



The effect of integrated complexity in judges' decision making on sentencing for drug abusers: between rehabilitation and punishment

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ABSTRACT

Background: The sentencing of drug offenders, particularly drug abusers, remains a complex issue within the criminal justice system. Despite the potential for rehabilitation, court decisions often result in imprisonment. This research examines the factors influencing judges' sentencing decisions in drug abuse cases, particularly how these decisions align with principles of justice and proportionality. **Methods:** This study employs a qualitative approach, analyzing case verdicts and interviewing legal practitioners to explore the rationale behind judicial decisions. Key factors, such as prosecutor demands, judge composition, and the involvement of expert witnesses (e.g., doctors), were assessed to understand their impact on sentencing outcomes. **Findings:** The study found that the primary factors influencing judicial decisions are prosecutor demands, judge composition, and the presence of a doctor as a witness. The presence of a medical expert increases the likelihood of a rehabilitation sentence, as all cases involving a doctor witness resulted in rehabilitation orders. Prosecutors, however, tend to apply article 112 of the criminal code, typically used for drug couriers and distributors, which often leads to imprisonment for abusers. Additionally, the study revealed that judges rarely employ an integrated complexity approach, which would involve evaluating additional evidence and broader considerations beyond the prosecutor's charges. Consequently, sentencing outcomes often lack proportionality, leading to adverse effects for drug abusers, such as exposure to violence and health risks in prison. **Conclusion:** The findings indicate a need for judges to adopt a more integrated and proportional approach in sentencing decisions for drug abusers. Instead of retributive punishment, rehabilitation could serve as a more just and effective alternative, better aligned with the nature of drug abuse as a victimless crime. **Novelty/Originality of this article:** This research offers novel insights into judicial decision-making by highlighting the limitations of current sentencing practices for drug abusers and advocating for a shift toward rehabilitation. The study underscores the importance of integrated complexity in judicial reasoning to enhance fairness and address the unique nature of drug abuse cases within the justice system.

KEYWORDS: drug abuse sentencing; imprisonment; integrated complexity; rehabilitation.

1. Introduction

The state of government policy on drugs in Indonesia exists only on paper. In practice, imprisonment is still the choice made by law enforcement officials in handling drug cases. Based on a study conducted by the Institute for Criminal Justice Reform (ICJR) in 2016 on the review of rehabilitation of drug users in judicial practice using SEMA No. 4/2010, it was found that the majority of public prosecutors (JPU) imposed criminal penalties. ICJR said that judges, prosecutors and investigators do not have the same understanding to demand

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that drug abusers be rehabilitated as stipulated in SEMA No. 4/2010. Not only that, judges and prosecutors still see the strong perspective of imprisonment for drug users. People who abuse drugs are one of the most marginalized populations, they are often considered criminals and many communities are not concerned with their problems, such as health issues. People who use drugs have rights and are regulated in various international instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1989) (Ventura, 2012). Therefore, the problem of drug use should not be seen as a legal issue alone. In 2009, the Political Declaration and Plan of Action was published, which provides the basis for demand reduction and supply reduction measures and is considered important because it means that drug abusers have the right to be protected by health care (Berridge & Bourne, 2005).

SEMA No. 4/2010 regulates the threshold of drug possession. Possession of narcotics within a certain limit can prevent a person from being sentenced to imprisonment but must get rehabilitation, for example, evidence of methamphetamine is less than 1 gram and for marijuana the limit is 5 grams, should get treatment (SEMA No. 4 Year 2010). However, the conditions of protection based on the law in reality are not in line, in the case of IS (37) the prosecutor charged with articles 111 or 112 of Law No. 35 of 2009 because he was proven to be carrying 0.4 grams of methamphetamine, even though based on the facts in court IS was proven to have violated article 127 of Law No. 35 of 2009, which this article was not charged (Sinaga, 2016). The same case was experienced by MS (31) who was prosecuted for 4 years for violating Article 112 paragraph 1 of Law No. 35 of 2009 with evidence weighing 0.0484 grams (Saputra, 2014). Strengthened in several cases such as the case of Sapril, a resident of Makassar who was sentenced to one year in prison because he was positively proven to use shabu narcotics and the prosecutor also confirmed that the defendant was not a dealer but a user, but was sentenced to one year in prison (Rudhy, 2011). The above cases show the tendency for people who use drugs below the user threshold to be punished. The judge's decision does not seem to have considered the amount and weight of drugs as stipulated in the SEMA.

The judge's decision must consider 3 factors, namely first, legal factors, which consider the criminal offense and the seriousness of the crime committed by the perpetrator, as well as the criminal record of the perpetrator. Second, factors outside of legal factors (extra-legal factors) include race, ethnicity, occupation, the offender's environment and others. Third, factors associated with the decision-makers, namely the personal characteristics of decision and policy makers, such as personality, education and environment (Walker, 1999). A number of studies have shown that judicial decisions play an important role in the lives of suspected drug abusers in terms of providing a second chance at life, health, preventing deaths and overdoses in prison and preventing mental disorders. In terms of providing a second chance at life, judges' decisions are important in avoiding stigmatization of people who use drugs. Judges' decisions not to treat people who use drugs harm them. Drug abusers should receive treatment but in fact many of them are convicted and potentially engage in worse behavior when they are in prison. In terms of health, people who use drugs in prison also have the potential to contract HIV due to needle-sharing (Fazel, 2011) and other diseases such as hepatitis, substance use disorders, mental illness and lack of health care (Kinner & Rich, 2018). The health rights they are entitled to should be taken into consideration by judges in determining decisions for victims of drug abuse.

Departing from previous research by Kinner & Rich (2018) regarding the conditions of drug abusers in prison who potentially do not get treatment, judges have an important role in determining the lives of lawbreakers because the judge's decision to rehabilitate determines the life of the next person. In drug cases judges have the opportunity to send offenders to rehabilitation institutions, but more users are sentenced to criminal penalties. Meanwhile, the punishment of drug offenders has negative impacts such as mental disorders, infectious diseases and suicide (Fazel & Baillargeon, 2011). Thus, judges' decisions play an important role in the lives of drug abusers, giving them a second chance

and avoiding the negative impacts of punishment in the form of deteriorating health, overdose deaths in prison, mental illness, etc. In criminology, drug users are categorized as crime without victims, namely crimes that do not cause victims (Schur, 1965) so that drug users are preferred to receive rehabilitation. Therefore, this study emphasizes the importance of analyzing judges' decisions in drug cases, to find out the factors that determine judges' decisions so that punishment of drug users can be avoided. Thus, decision-making in drug cases will not only reduce the crime rate but can contribute to improving the quality of public health, especially for drug abusers.

2. Methods

This TKA study uses secondary data from judges' decision documents from the South Jakarta District Court. Although this paper is a TKA, the data processing uses the content analysis method commonly used in theses. Content analysis according to Holsti (1969) is a research technique that aims to draw conclusions by identifying specific characteristics in a text systematically and objectively. In this research, content analysis is used to determine the level of cognition of judges in order to find out the judges' considerations. The procedure of this research is by coding first, then processing it using SPSS and presenting it in the form of diagrams and tables using Excel.

The research approach is the procedure and design used by researchers to conduct research (Creswell, 2014). The research approach used in this study is a quantitative approach. The quantitative approach according to Creswell (2014) aims to test the relationship between variables with objective theory. In Criminology research, the quantitative approach is used to measure patterns and determine responses to criminal behavior and crime (Piquero & Weisburd, 2010). The method used in this study aims to explain the factors of judges' decisions in the South Jakarta District Court in 2015 - 2018.

The data source in this study comes from court decision data obtained through the mahkamahagung.go.id website. The secondary data in this study were analyzed using SPSS to see the relationship between variables. The analysis used in this research is descriptive method and cross tabulation analysis. The descriptive method aims to present raw data into a more concise and easy to understand form (Istijanto, 2014). The descriptive method in this study was carried out on the results of the analysis of variables in the judge's decision, as well as demographic data. Meanwhile, cross tabulation analysis aims to identify the relationship between one variable and another (Sarwono, 2009). The cross tabulation in this study was carried out on the variables of the judge's decision (punishment and rehabilitation) against the variables of the type of drug, the weight of the drug, the article of the prosecutor's charge, the legal counsel, the composition of the judges, the gender of the defendant, the age of the defendant and the doctor witness. Relationship analysis was conducted using the chi-square test to determine the relationship between variables. In this study, the analysis of court decisions aims to determine the relationship between the variables of judges' decisions and variables in cases of drug abuse.

In this paper, the author uses quantitative data processing techniques carried out using Excel and SPSS. Prior to data processing, the author first grouped or coded the data based on case characteristics (article of charge, weight and type of drugs, type of verdict and composition of judges) and defendant information (gender, age, whether or not legal counsel was present, etc.). The coding process did not include the suspect's name but only the decision number and demographic identity. After categorizing and coding each variable, the author processed the data using Excel and SPSS. The processed Excel and SPSS results obtained will be attached in the form of tables and diagrams.

The descriptive method is used to analyze data by describing existing data without generalizing (Sugiyono, 2014), which in this study makes a frequency distribution that has been classified based on certain categories. Cross tabulation analysis in this study analyzes the relationship between two variables so as to produce a cross table and conduct a chi-square test to see a significant relationship (Prasetyo & Jannah, 2007). Data analysis is carried out to obtain conclusions from the research results. The author used Excel and SPSS

in processing the data. In this study, the variables tabulated using SPSS are the variables of the judge's decision as the dependent variable and the variables of the type of narcotics, the weight of the narcotics, the article of the prosecutor's charges, the legal counsel, the composition of the judges, the gender of the defendant, the age of the defendant and the doctor witness as independent variables. From the results of the data obtained, the author will analyze using the theory of integrated complexity, the prism of crime and the theory of retributive punishment and concepts that have relevance to this research.

3. Results and Discussion

3.1 Charges of the public prosecutor

Case analysis shows a tendency for prosecutors to criminally charge drug abusers by referring to Article 112, which is commonly used to charge drug couriers or dealers. The prosecutor's charges are influential, especially the article 112 used, because if the prosecutor charges victims of drug misusers as severely as sellers and couriers then the punishment is disproportionate. In several cases processed by the author, the public prosecutor charged Article 127 rehabilitation to defendants who possessed more than the minimum amount of drugs, while defendants who were charged with Article 127 rehabilitation and possessed less than the minimum amount of drugs were sentenced to imprisonment. In this analysis, it can be seen that the public prosecutor did not consider the amount and weight of drugs in his charges. Referring to SEMA No. 4/2010, the quantity and weight of drugs are important to consider in prosecuting and sentencing. Drug users should be prosecuted using Article 127 rehabilitation to obtain both medical and social rehabilitation.

In table 4.4 the prosecutor's charges are more severe than the judge's decision. This is contrary to the Attorney General's Regulation SEJA No. 029/A/JA/12/2015 which was made so that all prosecutors have the same perception and uniformity to handle drug abusers into rehabilitation institutions. Judges who tend to continue the charges filed by investigators and prosecutors, based on the results of the processed data above, it can be seen that prosecutors tend to demand that drug abusers receive criminal penalties. In practice, many law enforcers still view drug abusers as criminals and feel they need to be punished to have a deterrent effect rather than viewing them as victims who need treatment. In fact, a shift towards a health approach is often proposed to unify the view of drug abusers.

3.2 Composition of judges

In drug trials, the presiding judge consists of three people, namely one presiding judge and two member judges. Based on the analysis of the results of the decision, it was found that the presence of female judges in the composition of the panel of judges tended to give lighter sentences to the defendants. This finding is in line with several studies, such as those conducted by Gruhl, Spohn, and Welch (1981). The study showed that female judges have a lower tendency than male judges to give punishment to defendants. In addition, female judges are considered to be slightly more lenient in proving the defendant's guilt than their male counterparts.

Recent research by Wei and Xiong (2019) in China also supports these findings. They found that female judges were less likely to sentence drug abusers to prison than male judges. This suggests that there are gender differences in legal decision-making, which affect sentencing patterns. These differences may be related to a more empathetic perspective or a different approach to certain cases. Thus, the presence of female judges in the panel of judges provides its own dynamics that have the potential to influence the outcome of decisions, especially in drug cases.

3.3 Doctor's witness

A doctor's witness statement is influential in a trial and can convince the judge to make a decision. The information provided by doctors is based on their experience working in the medical field, academic studies and other medical publications (Hampshire, 1969) and their testimony can be accounted for. Based on the data processed by the author from 99 cases, there were 3 cases that had doctor witnesses in the trial and received rehabilitation decisions. This means that the doctor's witness determines the judge's decision. Seen in the trial of these 3 cases, there was a team of doctors who became witnesses to convince the judge that the drug abuser was an addict and needed treatment. The doctor witnesses presented were the Integrated Assessment Team formed to determine the defendant as an addict, owner or dealer of narcotics.

This assessment team aims to determine the extent of a person's addiction to drugs. According to joint regulation No: 01/PB/MA/III/2014 on the handling of drug addicts and victims of drug abuse, the Integrated Assessment Team consists of a team of doctors who are also psychologists, and a legal team consisting of the police, BNN, prosecutors and the Ministry of Law and Human Rights. The Assessment Team also analyzes medical and psychosocial for suspects who have addictions so that the Assessment Team can include how long it takes for the suspect to get treatment (ICJR, 2016). The results of the assessment can also complement the files in the trial. So that the judge can find out whether the suspect is a drug dealer or addict and can be considered by the judge. The assessment process is important because it provides an opportunity for victims of drug abuse to receive treatment. Unfortunately, in some cases, the existence of a referral letter for rehabilitation is not enough to make the judge decide on rehabilitation, the presence of a doctor's witness in the trial can determine the judge's decision.

3.4 Judges' decision making seen from integrated complexity

Integrated complexity is a person's ability to decide a case by looking at it from different perspectives so as to understand the causal relationship (Tetlock, Peterson & Berry, 1993). A person can be described as having low integration when they tend to make decisions quickly without considering other aspects. Whereas someone with high integration tends to seek a lot of information, be open-minded and consider other aspects when they make a decision. Usually someone with high integration is a good listener even when they disagree with the opinion presented (Tetlock, Peterson & Berry, 1993).

Judges in making decisions must use integrated complexity because judges are faced with the decision of a person's life, therefore in deciding a case the judge must consider the information and evidence obtained, as well as look at other aspects of the defendant before making a decision. Judges should not use a simple mindset when deciding a case. According to Guttieri, Wallace and Suedfeld (1995) judges must consider factors related to the two components of differentiation and integration. Differentiation means that the decision maker considers a number of problems or looks for alternative solutions to the problem, while integration is choosing actions that have positive value and minimize losses by considering morality, traditions and values.

Based on the data analysis conducted, it is known that in cases of narcotics abusers judges give more prison sentences than rehabilitation. Based on SEMA No. 4 of 2010, judges should provide rehabilitation decisions for drug abusers who possess less than the allowed amount of the prohibited substance. Based on this provision, the smaller the amount of narcotics (under the provision), the greater the possibility of the abuser getting a chance for rehabilitation. However, from the results of the data analysis conducted, almost all cases of abusers (regardless of the amount of substance, judges impose criminal penalties). This condition can be interpreted that judges tend to think black and white, judges only pay attention to the aspect of drug users as offenders and do not pay attention to the fact that drug use is a victimless crime (Schur, 1965). In addition, judges also do not consider providing a second chance, avoiding the negative impacts of criminalization such as the risk

of HIV, stigma, and mental disorders and suicide (Fazel & Baillargeon, 2011). Thus, judges in drug abuse cases have low integrated complexity.

If seen from table 4.15, many judges decide imprisonment for drug abusers who require treatment, judges have low integration because they think simply, not considering demographic factors such as age and legal factors such as the type and weight of drugs. In some cases when the defendant had provided a statement that they needed treatment, the judge still decided on imprisonment because the public prosecutor demanded imprisonment. The judge only continued the demands of the prosecutor who wanted to imprison drug abusers without considering other aspects. Judges do not consider various perspectives, dimensions or alternatives so that judges do not meet the predetermined standards of good cognitive processing (Guttieri, Wallace & Suedfeld, 1995) even though judges are expected to use integrated complexity thinking in deciding a case because the results of the decision will affect a person's life.

Judges in Indonesia rely more on their beliefs. Judges' beliefs are subjective, according to epistemology, beliefs must be based on professionalism. Based on integrated complexity, when a judge does not understand a case, the judge must immediately request the presence of an expert witness without having to wait for the prosecutor or legal counsel. If the judge does not present an expert when he does not understand, the judge is not professional because he decides a case based only on his belief. According to (Lintogareng, 2013) using judges' beliefs in making decisions is not prohibited, but judges should not decide a case based only on their beliefs without considering evidence. Judges must decide cases using their beliefs based on existing evidence. Through content analysis when the judge's decision is criminal, it indicates that the judge does not know or does not use the integrated complexity approach, especially since there are no expert witnesses who explain the impact of criminal decisions on drug abusers.

3.5 Drug abusers seen through the prism of crime

Definitions of crime vary greatly historically, culturally and locationally. In addition, what is considered a crime is also influenced by the power of the people who commit it according to Henry and Lanier (2007). Drug abusers are included in the powerless offender and are at the top of the prism. When viewed from the seriousness, losses and victims of crime, drug abuse is not included in serious crimes. Drug abusers harm themselves because they have addictions and need treatment.

Drug abuse is at the top of the prism because the victim is visible, the perpetrator has no power and it is a conventional crime. Crimes committed by powerless offenders carry a more severe punishment aspect than crimes committed by powerful offenders (Calavita & Pontell, 1993 in Henry & Lanier, 2001). There is a heavier social reaction to conventional crime or the upper prism (Henry & Lanier, 2010). So it is not surprising when judges sentence drug abusers to punishment. Because the implication, according to the author, is that judges will give heavier decisions to conventional crimes, crimes committed by powerless offenders and their victims are visible.

3.6 Judge's decision seen through retributive punishment theory

Rehabilitation of drug abusers is a form of punishment related to treatment or care programs both socially and medically (McNeill, 2014). In Indonesia, rehabilitation is clearly introduced as a form of punishment through Law No.35/2009 in article 103 paragraph 2, which states that undergoing rehabilitation is counted as a period of serving a sentence. However, the implementation is not in line, the rules made by the government are only on paper. According to the results of the author's data processing, judges imprison many drug abusers if seen in table 4.1. Punishment of drug abusers according to Bindal (2009) is disproportionate in criminal law practice, because crimes committed by drug abusers are victimless crimes.

Judges and other law enforcement officials tend to have similar perspectives in punishing drug abusers. They still consider that drug abuse is a crime that deserves criminal punishment. This decision to impose punishment is contrary to the regulations stipulated in the law, which is to provide rehabilitation for drug users. This can be seen in table 4.15 where many prosecutors and judges impose prison sentences on drug abusers who have evidence below the threshold. Therefore, judges and prosecutors tend to punish drug abusers not in accordance with the crime, even though the theoretical basis of retributive punishment has the principle of proportionality which provides proportional punishment or punishment in accordance with the crime, so that the punishment becomes fair (Bindal, 2009). Hastings and Selbie (1919, in Bindal, 2009) said that retributive punishment as revenge is understood as "evil" because of the urge to retaliate in the same way and to the same extent. Retributive punishment is not limited to imprisonment or the death penalty (Aquina, 1998 in Koritansky, 2005). Judges can provide punishment in the form of rehabilitation for them to get treatment. If retributive punishment is implemented based on the principle of proportionality, then drug abusers are entitled to rehabilitation. This makes the punishment fair. Rehabilitation centers are the right place for drug abusers who need treatment.

4. Conclusions

The results of the research conducted by the author show that the factors that influence judges in making decisions are the demands of the prosecutor, the composition of judges and witnesses. Doctor witnesses are very influential in convincing judges to rehabilitate drug abusers, in the decisions that researchers have analyzed, all cases that present doctor witnesses get rehabilitation decisions. Meanwhile, the public prosecutor mostly charges drug users using article 112, which is usually used to ensnare drug couriers and dealers. In fact, if the prosecutor demands imprisonment, the judge will also decide on imprisonment for defendants who use drugs. The composition of judges also influences their decisions, the presence of female judges tends to lighten the punishment for drug abusers.

In this study, it was found that judges did not use integrated complexity in deciding a criminal offense, judges did not consider other evidence and only continued the prosecutor's charges, whereas judges with a high level of integrated complexity would consider the values and evidence available. In this study, judges used simple logic in deciding a case, even though in the judge's decision a person's life is at stake. Judges who do not think in terms of integrated complexity are detrimental to drug abusers, not only in terms of time and materials but also in terms of the negative effects of criminalizing drug abusers, such as extortion, violence and HIV/AIDS in prison. In addition, when judges do not think in an integrated way, their decisions do not reflect justice.

When viewed through the prism of crime, drug abuse is at the top of the prism, because drug abusers are powerless offenders, drug abusers hurt themselves. Meanwhile, the judge only continued the prosecutor's charges and did not consider other evidence such as the type and amount of drugs. This reflects that the judge's decision did not pay attention to the principle of proportionality, even though when viewed from the seriousness of the crime, drug abusers are not included in serious crimes, therefore they are entitled to rehabilitation.

When viewed through the theory of retributive punishment, judges and law enforcement officials tend to see drug abusers as criminals who deserve criminal punishment for their mistakes, they still adhere to revenge with the same punishment, even though drug abuse is a victimless crime. Retributive punishment theory also adheres to the principle of proportionality, where the punishment given must be as severe as the crime committed. Whereas judges can decide on rehabilitation sentences that aim to cure drug abusers who have addictions so as to improve social order and reduce overpopulation in prisons.

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