

# The Implementation of the Circulars of the Supreme Court (Sema) No. 4 of 2010 for the Judge in Deciding the Case of Narcotics

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**Abstract:** *Indonesia is a state law that expressly stated in Article 1 paragraph (3) of the constitution of the Republic of Indonesia Year 1945 has shown that the state of Indonesia adheres to understand the state of the law. In the theory of State Law mentioned that the legal position higher than the position of the state so that in the act, behave and works better for the ruler, the people and the state should be subject to the applicable law. Law enforcement became one of the ways to create discipline, security and peace, prevention and eradication or prosecution after the occurrence of the violation of the law. Law enforcement and justice is a series of quite a long process and can involve a variety of the authority of the agencies/other law enforcement officials, namely in the field of criminal law enforcement involved investigators/police officers to the public prosecutor/ attorney general, the judiciary and the executive of the criminal.*

**Keywords:** Supreme Court, Judge, Narcotics

## 1. Introduction

Based on Law Number 35 Year 2009 on Narcotics, on the provisions of article 1 number 1 is defined narcotics are substances or drugs derived from plants or not a plant, either synthetic or semisintetis, which can lead to a decrease or change in consciousness, loss of taste, reduce to the disappearance of pain, and can cause dependence.

Based on Law Number 35 Year 2009 on Narcotics, types of Narcotics are classified as follows:

### a) Narcotic class I:

This group: "can only be used for the purpose of development of science and not used in therapy, as well as having a very high potential result in dependence, among others: the plant *Papaver Somniferum L* and all its parts, including the fruit and her straw, except the seeds; raw opium, namely the sap freezes own, obtained from the fruit of the plant *Papaver Somniferum L* that is only subjected to processing just for wrapping and transporting without regard to the levels of morphine; the coca plant, the plants of all the genus *Erythroxyton* from the family *Erythroxyloaceae*, including fruits and seeds".

### b) Narcotic class II:

This group: "can be used in the treatment, but the potential addiction is high. Use for the treatment as a last resort. Among others, such as: *Alfasetilmetadol* and *Alfameprodina*".

### c) Narcotics class III:

This group: "efficacious drugs and the potential dependence is low. This group, among others such as: *Asetildihidrokodeina* and *Dekstropropoksifena: α-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-butanol propionate*".

Understanding drug Addicts that related with the things set out in Article 127, Paragraph (1) and Paragraph (2), Article 54, Article 55 and Article 103 of Law Number 35 Year 2009 on Narcotics. Article 1 Number 13 of Law Number 35 Year 2009 on Narcotics, it is mentioned that drug Addicts are People who use or abuse of Narcotics and in a state of dependence on Narcotics, both physically and psychologically. From the definition, it can be classified in 2 (two) type of Addict Narcotics, namely: 1) the people who use Narcotics in the circumstances of the dependence of the physical and psychic, and 2) people who abuse narcotics in a state of dependence physically and psychologically. The first type, it can be categorized as a drug addict who has the legitimacy to use narcotics in the interests of the health service itself. Categories such as it, due to the use of narcotics is in accordance with the meaning of Article 7 of Law Number 35 Year 2009 on Narcotics and of course the Addict in question is a geek who is running medical rehabilitation, especially in the process of medical intervention. The drug addicts of the second type, it can be categorized as a drug addict who does not have the legitimacy to use narcotics in the interests of the health service, then the offender does not have the rights or actions are against the law.

The development of the current indicates the occurrence of the trend in the change strong in looking at the drug users are no longer seen as criminals, but as victims or patients who should be given empathy. The judge may hand down a ruling undergo treatment and/or care but after a through examination and specific considerations in future court hearings. For addicts of narcotic drugs that are not proven to be innocent and can prove as a user who inedible persuasion, the judge may assign to instruct the concerned to undergo treatment and/ or care.

## 2. Research Methods

To know and explain about the form of the implementation of the Circulars of the Supreme Court (SEMA) No. 4 of 2010 as the guidelines used by Judges in deciding the case of narcotics.

To know and explain about the factors that cause the emergence of disparities in the Judge's decision to implement the Supreme Court Circular (SEMA) No. 4 of 2010 as the guidelines used by Judges in deciding the case of narcotics.

### 3. Results and Discussion

The verdict of the criminal cases of narcotics with the actions of rehabilitation in practice occurs ambivalent between rehabilitation measures as part of the criminal sanctions or measures of rehabilitation in order to treatment or medical rehabilitation and social rehabilitation where between criminal penalties and rehabilitation measures that are opposite to each other. Rehabilitation activities are not only aimed towards the victims of abusers of narcotics captured apparatus, but also addressed to the victim because of his own consciousness want to recover from drug addiction-drugs.

Criminal law there are two, namely criminal law, public and criminal law special criminal law generally applicable in general and criminal law special is all the law outside of the criminal code and the laws of its complements both legislation criminal and non-criminal but those sanctioned with penalties. Criminal misuse of narcotics including special crimes stipulated in Law Number 35 Year 2009 on Narcotics.

The term rehabilitation with the understanding of the following :

- 1) Medical rehabilitation is the process of treatment activities in an integrated manner to relieve the addict of drugs, according to Article 1 number 16 of Law No. 35 Year 2009 on Narcotics.
- 2) Social rehabilitation is the process of recovery activities in an integrated physical, mental or social, so the former narcotics addicts be to re-implement a social function in people's lives, according to Article 1 number 17 of Law No. 35 of 2009.

Rehabilitation of drug users is a series of efforts that are coordinated and integrated, consists of the efforts of the medical, guidance mental, psychosocial, religious, education and training vocational to improve the ability of self-adjustment, self-reliance and self-help as well as achieving functional ability according to their potential, both physical, mental, social and economic. In the end, they are expected to overcome the problem of abuse of narcotic and re-interact with the community in a fair.

Double track system is a two-track system of sanctions in criminal law, namely of criminal sanctions of one of the parties and the type of sanctions actions on the other. Both are sourced from different ideas. Criminal sanctions based on the basic idea: "why was held conviction". While the sanctions act of departing from the basic idea: "for what held the conviction that". In other words, the criminal sanctions

actually are reactive against an act, while sanctions act more anticipatory against the perpetrators of such deeds.

The focus of criminal sanctions aimed at the wrong that has been done someone through the imposition of suffering so that he becomes a deterrent. The focus of the sanctions measures more focused on attempts to give aid on the offender so that he changed. It is clear, that the criminal sanctions further emphasize the elements of retaliation. He is the suffering that is intentionally charged to a transgressor. While the sanctions measures derived from the basic idea of the protection of the public and coaching or care for the offender. As said J.E. Jonkers, criminal sanctions focused on the criminal applied to crimes committed, while the sanctions act has the objective of a social nature.

Based on the foregoing, the double track system in the formulation of sanctions against the criminal misuse of narcotic drugs is the most appropriate, because based on the reviews victimologi that drug addicts are self-victimizing the victims that the victims as the perpetrators, victimologi fixed drug abuse as a victim, even though the victim of a criminal offence/a crime he did own. Therefore, the drug addict who is also the victim deserves to get protection. However, because drug addicts also as the perpetrator of a criminal offence/a crime then he should also remain unpunished, because of this it is said that the double track system in the formulation of sanctions against the criminal misuse of narcotic drugs is the most appropriate.

Criminal sanctions are meted out to drug addicts as a self-victimizing victim's is in the form of serving a sentence in prison, while the sanctions of the act is given to drug addicts as victims is a form of treatment and/or care that was held in the form of rehabilitation facilities. System implementation is the period of treatment and/or care is calculated as the punishment.

The purpose of the implementation of the rehabilitation of the medical and social is an effort to restore and/or develop the ability of the physical, mental, and social for drug users are concerned. Rehabilitation is divided into two forms, namely the rehabilitation of medical and rehabilitation social. Rehabilitation is a process of treatment activities in an integrated manner to liberate addicts of narcotic dependence, while the social rehabilitation is a process of election activities in an integrated manner, both physically, mentally and socially to a former drug addict can re-implement the social functions in the society.

### 4. Criminal Law enforcement in Criminal Acts of Narcotics

Law Number 35 Year 2009 on Narcotics has been given authority to judge examine the drug addict can decide to order the concerned undergo treatment and/or care if the addict is not proven guilty of committing a criminal offense. The formation of the Circular of the Supreme Court (SEMA-RI) No. 7 of 2009 about the Placement of the Abusers of Narcotics to the Center of Therapy and Rehabilitation of Narcotic drugs require that the convicted drug users and victims of the abusers was restored in the rehabilitation center.

For the treatment and/or care for drug addicts referred to above, is taken into account as a period of serving a sentence. Thus, the implementation of criminal rehabilitation can be prioritized as efforts to control the criminal acts of narcotics along with the rise of the victims of the abuse of narcotics. The verdict of criminal imprisonment is not an effective solution because of the abuse of narcotics and illegal drugs can penetrate the door of the prison. Instead of making a deterrent, the circulation of drugs in the prison actually increased their addiction. Verdict rehabilitation is expected to break the chain of dependence.

The problems associated with the terminology embedded in the Law Number 35 Year 2009 about Narcotics in Article 54 of using a drug addict and an abuser. Article 55 and Article 103 to wear addict, About 127 verse 1 wear abuser Chapter 127 verse 3 mentions the abuser then known as the victim of an abuser. Construction built from the provisions of article that is a drug addict and a victim of an abuser can direhabilitasi, whereas the abuser convicted.

The judge is indeed independent in check and judge a thing until can't in the intervention by anything. With a bottomed on the principle of the freedom of independence of judges will give birth to various forms of the verdict of the judge in particular on the criminal in the case of a sentence which in this case relates to a felony narcotics. The difference the application of the law of the judge against the abuser of narcotics more based on the obscurity of arrangements in the Law Number 35 Year 2009 About Narcotics, what is an abuser of narcotics that rehabilitated or punished.

The judge before dropping verdict should identify conscientiously what the performer is engaged in the circulation of narcotics or not, are the perpetrators of this pure abuser of narcotics and did the perpetrator is the victim of a felony narcotics or suspect an addict narcotics. To identify the various things this at face conference with good and careful with using the normative approach then should the verdict of the judge, if there is a difference or disparity, should disparity that is not flashy in terms of punishment or the application of the law.

## 5. Conclusion

The cause of the advent of the disparity of punishment is indeed very difficult to be eliminated, which need to be worked out is a punishment that is accurate and compatible. In this case, the sentence is not intended to achieve evenness of the absolute, because contrary to the principle of independence of judges, the rules limit the maximum and minimum penalties and the opposite side with a sense of justice and confidence in the judge. The judge is indeed independent in check and judge a thing until can't diintervensi by anything. With a bottomed on the principle of the freedom of independence of judges will give birth to various forms of the verdict of the judge in particular on the criminal in the case of a sentence which in this case relates to a felony narcotics.

Disparity in the context of the sentence is of opposite words from parity means equality of value. In the context of the sentence, parity is the equivalence of a sentence against the

evil with the condition are similar. Disparity referred to in this research can be interpreted simply the availability of the difference of the law against the evil with the condition of identical or in other words the availability of the sanction of the criminal are not the same against the criminal acts the same. Disparity of punishment is indeed very difficult to be eliminated, which need to be worked out is a punishment that is accurate and compatible.

Disparity in the context of the sentence have a connectedness with the implementation of the SEMA Number 4 2010 can be used by the judge in the cut off thing narcotics, but in practice appears disparity punishment should in a felony narcotics the same with based on the provisions set from SEMA but on the verdict of the judge still there is a difference between the punishment of a criminal is given to the accused abuser of narcotics is a criminal prison and the action of the rehabilitation of medical and social.

Surveyed from the strength of the binding of SEMA is not included in the hierarchy of legislation kareana SEMA is not didelegasikan live by the law. Unlike the legislations of the other which was subordinate legislation because it has a delegation from the law (primary legislation).

The handbill of the Supreme Court (SEMA) is a form of circulation of the leadership of the Supreme Court to the rest of the alignment of the judge nature guide, lead, give directions policy, and arrange something of the implementation of tasks and jobs in the sphere of justice. Manufacture of SEMA is the function of the Supreme Court in doing the supervision of the highest in all the range of the court in the case of the authority to give you a clue, a reprimand, or a reminder that looked necessary.

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