



Legal Considerations of The Judges In Narcotics Rehabilitation Decisions (Analysis of Decisions Number: 112 / Pid.Sus / 2018 / PN.Pwt.)

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Abstract

A judge's legal considerations are essential in determining the value of a judge's decision that contains justice (*ex aequo et bono*), legal certainty, and benefits for the parties concerned. This study analyzes judges' legal provisions in verifying rehabilitation sentences for narcotics abuse cases and judges' legal considerations in rehabilitation decisions in narcotics cases Number: 112 / Pid.Sus / 2018 / Purwokerto District Court. The research method used in this research is a normative juridical approach, which is carried out through a literature study that examines secondary data in the form of laws and regulations and other legal documents and research results, assessment results, and other references. Legal considerations of Purwokerto District Court judges in examining and deciding cases of narcotics cases with case Number: 112 / Pid. Sus / 2018 / Purwokerto District Court by imposing a sentence without imprisonment, which is only in medical rehabilitation for 6 (six) months in the Mental Health Service Installation. The integrated Banyumas Regional Hospital is not correct. Judges need to consider imprisonment to give a deterrent effect to the accused himself and also to other people or the community from committing the same act. That was because when the medical examination was carried out at the Mental Health Service office of the Banyumas Regional General Hospital, based on the results of the examination, there were no significant physical and psychological symptoms of dependence on the defendant. Judges in giving judges consideration should be treated more carefully, well, and carefully.

Keywords: Legal considerations, Judges, Rehabilitation.

Abstrak

Pertimbangan hukum hakim merupakan salah satu aspek terpenting dalam menentukan terwujudnya nilai dari putusan hakim yang mengandung keadilan (*ex aequo et bono*), kepastian hukum, dan manfaat bagi para pihak yang bersangkutan. Penelitian ini menganalisis terkait ketentuan hukum yang digunakan hakim dalam menjatuhkan vonis rehabilitasi terhadap kasus penyalahgunaan narkotika dan pertimbangan hukum hakim dalam putusan rehabilitasi dalam kasus narkotika Nomor: 112/Pid.Sus/2018/Pengadilan Negeri Purwokerto. Metode penelitian yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif yaitu dilakukan melalui studi pustaka yang menelaah data sekunder berupa Peraturan Perundang-undangan dan dokumen hukum lainnya, serta hasil penelitian, hasil pengkajian, serta referensi lainnya. Pertimbangan hukum hakim Pengadilan Negeri Purwokerto dalam memeriksa dan memutus perkara kasus narkotika dengan perkara Nomor: 112/Pid.Sus/2018/Pengadilan Negeri Purwokerto dengan menjatuhkan pidana tanpa penjara, yaitu hanya berupa rehabilitasi medis selama 6 (enam) bulan di Instalasi Pelayanan Kesehatan Jiwa Terpadu RSUD Banyumas tidak tepat. Hakim perlu mempertimbangkan pidana penjara untuk memberikan efek jera kepada terdakwa itu sendiri dan juga kepada orang lain ataupun masyarakat agar tidak melakukan perbuatan yang sama. Hal ini dikarenakan pada waktu dilakukan pemeriksaan medis di kantor Pelayanan Kesehatan Jiwa Rumah Sakit Umum Daerah Banyumas, berdasarkan hasil pemeriksaan tidak terdapat gejala ketergantungan Fisik dan Psikologis yang bermakna bagi diri Terdakwa. Hakim dalam memberikan Pertimbangan hakim seharusnya lebih disikapi dengan teliti, baik, dan cermat.

Kata kunci: Pertimbangan hukum, Hakim, Rehabilitasi.

I. Introduction

Drug abuse is a type of crime that can occur anywhere, both in urban and rural areas.¹ Based on the research report, it is stated that there are more than 200 million people around the world who use illegal drugs, which results in 250 thousand deaths per year. These illegal drugs include possession, use or use, trafficking and trafficking. Such cases are hazardous for the nation's survival and the state because they can damage the younger generation's mentality.²

The use of addictive narcotics requires special treatment, namely obtaining treatment and protection. Apart from being on the user side, this view also aligns with efforts to tackle narcotics abuse. In overcoming narcotics abuse, an integral strategy is needed from upstream to downstream. Decriminalization of abusers and narcotics addicts is a model of suppressing demand reduction to reduce the supply of illegal narcotics. This concept also has an economic impact on the handling of narcotics problems.³ However, these efforts did not always go smoothly. One of the challenges is the diversity of views in positioning narcotics users. This difference does not only develop in society but also affects law enforcement institutions and courts. In a discussion held at the Criminal Chamber of the Supreme Court, these differences of views were displayed.⁴ Supreme Judge Suhadi, for example, believes that drug users will continue to increase from year to year if they are not strict in giving sentences. He assessed that the death penalty alone would not deter drug offenders, let alone just rehabilitation.⁵ However, it is considered appropriate to cure this addiction to rehabilitate victims of narcotics abuse because rehabilitation can release narcotics dependence until they can enjoy a free life without narcotics.⁶

One example is Case Number: 112 / Pid.Sus / 2018 / PN.Pwt., the defendant has been proven to have used methamphetamine, which is registered in narcotics Category I (One) at serial number 61 in the Attachment to Law Number 35 of 2009 concerning Narcotics. In this case, the defendant was proven to have violated Article 127 paragraph (1) letter and Law Number 35 of 2009 concerning Narcotics. The defendant was decided in the form of Medical Rehabilitation at the Integrated Mental Health Service Installation at the Banyumas Regional General Hospital for 6 (six) months by stipulating that the rehabilitation period that the defendant had undergone was deducted entirely from the imposed rehabilitation period. The judge's consideration is one of the essential aspects in determining the value of a judge's decision which contains justice (*ex aequo et bono*). It contains legal certainty. Besides that, it also benefits the parties concerned, so the judge's consideration must be addressed carefully and carefully.⁷

II. Research Problems

1. What are the legal provisions used by judges in imposing rehabilitation verdicts on cases of narcotics abuse
2. What is the legal consideration of the judge in the decision on the rehabilitation of narcotics abusers

¹ Koesno Adi, *Diversi Tindak Pidana Narkotika Anak* (Malang: Satara Press, 2014), 129.

² Hanafi Amrani, *Sistem Pertanggungjawaban Pidana Perkembangan dan Penerapan* (Jakarta: PT Raja Grafindo Persada, 2015), 209.

³ Anang Iskandar, "Dekriminalisasi Penyalah Guna Narkotika Dalam Konstruksi Hukum Positif Di Indonesia," *Humas BNN*, last modified 2013, accessed July 15, 2020, <http://dedi.humas.bnn.go.id/read/section/artikel/2013/11/19/813/dekriminalisasi-penyalah-guna-narkotikadalam-konstruksi-hukum-positif-di-indonesia>.

⁴ Ali, "Paradigma Hakim Perkara Narkotika Belum Berubah," *HukumOnline.Com*, last modified 2013, accessed July 15, 2020, <http://www.hukumonline.com/berita/baca/lt52136123848fc/paradigma-hakim-perkara-narkotika-belumberubah>.

⁵ Supriyadi Widodo Eddyono, et. al., *Meninjau Rehabilitasi Pengguna Narkotika dalam Praktik Peradilan* (Jakarta: Institute for Criminal Justice Reform, 2016), 9.

⁶ Martono, Lydia Harina and Satya Joewana, *Peran Orang Tua dalam Mencegah dan Menanggulangi Penyalahgunaan Narkotika* (Jakarta: Balai Pustaka, 2006), 87.

⁷ Luhut Pangaribuan, *Pengadilan, Hakim, dan Advokat* (Jakarta: Pustaka Kemang, 2016), 106.

III. Research Methods

The method in this research is normative juridical research. The normative juridical method is carried out through literature studies that examine mainly secondary data in laws and regulations, court decisions, agreements, contracts, other legal documents, research results, assessment results, and other references.⁸ This research is descriptive, which aims to describe a situation regarding this research accurately. The data used are secondary. Secondary data is data obtained from literature by conducting literature studies, namely, conducting document studies, archives, and literature by studying theoretical matters, concepts, views, and legal principles relating to the subject matter of writing and legal knowledge consisting of primary legal materials, secondary legal materials, tertiary legal materials. After the secondary data in the form of documents is obtained ultimately, it is analyzed with regulations related to the problem. The data obtained will be analyzed qualitatively.

IV. Result And Discussion

1. Legal Provisions Used by Judges in Imposing Rehabilitation Verdict for Narcotics Abuse Cases

In imposing criminal sanctions on defendants who have violated a criminal act, judges are not an easy matter. The decision taken by the judge in making a decision must consider many things. The judge's decision is a law that is widely applied if it becomes a jurisprudence so that judges can follow it in deciding on the same case—of course, making a Judge's decision is based on the Criminal Procedure Code and applicable laws and regulations.⁹ Law enforcement aims to achieve justice, benefit, and legal certainty. The law provides rights that can be used by litigant parties to file legal remedies for court decisions that are deemed to be detrimental, and an attempt must be made to amend the decision to achieve justice, To fulfill the elements intended by law enforcement's aim.¹⁰

Law No. 35 of 2009 concerning Narcotics contains Article 54, which regulates rehabilitation. Article 54 reads, "Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation."¹¹ The mandatory nature of rehabilitation should be the primary benchmark for judges and law enforcement officials in taking action against narcotics users. Article 54 of the Narcotics Law is closely related to Article 127 of the Narcotics Law.

It is stated in Article 127 paragraph (2) that judges are obliged to pay attention to the provisions of Article 54, Article 55, and Article 103 of the Narcotics Law in making decisions. However, even though it is mandatory, it depends on investigators and public prosecutors in its implementation. If the Public Prosecutor does not use Article 127 of the Narcotics Law provisions in the indictment or indictment, then the placement of narcotics users in rehabilitation institutions is difficult to carry out. Including the fatal conditions, where the judge still decides to use Article 127 of the Narcotics Law but does not consider the rehabilitation provisions stated in Article 54 of the Narcotics Law.¹²

Article 55 of the Narcotics Law stipulates that (1) parents or guardians of underage narcotics addicts are required to report to public health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the government for treatment and/or treatment through medical rehabilitation, and social rehabilitation. ; (2) Narcotics

⁸ Badriyah Khaleed, *Legislative Drafting Teori dan Praktik Penyusunan Peraturan Perundang-undangan* (Yogyakarta: Medpress Digital, 2014), 41.

⁹ Aswin Pramudita, "Pertimbangan Hukum Hakim Menjatuhkan Sanksi Pidana Penjara terhadap Penyalahgunaan Narkotika tanpa Menerapkan Rehabilitasi Medis (Studi Putusan Nomor: 100/PID.SUS/2015/PN.SKT)", *Jurnal Verstek*, 5, No. 2: 167.

¹⁰ Harun M. Husein, *Kasasi Sebagai Upaya Hukum* (Jakarta: Sinar Grafika, 1992), 47.

¹¹ Andri Winjaya Laksana, "Tinjauan Hukum Pidana terhadap Pelaku Penyalahgunaan Narkotika dengan Sistem Rehabilitasi", *Jurnal Pembaharuan Hukum*, 2, No. 1 (2015): 76.

¹² Supriyadi Widodo Eddyono, *et al.*, *Meninjau Rehabilitasi Pengguna Narkotika dalam Praktik Peradilan*, *Op.Cit.*, 26.

addicts of legal age are obliged to report themselves or be reported by their families to community health centers, hospitals, and/or medical and social rehabilitation institutions appointed by the government to get treatment and/or treatment through medical rehabilitation and social rehabilitation. ; (3) The provisions regarding the implementation of compulsory reporting, as referred to in paragraphs (1) and paragraph (2), shall be regulated by government regulation.

The Narcotics Law provides sufficient space for judges to issue rehabilitation decisions. However, Article 103 of the Narcotics Law uses the word "can" in explaining the judge's authority in this provision. That means it is optional (optional) and not obligatory. At this point, the placement of narcotics users in rehabilitation places also very much depends on the judge's view. The provisions that require narcotics abusers to undergo rehabilitation and Law Number 35 of 2009 concerning Narcotics are also provisions issued by the Supreme Court. Namely Supreme Court Circular Letter Number 4 of 2010 concerning Placement of Abuse, Abuse Victims, and Narcotics Addicts into Rehabilitation Institutions Medical and Social Rehabilitation, an amendment from the Supreme Court Circular Letter Number 07 of 2009 concerning Placing Narcotics Users into Therapeutic and Rehabilitation Institutions. As referred to in Article 103 paragraph (1) letters a and b of Law No. 35 of 2009, the implementation of rehabilitation contains the classification of criminal acts in the provisions of the Supreme Court Circular Letter Number 4 of 2010.

This Supreme Court Circular provides direction that a narcotics abuser can be a narcotics addict if proven to meet the requirements as stipulated in the Supreme Court Circular Letter. The Supreme Court Circular Letter changes were carried out according to Law Number 35 of 2009 concerning Narcotics. By making changes to the Supreme Court Circular No. 07 of 2009 to become Supreme Court Circular No. 04 of 2010, it can be said that the Supreme Court still acknowledges that most of the prisoners and detainees in narcotics cases are categorized as users or even as victims who, if seen from the health aspect, are people who are sick, and of course, imprisonment is not a right step. Besides, the Supreme Court also agrees that correctional institutions or other detention places are not supportive and will only negatively impact other criminal behavior, which can further worsen the mental and health conditions suffered by narcotics convicts.¹³ Supreme Court Circular No. 4/2010 reflects the Supreme Court's view of narcotics use with an approach that prioritizes public health interests.¹⁴

The Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Head of the Indonesian Police, and the Head of the National Narcotics Agency agreed on a joint regulation on March 11, 2014, regarding the Management of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions. Article 4 paragraph(1) and paragraph(2) of the Joint Regulation stated that Narcotics Addicts and Victims of Narcotics Abuse as suspects and/ or defendants of narcotics abuse are arrested without evidence and proven positive for using narcotics through urine, blood, or hair tests could be placed in a medical rehabilitation institution and/or social rehabilitation institution under government management. That decision is after Laboratory Results Examination Minutes and Examination Minutes are made by the Investigator and completed with the Integrated Assessment Team's assessment letter.¹⁵

2. Legal Considerations of Judges in Decision on Narcotics Abuse Rehabilitation.

Legal consideration is a stage by the panel of judges to consider the facts revealed during the trial, starting from the lawsuit, answers, and the defendant's exceptions calculated with evidence that meets formal and material requirements, and reaches the minimum limit of proof.¹⁶ Among the law enforcement officers who are most dominant in implementing law

¹³ A.R. Sujono and Bony Daniel, *Komentar dan Pembahasan UUU No. 35 Tahun 2009 tentang Narkotika* (Jakarta: Sinar Grafika, 2011), 127.

¹⁴ Supriyadi Widodo Eddyono, et. al., *Meninjau Rehabilitasi Pengguna Narkotika dalam Praktik Peradilan*, Op.Cit., 29.

¹⁵ *Ibid.*, hlm.42.

¹⁶ Pradhita Rika Nagara, "Pertimbangan Hukum oleh Hakim dalam Menjatuhkan Putusan terhadap Anak yang Melakukan Penyalahgunaan Narkotika", *Jurnal Universitas Atma Jaya Yogyakarta* (2014): 2.

enforcement are judges. What determines the verdict of a case is based on the judge's intellectual, moral, and integrity against justice values.¹⁷

The basis for judges' consideration in deciding criminal cases is to consider juridical truth (law) with philosophical truth (justice). A Judge has to make a decision.¹⁸ To obtain a fair decision requires a very long process, namely through a court process. In this process, the essence of being achieved is finding material truth, which is the basis for imposing criminal sanctions to achieve a sense of justice. A fair decision can be obtained if handled by a judge who has high scientific integrity and must also be based on a moral spirit.¹⁹

One of the essential aspects in determining the value of a judge's decision is justice (*ex aequo et bono*) and contains legal certainty; besides, it also contains benefits for the parties concerned so that the judge's consideration must be addressed well and carefully.²⁰ Judges are authorized by law to receive, examine and decide a criminal case. Therefore, judges in handling a case must be able to do justice. A judge, in giving a decision, may be influenced by things that exist in him and his surroundings due to the influence of factors of religion, culture, education, values, norms, and so on so that there may be differences in perspective so that it affects considerations in making decisions.²¹

In examining and deciding cases, judges are often faced with the fact that the existing law cannot correctly answer and resolve disputes at hand. The judge must find completeness by discovering the law itself.²² To determine whether the defendant is proven guilty or not, the judge must adhere to the system of proof as regulated in Article 184 of the Criminal Procedure Code as follows: "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he is convinced that a criminal act occurred and that the defendant was guilty of committing it."

In determining a criminal sanction, a judge has both juridical and non-juridical considerations. In juridical considerations, it is proof of a criminal act's elements whether the accused's act has been fulfilled and is under the criminal act charged by the public prosecutor. The juridical factor is based on legal facts revealed in court. Legal facts obtained during the trial process are based on the suitability of the witness's testimony, the defendant's testimony, and the evidence which constitutes a series. This legal fact becomes the basis for consideration relating to whether a defendant has fulfilled all the criminal act elements accused of him. These elements will indicate the type of crime the defendant has committed.²³ In addition to juridical considerations, the judge, in making a decision, makes non-juridical considerations using the judge, seeing from the side the impact of the defendant's actions and the defendant's condition.²⁴

The sentences given to narcotics abusers vary according to the public prosecutor's indictment, and the legal facts revealed in the trial, as long as they do not deviate from the laws and regulations used. The judge considers which becomes the reason for the judgment given and how long the imprisonment will be imposed on the defendant. The freedom that a judge has is not absolute. Therefore there are minimum and maximum penal provisions for the

¹⁷ Romli Atmasasmita, *Sistem Peradilan Pidana Perspektif Eksistensialisme dan Abolisionisme* (Bandung: Putra A. Bardin, 2006), 14.

¹⁸ Darmoko Yuti Witanto and Arya Putra Negara Kutawaringin, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif dalam Perkara-Perkara Pidana* (Bandung: Alfabeta, 2013), 16.

¹⁹ Sri Dewi Rahayu, Yulia Monita, "Pertimbangan Hakim Dalam Putusan Perkara Tindak Pidana Narkotika", *Journal of Criminal Law*, 1, No. 1 (2020): 131.

²⁰ Adi Sulistiyono, et. al., *Sistem Peradilan di Indonesia dalam Teori dan Praktik* (Depok: Prenadamedia Group, 2018), 123.

²¹ Aswin Pramudita, "Pertimbangan Hukum Hakim Menjatuhkan Sanksi Pidana Penjara terhadap Penyalahgunaan Narkotika tanpa Menerapkan Rehabilitasi Medis (Studi Putusan Nomor: 100/PID.SUS/2015/PN.SKT)", *Op. Cit.:* 167-168.

²² Mara Iman Ito H., Zuleha, and Siti Sahara, "Pemenuhan Hak Rehabilitasi Medis dan Rehabilitasi Sosial terhadap Korban Penyalahgunaan Narkotika (Studi Putusan Nomor: 204/PID.SUS/2018/PN.LGS)", *Jurnal Ilmiah Mahasiswa Meukuta Alam*, 1, No. 2 (2019): 93-94.

²³ Himawan Setiaji, "Dasar Pertimbangan Hakim dalam Menentukan Sanksi Pidana bagi Pecandu Narkoba Residivis (Studi di Pengadilan Negeri Malang)", *Jurnal Universitas Brawijaya Malang* (2014): 7.

²⁴ *Ibid:* 7-8.

sentence imposed on the accused under the law's provisions. Freedom that is not absolute is crucial to prevent arbitrariness and ensures legal certainty.²⁵

The use of criminal law to tackle narcotics abuse will ultimately lead to the problem of how judges make decisions. The basis for the judge's consideration in imposing a sentence will significantly determine whether a judge's decision is considered fair or whether his decision can be accounted for.²⁶

The application of crimes committed against narcotics offenders, one of which is against narcotics abusers, is inseparable from the ethics of legal punishment, namely: (a) The moral right to punish someone is based solely on the fact that he has been proven to have committed a mistake or crime. (b) The moral obligation to punish exclusively stands on the same ground. (c) For retributive justice's sake, the punishment must be balanced with the wrong weight committed. (d) The moral basis for imposing punishment is that punishment is a "bleaching" of the guilt and "reform" of the challenged law. Punishment is a pattern of "rights" of the perpetrator of the crime. (e) Consequences of punishment as a precaution so that the convicted crime will not be repeated in the future. (f) The punishment gives satisfaction to both the victim and the other person.²⁷

Judges in an independent position must be impartial (impartial judge). As a judge who is impartial in carrying out his profession, the judge must always guarantee treatment under human rights, especially for the accused. Before a judge decides on a case, there must be a series of decisions that must be made, namely: (a) A decision regarding the case, namely whether the defendant has committed the act he is accused of; (b) Decisions regarding the punishment, namely whether the act committed by the accused was guilty and could be punished; (c) A decision regarding the penalty if the defendant can indeed be convicted.²⁸

Law enforcers should be based on ethics and morals so that there is synchronization between legal certainty and the side of justice. The punishment in the form of Medical Rehabilitation which is imposed on the accused of abusing narcotics in the case being investigated, has the objective of making the defendant recover physically and mentally; However, judges need to consider imprisonment to provide a deterrent effect on the defendant himself and also for other people or the community from committing the same act. Moreover, when the medical examination was carried out at the Mental Health Service office of Banyumas Hospital, the examination results showed no significant physical and psychological symptoms for the defendant, except for sore feet at night.

V. Conclusions

1. The legal provisions used by judges in imposing rehabilitation verdicts on narcotics abuse cases are regulated in Law No. 35 of 2009 on Narcotics, also supported by Supreme Court Circular No. 04 of 2010 and the Joint Regulation of March 11, 2014.
2. Judges' legal considerations in deciding to rehabilitate narcotics abusers in examining and deciding narcotics cases with Decision Number: 112 / Pid.Sus / 2018 / PN Pwt. imposing a sentence without imprisonment, which is only in medical rehabilitation for 6 (six) months at the Integrated Mental Health Service Installation at Banyumas Hospital, is not appropriate. Judges need to consider imprisonment to deter the accused himself and others or the community from committing the same act. Moreover, when the medical examination was carried out at the Mental Health Service office of Banyumas Hospital, the examination results showed no physical and psychological dependence symptoms significant for the defendant.

²⁵ Wijayanti Puspita Dewi, "Penjatuhan Pidana Penjara atas Tindak Pidana Narkotika oleh Hakim di Bawah Ketentuan Minimum Ditinjau dari Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika", *Jurnal Hukum Magnum Opus*, 2, No. 1 (2019): 57.

²⁶ Muhammad Rusli, *Potret Lembaga Pengadilan Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2006), 125.

²⁷ Yong Ohoitmur, *Teori Etika Tentang hukuman Illegal* (Jakarta: PT. Gramedia Pustaka Utama, 1997), 17-18.

²⁸ Sudarto, *Kapita Selekta Hukum Pidana* (Bandung: PT. Alumni, 2010), 74.

VI. Suggestion

1. Judges' considerations should be carried out carefully, well, and carefully to realize the value of a judge's decision, which contains justice (*ex aequo et bono*), legal certainty, and benefits for the parties concerned.
2. It is necessary to consider imprisonment to deter the defendant himself and other people or the community from committing the same act.

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