



The Implementation of Imprisonment Sanction Followed by Rehabilitation  
Sanction for Narcotics Abusers (A Case Study of Verdict Number  
47/Pid.Sus/2017/PN.Slk)

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<http://dx.doi.org/10.18415/ijmmu.v6i2.694>

**Abstract**

In the present study, the research problems proposed are: 1) What is the basic consideration of the judges in imposing the criminal and rehabilitation sanction on the perpetrators of narcotics abuse? 2) How is the proof of a case whose verdict is a criminal sanction? and 3) How is the implementation of imprisonment and rehabilitation sanction verdicts? In answering the research problems, juridical empirical approach is chosen to obtain primary data directly from informants and secondary data from primary of law materials including secondary and tertiary law materials. As a result, it can be concluded that there is a chance for a judge to impose imprisonment sanction and sanction for actions in a form of rehabilitation to perpetrators of narcotics abuse, but, in fact, it is challenging because of some reasons; one of which is the existence of various perceptions of law enforcement officers on the implementation of the laws, specifically on the Law number 35 of 2009 concerning Narcotics. Moreover, there is no strict provision regulating the procedures of the implementation of the law. As a result, it encounters many challenges in its implementation for the related institution. However, it should be concerned for the regulation makers for the realization of law enforcement reflecting justice, legal certainty, and benefits in the society.

**Keywords:** Criminal Sanction; Rehabilitation; Narcotics Abuse

**Introduction**

Narcotic abuse is increasing in Indonesia that it is found it has reached the alarming level causing Indonesia currently is in a state of narcotic emergency. Based on the results of a national survey on narcotic abuse in 2017, the number of narcotics abuse prevalence in Indonesia in 2017 was estimated to reach 1.77% or about 3,376,115 narcotic abusers (age group 10-59 years).<sup>1</sup>

The efforts to prevent and control narcotic abuse have been systematically outlined in Law number 35 of 2009 concerning Narcotics. Besides, various regulations in implementing the regulations

<sup>1</sup> [www.bnn.go.id](http://www.bnn.go.id). BUKU\_HASIL\_LIT\_2017.pdf, last accessed on September 13, 2018, at 3:20 West Indonesia Time.

have been released by the government to clarify the implementation of Law number 35 of 2009 concerning Narcotics.

Mardjono Reksodiputro states that the Criminal Justice System is a system in a society to overcome criminals.<sup>2</sup> The criminal justice system consists of some supporting sub-systems, such as Police, Attorney, Court, and Correctional Institutions as a unity (totality) which attempt to transform input into output to achieve the objectives of the criminal justice system in a form of re-socialization of offenders (short term), criminal prevention (long term), and social welfare (long term).<sup>3</sup>

The imposition of sanctions in a verdict is the result of judges' considerations with their beliefs and intuitions to reach an acceptable verdict in the society.<sup>4</sup> In deciding a case, the judge has the principle of freedom which is a part of his Juridical Power. It is stated in Article 24 Paragraph (1) of Constitution of 1945 that, "Juridical Power is the power of an independent state to hold a court in order to uphold law and justice". Furthermore, it is implemented in the Law number 48 of 2009 concerning Juridical Power.

Furthermore, Law number 35 of 2009 concerning Narcotics, in the case of its punishment system/sanction provisions, it adheres to a two-lane system in determining sanctions (double track system). Double track system is a two-track system concerning sanctions in criminal law, in which on the one side it applies criminal sanctions, while the other one it applies action sanctions in a form of rehabilitation; yet, both sanctions are in an equal position. Moreover, the emphasis on criminal and action sanction equality in double track system framework relates to the fact that the elements of disapprobation/ suffering (through criminal sanctions) and training are equally important.<sup>5</sup> The criminal sanctions are interpreted as a sorrow or suffering inflicted on someone who is guilty for doing actions prohibited by criminal law through a series of judicial processes by the power (law) which is specifically given to that problem. The imposition of criminal sanctions is expected to be able to make people avoid the criminal acts.<sup>6</sup> On the other hand, action sanctions are interpreted as a kind of punishment which characteristics are not inherent, yet educating and protecting. The action is intended to secure people and improve the violator, such as forced education, forced treatment, medical treatment in a hospital, etc.<sup>7</sup>

Law number 35 of 2009 concerning Narcotics provides freedom for judges (based on the convictions of judges) to choose whether or not to impose a sentence in the form of imprisonment or rehabilitation in narcotic abuse cases even though Law number 35 of 2009 concerning Narcotics is not regulated firmly about the separation in the application of both sanctions.

An empirical fact over the past two years, in an area of the Court Law of Solok, in enforcing the law against the Criminal Action of Narcotic Abuse, the judges tend to impose a verdict in a form of imprisonment for the perpetrators who were proven to violate articles, such as Article 111, 112 of Narcotics Law, Article 127 of Laws number 35 of 2009 concerning Narcotics. At the end of 2017, in the jurisdiction of Solok District Court, there was a narcotic criminal act that the researcher wants to examine. It was a case in which the judges imposed a verdict by combining two types of sanctions: criminal and rehabilitation sanction. It means that besides being imprisoned, the offender had to do rehabilitation. In

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<sup>2</sup> Mardjono Reksodiputro, *Human Rights in the Criminal Justice System*, Universitas Indonesia, Jakarta, 2007, page 84.

<sup>3</sup> Muladi, *Kapital Selection of Criminal Justice System*, Universitas Diponegoro, Semarang, 1995, page 7.

<sup>4</sup> Barda Nawawi Arief, *Law Enforcement Issues and Criminal Law Policies in Crime Management*, Kencana Prenada Group, Jakarta, 2008, page 25.

<sup>5</sup> Sholehuddin, M. *Sanctions System in Criminal Law, Double Track System Basic Ideas and its Implementation*, Raja Grafindo Persada, 2004, page 28.

<sup>6</sup> M. Ali Zaidan, *Criminal Policy*, Jakarta: Sinar Grafika, 2016, page 195.

<sup>7</sup> Mahrus Ali, *Criminal Law Basics*, Sinar Grafika, Jakarta, 2015, page 202.

this case, the verdict is revealed by the judge of Solok District Court for a man with initials AF (46 years) in which he was found to be guilty for owning Class I non-plant narcotics and had violated Article 112 Paragraph (1) of the Narcotics Law. As a result, he was sentenced for 4 years and 3 months (in addition to criminal penalties) and rehabilitation for 6 months in Mental Hospital of HB. Sa'anin Padang.

AF's case began on Thursday, May 18, 2017 at around 16.15 West Indonesian Time. He was arrested by the police of Solok City Regional Police on the edge of the Jalan Muaro RT. 01 RW.01 Tanah Garam, Lubuk Sikarah, Solok City when he was waiting for a witness with initials JN to buy methamphetamine narcotics to the defendant in which they had previously communicated via cellphone. After AF was caught, he was checked and searched. Then, in AF's right fist hand, a clear-color plastic clip containing two packages of methamphetamine narcotics and a box of Sampoerna brand cigarettes containing packages of three clear-color plastic clips inside his right pants pocket were found. He acknowledged that all of them belonged to him and he got it from his friend named Sari (listed in the People Search List) on Thursday, May 18, 2017 by buying them for IDR 1,400,000 (one million four hundred thousand rupiah). Furthermore, based on the measurement conducted by the authorized institution, it was found that the net weight of the five packages of methamphetamine narcotics from the defendant was .45 gram. Besides, based on the examination conducted in Agency of Drug and Food Control of Padang, the evidence positively contained methamphetamine. In this case, the Public Prosecutor charged AF for violating, first, Article 114 Paragraph (1) of the Narcotics Laws or, second, Article 112 Paragraph (1) of Narcotics Law in an alternative form. The judge of Solok District Court ruled that AF was proven to be legally and convincingly guilty for committing a criminal act of "owning Class 1 non-plant narcotics". As the indictment of the Second Public Prosecutor, namely Article 112 Paragraph (1) Narcotics Law, AF was sentenced for 4 years and 3 months and criminal penalties of IDR 800,000,000 (eight hundred million rupiah) with a provision that if the fine is not paid, it should be replaced with imprisonment for a month. Moreover, AF had to undergo healing and/ or treatment through rehabilitation at Prof. HB. Sa'anin Mental Hospital in Padang city for six months which was calculated with the period of the sentence imposed.

An interesting point to be studied is what basic consideration does the judge have in imposing criminal sanctions followed by rehabilitation sanction on AF. In the contrary, AF was proven to be guilty for committing a criminal act without the right to control and own Class I not plants Narcotics as regulated in Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics. The provisions of sanctions as stipulated in Article 112 Paragraph (1) are in the form of imprisonment sanction with a minimum sentence is four years, a maximum sentence is 12 years and criminal penalties, while there are no provisions for imposition rehabilitation in the article. In accordance with the aforementioned problem, what the researcher wants to examine are how is the judges' legal considerations in imposing prison criminal sanction followed by action sanctions in the form of rehabilitation for the narcotic abusers and how to prove the case, how the implementation of prison sentences as well as rehabilitation sanctions in the case, and how is the implementation later on.

## **Research Method**

### *1. Approach and Research Characteristics*

#### *a. Approach Method*

In writing a study of law, the approach used is empirical normative law (empirical legal study) conducted through studying the availability of legal regulations in the society, i.e. how is the implementation of sanction imposition regulated in the Constitution of Republic of Indonesia number 35 of 2009 concerning Narcotics. In this case, the approached used is the approach relating to law

effectiveness, especially the provision of sanctions regulated in Laws number 35 of 2009 concerning Narcotics and its implementation. Then, it will be correlated with the provision of sanctions implemented on the case number: 47/Pid.Sus/2017/PN.SLK and how verdict implementation is implemented on its perpetrators.

### b. *Research Characteristics*

The study is a descriptive study in which it represents the results of the study based on the research problems formulated in the sanction imposition in a form of imprisonment followed by action sanction in a form of rehabilitation regulated in the Law number 35 of 2009 concerning Narcotics, especially on case number: 47/Pid.Sus/2017/PN.SLK.

## 2. *Types and Law Material Sources*

### a. *Primary Data*

The data from the field study is obtained through asking questions in oral form (interview) as well as in written form.

### b. *Secondary Data Materials entail:*<sup>8</sup>

#### 1) *Primary Law Material is bonding law materials consisting of:*

- (a) the Preamble of Constitution of Republic of Indonesia 1945;
- (b) Law number 8 of 1981 concerning Criminal Procedure Law;
- (c) The Criminal Code;
- (d) Law number 35 of 2009 concerning Narcotics;
- (e) Law number 16 of 2004 concerning Attorney of Republic of Indonesia;
- (f) Law number 48 of 2009 concerning Juridical Power;
- (g) Law number 12 of 1995 concerning Correctional Service;
- (h) Government Regulation of Republic of Indonesia number 32 of 1999 concerning Terms and Procedures for Implementing Correctional Guidance
- (i) Ministerial Regulation and Human Rights number 3 of 2018 concerning Terms and Procedures for Granting Remissions, Assimilations, Family Visit Leave, Parole, Free Approaching Leave, and Conditional Leave.

#### 2) *Secondary data materials providing explanations about primary law materials, such as a bill, the findings of research studies, works in law, etc.*

#### 3) *Tertiary data materials are materials providing clues as well as explanations on primary and secondary law materials, such as dictionary, encyclopedia, cumulative index, etc.*<sup>9</sup>

## 3. *Technique of Documenting Law Materials*

The techniques of documenting law materials in this study are:

- a. Primary data were obtained through an interview with prosecutors handling the case number: 47/Pid.Sus/2017/PN.SLK in District Attorney of Solok and the leader of jail Class II of Solok or the authorized officers relating to the implementation of case number: 47/Pid.Sus/2017/PN.SLK.

<sup>8</sup> Soerjono Soekanto & Sri Mamudji, *Normative Legal Research: A Brief Review*, Jakarta, Rajawali Pers, 1990, page 29.

<sup>9</sup> *Ibid.* page 41.

- b. Secondary data were obtained through literature review on law in a library (Library Research) by collecting, studying, and analyzing materials and relevant literatures studied.

#### 4. Processing and Analyzing Law Materials

##### a. Processing Law Materials

After collecting the complete law materials, the next steps are processing and analyzing the materials as the following:<sup>10</sup>

###### 1) Editing

The law materials obtained will be analyzed again in order to obtain relevant materials with this study.

###### 2) Coding

Coding is aimed at giving a particular code or signal to law materials which have been edited.

##### b. Law Material Analysis

The law materials obtained from editing and processing the data are then described and analyzed using available concepts and theories existing in the theory framework. The data are then correlated with the research problems. As a result, the findings of this study are obtained which are expected to be able to contribute to the development of law science.

### ***The Result of Study and Discussion***

#### *Basic Consideration of Judge in Imposing the Verdict of Criminal Imprisonment Followed by Rehabilitation in Case number: 47/Pid.Sus/2017/PN.Slk on September 13, 2017*

The procedure of imposing decision on criminal justice is the last procedure of all series of a trial process. Therefore, in determining verdicts, the judge has to consider some aspects, such as carefulness, inaccuracy avoidance whether it is in a form of formal or material, and capability in technique making. When those negative aspects can be avoided, the judge will be able to bear, grow, and develop a characteristic of moral satisfaction which decision can be used as the reference for the same case or any theorists and legal practitioners as well as own conscience satisfaction if the decision is strengthened and not cancelled by the higher court.<sup>11</sup>

##### Case Position

In the decision, the case position can be identified in which the defendant was confronted before the Solok District Court which began from the arrest of someone with initials JS conducted by Police officers of Solok City Police Narcotics Investigation Unit on Thursday, May 18, 2017, at around 15.00 West Indonesia Time on Jalan Solok Arian Jorong Simpang Nagari Kuncir X Koto District above Solok District for the ownership of methamphetamine narcotics.

According to the explanation from JS, he obtained methamphetamine narcotics from the defendant. Then, the police officers developed the investigation and asked JS to call the defendant using

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<sup>10</sup> Bambang Sunggono, *Legal Research Methodology*, 12th print, Rajawali Pers, Jakarta, 2011, page 125.

<sup>11</sup> Lilik Mulyadi, as contained in H. Muchsin's paper, *Role of Judge's Decision on Domestic Violence*, Legal Magazine of *Varia Penradilan*, Number 260 July 2006 Edition, Ikahi, Jakarta, 2007, page 25.

JS's phone. JS told the defendant that he wanted to buy methamphetamine narcotics for IDR 500,000 (five hundred thousand rupiah). At that time, the defendant asked JS to visit a *tuak* (traditional liquor) shop in Surau Kajai Tanah Garam. Soon, the police officers with JS came to the place in which it was then found that the defendant was not there. Again, JS called the defendant and asked his position, but he told JS to come to a place in Muaro near Dormitory 12 Tanah Garam because he was there.

After that, the police officers and JS immediately went to the place and found the defendant was with a woman with initials PD. When the police officers passed in front of the defendant, stopped and went out of the car, the defendant soon escaped from them. Around ten meters from the defendant's initial position, the police officers could catch the defendant. At that time, the defendant clenched a fist showing that he was hiding something. Being suspicious, one of the police officers called PD and the head of local RT as the witnesses in searching the defendant's body and clothes carried out by the police officers. The head of local RT then came and witnessed the search of the defendant's body and clothes.

During the search, the police officers found a clear-color plastic clip with two plastic clips in it containing methamphetamine narcotics in the defendant's fist and a box of Sampoerna brand cigarette containing three clear-color plastic clips of methamphetamine in the right back pocket of his pants which ownership was acknowledged by him. Then, the defendant along with the evidence was taken to the police station of Solok City for further investigation. After rther investigation was carried out, the defendant revealed that he got the methamphetamine narcotics from Sari (listed in the People Search List) on Thursday May 18, 2017, by buying it for IDR 1,400,000 (One million four hundred thousand rupiah), but he had not paid it yet and promised to pay it for at most a week. The weight of the evidence was .45 gram and containing methamphetamine.

#### Proof Analysis

In the verdict, it can be seen that the case position in which the defendant was confronted before the Solok District Court. It began from the development of JS's case who was first arrested before police officers arrested the defendant. During the arrest of the defendant, it was found that there were evidence in the forms of one clear-color plastic clip with two plastic clips in it containing methamphetamine narcotics in the defendant's right hand fist and a box of Sampoerna brand cigarettes consisting of three packages of clear-color plastic clips containing methamphetamine narcotics from the defendant's right back pocket whose ownership was acknowledged by the defendant.

The Public Prosecutor in Solok District Attorney charged the defendant with an alternative charge, namely, first, violating Article 114 Paragraph (1) of Law number 35 of 2009 concerning Narcotics or Second Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics.

The panel of judges of Solok District Court sentenced the defendant with imprisonment for four years and three months and a fine of IDR 800,000,000 (eight hundred million rupiah) with the provision that if the fine was not paid, it had to be replaced with imprisonment for a month. The Panel of Judges also ordered the defendant to undergo healing and/ or treatment through medical rehabilitation at Prof. Sa'anin Mental Hospital in Padang city for six months which was also included in the period of the sentence imposed. In this case, the panel of judges considered the formulation aspects of criminal sanctions, justice aspects, psychiatric/ psychological aspects of the defendant, and the aspects of criminal conviction in order to create justice, benefits, and legal certainty besides the juridical aspect (i.e. the charges of the public prosecutors, legal evidence, and Articles in Law number 35 of 2009 concerning Narcotics).

The criminal sanction formulation aspects as stipulated in Article 112 Paragraph (1) number 35 of 2009 concerning Narcotics uses a system of formulation of criminal sanctions of a special minimum

cumulative namely imprisonment for a minimum of 4 years and a maximum of 12 years and a fine of at least IDR 800 million and at most IDR 8 billion; thereby, the length and magnitude of criminal sanctions are flexible, meaning that the judges may impose the agreement considered as the most appropriate, harmonious and equality that can be imposed on the defendant which is roughly worth for the act he does.

The Panel of Judges considers from the aspects of justice and psychological of the defendant that in any case the defendant's action violated the law, but on the other hand the use of narcotics cannot be stopped by the defendant because he could not resist their emotions or anger whenever his body wanted the narcotics. A specialist doctor in National Narcotics Agency of West Sumatera Province stated that it occurred because the defendant was dependent on the narcotics because he had consumed the narcotics for quite a long time, around 26 years. Therefore, when the defendant was rehabilitated in the clinic of National Narcotics Agency, he was shivering like having cold because of the impact of the narcotic substance in his body. Thus, what happened to the defendant was a series of dependence experienced by the defendant when he did the rehabilitation program in National Narcotics Agency clinic.

From the judges' consideration, it can be seen that even though the defendant's actions are proven to fulfill the elements of Article 112 Paragraph (1) Law number 35 of 2009 concerning Narcotics with the qualification of the acts of storing and owning narcotics, the judges also consider the intent and purpose or context of owning the narcotics, whether it was intended to be used by himself or traded by the defendant (in the context of illicit circulation). In this case, the judges believed that the ownership of narcotics was not in the context of illicit circulation, but it was used by the defendant because of his dependence on the narcotics.

After conducting an interview with the judges at the stage of the judge's deliberation, there was indeed a thought that the judges concluded that the defendant was a misuse. However, judges were constrained to decide the defendant as an abuser because the Public Prosecutor did not indict the Article 127 Paragraph (1) letter a of Law number 35 of 2009 concerning Narcotics. In the contrary, the judges were in accordance with the provisions of Article 182 Paragraph 3 and 4 of the Criminal Procedure Code where they had to use the Public Prosecutor's indictment in deciding the case. Then, the judges, based on the legal evidence and their beliefs, could make a verdict based on the Public Prosecutor's indictment, according to the Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics with the qualification of owning Class I Non-Plant Narcotics" by imposing imprisonment for 4 years and 3 months and a fine of IDR 800,000,000 (eight hundred million rupiah) with the provision if the fine could not be paid, it should be replaced with one-month imprisonment. Moreover, the defendant had to undergo healing and/ or treatment in a form of medical rehabilitation in Prof. Sa'anin Mental Hospital in Padang City for six months included in the period of his sentence imposed.

The basic consideration of judges in imposing prison sentences on the defendant was in accordance with what is stated in Article 112 Paragraph (1) Law number 35 of 2009 concerning Narcotics whose threat of punishment is a minimum of four years in prison and a maximum of 12 years in prison and a fine of at least 800 billion rupiah and a maximum of 8 billion rupiah".

On the other hand, the basis consideration of the judges to impose rehabilitation sanction was Article 103 Paragraph (1) letter a of Law number 35 of 2009 concerning Narcotics explaining that: Judges who examine the cases of narcotic addicts can decide to order the concerned person to undergo healing and/ or treatment through rehabilitation if the narcotic addict is found to be guilty for narcotics crime. Besides, the placement of defendants into Medical and Social Rehabilitation Institutions referred to the provision of SEMA number 4 of 2010 concerning Abuse Placement, Narcotics Abuse Victims in Medical and Social Rehabilitation Institutions to SEMA number 3 of 2011 concerning Placement of Victims of Narcotics Abuse in Medical and Social Rehabilitation Institutions. In addition, the number of evidence of

narcotics owned by the defendant was relatively small (referring to SEMA number 4 of 2010) also became the consideration for judges to decide the sanction of rehabilitation.

As an interview with the judges handling this case, even though the judges believed that the defendant was an addict/ abuser who had the right to get rehabilitation, but from the point of punishment, the panel of judges in the ruling still applied the provisions of Article 112 Paragraph (1) Law number 35 of 2009 concerning Narcotics with the qualification of criminal acts that defendants have been proven to have “owned class I non-plant narcotics” although in their considerations, the judges also explained that this defendant was a misuse for himself.

According to the researcher, if it is reviewed from SEMA number 3 of 2015 concerning the Implementation of the Formulation of the Results of 2015 Supreme Court Room Plenary Meeting as the Reference of Implementation of Duties for the Court, it is stated:

That the judges who check and decide the case must be based on the Public Prosecutor’s Indictment (Article 182 Paragraph 2 and 4 Criminal Procedure Code). The prosecutor charged with the Article 111 or Article 112 of Law number 35 of 2009 concerning Narcotics, but based on the facts revealed in the proven trial Article 127 Paragraph (1) letter a of Law number 35 of 2009 concerning Narcotics in which this article is not indicted, the defendant is proven to be a user and the number is relatively small (SEMA number 4 of 2010); thus, the judges decides according to the indictment but can deviate from the minimum special criminal provisions by making sufficient consideration.

Based on the SEMA, in this case, judges could impose criminal charges on the defendant under special minimum provisions because what the defendant did had fulfilled the qualifications of being user/ abuser with relatively little evidence (referring to SEMA number 4 of 2010). Meanwhile, Public Prosecutors did not indict the provisions of Article 127 of Law number 35 of 2009 concerning Narcotics, but it was not carried out by judges because, based on the facts of the trial, the defendant was a resident and had been convicted three times in narcotics cases; so it was worrying that it would not create a deterrent effect for the defendant if he deviated from the minimum provisions of Article 112 Paragraph (1) Law number 35 of 2009 concerning Narcotics. As a result, the sentence in a form of imprisonment followed by rehabilitation was expected to be able to cause deterrent effects for him and to heal his dependence on narcotics.

The Proof of Case number: 47/Pid.Sus/2017/PN.SLK on September 13, 2017 which Verdict was in a Form of Imprisonment Followed by Rehabilitation

#### 1. Proof

Proof is important when a criminal case enters the prosecution stage in the court. It is aimed at proving whether the defendant is truly guilty toward the crime he is charge on. In this case, proof has to be based on the Law (Criminal Procedure Code) which is the legal evidence in Article 184 of Criminal Procedure Code stating:

##### 1) Legal Evidence is:

- a. witness’ statement;
- b. expert’s statement;
- c. letter;
- d. clues;
- e. defendant’s statement.



- 2) Things which are generally known are not necessarily to be proven.

## 2. Case Analysis

Based on the facts of the trial related to the case described above, defendant was proven to be the person who possessed, saved or controlled non-plant narcotics of the type of methamphetamine as stipulated in Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics as stated in Letter of Claim.

From the interview with the Public Prosecutor who handled this case, the public prosecutor, in his claim, stated that the defendant had possessed, stored, or controlled non-plant narcotics of the type of methamphetamine. With the consideration in juridical analysis of Public Prosecutors' demands, it was explained that the defendant was arrested by police officers while standing and waiting for his friend JS who was first arrested by the police officers (the development case of JS) on the roadside. In this case, JS had contacted the defendant before and told him that he wanted to buy a package of methamphetamine.

Therefore, the defendant was not arrested in a state of being caught using methamphetamine narcotics, but he was caught when he possessed, controlled, and stored non-plant narcotics consisting of two packages of methamphetamine in clear plastic clips which were in the defendant's fist and three packages of methamphetamine in clear-color plastic clips inside a Sampoerna brand cigarette box in the back pocket of defendant's pants. The methamphetamine narcotics packages that the defendant acknowledged were his property bought from Sari (included in People Search List) for IDR 1,400,000 (one million and four hundred thousand rupiah) a day before the defendant was arrested. So, according to the public prosecutor, the most accurate charges were proven as the second alternative indictment which violated Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics. In fact, in the trial, it was also revealed that the defendant had long been dependent and he had undergone 6 times of outpatient to treat their dependence on narcotics. However, because the Public Prosecutor did not indict Article 127 Paragraph (1) letter a of Law number 35 of 2005 concerning Narcotics, the fact could not be used by the judges as a basis of doing prosecution.

The evidence used by the Public Prosecutor to prove Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics charged to the defendant were:

- a. Witnesses' Explanation;

Witnesses' explanation is the explanation from the witnesses of the arrestees and public witnesses who saw the defendant were arrested or secured by the authorities and were mastering the methamphetamine narcotics. Besides, the witnesses heard from the defendant's acknowledgement that the evidence in the form of methamphetamine narcotics was in his hands and pants pocket were his property. Therefore, from the explanation, their explanation had obviously shown that the defendant fulfilled the elements of "possessing, storing or controlling" in Article 112 Paragraph (1) of LAW number 35 of 2009 concerning Narcotics.

- b. Letter

The letter of evidence used in this case was the Report on the Evidence Testing from the authorities which in its conclusion stated that the evidence contained methamphetamine including Class I non-plant Narcotics.

c. Clues

The clues obtained in the trial were the correspondence of witnesses' statements, letter, defendant's statement, and the evidence presented at the trial where the corresponding information has described a concrete event that the defendant had possessed, stored, or controlled non-plant narcotics of methamphetamine type. As a result, the evidence strengthened the proof of the public prosecution's charges.

d. Defendant's Statement

Based on the facts of the trial, it was revealed at the trial that the defendant acknowledged that methamphetamine narcotics hold by him and those in the defendant's pants were his own from his friend named Sari (listing in People Search List). The defendant's acknowledgement was heard by the arresting witnesses and public witnesses who also witnessed the search activities after the defendant was secured by police officers.

In the claim, the Public Prosecutor proposed a claim against the defendant on the charges of violating Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics with the qualification deeds that the defendant had been proven to be legally and convincingly guilty for committing a criminal act of "possessing, storing or controlling class I non-plant narcotics", and then demanding the defendant with imprisonment for five years detainees for five years reduced as long as the defendant is in detainees and a fine of IDR 800,000,000 (eight hundred million rupiah) subsidies six months in prison with orders that the defendant remained in detention.

If it is further analyzed relating to the verification of the case, the facts were revealed from the explanation of specialist doctor treating the defendant. The doctor stated that the defendant had consumed methamphetamine narcotics for about 20 years and marijuana for about 26 years. Moreover, the defendant could hold back his emotions/ anger if his body wanted narcotics and could not overcome his addiction. The experts told that the defendant, when undergoing rehabilitation programs at National Narcotics Agency clinics, he shivered like having cold because of the impact of narcotics existing in the defendant's body. The experts' explanation was supported by a letter of the defendant's urine test that positively contained methamphetamine. Any facts which were not revealed in the case file during the study of case file (pre-prosecution stage) was in which the public prosecutor in arranging the letter of charges referred to the revealed facts on the case file in pre-prosecution stage. The facts revealed during the pre-trial were the defendant's actions of violating of Article 114 Paragraph (1) of Law number 35 of 2009 concerning Narcotics or Second Article 112 Paragraph (1) of Law number 35 of 2009 concerning Narcotics. Thus, the Public Prosecutor in his indictment letter did not indict the provisions of Article 127 Paragraph (1) letter a of Law number 35 of 2009 concerning Narcotics (according to the results of the interview with the Public Prosecutor's Office on Wednesday, January 2, 2019).

In relation to it, the prosecution authority was entirely in the hands of prosecutors as stipulated in Article 137 of the Criminal Procedure Code stating that the Public Prosecutor had the authority to prosecute anyone charged with committing a criminal offense by delegating the case to the District Court which had the authority to examine and adjudicate. Therefore, in pre-prosecution stage in determining the indictment to be compiled was entirely the authority of the public prosecutors. It depended on how the study of case file processed on the pre-prosecution stage, and how to reveal facts of the suspects' actions in the case file based on the available evidence. Thus, the public prosecutors could determine an article that would be imposed to the suspect according to the suspects' actions. In this case, it is in line with the law enforcement theory where the law enforcement process is an attempt to uphold legal norms as well as the values behind the norms. According to Soerjono Soekanto, one of the factors determining the law enforcement itself is on the hands of law enforcement.

As a reference in the decision of the Supreme Court number 698/Pid.Sus/2016 in which the Panel of Judges in the a quo case explained that the application of Article 111, 112, 127 of the Narcotics Law in which the element of possession or ownership of narcotics under the Article 112 is in the context of being traded, bought and sold or circulated. In other words, the narcotics are for illicit drug trafficking. In the contrary, if the ownership of narcotics is in context to be used against the law, Article 127 Paragraph (1) letter a Narcotics Law is more appropriate to be applied.<sup>12</sup>

*The Implementation of the Verdict of Rehabilitation Followed by Imprisonment in Case number: 47/Pid.Sus/2017/Pn.Slk on September 13, 2017*

Article 270 of Criminal Procedure Code (Criminal Procedure Code) determines that the implementation of a court decision that has legal force is still carried out by the prosecutor for which the clerk sends a copy of the decision letter to the prosecutor. In line with the provisions of the Criminal Procedure Code, it is also explained that in Article 36 of Law number 4 of 2004 concerning Judicial Power that the implementation of court decisions in criminal cases is carried out by prosecutors.

The process of implementing court verdicts having legal force is different based on the existing type of criminal. In this study, the researcher will only explain how is the implementation of judges' verdicts in the form of imprisonment followed by rehabilitation as the case study that the researcher is adopted.

In the case of imprisonment, the prosecutors, which are in this case as the executors, conduct the procedure. After receiving a copy of the court verdict and the clerk of the relevant court within a week, the chief attorney releases the letter of the implementation of court verdicts. As a result, prosecutors as the executors immediately handover the convict to the penal institution for serving a prison sentence followed by a complete administration in the form of an Official Report on the implementation of Court Verdicts; therefore, the task of the prosecutors as the executors has been completed with the convict sent to the prison party. However, in AF's case, a problem arose in which AF was also sentenced for rehabilitation for six months at the Ulu Gandut Hospital in Padang. The Public Prosecutors, in this case, had already executed imprisonment because in the court ruling ordered the defendant to remain in the prison so that the rehabilitation could not be carried out by the defendant.

If it is studied from the theory of justice, the consideration of the verdict is expected that the defendant will get immediate recovery from his dependence on narcotics. Then, the imprisonment done first by the defendant did not reflect justice and benefits for the defendant, meaning that the imprisonment which was first done had neglected the human right of the defendant in obtaining recovery of his health as stated by the constitution of our country. However, it was also a problem among the law enforcement officials if the defendant was given a rehabilitation sentence, what about the supervision and who could guarantee that the defendant would not escape when serving a rehabilitation because, in some cases handled by the court, after the prosecutors had executed the defendant by imposing rehabilitation sanction, there were some defendants escaped from the rehabilitation institutions. As a result, the medical treatment will be ineffective for the defendants.

In this case, where the imposition of imprisonment followed by rehabilitation, according to the researcher from the side of justice for defendants, it is more appropriate for the defendants to be rehabilitated first because the defendants should immediately get a recovery. However, in term of law enforcement, the imprisonment is more effective to be done first because it is worrying that the

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<sup>12</sup> (<https://m.hukumonline.com/berita/baca/lt59c1ead15cd31/beda-pasal-111-ayat-1-uu-narkotika/> accessed on December 26, 2018 at 10:00 West Indonesia Time).

defendants will escape before completing the rehabilitation sentence, while prison sentences have not been carried out so that the sentence is ineffective.

In relation with the aforementioned explanation, as the result of the interview with the Head of Bina Dik in Class II Solok Prison, the implementation of verdict of AF was the first time to be implemented in a form of imprisonment followed by rehabilitation. Therefore, in its implementation, officers in Prison will still coordinate with the Regional Office of the Legal Department and Ham of West Sumatera Province in which the Solok Prison will ask for instructions from the Regional Office on how to implement rehabilitation because there is not technical and operational guidelines regulating the verdict; thus, coordination with the prosecutor as the executor will be conducted.

Previously, there was indeed a discourse that rehabilitation of narcotics abusers was carried out in LP, but that was only in a form of socialization and was still constrained by facilities. In the researcher opinion, this is a discourse that reflects a sense of justice where the penalty for rehabilitation of narcotics abuse can be carried out at the Penitentiary because this also relates to the calculation of imprisonment period calculated by the period of undergoing rehabilitation.

## **Conclusion**

1. The basic consideration of the judges in imposing imprisonment followed by rehabilitation on the verdict number: 47/Pid.Sus/2017/PN.SLK on September 13, 2017, are the panel of judges considers other juridical aspects, i.e. the indictment of law persecutors, legal evidence, articles in the Law number 35 of 2009 concerning Narcotics, and considering non-juridical aspect in the form of justice, psychological aspect of the defendant, and criminal philosophy in order to create justice, benefits, and legal certainty.
2. The proof of Case number: 47/Pid.Sus/2017/PN.SLK on September 13, 2017, which verdict was in the form of imprisonment followed by rehabilitation based on indictments, the facts of the trial based on legal evidence (i.e. witnesses' explanation, letters, clues, and the defendant's statement), and in claiming, the Public Prosecutor also stated the matters becoming the consideration in proposing demands, such as things which were burdensome and mitigating for the defendant.
3. In the implementation of the rehabilitation verdict followed by imprisonment in case number: 47/Pid.Sus/2017/PN.SLK on September 13, 2017, there was no legal certainty when to implement it, whether after the convict has finished serving a prison period or it could be implemented during the imprisonment because rehabilitation sanction was also calculated as the period of sentence. It was the authority of the prosecutor as the executor who will coordinate with relevant parties in the implementation of rehabilitation verdict.

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