

Application of Supreme Court Circular Letter by Judges to Narcotics Abuse for Themselves

Ryan Fadli Siregar, Mhd. Azhali Siregar, Suci Ramadani

Abstract

Law enforcement against the abuse of narcotics for oneself in Indonesia still faces various problems, especially related to the application of the Supreme Court circular by judges of first instance and appeals. Based on an analysis of several decisions of Pengadilan Negeri Lubuk Pakam, it was found that the panel of judges at the first level and appeals tended not to make a legal breakthrough to get out of the Public Prosecutor's indictment which applied Pasal 112 ayat (1) Undang-Undang Nomor 35 Tahun 2009 concerning Narcotics. In fact, the facts revealed at the trial show that there is a logical and systematic legal basis for applying Pasal 127 ayat (1). In contrast to the cassation judge who is careful and dares to make decisions by considering legal facts and applying SEMA Number 4 of 2010 and SEMA Number 3 of 2015 as a basis for imposing a prison sentence below a special minimum. This study uses a qualitative descriptive method with a normative juridical approach that examines court decisions and relevant laws and regulations. The results of the study show that judges at the cassation level have applied restorative justice appropriately in accordance with the mandate of Pasal 5 ayat (1) Undang-Undang Nomor 48 Tahun 2009 concerning Judicial Power which requires judges to explore and understand the value of justice that lives in society. This is an important example for the courts of first instance to be more progressive in upholding substantive justice.

Keywords: *Application, SEMA, Narcotics Offender*

Ryan Fadli Siregar
Master of Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: ryanfadli.siregar@gmail.com

Mhd. Azhali Siregar, Suci Ramadani
^{1,2}Master of Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: azhalisiregar@dosen.pancabudi.ac.id, suciramadani@dosen.pancabudi.ac.id
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<https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF/issue/view/9>

Introduction

One of the state's duties in the field of law is law enforcement, which is realized through the establishment of judicial institutions. This judicial institution not only functions as a law enforcer, but is also expected to be able to make corrections and corrections to the positive laws that apply so that they are always in harmony with the times and are able to reflect the values of justice in society. Law enforcement is the main instrument in creating order, security, and order in social life. Law enforcement is carried out both in the context of prevention and enforcement of law violations that occur.

In its implementation, the law enforcement structure in Indonesia has its own roles and functions. An important element in this structure is the courts, which are given the authority by the state to adjudicate cases and render judgments while respecting the protection of human rights. Every decision taken by the court aims to realize justice, legal certainty, and benefits for the community.

Currently, one of the main focuses of law enforcement in Indonesia is the eradication of narcotics abusers. Narcotics crimes have been *transnational* and have caused serious impacts, especially among the younger generation, to an alarming level. Perpetrators of narcotics abuse are divided into 2 (two) categories, namely perpetrators as dealers and perpetrators as users.

In this context, the role of the courts is very important. Judges as executors of judicial power must be able to pay attention to the values that live and develop in society (*das sollen*). Thus, the court can be a forum for correction of current laws (*ius constitutum*) and encourage more equitable legal reforms in the future (*ius constituendum*). One form of the reform is reflected in the regulation of narcotics crimes as stipulated in Undang-Undang Nomor 35 Tahun 2009 (hereinafter referred to as the Narcotics Law), which adheres to a *double track* system through the application of criminal sanctions and action sanctions. One form of sanction for actions regulated in the law is rehabilitation for addicts and victims of narcotics abuse.

However, in practice, many narcotics cases are decided by judges with the imposition of criminal sanctions of imprisonment or confinement. Meanwhile, in the Narcotics Law, it is emphasized that rehabilitation for narcotics abuse is contained in Pasal 54. Furthermore, this Pasal expressly states that addicts and victims of narcotics abuse must be rehabilitated. This provision is closely related to Pasal 127 which specifically, in ayat (2) requires the judge to consider the provisions of Pasal 54, Pasal 55, and Pasal 103 in making a decision. The Supreme Court then emphasized this arrangement through the Supreme Court Circular Letter (hereinafter referred to as SEMA) Number 4 of 2010, which provides a clearer classification related to addicts, abusers, and victims of narcotics abuse who can be sentenced to rehabilitation.

Furthermore, the application of these provisions often depends on investigators and public prosecutors. If the public prosecutor does not include the provisions of Pasal 127 in the indictment or charge, then efforts to rehabilitate narcotics users become difficult to carry out. This is because the judge is bound by the provisions of Pasal 182 ayat (3) and (4) of the Criminal Code, which limits the judge to decide cases outside the indictment filed by the public prosecutor.

To answer these problems, the Supreme Court through the plenary meeting of the criminal chamber issued SEMA Number 3 of 2015. In the SEMA, it is emphasized that in the case of narcotics crimes, the judge must indeed decide based on the indictment of the public prosecutor, but it is allowed to deviate from the special minimum criminal provisions as long as it is supported by adequate consideration based on the legal facts revealed at the trial.

In this context, several decisions of Pengadilan Negeri Lubuk Pakam do not seem to have considered the application of SEMA Number 4 of 2010 and SEMA Number 3 of 2015 in their rulings, and do not show any efforts to make legal breakthroughs to get out of the special minimum criminal provisions. Seeing these conditions, the author is encouraged to further research the consistency of views and the application of legal provisions by first-instance judges, who should play a leading role in enforcing the law in society. This research is important

to examine the extent of the judge's courage in making legal innovations, especially in narcotics cases, when legal facts are found that are not in accordance with the public prosecutor's indictment. This study also aims to see whether judges in practice consider rehabilitation for narcotics users in order to realize restorative justice.

Research Methodology

In this Pasal, the research method used is a descriptive research method of analysis which is systematically arranged with certain thoughts in analyzing problems using qualitative methods. According to Hafni Sahir, the qualitative method is a method with a research processor based on the perception of a phenomenon with the approach of the data to produce a descriptive analysis in the form of verbal sentences from the object of research. The secondary data used as sources or information materials are primary legal materials, secondary legal materials and tertiary legal materials.

Discussion

3.1 The application of SEMA Number 4 of 2010 and SEMA Number 3 of 2015 by the Judge of the District Court of First Instance.

Narcotics crime can be interpreted as an act that violates the provisions as stipulated in Pasals 111 to 148 of the Narcotics Law. This can be seen from Supramono's opinion that if narcotics are only for treatment and scientific interests, then acts outside these interests are crimes (criminal acts). The narcotics crime itself can be formulated as *a crime without a victim*, with the perpetrators also playing the role of victims.

Victimless crime is generally characterized by no apparent direct impact of the interaction between the perpetrator and the victim. In this type of crime, no party is explicitly harmed because all parties involved participate in the crime. Thus, the perpetrator of the crime can also be considered a victim. According to Dadang Hawari, narcotics abusers are classified into three, namely:

1. Narcotics abusers with primary dependence, this disorder has symptoms of depression and depression, this occurs in people whose personality is unstable;
2. Narcotics with symptomatic dependence usually users use narcotics for pleasure alone, This happens in people with psychopathic (antisocial) and criminal personalities;
3. Narcotics abusers with reactive dependence. This happens due to curiosity, environmental influence, and *peer group pressure*. Abusers of this group are usually teenagers.

In the Narcotics Law, there are 3 (three) definitions of narcotics users, namely addicts, abusers, and victims of narcotics abuse. Narcotics addicts are defined as people who use narcotics and are in a state of dependence, both physically and psychologically. Meanwhile, abusers are people who use narcotics without rights or against the law. A victim of narcotics abuse is defined as someone who accidentally uses narcotics because he is persuaded, deceived, deceived, forced, and/or threatened to use narcotics.

Responding to this complexity, criminal law policies in dealing with narcotics crimes in Indonesia include regulations regarding criminal liability, types of acts that qualify as criminal acts, and types of criminal sanctions. Liability can be imposed on individuals and corporations as subjects of law, while prohibited acts include the circulation and abuse of narcotics and narcotic precursors. The criminal sanctions imposed consist of principal sanctions and additional sanctions as stipulated in the law.

Furthermore, the act of abusing narcotics for themselves is regulated in Pasal 127 of the Narcotics Law, namely people who use narcotics without rights or against the law (Pasal 1 number 15). Meanwhile, narcotics addicts, as in Pasal 128 and Pasal 134, are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically (Pasal 1 number 13).

The judge who examines the case of narcotics abusers for himself can, namely: *First*, Decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime, *Second*, Determine to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty committing a criminal act of narcotics.

To maximize the role of judges in deciding or determining rehabilitation, support from other law enforcement officials is needed. Of course, this must be based on a mutual understanding and agreement that drug abuse is a serious problem of the nation and enemies of the nation. This understanding and agreement from the government and law enforcement officials is then realized through a Joint Regulation of 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 Chief of the Police, and the Head of the National Narcotics Agency. Number 01/PB/MA/III/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number PER-005/A/JA/03/2014, Number 1 of 2014, Number PERBER/01/III/2014/BNN concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. Thus, drug addicts no longer lead to prison penalties but to rehabilitation facilities, because sanctions for addicts are agreed to be in the form of rehabilitation.

Provisions regarding rehabilitation are regulated in Pasal 54 to 59 of the Narcotics Law. Rehabilitation is very important for narcotics addicts, because they are individuals who use or abuse narcotics and experience dependence, both physically and psychologically. Rehabilitation is a treatment process that aims to free addicts from addiction. The rehabilitation period is equated to the period of serving a criminal sentence. If addicts do not get rehabilitation, it has the potential to cause crimes in the future.

In the criminal application of narcotics abusers for personal interests, it is also based on SEMA Number 04 of 2010 which regulates the placement of narcotics users in therapy and rehabilitation homes. In addition, the Supreme Court also issued SEMA Number 03 of 2015. One of the reasons for the issuance of SEMA is because the judge in examining and deciding the case basically has to adhere to the indictment filed by the Public Prosecutor. However, with the existence of this SEMA, if in the trial process it is proven that the defendant is a narcotics user as stipulated in Pasal 127, with a relatively small amount of evidence (in accordance with SEMA Number 4 of 2010), even though the Pasal is not listed in the indictment, the judge can still make a verdict based on the existing indictment by considering deviations from the provisions of the special criminal minimum, provided that it is accompanied by adequate consideration.

Table 1. Several cases regarding the criminal application of narcotics abusers for themselves at Pengadilan Negeri Lubuk Pakam

Defendant's Name & Evidence	Demands	First Instance Judgment	Appellate Rate Ruling	Appellate Rate Ruling
Musa Siagian / Shabu Net 0.47 grams.	Pasal 112 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 6 years and a fine of Rp. 800,000,000, Subs. 3 months in prison.	1091/Pid.Sus/2024/PN Lbp Pasal 112 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 5 years year and a fine of Rp. 800,000,000, Sub 3 months in prison.	1970/PID. SUS/2024/PT MDN Pasal 112 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 4 years and a fine of Rp. 800,000,000, Sub 3 months in prison.	2453 K/PID. SUS/2025 Pasal 127 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 1 year and 6 months

Hengki Aritonang & Irwansyah / Shabu Net 0.74 grams.	Pasal 114 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 6 years and 6 months and a fine of Rp. 800,000,000, Subs. 3 months in prison.	644/Pid.Sus/2024/PN Lbp Pasal 114 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 5 years and a fine of Rp. 1,000,000,000, Subs. 3 months in prison.	1574/PID. SUS/2024/PT MDN Pasal 114 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 5 years and a fine of Rp. 1,000,000,000, Subs. 3 months in prison.	868 K/PID. SUS/2025 Pasal 127 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 1 year and 6 months.
Deni Sulaika / Shabu Gross 0.16 grams.	Pasal 112 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 7 years and a fine of Rp. 1,000,000,000, Subs. 6 months in prison.	11/Pid.Sus/2024/PN Lbp Pasal 112 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 6 years and a fine of Rp. 1,000,000,000, Subs. 3 months in prison.	599/PID. SUS/2024/PT MDN Pasal 112 ayat (1) Jo. Pasal 132 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 5 years and 6 months and a fine of Rp. 1,000,000,000, Subs. 3 months in prison.	6396 K/PID. SUS/2024 Pasal 127 ayat (1) UU No. 35 Tahun 2009; Imprisonment for 1 year and 6 months.

Based on an analysis of several court decisions, it appears that the panel of judges at the first level and the appellate level are not likely to make legal breakthroughs to get out of the application of the special minimum criminal charges charged by the public prosecutor. In fact, when it is associated with the facts revealed in the trial, evidence and legal considerations are found that are systematic, clear, and logical in line with the provisions of SEMA Number 4 of 2010 and SEMA Number 3 of 2015. In contrast to the panel of judges at the cassation level who have acted appropriately and carefully in connecting the facts of the trial with the elements of criminal acts, thus canceling the decision of the appeals court and changing the decision of the court of first instance from Pasal 112 ayat (1) to Pasal 127 ayat (1) of the Narcotics Law.

This practice is in line with the mandate of Pasal 5 ayat (1) Undang-Undang No 48 Year 2009 concerning Judicial Power which emphasizes that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that lives in society. The provision aims to ensure that every judge's decision is not only in accordance with the applicable legal provisions, but also reflects substantive justice for the community. Thus, judges are no longer seen as mere mouthpieces of the law, but as parties who are autonomously and responsibly able to create and adapt the law to the social dynamics that develop in society.

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