

Criminalization of Narcotics Abuse Based on Restorative Justice (Decision Study Number: 477/Pid.Sus/2023/PN Smg)

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Abstract. *The issue of narcotics is a classic problem but is still a major obstacle in law enforcement and national development. Criminal acts are no longer carried out in secret but have been very openly carried out by users and dealers in carrying out operations of these dangerous goods. The facts that can be witnessed, almost every day both through print and electronic media, it turns out that these illicit goods have spread everywhere without discrimination, especially among the younger generation who are highly expected to become the next generation of the nation in the future. Narcotics and psychotropic drugs, throughout their history, have been known in civilization, which were originally useful for health. In line with its rapid development, it turns out, not only as medicine, but also as a pleasure, and ultimately paralyzes human productivity, which has the potential to reduce the degree of humanity. Therefore, the illegal circulation of all types of narcotics and psychotropic drugs has finally become the concern of all civilized humanity, even becoming a new nomenclature in crime, namely narcotics crimes.*

Keywords: *Criminal; Distribution; Drugs; Restorative.*

1. Introduction

The Unitary State of the Republic of Indonesia is a state of law. This is as regulated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that: "The State of Indonesia is a State of Law". The consequence of a state of law, then in the implementation of government and life in society, nation and state must be in accordance with the applicable legal rules or legislation. In the view of Prof. Dr. Van Kan, law is the whole of living regulations, has a coercive nature in order to protect the interests of individuals in society. Law is a set of rules that are coercive, but not to force a will on someone, but to protect the interests of individuals in society.¹

¹R. Soeroso, 2014, Introduction to Legal Science, Sinar Grafika, Jakarta, p. 27

The circulation of narcotics in Indonesia is very contrary to the goals of Indonesian development to realize a complete Indonesian human being and a just, prosperous, and orderly and peaceful Indonesian society. To realize a prosperous Indonesian human being, it is necessary to continuously improve efforts in the field of treatment and health services including the availability of narcotics as medicine, in addition to developing science.

The current era of globalization, both information and communication globalization, is a common phenomenon for modern humans. Information globalization has created new tensions, due to the increasing access of society to information.²The result of easy access to information is the emergence of a relationship between countries in the world easily, as well as easy means of transportation that facilitate relations between countries in the world, both Indonesia and other countries, so that anything that comes from abroad can enter Indonesia, including narcotics, even though supervision from the Indonesian State is already strict against anticipating the entry of these illicit goods into Indonesia, narcotics are still rampant in Indonesia.

Nowadays, narcotics have become a very serious and dangerous problem. On the one hand, the availability of narcotics is very necessary for medical purposes, but on the other hand, narcotics are now freely distributed without permission and are often misused by irresponsible people. The term narcotics is commonly mentioned in everyday life. This term is so attached and even familiar to the ears because of the rampant and frequent news of drug abuse. Starting from teenagers, students, officials, and police officers. Narcotics is an abbreviation of narcotics and drugs or hazardous materials. However, the flow of information on the abbreviation of narcotics from "dangerous" drugs is considered inappropriate, because in medical science, dangerous drugs are drugs that should not be sold freely, because their administration can be dangerous if not through medical considerations.³

The current illicit drug trafficking has reached an alarming point. The illicit drug trafficking targets the young generation who are psychologically unstable and therefore easily influenced to use drugs. The young generation is very vulnerable to being a strategic target for the drug trafficking mafia.⁴Teenagers are a group that is vulnerable to drug abuse because of their tendency to want to try, driven by curiosity.

However, as time goes by, narcotics are actually misused for things outside of treatment, even though the impact of using narcotics is very dangerous. Narcotics

²Muhyar Fanani, 2008, *Grounding Heavenly Law*, Yogyakarta, Tiara Wacana, p. 60.

³Aulia Fadhli, 2018, *NAPZA: The Threat of Dangerous Regulations and Solutions to Overcome Them*, Yogyakarta, Gava Media, p. 1.

⁴Herlina Martono and Satya Joewana, 2008, *Learning to Live Responsibly, Countering Narcotics and Violence*, Balai Pustaka, Jakarta, p. 26.

abuse is the use of narcotics that is not for medical purposes, but in order to enjoy its effects, in excessive amounts, more or less regularly, lasting long enough to cause physical health problems, mental health problems and social life.⁵ Even excessive use of narcotics (overdose) can cause death.

Drug abuse is one of the greatest dangers that threatens the young generation not only in Indonesia but also throughout the world. At this time the government is aggressively fighting drug abuse. In order for the expected law enforcement to be achieved and the eradication of drug trafficking crimes to be realized, one of which is the firmness in imposing criminal penalties on the perpetrators of the crime is very necessary. Drug abuse is a national and international problem. Drug abuse among the community is no longer a secret, because it has reached an increasingly disturbing proportion. Various international conventions have been formed and held to overcome the drug problem which has become a global problem. In 1961, the Single Convention on Narcotic Drugs was formed, which was then amended in 1971 to become the Protocol Amending the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances, and finally in 1988 the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was formed (UN Convention on the Eradication of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988).⁶

Indonesia enacted Law Number 8 of 1976 which was the ratification of the results of the 1961 Single Convention on Narcotics and its protocol of amendments. Based on Law Number 8 of 1976, Indonesia ratified Law Number 9 of 1976 concerning Narcotics. In its development, this law was updated with Law Number 22 of 1997 concerning Narcotics. This law regulates the prohibition of narcotics abuse for oneself as stated in Article 85 of Law Number 22 of 1997 as follows "anyone who without rights and against the law: a) uses narcotics class I for oneself shall be punished with imprisonment for a maximum of 4 (four) years, b) uses narcotics class II for oneself, shall be punished with imprisonment for a maximum of 2 (two) years, c) uses narcotics class III for oneself, shall be punished with imprisonment for a maximum of 1 (one) year". If we look closely, the criminal punishment system in this law only uses a single criminal punishment system, which means that the only punishment that can be imposed on perpetrators of narcotics abuse is imprisonment.

In its development, many perpetrators of drug abuse are not dealers or involved in drug trafficking syndicates, often their motivation to use drugs is only driven by curiosity, following in the footsteps of their friends, trying to find self-existence in society in the wrong way. People, especially the younger generation, who use drugs only to try them out and then become dependent must of course also be

⁵<https://media.neliti.com/media/publications/169828-10-politik-factor%20-engebab-penyalahgunaan-na.pdf> accessed on Wednesday, June 19, 2024 at 11.18 WIB.

⁶Anang Iskandar, 2013, Decriminalization of Drug Abusers in Positive Legal Construction in Indonesia, National Narcotics Agency, Jakarta, p. 65.

considered victims of drug trafficking. Starting from trying them out, even though the use of drugs is intended to cause pleasure for the user, so that psychological dependence occurs⁸. Even dependence on drugs is also one of the causes of unlawful behavior. Of course, conditions like this must also be treated differently from people who deliberately profit from drug trafficking.⁷

Law Number 35 of 2009 has accommodated protection for drug abusers including drug addicts and victims of drug abuse in the form of opening up the implementation of medical and social rehabilitation measures, this certainly changes the paradigm of the purpose of criminal punishment for drug abusers. Criminalization does not only start from the idea of retribution for perpetrators of crimes or prevention in order to protect society but has expanded to an integrated criminal system that unites various law enforcement joints in implementing the system in accordance with what is aspired to. The responsibility of the criminal system must begin since prevention is carried out since the crime was committed, the creation of crimes by perpetrators of crimes, and other stages until the reintegration of perpetrators of crimes as whole human beings in society and the strength of law enforcement in it.

An example of a case related to the crime of drug abuse in the Semarang District Court is decision number 477/Pid.Sus/2023/PN Smg. That the defendant with the initials HKP Bin (late) RIDWAN was charged by the public prosecutor with being proven legally and convincingly guilty of committing a criminal act of conspiracy to commit a crime without rights or against the law to attempt or conspiracy to possess, store, control, or provide narcotics class I in the form of plants as regulated and threatened with criminal penalties in Article 111 of Law Number 35 of 2009 concerning Narcotics. Then sentenced to imprisonment for 6 (six) years and 8 (eight) months minus the time the Defendant was in detention with the order that the Defendant remain detained and a fine of Rp. 1,000,000,000, - (one billion rupiah) subsidiary 6 (six) months in prison. The panel of judges in its decision stated that the Defendant HKP Bin (Alm) RIDWAN was proven legally and convincingly guilty of committing a crime without rights or against the law to commit a conspiracy to possess, store, control, or provide Class I Narcotics in the form of plants as in the indictment of the Public Prosecutor's Subsidiary. Then by imposing a prison sentence of 4 (four) years and 3 (three) months and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 1 (one) month.

The imposition of criminal penalties on drug abusers is certainly expected not only to provide a deterrent effect for the perpetrators but also as a means of overcoming crime. This humanistic value-oriented approach requires attention to the principle of individualization of punishment in the use of criminal sanctions as

⁷ Dafit Supriyanto Daris Warsito, *The Criminal System for Narcotics Abuse Criminals*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018, p. 33.

a means of overcoming crime.⁸In addition, in criminalization, there is not always an appropriate retaliation as a legal consequence for the actions committed. Recovery for the perpetrator must also be considered so that he is aware so that he can improve himself so that he does not repeat his actions again. Because this narcotic makes its abusers dependent, this recovery is more important than imprisonment.

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as mere sources. Normative legal research is a legal research that places law as a normative system. The normative system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings).⁹ The research specification used is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations and relevant theories which are then collected through data that is collected, processed, and arranged according to existing theories to obtain problem solving in accordance with applicable provisions.¹⁰

3. Results and Discussion

3.1. Criminalization of Narcotics Abuse Criminal Acts Based on Restorative Justice (Study of Decision No. Number: 477/Pid.Sus/2023/PN Smg)

Narcotics are substances or drugs that are very useful and needed for the treatment of certain diseases. However, if misused or used not in accordance with treatment standards, it can have very detrimental effects on individuals or society. This will be more detrimental if accompanied by the abuse and illicit trafficking of narcotics which can result in greater danger to the lives and cultural values of the nation which will ultimately weaken national resilience.¹¹

Drug abuse is a crucial problem for a nation. The problems that arise have a very massive impact on all aspects of human life. Health problems are not the only concern for us regarding the dangers caused by drug abuse, but also the social impact of drug abuse is one aspect that cannot be underestimated, drug abuse is still quite high in Indonesia. To suppress the increasing prevalence of drug abuse,

⁸Sri Endah Wahyuningsih, 2013, *Principles of Criminal Individualization in Islamic Criminal Law and Reform of Indonesian Criminal Law*, Diponegoro University Publishing Agency, Semarang, p. 82.

⁹*Ibid*, pp. 12-13

¹⁰Sri Sumawarni, *A Series of Legal Research Methods*, UPT UNDIP Press, Semarang, 2012, p. 6

¹¹Choirul Nur Akrom, et al., *Legal Analysis of the Implementation of Criminal Sanctions for Narcotics Abuse by Judges Reviewed from Sema Number 4 of 2010 in Palembang City*, *Lex Stricta Journal of Legal Science*, Volume 2 Number 3 April 2024, p. 150.

the Regional Government has taken various methods including deterrence through the legal process.

Criminalization of criminals cannot be separated from the criminal system adopted by the legal system in Indonesia. An important part of the criminal system is to determine a sanction. Its existence will provide direction and consideration regarding what should be used as a sanction in a criminal act to enforce the validity of norms.

The determination of sanctions in criminal legislation is not merely a matter of technical legislation, but rather it is an inseparable part of the substance or material of the legislation itself, meaning that the issues of penalization, depenalization, criminalization and decriminalization⁸ must be understood comprehensively with all aspects of the issue of the substance or material of legislation at the legislative policy stage.¹²

Judges in examining a case also require evidence, where the results of the evidence will be used as consideration in deciding the case. Evidence is the most important stage in the examination in court. Evidence aims to obtain certainty that an event/fact submitted actually occurred, in order to obtain a true and fair judge's decision. The judge cannot make a decision before it is clear to him that the event/fact actually occurred, namely its truth is proven, so that there is a legal relationship between the parties.¹³

Referring to the purpose of criminal punishment in the article used to impose a criminal sentence. It is stated that in imposing a sentence, the judge must consider the following:

- a. The perpetrator's mistake
- b. Motives and objectives for committing a crime
- c. How to commit a crime
- d. The mental attitude of the perpetrator of the crime.
- e. Life history and socio-economic conditions of the perpetrator of the crime
- f. The perpetrator's attitude and actions after committing a crime
- g. The impact of criminal penalties on the future of criminal acts
- h. Public views on criminal acts committed

¹²Sholehuddin, 2003, *Sanction System in Criminal Law*, PT RajaGrafindo Persada, First printing, Jakarta, p. 5.

¹³Mukti Arto, 2004, *Civil Case Practice in Religious Courts*, 5th edition, Pustaka Pelajar, Yogyakarta, p. 140.

- i. Criminal cases against victims or victims' families and
- j. Was the crime committed with planning?

Judges in decision making must have a wise, prudent, and fair nature because judges are figures who are still quite trusted by some people who are expected to be able to protect and decide a case fairly. Because in realizing the truth and justice or the welfare reflected in the judge's decision is not easy. If the case of the position of a case is not regulated in the legislation so that the judge as an enforcer of law and justice. Must explore, follow and understand the legal values that live in society.

In the Decision Case Number 477/Pid.Sus/2023/PN Smg that the defendant HKP bin the late RDW had committed a narcotics crime as in the indictment of the Public Prosecutor's Subsidiary. The defendant's actions began in 2022 when the Defendant Bin (the late) RDW attended the Vespa World Day event in May 2022 in Bali, the Defendant met his friend named BLY and asked Mr. BLY "Is there a shop that sells marijuana" and BLY answered "Yes" then BLY provided a link from Facebook with the account name Bran (Mr. weed), then in March 2023 the Defendant bought 50 (fifty) grams of marijuana through the Bran account (Mr. weed) for Rp. 750,000.00 (seven hundred five thousand rupiah) which was sent to the defendant's home address. Furthermore, in April 2023, the Defendant bought another 100 (one hundred) grams of Marijuana through the Brand account (Mr. weed) for Rp. 1,400,000.00 (one million four hundred thousand rupiah), which was sent to the workplace of Witness ATB alias Toms with the address Barberstory Jl. Kusumawardani No. 6 Pleburan Kec. South Semarang City of Semarang.

As a result of his actions, the defendant HKP had to be tried at the Semarang District Court. The judge's considerations which are of a legal nature are the judge's considerations which are based on the legal facts which are revealed in the trial and which have been determined by law as something which must be included in the decision.¹⁴, the author will describe it with the following description:

1. Public Prosecutor's Indictment

In addition to containing the defendant's identity, the indictment also contains a description of the crime charged, stating the time and place where the crime was committed. In the case of decision 477/Pid.Sus/2023/PN Smg, the defendant HKP was charged with the primary charge, namely Article 132 Paragraph (1) in conjunction with Article 114 Paragraph (1) and the subsidiary charge of Article 132 Paragraph (1) in conjunction with Article 111 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.

¹⁴Rusli Muhammad, 2007, *Contemporary Criminal Procedure Law*, Citra Aditya Bakti, Bandung, p. 212

2. Defendant's Statement

The defendant's statement according to Article 184 point e of the Criminal Procedure Code is classified as evidence. The defendant's statement is what the defendant stated in court about the actions he did, knew, or experienced himself. By paying attention to various court decisions, it turns out that the defendant's statement is a consideration for the judge and this is reasonable to include in the consideration because that is the will of the law.¹⁵

That in the case of Decision 477/Pid.Sus/2023/PN Smg that the defendant HKP in his statement admitted to consuming class I narcotics in the form of marijuana plants in buying, possessing the marijuana did not have a permit from the authorized agency. And the defendant also did not submit a mitigating witness (a de charge) for him

3. Witness Statement

Witness testimony can be categorized as evidence as long as the testimony concerns a criminal event that he/she heard, saw, and experienced himself/herself and must be submitted in a court hearing by taking an oath. So currently anyone who still has relevance to the case to provide information can be used as a witness. It does not have to be someone who saw, heard, or experienced a criminal event. Taking the illustration example that you gave, in the case even though there were no witnesses who saw the murder, in practice the Public Prosecutor will call the arresting witness, a witness from the victim's family, or other witnesses who still have relevance to the case. Without witnesses, it can cause doubts among the Judge in making a verdict. The Judge must not have reasonable doubts in sentencing the defendant guilty (beyond a reasonable doubt).

In the case of Decision 477/Pid.Sus/2023/PN Smg, the following witness statements were requested:

- a. CB Witness
- b. Witness RJS
- c. Witness ATB

That the Witness was arrested on Monday, May 22, 2023 at around 18.00 WIB at the Barbershop where the Witness worked, called Barberstory, Jln. Kusumawardani No. 6 Pleburan, South Semarang District, Semarang City, Central Java, the Witness was arrested after receiving 1 (one) pink package with receipt number 11LP1684579184943 from the sender on behalf of WAYCLOTHES.ID. That the Witness has collaborated with the Defendant 3 (three) timesHKP by receiving

¹⁵Rusli Muhammad, Rusli Muhammad, 2007, Contemporary Criminal Procedure Law, Citra Aditya Bakti, Bandung, p. 214.

the package containing marijuana, for the receipt of the package all were addressed to the Witness' workplace at Barberstory, Jln. Kusumawardani No. 6 Pleburan Kec. South Semarang City of Semarang, Central Java and then the Witness received it himself. The Witness received the first package containing marijuana around mid-March 2023, then the second around mid-April 2023 the exact date, then the third package containing marijuana was received on Monday, May 22, 2023 and then the Witness was arrested by officers from the Central Java BNNP not long after the Witness received the package from the Lion Parcel delivery service courier.

That the Witness has known the Defendant HKP since approximately 2014, around mid-March 2023, the date the Defendant HKP said he would use the address to send a package of narcotics in the form of marijuana;

That it is true that the Witness never refused when the Defendant HKP asked the Witness to accept the package containing the marijuana because of their friendship, and the Witness never received any payment from the Defendant HKP after receiving the package containing the marijuana ordered by the Defendant HKP, it was just that the Witness was once invited by the Defendant HKP to consume the marijuana together, that was after the Witness received the second package around mid-April 2023;

4. Evidence

Evidence is originally an object that can be confiscated and submitted by the public prosecutor in court. The evidence referred to above is not included in the evidence because the law stipulates five types of evidence, namely witness statements, expert statements, letters, instructions, and defendant statements. The types and forms of evidence considered by the judge are quite varied, namely according to the type of crime committed by the defendant against the crime of fraud, the public prosecutor submits the following evidence:

a. 1 (one) pink package with receipt number 11LP1684579184943 from the sender in the name of WAYCLOTHES.ID with the sender's cellphone number 082316382022, with the recipient's address in the name of ALBERTUS d/a Barberstory, Jln. Kusumawardani No. 6 Pleburan Kec. Semarang Selatan Semarang City Central Java, Recipient's cellphone number 08954024720001, which contains a black jacket and in the folds of the jacket there is an orange plastic bag containing pieces of leaves and seeds suspected of being class 1 narcotics in the form of a marijuana plant with a gross weight of + 105.79 grams (one hundred five point seven nine) grams, wrapped in aluminum foil, net weight 95.19404 grams after the remaining 95.17595 grams;

b. 1 (one) Xiaomi Redmi S2 brand cellphone in silver wrapped in a brown plastic casing with SIM card number 08884001046.

By considering the public prosecutor's indictment, witness statements, defendant's statements, then the evidence presented at the trial also considering the articles of the criminal law regulations, the panel of judges can decide the case according to the judge's considerations both legally and non-legally. Decision 477 / Pid.Sus / 2023 / PN Smg defendant HKP by the panel of judges was declared legally and convincingly proven guilty of committing a crime without rights or unlawfully committing a conspiracy to possess, store, control, or provide Class I Narcotics in the form of plants. Sentencing the defendant HKP to 4 (four) years and 3 (three) months in prison and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with 1 (one) month in prison.

Criminalization is to realize the creation of order, peace and justice through the imposition of real sanctions. Therefore, criminalization is not merely a punishment for perpetrators of criminal acts, but also as a state weapon in eradicating or preventing criminal acts. Current developments in the world show a strong tendency for change in viewing drug users who are no longer seen as criminals, but as victims or patients who must be given empathy. If a drug addict has been found guilty by a judge for the drug crime he committed, in order to provide an opportunity for the person concerned to be free from his addiction, the judge can decide to order the person concerned to undergo treatment and/or care. Likewise, if the drug addict is not proven guilty of the charge of committing a drug crime, in the sense that he is only a drug user who has been seduced, the judge can decide to order the person concerned to undergo treatment and/or care.

In the theory of punishment there is something called the absolute theory or retribution. According to this theory, punishment is imposed solely because a person has committed a crime or criminal act. This theory was introduced by Kent and Hegel. The Absolute Theory is based on the idea that punishment is not intended to be practical, such as correcting criminals but punishment is an absolute demand, not just something that needs to be imposed but becomes a necessity, in other words the essence of punishment is retribution (revenge). The absolute theory views that punishment is a retaliation for a mistake that has been made so that it is oriented towards the act and lies in the occurrence of the crime itself. This theory emphasizes that sanctions in criminal law are imposed solely because a person has committed a crime which is an absolute consequence that must exist as a retaliation for the person who committed the crime so that sanctions aim to satisfy the demands of justice.¹⁶

Drug abuse has reached a concerning level, not only the quantity of abuse is increasing and widespread, but its users have also spread to almost all levels of society, from students to state officials are involved in drug crimes. The circulation

¹⁶ <https://www.lawyersclubs.com/theoretica-pemidanaan-dan-besar-pemidanaan/> accessed on August 16, 2024 at 12.53 WIB

of drugs in Indonesia has a tendency to increase, and what is very unfortunate is that drug users are currently being carried out by government officials and law enforcement. Drug abuse is actually a criminal act, so the perpetrators must undergo legal proceedings like other law enforcement criminal cases.

3.2. Judge's Considerations in Sentencing Perpetrators of Drug Abuse Crimes Based on Restorative Justice (Study of Decision No. Number: 477/Pid.Sus/2023/PN Smg)

The judge's consideration is one of the very important aspects to realize the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, besides that there are also benefits for the parties concerned so that the judge's consideration must be addressed carefully, well, and carefully. If the judge's consideration is not careful, good, and careful, then the judge's decision originating from the judge's consideration will be canceled by the High Court / Supreme Court.¹⁷

In examining a case, the judge must pay attention to the evidence, because the results of the evidence will later be used as a consideration for deciding the case. Evidence is a very important stage in the examination at trial. The purpose of evidence is to obtain certainty that an event / fact that is submitted actually occurred, in order to obtain a true and fair judge's decision. The judge will not be able to issue a decision before it is clear to him that the event / fact actually occurred, namely its truth is proven, so that there is a legal relationship between the parties.

There are several factors that influence judges in making their decisions, divided into subjective factors and objective factors. Subjective factors include:

1. A priori behavioral attitude, namely the judge's attitude which from the start has assumed that the defendant being examined and tried is a person who is indeed guilty and must be punished.
2. Emotional behavioral attitudes, namely court decisions will be influenced by the judge's temperament. Judges who have an easily offended temperament will be different from the temperament of judges who are not easily offended.
3. The attitude of arrogance power, namely another attitude that influences a decision is "arrogance of power", here the judge feels that he is powerful and smart, more powerful than other people (prosecutors, defense attorneys, or defendants).

¹⁷Mahfin Gianjar Viandro, et al., Judges' Considerations in Handing Down Verdicts on Narcotics Crimes, *Justitiable* Vol. 6 No. 2, January 2023, p. 11.

4. Morals, namely the morals of a judge because in any case the personality of a judge is covered by behavior that is based on the personal morals of the judge in examining and deciding a case.

Meanwhile, objective factors include the following:

1. Cultural background, namely culture, religion, education of a person certainly influences the judge's decision. Although cultural background is not deterministic, this factor at least influences the judge in making a decision.

2. Professionalism, namely the intelligence and professionalism of a judge also influence his/her decision. The difference in a decision is often influenced by the professionalism of the judge.

In making a decision, the judge must first consider the defendant's actions both legally and sociologically. The forms of the judge's considerations are as follows:

1. Judge's Legal Considerations

Legal considerations are judges' considerations based on legal facts revealed in the trial and stipulated by law as things that must be included in the verdict, for example, the public prosecutor's indictment, the defendant's statement, witness statements, evidence, and articles in criminal law regulations. While non-legal considerations can be seen from the background, the consequences of the defendant's actions, the defendant's condition, and the defendant's religion.¹⁸

Juridical considerations are judges' considerations based on factors revealed in the trial and have been determined by law as things that must be included in the decision. Juridical considerations include the following:

a. Public Prosecutor's Indictment

An indictment is a letter or deed containing a formulation of the criminal act charged against the defendant, which is concluded and drawn from the results of the investigative examination, and is the basis and foundation for the judge in the examination before the court.

In Decision Number 477/Pid.Sus/2023/PN Smg defendant HKP, the charges used are Alternative Charges, namely an indictment consisting of or several articles of charges or tiered in sequence starting from the heaviest penalty to the lightest criminal act. The Primary Charge is Article 132 Paragraph (1) in conjunction with Article 114 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics and the Subsidiary Charge of Article Article 132 Paragraph (1) in conjunction with Article 111 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

¹⁸Laka Dodo Laia, et al., Judges' Considerations in Sentencing Narcotics Abuse, Jurnal Education and Development, Vol.10 No.3, September 2022 Edition, p. 749.

b. Criminal Charges

Criminal charges usually state the types and severity of the crime or types of actions demanded by the public prosecutor to be imposed by the court on the defendant, by explaining that because it has been proven that the crime has been committed, the public prosecutor has filed the criminal charges above. In Decision Number 477/Pid.Sus/2023/PN Smg for the defendant HKP, the elements that were considered by the judge were as follows:

1) Elements of every person

Considering that what is meant by every person in this Article is the same as the description and consideration of the elements in the primary charge, where the element of every person in the primary charge is fulfilled, then by taking over the consideration of the element of every person in the primary charge, the subsidiary charge has also been fulfilled.

2) The element of criminal conspiracy is to unlawfully or illegally attempt or conspiracy to possess, store, control or provide class I narcotics in the form of plants.

Considering that criminal conspiracy is the act of two or more people who collude or agree to carry out, implement, assist, participate in, order, encourage, facilitate, provide consultation, become members of a narcotics crime organization or organize a narcotics crime;

Considering, that what is meant by "without rights" is an act that violates the law or is contrary to the provisions of the law, or is not included in the scope of a person's duties and authority or because they do not have permission from an authorized official as determined by law, while what is meant by "against the law" is carrying out an act that is contrary to the law, both in the formal sense, namely contrary to the law or other written laws, and in the material sense, namely contrary to the values of propriety, values of justice that are alive and upheld by society;

Considering, that based on the legal facts revealed in court it is known:

- That it started in 2022 when the Defendant HKP Bin (the late) RDW attended the Vespa World Day event in May 2022 in Bali, the Defendant met his friend named BLY and asked Mr. BLY "Are there any stalls that sell marijuana" and BLY answered "Yes" then BLY provided a link from Facebook with the account name Bran (Mr. weed), then in March 2023 the Defendant HKP bought 50 (fifty) grams of marijuana through the Bran account (Mr. weed) for Rp. 750,000.00 (seven hundred five thousand rupiah) which was sent to the defendant's home address;
- That then in April 2023 the Defendant HKP bought another 100 (one hundred) grams of Marijuana through the Brand account (Mr. weed) for Rp. 1,400,000.00

(one million four hundred thousand rupiah), which was sent to the workplace of Witness ATB alias Toms with the address Barberstory Jl. Kusumawardani No. 6 Pleburan Kec. South Semarang City of Semarang;

- After interrogation of the Defendant HKP, the Defendant admitted that the order and owner of the marijuana was the Defendant HKP which was sent to Albertus' address with a fee if Witness Albertus received the marijuana package which would be used together between the Defendant and Witness Albertus so that Witness Albertus was willing to accept the delivery of the package in the form of marijuana, then the Defendant HKP, Witness Albertus Tommy Budiono alias Toms along with evidence were taken to the Central Java BNNP office for further examination;

c. Witness Statement

Witness testimony is one of the pieces of evidence in a criminal case which is a statement from a witness regarding a criminal event that he heard himself, saw himself, and experienced himself by stating the reasons for his knowledge. Witness testimony is a piece of evidence as regulated in Article 184 paragraph (1) letter a of the Criminal Code.

d. Defendant's Statement

Based on Article 184 paragraph (1) of the Criminal Code letter e. the defendant's statement is classified as evidence. The defendant's statement is what the defendant stated in court about the actions he committed or that he knew about himself or that he experienced himself, this is regulated in Article 189 of the Criminal Code.

That the defendant has also admitted to all the actions committed during the trial and the defendant did not present a mitigating witness (a de charge) for him.

e. Evidence

Evidence is an item used by the accused to commit a crime or an item as a result of a crime. These items are confiscated by investigators to be used as evidence in court. Items used as evidence submitted in court are intended to strengthen witness statements, expert statements, and the defendant's statement to prove the defendant's guilt. The evidence discussed here is all objects that can be confiscated and submitted by the public prosecutor in court, including:

- 1) Objects or claims of a suspect or defendant which are wholly or partly suspected of being or obtained from a criminal act or as a result of a criminal act;
- 2) Objects used directly to commit a crime or to prepare for a crime;
- 3) Objects used to obstruct the investigation of a crime;

4) Special objects are made or intended to commit crimes; and

5) Other objects that have a direct relationship to the crime

In Court Decision Number 477/Pid.Sus/2023/PN Smg, with the defendant HKP Bin the late RDW, the evidence presented in the trial was as follows:

1) 1 (one) Xiaomi Redmi S2 brand cellphone, silver in color, wrapped in a brown plastic casing, including SIM card number 08xxxxxxxxxxx;

2) 1 (one) pink package with receipt number 11LP1684579184943 from the sender in the name of WAYCLOTHES.ID with the sender's cellphone number 08xxxxxxxxxxx, with the recipient's address in the name of ALBRTS d/a Barberstory, Jln. Kusumawardani No. 6 Pleburan Kec. Semarang Selatan Semarang City Central Java, Recipient's cellphone number 08xxxxxxxxxxx, which contains a black jacket and inside the fold of the jacket there is an orange plastic bag containing pieces of leaves and seeds suspected of being class 1 narcotics in the form of a marijuana plant with a gross weight of \pm 105.79 (one hundred five point seven nine) grams, wrapped in aluminum foil.

f. Articles in the Narcotics Law

These articles begin and are seen in the indictment formulated by the public prosecutor as provisions of the narcotics law violated by the defendant. In the trial, the articles in the narcotics law are always connected to the defendant's actions. If it turns out that the defendant's actions fulfill the elements of each violated article, it means that it is proven according to the law that the defendant is guilty of committing the act as in the article charged against him.

In Decision Number 477/Pid.Sus/2023/PN Smg with the defendant HKP Bin the late RDW charged with Article 132 paragraph (1) Jo Article 111 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics which reads: "Any person who without rights or against the law plants, maintains, possesses, stores, controls, or provides Class I Narcotics in the form of plants, shall be punished with imprisonment of at least 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah)."

g. Circumstances that could be another consideration

1) Aggravating circumstances

- The defendant's actions do not support the government's program to eradicate narcotics and illegal drug crimes;
- The defendant has previously been convicted in the same case.

2) Mitigating circumstances

- The defendant was polite at the trial;
- The defendant regretted it and promised not to repeat it in the future.

2. Judge's Non-Juridical Considerations

In addition to considering the legal aspects, judges in making decisions make non-legal considerations. Non-legal considerations that start from the detrimental impacts and damage the order in social and state life. Non-legal considerations are as follows:

- a. The condition of the defendant, where the defendant can be held responsible for his actions in the sense that he is mature and conscious (not insane).
- b. The motive and purpose of committing a crime, meaning that every criminal act contains the fact that the act has a motive and purpose to intentionally break the law.
- c. How to commit a crime, the perpetrator in committing the act has an element of planning in advance to commit the crime. The element in question is the element of intention, namely the perpetrator's desire to break the law.
- d. The inner attitude of the perpetrator of a crime, this can be identified by looking at feelings of guilt, regret and a promise not to repeat the act.
- e. Life history and socio-economic circumstances, the life history and socio-economic circumstances of the perpetrator of the crime also greatly influence the judge's decision to reduce the sentence for the perpetrator, for example, the perpetrator has never committed any crime and has sufficient income.
- f. The attitude and actions of the perpetrator after committing a crime, the perpetrator in this case is asked for information about the incident, if the perpetrator behaves politely and is willing to take responsibility and admits all his actions openly and honestly. Then this can be a consideration for the judge to give leniency to the perpetrator.
- g. The influence of criminal punishment on the future of the perpetrator, criminal punishment also has the aim of deterring the perpetrator of the crime, also to influence the perpetrator not to repeat the act, free the perpetrator from guilt, socialize the perpetrator by providing guidance, so that they become better and more useful people.

Based on the description above, the Panel of Judges is of the opinion that because the evidence in the form of narcotics in the form of crystal methamphetamine which is stated to belong to the Defendant is still in a tolerable amount and the mens rea or the Defendant's mental attitude towards the evidence is for personal consumption, then the Defendant's actions are classified as narcotics abuse which violates Article 132 paragraph (1) Jo Article 111 paragraph (1) of the Republic of

Indonesia Law Number 35 of 2009 concerning Narcotics. Because in the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification and/or excuse, then the Defendant must be held responsible for his actions. Because the Defendant is capable of being responsible, he must be found guilty and sentenced to a criminal penalty.

Based on Article 132 paragraph (1) in conjunction with Article 111 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with Article 148 of Law Number 35 of 2009 concerning Narcotics, Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the results of the judge's decision are as follows:

- a. Declaring that the Defendant HKP Bin (Alm) RDW was not proven legally and convincingly guilty of committing a crime as stated in the Public Prosecutor's Primary Indictment;
- b. To acquit the Defendant HKP Bin (Alm) RDW therefore from the primary charge;
- c. Declaring that the Defendant HKP Bin (Alm) RDW has been proven legally and convincingly guilty of committing a criminal act without rights or against the law of conspiracy to possess, store, control or provide Class I Narcotics in the form of plants as stated in the indictment of the Public Prosecutor's Subsidiary;
- d. Sentencing the Defendant HKP Bin (Alm) RDW to imprisonment for 4 (four) years and 3 (three) months and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month;
- e. Determine that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed;
- f. Determine that the Defendant remains in detention;
- g. Establishing evidence

Judges in examining a case also require evidence, where the results of the evidence will be used as consideration in deciding the case. Evidence is the most important stage in the examination in court. Evidence aims to obtain certainty that an event/fact submitted actually occurred, in order to obtain a true and fair judge's decision. In principle, the Judge's task is to issue a decision that has legal consequences for other parties. However, the Judge cannot refuse to issue a decision if the case has been started or examined. The basis for the judge in issuing a court decision needs to be based on theories and research results that are interrelated so that maximum and balanced research results are obtained in terms of theory and practice. One effort to achieve legal certainty in the judiciary, where the judge is a law enforcement officer through his decision can be a benchmark for achieving legal certainty. The freedom of the judge also needs to be explained

in the position of an impartial judge (impartial judge) Article 5 paragraph (1) of Law No. 48 of 2009. The term impartial here must not be literal, because in issuing his decision the judge must side with the right. In this case, it does not mean being impartial in its considerations and assessments. The freedom of judges in examining and trying a case is a crown for judges and must continue to be guarded and respected by all parties without exception, so that no party can intervene with the judge in carrying out his duties. Judges in making decisions must consider many things, both those related to the case being examined, the level of actions and mistakes made by the perpetrator, to the interests of the victim and his family and also consider the sense of justice.¹⁹

Narcotics crimes with sanctions below the minimum consideration of the judge are one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to also containing benefits for the parties concerned so that the judge's consideration must be addressed carefully, properly, and precisely.

In the case where the court that decides a case will impose a criminal sentence on the defendant, then the judge examining the case must first consider what factors can be aggravating or mitigating the sentence that will be imposed on the defendant. Before considering the factors that can be aggravating or mitigating the sentence, the judge will consider the facts and circumstances obtained from the examination in the trial which are the basis for determining the defendant's guilt. There must be a statement that all elements in the formulation of the criminal act have been fulfilled along with its qualifications as stipulated in Article 197 letter d of the Criminal Code. Considering the factors that can be aggravating and mitigating for the defendant as stipulated above, the sentence imposed by the judge is expected to be in accordance with the defendant's actions and mistakes, not excessive and truly necessary to maintain legal order. Thus, the criminalization efforts carried out are not only based solely on the intention of retaliation, but also contain certain goals that are to be achieved such as prevention, protection for the community and for guidance.

To determine the severity of the criminal sanction, the judge in considering the punishment to be imposed on the defendant, the judge must pay attention to the objective circumstances of the perpetrator's actions, the judge must look at the defendant's background and the severity of the actions committed. Or in other words, the judge in imposing the severity of the sentence must consider the factors that exist in the defendant and the factors of the actions committed by the defendant. In Article 27 of Law Number 48 of 2009 concerning the Principles of Judicial Power, the issue of these consideration factors, especially those concerning the defendant, is confirmed as follows:

¹⁹Immanuel Christophel Liwe, *The Authority of Judges in Examining and Deciding on Criminal Cases Submitted to the Court*, *Lex Crimen*, Vol. III/No. 1/Jan-Mar/2014, p. 134

1. Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that exist in society.
2. In considering the severity of the punishment or penalty, the judge must take into account the good and bad qualities of the accused.

3.3. Obstacles and Solutions for Narcotics Abuse Criminals Based on Restorative Justice

Narcotics cases tried by judges in court often experience obstacles. The problem of sentencing is a very tricky issue, especially in cases of narcotics crimes, where the perpetrators often act as victims who need to receive good treatment. If the victims and defendants are young people, especially students, then giving too high a sentence can have fatal or bad consequences for the defendant and his future. Likewise, if the judge in his decision gives too light a sentence, it will have a bad effect on the community environment, because the community considers that narcotics crimes are a form of crime that can damage the joints of community and national life. Drug abuse is a force that can disrupt society as a whole, where narcotics are a product or trigger of crime. Narcotics are a disease that infects state institutions, the phenomenon of narcotics is a threat to every level of society, to individuals, to our communities, to the state and to international peace and security.

In this case, the judge is faced with a dilemma in sentencing a narcotics criminal, where the judge must pay attention to the interests of society on the one hand, that the defendant's actions are actions that must be punished severely, while on the other hand it concerns the interests of the defendant himself. These are the obstacles that are often experienced by judges in handing down a criminal verdict against a narcotics defendant.

Until now, the spread of narcotics and illegal drugs has reached a very alarming level. Almost the entire world's population can easily obtain narcotics and illegal drugs, for example from dealers who sell in schools, discos, and brothels. Countless efforts to eradicate drugs have been made by the government, but it is still difficult to prevent narcotics and illegal drugs from teenagers and adults. It is a terrible reality that many elementary and junior high school children have used or even helped distribute or sell narcotics and illegal drugs.

As has been described, there have been many and countless efforts made by the government to eradicate the use of narcotics and illegal drugs, but cases involving narcotics and illegal drugs continue to emerge. The answer is very simple, namely that the main driving element or motivator of perpetrators of crimes in the field of narcotics and illegal drugs is the issue of economic gain. If the act is carried out by a person or without rights, then it can be categorized as an act of narcotics abuse or a special crime that can be threatened with severe legal sanctions. Based on the understanding that has been put forward above, it can be seen that

narcotics abuse is the use of narcotics (drugs) excessively and not for treatment, so that it can cause physical, mental, attitude, and behavioral damage to society.

According to Lawrence M Friedman, there are at least 3 (three) factors that influence law enforcement. These factors include:

1. Legal Substance Factors.

"What is meant by substance here is the rules, norms, real patterns of human behavior that are in the system. Substance also means the products produced by people who are in the legal system, including the decisions they issue, the new rules they formulate. Substance also includes living law, and not just the suggestions in the statute book."

2. Structural Factors.

"In this case, it is the part that remains, the part that gives a kind of shape and boundaries to the whole. Friedman takes an example when discussing the structure of the legal system in Indonesia, then what is discussed is the structure of law enforcement institutions such as the Police, the Prosecutor's Office, and the Courts and also includes structural elements of the number and type of courts, their jurisdictions. Clearly, the structure is like a still photo that stops the movement."

3. Cultural Factors.

"In this case, human attitudes in the legal-belief system, values, thoughts and hopes. In other words, legal culture is the atmosphere of social thought that determines how the law is used, avoided or misused. Without a legal culture, the law is helpless, like a dead fish lying in a basket and not like a fish swimming in the open ocean."

One of them is the obstacle in the investigation process carried out by the police. In carrying out the investigation process against narcotics perpetrators, namely the lack of public participation, although there has been participation to provide information on the occurrence of narcotics crimes, but it is still considered lacking and needs to be increased, in addition to those mentioned above, is regarding investigations that sometimes experience difficulties because the network of narcotics abuse crimes is easily broken. That with the instrument of Article 131 of Law No. 35 of 2009 concerning Narcotics, it is hoped that public participation in providing information on complaints of narcotics crimes can increase.

Article 131 of Law Number 35 of 2009 concerning narcotics states that anyone who knows that a crime of narcotics abuse has occurred but does not report it can be subject to a maximum criminal sentence of 1 (one) year and a fine of 50 million rupiah, the next obstacle is that the community actually understands the perpetrators of narcotics abuse but they do not report it because they are afraid,

and in fact the reporter is protected by existing laws besides that it is difficult to get information from the perpetrators who are caught, according to information the perpetrators who are caught do not know the name of the real seller because they usually use a pseudonym and sometimes the goods are only placed in an agreed place and it is very rare for drug transactions to be directly handed over between the seller and the buyer.

Obstacles other than those mentioned above, are regarding investigations that sometimes experience difficulties because of the network of drug abuse crimes that are easily broken. So, it takes the astuteness of law enforcement officers in eradicating drug networks to the roots. Efforts made by law enforcers in solving obstacles in particular investigations, especially drug perpetrators who are special crimes not only endanger the perpetrators but also the nation and state must be able to prevent the dangers of narcotics.

Improvements in overcoming drug trafficking among prisoners that should be carried out by the Police considering the driving factors and obstacles faced are more emphasizing the obstacles faced in the efforts that have been made. Emphasizing that there must be a special formula that can overcome the emergence of an obstacle faced. The driving factors for the emergence of narcotics perpetrators are actually purely due to the form of the individuals themselves which consist of various types of characters. Efforts made to overcome obstacles in narcotics cases include the following:

1. Preemptive (coaching)

Coaching is one of the early prevention anticipation efforts carried out by law enforcers through activities aimed at eliminating the reasons for opportunities and drivers of narcotics perpetrators to commit narcotics crimes. The purpose of carrying out this activity is to eliminate the opportunity and driving factors for someone to become a user, as well as to create deterrence and motivate to raise awareness of perpetrators not to commit narcotics crimes, to cooperate with non-governmental organizations to provide counseling, about the dangers of narcotics.

2. Preventive (prevention)

This preventive action is a better effort than efforts after a crime has occurred. Preventing crime is better than trying to educate criminals to be better. Better in the sense of easier, cheaper, and achieving the desired goal. Even becoming one of the principles in criminology, namely efforts to improve or educate criminals not to repeat their crimes. Follow-up actions taken to prevent narcotics crimes through control and supervision with adequate facilities and means Geographic Information Systems.

The steps taken in the process of preventing and eradicating narcotics crimes are through penal and non-penal means.

1. Penal (criminal law) mitigation efforts. Mitigation efforts carried out penally for narcotics crimes focus on repressive efforts. Repressive efforts include a series of enforcement activities aimed at revealing all narcotics crime cases that have occurred. Law enforcement actions taken in mitigating narcotics crimes, namely through:

a. Conducting narcotics operations aimed at places considered to have the potential to be places for narcotics transactions.

b. Arrest and detain users and sellers or distributors of narcotics along with evidence, then conduct an investigation and prepare an Examination Report (BAP) to be submitted to the Public Prosecutor (JPU) to then be processed in court.

2. Non-Penal Efforts to Address Crime

a. Preemptive

The pre-emptive efforts carried out are educational activities aimed at eliminating the causal factors that are the driving force and opportunity factors that are usually called criminogenic correlative factors of the crime. The target to be achieved from this effort is the development and creation of a condition of behavior and norms of life free from drug abuse.

b. Preventive

This effort is made to prevent the occurrence of narcotics trafficking through direct control and supervision with the aim that the potential for crime does not develop into a factual threat.

4. Conclusion

One of them is the obstacle in the investigation process carried out by the police. In carrying out the investigation process against narcotics perpetrators, namely the lack of community participation even though there has been participation to provide information that narcotics crimes have occurred. Improvements in overcoming drug trafficking among prisoners that should be carried out by the Police seeing the driving factors and obstacles faced are more emphasizing the obstacles faced in the efforts that have been made. Emphasizing that there must be a special formula that can overcome the emergence of an obstacle faced.

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