



Judges' Considerations in Determining the Sentences for Narcotics Abuse Category I

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Article's Information	Abstract
<p>Keywords:</p> <p><i>Narcotics, Judge Considerations, Criminal.</i></p> <p>DOI :</p> <p>https://doi.org/10.25041/ip.v4i1.2900</p>	<p><i>The rise in drug-related arrests in Indonesia has increasingly implicated the younger generation, highlighting the urgent need for appropriate legal responses. Narcotics, which include both naturally derived and synthetic substances, have the capacity to alter consciousness, reduce or eliminate pain, and create dependency. In the legal context, while rehabilitation serves as a potential corrective measure, aimed at treating the drug users rather than solely punishing them, it is underutilized. Instead, judicial practices often lean towards imposing prison sentences and fines. This empirical normative legal research draws on both primary and secondary data, collected through fieldwork and library research, to explore these judicial decisions. The research focuses on how judges apply Article 127, paragraph 1, letter a of Law Number 35 of 2009 (Narcotics Law) in determining the guilt of defendants and deciding their sentences. A case research from the Special Class II Gedong Tataan District Court demonstrates that judicial decisions predominantly favor incarceration and fines, often due to the lack of established evidence that the defendants are drug addicts or victims of drug abuse, thus not qualifying them for rehabilitation. This research underscores the need for a critical reassessment of sentencing practices to better address the rehabilitation needs of drug offenders, particularly the youth.</i></p>

A. Introduction

Drug abuse is commonly viewed as a violation of societal norms and is legally classified as a crime. When treated as a criminal offense, the repercussions carry a stigma that necessitates preventive measures and legal action. To comprehend the sharp increase in drug-related offenses in Indonesia, it is crucial to explore the disconnect between the intended outcomes of



laws and their actual implementation. Effective testing methods are needed to reliably identify drug users among offenders, helping to pinpoint the reasons behind the escalating crime rates associated with drug abuse. Such offenses, regardless of the age, fame, or status of the individuals involved—including public officials—are increasingly recognized as widespread issues within the nation.¹

Law Number 35 of 2009 concerning narcotics aims to eradicate illegal drug trafficking, prevent drug abuse, and ensure narcotics are available for medical and scientific purposes. Despite the severe penalties stipulated by this law, including hefty fines and corporal punishment, the prevalence of drug-related offenses continues to rise. This trend suggests a failure in the law's deterrent effect. Drug abuse is a complex issue with ramifications across medical, psychiatric, mental health, and psychosocial domains. It is not merely a spontaneous event, but rather the culmination of various personal and environmental factors that converge over time, deeply affecting all involved parties. These factors are interwoven, influencing each other and playing significant roles in an individual's choices and overall life trajectory. Thus, deviations in behavior can stem from both personal predispositions and external influences.²

The misuse of narcotics, even when prescribed, can detrimentally impact both physical and mental health, potentially leading to addiction. Such misuse starkly contradicts Indonesia's developmental goals which aim to cultivate a holistic and just society, flourishing in peace and prosperity, underpinned by the Pancasila and the 1945 Constitution.³ The availability of narcotics for medical and scientific purposes underscores ongoing efforts in healthcare to use these substances responsibly. However, to align with these developmental goals, there is a pressing need to enhance the control and oversight of narcotics to prevent abuse and curtail their illicit distribution. Typically, narcotics crimes involve organized syndicates rather than isolated individuals, making it challenging to intercept the flow of these substances.⁴

The definition of a "dealer" under the Narcotics Law is excessively broad, potentially encompassing anyone involved in the lifecycle of a drug, from production to distribution. This ambiguity often complicates legal interpretations and court rulings, leading to varied and sometimes disproportionate sentencing. Individuals involved with drugs might simultaneously be classified as users, victims, or addicts, each requiring a different approach in terms of intervention and punishment.⁵

For instance, a recent case adjudicated by the Gedong Tataan District Court (Number 86/Pid.Sus/2022/PN.Gdt) resulted in a notably severe sentence of one year and six months' imprisonment for the defendant. Given the urgency signaled by the Indonesian government's declaration of a drug emergency, it is crucial to revisit how punishments are meted out, especially under Law number 35 of 2009, which outlines stringent penalties for class I violations. This law breaks down narcotics abusers into three categories: users, victims, and dealers. Users actively choose to consume drugs, victims are those coerced or deceived into drug use, and addicts are those who have developed a dependency due to excessive use. Dealers handle the logistics and distribution of drugs. This distinction is critical in ensuring that

¹ Idik Saeful Bahri, *Pemenuhan Hak Anak Dalam Proses Rehabilitasi Narkotika* (Yogyakarta: Bahasa Rakyat, 2020), hlm 23.

² Merry Natalia Sinaga, "Ide Dasar Double Track System: Sanksi Pidana Dan Tindakan Sebagai Sistem Pemidanaan Terhadap Pelaku Kejahatan Penyalahgunaan Narkotika," *Jurnal Penelitian Pendidikan Sosial Humaniora* 3, no. 1 (2018).

³ Putri Herdriani and Palupi Lindiasari Samputra, "Pengaruh Layanan Rehabilitasi Narkotika Terhadap Kualitas Hidup Warga Binaan Pemasyarakatan Di Lembaga Pemasyarakatan," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (2021).

⁴ Septa Candra, "Pembaharuan Hukum Pidana; Konsep Pertanggungjawaban Pidana Dalam Hukum Pidana Nasional Yang Akan Datang," *Jurnal Cita Hukum* 1, no. 1 (2013).

⁵ Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2022), hlm 7.

sentences are justly assigned, reflecting the nature of the involvement rather than applying a one-size-fits-all approach.

Law Number 35 of 2009 on Narcotics does not include provisions for the decriminalization of drug abuse. Article 4(b) of this law aims to prevent, protect, and save the Indonesian people from drug abuse, while Article 4(d) ensures the regulation of medical and social rehabilitation efforts for drug abusers and addicts, suggesting an approach that includes elements of decriminalization.⁶ However, the law also stipulates punitive measures: for instance, Article 127(a) states that personal use of Class I narcotics is punishable by up to four years in prison, underscoring the ongoing criminalization of drug abuse. According to the Criminal Code, involvement in drug abuse extends beyond the user to include those who order, participate in, or assist the act.⁷ The process of determining criminal responsibility for drug abuse extends beyond judicial findings and involves a comprehensive legal framework. Judges do not solely rely on police reports or laboratory results regarding narcotics content; they must consider the full extent of the evidence when applying the law to ensure that all proven offenses are appropriately penalized.⁸

Judges must, however, also take into account the sentencing guidelines. According to *BNN Regulation No. 11 of 2014 regarding Narcotics Addicts and Victims of Narcotics Abuse: Procedures for Handling Suspects/Defendants in Rehabilitation Institutions*, there are provisions regarding rehabilitation for convicts in the implementation of rehabilitation coaching in correctional institutions as follows:

1. The resident coaching period is 6 (six) months.
2. During detoxification and entry units, residents cannot be visited by family members.
3. Residents can be visited after entering the primary and re-entry phases.
4. If the resident escapes from the rehabilitation center and returns to the family, the family is obliged to inform the National Narcotics Agency and escort them back to continue the rehabilitation.⁹

In judicial sentencing, both objective and subjective criteria are crucial. Subjectivity pertains to the discretion judges exercise in imposing sentences, while objectivity is derived from the evidential scrutiny conducted during the trial. Despite subjective influences, it is essential for criminal judgments to be grounded in objective analysis. The sentence imposed in case Number 86/Pid.Sus/2022/PN.Gdt, where the accused received a 1 year and 6 month prison term, is viewed by some as excessively harsh, particularly considering the rehabilitative needs highlighted in drug-related offenses. According to Article 54 of the Narcotics Law, drug addicts and abuse victims are mandated to undergo social and medical rehabilitation.¹⁰

In this specific case, the Public Prosecutor concluded that the defendant was not part of a larger drug network and recommended a 6-month inpatient rehabilitation at the Kalianda Rehabilitation Workshop. However, the judges chose a punitive approach under Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning narcotics, which categorizes the defendant's actions as criminal. This decision, opting for incarceration over the suggested rehabilitation, prompts a deeper examination into the balance between punitive and rehabilitative justice in narcotics cases. The proposed research, titled "Analysis of Judge

⁶ M Ali Zaidan, *Menuju Pembaruan Hukum Pidana* (Jakarta: Sinar Grafika, 2022), hlm 51.

⁷ Titin Apriani, "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana," *Ganec Swara* 13, no. 1 (2019).

⁸ Rahmanuddin Tomalili, *Hukum Pidana* (Sleman: Deepublish, 2019), hlm 44.

⁹ Kitab Undang-Undang Hukum Pidana.

¹⁰ Wisnu Jati Dewangga, "Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika Dengan Pelaku Anggota Kepolisian (Studi Kasus Di Wilayah Hukum Boyolali)," *Jurnal Jurisprudence* 4, no. 2 (2017).

Considerations on Criminal Imposition of Class I Narcotics Abusers at the Gedong Tataan District Court" (Research of Decision Number 86/Pid.Sus/2022/PN.Gdt).¹¹

This research adopts a normative juridical approach complemented by empirical juridical research to address the issue of sentencing in narcotics cases, specifically focusing on the considerations of judges as seen in case number 86/Pid.Sus/2022/PN.Gdt.¹² The normative juridical approach involves a detailed examination of legal principles, theories, views, and doctrines, as well as an analysis of formal and material criminal law. This approach helps in understanding the legal framework and judges' considerations concerning the crime of drug abuse. In contrast, the empirical juridical approach focuses on the practical application of law through the research of opinions, attitudes, and behaviors of law enforcement officials. This method relies on the collection of objective facts from the field to assess the identification and efficacy of law enforcement.¹³

Qualitative data analysis plays a crucial role in this research, making it easier to interpret data and comprehend findings due to the quality of data presentation, which includes regular, coherent, and logical sentences. Conclusions are systematically drawn to provide a clear understanding of the judges' considerations in the aforementioned case. Despite the lack of direct drug possession—only eight packs of used clips were found—no rehabilitative measures were prescribed, highlighting a potential oversight in the application of rehabilitative justice for drug abusers not caught in possession of drugs.

The study's novelty lies in its exploration of the broader societal impacts of judicial decisions on community protection against drug abuse and illegal trafficking. It emphasizes the pivotal role of parents in prevention, suggesting that a community-oriented approach where parents mentor and teach life skills could significantly deter drug abuse. The research argues for a judicial practice that prioritizes rehabilitation, reflecting the significant benefits of such measures for the physical, psychological, and social well-being of drug addicts. The call for judges to exercise greater discretion and prioritize rehabilitative over punitive measures could lead to more effective outcomes in drug-related cases and help manage the capacity of correctional institutions more effectively.

B. Discussion

1. Completeness of Judge's Case Files in Imposing Rehabilitation Crimes for Class I Narcotics Abusers

Drug crimes have been accommodated by Law Number 35 of 2009, which also provides legal protection for drug abuse victims and addicts who must go through both medical and social rehabilitation. Article 54 expressly and unequivocally requires this. According to Article 127 of Law Number 35 of 2009 on Narcotics, a person who abuses drugs may receive a criminal sentence for rehabilitation if they meet the criteria outlined in Supreme Court Circular Letter Number 04 of 2010 Concerning the Placement of Abuse, Victims of Abuse, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions, which includes the following clauses:

1. When the accused was arrested by investigators, he was caught red-handed;
2. Evidence of 1 (one) day usage was found, for the methamphetamine group it was 1 gram;

¹¹ Muhamad Nur Ardhy, Muhyi Mohas, and Reine Rofiana, "Sanksi Rehabilitasi Bagi Prajurit TNI Yang Menjadi Terpidana Penyalahgunaan Narkotika (Studi Kasus Di Pengadilan Militer II-08 Jakarta)," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 1, no. 2 (2021).

¹² Nindiya Putri and Ediman Manik, "Sistem Informasi Berbasis Web Pada Badan Narkotika Nasional (BNN) Kota Binjai," *Jurnal Informatika Kaputama (JIK)* 2, no. 1 (2018).

¹³ Daffa Ladro Kusworo et al., "Establishment of a National Regulatory Body to Overcome Disharmonization of Natural Resources and Environmental Policies," *International Journal of Multicultural and Multireligious Understanding* 9, no. 11 (2022).

3. Positive laboratory test letter using Narcotics at the request of the investigator;
4. A certificate from a government psychiatrist/psychiatrist appointed by the Judge;
5. There is no evidence that the person concerned is involved in the illicit traffic of Narcotics.¹⁴

Judges must adhere to rigorous standards when rendering decisions, ensuring that they provide specific justifications based on evidence presented during the trial. As stipulated by Article 184 Paragraph 1 of the Criminal Procedure Code, this evidence includes witness and expert testimonies, documents, directives, and statements from the accused. These elements are crucial in forming the basis of any judicial decision. The case research of Decision Number 86/Pid.Sus/2022/PN.Gdt highlights a noticeable discrepancy between the charges brought by the public prosecutor and the ruling made by the judge.¹⁵ This situation underscores the importance of the *non ultra petita* principle, a legal doctrine that restricts judges to ruling strictly within the requests made in the charges, prohibiting decisions that exceed these stipulated demands.¹⁶

In the context of narcotics law, the classification of individuals involved in drug use is critical to understanding judicial responses. According to Article 1 Point 15 of the Narcotics Law, both drug users and addicts are defined as individuals who use drugs illegally or without rights. Additionally, victims of narcotics abuse are described in Article 1 Point 13 as those who are involuntarily coerced or manipulated into using drugs, distinguishing them from narcotics addicts who are individuals dependent on narcotics and demonstrate a physical and psychological addiction.¹⁷ Both groups are considered drug abusers under the law due to their unauthorized use of narcotics. The Narcotics Law provides for rehabilitation for both drug abuse victims and addicts, reflecting the law's recognition of their need for a recovery process aimed at reintegrating them into society. This rehabilitative approach is designed to restore these individuals that they can resume their roles within the community, emphasizing the law's focus on recovery and social integration rather than solely on punitive measures.

The law has protected this rehabilitation effort as an effort to save an abuser or addict, therefore they can get their health and social lives back to normal. The Narcotics Law does, however, contain inconsistencies, particularly in Article 127, paragraphs (2) and (3), which deal with rehabilitation and punishment, respectively. Article 54 of the Narcotics Law, states that

"Narcotics addicts and victims of Narcotics abuse must undergo medical rehabilitation and social rehabilitation."

This justification emphasizes the necessity of social and medical rehabilitation for both addicts and abuse victims, advocating for a shift from punitive measures to therapeutic interventions in the criminal justice system. Rehabilitation aligns with the treatment theory of punishment, which proposes that offenders are in need of medical care and should be treated and rehabilitated rather than strictly punished. The drug law enhances this approach by granting judges the discretion to opt between incarceration and rehabilitation, allowing for tailored solutions that address the root causes of addiction and abuse, and promoting recovery and societal reintegration.

¹⁴ Andi Najemi, Kabib Nawawi, and Lilik Purwastuti, "Rehabilitasi Sebagai Alternatif Pemidanaan Terhadap Anak Korban Penyalahgunaan Narkotika Dalam Upaya Perlindungan Terhadap Anak," *Jurnal Sains Sosio Humaniora* 4, no. 2 (2020).

¹⁵ Herman Herman, Arie Wibowo, and Nurdin Rahman, "Perilaku Penyalahgunaan Narkotika Di Kalangan Siswa Sekolah Menengah Atas Negeri 1 Banawa Kabupaten Donggala," *Media Publikasi Promosi Kesehatan Indonesia (MPPKI)* 2, no. 1 (2019).

¹⁶ Tofri Dendy Baginda Sitorus, Maidin Gultom, and Jaminuddin Marbun, "Rehabilitasi Terhadap Pengguna Dan Korban Penyalahgunaan Narkotika Dalam Konsep Pemidanaan Di Indonesia (Studi Kasus Putusan Di Pengadilan Negeri Purwokerto)," *Jurnal Prointegrita* 4, no. 1 (2020).

¹⁷ Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157, Anotasi 5076).

In a specific case handled by the Gedong Tataan District Court, the imposition of a prison sentence on the defendant was guided by Decision Number 86/Pid.Sus/2022/PN.Gdt. The court found that the defendant had illegally consumed methamphetamine, a Class I Narcotic, for personal use without health justification or regulatory approval, thus meeting the criteria under Article 127 Paragraph 1 Letter A of Law Number 35 of 2009 Concerning Narcotics. This decision underlines the delicate balance between enforcing law and embracing rehabilitative strategies in addressing drug-related offenses.¹⁸

At the trial, evidence indicated that the defendant was not actively using drugs at the time of arrest, and no drugs sufficient for even a single day's use were found—only eight used drug paraphernalia clips were discovered. Consequently, the facts did not align with the criteria outlined in SEMA No. 4 of 2010's point 2 letters a and b, which govern the implementation of rehabilitation. Given these circumstances, the Judge found no legal or moral justification to support the Public Prosecutor's demand for the defendant's rehabilitation. Thus, the Panel of Judges rejected this demand, aligning the sentence more closely with the defendant's actual conduct as evidenced in the case.¹⁹

The sentence was determined to be appropriate and fair after considering all pertinent facts and circumstances, fulfilling the stringent requirements for imposing a prison sentence. This decision adheres to the standards set forth in the Criminal Procedure Code and is deemed correct unless overturned or modified by a higher authority. The decision also aligns with the stipulations of the Supreme Court Circular Letter Number 04 of 2010, which details the prerequisites for deciding on rehabilitation sentencing. According to Article 184 Paragraph (1) of the Criminal Procedure Code, the judge's decision must be based on the evidence presented during the trial.²⁰

2. The basis for Judges Not Providing Rehabilitation for Narcotics Abusers Case Number 86/Pid.Sus/2022/PN.Gdt

In determining the most equitable decision in each case, judges are guided by the established elements of a crime as examined during the trial. While judges have the discretion to consider unpublished facts in their decision-making, this freedom is regulated by legal safeguards to prevent arbitrary judgments. Decisions must be well-founded and not hastily made without clear reasoning. In cases of drug abuse, judges are required not only to use evidence to establish criminal responsibility but also to carefully consider sentencing guidelines, which are divided into categories of criminal acts and criminal liability.

A criminal act is defined as behavior that is unlawful, unjustified, and fits the legal definition of the offense. Criminal responsibility hinges on the perpetrator, who must acknowledge accountability for the wrongdoing and the lack of justification for their actions. When imposing a sentence, judges employ both objective standards, which are based on evidence presented in court, and subjective judgment, which allows for judicial discretion within the bounds of the law. It is crucial that while judicial decisions may be subjective, they must also be objective and justifiable.²¹

Drug abuse, notably on the rise, presents a complex challenge as drug abusers are seen both as perpetrators and victims. The field of victimology expands this understanding by recognizing

¹⁸ M Nurdin, "Kajian Yuridis Penetapan Sanksi Di Bawah Sanksi Minimum Dalam Penyalahgunaan Narkotika," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018).

¹⁹ Anang Iskandar, "Penyalahgunaan Narkotika, Dipenjara Atau Direhab," *Hukum Pidana Dan Pembangunan Hukum* 2, no. 1 (2019).

²⁰ Marsaulina Nainggolan, Elvi Zahara, and Saparuddin Saparuddin, "Peranan Hakim Dalam Memberikan Perlindungan Hukum Terhadap Anak Korban Penyalahgunaan Narkotika (Studi Pengadilan Negeri Lubuk Pakam)," *Jurnal Mercatoria* 3, no. 2 (2010).

²¹ Andri Winjaya Laksana, "Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi," *Jurnal Pembaharuan Hukum* 2, no. 1 (2016).

that individuals who are coerced, deceived, or threatened into drug use are victims needing protection on both social and legal levels. Drug abuse is pervasive across various demographics, including students, celebrities, business professionals, and government officials, affecting nearly every region, including Gedong Tataan. The Gedong Tataan District Court frequently handles drug abuse cases, including the noted case (Number 86/Pid.Sus/2022/PN.Gdt). As the prevalence of drug abuse rises, judges are compelled to respond by categorizing such offenses under criminal acts.

The judge deliberated on the judgment (Number 86/Pid.Sus/2022/PN.Gdt), which addressed criminal penalties for drug abusers. A critical aspect in evaluating the merits of a judicial decision is the judge's rationale, which should encapsulate principles of justice (*ex a quo et bono*), legal certainty, and the benefits to the involved parties. Thus, it is imperative that the judge's reasoning is meticulously considered and articulated. Per the interpretation of Article 127 Paragraph (1) of Law Number 35 of 2009 on Narcotics, a defendant may be adjudged guilty of a narcotics offense if the stipulated criteria of the offense are met.²² It is essential to establish that the alleged crime stemmed from the act prompting the charge, the penalty applied, the corroborative evidence presented, and the factors bolstering the judge's conclusion. The offense's formulation necessitates the presentation of at least two pieces of credible, substantial, and relevant evidence, alongside the judge's conviction.²³

The author advocates for criminal rehabilitation as an appropriate remedy for drug abuse, suggesting it as an effective alternative. Law Number 35 of 2009 on Narcotics, specifically Articles 54, 55, and 103, empowers judges to mandate rehabilitation for drug abusers. According to this law, rehabilitation is bifurcated into two distinct phases, emphasizing a phased approach and prioritizing medical intervention as a therapeutic mechanism via health sciences. These provisions assert that rehabilitation is indeed the optimal strategy for addressing drug abuse cases. However, it is important to recognize that not all instances of drug abuse are eligible for a rehabilitation sentence.²⁴ As delineated in the Supreme Court Circular Number 04 of 2010 concerning the Placement of Abuse Victims and Narcotics Addicts into Medical and Social Rehabilitation Institutions, certain criteria must be met for drug abuse cases to qualify for rehabilitation sentencing as follows.

1. At the time of his arrest by investigators, the accused was caught red-handed;
2. Found evidence of 1 (one) day use, for the methamphetamine group is 1 gram;
3. Positive laboratory test letter using Narcotics at the request of the investigator;
4. A certificate from a government psychiatrist/psychiatrist appointed by the Judge;
5. There is no evidence that the person concerned is involved in the illicit traffic of Narcotics;

Based on these provisions, if one of the points is not fulfilled, then the perpetrators of narcotics abuse cannot be rehabilitated. Therefore, in addition to criminal rehabilitation, the imposition of prison sentences is one of the decisions for narcotics abuse.

Although the panel of judges acknowledged that the defendant was a victim of drug abuse, this did not directly dictate the verdict. The fact that the defendant admitted responsibility led the judges to conclude guilt; however, in determining the punishment, they also considered his victim status due to the circumstances surrounding his drug use. According to the evidence, the defendant began using drugs following an invitation by others, rather than of his own volition. This aligns with the Big Indonesian Dictionary's definition of "persuade," which describes it as an effort to convince someone of a truth using appealing language. Therefore, in this context,

²² Imran Imran, Nu Fadhillah Mappaselleng, and Dachran Busthami, "Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak," *Indonesian Journal of Criminal Law* 2, no. 2 (2020).

²³ Daffa Ladro Kusworo and Maghfira Nur Khaliza Fauzi, "Hybrid Restorative Justice: Optimizing Cessation Of Prosecution The Case Theft Through Restorative Judicial House," *Ius Poenale* 3, no. 2 (2022).

²⁴ Hamidah Abdurrachman, Eddhie Praptono, and Kus Rizkianto, "Disparitas Putusan Hakim Dalam Kasus Narkoba," *Pandecta Research Law Journal* 7, no. 2 (2012).

the words "invited" and "persuaded" suggest a similar influence, reinforcing the defendant's role as a passive participant rather than an active initiator of drug abuse.

Despite this, the decision to opt for rehabilitation over incarceration is not solely dependent on these factors. When adjudicating drug-related cases, judges must consider a variety of elements that complicate their decision-making process. It is essential to recognize the broader array of challenges judges face in such cases, which include evaluating the nature of the defendant's involvement in drug use and the potential benefits of different types of sentencing, such as rehabilitation, which may better address the underlying issues of drug dependency. Judges face a number of challenges when deciding cases of drug abuse, including:

1. There were facts at trial where the perpetrators of narcotics abuse were not charged with Article 127 jo. Article 1 number 15 of Law Number 35 of 2009 concerning Narcotics
2. Perpetrators of drug abuse do not have the results of an assessment issued by a psychiatrist or psychologist. Considering that the results of the assessment have an urgency for the judge in making a decision for the perpetrator to be sentenced to rehabilitation or imprisonment.
3. There are differences in the application of the alleged articles in some instances. There is an indictment of article 127 but in other cases there is no article 127 considering that the perpetrator had a similar series of actions.
4. The results of the assessment issued are not evenly distributed in every case.
5. There is no concrete benchmark to determine whether perpetrators of narcotics abuse should be sentenced to rehabilitation.
6. Budget mechanism and availability of facilities and infrastructure for treatment or rehabilitation treatment.²⁵

In addressing cases of drug abuse, judges confront several significant challenges. Effective case management requires the incorporation of specific evidence from both medical and non-medical sources. However, the imposition of prison sentences has not effectively curtailed drug-related offenses; rather, these crimes have seen an annual increase. This trend was evident at the Gedong Tataan District Court, where nearly 80% of the cases involved drug-related charges, leading to severe overcrowding in the penitentiary.

Furthermore, the imposition of prison or rehabilitation sentences has not substantially reduced the number of drug cases. The handling of drug case Decision Number 86/Pid.Sus/2022/PN.Gdt was deemed appropriate due to its specific justifications and legal foundations. However, in this decision, there was no substantial basis provided by the Panel of Judges for opting for rehabilitation over other forms of sentencing for the defendant, nor was the urgency of such an option justified.

Judges handling drug offenses sometimes impose varying sentences for similar crimes, which can lead to inconsistencies in legal outcomes. These decisions are influenced by various factors including legal principles, personal biases, and a heightened scrutiny by the judiciary. Prior to finalizing their verdicts on narcotics cases, the panels of judges also consider additional legal theories, focusing on the validity of the charges and the interpretation of relevant legal doctrines.

The dual track system categorizes sanctions into two types: criminal sanctions and action sanctions, both of which apply to individuals who commit crimes. This system is designed to balance the elements of reproach and suffering through criminal sanctions with elements of guidance and rehabilitation through action sanctions. As a result, both types of sanctions are

²⁵ Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika (Lembaran Negara Nomor 135, Tambahan Lembaran Negara Nomor 5062).

given equal importance under the dual track system, ensuring that offenders receive both punitive measures and opportunities for rehabilitation.²⁶

In cases involving drug abuse, the Public Prosecutor often utilizes Article 112 to prosecute offenders. However, in practical terms, prosecuting drug users under this article poses challenges. Judicial decisions, such as imposing prison sentences, aim to serve a deterrent effect, discouraging the defendant from repeating their offenses. In one instance, despite evidence from the trial confirming the defendant's personal use of crystal methamphetamine and laboratory tests indicating active addiction, the judges remained unconvinced. The defendant's inability to medically prove his addiction prior to arrest played a critical role in their decision-making process, illustrating the complexities and nuances involved in judicial interpretations of drug-related offenses.²⁷

Evaluating a suspect's role as either a drug user or dealer and assessing their level of dependence is critical for applying decriminalization efforts in drug abuse cases. According to Law Number 35 of 2009 Concerning Narcotics, specifically Article 54, drug addicts and victims of drug abuse are mandated to undergo both medical and social rehabilitation. This depenalization approach is further clarified in Article 103 paragraph (1), which substitutes criminal penalties with compulsory rehabilitation measures for drug abusers. Moreover, Article 1 point 15 allows judges to order rehabilitation for convicted drug addicts, provided their offenses do not extend beyond the use of drugs, highlighting the legal distinction between personal drug use and broader drug-related criminal activities. The law stipulates up to four years of imprisonment for any individual who self-administers Class I narcotics illegally, emphasizing a balanced approach that prioritizes rehabilitation while penalizing unauthorized use.²⁸

Every drug user driven by their addiction may resort to severe measures to satisfy their addiction. According to Law Number 35 of 2009 Concerning Narcotics, Article 1 Number 18, these measures can include engaging in a criminal conspiracy where two or more individuals agree to commit, assist, or participate in narcotic-related offenses. This definition encompasses actions such as carrying out, ordering, suggesting, facilitating, or providing consultation for drug crimes, thus potentially being part of an organized drug crime network. Per Article 132 paragraph (1) of the same law, anyone involved in attempting or conspiring to commit a narcotic crime faces the same penalties as those prescribed in Articles 111, 112, and 114, which involve engaging in the illegal cultivation, possession, control, or distribution of narcotics, whether plant-based or synthetic. The stipulated penalties for such narcotic offenses range from a minimum of four years to a maximum of twelve years in prison, along with potential fines up to eight billion rupiahs.²⁹

The classification of the defendant solely as a Class I drug abuser led the judges' panel to carefully consider various elements alongside the findings presented during the trial examination. They started by analyzing the defendant's statements, witness testimonies, expert opinions, and documentary evidence presented in court. Subsequently, they evaluated both the aggravating and mitigating factors affecting the case. Notably, the defendant's status as a victim of drug abuse was acknowledged as a mitigating factor. Despite this, he is being prosecuted as

²⁶ Evi Setia Permana, "Penjatuhan Putusan Hakim Atas Tindak Pidana Narkotika Berdasarkan Teori Conviction Rationee," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 9, no. 02 (2021).

²⁷ Vience Ratna Multi Wijaya, "Sanksi Rehabilitasi Pada Penyalahguna Narkotika (Putusan Nomor: 79/Pid/2012/Pt. Tk)," *Hukum Pidana Dan Pembangunan Hukum* 2, no. 1 (2019).

²⁸ Muhammad Akbar and Syahrul bakti Harahap, "Pertimbangan Hakim Dalam Memutuskan Perkara Tindak Pidana Penyalahgunaan Narkotika Golongan 1 Bagi Diri Sendiri," *Jurnal Smart Hukum (JSH)* 1, no. 1 (2022).

²⁹ Tommy Busnarma, "Penerapan Sanksi Pidana Denda Terhadap Pelaku Tindak Pidana Penyalahgunaan Dan Peredaran Gelap Narkotika Di Pengadilan Negeri Padang," *Soumatara Law Review* 2, no. 1 (2019).

a Class I narcotics abuser, leading to his sentencing under Article 127 paragraph (1), which provides for a prison sentence for those found guilty of such abuse.³⁰

C. Conclusion

In deciding case number: 86/Pid.Sus/2022/PN.Gdt, the judges of the Gedong Tataan District Court took into account several factors. Notably, the defendant was not using drugs at the time of apprehension, and there was no immediate need for rehabilitation. Furthermore, there was no evidence that the defendant possessed drugs for use on the day in question, although there were 8 packs of used clips present. This evidence suggested that the defendant's situation did not fall under the classification outlined in point 2 of the court's decision.

The panel emphasized the importance of carefully considering whether to impose a rehabilitation sentence for Class I narcotics abusers, stipulating that the judge must meet specific requirements. According to Article 184 Paragraph (1) of the Criminal Procedure Code, decisions must be based on evidence presented at trial. Additionally, the Supreme Court Circular Letter Number 04 of 2010 regarding the placement of abused persons, abuse victims, and drug addicts in medical and social rehabilitation facilities also provides guidance on these requirements.

The authors further extend their guidance to the public based on research and discussions, aiming to protect individuals from drug abuse and illegal trafficking. They highlight the pivotal role of parents in society as mentors, teaching life skills that help children become mentally stable adults with clear life goals who resist drug abuse. Lastly, the judges are urged to exercise heightened caution in handling cases involving drug addicts, ensuring that decisions are made judiciously in accordance with the law to uphold justice in society.

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