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**JURIDICAL REVIEW OF THE VALUE OF LEGAL CERTAINTY AND THE VALUE OF JUSTICE FOR THE MISUSE OF CLASS I NARCOTICS IN COURT DECISION NUMBER 304/PID.SUS/2020/PT SMG**

**Sri Setiawati<sup>1</sup>, Sri Hartati<sup>2</sup>, Rubiyanto<sup>3</sup>**

Faculty of Law Univeristy of 17 Agustus 1945 Semarang

Email: <sup>1</sup>[srisetiawati2101@gmail.com](mailto:srisetiawati2101@gmail.com), <sup>2</sup>[srihartati.untag@gmail.com](mailto:srihartati.untag@gmail.com),

<sup>3</sup>[rubiyanto.151161@gmail.com](mailto:rubiyanto.151161@gmail.com)

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**ABSTRACT;** *Legal certainty for narcotics abusers in Law Number 35 of 2009 concerning Narcotics does not yet have legal certainty where in practice abusers are often charged and even terminated by Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which is without rights and against the law depositor, owner, who controls narcotics class I non-plants. Based on the description above, the author is interested in studying this scientific paper with the title Juridical Review of the Value of Legal Certainty and the Value of Justice for the Abuse of Narcotics Group I in conviction Number 304/PID.SUS/2020/PT SMG. In practice narcotics abusers still use Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which is without rights and against the law of the depositor, the owner, who controls narcotics class I not plants even though there is a Supreme Court Circular Letter (SEMA) Number 3 of 2015 to identify the accused as an abuser. In its implementation, there are obstacles that exist in the authority of law enforcers, especially judges. This research also found that restorative justice for narcotics abusers by the courts is still not effective which is contained in the Appendix to the Decree of the Director General of the General Judiciary Agency Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of the Guidelines for the Application of Restorative Justice in the guidelines for the application of restorative justice in the General Court environment as an effort that can be made in deciding cases of class I narcotics abuse.*

**Keywords:** *Abuse, Narcotics, Legal Certainty*

## INTRODUCTION

Narcotics are substances that are prohibited by law in Indonesia but exempted under certain conditions regulated by law. Narcotics are actually only intended as treatment, the first type of narcotics used was opium.<sup>1</sup> Narcotics can be very detrimental to individuals or society, especially the younger generation. Narcotics, psychotropic substances, and other addictive substances are part of the criminal justice system.<sup>2</sup>

Narcotics abuse is one type of crime that has a very broad and complex social impact.<sup>3</sup> Narcotics abusers can also cause great losses to the state in terms of human resources. Not only abuse, but drug trafficking causes greater harm than drug abuse. Therefore, Indonesia has a prohibition against Narcotics. The prohibition of the use and distribution of Narcotics is contained in Law Number 35 of 2009 concerning Narcotics or can be referred to as the Narcotics Law.

The previous regulation on Narcotics was only found in the *Verdovende Middelen Ordonnantie (Staatsblad No. 278 jo No. 536)*.<sup>4</sup> However, the regulation is not suitable if used at all times in line with the development of the times in terms of traffic and transportation tools that encourage the spread and supply of narcotics to Indonesia.<sup>5</sup> As a result of the above convention, the Resolution of the Convention on Narcotics (The Resolution of the Convention on Narcotics) was adopted.

As a result of the above convention, Resolution of the United Nations Economic and Social Council, No. 1474 (XLVIII) dated March 24, 1970 UN conference on the Adoption of the Psychotropic Protocol held, the results of the convention, the Indonesian government in this case ratified the Convention on Psychotropic Substances 1971 in Act No. 8 of 1996 with reservation.<sup>6</sup> From the development of Law No. 8 of 1996, until now which has undergone several changes, which eventually became Act No. 35 of 2009.

Law Number 35 Year 2009 on Narcotics regulates efforts to eradicate narcotics crimes. The types of Narcotics criminal offenses can be in the form of fines, imprisonment, life imprisonment, and death penalty. Not only narcotics crimes, the Narcotics Law also regulates the utilization of narcotics in the interests of health, treatment, and regulates medical and social rehabilitation.

The purpose of the Narcotics Law is to reduce narcotics crimes. However, in reality, narcotics crimes in society have actually increased both quantitatively and qualitatively, considering that narcotics itself is addictive and also most people think that 'laws are made to be broken'. So that there are many victims in the widespread abuse of Narcotics, especially among children, adolescents, and other young people.

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<sup>1</sup> Kusno Adi, 2009, *Diversi Sebagai Upaya Alternatif Penanggulangan Tindak Pidana Narkotika Oleh Anak Edisi Pertama*, Malang: UMM Press, p.3.

<sup>2</sup> Kusno Adi, 2009, *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak (edisi pertama)*, Malang: UMM Press, p.12.

<sup>3</sup> Ida Bagus Gede Bawa Mahaputra, Anak Agung Sagung Laksmi Dewi dan Luh Putu Suryani, 2022, *Upaya Penaggulangan Tindak Pidana Penyalahgunaan Narkotika*, Journal of Analogi Hukum Volume 4, Number 3, 311-315, pp. 322.

<sup>4</sup> Siswanto Sunarso, 2012, *Politik Hukum dalam Undang-Undang Narkotika (UU Nomor 35 Tahun 2009)*, Jakarta: Rineka Cipta, p.11.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

Narcotics Crime is no longer committed individually, but also involves many people, even an organized syndicate with a wide network that works neatly and secretly, both nationally and internationally. The eradication of narcotics crime involves all nations in the world, even some indications show narcotics crime as an extraordinary crime which will have an impact on social, cultural, economic and political.

Narcotics abuse is a form of one type of crime that results in a very broad and complex social impact.<sup>7</sup> It is stated that Narcotics is a drug or material that is useful in the field of treatment or health services and the development of science and on the other hand there are also properties that cause dependence which is very detrimental if misused or used without strict and careful control and supervision.<sup>8</sup>

However, in the case of Law Number 35 of 2009, there is a lack of clarity regarding the regulation of criminal acts of users or abusers of narcotics and owners/storers/providers who control narcotics, where users/abusers of narcotics have their own criminal arrangements and owners/storers/providers who control have their own criminal arrangements. If interpreted, the user is the one who uses, while the owner is the one who owns. Further interpretation of the person who uses must have. So if the user of narcotics can potentially be subject to two criminal sanctions at once or can be given one criminal sanction, where it depends on the legal practitioners who are arguing.

In addition to the criminal offense of Narcotics, the Narcotics Law itself has a form of protection for users or abusers of Narcotics in the form of Rehabilitation. Rehabilitation can be used as a way to overcome drug addiction.<sup>9</sup> Rehabilitation can be requested independently or from a court decision. Therefore, rehabilitation should be used as a means that must be carried out for narcotics abuse.

However, in this case, the author found a person in court decision Number 304/PID.SUS/2020/PT SMG who is a user of narcotic substances with the type of methamphetamine. The person repeated the criminal act of narcotics as a user of methamphetamine, which in the verdict was subject to article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics with a sentence of 5 years imprisonment and a fine of 2 billion rupiah which was converted to 3 months imprisonment without an order from the verdict to be rehabilitated.

If you look at the decision, it can be seen that legal practitioners do not heed Article 127 paragraph (1) letter a of Law 35 of 2009 concerning Narcotics as a user, where the defendant is a person who commits a criminal offense as a user of class I narcotics in this case, namely methamphetamine. Whereas it is clear that the defendant is a person who uses or abuses narcotics, and the prosecutor also wrote in his alternative indictment that the defendant is punishable under Article 127 paragraph (1) letter a of Law 35 of 2009.

Therefore, the author is interested in writing a scientific paper research in the form of

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<sup>7</sup> National Narcotics Agency of the Republic of Indonesia, *Kasus penyalahgunaan narkoba memberikan dampak yang signifikan dalam berbagai aspek kehidupan*, 25 October 2018, <https://bnn.go.id/kasus-penyalahgunaan-narkoba-memberikan-dampak-yang-signifikan-dalam-berbagai-aspek-kehidupan/>, accessed on 27 December 2022, at 13:24 WIB

<sup>8</sup> Indonesia, *Law Number 35 of 2009 tentang Narkotika*, Consideration letter C.

<sup>9</sup> Maidin Gultom, 2012, *Perlindungan Hukum Terhadap Anak Dan Perempuan*, Bandung: PT. Refika Aditama, p. 122.

a thesis with the title "Juridical Review of the Value of Legal Certainty and the Value of Justice for Misuse of Class I Narcotics in Court Decision Number 304/PID.SUS/2020/PT SMG".

### **PROBLEM**

1. How is the juridical review of the value of legal certainty and the value of justice for class I narcotics abuse in Court Decision Number 304/PID.SUS/2020/PT SMG?
2. What are the obstacles / constraints faced by judges in imposing judicial decisions for class I narcotics abuse?
3. What are the efforts made by judges in deciding cases of class I narcotics abuse?

### **RESEARCH METHODS**

This research uses qualitative research, which is research that results in descriptive data through facts from natural conditions as a direct source with instruments from the researchers themselves.<sup>10</sup> According to Ashshofa, qualitative research focuses on the general principles that underlie the manifestation of units of symptoms that exist in human life, or patterns that are analyzed socio-cultural symptoms using the culture of the community concerned to obtain an overview of the prevailing patterns.<sup>11</sup>

Qualitative research has the characteristics of focusing more on collecting data in the field, where participants experience the problems to be studied and in this case the author as a key instrument who tries to collect data himself through observation, interview or take documentation after that reviewing all the data that has been obtained and processing it into categories or themes that cross data sources with inductive data analysis. Qualitative research is a form of research, in which researchers try to create a complex picture or a comprehensive view of the problem under study.<sup>12</sup>

This type of research uses normative juridical legal research. According to Soerjono Soekanto and Seri Mamudji in his book *Dyah Ochterina and A'an Efendi*, it is also called library research. The name library legal research is because normative legal research is carried out by examining library materials or secondary data. Furthermore, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes:<sup>13</sup>

1. Research into the principles of law;
2. Research into legal systematics;
3. Research into the degree of vertical and horizontal synchronization;
4. Comparative law;

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<sup>10</sup> Lexy Moeloeng, *Metodologi Penelitian Kualitatif*, Bandung: PT Remaja Rosda Karya, 2005, p. 4

<sup>11</sup> Burhan Ashshofa, *Metode Penelitian Hukum*, Jakarta: PT Rineka Cipta, 2010, p 21

<sup>12</sup> Creswell, *Research Design Pendekatan Kualitatif Kuantitatif dan Mixed*. Yogyakarta : Pustaka Pelajar, 2012, p. 261-263

<sup>13</sup> Dyah Ochterina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Research)*, Jakarta : Sinar Grafika, 2015, p. 19

5. Legal history.

## DISCUSSION

### **Juridical Review of the Value of Legal Certainty and the Value of Justice for the Misuse of Class I Narcotics in Court Decision Number 304/PID.SUS/2020/PT SMG**

One of the main objectives of Law No. 35/2009 on Narcotics is to protect the public from the dangers of narcotics abuse. If analyzed, the protection of the public from the dangers of narcotics abuse can have the potential to eradicate illicit drug trafficking. If there are no abusers, drug trafficking will also shrink or even disappear.

Law enforcers in their implementation often forget the purpose of the Narcotics Law due to the uncertainty that exists in the Narcotics Law. One of them is also contained in Court Decision Number 304 / PID. SUS/2020/PT SMG jo. Jepara District Court Decision Number 87/Pid.Sus/2020/PN Jpa. The facts contained in Jepara District Court Decision Number 87/Pid.Sus/2020/PN Jpa. dated June 30, 2020 which reads as follows:

- Based on the results of the examination of the Semarang Branch Forensic Laboratory BAP Lab No.: 222/NNF/2020, dated January 29, 2020, the defendant KHAMIDUN bin WARIS (alm), with the conclusion that after a criminalistic laboratory examination, it was concluded: BB494/2020/NNF in the form of crystal powder with a net weight of crystal powder of 0.83033 grams, BB-495/2020/NNF in the form of urine is containing METAMFETAMINA registered in Group I (One) Number 61 annex to Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.
- That the defendant had conducted a doctor's examination regarding the defendant's dependence on methamphetamine-type narcotics to the doctor EKO HARIAWAN, with the address Cimandiri 1/23 Semarang City on January 11, 2017.
- Recommendation from the National Narcotics Agency of Central Java Province Number: R/088/I/Ka/Rh.00.00/2020/BNNP-JTG dated January 24, 2020, with the results of recommendations:

Legal Team:

- Further Legal Proceedings.
- The defendant is a severe addict and can be rehabilitated.

Medical Team:

- From the results of the examination, the defendant suffered from methamphetamine abuse at the stage of regular use, thus requiring NAPSA rehabilitation, hospitalization for 3 (three) months.

However, the Jepara District Court Decision Number 87/Pid.Sus/2020/PN Jpa. dated June 30, 2020 decided as follows:

1. Stating that the Defendant KHAMIDUN Bin WARIS (deceased) mentioned

- above has been proven legally and convincingly guilty of committing the crime of "Without the Right to Own, Control Narcotics Group I Not Plants";
2. Sentencing the Defendant as mentioned above to 5 (five) years imprisonment and a fine in the amount of Rp2,000,000,000.00 (two billion rupiah) provided that if the fine is not paid, it shall be substituted with confinement for 3 (three) months;
  3. Determining that the period of arrest and detention served by the Defendant shall be deducted in full from the sentence imposed;
  4. Determine that the Defendant remains in custody;
  5. Determine the evidence in the form of:
    - 2 (two) packages of methamphetamine narcotics each in a small plastic clip wrapped in silver plastic with a total weight of + 0.84503 grams,
    - 1 (one) cellphone unit brand Nokia type 215 black color with number 082224021448;
    - Suspect's urine container. All were seized for destruction.
  6. Charges the Defendant to pay court costs in the amount of Rp5,000.00 (five thousand rupiah);

Furthermore, Court Decision Number 304/PID.SUS/2020/PT SMG states that:

1. Accept the request for appeal from the Defendant and the Public Prosecutor;
2. Affirm the decision of the Jepara District Court Number 87/Pid.Sus/2020/PN Jpa. dated June 30, 2020 which is being appealed;
3. Order the Defendant to remain in detention;
4. Determining that the length of detention period served by the Defendant shall be deducted in full from the sentence imposed;
5. To charge the Defendant to pay the court costs in both levels of judicial proceedings which in the appeal level shall amount to Rp2,500.00 (two thousand five hundred rupiahs);

The court decision mentioned above is a decision that is not in accordance with Law Number 35 of 2009 concerning Narcotics which is regulated in Article 127 of Law Number 35 of 2009 concerning Narcotics which reads as follows:

- (1) Every Abuser:
  - a. Narcotics Group I for oneself shall be punished with a maximum imprisonment of 4 (four) years;
  - b. Narcotics Group II for oneself shall be punished with a maximum imprisonment of 2 (two) years; and
  - c. Narcotics Group III for oneself shall be punished with a maximum imprisonment of 1 (one) year.
- (2) In deciding cases as referred to in paragraph (1), judges must pay attention to the provisions referred to in Article 54, Article 55, and Article 103.



- (3) In the event that the Misuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics abuse, the Misuser must undergo medical rehabilitation and social rehabilitation.

A misuser is a person who uses narcotics without the right or against the law. Therefore, in Court Decision Number 304/PID.SUS/2020/PT SMG based on the facts of the trial, the judge should have decided the defendant as a user, because the urine contained methamphetamine which is included in class I narcotic substances. The Decision of the Supreme Court of the Republic of Indonesia Number 1386K/Pid.Sus/2011 also states that, where it has been found that it is true that the narcotic shabu-shabu was used by the Defendant shortly before the Defendant was arrested, while it has also been found that the purpose of the Defendant buying the shabu-shabu was for his own consumption or use and not for sale or circulation. This can be proven by the existence of a Certificate which is also attached to an Outpatient Card made by Dr. Eko Hariawan which basically, explains that the defendant Khamidun is a patient.

In the Supreme Court Circular Letter (SEMA) Number 3 of 2015 also states that if the defendant is charged with Article 111 or Article 112 of Law No. 35 of 2009 concerning Narcotics but based on the legal facts revealed at trial, it is proven that Article 127 of Law No. 35 of 2009 concerning Narcotics is not charged, the defendant is proven to be a user and the amount is relatively small in accordance with the Supreme Court Circular Letter (SEMA) Number 4 of 2010, then the judge decides according to the indictment but can deviate from the special minimum criminal provisions by making sufficient considerations. It can be concluded that the judge in this case ignored the evidence in making a decision, which looked at the act of storing, possessing, controlling narcotics (which in this case is methamphetamine) without the right or against the law, so that the facts and the clearer truth were covered by the judge who tried this case.

Putting the defendant in a correctional institution will make it difficult for the correctional institution itself because there are no medical rehabilitation and social rehabilitation facilities for addicts and victims of drug abuse. Putting the defendant into a penitentiary to serve his/her sentence will cause drug dependency to worsen and will result in the spread of illicit drug trafficking within the penitentiary, which could potentially lead to the abuse of other convicts within the penitentiary.

Forcing the defendant to get rid of his addiction to drugs without adequate medical and social rehabilitation efforts is a form of cruel punishment against the defendant because it deliberately inflicts pain due to dependence on the defendant (who should be fostered by rehabilitation). This makes the implementation of the defendant's sentence not in accordance with the objectives of Law Number 35 of 2009 concerning Narcotics and not in accordance with the principles of justice.

Article 103 of the Narcotics Law states that judges examining drug addicts can decide to order the person to undergo rehabilitation if they are found guilty of committing a narcotics crime. The word "may" in Article 103 of the Narcotics Law can be interpreted as not mandatory. However, Article 127 paragraph (3) of the Narcotics Law states that every abuser must undergo medical rehabilitation and social rehabilitation. Such articles contradict each other. In Court Decision Number 304/PID.SUS/2020/PT SMG, the defendant should be required to be rehabilitated.

However, due to Article 103 of the Narcotics Law, there is no legal certainty for defendants who are proven in the facts of the trial to be rehabilitated.

In addition, Article 112 paragraph (1) of the Narcotics Law as applied in Court Decision Number 304/PID.SUS/2020/PT SMG is not appropriate if it is applied based on the elements proven in the facts of the trial. Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics should be used for drug dealers, dealers, drug traffickers<sup>14</sup>, but in its implementation Article 112 paragraph (1) is used for everyone including abusers so that it can result in narcotics prisons 70 percent filled with narcotics abusers / addicts.

It can be concluded that Article 112 paragraph (1) and Article 127 paragraph (1) of Law Number 35 Year 2009 on Narcotics has an ambiguous value. This kind of legal certainty also has the potential for the suspect to be subject to criminal sanctions with a double article, namely Article 112 paragraph (1) and Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. According to Sujono A.R. and Bony Daniel in his book, it is said that "*Eradication of narcotics trafficking is found, among others, in the provisions of Articles 111 to 126, while relating to narcotics abusers, among others, is found in Article 127 and Article 128*". In this case the author agrees with the opinion expressed by Sujono A.R. and Bony Daniel that Article 111 to Article 126 of Law Number 35 of 2009 concerning Narcotics is used for narcotics dealers while narcotics abuse is found in Article 127 and Article 128 of Law Number 35 of 2009 concerning Narcotics.

### **Obstacles/Constraints Faced by Judges in Imposing Judicial Decisions for Misuse of Class I Narcotics**

The implementation of the verdict on misuse of Article 127 paragraph (1) of Law No. 35 of 2009 concerning Narcotics often misses the provisions specified in Law No. 35 of 2009 concerning Narcotics. The obstacles / constraints that often exist in District Court Decisions, namely not deciding cases of narcotics abuse but instead missing the storage or possession without rights and / or against the law contained in Article 112 of Law No. 35 of 2009 concerning Narcotics. This is caused by one of them in the indictment of the public prosecutor who handles narcotics crime cases.

The function of the indictment is something that occupies a central and strategic position in the examination of criminal cases in court, because of this the indictment is very dominant for the successful implementation of the prosecution task. The indictment has several functions, namely: For the court / judge, the indictment is the basis and at the same time limits the scope of the examination, the basis for consideration in the decision. For the public prosecutor, the indictment is the basis for juridical proof/analysis, criminal charges and the use of legal remedies. For the defendant/lawyer, the indictment is the basis for preparing a defense.

The legal basis for the indictment is contained in Circular Letter of the Attorney General of the Republic of Indonesia Number: SE-004/J.A/11/1993 concerning the Preparation of Indictments. The most effective indictments are alternative,

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<sup>14</sup> Class IIA Narcotics Prison Cirebon, "*UU Narkotika, Bagaimana teknisnya?*", <https://lpnarkotika-cirebon.kemenumham.go.id/berita-utama/uu-narkotika-bagaimana-teknisnya>, accessed on 10 January 2023, at 23:14 WIB.



subsidiary or combination indictments. These indictments are not only the most effective for charging a defendant, but they also have weaknesses. That is, the words "if one of the charges has been proven, then the charges in the other layers do not need to be proven again". In this situation, if the charges listed in the indictment are alternative, subsidiary, or combination charges (containing alternative and/or subsidiary charges) that charge the defendant with Article 112 paragraph (1) of Law No. 35 of 2009 concerning Narcotics as a prima facie charge, and Article 127 paragraph (1) of Law No. 35 of 2009 concerning Narcotics as a subsidiary charge. If what is proven is Article 112 paragraph (1) of Law No. 35 of 2009 regarding Narcotics, Article 127 paragraph (1) of Law No. 35 of 2009 concerning Narcotics does not need to be proven again. Based also on the principle of *ius curia novit* contained in Article 10 of Law Number 48 of 2009 concerning Judicial Power where the court may not refuse to examine, adjudicate, and decide a case submitted under the pretext that the law does not exist or is unclear, but is obliged to examine and try it. In deciding the case Judges may not decide a case beyond the charges or indictment of the public prosecutor (*ultra petita* contained in Article 193 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure/Criminal Code). These three rules are an obstacle to deciding narcotics crime cases related to narcotics abuse with article 112 paragraph (1) of Law No. 35 of 2009 concerning Narcotics.

In addition to the above, there is a lack of progressive prosecutors who are more like prosecutors in general where the prosecutor is obliged to prosecute every person who commits a criminal offense regardless of the consequences that will arise in other words, every case with sufficient evidence must be prosecuted which is in accordance with the principle of legality.

Another obstacle related to drug crimes is the ineffectiveness of *restorative justice* for drug abusers, drug addicts, victims of drug abuse, drug dependence, and one-day drug users in the Appendix to the Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.00/12/2020 concerning the Application of Restorative Justice Guidelines in the Guidelines for the Application of *Restorative Justice in the General Justice Environment*. The need for prosecutors to attach assessment results from the Integrated Assessment Team which is a requirement for obtaining restorative justice. The lack of effectiveness of this decree is because the regulations for the implementation of restorative justice in the prosecutor's office are different from those in the general court. The difference is that the restorative justice regulation by the prosecution does not include restorative justice for drug abusers. This is also due to the lack of progressive judges who need to apply restorative justice to drug abusers.

### **Efforts that Can Be Made in Deciding Cases of Abuse of Class I Narcotics**

Efforts that can be made in deciding narcotics abuse cases can be seen from how judges decide narcotics crime cases related to abusers in Article 127 paragraph (1) of Law No. 35 of 2009 concerning Narcotics regarding narcotics abusers. Progressive judges are needed in deciding cases of narcotics abusers in order to make the Supreme Court Circular Letter (SEMA) Number 3 of 2015 effective which states that if the defendant is charged with Article 111 or Article 112 (on possession without rights and/or against the law) of Law No. 35 of 2009 concerning Narcotics, but based

on the legal facts revealed at trial, it is proven that Article 127 of Law No. 35 of 2009 concerning Narcotics, which this article is not charged, the defendant is proven to be a user and the amount is relatively small in accordance with the Supreme Court Circular Letter (SEMA) Number 4 of 2010, then the defendant is proven to be a user.

The judge decides according to the indictment but can deviate from the special minimum penalty provision by making sufficient considerations. In addition, judges need to use a restorative justice approach to drug abuse. *Restorative Justice / Restorative Justice* is a settlement of criminal cases in a manner similar to mediation but can have legal consequences with the termination of prosecution at the investigation stage until the stage in the court trial of a criminal case which involves the perpetrator of the crime with the victim, the perpetrator's family, the victim's family, traditional leaders, or stakeholders to jointly find a fair solution, which in its implementation has almost never been restorative justice contained in the Appendix to the Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.00 /12/2020 concerning the Application of Restorative Justice Guidelines in the General Justice Environment./12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice in the General Courts.

The application of restorative justice for drug abusers has several requirements, namely:

1. Restorative justice approach can only be applied to addicts, abusers, victims of drug abuse, drug dependence, and single-use drugs as stipulated in Article 1 of the Joint Regulation of the Chairman of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014, Number 3 of 2014, Number 11 of 2014, Number 3 of 2014 Number Per-005/A/JA/03/2014 Number 1 of 2014, Number Perber/01/III/2014/BNN on Handling Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions.

2. Restorative justice in drug cases can be carried out if the following conditions are met:

- a. At the time of being caught red-handed by Police investigators and National Narcotics Agency (BNN) investigators, evidence of 1 (one) day's use was found with the following details:

- |                                |                     |
|--------------------------------|---------------------|
| i. Metamphetamine group(shabu) | :1 gram             |
| ii. MDMA group(ecstasy)        | :2.4 grams 8 grains |
| iii. GroupHeroin               | :1.8 grams          |
| iv. GroupCocaine               | :1.8 grams          |
| v. Group                       | 5 grams             |
| vi. Koka Leaf                  | :5 grams            |

vii. Meskalin	:5 grams
viii. Psilocybin	group:3 grams
ix. LSD group (d-lysergic acid diethylamide)	:2 grams
x. PCP group(phencyclidine)	:3 grams
xi. Group of Phentaniil	:1 gram
x. Methadone group	0.5 gram
xi. Group of Morphine	:1.8 grams
xii. Group of Petidin	:0.96 grams
xiii. Group of Codeine	:72 grams
xii. Group of Bufrenorphine	:32 grams

- b. The Registrar ensures that the Prosecutor has attached the results of the assessment from the Integrated Assessment Team to each submission of case files charged in accordance with Article 103 paragraph (1) and Article 127 of Law Number 35 of 2009 concerning Narcotics, the Prosecutor attaches the results of the assessment from the Integrated Assessment Team.
  - c. If the case file at the time of submission is not equipped with the results of the assessment, the judge at the time of trial can order the prosecutor to attach the results of the assessment from the Integrated Assessment Team.
  - d. The judge may order the defendant to present the family and related parties to hear their testimony as mitigating witnesses in the context of a restorative justice approach.
3. The Panel of Judges in the trial process may order drug addicts and victims of drug abuse to undergo treatment, care, and recovery at medical rehabilitation institutions and/or social rehabilitation institutions.

The court shall provide a list of medical or social rehabilitation institutions in coordination with the Social Narcotics Board.

## **CONCLUSION**

Uncertainty over Article 54 of Law Number 35 of 2009 concerning Narcotics against abusers must be rehabilitated in the interests of the individual, the law, and the state with Article 103 of Law Number 35 of 2009 concerning Narcotics related to the authority of judges who handle cases of drug abuse can order abusers to be rehabilitated, which the article is less assertive for the authority of judges only as the word "can" which should be "mandatory" rehabilitation.

The uncertainty of Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics with Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which can potentially be ignored Article 127 because of the type of alternative or subsidiary charges where in Court Decision Number 304/PID.SUS/2020/PT SMG the defendant is considered to be storing methamphetamine narcotics regardless of the fact that the defendant in Court Decision Number 304/PID.SUS/2020/PT SMG is a methamphetamine abuser.

If analyzed, narcotics abusers are certain to possess narcotics which is in accordance with the elements of Article 112 paragraph (1). In accordance with the elements of

Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, it is potential that abusers who are convicted under Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. (1) Law Number 35 of 2009 concerning Narcotics without ordering medical and social rehabilitation so that it is not in accordance with the value of justice.

The obstacles/constraints that are still encountered in cases of abuse of class I narcotics of the type of methamphetamine are the lack of progressive prosecutors in indicting abusers as without the right and against the law to possess, store, control narcotics. In addition, there is a lack of progressive judges in deciding a case in order to achieve the values of justice, expediency, and legal certainty. Other than that, there is a lack of effective guidelines for the application of restorative justice, for abusers charged with Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

Active judges in deciding a case against narcotics crimes which need to streamline restorative justice contained in the Appendix to the Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.00/12/2020 concerning the Application of Restorative Justice Guidelines in the application of *restorative justice in the* General Court environment as an effort that can be made in deciding cases of abuse of class I narcotics in this case methamphetamine.

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## Miscellaneous

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