

The Analysis of the Imposition of Criminal Sanctions below the Special Minimum Limit against Narcotics Offenders

Inugraha Ala Aziz Puryasandra *)

*) Agency/ workplace, E-mail: inugraha.std@unissula.ac.id

Abstract. *The purposes of this study include: To describe the imposition of criminal sanctions below the special minimum limit for perpetrators of narcotics crimes based on Indonesian positive law, to analyze Judges' Considerations in imposing prison sentences under special minimum threats against Narcotics Offenders (Study of Blora District Court Decision No. 1/Pid.sus/2021/PN Blora), to explain the consequences of the Judge's decision deciding the case under the minimum provisions for punishment under the Narcotics Law. This research method uses a Juridical Sociological approach, namely research that uses an approach to the problem by looking at the norms or laws that apply as positive provisions, the following is the theory that is relevant to this paper by linking its implementation to the facts found in the field. The type of research used is descriptive analysis research, namely research that seeks to describe a symptom, event and event that is happening now. The results of this study indicate that: The judge's decision to impose prison sentences under a special minimum threat against the perpetrators of the Narcotics Crime is contrary to the objectives of Act No. 35 of 2009 concerning Narcotics, because the law already regulates the minimum and maximum threats. The judge's considerations in imposing a prison sentence under a special minimum threat against the perpetrators of the Narcotics Crime are that the defendant frankly admits his actions, the defendant regrets his actions and promises not to repeat the crime, the defendant has family dependents, the defendant has never been convicted. The Consequences of the Judge'*

Keywords: *Criminal; Narcotics; Sanctions.*

1. Introduction

The Republic of Indonesia, which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, regulates every behavior of its citizens inseparable from all regulations originating from law. The rule of law requires that the law must always be upheld, respected and obeyed by anyone without exception. This aims to create security, order, prosperity in the life of society and the state. In an effort to carry out development in all fields, especially in the field of law which is

currently underway in the State of Indonesia, all people are made aware of the important role of law as a means of protection for managing the life of society, nation and state in various fields of life.¹

The Unitary State of the Republic of Indonesia is one of the large countries that prioritizes the provisions of applicable law. The rules of positive law that apply in Indonesia are clearly an important component in building a safe, peaceful and peaceful life.²The concept of the criminal justice system known in Indonesia is a situation in which functional and institutional relations are established, namely coordination between one subsystem and another according to their respective functions and authorities as the functions and authorities regulated in the criminal procedural law in the context of enforcing the criminal law apply. Means, the criminal justice system includes the process of investigation, prosecution, examination at trial up to the implementation of the judge's decision.

Law is divided into two, namely private law and public law. Private law regulates individual interests more, while public law regulates public interests. In this case, criminal law is included in public law, and criminal law examines more the norms or rules of criminal law and criminal law. One of the goals of studying criminal law is for law officers to be able to apply the rules of criminal law appropriately and fairly.³As well as the function of criminal law in general is to regulate and organize community life in order to create and maintain public order.⁴From an operationalization/functionalization point of view, in the sense of how it is manifested and works, criminal law can be distinguished into three phases/stages, namely:

1. The Formulation Stage, namely the stage of determining criminal law regarding the types of acts that can be punished and the types of sanctions that can be imposed, the authority that is authorized to carry out this stage is the Legislative/Formulative power.
2. Application Stage, namely the stage of applying criminal law, or imposing a criminal sentence on a person or corporation by the Judge

¹Sutjipto Rahardjo. 1983. Law and Social Change, Bandung: Alumni, 1983, p. 127-146.

²Nur Dwi Edie W and Gunarto, Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN. Blora), Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>

³Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (Casestudy Decision No.61 / Pid.B / 2019 / PN. Blora), Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

⁴Haris Wahyu Sunarno and Akhmad Khisni, Analysis of Criminal Liability as Doer of Preening Criminal(Case Study in the Blora State Court), Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8779/4074>

for the actions committed by that person. The authorities in this stage are Applicative/ Judiciary powers.

3. Executive Stage, which is the stage of executing a crime by the criminal execution apparatus against a person or corporation that has been sentenced to such punishment. The authority in this case lies with the Executive/Administrative powers.⁵

Of the three stages mentioned above, the stage of formulation or the stage of establishing criminal law in legislation is the most strategic stage, because it is in this stage that the lines of legislation policy are formulated which are at the same time the basis for legality for the following stages, namely the stage of criminal implementation by the judiciary and the stage of criminal execution by the criminal executing apparatus.⁶As social beings, humans are always in touch with one another, because humans cannot live alone. In life there are norms that are very influential in determining the behavior of members of the community. These norms are made for the sake of order and harmony in common life, and among these norms there are legal norms.⁷

In the framework of "law enforcement" there is a will for the law to be upheld, so that the values that are fought for through the relevant legal instruments can be realized. In using the law, the ideals contained in the law are not necessarily really to be achieved, because the law is used to justify the actions taken. Talking about law enforcement in Indonesia, it is necessary to know that the purpose of law enforcement is to provide protection for the public from all criminal acts that might occur, so that the state is obliged to prevent and overcome crime. This is inseparable from the implementation of criminal law by the state, where criminal law is a part of the rule of law as a tool to protect society.⁸

1. Determine which actions may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition.

⁵Barda Nawawi Arief. 1998. *Several Aspects of Enforcement Policy and the Development of Criminal Law*. Bandung: Citra Aditya Bakti, p. 117

⁶Barda Nawawi Arief. 1993. *Legislative Policy in Combating Crime with Imprisonment*. Bandung: Citra Aditya Bakti, p. 3

⁷Supriyono, *Criminology Study of Crime of Fencing the Stolen Goods*, Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

⁸Moeljatno. 2002. *Principles of Criminal Law*, cet. 7, Jakarta: Renika Cipta, 2002, p. 1.

2. Determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened.

3. Determine in what way the imposition of the penalty can be carried out if there are people who are suspected of having violated the prohibition.

The state as the ruler and in the framework of carrying out law enforcement has the right to impose criminal sanctions and is the only legal subject that has the right to punish (*ius puniendi*). The State's authority to impose criminal sanctions is then delegated to law enforcers who work in a system known as the Criminal Justice System. According to Mardjono Reksodiputro, the criminal justice system is a system in a society to deal with crime problems.⁹The components that work together in the criminal justice system are mainly the agencies or bodies that we know by the names: Police-Attorney-Court and correctional institutions.

In essence, the main duties of a judge are listed in Act No. 48 of 2009 concerning Judicial Power, namely: to examine, try and decide on every case brought before him. Regarding decisions that can be handed down by judges against perpetrators of crimes, they can take various forms, as stipulated in the Criminal Procedure Code (KUHAP), namely acquittal decisions, acquittal decisions, and sentencing decisions.¹⁰While the form of punishment or punishment that can be imposed by a judge, namely:¹¹

a. Main punishments:

1. death penalty,
2. prison sentence,
3. imprisonment,
4. fines;

b. additional penalties:

⁹Mardjono Reksodiputro, 2007. Human Rights in the Criminal Justice System, Collection of Fifth Book, Center for Justice Services and Legal Service (formerly the Institute for Criminology), Jakarta: University of Indonesia. matter. 84.

¹⁰Article 191 and Article 193 of the Criminal Procedure Code (KUHAP) Law Number 8 of 1981, LN RI Number 3209.

¹¹Article 10 of the Criminal Procedure Code (KUHAP) Law Number 8 of 1981, LN RI Number 3209.

1. revocation of certain rights,
2. confiscation of certain goods,
3. announcement of the judge's decision.

Judges have a very broad freedom to choose the type of punishment (strafsort) according to their wishes, because in principle Indonesia's positive criminal law uses an alternative system in the inclusion of criminal sanctions.¹²In addition, the adoption of a minimum general criminal system, a general maximum and also a special maximum (for each crime) thus opens up opportunities for judges to use their freedom in imposing sentences. The absence of guidelines for general punishment in the current Criminal Code (KUHP) is deemed necessary as a basis for judges to freely pass their decisions. In the development of law-making, there are currently several laws and regulations that contain a specific minimum criminal system (outside the Criminal Code), as contained in Act No. 35 of 2009 concerning Narcotics. With the existence of a special minimal criminal system, it can provide limitations on the freedom that judges have in making decisions,¹³

With the existence of a special minimum criminal system, as contained in RI Act No. 35 of 2009 concerning Narcotics, it is hoped that the perpetrators of criminal acts of narcotics abuse can be subject to severe punishment, this is because every year the number of perpetrators of narcotics crimes is increasing/ increased, where one of the causes is inseparable from the lightness of the verdict handed down by the judge so that the imposition of a sentence does not create a deterrent effect for the perpetrators. Even though it is very clear that narcotics have a very bad impact on their users, even narcotics crimes are very dangerous to the interests of the nation and state. This law contains criminal provisions stipulated in Articles 111 to 148 which threaten the perpetrators with specific minimum criminal sanctions with the aim of providing a deterrent effect. However, the problem is that until now Indonesia does not have a "penal system" which includes "sentence patterns" and "sentence guidelines", namely references/guidelines for legislators in making/drafting laws and regulations that contain criminal sanctions. The term pattern of punishment is often also called "legislative guidelines" or "formulative guidelines". Meanwhile, "sentence guidelines" are guidelines for the imposition/application of sentences for judges ("judicative guidelines"/"applicative guidelines"). the problem is that until now Indonesia does

¹²Muladi, 1995. Matters to be Considered by Judges in Imposing Criminals in the Context of Seeking Justice in the Capita Selecta of the Criminal Justice System, Agency, Semarang: Diponegoro University, 1995, p. 107.

¹³Barda Nawawi Arief, 2007. Review of the Imposition of Minimum Criminal Sanctions, Jakarta, 27 November. 2007. Pg 112

not yet have a "penal system" which includes "penalty patterns" and "sentence guidelines", namely references/guidelines for legislators in making/drafting laws and regulations containing criminal sanctions. The term pattern of punishment is often also called "legislative guidelines" or "formulative guidelines". Meanwhile, "sentence guidelines" are guidelines for the imposition/application of sentences for judges ("judicative guidelines"/"applicative guidelines"). the problem is that until now Indonesia does not yet have a "penal system" which includes "penalty patterns" and "sentence guidelines", namely references/guidelines for legislators in making/drafting laws and regulations containing criminal sanctions. The term pattern of punishment is often also called "legislative guidelines" or "formulative guidelines". Meanwhile, "sentence guidelines" are guidelines for the imposition/application of sentences for judges ("judicative guidelines"/"applicative guidelines").

Judging from the function of its existence, this punishment pattern should have existed before criminal legislation was made, even before the national Criminal Code was drafted. Indeed, at this time we already have Law no. 12 of 2011 concerning Formation of Laws and Regulations, but the substance of this law is more about the principles, processes, procedures for preparation, discussion, technical preparation and implementation. Whereas in this law there is no mention of "punishment", at least matters related to the type of crime (strafsoort), the criteria for the length of the sentence (strafmaat) and the method of execution of the sentence (strafmodus). Although Indonesia does not yet have a "penalty pattern" related to the qualitative and quantitative criteria for determining a specific minimum sentence,

Apart from that, the adoption of a minimum general criminal system as well as a specific maximum (for each crime) also opens up opportunities for judges to use their freedom in imposing sentences. The absence of general punishment guidelines in the current Criminal Code is also seen as a basis for judges to freely make their decisions. This often happens in the courts. There is a legal principle which states that it is better for a judge to acquit a guilty person than to punish an innocent person.¹⁴In the development of law-making, currently there are several laws and regulations that contain a special minimum criminal system (outside the Criminal Code), as contained in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. With the existence of a special minimum criminal system, it can provide limitations on the freedom that the judge has in making decisions, although regarding this special minimum criminal system there are no rules/guidelines for its application.

Narcotics abusers both physically and psychologically need medical and social

¹⁴Soelidarmi. 2002. Collection of Contraversial Decisions from Contraversial Judges/Council. Yogyakarta: UII Press, p.9

assistance. The therapy used to relieve them of addiction cannot be carried out by simply imposing prison sentences. The application of imprisonment for addicts is not able to cure their dependence on narcotics. What does it mean if a narcotics addict is imprisoned without being followed by treatment measures, of course when this addict gets out of prison he will still be an addict. Narcotics addicts need medical assistance to cure their addiction. Act No. 35 of 2009 has accommodated protection for narcotics abusers including narcotics addicts and victims of narcotics abuse in the form of opening up the application of measures in the form of medical and social rehabilitation,¹⁵

In imposing a sentence by a judge against a perpetrator of a narcotics crime, a judge will pass a sentence within the limits specified in the Narcotics Law. Where in this Narcotics Law there are minimum and maximum limits on criminal threats, which will become a benchmark/guideline in imposing a verdict by a judge. With these guidelines, a judge can pass a verdict within the minimum limits and also within the maximum limits.¹⁶

In practice at trial, it turns out that decisions from judges still appear that pass criminal decisions under the minimum criminal provisions of the Narcotics Law with the example of the case in the decision of the Blora District Court No. 110/Pid.sus/2020/PN Bla dated 10 November 2020¹⁷, it is known that against the defendant named Alif Ardiles Wibowo, Amd Als Ardiles Als Deles son of Agus Budi Santoso, age 37, the judge has handed down a verdict in the form of imprisonment for 3 (three) years and a fine of IDR 800,000,000.00 (eight hundred million Rupiah) with the provision that if the fine is not paid then it is replaced by imprisonment for 1 (one) month, because the defendant is legally and convincingly proven guilty of committing the crime "Without the right to own, possess narcotics class I in plant form under the special minimum provisions of article 112 paragraph (1) of the Narcotics Law.

Then in the next case the Blora District Court again handed down a Decision under the specific minimum of the Narcotics Law, namely in decision number 1/Pid.sus/2021/Pn Bla dated March 3, 2021¹⁸ on behalf of the defendant Hery Subianto Alias Hery Biak Als Hery Alis Bin Susilo, age 44, the judge has handed down a decision in the form of imprisonment for 2 (two) years and without being sentenced to a fine. Semarang High School Number 151/Pid.sus/2021/PT SMG

¹⁵Dafit Supriyanto Daris Warsito, The Criminal System Against Narcotics Abusers), Daulat Hukum Journal: Volume 1 Issue 1, March 2018, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/2562>

¹⁶Muladi and Barda Nawawi Arief. 1998. Theories and Criminal Policy. Bandung: Alumni Press, p.27

¹⁷Blora District Court Decision (Number. 110/Pid.sus/2020/PN Bla) November 10, 2020

¹⁸Excerpt of Blora District Court Decision Number: 1/Pid.sus/2021/Pn Bla dated 03 March 2021

dated 08 April 2021.¹⁹Declare to strengthen the Blora District Court Decision Number 1/Pid.sus/2021/Pn Bla dated March 3, 2021, this means that the High Court Judge agrees with the Blora District Court Judge. The defendant was proven legally and convincingly guilty of committing the crime "Without the right to own, possessing class I narcotics in the form of plants under the special minimum provisions of Article 112 paragraph (1) of the Narcotics Law. As for the Narcotics Law itself, it has clearly regulated provisions on criminal threats within the minimum and maximum limits, as for example in Article 112 paragraph (1) of RI Law No. 35 of 2009 which regulates criminal threats for anyone who without rights or against the law plants, maintains, owns, stores, controls or provides Narcotics Group I in non-plant form.

2. Research Methods

The approach method used in this study uses a sociological juridical method. The specifications in this study are descriptive. The data sources used in this study are primary data sources, secondary data, and law enforcement data from police investigators. Primary legal materials consist of: the 1945 Constitution of the Republic of Indonesia, the Criminal Code, Act No. 35 of 2009 concerning Narcotics, and Act No. 2 of 2002 concerning the Indonesian National Police. Secondary legal materials consist of books, research documents, especially the issue of police authority policies in carrying out rehabilitation measures for narcotics users. The data collection method used was interviews with informants and document review.

3. Results and Discussion

3.1. Imposition of Criminal Sanctions Below the Special Minimum Limit against Narcotics Offenders Based on Indonesian Positive Law

Judges have a very broad freedom to choose the type of punishment (strafsort) according to their wishes, because in principle Indonesia's positive criminal law uses an alternative system in the inclusion of criminal sanctions.²⁰In addition, the adoption of a minimum general criminal system, a general maximum and also a special maximum (for each crime) thus opens up opportunities for judges to use their freedom in imposing sentences. The absence of guidelines for general punishment in the current Criminal Code (KUHP) is deemed necessary as a basis for judges to freely pass their decisions.

¹⁹Excerpt of the Decision of the Semarang High Court Number 115/Pid.sus/2021/PT Smg dated 08 April 2021

²⁰Muladi, 1995. Matters to be Considered by Judges in Imposing Criminals in the Context of Seeking Justice in the Capita Selecta of the Criminal Justice System, Agency, Semarang: Diponegoro University, 1995, p. 107.

In the development of law-making, there are currently several laws and regulations that contain a specific minimum criminal system (outside the Criminal Code), as contained in Act No. 35 of 2009 concerning Narcotics. With the existence of a special minimal criminal system, it can provide limitations on the freedom that judges have in making decisions.²¹

So the decision that imposes imprisonment under a special minimum threat against perpetrators of narcotics crimes is contrary to the objectives of Act No. 35 of 2009 concerning Narcotics. With the existence of a special minimum criminal system, as contained in RI Act No. 35 of 2009 concerning Narcotics, it is hoped that the perpetrators of criminal acts of narcotics abuse can be subject to severe punishment, this is because every year the number of perpetrators of narcotics crimes is increasing/ increased, where one of the causes is inseparable from the lightness of the verdict handed down by the judge so that the imposition of a sentence does not create a deterrent effect for the perpetrators. Even though it is very clear that narcotics have a very bad impact on users, even narcotics crime is very dangerous to the interests of the nation and the state. This law contains criminal provisions stipulated in Articles 111 to 148 which threaten the perpetrators with specific minimum criminal sanctions with the aim of providing a deterrent effect.

According to Sudikno Mertokusumo, the Indonesian state adheres to the principle of the persuasive of precedent, namely this principle gives freedom to judges in deciding a case without being bound by the decision of the previous judge so that a judge can make decisions based on his own beliefs, however this freedom is not absolute because the decisions made taken must be constitutional, not arbitrary, and based on valid evidence according to law.²² Kusumaatmadja is of the opinion that the binding power of jurisprudence in Indonesia is "persuasive precedent", that is, judges in subordinate courts are not bound by jurisprudence in continental European legal systems such as Indonesia.²³The principle of the binding persuasive of precedent is a principle in which existing decisions are not obliged to be followed by subsequent judges because judges are bound by law, according to the Judicial Law a judge has freedom in making decisions there are no provisions or obligations that require a judge to follow the previous decision, but the decision will be used as a consideration of what is the reason for the

²¹Barda Nawawi Arief, 2007. Review of the Imposition of Minimum Criminal Sanctions, Jakarta, 27 November. 2007. Pg 112

²²Anggara Suryanagara, "The Charges Are Nullified by Law After Investigation of the Main Case in the Court Session (Study of Decision Number 19/Pid. Sus/2015/PN. Sim)," Postgraduate thesis at the university of north sumatera: unpublished, 4.2 (2016), 204– 20.

²³Dri Utari Christina Rachmawati and Ismail Hasani, "The Future of the Indonesian Constitutional Court. Manuscripts of the Constitutional Court Conference and Advancement of Citizens' Constitutional Rights," 2013

judge in making the decision. According to the principle of the binding persuasive of precedent, judges are bound by the law so that the judge should impose a criminal sentence in accordance with what has been regulated in the law.

The law discovery method (*rechtsvinding*) that is most often used by judges is the method of interpretation or interpretation. Interpretation of the provisions that have been expressly stated must not deviate from the intent of the legislators.²⁴Judges have the authority to carry out legal interpretations of the articles in the law used if the contents of the articles used are unclear or incomplete. Analogical interpretation in the field of criminal law is prohibited in so far as it makes a formulation of the offense expand.²⁵Interpretation by analogy is permitted if it is used to fill in the blanks contained in the law because it has not been regulated in the provisions of the law. Interpretation by analogy is limited as an exception to the contents of Article 1 paragraph (1) of the Criminal Code as long as it does not expand the provision until it leaves the existing formulation. After the judge determines the law to be used for the case submitted to him, either using existing legal provisions or through interpretation, the judge will make a decision on the case.

Laws or statutory regulations are the basis for judges in making decisions in the context of enforcing laws that have been violated. This is because Indonesia adheres to the principle of legality which is stated explicitly in Article 1 paragraph (1) of the Criminal Code. The principle of legality in Latin is known as *nullum delictum, nulla poena sine praevia legi poenali*. According to Moeljatno, there are three meanings contained in the principle of legality, namely First, there is no action that is prohibited and punishable by crime if it has not been stated in a statute. Second, in determining the existence of a criminal act, analogies should not be used. Third, the rules of criminal law are not retroactive.²⁶

3.2. Judge's Considerations in Sentenced Imprisonment Under a Special Minimum Threat Against Narcotics Offenders (Study of Blora District Court Decision No. 1/Pid.sus/2021/PN Bla)

Narcotics crime with sanctions below a minimum judge's consideration is one of the most important aspects in determining the realization of the value of a

²⁴PAF Lamintang and C. Djisman Samosir, *Indonesian Criminal Law*, Sinar Baru, Bandung, 1983, p. 1.

²⁵PAF Lamintang and C. Djisman Samosir, *Indonesian Criminal Law*, Sinar Baru, Bandung, 1983, p. 4

²⁶Eddy OS Hiariej, *Principles of Legality and Legal Discovery in Criminal Law*, Erlangga, Jakarta, 2009, p. 26

judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's considerations This must be handled carefully, kindly, and carefully. If the judge's consideration is not thorough, good and careful, then the judge's decision originating from the judge's consideration will be canceled by the High Court/Supreme Court.²⁷The judge in examining a case also requires evidence, where the results of the evidence will be used as material for consideration in deciding the case. Proof is the most important stage in the examination at trial. Proof aims to obtain certainty that the proposed event/fact actually occurred, in order to obtain a correct and fair judge's decision.²⁸In principle, the judge's job is to make decisions that have legal consequences for other parties. However, the judge cannot refuse to make a decision if the case has already been initiated or examined.²⁹Freedom in setting considerations for judges is absolute and no party can intervene in making a decision. This aims to ensure that court decisions are truly objective. In addition, court decisions by judges must be accountable to God Almighty.³⁰The basis for judges in passing court decisions needs to be based on theory 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 decisions 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 making a decision the judge must take the right side. In this case it does not mean that it is not one-sided in its considerations and judgments. The freedom of a judge in examining and adjudicating a case is a crown for a judge and must be guarded and respected by all parties without exception, so that no party can interfere with the judge in carrying out his duties. The judge in making a decision must consider many things, both related to the case being examined, the level of actions and mistakes committed by the perpetrator, to the interests of the victim and his family and also consider the sense of justice.³¹

²⁷Mukti Arto, *Practice of Civil Cases in Religious Courts*, cet V, Student Library, Yogyakarta, 2004, p.140

²⁸Cristian H. Panelewan, *Juridical Review of Protection of the Rights of Suspects in the Process of Settlement of Criminal Cases*, *Social Science Journal*, Vol. 2 No. 2, 2015, p. 321

²⁹Sudarto. *Criminal Law and Community Development Studies on Criminal Law Renewal*, Sinar Baru, Bandung, 1986, p. 84.

³⁰Basic Considerations of Judges in Imposing Imprisonment Sanctions on Children as Perpetrators of theft Crimes with the Theory of Punishment, *Brawijaya University*, Malang, 2013, p. 9.

³¹Immanuel Christophel Liwe, *The Authority of Judges in Examining and Deciding Criminal Cases Submitted to Court*, *Lex Crimen*, Vol. III/No. 1/Jan-Mar/2014, p. 134

In making a decision against the defendant the judge not only looked at the testimony of the witnesses but also the legal facts revealed at trial. For this reason, the judge has two considerations, namely:

1. Juridical Considerations, namely considerations by judges based on the elements revealed in the trial and by law which have been determined as elements that must be included in the decision.

2. Non Juridical Considerations, namely:

a. The consequences of the defendant's actions in the case of narcotics abuse will have an impact on himself and on others.

b. The physical and psychological state of the defendant before committing the crime, including the social status attached to him.

c. The things that aggravating and mitigating the crime if it is maintained in every judge's decision, always contain things that are aggravating and mitigating the crime. This has indeed been found in Article 197 paragraph (1) of the Criminal Procedure Code which states that the sentencing decision contains aggravating and mitigating circumstances for the defendant.

a) Matters that incriminate the criminal

1. Disturbing society

2. Contrary to the wishes of the government in eradicating narcotics

3. The defendant's actions damaged the next generation

4. The accused has already been punished

b) Matters mitigating punishment

1. Never been in law

2. Regret his actions

The result of the judge's decision is different from the Decision of the SUPREME COURT Number 4136 K/Pid.Sus/2022 dated 24 August 2022. Revised the Decision of the East Kalimantan High Court in Samarinda Number 11/PID/2022/PT SMR dated 21 February 2022 which upheld the Tanjung District Court Decision Selor

Number 229/Pid.Sus/2021/PN Tjs dated 30 December 2021 concerning the qualifications of a proven crime and the length of time the sentence imposed on the Defendant became:

1. Declare the Defendant IBAU JATING child from JATING TINGAI proven legally and convincingly guilty of committing the crime of "Narcotics Abuse Class I for oneself";
2. Sentenced punishment against the Defendant and therefore with imprisonment for 1 (one) year and 6 (six) months;
3. Charged the Defendant to pay court costs at the cassation level of IDR 2,500.00 (two thousand five hundred rupiah);

4. Conclusion

The conclusion in this study is that the judge's decision that imposes a prison sentence under a special minimum threat against the perpetrators of the Narcotics Crime is contrary to the objectives of Act No. 35 of 2009 concerning Narcotics. The judge has the authority to carry out legal interpretations of the articles in the law that are used specifically in the application of criminal sanctions against perpetrators of crimes such as narcotics regulated in Act No. 35 of 2009 concerning Narcotics, provisions regarding criminal sanctions for perpetrators of narcotics crimes are separately described, and the threat of a more severe punishment is also accompanied by very high fines, both minimal and maximum. The judge's considerations in imposing a prison sentence under a special minimal threat to the perpetrators of narcotics crimes (Study of Decisions of the Blora District Court No. 1/Pid.sus/2021/PN Blora) The judge's considerations are based on juridical and non-juridical considerations, where the defendant admits openly what he has done, the defendant regretted his actions and promised not to repeat the crime, the defendant has family dependents, the defendant has never been convicted of a crime.

5. References

Anggara Suryanagara, "The Charges Are Nullified by Law After Investigation of the Main Case in the Court Session (Study of Decision Number 19/Pid. Sus/2015/PN. Sim)," Postgraduate thesis at the university of north sumatera: unpublished, 4.2 (2016), 204– 20.

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