

## **Basis for Judges' Considerations in Issue-Making Rehabilitation Decisions for Drug Addicts**

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**Abstract.** *The purpose of this study is to determine the basis for judges' considerations in giving decisions to drug addicts and to determine and analyze the factors that hinder criminal decisions by judges for drug addicts in Batam City. This type of research is normative legal research with a statutory approach with descriptive-prescriptive characteristics that are sourced from secondary data, including: primary legal materials and secondary legal materials. This secondary data includes primary legal materials, secondary legal materials and tertiary materials obtained by means of literature study, then analyzed by legal analysis. Legal provisions regarding sanctions for drug addicts in Law Number 35 of 2009 concerning Narcotics consist of 2 (two) types of sanctions, namely criminal sanctions and action sanctions. Criminal sanctions for drug addicts consist of the death penalty, imprisonment, and fines as stated in the provisions of Article 16, Article 121, and Article 127. Meanwhile, action sanctions are in the form of an obligation to undergo rehabilitation, both medical rehabilitation and social rehabilitation. The provisions regarding rehabilitation for drug addicts are stated in the provisions of Article 54 and Article 103. In addition, the results of this study also explain that the judge's considerations in imposing a criminal sentence on drug addicts in the District Court Decision No. 363/Pid.Sus/2023/PN Btm are based on the provisions of Article 54 and Article 103 of Law Number 35 of 2009 and the Circular of the Supreme Court Number 07 of 2009. The judge's decision in the District Court Decision No. 363/Pid.Sus/2023/PN Btm, in addition to aiming to trap the defendant (drug addict) with criminal sanctions, also aims to cure the defendant (drug addict) from dependence with sanctions in the form of rehabilitation.*

**Keywords:** *Consideration; Narcotics; Rehabilitation.*

### **1. Introduction**

Narcotics are something made from plants or not, whether synthetic or non-synthetic, which can cause impaired consciousness and addiction.<sup>1</sup> Initially, narcotics were used as a tool for religious rituals and were also used in the medical world, used in the process of anesthesia before a patient was operated on, but as time went by, narcotics were misused by irresponsible parties.<sup>2</sup> During this period, the circulation or distribution of narcotics seems to

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<sup>1</sup>Sarlito W Sarwono, Introduction to General Psychology, Jakarta: RajaGrafindo, 2017, p. 268.

<sup>2</sup> Siswanto Sunarso, Law Enforcement of Psychotropic Drugs in the Study of Legal Sociology, Jakarta: Raja Grafindo Persada, 2005, p. 6

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have become easier to reach remote areas throughout Indonesia, even though historically these illegal goods are still foreign to the people in these areas.

The current condition is a serious problem for the country. The problem of drug addiction in Indonesia is also very concerning. This is caused by the fact that Indonesia is located on 2 continents and considering the development of science and technology, the impact of globalization and advanced vehicles, and materialistic changes with the dynamism of the country. Opinions that can be disseminated illegally. If not acted upon immediately, it will have a bad effect on the life of the nation and the state in the future. According to Article 1(15) of the Narcotics Law No. 35 of 2009, an abuser is someone who uses narcotics uselessly, or against the law. So the definition of an act is against the law or against the law. Drug abuse is the crime of illegal or unlawful use of narcotics which results in the user becoming dependent on narcotics<sup>3</sup>.

Drug addicts can be called as perpetrators of drug crimes and also as victims of drug addicts because the individual uses drugs for certain reasons such as a sense of desperation that makes the perpetrator want to feel calm from consuming narcotics, on the other hand, drug addicts also experience physical and psychological suffering related to substance abuse. In cases of drug abuse, both imprisonment and re-education, the decision is entirely in the hands of the judge. This is based on the provisions of the Narcotics Law allowing judges to impose prison sentences as regulated in Article 127 of Law Number 35 of 2009 or rehabilitation measures for those who become addicts and abusers of narcotics as stated in Article 54 and Article 103 of Law Number 35 of 2009 Concerning Narcotics.<sup>4</sup>

The case of Nornatasya Binti Ruhazat and Azhari David Yolanda was charged with imprisonment for 6 (six) months because it was proven to use narcotics in the form of crystal methamphetamine weighing less than 1 gram, while according to the Circular of the Supreme Court Number 04 of 2010, users of narcotics with the Methamphetamine (Shabu) group weighing 1 gram must be rehabilitated in a medical rehabilitation and social rehabilitation institution. Based on the case of Nornatasya Binti Ruhazat and Azhari David Yolanda, they are required to undergo rehabilitation because they only used crystal methamphetamine less than 1 gram according to the Supreme Court Regulation Number 04 of 2010.

Then in deciding a case of narcotics abuse, the judge must consider Article 103 of Law No. 35 of 2009 which states "The judge examining the case of a narcotics addict can decide to order the person concerned to undergo treatment and/or care through rehabilitation if the addict is guilty of committing a narcotics crime or determine to order the person concerned to undergo treatment and/or care through rehabilitation if the narcotics addict is not proven guilty of committing a crime."

Based on the background above, the aim of this study is to determine the basis for judges' considerations in issuing criminal sentences for drug addicts.

## **2. Research methods**

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<sup>3</sup>Sutarmo Setiadji, 2006, *Beware! Don't Try to Become a User of Dangerous Drugs!*, Jakarta: UI-Perss, p. 2

<sup>4</sup>Agustiningsih, H., & Wahyuningsih, SE (2018). Decision of Linked with Narcotics Convicted in Act No. 35 Of 2009 in The District of Sumber Court. *Journal of Legal Sovereignty*, 1(3), 597-604.

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The approach method used in this study is the empirical legal approach method. Based on Soetandyo Wignjosebroto's view, empirical legal research is research in the form of empirical studies to find theories about the process of law working in society.<sup>5</sup>

The specifications in this research are descriptive analysis in nature, namely providing detailed, systematic and comprehensive explanations by grouping, connecting, comparing and giving meaning to the objects that are the problem.

The data used for this study are primary and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. Then secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials.

According to Ahmad Tanzeh in his book *Practical Research Methodology*, data collection is a systematic and standard procedure for obtaining the necessary data.<sup>6</sup> Data collection is an important step used to produce data in research, therefore in collecting it is necessary to pay attention to the validity of the data.

To obtain data in this study, the following data collection methods were used:

a. Field Observation

The general objective of conducting field observations is to observe directly in the open air to find the truth about something that is to be matched with human reason so that it can be accounted for and make the truth a fact and true.

b. Literature Study or Document Study

The main data collection method used in literature studies is secondary data obtained from bibliographic books, laws, and the opinions of legal experts.

The data that has been obtained is then analyzed with qualitative analysis, according to Prof. Dr. Sugiyono Qualitative research methods are called new methods, because their popularity has not been long, called postpositivistic methods because they are based on the philosophy of postpositivity. This method is also called an artistic method, because the research process is more artistic (less patterned), and is called an interpretive method because the research data is more concerned with the interpretation of data determined in the field or can be said to be data analysis without using numbers, but data obtained through research. Qualitative data analysis is carried out by examining all available data from various sources, namely from interviews, observations that have been written in field notes, personal documents, official documents, testing data with concepts, theories of related laws and answers obtained from respondents, where with this method it is expected to obtain clear data regarding the main problem.

### 3. Results and Discussion

In the ongoing judicial process or litigation in court, all parties to the case and being tried will demand justice and truth, to achieve the truth must be based on all theories or correct

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<sup>5</sup>Soetandyo Wignjosebroto, *Law, Paradigm, Method and the Dynamics of the Problem*, Jakarta: Huma, 2002, p. 147. See also Joko Purwono, *Research Methods Law*, Department of Education and Culture RI, UNS, Surakarta, 1993, p. 17-18.

<sup>6</sup>Ahmad Tanzeh, 2011, *Practical Research Methodology*, Yogyakarta, Teras, p. 83.

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mindsets. In this case, those in litigation demand or ask for justice and truth from a judge or panel of judges through litigation in court.

Judges are a form of a person's independence to achieve legal justice for a person or group, because a judge must be able to be independent and stand alone in his position, the position is in the form of a judge's decision or court decision. Because if the judge gets pressure from outside the court or the person in the case tries to direct a judge's decision to benefit one party, this is considered to be the absence of justice in the judge's decision and the decision is considered to be only intended to win the other party in the case.<sup>7</sup>

The independence of a judge in trying, examining cases and issuing decisions is very important in order to be able to make a fair decision and be in accordance with the judge's beliefs regarding his/her decision and the decision also has responsibility and can be accounted for.

Before deciding a case, the judge will first consider his decision on legal and non-legal considerations which are proof of the elements of a crime in accordance with the crime charged. These legal and non-legal considerations will be the judge's guideline by looking at the facts that occurred during the trial process with various evidence in the form of sanctions statements, expert statements, letters, instructions, defendant statements and also considerations made by the chief judge with member judges of the panel in the form of deliberation.<sup>8</sup>

Consideration is very important in a trial, especially for judges, through consideration it can give rise to a new law or legal discovery, consideration can also be used as a guideline for making a court decision, consideration is carried out based on laws and regulations or the scope of laws and regulations that are currently being used in a particular trial process, such as narcotics crime cases that are still undergoing the trial process, judges are not given the freedom to try cases that are outside the applicable laws for narcotics cases.

Considering the verdict that will be handed down by the judge, the judge will compile a series of laws based on legal theories, facts in the trial and interpret the law deductively and inductively with the aim of gaining confidence in whether or not a criminal act has been proven by the defendant and if in his considerations all elements of the charges submitted by the prosecutor are proven or fulfilled, then it can be concluded that the judge has made a decision that all acts committed by the defendant have been proven legally and convincingly and the defendant will be charged with a sentence that is commensurate with his actions.

Criminal acts involving narcotics have been regulated in Law Number 35 of 2009 concerning Narcotics, which are regulated in Articles 111 to 148 concerning acts without rights and against the law. There are many types of criminal acts regulated in this law, some examples of which are distributors, sellers, producers, carriers, controllers and many more. Law Number 35 of 2009 concerning Narcotics was created to aim to be able to suppress the amount of narcotics circulation in Indonesia and also avoid the many perpetrators of drug abuse, crimes in the form of narcotics have become a national threat, even the international world considers that narcotics are a serious problem and must be right in overcoming the

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<sup>7</sup>Anugrah, BD, & Witasari, A. (2021). Legal policy for management of criminal action of narcotics in low education. *Law Development Journal*, 2(4), 456-464.

<sup>8</sup>Diyono, D., & Purnawan, A. (2020). Judges Existencing In The Judicial Process Of Narcotics Criminal Actors. *Law Development Journal*, 2(3), 323-330.

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increasing number of victims, the fatal impact of illegal drug trafficking is attacking the younger generation as the successors of the nation, if only the successors of the nation are generations who become drug abusers and addicts, then it will have a bad impact on the development of a nation because its human resources have been damaged by drug addiction. Another thing that is feared is the existence of infectious diseases caused by the use of narcotics by injecting fluids into the body and replacing needles alternately so that it will be easy to transfer dangerous viruses.

In the author's opinion, illicit drug trafficking is very dangerous because it can easily occur in any form of drug buying and selling transactions and can cause drug abusers and drug addicts, drug abusers are those who are considered as crimes without victims or victimless crime can be interpreted that the perpetrators will only harm themselves with their actions that have used narcotics to their bodies, however, the perpetrators never feel a loss and instead assume they get peace after using narcotics, the substances contained in these narcotics are what can cause addiction and continue to use them, this is what is the real threat of narcotics because it damages the internal body slowly to its users.

Article 103 of Law No. 35 of 2009 concerning Narcotics means that judges can order addicts who are proven or not proven guilty of committing narcotics crimes to undergo treatment and/or care through medical rehabilitation and social rehabilitation. In the provisions of Article 103, judges are given the authority to take appropriate action against their decisions on drug addicts, however, this does not mean that judges ignore any facts that occur in court.

In the eradication of illicit drug trafficking, it is not only the role of the government that is the activist in eradicating it, the role of factors from the family environment also has a very influential role in preventing drug crimes from occurring in family members. The government in Law Number 35 of 2009 concerning Narcotics gives orders to parents/guardians as stated in the provisions of Article 55 Paragraph (1) and Paragraph (2) of Law Number 35 of 2009 concerning Narcotics:

- 1) Parents or guardians of underage drug addicts are required to report to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or care through medical rehabilitation and social rehabilitation.
- 2) Drug addicts who are old enough are required to report themselves or be reported by their families to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or care through medical rehabilitation and social rehabilitation. The two verses mentioned above expect and have the participation of families to help the government in overcoming the spread of narcotics specifically for drug addicts, this can also be done as soon as possible by the family to take the right steps to apply for medical rehabilitation and social rehabilitation before the perpetrator is caught red-handed by the authorities and must follow the trial process.

According to the results of interviews with two (2) judges at the Batam City District Court, another thing that must be taken into account before issuing a rehabilitation decision is that the defendant is not involved in a narcotics trafficking syndicate and is not someone who has previously served a court decision for the same crime or, more precisely, is a recidivist.

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The government also issued SEMA Number 7 of 2009 concerning the placement of drug users in therapy and rehabilitation institutions, as well as the issuance of SEMA Number 4 of 2010 concerning the placement of drug abuse victims and drug addicts in medical and social rehabilitation institutions, with the issuance of both SEMAs the government hopes and is more convincing for judges to be able to issue court decisions in the form of medical rehabilitation and social rehabilitation for drug addicts and abusers by undergoing care and treatment during the rehabilitation program period with the aim of being able to recover and return to a better social life.

In the provisions of several Articles mentioned above, the role of the judge is very important in the sentencing of perpetrators of narcotics abuse. Because the judge's decision must be fair and have an influence on the defendant, the influence is in the form of a deterrent effect to no longer repeat the same mistake.

According to the author, several factors that can be used as guidelines for judges to impose sanctions in the form of actions against drug addicts and abusers are very relevant so that judges and the court process do not require more time and costs during the trial process. It is hoped that judges will immediately impose a rehabilitation decision because they consider them to have become victims of their own actions and the illicit trafficking of narcotics so that the defendants before or after the trial in court can undergo treatment and medication as soon as possible.

Drug abuse is one of the crimes that often occurs in Indonesia. There are many factors that cause it, including hanging out in an environment that has a negative influence, where many people use narcotics, being influenced or invited by people close to them, such as friends who invite them to use narcotics, experiencing stress or experiencing very heavy life pressures and being able to easily use narcotics.

The circulation of narcotics must be monitored very strictly because the largest contributor of narcotics users is young people, this is considered very worrying because the young generation will be the successors of the nation, if the next generation of the nation has used a lot of narcotics, of course it will have a very bad impact on the future.

The following data from drug abuse cases carried out by members of the community, whether carried out individually or collectively, the data presented can tell how many drug users were sentenced to rehabilitation and imprisonment at the Batam District Court.

**Table 1**

**Data on Drug Abuse Cases Sentenced to Rehabilitation and Prison Sentences by Judges at the Batam District Court**

No.	Year	Medical Rehabilitation and Social Rehabilitation	Prison	Amount
1.	2022	12	75	87
2.	2023	59	151	210
	<b>Total</b>	71	226	297

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Source: Batam District Court

Based on data obtained from the official website of the Batam District Court, it has been shown that in 2023 there have been many cases of drug abuse totaling 210 cases in the Batam District Court, a very large number where drug abusers are sentenced to prison terms with different prison terms for each case, while rehabilitation charges are not even half of the prison terms.

The vast difference is certainly a separate consideration for a judge who becomes the chief judge or member in deciding the imposition of medical rehabilitation / social rehabilitation and imprisonment. The author takes a random case example to be used as material for analysis regarding the judge's decision in the form of medical rehabilitation and social rehabilitation, the author conducts an analysis of what things are considered by the judge in making a decision on medical rehabilitation and social rehabilitation, by analyzing the judge's considerations contained in the decision.

There are several factors that cause the crime of drug abuse by the general public, these factors usually occur from individual factors themselves, such as being easily influenced by the invitation of friends around them who have previously used narcotics and being persuaded by the seduction of these friends to just try it or even in many cases they become addicted or addicted to the narcotics, another factor is the ease of obtaining narcotics by illegal drug dealers, the drug business is a business with very large income and is profitable for dealers but is very detrimental to those who use and are addicted to the drugs, another factor is the lack of understanding of religion, religion itself prohibits its followers from doing things that can be detrimental to themselves or others, especially the family.

Based on an interview with David P. Sitorus, SH, MH, he is a judge at the Batam District Court who stated that perpetrators of narcotics abuse crimes in the imposition of criminal sentences refer to the provisions of Article 127 Paragraph (3) and also the Circular of the Supreme Court Number 4 of 2010 concerning the Placement of Abusers, Victims of Abuse and Addicts of Narcotics in Medical and Social Rehabilitation Institutions.

In the verdict handed down by the judge to Nornatasya Binti Ruhazat and Azhari David Yolanda, SH, MH Bin Jefri, it was very appropriate to impose a prison sentence of 6 (six) months each and social rehabilitation at the BNN Batam Rehabilitation Center.

#### **4. Conclusion**

Based on the description that has been explained in the formulation of the problem, several conclusions can be drawn as follows, the legal provisions regarding sanctions for drug addicts in Law Number 35 of 2009 concerning Narcotics consist of 2 (two) types of sanctions, namely criminal sanctions and action sanctions. Criminal sanctions for drug addicts consist of the death penalty, imprisonment, and fines as stated in the provisions of Article 16, Article 121, and Article 127. Meanwhile, action sanctions are in the form of an obligation to undergo rehabilitation, both medical rehabilitation and social rehabilitation. Provisions regarding rehabilitation for drug addicts are stated in the provisions of Article 54 and Article 103.

In addition, from this study it can be seen that the judge's considerations in imposing a criminal sentence on drug addicts in the District Court Decision No. 363/Pid.Sus/2023/PN Btm are based on the provisions of Article 54 and Article 103 of Law Number 35 of 2009 and the

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Circular of the Supreme Court Number 07 of 2009. The judge's decision in the District Court Decision No. 363/Pid.Sus/2023/PN Btm, in addition to aiming to ensnare the defendant (drug addict) with criminal sanctions, also aims to cure the defendant (drug addict) from dependence with sanctions in the form of rehabilitation.

The suggestions that can be given from this study are as follows: 1) for law enforcement officers, especially judges, in making a decision on drug abuse, they should prioritize the granting of rehabilitation rights compared to prison sentences, because the obligation to rehabilitate is more needed for drug addicts; 2) judges should dig deeper with the help of Community Research (LitMas) by community counselors, why drug abuse uses drugs. It would be wiser if judges emphasized mitigating factors as formulated in the decision, as a basis for judges to give reactions that are not criminal sanctions but in the form of sanctions or rehabilitation rights.

## 5. References

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