

Disparity of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes



Reni Ayu Wulandari¹, Handoyo Prasetyo²

^{1,2} Fakultas Hukum, Magister Huku, Univeristas Pembangunan Nasional "Veteran" Jakarta

ABSTRACT: This research aims to explain differences in judges' decisions regarding the imposition of sentences below the minimum in narcotics offense cases. The main focus of this research is the judge's thoughts when adjudicating narcotics cases which causes inequality in sentencing and determining appropriate sentencing criteria that the judge can take into consideration so that there is no inequality in punishment in the future. Inequality in sentencing has the meaning of giving different sentences to convicts in cases that are similar or almost similar in terms of the level of crime, whether they are carried out simultaneously or not, without justifiable reasons. This research aims to identify and analyze the basic considerations of judges in determining sentences against drug offenders, as well as identifying the factors that influence judges' decisions against perpetrators, especially those who violate Article 112 and Article 114 Paragraph 1 of Law Number 35 of 2009 concerning Narcotics. The data used in this research is secondary data in the form of judge's decisions. The analytical approach used is the case approach and criminal law concepts. The research results show that the judge considered the evidence presented in accordance with the procedures regulated in the Criminal Procedure Code in deciding the case. Factors that influence the judge's decision include legal aspects, characteristics of the perpetrator, and subjective factors of the judge concerned.

KEYWORDS: Narcotics, Disparity, Crime, judge', Consideration of Judges.

I. INTRODUCTION

Indonesia, as a developing country, means that many of our people do not understand narcotics or even have a weak understanding of the law, resulting in many people falling into it. Considering that narcotics crimes occurring in society continue to increase. Therefore, a study of the legal position of Supreme Court Circular Letter Number 4 of 2010, Supreme Court Circular Letter Number 3 of 2011, Supreme Court Circular Letter Number 3 of 2015 regarding the Decision of Law Number 35 of 2009 concerning narcotics based on hierarchical regulations in deciding cases become an important crime. Where the term narcotics is one of the other crimes, it is called a victimless crime or victimless crime.¹

It is important to know that plant and non-plant narcotics should be used for health purposes and the development of pharmaceutical and medical science. The Law on Narcotics was created with the aim of eradicating illicit trafficking and narcotics abuse. However, in reality this law focuses on punishment, there is a minimum criminal limit for perpetrators of narcotics crimes.

In Article 1 point 1 of Law Number 35 of 2009 concerning Narcotics, it is stated that Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic which can cause a decrease or change in consciousness, loss of taste, reduce or eliminate pain and can cause dependency, which is differentiated into groups as attached in Law Number 35 of 2009. There are several factors for narcotics users, namely:

1. Personal factors such as being easily shaken and easily influenced by bad invitations;
2. Social factors such as social factors, third, environmental factors such as the living environment, school or work environment and other social environments;
3. These environmental factors can have a negative influence on a person, meaning that the consequences resulting from interactions with the environment can result in a person doing good deeds and vice versa;
4. Factors in the existence and availability of narcotics, such as the easier it is for narcotics to be obtained or purchased.

The development of Narcotics Convicts cannot be separated from the development of criminal law in Indonesia which is realized through criminal law enforcement which works operationally through a system called the Criminal Justice System.² Regarding

¹ Tri Agus Gunawan, *Analisis Yuridis Ketentuan Undang-Undang No. 35/2009 Pasal 112 ayat (1) bagi Pecandu dan Penyalahgunaan Narkotika*, PPs Fakultas Hukum UII Program Magister Ilmu Hukum, Yogyakarta: tidak dipublikasikan, 2013.

² Diktat Akpol, Sisdil di Indonesia, (Semarang: Markas Besar Kepolisian Republik Indonesia, 2005), hlm 46.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

passing a decision on a defendant who has committed a narcotics crime, a judge must fully understand the meaning of the sentence imposed and the judge must understand what he wants to achieve by imposing certain criminal sanctions on a defendant who abuses narcotics. Therefore, every judge's decision cannot be separated from the criminal policy structure which will certainly influence the next stage.³

Decisions below the minimum as regulated in Law Number 35 of 2009 concerning Narcotics apparently do not deter perpetrators. Every year, narcotics cases increase in Indonesia, not only in big cities, but narcotics are spread widely throughout cities and villages. The perpetrators come from various groups, old, young, even teenagers. Law Number 35 of 2009 concerning Narcotics only regulates the minimum criminal limit but does not regulate the amount. According to data from prisons as of January 2022, the burden on detention centers reached 223 percent, conditions of excess capacity in detention centers and prisons are also the cause of several problems.

Narcotics convicts currently still dominate the number of residents in detention centers and prisons in Indonesia. This is because Indonesia still criminalizes narcotics users and abusers. The problem in prisons is narcotics crime which represents more than 50 percent of overcapacity in all prisons in Indonesia, while the total number of rehabilitation program participants through the National Narcotics Agency (BNN) is still minimal. Indonesia should no longer emphasize the punishment of narcotics users. According to Ma'ruf, the government and DPR should encourage reform of the prison approach to narcotics users with alternative non-prison sentences.⁴

The judge's considerations in handing down a decision below the minimum in this narcotics case have raised many questions, the judge in making his decision used the considerations set out in Supreme Court Circular Letter (SEMA) Number 3 of 2015, SEMA Number 4 of 2010 and SEMA Number 1 of 2017 and set aside the Laws Law Number 35 of 2009 concerning Narcotics.

There are 3 legal principles, namely, the principle of *Lex Superior Derogat Legi Inferiori*, which means that higher laws (norms/legal rules) negate the validity of lower laws (norms/legal rules), and the principle of *lex specialis derogat legi generali*, which means laws. (legal norms/rules) that specifically negate the validity of general laws (legal norms/rules), the principle of *lex posterior derogat legi priori* means that new laws (norms/legal rules) negate the validity of laws (legal norms/rules).) which is old.⁵

There are several decisions with relatively the same evidence but different verdicts. So it is necessary to dig deeper into what makes the judge's decision different. If the Judge decides with considerations based on the Supreme Court Circular Letter (SEMA), what is the hierarchy of position in the law, whether SEMA initially applies internally only but is applied externally/externally and in its implementation not all Judges use the SEMA. Eating needs to be further explored from the principles of justice, expediency and legal certainty if there are disparities in the judge's decisions so that these disparities become rational.

Based on the data above, it can be seen that there are several differences in the considerations of one judge compared to another when compared with relatively little evidence but imposing different criminal sentences. In the data above there are 5 (five) cases where it can be said that the defendant was actually a narcotics abuser. However, the decision from one to another is different.

Judges have the authority to decide and examine cases submitted to the Supreme Court and subordinate courts such as general, religious, military and state administrative courts and special courts. Judges are obliged to explore, follow and understand the values of justice contained and growing in social life.⁶ This is as stated in Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states: "judges and constitutional justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society".

In terms of evidence and decisions, Article 183 of the Criminal Procedure Code stipulates that in order to determine a crime against a defendant, his guilt must be proven with at least two valid pieces of evidence; and based on proof with at least two valid pieces of evidence, the judge is confident that the criminal act actually occurred and that the defendant is guilty of committing it. In Article 184 paragraph (1) of the Criminal Procedure Code ("KUHAP") it is stated that valid evidence is: witness statements, expert statements, letters, instructions and statements from the defendant. From the background of the problem above, the author formulates the formulation of the problem: How judges consider in deciding narcotics cases which give rise to disparities in punishment and how to determine appropriate sentencing criteria that can be taken into consideration by judges in deciding narcotics cases so that there will be no disparity in punishment in the future.

³ Sudarto, *Kapita Selekta Hukum Pidana*, (Bandung: Alumni, 1986), hlm. 100.

⁴ Dimas Jarot Bayu, *Lapas di Indonesia Menanggung Beban Berat*, Selasa, 14 September 2021, <https://www.katadata.co.id>, diakses 19/02/2023, 09:27 WIB.

⁵ Nurfaqih Irfani, *Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum*, Selasa, 24 Agustus 2020, hlm. 311.

⁶ Liwe, Immanuel Christophel. "Kewenangan Hakim Dalam Memeriksa Dan Memutus Perkara Pidana Yang Diajukan Ke Pengadilan." *Lex Crimen* 3.1 (2014), hlm. 134.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

II. RESEARCH METHODS

In this research, the author uses a normative juridical research method (also called doctrinal legal research), meaning research that relies on statutory regulations which is supported by literature studies that are relevant to the problems discussed and then analyzed and concluded in writing. The approach used by the authors is a case approach and a conceptual approach. This research also takes an approach through case studies to the problems focused on in this research by examining all Supreme Court Circulars and regulations related to the legal issues raised. The case approach is carried out in the context of legal research for practical purposes as well as legal research for academic purposes.⁷

III. RESULTS AND DISCUSSION

A. Judges' considerations when deciding on narcotics cases that give rise to disparities in punishment

Judges as enforcers of law and justice have the duty to study and understand the laws that apply in society. Namely so that judges can make decisions in accordance with legal and societal justice. In weighing the severity of the sentence, the judge must also pay attention to the good and bad character of the accused. This must be taken into account, as a person's personal circumstances must be taken into account to determine an appropriate and fair punishment. Personal circumstances can be learned from witnesses or people around them, medical experts, etc.⁸

The main task of the judge is to receive, examine and adjudicate and resolve every case submitted to him. It seems that the duties of judges are very simple as intended in article 2 paragraph 1 of Law Number 48 of 2009 concerning judicial power, but in reality it is not that easy and simple. In essence, a judge is expected to give consideration to whether a person is wrong or right or not, the event in dispute is true and then apply or determine the law. Before deciding a case, the judge first pays attention to the Public Prosecutor's indictment, the statements of witnesses who were present at the trial, the defendant's statement, evidence, subjective and objective conditions for a person to be convicted, as well as mitigating and aggravating factors. The data recapitulation is as follows:

1. Depok District Court Decision Number: 282/Pid.Sus/2021/PN.Dpk

No.	Question	Answer	
1.	Case Number	282/Pid.Sus/2021/PN.Dpk in the Name of the Defendant Masrudin als Kokak Bin Jayadi	
2.	Prosecutor's indictment	Type of Indictment	Alternative Charges
		Articles Indicted	First: Article 114 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics or Second: Article 112 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics
3.	Prosecutor's demands	Declared the defendant guilty of violating Article 112 paragraph (1) of Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. States that the defendant was sentenced to 5 (five) years and a fine of Rp. 800,000,000,- (eight hundred million rupiah) with the provision that if the fine is not paid it can be replaced by imprisonment for 1 (one) month.	
4.	Evidence	1 (one) pack of Neslite cigarettes containing 1 small package of crystal methamphetamine with a gross weight of 0.18 grams 1 (one) pair of dark blue trousers	
5.	Position Case	On Saturday, April 17 2021 at 17.20 the defendant was arrested while standing on the side of the road, then after the arrest was carried out a search was carried out and the BB was found and then after being asked if it was true that the BB belonged to the defendant. The defendant obtained the BB by buying it from Mr. ABDI (DPO) worth 200,000 in the Citayam area on Saturday 17 April 2021 at 16.00 by the defendant was planned to be consumed together with Brother ARIF (DPO).	
6.	Judge's considerations	Considering, that based on the legal facts above, the Defendant possessed Class I narcotics, not plants, because he purchased them from Mr. ABDI (DPO) worth 200,000, so that when arrested the defendant admitted that the methamphetamine belonged to the defendant, thus the element of having no rights or being unlawful in possessing, storing, controlling or providing Class I non-plant narcotics has been fulfilled.	

⁷ Dyah Ochtarina Susanti Dan A'an Efendi, 2014, *Penelitian Hukum (Legal Research)*, Cetakan Kesatu, Jakarta: Sinar Grafika, hlm. 110.

⁸ Satjipto Raharjo, 1991, *Pokok-Pokok Sosiologi Hukum*, Jakarta; PT.Raja Grafindo Persada, hlm. 23.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

		That the defendant explained how to consume the narcotics. Because the Public Prosecutor did not indict Article 127 paragraph (1) then according to SEMA No.3 of 2015 which reads: "the judge decides and examines the case must be based on the Public Prosecutor's Indictment Letter (Article 128 paragraph 3 and 4 of the Criminal Procedure Code), the prosecutor charged Article 111 or Article 112 but based on the legal facts revealed at trial it was proven that Article 127, which Article was not charged, the defendant was proven to be a user and the amount was relatively small (SEMA 4 of 2010), then the judge decided according to the letter charges but can deviate from the special minimum criminal provisions by making sufficient considerations."
7.	Verdict	Declaring the defendant guilty of violating Article 112 paragraph (1) of Republic of Indonesia Law no. 35 of 2009. States that the defendant was sentenced to 2 (two) years and a fine of Rp. 800,000,000,- (eight hundred million rupiah) with the provision that if the fine is not paid it can be replaced by imprisonment for 1 (one) month.
(Decision below minimum)		

2. Lubuk Pakam District Court Decision Number: 472/Pid.Sus/2021/PN.Lbp

No.	Question	Answer
1.	Case Number	472/Pid.Sus/2020/PN.Lbp in the Name of the Defendant Imran Alias Ran
2.	Prosecutor's indictment	Type of Indictment
		Alternative Charges
	Articles Indicted	First: Article 114 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics or Second: Article 112 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics
3.	Prosecutor's demands	Declared the defendant guilty of violating Article 112 paragraph (1) of Republic of Indonesia Law Number 35 of 2009. States that the defendant was sentenced to 8 (eight) years and a fine of Rp. 800,000,000,- (eight hundred million rupiah) with the provision that if the fine is not paid it can be replaced by imprisonment for 3 (three) months.
4.	Evidence	1 (one) pack of small plastic clips containing methamphetamine narcotics with a net weight of 0.08 grams; 1 (one) unit of Honda Revo BK 2160 CH motorbike.
5.	Position Case	When police officers were on duty at Pasar V Gang Salak 21 Deli Serdang, they saw a man riding a Honda Revo BK 2160 CH motorbike passing by that place, the police witnesses stopped the motorbike driven by the man who claimed his name was Imran alias ran. and tungkrik (DPO), then a search was carried out and a small plastic clip package containing methamphetamine was found on the ground one meter from the defendant. At that time, the defendant's friend managed to escape, then the defendant explained that the methamphetamine narcotics found belonged to the defendant and his friend bought tungkrik from an unknown person for Rp. 120,000, the narcotics were planned to be used jointly by the defendant and his friend.
6.	Judge's considerations	Considering, that based on the legal facts above when he was arrested the defendant was not using crystal methamphetamine, but instead the defendant was found 1 (one) small plastic clip pack containing methamphetamine narcotics on the ground one meter away from the defendant, which evidence was confirmed by the defendant as belonging to him. will be used with friends who have not been caught; Considering, that the panel of judges agrees with the consideration of the public prosecutor who has stated that the defendant has been proven guilty of committing the crime of "possessing Class I Narcotics which are not plants" however, does not agree with the criminal charges regarding the defendant's actions; Considering, that in order to determine the appropriate punishment to be imposed on the defendant, the panel of judges must also pay attention and consider the sense of justice for the defendant and the community, apart from that it is necessary to pay attention to SEMA Number 4 of 2019, where the fact is that the evidence of narcotics of the type methamphetamine obtained from the defendant is relatively very small.
7.	Verdict	Article 112 paragraph (1) Republic of Indonesia Law No. 35 of 2009. States that the defendant was sentenced to 2 (two) years and a fine of Rp. 800,000,000,- (eight hundred million rupiah) with the provision that if the fine is not paid it can be replaced by imprisonment for 1 (one) month.
(Decision below minimum)		

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

3. Martapura District Court Decision Number: 335/Pid.Sus/2017/PN.Mtp

No.	Question	Answer	
1.	Case Number	335/Pid.Sus/2017/PN.Mtp on behalf of the defendant Ardiansyah alias Japrit Bin Ahmad Rifai et al	
2.	Prosecutor's indictment	Type of Indictment	Alternative Charges
		Articles Indicted	First: Article 114 paragraph (1) Jo. Article 132 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics or Second: Article 112 paragraph (1) Jo. Article 132 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics
3.	Prosecutor's demands	Declared the defendant guilty of violating Article 112 paragraph (1) of Republic of Indonesia Law Number 35 of 2009 Jo. Article 132 paragraph (1). States that the defendant was sentenced to 7 (seven) years and 6 (six) months and a fine of Rp. 800,000,000,- (eight hundred million rupiah) with the provision that if the fine is not paid it can be replaced by imprisonment for 6 (six) months.	
4.	Evidence	1 (one) package of narcotics type shabu in a plastic clip weighing 0.26 grams; 1 (one) glass sparrow; 1 (one) orange lighter; 1 (one) brown wallet.	
5.	Position Case	Members of the Banjar Police Sat and Traffic Police arrested defendant 1 and defendant 2 because they were involved in a traffic accident with a pedestrian, then carried out an interrogation, when the Hendra Police carried out an examination of defendant 2, immediately defendant 1 threw away 1 (one) glass sparrow and 1 (one) orange lighter which was seen by the Hendra Police, then a search was carried out on the defendants and it was true that 1 (one) package of narcotics of the type of methamphetamine was found in the brown wallet belonging to the defendant 1. The defendants obtained the narcotics of this type of methamphetamine by purchasing to Brother Anan (DPO) for Rp. 300,000,- and the defendants used the narcotics before work	
6.	Judge's considerations	Considering, because all the elements of Psal 112 verse 1 Jo. Article 132 paragraph 1 Law no. 35 of 2009 concerning Narcotics has been fulfilled, then the actions of the defendants have been legally and convincingly proven guilty of committing the criminal act as stated in the indictment; Considering, that based on SEMA Number 4 of 2010 at least that can be used as a reference to determine whether a person is a narcotics abuser; Considering, therefore, regarding the sentences that will be imposed on the defendants, the panel of judges is of the opinion that the demands submitted by the public prosecutor against the defendants are still too heavy and far from justice; Considering, observing SEMA Number 3 of 2015, it is stated that "the judge examines and decides the case must be based on the indictment of the Public Prosecutor (Article 182 paragraphs 3 and 4 of the Criminal Procedure Code), the Prosecutor indicts Article 111 or Article 112 of Law No. 35 of 2009 concerning Narcotics, but based on the facts revealed at the trial it was proven that article 127 of Law no. 35 of 2009 concerning Narcotics, where this article is not charged, the defendants are proven to be users and the number is relatively small (SEMA Number 4 of 2010) so the judge decides according to the Indictment Letter, but can deviate from the special minimum criminal provisions by making sufficient considerations	
7.	Verdict	Article 112 paragraph (1) Republic of Indonesia Law No. 35 of 2009 Article 132 paragraph (1). States that the defendant was sentenced to 1 (one) year and 6 (six) months.	
(Decision below minimum)			

4. Lubuk Pakam District Court Decision Number: 1552/Pid.Sus/2020/PN Lbp

No.	Question	Answer	
1.	Case Number	1552/Pid.Sus/2020/PN Lbp Atas Nama Terdakwa Sebulon Silalahi Als Lalahi	
2.	Prosecutor's indictment	Type of Indictment	Alternative Charges
		Articles Indicted	Primair: Article 114 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

		Subsidiaries: Article 112 paragraph (1) Jo. Article 132 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics More Subsidiaries: Article 127 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics
3.	Prosecutor's demands	Declared the defendant guilty of violating Article 112 paragraph (1) of Republic of Indonesia Law Number 35 of 2009. States that the defendant was sentenced to 7 (seven) years and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid it can be replaced by imprisonment for 6 (six) months.
4.	Evidence	2 (two) small plastic sachets containing shabu-shabu with a gross weight of 0.28 grams; Cash of 40,000.
5.	Position Case	That the witnesses who were officers from Medan Labuhan Police were carrying out a raid on a gambling and drug trafficking location in Gang Tengah Neighborhood 19, then the witnesses entered the house which was the gambling location using the ding dong machine and then the witnesses saw several people who were not there. was known to be at the house then the witnesses raided the gambling location where several men fled out the back door so the witnesses gave chase and succeeded in arresting the defendant where during the arrest the defendant threw away 2 (two) small plastic packets containing crystal methamphetamine and money. cash Rp. 40,000,- which was 1 (one) meter from the defendant and when questioned the defendant did not admit that the evidence belonged to the defendant but the defendant admitted that he had used crystal methamphetamine on the day he was arrested.
6.	Judge's considerations	Considering, that because all the elements of article 112 paragraph 1 of Law no. 35 of 2009 concerning Narcotics has been fulfilled, then the defendant must be declared to have been legally and convincingly proven to have committed the criminal act as charged.
7.	Verdict	Article 112 paragraph (1) Republic of Indonesia Law No. 35 of 2009 concerning Narcotics. States that the defendant was sentenced to 4 (four) years and 8 (eight) months, a fine of Rp. 1,000,000,000,- (one billion rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 3 (three) months.
(Decision below minimum)		

5. Land Grogot District Court Decision Number: 162/Pid.Sus/2015/PN.Tgt

No.	Question	Answer	
1.	Case Number	162/Pid.Sus/2015/PN Tgt Atas Nama Terdakwa Basri Als Baco Bin Petta Puji	
2.	Prosecutor's indictment	Type of Indictment	Alternative Charges
		Articles Indicted	Primair: Article 114 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics Subsidiaries: Article 112 paragraph (1) Jo. Article 132 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics More Subsidiaries: Article 127 paragraph (1) Republic of Indonesia Law no. 35 of 2009 concerning Narcotics
3.	Prosecutor's demands	Declare the defendant guilty of violating Article 112 paragraph (1) Jo. Article 132 paragraph (1) Republic of Indonesia Law Number 35 of 2009. States that the defendant was sentenced to 6 (six) years and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid it can be replaced by imprisonment for 4 (four) months.	
4.	Evidence	1 (one) bag of methamphetamine with a gross weight of 0.16 grams; 2 (two) methamphetamine suction devices/bongs; 1 (one) matchstick; 1 (one) pack of LA cigarettes where methamphetamine was found; 2 (two) shovels made from straw; 1 (one) black bag 1 (one) white Samsung brand tablet; 1 (one) black Samsung brand cellphone 1 (one) small red bag where a methamphetamine/bong instrument was found	

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

5.	Position Case	The defendant was arrested by the police while he was at witness Nooryanto's house while using crystal methamphetamine with his friend in the TV room
6.	Judge's considerations	Considering, that based on the considerations above, all the elements of Article 112 paragraph 1 Jo. 132 paragraph 1 Law no. 35 of 2009 concerning Narcotics has been fulfilled and it is proven that the defendant did it
7.	Verdict	Article 112 paragraph (1) Jo. Article 132 paragraph (1) Republic of Indonesia Law Number 35 of 2009. States that the defendant was sentenced to 5 (five) years and (eight) months, a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 4 (four) months.
(Putusan diatas minimum)		

Based on the data above, it can be seen that there are several differences in the considerations of one judge compared to another when compared with relatively little evidence but imposing different criminal sentences. In the data above there are 5 (five) cases where it can be said that the defendant was actually a narcotics abuser. However, the decision from one to another is different.

Cases of drug addiction are no longer rare in Indonesia, many criminals serve their sentences only to be arrested again. According to Jahid Hanafi, the reason is that he cannot get rid of dependence on narcotics and returns to abusing narcotics. So sanctions with imprisonment are not very effective in deterring narcotics addicts and therefore, rehabilitation is considered a more appropriate punishment for dealing with narcotics abuse.⁹

Regarding rehabilitation for defendants of criminal acts of narcotics abuse, it is contained in articles 54, 55 and 103 in Law No. 35 of 2009 concerning Narcotics. Implementing rehabilitation for narcotics abuse is very important because it is a healing effort carried out using health science. As is known, narcotics are a type of drug which if consumed continuously will lead to addiction.¹⁰ This is what underlies rehabilitation efforts to free drug abusers from the bondage of drugs. When considering a case against a drug addict, they must have expertise that shows that the drug addict is an addict.

Exploring, following and understanding the values in the law is something that absolutely must be done by a judge in adjudicating cases to create justice. In Article 153 of the Criminal Procedure Code, a presiding judge is given the authority to lead the examination in the trial process and in this article also in paragraph (3) the judge has the authority for the purposes of the examination process to open the trial and declare it open to the public in the trial process. The judge has the authority to examine the evidence or witnesses in provide at the hearing. According to Article 184 paragraph (1) of the Criminal Procedure Code, evidence is: (1) witness statements; (2) expert testimony; (3) letter; (4) instructions; and (5) the defendant's statement.

The discussion of disparities in criminal sentences for narcotics cases in this writing is by taking a comparison of 2 (two) decisions that have permanent legal force, namely the first decision number: 1552/Pid.Sus/2020/PN Lbp (decision above the minimum) and decision number: 282/Pid .Sus/2021/PN Dpk (Decision below minimum) is as follows:

a. Case Position

Criminal decision Number 1552/Pid.Sus/2020/PN Lbp regarding a case regarding narcotics crimes committed by Sebulon Silalahi Als Lalahi.

That he is the defendant SEBULON SILALAHl als LALAHl on Saturday 21 March 2020 at approximately 12.30 WIT or at least at another time which is still included in the month of March 2020, at Gang Tengah Ward 19, Tanjung Mulia Hilir Subdistrict, Medan Deli District, the Court held in whose jurisdiction the defendant resides, last resided, where he was found or detained, he is only authorized to try the defendant's case, if the residence of most of the witnesses summoned is closer to the district court than the district court in whose area the crime was committed. (Article 84 paragraph (2) KUHAP), or at least in other places which are still included in the legal area of the Deli Serdang District Court which meets in Labuhan Deli, to examine and try them, "without right or against the law offering for sale, selling, buying , received, acted as an intermediary in buying and selling, exchanging or handing over Class I Narcotics" carried out by the defendant in the following manner:

That at the time and place as mentioned above, witness T. Siahaan, witness DP. Simanjuntak and witness Syadek Ginting, who is an officer from the Medan Labuhan Police, were carrying out a raid on a gambling and drug distribution location in Gang Tengah, Neighborhood 19, Tanjung Mulia Hilir Subdistrict, Medan Deli District, where previously the witnesses received information from the public regarding the gambling location and drug distribution at that location, Next, the witnesses entered the house where the gambling was located using a ding dong machine, then the witnesses saw several unknown people in the house, then the witnesses raided the gambling location, where several men ran away from the back door, so the witnesses The witness gave chase and succeeded in arresting the defendant. During the arrest, the defendant threw 2 (two) small plastic packets containing methamphetamine and cash amounting to IDR 40,000 (forty thousand rupiah) which was 1 (one) meter from the

⁹ Hanafi, J. (2013). *Pertimbangan Hakim Dalam Menjatuhkan Putusan Tindak Pidana Pecandu Narkotika*. Skripsi Universitas Islam Negeri Kalijaga, diakses tanggal 9 Juli 2023, sumber: <http://digilib.uin-suka.ac.id/id/eprint/8563/>

¹⁰ Yamin, M, 2012, *Tindak Pidana Khusus*, Bandung: Pustaka Setia, hlm. 120.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

defendant and when During interrogation, the defendant did not admit that the evidence belonged to the defendant, but the defendant admitted that he had used methamphetamine on Saturday, March 21 2020 at around 12.30 in Gang Tengah, Ward 19, Tanjung Mulia Hilir Subdistrict, Medan Deli District, then the defendant was SEBULON SILALAHl als LALAHl, who did not have a permit. to buy Class I narcotics, type shabu-shabu, together with evidence, they were taken to the Medan Labuhan Police for further legal proceedings, then after weighing was carried out, based on the Weighing Minutes of PT. Pegadaian (Persero) Labuhan Deli Branch Office Number: 123/POL-10009/2020 dated March 25 2020 obtained the results of weighing 2 (two) small red list clear plastic clips containing shabu-shabu with a gross weight of 0.28 (zero point two twenty eight) grams.

b. Public Prosecutor's Demands

The Public Prosecutor's demands are submitted by the Public Prosecutor after the examination at the Court is declared complete in accordance with article 182 paragraph (1) of the Criminal Code which states that the demand letter is read after the criminal trial evidence process has been completed and the prosecutor's demands in a narcotics crime case are completed.

- 1) Declare that the Defendant "Sebulon Silalahi als Lalahi" has not been legally and convincingly proven guilty of committing a criminal act as regulated and threatened in article 114 paragraph (1) of Republic of Indonesia Law No. 35 of 2009 concerning Narcotics, in Primair's indictment;
- 2) Acquit the Defendant "Sebulon Silalahi als Lalahi" from the Primary Charges;
- 3) Declare that the Defendant "Sebulon Silalahi als Lalahi" has been legally and convincingly proven guilty of committing the criminal act "Without rights or against the law controlling Narcotics Group I, not plants" as regulated and threatened in Article 112 paragraph (1) of Republic of Indonesia Law No. 35 of 2009 concerning Narcotics in the Subsidiary Indictment;
- 4) Sentenced the defendant "Sebulon Silalahi als Lalahi" to a prison sentence of 7 (seven) years reduced by the time the defendant was during the period of arrest and detention and a fine of Rp. 1,000,000,000,-, (one billion rupiah) subsidiary 6 (six) months prison With an order that the defendant remain in detention;
- 5) Declare evidence in the form of:
 - (two) small plastic packets containing shabu-shabu with a gross weight of 0.28 (zero point twenty eight) grams Confiscated for destruction.
 - Cash amounting to Rp. 40,000,- (forty thousand rupiah) Confiscated for the State.
- 6) Determine that if the Defendant is accused and sentenced to be charged with paying court costs of Rp. 2,000,-(two thousand rupiah).

c. Judge's considerations

The matters which are the basic considerations used by the judge in imposing a crime in decision Number 1552/Pid.Sus/2020/PN Lbp are based on the facts in the trial and also the judge's sense of justice which refers to the related articles. with the crime committed. The judge's considerations in imposing a crime on the defendant include:

The juridical considerations outlined above become a legal question for the panel of judges, whether the defendant can be accused of committing the criminal act alleged by the Public Prosecutor in his indictment. The defendant was sentenced to imprisonment for 7 (seven) years. The day determined by which the period of detention and detention that the defendant has served is deducted entirely from the sentence imposed.

The Panel of Judges first considered the primary charges as regulated in Article 114 paragraph (1) of Republic of Indonesia Law No. 35 of 2009 concerning Narcotics, the elements of which are as follows:

1. Everyone;
2. Without right or against the law Offering to sell, selling, buying, receiving, becoming an intermediary in buying and selling, exchanging, or handing over class I Narcotics;

Ad-1. Each person

Considering, that "Everyone" is of course synonymous with the meaning of "Anyone" as a legal subject who is constructed as a perpetrator of a criminal act. In this case Prof. Mulyatno and Mr. Tresna is of the opinion that the element "Whoever" or what "wetboek van strafrecht" identifies as "Hij", is declared not to be an element of a criminal act. However, according to the Panel of Judges, this matter still has a very important and determining position in relation to a criminal act in order to find and determine who the perpetrator (dader) of the criminal act itself is. Without the perpetrator there could be no criminal act (no actor no actions). Therefore, the element "whoever" remains a basic element that cannot simply be removed in efforts to prove the alleged existence of a criminal act committed by someone or anyone as an individual or group of people, in order to find the perpetrator (dader) who Actually. As Prof. Satochid Kartanegara, SH. states that the "perpetrator" is "anyone who fulfills all the elements contained in the delict formulations" (Criminal Law - Lecture Collection, Student Lecture Hall, Part Two, Page 5). For these reasons, the Panel of Judges will still consider the "whoever" element in this case as follows;

Considering, that what is meant by "whoever" is anyone who is a legal subject who supports rights and obligations in a state of physical and mental health and has the ability to be responsible (toerekeningsvaanbaarheid) for all the actions he has committed;

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

Considering, that in this case the Public Prosecutor has brought before one Sebulon Silalahi Als Lalahi who after going through an examination was declared to be the defendant, and it turns out that at the trial, upon questions from the Panel of Judges, he stated that he was in good physical and mental health and acknowledged and confirmed the identity of the defendant as stated in the case file. nor in the indictment of the Public Prosecutor is true his identity;

Considering, that regarding the ability to be responsible (toerekeningsvaanbaarheid) it is emphasized in the Memorie van Toelichting (MvT) that "every person" as an element of anyone, historically chronologically, is a legal subject which automatically has the inherent ability to be responsible unless the law expressly determines otherwise;

Considering, that the element of every person according to legal science is defined as the legal subject of a criminal act who can be held criminally responsible in the case of the Defendant Sebulon Silalahi Als Lalahi, as stated by the Public Prosecutor in his indictment, it is true that the defendant himself, as well as all the witnesses in In essence, it has been explained that what is meant by Sebulon Silalahi Als Lalahi is the defendant who is currently being confronted and examined at the Lubuk Pakam District Court trial and the defendant is in good physical and mental health. During the examination process it turns out that the defendant is quite competent and able to answer and explain the incident and If there is no justification or excuse that shows that there is a mistake regarding the person or the legal subject or any other reason that causes the defendant to be released from responsibility for the actions he has committed, then it is proven that what is meant by the element "every person" is the defendant Sebulon Silalahi Als Lalahi , so that the element "every person" has been fulfilled and therefore proven according to law;

Ad-2. Without Rights or Against the Law Offering to Sell, Sell, Buy, Receive, Become an Intermediary in Buying and Selling, Exchanging, or Handing over Class I Narcotics

Considering, that according to the doctrine put forward by several legal scientists, the meaning of without rights or against the law has a similar meaning, however, the Panel of Judges will consider the following;

(recht), "against the law" (wederechtig), legal and legal scholars also often use other terms, Hazewinkel and Suringa use the term "without authority" (zonder bevoegdheid, on recht matigheid), Hoge Raad uses the term "without rights" (zonder eigen recht), "exceeding authority" (met overschrijding van zijn bevoegdheid), "without regard to the method specified in the general rules" (zonder inachtneming van de bij algemene verordening bepaal de vormen) and others. According to Jan Rammelink, the concept of "without rights" (zonder eigen recht) is not far from the meaning of "against the law" (wederechtig). Someone who acts outside their authority is certainly acting (wedertegen) within the law. (read: Jan Rammelink, Criminal Law, Gramedia Pustaka Utama, Jakarta, 2003, p. 187);

Considering, that according to Prof. Simon's term "against the law" (wederechtig) is different from the term "without rights" (zonder eigen recht). For a wederechtig, it is implied that there is an act that is contrary to the law (in strijd met het recht). (read: P.A.F. Lamintang, Basics of Indonesian Criminal Law, Citra Aditya Bakti, Bandung, 1997, p.348);

Considering, that based on the limitations mentioned above, in the opinion of the Panel of Judges the phrase "without rights or against the law" must be interpreted as meaning the act (in casu offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over class I Narcotics) is carried out without permission or authority (zonder bevoegdheid) from an authorized official or not as regulated in Law Number 35 of 2009 concerning Narcotics;

Considering, to find out what is meant by "having done so without authority" (zonder bevoegdheid) as regulated in Law Number 35 of 2009 concerning Narcotics, is as follows:

- That Narcotics can only be used for the purposes of health services and/or scientific development (Article 7);
- That Category I narcotics are prohibited from being used for health service purposes (Article 8 paragraph (1));
- That in limited quantities, Category I narcotics can be used for the purposes of developing science and technology and for diagnostic reagents and laboratory reagents after obtaining approval from the Minister or a recommendation from the Head of the Food and Drug Monitoring Agency (Article 8 paragraph (2));
- That Category I narcotics are prohibited from being produced and/or used in the production process, except in very limited quantities for the purposes of science and technology (Article 12 paragraph (1));
- That scientific institutions in the form of educational and training institutions as well as research and development organized by the Government or the private sector can obtain, plant, store and use Narcotics for scientific and technological purposes after obtaining permission from the Minister (article 13 paragraph (1));
- That the distribution of Narcotics includes every activity or series of activities for distributing or handing over Narcotics, whether in the context of trade, non-trade or transfer for the purposes of health services and the development of science and technology (Article 35);
- That Narcotics in the form of finished medicines can only be distributed after obtaining a distribution permit from the Minister (Article 36 paragraph (1));
- That every Narcotics distribution activity must be accompanied by valid documents (Article 38);
- That Narcotics can only be distributed by the Pharmaceutical Industry, pharmaceutical wholesalers and Government pharmaceutical preparation storage facilities in accordance with the provisions of this Law (Article 39 paragraph (1))

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

d. Judge's Decision

Pay attention to Article 112 paragraph (1) of Republic of Indonesia Law no. 35 of 2009 concerning Narcotics and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

JUDGE:

1. Declare that the Defendant, Sebulon Silalahi Als Lalahi, as mentioned above, has not been legally and convincingly proven guilty of committing a crime as stated in Primair's indictment;
2. Acquit the Defendant therefore from the Primary Charge;
3. Declare that the Defendant Sebulon Silalahi Als Lalahi has been legally and convincingly proven guilty of committing the crime of "Without the Right to Possess Class I Non-Crop Narcotics";
4. Sentence the defendant to imprisonment for 4 (four) years and 8 (eight) months, a fine of IDR 1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 3 (three) Months;
5. Determine that the period of arrest and detention that the defendant has served shall be deducted entirely from the sentence imposed;
6. Determine that the defendant remains in detention;
7. State evidence in the form of:
 - (two) small plastic packets containing shabu-shabu with a gross weight of 0.28 (zero point twenty eight) grams Confiscated for destruction
 - Cash amounting to IDR 40,000 (forty thousand rupiah) was confiscated for the State
8. Charge the defendant to pay court costs in the amount of Rp. 2,000,- (two thousand rupiah);

2. Decision (282/Pid.Sus/2021/PN Dpk)

Criminal Decision Number 282/Pid.Sus/2021/PN Dpk concerning a case regarding narcotics crimes committed by Masrudin als Kokak Bin Jayadi

1. Case Position

That he is the defendant MASRUDIN Als KOKAK Bin JAYADI on Saturday 17 April 2021 at approximately 17.20 WIT or at least at a certain time in April 2021 or at least in 2021 at the front of Dipo Rt 004/017 Kel. Depok District. Pancoran Mas Depok City, or at least in a place that is included in the legal area of the Depok District Court which has the authority to examine and adjudicate this case, without right or against the law offers for sale, sells, buys, receives, becomes an intermediary in buying and selling, exchanges , or handing over Class I Narcotics, which act was carried out by the defendant in the following manner:

On FX witness. GATOT YS and witness TANZIL PI LAHUM, both members of the Pancoran Police, on Saturday 17 April 2021 received information from the public that in front of Dipo Rt 004/017 Kel. Depok District. Pancoran Mas, Depok City, often carries out crystal methamphetamine narcotics transactions. Next is witness FX. GATOT YS and witness TANZIL PI LAHUM headed to the location in question. At approximately 17.20 WIT, someone who looked similar to the defendant was seen according to the information received. FX witness. GATOT YS and witness TANZIL PI LAHUM then approached the defendant who was standing on the side of the road and then arrested the defendant. During the arrest and search of the defendant's body, evidence was found in the form of: 1 (one) pack of Neslite cigarettes which contained 1 (one) small package of crystal methamphetamine with a gross weight of 0.18 grams which was kept in his blue left trouser pocket. defendant. Next, the defendant and his evidence were taken to the Pancoran Mas Police for further processing. That the defendant admitted that the evidence belonged to the defendant and was obtained by purchasing it from Mr. ABDI (DPO) for Rp. 200,000,- which the defendant planned to consume together with Br. ARIF (DPO).

2. Public Prosecutor's Demands

Whereas at the trial the Public Prosecutor also read out a statement based on the Minutes of Laboratory Analysis of the Narcotics Agency of the Republic of Indonesia No. Lab: PL327/CD/IV/2021 dated April 27 2021, signed by Ir. Wahyu Widodo, as Head of the Central Narcotics Laboratory, basically explained that the white crystal granules with a net weight of 0.0218 grams were set aside from 1 (one) package or small wrapper containing white crystals belonging to the defendant. Positive for containing methamphetamine and registered in Group I serial number 61 Appendix I to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics;

Considering that the Public Prosecutor submitted the following evidence: 1 (one) pack of Neslite cigarettes which contained 1 (one) small package of methamphetamine with a gross weight of 0.18 grams and 1 (one) dark blue trousers belonging to the defendant, the evidence presented in this trial has been legally confiscated according to law and therefore can be used to strengthen evidence;

Considering, that based on the evidence and evidence submitted, the following legal facts are obtained:

That the Defendant was arrested on Saturday 17 April 2021 at approximately 17.20 WIB in front of Dipo Rt 004/017 Kel. Depok District. Pancoran Mas Depok City, starting from witness FX GATOT YS and witness TANZIL PILAHUM, on Saturday

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

17 April 2021 received information from the public that in front of Dipo Rt 004/017 Kel. Depok District. Pancoran Mas, Depok City, often carries out crystal methamphetamine narcotics transactions.

Based on this report, witness FX GATOT YS and witness TANZIL PILAHUM went to the location, during the investigation at around 17.20 WIB they saw someone who matched the information received. Next, witness FX GATOT YS and witness TANZIL PILAHUM approached the defendant who was standing on the side of the road and then arrested the defendant.

That during the arrest and search evidence was found in the form of: 1 (one) pack of Neslite cigarettes which contained 1 (one) small package of crystal methamphetamine with a gross weight of 0.18 grams which was kept in the pocket of the defendant's left blue trousers.

That the defendant obtained the methamphetamine evidence by purchasing it from Mr. ABDI (DPO) for Rp. 200,000,- in the Citayem area of Depok City on Saturday 17 April 2021 at around 16.00 WIB.

That the evidence was planned to be used by the defendant together with Mr. ARIF (DPO). That the defendant consumed the narcotic methamphetamine on Saturday 17 April 2021 at approximately 16.20 at the defendant's house in Kp. Length Rt 002/021 Kel. Rawapanhang District. Bojong Gede District. Bogor, by using an aqua glass, making a hole in it, then using a straw, then using a glass pipette, then putting the crystal methamphetamine into the pipette, then the defendant burned it using a match, causing smoke to come out and the defendant inhaled/sucked it.

Whereas based on the Republic of Indonesia Narcotics Agency Laboratory Examination Report No. Lab: PL327/CD/IV/2021 dated April 27 2021, signed by Ir. Wahyu Widodo, as Head of the Central Narcotics Laboratory, basically explained that the white crystal granules with a net weight of 0.0218 grams were set aside from 1 (one) package or small wrapper containing white crystals belonging to the defendant. Positive for containing methamphetamine and registered in Group I serial number 61 Appendix I to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

3. Judge's consideration

Ad.1. Element: Everyone

Considering, that what is meant by "Every Person" in this element is a person who is a legal subject who will be held accountable for his actions in this case, namely a person whose identity has been mentioned/explained by the Public Prosecutor in his indictment, namely the Defendant Masrudin als Kokak Bin Jayadi.

Considering, that according to the facts at the trial based on the statements of the witnesses and the Defendant, it is known that the person who was present and examined at this trial was a person whose identity corresponded to that contained in the Public Prosecutor's indictment so that in case there was no error in person.

Considering, that during the examination of the case, the Panel of Judges assessed that the Defendant was physically and mentally healthy and could answer well all the questions asked of him, therefore the Defendant was deemed not to be mentally disabled due to illness.

Considering, that regarding the "every person" element, the Panel of Judges only provides confirmation regarding the person or legal subject as their identity is stated in the Public Prosecutor's indictment, whereas regarding proof of whether the remaining elements have indeed been fulfilled by the Defendant's actions, according to the Panel of Judges the evidence regarding this matter, inherent when considering the following elements.

Considering that, from the description of the considerations above, the Panel of Judges is of the opinion that each element is fulfilled.

Ad.2. Element: Without Rights or Unlawful Possession, Storing, Controlling, or Providing Class I Narcotics Not in the Form of Plants;

Menimbang, bahwa unsur secara tanpa hak atau melawan hukum merupakan tindakan seseorang yang tidak has rights or violates the law and authority, and a person can obtain these rights if he has the authority granted by law or regulations that do not conflict with each other.

Considering, that the illegal and unlawful element in this article cannot be separated from possessing, storing, controlling or providing Category I Narcotics in non-plant form.

Considering that what is meant to be against the law according to Van Bemmell is:

1. As contrary to proper rigor in social intercourse;
2. Contrary to obligations established by law;

Considering, therefore, what is meant by without rights or against the law is the action of a person who does not have rights or is against the law and authority, and this right can be obtained by a person if he has the authority granted by laws or regulations that do not conflict with each other.

Considering, that actions without rights and against the law are related to the act or deed of possessing, storing, controlling or providing Class I Narcotics in non-plant form.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

Considering that the acts in this element are alternative in nature, the acts of blindness in this element do not need to be proven in their entirety, just one element is enough, and if one of the acts has been fulfilled then the other acts do not need to be proven any more and are deemed to have been proven.

Considering, that based on the testimony of witnesses, the defendant's statement is connected with the evidence obtained by the legal facts in the trial:

- That the defendant was arrested on Saturday 17 April 2021 at approximately 17.20 WIB in front of Dipo Rt. 004 Rw. 017 Ex. Depok District. Pancoran Mas Depok City;
- That initially was witness FX. Gatot YS and witness Tanzil Pilahum, on Saturday 17 April 2021 received information from the public that in front of Dipo Rt.004 Rw.017 Kel. Depok District. Pancoran Mas, Depok City, often carries out crystal methamphetamine narcotics transactions;
- Based on the following report, witness FX. Gatot YS and witness Tanzil Pilahum went to the location indicated, while carrying out investigations at around 17.20 WIB they saw someone who matched the information received;
- The next witness is FX. Gatot YS and witness Tanzil Pilahum then approached the defendant who was standing on the side of the road and then arrested the defendant;
- When the arrest and search were carried out, evidence was found in the form of: 1 (one) pack of Neslite cigarettes containing 1 (one) small package of methamphetamine-type narcotics with a gross of † 0.18 grams which was kept in the left trouser pocket. defendant's blue.

Considering that based on the legal facts above, the Defendant possessed Class I narcotics in non-plant form, namely crystal methamphetamine, as a result of the purchase from Mr. ABDI (DPO) for Rp. 200,000 (two hundred thousand rupiah), so that when he was arrested the Defendant admitted that the Shabu belonged to the Defendant, thus the element of having no rights or being unlawful in possessing, storing, controlling or providing Class I Narcotics not in the form of plants has been fulfilled.

That because the Public Prosecutor did not charge the Defendant with Article 127 paragraph (1) of Law of the Republic of Indonesia Number. 35 of 2009 concerning Narcotics, namely as a person who abuses Narcotics, in accordance with Supreme Court Circular Letter No. 3 of 2015 concerning the Implementation of the Formulation of the Results of the 2015 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for the Court, namely in part A number 1 which reads:

"The judge decides and examines the case must be based on the Public Prosecutor's Indictment Letter (Article 128 paragraphs 3 and 4 of the Criminal Procedure Code), the Prosecutor charges under Article 111 or Article 112 of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics but based on the legal facts revealed at the trial it was proven that Article 127 of the Narcotics Law was not charged, the defendant was proven to be a user and the amount was relatively small (SEMA 4 of 2010), so the judge decided according to the indictment but could deviate from the provisions special minimum punishment by making sufficient considerations."

Considering, that based on Sema Number 1 of 2017 concerning the implementation of the formulation of the results of the plenary meeting of the Supreme Court chambers in 2017 as a guideline for carrying out duties for the Court "formulation of criminal chambers" number 2:

- a. In the event that the Public Prosecutor does not indict Article 127 paragraph (1) of Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, but the legal facts revealed at trial are that the defendant is proven to be a class I narcotics abuser himself, the Supreme Court remains consistent with the Court's Circular Letter Agung Number 3 of 2015 number 1, because apart from the judge, when examining and trying a case, he still bases his decision on legal facts proven at trial, deliberations are also based on the indictment as intended in Article 182 paragraph (3) and paragraph (4) of the Criminal Procedure Code;
- b. In the event that the defendant is not caught red-handed while using narcotics and the defendant is found to have evidence of narcotics which is relatively small in quantity/weight (according to Supreme Court circular Number 7 of 2009 in conjunction with Supreme Court circular Number 4 of 2010) and the defendant's urine test results are positive for methamphetamine However, if the public prosecutor does not indict Article 127 paragraph (1) of Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, then the defendant's actions can be categorized as a Class I Narcotics abuser himself, while the qualification of the criminal act still refers to the indictment.

Considering, that based on the considerations above, the Panel of Judges is of the opinion that the defendant's act of possessing class I narcotics, type shabu, was for his own use and regarding the failure to carry out a urine test on the defendant by the investigator, which is clear in the investigation report, the defendant admitted that he had just used narcotics at his home (BA Defendant page 02 number 14) this should be suspected so that the defendant is not subject to Article 127 paragraph (1) of Republic of Indonesia Law No. 35 of 2009 concerning narcotics because at the time the Defendant was arrested the evidence was less than 1 gram, therefore the Panel of Judges agreed with the Public Prosecutor regarding the criminal act, however regarding the sentence imposed by the Panel of Judges they did not agree and the sentence would be imposed by the Panel. According to the Panel of Judges, the judge's decision below is appropriate and fulfills a sense of justice for the Defendant;

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

Considering, that although based on the decision letter of the Director General of General Justice Number: 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning restorative justice, especially regarding the assessment results letter from the integrated assessment team in this case, it was not submitted by the Investigator, Prosecutor General, and the Defendant's Legal Advisor because the integrated assessment team was never asked by investigators or the Public Prosecutor and also because the Defendant and his family were unaware of the assessment for narcotics users, however, the Panel of Judges must pay attention to the evidence when arresting the Defendant. weighing no more than 1 (one) gram or to be precise, a net weight of 0.0218 grams, moreover based on information the Defendant had only used narcotics for the first time before being arrested by the police and at the time of the arrest the evidence found had a net weight of 0.0218 grams so the defendant is still easy to improve so that he does not become a heavy narcotics user;

Considering, that because of all the elements of Article 112 paragraph (1) of Republic of Indonesia Law no. 35 of 2009 concerning Narcotics has been fulfilled, then the Defendant must be declared to have been legally and convincingly proven to have committed the criminal act as charged in the Second alternative indictment;

4. Judge's Decision

1. Declare that the Defendant Masrudin Als Kokak Bin Jayadi has been legally and convincingly proven guilty of committing the crime of "Without the Right to Possess Class I Non-Crop Narcotics";
2. Sentenced the Defendant Masrudin Als Kokak Bin Jayadi to prison for 2 (two) years 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 by a criminal penalty. imprisonment for 1 (one) month; Sentenced the Defendant Masrudin Als Kokak Bin Jayadi to prison for 2 (two) years 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 by a criminal penalty. imprisonment for 1 (one) month;
3. Determine that the period of arrest and detention that the Defendant has served shall be deducted entirely from the sentence imposed;
4. Decide that the Defendant remains detained;
5. Determine evidence in the form of:
 - 1 (one) pack of Neslite cigarettes containing 1 (one) small packet of methamphetamine-type narcotics left over from Lab results with a net value of 0.0157 grams;
 - 1 (one) pair of dark blue trousers;
Seized to be destroyed.
6. Charge the Defendant to pay court costs in the amount of Rp. 2,000.00 (two thousand rupiah);

B. The process of determining appropriate sentencing criteria that can be taken into consideration by judges in deciding narcotics cases to avoid disparities in punishment in the future.

A judge's decision is a statement by a judge as a state official who is given the authority to give a decision on the case he is handling and pronounce in a trial with the aim of resolving a case or dispute between the parties. The types of decisions are divided into two, namely final decisions and decisions that are not final decisions or usually called interlocutory decisions. The final decision occurs when the panel of judges has examined the defendant who was present at the trial up to the examination of the main case, while the interim decision is a decision by the judge which states that the head of the district court is of the opinion that the criminal case does not fall within the authority of the court he leads, so a decision letter is made that declare that the court has no authority to try the criminal case and delegate it to another competent district court.¹¹

Ada tiga bentuk putusan yaitu putusan bebas yang diatur dalam Pasal 191 ayat (1) KUHP terdakwa tidak terbukti melakukan criminal act; the decision to be free from all legal charges is regulated in Article 191 paragraph (2) of the Criminal Procedure Code, the criminal act charged is proven legally and convincingly according to the law, whether assessed from the evidence regulated in Article 183 of the Criminal Procedure Code, but the act proven is not a criminal act; and the criminal decision is regulated in Article 193 paragraph (1) of the Criminal Procedure Code where the defendant is proven guilty of committing a criminal act. The criminal justice process is a long process because this process is divided into 4 (four) stages. First, it starts from the inquiry and investigation stage, then continues with the prosecution stage, after that the trial examination stage is carried out and ends at the stage of giving a decision by the judge. The process of handing down a judge's decision is a complicated, difficult and lengthy process so that a judge requires experience, training and wisdom in the process of handing down a decision.

During the decision-making process, a judge must be sure whether a defendant has committed a criminal act or not, whether the actions committed by the defendant are included in a civil or criminal case, and still follow evidentiary guidelines to determine whether there has been a violation of the law committed by one of the parties involved in the case. . It is at this stage of the decision that the defendant being tried will determine whether the defendant is guilty or not. In the decision-making process, after the prosecution, defense and answers to the defense are completed, the judge will close the trial by saying "the trial is declared

¹¹ Fauziah Lubis, 2020, "*Bunga Rampai Hukum Acara Pidana*", Medan: Manhaji, hlm. 65.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

closed". After the trial is closed and not reopened, the panel of judges will hold deliberations to make a decision followed by making a decision and then reading the decision which can be announced on the same day or on another day by notifying the defendant, legal advisor and public prosecutor. After the verdict is read, the decision which has permanent legal force must be immediately executed by the Public Prosecutor.

Judges have an important role in law enforcement, especially when it comes to imposing criminal sanctions on someone which must be based on justice and law. One of the bases for a judge's consideration in determining the severity and lightness of a criminal sanction to be imposed on a defendant is always based on the principle of balance between guilt and unlawful acts. The judge's consideration is divided into 2 (two) characteristics, namely, the judge's consideration which is juridical in nature and the judge's consideration which is non-juridical in nature. According to Sudikno Mertokusumo, the Indonesian state adheres to the persuasive principle of precedent, namely this principle gives judges freedom to decide on a case without being bound by previous judges' decisions so that a judge can make a decision based on his own beliefs, but this freedom is not absolute because the decision taken must be constitutional, not arbitrary, and based on legally valid evidence.¹² Z. Asikin Kusumaatmadja believes that the binding power of jurisprudence in Indonesia is "persuasive precedent" namely that judges in subordinate courts are not bound by jurisprudence in continental European legal systems such as Indonesia.¹³

In handing down decisions, there are judges who bind themselves to statutory regulations so that what the judge decides is definitely in accordance with and does not deviate from the governing law, however, there are some judges who impose sentences below a specific minimum by considering several factors. According to the author's analysis, every judge may or has the right to impose a sentence below a special minimum according to his considerations and beliefs in the defendant because there are no regulations that stipulate that judges may not impose a sentence below a special minimum, but because judges in Indonesia are bound by the law then The judge should impose a sentence in accordance with what is regulated in the law. In this case the judge must impose a sentence in accordance with the special minimum provisions in the Narcotics Law. The benchmarks that are taken into consideration by judges in imposing sentences below the special minimum include:

It can be seen from the age of the defendant for minor defendants;

1. To what extent is the defendant involved in a narcotics crime, when there are 2 (two) defendants who both have narcotics, but the difference is that there is a defendant who obtains narcotics through a narcotics buying and selling transaction with the defendant acting as the buyer and the other defendant does not buy narcotics, but he obtained it through giving it to someone else, this difference is the judge's consideration in imposing a sentence below the special minimum on a defendant who obtained narcotics from someone else;
2. The age of the defendant is advanced, according to Law Number 13 of 1998 concerning the Welfare of the Elderly Article 1 paragraph (2) states that "elderly is someone who has reached the age of 60 (sixty) years and above";
3. When the defendant is sentenced in accordance with the Narcotics Law and serves his sentence in prison when the defendant is released, will the defendant not repeat the same crime;
4. Apart from that, what the judge takes into consideration is the weight of the narcotics evidence obtained from the defendant and the defendant's role in the distribution of the narcotics.

Judges have the freedom to impose sentences according to their considerations, so there are no sanctions for judges if they decide below the special minimum provisions, however, the tendency of judges to impose sentences below the special long-term minimum will cause criminal disparities. Criminal disparity occurs when there is application of criminal sanctions to the same criminal act but there are differences in the imposition of criminal sanctions and there are no clear reasons. According to the author's analysis, the freedom of judges in imposing sentences is one of the factors causing criminal disparities, because with the existence of Article 5 paragraph (1) of the Judiciary Law, judges can impose sentences below a special minimum by considering justice for the defendant. Apart from the freedom of judges, another factor in criminal disparities is the legislation itself. For example, in Article 112 paragraph (1) of the Narcotics Law, the minimum criminal sanction is 4 (four) years and the maximum 12 (twelve) years, because there are minimum and maximum limits in the criminal threat, the judge can freely impose a sentence between 4 up to 12 years for the defendant.¹⁴

The effect of criminal disparity is that the defendant will compare the punishment he received with the punishment received by other convicts who committed the same crime as him. When he compares the sentences and finds that there are differences in the sentences imposed even though the crime committed is the same, the convict will feel injustice and become a victim of law

¹² Anggara Suryanagara, "Dakwaan Batal Demi Hukum Setelah Pemeriksaan Pokok Perkara Dalam Sidang Pengadilan (Studi Putusan Nomor 19/Pid. Sus/2015/PN. Sim)," Tesis Pascasarjana pada universitas sumatera utara: tidak diterbitkan, 4.2 (2016), 204–20.

¹³ Dri Utari Christina Rachmawati dan Ismail Hasani, "Masa Depan Mahkamah Konstitusi RI. Naskah Konfrensi Mahkamah Konstitusi dan Pemajuan Hak Konstitusional Warga," 2013.

¹⁴ Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman Pasal 5 ayat (1) menegaskan: Hakim dan hakim konstitusi wajib menggali, mengikuti, dan memahami nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

enforcement discrimination. This will make the convict not respect and trust the law. Criminal disparities also have an effect on society when they find out about criminal disparities, this will give rise to distrust and public opposition to the law and judicial institutions.

Based on a search in the Directory of Decisions of the Supreme Court of the Republic of Indonesia (bangunan.mahkamahagung.go.id), 2 (two) District Court decisions were obtained in narcotics crime cases with criminal decisions in the form of punishments below the special minimum and above the minimum. These 2 decisions can be described in Table 1.

Table 1. Court Decisions in Narcotics Crime Cases with Sentences Below the Special Minimum

No	Decision Number	Articles Applicable	Special Minimum Criminal Threat	Verdict
1.	1552/Pid.Sus/2020/P N Lbp	Article 112 paragraph (1)	7 years imprisonment, fine Rp. 1 billion	Imprisonment 4 Years 8 Months and a fine of Rp. 1 billion
2.	282/Pid.Sus/2021/PN Dpk	Article 112 paragraph (1)	5 years imprisonment, fine Rp. 800 million	2 years imprisonment and a fine of Rp. 800 million

From the research of the 2 decisions as in Table 1, several criteria were obtained that the judge considered when imposing a sentence below the special minimum. Some of these criteria are as follows:

1. The defendant is only a user or abuser of the narcotics;¹⁵
2. The defendant consumed narcotics only for himself;¹⁶
3. The amount of narcotics used is relatively small;¹⁷
4. There is no indication that the defendant sold, became an intermediary in buying and selling, exchanged, or delivered narcotics;¹⁸
5. The defendant is the backbone of the family.¹⁹

If you pay attention to the various criteria above, they are circumstances that are not only related to the criminal act but also to the defendant. The situation relating to the defendant is that the defendant is only a narcotics user or abuser and the defendant is the breadwinner of the family. In such a context, judges vary greatly in the use of circumstances to be considered in sentencing. The occurrence of such a reality is actually understandable considering that in the current Criminal Code there is not a single chapter or article that regulates sentencing guidelines. In fact, these sentencing guidelines serve as guidelines of sentencing for law enforcement officers, especially judges, so that the sentences imposed are expected to approach the essence of justice for all and not only be based on the provisions of statutory regulations.²⁰

The absence of regulations regarding sentencing guidelines in the Criminal Code is theoretically related to the basic philosophy of punishment adopted. In this connection, the Criminal Code adheres to the classical philosophy of punishment which was a response to the ancient regime in the 18th century in France and England. The criminal system according to this school follows a definite criminal pattern (definite sentence) so that the judge's freedom (judicial discretion) does not have a place in the classical school. This is different from a criminal system that follows the modern (positive) trend, where punishment follows a pattern of criminal individualization. In such a pattern, judicial discretion is highly recommended, namely the judge's policy to consider punishment based on specific matters surrounding the crime and the individual perpetrator of the crime.²¹

In the 2 (two) decisions in narcotics crime cases which are the material for writing this thesis, several criteria considered by judges in imposing sentences below the special minimum are based on Supreme Court Circular Letter (SEMA) Number 03 of 2015 which states that if the Public Prosecutor (The prosecutor) charges under Article 111 or Article 112 of the Narcotics Law but the defendant is only a user (user) and the number is relatively small, so the judge can deviate from the special minimum

¹⁵ Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Magelang Nomor: 32/Pid.Sus/2015/PN Mgg, Putusan Pengadilan Negeri Magelang Nomor: 33/Pid.Sus/2015/PN Mgg, dan Putusan Pengadilan Negeri Klaten Nomor: 120/Pid.Sus/2018/PN.Kln.

¹⁶ Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Madiun Nomor: 72/Pid.Sus/2019/PN.Mad dan Putusan Pengadilan Negeri Bantul Nomor: 73/Pid.Sus/2015/PN.Btl.

¹⁷ Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Purwokerto Nomor: 220/Pid.Sus/2017/PN. Pwt dan Putusan Pengadilan Negeri Klaten Nomor: 120/Pid.Sus/2018/PN.Kln.

¹⁸ Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Bantul Nomor: 73/Pid.Sus/2015/PN.Btl, Putusan Pengadilan Negeri Klaten Nomor: 120/Pid.Sus/2018/PN.Kln, dan Putusan Pengadilan Negeri Kudus 164/Pid.Sus/2019/PN.Kds

¹⁹ Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Calang Nomor: 1/Pid.Sus/2016/PN.Cag.

²⁰ Barda Nawawi Arief dkk, 2017 "Formulasi Ide Permaadan Hakim (Rechterlijk Pardon) dalam Pembaharuan Sistem Pemidanaan di Indonesia", Jurnal Law Reform, 13, Vol. 1, hlm. 36., sumber: <https://ejournal.undip.ac.id/index.php/lawreform/article/download/15949/11861>, diakses 3 Agustus 2023.

²¹ Muladi, 2008, *Lembaga Pidana Bersyarat, cetakan kelima*, Bandung: P.T. Alumni, 2008, hlm. 29 & 33.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

criminal provisions.²² What is meant by "relatively small amount" refers to SEMA Number 04 of 2010, namely:²³ methamphetamine (shabu) group 1 gram, MDMA (ecstasy) group 2.4 grams (8 pills), heroin group 1.8 grams, cocaine group 1.8 grams, marijuana group 5 grams, coca leaves 5 grams, mescaline 5 grams, psilocybin group 3 grams, LSD group 2 grams, PCP group 3 grams, fentanyl group 1 gram, methadone group 0.5 grams, morphine group 1.8 grams, pethidine group 0.96 grams, codeine group 72 grams, buprenorphine group 32 mg .

Seeing that a narcotics crime is an extraordinary crime, for adult defendants, the judge should impose a sentence in accordance with the minimum sentence that has been regulated in the Narcotics Law, because no matter how light the narcotics evidence confiscated when the defendant has committed a narcotics crime, he must be punished accordingly. with a minimum or above minimum penalty so that the defendant is deterred from repeating his crime and other people do not commit the narcotics crime. The Narcotics Law was created with the aim of creating justice for society and the state by providing severe criminal penalties or at least in accordance with the special minimum criminal provisions regulated in the Narcotics Law.

CONCLUSIONS

Productions from the IJSSHR LaTeX style files. Causal Productions offers both A4 templates and US Letter templates for The basis of the judge's consideration in deciding disparities regarding narcotics crimes is due to different actions carried out by the defendant where if the defendant is only a user then the decision received can be lightened by carrying out rehabilitation and the burdensome considerations are where the defendant distributes/sells narcotics to the public and can be subject to sanctions in the form of imprisonment and fines. Based on the case above, it can be concluded that the basis for the judge's considerations in handing down disparity decisions was due to different actions carried out by the defendant even though they were involved in the same crime, namely narcotics.

The sentencing criteria considered by the judge in imposing a sentence below the special minimum in narcotics crime cases are: the defendant is only a user or abuser; the defendant consumes only for himself; the amount used is relatively small; there is no indication that the defendant sold, acted as an intermediary in buying and selling, exchanging or delivering narcotics; the length of the sentence threatened in the law is deemed to be disproportionate to the act committed; and the defendant is the backbone of the family. Some of these criteria are based on SEMA Number 03 of 2015 and SEMA Number 04 of 2010, although deviation from special minimum criminal provisions through SEMA is conceptually inappropriate.

REFERENCES

- 1) Anggara Suryanagara, "Dakwaan Batal Demi Hukum Setelah Pemeriksaan Pokok Perkara Dalam Sidang Pengadilan (Studi Putusan Nomor 19/Pid. Sus/2015/PN. Sim)," Tesis Pascasarjana pada universitas sumatera utara: tidak diterbitkan, 4.2 (2016), 204–20.
- 2) Barda Nawawi Arief dkk, 2017 "Formulasi Ide Permaadan Hakim (Rechterlijk Pardon) dalam Pembaharuan Sistem Pidana di Indonesia", Jurnal Law Reform, 13, Vol. 1 , hlm. 36., sumber: <https://ejournal.undip.ac.id/index.php/lawreform/article/download/15949/11861>, diakses 3 Agustus 2023.
- 3) Diktat Akpol, Sisdil di Indonesia, (Semarang: Markas Besar Kepolisian Republik Indonesia, 2005), hlm 46.
- 4) Dimas Jarot Bayu, Lapas di Indonesia Menanggung Beban Berat, Selasa, 14 September 2021, <https://www.katadata.co.id>, diakses 19/02/2023, 09:27 WIB.
- 5) Dri Utari Christina Rachmawati dan Ismail Hasani, "Masa Depan Mahkamah Konstitusi RI. Naskah Konfrensi Mahkamah Konstitusi dan Pemajuan Hak Konstitusional Warga," 2013.
- 6) Dyah Ochtorina Susanti Dan A'an Efendi, 2014, Penelitian Hukum (Legal Research), Cetakan Kesatu, Jakarta: Sinar Grafika, hlm. 110.
- 7) Fauziah Lubis, 2020, "Bunga Rampai Hukum Acara Pidana", Medan: Manhaji, hlm. 65.
- 8) Hanafi, J. (2013). Pertimbangan Hakim Dalam Menjatuhkan Putusan Tindak Pidana Pecandu Narkotika. Skripsi Universitas Islam Negeri Kalijaga, diakses tanggal 9 Juli 2023, sumber: <http://digilib.uin-suka.ac.id/id/eprint/8563/>
- 9) Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Magelang Nomor: 32/Pid.Sus/2015/PN Mgg, Putusan Pengadilan Negeri Magelang Nomor: 33/Pid.Sus/2015/PN Mgg, dan Putusan Pengadilan Negeri Klaten Nomor: 120/Pid.Sus/2018/PN.Kln.
- 10) Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Madiun Nomor: 72/Pid.Sus/2019 PN.Mad dan Putusan Pengadilan Negeri Bantul Nomor: 73/Pid.Sus/2015/PN.Btl.
- 11) Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Purwokerto Nomor:

²² Surat Edaran Mahkamah Agung (SEMA) Nomor 03 Tahun 2015 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 sebagai Pedoman Pelaksanaan Tugas bagi Pengadilan.

²³ Surat Edaran Mahkamah Agung (SEMA) Nomor 04 Tahun 2010 tentang Penempatan Penyalahgunaan, Korban Penyalahgunaan dan Pecandu Narkotika ke dalam Lembaga Rehabilitasi Medis dan Rehabilitasi Sosial.

Disparity Of Sentence Determination by Judges Regarding Decisions Below the Minimum in Narcotics Crimes

220/Pid.Sus/2017/PN. Pwt dan Putusan Pengadilan Negeri Klaten Nomor: 120/Pid.Sus/2018/PN.Kln.

- 12) Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Bantul Nomor: 73/Pid.Sus/2015/PN.Btl, Putusan Pengadilan Negeri Klaten Nomor: 120/Pid.Sus/2018/PN.Kln, dan Putusan Pengadilan Negeri Kudus 164/Pid.Sus/2019/PN.Kds
- 13) Kriteria ini digunakan sebagai pertimbangan dalam Putusan Pengadilan Negeri Calang Nomor: 1/Pid.Sus/2016/PN.Cag.
- 14) Liwe, Immanuel Christophel. "Kewenangan Hakim Dalam Memeriksa Dan Memutus Perkara Pidana Yang Diajukan Ke Pengadilan." *Lex Crimen* 3.1 (2014), hlm. 134.
- 15) Muladi, 2008, *Lembaga Pidana Bersyarat*, cetakan kelima, Bandung: P.T. Alumni, 2008.
- 16) Nurfaqih Irfani, *Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum*, Selasa, 24 Agustus 2020.
- 17) Satjipto Raharjo, 1991, *Pokok-Pokok Sosiologi Hukum*, Jakarta; PT.Raja Grafindo Persada.
- 18) Sudarto, *Kapita Selekta Hukum Pidana*, (Bandung: Alumni, 1986).
- 19) Surat Edaran Mahkamah Agung (SEMA) Nomor 03 Tahun 2015 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 sebagai Pedoman Pelaksanaan Tugas bagi Pengadilan.
- 20) Surat Edaran Mahkamah Agung (SEMA) Nomor 04 Tahun 2010 tentang Penempatan Penyalahgunaan, Korban Penyalahgunaan dan Pecandu Narkotika ke dalam Lembaga Rehabilitasi Medis dan Rehabilitasi Sosial.
- 21) Tri Agus Gunawan, *Analisis Yuridis Ketentuan Undang-Undang No. 35/2009 Pasal 112 ayat (1) bagi Pecandu dan Penyalahgunaan Narkotika*, PPs Fakultas Hukum UII Program Magister Ilmu Hukum, Yogyakarta: tidak dipublikasikan, 2013.
- 22) Yamin, M, 2012, *Tindak Pidana Khusus*, Bandung: Pustaka Setia.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.