



Analysis of Determination of Sanctions against Narcotics Abusers Who Experience Mental Disorders (Study of Denpasar District Court Decisions)

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Abstract: Research findings show that the proportion of drug users who suffer from mental disorders is still very high compared to that of drug users who do not suffer from mental disorders. The reason is that the use of drugs can cause addiction, which means that users will continue to do so that which affects the central nervous system and results in mental disorders in drug users, for example in two cases in the Denpasar District Court with cases of narcotics abuse where the defendant had bipolar disorder. This study concludes that the judge's consideration includes the reasons for bipolar mental disorder as mitigating factors. In the case of abuse of narcotics, the Defendants BJJ and YAR, even though they were bipolar, still did not abolish the sentence against the two Defendants in these two different cases.

Keywords: Narcotics, Criminal Sanctions, Bipolar Mental Disorder

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1. Introduction

The rise of criminal acts related to Narcotics is very wary of the public. Even though there are regulations governing the distribution of narcotics, the development of related crime cases has experienced rapid development from year to year. It can be concluded that narcotics crime is widespread throughout Indonesia and is not limited to a particular area. We are very concerned that drugs have directly harmed our children's future because we have seen the latest developments in the distribution and use of dangerous drugs. Our children and grandchildren may continue to face the dangers of drug addiction if nothing is done to prevent it. However, perhaps most people are unaware of this and think that drugs are not their problem as long as their children or their families are not victims. When they realized that their child had been victimized, they were shocked and filled with grief.¹

Philosophically and historically, the development of narcotics circulation regulated in the *Verdovende Middelen Ordonnatie*, *Staatsblad* Number 1927, marked the beginning of regulating narcotics and psychotropics in Indonesia. Number 278 jo, 536. This law is more commonly called the regulation of narcotics in society. Promulgated on January 1, 1928, containing instructions on how to package opium in the *Opium Verpakkings Bepalingin*, *Staatblad* 1927 Number 514 and the additional *State Gazette* dated February 3, 1928, and July 22, 1928. The provision of health services for treating addicts is not regulated in laws and regulations, which only regulate the trade and use of narcotics. Abuse of narcotics and psychotropics was increasingly widespread in society in the early 1970s, as did the variety of narcotics available for purchase.

Because of this, people are increasingly aware of the urgent need to pass laws covering all forms of drug abuse. At least the new law can make people afraid to do things that are considered narcotics crimes. According to Soedjono Dirdjosisworo, the distinction between those who obtain and distribute illegally and those with a tendency towards addiction to narcotics that require therapy is not strictly regulated. This also reflects that the V.M.O. no longer fulfills the requirements of the narcotics law and is not following the current administration of criminal justice in terms of criminal provisions and procedures.²

The term "narcotics and illegal drugs" or "dangerous substances" is abbreviated as "narcotics." The Ministry of Health of the Republic of Indonesia also introduced the term "narcotics," which refers to narcotics, psychotropics, and addictive substances. The word "narkoba" comes from the English word "narcotics." The definition of narcotics, according to Smith Kline and the French clinical staff, is: "Narcotics are drugs that cause deafness or drowsiness because of their effect on the central nervous system. This definition includes opium, opium derivatives (morphine, codeine,

¹ O.C.Kaligis & Associates, *Narkoba & Peradilannya Din Indonesia* (Bandung: PT. Alumni, 2011).

² Hanafi, "Analisis Terkait Sanksi Pidana bagi Pengguna dan Pengedar Narkoba dalam Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika The Analysis of Criminal Sanctions for Users and Drug Traffickers in Indonesian Regulation Number 35 Year 2009 about Narcotics," *Voice Justisia* 1, no. 2 (2017): 17-44.

heroin), and synthetic opiates (meperidine, methadone). The definition of narcotics according to Article 1, paragraph 1 of the Narcotics Law. 35/2009 are:

"Drugs are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause loss or change of consciousness, loss of taste, pain relief by elimination, and addiction, which are classified as attached in the Law. This". Drug regulation certainly has a purpose, and that is the goal of Law No. 35 of 2009. This is stated in Law No. 4 of 2009 as follows:

The objectives of the Narcotics Law are:

"Guarantee the availability of narcotics for the benefit of health services and the development of science and technology; b) protect, protect and save the Indonesian nation from drug dependence; c) Eradicating the illicit traffic of Narcotics and Narcotics Precursors; and d) administering medical and social rehabilitation for addicts and drug addicts. Drug abuse can damage the survival of society, nation, and state. Drug users in Law Number Article 35 of 2009 include those subject to the provisions of Articles 1, 13, and Article 1, Article 15.

Those who use or abuse narcotics and are physically and psychologically dependent on narcotics are considered drug addicts. Abusers are those who use drugs illegally or without permission. There are two (two) categories of elements that influence the occurrence of drug crimes, namely internal factors and external factors. Drug offenders possess internal factors, including a shaky soul and a feeling of hopelessness, and they need a sense of calm, security, and comfort to get rid of their anxiety and hopelessness. Association, influence from the environment, and pressure or pressure from certain parties are external factors that come from outside the perpetrators of narcotics crimes.³

Indonesia is a country founded on law, not power. A set of laws and regulations must regulate everything in Indonesia because of the rule of law principle. Achieving public order toward a prosperous society is the goal. Individual rights and responsibilities as citizens are regulated by law. Duties refer to everything they must do daily and reflect their citizenship status.

The primary responsibility of citizens is to comply with current laws and regulations and not to violate any restrictions imposed by the government. Therefore, all Indonesian citizens must comply with the recommended prohibitions and regulations. Law Number 35 of 2009 concerning Drugs is among the most important laws and regulations. This law is a renewal of Law Number 22 of 1997, which no

³ wijayanti Puspita Dewi, "Penjatuhan Pidana Penjara Atas Tindak Pidana Narkotika Oleh Hakim Di Bawah Ketentuan Minimum Ditinjau Dari Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika," *Jurnal Hukum Magnum Opus II* (2019): 55-73.

longer reflects changes in circumstances and conditions needed to combat and eradicate this crime.⁴

According to World Health Organization (WHO) data, psychiatric problems rank second after heart disease and can cause mental disorders. However, it turns out that public awareness of the importance of early examination for people with psychiatric disorders is not following this. Research findings show that the proportion of drug users who suffer from mental disorders is still very high compared to that of drug users who do not suffer from mental disorders. This is because the use of drugs can cause addiction, which means that users will continue to do so, affecting the central nervous system and causing mental disorders in drug users.⁵

An example of a case of abuse of narcotics with mental disorders is in the decision of the Denpasar District Court number 10/PID.Sus/2018/PN Dps, a foreign national named Baker Joshua James was convicted after being proven guilty of abuse of class 1 narcotics in another case, decision number 1119/Pid.Sus/2021/PN Dps, Defendant Yarri Al Rama was found guilty of abuse of class 1 narcotics.

In the facts of the trial, it was revealed that the two defendants in different cases had bipolar psychiatric disorders. However, there is a difference in the judge's considerations in determining mitigating circumstances in the two cases; wherein the first case, aspects of mental disorders were included in alleviating the criminal burden, whereas in the second example, even though a diagnosis of mental disorder was diagnosed, this was not considered to be able to reduce the sentence Penalty.

2. Methods

The research method used in this study is a normative research method with a statutory approach and a case approach. Legal material collection techniques with library research and analysis techniques using descriptive analysis.

3. Legal Analysis of Narcotics Abusers Who Have Mental Disorders Study of Denpasar District Court Decision No. 10/PID.Sus/2018/PN Dps

1. Analysis in Criminal Theory

Theory of Revenge (Absolute/ Retributive/Vergeldingstheorieen Theory) The retaliation theory justifies punishment because someone has committed a crime. Against the perpetrators of criminal acts, absolute retaliation must be held in the form of punishment. There is no question of the consequences of sentencing for convicts.

⁴ Irwan Jasa Tarigan, *Narkotika Dan Penanggulangannya*. (Yogyakarta: CV Budi Utama, 2017).

⁵ Iceu Amira dkk., "Penyuluhan tentang Napza dan Dampaknya terhadap Gangguan Jiwa pada Siswa SMK Qurrotu A'yun di Samarang Kabupaten Garut," *Jurnal Kreativitas Pengabdian Kepada Masyarakat (Pkm)* 5, no. 11 (2022): 3954–64, <https://doi.org/10.33024/jkpm.v5i11.7561>.

According to this theory, the basis for imposing a sentence is seen from the actions or mistakes of the criminal. Meanwhile, in theory, the purpose of justifying sentencing is based on or depends on the objective of sentencing, namely to protect society or prevent crime. The difference between several theories, including the goal theory, lies in how to achieve the goal and assess punishment use. The threat of punishment and the imposition of punishment are meant to correct the criminal.

In contrast to the theory of retaliation, the objective theory questions the consequences of punishment for criminals or the interests of society. Also, consider prevention for the future. Furthermore, the third is the combined theory (*Virenigingstheorieën*). This theory covers the relationship between fundamental theory and relative theory combined into one. According to this theory, the legal basis lies in the crime, namely retaliation or torture. In addition, the basis is the goal rather than punishment. According to this theory, the basis for imposing a sentence is seen from the elements of retaliation and correcting the criminal, meaning that the basis for sentencing lies in the crime and the purpose of the crime itself.⁶

Error in the broadest sense (*schuld in ruime zin*) knows error as the the basis for determining criminal liability according to Pompe, Vos, and Jonkers of three elements, namely:

1. *Teorekeningsvatbaarheid* (ability to be responsible)
2. Error in the narrow sense (*schuld in enge zin*), mistake (negligence, *Culpa*), or intentionally (*opzet, dolus*).
3. The act can be held accountable to the maker (*theekembaarheid theory*)

These elements show that culpability is not directly related to fault in the narrow sense or fault as an element of the criminal offense as an element of the criminal offense. Rather, culpability is an element of fault in the broad sense or fault as an element of criminal responsibility criminal responsibility. Criminal responsibility has the following elements ability to be responsible, fault in the narrow sense (forms of guilt) and actions of fault) and conduct. These elements indicate a view that monistic theory, because in addition to the ability to be held accountable, there are also elements of making in criminal liability there are also elements of making⁷.

In the decision handed down to the BJJ Defendant at the Denpasar District Court, decision no. 10/PID.Sus/2018/PN Dps shows that the punishment imposed, according to the author, follows the theory of punishment, especially in the combined theory, where the punishment obtained by the Defendant includes criminal aspects

⁶ Hikmawati Puteri, "Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif," *Negara Hukum* 7, no. 1 (2016): 71–88.

⁷ Roby Reza, "Analisis Pertanggungjawaban Hukum Bagi Pelaku Tindak Pidana Narkotika Yang Mengalami Gangguan Jiwa (Studi Terhadap Putusan Nomor 612/Pid. Sus/2019/Pn. Dps)," *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 2, no. 1 (2022).

such as retaliation and also fulfills the purpose of the crime as a deterrent effect which raises awareness of the mistake.⁸

This can be seen in the judge's decision that the BJJ Defendant was sentenced to 10 (ten) months in prison and had to undergo rehabilitation, which was counted as a period of serving his sentence. Imprisonment for 10 (ten) months is a form of retaliation for the criminal act of narcotics abuse committed by Defendant because the act violated the laws and regulations. Meanwhile, the rehabilitation period undertaken by the Defendant is a form of criminal aim to improve the perpetrators. In contrast, the rehabilitation period aims to break the addiction to illegal drugs the perpetrators consume.

2. Analysis in Penology Theory

The penologist has a strategic role in criminal law because the penologist determines the success or failure of giving sanctions to the perpetrators of crimes, determines the appropriate sanctions for the perpetrators of crimes, and the implementation of the punishment.⁹

The criminal function, which at the beginning of its journey was "retaliation," turned into a tool to protect individuals from disturbances by other individuals in society as well as protection for society itself from disturbances by crime and criminals. In subsequent developments, it is more directed to the function of (criminal) punishment, especially imprisonment, as a vehicle for coaching ten convicts before they return to society. The position of penology in legal science is:

1. The penology of its position in the science of law is called normative science as dogmatic law (law in the book). The law is studied as the rule of law in statutory regulations, books of laws, jurisprudence, and international conventions.
2. Empirical legal science, namely law in reality in society (law in action), legal reality science (legal sociology, legal anthropology, legal psychology, criminology, penology, victimology).¹⁰

Penology is defined as a science that studies the challenges of punishment. Punishment arises because of a crime, and society will respond to the crime (as a reaction) by bringing up norms/regulations, including legal norms. According to the author, judging from the penology theory of the BJJ Defendant's case, the criminal sanctions imposed were a form of punishment as a reaction to the actions committed. Meanwhile, it is related to the theory in penology. In that case, the criminal sanctions imposed on the BJJ Defendant are related to the theory of retribution (retaliation) and the theory of rehabilitation. The prison sentence imposed on the defendant is a form of the theory of retribution where the act of narcotics abuse committed by the

⁸ Baharuddin Badaru, "Analisis Sanksi Pidana Terhadap Pelaku Tindak Pidana Narkotika," *Pleno Jure* 9, no. 1 (2020): 58-71.

⁹ Sahat Maruli T. Situmeang, *Buku Diktat Mata Kuliah Penologi Fakultas Hukum Universitas Komputer Indonesia*, 2019.

¹⁰ Fajar Ari Sudewo, "Penologi dan Teori Pemidanaan" (Tegal, 2022), Hal. 9-10.

defendant is rewarded with a prison sentence. Hence, the sanctions here aim to satisfy the demands of justice in the theory of rehabilitation, which emphasizes that punishment as a tool to transform the perpetrator into a law-abiding and productive society is fulfilled in the judge's decision by imposing prison sentences and rehabilitating the accused.¹¹

4. Legal Analysis of Narcotics Abusers Who Have Mental Disorders Study of Denpasar District Court Decision No. 1119/Pid.Sus/2021/PN Dps

1. Analysis in Criminal Theory

The imposition of punishment or punishment is divided into three theories, namely the first Theory of Retribution or Theory of Retaliation, according to Muladi. The fundamental theory views punishment as retaliation for a mistake committed so that it is oriented to the act and lies in the crime itself. This theory puts forward that sanctions in criminal law are imposed solely because a person has committed a crime which is an absolute consequence that must exist as a retaliation for the person who committed the crime so that the sanction aims to satisfy the demands of justice.¹²

The second is objective theory. The theory of objectives gives the meaning of punishment as a means to uphold legal norms in society. This theory is different from the fundamental theory. The premise that a crime can be punished means that criminal punishment has a specific purpose; for example, improving mental attitudes or making perpetrators harmless, a process of fostering mental attitudes is needed. While the third theory is a combined theory, this combined school seeks to satisfy all adherents of the theory of retaliation and goals. For criminal acts, the community's desire to take revenge is responded to by being sentenced to imprisonment for criminals/convicts. However, the theory of the objective is followed, namely that criminals/convicts are given coaching so that after leaving prison, they will not commit crimes again.¹³

In the case of abuse of narcotics who experienced mental disorders by the Defendant YAR in the Denpasar District Court decision No. 1119/Pid.Sus/2021/PN Dps, The author thinks that the sentence imposed on Defendant YAR in the theory of sentencing

¹¹ Fachrurrozy Akmal, "PENOLOGI PENGAYOMAN," *Khatulistiwa Law Review* 1, no. 1 (2020): 39–60.

¹² Izza Musthofiyah Ulfayani, "Analisis hukum Pidana Islam terhadap pelaku tindak pidana narkoba yang dinyatakan gangguan jiwa (gila) oleh Pengadilan: studi Putusan PN Kisaran No. 575/Pid. B/2013/Pn. Kis" (UIN Sunan Ampel Surabaya, 2017).

¹³ AR Sitorus, "Eksistensi Sanksi Pidana Adat Dalam Penyelesaian Perkara Pidana," *E-Journal UAJY*, 2019, Hlm. 17-19.

is related to the theory of retaliation, where the sentence received by Defendant is imprisonment for four years.¹⁴

This prison sentence was imposed as retaliation for the actions of the Defendant who had committed a crime which in this case was abusing narcotics. According to the author, from the decision handed down by the judge in this case, it can be seen that the primary consideration is the aspect of legal certainty. Relief is only limited to something generally given to the Defendant. The things that are aggravating are the Defendant's actions not supporting the Government's program in the context of eradicating Narcotics abuse, while the mitigating things are that the Defendant is polite and has never been punished. Bipolar mental disorder suffered by the Defendant, according to the assessment of the Bangli Hospital, which was also included in the Defendant's defense, was not considered as one of the reasons for mitigating the Defendant's sentence.

2. Analysis of Penological Law Theory

From a penological perspective, the legal discovery method is obtained based on an approach or idea from progressive law, which is part of the process of seeking truth that never stops and creates substantive justice. Progressive law, which can be viewed as a concept that seeks identity, departs from the empirical reality of the workings of law in society in the form of dissatisfaction with and concern for the performance and quality of law enforcement in Indonesia.¹⁵

The judge's decision from the perspective of penology cannot be separated from the scope of penology, namely the type of crime, the purpose of sentencing, the effectiveness of sentencing, and the impact of sentencing. The criminal judge's decision in determining the type of crime and the objective of substantive justice through a progressive legal approach, law enforcers, investigators, public prosecutors, and courts can apply material lawlessness in law enforcement. Law enforcers, especially judges, must think creatively in making legal discoveries. Apart from the rules that have been enacted, there are still developing rules that are not legislated that continue to live in society, where even those rules that are not enacted are felt to be more just. Many of the regulations enacted needed to be more successful. Those rules will not be supported if they conflict with those still adhered to in society, even if they are not enacted.¹⁶

In the case in the decision of the Denpasar District Court No. 1119/Pid.Sus/2021/PN Dps, Defendant YAR was proven legally and convincingly to have committed the crime of drug abuse. In the decision by the Denpasar District Court against Defendant

¹⁴ Suriani Suriani, Dany Try Hutama Hutabarat, dan Irma Sari, "Pertanggung Jawaban Pidana Terhadap Pelaku Tindak Pidana Narkotika Dengan Gangguan Jiwa (Study Pengadilan Negeri Kisanan)," *Citra Justicia: Majalah Hukum dan Dinamika Masyarakat* 23, no. 2 (2022): 54–63.

¹⁵ Ferdy Rizky Adilya, "Putusan Hakim Pidana Yang Berkeadilan Substantif Melalui Pendekatan Hukum Progresif Dalam Perspektif Penologi," *Jurnal Aktualita* 1, no. 2 (2018): 482.

¹⁶ *Ibid*

YAR, it was stated that Defendant was sentenced to 4 years in prison and a fine of 800 million rupiah. In the decision handed down to the Defendant, there was no order for the Defendant to undergo a rehabilitation period that should be given to convicts in narcotics cases. When viewed from the theory of penology, according to the writer, the Denpasar Court judge's decision against Defendant YAR included the scope of the penological study where there was a determination of the type of crime, the purpose of sentencing, the effectiveness of sentencing and the impact of sentencing.¹⁷

In this case, the first type of crime is, of course, the crime of narcotics abuse committed by Defendant YAR, who is proven to have class I narcotics, namely methamphetamine weighing 0.14 (zero point fourteen) grams. The second is from the aspect of sentencing objectives, according to the author, following one of the sentencing theories, namely the fundamental theory or the theory of retaliation. In determining punishment, the law ignores the aspects of justice and expediency. The legal certainty in question is a product of law enforcement based on legally relevant trial facts, which can be seen that Defendant YAR has indeed violated Article 112 paragraph 1 of Law No. 35 of 2009 concerning narcotics.¹⁸

The third is the effectiveness of sentencing. The imprisonment imposed by the Judge against Defendant YAR, in the author's point of view, can certainly be effective or not because the effectiveness of punishment can only be seen after the Defendant has finished serving his sentence when his sentence has expired and returns to society. The Defendant does not repeat the same crime or committing other unlawful acts, so long as the punishment imposed is effective for the Defendant.

The last is the impact of sentencing. The impact of sentencing is closely related to the effectiveness of sentencing because the impact arising from sentencing can determine whether the punishment is effective or not. As explained above, if the impact caused to the Defendant by his punishment is a deterrent effect so that he does not repeat the same crime or commit other crimes, then the punishment is effective. Vice versa, if the punishment cannot cause a deterrent effect, then the resulting criminal impact is only "deprivation" rights.¹⁹

5. Conclusion

Two decisions related to narcotics abuse cases, namely the Denpasar District Court Decision number 10/PID.Sus/2018/PN Dps, a foreign citizen named Baker Joshua James was convicted after being proven guilty of misusing class 1 narcotics, a type of cannabis, while in other cases, the verdict number 1119/Pid.Sus/2021/PN Dps,

¹⁷ Marli Candra dan M. Jazil Rifqi, "Sanksi Kebiri dalam Perspektif Penologi," *Al-Jinayah: Jurnal Hukum Pidana Islam* 7, no. 2 (2021): 436-62.

¹⁸ MARCHEL ARIOS MATTHEW, "ANALISIS PEMBINAAN NARAPIDANA PENGIDAP GANGGUAN JIWA DALAM PELAKSANAAN PROGRAM PEMBINAAN WARGA BINAAN PEMASYARAKATAN (Studi Kasus di Lembaga Pemasyarakatan Kelas IA Bandar Lampung)," 2023.

¹⁹ Muhammad Al Haddad Athoillah, "Analisis hukum pidana islam dan penologi terhadap sanksi tindak pidana Illegal logging: studi putusan pengadilan negeri Bojonegoro Nomor 250/Pid. B/LH/2019/PN Bjn" (UIN Sunan Ampel Surabaya, 2022).

Defendant Yarri Al Rama was found guilty of misusing class 1 narcotics, the type of methamphetamine.

In the author's analysis, the decision handed down to the BJJ defendant in the Denpasar District Court decision no. 10/PID.Sus/2018/PN Dps shows that the punishment imposed, according to the author, follows the theory of punishment, especially in the combined theory, where the punishment obtained by the Defendant includes criminal aspects such as retaliation and also fulfills the purpose of the crime as a deterrent effect which raises awareness of the mistake. This can be seen in the judge's decision that the BJJ Defendant was sentenced to 10 (ten) months in prison and had to undergo rehabilitation, which was counted as a period of serving his sentence. Imprisonment for 10 (ten) months is a form of retaliation for the criminal act of narcotics abuse committed by Defendant because the act violated the laws and regulations.

Meanwhile, in the author's analysis of the decision of Defendant YAR, the sentence imposed on Defendant YAR in the theory of punishment is related to the theory of retaliation, where the sentence received by Defendant is imprisonment for four years. This prison sentence was imposed as retaliation for the actions of the Defendant who had committed a crime which in this case was abusing narcotics.

According to the author, from the decision handed down by the judge in this case, it can be seen that the primary consideration is the aspect of legal certainty. Relief is only limited to something that is generally given to the Defendant, such as the things that are aggravating are the Defendant's actions not supporting the Government's program in the context of eradicating Narcotics abuse, while the mitigating things are that the Defendant is polite and has never been punished. Bipolar mental disorder suffered by the Defendant, according to the assessment of the Bangli Hospital, which was also included in the Defendant's defense, was not considered as one of the reasons for mitigating the Defendant's sentence. From the penological theory perspective, the Denpasar Court judge's decision against Defendant YAR has fulfilled the scope of the penological study, namely determining the type of crime, the purpose of sentencing, the effectiveness of sentencing, and the impact of sentencing. The type of crime, in this case, is, of course, the crime of narcotics abuse committed by Defendant YAR, who is proven to have class I narcotics, namely methamphetamine.

The purpose of sentencing in the case of Defendant YAR is also following one of the sentencing theories, namely the fundamental theory or the theory of retaliation. This is a product of law enforcement based on the facts of the trial that Defendant YAR has violated Article 112 paragraph 1 of Law No. 35 of 2009 concerning narcotics. Whereas in terms of the effectiveness of sentencing, the imprisonment imposed by the Judge against Defendant YAR can undoubtedly be effective or not because the effectiveness of the sentence can only be seen after the Defendant has finished serving his sentence when his sentence has expired and returns to society. The Defendant does not repeat the same crime or commit other unlawful acts, so long as the punishment imposed is effective for the Defendant. Moreover, the impact of sentencing is closely related to the effectiveness of sentencing because the impact arising from sentencing can

determine whether the punishment is effective or not. If the impact caused to the Defendant by his sentence is a deterrent effect so that he does not repeat the same crime or commit another crime, then the sentence is adequate.

The most striking difference apart from the sentence period between the two defendants above is how the judge's consideration included the reasons for bipolar mental disorder as mitigating matters. In the case of abuse of narcotics, the Defendants BJJ and YAR, even though they were bipolar, still did not abolish the sentence against the two Defendants in these two different cases. The judge thought that the bipolar mental disorder experienced did not affect awareness in committing a crime, so it was decided that each Defendant in the different decisions was entirely responsible for his actions. However, in the BJJ, Defendant's reason for this bipolar mental disorder was included in mitigating reasons. In contrast, in the case of Defendant YAR, the condition of the bipolar mental disorder he was experiencing was not used as an excuse to lighten the Defendant's sentence.

References

- Akmal, Fachrurrozy. "PENOLOGI PENGAYOMAN." *Khatulistiwa Law Review* 1, no. 1 (2020): 39–60.
- Amira, Iceu, Hendrawati Hendrawati, Indra Maulana, dan Sukma Senjaya. "Penyuluhan tentang Napza dan Dampaknya terhadap Gangguan Jiwa pada Siswa SMK Qurrotu A'yun di Samarang Kabupaten Garut." *Jurnal Kreativitas Pengabdian Kepada Masyarakat (Pkm)* 5, no. 11 (2022): 3954–64. <https://doi.org/10.33024/jkpm.v5i11.7561>.
- AR Sitorus. "Eksistensi Sanksi Pidana Adat Dalam Penyelesaian Perkara Pidana." *E-Journal UAJY*, 2019, Hlm. 17-19.
- Athoillah, Muhammad Al Haddad. "Analisis hukum pidana islam dan penologi terhadap sanksi tindak pidana Illegal logging: studi putusan pengadilan negeri Bojonegoro Nomor 250/Pid. B/LH/2019/PN Bjn." UIN Sunan Ampel Surabaya, 2022.
- Badaru, Baharuddin. "Analisis Sanksi Pidana Terhadap Pelaku Tindak Pidana Narkotika." *Pleno Jure* 9, no. 1 (2020): 58–71.
- Candra, Marli, dan M. Jazil Rifqi. "Sanksi Kebiri dalam Perspektif Penologi." *Al-Jinayah: Jurnal Hukum Pidana Islam* 7, no. 2 (2021): 436–62.
- Fajar Ari Sudewo. "Penologi dan Teori Pidana," Hal. 9-10. Tegal, 2022.
- Ferdy Rizky Adilya. "Putusan Hakim Pidana Yang Berkeadilan Substantif Melalui Pendekatan Hukum Progresif Dalam Perspektif Penologi." *Jurnal Aktualita* 1, no. 2 (2018): 482.
- Hanafi. "Analisis Terkait Sanksi Pidana bagi Pengguna dan Pengedar Narkotika dalam Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika The Analysis of Criminal Sanctions for Users and Drug Traffickers in Indonesian Regulation Number 35 Year 2009 about Narcotics." *Voice Justisia* 1, no. 2 (2017): 17–44.
- Hikmawati Puteri. "Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif." *Negara Hukum* 7, no. 1 (2016): 71–88.

- Matthew, Marchel Arios. "Analisis Pembinaan Narapidana Pengidap Gangguan Jiwa Dalam Pelaksanaan Program Pembinaan Warga Binaan Pemasyarakatan (Studi Kasus di Lembaga Pemasyarakatan Kelas IA Bandar Lampung)," 2023.
- O.C.Kaligis & Associates. *Narkoba & Peradilannya Din Indonesia*. Bandung: PT. Alumni, 2011.
- Reza, Roby. "Analisis Pertanggungjawaban Hukum Bagi Pelaku Tindak Pidana Narkotika Yang Mengalami Gangguan Jiwa (Studi Terhadap Putusan Nomor 612/Pid. Sus/2019/Pn. Dps)." *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 2, no. 1 (2022).
- Sahat Maruli T. Situmeang. *Buku Diktat Mata Kuliah Penologi Fakultas Hukum Universitas Komputer Indonesia*, 2019.
- Suriani, Suriani, Dany Try Hutama Hutabarat, dan Irma Sari. "Pertanggung Jawaban Pidana Terhadap Pelaku Tindak Pidana Narkotika Dengan Gangguan Jiwa (Study Pengadilan Negeri Kisaran)." *Citra Justicia: Majalah Hukum dan Dinamika Masyarakat* 23, no. 2 (2022): 54–63.
- Tarigan, Irwan Jasa. *Narkotika Dan Penanggulangannya*. Yogyakarta: CV Budi Utama, 2017.
- Ulfayani, Izza Musthofiyah. "Analisis hukum Pidana Islam terhadap pelaku tindak pidana narkotika yang dinyatakan gangguan jiwa (gila) oleh Pengadilan: studi Putusan PN Kisaran No. 575/Pid. B/2013/Pn. Kis." UIN Sunan Ampel Surabaya, 2017.
- Wijayanti Puspita Dewi. "Penjatuhan Pidana Penjara Atas Tindak Pidana Narkotika Oleh Hakim Di Bawah Ketentuan Minimum Ditinjau Dari Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika." *Jurnal Hukum Magnum Opus II* (2019): 55–73.