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FORMULATION OF JUDGES' RULINGS BELOW THE SPECIAL MINIMUM ON NARCOTICS CASES TO BRING ABOUT JUSTICE

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ABSTRACT

Narcotics crimes are classified as *extraordinary* crimes because these crimes are transnationally committed by a syndicate with the aim of destroying the nation in a conceptual and systematic way. The formulation of the problem in this writing is 1. How to consider the legal basis of judges below the specific minimum on narcotics cases to bring about justice. 2. How is the formulation of criminal charges below the specific minimum for narcotics cases to bring about justice? This research uses a normative juridical approach that emphasizes literature research. In this study, what is used is the Statutory approach, conceptual approach, case approach, historical approach, and philosophical approach. The type of legal material used is primary, secondary, and tertiary legal material the analysis used is to use qualitative descriptive analysis. The formulation of criminal penalties below the special minimum for narcotics cases to realize legal certainty in Article 112 paragraph (1) of Law No. 35 of 2009 against perpetrators of narcotics abuse will be sentenced to a maximum of 12 (twelve) years in prison and at least 4 (four) years, and with a maximum fine of Rp. 8,000,000,000.00 (eight billion rupiah). According to Article 191 paragraph (1) of the Criminal Procedure Code (KUHAP) has stated unequivocally that judges are not allowed to impose a sentence exceeding the maximum threat or under the minimum threat set forth in the article used by the public prosecutor in his indictment, if the charges charged against the defendant are not proven validly and convincingly then the defendant should be decided freely.

Keywords: *formulation, criminal narcotics, justice*

INTRODUCTION

Narcotics crimes are classified as *extraordinary* crimes because these crimes are transnational in nature and carried out by a syndicate with the aim of destroying the nation in a conceptional and systematic way so that the government in eradicating narcotics abuse requires extraordinary efforts because currently the network continues to grow and is considered very worrying because it has a negative impact caused by The misuse of narcotics has caused such widespread casualties and can result in even greater danger to the life and cultural values of the nation. Narcotics are drugs or substances that can calm nerves, cause unconsciousness, or anesthesia, relieve pain and pain, cause drowsiness or stimulation, can cause stupor effects, and can cause addiction or addiction, and which are designated by the Minister of Health as Narcotics (Mardani, 2008).

The high number of narcotics crimes caused the government to create and issue Law Number 35 of 2009 concerning Narcotics. Parties who abuse narcotics according to Law No. 35 of 2009 consist of drug addicts regulated in Article 1 number 13 and abusers regulated in Article 1 number 15. A Narcotic Addict is a person who uses or abuses Narcotics and is in a state of dependence on Narcotics, both physically and psychically. The Indonesian government has also issued a warning that Indonesia is a narcotics emergency country (Lasco, 2020). With the narcotics emergency warning, drug users, buyers, and dealers should be severely

sanctioned. One of the sanctions given to drug abusers is in the form of imprisonment (Eleanora, 2011).

Based on the provisions of the Criminal Code (KUHP), it is known as the minimum prison sentence generally which is 1 (one) day and a maximum imprisonment of 15 (fifteen) years to 20 (twenty) years in terms of weight. A special minimum criminal is a criminal threat with restrictions on the minimum sentence period within a certain time where this special minimum crime only exists in certain laws outside the Criminal Code. Not all laws have a specific minimum criminal threat. One of the laws that have a special minimum threat is Law No. 35 of 2009 concerning Narcotics.

Regarding the enforcement of the law on the eradication of narcotics crimes in the current reform era, Lawerence M. Friedman sees that the success of law enforcement always requires the functioning of all components of the law. The legal system in Friedman's view consists of three components, namely the legal structure component, the legal *substance* component, and the *legal culture* component (Christiani, 2016). As a result of the low professionalism of law enforcement officers (structures), but also the result of the content of the legal product (substance) itself which is more of a cosmetic of the legal State than it highlights its legal essence to realize justice from the protection of human rights on the one hand as well as a pragmatic, hedonistic, and instantaneous culture (culture) that colors law enforcement in this country on the other.

For convictions regulated in the Law outside the Criminal Code which lists a specific minimum sentence in each formulation, there is not a single guideline that specifically regulates and *guides* judges in carrying out their obligations to decide a case. Of course, this will be a problem in itself if, in the facts revealed at trial, there are actually many things that relieve the Defendant of a special criminal act which in this case is related to the Narcotics case.

Even though in practice the formulation of the deli has explicitly specified a special minimum criminal, with certain legal considerations still the limit of the specific minimum criminal limit is hit. The juridical problem that then arises is the existence of a side with legal justice (*rechtvaardigheid*).

The judicial power will have implications for law enforcement by judges at trial because the attitude of judges in judicial proceedings will largely determine objectivity in deciding a case. There are some phrases that give privileged positions to judges, for example, the last bastion for the seeker of justice, besides this, the judge is ultimum remedium, which becomes the main tool for all irregularities, therefore, there is a fairly extreme expression that all parts of society can be corrupted as long as the judge is not all will be perfect (Sutiyoso & Puspitasari, 2005).

Various decisions of judges who decide a criminal case below the minimum limit result in the verdict being inconsistent, because the imposition of sanctions on an ideal verdict can provide a sense of legal certainty and a sense of justice in society even though there is a theory that justifies it. This often creates injustice in the imposition of criminal sanctions, because often judges in sentencing a criminal case are not proportional to the crime or the consequences of the crime itself. This in terms of the rules of criminal law does not conflict, because the previous criminal legislation has not established special minimum system rules in imposing the amount of criminal length and the severity of the sentence.

The verdict handed down by the judge against the defendant is very important because it affects a person's future. The judge's sentencing takes into account the events that developed in the trial. So there are criminal convictions that differ on the basis of the indictment and the dangerous nature of the charges. The importance of a criminal conviction because it concerns a person's future, "the work of the Criminal Justice System has the potential that one of the sub-systems can be disrupted so that it interferes with other sub-systems (Devy Iryanthy Hasibuan, 2015).

Based on the description stated in the background of the problem above, the author can formulate the problem in this dissertation as follows: How is the judge's legal consideration below the specific minimum on narcotics cases to realize justice? and How does the formulation of criminal convictions below the specific minimum of narcotics cases bring about justice?

METHOD

The method in this study serves to examine how the data is collected and how the data is analyzed, as well as how the results of the analysis will be implemented. According to Soetandyo Wignjosoebroto in legal research and its essence as scientific research, in a literal sense method means "way" (Irianto, 2011).

The research in this writing is based on normative juridical law research. Normative legal research includes the study of legal principles, legal systematics, the level of legal synchronization, legal comparison, and Legal History. One example is as stated by Sumitro normative legal research is legal research in the form of an inventory of applicable laws, seeking to find the principles or philosophical basis of the legislation, or research in the form of legal discovery efforts that in accordance with a particular case (Nasution, 2008).

A normative research approach is an approach in normative research that will allow a researcher to utilize the findings of legal science both empirical and other legal research for the benefit and analysis and explanation of law without changing the character of science as a normative science. In general, in this dissertation research, is distinguished between data from the community and the Literature. Data obtained directly from the public is called primary data, while data obtained from literature materials are secondary data. Sources of legal materials consist of secondary data and primary data. Activities carried out in the analysis of normative legal research data by means of data obtained in descriptive qualitative analysis, namely analysis of data that cannot be calculated (Asshiddiqie, 1997; Ibrahim, 2006).

RESULTS AND DISCUSSION

Consideration of Judges' Legal Basis Below the Special Minimum for Narcotics Cases to Bring About Justice

Judges are legal professionals who must have the knowledge and special expertise in the field of law that is reliable. Knowledge and expertise, especially as a determinant of the weight of the quality of legal services professionally to the rights of defendants. As a legal profession, then legal scholars must:

1. Able to master the law in Indonesia.
2. Able to analyze legal problems in society.

3. Mempu uses the law as a means to solve concrete problems wisely and remains based on the principles and principles of law.
4. Mastering the scientific basis for developing legal and legal sciences.
5. Recognize and be sensitive to justice issues and social issues.

The judge should have stuck to the indictment filed by the JPU. The indictment became the basis for the judge's examination at the Court's hearing. The examination at the trial Court must not deviate from what is formulated in the indictment. The letter of the indictment can be changed but must be in accordance with the provisions of the Criminal Procedure Code conducted before the examination at the Court hearing.

The judge will look at what facts are charged, if the indictment is wide open and too wide, then the JPU must also prove the wide open and wide charge. Therefore, the indictment must be made concise, careful, clear, and precise regarding the occurrence of the offense (criminal act) charged. The JPU's habit of outlining at length the background of the facts according to Andi Hamzah is unnecessary even in doing so according to him the JPU has opened the arena even wider, so the JPU has to prove the added things.

But actually, if the judge is good, then the judge does not need to dispute such small things, even jurisprudence has reminded a small thing not to be made into trouble so that the purpose of criminal law seeking material truth is not achieved. According to Article 191 paragraph (1) of the Criminal Procedure Code (KUHAP) has stated unequivocally that judges are not allowed to impose a sentence exceeding the maximum threat or under the minimum threat set forth in the article used by the public prosecutor in his indictment, if the charges charged against the defendant are not proven validly and convincingly then the defendant should be decided freely.

The reduction from that special minimum ruling was fatal to the Judge. If that is proven, then of course it will be able to influence the judge's stance in deciding the case. The criminal charges prosecuted by the JPU could potentially be granted or could be acquitted. But the judge, despite the JPU's fatal error in his indictment, should not have directly dismissed the charges below the special minimum. As is the case in the United States even an error or omission in the indictment against the defendant does not cause the cancellation of the indictment on the condition that the negligence does not cause harm to the defendant.

The judge should look at the relevant formulation of the offense only, if it is not relevant, then there should be no need to dispute or allude to the issue. For the JPU, although the entire formulation of the elements of the indictment is still possible to be formulated in the indictment, it should be simplified briefly and precisely regarding all the charges charged. A brief and clear description of the facts or criminal events is more helpful to ascertain the interests of the defendant's defense and JPU's evidence at the Court hearing. Of course, the indictment must be made in written form and easy to understand, concise, and real about the actual delinking.

Judges are free to examine and decide a case (independence of the judiciary). However, this freedom is not absolute, because the task of the judge is to uphold law and justice based on Pancasila, by interpreting the law and looking for the basics and principles on which it is based, through the cases faced by him, so that the verdict reflects the sense of justice of the Indonesian people. This means that the freedom of judges is limited by Pancasila, the law, the interests of the parties, and public order. In other words, the judge's decision must not deviate from Pancasila and must not conflict with the interests of the Indonesian state and nation.

The freedom of judges is influenced by the system of government, politics, economy, and others. The judge is an ordinary human being who in carrying out his authority and duties will not be separated from the various interests and influences surrounding him, including personal interests, family interests, and so on. Such circumstances are vulnerable and can cause conflicts of interest for the person of the judge concerned so that the actions or behaviors of such judges can tarnish the honor, dignity, and behavior of the judge, for example, a judge shows an attitude and behavior that favors one of the parties to the dispute in carrying out his judicial duties. In other words, the judge is unaffected by the internal behavioral impulses that can make him have to take a non-impartial and neutral verdict because his mind and conscience are no longer able to speak honestly. In the face of such circumstances, judges must and are required to have integrity and impeccable personality, and be honest, fair, and professional in carrying out their authority and duties.

In sentencing narcotics cases the judge is free from the intervention of any party. In addition, judges are free to explore, follow and understand the values of justice and are also obliged to assess the good and evil nature of each prospective convict subjectively. Finally, with the criminal threat model applied in Indonesia, criminal convictions below the special minimum cannot be avoided.

The formulation of the minimum crime applicable in Indonesia is actually regulated in the Criminal Code, in Article 12 paragraph (2) of the Criminal Code for imprisonment and Article 18 paragraph (1) for imprisonment. Both stipulate that the minimum penalty is 1 (one) day and this is generally applicable. As for the special minimum crime, it is not directly regulated in the Criminal Code, it's just that it is revealed in Article 103 of the Criminal Code that laws outside the Criminal Code may regulate special matters (special rules).

A special minimum criminal is a criminal threat with restrictions on the minimum sentence period within a certain time where this special minimum crime only exists in certain laws outside the Criminal Code and in the concept of the future draft Criminal Code. Not all laws have special minimum criminal penalties, one of which is Law No. 5 of 1997 concerning Psychotropic crimes. In the application of this special minimum criminal sentence, it is hoped that it will make it easier for judges to decide cases that are not too severe because there are often differences in convictions in the same case caused by things outside the legal facts that can affect the judge. But in reality, there are still many shortcomings for which there is a special minimum penalty.

Thus, in the construction of the judge's behavior, the shield of the judge's independence is meaningless in the realm of conduct, since the independence of the judge as an individual resides in his mind and conscience which is reflected in his ruling. However, the mind and conscience of judges in a court decision do not mean that without legal accountability they cannot be corrected or judged, but there is a judicial correction mechanism determined by law, namely that judges must submit to a legal consensus as mandated in the 1945 NRI Constitution that Indonesia is a state of law, so judges must submit to deciding narcotics cases instead of passing judgments below the special minimum.

Formulation of Criminal Charges Below the Special Minimum for Narcotics Cases to Realize Justice

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to containing benefits for the parties concerned so that the consideration of this judge must be addressed carefully, carefully, and carefully. If the judge's consideration is not thorough, good, and careful, then the judge's decision derived from the judge's consideration will be overturned by the High Court/Supreme Court (Sudarto, 1983).

The judge in the examination of a case also requires a proof, where the results of the proof will be used as consideration in deciding the case. The proof is the most important stage in the examination at trial. Proof aims to obtain certainty that an event/fact submitted actually occurred, in order to obtain a correct and fair judge's verdict (Arto, 2004).

In principle, the judge's job is to pass a judgment that has legal consequences for the other party. However, the Judge cannot refuse to pass judgment if the case has already begun or been examined. Freedom of consideration for judges is absolute and no party can intervene in passing judgments. This aims to ensure that the court's decision is truly objective. In addition, the judgment of the court by the Judge must be accountable against God Almighty.

The basis for judges in passing court decisions needs to be based on theories and research results that are interrelated so that maximum and balanced research results are obtained at the theoretical and practical levels. One of the efforts to achieve judicial legal certainty, where judges are law enforcement officers through their rulings can be a benchmark for achieving legal certainty.

The freedom of judges also needs to be explained in the position of impartial judges (impartial judge) Article 5 paragraph (1) of Law No. 48 of 2009. The term impartial here must not be literal, because in passing his judgment the judge must take the right side. In this case, it is not interpreted as not one-sided in its consideration and judgment. Moreover, the formulation of Law No. 48 of 2009 Article 5 Paragraph (1): the law is not discriminated against people" (Andi, 1996).

The freedom of judges in examining and adjudicating a case is a crown for judges and must still be supervised and respected by all parties without conformity so that neither party can intervene with the judge in carrying out his duties. The judge in passing the verdict, must consider many things, be it related to the case being examined, the level of actions and mistakes committed by the perpetrator, the interests of the victim and his family, and also consider the sense of justice of the community (Liwe, 2014).

The verdict handed down by the judge must be based on clear and sufficient consideration. Judgments that do not meet these conditions are categorized as judgments that are not sufficiently considered or *onvoldoende gemotiveerd*. The reasons for consideration can be certain articles of legislation, customary law, jurisprudence, or legal doctrine (Yahya, 2005).

As it is known that in criminal cases, the principle of proof applies; beyond a reasonable doubt, which means that, in passing his verdict, the judge is not only bound by valid evidence but also must be supplemented by the judge's conviction. This was then the reason for the judge to pass a verdict that he thought was in accordance with his reason and conscience. If indeed according to the judge's belief, the verdict given gives a sense of justice then it can be done (Achmad Ali, 2009).

The judge may decide under the minimum threat of the law, in the event that it is proved at trial that the accused is a user (Article 127 of the Narcotics Act) but that article is not charged by the Public Prosecutor to him. The legal basis is the Supreme Court Circular Letter No. 3 of 2015 concerning the Implementation of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting. The prosecutor charged with Article 111 or Article 112 of Law No. 35 of 2009 concerning Narcotics (Narcotics Law) but based on the legal facts revealed at the trial it was proven that Article 127 of the Narcotics Law where this article was not charged, the Defendant was proven to be a user and the amount was relatively small (SEMA 4 of 2010), then the judge decided according to the indictment but could deviate from the special minimum criminal provisions by making sufficient consideration.

Generally, in narcotics cases where the judge decides the case with minimum criminal sanctions, it is found that in the judge's judgment in the decision of the narcotics case, the point is because the General Prosecutor only charged the Defendant with Article 112 of the Narcotics Law but did not charge with Article 127 of the Narcotics Law even though at trial it was proven that this Defendant was a drug user so he should have been charged with Article 127 of the Narcotics Law. Based on the above provisions, it is understood that in a Narcotics case, a judge can decide to deviate from the minimum criminal provisions of the law if it is proven at trial that the Defendant is a user (Article 127 of the Narcotics Law), but the article is not charged by the Public Prosecutor to the Defendant.

Judges in conducting trials are free, and impartial and try to decide cases in accordance with their legal capabilities, this is as stated in Article 1 number 1 of Law Number 48 of 2009 concerning Judicial Power, which states that the power of the judiciary is the power of an independent state to organize justice in order to uphold law and justice based on Pancasila, for the implementation of the State of Law of the Republic of Indonesia.

The renewal of sentencing, especially in the enforcement of narcotics laws in Indonesia, is urgent as stated by Moeljatno that law enforcement determines in what way the imposition of the crime can be carried out if the person suspected of having violated the ban. But unfortunately, until now the Draft Criminal Code has not been passed even though the Draft Criminal Code has contained the concept of goals and guidelines for punishment based on the value of balance between the interests of the perpetrator and the community. Guidelines for applying criminal formulation are regulated in Articles 58-59 of the Criminal Code Bill (Concept 2005-2008). With this guideline, it is possible for a judge to impose other types of criminals/sanctions that are not listed in the formulation of a single criminal offense or can even impose other crimes/sanctions together with a single-formulated type of criminal.

Therefore, the formulation of criminal convictions is below a special minimum, a legal instrument or sentencing guideline is needed that can bind judges as a limitation/instruction on the perspective of the assessment of an issue, and the Supreme Court as the highest judicial institution must pay attention to the decisions of judges in the courts of the First Instance and appeals for subsequent corrections to decisions that have the potential to cause convictions. criminal substantial special minimums.

CONCLUSION

The legal basis of judges below the special minimum for narcotics cases to realize legal certainty The freedom of judges based on the independence of judicial power in Indonesia is

guaranteed in the Indonesian Constitution, namely the 1945 Constitution and the Law on Judicial Power where judges have independent power to administer justice to uphold law and justice. The freedom of judges here is not unlimited freedom by using that freedom to justify all means. But such freedom must refer to the application of laws derived from appropriate and correct legislation, interpreting the law appropriately through a justified approach, and the freedom to seek and find the law. According to Article 191 paragraph (1) of the Criminal Procedure Code (KUHAP) has stated unequivocally that judges are not allowed to impose a sentence exceeding the maximum threat or under the minimum threat set forth in the article used by the public prosecutor in his indictment, if the charges charged against the defendant are not proven validly and convincingly then the defendant should be decided freely. In the judge, the sentence is considered contrary to the laws and regulations that have been determined to be criminal with maximum threat or under special minimal threat.

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