

## ***Judges' Efforts to Uphold the Principles of Legal Justice and Human Rights in Imposing Sanctions in Drug Cases***

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### **Abstract**

This study aims to analyze whether court decisions in drug abuse cases are based on Indonesia's principles of justice and human rights. This study is important to conduct because there are quite significant differences in the sanctions received by perpetrators of drug crimes, giving rise to the perception that judges are inconsistent in providing fair decisions for perpetrators of drug crimes. In their decisions, judges often ignore the principles of human rights to provide a deterrent effect to perpetrators of drug crimes. Hence, the assumption arises that judges in many cases discriminate against defendants of drug crimes. This study uses a normative legal approach and case studies to examine the case submitted in decision number 1041/Pid.Sus/2024/PN.Sby. Based on these findings, the judge attempts to uphold a fair decision by imposing a sentence commensurate with the error and considering the economic ability of the perpetrator to pay the fine, with the option of additional imprisonment for six months if unable to pay. This decision approach aims to uphold the principles of human rights.

**Keywords:** *Drug Abuse; Human Rights; Principle of Justice*

### **1. INTRODUCTION**

East Java ranks among the regions with the highest incidence of narcotics-related crime in Indonesia as of 2024. According to the Head of the East Java Provincial National Narcotics Agency, the East Java Regional Police and courts receive approximately 5,000 to 6,000 reports annually concerning narcotics abuse, primarily involving marijuana and methamphetamine.<sup>1</sup> Surabaya stands out as one of the key cities in this context, reporting the second-highest number of narcotics cases within East Java. In the judge's decision number 1041/Pid.sus/2024/PN.Sby, the defendant was found guilty of distributing methamphetamine drugs and/or acting as an intermediary in methamphetamine transactions.<sup>2</sup> The evidence included an ATM card, approximately 0.429 grams of methamphetamine, a straw, a glass pipette, a scale, and a screw. The judge sentenced the defendant to seven years in prison and imposed a fine of one billion rupiah. This verdict was handed down to the defendant, GS, for proven involvement in selling, offering, and distributing illegal drugs.

Based on this verdict, the judge imposed a penalty of six years and six months in prison along with a maximum fine of one billion rupiah, with the condition that if the fine is not paid, it will be substituted with an additional six months of imprisonment. This decision has sparked the researcher's interest in examining whether the judge's ruling was based on the principles of justice and human rights.<sup>3</sup>

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<sup>1</sup> Surabaya.net. (2024). *Surabaya Menempati Urutan Kedua Kasus Penyalahgunaan Narkotika Secara Nasional*. <https://www.suarasurabaya.net/kelanakota/2024/jatim-menempati-urutan-2-kasus-penyalahgunaan-narkotika-secara-nasional/>

<sup>2</sup> Putusan/1041 Pid.Sus 2024/PN.Sby, Pub. L. No. Putusan 1041 Pid.Sus 2024, Direktori Mahkamah Agung Republik Indonesia (2024).

<sup>3</sup> Firman, A., Sinaga, R. S., & Bungana, R. (2023). *Perlindungan Hak Asasi Manusia dalam Sistem Hukum Pidana*. *Jurnal Ilmu Hukum Dan Tata Negara*, 1(4), 227–236. <https://doi.org/10.55606/birokrasi.v1i4.746>

Considering the inconsistency in rulings in similar cases, judges sometimes hand down disproportionate sentences, as seen in a case in Jember, where a drug user was sentenced to one year in prison after being proven guilty of drug use. In contrast, the law mandates rehabilitation for users. This case was discussed in a study by Waraspari (2024), in which the judges failed to consider Pasal 54, 55, and 103, which serve as guidelines for imposing penalties on individuals using drugs for personal consumption.<sup>4</sup>

The study noted that the judges overlooked these relevant articles, creating an impression that justice was hastily administered, ultimately disadvantaging the defendant due to the misaligned penalty. In that case, the defendant fulfilled the requirements that would have allowed for rehabilitation. It would be a different situation if the case involved a drug distributor, as stipulated in Pasal 114 (1) and (2), which prescribe a minimum sentence of five years and a maximum of 20 years in prison along with fines ranging from one to ten billion rupiah (BPK RI 2009).

A study conducted by Juliandi et al. (2023) analyzed a drug courier case in Medan where the defendant was proven to possess methamphetamine (classified as a type-1 distributor). In case number 1677/Pid.Sus/2023/PN.Mdn, the study noted that the maximum penalty for the defendant was five years in prison and a fine of up to one billion rupiah. In this ruling, the defendant was sentenced to a minimum of five to 20 years in prison according to Pasal 114 (1) of Undang-Undang No. 35 of 2009.

This illustrates how the judge issued the ruling based on what is written in the law, ensuring that the punishment aligns with the defendant's crime. However, this study primarily describes the legal procedures and the health risks of drug abuse, without exploring law enforcement from the perspective of justice and human rights. Therefore, the researcher identifies a gap in the study, namely the lack of an in-depth perspective on justice and human rights.<sup>5</sup> The study focuses more on judicial procedures and the dangers of drug abuse. This gap motivates the researcher to examine whether the sanctions imposed in decision number 1041/Pid.Sus/Pn.sby against GS are in accordance with the principles of justice and human rights.

Reflecting on the drug trafficking case in Bojonegoro, in decision number 197/Pid.Sus/2021/PN.Bnj, where the judge carefully considered every decision to align with the principles of justice, legal certainty, and usefulness, the decision was issued in line with Undang-Undang No. 35 of 2009 on narcotics abuse.<sup>6</sup> The study on this case indicates that the judge emphasized the values of legal justice and certainty when sentencing a

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<sup>4</sup> Juliandi, Nasution, M. D., Siahaan, G. P., & Batu, D. P. L. (2023). Putusan Hakim Terhadap Kasus Narkoba Saiful AG Berdasarkan Undang-Undang Narkotika Studi Perkara Putusan 1677/Pid.Sus/2023/PN.Mdn. *Depositi : Jurnal Publikasi Ilmu Hukum*, 1(4), 225–230. <https://doi.org/Doi.Org/10.59581>

<sup>5</sup> Jaya, C., & Hikmah, F. (2021). Legal Reform on Rehabilitation for Drug Users as an Ultimum Remedium Effort. *Jurnal USM Law Review*, 7(1), 354–375. <https://doi.org/10.26532/ijlr.v5i2.17923>

<sup>6</sup> Viandro, M. G., & Purwanto, G. H. (2023). Pertimbangan Hakim dalam Menjatuhkan Putusan Terhadap Tindak Pidana Narkotika. *Justitiable Universitas Bojonegoro*, 5(2), 1–15. <https://doi.org/https://doi.org/10.56071/justitiable.v5i2.544>

methamphetamine distributor, resulting in a sentence of four years in prison and a fine of between 800 million rupiah and a maximum of eight billion rupiah.

Given the numerous narcotics abuse cases where rulings are inconsistent with the crime committed, there is a tendency for judges to act in a discriminatory manner against drug offenders, especially when the cases involve public figures who are often easily freed and receive rehabilitation sanctions. This study aims to analyze how judges strive to apply the principles of justice and human rights in their rulings, thereby balancing sanctions, offenses, and the defendant's rights.

So, this research aims to assess whether the judge's ruling in case number 1041/Pid.Sus/2024/PN.Sby aligns with the values of justice and human rights by examining the judicial process and how the judge weighs decisions for the defendant. Unlike the previous studies mentioned, which mainly explain the judicial procedure followed by the judge in a narcotics case, this research emphasizes the judge's moral principles in viewing a case to ensure a fair verdict that does not violate human rights. The urgency of this research is to find out how decisions are based on the values of justice and human rights amidst the many different and discriminatory decisions of judges in drug abuse cases.

## **2. METHOD**

This study employs normative legal research, which describes the issues based on applicable legal theories and laws on narcotics abuse with reference to the verdict 1041/Pid.Sus/2024/PN.Sby. The normative legal research approach is a method focused on literature review, regulations, and legal theories to analyze and understand law as a normative rule. This research does not explore how the law operates empirically in society but rather emphasizes the normative aspects and concepts inherent in legal texts and doctrines.

The research method used is an analytical approach with a legal concept analysis approach and a case study approach.<sup>7</sup> The legal concept analysis approach is a research method focused on identifying, breaking down, and developing an understanding of key concepts within a particular field of study. As normative legal research, this study focuses on examining the use of positive law and the principle of justice related to the judge's verdict in cases of illegal drug abuse in Surabaya (Putusan/1041 Pid.Sus 2024/Pn.Sby, 2024). To support this research, This research also uses a literature review approach to deepen the study. The case study approach in legal research is a method used to analyze and understand a legal event or decision in-depth by examining a specific case. In the legal context, this approach involves a detailed examination of the facts, background, legal process, and judge's decision in a particular case.

## **3. RESULT AND DISCUSSION**

This decision can be analyzed from several perspectives. Firstly, the judge sentenced the defendant, GS, to six years and six months of imprisonment and imposed a fine of IDR 1 billion, with an additional six months of imprisonment if the fine is not paid. This punishment

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<sup>7</sup> Nugroho, S. S., Haryani, A. T., & Farkhani. (2020). *Metodologi Riset Hukum*. Oase Pustaka.

is intended to provide retribution for the offense of distributing methamphetamine to the public, which aligns with the retributive objective of criminal law.

The principle of procedural justice is reflected in the transparent court process that respects the rights of the defendant. In this document, the Surabaya District Court conducted a series of procedures, such as hearing the testimonies of the defendant and witnesses and considering the submitted evidence. The judge also ensured that the defendant's right to legal representation was fulfilled and that the defendant was given the opportunity to defend themselves without interference.<sup>8</sup> In this decision document, it is explained that the defendant has gone through a number of procedural stages set by the court before taking steps to be held accountable for his mistakes. the judge in this case gives the defendant the freedom to fulfill what is required in facing the trial, including evidence that will likely reduce the sentence that will be given.

Secondly, the legal process that the defendant underwent included stages of detention, trial, and examination of evidence, as recorded in the judge's decision. This indicates that the defendant was given the opportunity to defend themselves, and the decision was based on the evidence and testimonies presented in court. This aligns with the principle of procedural justice, which emphasizes the importance of a fair and transparent process, thereby reducing any suspicion toward the judge in sentencing the defendant.

In court, it was shown that the judge in charge of trying Mr. GS gave the defendant the opportunity to defend himself. this shows that the judge is open to listening to the defendant's submission so that he can provide views related to the decision to be taken. this also shows the true independence in determining a decision, so that the trial process runs as it should. Thirdly, during the trial, the defendant's counsel requested that the judge issue the fairest or lightest possible sentence, despite the defendant's violation of the law with evidence of possession, control, and distribution of methamphetamine for personal gain.

This demonstrates that in the judicial system, there is a mechanism to correct the sentence if it is deemed too severe or disproportionate to the offense committed. Thus, the judge's decision was not taken unilaterally; the judge provided the defendant with the opportunity to acknowledge their offense before reaching a decision. Fourthly, distributive justice was applied by the judge through the imposition of fines and the confiscation of the defendant's assets for the state. This redistribution of resources (both legal and those obtained through crime) back to the state is intended to maintain balance and prevent illicit gains from the defendant's criminal actions.

Enforcement of distributive justice is given by the judge to the defendant by giving a sentence according to the actions committed by the perpetrator. Because the defendant was legally proven to have sold narcotics and was sentenced to 6 years and 6 months in prison and a fine of 1 billion rupiah. this provides an illustration that drug dealers must be given a

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<sup>8</sup> Rawls, J. (1999). *A Theory of Justice* (Revised Edition). The Belknap Press of Harvard University.

law that makes them deterred, different from users for themselves who must be given rehabilitation sanctions from the court.

The principle of justice holds fundamental importance in the judiciary to ensure that a case achieves legal certainty. As explained in the research conducted by Dewanto (2020), judges' considerations in deciding cases in court must be grounded in the prevailing principle of legal justice.<sup>9</sup> Essentially, laws are made to uphold justice for everyone. Therefore, judges must consider the values of justice when making decisions.

Sianturi and Hikmah (2022) presented a similar argument in their study, stating that narcotics-related crimes should still be treated fairly, without discrimination from judges or law enforcement.<sup>10</sup> This is intended to produce a judgment proportional to the crime committed by the offender. This contrasts with the case studied by Warapsari and Soeskandi (2022), which highlighted a judge's subjectivity in sentencing a narcotics user to prison, despite the fact that the individual should have received rehabilitation.

Overall, the case discussed in this research reflects an effort to uphold justice within the context of criminal law by considering various principles of justice. Therefore, the judge's decision regarding the defendant in this narcotics abuse case, as regulated under Law No. 35 of 2009 on Narcotics and Psychotropics Abuse, was made by the court with an emphasis on the principle of legal justice.

In this study, narcotics abuse, which is deliberately committed in violation of the law, was investigated. Pasal 5 Undang-Undang No. 35/2009 about Drug Abuse, which includes all forms of activities and/or interactions with Narcotics Precursors. This means that every perpetrator, whether a user or distributor, will be sanctioned according to the crime committed through the judge's verdict in court, thus ensuring the enforcement of justice in society.<sup>11</sup>

The data shows that the most widely circulated type of narcotics in the community is crystal methamphetamine. Crystal methamphetamine is quite popular in Indonesia, with the highest number of cases, totaling 32,734 cases as of 2023. According to health experts, crystal methamphetamine refers to methamphetamine, a powerful stimulant that affects the central nervous system. This substance increases physical and mental activity, leading to increased energy and decreased appetite. However, continuous use of crystal methamphetamine can cause severe addiction, brain damage, mental disorders, and various other health issues.<sup>12</sup>

BNN (2024) report related to drug abuse in Surabaya indicates that the city continues to face significant challenges in combating drug abuse. BNN data from 2024 shows that

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<sup>9</sup> Dewanto, P. (2020). Rekonstruksi Pertimbangan Hakim Terhadap Putusan Sengketa Perdata Berbasis Nilai Keadilan. *Jurnal Ius Constituendum* |, 5(2). <https://doi.org/10.26623/jic.v5i2.2307>.

<sup>10</sup> Sianturi, D., & Hikmah, F. (2024). The Criminal Proof Mechanism for Gorilla Tobacco-Type Drug Crimes Under Guideline Number 11 of 2021 in Indonesia. *Jurnal Ius Constituendum*, 9(2), 251–265. <https://doi.org/10.47191/ijsshr/v6-i6-66>.

<sup>11</sup> Fatima, S., Junaidi, M., & Arifin, Z. (2023). Kedudukan Justice Collaborator Sebagai Upaya Pengungkapan Fakta Hukum Kasus Tindak Pidana Penyalahgunaan Narkotika. *Journal Juridisch*, 1(2), 158–170. <https://doi.org/10.26623/julr.v4i1.3368>.

<sup>12</sup> Kristian, D., Sadono, B., Sukarna, K., & Sulistyani, D. R. (2021). Kewenangan Polri dalam Menegakkan Kode Etik Anggota Polri yang Melakukan Tindak Pidana Narkotika. *Jurnal USM Law Review*, 4, 663. <https://doi.org/10.26623/julr.v4i2.3332>.

although there has been a decline in the prevalence of drug abuse in some areas, major challenges remain, especially in large cities like Surabaya. In Surabaya, as in many other areas, the most widely abused types of narcotics are crystal methamphetamine, marijuana, methamphetamine (crystal methamphetamine), and ecstasy.<sup>13</sup>

Drug use is predominantly male, accounting for about 74.5% of total users. Although the prevalence is decreasing, the number of methamphetamine users remains significant, indicating the need for stronger prevention measures and more effective rehabilitation programs. Civil society, educational institutions, and local governments must collaborate to educate the public to avoid narcotics.

One of the highlights of BNN is the importance of family resilience as a key factor in preventing drug abuse and promoting a collaborative approach with various stakeholders to strengthen these prevention measures at the local and national levels, including through family education patterns. This means that in smaller scopes such as families, parental roles in educating children have a significant impact on shaping behavior, attitudes, and character later in life. This is something the government should also encourage by being proactive in educating the public to stay away from narcotics, thereby creating a law-abiding, safe, and peaceful society like Kristian et al (2021) research.

Crystal methamphetamine is often misused because of its euphoric effect, which makes users feel calm as if they are floating. However, repeated use can cause various long-term negative effects, including depression, anxiety, and cell damage to organs, especially the heart and brain. In a medical context, methamphetamine is often used to treat narcolepsy and obesity, but its use is strictly regulated and closely monitored by the government to prevent damage due to its strong effects on users.<sup>14</sup> If used outside of these conditions, the user can be prosecuted under Law No. 35 of 2009 concerning narcotics abuse for misusing authority as regulated by law.

Perpetrators involved in activities such as offering or selling crystal methamphetamine to the public with any motive will be sanctioned according to Pasal 114 Ayat (1) UU No. 35 Tahun 2009. The research from Fatima et al (2023) said the prohibition of consuming, distributing, and storing narcotics outside of medical needs and scientific development in medicine and pharmacy is due to the malicious intent of making these substances an economic commodity that damages public behavior and health.

Determining a verdict in court relies on three main principles in positivist legal dictionaries: the principle of legal certainty, the principle of justice, and the principle of legal utility<sup>15</sup>. These principles are used by a judge in making a decision during a trial. In addition, considerations from the legal representatives, public prosecutors, and witness testimonies are also references for judges in deciding a criminal case.

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<sup>13</sup> BNN RI. (2024). *Laporan Badan Narkotika Nasional Republik Indonesia*.

<sup>14</sup> Sundary, R. I., & Muslikhah, U. (2024). State Responsibility in Protecting Indonesian Migrant Workers as Fulfillment of Human Rights. *Jurnal Ius Constituendum*, 9(3), 428–445. <https://doi.org/10.26623/jic.v9i3.9183>.

<sup>15</sup> Marbun, R. (2022). Press Conference And Hand Catch Operations As Symbolic Domination: Dismantling Fallacy In Criminal Law Enforcement. *Jurnal Ius Constituendum*, 7(1). <https://doi.org/10.22212/jnh.v9i1.998>.

This research employs normative legal methods, which describe the issues based on prevailing legal theories and narcotics abuse laws with a focus on the verdict 1041/pid.sus/2024/PN.Sby. The research uses an analysis method involving legal concept analysis and case study approaches. As a normative legal study, it aims to examine the use of positive law and the principle of legal justice in relation to the judge's verdict in cases of drug abuse in Surabaya.<sup>16</sup>

### **3.1 Implementation of the Principle Justice**

In Indonesia, the concept of justice in law is an effort by legal enforcers to ensure that legal actions and government policies are conducted fairly and equitably, without regard to a person's background. The principle of justice is the main foundation for law enforcement in deciding a case to avoid conflicting with human rights. It also serves as a basis for the government, policymakers, and law enforcement in issuing policies, creating laws, or imposing penalties or verdicts on lawbreakers.

In practice, experts such as John Rawls, Thomas Aquinas, and Jeremy Bentham define the principle of justice with several key points for its proper implementation.<sup>17</sup> First, a fair legal process: means that legal enforcers must be transparent in deciding cases, impartial, and non-discriminatory, creating a balanced and equal trial. Second, equality before the law; means that everyone is treated equally under the law, regardless of social status, gender, race, or religion. For example, during a trial, everyone is granted the same rights to defend themselves fairly.

Third, the law must provide mechanisms to restore the situation of those harmed by unlawful acts, including compensation or restitution to victims of criminal acts<sup>18</sup>. Fourth, the law must distribute rights and obligations fairly among all members of society, including the allocation of resources, protection of human rights, and equitable provision of public services.

Fifth, proportionate penalties should be imposed on criminals according to the seriousness of the crime committed. Therefore, the punishment should be proportional to the principles of justice in Indonesia. Sixth, is social relationship restoration, where justice includes a restorative approach in which criminals are encouraged to correct their mistakes to restore the social relationships damaged by the crime. Furthermore, the application of the principle of justice in Indonesia must also accommodate cultural diversity, customs, and local norms as long as they do not conflict with internationally recognized human rights principles, thereby achieving complete legal order. Additionally, the implementation aims to create a harmonious, peaceful, and prosperous society, leading to public order.

A prominent legal expert in Indonesia, Bagir Manan, who once served as Chief Justice of the Supreme Court of the Republic of Indonesia, in his book "Indonesian Positive Law: A Theoretical Study," stated that justice in Indonesian law must encompass both distributive

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<sup>16</sup> Muanam, M., Sudarmanto, K., Arifin, Z., & Sihotang, A. P. (2021). Authority of The Directorate of Drug Reserse of Jateng Polda in Hadling Criminal Actions of Drug. *Jurnal USM Law Review*, 4(2), 525–534.

<sup>17</sup> Taufik, M. (2013). Filsafat John Rawls. *Jurnal Studi Islam Mukaddimah*, 19(1).

<sup>18</sup> Ali, M., & Hafid, I. (2022). Kriminialisasi Berbasis Hak Asasi Manusia Dalam Undang-Undang Bidang Lingkungan Hidup. *Jurnal USM Law Review*, 5(1), 1–15. <https://doi.org/10.26623/julr.v5i1.4890>.

justice and corrective justice.<sup>19</sup> According to him, the law should not benefit only one party or group but should ensure the equitable distribution of rights and obligations to all citizens. In law enforcement, he also emphasizes the importance of integrity and professionalism among legal officers to ensure justice is achieved in society.

In addition, Satjipto Rahardjo a legal expert known as the initiator of progressive law theory, emphasizes that the law must serve human interests and place justice as the primary goal of law enforcement efforts.<sup>20</sup> According to him, justice does not reside solely in the text of the law or as a mere decoration in court, but legal justice must be applied in society. The law must be flexible and adaptable to social developments to provide substantial justice for the Indonesian people.

Based on these two perspectives it can be concluded that justice in law is the ultimate goal. Justice should be the strong foundation for law enforcers in making decisions so that all parties involved in a legal case can receive equal rights and ensure that every decision in a trial is beneficial to everyone, both the perpetrator and the victim.<sup>21</sup> In this context, the substance of the law as a medium to achieve justice for humanity can be realized. Criminal acts involving narcotics, as defined by law, involve the deliberate consumption, distribution, and storage of narcotics for the purpose of use or economic gain, which has the potential to disrupt the social fabric of society. Narcotics abuse is divided into two types: the first is the distribution of narcotics, either through sale or direct delivery, with indications of possession and control of narcotics for profit.

The second type is the use of narcotics with indications of possession, control, or use of narcotics for personal use without the right and against the law. In most cases, this type is adjudged as victimization, and the sanctions include rehabilitation to eliminate the side effects of drug use. The first type is subject to sanctions according to applicable law. In narcotics crime cases, the law differentiates sanctions for distributors and users. This is based on the harm caused; users generally only harm themselves, while distributors can cause widespread damage and harm the community. Therefore, the legal policy for narcotics abuse perpetrators is not always the same. Rehabilitation sanctions are only given to those declared victims of narcotics abuse.<sup>22</sup>

The verdict against defendant GS, as stated in verdict 104/Pid.Sus/2024/PN.Sby, where the defendant was accused of narcotics abuse by possessing, controlling, and distributing crystal methamphetamine obtained from a person named Antok (a fugitive) for IDR 3,000,000, was sentenced to seven years and eight months in prison with a fine of IDR 1 billion with an additional one-year sentence if the fine is not paid and a mandatory payment of IDR 2,000 to be handed over to the state. The judge's verdict shows that the criminal act

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<sup>19</sup> Manan, B. (2008). *Ilmuwan Penegak Hukum* (Abdurrahman, Ed.; Satu). Mahkamah Agung Republik Indonesia.

<sup>20</sup> Rahardjo, S. (2010). *Penegakan Hukum Progresif*. Penerbit Buku Kompas.

<sup>21</sup> Tamanaha, & Brian Z. (2017). *A Realistic Theory of Law*. Cambridge University Press.

<sup>22</sup> Iskandar, F. (2021). Pelaksanaan Pertanggungjawaban Pidana Pengedar terhadap Korban Penyalahgunaan Narkotika. *Jurnal Penegakan Hukum Dan Keadilan*, 2(2), 96–116. <https://doi.org/10.18196/jphk.v2i2.9989>.



of narcotics distribution for personal profit has been determined according to Undang-Undang No. 35 Tahun 2009 on narcotics abuse.

This verdict is also strengthened by the principles of justice and legal certainty, which are the judge's references in making decisions.<sup>23</sup> Therefore, the punishment received by Mr. GS in this context is the judge's effort to fulfill the primary goal of law, which is justice. Justice, as the ultimate goal of law, can be realized when judges make decisions impartially and are open to considering the seriousness of the law violation committed. Thus, the judge's decision will have a positive impact on law enforcement. When considering the defendant's case in verdict 1041/Pid.Sus/2024/PN.Sby, the judge's effort to uphold justice has been achieved based on several points.

The case described in this verdict involves the defendant GS, who was charged with narcotics crimes. In the context of the principle of justice, referring to the theory of legal justice principles presented by Tamanaha (2017), this verdict can be analyzed from several perspectives. We recognize that relativity in court decisions, particularly in narcotics abuse cases, occurs quite frequently. Criminal sanctions that are inconsistent, even for the same offense, are often experienced by narcotics offenders in the judiciary, leading to various suspicions. Therefore, as judges, decisions should not only be based on juridical aspects but must also take into account non-juridical aspects to ensure a balanced judgment in a case.

It would be highly detrimental if a judge were not objective in deciding narcotics abuse cases, a phenomenon known as sentencing disparity. This inconsistency in decisions makes it easy for anyone to question the integrity of judges, especially in the context of sanctions for narcotics offenders. Thus, the principle of justice is crucial to convey to the public that the law in this country is not lenient towards the powerful and harsh towards the weak.

### **3.2 Human Rights by Law Judge Verdict**

Judges in Indonesia face numerous challenges in upholding human rights principles when adjudicating cases of drug abuse. This is especially true in a society with strong perceptions and judgments about others' behavior, particularly in drug-related cases. Firman et al said it is therefore understandable that the challenges in implementing human rights principles in judicial decisions on drug abuse cases in Indonesia are quite complex.

One notable aspect is the limited number and quality of rehabilitation facilities in Indonesia. The minimal capacity of these facilities makes it difficult for judges to decide whether drug offenders should undergo rehabilitation when they are found guilty. This situation hinders the application of human rights principles, as rehabilitative approaches for drug users become difficult to implement. Judges often resort to imposing prison sentences due to the lack of adequate rehabilitation options and the lengthy rehabilitation process.

Another frequent challenge is the social stigma that equates drug users with drug dealers. Drug users are often viewed as having the same level of guilt as dealers, rather than being seen as victims in need of support to overcome addiction. This societal perception

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<sup>23</sup> Febrianti, M., & Utami, P. (2022). Kajian Yuridis Putusan Hakim yang Berupa Pidana Penjara bagi Terdakwa Penyalahgunaan Narkotika. *Jurnal Judiciary*, 11(1).

influences judges and other law enforcement officials, leading to biased decisions that may not align with existing regulations. For example, in a drug case in Jember, an individual who should have been rehabilitated as a user was sentenced to prison like a drug dealer.

In addition, rigid legal provisions create confusion for judges in imposing penalties. Judges face a dilemma: whether to strictly follow the law by the prosecution's demands or interpret regulations to align with statutory human rights principles. The conflicting legal arguments from both sides put judges in a difficult position. The lack of alignment in drug abuse laws further complicates judges' efforts to uphold human rights when sentencing drug offenders.

In case number 1041/Pid.Sus/2024/PN.Sby, the judge sought to impose a penalty on the defendant, GS, by considering the defendant's human rights. For instance, an option was provided for an additional six-month prison sentence if the defendant failed to pay a fine of 1 billion rupiah to the state. This shows the judge's attempt to tailor the penalty according to the defendant's economic capacity.

Drug abuse is a serious offense that must be met with strict sanctions because it is a criminal classified as an extraordinary crime. As a nation based on the rule of law, Indonesia must impose penalties that create a deterrent effect on drug offenders to prevent further harm, particularly to the younger generation, who are the nation's future. Although classified as an extraordinary crime, sanctions for drug offenders must respect the inherent rights of the perpetrators, ensuring that human rights are upheld even as appropriate punishments are given in accordance with their actions. Judges must balance these considerations when sentencing.

The decision number 1041/Pid.Sus/2024/PN.Sby related to a narcotics case, the concept of human rights (HAM) is reflected in several elements of this ruling: *First*, The Right to a Fair Trial The defendant, GS, was brought to trial with the right to legal assistance from his lawyer, M. Zainal Arifin, S.H. MH. This reflects the principle of the right to a fair defense, as recognized in international human rights, where every individual has the right to be represented and accompanied by a lawyer. *Second*, The Right Not to Be Punished Without Clear Legal Basis: The court handed down the verdict based on clear regulations, namely Pasal 114, ayat (1) Undang-Undang Nomor 35 Tahun 2009 concerning Narcotics. This ensures that the defendant is not punished arbitrarily, by the principle of legality in law and human rights at Indonesia.

*Third*, Consideration of Humanitarian Rights in Sentencing.<sup>24</sup> The decision also took into account mitigating factors for the defendant, such as the defendant's honest confession, polite demeanor, and family responsibilities. This demonstrates a humanitarian aspect in sentencing, where the punishment is not merely retributive but also educational and constructive. When a judge makes a ruling against a defendant in a narcotics case, as in the case of GS, the judge will consider a sentence that does not violate the human rights inherent to the individual. This is because, in Indonesia, human rights (HAM) are protected by various

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<sup>24</sup> Widiatama, Mahmud, H., & Suparwi. (2020). Ideologi Pancasila sebagai Dasar Membangun Negara Hukum Indonesia. *Jurnal USM Law Review*, 3(2), 133. <https://doi.org/10.26623/jic.v4i2.1654>.

regulations, primarily found in Undang-Undang No. 39 Tahun 1999 on Human Rights and the Constitution of Indonesia (UUD 1945).

The concept of human rights applies to all aspects of life, including the judicial process for narcotics cases. When a judge issues a decision in a narcotics case, the application of human rights must include several key aspects such as the right to a fair trial, the right to humane treatment, and the right not to be punished in a brutal and arbitrary manner.<sup>25</sup>

In this case, the judge has ensured that the defendant received a fair and non-discriminatory trial. This includes the right to be represented by a lawyer, the right not to be convicted without valid evidence, and the right to be given the opportunity to defend oneself. In narcotics cases, this is reflected in the trial process that involves legal representation for the defendant and a court procedure that is in accordance with the applicable law.

As stated, in the human rights law of Indonesia, including Pasal 9 Undang-Undang No. 39 tahun 1999, it is mentioned that everyone has the right to be free from degrading treatment. In the context of narcotics cases, even though the defendant has committed a crime, this right must still be respected. The judge considers mitigating factors such as the defendant's behavior during the trial, the confession of guilt, and family responsibilities, all of which indicate that although the defendant is sentenced, they are still treated humanely.

In Pasal 11 Undang-Undang No. 39 Tahun 1999, it is also stated that no one may be punished without a clear legal basis.<sup>26</sup> In narcotics cases, sentencing is based on applicable laws, such as Undang-Undang No. 35 Tahun 2009 about Narcotics. The defendant can only be sentenced if proven guilty based on sufficient evidence and in accordance with the law. In the context of imposing penalties on defendants in narcotics cases, several human rights principles are applied. The Right to Fair Treatment During Detention, While the defendant is detained, they still have the right to be treated with respect and dignity. The defendant must not be tortured or treated in a degrading manner, as stated in Pasal 33 Undang-Undang No. 39 Tahun 1999 and Pasal 28G UUD 1945.

Apart from that, Triwahyuningsih (2018) said that proportional punishment is part of the implementation of human rights in Indonesia. The application of human rights in sentencing requires that the punishment given is proportional to the crime committed. In narcotics cases, judges usually consider mitigating factors such as the defendant's admission of guilt, remorse, and the family responsibilities the defendant bears. This ensures that the punishment is not only retributive but also considers the humanitarian conditions of the defendant.

Although this ruling still demonstrates a rigid approach from the judge, heavily relying on the textual provisions of Law Number 35 of 2009 on Narcotics Abuse, the decision to consider the defendant's economic capacity is a commendable effort by the judge to apply

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<sup>25</sup> Faiz, P. M. (2017). Teori Keadilan John Rawls (John Rawls' Theory of Justice). *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2847573>.

<sup>26</sup> Triwahyuningsih, S. (2018). Perlindungan dan Penegakan Hak Asasi Manusia di Indonesia. *Jurnal Hukum Legal Standing*, 2(2). <https://doi.org/10.24269/lis.v2i2.1242>.

human rights principles. This provides an option for penalties that are proportionate to the crime committed by the defendant.

In the article Marzuki (2021) said about the Indonesian constitution, This right is recognized in Indonesian human rights law and 1945. Defendants who have served part of their sentence and demonstrated good behavior during detention can apply for a pardon, remission, or sentence reduction. This shows that human rights are still applied even after the sentence is imposed. Therefore, in GS's case, we can conclude that human rights have been applied to the best extent possible. Although narcotics abuse in Indonesia is a serious offense, the law ensures that the defendant receives what is rightfully theirs. Even though the crime committed is serious, Indonesian law still treats the defendant with respect, processes them fairly, and imposes proportional sanctions according to the principles of justice and humanity.

#### **4. CONCLUSION**

Based on the analysis in this study, it can be concluded that the judge made efforts to uphold the values of justice and human rights for Mr. GS, the defendant in a narcotics abuse case in Surabaya. These efforts can be observed through the judicial process conducted by the judge, which emphasizes the principles of procedural, distributive, and corrective justice. Additionally, the judge's decision took into account the human rights principles by considering the defendant's economic capacity as part of an effort to apply human rights principles. This approach deserves appreciation, as it provides an option for sanctions that are proportional to the offense committed by the defendant.

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