

The Concept of Punishment against Perpetrators of Narcotics Offenses in Article 111 Paragraph (1) And Article 112 Paragraph (2) Of the Narcotics Law



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ABSTRACT: This study aims to determine the legal consequences of decisions on narcotics criminal cases that deviate from the provisions of the general minimum special criminal law based on sufficient consideration by the Panel of Judges and the ideal concept of the Supreme Court Circular Letter Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the Supreme Court Chamber Plenary Meeting in 2015 as a Guideline for the Implementation of Duties for the Court in narcotics criminal cases class I. The type of research in this study is normative juridical supported by interviews with informants. The results of the study in this discussion are that the legal consequences of a narcotics criminal case decision deviating from the provisions of the special minimum general criminal law based on sufficient consideration by the Panel of Judges are decisions that are contrary to the principle of legality and cause disparities in judges' decisions for other cases that are identical to legal facts and conflicts of interest between the Public Prosecutor and the Panel of Judges in the trial.

KEYWORDS: criminalization, perpetrators, narcotics, legal consequences, principle of legality.

I. INTRODUCTION

In examining the criminal case in court, the Panel of Judges has the duty to seek and find the truth that a criminal offense alleged against the defendant actually occurred and the defendant can be blamed for committing the act.¹ Michael Zander in his book entitled *The Law Making Process* defines *ratio decidendi* as a legal proposition that decides a case seen from the angle or context of material facts, while Kusumadi Pudjosewojo defines the consideration of judges or *ratio decidendi* as true factors / material facts, factors that are essential to making a decision.² The judge in deciding a case first considers the juridical and non-juridical aspects in making a decision after being confronted with evidence.³

A court decision in the form of a conviction is handed down to the defendant if the panel of judges (court) is of the opinion that the defendant has been legally and convincingly proven to have committed the criminal offense charged.⁴ The judge's decision is closely related to how the judge expresses his opinion or consideration based on the facts and evidence in the trial as well as the judge's conviction in a case.⁵ Therefore, judges have a central role in imposing court decisions. In a court decision, there must be considerations regarding matters that aggravate and mitigate the decision, these considerations are used as reasons by the judge in making his decision, be it in the form of a conviction or other decision.⁶

In practice, there is a Supreme Court Decision Number 6929K/Pid.Sus/2022 dated December 8, 2022, in conjunction with the Bandung High Court Decision Number 240/Pid.Sus/2022/PT.Bdg dated August 10, 2022 in conjunction with the Depok District Court Decision Number 184/Pid.Sus/2022/PN.Dpk dated June 3, 2022, where the defendant was found guilty of committing a criminal act without the right to purchase class I Narcotics in a non-plant form in violation of the provisions of Article 114 paragraph (1) of the Narcotics Law which reads:⁷

"Every person who without the right or against the law offers for sale, sells, buys, receives, becomes an intermediary in the sale, purchase, exchange, or delivery of narcotics Group I, shall be punished with life imprisonment or imprisonment for a minimum

¹ Sofia Biloro, 2018, *Kekuatan Alat Bukti Keterangan Ahli dalam Pembuktian Perkara Pidana Menurut KUHP*, Jurnal Lex Crimen, Vol. 7, No. 1, hlm. 96-103.

² Kusumadi Pudjosewojo, 1976, *Pedoman Pelajaran Tata Hukum Indonesia*, Jakarta: Aksara Baru, hlm. 23.

³ Lutfhi Rusyadi, 2016, *Kekuatan Alat Bukti Dalam Persidangan Perkara Pidana*, Jurnal Hukum Prioris, Vol. 5, No. 2, hlm. 132

⁴ Leden Marpaung, 2011, *Proses Penanganan Perkara Pidana*, Jakarta: Sinar Grafika, hlm. 129-130.

⁵ Djoko Prakoso dan I Ketut Murtika, 1987, *Mengenal Lembaga Kejaksaan di Indonesia*, Jakarta: Bina Aksara, hlm. 41.

⁶ Lilik Mulyadi, 1996, *Hukum Acara Pidana Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi, dan Putusan Pengadilan*, Bandung: PT. Citra Aditya Bakti, hlm. 3.

⁷ Putusan Pengadilan Negeri Depok Nomor 184/Pid.Sus/2022/PN.Dpk, tanggal 3 Juni 2022, hlm. 21.

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of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp.1,000,000,000.00 (one billion rupiah) and a maximum of Rp.10,000,000,000.00 (ten billion rupiah)".

Based on the description of the article above, it explains that the minimum criminal punishment that can be applied to defendants of narcotics abuse is at least 5 (five) years, however the Panel of Judges in this case imposed an imprisonment of 2 (two) years 6 (six) months and a fine of one billion with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.⁸

Against the decision of the District Court, the Public Prosecutor filed an appeal to the Court of Appeal which decided and corrected the decision of the District Court in the form of imprisonment for 2 (two) years and a fine of one billion, provided that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.⁹ Subsequently, the Public Prosecutor filed a cassation petition to the Supreme Court which decided and stated that it rejected the cassation petition of the Public Prosecutor.¹⁰

The decision of the Panel of Judges in the aforementioned case, in imposing a prison sentence of 2 (two) years against the perpetrator of class I narcotics abuse is below the minimum threat as stipulated in Article 114 paragraph (1) of the Narcotics Law, which is 5 (five) years. In the consideration, the Panel of Judges found the fact that the defendant was actually only a narcotics abuser as stipulated in Article 127 paragraph (1) letter a of the Narcotics Law which reads "every abuser of class I narcotics for themselves shall be punished with a maximum imprisonment of 4 (four) years".

The decision of the judge of the High Court *aquo* who handed down a verdict below the minimum threat has legal considerations based on Supreme Court Circular Letter Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2015 as Guidelines for the Implementation of Tasks for the Courts. This SEMA explains the guidelines for Judges at the District Court, High Court and Supreme Court levels in deciding and examining narcotics cases must be based on the Public Prosecutor's Indictment, namely Article 111 or Article 112 of the Narcotics Law, but based on the facts revealed at trial, it is considered that Article 127 of the Narcotics Law is proven.¹¹ In this case, the judge decided in accordance with the indictment but deviated from the special minimum penalty provision by making sufficient considerations.¹²

In essence, the judge may not amend the indictment as determined by the Decision of the Supreme Court of the Republic of Indonesia Number 589K/Pid/1984 dated October 17, 1984 and the judge also in sentencing the defendant is not allowed to impose punishment for acts not charged by the Public Prosecutor.¹³ In addition, in Supreme Court decisions No. 47 K/Kr/1956 dated March 23, 1957 and No. 68 K/Kr/1973 dated December 16, 1976, it was emphasized that court decisions must be based on allegations (indictments). However, there is an interesting development and a new breakthrough from the Supreme Court of Indonesia. There are several court decisions that decide a criminal offense that is not expressly formulated in the indictment can be justified, if the criminal offense that is proven is similar to the criminal offense charged (which is expressly formulated in the indictment).¹⁴

The legal issue raised in relation to Supreme Court Circular Letter No. 3/2015, which was considered by the Panel of Judges in sentencing in narcotics cases, is that it has the potential to annul various policy products on which it is based. As it should be, the content in the Circular Letter should not deviate from the material regulated in the legislation on which it is based. As known, the principle of *lex superior derogate legi inferiori* means that laws and regulations that have a lower degree in the hierarchy of laws and regulations must not conflict with higher ones.¹⁵

This can result in confusion for law enforcers, including public prosecutors, legal counsel and judges themselves. Which rules should be adhered to for the guidelines for resolving narcotics cases because as the name implies, the Supreme Court Circular Letter Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2015 as Guidelines for the Implementation of Duties for the Courts only applies internally to one law enforcement community (Judges) while the Public Prosecutor is still guided by the Narcotics Law.

In addition, the result of disparity in the imposition of criminal sanctions is the difference in decisions given by judges to perpetrators of the same or similar criminal acts. Disparity can occur due to different juridical and non-juridical considerations in the two cases. Disparity in the imposition of criminal sanctions can weaken public trust in the judiciary and stigmatize the sustainability of the law.

Hypothesis The consideration of the Panel of Judges in Case Number 6929K/Pid.Sus/2022 dated December 8, 2022 was inconsistent with using the reason of justice for the defendant, where the Panel of Judges stated that the defendant was a drug user

⁸ Beniharmoni Harefa, "Perlindungan Hukum Terhadap Anak Sebagai Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak Di Indonesia", *Jurnal Perspektif*, Vol. 22 No. 3 (2017), hlm. 222-230.

⁹ Putusan Pengadilan Tinggi Bandung Nomor 240/Pid.Sus/2022/PT.Bdg tanggal 10 Agustus 2022, hlm. 10.

¹⁰ Putusan Mahkamah Agung Nomor 6929K/Pid.Sus/2022 tanggal 8 Desember 2022, hlm. 6.

¹¹ Bambang Waluyo, *Sistem pemasaran di Indonesia*, Jakarta: Sinar Grafika, 2023, hlm. 9.

¹² Indonesia, *Surat Edaran Mahkamah Agung tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 Sebagai Pedoman Pelaksanaan Tugas bagi Pengadilan, SEMA No. 3 Tahun 2015*, Rumusan Hukum Kamar Pidana tentang Narkotika, hlm. 1.

¹³ Galih Setyo Rangga, 2019, *Kepastian Hukum Putusan Pemidanaan Yang Tidak Berdasarkan Surat Dakwaan Jaksa Penuntut Umum*, Jurnal Hukum Universitas Wisnuwardhana, hlm. 33-42.

¹⁴ *Ibid.*

¹⁵ Handar Subhandi Bakhtiar, "The Evolution of Scientific Evidence Theory in Criminal Law: A Transformative Insight", *Jurnal Media Iuris*, Vol. 7 No. 2 (2024).

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or user. But did not consider that the perpetrator of the user or user of narcotics is a victim of narcotics abuse so that the perpetrator is obliged to undergo medical and social rehabilitation. Based on the background description above, the formulation of the problem in this study, regarding the legal consequences of the verdict of narcotics criminal cases deviating from the general minimum special criminal provisions based on sufficient consideration by the Panel of Judges.

II. RESEARCH METHODS

This research is normative juridical research. Normative juridical research is library legal research.¹⁶ Normative legal research includes research on legal principles, research on legal systematics, research on the level of legal synchronization, legal history research, and comparative legal research.

Analysis of legal materials is carried out by conducting legal interpretation (interpretation) and legal construction methods. Where in this writing using the grammatical interpretation method which is a way of interpreting the Law according to the meaning of the words contained in the Law. A rule must assess the meaning of words commonly used in everyday language that is commonly used. In addition, systematic interpretation is a method of legal interpretation that interprets the law as part of the overall system of legislation by connecting it with other laws. This interpretation needs to be done because a law is always related to other laws and regulations, so that nothing can stand alone.

III. RESULTS AND DISCUSSION

A. Implementation of General Criminal Sanctions Against Narcotics Offenders Based on the Indictment of Article 114 paragraph (1) and Article 112 paragraph (1) of the Narcotics Law

Judges' decisions or those that have permanent legal force generally contain punishments against those who commit criminal acts, then the decision can be executed, but if the defendant or the Public Prosecutor rejects or objects to the decision made by the Judge, then the defendant and the Public Prosecutor can exercise their rights, namely by taking legal action against the Judge's Decision.

Judge's consideration is one aspect that determines the realization of the value of a judge's decision which contains justice and contains legal certainty. Judges in examining a case need evidence, which is then used as material for consideration to decide a case. The judge cannot impose a sentence if there are not at least 2 (two) pieces of evidence. According to Article 184 of KUHP, evidence consists of witness testimony, expert testimony, letters, instructions and testimony of the defendant.

That the regulation regarding the Judge's consideration is regulated in Article 197 paragraph (1) letter d of the Criminal Procedure Code which determines: "considerations are prepared in summary regarding the facts and circumstances along with the evidence obtained from the examination in court which is the basis for the determination of the defendant. The definition of judge's consideration is the main part in carrying out the value of a judge's decision which includes justice and contains legal certainty.

In the judge's consideration there are juridical considerations and non-juridical considerations (sociological considerations). That the juridical judge's consideration must be based on the facts in the trial, which the Judge needs to master or know theoretically and practically, jurisprudence and case positions that he will resolve. Regarding decision making, Judges must be wise, careful and fair, because Judges are still very trusted by some people who expect to protect and decide a case as fairly as possible. Meanwhile, the Judge's non-juridical considerations (sociological considerations) are more towards the background of the criminal offense. That in the consideration of the Judge also needs to be adjusted to the rules, principles and strong beliefs that still apply in society.

Basically, the judge cannot make a decision before the event / fact actually occurred, by proving the truth, the legal relationship between the parties will be seen. Meanwhile, in essence, the Judge's consideration should contain the following matters:

1. Subject matter and matters that are admitted or arguments that are not denied.
2. There is a juridical analysis of the verdict in all aspects concerning all facts / matters proven in the trial.
3. The existence of all parts of the Plaintiff's petition must be considered / tried one by one so that the Judge can draw conclusions about whether the claim is proven / at least and can be granted / at least in the ruling.

The case in this thesis research, based on the Supreme Court Decision Number 6929K/Pid.Sus/2022 dated December 8, 2022, in conjunction with the Bandung High Court Decision Number 240/Pid.Sus/2022/PT.Bdg dated August 10, 2022 in conjunction with the Depok District Court Decision Number 184/Pid.Sus/2022/PN. Dpk dated June 3, 2022, it is known that the Panel of Judges decided and stated that the defendant was proven to have committed the crime of abuse of narcotics group I in the form of non-plants in violation of the provisions of Article 127 paragraph (1) of the Narcotics Law which reads "every abuser of narcotics group I for themselves shall be punished with a maximum imprisonment of 4 (four) years".

The Panel of Judges in deciding the case was based on sufficient considerations as well as the legal facts in the trial, even though it was known that the indictment of the Public Prosecutor did not charge or was not contained in the indictment of Article 127

¹⁶ Soerjono Soekanto dan Sri Mamudji, 2015, *Penelitian Hukum Normatif*, Jakarta: Rajawali Pers, hlm. 23.

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paragraph (1) of the Narcotics Law. In this case, it is known that the charges of the Public Prosecutor against the defendant are as follows:

1. First Indictment

The actions of the defendant as regulated and punishable in Article 114 paragraph (1) of the Narcotics Law which reads that every person who without rights or against the law offers for sale, sells, buys, receives, becomes an intermediary in the sale, purchase, exchange, or delivery of Class I Narcotics, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

The prohibitions as mentioned in Article 114 Paragraph (1) of the Narcotics Law above show that the law determines all acts without the right or against the law to offer for sale, sell, buy, receive, become an intermediary in the sale, purchase, exchange, or delivery of Class I Narcotics because it is very dangerous and has an effect on increasing criminality. If these actions are carried out by someone without the right, then it can be categorized as an act of narcotics abuse or a special criminal act that can be threatened with severe legal sanctions.

The provisions regarding sanctions in the Narcotics Law are very large. Criminal sanctions are at least 4 (four) years imprisonment up to 20 (twenty) years imprisonment and even death penalty if producing class I narcotics more than 1 (one) or 5 (five) kilograms. The fines listed in the Narcotics Law range from Rp. 1,000,000.00 (one million rupiah) to Rp. 10,000,000,000.00 (ten billion rupiah).

2. Second Indictment

The defendant is threatened with Article 112 paragraph (1) of the Narcotics Law, which reads, "Every person who without rights or against the law owns, stores, controls, or provides Narcotics Group I not plants, shall be sentenced to a minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah)."

Explanation of sufficient considerations by the Tribunal in this case, as follows:

1. Based on the charges that are in accordance with the facts revealed at trial, namely the first alternative charge as stipulated in Article 114 paragraph (1) of the Narcotics Law, the elements of which are as follows:

a. Everyone

In court, a defendant was presented who claimed to be Tatah Ismawati Bin Sarmuji whose identity matched the identity of the defendant listed in the indictment of the Public Prosecutor, and the defendant admitted that he had been charged by the Public Prosecutor, so that in this case there was no error in persona. Thus, the element of every person must be declared fulfilled.

b. Without right or against the law

It is known that the witness Ridwan Dwi Gani and the witness Jody Faizal Alviandi and several colleagues from the Depok Metro Police arrested the defendant based on the development of April's brother at the defendant's house for possessing methamphetamine. During a body search and search of the defendant's house, 1 (one) clear plastic clip containing methamphetamine wrapped in cigarette tin foil was found in the defendant's right pants pocket and 1 (one) white xiomi brand mobile phone was in the defendant's right hand along with a simcard.

Initially, April asked the defendant to sell methamphetamine, but the defendant did not agree because the defendant is not a seller, so the defendant bought 1 (one) gram of methamphetamine for his own consumption. The defendant purchased methamphetamine from April's brother for Rp. 1,200,000.00, however the defendant had not yet paid for the methamphetamine. After buying methamphetamine, April's brother left the goods wrapped in cigarettes to be handed over to BI, but the defendant did not know the person. The defendant suspected that the goods that April's brother had entrusted to the defendant were drugs, but the defendant accepted April's brother's entrustment because the defendant did not feel comfortable with April's brother and was also on the same direction as the defendant's way home. In addition, the defendant April told the defendant that she would only pay Rp. 1,000,000.00, so the defendant took the goods to the Cendana area of Depok City, but the defendant did not meet BI, and the defendant put them in the gate. After delivering the goods the defendant asked about the goods and April said that the goods were methamphetamine.

The defendant did not receive any money in return for the entrustment of Mr. April to Mr. BI, the defendant only received profit for his own consumption of methamphetamine, then the 1 (one) gram of methamphetamine at a price of Rp. 1,200,000.00 that the defendant purchased from Mr. April was used by the defendant, and on 6 December 2021 Mr. April asked the defendant to give some of the methamphetamine belonging to the defendant, approximately Rp. 200,000.00, to a friend of Mr. April named Mr. Bagol, then on 7 December 2021 the defendant gave the methamphetamine to Mr. Bagol because the defendant had not yet paid Mr. April and the remaining methamphetamine was secured by the police.

The defendant used methamphetamine for 3 (three) months and the last time the defendant used it before the arrest and based on the results of the Narcotics Laboratory examination dated January 10, 2022, 1 (one) clear plastic package containing white crystals with a net weight of 0.0782 grams, with the conclusion that the white crystals are true containing methamphetamine and are listed

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in group 1 Number 61 of the Appendix to the Narcotics Law and the final net weight of 0.0540 grams. The defendant is not a health professional or someone who works in the health sector and also the defendant in buying methamphetamine for his own consumption or handing over narcotics.

c. Offering for sale, selling, buying, receiving, intermediating in the sale, exchange or delivery of Class I Narcotics

The defendant purchased 1 (one) gram of methamphetamine from April for Rp. 1,200,000.00 for his own consumption, where the defendant had been using methamphetamine for three months and last used it before the defendant was arrested, then on 6 December 2021 April asked for some of the defendant's methamphetamine, approximately Rp. 2,000,000.00, to be given to Bagol, a friend of April and on 7 December 2021 the defendant gave the methamphetamine to Bagol because the defendant had not yet paid April and the remaining methamphetamine purchased by the defendant was secured by the police. In addition, on the same day that the defendant purchased the methamphetamine from April, April left the methamphetamine wrapped in cigarettes to be delivered to BI, in the Cendana area of Depok City, however the defendant did not receive any money in return for the deposit of April to BI, the defendant only benefited for his own consumption of methamphetamine, thus the element of buying class I narcotics must be declared fulfilled.

Because all elements of Article 114 paragraph (1) of the Narcotics Law have been fulfilled, the defendant must be declared legally and convincingly proven to have committed the crime as charged in the first alternative charge.

2. Sense of justice in society

The further consideration of the Panel of Judges, stated that the limitations of imprisonment and fines must be seen case by case and cannot be equated for all cases. The Panel of Judges also considered the application of Article 114 paragraph (1) of the Narcotics Law, namely in the context of illicit trafficking in narcotics, which can be identified from the existence of an economic profit motive, which is usually characterized by repeated transactions, stock of goods in relatively large quantities and the defendant obtains economic benefits that are proportional to the risks faced, which can be identified from the mode of transaction in the distribution or delivery of goods and usually found measuring or measuring tools in the form of scales and packaging.

Therefore, in considering the application of the articles in the alternative charges, the Panel of Judges did not only consider the formulation of criminal acts in the articles charged textually/grammatically, but also contextually, namely the atmosphere surrounding the occurrence of criminal acts based on material truth formulated based on the facts revealed at trial. The actions of the defendant who possessed methamphetamine by purchasing it from April at a price of Rp. 1,200,000.00 with the aim of being used by the defendant himself, causing the defendant to be sentenced to imprisonment for five years and a fine of Rp. 1,000,000.00 in lieu of six months imprisonment, according to the Panel is not in accordance with the sense of justice in society.

That with the amount of methamphetamine purchased by the defendant and the purpose of the defendant buying the methamphetamine was for his own use, the defendant can be categorized as a user or abuser. A user must first realize the source of the offense, namely the procurement of narcotics in this case, methamphetamine worth Rp. 1,200,000.00 which he bought from April's brother, because how can a person control methamphetamine if the goods in question do not exist in their original form. Thus, the Panel of Judges is of the opinion that an autistic abuser must first control or possess or in this case the defendant must first purchase the methamphetamine from the seller before it can be used or consumed.

The Panel of Judges in providing this sense of justice, emphasizes moral justice and social justice because Judges are not executioners in law enforcement and justice is not only the right of the community or the rights of victims but justice is also the right of the defendant.

3. Supreme Court Circular Letter No. 3/2015 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2015 as Guidelines for the Implementation of Tasks for Courts

Based on Supreme Court Circular Letter Number 3 of 2015, the Panel of Judges in examining and deciding cases must be based on the Public Prosecutor's Indictment. In this case, the Public Prosecutor charged with Article 114 paragraph (1) or 112 paragraph (1) of the Narcotics Law, while based on the legal facts revealed at trial, Article 127 paragraph (1) of the Narcotics Law was proven but this article was not charged.

To support the opinion of the Panel of Judges that the defendant was proven to be a user, they referred to Supreme Court Circular Letter No. 4 of 2010, where the maximum evidence of the defendant when caught in possession of narcotics of the metamphetamine group was 1 gram, while based on the results of the weighing scale the net weight of the evidence found on the defendant was 0.0782 grams. In addition, the defendant was not subjected to a urine test as stipulated in SEMA No. 4 of 2010, this is not the fault of the defendant because this obligation is attached to the investigator.

Due to these legal reasons, the Judges decided this case in accordance with the Indictment but could deviate from the special minimum criminal provisions as regulated in the Supreme Court Circular Letter Number 3 of 2015. Thus, the Panel of Judges is authorized to impose a sentence below the minimum threat if the punishment is deemed inappropriate, therefore the Panel of Judges is of the opinion that the punishment imposed on the defendant must be appropriate and proportional and must be in accordance with the level of actions and guilt of the defendant.

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Explanation of sufficient considerations above, the Decision of the Panel of Judges in this case is to impose a sanction of imprisonment for 2 (two) years and 6 (six) months and a fine of one billion with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months at the District Court level. Against the decision of the District Court, the Public Prosecutor filed an appeal to the Court of Appeal which decided and corrected the decision of the District Court only for the length of the defendant to be imprisoned for 2 (two) years and a fine of one billion with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.¹⁷

Subsequently, the Public Prosecutor filed a cassation petition to the Supreme Court which decided and stated that it rejected the cassation petition of the Public Prosecutor.¹⁸ The Decision of the Panel of Judges in the aforementioned case, in imposing an imprisonment sanction of 2 (two) years against the perpetrator of class I narcotics abuse is below the minimum threat as stipulated in Article 114 paragraph (1) of the Narcotics Law, which is 5 (five) years. In the consideration, the Panel of Judges found the fact that the defendant was actually only a narcotics abuser as stipulated in Article 127 paragraph (1) letter a of the Narcotics Law which reads “every abuser of class I narcotics for themselves shall be punished with a maximum imprisonment of 4 (four) years”.

The legal consequences of the verdict of narcotics criminal cases deviating from the general minimum special criminal provisions based on sufficient consideration by the Panel of Judges, namely:

1. Decisions that Contradict the Principle of Legality

The principle of legality applies in the realm of criminal law and is famous for von Feuerbach's legendary adagium which reads *nullum delictum nulla poena sine praevia lege poenali*. Freely, the adage can be interpreted as no criminal offense (delict), no punishment without (based on) the regulations that precede it. The adage is the basis of the principle that criminal provisions cannot be applied retroactively (non-retroactive principle) because an offense can only be considered a crime if there is a previous regulation that prohibits the offense to be committed, not after the offense is committed.

Judges must base their decisions on legislation and are free to interpret and interpret the law. However, in the event that there is no or unclear legal basis, the judge is still obliged to hear the case. So in principle, the principle of legality must be used as an initial guideline for judges to adjudicate the cases they are handling.

2. Causing Disparity in Judges' Decisions for other cases

Article 1 point 1 of Law Number 48 of 2009 on Judicial Power states that: Judicial Power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the Republic of Indonesia Rule of Law. The freedom of judges contextually has 3 (three) essences in exercising judicial power, namely:

- a. Judges are subject only to law and justice;
- b. No one, including the government, can influence or direct the decision to be rendered by the judge;
- c. There are no consequences to the personal conduct of judges in carrying out their judicial duties and functions.

According to the Judicial Power Act, the judge's considerations are the thoughts or opinions of the judge in reaching a verdict by looking at things that can alleviate or incriminate the perpetrator. Every judge is obliged to submit written considerations or opinions on the case being examined and become an integral part of the decision.

Judicial power is synonymous with the power to enforce the law or the power of law enforcement. In every criminal justice system, crime and punishment are actually the heart of the system, and therefore occupy a central position. This is because the decision in the form of imposition of punishment will have broad consequences, both concerning the perpetrator of the crime, the victim and the community. Moreover, if the decision is considered controversial, because the truth itself is essentially relative depending on where we look at it.

The indicator to measure how far a judge's decision is fair is called disparity of sentencing. Criminal disparity has a deep impact because it contains constitutional considerations between individual freedom and the state's right to impose punishment. Criminal punishment itself in this case must be interpreted as the imposition of suffering intentionally carried out by a person or institution that has the power or authority to someone who has committed a criminal offense according to the law.

Disparity is fatal if it is linked to correction administration. Convicts who compare their punishment with other convicts and feel there is disparity, then they will see themselves as victims of judicial caprice. The occurrence of disparity in the imposition of criminal sanctions is the difference in decisions given by judges to perpetrators of the same or similar criminal acts. Disparity can occur due to different juridical and non-juridical considerations in the two cases. Disparity in the imposition of criminal sanctions can weaken public trust in the judiciary and stigmatize the continuity of the law.

¹⁷ Putusan Pengadilan Tinggi Bandung Nomor 240/Pid.Sus/2022/PT.Bdg tanggal 10 Agustus 2022, hlm. 10.

¹⁸ Putusan Mahkamah Agung Nomor 6929K/Pid.Sus/2022 tanggal 8 Desember 2022, hlm. 6.

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3. Conflict of interest between Prosecutors and Judges

Prosecutors and judges have different roles in the criminal justice process. Prosecutors act as public prosecutors who represent the state in filing charges and prosecuting defendants, while judges act as examiners and decide cases, lead the trial, and impose fair and objective decisions.

Conflict between prosecutors and judges can occur when judges hand down verdicts that differ from the prosecutor's charges. This can occur because the facts examined at trial are different from the charges. However, judges still have to stick to their own legal considerations as protected by the Judicial Power Law. This results in confusion for law enforcers, including the public prosecutor, legal counsel and the judge himself. Which rules should be adhered to for the guidelines for resolving narcotics cases because as the name implies, namely Supreme Court Circular Letter Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2015 as Guidelines for the Implementation of Duties for the Courts only applies internally to one law enforcement community (Judges) while the Public Prosecutor is still guided by the Narcotics Law.

CONCLUSIONS

The conclusion in this study, namely the legal consequences of the verdict of narcotics criminal cases deviating from the special minimum general criminal provisions based on sufficient consideration by the Panel of Judges is a decision that contradicts the principle of legality in this case the Narcotics Law should be used and the disparity of judges' decisions is the difference in sentencing decisions imposed on the same criminal case can lead to injustice, legal uncertainty, and a negative view of the community towards judicial institutions as well as conflicts of interest between the Public Prosecutor in making indictments and charges and the Panel of Judges in considering legal facts at trial.

ADVICE

Suggestions in this study, regarding the Government in this case, the legislator can make changes to Article 111 paragraph (1) Article 112 paragraph (1) of the Narcotics Law related to the elements of possessing, storing and controlling must be attached to the purpose and intention of what the narcotics are for, because logically, everyone who uses narcotics for themselves must have, store and control. In addition, it is necessary to encourage the government to revise the criminalization articles in the Narcotics Law, especially the regulation of Articles 111 and 112 of the Narcotics Law, in addition to returning to the main approach of the Narcotics Law, namely the public health aspect, the more crucial thing is to provide justice for people who are dealing with legal proceedings related to narcotics use.

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