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DAFTAR ISI

JURIDICAL REVIEW OF UNILATERAL ENGAGEMENT ANNULMENT AS AN UNLAWFUL ACT IN CONNECTION WITH CODE OF CIVIL LAW (CASE STUDY OF DECISION NUMBER 45/Pdt.G/2019/PN.Sng) Yustya Laraswati, Yuniar Rahmatiar, Muhamad Abas..... 102-115

JURIDICAL REVIEW OF POLYGAMY PERFORMED BY CIVIL SERVANTS VIEWED FROM GOVERNMENT REGULATION NUMBER 45 OF 1990 (STUDY OF DECISION NUMBER 325/PDT.G/2019/PA.PWL) Windi Destriyanti, M. Gary Gagarin Akbar, Zarisnov Arafat 116-131

LEGAL PROTECTION OF CHILDREN AFTER DIVORCE DIVORCE RELATED TO ACT NUMBER 16 OF 2019 AMENDMENT TO ACT NUMBER 1 OF 1974 CONCERNING MARRIAGE (Decision Study Number 1145/pdt.g/2020/PA.Krw) Jihan Alfadia, Muhammad Abas, Zarisnov Arafat 132-144

CURRENT CONDITIONS FOR THE PROVISION OF CIVIL MEASURES CONTRA DROGS CONTRACTING CLASS I PARTIELLE ON THE BASIS OF LEGISLATION No. 35 OF 2009 ON DRUGS (Study of Judgment No. 446/Pid.Sus/2020/PN.Gpr) Jasa Sudjana, Deny Guntara, Yuniar Rahmatiar 145-162

LEGAL CONSEQUENCES OF DELAY REPORTING OF SHARE ACQUISITION BETWEEN PT. AGRO PRATAMA AND PT. DHARMA SATYA NUSANTARA BASED ON LAW NUMBER 5 OF 1999 CONCERNING PROHIBITION OF MONOPOLY PRACTICES AND UNFAIR BUSINESS COMPETITION (KPPU Case Study Number 29/KPPU-M/2019) Annisa Putri Azra, Anwar Hidayat, Yuniar Rahmatiar 163-181

OPTIMALIZATION OF THE ROLE AND FUNCTIONS OF THE LOCAL PROPERTY BOARD IN THE SUPERVISION OF THE USE OF LIMITED LANDS IN THE CABITATES OF THE NATIONS RELATED TO THE LAW NUMBER 17 OF 2014

(Case Study at the People's Representative Council of Karawang District)

Norma Indah Nur Fitrianingsih , M.Gary Gagarin Akbar , Sartika Dewi ...182-195

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

CURRENT CONDITIONS FOR THE PROVIDENT OF CIVIL MEASURES CONTRA DROGS CONTRACTING CLASS I PARTIELLE ON THE BASIS OF LEGISLATION No. 35 OF 2009 ON DRUGS

(Study of Judgment No. 446/Pid.Sus/2020/PN.Gpr)

Jasa Sudjana¹, Deny Guntara², Yuniar Rahmatiar³

¹Faculty of law, University Buana Perjuangan Karawang

² Faculty of law, University Buana Perjuangan Karawang

³ Faculty of law, University Buana Perjuangan Karawang

* Correspondence email: hk19.jasasudjana@mhs.ubpkarawang.ac.id

Abstrack: Narcotics abuse is an act of crime, the problem of narcotics abuse has a very negative and detrimental impact both in terms of law, health, economics, politics, and socio-cultural life. Narcotics abuse has been regulated in Article 127 of Law No. 35 of 2009 concerning Narcotics. As for the identification of the problem in this research study regarding the imposition of punishment against the perpetrators of the crime of class I drug abuse for themselves according to Law No. 35 of 2009 concerning Narcotics and what are the considerations of the panel of judges in deciding a case against the perpetrators of the crime of class I drug abuse for themselves himself in decision no 446/Pid.Sus/2020/PN.Gpr. In this study the aims were to find out the sentence imposed on the perpetrators of the crime of class 1 narcotics abuse for themselves according to Law No. 35 of 2009 and to find out the considerations of the panel of judges in deciding a case against the perpetrators of the crime of class I narcotics abuse for themselves in the decision number 446/Pid.Sus/2020/PN.Gpr. The research method used in this study is a normative juridical research method using secondary data as the main data. The results of this study are based on Law No. 35 of 2009 concerning Narcotics that perpetrators of class I drug abuse for themselves should receive medical and social rehabilitation, and the Decision of the Kediri District Court Number 446/Pid.Sus/2020PN.Gpr according to researchers there was a mistake and not in accordance with Law No. 35 of 2009 concerning Narcotics.

Keywords: Crime, Narcotics, Criminal Imposition

1. Introduction

Drugs, according to Article 1 Paragraph 1 of Law No. 35 of 2009 Concerning Drugs, state that:¹ "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, that can cause loss of taste, a decrease or change in consciousness, reduce or eliminate pain, and can cause dependence, and which are differentiated into groups as attached in this Law." According to this definition, narcotics are, on the one hand, drugs or substances that are beneficial to the provision

¹ Ratna Wp, *Aspek Pidana Penyalahgunaan Narkotika*, Legality, Yogyakarta, 2017, hlm. 185.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

of medical care and the advancement of science, but, on the other hand, they can also lead to dependence, which is seriously harmful to health if used independently and without a doctor's control and supervision.²

In the meanwhile, Article 6 paragraph 1 of the Law on Narcotics governs the classification of narcotics: "There are three (three) categories for drugs:

1. Narcotics Category I
2. Narcotics Category II
3. Narcotics Category III

In addition, class I narcotics are explained in detail in Article 8 of the Law on Narcotics:

1. Class I narcotics may not be utilized for the provision of health services.
2. With the minister's consent, use of Narcotics Class I must be for the advancement of research and technology.

According to the article's explanation, class I narcotics are only permitted to be used for the advancement of science and technology; otherwise, their use is strictly prohibited. In essence, the Narcotics Law has regulated the terms of the criminal penalties for anyone who violates them; the regulated criminal penalties are imprisonment, fines, and death. Rehab, on the other hand, is another option for punishing drug addicts. The Narcotics Law was passed with the intention of improving and realizing public welfare in the area of health care.

It is illegal to engage in activities including importing, exporting, producing, growing, storing, distributing, and using drugs without the permission and oversight of the relevant authorities.³

In their book Special Criminal Law, Rodliyah and Salim define a narcotics crime as an unlawful act carried out by a criminal subject while consuming substances or

² Rodliyah & Salim, *Hukum Pidana Khusus Unsur Dan Sanksi Pidananya*, PT. RajaGrafindo, Depok, 2019, hlm. 89.

³ Penjelasan Atas Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 Tentang Narkotika.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

drugs that are illegal and that can impair or alter consciousness, cause loss of feeling, lessen or completely eliminate pain, or result in dependence.⁴

In essence, Article 127 of the Narcotics Law requires that those who abuse drugs, particularly addicts and those who have been abused themselves, obtain both medical and social rehabilitation.⁵ However, in reality, the Public Prosecutor or Judge is constantly focused and will immediately apply Article 127 Paragraph (1) of the Narcotics Law to the accused as a class I drug abuser for himself by imposing a prison sentence, without paying attention to and taking into consideration Paragraphs (2) and (3).

In decision number 446/Pid.Sus/2020/PN.Gpr, the judge agreed to and complied with the Public Prosecutor's demands to apply Article 127 Paragraph (1) to the defendant as a class I drug abuser for himself by imposing a criminal sentence imprisonment of 3 years and 3 months without considering and considering Article 127 Paragraph (2) and (3), based on the study of the decisions in this study. If we read and understand Article 127 paragraph (2) and (3) that the judge in deciding the narcotics abuser case must pay attention to Articles 54, 55, and 103, then the judge is still obliged to decide on the defendant with rehabilitation.

The judge should have imposed a rehabilitation sanction in decision number 446/Pid.Sus/2020/PN.Gpr because, based on the Minutes of Examination (BAP) and accompanied by the available evidence, the author also believes that the defendant is a narcotics addict, as evidenced by the evidence. The narcotics discovered weighed only 0.013 grams, indicating that they were disposable and only used for themselves, and the judge should have imposed sanctions on the defendant to obtain medical rehabilitation and social rehabilitation in accordance with Article 4 (d), Article 54, 55, and Article 103 of Law No. 35 of 2009.

Narcotics users are both perpetrators of crimes and victims with rights that must be fought for. This is because, even though a person has committed a drug-related crime,

⁴ Rodliyah dan Salim, *Op.Cit.* hlm 87.

⁵ Ratna Wp, *Op.Cit.* hlm 2.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

they are still human beings with human rights that must be acknowledged and cherished. With this in mind, the state has an obligation to provide narcotics abusers with health services for themselves in order to recover from narcotic dependence, namely the right to counseling and rehabilitation.⁶

Deciding whether a defendant is guilty or not guilty is a judge's prerogative and authority, but under the Narcotics Law, the judge also has additional authority as a representative of the state to ensure that narcotics abusers and addicts receive arrangements in the form of medical rehabilitation and social rehabilitation, as outlined in Article 4 (d) of the Narcotics Law.⁷ Based on the background mentioned above, the authors are interested in conducting research with the title **CRIMINAL IMPOSITION OF PERSONS OF CRIMINAL ACTIONS ABOUT NARCOTICS CLASS I FOR YOURSELF BASED ON LAW NO. 35 OF 2009 CONCERNING NARCOTICS. (study of the decision: Decision Number 446/Pid.Sus/2020/PN.Gpr).**

The Narcotics Law has actually offered different treatment for perpetrators of illegal actions of narcotics abuse by regulating these rules and consequences. Prior to the implementation of this regulation, there was no distinction in treatment between narcotics abusers, addicts, dealers, and manufacturers. The following issues are discussed in this study:

1. What is the punishment for perpetrators of class I drugs abuse for oneself under Law No. 35 of 2009?
2. What factors did the Panel of Judges consider while considering a case against offenders of class I drug misuse for themselves in decision number 446/Pid.Sus/2020/PN. Gpr?

2. Method

This is a normative study employing qualitative research methodologies, and the following factors must be considered: The authors employed a normative juridical

⁶ Anang Iskandar, *Politik Hukum Narkotika*, PT. Elex Media Komputindo, Jakarta, 2020. hlm 55.

⁷ *Ibid.* hlm 9.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

approach in this study, and the reason they adopted this method was because the main data used was secondary data, meaning material gathered from literature studies. The specifications in this study are descriptive-analytical in nature, while the reason for choosing this specification is the process of describing, studying, and analyzing the applicable legal provisions regarding criminal liability for the perpetrators of the crime of class I drug abuse for themselves. Data yang telah diperoleh selanjutnya dianalisis secara kualitatif dengan menggunakan penalaran hukum aksiomatis, metode ini mempelajari pertanggungjawaban ilmiah dari segi hukum terhadap proses pembuatan suatu keputusan hukum mengikuti argumentasi dan alasan-alasan logis sebagai pembenaran terhadap keputusan hukum.

3. Analysis or Discussion

When a rule is made and promulgated with certainty, it governs clearly and logically, does not generate uncertainties, and does not have numerous interpretations. Legal certainty is a scenario in which human conduct, including individuals, groups, and organizations, is constrained and feels confined by the rule of law. Legal certainty refers to the enforcement of unambiguous, permanent, consistent, and consequential laws that are not altered by subjective conditions. Certainty and justice are not just moral imperatives; they also define the aim of the law.

In practice, we notice that there are rules that are followed and laws that are not followed by the community. Under these conditions, if everyone in social life does not follow the appropriate laws, the legal system will clearly collapse, and the laws will lose their meaning. The ineffectiveness of the law will have a significant impact on legal behavior, including illegal behavior, which will eventually affect law enforcement, which ensures certainty.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

3.1. What is the punishment for the perpetrators of the crime of abuse of narcotics class I for themselves according to Law No. 35 of 2009 concerning Narcotics.

Criminal is a punishment/sanction inflicted on purpose by the state, specifically through a court, on someone who has legally violated the criminal law, and the sanction is applied through the criminal justice process. So, according to the author, punishment is a form of suffering inflicted on persons who have violated a legal prohibition.⁸ Criminal imposition is also related to criminal statutes, which are part of the general law and contain types of punishment, limits on criminal sentences, methods of imposing crimes and how to carry them out, as well as reductions, additions, and exceptions to criminal sentences. The Criminal Code, Indonesia's primary source of criminal law, has outlined the sorts of crimes. As stated in Article 10 of the Criminal Code, crimes are classified into two categories: principal crimes and extra crimes.⁹

In Indonesia, drugs offenses are categorized as special crimes, crimes that are governed separately in the law, based on the applicable principle in the science of law, namely the principle of *Lex Specialis Derogat Legi Geranalis*, which states that special laws supersede general laws. unique laws, which offer unique restrictions for procedures for investigations, prosecutions, exams, or sanctions that differ from those specified in the Criminal Code.

Narcotics abuse is essentially classified as a felony, as defined by Narcotics Law No. 22 of 1997. However, with the advancement of science and technology, as well as the increasingly structured and systematic *modus operandi* in narcotics crimes, the number of new types of narcotics circulating and being abused, the government truly needs to reform the narcotics law, which ultimately applies. The Narcotics Law No. 35 of 2009 is a law that is expected to handle problems related to illicit commerce, use or

⁸ Adami Chazawi, *Op.Cit.* hlm 23.

⁹ *Ibid*, Hlm 25.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

misuse, narcotics precursors, and ensuring the supply of narcotics for the benefit of health and scientific progress.

Actually, there is a difference between Law No. 22 of 1997 and Law No. 35 of 2009. In Law No. 35 of 2009, there are new provisions, particularly regarding narcotics abusers, contained in Article 1 Number 15 that abusers are people who use narcotics without rights or against the law, with With this understanding, it can be understood that legal entities or corporations cannot qualify as subjects of narcotics abuse crimes.

drugs abusers can essentially become addicts or victims of drugs abusers, as controlled in Narcotics Law No. 35 of 2009, still in Article 127 with a different paragraph. Based on the decision of the Kediri District Court in Decision Number 446/Pid.Sus/2020/PN.Gpr regarding the case of the criminal act of narcotics abuse for oneself, the judge found the defendant legally and convincingly guilty of committing the crime of narcotics abuse class I for himself subject to Article 127 paragraph (1) and sentenced him to three years and three months in prison. Meanwhile, based on the facts of the trial, in accordance with the evidence and evidence in the decision, when the defendant was arrested, the defendant was caught red-handed at his home, the defendant possessed 0.013 grams of methamphetamine, the defendant was positive for narcotics according to the laboratory test letter, and the defendant was not involved in illicit drug trafficking.

This is an interesting study because, according to the author's analysis, the Public Prosecutor (JPU) always uses Article 127 paragraph (1) of Law No. 35 of 2009 concerning Narcotics in formulating charges for narcotics abusers, because Article 127 paragraph (1) regulates criminal sanctions for narcotics abusers for themselves, which explains that abuse of narcotics class I is punishable by a maximum imprisonment of 4 years, and abuse of narcotics. Whereas Article 127 paragraph (2) of Law No. 35 of 2009 concerning Narcotics states that the judge must consider Articles 54, 55, and 103 of Law No. 35 of 2009 concerning Narcotics when examining and considering cases involving narcotics abusers.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

Whereas Article 54 explains that narcotics addicts must receive medical and social rehabilitation, Article 55 explains that parents/guardians who abuse narcotics who are not sufficient must be reported to a rehabilitation institution, while those who are old enough must report themselves to a rehabilitation institution, Article 103 specifically and briefly explains that the judge can decide to order the perpetrators of narcotics abuse to receive medical and social rehabilitation. As a result of these three points, it can be determined that judges must pay attention to and consider them when addressing cases of criminal acts of narcotics misuse for themselves in order for the narcotics law to be correctly enforced.¹⁰

Article 127 paragraph (3) of Narcotics Law No. 35 of 2009 reiterates unequivocally that victims of narcotics misuse, whether proven or not, must continue to receive treatment and care at medical rehabilitation institutions and social rehabilitation. The authors of this paper tie the sentencing of drug addicts for themselves to punishment theory. Whereas, according to doctrine, sentencing theories can be divided into three major categories:

In this viewpoint, the perpetrators of unlawful activities must be prepared for the repercussions that will be given to them, namely suffering. This argument contends that sanctions in criminal law are imposed exclusively because a person has committed a crime, and that they must exist as a reprisal for a person who has committed a crime in order to satisfy the demands of justice. This perspective regards punishment not as revenge for the perpetrator's misbehavior, but as a means to a useful objective of preserving society toward prosperity. The purpose of punishment as a measure of prevention, namely broad prevention targeted at society, arises from this view. The law was then enacted to alleviate society's displeasure as a result of the crime.

This idea is a hybrid of absolute and relative theory. According to this theory, punishment is based on vengeance and the goal of the crime itself. Because, in order to attain justice and societal satisfaction, there must be a balance between retaliation and

¹⁰ *Ibid*, hlm 190.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

the objective of imposing punishment on someone who has committed a crime According to the legal literature, the integrated theory is classified into two types:

- a) The combined theory favors retaliation, but it must not go beyond what is required and sufficient to sustain social order.
- b) The combined theory stresses public protection, but the pain of being condemned should not be greater than the convict's conduct.

According to the author, the smart punishment of offenders for narcotics abusers based on judgment number 446/Pid.Sus/2020/PN is the best of the three sentencing ideas. Gpr is a punishment based on a relative theory, and even relative theory views sentencing as a means of achieving reform for the offender. That the judge must consider goals and benefits, not only revenge, when issuing a punishment; hence, rehabilitation is a smart sanction, because it has advantages and aims for abusers to recover from addiction and eliminate narcotics dependence.

3.2. What are the considerations of the Panel of Judges in deciding a case against the perpetrators of the crime of class I drug abuse for themselves in decision number 446/Pid.Sus/2020/PN. Gpr.

The judge's consideration is a critical factor in deciding the value of a judge's decision that contains justice and clarity, as well as benefits for the parties to the case, thus the judge's consideration must be thorough, good, and meticulous. The judge will also demand evidence while reviewing a case, and the conclusions of the evidence will be utilized as material for the judge to examine when considering a case. Essentially, proof is the most crucial stage in trial examination; proof seeks certainty that an event or fact submitted occurred in order to gain an accurate and fair judge's conclusion. When imposing a punishment, the court must ensure the defendant's right to truth, justice, and legal certainty. So it's not only retaliation. In plain terms, the goal of criminal procedural law is to discover material truth. That, in fact, the purpose is

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

broader, namely to seek and discover material truth, with the ultimate goal of achieving an orderly, peaceful, just, and wealthy society.¹¹

Normatively, this refers to Article 50 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power, which states that, in addition to the reasons and basis for the decision, court decisions must also include articles from relevant statutory regulations or sources of law that are not in written form and are used as the basis for trial.

In general, courts have independent discretion in determining the severity of criminal sanctions against the decisions they hear. The judge's decision to impose criminal punishment must be based on fairness and the facts of the trial process. Only after these legal facts, which are in the form of the defendant's statement, witness testimony, and evidence discovered, can the defendant's reason for committing the crime be determined. According to Article 5 paragraph (1) of the Law on Judicial Powers, judges are required to investigate, follow, and comprehend the values and sense of justice that exist in society. This means that if there is a legal vacuum or if the rules are unclear, a judge must have the competence and willingness to find the law (*recht vinding*). *Recht vinding* is the process through which judges/law enforcement officers develop concrete law, and the results of legal findings become the basis for making decisions. As a result, the judge must consider factors other than the legal component in order for the judge's judgment to fully reflect sociological and legal principles, as follows:¹²

1. Juridical Considerations

Legal considerations imply that judges make judgements based on official provisions of laws and regulations. A judge may not impose a punishment until at least two legitimate pieces of evidence are acquired, giving the judge confidence that a crime occurred and the prisoner is guilty of committing it (Article 183 of the Criminal Procedure Code). Witness

¹¹ Prasetyo Teguh, *Op.Cit.* hlm 32.

¹² Sudarto, *Kapita Selekta Hukum Pidana; Edisi Revisi*, Alumni, Bandung, 2010, hlm 67.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

Statements, Expert Statements, Letters, Instructions, and Defendant Statements are examples of legal evidence (Article 184 of the Criminal Procedure Code). Furthermore, it was determined that the defendant's acts violated formal law and met the elements of the crime he committed.

2. Sociological Considerations

Sociological considerations imply that the court imposes a sentence based on the defendant's social background and taking into account whether the punishment issued will benefit the community as a whole.

3. Philosophical Considerations

Philosophical considerations imply that the judge believes that the punishment imposed on the defendant is an attempt by the judicial process to improve the defendant's behavior. This indicates that the punishment concept is to coach criminal perpetrators so that when the convict leaves the penitentiary, he will be able to improve himself and not commit crimes again.

If the Panel of Judges believes that the defendant committed the offense for which he was charged properly and convincingly, a court decision in the form of punishment is inflicted on him. If the Panel of Judges believes that the defendant has not been legally and convincingly proven to have committed the crime for which he was charged, a court decision in the form of an acquittal (*vrijspraak*) is handed down to the defendant, and a decision to be released from all lawsuits is handed down to the defendant if the Panel of Judges believes that the defendant is proven to have committed a crime charged against him, but the act is not a crime.¹³

Based on the Decision of the Kediri District Court on Decision Number 446/Pid.Sus/2020/PN.Gpr in the case of the crime of narcotics abuse class I for oneself, the author analyzes that neither the charges nor the decision of the panel of judges were applied as they should, meaning what should be applied in law was not applied in accordance with the legal facts that occurred (*Das Sollen* and *Das Sein*). Despite the

¹³ *Ibid.*

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

fact that the judge's consideration is a critical step in determining the severity or lightness of a criminal sentence imposed on the defendant.

Considering the judge's decision against the defendant who committed the crime of drug abuse class I for himself in decision number 446/Pid.Sus/2020/PN.Gpr based on the second alternative indictment by imposing Article 127 paragraph (1) of the Law No. 35 of 2009 concerning Narcotics committed by the defendant Eko Nur Wahyudi Bin Supriyanto.

According to the author of the Kediri District Court's Panel of Judges, imposing prison sentences on the Defendant for 3 years and 3 months is not in compliance with the legal, sociological, and philosophical elements. Taking into account the results of the trial examination process based on witness testimony and the defendant's statement connected with evidence, it was revealed that the defendant committed the crime of drug abuse class I for himself, which was carried out with his own awareness, then based on the judge's considerations in the Court's decision Kediri State in decision number 446/Pid.Sus/2020/PN.Gpr. As a result, the writers of this paper examine the judge's considerations below.

According to statutory requirements, the defendant committed the crime of abuse of class I drugs for himself in this case by using the terms of Article 127 paragraph (1) letter an of drugs Law No. 35 of 2009. The judge's considerations in applying this article to this case against the defendant were incorrect, because in his consideration of decision number 446/Pid.Sus/2020/PN.Gp, the judge agreed with the public prosecutor and immediately applied Article 127 paragraph (1) without considering articles 54, 55, and 103, despite the fact that the following paragraph, Article 127 paragraph (2), mandates that judges in examining and deciding cases of narcotics abusers must pay.

In terms of the elements of each person, the judge stated that everyone refers to humans as legal subjects as perpetrators of criminal acts and their actions can be accounted for, in this case the defendant Eko Nur Wahyudi Bin Supriyanto was presented before the trial, that the defendant was able to answer all of the questions raised by the panel of judges and the public prosecutor properly and smoothly, the

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

authors are of the opinion that the defendant can indeed be held a defendant. Based on the results of the author's analysis, the panel of judges in decision number 446/Pid.Sus/2020/PN.Gpr was incorrect in deciding the defendant Eko Nur Wahyudi Bin Supriyanto with a criminal conviction imprisonment for 3 years and 3 months, and did not order the accused to undergo treatment or treatment through rehabilitation based on the mandate of Articles 4, 54, 55, and 103.

When the offender is legally and clearly demonstrated to be a narcotics abuser for himself, the problem of law enforcement, particularly imposing sanctions on narcotics abusers, should arise. The defendant has not been found guilty. In fact, however, drug users are condemned to prison because they have already been apprehended by investigators and public prosecutors. If the judge sentences him to prison, it becomes a tough, protracted, and highly damaging legal matter for all of us. Despite the fact that abusers commit conditional crimes and that law enforcement is rehabilitative.¹⁴

4. Conclusion

Based on their research, the authors reach the following conclusions:

1. Law No. 35 of 2009 concerning Narcotics was issued specifically and adheres to a double track system, and the rehabilitation mandated by Law No. 35 of 2009 concerning Narcotics is an ultimum remedium, that criminal sanctions are the last remedy, drugs are only used when it truly needs to be used, and criminal law or imposing criminal sanctions are not used for every problem This means that, while Article 127 paragraph (1) regulates criminal sanctions against perpetrators of narcotics abuse for themselves, if it is possible and feasible to be rehabilitated based on several factors including the perpetrators' conditions and evidence found, then the perpetrators of narcotics abuse for themselves are required to receive medical rehabilitation

¹⁴ Anang Iskandar, *Op.Cit.* hlm 75.

Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

and social rehabilitation in order to recover from narcotics dependence in accordance with

2. Based on the results of the author's analysis of decision number 446/Pid.Sus/2020/PN.Gpr, the writer disagrees with the judge in applying Article 127 paragraph (1) letter a Law No. 35 of 2009 concerning Narcotics, by imposing a prison sentence on the defendant, because there are elements that are not fulfilled in the case of the crime of narcotics abuse for oneself, and the author also disagrees with the decision of the panel of judges because. Articles 54, 55, and 103 of Law No. 35 of 2009 on Narcotics, as well as Supreme Court Circular Letter No. 04 of 2010 on the Placement of Abusers, Addicts, and Victims of Narcotics Abuse in Rehabilitation Institutions. The panel of judges should have decided or ordered the defendant to seek or undertake therapy, as well as treatment through a rehabilitation facility.

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Universitas Buana Perjuangan Karawang

Vol.8 No.2 (2023)

Submit: 1-Agu-2023

Revised: 7-Agu-2023

Published: 3-Sep-2023

Badan Pengembangan dan Pembinaan Bahasa Kementerian Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia; Edisi Kelima*, Balai Pustaka, 2019.

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