Circular Letter of the Supreme Court Number 1 of 2017, which states that "If the public prosecutor does not charge Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, but the facts revealed in the trial show that the defendant is proven to be a class 1 narcotics abuser for himself." In accordance with Article 182 paragraph (3) and (4) of the Criminal Code, deliberation must also be based on an indictment in addition to the judge who examines and tries the case must decide based on proven legal facts. "In addition, if the defendant is not arrested due to the use of evidence and drugs in small quantities, and if the results of the urine test show a high level of Methamphetamine in the defendant's urine. The public prosecutor does not apply charges based on Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The defendant is still considered to have committed drug abuse, even though the qualification of the defendant's criminal act depends on the indictment.

In the decision, the court must consider the Supreme Court Circular Letter Number 1 of 2017 because during the trial it was revealed that defendant I, Sarjan alias Jek, and defendant II, Abdul Buce Jalani alias Buce, were supposed to use class 1 narcotics in the form of crystal methamphetamine for their own personal interests. In

addition, the public prosecutor did not use Article 127 of Law Number 35 of 2009 concerning Narcotics in the indictment, and the evidence found was only 0.15 grams, which is far below the stipulated limit. Therefore, both defendants must be classified as class 1 narcotics abuse for personal use. However, the qualification of the crime still depends on the indictment. According to the author, the decision made by the Labuan Bajo District Court did not consider this issue thoroughly and was not in accordance with the applicable regulations in handling cases of narcotics abuse.

What are the legal consequences if the judge does not consider Supreme Court circular letter number 1 of 2017?

There will be legal consequences if the judge ignores the Supreme Court Circular Letter Number 1 of 2017 when deciding the case of narcotics abuse in the Labuan Bajo District Court Decision with number 28 / Pid.sus / 2023 / PN Lbj can be considered a legally flawed decision, because the judge in the decision did not consider the Supreme Court Circular Letter Number 1 of 2017 in which the Supreme Court Circular Letter contains provisions stating that if the defendant is not caught red-handed using and relatively little evidence is found then the defendant's actions are classified as class 1 narcotics abuse for himself but the qualification of the crime still refers to the indictment. In addition, other legal consequences resulting from this decision are the emergence of injustice and have an impact on the lack of public trust in the judicial system, because the public expects court decisions that are consistent with applicable legal regulations.

CONCLUSION

Based on the discussion presented by the author in the discussion , the author draws conclusions from the discussion, namely:

- The judge's considerations when sentencing the perpetrators of class 1 narcotics abuse for themselves, whose actions were carried out by defendant I, Sarjan, also known as Jek, and defendant II, Abdul Jalani, also known as Buce, were not in line with the provisions contained in the Supreme Court Circular Letter Number 1 of 2017. This was because the judge did not use the Supreme Court Circular Letter which should have been taken into consideration in sentencing the two defendants. However, the judge's considerations in decision number 28/Pid.sus/2023/PN Lbj were not in line with the Supreme Court Circular Letter Number 1 of 2017 and did not take this matter into account.
- Based on the research and discussion, the author concludes that the legal consequences that arise if the judge in his decision does not pay attention to the Supreme Court Circular Letter Number 1 of 2017 as a consideration is that the decision can be said to be a legally flawed decision, because the judge in his decision did not consider the Supreme Court Circular Letter Number 1 of 2017

in handing down a sentence to a perpetrator of class 1 narcotics abuse for himself.

- This decision can lead to injustice and have an impact on the lack of public trust in the judicial system, because the public expects court decisions to be consistent with applicable legal regulations.

Suggestion

The 1945 Constitution of the Republic of Indonesia, as well as other government and regional regulations, the Supreme Court Circular Letter is one of the legal products issued by the Supreme Court to the lower courts where this SEMA functions as a policy regulation in carrying out its duties so that judges in carrying out their duties must consider the Supreme Court Circular Letter Number 1 of 2017 when deciding on criminal cases of narcotics abuse for themselves when carrying out their duties and authorities .

Judges in handing down sentences against defendants of class 1 narcotics abuse for themselves must consider the applicable laws and regulations such as the Supreme Court Circular Letter Number 1 of 2017. This aims to avoid legally flawed decisions, because the judge in his decision did not consider the Supreme Court Circular Letter Number 1 of 2017 in handing down sentences against perpetrators of class 1 narcotics abuse for themselves. And also to avoid injustice that can result in the loss of public trust in the judiciary in Indonesia, the judge must also pay attention to and consider the Supreme Court Circular Letter.

REFERENCES

Amalia Yunia Rahmawati. 2020. "Legal Analysis of Criminal Responsibility for Self-Abuse of Class I Narcotics (Case Study of Decision: No.147/Pid.Sus/2011/Pn.Maros)." (July):1–23.

Daniella Constantine Tongkeles Atie Olii, Roy Ronny Lembong. 2022. "Coordination of the National Narcotics Agency (BNN) with Correctional Institutions in Enforcing Narcotics Distribution1." Xi(1):207–16.

Darus. 2017. *Recognizing and Being Aware of Drugs*. Bekasi: Terang Mulia Abadi.

Harum, Vanessa Mathilde, and Nurul Syarifah. 2023. "The Indonesian Government's Efforts to Handle Narcotics Crimes as Transnational Crimes." *Face of Law* 7(2):331. Doi: 10.33087/Wjh.V7i2.1245.

Mahmud, Marzuki Peter. 2005. *Legal Research* . Revised Edition. Surabaya: Kencana.

Muhamad, Hatta. 2022. *Law Enforcement of Drug Abuse in Indonesia* . Jakarta: Kencana.

Nafiatul, Munarwoh. 2023. "Legal Power of Ma Legal Products: Perma Sema, Fatwa, and Sk Kma." Retrieved (Https://Www.Hukumonline.Com/Klinik/A/Kekuatan-Hukum-Produk-

Hukum-Ma--Perma-Sema--Fatwa--Dan-Sk-Kma-Cl6102).

S, Susilo Susanto, Yudhy Johan, Ervianjaya, Manahan Uji Simanjuntak, Go Heeng, Agiana Her, And Visnhu Ditakristi. 2021. "Socialization Of The Dangers Of Drugs For Young People." *Realcoster: Real Community Service Center Journal* 4(1):34–42.

Wijayanti Puspita Dewi. 2019. "Imposition of Prison Sentences for Narcotics Crimes by Judges Below the Minimum Provisions Reviewed from Law Number 35 of 2009 Concerning Narcotics." *Magnum Opus Law Journal* 2(1):55–73.