

## Analysis of Judge's Decisions Against Narcotics Crime Perpetrators

Gustika Sandra<sup>1</sup>, Mukhawas<sup>1</sup>, Suriyati<sup>1</sup>, Asia<sup>1</sup>

Email: [gustikasandra84@gmail.com](mailto:gustikasandra84@gmail.com)

<sup>1</sup>Universitas Andi Sudirman, Indonesia

### Abstract

The aim of writing this thesis is to find out the principles applied by judges when they determine criminal sentences against individuals who personally abuse class I narcotics and the obstacles judges have in making decisions. The research was conducted at the Watampone District Court office. Data types are primary and secondary data. Primary data sources were obtained through direct interviews with Watampone District Court Judges. Apart from that, Decision number 288/pid.sus/2022/Pn Wtp. Secondary data comes from laws, documents and other legal regulations, as well as from literature from various journals and books. The results of the research prove that the basis for the judge's consideration is whether or not the narcotics case is serious or not and the characteristics and point of view of the perpetrator of narcotics abuse. The judge considers the incident that the defendant was proven to have committed narcotics abuse. Other considerations include various perspectives, namely juridical and non-juridical perspectives. the defendant's statement and legal facts revealed during the trial. Meanwhile, non-juridical considerations include the defendant's actions in the trial process, as well as aspects of age and responsibility. And what becomes an obstacle for judges when handing down decisions is the intervention of the parties towards the judges.

**Keywords:** Judge's Decision, Crime, Narcotics

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### Introduction

Indonesia is a country that recognizes the supremacy of law, which emphasizes that law enforcement must be fair, honest, professional and accurate. Therefore, the law enforcement system should work well to uncover and resolve all legal problems that occur in society. This state's efforts include the development of science and technology, but also updating the law every year to meet the progress and desires of citizens. Narcotics are substances and also medication because it can reduce consciousness, hallucinations and excitability. Narcotics can come from natural, synthetic or semi-synthetic ingredients.

However, Article 1 Paragraph 1 of the Narcotics Law explains that drugs are artificial substances or derived from plants that cause hallucinations, decreased consciousness and addiction. Excessive use can cause addiction. Narcotics are used to reduce pain and calm. Its misuse may result in legal consequences. Because the word "narcotics" always appears at almost every event, the word is already familiar to Indonesian people. starting with ambushes, detention, confiscation and legal proceedings for those who commit narcotics violations (Khaidir, 2019).

Drug abuse covers all ages, from children, teenagers, adults, to the elderly. Victims of drug abuse are estimated to cover around 1.5 percent of the total number of Indonesian citizens. are victims of drug abuse. Not only ordinary citizens, but officials and, even worse, law

enforcement officers are involved in these illicit goods. It is often said that the war on drugs is a moral and ideological war because drugs will damage the nation's next generation. As a result of drug users, especially those who have gone through the stages of addiction, is considered a victim and needs to be cured as soon as possible in the medical field and society, drug abuse cannot be punished (National Narcotics Agency, 2009).

Narcotics crimes are serious criminal offenses that have significant impacts. Drug abuse is a transnational crime, meaning that illegal trade and distribution is carried out between countries. Because Indonesia is considered a place for drug trafficking, drug crimes are no longer ordinary crimes; but it has spread throughout Indonesia and is often used as a stopover for perpetrators from foreign countries before finally arriving at their destination. Certainly, drug crimes can cause physical damage, mental health, emotions and attitudes of society. Narcotics abuse has become a problem that threatens society and the nation, becoming an organized crime at the national and international levels (Sudanto, 2017). Even though many of the perpetrators have been convicted by judges and given various sanctions, these decisions have not succeeded in stopping the trend of drug cases which continue, which adds to the effect of fear.

Drug crime is considered an extraordinary crime because it has crossed national borders (Trans National Organization Crimes) (Hafrida, 2014). The police is one of the organizations that can handle narcotics crimes. To do this, all relevant organizations must play a role, and the public must actively provide information about narcotics crimes that occur. Because based on various data and information, Indonesia will soon become one of the five drug-using countries in the world if this drug problem is not addressed immediately. considering the seriousness of the problem of drug abuse in Indonesia

## **Methods**

The approach taken in the research uses an empirical legal approach. In this case, the object of the research is decision number 288/Pid.Sus/2022/Pn.Wtp. The research conducted was descriptive in nature. Descriptive research is research intended to convey data or try to describe a situation by collecting data, compiling, clarifying and analyzing. In this research, the author uses an empirical type of legal research, namely referring to interviews with informants and the principles contained in statutory regulations and then connecting them to the problem being researched.

## **Results and Discussion**

### **Overview of Research Locations**

The District Court, or PN, is a judicial institution within the General Courts which is located in the district or city capital. The District Court is the court of first instance which is responsible for examining, adjudicating, deciding and resolving criminal and civil cases, unless the law stipulates otherwise. The Watampone District Court is located on Jalan MT Haryono, Macanang, West Tanete Riattang Regency. Bone Regency, South Sulawesi region

### **The Judge's Basic Considerations in Handing Down Narcotics Decisions**

Based on the results of an interview on 9 August 2023 with the Informant judge at the Watampone District Court, it can be seen from decision number 288/pid.sus/2022/Pn. WTP That the defendant with the initials A was detained in detention by investigators from 27 July 2022 to 15 August 2022. After hearing the statements of witnesses and the defendant as well as the public prosecutor's indictment in which there were criminal charges filed by the public prosecutor which were essentially as follows; (1) (Declare that the defendant with the initials A has been legally and convincingly proven guilty of committing a criminal act by means of

an evil conspiracy without right or against the law selling, buying, receiving, acting as an intermediary in buying and selling, or handing over Class I Narcotics as regulated and punishable by crime in article 114 paragraph (1) Law Number 35 of 2009 concerning narcotics. Article 132 paragraph (1) Law Number 35 of 2009 concerning Narcotics in the first indictment; (2) Sentenced the defendant initial A to prison for 7 (seven) years minus the period of arrest and detention that the defendant had served and a fine of IDR 1,000,000,000,-, subsidiary to 6 (six) months in prison with an order for the defendant to remain in detention; (3) State evidence in the form of; (a) 7 (seven) sachets of small clear crystals stored in plastic kip / clear with an overall initial weight of 0.3189 grams and a final weight of examination settings of 0.2426 grams; (b) 2 (two) gas matches; (c) 1 (one) glass pirex rod; (d) 1 (one) measuring spoon made of plastic pipette; (e) 1 (one) red cigarette box; (f) 1 (one) black sling bag: seized for destruction; the overall initial 0.3189 grams and the final weight after examination 0.2426 grams; (g) 2 (two) gas matches; (h) 1 (one) glass pirex rod; (i) 1 (one) measuring spoon made of plastic pipette; (j) 1 (one) red cigarette box; (k) 1 (one) black sling bag: seized for destruction, 1 (one) unit of black Xiaomi Redmi brand mobile phone with Sim Card number 089532876\*\*\* seized for the state; (4) Declare that the defendant is burdened with paying the cost of the case in the amount of IDR5,000,- (five thousand rupiah); After hearing the defense of the Defendant and or the Defendant's Legal Counsel who basically pleaded for leniency; After hearing the Defendant's plea which basically stated that it pleaded for leniency After hearing the Public Prosecutor's response to the Defendant's defence which essentially remained on his demands/requisitoir; After hearing the Defendant's response to the Public Prosecutor's response which essentially remained in his defense; Considering, that the Accused submitted to the trial by the Public Prosecution was charged under the indictment as follows:

That the defendant initials A, on Tuesday 19 July 2022 at around 19.00 Central Indonesia Time, or at least sometime in July 2022, or at least still in 2022, at Jalan Kesehatan Kel. Blue District. East Tanete Riattang District. Bone, or at least in a place that is still included in the jurisdiction of the Watampone District Court which has the authority to examine and adjudicate this case, has carried out an attempt or conspiracy to illegally offer for sale, sell, buy, receive, become an intermediary in selling buying, exchanging or handing over Class I narcotics, the defendant's actions were carried out in the following ways.

Whereas at the time and place mentioned above, starting on Friday, July 15 2022, the day after the defendant had finished serving his sentence at Watampone Class I A Prison, the defendant was contacted by a fellow prisoner, namely a man with the initials A, who asked for help to find methamphetamine for his wife, a woman. with the initials W (filed in a separate case file), then on July 17 2022 the defendant was contacted by a woman with the initials W and asked the defendant to come to her shop in Kel. Bajoe District. East Tanete Riattang District. When Bone arrived there, the defendant met a woman with the initials W, but at that time the woman with the initials W said that she did not have enough money to buy a package of methamphetamine so the defendant went home.

On Tuesday 19 July 2022 it will be a boy again. initials A called the defendant and told the defendant to take money from his wife, namely a woman with the initials W, amounting to IDR 3,000,000, - (three million rupiah). At around 18.30 Central Indonesia Time the defendant went to the boarding house of a woman with the initials W in Jin. Health Kel. Blue District. East Tanete Riattang, Bone Regency. And at that time the defendant received money to buy methamphetamine amounting to IDR 3,000,000 (three million rupiah) from the hands of a woman with the initials W. At around 19.00 WIT the defendant left the boarding house of a woman with the initials W, then the defendant contacted a man with the initials I (on the wanted

list) to order shabu for IDR 3,500,000,- (three million five hundred thousand rupiah) (in this case the money from the woman with the initials W is worth IDR 3,000,000, - (three million rupiah) and the defendant's money is IDR 500,000, - (five hundred thousand rupiah) which is then a man -The man with the initials I told the defendant to transfer money for the price of methamphetamine by stating his account number which the defendant wrote down on a piece of paper. Then the defendant stopped at BRI Link to transfer the money to buy the methamphetamine to the man with the initials I.

Not long afterward, the man with the initials A contacted the defendant and told the defendant to pick up methamphetamine on the street. langsung Kel. Macege District. West Tanete Riattang District. Bone and guided the defendant via cellphone to an electric pliers approximately 30 (thirty) meters from the car wash. When he arrived there the defendant found a cigarette wrapper attached to an electric pliers. After opening it, the defendant found 2 (two) medium sized sachets of methamphetamine stored in a clear plastic clip and 1 (one) small sized sachet of crystal methamphetamine stored in a clear plastic clip. At around 22.00 Central Indonesia Time, after taking the methamphetamine, the defendant immediately went to the boarding house of the woman with the initials W and when he arrived at the boarding house, the woman with the initials W contacted the woman with the initials K (filed in a separate case), after the woman with the initials K arrived, at that time the defendant handed over 2 (two) medium sized sachets of methamphetamine stored in a clear plastic clip directly into the hands of the woman with the initials K, after that the defendant went home still keeping 1 (one) small sized sachet of shabu stored in a clear plastic clip;- That on Wednesday the date July 20 2022 at approximately 22.00 Central Indonesia Time at Jalan Kesehatan Kel. Bajoe East Tanete Riattang District, Bone Regency, Bone Police officers conducted a raid and arrested a woman with the initials W and a woman with the initials K in connection with the abuse of the narcotic Gol I type methamphetamine. Then information was obtained from women with the initials W and K who stated that the shabu which was successfully confiscated by the police was obtained from the defendant.

That on Thursday 21 July 2022 at approximately 01.30 Central Indonesia Time at JIn. Health Kel. Bajoe District. East Tanete Riattang Bone Regency, precisely at the boarding house of the woman with the initials K, the defendant was successfully arrested by the police and obtained evidence in the form of 1 (one) black salempang bag which contained 1 (one) box of red cigarettes containing 7 (seven) Small clear crystal sachets stored in clear plastic clips. 2 (two) gas lighters, 1 (one) glass Pyrex stick and 1 (one) measuring spoon made of plastic pipette and 1 black Xiomi Redmi Brand Mobile Phone with Sim Card number 089 532 876 \*\*\* ;- That the defendant does not have permission from the Minister of Health of the Republic of Indonesia or other Government Institutions authorized to sell, buy, receive, act as an intermediary in buying and selling, exchanging or handing over Class I narcotics, type of methamphetamine: That based on the criminalistics laboratory inspection report No.Lab : 2827/NNF/VI/2022 dated 26 July 2022, in evidence 7 (seven) sachets containing clear crystals with a total net weight of 0.3189 grams and defendant A's urine was positive for containing methamphetamine; The defendant's actions are as regulated and punishable by crime in Article 114 paragraph (1) jo. Article 132 paragraph (1) Republic of Indonesia Law Number 35 of 2009 concerning Narcotics;

Taking into account that the defendant has been charged by the Public Prosecutor with alternative charges, the Panel of Judges will then decide whether the defendant can be considered to have committed the criminal act with which he is charged based on the legal facts

mentioned above. By considering the facts mentioned above, the Panel of Judges chose the first alternative charge as regulated in Article 114 paragraph (1) jo. Article 114 paragraph (2).

Every person without right or against the law offers to sell, sells, buys, receives, becomes an intermediary in buying and selling, exchanges or delivers class I Narcotics. Attempts or criminal conspiracy to commit criminal acts of Narcotics and Narcotics Precursors; Considering that the Panel of Judges considers the following elements: Every person; Although there is no explicit explanation of this element in the Criminal Code, it can be concluded that what is meant by "whoever/Any person" is an individual or individuals involved in a criminal act, based on Articles 2, 44, 45, 46,48, 49, 50, and 51. Therefore, the definition of this component is a legal subject who supports rights and obligations and has the ability to be responsible for his actions; Considering that the perpetrator of a criminal act is a human being (naturijkperson, natural person).

Considering, that what is meant by "Any Person/Every Person" is a legal subject, either a natural person/an individual or any person supporting rights and obligations (other than Article 44 of the Criminal Code) who can be or is subject to responsibility for every action; Considering, that what was presented to the trial by the Public Prosecutor, was a legal subject named Defendant A as a natural person (Natuurlik Persoons) with the identity as in the indictment and no other person was identified besides the defendant, after the defendant admitted his identity as in the indictment before the trial the defendant can answer well all the questions asked of him, so that the defendant is physically and mentally healthy, therefore the defendant's actions can be accounted for, thus part of this element has been fulfilled; Without rights or against the law, offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging or handing over class I narcotics, considering that this element is alternative because it has several forms of action, each of which has its own characteristics and characteristics. , where it is not necessary for all actions to be fulfilled, but just one action being fulfilled is enough to be seen as fulfilling this element. Considering, that according to Lamintang, the term "without rights" in criminal law, is also called the term "wederrechtelik

According to Lamintang wederrechtelik includes several understandings, namely; (1) Contrary to objective law Contrary to the rights of others; (2) Without rights that exist in a person; or Without authority;

Thus, without rights can be interpreted as actions that are contrary to objective law, actions that are contrary to the rights of other people, actions that are carried out without the rights that exist within a person, or actions that are carried out without authority; Considering, that unlawful acts in the context of criminal law, in the opinion of Satochid Kartanegara, "against the law" (Wederrechteliik) in criminal law are divided into; (1) Wederrechtelijk formal, which means if an action is prohibited or threatened with punishment by law; (2) Wederrechtelik Material, Unauthorized Material: Something that "may" not be entitled even though it is not prohibited and is not threatened with punishment by law. does not include general principles in the field of law (general principles); Considering, that from the definition of the nature of being against the law and its division above, it can be stated that the nature of being against the law has 4 (four) elements; (3) According to the definition of a criminal act, namely human behavior that is included in the definition of an offense, is unlawful and can be blamed; Unlawful nature is defined as a general requirement that an act can be punished; (4) The nature of being against the law is a written requirement for an act to be punished because the word "against the law" is in the formulation of the offense; (5) All components of the offense formula have been fulfilled, and the nature is against formal law; (6) The nature of violating material

law has 2 (two) views; Firstly, from the perspective of the act, which means violating or endangering the interests intended to be protected by the offense by the legislator; (7) Second, from the point of view of its legal sources, where the nature of unlawfulness is contrary to the principles of justice, propriety and community law, offering other people the opportunity to sell goods to earn money.

Based on Chapter 1, General Provisions, and Article 1 number 1 of Law Number 35 of 2009 concerning Narcotics, "Narcotics" is defined as a substance or drug derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, or reduce to eliminate the pain, and can cause dependence. Narcotics are classified into the following groups: Considering, marijuana, opium, cocaine and substances whose raw materials come from ingredients such as morphine, heroin, codeine and cocaine. They also include synthetic drugs that produce substances, hallucinogenic drugs, and stimulants.

Because drugs are chemicals necessary to maintain health, according to Ghooose, when they enter the body's organs, they alter one or more of their functions. Incredibly, the body has a physical and mental dependence on the substance. As a result, physical and mental disorders will arise if the consumption of these substances is stopped. Taking into account that Law Number 35 of 2009, Chapter XI, Articles 53 to Article 54 regulates the use of drugs for public purposes, especially in the fields of science and health, especially in terms of treatment and rehabilitation. Types of drugs such as narcotics are also increasingly developing in terms of processing and distribution. However, it has recently become known that the components of the drug have an addictive potential that can lead to dependence. Therefore, to cure individuals who have been trapped in drug use, it takes a long time to carry out treatment, supervision and control.

Taking into account that all the requirements of Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law of the Republic of Indonesia no. 35 of 2009 concerning Narcotics has been fulfilled, the defendant must be declared legally and convincingly proven to have committed the crime charged in the first alternative indictment. In addition, considering the criminal threat referred to in the crime for which the defendant was charged, it is possible that the defendant has fulfilled the requirements

The judge decided that the defendant must be responsible for his actions because the Panel of Judges deemed him physically and spiritually healthy so that he was able to take responsibility for his actions. Due to the fact that the defendant has been proven guilty, the defendant must be criminally punished.

Taking into account that the defendant has been legally detained and detained before this decision, the legal detention and detention period remains legally binding, deducted in full from the sentence imposed (based on article 22 paragraph 4 of the Criminal Procedure Code in conjunction with article 33 of the Criminal Code). In addition, because the detention and detention of the defendant was based on sufficient reasons, the defendant must be declared that the defendant with the initials A has been legally and convincingly proven guilty of committing the crime "Attempt or conspiracy to commit the crime of Narcotics and Narcotics Precursors without authorization or unlawful purchase, become an intermediary in the sale and purchase of non-plant Class I narcotics"; (1) Sentence the Defendant to imprisonment for 6 (six) years and 10 (ten) months, and a fine of IDR 1,500,000,000.00 (one billion five hundred thousand rupiah) provided that the fine is not paid then it will be replaced by imprisonment for 6 (six) months; (2) Determine that the period of arrest and detention that the defendant has served will be deducted entirely from the prison sentence imposed; (3) Determine that the defendant

remains in detention; (4) Charge the Defendant to pay court costs of IDR 5,000.00 (five thousand rupiah); (5) Judging from the contents of Decision number 288/pid.sus/2022/Pn Wtp, the decision is about narcotics and the defendant is the buyer, user and seller of these narcotics.

Based on the results of interviews with informants on 9 August 2023, according to the informant, the judge's basis for consideration of decision number 288/pid.sus/2022/pn.wtp was because there were aggravating circumstances because the defendant was part of a narcotics trafficking network because he had only been out of prison for 1 week and then the defendant formed a narcotics network as well as being an accomplice of defendant A (the defendant's friend) and was aggravated because the target of selling narcotics was to minors and the defendant was also a buyer of crystal methamphetamine, seller and middleman of class 1 narcotics. The reason the sentence was aggravated was because the defendant had only been out of prison for a week instead of making The defendant became better than before, but the defendant instead created a new network of illegal narcotics trafficking. The judge's considerations also did not look at the defendant's gender or other things, but the judge did not forgive narcotics cases. This was to provide a deterrent effect on narcotics perpetrators. Judges must impose sentences to guarantee truth, justice and legal certainty. So, it's not just a formality, revenge, or work habit. The main aim of criminal procedural law, according to Teguh (2011), explains that to find material truth. This goal is actually broader, because criminal procedural law aims to achieve a safe, peaceful, just and prosperous society. The facts revealed during the trial are considered by the panel of judges during the judge's deliberations. The basis used by judges to hand down court decisions must be based on maximum theory and research results and be balanced at the theoretical and practical levels. Decisions originating from judges' considerations that are not thorough, good and thorough will be annulled by the High Court or Supreme Court (Arto, 2004). In an effort to obtain judicial legal certainty, in the Judicial Power Law, every judge is required to convey their opinions or considerations in writing regarding the case being discussed, which is considered an inseparable part of their decision. Judge's consideration is defined as the judge's thoughts or opinions when they make decisions about matters that may lighten or aggravate the perpetrator. Both the 1945 Constitution Chapter IX Articles 24 and 25 and Law Number 48 of 2009 regulate independent judicial power. This is shown explicitly in Article 24, especially in the explanation of Article 24 paragraph (1) of Law Number 48 of 2009, which states that judicial power is the power of an independent state to administer justice to uphold law and justice.

In this provision, judicial power is considered an independent power, which means that it is not affected by extra-judicial power, except for matters mentioned in the 1945 Constitution. Article 5 paragraph (1) of Law no. 48 of 2009 stipulates that the position of an impartial judge (impartial judge) must be informed about the judge's independence. Since judges must take the right side when making decisions, the term "impartial" should not be used literally here. In this case, it is not intended that his considerations and assessments are impartial. Article 5 (1) Law no. 48 of 2009 states, "The court judges according to the law without discriminating between people" (Hamzah, 1996). The decision regarding the incident, whether the defendant has committed the act accused of him.

The judge's decision is the end of the court process in a case. The judge made this decision on the following matters; (1) Decision regarding the law regarding whether the defendant's actions constitute a criminal act and whether the defendant is guilty and deserves to be punished; (2) Decision regarding the crime, if the defendant can indeed be punished (Sudarto, 1986)

Judges are required to uphold justice and the law impartially. To provide justice, the judge must first examine the truth of the events presented to him, then assess the events and relate them to

the applicable law. After that, they can make a decision. A judge may not refuse to examine and adjudicate an incident submitted to him because they are deemed to understand the law. Section 11 Article 1 of the Criminal Procedure Code states that:

A court decision is a judge's statement made in an open court session, which can be in the form of punishment or acquittal or release from all legal charges in the matter and according to the method regulated in this Law. A court decision can only be considered valid and legally binding if it is made publicly at a hearing. The judge's decision must be valid if it is pronounced in public and is mandatory. Upholding justice and upholding the law is the duty of judges to judge multidimensional cases. Judges must work independently and must not be influenced or take sides with anyone. There are many laws that regulate the guarantee of this freedom, one of which is Article 24 of the 1945 Constitution of the Republic of Indonesia, which states that the state has the independence to administer justice to uphold law and justice. To make a decision, the judge considers the following; (1) Juridical Factors, meaning the laws and theories related to the case. According to the law, juridical considerations are considerations made by the judge based on the juridical facts revealed in the trial. For example, the defendant's statement, witness statement, evidence, and the public prosecutor's indictment; (2) Non-juridical factors, namely looking at the environment and based on the judge's own conscience.

One of the main duties of a judge is to provide decisions on cases submitted to him. In criminal cases, this decision is not affected by the negative evidence system (negative *wetterlijke*), which in principle determines that a right, event or error has been proven, apart from the presence of statutory evidence and the judge's belief which is based on moral integrity. To ensure that the decisions made by the judge can be well accepted by all parties, the judge must ensure that truth, justice and legal certainty have been established (Waluyo, 2004). Mitigating factors reflect the defendant's best qualities during the trial, while aggravating factors reflect the defendant's poor qualities. According to Rifai (2011), there are three important components in the use of judicial power based on the judge's freedom: 1) Judges are obliged to submit to law and justice. 2) No one, including the government, can influence or direct the judge's decision. 3) Personal judges are not affected when carrying out their judicial duties and functions.

Based on Article 53 of the Judicial Power Law, it reads; (1) In examining and deciding cases, judges are responsible for the determinations and decisions they make; (2) The determination and decision as intended in paragraph (1) must contain the judge's legal considerations which are based on appropriate and correct legal reasons and grounds.

In deciding a case, legal considerations—also known as legal considerations—serve as the legal basis for a judge. These considerations must be based on various considerations that are acceptable to both parties and must not deviate from applicable legal principles. These legal considerations are useful for judges when they decide a case. Before making a decision, a judge must be careful and try to ensure that his decision does not allow new cases to arise. The decision must be complete and not give rise to new cases. The judge's main duties—receiving, examining, adjudicating, and resolving every case submitted—are closely related to the judge's legal discretion. After examining the case, the judge then adjudicates, giving rights or laws to the people concerned. Therefore, legal rationality is very important for a judge when they decide a case in court. Therefore, it is very interesting to study legal rationality when a judge makes a decision (Mertokusumo, 2002). According to Arief (2001:23) explains that a judge in making a decision in a court hearing can consider several aspects: the fault of the perpetrator of the crime, the motive and purpose of committing the crime, the method of committing the crime, the inner attitude of the perpetrator of the crime, life history and socio-economic,



attitudes and actions of the perpetrator after committing a crime. The impact of crime on the future of the perpetrator.

The public's view of the criminal acts committed by the perpetrator. In deciding a case, the judge must consider the juridical, philosophical and sociological aspects. A judge must make a fair decision based on juridical truth, which means the legal basis used to determine whether the applicable legal requirements are met; philosophical truth, which means that judges must consider the side of justice whether they have acted and acted as fairly as possible in deciding a case; and sociological considerations, meaning that judges must consider whether their decisions will have a positive or negative impact on Society. Based on Article 50 of the Judicial Power Law, it reads; (1) A court decision must not only contain the reasons and basis for the decision, but also contain certain articles from the relevant laws and regulations or sources of unwritten law which are used as the basis for judging; (2) Each court decision must be signed by the chairman as well as the judge who made the decision and the clerk who participated in the session.

The sentence imposed on the perpetrator must take into account the error committed. This is the principle of error. The principle of legality, which is a societal principle, and the principle of guilt, which is a humanitarian principle, are two very important pillars that form the basis of decisions regarding punishment. To ensure that decisions do not contain defects, several decision principles are applied. Article 178 HIR, Article 189 RBG, and Article 19 Law no. 4 of 2004 (formerly Article 18 of Law No. 14 of 1970 concerning Justice) provides an explanation of this principle; (1) Contain clear and detailed reasons, namely: According to this principle, decisions made must be based on clear and sufficient considerations. A decision that does not meet these requirements is considered a decision that lacks sufficient consideration or *onvoldoende gemotiveerd* (insufficient decision); (2) Must adjudicate all parts of the lawsuit, that is, the decision must examine and adjudicate every aspect of the lawsuit thoroughly and comprehensively. They should not only check and decide on some, ignoring others. Article 178 paragraph 2 HIR, Article 189 paragraph 2 RBG, and Article 50 Rv regulate the method of such trials; (3) May not grant more than the demands, that is, the decision may not grant more than the demands in the lawsuit. This punishment is known as *ultra petitem partium*. A judge who grants a *posita* or *petitem* lawsuit is deemed to have exceeded the limits of his authority or is *ultra vires*. In other words, they acted beyond their authority. Decisions containing *ultra petitem* must be declared defective. This applies even if the judge made the decision in good faith or in accordance with the public interest. Judgment by granting more than what is demanded can be equated with an illegal action, even though it is done in good faith. Regulated in additional Principles Articles, as shown in Article 178 paragraph (3) HIR, Article 189 paragraph (3) RBG, and Article 50 Rv; (4) Said in public, namely One component that is inseparable from the principle of an honest trial is that the trial examination must be based on an honest process from start to finish. Trials and decisions are pronounced in court sessions that are open to the public or in public.

### **Judges' Obstacles in Handing Down Narcotics Decisions**

Law enforcement officers have carried out many law enforcement actions against narcotics crimes, including some that have been decided by the court. However, there are several obstacles in enforcing the eradication of narcotics abusers. This is because several judge's decisions were deemed inappropriate to require rehabilitation of narcotics abusers, so that they can continue their lives. Because the sentences imposed by judges on people who use or abuse drugs are not always appropriate, this has an impact on the enforcement of drug abuse itself. However, the logical consequence of implementing narcotics laws is that dealers and users are

punished. Prohibiting criminal acts of narcotics abusers and implementing punishments in accordance with those regulated in Law Number 35 of 2009 concerning Narcotics is important to prevent an increase in criminal acts of narcotics abusers and deter perpetrators from repeating their actions. To ensure that justice and legal certainty are in harmony, law enforcement must be based on ethics and morals. There should be no criminal law enforcement efforts that only prioritize legal certainty, ignore justice, or vice versa. Courts are places of law enforcement, where judges decide whether someone is guilty and should be held accountable for their criminal actions. Here, judges must have expertise, integrity and accuracy to decide a case. The judge's expertise is very important in handling cases. To make decisions based on these four important components of law enforcement, judges must understand cultural, social, economic and political aspects. Judges cannot make decisions based solely on the words mentioned in the law because they are not the mouthpiece of the law. To ensure that the judge's actions are substantially correct, the judge must have the ability to think and act progressively. Ultimately, criminal laws aimed at preventing drug abuse will influence judges' decision-making processes. The basis of the judge's considerations is very important in the process of imposing a sentence to determine whether the judge's decision is considered fair or accountable. Criminal penalties imposed on individuals who commit narcotics crimes, including narcotics abusers, are of course not affected by ethical principles regarding legal punishment, namely; (1) The fact that a person has been proven to have committed an offense or crime is the sole basis for the moral right to punish a person; (2) The moral obligation to punish remains firmly on the same basis; (3) Punishment must be proportional to the severity of the offense to ensure retributive justice; (4) According to moral principles, punishment is considered as "whitening" of wrongdoing and "reformation" of the law that is opposed; in other words, punishment is considered a pattern of "rights" of the perpetrator of the crime; (5) Punishment serves as a way to prevent the same violation from occurring in the future; (6) Victims and other people enjoy punishment.

Based on the results of interviews with informants from the Watampone District Court Judge. According to the informant, the judge's obstacle in handing down a decision was due to the intervention of another party in the decision and when he was dissatisfied and did not want to lose with the decision that the judge handed down, there was intervention by the defendant's legal advisor/advocate who often gave threats and contacted the judge and would report the judge who was considered make an aggravating decision. The existence of this report made the judge run out of energy and less focused on the next trial agenda. If there are obstacles in handing down a decision on a case, the judge will do what is called conscience, and along with instructions because in deciding a case the judge cannot make a decision at will. Everything must be based on good thinking and analysis. The informant added that the judge must not submit. to prosecutors and advocates because the judge here is the final decision maker. Everything is regulated in the judge's code of ethics. (Informant 1 46:2023).

The Code of Ethics for Judges is a set of ethical norms for Judges in carrying out their duties and functions in receiving, examining, adjudicating and resolving cases. The code of ethics stated in Article 13 paragraph (1) must not conflict with this government regulation. If civil servants violate the Code of Ethics, they will be subject to moral sanctions. The judge's code of ethics is to behave fairly, behave honestly, behave wisely and wisely, act independently, have high integrity, be responsible, uphold high self-esteem, be highly disciplined.

Judges in deciding a case must consider juridical truth, philosophical and sociological truth. Juridical truth means whether the legal basis used meets the applicable legal provisions. Article 183 of the Criminal Procedure Code explains that a judge may not impose a crime on a person

unless, with at least two valid pieces of evidence, he is convinced that a criminal act actually occurred and that the defendant is guilty of committing it. Researchers are of the opinion that the judge's decision is the main determinant in the outcome of a judicial decision. This is because based on the judge's considerations there are various kinds of thoughts that the judge has learned from the decision being studied. In thinking about the things a judge needs to consider, it turns out that there are various obstacles from parties who are not satisfied with the decision the judge gave. This sometimes causes the defendant to say that the judge handed down a decision arbitrarily/arbitrarily, but in handing down a decision a judge must have thought and studied the things that need to be considered.

With the use of modern technology supported by an extensive management and community network, abuse crosses national borders. This makes Indonesia a transit country and target for illegal trafficking. The aim of this law is to support minors who abuse drugs and assist government programs to eradicate drugs. The application of the law to individuals who abuse drugs among teenagers uses a legal norm approach that punishes these individuals to provide a deterrent effect so that they do not do the same thing again. The application of criminal law ultimately produces a deterrent effect and allows suspects to be rehabilitated. Perpetrators of abuse are divided into two categories: distributors and users. Criminal sanctions regulated in Law Number 35 of 2009 are part of law enforcement. This authority is given to law enforcement agencies such as the police and BNN as investigators, the prosecutor's office as public prosecutor, and ends with a court decision. The purpose of this law, as previously mentioned, is to prevent drug abuse among teenagers and help government programs to eradicate it. drugs. It is important to remember that based on Article 127 Paragraph 3 which explains: "If the abuser as mentioned in paragraph (1) can be proven or proven to be a victim of drug abuse, the abuser must undergo medical rehabilitation and rehabilitation." However, in practice, defendants who are sentenced to prison for using class 1 methamphetamine do not undergo rehabilitation.

Law Number 35 of 2009, explains that "judges are given the authority to examine and decide cases of users of misuse to be deemed ineffective in preventing and eradicating drug abuse, Law Number 35 of 2009 increases the function of BNN in preventing and eradicating drug misuse and is given authorities to carry out investigations and drug investigations. Judges are obliged to be fair to perpetrators of criminal acts considering their duties and responsibilities as law enforcers to uphold the law as well as the truth. Criminal liability of drug abuse addicts is not only based on the perpetrator's actions with elements of the law; judges also must pay attention to the punishment requirements contained in the law.

Terms of punishment are divided into two categories: criminal acts and criminal liability acts. The element of responsibility includes the perpetrator's ability to be responsible, fault, and no excuse. The elements of a criminal act include the formulation of an offense, being against the law, and the absence of a justification. The judge examines the defendant's guilt thoroughly, considering the type of error and its pattern. In determining criminal imposition or punishment, the judge considers this objectively and subjectively. The examination carried out at trial is considered objective, while the judge's authority to impose a sentence is considered subjective. As a result, judges have the authority and responsibility to decide whether someone who commits a narcotics crime should be punished.

## **Conclusion**

Based on research conducted by the author, the author can provide the following conclusions; (1) In decision number 288/pid sus/2022/Pn Wtp, the basis for the judge's consideration in narcotics decisions is how serious the case is, the higher the criminal threat will be seen from

the evidence as well as the statements of witnesses and experts at trial. Because the judge in this case is the final decision maker on sentencing the defendant. So the judge's decision really has a huge influence on how long the sentence is given and the sanctions imposed; (2) In decision number 288/pid.sus/2022/pn wtp, the obstacle for the judge in handing down a decision was the intervention of parties who were dissatisfied with the decision the judge handed down to the defendant.

### **Suggestion**

Based on the results of the research that has been studied, the author can provide the following suggestions; (1) Criteria between an addict and a narcotics abuser in Law no. 35 of 2009 concerning Narcotics is not clearly stated. So there should be clear criteria so that we can see the difference in sanctions between addicts and abusers who are carried out on their own initiative, not on the orders of investigators or judges; (2) Rehabilitation is very important for the physical, psychological and social life of a narcotics addict and victim of narcotics abuse. So it would be best if the panel of judges, when adjudicating cases of narcotics abusers, must provide rehabilitation measures. Rehabilitation measures can also be useful for one part of the criminal justice process, especially for correctional institutions, namely so that the capacity of correctional institutions does not exceed the predetermined capacity..

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